

# **Protecting Dundee's Children and Young People:**

## **An Introductory Overview**





## PREFACE

This Introductory Overview is part of the Inter-agency Guidance for the protection of children & young people in Dundee. It should not be used as a 'stand alone' document, other than as a quick reference guide to some of the basic points relating to the protection of children and young people. In recognition that some professionals might want to use it for this purpose, a separate table of contents is provided.

It must not be treated as a substitute for the more detailed inter-agency guidance produced by the Children & Young Persons Protection Committee, nor the detailed, agency-specific guidance and procedures that sit alongside it.

Instead, this overview, along with the detailed inter-agency and agency-specific guidance, forms the 'package' to which every professional should have access to and be familiar with.

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## 1. DEFINITIONS

### 1.1. 'Child'

- a person who is not yet 16 years old
- a person who is over 16 but not yet 18 and subject to a Supervision Requirement issued by a Children's Hearing or a Court order from England, Wales or Northern Ireland.

### 1.2. 'Right to be protected'

- 'the child has the right to physical and personal integrity .... to protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents or other carers' (Article 19, UN Convention on the Rights of the Child 1989)

The child also has rights:

- to be consulted,
- to obtain information,
- to express an opinion. and
- to have his or her privacy respected (Articles 12, 13 and 16)
- Any actions taken in respect of a child should take account of the child's best interests (Article 3).

We must be always be aware that there is a balancing act to be achieved between the rights of the child, as outlined above, and the rights of all citizens including children, as enshrined in the Human Rights Act, 2000. This has the potential to cause conflict when professionals are called upon to decide whose rights are most important. The Children (Scotland) Act, 1995 makes it clear that "the welfare of that child throughout his childhood shall be their ... paramount consideration." (Section 16).

### 1.3. 'Child abuse and neglect'

Often portrayed in a stereotypical manner - the evil perpetrator who commits inexcusable offences against helpless children. Regrettably, the vast majority of child abuse is caused by people who have a primary

responsibility to care for the child (parents or carers).

In many cases, however, situations and behaviour which reduce the chances of children to be safe and happy and to fulfil their potential can occur where there is no actual intent to harm but where the consequences are just as devastating for the children affected. We need to think about sources of risk, for instance:

1. risks brought about by carers' acts of omission or commission (e.g. physical assault, neglect of the child's physical, emotional or psychological needs, sexual abuse, abandonment, failure to protect the child from harm or failure to give the child appropriate guidance and control etc),
2. risks brought about because of a carer's temporary or permanent inability to provide good enough care (e.g. mental impairment, addiction, overwhelming stress etc),
3. risks brought about by the actions of other people towards the child (e.g. physical, sexual, emotional or psychological abuse) or the actual or likely risk presented by a person who has abused another child coming into the child's household. (The term 'household' means more than bricks & mortar - see Appendix 1).

In Scotland, the definitions of the categories of abuse and neglect are set out in national guidance. The following is reproduced from Protecting Children: A Shared Responsibility:

General definition of abuse - children may be in need of protection where their basic needs are not being met, in a manner appropriate to their stage of development, and they will be at risk from avoidable acts of commission or omission on the part of their parent(s), sibling(s) or other relative(s), or a carer (i.e. the person(s) while not a parent who has actual custody of a child).

To define an act or omission as abusive and/or presenting future risk for the purpose of registration a number of elements must be taken into account. These include demonstrable or predictable harm to the child which must have been avoidable because of action or inaction by the parent or other carer.

Categories of abuse - for recording all cases, the following are the standard categories of abuse. Although these are presented as discrete definitions, in practice there may be overlap between categories. In such cases local authorities should enter the child's name on the Child Protection Register under one main category of abuse although for the purpose of individual case management, the case conference may identify combinations of abuse categories which the child protection plan will need to address. It may also become necessary to change the category of abuse under which a child is registered as a case progresses.

#### Physical Injury

Actual or attempted physical injury to a child, including the administration of toxic substances, where there is knowledge, or reasonable suspicion, that the injury was inflicted or knowingly not prevented.

#### Sexual Abuse

Any child may be deemed to have been sexually abused when any person(s), by design or neglect, exploits the child, directly or indirectly, in any activity intended to lead to the sexual arousal or other forms of gratification of that person or any other person(s) including organised networks. This definition holds whether or not there has been genital contact and whether or not the child is said to have initiated, or consented to, the behaviour.

#### Non-Organic Failure to Thrive

Children who significantly fail to reach normal growth and developmental milestones (i.e. physical growth, weight, motor, social and intellectual development) where physical and genetic reasons have been medically eliminated and a diagnosis of non-organic failure to thrive has been established.

#### Emotional Abuse

Failure to provide for the child's basic emotional needs such as to have a severe effect on the behaviour and development of the child.

#### Physical Neglect

This occurs when a child's essential needs are not met and this is likely to cause impairment to physical health and development. Such needs include food, clothing, cleanliness, shelter and warmth. A lack of appropriate care, including deprivation of access to health care,

may result in persistent or severe exposure, through negligence, to circumstances which endanger the child.

1.4. 'Children at risk of significant harm'

Includes children at risk as a result of the actions of others, but also children who, by what seems to be their own choice of behaviour, place themselves and other young people in danger (e.g. by running away, consumption of harmful substances, self-injury to health, prostitution, harmful sexual activity, high-risk offending like taking and driving cars or fire-raising or the commission of offences against other children).

1.5. 'Children in need'

are defined in the Children (Scotland) Act 1995 as those children who are:

- unlikely to achieve or maintain (or have the opportunity of achieving or maintaining) a reasonable standard of health or development unless provided with services by a local authority; or
- whose health or development are likely significantly to be impaired unless such services are provided; or
- who are disabled; or
- who are adversely affected by the disability of any other person in their family; or
- who are being "looked after" by a local authority.

**2. LEGAL RESPONSIBILITY, AUTHORITY and POWERS to PROTECT CHILDREN AND YOUNG PEOPLE**

The legal responsibility and authority to conduct inquiries under child protection procedures is set out in Section 53 of the Children (Scotland) Act 1995. This states:

*"(1) Where information is received by a local authority which suggests that compulsory measures of supervision may be necessary in respect of a child, they shall—*

*(a) cause inquiries to be made into the case unless they are satisfied that such inquiries are unnecessary; and*

*(b) if it appears to them after such inquiries, or after being satisfied that such*

*inquiries are unnecessary, that such measures may be required in respect of the child, give to the Principal Reporter such information about the child as they have been able to discover.”*

Any person may apply to a sheriff for a Child Protection Order (Section 57 of the Children (Scotland) Act 1995), if they believe that a child or young person is suffering, or may suffer, significant harm. Additionally, a local authority may also apply if they suspect significant harm and their enquiries are being frustrated or access to the child or young person is being unreasonably withheld.

Section 55 of the Act also enables a local authority to apply to a sheriff to grant a Child Assessment Order, which can compel a child to be produced for specified assessment without necessarily removing the child to a place of safety.

Section 76 empowers a local authority to apply to a sheriff to make an Exclusion Order that named individuals should not have contact with certain children. The legislation is complex but does mean that action can be taken in some circumstances to remove or bar the person who presents the risk from the house rather than removing the child.

Police officers have powers (Section 61(5)) to immediately remove a child from a harmful situation to a place of safety. If a sheriff is unavailable to consider an application for a Child Protection Order, a Justice of the Peace can make an emergency protection order under Section 61 of the Act. Such an order only lasts for 24 hours, or until an application for a child protection order is decided upon by a sheriff, whichever is the earlier.

### **3. OUR DUTIES**

It is important to note that as practitioners we each have a duty of care for the children and young people for whom we provide services.

The term carer includes anyone who has the permanent or temporary care of the child, be it at home, in school, in clinic or hospital, at youth clubs or activity groups, residential units or foster care. This does not apply to teachers in terms of medical consent.

Parents in particular have responsibilities in law to safeguard and promote their child’s well being, as defined at Section 1 of the Children (Scotland) Act 1995.

Agencies should seek to work in partnership with children and families, consulting with them as much as possible and intervening as little as necessary to bring about lasting beneficial change for the child.

Each of us also has a duty to promote the well being of the child and to identify and respond to abusive or adverse situations. Just how we fulfil those duties will vary depending on our different roles. Each of us must take responsibility for knowing what duties our agency has placed upon us.

#### **4. WORKING TOGETHER**

Analysis of cases where children have not been protected - sometimes with fatal consequences - demonstrates that a common feature in such situations is often a breakdown in communication and a failure, by agencies and the professionals in them, to work together effectively.

Successful working together flows from there being trust and respect between professionals. For there to be trust and respect we need to know and understand the roles and responsibilities of other disciplines and professions. Inter-professional staff development programmes have a major role to play. But every individual also has a responsibility to commit to his/her own learning.

For there to be trust we also have to believe that other professionals are working to the highest standards required by their profession and will do what they say they will do. Whilst each organisation has a duty to support its staff in doing this, ultimate responsibility rests with the individual to ensure that his or her work is of the highest possible standard and that his/her word can be relied upon.

##### **4.1. Sharing Information and Confidentiality**

Priority is being given to the development of linked computer based information systems and an integrated assessment, planning and review framework for children in need in Dundee. This core assessment, planning and review framework should be accessible and common to all partner agencies, multi-agency case conferences and the children's hearing. Arrangements should be made for appropriate access to information by agencies in other areas should children or their families move (Scottish Executive, 2002).

(a) Record Keeping and Confidentiality

All professionals and agencies offering support or treatment are required to keep confidential information given to them in the course of their work. All professionals and agencies should keep clear, legible and up to date records of:

- contact with parents and children
- information held and consents on information sharing
- the assessment, care plan and any changes as a result of reviews of these
- contact with other agencies, including the date and content of information shared or discussions held.

Records should be dated and should identify the person recording the information. Agencies should comply with the principles of data protection legislation and guidance.

Information given to professionals by their patient, client, pupil, or service user should not be shared with others without the person's permission, unless the safety of the person or other vulnerable people may otherwise be put at risk.

People may be particularly concerned about their support services sharing information with other professionals. In most circumstances users of support and treatment agencies can rely on confidentiality as their guiding principle. However, there are important exceptions to this.

(b) Sharing Information When Children May Be At Risk

If there is reasonable professional concern that a child may be at risk of harm this will always override a professional or agency requirement to keep information confidential. All service providers have a responsibility to act to make sure that a child whose safety or welfare may be at risk is protected from harm. They should always tell parents this.

The Scottish Executive (2000) states, "Personal information about children and families given to professionals is confidential and should be disclosed only for the purposes of protecting children. Nevertheless the need to ensure proper protection for children requires that agencies share information promptly and effectively when necessary. Ethical and

statutory codes for each agency identify those circumstances in which information held by one professional group may be shared with others to protect the child”.

The Chief Medical Officer (2004) states that “All staff have a responsibility to act to make sure that all children are protected from harm.... All NHS staff are responsible for acting on concerns about a child - even if the child is not your patient. In relation to child protection, guidance for health professionals must be clear that they should always disclose any information needed in order to protect a child from risk of death, serious harm or neglect. If there is reasonable concern that a child may be at risk of significant harm this will always override a professional or agency requirement to keep information confidential”.

All agencies must ensure that clients/patients/service users are:

- informed of information sharing policies
- asked what information they are willing to have shared freely
- advised of the circumstances in which information will be shared without their consent, if necessary (where there is risk of death, serious harm or neglect).

When any professional or agency approaches another to ask for information they should be able to explain:

- what kind of information they need
- why they need it
- what they will do with the information
- who else may need to be informed, if concerns about a child persist.

If a professional or agency is asked to provide information they should never refuse solely on the basis that all the information held by the agency is confidential. On receiving answers to the above questions they should consider:

- whether there is any perceived risk to a child which would warrant breaking confidentiality
- what information the service user has already given permission to share with other professionals

- whether they have relevant information to contribute - that is information which has or may have a bearing on the issue of risk to a child or others, which enables another professional to offer appropriate help, assist access to other services, or take any other action necessary to reduce the risk to the child
- whether the information is confidential, already in the public domain or could be better provided by another professional or agency, or the parent directly
- how much information needs to be shared to reduce the risk to the child
- whether disclosure would be permanent in accordance with the Data Protection Act 1998

The professional should consider carefully all potential consequences for the child's welfare before making a final decision about whether or not to provide information asked for. S/he should record the information which has been shared, with whom and the reasons for the decision carefully. The professional or agency may subsequently have to justify their disclosure, or refusal to share relevant information, to a court, children's hearing, professional body or other forum.

When concerns about a child's safety or welfare require a professional or agency to share confidential information without a person's consent, they should tell the person that they intend to do so, unless this may place the child, or others, at greater risk of harm. They should tell them what information and to whom that information will be disclosed.

Dundee City Council and NHS Tayside have agreed an Information Sharing protocol. There is also an agreed inter agency protocol in respect of Child Protection. Staff should make themselves aware of the content of these protocols and those produced by their own agency.

"Caldicott guardians should ensure that health professionals are aware of their responsibilities towards the care and protection of children. They should ensure that where children are at risk of abuse and neglect, information is shared promptly with other relevant professionals in line with the General Medical Council and Scottish Executive guidance on when medical confidentiality can be breached" (Scottish Executive, 2002).

## 4.2. Language

When working across professions and disciplines it is important that we explain what we mean and check that other people understand what we have said or written.

Each of us uses a vocabulary of terms and 'jargon' that is generally understood within our profession or discipline. It is easy to assume that people from other disciplines understand this and therefore know exactly what we mean when we explain something.

An example of this is when we talk or write about 'CPR'. For some people this means 'Child Protection Register'. For others it means 'Cardiopulmonary Resuscitation'. This is one illustration. There are many more examples.

## 5. PRACTICE AND PROCEDURE

Familiarise yourself with inter-agency child protection guidance and with your own agency's specific practice and procedures. Some aspects of departmental/agency procedures and guidance are common and they are noted below:

- Think of the child and the child's needs and rights
- Assess the situation  
Is the child in immediate danger? If so, consult, take any appropriate action and make sure the child is protected. What are the issues involved? What is the nature of the risk?
- Consult  
Your line manager/specialist advisor etc. as detailed in your operational procedures. Consult with other agencies that need to be involved at this stage.
- Make a plan  
Who else needs to know? What should happen next? What are the options for intervention, who should initiate them? Are there critical time scales?

- Act  
Make your decisions and take appropriate action.
- Record  
All the relevant information: what did you see, hear, touch, or smell? Who else was there at the time? Who said what? Use notes and diagrams to help you. Are there photographs, tapes, other objects or records that should be preserved to help future assessment/action?
- Review  
Are you sure that the situation has been fully dealt with? Are there lessons to be learned? Are there issues you need to follow up? Is feedback needed - for you, your team, your agency, other agencies, the Child Protection Committee?

## 6. ROLES

We need to understand and appreciate each other's roles in what is a very complex and challenging environment if we are to work well together. The following are very brief descriptions of who does what in Dundee.

- 6.1. Dundee Children and Young Persons Protection Committee  
National guidance relating to, what are generally referred to as, Child Protection Committees (CPCs), states that, "The CPC is the primary strategic planning mechanism for inter-agency child protection work in each area. In undertaking this function it will interface effectively with other planning structures whose activities affect the protection of children, within and between agencies. It is essential that it links closely to integrated children's services planning and Community Planning"

The same document states:-

"The functions (of the committee) are grouped as follows:

- public information
- continuous improvement
- strategic planning."

Each of these groups has a number of sub-headings. For example, continuous improvement encompasses:-

- policies, procedures and protocols
- management information
- quality assurance
- practice
- training and staff development.

Membership of the Committee in Dundee comprises representatives from:

- Tayside Police
- NHS Tayside
- The Voluntary Sector
- Scottish Children's Reporter Administration
- Procurator Fiscal
- Dundee City Council Leisure & Communities Department
- Dundee City Council Education Department
- Dundee City Council Social Work Department

The committee is served by three full-time officers – Lead Officer, Staff Development Officer and Clerical Assistant.

#### 6.2. Dundee Children's Service Plan: Executive Planning Group

The Children's Services Executive Planning Group is the core group responsible for the strategic formulation and implementation of Dundee's Children's Services Plan, and for monitoring its progress. Like the Children & Young Persons Protection Committee, this is an inter-agency group involving Dundee City Council departments and representatives of NHS Tayside and the voluntary services. The chair rotates annually between the chief officers on the group.

The group meets regularly to take forward co-ordinated planning of service delivery across many sectors of work with children - health, education, police and social work. Responsibility for writing the plan and ensuring that its various aspects are delivered is delegated by the group to appropriate senior officers from the participating agencies.

### 6.3. Tayside Police

The boundary of Dundee is co-terminus with the Central division boundary of Tayside Police. Eastern and Western divisions are co-terminus with the local authority boundaries of Angus and Perth & Kinross Councils respectively. Central division is divided into several operational sections, each under the supervision of an Inspector. The Inspector has responsibility to ensure that there are sufficient resources in their area 24 hours a day.

The communications centre of the division is based at Police Headquarters, West Bell Street, and the control room there operates under the supervision of a Duty Inspector and Sergeant. Contact Police headquarters for all initial enquiries as none of the section stations have personnel based there continually for 24 hours a day.

Most matters pertaining to child protection are delegated to the Family Protection Unit (See below).

Police officers have a lead role in the assessment of risk posed by sex offenders. The register is maintained by the Police on ViSOR (Violent and Sex Offender Register) and PNC (Police National Computer). Two officers are based at Friarfield House, working jointly with staff from the Social Work Department Criminal Justice Service who assist them in assessing the risk of re-offending by an individual, under legislation provided by the Sex Offences Act 2003. There are strict legislative procedures to be followed with regard to the disclosure of information about sex offenders to groups or individuals that may be at risk from this category of person.

#### Crime Reduction Unit

The division has an established Crime Reduction Unit which has a remit for the management of cases involving juvenile offenders, children who abscond and missing persons.

#### Family Protection Unit (FPU)

Based at Seymour Lodge, Perth Road is a team of specialist CID officers known as the Family Protection Unit. They work jointly with the

Social Work Department's Child Protection Team. In addition to joint investigations into matters involving the abuse of children with the Social Work Department, the FPU also deal with complaints of abuse from adults which are of a historical nature.

#### Domestic Abuse Liaison

Beat officers attend to most domestic abuse incidents. However, they report these circumstances to a domestic abuse liaison officer at Police Headquarters. This officer works jointly with a worker from Barnardo's in ensuring, where necessary, there is a follow up service to the victim. Where there are children residing in a house where domestic abuse is known to be an issue, an assessment of their circumstances takes place to decide on a course of action which reflects their best interests.

#### Police Surgeons

In the context of child protection, Police Surgeons work closely with Senior Paediatricians in carrying out medical examinations of children. This procedure is only carried out after careful consideration of whether it is necessary to establish evidence for protective measures to be taken in respect of the child.

#### Police Emergency Powers

Section 61(5) of the Children (Scotland) Act 1995 gives Police Officers the power to remove a child to a place of safety where there is reasonable cause to believe that the circumstances are such that a Sheriff would grant a Child Protection Order but the matter is so urgent that to wait to obtain the Order would prejudice the safety of the child.

#### Sex Offender Register Assessment

Police officers have a lead role in the assessment of risk posed by sex offenders. The register is maintained by the Police. Two officers are based at Friarfield House, working jointly with the Social Work Department Criminal Justice Service. One works in relation to persons registered in terms of the Sex Offenders Act 1997. The other works in relation to non-registered offenders. There are strict procedures governing the disclosure of information from the register.

#### 6.4. Social Work Department – Children's Services

Staff in Children's Services, alongside the Police, have the lead role in the investigation of child protection concerns and referrals. They are also responsible for playing a leading role in the ongoing co-ordination of

assessments and planning for those children and young people whose names are placed on the child protection register.

The local authority has a duty to inquire into the circumstances of a child or young person if abuse or neglect is alleged. Within Dundee City Council that duty is delegated to the children's services division of the social work department. The social work department work alongside Tayside Police, which has a duty to prevent crime and to investigate if there is reason to believe that a crime may have been committed.

Whenever there is a concern that a child or young person has, or may have been abused or is being neglected, then the matter should be brought to the attention of the police and/or the social work department.

If you are unsure whether the concern crosses the threshold and is a 'child protection' concern then this should be discussed with a member of the child protection team or the social work department's access team. There is no clear line defining when a child in need becomes a child in need of protection.

If the child or young person is already involved with the social work department, the referral should be made to the relevant social worker or his/her senior social worker. It is the responsibility of the senior social worker in that team, along with their line managers if appropriate, to decide as to whether the referral will be treated as a child protection inquiry or as part of an ongoing child in need assessment. If it is agreed that a child protection inquiry, under child protection procedures, should be conducted, then it is the child protection team that will conduct that inquiry.

If you are unsure as to whether the social work department is already involved, or unsure of the name of the case responsible social worker, then this can be checked by contacting the child protection admin desk on 668538, or any social work office.

If the social work department is not already involved with child or young person, then the referral should be made directly to the child protection team on 668538.

All referrals must be followed up in writing within 48 hours. Detailed Protocols and Procedures apply to the work of the joint police/social work child protection team and the way in which the team

conducts inquiries. Those who make referrals to the joint team should expect to be involved in the initial phases of information gathering. This could involve attendance at an Initial Referral Discussion (IRD).

### Child Protection Team

Based at Seymour Lodge and working in partnership with the Police Family Protection Unit, the Child Protection team carry out child protection inquiries in all cases where there is reason to believe that a child may have suffered abuse or neglect.

In the case of a child protection inquiry in relation to a child or young person who is already involved with a care & assessment team, the inquiry findings will be reported back to the senior social worker of the case-holding team. He or she has the responsibility of liaising with other professionals and deciding on the course of action to be followed; e.g. child protection case conference, emergency protection order, etc. The child protection team will contribute its view to this decision-making process.

In the case of a child or young person not previously known to the social work department and where there is a need for continuing long-term social work involvement following an inquiry, the child protection team will retain case responsibility until a comprehensive assessment is completed. At this point, case responsibility will be transferred to the appropriate care & assessment team.

### Care & Assessment Teams

These are the social work teams that undertake the majority of the work with vulnerable children, young people and their families. Social workers in these teams are more often than not, the lead worker for all the ongoing assessment and intervention work in relation to the children who are named on the Child Protection Register. They also work with children who are 'looked after' by the local authority and children in need.

### Family Support Service

The Social Work Department has 8 Family Support Teams which are managed as an integrated and comprehensive network of family support resources. Each team provides a range of family support services to children in need, aged 0-12 and their families on a locality basis across the city. As well as fulfilling a preventative child protection role by promoting and supporting the welfare of children in need, specific

supports and services are offered to children and their families where abuse has been established. Family Support Teams work very closely with other professionals and agencies to ensure an integrated and multi-disciplinary approach to child protection work. Staff participate in and contribute to Initial Referral Discussions, Child Protection Case Conferences and to the implementation of child protection plans.

#### Out of Hours Service

This service operates between 5.00 pm and 8.00 am weekdays and during weekends and public holidays. As part of its comprehensive range of service provision, the team will conduct child protection inquiries at these times which are then transferred to the Child Protection Team.

#### Access Team

The Access Team is currently based at the Nethergate Centre and provides a single point of entry for all social work related enquiries and referrals. The team provides initial advice and assessment, undertakes short-term work and refers on to the appropriate section within the department if longer-term support is required. While the team undertakes initial assessments with regard to children in need, its members do not undertake child protection inquiries which are referred on to the Child Protection Team.

#### 6.5. Social Work Department - Criminal Justice Service

The Criminal Justice Service provides a range of services to courts and offenders and their families. These services include the provision of reports to the court to assist in sentencing and the monitoring and supervision of clients who are subject to a court order, some of whom may be identified as high risk offenders. Particular emphasis is given by the service to the large group of clients whose offending is related to their drug or alcohol misuse. Where a client with drug or alcohol issues also has child care responsibilities, the Criminal Justice Service will act to protect the welfare and safety of the children. The team also shares responsibility with the Police for carrying out assessments of offenders whose names are registered in terms of the Sex Offenders Act 1997. Specific work with sex offenders is undertaken by the Tay Project. The Criminal Justice Service contributes to child protection by initiating referrals to the Children's Services or the Children's Reporter and by working co-operatively with Children's Services workers and other professionals to secure the best interests of children at risk.

## 6.6. Education Department

### Designated Child Protection Officer (School)

The Designated Child Protection Officers are responsible for giving child protection advice/support to staff, pupils and parents within the school, and liaising with other agencies where appropriate. They maintain detailed records of all child protection concerns and action taken and advise staff of appropriate support to young people during disclosure, subsequent investigation and post investigation.

### Home School Support Service (HSSS)

HSSS support and advise schools and the Education Directorate in respect of child protection concerns. As a service, HSSS fosters and develops good communication and working practices between the agencies involved in child protection. Members of HSSS staff carry out initial investigations or joint investigations with relevant agencies where appropriate.

### Pupil Safety Officer (HSSS)

The Pupil Safety Officer co-ordinates the Education Department's Child Protection practice, and develops and delivers specialised in-service child protection training in support of designated child protection officers and staff from other agencies as well as offering advice/support to all educational establishments in respect of child protection issues.

### Dundee Education Psychology Service (DEPS)

DEPS functions in general as an advisory resource for parents, for educational establishments and for the local authority in Dundee with regard to difficulties of learning and behaviour.

DEPS does not have a statutory role in relation to child protection procedures. Within its general remit, however, DEPS staff will:

- act as a consultative service to schools about the development of children with reference to child protection issues
- proceed in casework with the awareness that abuse of the child is a possible factor
- provide a sensitive, informed and skilled response to children who disclose abuse to service staff

- when already involved in casework concerning a child who discloses abuse, provide advice and support to the school and the appropriate members of the child's family about responding to the needs of the child
- in appropriate circumstances, participate in direct interventions with abused children, as part of the multi-disciplinary team response.

#### 6.7. Leisure & Communities Department

The department's specialist children, youth work and preschool staff, Sport Development and art workers, work with young participants in a wide variety of informal learning situations within centres, in projects, on residential and on street locations. They are often the first point of adult contact for a child or young person who requires advice or information on aspects of personal protection.

Department staff contribute to young people's protection by:

- promoting trust by operating an advertised confidentiality policy which is available from the department
- providing accurate information and advisory services which target participants' needs
- supporting participants to make informed choices from the various options open to them
- referring consenting participants to specialist services
- assisting other agencies where possible to discharge their responsibilities
- attending training and contributing to interagency co-operation
- encouraging communities and organisations to develop and offer support frameworks to promote young people's protection.

#### 6.8. NHS Tayside

##### General Practitioner

GPs are ideally placed to pick up the early signs of abuse during their regular contact with children. GPs are aware of how to access the child protection system and the key personnel to contact to share information.

## Community Paediatrics

Doctors working in child health take part in the monitoring of health and development of children who give cause for concern either through known or suspected abuse. They also attend case conferences and assess children who are looked after by the local authority.

## Lead Paediatric Clinician Child Protection

The lead clinician is responsible for ensuring that children who have or may have been abused are offered sensitive assessment, treatment if necessary and follow up of their medical needs. This may include referral to counselling or psychiatric psychology services if necessary. The paediatrician is also involved in providing guidelines to health staff and offers training in child protection issues. A 24 hour service for advice and assessment is offered. The lead clinician works as part of a Health Service Child Protection team that includes the nurse consultant and his/her team (see below).

## Nurse Consultant Child Protection

The nurse consultant child protection manages the nursing team across Tayside. The team consists of a senior nurse for child protection (see below) in each of the primary care localities, a senior nurse in secondary care and a training co-ordinator.

## Senior Nurses (Child Protection)

The senior nurses for child protection are responsible for the provision of high quality child protection work by nurses, midwives and health visitors across both the primary and secondary care settings. The senior nurse for child protection offers support, supervision and training to staff, liaises with other agencies and is involved in strategic planning, research and audit in order to improve services offered to children and their families by nurses, midwives and health visitors.

## Child and Family Psychiatry

Children and young people who experience abuse are at increased risk of mental health problems. Multi disciplinary teams led by consultants provide assessment and treatment where indicated and will offer consultation to other agencies working with children so affected. The teams deliver services by geographical sector. There is a 24 hour emergency on-call service accessed through general practitioners.

## Midwives

Midwives care for women during the antenatal period, throughout labour and in the postnatal period. The midwife will continue to care for and monitor the mother's and baby's well-being at home until the tenth day after birth.

## Paediatric Nurses

Child protection is the responsibility of all nurses who are involved in the care of children. Nurses are well placed to make a major contribution towards child protection. In order to do so it is imperative that they are aware of and alert to indicators of abuse. In the event of suspected abuse they must be conversant with their role, implementing correct procedures and interagency working.

## Public Health Nurses/ Health Visitors

Public Health Nurses/Health Visitors are concerned with the prevention of ill-health and the promotion and provision of health enhancing activities for the family as a whole. They give a service to families over a long period of time, and are trained to recognise health and relationship problems, assess need and initiate action at an early stage.

## School Health Nurses

The school health nurse is the lead health professional in the delivery of a comprehensive screening and needs focused service for children of school age. As a regular visitor in school, the school health nurse has easy access to children and young people and can liaise effectively with parents, teachers and social workers to enhance the well being of all children and especially those at risk.

## 6.9. Children's Hearing System

### Children's Panel members

Children's Panel members are specially trained members of the community who are appointed by the Secretary of State to serve at tribunals called Children's Hearings. At a Children's Hearing, three panel members decide whether a child needs 'compulsory measures of supervision' and, if so, what form these measures should take.

### Children's Reporters

Any person or agency can refer a child to the Children's Reporter if it is believed that the child may be in need of compulsory measures of supervision. The Children's Reporter has statutory powers to investigate

the child's circumstances in order to decide if there is evidence to support one or more of the statutory conditions listed in the Children (Scotland) Act 1995 and whether compulsory intervention is likely to be needed. If so, the Children's Reporter writes a legal document called 'grounds for referral' and arranges a Children's Hearing. The Children's Reporter presents cases in court where there is dispute about grounds for referral (an application for proof) or the decision of a hearing (an appeal). Where a warrant or supervision order is issued by a hearing, the reporter is responsible for the administration of the case and for arranging reviews as required or requested. The reporter plays an active role in diverting children from the Hearings System where compulsory intervention is not likely to be needed.

#### The Safeguarder

The Safeguarder is an independent person who can be appointed by Panel members at a Children's Hearing to report on the interests of the child, usually in complex cases where there are competing interests and a risk that the needs and rights and views of the child may be difficult to keep in focus.

### 6.10. Court Services

#### The Sheriff

The Sheriff is a Judge who has power to issue child protection orders, child assessment/exclusion orders. He/she hears evidence at applications for proof, where there is dispute about grounds for referral, as well as appeals against decision of hearings.

#### The Sheriff Clerk

The Sheriff Clerk is the official to whom any requests for orders, applications or appeals should be directed and who arranges the court timetable and liaises with other agencies about court related matters.

#### The Procurator Fiscal

The Procurator Fiscal is the officer of the Crown who decides whether or not to prosecute someone who is alleged to have committed an offence. The Procurator Fiscal also deals with Fatal Accident Inquiries and other matters where there are issues of public interest.

#### Curator ad litem

There is provision for appointment of curators ad litem under the Children (Scotland) Act 1995 to represent the interests of children in

proceedings relating to adoption and to report in writing to a court. Curators ad litem are appointed in disputed court actions where an independent voice is considered necessary to represent the interests of the children; on occasions, curators ad litem are appointed in the course of Children's Hearing proceedings if procedurally these call in the Sheriff Court. In addition, curators ad litem may be appointed where parental responsibilities orders are sought or where an application is made for parental order under the Human Fertilisation and Embryology Act. In all these circumstances it is the Sheriff, or Lord Ordinary if in the Court of Session, who will make the appointment.

Provision is made for Statutory Instruments to establish a panel of Curators ad litem and also to provide for the appointment, qualifications and training of such persons who presently require to be legally qualified or to have relevant experience of child law. The curator's remit is to report to the court by whom the appointment is made on all the relevant circumstances of the particular child's life and all the influences upon him/her, reaching a conclusion and making a clear well founded recommendation to the court within the remit of the appointment upon what would be the best disposal for that child. The Curator ad litem can only recommend - the decision has to be made by the court.

#### Safeguarder

Like Children's Panel members, a Sheriff considering a child's case may appoint a Safeguarder to report on the child's interests during applications for proof or appeals.

#### 6.11. Specialist Resources

The Tay Project works with adults convicted of sexual offences. Several other specialist resources are also available - some like The Bridge Project working with children and young people who have committed sexual offence. Others offer services for individuals whose lives are affected by alcohol or drugs, abusive situations, or through providing therapeutic support.

The Corner offers a broad range of health and information services for young people through its city centre 'drop in' and also work in local communities. Age range 11-25 years (main target group: 11-18 years). All services - except medical - are anonymous and no appointment is necessary. The nature of the project's work means that there are many dilemmas, in relation to sexual health, child protection and the law. The

project is committed to working in collaboration with other agencies and its strength of response is in moving at each young person's pace and involving them in each stage of a process of communication with third parties.

It is not possible in a brief document like this to describe the myriad roles and range of specialist services which exist but it will always be worth while checking to see if specialist resources can help address specific difficulties which are affecting a child's life.

#### 6.12. Voluntary Agencies

Voluntary agencies in Dundee play a crucial role in supporting children directly and indirectly. Each has its own clearly identified remit and spheres of activity and will have child protection procedures in place which govern recruitment and supervision of volunteers who work with children and best practice when issues affecting a child's welfare are identified. There is a very high level of expertise and experience within the voluntary sector. Many agencies have experienced qualified child protection workers who will be the first port of call for workers within that agency. It is not possible to list and describe in this document all the voluntary agencies who are or could be working with children in need of protection.

Often the voluntary sector is working with children and young people where there are known child protection concerns and are heavily involved in risk management. Whilst statutory agencies have a lead role in many aspects of protecting children and young people, it is often the voluntary sector which has the lead role in supporting these children and young people.

## 7. SOME SITUATIONS AND SCENARIOS

### 7.1. Consent To Medical Examination, Treatment Or Procedure

If a medical practitioner believes that a child is capable of giving informed consent to any form of medical examination or treatment or procedure, that examination or treatment or procedure can be carried out without a parent's consent. But the child may decide not to give consent and even a parent's assent cannot override that choice. A Child Assessment Order granted by a sheriff or a Supervision Requirement granted by a Children's Hearing containing a specific condition can override a parent's objections to an examination or treatment or procedure but cannot override a

capable child's informed refusal (see the Age of Legal Capacity (Scotland) Act 1991 in Appendix 1 and also Section 90 of the Children (Scotland) Act) 1995.

### 7.2. A Child Needs Medical Treatment

An 11 year old child seen at a clinic needs treatment for a serious medical condition. The child's parents will not consent to the medical intervention required. Without treatment, the child's health will be seriously compromised. Efforts to negotiate with the parents to permit the child to have treatment have not succeeded but it is clear that both of them love the child deeply and have cared for the child very well. The child is deemed by the physician not to be able to give informed consent. Referral to the Children's Reporter may be an option; grounds for referral alleging that the child is likely to suffer unnecessarily or be impaired seriously in health or development due to a lack of parental care and/or that the child is the victim of neglect could be drafted and tested in Court. If established, the grounds for referral could form the basis for a decision by a Children's Hearing to issue a Supervision Requirement with a condition requiring the child to undergo the medical intervention necessary to improve his/her health. If urgent action is required, consideration could be given to seeking a Child Protection Order or a Child Assessment Order from the court in addition to referral to the Children's Reporter.

### 7.3. You've Got Suspicions But No Hard Facts

Where you have worries - a sense that something is wrong - talk to your line manager or child protection specialist. It is important to think of the child, assess the situation, consult, make a plan, act, record and review. You may want to call a network meeting by contacting all the relevant professionals involved and asking them to meet to discuss the child's circumstances. A more formal option would be to request the Social Work Department to convene an Initial Referral Discussion (IRD), which may be then lead to a Child Protection Inquiry and, thereafter, possibly a Child Protection Case Conference. This will enable any concerns to be set in an even wider context and the child's needs considered in an interagency forum which will make several significant decisions, principally relating to the possible registration of the child's name on the Child Protection Register and the development of an inter-agency child protection plan.

#### 7.4. It's Only The Child's Word....

By its nature, much abuse takes place in private with only one witness - the victim. Please do not dismiss the possibility of effective intervention just because 'It's only the child's word': there may be more evidence from other sources you don't know about, and there may be other victims in the past or in the future whose statements can be added to those of the child who has spoken to you which can lead to successful prosecution of a perpetrator as well as protection of this child and others. And remember that the Children's Reporter requires to prove cases on the balance of probability, not beyond reasonable doubt: sometimes the child's word is quite enough to secure protection for the child. For further information, look up 'Moorov doctrine' in Appendix 1.

#### 7.5. 'The Child's OK Just Now But Look At The Family's Past'

The Children (Scotland) Act 1995 tries to protect children from being abused by allowing us to work together to assess risk and take steps to prevent it becoming a reality for a child. If the child is or is likely to become a member of a family where there has been abuse of another child in the past or if there is or is likely to be someone in the household who has committed abuse in the past, that alone is enough to intervene in a planned statutory way. It is not necessary for anyone ever to have been convicted of a crime in order to be able to intervene positively to prevent harm.

#### 7.6. 'But We Don't Know Who Did It'

Sometimes we may never know exactly who did something to a child, but we do know that something has happened. Although the Procurator Fiscal needs to prove beyond reasonable doubt who exactly committed an offence to obtain a conviction in the Criminal Court, the Children's Reporter can take a case to a Children's Hearing because the child has been the victim of an offence committed by an unidentified person or persons and will seek to prove that case on a balance of probabilities - that is, that the child is more likely to have been the victim of an offence than not. An analogy in a different context: if we go into the car park and there is a large dent in the side of the car, we know that something or someone has caused the damage. The fact that we do not know exactly 'how' or 'who' does not mean it has not happened, and we submit our insurance claim on that basis.

7.7. 'He's a Schedule 1 Offender - We Have To Do Something!'

You will find a description of the offences mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 in Appendix 1. There are many people who have been convicted of Schedule 1 offences living in Dundee: some of them are bringing up children very well by themselves and some are very dangerous and no child should ever be left in their care. Statutory intervention can be justified simply by virtue of the presence or likely presence of a person who has committed an offence mentioned in Schedule 1 in the child's household. What the practitioners involved need to do is carry out a planned objective assessment of risk and then see if further steps are required in order to protect the child, knowing that there is the capability to intervene if need be.

7.8. 'But She Really Loves Her Child ...'

As a culture, we tend to want to identify someone to blame when things go wrong. But in cases involving child protection, there may be no-one to blame. Many carers cannot provide adequate care for their children, and would like to, but other factors prevent them from achieving that - alcoholism, recurring physical or mental health problems, relationships with other adults which cause risk to the child. The presence of love and affection do not mean that the child is not in need of some kind of assessment and intervention in order to mitigate and compensate for the shortcomings in the carer's care. We need to acknowledge emotional ties and aspirations but not be blinded by them.

7.9. 'The Child Doesn't Want Me To Tell Anyone About It ...'

(See section on Working Together, above)

It may happen that a child or young person will report abuse, but with the view that he or she does not want the information passed on to the key investigating agencies; i.e. social work or the police, because they're not going to make a formal complaint or they think it will lead to further or greater problems.

The person hearing the child or young person report abuse or neglect must be able to deal with child's or young person's concerns and advise them that, having heard what they've said, he or she cannot choose to do nothing about it.

Dundee Children & Young Persons Protection Committee strongly supports the principle that any person working in a statutory, or non-

statutory agency that is linked to a statutory agency through a service level agreement or other working partnership arrangement, should inform the police if they receive information that a criminal offence may have been committed.

It is part of the trusting relationship referred to above, that other professionals have to accept that the police will deal with the matter sensitively, mindful that the child's welfare is paramount, and may take one of a number of different approaches in trying to serve the best interests of the child. Formal investigation and the interviewing of suspects is only one of those approaches.

Absolute confidentiality cannot be offered. It will be for the network of professionals to meet and decide how best to proceed, taking account of the child's or young person's views.

#### 7.10. 'You'll Never Guess What Has Just Happened!'

You are doing your job, the way you usually do and then a child suddenly starts to tell you that something has happened to them or someone else, or they are worried that something is going to happen to them or someone else. What are you going to do? If you say 'Hang on while I consult my child protection manual/child protection officer', the child may well stop talking right there.

So think about how you might handle such a situation before it actually happens. There are one or two golden rules:

- if you make notes during the conversation - on the back of an envelope, a scrap of paper, whatever - keep that object: it has important evidential significance. If the child writes or draws anything, try to keep that object too for the same reasons
- try not to ask the child too many questions but simply listen to what you are being told
- reassure the child that you have listened, that you appreciate what you have been told but don't make promises you may not be able to keep
- don't jump to any conclusions but do take seriously what the child has said

- after the conversation is over, record what happened, who said what etc. as quickly as you can and decide what to do next. It is advisable to inform your senior/child protection officer as soon as possible.

#### 7.11. What Is Neglect?

Section 12(2) of the Children and Young Persons (Scotland) Act, 1937 states that 'a parent or other person legally liable to maintain a child or young person shall be deemed to have neglected him in a manner likely to cause injury to his health if he has wilfully failed to provide adequate food, clothing, medical aid or lodging for him, or if, having been unable otherwise to provide such food, clothing, medical aid or lodging, he has failed to take steps to procure it to be provided under the Acts relating to the relief of the poor.'

The Act goes on to state that if a child is suffocated in bed by a person aged 16 or over who was under the influence of drink, that shall be deemed to be neglect.

It is also important to read Section 12(3) of the Act: a person may be convicted of an offence under this section 'notwithstanding that actual suffering or injury to health, or the likelihood of actual suffering or injury to health, was obviated by the action of another person.'

Case law takes the statutory definitions a little further: In one case - HMA v Clarks - the Court stated that neglect did not have to be an intentional act on the part of the carers and that it was 'the want of reasonable care ..... the omission of such steps as a reasonable parent would take.' Another very important finding was in the case of Kennedy v S: this extended neglect into emotional aspects - just because 'children may be well nourished and clean does not justify a conclusion that they were not neglected.'

#### 7.12. 'Of Course, It's Really Hard To Prove Emotional Abuse'

It is not really hard to prove emotional abuse. This is a myth. If a child has been demeaned, degraded, denigrated by a carer, if that conduct has been witnessed by others or the child is able to tell us about it, or if the child demonstrates disturbance in other aspects of his or her life which cannot be explained in any other way, then a Court can be asked to draw the inference that the carer has been unable or unwilling to provide that child with the appropriate nurturing and supportive environment which

Section 1 of the Children (Scotland) Act 1995 specifically requires parents (and perhaps by extension any carer) to provide. If the case goes to Court, the standard of proof in terms of child protection measures is the balance of probability - is there evidence to convince the sheriff that emotional abuse is more probable to have happened or to be occurring than not?

#### 7.13. Sleeping Up A Close

Some children and young people can put themselves at considerable risk by their behaviour. Persistent running away from home, dangerous experimentation with substances, abuse through prostitution, sleeping rough, persistent offending, extreme risk taking, taking refuge with adults whose motives are suspect - these are all indicators of grave disturbance in the child's life. 'Supervision' in relation to the term 'compulsory measures of supervision' includes measures taken for the protection, guidance, treatment or control of the child. (Section 53(3) Children (Scotland) Act) 1995 and we should be thinking about risk assessment and protection for these children as well as those who are at risk because of the actions or inactions of others.

#### 7.14. 'It Was Just The Drink'....

Whatever the excuse, it is not good enough for any parent or carer to put their own needs and failings before the needs and rights of the child. Maybe the Friday night binge drinker is a really good parent 6 nights of the week, but the night he or she is drunk is the night that the damage may be done to the child. Maybe the drug abuser isn't usually irritable and erratic, but the days they are, the child may end up having to care for them rather than the other way around. Adults usually have choices about how they live, but children have to live with the consequences of those choices.

#### 7.15. 'But The Children Weren't There When He Hit Her ...'

Domestic abuse can occur in households of all types. Some perpetrators may wish to believe that their actions are discreet and do not affect the lives of everyone living in the environment, others will revel in the fact that everyone is affected. Victims of domestic abuse will often hope that the children have not noticed anything and that they are 'drawing fire' away from the children. Children are aware of domestic abuse even if they do not see it in person and can be very damaged in their attitudes and emotional development, quite apart from the risk of physical

injury should they try to intervene or become direct victims of abuse themselves.

#### 7.16. When The Abuser Is A Sibling

It can be very difficult to manage a situation where one child has abused another within a household or any other establishment. The needs of each child have to be identified and there may well be conflicts of interest and resource. Clear definition of any interventions are very necessary and clear communication with colleagues is vital in order to avoid polarisation and perpetuation of difficulties. There may be human rights conflicts and it will be essential to assess whether the protection from serious harm should take precedence over the welfare of the abusing child (see Appendix 1, A2)

In all cases of abuse and neglect it is essential to record precisely all facts, observations and events. It is the accumulation of evidence which will provide the best means of assuring protection. The experience of and consequences for the child should be a prime focus.

### 8. **Appendix 1: Short guide to some of the main legal references**

Children (Scotland) Act 1995:

See also the section on legal responsibilities, authority and powers.

Section 1 : Parental Responsibilities

Section 1 lists what a parent's responsibilities are:

- to safeguard and promote a child's health, development and welfare
- to provide direction and guidance appropriate to the child's stage of development
- to maintain personal relations and contact with the child, even if living apart
- to act as the child's legal representative.

Section 16/17 : Public protection as well as welfare of the child

The Act states that the welfare of the child throughout his/her childhood shall be the paramount consideration except for the purposes of

protecting members of the public from serious harm (whether or not physical harm). In those kinds of situations, a local authority or Court or Hearing may act or take decisions which are not consistent with affording paramourncy to the welfare of the child.

#### Sections 22 and 93(4): Children in need

Every Department of every local authority has a duty to:

- safeguard and promote the welfare of children in their area who are in need
- so far as is consistent with that duty, promote the upbringing of such children by their families.

Section 93(4) of the Act defines being 'in need' as being in need of care and attention because:

- the child is unlikely to achieve or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health or development unless provided with services by a local authority
- the child's health or development is likely significantly to be impaired, or further impaired, unless such services are so provided
- the child is disabled
- the child is adversely affected by the disability of any other person in the family
- the child is being 'looked after' by a local authority.

#### Section 70 : Supervision Requirements

A Supervision Requirement is the name given to the formal document issued by a Children's Hearing when the three members of the Children's Panel decide that a child is in need of compulsory measures of supervision. The Requirement can last for twelve months but can be extended at a Review Hearing. Theoretically, a Requirement can be issued a few weeks after a baby's birth and remain in force until the child's 18th birthday but the Children (Scotland) Act 1995 is quite clear that any order or requirement should remain in force only for as long as it is needed. The Children's Hearing can attach conditions to the requirement which are binding on the child. The conditions can regulate:

- where and with whom the child is to live
- whether and to whom the child's whereabouts are to be disclosed
- whether the child is to undergo any form of treatment, including medical treatment (subject to the child's right to withhold consent if he/she is deemed by a physician to be able to give informed consent)
- where the child is to go to school
- with whom the child is to have contact, and on what basis.

### The Protection of Children (Scotland) Act 2003

The Act created the 'List of Persons Unsuitable to Work With Children' (The List). Any person being employed in a 'childcare' position must be checked against the List. The means of doing this is via an Enhanced Disclosure check from Disclosure Scotland.

It is an offence to:

- employ anyone in a childcare position who is 'fully listed'
- to fail to remove someone from a childcare position if that person is found to be, or becomes, fully listed
- to fail to refer someone to the List if the 'grounds for referral' have been met.

An individual who is fully listed will commit an offence if they seek employment in a 'childcare' position.

### The Criminal Procedure (Scotland) Act 1995

The Criminal Procedure (Scotland) Act 1995 contains important information at Sections 41 - 46, 49 and 51 about children who are charged with committing serious offences and who may appear in Court.

The Act also allows Courts to refer children to Children's Reporters in cases where a person is being convicted of offences against children. These provisions of the Act can be found at Section 48:

Schedule 1 Offences:

At the end of the Criminal Procedure (Scotland) Act 1995, there are

10 'schedules'; the first one (hence the name, 'Schedule 1') relates to 'offences against children under the age of 17 years to which special provisions apply'. The 'special provisions' include the power of Courts to apply particular sentences which reflect the gravity of the offence in terms of who the victim was, to certify that grounds for referral have been established because a person has been convicted of an offence which involves a child, to refer to the Reporter any child who has been a victim of such an offence or who lives in the same household as someone who has committed such an offence and for other agencies to use the fact of conviction as a reason for protecting any children from that person then or at any time in the future.

A Schedule 1 conviction is never 'spent' in terms of the Rehabilitation of Offenders Act 1974.

The offences which are mentioned in the Schedule are:

- any offence under Part 1 of the Criminal Law (Consolidation) (Scotland) Act 1995; this Act deals with serious sexual offences like incest, unlawful sexual intercourse, involving children in prostitution etc.
- any offence under section 12, 15, 22 or 33 of the Children and Young Persons (Scotland) Act 1937. This Act deals with the special relationship between a child and the carer; examples include situations where a child has been the victim of an offence of assault, ill-treatment, neglect, abandonment or exposure, or would have been if there had not been effective intervention by someone else, procuring a child to beg or causing or procuring a child to take part in a public performance in which life or limb is endangered, or exposing children under the age of 7 to burning
- any other offence involving bodily injury to a child under the age of 17 years - for instance an assault on a child by someone who is not their carer, giving drugs or alcohol to a child which cause injury, injuring a child in a car crash where the child was not secured properly or the car was not being lawfully driven etc
- any offence involving the use of lewd, indecent or libidinous practice or behaviour towards a child under the age of 17 years; offences in this category include exposure to a child, showing a child pornography or taking pornographic pictures, sexualised behaviour which involves touching etc.

## Age of Legal Capacity (Scotland) Act 1991

This Act deals with the legal obligations and powers of children. One of the most important parts of the Act is Section 2(4). A child may consent - or refuse to consent - to any surgical, medical or dental procedure or treatment where, in the opinion of the medical practitioner attending the child, the child is capable of understanding the nature and possible consequences of the procedure and treatment.

## Scotland's Children, Volumes 1 - 4

In 1997, the Scottish Office (now called the Scottish Executive) published four related books entitled collectively Scotland's Children. The first three books (blue, red and green) contain guidance and copies of the statutory instruments which are used to give support and protection for children and their families, children who are looked after by local authorities and adoption and parental responsibilities orders and the fourth book (purple) contains a comprehensive bibliography and index.

## The Moorov Doctrine

The Law of Scotland requires corroboration, that is evidence from two sources. In many cases of sexual abuse there is no corroboration since children are alone, they have no injuries, there is no forensic evidence.

However, when two or more children are abused by the same accused there is a legal doctrine based on a case *HMV v Moorov* 1930 which allows the evidence of the victims to be mutually corroborative.

This is a very useful legal tool but it is very narrowly applied. Cases must be closely related in circumstances, time and character. This means that generally the instances must be within 3-4 years of one another, the form of abuse must be similar and the victims must be of a similar age or maturity at the time the offences were committed against them.

## Doctrine of transferred intent

Sometimes - in cases of domestic abuse in particular - perpetrators of abuse will say 'But I never meant to hit the child!' as if that in some way exculpates them. It does not. At a funeral tea in Dunfermline, a fight broke out: Mrs R meant to hit Mr H but hit Mr C instead, breaking his little finger. She was convicted of assaulting Mr C even though she had intended to hit Mr H and her appeal against conviction failed. (*Roberts v Hamilton*)

1989 SLT 399).

#### Definition of 'household'

The word 'household' where it appears in any legislation means more than simply the bricks and mortar of the building and is more than the place where people live; even though people may not be living together at the same address, they may still be members of the same household. The term connotes 'a family unit, or something akin to a family unit - a group of persons held together by a particular kind of tie who normally live together, even if individual members can be temporarily separated from it.' (McGregor v H 1983 SLT 626).

So if a man who has committed Schedule 1 offences against children is in prison and his partner gives birth to another child, it is quite competent to argue that the child is a member of a household in which there is a person who has committed a Schedule 1 offence: his absence is temporary and enforced by the intervention of the State. His partner might have decided to leave him and not permit him to live with her and the child again once he is released, in which case there would be a case for evaluating the evidence, but unless that could be established as a certainty, the presumption would be that full assessment of the risks to and needs of the child should be undertaken.

In the case of *A v Kennedy* 1993 SLT 1188/1993 SCLR 107, a couple had a child M who had died in 1983 of neglect and multiple injuries by ill treatment. In 1992, they had another child N. The Court held that N was a member of the same household as M: "even if one or more members had separated from it permanently, e.g. children leaving home, or new members were added ... (it was) a matter of fact and degree; passage of time, the gender of the members of the group and their experiences did not affect the identity of the household."

