TYPES OF PSYCHIATRIC TREATMENT

Dealing with the courts and parenting breakdown

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This is the fifth of a series of articles on treatment of child psychiatric disorders.

The resolution of disputes, problems, and uncertainties through the court system can, as well as safeguarding the interests of the child, actually promote these and be therapeutic. I use here therapeutic in the sense of an agent of positive change, ultimately for the child concerned.

Until now this has been best exemplified in the High Courts. One of the main challenges of the Children Act is whether this tool of positive intervention can be used as constructively and to the full in the lower courts and even transferred out into the community in precourt or no court situations.

Civil court proceedings concerning children and adolescents will almost always be about some form of parenting breakdown.

The purpose of this article is threefold: (1) To explore why child health specialists, particularly child psychiatrists, have come to be involved in the assessment of parenting breakdown and what relevant or essential skills they bring to the decision making process. (2) To demystify court proceedings by clarifying and simplifying. (3) To identify the constructive elements of court processes so that readers can determine how they can have a role in these and extend them to other situations.

The inter-relationship of the courts and child health specialists

Paediatricians and child psychiatrists are increasingly being asked to write reports for court—as expert rather than evidential witnesses—and this is likely to increase further with the Children Act and its emphasis on multidisciplinary assessment.

Courts are clearly mandated to concern themselves with the physical and emotional well being of children. Paediatric assessment, uniquely in medicine, has already moved to considering all aspects of a child's health, including the emotional adjustment and development. While a child psychiatrist may be the one assessing emotional adjustment in detail, the paediatrician has important contributions to make.

What physical abuse did for the paediatrician, sexual abuse has done for the child psychiatrist. The 'discovery' of physical child abuse in the 1950s gradually brought paediatricians into a central role in court proceedings and the 'discovery' of child sexual abuse in the 1980s brought child psychiatrists into the arena. Awareness of sexual abuse and the type of evidence child psychiatrists were giving about its sequelae brought into focus the fact that the most serious and longer lasting effects of any

abuse are the result of the emotional component of that abuse. We can expect that with this third new awareness, more cases will be brought under the sole category of emotional abuse.

This chain highlighting emotional abuse brings parenting as a whole under scrutiny: emotional abuse becomes equated with gross parenting failure on an emotional level or, put another way, a gross failure to meet a child's psychological needs for his or her healthy emotional development. (Parenting breakdown can, of course, involve other forms of abuse, physical or sexual, but will include an emotional component.)

This recognition has led to examination of how parenting can be analysed, what are its components, and how these can be assessed or measured. There is some agreement on its components but very little on how to measure or assess these systematically.

Parenting assessment

The components are best extracted by considering a child's basic needs (see table 1).

HOW TO ASSESS THESE NEEDS

There are complex schedules for doing this—for example, the social services assessment pack³

Table 1 Parenting assessment: the child's basic needs

The needs	The parenting components
Security/safety	<i>Safety:</i> food, warmth, clothing, etc and home, car, road, personal safety <i>Security:</i> sense of safety necessary for security, stability, and consistency—care givers, care itself, discipline, and boundaries. Mutual trust. Sense of being listened to and good channels of communication. Perception of parents as strong, able to cope, being in control, responsive
Belongingness	Continuity of care givers. Clear identity, for example, names, roots, culture. Sense of permanence. Personal/individual space and possessions
Self actualisation/identity development	Child treated as special and unique. Child seen as separate from parent by the parent(s) (distinction of needs). Perceptiveness of child's individuality and particular needs. Lack of intrusiveness
Praise/esteem	Meeting of child's need for esteem and praise. Expression of warmth and positive feelings, absence of hostility. Appropriate positive reinforcement. Valuing the child's differentness
New experience/knowledge	Encouragement of learning, extending new experiences and independence. Giving child sense of responsibility for his/her actions and for their impact on others

Modified from Kellmer Pringle and Maslow.^{1 2}

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and the National Children's Bureau child protection pack.⁴ There are assessments based almost entirely on interactional processes—for example those described by Reder,⁵ Cox *et al.*,⁶ Dowdney *et al.*,⁷ and Bentovim and Gilmour.⁸ Questionnaires, checklists, rating scales, for example, a parental bonding instrument,⁹ are of limited value in individual cases. Semistructured interviews used in research may have a place.¹⁰

I take a more pragmatic approach by (i) gathering information (from social services, schools, paediatricians, foster carers, etc) and (ii) making my own assessment of parenting through (a) direct discussions with the parent(s); (b) assessment of the child(ren) to assess their development and particular needs; and (c) observations of interactions between child(ren) and parents. In this way, I attempt to cover all the components of parenting listed above, the details of which vary greatly with age. I pay particular attention to positive remarks about the child, criticism, and indications of warmth or hostility all of which have been consistently shown to be assessable in a fairly reliable way and to relate to quality of parenting.¹¹ The parent(s) own experience of parenting is important. In situations of breakdown, my experience is that it has invariably been one of insecure or preoccupied type (see Crowell and Feldman¹²).

Having made an initial formulation considering all the components of the parenting needs, I structure (c) to target particular areas where problems may lie. If major problems are identified in this way then assessment of the parent's or parents' ability to change must follow.

ASSESSING ABILITY TO CHANGE

Prerequisites

- Acknowledgement of some responsibility for current situation, for example, child being in care.
- Acceptance that there is a need for change and that the parents themselves need to change.
- Acceptance of need for help in this.
- Child should not be used systematically as a scapegoat.

Capacity to change

- History of change/lack of change over time.
- History of cooperativeness and openness with 'helping' professions.
- Ability to reflect during assessment.
- Carryover of content of discussion from one assessment meeting to another indicating change of attitude.
- Tasks can be set to assess this more directly: they can be (i), within session or between session; (ii) directly or indirectly related to problems; and (iii) passive or active.
- Personality/illness/level of intelligence issues are also important factors in ability to change.

For a more comprehensive approach and model see Protchasha and Di Clemente, Bentovim *et al.*, and Jones.^{13–15} The parent-child

game¹⁶ is an interesting new approach to assessing parents' ability to improve on interactional skills.

Predictions about change

These are based on all of above and the input considered necessary to support change.

Exploring alternatives

There needs to be a careful look at alternatives: possibilities for solutions within family/extended family, the resources available for support/therapy, and how the best possible environment for change can be created. Again this is likely to require a collaborative effort with every one in the multiagency network exploring their resources and offering their knowledge of resources available elsewhere.

Under the Children Act, in effect, every request for a full order will be thrown out where it cannot be demonstrated that every avenue has been pursued in looking at means for keeping the family together. Under the Children Act it should be possible to undertake the whole assessment scenario I have described long before, or without any, recourse to court.

The child psychiatrist's contribution

A child psychiatrist has skills in all these areas relating to parenting assessment and the ability to change. Of particular relevance are the following:

- A multiaxial approach to classification, looking at the child in terms of their psychiatric, cognitive, developmental, and biological functioning, and social situation.
- Expertise in family psychiatry resulting from family centred work and the large body of knowledge on family functioning from the different schools of family therapy.
- Knowledge of child development.
- Knowledge about child temperament and its interactional importance.¹⁷
- Knowledge of adult psychiatry and from this, knowledge about what parenting functions are likely to be impaired in a parent with a psychiatric or personality disorder. The child psychiatrist will also have some knowledge about treatment and prognosis that will be very important in decisions around the child and has easy access to adult psychiatrists to consult over this.
- A 'scientific' approach. Medically trained practitioners do have particular skills to offer in these decision making processes, not simply by virtue of their knowledge base but also as the result of their particular and rigorous training involving the Socratic approach, an emphasis on cause and effect, pros and cons, and a healthy scepticism, particularly in examining evidence.

We are disciplined to think in terms of 'what evidence do I have for making that statement' and on 'what am I basing my opinion.' This approach, which is not so highly developed in other disciplines, together with the knowledge

already outlined, will be particularly useful to courts where the issue is centred on whether the harm the child has or may suffer is significant (a central concept in the new Children Act).

Prediction about the child's future is a most difficult and onerous task because far reaching decisions about the child may be based on it. In my opinion, this task falls most appropriately to the child psychiatrist. The child psychiatrist can formulate the problems on a multiaxial basis and base a prognosis on this. The very fact of childhood involves central concepts around the child as a developing being with considerable potential for change, and all the variables of the child's past experience, temperament, present state and future environment impinge on this. Attempts can be made, for example, to answer such questions as to the likely outcome in terms of emotional and behavioural adjustment of a sexually abused child exhibiting traumatised behaviours if she or he remains with the parent, or is in care, and is or is not offered therapy. Child psychiatrists also have a contribution to make in considering transcultural issues in placement decisions where the relative importance of identity development against other development needs must be weighted.

Clearly where there is psychiatric disturbance, the child psychiatrist has an important contribution to make. Particularly difficult cases involve children with an innate problem, for example autism, where a parent's care is in question and the question, under the Children Act, is whether another parent with such a child would be making a better job of it.

Table 2 Parenting breakdown

Problem/concern	Main focus for assessment in addition to parenting
Physical abuse	Paediatric assessment: risk to health and life. Emotional damage
Sexual abuse	Non-abusing parent's ability to support and protect child. Child's emotional state and needs, treatment needs
Failure to thrive physical deprivation	Paediatric assessment
Emotional abuse	Child's emotional state and needs, treatment needs
Munchausen syndrome by proxy	Paediatric assessment: risk to health and life. Psychiatric assessment of parent
Parental mental disorder: mental illness, personality disorder, substance abuse, mental handicap	Psychiatric/psychology assessment with particular reference to ability to make responsible decisions and progress
Beyond control: usually adolescents	Assessment of youngster's needs

Table 2 summarises the common contexts of parenting breakdown and table 3 some of the court mechanisms for dealing with them.

Court decisions

In order for courts to make decisions, the following are necessary.

- (1) Identifying the central issue(s) and the questions that need to be answered in order for a decision to be made.
- (2) Requiring all parties to justify their actions and criticisms with evidence.
- (3) Requiring that the evidence necessary to answer the central questions is produced.
- (4) Exploring alternatives, particularly that of no order.

In addition, the courts can be particularly useful in:

- Ensuring very thorough assessment.
- Confronting families with what is at stake—that is, possible loss of the care of a child.
- Making orders compelling compliance where a parent's own motivation is insufficient to result in change. This is, of course, not always successful.¹⁸
- Clearly defining criteria for measuring change on which future decisions will be based.
- Balancing the power between any individual, for example, a parent and an agency such as social services. Redressing the balance between parties can in itself be therapeutic and is less likely to occur when a case is handled entirely within one agency.

The whole process should be one of clarifying issues and identifying the most objective means of answering questions in relation to them.

The court is attempting to choose the least detrimental option, in the best interests of the child. In practice, it can decide where the child lives, who has day to day and other responsibilities, details of contact with others, and treatment needs. Decisions directly affecting adults are much more limited, particularly in the lower courts.

The party initiating proceedings—for medical practitioners this is usually social services or a parent—initiates this process by deciding what order they are seeking and on what grounds. The initiating party must then seek to produce evidence to support those grounds. The more experienced the initiating solicitor the better the questions will be that are asked in order to elicit information and evidence.

I have been involved in many cases, at the

Table 3 Courts: civil proceedings concerning children and adolescents in magistrates and county courts and High Courts

Issues	Parties	Range of orders/directions
Parenting breakdown including abuse and being beyond parental control School non-attenders Marital breakdown	Social services and others—for example, grandparents Education authority, parents Between parents	Residence, contact, supervision and care orders, specific directions Education supervision order Residence orders, specific issues, contact (care, control custody, and access are all gone)
Ethnic issues and consent issues	Any	Wardship with its inherent powers <i>except</i> full care orders (High Court)
Challenges about statutory services—for example, services to a child 'in need'	Any: particularly parents versus education, social services, or the health authority	Judicial review: decisions are binding on parties

county court or High Court level, where in effect the dispute is between the parent and a social services department where the parent, for a variety of reasons (often containing a large antiauthoritarian element) has completely fallen out with the social services department and a hostile relationship exists on both sides. The parent's failure to cooperate is then used as further evidence of their lack of responsibility and ability to change. A court can look at this objectively, lean on social services departments, if necessary, to change the social worker or use an independent agency or, if the lack of cooperation is deemed significant in terms of the child's interest, make this explicit to the parent laying down what cooperation the court expects if an order in the parent's favour is to be considered. I have seen very constructive work become possible with the most intransigent parents in this situation (see Familaro *et al*¹⁸). Of course, it is theoretically possible for this to be achieved by other means, for example the fashionable contracts. These, however, have no legal status and mean social services have 'no teeth' without the backup of a court. Nor do they deal with the power imbalance situation referred to above (see Wolff *et al*¹⁹).

A vignette

This is a greatly simplified example. A social services department wishes to seek a care order as a result of a mother being found on two occasions drunk and incapable when in charge of her three children under 5 years, one of whom actually went missing. The children are currently on an interim care order, in foster care. The middle child, a boy aged 3, uses no expressive language.

The issue would be: is this mother able to parent responsibly? The questions would be: What are the mother's parenting capacities? To what degree are these affected by drink? What is the prognosis as regards her drinking? How have the children been affected? Is the 3 year old's language problem innate or the result of disturbed emotional development? Is there any way of ensuring these children's safety without removing them? Is there any input which would enable this mother to fulfill her responsibilities?

The social worker involved with the case may have much of this information, but for two reasons additional outside expertise is likely to be required: (1) Social workers do not present their evidence in an 'expert' fashion addressing issues in a systematic manner. This is exacerbated by their own solicitors treating them as

inexpert by not requiring reports to answer specific questions but by requiring sworn affidavits, usually of a narrative type, for example on date X I went to the house and found Y. Opinions are not encouraged. (2) The social services department needs to call in outside expertise in areas in which they have little or none. Requirements for the case are shown in table 4.

As can be seen, a collaborative effort is required and there will be important inputs from the health visitor, general practitioner, nursery if applicable, and others who know the mother and children.

The concept of multidisciplinary assessment in addressing the needs of children is central to the new Children Act. The social services department usually initiates and coordinates such multidisciplinary assessments, including child assessment orders (in which the courts can control the nature of the assessment). While child psychiatrists may, for the present, be the group able to contribute most comprehensively to parenting assessment, their numbers are too few to be involved in all cases. Others, particularly clinical psychologists specialising in children, have a great deal to offer.

I do believe that child psychiatrists' skills are essential in certain complex situations:

- Where the child has a marked psychiatric disorder.
- Where a child's or adolescent's allegations are subject to doubt because of contradictions, inconsistencies, clearly fanciful parts, or a history of lying or fantasising. (The whole area of how to approach the validation of allegations is a subject in itself.)
- Where the parent has a marked psychiatric disorder.
- Where there is a need to interpret the meaning of a child's behaviour, for example, emotional reactions to contact with a parent or non-verbal behaviours such as play or acting out.
- Where there is a need to determine prognosis about a child's disorder.
- Where there is a Munchausen by proxy type situation in which for example a parent's overwhelming belief that a child has been sexually abused, in the absence of any evidence, becomes in itself, abusive.

Tips

Questions to be considered when you become involved in court proceedings: Who is instructing you? If this is your own local authority, the assessment is under your NHS contract, the writing of a report for court or attendance at court is section 2 work. If it is the local authority, check whether a *Guardian Ad Litem* has been appointed. If so, insist he or she is consulted about social services instructing you. If the guardian approves your doing the assessment this will avoid duplication—important for the child but also in order to conserve our own overstretched resources. If it is the guardian or a private solicitor all the work will be section 2 work and will be usually paid out of legal aid monies which are very restricting. It can take up

Table 4 Requirements for a case

Full assessment: area to be assessed	By whom
Children's health and physical and emotional development	Social services, child health specialist, child psychiatrist
The mother's own history	Social services and child health professionals
Stresses on the mother	Social services, child psychiatrist, clinical child psychologist, or combination of these
The mother's parenting abilities	
Mother's ability to change	Adult psychiatry
Mother's mental state, alcohol problem and its prognosis	

a lot of time negotiating what can be done for a specified sum. Ethically this can be difficult—is half an assessment better than none?

Whoever is instructing you the most important thing, and that which will determine the quality of the whole process, is the questions you are asked to answer. Make sure these questions are entirely open—that is not ‘should this mother ever see her children again?’ but ‘what is your opinion on future contact between mother and children?’. It is well worth the investment of time in getting questions clarified and if I get very biased questions, particularly from a private solicitor, this may determine me against taking the case.

Always get prior agreement to your report going to all parties. Your report is by definition unbiased but can be suppressed by the instructing solicitor. Occasionally I even go as far as sending a copy to the clerk of the court.

If the request comes from your local authority, consider whether you will be able to act in a sufficiently independent way. It can be very difficult to implicitly criticise one’s local department or make costly recommendations and then continue working with the department day to day.

Reports usually need to be long where difficult decisions are involved so as to include all the evidence and alternative arguments. The summary and recommendations should be short. The recommendations, though most attention is paid to them, are the least important as our job is to give the court all the necessary information to inform its decisions. My reports vary from five to 50 pages (the latter if there are several children and a large variety of possible outcomes).

It is worth forging links with the local courts, for example expressing a wish to meet the magistrates and the borough solicitors. I am usually not called in the lower courts and if I am, the borough solicitors and the courts do everything in their power to make this as convenient as possible.

Child Psychiatry and the Law is a most useful reference book when involved in court work.²⁰

General comment

I hope this article has made clear that by the very process of clarification and careful, objective assessment together with their innate authority, courts can have a very positive effect in furthering children’s interests. For this reason, while welcoming the Children Act as the most exciting step taken in children’s interests in my working life time, I am concerned over the inevitable impact of the act in relation to court proceedings.

(1) Wardship has virtually disappeared and in particular I believe this deprives parents (and therefore the child) of the highest level of judicial consideration where a parent may be overpowered in a situation of conflict with a statutory body.

(2) There will be a downwards movement in terms of the level of court. All cases will start in the Family Proceedings Courts and most will stay there. We have yet to see how easy it is to

get the more complex cases moved up to higher courts. My knowledge of magistrates and their training, and the solicitors and barristers involved in these lower proceedings makes me very concerned that children will lose out because of lesser expertise. Complexity will be gauged by the intensity of the ‘war’, that is the number of affidavits, rather than on the actual wisdom required to decide a multi-issue situation for a child.

The important thing is to be aware of, and to address these issues. Any party can apply to the registrar for a transfer of court and the health authority may in future see cause to make itself a party more frequently.

(3) My third concern relevant to this article is the concept of theoretically ever extending parental responsibility for children so that they can have multiple ‘parents’. While useful for adults in underlining concepts of responsibilities rather than rights, I believe it will be confusing for children and their need for clarity and security.

(4) My fourth major concern is that without the high court there is no court review procedure. Once a child is in care, there is no process that allows a court to review how social services is progressing the case, for example no curb on delays, say, in finding a long term placement. Social services may welcome this, I do not. This also denies magistrates the opportunity to learn from the experience of seeing how court decisions turn out.

(5) My fifth concern relates to problems that are likely to result from over stretched resources within all the agencies. This will affect: (a) assessment in general: there is likely to be a conscious or unconscious resistance to take on in depth assessment work. I am continually struck by how even the consideration of court proceedings, and certainly actual court proceedings, can transform a case and get movement and outcomes not originally considered possible—as a result of the processes I have described of clarifying issues and trying to answer questions around these issues. In addition the particular skills of the legal profession in the process of clarification and objective assessment will not be available where legal proceedings are not being considered. (b) The provision of alternatives. With the lack of financial resource in social services and treatment facilities within the health authority and social services, some families are likely to be treated unfairly. If an intensive treatment resource is not available care may be the only course where there are major parenting problems. One is often faced with the dilemma of whether to recommend an approach to enable change when one knows the resource is not available through the local health authority or social services and may need to be paid for in the independent sector. This is a particular problem when working with one’s own local authority.

I look forward positively to a future in which we can continue to develop ways of working with the courts that make use of the very constructive processes that I have outlined and in which we all learn to take those processes of assessment and intervention, which can also be

productive outside of the legal framework, into our interagency work.

I find this type of work often to be doubly satisfying: it is intellectually the most challenging I undertake and in terms of altering children's lives for the better often the most effective input I can have.

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Recommended reading

- 1 *Protecting children: a guide for social workers undertaking a comprehensive assessment*.³
- 2 *Child protection: a training and resource pack for work under the Children Act, 1989*.⁴
- 3 *Child psychiatry and the law*.²⁰
- 4 Rutter M. *Maternal deprivation reassessed*. 2nd Ed. Harmondsworth: Penguin, 1983.
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