



Tayside Joint Protocol for the Medical Examinations of Children and Young People

List of Contents / Index

Introduction	3
Services / Agencies Involved in this Joint Protocol	3
National and Local Child Protection Policy Context/Related Documents	4
Decision Making and Referral Process for Medical Examination	4
Types of Medical Examinations	4
Consent for Joint Paediatric / Forensic Medical Examinations of Children and Young People	5
Children and Young People's Rights	8
Parental Responsibilities and Rights	8
Escalation and Conflict Resolution	9
Appendix A	
Appendix B	
Appendix C	

Document Control

Guardian / Keeper:	Angus CPC Dundee City CPC Perth and Kinross CPC NHS Tayside Police Scotland – Tayside Division Crown Office and Procurator Fiscal Service
Version Number:	1.0
Approval Date: Angus CPC Dundee City CPC Perth and Kinross CPC TRIC PG5	4 September 2019 1 October 2019 27 August 2019 30 October 2019
Publication Date:	30 October 2019
Effective From:	30 October 2019
Review Date:	Continuous
ECHR Compliant:	Yes
Diversity Compliant:	Yes
Data Protection / GDPR Compliant:	Yes
FOI Compliant:	Yes
Health & Safety Compliant:	Yes

Introduction

A child can be defined differently in different legal contexts. For the purposes of this Joint Protocol, a child is defined as a person under the age of 16, (or up to 18 years of age for young people with vulnerabilities and additional support needs e.g. looked after and accommodated).

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 health and welfare of all children and young people remains paramount. Each service / agency recognises that it has different, but equally important roles and responsibilities.

The need for a specialist medical examination should be always considered as part of the Inter-Agency Referral Discussion (IRD) stage of the child protection process and investigation. This will require discussion with the Nurse Advisor for Child Protection or the On-Call Paediatrician for Child Protection.

There are two types of medical examinations:

- 1) a Joint Paediatric / Forensic Examination (hereinafter referred to as a JPFE) which is undertaken by a Paediatrician together with a Forensic Medical Examiner (hereinafter referred to as a FME) or
- 2) a Comprehensive Medical Examination by a Paediatrician only.

The decision for choosing what type of medical examination is required is taken by the On-Call Paediatrician for Child Protection in discussion with partner agencies.

The services / agencies party to this Joint Protocol are aware that consensus decisions to carry out a JPFE 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 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.

Services / Agencies Involved in this Joint Protocol

The following services / agencies are party to this Joint Protocol:

1. Angus Child Protection Committee;
2. Dundee City Child Protection Committee;
3. Perth and Kinross Child Protection Committee
4. NHS Tayside – Paediatric Services; FMEs and Custody Nurse Service;
5. Police Scotland Tayside Division; and
6. Crown Office and Procurator Fiscal Service.

National and Local Child Protection Policy Context/Related Documents

This Joint Protocol is compliant to existing and emerging national policy and practice standards and in particular:

- [Child Protection Guidance for Health Professionals 2013](#)
- [National Guidance for Child Protection in Scotland 2014](#)
- [General Medical Council 0-18 years: Guidance for all Doctors](#)
- [General Medical Council Protecting Children and Young People: Guidance for all Doctors](#)
- [MCN: Consent for Joint Paediatric/Forensic Medical Examinations of Children and Young People](#)
- NHS Tayside Child Protection Guidance (NHS Tayside Intranet Link):
http://staffnet.tayside.scot.nhs.uk/NHSTaysideDocs/groups/working_safely/documents/documents/docs_024816.pdf)

Decision Making and Referral Process for Medical Examination

In the context of the multi-agency child protection investigation, the need for a medical examination should always be considered at the Inter-Agency Referral Discussion (IRD) stage of the investigation.

The decision to have / not have a JPFE, or other type of medical examination, will **only** be made **after** discussion with the On-Call Paediatrician. Consent to a JPFE 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 JPFE or other type of medical examination.

The NHS Tayside Custody Nurse will contact the On-Call Paediatrician and will record the details of the referral to the NHS Child Protection Medical Service for audit and clinical governance purposes. The NHS Tayside Custody Nurse works closely with the FME and is therefore aware of workload for timing of potential medical examinations.

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

Types of Medical Examinations

JPFE

A **JPFE** is undertaken jointly by a Paediatrician and FME. This includes a Comprehensive Medical Assessment and a Forensic Examination to gather evidence for court proceedings. Two Doctors provide corroboration of the evidence. The Paediatrician is responsible for assessing the child or young person's health and development and ensuring the appropriate investigations and follow-up. The FME is responsible for the forensic component of the examination, including the taking of appropriate samples within a chain of evidence to fulfil the legal requirements.

This medical examination uses the National Proforma for contemporaneous note taking with written consent form included. A Preliminary Report is provided to the Police at the time of the medical examination and a full Soul and Conscience Report to the Police should be available within 4 weeks. The Paediatrician also writes to the GP and copies of this letter can be sent to the Social Worker, Health Visitor or School Health Nurse.

Examples of situations in which this type of medical examination is undertaken include where there is an allegation of physical abuse or sexual abuse; where there is an unexplained injury or the injury does not fit with the explanation given.

Comprehensive Medical Assessment

A **Comprehensive Medical Assessment** by a Paediatrician only may be preferable to a JPFE in some circumstances. This medical examination includes the assessment of need for immediate medical treatment and follow-up, as well as careful documentation and report writing. An example may be for the medical examination of siblings of a referred or subject case where there is unlikely to be significant forensic findings. These medical examinations can be undertaken by the On-Call Paediatrician for Child Protection, who would use the national proforma and written communication to the GP, Social Worker, Health Visitor or School Health Nurse.

The above examinations are usually undertaken at Seymour House, Dundee but they can also take place in Ninewells Hospital for In-Patients.

For children and young people where there are concerns of chronic neglect, a Comprehensive Medical Assessment may be required on a planned basis. There are clinics in Angus, Dundee and Perth and Kinross, where such examinations can be carried out. These are led by a Paediatrician with a Special Interest in Child Protection.

Children and young people with injuries may ALSO require assessment by a Specialist Doctor, for example an Ophthalmologist, Plastic Surgeon, Neurosurgeon or Orthopaedic Doctor. Input from a Radiologist may also be required for advice regarding X-Ray examinations. The Paediatrician involved in the case would liaise directly with these Specialty Doctors.

Other Health Requirements

Other health needs may have been identified during the child protection investigation. Assessments or follow-up may be appropriate via Health Visitors or School Health Nurses. Some children and young people may need referral to other health services such as TSRHS (Tayside Sexual Reproductive and Health Services) or CAMHS (Child and Adolescent Mental Health Services).

Consent for Joint Paediatric / Forensic Medical Examinations of Children and Young People

As part of a child protection investigation process, a discussion with a Paediatrician and FME regarding a JPFE of a child or young person may 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 person (s) who has parental responsibility and rights as specified by [Part 1 of The Children \(Scotland\) Act 1995](#).

Consent Issues

It is acknowledged and agreed that in all child protection investigations, where a JPFE 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 FME, prior to any JPFE taking place. Nevertheless, the focus must always remain on the health and wellbeing of the child or young person and it remains paramount that their holistic health needs are met.

Informed and Explicit Consent

The particular type of consent applicable for a JPFE is:

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

Both 1 & 2 are required before a JPFE can go ahead.

Implied Consent simply means that the individual has not explicitly said they don't agree to a JPFE to take place, so it is inferred that they do agree. **Implied Consent is not sufficient** for a JPFE to take place.

Consent Form

Consent should be written and documented on the National Child Protection Proforma Consent Form by the Paediatrician who is seeking consent.

Seeking Consent from Child / Young Person

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 JPFE. [The Age of Legal Capacity \(Scotland\) Act 1991](#) allows that a child or young person under the age of 16 can consent to any medical procedure or practice, if in the opinion of the attending qualified medical practitioner, they are capable of understanding the nature and possible consequences of the proposed medical examination or procedure.

Children and young people who are judged to have sufficient capacity to consent can withhold their consent to any part of the medical examination (for example, the taking of blood or a video recording). Clear notes should be taken of which parts of the process have been consented to and by whom.

The consent must be **INFORMED and EXPLICIT**, to the satisfaction of the Paediatrician and FME involved in the case.

Where a child or young person with capacity refuses to provide consent and agree to participate in JPFE, then the medical examination cannot and will not take place.

If a child or young person does not have the capacity to consent and agree to participate in a JPFE, consent should be sought from the parent / carer.

It should be noted that this does not allow the parent / carer an automatic right of access to the child or young person's medical information and does not allow them a legal right to be present during any JPFE.

Seeking Consent from Parent / Carer

It is agreed that in the majority of cases, the parent / carer with parental responsibilities and rights (A person holding parental responsibilities and rights in terms of [Part 1 of The Children \(Scotland\) Act 1995](#)) will have the authority / capacity to consent and agree to their child participating in JPFE. In these cases, consent should be sought from the parent / carer themselves.

Where the parent / carer with parental responsibility cannot be present at the medical, consent cannot be verbally passed on by a third person. In this situation, consent may be obtained from the parent / carer by the Paediatrician and FME over a telephone. When consent is agreed / disagreed, full documentation of time, date, place and persons present must be documented in the notes.

Compromised Consent

Occasionally, a situation may arise where the parent / carer does not have the ability or capacity to consent for a JPFE. For example:

- where parental responsibilities are unclear, or unknown, or contested; and / or
- where the person holding parental responsibilities and rights is the potential suspect or accused and the consent is refused and / or compromised.

In these instances, it may or it may not be appropriate for the parent / carer to give their consent and / or to be present at the JPFE.

Where a medical examination is thought necessary for the purposes of obtaining evidence in criminal proceedings but the parent / carer refuses their consent, the Procurator Fiscal may consider obtaining a Warrant for this purpose. However, where a child or young person who has legal capacity to consent declines to give consent then the medical examination will not take place and a Warrant is therefore not required.

If the Local Authority believes that a medical examination is required to find out whether concerns about a child or young person's safety or welfare are justified and the parent / carer refuses to give consent, then the local authority may apply to a Sheriff for a Child Assessment Order.

If the Local Authority believes that a child or young person may be at risk of significant harm, then a Child Protection Order may be applied for (although anyone may apply for a Child Protection Order, it is usually the Local Authority who would apply).

If a Child Protection Order is being sought to protect the child or young person from significant harm then a direction in relation to medical examination can be sought.

A child or young person who is subject to Child Assessment Order or Child Protection Order may still withhold their consent to a medical examination or assessment if they are deemed to have legal capacity.

NOTE: At the JPFE any child or young person with / without capacity may refuse to be medically examined despite explanations by the Doctors as to the purpose and benefits of it. If this happens the medical examination cannot and will not go ahead.

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 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".

What this means is that the test to be applied for all children and young people, regardless of age, is whether they have the capacity to consent, or to refuse to consent to participate. Children and young people who have the capacity to make the decision have a fundamental right to agree or refuse to participate in such a procedure. 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 for each case.

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. Professionals should refer to their own professional guidance. For doctors this is the [GMC. 0-18 years: guidance for all doctors](#). It should also be noted that there is no legal right for a parent / carer to be present during any medical examination.

Parental Responsibility

A **mother** has full parental responsibilities and rights, unless these have been removed by a Court.

A **father** has parental responsibilities and rights if:

- 1) he is, or was married to, the mother at the time of the child's conception or subsequently;

- 2) 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;
- 3) If he has acquired parental responsibilities and rights through court under [Section 11 of The Children \(Scotland\) Act 1995](#);
- 4) If he has acquired parental responsibilities and rights through entering into a formal agreement with the mother under [Section 4 of The Children \(Scotland\) Act 1995](#).

Others

Other people who are close to a child or young person may also acquire parental responsibilities and rights through Court Orders under [Section 11 of The Children \(Scotland\) Act 1995](#) (such as grandparents).

[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 child or young person, but who do not have parental rights and responsibilities) to do what is considered reasonable, to protect and safeguard that child or young person's health, development and welfare. This may allow that person to make certain decisions for the child or young person

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.

Escalation and Conflict Resolution

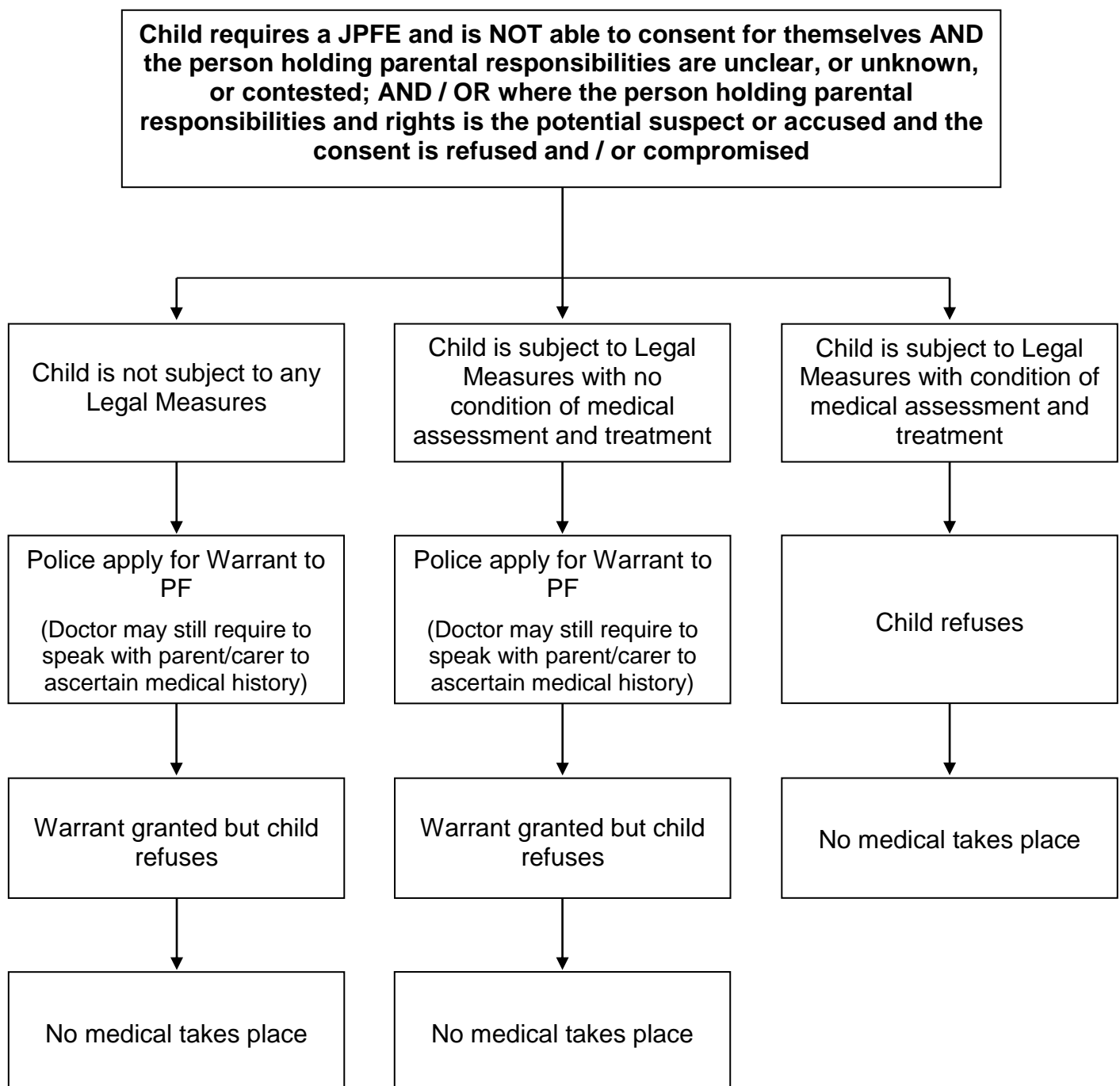
On rare occasions, situations may arise where a party to this Joint Protocol may disagree with the actions, inactions or decisions of another party, particularly in relation to the need for and / or type of medical examination necessary. It is important that at all times the health and wellbeing of the child or young person remains paramount.

In such circumstances, Practitioners should attempt to resolve any dispute through constructive dialogue; mindful of respective service / agency roles and responsibilities. Whilst there is a need to be respectful and recognise each other expertise and experience, it should be remembered that these are multi-agency decision making processes and there should be no power imbalance.

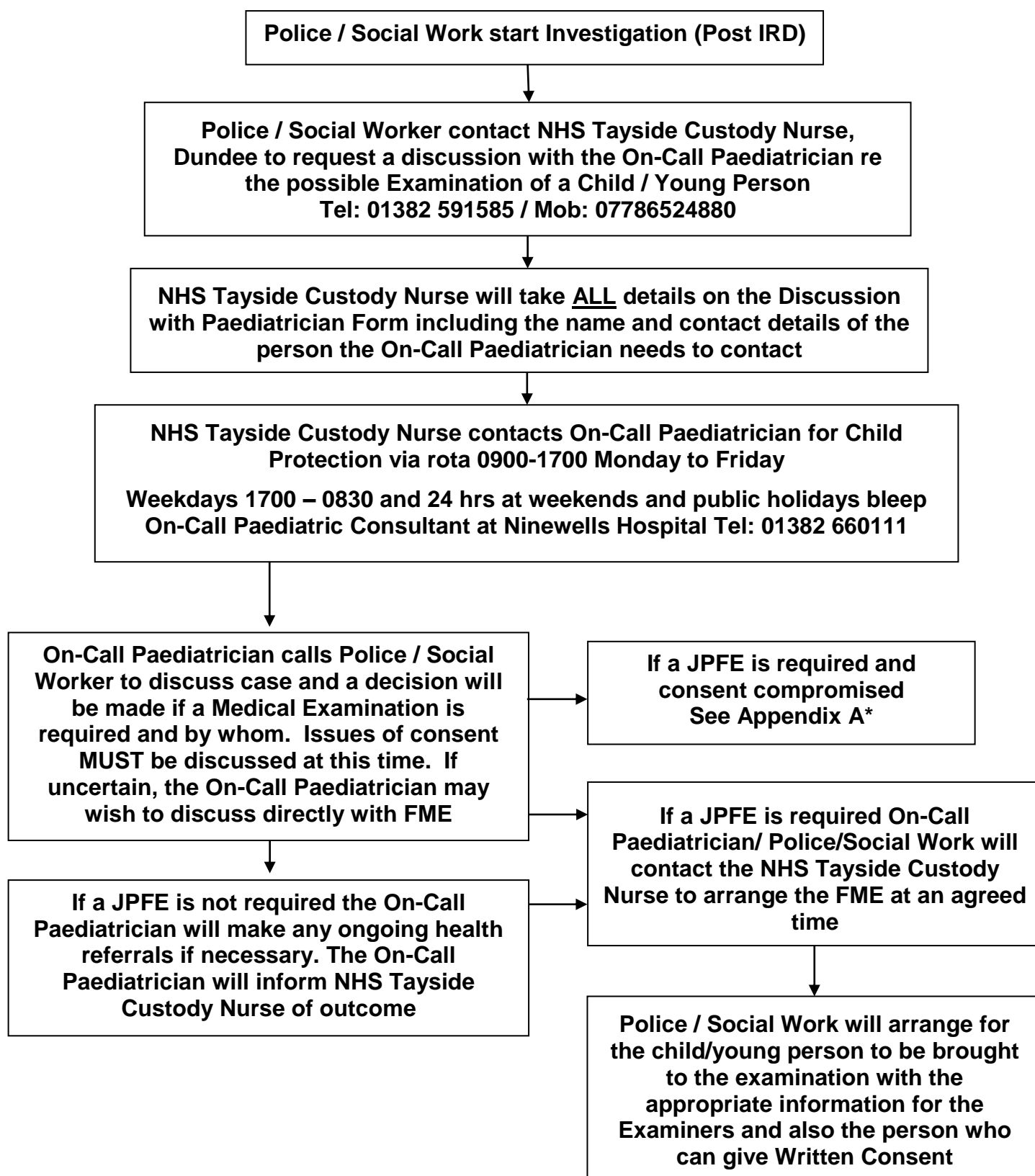
In the likely event any dispute or disagreement cannot be resolved at the Practitioner level, then the dispute or disagreement should be escalated through individual service / agency line management structures and in compliance with service / agency resolution and escalation procedures.

If necessary, this can also be escalated to the respective Local Authority Chief Social Work Officer (CSWO) whose role includes a responsibility for providing professional advice and challenge to all partners on *values and standards; practice and managerial decision – making; leadership; accountability; reporting arrangements and learning and development through reflective discussions and constructive debate*. The CSWO will have the final determination responsibility in terms of any unresolved dispute or disagreement. If, in the unlikely event, the dispute or disagreement remains unresolved, the CSWO may decide to refer the matter to their Child Protection Committee (CPC) and / or to their Chief Officers Group (COG).

PROTOCOL WHERE CONSENT IS COMPROMISED



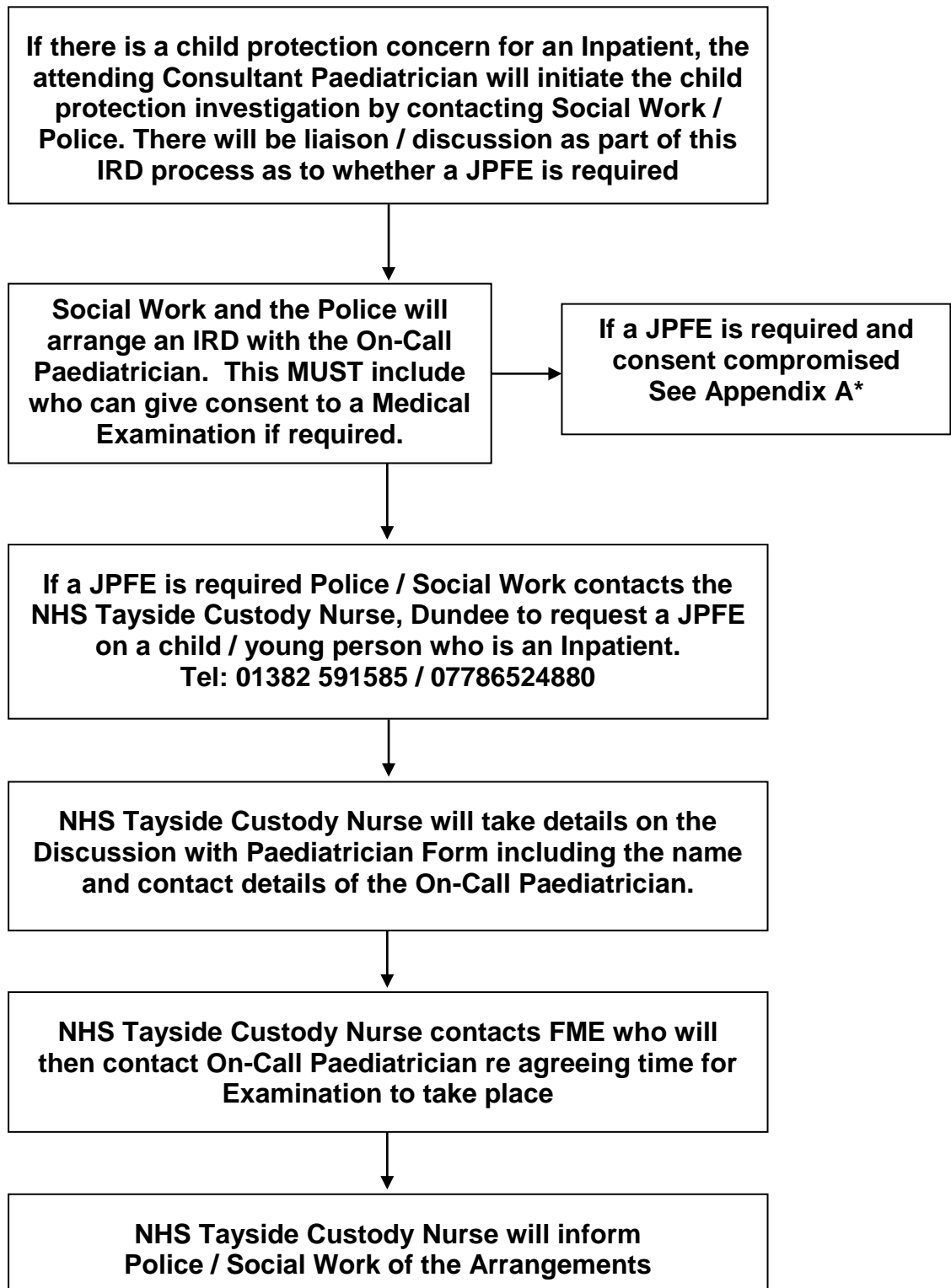
PROTOCOL FOR THE EXAMINATION OF CHILDREN AND YOUNG PEOPLE IN CASES OF ABUSE (COMMUNITY)



***Compromised Consent**

1. *where parental responsibilities are unclear, or unknown, or contested; and / or*
2. *where the person holding parental responsibilities and rights is the potential suspect or accused and the consent is refused and / or compromised.*

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



***Compromised Consent**

- 1. where parental responsibilities are unclear, or unknown, or contested; and / or**
- 2. where the person holding parental responsibilities and rights is the potential suspect or accused and the consent is refused and / or compromised.**