Contemporary Themes

Legal aspects of child injury or neglect

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Doctors concerned with children who have received non-accidental injury or who have been neglected or deprived should have a working knowledge of the social and legal procedures that may be necessary. The casualty officer or the resident needs to know something about the legal position when he wishes to admit a potential "battered" child to hospital, and the consultant must be aware of his responsibilities to the child, the parents, the social services, and the law.

The legal provisions and regulations described here apply only to England and Wales and are intended to give general guidance.

Place of safety order

If, after investigation and consultation, there is reason to believe that the child's "proper development is being avoidably impaired or neglected or his health is being avoidably impaired or neglected or he is being ill-treated," or that any of the other conditions in section 1 (2) of the Children and Young Persons Act 1969 are fulfilled, an application may be made to a magistrate (justice of the peace) for a place of safety order. Applications are usually made by the local authority or National Society for the Prevention of Cruelty to Children (NSPCC) and must be made in person and given on oath, but in an emergency any individual may apply to a magistrate for a place of safety order or ask the local authority (social services), the NSPCC, or the police to investigate. The police have special powers that enable them to keep a child in a place of safety for up to eight days without the authority of a magistrate. An application may be made at any hour of day or night; most social services departments have a telephone number by which a duty social worker can be called who will be able to contact a magistrate. Normally the magistrate does not require written evidence, but he is entitled to ask for it. If the NSPCC or the police take out a place of safety order they must promptly inform the local authority social services department because the authority has responsibility for any subsequent order made by a juvenile court.

A place of safety order should be requested only when there is a possibility that the child will be exposed to further injury by remaining at home, and attempts to persuade the parents to have the child admitted to hospital voluntarily have failed. A place of safety order can also be used to prevent the removal of the child from hospital against medical advice. In most instances admission to hospital may be arranged on a voluntary basis, and the parents are often only too glad to have the child removed, temporarily at least, from their care. A place of safety order is *not* a necessary preliminary to the other legal procedures discussed below. For example, care proceedings can be started while leaving the child at home if the circumstances are appropriate and there is no risk of serious injury. The place of safety is usually a hospital ward but may be a local authority residential home or a foster home. The maximum duration of the order is 28 days, during which period the child cannot be removed by the parents from the place of safety. Parents should, however, be advised that they can seek legal advice.

While the place of safety order is in force the authorised body (the local authority, the NSPCC, or the police) must investigate with a view to bringing care or control proceedings before a juvenile court under section 1 (2) of the Children and Young Persons Act 1969 already referred to; in this context the relevant conditions include being a member of the same household as another child who is or has been the subject of care proceedings for ill-treatment or neglect, and also the presence in the household of anyone who has been convicted of certain offences under schedule 1 of the Children and Young Persons Act 1933. It must also be shown that the child is in need of care or control, which he is unlikely to receive unless the court makes an order. This will require information on the home circumstances and also, in the case of physical injury or emotional disturbance, a statement by the consultant or any other doctor concerned with the case, who has examined the child, and who will be expected to give evidence to the juvenile court, if a care order is subsequently requested. Before the expiry of the place of safety order the evidence and information are examined and discussed, usually at a case conference, and it can then be decided:

(1) that proceedings will not be taken through the juvenile court. This usually means that on further consideration the evidence appears to be insufficient, and that it is in the interests of the child that informal action may be more appropriate; *or*

(2) what evidence shall be presented to the juvenile court and what recommendations shall be made; *or*

(3) that more time is required to collect evidence before taking the case before the juvenile court for a final hearing, and that an application will be made to the court for an interim care order on the basis of the evidence available.

Interim care order

An interim care order has the same legal force as a care order (see below), but with a maximum duration of 28 days. Theoretically, there is no limit to the number of interim care orders that can be granted, but the juvenile court would not expect an unreasonable delay in collecting evidence.

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Juvenile court hearing

Juvenile courts deal only with children under the age of 17 years. The hearing is fairly informal. The parents and the child must attend, also the social services worker or the NSPCC officer who is providing evidence. Anyone who has previously submitted a written statement may be called to give evidence. Normally the consultant who has examined the child should attend; he should confine his evidence to facts and findings, including a description of any non-accidental injuries in addition to any relevant observations on the growth and development of the child. He may, however, be asked to give his opinion about the history of the child or his siblings if this is relevant. He may also be questioned by the parents or their legal representative. It is not always understood that the decision of the magistrates about whether the case has been proved or not is based on the *oral* evidence, supported if necessary by photographs or radiographs. Professional witnesses often assume that the magistrates will have read their report before the hearing; this is not so. These reports are read by the magistrates only if they find the case proved, and are used to help them to come to a decision about the disposal of the case. The local authority normally makes recommendations to the court but the magistrates will, of course, make their own decisions.

The court may decide:

(1) To dismiss the case on the grounds that it has not been proved.

(2) To find the case proved. The order that a court may then make may be:

(a) an order requiring the parents or guardian to enter into a formal agreement to take proper care of the child and exercise proper control over him or her; this rarely applies to cases of neglect or non-accidental injury; *or*

(b) a supervision order; *or*

(c) a care order; *or*

(d) a hospital order under part V of the Mental Health Act, 1959; or a guardianship order under the same Act, giving guardianship to the local health authority, or any other person, including a relative who is concerned with the child. Both these normally apply to older children with severe mental illness or subnormality.

Care order

A care order can last until the child is 18 years old and gives full parental control to the local authority. Exceptionally, a care order lasts until the age of 19 if it was made at the age of 16 years or over, or it can be extended to 19 if the juvenile is accommodated in a community home or youth treatment centre and an extension is thought to be in his interest because of his mental condition or behaviour. The child may be placed in a local authority residential home or with foster parents. The parents are normally encouraged to visit the child if this is consistent with the child's welfare and planned future.

A care order can be terminated by the juvenile court on the application of the local authority or the parents. Where an application is made by the parents and is opposed by the local authority, any doctor who has been concerned with the case may be required to attend the court and give evidence. The court may decide that the child can be returned to his parents without any further control and the care order discharged with or without substitution of a supervision order. At any time during the care order the local authority can arrange for the child to return home for a trial period but still supervised by the social services department under the care order. This important decision should be made only after consultation with all those concerned. During this trial period responsibility is shared between the parents and the local authority. Supervision must necessarily be extremely close. If the trial period is successful the local authority may apply for the discharge of the care order but may ask for a supervision order instead. If unsuccessful—that is, there is further evidence of parental ill-treatment, neglect, or lack of concern—the local authority can again remove the child from the parents under the existing care order.

If the child becomes ill while the subject of a care order the parents should be informed. Though the local authority has powers to give permission for the child to have an anaesthetic or to undergo an operation, every effort should be made to obtain the parents' consent to the recommended treatment, but in an emergency where the parents cannot be found it is sufficient for a representative of the local authority to give consent.

In the event of refusal by the parents to give consent to an operation that has been agreed to by the local authority, the right course would be to obtain a supporting statement from a colleague and to proceed with the operation if it is an emergency, and to obtain legal advice if not an emergency, since this is a somewhat difficult legal area.

If an application for a care order should fail, or an established care order is terminated by a juvenile court on the application of a parent, but the local authority or voluntary organisation continues to have a serious concern for the child's welfare, they can appeal to the crown court.

Supervision order

Under a supervision order the child is allowed to return home for a specified period with a maximum of three years, and the supervising officer (from the social services department) has a statutory duty to "advise, assist, and befriend" the child and to help the parents with any social or other difficulties. Ideally, the *same* officer should carry out the supervision during the duration of the order. If at any stage the supervisor finds that the child is suffering by remaining at home the case may be brought back to the juvenile court with an application for a care order.

Voluntary admission to care and the duty of the local authority to assume care of children (Children Act 1948)

Under Section 1 of this Act, any child under 17 years may be received into care if the parents or guardians cannot be found or are temporarily or permanently unable to care for the child. If the parents are accessible they must give their consent to the child going into care: in cases of sudden parental illness or social difficulty, as may occur particularly in single-parent families, the request for the child to go into care may come from the parent or parents.

Such a voluntary admission into care is therefore an agreement between parents and local authority and can be terminated at any time by either party. Thus there is only limited protection of the child, and this type of care is generally unsuitable for cases of non-accidental injury or neglect.

Transfer of parental rights to the local authority

The assumption of parental rights may be considered by the local authority under section 2 of the Children Act 1948 (replaced by section 57 of the Children Act 1975) on a child who is already in their care under section 1 of the 1948 Act by a resolution taken out by the social services department of the local authority; this does not have to go before a juvenile court unless there is an objection by the parents (see below). Such action is normally taken where the parents are dead and there is no guardian or where the parents have abandoned the child or suffer from some permanent disability, including mental disease, which makes them incapable of caring for the child. In some instances it is sufficient that their mode of life makes them unfit to have care of the child. In others it may be con-

sidered that the parents have consistently failed, without reasonable cause, to discharge their obligations to the extent as to be unfit to care for the child. These considerations also apply to a person who is subject to a resolution based on the grounds given above and who is, or is likely to become, a member of the household containing the child and his other parent.

When a child has been in the care of the local authority under section 1 (or partly with the local authority and partly with a voluntary organisation) for a period of three years, this constitutes grounds for the local authority assuming parental rights (Children Act 1975). Parents must be informed of their right to object, and any objection must be made within one month after receiving the notice. If an objection is made by the parents the resolution will lapse within 14 days unless the local authority applies to a juvenile court. A resolution under section 2 provides the local authority with similar powers to that of a care order and lasts until the age of 18 years. Both the local authority and the parents have a right of appeal to the crown court against confirmation or termination of the resolution by a juvenile court.

The police

It is the duty of any citizen to inform the police if he thinks that a child has received non-accidental physical injury; the police will then investigate. Whether they subsequently decide to prosecute is their decision, though, before deciding to do so, it is desirable that they should consult with other agencies concerned, preferably at a case conference. In most areas the police are invited to all case conferences on suspected or proved non-accidental injury.

There are difficulties for the doctor who is required to give to the police information which is supposedly confidential. It is difficult to retain the confidence of the parents with whom he is working, and it is not helpful for it to be thought that all suspected cases of non-accidental injury admitted to a particular hospital are automatically reported to the police. In practice, the consultant must decide whether the injury is accidental or non-accidental and whether he thinks there are sufficient grounds for informing the police. Where a child has received severe or potentially fatal injuries it is obvious that the police must be told. It is the duty of the police representative at a case conference (as it is also the duty of those representing other agencies) to take back to his superior officer the opinion of the case conference, but the corporate opinion of the case conference is not binding on the police, or indeed on any agency attending it.

Each area needs to evolve its own method of working, with procedures best calculated to safeguard the child. What has become obvious is that insistence on professional dignity, and action by one group without reference to others concerned, whether by doctors, social workers, the police, or the legal profession, may result in a disastrously wrong decision that may cost the life of a child.

It cannot be overemphasised that joint consultation at all stages between the various bodies concerned is of enormous importance and that the procedures agreed should be clearly defined and understood by all who have to carry them out.

Further reading

Clarke Hall and Morrison's Law relating to Children and Young Persons, ed J Jackson, M Booth, and B Hains, 9th edn. London, Butterworth, 1977.

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Letter from . . . Chicago

Coming of the stork

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At this time the American public remains preoccupied with the progressive cachexia of the dollar, the malignant hypertrophy of the cost of living, the disappearing energy disease, and the dark prospects of an involutional recession. The President, accompanied by his hand-picked Georgian house staff, conducts frequent economic grand rounds, dispensing smiles and reassurance and placebo therapy, periodically urging the patient to heal himself and get out of bed. But, despite vigorous exhortations, the ungrateful patient refuses to get better, petulantly complaining about the failure of effective leadership and the lack of a consistent political philosophy, and criticising Mr Carter for being neither liberal nor conservative but drifting through the political fog like a flying Dutchman.[1] And, with disgruntled Democrats throughout the States threatening to draft Senator Kennedy, it has become clear that the country wants solutions and not sermons, action and not rhetoric. So it was no surprise when—the fog momentarily lifting in Washington—a stork carrying a parcel suddenly appeared in the June sunshine, circled several times over the White House, fluttered his wings ostentatiously, stopped for a moment to have his photograph taken, promptly deposited his burden in the Presidential oval office, and immediately flew off to tell all and sundry that decisive action had been taken and that the long awaited baby had at last arrived.

With Mr Califano acting as wet nurse, the new national health baby was immediately whisked over to the Capitol building. It was hoped that Senator Russell Long, the leader of a powerful centre Democratic block, would become godfather, buy the traditional silver cup, and make sure that the infant was brought up in the right religion. It was also hoped that Uncle Kennedy

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