

Strengthening duties on professionals to report child abuse

NSPCC Policy Briefing

We propose two changes to the reporting requirements on professionals in relation to the behaviour of others within the institution in which they work:

1. **The introduction of a criminal offence to cover-up, conceal or ignore known child abuse.** This would mean that all professionals working with children would be subject to a duty to report known child abuse and if they fail to do so criminal sanctions could be brought to bear. Such sanctions would make it clear that the protection of children is paramount and a failure to respond to abuse is not an acceptable option.
2. **The introduction of a restricted form of mandatory reporting relating to concerns or suspicions about abuse conducted by those within the institution.** This would remove the option of 'dealing with concerns in-house' from the senior professional, by requiring them to report the concern to an external body and take advice regarding appropriate investigation and response. Should the professional choose to ignore this requirement, criminal sanctions could be brought to bear. This would help prevent the perceived conflict of interest between protecting the child and protecting the institution's reputation.

For many years the NSPCC has worked with organisations and institutions that provide education, care and support to children to improve their capacity to safeguard and protect and to enable them to embed good practice in their culture and ethos. We recognise that a balance between building in good practice and prohibiting poor practice is important. Too much reliance on institutions to set their own safeguarding culture leads to uneven practice, whilst an over reliance on rules and checks leads to box ticking and a lack of personal responsibility for developing a safe environment.

In the last couple of years there have been revelations about abuse taking place within a number of institutions which educate, care for and support children. In too many of these cases it is evident that adults within the organisation were aware of abuse taking place or of concerns about members of staff or those associated with the institution. In some of these cases leadership within the organisation failed to investigate concerns thoroughly enough and at the extreme they sought to hide or cover up the abuse.

Such cases have raised questions about whether there should be stronger reporting duties, backed by criminal sanctions, on professionals working with children. This approach is referred to as Mandatory Reporting. Countries with a system of mandatory reporting have passed legislation to place certain groups or professions under a legal duty to report suspected cases of child abuse and neglect to the proper authorities. While it is important to encourage a culture of openness and personal responsibility in all circumstances where children are being cared for, there are disadvantages to a system whereby all professionals, in all institutions, are mandated to report abuse. The evidence from other countries where this form of mandatory reporting has been introduced suggests it may have unintended consequences including:

- Children are discouraged from reporting abuse because of concerns about being catapulted into criminal investigation

- Heightened reporting levels overwhelm the child protection system, diverting resources and focus away from service delivery into assessment and investigation; leaving it less able to respond to meet the needs of children
- Heightened reporting levels do not lead to an increase in the capacity of services to respond to need. In fact it has been shown in some cases to undermine capacity to respond
- Reporting driven by the process rather than focusing on the needs of the child
- Failing to address the underlying reasons why individuals do not report abuse.

It is for this reason that the NSPCC does not support the introduction of universal mandatory reporting whereby all professionals are required to report all concerns. However, it is clear that the current system is failing to ensure that child abuse or suspicions of child abuse within an institution is reported and responded to appropriately. This is unacceptable and in response the NSPCC has updated its policy on reporting child abuse.

In updating our policy we recognise the risk of unintended consequences posed by universal mandatory reporting models in other jurisdictions and we are also aware that the risk of abuse within institutions is greater in institutions where children are relatively more isolated and where institutions and those adults within hold a greater power and control over the child.

The National Crime Agency carried out a thematic assessment of the risks of child abuse in institutions¹. The report identified a number of features of institutional abuse, which include;

- *Children in institutional settings are not only at risk from adults who are inclined to abuse them sexually; but also from adults who either fail to notice abuse or, if they do, fail to report it.*
- *Where institutions put their own interests ahead of those of the children who engage with them, abusive behaviours are likely to become normalised, potentially leading to sexual abuse.*
- *The culture within an institution has a strong influence on the degree to which abuse might occur within it. Poor leadership, closed structures, ineffective policies and procedures together with the discouragement of reporting, facilitates a malign climate which colludes with those inclined to sexually abuse children.*
- *Where institutions are held in high regard and respected by the communities they serve, positional grooming can be perpetuated, whereby offenders conduct social or environmental grooming and mask their actions by virtue of their formal positions within an organisation.*
- *Intense loyalty and conformity of workers to the mission, norms and values of an institution can inhibit them from reporting concerns.*

The report's findings can be clarified into four factors that contribute to abuse in organisations-

1. The organisation concerned creates an amplified power difference between the abuser and the abused;
2. The people in the organisation are able to keep allegations of abuse away from external scrutiny;

¹ CEOP (2013), CEOP Thematic Assessment The Foundations of Abuse: A thematic assessment of the risk of child sexual abuse by adults in institutions

3. Part of the amplified power imbalance is caused by isolation of children from their normal sources of support, protection and advice (such as parents/carers);
4. People connected to organisations, leaders, employees and volunteers, can sometimes feel a strong sense of loyalty to their organisation and put the reputation ahead of the need to protect children, leading to the keeping of allegations of abuse within the organisation.

We propose two changes to the reporting requirements on professionals in relation to the behaviour of others within their institution:

1. **The introduction of a criminal offence to cover-up, conceal or ignore known child abuse.** This would mean that all professionals working with children would be subject to a duty to report known child abuse and if they fail to do so criminal sanctions could be brought to bear. Such sanctions would make it clear that the protection of children is paramount and a failure to respond to abuse is not an acceptable option.
2. **The introduction of a restricted form of mandatory reporting relating to concerns and suspicions about abuse conducted by those within the institution.** This would remove the option of 'dealing with concerns in-house' from the senior professional, by requiring them to report the concern to an external body and take advice regarding appropriate investigation and response. Should the professional choose to ignore this requirement, criminal sanctions could be brought to bear. This would help prevent the perceived conflict of interest between protecting the child and protecting the institution's reputation.

These two proposals are detailed in more depth below.

1. Criminal offence to cover-up, conceal or ignore known child abuse

It is almost inconceivable that in England and Wales it is not currently a criminal offence for a professional to cover-up, conceal or ignore child abuse occurring within the organisation that they work in or are associated with. Yet at present, professionals who act, or choose not to act, in such a way to prevent the investigation of child abuse are not likely to be subject to criminal sanctions².

Sadly a number of cases have revealed that there are some situations where it is evident that individuals who work in institutions that work with children have sought to cover-up, conceal or ignore known abuse within the institution by 'turning a blind eye', moving staff on, moving staff around, misplaced loyalty to a work colleague, fear for their own job security, etc.

In such instances, where there is no existing criminal investigation and in particular when the cover-up arises as a result of a failure to act (omission) or 'turning a blind eye', criminal sanctions are limited and very difficult to apply.

The current law in England and Wales is insufficient in these circumstances:

- Sexual Offences Act 2003 – makes no provision for non-reporting of sexual abuse
- Perverting the Course of Justice – the law requires an act to be committed, an omission is not enough, and requires an active investigation to be underway
- Child Cruelty Offence³ - only applies to those with responsibility for the child and technically very difficult to apply to cover-up or concealment

² In Northern Ireland it is a criminal offence to fail to disclose an arrestable offence to the police.

³ Section 1 Cruelty to persons under 16, Children and Young Persons Act 1933

- The Fraud Act – requires the cover-up or concealment to be underpinned by an intention to achieve personal financial gain or secure financial loss of another.

The NSPCC is calling on the Government to make it a criminal offence in England and Wales for a professional working with children, to cover-up, conceal or ignore child abuse by those within the institution. Such sanctions would make it clear that the protection of children is paramount and a failure to respond to abuse is not an acceptable option.

2. A restricted form of mandatory reporting in particular institutions

There have been a concerning number of child abuse cases where it is evident that professionals have failed to report child protection concerns or suspicions about the behaviour of an individual associated with their organisation. These have led to calls for such reporting to be mandatory with a failure to do so meaning criminal charges could be brought to bear.

A duty to report concerns or suspicions of abuse, together with a criminal sanction for failing to do so, is intended to encourage the reporting of concerns to an external body to enable appropriate investigation and response.

For this reason the NSPCC supports the introduction of a restricted form of mandatory reporting. Such a duty would remove the option of ‘dealing with the concern in-house’ from the professional, by requiring them to report the concern to an external body and take advice regarding appropriate investigation and response. Should the professional choose to ignore this requirement, criminal sanctions could be brought to bear. This would help prevent the perceived conflict of interest between protecting the child and protecting the institution’s or individual’s reputation. We suggest initially three restrictions to the introduction of a limited model of mandatory reporting as outlined below.

- **A duty to report should apply when the concerns are about the behaviour of those within the institution** – This addresses the conflict which may be posed when balancing responsibilities to safeguard children against those to a member of staff or volunteer.
- **The duty is initially limited to those offering residential accommodation to children.** This would include hospitals, care homes, police custody facilities, young offender institutions, scouts/guides, outward bound facilities, boarding schools etc. – This is in recognition of the risk of unintended consequences presented by ‘universal’ mandatory reporting regimes experienced in other jurisdictions and the greater likelihood of the features of institutions in which abuse occurs being present in those institutions which provide residential care. Limiting the initial introduction of a restricted form of mandatory reporting would enable assessment of impact and effectiveness. If considered successful, the model could be enlarged incrementally or more rapidly to include a wider group of institutions. If found to be undesirable, it would be easier to repeal legislation.
- **The duty is limited to those in leadership positions, the head of the organisations and/or a designated person such as a child protection lead or the head of unit.** - The advantages of this restriction include reinforcing the use of organisational safeguarding policies and procedures, limiting the number of reports and retaining the potential for confidentiality of disclosure.

We recognise that these restrictions mean that not all institutions working with children will immediately be subject to a duty to report. However, because of the risks of significant unintended consequences of introducing any form of mandatory reporting, we propose this option as providing a realistic starting point. That said, there is clearly opportunity and scope to improve the

safeguarding of children in **all** institutions through a multi-faceted approach as described in the final section of this paper.

In supporting the introduction of a restricted form of a duty to report the NSPCC recognises the need to explore the following aspects in more details with stakeholders:

- the definition of the institutions to which the proposed duty should apply;
- the individuals which the proposed duty should apply to;
- the behaviour that should be subject to a duty to report or the threshold for reporting;
- what level of knowledge of abuse would trigger the proposed reporting duty;
- whether an external reporting mechanism necessary or desirable and how would such a reporting mechanism operate;
- whether increased governance obligations on board members, trustees or governors would support a duty to report

Protecting children – what else is needed?

It is important to recognise that a mandatory reporting regime is not a silver bullet and alone will not address the challenges faced when safeguarding and protecting children. The NSPCC believe that child safeguarding and protection works best when there is an effective structure that:

- focuses on the best interests of the child
- creates good protective, organisational cultures;
- supports children speaking out and being heard;
- has external checks to make sure the right measures are being implemented; and
- takes action when the system fails to protect children properly, including giving protection to those who report their concerns or take action to make children safe.

It is essential to ensure that both of the proposals set out above are underpinned by strong statutory and professional guidance that is consistent across all areas of child safeguarding and that drive all organisations that provide services to children to have robust and effective safeguarding arrangements. The arrangements need to be underpinned by excellent policies and procedures, but also implemented and monitored to ensure that people engaged in delivering services take effective steps to protect children from abuse.

Inspection regimes and regulatory requirements play a key role in ensuring that effective policies and procedures and training and awareness activities are in place. Robust and appropriate safeguarding practice is also underpinned by good governance and the NSPCC suggests consideration of a role for strengthened corporate liabilities to establish principles of accountability for organisations in relation to safeguarding policies and procedures.

The NSPCC will continue to work alongside key stakeholders and professionals to review and refine these proposals and wider measures based on evidence and practice to continue to improve safeguarding practice in all institutions caring for children.

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