

PROTOCOL
To assist in the
Provision of

PRE TRIAL
THERAPY

For child witnesses

SOUTH WALES CHILD PROTECTION FORUM

A PROTOCOL TO ASSIST IN THE PROVISION OF PRE-TRIAL THERAPY FOR CHILD WITNESSES

1. AIM

1.1 The aim of this agreement is to ensure that where it is intended to provide therapy to a child who is a witness in criminal proceedings the decision to do so is taken with the best interest of the child in mind and in the light of all the relevant information including the potential effect of the therapy on the criminal proceedings.

2. OBJECTIVES

2.1 The objectives of this agreement are:-

- that children always receive therapy when it is needed
- to improve the understanding of the difficulties for criminal prosecutions associated with the provision of therapy for child witnesses prior to a criminal trial
- to clarify the roles of those involved in making decisions about the provision of therapy prior to a criminal trial
- To ensure that those responsible for deciding whether or not therapy should be provided and the nature of that therapy, have as much relevant information about the criminal proceedings as they need to assist their decision.

3. DEFINITIONS

3.1 Various terms will be used in this agreement. These terms and their agreed meanings are set out below;

3.2 **Therapy:** As defined at paragraph 2 of the Action for Justice publication, Provision of Therapy for Child Witnesses Prior to a Criminal Trial, Practice Guidance.

3.3 **Therapist:** A therapist or counsellor who has received appropriate training and who has a thorough understanding of the effects of abuse. They must have a good understanding of how the rules of evidence for witnesses in criminal proceedings may require modification of techniques. They will be members of an appropriate professional body or have another recognised competence relevant to the provision of therapy, or counselling of children who have been the subject of abuse. See paragraph 5- Provision of Therapy for Child Witnesses Prior to Criminal Trial, Practice Guidance.

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3.4 **Child Witness:** Anyone under the age of 18 who has provided a written statement or video interview admissible in evidence in a criminal trial.

3.5 **Child care body:** Those organisations directly concerned with the care and welfare of children who are signatories to this agreement.

4. THE DECISION TO PROVIDE THERAPY

4.1 The decision whether or not to provide therapy to a child and the type of therapy provided is a decision that must be taken by the therapist on the basis of direct consultation with persons with parental responsibility and the child, taking into account the child's ability to give informed consent. The potential consequences of consenting to therapy or declining consent – must be clearly explained to any person with parental responsibility. Where there is no person with parental responsibility, or consent has been unreasonably withheld and the child is not deemed competent to give consent, the matter may need to be put before the court

4.2 In reaching their decision it is vital that therapists are aware of whether or not there are criminal proceedings current, the nature of those criminal proceedings and the potential impact of the provision of therapy upon the criminal proceedings.

4.3 This protocol recognises that there is always an inherent risk in the provision of therapy that the therapist may influence the thoughts of the child. To reduce these risks, it is vital that the therapist is both appropriately qualified and that the therapist is not provided with an over detailed account of the child's evidence. The therapist should have sufficient information to recognise a variation in the child's account whilst not having such a detailed account as to raise the risks of influencing the child to an unacceptable level.

5 THE PROVISION OF INFORMATION

5.1 When a representative of a Child care body becomes aware that a child for whom they are responsible is a potential witness in criminal proceedings, he should liaise with the police officer dealing with the case before referring the child to a therapeutic service.

5.2 The police officer dealing with the case will confirm whether or not the child is a witness in a criminal case and if so will immediately liaise with the Crown Prosecution Service unit responsible for the conduct of the case.

5.3 The officer in the case will ensure that the Child care body is provided with the information provided by the Crown Prosecution Service set out at paragraph 6.1.

5.4 The Child care body will then pass this information to the therapist who will make the final decision about the provision of therapy and the type of therapy to be provided.

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- 5.5 Where a child is referred to a therapist by a Child care body, it is the responsibility of the therapist to confirm with the Child care body whether or not the child is a witness in criminal proceedings.
- 5.6 Where the child seeks the assistance of a therapist directly, the therapist must establish with the child (or with those responsible for the welfare of the child) if the child is a witness in criminal proceedings. Where the child is a witness in criminal proceedings, the therapist should take steps to contact the police with a view to securing the information set out below at paragraph 6.1.

6. POLICE, CPS LIAISON

- 6.1 When the police are informed that consideration is being given to providing therapy to a child witness, the officer should immediately contact the Crown Prosecution Service. Where possible, the officer should establish not only the intention to commence therapy but the nature of the therapy proposed. The Crown Prosecution Service lawyer dealing with the case, will consider the potential impact of the therapeutic decisions and forward to the officer in the case the following:-
- A short report containing the views of the lawyer on the likely effects on the criminal proceedings of providing either therapy generally or the specific therapy envisioned.
 - details of the charges or counts faced by the defendant
 - the current stage reached in the criminal proceedings
 - a summary providing general details of the allegations made by the child together with the circumstances in which the offences were committed or where the child witness is not the victim of the offending, the general nature of the child's evidence and their involvement in the incidents giving rise to the criminal proceedings.
- 6.2 It is the responsibility of the officer in charge of the case to pass this information either to the Child care body with responsibility for the welfare of the child, or directly to the therapist dealing with the child.
- 6.3 CPS will ensure that the police are informed of the named contact within each Criminal Justice Unit and Trial Unit for liaison in accordance with paragraph 6.1.

7. PROVISION OF THERAPY

- 7.1 After the therapist has considered all the relevant information, including that provided by the police and the Crown Prosecution Service and has reached a

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decision that therapy should be provided, the therapist should look to provide a form of therapy least likely to prejudice the evidence of the child in criminal proceedings. Wherever possible, particular forms of therapy should be avoided, namely; hypnotherapy, psychodrama, regression techniques and unstructured group therapy.

- 7.2 Wherever possible, the child should receive individual therapy sessions with the same therapist and every effort should be made to avoid any group sessions taking place prior to the child giving evidence. There should not be a change of therapist other than in exceptional circumstances.
- 7.3 Therapists should make every effort to avoid using leading questions, discussing the evidence which the child or other witnesses will give including exploring in detail the specific allegations made. The final decision about using these techniques is one that must rest with the therapist but the therapist should bear in mind the potential consequences of such an approach.
- 7.4 In addition to any record of the therapeutic session that the therapist is obliged to make, the therapist should complete a record of the therapeutic session containing the following details:-
 - the name of child
 - the name of the therapist
 - the name of the agency providing therapy
 - Confirmation that the therapist is aware of the criminal proceedings and has seen the information supplied by the police and Crown Prosecution Service.
 - The date of the session
 - the location of the therapy
 - the length of the session
 - whether other records were made and if so in what form and where they are located
 - whether any other person was present, together with their details
 - confirmation that nothing was said by the child which contradicts their Evidence in the criminal proceedings.
- 7.5 It is recommended that the pro forma at Annex A be used for this purpose and that each therapist who deals with the child should complete such a record. The record should be kept contemporaneously as a running log and should be available for disclosure to the police on request. The agency providing therapy

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will seek the consent from the parent / carer for the disclosure of the Annex A pro forma (i.e. the record of therapy having taken place which does not include any details of the content of the therapy).

- 7.6 If during the course of a therapeutic session a child makes a statement, which is in conflict with the summary of evidence provided, which the child has provided to the police, the therapist should make a note of that statement and immediately disclose it to the police.
- 7.7 Should a child disclose further abusive experiences, then that disclosure will be dealt with in accordance with child protection procedures.
- 7.8 Where the officer in the case is aware that a child witness is receiving therapy, it will be the officer's responsibility to contact the therapist to secure copies of the information kept by the therapist in accordance with Paragraph 7.4 above and to pass copies of those records to the CPS. The officer should do so whenever the officer considers that to be appropriate but in any event: -
 - immediately prior to the submission of the full file of evidence to the CPS
 - immediately before the plea and directions hearing in the Crown Court or the pre-trial review hearing in the Magistrates' Court
 - two weeks before a fixed trial date
 - when requested to do so by CPS.

8. **DISCLOSURE**

- 8.1 The Crown Prosecution Service is bound by the disclosure regime imposed by the Criminal Procedure and Investigations Act 1996 and the Attorney General's Guidelines on disclosure. The purpose of disclosure is to ensure that information that is of genuine relevance to a criminal case is available to the parties and to the court in order to ensure that the defendant receives a fair trial.
- 8.2 The Crown Prosecution Service is obliged to disclose the information in its possession and to notify the defence of information held by other parties. In accordance with this obligation the Crown Prosecution Service will disclose to the defence and the court the information provided by the therapist under paragraph 7.4 of this agreement.
- 8.3 Where the Crown Prosecution Service comes into possession of other information provided by the therapist which may be discloseable, but which the therapist would not wish disclosed, for what ever reason, the Crown Prosecution Service will liaise with the therapist and any appropriate legal representative with a view to deciding whether or not the information should be disclosed or made the subject of a Public Interest Immunity application to the Crown Court. If, after discussion, the Crown Prosecution Service believes that the information should be disclosed but the therapist still wishes to maintain its confidentiality

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the Crown Prosecution Service will arrange for a Public Interest Immunity application to be made to the Crown Court at which the therapist or the therapist's legal representative will be responsible for explaining to the Court the basis for the application.

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SIGNATORIES

NAME	AGENCY	SIGNATURE	DATE
<i>Dr Meraj Hasan Consultant in Child and Adolescent Psychiatry</i>	<i>Child and Adolescent Mental Health Service</i>		October 2007
<i>Superintendent Martin Jones</i>	<i>Public Protection, South Wales Police</i>		October 2007