

Child Abuse – A Legal Practitioner's Guide, Part II

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INTRODUCTION

This is the second of two articles concerning the issue of child abuse. The first article was published at [1997] Fam Law 665. The object of this article will be to assist lawyers, in particular, to ensure that social services, having the primary role in child protection, and other agencies, operate good practice in public law children cases. The article begins with a look at some of the risk factors that are evident in child abuse, and the role of the social services department in investigation, assessment, and planning, with a particular look at the case conference procedure.

RISK FACTORS

There are a number of models which are used in the training of child protection social workers, including:

- (1) the psychopathic model, which focuses upon abnormal characteristics of the abuser and emphasises psychological dysfunction. This would be particularly relevant in a case involving sexual abuse and, or, physical violence used by an abuser towards a child, and should such a matter develop into court proceedings where sexual abuse is an issue it will often involve a psychological assessment of the alleged sexual offender to assist the court and other parties in assessing the level of risk. A criticism of this model is that it does not take into account the social causes of psychological stress;
- (2) the social environmental model, which takes into account external factors that can promote violence which can lead to non-accidental injury (NAI) of a child and may include: low wages, social isolation, lack of support from extended family, overcrowding, poor housing conditions, and illness, whether of the child or of the carer. However, such a model does not explain why some families suffering these social and environmental indicators do not abuse;
- (3) the special victim model, which is based upon the assumption that certain children may be more vulnerable and their particular needs trigger abuse, for example low birth weight, prematurity, disability or an unwanted stepchild. This model does not provide an explanation as to why many

children cause parents anxiety which does not then result in the abuse of the child;

- (4) the feminist model, which views men as decision makers and disciplinarians in families and violence is accepted as a method of control to maintain dominance;
- (5) family dysfunction model, which is based upon the assumption that problems within the family, such as child abuse, are symptoms of family dysfunction and treatment must involve the whole family to improve the dynamics, communication and the nature of the relationships involved;
- (6) the psychosocial model, which attempts to integrate the characteristics of abusing parents, their children, and the situation in which they live, and is based upon the presumption that child abuse cannot be explained by a single factor and results from an interaction of individual, social, and environmental influences, and certain stress factors predisposing an individual to violence.

Set against these models certain matters can be seen as potential causes of abuse:

- the power whereby an adult feels the need to abuse the power that they have over someone weaker than themselves which may be associated with gender and men's views about their rights over women and their children;
- unrealistic expectations where parents look to their children to supply affection and companionship, and overlook the responsibility that care of children entails;
- disturbed or inadequate people with psychological or emotional problems;
- stepfamilies and the demise of the traditional unit can be seen as a potential cause of abuse but does not answer the question why some stepfamilies function better than the traditional family unit in some cases;
- a violent society and its effects, including the media portrayal of sex and violence, and in particular pornography;
- a cycle of depravation whereby people who were abused themselves as children are seen as more likely to abuse their own children unless the cycle

- is broken;
- social factors whereby the life and chances of many children are adversely affected by the society in which they live, and which discriminates against them through differences in social class, education, housing, and employment.

INVESTIGATION OF CHILD ABUSE

A referral concerning the child suspected of having been abused will initially be made to the social services department, often to the duty social worker for the relevant district office. Action following receipt of a referral differs slightly from authority to authority but in the main it is based upon the principles outlined in the Department of Health guidance – Home Office, Department of Health, Department of Education and Science, Welsh Office *Working Together Under the Children Act 1989 – a guide to arrangements for inter-agency co-operation for the protection of children from abuse* (HMSO, 1991) (*Working Together*).

Paragraph 5.11.1 of *Working Together* provides 'the starting-point of the process is that any person who has knowledge of, or a suspicion that a child is suffering significant harm, or is at risk of suffering significant harm, should refer their concern to one or more agencies with statutory duties and/or powers to investigate and intervene – a Social Services Department, the Police or the NSPCC'. Referrals may come from members of the public, those working with children and families who are not accustomed to dealing with child protection or from other professionals who are regularly engaged in child protection work. All referrals, whatever their origin, must be taken seriously and must be considered with an open mind which does not prejudge the situation. The statutory agencies must ensure that people know how to refer to them, and they must facilitate the making of referrals and the prompt and appropriate reaction in response to expressions of concern. The ACPC (Area Child Protection Committee) should publish advice about who to contact with details of addresses and telephone numbers.

A balance must be struck between unnecessary intervention following a referral and action to protect the child. Relevant agencies with a child protection role should ensure that all staff involved in deciding upon action to be taken following a referral have necessary training, skills and expertise. Usually, there will be discussions and consultation between professionals from child protection agencies before protective action is taken, and in some cases there will be a need to seek a specialist's opinion. Paragraph 5.10 of *Working Together* provides 'to be effective, co-operation between agencies providing protection to children must be underpinned by a shared agreement

about the handling of individual cases'. These stages can be identified as:

- (1) referral and recognition;
- (2) immediate protection and planning the investigation;
- (3) investigation and initial assessment;
- (4) child protection conference and decision making about registration;
- (5) comprehensive assessment and planning;
- (6) implementation, review and, where appropriate, de-registration.

Referral and recognition will lead to the referral being stopped in its tracks or to further investigation and assessment, including the possibility of immediate protection through an emergency protection order or police protection order. In some cases prior to formal investigation and initial assessment there will be a need for a strategy discussion, often by telephone, between statutory agencies, for example police and social services, to plan the investigation and in particular the role of each agency and the extent of joint investigation. Some authorities have designated child protection investigation teams (CPIT) which will work with police officers in joint investigation, whereas social workers in other authorities may have responsibilities for investigation, assessment, and planning. The third stage, investigation and initial assessment, involves the local authority, through its social services department, carrying out an investigation under s 47 of the Children Act 1989 to establish:

- (1) the facts about the circumstances giving rise to the concern;
- (2) to decide whether there are grounds for concern;
- (3) to identify sources and the level of risk;
- (4) to decide protective or other action in relation to the child and any others.

Once a formal investigation has begun it will, in most cases, lead to a case conference.

Paragraph 6.4 of *Working Together* provides 'an initial child protection conference should be called only after an investigation under s 47 of the Children Act 1989 has been made into the incident or suspicion of abuse which has been referred. It should not be convened until relevant information and reports are available to inform the decisions of the conference. All initial conferences should take place within 8 working days of referral except where there are particular reasons for delay'.

Part 6 of *Working Together* provides a detailed analysis of the nature of child protection conferences. The initial child protection conference will act as a forum, bringing together professionals from various

child care agencies including social services, the health authority, police, and education departments. Most local authorities now have policies through their ACPC for the attendance of parents at case conference including the right to bring a solicitor as support. There may be a section within the case conference where the parent/parents and solicitor are asked to leave following the gathering of information when social services and other agencies decide upon recommendations which may include the issue of care proceedings or the implementation of a child protection plan to ensure there is limited, if any, risk of abuse to the child. The child protection plan may include monitoring and supervision by various agencies involving the attendance of a parent/parents at, for example, a child and family guidance clinic or a social services family centre, or a requirement on the parent to arrange for a child to be examined regularly at a health centre or by a paediatrician. If legal proceedings are recommended issues of contact will be considered and planned provision for assessment and treatment. The child protection plan will usually only be prepared if a child is placed on the child protection register, although registration does not preclude the local authority from providing services under s 17 of the Act. It is rare for children to attend a conference but there seems to be a divergence between authorities. An older child may attend with a solicitor, particularly if there are care proceedings and if it is important for the conference to consider the child's wishes and feelings. Some children may express a strong view to be involved in the decision making/recommendation process that takes place at a case conference.

Conferences may take two forms. First, an initial child protection conference; and, secondly, a review conference which may take place after the result of a comprehensive assessment. The only decision made at a case conference will be whether a child should be placed upon the child protection register. Categories of registration include:

- (1) physical abuse;
- (2) neglect;
- (3) sexual abuse;
- (4) emotional abuse.

However, the list is not exhaustive and varies from authority to authority. The conference usually follows a particular agenda:

- (1) introduction;
- (2) information regarding the incident and investigation;
- (3) information regarding background and previous involvement of each agency;

- (4) information regarding the current family functioning;
- (5) a risk analysis, decisions and recommendations.

The nature of the risk analysis may vary between authorities and is not a scientific process. It is not unknown for conference members to vote on whether the level of risk is high, low or medium, and there can be a degree of divergence between members at the conference. It may be considered premature to carry out a risk analysis at case conference level to any great degree and risk analysis is usually better considered through a comprehensive assessment.

The nature of child protection investigations came under close scrutiny, particularly concerning alleged sexual abuse, in the *Report of the Inquiry into Child Abuse in Cleveland 1987* (HMSO, 1987) Cm 412. Chapter 12 of the report in particular concerns the importance of listening to the child, the use of video recording, the attendance of parents at interviews, and the nature of the interview with the child. Chapters 13 and 14 of the report contain useful information about social work practice in referral and response, planning, co-ordination and assessment, the role of particular agencies, and inter agency co-operation. The specialist assessment teams referred to in chapter 14 of the report do not appear to have come to fruition.

COMPREHENSIVE ASSESSMENT AND PLANNING

Working Together provides at para 6.1 'on registration of a child the initial plan should include a comprehensive assessment. Its purpose is to acquire a full understanding of the child and family situation in order to provide a sound basis for decisions about future actions. The assessment has to be planned and structured, and decisions have to be made with respect to each of the following questions':

- Who will undertake the assessments?
- Where will it be undertaken?
- What is the time-scale?
- How should it be recorded?
- How to involve the family?
- What is the legal status?
- How will it fit in with any court action?
- Have the necessary steps in relation to this been taken?
- How will it fit in with any other action, for example any police investigation and prosecution?
- What is the social services department's position regarding parental responsibility?

Guidance on the approach to assessment is found in *Protecting Children – A Guide for Social Workers Undertaking a Comprehensive Assessment* (HMSO, 1995) (the orange book), which is an indispensable manual

for a childcare practitioner. The assessment process aims to collect and evaluate information about the family with a view to establishing a clear picture of:

- (1) the main causes for concern about the child;
- (2) the child's social and emotional development, health and any problems;
- (3) parents' and partners' background – the couple's relationship with each other and with the children, with particular attention being paid to their ability to meet the child's needs;
- (4) the nature of the child's and family's networks of relatives, friends and links with professional or other organisations;
- (5) the parents' degree of acceptance of responsibility for the concerns about their child, their wish to bring about change and their ability to do so;
- (6) the help that the family will require and the likely time-scale needed for changes to occur.

The main components/questions to enable the social worker carrying out the assessment to obtain information about the above matters are found at chapter 8 of the orange book. The list of questions is extensive and there are 167 in total in chapter 8 that cover a whole range of child care/parenting issues.

The quality and format of the comprehensive assessment can vary from authority to authority and from one social worker to another. A practitioner acting for a parent in care proceedings should try to

identify any areas of the comprehensive assessment which are not included in the statement for court either because the questions have not been asked or that they are not favourable and supportive of the local authority's plans. As part of the assessment process, an assessment by, for example, a child psychologist or an assessment of a suspected perpetrator of sexual abuse may be carried out which may then be considered along with the other information obtained through the assessment, and may enable planning to take place.

Part 3 of the orange book gives information about the use of the assessment for planning, and there is a useful planning model table which identifies the causes for concern: the attitude of a parent to problems, individual profile of parents, physical conditions, networks or whatever; whether the features are primarily positive or negative, the changes needed, the factors helping change, factors blocking change, the resources needed to bring about change, and the time-scale required. The assessment should dictate the care plan for the child. Consideration can then be given to whether the child should be made subject to a care order and, if so, whether there is a possibility of rehabilitation to the parent under the care plan or immediate placement at home, whether a supervision order with directions will sufficiently address the causes for concern within the assessment or whether there is no possibility of rehabilitation and the only option is adoption or long-term fostering.

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