The Children Act

One law that could actually help drug services advance their clients' welfare

IF YOU:

- ever have children on your premises;
- work directly with adolescents;
- offer services to adults who are also parents;

then you need to know about the Children Act.

Community care, NHS reform and the Criminal Justice Act all require your attention. In the midst of this wave of new legislation affecting your agency, the Children Act 1989 may seem peripheral, but it does offer increased opportunities and services to your clients – provided you know how to use it.

Those of you who have had experience of childcare law will know that it was a minefield; layer upon layer of sometimes contradictory statute, increasingly out of sync with society's debates about the rights of children and parents.

Key principles

The Children Act 1989 repeals all this previous legislation, replacing it with one consistent legal instrument. It concerns itself with the welfare of children from birth until the age of 18 and, in some cases, until the age of 21. The Act consolidates a wide variety of older legislation, amalgamating previously distinct areas such as child protection, special needs provision and civil and matrimonial disputes. It sees the overriding common factor in all these areas to be the needs of the child. In its key principles, the new Act states, for the first time in law, what we probably all consider to be common sense notions about children.

This radical development will probably take some time to work through into practice, but it has been prepared for in an unprecedented way. For the first time, extensive training for the judiciary and allied legal personnel has been mandatory. Significant grants have been given to all local authorities in England and Wales for comprehensive training for social services workers and other relevant staff groups.

Scotland, however, is not covered by the Act, due to its different judicial system.

Outlining some of the key principles of the Act will indicate the new approaches required in attitude and action.

The paramountcy principle. In section 1(1), the Act states:

"The child's welfare shall be the court's paramount consideration."

This may seem self-evident, but nowhere else in law has this principle been enshrined. It represents a fundamental shift towards child-focused practice, affecting all agencies which have contact with children of whatever age.

Partnership with parents. Throughout the Act it is presumed that children are best looked after by their parents. It follows that the active and positive involvement of parents is required whenever services are provided for their children by statutory childcare agencies.

Examples might be where a child needs services because they are HIV positive, where there are concerns about child protection, or where a physically impaired child requires an educational placement. These examples illustrate that the Act's remit extends beyond child protection to all other aspects of a child's needs, some of which might be met by local authority services other than social services.

by

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The Children Act 1989 prioritises child welfare and places duties on local authorities and other agencies working with parents and children. It also provides new opportunities for agencies such as drug agencies to advocate on behalf of and gain support for clients who are parents or young people, particularly if 'children in need' are involved. Unlike previous legislation, the Act emphasises working with parents and the need for children to remain with their parents with appropriate support.

Parental responsibility. The Act expects professionals to involve parents in plans for children. It also expects those parents to have their children's best interests in mind. Parental responsibility is seen by this Act to be more than just a definition of parental rights.

"Parental responsibility means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property."

Who is a parent? 'Parents' are broadly defined, enhancing the status of natural fathers who previously had no legal rights. So who does the Act see as a parent?

- Mothers, irrespective of marital status, are always parents.
- Married fathers are always parents.
- Unmarried fathers can obtain 'parental responsibility' by a variety of procedures which include being given it by the mother or applying via the court.
- 'Parental responsibility' can be given to other relevant adults in the child's life. These adults then retain that responsibility until the child reaches adulthood.

Establishing 'parental responsibility' status for people other than natural parents is a complex issue, if only because the legal precedents have yet to be set.

Children in need. The wording of the Act allows local authorities some discretion over defining the term 'children in need'; later we shall look at the implications of this for drug agencies. However defined, the Act does give local authorities two clear duties with respect to these children.

"It shall be the general duty of every local authority

(a) to safeguard and promote the welfare of children within their area who are in need; and

(b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs."

Note the continued emphasis on the need of children to be cared for by their families. The Act allows for the flexibility to define a child as in need for a matter of days, months or years, and for them to move in and out of need depending on the circumstances.

The 'no order' principle. Again supporting the needs of children and their parents' place in these needs, the Act requires courts to consider very carefully what action they should take in relation to children. A court is prohibited from making any order unless it is satisfied it will promote the child's welfare. This applies not just to care and supervision proceedings but also to private cases. The Act's insistence in this area acknowledges that this has not always been the case.

After care. Most children in the care of a local authority leave it when they reach 16 years of age. The Act reflects concern for this group of children and requires local authorities to prepare and assist them for independent life until they reach 21 years of age.

Implications for drug agencies

Such a major legislative change is bound to affect any agency involved with children and parents; many drug agencies come into this category. While the Act is complex, you need not be legal experts to make use of it and to see the advantages it could confer on your clients and how it can enhance and enable your agency's work.

While running courses for drug agencies on the application of the Children Act, we have seen active and positive use of the Act by a variety of agencies. They have adapted their policies and procedures, increased their liaison with statutory services to empower their clients, and audited their own services in the context of the Act. Some have even come to be seen as experts on the Act by their statutory colleagues.

The panel Ways to use the Children Act gives some examples of how you can use the principles of the Children Act outlined above. In most scenarios you can consider your interest as twofold – as information givers to and advocates for clients, and as furthering your development role within professional networks.

Further potential applications of the Act will no doubt emerge – many aspects of the law are still to be established by precedents and local application. Remember that there will be times when the best help you can give your client will be to find a lawyer who can give them up-to-date advice.

Beyond these specific applications to drug agency clients, the Act may have wider implications for these agencies' services and procedures. In "Who's

Ways to use the Children Act

Children in need

This may be one of the key areas of the Act for drug agencies, potentially enabling them to help clients obtain services and financial help from several departments of the local authority. At the time of writing, cases are going before the courts asking for rehousing of homeless families under this section of the Act. We anticipate that a wide range of cases will establish precedents where the issues range from children's physical disabilities to the mental health of their parents. Some local authorities have already committed themselves to clear definitions of children in need, including in some cases children with HIV or with an HIV positive parent, or children with drug using parents. It is always worth considering whether and how their local authority may be obliged to help your clients, whether they be parents or adolescents.

Partnership with parents

Where you hold an advocacy role for parents or children as clients of your agency, the Act offers you a lever to use with resistant statutory services. For example, you can encourage the local authority to evidence partnership with parents through the ways they enable the involvement of parents in case conferences.

Parental responsibility

This is an important legal change that many drug agency clients and their families will want to know about, one likely in many cases to take over from the custody disputes of the civil courts. You can inform your clients of this significant change in law in some very straightforward ways – for example, by displaying the excellent series of leaflets for service users published by the Department of Health. You can find out how your particular local authority intends to process transfer of parental responsibility and you can advocate for the extension of parental responsibility on your clients' behalf.

After care

Drug agencies often see young people who have a history of local authority care. The Children Act means their local authorities now continue to have some responsibilities with respect to these children up to the age of 21. These responsibilities might include payment for accommodation or clothing, and "assistance, advice and befriending". Drug agencies can help their adolescent clients get the help they are entitled to. Again, the Department of Health has published information leaflets specifically for this group of young people.

FOR FURTHER INFORMATION

- **DEPARTMENT OF HEALTH LEAFLETS.**
A series of leaflets about the Children Act has been produced for parents and young people.
Available free from The Children Act, FREEPOST (BS 528/82), Bristol BS3 3YY.

- **A GUIDE FOR FAMILIES: YOUR CHILD AND SOCIAL SERVICES. Parents' Aid.**
A straightforward question and answer format for parents, young people and workers, updated to incorporate the Children Act.
Available from Parents' Aid, phone 0279 425166.

- **AN INTRODUCTION TO THE CHILDREN ACT. Department of Health.**
A good concise overview.
Available from HMSO.

- **WORKING TOGETHER UNDER THE CHILDREN ACT 1989. HMSO.**
Updated government guidance on inter-agency cooperation for the protection of children.
Available from HMSO.

- **A GUIDE TO THE CHILDREN ACT 1989. Richard White *et al.* Butterworth.**
A full commentary, including the full text of the Act.
Available through bookshops.

- **FAMILY SUPPORT, DAY CARE AND EDUCATIONAL PROVISION FOR YOUNG CHILDREN. Department of Health.**
One of the several volumes of guidance and regulations issued by the Department of Health to accompany the Children Act. This one is of particular interest to drug agencies with residential or other childcare facilities.
Available from HMSO.

- **REVIEW OF CHILD CARE LAW IN SCOTLAND. Scottish Office.**
An up-to-date review of developments since the implementation of the Social Work (Scotland) Act 1968.
Available from Scottish Office (Social Work Services Group).

- **EFFECTIVE INTERVENTION: CHILD ABUSE (GUIDANCE ON CO-OPERATION IN SCOTLAND). Scottish Office.**
The companion volume to the English/Welsh *Working Together.*
Available from Scottish Office (Social Work Services Group).

Minding the Kids?" (**Druglink**, September/October 1990), we wrote about the importance of childcare and child protection procedures for drug agencies. None of this has changed. However, the Children Act will assist your agency to work in a child-focused way with the parents and children you contact.

The law now agrees with practitioners that "the welfare of the child is paramount". Agencies that have any contact with children must demonstrate this. This in turn has implications for the services you offer, the ethos and language of your agency's policies, and the application of your agency's procedures in areas such as confidentiality and health and safety. All statutory agencies have had to change their procedures to conform to the Act, so drug agencies need to update any written material previously obtained from social service departments or from the Department of Health. Documents agencies should have include their local authority's child protection handbook and the government guidelines, *Working Together*.

The Act requires new standards for childcare provided outside home and for residential services housing children. This has implications for your agency if, for example, you run a creche or if the workers (or residents) look after a child in the agency on behalf of a parent, no matter what the circumstances. Each local authority will have Children Act registration officers who can advice on these issues.

The legal framework in Scotland and Northern Ireland is different, although standards of good practice still apply. Drug agencies with UK-wide or cross-border briefs need to be aware that these differences exist. Official documents for these jurisdictions equivalent to those for England and Wales are noted in the Further Information panel. ■

FEATURE

Crack injection

More crack users are injecting, risking serious health problems

WHEN SMOKABLE crack cocaine first became common in American cities it was hoped that by replacing the injection of cocaine it would help reduce the high rate of HIV spread among drug injectors. This optimism was short lived. Few cocaine injectors in New York switched to crack,[1] and the circumstances of the 'crack culture' seemed likely to increase the risks of heterosexual HIV transmission; women were found to be exchanging sex for crack, both through prostitution and directly in 'crack' houses.[2]

In England, predictions that the crack 'epidemic' would follow the same course as in America have not, to date, materialised. But here too crack may not turn out to have the expected impact on HIV transmission. Two studies in progress at the Centre for Research on Drugs and Health Behaviour have shown that more drug users are now injecting crack. This is one of the findings of a wider study of the prevalence of cocaine and crack use among subjects recruited through drug agencies and through a community survey of drug users not in contact with services

In 1990, crack was being injected by 13 (9 per cent) of 149 identified crack users. By 1991 this had risen to 31 (21 per cent) of 147 crack users sampled in the same way, a statistically significant increase. During the same period, our data from an MRC/WHO study of drug injectors in London showed that in 1990 only 3 (4 per cent) out of 85 crack users were injecting. By 1991 this too had increased significantly to 31 (23 per cent) of 138 crack users.

This trend to injecting crack has a number of health implications. American studies have shown that people who inject cocaine are more likely to share equipment than are those who inject opiates and so may be at greater risk of HIV transmission.[3] When the cocaine is in the form of crack, there are additional risks. Experienced injectors break crack down to a soluble compound similar to cocaine hydrochloride by adding an acid, such as vitamin C. Others have tried to dissolve crack by heating it in water or alcohol forming a viscous substance which blocks the needles normally available in drug agencies. Reports have been received of injectors using large veterinary needles which are difficult to obtain and therefore more liable to be shared.

Any injected substance is liable to cause tissue damage leading to abscesses. This is particularly so in the case of cocaine (in any form) because of its local anaesthetic properties which dull the pain normally caused when injectors 'miss' a vein. Injection site damage may be exacerbated by the use of large needles and by injecting a substance which is only partially dissolved. Some crack injectors have reported that residual ammonia in crack prepared with household ammonia has a caustic action, causing ulceration.

Explanations for the increasing popularity of injecting have included: a shortage of cocaine powder on the streets; the availability of crack in smaller, and therefore cheaper, quantities; and the near purity of crack as opposed to cocaine powder, which may have been diluted with a variety of substances. In our study, 41 out of the 44 individuals who were injecting crack were found also to be currently injecting heroin. Another one was injecting methadone and two amphetamines. People who inject crack may have started their injecting careers with opiates and then applied this method to other drugs, such as crack. ■

by

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1. Des Jarlais D.C. *et al.* "Intravenous cocaine, crack, and HIV infection." *Journal of the American Medical Association*: 1988, 259(13), p.1945-6.
2. Carlson R.G. *et al.* "The crack life: an ethnographic overview of crack use and sexual behaviour among African-Americans in a Midwest metropolitan city." *Journal of Psychoactive Drugs*: 1991, 23(1), p.11-20.
3. Chaisson R.E. *et al.* "Cocaine use and HIV infection in intravenous drugs users in San Francisco." *Journal of the American Medical Association*: 1989, *261*, p.150-152.