

NSPCC Scotland response to the Children and Young People Bill consultation

September 2012

NSPCC Scotland welcomes the opportunity to respond to the consultation on the Children and Young People Bill which we believe presents a unique and very welcome opportunity for increasing the protection of children's fundamental rights and freedoms.

We fully support the commendable aspirations in the Bill proposals, particularly those around early intervention and prevention, and welcome efforts to entrench children's rights in public service provision in Scotland. However, we believe there are areas where the proposed Bill could be strengthened in order to meet better the aims of the legislation, as set out in the consultation document. These suggestions are set out below.

About NSPCC Scotland

The NSPCC aims to end cruelty to children. Our vision is of a society where all children are loved, valued and able to fulfil their potential. We are working with partners to introduce new child protection services to help some of the most vulnerable and at-risk children in Scotland. We are testing the very best intervention models from around the world, alongside our universal services such as ChildLine¹, and the NSPCC Helpline. Based on the learning from all our services we seek to achieve cultural, social and political change – influencing legislation, policy, practice, attitudes and behaviours so that all children in Scotland have the best protection from cruelty.

NSPCC Scotland response

Chapter 1: *A Scotland for every child*

1. Do you feel that the legislative proposals will provide for improved transparency and scrutiny of the steps being taken by Scottish Ministers and relevant public bodies to ensure the progressive realisation of children's rights?

While we welcome the Bill proposals as a step forward in promoting children's rights, our preferred method of providing this distinct protection for children's rights would be to fully incorporate the UNCRC and its optional protocols into Scots law. In doing so, the Scottish Government would provide every child in Scotland with entrenched and enforceable rights.

We would urge the Scottish Government to use this unique legislative opportunity to ensure that children's rights are applicable to all children, including those who are particularly vulnerable, such as those in the youth justice system, very young children, or children who are looked after.

¹ Until March 2012, ChildLine in Scotland will be delivered by Children 1st, on behalf of the NSPCC.

Very young children are particularly vulnerable to their rights being breached. They have no voice with which to speak out about maltreatment, are physically frail relative to other groups of children, and are completely reliant on their parent or carer to meet their needs.

Greater consideration must also be given to the competing paradigms of child and parents' rights. A recent report by Ofsted² raised the question of the balance of rights between parents and babies. In some cases these rights are compatible, and the rights which will protect babies, are those which will support parents. For example if a teenage parent is identified as a child in need who therefore has a right to receive adequate support, this support structure should also help to protect their baby. However, the report also highlighted the fact that there are cases in which the rights of parents and the rights of babies need to be balanced with evidence of models of practice with a strong focus on the needs of the parent/carer, in some instances to the exclusion of the needs of the baby.

Similarly, when a young child is removed from parental care, important and often difficult decisions have to be made about subsequent contact between child and parent. A human rights perspective suggests that visits with parents should provide a benefit to the infant and no physical or emotional costs or risks for the child. Visiting arrangements also need to ensure that the infant has the best chance of recovery from abuse and neglect. NSPCC Scotland believes that a rights-based perspective requires us to ensure that the rights of infants who have been harmed by abuse and neglect take precedence over parents' rights.

Given the high rates of maltreatment and babies' inability to speak up for themselves, NSPCC Scotland would urge that, in the application of the proposed duty on Scottish Ministers, specific consideration is given to the need to respect and promote all babies' rights but particularly those of babies' who become looked-after and accommodated. Raising awareness of the specific needs of babies could help drive broad change in attitudes and behaviours at a number of levels.

The Children & Young People Bill should seek to take account of the rights of all children, including those who may be especially vulnerable, in order to better protect them from abuse. NSPCC Scotland is keen to work with the Scottish Government to explore how we can better respect babies' rights in both policy and practice, particularly in terms of protecting them from maltreatment.

2. On which public bodies should a duty to report on implementing children's rights be applied?

3. Do you agree that the extension of the Children's Commissioner's role will result in more effective support for those children and young people who wish to address violations of their rights?

² Ibid

NSPCC Scotland raised the need for effective and child-accessible mechanisms for redress for violations of a child or young person's rights under the UNCRC in our response to the Rights of Children and Young People Bill consultation. We therefore welcome in principle the proposal to extend the powers of the Commissioner so as to allow investigations relating to alleged violations of individual children's or young people's rights.

However, we would highlight a number of issues arising from this proposal which require further consideration. They concern among other things the scope of the investigatory power, its delineation from other complaints systems and institutions, the interaction of the investigatory function with the duties (or lack of duties) on service providers subject to the power, the role of the child in the process, and the resourcing of the extended function.

We maintain that an investigatory function for the Commissioner relating to individual children and young people, which is properly conceived, established and resourced would be a useful and important mechanism for children and young people to resolve alleged violations of their rights under the UNCRC.

4. Do you agree with the definition of the wellbeing of a child- or young person-based on the SHANARRI Wellbeing Indicators, as set out in the consultation document?

NSPCC Scotland welcomes the intention of the above proposals to allow for a holistic approach to the needs of the child. However, in a report by UNICEF in 2007, 'Report card 7: An overview of child wellbeing in rich countries³', the UK was at the bottom of the league table of child wellbeing when compared to 20 other OECD countries.

If the SHANARRI model is to adequately deliver on Ministers ambition to "make Scotland the best place in the world to grow up in" then selected indicators must be internationally comparable and should correspond to the reporting clusters proposed by the UNCRC⁴. This would significantly improve public bodies capacity to monitor the implementation of the UNCRC and the capacity of the Scottish Government to legitimately fulfill its proposed new children's rights duty.

5. Do you agree that a wider understanding of a child or young person's wellbeing should underpin our proposals?

6. Do you agree that a duty be placed on public bodies to work together to jointly design, plan and deliver their policies and services to ensure that they are focused on improving children's wellbeing?

7. Which bodies should be covered by the duties on joint design, planning and delivery of services for children and young people?

³ <http://www.unicef.org.uk/Latest/Publications/Report-Card-7-An-overview-of-child-well-being-in-rich-countries/>

⁴ See Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/469/10/PDF/G1046910.pdf?OpenElement>

8. How might such a duty relate to the broader Community Planning framework within which key service providers are expected to work together?

NSPCC Scotland supports in principle any measures that would facilitate joint working of public bodies to improve outcomes for children and young people. However this must be supported by a significant package of resources to provide a strong platform to allow these commendable proposals to succeed.

We strongly support the proposition that improving child wellbeing should be the focus of any new duty to integrate design, planning and delivery of services. Child wellbeing is predicated on children's rights being respected in all areas of their lives.

We are also aware that there is a raft of legislative proposals under consideration which potentially change the future landscape for children and family support services. Our concern is that these proposals are mostly being advanced in policy contexts where the impact in terms of the needs and rights of children are not guaranteed to be prioritised or considered.

Our primary concern should be to ensure that all future developments, including service integration, are driven in practice by children's rights and their ability to exercise these. Indeed there is strong evidence, from studies of integrated services in the UK and elsewhere, which shows that this kind of focus is essential if integration is to achieve the improvements in outcomes desired by Government.⁵ Centralized top down approaches to integration do not appear to work. Effective integration is associated with the involvement of children and families and communities in designing services. The focus needs to be 'on the specific aspects of individual partnerships which deliver particular outcomes for identified groups.'⁶

For this reason we support the request made the Scottish Commissioner for Children & Young People that the current consultation on the Integration of Health and Social Care should cover all services, not only those for adults. The Scottish Government should consider the degree of overlap of the proposals under these two consultations and reflect its intentions in each of the Bills.

We would also welcome the opportunity to explore, with the relevant Bill teams, the cross-cutting narrative between the proposed children's Bill and the Scottish Government's broader legislative developments.

The envisaged joint working proposed under the new duty will require strong leadership at all levels of Government alongside financial incentives, such as pooled budgets, if the desired integration is to be realised. A new approach to scrutinising how joint working and decision-making takes place may also be needed. More detail from the Scottish Government on proposed drivers and inspection arrangements would be welcomed.

9. Do you agree that we should put in place reporting arrangements making a direct link for the public between local services and outcomes for children and young people?

⁵ M Robinson et al (2008) Supporting Theory Building in Integrated Services Research (Slough: NFER).

⁶ A Petch (2012) iriss insight 14: integration of health and social care (Glasgow: iriss).

10. Do you think that these reporting arrangements should be based on the SHANARRI Wellbeing Indicators as set out in this consultation paper?

11. On what public bodies should the duty for reporting on outcomes be placed?

Chapter 2: A Scotland for each child

12. Do you agree that the Scottish Government should increase the number of hours of funded early learning and childcare?

13. Do you agree that the Scottish Government should increase the flexibility of delivery of early learning and childcare?

14. Do you think local authorities should all be required to offer the same range of options? What do you think those options should be?

15. How do you think the issue of cross-boundary placements should be managed, including whether this might be through primary or secondary legislation or guidance?

16. Do you agree with the additional priority for 2-year olds who are 'looked after'? What might need to be delivered differently to meet the needs of those children?

We welcome the Scottish Government's aim of achieving a coherent, universal system of early childhood education and care. While we support the extension of the provision to all vulnerable/looked-after two year olds, we would welcome additional clarification on how this proposed entitlement will be designed and delivered to best address the particular adversities faced by young children who are looked-after.

Similarly we would welcome clarification of the definition of 'vulnerable' the Government intends to use. The need for detailed work around criteria was a key learning point from the pilots of the Coalition Government's 'Fairness Premium' childcare initiative for disadvantaged two year olds in England. A number of studies in Scotland have shown that policies which are too narrowly focused or targeted will fail significant numbers of children in need. The way we design support for children and families must therefore reflect the complexity, often including the instability and insecurity, of their lives.

Learning from our children and family services tells us that the processes that lead to poor outcomes for children are dynamic and multi-faceted. Findings from the Growing Up in Scotland survey⁷ bear out the negative effects of poverty on child outcomes – they also show that child poverty is dynamic, not static. Around 1 in 5 GUS children are growing up in persistent, or enduring, poverty. But a larger group of children (42% of the GUS sample) have been moving in and out of poverty as they grow up, and these include children of families in work as well as in workless households. The way we design child care and family support must reflect this diversity and complexity.

⁷ M Barnes et al. (2010) Growing Up in Scotland: The Circumstances of Persistently Poor Children (Edinburgh: Scottish Government).

Child care services for looked after children require high-quality therapeutic input to set children on a healthy trajectory for life. However, our research indicates that there is a limited evidence-base on which approaches work effectively with attachment difficulties in looked after children.⁸ Professionals delivering care provision to vulnerable two year olds must be suitably trained and supported to develop meaningful nurturing relationships which are responsive to the distinct needs of children who are likely to have sustained a significant degree of trauma in their early lives.

NSPCC Scotland would call for greater consideration of the potential negative effectives of extended child care provision for a looked-after child where it would result in separation from their primary care giver in the early stages of placement. When a child has not formed a strong attachment with a foster carer prior to being placed in child care, there is potential for prolonged periods of separation to undermine the development of a healthy and secure attachment between the child and the foster carer⁹.

Given the growing body of evidence which highlights the significance of attachment and permanence for children, particularly in the early years, in providing a secure and protective foundation from which a child can grow and develop¹⁰, NSPCC Scotland urge the Scottish Government to consider the potential impact of a 600 hours minimum child care entitlement for looked after two year olds and the prospective implications of this on the fragile, developing bond between the child and the foster carer.

We welcome the proposed enhancement of child care service. However, would urge the Scottish Government to ensure child care services for looked-after children are flexible and responsive to the often considerable adversities experienced by this particularly vulnerable group and reflect this by providing high quality, therapeutic care which addresses the significant degree of distress so often experienced in their early lives.

17. Do you agree with the proposal to provide a point of contact for children, young people and families through a universal approach to the Named Person role?

18. Are the responsibilities of the Named Person the right ones? Are there any additional responsibilities that should be placed on the Named Person?

19. Do you agree with the proposed allocation of responsibilities for ensuring that there is a Named Person for a child at different stages in their lives set out in the consultation paper?

NSPCC Scotland supports the intention behind the Named Person approach which, if properly resourced, could increase the likelihood of early intervention for children and young people; thus improving their outcomes.

It is proposed that the Named Person should be the responsibility of the health board i.e. Health Visitor for 0 – 5 years, then the relevant guidance/Head teacher when the child

⁸ NSPCC (2010) *Op cit*, p32

⁹ psychiatristreports.co.uk Dr. Mark Child *Psychiatrist Reports Family Criminal Injury Cases*

¹⁰ See Bowlby, J. (1979). *The making and breaking of affectional bonds*, London: Tavistock Publications; and Zeanah, C. and Emde, R.N. (1994). *Attachment disorders in infancy and childhood*, in Rutter, M, Hersov, L. and Taylor, E. (eds) *Child and adolescent psychiatry*, 3rd edition, Oxford: Blackwell.

enters the education system. Given that, where we have universal services, the evidence is that the staff who work with infants and parents are stretched to the limit. Between 2009 and 2010 health visitor numbers fell in 7 out of 14 Health Boards.¹¹ In NHS Lothian numbers declined by 25%, reflecting a shift towards public health nursing.¹² Concerns about excessive health visitor caseloads continue to be highlighted.¹³ The 2008 review of the health visiting workforce in NHS Greater Glasgow reported capacity overwhelmed by the scale of need, measured in levels of child vulnerability.¹⁴

A good indicator of these capacity issues is the actual coverage, or reach, of child health surveillance, which is a universal service. Recent research shows that the actual take-up of child health reviews is variable, declines with child age, and is lowest amongst the most deprived groups with the highest needs. Amongst the most deprived families take-up of the 39-42 month review was just 78%.¹⁵ The remedy to the 'Inverse Care Law'¹⁶ operating here is resource intensive: it requires 'robust efforts...to assess their (the children's) needs and engage them and their families with appropriate and sensitive services.'¹⁷

Despite these obvious resource constraints, NSPCC Scotland support the aspiration embodied in the role of the Named Person and considers that, a single, significant individual could deliver a positive, consistent and nurturing relationship throughout the child's journey. To ensure that the Named Person is appropriately empowered, has sufficient capacity and is well supported to develop a significant relationship with the child, the role must be developed beyond the bureaucratized duties presented in the legislative proposals to a more meaningful, latent model of therapeutic support which enriches the child's experience of childhood and adolescence.

NSPCC Scotland would welcome more detail on the perceived parameters of the Named Person role. We are also concerned that compelling professionals to collect information on children, without a clear understanding of how this information will be utilised, may not serve children's best interests.

Clarification is required on all the issues above however, we welcome the Named Person in principle provided it does not undermine the child's right to confidentiality and is accompanied by a committed resource package to support training and recruitment within the relevant professions.

¹¹ <http://www.isdscotland.org/workforce/>

¹² Care concerns as health visitor numbers fall by 25% in Lothians'. *Scotsman*, 3 March 2011.

¹³ Scottish Parliament Finance Committee Scrutiny of Draft Budget 2012-13. Submission from Dr Philip Wilson, Dr Colin Brown, Dr Kerry Milligan and Dr Anne Mullin. Available at: http://www.scottish.parliament.uk/S4_FinanceCommittee/Dr_Phillip_Wilson.pdf

¹⁴ NHS GGC (2008), *Mind the Gaps: Improving Service for Vulnerable Children* (Glasgow: NHS GGC).

¹⁵ Scottish Parliament Finance Committee Scrutiny of Draft Budget 2012-13. Submission from Dr Philip Wilson, Dr Colin Brown, Dr Kerry Milligan and Dr Anne Mullin. Available at: http://www.scottish.parliament.uk/S4_FinanceCommittee/Dr_Phillip_Wilson.pdf

¹⁶ Tudor Hart, J, (1971), The Inverse Care Law. *The Lancet*. 1(7696): 405-412.

¹⁷ Wood, R, et al. (2012) Trends in the coverage of 'universal' child health reviews: observational study using routinely available data. *British Medical Journal Open* 2012; 2:e000759

20. Do you think that the arrangements for certain groups of school-aged children as set out in the consultation paper are the right ones? What, if any, other arrangements should be made? Have any groups been missed out?

21. Do you think a single planning approach as described in the consultation paper will help improve outcomes for children?

22. How do you think that children, young people and their families could be effectively involved in the development of the Child's Plan?

23. Do you agree that care-leavers should be able to request assistance from their local authority up to and including the age of 25 (instead of 21 as now)?

NSPCC Scotland believes that public bodies have a moral obligation to support and protect all children but particularly those who are raised by the state and who are likely to have experienced significant difficulties throughout their young lives. Looked after children require support throughout their transition to independence as a child living with birth parents does. The state's corporate parenting responsibility should therefore provide the support (emotional as well as financial, education etc) to ensure a successful transition to adulthood.

NSPCC Scotland strongly agrees that special attention needs to be given to determining how looked after children over 21 years realise their right to assistance from local authorities - particularly their right to access therapeutic services to recover from abuse as overall levels of specialist therapeutic provision for looked after children are unacceptably low.¹⁸

We would therefore like to see this measure strengthened to deliver a right to receive, rather than a right to ask for support, with a corresponding duty on local authorities to provide it.

24. Do you agree that it would be helpful to define corporate parenting, and to clarify the public bodies to which this definition applies? If not, why not?

25. We believe that a definition of corporate parenting should refer to the collective responsibility of all public bodies to provide the best possible care and protection for looked-after children and to act in the same way as a birth parent would. Do you agree with this definition?

26. Do you agree that a new order for kinship carers is a helpful additional option to provide children with a long-term, stable care environment without having to become looked after?

27. Can you think of ways to enhance the order, or anything that might prevent it from working effectively?

¹⁸http://firststop/EndingCruelty/Themes/LookedAfterChildren/SummaryLookedAfterChildren_fga79815.ht

28. Do you agree that local authorities should be required to match adoptive children and families through Scotland's Adoption Register?

NSPCC Scotland welcomes the Scottish Government's emphasis on early intervention and the increasing focus on the importance of achieving early permanent care arrangements for maltreated children. However, the main aim of the national register is to improve process efficiency, defined in terms of timescales, whereas, in our view, the main source of delay relates to the detail of decision-making about permanence arrangements. The assumption that systems need to be more efficient rather than adapted are not uncommon among relevant stakeholders but efforts to improve efficiency alone, defined in these terms, have not yet been shown to lead to better outcomes for children in the care system, or improved services for birth families.

For example new adoption regulations in England and Wales focuses on improving the speed of decision making in adoption cases but there is less emphasis on the quality of decision making and the care giving environment. Eileen Munro questions whether such changes will produce the outcomes they intend. *"The adoption inspection criteria and the reforms in the court system both introduce timescales and targets which are at variance with my review's aim of reducing them because of the perverse effects they have produced."*¹⁹

The main delays in the permanence process for looked after children lie in the decision making processes leading to a decision on permanence²⁰ There is a need for principles and management information in relation to all stages of the decision making process. As, without standards to aim for, or provide comparison, it is difficult for local authorities and other agencies to assess their performance and take action to improve it. This affects overall performance and can create considerable disadvantage for the individual children whose cases can be left to drift, in some cases for years.

Zeanah and colleagues in New Orleans have taken a rigorous approach to assessing and intervening in families of maltreated young children who have been placed in foster care²¹. They identify barriers to the development of positive attachment and work with families to remove these within an appropriate developmental time span. If families are unable to achieve the necessary levels of change then the placement with the foster carer becomes a permanent adoptive placement.

To inform and improve decision-making about permanence, NSPCC Scotland is testing this innovative service model. In partnership with Glasgow City Council and NHS Greater Glasgow and Clyde, and Zeanah and Colleagues, we are piloting the New Orleans Intervention Model to provide tailored family support on the basis of assessments of attachment relationships, for children who have been maltreated in Scotland.

This approach has a number of positive outcomes. When children are returned to their families there is a significant reduction in further episodes of abuse, both for that child and for subsequent siblings. Even where a child is not returned to the parent there is

¹⁹ <http://www.cypnow.co.uk/cyp/news/1073327/>)

²⁰ SCRA (2011) *Care and permanence planning for looked after children in Scotland*, Stirling: SCRA

²¹ Zeanah et al, 2001

positive impact on the siblings remaining at home. For those children who are permanently removed from their parent the work done with foster carers to ensure appropriate matching and to promote attachment means a reduction in the number of placements a child experiences.

The New Orleans model and studies of concurrency planning models demonstrate that carers can be supported to provide the nurturing environment that young children need and to offer commitment from the earliest possible stage. There is evidence from the literature that carers need preparation and support for this task and that active engagement of foster carers with the birth family has benefits for all involved.

NSPCC Scotland would urge the Scottish Government to balance the efficiency of decision making with the therapeutic and support needs of children, parents and carers. Together these measures can integrate more fully the reality of the child's situation and can potentially lead to healthier outcomes in later life.

29. Do you agree that fixing maximum limits for fostering placements would result in better care for children in foster care? Why?

30. Do you agree foster carers should be required to attain minimum qualifications in care?

31. Would a foster care register, as described, help improve the matching by a local authority (or foster agency)? Could it be used for other purposes to enhance foster care?

32. Do you think minimum fostering allowances should be determined and set by the Scottish Government? What is the best way to determine what rate to pay foster carers for their role - for example, qualifications of the carer, the type of 'service' they provide, the age of child?

Determining appropriate maximum limits for foster carers will be contingent on a range of factors relating to the distinct needs and experiences of both the child and the prospective carer. A more significant determinant of outcomes for looked-after children is the quality of care provided by the foster carer. There is a small but growing body of evidence that interventions to assist foster carers to respond sensitively to damaged children can have a marked effect on children's behaviour and subsequent attachment relationships²².

Support and services for looked after children require high-quality therapeutic input to set children on a healthy trajectory for life. However, our research indicates that there is a limited evidence-base on which approaches work effectively with attachment difficulties in looked after children.²³

²² Dozier, M and Lindheim, O (2006) This is my Child: Differences in foster parents in commitment to their young children. *Child Maltreatment* 11. 338- 345.

²³ NSPCC (2010) *Op cit*, p32

The value of foster care should be strengthened to ensure that it is a high-quality intervention which offers nurturing support and secure attachment for vulnerable children. NSPCC Scotland has found that one of the issues local authority partners struggle with is how to recruit, train and support foster carers. It is also unclear what evidence there is behind the vast bulk of the training and support arrangements for foster care in terms of the impact on healthy attachment and recovery from abuse.

Specialist preparation and support for carers can promote earlier positive outcomes for children who become looked after²⁴. For young children who are placed away from home it may be more important to assess the functioning of the family in which they are to be placed, and the capacities of the adults to provide responsive attuned care to the specific child, than to assess attachment security and organisation. There appears to be consistent evidence that for older children it is important that their caregivers can respond to them at their developmental age rather than their chronological age.

NSPCC Scotland would welcome any national measures to strengthen foster care, provided the stimulus is enhancing the care experience for the looked-after child. Latent models of foster care can provide little more than an extended respite service; however, if appropriately resourced and developed, it has the potential to provide nurture and stability and, particularly for our youngest children, meet their urgent attachment needs.

Any other comments

NSPCC Scotland believes that any initiative to protect and promote children's rights must seek to provide children with the same protections as adults under the law against physical abuse. We believe the Children & Young People's Rights bill presents a real opportunity for the Scottish Government to reconsider full legal protection for children from physical chastisement in the home, or any other setting. Additionally, we would urge the Government to seek to promote non-violent parenting within the forthcoming National Parenting Strategy.

Conclusion

NSPCC Scotland fully support the Scottish Government's aspiration to "*ensure children's rights are deep rooted in public services*" as set out in the Children and Young People Bill proposals. However, we believe there are areas where the proposed Bill could be strengthened in order to meet better the aims of the legislation. We would welcome the opportunity to work with the Scottish Government to help realise its commendable ambition to make Scotland the best place in the world to grow up in.

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²⁴ IRISS (2012) Attachment informed practice with looked after children, Insights no. 1

