



## **GUIDANCE IN RELATION TO PAEDIATRIC EXAMINATIONS**

Date of this document – 01.01.12

Date Reviewed – 18.10.13

Document review date – 18.10.15

## THE NEED FOR AUTHORISATION

Following comments made in judgements in care proceedings by two local circuit judges (including the Designated Family Judge for Leeds, His Honour Judge Hunt), the following guidance is being issued to remind staff of the legal position in relation to paediatric examinations, and in particular, the need for the examining doctors to have appropriate legal authority for such examinations, both during and outside care proceedings.

1. A doctor's authority to examine a child whether intimately or otherwise, can only come from two sources, more particularly:
  - a) from the consent of those with parental responsibility where there are no ongoing care proceedings; and
  - b) once care proceedings have been instigated, if the examination is for forensic purposes, by order of the court.
2. Outside care proceedings, to be valid, the consent obtained from those with parental responsibility must be informed and freely given.

### ***Written consent is advisable.***

If the examination is to include genital and/or anal examination (ie is an intimate examination), explicit consent should be obtained for this.

Examination without consent may be held in law to be an assault. Legal liability rests with the examining doctors and their employers.

### ***RCPCH 2008 Guidance: "The Physical Signs of Sexual Child Abuse"***

*Failure to obtain consent for an intimate examination may constitute an assault. The extent and purpose of the forensic examination must therefore be explained and in addition, with whom information, test results and photo-documentation will be shared. The patient and/or carer should be advised that they can withdraw consent at any time during the examination. (para.9.3.5)*

3. Any examining paediatrician should take the precaution of asking whether there are ongoing care proceedings if they not already aware of this.

They should always ask to see a copy of the order setting out their authority to examine the child and its scope (eg does the scope include the authority to intimately examine the child etc).

Preferably, the doctor should ask for the order on receipt of their instructions rather than at the time of examination itself in case issues or problems arise.
4. Social Workers attending a child protection medical *during care proceedings* should routinely:

- a) have a copy of the order authorising the medical examination provided to them by Legal;
  - b) have read the order and understood it;
  - c) ensure that the doctor undertaking the medical has seen a copy of the order and is fully aware of the scope of their authority to examine the relevant child;
  - d) never be hesitant about pointing out any restrictions or other important issues about the order to ensure that the wishes of the court are respected and adhered to; and
  - e) seek advice from Legal if they have any queries in relation to the terms and scope of the order.
5. In the event that a doctor is concerned about the terms of the order authorising them to conduct an examination or any restriction in it, consideration should be given to making an urgent application to the Court.
6. If a follow up medical examination is needed, then authorisation from the court will usually be required. In such circumstances, the doctor should request the social worker to facilitate an application to the Court to authorise such an examination, if the existing court order does not provide for this.
7. Social Workers attending a child protection medical *where the child concerned is not subject to ongoing care proceedings* should routinely:
- a) ensure that the parents have given informed and freely given consent to the examination to the doctor; and
  - b) if the examination is to include genital and/or anal examination (ie is an intimate examination), ensure that the doctors have obtained explicit consent for this from the parents.

It is recognised that it is the doctor's responsibility primarily to obtain the requisite informed consent from the parents. However, social workers have a role in ensuring that the requisite consent is obtained.

8. Where the child concerned *is not subject to ongoing care proceedings* and the parents have *refused consent* to the child being medically examined, consideration will need to be given by the Social Work team, in liaison with the relevant doctor involved, as to whether authority to examine the child should be obtained from the Court, eg where there is a real concern that the child has been abused and the parents are suspected perpetrators of that abuse. Social Care (Legal) will need to be contacted as a matter of urgency in such cases for legal advice and assistance.