



## Briefing for the Public Petitions Committee

**Petition Number:** [PE1551](#)

**Main Petitioner:** Scott Pattinson

**Subject:** Mandatory reporting of child abuse

Calls on the Parliament to urge the Scottish Government to introduce legislation that makes it a criminal offence to fail to report child abuse

### Background

There are no specific mandatory regulations in the UK requiring professionals who work with children to report suspicions about child abuse to the authorities. However, in Northern Ireland, it is an offence not to report an arrestable crime to the police, which, by definition, includes crimes against children. In the rest of the UK, professionals who work with children report their concerns and are expected to co-operate and exchange information. Expectations with regard to reporting and information sharing are clearly set out in legislation and guidance<sup>1</sup>.

Guidance for professionals in Scotland is set out in [National Guidance for Child Protection in Scotland 2014](#) ("the Guidance"). The Guidance also sets out the wide-ranging and relevant legislation in relation to the protection of children. The legal duty to investigate and report issues in relation to child protection is derived from two sources: the Police and Fire Reform (Scotland) Act 2012 which provides the mandate for police officers; and the Children's Hearings (Scotland) Act 2011, sections 60-64 of which set out the duties and powers of local authorities, constables, courts and other persons to refer all children who may be in need of compulsory measures of supervision to the Scottish Children's Reporters' Administration; and section 66 of this Act which requires the Principal Reporter to consider whether such compulsory measures of supervision are necessary, in which case the Reporter must refer the case to the Children's Hearing under section 69.

The Guidance points out that all agencies that work with children and their families have a shared responsibility for protecting children and promoting, supporting and safeguarding their wellbeing. Each has a different contribution to make to this common task.

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<sup>1</sup> NSPCC factsheet - [Child abuse reporting requirements for professionals](#) (July 2014).

These include: identifying wellbeing concerns; sharing relevant information; contributing to risk assessments and Child Protection Plans; and, in some instances, actively contributing to investigations and providing specialist advice or support.

With regard to identifying and managing risk, the Guidance states that:

“..... all notifications of concerns about children should be taken seriously. Staff responsible for responding to concerns which are raised should be aware that even apparently low-level concerns may point to more serious and significant harm. They should be sufficiently skilled in gathering information and carrying out initial risk assessments that children at risk of significant harm are not overlooked. Practitioners should consider all cases with an open mind and not make any assumptions about whether abuse has, or has not, occurred. It is important to share relevant information with the appropriate people or agencies. Practitioners need to be alert to the possibility of abuse both of children they already know and in cases where concerns about child abuse or neglect are not stated at the outset.

Social work services and police have a clear statutory role in deciding whether an investigation should take place. Any service may receive a notification of concern about a child's safety and these should be shared with social work. When social work services are notified of concerns about a child's safety, they will need to form a view as to the nature of the child's needs and what response is needed, if any. All concerns, including those that do not require an immediate response, should be acknowledged quickly, indicating when a response will be made.”

The question posed by the petitioner is whether there is a need to introduce mandatory reporting as an additional protection if the current guidance and legislation fail to adequately protect children. It would appear that the petitioner would like to see mandatory reporting introduced, not just for professionals working in child protection, but for the wider general public also. The petitioner envisages that failure to report child abuse to the relevant authorities should be a criminal offence.

As the petitioner points out, mandatory reporting systems for certain groups or professionals have been introduced and used in a number of other jurisdictions (e.g. Canada, Australia and the USA). Parliaments in all Australian states and territories have enacted mandatory reporting laws of some description. However, the laws are not the same across all jurisdictions. The main differences concern who has to report, and what types of abuse and neglect have to be reported. There are also other differences, such as the state of mind that activates the reporting duty (i.e. having a concern, suspicion or belief on reasonable grounds) and the destination of the report.

There is evidence to suggest that existing mandatory reporting regimes can lead to unintended adverse consequences, such as creating a culture of reporting rather than acting; dissuading children from disclosing incidents for

fear of being forced into hostile legal proceedings; or overwhelming an already stretched child protection system so that attention is diverted from where it is most required.

The report of a round-table discussion on mandatory reporting, facilitated by the NSPCC and attended by professionals working in the field of child protection<sup>2</sup>, highlighted the risks, concerns and unintended consequences of universal mandatory reporting:

- evidence suggests that the universal model can create a significant increase in the number of reports to statutory agencies. This leads to diversion of resources from provision of support and services, into assessment and investigation. Linked to this is the risk that children who are being abused or at risk of being abused are less likely to be identified and helped than they were before
- universal mandatory reporting does not guarantee effective child protection and creates a false sense of security. It has resulted in child protection work forces placing greater focus on investigation at the expense of safeguarding. There are high percentages of unsubstantiated reports in countries such as the USA and parts of Australia (approximately 78%). High levels of unsubstantiated reporting do not necessarily mean that the reports were wrong; abuse may have taken place
- prosecutions for non-reporting are low and in some countries there have been no prosecutions e.g. Canada. Despite universal mandatory reporting laws there are significant instances of abuse within settings in the USA, Canada and Australia with inquiries ongoing at present
- universal mandatory reporting may deter victims from seeking help for example from sexual health clinics due to concerns about confidentiality and/or being catapulted into the criminal justice system without their consent or proper preparation. Universal mandatory reporting may also deter families from revealing abuse in order to seek help
- there is evidence that children value the opportunity to disclose abuse and want to remain party to the decision to officially report the abuse. Removing their right to involvement in the decision making process, for older children, could have perverse consequences

On 9 July 2014, the BBC carried a news story pointing out that Peter Wanless, Chief Executive of the NSPCC, said there should be a duty on institutions like hospitals, children's homes and boarding schools to report abuse. Mr Wanless told BBC Radio 4's Today programme: "If someone consciously knows that there is a crime committed against a child, and does

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<sup>2</sup> [Exploring the case for mandatory reporting: a summary of a roundtable hosted by the NSPCC](#): July 2014.

nothing about it because they put the reputation of the organisation above the safety of that child, that should be a criminal offence."

The article stated that the NSPCC had previously opposed all forms of so-called mandatory reporting.

On [3 March 2015](#), the office of the Prime Minister stated that new criminal sanctions for those who fail to protect children from sexual exploitation would be at the heart of a package of new measures to be announced imminently.

The UK Government will consult on extending the new criminal offence of '[wilful neglect](#)' of patients to children's social care, education and elected members as part of its national response to damning reports which found systematic institutional failings and cultures of denial and blame in Rotherham, and elsewhere.

### **Scottish Government Action**

SPICe has not identified any specific action in this area.

### **Scottish Parliament Action**

SPICe has not identified any specific action in this area.

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**3 March 2015**

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