

“It doesn’t happen to disabled children”

Child protection and disabled children

Report of the National Working Group on Child Protection and Disability

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National Working Group on Child Protection and Disability

The National Working Group on Child Protection and Disability was established in July 2001. Membership is drawn from national disability and child protection organisations and from individuals with considerable experience in practice, training, research and consultancy in respect of disabled children. The group also covers a range of professional disciplines including social work, education, health, policy and practice development, criminal justice and law enforcement. Members of the Group share a commitment to work together to promote the safeguarding of disabled children.

The National Working Group aims:

- to identify and eliminate barriers and to ensure the creation of systems and processes that protect disabled children
- to promote the rights of disabled children for safe and effective care and protection and ensure their individual voices are heard and acted upon.

This report is the first report of the National Working Group. The chapters reflect the key issues and concerns that were identified at a seminar held in July 2001 and have been subsequently endorsed by Group members. The recommendations lay out what we believe is required to ensure that disabled children's right to protection from abuse is upheld.

The Group will now take the recommendations to policy makers and national and local forums in order to:

- raise awareness
- promote action
- identify opportunities to advise.

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We especially thank Jenny Morris for helping us to bring the report together.

Christine Lenehan, Council for Disabled Children, Co-chairperson

David Miller, NSPCC, Co-chairperson

On behalf of the National Working Group on Child Protection and Disability.

Foreword

Sir William Utting

Two experiences awoke my concerns about child protection and disability. The first was professional, particularly in the DHSS and Department of Health in the 1980s. We were confronted in those years by an increasing volume of information about the abuse of children by adults who were responsible for caring for them. We struggled to understand how adults with duties of affection and care towards children could abuse them physically and sexually. Evidence about the exploitative and manipulative methods employed gradually broke down our barriers of disbelief. Parents, relations and strangers were not the only people who abused children; members of the caring professions did too.

Most difficult of all to accept was that disabled children could be victimised physically and become targets of systematic sexual abuse. It was simply unthinkable that adults who had caring responsibilities could exploit and abuse children with physical, intellectual or sensory impairments. The evidence of inquiries, however, particularly into schools and other residential settings, demonstrated not only the reality of such abuse but also that it was almost impossible for disabled children to obtain redress through the criminal courts.

The second experience was entirely personal. It occurred through a friend who had been disabled from birth. Her matter-of-fact account of exploitation in residential and day settings vividly illuminated a culture – now in the distant past – in which disabled children were reduced to the status of objects for the gratification of adults. I emphasise that this was all long ago. Such experiences confirm however the comparative ease with which cultures of neglect and abuse arise, and the importance of positive action to prevent them.

We should be long past the point of a ‘one size fits all’ system of child protection. If the child is the focus, then the characteristics of the child should help to form both the methods and the resources of a protective investigation. Disabled children are particularly vulnerable to abuse. Additional measures are therefore needed to prevent, investigate and remedy incidents of abuse. The Report of the National Working Group sets out a powerful and compelling agenda for change.



Sir William Utting, Former Chief Inspector, Social Services Inspectorate and author of *People Like Us: the report of the review of the safeguards for children living away from home*

Overview

It ruined my life. I still find it difficult to talk about. 24-year-old disabled adult, sexually abused by a care worker in a school

She couldn't tell us she had been hit but I couldn't see what else could have caused the bruises. But nothing happened... as far as I know whoever did it still works there. Mother of a 13-year-old girl with learning disabilities

I worry that we accept levels of neglect and really poor quality of care that we wouldn't if it was an able-bodied child. Social worker

All the evidence that we have about disabled children's experiences suggests that they are more vulnerable to abuse than non-disabled children. For the last twenty years or so, a number of individuals and organisations have struggled to bring this to the attention of government, local authorities and the major children's organisations.

In 2001 some of these organisations and individuals came together to form the National Working Group on Child Protection and Disability¹. Members of the Group drew on their wide experience and their contact with disabled children and adults to identify the key issues concerning the safeguarding of disabled children. This report, written by members of the Working Group, discusses what is known about the abuse of disabled children, highlights inadequacies in current policy and practice, and makes recommendations to both government and local agencies. The papers that make up the report highlight important areas of concern and set out the evidence on which the recommendations are based.

The first chapter provides the context for the report by summarising relevant research and identifying the factors that create disabled children's vulnerability to abuse. Analyses of large-scale population data in the United States found that disabled children were over three times more likely to be abused or neglected than non-disabled children, and smaller scale research in the United Kingdom indicates similar levels of abuse or neglect. While progress has been made in the recognition of disabled children's right to be safe, both central government and local child protection services have so far generally failed to effectively protect disabled children from abuse.

In Chapter 2, two experienced practitioners provide damning evidence of

these failures. Barriers to the effective protection of disabled children from abuse are identified at all stages of the child protection process – from referral all the way through to taking action. As the authors explain, sometimes these barriers are organisational, such as the failure to provide the additional time and resources that are often necessary to communicate effectively with disabled children and to carry out high quality assessments. Sometimes, however, the barrier is to be found in the attitudes that professionals bring to situations of suspected abuse. As they write: “We still come across situations where child care professionals do not believe anyone would abuse a disabled child; where the child’s pain and distress is not recognised; where abusive practices are seen to be necessary because of the child’s impairment.”

Chapter 3 concerns the particular vulnerability of disabled children in residential settings, with a focus on residential schools as this is the most common residential experience for disabled children. The chapter highlights that local education and social services authorities do not pay sufficient attention to the welfare of disabled children placed at residential special schools. The authors also identify that there are inadequacies in the application of current child protection procedures and practices to disabled children in these settings. While the work of the National Care Standards Commission/Commission for Social Care Inspection should mean that children and their families become more aware of their entitlement to safe and protective care, concerns remain about how effective the new inspection regime and complaints procedures will be, particularly in terms of adults’ abilities (including that of inspectors) to communicate with children.

Chapter 4 draws on the authors’ many years of working with children with complex needs, of child protection work, and of promoting the rights of disabled children. They emphasise “that addressing the everyday abuses of the rights of disabled children (abuse with a small ‘a’) may play a significant role in reducing vulnerability to the forms of harm at the other end of the spectrum, when formal child protection interventions and criminal investigations will be required (abuse with a large ‘A’)”. The chapter examines how a focus on disabled children’s human and civil rights can protect children from abuse, help prevent unintended abusive practices in both residential and community settings, and play a key role in carrying out effective investigations of abuse.

The final chapter draws on experiences of child protection investigations and the criminal justice system to highlight the barriers to getting justice for disabled children who have been abused. While welcoming recent attempts to make it easier for “vulnerable” witnesses to give their evidence, the chapter highlights that disabled children and young people experience barriers to justice before they ever

get to court. Moreover, as the authors argue, the new measures are not being implemented quickly enough, nor do they address all the barriers within the criminal justice system.

The Working Group has drawn on the experience and expertise of its members – and the evidence presented in these chapters – to make recommendations, aimed at both government and local child protection agencies. If implemented, these recommendations would help to address current inadequacies in the safeguarding of disabled children from abuse. For too long, policy makers and practitioners have shied away from addressing these issues. For far too long the particular vulnerability of disabled children to abuse has gone largely unrecognised. There are many developments taking place in children’s services, and the recent Inquiry into the death of Victoria Climbié has drawn attention to the importance of addressing the continuing inadequacies in the child protection system generally. The safeguarding of disabled children, however, has still not been sufficiently brought into the “mainstream”. The title of this report reflects a common belief that disabled children are not abused. It also reflects the common failure to apply standard child protection procedures to disabled children, either to protect them from abuse or to take action when abuse is suspected.

We hope that this report and its recommendations will help to highlight the importance of child protection policy and practice for disabled children and thereby make it more likely that individual disabled children will be protected from abuse.

¹A full list of members is given in the Appendix. The Council for Disabled Children and the NSPCC jointly chair the Group and the NSPCC has provided administrative and financial support, including the publication of this report. The Working Group, and this report, is concerned with England although much of the policy context and many of the issues apply throughout the United Kingdom.

Recommendations

The National Working Group on Child Protection and Disability believes that comprehensive action is required in order to protect disabled children from abuse. Our first two recommendations reflect this, calling as they do for a review of the current child protection system and the development of a national strategy for the safeguarding of disabled children. However, within these two main recommendations, smaller steps are identified that would help promote the safeguarding of disabled children even if they were implemented without a major review or national strategy. The remaining recommendations also identify specific action which, if taken, would start to address the need to better protect disabled children.

1. The Department for Education and Skills should review the current child protection system in respect of disabled children.

This review should include:

- 1.1 Collection and analysis of local and national data on disabled children who are subject to the child protection process.
- 1.2 A review of existing local and inter-agency mechanisms to promote the safeguarding of disabled children.
- 1.3 A review of existing child protection processes in respect of disabled children placed out of authority, particularly disabled children in residential special schools.
- 1.4 A review of civil and criminal proceedings concerning allegations of abuse against disabled children.
- 1.5 A review of previous investigations concerning abuse of disabled children in organisational settings (ie respite care facilities, residential schools or homes, etc).
- 1.6 A review of Serious Case Reviews where the child was disabled.

2. The Department for Education and Skills should develop a national strategy for the safeguarding of disabled children.

A national strategy should be developed in consultation with disabled children and adults and organisations advocating on their behalf. The purpose of this

strategy should be to both improve the way the child protection system works for disabled children and to promote good practice in safeguarding disabled children. This should include a commitment to ensuring that the child protection needs of black and minority ethnic disabled children are addressed in all child protection policies, strategies and action plans. Specifically, the strategy should include:

- 2.1 National guidance for the safeguarding of disabled children.
- 2.2 Collection and analysis of statistical information, at both a national and local level, concerning disabled children and abuse. Publication of this information on a regular basis.
- 2.3 National and local mechanisms for monitoring and reviewing child protection policies, procedures, practices and strategies relating to disabled children.
- 2.4 National and local mechanisms for assisting organisations providing services for disabled children and their families to develop safeguarding policies and practices.
- 2.5 National and local mechanisms for consulting with disabled children and adults, and organisations advocating on their behalf, about how best to safeguard disabled children.
- 2.6 Training strategy to ensure that professionals are equipped to promote the safeguarding of disabled children and to respond effectively to specific child protection concerns.
- 2.7 Promotion of safety and awareness programmes for disabled children and their families.
- 2.8 Policies, procedures and resources to address the barriers that get in the way of using civil and criminal proceedings to address allegations of abuse of disabled children.

The implementation of this strategy will require:

- 2.9 Resources to promote the safeguarding of disabled children, including additional costs of effectively applying existing child protection procedures to disabled children.
- 2.10 Regular review of the implementation of the strategy in consultation with disabled children and adults and organisations advocating on their behalf.
- 2.11 Publication of the review.

3. The Department of Health and Department for Education and Skills should ensure that disabled children’s safeguarding needs are fully addressed in the forthcoming National Service Framework (NSF) for Children, Young People and Maternity Services and the Government’s plans for improving children’s services, outlined in *Every child matters*.

4. The Department for Education and Skills, Department of Health and the Home Office should ensure that the relevant Inspectorates implement Recommendation 2.15 of the Joint Chief Inspectors’ report on Arrangements to Safeguard Children.

This recommended that all relevant Inspectorates should ensure that, prior to the next Joint Chief Inspectors’ report, “appropriate inspection activity” should be undertaken concerning disabled children.

5. Research is needed to inform the development of better practice in safeguarding disabled children.

Relevant government departments, and other funders of research, should seek to develop a body of research which would enable us all to better protect disabled children. Research is needed into:

5. 1 The effectiveness of the existing child protection system in addressing abuse of disabled children.
5. 2 Indicators of abuse of disabled children.
5. 3 Investigative practices and techniques required and the implications of these for practitioners and agencies.
5. 4 Therapeutic needs of disabled children who have been abused and how best to meet these needs.
5. 5 The role of support services in preventing abuse.
5. 6 What disabled adults and children can tell us about how to prevent and stop abuse.

6. The Department for Education and Skills should take action to ensure that information is collected concerning the abuse of disabled children within current recording systems.

The Working Group believes that we need more comprehensive information about disabled children’s experience of abuse and how well current systems protect them. This would be achieved by implementing Recommendations 1 and 2. In the meantime, information could be improved by the use of existing

recording systems, as outlined below:

- 6.1 Local authorities should be required to record whether a child placed on the Child Protection Register (or similar future record) is disabled. To ensure consistency, the government should issue guidance on definitions and categories to be used for recording disability/impairment.
- 6.2 The Department for Education and Skills should require those notifying death or serious injury of a child to record whether the incident concerns a disabled child. This information should be included in the Department's database.

7. The Home Office should undertake a review of the effectiveness of the special measures under the Youth Justice and Criminal Evidence Act 1999, to establish whether the guidance for vulnerable and intimidated witnesses has been effective in promoting justice for abused disabled children.

While the Working Group welcomes the guidance *Achieving Best Evidence*, we believe that disabled children and young people experience barriers to justice before they ever get to court, that the new measures are not being implemented quickly enough, and that they do not address all the barriers within the criminal justice system.

We therefore recommend that the Home Office:

- 7.1 Carries out research on disabled children and young people's access to and experiences of the criminal justice system.
- 7.2 Extends the special measures contained in the 1999 Act to include the provision of information to juries about a witness's impairment and its impact on their evidence.
- 7.3 Requires that good practice in witness preparation, which is being carried out in a number of areas throughout the UK, be adopted on a national basis to ensure that disabled children and young people are properly supported to give evidence in an effective and confident way.
- 7.4 Speeds up the full implementation of *Achieving Best Evidence*, paying particular attention to how the special measures can be used to assist disabled children and young people as witnesses.

8. Area Child Protection Committees (or any future equivalent bodies) should develop local multi-agency safeguarding strategies for disabled children.

Such strategies should include:

- 8.1 Consultation with disabled children and adults, and organisations advocating on their behalf, about how best to safeguard disabled children.
- 8.2 The gathering of local data concerning disabled children in the child protection system and analysis of outcomes.
- 8.3 Training strategy to ensure that child protection workers have the necessary skills in working with disabled children, and that staff working with disabled children are aware of child protection issues and procedures. The training strategy should also address managers' supervision role and the competencies required to work in culturally diverse settings.
- 8.4 Identification of additional resources required in order that existing child protection systems are effective in protecting disabled children.
- 8.5 Clear policies and procedures to be followed in the event of child protection concerns involving a disabled child or children in organisational settings (eg respite care, residential special schools, children's homes, day care).
- 8.6 Clear policies and procedures regarding child protection responsibilities towards disabled children placed out of area.
- 8.7 Clear policies and procedures regarding child protection responsibilities towards disabled children placed within the local authority area by another authority or organisation.
- 8.8 Development of emergency placement services to care for disabled children who are moved from abusive situations.
- 8.9 Therapeutic support to disabled children who have experienced abuse.
- 8.10 Advice and assistance to help service providers of support to disabled children and their families to develop effective safeguarding policies and practice.
- 8.11 Regular review of the implementation of the strategy in consultation with disabled children and adults and organisations advocating on their behalf.

Chapter 1 Disabled children and abuse

David Miller, Project Manager, Services to Disabled Children and their Families, NSPCC

This chapter summarises the research concerning disabled children and abuse, identifies relevant policy and service initiatives, and highlights key issues and concerns. It sets the context for the chapters which follow in this report.

Findings from research

Prevalence of abuse among disabled children

Awareness of the vulnerability of disabled children to abuse has grown since the 1960s. This has followed research that has been undertaken, principally in the United States.

Sobsey (1994), Westcott (1993), Westcott and Cross (1996) and Westcott and Jones (1999) provide useful summaries of the development of research from the late 1960s onwards. Early research generally focused on small samples of specific groups of children. Although recognising that disabled children are abused, the methodological bases of these early studies were poor and the extent of abuse was therefore unclear. Research in the 1970s generally focused on the prevalence of disability/impairment among abused children and the nature of the abuse–disability relationship began to be questioned. Studies continued into the 1980s with a change in focus towards the prevalence of abuse within a wider range of populations of disabled children. These studies began to highlight the vulnerability of disabled children to abuse.

Research in the 1990s and onwards responded to some of the methodological weaknesses of earlier research and a number of large-scale research studies were undertaken in the United States which demonstrated quite clearly the greater prevalence of abuse amongst disabled children as compared to non-disabled children.

The largest and most recent study is that carried out by Patricia Sullivan and John Knutson (Sullivan and Knutson, 2000) who analysed computer records on over 40,000 children in an American city. They found that disabled

children were 3.4 times more likely to be abused or neglected than non-disabled children. They were 3.8 times more likely to be neglected; 3.8 times more likely to be physically abused; 3.1 times more likely to be sexually abused and 3.9 times more likely to be emotionally abused. Overall, 31 per cent of disabled children had been abused, compared to a prevalence rate of 9 per cent among the non-disabled child population.

What do we know about the prevalence of abuse among disabled children in the United Kingdom?

Research in the United Kingdom in relation to abuse and the safeguarding of disabled children has been extremely limited. Margaret Kennedy raised the profile of the vulnerability of deaf children to abuse following a survey of 156 teachers and social workers for deaf children (Kennedy, 1989). This established high levels of actual or suspected physical, emotional or sexual abuse. Helen Westcott interviewed 34 adults who had been abused as children, 17 of whom were disabled (Westcott, 1993). This research focused on the abuse experienced by disabled and non-disabled people and the social circumstances surrounding this.

Information about the numbers of disabled children subject to child protection procedures should provide an indication of the prevalence of abuse among disabled children. However, local authorities are generally unable to provide information about the numbers of disabled children among child protection referrals or on child protection registers. One UK-wide survey (Cooke, 2000) found that, although 51 per cent of local authorities said they recorded whether an abused child was disabled, only 14 per cent could actually give a figure. This confirmed earlier research, which found that, even when local authorities did include a record of disability in their child protection procedures, a lack of a common definition and inconsistent recording meant the information was not available (Morris, 1998b).

This same research was able to gather information from one local authority area about the numbers of disabled children on the Child Protection Register. This established that, although disabled children made up only 2 per cent of the local child population they accounted for 10 per cent of the children on the Child Protection Register. Looked at another way, 9.5 per 1,000 disabled boys were on the Child Protection Register compared to 2.2 of non-disabled boys while the equivalent figures for girls were 15 and 2.3 (Morris, 1999).

It would appear from the Children in Need Census that disabled children are over-represented among those children who are looked after because of abuse or neglect. In the sample week in 2001, there were 2,400 disabled children looked

after because of abuse or neglect and they accounted for 7 per cent of the total of 33,700 children looked after for these reasons (Department of Health, 2002(a)). As disabled children make up about 3 per cent of the total child population (Department of Health, 2000a), it would seem that they are more likely, than non-disabled children, to be looked after by local authorities because of abuse or neglect. It must be stressed, however, that statistics on looked after disabled children have to be treated with caution, as there are inconsistencies in terms of whether a child is defined as “disabled” and also in what circumstances they are recognised as being “looked after”.

What research tells us about why disabled children are more vulnerable to abuse

There is limited research into the risk factors experienced by disabled children, and even less research on how they can be protected from abuse. Nevertheless, this research literature (which is listed in the Bibliography) indicates that vulnerability factors can be divided into three main categories: the attitudes and assumptions held by others; inadequacies in service provision; and factors associated with impairment.

Attitudes and assumptions

- Society devalues and disempowers disabled people. Negative attitudes create both a vulnerability to abuse and make it less likely that disabled children will be listened to about their experiences of abuse.
- There is a lack of awareness among carers, professionals and the general public of the vulnerability of disabled children and what the indicators of abuse are for disabled children.
- Assumptions are sometimes made about the effects of impairment, which can result in indicators of possible abuse being mistakenly attributed to the child’s impairment.
- There is a commonly held belief that disabled children are not abused. This can lead to the denial of, or a failure to report, abuse.
- There is sometimes a failure to recognise the impact of abuse on disabled children.
- Negative attitudes mean that disabled children are often especially vulnerable to bullying and intimidation and can be more vulnerable than other children to abuse by their peers.

Inadequacies in service provision

- Disabled children and their families face many barriers to their full

participation in society. These barriers limit their capacity both to contribute towards, and access, community resources and services, including preventative services.

- Lack of appropriate or poorly co-ordinated support services can leave disabled children and their families unsupported and physically and socially isolated. Isolation is widely recognised to be a risk factor for abuse.
- Organisational and skills gaps between professionals working with disabled children and those in child protection create barriers to an effective child protection system.
- A lack of comprehensive and multi-agency assessments and planning leads to both a failure to promote the child's welfare, and a failure to identify early indications of possible abuse.
- Disabled children often lack access to the assistance they need with communication. Communication systems sometimes lack the language necessary to disclose abuse.
- There is a common failure to consult with disabled children about their experiences, views, wishes and feelings and they often have little choice and control over many aspects of their lives.
- Disabled children's dependency on an abusing carer can create difficulties in avoiding or communicating about abuse especially if this is a key person through whom the child communicates.
- Some disabled children may have learned from their care or wider experience to be compliant and not to 'complain'.
- There is often little effective sex education or safety and awareness work with disabled children.
- Disabled children (or anyone close to them) may be inhibited about complaining because of a fear of losing services.
- Disabled children may not have someone to turn to, may lack the privacy they need to do this, or the person they turn to may not be receptive to the issues being communicated.

Factors associated with impairment

- Disabled children may receive intimate personal care, possibly from a number of carers, which may increase the risk of exposure to abusive behaviour.
- Disabled children may have an impaired capacity to resist or avoid abuse.

- Disabled children may have communication difficulties or lack of access to an appropriate vocabulary, and this may make it difficult to tell others what is happening.

Disabled children living away from home are particularly vulnerable. In addition to the risk factors that exist for all children in residential settings, disabled children are at risk of particular forms of abuse. These include over-medication, poor feeding and toileting arrangements, issues around control of challenging behaviour, lack of stimulation, information and emotional support (Utting, 1997). Disabled children are in fact more likely than non-disabled children to live in a residential, rather than a family, setting.

Adequate statistics of disabled children in residential care do not exist. However, the re-analysis of the 1986 OPCS disability survey, Gordon, Parker, Loughran (2000) found that disabled children are more likely to be in residential care than non-disabled children are. Thirty-one per cent of disabled children in care were estimated to be in residential accommodation compared to 23 per cent of non-disabled children in care. Furthermore, it was estimated that 5.7 per cent of the total population of disabled children were in local authority care compared to a rate of 0.55 per cent for the population as a whole. It should be noted that the OPCS survey included children with behavioural difficulties within the disability criteria. Although the numbers have probably decreased since 1986 it is likely that relative differences remain.

Disabled children at residential schools were not included in the OPCS statistics on disabled children in residential settings. We do not know how many children are currently placed in such schools but recent research found that they are not always afforded the protection of 'looked after' status. Even when children are 'looked after' the extent to which local authority responsibilities are undertaken varies considerably (Abbott et al., 2000). Issues relating to the safeguarding of disabled children at residential schools are covered in more detail in Chapter 3 of this report.

What research tells us about how best to protect disabled children from abuse

Research into effective safeguarding for disabled children is limited. The Working Group identified that, as with all children, an effective safeguarding strategy for disabled children must address barriers at a number of different levels. The Group also stressed, however, that there are specific issues to be considered when safeguarding disabled children.

Society level

There needs to be a shift in values and attitudes and awareness so that:

- Disabled people are recognised and valued as equal citizens with equal rights.
- Individuals recognise and act on their responsibility towards removing the barriers that prevent disabled people from participating fully in society.
- The safeguarding of disabled children becomes a priority.

Community level

Safeguarding of disabled children requires supportive and safe environments that empower disabled children. This includes:

- A choice of safe and accessible community and leisure services.
- Effective networks and support systems.
- Flexible support that is responsive to individual needs and which places a value on the views of the disabled child.
- Policies and practices within schools and services (especially residential settings) that safeguard, respect and empower disabled children. These should include clear child protection and other relevant procedures and guidelines: for example, intimate care; management of behaviour; recruitment and screening of staff; staff training and supervision; and consultation with disabled children and young people.
- Effective child protection strategies and systems.

Carer level

- Improved co-ordinated and inter-agency planned support for carers.
- Holistic assessments of need that include valuing a child's religious and cultural needs.
- Consultation with disabled children in matters related to their care.
- Awareness raising of carers to the vulnerability of disabled children, indicators of abuse, and of their potential role in safeguarding children.
- Early and comprehensive multi-agency assessments of need that consider possible underlying causes of any presenting causes for concern.
- Communication with the child and the taking of active steps to remove

barriers and promote communication.

- Training, supervision and appraisal of staff.

Individual level

- Empowerment of child or young person through seeking their views, wishes and feelings, ensuring choice, provision of opportunities.
- Sex education and safety and awareness work.

Key policy and service developments

Developments in safeguarding disabled children

In the late 1980s and early 1990s, Margaret Kennedy and the Keep Deaf Children Safe project raised awareness of the abuse experienced by many deaf children and the failure of services to protect them. Her survey of deaf children (Kennedy, 1989) was followed by a notable increase in attention to the vulnerability of disabled children, the limitations of existing services and the need for service providers to respond. For example, Hilary Brown and Ann Craft raised the issue of the sexual abuse of children and adults with learning disabilities (Brown and Craft, 1989) and the journal *Child Abuse Review* devoted a special edition to disabled children (Kennedy and Kelly, 1992). Disabled people, such as Merry Cross, Margaret Kennedy and Saadia Nielson, developed training courses to promote the better safeguarding of disabled children and pressed government and local authorities to recognise disabled children's vulnerability to abuse. Ruth Marchant and Marcus Page carried out pioneering work interviewing disabled children who had been abused (Marchant and Page, 1992; 1997). A number of key people in this field came together to develop a training and resource pack concerning disabled children and abuse, funded by the Department of Health and published by the NSPCC (Cross et al., 1993). This pack, called the *ABCD Pack*, was the first publication in the UK of its kind and became a major resource for raising awareness.

At government level, however, there was limited recognition throughout the 1990s, of the vulnerability of disabled children to abuse. One exception was Sir William Utting's *Review of the Safeguards for Children Living Away from Home* (Utting, 1997). This considered the position of disabled children living away from home and concluded that they are extremely vulnerable to abuse of all kinds, including peer abuse, and that high priority needed to be given to protecting them.

Over the last ten years or so, there has been an increasing focus on the rights of disabled children and young people (Marchant and Page, 1992; Chailey Heritage, 1997; Morris, 1998b; Middleton, 1999; Department of Health, 2000b; Department of Health, 2001). This has been of relevance both for access to community facilities and services, and for child protection. Issues of communication, consultation and empowerment of disabled children have been highlighted and promoted.

This increase in awareness led to some shift in focus towards safety and awareness work with disabled children. The Shepherd School based in Nottingham produced *The Protection Pack*, a pack for working with children and young people with learning difficulties (Shepherd School, 1994). The National Deaf Children's Society joined with the NSPCC to produce *Safe in Your Hands*, aimed mainly at staff working with deaf children within educational settings (National Deaf Children's Society/NSPCC, 1998). This pack followed earlier materials produced by Margaret Kennedy for working directly with deaf children in raising awareness (Kennedy, 1990b; 1994).

In response to concerns for the vulnerability of learning disabled children and adults, The Ann Craft Trust (formerly NAPSAC) and VOICE UK were established in the early 1990s to provide support for learning disabled people, their families and professionals. A number of other organisations offering consultation, training and other services relating to the protection of disabled children have since developed.

In spite of these developments, the increased vulnerability of disabled children to abuse has been reflected in local and national policy to only a limited degree. *The Children Act: guidance for disabled children* acknowledged their vulnerability (Department of Health, 1991a). Guidance on child protection processes recognised that disabled children may have additional needs, but little specific guidance was given (Department of Health 1991b). *The Memorandum of Good Practice on Video Interviewing with Child Witnesses for Criminal Proceedings* gave very limited comment in respect of interviewing disabled children (Home Office/Department of Health, 1992).

The current child protection guidance issued by central government recognises that disabled children are at greater risk of abuse (Department of Health/Home Office/Department for Education and Employment, 1999). It gives reasons for this and limited guidance about what local agencies should do. Recent guidance concerning support to families with very young disabled children also recognises the particular vulnerability of disabled children to abuse, and urges Area Child Protection Committees to promote "high standards of practice" (Department for Education and Skills/Department of

Health, 2003, para. 4.8). It is difficult to be confident that these “high standards” are common however, as is illustrated in Chapter 2 of this report.

Local authorities were asked, for Year 4 of their Quality Protects Management Action Plans, to comment on child protection arrangements in relation to disabled children. An analysis of these MAPs found that some Area Child Protection Committees had identified this as an area which needed development and that a few had introduced policies, provided multi-agency training or set up sub-committees. However, less than half the MAPs contained any details of how this issue was being addressed (Council for Disabled Children, 2003, p.49). As we now have clear evidence that disabled children are particularly vulnerable to abuse, and almost twenty years of research indicating that they are not being sufficiently protected, this lack of action is surprising.

The Government made a commitment in 1998 to commission joint three-yearly reports from the Inspectorates concerned with children. The first report, published in 2002, did not look at how well disabled children were being safeguarded but recommended that, prior to the next report, all the relevant Inspectorates should undertake specific inspection activity concerning disabled children (Social Services Inspectorate et al., 2002, pp.9–10). It is not known, at the time of writing, what plans are in place to implement this recommendation.

The special measures that have been made available through the Youth Justice and Criminal Evidence Act, passed in 1999, should help enable disabled children give evidence. Many of these were introduced in July 2002, and guidance has been issued which contains specific reference to disabled children (Home Office et al., 2001). The use of intermediaries to assist with communication may be particularly enabling although the use of these is to be the subject of pilot projects before being introduced. However, as Chapter 5 illustrates, there is a long way to go before disabled children are likely to experience equal access to the criminal justice system.

The Care Standards Act 2000 strengthens safeguards for children who are being cared for in a range of circumstances, including residential schools and colleges. New National Care Standards have now been established and these are discussed in Chapter 3 of this report. The Protection of Children Act 1999 further strengthens safeguards in respect of the vetting of individuals working with children.

Research relating to the abuse of disabled children in the UK remains very limited, as does our understanding of the nature and circumstances in which

abuse occurs and the potential impact of support services in creating safer environments and more effective child protection systems. The Department of Health's summary of research findings concerning child protection, published in 1995 (Department of Health, 1995), contained no reference to disabled children and it would seem that this group of children remain a low priority in terms of the funding of research in this area.

Developments in services to disabled children

Support services should promote the welfare of disabled children and it is reasonable to expect that these will have some impact on the level of risk. However, the extent of this impact is unknown. The Children Act 1989 marked a change in approach towards disabled children. They were defined as children "in need" and as such are entitled to an assessment and to the provision of services under the same legislation and standards as non-disabled children.

Other legislation during the 1990s has focused on the needs and rights to services for disabled children and their families. This has included: the Carers (Representation and Services) Act 1995; the Disability Discrimination Act 1995; the Education Act 1996; the Local Government and Housing Act 1999; the Carers and Disabled Children Act 2000; the Special Educational Needs and Disability Act 2001. Throughout the 1990s there has been increasing recognition of the circumstances and needs of disabled children and their families and of the inadequacies of the support services for meeting these. Research has highlighted that:

- the families of disabled children have limited resources and high levels of unmet need for support services (Beresford, 1995)
- black and minority ethnic disabled children and their families are less likely to access the services and benefits for which they are eligible (Chamba et al., 1999)
- children with high levels of support needs experience frequent barriers to accessing services and community provision (Morris, 2001).

The importance of consulting with disabled children and young people in respect of their individual needs and care plans and service development has been highlighted (Morris 1998b, 2001; Westcott and Cross, 1996). Guidance and materials have been produced to support the consultation and communication process (for example, Kirkbride, 1999; Marchant and Martyn, 1999; and the *Two Way Street* video, Triangle/NSPCC, 2001). More recently, funded by the NSPCC, Ruth Marchant and Merry Cross, from Triangle, have

developed an image vocabulary to help children communicate about a range of important issues (Marchant and Cross, 2002).

In recent years, the Government has prioritised the need to develop services for disabled children, although there has been no similar prioritisation of disabled children in the context of child protection policies. Additional funding has been made available for services to disabled children and their families, most notably through the Quality Protects programme, a five-year funding initiative which ends in 2003/04. Funding has also been provided for a range of initiatives including Early Years Child Care Development Partnerships, the Schools Access Initiative and the national learning disability strategy, Valuing People. The Family Fund Trust has also received increased funding for the practical support they provide to families of disabled children. Disabled children and their families will also benefit from the cross-Government programmes of Sure Start, Children's Fund and the Connexions service, and the commitment to fair access to healthcare and reducing child poverty.

The Quality Protects programme's main objective for disabled children was: To ensure that disabled children gain maximum life chance benefits from educational opportunities, health care and social care, while living with their families or other appropriate settings in the community where their assessed needs are adequately met and reviewed. Analysis of Quality Protects Management Action Plans for the first four years of the programme has shown some limited improvements in services for disabled children and their families but wide variations in the degree to which disabled children are involved in developments relating to their care. In the earlier years of Quality Protects, many local authorities admitted that work to consult and involve disabled children was at an early stage (Council for Disabled Children, 2000; Robbins, 2001), and this remained the case in the fourth year of Quality Protects (Council for Disabled Children, 2003, p.43). Moreover, the analysis of Quality Protects MAPs for Years 3 and 4 found few systematic accounts of councils meeting the particular needs of black and minority ethnic disabled children and concluded that this appeared to be a relatively underdeveloped area of work.

Specific guidance was produced by the Department of Health (Marchant and Jones, 2000) in respect of assessing the needs of disabled children and their families. This highlighted the issues of communication and the need to consider the effect of disabling barriers as well as the impact of the disabled child's impairment. However, it is disappointing that this guidance was not part of the main guidance on assessment. It remains to be seen whether the National Service Framework for Children will adequately address the protection of disabled children from abuse and the ways in which services can and should safeguard them.

Conclusion

While recognising the developments there have been in services, a number of significant issues and concerns remain in respect of the safeguarding of disabled children. Although we know that disabled children are particularly vulnerable to abuse, there is still inadequate research in the United Kingdom. We know very little about the experiences of disabled children within the child protection system. We also do not know enough about what type of action and services would help to better safeguard disabled children. Much work remains to be done to ensure that support services enhance the safety and well-being of disabled children, and that existing child protection systems are effective in protecting them from abuse.

Chapter 2 The child protection system and disabled children

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Introduction

Research tells us that disabled children are at increased risk of abuse yet we know, from our many years experience of child protection work with disabled children, that they are often not given the protection they need.

Government guidance makes clear that disabled children are entitled to the same levels of protection (Department of Health/Home Office/Department for Education and Employment, 1999), and assessments of their needs (Department of Health/Department for Education and Employment/Home Office, 2000; Department of Health 2000b), as non-disabled children. The guidance also highlights the ways in which disabled children are particularly vulnerable and the specific steps which practitioners should take to safeguard them. *Working Together to Safeguard Children and their Families* contains a checklist of particular issues which should be considered when the child is disabled (Department of Health/Home Office/ Department of Education and Employment, 1999, p.69). *The Framework for the Assessment of Children and their Families* has a chapter in the *Practice Guidance* devoted to the assessment of disabled children (Department of Health, 2000b, Chapter 3).

In this chapter, we draw on our many years experience of working in child protection to identify the barriers that get in the way of safeguarding disabled children. These barriers operate at all the different stages of the child protection process, from referral through to taking action.

Referral

Child protection referrals are only made if there is a recognition of child protection concerns. Where there is a lack of understanding, a lack of knowledge or misunderstanding of the issues, referrals will not be made. A high level of awareness of child protection issues for disabled children is necessary to ensure that appropriate referrals are made and “intake” social

workers recognise child protection concerns.

Unfortunately, our experience is that a number of barriers can get in the way of recognising concerns and/or making an appropriate referral and we have listed these below.

A reluctance to believe that a disabled child is at risk of abuse

An assumption is sometimes made that a child is not at risk of abuse if they have physical and/or sensory impairments and/or learning disabilities. Although there has been more attention paid in recent years to the experience of abuse among disabled children, there is still sometimes a reluctance to believe that anyone would abuse a disabled child. For example, during an audit looking at implementation of safeguards in a residential special school, we came across a situation where concerns and indicators of sexual abuse had not been recognised. The child involved had multiple physical impairments and very limited communication. During school holidays he would return home and share a bed with a male lodger. He displayed significant changes in his behaviour when he returned from visits and had bruising. His mother explained that they needed the lodger for his financial contribution and that her son's injuries were self-inflicted during epileptic fits. The school staff did not consider that the boy could be at risk of sexual abuse and never made a referral. The school nurse expressed concern about his "sharing a bed" with the lodger as "inappropriate" but didn't feel there was anything else she could do, as he wouldn't be able to go home otherwise.

Assumptions that a disabled child could not be a credible witness

An assumption that a disabled child will not be a credible witness can act as a block to making a child protection referral. On many occasions residential staff, teachers, and nurses have told us that they have had concerns about a disabled child but have not reported them as they've felt "it wouldn't go anywhere". Often this was based on their own experience of previous unsuccessful referrals or advice from managers or colleagues.

In one example, the eldest of three girls with learning disabilities disclosed sexual abuse after she left home, by telling her hostel worker. The worker did not refer it to social services as it was considered that the two younger ones would not be able to disclose or make credible witnesses as their learning disability was more severe. When the second girl left home at 16 years and also disclosed sexual abuse an investigation was triggered. However the parents refused access for the 14-year-old to be interviewed, the police did not pursue the matter and social services did not initiate civil proceedings. It was considered that the two sisters' statements alone were not credible

witness evidence and no other action was taken to assess risk or protect the youngest sister.

In this case, as in many others, particular factors concerning the vulnerability of disabled children were not considered in assessing thresholds of risk or investigating for evidence. Had the case gone to case conference a multidisciplinary decision may have informed ongoing work or application for civil proceedings. In our experience, practitioners often do not recognise that civil proceedings require a lower standard of proof than criminal proceedings, and that action can be taken to safeguard a child, even if there is no prospect of a criminal prosecution.

Behaviour and/or physical symptoms are seen as related to impairment

Behaviour or physical symptoms are sometimes seen as the result of a child's impairment rather than a result of abuse or neglect and this can lead to a failure to make an appropriate referral. For example, a child with learning difficulties, limited communication and eczema had red marks on his arms and legs. These were in fact due to him being tied into his buggy but were misinterpreted as being due to the eczema. In another case, bruising to the thighs and anal area was assumed to be associated with the administration of rectal valium but was in fact caused by sexual abuse.

Abusive practices are unrecognised

Those responsible for a child's care can sometimes take action, in response to impairment, which – if it was done to a non-disabled child – would be seen as abusive but this is not recognised as such. For example, in one case a paediatrician decreased feeding for a child who was being tube-fed, on the grounds that if she put more weight on it would become difficult for her mother (the main carer) to lift her. In another case, a child was tied into a chair in order to control his behaviour at school. Medication can also sometimes be used in ways that potentially damage the child. One example is the routine use of paracetamol when a child exhibits a level of distress, over a period of time, with no further exploration as to why the child might be distressed. Another example is the inappropriate use of anti-psychotic drugs to control a child's behaviour. Here the barrier to an appropriate referral is the belief that behaviour which, in the case of a non-disabled child, would be identified as abusive, is not so identified in the case of a disabled child.

If a child needs particular assistance or equipment a failure to provide this can amount to neglect and in some cases may be life threatening. For example, a disabled 12-year-old with communication impairment was found at a residential school with a plastic glove in her mouth and in danger of

choking on it. Even if this was an accident there is an issue about properly supervising the child. She was exposed to a life-threatening situation, yet this was not recognised. For a child with high care needs, a failure to provide the level of assistance required can result in a level of neglect which is abusive.

A reluctance to challenge carers

There is often a heavy reliance placed on carers (whether family or paid carers) as a source of information about disabled children. Child protection workers can sometimes feel out of their depth in terms of knowledge of a child's impairment. It can be easy to rely on others in close contact with the child to interpret and explain behaviour or symptoms. This means that initial inquiries might be satisfied on limited information – as may also be the case for non-disabled children. However, with non-disabled children decisions are greatly informed by “developmental milestones” and these may not apply to a disabled child. When assessing disabled children an additional/different approach is required because of their vulnerability and workers' knowledge of “what might be expected”.

There are also situations where children are left in situations where there is a high level of neglect, and sometimes abuse, because a professional feels the parent, carer or service “is doing their best”. There can be particular reluctance to move a child when the worker knows that it would be difficult to find substitute care – “where else would we put them?” can be a block to taking appropriate action to safeguard a child and generating a child protection referral.

In addition to the barriers identified above, child protection intake teams sometimes feel that they should refer a disabled child to the Disabled Children's Team rather than act on any concerns themselves. Child protection concerns can also remain unrecognised when a family asks for respite care. The child's welfare and needs can be lost in the process of putting a respite care service in place.

There are therefore a number of factors that get in the way of recognising that a disabled child is at risk and that a referral is required to safeguard their welfare. However, even when a referral is made, we have found that there are further barriers that can get in the way of effective child protection.

Initial and core assessments

Once a concern is reported and a referral has been accepted, local authorities are required, using the *Framework for the Assessment of Children in Need and their Families*, to address the following questions:

- What are the needs of the child?
- Are the parents able to respond appropriately to the child's needs? Is the child being adequately safeguarded from significant harm, and are the parents able to promote the child's health and development?
- Is action required to safeguard and promote the child's welfare?

(Department of Health/Home Office/Department for Education and Employment, 1999, p.41).

Core assessments should be carried out if it is established that the child is "in need" or if there is "reasonable cause" to suspect that the child is suffering, or is likely to suffer, significant harm (Department of Health/Home Office/Department for Education and Employment, 1999, p.42). One of the criteria for a child being "in need" is if the child is disabled so, even if there is no "reasonable cause" for concern, a full assessment of need, using the *Framework for the Assessment of Children in Need and their Families* (Assessment Framework) should be offered. In practice, as we have already mentioned, it is quite common for families with disabled children to be referred to respite care or other services, without any consideration that there may be issues about the child's safety or protection.

A high quality assessment, using the Assessment Framework, is the best preventative tool, the most effective way to safeguard children, as it is an opportunity to focus on needs in a holistic and comprehensive way. As we know that disabled children are particularly vulnerable to abuse, social workers should use every opportunity to carry out an assessment using the Assessment Framework.

Unfortunately, even when an initial assessment has established a cause for concern and a core assessment is carried out, a number of barriers can get in the way of focusing effectively on the child's needs and vulnerability.

Assessments can be dominated by a child's medical condition

The assessment is sometimes dominated by the child's medical condition and the service response to that condition. For example, assessments concerning children who are terminally ill, or have complex healthcare needs, can be dominated by the need for palliative or other medical/nursing care and what services are available to deliver this. It can be hard in this kind of situation to hold onto a more holistic perspective on the needs of the child and their family, particularly when families – often very understandably – place such importance on a medical perspective of their child's needs. Yet, however ill or disabled a child is, their basic needs "are no different to those

of any other child” (Department of Health, 2000b, p.74). When medical treatment and nursing care take precedence in the care package, children’s emotional needs can be lost. Reliance on existing services – such as hospices and residential respite care – may mean that the child ends up with any number of carers in several settings and there is little attention paid to their vulnerability.

Assessments may focus on needs relating to impairment

Assessments involving a disabled child can become more about identifying needs relating to impairment (for example, for equipment and adaptations) and this can get in the way of considering the child’s general welfare. It is important that assessments are not dominated by the ways in which disabled children are different from non-disabled children, or by assumptions that they always and/or only require specialist, different services. Disabled children may have particular needs but they also have the same developmental and welfare needs as non-disabled children, and are entitled to the same protection from abuse and neglect. It is important to prevent assessments being reduced to a checklist of adaptations, equipment, personal care, respite, welfare benefits, and so on.

Lack of familiarity with impairment

A lack of familiarity with a child’s impairment can get in the way of social workers using their expertise in child protection issues. Sometimes statements such as “He has a mental age of five” can inhibit social workers who are more familiar with carrying out assessments of non-disabled children. It almost seems to put a block on the social worker’s confidence in their own judgement concerning child development and child protection issues. While it may be necessary to call on specialist expertise to understand the impact of a child’s impairment, the areas of need laid out in the Assessment Framework should still all be covered.

It can sometimes be hard for a social work professional to remain confident in their own expertise and judgement when challenged by those who have day to day care of a disabled child. For example, when challenging care practices, we have received responses such as “You’re being idealistic, if you worked here you’d soon take their batteries out” (referring to a practice of removing batteries from an electric wheelchair to prevent the child moving about independently).

Insufficient time to carry out assessment

Existing child protection systems and procedures often do not allow for the

additional time that is required to carry out a high quality assessment involving a disabled child. If time is short, it is more difficult to gather information from a number of different sources about how to ascertain the child's "wishes and feelings" and there may be an inappropriate reliance on the main carer or one professional for this information. It will be particularly vital to allow more time when the assessment concerns a child who has cognitive and/or communication impairments. For example, a head teacher may say "He can't communicate", but a classroom assistant may be able to provide information about how the child communicates that he is happy or unhappy. A parent may say "I know what she's trying to say but no-one else does", yet it will be important to talk to others who are in regular contact with the child.

Social workers can feel overwhelmed by the needs of some disabled children

In our experience social workers can sometimes feel overwhelmed by the child's needs and by the sheer hard work which carers face in looking after some disabled children. Feelings such as "I wouldn't be able to manage" can get in the way of their professional judgement about whether a child is safe. A holistic assessment of a family's needs may well identify that the child's care needs and/or behaviour are a cause of considerable stress for family members. However, this should never result in a failure to recognise neglect or abuse, or to safeguard the child.

Families of disabled children may resist yet another assessment

Many families experience a range of assessments from a number of different professionals and can resist yet another assessment, particularly if previous assessments have not resulted in the support they need. It is important to convince families that this assessment is worth their while and to overcome resistance to full involvement created by (often justified) cynicism.

Child protection investigations and action to safeguard disabled children

Where a child "is suspected to be suffering, or is likely to suffer, significant harm", Section 47 of the Children Act 1989 requires social services authorities to make enquiries in order to determine whether action is needed to promote or safeguard the welfare of the child concerned. Government guidance makes it clear that "where there are concerns about the welfare of a disabled child, they should be acted upon...in the same way as with any other child [and] the same thresholds for action apply" (Department of Health/Home Office/ Department for Education and Employment, 1999, p.69). However, in our experience this does not always happen.

Again a number of barriers get in the way of carrying out effective child protection investigations and taking action to safeguard disabled children. These barriers can effect any stage of the process – strategy meeting, inquiries, investigation, case conference and case review.

Assumption that an investigation cannot proceed if a child has not disclosed abuse

Although it is not necessary for a child to make a statement in order for an investigation to take place, a child's communication and/or cognitive impairment is often cited as a reason for failing to proceed with an investigation. Where the subject of concern is a (non-disabled) baby the inability to make a statement does not prevent an investigation, yet this happens all too often, in our experience, when a disabled child is involved.

If child protection workers start from the assumption that it is not necessary for the child to make a disclosure, then it is more likely other sources of evidence will be sought.

Not enough attention is paid to various sources of information

Disabled children may have case files held by a number of service providers and these may well be a source of valuable information. A retrospective analysis of records may show a pattern of incidents being recorded but not identified as cause for concern. However, this means that an investigation may well take longer than where a child has disclosed abuse and extra time is not always allowed for this.

When strategy meetings and case conferences are held, proper consideration of the issues concerned can be inhibited by a failure to recognise that more time may be needed in order to gather information:

- from a number of different sources
- about the child's perspective
- from specialists in the child's impairment and/or situation.

Disproportionate emphasis is placed on medical opinions

It is common for more importance to be placed on medical opinion than on the opinions of those in frequent contact with the child. We have come across situations where a GP's report that expressed no concern was given more weight than the school's records which showed many injuries over a number of years. Disabled children may be in regular contact with foster carers

through their use of a short-term break service, yet these carers' views tend to be given less weight than those of GPs or consultants.

The child may be in contact with many people

It may be much harder to identify the perpetrator, because a disabled child may be in contact with a large number of people – respite foster carers, care workers, learning support assistants, therapists, escorts and drivers, as well as all the people that a non-disabled child may be in contact with. However, this difficulty in identifying a perpetrator should not inhibit action to safeguard a child, although in our experience it often does. Professionals involved in the child protection system, and the courts, require information about the context in which the child might be experiencing abuse in order to be able to take action to protect the child. For example, there may be indications of sexual abuse and a comprehensive look at the child's life may establish that he or she comes into close contact with getting on for twenty different people in the course of an average week. If the perpetrator is not known it may be difficult to identify who is presenting the risk. However the child's level of vulnerability is clearly established and requires protective planning and action. This may need to be creative to suit the needs and context of that particular child to ensure that as much as possible is done to effectively safeguard them.

It may not be safe for a child to disclose abuse

Investigation and action planning also need to take into account the fact that a disabled child may be dependent on an abuser for personal care, for communication assistance, and so on. They may be less able to tell someone about what is going on, because of this dependency. It is important to consider whether it is safe for the child to disclose abuse. Dependence on a carer for personal care, for medication and/or for essential treatment can mean that disclosure is almost impossible if the abuser is the carer, has a relationship (professional or personal) with the carer, or is in a position of power over the carer or care plan. If disclosure is seen as paramount before action can be taken, this in itself can be putting the child at risk. Different investigative methods may need to be pursued and possibly greater reliance placed on other evidence to inform risk assessment and the balance of probability.

The police are less likely to investigate abuse of a disabled child

When the police are contacted concerning a child protection investigation, the first question they ask is often "Will we be able to interview the child?" When a disabled child is involved, experience shows that the police are unlikely to feel that a criminal investigation or prosecution will be possible (this is also

discussed in Chapter 5). Nevertheless, a child protection investigation is not dependent on a criminal prosecution and indeed the police can still be involved in a child protection investigation even when it seems unlikely a prosecution will result. They can be involved as part of Strategy discussions or meetings and their advice and perspective can be particularly useful when the case is a complex one in terms of the information to be gathered. Police involvement is also useful because other agencies tend to take such investigations more seriously when they are involved.

As a criminal prosecution is less likely where a disabled child is involved, it is particularly important, in these cases, that the lack of a criminal prosecution does not mean that no child protection investigation is carried out or action taken to safeguard the child. It is also important that action to safeguard the child is still taken even when the social services authority is carrying out a single agency investigation. However, for social services teams, a case often has less status, and can lose momentum and priority if the police are not involved.

Social workers' attitudes and assumptions

Social workers may bring attitudes and assumptions to the investigation which get in the way of recognising abuse or acting on suspicions of abuse.

It can be difficult to believe that any child (disabled or non-disabled) is being abused and the evidence of many public inquiries tells us that perpetrators can be very convincing. When a disabled child is involved there are additional assumptions which can get in the way of taking action: "it doesn't happen to disabled children"; "the parent/carer is a saint"; "the child is so vulnerable nobody would do it" – these are all statements which we have heard. We also believe that in some situations, there is an underlying feeling that some children are so disabled that they don't suffer as much, or, for example, a child with learning disabilities doesn't really understand that they have been sexually abused. Inevitably, in many situations there are doubts about whether a child is in fact being abused. In these circumstances the social worker may be more willing to take the risk of not taking any action, because of an assumption (which may be subconscious) that the consequences of failing to prevent abuse are not so great for a disabled child as for a non-disabled child.

The importance of case conferences

If initial thresholds and risks concerning disabled children are not recognised cases will not go to conference, which can mean that key opportunities to protect disabled children are lost. This loss of opportunities does not just

relate to protecting an individual disabled child but also for gathering information which can help address disabled children's particular vulnerability to abuse.

If a case conference is not convened this means there is no independent analysis of the inquiries, no automatic forum for multidisciplinary consideration of risk, and no format for ongoing monitoring of concerns. The particular vulnerability of disabled children means that, even if a decision is taken not to register a child, other action may need to be taken to address concerns. A case conference offers the opportunity to do this and to set in place a system for reviewing action taken to safeguard the child. If a conference is not held all these opportunities are lost.

It is also important that, when a case does go to conference and a decision is taken not to place a child on the register, the reasons for non-registration are clearly stated. Moreover, a proper monitoring of cases of disabled children going to conference will produce valuable information to inform strategic planning, practice and training. It is particularly important, therefore, that information is recorded and collated about how many children subject to child protection procedures are disabled. The lack of this information, at both local and national level, makes it more difficult to identify inadequacies in current policies and practice or to take action to better protect disabled children from abuse.

Extra-familial abuse

In our experience, it is rare for case conferences to be held when the alleged abuser is a worker or a volunteer. In these situations, the person may be removed or the child may be removed from their care and the child is therefore considered to be no longer at risk. Nevertheless, in this kind of situation it is still important to consider how vulnerable the child is to future abuse and to address this issue through assessment and care planning.

Barriers in other parts of the child care system

Barriers within other parts of the child care system can undermine the potential for keeping disabled children safe. Families with disabled children are less likely to be referred to family support services such as Assessment Centres. This is partly because such services often feel they do not have the expertise to offer such support, particularly where a child has significant impairments. This can mean, however, that unless abuse or neglect of a disabled child reaches the threshold which warrants removal from their home, no other action or services are put in place to safeguard them. Even where such thresholds are reached, within a family or service setting, disabled

children may still be left in an abusive situation because of the lack of alternative care. There is a need for specialist foster carers for emergency placements for disabled children when cause for concern has been established. This would prevent children being left in abusive situations because there is nowhere to place them. It is also important that Family Assessment Centres, and other support services, provide a service for families with disabled children, as indeed they are required to do under the Disability Discrimination Act.

Case reviews (Part 8 reviews) are less likely to be carried out when a death or injury involves a disabled child

Case reviews are held when a child dies and abuse or neglect are known or suspected to be a factor. They are also held when a child sustains a potentially life threatening injury or serious and permanent impairment of health and development, or is subjected to particularly serious sexual abuse; and the case gives rise to concerns about inter-agency working to protect children. There are, at the time of writing, no national data regarding Part 8 reviews of cases concerning disabled children.

A situation which leads to the death or serious injury of a disabled child may be less likely to be identified as a child protection issue, particularly because – for the reasons we have discussed – an earlier child protection referral may not have been made. Disabled children may also be under-represented among case reviews because assumptions are sometimes made that the child's impairment made it difficult to identify child protection concerns so, for example, the child's communication difficulties are blamed for the failure of agencies to act rather than the failure of professionals to gather information.

The purpose of case reviews is for agencies to learn lessons about the way they work together to safeguard children, and to enable action to be taken to address any failings which emerge. We know, from the evidence summarised in Chapter 1 of this report, that disabled children are particularly vulnerable to abuse, and they are likely to experience abuse for longer than non-disabled children. If cases of abuse involving disabled children are unlikely to be referred through the child protection system, let alone to be the subject of Part 8 reviews, there are therefore significant missed opportunities to learn from past experiences and develop better practice in safeguarding disabled children.

Conclusion

“A useful question in assessment is: Would I consider that option if the child were not disabled?” (*Assessing Children in Need and their Families: practice guidance*. Department of Health, 2000b, p.80).

In our experience, there are barriers at all stages of child protection procedures, to disabled children being protected and safeguarded. Sometimes this is because organisations’ procedures and practices do not take into account the specific measures required in order to effectively protect disabled children, such as more time for initial assessments and Child Protection Conferences, or the need to seek specialist advice. Sometimes, however, it is the attitudes of professionals that get in the way. We still come across situations where child care professionals do not believe anyone would abuse a disabled child; where the child’s pain and distress is not recognised; where abusive practices are seen to be necessary because of the child’s impairment.

There is also little recognition of how painful it can be for child care professionals to acknowledge the abuse that a disabled child is experiencing. It is particularly distressing when attempts to safeguard a disabled child come up against seemingly insuperable barriers.

In order to protect disabled children, all those involved in child protection and in services for disabled children, should recognise:

- the specific contexts in which abuse of disabled children takes place
- the need to use existing child protection procedures and systems when there are concerns about a disabled child, and,
- at the same time the alterations which need to be made to existing procedures and systems in order to properly respond to the needs and experiences of disabled children.

Social workers need to apply to disabled children their expertise gained in child protection work with non-disabled children. In our experience, all too often they apply different assumptions and/or feel inhibited in exercising their judgement concerning risk. It is also important that the assessment process should identify who a child is dependent on and for what, thus identifying vulnerability. This is particularly important in the assessment of the needs of a disabled child.

Current initiatives such as the development of Children’s Trusts, the National Service Framework for Children, and plans outlined in *Every child matters*

offer opportunities for better safeguarding of disabled children. However, unless attention is paid to how child protection processes can better address the needs and circumstances of disabled children, the child protection system will not be able to adequately respond to disabled children's experiences of abuse.

Chapter 3 Child protection and disabled children at residential special schools

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Introduction

This chapter concerns disabled children placed at residential special schools. There are no comprehensive statistics on the numbers of disabled children in residential settings but all the available estimates indicate that the majority of disabled children who spend most of their childhood living away from home are in residential schools. Residential schools, and the local education and social services authorities which fund such placements, therefore have a key role to play in safeguarding disabled children.

We know very little about the experiences of disabled children at residential schools from their point of view. One research project which examined the experiences of 32 children in residential special schools found care practices which varied from “excellent – warm, committed and engaged” to “very dehumanising and [showing] very little respect [for the children concerned]” (Abbott et al., 2001, p.72). The majority of the children who were able to participate in interviews told of particular members of staff who assisted them in ways that they did not like but there was only one child who was happy with action which resulted from their complaint (ibid., p.65). Most of the children in these schools had little contact with the wider community during term-time and, although some of the schools were very good at enabling parents to maintain contact, some parents had great difficulty in keeping in close contact with their children.

Research, and public inquiries – such as the Waterhouse Inquiry (Waterhouse, 2000) and the Utting report (Utting, 1997) – illustrate both the vulnerability of children in residential settings and the importance of regulatory and inspection frameworks for keeping them safe. We also know that disabled children are much more vulnerable to abuse than non-disabled children (see

the summary of research in Chapter 1 of this report). It is therefore important that a framework is in place to protect disabled children placed at residential special schools and that it is effective in practice.

This chapter examines this issue by looking at the extent to which local education and social services authorities protect the welfare of disabled children placed at residential special schools. It then considers the responsibilities of schools to safeguard disabled children, and how child protection procedures should be applied if there are allegations of abuse of a child at a residential special school. Finally, the chapter looks at the role of the National Care Standards Commission (from April 2004 the Commission for Social Care Inspection) and at how standards and monitoring processes should help to protect disabled children from abuse.

Local authority responsibilities towards disabled children placed at residential schools

Social services authorities

Disabled children are defined as children “in need” within the terms of the Children Act 1989. They are entitled to an assessment of their needs and this should be carried out using the *Framework for the Assessment of Children in Need and their Families* (Department of Health/Department for Education and Employment/Home Office, 2000). The Government also issued *Practice Guidance* which gives specific advice on assessing the needs of disabled children and their families (Department of Health, 2000b). The Assessment Framework will become part of the new Integrated Children’s System (see: www.doh.gov.uk/integratedchildrenssystem) when it is introduced following the current pilots.

There are a number of barriers which get in the way of social services authorities using the Children Act to protect the welfare of disabled children who are placed at residential special schools. One difficulty is that “children in need” assessments and services (ie provided under Section 17 of the Children Act) often receive a lower priority than social services’ child protection responsibilities (under Section 47). Further difficulties arise associated with the circumstances in which residential school placements are usually made. These placements often come about because parents are unhappy with local education and support services. The decision-making process leading up to a residential school placement is commonly characterised by conflict between parent and authority, and sometimes conflict within the authority about who should fund such a placement (Abbott et al., 2000; 2001). In such situations, it can be difficult to focus on the child’s needs.

Furthermore, many children who are placed at residential special schools have complex needs and placement decisions may be made on the basis of placement availability rather than on identified need. Research into the decision-making processes which led to residential school placements found that the joint panels, which most education and social services departments used to make formal decisions, focused on whether an out-of-authority placement was necessary, not on whether a particular placement was suitable. As one senior manager said: “The report which goes to panel doesn’t deal with the school, it deals with why the placement is needed” (Abbott et al., 2001, p.45).

All these factors act as barriers to a comprehensive and holistic assessment of, and response to, the needs of disabled children and their families. This means that there are barriers to safeguarding children at the very start of each residential placement.

If a social services authority is involved in arranging a placement, the child has “looked after” status and there is a duty under the Children Act to draw up a care plan, to review it at regular intervals and to visit the child regularly. Authorities will also, in future, be required to appoint Independent Reviewing Officers who will chair reviews and have responsibility for monitoring care plans of looked after children. There is, however, inconsistency and confusion among social services authorities as to whether disabled children who they place at residential special schools should be treated as “looked after”.

When asked for a definitive view on whether boarding school placements should be funded without the child being treated as looked after, the Department of Health responded that “Our view is that children should not normally be maintained in schools by social services departments unless they are looked after. This will ensure that their progress is regularly reviewed and their welfare safeguarded” (Platt, 2001). This view was reiterated in the recent Local Authority Circular Guidance on accommodating children in need and their families (Department of Health, 2003). In spite of these statutory obligations, a survey of local authorities found that about one in four of social services departments do not treat the children they fund at residential schools as “looked after”. Among those who do recognise their obligations towards these children, many find it difficult to carry out regular reviews and there is little evidence of children’s own “wishes and feelings” being ascertained (Abbott et al., 2000; 2001).

This research found that few authorities “were consistently and constructively using Children Act regulations to protect the interests of disabled children at residential schools” (Abbott et al., 2001, p.99). Disabled children at residential

schools are potentially very isolated and their families often receive little support from social services authorities to maintain contact. The low priority accorded them by social services departments, and the lack of clarity about their looked after status, means that social workers often do not play much of a role in safeguarding their interests.

There is also a lack of clarity in government guidance concerning child protection (Department of Health/Home Office/Department for Education and Employment, 1999) as to the relationship and responsibilities of the social services authority for the area where the child is placed and that of the placing authority. The authority local to the child should be given the responsibility to lead and co-ordinate the investigation in partnership with the child's placing authority which should be in a position to understand the child's needs. The authority local to the child should be able to collate the information concerning any patterns of allegations in a particular establishment, and they have a duty to investigate patterns of allegations and concerns within the structure of a serious case review. Anecdotal evidence is that allegations of abuse within residential schools for disabled children seldom reach this level of inquiry. Schools are now required to report to the National Care Standards Commission any initiation and outcome of child protection enquiries but this still assumes the ability to identify an allegation as one concerning abuse. As Chapter 2 discusses, there are many barriers that get in the way of recognising a disabled child's experience of abuse.

Education authorities

Disabled children at residential special schools will have had their educational needs assessed by their local educational authority. When carrying out such assessments, the education authority is required to seek advice from the social services authority (Education (Special Educational Needs) (Consolidation) Regulations 2001, 7(1)). The Special Educational Needs Code of Practice stresses the importance of joint-working and providing an integrated service, stating that social services advice must be appended to the Statement (Department for Education and Skills, 2001, para. 6.29, 8.30). When a residential placement is made where the child will be away from home for a consecutive period of more than three months, the local education authority must inform the social services authority (Children Act 1989, Section 85). There is evidence, however, that this statutory obligation is commonly unfulfilled (Morris, 1998b, Abbott et al., 2000).

While the statementing process may involve an extensive assessment of the child's educational needs, this may miss essential aspects of social care needs. The inter-relationship between dimensions of need identified in the

Framework for the Assessment of Children in Need and their Families – the child’s developmental needs, parenting capacity, and family and environmental factors – is unlikely to be considered. This may result in a placement being made which fails to meet the holistic needs of the child. Although the *Special Educational Needs Code of Practice* stresses the importance of involving children in the assessment of their needs, research has found that the decision-making process is dominated by other issues and it is all too easy for children’s views to be lost (Abbott et al., 2001).

In every local education authority a senior officer should be responsible for co-ordinating action on child protection across the Authority. When child protection concerns arise in relation to an individual child, the education authority has a clear role to work in partnership with social services. The *Code of Practice* explicitly states that if there are concerns about a child’s welfare, or if the child is on a local authority child protection register, the local education and social services authorities should “consider jointly agreeing an arrangement for identifying a child’s needs and specifying and monitoring the provision to meet such needs” (Department for Education and Skills, 2001, para. 4.53). There has, as yet, been no monitoring as to whether these arrangements are made or whether they are effective in safeguarding children. Existing evidence about the barriers to joint working between education and social services authorities would tend to indicate cause for concern (Dyson et al., 1998).

The National Association of Independent Schools and Non-Maintained Special Schools has, together with the DfES, DoH and the Association of Directors of Social Services recommended a “model contract” which should be used when local education authorities place a child at an independent or non-maintained school (National Association of Independent Schools and Non-Maintained Special Schools, 2002). This contract contains clauses which reflect the child protection responsibilities placed on schools by the new national minimum standards for residential special schools (see below). It remains to be seen how many local education authorities will adopt the contract and how rigorously they will monitor their contracts with schools.

Although social services departments have, in recent years, been more likely to jointly fund residential school placements, the majority of placements are still solely funded by local education authorities (Abbott et al., 2000; 2001). In these circumstances, there may be minimum attention paid to the child’s general welfare. Social services departments consider that they do not have any responsibilities towards these children, even though most of the children concerned are “children in need” because they come under the Children Act’s definition of “disabled”. Although education authorities do have responsibility

to carry out an annual review of the child's Statement of special educational need, it is unlikely this will consider wider welfare issues. It is also common for reviews to be done merely by receiving a report from the school, and unusual for the views of the child to be sought (Abbott et al., 2001).

There are therefore a number of barriers to the effective action by social services and local education authorities in terms of safeguarding children placed out-of-authority. These children are geographically separated from those (whether parents or professionals) who can advocate on their behalf and there can be problems with identifying and naming concerns. Where the child has a communication impairment it may be particularly unlikely that there is someone who can identify a concern and help them to take forward a complaint. Their isolation from their placing authority and, for some children their parents, means that changes in behaviour and other indicators of abuse may not be noticed and questioned.

Responsibilities of schools

The responsibilities of residential special schools to safeguard children from abuse are clearly stated in the existing statutory framework. The Government issued specific guidance for education services in 1995 and this covered the responsibility of both schools and local education authorities (Department for Education and Employment, 1995). This circular is being updated and future guidance is also expected concerning the statutory requirement for schools to safeguard and promote the welfare of children under Section 175 of the Education Act 2002. However, at the time of writing the 1995 circular was still in effect, although it should be noted that it only applies "for information" to independent schools. The circular draws attention to the particular vulnerability of children with special educational needs and summarises schools' responsibilities as follows:

- All staff should be alert to signs of abuse and know to whom they should report any concerns or suspicions.
- All schools and colleges should have a designated member of staff responsible for co-ordinating action within the institution and liaising with other agencies, including the Area Child Protection Committee (ACPC).
- All schools and colleges should be aware of the child protection procedures established by the ACPC and, where appropriate, by the local education authority.
- All schools and colleges should have procedures (of which all staff should be aware) for handling suspected cases of abuse of pupils or students, including procedures to be followed if a member of staff is accused of abuse.

- Staff with designated responsibility for child protection should receive appropriate training.

(Department for Education and Employment, 1995).

These obligations are also reflected in the new National Minimum Standards to be inspected by the National Care Standards Commission (see below).

Government guidance on inter-agency working (Department of Health/Home Office/Department for Education and Employment, 1999) makes it clear that schools have a role and a responsibility to safeguard children from abuse, whether this is in the form of preventive action or involvement in child protection procedures and investigations. Again, these obligations are reflected in the new national minimum standards and potential difficulties in meeting these are discussed below.

The section in this guidance that deals specifically with the abuse of disabled children makes clear the importance of “ensuring that disabled children receive appropriate personal, health and social education (including sex education)”. As with non-disabled children, schools have the most important role to play in these measures which are an essential part of safeguarding children. Nevertheless, there is much evidence that personal, health and social education, and specifically sex education, for disabled children remains underdeveloped. Many disabled children receive no sex education and little in the way of education in how to keep themselves safe (see Westcott and Cross, 1996).

It is not clear whether local Area Child Protection Committees (ACPCs) are able to provide advice and support to residential special schools within their area, particularly in areas where there are a number of such schools. Undoubtedly, some ACPCs do not have the resources to assist with training, consultation and advice to independent and non-maintained schools. There may also be difficulties in finding high quality trainers and consultants who understand the particular child protection needs and responsibilities within residential special schools. The senior officials in each LEA who are responsible for child protection do not have a training brief explicitly within their job description and their responsibility to the independent and non-maintained sector is unclear. The role of residential special schools in terms of child protection and their relationship to the rest of the child protection structure are issues which remain under researched.

National Care Standards Commission/Commission for Social Care Inspection

Following the Care Standards Act 2000 there are now National Minimum

Standards for children's homes (Department of Health, 2002b) and residential special schools (Department of Health, 2002c) which will be inspected by the National Care Standards Commission (from April 2004, Commission for Social Care Inspection). A residential special school is treated as a children's home if it provides accommodation for any child for more than 295 days (42 weeks) of the year. Many residential special schools provide accommodation beyond the usual school terms and will therefore come under the national minimum standards and the regulations for children's homes.

Both sets of National Minimum Standards seek to promote the general welfare of children, as well as setting out specific requirements aimed at protecting them from abuse. Schools and children's homes are required, for example, to have policies on countering bullying, to monitor the quality of care, to undertake risk assessments and to train all staff (including temporary and agency staff) in the prevention and recognition of abuse. Staff are required to have a clear understanding of the local Area Child Protection Committee procedures, and schools and homes must have their own procedures and systems for protecting children from abuse and responding to abuse. The National Minimum Standards for residential special schools contains an Appendix which sets out school procedures for responding to allegations or suspicions of abuse (Department of Health, 2002c, Appendix 1).

The National Minimum Standards thus create clear requirements for residential special schools to safeguard children. However, the ability of schools to provide a safe environment for children and to protect them from abuse depends very heavily on staff being able and willing to identify child protection concerns and to act on them. In practice, the ability of staff to do this can be variable particularly in relatively closed environments. The Office for Standards in Education (Ofsted) has reported recent improvements in that most residential schools now have written child protection procedures. However, widespread concerns remain about the level of qualified care staff and fewer than a third of schools offer effective professional development programmes for unqualified care staff. A small number of schools do not deal well with complaints, have no independent listener for children, and have weak links with social workers (Office for Standards in Education, 2001).

Some new requirements will address these issues. By 2005 Heads of Care at residential special schools must have at least three years' experience at senior level in a child care setting and a relevant professional qualification. There should also be a minimum level of 80 per cent of care staff who have completed NVQ3 in caring for children and young people or an equivalent. New care staff from January 2004 must either have these or start working towards them within three months of starting employment.

The new National Minimum Standards specify the need for school staff to understand and conform with child protection procedures so there should be no further ambiguity over the reporting lines for allegations of abuse when an establishment serves a number of local authorities, nor ambiguity over who should investigate these. However, the relationship between the local ACPC for the school, the ACPC for the child and the National Care Standards Commission, and their respective roles and responsibilities remains unclear.

There is a requirement to notify the National Care Standards Commission, and placing authorities, about serious incidents (including allegations of abuse). This may enable the NCSC to collate and to pick up situations where there is reason for concern. Inspectors/commissioners will be inspecting against the same standards for the first time and work is ongoing to ensure consistency of inspection and methodology. There is an accredited qualification for inspectors/commissioners.

The power of the Commission varies between the different sectors. They have the power to take action to register/close children's homes and care homes which accommodate some under 18s. They are able to report to the Department for Education and Skills (DfES) their concerns and recommendations concerning residential special schools and further education colleges accommodating young people under 18. It will be for the DfES to determine action. Similarly the NCSC would only be able to advise placing authorities of its concerns, send them the report and it would be for the placing authority to determine action. In most cases, the DfES will not be able to instruct placing authorities, and could only advise them of the concerns and direct them to the reports.

The DfES has acknowledged that, although it has the power to intervene when schools are also registered as children's homes, it has sometimes proved difficult to do this even where there are serious concerns, particularly when an independent school is involved. New powers were taken under the Education Act 2002 to act more quickly to de-register independent schools where there are "very serious concerns for child welfare". It is also hoped that "improved liaison between officials at the DfES and the NCSC will help to identify when and how respective powers can be most effectively used" (Department of Education and Skills, 2003, p.37).

Inspection reports will be available and accessible on request from the NCSC local area office, the school or home itself or the authority/provider responsible for the home or school. Research has found that, when parents feel that local services cannot meet their child's needs, they receive little assistance from either education or social services professionals when trying

to find out whether a residential special school is suitable for their child. As one mother said, “I wanted...someone in authority to visit the schools to ask the questions that I felt unable to ask...I wanted the reassurance” (Abbott et al., 2001, p.46). Even though these children are spending a lot of time away from home, their parents still have a key role to play in protecting them. In these kinds of circumstances it is vital that information is easily available about how well a school does at looking after the children in their care.

Conclusion

The Care Standards Act provides an opportunity to develop an inspection regime which could enhance the quality of care provided in residential special schools and strengthen measures for safeguarding children from abuse. However, the legislative and regulatory framework laid down by the Children Act, to safeguard individual children, remains inadequately implemented. Disabled children are often placed at residential schools without a full assessment of their and their families’ needs. It is therefore unlikely that the child’s needs are fully matched with what a particular residential special school can provide. Moreover, placements are commonly made on the basis of availability. Parents receive little assistance from their local education or social services authority to keep in touch with their children and can find it difficult to access information concerning the quality of the school. Once a child is at a school, it can be hard for parents to question the quality of care and education. They may fear the consequences of their intervention which could place pressure on them as a family or result in another unwanted move for their child.

Ambiguity concerning the responsibilities of social services and local education authorities, and parents, means that it is unclear who has responsibility for monitoring children’s welfare at residential special schools. Children often lack an effective advocate. At the same time the credibility of any complaints they make themselves can be undermined and they receive little assistance as monitors of their own welfare. The work of the NCSC should mean that children and their families become more aware of their entitlement to safe and protective care. However, this remains dependent on adults’ abilities to communicate with children and to provide them with accessible information concerning their rights and the standards of care that they can expect.

The National Working Group on Child Protection and Disability felt that, in order to safeguard the welfare of children who were placed at residential special schools, residential special school placements should be placements of choice, not of last resort. When such placements are made, aims and

outcomes should be agreed by all concerned, including parents and children, and a key aim should be the inclusion and participation of children in their local communities. Placements themselves should include well-supported family contact plans. There should be robust reviewing systems and children should have access to independent visitors. There are also specific measures that could be taken to improve the current child protection system to better protect disabled children at residential special schools and these are included in the main recommendations of this report.

Chapter 4 Child protection practice with disabled children

Ruth Marchant and Marcus Page, Triangle

Triangle is a not-for-profit organisation with a strong children's rights value base, providing training and consultancy about child protection and consultation with disabled children (see end of chapter for contact details).

Introduction

This chapter is informed by many years of practice experience in the field of childhood disability and child protection. This experience has been gained in the statutory sector, in health and social services, and, for the past five years, as co-directors of Triangle, an organisation providing consultancy and training across the UK and internationally around issues relating to disabled children. These include issues of communication and consultation, safeguarding children and investigating abuse, and understanding and responding to challenging behaviour. Within Sussex we provide an outreach service for children with severely challenging behaviour who are at risk of exclusion from mainstream services. All of our work is informed by the consultative groups of disabled children and young people aged between five and 21 years convened by Triangle.

We shall argue that a rights based approach is essential to ensuring that disabled children receive protection equal to their non-disabled peers, and services that are suited to all of their needs.

Our early joint papers in this field described investigations and evidential interviews concerning children with complex needs, some of whom did not have speech and instead used augmentative forms of communication such as symbol based communication boards (Marchant and Page, 1992). Over the past decade, the level of awareness of the increased risks for disabled children has risen considerably and principles of good practice specifically relating to safeguarding disabled children are now included in government guidance (eg Department of Health/Home Office/Department for Education and Employment, 1999; Department of Health/Department for Education and Employment/Home Office, 2000; Department of Health, 2000b; Home Office et al., 2001).

Applying these principles in practice with children who are disabled, particularly where their impairment(s) affect their communication, can nevertheless present a significant challenge to practitioners. The risk remains that the rights of disabled children are not respected and that they continue to receive an unequal service. In this chapter we will reflect on vulnerability and also use examples of practice to illustrate how we endeavour to involve all children in decisions (including child protection interventions) that affect their lives.

Disabling barriers

It is necessary to place any discussion of safeguarding disabled children in the wider social context where attitudes towards impairment, and the social processes that arise from these, create barriers to inclusion and increase the vulnerability of disabled children. Awareness of these processes is essential for any work in this field if we are not to mirror them in our own practice. We have a strong belief that addressing the everyday abuses of the rights of disabled children (abuse with a small ‘a’) may play a significant role in reducing vulnerability to the forms of harm at the other end of the spectrum, when formal child protection interventions and criminal investigations will be required (abuse with a large ‘A’).

One of the biggest barriers faced by disabled children is that they are commonly seen as their impairment. Their age, gender, ethnicity, religion and culture that make up their unique individuality are subsumed to this one dimensional labelling. A study that looked at lives of disabled children within schools found “everything related to a child being explained by their impairment. Normality and difference were daily and institutionally reinforced by the use of social and physical space, and through both mainstream and segregated schooling ... Where peer relationships with non-disabled children developed, they were sometimes dominated by the assumption of need and care” (Watson and Priestley, 2000).

The discriminatory social process is insidious. This “oppression is not simply the abuse of power by one group over others; it is how the oppressed group is made to feel about it, and about themselves ... oppression is being forced to live a life according to someone else’s rules, within their reality and according to their assumptions” (Middleton, 1995). This internalised oppression can result in a class of compliant victims who see themselves as deserving of harmful or neglectful treatment (Westcott and Cross, 1996). Moreover, as practitioners we can too easily collude with standards of care for disabled children that we would not dream of accepting for other children. For example, despite our knowledge of the importance of secure attachments for children’s emotional and social development, young disabled children are still

receiving service provision that involves them sleeping in several different places a week.

The Waterhouse Inquiry (Waterhouse, 2000) drew attention to the additional risks of abuse faced by any child cared for away from home. The greater the child's impairment the greater the likelihood that they will be cared for in residential settings (Gordon et al., 2000). The re-analysis of the OPCS Disability Survey, originally conducted in 1988, found that the average age of admission for a child with "intellectual and behaviour disabilities" was 12.5 years; the average age of admission of a child with "multiple disabilities" was 9.1 years and for a child with "multiple and very extreme disabilities" the mean age at admission was 6.1 years. The ages of children admitted to such provision might be higher now but the trend, in our experience, is similar. Put very simply, the more disabled the child, the longer they are likely to live away from home. This increases both their exposure to risks and their likely vulnerability to those risks.

For disabled children from minority ethnic groups, disability discrimination is compounded by institutional racism. For example, a study of disabled children from 600 ethnic minority families found that half of the sample were reported to have seven or more unmet needs as opposed to the average of four found by an equivalent sample of white families (Chamba et al., 1997).

We need to understand the impact of dis-abling and discriminatory social processes on individual children and to recognise that the consequences of impairment are to a large extent mediated by resources, living situations and social relationships. For instance, the degree of dependency on others for personal care and other needs, rarely arises solely from a child's impairment. Dependency may also be created or compounded by how a child is perceived and treated, and by the accessibility of the places where they spend time. Awareness of this process may be important for decisions regarding neglect or emotional abuse:

Josh has cystic fibrosis and cerebral palsy. His consultant has prescribed two sessions of physiotherapy per day to reduce the frequency of chest infections. Instead Josh has been rationed to one physiotherapy session per week by his local health authority; he therefore frequently develops infections and only when hospitalised receives the number of sessions he needs.

Dependency may sometimes be created through benign motivations rather than neglect but the resulting "over-protection" is unhelpful to a child's development and can also create vulnerability.

Michael has a severe learning difficulty and a condition affecting his growth such that he is very small for his age. His mother continued to bathe him despite his ability to wash himself and attaining puberty. The denial of his sexual development and failure to teach appropriate boundaries contributed indirectly to his being temporarily excluded from school for sexual activity with another child.

Communication rights

Sally has cerebral palsy and has high physical dependency needs and no speech. She has good cognitive and language abilities and she uses a communication board. She attends further education and was staying in residential provision but felt she was being “driven mad” by carers who failed to inform her what they were going to do or ask her what she wished for – even as to the simplest things such as how she liked her tea. She felt forced into leaving the college.

This example highlights what we would regard as the most basic of children’s rights – to be communicated with and consulted about decisions affecting their life according to their age and understanding. This right is fully recognised in the United Nations Charter of Children’s Rights, the Children Act and most of the guidance concerning children from the Department of Health, the Department for Education and Skills, and the Home Office. We see it as vital that communication is understood as more than the use of speech and language and that all professionals’ working definition of communication includes the wide range of ways that children make their wishes and feelings known, including non-verbal and augmentative methods (Triangle/NSPCC, 2001). We also regard it as the right of children that adults take responsibility for initiating communication, for maintaining it and for repairing it when it “breaks down”.

With some disabled children this may require first obtaining an accurate assessment of their understanding and language abilities from their parent, teacher and speech and language therapist and then taking advice on communicating or working with the assistance of someone who knows the child well. Sadly, the biggest barrier to communication continues to be the attitudes and behaviour of professionals, and the failure to follow existing guidance. In one case we were involved in, concerning life threatening injuries to two young girls with severe cognitive impairments, it emerged that only two out of 60 health and social services professionals who had had contact with the children had taken responsibility for directly communicating with them and recording their words and non-verbal responses. The failure to respond to the children’s communication needs was not only an abuse of their rights but

had also helped to create their vulnerability to abuse with a capital 'A'.

However, we do not deny the challenges of upholding the right to communication for all children. Where a child is profoundly disabled it can be difficult to represent their views.

Liam was the subject of care proceedings and there was a dispute about parental contact. He has a number of different impairments that impact on his communication and his awareness of the world. His general physiological and neurological state is extremely variable. He has significant loss of vision and hearing; his understanding is limited; he has minimal intentional movement.

Liam's world is a very different world to that of most three-year-old boys and we cannot be sure how he experiences it, but we do know that he shows awareness of his surroundings and differentiates between certain situations and between certain people. It also seems that his physical state and indeed his physical health have at times been directly linked to his emotional well-being.

From direct observation and from information gained from his carers it was possible to be confident that Liam:

- Sometimes shows response to an adult voice by body movements
- Cries differentially due to different discomforts
- Occasionally smiles in response to adult attention
- Occasionally repeats own sound in response to adult attention
- Shows recognition of two familiar people by cessation of distress
- Will sometimes turn slightly towards a familiar voice
- Has at times tracked movements of people if they are talking
- Is more relaxed and more likely to respond to familiar adults
- Takes a long time (months of daily contact) to be "familiar" with someone new
- Looks away if cross or upset
- Enjoys noisy environments (eg steam trains, seaside arcades, animals and farms, music and singing)
- Appears to enjoy jacuzzi, massage, aromatherapy, and the sensory room.

Liam is completely dependent on carers who know him very well to interpret his behaviour and general state and to assign meaning to these. This is in line with the parenting needs of a very young baby, although his physical care needs are far more complex.

Liam's physical frailty and extreme vulnerability and the combination and extent of his impairments dictate higher standards of consistency and continuity of care than would be required by a non-disabled five-year-old. In the proceedings, we argued successfully that Liam should spend his time in a single setting.

In our view, a child such as Liam is not able to have 'wishes' in the sense of definite wants and desires. If he does he is certainly not able to communicate them to us in a way that we can understand. However Liam clearly has feelings, and an awareness of his surroundings, and is able to differentiate between settings and to respond differently to very familiar people. Therefore he needs security and predictability more than other children, which means familiar environments and known, competent carers. Indeed his life may depend on it.

Ascertaining how and what a child communicates is key to safeguarding them, whatever their level of impairment. We know that it is possible to recognise signs of distress or contentment in the youngest of infants and we need to ensure that our definitions of communication are inclusive and not discriminatory.

Conflicting rights and defensive practices

The rights of children are sometimes regarded as conflicting with the rights of carers or parents. We are concerned about a number of practices that are apparently designed to safeguard children but in our experience often do the opposite.

In our consultancy work we have seen all of the following in written guidance in services for disabled children:

- Never undertake intimate care alone
- Never take a child in your car
- Do not cuddle or offer comfort to children, or the most damning of all
- Never be alone with a child.

We have also been told of practices that have evolved to satisfy defensive institutional 'safety rules', for example, assisting children to use the toilet only

with the door open; surrounding a child with cushions before you sit them on your lap; having a child in a restraint harness rather than hold their hands.

One residential unit had been given a 'child protection' policy which stated that no adult should ever be alone with a child. Most of the time there were three staff caring for six children. Implementing the 'never be alone with a child' rule was proving impossible. If one child needed to use the toilet, then the rule was immediately broken unless all three staff went, because otherwise one of them would be alone with a child and the rule would be broken.

To complicate things further, a separate rule in the policy said that no child should be left unsupervised. To comply with both rules, all three staff and all six children would have to go whenever one child needed the toilet.

Such defensive and negatively framed policies can result from fear of 'false allegations' (and the myth that these are more common with disabled children). These and other blanket 'safety' strictures often occur after an institutional abuse investigation within an agency or in foster and adoptive care, and sometimes within birth families where a child's condition leads to high levels of external monitoring. The costs for children are high. Exposure to others' gaze works against a sense of ownership of one's body, an understanding of personal boundaries and self worth. Loss of affection ("we're not allowed to touch them anymore...") is also very costly for children. Staff who feel unsafe or mistrusted are not able to provide the secure and emotionally warm relationships that children need. The majority of workers would never abuse children yet are sometimes working in contexts where policy and procedures suggests otherwise.

The belief that the protection of children and the protection of staff are somehow conflicting aims must be confronted and challenged. Everyone is safer if expectations are clear and this makes it easier to detect those carers who are unsafe. Sound procedures and policies are in the interests of both children and staff, and therefore both groups should be involved in the development of definitions of good practice.

Triangle has a policy of actively supporting one to one care, including intimate care, and a very positive approach to physical interventions from cuddling through to restraint where a child needs this. We know that touch is important to emotional development and we can consult with children about what forms of physical comfort and restraint they prefer.

Peter, at the age of seven, had ADHD and was profoundly deaf. At the

time of our involvement he required frequent physical intervention from adults to keep him safe, but was finding the variation in adult approaches extremely difficult to cope with. Peter was very happy to cooperate in a discussion of how different approaches made him feel and assisted in the development of a consistent strategy by working with his family and school staff to produce a photograph based guide to safe ways to hold him and move him when necessary.

Clarity of expectations

Various institutional abuse investigations have highlighted apparent confusion within some services about what is acceptable practice and what is not. Some practices seem to have been sanctioned or at least tolerated within services for disabled children that would not be acceptable elsewhere, for example the use of aids (wheelchairs, toilet seats, walking equipment) to restrain children.

Children, staff and families need to be very clear about standards and expectations within services if children are to be safer. A charter of rights, codes of conduct and guidelines for good practice can set and communicate such standards, making clear the basic rights of all children using the service, and setting out what these rights mean in terms of day to day practice for staff.

Where a child presents behaviour that adults find challenging, clear expectations and a rights-based approach are crucial.

Shula is a child with severe visual impairment and physical disability, who experienced neglect and violence in her early years. She was at risk of exclusion from school and her latest foster placement was at risk of breakdown because she was “proving unmanageable”.

Shula’s more dangerous behaviours were understandably creating a great deal of concern. People were anxious about intervening in case they were seen to be assaulting or abusing Shula; or in case they themselves got hurt or injured. Some people advocated that all of Shula’s “bad behaviours” should be ignored, but found it impossible to do nothing when she was smashing her head against the floor or hitting out at others. Others viewed her behaviour as deliberate and calculating and that she could “stop if really told off”. In fact this was part of the written guidance for school staff.

The impact of neglect or trauma on early neurological development has been extensively studied over the last ten years. There is considerable evidence for

changes in brain function in association with abuse and neglect. When neglect and trauma occur together, the brain's capacity to modulate and regulate impulse and emotion can be seriously impaired. As is clear with Shula, a child's neurological and sensory development can also be massively damaged. We worked with the adults in Shula's life to explain the neuro-chemical reactions that went with Shula's experiences of abuse and neglect and to understand that these are likely to be immediately reactivated whenever there is a reminder of that trauma, whether or not the threat is real. This may explain some of Shula's screaming and self-injury, and some of what appeared to be an exaggerated threat response. Steps were taken to reduce and prevent incidents of challenging behaviour by:

- reorganising the environment to make it more predictable for Shula
- reorganising activities to be less stressful for Shula
- removing unnecessary triggers, or limiting them and planning for them.

Those involved with Shula needed clear guidelines for physical interventions. These were an important and necessary part of being with Shula and needed to be used very positively, but basic guidelines about using the least restrictive alternative and for the shortest possible time were needed. There was also a need for clarity when Shula was being restrained in her seat for other reasons than to prevent immediate risk of serious physical harm to self, others or environment.

Importantly a very structured approach to Shula's communication was recommended which proved to be a key factor in reducing her more challenging behaviours. We suggested that people always acknowledge her communication, show her respect and use clear language at an appropriate level to her understanding. This illustrates the need to work at different levels to ensure a child's safety, including changing attitudes and adult behaviour.

Child protection investigations

The guidance within *Working Together to Safeguard Children* (Department of Health/Home Office/Department for Education and Employment, 1999) and *Achieving Best Evidence* (Home Office et al., 2001) makes explicit reference to disabled children, especially those who have impairments that affect their communication, and asserts their equal right to protection and justice. Chapter 2 of this report has explored some of the barriers which can get in the way of using established child protection procedures to safeguard disabled children. In our work, we have tried to address these barriers by identifying the additional steps which need to be taken in order to deliver a disabled child's equal right to protection. Although, in many instances,

criminal proceedings are not achieved, this should not prevent abuse being acknowledged and action taken.

Sophia is seven years old and has a severe cognitive impairment and very little receptive and expressive language. She has recently acquired a few Makaton signs and uses some Spanish and some English words. Her parents were neglectful and emotionally abusive and she had been accommodated since the age of five with two different foster families. When her most recent foster carer asked her son to “fetch the tape” (they were fastening a parcel) Sophia became terrified and shouted “No tape! No tape!” and clasped her hand over her mouth. Sophia did not say any more about the reason for her fear. The foster carer reported her concern to social services that Sophia may have been subjected to having her mouth taped shut.

The investigation was jointly undertaken by a social worker and police officer who accepted that Sophia could not be interviewed in the usual way and that they would need to take advice about giving her the best opportunity to communicate. They spoke with the teacher from Sophia’s special school and arranged for a speech and language therapist to undertake a formal assessment of her language comprehension. Photographs and video were taken of the outside of the various places that Sophia had lived, including her family home, her foster homes and a short stay residential unit. They also took copies of the photographs of people in Sophia’s life story book, including family members and the foster families, and obtained photographs of staff in the unit and laminated these for use in their work with Sophia.

Sophia was visited in her foster home by the social worker and police officer and she also had a visit to the police interview suite to familiarise her with the room and cameras. The lead interviewer was supported in the interview by a bilingual teacher and by the speech and language therapist in the observation room. Through using very simple sentences with vocabulary known to Sophia, along with careful observation of Sophia’s differential response to the videos and the photographs, it was possible to ascertain that it was an uncle who created anxiety in Sophia’s mind and who was associated with “tape”. Other children in the family household were interviewed but had not witnessed the abuse. The man identified in this way was questioned by the police officer and made a “no comment” interview. It was decided that a prosecution would be unlikely to succeed but a case conference was held; a protection plan instigated in respect of children at risk; and play therapy was recommended for Sophia as well as specialist advice to the foster carers.

This investigation and interview was costly in time and did not lead to a

criminal prosecution. However, by validating Sophia's communication and the abusiveness of the experience it had considerable value. It also resulted in Sophia and other vulnerable children being protected from future contact with the man concerned. In addition to this, the care with which the investigation and interview had been undertaken also prevented harm being caused by unwarranted suspicion of innocent parties. Finally, a set of valuable communication resources were handed over to Sophia's foster family and school for her future use.

Conclusion

In this chapter we have sought to demonstrate that a rights based approach is key to the safeguarding of disabled children. In our view, these basic rights should extend to all children:

- the right to safety
- the right to communication
- the right to express one's feelings and have these taken into account.

Shifting the focus away from a 'deficit' model of disabled children's communication encourages the creation of communication-enabling environments and approaches. We need to broaden our definition of communication and take seriously our duty to seek advice from those who know the child best and those who have the relevant knowledge and skills to advise us. We need to know how we can help children to understand us and how we can better understand them.

Alongside this we have questioned the increasingly defensive approach of some services, proposing that children's rights do not conflict with adult's rights and that clear guidelines for practice protect both adults and children.

Finally we have shown how disabled children may be included in formal child protection processes with additional time and planning and multidisciplinary advice where needed.

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Chapter 5 The criminal justice system and disabled children

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Introduction

Adults and children who experience abuse look to the criminal justice system for redress. However, it is generally accepted and publicly acknowledged that victims of crime enter that process fearing the possibility of giving evidence in a criminal trial. Media and theatrical representations of witnesses being subjected to intrusive cross-examination by defence barristers may increase this fear. The stress of giving evidence has been known to cause confusion and distress on the part of the witness in criminal trials, which in turn may affect the quality of evidence the court receives.

A number of official inquiries have highlighted the particular difficulties that children, and other vulnerable witnesses, experience within the criminal justice system (for example, Utting, 1997; Social Services Inspectorate, 1993; Pigot, 1989). One such report, for example, concluded: "Concern remains, however, about significant numbers of persons who are considered by professionals to have perpetrated abuse but who will continue to elude conviction due to the nature of evidence required by the criminal justice system" (Social Services Inspectorate, 1993).

The prime objective of the criminal trial is to ensure the defendant receives a fair and public hearing. The jury must be satisfied "so that they are sure" that the accused is guilty of the offence as charged. Judges are required to direct juries in criminal trials to return a verdict of "not guilty" if they are not sure as to the guilt of the defendant.

In cases involving disabled children and young people as witnesses, the prosecution are bound by the same standard of proof as in any criminal trial.

The jury is expected to assess the evidence, and the witness's credibility as to truthfulness, by hearing their evidence and observing non-verbal demeanour.

Recent legislation and guidance are aimed at making it easier for those witnesses who are considered 'vulnerable' or 'intimidated' to give evidence in court. However, concerns remain that disabled children and young people experience barriers to justice before they ever get to court, that the new measures are not being implemented quickly enough, and that they do not address all the barriers within the criminal justice system.

Falling at the first hurdle

Our experiences indicate that many courts are denied the opportunity to even hear the evidence of disabled children and young people. Many of these cases do not reach court because those involved in investigating abuse allegations commonly assume that disabled children will not be able to give credible evidence in court.

One recent example of this concerns a 13-year-old boy with autistic spectrum disorder at a residential special school. On visits home, his carer noticed bruising to his body and a black eye, and on another occasion a fractured hand. The school had no record of any injuries and there was no explanation as to how he had sustained them. His carer believed he could have indicated how he had been hurt. However, because the child was not able to communicate verbally, a witness statement was never taken.

Another example concerns a nine-year-old child with severe learning disabilities and limited speech who attended a day school. A care worker had physically abused the child and another worker who had witnessed this reported it to her manager. The police were informed and interviewed members of staff but none of the children. The Crown Prosecution Service (CPS) did not proceed with the case.

Cases like this demonstrate some of the difficulties faced by disabled children and young people in accessing their rights to legal redress. Those responsible for acting on abuse allegations – from the police to the CPS – commonly fail to proceed with prosecutions involving disabled witnesses, often because of past experiences of the difficulties such witnesses face in having their testimony properly recognised within the existing criminal justice system.

New measures to assist vulnerable witnesses

The Youth Justice and Criminal Evidence Act 1999 introduced special

measures in relation to vulnerable and intimidated witnesses, including children. The special measures include:

- Section 23: Screens. Partitions can be provided to protect the witness from seeing the accused.
- Section 24: Live Link. The witness can give evidence at the actual time of the trial through a close-circuit television (CCTV) link to the courtroom.
- Section 25: Exclusion from the court. Members of the public and press (except for one named person) can be kept out of the courtroom in cases of sexual assault or intimidation.
- Section 26: Removal of wigs and gowns. Judges and barristers may remove their wigs and gowns if required or requested on behalf of the witness.
- Section 27: Video evidence-in-chief. The witness may be permitted to give their evidence-in-chief on videotape prior to the court case (this was already available to children).
- Section 28: Video cross-examination. This allows for the cross-examination of the witness by the defence to take place prior to the actual trial and be recorded on video. (This facility has yet to be implemented.)
- Section 29: Use of an intermediary. A person may be appointed by the court to act as an intermediary between the witness and the court to make clear to the witness questions put to them and enable the court to understand their responses.
- Section 30: Aids to communication. Aids to communication may be used to enable the witness to give best evidence, even if this is not verbal, for example by signs and symbols, communication boards, or electronic equipment.

The Home Office, (the then) Lord Chancellor's Department, Crown Prosecution Service, Department of Health and the National Assembly for Wales have jointly issued Guidance, *Achieving Best Evidence*, in order to assist those implementing the Youth Justice and Criminal Evidence Act 1999. This guidance addresses the needs of disabled children and young people (and other vulnerable groups) as witnesses within the criminal justice system. It is of crucial importance that these guidelines are fully implemented for disabled child witnesses if they are to achieve justice.

Achieving Best Evidence gives clear and concise instructions to address the needs of disabled children in order to ensure that the account of what they witnessed can be to the standard of criminal testimony. For example, the

Guidance requires that the services of specially trained individuals are engaged to assist in the interview process by either taking part in that process or advising the interviewers on how to proceed.

However, as we have already identified, it is prior to this stage that disabled children and young people meet their first hurdle within the criminal justice system. There are many instances where decisions are made not to interview the child/young person based on an ill-informed knowledge or understanding of their impairment and its impact. Often this is done without taking any professional advice on the impact of impairment or the ability of the individual concerned to communicate in some format other than verbal. The decision not to interview is generally based on the assumption that the witness's ability to give evidence within the criminal court setting is doubtful, or that the experience could prove not to be in the "best interests" of the witness.

One example concerns a 12-year-old girl with learning disabilities who alleged sexual abuse by a fellow pupil in a day school. No statement was taken by the police, who told the girl's mother "it wouldn't go anywhere". The investigating police officer also informed the mother that "it was not in the public interest to proceed with a video interview". The girl was spoken to informally at her home and gave a verbal statement. The police eventually informed the girl and her mother that the boy concerned had admitted "doing wrong". Despite the girl's assertion that she wanted to pursue the matter she was told, "sometimes it's better to try to forget what's happened".

This example illustrates how important it is that those carrying out investigations into allegations of abuse concerning disabled children and young people know about the measures that can be taken, under the new Achieving Best Evidence Guidance, to assist vulnerable witnesses to give evidence.

Implementing Achieving Best Evidence

As part of implementing Achieving Best Evidence, there are a number of initiatives to support witnesses who are disabled/vulnerable. Unfortunately, however, this support is variable throughout the United Kingdom, there have been delays in piloting initiatives, and there are important limitations to these developments.

Witness profiles

One such initiative is the City of Liverpool Investigations Support Unit. This unit will provide support for the disabled witness and also provide "witness profile" reports for the CPS, the defence and the court. These "witness

profiles” will include all information available on the witness’s impairment or vulnerability and how the judge, prosecution and defence barristers can enable them to give their best evidence. It is the intention of this unit, supported by the CPS, to disseminate this example of good practice throughout the UK.

The importance of these reports cannot be underestimated in supporting disabled children and young people in the criminal legal process. However, one absolutely crucial element of that process is currently not provided with independent information about the witness’s impairment, namely the jury.

The jury, the arbiters of the truth, remains unaware of the nature of a witness’s impairment and how this may impact on their ability to give evidence. The jury is expected to judge the truthfulness and credibility of the witness by hearing the evidence and interpreting his or her non-verbal cues. The jury at present is expected to form a judgement of the truth of a disabled witness’s testimony with no information whatsoever about their impairment and its effect on their communication, behaviour or body language. The CPS, the judge, the prosecution and the defence barrister will all have prior knowledge of the witness’s impairment. The jury, who will decide the outcome of the case, will judge that witness without being made aware of the full circumstances of their impairment and its impact on their ability to give evidence to the court. Remember that the prosecution have to prove their case beyond all reasonable doubt. If the defence can raise doubt in the jury’s mind the defendant is entitled to be acquitted.

The use of intermediaries

The use of intermediaries is intended to be piloted in a number of areas. The role of the intermediary is described within *Achieving Best Evidence* (para. 5.80) as: “Intermediaries may be used to help a witness to communicate who has difficulty understanding questions or framing evidence coherently. They will normally be a specialist, through training or unique knowledge of the witness, or have skills to overcome specific communication problems, such as those caused by deafness. Deaf witnesses can choose to rely on administrative arrangements for the provision in the court of interpreters for deaf people, or if it is more appropriate to their particular needs, to apply for an intermediary or communication aid under the Act’s provisions.”

The original date for the piloting of intermediaries was 24 July 2002. This date has unfortunately been slipping and, at the time of writing, the pilot will not commence until November 2003. This in turn will most likely delay the national introduction of the scheme. Judges can apply current powers to

instruct intermediaries in cases involving disabled witnesses. However, this is very much at the discretion of the individual judge concerned with the trial.

Conclusion

Disabled children and young people who experience abuse are entitled to justice. In order to be able to give a reliable account to the court, they must be supported by early assistance and the offer of all relevant “special measures” to ensure they are enabled to give their best evidence. They should also be empowered to make their own choices as to how matters proceed.

We need more research about young disabled people’s experiences of the criminal justice system. Such research should enable proper evaluation of our society’s ability to deliver justice on behalf of disabled children and young people who have been abused.

We end this chapter with a final example of a young disabled person experiencing barriers to accessing the criminal justice system. This concerns a young person who is deaf, uses British Sign Language and has learning disabilities. Following an allegation of sexual abuse, a joint social services and police interview was conducted under the *Memorandum of Good Practice* (prior to *Achieving Best Evidence*). The young person gave a clear statement alleging serious sexual assault by an adult employed to work with them. Both the social work practitioner and the police felt that the statement was a strong piece of evidence. However, the Crown Prosecution Service decided not to proceed with the case on the grounds that this was not in the young person’s best interests. The young person was considerably distressed by the decision. Had it been possible for the jury to receive independent information as to the young person’s impairment, the CPS may well have made a different decision. Examples such as this happen too often. Urgent action is needed to deliver to disabled children and young people their full entitlements to legal redress under the criminal justice system.

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