Breach of duty

A new paradigm for the abuse of children and adolescents in care

Anne Forward

Analysis of the issue of abuse in care reveals that common structures and processes for response to allegations operate within a paradigm of minimalist child protection and that this paradigm is inadequate to the effective management of the problem. The paper will argue that a shift of paradigm is required. Concepts of individual pathology and deficiency, conflicts of interest in reporting and investigation and tolerance for all but seriously inadequate care for children must be replaced. A paradigm of duty of care would result in policy and procedure which embraced agencies' moral and legal duties towards children and assessed allegations of harm from this holistic perspective.

Responding to allegations of a child being harmed whilst in the care of an agency or institution is highly problematic. The protection of children from familial abuse is challenging enough, yet abuse in care has additional complexities and difficulties. Behaviour indicators and warning signs may go unnoticed or allegations disbelieved, particularly where the child has suffered harm prior to the care arrangement (by definition almost a universal factor for residential and foster care placements). Alternatively, the reporting of allegations can elicit a dramatic response, and some system-wise adolescents have discovered that making malicious allegations can be rewarding. Investigatory responses to allegations have tended to generate high costs for all parties, with the interests of children, care-givers and systems often in direct conflict. The potential for further damage is high and there are rarely right answers - often 'the best approximation of the truth' is a good outcome (Braga, 1993: 91).

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A description of the common response

A typical response to an allegation that a child has been harmed in care is for child protection staff to investigate in much the same manner, with the same premises and goals as an investigation of abuse or neglect in familial care. Investigatory responses are founded on child protection legislation enacted to enable intervention into families - this stretching of statutes and policies to apply to the arena of formal care is standard practice overseas (Rindfleisch & Rabb, 1984:211). Australian responses do not appear to differ to any significant degree.

The intent of investigators is to make the child safe and (not necessarily always) to ascertain the identity of the perpetrator, and form an assessment of the nature, context and causes of any abuse or neglect. During the investigation, those accused of abusing or neglecting a child in their care are given minimal information and are likely to be suspended from active duty or have children removed from their care pending the outcome. Management personnel may be involved where there may have been a breach of discipline. Some of those accused complain about a presumption of guilt by investigators and denial of natural justice. Others feel that 'mud sticks' and despite negative findings, they are forever suspect.

Delays in completion of investigations are likely, given the excessive demands and competing priorities in an already overloaded child protection system - children and caregivers may be left with their lives and careers in limbo while complex administrative procedures are worked through. Both processes and outcomes can be highly traumatic and damaging for those accused. Post-investigation responses by agencies are absent, or deficient: information obtained is not systematically used to either effectively discipline or educate the offending staff member or caregiver nor to correct systems deficits. Even more concerning, management of the problem has inadvertently resulted in the creation of a secondary problem: heightened stress levels and defensiveness in care-givers. When care-givers feel the need for protective behaviours training to guard against false and misleading allegations, the warning bells should be ringing that this problem is both off the track and out of control.

An analysis of the current paradigm

Harm caused to children in care situations logically appears to call for the same protective response as to the familial abuse of children, albeit with awareness of additional complexities. It has been accepted without question that children are generally safer in formal care than in the care of their families, that child

protection investigators are the most appropriate personnel to assess allegations of harm to children in the care of agencies and that child protection agencies can best investigate abuse within their own systems. Such beliefs and practices are fundamentally unsound.

Structures and processes for response to abuse in care derive from a paradigm of minimalist child protection, the paradigm that has come to dominate child welfare services over the past 20 years. This narrow problem-oriented service approach is driven by investigatory procedures and adversarial relationships, concerned only with the avoidance of harm (Thomas, 1990:7). Analysis will reveal how this paradigm is inadequate to the effective management of abuse in care.

Paradigms are the fundamental frames of reference built up by experience, which determine how we see and interpret the world. As our known and familiar way of viewing, we use paradigms as a reference to interpret information and guide our actions. Rarely are we aware of the underlying paradigms of our thought and action, almost never questioning their applicability or accuracy. (Kuhn, 1970). Yet where the paradigm is inadequate, structures and processes developed according to it will be unable to effectively manage the problem. Attempted solutions to the problem may even create new problems. Fine tuning of existing processes will not result in the desired outcomes. There will be puzzlement as to why, and how to address the growing complexity. Abuse in care responses have become increasingly complex without a corresponding improvement in effectiveness. Rather than tinkering with existing structures and processes, a deeper look at underlying paradigms is necessary. This requires the setting aside of prevailing beliefs and assumptions, a critical analysis of current issues and a clarification of values and objectives.

Six major deficiencies emerge in an analysis of historical responses. They are:

1. the premise that abuse in care is the same as abuse in the family,
2. response only at the serious end of the scale,
3. paying insufficient attention to the needs and rights of others affected by the issue,
4. common use of a medical formulation of child abuse as an action by an inadequate or deficient individual,
5. insufficient rigour and objectivity in reporting and investigation, and
6. failure to provide effective feedback loops from investigation outcomes to the correction of deficits.

As substantial issues in their own right, each needs elaboration:

FUNDAMENTAL DIFFERENCES BETWEEN HARM TO A CHILD IN CARE AND THE FAMILIAL ABUSE OF CHILDREN

- In some respects there are similarities between the two: a caregiver who harms a child is often overstressed and inadequately supported, and their behaviour violates the norms of adequate care (Garbarino, Guttman & Wilson-Seeley, 1986:179). Responses to allegations may also be similar in both families and agencies: individuals within the system may exhibit denial, cover-up or defensive behaviour (Nunno & Motz, 1988:523). There are fundamental differences however:

- Children in care are generally in a more vulnerable situation than when in the care of their families. Separated from their informal and familiar helping networks, they may have no-one to turn to for help (Westcott, 1991 :12-13). Professional care is always a poor substitute to the care provided by an adult who is emotionally attached to the child and able to offer them stable, continuous and permanent care. Goldstein, Freud, Solnit and Goldstein urged professionals 'to recognise that, neither separately nor together, do they make or make up for a parent - even an ordinary, imperfect one.' (1986:123). (Foster care can provide substitute parenting but has its own accountability issues of having indeterminate status somewhere mid-way between professional responsibility and family privacy and autonomy.) Furthermore, the professional relationship is a powerful one which can further increase the power differential between adults and children thereby creating the potential to exploit (Sloan, 1988 *in* Westcott, 1991:12).

- Children in care, who are disadvantaged by their life history or by behavioural, emotional or physical conditions, are at higher risk of abuse, often being more difficult to raise and handle (Nunno, Rindfleisch & Docherty, 1990:16; Durkin 1982:15).

- Relationships between staff and children are formally defined, generally professional not personal. As part of their agency contract, staff and caregivers are obliged to act within agreed standards of care (Garbarino, 1986:180) ie, not just within criminal and child protection statutes but also to abide by agency regulations and codes of behaviour.

- Agencies and institutions are expected to provide better standards of care than that expected of families. (Garbarino et al, 1986:180, Thomas, 1982:36). The community expects the provision of appropriate, preferably optimal, standards of care for the clients of agencies and institutions and subjects these agencies to greater scrutiny (Harrell & Orem, 1980:1). Thomas argues that in formal care the issues of severity of harm and intent are not relevant: when an agent of the state has clearly accepted responsibility for carrying out state law - a violation of that law is sufficient within itself to have breached the law, regardless of the degree of harm. Likewise, absence of intent is no defence - even if harm caused is accidental, the agent of the state is accountable for not preventing the accident by providing a hazard-free environment (1982: 34-5).

Although children in professional care situations are additionally vulnerable and community expectations for their care are higher than for families, within a child protection paradigm the reverse assumptions prevail. Nunno and Motz argue that 'the child protection system assesses the risk level based on the assumption that the child is less vulnerable...where he [or she] is in the care of professionals or in a foster home trusted by the agency' and that this is a false assumption which conflicts with available statistics on reports and fatalities in care (Nunno & Motz, 1988:524).

Available statistical evidence on the incidence of harm to children in care is unclear, due to the tendency to under-report and the absence of adequate means to measure the extent of the problem. Yet evidence suggests that the incidence of harm is at least as high as that in families, with documented cases of serious and systematic abuse of children's rights (Ryan & McFadden, 1987; Goodman, Hughes & Nicol, 1990; Levy & Kahan, 1991). That investigators are less likely to confirm reports of abuse in care than reports of familial abuse additionally supports the notion of bias against the realities of abuse in care (Nunno et al, 1990:17). Where this false assumption of relative safety prevails, children's needs are likely to receive less attention after placement, and lower standards of care in agencies and institutions may develop and be permitted. Abuse in care responses must be in accordance with community expectations and, agency mandate and responsibilities and cognisant of the realities of children's experience and treatment. Recognition of the vulnerability and relative powerlessness of children and youth in care must occur, along with the provision of complaints and advocacy mechanisms for children and young people which have a degree of independence from the setting.

The harm of a child in care is a professional not a personal issue; failure to provide adequate care for a child should be seen, not as an abusive action or omission (though it may indeed be so) but more significantly as a 'violation...of laws, licensing regulations and/or codes of conduct' (Thomas, 1990:10).

A PROTECTIVE RESPONSE ONLY AT THE SERIOUS END OF THE SCALE

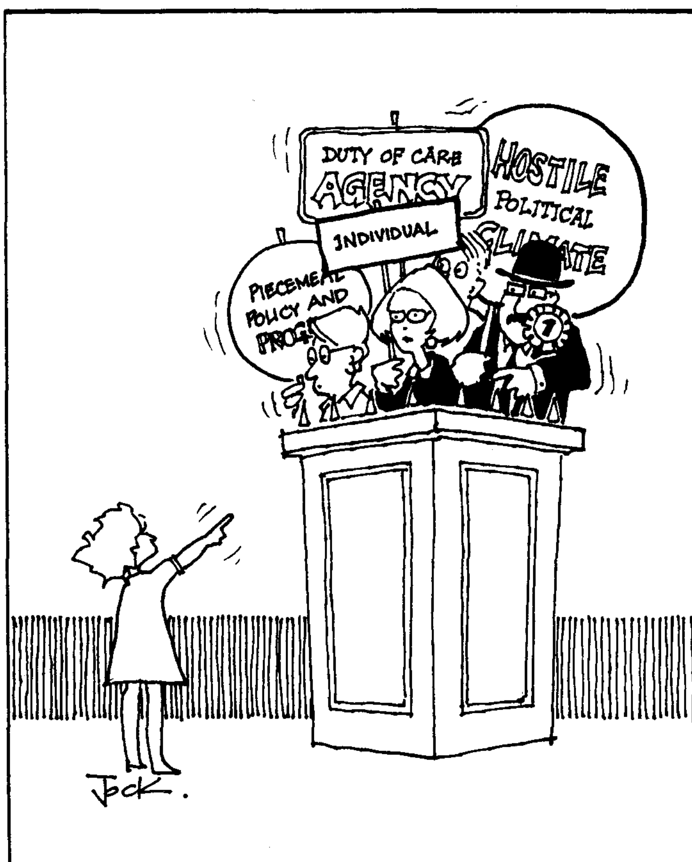
Familial child abuse investigations are guided by the principle of minimally intrusive intervention, based on societal values of the privacy of the family and the minimalist role of the state. There is considerable allowance made for a broad range of parenting practices, and intervention into families thus occurs only when care falls below seriously inadequate levels (Thomas, 1982:27). It is common practice for abuse in care responses to similarly intervene only at the serious end of the scale: ie, the commission of criminal offences and behaviour which meets definition criteria for suspected abuse or neglect. This practice is the result of the unquestioning and inappropriate application of the above principle. Whilst such leniency may be applicable to familial abuse, it is incompatible with formal care situations where the community expects that agencies and institutions provide better than minimally adequate care for children.

In adopting the criteria for intervention at the same level as familial abuse, many acts and situations which have still breached the agency or institutions legal duty of care towards the child are ignored. From the point of view of the interests of the agency, this is a legally careless practice: although acts and situations may not be serious enough to register as child abuse or criminal behaviour, they may still amply satisfy the criteria for negligence should this be tested in Court (Besharov & Besharov, 1985, ch.5).

For negligence to be proven four conditions must be satisfied:

- that a duty of care was owed to the victim,
- that the duty was breached - ie, care failed to meet the required standard, based on what a reasonably prudent person in such a position should provide, according to the plaintiff's particular needs and circumstances and the expertise and qualifications of the care-giver,
- that the breach caused damage,
- that the damage suffered was reasonably foreseeable (Creyke & Weeks, 1985: 1-2).

Anecdotal evidence would strongly suggest that the hidden incidence of inadequate care which would satisfy these criteria is enormous. The reason litigation is not common in Australia, as in the United States, seems to have more to do with the relatively non-litigious climate and the marginal role permitted by the States for child advocacy, rather than the absence of grounds for negligence. Protection from liability should not, however, be the sole determinant for paying attention to a broader range of indiscretions: the agency has a higher moral duty to have quality control mechanisms in place which pick up failures *before* they cause harm to clients and to provide individual protection when the client is in jeopardy. The dilemma which administrators have so far ignored, but must grapple with, is how to signal a higher standard of care and be honest about failures, without exposing services to massive litigation, thereby jeopardising the very viability of these scarce and already under-resourced services.



INADEQUATE REGARD FOR SECONDARY VICTIMS

A 'child rescue' model of child protection endeavours to secure the safety of children and protect them from further harm. Other concerns, such as the circumstances of the abuse, the rights of those accused and others affected are seen to be peripheral to the needs of the child and therefore less important. This philosophy has lost favour in general child protection practice as it was discovered that a child's interests could not adequately be protected without due attention to the child's broader needs. The investigation and treatment of familial abuse is now recognised to be more successful when a family-centred approach is used (Pecora, Whittaker & Maluccio, 1992.).

A child rescue approach to the investigation of abuse in care can result in similar damage to that in families. The manner in which investigations are conducted can significantly contribute to the expected defensiveness. If investigators are:

> ...possessed of a messianic zeal and a conviction that only they can uncover the facts; if they literally invade [the setting] without due regard for staff [or care-giver's] views on the alleged events and if they proceed as though dealing with common criminals, then the reaction [of staff and caregivers] is predictable: they will feel brutalized and demoralized.
>
> (Braga, 1993, pt.2: 108-9)

It is critical to recognise that without due care and respect for the needs and rights of those affected by the investigation and its aftermath, denial and defensiveness can increase dramatically and responses can themselves become abusive (Durkin, 1988:16; Carbino, 1992: 498-9; Matsushima, 1990: 321). To not unnecessarily raise the stress levels of already vulnerable staff and caregivers should be an important consideration for investigators. Without sufficient heed being paid to the wider context, children's broader interests are not addressed, there may be many secondary victims created and the resulting adversarial climate can impact counter-productively on the quality of care that children receive.

ASSESSMENT OF ACTS BY INDIVIDUAL PERPETRATORS

An act of abuse towards a child is the result of many factors that lead to a

specific incident (Durkin, 1982:18). This complexity is invariably greater when the child is in a state-sanctioned and approved care arrangement. Yet the typical investigatory response to an allegation of abuse in care begins by satisfying definition criteria of a suspected discrete action by an abusive individual, acting with intent, possibly with mitigating circumstances. This is despite research and practice knowledge which indicates that, with the exception of sexual abuse (see Pringle, 1992-3), the problem of abuse by staff and care-givers does not generally derive from their inadequacies or unsuitability but from resource, structural, training and practice issues (Cavanagh, 1992:17). Even where abuse is as a result of an unsuitable staff member or care-giver, the agency plays a significant part, having responsibility for the recruitment, supervision and appraisal of those who abuse.

Writers have stressed the need to change the focus from the individual abuser to the work organisation within which the abuse occurs (Braga, 1993:100). Gil argues for expansion of the definition of child abuse to include institutional attitudes, policies and situations that hurt children, harm family integrity and infringe on basic rights. Abuse may thus encompass: individual abuse by a staff member or caregiver, program abuse, where care falls below accepted standards or where extreme, harsh or inhumane techniques are used to teach or guide children, and system abuse where the child care system, stretched beyond its limits, is incapable of guaranteeing the safety of all children in care (Gil, 1982:9-13). Cashmore, Dolby and Brennan's definition is all encompassing:

> Systems abuse occurs when preventable harm is done to children in the context of policies or programs which are designed to provide care or protection. The child's welfare, development or security are undermined by the actions of individuals or by the lack of suitable policies, practices or procedures within systems or institutions'
> (Cashmore et al, 1994:10)

Within this expanded definition, culpability for such harm does not lie solely with the individual perpetrator but extends right through the system, up to and including societal culpability for the value accorded to, and provision for, its most vulnerable members. This extended culpability is recognised in law as the principle of 'respondeat superior', or 'vicarious liability', where supervisors and managers are held legally accountable for the actions of their employees and will be named in legal actions for negligence (Reamer, 1993:21). Whilst affirming management responsibility for administrative failure to protect a child from harm is a valuable reminder of the law's view on the matter, to see the need for systems assessment in terms of more widely apportioning blame is to miss the point - it is this narrow, legalistic mentality that is the problem. The value of a systems model lies in the more accurate assessment of the causes of harm and the clarification and affirmation of responsibility that it gives. The objective of investigation, besides protecting the child, should not be to apportion blame but to improve the service.

The absence of any impact of the literature on systems abuse on investigative policy and procedure seems puzzling at face value. The use of the term 'systems abuse' is not helpful according to Thomas (1990:10), making it difficult to assign responsibility to an inert structure. The dynamics of power could also explain the reluctance of management to embrace their responsibilities: those in power define reality and can attribute blame without threatening their own base of support (Pinderhughes, 1989:136). Professional theory does not challenge this dynamic - the dominance in the professions of a medical model of child abuse maintains the view of a problem with its causes in the personality or background of the perpetrator (see Parton, 1985).

> '...it is easier and more expedient to fire individual perpetrators, but not as fruitful as changing the system'

A gulf exists between sound academic, legal and practice arguments about the systems nature of the problem, yet investigatory responses continue along individualistic lines. Durkin commented '...it is easier and more expedient to fire individual perpetrators, but not as fruitful as changing the system' (1982:18). An integrated perspective which can assess an incident or situation in the context of the interaction of child, caregiver, program, agency and societal factors is essential.

THE NEED FOR GREATER RIGOUR AND OBJECTIVITY

A core tenet of child protection is that when care provided to a child falls to a level at which the child is harmed or is at risk of harm, the caregiver who is providing this inadequate care cannot be fully relied upon to correct the identified deficits and to address the child's needs without at least some assistance and monitoring by an independent agent. Yet when harm occurs to a child within an agency or institution, this same rule is rarely applied and children are left without such a protective safeguard. Child care systems, like any system, develop their own rules by which they define their contacts with the outside world. These systems can become closed, thereby excluding the checks and balances and accountability mechanisms that can ensure proper care is taken to prevent danger or abuse within these systems (Galbally, 1993:226). The goal can become containment or maintenance rather than the giving of care, and abusive behaviour or injurious environments may fail to be recognised (Nunno & Motz, 1988:523).

The same systems who provide inadequate care may be left to report themselves, investigate themselves and to make recommendations for action. The interests of children, staff and care-givers, the agency and the community may be in direct conflict. Staff and managers who have a vested interest in the maintenance of scarce care resources may be in a position of assessing their functioning. Concern with disrupting hard to find placements and relationships between agencies may overshadow the needs of the child. Investigatory staff may be compromised in their objectivity by their familiarity with those accused. Nunno and Motz posit that these inherent conflicts of interest should be a major concern of administrators, child protection services and licensing or regulatory bodies (1988: 525). No system can be wholly relied upon to police itself - duty statements, internal quality control mechanisms and goodwill will not guarantee the protection of children's interests. Despite the best of intentions, there are just too many competing demands and interests in a highly pressurised environment. Attempting to reduce these conflicts of interest, whilst still keeping the reporting, investigation and decision making responses within the system, results in multi-layered and complex policy and procedure. As complexity increases, so too may the potential for inefficiency and error and for means to become ends in themselves, yet still with no guarantee that children's interests will prevail.

Relationships between agencies are also prone to contamination. Interagency work in the field of child abuse is distinctive in terms of the feelings engendered and the anxiety generated, both in dealing with families and with agencies. When an allegation is made that a child in care has been abused, the institution or agency is forced to open itself to outside review and scrutiny. Likely responses can be denial, cover-up, defensive behaviour and fear of punishment and reprisal (Nunno & Motz, 1988: 523). Additionally, investigative workers

bring to their task their own professional identity and views about the role, status, and frames of reference of other groups (Hallet & Stevenson, 1980:20). These group stereotypes and tensions can interfere with rigorous assessment, playing out intergroup and interagency rivalries and hostilities in the processes of notification and investigation of harm, and can seriously contaminate the formal problem -solving activity of the whole inter-agency system (Dale, Davies, Morrison & Waters, 1986:38).

Alternatively, partnership and goodwill between agencies can work well for the professionals involved, but can limit the objectivity of those in the partnership in viewing the possibility that a child may be maltreated. There is a need to foster healthy partnerships, but without losing sight of the need for vigilance in ensuring that children are safe from harm and receive services that promote their developmental growth and safety. (Nunno et al, 1990:13). These two concepts are not mutually exclusive but the difficulty of successful interagency practice is well recognised.

> Children and adolescents in care must have access to advice and counselling, independent advocacy or representation, effective complaints procedures and independent review of their circumstances

Failure to eliminate or at least minimise inherent conflicts of interest in both intra and inter-agency management of harm to children in care is a serious compromise of the principles of child protection. There are many examples in the literature of the failure of checks and balances both within and between systems meant to safeguard the interests of children (Reder, Duncan & Gray, 1993; Howitt, 1992). Children and adolescents in care must have access to advice and counselling, independent advocacy or representation, effective complaints procedures and independent review of their circumstances (Gulbekian Foundation Report, 1993).

Inter-agency collaboration will not effectively protect children without:

- a working consensus on the issue,
- a clear mandate for collaboration,
- co-ordinating structures,
- consensus on the principles of intervention,
- agency and inter-agency procedures,
- appropriate training,
- a focus on provision of service rather than identification and protection,
- supervision and consultation for reflection and correction,
- a vigorous quality assurance approach,
- a focus on staff care, both within and between agencies

(Morrison, 1993)

Nunno and Motz argue that the ideal response is for specialised units, supervised by a designated independent agency, to conduct investigations of abuse in care. These investigators would possess the knowledge and skills necessary to conduct fair and thorough investigations of varying care arrangements (Nunno & Motz, 1988:526). Braga agrees that an external investigatory body 'helps neutralize the complex affective and other job related inter-connections' that exist within the setting, but believes that a degree of trust must exist to allow for at least a preliminary investigation of allegations by the agency (1993:106-9).

Whatever policy and procedure is adopted, this dilemma must be confronted: how to ensure the child's interests are paramount, minimise conflicts of interest and ensure some structural and functional independence of investigators from those who are being investigated, versus how to utilise the specialised knowledge of caregivers, staff and managers, maintain co-operative relationships and respect service boundaries.

Providing effective feedback for the correction of deficits

When investigators operating from a child rescue framework assess an allegation of harm, outcomes will state whether the child was abused and what the child's needs are. The perpetrator will be dealt with, the child may be moved and the matter will be closed, not to be pursued further unless there is another allegation on the child or against the perpetrator. Systems deficits which caused or permitted the abuse are not assessed and therefore not corrected. Good management systems have feedback loops which use input from the investigation and analysis of failures to the correction of these deficits. The narrow child protection focus on the avoidance of harm does nothing to correct these deficits, except to remove 'bad apples from the barrel'. As well as not assisting the correction of systems deficits, investigations also consume precious resources for little gain.

Sound corrective processes require two components:

- Post-investigation policy and procedure which utilises outcomes and recommendations of skilled systems assessments and feeds them back through channels which take seriously the recommendations for corrective measures and enforce compliance if required. (Nunno and Motz, 1988)

> Good management systems have feedback loops which use input from the investigation and analysis of failures to the correction of these deficits.

- Responses cannot begin to be corrective until they move from the narrow avoidance of harm to placing the issue in the context of the total care system and its expected standards of care:

> ...aiming for the optimal is the most effective way of preventing systems abuse and so avoiding harm to children. Providing for positive and optimal goals rather than avoiding harm should be the criterion of success. It is not sufficient simply to avoid harm to children and to say what should not happen. It is also important to have a clear conception of positive end-point goals.
>
> (Cashmore et al, 1994:11)

Reframing the paradigm in terms of duty of care

In order to effectively address the above deficits, a reorientation of perceptions and organisational approaches to the problem is necessary. Incidents or situations of harm to a child in care need to be viewed, and responded to, not as an abusive action by an individual but as a breach or dereliction of duty at individual, program and agency levels. Responsibilities, both legal and moral, need to be embraced by the organisation. Objectives and standards of service must be clarified, openly signalled and a pro-active service delivery strategy formulated. The goal of service delivery must become one of child development, not child protection. Quality control systems would, wherever possible, pick up harmful care situations before they could cause harm to a child. Should these fail, a child at risk would have their circumstances investigated in a timely, skilled and rigorous manner.

EMBRACING OF MORAL RESPONSIBILITY

Agencies of the state which provide care for children have both legal and moral duties to fulfil. The term 'duty of care' is a legal one, used to clarify an obligation under the law, which if seriously breached, enables complainants, as an action of last resort, to exercise their right to a claim for compensation (Creyke & Weeks, 1985: 1-2). The concept, in its broader sense, also has a moral basis: where a duty is clearly invested in one party by another, there is a moral obligation to meet that responsibility to a higher standard than defined in law. An agency invested with the responsibility for care, custody, control or supervision of a child thus has a legal duty to act in accordance with the law and a moral duty to meet the community's expectations of service. Embracing moral duties is 'the right thing to do', but is also, in the end , the best course of action. As this discussion has demonstrated, a narrow, legalistic focus is counter-productive, doing little to clarify and enforce desired behaviour. Legal problems that arise are often symptomatic of fundamental violations of ethical standards. The setting of high ethical standards will go a long way toward preventing legal liability (Reamer, 1993:22-3), but is also a precondition of being able to meet organisational objectives.

> The term 'duty of care' is a legal one ..The concept, in its broader sense, also has a moral basis: where a duty is clearly invested in one party by another, there is a moral obligation to meet that responsibility to a higher standard than defined in law

A moral position on agency responsibilities affirms the rights of stake-holders on the basis of social justice principles, but moves beyond the recognition of rights to the embracing of responsibilities. Rather than solely a rights based framework, responses will develop from a duty based framework, as whilst the assertion of rights is necessary for the protection of the vulnerable, rights advocacy has its limitations. A right is only relevant to the extent that its correlative obligation is assumed by others; the only way of protecting rights 'is ...to speak of .... reasonable obligations which specify upon whom the obligation falls' (Clarke & Tonti-Filippini, 1986:4-5). An agency will accept both its positive and negative duties: the negative duty is to genuinely endeavour to prevent harm to children in care and to ensure that, except in unavoidable circumstances, care does not fall below adequate standards; the positive duty is to provide a standard of care in keeping with community expectations.

GREATER ORGANISATIONAL TRANSPARENCY

A defensive posture is characteristic of many child welfare services (Thomas, 1990; Besharov, 1985). Standards of service cannot be improved inwardly whilst maintaining defensive relationships internally and externally. The organisation must clearly signal its objectives and standards of service to consumers, caregivers, staff and community and open itself to greater scrutiny. This is not to suggest that organisations lay themselves open to litigation - liability protection is a necessary and good practice for the protection of scarce agency resources for the benefit of all children 'as long as it does not lead to sacrificing an agency's mission to less noble agency interests' (Thomas, (1990:14).

AN EFFECTIVE SERVICE DELIVERY STRATEGY:

The following organisational components support the effective delivery of child welfare services:

- articulating a clear organisational mission and program philosophy,
- developing effective organisational designs and service technology,
- careful personnel recruitment, selection and training,
- professionalisation of staff,
- specifying measurable performance criteria and worker appraisal methods,
- providing high quality supervision,
- collecting and using program evaluation data, including consumer feedback information

(Pecora et al, 1992:431-2)

The core mission of agencies which provide care for children is child development, not child protection: 'defining and assuring the rights of children to achievement of developmental goals related to individualization, socialization and cognitive preparation' (Thomas, 1982:26; 1990: 9). A clear, value-driven service mission defines the frameworks and principles from which goals and objectives are clarified and service delivery evolves. The organisation will be client-centred and outcome-focussed. The values and principles of organisational policy and procedure are based on a sound ethical footing. Care standards are developed accordingly. A keen grasp of ethical dilemmas and an understanding of the nature of ethical decision-making is required by staff and management (Reamer, 1993:22-3). Front-line staff and care-givers are treated as precious resources; performance expectations are clear and feedback, support and supervision is of high quality.

> Critical quality control mechanisms for children in care include entry and exit interviews, access to reliable complaints systems, advocacy and representation and independent review of circumstances

Program evaluation data is collected and used systematically to ensure that care and services provided are in accordance with the purpose of the service, to assess the adequacy and efficiency of agency resources to carry out the objectives of the service and to determine whether services are effective (Pecora et al, 1992:432-451). Evaluation of quality is an ongoing part of the service provision process, rather than an external and periodic activity. Both quality assurance and quality control strategies are essential to establish good quality services - quality assurance seeks to develop mechanisms which minimise the likelihood of poor quality outcomes; quality controls pick up problems that do occur and feed them back into the quality assurance system for elimination (Osborne, 1992:437-441). Critical quality control mechanisms for children in care include entry and exit interviews, access to reliable complaints systems, advocacy and representation and independent review of circumstances.

So where does the investigation of allegations of harm fit into this organisational picture? Without minimising its critical function, the answer to this question must appropriately be: a minor role. The best protection from harm for children in care is prevention. The major focus of an organisation's energy and resources should be on service provision. Quality assurance and quality control systems - of which investigation is one - should keep their appropriate place as critical but minor functions.

AN INVESTIGATORY RESPONSE OF LAST RESORT:

General management and quality control systems cannot do justice to the needs and rights of such a vulnerable group as children and youth. The investigation of harm is a specialist function of both quality control and emergency service provision. Its objectives serve dual purposes:

1. to protect the child from further harm, assess the impact of the incident/ situation on the child and ensure the child's needs are met, and

2. to assess the incident in its context as to whether there has been a violation of care standards, agency regulations and procedures or criminal codes.

Agencies must address quality of care deficits at a level less serious than where harm is caused, yet specialist independent assessments could not be, and need not be, conducted on every incident or situation of inadequate care. It is recommended that an investigatory response occur for all situations where a child is suspected of being harmed or at risk of harm, making comment in the assessment of in what way the care received was inappropriate and/or sub-optimal. It remains the responsibility of the agency's management and quality assurance systems to provide for appropriate levels of care, set standards of care and conduct and to monitor and evaluate service provision. Those staff nominated to investigate possibly harmful breaches of care standards provide the function of an independent safeguard for the child by ensuring their protection when internal systems have failed to ensure adequate care - the 'safety net' of general quality control and quality assurance processes.

When internal management systems and quality assurance mechanisms within an agency system have failed to such an extent that a child within that system is harmed or is at risk of harm, that system cannot be fully relied upon to adequately protect and assist the child. An investigatory response must be based on this premise. When such a point is reached, the child requires protection and assistance from an independent agent. To maximise rigour and objectivity, assessment responses must be as structurally and functionally independent as political and economic constraints will allow. The safeguard of an independent perspective may paradoxically allow for greater collaboration and co-operation with staff in the setting, provided the integrity of the independent assessor is assured. Within agencies the investigation of allegations of harm to a child in care should be demarcated structurally and functionally from investigations of abuse in familial care to avoid a blurring of differences.

The importance of the issue warrants due recognition through the appointment of specialist personnel to the tasks of co-ordination, assessment, consultancy and/ or monitoring. Assessments must be conducted by specially trained and highly skilled staff with demonstrated competence in the conduct of systems assessments, the ability to elicit information in a fair, sensitive and respectful manner and an unshakeable commitment to the interests of the vulnerable and powerless.

Post-substantiation procedures are required to ensure that assessment findings are viewed seriously and formal mechanisms are created for the correction of identified deficits.

terms of 'abuse', 'perpetrators' and processes of 'notification' and 'registration' maintain minimalist and pathology-based thinking and should be discarded for more appropriate terminology.

Terminology is reflective of its underlying paradigm. Shifting paradigms whilst maintaining old terminology is likely to restrain holistic thinking - terms of 'abuse', 'perpetrators' and processes of 'notification' and 'registration' maintain minimalist and pathology-based thinking and should be discarded for more appropriate terminology. Reports of harm, inadequate care and improper conduct which prompt assessment of the incident, circumstances and context place the function within a duty of care framework. Issues gain recognition in their own right when they are deemed worthy of being measured.

The true incidence of harm to children in care is unclear as it has not been adequately measured as an issue in its own right; the incidence of inadequate care is unknown. Ideally, systems should measure and evaluate the incidence of care which falls below adequate, rather than abusive, levels. Centralised recording of reports and outcomes must also occur - children, staff and caregivers must be able to be tracked within and between systems.

Conclusion

- The proposed model advocates replacement of concepts of individual pathology and deficiency, in-house investigatory responses and tolerance for all but seriously inadequate care for children. A paradigm shift to embrace existing legal duties, agency regulations, good management practice and persuasive arguments from the literature is required. The failure to date to develop policy and procedure within this more appropriate paradigm no doubt has many causes. Current responses have to some extent developed because they were the only courses available - events take certain courses because they are restrained from taking alternate paths (Bateson, in White, 1986 :169). Restraints for change may be any or all of the following:
- ideological - being bound by the failure to question underlying inadequate paradigms,
- political - having to admit to the true nature and extent of inadequate care in an already hostile political climate where, given available resources, expectations of service provision are often impossibly unrealistic,
- piecemeal rather than holistic policy, and program development, and
- sheer complexity of the issue.

To embrace the implications of re-defining abuse in care is an enormous challenge. Yet to fail to even attempt to do so is to expose staff and agencies to potential litigation and to perpetuate a response which disproportionately places blame for the harm caused to children in care on those least powerful - foster parents, front-line staff and even children themselves - and does little to improve standards of care.

It would be naive to believe that this model is a panacea - it will not address the problems of inadequate resources to meet demand, the socio-political context which sees foster care, residential care and secure care as a solution to social problems nor point an easy path through the morass of ethical dilemmas and conflicting interests inherent in the issue. But it will at least begin to do two things. Firstly, it will attempt to place responsibility for harm and inadequate care caused to children more appropriately with those who are responsible and thereby with those who are in a position to correct the deficits within their own sphere of influence. Systemic assessment does not mean that individuals will be able to evade responsibility for their own poor practice; alternatively it affirms individual responsibility at each level of the agency or institution. Secondly, by attempting to

define duties and the breach of them,, it will force greater clarity of the legal and moral obligations toward children and young people in care, thereby protecting children's interests in a real sense. It is only when we have defined what, realistically, we should, and can, provide children that we will know when we have failed.

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