Campaign for Abuse Investigation Reform

Justice Denied?

Abuse investigations and child protection

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1. What is wrong with the child protection system?

Introduction

1.1 A robust system of child protection is at the heart of a humane social policy. This is reflected in the widely held consensus that in any matter of dispute, the welfare of children is paramount. This principle, embodied in the 1989 Children Act, has been the guiding spirit of the reform and expansion of the child protection system which encompasses not just social services, but aspects of the criminal justice, medical, education and mental health systems. As a result, more families have been drawn into court based procedures, with a massive rise in criminal prosecutions for alleged abuse.

1.2 Shared expertise, disseminated through multi-agency working and training, is often seen as the most effective way of tackling child abuse, so that professionals are alert to warning signs and can act at the earliest opportunity. Successive inquiries into preventable child deaths, such as the Jasmine Beckford case in the 1980s'[1] and the more recent Victoria Climbie[2] case, have highlighted the problems of allowing identifiable life-threatening abuse and neglect to slip through the net despite the long-term involvement of child protection agencies.

1.3 Reforms are therefore generally aimed at plugging gaps in procedural efficiency. Yet there are many shortfalls in the system that act to the detriment of the welfare of children, which are unacknowledged because there is an ingrained resistance to recognise the existence and causes of false allegations of abuse.

1.4 These fundamental flaws can be illustrated by the following examples of massive failure to protect the welfare of children through the commission of detrimental action by the child protection system itself:

- **1986** – In successive judgments psychiatrists and social workers at Great Ormond St Hospital were criticised in the High Court family division[3] for having induced false allegations of sexual abuse using suggestive interviewing methods. The team was a major national training resource. Countless families were destroyed but no action was taken to review training and practice.

- **1988** – The Cleveland Inquiry[4] criticised paediatricians, social workers and psychologists for acting in concert to diagnose sexual abuse on the basis of unsound techniques, suggestive interview and investigative play therapy methods on the presumption that abuse had occurred. The report recommended joint working and training between police and social workers but no action was taken to review national training standards and practice.

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[1] Blom-Cooper, L (1986) *A Child in Trust*

[2] Lord Laming, 2003 http://www.victoria-climbie-inquiry.org.uk

[3] *(1987)* Family Law, 4.

[4] *Report of the Inquiry into Child Abuse in Cleveland 1987,* HMSO, 1988, Cm 412.

- **1988-91** – Allegations of 'satanic abuse' rings were made in Nottingham, Rochdale, Congleton the Orkneys and elsewhere. Subsequent enquiries dismissed the fears as being caused by the superimposition of social workers' beliefs on children and vulnerable adults, using suggestive interviewing techniques with the direct and indirect cross-contamination of allegations between social workers, foster carers and children. A Nottingham report describing and warning of the dangerous practices of the social workers was suppressed.[5]

- **1994 -** Two nursery nurses in Newcastle were accused of the serious sexual abuse of numerous children in bizarre acts in the nursery and elsewhere. The charges were dismissed pre-trial because of insufficient and tainted evidence. A council-appointed panel conducted a review of the case and found the pair to be guilty despite the acquittal. In a private libel action in 2002, the nurses were exonerated. The allegations were found to be based on mistaken medical diagnoses, suggestive questioning and information sharing, with a finding of malicious libel made against the panel.[6] Despite the identification of the flawed methods of investigation, utilising the 'multi-agency' approach, which were endorsed and replicated by the review panel, no action has been taken to rectify the mistakes.

- **1980's – present day** Thousands of parents were falsely accused of sexual abuse by adult children who believed, or stated, that they had 'recovered' or 'discovered' memories of serious childhood abuse previously unknown to them or anyone else. The unsound theories and practices precipitating this dangerous outcome were identified by a working party of the Royal College of Psychiatrists in 1998[7]. They were widely used in NHS child and adolescent and adult mental health services and social services departments, but no action was taken to review training and practice.

- **1992 – present day** Thousands of teachers and care workers were falsely accused of sexually and physically abusing child and adolescent care home residents decades before. This was as a result of police trawling, suggestive investigation methods, cross-contamination and compensation incentives. A House of Commons Select Committee inquiry[8] warned that current safeguards against injustice and miscarriage of justice in these cases were seriously inadequate and called for reform. The Government refused to act.

- **1980's – present day** Thousands of parents were wrongly accused of killing or deliberately harming their children on the basis of non-specific symptoms and profiles which predicted that the psychological propensity to inflict serious intentional harm was a widespread hidden problem. Women were wrongly prosecuted and convicted of murder while many more parents lost their children through the family courts. The flawed expertise spreading the mistakes through the multi-agency protection system was recognised early on but it was only when

[5] Joint Enquiry Team Report http://www.users.globalnet.co.uk/~dlheb/Default.htm

[6] *Lillie and Reed v Newcastle City Council and others* [2002] EWHC 1600 (QB)

[7] Brandon, S., Boakes, J., Glaser, D., and Green, R. (1998). Recovered memories of childhood sexual abuse: Implications for clinical practice. *British Journal of Psychiatry*, 172, 296-307.

[8] The Conduct of Investigations into Past Cases of Abuse in Children's Homes, 2002, HC 836-I http://www.publications.parliament.uk/pa/cm200102/cmselect/cmhaff/836/83602.htm

high profile convictions were finally overturned in the Court of Appeal that the problem was officially recognised.[9] The child protection system is, as yet, still resistant to examining the nature and extent of the problem and there have been no measures taken to review training and practice.

Mistakes and flaws

1.5 A pattern emerges in these cases of the same mistakes being compounded and applied to different groups of people.

These include:

- a presumption of abuse histories in disturbed children and adults
- a presumption of guilt in the accused
- suggestive interviewing beliefs and techniques
- a failure of investigative objectivity
- direct and indirect contamination of evidence
- reliance on flawed theories and knowledge base
- use of unreliable expert evidence
- failure to independently monitor training and practice

1.6 'High profile' cases attracting publicity tend to be those where a significant number of people are jointly affected. However the same mistakes have been applied diffusely in individual cases in the family courts and criminal justice system and are hidden from the media and public inquiry. In the case of retrospective sexual abuse allegations in families, a far greater number of people have been affected than in the institutional cases, though the principles of flawed investigation, prosecution and conviction may be the similar. The Criminal Cases Review Commission confirms that the domestic case applications that are a cause for concern far outweigh the institutional ones. Similarly it is known that a large number of parents have lost their children in the family courts on tenuous evidence.

1.7 Thus the number of children, families and adults in authority who have been unjustly served and harmed by the child protection system is potentially enormous. Each and every case has a damaging impact on the welfare of children through

- wrongly separating children from their parents
- abuse therapy for non-abused children
- perverse incentives to lie among children and adult false accusers
- depriving children of fathers and grandfathers in wrongful convictions for extra-familial and institutional abuse

1.8 As a result of this injustice, support groups have arisen supported by authoritative professionals. Their individual and collective knowledge of the process of misjudgement in the child protection and criminal justice systems is extensive and echoes the findings made public in the cases above.

[9] R v Clarke [2003] EWCA R v Cannings [2004] EWCA

1.9 This is a potentially invaluable resource for reviewing training and practice that would

- expedite the early screening of unreliable allegations
- preclude the compounded effects of professional misjudgement
- improve investigative efficiency in identifying genuine cases

1.10 .Thus the paramount principle of the welfare of children would be properly applied in child protection resulting in an overall improvement of services to children and families. The massive resources currently spent pursuing and prosecuting innocent people could be freed up to address genuine social problems, healthcare and the reduction of the tax burden.

1.11 Yet not only is this resource overlooked, it is frequently treated with suspicion and disdain. The slogan 'believe the child' or 'believe abuse exists on suspicion' which is the child protection counterpart of the presumption of innocence in the judicial system, precludes the child protection system from acknowledging not just the implications of mistakes, but their very existence. This can be readily gleaned from the fact that the same professionals and corpus of flawed expertise responsible for the mistakes identified as far back as the mid-1980s are still in the vanguard of training and still exerting a disproportionate influence on the multi-agency approach to investigation.

1.12 Thus systematic failure to acknowledge, learn from and rectify mistakes on a national level perpetuates and compounds the manufacturing of injustice and avoidable harm. Reforms and legislation designed to improve detection and successful prosecutions will have a perverse effect in criminalising the innocent, damaging the welfare of non-abused children and impeding the identification of genuinely abused children and offenders.

2. Working together or blinkered vision?

Summary of the current child protection system

2.1 A statutory system of child protection with investigative and protective powers is a vital safeguard for the well being of children. Although child protection is a multi-agency process where professionals 'work together' along designated and bulky guidelines, in practice social services and the police take the lead. Inter-agency Area Child Protection Committees oversee policy, training and practice in each local authority. However these committees have no statutory basis and are unaccountable and unregulated.

2.2 Widespread and justified concerns about child abuse have given rise to, what might be called an extended 'child protection community'. This comprises national charities, self-help groups, childcare consultants and commentators, independent therapists and social workers, academics and university departments. This loose body, though not formally recognised, exerts a considerable influence on the statutory agencies. They may act as expert witnesses in court, provide risk assessments and contribute to the investigative process. But this 'expertise' may be self-appointed, unquestioned and unaccountable.

2.3 Much of the caseload of child protection workers is uncontroversial, involving established risk factors of abuse and neglect where social workers and health professionals juggle to maintain a protective environment for children in difficult families with long histories of deviance, drug and alcohol abuse, violence, poverty, physical and mental illness, dishonesty and low intelligence. No one should underestimate the burden of this task and the fact that successful routine child protection support is rarely acknowledged by society at large.

2.4 Unfortunately a small proportion of those involved in child protection have disproportionately influenced the system to ill-effect. Biased political and ideological opinions masquerading as knowledge may be unchallenged because the child protection environment is amenable to and tolerant of these views since they are deemed to be child and victim centred. Those influencing misjudgement include child abuse compensation lawyers, survivor groups, 'recovered memory' therapists, conspiracy theorists and satanic and ritual abuse seekers. This has created the widespread belief that the overwhelming majority of allegations are true and that there continues to be a large hidden well of undetected abuse. Not only do these unwarranted beliefs promote societal anxiety and distrust; they also sully the judgement of investigators, judges and juries. They prejudice the innocent and provide a lucrative incentive for the making of false allegations by people who know they are likely to be believed in the current climate of fear.

2.5 In the current child protection system, theories are promoted and put into practice relatively free from scrutiny. Rigid and inappropriate questioning of children and adults in inquiries leave thousands of innocent families bewildered and distressed while misinformation and misjudgement goes unheeded and unchecked. Mistakenly interpreting the paramountcy of the welfare of the child principle as advocacy on

behalf of a presumed victim, child protection investigators frequently lose objectivity – and are buttressed in this by their training and guidelines. This extends to seeing their role as jointly investigative and 'therapeutic' - thus reinforcing dangerous presumptions in the investigative process.

2.6 Methods known to contaminate and conflate unreliable evidence are routinely used to substitute for sound forensic evidence. They include child play therapy for eliciting 'disclosures', the unfounded presumption of progressive recall of abuse in the form of escalating narratives and sharing information about other complaints and memory prompts with suspected victims. Psychological and medical experts may give misleading evidence in court without adequate challenge because fallacies and unsound presumptions about abuse have become widely accepted by judges, juries and lawyers – as they have become by the public at large.

2.7 Despite the proliferation of guidelines for 'working together' procedures, there is no legally enforceable code of practice for the carrying out of child abuse investigations. Consequently complaints about unfair or badly conducted police and social services investigations are virtually impossible to substantiate. In effect, the child protection system is unregulated and provides no meaningful evidence of the effectiveness of its operational approach and the recognition and consequences of mistakes. Data from Parents Against INjustice (PAIN), collected in the 1980s and 1990s, showed that 88% of its cases arose because of 'perceived' abuse rather than any empirical evidence or a direct allegation from a child. The source of referrals and reliability of the evidence upon which investigations are based, and the quality and content of the training and knowledge base of child welfare experts, are issues about which the authorities should be seriously concerned. There is a lack of research into the influence of the perceptions, personal agendas and belief systems of care workers, medical consultants, investigators and prosecutors, upon the outcome of cases**.**

Why is the child protection system fundamentally flawed?

Sexual abuse

2.8 Twenty years ago sexual abuse was a known but peripheral concern of the child protection system. The reversal of this trend was laudable, if based on reliable evidence and investigation. Unfortunately this was not the case. Projections of a massive hidden well of sexually abused children were based on speculation and unsound theories with suggestive interviewing techniques spawning false examples on which to substantiate the speculation and generalise. Nevertheless the ideas took hold in the child protection system through repetition and the spreading of the flawed theories and practices. Eventually the media, public and the Government took the assertions at face value so that an expectation of massive sexual abuse discovery prejudiced investigations, prosecutions and trials.

2.9 Expert evidence in courts was dangerously compromised.[10] Many of the experts relied on the same unproven theories and assumptions, diagnostic symptoms and

[10] See Pillai, M Forensic examination of suspected child victims of sexual abuse: a personal view J. of Clinical Forensic Medicine (in press)

techniques as the practitioners were using. Thus validation was a circular process lending a dangerous patina of respectability to poor judgment.

2.10 Social services departments were infused with concerns about the rights of women and children. These concerns were valid, but overlain with ideological precepts deriving from a particular radical feminist view that dictated that all men were potential sexual abusers. This bias fostered unsound practice and precluded any political will to review safety.

2.11 The absence of a reliable knowledge base encouraged the development of conspiracy theories about widespread paedophile rings and networks. These ideas were uncritically accepted and acted upon, resulting in the false allegations of satanic and ritual abuse. In Nottingham an inquiry panel dissected mass allegations of a satanic abuse ring, and found they were rooted in the prejudices of the social workers who had imposed their ideas on the children and vulnerable adults unwittingly and that the semblance of corroboration in the stories resulted from the contamination of foster carers as intermediaries instructed by the social workers. The report[11] warned that unless action was taken to stem these theories and methods gross injustice would occur and mentioned workers in children's homes as being likely targets. Due to pressure from the social workers involved the report was suppressed so that the lessons of national significance were not learned and taken on board.

2.12 At the same time as satanic abuse conspiracies were being aired, it was postulated that networks of paedophile rings were operating in children's homes. This idea was related to the satanic abuse claims insofar as the rings were alleged to be victim feeders into the satanic networks. However, it quickly became a self-standing assertion attracting widespread acceptance outside the hardcore of believers in satanic abuse.

2.13 By this time, joint training initiatives inspired by the Cleveland recommendations had led to the police being affected by similar beliefs and practices common among social workers. Government guidelines[12] emphasised the paramount welfare of the child (though accusers were often adults) and this became interpreted as uncritical belief in allegations.

Physical abuse

2.14 Concern about non-accidental injury and chronic neglect has long been the mainstay of child protection as most inquiries and 'Part 8' reviews into child deaths confirm. In uncontroversial areas of chronic abuse and neglect in families with multiple problems, social workers are often loathe to remove children from home because past experience shows that children from these types of families have poor outcomes in care and because they are well known to the authorities. Social workers often tolerate relatively high levels of risk in these families. The vast amount of paperwork created by multiple agency invention and monitoring in these cases may impede effective communication between agencies and the sharing of critical information as posthumous inquiries into child deaths have repeatedly demonstrated.

[11] JET *supra*
[12] *Working Together*, Department of Health and the Home Office, 1991.

2.15 However the positing of criminal 'syndromes' such as Munchausen's Syndrome by Proxy and the Shaken Baby Syndrome to explain a wide variety of illnesses, injuries and deaths, without exploring the greater likelihood of natural causes drew thousands of innocent parents into the child protection and criminal justice net.

2.16 The ascendancy of diagnostic experts utilising 'junk science' to posit criminal and pathological tendencies in ordinary families echoes the experiences of people wrongly accused of sexual abuse. When the family is previously unknown to social services, social workers are often less likely to tolerate risk because their training has erroneously taught them to believe that the absence of evidence pointing to motive and guilt is indicative of a hidden propensity clothed in 'denial'.

2.17 Many of the professionals who have dominated these areas are also purported experts in the field of alleged 'hidden' sexual abuse. They share the same core beliefs about the extent of hidden deviancy explaining a wide variety of illnesses and social problems. Indeed a common explanation for the alleged hidden deviant pathology of the accused (particularly when mothers are implicated) is that of childhood sexual abuse.

2.18 Since these 'experts' have become an influential source of training in the 'multi-agency' child protection process, a circular process can arise where once suspicion is raised by social and health care workers, a diagnosis is made and the social workers and police act on the assumption of the correctness of the diagnosis, overlooking evidence which points away from guilt.

Police trawling in children's homes investigations

2.19 The police 'trawling' operations grew out of belief that networks of paedophiles had been operating clandestinely in children's homes forming a link to prostitution, intra-familial and satanic abuse 'networks'. The investigations replicated the mistakes identified in the sexual and satanic abuse multiple inquiries actively searching for further victims and offenders, with direct and indirect contamination creating a circular semblance of corroboration known as 'similar fact'. Many of the accusers had a criminal background, having been in children's homes that were the former 'approved' schools, and had drug and alcohol histories making them vulnerable to suggestion and incentives such as compensation rewards and the mitigation of offences.

2.20 It stands to reason that because sexual abuse exists, some genuine complaints were uncovered. However, because the investigations had no means of sifting reliable from unreliable allegations, genuine complaints prejudiced the innocent by association, while even people not directly accused became tarnished by association with the innocent accused.

2.21 It is worth noting that despite the large number of retrospective police trawls implicating hundreds of care workers and teachers, not one mooted paedophile ring or network has been detected. Rather the sheer volume of complaints collected through flawed methods has prejudiced a large number of individuals resulting in unsafe convictions and many more dropped charges where people are left tainted with

careers ruined without the possibility of redress and a definitive clearing of their names.

2.22 Unhappily the Waterhouse inquiry[13] in North Wales exacerbated injustice in police trawls. Instituted following a police trawl resulting in a number of convictions and subsequent media publicity alleging a cover up of a wider paedophile ring, its terms of reference were constrained by the presumption of the safety of all the previous convictions. Consequently it failed to examine the roots of the problem and accepted many unsubstantiated claims at face value. Thus while it rejected the claims of a paedophile ring, it rubber stamped trawl operations igniting further large scale operations which have resulted in further suspect convictions.

2.23 It should be noted that just as sexual abuse exists, there are instances of two or three paedophiles working in concert. However these bear no relation to the phantom rings predicted by the sexual abuse conspiracy theories, nor are they similar to internet child pornography networks.

2.24 These failures jeopardize the identification of genuine offenders who pose a risk. .In the Ian Huntley case, independent contemporaneous reports of sexual abuse of minors were overlooked and not acted upon by the police and social services, though here there was a body of potentially reliable uncontaminated evidence which indicated he posed a genuine risk.

Risk assessments

2.25 Where an investigation is ongoing, the accused has not been prosecuted, or prosecuted and acquitted, they may be asked to undergo 'risk assessment' in order to remain in the family home or continue with a career which involves responsibility for children.

2.26 Unfortunately these assessments are frequently prejudicial in that they rely on

- risk factors present in known offenders
- the quality of information passed to the assessor by the referral agencies
- stereotypes of offenders and symptoms of offending derived from pseudo-scientific theories

2.27 In these situations people are effectively required to prove their innocence without any of the safeguards of the judicial process. A negative report is a permanent blot on the person's future, while refusal to submit to the process acts as a similar bar.

2.28 Meanwhile, in cases where genuine offenders have undergone treatment programmes in prisons and through the probation service, the application of flawed theories of abuse may allow deviant tendencies to be overlooked as skilled offenders 'learn' how to manipulate the therapists and assessors.

2.29 A review of the current standards of knowledge and practice in the child protection would, it is submitted

[13] Sir Ronald Waterhouse, *Lost in Care,* The Stationery Office, 2000

- exclude the proliferation of ideological theories and self-appointed and unsound experts in assessment
- preclude the perceived need for assessment in a large number of wrongly implicated suspects and families
- improve the accuracy of assessments where genuine risk is detected
- allow the development of more effective treatment programmes for offenders

The therapeutic straightjacket

2.30 In addition to innocent people being directly prejudiced by child protection investigations, there are thousands more whose lives and families have been devastated by child sexual abuse allegations made in therapy by their adult children. These may be a result of popular and therapeutic belief that memories of sexual abuse are stored unconsciously in the mind until an adult life crisis brings the belief of the possibility of past abuse to the fore. At this a point a person may think they have 'discovered' their 'hidden ' memories – and an explanation for unhappiness - through fleeting mental images (presumptively termed 'flashbacks'), vivid dreams or the creative symbolic interpretation of any aspect of their lives.

2.31 There is no scientific evidence to demonstrate that people remember their past traumatic experiences in this way; rather than discovering new traumatic 'memories', people are unable to forget painful emotional experiences. A body of pseudo science has evolved attempting to prove that this form of confabulation is reliable, but what it comes down to is pernicious make-believe.

2.32 Child protection professionals, having direct access to genuinely abused children in investigations, ought to be the most sceptical and least gullible of people in addressing the reliability of claims, taking note of the antecedents and the form of recall. However, the reverse is the case and their patronage helps perpetuate a vast network of therapists and counsellors who are, often unwittingly, the midwives of family division.

2.33 These cases form an appreciable proportion of retrospective child abuse investigations and prosecutions – usually against fathers and step-fathers. False sexual abuse allegations frequently create an emotional maelstrom that poisons judgement. Within families there may be an infectious or *folie à deux* quality to the claims whereby one sibling makes allegations and another joins in either because they are similarly persuaded and vulnerable to suggestion, or because they are persuaded that the accused 'must' be a 'pervert'. Seeing a previously loved parent in this new light, they recast innocent parental affection as malign.

2.34 Even where there is no or minimal police involvement the effect can be devastating. Second families may find themselves under scrutiny by social workers or feel afraid of having children because a child by a previous marriage is making accusations. Non- accusing siblings may find themselves investigated to ensure the grandparents have only supervised access to the their children. Falsely accused people in jobs where they are responsible for or come in contact with children feel they may be placed on registers and lose their careers.

2.35 Wrongly accused people in these situations cannot 'prove' their innocence while third parties have to make a reasoned judgement of trust. There are no means in law to hold therapists and accusers to account in these situations. There is no right of third party access to therapists' records despite the criminal content of the allegations, and no right to sue for damages in malpractice.

2.36 While many of these problems are outside the child protection system, they are supervenient on the central core of belief, training and practice within its culture. Reform of the child protection system would systematically undermine the existence of the misguided presumptions and expectations of the satellite therapy and counselling industry and substantially reduce the number of therapeutically induced and encouraged false allegations.

Inquiries and tribunals and the right of appeal

2.37 There is widespread disquiet about the current procedure of judicial and quasi-judicial inquiries into the circumstances surrounding alleged child abuse. Such inquiries may be couched in terms of reference to do with examining the effectiveness of child protection protocols, when in fact they make findings of guilt against people who have not been afforded any meaningful protection and whose legal and human rights are frequently ignored.

2.38 The Shieldfield inquiry demonstrated how dangerous such inquiries might be. The accused had no right of appeal against the findings and had to resort to defamation proceedings. In this case the inquiry panel were protected by qualified but not absolute privilege, which allowed for the finding of malicious libel. However, other inquiries which have resulted in damning findings of fact regarding abuse, notably the Waterhouse Tribunal[14] and the Clywch Inquiry[15] held by the Children's Commissioner for Wales have been protected by absolute privilege in law with no right of appeal by those found 'guilty'.

2.39 There is chain of prejudice which has been established by the imposition of these inquiries. The Waterhouse Tribunal recommended the setting up of a post of children's commissioner for Wales with independent powers. This was established by statute and resulted in the Commissioner, who is not legally qualified, immediately holding his own 'mini-Waterhouse' covering claims of abuse that had not been criminally tried.

2.40 In addition to making damning findings of fact against teachers and other officials, the commissioner made a series of recommendations which would involve the setting up of 'mini- Clywch' tribunals wherever there was a allegation of child abuse in schools regardless of whether the case went to trial.

2.41 These inquiries can amount to 'inquisitions' where the natural rights of justice of the accused are procedurally overruled. There is a tendency to place undue weight on the oral testimony of complainants without proper examination or investigation of its

[14] supra 2.22 For a critique of Waterhouse see www.richardwebster.net
[15] [2004] http://www.childcom.org.uk/clywch/index.html
For a critique see *Power without Responsibility? A Critique of the Clywch Inquiry* Clywch Response Group, 2004.

reliability. Crucially, the findings of the tribunals may be used by the complainants in civil proceedings for damages and are pressed for by complainant advocacy groups and compensation lawyers. With the establishment of a Children's Commissioner for England in current legislation, there is a danger of a further proliferation of injustice in relation to innocent people accused and the further expenditure of public and private money on unjustified compensation claims and court proceedings.

2.42 In the interests of justice there ought to be a judicial right of appeal against findings of fact in these inquiries with a duty to clear the innocent.

2.44 Consideration should be given as to whether such inquiries are a justifiable and adequate means of establishing the *prima facie* existence of abuse on a wide scale. Evidence from a Department of Justice investigation in Nova Scotia, Canada[16] suggests that an independent investigative approach based on rational analysis of all the facts can provide a clearer picture of the likelihood and extent of historical abuse. This approach would act as filter for the consideration of the fairness and feasibility of setting up a public inquiry to establish the existence of individual and mass claims of historical abuse. Such a perspective is invariably missing from an inquiry based on a procession of witnesses giving oral uncorroborated testimony where undue weight is given to narrative rather than objective analysis of the circumstantial and historical facts which provide a structural foundation of the likelihood of the possibility of abuse.

System failure and group think

2.45 Inquiries into the existence of Weapons of Mass Destruction in Iraq identified core failings in intelligence agencies across the world. In particular there was an uncritical acceptance of 'group think' where unfounded assumptions of fact were taken for granted with a failure to examine the reliability of uncorroborated witnesses. A similar pattern has developed in the child protection system, but as it has developed over twenty years, it is deeply embedded and resistant to change.

2.46 Inquiries and court cases that have recognised the errors in cases have not been equipped with the brief to examine the roots and extent of the problems which have been replicated and exacerbated over the last twenty years. The system has failed to heed or learn the lessons from the large number of false allegations despite the fact that it is a methodological necessity in science and knowledge to recognise the false in order to understand the truth.

2.47 It is a shocking and shameful fact that despite the growth of a reliable body of research and knowledge into the methods used by sexual abuse investigators over the last twenty years, in addition to a knowledge existing prior to this which has been pre-empted, the same mistakes in training and practice are still apparent, while not one investigator has been brought to account for their failings.

[16] Internal Investigations Unit report regarding the investigation into allegations of abuse by former residents of Provincial youth facilities. Department of Justice, Nova Scotia (1999). The findings are summarised in Chapter XV of the Kaufman Report, Department of Justice, Nova Scotia 2002 http://www.gov.ns.ca/just/kaufmanreport/exec-toc.htm.

2.49 Truths that have not been incorporated into the investigative systems include*:*

- People do lie about sexual abuse for all sorts of reasons.
- Children and adults may come to state and believe false sexual abuse histories through explicit or implicit suggestion and incentives.
- Genuine sexual abuse is reported in entirety and not through gradual or progressive disclosure which results in unreliable testimony.
- The history of the source of an allegation and the influences on it and an inquiry into alternative explanations are necessary to weigh up its prima facie reliability.
- Expert evidence may be contaminated with the same assumptions driving the investigators.
- The influences of common investigators and other third parties need to be independently assessed in an investigation where similar allegations are made.

2.50 Independent evaluation of reliability of evidence is a key problem. Because the child protection system has developed shared unfounded presumptions, professionals who are empowered to review problems that have been identified may themselves be implicated in holding similar views to those criticised. Revised guidelines intended to correct mistakes and incorporate research findings may be distorted to accommodate underlying unsafe presumptions.

2.51 The child protection system has failed to develop adequate procedures to sift true from false allegations of abuse. Past experience has demonstrated that unless the totality of the historical development of sexual abuse investigation theory and practice is examined, errors will be regarded as isolated and atypical.

2.52 The appointment of a suitably independent and objective inquiry requires careful and astute management with assessors who are able to distinguish methodologically sound research from that which incorporates the confirmatory bias of prior belief. Nor should it be assumed that because certain types of convictions on uncorroborated evidence are widespread, that all or even most of these convictions are safe.

Compensation

2.53 Awareness of the availability of criminal compensation awards for abuse among lawyers, social workers, therapists, police and victim advocacy groups arose simultaneously with the rise of retrospective complaints and prosecutions for alleged abuse in 1990. This was also at the time when the was surge in the popularity of diagnosing abuse according to alleged effects and adult symptoms, including alleged 'repressed' or 'dissociated' memory explaining a previous lack of conscious awareness of abuse.

2.54 It is disturbing that a criminal injuries award for alleged abuse may rest solely on two factors - a report to the police which may be decades after the alleged abuse and a psychological report on the effects. A conviction or even a prosecution is unnecessary - this being on the reasonable grounds that in the cases of established crimes, the perpetrator may hot be identified or apprehended. The obvious problem is that where the police record the complaint as a crime, without proof as to its existence, a psychologist may assume the factual existence of the abuse has been established and

make an assessment sympathetic to this claim without any inquiry as to its factual veracity. Assessing experts do not investigate the facts, as they assume that is the province of the police and therefore public monies may be paid out without there being a foundation of fact to support the claim.

2.55 The other problem is that where a complaint is made that is based on mistaken belief or lies, because a police report is a necessary condition of receiving compensation, a prosecution may follow without that being the primary intent of the complainant. Thus what may begin as a misguided attempt to solve financial problems may end up as a wrongful conviction of an innocent defendant.

2.56 Since there is usually no way of disproving non-existent crimes where injuries are alleged to be psychological and the evidence uncorroborated, it is unlikely that false claims can be detected as fraudulent, and that therefore the normal deterrents against false claims, which are highlighted by the Criminal Injuries Compensation Authority, do not apply.

2.56 There is also a perverse incentive in such claims to maximise the nature and longevity of abuse since this may double or treble the monetary award. By the same token this process will prejudice the innocent defendant and result in lengthy sentence - much longer that that for most genuine abuse which may be milder and restricted in time.

2.57 Civil claims for personal injury compensation may also be made, particularly in institutional cases where the limitation rules allow for late claims for negligence[17] and vicarious liability. This is in contrast to claims against the alleged abuser which are currently barred under limitation periods beyond six years from the assault or age of majority[18].

2.58 A number of lawyers specialise in child abuse civil claims against institutions, using a conviction to launch group claims for a much larger number of complainants, sometimes openly advertising in prison newspapers for victims to contact them. Notably in these claims there is a greater overt emphasis on psychological mechanisms that allegedly precluded knowledge of the abuse than is the case in the cases going to trial. This pattern suggests opportunistic presentation, since alleged 'repressed' or 'dissociated' memory need not be advanced as a reason for delay in criminal cases where there is no limitation period and would probably act as a deterrent to prosecution and conviction. Conversely in the civil courts, where the standard of proof is the balance of probabilities, such arguments may be successfully

advanced and provide an explanation for delay which overcomes the normal limitation rules for personal injury (three years from the assault or age of majority).

2.59 In at least one group claim against an institution, complainants who claimed to always remember abuse for the purposes of the criminal trial, claimed to have 'repressed' the memory until recent adulthood for civil claim purposes. It is of note that in cases of 'repressed' or 'dissociated' memory reliance will be placed on expert

[17] Limitation Act 1980 s.33
[18] Limitation Act 1980 S.14 affirmed in *Stubbings v. Webb* [1993] 2 WLR 120

opinion. That this may be accepted by the courts as legitimate, underlines the need for a greater scrutiny of legally acceptable expert opinion as has been recommended following the review of the evidence of Sir Roy Meadow in the cot death cases.

3.00 The Law Commission has suggested reforms of the current limitation rules restricting civil compensation claims against abusers which would have an effect in promoting many more domestic civil compensation claims and give raise to a greater number of claims for alleged 'repressed' and 'dissociated' memory[19]. However, given the existing relative ease making spurious claims, it is submitted that all uncorroborated claims for compensation should be subject to stringent assessment and excluded unless there is objective contemporaneous corroboration of the assaults[20].

3.01 It should be noted that the making of false or mistaken claims of abuse can be very damaging to the accuser. Many of the alleged symptoms of abuse are in fact aggravated or 'triggered' by the allegations and the pursuit of reward. This is a fact recognised even by compensation lawyers[21] who naturally attribute the distress, increased drug and alcohol abuse, mental disturbance, self-harm and suicide attempts to the alleged abuse. The combination of dwelling on childhood disturbances, real or imagined, together with desire for revenge and monetary redress may be lethal and it must be doubted as to whether monetary compensation has a long term emollient or therapeutic effect. It might be far better to provide high quality rehabilitation programmes for people with disadvantaged childhoods, whether or not this involved being placed in care homes - abuse being only one of a significant number of misfortunes, accidental and otherwise, that might preclude the likelihood of a productive and happy life.

[19] Limitation of Actions, Law Com No 270

[20] Although the CICA claim to look for corroboration in making an award where there is no corroboration, in practice this adheres to the lesser standard of 'consistency' which would not constitute corroboration in law. See evidence of Howard Webber, chief executive, Criminal Injuries Compensation Authority, to the Home Office Select committee (supra) 11.6.2002 Q.306

[21] See evidence of Peter Garsden, secretary of the Association of Child Abuse Lawyers to Home Affairs Select committee (supra) 11.6.2002, Q.526

3. The criminal justice system in child abuse cases

3.1 Simultaneously with the rise of concern about child sexual abuse and hidden pathological syndromes, safeguards against wrongful prosecution and conviction have been eroded. In part this is predictable since many of the same unfounded presumptions that have blighted the investigation process became imported into the courts. However, there have also been specific measures implemented to maximise prosecutions and convictions - a trend which shows no sign of abating.

The decision to prosecute

3.2 Criminal prosecutions depend on two factors, the public policy test and the evidential test. The policy test is only to be applied if the evidential test is passed and this depends on whether in the opinion of the Crown, a conviction is more likely than not. Thus the soundness of the test depends on the judgement of the prosecution as to the reliability of the evidence gathered by the investigators, and the reliability of the trial process in sifting true from false claims. If either or both of these facets are compromised, then so is justice. However, the public policy test places further pressure on these constraints, since it is generally public policy to prosecute all sexual abuse cases and there is intense political pressure to do so.

Evidential reliability

3.3 The Crown Prosecution Service works closely with the investigative process in large-scale operations such as police trawls. However, rather than providing a gate-keeping function, this process has in practice allowed the police to temper the evidence to the demands of the prosecution and trial process. This is possible because, unlike cases where there is independent evidence of the crime taking place, these cases depend on what people say to the police many years after the alleged crimes have been supposedly committed. Thus oral testimony that supports or corroborates an alleged offence may be introduced without the possibility of it being objectively tested.

3.4 In some cases this defective process can be overtly detected through analysis of evidence added and contradicted over the period of the investigation. In any other type of investigation this would be seen as the hallmark of unreliable evidence. However, because both the investigators and prosecutors have adopted the defective doctrine of ‘gradual disclosure’ peculiar to the reporting of sexual abuse allegations, it is seen both as acceptable and an indication of veracity. It is therefore contended that the recognition of the unreliability of ‘gradual disclosure’ would drastically foreclose the production of wrongful prosecutions.

Disclosure and investigative practice

3.5 In recent years there have been a number of statutory reforms designed to close what is perceived to the 'justice gap' where criminals escape prosecution and conviction for crimes. This is however, a difference between prosecuting a suspect for an objectively known offence (such as burglary) and one where the only evidence of a crime having been committed depends on the oral testimony of an accuser. In

these latter cases the identification of a suspect may be dispensed with since the existence of the crimes is dependent on the guilt of the suspect.

3.7 The paramountcy principle (which is a function of family law) has been widely misapplied in child abuse criminal investigations to mean a child or complainant-centred approach where the complaint is automatically believed with the police and allied professionals seeing themselves as advocates rather than objective investigators. This approach has been fostered by emotive victim-identification training techniques which contribute to the production of evidence based on narrative rather than objective investigation. This detracts from the ability to test the veracity of allegations since these complaints sound plausible because of the details of bodily movements etc, while being vague and untestable as to the circumstantial facts.

3.8 Once the police have decided to record the allegations as crimes, objective investigation may effectively come to an end with activity directed at shoring up an allegation. Thus contradictory evidence or that pointing away from the guilt of the accused may be overlooked, ignored or, in some cases, suppressed. Alternative explanations of the source of the allegations are not probed, with the investigators committed to belief in the allegations in order to support what they believe to be the child's or complainant's best interest. However, it should be self-evident that supporting unfounded allegation is not only against the principles of justice, but damaging to the welfare of the complainant.

3.9 Investigations are further compromised by the police and child abuse professionals having adopted a belief in 'therapeutic' interviewing processes. Not only does this include a presumption of belief in the veracity of the allegation and status of the complainant as a victim, it may also lead them to adopt suggestive interviewing techniques akin to that of 'recovered' or newly 'discovered' memory. In these cases, complainants may be encouraged to use visualisation techniques and other suggestive practices to improve recall when in fact they are being led to confabulate in a manner similar to hypnosis.

3.10 An understanding of suggestion, confabulation and contamination is generally poor in child abuse investigators because the training they receive is influenced by professionals who adopt these practices. Furthermore there is an assumption that leading questions are the main source of prejudicial practice. Leading questions, particularly when hidden in a witness's written statement, can be important in providing misleading evidence. However research demonstrates that it is the confirmatory bias of the interviewer that is most likely to distort testimony, together with source misattribution - ie where the interviewer holds a prior assumption that an allegation or a suspicion of abuse is attributable to a specific cause. Both these flaws are currently ingrained in current police practice in interviewing child and adult complainants.

3.11 Pressure to prosecute sexual abuse cases is intense and forms a critical but misunderstood part of the perceived 'justice gap'. It may be the case that many abusers are not prosecuted, however the combination of broadening the scope of prosecutions and strengthening the hand of the police and prosecution has meant that large numbers of people have been unfairly indicted on unreliable evidence, with the

power to convict increased while at the same time the ability to defend has diminished.

3.12 Thus it is that statutory reforms and judicial interpretation have, for this group of vulnerable innocent defendants, widened the justice gap. It is not clear to what extent these reforms have improved the conviction rate of genuine sex offenders, since the detection of genuine offences can often be facilitated by orthodox investigation because of the existence of corroborative evidence such as indecent photographs of victims which are frequently taken and collected by paedophiles. However, to increase conviction rates at the expense of a large number of innocent people (while rewarding mistaken and malicious accusers with compensation) is wholly wrong in principle and practice.

3.13 In relation to these measures, much criticism has been levelled at the statutory reform of pre-trial disclosure initiated by the Criminal Investigation and Procedure Act 1996. This gives the police the right to choose what evidence to disclose to the defence apart from that supporting the prosecution.

3.14 The current regime is to be amended in the light of the Criminal Justice Act 2003. This will include extended powers for the police to interview defence witnesses with proposed defence witnesses to be disclosed by the defence prior to trial.
In many child abuse investigations, the disclosure principles are unfair to the defence.

3.15 Firstly, the police investigating the case are not objective arbiters of what material might assist the defence and there are many examples of non or late disclosure of unused evidence that have prejudiced the defence. Secondly, the police are entitled to withhold not only certain information, which might have unfairly assisted the prosecution, but information as to its existence.

3.16 Consequently material that might be used unfairly to build the cogency of a prosecution case - such as background material from social services files on the witnesses - will be withheld from the defence while forming part of the 'sensitive' material key to the credibility of witnesses.

3.17 Applications by the defence for the disclosure of social services, therapy and medical records are routinely blocked on the grounds of confidentiality and public interest immunity. Such material can dramatically affect the ability of an innocent person to defend him/herself. Currently there is a presumption of non-disclosure on application to the court. At present even where disclosure is permitted by application to the court only selected material may be released. However it is in the nature of these cases that circumstantial information may is key to unravelling the explanation of a false allegation attributed, retrospectively, to the alleged abuse. Such matters are far from incidental, because much of what is passed as evidence of the offences in these cases is evidence of the alleged psychological and emotional effects. There is a real danger in these cases that juries will convict not on whether they are convinced that the events took place, but on whether the accuser presents a convincing 'profile' of an abuse victim. Clearly where there are other documented potential causes, the jury give greater weight to this than the hypothetical cause presented on uncorroborated retrospective testimony.

3.18 It is submitted that in the interests of justice, this presumption of non-disclosure should be reversed, so that the prosecution has to make a case for non-disclosure rather than the defence to argue why they should be disclosed.

3.19 The current lack of safeguards for adequate investigative practice and disclosure are underlined by the fact that there is no enforceable mandatory code of practice in child abuse investigations for the police and allied agencies. Such a code should include

- A duty to investigate objectively, including that pointing away from the guilt of the accused and alternative explanations for the making of the complaint
- Audio recording of contacts with witnesses prior to statement making
- Audio or video recording of interviews for statement purposes
- A duty to investigate and disclose evidence of counselling and therapy whether or not the witness claimed to have make allegations prior to counselling
- Independent monitoring of the investigation
- Exclusion of social services and other professionals from a quasi-investigative role
- Exclusion of the police from adopting a quasi-therapeutic role and using suggestive interview techniques and assumptions

The defence hurdle

3.20 Retrospective sexual abuse trials are presented as a loose-fitting prosecution narrative. The evidence may be vague, but includes graphic and lurid descriptions of sexual acts which may have an unsettling and convincing effect on juries. The innocent defendant effectively has to prove that contemporaneously completely unknown events did not take place and prove an ulterior motive for making false allegations. In the context of the court drama, this is very difficult to do and places an unrecognised and unfair burden on the defendant.

3.21 If convicted, the defendant then has to provide new evidence in order to gain the prospect of overturning the conviction on appeal. Where the evidence of the crime rests solely on oral testimony of the complainant, this is an almost insuperable burden.

3.22 The Criminal Cases Review Commission has highlighted retrospective sexual abuse cases, both domestic and institutional, as those causing particular concern and a group of legal practitioners has set up the Historic Abuse Appeals Panel to concentrate on this area of work. However, unless measures are taken to improve the gate-keeping of reliable evidence with a rethink of the current safeguards and legal rules concerning these cases, the prospect of overturning cases remains slight. The House of Commons Select Committee Report highlighted some of these concerns in institutional cases, though the regularity and safety of the much larger number of retrospective domestic convictions - which may also be subject to the same and distinct, but equally prejudicial, problems - remains unexamined.

Children's evidence in the courts

3.23 There are far fewer abuse trials where children are complainants than those involving retrospective complaints made by adults. This is despite the fact that there are special measures to make the giving of evidence by children easier. The reasons for this are unclear. One point made by child abuse professionals is that it is difficult for children to report abuse contemporaneously. This however should be less of a problem since the late 1980s, the setting up of Childline and the general awareness of sexual abuse and knowledge of the sympathetic responses. Furthermore, parents and carers are now more alert to signs of abuse and forensic evidence, such as the presence of semen on bedding and nightclothes, would provide powerful contemporaneous corroboration of such crimes.

3.24 Another argument put forward is that reports are frequent, but that children cannot overcome the evidential hurdles necessary for a prosecution despite the special measures. It is certainly true that many children's video interviews are rejected by the Crown Prosecution Service as being evidentially insufficient. However, this may be a function of the reliability of evidence, rather than the actuality of the crimes. It is known, for instance, that many false accusations of child abuse are made during parental custody disputes, while others may be a product of social services intervention and foster care.

3.25 One salient point to be considered is that the child protection system rarely acknowledges the existence of false allegations and the effect on the children and families concerned. Consequently, there has been concerted pressure to lower the evidential hurdles for children. Now it is possible not only, to present a video recorded interview with the child as evidence, but also to pre-record cross examination. Children may also be 'interpreted' through 'intermediaries', presenting yet another problem of evidential reliability[22].

3.26 The effect of these recent changes in court rules has yet to be assessed, but even under the previous regulations problems have emerged in many cases that have gone to trial.

Video recordings and the Memorandum

3.27 Video recordings were permitted to replace the giving of live evidence by children in the 1992 Criminal Justice Act[23]. These were interviews with the police, governed by guidelines in the Memorandum of Good Practice[24], which aimed to eliminate suggestive practices and leading questions. The fact that many cases have failed at a preliminary stage suggests that the police have in many cases been operating correctly. However, a significant number of video recordings are admitted at trial where the Memorandum guidelines are breached and it is left for the jury to decide whether the evidence is reliable.

[22] Youth Justice and Criminal Evidence Act 1999

[23] s.32A Criminal Justice Act 1988

[24] Memorandum of Good Practice (1992) Home Office

3.28 This absence of mandatory force to the Memorandum guidelines exposes innocent defendants to the risk of grave injustice. Furthermore the flawed doctrine of 'gradual disclosure' is also applied to children allowing incremental, contradictory and inconsistent evidence to be seen as reliable. Juries are not given detailed explanations as to the meaning and significance of the Memorandum guidelines, and are arguably not able to understand the significance of suggestion and confabulation. This is an area where research, as to the understanding of jurors and the public at large, is vital given the misconceptions already endemic in the child protection system.

3.29 This is not to say that children cannot be reliable witnesses and resistant to suggestion. However, children's evidence is a sensitive matter and in these cases juries may be readily swayed by emotion with defence barristers reluctant to cross-examine for fear of giving the impression of being oppressive.

3.30 The Memorandum has been superseded by new guidelines termed 'Best Evidence'[25], but these are also open to discretion so that the problems previously identified have continued.

Medical evidence

3.31 Children's cases are those where medical evidence is most likely to be a factor in the case. In many cases a positive finding by a medical expert may be pivot on which the case rests. However, over the years it has become apparent that both descriptive and photographic evidence can be grossly misleading, with many natural genital variations occurring, that are wrongly attributed to sexual abuse. Furthermore, many experts will say that non-specific findings are not indicative but 'consistent' with sexual abuse. This finding has no probative value, since it also means that the findings are consistent with no abuse. However, this evidence may mislead a jury into thinking either positive signs have been found, or that it is for a defence expert to produce evidence disproving abuse, thus reversing the burden of proof.

3.32 As has been seen in physical child abuse cases and cot death cases, expert medical evidence may be highly prejudicial. The same considerations apply to child sexual abuse medical evidence and it is an area where the courts need to apply more stringent standards of admissibility. One glaring example was exposed in the Newcastle nursery nurses libel case. The paediatrician Camille San Lazaro had been widely praised as a leader in her field and had given evidence uncontradicted in numerous trials and family court cases in the Northeast. At the libel trial, her practice was found to be fundamentally flawed.[26] It was on the basis of her findings that the allegations began to mushroom, indicating that the medical examiner may be responsible not just for importing bias to the trial, but also contributing to inappropriate suggestion.

[25] www.homeoffice.gov.uk/docs/bestevidencevol1_cover.pdf

[26] Lillie and Reed *supra*

Pre-trial therapy

3.33 Therapy with children who are, or are thought to have been sexually abused, is problematic because of the defects identified elsewhere in the report. However, the therapist will automatically assume the child has been abused and one of the main dangers evidentially, pre-trial, is that an untrue story will become rehearsed and resilient to cross examination, and that children may be encouraged to confabulate in the belief that further hidden experiences are being revealed. Unfortunately, Government guidelines for pre-trial therapy have drawn upon unsound theories and practices of play therapy that have a track record of inducing false allegations. Consequently, even though it is stressed that nothing of evidential significance should be discussed with children in pre-trial therapy, there is no current way of monitoring whether therapists are unwittingly suggesting and reinforcing false allegations.

3.34 One way of monitoring practice is to video record therapy sessions. It should be noted that it was only when the video records of the Great Ormond St therapy sessions were demonstrated in the High Court in 1986, that the grossly unreliable practices were exposed. These video recordings had not been intended for court use but for training. Since that time however, video recordings of therapy sessions with children thought to be sexually abused, are rarely made, despite the fact that the conduct of these sessions may have grave importance for criminal and family court proceedings.

4. Child protection and the family courts

4.1 The family courts deal with the bulk of child abuse cases together with matrimonial matters and contact disputes. The system has been frequently criticised for being cumbersome, unfair, secret and unaccountable. It is in this cloistered forum that the bogus expertise identified as forming the heart of the problem of misjudgment has been allowed to flourish and establish a power base. This base has extended its tentacles to the far reaches of child protection practice emerging explicitly or implicitly in criminal trial procedure to prejudice innocent defendants.

4.2 Family court procedure operates on the assumption that 'every case is different' and must be decided on its own facts with the standard of proof that of the balance of probabilities.

4.3 In this scenario evidence is too often dependent on social workers' and allied experts' opinions, the reliability of which goes unchallenged. Without public scrutiny, reputations can be built up through the family courts accelerating misjudgment.

4.4 Only when there is a matter of legal importance or public interest are hearings in the High Court of the family division made public. Since every case is deemed to be different, case law is minimal and is very difficult to challenge decisions on appeal. Where judgments of diagnostic importance have been made public – such as in the Great Ormond St cases identified in 1.4, they do not involve legal precedent and the depth of their significance has never been incorporated into training and practice. In these cases, the experts involved continued to exert disproportionate influence on training and assessments in the courts.

4.5 Taking action to protect children at risk of abuse is managed by social services. Under the Children Act 1989, parents are entitled to full representation in the decision making process, including attending case conferences where key decisions are taken.

4.6 The experience of many wrongly accused families is however that misinformation is fed into the process by social workers and other professionals which goes uncorrected with decisions taken prior to the case conference at professional strategy meetings. Families complain that adverse decisions are taken without reference to the underlying facts, but on the basis of prejudicial views which range from over-zealous concern to malice where action is taken in response to a complaint.

4.7 Once a decision is taken which accuses the family of abuse or negligence, opposition, whether or not justified, may be viewed as further evidence of parental deviance. Contact with children in care maybe severely restricted with visits supervised with these visits used in evidence against them. There is no recourse to independent complaint.

4.8 Parents are told that they will be able to channel their complaints through the courts in care proceedings, but in practice the opportunity to scrutinise social services conduct and decision making is severely limited.

4.9 Wrongly accused families had no recourse to publicity. Case papers are confidential and the press is gagged from publishing anything which might identify a

child in family court cases however gross and manifest the injustice. In these circumstances, it is arguable that it is not the best interests of a child that is being served, but the protection of the agencies which are unaccountable. This is how a vast well of injustice can be hidden against the public interest, while misjudgment in leading professionals can continue to flourish unchecked.

4.10 There is also evidence of misuse of interim care orders to control families and take children into care where there are insufficient grounds for an emergency protection order. This is a flagrant misuse of the reforms in the 1989 Children Act which were expressly designed to preclude precipitate action.

4.11 There are also cases where social services, having taken out an interim care order on tenuous grounds, attempt to shore up grounds by introducing mistaken sexual abuse allegations. This may be because the children display behavioural disturbances which are interpreted as symptoms of sexual abuse rather than a reaction to being separated from their parents. Young children in these situations are known to be vulnerable to suggestion. Once made, the allegations extend and deepen the separation of children and their parents. Eventually the sexual abuse charges may be dropped when found to be evidentially unreliable. However, by this time it may be virtually impossible for the parents to be re-united with their children, adoption plans are formalised with general opinions about the parents tainted by the sexual abuse allegations.

4.12 These cases correspond to private law contact cases. Resident parents, usually mothers, who oppose paternal contact sometimes make unfounded sexual abuse allegations. They may have anxieties about emotional and behavioural disturbances in their child caused by separation or some other cause and may be aided and abetted in their fears by therapists and child protection professionals. The pattern that follows may be similar to the public law cases in that although the allegations may be dismissed, the child has become alienated from the non-resident parent to such a degree that no meaningful relationship can ensue. Thus the well-publicised concerns about non-resident parental contact with children have a direct relationship to the flaws endemic in the child protection system.

4.13 In other commonwealth jurisdictions, the secrecy of the family courts has been lifted without detriment to the welfare of children. This would not entail lifting anonymity as is the case in the criminal courts which are public.

A similar reform in the UK would

- Allow public scrutiny of the quality of justice in the family courts
- Allow public scrutiny of the opinions of experts
- Preclude unaccountable ‘empire building’ by bogus and biased experts
- Improve the quality of justice for children and families

5. What needs to be done?

5.1 There is an urgent need to institute a mandatory code of practice for police and social services in child abuse investigations, to improve monitoring, practice and ensure redress for bad practice and injustice. This will allow for the collection of reliable data on the conduct of investigations, identifying mistakes and providing an invaluable body of evidence for reform.

5.2. Investigative practice should be reviewed to ensure objectivity with clear and accountable separation of the roles of professionals to their own area of expertise.

5.3 Measures should be taken to regulate the use of unreliable expert evidence in the courts.

5.4 The rules governing the process of awarding criminal and civil compensation in uncorroborated abuse claims should be tightened.

5.5 Secrecy in the family courts should be lifted.

5.6 There is a need for the safety of the entire process, from prosecution to appeal, to be reviewed in the light of the effect of child protection investigation methods on abuse cases. It is necessary to inquire into the development of the reliability of the theories and practices used in the child protection system and criminal justice system, taking into account the broad range of knowledge and experience of false allegations available through previous inquiries, research and those affected. A judicial inquiry would be unable to span such a broad remit, so it is recommended that a Royal Commission be set up to examine the proposition:

The question to be asked is*:*

To what extent are the child protection and criminal justice systems effective in sifting of true from false allegations of abuse; providing objective investigation; weighing the evidential reliability of testimony and ensuring the safeguard of a fair trial?

End
FACT/MJ/Jan 2005