

Baby P

A Scottish Analysis from a Children's Reporter Perspective

Parameters of Report

This report was prepared following a request from the Principal Reporter/Chief Executive of the Scottish Children's Reporter Administration (SCRA), to consider the circumstances leading to the death of the child described as 'Baby P' and to place this within a Scottish context for the purposes of children's reporter comparison.

The report considers the restricted facts available from a reporter perspective only¹ and at some parts, where specified, reflects the subjective view of the author. Other agencies are referred to for the purpose of a realistic perspective but this is not intended to express a view on, or to fully reflect their individual practices. In some instances local practice is referred to rather than the national practice. This is to exemplify a particular point and to assist the reader in noting how a particular practice might operate.

Whilst practice may differ between agencies and in local authority areas, SCRA is a national organisation operating across Scotland. Various tools are used by SCRA to develop and maintain practice consistency. This includes a manual for Practice Guidance, Practice Guidance Notes, Operational Guidance Notes and the SCRA Framework for Decision Making. Some of these are referred to in detail in this report.

This report is prepared using a set of ideals and is based on a best practice model. It considers the processes which may occur in an identical set of circumstances in Scotland. Two hypothetical dates have been created for the purpose of illustration and to give the reader an opportunity to reflect on two significant points in time.

The report considers the position from a Scottish legal and children's reporter perspective. It is not intended to express any view on English law or English child protection practices, apart from the purposes of comparison.²

There are a wide range of legal measures and processes which could be applied in certain circumstances at certain points in time. For the purpose of brevity and focus, and in light of the restricted facts available, this report focuses on the following:

- **the referral process to the children's reporter**
- **the decision making process of the children's reporter**
- **the emergency orders: child protection order (CPO) and a place of safety warrant**
- **entry to the children's hearing process**
- **the proof process**
- **the supervision requirement**

¹ For a reporter currently practising in East Ayrshire.

² See pages 27 to 29 of this report.

Various mechanisms exist by which a CPO³, warrant⁴, the substantive decision of the children's hearing⁵ and the substantive decision of the sheriff in a proof⁶ can be challenged by *relevant persons* and by the child. The reporter can also appeal against the substantive decision of a sheriff.

This report does not consider these processes.

³ Section 60 of the Children (Scotland) Act 1995: Duration, recall or variation of child protection order.

⁴ Section 51 (8) of the Children (Scotland) Act 1995

⁵ Section 51 (1) of the Children (Scotland) Act 1995

⁶ Section 51 (11) of the Children (Scotland) Act 1995

Methodology

In preparing this report, the following two documents were considered:

- **Haringey Local Safeguarding Children Board, Serious Case Review. “Child A”, Executive Summary** (November 2008)
- **Ofsted/Healthcare Commission/HM Inspectorate of Constabulary: Joint Area Review** (report undated but received in December 2008)

Facts

This report uses the restricted facts described in pages 1 to 4 of the **Haringey Local Safeguarding Children Board, Serious Case Review. “Child A”, Executive Summary** (hereinafter described as the ‘Haringey report’).

It is important to note that reporters will reach a decision based on the full facts and evidence available to them. In order to hypothesise in this report, it has been necessary to make the following assumptions:

- **There is sufficient evidence to support the need for compulsory measures of supervision (as opposed to no requirement for a children’s hearing or a referral to the local authority for the advice, guidance and assistance of the child and his family);**
- **There is sufficient evidence to support the conditions referred to in this report under section 52 (2) of the Children (Scotland) Act 1995.**
- **That decisions to refer child A (and his siblings) to the reporter would have been made by the agencies identified.**

This report also considers the comments and recommendations provided in the **Ofsted/Healthcare Commission/HM Inspectorate of Constabulary: Joint Area Review**⁷ (hereinafter referred to as the ‘Ofsted report’) and makes particular comment on these at pages 28 to 29 of this report.

⁷ It is noted that Ofsted judged the quality of the serious case review relating to Baby P to be inadequate.

Reference tools

The following reference tools were used:

- **Children (Scotland) Act 1995**
- **Act of Sederunt (Child Care and Maintenance Rules) 1997**
- **'It's everyone's job to make sure I'm alright'** (Report of the Child Protection Audit and Review): Scottish Executive 2002
- **'Getting it right for every child'** (Scottish Executive) 2005
- **Protecting Children: A shared responsibility** (Scottish Office)
- **Framework for Decision Making by Reporters (SCRA)**
- **East Ayrshire Local Authority Child Protection Guidelines**
- **Children's Hearings in Scotland** (2nd edition, 2005; Professor Kenneth Norrie)
- **Children's Hearings and the Sheriff Court** (2nd edition, 2000; Sheriff Brian Kearney)

Terms

The term 'child A' is used in the body of this report which mirrors the term used in the Haringey report.

Circumstances of Child A's death

On **3 August 2007** at approximately 11.30 am Ms A (mother of child A - a white child of Irish ethnic origin) called the London Ambulance Service. Attending paramedics took the apparently lifeless body of child A (**aged seventeen months**) to the North Middlesex University Hospital.

In spite of efforts by ambulance and hospital staff to revive him, child A was pronounced dead at 12.10 pm. A post mortem completed on 6 August 2007 offered as a provisional cause of death 'a fracture/dislocation of the thoraco-lumbar spine'.

At the time of his death, child A was subject of a multi-agency child protection plan, which had been in place since 22 December 2006.

Police enquiries established that at the time of child A's death, Ms A's boyfriend, Mr H, lived at her address and Mr G, his three children and a fifteen year old female whom he described as his girlfriend, had been staying there since 17 July 2007⁸.

Ms A pled guilty and Mr H and Mr G were found guilty in 2008, of causing or allowing the death of a child or vulnerable person.

⁸ Extracted from Haringey Report, page 1, Section 1.1

Chronology of significant events

*Black typeface in bold and boxed, indicates the facts described in the Haringey report, of each period of time or event. Following each boxed section is a summary of how each incident or material fact may have been dealt with in Scotland, from a children's reporter perspective.

Ms A separated from her husband in the summer of 2006, from which time she had undertaken the care of their four children, a boy (child A) and his three older siblings.

There were no concerns about the welfare of any of the children in the family prior to mid December 2006, when child A (then aged nine months) was presented at a hospital with a head injury and bruising, considered by medical staff to be suggestive of non accidental injury⁹.

Scottish practice

Initial presentation of child A

The author is unable to comment on the national practice in health.¹⁰ West of Scotland child protection procedures¹¹ indicate that any health agency who identifies a child with likely non accidental injuries, should make a referral to social work, without delay.

If child A presented in an Ayrshire hospital, an Accident and Emergency Consultant, a Consultant Paediatrician or ward staff would make a referral to social work, who will normally be the agency to contact the police. The Consultant will follow the referral up by informing the Child Protection health team. They will engage locally and monitor the progress of the referral.

In certain circumstances, where it is difficult to arrange social work contact or where the injuries to a child are of a serious nature, health will make a referral directly to the police.

Initial processes

- On receipt of the referral to social work, a check would be completed to identify if this child is known or has been previously known to the department (using the SWIFT database system) and to ascertain if the child is or has been on the local

⁹ Extracted from Haringey Report, page 3, paragraphs 2.1.1 and 2.1.2.

¹⁰ Further use of this report might allow exploration of the Scottish position across health agencies.

¹¹ West of Scotland procedures were developed by the West of Scotland Consortium and adopted by most local authorities. These procedures will appear in local authority child protection plans, or guidelines, e.g. East Ayrshire Child Protection Guidelines, section 2 and 2.5.1.3 in relation to health.

authority child protection register.¹²

- Where a specialised police unit exists, such as the family protection unit in East Ayrshire, a referral to the police would be directed there. Consultation would be held by police with health and social work and a check would be made on the vulnerable person's database to ascertain if the child or his associates are or were known to the police. Police investigations would commence.
- Any one of the three agencies¹³ (health, social work or police) can thereafter make a referral to the reporter in terms of **section 53** of the **Children (Scotland) Act** (hereinafter described as 'the Act'), where they are satisfied that a child may be in need of compulsory measures of supervision. In the majority of incidents involving 'suggestive non accidental injuries', it is likely the referral would come from the police in the form of a police report (if charges are made) or in the form of a police subject sheet (where concerns are recorded and no formal charges [yet] made).
- At this first stage, a referral can be made both in respect of child A and in respect of his 3 older siblings (if aged under 16 years).
- Where a reporter receives information from any source that indicates a child may require a children's hearing to be arranged, the reporter shall commence investigation (**section 56** of the Act). Once the referral is received and registered the reporter commences investigation using the SCRA Reporter Administration Database (RAD) system for recording and the SCRA Framework for Decision Making as a tool.

The independence of the children's reporter

Children's reporters are employed by the Scottish Children's Reporter Administration. The role of the reporter is independent from that of any office of the local authority, which includes social work and education and from any office of health.

The reporter has an investigative function and it is exclusively through the reporter that children are referred to a children's hearing. The reporter drafts the grounds for referral for the children's hearing. The reporter also appears in proofs before the sheriff where grounds for referral are not accepted or understood.

More detail on the reporter's role and function is described in the following sections of this report.

¹² Further use of this report might allow exploration of the Scottish position across social work departments.

¹³ Anyone may make a referral to the reporter. At this stage this report is considering the information presented to the three agencies identified.

Mid December 2006 – Referral 1 (child A)

Referral Registration

The question of whether compulsory measures of supervision are necessary in respect of a child arises if at least one of the conditions mentioned in **section 52 (2)** of the Act is satisfied.

In the circumstances described, it is assumed for the purpose of this report that the reporter registers child A under the category of:

- **section 52 (2) (d):** is a child in respect of whom any of the offences mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (offences against children to which special provisions apply) has been committed: section 12 of the *Children and Young Persons (Scotland) Act 1937*: sub category: **bodily injury**.

It is assumed for the purpose of this report that the reporter registers the three older siblings of child A under the category of:

- **section 52 (2) (e):** is, or is likely to become, a member of the same household as a child in respect of whom any of the offences mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (offences against children to which special provisions apply) has been committed: member of the same household as a child victim of a section 12 offence (of the *Children and Young Persons (Scotland) Act 1937*): sub category: **bodily injury**.¹⁴

Initial Investigation

Once the referral is received the reporter, when making investigation, is considering:

- whether there is sufficient evidence to support any of the conditions under **section 52 (2)** of the Act;

and

- whether there is a need for compulsory measures of supervision.

¹⁴ As opposed to section 52 (2) (f), noting that the perpetrator of the injuries is not identified at this stage.

Using the SCRA *Framework for Decision Making*¹⁵ and referring to SCRA Practice Guidance Note 35: *Case Prioritisation for Children not subject to Supervision*, it is assumed for the purpose of this report that the reporter notes the following points (which are represented below in summary form) when recording her investigation on the SCRA RAD system:

Extent of concern for child: high¹⁶

Noting: vulnerability and age of child/9 months + head injury + bruising + clinical view that this is suggestive of non accidental injury + no explanation offered for injury

Nature of incident: high

Noting: head injury + bruising + clinical view that this is suggestive of non accidental injury + no explanation offered for injury.

Cooperation with/Impact of Intervention: no information

It is not clear from the Haringey report whether there would have been sufficient information to form a view on Ms A's level of cooperation at the point in time when Referral 1 would have been made to the reporter.

Initial Decision: Extensive investigation

Requesting the following reports: social background report* + social work risk assessment* + chronology of significant events* + health visitor report* + medical reports e.g. ophthalmology, radiology, paediatric + police witness statements.

**Where the integrated assessment framework (IAF) has been piloted or implemented in a local authority area, these reports would be expected to appear within the body of the single IAF*

Case Prioritisation

Child A would have a SCRA case prioritisation status of '**high priority**' in terms of the SCRA Practice Guidance Note 35: *Case Prioritisation for Children not subject to Supervision*.¹⁷

¹⁵ Page 6.

¹⁶ SCRA *Framework for Decision Making by Reporters*, at page 24 provides examples of the types of the offences against children that may be presumed to be of high, moderate or of low gravity, this includes physical abuse causing bruising in a child aged under 4 and evidence of deliberate intent to harm the child, physically or emotionally.

¹⁷ Page 3, Section 4.

Child A remained in hospital for four days until discharged to the temporary care of a family friend pending completion of multi agency enquiries six weeks later. At that point the police investigation was continuing, but had not identified any perpetrator of child A's injuries¹⁸.

Following the above incident and a consequent initial child protection conference on 22 December 2006, child A and his youngest sibling became subject of child protection plans. From that point Ms A and her children had extensive involvement with professionals from local agencies particularly the Police, Children & Young People's Service and primary, community and acute health service providers¹⁹.

Child Protection Case Conference

Prior to or after discharge from hospital, a child protection case conference may be requested by any agency and may be convened by the social work department.

Where a child has sustained likely non accidental injuries, it is likely that a child protection case conference would be promptly convened.

Best practice would be to convene this **prior** to discharge to ensure all agencies are fully aware of concerns and to identify pre-discharge requirements and post discharge planning.

A variety of agencies would be invited to attend, including:

- Health (paediatrician, health visitor, GP)
- Police
- Social work
- Children's Reporter²⁰

Child Protection Register

In light of the failure to explain the cause of child A's injuries it is assumed for the purpose of this report that registration on the local authority child protection register would be agreed.

- Likely category: at risk of ***physical injury***.

¹⁸ It is not necessary for the reporter to specify the name of a perpetrator in any grounds for referral which state that the child has been the victim of a schedule 1 offence; **McGregor-v-AB 1981 SC 328**. If the perpetrator is known he or she would be identified in the statements of fact of the grounds for referral.

¹⁹ Extracted from Haringey Report, page 3 paragraphs 2.1.3 and 2.1.4.

²⁰ It is the practice in East Ayrshire: Kilmarnock team to prioritise reporter attendance at initial child protection case conferences, operational pressures permitting. The reporter is not permitted to express a view on registration at case conferences.

Child A's siblings could be given consideration at the same time, although this does not necessarily result in equal registration.

It is not clear at this stage how long child A remained in the care of a family friend,²¹ or to what extent his mother had contact with him, supervised or not.

Given the level of cooperation which is described by the mother at this time, it is likely that child A's accommodation would at this point in time, be agreed on a voluntary basis by the local authority, under **section 25** of the Act.

Child Protection Order

An application to a sheriff for a child protection order (CPO) could be made under **section 57** of the Act if the mother's cooperation changed or if she insisted on child A's return and the risk to child A was assessed to be significant.

Section 57 specifies:

(1) Where the sheriff, on an application by any person, is satisfied that –

(a) there are reasonable grounds to believe that a child –

(i) is being so treated (or neglected) that he is suffering significant harm; or

(ii) will suffer such harm if he is not removed to and kept in a place of safety, or if he does not remain in the place where he is then being accommodated (whether or not he is resident there); and

(b) an order under this section is necessary to protect that child from such harm (or such further harm),

he may make an order under this section (to be known as a "child protection order")

There must be an attempt to implement a CPO once the CPO is made, within 24 hours, otherwise it shall cease to have effect.²² Notice of the making of a CPO must be provided to the reporter.²³

If an application for a CPO is made and granted, once it is implemented, child A is removed to a place of safety or secured in his current placement (assuming he remains with the 'family friend' and this is considered to be suitable).

²¹ It is noted that he was placed there 'pending completion of multi agency enquiries six weeks later' Haringey Report, page 3, paragraph 2.1.3.

²² Section 60 (1).

²³ Section 57 (5).

From the time of child A's first presentation at hospital, observations and assessments of the relationship between Ms A and her children remained largely positive and she was considered to be co-operating with the child protection plans.²⁴

This level of parental cooperation by Ms A would inform the reports presented to the reporter and may influence any recommendation made by the report writer(s) on whether compulsory measures of supervision are necessary.

In an area where the integrated assessment framework (IAF) is in place, the lead agency will be identified. In this case, it is likely to be social work.

Assuming child A is placed on the child protection register, as earlier noted, it would be expected that he would be visited and seen at least once a week by an allocated social worker during the duration of his registration.

Various professionals noted that child A was an active child who was observed to throw his body around and head-butt family members and physical objects. This appeared to support Ms A's concerns that her son suffered frequent accidents due to being an active, clumsy child with a high pain threshold. From March [2007], a main element of the child protection plan was to obtain a developmental paediatric assessment, to ascertain if there was an organic reason for such behaviour.

With one exception, the two elder siblings both under eight years old, did not give cause for significant concern. They attended school regularly and there was no evidence from schools of any concerns about their home life or any indication of changed circumstances.²⁵

The exception to the above apparently reassuring perception was an incident in March 2007, when Ms A was seen to slap her eldest child. This child was consequently made subject of a child protection plan in March 2007.²⁶

²⁴ Extracted from Haringey report, page 3, paragraph 2.1.5.

²⁵ Extracted from Haringey report, page 3, paragraphs 2.1.6 and 2.1.7.

²⁶ Extracted from Haringey report, page 3, paragraph 2.1.8.

March 2007: Referral 2 (eldest sibling of Child A)

Subsequent referrals: the re-assessment process

The second referral (and subsequent referrals) would be forwarded to the reporter allocated to the child, which provides for continuity in casework management.

A new referral and any subsequent referral, is considered in the same manner as the first referral. Reporters will use the SCRA *Framework for Decision Making* as a tool and will record the decision in the SCRA RAD system. This amounts to a re-assessment on each occasion and will necessitate consideration at each stage, of whether any of the new material factors elevate the pre-existing levels of particular concern.

First re-assessment

By this point in time, the reporter would be reaching the **50 working day** timescale (from receipt of referral to final decision)²⁷ to reach a final decision on the first referral. In child A's case, which has been identified as 'high priority' the reporter would endeavour to reach a decision at the earliest stage possible and in advance of the 50 working day target.²⁸

It is unclear at this point in time whether the medical reports available would exclude organic reasons for child A's by now alleged 'clumsy' behaviour. In any event, the reporter still holds the information on Referral 1: December 2006 which describes 'suggestive non accidental' injuries, to a 9 month old child.

The additional incident in March 2007 when Ms A was seen to slap her eldest child would increase reporter concerns and merit a re-assessment in the manner described.

Consistent with the earlier child protection case conference related to Referral 1, it is likely that the eldest sibling would now be subject to a child protection case conference. It is assumed for the purpose of this report that registration on the local authority child protection register would be agreed with an outcome of registration on the child protection register. Category: at risk of physical injury.

A referral to the reporter is assumed for the purpose of this report to follow and the category of reporter registration and investigation for the older sibling would follow the same pattern stated in respect of child A. This becomes Referral 2.

²⁷ Blueprint for the Processing of Children's hearing Cases, Second edition 2001: Standard 4.

²⁸ Which could result in the reporter reaching a final decision in the first referral **before** the incident which has been presumed to result in a second referral.

A new referral may be received in respect of both the elder sibling (and also the other siblings) and in respect of child A.

For Referral 2, It is assumed for the purpose of this report that the reporter registers child A under the category of:

- **section 52 (2) (e):** is, or is likely to become, a member of the same household as a child in respect of whom any of the offences mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (offences against children to which special provisions apply) has been committed: member of the same household as a child victim of a section 12 offence (of the *Children and Young Persons (Scotland) Act 1937*): sub category: **wilful ill treatment** (as distinct from bodily injury as no injuries²⁹ to the elder sibling have been described)

²⁹ **B-v-Kennedy 1987 SLT 756** and **F-v-Kennedy 1988 SLT 404**.

Casework Management: Reporter recording

Taking into account the circumstances described (from the restricted facts available) in Referrals 1 and 2, it is assumed for the purposes of this report that the reporter records the following (in respect of child A):

Factors	Strengths	Weaknesses
Child's development	<ul style="list-style-type: none"> Child cared for by family friend until conclusion of investigation (6 weeks) – protective factor? 	<ul style="list-style-type: none"> Likely NAI at 9 months Head injury and bruising Query organic cause for child's 'clumsy behaviour'? Query mother's explanation (clumsy child with high pain threshold)?
Parenting	<ul style="list-style-type: none"> Positive observations of parenting³⁰ 	<ul style="list-style-type: none"> Assault by mother on elder sibling (March)
Family and Environmental factors	<ul style="list-style-type: none"> Family friend providing temporary care of child – protective factor? 	<ul style="list-style-type: none"> Single mother, 4 children, recently separated from her husband³¹

History of cooperation with/impact of intervention: high

(in respect of Ms A)³²

- Co-operation with most professional visits and appointments
- Positive response to offers of help
- Frequent initiation of communication with professionals, often relaying information between them
- Openness of manner

³⁰ There is no information pertaining to the husband of Ms A, to inform whether he would prove to be a protective factor, or not.

³¹ Family and environmental factors are not explained in any detail in the Haringey report. In a real referral scenario, the reporter would expect to know much more about the social background of child A, his family and his associates.

³² Extracted from Haringey report, page 5, paragraph 3.1.1. It should be noted that a recommendation of the Haringey report is that **fact is distinguished from parental explanations/assumptions** – at page 11, paragraph 4.3.15, second bullet.

Reporter final decision

The reporter has a spectrum of possible decisions, which includes a decision not to arrange a children's hearing.

Presuming sufficiency of evidence³³ and taking account of the circumstances described in Referrals 1 and 2 between December 2006 and March 2007, it is assumed for the purpose of this report that the reporter would consider one of the following options in light of the risk factors present to child A:

1. A referral to the local authority under **section 56 (4) (b)** of the Act (colloquially referred to as 'voluntary supervision')
2. To arrange a children's hearing under **section 56 (6)** of the Act to consider grounds for referral for child A under:

(1) section 52 (2) (d) (bodily injury); and

(2) section 52 (2) (e) (member of the same household as a child victim [elder sibling] who has been wilfully ill treated.

Children's Hearing

In view of child A's young age and the second incident to the eldest sibling, the reporter is assumed for the purpose of this report to pursue option 2 (to arrange a children's hearing); despite the levels of cooperation by the child's mother. The need to consider compulsory measures of supervision would be informed by the following factors:

1. **No explanation for child A's mid December injuries – which lowers the threshold of any protective factors.**
2. **Assault on eldest sibling by mother – which increases the level of risk present .**

Meanwhile, the category of priority for child A would remain as **high priority**.³⁴

A children's hearing would be scheduled within 20/30³⁵ working days of the decision by the reporter to proceed to a hearing. Assuming best practice, and all delays minimised, a hypothetical date for the children's hearing has been set as **13 April 2007** to inform the next set of procedures and circumstances described in this report. Where a child is categorised as 'high priority' and where the reporter is satisfied there is a need for compulsory measures of supervision, she will arrange a children's hearing at the earliest stage possible.³⁶

³³ See page 4 of this report.

³⁴ In terms of the SCRA case prioritisation status, referred to earlier at page 10 of this report.

³⁵ Based on Time Intervals Working Group targets.

³⁶ This could result in a date earlier than 13 April 2007.

April 2007: Referral 3 (child A)

In early April 2007 child A (by now aged 13 months) was presented at a hospital for a second time this time with a swelling to the left side of his head, understood to have been the result of hitting his head on a fireplace after being pushed by another child. He also had bruises and scratches to face head and body, a rash to his face and neck and it was noted he had head lice. He was admitted for two days for observation and treatment with antibiotics and with the agreement of Haringey's Children & Young People's Service, discharged home.³⁷

Second Re-assessment

The same process of referral by [health](#) → [social work](#) → [police](#) → [reporter](#) can commence following this incident. A review child protection case conference would be likely to follow.

Once Referral 3 is received by the reporter this would prompt a new investigation and a re-assessment, assuming a decision has by now been concluded in respect of Referrals 1 and 2. All previous factors would be considered and the level of concern for this child would be likely again to be set as **high priority**,³⁸ given the historical injury, assault on elder sibling and the age of child A (13 months), the new injuries, rashes and head lice.

If the hearing had not yet commenced, this new incident (if it occurred in the period up to 3 April 2007) could be included in grounds for referral to the hearing on 13 April 2007. It is assumed for the purpose of this report, that the reporter registers Referral 3 under the category of:

- **section 52 (2) (c)** is a child who is likely –
 - (i) to suffer unnecessarily; or
 - (ii) be impaired seriously in his health or development,due to a lack of parental care

or

- **section 52 (2) (d)** is a child in respect of whom any of the offences mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (offences against children to which special provisions apply) has been committed: section 12 of the *Children and Young Persons (Scotland) Act 1937*: sub category: **wilful neglect**.

³⁷ Extracted from Haringey report, page 4, paragraph 2.1.9.

³⁸ In terms of the SCRA case prioritisation status, referred to earlier at page 10 of this report.

The children's hearing (13 April 2007)

Ms A is described as the mother of child A and appears to enjoy parental responsibilities and rights in respect of child A at this point in time. On this basis she will be granted *relevant person* status under **section 93 (2) (b)** of the Act. Ms A therefore has a right and an obligation to attend the children's hearing (**section 45 (8)** of the Act)

Little is known or described in the Haringey report of Ms A's husband. However, on the basis that he was married to Ms A and would enjoy parental responsibilities and rights in respect of child A, he similarly will be granted *relevant person* status.

The reporter would be likely to be instructed by the children's hearing to make an application for proof on the basis of **section 65 (7)** of the Act (if Ms A and/or her husband do not accept the grounds) and **section 65 (9)** of the Act (the child, due to age, will be incapable of understanding the grounds).

Grounds for referral

A style grounds for referral is appended³⁹ which reflects the circumstances described in Referrals 1, 2 and some of the circumstances described in Referral 3.⁴⁰

Place of safety

Assuming child A is by now residing at home with his mother, the need for removal of the child from his home to a 'place of safety' would be considered by the children's hearing and a hearing warrant may be issued under **section 66 (1)** of the Act.

If a warrant is issued, then, on the reporter's motion, further hearings will be arranged (presuming there is cause shown for the warrant to continue), within the 22 days maximum duration of each warrant to a maximum collective duration of 66 days in total (of warrants which can be authorised by the hearing). Most usually, this will result in up to 3 warrants issued by the hearing. Thereafter applications may be made by the reporter for court warrant(s) in terms of **section 67** of the Act.

If a warrant is issued, child A is removed from his mother's care. The local authority is obliged to give effect to the hearing's decision. In practice, this will ensure any contact with his mother is supervised, whether a condition denoting contact frequency and/or other conditions is inserted or not.

³⁹ Appendix A.

⁴⁰ Only the injuries to child A from Referral 3 are included in the style grounds for referral, which are written to illustrate the facts and information available at the particular moment in time. At the time of receipt of Referral 3 there would be insufficient information to proceed to draft grounds pertaining to sections 52 (c) and (d) of the Act in time for the hearing on 13 April 2007. This does not prevent these conditions being brought under separate grounds for referral at a later date. The reporter will always be mindful of the welfare of the child and will not wish to delay the children's hearing, when there is sufficient evidence to proceed on one or more of the conditions specified in section 52 (2) of the Act.

If a warrant is issued by the hearing, child A is removed from his mother's care to a place of safety on 13 April 2007.

If no warrant is issued child A remains in the care of his mother whilst proof proceedings commence and until the next children's hearing is scheduled to consider a remit of established grounds under **section 68 (10)** of the Act (assuming the reporter succeeds in establishing grounds at court).

Sheriff Court proof

The following procedures apply to the proof:

- The reporter will lodge the application for proof at the relevant sheriff court within 7 days⁴¹ of the direction from the hearing.
- The court will allocate a diet for proof within 28 days of the lodging of the application.⁴² The diet will commence in that time but may not be concluded for some time thereafter depending on the complexity of the case and the level of evidence.
- The reporter leads evidence and the burden of proof sits with the reporter. The civil standard of proof applies: on the *balance of probabilities*.
- Ms A (and child A's father) has the right to legal representation.
- The sheriff may consider the appointment of a Safeguarder⁴³ or a *Curator ad litem*⁴⁴ to the child.
- Corroboration of facts is not required and hearsay evidence of any degree may be led by the reporter.⁴⁵

⁴¹ Rule 3.45 Act of Sederunt (Child Care and Maintenance Rules) 1997.

⁴² Section 68 (2) of the Act.

⁴³ Section 41 of the Act.

⁴⁴ Under *common law*.

⁴⁵ Sections 1 and 2 of the Civil Evidence (Scotland) Act 1988.

Referral 4 June 2007

There was a further significant event in early June 2007 when a social worker observed marks on child A, informed the Police and, with Ms A's co-operation arranged and attended a medical examination, at which it was concluded that there was a reasonable probability that some of the bruising was due to abuse.⁴⁶

Third Re-assessment

The same process of referral by **health** → **social work** → **police** → **reporter** would commence following this incident. A review child protection case conference would be likely to follow.

Once Referral 4 is received by the reporter this will prompt a new investigation and a further re-assessment, assuming a final decision has by now been taken in respect of the Referrals 1, 2 and 3. All previous factors would be considered and the level of concern for this child would be likely again to be set as **high priority**⁴⁷, given the following:

1. **the historical injury to child A (December 2006)**
2. **the assault on elder sibling (March 2007)**
3. **the age of child A by that time (13 months)**
4. **the new injuries, rashes and head lice (April 2007)**
5. **the new bruising (June 2007)**
6. **the 'reasonable probability' of 'abuse'**

It is assumed for the purpose of this report, that the reporter registers Referral 4 under the category of:

- **section 52 (2) (d)** is a child in respect of whom any of the offences mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (offences against children to which special provisions apply) has been committed: section 12 of the *Children and Young Persons (Scotland) Act 1937*: sub category: **bodily injury**.

The reporter may decide to keep this referral 'open' until the conclusion of the proof and to reach a final decision following this. Alternatively, the reporter could raise fresh grounds and seek to conjoin both applications in the court process. The welfare of the child⁴⁸ will be the paramount consideration of the reporter who will wish to ensure there is no unnecessary delay in the conclusion of proceedings.

⁴⁶ Extracted from Haringey report, page 4, paragraph 2.1.10.

⁴⁷ In terms of the SCRA case prioritisation status, referred to earlier at page 10 of this report.

⁴⁸ Section 16 (1) of the Act.

Child Protection Order: 4 June 2007

In order to consider the 4 June 2007 incident, it is necessary to presume no place of safety warrant was in place (following the hearing on 13 April 2007) and that child A remained in the care of Ms A.

At this time, noting that the application for proof is underway and grounds for referral have been drafted which pertain to an earlier non accidental injury to child A and an assault on the elder sibling, an application could be made for a child protection order in terms of **section 57** of the Act.⁴⁹

In theory anyone may make an application for a CPO. In the majority of applications this is made by the local authority. It is likely that the local authority would be the applicant in child A's situation.

Assuming a date of 4 June 2007 (in accordance with the timing of the undernoted decision by Haringey social services and police), the risk of further non accidental injury to child A would be removed upon implementation of the CPO, when the child would be removed from his mother's care and taken to a place of safety until the reporter decides whether to proceed to a second working day hearing.⁵⁰

On 04 June 2007, so as to ensure no unsupervised contact between child A and his mother, Haringey's Children & Young People's Service and Police agreed temporary safeguarding measures for child A involving a childminder and the same friend who had previously provided temporary care of him.

Also agreed at that point, and confirmed at the review child protection conference a week later, was the need to complete the still outstanding developmental assessment, to obtain legal advice on the justification for initiating protective legal proceedings and to learn the result of then ongoing police investigations.⁵¹

⁴⁹ See page 12 of this report.

⁵⁰ If the reporter proceeds to a second working day hearing, the provisions are contained in section 59 (2) of the Act.

⁵¹ Extracted from Haringey report, page 4, paragraphs 2.1.11 and 2.1.12.

Supervision Requirement

Presuming a timescale of just over 2 months from the commencement of the proof proceedings to completion, a hypothetical date has been set of **29 June 2007** for the remit of established grounds for referral to the children's hearing.

This timescale is optimistic in assuming no complex injuries from the incident in mid December 2006 and limited court adjournments.

The children's hearing have the sole authority to decide whether or not a child should be placed on a supervision requirement. The children's hearing must be satisfied that compulsory measures of supervision are necessary in respect of a child before reaching this decision⁵². A supervision requirement may require a child to reside at a place or places specified in the requirement.⁵³ A supervision requirement can be made without such specification, allowing the child to remain with his parent or carer in the family home.

In child A's circumstances it is assumed for the purpose of this report that a supervision requirement is made and that this specifies a place of residence, which may be a foster placement.⁵⁴ This assumption is reached on the basis of the collection of incidents and injuries in December 2006, April 2007 and June 2007 to child A and his elder sibling in March 2007.

Contact with the child's mother (and father) would require to be considered and a condition of contact could be made, including a requirement for supervised contact, or no contact.

(Whether a warrant has been issued or not), child A could be placed on a supervision requirement under section 70 of the Act, by 29 June 2007, with a condition of residence (with or without a condition regulating contact between child A and his mother, Ms A and between child A and his father).

⁵² Section 16 (3) of the Act.

⁵³ Section 70 (3) (a) of the Act.

⁵⁴ If a foster placement is recommended compliance with the Children's Hearing (Scotland) Rules 1996, 20 (6) (a) and (b) and the Fostering of Children (Scotland) Regulations 1996 is necessary before a condition of residence can be specified in a supervision requirement.

Police enquiries with respect to potential perpetrators of child A's injuries both in December 2006 and June 2007 proved inconclusive and were ultimately completed in July 2007, with no criminal charges being preferred against any individuals.⁵⁵

No criminal proceedings

The decision not to proceed with criminal charges, does not prevent the reporter's enquiries, affect or delay the reporter's decision to proceed to a hearing. The standard upon which the reporter is required to prove a Schedule 1⁵⁶ offence of section 12⁵⁷, bodily injury to a child is on the civil standard: on the *balance of probabilities*. Corroboration of facts is not required and hearsay evidence of any degree may be led.⁵⁸

The reporter is not required to specify the name of the perpetrator, although if this is known, the reporter will specify this in the statement of facts.

In Scotland, it is not necessary for the reporter to identify in the grounds for referral who perpetrated the offence or where the offence was committed. The focus is on the harm that has been caused to the child, rather than how or by whom it was committed. However if it is known who perpetrated the offence the reporter would specify this in the grounds for referral, which would have importance in future decisions and in the care plan for the child.

⁵⁵ Extracted from Haringey report, page 4.

⁵⁶ To the **Criminal (Procedure) (Scotland) Act 1995**.

⁵⁷ To the **Children and Young Persons (Scotland) Act 1937**

⁵⁸ Sections 1 and 2 of the **Civil Evidence (Scotland) Act 1988**.

July 2007

Haringey's Children & Young People's Service obtained legal advice on 25 July 2007, which indicated that on the basis of the information provided, the threshold for initiating Care Proceedings (a Care Order would have meant that the local authority would have shared parental responsibility with the child's parents and would have had the authority to remove child A) was not met. ⁵⁹

Statutory Intervention

The statutory test for a child protection order is specified in **section 57** of the Act, as aforesaid at page 12.

Based on reporter experience and after completing an analysis of grounds in 35 child protection orders granted in East Ayrshire in the year 1 January to 31 December 2008, it is the author's view that the circumstances described in this report as at **December 2006** and at **June 2007**, would have met the statutory test for the granting of a CPO.

As earlier noted, the children's hearing can make a supervision requirement if grounds for referral are established (hypothetical date: 29 June 2007).

⁵⁹ Extracted from Haringey report, page 4 at paragraph 2.1.14.

August 2007

Child A was seen by a paediatrician on 01.08.07, for the purpose of the developmental assessment. The paediatrician judged that he was unwell and miserable with a possible viral infection and partly healing scalp infection. The doctor completed a history, prescribed medication, arranged for various tests to be made and a follow up appointment made to complete the assessment.

Child A died before the intended follow up appointment was made.⁶⁰

⁶⁰ Extracted from Haringey report, page 4 at paragraphs 2.1.15 and 2.1.16.

The Scottish Perspective

Several differences exist between the Scottish and English legal and child protection systems. A number of matters of concern were raised in the Haringey report and in the Ofsted report. These have informed the last section of this report, which reflects primarily on reporter practice. Some reference is made to other agency practices for the sake of completeness.

The following points are illustrations of Scottish practice:

1. There is no requirement for the reporter to specify a perpetrator in non offence grounds for referral. If the perpetrator is identified the reporter will specify in the grounds for referral.
2. Non offence grounds for referral are established on the civil standard of proof. Corroboration of facts is not required and hearsay evidence of any degree may be led.
3. Each incident in the chronology of significant events which the author has defined as a 'referral', would result in a re-assessment of concerns by the reporter.

The Haringey report identified insufficient attempts to use new incidents to prompt re-assessment.⁶¹

4. Where multi agency referral discussion or referral groups (on non offence grounds) sit in local authorities this will result in the regular sharing of concerns and joined up working. Lead agencies are normally identified and cohesive action and care plans progressed. Officers from statutory agencies attend. This may include, health, housing, social work, education and addiction services. Local authority housing can play a significant role in identifying any housing concerns and in identifying any changes in household composition.

In the last months of child A's life he was seen by health professionals eight times and in his last week by a social worker and a paediatrician. None of whom identified any major concerns about the child's health and wellbeing.⁶²

The change to Ms A's household was not discerned by any professional⁶³.

5. **The Haringey report states that '*child A had visible symptoms of physical abuse and chronic neglect in the week before his death*'.⁶⁴**

⁶¹ Haringey report, page 5 at paragraph 3.1.3.

⁶² Haringey report, page 5 at paragraph 3.1.6.

⁶³ Haringey report, page 5 at paragraph 3.1.4.

⁶⁴ Haringey report, page 7 at paragraph 3.1.14

It is the author's view that if a 'diagnosis of abuse' had not been reached in the weeks following Referral 1 in December 2006, it could have been reached after Referral 3 (4 April 2007).

- 6. The Haringey report expresses concern that professionals relied too much on the assumption that child A's injuries might have been as a result of lack of [parental] supervision⁶⁵.**

Even if it was not possible to prove a non accidental injury, a lack of parental supervision in a child of 9 to 17 months, which resulted in injuries to the child would, in the author's view, be sufficient to establish a lack of parental care or neglect under **section 52 (2) (c) or (d)** of the Act.

- 7. From April 2007 persistent sores on child A's scalp did not raise questions about the effective application or appropriateness of the various medications prescribed.⁶⁶**

This would add to reporter concerns about parenting and neglect and would increase the likelihood of establishing grounds pertaining to lack of parental care or neglect.

- 8. Section 57** of the Act (CPO) would, in the author's view, have been satisfied (i.e. that child A was suffering or likely to suffer significant harm) on two occasions as specified in this report (December 2006 and June 2007).

Haringey's Children & Young People's Service obtained legal advice on 25 July 2007, which indicated that on the basis of the information provided, the threshold for initiating Care Proceedings (a Care Order would have meant that the local authority would have shared parental responsibility with the child's parents and would have had the authority to remove child A) was not met.⁶⁷

- 9.** Consultant paediatricians and key health professionals would be invited to child protection case conferences and/or to submit health reports. This would inform any discussion and decision on child protection registration and on care plans.
- 10.** Police would be invited to child protection case conferences and would inform any discussion and decision on child protection registration.

⁶⁵ Haringey report, page 5 at paragraph 3.1.2.

⁶⁶ Haringey report, page 5 at paragraph 3.1.7.

⁶⁷ Haringey report, page 4 at paragraph 2.1.14.

11. It is best practice to use parallel growth percentile charts in Scotland, which provides an indicator of growth and development. In practice, they are more commonly used by hospital based health professionals. Where there is concern for a child's growth, community based health professionals may use percentile charts to record this. A percentile chart is maintained in the personal child health record (the 'red book'), which is held by the parent. The health professional does not ordinarily maintain a copy of this.

The Haringey report recommends that these are introduced by health visitors/school nurses and maintained in the records of children where there are concerns about growth and those subject to a child protection plan.⁶⁸

12. The SCRA Framework for Decision Making provides a recording framework on RAD for initial and final decision making by the reporter, which increases the standard of record keeping.

The quality of recording, assessment and child protection planning by social care, police and health was considered to be inadequate by Ofsted. The standard of record keeping in the health records of looked after children and young people was considered to be poor and sometimes inaccurate, by Ofsted.⁶⁹

⁶⁸ Haringey report, page 11 at paragraph 4.3.14.

⁶⁹ Ofsted report, pages 7 and 8.