



**A Social and Economic Analysis of the
use of Legal Services (SEALS) in the
Child and Family Agency (Tusla)**

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Authors: Halton, C., Harold, G., Murphy, A. & Walsh, E. (2018)

Printed by Hacketts - (021) 427 4014

Citation reference: Halton, C., Harold, G., Murphy, A. & Walsh, E. (2018) A Social and Economic Analysis of the Use of Legal Services (SEALS) in the Child and Family Agency (Tusla). University College Cork.

Date of Publication: September 2018

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ACKNOWLEDGMENTS

The research was conducted with the support of funding under the Irish Research Council's Research for Policy and Society Scheme [Seals Project No R16841] with Tusla as the agency partner.

Firstly, the research team wish to acknowledge, with gratitude, the participation of the many Tusla social work practitioners and educational welfare professionals who engaged so generously with this research.

The research team is grateful to the research oversight committee for the consultation, collaboration, and insightful discussions held over the course of the project. We acknowledge with thanks the co-operation and assistance offered by Marian Brattman, Pamela Benson, Dan O'Shea, Angela Feeney, Valerie Mawe, Aidan Waterstone and Joy McGlynn.

Thanks are also extended to members of the judiciary and personnel working in District Court Offices for their accommodation of the researchers during the conduct of observations.

We acknowledge the assistance of Derek Mulcahy (Tusla) in administering the SEALS surveys and Ms Pamela Benson from Tusla Legal for her assistance with regards to obtaining data for the econometric analysis. We would also wish to acknowledge Mr David Walsh and Mr Michael Egan from ACCS who provided the data.

Finally, we wish to convey our appreciation for the support of colleagues at the School of Applied Social Studies and the Department of Economics and Cork University Business School at UCC.

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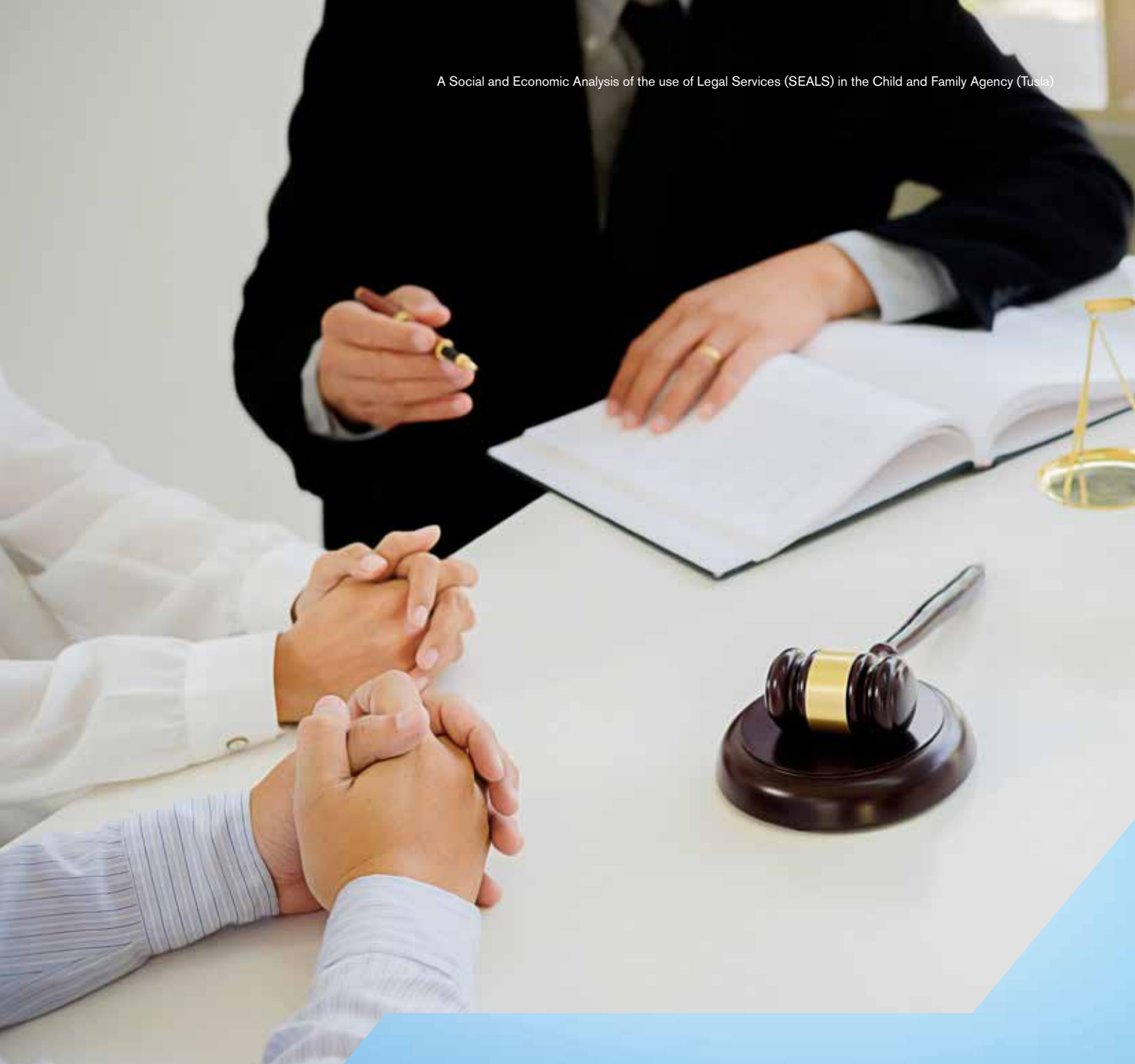
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EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

SECTION 1

INTRODUCTION: SETTING THE SEALS STUDY IN CONTEXT

The first section briefly sets out the context and design for the SEALS research project.

Background and context of the SEALS research

The SEALS research project commenced in March 2016 and was completed over a two-year period. Taking a multidisciplinary socioeconomic perspective, this project explores Tusla, Ireland's Child and Family Agency's, engagement with legal services, particularly in the contexts of child protection and welfare, and Educational Welfare Services.

Rationale for the research

Child protection and welfare practice, in particular, is viewed as the most legally intensive speciality within the social work profession. This research examines the economic, legal and social contexts that guide the use of legal services by social work and educational welfare professionals in Tusla.

Aims of the SEALS project

- To develop a deeper understanding of the variables of influence determining child protection and welfare social workers' and educational welfare practitioners' engagement with legal services; and
- To produce an evidence base to support policymaking and practice, but also to inform the development of social work education in the context of child protection and welfare work.

Objectives of the SEALS project

- To examine the factors which influence the decision-making practices of Tusla personnel when accessing legal services;
- To conduct an econometric analysis of the factors associated with the use of legal services in child welfare proceedings;
- To investigate variations in the use of legal services by Tusla personnel;

- To explore regional variations in court practice and how this impacts on the cost of legal services; and
- To undertake a review of relevant policy and practice in an international context.

Research Process

Research ethics review group

The research team were assisted by Tusla's National Research Office in aspects of the data collection. A research oversight committee comprising Tusla's National Research Office, in-house legal service, Area Manager, and Educational Welfare Services Regional Manager was established. Ethical approval was obtained for the research following its review by UCC's Social and Research Ethics Committee and Tusla's Research Ethics Review Group.

A mixed methods research approach was employed using both quantitative and qualitative approaches to data collection. Specific methodologies included:

An econometric analysis

Data on 'closed' matters (i.e. where the final bill has been received) relating to child and family legal spend from 2014 to August 2016 were provided to the research team (N= 1032). The data pertains to information collected through the AXLE system, administrated by ACCS¹. This expenditure data pertaining to legal spend by Tusla on child welfare proceedings was employed to undertake an Ordinary Least Squares regression investigating the factors associated with the use of legal services.

¹ AXLE is the information system that member firms use to enter data on for invoicing/billing purposes. This system is managed by Arthur Cox Consultancy Services (ACCS).

Questionnaire survey

A survey questionnaire was administered nationally to social work and educational welfare professionals. Both surveys collected data pertaining to practitioner profiles, education and training, work experience, engagement with legal services, attitudes towards use of legal services, continuing professional development and professional supervision.

Focus groups and semi-structured interviews

Survey participants were invited to participate in a follow-up interviews/focus groups. The interviews/focus groups set out to further probe the survey responses as well as ascertain participants' views on additional matters. Four solicitors, all from the panel of firms who go on record for Tusla in child welfare proceedings, participated in interviews, while a further two legal firms returned written responses following on from the research team's call for participation.

Court observations of in-camera District Court Child Welfare Proceedings

The researchers conducted a series of observations, attending child welfare proceedings across nine court districts in total. The districts in which child welfare hearing observations were undertaken were randomly selected, but the SEALS team did ensure that each of the four Tusla administrative areas were represented. Courtroom observations were not intended to serve the purpose of quantification; they enabled the researchers to contextualise the data collected qualitatively, providing an important reference point for the researchers to effectively relate to the perspectives shared by interviewees and focus group participants. The contextual insights offered by the court observations will be referred to throughout the report as and when they relate to the respondent data.

Participant sample

The research involved a range of personnel engaged in child welfare practice, and the associated legal proceedings. The cohorts of participants who were engaged were social

workers, team leaders, principal and senior social workers, area managers, educational welfare officers, senior educational welfare officers, regional managers of the Educational Welfare Services, and solicitors going on record for Tusla in child welfare proceedings.

It was originally proposed to engage with guardian ad litem in the context of the SEALS research; however, a full and comprehensive dataset on GAL-related expenditure was not at the disposal of the research team and as a consequence it was decided to exclude that cohort from the study.

Initially it was proposed to interview members of the judiciary who preside over child welfare proceedings in the District Court. However, the research team engaged with the Courts Service on this matter and it was determined that such an approach would not be required as the research team were conducting observations of in-camera child welfare hearings to directly observe the relational aspects of courtroom practices and processes in the courtroom environment.

SECTION 2

SETTING THE IRISH CHILD PROTECTION AND WELFARE SYSTEM IN CONTEXT

A comprehensive review of the literature on child protection and welfare systems was completed to identify key contextual themes emerging from international and Irish research. A more inquisitorial process is widely supported within the commentary on child protection and welfare systems internationally. However, Ireland's child protection and welfare system has moved increasingly towards becoming a largely adversarial paradigm. Consequentially, discourse and practice tensions arise at the intersection between child protection and welfare and the law that result in challenges for child protection and welfare systems, processes and personnel. This section points to the urgent need for a review of Ireland's child protection and welfare system and advocates for action be taken to promote greater interdisciplinary communications and understanding between child protection and welfare and legal professionals.

SECTION 3

RESULTS OF FIELDWORK WITH TUSLA PERSONNEL

In this section the results are presented of the surveys, interviews and focus groups completed with Tusla personnel in the Educational Welfare Services and Child Protection and Welfare Service, and findings from interviews with solicitors.

3.1 PERSPECTIVES FROM SOCIAL WORKERS

This section represents social workers' views on what is commonly regarded as a strongly contested arena, i.e. the relationship between social work and the law in child protection and welfare proceedings. The social workers' voices provide protection and an important insight into their experiences of working as child protection and welfare social workers in the legal context and with legal personnel.

Specific practice challenges associated with court attendance are identified. Regional and individual variations in the practices of different members of the judiciary is identified as posing significant practice challenges and is directly connected with their use of legal services. The costs in personnel's time and resources are linked to time inefficiencies associated with court practices, i.e. court schedules, the 'list' system, court delays, adjournments, and the increased review of orders granted.

Skill and knowledge deficits surface in the data. The need is identified for the provision of ongoing training and development opportunities for social work personnel to better prepare them for the increasing demands of court-related work, i.e. report-writing, consultation with legal personnel, and giving expert evidence. Participants prioritise training needs in the following areas: child care law, preparation and writing of court reports, communication competence with legal personnel, and courtroom skills.

The need emerged for the provision of regular professional supervision and structured mentoring and support facilities for social work personnel. This support includes caseload management and adequate opportunities for continuing professional development and interdisciplinary training which is

tailored appropriately to reflect the needs of different personnel cohorts.

Communication within Tusla, Ireland's Child and Family Agency, and between it and legal personnel is identified as key to providing best child protection and welfare practice. The requirement for more opportunities to engage in professional and interprofessional training and education surfaces in the data, specifically, training at induction, graduate entry, and ongoing in-service development is required to address the practice challenges associated with working in an adversarial child protection and welfare system.

3.2 PERSPECTIVES FROM SOCIAL WORK MANAGERS

This section of the report represents participants' observations and experiences of their role as managers of child protection and welfare services. Data was gathered from interviews and from a national survey. The texts of managers foreground the challenges linked to their managerial and professional responsibilities. Managers' efforts to hold the tensions between the exercise of their professional, organisational, and legal mandate to serve the best interests of the child are represented in this section of the report.

The specialist nature of child protection and welfare practice and the onerous responsibility placed on Tusla personnel, as represented in legal statute, was highlighted in this section. A strong link emerges in the data collected from social workers and managers. Similar themes surface in the social workers' and managers' sections of this report, thus highlighting their importance across the system, variations in court practices between judges, demands on time associated with court attendance, the impact of adversarialism on practice, and the value placed on organisational support.

Managers identified the challenges in social and legal discourse on child protection and welfare matters where different discourses and sometimes contrasting practices of social work and legal personnel are made apparent. Finding ways to address the many challenges surfacing in the texts of social workers was represented as a key management function. Managers focused on their

responsibility to ensure that 'best professional practice' prevails amongst Tusla social workers. The need for Tusla to establish good internal structures of support was highlighted, e.g. opportunities for in-service training and interprofessional training, quality structured induction programmes, provision of regular professional supervision, and formal and informal mentoring facilities.

Managers concur with invocations from researchers in Ireland and internationally and from social work participants for the provision of specialist training to members of the judiciary who preside over child welfare hearings. A lack of appreciation by some legal personnel of the role and expertise of the social worker in child welfare proceedings was found. Interdisciplinary training is proposed as a way to bridge prevailing misunderstandings and miscommunications that exist, in varying degrees nationally, between legal and social work personnel in child welfare proceedings.

Managerial responsibilities were identified related to the exercise of quality control and financial accountability, with consequential regional disparities observed in court practices. Participants assert that differences in the practices of members of the judiciary and legal personnel across geographical regions requires modified practice responses, which may incur additional costs in terms of professionals' time and the use of Tusla resources. Consequentially, a need emerged for clear policies and procedures to be developed to support consistency in practices of financial oversight and in the management of the use of Tusla resources. Managers sought further training in the application of quality control measures and in the correct use of Tusla financial systems.

3.3 PERSPECTIVES FROM EDUCATIONAL WELFARE SERVICES

This section of the report presents the results of survey data collected from the Educational Welfare Services professionals and also from a focus group conducted with Educational Welfare Services management. The response data from the Educational Welfare Services survey indicates that engagement with legal services constitutes a significant part of the work undertaken by educational welfare personnel.

The Educational Welfare Services is mandated by the Education (Welfare) Act, 2000 to bring proceedings before the District Court. In circumstances where an educational welfare officer forms the opinion that a parent is 'failing or neglecting to cause his or her child to attend a recognised school in accordance with this Act' a School Attendance Notice is issued in accordance with Section 25 of the aforementioned Act. If a parent fails to comply with this Notice within seven days of its issuance, the Educational Welfare Officer can bring proceedings before the District Court relating to deciding on prosecution, issue of a summons, and the court hearing.

Tusla's educational welfare personnel present their experiences in and perspectives on their engagement with legal services. A strong link emerges in the data between the experiences of Educational Welfare Service personnel and those of child protection and welfare social workers. Themes emerging relate to variation between judges, the significant demands on time that are associated with court attendance, the impact of adversarialism on practice, and the value placed on organisational support.

While the echoing of similar themes across different professional cohorts in this research points to their significance, it is important to recognise that the engagement with legal services undertaken by the Educational Welfare Service is distinct in significant ways from that experienced by social workers. This is due to the different legislation mandating their respective remits and the differences that exist between patterns of engagement across different sections of Tusla.

3.4 PERSPECTIVES ON SOCIAL WORKER-SOLICITOR RELATIONSHIPS IN THE CHILD PROTECTION AND WELFARE SYSTEM

In this section of the report consideration was given to the relationship between Tusla social workers and the solicitors going on record for Tusla in child welfare proceedings. Drawing on data obtained from engagement with both solicitors and social workers, this section is concerned with elucidating some of the opportunities and challenges that emerge at this interdisciplinary intersection.

Social workers and solicitors are required to work together in the context of child proceedings. The interdisciplinary intersections, which result from social workers' engagement with solicitors, pose both challenges and opportunities, which are explored in this section.

Social workers and solicitors have distinct frames of reference, each of which inform the perceptions and expectations held around the roles and responsibilities of the other. Sometimes these become challenged in the course of child welfare court proceedings. It is believed that the development of interdisciplinary dialogue might result in improvements in practice when practitioners engage with one another to come to an understanding of their respective positions.

Social workers place a high value on their engagement with solicitors, in particular pre-court consultation. That engagement constitutes an important ingredient in enabling social workers to effectively articulate their competencies in the adversarial context of child welfare proceedings in the District Court.

While social workers indicated that their engagement with solicitors was largely positive, the data also tells us that there are challenges arising from the tensions which emerge at the intersection of child protection and welfare practice and the legal context. Cost to professionals' time is significant, and related issues of preparedness have emerged as being relevant to the practice of both social workers and solicitors.

A further significant challenge posed is the scrutiny of practice and challenge to social worker expertise which takes place during court proceedings. At times, decisions on child protection and welfare appear to be significantly influenced by professionals who have not engaged closely with the child for whom best outcomes are sought. This includes solicitors who sometimes (i) engage in negotiation with respondent solicitors during periods of court delay, and (ii) advise social workers on applications being made in a manner that is sometimes heavily influenced by an impetus to respond to judicial variation.

As indicated by respondents in this research, the adversarial nature of proceedings can result in the paramountcy principle being at risk of becoming obscured in the court when solicitors focus on the need to demonstrate, both in court reports and in evidence, how evidentiary thresholds have been met.

SECTION 4

ECONOMETRIC ANALYSIS

Use Of Legal Services In Child Welfare Proceedings: An Econometric Analysis

The results of an econometric analysis to investigate the factors affecting spend on legal services are presented in this section. The direct financial costs of engaging with legal services necessitated by the adversarial nature of child welfare proceedings is scrutinised.

Three analyses were conducted. The first two analyses relate to general legal spend and use two dependent variables (time billed and total euro amount billed) for the full sample to investigate the factors influencing time billed and euro amount billed. The third analysis examined the factors affecting spending on legal fees for third parties and pertains to a subset of the main dataset for which third party spend was available.

The analyses demonstrated that the type of legal personnel, i.e. fee-earner type who bills for the matter, volume of legal activity, and type of legal activity, have significant positive effects on legal spend. With regards to type of legal activity (and frequency of their occurrence) the following were found to have statistically significant positive relationships with time billed and euro amount billed: Care Order Section 18, Criminal Proceedings, Interim Care Order Section 17, Special Care Order, Supervision Care Order Section 19, Disclosure Criminal, Section 25 Mental Health Act 2001, Adoption and Child Abduction. It is proposed that these types of legal activities, when present, increase spending on legal services. The analyses reveal that administrative area does not affect spending on legal services. The results reveal that engagement with legal services necessitated by the adversarial nature of child welfare proceedings has considerable cost implications.

There were a number of factors which impeded on the scope of the econometric analysis:

Firstly, only closed matters were analysed (closed matters refer to those for which a final bill has been issued), which may introduce a bias, as ongoing

matters may have a greater degree of complexity not captured amongst closed matters.

Secondly, despite having incentive structures in place for member firms to input data onto the system, significant gaps (i.e. missing data) are evident in the dataset, which placed constraints on the variables that could be included.

Finally, the analysis is not explaining all of the variations in spend on legal services, as it is confined to the data provided from the AXLE system by Tusla.

SECTION 5

CONCLUSION

Balancing the many tensions that exist in child protection and welfare practice between the rights of children and those of parents poses a significant challenge. In Ireland, child protection and welfare social work practice is located at a junction where the values of the profession and the requirements of the Child and Family Agency intersect with the demands of the legal system. With the mission of serving the best interests of the child in educational welfare and in child protection and welfare social work, this report demonstrates that personnell encounter ongoing challenges in attempting to reconcile the social, economic and legal tensions arising in practice. This report has shown that a complex interplay of social and economic variables determines social workers' and educational welfare personnell's engagement in child welfare proceedings, which require of them to negotiate the legal system and to engage with other professional actors. These variables include: financial cost, consultation practices, education and training, variations between judicial and court practices across court districts, and availability of opportunities for ongoing professional training and development, which are all directly linked with court preparation and attendance. A summary of the main themes emerging from the study are as follows:

The Influence of an Adversarial System

Paramountcy Principle: A concern that was echoed by many of the participants in this research was that the paramountcy principle (securing the best outcomes for children) is at risk of becoming obscured in the adversarial legal arena. This research has shown how meeting evidentiary thresholds has become a significant influence in child protection and welfare social workers' practice when preparing for court.

Increased Accountability: child protection and welfare social workers hearings and in educational welfare hearings the professional practice of Tusla personnel is exposed to scrutiny and challenge in the legal sphere. This constitutes an increased accountability requirement for child protection

and welfare social work practice, which was acknowledged by participants as a mechanism for ensuring that all applications made to the court are robust and well-founded. The legal context is similarly acknowledged as valuable because of its protective and gatekeeping functions.

Challenges of the Legal Context: It is acknowledged that the legal context can result in a tension for Tusla personnel, where legal solutions only offer partial solutions to the highly complex social, economic, and policy issues that are embedded in the cases before the courts. A fear was expressed by child protection and welfare social workers that their expertise is being eroded and obscured in the court arena, where other expert voices are perceived as being afforded more credibility than that of social workers, e.g. the GAL.

Time Costs: Time also emerged as a key consideration for all personnel involved in child welfare and educational welfare proceedings. The issues of court delays, court schedules, and regular adjournments were widely signalled as placing stringent time and resource demands on Tusla, the Child and Family Agency, and on its personnel.

Effective interdisciplinary engagement requires interdisciplinary training

Training: Engagement between child protection and welfare, educational welfare, and legal professionals is multidisciplinary. A more collaborative, interdisciplinary approach to training is advised to better promote effective relationships across and between agencies, professionals and individuals. Recognition must be given to the discrete pieces of legislation mandating the respective remits of social workers and educational welfare personnel. Training must be tailored to attend to the nuanced differences between the responsibilities and legal mandate of various personnel.

Specialist training for the judiciary: This report corroborates the argument in existing Irish and international research for increased specialism amongst members of the judiciary

who preside over child welfare and educational welfare proceedings. Each of the cohorts whose perspectives were showcased in this report spoke to the considerable variation that exists across court districts and between the practices of individual judges, and these variations pose significant resource challenges for Tusla and all personnel involved in child welfare proceedings.

Interdisciplinary communication: The maintenance of good communication systems to support more positive, functioning relationships within Tusla is recommended. Clear channels of communication between Educational Welfare Services and child protection and welfare teams towards making co-ordinated presentations in legal proceeding were advocated.

Organisational Support

Training and Development: A key finding from this research is the significant value that participants place on receiving support from Tusla to support them to effectively articulate their professional competencies in the complex legal domain. The SEALS findings highlight the importance of structured induction practices and of ongoing opportunities for continuing professional development.

The surveys signalled inconsistencies in the induction experiences of respondents, and variations were also identified in the provision of court skills training for child protection and welfare social workers and educational welfare officers.

Relevant, specialised, agency-based interdisciplinary training is needed to provide a key support to personnel to negotiate the specialist legal context of educational welfare and child protection and welfare practice.

Structures of Supervision and Personnel Support: Supervision, mentorship, and court accompaniment are seen as critical factors in Tusla's support of its personnel. Many of the participants in this research spoke to the support associated with court accompaniment by team leaders and senior educational welfare

officers, which signals a pastoral dimension to their management roles. There is potential also for mentoring relationships and professional supervision to be used as fora for debriefing on engagement with legal services.

Implementing Quality Controls: The SEALS report has highlighted the need for direct engagement by Tusla with its personnel who are legal service users, in its approach to policy development and innovation. The relevant personnel need to receive adequate training, including a set of clearly defined criteria, which will enable them to fulfil the management role of financial and quality control of services more effectively. Current Tusla policies and practices of financial oversight and quality control need to be reviewed and revised. Standardised practices need to be developed to assist monitoring practices of financial oversight and quality control of services. With sufficient support it is suggested that the legal service user role could progress beyond a time-consuming administrative function towards becoming an important auditing measure, which could help Tusla ensure better accountability and cost-effectiveness of legal service providers.

following legal activities are present, spending on legal services increases: Care Order Section 18, Criminal Proceedings, Interim Care Order Section 17, Special Care Order, Supervision Care Order Section 19, Disclosure Criminal, Section 25 Mental Health Act 2001, Adoption and Child Abduction.

Legal Context: The analysis reveals that administrative area does not affect spending on legal services. The results reveal that engagement with legal services necessitated by the adversarial nature of the system in which child welfare proceedings are carried out has considerable direct financial costs for Tusla.

Use of Legal Services in Child Welfare Proceedings from an Economics Perspective

Legal Spend: The econometric analysis in this report demonstrates that fee-earner type, volume of legal activity, and type of legal activity have significant positive effects on legal spend. Results of the econometric models are significant and the variables within them are demonstrated to have significant relationships with the time/amount billed.

Cost Variables: An investigation of the factors affecting legal spend was performed using an econometric analysis. The direct financial costs of the adversarial nature of child welfare proceedings was examined. The results suggest that the type of legal personnel, i.e. fee-earner type who works on the case, volume of legal activity, and type of legal activity have significant positive effects on legal spend. Specifically, when the

KEY RECOMMENDATIONS

Based on the analysis of data collected via the SEALS survey and interviews and focus groups and the econometric analysis the following recommendations emerge:

Recommendation for Social Work Services

Provision of Specialist Interdisciplinary Legal Training: All social work personnel must have an informed knowledge of legislation and policy that informs their practice and their experiences at court. The provision of a variety of opportunities for ongoing professional and interprofessional training and education is proposed as a way of ameliorating the existing tensions and prevailing misunderstandings and miscommunications that arise between legal and social work personnel in child welfare proceedings.

Development of Opportunities for Continuous Professional Development: The provision of opportunities for continuous professional development and education at all levels is advised, i.e. induction, graduate entry, and in-service development.

Review of Court Practices: Participants call for a review and revision of court practices and protocols that link directly to cost inefficiencies in the use of social workers' time and resources. Finding functional ways to foster structured communication systems and protocols between Tusla, the Child and Family Agency, and the Court Service is recommended.

Provision of Specialised Skill-based Training Opportunities: Towards ensuring that personnel are adequately prepared to represent the needs of children in the legal courtroom domain a call is made for greater provision of opportunities for personnel to engage in ongoing legal education and training events. The focus of training should be on child care law, preparation of court reports, presenting professional evidence in court, and general courtroom skills.

Provision of Supervision: Towards supporting best practice in child protection and welfare social work the provision of consistent supervision, structured mentoring, and peer support for all social work personnel is advised.

Review of Financial Processes, Systems and Training: The importance of providing good systems and processes for financial regulation to ensure appropriate use of Tusla resources in the delivery of services to vulnerable children was highlighted. Managers call for improvements to be made in the training of legal service users in the use of financial systems, thus ensuring that regulatory and quality control practices are more systematically and uniformly applied throughout the service.

Recommendations for Educational Welfare Services

Arising from the analysis of data collected via the SEALS survey and qualitative approaches, the following recommendations emerge regarding engagement between Educational Welfare Services professionals and legal services used by Tusla. Similarities emerge between the recommendations of social work and educational welfare personnel:

Provision of Organisational Support: The provision of adequate organisational supports in the form of ongoing training and workload management are essential towards helping educational welfare personnel to articulate their roles effectively in the courts.

Development of Opportunities for Training in Legislation and Policy: Educational welfare officers must be supported in developing a comprehensive critical awareness of the legislative and policy domains informing their practice and their experiences at court, through higher education and continuing professional development.

Provision of Increased Consultation Time with Solicitors: The data collected in this research suggests that educational welfare officers would value increased consultation time with solicitors.

Promotion of the Educational Welfare Service by Tusla:

The data points to work needing to be completed by Tusla to identify ways in which the organisation can work to develop its external perception by legal professionals so that the Educational Welfare Service is recognised as part of the organisation and working in line with the broader mission of the Child and Family Agency, namely to secure best outcomes for children.

Increased Communication between Tusla Personnel:

There is support from the data for increased consultation between the Educational Welfare Services and child protection and welfare social work teams so that all parties are sufficiently aware of ongoing legal cases across different departments of Tusla's engagement with families.

Recommendations for Solicitors and Tusla

Arising from the analysis of data collected via the SEALS survey and direct engagement with legal firms, the following recommendations emerge regarding engagement between Tusla child protection and welfare and Educational Welfare Services and solicitors.

Developing Understanding of the Various Roles and Responsibilities of Tusla Personnel:

Solicitors for Tusla must possess a comprehensive understanding of the policy contexts within which Tusla personnel perform their duties. This is critically important to ensure that the specific expertise of personnel is adequately recognised by solicitors.

Building Structures of Support for Tusla Personnel:

Solicitor firms and Tusla are responsible for supporting Tusla personnel to articulate their professional competencies in the context of court proceedings. A sustained, consistent, collaborative, and interdisciplinary approach to training needs to be developed.

Recommendations from Econometric Analysis

From conducting the econometric analysis to investigate the factors affecting legal spend a number of recommendations are proposed:

Recognition of the Limitations on Data Availability:

Owing to the data available this analysis was confined to examining legal services spending and excluded examining the outcomes from the legal spend. Therefore, no considerations could be given to the cost-effectiveness or value for money of this legal spend, and a cost benefit analysis could not be performed. While measuring and evaluating outcomes in this arena is challenging and difficult, it is valuable with regards to quality of child protection and welfare services and to consider if spending is generating value for money. A longitudinal approach to data collection would enable such an analysis to measure and collect data on qualitative outcomes need to be developed.

Importance of Compliance and Regulation:

Tusla indicated that incentive structures are in place for member firms to input data onto the system. However, given the significant data gaps evident in the dataset, greater compliance is required throughout the system.



SECTION 1

SETTING THE SEALS STUDY IN CONTEXT

SECTION 1

INTRODUCTION: SETTING THE SEALS STUDY IN CONTEXT

Background and context of the research

The SEALS research project was funded under the Irish Research Council's *Research for Policy and Society* scheme, with Tusla, Ireland's Child and Family Agency, as the partner organisation. The research commenced in March 2016 and was completed over a two-year period. Taking a multidisciplinary socioeconomic perspective, this project explores Tusla's engagement with legal services, particularly in the contexts of child protection and welfare and Educational Welfare Services. In the context of this research, the primary legal service under consideration is that provided by the panel of legal firms from which solicitors go on record for Tusla in child protection and educational welfare legal proceedings.

It is recognised that the child welfare and protection system in Ireland is largely adversarial. The court provides the context for proceedings, and within that setting all participants are expected to be conversant in the dominant legal discourse. As strategic partners in this research, the mission of Tusla provides an important guiding reference point throughout the design, enactment, and analysis of this research. As stated in its first Corporate Plan 2015-2017, Tusla's mission was as follows:

"With the child at the centre, our mission is to design and deliver supportive, coordinated and evidence-informed services that strive to ensure positive outcomes for children."

This report functions to develop understanding around the articulation of the paramountcy principle at the intersection of child welfare practice and the law.

The key piece of legislation informing the work of child protection and welfare social workers is the Child Care Act, 1991. Tusla can make applications to the court, e.g. for supervision orders and care orders, for the children with whom they work. Child protection and welfare proceedings are heard 'in camera' in the District Court. The Educational

Welfare Services (formerly the National Educational Welfare Board) came under the auspices of Tusla in 2014. The statutory arm of the service is mandated to prosecute parents or guardians who fail or neglect to cause their child to attend school. The key piece of legislation informing the work of Educational Welfare Officers is the Education (Welfare) Act, 2000. Under the Act, provision is made to enable the Educational Welfare Services to take criminal proceedings against parents who are deemed to be in breach of the Act's terms. Such proceedings are heard publicly in the District Court, and this is a significant distinction between the court-related work of Tusla's social workers and educational welfare officers.

SEALS is an interdisciplinary research collaboration involving social work educator-researchers and economists. The research methods employed reflect this, with a mixture of social, scientific, and economic approaches used, as outlined below.

Rationale for the Research

Social work increasingly brings practitioners into contact with the legal system. Child protection and welfare practice, in particular, is viewed as the most legally intensive speciality within the social work profession. Over the last 25 years the legal profession and the courts have come to play an increasingly prominent role in the handling of child welfare cases in Ireland. Despite this, very little research has been carried out on the interface between social services and the legal system.

Against a backdrop of austerity measures in recent years, public expenditure in Ireland has come under intense scrutiny. Child protection and welfare social workers and educational welfare officers in Tusla work in a public service context where procurement requirements and systems of accountability need to comply with regulatory controls enshrined in legislation and operated by finance departments. While Tusla child protection and welfare social workers are vested with responsibility to protect the

welfare of children in their care, nonetheless the work they carry out can be significantly influenced and shaped by their organisation's approach to resource allocation.

This research sets out to examine the economic, legal, and social context which guide the use of legal services by social work and educational welfare professionals in Tusla.

Aims of the SEALS project

- To develop a deeper understanding of the variables of influence determining child protection and welfare social workers' and educational welfare practitioners' engagement with legal services; and
- To produce an evidence base to support policymaking and practice, but also to inform the development of social work education in the context of child protection and welfare work.

Objectives of the SEALS project

- To examine the factors which influence the decision-making practices of Tusla personnel when accessing legal services;
- To conduct an econometric analysis of the factors associated with the use of legal services in child welfare proceedings;
- To investigate variations in the use of legal services by Tusla personnel;
- To explore regional variations in court practice and how this impacts on the cost of legal services; and
- To undertake a review of relevant policy and practice in an international context.

Research Process and Methodology

The researchers liaised closely with Tusla's National Research Office in the design of the study. The research team were assisted by Tusla in aspects of the data collection, e.g. collating data related to financial spend and utilising the organisation's email database to distribute the online survey. The latter enabled the national administration of the SEALS surveys across all four of the agency's administrative areas, i.e. West, South, Dublin North East, and

Dublin Mid Leinster. A research oversight committee comprising of the research team and representatives from Tusla's National Research Office, Educational Welfare Services Regional Manager, an Area Manager and Head of Legal Services met quarterly over the course of the project. The committee was established as a forum where decisions relating to the design of the study were discussed, e.g. through circulation of draft versions of data collection tools. In our collaborations various challenges in enacting the methodology were discussed to resolution. Preliminary findings were shared as the research progressed. Significantly, the enactment of the research and the results remain in the researchers' domain; therefore Tusla's engagement with the researchers was as impartial and unbiased outsiders.

Ethical approval was obtained for the research following its review by UCC's Social and Research Ethics Committee and Tusla's Research Ethics Review Group. The confidentiality of all participants was of central importance in the overall methodological strategy and was ensured by the research team in its enactment of strict protocols on data collection and management.

The SEALS researchers employed a mixed methods research approach, employing both quantitative and qualitative approaches to data collection. The specific methodologies employed are as follows:

Use of Legal Services in Child Welfare Proceedings from an Economics Perspective: An Econometric Analysis

Data on 'closed' matters (i.e. where the final bill has been received) relating to child and family legal spend from 2014 to August 2016 were provided to the research team (N = 1032). The data pertains to information collected through the AXLE system, administrated by ACCS. This expenditure data pertaining to legal spend by Tusla on child welfare proceedings was employed to undertake an Ordinary Least Squares regression investigating the factors associated with the use of legal services. A regression refers to a mathematical equation that allows the target variable to be predicted from other variables that influence it.

Questionnaire survey

A survey questionnaire was administered nationally to collect data from social work and educational welfare professionals. Two different versions of the survey were designed to reflect differences between the respective roles of social workers and educational welfare professionals. Both versions followed the same structure, seeking to collect data pertaining to practitioner profiles, education and training, work experience, engagement with legal services, attitudes towards use of legal services, continuing professional development, and professional supervision. Upon completion of an initial design the surveys were piloted before a further cycle of refinement. The research team was cognisant of the demands on professionals' time and endeavoured to design a survey that was user-friendly and relevant to their day-to-day work practices. Copies of both versions of the survey are attached in Section 7: Appendices 1 & 2.

With co-operation from Tusla's IT division the link to the social work survey, together with information about the research, was circulated to 1,404 social work professionals and 384 responses were received, constituting a 27% response rate*. The link to the educational welfare version of the survey was circulated to 91 professionals and 88 responses were received, constituting a 97% response rate. A challenge that was encountered related to the reliability of email addresses provided to the researchers. Some emails were returned as undeliverable.

Focus groups and semi-structured interviews

The SEALS research methodology was partly iterative in its design; all those who completed a survey were invited to participate in a follow-up interview. These interviews afforded the researchers an opportunity to further probe the survey responses as well as ascertaining participants' views on additional matters. As noted above, the Educational Welfare Services survey achieved an exceptionally high return rate and this provided the research team with a significant and rich breadth of detail offered in narrative responses. Upon preliminary analysis of the Educational Welfare Services survey data it was determined that knowledge gaps persisted which could only be addressed by those acting in management roles within the Educational Welfare Services, e.g. pertaining to budgetary and policy decisions, so a

focus group was facilitated with Educational Welfare Services management. Two focus groups were also conducted with social workers in the South and Dublin Mid Leinster. Semi-structured interviews were conducted with four Area Managers, ten Principal Social Workers (including some PSWs with the designation of Legal Service User), and ten social work Team Leaders. Topic guides varied depending on the cohort and their respective roles as determined by the specific nature and frequency of their engagement with legal services. Finally, four solicitors, all from the panel of firms who go on record for Tusla in child welfare proceedings, participated in interviews, while a further two legal firms returned written responses following on from the research team's call for participation.

Court observations of in-camera District Court child welfare proceedings

Dr Carmel Halton (Principal Investigator) and Dr Gill Harold (Project Researcher) were granted approval upon application by the Minister for Justice to attend and observe child welfare proceedings under the terms of the Child Care Act, 1991 [Section 29(7)], Regulations 2012. The researchers conducted a series of observations, attending child protection proceedings across nine court districts in total. The districts in which child protection hearing observations were undertaken were randomly selected, but the SEALS team did ensure that each of the four Tusla administrative areas were represented. The cases observed by the researchers were presided over by a mixture of regular sitting judges and visiting judges. The scheduling of educational welfare hearings during the data collection phase posed a challenge for the research team. As these hearings are interspersed among criminal matters, it was not as easy to ascertain when they were scheduled to take place. In co-operation with the research oversight committee, a hearing date was identified and a limited number of educational welfare hearings were observed on one date in one court district. It is recognised that this aspect of the sampling strategy was not randomised.

These observations were conducted in advance of the social work focus groups and interviews. This was a conscious scheduling decision in the overall research work programme. The sequence of the methodological strategy was a review of relevant Irish and International studies followed by the conduct

of court observations and subsequent qualitative data collection. Attendance at the hearings was not intended to serve the purpose of quantification; rather, it enabled the researchers to contextualise the data collected qualitatively, providing an important reference point which allowed the researchers to effectively relate to the perspectives shared by interviewees and focus group participants. Each of the hearings attended formed just one part of proceedings which were ongoing. No case was observed in its entirety by the SEALS researchers. Consequently, the SEALS research team cannot make definitive statements with universal application based on these observations. The contextual insights offered by the court observations will be referred to throughout the report as and when they relate to the respondent data.

Participant sample

The SEALS researchers engaged with a range of personnel who are involved in child protection and welfare practice, and the associated legal proceedings; the cohorts of participants who were engaged were social workers, team leaders, principal and senior social workers, area managers, educational welfare officers, senior educational welfare officers, regional managers of the Educational Welfare Service, and solicitors going on record for Tusla in child welfare proceedings.

It was originally proposed to engage with guardian ad litem¹ in the context of the SEALS research. Upon receipt of the financial data for the purposes of econometric analysis, it became evident that a full and comprehensive dataset on guardian ad litem related expenditure was not at the disposal of the research team. For that reason it was decided to exclude that cohort from the study's analysis overall.

It is acknowledged by the research team that the experiences of parents who are involved in child protection and welfare proceedings demands exploration. With its focus on Tusla's use of legal services, it was decided that the SEALS project would not be an appropriate context for the exploration of such perspectives. Relatedly, the research team did not engage with solicitors who represent parents in child welfare proceedings, as it was deemed that any comment arising on parents' experiences of the system and processes would be a secondary representation and therefore beyond the scope of this research.

Finally, it was also proposed at the outset that members of the judiciary who preside over child welfare proceedings in the District Court, would be engaged in qualitative interviews. The research team engaged with the Courts Service on this matter and it was determined that such an approach would not be required as the research team were conducting observations of in-camera child welfare hearings to directly observe the relational aspects of courtroom practices and processes in the courtroom environment.

A note on the literature search strategy

Via University College Cork's library website a preliminary literature scope was conducted using the social scientific databases Academic Search Complete and SocINDEX. The key search terms used included, but were not limited to, 'social workers', 'child protection', 'child welfare' 'legal proceedings', 'legal system', 'adversarialism', 'courts' and 'family law practice'. The bibliographies of published peer-reviewed journal articles identified through this search provided a further point of reference to the research team. Recommendations made by members of the research oversight committee meeting were also reviewed by the research team.

Conclusion

Conducting an investigation into how and why child protection and welfare social workers and educational welfare officers interface with the law in the context of their professional practice in the courtroom is a primary focus for this research. This report presents a conceptual framework within which emerging issues and agendas can be examined and discussed. The study design was intended to address the main aim of the research project, i.e. to develop a deeper understanding of the variables of influence determining child protection social workers' and educational welfare practitioners' engagement with legal services. In addressing the aims of the research, the findings will uncover the conflicts and tensions that arise at the intersection between child protection and welfare practice and the legal system, in particular the ways these become articulated in the courtroom context.



SECTION 2

SETTING THE IRISH CHILD
PROTECTION AND WELFARE SYSTEM
IN CONTEXT

SECTION 2

SETTING THE IRISH CHILD PROTECTION AND WELFARE SYSTEM IN CONTEXT

Introduction

The role of child protection and welfare social workers in court has increasingly become a focus for comment and debate (recent Irish commentary includes Parkes et al (2015); Coulter (2015); O'Mahony et al (2016)). Child welfare practice, in particular, is viewed as the most legally intensive speciality within the social work profession. While the legal profession and the courts play an increasingly prominent role in child welfare proceedings, very little research has been completed to date on the interface between social work and legal personnel and services.

The purpose of this section is to identify key contextual themes emerging from the relevant literature based on international and Irish research. Child protection and welfare systems have been the subject of much inquiry. This is not least because, as Duffy and Collins (2010) assert, 'when studying child welfare decision-making, one should acknowledge the system in which the decisions are made' [in Berrick et al (2015: 377)]. While the term 'system' implies coherence and organisation, it is in fact more appropriate to recognise child welfare and protection systems as nuanced and subject to variations, both within and between.

Considering the child protection and welfare system in the Republic of Ireland generally, there is considerable support in the literature for the view that the system is paternalistic, largely adversarial in its practice, and blighted by inconsistencies in judicial practices across courts. Nor is the system one which dictates or influences universality in practice by the relevant actors. Parkes et al (2015: 424) argue that 'there is no one homogenous child care proceedings model in Ireland, and that there are a variety of ways through which the voices of children are included in such cases in various regions'.

Child Welfare Systems – Critically considering adversarial approaches

Child protection and welfare (CPW) systems are not easily defined; internal variations are prevalent. However, drawing on the work of Gilbert, Parton and Skivenes (2011) we can see that the following binaries represent characteristic hallmarks of approaches internationally, with each continually subject to change over time:

Child protection orientation	Family Services Orientation (partnership model)
Adversarial	Inquisitorial
Legalistic	Therapeutic
Coercive powers of the State	Voluntarism

Whether Ireland's child protection and welfare system is located within an adversarial or inquisitorial paradigm is not easily determined. Coulter (2015: 3) explains:

The role of the courts can seem contradictory – on the one hand they perform an inquisitorial role, inquiring into the appropriate protection and care for children; on the other they are administering justice in an adversarial system where the State, through the CFA, must prove that on the balance of probabilities the parents have failed in their duty towards their child or children, and where the parents are fully entitled to contest this. Child care proceedings are therefore frequently described as hybrid: combining aspects both of an inquiry and of an adversarial court contest.

Parkes et al (2015: 424) describe the approach taken to child care proceedings in Ireland as 'court-centric, judge-led [and] adversarial'. This adversarial nature they identify has been considered by many

commentators. O'Mahony et al (2012: 51) make reference to the work of Buckley, Skehill and O'Sullivan, who deem that the 'current approach is too "forensic" and one dimensional, focusing excessively on investigating and obtaining evidence for adversarial and legalistic court proceedings rather than genuinely supporting children and families where children's welfare is at risk'.

(Hamilton, 2011: 63) asserts that '... trials in Ireland are competitive in nature, with both sides seeking to promote their own version of events, rather than engaging in a mutual search for the truth. Having said that, it is important to note that the Irish courts have acknowledged the inappropriateness of strict adversarial proceedings for child care cases where the predominant concern should be the best interests of the child'. Citing the notable cases *Southern Health Board v CH* (1996) and *JL v JL* (1996), Hamilton (ibid) notes some relevant characteristics of child care proceedings in Ireland, such as the relaxation of rules of evidence and a rejection of the view that family law cases are entirely adversarial given the adherence to the paramountcy principle. In line with the above, Hamilton further notes that 'social care professionals should aim for a balanced view in their reports and testimony to court' (ibid).

Braye and Preston-Shoot (2011: 123) have reflected extensively on the relationship between law and social work. They posit that 'in an adversarial court system [...] the principle of welfare can become secondary to the quality of evidence and the quality of advocacy that is entered. [...] legal processes can lead to harmful or anti-therapeutic outcomes, with social workers having to weigh this in the balance when considering intervention in people's lives'. However, it must also be conceded that the law functions as a protective force by safeguarding the rights of individuals and groups. The real challenge for child protection and welfare social workers is to engage in practices that are informed by the economic, social, legal and policy systems which situate their practices.

The adversarial approach has many critical detractors. McGrath (2005) is highly critical of the impact of child welfare proceedings in an adversarial paradigm. He outlines the associated drawbacks, which include damage to parental perceptions of care proceedings, as these can reinforce feelings of

guilt and shame, which can espouse anger, to the detriment of collaboration. McGrath also discusses the strain on children during protracted legal disputes in which their futures are effectively put on hold. McGrath is also of the opinion that the adversarial approach puts a strain on professional witnesses.

Ellett and Steib (2005) have similarly critiqued the adversarial direction in which child protection and welfare proceedings have moved. Commenting from the American perspective, they determine that an increase in judicial oversight and a growing volume of increasingly complex child welfare cases has 'given birth to a system in which the power and authority between two organizational entities intended to be partners in service to society's most needy children and families is greatly unbalanced' (2005: 348).

Ellett and Steib (ibid) recognise that an adversarial approach is a characteristic hallmark of Common Law states, but make the insightful observation that 'practices in the adversarial legal process that may work well in other situations appear counterproductive when applied to child welfare matters. They are convinced of the detrimental impact of the adversarial approach in the child welfare context and in the manner in which actors in the system relate to one another and whose voices are heard. As they see it, the focus has become obscured from its rightful positioning on children's wellbeing; 'the court system is becoming an industry with the involvement of growing numbers of attorneys and court personnel. Clients, especially children, and OCS [Office of Community Services] personnel are too often viewed as ancillary to the court process' (Ellett and Steib, 2005: 348).

Alternative Frameworks for Child Protection Proceedings

Establishment of specialist family court

The suggestion of establishing a dedicated family court in Ireland has received critical attention (see for example Martin, 2005). O'Mahony et al (2016: 132) consider this matter closely with due consideration to the Irish context. Making reference to the findings of the *Child Care Law Reporting Project*, they point to 'a lack of specialization which results in a system that does not always meet the needs of its users and in which practice varies enormously from judge to judge and court to court.' The variations they allude to are

as follows (ibid):

- the rates at which orders are granted;
- the levels of training provided to judges;
- the scheduling of proceedings and amount of time available for child care cases;
- the openness of the system to hearing the voice of the child or to making allowances to facilitate parental participation; and
- the physical facilities in which the proceedings are held.

Looking beyond adversarialism towards the 'opportunity' of inquisitorial proceedings

Alongside the idea that a discrete court be established, there is also an advocacy from McGrath (2005) to consider how inquisitorial approaches, such as that used in the Netherlands, might present fewer stressors to all actors. He explains that the Dutch court hearings are informal in comparison with Irish approaches and that parents and older children are able to talk directly to the judge, which McGrath views as demonstrating a different type of relationship between the citizen and the state. O'Mahony et al (2016: 137) assert that a 'modified' adversarial model is employed in the Irish child protection system; 'the aspiration set down by the Irish Supreme Court that child care cases take a more inquisitorial format than other court proceedings. However, even when affirming that aspiration the High Court has acknowledged that the proceedings remain located within an adversarial framework.' In the American context, Hardcastle (2005: 57) discusses 'therapeutic justice', a model in which actors, including family court judges, 'reject[s] the traditional adversarial processes in favour of inquisitorial processes. They view the adversarial process as a barrier to the goal of making families whole and healthy.

The involvement of lay persons in child welfare proceedings

This has been explored in the Swedish context by Svensson and Höjer (2017: 83), who explain that the use of laypersons in decision-making bodies 'can

increase the legitimacy and responsibility of child protection in society as a whole' but 'on the other hand, it can threaten the idea of having decisions handled in a professional way, with consequential effects for the social work profession'.

Interdisciplinary training

Ellett and Steib (2005: 348) state that 'judges' participation in legal training for child welfare personnel and students are examples of low-cost activities that can be replicated elsewhere. Some judges suggested that joint training sessions for judges, caseworkers, and supervisors would be beneficial in better understanding the multiple roles, legal responsibilities, and expertise in child welfare cases.

Ellett and Steib (2005: 349) go on to consider the merits of adequate training and knowledge of the legal system amongst supervisors:

Given the demanding high caseloads that the majority of child welfare personnel are assigned and the complexity of these cases and the courts, it seems important to develop opportunities for child welfare supervisors to closely mentor personnel, particularly new personnel. For example, supervisors might attend court sessions with personnel to support and provide feedback about their case preparation, demeanour, testimony, and other observations. To this end, a priority for supervisors' training may be legal issues in child welfare and working with the courts. This suggestion takes on additional importance in view of recent findings that problems with courts are a factor in contributing to child welfare employee turnover (A.J. Ellett, Ellett, & Rugutt, 2003).

Speaking to the importance of supervision and support for social workers, Buckley (2002: 267) highlights that 'the emotional competence of professionals to undertake their tasks in a stressful area of work cannot be assumed', and that this has a bearing on the quality of child protection practice carried out.

Child-centred approaches 'Best Interests of the child'

Ireland has a commitment as a state which has ratified the UN Convention of the Rights of the Child. Article 3(1) of the United Nations Convention on the Rights of the Child² states as follows:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

This requires children's best interests to be foregrounded in actions concerning them, and Tusla's mission, as outlined in the introduction of this report, aligns with this position:

With the child at the centre, our mission is to design and deliver supportive, coordinated and evidence-informed services that strive to ensure positive outcomes for children.³

Enabling children's voices to be heard is an implicit feature of this commitment. In Ireland, the appointment of a guardian *ad litem* (GAL) is provided for in Section 26(1) of the Child Care Act. GALs represent the best interests of the child in court proceedings. It has been widely noted that the Act provides inadequate guidance on the role or use of GALs. There is significant variation in judicial practice around Ireland in this regard, as evidenced by Coulter (2013: 28), who noted that GALs 'were much more likely to be appointed by the court in Dublin, where they featured in 75 per cent of cases, than in provincial Ireland, where this figure was 50 per cent.' This reflects the vagueness of the law relating to the appointment of GALs.

On the basis of their research into child welfare proceedings in the Irish District Court, Parkes et al (2015: 443) assert that adult professionals including social workers, solicitors, judges and GALs are 'the decision makers and gatekeepers to the court proceedings for the children concerned.' They also suggest that the predominantly adversarial nature of

the Irish system impacts upon children's participation therein:

There is a consensus across professions that child participation is a good thing in theory but that Irish child care proceedings are not conducive to this in practice. This does not appear to be based on an ideology/belief system that is opposed to children's participation per se, but rather is a response to the current child care proceedings model in place, where the court environment is viewed as an intimidating one, with an adversarial model at its centre and an absence of a supportive, child-friendly process through which the child might participate safely and openly. Thus, while professionals claim to be in favour of child participation in the theoretical context of an ideal system, some might argue that this lets them off the hook in terms of facilitating children being heard under the existing framework.

O'Mahony et al (2016: 306-7) explain that the Child Care Act of 1991 seeks to protect the rights of parents 'through the assignment of decision-making to an adversarial process in the District Court, where parents have the opportunity to contest applications made by the Child and Family Agency for child protection orders.' Within this framework, parents and child protection officers are constructed as adversaries and the participants in the research conducted by O'Mahony et al (2016: 310) were unanimously of the view that 'legal representation for parents is essential, both as a matter of protecting the basic rights of parents and of ensuring that the proceedings are properly conducted.'

Law and the legal context also result in a tension for child protection and social workers, where legal solutions only offer partial solutions to the highly complex social, economic, and policy issues that are embedded in the cases before the courts. Rules and regulations commonly applied in law and policy often fall short in terms of instructing/guiding or directing social workers' practices. Swain (2014: 2) highlighted the highly complex and challenging role social workers occupy; 'social work's principal constituency is 'the person', whose presentation to social workers is defined by an interweaved matrix of individual, structural, and community perspectives, shaped by socio-political influences, and by the constraints of culture, difference, resource availability, and the exercise of power.'

² Available at: <http://www.childrensrights.ie/sites/default/files/UNCRCEnglish.pdf>

³ First Tusla Corporate Plan 2015-2017

Child Protection Social Work and Court

The idea that the legal system is a challenging context for social work practice is well-articulated in the literature. Among the commentators who highlight this is Swain (2014: 3), who states that 'for social workers, involvement with the law and legal systems is usually an uncomfortable prospect, and research has shown that interaction with lawyers and legal systems can constitute a factor in social worker burnout and so turnover' [citing Vandervort et al (2008: 547)]'.

Rice (2014: 442) offers the following:

The phrase 'going to court' carries with it many images, impressions and messages, most of them daunting, if not forbidding. The shadow of the law is both the literal shadow cast by the towering bricks and mortar of the court buildings, and the almost palpable shadow of the formalities and procedures that go on inside.

An important broader point arises at the intersection between law and social work in child welfare proceedings and it relates to the differing approaches to building and configuring relationships in these respective domains. Zifcak (2014: 13) explains how 'the tradition and the ethics of the legal profession dictate that the lawyer should act as the client's advocate, not as their counsellor. It is not part of this to question the client's motives or to determine, except in a narrow legal context, what is in the client's best interests.'

For child protection social workers, their fundamental mandate is the advocacy and pursuit of the best interests of the child. So a solicitor going on record for Tusla social workers, while representing the Child and Family Agency as their direct client, is ultimately reflecting that broader mandate. In social work practices relationships can be more complex and are necessarily impacted by multiple considerations. As Zifcak (ibid) explains:

in the casework relationship [...] it is understood that the social worker has a role not only in defending the client's best interests but to assist in determining what these are. In so doing, the social worker will, naturally, take into consideration the interests of others. This is because, in resolving a person's individual difficulties, a premium is properly placed on the creation and maintenance

of constructive and supportive relationships with family, friends, professionals and others (Charlesworth, Turner and Foreman, 2000).

In the context of child protection proceedings, then, it is reasonable to assert that a tension may arise within the complete casework of a social worker with a family, namely, how to support parents undergoing the rigour of the court process which arises from an application being made by the Child and Family Agency. This is highlighted by Rice (2014: 442), who points out that, significantly, while 'experience will ensure a social worker to the formalities and processes', there often exists an unfamiliarity with the courts among their clients 'whose apprehension at their only contact with the law is compounded by the arcane practices and alien procedures of courts.'

Most recently in the Irish context, Burns et al (2017) have explored those aspects deemed significant by social workers in their participation in District Court child welfare proceedings. The authors note that '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' (Burns et al, 2017: 119). Consequently, the authors join the chorus of critical voices internationally calling for improved understanding of social workers' interactions with and perceptions of the court system.

Among the aspects of going to court which were identified by the authors were the deficit focus required of social workers to meet evidentiary thresholds, associated detrimental impacts on relationships with parents, the relative expertise of social workers being perceived as lesser than other clinical professionals despite the close understanding a social worker has of a child's lived circumstances, court waiting times, and insufficient training (adapted from Burns et al, 2017).

Two issues of particular contextual relevance to the SEALS study present strongly in the literature as being of acute concern to child protection and welfare social workers in considering their court experiences: the associated costs (time and emotional) and the perceived erosion of social work expertise that takes place in the court domain.

The engagement with the courts system, which is part of child protection social workers' roles, places

a stringent demand on social workers' time. Burns et al (2017: 118) are among those who observe the adverse significance of 'waiting times in court and wasted personnel hours waiting for cases to be heard'. McKeigue and Beckett (2010: 163) make clear that the time demand is not only connected to court time but, rather, 'court takes time from pre-court.'

In England and Wales, the Children and Families Act 2014 imposes a 26-week deadline for care and supervision proceedings in all but exceptional cases. In an analytic discussion of findings from their pilot study of this timeframe being applied, Beckett, Dickens and Bailey (2014: 4-5) considered its effect on the speed of proceedings, concluding that the pilot was 'successful in reducing the number of court hearings'. While a concern exists that the imposition of such a timeframe may result in deferral of court proceedings, which would amount to the delay simply being moved to the pre-court phase, the study found to the contrary, with there being 'no evidence that the reduction in the length of care proceedings has been achieved at the expense of more delay in the pre-court period'.

Taylor, Beckett and McKeigue (2008: 26) explicate in detail the anxieties that were reported to them by social workers in their research in England, relating to child care proceedings, with feelings of being powerless and under-valued featuring amongst the responses in their focus groups with social workers. Writing in the English context, Taylor (2007: 18) states that 'rightly or wrongly, some social workers say they are viewed as being beneath the children's guardian, and any experts called, in the court room pecking order. This is despite the fact social workers often spend very lengthy periods of time working with the children and their families, when experts may have only met them once.' This is despite the fact that social workers can feel in possession of 'their own expert power' (Taylor, Beckett and McKeigue, 2008: 26).

The literature also suggests that despite the perceived fact of having comparatively less weight and expert credibility attached to their evidential position in the courtroom, beyond that setting social workers are widely regarded as being responsible for decisions which are, ultimately, taken by the Court. Burns et al (2017: 119) state that social workers can experience a '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'.

The need for interdisciplinary understanding at the intersection of professional perspectives engaged within the child protection paradigm has been long recognised. Ferguson (1995: 35), speaking about the role of the judiciary in decision-making, asserted that 'considerable efforts have to be made to develop ongoing interprofessional communication and mutual understanding between child care professionals and judges.' Writing a year later, Gilligan (1996: 69) observed that while some members of the judiciary had indicated a disavowing of obligatory formal training for child care work, 'it seems likely that some formula will have to be found which satisfies the concerns of a wide spectrum of opinion on the matter.' Gilligan went on to forecast that the increased volume of child care cases to be heard in Courts as a result of 1991 Act would lead to this formula being developed 'sooner rather than later' (ibid). Over twenty years on from that assertion it remains reasonable to argue that such a formula is still in development.

Ferguson's (2011: 191) writing illuminates the changes arising from the challenges faced in contemporary social work and calls for an integrated approach to the cultivation of interagency professional relationships towards best outcomes for those who become engaged with services:

While commentators and critics rightly worry over social work's apparent loss of identity and purpose in an age of increased management, bureaucracy and multi-agency working, the value and integrity of social work can no longer be seen just in its own terms but must be grounded in relation to the whole system of professional, service user and community practices.

The court context is an especially challenging context for child protection and welfare social workers. While child welfare proceedings are held in camera, with members of the public not permitted to attend, there is nonetheless a public dimension to the manner in which social workers are asked to speak to sections of their court reports, which, necessarily towards meeting evidentiary thresholds, can be largely negative about the capacity of parents to care for their children in the family home. Kenny (1995: 53)

explains the practice of child protection as 'not only to assess what may have been done to a child, but also to do so in a way that does not offend the privacy and primacy of the family'. The balance between both constitutes an ongoing challenge at the heart of child protection social work.

The impact of court-related work on social work practice is well-documented. In the discourse that closely followed the Child Care Act of 1991, increased monitoring of social work practice was identified as a key change that the Act would signal. In 1995, O'Kelly (p. 222-3) commented that the Child Care Act of 1991 would lead to increased accountability in social work practice, observing that it would become 'like working in a goldfish bowl'. Ferguson (1995: 35) similarly asserted that professional judgements would likely be placed 'more under the microscope', and that courtroom evidence constitutes a new kind of scrutiny for social workers and other professionals involved in child protection work.

Ferguson (ibid) also considers the impact of judicial decision-making and reviews of the implementation of such decisions, signalling a significant change to social work practice with this 'monitoring of previously quite sacred areas of professional discretion and practice.'

Welbourne (2010: 94) notes that 'accountability is particularly important in social work because of the power that professionals have in relation to service users.' Significantly, 'social workers are legally bound to carry out their duties in a way which does not contravene any other duties they may have to their service users' (ibid: 96).

Hamilton (2011: 40) asserts that scrutiny, political and social, arising from the politicisation of child abuse has fuelled this increased accountability. Acknowledging the benefits to service users, Hamilton (ibid, drawing on O'Doherty (2005: 239)) notes how 'for social workers this has sometimes resulted in a struggle to 'retain some principled professional autonomy in a climate of organisational imperatives and instrumental targets'. While child protection proceedings in the District Court are held 'in camera', they amount to a scrutiny of practice which can be regarded as public, as social workers' decision-making practices are held to account by judicial questioning and in cross-examination by respondents' legal representation.

Child protection social work and the law – negotiating disciplinary positions and relationships

Social work and law are properly characterised as contested and multiple discourses.
(Roche, 2010: 18)

While there has been a good amount of attention paid in the literature to social workers' engagement with the law and legal services, in the Irish context there is less attention paid in the literature to specific tensions that arise at the intersection of the disciplinary positioning of law and child protection social work. The management of these tensions is encapsulated in Adams et al's (1998: 66) observation that 'the challenge for social workers – and, arguably, for legal practitioners, too – is 'to address the tension and dilemmas inherent in social work law, in the relationship between social work, social policy and the law, through a legal, policy and organisational literacy'.

Swain (2014: 5) is convinced of the merit of an alliance between social work and law, stating that 'both professions bring frameworks of understanding and approaches to problem resolution which, appropriately utilised, are valid and relevant to the difficulties faced by those marginalised in the community'. Critically, there is a balance to be struck. Thomas (2005: 167), drawing on Mnookin's (1976) argument, reflects on the need for 'legal and administrative standards which limit interventions to those situations where we have a reasonable level of certainty that we can at least choose the 'least detrimental alternative', and the proposition that 'difficult and complex decisions about state interventions in family life should be governed by 'determinate rules' rather than 'indeterminate standards.' Expanding on such rules, Thomas (ibid) asserts that amongst the principles on which these ought to be based is 'that "legal rules ... should not contradict deeply held and widely shared social values"'

Reflecting on the child protection system in Ireland, Burns et al (2017: 117) note that 'a core strength of the Irish model is that it places an independent safeguard on the exercise of the state's power'. While the utility of law in affording a seriousness and legitimacy to child welfare proceedings is

undisputed, perhaps a broader and more significant issue is the impact of the law on the discursive context in which child welfare is couched, moving from a sometimes paternalistic paradigm of 'care' to one of 'rights'. As Roche (2010: 19) illustrates:

The language of care might not allow the object of care to break free of their dependent, being-cared-for status. The language of rights is also about values - not necessarily in the form of a preferred list of 'correct' values but through the recognition of different viewpoints and through the hearing of different and perhaps unfamiliar voices on questions of need and respect.

In the literature on law and social work there is repeated expression of the need to recognise that engagement with legal services constitutes just one part of a social worker's complex and at times contested role. As Braye and Preston-Shoot (2011: 123) state, 'the legal map is not the only one in the backpack. Tucked into another pocket is the 'ethical duty of care' map, showing professional values that may contradict what is legally mandated, or at least be tangential to it (Alexander, 2003).'

Of significance also is the need to recognise how relationships are configured differently by legal practitioners and social workers and this difference is often made visible in the courtroom context. Zifcak (2014: 12) elaborates on the differences in roles and responsibilities between lawyers and social workers. These differences demonstrate clearly some of the challenges and tensions that social workers and lawyers experience in their interactions with each other in the courts. The importance social workers give to building ongoing, productive relationships with clients over time is highlighted by comparison with the functional, time-limited relationships which lawyers build with their clients:

The lawyer's involvement with his or her client is limited. Its purpose is to negotiate a legal solution to or obtain a legal decision on that client's problem. To achieve this object the lawyer uses legal rules, techniques and procedures. Once the presenting legal problem has been addressed, the lawyer's relationship with the client is at an end.

The social worker's purposes are more complex. Social work practice may seek simply to achieve certain concrete ends, but it is generally assumed that the social worker's intervention should address not only the client's practical requirements but also their personal needs. To do this the social worker must develop a productive and sensitive relationship with the client. In law the establishment of such a relationship is desirable but unnecessary. In social work its creation is not only desirable but imperative.

Questions arising throughout this research relate to how social, economic, organisational, and legal systems and practices can contribute to the enhancement or to the diminution of child protection and welfare work. A key question arising throughout this research is, how are the 'best interests of the child' being served within the current structures and systems that are responsible for the delivery of child protection and welfare work in Ireland?

Research on educational welfare and the law

On the matter of educational welfare and the law a critical gap exists in the Irish context. One notable exception is the recently-completed doctoral research of Perry (2017), which explores the prosecution of parents in Ireland for the non-attendance at school by their children. Within that study Perry makes two key statements that serve a contextual purpose for the SEALS research. The first is that 'legal proceedings are increasing year on year' (Perry, 2017: 197), which the author identifies as being in line with UK and US trends. Secondly, Perry's research finds that regional differences persist in relation to legal proceedings. The author highlights the 'lack of consistency across the country when it came to the prosecution of parents for the school non-attendance of their children, which was viewed as creating an unfair and inequitable system' (Perry, 2017: 199). These findings resonate with the themes of increasing adversarialism and variation between court districts which emerged so strongly from the existing Irish research on child protection and welfare social work and the courts.

Use of Legal Services in Child Welfare Proceedings from an Economics Perspective

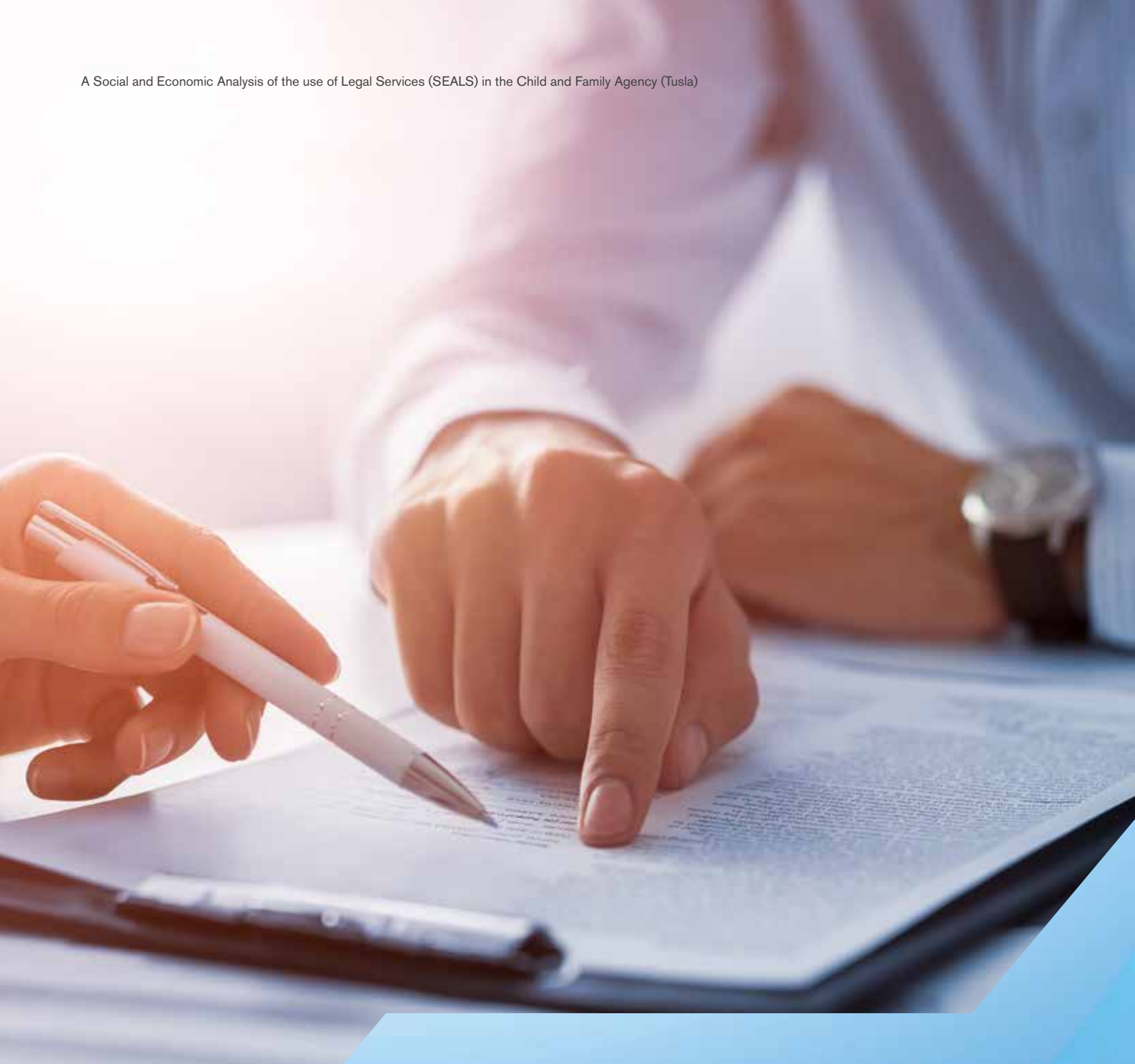
There is a relative dearth of literature and general commentary on the economics of child protection and welfare which goes beyond the disaggregation of expenditure data. This is not surprising given the difficulty associated with measuring qualitative outcomes, which are sometimes intangible, e.g. happiness and wellbeing in adult life following the experience of childhood neglect and removal from the family of origin. Longitudinal research is required to address this gap, engaging with children in care through to adulthood.

An exception is Gustavsson and Seagal (1994: 181), who have spoken to the 'cost of neglect' in another sense, stating that 'the overall benefit to society of caring for our children today is a healthy and productive workforce for tomorrow.' They talk in the American context about social and economic costs, e.g. high school dropout, social services, and juvenile detention, amongst others, concluding that 'preventive services are beneficial in the long term [as] most social problems that go untreated become very costly over time.' While the cost effectiveness of preventive early intervention is foregrounded, they also state that 'prevention of social problems through early intervention is key to improving the overall wellbeing of children' (ibid: 191). Gilligan's (1996: 70) commentary from the Irish context, at approximately the same time, corroborated this view, with the assertion that 'it is important that the child care agenda is not dominated by a narrow preoccupation with child protection, but retains a balance which favours prevention and family support (Gilligan 1995)'.

Conclusion

This review of literature has clearly articulated the challenges and contradictions that are endemic in child welfare systems internationally. In particular, it has foregrounded the tensions which arise at the intersection between child welfare and the law and the consequential challenges that are posed for child welfare systems, processes, and personnel. The urgency for the pursuance of an enhanced interdisciplinary understanding between child welfare and legal professionals has been asserted many times in existing research and is further reinforced in this section of the report. The SEALS research will explicate some of the tensions already represented in previous research and it will identify specific aspects of child welfare proceedings that require urgent revision and reform.

Ireland's child welfare system has moved increasingly towards becoming a largely adversarial paradigm. As set out in this section, a more inquisitorial process is widely supported within the commentary on child welfare systems internationally. This report will consider the many challenges, as represented by Tusla personnel, presented within this adversarial paradigm, and it will highlight the impacts which these tensions bear on the realisation of Tusla's mission 'to serve the best interests of the child'.



SECTION 3

RESULTS OF FIELDWORK WITH TUSLA PERSONNEL

SECTION 3

RESULTS OF FIELDWORK WITH TUSLA PERSONNEL

3.1 PERSPECTIVES FROM SOCIAL WORKERS

Introduction

This section of the report sets out to represent social workers' views on what is commonly regarded as a strongly contested arena, i.e. the relationship between social work and the law in child welfare proceedings. Data from a national survey and from the texts of interviews and focus groups⁴ with social workers will be presented. 374 survey respondents, of which 228 (61%) were social workers, is represented in Fig 3.1.1.

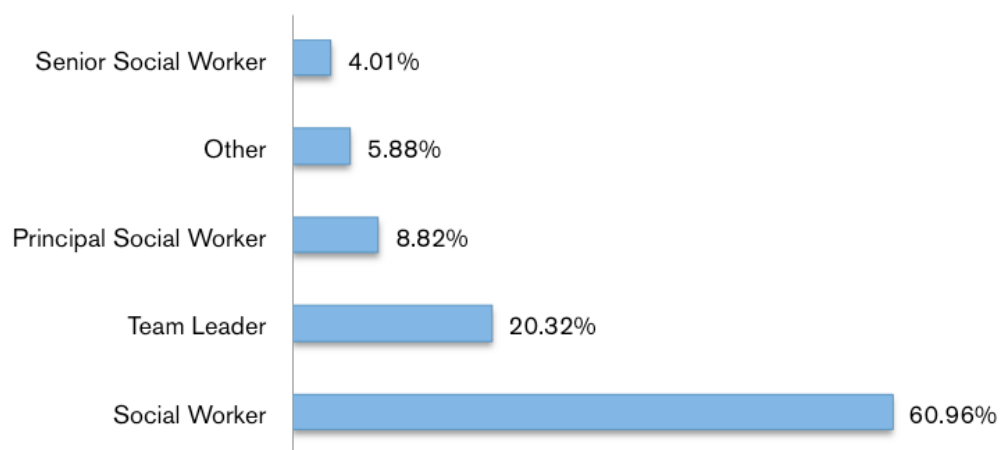


Fig 3.1.1 Profile of Social Workers survey respondents (Source: Q.4 SEALS Social Worker Survey)

Profile of Social Workers survey respondents by Tusla Region

The regional representation of respondents is displayed on Fig 3.1.2. The highest representation of respondents came from the South, with 131 (35%). The next highest representation was from Dublin North East, 101 (27%). The total number of respondents to question 7 was 373.

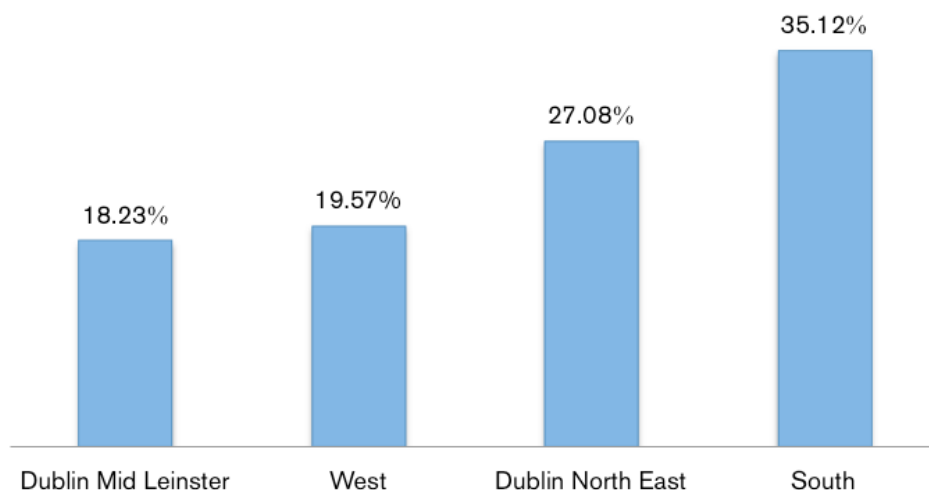


Fig 3. 1.2 Profile of Social Workers survey respondents by Tusla Region (Source Q.7 SEALS Social Worker Survey)

⁴ Responses that were offered during focus group proceedings are annotated as 'FG' throughout this section.

As previously discussed, the Child Care Act 1991 provides the statutory foundation and legal requirements for child protection and welfare social work in Ireland. This research represents the views of research participants' using data obtained in the national survey and from the texts of interviews and focus groups with social workers. In this section of the report attention will be drawn to social, economic, and legal considerations that respondents have linked to the performance of their roles and responsibilities as child protection and welfare social workers in Ireland. Specifically, this section will examine participants' representations of their observations and experiences of child welfare proceedings.

Theme 1

SOCIAL WORKERS ENGAGEMENT WITH THE LEGAL SYSTEM AND LEGAL PERSONNEL

Court Context

In response to Q.33 of the survey, 320 respondents (94%) of a total of 339 respondents had attended court in their capacity as child protection and welfare social workers, thus representing it as a fundamental aspect of their role as child protection and welfare social workers. In addition, respondents were asked, in Q.34, to approximate how many times they had attended court in the last 12 months. Responses to Q.34 varied, with 20 respondents (8%) of a total of 291 respondents stating that they had not attended at all. The largest number of court attendances, i.e. 200, was stated by one respondent.



Fig 3.1.3 Profile of Social Workers by Attendance at Court (Source: Q.33 SEALS Social Worker Survey)

Furthermore, engagement with legal personnel was identified as a significant part of their work role, with 315 (96%) of respondents stating their work involved engagement with solicitors. Moreover, report-writing was represented as a key component of their court work, with 316 (97%) of 327 respondents engaged in the practice of writing reports for court.

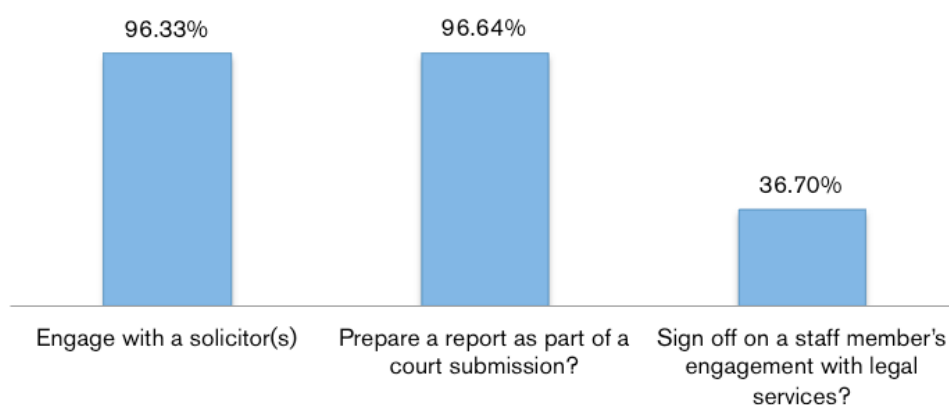


Fig 3.1.4 Profile of Social Workers by Legal Service Role (Source: Q.32 SEALS Social Worker Survey)

Recognising the centrality of their legal responsibilities in child welfare proceedings, respondents expressed a variety of views on the inter-relationships between social work and legal personnel in child welfare hearings. Recognising the significant role that the court played in formalising child welfare proceedings, by bringing a gravity and seriousness to the proceedings, a focus group participant reflected:

'I think the fact that it happens in court brings a seriousness to it and it brings a focus.' (FG)

The court was also regarded as a positive context for parents, a place where they were encouraged to express their views.

Well, I think it's a very fair hearing process ... if they [parents] have concerns they bring that in. You know, if they want to be actively involved in their young person's welfare and wellbeing we'd always encourage them to say whatever they thought at the court hearing and let the judge make a decision on whether care proceedings are justified or not, because they can get a balanced view then. (SW)

Likewise, the court was acknowledged as having a direct and positive impact on social workers' preparation and assessment practices. A view was expressed that the seriousness of the child welfare hearing process requires social workers to be adequately prepared for and well-informed in courtroom processes and protocols, e.g. cross-examination.

You know, you have to be very grounded in your preparation, very grounded in your decision-making, and know where you're going and know what you want to do, because you're subject to cross-examination. Then you have to know your stuff and you have to be focused, you have to be clear, and you can't be blasé. And I think that to me is what makes it good, because it's a reflection of the seriousness of what we do. (FG)

Conversely, while acknowledging the seriousness of the child welfare proceedings, participants also highlighted disparities in courtroom practices, which they believed failed to give due recognition to the gravity of child welfare issues:

'But the cases are too serious, children's lives are too serious to be lumped in between traffic and public order offences.' (FG)

This view was further supported by a participant who referred to the lack of value and respect for child care matters as demonstrated in the way proceedings were conducted in court.

A judge in the High Court is expected to make decisions on these most damaged, most vulnerable children, and they're dealing with fifty cases in the same day. In, out. It's like a fecking train station. And you're standing in the court and you can't hear what's going on. (FG)

Professional Relationships with the Judiciary

When asked to describe their relationships with the judiciary 93 (31%) respondents out of a total of 298 described relationships as largely positive, while 185 (62%) described them as varied. A significantly larger proportion of respondents, 169 (57%), portrayed their relationships with solicitors as largely positive.

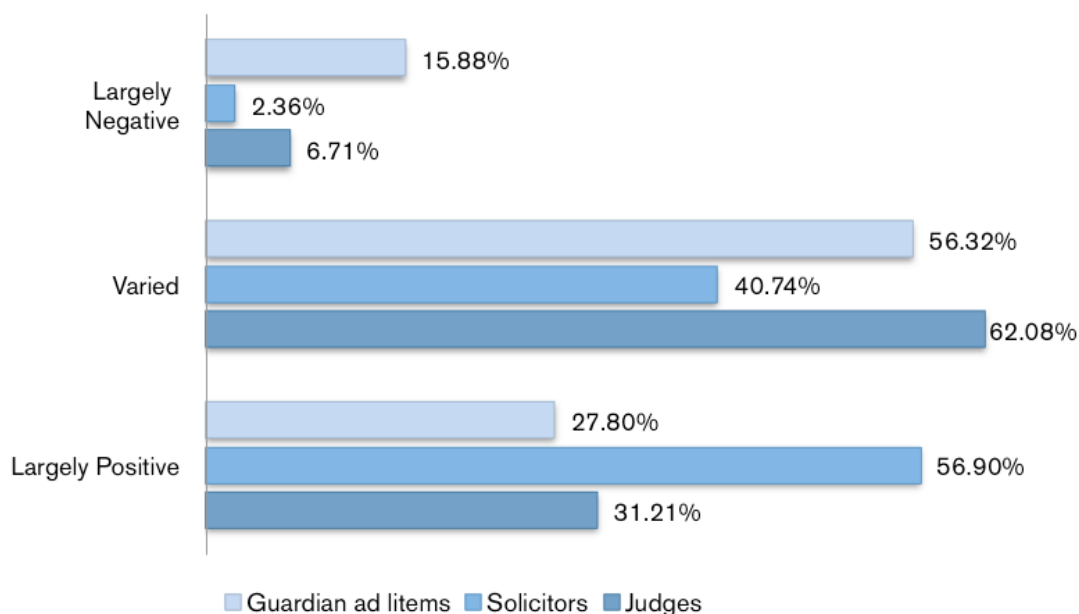


Fig 3.1.5 Social Workers Experiences of Engagement with Legal Personnel (Source: Q.39 SEALS Social Worker Survey)

Putting the significance of the relationship between the judiciary and child protection and welfare social workers in context, the majority of participants pointed to the important role of the judiciary in child welfare hearings. Their influence on both the process and the outcome of child welfare hearings was recognised. In Q.33 of the survey, over 320 of 339 respondents (94%) agreed their work involved court attendance. Many respondents made specific reference to varied experiences with members of the judiciary and with solicitors. Views were expressed that while some solicitors and members of the judiciary appreciated the complexities of child welfare issues others did not:

'Some Judges appreciate the complexity of the work and the constraints due to a shortage of staff and resources; others have a negative view of social workers and social work. The same is true of solicitors.'
(Q.39, Respondent 37)

A lack of consistency was observed in the attitudes and practices of various judges in court. Some judges' practices were described as more akin to a case management style of operation. Lengthy court hearings and practices of adjournment seemed to further add to perceptions that some judges were using the court both to micro manage child welfare cases and the practices of social workers. While negative experiences of the practices of the judiciary surfaced, more positive experiences of the judiciary were also acknowledged, thus highlighting a lack of consistency and regional variations in court practices of members of the judiciary:

The attitude of judges varies greatly. There is no consistency in applying the law ... Some want to case manage individual cases, leading to lengthy court cases and numerous court appearances. On the other hand, some are even handed, fair and actually listen, read the reports and give balanced decisions. (Q.39, Respondent 9)

Levels of understanding by the judiciary of child welfare and protection matters was represented as varied. Some respondents believed that this had a negative, adverse consequence for interprofessional relationships:

Experience with judges varied because each judge has a different level of understanding of child welfare/ protection issues. The experience with a judge also depends on their attitude towards a particular issue, the pressure the judge is under because of the list on that day, and the mood of the judge. (Q.39, Respondent 1)

A view was expressed that the actions of different members of the judiciary required different and more specific responses from child protection and welfare social workers. A participant spoke about their having to adopt certain practices in court with legal personnel so as to achieve better court outcomes for children and families:

Depending on which judge you get kind of determines the outcome ... there might be one or two judges that might be very pro-parent. They might kind of want their participation a lot in it. But at the same time as well you're kind of—you're trying to get them to balance the best interests of the child and the parents' rights. (FG)

Conversely, participants acknowledged the significance of certain court practices adopted by the judiciary that were regarded as more child-focused, thus working towards the achievement of better outcomes for children.

I've had one particular child who asked to go meet the judge, and that was facilitated, and that really led to kind of her voice being heard and in fact made her feel empowered ... and I think the judges really get that very important piece that they're writing this, they're putting their effort into it, and they want their voice to be heard. (FG)

Judges' engagement with young people in the child welfare hearings was generally valued. It was experienced as empowering of young people, encouraging them to participate and to express their views:

'Yeah, I would agree with that. And I think the young people—it's mainly young people—that get a chance to talk to the judge feel, like you say, empowered.' (FG)

Throughout the research respondents acknowledged the critical role of the judiciary in child protection and welfare hearings. In the survey and interviews the judiciary's considerable influence on the outcome of decisions was recognised. Furthermore, this influence was witnessed in the researchers' regional observations of child welfare hearings, which were completed as part of this research:

'... in my discussion with colleagues like afterwards, kind of in debriefing, saying how Court went, they will kind of say, yeah, well, if that was in front of such-and-such a judge you might have got a different outcome. And that would be kind of something that you kind of would hear kind of told around a bit as well.' (FG)

The centrality of the role of the judiciary in both the process and outcome of child welfare hearings was commonly acknowledged and observed throughout this research. Referring to the process of decision-making in court, some judges adopted practices in court that were more analytical and inquiring, while others were seen to be more focused on achieving a speedy decision:

'... if you haven't experienced it yourself then you'd definitely hear it from colleagues around this judge is particularly good if you want to just have a quick in and out. They were more likely to give an order over this judge. They might be picking a bit more at your evidence. They might be a bit more analytical and ask a few more questions.' (FG)

The many variations in the practices of the judiciary, as represented in the survey and texts of interviews and also supported by courtroom observations, clearly points to a lack of regional consistency in court practices, procedures and protocols.

'Overall the court experience can be varied. There can be a balanced and fair approach taken, but in a lot of instances the professional judgements of the social workers are not taken seriously and heavily criticised, and other professionals are brought in to provide other assessments, which in the majority of cases come out with the same recommendations as the social worker.' (Q.39, Respondent 25)

Professional Relationships with Solicitors

Throughout this report the engagement of child protection and welfare social workers with legal personnel and legal services is seen as an integral aspect of the role of child protection social work. In Q.40, 194 (62%) of 315 respondents stated they had directly engaged with legal professionals from the panel of external law firms engaged by Tusla. In responding to Q.41, 178 (57%) of 313 respondents had directly engaged with Tusla internal legal services.

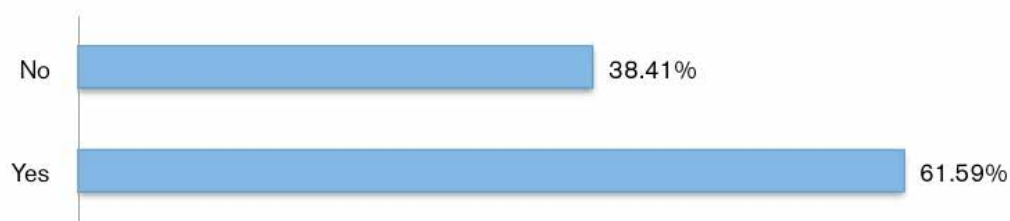


Fig 3.1.6 Social Workers Experiences of Engagement with External Law Firms (Source: Q.40 SEALS Social Worker Survey)

While Section 4 of Chapter 4 will focus on this matter in more detail, suffice to say that similar to the views expressed in the section on relationships with the judiciary, respondents recall both positive and negative relationships with solicitors in child welfare hearings. However, in Q.39 of the survey, 169 respondents (57%) of a total of 297 respondents described their relationships with solicitors as largely positive, 121 (41%) of a total of 297 respondents recalled having varied experiences:

'I find our own solicitor very good; puts you through your paces; asks difficult questions. Very astute and experienced at this point from a child protection/children in care perspective.' (Q.39, Respondent 25)

'Some solicitors take on too much work and do not employ enough personnel, so that they are involved in too many cases on the one day. A recent example was when a solicitor from one firm had 9 cases in the family court, was very confused and got them mixed up. This solicitor is poor at taking direction from Tusla personnel, and feedback from personnel is that the solicitor is not very helpful when personnel are in the witness box.' (Q.39, Respondent 9)

Time Inefficiency

As attendance at court represents a significant and very important aspect of social workers' role in Tusla, it is important to present participants' experiences of the court process. In the survey and in the scripts of interviews and focus groups, frequent references were made to practice tensions that arise in the performance of their statutory roles and responsibilities in court. Participants referred to their frustrations with certain legal procedures in court. They referenced specifically the practice challenges arising from current court scheduling practices, i.e. the list system, and its requirement of them to remain in court, sometimes for an entire day, waiting for their cases to be heard:

'Right, well, my biggest problem is the schedule. You go to court at half-ten, the solicitors are going in for the list, and you're sixth on the list and you're still called last. But there's no timeslots, like. You know, so you're sitting there.' (SW1)

The physical limitations that the courtroom context placed on participants' ability to complete work-related tasks while waiting around in court was highlighted throughout the research. Specifically, the lack of privacy and the tensions and frustrations they experienced by having to wait around for one's case(s) to be heard were articulated:

'But it's very, very difficult. You can't do case notes even if you brought your laptop, or letter-writing or anything, because there's a crowd around you. So you can't do anything. You're just sitting there.' (FG)

'It's absolutely horrendous. At the moment we turn up at 9 o'clock and you might not be heard till 5 in the afternoon, which is a ludicrous waste of everybody's time. Sometimes you're just there left waiting. And it's the fact that you can't do anything for that day, or you can't put anything in to do because you've had to put a line through the whole day because you have to be prepared to be ready.' (FG)

Court reports were represented as an essential requirement of child protection practice. 316 out of a total of 327 (96%) of survey respondents in Q.32 acknowledged that they were engaged in the practice of writing reports. In response to Q.35, 219 (77%) of respondents from a total of 283 were engaged in report-writing as part of a court submission. While writing reports was a common practice for most social workers, they presented significant pressures. Social workers' professional obligation to ensure their assessments and recommendations are clearly and systematically represented was viewed as an important and onerous professional responsibility that is linked directly to achieving the best outcomes for children.

'It's very important, like, to be well-prepared. You know, you know court dates well in advance. So to have your court report ready is really important, because while you're writing it you're reflecting and you're thinking about what you need to present to the judge.' (FG)

While the importance of the court report in child welfare hearings was recognised, the process of writing court reports was also experienced as a very time-consuming process:

'Well, it is a huge time. I'm doing the care order report at the moment and I would say I've easily spent about two days on it already.' (FG)

Theme 2

ROLE OF THE TEAM LEADER/LINE MANAGER IN THE COURT PROCESS

Managers Accompaniment of Social Workers to Court

The role of the team leader/line manager in relation to court attendance was given particular prominence and regional variations in practices did emerge. In response to Q.35, 133 (48%) of respondents from a total of 277 were always accompanied to court by a line manager, while 93 (34%) were sometimes accompanied.

In response to Q.37, 179 (65%) of a total of 277 respondents indicated they were accompanied by their line manager to court for applications for an Interim Care Order, while 152 (55%) were accompanied for a Full Care Order, 110 (40%) for Emergency Care Orders, and 113 (41%) and 112 (40%) respectively for Care Order Reviews and Supervision Orders.

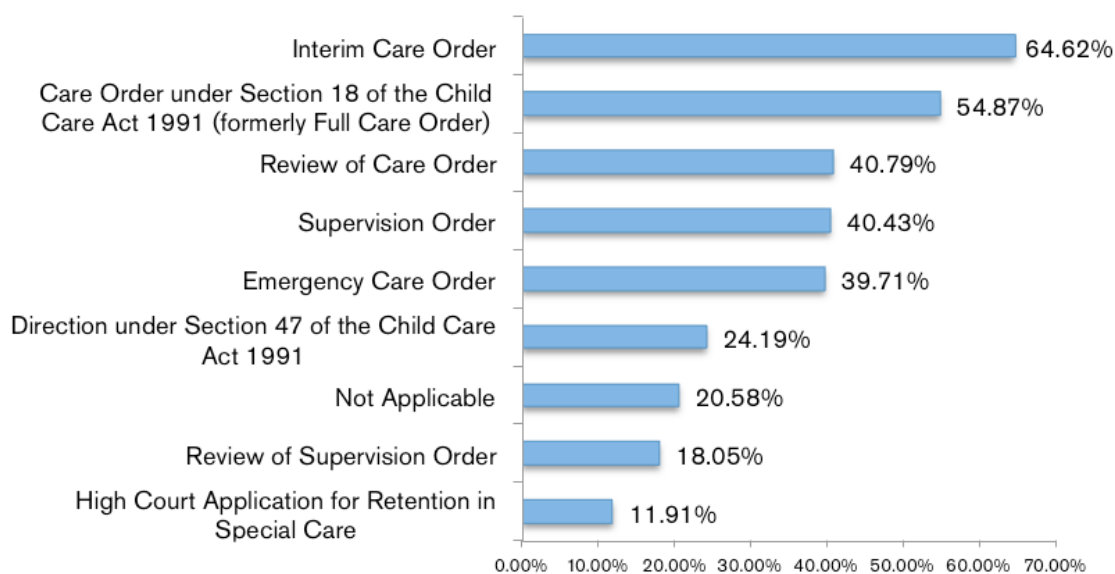


Fig 3.1.7 Team Leader and Line Managers Attendance at Court with Social Workers (Source: Q.37 SEALS Social Worker Survey)

While regional and individual variations in the practices of line managers with regard to accompanying personnel to court did surface throughout the research, due recognition was given to the presence of the line manager in court for care applications:

'Yeah, definitely. I don't know, I think it's some unwritten policy or rule of thumb that the team leader always has to go in with the social worker. At least it is in my office anyway. I don't know whether it's everywhere.' (FG)

However, the policy and practice of having a line manager accompany social workers to court appeared to vary between individual managers and Tusla regions:

'... my experiences were quite positive. It was very good at the beginning. There was a lot of support put in. But sometimes for other colleagues I see that maybe the support isn't there as much as it should be.' (FG)

The moral support and confidence given to the social worker by the presence of the team leader in court was stressed:

'I think it's important that your team leader is there, you know, I mean, for moral support. You do need that person there to just I suppose support you through it and make sure, look, you know this inside out, and kind of to give you a confidence boost as well.' (FG)

Participants gave due deference to the authority that the team leaders' presence in court brought to the court proceedings. Their representation of agency policy, of resource issues, and of the perspective of Tusla management, particularly in complex and contested cases, was viewed as very important:

'But also if there's something that you can't do, that you're not responsible for, that requires a management level, they need to be there to kind of support you in that as well. So let's say if there's funding not released for something and you're like, well, I'm not sure what the holdup is, maybe my team leader might be able to field that question. So it's good to have that backup there definitely.' (FG)

Theme 3

ADVERSARIAL NATURE OF THE COURT PROCESS

Competing Practices and Discourses

Participants throughout the research referred to the many challenges presented in their efforts to serve the best interests of the child within the current child protection system. Participants noted the adverse impact that the current legal structure and format is having on social workers' capacity to participate in the proceedings:

'... depending on the formality or otherwise of the court you're sometimes not able to actually participate in the conversation that happens in the court. You know, and in terms of the structures it's like having the person who knows the most say the least.' (FG)

The technical and legalistic language used in child welfare hearings was represented as posing a particular representational challenge for social workers. They are required, according to some participants, to adopt a different, more legally-infused language when representing their expertise to legal professionals in court. Some participants believed that the requirement of them to foreground legal terminology in making presentations in court serves to undermine social work expertise and, regrettably, weaken their own professional voice:

'Yeah, I think that there's an issue, you know. In terms of your case you are actually the expert, you know, but because you're bringing that case then to the legal stage it's kind of saying you have the expertise but we're going to tell the story in a different language.' (FG)

A participant clearly represents their dissatisfaction with certain practices that are employed by some legal professionals in child welfare hearings. They worry that legal professionals, who are not sufficiently aware of the needs of specific children, are sometimes making decisions that are not always in their best interests:

'... you have professionals making decisions about children and they're making them sometimes not their best interests, in the interests of compromise.'

I call that horse-trading and I say it straight up. These people have never seen these children. They probably don't have a good concept of what's happening or what could be happening for that child.' (FG)

The call by judges for regular case reviews was experienced in some instances as positive, as providing an opportunity for formal review of cases:

'And I think the reviews, the annual reviews, are good, because if things are sliding you can say to the parents, well, you know, we'll be in court in a month's time, whatever. But you can always re-enter at any stage anyway if things go bad.' (FG)

However, the practice of having very frequent reviews of cases was also experienced as an overly obtrusive practice used by some members of the judiciary. It was viewed as a way of monitoring and tracking social workers' practice. Regular case reviews were more generally experienced as representing a 'lack of trust' (FG) by judges of social workers' professionalism:

'But where the reviews become very regular then there's a crossover. The judge is then really doing the social work department's work. Like there has to be a line drawn. Definitely our profession's been eroded.' (FG)

Particular attention was drawn to the time-consuming practice in some regions of undertaking frequent case reviews:

'One of the difficulties we have down here is endless reviews.' (FG)

The usefulness and efficacy of regular reviews in terms of their 'added value' to the child and family was also questioned. Variations in judges' practices around case reviews necessarily resulted in more social work time and resources given to those cases that were up for review than to other cases:

'The decisions that are reached are not always right for the children. At times this is helpful in terms of keeping on top of cases. However, it also means cases in court get more attention and resources and time than the others.' (Q.39, Respondent 25)

Different Professional Roles and Responsibilities

The role of the social worker in child welfare hearings was defined as really important and quite separate from the legal professionals. The social workers represented their particular role in the proceedings as bringing the child and the reality of their particular social and psychological circumstances to life in the court setting:

'Like nobody sees a picture of a child. Nobody sees a photograph of the home. Nobody sees a video of... The judge is depending on the social worker to make that child come alive and it's pretty hard to do in such a dry environment, you know.' (FG)

'I want the judge to see the elements of the child's life, I want the judge then to see my opinion in terms of my social work analysis, and I want the judge to see maybe the overall context of what's happening in this child's life.' (FG)

Conversely, legal personnel were regarded as more specifically focused on representing the legal mandate and on drawing attention to technical points in the law. A participant pointed to tensions arising in child welfare hearings between representations of the legal and the social work child welfare mandate:

'Yeah, I think in a sense they're legal professionals, so their expertise is in the law. And we're sucked into this place, which is actually where the functioning is about the law, not about the issue. And I think that everybody apart from the social worker that's in there has an investment in the law, whereas our investment is with the child.' (FG)

Participants spoke of the stress they experienced when representing their statutory role in court proceedings. They are vested with numerous responsibilities, i.e. to implement their legal obligations to the court, to work within the limitations of Tusla resources, to represent the needs of the young people and families, and also to meet their professional obligations. The requirement of them as professionals to mediate the tensions that arise between the various agendas and personnel involved in child welfare hearings was represented as challenging. One participant gave an example of how these challenges became apparent in the completion of fostering assessments:

'So I can understand why fostering assessments aren't done as they should be, because there is a guideline there to say—that they're done in sixteen weeks. But we all know there's no staff. There is lots of foster families that need assessment but that also need to be supported. So you can't sit there and say like, oh, yeah, it's them in fostering, you know, like.' (FG)

The lack of acknowledgement by judges and legal personnel of the limitations placed on social workers' practice by agency and resource limitations triggered significant frustration. The difficulties they experienced in their efforts to balance the needs of the child with the requirements of the court and with their responsibilities to represent their employing agency were clearly articulated:

'Like we all know that and the judge knows that and there's no point in going mad with me that there's no placements because I can't find them, you know. It'd be great if there was places, you know. There should be. I'd feel that that's the response I want to give because that's fact, but I don't know whether that's a response that management would like for me to give—because you feel like you kind of have to cover for them as well. It's like, look, well, I don't know.' (FG)

Rights of Parents and Rights of Child

In an adversarial system, different parties and their particular interests are represented. Balancing the needs and welfare of one party against the rights and responsibilities of another party is a constant challenge. Strains can become apparent in child welfare hearings when some judges are viewed as being more focused on representing the rights of parents in their judgements than on serving the best interests of the child. The pressures that social workers encounter in their efforts to have the child's voice heard in court proceedings are clearly articulated:

'Yeah, and even in the judgment or even in the words of the judge it's not about the best interests of the child. What he's talking about is the need for equity and balance between the parents' rights, but that's at a cost of the child's rights.' (FG)

Over time, participants witnessed different shifts in emphasis in legal discourse with consequential changes in legal practices. Child protection and

welfare hearings were perceived as becoming more rights-based, more legally complex, with an observable shift towards representing parents' rights. An increased rigidity in the system was also noted. In response to these noticeable changes a respondent favoured judges becoming more specialised in family law matters and consequentially more appreciative and understanding of child welfare matters, e.g. access.

'So I think there's been a shift towards parents' rights and it becoming more rights-based about the parent versus the baby. The points of law being brought up more so, you know, more rigidity, going into fine points of law, technical points, and getting away from any hope that we ever had of it becoming less adversarial...' (FG)

'In relation to access applications, judges can be very focused on the rights of the parents/relatives involved, at times granting large amounts of access to parents who cannot parent unsupervised. Generally, it would be better for judges to be experienced and specialised in family law and to have more understanding of issues especially in relation to access, etc.' (Q.39, Respondent 25)

Theme 4

ROLE OF GUARDIAN AD LITEM [GAL] AND THE CHILD PROTECTION AND WELFARE SOCIAL WORKER

Participants proffered the view that their professionalism in child protection and welfare proceedings and their expertise in child welfare matters is increasingly being called into question by legal personnel in court:

'Overall the court experience can be varied. There can be a balanced and fair approach taken but in a lot of instances the professional judgement of the social workers are not taken seriously and heavily criticised and other professionals are brought in to provide other assessments, which in the majority of cases come out with the same recommendations as the social worker.' (Q.39, Respondent 49)

Conflicts of interest were identified as developing between GALs and Tusla social workers. Many participants spoke about how the GALs' opinions were held in greater regard by the judiciary:

'The judges do not seem to have the same respect for the social worker that there is for the guardians.' (FG)

It was noted that the GAL's evidence was often given more attention by the judiciary in comparison to social workers' evidence:

'Yeah, I think the perception of kind of how GALs are treated and how social workers are treated is completely different ... when the GAL came into it then it was like she was nearly hanging off every word ...' (FG)

It was noted that a social worker's recommendations to court are conditional on resources being made available by Tusla; however, GAL recommendations have limited resource conditions attached to them. This reality is experienced by participants as professionally undermining particularly in the court context:

'Social workers make recommendations on an ongoing basis based on their assessment and knowledge. Unfortunately, due to resources, this is not supported by management. But once in the court system, when GALs recommend exactly the same, it is possible and happening, this undermines the credibility of the social worker. GALs have a lot of pull with judges when their knowledge of the children at times is limited. GALs have too much influence and input on how often cases are returned to court.' (Q.3, Respondent 15)

A variety of challenges and tensions related to roles and relationships between child protection and welfare social workers and GALs emerged. Participants stated that the following factors had a significant impact on the availability of services and on professional relationships, i.e. cost factors, use of Tusla scarce resources, and the high earnings of GALs:

'I believe that the GALs have a unique position within the courts, which is entirely unjustified. They lack the experience and training of our own staff and yet are viewed as the experts in court in respect to the needs of the child. I think judges place too great an emphasis on their opinions over that of our professional staff. They spend our local budgets by demanding private services.' (Q.39, Respondent 83)

Specific issues related to conflict of interests between the GAL and the social worker were identified:

'Their [GAL] role is ill-defined. They infringe upon the role of social worker in interacting with the child and family.' (FG)

Despite the many challenges articulated with reference to social workers' experiences of GALs, reference was also made to a valuable and distinct role that the GAL can have in mediating tensions between the social worker, Tusla and the family:

'The other thing is where I think a guardian is good is if the conflict has become too great between the social worker and the family or between the social work department and the family. And that happens sometimes by the very nature of the fact that we have to give such a level of evidence to the court. That's what's demanded – that you point out all of the parents' difficulties – highlight them. But if that creates such an amount of conflict then a guardian can sometimes come in as a third party, that the parent may relax a small bit and give more information to the guardians. So in those cases there is a use, a value to the guardian being appointed.' (FG)

Theme 5

SPECIALIST TRAINING IN CHILD PROTECTION

Social Work Education

As this research demonstrates, child protection and welfare social workers spend a considerable amount of their time in court. Consequentially, a very good working knowledge of legal processes and procedures is commonly acknowledged. However, as one participant reflects, social work training does not reflect its importance:

'But the proportion of time that social workers spend in courts now is far greater than the proportion of time social work training around the law is.' (FG)

In response to Q.11 in the survey, 155 (43%) of respondents out of a total of 362 respondents believed that social work education programmes 'somewhat' prepared them to respond to the legal aspects of the child protection social work role. However, 140 (39%) of 362 total respondents indicated that it had poorly or very poorly prepared them for the role.

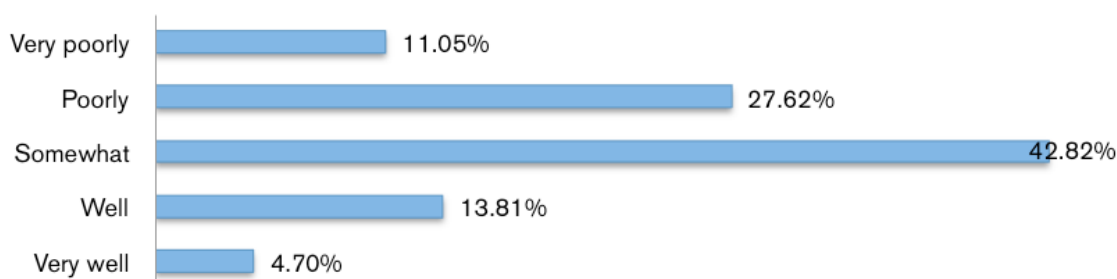


Fig 3.1.8 Does Social Work Education prepare Social Work graduates for engagement with legal services in Child Protection Practice (Source: Q.11 SEALS Social Worker Survey)

It was proposed by many respondents that more specialist knowledge of child welfare should be provided to child protection and welfare social workers at postgraduate level. In addition, the provision of specialist in-house training opportunities were advocated:

'But truly child protection within social work needs to ... there needs to be greater training. It needs to be valued more. So do you make everybody go and do a further postgrad course or could there be some kind of in-house continuous training or some kind of apprenticeship thing when you get in? But that has to be looked at.' (FG)

'Social workers have never been trained to deal with the rigors of court work. They are expected to conduct themselves as quasi solicitors without any training whatsoever. Courts have become extremely conflicted and social workers are constantly subjected to aggressive and rude cross-examination, while judges in the main show a complete disdain not only for the workers but also for the agency as a whole.' (Q.59, Respondent 160)

In-service Training and Education

(a) Induction

Referring to Tusla induction training, 217 (61%) out of a total of 358 respondents indicated that they had no induction training since entering the service, while 141 (39%) of respondents stated that they had induction training. Of the participants who received induction training, 63 (45%) out of 141 had participated in structured induction while 78 (55%) received unstructured induction.



Fig 3.1.9 Type of Induction Training (Source: Q.16 SEALS Social Worker Survey)

The length of induction training was represented as quite varied, ranging from part of a day to a week.

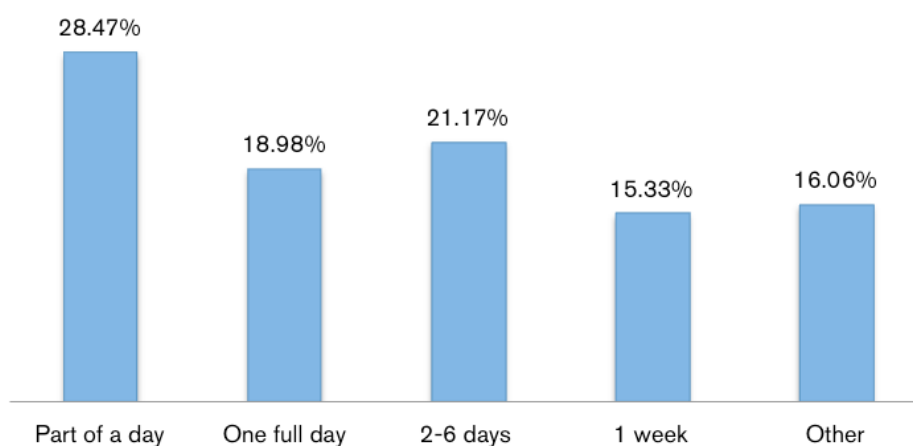


Fig 3.1.10 Length of Induction training (Source: Q 17 SEALS Social Worker Survey)

While induction training was provided, 115 (83%) of a total of 138 respondents stated that the induction programme did not include training on the use of legal services, while 23 (17%) of respondents stated their induction training had included information on the use of legal services.

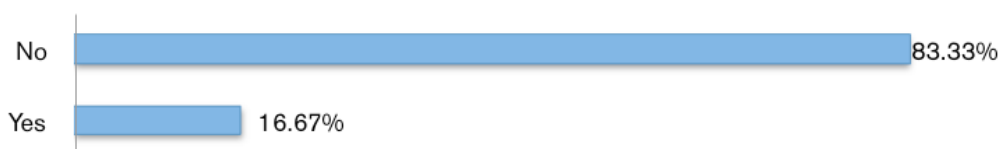


Fig 3.1.11 Training in Use of legal Services (Source: Q 18 SEALS Social Worker Survey)

(b) Opportunities for Ongoing Professional Development

The provision of in-house support to personnel was regarded as important. However, in the survey, 301 (84%) of respondents out of 358 had never been assigned a mentor/buddy, with 57 (16%) having a mentor assigned to them.

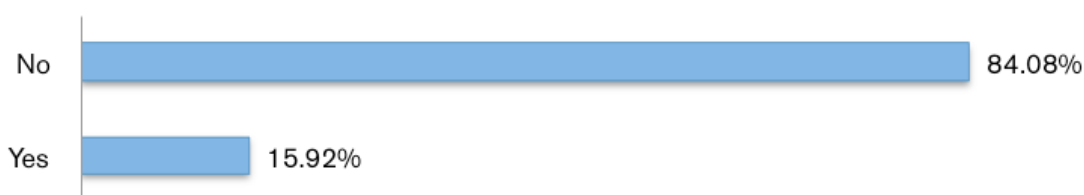


Fig 3.1.12 Provision of a Mentor (Source: Q 19 SEALS Social Worker Survey)

A need was identified for the provision of ongoing training and support for all Tusla social workers.

'We need to undertake a needs analysis of training needs across staff and managers. We need to give new recruits (to Tusla) immediate access to legal training. We need to give more specific and specialist training to those in certain roles (e.g. staff and managers who take children into care, staff who undertake S. 3 type of assessments, including risk assessments).' (Q.59, Respondent 175)

While some training was provided by Workforce Training and Development in Tusla, opportunities for personnel training and development in courtroom skills needed to be provided on a regular and continuous basis:

'There probably is one courts training every year, but I'd say with the turnover of staff there's a need for more of it. But it should be kind of that if you start in the social work department that you're guaranteed within three or four months anyway that you'll get court skills training.' (FG)

Greater provision of opportunities to engage in continuous professional development was advocated:

'Over the years in service training was excellent on presentation skills in court ... Supervision was excellent in early days in preparation also with good team leaders. Attending conferences was essential in getting and keeping up to date on the developments so that I was sharper going into court and could hold my own arguments with others, e.g. solicitors. Also getting legal opinion on a difficult case supported by a senior manager at the time was key in giving me confidence to go against the accepted way of doing business when it was needed in a case.' (Q.12, Respondent 51)

Professional Supervision

Professional supervision was generally recognised as providing an opportunity for ongoing professional development. When asked in Q.50 of the survey if they had received professional supervision, 255 (82%) of a total of 311 respondents answered in the affirmative. 56 (18%) of respondents had not received supervision. In Q.51 the majority of respondents, 230 (92%) of 251 respondents, said their supervision was received within Tusla. According to Q.52, the majority of respondents, 120 (48%) from a total of 251, said they received supervision once a month, 72 (29%) received it every 6 weeks, and 12 (5%) were not receiving supervision at the time of completing the survey. In response to Q.54, when asked about the type of supervision they received, 243 (99%) of a total of 245 respondents identified individual supervision. All aspects of supervision management, administration and support was experienced by over 75% of a total of 249 respondents. 185 (75%) of 248 respondents indicated that they used supervision as an opportunity to discuss aspects of their work that was related to their use of legal services.

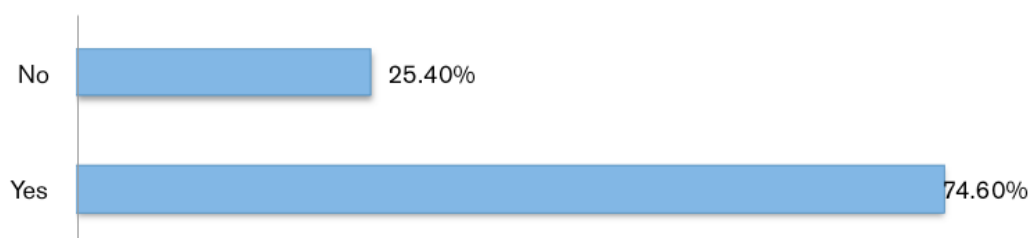


Fig 3.1.13 Social Workers use of Professional Supervision (Source: Q.55 SEALS Social Worker Survey)

In the survey, in answer to Q.55, 75% of respondents stated that they used supervision as an opportunity to discuss court and legal processes. In response to Q.59, more training in courtroom skills and in the use of legal services was advocated:

'Further training is required in respect of giving evidence and undertaking court reports to match what is expected within the court arena. Training in respect of being questioned by respondent solicitors and how best to present evidence would be beneficial.' (Q.59, Respondent 12)

Altogether, respondents held the view that supervisors should be involved in mentoring and advising personnel on issues related to court attendance:

'Court outcomes and experience should be discussed in supervision. Court attendance can be a daunting experience for a SW and reflecting/reviewing same important. Also, cases in court tend to be high priority and it is important to reflect on and consider outcomes with these cases.' (Q.59, Respondent 116)

'I would have an expectation that a supervisor would have a high level of knowledge of the requirements of the court in all aspects that relate to a social worker's involvement, i.e. how to present a report for the court, evidencing the relevant report content, explaining the role of the social work in relation to the court proceedings, explaining what the court requires of the social worker.' (Q.59, Respondent 161)

Interprofessional Training

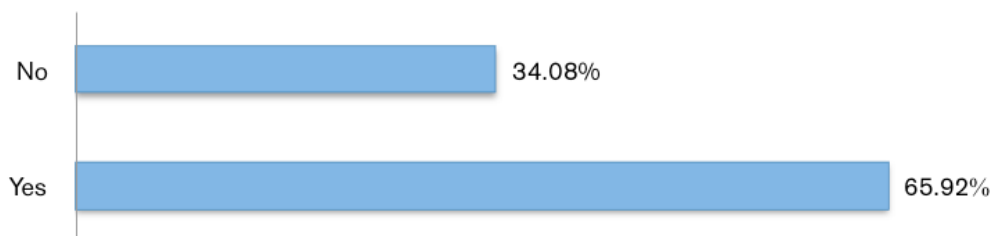


Fig 3.1.14 Specialist Training on Engagement with Legal Personnel (Source: Q.49 SEALS Social Worker Survey)

As previously stated, the researchers in this project observed and participants continuously referenced the central role that the judiciary occupy in child welfare proceedings. Because of the pivotal role that judges were seen to occupy in proceedings, specific and specialist training in child welfare matters was regarded as essential for all personnel – *‘The judges need to be trained, because some of the judges just don’t understand child welfare.’* And the participant raised their concerns that a lack of specialist knowledge on the part of the judiciary could lead to *“an erosion of the social work profession.”* (FG)

The provision of specialist training for judges was raised by many participants in the interviews and the survey. It was regarded as a significant issue, which could potentially have a positive influence on child welfare hearings:

‘Generally, it would be better for judges to be experienced and specialised in family law and to have more understanding of issues especially in relation to access etc.’ (Q.39, Respondent 25)

‘There are times when the decision made by the Court is questionable, and as there is no record or accountability with regard to the decision-making process of the judge, the SW will always be held liable even if they were actively seeking for a child to be removed and was then subsequently returned home by the Court and harmed. Judges are not trained nor do they have to attend training.’ (Q.39, Respondent 32)

Greater opportunities for engaging in interprofessional training was advocated as a way of redressing the challenges and tensions arising between legal and social work personnel in child welfare hearings:

‘More engagement and training with the legal profession. External firms frequently run information evenings and training for SW staff for CPD points.’ (Q.39, Respondent 164)

Joint professional training with legal personnel was advocated and views were expressed that such training could ultimately lead to achieving better outcomes for children and families:

‘We should consider doing appropriate joint professional training with SWs/Manager and solicitors, or at least have some joint group forums aiming to achieve better outcomes in such cases. I’m aware that this might be a wider issue and include a wider/systemic type discussion and change.’ (Q.59, Respondent 175)

‘There needs to be joint training between the professionals involved. There needs to be a shakeup of how the courts are organised for childcare cases, e.g. not a formal court room but everyone sitting around a table on the same level, etc. Better training for social workers in terms of reports and evidence given, there needs to be more respect for social workers as a profession in the court setting.’ (Q.59, Respondent 67)

Theme 6

SUGGESTIONS FOR REFORM OF THE CHILD PROTECTION AND WELFARE SYSTEM

A number of recommendations were made by participants towards redressing the challenges identified in the texts of interviews and focus groups. A consistent theme that emerged throughout the research referred to the need for specially designated family courts to be established. A less adversarial approach to be adopted resembling a family case conference style of engagement was suggested:

'Like I would have hoped, I would have always wished that matters would become less adversarial and there'd be some kind of forum, like a case conference, where the judges would sit down and everybody would debate what's in the best interests of the child. What's in the middle of the table is the best interest of the child. And I don't think that's the case any more in the courts.' (FG)

A more informal context was viewed as a more desirable child welfare forum, thus encouraging greater participation of children and parents in the process:

'... it's all a conversational style that suits parents, I think. It's more a 'tell me about that'. Quite difficult to describe, but it's not all facts. You know, it's an encouraging atmosphere that they need I suppose to tell their story and to feel that they can tell it.' (SW1)

It was also suggested that engagement of more than one person in the decision-making process in child welfare proceedings would be preferable. A call was made for the establishment of specially designated child welfare courts and for the provision of specialised training for judges in child protection hearings was emphasised.

'Let's say if one judge is less analytical than another judge, that might be more about feelings or whatever like that, and kind of say, well, what's the best thing for this child? Kind of an emotional sense. Kind of—I don't know—not so twisting but kind of I suppose using the law to kind of come around to whether that's an acceptable position for them. But, yeah, I think if there was more than one

person making that decision they could actually check it off each other and see, well, actually is this the best, like, so.' (SW1)

Summary

The Child Care Act 1991 provides the statutory foundation and legal requirements for child protection and welfare social work in Ireland. The child welfare hearing is the context where serious decisions on the welfare of vulnerable children are made and where the onerous responsibilities held by child protection and welfare, social workers are made visible.

This section of the report represents social workers' perspectives on their roles, relationships, and responsibilities in child protection and welfare proceedings. The social workers' voices provide us with a unique insight into their experiences of the defining influence that the legal context and legal personnel have on the performance of their mandated child protection roles and responsibilities.

Accepting that engagement with legal personnel is an essential feature of child protection and welfare social work, attention is drawn throughout this section of the report to the many and varied experiences of participants' engagement with legal processes and with legal personnel. Many ideological and practice challenges are represented in the texts of participants as they struggle to reconcile the diverse discourses of social work and law and of the different practices of legal and social work personnel. Changes are suggested in order to progress their expertise in complex family and child welfare matters, and to assist them in representing that expertise in a legal context, where evidential thresholds are high.

Likewise, the legal situational context of child welfare hearings and the regional variations in court processes and practices, e.g. specialised courts and specialised judges, are identified as anxiety-provoking. Consequential legal requirements for report-writing and giving evidence are also represented as stressful activities. Throughout the section participants present, on the one hand, their expertise in child protection and welfare matters, while on the other hand, they refer to legal practices and experiences that serve to challenge and sometimes even weaken that expertise. Holding the complex tensions that emerge in child welfare proceedings between competing social and legal

matters poses a challenge for all involved. The provision of additional and ongoing opportunities for professional and interprofessional training and education at all levels, i.e. graduate entry and in-service development, is proffered as a way forward towards addressing some of the challenges surfacing in the scripts of participants.

3.2 PERSPECTIVES FROM SOCIAL WORK ‘MANAGERS’

Introduction

The Child Care Act 1991 provides the statutory foundation and legal requirements for child protection and welfare social work in Ireland. Child welfare hearings are the context where very important decisions are made about the safety and protection of vulnerable children in Irish society. This section of the report represents participants’ observations and experiences of their role as managers of child protection and welfare services. The texts of managers demonstrate clearly the many challenges associated with managing the various tensions that arise in the performance of their managerial and professional responsibilities. Managers’ efforts to hold the tensions arising in practice between the exercise of their professional, organisational, and legal mandate ‘to serve the best interests of the child’ surface throughout this section of the report.

The researchers draw on data provided by managers of Tusla child protection and welfare services. Serious consideration is given to the opinions documented throughout the research, in a national survey, and in the texts of interviews with four Area Managers, ten Principal Social Workers (including some PSWs with the designation of Legal Service User), and ten social work Team Leaders. Interview scripts and the survey data have all been probed for evidence of social, economic, and legal concerns that link to the central objectives of the SEALS project, i.e. to examine the factors which influence the decision-making practices of Tusla personnel when accessing legal services, to investigate variations in the use of legal services by Tusla personnel, and to identify regional variations in court practices.

As demonstrated in Fig 4.2.1., survey respondents represented social workers and managers across all four of the Tusla administrative areas, i.e. West, South, Dublin North East, and Dublin Mid Leinster. The breakdown of the representation is as follows: 101 (27%) Dublin North East, 68 (18%) Dublin Mid Leinster, 73 (20%) the West, and 131 (35%) the South. The total number of respondents to Question 7 was 373.

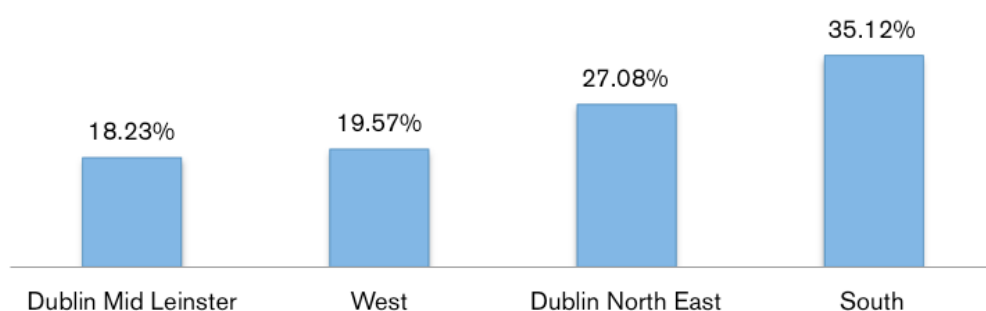


Fig 4.2.1. Profile of all survey respondents by Tusla region (Source: Q.7 SEALS Social Worker Survey)

Fig 4.2.2 reveals managers’ representation in the survey as broken down into Team Leaders 76 (20%), Principal Social Workers 33 (9%), Senior Social Workers 15 (4%), and in the other category 11 (3%) of 22 respondents were Area Managers. The total number of respondents to Question 4 was 374.

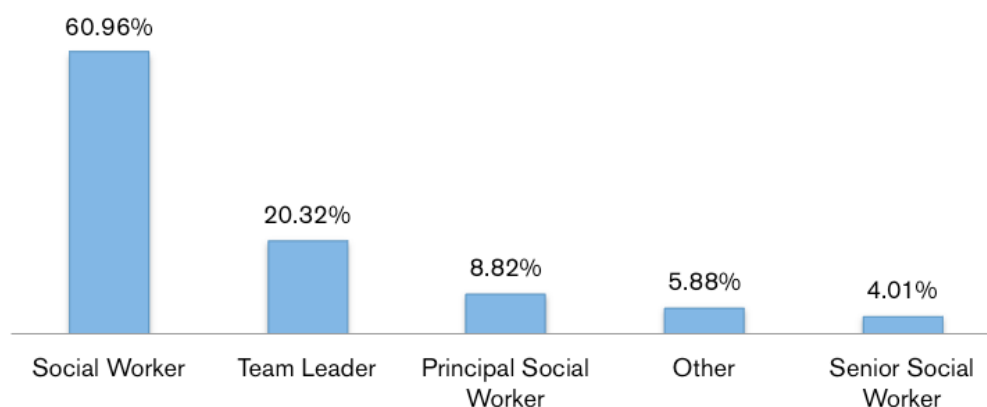


Fig 4.2.2 Profile of survey respondents (Source: Q.4 SEALS Social Worker Survey)

This section of the report focuses specifically on representing managers' experiences and understandings of social and economic factors that directly impact on the use of legal services by Tusla personnel. However, similar themes have emerged and are represented elsewhere in the research.

Theme 1

THE LEGAL CONTEXT OF CHILD PROTECTION HEARINGS: MANAGERS' PERSPECTIVES

Throughout this research importance is given to the influence the legal context and legal personnel have on shaping child protection and welfare practice. As previously stated, child welfare hearings are where the central context child protection and welfare matters are examined. They are the point where social and legal considerations on a child's welfare are deliberated upon and where decisions on the protection and welfare of vulnerable children are made.

The literature and SEALS research findings point to a more adversarial approach being adopted in child welfare proceedings. Significantly, it is in preparing for and engaging with child welfare hearings that social workers and legal personnel converge. Consequently, the child welfare hearing provides the SEALS researchers with a significant vantage point from which to identify and investigate variables that have a direct influence on social workers' and managers' experiences of legal personnel and of their use of legal services.

As this is a national research project, evidence of regional variations in court practices surface throughout the scripts of interviews. In addition, the researchers' own courtroom observations, which took place early on in the SEALS project, serve to further corroborate the existence of regional variations in legal practices.

Variations in Court Practice

Participants identify the judge as a central figure in the child welfare hearing. In this section of the report, managers reflect on their mixed experiences of legal practices around the country and also on their different, sometimes contrasting, encounters with legal personnel in child welfare proceedings.

Change in the culture and practice of child protection and welfare social work

A significant change in the culture of child protection social work was identified. The more legalistic, adversarial approach adopted in specialist child welfare proceedings was linked directly to more recent changes evidenced in child protection and welfare practice.

'When I started out as a social worker I would collect parents, bring them into court, drop them home. Even though I'd have to go up and give evidence about them I'd still drop them home afterwards. I'd have a cup of tea or coffee with them after court. You know, you don't get that any more in the specialist courts. All the social workers are in one part of the court, the parents are in another. It's nearly seen, you know, that you're trying to coerce a parent if you sit down beside them. It's become, yeah, it's become massively legalistic.' (AM4)

Influences of the Adversarial Court Process

The Child Care Act 1991 provides the statutory foundation and legal requirements for child protection and welfare social work. All participants recognised the seriousness of the work they do and the central role they play in decision-making on the safety and protection of vulnerable children. Managers reflect on the changing context within which child protection and welfare social work is practised. A manager pointed to how the legal mandate guides and directs child protection and welfare social work. The higher evidential thresholds required in completing child protection and welfare assessments and in making recommendation were highlighted:

'It's really the assessment I suppose from the social worker and the team leader that, you know, there's a very serious and significant risk to a child if we don't intervene ... It's the threshold within the law, you know, in terms of the Child Care Act and whether we see that threshold has been reached in terms of significant harm to a child.' (AM4)

The higher threshold of evidence required was viewed as a very important variable in making decisions about taking a case to court:

'The threshold of evidence is going to the point of beyond reasonable doubt as opposed to on the balance of probability.' (AM4)

The high evidence threshold that currently exists in child welfare law means that social workers have to be prepared for more intensive scrutiny in court when giving evidence:

'I have to go before this local judge ... whereby every move I make can be cross-examined to a tee.' (AM4)

Elaborating on the process of cross-examination they describe it as:

'very often higher than what's required in the criminal court. I've also been a witness in criminal cases. I've been cross-examined less vigorously than in childcare settings.' (AM4)

Managers made reference to their having to intervene in some cases to curtail vigorous cross-examination, not only of social workers but also of parents by legal personnel:

'And, I mean, I don't think parents should feel they're on trial either in those scenarios and... I would very clearly say to our solicitors no, don't cross-examine them that harshly, you know, that's not what we're here to do.' (AM4)

Calls for a less adversarial approach to be adopted in child welfare hearings were made. The recent rollout of training in the *Signs of Safety* programme was represented as a more positive step forward. Participants believed the programme promoted an approach to working with families that is more akin to 'empowering the family to own the issue', an intervention that was associated with more traditional approaches to social work intervention:

'Well, I think definitely the approach actually might assist with coming up with solutions with families that doesn't require a legal response. Signs of Safety I think is very much about empowering the family to own the issue. To be honest, it goes back to kind of the bread and butter of what social work values were in terms of empowerment. I think in a lot of ways a lot of the systems we've had in place in terms of the courts it's disempowering families and it has given sort of... 'it's the State's issue to fix'. And I think this

approach is more about empowering families to in partnership co-produce the solutions.' (AM4)

The focus in Signs of Safety programme is on empowering the families and on giving back some control and autonomy to families was particularly welcomed. A participant expressed their hope that this approach will support the resolution of child welfare matters outside of the court with a consequential lessening of the number of child welfare cases being brought to court. Such a development was welcomed:

'It's family-driven as opposed to service-driven. That's what really struck me about the training. You know, actually some of these very challenging families resources aren't the issue and in fact we tend to throw the kitchen sink of resources. But they're not having good outcomes. So this is a different approach. I think it hopefully would lead to less cases actually needing to go before the courts.' (AM4)

Variations in the Discourse and Practice of Law and of Social Work

While many participants reflected on the changing context of child welfare proceedings, many also reflected on their different and varying experiences with members of the judiciary in the child welfare hearings. A manager remarked on the worrying attitude portrayed by a member of the judiciary towards social work and Tusla. They pointed to specific practices in court that demonstrated an apparent lack of understanding on the part of members of the judiciary of the complexity of social issues represented in the profiles of children and families appearing before child welfare hearings:

'And I suppose unfortunately, you know, I've experienced judges who are scathing of the work that we do, that they blame the problems of society on Tusla ...never mind that some of those issues come from poverty and deprivation, you know, the complexity of those issues.' (AM4)

The same participant acknowledged the challenges posed to legal personnel and to the application of law by more social constructions and interpretations of child welfare matters, represented by social workers. In the context of child welfare hearings, contrasting practice paradigms and disciplinary discourses that

prevail between social work and the law are made visible, posing some very real philosophical, practical, and economic challenges for all parties involved in proceedings. As one manager clearly stated, social work is '*not a neat practice*'. It poses significant challenges for the judiciary in making decisions in complex family law matters:

'Oh, I'm sure they get very frustrated with us sometimes, you know, because we don't work in a perfect system. We have placements break down. I think, you know, placements break down, we maybe sometimes intervene too early, sometimes we intervene too late, but I think probably I suppose it's not neat. You know, it's not neat work. So it's not a science of do you intervene today, tomorrow, next month. You're, you know, checking when is the right time ... And I think that's probably very challenging in fairness to a judge to try and make a decision on that.' (AM4)

While acknowledging the challenges faced by the courts and the judiciary in terms of coming to an understanding of complex family and child care issues, the frustration of a participant clearly surfaces. Not knowing how best to respond to court practices that have a direct and sometimes adverse impact on social workers and on their practice is represented in the question '*what do I do?*':

'I have huge respect for the courts and I do understand they've a very difficult job to do, but I sometimes feel ... I'm not sure if all the time our staff are treated with dignity in the courts. And staff get very frustrated sometimes with us, with their senior management, because they feel, well, you should be doing more. But it's hard to know, like, what do I do?' (AM4)

Another participant supported the views of AM4 referring to practices in the court that represented a general lack of respect for social work. They pointed to evidence of a more adversarial approach being adopted by the judiciary:

'I think there's a kind of general lack of respect for social work witnesses from the judiciary. It's kind of, well, listen, you brought the application, you need to go through this, you need to answer this person's questions no matter how difficult those questions are, without any real protection from the judge, you know.' (LSU 24)

As a legal service user, the same participant represented their concerns for social workers working in a child welfare system that is becoming increasingly more adversarial in its approach. This practice was viewed as particularly worrying in the context of the profile of child protection and welfare social workers being in the main young, female and inexperienced:

'A thing for me is that, as you know, a lot of our social workers are young. They're invariably female. They're inexperienced. But they can't have a team leader on the stand with them, or a manager. They're left up there on their own without really proper protection.' (LSU 24)

While the legal expertise of the judiciary was clearly acknowledged, the personality of the judge was described as having a very defining influence on the process and outcome of child welfare hearings. Important observations were made about suitability of a particular member of the judiciary in child welfare hearings:

'The judge was a really good legal mind but he had a terrible—a personality which was not conducive to supporting children. And you could see him visibly getting angry and, you know, you could measure his anger. And he used to erupt every time at one particular social worker—one particular solicitor commonly. And he just wasn't suited to that.' (PSW10)

Furthermore, many individual and regional variations in the practices of the judiciary were highlighted by many participants:

'Some judges are more interested, more understanding, and just more suited to working in the family law courts and I think that's the way it should be.' (PSW10)

Moreover, participants commented on an apparent lack of judge's knowledge and understanding of the expertise of the social worker. They believed that a general lack of appreciation of the content and level of social work education and training was made visible in court practices:

'Sometimes I think maybe I'm not sure if they know that social workers are as well qualified as they are as well. I mean, most social workers have

five years under their belt in terms of their social science degree and then a master's. So that's five years training to have a social work qualification. And I actually sometimes think judges may think that social workers maybe have two years or, you know, a certificate of something.' (AM4).

Developing on from this observation the same participant acknowledged that responsibility for misunderstandings developing between social workers and the judiciary regarding social work proficiencies may be reflective of social workers' inability to clearly articulate what they do:

'But I think part of that is that as a profession maybe we haven't been so good at articulating what our strength of our profession is, you know.' (AM4)

The prevalence of regional variations in the levels of expertise and training of judges and legal personnel in matters related to child welfare and development was highlighted:

'But, you know, sometimes District Court judges are sort of semi-retired solicitors or something. You know, they're not necessarily trained.' (AM3)

Additionally, participants observed some failures in cross-disciplinary understandings and practices between social workers and legal personnel. Legal personnel's lack of knowledge of child development matters was noted as a concern. A call for more specialised training in child care law for legal personnel was advocated:

'They don't know very much about child development and sometimes they feel that their own opinions are more valid than the expert opinions of social workers. They're just not trained to work in child care law cases. And I think we should have solicitors who are trained—judges who are trained in this area, to work in the area and provide good adjudication.' (PSW10)

Regional variations court practices and procedures

The specialised nature of family and child care law was acknowledged. While more specialised family courts were advocated, participants also noted there was evidence that some judges more than others had a greater interest and aptitude for family law work.

Attention was drawn to the absence of specialised family law courts in some geographical regions; consequentially, family law matters were often placed at the end of the list of criminal law cases. The practice of leaving family law matters to the end of the general court list was generally regarded as inappropriate and disrespectful:

'And again we don't have a particular family law process in [region specified], so they [the judges] are doing this on top of their other criminal cases, etc. You know, they put time aside for it but they're not trained/orientated towards family law at all per se. I think in [region specified] there's some effort at a family law court specialism. They don't have that specialism here at all and in that way ... they're doing it as an add-on ... there isn't a sense of it being done respectfully at all, right.' (AM3)

'Yeah, okay, I think that childcare law, family law in relation to children is very specialised and I think that having a couple of family law cases tagged onto a criminal justice day or tagged onto the end of a criminal justice series of law cases is really unhelpful.' (PSW10)

While the absence of specialised family law courts in certain regions was criticised, it was also stated that the more specialised courts tended to take a more forensic approach than regional courts, which was met with mixed responses. Managers presenting in the more specialised family law courts noted that greater attention was given in these courts to discussing legal technicalities and to ensuring legal practices, and matters of law were strictly applied:

'Well, sometimes the specialist courts, say, in [Region] – and like as a social worker I've covered both of those courts – they're more forensic in specialist courts, much more forensic in terms of the level of detail they require, in terms of laws of giving evidence, in terms of the application of the hearsay rule. It's a little bit easier in the more local district regional courts.' (AM4)

Differences in the practices of the judiciary were observed, with certain judges viewed as adopting a more individualised approach to conducting child welfare proceedings, e.g. bringing children back for frequent reviews, while other judges' practices seem more intent on implementing specific interventions in children's lives. Furthermore, the knock-on influence

of variable court practices had, according to some participants, a direct impact on how Tusla resources were allocated between different cases. In some instances the practice engaged in some specialised court hearings was experienced as the courts attempt at imposing more managerial type 'policing' controls over social workers' practices and over the use of resources by Tusla personnel. These practices were regarded unfavourably:

'The specialist courts that we would have in [region], for example, are, to be honest, policing us more. So, for example, if a judge grants a full care order now they're putting in stipulations into the order that if the foster carers don't have an allocated link worker, if the child placement changes, if the child doesn't have an allocated social worker, we've to re-enter it back to court ... And I suppose that's a challenge because, you know, obviously resources are, you know, they're finite, and it means then that we may have to allocate a resource to that particular scenario whereas our own judgment is actually another family need it a lot more. But that comes up regularly.' (AM4)

Overall, the more specialised family law courts were experienced as impacting significantly on the way social workers perform their child protection mandated role. While acknowledging the direct influence of the courts on decision-making in matters of resource allocation in child care cases, questions emerged about quality control of services, with doubts being expressed about whether certain court practices serve the child's best interests and thus achieve better outcomes for children:

'One of the pieces that we have specifically here ... we have a District Judge who makes short orders ... in the initial phase for three months, six months and on an ongoing basis. It's generally for a 12-month period, so very often we've difficulties that arise, not just in relation to the amount of court, but for the children and the lack of security in terms of being in care.' (AM3)

A court practice of seeking multiple assessments for children was highlighted. Concerns related to issues of 'attachment' and achieving 'permanency' were raised and doubts expressed about whether 'good outcomes for children' are achieved by these practices:

'The outcomes for children, I wonder are they any better because of the road that we're on at the moment with these multiple assessments being ordered in the courts. And I sometimes think it's delaying an inevitable decision that has to be made, to be honest ... I see the requests for the assessments come through and I just see so many children getting so many assessments and I just worry about what that's like for a child. And I just really wonder about the outcome of that and whether that's promoting good outcomes for children, And I've seen children who've been on interim care orders for up to three and four years, you know, and it's down to assessment after assessment after assessment. And that's certainly not a culture of permanency ... very significant period of time where they don't know whether they're coming or going. And then we wonder then why they haven't attached with carers ...' (AM4)

Theme 2

COST OF LEGAL SERVICES

Escalating costs linked to courtroom practices

While certain court practices raise issues that are cost-related, many of which are detailed in Section 4 of this report, it is not only the financial costs of legal representation that are regarded as important; the incidental costs to social workers' time and resources are also a cause of real concern to participants.

Undoubtedly, as this research demonstrates, when an adversarial approach is adopted in child welfare proceedings, higher costs ensue. The level and frequency of cross-examination in cases, with legal practices sometimes involving forensic scrutiny of witnesses, is linked directly to demands for greater legal representation with a consequential escalation in legal costs, i.e. employment of solicitors and barristers, and more incidental costs:

'The cross-examination, what we have found more recently is that there's a greater level of legal representation coming into District Court hearings. Obviously you'd expect it at Circuit Court, but increased use of barristers at District Court; that cases that in the District Court would have been heard in 3 or 4 hours previously, are now going

into minutiae of legal procedures and very often going on for 4, 5, 6 days of hearing, and the incidental costs with all of that.' (AM3)

The same manager elaborates on specific courtroom practices, e.g. failure of court list system, frequency of adjournments that are very time-consuming and result in consequential incidental inefficiencies associated with the best use of social workers' time and expertise:

'I suppose the time factor that our staff spend in court on occasions that we're waiting late in the evening - say a case that's booked for 10 am but we don't get to be heard until 4 and the case goes on until 8, 9 in the evening - that would not be infrequent. The amount of adjournments and deferrals of hearings is a frequent piece that comes up, so you're in court and the judge, on application very often from the defendants, says, 'I'm adjourning it,' and your whole day is gone and you're back in again. So those are two pieces.' (AM3)

References were made throughout the research to the scarcity of agency resources. While acknowledging the increasing complexity of child care cases, court responses and attendant legal practices and protocols were generally experienced as having become more conflict-ridden with a consequential escalation in the use of legal services by Tusla personnel. Participants linked escalating costs in the use of legal services by Tusla staff directly to the more adversarial approach adopted in child welfare proceedings:

'Some judges are. They are not meaning to be punitive but they don't think about the cost because it is not a cost to them.' (AM2)

The point was also made that increases in expenditure on legal services presents significant budgetary concerns for Tusla. The more money spent on legal services, the less money is remaining to deliver frontline services to children in need:

'I mean, I think the amount of money that's been ploughed into legal services is exorbitant and it's getting worse and worse. You know, I think what people fail to realise is that the money's all coming from the same pot. You know, so the therapeutic direct work services that children need come from

the same pot that legal services are coming from. Everything seems to be much more complex and conflicted than it used to be or needs to be. So almost every decision, seemingly simple decisions, are being appealed before the court by parents' solicitors through either Legal Aid or through private law firms.' (PSW24)

While there is a general appreciation that the cost of legal services in Tusla is rising, a manager stated that they were satisfied social workers employed appropriate practices when seeking legal advice on cases:

'I would say in fairness to social workers, like, okay, when they're in a case sometimes they might ring the solicitors probably maybe a little bit too often or whatever, but in the main I think when we seek legal advice I think it's appropriate that we seek legal advice, yeah.' (AM4)

However, the same manager remarked that some social workers may need to be made more aware of the costs involved with every action that involved engagement with legal services. While they welcomed the collegiate relationship that can develop between solicitors and social workers, they acknowledged that this relationship can sometimes mask the cost issues associated with the provision of legal advice:

'As I said, it's very, you know, collegial, to the point, though, sometimes that you have to remind social workers that we can't be contacting solicitors to tease out issues about the particular practice on the case. You know, sometimes it can be, you know, that the legal advice and the solicitors are so available that people are ringing them very, very, very regularly and nearly forgetting that every time they call them we're being charged for it.' (AM4)

Financial oversight and quality control: Role of Tusla managers

A feedback mechanism exists in Tusla to facilitate managers to report on legal services received. However, a lack of formal procedures or financial oversight was noted:

'There's no formal oversight and it's really only when it has escalated that it comes to me.' (AM2)

In the absence of what was regarded as 'formal oversight', variations in managers' feedback practices on legal services surfaced in the texts of interviews. Social work managers represented significant differences in their interpretation of their role with respect to providing financial oversight and quality control of legal services. One manager outlined the role of the Area Manager:

'The legal billing has changed over time, and in particular when it went into a national contract, initially we were able to see the breakdown of it and I could see the breakdown of it on occasions I was able to point out. But they have changed that system again and it's become more opaque, to be honest with you, and we find it far more difficult to actually make a breakdown. It's very difficult for us to get any sense of how the billing is happening at this occasion. So at this stage, other than does it relate to a case that has happened; did the case go on for a specific period of time, that's as far as we get.' (AM4)

Confirming the challenges identified by AM4, a legal service user also pointed to their limitations in providing financial oversight on legal spend, describing the practice as 'quite tokenistic':

'Well, I don't actually see the specific invoices. What I get is just an outline of what the total fee is and whether I'm satisfied with that or not. So in some ways it's quite tokenistic.' (LSU 24)

Clearly some participants had a very specific understanding of their role as a legal service user. They provided a detailed outline of how they interpreted and represented their role with regard to providing financial oversight and feedback for legal services received:

'I'm Principal Social Worker in [region] for children in care and aftercare, so any invoices for those

services and departments will be forwarded to me. So I would usually have a quick look. I don't do the feedback myself; it goes out to the relevant team leader. So the invoice comes to me for every case that's in court. And I would be dealing with about four hundred and fifty children and young people. All of those bills and the feedback forms comes to me. We'll have almost a baseline of what the expected cost will be for a case and if it's going to be more I'll get an email about that as well. I've never not paid an invoice. You know, I suppose just sometimes you have to tease it out—how was it this much?' [the bill] (LSU2)

Regional practices between legal firms and social work certainly prevail and they have evolved over time. Some regions believed that practices related to financial oversight on legal costs was better in some regions than others:

'But I do in terms of that process have a very close working relationship with the solicitor covering [region]. So we would review invoices that seem out of the norm. So, for example, in a recent case where a guardian ad litem had charged—their solicitor had charged exorbitant fees, we challenged that and it was brought back before the court by their lawyers and the judge actually ruled in Tusla's favour. But that's really the system we developed locally between myself and the solicitor and it's based on just the working relationship that we have.' (LSU 24)

The practice of managers querying invoices was varied regionally and from manager to manager. One manager stated clearly that they would not query an invoice; however, they had queried the quality of service received from legal personnel and they believed that this exchange had mutual benefits to both the social work service and the legal firm:

'No, I wouldn't query an invoice but we have queried the quality of the legal representation. Myself and another principal social worker for child protection met with the head of the firm that represents us and we spoke to the person and expressed our concerns about the quality of representation. And it was a useful meeting because then the head of the firm had an opportunity to talk to us about some of the concerns he has about some of the evidence that social workers give and we did make some changes arising from that.' (PSW10)

Another manager identified very specific practices they use in managing invoices received from legal firms:

'Well, generally I would just open them [invoices] and check what it is that I'm being charged for. I would give that to the Team Leader or the Social Worker and get them to confirm that they were in court, that they had these conversations, you know, just to make sure that what I'm being charged for is what actually happened. And if the social workers and the team leaders agree that that's an accurate reflection of the work involved then I would sign off on it. If I have a query ... I would then write back and say what my query is.' (PSW17)

Many participants stated clearly that they do not provide feedback on legal services because of a lack sufficient time:

'I don't complete it [feedback]. You know, I think we're meant to complete it regardless of whether there's an issue or not, and I don't. You know, I just don't have the time.' (LSU19)

In terms of Tusla getting 'value for money' a participant advised the expansion of in-house legal services:

'I suppose I would like to see ... Tusla grow their in-house legal services. You know, I think that that might represent better value for money.' (LSU19)

When questioned about the costings of pre-court hearing consultations, a manager stated they were more concerned with ensuring best practice than with monitoring costs:

'Well, I'm sure there is, because, you know, it's legal time. But, you know, to be perfectly honest that doesn't cross my mind in the slightest. I'm not really interested in that because, you know, I want these children—these social workers to be as well-represented and as well-prepared and I want the legal teams to be as well-prepared as possible and if that's money then so be it, you know. I honestly don't waste money, but, you know, it's really important that the legal team are well-briefed in presentations.' (PSW10)

While a general lack of knowledge and understanding of the financial systems that operated in Tusla surfaced in the texts of many managers, nevertheless, there were some notable exceptions:

'And then they bill—as far as I understand it—they funnel their billing—well, first of all they write up a letter when they get a new appointed case and they tell us how much they estimate the cost is going to be for the case. I respond if I'm satisfied or not with the service that was provided, and 90% of the time I am exceptionally satisfied with the services that are provided.' (PSW25)

'I think the practice has tightened up lately. To be honest with you I think it's a lot more streamlined. So generally when invoices come in they're correct. So there's no additional. Do you know I mean? You know, just it's very straightforward. So it's when queries arise that that takes up a bit of time, because you've to make a couple of calls on it and go back and track back through stuff, you know.' (LSU19)

Training in use of financial systems

The absence of standardised practices and training in the use of financial systems in Tusla emerged as a matter of concern in the interviews with Principals and designated Legal Service Users (LSUs):

'No, there's no training on that at all. It's just a system that was introduced and Principal Social Workers were asked to take on that role—which I can understand, because we have the finger on the pulse of what's happening in terms of the District, Circuit and the High Courts in terms of our obligations.' (PSW24)

'Yeah, there's no formal training or policies and guidelines that I'm aware of. I just follow good governance—I do feel there hasn't been formal training. I feel at a disadvantage with this because I suppose I'm just matching what I believe is accurate fees.' (PSW19)

Quality Control: Role of Team Leaders

The team leaders' managerial responsibility was represented less in terms of providing financial oversight and more in terms of providing quality assurance, support, and direction to social workers,

thus ensuring best practice was achieved in courtroom presentations and report writing:

'The team leader will review their [social worker's] report prepared for the court to make sure that it covers everything and that it's well-presented and that it's evidential-based and, you know, that they're very careful about what they put into it, you know, that they can support it and that so that when they go up onto the stand then that, you know, they're not going to be in a difficult position.' (PSW2)

The oversight that the team leader has with regard to examining court reports prior to court submission was further elaborated at interview:

'So there's a lot of preparatory work done in supervision and we put dates in for it to be sent into myself. Then I'll go through it for corrections or sit with them and go through it or whatever. Then the report's given back, and then it's tidied up for final submission to the solicitors, and then we send that off.' (TL2)

Regarding the practice of team leaders and principal social workers accompanying social workers to child welfare hearings, this practice, while fluctuating from region to region and from team leader to team leader (see social workers section for further details), it was viewed as very important practice. Generally, participants believed that the experience the manager brought to the court was valuable and valued by the social workers:

'I think the social workers would think it's very important. I sometimes wonder what my role is. But, you know, I was in court yesterday and there was a couple of things that were difficult. And I'm a bit more experienced, I've been around for a lot longer, and I felt that I could make decisions that the social workers might have struggled to make.' (PSW10)

The important instructional and leadership role of the team leader was acknowledged:

'But basically my role was to instruct the solicitor on decisions that basically needed to be made that the social worker couldn't instruct. That was really my role. And I suppose in my own mind I'm taking the role for support for the social worker who's put on the witness stand.' (TL2)

Theme 3

TRAINING

Specialist child protection training for social workers

Managers pointed to the importance of providing specialist training in child protection at induction and onwards throughout a social worker's career. Time was a recurring theme that surfaced throughout the managers' interviews. The considerable amount of time that child protection and welfare social workers spend in court was singled out for particular comment by a number of participants. Inevitably, increases in time spent in court was directly correlated with increased expectations of advanced knowledge and understanding of the legal processes and systems where child protection and welfare matters are situated. Providing adequate training to all social workers from induction onwards was highlighted as essential. One manager spoke about recent advances in induction training in Tusla:

'There is a new induction course coming up next year, and workforce learning development are working on that, and workforce learning development have done a court skills programme this year.' (AM2)

While it was acknowledged that formalised 'in-service' specialist training in child protection, i.e. courtroom skills and 'Children First' was made available 'in-house', similar to the social workers interviewed in this research, deficits in the provision of formalised induction were represented in the survey and further acknowledged in interviews with managers and social workers:

'No, induction is not as strong, as formalised as we would want it to be, there's no doubt about that. There's occasional induction that comes through, but by and large it's unstructured and in my experience it has ever and always been that way. Now there are certain pieces like training, like set piece training, that we would ensure that they have done, there's Children First training ... court upskills, you know, various pieces, but there is no formalised package of induction that's being offered.' (AM1)

Akin to the views of social workers, managers supported better provision of informal mentoring and collegiate support to be provided for new personnel:

'So, very often you have new social workers coming in, sometimes they are coming in on temporary contracts initially, so the induction that they get is nearly by working alongside and picking up from the person that is there, obviously supported more closely in the opening stages by the team leader, but it's that sort of collegiate piece that is there.' (AM1)

While acknowledging the important generic knowledge acquired on professional social work programmes, more specialist types of knowledge were believed to be needed in practice, and in this respect it was acknowledged that a good team structure can provide an important context for promoting ongoing learning and professional development:

'There is an expectation in colleges that when somebody qualifies they are qualified to go out and practice and be that rounded social worker on day one. In practice we never see that as being the reality. That social worker will learn more in reality from a good team.' (AM1)

Briefing personnel before and debriefing them after court work was viewed as an important supportive and educational function of managers thus contributing to personnel's ongoing professional development:

'Briefing our own people, ensuring the training, and ensuring the debriefing after ... because people can be highly stressed and people know that these cases are going to be challenged to the nth degree and they know what's going to happen. We've had cases again of people giving evidence in High Court cases again ... talking to people and talking them through again what to expect various pieces.' (AM1)

Interprofessional training

Acknowledging the more specialised nature of child welfare proceedings and the increasingly adversarial approach being adopted in child welfare hearings, a number of challenges were identified. A Principal Social Worker called for additional 'in-service' training to be provided thus facilitating better cross-disciplinary communication and collaboration in child welfare proceedings. A need was identified for professionals to have a mutual understanding and appreciation of

each other's roles and responsibilities:

'I mean, that is a difficult one, because while I think social workers need to be trained to a high level so they conduct themselves properly in court, I think while we do need additional training we also need to have judges who have a far better understanding of who we are, what we do, and what we're seeking to do, because as it stands we're going in expecting to be able to combat trained barristers and judges who will be very challenging and pick holes in what we're trying to say.' (PSW24)

Summary

The child welfare hearings are the nexus point for child care decision-making in Ireland. They play a pivotal role in delivering on Tusla's mission, as stated in its first Corporate Plan 2015-2017:

"With the child at the centre, our mission is to design and deliver supportive, coordinated and evidence-informed services that strive to ensure positive outcomes for children."

This section of the report represents managers' perspectives on their managerial roles, relationships, and responsibilities in pursuing Tusla's child protection and welfare mandate. The specialist nature of child protection and welfare practice and the onerous responsibility, located in statute, vested in child protection and welfare social workers, was emphasised in interviews with managers.

Throughout this section of the report, participants highlight the challenges they face in mediating tensions that surface in child welfare proceedings.

The child welfare hearing is a context where different discourses and sometimes contrasting practices of social work and legal personnel become apparent. Finding ways of responding to and overcoming the challenges presented to social workers and to the Child and Family Agency in the court setting was represented as a key function of Tusla managers. Managers drew attention to Tusla's responsibility to its social workers to ensure 'best professional practice' prevails through the provision of good internal structures of support for social workers, e.g. in-service training, quality induction programmes,

regular professional supervision, and proper mentoring facilities. Furthermore, the increasingly adversarial culture that prevails in child welfare proceedings was noted by participants as mitigating against ensuring the 'best interests of the child' being achieved.

The managers concur with invocations from researchers in Ireland and internationally for specialist training to be provided for members of the judiciary who preside over child welfare hearings. Additionally, it is proposed that the provision of interdisciplinary training might serve to bridge prevailing misunderstandings and miscommunications that exist in varying degrees nationally between legal and social work personnel in child welfare proceedings.

In this section, managers considered their managerial responsibilities on matters of quality control and financial regulation. They made a number of observations on the presence of regional disparities in court practices and on dissimilarities in the attitudes and practices of members of the judiciary across geographical regions. A lack of appreciation by some legal personnel of the role of the social worker in child welfare proceedings was noted. It was viewed as impacting significantly on the hearing process and consequentially on the achievement of 'best outcomes' for children.

The researchers draw on interview data with managers to foreground managers' responsibilities in areas of financial oversight and quality control of Tusla's use of legal services in child welfare proceedings. Regional and individual disparities in the practices of management personnel with regard to providing financial oversight in the use of legal services by Tusla personnel were noted. The issue of Tusla's scarce resources was raised. The importance of good financial regulation to ensure proper use of resources in the delivery of services to vulnerable children was highlighted. Participants acknowledged the challenges they faced in their efforts to negotiate Tusla financial systems and processes. A call was made for better training to be provided in the use of financial systems for all personnel vested with this responsibility, thus ensuring that regulatory and quality control practices are systematically and uniformly applied throughout the service.

3.3 PERSPECTIVES FROM EDUCATIONAL WELFARE SERVICES

In this section of the report reference will be made to the data collected as survey responses from Educational Welfare Services professionals and also from a focus group conducted with Educational Welfare Services management. The link to the educational welfare version of the survey was circulated to 91 professionals. 88 responses were received, constituting a 97% response rate. The following chart (Fig 3.3.1) displays the profile of survey respondents, showing their roles within the Educational Welfare Services.

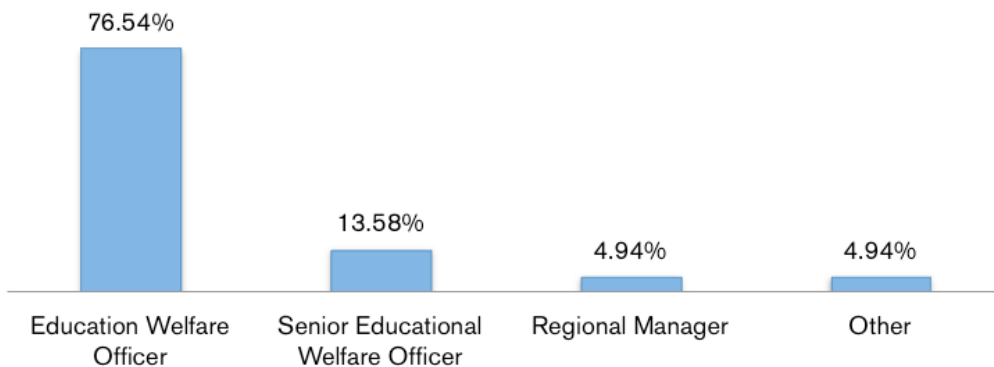


Fig 3.3.1 Profile of EWS survey respondents by role (Source: Q.4 SEALS EWS survey)

Involvement by educational welfare personnel with legal tasks

The response data of the Educational Welfare Services survey indicates that engagement with legal services constitutes a significant part of the work undertaken by educational welfare officers. As represented in the chart below (Fig 4.3.2), of 80 respondents, 54 educational welfare officers (67.5%) indicated that they had envisaged their role would 'very likely' involve engagement with legal services.

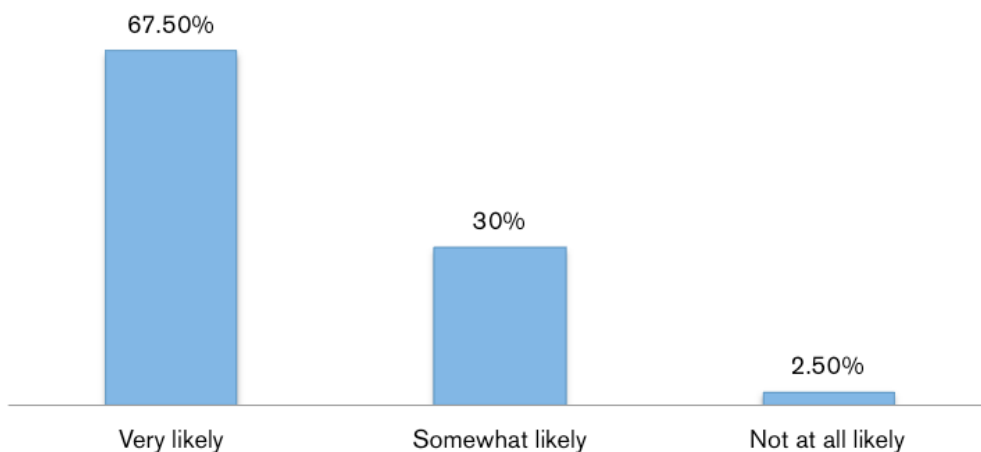


Fig 3.3.2 Perceived likelihood of EWO role involving engagement with legal services (Source: Q.9 SEALS EWS survey)

This is arguably unsurprising given that the statutory arm of the service is mandated by the Education (Welfare) Act, 2000 to bring proceedings before the District Court. In circumstances where an educational welfare officer forms the opinion that a parent is 'failing or neglecting to cause his or her child to attend a recognised school in accordance with this Act', a School Attendance Notice is issued in accordance with Section 25 of the aforementioned Act. If a parent fails to comply with this Notice on the expiry of a minimum of seven days of its issuance, the EWO can bring proceedings before the District Court.

In a strategic recognition of this strong intersection between educational welfare practice and the legal system, the Educational Welfare Services (formerly the National Educational Welfare Board, often referred to as the Educational Welfare Services throughout this report) has a set of *Guidelines on Legal Procedures*. This guidance document is a reference point for consultation by professionals working in Tusla's Educational Welfare Services and contains a section on legal proceedings which explores matters relating to deciding on prosecution, issue of summons, and the court hearing.

Survey questions exploring the specific aspects of educational welfare professionals' involvement with specific legally-oriented tasks highlighted that the vast majority of educational welfare officers fulfil such roles. For example:

- Of 68 respondents, 65 (95.59%) have engaged with a solicitor.
- Of 68 respondents, 62 (91.18%) have prepared a report as part of a court submission.
- Of 76 respondents, 62 (81.58%) have attended court in their capacity as EWO.

These results indicate that engagement with the legal system features amongst the duties of most educational welfare officers.

Engagement with legal professionals

The survey administered to educational welfare professionals sought responses relating to experiences of engagement with legal professionals.

Judges

In relation to judges, of 57 respondents, 28 (49.12%) indicated that their experience was largely positive, while 29 respondents (50.88%) said it was variable. No respondents said that their experience of engaging with judges was largely negative. The variability suggested by these survey findings was further articulated in the narrative responses offered in the survey.

We see a resonance with the variation in judicial practice which is illuminated in the sections on social work and solicitor perspectives. As one survey respondent asserted:

'My experiences with judges is that it depends on the day, which judge you get, as to how a case may go. It is very unpredictable.' (EWS survey Q.34, Respondent 9)

A further respondent stated that:

'Judges are largely positive. Our residing judge has a good understanding of our work and is therefore mostly positive, but when he is not sitting the experience can differ greatly.' (EWS survey Q.34, Respondent 44)

One of the prominent messages emerging from the educational welfare data was the contention that legal professionals do not seem to adequately understand the role and function of the Educational Welfare Services. There is a perception that the remit of the organisation is not afforded an appropriate degree of seriousness in comparison with child protection work. These sentiments are evident in the following survey responses:

'... sometimes feel that judges think that we are the Department of Education, and do not link our service with TUSLA.' (EWS survey Q.34, Respondent 3).

'At times I have felt that judges do not have full understanding of our role and the limitations to this, for example, that we do not have direct access to CAMHS and other services. There is also a lack of understanding on how the education system works.' (EWS survey Q.34, Respondent 11).

As with the child protection and welfare social worker data, there is evidence in the Educational Welfare Services data to support the contention that comprehensive understanding by legal professionals of the function and responsibility of educational welfare officers is valued. Specialism in educational welfare among judges, arising from regularly presiding over cases taken by the Educational Welfare Service, is valued by educational welfare officers. As this survey respondent asserted:

'We regularly have the same judge sitting, so he is very positive about our role and this has a positive outcome for our cases.' (EWS survey Q.34, Respondent 5).

A further resonance with the social work data is the perceived inconsistency of judicial practice. For one respondent their experience 'depends on the mood of the judge or if the judge is filling in for a regular judge' (EWS survey Q.34, Respondent 6). The issue of judicial variation came into sharp focus when a respondent at an Educational Welfare Service management focus group shared their experience, as follows:

'I have one judge who places a large emphasis on education, and she will talk to the parents and tell them that the child has to be in school. In her cases I find there is movement, things happen [...] I have another judge then who, when our cases are called she literally puts her eyes up to heaven, and it's like, (sighs) education again. And as a result I find the progress in that area isn't as good for our families because they see that [...] she fines one of our parents €10 because the child isn't in school. And that kind of leaves us nowhere, because the child is not back in school, where do we go? We go back into court? [...] We've another one who'll adjourn and adjourn [...] and then they [children] age out. So they become sixteen and we're going in then looking for a strike-out because they're overage.'

A related echo of the social work data is that educational welfare officers similarly value solicitors' knowledge of and familiarity with the practice of individual judges:

'The local firms have a great knowledge of their judge.' (EWS survey Q.34, Respondent 1).

'I believe the local solicitors know the working practices of local judges/courts better.' (EWS survey Q.34, Respondent 15).

'I think that the knowledge of local solicitors of the judges and their courts, they'll tell you "no, wouldn't be a good way to go for him on this one, we might come around this way, he prefers such and such" [...] like really, really nuanced stuff that for us is really valuable.' (Participant, EWS management FG).

These assertions highlight the significance and prevalence of judicial variation as a dynamic to be negotiated during court proceedings.

In section 3.1 of this report, which focussed on social worker perspectives, we saw the view expressed that legal proceedings afford an importance and seriousness to the domain of child protection and welfare social work, with the possible outcome of a child's removal from parents. It was interesting to note a view expressed by one survey respondent regarding the perception of educational welfare as a contingent factor of a child's overall welfare, as follows:

'I feel that some judges can be very slow to appreciate the serious nature of denying a child an education and the amount of time and effort it takes before a case is brought to court, which often results in derisory fines for the parents upon conviction and ultimately demeans the work being done by EWS.' (EWS survey Q.34, Respondent 2)

Solicitors

In relation to solicitors, of 59 respondents, 47 (79.66%) indicated that their experience was largely positive, while 12 respondents (20.34%) said it was variable. No respondents said that their experience of engaging with solicitors was largely negative. The variability suggested by these survey findings was further articulated in the narrative responses offered in the survey.

On the positive side, several educational welfare practitioners indicated that they were happy with the level of service being provided by the solicitors going on record for them in educational welfare proceedings at court. The following survey responses capture these positions:

'The solicitors always kept in mind best interests of children.' (EWS survey Q.34, Respondent 1)

'The solicitor our team works with is excellent and very responsive. She also guides me through the process and keeps me up-to-date with the warrant process, which she is chasing.' (EWS survey Q.34, Respondent 10)

'Engagement has been excellent from issue of summons to conclusion of cases in court. Local solicitors are very available to staff for consultation and counsel.' (EWS survey Q.36, Respondent 1)

Of note is the importance for educational welfare officers of feeling that the solicitors representing

them fully understand the role of educational welfare professionals. As one respondent put it, *'we have been lucky enough to have consistent solicitors who have got to know and fully understand the work of the EWS'* (EWS survey Q.34, Respondent 15).

A further aspect of working with solicitors that was perceived positively by educational welfare practitioners was the practical difference it has made in eliminating aspects of the administrative workload accompanying the issuance of summons towards prosecution. As a participant at an Educational Welfare Service management focus group outlined:

'Once we are given the go-ahead to take the summons, they [solicitors] do all of the paperwork as well [...] we have found it has really taken the administrative burden off of us, and it puts responsibility back on the legal team that are representing us to ensure that all of our I's are dotted and our T's are crossed.'

As regards some negative experiences reported, consultation and preparation practices by solicitors emerged as a cause of concern for a number of respondents in the Educational Welfare Service survey. One respondent stated their concern in the following way, highlighting the perceived disparity between the regard held for the importance of educational welfare cases as against child protection cases:

'When a solicitor was used, it was sometimes very poor. No preparation done; knowledge of case very poor. Feel that they consider EWS cases not worthy of putting same prep in as other cases. With proper consultation before court it can work well, but solicitors don't afford us this opportunity a lot of the time.' (EWS survey Q.34, Respondent 3).

Aside from being well-prepared on the details of a particular case, there is also a suggestion in the data that educational welfare practitioners value when solicitors are familiar with the legislation which mandates their work in the educational welfare sector:

'The only concern would be when the regular solicitor for the case is tied up with a different matter and different solicitor is sent and is not always completely familiar with legislation or case.' (EWS survey Q.34, Respondent 11).

While child protection and welfare social workers regularly engage in consultation with solicitors in advance of hearings, most of the consultation in educational welfare proceedings happens between senior Educational Welfare Officers and solicitors. It is clear that, like their child protection counterparts, educational welfare officers value consultation with solicitors, and in instances where this is limited, Educational Welfare Officers can sometimes be left feeling insufficiently supported prior to court hearings. As one respondent asserted:

'Seniors mostly engage with solicitors prior to court day. I only ever speak to them on the court day. Solicitor does not go through possible questions he may ask me with regard to giving evidence, in advance. This would be most helpful.' (EWS survey Q.34, Respondent 14).

Impact of engagement with the legal system on educational welfare practice

The responses obtained from educational welfare officers suggested that the dominance of the legal sphere impacts on practice and that a tension emerges where the legal impetus to prosecute and seek conviction is perceived as subsuming the broader imperative of ensuring the best outcomes for children, as reflected in the following excerpts:

'The solicitor continually pushes for a conviction and our welfare role is lost.' (EWS survey Q.34, Respondent 33).

'At times our goals and objectives and those of solicitors can vary. Solicitors are more inclined to look for prosecution where we look at it as a last means to have a child return to education.' (EWS survey Q.34, Respondent 41).

As a counterpoint, it was acknowledged that legal representation is of value to educational welfare professionals given the specific challenge posed in the adversarial environment of court proceedings. This was elucidated by a participant in a focus group with the Educational Welfare Service management as follows:

'Not all seniors (a) would be comfortable, or (b) would have the kind of legal background that would be necessary to lead the case. If it's the case that it's being very strongly defended on the

other side by the solicitor, and even sometimes the barrister, well, then I think it's a very unlevel playing field if we're expecting the EWO and the SEWO to be up to speed on parts of the legislation that they might throw in, and that at least we have a solicitor there.'

As another participant in the focus group put it, legal representation serves a protective mechanism:

'Having the solicitor there as well, it's a safeguard for the senior and for the educational welfare officer in case of judicial review.'

The review of literature presented in Section 2 of this report showed that research internationally has drawn attention to the detrimental impact of adversarialism on effective co-working between child welfare professionals and families. It was interesting to note the view expressed by a participant in an Educational Welfare Services management focus group, which indicates to the contrary, that the educational welfare officer -parent relationship is not jeopardised, largely due to the investment into keeping that relationship effective, in the longer term:

'It doesn't harm our relationships with parents, because we have worked I suppose before we get to court. Court is a last resort. We have built up that relationship with the parents, and we've tried to help and support them, and they've seen that. They've known that court can be an option and I suppose even when we get to court they still see us as their support [...] Quite a lot of the time the parent waits for you outside the court to say "now, does that mean I have to come back here again, or, do you know, what does that mean?" You know, they'll talk to you rather than actually talking to their solicitor, so I suppose fair play to the EWOs and seniors for maintaining that and to nurture that relationship that they have with parents.'

Time as cost

The issues related to time were evident to the researchers during their attendance at a court date during which six educational welfare proceedings were scheduled for hearing. On the day in question the court sitting started 45 minutes later than scheduled. After a number of cases involving criminal

damage and public disorder had been heard, the six hearings pertaining to the Educational Welfare Service commenced and all of them were heard within an eight-minute timeframe.

A senior educational welfare officer and an educational welfare officer were both in attendance. They had travelled approximately 100 km to attend the hearing. Only the solicitors going on record for Tusla and the solicitors for the respondent parents spoke, and at certain points the sitting judge addressed the parents directly. Neither the Educational Welfare Officer nor the Senior Educational Welfare Officer were called to give evidence. Four out of the six hearings on this occasion involved the submission of an updated court report.

This session of observation illuminated the significant time cost that EWOs can face when going to court, experiencing the same delays as their social work counterparts in child welfare proceedings. Arguably, the potential for such delays is exacerbated by the fact that legal proceedings taken by the Educational Welfare Service are located within the sphere of criminal proceedings and without protected designated times such as the family law times in District Court schedules, educational welfare proceedings are (more regularly) competing for time with other criminal matters on court lists.

Financial cost

As outlined in other sections of this report, financial data pertaining to the Educational Welfare Service legal expenditure was not received by the research team for economic analysis. In the social analysis aspects of the research the issue of financial expenditure was illuminated both in the survey and the Educational Welfare Service management focus group. The graph below indicates that of 73 respondents, 72 (98.63%) responded that concerns relating to cost had never deterred them from requesting or accessing legal services.



Fig 3.3.3 Impact of concerns relating to cost on EWS professionals requesting or accessing legal services (Source: Q.40 SEALS EWS survey)

At a focus group with the Educational Welfare Service management it emerged that budgetary oversight is regarded as a part of their remit and that there is an expectation of a high standard among the solicitors going on record for the Educational Welfare Services in educational welfare proceedings, which constitutes good value for money:

'From our point of view as managers we'd always be very conscious that we must get the best value for money, and therefore we have the oversight of what's coming in. If I saw a bill coming in and I thought it was astronomical, or if it was outside of the agreed contract, or I think once where we had to contact a firm of solicitors and say we weren't happy with the brief and we thought your solicitor wasn't prepared enough and they should have said this in court, they came back to us and said, "Well, we won't charge you for that particular work if you weren't satisfied." If it [the bill] did come through, you'd say look, there is an agreement, and I won't sign off on this.'

Organisational identity

Earlier in this section we saw how the Educational Welfare Services survey data illuminated the importance of the relationship between the service and the firm going on record for them in legal proceedings with regard to solicitors' knowledge of judicial practice and familiarity with educational welfare legislation. Of significance also is the understanding that exists amongst criminal justice professionals of the function and remit of the Educational Welfare Services.

The main priority of the work of the Educational Welfare Services, as explained on Tusla's website, 'is around the welfare of children and young people and on ensuring that concerns and problems around attendance are addressed before attendance becomes a crisis issue.'⁵

The paramountcy of children's wellbeing is foregrounded here. The recent integration of the Educational Welfare Services, now coming under the auspices of Tusla, has had an impact on the ways in which legal professionals perceive the organisation, and one participant in an Educational Welfare Services management focus group indicated that a piece of work exists for Tusla in raising awareness of the distinct remits that lie with child protection and welfare social workers and those that lie with educational welfare professionals:

'Since we came into Tusla, previously we were a body by ourselves, the NEWB, and sometimes social workers would be called into court based on questions that arose at a hearing. What has happened now is that some judges in District Courts have said, but Tusla's social workers are involved with this family, but Tusla's educational welfare officers are taking this family to court, so what's going on here?'

⁵ <http://www.tusla.ie/services/educational-welfare-services/service-stands>

Concurrent to the undertaking of the SEALS research, a process took place in which legal firms going on record for Tusla retendered for their place on the panel of legal firms. In relation to that process, participants in an Educational Welfare Services management focus group – which took place before the retendering process was complete – expressed concerns about the potential impact of the outcome if smaller local firms were to be replaced with larger ones:

'Adjournments and lack of knowledge and lack of a relationship with the local seniors and so on and so forth, I think we are going to go way back in terms of our credibility, as an organisation. So I think that seriously needs to be revisited in terms of some degree of autonomy being left in the regions whereby local knowledge, local firms who have proven to be good are actually utilised.'

This point showcases the high value placed on sustaining effective relationships with solicitors and legal firms. It also demonstrates the value of involvement by direct service users in consultation practices around restructuring processes. One participant in the Educational Welfare Services management focus group explained how the critical difference between the areas of law, which distinguishes educational welfare mandates from child protection mandates, is perceived to have a direct bearing on the effectiveness of the practitioner-legal firm relationship given the different areas of specialism that exist between firms:

'The majority of firms have a specialisation in criminal and corporate, or family and corporate [law]. There are very few firms that actually would cover criminal and family. Or the really big firms will cover criminal, family and corporate, very simply because there isn't money in criminal and family so they need to have an extra piece. So I think that there is a real danger for us in that because the social work side of the house is the bigger piece of cake.'

Another participant asserted the need for a unified organisational identity to be developed. The excerpt which follows highlights the importance of well-informed and well-prepared legal representation given the potential for tensions to emerge which arise from the fact that child protection and welfare social workers and educational welfare professionals,

while all working on behalf of Tusla, are mandated by separate pieces of legislation:

'If we are going down the route of having the same legal representation, we as an organisation have to be absolutely clear on how, what we are doing together, and how we are doing it, before we get to court, because solicitors don't mind that sort of interagency bit for you; they go in with the legal head to do with the Act and the legislation, and, you know, which one takes precedence on a given day is the care and protection of the child or the fact that they are not in school, if you are going ahead with two proceedings. It's sort of dynamite in my view if we do not know exactly the page we're on together.'

Ultimately, this signifies a need for Tusla to consider the way in which the connection between its child protection and welfare work, and educational welfare practice, is externally perceived. There is a need to foreground the shared platform of seeking best outcomes for children while responding to the tensions that emerge because of the different pieces of legislation governing these discrete pieces of work.

There is evidence in the data to demonstrate that legal professionals are looking for more effective co-working and cohesion across the workings of different sections of Tusla's child welfare departments. As an Educational Welfare Services manager conveyed at a focus group:

'The judge actually said we're seeing you now as part of Tusla, which has the whole social work piece. So he said, "What have ye done? You are now Tusla." And it was the Educational Welfare Services had brought the parents to court because they weren't sending their child to school. But he said, "You know, in Tusla what are ye doing to support this family? Where's the social work element? Have you spoken to your colleagues?" and [the judge] sent everybody home until they did that.'

Organisational support

There is evidence in the data collected from respondents that gaps exist in the support being offered by Tusla to educational welfare officers when conducting their roles at the intersection with

the legal system. In a focus group with Educational Welfare Services management, one participant was critical of the fact that court skills training seemed to align better with the court expectations placed upon social workers than educational welfare professionals:

'[...] two seniors went on it as a sampler, nationally, to see, and it doesn't fit at all for us. It's very much around child care legislation, all adoption, fostering [...] So we need and we have said that we want to do a module on the Educational Welfare Services that would fit into that and also would educate social workers, and I think that is really important that they understand what our proceedings are and what it takes to get there, etc. That's a gap.'

There was also an issue in relation to protection of caseloads. Of 73 respondents asked if their current caseload was protected, 27 (36.99%) indicated that it was, while a majority of 46 (63.01%) respondent that it was not. The caseload issue is significant, as we can see from the Educational Welfare Services survey data that tensions arising directly from competing time pressures become articulated at the intersection of educational welfare and the legal system, as can be seen from the following response:

'Judges tend to be quite erratic. Their demands can sometimes be unfeasible (e.g. having a psychological assessment and report completed within a month!!)' (EWS survey Q.34, Respondent 3).

Conclusion

This section of the report has explicated key issues identified by Tusla's educational welfare officers with regard to their engagement with legal services. In certain respects we see a strong resonance between their experiences and those of their child protection colleagues. Such issues include variation between judges, the demands on time that are associated with court attendance, the impact of adversarialism on practice, and the value placed on organisational support. While the echoing of these themes across different professional cohorts points to their significance, it is important to recognise that the engagement with legal services undertaken by the Educational Welfare Services is distinct in significant ways from that experienced by child protection and welfare social workers. This is due to the different legislation mandating their respective remits and

the differences that exist between patterns of engagement across different sections of Tusla.

3.4 PERSPECTIVES ON SOCIAL WORKER-SOLICITOR RELATIONSHIPS IN THE CHILD PROTECTION SYSTEM

Introduction

In this section of the report, the focus shifts to consider the relationships between Tusla child protection and welfare social workers⁶ and the solicitors going on record for Tusla in child welfare proceedings. Drawing on data obtained from engagement with both solicitors and social workers, this section is concerned with elucidating some of the opportunities and challenges that emerge at this interdisciplinary intersection.

Based on the surveys returned by Tusla social workers, experiences of engaging with solicitors are described by a majority as 'largely positive'. As represented in the image below, of 298 respondents, 169 people (56.9%) indicated that their experience of engaging with solicitors was 'largely positive'. A further 121 respondents (40.74%) described their engagement as 'varied', while just 7 social workers (2.36%) indicated that it was largely negative.

Upon further consideration of the survey responses offered by social work practitioners, as well as the follow-up interviews with social workers and solicitor interviews, what emerges is a complex interplay of variables which formulate relationships which at times function well but which can also lead to tensions arising from distance between disciplinary-specific standpoints.

Defining and understanding roles and responsibilities across disciplines

Each of the solicitors who participated in the research (four engaged in interviews while a further two offered written responses) were asked how they understand their role. The fundamental role of legal advisor was foregrounded in the responses. Within

⁶ It is important to note that the solicitors who participated in the SEALS study did not discuss their experience of going on record in educational welfare proceedings. For that reason, this section of the report focuses solely on social worker-solicitor relationships. Section 3.3 of the report contains a discussion of the engagement between Educational Welfare Services professionals and solicitors.

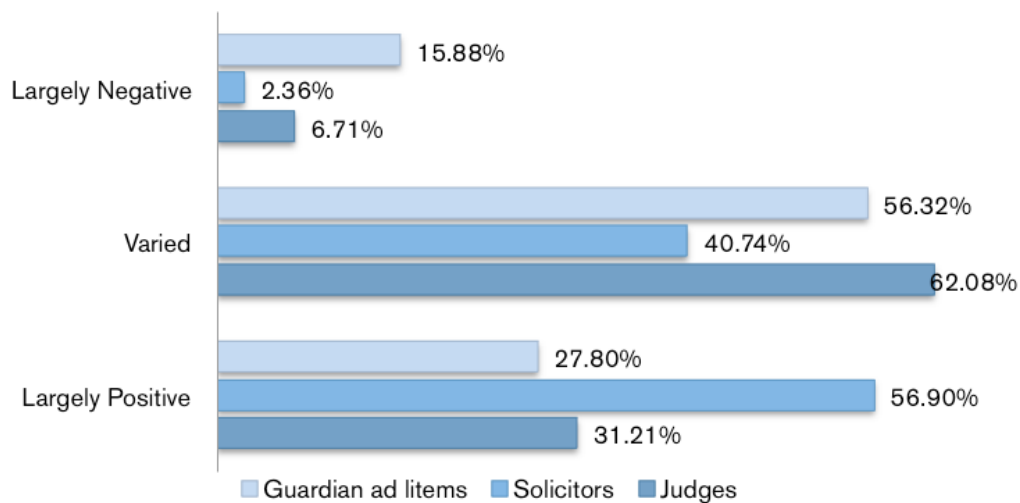


Fig 3.4.1 Social workers' experiences of engagement with other professionals at court (Source: Q.39 SEALS Social Worker Survey)

the dominant context of the court setting the solicitors who go on record for Tusla are experts in the legal domain and are well-qualified for 'bringing the proceedings before the court and putting the relevant evidence before the court to meet various thresholds' (Solicitor 1).

The notion of meeting thresholds is not a static one, as noted by one respondent:

'Over the years, the threshold for evidence seems to have clearly moved from "on balance of probability" to "beyond reasonable doubt" and SW regularly report feeling like they are the ones on trial.' (SW survey Q.39, Respondent 115).

Expert legal guidance is clearly valued by social workers in negotiating the complex domain of the courts. As one respondent asserted:

'I find our own solicitor very good; puts you through your paces; asks difficult questions; very astute and experienced at this point from a child protection/children in care perspective.' (SW survey Q.39, Respondent 25)

Acknowledging disciplinary distance

A contention expressed across a number of the cohorts interviewed was that social workers are not lawyers, and vice versa, and that professionals should not be expected to perform roles for which they are not qualified. One solicitor commented on the expectations arising for social workers giving evidence to the court, stating: 'You know, they didn't qualify to become witnesses in court cases. They qualified to help children' (Solicitor 1), and in so doing highlights how social workers can effectively rise to this challenge by articulating from a position of expertise that is linked to the role for which they are qualified:

'... probably the biggest strength, and it always strikes me, is the social workers know the children. [...] I know these children's lives backwards from reports and from assessments and from whatever else in that nature, but I don't know the child.' (Solicitor 1)

As we have seen in earlier sections of this report, social workers sometimes feel as though their expertise in the area of child protection is undermined through engagement with the legal process and in the broader context of the courts. Existing commentary on social work and the law has largely focused on the challenges facing social workers to become effective communicators in the court, with far less focus being placed on the dominance of the legal domain.

Who instructs who? Considering social work expertise in the court domain

Many of the responses offered by solicitors pertaining to their understanding of their role referred to the matter of taking instruction. There is evidence in the data to suggest that the issue of legal instruction can become a point of contention. Social workers in this research asserted that *'there is often a lack of understanding that we are instructing the solicitors not vice versa'* (SW survey Q.39, Respondent 7). Many had experience of solicitors strongly encouraging a course of legal action which did not align directly with the position that had been reached by a social work team based on their assessment. The following excerpt from an interview with a team leader illustrates this point:

'You have a case and you have a legal consult with them and they tell you, oh, you really need to go for a care order. But maybe we don't want to go for a care order for other reasons. I think sometimes—and if there's an inexperienced social worker they might go along with that rather than making a professional judgement on the case from a social work perspective and then instructing our solicitors to bring the case we want them to bring to court.' (Team Leader 1)

Interestingly, some solicitors expressed a concern that they are becoming engaged too late in the process. Speaking of the role played by solicitors in considering the instructions, robustness of evidence, and likely success of applications to the court, one solicitor expressed a concern that social workers need to be cognisant that this role can sometimes involve offering legal advice which may be contrary to the position reached within the social work team:

'I do think that's an important role that we have and that sometimes social workers can almost have forgotten that [...] by the time instructions reach us a certain view has been formed within the team or within the social worker's line management that a certain application needs to be brought [...] we do need to kind of remind people that they need to meet the threshold in terms of evidence. And if we feel that the type of order or the length of the order they're looking for is disproportionate, we've an obligation to remind them of that too.' (Solicitor 3)

As discussed in section 3.1 of this report, social worker respondents detailed how, during the well-documented prolonged delays waiting for cases to be heard, legal representatives from both parties in a case can sometimes engage in discussion which leads to amendments to the CFA's application, of which social workers and their managers are not aware until the hearing is taking place. Recognising the value of the court domain as a space which facilitates all voices to be heard, the following sentiment expressed by a participant in a social worker focus group reinforces the view that social workers have a more profound sense of a child's circumstances than that of legal professionals:

'These are all people who haven't seen the child in the family home, who don't have that gut thing – What's going to happen to this kid if this kid is left there over the weekend, or whatever?' (Social Worker, Participant FG1)

There was an acknowledgement on the part of social work respondents that they have a responsibility to ensure that their professional expertise is foregrounded and their voices heard in the legal domain:

'Solicitors at times have counselled the social work department allowing more access to take place as a bargaining tool to get consent for a court order rather than go to court. Social workers need to be stronger in this and have concrete reasons for their decisions around access which they and the solicitors are confident enough to stand over in court.' (SW survey Q.39, Respondent 15).

Significantly, the articulation of social work expertise in a legal domain sees it positioned in a complex sphere in which it is regularly contested. One solicitor indicated that their consultation with social workers can be a forum for addressing the disconnect between expectations couched in social work expertise and their articulation in the court as a space of contestation:

'Managing client expectations. And I keep coming back to this because I think it's a really significant issue in child protection law [...] best interests of a child from a social work perspective can often be chasms apart from the legal position around parents' rights, around the European Convention

on Human Rights, particularly Article 8, which is the right to privacy of family life.'

Influence of judicial variation on solicitor practice

Solicitors' understanding of varying approaches favoured by individual judges emerged as a key component towards effective preparation for court. These variances can be articulated at the broad level of favouring shorter care orders with more regular review hearings, to the minutiae of proceedings such as the template followed in the preparation of social work reports. As one solicitor interviewee put it:

'Any solicitor or barrister will tell you the Number 1 rule is know your judge. [...] you have to take that into account because it is a significant factor even if, you know, maybe it shouldn't be such a significant factor.' (Solicitor 1).

It was suggested that this is an especially profound issue in areas which have shorter and less frequent time dedicated to child welfare hearings, as the following excerpt from a solicitor in the north-west of Ireland suggests:

'We have a resident judge and they are incredibly busy; they don't have the time to devote to lengthy hearings. So the difficulty we have is that you will get a visiting judge who will come up for maybe two or three weeks to deal with, you know, one or two cases. So how you prepare your case is nearly on the basis of who's going to be that person, because they all have different standards and they all have different requirements.' (Solicitor 2)

Variation in judicial practice has been highlighted in earlier sections of the report, and from engagement with solicitors it is evident that it directly and significantly impacts their practice approaches:

'And I think that to be fair what would help us enormously is some sort of—how would I say—uniformity of approach, certainly throughout the provinces, because naturally enough you advise your client based significantly on the personality of the judge you're dealing with. [...] that's the reality of it.' (Solicitor 3)

'I suppose ideally you have a national approach. But when you have District Court level, different

District Court judges, different rhythms to court—so you might have a rural court with a judge sitting who's dealing in childcare once a month and that's a completely different dynamic to a city specialist childcare court. So it is going to be different.' (Solicitor 1).

Amongst related opinions shared by social workers is the view that sometimes a solicitor's course of action can be heavily influenced by the sitting judge. As one survey respondent put it:

'Other solicitors are more mindful of the judges and may not be as open to taking instruction that may be contrary to what the judge may have already indicated on a matter.' (SW survey Q.39, Respondent 51).

This indicates a lack of recognition on the part of their solicitors that social workers in the Child and Family Agency instruct solicitors from a place of expertise in the domain of child protection and welfare.

Mentorship, consultation practices and preparedness

It emerged that solicitors regard a part of their role as being to support social workers in preparing for court and delivering evidence. As one indicated:

'Lack of experience amongst newly qualified social workers can be hugely challenging.' (Solicitor 6)

Efforts are sometimes made to eliminate the unfamiliarity of the court space as a helpful step in preparing social workers for court:

'I'd often bring them in, show them the courtroom, show them around the courtroom, show them where they'd be sitting in the witness box, which way to look at the judge, and tell them where the barrister or the solicitor or whoever it is would be sitting on the other side.' (Solicitor 4)

The issue of social workers' preparedness extends beyond the physical space of the court, relating to the case details and confidence in delivering testimony:

'Before any case you have to be as prepared as you possibly can. You do whatever you can to try and increase people's confidence and ensure that they know the case inside out.' (Solicitor 2)

One solicitor articulated the importance of social workers being sufficiently supported by their organisation, thereby suggesting that effective presentation by social workers at court is a cross-disciplinary concern:

'Leadership and management are also key issues; if team leaders are positive and have a good rapport with their social workers, this usually translates into a better social work practice in terms of the presentation in the court setting. If a social worker is demotivated and demoralised, this can be very challenging and have a very negative impact on the outcome.' (Solicitor 6)

It is important to note that issues of preparedness are not only a matter of concern for social workers. As demonstrated in section 3.1 of this report, there was evidence in the social work survey to suggest that social workers are not always satisfied with the performance of the solicitors going on record for Tusla. Dissatisfaction may be linked, for example, to the volume of cases being handled by individual solicitors and the potential for confusion to arise between cases during court proceedings. A further concern expressed by social workers, again related to preparedness, was around solicitors' knowledge of the policy contexts in which child protection and welfare professionals' work:

'One solicitor sent a PSW a copy of the foster care regulations and told her that we could of course place a child with relatives without any checks. There was a complete lack of understanding of the wider policy context that we work in.' (SW survey Q.39, Respondent 7).

Going beyond the mentorship aspect, consultation practice is regarded by another solicitor as being fundamentally necessary to prepare social workers for cross-examination:

'... in many, many cases you're going to be cross-examined potentially by up to three other solicitors, because you're going to be cross-examined by both parents if they've separate representation and also potentially a guardian ad litem solicitor who's going to be very invested in care-planning. [...] it's very short-sighted to go into a complex care order hearing and not to have invested the time in looking at the frailties in the case and the challenges in the case, you know.' (Solicitor 3)

While the value of consultation is clearly recognised by solicitors, evidence from the social worker data tells us that solicitors' consultation practices sometimes fall short of social workers' expectations and this impacts upon social workers' experiences of going to court. One survey respondent outlined that:

'Not all solicitors make themselves available prior to going into court. They don't always ascertain the social workers' opinion. This can impact on considerations around dates for orders for instance and such situations need to be teased out in advance and not necessarily at the end of a court sitting.' (SW survey Q.39, Respondent 53)

While another asserted that:

'Securing meetings with solicitors to prepare for courts is a piece of work that needs to be improved on.' (SW survey Q.39, Respondent 98).

One solicitor indicated that consultation practices vary, sometimes contingent on the complexity of the case at hand:

'I know that a lot of the time we don't get the opportunity to have a consultation in advance [...] we just get a few minutes before the court. [...] but if it would be a full care hearing or a fully contested interim care order hearing then we'd make sure that we'd meet with the social workers in advance.' (Solicitor 4).

The data collected from social workers indicates that the type of consultation that takes place on the day of a hearing can be regarded as insufficient, as the demands of the court environment make for an inadequate environment:

'Contact on the day with the solicitor when the actual decisions are being made, information is clarified, can be rushed and ad hoc.' (SW survey Q.39, Respondent 89).

Submission of court reports

The timely submission of court reports to solicitors in advance of proceedings emerged as a key point of tension in the interviews with solicitors, who expressed disdain at the impact of late submission of reports, as reflected in the following excerpt:

'We've had huge issues where I go into court and I could get handed a report in the morning. And I might have fifteen cases. And I have consistently said this is not good enough, I can't prepare if you're going to give me information this late. You have to give it to me in advance. [...] my sentiments have been echoed by the judge also and indeed by respondents' solicitors who are coming in and saying, 'You know, if we get the report the morning of the court, I mean, we can't go through it with our clients, we can't get instructions.' (Solicitor 2)

This frustration sits alongside an understanding of why this issue arises; solicitors are cognisant of the competing pressures and demands on social workers' time:

'I don't know how social workers manage to find the time to write reports. Hand on heart, even though I give out when I don't get them in time, I actually don't—I can't contemplate having had the time to write them.' (Solicitor 3)

Relatedly, there is recognition that pressures and challenges pertaining directly to the child welfare court proceedings system have a bearing on social workers' ability to match the expected timeframes required of them for the submission of reports:

'So if you have a social worker who's been waiting in court all day for me on a Wednesday to give evidence, their entire Wednesday is out because they're stuck in a case with me, and then they have had to get a report in to me that evening for the following week. It's difficult.' (Solicitor 1).

Despite this awareness and understanding, late submission of reports can impact upon the progress of proceedings, with respondents' solicitors conveying dissatisfaction that the *'late receipt of reports for reviews does lend itself to a lot of adjournments of reviews, which can be avoidable'* (Solicitor 3). This is an issue which speaks to broader

challenges associated with protecting caseloads and the need for better supports for social workers within their organisation, including measures that respond to the tensions which arise for individuals in their practice.

Performing in adversarial contexts: Social workers' experiences with solicitors during cross-examination

As discussed in earlier sections of this report, the adversarial nature of child welfare proceeding directly influences social workers' practice. In a written response to the research team, one firm of solicitors conveyed the view that:

'It is becoming increasingly evident that social workers are more robustly challenged than in years gone by in court proceedings and we feel this proves to be somewhat unhelpful to all parties in what ultimately should not be an adversarial process.' (Solicitor 5).

Many social workers relayed their negative experiences of engaging with respondent solicitors *'because of a highly adversarial and aggressive manner, which is not helpful to the case, the parents and the children, in my experience'* (SW survey Q.39, Respondent 1). The basis of many social workers' negative critique was not personal impact but rather the detriment to the achievement of best outcomes for children, as illustrated by the following responses:

'Solicitors can vary according to the leeway given to them by judges in terms of cross-examination. Some are particularly adversarial and forget the paramountcy principle.' (SW survey Q.39, Respondent 64).

'Solicitors focus on scoring points and winning their case as opposed to focusing on what is best for the child and family. It is an adversarial system.' (SW survey Q.39, Respondent 44).

It should be noted that social workers' engagements with respondent solicitors were not universally negative, however, as evidenced by the following response:

'I have no expectation of cordiality in terms of

interactions with respondents' solicitors although the interactions are generally professional.' (SW survey Q.39, Respondent 47).

The increased engagement of counsel, i.e. use of barristers, emerged as a point of interest for both social workers and solicitors. Speaking to their experience of encountering barristers, one social worker offered that:

'Their aggressive stance in all cases and their stance on fighting for children to be returned home or access to be increased even when parents have indicated that is not their wish is concerning from a professional point of view and also from the children's point of view in that permanency planning for the children is delayed without reason.' (SW survey Q.39, respondent 98).

From the solicitors' perspectives, there was an understanding that inclusion on the panel of legal firms engaged by Tusla constitutes a commitment to usually presenting cases in court, with counsel engaged only when the degree of contestation or complexity of a case is greater than usual, as explained by the following interviewee:

'Part of our tender, our national agreement, is that we do it ourselves. So unless there's something of particular complexity [...] we tendered and won the contract on the basis that we had the capacity to deal with it ourselves. So I think the view of Tusla is that they want the solicitors who are specialists in it to continue to deal with it both at District and District Court Appeal, which is obviously at Circuit Court level.'

Impact of perceptions of cost on social workers' engagement with solicitors

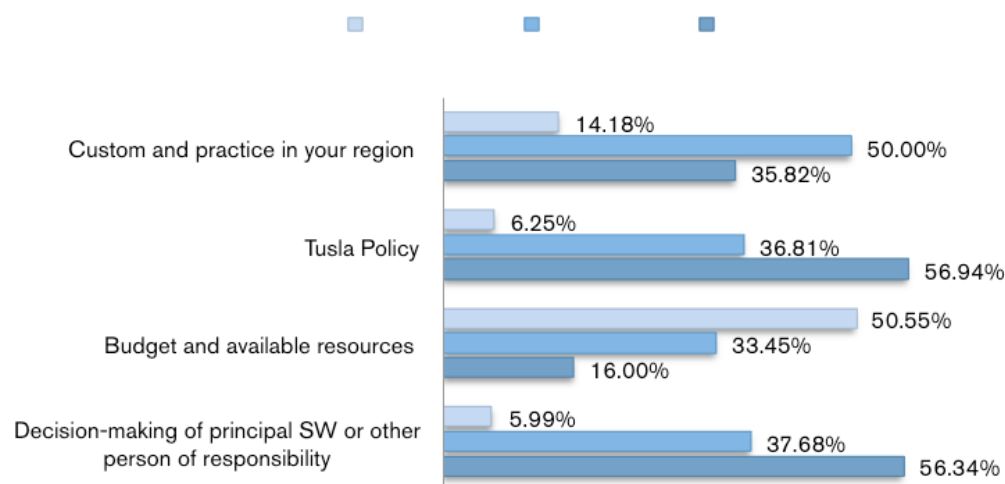


Fig 3.4.2 Factors influencing social workers' engagement with the courts (Source: Q.38 SEALS Social Worker Survey)

Just over half of respondents (275) of Q.38 (Fig 3.4.2 above) indicated that concerns around budgets and available resources do not impact upon their engagement with courts (e.g. a decision to make an application for a care order). It would appear that budgetary concerns impact more directly on managerial decisions, as evidenced in a previous section of this report. Despite this it was interesting to note the indication that issues relating to cost can intersect with social workers in the performance of their roles. The following excerpts from the social work survey highlight this issue:

'The continual discouragement of social worker receiving support from solicitors due to cost factors is also something which needs to be massively reconsidered.' (SW survey Q.39, Respondent 94)

'I was informed recently by my line manager that it costs about 10 euro per email to email a legal company that is contracted by the CFA for a case [...] she informed that I should have contacted [Tusla legal services] first in relation to a specific aspect of the case so as to not waste resources.' (SW survey Q.39, Respondent 26)

Consultation sessions are time-recorded for billing purposes by solicitors. One solicitor challenged the cynicism with which that practice is often met, on the basis that *'we care about the outcomes in terms of the children concerned'* (Solicitor 3) and went on to express a concern that consultation was sometimes not being availed of due to the associated cost and a reliance on effective management within the Child and Family Agency to ensure that appropriate legal supports are sought and obtained:

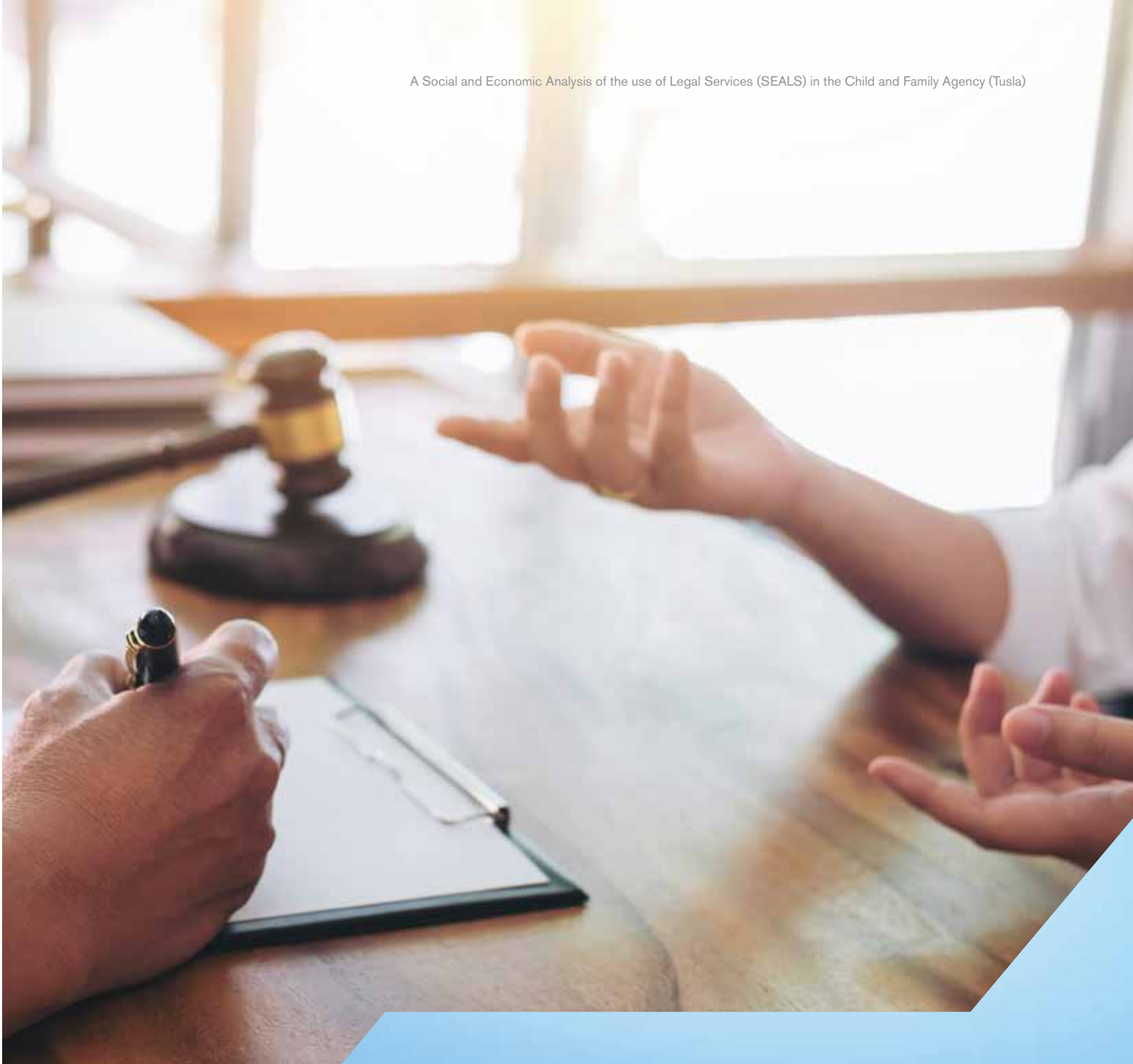
'Often people don't look for a consultation. I wonder if that is informed internally by the contractor? If I get in a very complex report and if I have a team leader who's tuned in and experienced they'll often phone me and say, 'I think we need to have a consultation on this.' (Solicitor 3).

Conclusion

Social workers and solicitors are required to work together in the context of child welfare proceedings. Each cohort has a set of perceptions and expectations around the roles and responsibilities of the other. Sometimes these become challenged in the course of child welfare court proceedings. The development of interdisciplinary dialogue can result in improvements in practice when practitioners engage with one another to come to an understanding of their respective positions.

This section has highlighted the clear value that social workers place on their engagement with solicitors; that engagement constitutes an important ingredient in enabling social workers to effectively articulate their competencies in the adversarial context of child welfare proceedings in the district court. However, while social workers indicated that their engagement with solicitors was largely positive, the data also tells us that there are challenges arising from the tensions which emerge at the intersection of child welfare practice and the legal context.

Cost to professionals' time is significant, and issues of preparedness have emerged as being relevant in the practice of both social workers and solicitors. A further significant challenge posed is the scrutiny of practice and challenge to social worker expertise, which can see decisions on child welfare being taken by professionals who have not engaged closely with the child for whom best outcomes are sought. This includes solicitors who engage in negotiation with respondent solicitors during court delay and who advise social workers on applications being made, in a manner that is sometimes heavily influenced by seeking to be responsive to judicial variation. As indicated by respondents in this research, the adversarial nature of proceedings can result in the paramountcy principle being at risk of becoming obscured in the court when solicitors focus on the need to demonstrate, both in court reports and in evidence, how evidentiary thresholds have been met.



SECTION 4

ECONOMETRIC ANALYSIS

SECTION 4

ECONOMETRIC ANALYSIS

USE OF LEGAL SERVICES IN CHILD WELFARE PROCEEDINGS: AN ECONOMETRIC ANALYSIS

Frequently Used Terms

Administration area	Geographical regions categorised by Tusla's administration areas: Dublin North East, Dublin-Mid-Leinster, South, and West.
AXLE system	Information system member firms enter data on for invoicing/ billing purposes. This system is managed by Arthur Cox Consultancy Services (ACCS).
Complexity	Refers to the range and quantity of legal activity.
Fee-earner type	Type of legal firm personnel working on the matter - Partner, Solicitor, and Associate.
Matter	Unit of analysis on AXLE system - can include multiple children from the same family and include multiple legal activities.
Matter: Closed Matter	A matter for which the final bill has been received.
Matter: Open Matter	A matter for which the final bill has not yet been received.
Member Firms	Legal firms that provide legal representation on behalf of Tusla. Firms selected through tender process.
Third Party	Spend on legal services by Tusla for third parties. This includes spend on counsel and other third parties.

Contextualising the Economic Analysis of Use of Legal Services in Child Welfare Proceedings

The sole source of data available for the economic analysis of factors affecting legal spend was the AXLE system, the primary aim of which is to record data from invoices and legal activity pertaining to said invoices. No data on corresponding outcomes were available. This hampered the original intent/objective of the study to conduct a cost benefit analysis to assess value for money. Without data on outcomes no assessment comparing costs and benefits was feasible. The scope of the economic analysis was refined accordingly, as follows:

An investigation of the factors affecting legal spend was performed using an econometric analysis. In the context of the adversarial nature of child welfare proceedings we investigate the cost implications of engaging with legal services. To do so, an econometric analysis of geographical and legal factors influencing variations in Tusla's legal spend is performed. This analysis is limited to matters opened between 2014 and August 2016 and also closed in that same period (closed matters refer to those for which a final bill has been issued). Nevertheless, the breadth of legal activities included in the analysis is substantial, and there is good geographical representation. Regression analyses are carried out to investigate:

1. Factors influencing total spend by Tusla per matter;
2. Factors influencing time billed for services to Tusla from member firms per matter;
3. Factors influencing third party spend by Tusla per matter;

where total spend per matter, time billed per matter, and third party spend per matter represent legal expenditure by Tusla to member firms.

The researchers were also provided with additional variables relating to number of children per matter, type of court, order name, etc. However, this data was collected on a system tangential to the AXLE system. During the data organisation stage, it was discovered that a significant proportion of this data were blank. It was unclear if these blanks were owing to no activity or missing data. As a result, these variables could not be matched to matter numbers and time/ amounts billed in the data presented and therefore could not be included in the econometric analysis. Also, legal spend for the Educational Welfare Service were tangential to the AXLE system for the time period analysed, thus could not be included in the analysis. Also, information pertaining to legal spend for GALs was unavailable for the time period considered in the analysis (2014 – August 2016). Where GAL data were available it was only for one provider and therefore could not be considered representative.

With regards to analysing third party legal spend by Tusla, data on this was only available for a subset of the sample. It was unclear if the small sample size was owing to no activity or missing data. As a result, caution needs to be exercised when drawing inference or making recommendations from the analysis of third party spend.

As indicated in the literature review, there is dearth of literature and general commentary on the cost effectiveness of child protection and welfare. This limitation is often owing to difficulties in measuring and collecting qualitative outcomes. As was the case in previous literature, this analysis is confined to examining expenditure data arising from the use of legal services in child welfare proceedings and the factors affecting same.

Methods

Prior to presenting the econometric analysis the data is described and summarised. This includes examining correlations between variables. Correlation assesses the strength of the relationship between two variables (Greenhalgh, 1997). Following this an econometric analysis is undertaken to estimate the following three equations:

1. $\ln \text{MemberFirmBill} = \alpha + \beta_1 \text{AdminArea} + \beta_2 \text{FeeEarnerType} + \beta_3 \text{LegalCategory} + u_i$
2. $\ln \text{TimeBilled} = \alpha + \beta_1 \text{AdminArea} + \beta_2 \text{FeeEarnerType} + \beta_3 \text{LegalCategory} + u_i$
3. $\ln \text{ThirdPartyBill} = \alpha + \beta_1 \text{AdminArea} + \beta_2 \text{FeeEarnerType} + \beta_3 \text{LegalCategory} + u_i$

Where:

$\ln \text{MemberFirmBill}$ = log member firm bill in euros (continuous variables, euros)

$\ln \text{TimeBilled}$ = log member firm time billed in hours (continuous variable hours)

AdminArea = administrative area (4 binary variables representing each administrative area, Dublin North East, Dublin-Mid-Leinster, South, and West, where 1 indicates presence and 0 absence)

FeeEarnerType = Legal professional (3 binary variables representing each type of earner, Partner, Solicitor and Associate, where 1 indicates presence and 0 absence)

LegalCategory = legal category (24 binary variables representing each type of legal activity. See Table 1 for list)

α = constant

β = coefficient

u = error term

These equations are estimated via Ordinary Least Squares (OLS) regression technique using the statistical software package STATA Version 14 (StataCorp, 2015). A regression refers to a mathematical equation that allows the target variable (dependent variable) to be predicted from another (the independent variable(s)). It is important to note that regression implies a direction of influence; it does not prove causality. The simplest regression equation, is $y = \alpha + bx$, where y is the dependent variable (plotted on the vertical axis), x is the independent variable (plotted on the horizontal axis), and α is the constant or y intercept, b is the estimated effect also known as the regression coefficient (Greenhalgh, 1997). A multiple regression (a more complex mathematical equation) allows the target variable to be predicted from two or more independent variables (often known as covariables) (Greenhalgh, 1997).

Dependent Variable

Each regression has a unique dependent variable. The first is euro amounts of total member firms bill. This is a continuous variable measured in euro amounts member firms have billed Tusla for each matter. The second is time billed. This is also a continuous variable measured in hours billed (time billed by the member firm). The third is any third party spend on a matter. This is a continuous variable measured in euro amounts. As is often the case with continuous variables the raw data were not normally distributed (see Figures 4.1 and 4.2). To facilitate the OLS regression analysis, therefore, each of the dependent variables were logged (see $\ln$ notation on equations).

Independent Variables

The three regressions have the same independent variables. Admin area refers to one of four areas: Dublin North East, Dublin Mid Leinster, South, or West (dummy variable for each). Fee-earner type refers to presence of a partner, solicitor, and/or associate working on the matter (dummy variable for each). To capture matter complexity the range and quantity of legal activity is included in the analysis. To do this 23 count variables are created, each capturing type of legal activity (see list below) and the amount of these activities per matter.

The regression estimates P values. This captures the probability that any particular outcome would have arisen by chance. Standard scientific practice usually deems a P value of less than 1 in 20 (expressed as $P < 0.05$, and equivalent to betting odds of 20 to 1) as “statistically significant” and a P value of less than 1 in 100 ($P < 0.01$) as “statistically highly significant”.

By definition, then, one chance association in 20 will seem to be significant when it is not, and one in 100 will seem highly significant when it is really a “fluke.” A result in the statistically significant range ($P < 0.05$ or $P < 0.01$, depending on what is chosen as the cut off) suggests that the authors should reject the null hypothesis (the hypothesis that there is no real difference between two groups). But a P value in the non-significant range tells you that either there is no difference between the groups or that there were too few subjects to demonstrate such a difference if it existed—but it does not tell you which (Greenhalgh, 1997).

Data

Data on ‘closed’ matters relating to child and family legal spend from 2014 to August 2016 were provided to the research team ($N = 1032$). The data pertains to information collected through the AXLE system, administrated by ACCS. Table 4.1 provides the summary statistics. Data on third party spend was also analysed ($N = 91$).

Description of Dependent Variables

The OLS regression assumes that the errors, as estimated by the residuals, are normally distributed. Histograms are presented to show the proportional frequency of the variables (see figures 4.1.1 to 4.1.4). As illustrated in Figures 4.1.1 and 4.1.2, both of the dependent variables were skewed. That is to say, the distribution is asymmetrical, therefore is non-normally distributed. In this situation where the variables are right-skewed, i.e. have a long tail at the high end, most of the observations occur at lower values. Consequently, the regression may be influenced a lot by one or a few of the cases at the high end (outliers). Taking the log of the variable can reduce or eliminate the skew, improving the model. Furthermore, using log of the variables makes substantive sense with variables such as we have here, which we tend to think of in multiplicative terms rather than additive ones. For example, where the variable involves money, €2,000 per year raise feels very different if your salary is €20,000 than if it is €200,000.

Figures 4.1.3, 4.1.4 and 4.1.5 present a histogram of each of the variables after they have been logged: log total billed (euros), log time billed (hours), and log third party billed (euros). The average log total amount billed is €7.09 (Standard deviation 1.399) and average log time billed (hours) is 1.774 (standard deviation 1.372). The average log third party spend is €8.79 (standard deviation 1.178) (see Table 4.1.1). After the variables are logged there is symmetry in the data.

Also, there is a strong positive correlation between time billed and amount billed ($r = 0.89$). That is to say, as time increases legal spend in euros increases. This positive relationship is illustrated Figure 4.1.6.

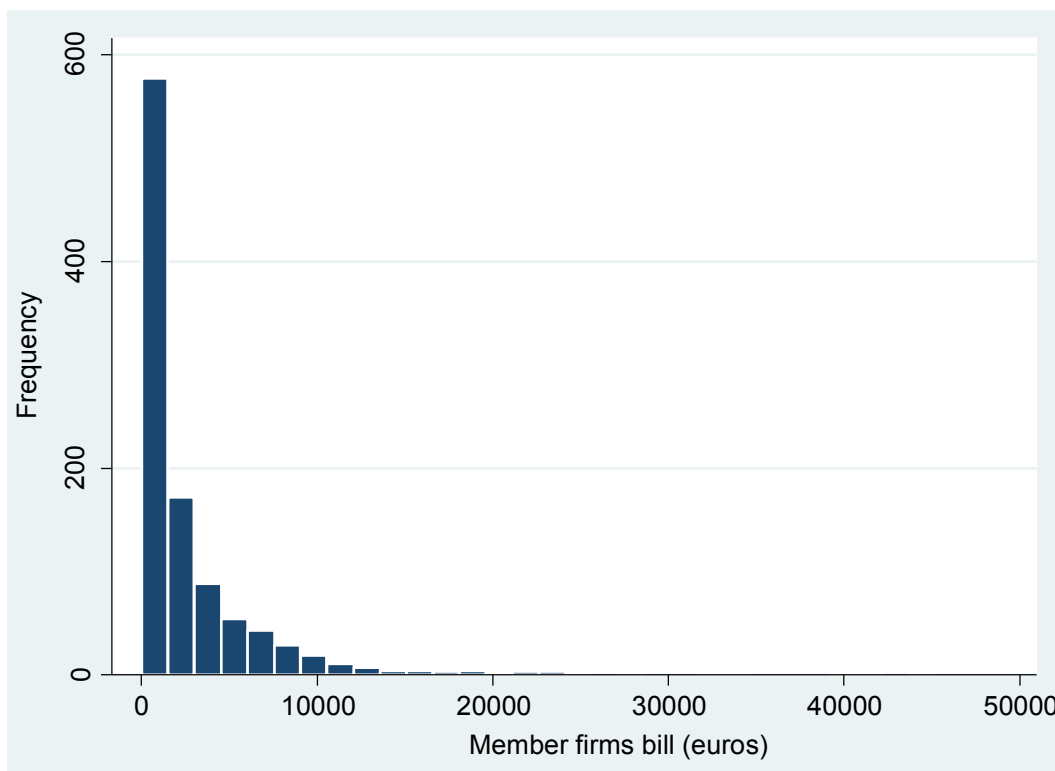


Figure 4.1.1 Histogram Total Amount Billed

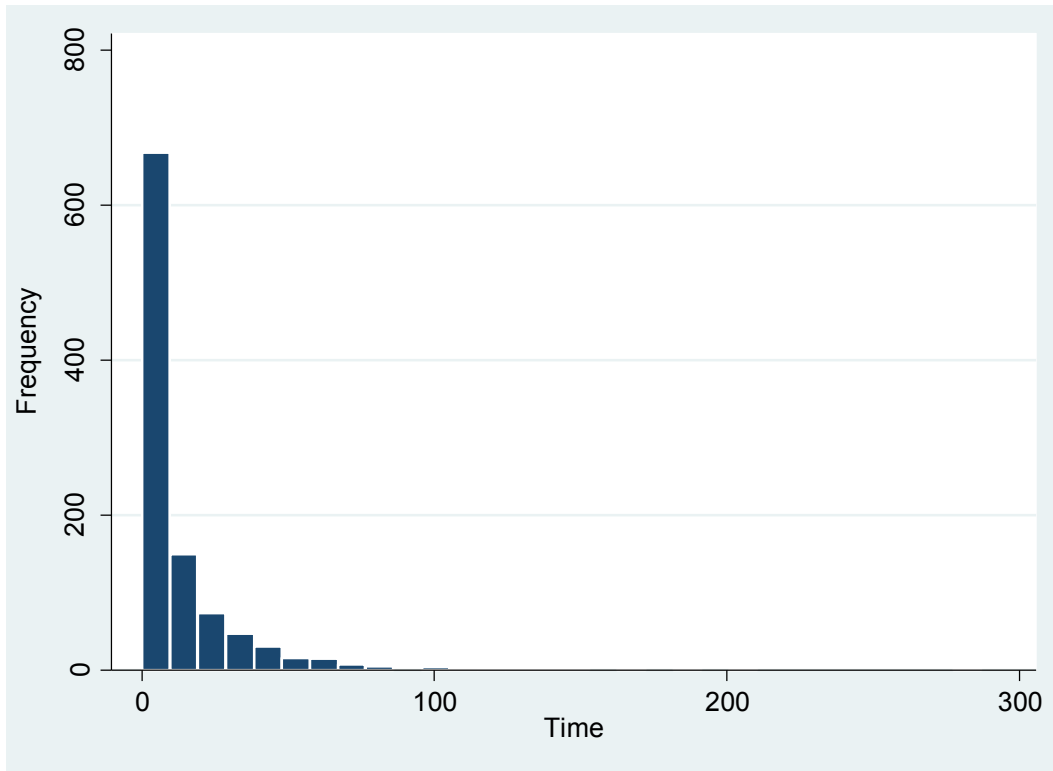


Figure 4.1.2 Histogram Total Time Billed

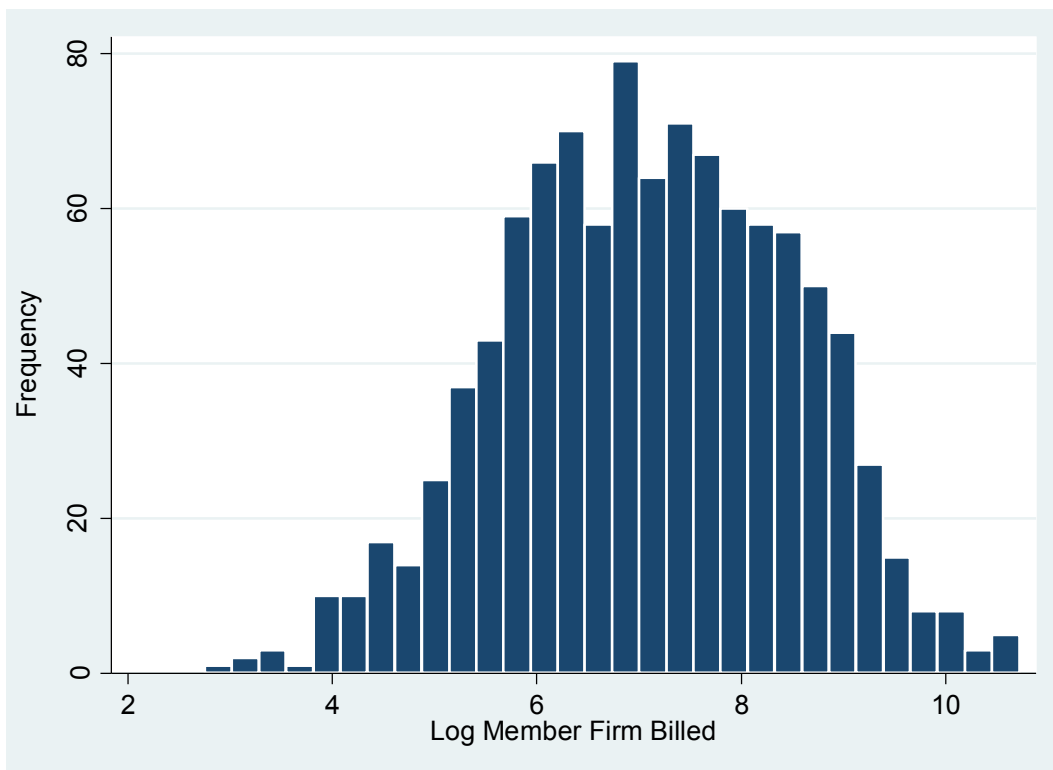


Figure 4.1.3 Histogram Total Amount Billed Logged

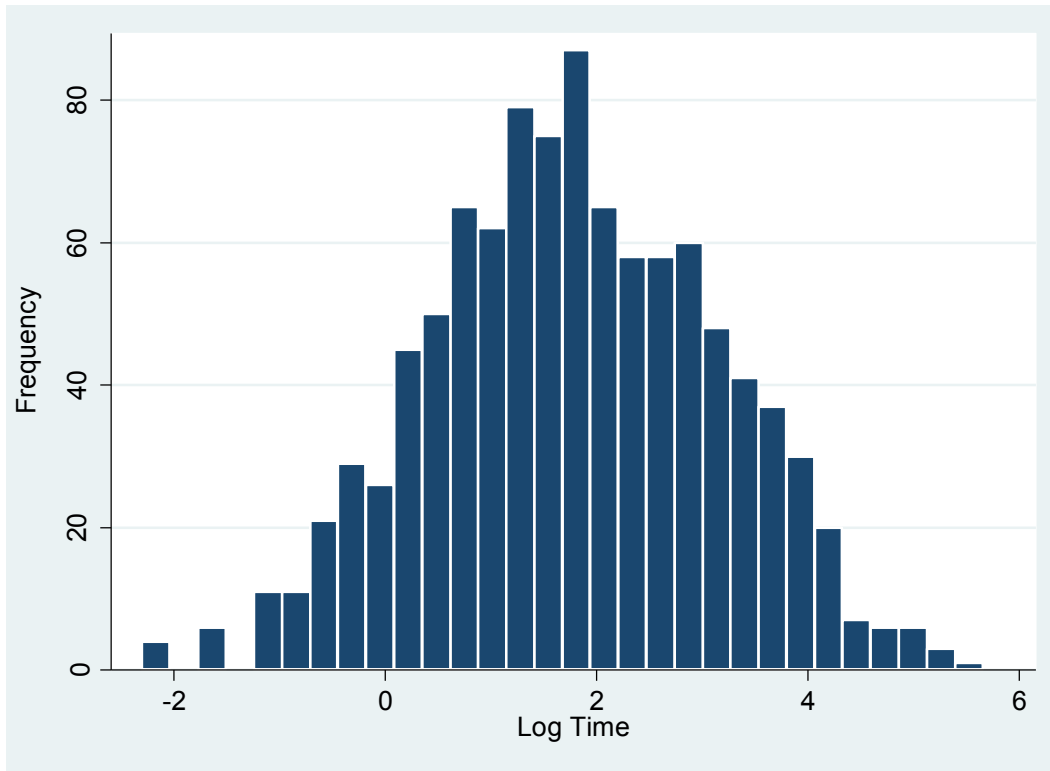


Figure 4.1.4 Histogram Total Timed Billed Logged (hours)

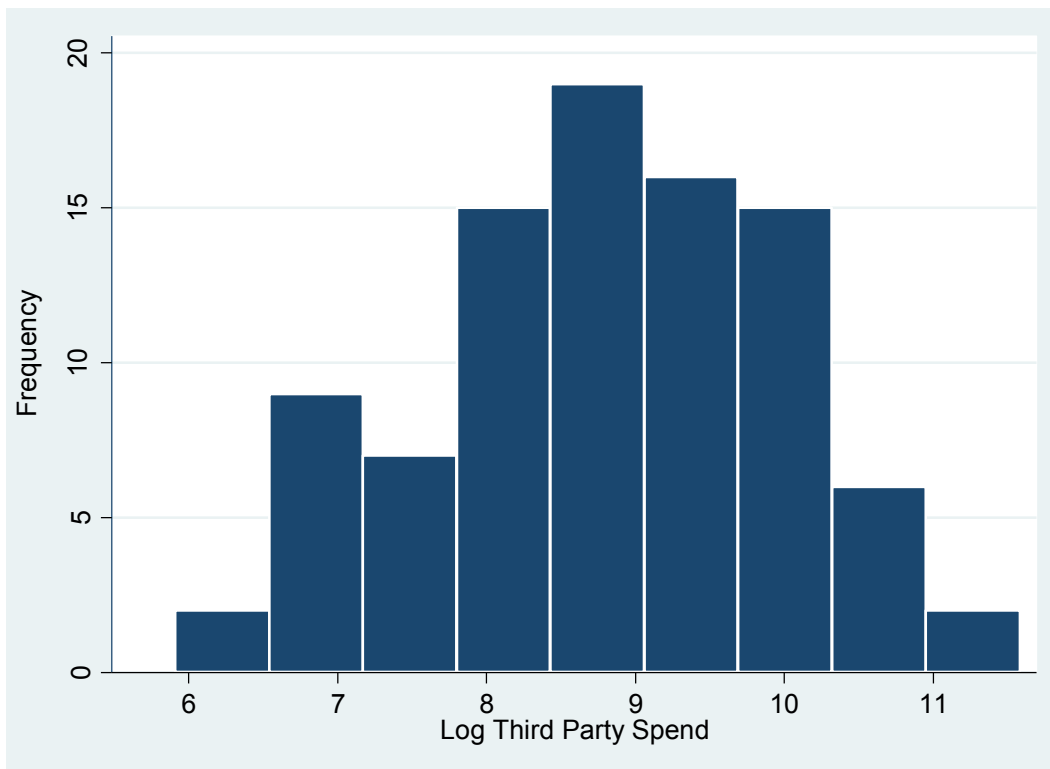


Figure 4.1.5 Histogram Third Party Spend Logged

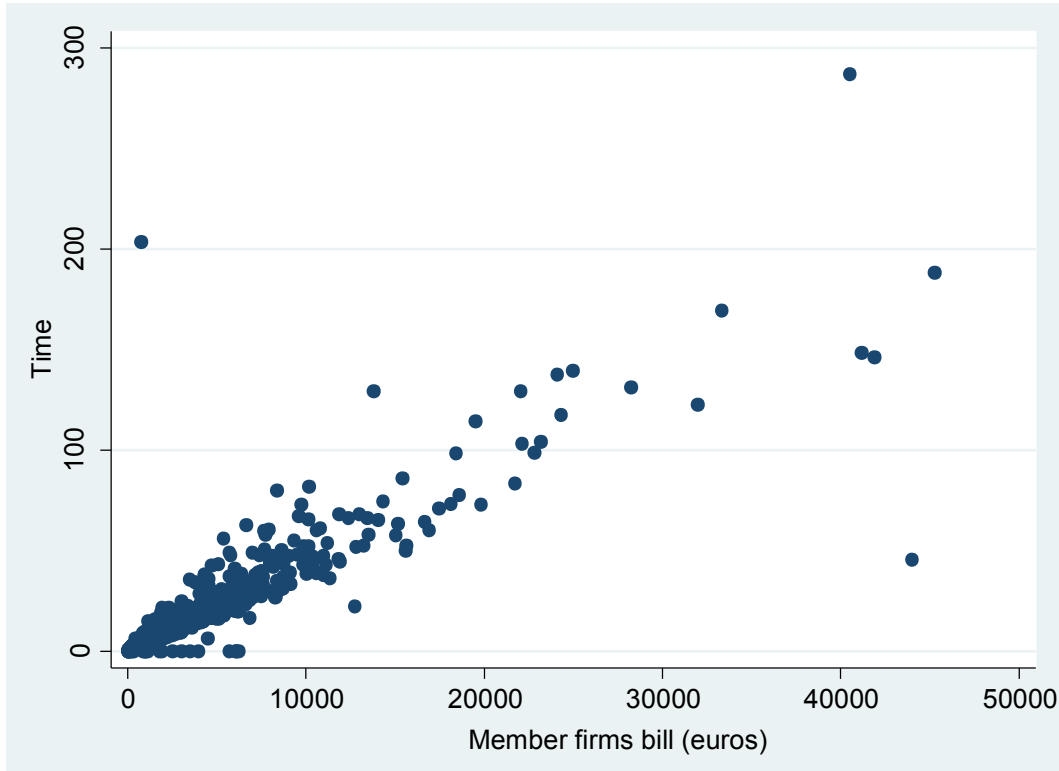


Figure 4.1.6 Relationship between Time Billed and Total Amount Billed

Description of Independent Variables

With regards to geographical area, 33% of matters analysed related to Dublin Mid Leinster area; 27% West area; 22% Dublin North East, and remaining 19% the South (Figure 4.1.7). With regards to fee-earner type, 61% of matters had partner time billed; 54% had associate time, and 33% had solicitors (Figure 4.1.8). In terms of matter complexity the most frequently occurring activities were Section 17 Interim Care Order (52%), Section 18 Care Order (40%), General Advice (30%), Emergency Care Order (28%), and Supervision Orders (28%). See Figure 4.1.9. Figure 4.1.10 illustrates the variation in most frequently occurring activities (Section 17 Interim Care Order, Section 16 Care Order, General Advice, Emergency Care Order, and Supervision Orders) by administrative area.

With regard to third party spend (N = 91), 4% of matters had payment for counsel attached (average €12,668, standard deviation €10,881), 3% of matters had payment for GAL solicitor attached (average €9,797, standard deviation €10,227), 1% had payment for GAL counsel (average €8,789, standard deviation €11,922), 2% had payments for solicitors for third parties (average €8,023, standard deviation €10,392), and 0.3% had payment for counsel for third parties (average €9,123, standard deviation €7,296).



Figure 4.1.7 Administration Area

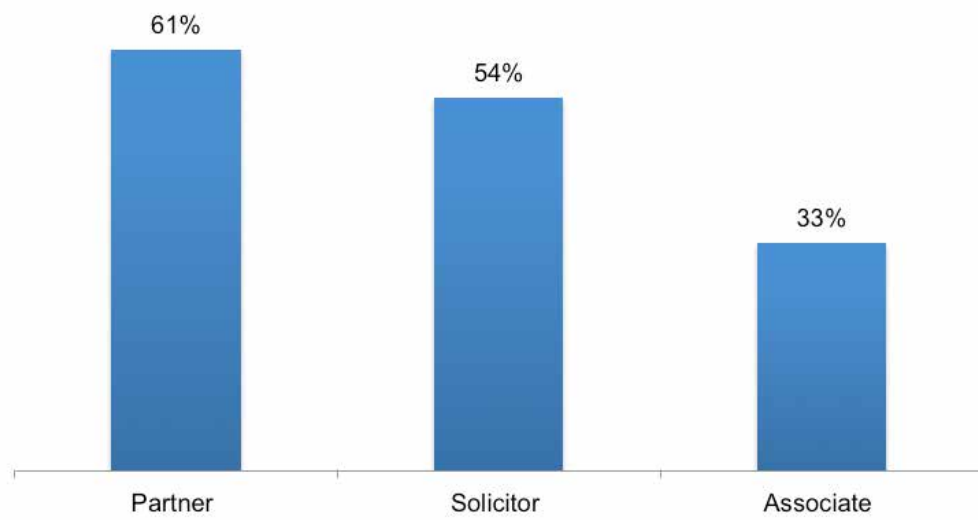


Figure 4.1.8 Fee-earner Type

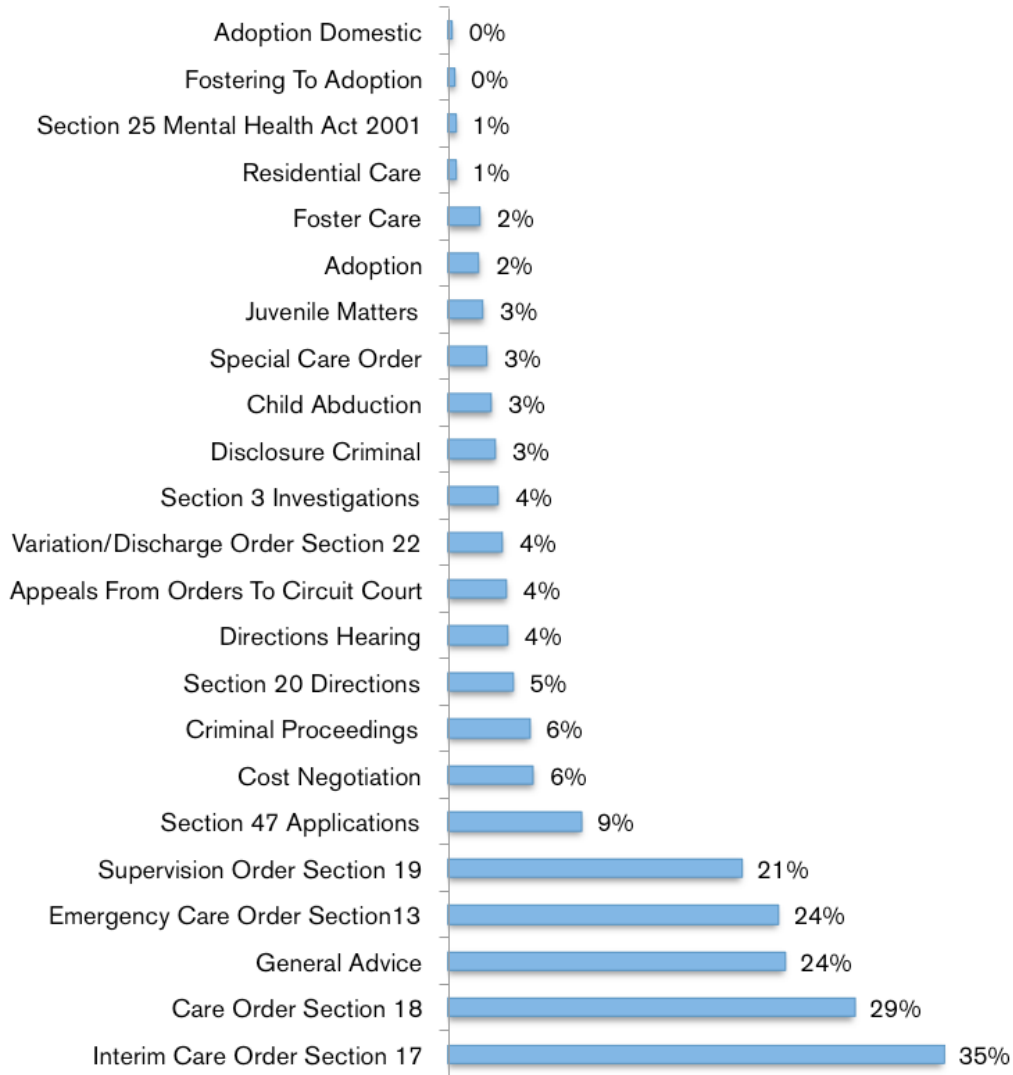


Figure 4.1.9 Legal Activity

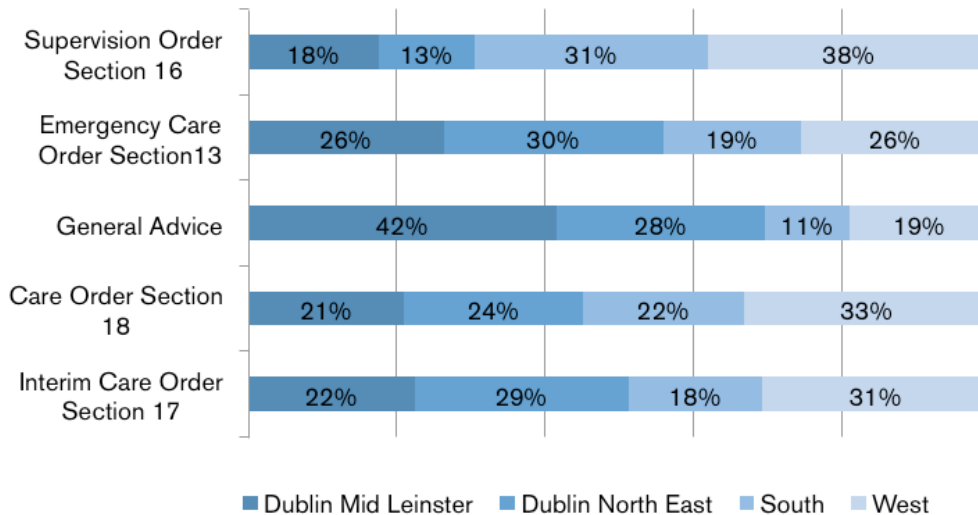


Figure 4.1.10 Legal Activity by Region (Top 5 Types of Legal Activity)

Table 4.1.1 Descriptive Statistics

Variable	Obs (N)	Mean	Std. Dev.	Min	Max
Log member firm billed (Euros)	1032	7.092	1.399	2.752	10.72
Log Time billed (hours)	1011	1.774	1.372	-2.302	5.659
Log third party spend (Euros)	91	8.788	1.178	5.911	11.579
Dublin Mid Leinster	1032	0.328	0.470	0	1
Dublin North East*	1032	0.217	0.412	0	1
South	1032	0.190	0.392	0	1
West	1032	0.266	0.442	0	1
Partner	1032	0.609	0.488	0	1
Solicitor	1031	0.334	0.472	0	1
Associate	1032	0.539	0.499	0	1
Adoption	1032	0.026	0.182	0	2
Adoption domestic	1032	0.002	0.044	0	1
Appeals from Orders to Circuit Court	1032	0.056	0.293	0	3
Care Order Section 18	1032	0.402	0.702	0	3
Child Abduction	1032	0.050	0.307	0	3
Cost negotiation	1032	0.078	0.333	0	3
Criminal proceedings	1032	0.086	0.381	0	3
Directions Hearing	1032	0.045	0.216	0	2
Disclosure Criminal	1032	0.041	0.238	0	3
Emergency Care Order Section13	1032	0.282	0.544	0	2
Foster care	1032	0.024	0.160	0	2
Fostering to Adoption	1032	0.009	0.135	0	3
General Advice	1032	0.296	0.577	0	3
Interim Care Order Section 17	1032	0.522	0.801	0	3
Juvenile Matters	1032	0.028	0.182	0	2
Residential Care	1032	0.006	0.076	0	1
Section 20 directions	1032	0.058	0.279	0	2
Section 25 Mental Health Act 2001	1032	0.006	0.076	0	1
Section 3 investigations	1032	0.040	0.219	0	3
Section 47 applications	1032	0.113	0.373	0	3
Special care order	1032	0.045	0.295	0	3
Supervision Order Section 19	1032	0.282	0.598	0	3
Variation/discharge order section 22	1032	0.044	0.227	0	2

Results

Results of the regressions are presented in Tables 4.1.2 and 4.1.3 and are now discussed separately.

(1) Total Billed (Euros)

The regression results reveal that the independent variables explain 50% of the variation in total amount billed. The results show over the period 2014 to August 2016 there are a number of factors which are statistically significant at 1%, 5% and 10% levels. The most significant results are those which are statistically significant at 1% level (See Figure 4.1.11). Having a fee-earning partner increases the total amount billed per matter by 42%, holding all else constant. Similarly, having a fee-earning associate increases the total amount billed per matter by 21%, holding all else constant. With regards to legal activity, adoption (125%), adoption domestic (166%), care order Section 18 (47%), child abduction (48%), criminal proceedings (71%), disclosure criminal (53%), emergency care order (22%), general advice (13%), interim care order (60%), Section 25 Mental Health Act 2001 (91%), Section 3 investigations (33%), special care order (57%), supervision care order Section 16 (50%), variation/discharge order Section 22 (40%) all individually increase the total amount billed per matter, holding all else constant. LSU Administration area was insignificant in explaining total amount billed.

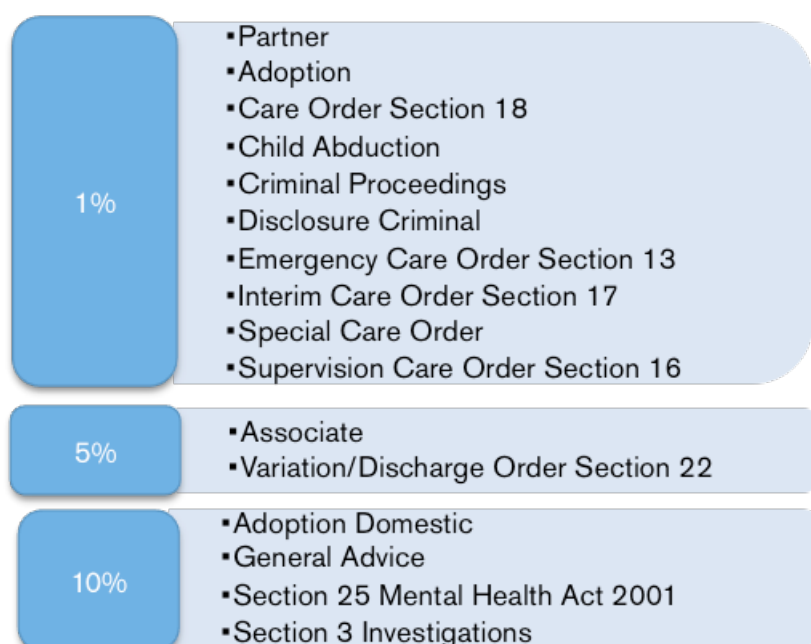


Figure 4.1.11 Total Billed Significant Factors Results

(2) Time Billed (hours)

The regression results reveal that the independent variables explain 52% of the variation in time billed. The results show over the period 2014 to August 2016 there are a number of factors which are statistically significant at 1%, 5% and 10% levels. The most significant results are those which are statistically significant at 1% level (See Figure 4.1.12). Having a fee-earning partner increases the total time billed per

matter by 20%, holding all else constant. Similarly, having a fee-earning solicitor increases the time billed per matter by 28%, holding all else constant. Also having a fee-earning associate increases the total time billed per matter by 34%, holding all else constant. With regards to legal activity, adoption (118%), care order Section 18 (46%), child abduction (44%), criminal proceedings (68%), disclosure criminal (51%), emergency care order (24%), interim care order (60%), juvenile matters (42%), Section 25 Mental Health Act 2001 (108%), Section 3 investigations (31%), special care order (54%), supervision care order Section 16 (51%), variation/discharge order Section 22 (40%) all individually increase the total time billed per matter, holding all else constant.

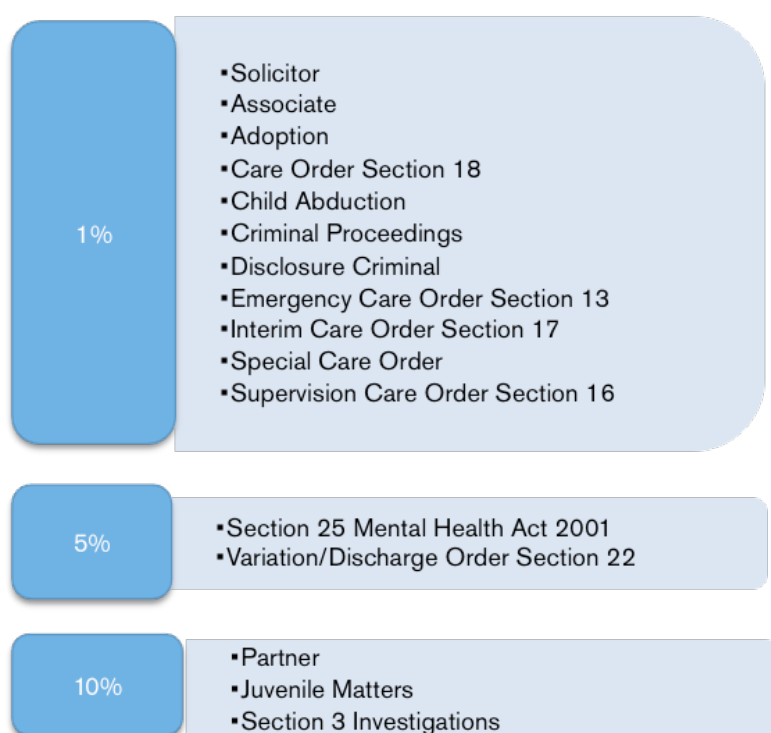


Figure 4.1.12 Time Billed Significant Factors Results by Level of Significance

(3) Third Party Legal Expenditure

The regression results reveal that the independent variables explain 44% of the variation in third party legal spend. The results show over the period 2014 to August 2016 there are factors which are statistically significant at 1%, 5% and 10% levels in explaining the variation in third party legal spend (Figure 4.1.13). The results suggest that having a fee-earning solicitor decreases the third party spend per matter by 80%, holding all else constant. With regards to legal activity, appeals form orders to circuit court (-60%), foster care (-228%), Section 25 Mental Health Act 2001 (-385%), Section 47 applications (-183%) all individually decrease third party spend per matter, holding all else constant. Whereas care order Section 18 (34%), cost negotiation (58%), directions hearings (117%), disclosure criminal (65%), interim care order (32%), special care order (74%), all individually increase third party spend, holding all else constant.

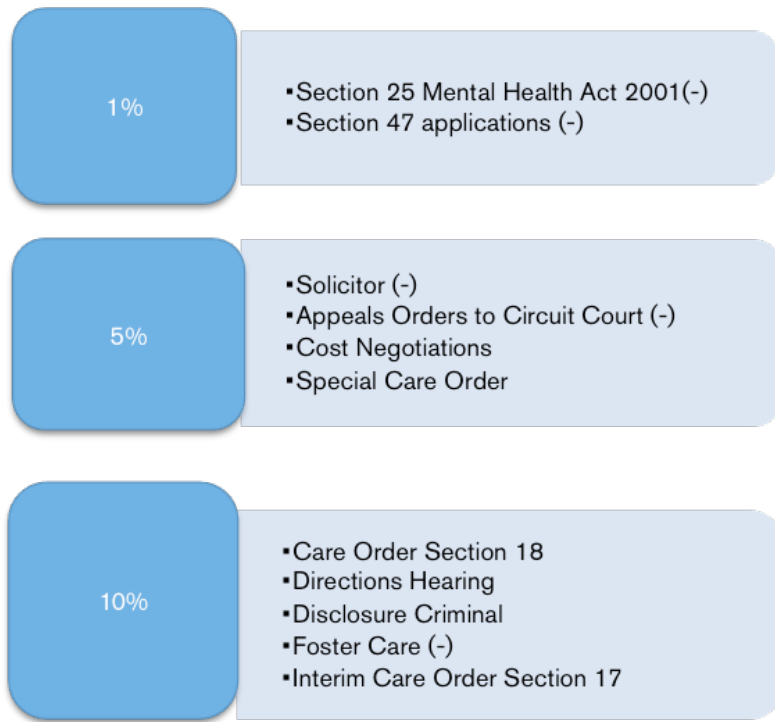


Figure 4.1.13 Third Party Spend Significant Factors Results by Level of Significance

(-) indicates a negative relationship

Table 4.1.2 Regression Results: Member firm billed (Euros) and Time billed (hours)

	Model 1	Model 2
	Y=Log Member Firm Billed	Y=Log Time Billed
	b(se)	b(se)
LSU Admin Area		
Dublin Mid Leinster	0.149 (0.089)	0.041 (0.086)
South	0.149 (0.106)	0.056 (0.103)
West	0.0553 (0.098)	-0.004 (0.095)
Fee-earner Type		
Partner	0.417*** (0.084)	0.200* (0.082)
Solicitor	-0.131 (0.081)	0.279*** (0.078)
Associate	0.212** (0.080)	0.336*** (0.079)
Legal Category – Number of		
Adoption	1.250*** (0.187)	1.184*** (0.179)
Adoption domestic	1.663* (0.755)	1.341 (0.724)
Appeals from Orders to Circuit Court	0.174 (0.116)	0.214 (0.112)
Care Order Section 18	0.474*** (0.051)	0.461*** (0.049)
Child Abduction	0.482*** (0.118)	0.444*** (0.113)
Cost negotiation	0.193 (0.112)	0.114 (0.107)
Criminal proceedings	0.708*** (0.089)	0.679*** (0.085)
Directions Hearing	0.271 (0.150)	0.240 (0.144)
Disclosure Criminal	0.526*** (0.135)	0.514*** (0.130)
Emergency Care Order Section 13	0.222*** (0.062)	0.239*** (0.059)
Foster Care	-0.149 (0.199)	-0.100 (0.190)
Fostering to Adoption	0.448 (0.251)	0.462 (0.241)
General Advice	0.129* (0.062)	0.104 (0.06)
Interim Care Order Section 17	0.604*** (0.047)	0.605*** (0.045)
Juvenile Matters	0.262 (0.177)	0.422* (0.170)
Residential Care	0.227 (0.431)	0.066 (0.413)
Section 20 directions	0.006 (0.115)	0.209 (0.110)
Section 25 Mental Health Act 2001	0.908* (0.411)	1.080** (0.394)
Section 3 investigations	0.332* (0.146)	0.309* (0.140)
Section 47 applications	0.151 (0.087)	0.152 (0.083)
Special Care Order	0.572*** (0.131)	0.542*** (0.126)
Supervision Order Section 19	0.503*** (0.057)	0.513*** (0.055)
Variation/Discharge Order Section 22	0.404** (0.148)	0.399** (0.142)
Constant	5.660*** (0.101)	0.316** (0.100)
Sample Size	1032	1011
Adj R ²	0.497	0.521

Notes: b is the coefficient, se is the standard error, Dublin North East is the reference category for LSU Admin Area,

* Statistically Significant at 10% level, ** Statistically Significant at 5% level, *** Statistically Significant at 1% level

Table 4.1.3 Regression Results: Third Party Spend

	Model 3
	Y=Log Third Party Billed
	b(se)
LSU Admin Area	
Dublin Mid Leinster	-0.506 (0.351)
South	-0.395 (0.405)
West	-0.337 (0.358)
Fee-earner Type	
Partner	0.0654 (0.308)
Solicitor	-0.813** (0.281)
Associate	-0.287 (0.305)
Legal Category – Number of	
Adoption	0.452 (0.353)
Adoption domestic	0.718 (0.844)
Appeals from Orders to Circuit Court	-0.612** (0.211)
Care Order Section 18	0.345* (0.147)
Child Abduction	0.240 (0.165)
Cost negotiation	0.578** (0.197)
Criminal proceedings	0.046 (0.292)
Directions Hearing	1.175* (0.510)
Disclosure Criminal	0.655* (0.311)
Emergency Care Order Section 13	-0.428 (0.259)
Foster care	-2.284* (1.131)
Fostering to Adoption	-0.034 (0.439)
General Advice	0.126 (0.192)
Interim Care Order Section 17	0.325* (0.151)
Juvenile Matters	-0.671 (0.515)
Residential Care	-0.242 (1.050)
Section 20 directions	0.628 (0.773)
Section 25 Mental Health Act 2001	-3.849*** (0.962)
Section 3 investigations	-0.028 (1.075)
Section 47 applications	-1.835*** (0.432)
Special care order	0.736** (0.227)
Supervision Order Section 19	-0.093 (0.222)
Variation/Discharge Order – Section 22	0.435 (0.336)
Constant	8.761*** (0.460)
Sample Size	91
Adj R ²	0.443

Notes: b is the coefficient, se is the standard error, Dublin North East is the reference category for LSU Admin Area,

* Statistically Significant at 10% level, ** Statistically Significant at 5% level, *** Statistically Significant at 1% level

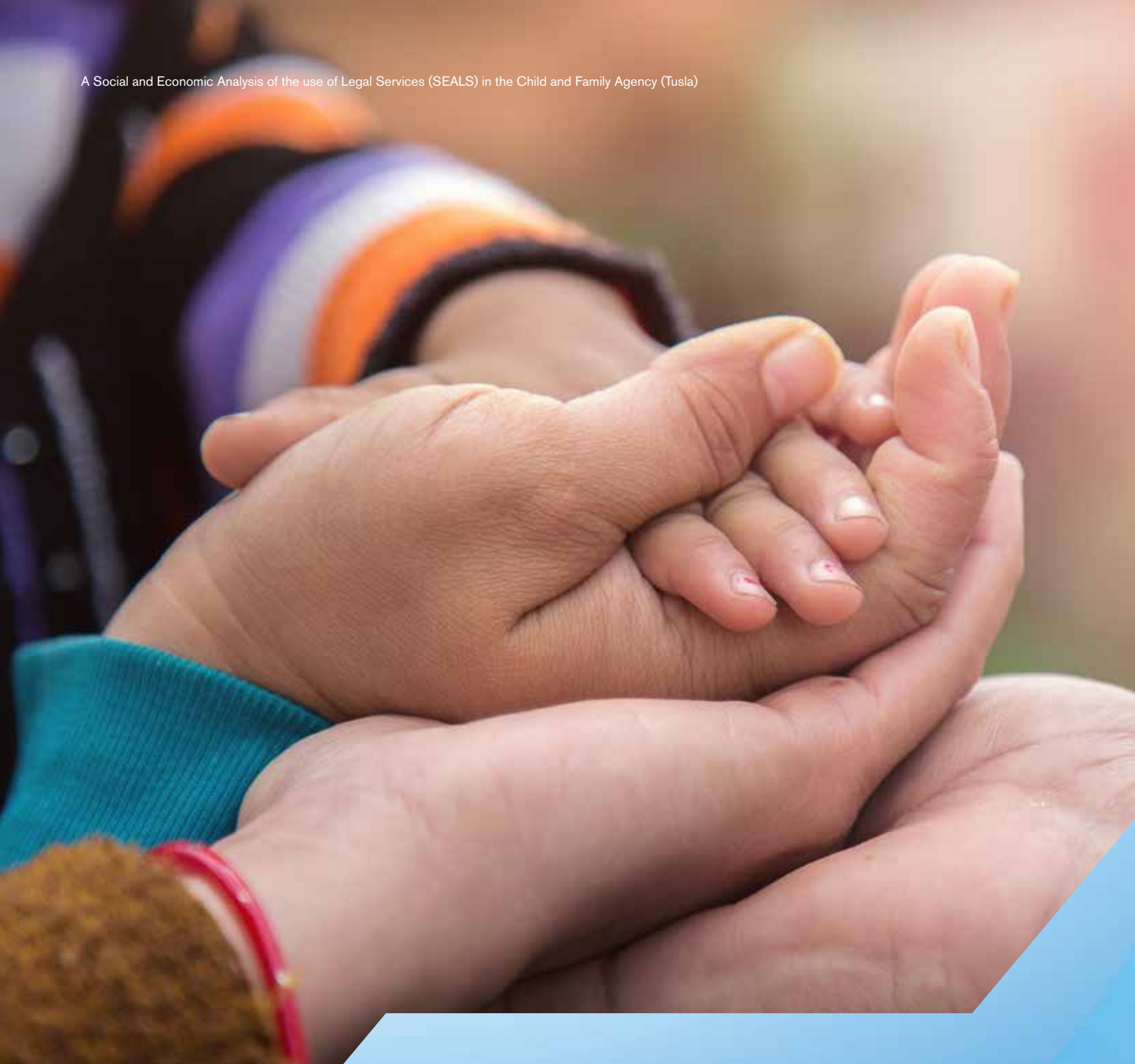
Summary

In this section an econometric analysis is performed to investigate the factors affecting spend on legal services, thus investigating the direct financial costs of engaging with legal services necessitated by the adversarial nature of child welfare proceedings.

Three analyses are conducted. The first two analyses relate to general legal spend and use two dependent variables (time billed and total euro amount billed) for the full sample to investigate the factors influencing time billed and euro amount billed. The third analysis examines the factors affecting spending on legal fees for third parties and pertains to a subset of the main dataset for which third party spend was available.

The analyses demonstrate that the type of legal personnel, i.e. fee-earner type who bills for the matter, volume of legal activity, and type of legal activity have significant positive effects on legal spend. With regards to type of legal activity (and frequency of their occurrence) the following were found to have statistically significant positive relationships with time billed and euro amount billed: Care Order Section 18, Criminal Proceedings, Interim Care Order Section 17, Special Care Order, Supervision Care Order Section 19, Disclosure Criminal, Section 25 Mental Health Act 2001, Adoption and Child Abduction. That is to say, these types of legal activities, when present, increase spending on legal services. The analyses reveal that administrative area does not affect spending on legal services. The results reveal that engagement with legal services necessitated by the adversarial nature of child welfare proceedings has considerable cost implications.

The analysis presented here is subject to limitations. Firstly, only closed matters were analysed (closed matters refer to those for which a final bill has been issued), which may introduce a bias as ongoing matters may have a greater degree of complexity not captured amongst closed matters. Secondly, despite having incentive structures in place for member firms to input data onto the system, significant gaps (i.e. missing data) are evident in the dataset, which placed constraints on the variables that could be included. Finally, we acknowledge the analysis is not explaining all of the variation in spend on legal services. However, the analysis is confined to the data provided from the AXLE system by Tusla. We appreciate that AXLE is a management information system of which the primary purpose is to collate information for billing purposes.



SECTION 5

CONCLUSION

SECTION 5

CONCLUSION

Balancing the many tensions that exist in child protection and welfare practice is a significant challenge. It involves balancing the rights of children with those of parents. Child protection and welfare social work practice is located at a junction where the values of their profession and the requirements of the Child and Family Agency intersect with the demands of the legal system. With the mission of serving the best interests of the child in educational welfare and child protection and welfare social work, professionals encounter the ongoing challenges presented in attempting to reconcile the social, economic, and legal tensions arising in practice.

This report has shown that a complex interplay of social and economic variables determines social workers' and educational welfare professionals' engagement in child welfare proceedings, which require of them to negotiate the legal system and to engage with other professional actors. These variables include financial cost, consultation practices, variations between judicial practice across court districts and availability of opportunities for professional development, which is directly linked with court preparation and attendance.

This section will firstly present general concluding statements relating to four broad concerns, as follows:

- Adversarialism;
- Effective interdisciplinary engagement requires interdisciplinary training;
- Organisational support; and
- Use of Legal Services in Child Welfare Proceedings from an Economics Perspective.

It will then go on to present the key recommendations emerging from specific sections of the report.

GENERAL THEMATIC CONCLUSIONS

Adversarialism

A concern that was echoed by many of the participants in this research was that the paramountcy principle – securing the best outcomes for children – is at risk of becoming obscured in the adversarial legal arena, the hallmark of which is contestation. As explored in the review of literature at the beginning of this report, international commentary indicates that less formal and more inquisitorial systems of child welfare and protection are favourable. In child welfare proceedings children's rights are held in tension with parents' rights. This research has shown how meeting evidentiary thresholds has become a significant influence in social workers' practice when preparing for court. This approach requires child protection and welfare social workers to highlight deficiencies in parenting capacity, which in turn can have a detrimental impact on the positive functioning relationship that a social worker can enjoy with families beyond a court hearing.

Even though child welfare hearings take place 'in camera', social work practice, which is anchored in a paradigm of care, is exposed to scrutiny and challenge in the legal sphere. This constitutes the increased accountability of social work practice, which was acknowledged by participants as a mechanism for ensuring that applications to the court are robust and well-founded. The legal context is similarly acknowledged as valuable because of its protective and gatekeeping functions; social workers' decision to make applications to the court and educational welfare officers' decision to prosecute are governed by legislatively-enshrined parameters, thereby affording a seriousness and legitimacy to child welfare work and potential outcomes for families.

Alongside these positive aspects of child protection and welfare professionals' engagement with the law the legal context also results in a tension for child protection and welfare social workers, where legal solutions only offer partial solutions to the highly complex social, economic, and policy issues that are embedded in the cases before the courts. Rules and regulations commonly applied in law and policy often fall short in terms of guiding or directing social workers' practices. While a court hearing is a significant occasion for professionals and families, it is nonetheless just one moment along a broader continuum of engagement between child protection and welfare professionals and families.

Child protection and welfare social workers and educational welfare professionals are required to effectively articulate their professional competencies in the legal domain, with its dominant legal discourse, in which all participants are expected to be conversant. While solicitors have an important protective function helping social workers and educational welfare professionals to navigate this legal domain, this research has shown that Tusla personnel sometimes feel solicitors instruct them rather than the other way around. This speaks to a fine balance that must be negotiated when these professionals seek to effectively articulate expert child welfare positions within a disciplinary context which is removed from their professional training, with the associated parameters of legal procedure and court rules. Another significant concern showcased in the SEALS data is that the expertise of child welfare professionals becomes eroded and obscured in the court arena, where the perspectives of guardians' ad litem and expert voices, e.g. psychologists, are perceived as being afforded more credibility than that of social workers.

Time emerged as a key consideration for child protection and welfare social workers and educational welfare officers, as well as for legal professionals. The issues of court delay and adjournments were widely signalled as stringent demands on time. Scrutiny of Tusla's practice is represented in the practices of the judiciary where there are higher rates of judicial reviews and call backs to court demanded by the judiciary. There is a significant associated time cost, as the participants in this research indicated that cases due for court hearing get prioritised in the overall caseload due to the demands associated with the preparation of court reports.

Effective interdisciplinary engagement requires interdisciplinary training

Designated responsibility for the protection of vulnerable children rests with Tusla under the Child Care Act 1991 and this constitutes a direct correlation between child welfare practice and the law. The need for mutual understanding between child protection and welfare professionals and legal professionals is therefore critically important.

Engagement between child protection and welfare professionals and legal professionals is multidisciplinary. In order for effective relationships across and between agencies and individuals to be realised, this engagement needs to be understood as *interdisciplinary*. This will require a collaborative approach to training which takes place in a dialogic space where the variables and tensions across and between legal expertise and social work/child welfare practice are acknowledged. Such training would allow all parties to refine their understanding of the impact of engagement with legal services on social work and educational welfare practice.

Child protection and welfare social workers and educational welfare professionals require support from Tusla in order to meet the challenges and demands presented through engagement with legal services. This support can take the form of caseload management as well as the facilitation and standardisation of continuing professional development, as discussed further later in this section. There is a need to recognise the discrete pieces of legislation mandating the respective remits of child protection and welfare social workers and educational welfare professionals and the related need to factor these nuances into tailoring the Agency's approach to training accordingly.

As well as the need for training for Tusla personnel this report corroborates the argument in existing Irish and international research for specialism amongst members of the judiciary who preside over child welfare and educational welfare proceedings. Each of the cohorts whose perspectives were showcased in this report spoke to the considerable variation that exists across court districts and between individual judges. This has a direct bearing on child welfare professionals' experience of legal proceedings, and the lack of standardisation can pose a challenge for them when preparing for court.

The maintenance of positively functioning relationships within Tusla is deemed important by the participants of this research, with the significant associated benefit of effective engagement across and between the child protection and welfare and educational welfare functions of the organisation. All legal action taken, including care order applications under the Child Care Act 1991 and prosecutions taken under the Educational Welfare Act 2000, are taken by Tusla. This requires clear channels of communication between Educational Welfare Services and child protection teams, towards making co-ordinated presentations in legal proceedings. The effective integration of services would also promote the view that educational welfare is an important factor in children's overall welfare, and that the work of the Educational Welfare Services is integral to achieving Tusla's mission to secure best outcomes for children.

Organisational support

A key finding from this research is the significant value that child protection and welfare professionals place on support from Tusla towards enabling them to engage effectively with legal services and other professionals in a legal context. The SEALS findings highlight the significance of Tusla's induction practices and opportunities for continuing professional development as effective measures to support child protection and welfare practitioners to effectively articulate their professional competencies in the complex legal domain.

The surveys signalled inconsistencies in the induction experiences of respondents, and variations were also identified in the provision of court skills training for child protection and welfare social workers and educational welfare officers. The participants in the SEALS surveys indicated very high attendance at in-service training, which demonstrates the willingness and availability of Tusla personnel to participate in training on an ongoing basis. Opportunities for relevant, specialised, agency-based interdisciplinary training form a key support to personnel as they negotiate the specialist legal context within which child protection and welfare practice is constructed and prescribed.

In addition to training, it transpired that clinical supervision, mentorship, and court accompaniment are critical factors in Tusla's support of its personnel.

As evidenced in the literature review and highlighted by the participants in the SEALS research, court attendance is a contributory factor to the high turnover rates among child protection and welfare professional. It is a significant consideration for Tusla regarding retention of personnel. Many of the participants in this research spoke to the support associated with court accompaniment by team leaders and senior educational welfare officers, which signals a pastoral dimension to their management roles. There is potential also for mentoring relationships and professional supervision to be used as fora for debriefing on engagement with legal services, but the survey responses have indicated that variation exists in participants' experiences of same.

The SEALS report has highlighted the need for direct engagement by Tusla with its personnel who are legal service users in its approach to policy development and innovation. This was showcased in participants' discussion that the designation of some PSWs with the role of legal service user, i.e. an individual tasked with reviewing and approving invoices received from legal firms, requires enhanced support of personnel. The relevant personnel need to receive adequate training, including a set of clearly defined criteria which would enable them to fulfil the role effectively and in a standardised way, with a comprehensive understanding of the rationale for the task.

It must also be recognised that in order to fulfil the responsibility, legal service users need to have adequate time. With sufficient support this designated role could progress beyond a time-consuming administrative function towards becoming an important auditing measure which could help Tusla ensure the accountability and cost-effectiveness of legal service providers.

Observations shared by the participants in this research may be usefully articulated in deciding on approaches to future similar processes. Those practitioners who engage directly with legal services and legal professionals are well-placed to comment on the strengths and challenges arising from engagement with legal services and their perspectives, and 'on the ground' knowledge can be a valuable ingredient in decision-making which proves responsive to the needs of child welfare professionals in the dominant legal arena.

Use of Legal Services in Child Welfare Proceedings from an Economics Perspective

The econometric analysis in this report demonstrates that fee-earner type, volume of legal activity, and type of legal activity have significant positive effects on legal spend. Results of the econometric models are significant, and the variables within them are demonstrated to have significant relationships with the time/amount billed. Nevertheless, we acknowledge they are not explaining all of the variation in time and amounts billed. However, the analysis is confined to the data provided from the AXLE system, of which the primary purpose is to collate information for billing purposes.

An investigation of the factors affecting legal spend was performed using an econometric analysis, thus investigating the direct financial costs of the adversarial nature of child welfare proceedings. The results suggest that the type of legal personnel, i.e. fee-earner type who works on the case, volume of legal activity, and type of legal activity have significant positive effects on legal spend. Specifically, when the following legal activities are present, spending on legal services increases: Care Order Section 18, Criminal Proceedings, Interim Care Order Section 17, Special Care Order, Supervision Care Order Section 19, Disclosure Criminal, Section 25 Mental Health Act 2001, Adoption and Child Abduction. The analysis reveals that administrative area does not affect spending on legal services. The results reveal that engagement with legal services necessitated by the adversarial nature of the system in which child welfare proceedings are carried out has considerable direct financial costs for Tusla.

KEY RECOMMENDATIONS

Social Workers

Based on the analysis of data collected via the SEALS survey and qualitative approaches the following recommendations emerge regarding social work practitioners engagement with legal services:

- The social workers refer to the defining influence that the legal context and legal personnel have on the performance of their mandated child protection and welfare roles and responsibilities. Towards achieving best

outcomes for children social workers highlight the requirement for members of the judiciary to have specialist training in child protection and welfare matters when presiding over child welfare hearings.

- The provision of additional and ongoing opportunities for professional and interprofessional training and education at all levels, i.e. graduate entry and in-service development, is suggested as a way forward towards redressing some of the practice challenges that are articulated throughout this report. Many of the practice challenges that are identified by social workers seem to be linked to a lack of appreciation of the different roles and responsibilities of the various professionals involved in child welfare proceedings.
- Time inefficiencies associated with court attendance, court schedules, and courtroom protocols are highlighted as having an adverse impact on social workers' practice. Participants call for a review and revision of court practices and protocols in child care proceedings, which link directly to cost inefficiencies in the use of social workers' time and resources.
- When focusing on developing child welfare practices, systems, and protocols in child protection and welfare matters it is suggested that the provision of formal and informal opportunities for cross-disciplinary dialogue would be helpful.
- Legal requirements for report-writing and giving evidence are represented as stressful activities. A specific call is made for Tusla to provide regular opportunities for personnel to engage in ongoing education and training events that focus on child care law, preparation of court reports, presenting professional evidence in court, and general courtroom skills.
- The provision of consistent supervision, mentoring support, and structured induction programmes were all suggested as essential in supporting personnel to develop and sustain best practices in child protection and welfare social work.

Social Work Managers

Based on the analysis of data collected via the SEALS survey and interviews the following recommendations emerge regarding social work managers' engagement with legal services:

- Similar to social workers, managers highlight the challenges they face in mediating tensions that surface in child welfare proceedings between Tusla personnel and legal personnel. Locating social work within the legal domain where child welfare proceedings are situated is experienced as complex and challenging. The different discourses and sometimes contrasting practices of social work and legal personnel emerge throughout the texts of interviewees. The provision of interprofessional training opportunities between Tusla personnel and legal personnel is advocated.
- Finding ways to build structural links and collaborative relationships between Tusla, Child and Family Agency and the Court Service to address the issues arising in this research is recommended.
- From an agency perspective, managers drew attention to Tusla's responsibility to its social workers to provide formalised internal structures of support for social workers, e.g. in-service training, regular induction programmes, consistent professional supervision, and ongoing mentoring support.
- Similar to social workers, managers concur with invocations from researchers in Ireland and internationally for specialist training to be provided for members of the judiciary who preside over child welfare hearings.
- A lack of appreciation by some legal personnel of the role of the social worker in child welfare proceedings was noted and it was viewed as impacting adversely on the child welfare hearing process. The provision of opportunities for interdisciplinary training on all matters related to child protection and welfare was advocated.
- Managers represented their managerial responsibilities on matters of financial regulation. The existence of regional and individual disparities in the practices of management personnel, in terms of exercising

their responsibilities to provide financial oversight on the use of legal services by Tusla personnel, was emphasised. Consequentially, the development of functional systems and processes to support financial oversight and regulation are regarded as critical, thus ensuring that best practices prevail.

- Managers called for better training to be provided in the use of financial systems for all personnel vested with responsibility for financial oversight, thus ensuring that regulatory and quality control practices are more systematically and uniformly applied throughout the service.

Educational Welfare Services

Arising from the analysis of data collected via the SEALS survey and qualitative approaches, the following recommendations emerge regarding engagement between Educational Welfare Services professionals and legal services used by Tusla:

- The provision of adequate organisational supports, in particular opportunities for interdisciplinary training, is essential towards helping educational welfare professionals to articulate their roles effectively in the courts.
- The data collected in this research suggests that educational welfare officers would value increased consultation time with solicitors. This would require interagency collaboration involving the Educational Welfare Service and respective legal firms to determine how this might be facilitated.
- There is a piece of work to be done by Tusla to identify ways in which the organisation can work to develop its external perception by legal professionals so that the Educational Welfare Service is recognised as part of the organisation and working in line with the broader mission of the Child and Family Agency, namely to secure best outcomes for children.
- There is also support in the data for increased consultation between the Educational Welfare Services and child protection and welfare social work teams so that all parties are sufficiently aware of ongoing legal cases across different departments of Tusla's engagement with families.

Solicitors

Arising from the analysis of data collected via the SEALS survey and direct engagement with legal firms, the following recommendations emerge regarding engagement between Tusla child protection and welfare social workers and educational welfare officers and solicitors:

- Solicitors going on record for Tusla must possess a comprehensive understanding of the policy contexts within which child protection and welfare social workers perform their duties. This is critically important to ensure that social worker expertise is adequately recognised by solicitors upon receipt of instruction and in their representation of the social work perspective in court proceedings.
- Both solicitor firms and Tusla can play a role in supporting social workers to articulate their professional competencies (report writing, time management, etc.) in the context of court proceedings. A sustained, consistent, collaborative, and interdisciplinary approach to training can help fulfil this requirement.
- Child protection and welfare social workers and educational welfare officers in their practice must be cognisant of and responsive to legislation and policy which upholds the rights of parents in legal proceedings. These officers can be supported in developing a comprehensive critical awareness of the legislative and policy domains informing their practice and their experiences at court through higher education and continuing professional development.

in this arena is challenging and difficult, it is valuable with regards to quality of child protection services and to consider if spending is generating value for money. A longitudinal approach to data collection would enable such an analysis. As discussed in the literature review, this challenge is not unique to Tusla, and methods to measures and collect data on qualitative outcomes need to be developed.

- Tusla indicated to the research team that incentive structures are in place for member firms to input data onto the system. However, given the significant data gaps evident in the dataset, greater compliance is required throughout the system.

Econometric Analysis

From conducting the econometric analysis to investigate the factors affecting legal spend a number of recommendations are proposed:

- Owing to the data available this analysis was confined to examining legal services spending and excluded examining the outcomes from the legal spend. Therefore, no considerations could be given to the cost effectiveness or value for money of this legal spend, and a cost benefit analysis could not be performed. While measuring and evaluating outcomes



SECTION 6

BIBLIOGRAPHY

SECTION 6

BIBLIOGRAPHY

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SECTION 7

Appendices

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Social Workers

About this questionnaire

Dear Participant,
Please read this information about the SEALS research before completing the questionnaire below.

This questionnaire survey is being used to collect information about social workers / educational welfare professionals' use of legal services. This questionnaire is being circulated as part of a research project which is funded by an Irish Research Council Research for Policy and Society scheme and which is being carried out by an interdisciplinary team from University College Cork, which comprises Dr. Carmel Halton (Principal Investigator, School of Applied Social Studies), Dr. Aileen Murphy and Dr. Edel Walsh (School of Economics) and Dr. Gill Harold (Project Researcher, School of Applied Social Studies).

About the research

Taking a multidisciplinary perspective, this project explores Tusla's engagement with legal services, particularly in the contexts of child protection and welfare, and educational welfare services. The project sets out to examine a range of issues relating to why and in what contexts Tusla staff use legal services; and to identify and explore regional variations in accessing legal services and in Court practice.

Why complete this questionnaire?

It is envisaged that the project could help to direct future Tusla policy and practice regarding its use of legal services. The findings of this research will be useful for informing the education and training of social workers going forward.

The research team would like the opportunity to engage with social workers and educational welfare officers, to gather their professional practice-based perspectives, which are fundamentally important in addressing the research questions. Your participation in this research would be highly valued and the research team is happy to hear from anybody who may wish to make further enquiries about this research.

How long will it take me to complete this questionnaire?

It is estimated that this questionnaire will take approximately 20 minutes to complete.

As a token of appreciation to those who have completed this survey, participants are invited to enter a draw upon completion of the survey, to be in with a chance to win a new tablet device. Entry into the draw does not compromise your confidentiality, which will be protected by the SEALS research team at all times.

Yours faithfully,

SEALS Research Team

University College Cork

1. I hereby give my consent to participate in this research, in the knowledge that the SEALS research team will ensure that my confidentiality is protected at all times.

☐ I consent to participate - proceed to survey

☐ I do not consent to participate - exit survey

Note on completing the questionnaire:

To move forward in the questionnaire please press the 'Next' button at the end of each page.

If you wish to go back to a previous page, press the 'Prev' button at the end of the page.

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Social Workers

Part 1: Participant Profile

2. Age range (please tick as appropriate):

- ☐ 20-25
- ☐ 26-35
- ☐ 36-45
- ☐ 46-55
- ☐ 56-65
- ☐ 65+

3. Gender

- ☐ Male
- ☐ Female

4. Please indicate your current position from the following list:

- ☐ Social worker
- ☐ Senior social worker
- ☐ Team leader
- ☐ Principal social worker
- ☐ Other (please specify)

5. Please indicate the total duration of your experience working with Tusla and, if applicable, with other relevant agencies e.g. HSE prior to the inception of Tusla on 1st January 2014:

Year(s)

Months

6. In what area of practice are you currently working?

- ☐ Children in care
- ☐ Fostering
- ☐ Adoption
- ☐ Child Protection
- ☐ Intake and assessment
- ☐ Other (please specify)

7. Please indicate the Tusla region in which you are currently working

- ☐ Dublin North East
- ☐ Dublin Mid Leinster
- ☐ West
- ☐ South

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Social Workers

Part Two: Education and Training

8. In what year did you qualify as a social worker?

9. Please indicate which of the following awards you hold (please tick all that apply to you):

- ☐ NQSW postgraduate award (e.g. Master of Social Work)
- ☐ NQSW undergraduate award (e.g. Bachelor of Social Work)
- ☐ CQSW postgraduate award (e.g. Master of Social Work)
- ☐ CQSW undergraduate award (e.g. Bachelor of Social Work)
- ☐ Diploma in Social Work (postgraduate award)
- ☐ Diploma in Social Work (undergraduate award)
- ☐ UK social work qualification
- ☐ Other EU social work qualification
- ☐ Non-EU social work qualification
- ☐ PhD
- ☐ Other (please specify). If you hold a non-Irish social work qualification, please specify your qualification and where this was obtained:

10. When studying towards becoming a social worker, how likely did you envisage that your role as a child protection social worker would involve engagement with the legal system and legal professionals?

- ☐ Very likely
- ☐ Somewhat likely
- ☐ Not at all likely

11. How well did your social work education prepare you for this dimension of your role?

- ☐ Very well
- ☐ Well
- ☐ Somewhat
- ☐ Poorly
- ☐ Very poorly

Please elaborate

12. Have you availed of any of the following continuing professional development activities? (Please note, this question relates to your work with Tusla and, if prior to 1st January 2014, relevant agencies e.g. HSE.) Please tick all that apply:

- ☐ In-service training
- ☐ Courses/workshops (other than HE and in-service training)
- ☐ Attending conferences, seminars and presentations
- ☐ Supervision
- ☐ Peer Consultation
- ☐ Mentoring
- ☐ Self study
- ☐ Other

Please provide details if applicable

13. If applicable, please indicate when you most recently availed of continuing professional development activities

- ☐ past six months
- ☐ past 6-12 months
- ☐ past 12-18 months
- ☐ 18 months ago or longer
- ☐ Not applicable

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Social Workers

Part 3: Work Experience

14. When did you join Tusla (or if prior to 1st January 2014, relevant associated agencies e.g. HSE)

15. On employment with Tusla, were you provided with a programme of induction?

☐ Yes

☐ No

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Social Workers

16. Was this programme of induction structured or unstructured?

- ☐ Structured
- ☐ Unstructured

17. How long did the programme of induction last?

- ☐ Part of a day
- ☐ One full day
- ☐ 2 - 6 days
- ☐ One week
- ☐ Other

If 'other' please specify:

18. Did the programme of induction include any information or training regarding the use of legal services by Tusla social work teams?

- ☐ Yes
- ☐ No

If yes, please provide details

19. Have you ever been assigned with a professional mentor or buddy while employed by Tusla (or, prior to 1st January 2014, relevant associated agencies e.g. HSE)? Please note, this question is asking about individuals *other than* supervisors.

☐ Yes

☐ No

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Social Workers

20. When was your mentor/buddy assigned to you?

21. Do you still have a mentor/buddy?

☐ Yes

☐ No

22. How often do you see your mentor/buddy?

☐ Daily

☐ Weekly

☐ Monthly

☐ Quarterly

☐ Other

☐ I do not currently have a mentor

If other please specify how frequently

23. Have you discussed your use of legal services with a mentor/buddy?

☐ Yes

☐ No

24. If you were a newly-qualified social worker when you commenced employment with Tusla, was your caseload protected for the first six months?

☐ Yes

☐ No

☐ Not applicable

25. Is your caseload currently protected?

- ☐ Yes
- ☐ No

26. How many cases are in your current workload?

27. What number of those cases have the involvement of legal services?

28. Have you always worked within the practice area in which you are currently involved? (e.g. adoption / child protection / intake and assessment etc.)

- ☐ Yes
- ☐ No

If no, please outline which practice areas you were previously involved with:

29. Please indicate if you have been promoted to any of the following positions within Tusla:

- ☐ Senior social worker
- ☐ Team leader
- ☐ Principal social worker
- ☐ Not applicable
- ☐ Other

If 'other', please specify the role

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Social Workers

Questions for team leaders, senior and principal social workers only

30. After what length of service were you promoted to the position of: (Please submit information on all that apply to you)

Senior Social Worker

Team Leader

Principal Social Worker

Other

31. How long have you been working in your current promoted role?

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Social Workers

PART 4: ENGAGEMENT WITH LEGAL SERVICES

ENGAGEMENT WITH LEGAL SERVICES IN RELATION TO CHILD PROTECTION AND WELFARE SERVICES SINCE WORKING WITH TUSLA

32. Have you had cause in your role to personally do any of the following tasks directly? (please tick all that apply)

- ☐ Engage with a solicitor(s)?
- ☐ Prepare a report as part of a court submission?
- ☐ Sign off on a staff member's engagement with legal services?

33. Have you ever attended court in your capacity as a child welfare protection social worker?

- ☐ Yes
- ☐ No

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Social Workers

34. How many times have you attended court over the past 12 months in your role as social worker (applies to all grades and assignments)?

Please note: If you attended court twice on one day, but in relation to two *separate* cases, please count this as two times in court.

35. For your court appearances in your social work role:

Were you accompanied
by your line manager?

Did you have to prepare
a report as part of a
court submission?

Did you engage with a
solicitor(s) prior to the
court case?

Did you have legal
representation in court?

36. When preparing for / during those court appearances, have you engaged with Tusla's legal services?

- ☐ Yes (for all appearances)
- ☐ Yes (for some appearances)
- ☐ No

If 'yes' please specify how many cases this amounts to:

37. Please indicate, if applicable, when making which of the following types of application to the court, were you accompanied by your line manager or team leader in court (Please tick all that apply):

- ☐ Emergency Care Order
- ☐ Interim Care Order
- ☐ Care Order under Section 18 of the Child Care Act 1991 (formerly Full Care Order)
- ☐ Review of Care Order
- ☐ Supervision Order
- ☐ Review of Supervision Order
- ☐ High Court Application for Retention in Special Care
- ☐ Direction under Section 47 of the Child Care Act 1991
- ☐ Not applicable

38. Please indicate the extent to which each of the following factors influences your engagement with the courts service?

	Level of influence
Decision-making of principal SW or other person of responsibility	
Budget and available resources	
Tusla policy	
Custom and practice in your region	

If there are any other factors not listed above that you feel are relevant please state them below

Appendix 1 Social Workers Survey

39. Based on your attendance at court in your capacity as child welfare and protection social worker, how would you describe your experience of engaging with each of the following professionals and please elaborate in each instance:

My experience was:

Judges

Solicitors

Guardian ad litem

Please elaborate on your experiences with some or all of the above:

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Educational Welfare Services

47. Please indicate the nature of the supervision you have received:

- ☐ Internal supervision
- ☐ External supervision
- ☐ Both

48. How often do you currently receive professional supervision?

- ☐ Once a week
- ☐ Once a fortnight
- ☐ Once every three weeks
- ☐ Once a month
- ☐ Once every six weeks
- ☐ Once every two months
- ☐ Once every three months
- ☐ Once every four months
- ☐ I do not currently receive supervision

49. What forms of professional supervision have you received? Please tick all that apply:

- ☐ Individual
- ☐ Group

Appendix 1 Social Workers Survey

43. Do you worry about the costs associated with accessing/using legal services?

☐ Yes

☐ No

44. Have concerns related to cost ever deterred you from requesting or accessing legal services?

☐ Yes

☐ No

45. Are you aware of the different costs associated with varying grades of legal professionals (i.e. solicitors/associates/partners within the member law firms)?

☐ Yes

☐ No

46. How do you decide which of these (solicitors/associates/partners) you need and in what circumstances?

47. Do you know how to complain if you are not happy with the legal services that are provided?

☐ Yes

☐ No

48. Have you ever complained about the legal service you have received?

☐ Yes

☐ No

If yes, please elaborate:

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Social Workers

PART 5: Continuing Professional Development and Professional Supervision

49. Have you received professional training since joining Tusla regarding engagement with legal services and legal professionals or legally relevant aspects of your role?

☐ Yes

☐ No

If yes, please indicate the year you took the course and the course title below

--

50. Have you received professional supervision?

☐ Yes

☐ No

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Social Workers

51. Please indicate the nature of the supervision you have received:

- ☐ Internal supervision
- ☐ External supervision
- ☐ Both

52. How often do you currently receive professional supervision?

- ☐ Once a week
- ☐ Once a fortnight
- ☐ Once every three weeks
- ☐ Once a month
- ☐ Once every six weeks
- ☐ Once every two months
- ☐ Once every three months
- ☐ Once every four months
- ☐ I do not currently receive supervision

53. What forms of professional supervision have you received? (please tick all that apply)

- ☐ Individual
- ☐ Group

54. Which of the following categories match the content of the professional supervision that you have received? Please tick all that apply.

- ☐ Management
- ☐ Support
- ☐ Learning and Development
- ☐ Engagement/ Mediation
- ☐ Clinical work
- ☐ Administrative matters/case management
- ☐ Professional / career development

55. Have you used professional supervision as an opportunity to discuss aspects of your work relevant to engaging with legal services?

- ☐ Yes
- ☐ No

56. Overall, what proportion of your professional supervision involves discussing your engagement with legal services?

- ☐ Very little
- ☐ A moderate amount
- ☐ A large amount
- ☐ Variable
- ☐ None

57. Please indicate if the guidance offered during professional supervision has pertained to any of the following categories:

- ☐ Engagement with legal representatives e.g. solicitors
- ☐ Court presentation skills
- ☐ Recommendations on court report writing
- ☐ Providing evidence in court

Other (please specify)

58. How satisfied are you with the professional supervision you have received in relation to court work?

- ☐ Very satisfied
- ☐ Somewhat satisfied
- ☐ Not at all satisfied

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Social Workers

59. What recommendations to do with professional supervision would you like to make in relation to court work?

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Social Workers

Part 6: Attitudes towards use of legal services

60. Custom and practices on my team make me more inclined to access/use legal services

Strongly disagree

☐

Disagree

☐

Undecided

☐

Agree

☐

Strongly agree

☐

61. The judicial route has provided better outcomes for children.

Strongly disagree

☐

Disagree

☐

Undecided

☐

Agree

☐

Strongly agree

☐

62. I am confident about my professional judgement when making decisions to access/use legal services.

Strongly disagree

☐

Disagree

☐

Undecided

☐

Agree

☐

Strongly agree

☐

63. I believe that my professional judgement is valued during court proceedings.

Strongly disagree

☐

Disagree

☐

Undecided

☐

Agree

☐

Strongly agree

☐

64. I implement a consistent approach across all my cases when accessing/using legal services.

Strongly disagree

☐

Disagree

☐

Undecided

☐

Agree

☐

Strongly agree

☐

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Social Workers**Survey Conclusion**

65. If you would be willing to participate in a follow-up interview with a member of the UCC research team, please provide below your name, an email address that you access regularly and a contact telephone number.

Important: Opting in to participate in an interview will not compromise your confidentiality, which will be protected by the SEALS research team at all times.

Name	
Email Address	
Contact Phone Number	

66. As a token of appreciation to those who have completed this survey, you are invited to enter a draw to be in with a chance to win a new tablet device. To enter the draw, please provide below your name, an email address that you access regularly and a contact telephone number. If you do not wish to enter the draw, please click 'Done' to exit survey.

Important: Entry into the draw does not compromise your confidentiality, which will be protected by the SEALS research team at all times.

Name	
Email Address	
Contact Phone Number	

Appendix 2 Educational Welfare Officers Survey

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Educational Welfare Services

About this questionnaire

Dear Participant,

Please read this information about the SEALS research before completing the questionnaire below.

This questionnaire survey is being used to collect information about social workers / educational welfare professionals' use of legal services. This questionnaire is being circulated as part of a research project which is funded by an Irish Research Council Research for Policy and Society scheme and which is being carried out by an interdisciplinary team from University College Cork, which comprises Dr. Carmel Halton (Principal Investigator, School of Applied Social Studies), Dr. Aileen Murphy and Dr. Edel Walsh (School of Economics) and Dr. Gill Harold (Project Researcher, School of Applied Social Studies).

About the research

Taking a multidisciplinary perspective, this project explores Tusla's engagement with legal services, particularly in the contexts of child protection and welfare, and educational welfare services. The project sets out to examine a range of issues relating to why and in what contexts Tusla staff use legal services; and to identify and explore regional variations in accessing legal services and in Court practice.

Why complete this questionnaire?

It is envisaged that the project could help to direct future Tusla policy and practice regarding its use of legal services. The findings of this research will be useful for informing the education and training of social workers going forward.

The research team would like the opportunity to engage with social workers and educational welfare officers, to gather their professional practice-based perspectives, which are fundamentally important in addressing the research questions. Your participation in this research would be highly valued and the research team is happy to hear from anybody who may wish to make further enquiries about this research.

How long will it take me to complete this questionnaire?

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Yours faithfully,

SEALS Research Team

University College Cork

1. I hereby give my consent to participate in this research, in the knowledge that the SEALS research team will ensure that my confidentiality is protected at all times.

☐

I consent to participate - proceed to survey

☐

I do not consent to participate - exit survey

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Educational Welfare Services

Part 1: Participant Profile

2. Age range (please tick as appropriate):

- ☐ 20-25
- ☐ 26-35
- ☐ 36-45
- ☐ 46-55
- ☐ 56-65
- ☐ 65+

3. Gender

- ☐ Male
- ☐ Female

4. Please indicate your current position from the following list:

- ☐ Education Welfare Officer
- ☐ Senior Educational Welfare Officer
- ☐ Regional Manager
- ☐ Other (please specify)

5. Please indicate the total duration of your experience working with Tusla and, if applicable, with the National Educational Welfare Service/School Attendance Service prior to the inception of Tusla on 1st January 2014:

Year(s)

Months

6. Please state the Tusla region in which you are currently working

- ☐ Dublin North East
- ☐ Dublin Mid Leinster
- ☐ West
- ☐ South

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Educational Welfare Services

Part Two: Education and Training

7. Please indicate which of the following awards you hold (based on Ireland's national Framework of Qualifications - please tick all relevant):

- ☐ Level 1 Certificate QQI
- ☐ Level 2 Certificate QQI
- ☐ Junior Certificate
- ☐ Leaving Certificate Applied
- ☐ Leaving Certificate
- ☐ Advanced/Higher Certificate
- ☐ Ordinary Bachelor Degree
- ☐ Honours Bachelor Degree
- ☐ Higher Diploma
- ☐ Post-graduate Diploma
- ☐ Masters Degree
- ☐ Doctorate
- ☐ Other (please specify).

8. What would you name as your professional background e.g. Social Care, Teacher, Youthwork etc.

9. Before becoming an Educational Welfare Officer, how likely did you envisage that your role in educational welfare would involve engagement with the legal system and legal professionals?

- ☐ Very likely
- ☐ Somewhat likely
- ☐ Not at all likely

10. Have you availed of any of the following continuing professional development activities? (Please note, this question relates to your work with Tusla and, if prior to 1st January 2014, relevant agencies e.g. HSE / National Educational Welfare Board / School Attendance Service.) Please tick all that apply:

- ☐ In-service training
- ☐ Courses/workshops (other than HE and in-service training)
- ☐ Attending conferences, seminars and presentations
- ☐ Supervision
- ☐ Peer Consultation
- ☐ Mentoring
- ☐ Self study
- ☐ Other

Please provide details if applicable

11. If applicable, please indicate when you most recently availed of continuing professional development activities

- ☐ past 6 months
- ☐ past 6-12 months
- ☐ past 12-18 months
- ☐ 18 months ago or longer
- ☐ Not applicable

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Educational Welfare Services

Part 3: Work Experience

12. When did you join Tusla (or if prior to 1st January 2014, relevant associated agencies e.g. HSE / National Educational Welfare Board / School Attendance Service)

13. On employment with Tusla (or, formerly, the National Educational Welfare Board), were you provided with a programme of induction?

☐ Yes

☐ No

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Educational Welfare Services

14. Was this programme of induction structured or unstructured?

- ☐ Structured
- ☐ Unstructured

15. How long did the programme of induction last?

- ☐ Part of a day
- ☐ One full day
- ☐ 2 - 6 days
- ☐ One week
- ☐ Other

If 'other' please specify:

16. Did the programme of induction include any information or training regarding the use of legal services in educational welfare work?

- ☐ Yes
- ☐ No

If yes please provide details

Appendix 2 Educational Welfare Officers Survey

17. Have you ever been assigned with a professional mentor/buddy while employed by Tusla (or, prior to 1st January 2014, the National Educational Welfare Board)? Please note, this question is asking about individuals *other than* supervisors e.g. line managers.

☐ Yes

☐ No

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Educational Welfare Services

18. When was your mentor/buddy assigned to you?

19. Do you still have a mentor/buddy?

☐ Yes

☐ No

20. How often do you see your mentor/buddy?

☐ Daily

☐ Weekly

☐ Monthly

☐ Quarterly

☐ Other

☐ I do not currently have a mentor

If other, please specify how frequently

21. Have you discussed your use of legal services with a mentor/buddy?

☐ Yes

☐ No

22. For the first six months of your employment with Tusla/EWS/ School Attendance, was your caseload protected?

☐ Yes

☐ No

23. Is your caseload currently protected?

☐ Yes

☐ No

Appendix 2 Educational Welfare Officers Survey

24. How many cases are in your current workload?

25. What number of those cases have the involvement of legal services?

26. Please indicate if you have been promoted to any of the following positions within Tusla:

- ☐ Senior Educational Welfare Officer
- ☐ Regional Manager
- ☐ Other
- ☐ Not applicable

If 'other', please specify the role

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Educational Welfare Services

27. After what length of service were you promoted to the position of: (Please submit information on all that apply to you)

Senior Educational Welfare Officer	
Regional manager	
Other	

28. How long have you been working in your current promoted role?

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Educational Welfare Services

PART 4: ENGAGEMENT WITH LEGAL SERVICES

ENGAGEMENT WITH LEGAL SERVICES IN RELATION TO CHILD PROTECTION AND WELFARE SERVICES SINCE WORKING WITH TUSLA

29. Have you had cause in your role to personally do any of the following tasks directly? (please tick all that apply)

- ☐ Engage with a solicitor(s)?
- ☐ Prepare a report as part of a court submission?
- ☐ Sign off on a staff member's engagement with legal services?

30. Have you ever attended court in your capacity as an educational welfare officer?

- ☐ Yes
- ☐ No

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Educational Welfare Services

31. How many times have you attended court over the past 12 months in your educational welfare role? (You may be able to access this information by consulting 'Court Appearances' filed under your monthly returns).

Please note: If you attended court twice on one day, but in relation to two *separate* cases, please count this as two times in court.

32. For your court appearances in your educational welfare role:

Were you accompanied
by your line manager?

Did you have to prepare
a report as part of a
court submission?

Did you engage with a
solicitor(s) prior to the
court case?

Did you have legal
representation in court?

33. When preparing for / during court appearances, have you engaged with Tusla's legal services?

- ☐ Yes (for all appearances)
- ☐ Yes (for some appearances)
- ☐ No

If 'yes' please specify how many cases this amounts to:

Appendix 2 Educational Welfare Officers Survey

34. Based on your attendance at court as a prosecuting Educational Welfare Officer, how would you describe your experience of engaging with each of the following professionals and please elaborate in each instance:

My experience was;

Judges

Solicitors

Guardian ad litem

Please elaborate on your experiences with some or all of the above:

35. Please indicate the extent to which each of the following factors influences your decision to recommend that a case be taken to court by the EWS?

Level of influence

Decision-making of
EWS management or
other person of
responsibility

Budget and available
resources

Tusla policy

Custom and practice in
your region

If there are any other factors not listed above that you feel are relevant please state them below

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Educational Welfare Services

36. In the course of your educational welfare duties, have you ever personally and directly engaged with legal professionals from the panel of external law firms engaged by Tusla?

- ☐ Yes
- ☐ No

Please elaborate (e.g. the nature and frequency of such consultations; organisational constraints)

37. In the course of your educational welfare duties, have you ever personally and directly engaged with legal professionals from Tusla's internal legal services?

- ☐ Yes
- ☐ No

Please elaborate (e.g. the nature and frequency of such consultations; organisational constraints)

38. Do you have direct open access to legal services or do you require management sign-off?

- ☐ Open access
- ☐ Require management sign-off
- ☐ It varies

If 'it varies', please elaborate briefly on why:

39. Do you worry about the costs associated with accessing/using legal services?

- ☐ Yes
- ☐ No

Appendix 2 Educational Welfare Officers Survey

40. Have concerns related to cost ever deterred you from requesting or accessing legal services?

☐ Yes

☐ No

41. Are you aware of the different costs associated with varying grades of legal professionals (i.e. solicitors/associates/partners within the member law firms)?

☐ Yes

☐ No

42. How do you decide which of these (solicitors/associates/partners) you need and in what circumstances?

43. Do you know how to complain if you are not happy with the legal services that are provided?

☐ Yes

☐ No

44. Have you ever complained about the legal service you have received?

☐ Yes

☐ No

If yes, please elaborate:

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Educational Welfare Services

PART 5: CONTINUING PROFESSIONAL DEVELOPMENT & PROFESSIONAL SUPERVISION

45. Have you received professional training since joining Tusla regarding engagement with legal services and legal professionals or legally relevant aspects of your role?

☐ Yes

☐ No

If yes, please indicate the year you took the course and the course title below

--

46. Have you received professional supervision?

☐ Yes

☐ No

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Educational Welfare Services

47. Please indicate the nature of the supervision you have received:

- ☐ Internal supervision
- ☐ External supervision
- ☐ Both

48. How often do you currently receive professional supervision?

- ☐ Once a week
- ☐ Once a fortnight
- ☐ Once every three weeks
- ☐ Once a month
- ☐ Once every six weeks
- ☐ Once every two months
- ☐ Once every three months
- ☐ Once every four months
- ☐ I do not currently receive supervision

49. What forms of professional supervision have you received? Please tick all that apply:

- ☐ Individual
- ☐ Group

50. Which of the following categories match the content of the supervision that you have received? Please tick all that apply:

- ☐ Management
- ☐ Support
- ☐ Learning and Development
- ☐ Education/Mediation
- ☐ Clinical work
- ☐ Administrative matters/case management
- ☐ Professional / career development

51. Have you used professional supervision as an opportunity to discuss aspects of your work relevant to engaging with legal services?

- ☐ Yes
- ☐ No

52. Overall, what proportion of your professional supervision involves discussing your engagement with legal services?

- ☐ Very little
- ☐ A moderate amount
- ☐ A large amount
- ☐ Variable
- ☐ None

53. Please indicate if the guidance offered during professional supervision has pertained to any of the following categories:

- ☐ Engagement with legal representatives e.g. solicitors
- ☐ Court presentation skills
- ☐ Recommendations on court report writing
- ☐ Providing evidence in court

Other (please specify)

Appendix 2 Educational Welfare Officers Survey

54. How satisfied are you with the professional supervision you have received in relation to court work?

- ☐ Very satisfied
- ☐ Somewhat satisfied
- ☐ Not at all satisfied

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Educational Welfare Services

55. What recommendations to do with professional supervision would you like to make in relation to court work?

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Educational Welfare Services

56. Custom and practices on my team make me more inclined to access/use legal services

Strongly disagree

Disagree

Undecided

Agree

Strongly agree

☐☐☐☐☐

57. The judicial route has provided better outcomes for children.

Strongly disagree

Disagree

Undecided

Agree

Strongly agree

☐☐☐☐☐

58. I am confident about my professional judgement when making decisions to access/use legal services.

Strongly disagree

Disagree

Undecided

Agree

Strongly agree

☐☐☐☐☐

59. I believe that my professional judgement is valued during court proceedings.

Strongly disagree

Disagree

Undecided

Agree

Strongly agree

☐☐☐☐☐

60. I implement a consistent approach across all my cases when accessing/using legal services.

Strongly disagree

Disagree

Undecided

Agree

Strongly agree

☐☐☐☐☐

SEALS (Social and Economic Analysis of Legal Services) Questionnaire for Educational Welfare Services

Survey Conclusion

61. If you would be willing to participate in a follow-up interview with a member of the UCC research team, please provide below your name, an email address that you access regularly and a contact telephone number.

Important: Opting in to participate in an interview will not compromise your confidentiality, which will be protected by the SEALS research team at all times.

Name

Email Address

Contact Phone Number

62. As a token of appreciation to those who have completed this questionnaire, you are invited to enter a draw to be in with a chance to win a new tablet device. To enter the draw, please provide below your name, an email address that you access regularly and a contact telephone number. If you do not wish to enter the draw, please click 'Done' to exit survey.

Important: Entry into the draw does not compromise your confidentiality, which will be protected by the SEALS research team at all times.

Name

Email Address

Contact Phone Number

Appendix 3 Semi-structured Interview Scripts



SEALS (SOCIAL AND ECONOMIC ANALYSIS OF LEGAL SERVICES)

(i) Topic Guide for social worker focus group

1. What aspects of child welfare court proceedings do you deem to work well, considering the outcomes for:
 - Services users (children and their families)
 - The courts
 - Social workers
 - Guardians *ad litem*
2. What aspects of child welfare court proceedings do you deem to be challenging, again considering the outcomes for:
 - Services users (children and their families)
 - The courts
 - Social workers
 - Guardians *ad litem*
3. In light of Q1 and Q2, what in your views would make a difference, to allow for better outcomes to be achieved in respect of all parties?
4. What preparation have you been given towards your engagement with legal services, court preparation and attendance, and do you regard it as sufficient?
5. If there was a suggested timeframe enshrined in the law (e.g. in the UK the Children and Families Act 2014 makes it a legal requirement that child care proceedings - in all but exceptional cases - should be completed within 26 weeks), what impact do you think this would potentially have on your work and on the outcomes for children and their families?



SEALS (SOCIAL AND ECONOMIC ANALYSIS OF LEGAL SERVICES)

(ii) Topic Guide for Area Manager Interviews

1. What are the main issues fed back to you about court by Team Leaders and social work teams? In what forum do you receive this feedback and is there a channel through which you can convey it, towards contributing to Tusla policy development?
 - a. Relatedly, what are the satisfaction levels in your area regarding the service received by legal firms who go on record for Tusla in CPW hearings?
 - b. To what extent, if any, are you involved with the oversight of invoices received for legal services and budgetary management?
 - c. Thinking about the profile of cases in your area, and the influence of judicial practice, are adjournments and delays prevalent or not? If so, what is the impact on your staff, their caseloads and the allocation of resources?
 - d. There is evidence in the survey responses from social workers that they face very high, sometimes unfeasible, demands and expectations from judges and GALs. In what way is Tusla supporting its staff towards meeting or managing these expectations?
2. Tusla is committed to being a 'learning organisation'. The SEALS survey responses indicated that induction practices are variable and sometimes unstructured. Can you please speak to this in relation to your area?
3. Finally, based on your extensive understanding of the child protection and welfare system in Ireland, are there any reforms that you would like to propose specifically around the engagement between social workers and the legal system?



SEALS (SOCIAL AND ECONOMIC ANALYSIS OF LEGAL SERVICES)

(iii) Topic Guide for Principal Social Workers

1. Can you please explain your role in relation to reviewing and approving invoices received for services provided by legal firms.
2. Are there Agency policy or practice guidelines available in relation to this part of your remit and/or did you receive any training in this regard?
3. Are there Agency guidelines for reviewing invoices? What criteria are engaged in the process?
4. How frequently do you have cause to query or challenge invoices?
5. Can you please provide detail on the reasons why invoices may be queried or challenged and what your experience has been of such queries resulting in a revision of the invoice?

(iv) Topic Guide for Team Leaders

1. Based on your experience to date, how do you understand your role when accompanying a member of your social work team for child welfare proceedings in court?
2. Are members of your social work team always accompanied at court by a team leader? If not, you might please expand on what reasons there might be for variation.
3. What impacts on social workers have you observed as a result of court attendance and preparation for same?
4. What is the exact nature of the support you offer members of your team in respect of the above?
5. In terms of your own overall workload, can you please elaborate on how attendance at court impacts on your time?



SEALS (SOCIAL AND ECONOMIC ANALYSIS OF LEGAL SERVICES)

(vi) Topic Guide for Solicitor Interviews

1. Please describe what you understand to be your role when engaging with Tusla social workers when going on record in child welfare proceedings.
2. The data collected to date in the SEALS research indicates variations in the consultation practices between social workers and solicitors going on record for Tusla.
 - a. What factors influence your consultation practice?
 - b. Are you aware of any variations in consultation practices? If so, to what do they pertain and to what can they be attributed?
3. Based on your experience of engaging with social workers in the court setting, can you identify strengths in practice or aspects that can prove challenging?



SEALS (SOCIAL AND ECONOMIC ANALYSIS OF LEGAL SERVICES)

(v) Topic Guide for Focus Group with Educational Welfare Services Management

1. Has EWS (or previously NEWB) devised policies to guide its engagement with legal services and legal professionals, and/or the engagement of individual educational welfare professionals with legal services? Are there any variations in how these policies are applied from region to region based on local custom and practice?
2. Specifically, is there a policy set out around collegial accompaniment at court e.g. regional managers' attendance with EWOs?
3. In terms of the budget/resources available for expenditure on legal services, is this devolved on a regional basis or is there a national budget from which regions can draw? What are the criteria for the allocation of this budget?
4. Is there a dedicated programme of induction for new entrants to EWS and if so, does this include opportunities for training on the use of legal services and court attendance?
5. Based on your own experience of attending court, how would you describe the manner in which legal professionals – judges and solicitors in particular, have engaged with you? What do you think is their perception of EWS and education welfare professionals? Do you think they have a comprehensive understanding of the function of EWS and its professional role/remit?

GLOSSARY OF TERMS

Frequently Used Terms in the Report

Social and Economic Analysis of the use of Legal Services by Tusla	SEALS
Child protection and welfare social worker	CPWSW
Educational Welfare Officer	EWO
Educational Welfare Service	EWS
Child and Family Agency	CFA
Child Protection and Welfare System	CPWS
Guardian ad Litem	GAL
Social Worker	SW
Focus Group	FG
Principal Social Worker	PSW
Area Manager	AM
Team Leader	TL
Legal Service User	LSU



