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## CONTROVERSY

## Who is failing abused and neglected children?

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*This is a response to an article by Nigel Speight and Jane Wynne, 'Is the Children Act failing severely abused and neglected children?', published in this journal in March 2000.<sup>1</sup> Overall, we consider the article to be polemical and inadequately argued. Many of the points made are unsubstantiated and there are errors of fact. Where does evidence based practice go if senior practitioners prefer anecdotes and personal belief to research findings?*

*Restrictions on space preclude an exhaustive reply to all the points Speight and Wynne raise, so we have confined ourselves to addressing those considered most significant.*

**Methodology**

A primary weakness in the article is its anecdotal basis and reliance on comments from colleagues. No attempt is made to address the extensive research literature which relates to the periods before and after the implementation of the Children Act. This high calibre, well corroborated literature has been subjected to stringent peer review.<sup>2</sup> Speight and Wynne are dismissive of this research, as their comments about "Messages from research" indicate. They assert that child protection has worsened without clearly defining their terms of reference or the ways in which they are measuring outcomes. Instead, they base their opinions about what happens now on comparisons with an idealised view of previous practice. This leads to serious misconceptions and spurious conclusions that may have damaging consequences.

**Before the Children Act**

The authors simultaneously sanitise and simplify the situation before the Children Act and underestimate the range of concerns that existed. The use of compulsory intervention, for example, was found to be less effective than working with parents of children who needed to be separated from families for their protection.<sup>3</sup> Far from producing quick decisions based on professional assessment, wardship proceedings were frequently long and drawn out, leaving the courts no alternative but to accept de facto severance from family as the status quo. Children, and parents, were frequently unrepresented and their perspectives ignored.

A purely procedural avenue for assuming parental rights was used, without scrutiny of evidence unless contested. It is indefensible to

remove children from families through a process in which children and parents are not represented, alternative explanations for a child's conditions not explored, nor options for a child's care heard.

A raft of research, inquiries, and criminal investigations has unequivocally shown the profoundly disturbing legacy of the care system.<sup>4-5</sup> Abuse, neglect, and destruction of family relationships have wrecked lives. While this cannot justify inaction where serious concerns exist, it must be accepted that being in state care is a "risk to be balanced against others"<sup>6</sup>; the aim cannot be to protect children from some risks, merely to expose them to others sometimes more pernicious.<sup>7</sup>

A compelling case has been made that a rescue mentality dominated which did not meet children's needs, and that greater emphasis (and resources) were needed for preventive and supportive services.<sup>8</sup> Assumptions associated with "rescue" justified the systematic ending of relationships between parents and children in care through placement at a distance, lack of communication between social workers, and parents and formal termination of contact. Research drew attention to the negative consequences of this for children (many of whom had not been abused). It showed how inclusive substitute care could promote children's welfare, contributing to the stability of placements and a positive sense of personal identity.<sup>9-10</sup>

**The Children Act 1989 and its workings**

While accepting that there are flaws in the content and the implementation of the Act, we dispute many of the views expressed by the authors. These seem to be focused on the most severe end of the child protection continuum, whilst drawing conclusions about the care and protection system as a whole. It is understandable that the authors wish to focus on children in the most serious danger, but there is no litmus test for determining who such children are. The current system has to deal with *all* children at risk of significant harm.<sup>11</sup> The decisive intervention required to protect a severely ill treated child is inappropriate when dealing with the majority of children in the system. Too frequently, the system has placed pressure on a non-abusing parent, most usually the mother, undermining rather than supporting parenting.<sup>12-13</sup>

There are situations in which parents and children need to be separated. However,

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research indicates that in the majority of situations, maintaining a cooperative working relationship with a parent or other family member provides the best possibility for children.<sup>14 15</sup> Also treating parents with respect, a recognition that they have rights promotes, rather than undermines, their cooperation.<sup>16</sup> There is a difficult balancing act to achieve.

When child protection systems are evaluated on an international basis, the UK system is considered to have strengths, particularly at the most severe end of the continuum.<sup>17 18</sup> Concerns do exist, however, about the impact of persistent neglect and emotional abuse<sup>19</sup>; the extent of child sexual abuse and the ability of the system to deal with organised abuse<sup>20</sup>; and the impact of domestic violence on women and children<sup>21 22</sup> etc. Primary prevention is still under resourced. This failure to provide early supportive intervention continues to propel children and families into a child protection system that may offer little in terms of meeting children's needs or ameliorating harm already experienced.<sup>2</sup>

The Human Rights Act 1998 (effective from 2 October 2000) incorporates into UK law the European Convention on Human Rights. Article 8 requires respect for family life, and allows intervention only where it is legally endorsed and to the extent necessary to protect the welfare of children. Case law in the European Court of Human Rights upholds the principle that childcare interventions should be limited and focused on family reunification.<sup>23</sup> The law and practice of child protection in the 1980s is unacceptable by these standards. The European approach is not just one of philosophy, but recognises the importance to each other of parents and children and the defects in state care.

It is untrue to suggest that "a lobby scarcely exists" to promote the interests of abused children, a statement which may annoy major non-governmental organisations which continue very actively to work on behalf of children. They undertake research and innovative practice to improve services, often in partnership with local authorities; for example, Barnardo's work with young women sexually abused through prostitution.<sup>24</sup>

### The Children Act: a different evaluation

Many things are harmful to children, and most children who are the subject of harm will never come to the attention of statutory agencies.<sup>25</sup> This is so even when there has been an "explosion" of child protection referrals, not just here but in the USA and Australia.<sup>26</sup> The Children Act allows for the provision of services to children in need and their families as well as for child protection interventions. When the lives of children are examined in detail, it becomes clear that the intentions of the Children Act are undermined by a reluctance to resource adequately its preventive provisions and the failure of social policy generally to systematically address the needs of children (through antipoverty strategies, for example). This failure to safeguard children's wellbeing at a

primary prevention level generates intolerable pressures within the child protection system, which has become the gateway to services.

Not only do the aspirations of the Children Act remain unrealised, but obligations to promote children's rights and wellbeing assumed when the UK ratified the UN Convention on the Rights of the Child, require considerable further investment.

### Conclusions

There are and will continue to be many failings in our care and child protection systems and there are some children whose parents will never be able to provide good enough care. However, the article to which we respond does little justice to the Act or those with the unenviable responsibility for implementation. It takes scant account of the complex social and economic factors that both affect people's lives and shape social work interventions. The Children Act on its own can do little to counteract these societal factors and its positive potential has, in any event, been compromised by lack of resources.

While polemic can be a vital fuel for debate, in this instance it appears unhelpful and leads to a level of confidence about medical knowledge and intervention that is unwarranted.

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### Reply

We are pleased to have the opportunity to reply to the belated response to our paper from our colleagues in Warwick. We would point out that we have already responded at some length to a paper from Dame Brenda Hale, who covered much the same ground.<sup>1 2</sup>

Harrison *et al*'s main objection to our paper is regarding the paucity of evidence for our assertions. Interestingly one of us (JW), took part in a recent debate in Professor Spencer's department at which it was generally agreed that there is a major problem with good evidence and sound research on this whole area. Our paper was based on our joint clinical experience and observations of the last 20 years, but we would like to point out that in addition, we have published (with Chris Hobbs) peer reviewed papers covering the following topics:

- child deaths<sup>3</sup>
- re-abuse of children<sup>4</sup>
- abuse of children in care<sup>5</sup>
- morbidity following abuse<sup>4</sup>
- changes in practice<sup>6</sup>

Harrison *et al* ignore these papers whilst exhorting us to look again at "Messages from Research". However, in a literature review of child abuse interventions, many of which were included in "Messages from Research", Gough found only 9 out of 225 papers to be methodologically sound.<sup>7</sup>

The whole legal framework for child protection is hardly evidence based. Legislators write the law and judges interpret it, thereby creating precedents that influence future decisions.

Our initial paper looked at a group of children and families who had been involved in the legal process, and which we felt represented an observable change in practice by social workers and the courts since the inception of the Children Act. This change was overwhelmingly towards non-intervention or delay in intervention.

We accept that there are grave defects in the current alternative care of abused children away from their families but would prefer these defects to be addressed separately and not used as an excuse for a policy of non-intervention.

Currently, fewer than 1% of children referred to social services for possible abuse end up in judicial proceedings. More children are currently in the care system because of parental request than because of abuse or neglect.

Total child deaths due to abuse were 67 in 1990 and 77 in 1999.<sup>8</sup> All this supports our contention that currently social workers and the courts are interpreting the Children Act in such a way as to err on the side of non-intervention.

It is possible that Harrison *et al* do not share our basic premise regarding the desirability of intervention in child abuse and neglect, and that this explains their enthusiasm for the Act. We still agree that the Children Act could be used to protect children really successfully, but argued that there was a philosophical bias in it which leads social workers (perhaps incorrectly) to feel discouraged from intervening.

In this context, we noted with interest the pre-inquiry comment of Laming who is to chair the Anna Climbie inquiry (another extreme example of non-intervention), "[The Children Act] is coherent and on paper ought to work. But is it too complicated?" (we would say contradictory).<sup>9</sup> He went on to describe Anna's death as due to a systems failure rather than due to the failings of individuals.

Surely there are no conceivable grounds for complacency regarding current child protection practice in this country. Either this is the fault of the Children Act as it stands, the interpretation put on it by professionals, or the failings of individuals (and probably a combination of all three).

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