Evidence in cases of alleged physical or sexual abuse of children commonly fails to meet the standards required for a successful prosecution. This study examines why this is so. Based in two police force areas, with a sample of 94 child abuse cases, the study examined the gathering, presentation and evaluation of evidence at each stage of the criminal justice process. It also looked at the arrangements for dealing with children’s testimony in other jurisdictions.

**KEY POINTS**

- The initial videotaped interview with a child who alleges abuse was found to serve several different purposes which can be difficult to reconcile. This can place unrealistic demands upon interviewers.

- Police officers were given little training or guidance in the legal principles underlying the various protocols they are asked to follow when investigating child abuse cases.

- There is a belief among police officers and CPS lawyers that it is very difficult to secure a conviction in cases where the sole evidence is a child’s unclear account of the alleged abuse. The decision to prosecute was influenced by this belief. Cases where a child had given a clear and consistent account were viewed more positively.

- While recent reforms introducing special procedures for the delivery of children’s testimony appeared to be working fairly well in the study areas, some technical problems remain. Also, the relatively few cases in which children were subjected to unfair or intimidating cross-examination seemed to loom large in police and CPS consciousness.

- Other countries have adopted innovative approaches to receiving children’s testimony, including recording all the child’s evidence at a pre-trial hearing.

Over the past decade, concern about abused children’s needs has led to new approaches in the investigation of child abuse. Legislative and procedural reform has concentrated on developing efficient procedures for multi-agency case management and on modifying the means by which children give evidence. Child witnesses can now testify at trial by live television link rather than from the witness stand (Criminal Justice Act 1988). A child’s evidence-in-chief may now be video recorded at the time of the initial complaint and that videotape shown to the jury in place of live testimony (Criminal Justice Act 1988 as amended by the Criminal Justice Act 1991 and the Criminal Justice and Public Order Act 1994).

The Memorandum of Good Practice (Home Office and Department of Health, 1992) is a guide to interviewing children in child abuse cases. It aims to ensure that a video interview is admissible as evidence in a criminal trial. It was hoped that the changes in the method of eliciting children’s testimony would improve the quality of that evidence. While the Memorandum’s guiding principles retain widespread support, there have been criticisms; for example, concerning the length and number of interviews it recommends.
Since this research was completed, the Youth Justice and Criminal Evidence Act 1999 has been passed. The Act aims to increase the protection afforded child witnesses by extending the scope for their evidence to be given either by video recording or via live television link.

THE RESEARCH
The objectives of the research were to:

• investigate the extent to which cases are not prosecuted because the evidence gathered is deemed insufficient or inadmissible
• examine how the admissibility and weight of the evidence is evaluated during the inter-agency investigation, the assessment of the case by the CPS and the trial
• examine whether, if the case is not prosecuted on evidential grounds, the perceived weakness of the case is well-founded
• develop practical recommendations aimed at enhancing the reliability of children’s evidence
• consider whether further legislative reform is warranted.

The study’s two elements

• A case study of recent and ongoing criminal investigations in two police force areas, covering three CPS offices and two Crown Courts. Case files were reviewed and interviews conducted with the police officers, Crown Prosecutors and barristers involved in these cases. Trials were observed.

• A comparative survey of other jurisdictions where there have been initiatives designed to facilitate the reception of children’s evidence and improve its quality.

THE CASE STUDY

The sample of cases was obtained from the CPS and three police child protection units (CPUs) in the two study areas in September and October 1996. Selection criteria were that cases involved an allegation of physical assault, ill treatment or neglect, or a sexual offence, in which the victim was, at the time of the complaint to the police, aged 17 or under. The 94 cases studied involved 124 complainants and were made up from the police file sample (30 cases), CPS advice file sample (30 cases) and CPS charge file sample (34 cases). Most cases examined involved sexual allegations (see Table 1). Physical abuse allegations were prominent in the police file sample, but not in the advice or charge file samples. The inference is that alleged physical abuse is less likely to be prosecuted than alleged sexual abuse.

Of 124 complainants, 123 knew the alleged abuser. This is not surprising as a significant proportion of the cases originated from police units which only investigated allegations where the alleged perpetrator was either a family member or had temporary care of the child. These were the most problematic cases when it came to evaluating evidence and deciding whether to prosecute.

The investigation
CPU officers were aware of their responsibility to regard the child’s welfare as paramount. This could be difficult to reconcile with their responsibilities as criminal investigators. Child protection training courses concentrated on the conduct of the video interview. As a consequence, other areas of the investigation which also need skills specific to child abuse, could be overlooked. Officers were given little guidance in the legal principles underlying the various protocols they are asked to follow.

The videotaped interview is:

• the initial step in a criminal investigation
• an inquiry into whether the child is in need of protection
• the examination-in-chief of the child at trial.

While many interviews reflected good and even excellent practice, the tension between these three purposes could result in testimony which was incomplete, inadmissible, or difficult for the jury to understand and evaluate.

The videotaped interview was often the first time the child had spoken in detail about the offence. It was typically a rambling, incoherent account. Interviewers tried to clarify it by asking further questions but, unlike a barrister conducting an examination-in-chief in court, they did not at that stage have a view of the whole case and sometimes no clear idea of the nature of the child’s allegations. Memorandum guidance, or its interpretation, sometimes hampered the collection of evidence. Interviewers knew they should not ask ‘leading’ questions, but did not have sufficient grounding in the legal rules to be confident in deciding which questions to ask. Moreover, the Memorandum advises interviewers to avoid some questions which would in fact be acceptable to the court.

The decision to prosecute
CPS lawyers said videotaped testimony was very helpful in evaluating child witnesses, though these tapes are time-consuming to review.

The police and Crown Prosecutors believe that the experience of testifying at trial is traumatic for children

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**Table 1 Proportion of cases in different categories of alleged abuse**

<table>
<thead>
<tr>
<th>Category</th>
<th>Frequency of cases No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sexual abuse</td>
<td>61</td>
<td>65%</td>
</tr>
<tr>
<td>Physical abuse</td>
<td>19</td>
<td>20%</td>
</tr>
<tr>
<td>Physical abuse and neglect</td>
<td>6</td>
<td>7%</td>
</tr>
<tr>
<td>Physical and sexual abuse</td>
<td>5</td>
<td>5%</td>
</tr>
<tr>
<td>Neglect</td>
<td>2</td>
<td>2%</td>
</tr>
<tr>
<td>Physical and sexual abuse and neglect</td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td>Total</td>
<td>94</td>
<td>100%</td>
</tr>
</tbody>
</table>

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and this could lead them to conclude that prosecution was not in the public interest.

The police and CPS believe that it is extremely difficult to secure a conviction where the sole evidence is that of an inarticulate child who has not given a clear account of the abuse. Where the child’s account was clear, consistent and detailed, or there was evidence which supported the child’s allegations, the case was viewed more positively.

Corroborative evidence was usually lacking. In its absence the child’s credibility was the critical factor. The children who made these allegations often came from troubled backgrounds or had been involved in a previous investigation. In the eyes of the police and CPS, these factors were likely to undermine children’s ability to cope with an attack on their credibility. Police and prosecutors also believed that where, for example, a child had delayed making a complaint, this would be exploited by the defence.

CPS lawyers did not attend Crown Court themselves and there was no mechanism to ensure they were routinely informed of evidential rulings and the outcome of cases which they had approved for trial. They had to rely on caseworkers for information about the progress of cases, including rulings on the admissibility of evidence. This in turn compromised lawyers’ ability to advise the police, for example in relation to the need for corroborative evidence, or on the credibility of disclosures in video interviews.

The pre-trial period
In the sample the average time from the initial complaint to the police to the start of the trial was 14 months (11 months, excluding a few very long-running cases). There seemed to be no co-ordinated effort to bring cases to trial speedily, and certainly none that succeeded in overcoming the powerful disincentives within the system. The formal ‘fast-tracking’ system in operation at one court centre had no discernible impact upon the speed with which cases were brought to trial. The transfer mechanism did not appear to ensure that child abuse cases received priority in the Crown Court. Plea and directions hearings were often ineffectual, so that the admissibility of the videotaped interview and of other evidence, as well as entitlement to use the video link or screen, remained undetermined until the trial.

Delay can undermine the integrity of the child’s evidence. For example, contamination might be alleged and inconsistencies could arise between the child’s accounts. Furthermore, the child might come under pressure to retract the complaint, or the child’s carers might withdraw their support for the prosecution.

The trial
Overall, the statutory reforms providing special procedures for children’s testimony in court had bedded down fairly well in the study areas. The Bar recognised the benefits for both prosecution and defence of the videotaped interview and the video link. But the view persisted that children make a stronger impression on the jury when they testify from the witness box.

Technical problems with videotaped interviews and with the live link sometimes made it difficult for juries to assess the child’s evidence.

Prosecuting counsel felt they had to rely on the trial judge to intervene where cross-examination was intimidating or unfair or where improper attacks were made on the complainant’s credibility during the defence’s address to the jury. However, it appeared that some trial judges were reluctant to intervene. These relatively few cases in which children were treated harshly loomed large in police and CPS consciousness.

Child witnesses could be exposed to attack in cross-examination for delaying their complaint even for a few hours due to the ‘recent complaint’ doctrine. This was despite the fact that reluctance to disclose abuse is consistent with well-recognised patterns of secrecy, embarrassment and shame.

Expert medical opinion as to the significance of physical signs of sexual abuse (or their absence) is commonly presented in the criminal courts. However, juries are not allowed to hear expert psychological or psychiatric opinion of children’s behaviour or demeanour following sexual abuse.

THE COMPARATIVE STUDY
The study examined the approaches taken to the eliciting of children’s testimony in other jurisdictions, focussing in particular upon Canada, the US, Australia, New Zealand and Scotland.

In 1989 the Advisory Group on the videotaping of children’s evidence (The Pigot Report) proposed that the whole of a child’s testimony, including cross-examination, should be given pre-trial, on videotape. This proved controversial, and subsequent legislative changes only partially implemented these recommendations. In particular, cross-examination of the child witness still takes place at trial. This compromise arrangement is colloquially referred to as ‘half Pigot’.

Variations on ‘half Pigot’
Under the current English regime the videotaped investigative interview may be substituted for oral examination-in-chief of the child witness at trial, with prosecuting counsel permitted to ask supplementary questions only in restricted circumstances. In practice there are seldom any supplementary questions. In Canada and New Zealand, prosecuting counsel are free to use the videotaped interview as they think appropriate, as complete replacement for oral examination-in-chief or as one segment of a child’s testimony. This may help to show how the disclosure emerged and demonstrates a child’s emotional state at the time. It allows prosecutors to organise children’s testimony into a more coherent and chronological narrative.
Child witnesses in the study areas could be uncertain until the start of the trial how exactly their testimony was to be delivered. In four Australian States child witnesses have a measure of control over how their testimony will be presented in court, with statutory presumptions that they are entitled to have their videotaped interviews admitted in evidence, and that CCTV may be used for oral testimony.

**Variations on ‘full Pigot’**

Variations on ‘full Pigot’ have been implemented following legislation in Western Australia, Queensland, 36 US States and in Federal US. The entire evidence of a child witness is recorded at a pre-trial hearing. All these jurisdictions, except Queensland, appear to consider that the procedure is working satisfactorily. Early experience in Western Australia indicated that the child’s testimony was not always delivered well before the trial, but this problem has apparently been overcome. The child’s evidence is now completed within an average of seven months. Proposals to extend pre-trial cross-examination throughout Australia and introduce it in New Zealand are currently under consideration. In Scotland, legislation permitting pre-trial testimony by children has been in force since 1993 but has not been used. This is apparently because prosecutors and judges are reluctant to depart from the traditional mode of presenting evidence to a jury and so decline to invoke the broad statutory discretion to use the procedure.

**KEY RECOMMENDATIONS**

- All CPU officers should be given standardised training in conducting child abuse investigations, including practical instruction in the legal principles which underlie the rules of evidence.
- The Memorandum should be revised to reflect changes in the law and experience gained in interviewing children since 1991. Its scope could be expanded to include guidance on planning the investigation as a whole and on evaluating the totality of the evidence.
- Each CPS branch should contain prosecutors with special responsibility for child abuse work, including monitoring case progress and reviewing case outcomes with colleagues.
- All cases involving child witnesses should be placed under the supervision of a designated judge as soon as they are transferred to the Crown Court. The judge should have responsibility for setting a timetable for prosecution and defence disclosure, and for any pre-trial applications.
- Prosecuting counsel should be given greater latitude in determining the extent to which the videotaped interview shall constitute the child’s examination-in-chief at trial.

**REFERENCES**


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