



## Joint Protocol

for the

# Joint Paediatric/Forensic Medical Examinations of Children and Young People across Tayside



TAYSIDE POLICE



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## Introduction

All services/agencies across Tayside who are party to this Joint Protocol have a shared responsibility for the care and protection of children and young people. The care, health, wellbeing and protection of all children and young people remain paramount. Each service/agency has different, but equally important roles and responsibilities respectively.

Whilst carrying out these responsibilities, it is often necessary to consider and carry out a Joint Paediatric/Forensic Medical Examination of a child or young person as part of a child protection enquiry and/or investigation.

The services/agencies party to this Joint Protocol are aware that consensus decisions to carry out a Joint Paediatric/Forensic Medical Examination are, on occasions, sometimes difficult to reach.

The services/agencies party to this Joint Protocol are also aware that difficulties often arise around the question of parental/carer responsibilities, rights and consent being obtained to the satisfaction of all Practitioners or the procedures to follow where consent cannot, for a variety of reasons, be gained or obtained. It is not the intention of this Protocol to provide a solution to each and every possible scenario.

However, the key services/agencies party to this Joint Protocol have agreed on certain key principles which will, without doubt, aid the decision making process during these complex, urgent or highly emotive child protection cases.

## National and Local Child Protection Policy Context/Related Documents

In December 2010, the Scottish Government published their National Guidance for Child Protection in Scotland 2010. Within *Part 3 – Identifying and Responding to Concerns about Children*, high level information, advice and guidance is provided in relation to Health Assessments and Medical Examinations, including Specialist Paediatric and/or Joint Paediatric/Forensic Medical Examinations.

The services/agencies party to this Joint Protocol will also have in place their own single and/or inter-agency information, advice and guidance in relation to Health Assessments and Medical Examinations, including Specialist Paediatric and/or Joint Paediatric/Forensic Medical Examinations, which will support and complement this Joint Protocol. These publications will also provide information, advice and guidance on Information Sharing, Confidentiality and Consent.

## **Joint Protocol for Joint Paediatric/Forensic Medical Examination**

As part of a child protection enquiry and/or investigation a discussion with a Paediatrician and/or Forensic Medical Examiner (FME) regarding a Joint Paediatric/Forensic Medical Examination of a child or young person in Tayside will be required.

In all such cases there will be a requirement to seek and obtain consent, either from the child or young person (subject to age, understanding and capacity), the parent and/or carer, or any other the person (s) who has parental responsibilities and rights, as specified by The Children (Scotland) Act 1995.

**This Joint Protocol should be followed when seeking and obtaining Consent for a Joint Paediatric/Forensic Medical Examination in child protection cases.**

### **Service/Agencies Involved in this Joint Protocol**

The following services/agencies are involved in this Joint Protocol:-

1. Angus Council – Social Work Service;
2. Dundee City Council – Social Work Service;
3. Perth and Kinross Council – Social Work Service
4. NHS Tayside – Paediatric Services; Forensic Medical Examiners(FME); and Custody Nurse Service;
5. Tayside Police; and
6. Crown Office and Procurator Fiscal Service.

In addition, the respective local authority area Child Protection Committees (CPCs) and Legal Services Departments support this Joint Protocol.

### **Strategic Aim**

All services/agencies who are party to this Joint Protocol agree that the overall strategic aim of any child protection enquiry and/or investigation is, above all else, to promote and ensure the care, health, wellbeing and protection of the child or young person concerned.

Any discussions, decisions or actions agreed during these child protection enquiries and/or investigations must realise this basic aim. In all cases, the care, health, wellbeing and protection of the child or young person is paramount and the interests of the child or young person must be put before any other consideration.

## Decision Making Process

It is agreed that early consultation with the on-call Paediatrician is crucial for effective decision making and the formation of action plans so as to progress child protection enquiries and/or investigations. In practice, this will take place by following local initial screening processes and as part of any the inter-agency referral discussions processes.

In keeping with local guidance, these initial screening processes should, as a minimum involve social work, police **and** health. The process should be accurately recorded in terms of time, date and place of the discussions; who took part; what was discussed; what was agreed; what was disagreed (if anything); who has the responsibility; what are the timescales; and/or contingency arrangements.

The decision to have/not have a Joint Paediatric/Forensic Medical Examination will **only** be made **after** discussion with the Paediatrician. Consent to a Joint Paediatric/Forensic Medical Examination must also be discussed at this time.

In practice, this means notification of the case details (as far as they are known) via the NHS Tayside Custody Nurse, to the on-call Paediatrician prior to any decision being made regarding a Joint Paediatric/Forensic Medical Examination.

Practitioner Flowcharts illustrating how this consultation process works in practice are provided at Appendix B and C to this Protocol.

## Children and Young People's Rights

Respect must always be given to a competent child or young person's decision to agree or refuse to participate in any part of a Joint Paediatric/Forensic Medical Examination. This is in keeping with the legal requirements of The Age of Legal Capacity (Scotland) Act 1991.

In particular Section 2 (4) of the act states:-

*"A person under the age of 16 years shall have legal capacity to consent on his own behalf to any surgical, medical or dental procedure or treatment where, in the opinion of a qualified medical practitioner attending him, he is capable of understanding the nature and possible consequences of the procedure or treatment".*

In practice, the test to be applied here, for all children and young people, irrespective of age, is their capacity and competency (both physical and mental) to agree or refuse to participate in any part of a Joint Paediatric/Forensic Medical Examination.

They have, subject to the foregoing test, a fundamental right to agree or refuse to participate in such a procedure, if they so wish. There is no age specific presumption made in Scottish Law in terms of capacity and/or consent and therefore a judgment call has to be made on an individual-by-individual and case-by-case basis.

## Parental Responsibilities and Rights

Sections 1 (1) and 2 (1) of The Children (Scotland) Act 1995 specify and describe parental responsibilities and rights for children and young people. Parental responsibilities and rights largely cease when a child or young person is aged 16. However, the exception to this is where there is a parent's responsibility to continue to provide guidance to their child from age 16 to 18.

In these circumstances, practitioners should seek to keep parents/carers involved in issues affecting their children, but only to the extent that this is compatible with the rights and autonomous choices of the child or young person.

In any case, it should be noted that a parent/carer has no automatic right of access to a child or young person's medical information, without their child's prior knowledge and/or consent. It should also be noted that there is no legal right for a parent/carer to be present during any medical examination, again without the prior knowledge and/or consent of their child.

### Parent

A **parent** is defined as someone who is the birth mother or adoptive mother or father of the child or young person. A **mother** has full parental responsibilities and rights, unless these have been removed by a Court. A **father** has parental responsibilities and rights if he is, or was married to, the mother at the time of the child's conception or subsequently, or if the child's birth has been registered after 4 May 2006 and he has been registered as the father of the child on the child's birth certificate.

A **father** may also acquire parental responsibilities and rights under The Children (Scotland) Act 1995, by entering into a formal agreement with the mother, or by making an application to the Court.

### Certain Others

Certain other people may also acquire parental responsibilities and rights through Court Orders. Section 5 of The Children (Scotland) Act 1995 allows certain other third parties (e.g. relatives and carers) who have the care and control of a young child or young person, to do what is considered reasonable, to protect and safeguard that child or young person's health, development and welfare.

### Limitations

Parental rights only exist, in so far as they are necessary, to allow a parent/carer to fulfil their responsibilities. These responsibilities are:-

- looking after their child's health, development and welfare;
- providing advice, support and guidance;
- maintaining regular contact with their child, if they do not live with them; and
- acting as their child's legal representative.

In order to fulfil these responsibilities, parental rights include:-

- the right to have their child live with them;

- to decide how their child is brought up; and
- to act as the child's legal representative.

In terms of this Joint Protocol, it is the right to act as their child's legal representative, which gives a parent/carer the ability to consent to medical treatment and/or examination for their child.

## **Consent Issues**

It is acknowledged and agreed that in all child protection enquiries and/or investigations, where a Joint Paediatric/Forensic Medical Examination of a child or young person may be a desirable action, the question of who can competently give consent should be discussed and agreed with both the Paediatrician and the Forensic Medical Examiner (FME), prior to any such Joint Paediatric/Forensic Medical Examination taking place.

Nevertheless, the focus must always remain on the care, health, wellbeing and protection of the child or young person and it remains paramount that their holistic health needs are met timeously.

## **Seeking Consent from Child**

It is also acknowledged and agreed that in many cases, the child or young person will have the capacity to consent and agree to participate in a Joint Paediatric/Forensic Medical Examination. In Scottish Law, this is considered to be sufficient (The Age of Legal Capacity (Scotland) Act 1991). In these cases, consent should be sought from the child or young person themselves. Best practice would suggest that parents/carers should be kept informed of their child's decision.

Where a child or young person with capacity refuses to provide consent and agree to participate in a Joint Paediatric/Forensic Medical Examination, then such an examination cannot and will not take place.

However, it is also acknowledged and agreed that in certain cases, the child or young person will not have the capacity to consent and agree to participate in a Joint Paediatric/Forensic Medical Examination and as such, consent should be sought from the parent/carer.

It should again be noted that this does not allow the parent/carer an automatic right of access to their child's medical information and does not allow them a legal right to be present during any Joint Paediatric/Forensic Medical Examination, again without the prior knowledge and/or consent of their child.

## **Seeking Consent from Parent/Carer**

It is also acknowledged and agreed that in the majority of cases, the parent/carer with parental responsibilities and rights will have the capacity to consent and agree to their child participating in a Joint Paediatric/Forensic Medical Examination. In these cases, consent should be sought from the parent/carer themselves.



However, it is also acknowledged and agreed that in certain cases, for whatever reason, they may not consent to their child participating in a Joint Paediatric/Forensic Medical Examination.

### **Compromised Consent – Course of Action**

In addition, it is also acknowledged and agreed that in certain extreme cases, that ability, for a parent/carer to consent and agree to their child participating in a Joint Paediatric/Forensic Medical Examination, could be compromised for a number of reasons, for example:-

- where parental responsibilities are unclear, or unknown, or contested; or
- where the person holding parental responsibilities and rights is the potential suspect or accused; or
- where he/she is the subject of criminal enquiries and/or investigations.

In practice within Tayside, this will be a fairly rare occasion, however where it does occur, consent should **not** be sought from the parent/carer.

In these circumstances, the Police Officer in charge of the child protection enquiry and/or investigation should alert both the Paediatrician and the Forensic Medical Examiner (FME) via the Custody Nurse, that consent cannot be sought from the parent/carer because it has been compromised.

Thereafter, the Police Officer in charge of the child protection enquiry and/or investigation, in partnership with the Social Worker, will immediately apply to the Procurator Fiscal and request a Common Law Warrant. The Procurator Fiscal will then, if satisfied, apply to the Sheriff for a Common Law Warrant, thus allowing for such a Joint Paediatric/Forensic Medical Examination to take place. Clearly it will remain for the Sheriff to decide, based upon the evidence provided, whether to grant or not to grant such a Warrant.

However, again, where a child or young person refuses to agree to participate in a Joint Paediatric/Forensic Medical Examination, then such an examination cannot and will not take place, irrespective of a warrant having been granted.

A Practitioner Flowchart illustrating how this process works in practice are provided at Appendix A to this Protocol.

### **Other Formal Legal Measures (By Exception)**

It is also acknowledged and agreed that in certain circumstances, it may be deemed necessary to pursue an alternative course of action, particularly where there is sufficient evidence to suggest the risk of significant harm. In these circumstances more formal legal measures may need to be considered and this could include the Social Work Service applying for a Child Protection Order (CPO) per Section 57 (1) The Children (Scotland) Act 1995 from the Sheriff. If so applied for and granted, then the requirement for a Joint Paediatric/Forensic Medical Examination will be requested.

In circumstances where a CPO is refused, then the alternative may still be for the Police Officer in charge of the child protection enquiry and/or investigation, in partnership with the Social Worker, to apply to the Procurator Fiscal and request a Common Law Warrant.

## **Informed and Explicit Consent**

The particular type of consent applicable for a Joint Paediatric/Forensic Medical Examinations is:-

1. **Informed Consent** – the individual must understand what is being asked of them and must give their consent/permission freely for a Joint Paediatric/Forensic Medical Examination to take place; and
2. **Explicit Consent** – the individual positively gives their consent/permission for a Joint Paediatric/Forensic Medical Examination to take place

**Implied Consent** simply means that the individual has not explicitly said they don't agree to a Joint Paediatric/Forensic Medical Examination to take place, so it is inferred that they do agree.

**Implied Consent is not sufficient** for a Joint Paediatric/Forensic Medical Examination to take place.

## **Child**

It is acknowledged and agreed that if a child or young person is to be examined by way of a Joint Paediatric/Forensic Medical Examination and that child or young person has the capacity to consent and agree to participate, then consent should be sought from the child or young person themselves.

That consent must be **INFORMED and EXPLICIT**, to the satisfaction of the Paediatrician and Forensic Medical Examiner (FME) involved in the case.

## **Parent/Carer/Other**

It is also acknowledged and agreed that if a child or young person is to be examined by way of a Joint Paediatric/Forensic Medical Examination in a Joint Paediatric/Forensic Medical Examination and where the child does not have capacity to consent and agree to participate, then a person holding parental responsibilities and rights in terms of Sections 1 (1) and 2 (1) and 5 of The Children (Scotland) Act 1995, for that child or young person must provide consent, where it is appropriate to do so and where it has not been comprised as outlined above.

## **Written Consent Form**

The consent should be a written consent. The Paediatrician and/or Forensic Medical Examiner (FME) who are seeking and obtaining consent should use a Consent Form, which should be signed and dated by the child or young person, if they have capacity to do so, or the person holding parental responsibilities, but only if not compromised.

The Paediatrician and the Forensic Medical Examiner (FME) will also record their discussions with the person (s) providing that consent.

## Satisfaction of Consent

That consent must be **INFORMED and EXPLICIT**, to the satisfaction of the Paediatrician and Forensic Medical Examiner (FME) involved in the case. It should take the form of written consent on a Consent Form.

Both the Paediatrician and the Forensic Medical Examiner (FME) must be satisfied that the person giving consent fully understands the purposes of the Joint Paediatric/Forensic Medical Examination to take place, that their ability to give consent has not been compromised, what it will involve and how the results/samples taken at the Joint Paediatric/Forensic Medical Examination may be used.

Notwithstanding any form of consent provided, it is agreed that a child or young person, who demonstrates sufficient maturity and understanding, has the right to agree or refuse to take part in any part of a Joint Paediatric/Forensic Medical Examination.

Where a child or young person with capacity refuses to provide consent and agree to participate in a Joint Paediatric/Forensic Medical Examination, then such an examination will not take place.

Information and Advice Leaflets will also be provided to children, young people and their parents/carers explaining these arrangements and why these type of examinations are necessary.

## Conflict Resolution

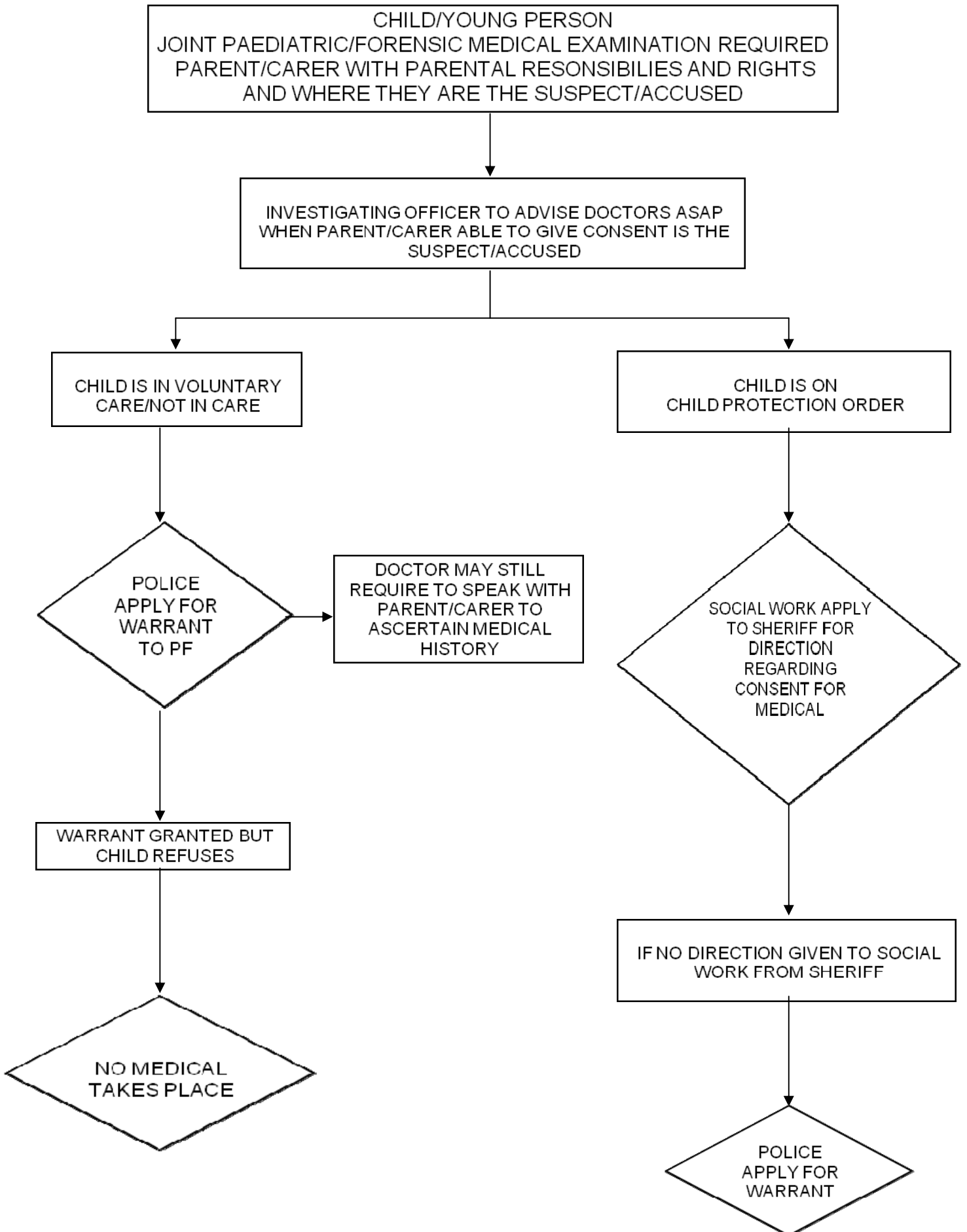
It is agreed that in cases where courses of action cannot be agreed by Practitioners (either in terms of identifying who has parental responsibilities and rights, or who can provide informed/explicit consent, or the level of consent provided, or where a Warrant/CPO should be sought) then as part of a conflict resolution model, the issues should be escalated to a Tayside Senior Officer Group.

The Tayside Senior Officer Group will consider the case and attempt to resolve the conflict, keeping in mind the legal perspectives and the best interests of the child and young person.

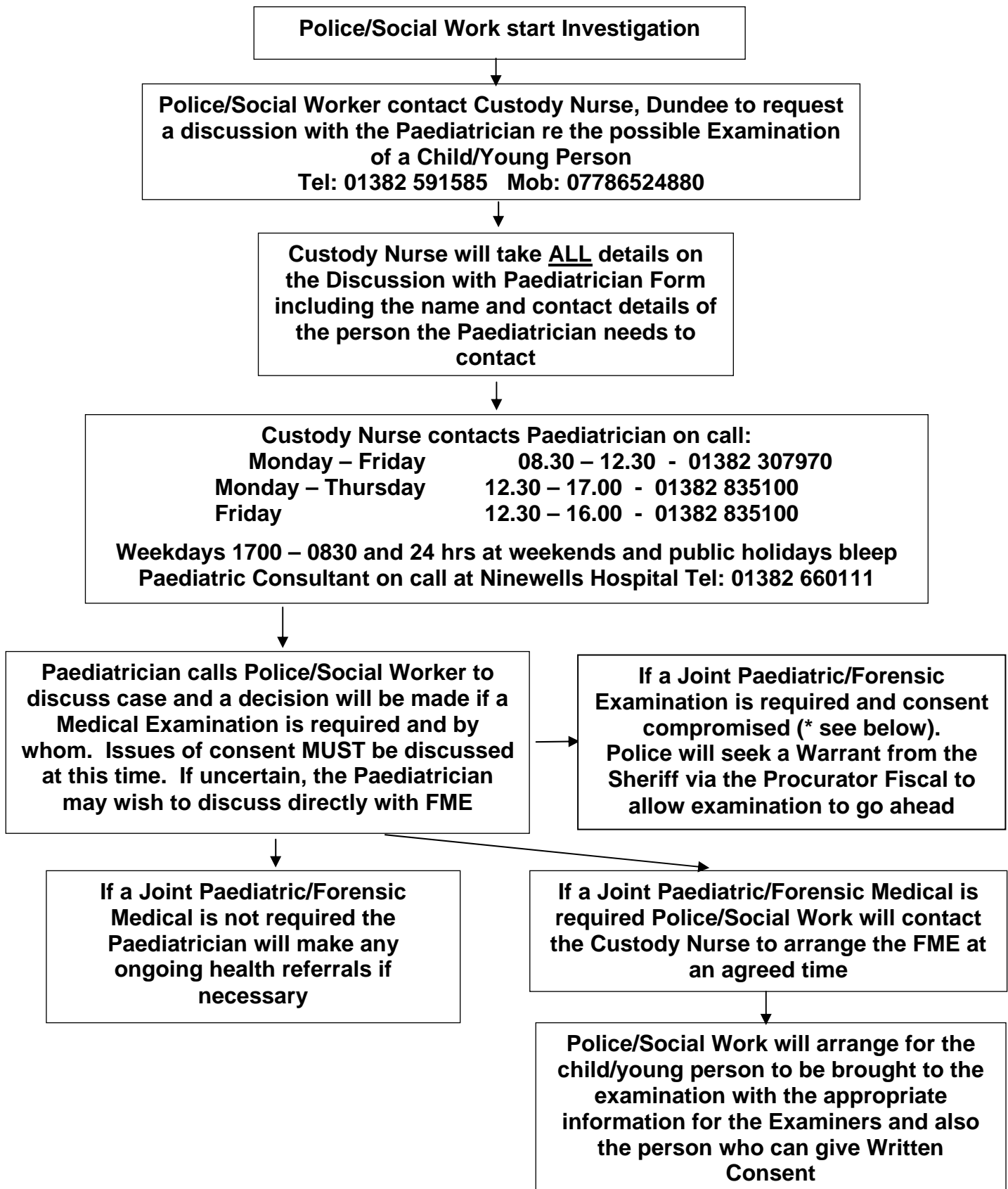
It is agreed that the Tayside Senior Officer Group will consist of the following people: -

- i. A Detective Chief Inspector from Tayside Police;
- ii. A Senior Paediatrician from NHS Tayside;
- iii. A Senior Officer from the respective Local Authority Social Work Service;
- iv. A Solicitor from the respective Local Authority Social Work Service;
- v. A Senior Forensic Medical Examiner (FME); and
- vi. A Senior representative from the Crown Office and Procurator Fiscal Service.

**PROTOCOL WHERE CONSENT IS COMPROMISED**



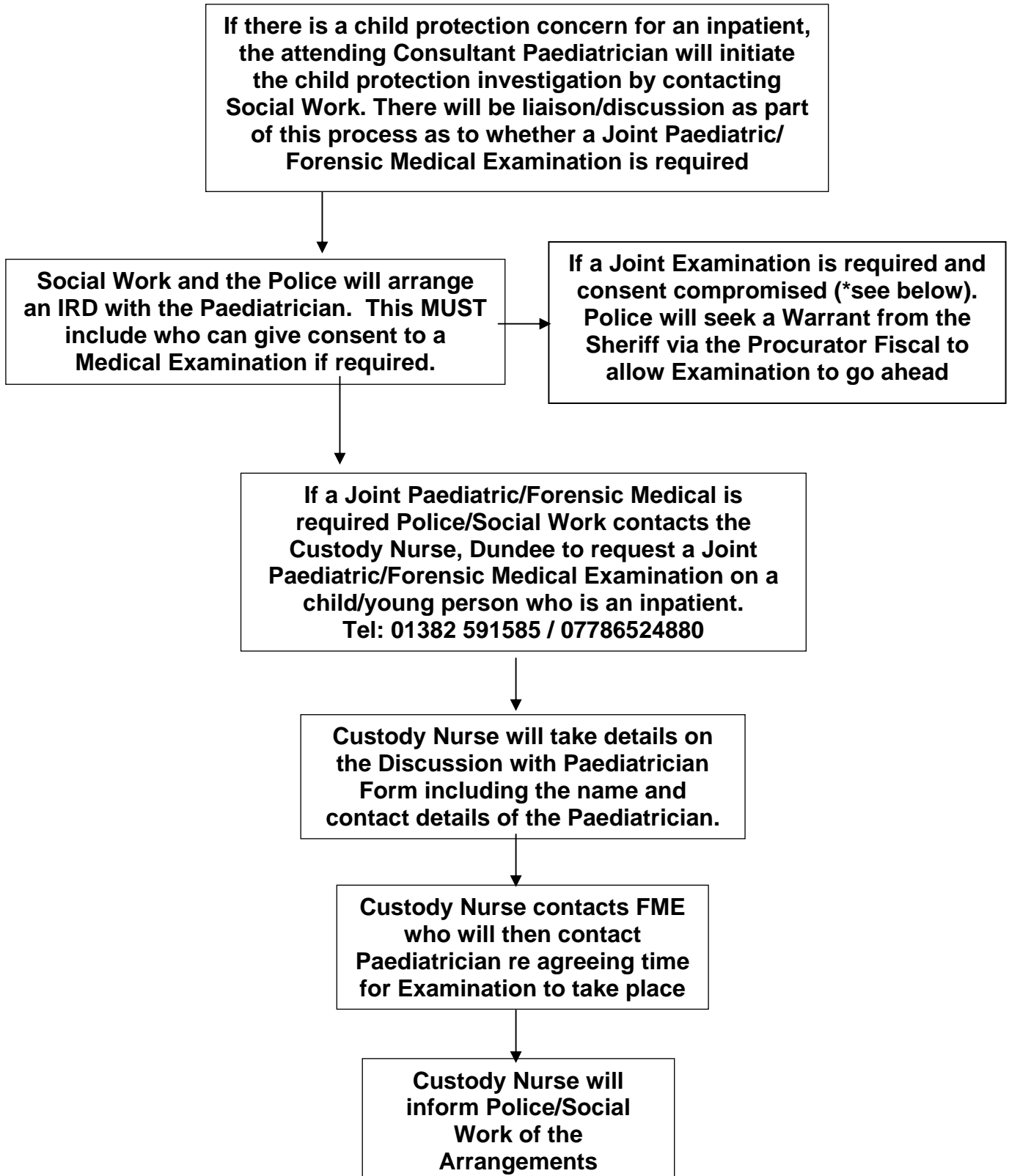
**PROTOCOL FOR THE EXAMINATION OF CHILDREN IN CASES OF ABUSE  
(COMMUNITY)**



**\*Compromised Consent**

1. Where parental responsibilities are unclear, unknown or contested;
2. Where the person holding parental responsibilities and rights is the potential suspect or accused;
3. Where he/she is subject of criminal enquiries.

**PROTOCOL FOR THE EXAMINATION OF CHILDREN IN CASES OF ABUSE  
(INPATIENT)**



**\*Compromised Consent**

1. Where parental responsibilities are unclear, unknown or contested;
2. Where the person holding parental responsibilities and rights is the potential suspect or accused;
3. Where he/she is subject of criminal enquiries.