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Foreword

For all the disciplines engaged in the practice and study of both family law and the criminal law, non-accidental head injuries in young children pose some of the greatest difficulties and give rise to the most rigorous challenges. It is a subject on which there remains a divergence of responsible medical opinion; where the symptomatology is itself controversial; where it is very difficult to be certain of the timing of the injuries and the number of incidents involved; and in which the interpretation of scans (whether CT or MRI) requires highly specialist expertise. Add to that already complex cocktail the fact that perpetrators rarely if ever give a true account of what has occurred, and the difficulties of establishing precisely what has happened to the injured child are self-evident. Yet few areas of child abuse have more significant long term consequences for the children involved – that is, of course, where they survive.

The minefields in the forensic context are legion, and in the criminal context have had far-reaching consequences. Even in the family justice system, where proceedings involving non-accidental head injury are rigorously examined by a specialist judiciary, care proceedings in which all the professionals in every discipline are of unimpeachable competence can still carry the danger of a miscarriage of justice, as in W v Oldham MBC [2006] 1 FLR 543, a decision of the civil division of the Court of Appeal which, rightly, has not escaped the authors’ notice.

Against that background, I welcome this user-friendly book, which not only provides a helpful and balanced tour d’horizon, but also puts the subject both in its historical context and in the context of the authors’ own well-focused and interesting research.

Child abuse, of which non-accidental head injury is a significant element, is an all-too-prevalent social evil. To combat it effectively, we must understand it. This book is a useful contribution to that process, and I commend it to readers from all the disciplines engaged in the criminal and family justice systems.

The Rt. Hon. Lord Justice Wall
Introduction

We hope that this book will attract readers from a wide variety of disciplines who wish to gain an insight into the challenges faced in responding to cases of non-accidental head injury in young children. As an aid to clarity, by way of introduction we address three issues: first, we provide an explanation of the relationship between non-accidental head injury and shaken baby syndrome in order to justify what, at first sight, may appear to be our interchangeable use of the terms throughout the book; second, as many readers will not have a medical background, we explain the key medical terms and associated phrases which we use and, finally, we outline the background and rationale of the empirical research we have conducted in this area and explain how we have incorporated the research findings into our analysis and critique of current issues at various stages in the book.

What’s in a name? Shaken baby syndrome and non-accidental head injury

As the title indicates, the central focus of this book is on non-accidental head injury (NAHI) in young children. However, as will soon be evident to the reader, we frequently make reference to ‘shaken baby syndrome’ (SBS). As we explain in detail in Chapter 2, SBS has traditionally been used to explain a constellation of injuries in a young child which typically include subdural haemorrhages, retinal haemorrhages and encephalopathy and which are thought to have been caused by violent shaking of the child. To many the terms NAHI and SBS appear synonymous and indeed, SBS has frequently been used as a generic term for NAHI. However, this has the potential to lead to confusion as it implies shaking as the cause of all NAHI. As we explain in Chapter 2, the current controversy over the cause of the injuries in cases of alleged SBS has resulted in a preference for the more objective term NAHI, which does not infer any specific mechanism of the injury or injuries. In the light of recent events we have restricted our use of the term SBS to those sections of the book in which we are specifically
referring to the phenomenon of the syndrome as traditionally understood. In all other contexts, we adopt the more neutral term of NAHI.

**Explanation of terminology and abbreviations used**

*Apnoea*: temporary cessation of breathing.

*Diffuse axonal injury (DAI)*: widespread injury to the delicate axonal nerves of the brain, whereby they are stretched and/or torn.

*Encephalopathy*: an abnormal condition of the structure or function of the brain.

*Hypoxia*: a lack of oxygen in the tissues.

*Non-accidental injury (NAI)*: injury caused to a child, either intentionally, recklessly or negligently.

*Non-accidental head injury (NAHI)*: non-accidental injury inflicted to a child’s head.

*Retinal haemorrhage (RH)*: bleeding within the retina, which is the light sensitive layer that lines the interior of the eye.

*Shaken baby syndrome (SBS)*: a constellation of clinical findings in a young child believed to have been caused by shaking. The clinical findings variously include: subdural haemorrhages, retinal haemorrhages, encephalopathy and multiple fractures in the long bones (and ribs).

*Subdural haemorrhage (SDH)*: bleeding into the area between the dura mater (the outer membrane which covers the brain and lines the skull) and the arachnoid mater (the middle membrane that covers the brain).

*The triad*: the three intracranial injuries, the finding of which in young children has traditionally been considered to the hallmark of shaken baby syndrome. The injuries consist of subdural haemorrhages, retinal haemorrhages and encephalopathy.

**The role of our research findings**

The first population based case series study of infants who had sustained a SDH was published in the UK in 1998 (Jayawant et al. 1998). This study revealed important details on the epidemiology, associated features and investigation of SDH, which is often the first clinical sign to be picked up on a computerised tomography (CT) or magnetic resonance imaging (MRI) scan or at post mortem that alerts the paediatrician to a likely diagnosis of
NAHI. The study suggested that, in the absence of alternative explanations, many clinicians were not eliminating the possibility of child abuse in their diagnostic work in all cases. However, although the study indicated that there were shortcomings in the evidence available on which to base subsequent decisions, it provided no detail on the social and legal decision-making process and outcomes. Our research project, which was funded by the Nuffield Foundation, was therefore designed to investigate the quantity and quality of evidence recorded when a SDH is detected and during subsequent investigations, and to evaluate the use made of such evidence in the decision-making processes which determine the social and legal consequences for the victims and their families. An overview of the research methodology and results can be found in the appendix to this book.

The research project was completed in 2002. However since that time, significant developments have taken place in this area, including new scientific research on the causes of head trauma in children and the detailed scrutiny of the evidence provided by medical expert witnesses in legal proceedings. We have watched events unfold with interest. This book combines an analysis of our research evidence with a policy critique of the current medical, legal and social responses to NAHI in young children in the light of more recent events. We believe that this approach will give the reader a unique insight into the challenges faced in responding to these difficult cases. We hope that the book will be useful to a wide range of practitioners and that it will also make a significant contribution to the academic debate in a rapidly developing and frequently controversial area.
CHAPTER 1

The Problem of Child Abuse: Recognition, Responses and Re-evaluations

We begin this chapter with a historical overview of the process of recognition of child abuse as a significant social problem requiring a structured framework for state intervention in family life. We consider the key developments in social and political activity since the mid twentieth century which culminated in the Children Act 1989. The 1989 Act has been described as the most comprehensive and radical piece of legislation relating to children, and this Act, together with the Working Together guidance on the arrangements for inter-agency co-operation for the protection of children from abuse published in 1991, formed the legal and practical frameworks for responding to suspicions of child abuse during the 1990s, when the cases of suspected non-accidental head injury (NAHI) in our research cohort were investigated. We then examine the increasing emphasis being placed on safeguarding and promoting the welfare of all children in need in the late 1990s which led to the revision of the Working Together guidance in 1999, before moving on to developments in the twenty-first century, exploring reactions to Lord Laming’s inquiry into the death of Victoria Climbié and the resulting changes brought about by the Children Act 2004. We consider how the new frameworks for intervention currently being structured are likely to impact on society’s response to cases of suspected or known abuse. We conclude the chapter by considering the extent of the problem of physical child abuse in England and Wales, with particular reference to the abuse of babies and very young children.

The process of recognition of child abuse

The phenomenon of child abuse is not new – children have undoubtedly been abused in one way or another since time immemorial. Yet it is only in comparatively recent times that we, as a society, have been prepared to