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CHAPTER 3

The social, legal and practice context for protecting and safeguarding children

James Reid

In the previous chapter we provided a brief history of central government guidance and in this chapter I develop germane themes in the development of child protection legislation. We begin by learning further from the history of a small number of child tragedies that help to illustrate how understanding of child protection as a social phenomenon. The importance of trans-national conventions is then highlighted. Discussion consequently moves to brief consideration of examples of abusive practices by early years practitioners before consideration is given to the prevalence of child abuse for young children. The subsequent duties and responsibilities placed on early years practitioners by legislation and the conditions necessary for effective practice with parents and carers are covered.

By the end of this chapter you will:

- further appreciate the social, cultural, political and moral milieu that affects child protection legislation, policy and practice;

- understand how various duties and responsibilities are enshrined in international conventions and national law;

- recognise the conditions necessary for effective practice with parents and carers;

- recognise the need for a critical approach to safeguarding practice.

A brief history of child protection: a social phenomenon

In the previous chapter we were reminded that concepts of child protection are affected by our understanding, knowledge, definitions and practice in the child protection arena, all of which are determined by a range of social, cultural and personal influences. Chapter 2 of this text looked in depth at the development of policy and guidance since the mid-1970s at a time when awareness of child abuse was heightened by Henry Kempe and colleagues regarding the prevalence of 'battered baby syndrome' (1962). Significant in this period was the voice of women and feminisms in raising concern about violence and the broader misuse of power. Throughout the 1970s and early 1980s developing policy was concerned to prevent the abuse of children and to raise understanding of duties and responsibilities of professionals and agencies in protecting children from harm. The late 1980s and 1990s saw significant changes in our understanding of family and the state's relationship with children and their parents/carers. Central to this was the Children Act 1989 and develop neoliberal concerns about welfare and the economy. More recently, focus has shifted to authoritarian state management of child protection and an increasing moral panic over radicalisation. What is clear is that both emerging research and significant voices influence child protection legislation, policy and practice. Indeed, Parton and Reid argue that one of the more significant voices in determining currently what constitutes a protection matter for a child is the media.

As was stated in Chapter 2, history has a lot to tell us about the current state of child protection, and that history is replete with examples of change based upon social, cultural or moral developments. One of the first instances of recognition of child abuse occurred in New York in 1874 when 10-year-old Mary-Ellen McCormack was discovered in a neglected state with severe physical injuries inflicted by her adoptive mother. There was no protection available to her at the time since physical punishment of children was permissible. The

mantra of the day, 'spare the rod and spoil the child', meant that physical punishment was not only acceptable but encouraged as an appropriate and necessary approach to child care. Undoubtedly this has resonances with the ongoing debates in England about physical chastisement of children by parents. There was no legal basis for the authorities to intervene in family life to protect Mary-Ellen from the severe physical abuse she was experiencing – that is, until the American Society for the Prevention of Cruelty to Animals persuaded a judge to classify Mary-Ellen as an animal to allow it to remove her from her adoptive mother's care.

Mary-Ellen's experience was reported as a moral outrage by the media (see Howard Markel's 2009 article in the *New York Times*) and was instrumental in the development of the New York Society for the Prevention of Cruelty to Children, the model for the National Society for the Prevention of Cruelty to Children (NSPCC) in the United Kingdom. It is worth noting that she lived to the age of 92 and had many children and grandchildren. Subsequently, philanthropic interest in the maltreatment of children led to new laws, changes to existing laws and therefore further protection for children. By the end of the 1880s the United Kingdom had its first law enabling the state to intervene in family life.

The influence of children's deaths

The right of the state to intervene in private family matters, and in particular in the right of parents to bring up their children as they see fit, has always been fraught. On many occasions the untimely and tragic death of children has led to legislative change. In the post-war period the death of Dennis O'Neill saw the introduction of Children's Committees, a forerunner of Area Child Protection Committees (ACPCs). However, the latter did not come into being until the 1974 inquiry into the death of Maria Colwell criticised local agencies for their lack

of co-ordination. This theme has continued in the more recent inquiries undertaken by Lord Laming (2003, 2009) into the deaths of Victoria Climbié and Baby Peter, which recommended that ACPCs be replaced by Local Safeguarding Children Boards (LSCBs).

Since the 1970s a growing corpus of research allied to increasing vocal concern about the rights of children and women and damning child death inquiry reports saw an escalation in coverage of child abuse as a concern in the media. At the same time as knowledge was developing of 'children at risk', a second narrative of 'children as risk' – young tearaways, feral, destructive and out of control – had acquired momentum, in part as a reaction to the prevailing economic conditions and the explosion of the punk culture. This dichotomy of children as at risk or risky was similar to the many other conflicts facing children and young people, including the rights of parents versus the rights of the child, the role of the state versus the role of the family, and the welfare of the child versus the rights of the child. Increasingly the lexicon of moral panic was entering the debates surrounding children and risk (Parton *et al*. 1997).

Changing understanding of the family

Just as new research, rights movements and moral panics were shaping approaches to childcare policy and practice, so were changes in understanding of family structures and relationships. Increasing divorce rates, decreasing marriage rates, societal ease with sexual partnerships not based in marriage, and children living in more diverse family situations meant that the focus moved from children growing up within the nucleus of a family to kinship networks and partnerships (Beck and Beck-Gernsheim 2002; Smart and Neale 1999). The New Labour government of the 1990s, rather than pursuing traditional policies to strengthen and maintain marriage and the family, focused instead on enhancing children's life

chances and wellbeing, and on secure and stable attachments. According to Parton, the family was deconstructed and disaggregated so that policy

> subtly but significantly shifted from a focus on the family to one that was concerned directly with childhood vulnerability and well-being and upholding parental responsibility. Childhood was moved to the centre of policy priorities, seen as lying at the fulcrum of attempts to tackle social exclusion and the investment in a positive, creative and wealth-creating future, and many of the challenges posed by the social and economic changes related to globalisation.
>
> (2011: 857)

While the New Labour government considered the nature of partnership between individuals an essentially private matter, the issue of parenting was of considerable interest to the state, particularly in relation to the welfare of children, including the right to protection. Safeguarding the welfare of the child was in vogue, with child protection integrated into a predominantly child-centred rather than family-focused framework. The most significant manifestation of this was the *Every Child Matters: Change for Children* (DfES 2004) programme.

Unsurprisingly, the Coalition government (2000-2015) had a rather different view about the definition and provision of welfare and 'moral' questions such as the nature and status of the family. The difference in ideology is immediately apparent: the prime minister attacked the previous administration for failing to tackle poverty and a range of social ills, arguing that too much emphasis placed on 'state action' rather than 'social action' (Cameron 2009). What had exercised the government, however, were the economic conditions of a prolonged recession. In part, moves to create a context for child protection work that involved more

autonomy, less bureaucracy and less regulation stemmed from a desire to move responsibility from the centre and to manage costs.

Nonetheless, the prevailing ideology of government from the 1980s onwards has been an assertion of power through narratives framing the struggle of needs, versus rights, versus responsibilities (Eekelaar 2006). In this regard there have been approaches within policy that have shifted understanding of rights and responsibilities between family members, but more significantly, within a neoliberal frame, what is understood as appropriate or moral within families and therefore what families should be (Henaghan 2008). Moreover, changes to policy have required practitioners to continually strive to understand, interpret and apply updated guidance so that 'chaos' (Dewar 1998) is a normal aspect of their daily work.

In this regard, and following the deaths of Victoria Climbie in 2000 and Peter Connolly in 2007, the ensuing media outrage remains pivotal in current child protection policy. Not only has the focus shifted ideologically from broader safeguarding and welfare concerns to a more focused child protection policy, it has also shifted politically, since no government can risk moral outrage or media indignation by appearing weak on child abuse or poor professional practice. Nor can the government be implicated in maintaining structures and systems that contribute to ineffective child protection practice. So, both the powers of the regulator, the Office for Standards in Education, Children's Services and Skills (Ofsted), and the Secretary of State, have been enhanced. Moving practitioners and not systems to the centre of child protection practice enables the government to establish a buffer between it and any future child tragedy.

A Contemporary Moral Concern – Prevent

The *Prevent* strategy (HM Government 2011) provides the foundation for the requirements and responsibilities of professionals in response to concerns over the radicalisation,

particularly of Muslim youth. There is specific guidance for England and Wales and separate guidance for Scotland. Developed in 2007 the programme is now in its second phase, from 2011, and particular emphasis is given to the duty for professionals in formal education settings to '*Channel*' children and young people who are considered to be at risk of radicalisation towards specific counselling programmes. *Prevent* takes the lexicon of safeguarding and child protection and 'securitizes' it so that certain young people are considered to be 'risky', perhaps by 'grooming' others, who in turn are 'vulnerable' and 'at risk' of radicalisation (Thomas 2016).

In addition, significance is given to the requirement to teach fundamental British Values with the need for Early Years practitioners to recognise the particular vulnerabilities of very young children in being exposed to the harmful views of others in their lives. Referencing the requirements in Early Years Foundation Stage framework, *Prevent* (HM Government 2015b, para. 61) reinforces the responsibilities of Early Years professionals for the child's personal, social and emotional development, and therefore conflates issues of radicalisation with child protection and child development. Specifically, the range of education and child care providers are:

> Subject to the duty to have due regard to the need to prevent people from being drawn into terrorism. Being drawn into terrorism includes not just violent extremism but also non-violent extremism, which can create an atmosphere conducive to terrorism and can popularise views which terrorists exploit (*Prevent*, HM Government 2015b, para 64).

Child deaths, political expediency and contemporary moral panics have shaped legislation and policy. In a context over the struggle between rights, responsibilities and the framing of

moral action in the daily work of families and professionals, international Conventions have also had significant influence in child protection policy and practice.

Trans-national conventions on the rights of the child

The United Nations Convention on the Rights of the Child

Moral indignation at the behaviour of children and the contrary vociferous debates about children as morally vulnerable and at risk from abuse was, in a manner of speaking, brought to a head with the ratification of the United Nations Convention on the Rights of the Child (UNCRC) in 1989. The Convention came at a time of increasing international concern of harm through armed conflict, slavery, trafficking, prostitution, lack of health care and education, and the abuse of disabled children.

The Convention, in article 3, established the primacy of the best interests of the child and tackled the issue of when the state could intervene in family life. As a signatory, the UK government had a responsibility to ensure that national law conformed to the requirements enshrined in the articles of the Convention. In relation to child protection several articles apply, including article 6 (Right to Life), article 19 (Protection from Violence), article 34 (Sexual Exploitation of Children), article 35 (Prevention of Abduction, Sale and Trafficking), article 36 (Protection from Other Forms of Exploitation) and article 37(A) (Prohibition of Torture, Inhuman or Degrading Treatment). The UNCRC is not binding in UK law. However, the government met many of its responsibilities in relation to the Convention through the enactment of the Children Act 1989.

The European Convention for the Protection of Human Rights and Fundamental

Freedoms

A further trans-national convention has significant influence in child protection legislation, policy and practice. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was first agreed by the Council of Europe in 1950 in the wake of the Second World War. However, it was not until the enactment of the Human Rights Act 1998 (HRA), which took effect in 2000, that the requirements of the ECHR were incorporated into UK law. The ECHR and HRA are applicable to all citizens without discrimination (ECHR article 14) and affect children in a number of important ways. First, all relevant UK legislation has to take into consideration children's rights. Second, children have the right to legal redress. Like the UNCRC, the ECHR is structured through a number of articles, including article 2 (Right to Life), article 3 (Prohibition of Torture), article 4 (Prohibition of Slavery and Forced Labour) and article 8 (Right to Respect for Private and Family Life).

While the UNCRC lays out the independent rights of children, it also recognises that the best interests of the child are usually served by supporting the child's family. The ECHR sustained the ongoing tension between children's rights to protection (article 3) and the rights of a family to be free from state interference (article 8). The balance was struck in section 1(1) of the Children Act 1989 and the introduction of the paramountcy principle – specifically, that the welfare of the child is paramount. The nuance here is important. Although both the UNCRC and ECHR are specifically framed in terms of rights, in UK child protection law it is the child's welfare and not their rights that are paramount. This leads to some conflict in legislation so that on some occasions the welfare of children has paramountcy over the rights of parents whereas in other respects, such as education, parental views have prominence.

Government and Governance

Responsibility for child protection in the UK is a matter for the Northern Irish, Scottish and Welsh devolved assemblies and, for England, parliament. However on other matters the UK parliament has jurisdiction. The 2010-2015 the UK Coalition government was committed to the maintenance of rights without discrimination. However, elements within the Conservative Party expressed reservations about the scope and impact of the HRA, with some calling for it to be repealed. These concerns have continued post the 2015 general election, with significant concern within government and the ruling Conservative Party about the political, social and financial cost of enforcing the duties enshrined in the HRA. Indeed these have been posited as a reason in arguments in 2016 for the UK's exit from the European Union. Of course, some of this discomfort with the HRA stems from its links to the ECHR and concomitant judgments of the European Court of Human Rights. Notwithstanding this, the ideological opposition for many politicians stems from ideological tension over the rights agenda and, in particular what they consider to be loss of sovereignty to the institutions of the European Union (EU).

These concerns highlight the difference between government and governance, that is, the election of a representative body whose job it is to legislate, and the operationalization of legislation through other public bodies and quangos. In England, for example, the Department for Education is the government department responsible for child protection but the relevant legislation is put into practice by the courts, children's departments, schools, health services, the police, and so on. In this regard the English child protection system is relatively unaffected by Europeanization. However, other departments of state have stronger crossover with European institutions that influence their work. The Home Office, for example, works collaboratively with the EU on matters of international crime, including child

trafficking, but is less enthusiastic on issues of asylum and immigration (Dorey 2014), although these often involve children and young people and their incarceration. Similarly the Department of Work and Pensions has responsibility for the alleviation of poverty and social exclusion but has been criticized since, despite EU targets to reduce poverty by 2020, rates of poverty, including child poverty, in the UK are set to increase (Browne and Hood 2016). Governance and comment from responsible national and international bodies is often unwelcome when it is seen as interfering with government and sovereignty and is often articulated around the tension between the rights of the individual and the responsibility of a sovereign government.

The prevailing political, social, cultural and moral mores of the day are significant in defining safeguarding and child protection. Both national and international experiences of the maltreatment of children help to determine legislation, policy and guidance. Safeguarding and child protection legal and moral obligations are enshrined in trans-national conventions and the United Kingdom meets these obligations particularly through UK primary legislation. Tensions can exist however between departments of state, for example the Treasury determines how much money the Department for Education has to spend, the Home Office determines asylum and immigration policy; and between government and those who work outside that particular ideological sphere.

Professional failings in early years child protection

Child abuse inquiry reports have consistently criticised agencies, individually and collectively, for failing to protect children. The Laming Report (2003) into the death of Victoria Climbié was the basis for the introduction of Local Safeguarding Children's Boards. Enhanced local authority accountability and 150 local programmes focused on early

intervention, safeguarding and welfare, shared responsibility, information sharing and integrated services were promoted through the auspices of the *Every Child Matters: Change for Children* programme. The legal basis for these developments was the Children Act 2004, which amended aspects of the Children Act 1989 to strengthen safeguarding practice. The consequences of the death of Victoria and Baby Peter have largely focused on inter-agency co-operation and systemic failings, as discussed in Chapter 10 of this text.

Of course, the latter are not the only determinants of legislation and guidance; culture within an individual setting where poor and abusive practices have occurred has also played a role, as the case of Vanessa George demonstrates.

Vanessa George had worked at a nursery in Plymouth since 2006. She was arrested in 2009, after sexually explicit photographs involving young children, taken in the toilet area of the nursery, were discovered on the computer of Colin Blanchard in the north of England. George, Blanchard and a second female, Angela Allen from the Nottingham area, were convicted in October 2009. George admitted seven sexual assaults and six counts of distributing and making indecent pictures of children. Blanchard pleaded guilty to 17 counts of child pornography and two sexual assaults on children. Allen pleaded guilty to four child sex assaults and one count of distributing an indecent image. The three had not met in person but used the internet and mobile technologies to keep in touch and distribute the images.

The Plymouth Safeguarding Children Board Serious Case Review (SCR) (2010) into the circumstances of abuse at the nursery identified fragmentation in key parts of the safeguarding system, including with Ofsted and the Early Years Service, thus highlighting again the dangers of systemic failure. However, the SCR was also keen to highlight George's role within the nursery team, as this extract (p. 15) identifies:

[George] has been described by staff as both *'horrible'* and more often *'the life and soul*

of the party'. The predominant view is of a popular member of staff both with parents and other members of the staff team. The [nursery] individual management review comments that:

'Although she was not senior in her position, other factors such as her age, personality and length of service could have created an illusion of position of power and encouraged a sense of trust . . . It is also the case that [George] is of the ability to behave in a highly manipulative manner and hence gain high levels of trust in others'

It is quite clear that [George] had gained a position of trust with the manager, who allowed her to babysit for her foster children. Some staff referred to [George] being one of a clique. Her position of power within the staff group was such that although staff became increasingly concerned about her crude language, discussion of extra-marital relationships and showing indecent images of adults on her phone, they were unable to challenge her.

Another reason for lack of challenge within the staff group proposed by the nursery individual management review author is that colleagues experienced feelings of guilt and discomfort at having been exposed to this increasingly inappropriate material. By even being shown sexualised pictures it is possible that staff believed they had 'allowed' it to happen and consequently did not know how to raise this with others. By drawing others partially into her activities, [George] made challenge even less likely and may have interpreted the behaviour as implicit support.

George received an indeterminate sentence, with the stipulation that she be held in custody until she is no longer considered a danger to the public. Her minimum jail term is seven years. The organisational culture within the nursery was one therefore of blurred boundaries, fear, the abuse of trust, the misuse of power and a lack of good governance and

accountability. The lessons are clear: not only should the early years practitioner be aware of the broad social, cultural and moral conditions for practice and how these drive policy, legislation and guidance, but they also need to consider the local conditions and how these impact upon guidance and practice.

Prevalence of child abuse

The case of Vanessa George brings into sharp focus the possibility of child abuse in an early years setting and the dynamic, changing nature of abuse, given her use of mobile and other communication technologies (see Chapter 8). Of course, George, Victoria Climbié and Baby Peter are some of the small number of cases that come to media attention; beyond these there are many, many more that do not make the headlines. Indeed the NSPCC website contains serious case review reports into the deaths or serious injury to 41 children aged seven or younger during 2015 alone (see: 'further reading' below). An NSPCC report (Cuthbert *et al.* 2011: 5) into the prevalence of child abuse of children up to the age of 1 reminded us that 'the emotional abuse, neglect or physical harm of babies is particularly shocking both because babies are totally dependent on others and because of the relative prevalence of such maltreatment'. Indeed, the report suggested that '45 per cent of serious case reviews in England relate to babies under the age of 1 year' and 'in England and Wales, babies are eight times more likely to be killed than older children'. While it is always important to take a critical approach to statistics, it is probable that there is under-reporting of child abuse in very young children since they are dependent on intimate care and cannot necessarily communicate about the abuse or remove themselves from abusive situations. As with disabled children, babies are extremely vulnerable to any misuse of power. The NSPCC report (ibid.) estimates for the first time the numbers of babies living in vulnerable and

complex family situations:

In the UK, an estimated

- 19,500 babies under 1 year old are living with a parent who has used Class A drugs in the last year
- 39,000 babies under 1 year old live in households affected by domestic violence in the last year
- 93,500 babies under 1 year old live with a parent who is a problem drinker
- 144,000 babies under 1 year old live with a parent who has a common mental health problem. (ibid.: 31)

While the statistics are now a few years old they do provide a baseline for this particularly vulnerable group of children. Indeed they remain relevant when acknowledging that neglect remains the most common reason for a child's name to be placed on the child protection register or to have a child protection plan and:

Numbers of recorded cruelty and neglect offences in England and Northern Ireland are now the highest they have been for a decade. There are more children suffering abuse or neglect than those who are known to children's social services – (the NSPCC) estimate that for every child subject to a child protection plan or register, another eight children have suffered maltreatment (NSPCC 2015: 8).

The NSPCC website (www.nspcc.org.uk) is a useful source for up- to-date research on all aspects of abuse, including prevalence. Overall, the number of referrals, including the number of children in need of protection is increasing:

- **657,800** The number of referrals to children's social

care in 2013-14 – an increase of 10.8% compared to the previous year when there were 593,500 referrals.

- **397,600**

  The number of children in need at 31 March 2014 – an increase of 5.0% from 378,600 at 31 March 2013.

- **47.2%**

  The proportion of children in need with abuse or neglect identified as their primary need. This is the most common primary need, followed by family dysfunction at 18.6%. This has remained broadly similar to the previous year.

- **142,500**

  The number of section 47 enquiries (child protection investigations) carried out in 2013-14. An increase of 12.1% on 127,100 last year.

- **48,300**

  The number of children who were the subject of a child protection plan at 31 March 2014. An increase of 12.1% on 43,100 at 31 March 2013 and an increase of 23.5% since 31 March 2010.

(source: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367877/SFR43_2014_Main_Text.pdf)

One final statistic is worth mentioning as it reminds us how particularly vulnerable very

young children are. According to Smith *et al*. (2011), infants aged under 1 year are eight times more at risk of being killed at the hands of another person than any other age group in England and Wales, with one baby on average killed almost every two weeks in the United Kingdom. The statistics will change over time, as will approaches to protection and safeguarding. What will remain constant is that children are harmed in a variety of ways and childcare professionals are charged with the responsibility of ensuring that children are protected from harm and their welfare safeguarded. Chapters 4 and 5 will consider in greater depth a number of categories of abuse.

Definitions of abuse

Just as the Vanessa George case and the statistical evidence demonstrate the centrality of safeguarding for early years practitioners, so do (as we read in Chapter 2) the definitions used by government, underlining the complexity of the issue. *Working Together to Safeguard Children* (HM Government 2010a: 37–39) set out to provide insight into the different categories of abuse and advised that

> [a]buse and neglect are forms of maltreatment of a child. Somebody may abuse or neglect children by inflicting harm, or by failing to act to prevent harm. Children may be abused in a family or in an institutional or community setting, by those known to them or, more rarely, by a stranger. . . . They may be abused by an adult or adults, or another child or children.
>
> (ibid.: 37–39)

The 2013 and 2015 versions of this document removed many of these definitions, paring

down the 2010 guidance to nine items (2013) and eleven items (2015) in 'Glossary A' and reference in the introduction to the safeguarding and welfare of children as:

- protecting children from maltreatment;

- preventing impairment of children's health or development;

- ensuring that children are growing up in circumstances consistent with the provision of safe and effective care; and

- taking action to enable all children to have the best outcomes.

(HM Government 2013: 7; 2015: 5)

It is interesting to note however that the 2015 guidance later refines the final point to 'taking action to enable all children to have the best *life chances'* (HM Government 2015: 92. My emphasis).

In reducing the number of definitions of abuse, the government is clearly putting the onus back on practitioners to make judgements based on their knowledge and expertise, with clear implications for early years professionals, through early intervention, to enable children to have the best life chances. Yet practice is only possible under a legal framework and, as we will now see, the language used in statute can sometimes be unclear.

Overarching legislation

Whereas it is the Children Act 1989 and the Children Act 2004 that provide the framework in particular for safeguarding and child protection practice, it is the Childcare Act 2006 that provides much of the basis for early years provision and practice. As was stated in the previous chapter, section 11 of the Children Act 2004 and section 40 of the Childcare Act

2006 place duties on organisations and individuals, including those in early years, to ensure that their functions are discharged with regard to the need to safeguard and promote the welfare of children. However, legislation itself is not sufficient to frame practice; the relevant guidance must also be taken into consideration. The requirements for child protection are detailed in *Working Together to Safeguard Children* (HM Government 2015) and the requirements for safeguarding and the protection of welfare in the *Statutory Framework for the Early Years Foundation Stage* (DfE 2014). This latter framework is mandatory for all early years providers, maintained schools, non-maintained schools, independent schools and all providers on the Early Years Register. It is presented in three sections; section 3 details the safeguarding and welfare requirements for the sector, and these are given legal force by Regulations made under section 39(1)(b) of the Childcare Act 2006. The framework will be discussed further in Chapter 6.

Activity:

Read the latest version of *Working Together to Safeguard Children* and the *Statutory Framework for the Early Years Foundation Stage*.

What are the early year's practitioner's duties in relation to safeguarding?

Summarise the key points in section three of the *Statutory Framework for the Early Years Foundation Stage*.

As already highlighted, legislation alone is insufficient to frame practice and this can be seen in the duties enshrined in two of the most relevant sections of the Children Act 1989, section 17 and 47. Section 17(1)(a) of the Act imposes a duty 'to safeguard and promote the welfare of children within their area who are in need' and section 17(10) goes on to elaborate that a child shall be taken to be in need if:

(a)   he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;

(b)   his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or

(c)   he is disabled, and 'family', in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living.

(11)   For the purposes of this Part, a child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed; and in this Part –

■ 'development' means physical, intellectual, emotional, social or behavioural development; and

■ 'health' means physical or mental health.

Several questions immediately arise. What is 'a reasonable standard of health or development', or a significant impairment? Similar queries arise in relation to section 47 of the Act, which places a duty on any local authority, the police or other persons authorised by the Secretary of State to make inquiries where there is 'reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm' (s. 47(1)(b)). Consequently, what is reasonable cause, how do you predict the future and what is significant and what is harm?

Reflective task: John

John is 4 years old and the youngest of three siblings, all aged under 9. They live with their mother on a local estate and are socially isolated. The mother has difficulty in managing the children's behaviour and in managing their daily care. When she is cooking or dealing with the older children, John is confined to a buggy in front of the television. His speech and mobility are not what you would expect for a 4-year-old and he has difficulty in mixing with other children. He is loved dearly by his mother.

Think about the following:

- Are his health and development being impaired?
- Is the impairment significant and, if so, what evidence and judgements are you using to come to this decision?
- Is he suffering harm?
- Is the harm significant and, if so, what evidence and judgements are you using to come to this decision?

What is harm?

It is of course difficult to make judgements based upon little information, but in such instances some of our assumptions and prejudices come to the fore when what is required is a more forensic approach based upon knowledge, evidence and research. Under section 31(9) of the Children Act 1989 as amended by the Adoption and Children Act 2002:

> '[H]arm' means ill-treatment or the impairment of health or development, including, for example, impairment suffered from seeing or hearing the ill-treatment of another; 'development' means physical, intellectual, emotional, social or behavioural development

'health' means physical or mental health; and 'ill-treatment' includes sexual abuse and forms of ill-treatment which are not physical.

The concept of harm is a difficult one to deal with, particularly since cultural, social and personal mores come into play. The change made to the definition of harm by the 2002 Act includes the reference to 'impairment suffered from seeing or hearing the ill-treatment of another', meaning domestic violence, once again underpinning the point that the development of child abuse is a culturally defined phenomenon. What is regarded as reasonable is different within and between communities and societies. In a country where a large proportion of the child population is afflicted by malnutrition, a parent's inability to provide sufficient food to their child would not be categorised as neglect on the parent's part. Is this any different for a child growing up in poverty in the United Kingdom? In more affluent countries there have been changes in the recognition of the potentially abusive nature of some behaviours that were previously accepted as reasonable. In Scotland it is no longer acceptable to 'smack' your child; in England, 'reasonable chastisement' is permissible. A 1995 survey by Creighton and Russell of the childhood experiences of a national UK sample of adults aged 18–45 found that some 35 per cent said they had been hit with an implement. Only 7 per cent felt that it was acceptable to do that to a child now. 'Within any society there is continual evolution of the parental behaviours that are deemed unacceptable towards children' (Hobart and Frankel 2005: 25).

How we as individuals define child abuse depends on our beliefs about acceptable and unacceptable behaviours, where we were born, how we were raised, our customs and beliefs, and how we view 'children' and family life. We must take this into consideration when making judgements about harm or impairment, particularly in a context where the government has moved to place the responsibility for safeguarding and protection squarely on

the shoulders of professionals and where professional guidance has been pared down to a minimum.

The context of harm

This is not to say that further guidance is not available; it is. Indeed, it is still possible to look back at the definitions in the 2010 version of *Working Together* for some help when making decisions, and, most importantly, there is guidance available on the website of the Local Safeguarding Children Board. Yet guidance is simply that: a guide, albeit a statutory guide. There are no absolute criteria, for example, on which to rely when making decisions about what is or what is not significant harm. A child who never experiences physical punishment but who is slapped once may experience the incident as abusive and harmful whereas a child who is frequently slapped may not. Under section 31(10) of the Children Act 1989, 'Where the question of whether harm suffered by a child is significant turns on the child's health and development, his health or development shall be compared with that which could reasonably be expected of a similar child.' It is necessary therefore to consider the social context, the severity of the slap, the level of physical harm, the duration and frequency, premeditation, and the presence of threat. It is possible for a single incident to constitute significant harm, for example a violent assault, use of a weapon or implement, or poisoning. More frequently, significant harm is a combination of factors, such as physical and psychological harm, that adversely impact upon health and development. In every circumstance it is necessary to consider the harm or potential harm from the child's perspective alongside the family's strengths and supports that indicate capacity for change and improvement.

Guidance and where to find it

The foremost government guidance to protecting children is *Working Together to Safeguard Children* (HM Government 2015). This sets out how all organisations and professionals should work together to promote children's welfare and protect them from abuse and neglect. The *Statutory Framework for the Early Years Foundation Stage* (DfE 2014) sits alongside *Working Together* to further detail the policies and practices that are necessary within a setting to ensure a safe environment. This is only some of the guidance available. Some deals with children and young people in specific circumstances, for example abuse linked to faith or belief (including spirit possession), while other guidance considers safer recruitment, disclosure and barring practices. Details of all the relevant guidance can be found on the Department for Education website and, of particular help, the Local Safeguarding Children Board website, both of which can be found by using an internet search engine.

Understanding key government documents and agendas is an important underpinning for safeguarding practice, as are children's rights and the concept of childhood. The guidance cannot be ignored but we should remember that it is implemented in a context of cultural, societal and personal mores. The personal element in child protection and safeguarding is important since it is not merely a matter of cognitive ability; it also involves feelings and skills.

Effective and critical practice with children, families and carers

The Department for Education (2012a) promotes 'evidence based practice' as the basis of skills and knowledge needed by people whose work brings them into regular contact with children, young people and families. It brings together the need for knowledge of the most up- to-date research, particularly of social learning theory, attachment theory, parenting styles

and human ecology, with practitioner skills as the basis for practice. What is not sufficiently emphasised is the need for criticality and a questioning approach by the practitioner both to practice and to the knowledge that supports that practice. While attachment theory, for example, is extremely important, the practitioner should also bear in mind other possibilities such as theories of loss. When one is thinking about parenting styles in a safeguarding context, is what is being assessed the parent's approach to parenting or the parent's capacity to parent? These are very different things but potentially either could be assessed using existing tools. Indeed, an assessment of each with the same child and family could lead to very different outcomes. It is the role of the critical practitioner to constantly question their approach, to consider the cultural (organisational and wider), societal and personal mores that mould practice. Consequently, the practitioner must also decide whether they have the necessary skills for effective practice with children and their families and carers.

These necessary skills are wide-ranging and include aspects of direct practice with children but also with the important adults in a child's life. The minimum requirement involves skills in understanding what is meant by child protection and safeguarding, and the many ways in which children can be harmed. This necessarily requires keeping up to date with developments in the field, for example through the use of information and communication technologies and the internet. Understanding also involves recognising the key role of parents and carers in safeguarding and promoting a child's and, as stated above, that parenting styles and parenting capacity are very different. Involving parents and carers immediately throws up the need for clear and effective communication skills and personal skills. It takes confidence to discuss difficult issues with parents and carers, particularly if challenge enters the interaction. In this regard, all practitioners need to be aware of the boundaries of personal competence and responsibility, take steps to involve others if necessary, and therefore know where to get advice and support.

Empowerment in child protection and safeguarding

However, having the relevant skills is meaningless if these are used uncritically and in a manner that seeks to disempower rather than empower children and their parents and carers. This can be seen in approaches to assessment adopted by practitioners. Three different models of assessment were identified by Smale and Tuson (1993 – cited in Milner and O'Byrne 2002: 29–31):

1. *The questioning model*: here the . . . worker holds the expertise and follows a format of questions, listening to and processing answers. This process reflects the . . . worker's agenda.

2. *The procedural model*: the . . . worker fulfils agency function by gathering information to see whether the subject fits the criteria for services. Little judgement is required, and it is likely that checklists will be used.

3. *The exchange model*: all people are viewed as experts on their own problems, with an emphasis on exchanging information. The . . . workers follow or track what other people are saying rather than interpreting what they think is meant, seek to identify internal resources and potential, and consider how best to help service users mobilize their internal and external resources in order to reach goals defined by them on their terms.

Of these models of assessment, practice should lend itself to the 'exchange model', but only if the practitioner has sufficient time to exercise their skills and work at the individual child's pace. Where the practitioner does not work at the child's pace and does not adequately take

account of prejudice, values and ethics, or where it is assumed that the practitioner holds a 'monopoly of knowledge' (Calder 2003: 43), partnership and empowerment will be affected and the assessment will lean towards the questioning and procedural models.

The model chosen by the practitioner is also likely to be influenced by perceptions of risk and need, and how the setting approaches each of these concepts. While policy since the 1990s has sought to 'refocus' intervention with children and their families away from risk to need for many, the predominant system used to provide support remained focused on protection, with assessment of risk as the major outcome. Part of the reason for this is historical and structural in that the Children Act 1989 went some way to defining risk through the concept of 'significant harm' but did little to provide guidance and structure to the assessment of need.

The dichotomy remains prevalent. Many of the services developed to tackle social exclusion have safeguarding and need as their primary focus, whereas statutory services such as social work are required to focus on child protection and on risk. Nonetheless, it is very easy to get sidetracked by the dichotomy of risk versus need debate and there is a possibility that the discourse will fail to recognise practice, particularly assessment practice, as a means of empowerment, of working in partnership and of enhancing understanding about children and their families. To focus solely upon the concepts of risk and need is to focus upon the objective and outcome of the work. Such an approach ignores the variety and richness of the human condition and relationships, and it is these that are crucial to an ecological model and exchange model of assessment (Dalgleish 2003).

Inclusive and critical practice

For safeguarding practice to be meaningful, it must be seen as an inclusive process.

Practitioners will have explicit understanding of the context of both the family and themselves. Holland reminds us that it behoves the practitioner to develop their practice in recognition of the constraints of the prevailing frameworks and policy and practice contexts, further arguing that the core principles of assessment practice include:

- Consulting family members (including children) about the assessment aims, methods of assessment and how to evaluate the assessment work.
- Working with an openness to others' perspectives, especially professionals from other disciplines and family members.
- Working within a stance of consulting and listening, rather than measuring from an expert distance.
- Maintaining the safety and welfare of the child as top priorities (whilst being aware that these are not always easily definable).
- Ensuring access to the assessment process through careful attention to aspects such as assessment methods, language choice, gender, cultural norms and literacy and articulacy levels.
- Being constantly critical and reflexive about dominant explanations for a particular family situation and aiming not for the correct conclusion, but the one that is most useful and least likely to be wrong. (2004: 157–158)

Reflective task: partnerships with parents and carers

Millar and Corby (2006) discuss the circumstances in which parents and carers feel genuine partnership and empowerment, including:

- when honesty and trust have been developed;

- through open and clear communication;

- through genuine involvement in the process;

- when empathy and genuine concern are evident;

- when practice is accountable – enabling the service user to challenge what is said and written.

Consider your own practice and that in your setting. What evidence can you provide of the above generally and, more specifically, in relation to safeguarding practice?

If you have little experience of safeguarding practice, how would you ensure the conditions above are met?

Suspected abuse

If you are worried a child is being abused, you should discuss your concerns with the person in your setting who has lead responsibility for safeguarding. You can also seek advice from the police or children's social care. It is preferable that you identify yourself and give details. You can also ring the National Society for the Prevention of Cruelty to Children (NSPCC) helpline. Knowing how damaging abuse is to children, it is up to the adults around them to take responsibility for stopping it.

If a child tells you about abuse:

- Stay calm and be reassuring.
- Find a quiet place to talk.
- Believe in what you are being told.

- Listen, but do not press for information.

- Say that you are glad that the child told you.

- Say that you will do your best to help and support the child.

- Seek the help of the safeguarding lead practitioner. Other colleagues can also offer help but be sensitive about the information and work within guidance and procedure for the setting.

- Acknowledge that the child may have angry, sad or even guilty feelings about what happened, but stress that the abuse was not the child's fault.

- Acknowledge that you will probably need help in dealing with your own feelings.

- Record as soon as you can what has been said, by the child and you, and what actions you have taken.

Conclusion

Social views about standards of child care change over time. Historically, societies have initially been concerned about protecting children from serious physical injury and neglect. Increasingly, awareness and condemnation of the sexual abuse of children have grown, followed by growing concerns regarding emotional abuse. As societial views of what constitutes 'good child-rearing practices' continue to evolve, views of what is acceptable and unacceptable practice will need also to evolve. Safeguarding practice therefore is more than a cerebral task and the practitioner should be aware of those working practices, experiences, values and mores that impact upon decision making. However, it is essential that practice outcomes are based upon critical use of research, with attention being paid to the presence and use of predominant ideas. The existence and use of frameworks does not guarantee good practice, nor does the completion of a particular form always constitute an assessment. It is

crucial that the practitioner consider and analyse the information gathered in the light of relevant literature and research. Good practice depends on the practitioner's skill in analysis.

The need to work inclusively with parents and carers is also acknowledged and accepted by the professional community. Inclusive practice is a main tenet of policy and procedure, and is engrained within the laws, regulations and requirements of the childcare profession. When safeguarding practice is holistic, it can be a platform for partnership and consequently will leave many parents and carers feeling more involved in the decision making affecting their and their children's lives. This can only be of benefit to the child.

Further reading

Cuthbert, C., Rayns, G. and Stanley, K. (2011) *All Babies Count: Prevention and Protection for Vulnerable Babies*, London: NSPCC.

This NSPCC report includes new analysis into the number of babies aged under 1 year who are affected by parental substance misuse, mental illness and domestic abuse, which are all important risk factors for abuse and neglect.

Serious Case Review reports, in particular those focused on younger children. Available: https://library.nspcc.org.uk/HeritageScripts/Hapi.dll/search2?searchTerm0=C5306&_ga=1.191385001.2024638879.1461757111