

ARTICLES

The quality of joint investigative interviews with children in Scotland

David La Rooy,
Scottish Institute for Policing Research &
University of Abertay Dundee.
E-mail: david@larooy.net

John Halley,
Advocate.
E-mail johnhalley@arnotmanderson.co.uk

The writers wish to highlight a serious systemic problem which is harming the welfare of children and the interests of justice in Scotland.

Cases involving allegations of child abuse raise issues of great importance and sensitivity in all jurisdictions. Such cases provide the context in which there is direct interface between considerations arising from the welfare of children and the interests of justice. In Scotland the procedural context is usually in criminal proceedings and in referrals to the Children's Hearing system. However, these issues often also arise in applications for orders under s 11 of the Children (Scotland) Act 1995.

It is difficult to estimate the true cost of child sexual abuse to society, but it is likely to be significant. Although the personal cost to victims, their families and the community cannot be calculated, significant levels of police, social work, legal and medical resources are used. A recent retrospective survey of young adults in the UK revealed that 6 per cent of boys and 8 per cent of girls claimed to have suffered such abuse while under the age of 18 years (May-Chahal & Cawson, 2005). The problems stemming from abuse include physical and mental trauma, injury, re-victimisation, externalising problems, educational difficulties, health problems and a failure to thrive (Frothingham et al, 2000). Recent results from a New Zealand study suggest that victims of child sexual abuse are twice as likely to become involved in abusive relationships later in life (Fanslow et al, 2007).

Simply participating in the legal system has been shown to have negative consequences for children who allege child abuse. Goodman et al, (1992) compared children who had to give evidence in court with children who did not end up having to testify. They found behavioural and mental health problems in the children, just months after testifying, which were linked to the number of times children testified; the more children testified, the worse the behavioural

and mental health problems were. Quas et al, (2005) followed up these cases 14 years later and still found problems associated with previous participation in the legal system. The frequency of giving evidence was still associated with internalising problems such as anxiety and depression all those years later. Externalising behaviours such as aggression and antisocial behaviour were also present. The levels of distress experienced by children while actually giving evidence also predicted later mental health problems. When lenient sentences were perceived to have been imposed, victims felt that more could have been done. Children who were older at the time of the court appearance harboured negative attitudes towards the legal system that followed them into adulthood.

Under the present systems which are in place it is only through the proper and efficient investigation of allegations of child sexual abuse that the cost to the system, and the difficulties for children, can be mitigated.

Current issue: The quality of interviews with children in Scotland

When children allege abuse there is frequently little or no physical evidence supporting their allegations. Investigators must therefore rely on what children say when they are formally interviewed. Exactly what is said forms a crucial part of the evidence in many cases. Over 30 years of accumulated research on children's memory capabilities shows clearly how interviews should, and should not, be conducted. It is vital that children should be enabled to provide an account of their experiences through a non-leading and non-suggestive structured line of questioning. The most reliable information is obtained when interviewers use open-ended requests for information as simple as, "tell me what happened," "tell me more about that," and "you said —, tell me more about that," (Lamb et al, 2008).

The Joint Investigative Interview Technique (JIIT) commissioned by the Scottish Executive (2003) is an example of internationally accepted best practice guidelines. The guidelines emphasise the use of open-ended requests for information. Of particular note is an appendix echoing the detail of the National Institute of Child Health and Human Development (NICHD) Protocol. The NICHD protocol has been validated in field studies of approximately 40,000 forensic interviews with children over the last 10 years (See Lamb et al, 2007; 2008; Orbach et al, 2000) and is regarded as the 'gold standard' for interviewing children.

THE QUALITY OF JOINT INVESTIGATIVE INTERVIEWS WITH CHILDREN IN SCOTLAND

Serious cause for concern

However, there is serious cause for concern regarding the forensic interviewing of children in Scotland because there is currently no requirement to video, or tape, record interviews with children (plans have been formulated to change this in the coming years, see Scottish Executive, 2007). Available evidence overwhelmingly demonstrates that recording interviews is the best way to preserve evidence compared to handwritten contemporaneous notes, post-facto notes, or just trying to remember what was said. It is not possible to know exactly what was said in an interview without having recorded it (Warren & Woodall, 1999). Research also shows that the type of questions asked, whether they be suggestive or neutral, also have a significant impact on the answers children give, again emphasising the need to record exactly what was said by interviewers (Ceci & Bruck, 2000). By not recording interviews, evidence can be, and is, lost.

Moreover, the absence of recorded interviews in Scotland means that it is impossible to determine accurately whether or not the Scottish Executive (2003) recommendations are actually being used by police officers and social workers who jointly interview children. Previous research conducted in England and Wales has shown that the uptake and implementation of government guidelines on interviewing child witnesses cannot be assumed (Sternberg et al, 2001). The lesson learned is that the release of government guidelines is the beginning of a process to improve interviewing standards — not the end of a process. The quality of interviews must be independently checked to determine that a high standard is maintained (Lamb et al, 2002a, 2002b). When applicable, training resources can then be justified and targeted. It is surprising and concerning that resources are currently being directed towards training police and social workers in Scotland, yet no attempt has been made to evaluate the success of the training. Evaluation is urgently needed before even more resources are directed towards training when video recording of interviews becomes mandatory in Scotland.

Survey of police officers

To address this issue Dr La Rooy (2010) and his collaborators (Professor Michael Lamb of Cambridge University & Professor Amina Memon of Royal Holloway College University of London) surveyed 91 police interviewers throughout Scotland about their perceptions of how well they adhered to the Scottish Executive (2003) guidelines. The findings of this survey

indicated that almost all respondents (97 per cent) received the appropriate national one week training course and overwhelmingly indicated (again 97 per cent) that their training equipped them either quite, very, or extremely well for conducting their interviews. Thus, it is not surprising that interviewers also indicated that they believed that their interviews resulted in obtaining a full and complete account of events in question (88 per cent).

However, aside from this positive self evaluation there are reasons to be very concerned as to the quality of interviews that are being conducted with children in Scotland. Other results in the survey showed that (1) most interviewers (78 per cent) received no refresher training even though they had been interviewing for several years; (2) no interviewers received formal feedback about the quality of interviews that they conducted from their peers, managers or other experts in the field; (3) the use of open-ended prompts was not widespread with 20 per cent of interviews indicating that they never or rarely use them; (4) interviews are not currently being electronically recorded; and (5) 'practice interviews' were not being conducted with children prior to the main interview although research suggests that practice interviews are a vital component of the interview process. These results have implications for how well current training initiatives are succeeding in preparing interviewers for the role of conducting investigative interviews with children.

Crucial context: The welfare of children and the interests of justice

One of the most crucial functions of properly conducted joint investigative interviews with children is to elicit evidence, in accordance with the applicable guidelines and best practice. This exercise is both fundamental and crucial to the interests of justice in the respect that it ought to yield evidence, in appropriate circumstances, which is capable of contributing to a legal sufficiency in the prosecution of crime, sometimes of the very most serious nature.

The exercise is also both fundamental and crucial to the welfare of children in the respect that it ought to yield evidence, in appropriate circumstances, which feeds into the systems in place in each local authority area in Scotland for inter-agency child protection. Properly conducted joint investigative interviews with children ought, therefore, to provide evidence on the basis of which robust decisions can be properly made that might have a dramatic effect on family life in this context. This might result,

THE QUALITY OF JOINT INVESTIGATIVE INTERVIEWS WITH CHILDREN IN SCOTLAND

in appropriate cases, in children being the subject of child protection orders, or compulsory measures of care, or even in the exclusion of a parent from the family home. This can, and often does, happen whether or not there are ever any criminal proceedings initiated in respect of a particular matter.

It follows, therefore, that, at the point when an allegation of impropriety or abuse first arises, it is absolutely vital for the welfare of a child, and in the interests of justice, that the applicable guidelines and best practice are followed from the outset of the joint investigative interviewing process. At that initial stage the investigators can never know what sort of matter they are dealing with, nor at what level of seriousness.

Two recent cases

Two recent cases raise the greatest concern about the quality and manner of joint investigative interviews, and other aspects of the investigative process, conducted with children in Scotland. This concern arises from the perspectives of both the interests of justice and the welfare of children.

(1) *HM Advocate v G*, 2010 SLT 239.

The case report relates to a High Court prosecution in which the libel contained allegations of sexual assault and rape in relation to two complainers aged 12 and 13. A preliminary issue was raised on behalf of one of the accused as to the admissibility of the oral evidence of both girls. At preliminary hearing stage Lord Brodie decided that it was inappropriate that the relevancy of the complainers' evidence be decided as a preliminary issue and that the objection taken should be disposed of at the trial diet.

The significance of the case, for present purposes, lies in the consensus view of both the Crown and defence that "there were concerns" in relation to the process by which the complainers had been interviewed and precognosed in preparation for trial. The defence argument was, in essence, that the complainers had already been cross examined about material matters to the extent that their oral evidence was rehearsed and not capable of being relied upon at the trial. This argument was founded upon clear expert opinion. It was argued that the Crown's reliance on both of the complainers' evidence, in the circumstances, amounted to oppression.

(2) *S v F*, Sheriff N M P Morrison, QC, Edinburgh sheriff court, 13 April 2010, unreported.

This case related to competing applications for orders under s 11 of the Children (Scotland) Act 1995 by the pursuer father and the defender mother of two children. The substance of the dispute between the parties turned upon the defender's contention that the eldest child, Z, a five year old girl, had made and repeated a whole series of concerning statements which were understood to implicate the pursuer in impropriety and sexual abuse of her.

The focus of the evidence led fell upon the process in which various allegations were said to have been made by Z. There was questioning and suggestion by the defender. Thereafter, the child was subject to an, at best, inconclusive joint investigative interview by police and a senior social worker. Notwithstanding that, Z then underwent a full medical examination. "Direct work" then took place between the child and the same senior social worker during which further, and different, allegations were said to have been made against the pursuer. A second joint investigative interview took place, conducted by the same senior social worker and a WPC. Z was thereafter referred to a therapeutic service for children who have been sexually abused.

Expert evidence was led for both parties. A consensus view prevailed that all statements of Z following the first, initial, joint investigative interview were "contaminated" and, therefore, unreliable. There was never any question of Z being called to give evidence.

For present purposes the importance of this case can be seen from paras 66 to 73 of the sheriff's note. Sheriff Morrison carefully sets out, in detail, a depressing catalogue of failures which amount to inept joint investigative interviewing and flawed rationale in the entire investigative process. The sheriff is driven to recommend the removal of the senior social worker, a CID officer and a WPC from child investigative interviewing until they have been re-trained. Sheriff Morrison's Judgment is compulsory reading for any practitioner with interest in the issue of investigative interviewing of children.

The sheriff records, and accepts (at para 67), the view of the defender's expert that the interviewing of Z was worse, in some respects, than that which led to the Orkney Inquiry in 1991.

Sadly, the failures highlighted in this case are not dissimilar to the kinds of malpractice which

THE QUALITY OF JOINT INVESTIGATIVE INTERVIEWS WITH CHILDREN IN SCOTLAND

the writers regularly encounter in their respective practices in other cases of joint investigative interviewing of children in Scotland.

Video recording investigative interviews

The terms of s 271M of the Criminal Procedure (Scotland) Act 1995 envisage that a prior statement made by a child shall be admissible in criminal proceedings in Scotland as the evidence in chief of that child, or part thereof. Section 262 of the Criminal Procedure (Scotland) Act 1995 envisages that a prior statement of a child is contained in a document if it is recorded on a video or DVD recording of the child's statement. Ideally, the prior statement envisaged should be in the form of a properly conducted joint investigative interview.

In civil proceedings of all kinds such video or DVD recordings of properly conducted joint investigative interviews are admissible as hearsay evidence as permitted by the scheme of the Civil Evidence (Scotland) Act 1988.

Against this legal background it is a matter of the greatest concern, that, as a matter of practice, at present, joint child investigative interviews conducted by police and social workers are not routinely recorded on video or DVD. Indeed, the writers understand that this is rarely done. The writers share the view of Sheriff Morrison, at para 68(1) of the Judgment in *S v F*, that it is extraordinary that this is not done as a matter of course.

It is understood, however, that the Scottish Executive Guidelines of 2003 are presently being reformulated and that all joint investigative interviews conducted by police and social workers with children will be recorded on video or DVD.

The potential benefit, from the perspectives of both the interests of justice and the welfare of children, is clear: a properly conducted joint investigative interview with a child should elicit clearer and less contaminated (and therefore more reliable) evidence than the courts appear to be furnished with at present.

Conclusion

Such research information as exists, and case law from the civil and criminal courts, both demonstrate the poor quality of joint investigative interviews conducted with children in Scotland. This raises an acute matter of the greatest concern for all professionals involved in these processes and in the public interest. The poor quality of interviewing affects both the interests of justice and the welfare of our most vulnerable children.

There is an urgent need for proper, robust and thorough training of, first and foremost, those professionals directly involved in the process of joint investigative interviews with children in Scotland. The present article is founded upon information which demonstrates that the extant approach to training must be defective because it is not working in practice.

In addition, there is an urgent need for the introduction of ongoing training of interviewers, by assessing the interviews they have carried out, with a view to ensuring that high standards are maintained. This must be done in a structured and systematic manner in order to be effective. This crucial aspect of necessary training cannot even be embarked upon unless and until joint investigative interviews with children are electronically recorded as a matter of standard practice and routine.

Future research initiatives must directly assess the quality of interviews that are being conducted with children. The quality of these interviews should be quantitatively assessed to determine how well best practice guidelines are being followed. Obtaining access to a sample of forensic interviews in Scotland is being sought. This needs to be approached sensitively and the co-operation of the police and social workers is essential. Quality assessment should follow the National Institute for Child Health and Human Development (NICHD) system of analysing the quality of the interviews with children. This method of analysing the quality of interviews has been developed by a team of researchers lead by Professor Michael Lamb and is supported by the largest dataset of this type in the world today.

The writers suggest that these training needs apply not only to police and social workers who actually conduct joint investigative interviews with children. It is suggested that there is a clear need for a greater understanding of the central, crucial, issues involved in the process of eliciting evidence from children on the part of judges, prosecutors, defence advocates and solicitors in private practice, and all professionals whose work in any way is concerned with the interests of justice where they must co-exist with the welfare of children.

There is a more fundamental question raised by the defective implementation in practice of the mechanisms which our legal system has provided since the coming into force of the Scottish Executive Guidelines in 2003 and the Vulnerable Witnesses (Scotland) Act 2004. Can it be properly asserted that the interests of

THE QUALITY OF JOINT INVESTIGATIVE INTERVIEWS WITH CHILDREN IN SCOTLAND

justice necessarily require children to be led in evidence as witnesses at all? This is an issue to which the writers will return.

In the meantime it is suggested that proper implementation of the extant guidelines and statutory mechanisms already available can alleviate some aspects of the torture that our system is capable of subjecting our most vulnerable children to. This can only hope to be achieved, in any meaningful manner, by proper training and ongoing review of the joint investigative interview process.

Citations

Ceci, S J, & Bruck, M (2000). Why judges must insist on electronically preserved recordings of child interviews. *Court Review*, Summer.

Fanslow, J L, Robinson E M, Crengle, S, Perese, L (2007). Prevalence of child sexual abuse reported by a cross-sectional sample of New Zealand women. *Child Abuse & Neglect*, 31, 935–945.

Frothingham, T E, Hobbs, C J, Wynne, J M, Yee, L, Goyal, A, & Wadsworth, D. J. (2000). Follow up study eight years after diagnosis of sexual abuse. *Archives of Disease in Childhood*, 83;132–134.

Goodman, G S, Taub, E P, Jones, D P H, England, P, Port, L K, Rudy, L, & Prado, L (1992). Testifying in criminal court. *Monographs of the Society for Research in Child Development*, 57 (5, Serial No. 229).

Lamb, M E, Hershkowitz, I, Orbach, Y, & Esplin, P W (2008). Tell me what happened: Structured investigative interviews of child victims and witnesses. Wiley. In Press.

Lamb, M E, Orbach, Y, Hershkowitz, I, Esplin, P W, & Horowitz, D (2007). Structured forensic interview protocols improve the quality and informativeness of investigative interviews with children: A review of research using the NICHD Investigative Interview Protocol. *Child Abuse and Neglect*, 31, 1201–1230.

Lamb, M E, Sternberg, K J, Orbach, Y, Esplin, P, & Mitchell, S (2002a). Is ongoing feedback necessary to maintain the quality of investigative interviews with allegedly abused children? *Applied Developmental Science*, 6, 35–41.

Lamb, M E, Sternberg, K J, Orbach, Y, Horowitz, D, & Esplin, P (2002b). The effects of intensive training and ongoing supervision on the quality of investigative interviews with alleged sex abuse victims. *Applied Developmental Science*, 6, 114–125.

La Rooy, D, Lamb, M E, & Memon, A (2010) Forensic interviews with children in Scotland: A survey of interview practice among police. *Journal of Police and Criminal Psychology*. (available from <http://repository.abertay.ac.uk:8080/jspui/bitstream/10373/520/1/survey.pdf>)

May-Chahal, C, & Cawson, P (2005). Measuring child maltreatment in the United Kingdom: A study of prevalence of child abuse and neglect. *Child Abuse and Neglect*, 29, 969–984.

Orbach, Y, Hershkowitz, I, Lamb, M E, Sternberg, K J, Esplin, P W, & Horowitz, D (2000). Assessing the value of scripted protocols for forensic interviews of alleged abuse victims. *Child Abuse and Neglect*, 24, 733–752.

Quas, J, Goodman, G, Ghetti, S, Alexander, K, Edelstein, R, Redlich, A, Cordon, I, & Jones, D (2005). Childhood Sexual Assault Victims: Long Term Outcome After Testifying in Court. *Monographs of the Society for Research in Child Development*, 70, (2).

Scottish Executive. (2003). *Guidance Interviewing Child Witnesses and Victims in Scotland*. Edinburgh: Author.

Scottish Executive. (2007). *On the record: Evaluating the visual recording of joint investigative interviews with children*. Edinburgh: Author.

Sternberg, K J, Lamb, M E, Davies, G A & Westcott, H L (2001). The Memorandum of Good Practice: Theory versus application. *Child Abuse and Neglect*, 25, 669–681.

Warren, A R, & Woodall, C E, (1999). How well do interviewers recall their interviews with children? *Psychology, Public Policy, and Law*, 5, 355–371.

