Safeguarding children is everyone's responsibility: UK government statement on the duties of doctors

Terence Stephenson

The first duty of the paediatrician is to the child or young person

Over the past few years, some paediatricians have faced legal action as a result of their involvement in child protection cases. Others have had vexatious complaints of which only a tiny minority have been upheld.^{1 2} A survey of members of the Royal College of Paediatrics and Child Health (RCPCH) found that 13.8% of over 4500 respondents had been subject to a total of 786 complaints about child protection and that the number of complaints per year had increased from less than 20 in 1995 to over 100 in 2003.³ Of those complaints resolved at trust or NHS level (including the NHS Ombudsman), less than 3% were upheld. Of 87 referrals to the UK General Medical Council (GMC), only that against Dr David Southall was upheld. The GMC extended the 2004 ban against him working on child abuse cases by a further 12 months on 23 July 2007.

As a result of these factors, many paediatricians have been deterred from giving expert evidence in suspected child abuse cases, adding further delays to a slow system⁴ and resulting in the Chief Medical Officer's consultation document *Bearing good witness*.⁵ This is against a backdrop of some health professionals describing a reluctance to report suspected child abuse,⁶ a worrying situation and potentially taking us back to the days before Henry Kempe's seminal work on non-accidental injury.⁷ A stratified random sample of 979 nurses, doctors and dentists working in primary care in Northern Ireland were sent a postal questionnaire; 419 responded, giving a 43% response rate. The data were collected in 2002–2003. In their working lives, 60% (251) said that they had seen a suspicious child physical abuse case; however, only 47% (201) had reported a suspicious case to the authorities, leaving a 13% gap in reporting.⁶

Lord Laming wrote "staff who undertake the work of protecting children and supporting families on behalf of us all deserve both our understanding and our support" and "staff doing this work

need... persistence and courage".⁸ However, neither his report nor the government subsequently addressed how paediatricians were to be supported and understood when parents, who may be implicated in child abuse, used complaints procedures and the media to attack them.

THE GOVERNMENT AND THE MEDIA

The UK government has appeared reticent to openly support UK paediatricians. Behind the scenes, the RCPCH has worked hard to persuade ministers and civil servants of the need for such a signal. At 10:06 on Friday 20 July, the Children's Safeguards Policy Unit released a two line "email shot" announcing that a "Joint DCSF/DH Statement on the duties of doctors and other health professionals in investigations of child abuse" had been placed on the government departments' websites⁹ - there was no fanfare, no press launch and not even a press release. However, 23 days after Gordon Brown assumed the office of prime minister and created the new ministerial Department for Children, Schools and Families, this is a welcome if muted recognition of paediatricians' invaluable contribution. The accompanying ministerial letter stated "the government has made the problem of tackling child abuse and improving safeguards for children a top priority".

This quiet announcement contrasted with coverage relating to child protection in the UK national newspapers for the same day. *The Guardian* newspaper¹⁰ quoted two paediatricians writing in the *British Medical Journal*¹¹: "Uncertainty over what constitutes a sudden unexpected infant death means some deaths may be wrongly reported as being due to 'natural causes'". *The Times* and *The Independent* ran with the same story. *The Guardian* continued: "The debate over cot death intensified when Professor Sir Roy Meadow gave evidence at the trial of solicitor Sally Clark in 1999. She was

convicted of murdering her two sons but freed by the Court of Appeal in 2003. Prof Meadow told the jury at her trial there was a "one in 73 million" chance of two children dying from cot death in the same affluent family. Mrs Clark was found dead at her home in March, more than 18 months after Prof Meadow was found guilty of serious professional misconduct by the General Medical Council (GMC) and struck off. Both of those decisions were later overturned after an appeal at the High Court".

The following working day, *The Guardian* followed up with a piece about Dr David Southall¹²: "Why should a doctor be punished for raising concerns he believes are valid? *The entire child protection system hinges on the willingness of individuals to raise such concerns, whether proved right or wrong* [my italics]; and that willingness depends on them being free to do so without fear of losing their livelihood. For the past decade the GMC has lacked the courage to deal with vexatious complainants and, in its determination to show it doesn't favour doctors over patients, has allowed itself to be exploited by campaigners dedicated to disrupting child protection. Southall, a cot-death pioneer who has saved countless lives, has been a marked man since his research led him to the unpalatable conclusion that some mothers deliberately harm their own children". It is of note that, unlike controversial MMR research for example, Southall's research on smothering has never been disproved or withdrawn by a journal.¹³

Dr Southall faces further disciplinary proceedings following an allegation he kept more than 4000 "special cases" files on children: "He now faces a series of GMC hearings, all linked to the same group that has campaigned tirelessly against him... Accused parents have lawyers, campaigners, the media and, it seems, the GMC to speak up for them. Infants have only frontline professionals, and under the Children Act it is their responsibility to put the child's interests before any other consideration. If society continues to vilify them, the price will be paid with the suffering and death of society's weakest members".¹²

THE JOINT DEPARTMENT FOR CHILDREN, SCHOOLS AND FAMILIES/DEPARTMENT OF HEALTH STATEMENT

So what do the eight pages of 2223 carefully chosen words,⁹ all scrutinised by lawyers, say and do they provide solace for paediatricians? There are seven key messages for us all:

1. In child protection work, paediatricians' first duty is to the children

concerned, even if the consequences of acting in good faith are distressing for the parents.

2. In the case of *D vs East Berkshire*, the House of Lords stated unequivocally that "when considering whether something does not feel "quite right" a doctor must be able to act single-mindedly in the interests of the child".¹⁴
3. Paediatricians undertaking child protection are part of multi-agency teams and need to be aware of legislation and guidance relevant to child protection work, in particular, the desirability of working with parents whenever possible, the law regarding consent to treatment and examination and the concept of "Fraser competence", and the recognition that sharing appropriate information with relevant authorities is neither a breach of patient confidentiality nor of the UK Data Protection Act. The sentiments of the 1989 Children Act still inform such judgements: "the welfare of the child is paramount".
4. The European Convention of Human rights does not prevent paediatricians doing their job well. The Court of Appeal stated that the principal purpose of Article 8 ("everyone has the right to respect for his or her private and family life"), at least where there are children, must be the safety and welfare of the child.¹⁵
5. In reaching sound judgements, paediatricians should (as in all clinical work) take account of all relevant factors, keep an open mind and consider all reasonable alternatives,

consult appropriately, recognise the limits of their expertise, and acknowledge where there is lack of information. (I would add that it is also good practice to document, date and sign all clinical findings and the decision making process.)

6. If giving evidence in court, the obligation of a paediatrician as a professional witness is to be an independent advisor to assist the court, not an advocate for a particular party or theory.
7. Paediatricians would not be liable for defamation unless it could be proved that they acted maliciously.

Whilst the legal references are drawn from English case law, I believe that all paediatricians in the UK and Ireland could draw on these principles unless their jurisdiction explicitly states otherwise.

SUMMARY

Paediatricians' first duty is to the child or young person. Paediatricians should not be distracted by a parallel duty to anyone else, including parents. At last we have confirmation publicly that these are also the views of the UK government.

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are personal views and not necessarily the views of those organisations.

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