



# Scottish Investigators' Guide to **CHILD PROTECTION**



Dumfries and Galloway  
Constabulary



**This document has been produced on behalf of the Association of Chief Police Officers in Scotland (ACPOS) by the ACPOS Child Protection Working Group. It will be updated according to legislative and policy changes and re-released as required.**

**ACPOS wish to express thanks to all those involved in the drafting of this document.**

**All of the responses during the consultation phase were appreciated and contributed to the final document.**

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# Foreword



Deputy Chief Constable **Tom Halpin**  
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Chair: ACPOS Family Protection Portfolio

The Scottish police service can rightly be proud of the important role that it plays in protecting the public and in particular those vulnerable sections of our community, especially children.

Unfortunately the abuse of children is a fact and feature in our society and whilst efforts are made to address the causal factors, it will remain incumbent on the police service to ensure that we can deliver a policing response to these matters that offers the highest standards of professionalism and integrity, protecting children whilst also serving the wider needs of society.

To assist in meeting the standards that the public deserves and should expect, ACPOS identified benefit in developing this guide, intended to assist police officers faced with dealing with the challenges that investigations into the abuse of children can bring. In so doing we are able to ensure that across Scotland the police will engage in these matters using a systematic and structured approach, informed by experience, 'best practice', and in line with legislative and policy guidance.

While bringing this consistency of practice and approach it is recognised that the police response will also require to reflect local policies and procedures, and consequently in some sections a 'generic' position is provided that is considered as the minimum standard.

This will allow the police guidance to be complementary to existing and developing inter-agency guidance.

This guidance is intended to inform the policing response which experience tells us will require to be flexible, to suit the needs of the individual case and ensure the protection and continued safety of the child and their family, whilst ensuring that expectations within wider society are met and those who offend against children are identified and appropriately dealt with. With the ever-changing nature of the threat towards children the policing response must remain pro-active to ensure that we are able to deliver the highest standards of response. This guidance is envisaged to become a 'living' document that will enable investigators to share practice, ensuring that everyone benefits from this shared learning experience.

Police officers involved in this area of work can feel proud of the fact that they are able to make a positive difference.

A handwritten signature in blue ink that reads "Tom Halpin".

April 2008



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## PART I

# Child Protection in Context



## Chapter I

# Child Protection

### Introduction

This section outlines significant national developments in relation to child protection responsibilities, in particular the key areas impacted upon by the Scottish Executive Child Protection Reform Programme between 2003 and 2006.

For police purposes the definition of a 'child' is outlined in the Children's (Scotland) Act 1995 as being:

### Child

- i) a child who has not attained the age of 16 years; or
- ii) a child over the age of 16 years who has not attained the age of 18 years and in respect of whom a supervision requirement is in force; or
- iii) a child whose case has been referred to a Children's Hearing by virtue of a Supervision Order issued in England, Wales or Northern Ireland, and for the purpose of the application of those chapters to a person who has failed to attend school regularly without reasonable excuse, includes a person who is over 16 years of age but is not over school age.

### Child Protection Reform

Following a number of child protection significant case reviews a national audit of child protection services was commissioned. The findings were outlined in the publication **"It's everyone's job to make sure I'm alright"**, Report of the Child Protection Audit and Review, (Scottish Executive, 2002). This report concluded that there were shortcomings in the single and multi-agency systems in place to protect children and made 17 recommendations for improvements.

Following publication of the review, a three year programme was established to improve practice to offer better protection of children at risk of neglect and abuse and reduce the numbers of children who need protection. This was intended to bring a consistency of approach across Scotland.

Projects of the reform programme included:

- the publication of a **Children's Charter**, setting out what every child has the right to expect;
- the development of the **Framework for Standards** which applies to all agencies;
- the development of **multi-agency inspections** for all agencies involved in child protection;

- examination and clarification of the role and remit of **Child Protection Committees**;
- the development of a **24 hour child protection helpline service**;
- **raising community awareness of child protection**;
- **inter-agency child protection training**; and
- **child death and significant case reviews**.

Whilst the reform programme is now complete and the evaluation has been carried out the impact and outcomes are still very much at the centre of child protection in Scotland and are the key drivers in improving children's services.

### The Policing Role

The priorities of the Police Service in responding to child protection concerns are governed by legislation and are underpinned by duties contained within the United Nations Convention on the Rights of the Child (UNCRC), the Human Rights Act 1998 and the European Convention on Human Rights (ECHR).

These priorities can be summarised as follows:

- to protect the lives of children;
- to respect the rights of child victims of crime;
- to ensure that in the policing of child abuse the welfare of all children is the paramount consideration;
- to investigate all reports of child abuse and neglect;
- to take effective action against offenders so that they can be held accountable, through the criminal justice system, while protecting children and young people;
- to adopt a proactive multi-agency approach to child protection; and
- to establish investigating child abuse and safeguarding children as a mainstream policing activity.

Inquiries into child deaths and homicides such as the **Victoria Climbié Inquiry Report** published in 2003, demonstrate the necessity for all victims of child abuse to receive the appropriate quality of service according to their individual needs. All allegations should be properly investigated and, where possible, offenders held accountable through the criminal justice system, without discrimination.

Chief officers should establish and implement policies which ensure that the police response to child protection fully supports and achieves these priorities. This requires all police officers and police staff to be confident and competent in identifying child protection issues, responding appropriately, and for subsequent criminal investigations to be undertaken by specialist investigators.

From a Scottish perspective the following strategic issues are identified as being of importance for chief officers to consider:

- implementing comprehensive policies and procedures, incorporating the Scottish Investigators' Guide to Child Protection to compliment and augment related materials;
- ensuring that the training needs of all staff are met through relevant national and local training initiatives;
- ensuring the effective supervision of all aspects of policing child protection.
- ensuring that the investigation of crime against children is as important as the investigation of any other form of serious crime.
- focusing on police responsibility for Child Protection investigations within a multi agency context to ensure that offenders are held to account;
- developing information systems which support information sharing both within the police service and with other agencies;

In achieving these priorities and fulfilling these obligations, partnership working with both criminal justice agencies and other statutory and voluntary sector services is essential. **The Bichard Inquiry Report** (2004) following the deaths of Holly Wells and Jessica Chapman established the importance of the police managing intelligence information relating to child protection and the appropriate sharing of information and intelligence.

## Chapter 2

# Categories of Abuse

### Introduction

The general categories of child abuse were set out, in Scotland, in 1993. These categories were determined primarily to enable the easy registration of children considered 'at risk' on Child Protection Registers and statistical collation/forward planning. They are general and do not set out to categorically define abuse. Each category has a separate description. Even then, these descriptions tend to go for breadth rather than depth.

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 as abusive and to reduce future risk, a number of elements must be taken into account. These include demonstrable or predictable harm to the child which was a result of action or inaction on the part of the parent or other carer.

**'Protecting Children—A Shared Responsibility' (Scottish Office, 1998)**, outlined that **"categories of abuse are not discrete and may be present in combination. For example, sexual abuse may be associated with physical injury or neglect. Emotional abuse is a factor present in all forms of abuse..."** It is clear that in describing general categories the relationship between them is not straightforward. The descriptions contained in this document are as close to actual definitions of abuse as are currently available in Scotland.

### Categories of Child Abuse

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The categories of abuse for registration are:

- Physical Injury
- Sexual Abuse
- Non-organic Failure to Thrive
- Emotional Abuse
- Physical neglect

### 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 not knowingly prevented.

## Sexual Abuse

Any child may be deemed to have been sexually abused when any person(s), by design or neglect, involves 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 development 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 emotional needs such as to have a severe effect on the behaviour and development of the child.

This may include situations where, as a result of persistent behaviour by the parent(s) or care giver(s), children are: rejected, belittled, made scapegoats, inappropriately punished, denied opportunities for exploration, play and socialisation appropriate to their age and stage of development or encouraged to engage in anti-social behaviour; put in a state of terror or extreme anxiety by the use of threats or practices designed to intimidate, isolated from normal social experiences preventing the child from forming relationships.

## 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

## Conclusion

It is accepted that these descriptions are general and designed to assist in arriving at registration decisions. However, in examining each in detail, and thinking through how they might be applied in a practical context, some problematic questions/issues arise for the practitioner.

Any child who is being exposed to the risk of one of the categories of abuse outlined above will require intervention from at least one agency. The duty of the police in relation to their involvement with the child concerned is highlighted within the Investigative Procedures and Considerations chapter of this manual



## Chapter 3

# Criminal Legislation

### Introduction

The following section is intended as a guide to the criminal law and legislation most frequently used in child protection matters. It is drawn from PINS and readers will be aware that changes can often occur; therefore when considering a particular question it is recommended that full reference is made to PINS to ensure that the most contemporaneous position is available.

### Rape

Rape is the carnal knowledge of a female by a male person, without her consent. It is also rape for a male person to have sexual intercourse with a girl less than 12 years of age even if she is willing, or with a female who is incapable through mental abnormality of giving proper consent. Carnal knowledge means penetration to the slightest extent even without emission.

**Note:—See also statutory crimes for offences of sexual intercourse with children aged 13 years and below.**

### Overcoming her Will

It is not essential that physical violence be used to overcome the will of the victim. Threats or the administration of drugs, for example, may be used.

There need not be physical resistance on the part of the complainer. In the case of **Barbour v HMA 1982, SCCR 195**, the appellant was charged with raping a woman whom he had threatened with violence. The complainer accepted that she had not offered any resistance. The trial judge directed the jury that the important matter was not the amount of resistance, but whether the complainer was an unwilling party to the rape. The appeal against the conviction was dismissed.

### Sodomy

Sodomy is the crime of unnatural connection between human males. Proof of penetration is an indispensable requirement. It is not an offence for two consenting adults over the age of 16 years to engage in a homosexual act in private, namely sodomy or an act of gross indecency (see section 13 Criminal Law (Consolidation) (Scotland) Act 1995).

### Public Indecency

On 22 July 2003, the High Court delivered opinions in the decisions of *PF Dunoon v Allan Dominick* and *Gillan MacLean v PF Inverness* in relation to the charge of shameless indecency. The judgements in these cases have resulted in consequences for the investigation, reporting and prosecution of conduct previously amounting to shameless indecency.



The principal effects of these decisions are two-fold:

- to restrict the criminality of such behaviour; and
- to define an offence of “public indecency”.

Consequently, the charge of shameless indecency no longer exists and reports to the Procurator Fiscal should no longer contain reference to this crime.

The High Court stated that the newly defined crime of public indecency has two elements; the act itself and the effect it has on the minds of the public. Some examples were provided by the Court, for example, indecent exposure, sexual intercourse in a public place and the making of indecent actions/gestures. The issue of whether it was necessary to establish sexual gratification was also considered, however it was decided that this was a matter of motive and was irrelevant to liability. As far as the public element of the crime is concerned, the Court stated that the determining factor was not whether it was committed in public but rather that it occurred in the presence of unwilling witnesses or in private premises but nonetheless visible to the public.

Relevant cases should be charged and reported using the appropriate common law or statutory charges, other than shameless indecency, including where appropriate the newly defined offence of public indecency.

### Indecent Assault

Indecent assault is not a separate crime but is a form of a common law assault accompanied by indecent circumstances. It has been held that any uninvited handling of the victim's private parts constitutes the crime.

#### Decisions

Held as a charge of assault by placing your hand upon his private part sufficiently sets forth a charge of indecent assault (**McLaughlan v Boyd**, 1933 SLT 629). Under section 15 of the Criminal Law (Consolidation) (Scotland) Act 1995 it shall be in defence to a charge of indecent assault committed against a girl under the age of 16 years that the person so charged has reasonable cause to believe that the girl was his wife.

### Lewd, Indecent and Libidinous Practice

In the case of **McLaughlan v Boyd**, 1933 SLT. 629, it was held that the common law does not define exactly those forms of indecent conduct which amount to crime but holds that all shamelessly indecent conduct is criminal. Such conduct may include the carrying out of acts of a sexual nature in the presence of a child. Whether the person towards whom such practices are used is a girl under the age of 12 years or a boy under the age of 14 years, the common law charge of Lewd Indecent and Libidinous Practices and Behaviour should be used.

Where such a girl is 12 years of age and under the age of 16 years, Section 6, Criminal Law (Consolidation) (Scotland) Act 1995 should be used. Where such a boy is 14 years of age or over, an appropriate charge would be Indecent Assault at common law.

**Note:—Criminal Law (Consolidation) (Scotland) Act 1995.** The legislation in force at the time of the commission of the offence **MUST** be utilised throughout the investigation and reporting process. E.g. If the offence was committed prior to the effective date of this legislation, then **Sexual Offences (Scotland) Act 1976** should be utilised and prior to this, **Criminal Law Amendment Act 1922**.

## Incest

### Section 1 Criminal Law (Consolidation) (Scotland) Act 1995

Any male person who has sexual intercourse with a person related to him in a degree specified in column 1 of the table set out below, or any females who have sexual intercourse with a person related to her in a degree specified in column 2 of that table shall be guilty of incest unless the accused proves he or she:

- a) does not know or had no reason to suspect the person with whom he or she had sexual intercourse with was related in a degree so specified;
- b) did not consent to have sexual intercourse, or to have sexual intercourse with that person;
- c) was married to that person at the time when the sexual intercourse took place, by a marriage entered into outside Scotland and recognised as valid by Scots law.

### Degrees of Relationships

Column 1	Column 2
1. Relationships by consanguinity	
Mother	Father
Daughter	Son
Grandmother	Grandfather
Grand-daughter	Grandson
Sister	Brother
Aunt	Uncle
Niece	Nephew
Great grandmother	Great grandfather
Great grand-daughter	Great grandson
2. Relationships by adoption	
Adoptive mother or former adoptive mother. Adopted daughter or former adopted daughter.	Adoptive father or former adoptive father. Adopted son or former adopted son.

For the purpose of this section, a degree of relationship exists in the case of a degree specified in paragraph 1 of the table:

- a) whether it is of the full blood or the half blood; and
- b) even where traced through or to any person whose parents are not or have not been married to one another.

For the avoidance of doubt sexual intercourse between persons who are not related to each other in a degree referred to above is not incest. This is in reference to the adoption table as detailed above.

**Notes:**

- a) **Subsection (1)(b) means that the person did not consent (a) to have sexual intercourse or (b) to have sexual intercourse with that person.**
- b) **In a charge of incest by a father with his two daughters, on different occasions, it was directed that, if the evidence of both girls is believed, the evidence of one may be taken as corroboration of the other (HMA. v AE, 1938 S.L.T.7 70).**
- c) **Held, that, where a man aided and abetted intercourse between mother and son, he was guilty, at least in part, although his relationship was not within the prohibited degrees. (Vaughan v HMA., 1979 SLT. 49).**

### **Intercourse with Step-Child**

#### **Section 2 Criminal Law (Consolidation) (Scotland) Act 1995**

Any step-parent or former step-parent who has sexual intercourse with his or her step-child or former step-child shall be guilty of an offence if that step-child is either under the age of 21 years or has at any time before attaining the age of 18 years lived in the same household and been treated as a child of his or her family, unless the accused proves that he or she:

- a) did not know and had no reason to suspect that the person with whom he or she had sexual intercourse was a step-child or former step-child; **or**
- b) believed on reasonable grounds that the person was of or over the age of 21 years; or
- c) did not consent to have sexual intercourse, or have sexual intercourse with that person; or was married to that person, at the time when the sexual intercourse took place, by a marriage entered into outside Scotland and recognised as valid by Scots law.

## Intercourse of Persons in Position of Trust with Child under 16

### Section 3 Criminal Law (Consolidation) (Scotland) Act 1995

- 1) Any person of or over the age of 16 years who:
  - a) has sexual intercourse with a child under the age of 16 years;
  - b) is a member of the same household as that child; and
  - c) is in a position of trust or authority in relation to that child, shall be guilty of an offence, unless the accused proves that subsection (2) below applies in his or her case.
- 2) This subsection applies where the accused:
  - a) believed on reasonable grounds that the person with whom he or she had sexual intercourse was of or over the age of 16 years; or
  - b) did not consent to have sexual intercourse, or to have sexual intercourse with that person; or
  - c) was married to that person, at the time when the sexual intercourse took place, by a marriage entered into outside Scotland and recognised as valid by Scots law.

**Note:—See also provisions of Sexual Offences (Amendment Act) 2000.**

## Sexual Offences (Amendment) Act 2000

### Abuse of Positions of Trust—Section 3

- 1) Subject to subsection (2) and (3) below, it shall be an offence for a person aged 18 or over:
  - a) to have sexual intercourse (whether vaginal or anal) with a person under that age; or
  - b) to engage in any other sexual activity with or directed towards such a person if (in either case) he is in a position of trust in relation to that person.
- 2) Where a person (“A”) is charged with an offence under this section of having sexual intercourse with, or engaging in any other sexual activity with or directed towards, another person (“B”), it shall be a defence for A to prove that, at the time of the intercourse or activity:
  - a) he did not know, and could not reasonably have expected to know, that B was under 18;
  - b) he did not know, and could not reasonably have expected to know, that B was a person in relation to whom he was in a position of trust; or
  - c) he was lawfully married to B.
- 3) It shall not be an offence under this section for a person (“A”) to have sexual intercourse with, or engage in any other sexual activity with or directed towards, another person (“B”) if immediately before the commencement of this Act:
  - a) A was in a position of trust in relation to B; and
  - b) a sexual relationship existed between them.

- 4) A person shall be guilty of an offence under this section shall be liable:
  - a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or to both;
  - b) On conviction on indictment to imprisonment for a term not exceeding five years, or to a fine or to both.
- 5) In this section, “sexual activity”:
  - a) does not include any activity which a reasonable person would regard as sexual only with knowledge of the intentions, motives or feelings of the parties; but (b), subject to that, means any activity which such a person would regard as sexual in all the circumstances.

#### Meaning of “Position of Trust”—Section 4

- 1) For the purpose of Section 3 above, a person aged 18 or over (“A”) is in a position of trust in relation to a person under that age (“B”) if any of the four conditions set out below, or any condition specified in an order made by the Secretary of State by statutory instrument, is fulfilled.
- 2) The first condition is that A looks after persons under 18 who are detained in an institution by virtue of an order of a court or under an enactment, and B is so detained in that institution.
- 3) The second condition is that A looks after persons under 18 who are resident in a home or other place in which:
  - a) Accommodation is provided by an authority under section 26(1) of the Children (Scotland) Act 1995; and
  - b) B is resident, and is so provided with accommodation and maintenance in that place.
- 4) The third condition is that A looks after persons under 18 who are accommodated and cared for in an institution which is:
  - a) a hospital; or
  - b) a residential care home, nursing home, mental nursing home or private hospital; or
  - c) a community home, voluntary home, children’s home or residential establishment; and is accommodated and cared for in that institution.
- 5) The fourth condition is that A looks after persons under 18 who are receiving full-time education at an educational institution, and is receiving such education at that institution.
- 6) No order shall be made under subsection (1) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- 7) A person looks after persons under 18 for the purposes of this section if he is regularly involved in caring for, training, supervising or being in sole charge of such persons.



- 8) For the purposes of this section, a person receives full-time education at an educational institution if:
- he is registered or otherwise enrolled as a full-time pupil or student at the institution; or
  - he receives education at the institution under arrangements with another educational institution at which he is so registered or otherwise enrolled.
- 9) In this section, except where the context otherwise requires:
- “authority” means, in relation to Great Britain, a local authority; and
- “hospital” has, in relation to Scotland, the meaning given by section 108 (1) of the National Health Service (Scotland) Act 1978; and “nursing home”, in relation to Scotland, means a nursing home registered under section 1 of the Nursing Homes Registration (Scotland) Act 1938; and
- “private hospital” has, in relation to Scotland, the meaning given by section 12(2) of the Mental Health (Scotland) Act 1984; and “residential care home”, in relation to Scotland, means an establishment in respect of which a person is registered under section 62 or 63 of the Social Work (Scotland) Act 1968; and “residential establishment”, has the meaning given by section 93(1) of the Children (Scotland) Act 1995 as the meaning of that expression in relation to a place in Scotland.

### Intercourse with Girl under 16

#### Section 5 Criminal Law (Consolidation) (Scotland) Act 1995

- Subject to section 205A of the Criminal Procedure (Scotland) Act 1995 (imprisonment for life on further conviction of certain offences), any person who has unlawful sexual intercourse with any girl under the age of 13 years shall be liable of conviction on indictment to imprisonment for life.
- Any person who attempts to have unlawful sexual intercourse with any girl under the age of 13 years shall be liable of conviction on indictment to imprisonment for a term not exceeding 10 years or on summary conviction to imprisonment for a term not exceeding 3 months.
- Without prejudice to sections 1 to 4 of this Act, any person who has, or attempts to have, unlawful sexual intercourse with any girl of or over the age of 13 years and under the age of 16 years shall be liable on conviction on indictment to imprisonment for a term not exceeding 10 years or on summary conviction to imprisonment for a term not exceeding 3 months.
- No prosecution shall be commenced for an offence under subsection (3) above more than one year after the commission of the offence. (In these instances consider whether a charge of Lewd and Libidinous practices or behaviour might be considered relevant and appropriate).**
- It shall be a defence to a charge under subsection (3) above that the person so charged:
  - had reasonable cause to believe that the girl was his wife; or
  - being a man under the age of 24 years who had not previously been charged with a like offence, had reasonable cause to believe that the girl was of or over the age of 16 years.

- 6) In subsection (5) above, “a like offence” means an offence under:
- a) subsection (3) above; or
  - b) section 4(1) or 10(1) of the Sexual Offences (Scotland) Act 1976 or sections 5 or 6 of the Criminal Law Amendment Act 1885 (the enactments formally creating the offences mentioned in subsection (3) above and section 9(1) of this Act); or
  - c) section 6 of the Sexual Offences Act 1956 (the Provision for England and Wales corresponding to subsection 3 above), or with an attempt to commit such an offence; or
  - d) section 9(1) of this Act.
- 7) For the purpose of subsection 4 above, a prosecution shall be deemed to commence on the date on which a warrant to apprehend or to cite the accused is granted, if such a warrant is executed without undue delay.

**Notes:**

- a) In the case of a man of 23 years of age or under (i.e., has not reached his 24th birthday—**R.V CHAPMAN, 95 J.P. 205**), the presence of reasonable cause to believe that the girl is over the age of 16 years shall be a valid defence on the first occasion on which he is charged with an offence under section 5(1)(Sub- section 5(b) above).
- b) In the case of **HMA.V WATSON, 23 SLR 267**, it was held that sexual intercourse, between a girl and a male who was not her husband, was unlawful sexual intercourse within the meaning of section 5(1) above. In this section, therefore, the word “unlawful” means “extra-marital”. A marriage in Scotland, between persons either of whom is under the age of 16 years, is void. If, however, the marriage is entered into, outside Scotland, between persons, neither of whom is domiciled in Scotland, and recognised as valid by Scots law and, if the female was under the age of 16 years, the defence afforded by subsection (5) above would be available.
- c) In the case of an adult female having sexual intercourse with a male child under the age of 16 years, the charge of Indecent Assault would be appropriate.

## **Indecent Behaviour Towards Girls Between 12 and 16**

### **Section 6 Criminal Law (Consolidation) (Scotland) Act 1995**

Any person who uses towards a girl of or over the age of 12 years and under the age of 16 years any lewd, indecent or libidinous practice or behaviour which, if used towards a girl under the age of 12 years, would have constituted an offence at common law shall, whether the girl consented to such practice or behaviour or not, be liable on conviction on indictment to imprisonment for a term not exceeding 2 years or on summary conviction to imprisonment for a term not exceeding 3 months.

## Homosexual Offences

### Section 13 Criminal Law (Consolidation) (Scotland) Act 1995

- 1) Subject to the provisions of this section, a homosexual act in private shall not be an offence provided that the parties consent thereto and have attained the age of 16 years.
- 2) An act which would otherwise be treated for the purposes of this act as being done in private shall not be so treated if done:
  - a) When more than two persons take part or are present; or
  - b) In a lavatory to which the public have, or are permitted to have, access whether on payment or otherwise.
- 3) A male person who is suffering from mental deficiency which is of such a nature or degree that he is incapable of living an independent life or of guarding himself against serious exploitation cannot in law give any consent which, by virtue of subsection (1) above, would prevent a homosexual act from being an offence; but a person shall not be convicted on account of the incapacity of such a male person to consent, of an offence consisting of such an act if he proves that he did not know and had no reason to suspect that male person to be suffering from such mental deficiency.
- 4) In this section, "a homosexual act" means sodomy or an act of gross indecency, shameless indecency by one male person with another male person.
- 5) Subject to subsection (3) above, it shall be an offence to commit or to be party to the commission of, or to procure or attempt to procure the commission of a homosexual act:
  - a) otherwise than in private;
  - b) without the consent of both parties to the act; or
  - c) with a person under the age of 16 years.
- 6) It shall be an offence to procure or attempt to procure the commission of a homosexual act between two other male persons.
- 7) A person who commits or is party to the commission of an offence under Subsection (5) or subsection (6) above shall be liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine or to both and on summary conviction to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the prescribed sum (within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995).
- 8) It shall be a defence to a charge of committing a homosexual act under subsection (5)(c) above that the person so charged being under the age of 24 years who had not previously been charged with a like offence, had reasonable cause to believe that the other person was of or over the age of 16 years.
- 9) A person who knowingly lives wholly or in part on the earnings of another from male prostitution or who solicits or importunes any male person for the purpose of procuring the commission of a homosexual act within the meaning of subsection (4) above shall be liable:



- a) on summary conviction to imprisonment for a term not exceeding 6 months; or
  - b) on conviction on indictment to imprisonment for a term not exceeding 2 years.
- 10) Premises shall be treated for the purpose of sections 11(1) and 12 of this Act as a brothel if people resort to it for the purposes of homosexual acts within the meaning of Subsection (4) above in circumstances in which resort thereto for heterosexual practices would have led to its being treated as a brothel for the purposes of those sections.
- 11) No proceedings for:
- a) the offences mentioned in subsections (5) and (6) above; and
  - b) any offence under subsection (9) above which consists of soliciting or importuning any male person for the purpose of procuring the commission of a homosexual act shall be commenced after the expiration of 12 months from the date on which that offence was committed.

### **Sexual Offences (Procedure and Evidence) (Scotland) Act 2002**

Where a person is arrested for any of the undernoted offences, notification as per section 288C of the Criminal Procedure (Scotland) Act 1995, will apply (see appendix). The notification should be read over by the duty officer or in their absence the arresting officer at the time of the completion of the arrest/rights of accused documentation. It may also be advisable for forces to consider that where notification is given, a copy of the said notification should be handed to the person(s) arrested.

It is also advised that the duty officer or arresting officer notes intimation of the notification within the custody notes or in the officer's police notebook.

Offences to which this act applies:

- a) rape;
- b) sodomy;
- c) abduction of a woman or a girl with intent to rape;
- d) assault with intent to rape;
- e) indecent assault;
- f) indecent behaviour (including any lewd, indecent or libidinous practice or behaviour);
- g) an offence under section 106(1)(a) or 107 of the Mental Health (Scotland) Act 1984 (unlawful sexual intercourse with mentally handicapped female or with patient);
- h) an offence under any of the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39):
  - i) sections 1 to 3 (incest and related offences);
  - ii) section 5 (unlawful sexual intercourse with a girl between 13 and 16);

- iii) section 6 (indecent behaviour towards girl between 12 and 16);
- iv) section 7(2) and (3) (procuring by threats etc.);
- v) section 8 (abduction and lawful detention);
- vi) section 10 (seduction, prostitution, etc of girl under 16);
- vii) section 13(5)(b) or (c) (homosexual offences);
- viii) attempting to commit any of the offences set out in paragraph (i) above.

### **Children and Young Persons (Scotland) Act 1937**

#### **Prevention of Cruelty and Exposure to Moral and Physical Danger— Section 12**

- 1) If any person who has attained the age of 16 years and has the custody, charge or care of any child or young person under that age, wilfully, ill-treats, neglects, abandons, or exposes them, or causes or procures him to be, ill treated, neglected, abandoned or exposed, in a manner likely to cause them unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of an offence, and shall be liable:
  - a) on conviction on indictment, to a fine, or alternatively, or in default of payment of such a fine, or in addition thereto, to imprisonment for any term not exceeding 10 years;
  - b) on summary conviction, to a fine not exceeding the prescribed sum or alternatively, or in default of payment of such a fine, or in addition thereto, to imprisonment for any term not exceeding six months.
- 2) For the purposes of this section:
  - a) a parent or other person legally liable to maintain a child or young person shall be deemed to have neglected them in a manner likely to cause injury to health, if they have failed to provide adequate food, clothing, medical aid or lodging for them, or if, having been unable otherwise to provide such food, clothing, medical aid or lodging, has failed to take steps to procure it to be provided under the enactments applicable in that behalf;
  - b) where it is proved that the death of a child under three years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the child) while the child was in bed with some other person who had attained the age of 16 years that other person shall, if they were, when they went to bed, under the influence of drink, be deemed to have neglected the child in a manner likely to cause injury to his health.

- 3) A person may be convicted of an offence under this section:
  - a) notwithstanding the actual suffering or injury to health, or the likelihood of actual suffering or injury to health, was obviated by the action of another person;
  - b) notwithstanding the death of the child or young person in question.
- 4) Where any person who has attained the age of 16 years is tried on indictment for the culpable homicide of a child or young person under the age of 16 years of whom they had the custody, charge, or care, it shall be lawful for the jury, if they are satisfied that they are guilty of an offence under this section, to find them guilty of that offence.
- 5) Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a child or young person to administer punishment to him (see Section 48 of the Education (No. 2) Act 1986—the abolishment of corporal punishment of pupils in most schools and Section 51 of the Criminal Justice (Scotland) Act 2003).

**Notes:**

- a) **“Neglect” means the absence of such reasonable care, as a normal parent would have for the child (R v Senior, 1899, 63 J.P. 8).**
- b) **In PHV LEES and BD V ORR (1993) SCCR. 900, the necessary standard of care was defined as the standard a “reasonable parent, in all the circumstances, would regard as necessary to provide proper care and attention to the child”. Failure to reach this standard would amount to neglect. In these cases it was held that (a) to be drunk and incapable of looking after a 9-month old child at home and (b) to leave a 1½-year old girl at home alone was not a contravention of the above section unless it was proved that the act was likely to cause unnecessary suffering. This was followed in McF.V NORMAND (1995) SCCR. 380, where it was held that to leave an 8-month old baby for about 45 minutes, secure in a car child seat in a locked car where the child was not upset, was not a contravention of the above section.**
- c) **It is to be noted that, by virtue of Section 27, a father is not deemed to have ceased to have the custody of his child by reason only that he has deserted the mother and child. Thus, where a husband deserts his wife and children and does not send any part of his earnings to his wife, a charge of “wilful neglect” under section 12 above, is competent. (HENDERSON V STEWART (1954) SLT. 265).**
- d) **An offence under section 12 (above) is included in Schedule 1 of the Criminal Procedure (Scotland) Act 1995, and therefore the offender may be apprehended in the circumstances specified in section 21 of the 1995 Act.**

## Assault

Every attack directed to take effect physically on the person of another is assault whether or not actual injury is inflicted. There must be criminal intent: an accidental injury, even although caused by a mischievous act, does not amount to assault. It is not necessary, in order to constitute this crime, that the attack should take effect. To throw a stone at another person is assault even though the attackers aim is faulty or the stone is evaded. Where A intends to assault B and strikes C instead, by the doctrine of transferred intent, he is guilty of assaulting C (**Roberts v Hamilton** 1989 SCCR 240)

As the words assaults and assaulted were repealed by Section 51(5) of the Criminal Justice (Scotland) Act 2003, since 27 October 2003 it has not been competent to prefer a charge of assault relating to a contravention of the Children and Young Persons (Scotland) Act 1937 Section 12(1). In all circumstances the common law charge for assault (whether simple or serious) should be used in respect of children. When completing a SCRO descriptive form for such assaults the victim should be clearly identified as a **child**.

## Justifiable Assault

In certain cases an assault may be justified by showing that it was done under the authority of the law or in self-defence. In such cases the force used must only be as great as is necessary to affect the object in view.

## Decisions

The common law fortified by section 12(7) of the Children and Young Persons (Scotland) Act 1937 which authorised any parent, teacher or other person having the lawful control or charge of a child or young person to administer punishment to him/her, was repealed by Section 51(5) of the Criminal Justice Scotland Act 2003 which came into effect on 27 October 2003. Section 48, Education (No. 2) Act 1986, abolished corporal punishment of pupils in most schools.

## Breach of the Peace

Breach of the Peace is a crime at common law and is constituted by one or more persons conducting himself or themselves in a riotous or disorderly manner to the alarm, annoyance or disturbance of the lieges. It may be committed anywhere, on a street, church or public building or even in a private dwelling house. Breach of the Peace can be utilised as a competent charge for many forms of inappropriate behaviour to which no other charges apply. e.g. Peeping Tom.

## Child Abduction Act 1984

### Parent etc. taking or sending children out of the United Kingdom— Section 6

This legislation is detailed and can be found in PINS. Early consultation with the Procurator Fiscal is advisable in the investigation of incidents of this nature.



## Chapter 4

# Civil Legislation

### Introduction

The following section is a guide to the civil legislation most frequently used in child protection matters. It is drawn from PINS and readers will be aware that changes can often occur therefore, when considering a particular question it is recommended that full reference is made to PINS to ensure that the most contemporaneous position is available.

### Children (Scotland) Act 1995

Police officers have a duty to refer children who may be in need of compulsory measures of supervision to the Reporter to the Children's Panel. The following paragraphs layout the provisions of the Children (Scotland) Act 1995.

The Act is divided into four main parts:

- **Part 1**—Deals with the responsibility and rights of parents and guardians towards children and decisions about family matters.
- **Part 2**—Deals with the promotion of children's welfare by public authorities such as local authorities and the operation of the Children's Hearing System.
- **Part 3**—Makes amendments to the law on adoption of children.
- **Part 4**—Makes general and supplementary provisions in relation to the Act.

In general, the police service is not greatly affected by the Act; however, there are several sections which police officers must be aware of. The general philosophy of the Children (Scotland) Act 1995 is one of minimum intervention. The state should only become involved when absolutely necessary for the protection of a child's welfare and this involvement should only be to the minimum extent needed to achieve its purpose.

The main principles of the Act are:

- a) Each child has the right to be treated as an individual.
- b) Each child who can form a view on matters affecting him/her, has a right to express those views if he/she so wishes.
- c) Parents should normally be responsible for the upbringing of their children and should share that responsibility.
- d) Each child has a right to protection from all forms of abuse, neglect or exploitation.
- e) So far as consistent with safeguarding and promoting the child's welfare, the public authority should promote the upbringing of children in the family home.
- f) Any intervention by a public authority in the life of a child must be properly justified and should be supported by services from all relevant agencies working in collaboration.

The main themes of the Act are:

- a) The welfare of the child is the paramount consideration when his or her needs are considered by courts and Children's Hearings.
- b) No court should make an Order relating to a child and no Children's Hearing should make a supervision requirement unless they consider that to do so is better for the child than to make no Order or supervision requirement at all.
- c) The child's view should be taken into account where major decisions are to be made about his/her future.

## Part 1

### Family Law

Although this part of the Act relates to family law and not criminal law, officers must be aware of certain provisions in order that they can give appropriate advice and in some circumstances take the correct course of action.

Section 3 of the Children (Scotland) Act 1995 provides that a father who is not married to the child's mother does not have rights in relation to the child. The Act does, however, make it easier for unmarried fathers to acquire parental rights and responsibilities. This can be done by agreement between the parents provided it is done in a legal and official manner or the father may apply to the courts for parental rights and responsibilities, albeit a father has no parental rights or responsibilities he still has an obligation to support his child financially. Both parents, if married, continue to have responsibility for their children, even if they subsequently separate or divorce.

## Part 2

### Promotion of children's welfare by local authorities and the operation of the Children's Hearing system

This part of the Act is divided into four chapters:

- Chapter 1**—support for children and their families.
- Chapter 2**—Children's Hearing.
- Chapter 3**—protection and supervision of children.
- Chapter 4**—parental responsibilities Orders.

Chapter 1 of the Act does not greatly affect the police.

Chapter 2 provides the legal framework within which the Children's Hearings system operates. The Children's Hearing system retains its central place in the provision of child welfare and juvenile justice in Scotland. The guiding principle is that children who offend and children who are offended against may be equally in need of help. The Act retains the main elements of the hearing system but strengthens its role in order to promote the interests of children referred to them.

Chapter 3 of Part 2 of the Act contains the provisions which have the greatest impact on the police and for this reason it is important that officers have a detailed knowledge of the contents of this chapter and a full understanding of their powers and responsibilities.

### Children Requiring Compulsory Measures of Supervision

Section 52 of the Act states that a child may require compulsory measures of supervision if at least one of the following conditions applies to him or her:

The conditions are that the child:

- a) is beyond the control of any relevant person;
- b) is falling into bad associations or is exposed to moral danger;
- c) is likely:
  - i) to suffer unnecessarily; or
  - ii) to be impaired seriously in his/her health or development due to lack of parental care;
- d) is a child in respect of whom any of the offences mentioned in Schedule 1 of the Criminal Procedure (Scotland) Act 1995 has been committed;
- e) is, or is likely to become a member of the same household as a child in respect of whom any of the offences referred to in paragraph (d) above has been committed;
- f) is, or is likely to become, a member of the same household as a person who has committed any of the offences referred to in paragraph (d) above;
- g) is, or is likely to become, a member of the same household as a person in respect of whom an offence under sections 1 to 4 of the Criminal Law (Consolidation) (Scotland) Act 1995 has been committed by a member of that household;
- h) has failed to attend school regularly without reasonable excuse;
- i) has committed an offence;
- j) has misused alcohol or any drug, whether or not a controlled drug within the meaning of the Misuse of Drugs Act 1971;
- k) has misused a volatile substance by deliberately inhaling its vapour, other than for medicinal purposes;
- l) is being provided with accommodation by a local authority under section 25, or is subject of a Parental Responsibilities Order under section 86 of this Act and in either case his/her behaviour is such that special measures are necessary for his/her adequate supervision in his/her interest or in the interest of others.
- m) is not subject to a supervision requirement, but the Reporter has been required to refer the case to a Children's Hearing under section 12(1) of the Anti-social Behaviour Etc. (Scotland) Act 2004

### Schedule One Offences

Offences under Schedule 1 of the Criminal Procedure (Scotland) Act 1995 are:

- a) any offence under Part I of the Criminal Law (Consolidation) (Scotland) Act 1995 (incest and related offences, prostitution offences and homosexual offences);
- b) any offence under section 12, 15, 22 or 33 of the Children and Young Persons (Scotland) Act 1937;
- c) any other offence involving bodily injury to a child under 17 years of age;
- d) any offence involving the use of lewd, indecent or libidinous practice or behaviour towards a child under the age of 17.

Offences under sections 1 to 4 of the Criminal Law (Consolidation) (Scotland) Act 1995 are:

- 1) Incest;
- 2) Intercourse with a step child;
- 3) Intercourse by a person in position of trust with child under 16.

#### Notes:

- a) **“An offence involving bodily injury” necessarily includes an offence in which the purpose of the offender is to inflict bodily injury, whether he succeeds in that purpose or not (HMA v McPhie, 1926 SLT 312)**
- b) **Reference in the Criminal Procedure (Scotland) Act 1995 (except in section 46 thereof) and in Part III of the Social Work (Scotland) Act 1968 (children in need of compulsory measures of care) to the offences mentioned in Schedule 1 above shall include an offence under section 52(1)(a), Civic Government (Scotland) Act 1982 (indecent photographs of children) section 52(8), Civic Government (Scotland) Act 1982, as amended by Schedule 15, Criminal Justice Act 1988).**

### Duty to Provide Information to the Principal Reporter

A constable who has reasonable cause to believe that compulsory measures of supervision may be necessary in respect of a child, shall give to the Principal Reporter such information about the child as he/she has been able to discover and shall also make any report that requires to be made in relation to a child to the Principal Reporter as well as the appropriate prosecutor (section 53(2)(a) and (3)). (The Constable should submit a report to SCRA containing this information, within custody timescales.)



## Child Protection Orders

A Child Protection Order ensures that where it is necessary to protect a child from significant harm\*, any person including the police and local authority can apply to a Sheriff to grant a Child Protection Order to remove a child to a place of safety under section 57(1) of the Act. Although the Act states that any person can apply for a Child Protection Order (CPO), in general it is the local authority (Social Work Department) that will apply for an Order.

Where a Sheriff is satisfied that the conditions for making the Order are met and that there are reasonable grounds to believe that the child is:

- being treated or neglected in such a way that he or she is suffering significant harm; and
- will suffer such harm if he or she is not removed to and kept in a place of safety or he or she does not remain in the place of safety; and
- the Order is necessary to protect the child from such harm or from such further harm, he may grant an Order.

A Child Protection Order may, subject to the terms and conditions the Sheriff considers appropriate, do any one or more of the following:

- require any person in a position to do so, to produce the child to the applicant;
- authorise the removal of the child by the applicant to a place of safety and the keeping of the child at that place;
- authorise the prevention of the removal of the child from any place where he/she is being accommodated;
- provide that the location of any place of safety in which the child is being kept should not be disclosed to any person or class of person specified in the Order.

In addition to the powers mentioned above a Sheriff can direct that the child is medically or psychiatrically examined. He or she also has the authority to prohibit or regulate contact with the child mentioned in the Order and specific persons.

## Serving the Order

Rules of court require the applicant to serve a copy of the Order forthwith. The Order must be served on:

- the child;
- any relevant person (see definitions ) whose whereabouts are known;
- the Principal Reporter;
- The local authority in whose area the child is resident.

*\*Significant harm must be serious harm, not minor, transient or superficial and can be physical or emotional. The Act, however, gives little guidance on how serious the harm need be, but it must be more serious than the potential trauma of removing the child from the home.*

The need to inform parents of their rights and responsibilities under the Order is crucial. Explanatory notes should be served with a copy of the Order informing parents, or the relevant person, what will happen to their child and what options are available to them. The Order will cease to have effect unless an attempt is made to implement the Order within 24 hours of it being granted.

Once the Order is granted the Reporter must convene a hearing on the second working day in order to renew the Child Protection Order if appropriate. The Reporter must thereafter convene a panel on the eighth working day when they must present the grounds for referral to the panel. The panel can grant a warrant to continue protection measures if necessary.

Section 61(1) of the Act provides where on the application of any person, a Justice of the Peace may grant an authorisation to remove a child to a place of safety if:

- a) the conditions laid down for the making of a child protection order in Section 57(1) of the Act are satisfied; and
- b) it is probable that any such order if made, would contain an authorisation to remove the child to, and keep them in, a place of safety or an authorisation to prevent the removal of the child from any place where he/she is being accommodated; and
- c) in the circumstances it is not practicable for an application for a Child Protection Order to be made to a Sheriff or for a Sheriff to consider such an application.

The authorisation granted by the Justice of the Peace will cease to have legal effect after **12 hours** unless the child has either been or is being removed to a place of safety or arrangements have been made to prevent the child's removal from the place specified. The authorisation lasts for a maximum of 24 hours and if necessary a Child Protection Order must be sought thereafter.

### Offences in Connection with Orders Etc for Protection of Children

A person who intentionally obstructs:—

- a) any person acting under a child protection order.
- b) any person acting under an authorisation granted under section 61(1) or (2) of this Act; or
- c) a Constable acting under 61(5) of this Act;

shall, subject to section 38(3) and (4) of this Act, be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### Police Emergency Powers

Section 61(5) states that where a constable has reasonable cause to believe that:

- a) the conditions for making a Child Protection Order under section 57(1) are satisfied; and;
- b) it is not practicable in the circumstances for him to make an application for such an Order to the Sheriff or for the Sheriff to consider such an application; and

- c) in order to protect the child from significant harm (or further such harm) it is necessary for him to remove the child to a place of safety he may remove the child to such a place and keep him there.

This section only allows the child to be kept in a place of safety for up to 24 hours, from the time when the child is removed, if required a Child Protection Order must be sought from the Sheriff if the child needs to remain in the place of safety for longer than that period.

Officers can only remove and keep a child where it is necessary to protect the child from significant harm which cannot be of a minor, transient or superficial nature. The necessity to remove the child must be immediate, otherwise the provisions concerning authorisation by a Justice of the Peace can be adopted.

A constable is required as soon as reasonably practicable after removing a child to a place of safety, to take steps to inform the following persons of the child's removal:

- any relevant person in relation to the child;
- any person, other than a relevant person, with whom the child was residing prior to being removed to the place of safety;
- the local authority in the area in which the place of safety to which the child was removed is situated;
- the local authority for the area in which the child is ordinarily resident;
- the Principal Reporter.

These persons must be informed of:

- the removal of the child by a constable to the place of safety;
- the place of safety at which the child is being or is to be kept;
- the reason for the removal of the child to a place of safety;
- any other steps which a constable is taking to safeguard the welfare of the child while he/she is in a place of safety.

A constable, where he/she considers it necessary in order to safeguard the welfare of the child, may withhold from any person mentioned above, the location of the place of safety where the child is being kept. The constable must, as soon as reasonably practicable, after these measures have been taken, inform the child of the reasons for the emergency protection measures and of any further steps that may be taken in respect of the child under the Act.

The constable shall, as far as practicable, give the child the opportunity to express his/her views and should take regard of the child's opinion before taking any further steps, taking account of the age and maturity of the child in these circumstances.

Where a constable has taken emergency protection measures in relation to a child, the constable shall do what is reasonable to safeguard the safety of the child, particularly in relation to the length of time the child is subject to those measures.

In cases where a child is taken to a police station, the constable shall, as soon as reasonably practicable take the child to a more appropriate place of safety. The constable shall, provided it is reasonably practicable and in accordance with the child's welfare, allow the child to have contact with any relevant person, or any persons with whom he/ she was living immediately before these measures were taken.

The police should immediately contact the Social Work Department when invoking emergency powers to alert the department to the situation and set in motion social work procedures.

Prior to utilising emergency powers Police Officers should carefully consider the justification for their actions and whether the provisions of the Act are met.

### **Alternative Care Arrangements/Places of Safety**

A distinction must be made between removing children to a place of safety and placing them with alternative carers. In instances where children are left unattended or their parent(s) are so drunk as to be incapable of caring for them, it may be more appropriate to place children in the temporary care of a suitable person than to invoke emergency powers bearing in mind the criteria required. If placing children with alternative carers, police officers must ensure that detailed PNC/SCRO and intelligence checks are carried out to check for Schedule 1 offences and other relevant conviction/intelligence information. Checks should also be made with the Social Work Department to assess the suitability of the proposed carer.

Often the Social Work Department may already have identified alternative carers. If this is the case, officers must still carry out PNC/SCRO and intelligence checks in order to check conviction/intelligence information.

### **Child Assessment Order**

Section 55 of the Act allows a Sheriff to grant an Order to carry out an assessment of the state of a child's health or development or of the way he/she has been treated. Assessment Orders are designed for use in cases where there are suspicions of abuse and neglect and the degree of urgency is not considered so great as to suggest the need for a Child Protection Order under section 57(1) of the Act.

Child Assessment Orders enable the local authority to arrange specific assessment of a child's health, development or the way in which he or she has been treated in order to establish whether a child is suffering or is likely to suffer significant harm. The Order may authorise the removal of a child to the place where the assessment is to be carried out and the keeping of the child there or elsewhere for a period not exceeding 7 days.

Only a local authority may apply to the Sheriff for a Child Assessment Order although police officers should be aware of the powers and provisions granted in such an Order.

If a Sheriff is satisfied that the grounds for a Child Protection Order are met when the local authority has applied for an Assessment Order, he must grant the Child Protection Order in place of the Assessment Order.



## Exclusion Orders

Section 76 of the Act allows a Sheriff to grant an Exclusion Order on application by the Local Authority. This enables a Sheriff to exclude an alleged abuser from the family home rather than removing the child.

The Order is a statutory measure available to protect children who are suffering or are likely to suffer significant harm. On the Sheriff being satisfied that grounds exist to grant an Exclusion Order it may exclude a named person from a specific place. Before granting the Order the person to be excluded will be heard by the Sheriff.

Pending the making of an Exclusion Order, a Sheriff may grant an Interim Order. Normally this Interim Order can be obtained within 48 hours and can be implemented immediately extending the same powers as have been requested by the local authority for the full Exclusion Order.

## Power of Arrest

Section 78(6) of the Children (Scotland) Act 1995 stipulates that a constable may arrest, without warrant, the named person, if he has reasonable cause for suspecting that person to be in breach of interdict to which a power of arrest is attached. The granting of an Exclusion Order is a civil process and therefore arrest can be effected on the evidence of one witness. The Act is silent on the issue of evidential requirement.

## Definitions

### Child

- i) a child who has not attained the age of 16 years; or
- ii) a child over the age of 16 years who has not attained the age of 18 years and in respect of whom a supervision requirement is in force; or
- iii) a child whose case has been referred to a Children's Hearing by virtue of a Supervision Order issued in England, Wales or Northern Ireland, and for the purpose of the application of those chapters to a person who has failed to attend school regularly without reasonable excuse, includes a person who is over 16 years of age but is not over school age.

### Relevant Person

In relation to a child this means:

- i) any parent enjoying parental responsibilities or parental rights under Part 1 of this Act;
- ii) any person in whom parental responsibilities or rights are vested by, under or by virtue of this Act; and
- iii) any person who appears to be a person who ordinarily (and other than by reason only of his employment) has charge of or control over the child.

**In need**

This is defined as being in need of care and attention because:

- i) he/she is unlikely to achieve or maintain or have the opportunity of achieving or maintaining a reasonable standard of health or development unless services are provided for him/her by a local authority;
- ii) his/her health or development is likely to significantly be impaired, or further impaired, unless such services are provided;
- iii) he/she is disabled; or
- iv) he/she is affected adversely by the disability of any other person in his family.

**Parental Responsibility**

This means a parent has, in relation to his/her child, the responsibility:

- i) to safeguard and promote the child's health, development and welfare;
- ii) to provide direction and guidance in a manner appropriate to the stage of development of the child;
- iii) if the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis; and
- iv) to act as the child's legal representative but only in as far as compliance with this section is practicable and in the interests of the child.

**Parental Rights**

This means a parent has the right:

- i. to have the child living with him or her or otherwise to regulate the child's residence;
- ii. to control, direct or guide in a manner appropriate to the stage of development of the child, the child's upbringing;
- iii. if the child is not living with him or her, to maintain personal relations and direct contact with the child on a regular basis;
- iv. to act as the child's legal representative.

**Accommodation**

**Accommodation means, except where the context otherwise requires, accommodation provided for a continuous period of more than 24 hours.**

**Child Assessment Order**

Child Assessment Order means an order granted by a sheriff for the assessment of the state of a child's health or development, or of the way in which he or she has been treated.

**Child Protection Order**

Child Protection Order means an order granted by a sheriff which allows the removal of a child etc where immediate removal to a place of safety is necessary for his or her safety.

### **Compulsory Measures of Supervision**

Compulsory Measures of Supervision means—in respect of a child—such measures of supervision as may be imposed by a Children's Hearing.

### **Exclusion Order**

Exclusion Order means an order granted by a Sheriff enabling the alleged abuser to be excluded from the family home—rather than removing the child.

### **Family**

Family when considered in relation to a child, includes:

- i) any person who has parental responsibility for the child;
- ii) any other person with whom the child has been living.

### **Family Home**

Family Home means any house, caravan, houseboat, or other structure which is used as a family residence and in which the child ordinarily resides with any other person with parental responsibilities and includes any garden or other ground or building attached to and occupied with, or otherwise required for amenity or convenience of the house, caravan, houseboat or other structure.

### **Place of Safety**

Place of Safety in relation to a child, means:

- i) a residential or other establishment provided by a local authority;
- ii) a community home;
- iii) a police station;
- iv) a hospital, surgery or other suitable place, the occupier of which is willing temporarily to receive a child.

### **Residential Establishment**

Residential Establishment means an establishment (whether managed by a local authority, by a voluntary organisation or by any other person) which provides residential accommodation for children for the purposes of this Act or the Social Work (Scotland) Act 1968.

### **Supervision Requirement**

Supervision Requirement means a requirement made by a Children's Hearing who are satisfied that compulsory measures of supervision are necessary in respect of the child and includes any condition contained in or related to it.

### **Supervision**

Supervision means measures taken for the protection, guidance or control of the child.





## PART 2

# The Investigative Process



## Chapter 5

# The Investigative Process

### Introduction—identification and notification of a concern

All police officers to varying degrees come into contact with children, young persons and their families. It is imperative to recognise that **every police officer** has responsibilities in the identification and subsequent notification of concerns regarding a child or young person. This process includes carrying out initial enquiries, crime scene preservation and basic investigative work.

The very nature of child protection cases may often involve patterns of behaviour and an accumulation of individually minor forms of abuse that together constitute significant harm, raising concerns and levels of intervention. It is important to point out that an officer may be presented with an apparently minor issue which does not in itself cause concern but which is actually part of a pattern of abuse. It is also possible that concerns about children and young people that appear unconnected are actually part of a pattern of abuse by either the same offender or different but connected offenders. Concerns about one child may also lead to concerns about other children with whom the suspect has contact. Identifying potential patterns depends upon officers' abilities to identify and thereafter deal with any concerns identified.

### Identification of a concern

Child Protection concerns emanate from a variety of sources, both internally and externally. Police and police staff in the course of their daily duties may become aware of concerns about a child, either by personal observations, or by receiving reports directly or anonymously from members of the public, children, family members, friends, relatives or concerned neighbours. Officers should be vigilant at all times as there may be occasions when welfare concerns and risks to children are not easily identifiable. Referrals may also be made to Police from external agencies such as Social Work Department (SWD), Education or Health professionals.

It would be reasonable to suggest that potentially any incident attended by police officers where children are present (or normally present) may result in concerns being raised in relation to the care, safety and well-being of the child or young person. Officers attending such incidents should therefore be prepared to identify issues that adversely affect the safety and well-being of the child or young person and consider whether the incident is one in a series of related incidents, which may or may not have been previously reported.

Examples of the types of call police officers will routinely attend, which may alert them to child protection concerns, include:

- violence/disturbance calls of any nature
- drugs searches
- domestic abuse calls
- missing persons reports
- youths causing annoyance
- road traffic offences
- children being left alone/without appropriate supervision.

### Risk Factors

It is imperative that officers should be able to identify children who may have been harmed physically or emotionally or who may be at risk of neglect or further harm, even when dealing with matters that appear to be unrelated to child protection. There is therefore merit in drawing attention to 'risk factors' which are crucial in recognising a potential child protection concern. Below are non-exhaustive lists of circumstances specific to both the child and the suspect which may increase risk and should therefore heighten concerns and shape the appropriate initial police response.

Children at increased risk of vulnerability – circumstances of the **child** and/or factors to consider:

- babies under one year old
- children who are living with disability/violence/disturbance calls of any nature
- drug searches
- domestic abuse
- missing persons reports
- children left alone/without appropriate supervision
- children living in families with substance misuse issues
- children exposed to parents/carers under extreme stress or who are socially isolated e.g. mental health issues, extreme poverty
- children expected to conform to cultural beliefs who may be at risk
- looked after, or looked after and accommodated children and young persons

Children at increased risk of vulnerability—circumstances of the **suspect** and/or factors to consider:

- history of violent/sexual offending by suspect
- child abuse by suspect
- domestic abuse by suspect

- abuse of animals by suspect
- grooming behaviour by suspect
- failure to provide medical care for a child by suspect
- failure to admit responsibility for previous abuse
- threats or attempts to commit suicide or to self-harm
- misuse of substances – illegal/prescribed drugs and/or alcohol
- history of mental illness

There is no scientific formula for the identification of risk of harm and assessment of the safety of the child. However, the factors outlined above should be considered when determining whether a child is the victim of abuse or at risk of abuse or further harm. One factor alone based on an officer's professional judgement may be enough to trigger intervention. It is vitally important the above risk factors are considered and recorded on the child protection/concerns referral form (a 'non-offence' referral) highlighting initial concerns and the identification of a child protection concern.

### Initial considerations/actions

On almost every occasion the first police officers to attend an incident will be uniformed non-specialist officers. It is imperative therefore that they are aware of key considerations with regards to a subsequent child protection investigation.

The priority in all police involvement is the immediate safety and well-being of any children. This obviously requires an immediate assessment of the need for medical assistance.

Where there is a possibility of harm or risk of harm, every effort should be made to see and speak to the child concerned and to establish that they are unharmed and not at immediate future risk of harm. This should also apply to any other children present or who normally reside at the locus.

There is no legal requirement for a parent or other adult to be present, or to give consent for an officer to talk to a child in order to establish their safety and welfare. Indeed, where an officer suspects an adult present has had some involvement in the child protection concern, a request should be made to speak to the child separately. Officers should consider whether an adult's refusal to allow access to speak to a child separately increases suspicion of risk of harm. In cases where entry to premises, or any part, is refused, officers should consider whether it is appropriate to exercise their emergency powers under Section 61(5) Children Scotland Act 1995. If an adult refuses access to speak to a child a police notebook record should be made of the officer's request and the response. It is worth remembering that where it is clear that one of the parents/carers has no involvement in the child protection concern, it is good practice to seek their co-operation.

In order to provide reassurance to the child, it may be helpful to have an adult the child knows present while the officer establishes the welfare of the child. The officer should be satisfied that the presence of the adult will not adversely delay speaking to the child and will not inhibit the child from speaking freely.

When speaking to a child it is crucial that this initial fact finding does not delve too deeply into a highly detailed account. For parameters around interviewing, refer to Chapter 11—Joint Investigative Interviewing. Officers must exercise caution to ensure that their approach would not be considered oppressive or suggestive in any subsequent legal proceedings.

The following guidance should be followed by non Joint Investigative Interview trained officers when they are undertaking initial questioning of children:

- only ask enough questions to gain basic information such as establishing the child's safety and gaining a brief account of anything that has occurred such as confirming any offences, the identity of the suspect(s) and the crime scene and any information to preserve evidence
- listen carefully
- record verbatim all questions asked and responses elicited, including details of non verbal forms of communication where appropriate
- take any disclosure seriously
- avoid leading questions (use open questions).

As soon as the welfare of the child has been established or the officer has determined that the child is at risk of harm or has been harmed, the conversation should be closed to ensure it does not constitute an interview. It is vitally important that the following information is recorded:

- child's name, sex and date of birth
- name of the person(s) with parental responsibility and primary carer(s)
- who was present when the child was spoken to
- questions asked of the child (verbatim)
- child's responses (verbatim)
- description of the child's physical appearance including injuries, clothing and state of cleanliness
- observations of the child's physical condition (cursory observations only therefore any injury subsequently discovered and not originally observed and noted can be explained)
- description of child's demeanour
- description of the child's surroundings, including the condition of the home

Having established the welfare of the child, officers should ensure the completion of a full initial investigation and the preservation of any evidence. Officers should:

- identify, preserve and control the scene to protect all evidence
- establish when/where the alleged abuse took place (think forensics)
- safeguard forensic evidence – drinking/eating, washing, smoking, going to toilet, removing/washing clothing, etc



- confirm identity of suspect
- confirm relationship of alleged abuser to child
- confirm access alleged abuser has to child/other children
- establish who is or was at the scene/trace witnesses
- record accurate and detailed statements from all available witnesses
- record demeanour of child, witness and suspect
- conduct appropriate intelligence/information checks
- carry out cursory search of house to establish living conditions (including provision of heating, food, clothing, cleanliness, sleeping arrangements, etc).
- request attendance of forensic support for scene examination as appropriate
- conduct door-to-door enquiries
- secure relevant CCTV tapes, etc.
- establish sufficiency of evidence—detention/arrest.

### Crime Scene Preservation

It should be noted that guidance with regards to scene preservation and examination may be provided by a Crime Scene Manager, dependent upon the nature of the enquiry. However, initial actions will be crucial. The following is a checklist for preserving potential crime scenes:

- identify the scene and its parameters
- there may be more than one crime scene (the primary crime scene may be the victim, the secondary crime scene may be the suspect)
- identify routes taken by suspect and victim
- identify a rendezvous point and a common approach path to the centre of the scene
- cordon scene as soon as practicable (the extent of cordons is decided on a case by case basis and it is better to make the boundaries too large than too small)
- secure scene, depending on circumstances, using tape, officers and/or vehicles, as best suits
- protect the scene against disturbance by human, animals and the elements
- start a log of persons who have entered the cordoned area
- eliminate unnecessary police officer and police staff attending the scene;

## Initial Course of Action—Options

The course of action taken by police officers is wholly dependent upon the circumstances with which they are faced. When members of police and police staff have contact with children, their families/carers or other individuals and there are concerns regarding the safety or well being of a child/children, the concerns/circumstances should be referred to social services according to local arrangements. The priority is that where a child protection concern has been identified it must always be referred to social services and there are a variety of options available to facilitate this:

- In cases where the risk is immediate and significant, police officers should invoke statutory powers and take emergency action to protect the child/children.
- Circumstances may also arise where officers would not be justified in taking emergency action but the concern is serious enough to merit further police action at that time. In these circumstances officers should pass their concerns verbally to the Family Protection Unit, or where not available (out of hours) to the duty Inspector\* to initiate joint child protection procedures, including an initial referral discussion (IRD) and/or strategy discussion as appropriate and complete referral form.

## Notification of a concern

Having identified a child protection concern, it is essential to ensure that supervisors, specialist departments and partner agencies are notified of the circumstances as soon as possible. In any case, a referral form should be submitted **prior to the conclusion of the tour of duty** (refer to Force Procedures).

The process of making a child protection referral to an outside agency such as the Social Work Department is recorded and managed by way of the completion of a police referral form. This is a subjective assessment, based on facts, observations and initial actions intended to raise awareness of the need for closer inspection of the wider circumstances of the child. Information contained on the referral form is crucial in advancing the identified concerns.

The following is a checklist of items that should be included when submitting a referral form:

- full details of the child/children (including name, sex, date of birth, schools attended, etc)
- full family details including parents, all members of the household (including siblings) and any other relevant persons not living in the household (partners, known associates, etc.)
- details of the incident attended (including details of caller/referrer and any witnesses) and actions undertaken;
- exact nature of concern referring directly to provisions **under Section 52 of the Children (Scotland) Act 1995, children requiring compulsory measures of supervision**
- full description of the dwelling (including living conditions, clothing, food provisions, heating, etc)

\* (Local Force Procedures should be followed regarding referral processes)

- identified risk factors present
- details of background checks conducted and relevant information gleaned
- details of all discussions with partner agencies, including decisions made and reasons for such decisions having been made
- recommendation of course of action to be taken

**It is important to note the significance of good record keeping, especially with regards to information sharing, decision making and rationale.**

On all occasions, regardless of whether crimes/offences have been identified, police information systems and intelligence databases must be updated as soon as reasonably practicable. This includes the submission of a referral form and where appropriate, a crime report and any Intelligence report, prior to the completion of duty.

Following submission of the referral form, a number of courses of action can be initiated, including:

- where there is reasonable cause to believe that a child may be in need of compulsory measures of supervision, information will be passed to the Reporter, whether or not there are grounds for criminal prosecution
- where crimes/offences have been detected, police officers have a statutory duty to investigate the circumstances and report the facts to the Procurator Fiscal/SCRA as appropriate
- sharing information and contributing to multi-agency assessment.

The identification and notification of concerns about children by police officers is a crucial element in the protection of Scotland's children. The importance of submitting quality referral forms cannot be overestimated and is reliant upon vigilant officers.

Initial actions remain crucial not only to the subsequent child protection investigation, but also to the immediate and continued safeguarding of children and young people.

## Chapter 6

# The Investigative Process (Inter-agency)

### Introduction

Each agency makes a distinctive contribution to protecting children within a context of collaboration and shared understanding. It is imperative that all agencies involved in working with children are aware of the child protection system and of the methods in place for sharing information in order to identify child protection concerns and to ensure they are addressed and dealt with in an appropriate manner.

In order to successfully implement child protection procedures, the inter-agency approach must be adopted and all agencies must work together to ensure the safety and wellbeing of children under their care. As a result of inter-agency working, it has become clear that joint enquiries are the best way to proceed with child protection enquiries.

Joint enquiries are not intended to mean a joint investigation by the Police, Health and Social Work Department of the entire matter. It does imply however, close liaison between all agencies involved in an enquiry prior to and throughout the investigation. Specific tasks will be allocated to agencies and individuals as required.

The objectives of a joint enquiry are to ensure:

- the child is not subjected to repeated or unnecessary interviews and/or medical examinations;
- information sharing specific to the case is undertaken by all relevant agencies;
- the level of risk to a child or young person can be clearly assessed taking account of all available information
- the decisions and actions in an investigation will, whenever practicable, follow from consultation between agencies;
- the wider needs of a child or young person are clearly identified and addressed
- clear definition is given in relation to each agency's role in the investigation;
- parents and children are kept fully informed of all developments in relation to the investigation, unless doing so places the child at further risk of harm, or impedes the investigation.

Across Scotland local inter-agency procedures exist to assist agencies working with children. All staff should familiarise themselves with these procedures.

## Child Protection Referrals

Child protection concerns can come to the attention of the police in a variety of ways including through personal disclosure by the child, police observations of the child and/or carer, and through information provided by third parties, eg. other children, friends, family members or concerned neighbours. Alternatively concerns may be reported to the police by other professional agencies such as the Social Work Department (SWD), the Education and/or Health professionals. Concerns may also be reported by various means, including by letter, telephone call or e-mail, with or without the informant's identity.

The initial response of police staff to all child protection concerns is critical. All reports must be treated as a priority and dealt with in a sensitive manner. Assessments should be carried out to determine the urgency of the police response, and full and thorough investigations should be undertaken to ensure that all children get the help they need when it is most needed.

Additionally, no guarantee of confidentiality can be given to the child, person or agency raising the concern. They should be informed that, as a minimum, the matter must be recorded and, in the best interests of the child, the concern will be discussed with other staff/agencies.

## Assessment of risk

On receipt of information about a child protection concern, before making a referral to another agency, or immediately upon receipt of a child protection referral from another agency, an initial assessment of the information provided should be undertaken to determine the appropriate response. Where the information provided is deemed to relate to a Child Protection matter, local Inter-agency Child Protection procedures should be invoked.

Where only limited information is available, referral to another agency should not be delayed unnecessarily.

Key information and risk factors which will be assessed include:

- is the child in imminent danger?;
- are there any other children who may be at risk?;
- is/are the child/ren repeat victims?;
- is the family known previously to statutory services?;
- exact nature of concerns;
- seriousness of any injuries;
- ages/disabilities of children involved;
- are children/parents/carers under influence or drink, drugs or other substances?;
- are children/parents/carers self-harmers/suffer from mental health issues?;
- does the child/parent/carer have a history of violence/sexual offending?;
- details/background/previous knowledge of referrer.



## Background checks

Prior to making contact with partner agencies, or immediately upon receipt of a child protection referral, police officers should interrogate all available police information systems and databases at the earliest available opportunity. These systems include:

- Police National Computer (PNC);
- Criminal History System (formerly SCRO);
- Scottish Intelligence Database (SID);
- Violent and Sexual Offenders Register (ViSOR);
- Command & Control Systems (Storm/Captor etc);
- Crime Recording/Management System (OSS);
- any other vulnerable person's databases, missing person's files, domestic incident registers, child/family protection unit files, youth justice records etc.
- Impact Nominal Index (INI);

All relevant information and intelligence must be fully considered and assessed and if appropriate shared with partner agencies, who will also be required to check their own records and databases, including checks of the child protection register

## Considerations relating to initial enquiry

Where a referral has been received by the police service, a number of considerations must be borne in mind before proceeding further. These centre around the welfare and safety of the child/other children, the circumstances of the accused and the requirement to preserve evidence and include:

- the immediate safety and wellbeing of the child or other children, including any unborn children;
- the need for medical attention;
- opportunity of access to the victim and to other children by the alleged perpetrator;
- relationship of the alleged perpetrator to the victim;
- the proximity in time of the last occasion of alleged abuse;
- the period over which the alleged abuse has occurred;
- the need for removal of the child or other children from the home (undertaken where possible and practicable only AFTER discussion between the supervisor on duty in both the Police and Social Work Department);
- the need to obtain and preserve evidence;
- sufficiency of evidence to justify the arrest of the alleged perpetrator;
- duty to both the Procurator Fiscal and Reporter to the Children's Panel bearing in mind the lower standard of evidential proof required by the Reporter when assessing relevant evidence.



Decisions regarding the progress of the enquiry should not be undertaken until all of the above points have been given consideration. All decisions should be recorded appropriately.

### Initial Referral Discussions (IRD)

Whenever a Child Protection Referral is discerned as indicating that a child has suffered, is suffering or may be at risk of abuse, the police will implement Inter-agency Child Protection procedures by initiating Initial Referral Discussions (in some areas this is also known as an Inter-agency Referral Discussion, a Tripartite Discussion or an Initial Strategy Discussion). For the purpose of ease and consistency we will use the generic abbreviation of IRD.

The purpose of the IRD is to determine whether or not to progress the matter jointly, share information to inform the risk assessment and ensure that any response is co-ordinated. Consequently agency representation will vary on a case by case basis but it is expected that in all cases there will be involvement of police, social work and health. Notwithstanding it is important to understand that agency action to protect a child must not be stalled by any delay that might be generated from trying to achieve a meeting with full representation. It is also expected that agency participation will be undertaken at supervisory level and a record of information sharing and decision making (including rationale) will be kept. The IRD will identify tasks and responsibilities and it is important that these are progressed with feedback being shared as this is likely to impact on future decision making and action. It is recognised that some areas use the IRD as a series of meetings through which the management of a referral is achieved whereas others will employ alternative practice and process.

An IRD may be carried out by telephone but in cases which are complex, contentious or present particular challenges they will be by face-to-face meeting as soon as practicable.

### Information Sharing

In order to make decisions the police will share with the other agencies all information available that may be relevant to the assessment of risk and planning of further investigations. This will include information on the child who is subject to the referral, key adults who have involvement with the child and other children who may be at risk. Where there is uncertainty whether information held is relevant, it should be shared. It is important to remember to consider and share information which indicates any potential risk to employees of agencies who may be involved in any response (this might include previous aggressive or violent behaviour, infectious disease or mental health issues). Information sharing is a two-way process and police involved must remember to expect partners to fully engage and participate, and be prepared to request partners to provide detailed information that will inform decision making, especially around 'risk'. The dynamic nature is also recognised and again it is expected that as fresh or updated information becomes available, this will in turn be shared.

## Decision Making

IRDs must consider and make decisions on:

- the requirement for immediate legal measures to be taken to protect the child or young person i.e. Child Protection Order, Child Assessment Order or Exclusion Order;
- whether there is evidence of risk to any other child/ren, other than the subject of the referral, including unborn children;
- what measures will be taken in the short term to reduce/remove the risk;
- what further information is required, who will be responsible for gathering this and whether this will be carried out jointly or by a single agency;
- whether a joint Investigative Interview is required and if so consideration of the arrangements for this, including arrangements for an interview planning meeting
- whether a medical examination is required, the nature, timing and location for this and who will perform it;
- any additional support needs for the child or young person, including when additional support is identified as necessary for the child, who will provide this;
- whether consent will be sought from parents/carers and if sought, who will obtain this;
- how information will be passed to parents/carers throughout the investigation;
- what, if any, feedback will be given to the initial referrer at this stage and who will provide this;
- what other agencies/bodies require to be notified (for example the Scottish Commission for the Regulation of Care).

In considering all of these issues, timescales and the sequence of actions must be explicitly decided upon. All decisions and actions taken should be fully documented in order to ensure future accountability.

## Consent

Consent issues need to be considered during all Child Protection investigations and it is important not to make decisions on consent in isolation. Discussing these matters at an early stage will reduce the likelihood of decisions being made which may compromise investigations or the protection of the child or other children.

Reference Table

Issue	Consent of Parent/Carer/Guardian	Consent of Child
Joint Investigative Interview	Desirable but not legally required.  <b>Do not seek if parent etc, suspected as source of risk/harm.</b>	Always required.
Medical examination.  Where child is deemed by doctor to be incapable of comprehending consequences, and of consenting	Required.  Where not given but examination necessary consider Child Assessment Order/Child Protection Order.	Always required.  (Despite not being able to 'consent', medical practitioners will still seek the implied consent of the child in allowing any examination)
Medical examination  Where child is deemed by doctor to be capable of comprehending consequences, and of consenting	Not required	Always required  Even where a condition of a warrant/order or supervision requirement is for the child to submit to medical examination or treatment (S.90, Ch. (Scot.) Act, 1995
Information sharing about the child and significant adults without consent	Where there is reasonable cause to believe a child may be at risk of harm, information will be shared. No consent is needed.	Where there is reasonable cause to believe a child may be at risk of harm, information will be shared. No consent is needed.

### Outcomes of the Initial Referral Discussion

It should be noted that due to the flexible nature of the IRD process, enquiries may fluctuate between a single agency response and a joint agency response. Indeed, there are a variety of outcomes following an IRD. These include:

#### No further action

Sufficient information may be available to decide that no further action is required at that time by any of the core agencies.

#### Voluntary support

There may be a need for one or more agency, statutory or voluntary, to provide support to a child and/or family on a voluntary basis.

#### Single agency investigation

Where evidence suggests that this is the best way to proceed, a single agency conducts further investigations.

**Examples of where this may take place would be in instances of non-familial abuse, where the family members were in no way responsible for the abuse and could not have prevented the abuse occurring, and where there is no previous history or involvement with social services. It should be noted that as there is no definitive guidance, each case should be considered and assessed jointly on its own merits.**

### Joint Investigation

Where there is sufficient information to suggest that in the best interests of the child, agencies investigate jointly including a joint investigative interview and medical assessment of the child/children concerned.

### Referral to the Children's Reporter

Where concerns about a child are such that compulsory measures of supervision may be necessary, a referral should be made in writing to the Children's Reporter.

### Other Legal Measures

Immediate legal measures i.e. Child Protection Order or Exclusion Order, required due to evidence of immediate risk of significant harm to any child, or a Child Assessment Order, where there is reasonable cause to suspect a child is suffering or is likely to suffer significant harm and there is a lack of co-operation from parent(s)/carer(s) to enable assessment to be carried out satisfactorily.

### Child Protection Case Discussion

It may be considered that there is merit in holding a case discussion in line with inter-agency child protection procedures to allow agencies to fully participate in and contribute to the information gathering and sharing element. Certain types of cases, e.g. sexual abuse, will benefit from having this more formalised and structured response.

These outcomes are not mutually exclusive and more than one outcome may be the result of an IRD. All those involved in the IRD must be explicitly clear about who will be responsible for completing allocated tasks, timescales for completion of these and the expected reporting and recording mechanisms. Those involved in the IRD must also ensure that full and accurate records are made of all decisions and actions taken, including reasons.

### Recording of IRD

Agencies involved in any IRD are expected to maintain their own record of the information exchanged and decisions taken, including rationale for these.

### Reporting Back

At the conclusion of every investigation, whether single agency or joint, all agencies involved should share and assess the information gathered and make any necessary final decisions regarding the matter. Consideration should be given at that time to:

- on-going support or onward referral to other agencies for a child/family regardless of outcome of any investigation (including no findings); and
- what feedback, if any, is required to the initial referrer, the child, parent(s)/carer(s) and any other agency. Who will do this, and how, i.e. verbal or written etc.

## Child Protection Case Conferences

During the course of a child protection investigation agencies may participate in any of the formal joint meetings held to consider the safety, well-being and needs of the child/ren. These are known as Child Protection Case Conferences. There are a number of types and each has its own purpose. A Child Protection Case Conference (CPCC) is a formal multi-agency meeting that shares agencies' assessments, including chronologies and risk assessments, and identifies necessary actions to protect a child. There are four types of Child Protection Case Conference; Initial, Review, Pre-birth and Transfer. The exact timings of when to hold the various CPCCs and the specific mechanics of running a CPCC will vary across Scotland. Officers should refer to their local area inter-agency Child Protection procedures for further information.

It should be noted that as a matter of course parents/carers and, where age appropriate, children will be invited to attend the case conference.

The meetings include:

### Initial Child Protection Case Conference

The decision to hold an initial Child Protection Case Conference will be taken in line with local protocols and guidance. In some areas it will be under the direction of social work while in others it is dealt with as part of the IRD. The time constraints within which to convene an Initial CPCC will also vary across Scotland.

An initial CPCC is held where there are serious professional concerns about the likelihood of harm to a child or young person through abuse or neglect. The purpose of an initial CPCC is to share all relevant information held by agencies, to inform the ongoing assessment process and to determine whether further action is required to support and/or protect the child or young person. In addition the CPCC will :

- ensure that all relevant information held by each agency has been shared and considered on an inter-agency basis;
- review decisions made during IRDs and during any subsequent joint child protection inquiry or investigation;
- consider all available information and initial assessments; and
- consider the views of the child/parent(s)/carer(s) regarding on-going support and/or protection measures required.

After consideration of the above, attendees have a responsibility to contribute to decision making. A number of key decisions require to be taken. These include:

- requirement to place the child on the Child Protection Register;
- requirement to submit a referral to the Children's Reporter; (in some cases a referral may already have been made, e.g. direct by the police. Notwithstanding, there remains the expectation that the case conference considers whether a further referral requires to be made.)
- requirement for immediate legal measures (this is most likely to be in response to new information, otherwise an earlier application for legal measures should have been made);
- requirement for additional voluntary support; and/or
- no further action.



Where the Conference decides to place the child(ren)'s name(s) on the Child Protection Register, the CPCC must decide under which category the child should be registered and then:

- appoint a Case Co-ordinator (this will never be a police officer);
- identify key professionals to form a multi-agency Core Group;
- agree the initial Child Protection Plan;
- decide on whether to refer the child to the Children's Reporter for consideration of compulsory measures of supervision;
- set a date for a Review Child Protection Case Conference.

### Review Child Protection Case Conference

The purpose of a Review Child Protection Case Conference is to review decisions where a child's name has been placed on the Child Protection Register. It will:

- review decisions made at Initial CPCC;
- consider all new information available;
- review progress of the Child Protection Plan and amend this where appropriate;
- consider whether compulsory measures of supervision are still/now required in respect of the child or young person
- decide whether the child's name should remain on the Child Protection Register
- introduce a phased withdrawal/increase of support measures

### Pre-birth Child Protection Case Conference

A Pre-birth Child Protection Case Conference is held when there are serious professional concerns about the likelihood of harm to an unborn child through abuse or neglect when they are born.

Factors that might lead to Pre-birth CPCCs may include:

- identified problem substance use by the mother or other individuals within the household;
- there has been a previous unexplained death of a child whilst in the care of either parent/carer;
- a parent or other person in the household may present a significant risk to the child's safety or development, including schedule 1 offender etc.;
- a sibling in the household is or has been on a Child Protection Register;
- a sibling has previously been removed from the household temporarily or otherwise;
- domestic abuse is likely to significantly impact on the child's safety or development;
- parental mental illness/impairment is likely to impact on the child's safety or development;



- there are concerns about parental ability to self care and/or to care for the child e.g. unsupported young or learning disabled parent; and
- any other concern exists that the child may be at risk of harm including a parent previously suspected of fabricated or inducing illness in a child.

### Transfer Child Protection Case Conference

The decision on whether to hold a Transfer Child Protection Case Conference and the timing of it will be made in line with local authority guidance albeit in some areas it is recognised that such a possibility will trigger an IRD which will be used to consider the need to hold such a meeting. This will additionally enable any further protective and supportive measures to be considered and agreed.

The purpose of a Transfer Child Protection Case Conference is to consider cases where there are serious professional concerns about the likelihood of harm through abuse or neglect of a child whose name has been placed on a Child Protection Register and where the family/child moves into another local authority area. The purpose of such a meeting is to highlight concerns regarding children to relevant professionals within the new authority where the child will be resident and to consider how the new authority will deal with this. It will specifically consider whether, on the child's name being removed from the relinquishing area's Child Protection Register, the child's name will be placed onto the new area's register.

### Threshold for Registration

The placing of a child's name (or not) on the Child Protection Register is one of the key decisions that must be taken by a CPCC. A number of factors require to be considered when deciding whether the threshold for registration has been reached. Factor(s) which require to be taken into account include:

- the seriousness of the concerns (actual or potential) in terms of harm to the child;
- the level of risk to the future safety, development and welfare of the child;
- the level of professional confidence either that abuse has occurred, and is likely to be repeated, or that the child is at risk from abuse;
- the most effective forms of intervention to tackle the child's needs;
- the age and developmental stage of the child, his/her cognitive ability etc;
- parental/care givers capacity to parent including their track record of parenting;
- parental attitude and willingness to co-operate;
- the presence of any factors that would offer protection to the child for example, extended family living locally that may be able to support and help;
- reactions and views of the child.
- personal resilience of the child which can be evidenced

### The Police Role at Case Conferences

Appropriate police attendance and participation at case conferences is expected. Officers attending must have a clear understanding of the purpose of case conferences and be prepared to fully engage and represent the police at these forums. In some areas the police will, where time permits, submit a written report outlining the information held and available for sharing. In certain circumstances the police may hold information that is of a restricted or above nature and in these instances dissemination must be controlled in line with force guidance. Consequently officers attending must be fully prepared, with an understanding of the particular matter under consideration as well as the wider knowledge of the child and their family circumstances. There will be instances where police are invited to attend a case conference where there has been no previous police involvement. It must be recognised that notwithstanding there remains a role for the police to fully participate and engage and at the very least we will be able to draw information from the meeting that will be valuable as well as positive contributing to discussion and consideration regarding the protection of the child(ren).

### Preparation

All Police Officers invited to attend case conferences must be adequately prepared for their attendance and if unfamiliar with the process should liaise with local FPU staff and/or refer to local procedures for advice on the CPCC process. The most appropriate police representative to attend the case conference meeting should be identified, and thereafter the following actions should be completed:

- interrogation of all available Police information systems and databases, including the Scottish Intelligence Database (SID), to extract all relevant information concerning the child, parent/carer and any other significant individuals;
- decide what information can be shared at appropriate point of CPCC (i.e. restricted access information shared with partner agencies outwith the presence of the child/parents);
- submit a written report for the case conference according to the format agreed locally within the required timescales;
- familiarise themselves with the information contained in partner agency reports.

All of these actions should be completed prior to the meeting taking place. It is not necessarily the responsibility of the officer attending the case conference to undertake these tasks, however he or she, in conjunction with their supervisor and/or the FPU supervisor must ensure that this is done in relation to each and every case conference meeting that police officers are invited to.

### Police role/responsibilities

In order to arrive at the most effective decisions and thereby achieve the best outcomes for the child, consideration must be given regarding the most appropriate person to represent the police. In some instances it will be a specialist child protection officer, in some a supervisor whilst in other cases it may be a local officer who has been involved in dealing with the family in relation to other matters. In fact it may be any one or combination. Good practice suggests that each force has in place some way of ensuring that all invitations are fully considered to ensure that relevant officers attend and also that they are fully prepared to contribute to such a meeting. All police officers called to attend a case conference should:

- provide written reports detailing all relevant information extracted from police databases and information systems, and a chronology of police involvement, with the child, parents/carers and any other significant adults
- attend when invited;
- remain present until all discussions and decision making are complete (Case Conferences usually last between one and a half/two hours and professionals must allow sufficient time for their attendance and full participation, including travelling time);
- arrive fully informed, prepared and able to bring all relevant information to the CPCC;
- provide a succinct verbal summary of their agency's knowledge and involvement;
- participate in discussions on the perceived or actual risks to the child(ren), protective factors present, and what support can be offered from extended family/community and professionals;
- be aware of the range of options available and decisions that require to be made
- consider all the information made available so as to be able to offer a view in relation to the risk of future harm and the course of action which should be followed (based on factual information and supported by evidence);
- report back to the relevant FPU and update relevant police systems regarding decisions taken and the reasons for these.

### Restricted Access Information

Restricted access information is information that by its nature cannot be shared freely with the child and family/representatives within the full CPCC. It will be shared with professionals present during the 'protected period/restricted minutes' section of the CPCC to enable the complete picture to be considered. It includes:

- sub judice (information subject to legal proceedings, the sharing of which may compromise those proceedings).
- third party information (personal data or information, from or about a third party that may identify them if shared, in breach of Data Protection legislation).
- some intelligence information, including information which may disclose the identity of a source, and/or compromise on-going policing activity.
- any other policing information which if shared may compromise an on-going policing operation.
- any police information which if disclosed may place an individual at risk.

Professionals will be required to justify why information is being classed as Restricted Access Information.

All information, other than Restricted Access Information, contained in reports will be shared openly with the child/parent(s)/carer(s) during the CPCC.

### Dissent

There will be instances where a police officer attending disagrees with a decision taken regarding the protection of a child. If such a situation arises it is expected that the officer will register their dissent with the chair of the meeting and also at the earliest opportunity advise their own line manager of the circumstances. This will permit supervisory consideration of whether to pursue any further action in respect of the matter.

### Bail

There will be instances where the checks reveal that either parent and/or carer will be subject of a bail condition restricting access/contact. In these instances this information must be passed to the person organising the conference to ensure that an appropriate decision is made on how to facilitate the individuals involvement without compromising the legal position.

## The Child Protection Register

### Purpose

Every local authority area in Scotland maintains a list of all the children in that area who are placed on the Child Protection Register and for whom there are inter-agency Child Protection plans.

At the conclusion of a Child Protection Case Conference (see above) it will be explained to a child or young person (where present) and to their parents, carers or representatives that their details will be placed on the Child Protection Register. This has a positive two-way effect:

- it alerts professional staff to the fact that there has been an identified risk to the child concerned; and
- it assists the Core Group to evaluate the current level of risk to the child.

### Categories of Abuse

When a child's name is placed on the Child Protection Register the Child Protection Case Conference making this decision will also decide which category of abuse the child is most at risk of suffering.

There may be overlap between categories. In such cases local authorities should enter the child on the Child Protection Register under one main category of abuse with additional categories also recorded. 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.



## Chapter 7

# Information Sharing between Police and Other Agencies

### Intelligence Submissions

Part V of the Police Act 1997 is legislation which has been introduced to allow individuals, prospective employers and voluntary organisations to apply for certificates giving criminal history or in some circumstances, other relevant information held by the police such as Criminal Intelligence.

It particularly applies to individuals who have regular contact with, train, supervise, care for or are to be solely responsible for children and vulnerable adults.

One of the findings of the Richard Review was the identification of intelligence gaps in relation to the submission of intelligence logs concerning offences against children.

It is important that, when an officer becomes involved in a Child Protection enquiry where a suspect is known or later identified they immediately submit an intelligence report (SID). This requires to be updated during the course of the investigation and also at the conclusion.

Given the sensitive nature of most Child Protection enquiries it is not necessary to include details of the child victims in the intelligence report.

### Police Information

It is important to understand what is meant by the term “police information”. The Management of Police Information (MOPI) code of practice defines police information as information that is required for a policing purpose. Policing purposes are defined as:

- a) protecting life and property;
- b) preserving order;
- c) preventing the commission of offences;
- d) bringing offenders to justice;
- e) any duty of responsibility arising from common or statute law.

These five policing purposes provide the legal basis for collecting, recording, evaluating, sharing and retaining police information. They do not replace or supercede any existing duty or power defined by statute or common law, nor do they define every policing activity.

The five policing purposes are not mutually exclusive; information can be collected for one policing purpose and used for another that may not have been known about at the point of collection. It is essential therefore that a policing purpose is established in order for information to be legally held.

## Principles of information sharing

ACPOS considers that there will be a presumption to share information to protect children unless there are compelling reasons for not so doing.

Many agencies have found challenges in adopting a similar position and this challenge has been recognised as part of the governments response to improving child protection services. Efforts have been made to establish a common position and to progress the work they have developed a draft set of common key principles in relation to information sharing to protect children at risk of significant harm. This provides that when agencies are sharing information with partner agencies:

- the safety, welfare and well-being of a child is paramount when making decisions to lawfully share information with or about them;
- children have a right to express their views and to have them taken into account when decisions are made about what should happen to them;
- the reasons why information needs to be shared and why particular actions need to be taken should be communicated openly and honestly with children and, where appropriate, their families unless doing so would place a child at risk of further harm.
- at all times, information shared should be relevant, necessary and proportionate to the circumstances of the child, and limited to those within the child's personal network and the workers or agencies who need to know;
- information shared should be accurate and up-to-date, necessary for the purpose for which it is being shared and shared securely.
- when information is shared, a record should be made of when it was shared, with whom, for what purpose, in what form and whether it was disclosed with or without consent. Similarly, if a decision is taken not to share information, this should also be recorded. In situations where there is dissent or dispute, this should also be recorded.

## Inter-agency expectations

It is vital to understand that in order to make an informed, well-balanced decision on a particular course of action, each agency should share all of the information that is available to it that may be relevant. This should include:

- information on the child subject to the enquiry;
- key adults who have involvement with the child; and
- other children who may be at risk.

There is an expectation that each agency will thoroughly research the information systems available to them and thereafter share information with their partners to enable effective decision-making. These systems should include single agency and shared information systems, paper based and electronically stored.



These sources of information can be extensive and may vary on a case by case basis. The **minimum** checks that the police service should carry out and share are:

- Police National Computer (PNC);
- Criminal History System (CHS, formerly SCRO);
- Scottish Intelligence Database (SID);
- Violent and Sexual Offenders Register (ViSOR);
- Command & Control Systems (Storm/Captor etc.);
- Crime Recording System (OSS);
- IMPACT Nominal Index (INI); and
- any additional records held manually or by any other part of the respective force, for example the Juvenile Liaison Officer (JLO), Allocator, Domestic Abuse Liaison Officer, Vulnerable Persons Database, FPU Files, Missing Persons records and Youth offender unit.

Key partners within Social Work and Health should check similar single agency databases including, most importantly, the local Child Protection Register.

### Emergency Disclosure Checks

Scottish Government guidance in police circular 4/2007 considers situations where the police will be expected to provide immediate assistance to partners, predominately social work, in carrying out background checks prior to the placement of children. These will be situations where there is immediacy in the placement rather than a planned event where the normal process of checks through Disclosure Scotland would take place. Police are expected to provide support these facilitate these requests, which should be made in writing by a senior official from the service requesting the check. The police action will be to carry out checks of the systems listed above for all known persons within the address where the child is to be placed. The response is expected to be in writing outlining details of the information held. There will be instances where a decision is made to withhold sensitive information and in these cases it is important that the police record this decision along with the rationale.

### Children who move from the force area

When families who have been involved with the police in terms of child protection concerns move out of a force area then such information should be highlighted to the recipient force.

It is imperative that because a family move they are not lost in respect of the monitoring process or scrutiny they would be under had they not moved. It is for the receiving force to decide the level of concern they pose in their area and what action should be taken.

To this end, when a family relocates, the Family/Child Protection Unit in the new area should be informed and a package of information should be prepared for sharing.

The following relevant information should be shared:

- full details of child/ren;
- parents details (including SCRO, PNC, SID references);
- full details of partners/other adults who may be connected with concerns;
- previous address;
- new address;
- chronology of incidents;
- chronology of allegations;
- case conferences and results;
- details of enquiry officer/s and contact details;
- details of relevant SW staff and contact details if known.

When the package is forwarded to the recipient force, a named person should receive the information. The originating force must update their records of the movement and include the named person's details where the information has been sent.

## Chapter 8

# Adults Working With Children

### Introduction

The Police have a critical role in ensuring that a pro-active stance is taken to reduce the opportunity of unsuitable adults being left in charge of children.

This role is supported by the Disqualified from Working with Children List (DWCL) and should progress through the proposed Scottish Vetting and Barring Scheme.

### Intelligence Submissions

Part V of the Police Act 1997 is legislation which has been introduced to allow individuals, prospective employers and voluntary organisations to apply for certificates giving criminal history or in some circumstances, other relevant information held by the police such as Criminal Intelligence.

It particularly applies to individuals who have regular contact with, train, supervise, care for or are to be solely responsible for children and vulnerable adults.

One of the findings of the Bichard Review was the identification of intelligence gaps in relation to the submission of intelligence logs concerning offences against children.

It is important that, when an officer becomes involved in a Child Protection enquiry where a suspect is known or later identified they immediately submit an intelligence report (SID). This requires to be updated during the course of the investigation and also at the conclusion.

Given the sensitive nature of most Child Protection enquiries it is not necessary to include details of the child victims in the intelligence report.

### Disqualified From Working with Children List

The Protection of Children (Scotland) Act 2003 provides for Scottish Ministers to maintain a list of persons considered unsuitable to work with children. The Disqualified from Working with Children List (DWCL) has been operational since January 2005.

The Protection of Children (Scotland) Act 2003 aims to improve safeguards for children by preventing unsuitable people from working with them.

The key aspects of the legislation are:

- Scottish Ministers to maintain a Disqualified from Working with Children List;
- An individual working with children, whether paid or unpaid, is to be referred to the List when they have harmed a child or put a child at risk of harm and have been dismissed or moved away from contact with children as a consequence;
- Organisations have a duty to refer people to the List backed up by an offence for failing to make referrals;
- The List includes those convicted of an offence against a child, when the court considers them to be unsuitable to work with children;
- Those on the List (other than provisionally) will commit a criminal offence if they apply to or work with children;
- It is an offence for an organisation to knowingly employ a person to work with children if that person is on the List (other than provisionally);
- Safeguards for the individual are included in the Act including the right to appeal to a Sheriff;
- The fact that someone is on the List will be released as part of a Disclosure available from Disclosure Scotland;
- The List helps to strengthen the safeguards already in place to protect children.

Scottish police forces cannot access the DWCL at present but play a significant role in ensuring it is an effective pro-active measure in protecting children through timeous SID Submissions which are then disseminated to Scottish Ministers by Force Disclosure Units.

The English equivalent of the DWCL is **LIST 99**, for information on List 99 click here (<http://www.teachernet.gov.uk/docbank/index.cfm?id=4778>).

### Scottish Vetting and Barring Scheme

The Protection of Vulnerable Groups Bill has now been enacted and is scheduled to be introduced in mid-2009. A new executive agency will be set up—the vetting and barring agency will incorporate the existing Disclosure Scotland. It will separate the processes of vetting, where employers make a judgement on the suitability of a potential employee and are made aware of any information which may indicate unsuitability such as previous convictions, pending cases and relevant police intelligence, and that of barring from the workforce, decisions which will be taken by an independent barring board.

Under the new Act the Disqualified from Working with Children List (DWCL) will be incorporated into two new lists—the barred from working with children and the barred from working with adults lists. The Act allows that the police service can access these lists for the purposes of the prevention and detection of crime.

A critical element of the new vetting and barring scheme is continuous update, i.e. when a person joins the scheme through their work with children or vulnerable adults, their membership details will be available for checking, probably on the Criminal History System, so that when any relevant information comes to the notice of the police they are able to make this available immediately to the Part V disclosure unit within forces who will assess it and if serious enough – pass this to the barring agency for consideration of barring.

All police officers and support staff need to be aware of this process and submit any such information timeously in order that any appropriate action can be taken

This will bring an improved vetting and barring scheme for those working or applying to work with children and/or adults at risk.

### Impact Nominal Index

The Impact Nominal Index (INI) is a national computer database which is available, via the Police National Network (PNN), to all Police Forces in the United Kingdom. The database is a national index of individuals whose names and personal details have been recorded by the police, primarily in connection with the following policing business areas:

- Intelligence;
- Crime Recording;
- Child Abuse (Protection) Investigation;
- Domestic Violence;
- Firearms (Revocation and Refusal); and
- Custody.

The INI computer database was developed in response to the recommendations of the Richard Inquiry. Access to the database has been classified as “restricted”.

It provides an expanded capability to search for named individuals who have become known to the police but who have not necessarily been convicted or charged with any crimes or offences. By searching the database, it will be possible to establish if information in respect of any named individual is held by any police force in the United Kingdom. When a record regarding an individual is identified, the system will provide details of the originating force(s), any unique reference number(s) relating to that individual and contact details for further information. This database represents a significant increase in the capability of to access information held by other forces. It should be noted that information from Scottish forces has been limited to that already found on CHS, whereas the forces in England and Wales have included much wider records.

In all instances, all local and national computer systems (PNC, SCRO, SID, ViSOR etc.) **must** be searched prior to requesting a search of the INI database.



## Chapter 9

# The Investigative Interviewing of Children

### Introduction

The structure and procedures for conducting an investigative interview of a child are clearly outlined in the national guidance document, **“Supporting Child Witnesses, Guidance on Interviewing Child Witnesses in Scotland.”** (Scottish Executive, 2003).

Although the guidance is relevant to all cases involving child witnesses, it is predominantly aimed at police officers and social workers conducting investigative interviews with children in relation to concerns of abuse and is therefore relevant to both criminal and civil proceedings. Consequently, in all circumstances when police officers are conducting investigative interviews with children, whether or not this is jointly with social workers this guidance should be adhered to.

**At some point in their service, all police officers will undertake an interview with a child witness. The national guidance applies equally to officers who are trained or untrained in undertaking joint investigative interviews and consequently all police officers should be aware of its contents.**

The following paragraphs highlight some salient points from the national guidance. Some are clearly couched towards joint investigative interviews however the practice guidance is considered as having relevance for those interviews that are conducted solely by police officers.

### Definition

An investigative interview is a formal, planned interview with a child, carried out by staff trained and competent to conduct it, for the purposes of gaining the child's account of events (if any) which require investigation.

### Purpose

The main purposes of the investigative interview are:

- to learn the child's account of the circumstances that prompted the enquiry,
- to gather information to permit decision making on whether the child in question, or any other child, is in need of protection, and
- to establish whether a crime has been committed.

It is crucial that when officers undertake an investigative interview, whether jointly or not, they must do so with an open mind. The sole intention during such an interview should not be to only substantiate a suspicion or allegation but interviewers must explore alternative hypotheses.

## Planning/Preparation

As with any interview there is benefit in a degree of planning and preparation. The national guidance strongly advises that a planning meeting is held prior to the investigative interview. It is acknowledged that it may not always be possible to convene a meeting; however, it is imperative that a substantial degree of planning and preparation takes place before commencing an investigative interview with a child witness. A record of this planning and preparation process must be made by the agencies concerned and retained for future reference.

The following list details some of the points that should be considered during the planning phase, this list is by no means exhaustive:

- the child's age and gender
- their race, culture, religion, ethnicity, first language and whether an interpreter is required
- their cognitive (e.g. attention and memory) and linguistic (comprehension and speech, vocabulary) abilities and range of behaviours
- their present emotional state
- any mental and/or physical health requirements
- any physical, mental or learning impairments that require specialist input/attention
- the child's family composition and living arrangements
- the nature of the child's relationship with family members and/or carers
- daily routines, bath, bed, meals etc
- any sources of stress for the child and/or family
- any previous involvement with the child protection agencies—if so, the nature of such
- details of previous action taken and support provided
- other sources of information; parents, carers, teachers, GP
- contingency plans (e.g. for retraction of earlier statements, change in lead interviewer)

Consideration should also be given at this stage in relation to the location and duration of the interview.

## Briefing

Prior to the investigative interview commencing, it is crucial that the interview team is jointly briefed. This briefing can be undertaken by either the social work or police manager who will be responsible for recording the details of the briefing. The original copy of this record will be retained by the police and a copy provided for the Social Work Department. The following list outlines some of the issues that require to be discussed during the briefing. Again this list is by no means exhaustive:

- the circumstances leading to the investigative interview
- background information regarding the child

- the objectives of the interview
- issues in relation to consent
- layout of interview room
- the roles to be undertaken during the interview
- ground rules to be used
- how the interview will be recorded
- topics to be explored
- what questions will be asked
- how the competency of the child will be tested
- any perceived needs the child may have
- potential impact of the interview on the child
- contingency plans
- presence of support person during the interview
- possibility of the need for a further interview

The main purpose of the briefing is to ensure that both members of the interview team:

- are aware of the circumstances leading to the interview
- understand the purpose of the interview
- understand their role within the interview
- identify any potential sources of difficulty
- are familiar with the areas to be probed
- are aware of contingency plans, i.e. if child gets distressed, becomes suspect etc

### Interview Model

The interview framework outlined in the national guidance is called the 'phased approach' and the general principle behind it is to elicit as accurate and comprehensive an account as possible from a child. The entire interview process must be capable of standing up to the scrutiny of the court as legally sound testimony.

The phased approach includes five distinct phases although there may be some overlap between them and the interviewers can switch between the phases. The phases of the interview are:

- Introduction
- Rapport
- Free narrative
- Questioning
- Closure

The purpose of each of these phases is as follows.

### Introduction Phase

The introduction phase should be used by the interview team to introduce themselves to the child and provide a brief description of their role both within the interview and in relation to their day to day work. At this stage, the child should also be given a brief explanation of the purpose of the interview, however, interviewers must ensure that no suggestion is made to the child in relation to the allegation being investigated. The method of, and the reason for recording should be explained to the child at this stage along with the pertinent 'ground rules' for the interview.

### Ground Rules

A comprehensive list of 'ground rules' is contained in the national guidance but the following list provides some examples of 'ground rules' that should be used:

- "If I ask a question that you don't understand, please tell me and I will try to ask it another way"
- "If I ask a question that you don't know the answer to or can't remember, then please tell me, it's okay for you to say you don't know or can't remember"
- "You shouldn't try to guess the answer. You should only talk about things that really happened"
- "Even if you think I already know something, you should tell me anyway"

The 'ground rules' are best introduced during the 'Introduction' phase of the interview to ensure clarity for all concerned in the interview.

### Competence test

Although there is no legal requirement for the child to be subjected to a competence test, the national guidance advises that it should be stressed to the child the need to tell the truth. **(The Vulnerable Witnesses (Scotland) Act 2004 has abolished the use of the competence test during court proceedings however, the national guidance has yet been updated in relation to the use of the competence test during the interview situation).** Local interpretation in some areas has seen the inclusion of the competence test during interview being stopped. However, a case where this practice was implemented and no competence test included was lost.

Consequently, until definitive guidance is issued, officers should carefully consider continued use of the competence test. COPFS direction currently remains that a competence test is not to be applied. However, it is crucial that any issues regarding the capacity of a child witness be identified and reported to the procurator fiscal within the comments element of any standard police report.

### Rapport

The rapport phase is a crucial element of the investigative interview and should never be omitted. The length of the rapport phase will, however, vary from child to child depending on the needs of the individual child and the circumstances of the enquiry.

The rapport phase should be used to allow the child to speak and for the interviewer to listen and for the interviewers to check out the appropriateness of their roles. The interviewer must use open questions and prompts at this stage to assist in setting the tone for the remainder of the interview. The rapport phase is also an opportunity for the interview team to assess the child's communication skills and stage of cognitive, social and emotional development.

### Practice interview

The national guidance refers to the use of a 'practice interview' during the rapport phase. This 'practice interview' should not 'stand alone' from the rapport phase but should flow naturally during it. The interviewer should identify a neutral topic and prompt the child to speak about it, i.e. school, hobbies, birthday party etc. This will allow the interview team to assess the child's use of vocabulary.

### Free narrative

Free narrative is the child's own account of events and interviewers should refrain, as much as possible, from interrupting the child during this phase. Interviewers should invite the child to tell them everything they remember about an event and must avoid seeking clarification from the child right away. Instead they should make a mental note of the points which require clarification and revisit these areas later in the interview.

Interviewers should use facilitative prompts as much as possible:

- neutral acknowledgement—"Uh Huh"
- reflect back what the child has said—Echoing
- use of "Tell me more"
- use of "Then what?"

During this phase the child may become distressed. If this is the case the interviewer must reassure the child—"It's alright, take your time, I'm listening". Interviewers should never use such phrases as—"You're doing really well" or "Good girl/boy" nor should they initiate physical contact with child by way of comfort. Interviewers should always acknowledge that the child is finding it difficult by using such phrases as—"I can see this is difficult for you, take your time" or "Is there something that would make it easier for you to speak with me today".

### Questioning

The child may be able to provide a comprehensive free narrative account of what has



happened, however, it may be necessary to clarify or expand on what the child has said. There are four main types of questions referred to in the national guidance:

- Open
- Specific
- Closed
- Leading

### Open

Open questions invite a more detailed response from a child without pressurising or leading them in any way. These types of questions are by far the best to use during an investigative interview and interviewers should endeavour to always use them as a first choice:

- “Please tell me everything you can remember about that”
- “What happened then?”

### Specific

Specific question can be used to probe for specific clarification of a topic or for a more precise account of events from the child:

- “Where were you when you played the game?”
- “What colour was the car?”

What, where, when and who questions are useful questions, however, interviewers should avoid the use of ‘Why’ and ‘How’. Use of these words can imply blame and in addition, they have different meanings in different parts of the country.

### Closed

A closed question has three possible answers:

- Yes
- No
- Don’t know

Closed questions are useful to confirm the interviewers understanding of what the child has said:—“You told me..., is that right?” **When using this technique, it is crucial that the interviewer repeats exactly what the child has told them.**

**Children are more likely to guess the answer to a closed question or to be led by the interviewer. Therefore, the use of closed questions should be avoided.**

### Leading

A leading question makes assumptions about facts that have not been confirmed or suggest a certain answer to the child—**“So then he touched you, didn’t he?”**

The general rule is that leading questions should never be used in an investigative interview, however, there may be occasions where their use is justified (to ensure the safety of a child in a particular situation). If used, a leading question should be immediately followed up by an open question. Leading questions are the most likely to be challenged in subsequent proceedings, therefore, their use should be planned, justified and well thought out.

### General questioning points

When questioning children, interviewers should aim to keep question short and simple. Interviewers should not ask:

- Questions that include double negatives
- Multiple questions
- Long questions
- Questions with police/social work jargon
- Abstract or Hypothetical questions

Like the rapport phase, the closure phase must never be missed out even if the interview finished abruptly. During the closure phase the lead interviewer should check if the second interviewer has any questions, ask the child if he/she has any questions and summarise what the child has said. The closure phase should also address the following issues:

- Potential for further interview (if this is a possibility)
- Inform the child of what will happen next
- Contact names and numbers
- Thank the child
- Return to rapport phase

### Interview atmosphere

#### Interview room

During the planning phase, consideration must be given to the location of the interview. The interview location must be child friendly and somewhere that the individual child will feel safe. It is crucial that during the interview the child is helped to feel as relaxed and comfortable as possible. The interviewers must give thought to the lay out of the room to minimise as far as possible the perceived power imbalance between them and the child. For example, with very young children it may be better for the interviewers to sit on the floor along with the child.

#### Pace

The pace of the interview will largely be dictated by the child, however, for recording purposes the interviewers will have to influence this

#### Breaks

Interviewers must be aware of the child's needs and explain to the child at the beginning and throughout the interview that if he/she needs to have a break for any reason then he/she should let the interviewers know. In addition, throughout the interview, the interviewers

should be looking for signs that the child may need to take a break. Full details of any breaks taken must be recorded in the body of the interview record. This should include details of the time, duration of, reason for and what occurred during the break.

### Manner

Throughout an interview, interviewers must ensure that their manner is child friendly and appropriate. The language used must be age appropriate and interviewers must be careful that they don't lapse into adult language and workplace jargon.

### Recording

At present in Scotland, audio and visual recording of investigative interviews is not routinely undertaken. At the moment most interviews are recorded by hand. It is essential that interviewers can record effectively by hand as there will be circumstances where it would not be appropriate to utilize mechanical recording equipment, i.e. where it is suspected that the child has been video recorded while being abused, when appropriate equipment is not available etc. Consequently, it is imperative that interviewers are able to record a full, accurate and verbatim account of the interview. To achieve this, one interviewer should lead the interview and the other interviewers should have responsibility for recording **all** dialogue and the body language of the child. This recording should also provide a description of the room layout and atmosphere etc. It should also include a brief description of the child's mood and demeanour. Issues such as consent and those present in the room should also be highlighted at the beginning of the interview record. All stages of the interview, including introduction, rapport and closure must be recorded. The interview must be recorded contemporaneously and must contain as much information as possible. It is acknowledged that this is an extremely difficult task, if not impossible, therefore, interviewers must endeavour to keep the pace of the interview as manageable as possible. This can be assisted by explaining to the child from the outset that the interview must be recorded and describing to them how this will be done. Throughout the interview the lead interviewer must ensure that he/she tries to ensure that the recorder has an opportunity to maintain the record.

This can be done by:

- regularly checking with the recorder to ensure they are keeping up
- agreeing on a signal between the interviewers to communicate that the recorder is not keeping up - any use of signals must be fully explained to the child
- use of pauses as and when appropriate
- echoing the child—repeating/reflecting back exactly what the child has just said
- the use of recaps of the information given by the child—this also checks that the interviewer has understood what the child has said and will convey to the child that he/she is being listened to.
- the use of trigger points—in circumstances where the recorder cannot keep up with the pace of the interview he/she can insert a trigger point to assist them to remember what was said and leave a space to be updated at the conclusion of the interview. This **must** be completed at the **immediate** conclusion of the interview and must be highlighted in some way to signify that it was not recorded at the time. This method should only be used when absolutely necessary.

As soon as possible after the interview, the interviewers must read through the statement together and ensure that they are satisfied that it is a true and accurate reflection of the interview. At this stage the trigger point must be completed to the agreement of both members of the interview team. Once satisfied with the content of the recording, the interview team should sign and date every page of the record and also initial any additions or changes made to the record. The police should then retain the original recording and if conducted jointly, the social worker should be supplied with a photocopy of the record.

### Debriefing

As soon as possible after the conclusion of the interview a joint debriefing should take place. This debriefing can be undertaken by either the social work or police manager who will be responsible for recording the details of the debriefing. The original copy of this record will be retained by the police and a copy provided for the Social Work Department. The following list outlines the purpose of the debriefing, again this list is by no means exhaustive:

- to ascertain what information was gleaned during the investigative interview
- to decide on any further action that may be required
- the need for a further interview
- to identify any operational or practice issues

### The victim who becomes a suspect

During the course of any investigative interview, the child may provide information, which may suggest that he/she has been involved in the commission of an offence. In such circumstances, interviewers must balance the needs and welfare of the child against the needs of justice. Interviewers need to take cognisance of the offence alluded to and the circumstances leading to the child being interviewed and decide which is the main priority. Consequently, the interview may be terminated in an appropriate manner, or may be continued, in relation to the child as a victim/witness. Any reference to the commission of a crime must be acknowledged but it must be made clear to the child that the circumstances surrounding the offence will be discussed at a later time.

### Conclusion

There is no doubt that conducting investigative interviews with child witnesses is a challenging task. The conduct of investigative interviews is subject to a great deal of scrutiny and their conduct can have a significant impact on the outcome of an enquiry. However, officers should be mindful that an investigative interview is only part of the enquiry and all other circumstances and information obtained must be fully considered.

It is recommended that all Child Protection Officers are fully conversant with the entire contents of the national guidance.

## Chapter 10

# Medical Examinations and Assessments

### Introduction

Subjecting a child to any form of medical examination should never be taken lightly. The ethics and moral issues of formal medical intervention are complex, with multi-agency discussions crucial and more importantly, the views of the child must be considered.

When circumstances indicate that a medical examination may be necessary as part of the evidence gathering process, then discussion about this should take place as part of the Initial Referral Discussion process. This discussion involves Police, Social Work and appropriate Health representative; in some areas the local Consultant Paediatrician. Agreement should be reached in relation to the following:

- the need for a medical examination,
- the type of medical examination,
- who should conduct the examination,
- the purpose of the examination.
- where it should take place, and
- when it should take place.

The following are circumstances in which it would be appropriate to consider a medical examination:

- when the child has injuries which he/she states were inflicted;
- when a child has injuries inconsistent with the explanation given;
- when a child has made a disclosure of physical abuse however there are no apparent injuries;
- when a child appears to be suffering from physical neglect;
- when a child alleges sexual assault or there are child protection concerns in relation to sexual abuse including allegations of touching over clothing, fondling, attempted/actual digital penetration, or any other allegations of penetration;
- when there is concern in relation to non-organic failure to thrive.

Best practice dictates that child medical examinations should be conducted jointly by a Forensic Medical Examiner and a Consultant Paediatrician. It is though recognised that each case is unique and must be considered as such. For example, in some instances there will not be the same requirement for corroboration or there may be pressing issues around time affecting the immediate needs of the child or perhaps availability of staff and facilities where a decision can be taken to progress with one doctor. When taking these decisions it is important to fully explore and consider the immediate effect as well as the longer-term implications. From a police perspective it is recommended that there always be supervisory input in these discussions, which should always form part of the IRD. This will also consider issues around consent.



## Consent

The Age of Legal Capacity (Scotland) Act 1991 provides that:

**“A child under 16 may consent to any surgical, medical or dental procedure or treatment where, in the opinion of the medical practitioner attending him or her, the child is capable of understanding the nature and possible consequences of the procedure or treatment”**

The converse is also true in that they can also refuse or withdraw consent. This is reliant upon the opinion of the medical practitioner determining that the child is “competent” to consent to the examination or treatment, and that they understand the nature and consequences of this.

As a matter of good practice, parental consent should be sought however, this should not provide a barrier to action in the interests of the child. Where parental/carer consent is an issue and cannot be resolved consultation should be made with respective line management who can ensure that there is consideration across agencies to determine the situation and the best way to progress.

This may include instances where for example the child is not deemed to have sufficient understanding as aforesaid and parental permission is not granted, consideration may be given to the Social Work Department making an application to a Sheriff for a Child Assessment Order

## Police attendance and role at medical examinations

It is important that Police are present at medical examinations. It is not necessary for them to be within the examining room however, should evidential forensic swabs be taken then Police should be present to maintain the continuity of evidence.

All forensic swabs should be taken and labelled in accordance with local Force Procedures or Standard Operating Procedures.

The importance of dealing with forensic samples properly cannot be underestimated as this avenue of evidence gathering can prove a key part in the securing of a conviction.

Police officers are expected to brief medical staff prior to the examination commencing, in particular in relation to the nature of any disclosure made by the child. This should negate the requirement for any further interview of the child by medical professionals, thus minimising further distress to the child or young person. Police officers in attendance at medical examinations have a responsibility to ensure that this does not take place.

Officers should never be afraid to discuss with and suggest to the Forensic Medical Examiner and Paediatrician what forensic samples they think are most relevant, and this should be discussed before the examination commences. Police officers are trained to investigate and gather evidence and should maximise opportunities to seize vital evidence.

When a child has visible injuries that require to be photographed, this should be carried out by the local Scenes of Crime Officer or by trained police officers, where possible, and if appropriate, at the same time as the medical examination is conducted or later if it is more suitable.

## Radiology in child protection investigations

The murder investigation manual provides a succinct account of how to make best use of the experts who work in the medical field of radiology. Below is a brief summary of this guidance.

Identifying fractures and bone injuries in infants and babies is particularly difficult, and investigators sometimes have an unrealistic view of the possibilities for conclusive evidence. Naturally, those trying to carry out a childcare assessment or a criminal investigation want clear and unambiguous answers from medical colleagues, but this is sometimes not possible. It is sometimes particularly difficult for example, to detect acute (very recent) fractures to the ribs.

### Full skeletal survey

The term 'full skeletal survey' is often used to describe the obtaining of X-ray pictures from the whole of a child's body. A significant amount of radiation is needed for this process, and the larger the child, the more radiation will need to be absorbed. Radiologists may therefore advise against this technique in older living children who are above the age of three years. Older children can communicate, and they should undergo a full paediatric examination, with radiographs only being taken of any painful, tender or deformed areas (children in the same family or with the same carers, who are under the age of three years old, should have a full skeletal survey because many of the fractures associated with NAI may not be apparent on clinical examination alone). Whenever a 'full skeletal survey' is requested and carried out, it is vital that every bone in the body has a good quality image taken of it. This means from the top of the child's head to the tips of his or her fingers and toes. It is also recommended that a CT brain scan is considered for all small children in whom Non Accidental Injury is suspected.

When x-ray evidence is crucial to a case involving a live child investigators need to consider what extra steps need to be taken to ensure best evidence is obtained.

Where there is any doubt about the initial findings of suspected fractures, and in any case where the consequences of the case could involve a criminal prosecution or a child being removed into care, a follow up radiological examination must always be carried out on the suspected fracture site after two weeks. The ossification (calcification) resulting from the healing process will be much more visible than in an acute fracture, and an expert comparison of the two sets of x-rays will confirm the presence of a fracture or otherwise.

### Other useful techniques

A consultant radiologist will be able to advise on the use of other techniques such as MRI scanning, to detect, or confirm the presence of suspected fractures, and investigators should always ask what else may be appropriate.

A radioisotope bone scan may be helpful in detecting acute rib fractures and in some situations may be used as an alternative to delayed films. This technique however, will rarely pick up skull fractures, or injuries adjacent to joints such as knees and ankles. A radioisotope bone scan does not form part of the routine work-up of a case. It may be used instead of delayed x-rays to detect rib fractures. It is not sensitive for many other types of fractures, and gives no indication of the age of an injury. It should only be performed in hospitals with experience of undertaking these investigations in infants. The scanning takes some time to perform and any movement of the baby leads to artefact and blurring of the image and further difficulties in interpretation. It requires an intravenous injection of radioactive isotope. The radiation dose is low.

## Conclusion

This chapter has discussed some medical procedures that can be utilised for examinations of children and the police role during the examination of children. Officers should always seek advice from medical practitioners on what procedures are best for a particular situation.

## Chapter 11

# Video Identification Parades (ViPER)

### Introduction

In 2004 widespread use of Video Identification Parades (ViPER) was introduced across Scotland.

A video identification parade is where a video image of the suspect or accused person is recorded under controlled conditions. A number of images of persons who, as far as possible, resemble the suspect or accused person in terms of age, build and general appearance are thereafter selected from a central library of volunteers to form the rest of the parade. The images are arranged, taking into account the position(s) chosen by the suspect or accused and his/her legal representative, and transmitted to the requesting force. The compilation(s) is transferred to DVD to be played back by means of a conventional DVD player/television, portable PC or, if transferred onto video cassette, video player/television.

A video identification parade should always be the preferred means of identification when child witnesses (or other vulnerable witnesses) are involved as it removes the confrontational aspect of physically viewing the suspect or accused person(s) in a line of other people.

Police officers must refer to individual forces operating instructions and the published Lord Advocate's Guidelines to Chief Constables—Guidelines on the Conduct of Visual Identification Parades, which can be viewed at the Crown Office web site, or you can [click here](#). In addition they should refer to the Guidance into the Conduct of Identity Parades with Child Witnesses from the Scottish Government that can be viewed [click here](#).

### Information for the child witness and their parent or carer

As soon as it is known that a video identification parade is to be held the officer in charge of the investigation should arrange for a clear explanation to be given to the child witness, and their parent or carer, as to what the procedure is and why a video identification parade is necessary, especially when the suspect or accused person is related or known to the child witness. The context of the word 'parade' will have to be explained, given that the child witness will be viewing a DVD or videotape on a television or computer.

To support this information guidance and booklets have been developed by ACPOS in partnership with the Scottish Government's Child Witness Support Implementation Group, comprising the Crown Office and Procurator Fiscal Service, Scottish Children's Reporter Administration and the Scottish Court Service.

The information booklets should, where possible, be provided and explained well in advance of the day the viewing is to be held. ViPER liaison officers have been appointed to train and oversee ViPER parades within each force.



## Chapter 12

# Child Witnesses and Special Measures

### Introduction

It is of considerable importance at the outset to ensure that the child's needs are identified and protected throughout their journey within the justice system. Police officers are more often than not the first professionals a child will meet within the justice system and have an important role to play in ensuring that these needs are considered from the outset.

The Vulnerable Witness (Scotland) Act 2004 provides special measures for both children and other vulnerable witnesses to allow them to give evidence in criminal and civil court proceedings to the best of their abilities.

### Vulnerable witnesses

#### Main Definitions

- 1) For the purposes of this Act, a person who is giving or is to give evidence at, or for the purposes of, a trial is a vulnerable witness if—
  - a) the person is under the age of 16 on the date of commencement of the proceedings in which the trial is being or to be held (such a vulnerable witness being referred to in this Act as a “child witness”), or
  - b) where the person is not a child witness, there is a significant risk that the quality of the evidence to be given by the person will be diminished by reason of—
    - i) mental disorder (within the meaning of section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)), or
    - ii) fear or distress in connection with giving evidence at the trial.
- 2) In determining whether a person is a vulnerable witness by virtue of subsection (1)(b) above, the court shall take into account—
  - a) the nature and circumstances of the alleged offence to which the proceedings relate,
  - b) the nature of the evidence which the person is likely to give,
  - c) the relationship (if any) between the person and the accused,
  - d) the person's age and maturity,
  - e) any behaviour towards the person on the part of—

- i) the accused,
  - ii) members of the family or associates of the accused,
  - iii) any other person who is likely to be an accused or a witness in the proceedings, and
  - f) such other matters, including—
    - i) the social and cultural background and ethnic origins of the person,
    - ii) the person's sexual orientation,
    - iii) the domestic and employment circumstances of the person,
    - iv) any religious beliefs or political opinions of the person, and
    - v) any physical disability or other physical impairment which the person has,
- as appear to the court to be relevant.

It is hoped that by applying special measure thereby reducing the anxiety and pressure which child witnesses may feel when giving evidence, it is likely that they will be better able to give their evidence.

### Applying for special measures

In all criminal and children's hearing court proceedings, the person citing the child witness must complete a child witness notice. The person who will prepare the necessary notice or application will vary depending on the nature of the proceedings:

- Criminal Proceedings—Procurator Fiscal or Defence Agent;
- Children's Hearings—Children's Reporter, Safeguarder or Defence Agent;
- Civil Cases—Those acting for the litigants.

**The Act requires the court to make a decision on the provision of special measures within seven days of the lodging of the notice.**

The person preparing the case will need to consider the list of witnesses and whether the provisions of the Vulnerable Witnesses Act apply to any witnesses, and if so, to what extent.

They will firstly consider:

- i) whether the witness is a child under 16;
- ii) whether the witness is a child under 12 and is likely to be cited to give evidence in a trial involving an offence of a violent or sexual nature; and

if either of the above, which of the standard special measures is or are most appropriate for the purpose of taking evidence.

## Types of special measures

- i) A live television link from another part of the court building or other place outwith that building;
- ii) prior statements as evidence in chief (criminal cases only);
- iii) taking evidence on commission;
- iv) a screen; and
- v) a supporter.

Each of these special measures can be used on its own or in conjunction with one or more others.

The person preparing the case for special measures is expected to obtain both the views of the child and also those of the parent (except where the parent is the accused or other party implicated in the allegations).

It should be noted that a child should be presumed to be of sufficient age and maturity to form a view if he or she is aged 12 or over. If there is any inconsistency between the views expressed by the child and those expressed by the child's parents, then the views of the child should be given the greater weight. Younger children will also be able to give a view but this may be given less weight if the parent has given a different view.

## The police role in special measures

Police officers submitting Standard Police Reports to the Procurator Fiscal and/or SCRA are in a position from the outset to identify the needs and expectations of child witnesses.

Those in particular who may have conducted Joint Investigative Interviews with a child or who have observed the child in particular settings should record their observations in the Further Enquiry/Remarks section of the Standard Prosecution Police Report.

The areas of preliminary information, which can be useful to the Procurator Fiscal at an early stage, can include the following:

- whether the child or young person is a victim;
- home situation/social work or carer arrangements;
- details of the responsible person;
- relationship of witness to offender;
- interpretation and translation needs including specification of language;
- additional/special needs;
- how the witness feels about going to court;
- whether it seems likely witness will need special measures including an appropriate adult or a supporter.

Consideration of who would be an appropriate support person, taking account of the wishes of the child or vulnerable witness, and balancing this against evidential requirements

For officers who have conducted joint interviews, the following information can also be useful:

- the child's communication during the rapport building session (did they provide long narratives in relation to open prompts or did they have to be prompted with more closed questions);
- any areas of difficulty that were observed in respect of the child speaking about the allegation and ways in which these difficulties might be resolved;
- were there any areas where the child had difficulty understanding the nature of the conversation;
- in general, what the child responded best to;
- in general, what the child had difficulty responding to.

Whilst police officers are not wholly responsible for capturing all the above information for the benefit of the prosecution services, it is an opportunity to highlight early, any issues surrounding the child which may be of relevance to the potential prosecution of the accused person.

### Child therapy prior to court proceedings commencing

There will be occasions when it is deemed appropriate that a child witness may benefit from therapy after they have provided their witness statement to police.

Ultimately, the decision for whether a child should have therapy rests with the child's parents or carers. The Procurator Fiscal should be made aware at the earliest opportunity when therapy has been proposed and then dependant on the circumstances, the PF can advise, if it is felt that therapy could affect criminal proceedings.

If the Procurator Fiscal considers that the proposed therapy may prejudice the criminal case, those responsible for the child's welfare should take this into account when deciding whether to agree to the therapy. It may still be in the **best interests of the child** to proceed with the therapy.

The therapist should be made aware of any pending criminal proceedings before commencing the therapy and should also be aware of the implications of using techniques which may result in the child's evidence being discredited. As a general principle, **group therapy** should not be offered to the child witness prior to the trial.

The Procurator Fiscal will always disclose to the defence if the child witness was undertaking therapy and it may be that the therapist is cited by either the Defence or Procurator Fiscal to give evidence in court.

**The Code of Practice to facilitate the Provision of Therapeutic Support to Child Witnesses in Court Proceedings** was developed by the Scottish Executive and is available as an insert within the Supporting Child Witnesses Guidance Pack and can be viewed by [clicking here](#).

## Conclusion

The entire judicial process from the start of an investigation to giving evidence in court can make an already traumatic experience even more frightening for a child witness.

Aside from the application for special measures, Victim Support manage the Witness Service who are in a position to help victims, witnesses and their families and friends at court by providing the following assistance:

- pre-court visits for witnesses so that they are familiar with the courtroom and the roles of the various people in court before they give their evidence;
- support, in the courtroom if necessary, on the day of the trial and during sentencing and afterwards;
- a separate waiting area;
- information about court and legal processes;
- special help and support for witnesses who are vulnerable or intimidated.

The Scottish Government and Victim Support (Scotland) supply literature for children on what to expect at court.



## Chapter 13

# Offender Management

### Introduction

When dealing with all types of offenders, the police must fully consider the actual and/or potential risk that they pose to the community, and in particular vulnerable groups, especially children.

### Child protection and the management of sex offenders

The implementation of the Sex Offenders Act 1997 placed responsibilities on the police in respect of the management of registered sex offenders. The original legislation was superseded by the Sexual Offences Act 2003 and was supplemented by various legislation, most recently the Management of Offenders etc. (Scotland) Act 2005, incorporating the Multi-Agency Public Protection Arrangements (MAPPA).

MAPPA specifies a statutory duty on Police, the Local Authority, the Health Board and the Scottish Prison Service to establish arrangements for the assessment and management of the risks of registered sex offenders, serious violent and other offenders, within each local authority area. The procedures in respect of sex offenders were introduced in April 2007 and those for the other offenders will follow.

Child protection is obviously an issue that is to be addressed during any risk assessment and on-going management of registered sex offenders.

The effective sharing of relevant information held by agencies managing sex offenders is the key to ensuring that child protection agencies are aware of those individuals who either reside with or have ongoing contact with children. This then allows child protection agencies to assess the risk that these individuals may pose to the children they have contact with and to act upon these risks where relevant. It also importantly allows child protection agencies to fully and effectively consider any decisions made regarding these children.

### Community Impact Assessment (CIA)

Recent experience in dealing with child tragedies make it clear that there is a need to work with families and communities to ensure successful resolutions to major investigations. This success must be measured in the broader terms detailed above.

In child protection cases the potential damage to community relations must be considered and a CIA may be required. The CIA will also provide a valuable early indication of whether wider community involvement might bring useful material to the investigation. Consequently, this should be approached in an expedient manner so that any potential for public disharmony is curtailed.

Investigating officers should always be mindful of the benefits a Community Impact Assessment can have as a defusing technique to settle community tensions. A CIA should be undertaken in line with local force procedures.

## Chapter 14

# Management and Supervision in Child Protection

### Introduction

Police officers working in this area of business have to be provided with an appropriate level of management guidance and support, to ensure that our involvement and interaction is achieved at the highest possible levels. It is expected that managers will take an active approach when discharging their areas of responsibility.

### Managing child protection investigations

Managing people is integral to any investigation. There are two components to people management within a joint investigation. They are:

- managing colleagues within the Police Service; and
- managing relationships with external individuals and organisations who may assist the investigation, or may provide material to assist the investigation.

An effective investigation will require the development of the following, as applicable, in accordance with national and local protocols:

- referral documentation;
- policy file;
- joint victim care plan;
- joint witness management plan;
- search and forensic management plan;
- suspect management plan;
- disclosure plan.

The management of the investigation should be consistent with any plan agreed at the case discussion stage yet remain flexible enough to easily be reconsidered and where necessary, amended following fresh information.

Dealing with child protection matters has high expectations on staff and there is a significant level of external scrutiny, particularly in cases where there is considered to have been 'failure'. It is important that police supervision is visible and active in support of the best interests of any child and also the personnel involved.

### Lines of enquiry

When concern about the welfare of a child has been expressed, supervisors should ensure the thorough exploration of the background and history to ascertain whether there is a pattern of abuse against one child or several children, or whether evidence suggests a single incident.

Investigations should relate to the child about whom concern has been expressed and any other children of the family. Information obtained should be used in any multi-agency child protection responses and included in any police reports to the Procurator Fiscal and/or Reporter.

Managers should ensure protocols are in place for the proper recording of any material that may be relevant to the investigation. In cases of crimes against children, supervisory officers should, from the outset, take an active role in ensuring that a thorough investigation is carried out ensuring the continued protection of the child and support for the investigating officer(s).

The role of the supervisor includes responsibilities relating to the child protection investigation and staff management. Where appropriate, this demanding role can be shared between several supervisors. It is essential that the supervisor's own workload does not detract from their supervisory functions. The supervisor's workload should be routinely monitored by their own manager.

### Assessment of referrals and intelligence

The supervisor within these units performs a key role in risk assessment of referrals and intelligence indicating concerns for children. This arrangement has the advantage of ensuring consistency in decision making and allowing resources to be properly and quickly directed to cope with demand.

This assessment process should focus the attention of other agencies by prioritising referrals and intelligence. All information held by the police about significant adults should be assessed in terms of the impact it may have on the victim or any other child. The information may, in isolation, not primarily focus on a particular child, but if considered with other facts it may have an impact on the welfare of the child.

When a referral is received or a concern is raised the supervisor should ensure that thorough checks are made of all available police databases and information systems, including SID, in respect of all relevant individuals. Information gathered as a result of these checks should be recorded. Violent or sexual offences committed against victims of any age by a suspect in such cases will be particularly relevant, in addition to any other offences or intelligence information that may influence an assessment of risk.

The unit supervisor should ensure that information received by way of a referral, and all other relevant information is reviewed, recorded on the local child protection database or index system and cross-referenced with previous files for the same child and/or other family members.

### Supervision of investigations—Quality Assurance

In child protection inquiries supervisory officers should, from the outset, take an active role in ensuring that a thorough investigation is carried out. Supervisors must ensure that they are routinely involved in directing and reviewing the progress of all aspects of child protection investigations, including the identification of risk factors. The supervisor should also sample, review and supervise joint investigative interviews of children and PRICE model suspect interviews, in accordance with local policy. It is suggested that a minimum of three interviews per year per officer should be sampled.

It is recommended that cases sampled should be drawn from the latest 'closed' cases so that any issues arising can be addressed immediately, without interference with a particular case. Where appropriate to the complexity of a case or to meet the requirements of effective supervision and staff development, remote monitoring of live interviews should also be considered.

Supervisory reviews of completed investigations should be signed off before they are filed. The results of any reviews may be relevant to the officer's personal development record, according to force policy.

### **Staff management and welfare**

Line managers should be aware of the potential impact that faces staff working in this challenging field. They have to be alert to any warning signs of stress and ensure that the balance of work within the team, the welfare of individuals and the quality of their work is maintained. They should also ensure that adequate opportunities are given for officers to discuss concerns about cases which may affect their welfare. Consideration should be given to implementing mandatory or voluntary counselling and/or welfare support for all staff working in this field. In any event response to any concerns and/or support will be in line with force guidance and procedures.

### **Resource management**

The unit supervisor is responsible for managing resources and ensuring that the following aspects of investigations are considered:

- Develop and implement investigative strategies
- Use of information management systems

The successful management of an investigation requires planning, organisation, control and motivation. An investigation may entail managing any or all of the following:

- Resources;
- People;
- Risk;
- Quality assurance;
- Actions;
- Record keeping;
- Auditable decision making; and
- Communication.

The key to effective resource management is planning and foresight. Investigators, in conjunction with supervisors must, at the earliest opportunity, identify the resource needs of an investigation.

When deciding on the resources required the supervisor must consider the appropriate level of investigative response, the availability and cost of the required resources and whether their use is proportionate.

Where resources are limited, supervisors must prioritise the needs of multiple investigations in line with the resources available. This can be particularly difficult during the initial investigative phase.

There is now a greater emphasis on full and accurate record keeping within a child protection investigation. This includes the use of resources. Where it is anticipated that significant resources will be used in an investigation, supervisors should record the following information:

- The purpose for which resources were requested (including the reasons for the request and the estimated time the resources would be required for);
- The type of resources allocated;
- The reason for requesting the resource;
- What was actually achieved?

If an investigation or its methods are reviewed by a supervisor, independent review panel or court, those undertaking the review must be able to determine that the decisions and actions were reasonable. Accurate record keeping will provide a key point of reference in the event of any review.

### Health and Safety considerations

Health and Safety and Human Rights legislation demands that risk is assessed and managed to prevent or reduce the likelihood or impact of harm, damage to property or reputation of:

- Victims;
- Witnesses;
- Suspects;
- The general public;
- Police employees and the Police Service;
- The local community.

A number of areas of investigation are susceptible to risk and every supervisor is responsible for managing these potential risks by undertaking appropriate risk assessments.

The measures taken to deal with risk can range from being relatively simple, such as the provision of crime prevention advice, to the complex, e.g., providing witness protection. Investigators must be able to:

- Recognise any risks that may occur during an investigation and their likely impact upon individuals, the investigation or the organisation itself;
- Make appropriate decisions to manage that risk;



- Keep detailed records demonstrating the steps taken to manage and monitor risk;
- Communicate details to others of the risk, or the strategies established to deal with it (e.g. colleagues, victims or witnesses).

Forces have policies and procedures for assessing and managing such risk. Investigators should understand their local risk assessment and risk management processes. Failure to deal with risk can be detrimental to the health and safety of individuals, do irreparable damage to the investigation and lead to a lack of public confidence in the organisation's competence.

During the course of an investigation, risk assessment should be subject to regular reviews to ensure that identified risks have been adequately managed. If any new risks are identified or the nature of the investigation changes significantly, a new risk assessment should be carried out.



## PART 3

# Complex or Less Common Types of Investigations



## Chapter 15

# Child Protection and Substance Misuse

### Introduction

Dealing with adults who misuse substances (alcohol and drugs) is part of every day work for police officers. Many of these adults are parents charged with the care of children ranging from newborn babies to adolescents. Officers dealing with such adults must have an awareness of the impact of this parental behaviour on the well being of the child and be prepared to act accordingly.

In 2003, the Scottish Executive published '**Getting our Priorities Right: Good Practice Guidance for working with Children & Families affected by Substance Misuse**' while the Home Office published '**Hidden Harm**', which outlined the findings of an Inquiry by the Advisory Council on the Misuse of Drugs. Both reports identified significant concerns regarding the effect on children exposed to or living in environments with substance misusing parents and/or carers.

The documents provide advice to agencies (including police) working with people who have drug and alcohol addictions. The guidance clarifies the expectation on agencies to refer their concerns to appropriate family support and child protection services.

Parental/carer drug and alcohol misuse has the potential to create a range of negative impacts on children which threaten their present well being and their future development. The following are examples of this:

- Children may be exposed to and involved in drug related activities and associated crimes;
- They are more likely to display behavioural problems, experience social isolation and stigma and misuse substances when they are older;
- Violence might be a feature in such households;
- Households might be unstable, chaotic and characterised by criminal activity;
- Others from outwith the home might exploit the vulnerability of the family to abuse the child;
- Babies are particularly vulnerable to the effects of parental substance misuse. As a result, many child deaths have occurred in families where parental substance misuse is a factor.



### Pregnant substance misusers

Most drug-misusing women are of child-bearing age. Substance misuse is often associated with poverty and other social problems, therefore pregnant drug-misusing women may be in poor general health as well as having health problems related to drug use. Use of alcohol and tobacco is also potentially harmful to the baby. Substance misuse during pregnancy increases the risk of:

- having a premature or low weight baby;
- the baby suffering symptoms of withdrawal;
- the death of the baby before or shortly after birth;
- Sudden Infant Death Syndrome;
- physical and neurological damage to the baby before birth, particularly if violence accompanies parental use of drugs or alcohol;
- Foetal Alcohol Syndrome.

### Police response to parental/carers substance misuse

It is acknowledged that not all children who live with substance misusing parents/carers are at significant risk of harm. However, when police officers come into contact with adults who care for children and who have substance misuse backgrounds, the broader picture of the potential impact of this lifestyle should be looked at to ensure that the children's needs are met.

Any issues which evidence a negative impact on children as a result of parental/carers substance misuse should be highlighted to partner agencies through the submission of a referral. This will allow agencies to share relevant information and make decisions about the future welfare of these children to ensure the children's needs are met. **This includes unborn children.**

In addition, when police come into contact with children who are misusing substances (including alcohol) then they are expected to ensure partner agencies are informed through the referral process. The misuse of substances by children is one of the grounds for referral to the Children's Reporter.

## Chapter 16

# Domestic Abuse

### Introduction

Domestic abuse refers to a wide range of physical, sexual, emotional and financial abuses between people who are or have been close partners. Typically, it involves a pattern of abusive behaviour that tends to escalate over time. The British Crime Survey shows that domestic abuse is more likely to involve repeat victimisation and injury than any other form of criminalized behaviours.

It is recognised by the Scottish police service that domestic abuse can occur between female perpetrators and male victims, and between same sex couples.

Research shows that there are significant links between domestic abuse and child abuse. It is vital to recognise that domestic abuse and child abuse are not necessarily separate forms of abuse, but often occur concurrently. Failure to identify and fully investigate domestic abuse could result in failure to protect the safety and well-being of both child and adult victims.

Many people who experience domestic abuse have children and at its simplest form living with domestic abuse can be seen as a form of emotional abuse.

### Emotional abuse

Children are often present during a physical or verbal attack on their parent or are able to hear it from elsewhere in the home. Hearing a violent episode may often be more traumatic than being present as a child's imagination may escalate a situation and (depending on their age) they may feel powerless and unable to protect their parent. Children may also observe their parent's injuries after an incident and live in fear that they or their parent may be killed or seriously injured.

It is also important to remember that children living with domestic abuse are exposed to a variety of abusive behaviours not just violence. Domestic abuse is about power and control of the abuser over the victim and children are likely to experience the fear and isolation of living in such an environment. Children may experience some forms of controlling behaviour for example; not being allowed to go to a friend's house, their pets being hurt or being isolated from other relatives.

It is not uncommon for children to believe they are to blame for the abuse, for example, a violent incident may be triggered by a minor misdemeanour on the child's part. Children may feel guilty for not coming to the aid of their parent and again this guilt may be associated with feelings of self-blame. Additionally children may be used by an abusive parent as a vehicle to manipulate, control or physically abuse their partner during a relationship or after separation—for example threats to hurt a child or continuing abuse through child contact arrangements.

### Risk of actual physical or sexual abuse

Domestic abuse has been found to be a strong indicator of either or both physical and sexual abuse of children—domestic abuse being a typical context within which child abuse develops

Children may also become targets, intended or unintended, during domestic abuse incidents with the child suffering accidental injury if they become caught up in the incident or attempt to intervene. Instances also occur where one parent injures the child and blames the other parent.

Violence in the home may also undermine the child's actual chances of survival. In an analysis of child death reviews, one of the commonly recurring themes was the existence of domestic abuse. It should also be noted that women have been found to be at the greatest risk of homicide at the point of separation or after leaving a violent partner and that some violent parents kill their children as a means of taking revenge on their partner for leaving them.

Domestic abuse also affects the unborn baby. Research shows that pregnancy is often a trigger for domestic abuse to begin or existing abuse to escalate.

### Policing domestic abuse

The Association of Chief Police Officers in Scotland (ACPOS) and the Crown Office and Procurator Fiscal Service (COPFS) have agreed the following definition of domestic abuse:

**“Any form of physical, sexual or mental and emotional abuse which might amount to criminal conduct and which takes place in the context of a close relationship. The relationship will be between partners (married, cohabiting or otherwise) or ex-partners. The abuse can be committed in the home or elsewhere.”**

The ACPOS/COPFS joint protocol ‘In Partnership Challenging Domestic Abuse’ identifies agreed best policing practice in terms of the investigation, reporting and prosecution of domestic abuse. All officers must make sure they are familiar with this protocol.

On all occasions when children are present during domestic abuse incidents and in all cases where children are a part of the household, whether or not they were present at the incident, a referral form will be submitted in line with force procedures. This will include circumstances where children are not permanent members of the household but may return. In circumstances where it is identified that a partner is pregnant a referral for the unborn baby must be submitted.

## Chapter 17

# Fabricated or Induced Illness

### Introduction

The phenomenon of parents and carers inflicting harm upon children in their care by fabricating or inducing illness, and subsequently bringing this to the attention of medical practitioners for unnecessary investigation and treatment, is well documented. Fabricated or induced illness (FII) has previously been referred to as Munchausen's syndrome by proxy

There are examples of such harm being inflicted while the child is under medical supervision, including interference with intravenous lines, suffocation and deliberate poisoning.

### The Investigation

This type of investigation should be carried out where it is known or suspected that an adult is causing a child to suffer fictitious symptoms or is interfering with the treatment of a child where the consequences of that action may endanger the child's life or result in significant harm. A child may also be exposed to unnecessary investigations or treatments.

As these investigations are particularly rare it is recommended that a senior investigating officer is appointed and specialist support from the National Policing Improvements Agency (NPIA) is considered.

### Investigative considerations

- Initial referral discussion should take place between police, health and social work sharing all relevant information by either agency;
- Contact other agencies which hold relevant information including health, education, children's reporter, other police and social work;
- Check if child's name is on Child Protection Register, and if so, why and when?;
- Identify if there is any risk to any other children and address;
- If matters are to be investigated jointly, agree where and when this is to occur;
- Appoint SIO and key investigation personnel;
- Identify which social workers are to be involved;
- If child is hospitalised appoint a liaison officer to link with a single point of contact at the hospital;
- Identify source of disclosure (if not child) and interview;
- Consider a strategy meeting to include:

- Paediatrician in charge of case;
- Child Psychiatrist;
- Social Work Services;
- SIO/FPU (CPU) officers;
- Media officers (police/hospital);
- Health Visitor and GP;
- Commence a Policy log and maintain;
- Contact Procurator Fiscal at an early stage;
- Media strategy;
- If non-suspected parent is not aware, consider if and how they are to be approached;
- Welfare and support of non-abusive parent;
- Consider FLO;
- If required, utilise HOLMES;
- Locate and seize all medical records;
- Consider examination of medical records of suspect and other siblings of child;
- Decide whether parental consent will be sought for any interviews;
- If no parental consent for interview is available, consider whether not to interview the child would seriously impede the investigation or would significantly increase the risk of harm to the child. If so, proceed to interview without consent;
- Consider whether child can give consent to medical examination taking account of the Age of Legal Capacity (Scotland) Act 1991;
- If child or children is/are to be interviewed jointly, agree where and when this is to take place;
- Supervisory officers and social workers to have planning discussion to agree:
  - Who should be present at interview;
  - What way it should proceed;
  - Which areas are to be explored;
  - How it will be recorded;
- Carry out joint interview of child/children;
- At completion of interview, assess any statement made;
- Consider further interview of child to clarify any points;
- Interview any further witnesses indicated by child or other source;
- If required, consider further medical assessment of child;
- Progress to medical if child is considered as capable of giving consent;



- Where relevant, obtain parental consent for medical assessment
- If consent is refused then consider seeking a court order;
- If a locus is identified, secure same;
- Have locus photographed/video-recorded;
- Have scene of crime examination at locus;
- Seize all productions required;
- Plan interview of suspect(s);
- Consider interview packages for interviewing officers;
- Consider use of an independent medical expert to outline what fabricated or induced illness is;
- Have analyst produce timeline strategy showing history of child and relevant illness or injuries;
- Have suspect(s) interviewed;
- If sufficiency of evidence exists, report suspect(s) to Procurator Fiscal concerned. Forward copy of report to children's Reporter;
- If insufficient evidence is gained, report the matter to Children's Reporter via local procedures;
- Pass result of police enquiries to social work department;
- Pass result to hospital concerned;
- Consider press release and welfare of suspect issues.
- Submit intelligence report as soon as suspect is identified and regular update during course of investigation and at conclusion.

### Salt or drug induced poisoning

When fabricated or induced illness is being considered within a child protection investigation, the investigating officer should seek direction from medical experts as to whether salt or drug induced poisoning is a possible explanation.

When salt or drug induced poisoning is the suspected cause of apparent illness, this should be brought to the attention of the examining physician. A request should be made for appropriate blood, hair and urine samples to be obtained for forensic analysis and hospital use. Some toxins are present in body fluids for only a limited time following administration. The investigating officer should therefore identify and seize any material that contains body fluids from the child, such as traces of blood, vomit, urine or faeces.

Feeding bottles and other equipment associated with feeding the child should also be seized for examination and where available, samples of any left over food. Advice can be obtained from the forensic liaison officer within your force as to the correct storage, packaging and submission of any items seized.

## Chapter 18

# Female Genital Mutilation (FGM)

### Introduction

Female genital mutilation (FGM), often referred to as 'female circumcision', comprises all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural or other non-therapeutic reasons.

FGM has serious consequences for physical and mental health. It can also result in death.

The procedure is reportedly practised in twenty-eight African countries and in parts of the Middle and Far East. It is typically performed on girls aged between 4 and 13, but can be performed on newborn infants or on young women prior to marriage or pregnancy. **It is not a religious practice** and leaders of all major religions have condemned the practice as unnecessary and harmful.

The Female Genital Mutilation (Scotland) Act was passed in 2005, following on from the Prohibition of Female Circumcision Act 1985 (which first made FGM illegal in Britain). The Act makes it unlawful to carry out any of the procedures detailed above on a girl or a woman. It is also an offence under the Act for UK nationals or permanent UK residents to carry out FGM abroad, or to aid, abet, counsel or procure the carrying out of FGM abroad, even in countries where the practice is legal.

The act **excludes** surgical operations which are necessary for a girl's physical or mental health and operations carried out in conjunction with childbirth.

### Indicators of FGM

FGM is usually practiced in the country of origin of the child's family (albeit intelligence suggests that more local communities are collectively paying for individuals from their home countries to fly to Britain and perform the acts here). Suspensions may arise in a number of ways that a child is being prepared for FGM to take place abroad. These are 'intelligence-led' and include:

- knowing that the family belongs to a community in which FGM is practised;
- knowledge that the family are planning a holiday with their female children abroad and have arranged vaccinations and a planned absence from local educational establishments;
- the children may have mentioned they were going abroad for a 'special procedure'.

There are also a number of indicators that FGM may have already occurred, including:

- prolonged absence from school with noticeable behavioural change on return;
- long periods away from classes or other normal activities, possibly with bladder or menstrual problems;
- midwives and obstetricians may become aware that FGM has been practised on an older woman and this may prompt concerns for children in the same family.

Once again, everyone has a role to play in the identification of FGM. Internally, Safer Community Officers and School Liaison Officers are well placed. From a multi-agency perspective, partners within Health and Education are similarly placed to raise concerns and ensure an appropriate response.

### Police response

The challenge in investigating such a crime is that despite the severe health consequences, parents and carers who permit these acts on their children may genuinely believe that it is in their child's best interest to conform to their prevailing custom. They may believe it makes the child socially acceptable and may not intend it as an act of abuse.

However, on all occasions where the child appears to be in immediate danger of mutilation officers should invoke police emergency powers and remove the child to a place of safety. It should be noted that a conditional power of arrest is also attached to the FGM (S) Act.

Where practicable an Initial Referral Discussion and/or Case Discussion/Strategy/Planning meeting should take place to decide, on a multi-agency basis, to identify what steps require to be taken to ensure both the child's short term and long term safety. On all occasions, an initial referral form will be completed. A Child Protection Case Conference will be convened and reports to both the Children's Reporter and the Procurator Fiscal will be submitted.

In circumstances where the child has already undergone FGM and there are no other risk factors indicating that the child is in immediate risk of harm, an initial referral will be submitted and an IRD undertaken. Arrangements, including medical and therapeutic assessments should be made to safeguard the child. Similar procedures to those outlined above will thereafter follow. The potential risks to other female children within the family should not be overlooked.

The potential role of Safer Community/Community Safety Departments to assist and advise on diversity issues should also be considered. Fear of an accusation of racism or antagonism within the local community cannot be used as an excuse for the failure by police and/or other statutory agencies involved in Child Protection to pursue a proper course of action when investigating FGM.

## Chapter 19

# e-Crime in Child Protection

### Introduction

Advances in technology, the increased use and sophistication of computers and other electronic media, like telephones and games consoles, by children and adults, and the ease of accessibility have provided abusers with an ideal medium in which to operate anonymously, targeting potential victims, and to share their interest with other like-minded individuals.

While this chapter mainly focuses on the investigative response to abuse using computer technology there is an emerging trend for mobile telephones to feature in this type of criminal activity. It is important for the investigator to fully consider whether or not there is any evidential or intelligence opportunity that can be accrued from analysis of physical mobile handsets or examination of billing. It is important to ensure that the evidential integrity is maintained and seizure or acquisition of any product or production is in line with force guidance.

On-line sexual abuse of children and the creations and sharing of sexual abuse images of children is becoming more prevalent, it is important for investigators to have an understanding of the complexities of these types of investigations.

The primary reasons why paedophiles produce, use and collect child abuse images are:

- Their own sexual arousal and gratification;
- To lower the inhibitions of their child victims;
- As “blackmail” to ensure that the child does not tell the “secret” of the activity that he or she is being forced to endure;
- To preserve the child’s “youth” by maintaining a pictorial record of the child’s appearance at the “desirable” age even after he or she has grown older and matured;
- As a medium of exchange with other paedophiles to enlarge their child abuse image collection and to gain access to other children.

### Online grooming

Online grooming is a course of conduct enacted by an adult, which would give a reasonable person cause for concern that any meeting with a child arising from the conduct would be for unlawful purposes with a sexual motivation.

Often, adults who want to engage children in sexual acts, or talk to them for sexual gratification will seek out young people who lack appropriate social networks or are otherwise vulnerable. They will often use a number of grooming techniques, including building trust with the child through lying, creating different personas and then attempting to engage the child in more intimate forms of communication. Sometimes this leads to compromising a child with use of images and webcams. Child sex abusers will often use blackmail and guilt as methods of securing a meeting with the child.

Child sex abusers find the Internet an easier place to gain contact with children due to the anonymity of the medium. They will often lie and pretend to be younger than they are or assume false identities, and find a sense of security by operating from the safety of their own homes. They have been known to set up bogus email accounts and false chat room identities in order to mask their identity online.

There are a number of actions that these adults will engage in online. These include:

- Swapping child abuse images in chat areas or through instant messenger with other adults or young people and forming networks with other child abusers to share tips on how to groom more effectively and how to avoid being caught;
- Swapping personal information of children that they have collected with other abusers;
- Participating in online communities such as blogs, forums and chat rooms with the intention to groom children, collect sexually explicit images and meet them to have sex;
- Making contact with children via Instant Messenger, email, gaming and on message boards.

Adults target children through a variety of means, for instance, through member profiles in their instant message accounts, which often hold personal details and indicate their ages and which can be viewed publicly if a child hasn't requested otherwise. They will also ask young people who they have met online – for example in gaming sites, to add them to their friends contact lists so that they can chat to a children's network of friends. They also go to child-specific chat rooms and forums, to engage young people through deceit or flattery. From this public area they would then encourage the child to talk more privately through texting on mobile phone, or in instant messenger or by personal contact. Some abusers will send hoax letters via email to young people, purporting to be an organisation that they are interested in – and then hope that the child responds. Adults who want to contact children can do so quite easily online, since personal information is often not kept private in the same way that it would be offline.

### **Investigative Process—Images and Computers**

This type of investigation should be carried out where there is an allegation that a person is in possession of images depicting child abuse on a computer or electronic storage media.

### **Specialist computer crime assistance**

Each force area will have available an e-crime unit. One of the functions of this unit is to liaise with police personnel engaged in computer crime enquiries in order to provide expert advice and assistance.



### Investigative considerations

- Welfare of the children depicted and those who come into contact with the suspect
- The family of the suspect may not be aware of his/her possession of such images and they will require to be appropriately managed; Consider how this message will be delivered
- Consider commencing a policy log at an early stage of the enquiry;
- Full intelligence checks should be completed in respect of all known persons;
- Appointments of an SIO and key personnel, especially where there are multiple suspects;
- Utilise HOLMES;
- Flagging of suspects through SCRO etc.;
- Security of the operation and suspects is vital. Identities should be restricted to need to know only;
- Consult Fraud and E-crime Unit;
- Discuss request for warrant with Procurator Fiscal in advance of application, if possible;
- Consultation with other forces where appropriate;
- Low profile approach to premises;
- Dedicated officers to interview suspect, closely working with interview advisors;
- Dedicated officers to deal with productions;
- Liaison with Family/Child Protection Unit regarding any child protection issues;
- Premises should be photographed to show computers and also décor, furniture to establish if any images recovered were made on those premises;
- Consider a search of secondary premises – places of work and businesses;
- Security and storage of items seized;
- De-brief teams to consider investigative, child welfare and intelligence issues;
- Impact assessments for each suspect;
- Media release;
- Seizure policy;
- Examination policy for computer related items - photographs, video cassettes etc.;
- Suicide strategy;
- Return of seized material;

- Expert evidence;
- No copies should be made of any material seized (except as part of the forensic examination);
- Arrangements for defence to view seized material;
- Disclosure issues
- Identification of children depicted.
- Intel & SOPO's, RSHO's

### Officers viewing indecent images for court purposes

In criminal proceedings images will have to be viewed and categorised and this is done by police officers. In major investigations these images can run into hundreds of thousands therefore it is crucial that suitable officers are identified to undertake this disturbing and stressful job.

Any officer involved in such viewing will be a **volunteer** and supervisors have a responsibility for their support and welfare. Prior to viewing any images, officers will be psychologically tested to ensure that they are suitable for the role. Psychological support will be available throughout the enquiry and officers will be re assessed at the conclusion of the enquiry. Due to the nature of this type of work, it is paramount that the welfare and working conditions of these officers is monitored and managed to ensure a comfortable work environment.

Officers will be trained in the use of “viewing station” equipment and the viewing stations themselves will be password protected and situated within secured offices. **No officers, other than those so trained, will be able to view any images**—not least to ensure that evidence is not compromised or contaminated.

### Useful Internet sites

#### **CEOP (Child Exploitation and Online Protection)—[www.ceop.gov.uk](http://www.ceop.gov.uk)**

Launched in April 2006, the CEOP Centre works across the UK and maximises international links to deliver a holistic approach that combines police powers with the dedicated expertise of business sectors, government, specialist charities and other interested organisations—all focused on tackling child sex abuse wherever and whenever it happens.

The **Harm Reduction Faculty** is multi-faceted. A Victim Identification Team focuses on identifying child victims of online abuse, backed up by a sophisticated database and software to support investigators in sharing intelligence gathered from seized images.

The **Operations Faculty** focuses on issues such as organised crime profiteering from the publishing or distribution of images, support for local forces in areas such as computer forensics and covert investigations as well as working with international authorities to maximise policing powers.

## Chapter 20

# Looked After Children and Young People

### Introduction

Children and young people living away from home, including those in foster care, residential care, private fostering, health settings, residential schools and secure units may be particularly vulnerable to abuse.

Any allegations regarding abuse of children or young people who are or have been looked after can be historical or current and both will require an assessment of risk in respect of the suspects continued access to victims.

### Is a Major Crime Investigation required?

After consulting with multi-agency partners and having identified the potential for an investigation, it is crucial to determine the size and complexity of the enquiry and to consider the options that are available to the Senior Investigating Officer (SIO).

The need to assess the short, medium, and long-term impact of such an enquiry, and potential escalation is essential at a very early stage and as the enquiry progresses. Equally, the involvement of other forces should be considered in light of the transitory characteristic of this type of witness and offender.

Experience has demonstrated that most of the current major enquiries started from simple beginnings with very few complaints or offender profiles. The feasibility of resorting to a HOLMES investigation should be constantly considered by the SIO. Throughout such an enquiry the SIO may wish to consider the confidentiality of the information under investigation and the potential for a compromise in relation to the seizure of documents and productions at a later stage.

### Considerations for a Senior Investigating Officer

The Senior Investigating Officer should consider the following issues:

- The number of concerns currently highlighted;
- The nature and severity of the allegations;
- The investigation to include crossing other Police Forces boundaries;
- The number and type of homes or institutions referred to;
- The number of residents within such establishments;
- The potential time parameters;
- The number of potential suspects;

- The potential for growth in numbers of witnesses, institutions or suspects.
- Consultation with Procurator Fiscal and direction on investigative boundaries.
- Media strategy, either active or passive.

The following points must always be considered when dealing with alleged victims and witnesses who become involved in a major investigation of this nature. These points are by no means exhaustive:

- Be aware of the medical/mental state of the victim. Consider the use of audio/video tape;
- Confirm the establishment(s) where they were placed;
- Confirm dates/time spent at Establishment;
- Be conscious of any physical/medical evidence, which may be available;
- Keep in touch; leave and obtain contact numbers/addresses;
- Offer support of other agencies, e.g. Social Services, for counselling etc.;
- Obtain a photograph (if available) of victim at the age of attendance at Establishment;
- Obtain details of any other persons they remember from establishment;
- Establish if witness has been interviewed/given statement to other enquiries;
- Establish if witness has kept in contact with anyone from the establishment;
- Recover any relevant memorabilia from time at establishment.

### Historical abuse

Allegations of child abuse are sometimes made by adults and children a long time after abuse has occurred. There are many reasons for an allegation not being made at the time including fear of reprisals, the degree of control exercised by the abuser, shame or fear that the allegation may not be believed.

The allegation may be triggered by the person becoming aware that the abuser is being investigated for a similar matter, or suspicions that the abuse is continuing against other children.

There is no defined period of time which must have elapsed before a complaint is deemed to be historical. In light of this it is imperative that a common sense approach is adopted by investigators so that such allegations are dealt with by appropriately trained staff.

Historical allegations have the potential to develop into major investigations involving either multiple victims or multiple suspects,.

When dealing with these matters it is important that the issues listed above as considerations for an SIO are given due cognisance.

### **Historical Institutional Child Abuse Database (HICAD)**

HICAD is administered by the Serious Crime Analysis Section (SCAS) at the National Police Improvement Agency (NPIA). Police forces can submit names of suspects and minimal information (including last known address). This name is then searched across the database to see if they have been the subject of investigation elsewhere. If so both police forces are contacted and encouraged to contact each other to share information or intelligence on that person. If that person has not been the subject of an enquiry in the past then their details are entered onto the database to be included in future searches. Individuals entered onto the database have to be under investigation but not necessarily charged or convicted of a crime. The database only retains details of people who have been subject to an investigation and contains no information about suspected offences or details of alleged victims.



## Chapter 21

# Missing Children

### Introduction

Child abuse may be indicated when a child is reported as missing, or when a family or child misses significant appointments, e.g. with health care professionals, and is suspected of having moved from the local area without notice. Children who go missing may be at risk whilst missing and/or may have run away to escape abuse.

When missing children are traced, enquiries should be carried out to establish the reasons for their disappearance and this should be recorded as intelligence.

### Children missing from education

Children Missing from Education (CME Scotland) is a national project to track and trace children and their families who become missing from education. Each local authority coordinates a wide local search which involves searching databases for education, housing and social work to establish if the child is missing and will advise the team at CME.

Once enquiries are exhausted, the CME will contact the designated police point of contact who will assess all the information in line with the ACPOS/CME Memorandum of Understanding and decide on a course of action in line with their local force procedures. In essence this matter will thereafter be treated in line with force procedures as a missing person enquiry.

### Families who go missing from Health

NHS Scotland has also introduced a missing family alert (MFA) process to locate children, young people and their families who have ceased contact with the NHS, and for whom there may be concerns of significant harm in respect of an unmet need, vulnerability or abuse.

On receipt of a report of a missing child from Health, police will carry out an initial assessment based on all the known circumstances at that time. They will then decide on a course of action in line with their local Child Protection and/or missing person procedures.

## Chapter 22

# Guidelines on Investigating Sudden Unexpected Deaths in Infancy

### Introduction

In 2004 Baroness Helena Kennedy QC carried out a review of investigative practice towards Sudden Unexpected Deaths in Infancy (SUDI) following the acquittal of several mothers previously prosecuted for the death of their infants. Baroness Kennedy's report made several recommendations that were highlighted as best practice for the whole of the United Kingdom. The central strand of this report was the requirement for a multi-agency protocol for all professionals involved in the attendance and investigation of child deaths, and the role of the legal system in any subsequent prosecutions. Within the report it is identified that although there are differences between the legal and health systems in England and Wales and those in Scotland, this should not preclude the development of a protocol north of the border. In response to this the Scottish Cot Death Trust has coordinated agencies across Scotland to form a protocol for the investigation of SUDI. This protocol is intended to establish best practice for staff of all agencies.

The death of every child is a tragedy and every death must be fully investigated in order to establish the cause of death. This is a fundamental human right under the terms of Article 2 of the Human Rights Act 1998, which states that everyone's right to life shall be protected by law and no one shall be deprived of life intentionally. This will also help to support the grieving parents and relatives of the child.

It is also important for medical services to understand the cause of death and, if necessary, to put in place measures to prevent further deaths of children in similar circumstances. The police have a key role in this however; their prime responsibility is to the child and family, including siblings, and any future children who may be born into that family.

The vast majority of infant deaths are as a result of natural causes. In a small number of cases however there may be concern that the child's death is suspicious. For this reason it is imperative that in every death investigation police officers should operate to the highest standards, to identify when criminal acts have occurred, and also to assist other key professionals in establishing the cause of death. As a professional agency committed to partnership working, the police have a duty to assist in gaining any such information and evidence that establishes the true cause of death.

In some cases a specific cause of death cannot be established. In such cases pathologists involved may classify the death as Sudden Unexpected Death in Infancy (SUDI) or may record the cause of death as being 'undetermined'. This simply means that the cause of death has not been established and should not be interpreted as anything more sinister.

There are six guiding principles that underpin the work of professionals dealing with any infant death investigation. These are listed below:

- Sensitivity,
- Open mind/balanced approach;
- Appropriate response to the circumstances;
- An inter agency response;
- Sharing of information;
- Preservation of evidence.

**Note: All of the above principles are of equal importance. In applying the principles individuals and agencies should ensure that all actions undertaken are legal, necessary, relevant and proportionate, in order to comply with the requirements of the Human Rights Act 1998.**

### Initial action

If the police are the first professionals to attend the scene of an infant death then urgent medical assistance should be requested immediately as the preservation of life is the primary objective at this stage.

If police are summoned to attend at a home address or other location, before a child has been taken to a hospital, then the child's body must be accompanied to the hospital for the purpose of continuity of identification. It is recommended that the body should be taken to a hospital casualty department to enable any chance of resuscitation and to facilitate expert examination by an appropriately trained Paediatrician. The child will normally be transported by ambulance.

The first officer to attend the locus should make a visual check of the locus, including the child and its surroundings, noting any unusual circumstances, including those in the under noted checklists. It must be established whether the body has been moved and the current position of the child should be recorded.

Police attendance should be kept to a minimum during the initial stages of the investigation. Officers should be aware of the distress that can be caused to bereaved parents/carers and other family members by multiple police officers attending at the locus, especially if they are uniformed officers using marked police vehicles.

The senior detective officer on duty should be contacted and requested to attend at the locus, along with a supervisory officer, in order to determine whether there are any suspicious circumstances. An SIO should always be appointed to oversee all infant death investigations, whether or not there are any obvious suspicious circumstances.

The SIO will be responsible for determining what additional specialist resources are required to progress the investigation, such as Crime Scene Managers (CSMs), Interview Advisors and Family Liaison Officers (FLOs), in accordance with the Major Crime Investigation Policy.

The parents/carers should be provided with a detailed explanation of the investigative process, including the role of the police, and the purpose of a post mortem examination. If a FLO is appointed it may be appropriate for them to perform this function.

The preservation of the scene and the level of investigation required thereafter will be determined according to the particular circumstances of the case.

### Partnership approach

Effective co-operation and liaison between police and paediatricians is very important at every stage of the investigation. The detection of child abuse is part of the standard training of paediatricians, which should equip them to carry out appropriate examinations including external examination, skeletal survey and any other tests which may be appropriate.

Assistance can be provided by health professionals who will be responsible for the early examination of the body, collating information from medical records, convening a meeting among all medical professionals involved with the family and preparing reports for pathologists.

Some paediatricians may offer to record details of the history from the parents/carers of a deceased child. This should be carefully considered by the SIO as it represents an ideal opportunity for investigators to make initial assessments of the demeanour and attitude of those caring for the child at time of death, and to assess their credibility. Health staff should complete a History and Examination form and this will be shared with the police.

An external physical examination, recorded by way of photographs and/or video, should be undertaken by medical staff and police at the earliest possible stage in order to record any suspicious or unidentifiable marks.

The Procurator Fiscal and pathologist must also be notified at the earliest available opportunity. The pathologist has extensive experience dealing with sudden deaths and bereaved families and as such will be invaluable in explaining to the parent/carer what will happen to their child's body and why. The SIO and the pathologist should continue to liaise closely throughout the investigation.

### Factors common in most infant deaths

The following are examples of findings common to most infant deaths. In the majority of cases these features should be not arouse undue concern or suspicion:

- Froth emerging from the mouth and nose. Froth results from the expulsion of air and mucus from the lungs after death. Sometimes the froth may be blood-stained, this does not mean that the death was unnatural;
- Small quantities of gastric contents around the mouth. This does not mean that death was caused by inhalation of vomit. Often there is slight regurgitation immediately after death;
- Purple discoloration of the parts of the face and body that were lying downwards. This is not bruising, but is caused by the draining of blood in the skin after death. For the same reason the parts of the body that were lying upwards may be very pale;
- Covering of the child's head by the bedclothes. This has been a common feature of historical cot death cases, and can contribute to death through accidental asphyxia or overheating;
- Wet clothing or bedding. This is usually caused by excessive sweating before death.



If the child looks as though he/she has been roughly handled, investigators should consider that this may have been the result of attempts at resuscitation.

### Factors which may increase suspicion

Some of these factors may be present in a non-suspicious infant death, and they are not always indicators of concern. They should however be considered along with all of the other available information and circumstances.

The list is intended merely as a guide for investigators and is not prescriptive by any means. Some of the factors may arouse suspicions however they should not be considered in isolation and should always be considered against the other available information. The checklist is in no way exhaustive however; it may provide some guidance in determining whether or not an infant death is suspicious:

- There have been previous unusual illness episodes or recent admissions to hospital;
- There is crusted blood on the face of the type associated with smothering and physical abuse rather than the 'pinkish' mucus associated with resuscitation;
- There are unusual bruises;
- There are foreign bodies in the upper airway;
- The child is older than 12 months;
- The parents or carers have given an inconsistent account of the events surrounding the child's death;
- The child has come from a family in which a previous child has died unexpectedly. It must though be borne in mind that it is still quite possible for second deaths to occur naturally;
- The child has come from a family or household with a history of drug/alcohol abuse, and/or domestic abuse;
- The child or another sibling within the family, is, or has previously been on the Child Protection Register.

### Interview process

A full history should be obtained from the parents/carers at the earliest available opportunity. This should be done with tact and diplomacy, recognising that they will be upset and distressed, and may be suffering the effects of shock or grief at the death of their child, regardless of any suspicions regarding their involvement.

Clearly, someone who has knowingly killed a child is likely to lie to cover up their actions, so any conflicting accounts will naturally raise suspicions. It must be remembered however that the parents/carers have just suffered bereavement and as such they are likely to be in a state of shock and possibly confused. Repeat questioning of the parent/carer by different police officers should be avoided at this stage if at all possible.



Often medical staff at hospitals have interviewed parents before the police arrive in an effort to establish the circumstances surrounding the child's collapse. Details of this information should be sought by investigators, as it will undoubtedly prove useful should a different version be provided later.

Consideration should be given to each of the parents/carers/family members being interviewed separately to avoid the possibility of each contaminating the other's version of events.

The relevant history will vary dependent on the age of the child, but where applicable should include the following information as a minimum:

### Background Information

- Full details of parents/carers, contact addresses, telephone numbers etc.
- Have either of the parents/carers been involved in earlier relationships where they have had children? If so, obtain full details of any significant events in the lives of those children.
- Has there been any previous child death in that or the extended family? If so full details.

### Medical History

- Was the child born prematurely and what was his/her weight at birth?
- What type of delivery?
- Did the child require special treatment after birth?
- Was child discharged from hospital with mother? If not, did he/she require special treatment?
- Who is the child's GP?
- Has the child had any illness since birth or been seen by a doctor for a health problem?
- Has child received injections/immunisations? If so, for what and when?
- Has the child attended clinic or been medically examined? If so, date and venue.
- Has the child been admitted or taken to a hospital or clinic? If so, which hospital/clinic, when, what for?
- Were they furnished with a booklet (the parent-held Child Health Record often known as the Red Book) detailing medical checks, examinations, dates etc, if so, where is that?
- Do the parents, other members of the household or carers smoke? If so, was the child in a smoke free environment or not?
- Was the child breast fed?
- When was the child last fed, with what, and by whom? (Locate and preserve any bottles etc.)

### Circumstances of death

- Detailed account of child's behaviour 72 hours prior to death, i.e. health of the child the day before.
- Who was there/with the child in preceding 24 hours?
- Who was the last person to see the child alive?

### Circumstances of recovery

- Who found the child to be dead?
- What was the room temperature where the child was found?
- How did the child look when found (blue, pink, stiff etc)?
- Who else was in the house at the time of discovery?

### If child died in sleep

- Who put the child to bed and how?
- What condition was the child in?
- How much clothing or wrapping was used on the child?
- Was bedding over/under the child?
- Was bedding tucked?
- Was an electric blanket used?
- Where was the child sleeping in relation to the parents/carers, and in what?
- Who was in the child's room?
- Who else was in the child's bed?
- What was the sleeping position of the child?
- Was there heating in the house?
- Was there heating in the child's room?
- What type of heating?

Officers should consider carefully the behavioural response of the parents/carers. Whilst they should take note of any apparent inappropriate or unusual responses to the child's death this should not be considered indicative of involvement in the death, on its own merits.

Other children in the family should also be seen, both as potential sources of information and as an indicator of standards of care provided by the parents. It is essential to ensure the welfare of the siblings and to consider whether any child protection measures need to be taken to ensure their continued protection.

## Crime Scene Management

- The SIO in conjunction with any CSM appointed should give consideration to:
- Preservation of the scene (including recording room temperature);
- A scene entry log;
- Arranging for photographs and video of the scene/other rooms etc.
- Seizing bedding and clothing, but only if there are signs of forensic value such as blood, vomit or other residues (the child's nappy and clothing should remain on the child but arrangements should be made for them to be seized at the hospital);
- Seizing items such as the child's used bottles, cups, food, medication which may have been administered.

The above is **not** an exhaustive list of actions and should be treated only as a guide. They will not be necessary in every case.

Often the first notification to the police of an infant death occurs when the child is already at hospital. In such cases consideration should be given to designating scenes, both at the hospital and at the location where the child was first discovered to be unwell.

If it is considered necessary to seize items as productions officers should do so with full respect and consideration for the parents/carers and other family members. It may be useful to explain to them that examination of the items may help in establishing the cause of their child's death. This will provide them with a source of re-assurance and feeling that the police are working with them, rather than making them feel in any way accountable for the death.

In general police officers should ensure that any items seized as productions are returned to the family as soon as possible following the pathologist's findings being established. This should however only be done with the agreement of the appropriate Procurator Fiscal, or at the conclusion of the investigation. The term 'investigation' includes any possible trial or appeal process.

Before returning the any items or productions seized, parents must always be consulted for their views on this. Officers should never make assumptions about whether families will or will not want items returned to them, and in what condition. Where items have been seized for considerable periods of time, or where there has been some deterioration or damage to the items, families should be consulted about how they would like items returned to them. Efforts should be made to ensure that all items seized are returned in a presentable condition if that is what the family have requested. In all cases officers should ensure that all official police labels and wrappings have been removed from the items before return.

## Additional considerations

In all cases of infant death the officer in charge of the investigation should ensure the follow tasks are completed before reporting the circumstances of the death:

- Check all available police systems and databases in relation to all family members including PNC, SCRO/CHS, Scottish Intelligence Database, Crime Recording System, Incident Logs, Command & Control Records, Domestic Abuse Logs;
- Check family/child protection unit databases or files;
- **Raise SID log as soon as reasonably practicable:**
- Liaise with the relevant Social Services Department to ensure their records are checked, including the Child Protection Register (and previous registrations if possible), and to involve them in a strategy discussion if appropriate;

If the parents/carers wish to accompany their child to the mortuary, then this should be facilitated, ensuring that they are accompanied by a police officer. Hospitals often offer bereaved parents a lock of hair, or foot or handprints taken from their deceased child. This is often well received and there should be no police objections to this.

In cases of infant death it is entirely natural for a parent/carer to want to hold or touch their child. In the majority of cases the wishes of the parents/carers should be accommodated. Provided this is done with a professional present (such as a police officer, nurse or social worker), it should be allowed. In most cases the individuals involved will have had legitimate intimate contact with the deceased child before or at the time of death therefore it is highly unlikely that forensic evidence will be contaminated. If the death has by this time been classified as suspicious, the SIO should, where possible, be consulted before a parent/carer is allowed to hold their child. If there is any lack of agreement between medical staff and police about the handling of the body then the pathologist must be informed at once in order that the pathologist can advise on the appropriate course of action.

In all cases the Procurator Fiscal will request a post mortem examination be carried out by a paediatric pathologist or a pathologist with some paediatric expertise. In any case where the death is suspicious, a forensic post mortem must take place.

A full skeletal survey should be requested and this should be carried out and interpreted by a paediatric radiologist or radiologist with paediatric expertise, to ensure the best possible result. It is important that the skeletal survey includes the whole body. The officer in charge of the investigation should give a full briefing to the pathologist(s), sharing of all relevant information including showing of the video and photographs of the locus. Whether or not the post mortem reveals physical signs of injury it is important that extensive toxicological tests are carried out.

The officer in charge of the investigation should discuss the matter of body/tissue retention with the paediatric pathologist and Procurator Fiscal. The parents/carers should be updated in respect of the expected time scales for the return of the body to the family.

## Death Reports

Such deaths will be the subject of a report to the Procurator Fiscal using the Standard Police Death Report recognised throughout all the Scottish Police Forces.

## Referral to Support Agencies/Police Withdrawal

Eventually, the investigation will close and the police will withdraw from involvement with the family. The police may have become a close point of contact to the family/carers and the severance of this connection should be carefully considered and the relevant support services/agencies should be involved where necessary. Parents/carers, family members and other siblings should be referred to local and national support agencies as appropriate.

Groups that may assist are:

- Scottish (COT) Death Trust. **Tel: 0141 357 3946**
- People Experiencing Trauma and Loss (PETAL). **Tel: 01698 324502**
- Cruse Bereavement Care Scotland. **Tel: 0870 167 1677**
- The Compassionate Friends. **Tel: 08451 232304**
- Victim Information and Advice. (VIA) **Tel 01382 341 185**
- Victim Support (Scotland). **Tel: 0845 303 0900**
- Foundation for the Study of Infant Deaths. **Tel: 0870 787 0554**

Consideration should also be given to referring family members to GPs and/or local Social Services for counselling where appropriate.



## Chapter 23

# Non Accidental Head Injuries and Shaken Baby Syndrome

### Introduction

Much debate has occurred recently over the safety of convictions of parents/carers who have been found guilty of the murder or manslaughter of their children through Shaken Baby Syndrome.

This debate has centred on the credibility of expert evidence given in these cases. Comments were made by expert witnesses during trials which were found to have no scientific foundation and for that reason testimonies were deemed to be unsafe. As such, many have had their convictions overturned on appeal.

### What is non-accidental head injury?

Non-accidental head injury is what is colloquially known as Shaken Baby Syndrome. Both terminologies describe the internal injuries a baby or young child sustains from being violently shaken. It is a descriptive term of how injuries may have occurred and not a medical diagnosis.

There are a number of other common expressions to describe a similar pattern of injuries, including:

- inflicted traumatic brain injury;
- battered child syndrome;
- inflicted head trauma;
- shaken impact syndrome;
- whiplash infant syndrome.

When a baby is shaken to and fro, the head moves at speed in a flailing “figure of 8” motion which causes blood vessels to shear from the lining between the brain and skull. The following is a list of injuries that have been recorded as a result of these:

- swelling and haemorrhaging to the brain;
- retinal haemorrhaging and/or bleeding at the optic nerve;
- lack of oxygen causing further damage to the brain;
- fractures to the ribs (caused by gripping or squeezing the baby’s sides);
- fractures to the long bones (caused by holding, pulling or twisting);
- of the wrists or ankles (caused by holding, pulling or twisting during shaking);
- middle ear bleeding (damage to blood vessels);
- bruising on body where baby was held.

At worst the injuries can result in the death of the baby however survivors can also suffer from disabilities ranging from mild learning disorders, to moderate and severe mental and physical disabilities.

Examination of previous cases by medical experts has found that in many cases, one or more of the following three distinct features were present—known as the ‘TRIAD’.

The three features are:

- Subdural Haemorrhaging;
- Retinal Haemorrhaging;
- Encephalopathy (a form of brain damage).

The Court of appeal has concluded that the presence of this triad of injuries is consistent with unlawful application of force. Furthermore, that the triad requires the application of some trauma and in the vast majority of cases, more than rough handling would be necessary. However, in rare or very rare cases, such injuries could be caused by little force.

What is clear is that each individual case should be considered with an open mind, and diagnosis will be determinant on the individual facts and circumstances of each case.

### The investigation process

All non accidental head injury investigations should be considered a priority and investigated thoroughly with sufficient resources allocated to perform this task effectively. Furthermore investigations should be approached with the highest levels of tact and diplomacy.

Joint child protection procedures should be invoked in order to ensure the necessary sharing of information between agencies.

The following is intended to outline the process of investigation, and considerations for the officer in charge of the investigation, when investigating a suspected case of non-accidental head injury:

- Interrogate all police information systems and databases for information held on the child, family, and any other significant adults, including the alleged offender if known;
- Contact any other statutory and/or voluntary agencies which may hold information in relation to the family and any other significant adults, including the alleged offender, and collate all relevant information held. This may assist in the identification of potential motives/factors accounting for the abuse, e.g. mental health concerns, medical or physical disabilities in the parent or child, alcohol/substance dependency or withdrawal, lack of parental experience etc.;
- Where a known suspect is identified, ascertain whether he/she has access to any other children or vulnerable persons;
- Ascertain whether the non abusing parent/carer is aware of the concern, if and how they are to be informed, and whether they are in a position to protect any further children;

- On the basis of the above information, on a multi agency basis, assess the level of risk to any other children or vulnerable persons, within the family or elsewhere. This may require joint child protection procedures to be invoked, and/or the use of police emergency powers.
- If child is at hospital, dispatch one or more officers to there as a single point of contact, to obtain updated prognosis etc., and to act as police liaison;
- Trace medical staff involved and obtain statements, focusing on any explanation given by parents;
- Identify paediatrician in charge of case and interview for medical prognosis;
- Retain medical records for child, including hospital admission card etc.;

Appoint an SIO to progress the investigation. The SIO will be responsible for determining what additional specialist resources are required to progress the investigation in accordance with the Major Crime Investigation Policy, such as:

- Crime Scene Managers (CSMs),
- Interview Advisors and
- Family Liaison Officers (FLOs),
- Media Services
- The services of a forensic analyst to provide a detailed timeline of all significant events in the child's life.

The SIO will also determine whether or not it is appropriate to complete a Policy Log, dependant on the nature of the matter under investigation

The Chapter on medical examinations in this manual suggests areas to be considered during such investigations. To recap, some medical procedures which should be carried out are as follows:

- Full skeletal survey, from head to finger and toe tips, properly interpreted by a paediatric radiologist;
- Ultra violet photography;
- Thorough ophthalmologic examination including specialised retinal photography;
- If the child is on life support, MRI and CT scans, ensuring that the machine is set up for brain matter;

## Conclusion

Investigating a suspected case of non-accidental head injury presents significant challenges, not least as a result of some of the media publicity surrounding recent appeal cases. As such, every investigation must, from the outset, be conducted to the highest standards, balancing investigative considerations, with the need to ensure the family members are dealt with appropriately. By ensuring that every potential source of evidence is explored, police officers will be able to maintain public satisfaction, whilst also ensuring that the standard of investigation withstands external scrutiny.

## Chapter 24

# Trafficking

### Introduction

People trafficking is the practice of transporting people into, out of, or within the UK, in order to exploit them using deception, intimidation or coercion. Forms of exploitation associated with the trafficking of children include:

- Bonded labour or servitude;=
- Commercial sexual exploitation;
- Facilitation of benefit fraud;
- Trade in human body parts;
- Religious practices.

Trafficking is often accompanied by violence or threats of violence against the victim and their family. For that reason, officers should be alert to the possibility that victims may not fully cooperate with an investigation for fear of reprisals. Offenders may also attempt to abduct or coerce the child while the investigation is ongoing and while the child is being cared for by the local authority.

For further information, see the ACPO (2005) Practice Advice on the Use of Immigration Powers against Crime.

### Conclusion

Trafficking liaison officers are in post in each of the Scottish forces and must be involved in these types of enquiries.

A victim of trafficking could present themselves to any police officer, anywhere in Scotland at any time. Therefore it is imperative the victim gets the appropriate response otherwise they will continue to be exploited and in worst case scenarios could be murdered.

## Chapter 25

# Under Age Sexual Intercourse

### Introduction

Scottish law states that it is a crime for any person to have unlawful sexual intercourse with a girl under the age of 16 years or a boy under the age of 14 years.

Should there be exceptional circumstances where criminal charges are not labelled there must be full information sharing between agencies, submission of intelligence reports and accurate record keeping of decisions and their rationale.

In some cases this activity will be taking place consensually where those involved are in a relationship (boyfriend—girlfriend who are of similar ages and with no contra indicators within their relationship). These situations can create some tension between agencies regarding the optimum method of response keeping the needs of the child at the forefront of any activity. Partners will see other priorities, like the health and well being needs, taking precedence over any consideration around punishment and/or sanction.

When the police are made aware of these types of incidents they require to be considered and managed in a professional and sensitive manner. There requires to be early supervisory involvement to ensure that the police response is appropriate. An immediacy of response is not always required and in these instances a staged and planned multi-agency response is seen as providing the optimum model so that all aspects are considered and the needs of the child(ren) are met.

It is recognised that investigation is required to ensure that the circumstances of the relationship are fully explored and assessed to identify those where either participant is acting as an abuser and enable a proportionate but proper response to be carried out.

It is imperative that in the immediate stages of any such enquiry an intelligence record is created and all police and partner agencies systems checked to identify any contra indicators that will inform a risk assessment. Likewise the submission of intelligence is to be considered as a priority.

This area remains challenging with national work underway to develop multi-agency guidance that will assist professionals dealing with these matters, to ensure that the needs of children are addressed and those who exploit children in this way are readily identified and dealt with.



## Chapter 26

# NPIA Crime Operations

### Introduction

This section primarily focuses on the information and advisory services and support offered to forces by NPIA (National Policing Improvement Agency) Crime Operations (Crime Ops) unit to assist them with their serious and series crime investigations. Crime Ops is part of NPIA's Operations Division and the services provided by Crime Ops is complemented by other services offered under the Operations Division.

NPIA Crime Operations (formerly National Centre for Policing Excellence) continues to provide information, advice and support to serious and series crime investigations.

Each regional team is headed by a Regional Advisor (RA); within the teams there are a number of experienced detective sergeants who fulfil the role of crime investigations support officers (CISO).

A full list of the areas in which support is provided can be obtained from the Scottish regional coordinators, by contacting the Opsline services on 0870 241 5641.

The following areas are however particularly relevant to Child Protection investigations.

### National Injuries Database

The National Injuries Database (NID) is part of a national resource to support serious crime investigations for the analysis of weapons and wounds.

The NID is mainly victim focused and can search for cases with similarities between a victim's wound(s) and known injury patterns and/or possible weapons. This is particularly useful for an investigation team in cases where the nature(s) of the injuries are unknown and the weapon(s) has not been identified. The database currently holds over 4,000 cases of suspicious deaths, homicides and clinical cases. It also has more than 20,000 images.

Medical, forensic, scientific and police reports combined with photographs, X-rays and videos provide information for the NID. It is anticipated that future developments will allow the NID to be linked to the national pathology system to provide an increased and broader data set.

## Other Services

Other services that are available through the NID include:

- Serious, Sexual Assault and Attempt Murders Database—this is linked to the NID allowing comparisons of injuries to be made between live and dead victims;
- Comparison Programme—this can display photographs from up to four cases simultaneously on one screen and can be useful for the identification of a potential series;
- Support and coordination of digital superimposition/image overlay—with an independent image consultant. This is used to compare weapon images with wound patterns, and has frequently been used for potential footwear impressions on skin;
- Facilitation and support of second opinion and cold case review work—a wealth of expertise has been generated through close working relationships with Home Office pathologists and other medical experts.

## Serious Crime Analysis Section (SCAS)

SCAS became fully operational in 1998, with one main objective—to identify the potential emergence of serial killers and serial rapists at the earliest stage of their offending. The department was developed as a result of the Byford Report, an enquiry into the Yorkshire Ripper murder investigation, which highlighted the need for a national database to hold the details of serious criminal offences committed in the UK, thus eliminating many of the problems related to police forces sharing information about such offences.

### Database Analysis

SCAS uses the latest technology to gather and record information on serious crime, and conducts analyses to identify possible similarities within cases. Its principal database store is VICLAS—the Violent Crime Linkage Analysis System.

To assist with analysis, SCAS also has access to information from several UK databases including the Forensic Science Service, the Police National Computer (PNC), the Method Index, the CATCHEM database and ViSOR.

Accessing such databases can help identify:

- cases committed by the same offender (comparative case analysis);
- lines of enquiry and investigative priorities based upon statistical probabilities;
- possible suspect populations using single lists produced using QUEST or VODS.

The investigating police officer receives a written report from a crime analyst with a number of key elements designed to assist the investigation. The report will identify if there are grounds to believe the investigator's case could be part of a new or existing crime series. It will also provide behavioural interpretation of the offence, which can provide assistance for searching in-force databases for similar or related crimes. Based on the frequency of incident, the report will often contain a statistical description of some of the elements involved which can alert an investigator to the importance of some aspects of the offence not immediately apparent.

## Behavioral Investigative Advice (BIA) and Advisers (BIAs)

Formerly known as 'offender profiling', BIA can be understood as an investigative support technique that can be utilised in cases of serious crime. In essence, it may be defined as the process of drawing inferences about an offender or offence from a detailed examination of actions within a crime from a behavioural perspective.

The support and advice available comes in many forms and includes:

- crime scene assessment;
- motivational factors;
- cold case reviews;
- series identification/case linkage;
- risk assessment;
- DNA screening suspect prioritisation;
- familial DNA screening prioritisation;
- interview strategy;
- offender background characteristics;
- investigative suggestions/strategies.

BIA is best understood as a strategic information management tool that can be used to better understand an offence, prioritise suspects, assist in the interview process and develop new investigative strategies to complement traditional approaches.

Further advice regarding any aspect of BIA can be sought through the Head of Behavioural Science, NPIA Operations.

## Chapter 27

# Significant Case Reviews

### Introduction

Recommendation 6 of the Audit and Review of Child Protection **It's Everyone's Job to Make Sure I'm Alright** asked for the Scottish Executive to "consult on how child fatality reviews should be introduced in Scotland".

During April 2007 the Scottish Executive published the Protecting Children & Young People: Interim Guidance for Child Protection Committees for Conducting Significant Case Reviews (SCR). The purpose of the guidance is to provide a systematic and transparent approach to the review process. The overarching objectives of a review are to:

- Establish whether there are lessons to be learnt about how better to protect children and young people and help ensure children get the help they need when they need it in the future – Reviews should be understood as a process for learning and improving service as well as a means of recognising good practice;
- If and when appropriate, to make recommendations for action (albeit that immediate action to improve service or professional shortcomings need not await the outcome of a formal review);
- Consider how any recommended actions will be implemented;
- Address the requirement to be accountable, both at the level of the agency/agencies and the occupational groups involved;
- Increase public confidence in public services, providing a level of assurance about how those services acted in relation to a significant case about a child; and
- Identify national issues where appropriate including good practice.

The guidance is relevant to all those involved in the delivery of children's services, including those working in the statutory and voluntary/independent sector.

Regardless of whether or when a SCR takes place, it is important that any obvious areas for improvement of practice identified by the immediate evidence should be addressed as soon as possible. Following the death of a child or the identification of serious concerns relating to a child, agencies should immediately assess the circumstances of the case to identify if there are any immediate actions that need to be taken. If action is required, it should be proportionate and taken at local level as far as possible. [Click here](#) to obtain access to the full guidance which is entitled "Protecting Children & Young People: Interim Guidance for Child Protection Committees for Conducting a Significant Case Review".





# GLOSSARY



# Glossary

**Child** means:

- i) a child who has not attained the age of 16 years; or
- ii) a child over the age of 16 years who has not attained the age of 18 years and in respect of whom a supervision requirement is in force; or
- iii) a child whose case has been referred to a Children's Hearing by virtue of a Supervision Order issued in England, Wales or Northern Ireland, and for the purpose of the application of those chapters to a person who has failed to attend school regularly without reasonable excuse, includes a person who is over 16 years of age but is not over school age.

**Relevant person** in relation to a child means:

- i) any parent enjoying parental responsibilities or parental rights under Part 1 of this Act;
- ii) any person in whom parental responsibilities or rights are vested by, under or by virtue of this Act; and
- iii) any person who appears to be a person who ordinarily (and other than by reason only of his employment) has charge of or control over the child.

**In need** being in need of care and attention because:

- i) he/she is unlikely to achieve or maintain or have the opportunity of achieving or maintaining a reasonable standard of health or development unless services are provided for him/her by a local authority;
- ii) his/her health or development is likely to significantly be impaired, or further impaired, unless such services are provided;
- iii) he/she is disabled; or
- iv) he/she is affected adversely by the disability of any other person in his family.

**Parental Responsibility** a parent has, in relation to his/her child, the responsibility:

- i) to safeguard and promote the child's health, development and welfare;
- ii) to provide direction and guidance in a manner appropriate to the stage of development of the child;
- iii) if the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis; and
- iv) to act as the child's legal representative but only in so far as compliance with this section is practicable and in the interests of the child.

**Parental Rights** a parent has the right:

- i) to have the child living with him or otherwise to regulate the child's residence;
- ii) to control, direct or guide in a manner appropriate to the stage of development of the child, the child's upbringing;
- iii) if the child is not living with him, to maintain personal relations and direct contact with the child on a regular basis;
- iv) to act as the child's legal representative.

**Accommodation** except where the context otherwise requires, accommodation provided for a continuous period of more than 24 hours.

**Child Assessment Order** an order granted by a sheriff for the assessment of the state of a child's health or development, or of the way in which he or she has been treated.

**Child Protection Order** an order granted by a sheriff which allows the removal of a child from home where immediate removal to a place of safety is necessary for his or her safety.

**Compulsory Measures of Supervision** in respect of a child, such measures of supervision as may be imposed by a Children's Hearing.

**Exclusion Order** an order granted by a Sheriff enabling the alleged abuser to be excluded from the family home – rather than removing the child.

**Family** in relation to a child includes:

- a) (a) any person who has parental responsibility for the child;
- b) (b) any other person with whom the child has been living.

**Family Home** any house, caravan, houseboat, or other structure which is used as a family residence and in which the child ordinarily resides with any other person with parental responsibilities and includes any garden or other ground or building attached to and occupied with, or otherwise required for amenity or convenience of the house, caravan, houseboat or other structure.

**Place of Safety** in relation to a child means:

- a) a residential or other establishment provided by a local authority;
- b) a community home;
- c) a police station;
- d) a hospital, surgery or other suitable place, the occupier of which is willing temporarily to receive a child.

**Residential Establishment** an establishment (whether managed by a local authority, by a voluntary organisation or by any other person) which provides residential accommodation for children for the purposes of this Act or the Social Work (Scotland) Act 1968.

**Supervision Requirement** a requirement made by a Children's Hearing who are satisfied that compulsory measures of supervision are necessary in respect of the child and includes any condition contained in or related to it.

**Supervision** measures taken for the protection, guidance or control of the child.

**Risk** this has been defined as the relative probability of an injury or other harmful occurrence to a child, particularly when inflicted or arising as a result of neglect by an adult.

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