Articles

CHILD PROTECTION RISK ASSESSMENT: AN INDEPENDENT SOCIAL WORK EXPERT WITNESS PERSPECTIVE

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Sadly, significant numbers of babies and infants each year in the UK sustain serious injuries the cause of which are considered to be suspicious by the police, other child protection professionals and the courts. Usually in such cases emergency protective action is taken by social services with the babies/infants being separated from their primary carers whilst investigations proceed. Such investigations and consequent separations between parents and babies/infants are often protracted, over periods of several months. Following lengthy care proceedings, having heard complex medical evidence, the court may rule on the balance of probabilities that one or more parents/carers was responsible for causing the injuries. In many cases, following such 'findings of fact' the parents/carers continue to maintain that this was not so, and that there must be an innocent explanation for the injuries. Professionals often construe such reactions as parental 'denial', and may consider this to be a significant risk factor in itself.

It is important to note that the notion of 'denial' is often over-simplified in child protection practice (at worse 'denial' is construed as evidence of guilt, and/or continuing high-risk). This is not acceptable in risk-assessment practice of any degree of sophistication. I have written in some detail about the complexities of 'denial' in child protection practice (P Dale, R Green and R Fellows, Child Protection Assessment Following Serious Injuries to Infants: Fine Judgments (John Wiley and Sons, 2005), at pp 59–62). If a person is responsible for a reprehensible act against a child, there are a number of psychosocial reasons why direct responsibility may not be taken. For example, confessions involve public shaming and are likely to lead to criminal conviction and imprisonment. Loss of employment, financial ruin – and consequent loss of family and home often follows. For various reasons some people may have impaired memory for the abusive act and genuinely (but erroneously) proclaim their innocence. Other cases involve 'false-positive' judicial errors where a parent is convicted, maintains their innocence, and is subsequently acquitted on appeal on the basis of new evidence.

In this complex area of risk assessment parents who continue to 'deny' do not necessarily represent a continuing high level of risk to children. A parent who has committed a reprehensible act may indeed have an underlying inherent compulsive psychopathic motivation to repeat the offence if provided with the opportunity. This is the rare high serious risk scenario. Other parents may have a tendency towards disinhibited anger that may be resolved with counselling/therapeutic help. On the other hand, many parents who have acted 'out of character' at times of stress/depression and have committed a reprehensible act acquire a compelling determination never to place themselves in any such situation again.

Following the 'finding of fact, further assessments take place directed by the court with regard to the future placement of the baby/infant. Theses are most often undertaken by psychiatrists, psychologists
and independent social workers. The focus is whether it can be considered safe for the baby/infant (and often siblings) to be reunified to the parents; if not, whether or not a kinship placement is most appropriate, or whether the baby/infant should be placed for adoption with strangers. This latter outcome has been noted to be draconian: ‘What other area of forensic activity, since the abolition of the death penalty, empowers the state to intervene so drastically in the family life of the private individual?’ (Coleridge J ‘Another Big Bang’ [2003] Fam Law 799).

This article, based on practice and research experience with such cases in England and Northern Ireland over 35 years, addresses these risk, parenting and kinship assessments from an independent social work perspective and outlines the factors to be taken into account in the process of risk analysis. Practice and research based guidelines are presented to inform courts and statutory social work agencies about the level and nature of continuing risks in specific cases. The features of cases where reunification can be considered to be the appropriate outcome for the child are outlined as well as the features of cases where it could not be considered safe for the child to return home.

It is vital that family courts are fully informed through expert assessments regarding: (1) the viability of reunification; (2) ‘potential for change’ in the parents; (3) the opportunity for kinship placements; (4) the prospects for positive direct post-adoption contact (if the child is to be adopted); and (5) the overall ‘reasonableness’ of the local authority care plan and its actions (and inactions) during the process (and prior to) the care proceedings. Such a focus is crucial with regard to compliance with the European Convention on Human Rights particularly the right to family life and the right to a fair trial.

INDEPENDENT SOCIAL WORK RISK ASSESSMENT: THREE CASE EXAMPLES

Case One
Two parents, although affected by poverty, adverse personal childhood experiences and some difficulties in their own relationship, had coped well with their first three children. At the age of 9 weeks their fourth child became unwell and the parents sought help from several GPs before, dissatisfied with local medical advice, taking the baby to hospital. The baby was found to have subdural haemorrhages requiring immediate surgery. Care proceedings were initiated. The three older children remained at home throughout but the injured baby was eventually subject to compulsory adoption. The parents disputed the medical evidence but the court found that one of the parents (but not which) had caused the injury non-accidentally.

Disconcertingly, three subsequent babies born to the parents were removed from their care at birth and adopted with no independent assessment (the court relied on the evidence of the local authority and the children’s guardian that there had been no change in the parents’ ‘denial’). Notwithstanding this the three older children remained settled in their parents’ care (bemused by the disappearance of four successive baby siblings). The mother became pregnant for the eighth time and at last an independent social work risk assessment was commissioned. The outcome of this was a recommendation by the independent social worker that the baby be allowed to remain in the care of the parents subject to a specific risk management and family support programme. This was accepted by all parties and there was no need for a contested final hearing. The costs saved in avoiding the need for a contested final hearing are unknown.

Case Two
An 8-week-old baby, the first child of both parents, became increasingly unwell. The parents sought help from their GP and the local hospital but were wrongly reassured that the baby was not ill. On their own initiative the parents took the baby to another hospital in a neighbouring area where a life threatening brain injury requiring immediate surgery was diagnosed. The baby survived but was left with a serious permanent disability. The parents were of the view that the injury must have been caused by a traumatic assisted birth procedure but the court
found that the injury was non-accidental and that one (but not which) of the two parents was responsible. An independent social work assessment was commissioned during which time the parents were enabled to have contact with the baby for around 30 hours per week. The recommendation of the independent social work risk assessment was that the baby be reunified with the parents in the context of a specific risk management and family support programme. This recommendation was accepted by all parties and there was no need for a contested final hearing. The costs saved in avoiding the need for a contested final hearing are unknown.

Case Three
A baby was born to two young people in a tenuous relationship. Mother and baby lived with a relative, and father had regular contact with the baby at the relative’s home. At the age of four weeks the baby was noted by the relative (on returning home from work) to be unwell, and the relative took the baby and the mother immediately to their local hospital. Prior to the relative returning home, the parents had separately looked after the baby in the relative’s home. At the hospital the baby was found to be suffering from a life threatening skull fracture and brain injuries.

The local authority obtained an emergency protection order and on eventual discharge from hospital placed the baby in foster care. The court found that the injuries were non-accidental and that they had been inflicted by one parent (but not which). Both parents adamantly denied that each was responsible without implicating the other. The local authority quickly formed an opinion that the baby should be placed for compulsory adoption. An independent social work risk assessment was commissioned. The recommendation of the independent social work risk assessment was that the baby should be placed in the primary care of the relative (in whose home the baby had previously been living). This was opposed by the local authority and the children’s guardian, both of these parties continuing to support compulsory adoption. There was
a contested final hearing, the outcome of which was that the baby was placed with the relative on a supervision order. The independent social work risk assessment played a substantial role in enabling this baby to remain cared for within the natural family.

**ASSESSMENT SHOULD PROVIDE A THERAPEUTIC OPPORTUNITY**

For over two decades it has been a fundamental expectation of government policy that child protection assessments should provide a therapeutic opportunity for parents/families (Department of Health, Protecting Children: A Guide for Social Workers Undertaking a Comprehensive Assessment (HMSO, 1988); Dept of Health, Framework for the Assessment of Children in Need and their Families (TSO, 2000)). Over the same period of time, there has been a steady decline in the interest and ability of local authority social workers to utilise a supportive and therapeutic approach with families. Research into parent/family perceptions of child protection services illustrates widespread and strong feelings about what is experienced as an anti-therapeutic style of local authority interventions (P Freeman and J Hunt, Parental Perspectives on Care proceedings (TSO, 1999); P Dale, ‘Like a fish in a bowl: parents’ perceptions of child protection services’, [2004] Child Abuse Review, at pp 137–157). Resources for therapeutic work with families have diminished (note the disappearance of many local family centres), and the culture of local authority social work has evolved from family support into defensive practice characterised by ‘child rescue’ and monitoring/control (L M Fox Harding, Perspectives in Child Care Policy (Pearson, 2nd edn, 1997); H. Laming, The Protection of Children in England: A Progress Report (TSO, 2009)).

It might be considered (to counterbalance this negative trend in local authority social work) that children’s guardians could provide a therapeutically-inclined assessment function. However, the role of children’s guardian has changed substantially since the early years of the self-employed independent guardian ad litem service (established in 1984), and is now one that is predominantly focused on case management and commissioning assessments by other professionals. Most significantly, Cafcass (established in 2001 to manage the Guardian service) is now under extreme financial constraints and Ofsted reports indicate that the quality of the children’s guardian service has suffered significant decline. In response to both of these factors Cafcass has developed a deeply unpopular ‘box ticking’ monitoring control of children’s guardian’s which is antithetical to the original envisaged independent role. The reality is that children’s guardians often now do not have continuity of involvement, nor the time or family therapeutic expertise to undertake the independent social work assessment (of families) or scrutiny (of local authority practice) that is required to ensure fair process for parents and children in the complex care proceedings arena.

Assessments by psychiatrists and psychologists in complex care proceedings cases are often restricted to ‘snapshot’ perspectives informed by one or perhaps two interviews/observations. Whilst such views, including mental state examinations (psychiatrists) and cognitive evaluations (psychologists) can, and do, provide vital assessment information; by definition from such brief interventions they are not well placed to report on potential for change in response to a therapeutically-oriented assessment intervention. One exception to this was residential assessments, but due to disadvantageous restrictions in legal aid funding, these are now much less readably available.

It is in this context in recent years (at least over the past decade) that experienced independent social work expert witnesses have undertaken a range of community based risk and parenting assessments in complex care proceedings cases. These have been commissioned via solicitors (representing parents or the guardian) by local authorities; and often jointly across all parties (the costs being divided proportionately between the Legal Services Commission and the local authority concerned). Many such independent social workers have extensive experience in child protection practice and therapeutic work, and have published descriptions and evaluations of their practice (eg P Dale and R Fellows, ‘Independent child protection

RISK ANALYSIS

Recommendations for or against reunification in cases of serious injuries to infants require a balancing act of the significance of risk factors; the degree to which risk factors can be ameliorated; the identification of family strengths; and the availability of appropriate resources for a specific risk-management strategy. Generally, acceptance of full responsibility and provision of a convincing explanation provides a firmer basis for risk prediction than circumstances in which acceptance of responsibility is absent or partial and an understanding of the dynamics of the incidents of concern remains incomplete. Assessments of the likelihood of further harm can be made more confidently (but never with 100% accuracy) in the former than the latter scenario. In cases of serious injuries to infants with discrepant parent/carer explanations and/or 'uncertain perpetrators' key factors affecting the level of future risk include:

- the nature of the original harm;
- parental characteristics;
- child characteristics;
- parents’ relationship;
- the quality of the parent-child relationship(s);
- levels and nature of family and social stresses;
- availability of extended family and professional support;
- parents’ ability and willingness to utilise help and support in relation to identified difficulties or challenges.

The Nature of the Original Harm:

One crucial factor relating to the potential for successful reunification is the question of motive/intent in relation to the injuries. Consider three scenarios on an hypothetical intent versus no-intent continuum:

- To what extent do the injuries reflect an innate psychopathological/sadistic susceptibility or motivation on the part of a parent/carer to cause repeated serious harm to a child (if given the chance)?
- To what extent do injuries stem from an inherent or entrenched parental/carer condition resulting in regular disinhibited aggressive behaviour without specific malintent regarding the child?
- Or, to what extent are the injuries a reflection of untypical momentary losses of control or recklessness (and a transient susceptibility to this) during periods of intense frustration when coping resources were overwhelmed?

Successful reunification is most likely (and more quickly) in cases where injuries have occurred in the third of these scenarios when the psychosocial circumstances prevalent at the time of the injuries have changed. I would exclude reunification as ever being appropriate in the first (sadistic) scenario (such situations are very high risk – but fortunately also very rare). In the second scenario reunification may be possible (but less likely than the third scenario) if there has been demonstrable sustained positive change in relation to the contributory underlying disinhibiting personality factors (eg mental illness, personality disorder, uncontrolled epilepsy, drug/alcohol addiction). A history of serious injuries occurring on several occasions is likely to constitute a greater continuing risk factor than circumstances in which there was one serious injury. A history of several serious injuries requires very careful analysis of the personality factors relating to the possible perpetrators (in addition to the psychosocial context at the time of the injuries).

Help-Seeking/Help-Avoiding

This is also a significant issue in relation to future risk assessments. To what extent were the parents/carers aware that the infant was seriously harmed and deliberately avoided seeking help? Such deliberate avoidance of seeking medical help in some cases can make a significant contribution to the infant not surviving or becoming permanently disabled from his/her injuries. In contrast, some parents
who have caused harm do seek medical help immediately once they are aware that the harm has occurred (or following a very short delay). Delayed help-seeking with knowledge that the infant is significantly harmed is suggestive of likely on-going higher risk personality characteristics in a parent (in contrast to a parent who seeks help immediately).

Parental Characteristics
Higher-level risk factors relating to parental characteristics include: enduring (or recurring) serious psychiatric conditions; personality disorders (especially those that involve disinhibition of aggression); significant learning disabilities; chronic drug/alcohol dependence; and enmeshment in violent adult relationships (domestic violence). Reunification of an injured infant would generally be contraindicated in a situation where such factors remained significant (or where there was a significant risk of them recurring). There are also perplexing cases where serious injuries have been sustained by an infant (which have been found by a court to be non-accidental) where there appear to be no identifiable contextual psychosocial stressors.

Child Characteristics
Attributes of the infant/child are a significant part of any risks/strengths equation. Infants/children who are temperamentally difficult to manage and are unrewarding to carers are at higher risk of further abuse. Some infants are disabled as a consequence of the abuse (or for other reasons) and have special needs (and present higher level challenging demands of carers) that may be beyond the resources of their parents (thus ruling out reunification). Child characteristics can also be apparent as risk indicators with regard to the symbolic meaning the child has for the parent (eg if the child reminds the parent of a hated other person). The age of a child is also a significant factor. For example, toddlers are less vulnerable to serious consequences of an impulsive violent shake or squeeze, than are small babies.

Parents’ Relationship
A significant risk factor contraindicating reunification is continuing dynamics of violence in the parents’ relationship. This would almost invariably exclude any possibility of reunification. When parents have remained together, notwithstanding a history of significant violence in their relationship, substantial evidence of sustained positive change would be required prior to reunification. My own experience and research indicates that reunifications may be more successful when the two parents responsible at the time of the injuries have since separated. (P Dale, R Green and R Fellows, ‘Serious and fatal injuries to infants with discrepant parental explanations: some assessment and case management issues’ (2002) 11 Child Abuse Review 296–312).

The Quality of the Parent-child Relationship(s)
Parent-child relationships can be assessed in relation to the quality, consistency and sensitivity of parental care-giving – and the nature of the child’s reciprocal responsiveness to such care-giving. Parenting commitment, attentiveness, child-centredness, acceptance/rejection, parenting skills/style and attachment are areas that can reflect positive and negative parent-child relationships. With regard to risk assessment following serious injuries to infants, the greater the level of continuing concerns about the nature of the parent-child relationship (and non-responsiveness to appropriate professional interventions) the less likely it is that reunification could be considered a safe option. However, it is very important that the nature and impact of the subsequent parent-child separation is carefully considered with regard to observations that are made about the parent-child relationship (particularly when these are critical observations). Too often the impact of the forced separation itself on observations of ‘poor’ parent – child ‘attachment’ is overlooked (or insufficiently considered) by professionals undertaking ‘attachment’ assessments (see P Dale et al, Child Protection Assessment Following Serious Injuries to Infants: Fine Judgements (John Wiley and Sons, 2005), at pp 157–162).

Levels and Nature of Family and Social Stresses
The context of serious suspicious injuries occurring is often (but not invariably) one
There are no risk free options in child protection practice. Any decision involves risks whether this is a decision to reunify a child who is subsequently re-injured (a 'false negative' error), or a decision not to reunify when this could have been successful thus causing the harms that can arise from unnecessary permanent separations from natural parents and family (the 'false positive' error) (P Dale, 'Serious injuries to infants with discrepant explanations: specialist assessment issues' [2003] Fam Law 668). Research also indicates that serious re-injury rates following reunification are very low (P Dale et al, Child Protection Assessment Following Serious Injuries to Infants: Fine Judgments (John Wiley and Sons, 2005), at pp 59–62).

CONCLUSION

Independent social work expert witness assessments play a crucial role in many contested care proceedings cases. They provide a significant opportunity to assess risk, parenting skills, and potential for change; as well as commenting from a peer review perspective on the reasonableness of the local authority actions and proposals. In many cases agreement is reached prior to the final hearing obviating the need for a high cost contested final hearing.

At the time of writing (early 2010) there is a threat to the continued funding of independent social work expert witness risk assessments following a joint proposal by the Ministry of Justice and the Legal Services Commission (Consultation paper 19/09, published 20 August 2009). What does not appear to have taken into account (and no data is presented on the issue) is the impact of independent social work expert witness assessments on agreements being reached between all parties about court outcomes, thereby avoiding the substantial costs of contested final hearings. This commonly occurs, and is not only a significant saving to the public purse, but is also psychologically and emotionally beneficial for the children and families involved in the proceedings.

Without the input of independent social work expert witnesses in complex and contentious care proceedings, the quality of evidence available to the court in making profound decisions about the future of children (eg reunification v compulsory adoption) will diminish in a drastic way. The 'reasonableness' of local authority interventions and care plans will not be subject to a sufficient level of professional peer review scrutiny and, particularly, the crucial 'potential for change' assessment issue will not be explored in a thorough way independent of the parties to the proceedings (the local authority and the children's guardian). The result most likely will be increased delays (infants remaining in 'limbo' for even longer periods of time during extended care proceedings), and challenges to the fairness of the proceedings including applications to the European Court on the basis of an unfair trial (inequality of arms) and infringement of the right to family life.