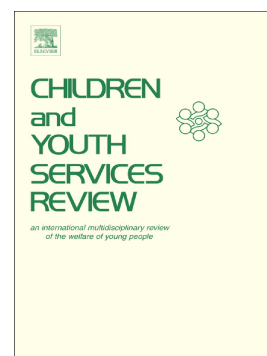


Accepted Manuscript

Care order templates as institutional scripts in child protection: A cross-system analysis

Jill Berrick, Jonathan Dickens, Tarja Pösö, Marit Skivenes



PII: S0190-7409(17)30717-X
DOI: [doi:10.1016/j.chilyouth.2017.11.017](https://doi.org/10.1016/j.chilyouth.2017.11.017)
Reference: CYSR 3576
To appear in: *Children and Youth Services Review*
Received date: 15 August 2017
Revised date: 11 November 2017
Accepted date: 12 November 2017

Please cite this article as: Jill Berrick, Jonathan Dickens, Tarja Pösö, Marit Skivenes , Care order templates as institutional scripts in child protection: A cross-system analysis. The address for the corresponding author was captured as affiliation for all authors. Please check if appropriate. Cysr(2017), doi:[10.1016/j.chilyouth.2017.11.017](https://doi.org/10.1016/j.chilyouth.2017.11.017)

This is a PDF file of an unedited manuscript that has been accepted for publication. As a service to our customers we are providing this early version of the manuscript. The manuscript will undergo copyediting, typesetting, and review of the resulting proof before it is published in its final form. Please note that during the production process errors may be discovered which could affect the content, and all legal disclaimers that apply to the journal pertain.

Journal: **Children and Youth Service Review**

Running head: Scripts

Title of paper: Care order templates as institutional scripts in child protection: a cross-system analysis

Authors: *Jill Berrick, Jonathan Dickens, Tarja Pösö, & Marit Skivenes*
Our names on this paper are ordered alphabetically.

Corresponding author: Professor Marit Skivenes

Author details:

Professor Marit Skivenes

University of Bergen, Norway.

Department of Administration and Organization Theory

Email: marit.skivenes@uib.no

Phone: +47 959 24 979

Office Address:

Christiesgate 17, 5020 Bergen, Norway

Professor Jill Berrick

University of California, Berkeley, USA

School of Social Welfare

Email: dberrick@berkeley.edu

Phone: 510-643-7016

Professor Jonathan Dickens

East Anglia University, UK.

School of Social Work

Email: j.dickens@uea.ac.uk

Telephone: +44 (0)1603 59 3634

Professor Tarja Pösö

University of Tampere, Finland

School of Social Sciences and Humanities

e-mail: tarja.poso@uta.fi

Phone: +348504336258

Funding: The research project is funded by the Norwegian Research Council (217115).

Care order templates as institutional scripts in child protection: a cross-system analysis

Abstract

This article compares blank care order application templates used in four countries (England, Finland, Norway, and USA (California)), treating them as a vital part of the 'institutional scripts' that shape practice, and embody state principles of child protection. The templates are used when child protection agencies apply to court for a care order, usually to remove a child from the family home. The templates prescribe and shape the type of information and analysis that is required justify such an extreme level of state intervention in family life. They are a mechanism and a manifestation of the principles and the legislation of each child welfare system, and are able to cast light on issues that might otherwise remain unseen or unnoticed in cross-country comparisons. The analysis of the documents compares the language and form of the four blank templates, their inter-textuality, their readership, and authors. The analysis highlights the discretionary space allocated to social workers across countries and the state frameworks within which child protection efforts are embedded.

Key words: child welfare, care order preparations, institutional scripts, discretion, cross-country comparisons

Highlights:

Templates used in child welfare practice are manifestations of the principles of each child welfare system.

Templates, intentionally or unintentionally, recode and redefine the lived experiences of children and families, and the interactions between the family and the state.

The analysis casts light on issues that might otherwise remain unseen and unnoticed in cross-country comparisons.

1. Introduction

In most western industrialized countries, courts make decisions about involuntary child removal into state care based upon recommendations from social workers serving as agents of the state (Author et al., 2015a; Burns et al., 2017). Care order preparations – the activities, evidence, and documentation required to send an application to court -- vary between child protection systems along several dimensions, some of which (e.g., thresholds for intervention, time available for preparation, guidelines, expertise and institutional support) have been captured in previous research (Author, 2016). While the court may conduct a hearing, call witnesses and hear the private and public parties'

oral arguments, the written care order application – sometimes referred to as a social worker’s “court report” -- provides the preliminary presentation of the case and in some instances is the only material used in decision making. Care order applications document the reasons for state intervention, as viewed by a state representative (Dingwall et al., 2014). In practice, the application will be affirmed or rejected by the court, and may set the terms for the state’s involvement with the family, with or without the family members’ consent.

As important as the care order application is to the child and family portrayed therein, these documents appear infrequently as a subject of study. It has been pointed out that in general, the institutional settings of public welfare activity remain understudied (Hupe & Buffat 2014). The content of the care order application may serve as the source of data for research regarding the characteristics of families in question (see for example D’Andrade, 2009; de Godzinsky 2015; Hiitola 2015), but the blank template itself is not regularly featured as a source of study. However, it is crucial because it is the document that guides agency staff in completing the application, presenting the facts of the case, and recording and exchanging information between the agency and judicial system. It serves an institutional purpose reflected in its overall scheme, required detail, vocabulary, headings, structure and the subjects it addresses (e.g. Cicourel 1968; Prior 2003). It serves as a guide to social workers to develop a narrative that meets the court’s expectations (cf. Prince 1996; Healy & Mulholland 2010). As such the template may be regarded as a key manifestation of the philosophical underpinnings of the system within which it is located.

In this article, we conduct a comparative document analysis of blank care order application templates from four child welfare systems (England, Finland, Norway, and the USA (specifically, California)). The aim is to analyse key features of the templates in the four states, and in doing so, assess the wider frames in which their child welfare systems operate.

The article is organized in six parts. In the next section we present the theoretical framework that guides our analysis, followed by an overview of care order proceedings in the four systems. Thereafter the methods section presents our data (the templates) and analytical approach, followed by findings. Then follows a discussion of the findings, and the conclusion.

2. The institution of care order application templates

In the classic work of March and Olsen (2006) an institution is defined as: "...a relatively enduring collection of rules and organized practices, embedded in structures of meaning and resources that are relatively invariant in the face of turnover of individuals and relatively resilient to the idiosyncratic preferences and expectations of individuals and changing external circumstances." (March & Olsen 2006, 3; see also March and Olsen, 1989). Organizational charts, procedures manuals, and other instruments of institutional form and function serve instrumental and cultural purposes, becoming imbued with meaning and values. A care order application template would in this perspective streamline, organise, include and exclude information by instructing staff in the child protection agencies to attend to certain themes and categories of information that should be presented to the court.

The concept of 'scripts' is useful to clarify the mechanism by which institutional rules are enacted in organizations and in their interactions with other systems or organizations. Scripts are observable, recurrent activities and patterns of interactions characteristic of a particular setting (Hasenfeld 2010, 99). According to Hasenfeld (2010), scripts highlight how organisations select and establish the rules that guide their work and how these rules become enacted in (mundane) organisational practices.

Organizational templates may differ in regard to the discretion the social worker is supposed to exercise to formulate categories of information. Some templates are highly restrictive (the social worker responds to pre-set questions by ticking a box), whereas others may offer significant latitude with allowances for a free text presentation of the case. There is clear evidence that agency discretion varies considerably in child protection systems under different welfare contexts. In a study of four child protection systems, researchers found that the U.S. and England have set much stricter boundaries (or 'standards' in Dworkin's words (1972)) on the use of discretion among social workers considering care order preparations in comparison to Norway and Finland (Author et al., 2015a). Dworkin distinguishes between weak (little) discretion and strong (much) discretion. An important aspect of the concept of weak discretion is that it is related to fact-oriented situations in which clear "game" rules and instructions exist. This could, for example, be evident in a social security service that provides economic support to a parent raising a child. In contrast, strong discretion is relevant to those decisions that are not closely guided by clear standards or instructions (Dworkin 1972,

33 cf. **Schneider 1992**). **Social workers who are tasked with assessing** the best interests of the child, with little agency guidance would typically be enacting strong discretion. Hence, discretion relates to how decision makers are instructed by relevant authorities. The templates for care orders may thus be regarded as setting standards for the amount of authority social workers have in providing information and presenting the care order case. As such, examining care order templates using the conceptual framework of institutional scripts, provides not only an understanding of social workers' behaviour, but also an understanding of how templates, intentionally or unintentionally, recode and redefine the lived experiences of children and families, and thereby the interactions between the family and the state.

2.1 Care order proceedings in four systems

Judicial decisions regarding care orders are extremely consequential (Author et al., 2015a; Burns et al., 2017). Care orders restrict parental rights to a child's care and custody in order to protect a child's right to safety or well-being. Care orders often result in separating children from parental care and ordering children's placement in foster care or another form of substitute care. These determinations are, of course, guided by policy and the cultural and national context in which policies are embedded. The Norwegian and Finnish child welfare systems bear certain similarities and have been described as family-service oriented in the context of promoting children's rights (Gilbert et al., 2011; Author et al., 2015a). The United States has been variously described as having 50 state systems, but all are shaped by an overarching framework of child protection in a legal rights-based frame (Gilbert et al., 2011). England is positioned between these two approaches with an aspiration for a family-service approach but operating within a legalistic, protection-based frame (Gilbert et al., 2011; Author et al., 2015a). From the available data it appears that Norway and Finland have a low threshold for eligibility into child welfare services, including care orders, whereas the threshold is higher in England and even more so in California. These differences in threshold can be expected across countries in part due to the definition of need from a "compromised well-being" frame (Norway) to an "evidence of harm" frame (California). Other studies have also shown that social workers in these countries view the justification for state intervention in families differently, in part because of different interpretations of harm and risk of harm (Author et al., 2017b).

Procedural differences are considerable and care order preparations are more prescriptive in England and California with the court leading the proceedings through two or three decision making steps, whereas in Finland and Norway there is one decision making point. The space for discretion among front-line practitioners is wider in Norway and Finland than in California and England (Author et al., 2015a).

The legal criteria for care orders in the four countries are quite different. In California, care order proceedings are guided by law, detailed in the California Welfare and Institutions Code 300 (W&I Code 300). The conditions for intervention are described briefly, but a more thorough review can be found elsewhere (Official Legislative California Information, 2017). These conditions may result in the court taking jurisdiction of the child, though less intrusive interventions are required if it is expected that they can offer sufficient protection. They include (1) risk or substantial risk of serious physical harm inflicted non-accidentally; (2) serious physical harm or illness (or risk thereof) as a result of the failure or inability of a caregiver to adequately supervise or protect the child; (3) a child sexually trafficked and whose caregiver failed or was unable to protect the child; (4) the child is suffering or at risk of suffering serious emotional damage as a result of the conduct of the caregiver; (5) the child is, or there is substantial risk of being sexually abused; (6) the child's parent caused the death of another child due to abuse or neglect; (7) the child was subjected to, or the parent failed to protect the child from an act of cruelty; (8) the child's sibling is abused or neglected.

In England, the 'threshold criteria' for a care order are set out in section 31 of the Children Act 1989. They are that the child is suffering, or is likely to suffer, significant harm, and that this is attributable (a) to the care given, or likely to be given, to the child not being what it would be reasonable to expect a parent to give him/her; or (b) to the child's being beyond parental control. Even if those criteria are met, it is not inevitable that the court will make a care order. It then has to consider other criteria, notably the child's welfare, which is the court's 'paramount concern' (s. 1(1)), the care plan for the child (s. 31A), the proposed arrangements for contact (if any) between the child and his/her parents (s. 34), and various other matters set out in s. 1(3) of the Children Act, known as 'the welfare checklist'. This includes the child's wishes and feelings, his/her physical, emotional and educational needs, and the capabilities of his/her parents and other relevant persons. It also has to consider whether making an order is better for the child than not doing so (s. 1(5)), and whether the proposed intervention in private and

family life is proportionate (European Convention on Human Rights, article 8). The key point is that the essential threshold is significant harm, rather than the child's overall well-being, but those wider considerations do come into play once the threshold has been passed.

In Finland and Norway, the main removal criteria are three-fold (Finnish Child Welfare Act 417/2007, section 40; Norwegian Child Welfare Act of 1992, article 4-12). The care order may be introduced if the child's health or development is at risk of being seriously endangered. The endangerment can be due to lack of care or other circumstances in which the child is being brought up; or due to the child seriously endangering his/her health or development by the abuse of intoxicants, by committing an illegal act other than a minor offence, or by any other comparable behaviour. The second condition is that a care order decision should only be considered if the in-home services are not relevant or appropriate, and the third condition being a care order and related substitute care should serve the child's best interest. In both countries, implementation of the second condition usually results in long periods of in-home services prior to a care order application. And the breadth of the third criteria leaves a wide space for professional discretion, and more so in Norway than in Finland as Finnish legislation gives some instruction on the interpretation of the principle. In both Norway and Finland the UN Convention on the Rights of the Child (1989) is incorporated into national legislation of child protection.

Regardless of the differences in the criteria and the preparatory processes, social workers in all studied countries have to summarise their knowledge of the case and the work they have undertaken with the family in a written form that we refer to here as a care order application. The task of the care order application is to demonstrate why a particular child and his/her situation meet the legal criteria for a care order as seen from the point of view of front-line social work practice. Consequently, the application interconnects the legislation, professional assessment and the child in question. The care application is addressed to the county boards (Norway), family courts (England), administrative courts (Finland) or the Juvenile Dependency Courts (California). The courts function in the form of one legally qualified, professional judge as in California and (for most cases) England; or as a panel of judge, expert member and a lay person in Norway or a panel of two judges and one expert member in Finland (Author et al., 2017c; Burns et al, 2017). England also has a 'panel' system, two or three lay judges (not

professional lawyers) and cases which are, on the face of it, more straightforward are likely to be allocated to this lower tier of the family court.

3. Data and method

The data for this study are the four care order application templates. The California template, the “Jurisdiction/Disposition Report” was designed in the late 1990s when the state was developing a computer system for managing all child welfare information. All of the court report templates were developed by a committee of child welfare and judicial professionals, most of who worked as administrators in child welfare at the state and county levels. Although it was hoped that all 58 California counties would use the same template, variations on the original template were created in several counties. The templates are adjusted regularly in response to legislative changes when social workers are prompted to ascertain new information and to forward this to the judge. In most California counties, social workers are required to use the Structured Decision Making (SDM) tool to inform their safety and risk assessments. The SDM is an internal document not shared with the courts and as such, the court report is organized, in part, to reflect the safety and risk assessment determined by the SDM (personal communication, Sylvia Deporto).

The English form is known as the “Local authority social work evidence template” (ADCS and Cafcass, 2016). It is not obligatory, but is used widely by local authorities. The form is recommended by the principal legal, social work and governmental agencies (listed on the form), and is designed to comply with the court guidelines for care proceedings, the Public Law Outline 2014. The first version was introduced in summer 2014, and a revised version in summer 2016, which is the version we are analysing here. This template is only one part of the care application. There will also be an application form which gives a summary of the case and details of the parties, the current assessment of the child and family, and the care plan.

The Finnish template, “Hakemus hallinto-oikeudelle lapsen huostaanottoa (LsL 43§ 2 mom.) koskevassa asiassa” (Application to the administrative court regarding a care order of a child, Child Welfare Act Section 43 Paragraph 2) is available in the web-based Handbook of Child Welfare, hosted by the National Institute for Health and Welfare (Lastensuojelun käsikirja 2017) and commonly used in child welfare. The

template is dated 2010 which means that it was prepared after the major changes in child welfare legislation of 2007. The template has not been changed since that time.

In Norway, national guidelines have not been developed for structuring the “petition of action.” However, there are various care order application templates in place as several of the twelve regional county boards have collaborated with municipality lawyers to establish common guidelines. It is unknown how many different guidelines are employed across the country or how local authorities may be applying them. For this paper we use the guideline made in collaboration between the County Board of Hordaland and Sogn & Fjordane and the child welfare agencies in Bergen Municipality (undated guideline). The template is titled ‘Begjaering om tiltak til fylkesnemnda for barnevern og sosiale saker Hordaland/Sogn og Fjordane’ (Application for a care order to the County Board of Hordaland/Sogn og Fjordane). We have reason to believe guidelines used elsewhere in the country are modelled similarly – for example, the guidelines for the Oslo County Board (the largest board in Norway) are similar.

The analysis focuses on the written text in the blank care order templates. We approached the templates by analysing three aspects, as suggested by Atkinson and Coffey (1997) in their methodological approach to the analysis of documentary sources as textual materials: language and form, inter-textuality and authorship and readership of the documents. The analysis of these elements, found in any document, provide insight into the institutional scripts embedded in the blank templates. First, when examining the *language and form*, we looked at the headings as well as the structure of the blank templates. The headings and form of the template ask, invite and allow the author to record selected information, and instruct the author to exclude other information. In practice, they materialise social workers’ area of discretion. Structured headings and narrow space in the template restrict and standardise social workers’ information whereas general headings and free text space give more room for social workers to present the topic from their point of view.

Second, *inter-textuality* (how the template interacts with other texts) was assessed by collecting information about the other texts that the templates refer to in headings or instructions. Documents do not exist in isolation; rather they exist in a continuum of several institutional documents (Atkinson & Coffey 1997). The preparations for care orders do not exist in isolation either, and the linkages between the care order proposal and other documents are – or may be – demonstrated in the

templates. This is not straightforward however, as there may be direct and indirect references to other texts. In our analysis we listed the direct references and placed them into thematic groups. The analysis of indirect (implicit) references requires cultural knowledge of the country in question in order to recognise that the wording used in the heading might refer to legislation, for example, although legislation may not be mentioned explicitly.

Third, *authorship and readership* (who is textually presented as the author of the document and who is the reader), were examined by looking at the required signatures and other indications as to the author, as well as the anticipated reader as presented in the template. Social workers typically write the care order application forms but they are not necessarily the person signing the application. In our analysis, we examined whether the form is signed by the author (the social worker) or another individual. If another individual is involved, this may be an indication that the social workers' view and information about the case (discretion) requires authorisation by others.

We collected all the textual phrases, often very short and mundane (such as 'the child's first name') under the aspects mentioned above, and sought thematic underpinnings in each topic. The research group members analysed the template from their own country; in addition, the templates were cross-read jointly by the research group. In section 2 above we introduced the forms in the context of care order proceedings in the four countries, and in the discussion section that follows the findings we expand on this analysis. Our interpretation of the findings uses other empirical work we have conducted regarding child protection in the four countries (e.g. Author et al., 2015a and b, 2016 and 2017a and b).

For the purpose of simplicity we use the short term "template" for "the blank care order application template". Furthermore we use the term "country" to distinguish between the four systems and templates, although of course California is not a country, and even though the templates are not necessarily used throughout the country/state.

3.1 Limitations

This analysis gives us information about the requirements that are set for a care order application, but it does not provide information about how the courts make their decisions, what types of information courts may privilege, or what kinds of information are actually contained in care order applications. The templates are supported by

additional material in each country and that material might be important – if not even more important than the application form – for the court’s decisions. Staff in child welfare agencies might complete the templates differently from the textual headings and instructions of the templates; they may well also have different writing skills and attitudes towards recording and therefore the actual text might look very different from the expectations of the template (Healy & Mulholland 2010). Others have in fact observed that social workers find their ways for ‘workarounds’ in recording their efforts even within the most structured client-recording systems (Huuskonen 2014; Wastell et al., 2010).

The cross-country analysis of the blank templates requires reading the templates in their original language as well as translating the original terms and languages (Norwegian or Finnish) into English. There may be some meanings lost in translation, which is a well-known challenge in any cross-country study but even more challenging when the terms should be translated so that they are still true to their original system. In particular, those system-related terms in Norway or Finland may not have any exact counterparts in England or California; yet they need to be addressed in English.

4. Findings

The four templates vary in length and content, as well as their formal authorisation and implementation. In the following we will compare the templates using Atkinson and Coffey’s (1997) three headings: language and form; inter-textuality; authorship and readership. In sum, these findings will also provide us with information about the type of discretion that the templates represent.

4.1 Language and forms of the templates

All four templates are structured with main headings which indicate the major themes about which information should be provided. In Table 1, we list the main headings in the order in which they appear in the different templates. The templates cover many of the same issues, understood in a wide sense (e.g. the presentation of the case), and differ substantially in how many headings they contain, the scope and details of the topics raised (e.g. subheadings), if they are integrated into an electronic system (England,

Finland, CA) or not (Norway) and if they mainly provide space for free text responses (CA, Finland, Norway) or also more structured boxes or genograms (England).

Table 1. The main headings of the blank templates

<p>Norway</p> <ol style="list-style-type: none"> 1. Public and private parties 2. About the case 3. Parties (private) 4. Procedural information that may impact proceedings/ case management 5. Tipping point 6. Evidence and witnesses 7. Case description 8. Suggested decision 	<p>Finland</p> <ol style="list-style-type: none"> 1. Names 2. The claim and its arguments 3. Information about in-home services 4. Information about the client plan 5. Examination of the close network of the child 6. Information about the suggested placement 7. Plans to keep contact between the child and his/her close people 8. Examination of the child's health 9. Hearing the views 10. Request and reasons for an immediate placement
<p>England</p> <ol style="list-style-type: none"> 1. Names 2. Case details 3. Social work chronology 4. Analysis of harm 5. Child impact analysis on each individual child 6. Analysis of parenting capability 7. Analysis of wider family capability 8. The proposed S31A care plan – the 'realistic options' analysis 9. The range of views of parties and significant others 10. Case management issues and proposals 11. Statement of procedural fairness 12. Signature 13. The welfare checklist in full for reference 	<p>California</p> <ol style="list-style-type: none"> 1. Names 2. Summary recommendation 3. Child(ren)'s whereabouts 4. Parents/legal guardians 5. Attorneys 6. Indian Child Welfare Act Status 7. Child welfare legal History 8. Jurisdiction 9. Search results 10. Paternity/Legal relationships 11. Family law status 12. Family history 13. Current Family assessment/social study 14. Current situation of child 15. Placement of child 16. Sibling relationships and contact 17. Visitation 18. Service plans 19. Assessment/evaluation 20. Safety goals 21. Harm and danger statements 22. Attachments 23. Signature

All four templates require basic information about the involved parties, a summary of the case and its legal grounds. This would include names of the child and his/her parents and other caregivers, birthdate, addresses, legal relations between private parties, name of child welfare agency, legal representatives, name and article of the relevant legislation, witnesses, etc.

In the California template the following headings guide additional required content to which social workers have an expandable free-text context in which to provide information: Indian Child Welfare Act eligibility (refers to whether or not the child belongs to a Native American tribal community wherein different laws would apply); Legal history (which includes the family's previous contact with the juvenile court); jurisdiction (the evidence pertaining to how / why the child was detained under W&I code 300); search results (includes information related to identifying and locating the father, if not a current party to the case); paternity/legal relationships (includes information about the legal or presumed relationship between the child and the father); family law status (relates to information pertaining to divorce or custody arrangements that might precede the case under consideration); family history (a general description of the family including caregiver difficulties such as a history of abuse or neglect as a child, mental health problems, drug or alcohol problems, criminal history, domestic violence, previous restraining orders). The following heading, 'Current family assessment/social study' comprises nine subheadings: a description of the current referral (set options: for neglect or for abuse), a description of the caregivers' parenting skills, basic material needs, social support system, cultural identity, physical health, mental health, coping skills, substance use, criminal activity, and domestic violence. The child's current situation is described under six subheadings (medical/physical health, educational and developmental status, physical mental/emotional/behavioural status, relationships/cultural identity and peer/adult social relationships). The child's substitute care arrangement is described including a review of the appropriateness of the arrangement and the child's adjustment (with an emphasis on the least restrictive, most family-like arrangement with preference for kin), and provisions for birth parent, sibling, and grandparent visitation. The final section includes the service plan for the child and family that enumerates the services in which the parent and/or child will be required to participate, and the safety goals for the family. If court intervention is sought

(in lieu of voluntary services), descriptions of the harm or danger to which the child may be subjected must be included.

The English template requires detailed information regarding the case, including data about family members and relationships (it is expected that family composition will be shown on a diagram known as a 'genogram': the form says this is 'mandatory but the format may be adapted'), social work chronology, analysis of harm, child impact analysis, analysis of parenting capability and wider family capability, the proposed care plan(s), views and issues raised by other parties, case management issues and proposals, statement of procedural fairness, signature and then a section which gives two welfare checklists in full, taken from the relevant legislation. Many headings invite descriptive accounts and the sections of the form can expand to take longer answers, but the emphasis is on succinctness and the social worker's assessment of the facts – the word 'analysis' is used in nine of the headings and sub-headings. In particular, there is a focus on the experiences and views of the child. The form asks for a description of the child's daily life during the period in question, and analysis of the child's needs. There is a section for the child's own statement, if this is appropriate. Social workers are asked to present their assessment of the 'realistic placement options', enumerating factors for and against each one. There is an expectation that members of the child's wider family will be considered. The language and terms used in the form are familiar in social work, but also draw heavily on the legal framework and terminology. The emphasis of the form is in detailed information about harm, social relations and social work assessments. The social worker's task is to present the facts in the context of his/her assessment.

The Finnish template requires that the social worker indicate whether the person in question agrees or disagrees with the care order application. Social workers then respond to the following headings: 'The claim and its arguments', 'Information about in-home services', 'Information about the client plan', 'Examination of the close network of the child', 'Information about the suggested placement', 'Plans to keep contact between the child and his/her close people', 'Examination of the child's health', 'Hearing the views' and 'Request and reasons for an immediate placement'. The main headings in the template typically have four or five subheadings, each providing space for free text. The headings and subheadings follow the vocabulary and logic of the Child Welfare Act. The template rests heavily on 'how?' questions: social workers are asked to describe how

certain tasks have been carried out. The emphasis is thus on reports of work that has been done. For example, under the heading about examining and hearing the views, the social worker is asked to explain how the view of a child below 12 years of age has been heard, how the view of the child who is 12 or older has been heard, and how the views of parents and other people have been heard. The last subheadings invite a free text description about how the views *have been* taken into consideration and how they *should be* taken into consideration. The “how” question serves as an alternative to asking about the opinions and views of the people involved. The description of the family’s / child’s problem – the reason for a care order – is described under two headings: the factors which are likely to threaten seriously the child’s health and development, and the factors in the child’s own behaviour which threaten his/her health and development. Again, the language of the text originates directly from the Child Welfare Act.

The Norwegian template offers eight sections, each with a heading and a short description of the type of information required. Following the three first sections eliciting basic information, social workers are required to state their recommendation for the county board’s action going forward including whether the case might require a five- or three-person board (depending on the complexity of the case); if pre-proceedings meetings with lawyers are necessary; if cases are related and thus should be treated at the same time; if more information or evidence is required and thus the time line should be extended; if an interpreter is needed; and if a spokesperson for the child is required. The next section asks for information about the tipping point for the case, i.e. the factors leading to a determination that in-home services were not sufficient and that out-of-home care became necessary. This is followed by a section that requires brief information about the evidence in chronological order and case witness information (e.g. a child’s teacher or medical doctor and their identifying information). The next section asks for the presentation of the case where the worker is required to write a fact-based presentation of the case in chronological order. Case information should include a review of the general facts, child welfare agency position, private parties’ position, and child welfare agency’s assessment, analysis and conclusion based on the legal standards for intervention. A list of in-home services that have been previously offered are included as an attachment. The final section asks for a conclusion including the recommended decision with a reference to the legal section in the Child Welfare Act.

4.2 Inter-textuality of the templates

All of the templates under analysis refer to the legislative context of the state's authority vis-à-vis the family. The California template refers to federal law (e.g., Indian Child Welfare Act), state law, (Welfare and Institutions Code (W&I Code) 300), and case law, and is regularly updated when new legislation imposes additional requirements on agency or court practices. The sub-headings also refer to the contents of the SDM risk assessment tools, forms that assess a child's safety and risk, but that are not attached to the court documents.

The English form has few explicit references to legislation (i.e. specifying relevant sections of the Children Act 1989), but it is heavily shaped by legal terminology and requirements. For example, phrases such as 'harm', 'child's wishes and feelings', 'parenting capability', all come from the Act, as well as two welfare checklists in full taken from the Children Act 1989, and the Adoption and the Children Act 2002. Indeed, the form is shaped not just by the primary legislation but also court decisions, notably a case known as *Re B-S*, which made it a requirement to spell out the arguments for and against each realistic placement option (*Re B-S (Children)* [2013] EWCA Civ 1146).

The textual interaction between the template and law is strong in the Finnish template. The Child Welfare Act is referenced in the headings and subheadings. Even when the law is not mentioned, the themes and the wording clearly resemble the legislation. The template lists several documents which may be attached to the care order application that are developed as part of the care order preparations defined by the Child Welfare Act (e.g. the care plan for the child). The attachments are thus an important part of the application.

The Norwegian Child Welfare Act (1992) is directly referenced in the template in relation to several of the thematic headings. Legislative criteria are referred to in relation to the threshold for removals, proceedings for the county board, as well as for the conclusion of the case presentation. Furthermore, there are indirect references to the legislation of civil procedure about the structure and content of a written court judgment; as well as to possible former court documents or expert reports, to ensure that information already available is not repeated.

4.3 Authors and readers of the application

The reader – the court – is clearly specified in the California template. The author is the child welfare agency as represented by the social worker and the supervisor who sign the application. Although the court report is given to the parent(s) and to the attorneys for all parties in advance of the court hearing, the document is not written for the parent as the primary audience.

The specified readers of the English template are the court and the family members, and the family is given considerable attention in the section which is headed ‘statement of procedural fairness’. Here, it is asked whether the contents of the statement have been communicated to the mother, father, significant others, and the child, in a way that can be clearly understood. The English template should be completed and signed by someone who is a registered social worker (the separate application form would be signed by a local authority lawyer on behalf of the director of children’s services).

The reader of the Finnish application is the regional administrative court. The application template is signed by the social worker ‘in charge of the child’s case.’ In addition, the local authority is regarded as ‘a body which has made the application’ and its name and address should be written in the template.

The readers of the Norwegian application are the County Board, the lawyer for the private parties (parents and child), and the lawyer for the municipality (i.e. the child welfare agency’s lawyer). The author of the application is the child welfare agency. The manager and the caseworker sign the application.

5. Discussion

The comparative document analysis examining care order application templates from four child welfare systems in California (USA), England, Finland, and Norway show similarities and differences that reflect the institutional frames in which they are embedded. Overall, the *intertextuality* is similar across the four countries; each country’s template closely follows the legal frame authorizing state intervention. The *author-readership* of the applications are similar, except for two noteworthy differences: First, the English template explicitly considers parents as readers of the care order application. As such, rather than relegating parents to a third-party status in the proceedings, they are portrayed as central actors and consumers. Second, the California

template can be differentiated from the others with its specific attention towards Native American/ Alaskan Natives as potential parties to the case. The Indian Child Welfare Act is a separate, parallel federal law with unique legal requirements for these populations.

Where we see more pronounced differences across countries is in the *language and forms* of the templates. All require similar, basic pieces of information that set the scene for decision-making. Important parties in the case are identified, and all templates require a summary of the case, the reason for the court application, and a recommendation for the court decision. The templates are, however, textually different across the studied countries although they all serve the same purpose, i.e. to provide sufficient information so that a decision about a possible care order can be made.

The Norwegian template is a simple outline of the expected interaction between the County Board and the child protection agency. Its primary focus is to facilitate the hearing and the decision making that is going to take place in the County Board. The template sorts out whom should be included in the proceedings according to legal regulations and directives (e.g., is a spokesperson for the child required?; is an interpreter needed?; is the case unusually complex requiring additional decision makers?). The material requirements from the template is the narrative about the content of the care order case within the context of the law. It is an encouragement to social worker to be fact based and systematic in their descriptions. The Norwegian template serves as a guide to the *process* that should be undertaken, whereas the other three templates lay out the structure of the *information* that will be included for decision makers. This process-based document allows for significantly greater discretion in the material that is ultimately provided to the courts, and thus greater discretion among child protection staff as to what information they might ultimately include. Whether there is little or great variability in the actual content that is shared across social workers in their interactions with County Boards is outside the scope of this work, and to these authors' knowledge, has not been studied by others.

The Finnish template focuses on the agency efforts that have preceded the court application. In other words, procedural issues are also in the foreground, though the focus is on past actions rather than the future actions directed by the Norwegian template. In Finland, agency staff must demonstrate that in-home services have been exhausted and that the care order is a service of last resort. Even the view of the child is approached as a procedural matter: the template headings invite the social worker to

describe how the child's view has been consulted. These features of the institutional script appropriately reflect the characteristics of the Finnish child welfare system where the importance of in-home services dominates. Again, the Finnish templates would suggest that child protection staff have a relatively high degree of discretion they can exercise in order to bring to bear a variety of services to meet families' needs. The court process is, in part, a check on whether or not the exercise of this discretion was sufficient in identifying and allocating services in the right amount and duration.

Others have argued that the vocabulary of *services* defines the core approach to child welfare in Finland more than the vocabulary of social problems such as abuse and neglect (Pösö 2011). As such, the template guides agency professionals to focus on service receipt more than considerations of risk or harm. Compared with the English and California templates, the characteristics of the child and family history are given very little attention.

The Finnish template also features the voice of parents and children differently from what is evident in the other templates. Finnish law specifies that parents (custodians) and children over age 12 must be consulted in order to learn about their consent to the care order proposal and that the court makes decisions only on those care orders which lack the consent of those parties. The institutional norms embodied in the blank template feature consent and objection as part of client voice as it is essential for the court proceedings to start.

In England, child welfare agencies are expected to have offered services to help the family keep the child, before bringing the case to court (exceptionally this would not be required, in situations of grave risk or where services have previously been offered, unsuccessfully, to support other children remaining in the family). The template reflects the crucial role of the court, not just to reach a judgment about what has happened in the past, but to scrutinise the local authority's plans for the child's future. In other words, the court serves, in part, as a check on social workers' discretion to determine a future path for the child and family. This may be seen as a particular outcome of long-standing misgivings in the courts about the capacity and determination of local authorities to implement the court-ordered care plan – even though child welfare research shows the doubts to be exaggerated (Family Justice Review, 2011). In particular, following the *Re B-S* judgment in 2013, there is a much more explicit focus on trying to find suitable placements with members of the extended family (typically grandparents, aunts and

uncles) and other 'connected persons'. When comparing the English template with the other templates in our study, the institutional norm of the template appears very much a psychosocial presentation of the child including an analysis of the child's well-being and risks, the impact of any harm suffered, the likely impact of any changes, and an assessment of the child's wishes and feelings, items specified in the welfare checklist (see above).

In California, the court report is clearly a legal document based in the language of rights and legal transgressions. The justification for the application is embedded in lengthy and detailed descriptions of the social and intra-personal conditions of the family both past and present. Compared to the other country templates, the California form asks specifically for detailed information about the caregivers' risks (e.g., domestic violence, mental health, substance use, etc.), in line with information the social worker will have collected during the assessment phase with the aid of the Structured Decision-Making tool, an evidence-based risk assessment platform for identifying risk and harm to a child. Social workers are required to provide detailed information about the harm that has befallen the child, and the anticipated danger absent state intervention, further making the claim for warranted action. In contrast to the other countries, the California form also emphasizes the safety context and threats to the child and the safety goals for the family. The notion of "safety" (in contrast to the well-being or wishes and feelings of the child) suggests a more narrow interpretation of potential judicial involvement. The overall aim of the template is to give a presentation of former and present social problems of children and parents to build a case based on evidence of harm and an evidence-based assessment of the risk of future harm. The template, in comparison to the others under study, is highly prescriptive in eliciting particular information about children, parents, and the risks that may arise absent state intervention. The template elicits information about *who* the actors are, and *what happened*. As such, it limits social worker discretion about the content of information provided to the courts

Similar to the other countries under study, the California court cannot take jurisdiction of a child unless the state can show that it has provided reasonable efforts to prevent removal. Prompts to record whether reasonable efforts were provided are ample in the English and Finnish templates; in California, a separate, earlier hearing than the one under study here is used to determine whether reasonable efforts to prevent placement were provided. In the template for that hearing, social workers are

directed to enumerate the services that were previously offered to the family and thus there is no corollary in this study.

Also similar to the English template is the requirement to identify the family's informal social support network as a potential service ally. The California template includes a request for information about the parent's and the child's cultural identity and how this might serve as an added strength that might otherwise be overlooked. Inclusion of information about cultural identity might serve an additional benefit in alerting all of the parties about the need for their own cultural sensitivity as readers of the presented material. Given the significant over-representation of children of color in California's child welfare system, attention to the unique cultural context of the child and family may be warranted.

What is the discretionary leeway that these four care order templates, considered in isolation, provide to child welfare agencies and social workers? The templates differ in the number of instructions they provide. As a gross measure, the Norwegian template includes only eight heading categories, Finland 10, England, 13, and California (USA) has 23. The mere number of instructions suggests that the template with the fewest instructions, the Norwegian template, leaves the greatest discretionary space, whereas the template with more instructions (California) suggests less discretion in the kinds of information that can be presented to courts for decision making. Applying the weak and strong discretionary dichotomy, the Norwegian template provides staff with strong discretion as it gives very few instructions on the material content of the information that should be included within each instructional heading. The three other templates provide staff with weaker discretion. Both the English and the California template are particularly detailed in their instructions about the relevant and necessary information to include within each instructional heading.

6. Conclusions

Using alternative sources of data, the authors have previously identified some of the similarities and differences in the child welfare systems of England, Finland, Norway, and the USA (California) (Author, 2015). The purpose of this paper is not to re-examine those earlier narratives, but instead to examine whether one structural element used by

these systems – the care order template -- could serve to instantiate these articulated differences across systems. The templates represent a part of the institutional script that structures the nature and types of information that the courts are given to hear, and they structure the kind of information that social workers have been trained to look for. They define the essential details of those families' and children's circumstances on which an ultimate state intervention is considered.

The blank templates are not random; rather, they are a mechanism and a manifestation of the principles and the legislation of each child welfare system. The institutional scripts of care orders demonstrate how the system principles are translated into themes that reflect the courts' requirements to justify state intervention. In California, the templates focus on family problems that are linked to the evidence-base associated with risk – all in the context of a safety threshold for children. In England, the templates orient the reader to the child's well-being and the plan for his/her future. The Finnish templates orient the reader to the service context provided to the family and its sufficiency as a hedge against further state action. And in Norway, the template is used as a tool to ensure proper procedural safeguards are enacted. These scripts therefore crystallise differences across and between national contexts and as such serve to illustrate country child welfare orientations towards protecting children from risk and harm (California) and providing services to families and children (Norway and Finland) described by Gilbert et al. (2011). Having said that, it is also important not to over-state the differences: safety is important in Finland and Norway too (child endangerment is the first criterion for a care order), procedural safeguards for children and parents are important in all the countries, the provision of services to try to prevent removal is important in the USA too. It is a matter of emphasis and nuance, rather than absolute and rigid differences.

In the case of England, a review of the template in the context of other institutional scripts helps to clarify that country's place in a cross-country context, and shows the subtleties behind simplistic risk/service caricatures. Other authors have previously referred to the English system as being a hybrid between the family service and child protection orientations (Gilbert et al., 2011; Author et al., 2015a). The blank care order application template demonstrates how the English child welfare system is currently trying to balance these two approaches, at the point when a case has entered care proceedings. There is a focus on the child's well-being now and in the future, with a

requirement for detailed information about the harms, risks and proposed plans for the child in several psychosocial dimensions (the welfare checklist). There is a strong emphasis on the child's experiences, wishes and feelings, but also on looking for placements within the extended family. The blank template thus reveals how the notion of children's 'welfare' is currently constructed in England under the umbrella of promoting children's well-being while securing their protection.

A child welfare worker's task is, fundamentally, to act within the principles and legal boundaries of their child welfare system. When responding to the care order application form, these principles and legal boundaries are made manifest, and the expectations and leeway for discretion given to child welfare workers becomes visible. Cross-country comparisons, whether conducted by way of policy frames (Author, et al., 2015a), front-line practice (Author, et al., 2016a; Author et al., 2015b), or institutional scripts allow for a re-examination of the priorities, principles, and boundaries that shape any single country and help to shape the future of child welfare internationally.

References

- ADCS and Cafcass. Association of Directors of Children's Services and Children and Family Court Advisory and Support Service. (2016). *Local Authority Social Work Evidence Template*, available at: <http://coppguidance.rip.org.uk/court-application/section-31-application/>
- Atkinson, P., & Coffey, A. (1997). Analysing Documentary Realities. In D. Silverman (Ed.), *Qualitative Research. Theory, Method and Practice* (pp.45–62). London: Sage.
- Burns, K., Pösö, T. & Skivenes, M. (2017). *Child welfare removals by the state: a cross-country analysis of decision-making systems*. New York: Oxford University Press.
- Cicourel, A. (1968). *The Social Organization of Juvenile Justice*. New York: Wiley.
- D'Andrade, A. C. (2009). The Differential Effects of Concurrent Planning Practice Elements on Reunification and Adoption. *Research On Social Work Practice*, 19. 446-459. doi:10.1177/1049731508329388.
- de Godzinsky, V., (2015). Kohti lapsiystävällisempää oikeudenkäyttöä (Towards more child friendly justice) *Lakimies* 6, 856 – 878.
- Dingwall, R., Eekelaar, J. & Murray, T. (2014). *The Protection of Children* (new version of second edition published in 1995). New Orleans: Quid Pro Books.
- Dworkin G. (1972). Paternalism. *The Monist*, 56(1), 64-84. Available at: <https://doi.org/10.5840/monist197256119>.
- European Convention on Human Rights, European Court of Human Rights Council of Europe. Available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf.
- Family Justice Review (2011). *Family Justice Review, Final Report*. London: Ministry of Justice. Available at:

- https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217343/family-justice-review-final-report.pdf.
- Finnish Child Welfare Act 417/2007, section 40. (Lastensuojelulaki). Available at: <http://www.finlex.fi/fi/laki/ajantasa/2007/20070417?search%5Btype%5D=pika&search%5Bpika%5D=Lastensuojelulaki>.
- Gilbert, N., Parton, N. & Skivenes, M. (2011). *Child Protection Systems. International Trends and Orientations*. New York: Oxford University Press.
- Hasenfeld, Y. (2010). Organizational Forms as Moral Practices: The Case of Welfare Departments. In: Y. Hasenfeld (ed.), *Human Services as Complex Organizations* (pp. 97–114). Los Angeles, Sage.
- Healy, K. and Mulholland, J. (2010). *Writing Skills for Social Workers*. London: Sage.
- Hiitola, J. (2015). *Hallittu vanhemmuus. Sukupuoli, luokka ja etnisyyshuostaanottoasiakirjoissa [Governed parenthood. Gender, class and ethnicity in care order files]*. Acta Electronica Universitatis Tampereensis 1515. Tampere: University of Tampere.
- Hupe, P. L., & Buffat, A. F. (2014). A Public Service Gap: Capturing Contexts in a Comparative Approach of Street-Level Bureaucracy. *Public Management Review*, 16 (4), 548-469. doi: <http://dx.doi.org/10.1080/14719037.2013.854401>.
- Huuskonen, S. (2014). *Recording and use of information in a client information system in child protection*. Acta Universitatis Tampereenses 1904. Tampere: Tampere University Press.
- Lastensuojelun käsikirja: lastensuojelun lomakkeet (2017). In *The Handbook of Child Welfare: the forms in child welfare 2016*. Retrieved August 8, 2017 from, <https://www.thl.fi/documents/647345/866017/Hakemus+hallinto-oikeudelle+lapsen+huostaanottoa.pdf/a7e755bd-6139-4f80-a5d4-cf805eed2ee0>
- March J. G., & Olsen J, P. (2006). Elaborating the New Institutionalism. In R. A. W. Rhodes, S. A. Binder & Rockman B. A (ed.), *The Oxford Handbook of Political Institutions*. Oxford: Oxford University Press.
- March J. G., & Olsen J. P. (1989). *Rediscovering Institutions: the Organizational Basis of Politics*. New York: The Free Press.
- Norwegian Child Welfare Act of 1992, article 4-12 (Barnevernloven). Available at: https://lovdata.no/dokument/NL/lov/1992-07-17-100#KAPITTEL_4.
- Official California Legislative Information. Leginfo.ca.gov. Available at: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=wic&group=00001-01000&file=300-304.7>
- Pösö, T. (2011). Combatting Child Abuse in Finland: From Family to Child-Centered Orientation. In N. Gilbert, N. Parton & M. Skivenes (eds.), *Child Protection Systems. International Trends and Orientations* (pp. 112–130). New York: Oxford University Press.
- Prince, K. (1996). *Boring Records? Communication, Speech and Writing in Social Work*. London: Jessica Kingsley.
- Prior, L. (2003) *Using Documents in Social Research*. London: Sage.
- Schneider, C. E. (1992). Discretion and Rules: A Lawyer's View. In K Hawkins (Ed.), *The Uses of Discretion*. Oxford: Oxford University Press.
- Wastell D., White S., Broadhurst K., Peckover S. & Pithouse A. (2010). Children's Services in the Iron Cage of Performance Management: Street-level Bureaucracy and the Spectre of Švejkism. *International Journal of Social Welfare* 19, 310–320.