

NSPCC Scotland response to proposals to introduce a duty of Candour

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

General comments

NSPCC Scotland welcomes the opportunity to respond to the consultation on the proposals to introduce a duty of candour for organisations providing health and social care services. We consider a new approach to accountability - that is supportive of both service users and staff - a welcome step to address inconsistencies across the country in respect of the rigour and standard of open disclosure when harm occurs.

Reluctance to disclose harm can occur when service users feel they won't be believed or staff fear that they may risk losing their jobs if they report harm. The Scottish Government's proposed recommendations have the potential to help address these concerns by providing staff with appropriate knowledge and support to fulfil their duty of care. They may also encourage confidence amongst service users to report incidents of harm where there is a clear process to ensure that allegations will be followed up.

Answers to specific questions

Question 1:

Do you agree that the arrangements that should be in place to support an organisational duty of candour should be outlined in legislation?

While health and care professionals are already required to tell people about instances of harm, observations made by Healthcare Improvement¹ has shown that ethical and policy guidance has largely failed on its own to improve rates of disclosure. We therefore support in principle, proposals to introduce legislation that will require organisations in Scotland to tell people if there has been an event involving them where there has been physical or psychological harm as a result of their care or treatment.

However legislation of this type is not a silver bullet. Barriers to being open after serious safety incidents have been identified to include fear, worry, embarrassment and lack of institutional support². Therefore, to make any legislation aimed at increasing accountability work, we require a culture of openness within our institutions where there is transparency, cooperation and well trained, confident and supported staff that is empowered to speak out without fear of retaliation, and with the confidence that appropriate action will be taken.

Question 2:

Do you agree that the organisational duty of candour encompass the requirement that adequate provision be in place to ensure that staff have the support, knowledge and skill required?

We greatly welcome the commitment in the consultation to put within the duty a requirement to ensure that staff has the knowledge and skills required to administer it. NSPCC Scotland firmly support the embedding of a human rights approach into the design and delivery of care services, and believe that this is contingent upon the systems and culture within which services are delivered. The Human Rights Consortium in Scotland recently highlighted a survey of 160,000 public service workers by the trade union UNISON, which found that workers felt they did not work in a human rights culture³.

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.

Question 3a: Do you agree with the requirement for organisations to publically report on disclosures that have taken place?

Question 3b: Do you agree with the proposed requirements to ensure that people harmed are informed

¹ Learning from adverse events through reporting and review: Being Open in NHSScotland (June 2014) NHS Scotland

² Pinto, A., Faiz, O., & Vincent, C. (2012). Managing the after effects of serious patient safety incidents in the NHS: an online survey study. *BMJ quality & safety*, qhc-2012.

³ Report of Responses to Our Consultation Human Rights in a Public Servant's Oath? Pub by HRCS

We consider the requirement to keep people informed of instances of harm as a necessary and positive step in protecting service users and improving practice in the longer term. This could go some way to alleviate concerns from victims that if they report abuse nothing will happen in following up that report. The opportunity to be continually involved in the process of notification will insure that people who make allegations can seek clarity and reassurance that their questions have been answered and their experience has led to changes in practice.

Where the victim of harm is a child, we would encourage the Government to publish, to support the legislation, age specific guidance for children and young people about the impact and nature of the provisions being introduced. Children and young people have different needs to adults and those needs must be communicated in language that recognises their different age, stage and levels of maturity

Question 3c: Do you agree with the proposed requirements to ensure that people are appropriately supported?

NSPCC Scotland welcomes proposals to ensure that both staff and service users will be appropriately supported to disclose instances of harm. For staff working with children they must have the distinct skill set to talk to children about potentially sensitive subjects. Specialist preparation and support for adults who work with in a care setting can promote earlier positive outcomes for children in their care⁴. Staff should be able to access support during the process of reporting harm, this may include counselling services or trade union support.

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 harm. 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.

Question 4: What do you think is an appropriate frequency for such reporting?

To avoid confusion the frequency for reporting should be of similar length to other reporting or inspection requirements in health and social care settings

Question 5: What staffing and resources that would be required to support effective arrangements for the disclosure of instances of harm?

The statutory duties on professionals around reporting and information sharing have recently been reinforced by the Children and Young People's Act 2014 which provides for a named person for every child. Strengthening professional practice around reporting and sharing concerns, in line with Getting It Right For Every Child, was the

⁴ IRISS (2012) Attachment informed practice with looked after children, Insights no. 1

centre-piece of the legislation. The named person proposal stimulated a wave of concerns from professionals and professional organisations who, knowing and taking seriously their statutory duties, are concerned about the necessary resources and supportive cultures being in place to make this work effectively in practice.

Resource issues within the children’s workforce are well documented. A recent UNISON and Community Care survey of social work staff across the UK highlighted “*the need to make an urgent cash injection into child protection and mental health services for vulnerable children to improve confidence and to ensure that councils are enabled to fulfil their statutory obligations and remain accountable to local people for how they support children.*”

Although social care services already have procedures in place to report harm in respect of children, it is arguable the extent to which this happens in practice⁵. Therefore, existing and additional responsibilities around disclosure must be supported by the necessary resource package to insure that staff have sufficient training, skills and capacity to appropriately deal with allegations of abuse. Contracting local authority budgets and capacity issues across the children’s workforce indicate that existing procedures and staffing levels for dealing with the reporting of abuse allegations may not be sufficient to enable professionals to comply with an additional duty in practice.

Question 6a:

Do you agree with the disclosable events that are proposed?

Seek advice

Question 6b: Will the disclosable events that are proposed be clearly applicable and identifiable in all care settings?

Seek advice

Question 6c:

What definition should be used for ‘disclosable events’ in the context of children’s social care?

Children’s social care services, as well as keeping children safe from harm, are primarily intended on support healthy development and to enable a child to reach his/her full potential. Decisions taken to that effect, such as taking children into care, may have unintended consequences, though it may not always be possible to attribute trauma to any particular action. It is not clear from the consultation material what constitutes a disclosable event. Therefore detailed analysis should be undertaken with relevant stakeholders to consider the different contexts that influences safety and harm incidents within health and social care services. We seek assurance from the Government that the lessons learned through any new procedures around disclosure can and will contribute to the reduction, and eventual elimination, of child abuse and neglect in Scotland now and in the future.

⁵ Learning from adverse events through reporting and review: Being Open in NHSScotland (June 2014) NHS Scotland

Question 7

What are the main issues that need to be addressed to support effective mechanisms to determine if an instance of disclosable harm has occurred?

Question 8:

How do you think the organisational duty of candour should be monitored?

We would suggest clear lines of accountability to Ministerial level in order that inspection Bodies are supported to perform their duties adequately. This is especially important where inspection agencies are inspecting contracted out provision – the proposals place a duty on organisations only, they are not applicable to individuals delivering services - where there may be less clarity around the human rights obligations of providers.

Conclusion

NSPCC Scotland considers the introduction of a duty of candour a positive step to strengthen protections for children and young people in receipt of care services in Scotland. We believe that providing transparency and accountability for children and young people who have been harmed could be beneficial to their overall health and wellbeing. However, the proposal should be one strand of a range of measures to achieve remedies for systemic failings which harm children.

We believe that the learning from adverse events through reporting and review should be utilised by institutions, corporate parents and all other relevant stakeholders to ensure that a children's rights approach is embedded in their cultures, behaviours and budgetary priorities now and in the future.