

Child abuse cases: deciding to prosecute

An NSPCC factsheet

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This factsheet gives a definition of child abuse and describes how criminal investigations are undertaken. It also explains why it is sometimes decided not to prosecute in cases of child abuse.

Please note that this factsheet refers to the law as it stands in England.

What is the definition of child abuse?

In civil law, child welfare is the responsibility of local authorities and family courts. Under [section 47 of the Children Act 1989](#), local authorities are charged with the “duty to investigate ... if they have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm”.

Harm, under [section 31\(9\) of the Children Act 1989](#) is defined as "ill-treatment or the impairment of health or development". [Section 120 of the Adoption and Children Act 2002](#) added to this definition: "... including for example, impairment suffered from seeing or hearing the ill-treatment of another". To decide whether harm is significant, the health and development of the child is "compared with that which could reasonably be expected of a similar child" (Children Act 1989).

In criminal law it is the police and the criminal courts who prosecute offenders and protect the public, including children. [Home Office Circular 16/2005](#) lists criminal offences against children. It includes the offence of cruelty to children, which was first established in [section 1 of the Children and Young Persons Act 1933](#):

“If any person who has attained the age of sixteen years and has the custody, charge, or care of any child or young person under that age, wilfully assaults, ill-treats, neglects, abandons, or exposes him, or causes or procures him to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health...that person shall be guilty of a misdemeanour...”.

How is child abuse investigated?

When a child is abused, the primary concern will usually be to ensure that the child is protected from the risk of further abuse, and the child's welfare will be a priority in any child protection investigations and proceedings. "Wherever possible, protection will be achieved by working in partnership with the child's carers, without the need to resort to formal state intervention. However, particularly in cases where the child has suffered physical harm or has been sexually abused, a criminal investigation will also be undertaken" (Cobley, 2005).

An investigation by the local authority's child protection team may lead to a child being placed on the child protection register and/or being removed from home if they are considered to still be at risk. Assessments will be carried out on the family in order to establish the level of risk to the child. The child protection team has a duty to discuss the case with police if they believe the abuse constitutes or may constitute a criminal offence (section 5.19 of HM Government, 2010).

How are criminal investigations of child abuse undertaken?

All police forces have child abuse investigation units (CAIU's), which normally take primary responsibility for investigating child abuse cases. The police will make the decision whether to proceed with a criminal investigation and, if appropriate, the abuse will be recorded as a criminal offence. There will be less serious cases where, after discussion, it is agreed that the best interests of the child are served by a children's social care-led intervention rather than a full police investigation (HM Government, 2010).

The child protection and criminal investigations will usually be undertaken simultaneously; the government has produced guidance to facilitate the 'working together' of agencies involved in child abuse investigations (HM Government, 2010). Tensions may arise between the two investigations, often as a result of the unwillingness of carers to cooperate with the investigations and, in particular, the unwillingness of the abuser to admit responsibility for fear of criminal prosecution (Cobley, 2005).

How many criminal prosecutions in cases of child abuse are there and how are decisions made?

Only a proportion of child abuse cases initially investigated by local authorities will lead to a criminal investigation and/or prosecution.

In 2010, 2,172 people in England and Wales were found guilty or cautioned for the specific offence of 'cruelty to or neglect of children'. There are of course other offences against children which lead to prosecutions, for

example in the same year 309 people in England and Wales were cautioned or found guilty of sexual activity with a child under 13, and 1,184 of sexual activity with a child under 16 (see Tables A4.4 and A4.5 in Ministry of Justice, 2011a).

The Crown Prosecution Service decides whether or not a prosecution is in the public interest. The Code for Crown Prosecutors (Crown Prosecution Service, 2010) is a public document that sets out the basic principles to be followed when making a decision. Crown Prosecutors must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. They must also decide whether the evidence can be used and whether it is reliable. If the evidential stage of the decision-making process is passed then the case moves to the public interest stage. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect.

Why might it be decided not to prosecute in some cases of child abuse?

The standard of proof in criminal proceedings is much higher than for civil proceedings. The standard in criminal proceedings is 'beyond reasonable doubt', whereas for civil proceedings it is the 'balance of probabilities'.

Previously in cases where each parent blamed the other for a child's injuries, there was often not enough evidence to convict either.

This legal loophole (whereby defendants in murder and manslaughter cases could escape conviction by claiming each other had killed the child) was closed by the **Domestic Violence, Crime and Victims Act 2004** which provided for a new offence of causing or allowing the death of a child or vulnerable adult.

The **Domestic Violence, Crime and Victims (Amendment) Act 2012** extended the legislation to situations where children and vulnerable adults have been seriously harmed.

Even where the perpetrator is known, there are many reasons for not proceeding with a criminal prosecution:

- **moral culpability** - for example where harm is deemed to be as a result of poor parenting rather than criminal intent, it may be more appropriate to look at the support needs of the family in order to improve parenting
- **dangerousness** - the perpetrator is considered unlikely to re-offend
- **strength of evidence** - evidence may fail to meet the standards required for a realistic prospect of conviction

- **concern for the welfare of the child** (Gwynn et al, 1999).

It may not always be considered to be in the interests of the child to carry out a criminal prosecution, since the experience of testifying at trial can be traumatic. However, much has been done to improve the process for child witnesses, including the availability of pre-trial therapy, use of intermediaries, video suites for Achieving best evidence (ABE) interviews and the provision of support services for young witnesses (Ministry of Justice, 2011b). The use of video recorded evidence and live link TV are the preferred methods of hearing children's evidence in criminal proceedings, particularly in cases involving allegations of sexual abuse.

Even where a child is the only main witness, a court can convict. Recent cases have confirmed that properly directed juries can reach a safe conclusion on the basis of the evidence of a single witness, whatever his or her age and whatever his or her disability.

References

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