



Provision of Therapy for Child Witnesses Prior to a Criminal Trial

Practice Guidance

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FOREWORD

Witnesses are fundamental to the success of the criminal justice system. The Government, in its response to Sir William Utting's report *People Like Us*, said it was determined to ensure that children and other vulnerable witnesses should be able to give their best evidence in criminal proceedings with the minimum of distress.

The report *Speaking Up For Justice*, produced in June 1998 by an interdepartmental working group on the treatment of vulnerable or intimidated witnesses, endorsed the development of guidance on therapy for child witnesses prior to a criminal trial and concluded that vulnerable or intimidated witnesses should not be denied the emotional support and counselling they may need both before and after the trial.

The Crown Prosecution Service, the Department of Health and the Home Office have worked together to produce this guidance. The guidance is issued as part of the *Action For Justice* programme by which the Home Office is co-ordinating the implementation of the various measures for witnesses recommended in *Speaking Up For Justice*.

The guidance is primarily for the assistance of child care professionals and lawyers involved in making decisions about the provision of therapeutic help for child witnesses prior to a criminal trial. The guidance makes it clear that the best interests of the child are paramount when deciding whether, and in what form, therapeutic help is given. We hope that it will be helpful for all practitioners, especially those in the criminal justice system, NHS, social services departments and voluntary child care organisations.

The guidance has been produced following widespread and lengthy consultation within the criminal justice system and with those professionals who provide therapeutic help to abused

children. We are grateful to all concerned for their important contributions to this guidance. We believe that the use of this guidance will enable children who need therapy to receive it at an appropriate time and to give their best evidence in criminal proceedings.



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PROVISION OF THERAPY FOR CHILD WITNESSES PRIOR TO A CRIMINAL TRIAL: PRACTICE GUIDANCE

1 INTRODUCTION

1.1 Concern has been expressed that witnesses, and in particular child witnesses, have been denied therapy pending the outcome of a criminal trial for fear that their evidence could be tainted and the prosecution lost. This concern may conflict with the need to ensure that child victims are able to receive, as soon as possible, immediate and effective treatment to assist their recovery. In the context of this potential conflict, the following matters are relevant:

- many child victims express the wish to see their abuser convicted and punished;
- there is a wider public interest in ensuring that abusers are brought to justice to prevent further abuse;
- all accused persons are entitled to a fair trial.

1.2 It follows, therefore, that both child care professionals and forensic investigators have a mutual interest in ensuring, wherever possible, that children who receive therapy prior to a criminal trial are regarded as witnesses who are able to give reliable testimony.

Purpose and use of this guidance

1.3 This guidance is issued jointly by the Home Office, the Crown Prosecution Service and the Department of Health. It is the result of careful examination of these issues by a

multi-disciplinary working group, refined by an extensive consultation exercise.

- 1.4** The guidance is primarily aimed at therapists and lawyers involved in making decisions in cases where the provision of therapy for child witnesses prior to a criminal trial is a consideration. However, it is hoped that the guidance will be helpful for everyone who comes into contact with child victims of abuse, particularly teachers, health visitors, social workers and police who are often the first to hear an allegation.
- 1.5** It is recognised that decisions made in individual cases will depend upon the particular considerations which apply to those cases. The guidance is intended to be practical in nature to avoid assumptions based on perceptions which may be unfounded. It is also acknowledged that practice will continue to evolve. The guidance simply aims to support this process by providing information based on current thinking about these issues.
- 1.6** In particular the guidance which follows seeks to:
 - improve understanding of the difficulties for criminal prosecutions associated with the provision of therapy for child witnesses prior to a criminal trial;
 - clarify the roles of those involved in making decisions about the provision of therapy prior to a criminal trial;
 - explain the use of terminology, and provide advice on the appropriateness of different therapeutic techniques;
 - set out a framework for good practice which highlights the important issues.

What guidance already exists on the provision of therapy for child witnesses prior to a criminal trial?

1.7 The UN Convention on the Rights of the Child states:

- Article 3. “When adults or organisations make decisions which affect children they must always think first about what would be best for the child”.
- Article 12. “Children too have the right to say what they think about anything which affects them. What they say must be listened to carefully”.

1.8 There has, prior to the publication of this guidance, been no nationally issued guidance, but the following publications should also be taken account of.

1.9 *Working Together to Safeguard Children* (Department of Health et al, 1999) sets out the inter-agency processes to be followed when a child is considered to be likely to be or is suffering significant harm. If, following enquiries under section 47 of the Children Act 1989, and a subsequent child protection conference a child’s name is placed on a child protection register, a child protection plan must be constructed. This plan should, along with other requirements, “describe the identified needs of the child and what therapeutic services are required” (paragraph 5.82 of *Working Together to Safeguard Children*). If, during this planning stage, it is known that the child is to be a witness at a criminal trial, consideration should be given to the child’s therapeutic needs, the possible impact the provision of therapy might have on the criminal trial and the consequences for the child of either proceeding with the therapy or deciding not to, having taken account of the implications for the criminal trial.

- 1.10** The Home Office and Department of Health’s guidance (currently being revised), *Memorandum of Good Practice on Video Recorded Interviews with Child Witnesses for Criminal Proceedings* (1992) states that “Once the video recorded interview is complete, it should be possible for appropriate counselling and therapy to take place. It should become standard practice to inform the police and the Crown Prosecution Service about the nature and content of the therapy in each case. The defence may justifiably wish to know about both the nature and content of the therapy that has taken place before the child gives evidence in cross-examination” (Paragraph 3.44).

Therapy has not been encouraged before the video interview is recorded since lawyers have argued that the therapy might affect or taint the child’s evidence. The likelihood of a prosecution being jeopardised is thought to be greater if therapy takes place before the video-recorded interview has taken place.

- 1.11** *The Young Witness Pack* (1998; 2000) focuses on the preparation of the child witness for giving evidence in a criminal trial. However, the first section of Chapter 6 of the Pack makes the distinction between preparation and therapy prior to a criminal trial, and sets out some of the issues to be considered regarding the provision of therapy in this context.

2 WHAT IS THERAPY?

2.1 The term “**therapy**” covers a range of treatment approaches, including **counselling**, but in this context it does not include any physical treatments.

2.2 A precise definition of **psychotherapy** is not straightforward, but Kazdin (1990) defined it in the following way:

“Psychotherapy includes interventions designed to decrease distress, psychological symptoms and maladaptive behaviour, or to improve adaptive and personal functioning through the use of interpersonal interaction, counselling or activities following a specific treatment plan. Treatment focuses on some facet of how clients feel (affect), think (cognition) and act (behaviour)”.

2.3 Psychotherapies and counselling can be grouped in a number of ways (for example, psychodynamic, cognitive-behavioural, systemic, experiential). They are underpinned by different models of understanding and techniques, and they vary in the context in which they are given (individual, family, group etc) and frequency of sessions.

Types of therapeutic work undertaken prior to a criminal trial

2.4 Two broad categories of **therapeutic work undertaken prior to a criminal trial** can be identified:

2.4.1 Counselling

This will address a number of issues, including:

- the impact on the child of the abuse;

- improving the self-esteem and confidence of the child;
- providing the child with information with regard to, for example, abusive relationships. The aim of this is to enable the child to seek out assistance from a trusted adult if the child feels unsafe at some stage in the future.

2.4.2 Psychotherapy

This will address a number of issues, including:

- treatment of emotional and behavioural disturbance, for example post-traumatic stress disorder;
- treatment of a child who has been highly traumatised and shows symptoms which give rise to concern for the child's mental health.

Both **counselling** and **psychotherapy** may require long term involvement with the child, depending upon the degree of the trauma suffered and the child's cognitive ability.

2.5 Preparation for court

Prior to the criminal trial work may be undertaken to prepare a child for the trial.

The purpose of this work is to:

- provide the child with information about the legal process;
- address any particular concerns or fears which the child may have in relation to giving evidence;
- reduce anxiety.

The timing of the preparation for court is important. If it is carried out too soon before evidence is given, the child's anxieties may be increased. On the other hand, if it is carried out at the last minute the child may feel rushed and be unable to assimilate the information given.

The References section of this guidance includes materials which will assist with the preparation of the child witness for giving evidence in court. *The Young Witness Pack* (1998), which is aimed at both children and young people, provides booklets for specific age groups. There is a video addition to the Pack entitled *Giving Evidence - What's It Really Like?* (NSPCC 2000) which is suitable for older children. The Barnardo's video *So, You're Going to be a Witness* (1996) is suitable for younger children.

3 WHAT ARE THE CONSEQUENCES OF THERAPEUTIC HELP BEING GIVEN TO A CHILD PRIOR TO A CRIMINAL TRIAL?

- 3.1** A criminal court can only convict an accused person of an offence if it is satisfied, on the basis of the evidence brought by the prosecution, that the accused is guilty. Evidence is something that tends to prove or to disprove any fact or conclusion.
- 3.2** The tradition in the courts of England and Wales is generally speaking an oral one. Great reliance is placed upon the oral evidence of witnesses. The evidence of each witness is probed under cross-examination, to test its accuracy and truthfulness. The jury (in a Crown Court trial) decides the weight to be attached to the evidence when assessing whether guilt is proved.
- 3.3** Discussions prior to a criminal trial with or between all types of witness have been held by the courts in a number of cases to give rise to the potential for:
- witnesses giving inconsistent accounts of the events in issue in the trial;

- fabrication, whether deliberate or inadvertent. For example, a witness may:
 - become aware of gaps or inconsistencies in his or her evidence, perhaps when compared with that of others;
 - become more convinced (or convincing) in his or her evidence, but no less mistaken.

3.4 Therapy is one kind of discussion which may take place prior to a trial. Other examples of discussions which may give rise to the evidence of adults and children being challenged include:

- informal contacts (for example, with friends and family);
- operational de-briefing by police officers (for example, after a large public disorder incident);
- training.

At court, witnesses other than experts are not permitted to sit in court before giving evidence (so that they do not hear the accounts of other witnesses) and they are not permitted to discuss their evidence until the case is concluded.

3.5 Children may derive therapeutic benefit from simply talking about their experiences. To an extent they will determine when they are ready to do this but the professionals concerned should be aware of the possible consequences of allowing it to happen. These may include allegations of coaching and, ultimately, the failure of the criminal case. It should also be borne in mind that the professionals concerned may themselves be called to court as witnesses in relation to any therapy undertaken prior to the criminal trial.

- 3.6** The issue raised by all discussions undertaken prior to the criminal trial, including therapy, is whether the process can affect - that is to say undermine - the actual or perceived reliability of that witness's evidence and the weight the jury will attach to it. This will depend upon a number of factors, such as the circumstances in which the discussions take place. Some of these factors are explored in section 5 below, which sets out guidelines on the use of therapy.

Records of therapy and confidentiality

- 3.7** The administration of justice and the need to ensure a fair trial demand that **any** information and evidence which could have an impact on the decision to prosecute, the conduct of the case, or the outcome of proceedings is made available to the police and prosecution.
- 3.8** The rules of disclosure place certain responsibilities on the investigator, prosecutor and also third parties, that is to say individuals or bodies who are not part of the prosecution. Therapists will generally be third parties for this purpose. Those responsibilities mean that all material that **may** be relevant to the issues disputed in the case must be preserved.
- 3.9** At some stage during the trial process the prosecution must provide the defence with such of the information and evidence as may undermine the prosecution case or assist the defence case. In this way, all of the material that is relevant to the outcome of the trial is put before the jury or magistrates. Relevant material is that which may tend to prove or disprove the issues disputed by the prosecution and defence.

- 3.10** Disclosure should not be viewed as a tool to enable the prosecution or defence to satisfy their curiosity. It is a principle designed to ensure that information that is of genuine relevance to a criminal case is available to the parties and the court.
- 3.11** This document does not set out the detailed provisions relating to disclosure but aims to highlight some of the issues that may affect the handling of those cases. Local arrangements may exist to facilitate handling requests for disclosure of material in the hands of third parties.
- 3.12** Requests for information to be obtained from third parties may be made at various stages in a criminal case by:
- the police;
 - the prosecutor;
 - the defence;
 - the court.
- 3.13** The requests should explain the issues in the case, so far as they are known, and be reasonably precise. Speculative inquiries are discouraged. The purpose should be to elicit a genuine and focused search for relevant documents or information. Careful maintenance of records of therapy will facilitate this focused approach. Where a therapist receives a request for information or documents, **legal advice** should be obtained before complying with the request. If, for example, the therapist is employed by a Social Services Department or NHS Hospital, the legal department of such a Department or Hospital will provide advice.

- 3.14** In addition to informal requests for information, if there are real grounds to believe that material which could affect the outcome of the prosecution is being withheld, an application may be made to the court for a witness summons to obtain the material. If, as will usually be the case, a therapist, having taken appropriate legal advice, believes that the material should not be disclosed, he or she may oppose the witness summons application. In that case the court may hold a hearing at which the therapist's employer may be legally represented. The court, having heard representations from the advocate representing the applicant for the witness summons and the advocate for the therapist's employer, will decide whether or not to issue a summons requiring the disclosure of the material.
- 3.15** Because of the recognition that maintaining a child's trust is central to the provision of therapy, it will usually only be appropriate to breach confidentiality in compliance with a court order, as outlined in paragraph 3.14 above. Those aspects of the therapy that have no material relevance to criminal proceedings should not have to be disclosed. However, the issue of relevance may need to be reviewed at different stages of the criminal case, as more becomes known about the prosecution and defence cases. Confidentiality cannot therefore be guaranteed in advance. Bearing this in mind, it is important that an understanding is reached with the child and carers at the outset of therapy, of the circumstances under which material obtained during treatment may be required to be disclosed.

4 DECISION MAKING

Who makes the decisions about the provision of therapy where there are criminal proceedings?

- 4.1** The Crown Prosecution Service is responsible for reviewing and conducting the majority of criminal cases involving child victims and witnesses. Once a Crown Prosecutor considers that there is a realistic prospect of conviction, the public interest must be considered. A primary consideration for Crown Prosecutors when taking decisions in these circumstances is the best interests of the child.
- 4.2** The prosecution in these criminal cases must do what it can to:
- identify cases in which the provision of therapy before the criminal trial might be thought to have some material impact on the evidence;
 - assess the likely consequences for the criminal trial in these cases;
 - ensure that these cases are dealt with as quickly as possible;
 - safeguard the confidentiality of therapy sessions wherever possible whilst ensuring that the defence and the court are aware of the existence of information which might undermine the prosecution case or assist the defence.

These questions are not unique to therapy which takes place before the criminal trial, but the ethical, medical, welfare and legal issues are of particular importance in these cases.

- 4.3** Whether a child should receive therapy before the criminal trial is not a decision for the police or the Crown Prosecution Service. Such decisions can only be taken by all of the professionals from the agencies responsible for the welfare of the child, in consultation with the carers of the child and the child him or herself, if the child is of sufficient age and understanding.
- 4.4** The **best interests of the child** are the paramount consideration in decisions about the provision of therapy before the criminal trial. In determining what is in the best interests of the child, due consideration should be given to ascertaining the wishes and feelings of the child, in a manner which is appropriate to the child's age and understanding. When working with the child either for assessment or therapeutic purposes, account should be taken of the child's gender, race, culture, religion, language and (if appropriate) disability.
- 4.5** If there is a demonstrable need for the provision of therapy and it is possible that the therapy will prejudice the criminal proceedings, consideration may need to be given to abandoning those proceedings in the interests of the child's wellbeing. In order that such consideration can be given, it is essential that information regarding therapy is communicated to the prosecutor.
- 4.6** Alternatively, there may be some children for whom it will be preferable to delay therapy until after the criminal case has been heard, to avoid the benefits of the therapy being undone.

- 4.7** While some forms of therapy may undermine the evidence given by the witness, this will not automatically be the case. The Crown Prosecution Service will offer advice, as requested in individual cases, on the likely impact on the evidence of the child receiving therapy.

Communication

- 4.8** Clear lines of communication are required to ensure that everyone involved in the process is fully and reliably informed. Named contact points should be established in each agency for each child. Information should be routed through the police contact point although direct consultation between the professionals involved may be advisable in certain circumstances. This should be arranged using the same named contact points.

5 GUIDELINES ON THE USE OF THERAPY

- 5.1** Set out below are guidelines on the use of appropriate therapy with child witnesses. The stated principles mark the distinction between the use of psychotherapy and counselling by qualified practitioners and formal preparation of the witness for the giving of evidence in court. Where such preparation takes place, the witness should not discuss or be encouraged to discuss the evidence which s/he is to give in the criminal proceedings but may receive general support to help them through the process of appearing in court.
- 5.2** All people who work with children before a criminal trial should be aware of the possible impact of their work upon

subsequent evidence in the trial. Some types of therapeutic work are more likely to be seen as prejudicial and thereby undermine the perception of a child's credibility and reliability or to influence a child's memory of events or the account they give. Preparation for court and carefully planned preventive work which does not focus upon past abuse presents less of a problem than interpretive psychodynamic psychotherapy. Hence, there is a spectrum of evidential risk to the criminal trial which should be considered.

5.3 The least problematic aspect of therapy will focus on improving self-esteem and self-confidence, often using cognitive/behavioural techniques. Other issues which might be addressed include:

- the reduction of distress about the impending legal proceedings;
- the treatment of associated emotional and behavioural disturbance that does not require the rehearsal of abusive events.

5.4 Careful recording is essential and, prior to therapy beginning, the child's need for such therapy should be clearly stated.

Who are the therapists?

5.5 Professionals offering therapy may be working within the NHS, Social Services, the voluntary sector or privately. The context in which therapy occurs can therefore vary from a social services department or NHS child and family mental health clinic to a private or voluntary setting.

- 5.6** There are a number of factors relating to qualifications, training and experience which can guide the relevant professionals about the competence of any single individual to undertake psychotherapy or counselling with a child who is to be a witness in a criminal trial.
- 5.7** Providers and purchasers of therapy for children in this situation must ensure that any therapist or counsellor has appropriate training according to the level of work to be undertaken, as well as a thorough understanding of the effects of abuse. Membership of an appropriate professional body or other recognised competence would be expected in these circumstances. They must also have a good understanding of how the rules of evidence for witnesses in criminal proceedings may require modification of techniques.
- 5.8** Children may receive preparation for the experience of giving evidence in court. This must be given by suitably trained individuals, who will need to be aware of the clear distinction between the preparation of a child for the experience of giving evidence in court and the provision of therapy or counselling to address trauma. National Standards for Young Witness Preparation will be issued as part of the current revision of the 1992 *Memorandum of Good Practice on Video Recorded Interviews with Child Witnesses for Criminal Proceedings*.

Assessment of need for therapy

- 5.9** Assessment of the need for therapy of any child during the pre-trial period (when that child may become a witness in the subsequent trial), should only be undertaken following

consultation with the relevant other professionals involved. This may be appropriate in the context of a strategy discussion or child protection conference convened under child protection procedures. If the child is not the subject of child protection processes, and it is judged desirable, a meeting of all relevant professionals might be convened for the purpose of discussing an assessment and treatment strategy.

- 5.10** The function of any such discussion should be to discuss the needs and best interests of the particular child. The discussion should include the logistics of setting up a specialist assessment of the child, with agreement on who will undertake this assessment and which professional agencies will support the assessment, for example by bringing the child to appointments and working with the family.
- 5.11** Although it would be inappropriate to pre-empt the outcome of a subsequent specialist assessment for therapy of whichever kind proposed, it is nonetheless important that priority be given to **the best interests of the child**. The impact of any therapy upon the conduct of the criminal case should also be fully discussed. The Crown Prosecution Service will advise, as requested, on the likely effect of a particular type of therapy on the evidence of witnesses in individual cases and will need to be informed about any planned or ongoing therapy. Where a criminal case is at an advanced stage, it may be possible to consult the judge in chambers as to the potential consequences of a proposed course of action.

- 5.12** It is vital that a trained professional person with a recognised competence in such assessments should see the child and any relevant family members. One or more careful assessment interviews should be conducted in order to determine whether and in what way the child is emotionally disturbed and also whether further treatment is needed. This could be as part of an assessment undertaken according to the *Framework for the Assessment of Children in Need and their Families* (Department of Health et al, 2000).
- 5.13** It is important to note that not all children who are assessed in this way will need therapy. Final recommendations from the assessment will indicate the type of therapy or intervention, if any, required by the particular child. It will be important for such findings to be made available to other relevant agencies involved as soon as possible after the assessment is completed.

Important issues regarding an assessment

- 5.14** A whole range of issues may arise in the course of any assessment, but for those undertaking an assessment of child witnesses to determine whether they require therapy, it is important to address the following areas.
- 5.15** **Developmental factors** must be taken into account during the assessment of each child. Children of the same age may have different levels of understanding. An assessment should therefore address the child's development in both emotional and cognitive terms, as well as any relevant physical illnesses or developmental problems which might affect a child's performance as a witness in court, and which could be worked with in the course of therapy provided prior to the criminal trial.

- 5.16** A child with **specific needs** may, with the appropriate assistance, be a competent witness. An assessment of children with specific needs, including physical and learning disabilities, hearing and speech impairments should be conducted in conjunction with specialist workers who are trained in these areas of work.
- 5.17** The issue of possible **suggestibility** in an interview situation, or during cross-examination in court should also be addressed during an assessment. It should be remembered that some children including young children, learning disabled children, very severely abused children who have been intimidated or physically beaten, or severely emotionally disturbed children are more likely to produce erroneous or ambiguous responses to leading questions from interviewers, than are less vulnerable or older children. Particular care, therefore, should be taken in the assessment of such vulnerable children to use short, plain, words, to ask open questions where possible and to avoid convoluted, hypothetical or other leading questions.
- 5.18** The assessor should use a limited range of selected **assessment tools** such as drawing materials and appropriate toys (for example, non-anatomical dolls) to supplement questioning within a session. The use of anatomical dolls in assessment for therapy is unlikely to be necessary, since specific investigative work about alleged abuse (which may or may not involve anatomical dolls) will already have been undertaken in the joint investigative interview. The use of any materials which suggest or presume that abuse has taken place should be avoided.

- 5.19** If deemed clinically appropriate, children should also have a separate psychological and/or developmental assessment to obtain baseline data on their cognitive and emotional functioning. Such a psychological assessment will indicate whether the child has specific needs which may require assistance in court, for example an intermediary or interpreter, as well as contributing to an understanding of the child's emotional needs.
- 5.20** Some children are so severely traumatised that the short term provision of, for example, once or twice weekly therapeutic sessions may be either inadequate for their needs or positively disturbing for them, particularly if their home or alternative care situation has not been fully resolved. With certain children, therefore, it may be better to delay long-term therapeutic work until a placement is made within a containing environment and then commence more intensive therapeutic work.
- 5.21** This may, in some cases, mean delaying therapy until the criminal proceedings are at an end (though in such cases prosecutors will wish to do all that they can to expedite the proceedings). This does not, however, preclude the important provision of general support for the child and family or briefer forms of more focused therapy.

Potential problem areas

- 5.22** Problems may arise when the therapist attempts to distinguish fantasy from reality. In this kind of situation, the therapist should be as open to the idea that material presented as factual truth may be a distortion, as they are to a fantasy being a representation of reality.

- 5.23** Interpretative psychotherapy may, therefore, present evidential problems even if carefully conducted. The professional background and training of the therapist, the provision of adequate supervision arrangements, the appropriateness and robustness of the policies of the agency providing therapy will all help to obviate problems.
- 5.24** There are therapeutic approaches that would very definitely present problems as far as evidential reliability is concerned. These would include hypnotherapy, psychodrama, regression techniques and unstructured groups.
- 5.25** As the courts become more familiar with the provision of therapy prior to the criminal trial and more confident in the standards and knowledge of the agencies providing it, anxieties will become less. Training for professionals providing therapy and for the judiciary and legal profession will be of value.

6 CONCLUSION

- 6.1** It should be understood that those involved in the prosecution of an alleged abuser have no authority to prevent a child from receiving therapy.
- 6.2** The police and the Crown Prosecution Service should be made aware that therapy is proposed, is being undertaken, or has been undertaken.
- 6.3** The nature of the therapy should be explained so that consideration can be given to whether or not the provision

of such therapy is likely to impact on the criminal case. There should be a locally agreed mechanism for communicating this information and enabling it to be routed through the police to the Crown Prosecution Service using named contact points assigned to each individual child. Direct consultation between the professionals involved may be desirable in some circumstances and should be arranged in the same way.

- 6.4** Records of therapy (which includes videos and tapes as well as notes) and other contacts with the witness must be maintained so that they can be produced if required by the court. They should include, in the case of therapy, details of those persons present and the content and length of the therapy sessions. It is not expected, for practical reasons, that verbatim written records will be kept.
- 6.5** At the outset of therapy an understanding should be reached with the child and the carers, of the circumstances under which material obtained during therapy might be required to be disclosed. Maintaining a child's trust will remain important and it can be confirmed that those aspects of the therapy that have no material relevance to criminal proceedings will not have to be disclosed. However, what is "relevant" may change as the case progresses and so confidentiality cannot be guaranteed.
- 6.6** In newly arising allegations, therapy should not usually take place before a witness has provided a statement or, if appropriate, before a video-recorded interview has taken place. However, in existing cases where therapy is already under way, a decision about how to proceed may be best made after discussion at a multi-disciplinary meeting which

includes the child's therapist. Clearly, when therapeutic work is in progress, disruption of therapy should be avoided even if new investigations must be conducted. If it is decided that leading questions or interpretations must be used to help a child in psychotherapy then the evidential implications of this should be understood and made clear.

- 6.7** If the prosecutor advises that the proposed therapy may prejudice the criminal case, those responsible for the child's welfare should take this into account when deciding whether to agree to the therapy. It may still be in **the best interests of the child** to proceed with the therapy.
- 6.8** The therapist should be made aware of any pending criminal proceedings before commencing the therapy and should also be aware of the implications of using techniques which may result in the child's evidence being discredited.
- 6.9** Therapists or counsellors should avoid using leading questions or discussing the evidence which the individual or any other witness will give, including exploring in detail the substance of specific allegations made.
- 6.10** Prior to the criminal trial, group therapy where the specific recounting of abuse takes place is best avoided. The particular danger of this kind of group therapy is that the witness may adopt the experiences of others taking part in the therapy. Structured group therapy approaches which help in a neutral way to improve the child's self esteem are less likely to cause difficulties. As a general principle, **group therapy** should not be offered to the child witness prior to the trial.

- 6.11** Children may derive therapeutic benefits from talking about their experiences, but any detailed recounting or re-enactment of the abuse may be perceived as coaching. Therapists should recognise that the criminal case is almost certain to fail as a consequence of this type of therapeutic work. This should be differentiated from the accepted practice of allowing witnesses, prior to giving evidence, to refresh their memory by reading their statements or viewing their video recorded interview.
- 6.12** Professionals should avoid the use of jargon and take care to use language that will not be perceived, if repeated by a child witness, as evidence of the witness being instructed. The language content of the therapy and counselling sessions is guided by the child but equally it must be recognised that children do use different forms of language in differing situations and contexts.
- 6.13** During therapy, witnesses should never be encouraged to extend their account of the abuse which they have suffered. However, it is acceptable to offer general reassurance and support to a child during this difficult process.
- 6.14** Any disclosure of materially new allegations by the witness undergoing therapy, including possible disclosures of their own abusive behaviour, or any material departure from or inconsistency with the original allegations should be reported to the Social Services Department, Police and any other statutory agency in accordance with the local area child protection committee (ACPC) procedures.

- 6.15** Prosecutors **must** be informed that the witness has received therapy. Prosecutors **must** then obtain an assurance that the witness did not, in the therapy session(s), say anything inconsistent with the statements made by the witness to the police. Prosecutors may need to be made aware of the contents of the therapy sessions as well as other details specified in the above paragraph, when considering whether or not to prosecute and their duties of disclosure.
- 6.16** Discussions at local level between the agencies concerned, exploring practical ways to facilitate good practice, will be helpful in handling the issues outlined in this guidance. A local protocol setting out the approach to be followed may be helpful.

7 ACKNOWLEDGEMENTS

We are grateful to all those who have contributed to both the consultation draft and final version of this document. We would like to thank particularly members of the working group and those listed below who took responsibility for consulting colleagues in their respective disciplines and contributing to drafts:

Ms Rosemary Arkley, formerly SSI, Department of Health

Mr Bryan Boulter, CPS (from April 2000)

Ms Deborah Turnbull, CPS (until April 2000)

Ms Deborah Cameron, Association of Directors of Social Services Departments

Dr Elaine Gadd, Department of Health

Ms Jenny Gray, Department of Health

Dr Robert Jezzard, Department of Health

Dr Loretta Light, Senior Medical Officer, Lichfield

Mrs Mair, formerly Department of Health Solicitors

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Also, we are grateful to those who responded to the consultation draft, in particular the Police, the Judiciary, the CPS, Social Services Departments, Therapists, Academics and Voluntary Child Care Organisations.

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