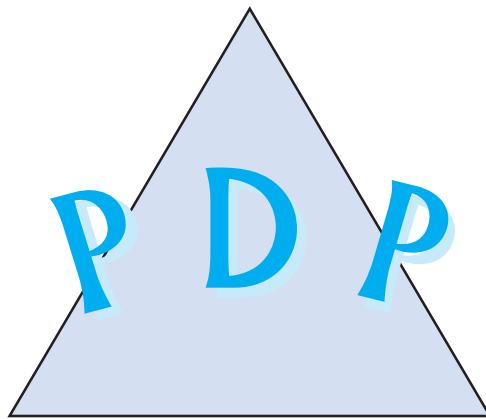


1997-1998



Professional Development Programme
for Educational Psychologists in Scotland

The Children (Scotland) Act 1995

Psychologists and the Children (Scotland) Act 1995

CONTENTS

| | |
|--|-----------|
| FOREWORD | 1 |
| INTRODUCTION | 4 |
| POSSIBLE TENSIONS BETWEEN THE CHILDREN (SCOTLAND)ACT 1995 AND THE EDUCATION (SCOTLAND) ACT 1980, AS AMENDED | 5 |
| COLLABORATIVE WORKING UNDER THE CHILDREN (SCOTLAND) ACT 1995 | |
| Justification, Principles and Issues | 8 |
| Collaborative Working: Practice and Issues | 12 |
| CONSULTING WITH CHILDREN | |
| Introduction | 18 |
| Legislative Framework | 18 |
| Practice - Creating a Listening Ethos | 22 |
| Implications | 26 |
| Possible Areas for Development | 27 |
| Dilemmas | 30 |
| CONCLUSIONS | 31 |
| BIBLIOGRAPHY | 34 |
| LIST OF PARTICIPANTS | 38 |

PSYCHOLOGISTS AND THE CHILDREN (SCOTLAND) ACT 1995

FOREWORD

Jenni Barr, Coordinator

PDP topics differ in their nature and scope. Some are research based with a written product the natural outcome of the investigation. Some are disseminatory, gathering information on effective psychological practice and opening opportunities for sharing skills and training. Yet others explore the impact of a new development within education, teasing out possible implications for psychologists working in local authority settings.

This project is an example of the latter type. The Children (Scotland) Act (1995) is a very recent arrival with implications affecting various agencies spanning the local authority, health board and the voluntary sector. In several areas of the country, initial training was offered first to social work services, and some authorities came to view the Act as essentially a piece of Social Work legislation. Thus it was only during the period covered by this project - May 1997 to February 1998 - that many authorities began to come to grips with the wider implications of the Act, a process assisted by the requirement to produce the first of the corporate Children's Service Plans.

For those psychologists involved in this project, the professional development element took two distinct forms. One was 'hands-on': each became a nominated representative from their Psychological Service on activities involving the Children (Scotland) Act at local level. This involved individuals in activities as diverse as sitting on working groups, collaborating on interagency planning, being identified as a consultant when aspects of the Act were being

implemented. In several cases this activity highlighted the fact that education services were not routinely being invited into key planning forums - so a new liaison role was born for the PDP psychologists in highlighting gaps within their own authority processes.

If there were occasions when this felt like being thrown in at the deep end, the PDP psychologists have drawn support for these new roles from the second strand in the experience - involvement in the Children Act group, with opportunities to share lessons from the six authorities represented and to develop with psychologist colleagues an understanding of the more pressing implications of the Act. Arising from the project involvement there have been openings to attend a range of conferences, to assist in planning a national conference, to deliver together an in-service morning for three Psychological Services, to speak - singly or in pairs - at a range of other venues.

This twin approach of individual 'hands-on' involvement within the authority with general support from the project group for taking on new roles has proved to be a successful combination. Individuals have found themselves working at new levels and in new forums within their authority, representing their own service or at times the education service with confidence and a quiet authority, and the invitations to deliver in-service speak for themselves. What it does mean is that on this project the written product is only one part of the PDP activity. The paper which follows will not be the definitive word on the Children (Scotland) Act 1995. The scene is changing rapidly (for example, authorities were involved heavily during Autumn 1997 in initial Children's Service planning, but this activity drew to a close once the deadlines were met; future revisions may involve rather different processes). What the paper seeks to do is to continue the task begun by Gordon Phillips (1997a and 1997b) in asking, what are the key implications of the Act for psychological services across

Scotland? Included in the consideration are examples of activities involving psychologists and the Children (Scotland) Act 1995, drawn from the responses of Scottish principal psychologists in early 1998. They highlight a variety of activities which are possible when responding to the spirit of the Act, but also the disparate nature of present responses: initiatives are patchy, often tentative and small-scale. It is hoped this paper can go some way towards setting an agenda for development that is relevant at both local and national levels.

In the paper which follows there is a degree of scene-setting, some initial comparison of the Children (Scotland) Act 1995 with other key pieces of legislation, then a major consideration of two important aspects as they affect the work of psychologists:

- the call to councils for effective multidisciplinary working, and
- an examination of the opportunities offered by the new requirement to consult with children.

It has already been identified that *Consulting with Children* will become a PDP project in itself during session 1998/9, so in that section of the paper the aim is to open up the issues and prepare the way for more thorough developmental treatment.

PSYCHOLOGISTS AND THE CHILDREN (SCOTLAND) ACT 1995

Ken Dutton, Charles Gow, Julia Johnson, Pamela McIlwain, Stuart Taylor, Ruth Wheeler

INTRODUCTION

At the time of writing the Children (Scotland) Act 1995 has been implemented barely a year, and psychologists along with a range of other child care professionals are very much a part of a rapidly evolving process of rethinking practice in the light of these developments. A good amount of the early thinking, awareness raising, and teasing out of the immediate implications of the act was undertaken by Gordon Phillips (ex Principal Psychologist in Glasgow City) and acknowledgement is duly given at the start of this paper.

Though hailed initially as innovative and far-reaching, closer inspection reveals that a lot of the practice proposed within the Act has been evolving naturally in professionals' practice over the last decade. The legislation thus consolidates what has been changing and developing practice, as well as proposing some new concepts, practices and terminology. Mirroring what happened when the English equivalent Children Act 1989 was implemented, the current feeling is that as yet there has been limited impact of the new legislation on actual day-to-day work.

Consultation with psychologist colleagues suggested early anxieties were based on the new requirements encapsulated in the assessment orders and the potential tight timescales that these would demand. How this would impinge on time allocation and work negotiation systems was an unknown. In practice, the uptake of such orders to date has been minimal, the direct impact negligible.

The two areas with biggest impact on the day-to-day working of psychological services to date are the requirement for active collaborative working between agencies, and the right of

children to have their views heard and taken account of in a variety of situations. These will be considered in turn in the substantive sections of this paper. But first a look at how the Children (Scotland) Act 1995 sits with other legislation affecting the day-to-day practice of the educational psychologist.

POSSIBLE TENSIONS BETWEEN THE CHILDREN (SCOTLAND) ACT 1995 AND THE EDUCATION (SCOTLAND) ACT 1980, AS AMENDED

There are definite inconsistencies between the Education (Scotland) Act 1980, the UN Convention on the Rights of the Child 1989 and the Children (Scotland) Act 1995. The Education (Scotland) Act 1980, as amended, leans heavily on previous education legislation and embodies much of its philosophy, stretching back in part to the Act of 1872, and shaped by the Acts of 1944 and 1962. It is strong on the rights and duties of the local education authority and of parents, but has no specific focus on children's views and no explicit welfare principle.

The UN Convention on the Rights of the Child was ratified by the UK in 1991, but it is the Children (Scotland) Act 1995 which became the first attempt to implement aspects of the Convention in legislation. It follows that these two are more consistent in terminology and philosophy.

There is a further distinction to note. The Children (Scotland) Act 1995 is legislation which revises comprehensively previous social work Acts in Scotland. Principles underlying current social work practice are, therefore, consistent with the UN Convention and with existing legislation. Less so for education. The Children (Scotland) Act 1995 modifies previous education legislation only in minor detail. Thus the Children (Scotland) Act 1995 sits alongside the Education (Scotland) Act 1980 as current legislation affecting the practice of educational professionals, but the two differ in certain key respects.

Firstly, they differ in the locus of responsibility. The Education (Scotland) Act 1980 outlines the duties of the local education authority. The Children (Scotland) Act 1995 speaks only of the council's responsibility - the emphasis here is on the corporate endeavour.

There are differing definitions of the same term. 'Parent', for example, is defined with greater specificity in the more recent legislation, such that a biological father who was never married to the mother would not automatically have rights as a parent under the Children (Scotland) Act 1995, but would, in many circumstances, under the Education (Scotland) Act 1980.

These distinctions are in addition to the more general differences between the Acts in philosophy and approach, notably the introduction within the Children (Scotland) Act 1995 of new definitions of parental responsibilities and of an emphasis on children's rights.

How problematic are these differences? Perhaps not too problematic as long as it is clear which Act applies in any given situation. Thus, the legislation covering a school placing request, or the procedures for consultation when considering the closure of a school are laid down in the Education (Scotland) Act 1980, as amended. They, therefore, outline the duties of the local education authority and the rights of the parents within these processes, but make no specific requirement that the views of the young people concerned be taken into account. If the young people's views differed from those being put forward by their parents - ostensibly on their behalf - they have no formal right of redress or appeal under the law.

However, there are groups of pupils identified by the Children (Scotland) Act 1995 whose views *must* now be sought on decisions that affect them, and these include the pupils defined by the Act as those 'looked after' by the local authority. A placing request would certainly affect such pupils, so is this, then, a point where the two Acts come together, and if so how

are the tensions to be resolved? It may be that with respect to this group at least, the earlier legislation could be amended. Indeed, there are those who believe that an early task of a new Scottish Parliament may be a more comprehensive revision of the Education (Scotland) Act 1980.

In practice, under the new Act many authorities are already finding that to spend too much energy defining precisely who is 'in need' (thereby attempting to define who should be consulted) may not be the best way to proceed. An alternative approach might be to develop practices whereby consultation with pupils - *all* types of pupils - becomes an integral and routine part of an authority's procedures. In this way, those who must be consulted under the Children (Scotland) Act 1995 will be included, but the wider spirit of the legislation will also be honoured.

Here lies the hope for the Education (Scotland) Act 1980. It may be somewhat restricted in its formal prescriptions, but there is little within the Act to prohibit local authorities from choosing to go further than the strict requirements of the legislation in terms of their own authority guidance and practice. With a deliberate aim to incorporate some of the key principles of the Children (Scotland) Act 1995 it could, after all, be possible to develop a corporate strategy with protocols and arrangements in place to cover areas as diverse as:

- effective planning for children's services
- one-door entry to services
- joint assessment systems, reflected at all levels within the authority
- joint information systems
- joint management systems
- shared and independent funding
- reconciling potential conflicts within the legislation
- effective collaborative working in front-line services.

If all this is possible, how much substance is there to the allegations of tension between the Acts? Perhaps as practitioners it is enough that we are aware of potential conflicts and differences of emphasis within the legislation, so that we can use this awareness to create opportunities for good practice that go beyond the strict letter of the law and embrace the combined spirits of the two Acts.

COLLABORATIVE WORKING UNDER THE CHILDREN (SCOTLAND) ACT 1995

Justification, Principles and Issues

The whole is greater than the sum of the parts. Collaborative working by different agencies including the voluntary sector within a corporate plan by a local authority is one of the main directions of the Act (Section A, 2.4.1). Its accompanying guidelines (directly and by significant implication) signal the legal and ethical need for, and the considerable benefits likely to result from, effective inter-agency collaboration.

Relevant sections of the Act that imply departmental collaboration concerning the assessment and provision of services to children include:

- Section 19 Local authority plans for services for children
- Section 20 Publication of information about services for children
- Section 21 Co-operation between authorities
- Section 23 Children affected by disability.

'Social work departments should make arrangements with local education departments, Health Boards and NHS Trusts, and primary health care teams for sharing information, joint

assessment and provision of health, education and social work services in individual cases, in the light of the requirements for collaboration under the act.'

(Social Work Services Group, 1997)

Part Two of the Act directs authorities to build on existing good practices with collaboration and partnership between voluntary and statutory agencies, the parents, children and young people involved through the creation of Children's Service Plans.

'The general aim of planning is to ensure that these services are provided in a co-ordinated way, making the best use of available resources to provide help where it is most needed and in the way it is most needed'.

(City of Edinburgh 1998)

This point is taken up throughout some available draft Service Plans: Glasgow's draft plan (1997) mentions departments working together, joint working, joint assessment, collaboration between agencies / departments approximately 86 times; Edinburgh's around 102 times.

But why work together? Various high profile child protection cases have highlighted the tragedy that can arise from a lack of information sharing, lack of trust and of co-ordinated priorities between the different agencies involved with children. It has become part of the received wisdom within the professions concerned with children that collaboration is a 'good thing'. But if this is accepted uncritically, then there can be a tendency to downplay the fact that, without certain safeguards, collaboration can also lead to conflicts amongst and between professionals that can be harmful to the process and to the children and families involved.

'Collaboration is a paradoxical concept in the field of social welfare. There can be little doubt that the notion is in vogue. The desirability of some form of collaborative activity has become a sine qua non of effective practice within the welfare professions, both at practitioner and policy making levels. However, we know remarkably little about how collaborative activity works, why it may initially be developed, how it may be measured or even how it may be defined.' (Hudson 1993)

Law does not just appear from the ether. At best we can hope that law highlights, promotes and allows good practice (see Section A,1.2). Over the years there have been many examples of collaborative working practices from all areas of Scotland. Whilst some of these were closer to the spirit of the Act than others, they all had elements of good practice that can be developed and refined.

In the late 1960's a group met under the Youth at Risk initiative. This was a multi-agency group from all parts of Scotland who met with the prime objective of listening to young people and trying to learn from them. The group ran for some twenty years.

The Plowden Report (1967) praised the Glasgow school welfare service for its attempts to narrow the gap between education and social services.

In 1983 Lothian Region instigated a policy of Youth Strategy, whose primary aim was to keep children within their own homes, schools and communities wherever possible through the provision of local services and collaboration and joint working between those agencies providing the services.

Children in Scotland Information Pack Factsheet No 5 on 'co-operation' (1996) makes some good specific points and signals up pertinent general issues:

- co-operation and collaboration should not be perceived as ends in themselves but as means to ensure that children and families receive needed services and support
- unless organisations come to common understandings of such concepts as 'children in need' then joint working will fail.

They also note that, thus far, experience of this in the rest of the UK has not been particularly positive.

Educational psychologists have traditionally worked collaboratively with other professions. Much of our work cannot be done without collaboration. However, for many psychologists it is the exception to be able to work with fellow psychologists, particularly at a case work or school level. It is far more common to be working collaboratively with other education staff, health personnel or social work staff. Under the Act, although the responsibility for working collaboratively is to be seen as a corporate responsibility, it is likely that psychological services will continue to be one of the services receiving the most regular requests for collaborative working from fellow education, social work and health colleagues. Are these requests as pressing from the voluntary sector?

Collaborative Working: Practice and Issues

Information exchange between and within agencies

Some eleven Scottish authorities are presently piloting a Scottish Office amended version of 'Looked after Children' forms (1997). The materials include essential information records, placement agreement records, care plan records and review of arrangements records. The essential information records are divided into two parts. Part 1 is concerned with immediate and current personal details, health information, family details and professional contacts. The professionals cited are social worker, head teacher, class teacher, guidance teacher, general practitioner and health visitor. Part 2 is more comprehensive, with further questions on personal details, health, education, legal and protection issues, placement history, family details, professional contacts and administrative information. The professionals cited here are those included in Part 1 plus community medical officers, paediatricians, child or adolescent psychiatrists / psychologists, psychiatric social worker, education social worker, dentist, optician and speech therapist. Curiously, despite the questions in the education section requesting information on individual education plans, Records of Needs and future needs assessments, educational psychologists do *not* appear to be included in this list.

Other authorities, e.g. City of Edinburgh Council, are developing their own assessment documents along similar lines, not only for 'looked after' children but for all children in need. The aim is that important relevant information be accessible, available and collected in a way which avoids repetitive questioning of parents and children by different agencies for the same basic information.

During the consultation phase of drafting its Children's Service Plan, Scottish Borders Council has trialled the setting up of a database which aims to identify and quantify children affected by disability in a comprehensive fashion. Information on children with a Record of

Needs has been cross-referenced with the Health Board's Special Needs Register and with information from the established voluntary and parental support groups. Joint information gathering and holding should mean fewer children get lost in the system or end up receiving what can seem to be a random package of help, random because it depends too heavily on the route by which they were first referred.

Issues for consideration

- Should there always be a lead agency and how will this be decided?
- It will be important to monitor the information collected to ensure that it is legal, useful, valid, reliable and relevant. Will this depend on which department is collecting it? How often will it be updated? When will it be destroyed, and on whose decision?
- How will information be exchanged between agencies - electronic joint access, written report, multidisciplinary meeting, one-to-one discussions? What are the different implications of these approaches? How will children and parents be assured in terms of access, availability and confidentiality of jointly held information?
- How will information and planning be managed between local authorities?
- How can information technology be used to make the task easier?

Assessment and identification of needs

Joint working in this area is at different stages of development and sophistication in different authorities. It is already common for pre-school children to be assessed jointly. Pre-school community assessment teams spanning education, social work and health are experienced in holding case conferences with parents following a period of coordinated assessment where the findings are shared, joint plans made and responsibilities agreed.

Some developments in assessment are easily incorporated into psychologists' existing practice. An example is the following recommendation arising from the Act:

'Education departments should notify social work departments of impending assessments of special educational needs involving children with disabilities so that the social work department may consider whether a conjoint assessment of needs under the 1995 Act should be undertaken.' (Social Work Services Group, 1997)

Issues for consideration

- How will we resolve the issue of overlapping roles: who does what, when and where?
- How do we react to the possibility of aspects of our work as educational psychologists being prioritised or managed by agencies other than education?
- Will there be difficulty in maintaining and using professional competencies and roles?
Authorities need to recognise and accept that corporate responsibility for children's welfare does not mean that professionals become 'generic' professionals. This is not a defence of professional mystique but a recognition of the value of different professional viewpoints. The benefit of the Act should be that as we are working collaboratively there is understanding and mutual respect about our respective roles.
- Which models of assessment are in the best interests of the child? The preference of psychologists continues to be contextual assessment over time. This fits poorly with the apparent economy but potential invalidity of one-stop hospital multi-assessments.
- Will there be an increased role / responsibility for educational psychologists?
Already in some authorities educational psychologists are being asked to become the lead professional in assessments of children affected by disability. If any, what further training might we need for this?

- Interagency collaboration is a key issue in Child Protection work. Educational psychologists may be increasingly involved under the Act in assessing the extent to which some children are at risk of 'significant harm' within child protection procedures. These assessments come with stringent timescales and legal priority. How will psychologists seek to manage these within the systems of time allocation and school level agreements which most psychological services currently operate?

Meeting needs: planning, delivery and review

Education is a universal and statutory service. Social work is proactive and reactive safety net statutory service. Planning can be seen as being about communicating alternatives and generating creative solutions.

'The development of Children's Services Plans presents a major challenge to reconcile value systems, policy stances and operational practice across a range of services. The process of carrying out a large scale review and needs analysis is a huge commitment. The process of consultation is potentially a logistical nightmare' (Telfer, 1997)

There should be enhanced opportunities for flexible responses, creative packages of support, relevant help when needed and proactive planning from the collaborative agencies. There should be more opportunities for shared resources and flexible arrangements for funding. The dangers are of overly bureaucratic systems which frustrate rather than promote children's welfare. Joint systems should not be allowed to lead to joint prevarication or the creation of barriers to resources.

Issues for consideration

The various agencies will need to develop joint policy with agreed priorities. Initially it will be necessary to ensure that existing policies are not contradictory.

- ‘Joint working is a bit like herding cats, getting people to collaborate, with everyone having their own agenda.’ (McKeena, 1997)
- ‘Where does this collaboration sit with other priorities? Dealing with processes not outcomes can be a problem for the National Health Service.’ (Caestecker, 1997)
- Does it matter that different emphasis is given to process and outcome by the various collaborating agencies?
- Present plans for evaluating the Act seem to be in the social researchers' domain.
(Scottish Office Central Research Unit, 1997)
- How will we review collaboratively the working of the Act?
- For collaboration to work smoothly in planning, delivery and review the collaboration needs to be at all levels from field worker to government minister. Is this then an argument for a Children’s Department within each authority or a Ministry for Children, as exists in some Scandinavian countries? Could it be that our future as educational psychologists may lie in working within either of these structures?

Training

Collaboration requires mutual respect and understanding. Hough and MacBeath (1989) suggest that there are mythologies and misunderstandings in the expectations of the various professions as to what the other professions should or can provide. From experience, the more we work together the more likely we are to have a realistic view of what others can achieve. The training of health, education and social work professionals differs in key

respects. There is a different attitude and character profile for students of the various professions prior to training, and this difference increases following training.

‘The student of the interface between social work and education in the 1980's resembles the anthropologist....aiming to document and describe the confrontation between two widely different cultures.’ (Bruce, 1983)

Child Protection procedures and the briefings on the Act have already provided opportunities for joint training.

Issues for consideration

- Do educational psychologists need to have some initial training that is common to all professionals who work with children? What would this training look like?
- Is there a need for more opportunities for joint professional training within authorities with the aim of increasing mutual understanding and consistent responses? Do we need to develop shared values or to learn to respect our differences? Are there ways of improving communication across the professions? By what means do we establish a common understanding of such concepts as ‘children in need’ or ‘vulnerable’?
- How can the training and in service sections of an authority offer courses of relevance for collaborative working? What contribution should educational psychologists be making to this?
- How can effective liaison extend beyond the authority to include the health board and the voluntary sector?

Final comments for this section are to be found with the conclusions at the end of the paper.

CONSULTING WITH CHILDREN

Introduction

Psychologists' practice has evolved towards increased collaboration with others. Parents and now children are viewed as clients and partners with rights. The arguments for consulting with children and engaging with them as active participants are ones which resonate with good psychological principles and practice.

The arguments for consulting with children are threefold:

- pragmatic - they have information to contribute
- moral - they have a right to be listened to
- legal - we have a duty to ascertain their views. (Gersch, 1992)

The pragmatic argument rests on the grounds that children have unique and crucial information to contribute to decisions being made about their lives and that plans which respect their views have a greater chance of success. The moral argument is one of natural justice, and rests on the basic human right to be heard and to have one's views taken seriously. The legal argument derives from the United Nations Convention on the Rights of the Child, adopted by the UN in 1989, ratified by the UK government in 1991 and reflected in the Children (Scotland) Act 1995.

Legislative Framework

The UN Convention on the Rights of the Child 1989 includes the statements:

‘States parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. For this

purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.'

(Article 12)

Although the UN Convention was ratified by UK government in 1991 this process, unlike some other countries, does not automatically incorporate the conventions into the domestic legal system. The UN Convention has only rhetorical and not legal power in the UK. Even so, this rhetorical power has become a driving force behind certain legislation and certain new practices and approaches (Tisdall, 1997).

The Children (Scotland) Act 1995 has three underlying principles, the first of which are the welfare principle and the 'no order' principle. The third concerns children's views: any person fulfilling parental responsibility or exercising parental rights, the local authority, the Children's Hearing and the court are to have regard to the views of the child, if the child is capable of expressing them and wishes to do so.

The Act details specific circumstances in which children's views are to be heard.

Responsibilities are laid on:

- parents when fulfilling their parental responsibilities or exercising their parental rights

(Section 6)

- the courts when dealing with private law proceedings to do with parents' rights and responsibilities

(Section 11)

- children's hearings and courts in deciding matters relating to children's welfare

(Section 16)

- local authorities when making decisions in relation to a child they are looking after or propose to look after (Section 17)
- courts and adoption agencies in relation to adoption decisions. (Section 95)

In so doing these agents '...taking account of the age and maturity of the child concerned, shall so far as practicable give him the opportunity to indicate whether he wishes to express his views; if he does so wish, give him the opportunity to express them; and have regard to such views as he may express.' Section 16 -1)

There are also responsibilities laid on local authorities when drawing up Children's Service Plans to take into account the views of potential users, the children and families who are currently using or receiving services and those who have previously received services.

(Social Work Services Group, 1997)

The Act introduces a new legal framework for assessment, services and support to children with disabilities, children affected by disability and their families. Children should be 'actively involved in assessments, decision-making meetings, case reviews and conferences' and they 'should be given help to express their views and wishes and to prepare written reports and statements for meetings where necessary' (SWSG 1997). Additional arrangements may be needed to establish a child's views where a child has complex needs or communication difficulties (SWSG 1997).

The Children (Scotland) Act 1995 re-asserts the right of a child to consent to, or refuse, medical examination or treatment contained within the Age of Legal Capacity (Scotland) Act 1991. This states that children and young people under 16 have the capacity to consent to

their own medical examination and treatment where, in the opinion of the medical practitioner attending him or her, he/she is capable of understanding the nature and possible consequences of the examination or treatment. Parental consent is not relevant unless it is the view of the medical practitioner that the child cannot understand. If a child is capable of understanding and refuses treatment, that refusal should be respected. There is a presumption that children over the age of twelve have the necessary maturity to understand, but a younger child *may* understand, just as a child over twelve may not. The right of the child who is capable of understanding to refuse medical examination or treatment has not yet been tested in a court in Scotland.

Implications

The immediate implications of the legislation for Psychological Services in Scotland have not been significant (see Section A,1.2). This echoes the experience of English services following the implementation of the Children Act 1989. But the underlying principles of respecting children, listening to children and empowering children all reflect an ethos that underpins and informs good psychological practice.

The extent to which children can express and advocate their views and ideas will depend on:

- a. the ethos of institutions
- b. the attitudes of teachers
- c. the maturity, skills and ability of the child
- d. the attitude of the child's parents
- e. the attitude and propensity of other professionals
- f. the attitude, maturity and culture of the children in the school.

(Gersch and Gersch, 1995)

These factors are located within core areas of psychologists' practice. The issue for us as practitioners is how best to use our expertise to further genuine consultation with children within our own practice and in the contexts within which we work.

Practice - Creating a Listening Ethos

'Listening sincerely is not the same as simply doing what children ask. It is often the case that through discussion, negotiation and experience attitudes change, but in order for this to happen there needs to be an underlying listening ethos' (Gersch 1996)

Current legislation is an acknowledgement of an already changing context regarding the importance placed on the views of children. The Act is therefore not the starting point, but it gives legitimacy to existing practice, and offers pointers for continuing development. Consideration of the English perspective including the resources of LEA educational psychology services can be helpful. However, it is noted that comparable work exists already in Scotland, both within the broad theme of encouraging the involvement of pupils (for example buddy schemes, peer counselling or peer tutoring projects), and in new work which may have been prompted directly by the legislation. The effects of this have been reported recently in some detail in 'Close to the Mark' (Scottish Office Education and Industry Department, 1997).

For this PDP project, information on initiatives to improve consultation with children specifically involving Scottish psychological services was collated by survey. Twenty six replies were received from the thirty two local authorities (a response rate of 81%). Nine of these were reports of new initiatives. Two PDP groups currently operating were seen as having direct relevance to the topic, the project reported here, and colleagues working on the

ADHD topic who were interviewing children about their feelings in relation to diagnosis, treatment and school support. Other responses related to specific work which can be listed along with wider UK initiatives. In the sections which follow, Scottish initiatives are cited by local authority area (and within square brackets) and all were reported by Principal Psychologists by personal communication in response to the survey request. All the work is seen as new, ongoing and directly related to current practice. At the time of reporting, none is as yet in publishable form.

Examples of educational psychology led initiatives are here grouped by the levels at which the intervention takes place, whether involving an element of individual casework or a consultative role.

Local Authority

- all Scottish authorities are involved in producing and reviewing joint agency Children's Service Plans, which under the requirements of the legislation must include a policy for consulting with children in certain key areas
- children's versions of SEN5 forms (forms which previously ascertained only parents' views) [Scottish Borders & City of Edinburgh]
- new Record of Needs procedures acknowledging the necessity to consult with the child as an integral part of the process [Highland]
- adaptation of Record of Needs Part VII forms to include a child's view on the Record [Moray]
- consultation panels being run by Continuing Education Dept in local areas to find children's views on local services and amenities [Scottish Borders]

- pilot project to redesign Psychology Service referral forms to include child's views
[West Dunbartonshire]
- new prospectus containing specific reference to separate rights of the child to access the Psychological Service and their rights re access to files [Highland]
- new procedures by which all children being considered for referral to the psychological service can be consulted about the referral, plus the development of new self referral procedures
[Moray]

Whole School

- systems projects aimed at changing school practice, including pupils' working groups
(Gersch and Noble 1991)
- several initiatives throughout various Scottish authorities reported in 'Close to the Mark'
(SOEID 1997)
- consultation exercises with pupils in selected special and mainstream schools, covering services provided in the schools, contacts with school staff, involvement in meetings and out-of-school opportunities
[South Lanarkshire]

Classroom

- a range of initiatives throughout various Scottish authorities reported in 'Close to the Mark'
(SOEID 1997)
- initiatives involving children in assessing and monitoring their own work, in consultation with the teacher
(Gersch and Brown 1986)

- lessons in PSD time covering the Children (Scotland) Act 1995 and children's rights, including seminars on the UN Convention on the Rights of the Child 1989

[South Lanarkshire]

Individual Child

- Questionnaire and/or structured interview work designed to elicit children's views (examples in the literature include pupils excluded from school (Nolan and Sigston, 1993); pupil's view within assessment of SEN (Gersch and Hollgate, 1994); contribution to IEP (Morton, 1994); younger special needs pupils (Mortimer, 1994))
- psychological theories of counselling such as personal construct and solution focused approaches may have future value here
- a review of Future Needs procedures and how to better involve young people in the process
[City of Edinburgh - trainee project]
- consideration of how to involve young people more actively in meetings and reviews
[West Dunbartonshire]
- intensive individual work with children in Dunblane to facilitate and assist their personal involvement in case conferences
[Independent psychologist, working sessionally for local authority]
- including children in the steps and decision-making procedures of the exclusion process.
[City of Edinburgh]

There is a need for practical guidance for school staff on how to consult with children and young people. However, an overview of the literature suggests that techniques and procedures are ultimately less important than creating the climate in which children feel able to talk to adults freely and express their ideas openly. Gersch et al (1996) have proposed a series of checklists which may be a resource for local authorities, schools, teachers, and non

teaching professionals including educational psychologists. These question prompts could act as a useful starting point for future planning and development.

Implications

Clearly there is a need to create a route for children's views to be expressed and recorded on the decisions that affect their lives. However, positive partnership with pupils, perhaps especially those with learning or behaviour difficulties, is unlikely to occur spontaneously and effecting genuine involvement of children will present a challenge. While it is to be hoped that we have moved away from the Victorian dictum that children should be 'seen and not heard' we may still be some way from establishing a true listening ethos within education (Gersch et al, 1996).

There will be a need to address this issue at the four levels identified:

Local Authority

If we want to listen to children then we need to create the structures, procedures and environment that will create the listening ethos.

- What is the Authority's policy on listening to children as expressed in the Children's Services Plan?
- Have personnel been identified who will look at the implications and implementation of this and monitor developments?

School

The material presented above indicates no shortage of initiatives to try to involve pupils in decision-making at school level. However, few initiatives are country-wide. This prompts some questions:

- Is what is being done occurring in an ad hoc or tokenistic fashion?
- Is it dependent on the personalities involved or is it part of school or authority policy?
- Where does resistance to such involvement come from and how can it be tackled?
- How are staff enabled to express any concerns about involving children or their anxiety about the skills and changes needed to do this professionally?

Classroom

Again an appropriate ethos should be created in the classroom where children feel they are actively involved and that their views are heard. The points about staff anxieties and resistance are particularly relevant here.

Individual Child

Having regard to children's views means listening to them as a group (e.g. via school councils) and also as individuals. Staff will need support, advice and provision of materials in order to achieve this in a fair and objective way, especially with the very young, those with learning difficulties and those disenchanted with education.

At each of these four levels there are key criteria for helping children participate in major decisions affecting their education. These include

- informing the child
- consulting with the child

- allowing the child choice.

Possible Areas for Development

We are talking here about the development of a new climate of consultation. Where there has not been a history of such a climate some resistance may be expected. Some barriers to a willingness to listen to children and to share information actively with them may need to be broken down, including:

- the 'I know best' barrier
- the 'I've more experience than you' barrier
- the 'I'm only thinking of your best interests' barrier
- the 'I've got a job to do' barrier. (Woolfson, 1997)

There will be a need, therefore, for preparatory work to be done so that such effects as tokenism and lip service do not result. It may be that the most productive way forward is a two pronged approach: listening to staff concerns coupled with practical advice and guidance on how to consult with children.

The authority will need to decide who should be doing such development work. It would be natural for the psychological service to be considered in this respect.

"Psychologists have (or should have) a special facility in terms of ascertaining the child's wishes and feelings. They are also the professional group best suited to establishing his or her emotional and educational needs and the likely effect on him or her of any changes".

(Conn, 1991)

Adults involved with children are also entitled to have their views heard and acknowledged. There may be a need for reassurance that listening sincerely to children is not simply doing what children ask. Practical help and suggestions offered to enable the adults to carry out such listening will help build the confidence, personal and professional skills that may in turn lead to attitude change. While sensitivity and empathy are vital, they can only be enhanced by the learning of skills which involve the ability to build up communication, including such skills as reading body language and attending to what is *not* being said. Still, without the proper ethos no technique is going to be sufficient.

There is a role for psychological services to look at their own policy, procedures and practice in this regard:

- By what means do we seek to share information about provision and about our decision making processes with the children with whom we work?
- Where are children's views recorded concerning referral to and recommendations made by the Service?
- Where in the process of opening a Record of Needs do we have regard for and record the child's views?

Perhaps more collaborative models of working need to be explored. The status and role of the psychologist may also need to be looked at. Does having regard for children's views challenge some of the more traditional roles of the psychologist, for example prompting a shift from assessor, advisor, therapist to role of child advocate? Are there ways in which this kind of advocacy role may be different from the role exercised by children's rights officers, newly appointed in several areas of Scotland?

There may be problems ascertaining the views of the very young or those whose learning difficulties make language comprehension and expression difficult. How do we ascertain that a child is capable of making decisions, negotiating and exercising choice? Could it be that a child's contribution might be dependent on the skills of the advocate?

As psychologists we are aware of the dangers of

- overburdening children with decision-making procedures where they have insufficient experience or ability to make an appropriate judgement
- losing a child's views in the often complex process of assessment, and
- raising false expectations regarding the authority of a child's expressed view.

How do we seek to achieve a correct balance ?

Dilemmas

The Act raises one of the recurring questions for a psychologist - who is the client ? The welfare of the child is seen as a fundamental principle of the Act. Would a role as child advocate present a conflict of interests for the psychologist as a council employee? Mr. Justice Garland in the case 'Phelps Vs Hillingdon London Borough Council' said in his judgement, "an educational psychologist owes a duty of care, not only to the local authority employing her, but also to the child being assessed, through her parents, on the basis that they would act upon her findings, recommendations and advice" (1997).

Another dilemma arises where the child's views differ from that of his/her parents. Present legislation regarding parents' rights, their responsibilities and the child's rights may require clarifying and mechanisms introduced to resolve differences.

In extending children's rights to have their views considered we must further be aware of dilemmas that can arise where one child's views clash with another or group of others. We expect parents to be able to consider the views of other parents; children may need to be helped to act similarly. Clearly, this will not always be easy.

In real situations negotiation and compromise will still be important elements. Perhaps the important fact is that children are genuinely being included within the process - through both a concern to find appropriate means to share information and consulting to ascertain their views.

CONCLUSIONS

It has not been possible in this brief paper to look at all aspects of this Act, nor the full range of potential responses. What the paper seeks to do is to look at three areas - marrying the Act with other existing legislation, the call for effective multidisciplinary working and the rights of children to be consulted on decisions which affect their lives. As far as these areas are concerned, whither psychological services?

The debate concerning tensions within the legislation is not yet over. Certainly, there are key terms defined differently between the Education (Scotland) Act 1980 and the Children (Scotland) Act 1995, and there are new rights enshrined in the latter which reflect the priorities of the UN Convention on the Rights of the Child. However, already within Scotland there are councils whose education services appear to assume that there are no tensions which affect them substantially: as far as education matters are concerned they will continue to operate as if solely under the Education (Scotland) Act 1980. This is to ignore the call in the Children (Scotland) Act 1995 for integrated council responses, and the very specific obligations to consult at least with those pupils who are 'looked after'. Others have

looked to preserve the principles enshrined in both Acts through a response that goes beyond mere legislative prescription. How specific conflicts will be settled, however, is still unclear. It may yet take some cases tested in the courts to resolve how the law is to be interpreted and applied.

What is not disputed is the call for psychological services to be involved in a coordinated, multidisciplinary response to the needs of children. At council level this means joint planning of children's services; the exploration of one-door entry to services; development of joint assessment, information and management systems; the possibility of shared as well as independent funding. This needs not only effective collaboration at ground level (this paper has detailed what can facilitate as well as hinder) but parallel administrative structures that assist at every level within a council. The reorganisation of local councils may have opened some opportunities to address this (in at least one large city there has been a deliberate attempt to twin administrative structures within social work and education so as to assist joint decision-making and funding on issues such as residential placements), but it has also brought its own difficulties and challenges. In central Scotland the areas covered by the health boards used to be roughly consistent with authority boundaries. Not so now. In one notable example the one health board now covers three discrete councils. There may be a joint will to establish common policies and structures for the sharing of information and decisions, but there are real difficulties where these cross council boundaries too. Could an enhanced level of collaboration across adjacent psychological services offer assistance here?

Finally to consulting with children. Although already firmly within the domain of psychologists, there are fresh opportunities offered by the Act both to look at our own processes for involving children as active participants in the work that we do, and for

assisting others as they develop their skills and expertise in this area. A new climate is being fostered in our schools and beyond which has equal regard for the rights of adults and children.

This is a considerable task, with many avenues to explore. It includes how we share information with children as well as how we listen to them and guide them to make choices. It includes how children can be helped to have a voice in the areas where crucial and controversial decisions concerning them are being made, including authority appeals and the courts. There is a whole new project here. This will, indeed, be given a major focus within the PDP for psychologists in 1998-9.

At one level the Children (Scotland) Act 1995 presents nothing new in terms of what has always been seen as best practice for educational psychologists. However, here is a chance to review a significant part of what we can do, likely should be doing, and now will have to do.

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LIST OF PARTICIPANTS

NAME, COUNCIL AND TEL. NUMBER

ADDRESS

Ken Dutton
Scottish Borders
01835 824000 x 5816

Psychological Service
Scottish Borders Council HQ
Newton St Boswells
MELROSE TD6 0SA

Charles Gow
East Dunbartonshire
0141 775 2645

Psychological Service
Gartconner School
Gartshore Rd
KIRKINTILLOCH G66 3TH

Julia Johnson
City of Edinburgh
0131 343 6181

Psychological Service
Easter Drylaw Dr
EDINBURGH EH4 2RY

Pamela McIlwain
City of Edinburgh
0131 229 4223

Psychological Service
7 Merchiston Park
EDINBURGH EH10 4PR

Stuart Taylor
Dumfries and Galloway
01776 704126

Psychology Service
Foundry Lane
STRANRAER DG9 ODY

Ruth Wheeler
West Dunbartonshire
0141 952 0311

Psychological Services
Braidfield High School
Queen Mary Ave
GLASGOW G81 5LR