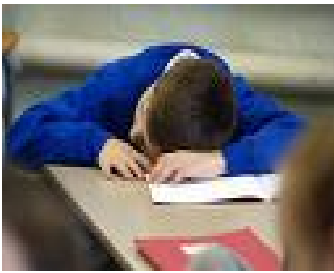


EMOTIONAL ABUSE AND NEGLECT



Emotional abuse and neglect are difficult to establish in contested proceedings in a Court of law. To prove that a child is being “neglected” the HSE must establish a ‘pattern’ of episodes of neglect in order to build up a picture which justifies State intervention. It is like creating a “jigsaw”- it takes time and patience and purpose. Neglect and emotional abuse may be active or passive but experts are clear that such abuse stops children from reaching their full potential psychologically and physically if they are allowed to remain in such an environment. Psychologically unavailable parents or hostile/ rejecting, or “low-on-warmth, and high-on-criticism” parental behaviour has been identified as emotional abuse and neglect. However, it may be difficult to establish and even when it is established it may be difficult to measure with reasonable accuracy. If the Social Workers move too soon the picture may not be clear enough. Less draconian interventions such as support or supervision are frequently tried in advance of a Care application to Court. However there are instances when the intervention may be too late. Getting the balance right is always difficult.

A Report on Family Law Proceedings published by the Court Service in 2007 found 60% of all children who were placed in care voluntarily, or by court order, had been neglected. More than 2,100 children have been placed in the care of the State by the courts, and there are 5,060 children either in foster care or in residential care in the country. The Report suggests different measures of intervention in different

parts of the country with children living in the east of the county more likely to be placed in care than those in the west. Of all the children taken into care, 2,175 children were placed in care by Court Order, the rest were placed in voluntary care. Of the 5,060 children in care only 442 are in residential care and the vast majority are in foster care. A further 32 are cared for at home under supervision.

Before a child is placed in care the Court must always have regard to the rights and duties of parent, but it must also regard the welfare of the child as the first and paramount consideration. It must also and in so far as practicable give due consideration to the wishes of the child having regard to his or her age and understanding. This balance is important to preserve the rights of all concerned.

Neglected children live in communities, they go to school and church, they are never invisible. What happens in a suspected case of physical or emotional abuse or neglect is as follows:

A complaint may be made to the HSE that a child in their area is at risk.

The complaint may be fair or unfair true or false. The HSE have a duty to investigate all complaints received under the Child Care Act, 1991.

Persons who report ‘suspicions’ of abuse in good faith to the HSE or an Garda Síochána are protected from civil liability under the Protections for Persons Reporting Child Abuse Act, 1998. A complaint may be made by someone who has ‘reasonable’ cause believe that the child has been or is being assaulted, ill-

treated or neglected or sexually abused or that the child's health development or welfare is being avoidably impaired or neglected.

Any person who makes a malicious false complaint may be prosecuted and on summary conviction or conviction on indictment face imprisonment or fine or both.

When the HSE social worker for the area receives a complaint of suspected child abuse, he or she visits the parent or parents of the child or children. [National Guidelines: Our duty of Care- Department of Health and Children (Practical Guide) 2002]. They may hold a number of meetings such as strategy meetings, child protection conferences and review meetings to discuss the case.

If they feel that the child is 'at risk' or at continuing risk and still residing with the caregiver the child's name is placed on the Child Protection Notification System (CPNS). This is a HSE record of every child about whom, following a preliminary assessment, there is a child protection concern. If the child is placed in the CPNS the HSE must prepare a Child Protection Plan. This plan is drawn up in consultation with all parties concerned. After that the case is reviewed at 6-monthly intervals. If the child's health and wellbeing cannot be safeguarded within the family then the child may be voluntarily placed in care following an agreement, or an application is made to Court under Part IV of the Child Care Act, 1991. When this happens the Court makes a decision as to whether the child should be placed in care. There are various levels of Court Order. A Care Order places the child in care for a period of time and a care order can last until the child is 18 years. A Supervision Order does not remove the child from the family but allows the social workers visit the child and advise on steps to be taken to safeguard their welfare. While the parents/caregivers can agree to accept that advice voluntarily the Supervision Order reinforces the necessity to act on that advice. The guiding principal for the Court in these

cases is the 'best interests of the child' and the child who is affected by the order must be given a voice also. If they are old enough they may be given their own solicitor for the proceedings and joined as a party to the proceedings in their own right. They may on the other hand be appointed a "Guardian Ad Litem" if this is deemed to be in the interests of justice. In this way the position of the child, independently of the parents, is given a status in adversarial proceedings.

In the light of all this you may wonder why there still appear, from time to time, cases where children have clearly not been adequately protected from ongoing abuse. Exceptional abuse which slips through the net has been found and reported on before, such as The Kilkenny Incest Investigation (1993), the death of Kelly Fitzgerald (1996), and the McColgan Report (1998)). A HSE Investigation has also been commissioned in relation to the Roscommon Incest Case (2009). However the safety of children in the care of the State has also been found to be inadequate at times , and there are also instances of exceptional abuse of children in care such as The Madonna House Inquiry (1996) and Trudder House Report (2000).

It may be impossible to completely prevent child abuse whether the child remains within the family or in care ; however , no child should suffer abuse because the systems charged with protecting them have failed.

For Advice on Mediation options, Collaborative Law, Traditional Neogotiation and Separation and Divorce Litigation contact the Ronan Daly Jermyn Family Law Department.

12 South Mall, Cork.

Telephone: 021 4802700