

NO SMOKE WITHOUT FIRE: THE PRESUMPTION OF GUILT IN CHILD ABUSE ASSESSMENTS

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Abstract

The Child and Family Agency (Tusla) is the state agency for the protection and welfare of children in the Republic of Ireland. For the past ten years, it has operated a standardised policy and procedure for responding to allegations of child abuse and neglect (Tusla, 2014). Having reviewed almost 200 retrospective cases, this author has noticed some unfavourable and recurring trends in social work assessments. While the professional decision-making is usually of a high standard, social workers sometimes unwittingly fall short in affording the accused person their right to fair procedures. This is born out of a universal social work trait to support victims.

Although Tusla (2023) has introduced a new Child Abuse Substantiation Procedure (CASP), there is learning to be had from past practice and how history might well repeat itself if sufficient cognisance is not taken of an accused person's inherent right to natural justice. That right is not confined to child-protection assessments, but is relevant to all aspects of social work, across jurisdictions. Therefore, this article provides a thematic review of the key issues and offers suggestions on how to strike a better balance between the competing rights of the alleged abuser and the accused.

Introduction

In the science lab in school, our teacher delicately tipped some crystals into a beaker of bubbling liquid. At once, the compound transformed into noxious, nose-gripping puffs which ascended like smoke signals to the ceiling. Stepping back from it in admiration, and wearing his round glasses, blazer and robe, he looked for all the world like a forerunner of Harry Potter. Then, pointing at me with his little finger, as he was wont to do, he enquired in his plummy accent: 'Master Harrison, what does this experiment indicate to you?' After cursory consideration, I replied with unwarranted confidence: 'That there's no smoke without fire, Sir.' I was wrong, of course. There was neither smoke nor fire – the answer to the illusion lay elsewhere, beyond my current understanding.

As the above cameo illustrates, sometimes we draw conclusions that are not based on facts, but on assumptions masquerading as facts. Social work is a benevolent profession, where the social worker is generally predisposed to assist the underdog. However, this, in turn, can lead to the unwitting cutting of corners in assessments, whereby the benefit of the doubt is given to the alleged victim.

In the Irish Republic, social work assessments are conducted in tandem with any criminal investigation, which may be conducted by An Garda Síochána (the police) and protocols are in place to facilitate cooperation between the two State

agencies. Tusla's Policy and Procedure for Responding to Allegations of Child Abuse and Neglect (2014) affords a person, against whom a child abuse allegation is made, the explicit right to an appeal if the social work assessment reaches a founded conclusion against them. An appeal is a new and impartial examination of the work undertaken by the social workers who reached the conclusion that abuse has taken place, and is undertaken by two social workers independent of Tusla.

This right of appeal arises in cases where the allegations of abuse may not be tested in the court, but where others may need to be informed, to protect other children. The 2023 Child Abuse Substantiation Procedure (which uses the term review rather than appeal) explains that it is to be used:

- Where an allegation is made against an individual whose contact with children is through an organisation, institution or through their work.
- Where the accused has no current contact with children, but information may need to be shared because of risks to children in the future.
- Where the disclosure of abuse is made by children against children.
- Where the accused person is now an adult, but was a child at the time of the alleged abuse.
- Where the disclosure is made against a relative, foster carer or other adults who live in the foster carer's household.

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