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CHAPTER FIVE

JUDGING SOCIAL WORK EXPERTISE IN CARE PROCEEDINGS

ANN POTTER

I. INTRODUCTION

This essay draws on a qualitative, socio-legal study which explored how the judiciary, lawyers and social workers evaluate social work evidence within care proceedings in England, across and between the disciplines of law and social work. First, the contemporary context for social work practice in care proceedings in England is explained and approaches to studying social work expertise are outlined. The empirical study is then briefly described, followed by a discussion of findings relating to judicial evaluations of social work evidence within legal proceedings. Collins and Evans' (2007) theory of expertises was applied in the study to analyse the presentation of social work evidence, and the evaluation of professional social work expertise by judges in care proceedings, with a focus on interactional and meta-expertises. This new application of the theoretical framework within an empirical, socio-legal study enables a focus on interdisciplinary communication and evaluation within legal proceedings, understanding expertise as more than expertise in 'doing' social work or law.

II. CONTEXT: CARE PROCEEDINGS, FAMILY JUSTICE REFORMS AND THE RE-POSITIONING OF SOCIAL WORKERS AS "EXPERTS"

Care proceedings in England are the legal means by which state-employed social workers may apply to the Family Court to remove a child from its family, where parents have caused

or may cause significant harm to the child (Children Act 1989 s.31). Care proceedings are civil cases heard by lay magistrates (supported by a legal adviser) or by legally qualified judges, depending on the complexity of the case (hereafter referred to collectively as judges). The social worker, via their employing local authority, is the applicant in the proceedings and they present evidence to the Family Court as a professional witness, to support the application. The parents and the child are respondents within this adversarial legal process and the child is represented by an independent social work professional (the Children's Guardian). The role of the Children's Guardian is to represent the child in court; to make their own enquiries and advise the court on the appropriateness of the local authority's application; to appoint and instruct a lawyer for the child; and to advise if additional evidence is required. All parties are represented by publicly funded lawyers for the duration of the proceedings. During the proceedings, written evidence is provided by all parties and contested evidence may be challenged in oral cross examination, with factual judgements decided on the balance of probabilities. Prospective judgments at the end of the proceedings, about the most appropriate future plan for the child, are based on the primary principle in the Children Act 1989 that the child's welfare is the court's paramount consideration (Children Act 1989 s.1).

If a decision is made to issue care proceedings, local authority social work evidence is generally comprised of the social worker's written assessments of the children's needs, the capacity of the parents to meet those needs and consideration of environmental factors that may support or hinder the parenting capacity (Department for Education 2014; Department for Education 2015). Judges in care proceedings consider evidence from all the parties, including the professional opinion evidence provided by the local authority social worker and the Children's Guardian (on behalf of the child), to decide on the appropriate outcome for the child. Thus all care proceedings have at least two professional witnesses, both of whom are

permitted to provide opinion evidence, based on their professional work with the family. Whilst the Children's Guardian plays an important role in care proceedings in representing the child and advising the court, local authority social workers' evidence in care proceedings is an under-researched aspect of professional practice and is a focus within family justice system reform, as discussed below. Accordingly, evaluation of the evidence of local authority social workers in care proceedings, and particularly their expertise, was chosen as the focus for this study.

In some care proceeding cases, in addition to the professional witnesses already outlined, the court may appoint one or more independent 'expert' witnesses, as defined in court rules (Family Procedure Rules 2010 SI2010/2955, Part 25). For example, a paediatrician, radiographer or neurologist may be required to advise on the potential cause of injuries in a case of suspected physical abuse; a DNA testing company scientist may report on biological relatedness; a psychiatrist may advise on treatment options and prognosis for a parent whose mental disorder is negatively affecting their parenting capacity. Independent expert witnesses are appointed when the court requires specialised areas of knowledge and recognised levels of expertise in relation to particular features of a case. Clearly the local authority social worker (or the Children's Guardian) is not qualified to provide this type of medical or scientific evidence.

The relative status of professional and expert witnesses in care proceedings was addressed in the most recent government commissioned reform of the family justice system in England. The Family Justice Review (Ministry of Justice 2011b) highlighted a major problem with care proceedings taking too long, causing delayed decision making for children (and families), with increasing cost to the public purse. In particular, the review identified and confirmed a generalised lack of trust in the quality of local authority social work practice and evidence in care proceedings. This led to an over-reliance on court-appointed, independent

expert witnesses, particularly clinical psychologists and independent social workers, which was identified as a significant, contributory factor to unnecessary delay. This view was supported by research which found that additional, independent expert witnesses were used often in care proceedings to provide a ‘second opinion’ on the prospective, welfare decision-making at the end of proceedings, as a consequence of a lack of confidence in the evidence and professional expertise of local authority social workers (Brophy 2006; Masson et al 2008). This was as opposed to the appropriate need for medical or ‘scientific’ experts in some cases, as explained above. The increasing use of independent social workers and psychologists reflected a perceived hierarchy of professional knowledge and expertise within the Family Court. Evidence from independent social workers and professionals such as clinical psychologists was deemed ‘more’ expert, and therefore preferable to relying solely on evidence from local authority social workers (Ministry of Justice 2011a).

To reduce delay and curb costs, the Family Justice Review (Ministry of Justice 2011b) recommended a mandatory reduction in the use of independent experts in care proceedings. This Review recommendation resulted in legislative change, and the Children and Families Act 2014 (s. 13(6)) now formally restricts the use of independent expert witnesses in care proceedings to situations where it is ‘necessary’. In 2013, anticipating this legislative change, the President of the Family Division of the High Court of England and Wales, Sir James Munby made widely publicised comments about social workers, and the lack of trust in them as professional witnesses. With fewer independent expert witnesses, he identified that judges would have to rely more on social work evidence as the main source of professional information, analysis and (hopefully) expertise in relation to outcomes for children. This would require legal professionals to reconsider their approach to evaluating local authority social work evidence within care proceedings. Accordingly, the President of the Family Division outlined his expectation that, as there would be fewer independent experts, the

judiciary and lawyers must now perceive and treat social workers in care proceedings as ‘experts’ in their own right (Munby J 2013).

These legal and policy changes aimed to influence professional legal practice and attempted to re-position local authority social workers as ‘experts’ within care proceedings, by promoting increased recognition of expertise within this professional group. However, the prevailing social, political and media perceptions of local authority social workers was (and remains) negative, particularly in relation to a well-documented ‘blame culture’ surrounding child protection services, with social workers often seen as failing in their responsibilities to protect children from abuse (Dickens et al 2017; Care Crisis Review 2018). The potential contradiction between a policy driven attempt to re-position social workers as experts, and a social context of negativity and blame towards social workers provided an appropriate rationale to explore understandings of local authority social work expertise, using legal evaluations of local authority social work evidence within care proceedings as a basis for empirical enquiry.

III. UNDERSTANDING SOCIAL WORK EXPERTISE

Social work is a relatively new profession and is based in values such as empowerment and social justice (see, for example, the Global Definition of the Social Work Profession: IFSW 2014). The concept of professional expertise is challenging for some in social work, suggesting associations with and claims to privileged knowledge domains and elite social groups, which may be considered to be potentially ‘at odds’ with the aims of the profession (Parton 2014). However in the context of a ‘blame culture’ towards child protection services, and a perceived ‘expertise gap’ amongst social workers (Dickens et al 2017), there is an

obvious attraction to the identification and development of features of professional expertise within social work, to improve practice and re-claim professional reputation.

In the literature relating to studies of expertise, theories of the structure, acquisition and performance of expertise have tended to dominate (for example, Dreyfus and Dreyfus 1986; Chi 2006; Ericsson 2006). Studies of social work expertise have usually focussed on the development of expertise, with the mastery and application of a body of knowledge as a key feature, acquired over time and often within professional education and training (Fook et al 1997; Drury-Hudson 1999; Fook et al 2000; Taylor and White 2006). In child protection research, studies from across the international social work field have explored social workers' expertise when using different types of knowledge and decision making tools in practice based decision-making (for example, Gillingham 2011). Other studies have compared novices and experienced social workers (for example, Davidson-Arad and Benbenbishty 2014; Fleming et al 2014). As in other research relating to professional practice, social work studies often focus on recognisable features of expert performance during practice with children and families, seeking to understand how social workers might become 'more expert', through a developmental approach to domain-specific education and training. So far, much less attention has been paid to how social work expertise is understood and evaluated in interdisciplinary settings, for example when social workers act as professional witnesses in legal proceedings. Social work expertise in this scenario is about the effective communication of social work knowledge and practice, within a legal (rather than a social work) process. Those making judgments about the social worker's expertise are professionals from a different background (law), seeking to understand a different knowledge base to their own and evaluate evidence (information about practice and professional opinion) from another discipline. As such, questions are raised about how expertise may be communicated, understood and evaluated across disciplinary boundaries. This shifts the focus away from

domain-specific considerations of the structure or acquisition of social work expertise in practice with children and families, to the types of expertise involved in inter-disciplinary communication by a social work witness, and evaluation of this by the judge, within a legal process.

Domain-specific, developmental theories of expertise are useful to consider how someone progresses from novice to expert within their own discipline, over time (for example, Dreyfus and Dreyfus 1986; Fook et al 2000). However such theories do not address the dynamic, social processes involved in communicating knowledge and evaluating expertise across disciplinary boundaries. In contrast, Collins and Evans' (2007) theory identifies a range of different expertises, including contributory expertise (expertise in doing) and interactional expertise (expertise in communicating effectively with non-experts, derived from the expert's reflective and interactional abilities). In social work, expertise 'in the field', the practice of social work with families and children, can be categorised as contributory expertise.

Following Collins and Evans, this is different to the interactional expertise required to produce excellent written social work evidence for a legal process, or to be evaluated by legal decision makers as an impressive and authoritative professional witness in a courtroom.

In relation to legal judgments about social work expertise, Collins and Evans also identify types of meta-expertises (expertise in evaluating others) including technical connoisseurship. Technical connoisseurship is described as 'the ability to judge an expertise without being able to practice it' (Collins and Evans 2007, 59). It is also related to interactional expertise and is achieved by socialisation not in the practice itself, but in its language and discourses. In other words, judges need to be sufficiently socialised in the language and practices of social work, in order for them to be able to make meaningful evaluations of the expertise (or otherwise) of the social worker as a professional witness. In this study, Collins and Evans' theory was

useful in enabling consideration of the different types of expertises involved in inter-disciplinary communication and evaluation of social work expertise in care proceedings.

IV. THE SOCIO-LEGAL STUDY

This qualitative, socio-legal study explored the views and experiences of local authority social workers, lawyers and the judiciary in relation to the expertise of social workers in care proceedings. This was an in-depth, ethnographic study of how local authority written and oral evidence was presented and evaluated in a sample of contested care proceedings cases (n=4), within one geographical area in England. Methods included judicial focus groups; observations of court-based professional discussions; observations of the oral evidence of the social work witnesses in the contested hearings; semi-structured interviews with the social work and legal professionals in each case; and analysis of the written social work evidence in each case.

Care proceedings in England are heard in private, with access usually restricted to the parties in the case. The nature of the information presented in evidence by the parties is sensitive. The subsequent legal decisions made may have life-long consequences for the parents and the children involved, and families are often distressed by and within the proceedings. Ethical approval for the research was granted by the University of Bristol Law School Research Ethics Committee. Permissions to conduct the various elements of the study were granted by the Ministry of Justice, the President of the Family Division of the High Court of England and Wales, Her Majesty's Courts and Tribunals Service, Cafcass (the body that employs Children's Guardians) and the local authorities whose cases were included in the study. The focus of the study was professional practice and professionals' experiences of the legal process, however it was important to be mindful of and acknowledge the importance of the

proceedings for each family in the sample cases. No data were collected from or about any family members or children. However, when cases were identified for the study family members were approached, via their lawyer, to provide information about the study and request their agreement to the researcher observations. If any family members objected then the observations did not proceed and the case was not included in the study.

Ethnographic data collection from the sample of cases involved triangulation of a range of qualitative methods, including participant and researcher perspectives (Moran-Ellis et al 2006). Data were gathered from social work and legal professionals about what they understood social work expertise to be, and their experiences of being a professional witness or evaluating professional witnesses in care proceedings. Analysis of the data (Boyatzis 1998) led to the construction of themes relating to the preparation, content, presentation and evaluation of social work evidence, across and between the professions of social work and law. Part of the analysis involved the application of Collins and Evans' theory of expertises, in particular consideration of the social workers' interactional expertise in presenting their evidence and the judges' meta expertise (technical connoisseurship) in evaluating the social workers' evidence within the care proceedings, discussed below.

V. DISCUSSION

All of the social workers in the study expressed a view that they found being a professional witness in care proceedings intimidating and 'nerve-wracking'. This was largely due to their desire to perform well, and achieve a favourable evaluation by the judge in relation to their proposed plan to safeguard the children in the cases. The social workers were concerned to ensure that their written evidence addressed the legal requirements of the care proceedings process, in terms of using the correct evidence format, and demonstrating a balancing

exercise in their analysis that complied with judicial directions in case law (*Re B-S (Children)* [2013] EWCA Civ 1146). The social workers also considered that, to be evaluated as demonstrating expertise, they should include references to social work theory and research in their written evidence, in addition to an account of their work with the family members and the child. In relation to communicating effectively with the legal decision maker, the social workers described that they would need to shape their evidence to the expectations of the court, which required knowledge of the legal process and the practices and etiquette of contested hearings, particularly when giving oral evidence and being cross-examined.

The social workers varied in their level of experience as a professional witness in care proceedings, however they all described this deliberate approach to the preparation and presentation of their evidence, within which they were mindful of the need to ‘have the court in mind’ when providing their professional opinion. This highlighted a conscious awareness amongst the social workers of the inter-disciplinary nature of the communication of their evidence in legal proceedings. They were aware of potential barriers to understanding across the disciplines of social work and law, and they recognised that the onus was on them, the social workers, to shape the way they communicated their evidence, to meet the requirements of the legal evaluators. Thus, to demonstrate expertise as a professional witness within care proceedings, the social workers needed to be able to operate and communicate expertly with legal professionals, within a legal process. The social workers recognised this and in the study they highlighted the importance of becoming socialised in the language and practices of the legal system and care proceedings processes, in order to maximise their potential to achieve a favourable legal evaluation of their evidence.

These findings in relation to the social workers in the study align with Collins and Evans’ theory of expertises, and in particular their identification of Interactional Expertise.

Interactional Expertise is explained as the ability of a contributory expert from one domain

(discipline) to communicate their expertise effectively to someone from another domain. To achieve Interactional Expertise, the dispositions of reflective ability and interactional ability must be engaged and combined. In this study, reflective ability can be seen in the social workers' deliberate and conscious attempts to reflect on what the decision maker wants and needs to achieve the legal decision that the social worker is aiming for. Interactional ability is seen in the social workers' purposeful shaping of social work information and professional opinion into a legally acceptable format, including acceding to requirements in case law about setting out the analysis underpinning their social work recommendation in a particular (legally determined) way. According to Collins and Evans it is the combination and application of these reflective and interactional abilities that enables Interactional Expertise to be realised.

Turning now to legal judgments about social work expertise, as explored in the study. In order to be able to evaluate the evidence of a professional witness from a discipline other than law, it follows that a judge must understand enough about the language and practices of the other discipline to enable them to assess the quality of the practice and the professional opinion presented in the evidence. Collins and Evans explain this as 'technical connoisseurship'. As explained above, all care proceedings involve social workers as professional witnesses and as such Family Court judges are likely to acquire technical connoisseurship through hearing cases, in addition to mandatory judicial training that they must undertake, prior to being allocated care proceedings cases.

The judicial focus groups provided some general insights into the experiences and the expectations of the legal decision makers when evaluating social work evidence in care proceedings. In order to be evaluated favourably, the judges expected the social workers to adhere to the legal requirements for the format of their evidence, and to show that the analysis underpinning their recommendation was compliant with case law, as outlined above.

The judges did not place significant emphasis on other potential indicators of expertise such as the length of social workers' practice experience, or the need for social workers always to include theory and research in their evidence (this was in contrast to the expectations of the social workers). Rather, the judges expressed a strong view that social work evidence that demonstrated compassionate, relationship based practice with children and families (Turney 2012) would be more likely to indicate reliability, credibility and expertise in the social work witness. In summary, the judges identified that, for them, social work expertise would be evidenced by appropriately structured written evidence, with a clearly reasoned recommendation, which demonstrated fair and value based work with children and families

The observations of the contested hearings in the sample cases provided an additional opportunity to analyse how the judges evaluated the social workers' evidence and their expertise as professional witnesses during their oral evidence in the sample cases. In adversarial legal systems, the lawyers for the parties in a case usually conduct the questioning of witnesses. However, in contested care proceedings hearings in England, it is also common practice for a judge to ask their own questions directly of a witness, during the oral evidence. In this study, different types of judicial question posed to the social workers in the cases were observed and categorised as clarification questions, elaboration questions and discursive questions. Instances of discursive questions in particular provided examples of observed inter-disciplinary communication and evaluation. This was judicial evaluation 'in action', where the social work witness and the legal decision maker engaged in an exchange of several questions and responses about a particular aspect of the social worker's oral evidence. Observations of these discursive exchanges between the judge and the social work witness indicated that the judges were applying their own knowledge and experience of social work practice, including social work theory and research evidence, in formulating their questions to the social work witness. In one example, the judge and the social worker 'discussed' the

social work research evidence for decision making as to the placement of siblings together or apart. In formulating the discursive questions, the judge demonstrated familiarity with the relevant social work knowledge base for this issue. During the exchange, the judge appeared to respond favourably to the social worker's (knowledgeable) answers to the questions and it became apparent that the judge was eliciting the 'expert' opinion of the social work witness on this aspect of the case. This demonstrated technical connoisseurship in the judge. The judge was seeking to evaluate the social worker's expertise about the issue, but in order to do so they needed to know (enough) about social work's language and practices (at least in relation to this particular issue) to initiate and continue the discursive exchange as observed. Interactional expertise was demonstrated by the social work witness, who responded knowledgeably and authoritatively to the judge's questions, in effect engaging in a type of professional discussion with the judge. This example highlights a dynamic relationship between the expert (social worker) and the evaluator (judge). The social worker engaged their interactional expertise to communicate their social work knowledge to a legal audience, within a legal process. The judge used technical connoisseurship (about social work), both to initiate the discursive question and answer exchange, and then to evaluate the responses of the social work witness during their evidence.

VI. CONCLUSION

This essay has outlined some examples of the application of Collins and Evans' theory of expertises within an empirical, qualitative socio-legal study of social work expertise in care proceedings. Although developed primarily within the field of Science and Technology Studies, Collins and Evans' theory has potential applications in other inter-disciplinary

processes, in particular those involving the communication, presentation and evaluation of professional knowledge across disciplinary boundaries.

The application of the theory within this study enabled a useful differentiation between expertise in child protection social work with children and families, and expertise as a professional social work witness in care proceedings. A social worker may be engaged in excellent, expert social work with children and families ‘in the field’ (contributory expertise within the social work process). However in order to be judged as an expert professional witness within care proceedings, a social worker must prepare and present their evidence in a form and manner that enables a favourable legal evaluation (interactional expertise within the legal process).

Collins and Evans’ theory also enabled identification of a specific judicial meta-expertise, technical connoisseurship. This is based on socialisation in the language and practices of another domain or discipline, and was observed in this study in the judicial evaluations of social work witnesses during their oral evidence. Technical connoisseurship underpins expertise in evaluation and the formulation of informed judgments about a familiar domain. It involves ‘acquaintanceship’ with the domain, rather than immersion within it. The example from this study demonstrated how technical connoisseurship was used by a judge to evaluate a specific, knowledge based aspect of a social work witness’s evidence.

The legal and policy context outlined earlier involves the re-positioning of social workers as expert professional witnesses in care proceedings. This requires the judiciary to accept and rely on social work evidence as their main source of expert professional opinion for legal decision making. Prevailing negative views about social work practice present a challenge to this process. The application of Collins and Evans’ theoretical framework assists with a deeper understanding of the range of expertises involved in promoting effective inter-

disciplinary communication and evaluation in legal proceedings. This understanding has the potential to assist social workers to develop and improve their practice and communication as professional witnesses. It encourages them to focus on socialisation in the language and practices of the court, thus enhancing their interactional expertise. For judges, the importance of technical connoisseurship in effective evaluations of social work witnesses underlines the need for judges to be or become sufficiently acquainted with the knowledge base of the social work witness.

From both perspectives (social worker and judge), it is clear that expertise needs to be understood as more than ‘doing’ social work or law. Rather, and as explained by Collins and Evans, expertise is a social process, involving socialisation within the particular field of knowledge and practice, thereby enabling effective and meaningful communication and evaluation across domains and disciplinary boundaries. This understanding should inform the types of professional development processes that will promote interactional expertise in social work witnesses, and support judges to develop and maintain technical connoisseurship to make informed evaluations of social work evidence within legal proceedings.

Applying Collins and Evans’ theory of expertises, it is clear that efforts to improve practice and confidence amongst social work witnesses and judicial evaluators should prioritise effective socialisation across and between the disciplines of social work and law.

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