

Evidence in Norwegian child protection interventions – Analysing cases of familial violence

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Abstract

How is expert evidence used in care order proceedings when children are considered for foster care placement because of familial violence? What are important factors and how do the decision-makers use and evaluate evidence from specialists and experts? In this in-depth analysis of 104 published care order decisions from the Norwegian County Boards, I investigate how decision-makers use and evaluate evidence from expert witnesses to determine whether a care order may be granted. The analysis shows that the evidence largely revolves around social functioning, care context and topics about how parents and children relate to each other. Led by the law, the decision-makers use this evidence to determine whether the child's situation is harmful, whether support services are viable and whether a care order is in the child's best interests. I find that decision-makers draw unevenly on evidence with regards to these legal requirements, and that the use predominantly defers to expert authority. However, there is also evidence of independent reasoning, where deferral to the epistemic authority of the experts is weakened. This is shown through evaluative and critical assessments and scrutiny of the disciplinary evidence.

KEYWORDS

child's best interest, decision-making, epistemic authority, evidence, justifications, violence

1 | INTRODUCTION

A broad consensus exists that familial violence has severe consequences for children (Hillis et al., 2017; Holt et al., 2008). Where child protection services (CPS) in Norway are concerned about the welfare of a child and consider foster care placement, they refer the case to the County Social Welfare Board (CB). The CB decides the question of a care order (foster care placement) after court-like proceedings (Skivenes & Søvig, 2017). These decisions rest on reports and testimonies from experts, CPS workers, teachers, other professionals and existing social science literature – that I refer to as *disciplinary evidence*

and *disciplinary knowledge* – as well as lay testimonies from parents, children, relatives and their social networks (Løvlie & Skivenes, 2021). The CB considers all evidence to make a decision (Løvlie & Skivenes, 2021; The Child Welfare Act, 1992). The aim of this study is to analyse decision-makers' use and evaluation of disciplinary evidence, which in a democracy should assist the CB in making accountable and legitimate decisions (Molander et al., 2012).

Criticism of disciplinary evidence concerns both the imperfections of scientific literature and knowledge on which it is based, and experts' differing opinions (Mnookin, 2008). In Norway, criticism by researchers and professionals concerns the qualifications of experts

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engaged by the CPS, the quality of expert reports, how data are interpreted and what implications this have or may have for the children, and the quality of the report review process (Asmervik, 2015; MRU, 2021; Wester et al., 2021). These criticisms showcase experts and professionals having disagreeing opinions and concerns about the interpretation of data, causal claims, the potential implications for children's development and well-being, including the imperfections of disciplinary knowledge. A concern follows about the balance of epistemic dependence (Ward, 2016) and the decision-makers' awareness of the imperfections of science and their capability to evaluate the disciplinary evidence independently and critically (Robertson & Broadhurst, 2019; Ward, 2016). In addition to this, the decision-makers' lack of training to evaluate the disciplinary evidence is a possible competency gap that reinforces concerns of dependence and deferral to professionals (Burns et al., 2016; Cashmore & Parkinson, 2014). This underscores the importance of investigating the balance of epistemic dependence and the risks it represents to democratic legitimacy (Turner, 2001; Ward, 2012). However, there is little research on judicial decision-makers' evaluation and the use of disciplinary evidence (Robertson & Broadhurst, 2019; Ward, 2012). CB decision-makers are required to make an independent reasonable decision (The Child Welfare Act, 1992: § 7–3). Therefore, this investigation is important to determine the accuracy of criticism and to contribute to the limited pool of research on the use of disciplinary evidence in care order justifications.

The paper examines two research questions:

1. How do CB decision-makers use and evaluate disciplinary evidence when making care order decisions in published cases about familial violence?
2. Is there an evidence in the CB decision-makers' reasoning of independence from the epistemic authority (Ward, 2016) of experts in these cases?

The data for my study consist of all publicly available Norwegian care order decisions concerning violence from 2016 to 2017. The written decisions provided all evidence and arguments from the proceedings that the decision-makers deem relevant to include and serve the decision-makers' justifications for intervening (The Dispute Act, 2005). The paper begins with an operationalisation and discussion of disciplinary evidence set against related research. I continue with contextual descriptions of the CB, legislation and violence, prior to establishing the theoretical framework. Then I described the research design, method and coding process, followed with the findings, a critical discussion, and finally the concluding remarks.

2 | BACKGROUND

2.1 | Disciplinary evidence

Here 'disciplinary evidence' is understood as child-orientated research-based knowledge from psychology and other disciplines that

provide, or ensure quality of, welfare services (McAvoy, 2014). It covers and merges different disciplines sharing a scientific basis into one concept, understanding 'discipline' as schools of research, thought, and praxis concerned with children and families. It is inspired by Abbott's (1988) theory about different professions' claim to jurisdiction, and Littig's (2009) distinction of experts and specialists. I connect Abbott's three professional acts ('diagnosis', 'inference' and 'treatment') with Littig's distinction between specialists and experts according to 'formative' and 'interpretative' power. Formative power (enacting measures in people's lives) overlaps with Abbott's treatment concept and interpretative power (creating definitions and understanding of phenomena) overlaps with Abbott's diagnosis and inference concepts (Abbott, 1988; Littig, 2009). In this study, psychologists and physicians are experts considered to share jurisdiction, being the principal producers of knowledge in child-orientated disciplines. They produce theories and terminology to diagnose and infer treatment, also used by specialists such as social workers, nurses, and arguably, in this context, teachers and other professions working with children (Burns et al., 2016; Ferguson, 2018). Collectively, experts and specialists have epistemic authority, i.e. authority derived from their professional and specialized knowledge (Hardwig, 1985). Their interpretative power, as expressed in scientific literature and evidence they produce, is important for the CB to be sufficiently informed (Littig, 2009). The disciplinary evidence provides the CB, possessing formative power and authority, with "a capacity to action" (Adolf & Stehr, 2017: 28), enabling knowledge-based decisions to establish new binding definitions. A new definition, for example, would be granting a care order, which is a significant intervention into family life through an exercise of state power.

Judicial decisions in a democracy should be according to the law, rational and just, based on the facts of the case, including all parties' equal opportunity to argue their case, and up-to-date knowledge relevant to the issues of the case (Alexy, 1989; Habermas, 1996). Decision-makers handling a specific case are challenged by generalized disciplinary knowledge (Cashmore & Parkinson, 2014; Rathus, 2013). Scientific disciplines are rarely unanimous about the interpretation, understanding and treatment of specific phenomena. Because of this, new knowledge is continuously produced, changing the topography of knowledge (Beck, 1992). Navigating disciplinary knowledge challenges decision-makers to adhere to the scientific understanding, which may confound their decisions when applying an everyday or legal understanding of concepts and phenomena (e.g. attachment) that deviates from scientific (e.g. psychological) definitions (Helland & Nygård, 2021; Rathus, 2012). Introducing disciplinary knowledge in judicial settings, whether through expert reports and testimonies or decision-makers reading the literature on their own, may confound and lead to misapplication by the decision-makers, at worst leading to deleterious consequences for children and their families (Rathus, 2013; Ward, 2012). The Norwegian system includes an expert among the decision-makers (see below), differentiating it from other systems, which could arguably minimize the misapplication risks (Skivenes & Tonheim, 2017).

2.2 | Related research

Analyses of care orders cover topics such as parents' defensive strategies when appealing decisions (Juhasz, 2018) and judges' justifications for making, upholding, or changing decisions about adoptions in Norway (Helland, 2020). There are however few social scientific studies on justifications of care order cases focussing on decision-makers' practices of evaluating and using disciplinary evidence (Ward, 2012, 2016).

Expert reports in Norway are assessed and approved by the Commission of Child Welfare Experts (CCWE) before the CB uses them. Norwegian researchers and the human rights committee of the Norwegian Psychological Association (MRU) have expressed concerns that the CCWE accepts reports of poor quality (Asmervik, 2015; MRU, 2021). For example, Asmervik (2015) criticizes two reports, accepted by the CCWE without comments, for lacking considerations of alternative hypotheses and therefore weak conclusions (see also MRU, 2021). This concern was also registered in interviews of child welfare experts (Augusti et al., 2017). This suggests that plurality and rigorousness are important to inform the CB, because current knowledge is uncertain and subject to change. For instance, there are disagreements on diagnosing shaken baby syndrome in Norway, where forensic medical evidence may have led to wrong decisions by the courts (see Wester et al., 2021). Key informant interviews from Norway also indicate limited awareness of updated disciplinary research among CB jurist members.¹

2.3 | The county board and experts

During CB hearings on care orders, all parties can provide a statement, parents are provided with free legal aid, and the decisions may be appealed to the court system (Skivenes & Søvig, 2017). The CB is an independent decision-making body and normally consists of three members: a judge-qualified jurist, a lay member and an expert member (e.g. psychologist). The expert member's presence is to ensure the quality of the decisions' knowledge-basis (Skivenes & Tonheim, 2017). Furthermore, the expert member's knowledge and expertise is to be kept in check by the jurist and lay member, to ensure a democratically legitimate process (Sosialdepartementet, 1985).

CCWE independently reviews expert reports before they can serve as expert evidence, ensuring that accepted disciplinary standards are followed, and that report conclusions follow from the data. CCWE may approve a report with different degrees of 'observations' about the quality of the report, which may be disagreements with the report require minor to major corrections and/or revisions, a supplemental report or no comments. The degrees of observation are no observations, minor observations, observations, recommendation of supplemental report, severe observations and dissent. In 2017, the CCWE reviewed 748 expert reports, 66% received no observations, 20.7% received observations, 8.6% received minor observations, 3.5%

received recommendation of supplemental report, 1.2% received severe observations and 0.4% dissent (BSK, 2018). The CCWE approval process has been audited and was evaluated to improve the rule of law (Haugnæss & Stokland, 2015). Despite this, there are still concerns about poor quality reports receiving no 'observations' and concerns about public trust in child welfare experts (Asmervik, 2015; Augusti et al., 2017).

2.4 | The child welfare act

The CB proceedings are regulated by the Norwegian Child welfare act (1992), and decision-makers must determine whether the evidence proves that the criteria for a care order are met. There are three criteria. First, the legal threshold, it has four sub-sections; the following three are relevant to this study:

- "A. if there are serious deficiencies in the daily care received by the child, or serious deficiencies in terms of the personal contact and security needed by a child of his or her age and development,
- C. if the child is mistreated or subjected to other serious abuses at home or,
- D. if it is highly probable that the child's health or development may be seriously harmed because the parents are unable to take adequate responsibility for the child." (The Child Welfare Act, 1992: § 4–12).

Second, all relevant support measures to improve the situation must have been attempted, and if unsuccessful a care order may be issued only if, third, it is in the child's best interests (CBI) (The Child Welfare Act, 1992). The decision must be reasoned and justified in writing, and typically consists of 12–20 pages including the cases' facts, the parties' arguments and evidence, and the CB's arguments and justification for its decision.² The reasoning and justification should be independent (The Child Welfare Act, 1992), and in these cases disciplinary evidence on violence and its consequences are central considerations.

2.5 | Violence

This study examines care order cases where children are exposed to familial violence: either as witnesses or as direct victims of violence. Research on familial violence is extensive, with widespread agreement on the detrimental consequences for children being targeted by, exposed to, or witnessing it in the family (Hillis et al., 2017; Holt et al., 2008). Care order cases about violence are complicated cases where disciplinary evidence on the symptoms and consequences of violence may strongly influence outcomes (Cashmore & Parkinson, 2014; Rathus, 2013). Therefore, any independence – such as disagreement or contingent agreement – from epistemic authority in these cases may be more perceptible in the CB's use and evaluation of disciplinary evidence.

2.6 | Theoretical framework

Reasoning is intrinsic to judicial justifications using and evaluating evidence, and should be transparent to ensure accountability (Bovens, 2007). If disciplinary evidence is used as the sole justification and authoritatively determines a decision's outcome, this could constitute a risk for the CB's accountability, unless the decision-makers transparently demonstrate that they are not 'blindly' deferring to epistemic authority (Ward, 2016). Disciplinary evidence used to overshadow reasoning about non-legal-but-law-relevant issues – such as normative CBI assessments – are instances of apparent deference.

In this conceptualisation of deference to epistemic authority, the endorsement of epistemic authority and the expressed expectation of deference to that authority are central. A 'weak deference' shows that a decision not only refers to disciplinary evidence and other evidence in reasoning and justification but also understandably and transparently shows why and how a decision was reached. 'Weak deference' is expressed as reflective acceptance of evidence in the decision-makers' reasoning and justification of using disciplinary evidence, connected to lay evidence and the decision-makers' own assessments (Moore, 2017; Turner, 2012). Conversely, 'strong deference' shows that decision-makers defer passively and uncritically to epistemic authority, presenting disciplinary evidence as reason enough. Presumably, an expression of (inescapable) epistemic dependence, where why and how a decision was reached, is obscured (Moore, 2017; Ward, 2016). 'Strong deference' means that disciplinary evidence serves as the sole justification and reasoning of a decision. It is expressed through extensive citation and 'copy-pasting' from disciplinary evidence, presented as justification enough, where other evidence is hidden, or left out, in favour of the disciplinary evidence (without apparent reasoning).

A central principle in care order proceedings is CBI. Determining CBI relies on an interwoven knowledge base where normative considerations and factual information are navigated (Løvlie & Skivenes, 2021; Skivenes, 2010). Epistemic authority in this context highlights the tension among lay, disciplinary, and legal perspectives, as the CBI principle is shaped by indeterminate and conflicting norms about child rearing and family life (Elster, 1989; Mnookin & Szwed, 1983). Where the legal perspective is based in a vaguely defined generalized child, hypothetically representing all children, the disciplinary evidence is empirically based on the specific child (Ottosen, 2006). Deference to epistemic authority in this instance may serve rational decision-making, where evidence reveals the needs of the specific child relative to a generalized child and the CB's assessment of the evidence. The relationship between CBI, as a decision-making principle, and disciplinary evidence may be that the latter is a support mechanism of the former, and how this relationship manifests is a puzzle that this study's approach sheds some light on.

3 | METHOD

As a part of the ACCEPTABILITY-project³ financed by the Norwegian Research Council, this study examines 104 care order decisions by the CB about familial violence from 2016 ($n = 59$) to 2017 ($n = 45$). The data were collected from Lovdata.no, an online database of publicly available decisions.⁴ The decisions were de-identified prior to collection. They were written and analysed in Norwegian. Each case was assigned an identifier, used when presenting quotes in the paper: year-number, e.g. 16–12: case 12 from 2016. There were two inclusion criteria during data collection: (1) care order cases according to sections 4–12 of the Child Welfare Act (1992), and (2) explicit mentions of familial violence. For further details on case selection, see Løvlie and Skivenes (2021). Before substantial coding, the data were reviewed and systematized according to types of violence and disciplinary knowledge, number and age of children, and outcome. Physical violence was mentioned in 98 and psychological violence in 87 cases. In 22 cases, only specialist knowledge was used: in 13 cases, support measures had been attempted; in 5 cases, the CB dismissed the viability of support measures for the families; in 2 cases, the CB recommended support measures; and in 2 cases the topic of support measures was absent. In 10 cases, only expert knowledge was used: in 7 cases, support measures had been attempted, and in 3 cases was dismissed. The 104 cases involve 176 children, with an average age of 8 years. Ten of the decisions did not end in a care order, and in one case the decision was a mixed, where three out of four children were removed.

3.1 | Limitations

The coding focusses exclusively on the CB's section of reasoning and justification in the written document. The remaining sections of the written document, about a case's background, CPS argumentation and the private party's argumentation, are excluded. This narrows the analytical focus to elements that are explicated by the decision-makers when writing and justifying the care order-decisions. It allows identifying the extent of disciplinary evidence used in justifications, about whom and what it concerns, and ultimately how the CB evaluates and uses the evidence it deems relevant.⁵ However, other elements of the proceedings and disciplinary evidence that may be of interest but not included by the CB when writing the justification of the decision may be absent from the analytical focus, and the detailed and full presence of disciplinary evidence in a case may be missed.

The sample comprises 27% of publicly available cases from 2016 to 2017 ($n = 384$), and because the selection of case publication is undocumented the sample is not representative. The possibility cannot be dismissed, but is unlikely, that there are more cases involving violence in the published decisions. All of these cases include explicit mentions of familial violence. Cases where violence only pertains to the background or history of one or both parents, but not explicitly

identified as a risk factor, were excluded in the review process. While this means that some relevant cases are perhaps excluded, it is reasonable to believe that decisions not explicitly mentioning violence fall outside the purview of this paper. Also, I have not had access to CPS casefiles, nor did I observe the deliberations of the board members which would have provided further insights into the use and evaluation of disciplinary evidence.

3.2 | Coding

Disciplinary evidence in this sample concerns risks to the care and safety of children and their development; it provides accounts of the present status, and incidents influencing the future, of the children (Løvlie & Skivenes, 2021). Decision-makers cite evidence and research literature, and use it to substantiate claims about risk characteristics or risk behaviours of parents, by focussing, for instance, on their denial and trivialisation of violence, blaming their children, and the parents potential for change (Løvlie & Skivenes, 2021). The 104 decisions were subjected to a thorough content analysis using NVivo 12 in several rounds of coding. This process was framed by the conceptualisation of 'disciplinary evidence' when developing and refining codes, checking for reliability continuously. Codes (Table 1) were developed with three main influences:

1. Conceptual and theoretical perspectives on disciplines, experts/expertise, professions, and epistemic dependency and authority (Abbott, 1988; Hardwig, 1985; Littig, 2009; McAvoy, 2014; Moore, 2017; Turner, 2014; Ward, 2016).
2. Themes of CB reasoning emerging from the data.
3. Existing research on care orders and related CPS, CB and court decisions (Helland & Nygård, 2021; Juhasz, 2020; Krutzinna & Skivenes, 2020; Ward, 2012).

Using NVivo, disciplinary evidence as conceptualized in this paper was identified in the decisions: relevant portions of the text were selected and coded, focussing on CB reasoning and justification citing and paraphrasing specialist and expert reports and testimonies. Citations and paraphrases in the justifications of whether legal criteria were met present likely expressions of deference to or rejection of epistemic authority (Ward, 2016). The focus narrowed on reasoning of evidence and testimonies regarding relevant topics (see below) for determining fulfilment of legal criteria.

3.3 | One category of disciplinary evidence

The conceptualisation of disciplinary evidence as inspired by Abbott (1988) and Littig (2009) was initially operationalized and coded as two categories distinguishing between (1) *specialist evidence* from social

TABLE 1 Code descriptions

Codes	Description	
Evidence		
Disciplinary evidence	Expressions of expert and specialist knowledge in CB reasoning/justification	
Legal criteria		
Legal threshold	Reasoning of legal threshold	
Support measures	Reasoning of relevance/viability of support measures	
CBI	Specific and implicit assessments and reasoning of CBI	
Who		
Children	Disciplinary evidence about children	
Parents	Disciplinary evidence about parents	
Disciplinary evidence topics		
Functioning	Disciplinary evidence about social, psychological, and physical skills, functioning and capacities	
Care context	Disciplinary evidence about social/emotional and physical care history, needs and quality	
Attachment development	Disciplinary evidence about quality, needs, and capacities regarding attachment and development	
Stabilization	Disciplinary evidence about diagnoses, stability and predictability	
Assessments	Sub-codes	
Acceptive	CB agreeing with disciplinary evidence	
	Agreeing	CB explicitly agrees with or makes assessment mirroring disciplinary evidence
	Research	CB references/paraphrases research
Evaluative	CB evaluates disciplinary evidence	
	Data-basis	CB evaluates the data basis of the disciplinary evidence
	Conflicting	Evaluation and reasoning of divergent assessments in disciplinary evidence
Critical	CB criticizes premises or conclusions of disciplinary evidence	

workers, child welfare workers, nurses and teachers; and (2) *expert evidence* from psychologists, physicians and psychiatrists.⁶ However, the extensive presence of both categories, with little relevant variation,⁷ led to combining them into one category of *disciplinary evidence*. It includes some CPS testimonies because of their educational background and professional status, and the CB's emphasis in these instances (Saks, 2012). Some foster parents' testimonies are also included, because unlike biological parents, they must go through an approval and training process (Bufdir, n.d.), and the CB gave more weight to their testimonies in the included observations. References to disciplinary evidence range from page-long citations from reports to short paraphrases.

3.4 | Legal criteria

Codes were created of the written reasoning about the required legal criteria. The three criteria are (1) legal threshold, (2) support measures and (3) the CBI. First, the legal threshold refers to meeting the requirements for one or more sub-sections of the legal section. Second, having attempted and exhausted possible support measures is a criterion making sure that the family has received offers of help to improve the situation. Third, whether a care order is in CBI. All three are required for making a care order decision. The legal criteria codes were then overlaid with the evidence code in NVivo to isolate uses of disciplinary evidence.

3.5 | Evidence about?

The coding distinguishes between disciplinary evidence about parents and children. During this process, four topics crystallised in the CB's reasoning.

1. **Functioning:** parents and children's emotional, social, and psychological skills, functioning and capacity in social situations. Characteristics of parents' behaviour and children's abilities to socialize and interact with others appear central to determining neglect and violence. Children interacting poorly, exhibiting antisocial tendencies, older children that are unfamiliar with what is considered normal hygiene, parents struggling with illiteracy or interacting poorly with teachers, the CPS, or other welfare services. It includes instances of adequate functioning, e.g. parents may have 'good social functioning', or children's emotional capacities are advantageous, despite detrimental factors of a poor care situation.
2. **Care context:** the care situation both past and present, including current and future needs; if parents provide inadequate clothing, being repeatedly late in kindergarten, not understanding signals from their children, focussing on their mobile phones during meals, or letting personal struggles negatively affect the care situation. Conversely, situations of good care are included, despite other detrimental factors.

3. **Attachment and development:** descriptions and quality of attachment and development between parents and children, often connected with parents' and children's development, e.g. abilities to control emotions. Including observations of good development, or attachment, despite poor functioning or detrimental care situations.
4. **Stabilization:** diagnoses and the need for predictability and stability. The potential consequences of a psychiatric diagnosis of parents or children that may inhibit care owing to treatment keeping parents and children apart. Additionally, predictability and need for stability for children are included, because of diagnoses or other struggles. Including positive observations often related to how parents or children deal with diagnoses in a good way, or where stability may be present, despite poor care conditions.

3.6 | Assessing knowledge

To investigate the question of use and evaluation of disciplinary evidence, and to detect independent reasoning, theoretical input on epistemic authority and the role of knowledge informed the operationalisation that is otherwise rooted in the data.

Assessments were identified in the use and evaluation of references to, citations and paraphrases from disciplinary evidence. I identified three kinds of assessments, with four sub-codes. First, where the CB predominantly adheres to the conclusions of the disciplinary evidence, these *acceptive* assessments generally endorse deferral to epistemic authority. Two sub-codes were devised: (A) agreeing, where the CB explicitly agrees with and/or mirrors its own assessment with the disciplinary evidence, and (B) research, where the CB cites/paraphrases research literature. Second, where the CB evaluates disciplinary evidence and knowledge, these *evaluative* assessments lean toward reflective acceptance (Moore, 2017), based on evidence evaluation and corroborating lay evidence (Turner, 2012). Two sub-codes were devised: (A) data basis, where the CB highlights the basis of the evidence – clinical work and observations – and other details about the quality of the disciplinary evidence, and (B) conflicting assessments, identifies where different disciplinary evidence assess differently and conclusions diverge. Third, where the CB openly criticizes the disciplinary evidence's premises and/or conclusions. These *critical* assessments tend toward rejection of, or weaker deferral to, disciplinary evidence because premises and conclusions do not fit nor fit the CB's own assessment. Including procedural criticism, e.g. the CPS applied too late for a care order, or the CB disagrees with the need for such an application.

These codes are not divided between strong or weak deference to epistemic authority, because either may appear in a case. A 'sum of deferral' would be meaningless, as even in a case of criticism, there may be evaluative and acceptive assessments.

The decisions were de-identified at the time of collection; however, further anonymisation was undertaken by the researcher. I have engaged with and followed the research ethics guidelines by The National Committee for Research Ethics in the Social Sciences and

the Humanities.⁸ The study has been subjected to the legal and ethical process of the project.⁹ All excerpts presented in the findings section are fully anonymised, translated by the author and used illustratively to show instances of how decision-makers express uses and assessments of disciplinary evidence.

4 | FINDINGS

The findings show disciplinary evidence in 101 (97%) of the decisions. In 98 (94%) decisions, disciplinary evidence concerned children, and parents in 86 (83%). The larger focus on children in disciplinary evidence is unsurprising, because of the CBI principle, whereas the relatively high focus on parents is expected considering they represent the risk of violence.

Concerning sections 4–12 legal criteria, Table 2 shows that the legal threshold was considered and reasoned in all cases. Two points of interest appear in the criteria column: that support measures were not explicitly considered in two cases, and that in four cases the child's best interests were not given an independent justification beyond assertions like “The decision is in the best interests of the child”.

To what extent are legal criteria based in disciplinary knowledge? When combining knowledge codes with legal criteria codes, Table 2 shows disciplinary evidence present in the consideration of the legal threshold (93%), support measures (32%) and CBI (31%).

Figure 1 shows four topics in the CB's reasoning. The most prevalent topic (89%) concerns social, psychological, and physical skills, needs, and capacities of children and parents. The next topic (78%),

TABLE 2 Legal criteria according to sections 4–12 and disciplinary evidence presence ($n = 104$)

Code	Criteria	Disciplinary evidence presence
Legal threshold	104 (100%)	97 (93%)
Support measures	102 (98%)	33 (32%)
CBI	100 (96%)	32 (31%)

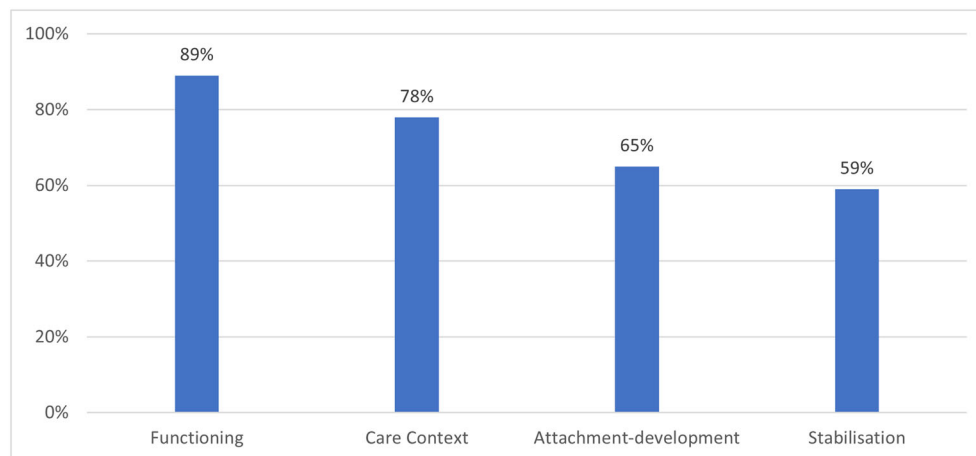


FIGURE 1 Topics ($n = 104$)

concerns the current and past social, emotional, and physical care situation, including needs and quality of psychosocial, and material conditions at home. The third topic (65%) concerns the attachment and children's physical and psychosocial development. The fourth topic (59%) concerns the needs for stability and treatment, regarding parents' conditions and children's need for predictability and safety.

4.1 | Use and evaluation

The use and evaluation of disciplinary knowledge are shown in the CB's responses to epistemic authority (Table 3). The following excerpts are used as illustrations of how the CB uses and evaluates disciplinary evidence.

4.2 | Acceptive

The CB's acceptive responses explicitly adheres to, or present assessments mirroring, the disciplinary evidence, sometimes referring to relevant research. The following excerpt illustrates how the CB agrees with disciplinary evidence recommending a care order concerning two children aged 13 and 8:

“Psychologist specialist [anonymised] from BUP explained that it can be harmful for children not to have

TABLE 3 Assessments ($n = 104$)

Codes	Sub-codes	n
Acceptive		85 (82%)
	Agreeing	81 (78%)
	Research	17 (16%)
Evaluative		71 (68%)
	Data basis	68 (65%)
	Conflicting assessments	13 (13%)
Critical		25 (24%)

their perception of reality validated. This is because children need to be able to trust themselves and their perception to develop well. Children need help to interpret reality. If they are not given sufficient support, it could affect the child's safety and predictability. The county board shares this view." (16–12)

The CB presents the views and descriptions by the psychologist about harmful effects on children's development when validation and reality-interpretation are absent. This appears to be an endorsement of epistemic authority, as the CB 'shares this view', in what may be shorthand for reasoning absent in the decision.

In the next excerpt, the CB decision-makers reference research literature to highlight existing authoritative knowledge and research-based consensus, from a care order concerning a 13-year old:

In the case of epilepsy in general, psychosocial challenges relating to social interaction, insecurity, impulsivity or aggression, and memory difficulties are often reported. In general, about the diagnosis [confidential information removed], it is stated that it can lead to problems with oral instructions, difficulties in understanding fast or unclear speech, and poor listening skills. (17–01)

The excerpt illustrates how the CB links behaviour of the child to relevant diagnostic knowledge, relying on and deferring to this research-based knowledge in their justification to grant a care order.

4.3 | Evaluative

The CB's evaluative responses highlight the quality of the data as a basis for endorsing deference to disciplinary evidence. The following excerpt from a care order concerning a 10-year old illustrates the CB focussing on the data basis:

Special emphasis has been placed on the submitted expert report. The report's introduction states the extensive investigations it is based on, including 2000 pages of documents from the CPS, various conversations with the above-mentioned actors, the support apparatus in general, as well as mother, father, and child. Furthermore, additional documentation has been obtained from various agencies, interaction observations have been made and also cognitive ability tests (WISC-IV and WPPSI-III), and [child]'s functioning has also been mapped with checklists for experiences and symptoms (ATV's mapping package for children living with domestic violence). (16–03)

The amount and diversity of data, together with the descriptions of extensive and thorough disciplinary assessments of the child, are highlighted by the CB as they endorse the disciplinary recommendation to grant a care order.

In instances of conflicting assessments, the CB highlights diverging conclusions of disciplinary evidence in their justification, as illustrated in this excerpt from a case not ending in a care order, concerning four children aged 12, 8, 5 and 3:

The evidence diverges, the testimonies from "Familiehjelpen AS," the child protection service, from "ATV" and the crisis centre ... are not recognisable in testimonies from the [social welfare] contact or GP. ... They have not experienced anything criticisable... Nor do the statements from the school indicate that there is anything worrisome about the children's care situation. (16–15)

The family's social welfare contacts, physician and the school the children attend have no concerns regarding the family, despite the observations and concerns expressed by support measure services and CPS. The decision-makers consider, independently, which disciplinary evidence to defer to and which to challenge and reject.

4.4 | Critical

The CB's critical assessments criticizes disciplinary assessments and testimonies, sometimes showing the board's independence in reasoning and assessment. This excerpt from a case concerning three children aged 6, 5 and 3, not ending in a care order, illustrates independence in the CB criticism of poorly supported conclusions:

The board finds, based on a review of the observations [anonymised] has made in the family and [anonymised]'s supplementary explanation, that there is no basis for [anonymised]'s conclusion that these children live with serious neglect ... the board cannot see that it is likely that the children live in a clearly unsustainable situation with their parents, nor that it will be in the children's best interests for them to be taken out of the home. In the board's assessment, [anonymised]'s report draws conclusions based on poor factual basis. (17–09)

The CB has reviewed the expert report, rejecting it based on no or little evidence in the report to support its conclusion, also stating that it is doubtful that a care order would be in the children's best interests.

5 | DISCUSSION

5.1 | Assessment

This study addresses how Norwegian decision-makers use and evaluate disciplinary evidence in care order decisions. According to Ward (2016), a 'weak' expression of epistemic deference is appropriate in the judicial context. It acknowledges the relationship of dependence

between decision-makers and disciplinary practitioners and requires that the decision-makers themselves determine whether disciplinary evidence is relevant and understandable (Ward, 2016). This is similar to what Moore (2017) calls 'reflective acceptance', where the disciplinary evidence must withstand procedural contestation and scrutiny and be deemed sufficiently 'convincing', and that the decision-makers through argumentation come to a conclusion, explicating disagreements in the written decision. The findings of this study of care order decisions about familial violence demonstrate that the CB may actively, based on independent reasoning, choose to accept the premises and conclusions of the disciplinary evidence, judge the disciplinary practitioners' credibility, and fit disciplinary evidence together with other evidence (Moore, 2017; Turner, 2012).

To ensure accountability, decisions must be available, and Norway published 15% of the CB decisions in 2017 (Fylkesnemndene, 2018),¹⁰ which is high compared to countries like, for instance, Ireland, where access to published care order decisions is more difficult (Burns et al., 2019). Also, the reasoning and justification must be understandable (Bovens, 2007). In other words, the CB should be transparent and detailed in their evaluation of evidence – arguably also a challenge for professionals who deliberate among themselves when creating or approving reports (Moore, 2016). Thus, the transparency of disciplinary evidence to be assessed by decision-makers influences the decision-makers' competency gap (Cashmore & Parkinson, 2014; Moore, 2016). However, in the Norwegian system, the inclusion of an expert member may help to bridge this gap (Skivenes & Tonheim, 2017). Also, disciplinary evidence from schools and CPS may relieve the CB from relying on a single professional source, alleviating vulnerability to poor-quality expert reports, through a kind of data triangulation (Bernt, 2017).

How is the disciplinary evidence evaluated? The decision-makers largely show acceptive agreement (78%), sometimes supported by references to research (16%). This suggests a strong deferral; however, it is informed by the evaluative assessments of the basis of the evidence (65%), where premises and conclusions are considered, showing the CB asserting competency to evaluate the evidence. Furthermore, when the CB evaluates conflicting disciplinary evidence (13%), it claims understanding of the disciplinary evidence's quality and relevance, asserting independent reasoning. Here, the CB endorses some evidence while rejecting other. Two possible explanations for these demonstrations of competency are the CB's experience as specialized decision-makers; and the presence of expert members assisting in evaluating disciplinary evidence. This suggests a leaning toward stronger epistemic deference but with prospects for weaker deference and reflective acceptance. Including an expert on the decision-making panel is an arguable strength of the Norwegian system, compared to systems where the decision-makers are non-experts with regards to disciplinary knowledge, e.g. Germany (Haug & Höynck, 2017). However, in Norway, it could also constitute a risk of disciplinary knowledge overshadowing legal jurisdictions (Sosialdepartementet, 1985, see Abbott, 1988).

While acceptive uses of the evidence are prevalent, critical appraisals are present in relatively many cases (24%). Here the CB

highlights unsupported claims, criticizing disciplinary evidence that does not hold up under scrutiny, because it appears biased, or the CB finds the conclusions poorly supported. While it is expected that the CB is rigorous that almost a quarter of the cases in this study include criticism of disciplinary evidence demonstrates rigorousness in the Norwegian model to protect children's and parents' rights, and to uphold rational democratic legitimacy. This speaks to criticism of disciplinary evidence quality and the CB's capability to independently assess quality (Asmervik, 2015; MRU, 2021). It suggests an awareness that strong deference is undesirable in judicial decision-making, despite a high prevalence of agreement. The prevalence of agreement and internalization of disciplinary evidence in justifications suggest a strong deference to expert authority, emphasized by references to research literature, and sometimes further nuanced by the evaluations of the data basis of the evidence. This nuancing appears to focus on the quality of the data, evaluating the relationship between the observations and recommendations, including descriptions of the long and hard work of the expert (Ward, 2012). Evaluations of conflicting evidence, where the work and experience of the professional is used to reason and justify the CB's decision, express stronger deference (Ward, 2016). However, criticism of premises and conclusions in disciplinary evidence appears in several cases, and this critical stance is legitimized by an expert member among the decision-makers who is there to ensure the correct understanding and use of disciplinary evidence.

The CB's deference to disciplinary evidence in this study appears characterized by variability. Some instances appear less independent in use and evaluation, but many are characterized by leaning toward deference dependent on an appraisal of the evidence and the credibility of its source. There is critical reasoning in relatively many cases in this study, whereas outright and unreasoned rejection is absent. Reasoned and justified deference, as it appears in this study, weakens what first appears as strong deference. However, weak deference combines disciplinary and lay evidence, showing evaluations of why and how disciplinary evidence was used, including disagreement, criticism and contingent agreement (Moore, 2017; Ward, 2016).

5.2 | Use

Who produces, and about whom is, the evidence? The study shows that disciplinary evidence from psychologists, social workers, physicians and other professionals working with families is consistently used (97%). This was an expected prevalence due to the nature of care order cases and the wide inclusion of knowledge professions (Alanen, 1988; Friis, 2017). Because these are cases about protecting children from familial violence, the CB uses disciplinary evidence about children (94%) and parents (83%) to justify the legal criteria. Disciplinary evidence is highly present when considering the legal threshold (93%) but curiously absent when considering support measures (32%) and CBI (31%). Whether this absence is because the decision-makers find the latter two criteria easier to judge, despite

claims that CBI is a difficult and complicated normative consideration (Elster, 1989; Ottosen, 2006), or in a sort of spillover effect where justifying the legal threshold implicitly justifies the following criteria sufficiently, remains a question. The less explicit use of disciplinary evidence when justifying support measures and CBI suggests an inconsistency in how disciplinary evidence is used and challenges the accountability and legitimacy of some decisions. The evidence may be part of the in-person deliberations but its absence in the CB's written justification confounds the CB's reasoning and conclusion from a lay perspective.

Following the prevalence of disciplinary evidence in these cases is a worry about the reliability of the evidence (Mnookin, 2008). Decision-makers' use of disciplinary evidence about case-relevant topics, including evaluating the evidence's relevance and quality, must bridge methods of pursuing truth and evaluating evidence in law and the social sciences (Beck et al., 2009). CB justifications of interventions rely on a pragmatic discourse (Løvlie & Skivenes, 2021), and in this study, CB justifications concern four topics following the disciplinary evidence. Evidence about children's and parents' functioning (89%) and qualities of the care situation (78%) are prevalent. These topics correspond with research showing that social and psychological capacities are central in care order considerations (see Krutzinna & Skivenes, 2020), interweaving family members' functioning together and separately, with the CBI. The topics illustrate where norms blur the lines between lay perspectives, and legal and disciplinary jurisdictions. Overcoming these blurred lines using disciplinary evidence suggests an arguably reasonable deference to epistemic authority. Evidence about attachment between children and parents, and children's development (65%), together with stabilizing aspects (59%) of diagnoses and therapy, shows that focus on the individual's relationships, sociopsychological development, and side effects of mental illness interlaces the CB's reasoning with disciplinary knowledge. Using disciplinary evidence on these topics to justify whether the legal threshold is met informs why disciplinary evidence is rarer in the justifications of support measures and CBI. These two criteria depend on meeting the legal threshold, as cases that do not end in a care order, may be because support measures are still deemed viable and may therefore not include CBI considerations in their written decision (see Løvlie & Skivenes, 2021).

6 | CONCLUDING REMARKS

The study shows that disciplinary evidence is extensively used to ensure the capacity to decide whether children's functioning, care situation, attachment, development and stability meet the legal threshold for a care order. The use and evaluation of disciplinary evidence in the published decisions appear as acceptive, evaluative and critical. The CB's use and evaluation are characterized by acceptance, evaluation and criticism of disciplinary evidence, both dependently deferring and independently endorsing the epistemic authority. Disciplinary evidence is consistently used to justify the legal threshold based on assessments of risks of harm, and the CB

demonstrates an independent gaze when asserting its competency and authority.

Further investigation into the organization of the CB with an expert member is needed, as it can push proceedings toward both transparency and opaqueness. Transparency, because the lay member may require the expert member to clarify evidence and reasoning. Opaqueness, because the disciplinary and legal expertise overwhelms the lay perspective, pushing deliberations toward negotiating the professional jurisdictions, and 'which truth' (legal or scientific) is advocated in the decision's justification (Moore, 2016).

The inconsistency regarding disciplinary evidence's role in justifying (and determining) the child's best interests remains unresolved; however, the implications could be promising if reasoning was more transparent about the use of disciplinary evidence.

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CONFLICTS OF INTEREST

No conflict of interest to report.

ETHICS

The project's ethics and data protection assessments can be found here: <https://www.discretion.uib.no/wp-content/uploads/2019/12/INFORMATION-ABOUT-DATA-PROTECTION-ETHICS-AND-DATA-ACCESS.pdf>

DATA AVAILABILITY STATEMENT

The data material consists of cases written in Norwegian that are available from the public legal database LovdataPro (<https://lovdata.no>) for registered users. More information about the cases and search keywords used in this study are available from the author upon request.

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ENDNOTES

- <https://discretion.uib.no/projects/supplementary-documentation/key-informant-interviews-5-countries/>
- See Appendix for an outline of CB decisions (<https://discretion.uib.no/projects/supplementary-documentation/#1,552,296,903,964-af7d19a0-9d4c>)
- <https://discretion.uib.no/projects/the-acceptability-of-child-protection-interventions-a-cross-country-analysis/>
- https://lovdata.no/info/information_in_english
- Requirements and structure of decisions: <https://discretion.uib.no/resources/requirements-for-judgments-in-care-order-decisions-in-8-countries/#1,588,242,680,256-00a159db-e9f7>

- ⁶ Independently engaged experts appeared only in 17 cases thus the extension to professional affiliation.
- ⁷ See Appendix.
- ⁸ <https://www.forskningsetikk.no/en/about-us/our-committees-and-commission/nesh/>
- ⁹ <https://www.discretion.uib.no/wp-content/uploads/2019/12/INFORMATION-ABOUT-DATA-PROTECTION-ETHICS-AND-DATA-ACCESS.pdf>
- ¹⁰ They may publish up to 20% (Fylkesnemndsutvalget, 2005).

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SUPPORTING INFORMATION

Additional supporting information can be found online in the Supporting Information section at the end of this article.

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