

NSPCC Scotland response to proposals introducing an offence of Wilful Neglect January 2015

About NSPCC Scotland

The NSPCC is here to end cruelty to children. We do this in three ways: Protecting children who are suffering abuse today; preventing abuse from happening to children tomorrow; transforming society so all children are safer in the future.

In Scotland, the NSPCC provides preventative services to help the most vulnerable children and their families. We believe that every childhood is worth fighting for and we make a difference for all children by standing up for their rights, listening to them, helping them when they need us and by making them safe.

Working with others, we are testing some of the very best models of child protection from around the world. As well as a UK-wide helpline for adults who are worried about a child or want advice, we also provide [ChildLine](#) – the UK’s free, confidential 24-hour helpline and online service dedicated to children and young people.

ChildLine gives children a voice. Whatever their worry, whenever they need help, we're listening. It means we understand the problems they face, and we make sure that tackling them is at the heart of everything we do. It's one of the things that make us unique as a children's charity.

NSPCC Scotland response

Q.15. We believe that the proposed offence should cover all formal situations where health care is provided for children, for example in NHS hospitals and independent hospitals. However, the range of social care services provided for children is different to those delivered for adults. We would like to hear your views on the types of social care services for children that you think should or should not be covered by our proposals.

NSPCC Scotland welcomes the opportunity to respond to this consultation on the best way to prevent child abuse being covered up and to encourage reporting at the earliest stage. The increasing number of cases of abuse coming to light in institutions, such as hospitals, children's homes and boarding schools, suggests that there is a lack of balance between supporting staff to do the right thing and the challenge if they do not. We believe anyone who tries to cover up child abuse in order to protect their or their organisation's reputation, should face criminal charges. Particular consideration must be given to "closed" institutions such as boarding schools and residential care homes, where contacts with adults beyond the institution itself are limited. We welcome the Scottish Government's decision to examine the case for stronger corporate duties to protect children but are unsure of the need for further legislation.

The provision embedded in GIRFEC through the Children and Young People (Scotland) Act 2014 provides the most comprehensive basis for protecting children through early intervention and prevention, and of confirming the corporate responsibilities of a whole range of public bodies. The named person provision is a key step in formalising the role that universal services can play in supporting every child's safety and wellbeing. However, the role must be developed beyond the bureaucratised duties set out in the legislation, to a more latent model of therapeutic support for those who need it.

The named person provision in the 2014 Act and the offence under section 12 of the Children and Young People Act 1937, "*cruelty to persons under 16*", already makes it illegal to actively cover up child abuse. To date there have been no prosecutions of concealment of child abuse. It could be that a new offence might, by bringing a focus on the issue, change that. However, the fact that current legislation is not used for prosecutions would indicate that there are wider issues that need to be addressed.

To ensure criminal prosecutions are made effectively We require a culture of openness within our institutions where there is transparency, cooperation and well trained, confident and supported staff who are empowered to speak out without fear of retaliation, and with the confidence that appropriate action will be taken. Wider action is needed to create healthy, equal and open organisations and workplaces. People who feel insecure and vulnerable within organisational/company hierarchies are less likely to speak out.

High quality, independent advocacy, which is easily accessible to children and young people in residential care or confinement, must also be made available so that children are able to report instances of neglect. There is concern that such services are being lost as a result of contracting local authority budgets and, where provision does exist, the quality is patchy across localities. Sufficient resources must be available to ensure the high quality advocacy services are promoted to encourage uptake.

NSPCC Scotland is opposed to underpinning, by criminal sanction, the more general duties professionals have to report suspicion that a child may have been harmed and we consider the provision in the Children and Young People (Scotland) Act on named person, and the GIRFEC approach to be appropriate. Evidence from other countries suggests that such mandatory reporting arrangements can over emphasise process and lead to onward referrals, many of which are never dealt with properly, and this can be at the expense of focused action to protect those children most in need. The Scottish Government must be clear that children will be safer as a consequence of the proposed changes.



Conclusion

In conclusion, NSPCC Scotland would point to the fact that the current provisions, that could be used to bring people to account for covering up abuse, are not used in practice. Any new legislation needs to be supported by wider policy that shifts the balance towards the interests of children. The legal process itself needs to be oriented more decisively towards justice for those who have been abused. In the wider system, the named person provision offers children additional protections. To make any legislation work effectively staff need to feel empowered to report any abuse without fear of the consequences. Children too need to be supported to speak out through the provision of appropriately resourced advocacy services. Recent revelations of children being abused with offenders seemingly unchallenged indicate we still do not have the balance right in the justice system.

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