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The Countess of Mar is a Deputy Speaker of the House of Lords.

How the law is being abused to force treatment on children

Margaret Mar says the parents of ME sufferers are being victimised by the Children Act.

One of our most important laws, the Children Act 1989, is being misused to accuse innocent parents of seriously harming their sick children and to enforce potentially harmful treatment on their children without parental consent. When it comes to these children being taken into council care, the parents' fundamental liberty to bring them up is being denied.

The children in question are often severely disabled by an illness for which science has yet to find a cure - myalgic encephalomyelitis (ME), often bracketed with chronic fatigue syndrome (CFS). When questioned, the Department of Health acknowledges both the seriousness of the illness and the lack of effective treatment for it.

In practice, the department ambivalently turns a blind eye to its own officers who, without hard evidence, blame parents for their child's illness and invoke child protection law. Apart from anything else, this is a breach of a family's right to a private life under the Human Rights Act 1998. Sometimes children are taken away from parents and subjected to often futile cognitive-behavioural therapy and physical exercises.

In the cases to which I refer, social workers use their powers under Section 47 of the Children Act to conduct one-sided investigations into families; to hold secret meetings; and then to convene benign-sounding "conferences". In fact, these conferences decide whether a child is placed on the child-protection register, as a first step towards care proceedings. To parents who have been gulled into believing that social workers are there to help them and their children, these proceedings seem like kangaroo courts.

Government guidance expects the chairman of such a conference to be independent and objective. However, it is not unknown for the chairman and the person who initiated the proceedings to have discussed the case beforehand. Biased opinion and hearsay are presented as evidence. Accused parents are denied a real opportunity to present their case. Medical evidence that counters the need for protection is disregarded.

Parents' right to a second medical opinion is not on the agenda, even though this is contrary to General Medical Council guidance and the

recommendations of the Butler-Sloss inquiry. Members of the conference both give evidence and vote. It is almost a foregone conclusion that the child will be put on the at-risk register, with the added threat of a care order if the child protection plan and medical recommendations are not complied with.

Parents are made to feel they are guilty until proved innocent, and are denied any opportunity to prove their innocence. These families are abused by the system set up to prevent abuse. A sense of injustice haunts them.

In the process, child protection records are retained, but access to them by the parents is denied. This makes complaints procedures unworkable. One parent in South Wales has been trying for 11 months to get access, under the Data Protection Act, to relevant social services and medical files from Cardiff and Vale NHS Trust. Important documents continue to be withheld.

Innocent families say that their telephones and letters are being intercepted, even though this can be done only with the permission of the Home Secretary. The purported basis for this injustice against parents is Section 47 of the Children Act, under which a local authority has a duty to investigate when it has "reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm". For a care order to be made, two criteria must be satisfied: that the child is suffering significant harm, or is likely to suffer significant harm, and that the harm, or likelihood of harm, is attributable to unreasonable parental care.

Once child protection proceedings have started, a family can be subjected to months of court hearings. The inexorable momentum leading to a care order is difficult to reverse. Family proceedings are behind closed doors; there are no effective means of challenge; and an emergency protection order can be obtained within an hour by a social worker applying to just one magistrate, outside court hours.

Whenever presented with evidence of the parents' innocence, social workers resort to "moving the goalposts". Allegations are changed during the proceedings. So, parents who have provided an alternative competent medical opinion on their child's illness are then steered away from the issue of medical treatment to other concerns.

Are doctors and social workers losing sight of the law? In the case of ME, the "significant harm" criteria cannot be attributed to parental actions or lack of care. Therefore the case is not within the remit of the Children Act. To accuse parents of abuse, on the evidence of ME, is a misdiagnosis and distressing for the families. The whole thing is tragic, because professionals are operating out of a feeling of duty and in what they see as the best interests of the child.

There is, though, a possibility of judicial review of such cases. In 1998, a family with a child with ME, under the care of his GP and a consultant paediatrician, sought judicial review of decisions (by the consultant community paediatrician and social services) to use child protection procedures to overrule the child's doctors' advice.

The case was argued on the basis that the original court that ordered treatment should have prescribed it only in accordance with a competent body of opinion. In an illness where there is not a generally agreed method of treatment (and given that the child is already following competent medical advice), it is outside the remit of the Children Act for the court to enforce alternative advice.

In the case in point, a court order was made (with consent of all the parties in the case) declaring that, "B's parents have a right to give or withhold consent to elective forms of medical treatment in respect of B". Is it not time for doctors and social workers to stop using care orders as a back door to enforce medical treatment on children with ME?

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