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# Supporting professionals to take action against neglect

September 2012

## Summary

### Issue

Child neglect is cited as a direct cause of one in six deaths and serious injuries in Serious Case Reviews and is a key factor in many more. Neglect is cited as the primary reason for concern for over 40% of children subject to child protection plans. Neglect is a serious child protection issue and is a particularly complex form of abuse resulting in wide-reaching harm to children. Despite this, we have new evidence to suggest child protection professionals do not have a clear sense of the law in relation to neglect and that it is not applied in a consistent way. We also have evidence that cases of neglect are being allowed to continue for too long before social workers decide to begin proceedings to take a child into care.

Neglect is defined within statutory guidance as: “the persistent failure to meet a child’s basic physical and/or psychological needs, likely to result in the serious impairment of the child’s health or development.

Neglect may occur during pregnancy as a result of maternal substance abuse. Once a child is born, neglect may involve a parent or carer failing to:

- provide adequate food, clothing and shelter (including exclusion from home or abandonment);
- protect a child from physical and emotional harm or danger;
- ensure adequate supervision (including the use of inadequate care-givers); or
- ensure access to appropriate medical care or treatment.

It may also include neglect of, or unresponsiveness to, a child’s basic emotional needs.”

(Department for Education, 2010)

### NSPCC’s research

Between March and September 2012, the NSPCC conducted a comprehensive review of the law in relation to neglect consulting with over 40 professionals (including social workers, family lawyers, barristers, criminal lawyers, local authority lawyers, members of the judiciary, the police and the criminal prosecution service) and hosting workshops with a range of professionals.

We also conducted an online survey with 242 social work and associated professionals in partnership with *Community Care*. Key findings included:

- Only 7% of social work professionals were confident that timely action is taken in response to neglect, whereas 76% were confident that timely action is taken in response to physical abuse and 75% in response to sexual abuse.
- Two thirds (65%) reported that they are not confident that cases of neglect are appropriately progressed to the care proceedings stage.
- 42% said local areas were not effective in taking appropriate action on neglect.
- 87% said they needed more legal support on neglect cases.

In reviewing the challenges faced by those working to tackle neglect, we have identified four key issues relating to the understanding, interpretation and use of the law in relation to neglect. In response we propose four actions:

#### **More effective training on neglect for professionals**

There is an acute need for improved training, awareness and understanding of neglect and its impacts amongst social workers and the judiciary. In our survey, 45% of social work professionals themselves identified the lack of understanding of the cumulative effect of on-going neglect amongst social workers as a key barrier to appropriate and timely action being taken against neglect. They identified a need for training, and 58% identified the need for the same training for the judiciary.

#### **Lead practitioners for neglect appointed at a local level**

In response to the overwhelming lack of confidence among social work professionals that appropriate and timely action is being taken in response to neglect, local authorities should consider establishing a lead practitioner or champion for neglect. The lead practitioner should be an experienced professional who is confident, knowledgeable and able to keep up-to-date with practice developments, and share that practice, knowledge and expertise. They should be able to support teams to be decision-focused and take action before children are harmed.

#### **Revisions to the definition of neglect**

The NSPCC has proposed that the wording of the definition of neglect currently outlined in the 'Working Together' guidance be amended to reflect our understanding of the nature of neglect and the challenges social workers and local authorities face when taking appropriate action for children suffering neglect. We have found the use of the term 'persistent failure' within the definition of neglect to be problematic. Neglectful behaviour is not always constant. With support, neglectful parents may demonstrate improvements in behaviour only to relapse once support is reduced or withdrawn (the 'revolving door syndrome'). As a result, neglectful behaviour may be more appropriately defined as a 'pattern of behaviour'. Best practice was described as the assessment of neglect including consideration of 'patterns of neglectful behaviour' over time. This was found to be more useful an approach than focussing on 'persistent neglectful behaviour'.

#### **Consideration of a legal 'Practice Direction' to clarify the test for removal of a child suffering or likely to suffer significant harm**

We are exploring whether or not a practice direction from the Family Division would help provide a clear, concise statement of the legal test for removal of a child. Practice directions are issued for the purpose of enabling courts to deal with cases justly, expediently and fairly by providing directing and guiding legal practice. In particular, we are exploring whether or not a definitive, clear and concise statement of the applicable test for removal of a child will remove the current confusion and variation in

approach and support local authorities to make appropriate and timely decisions about when to issue care proceedings and take timely appropriate action to protect a child suffering neglect.

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## Supporting professionals to take action against neglect

### Introduction

Child neglect is a direct cause of one in six deaths and serious injuries in Serious Case Reviews and is a key factor in many more. Across the UK the child protection system engages with thousands of families every year but children are continuing to suffer in the absence of appropriate action. We have new evidence to suggest that child protection professionals do not have a clear sense of the nature of the law in relation to neglect and that this is not applied in a consistent way. Our evidence also reveals concerns that cases of neglect are being allowed to continue for too long before social workers decide to begin proceedings to take a child into care.

Neglect is a serious child protection issue and is a particularly complex and challenging form of abuse resulting in wide-reaching harm to children. Neglect is complex because it is the result of inaction, such as failure to provide shelter, support and nurture. Children can suffer neglect at the hands of a wide range of carers from varied backgrounds and experiences. Neglectful carers may respond initially to support and intervention provided, but many relapse after support is withdrawn or their circumstances change. Services often find it difficult to distinguish neglectful parenting and different parenting styles, they may find it possible to excuse behaviour or support very minor change in behaviour because of the carers challenging circumstances.

There is a clear and immediate need for increased preventative work to support families to meet their children's needs before concerns become serious enough to warrant intervention by the child protection system. However, we are also concerned about those who are within the system but for whom the system is failing.

Neglect is defined within statutory guidance<sup>1</sup> as: *“the persistent failure to meet a child’s basic physical and/or psychological needs, likely to result in the serious impairment of the child’s health or development. Neglect may occur during pregnancy as a result of maternal substance abuse. Once a child is born, neglect may involve a parent or carer failing to:*

- *provide adequate food, clothing and shelter (including exclusion from home or abandonment);*
- *protect a child from physical and emotional harm or danger;*
- *ensure adequate supervision (including the use of inadequate care-givers); or*
- *ensure access to appropriate medical care or treatment.*

*It may also include neglect of, or unresponsiveness to, a child’s basic emotional needs.”*

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<sup>1</sup> *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children* (DfE, 2010) sets out how organisations and individuals should work together to safeguard and promote the welfare of children and young people in accordance with the Children Act 1989 and the Children Act 2004.

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### Key facts about neglect:

1. Neglect is the most prevalent form of abuse within the family in the UK, blighting children's lives for many years to come: The NSPCC's study *Child Cruelty in the UK 2011* (2011) found that around one in ten 11-17 year olds have experienced neglect at some time in their lives.
2. Neglect is cited as the primary reason for concern for over 40% of children subject to child protection plans throughout the UK.
3. The number of people contacting the NSPCC about neglect has more than doubled over the past two years. In 2011/12 the NSPCC received just over 12,100 contacts<sup>2</sup> by people worried about the neglect of a child. Of those 12,100 contacts, just over 8,600 were referred<sup>3</sup> to the police or children's services. These referrals involved just under 17,600 children.

Between March and September 2012 the NSPCC conducted a comprehensive review of the law in relation to neglect consulting with over 40 professionals (including social workers, family lawyers, barristers, criminal lawyers, local authority lawyers, members of the judiciary, the police and the criminal prosecution service), and hosting two workshops with a range of professionals. The NSPCC also conducted an online survey for social work and associated professionals in collaboration with Community Care<sup>4</sup> which generated 242 responses.

The survey provided some stark findings including:

- Only 7% of social work professionals responding to our survey were confident that timely action is taken in response to neglect, whereas 76% were confident that timely action is taken in response to physical abuse and 75% in response to sexual abuse.
- Two-thirds (65%) reported that they are not confident that cases of neglect are appropriately progressing to the care proceedings stage.
- Two in five (42%) said local areas were not effective in taking appropriate action on neglect
- Nine out of ten (87%) said they needed more legal support on neglect cases.

Tackling neglect requires a wide range of actions including increased public awareness, increased early support, improved interaction with adult services, improved assessment tools. The NSPCC is committed to tackling neglect by developing and testing early intervention support and identifying practice which will support more effective identification, intervention and response to neglect.

### NSPCC recommendations

#### *More effective training on neglect for professionals*

Our consultations with social workers, family lawyers and the judiciary have highlighted an acute need for improved training, awareness and understanding amongst social workers and the judiciary.

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<sup>2</sup> „Contacts' is used to describe people contacting the helpline through telephone, text and online reporting.

<sup>3</sup> „Calls' is used to describe people who contacted the helpline by telephone.

<sup>3</sup> „Referrals' are when the information is passed on to children's services or the police. Referrals can be about more than one child.

<sup>4</sup> The survey was hosted online and was open between 8<sup>th</sup> June 2012 and 24<sup>th</sup> September 2012. We received a total of 242 responses from social workers and other professionals in the field.

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Training needs are focused in two key areas:

- Understanding of the cumulative effect of on-going neglect on children and their development amongst both social work and legal professionals as well as the judiciary to support presentation and understanding of good evidence.
- Enhanced training and preparation for social workers in preparing neglect cases for court and presenting the case in court.

In our recent survey of social work professionals, 45% identified the lack of understanding of the cumulative effect of on-going neglect amongst social workers as a key barrier to appropriate and timely action being taken against neglect. An even greater need for the same training of the judiciary was identified with 58% of respondents identifying the lack of understanding amongst the judiciary as a key barrier. One practitioner noted that what is needed is:

*Better training and understanding to increase the knowledge base about how best to evidence neglect in a manner that the accumulative effects are more clear and allow cases to be taken seriously at the earliest stage rather than later.*

In relation to training of the judiciary, in line with the findings of the Family Justice Review our consultations suggested a need for improved training, awareness and understanding of the nature and impact of neglect amongst the judiciary in particular the potential impact of protracted decision making processes. A review of the training available through the Judicial College in relation to family law reveals that neglect does not feature in the list of topics covered for any of the courses listed for the year 2012-2013.

Our consultations revealed a need to address the current situation in which social workers are ill-prepared for court and the reports provided lack analytical assessment more often presenting a long description of the case rather than a clear articulation of the need for action. At present limited provision is made within the core social work training courses to educate social workers about the law and preparation for and presentation at care proceedings. A review of the main social work undergraduate courses shows that the law and care proceedings are generally covered in a module in the first or second year of study.

This need is demonstrated in the lack of confidence evident amongst social workers in relation to the likelihood that appropriate proceedings will be brought in cases of neglect. In response to our survey two-thirds (64%) of respondents lacked confidence that neglect cases for which proceedings should be brought regularly do so. Furthermore, almost nine out of ten (86%) of respondents agreed that more legal support was necessary when addressing neglect cases.

### Recommendation

Social workers in child protection teams should receive training in the cumulative impact of neglect upon a child and the law relating to care proceedings, the preparation of cases for court and the presentation of cases in court. We recognise that the social work undergraduate course curricula are very full and it may not be feasible to add in additional elements. Therefore we propose that the

provision of and requirement to complete post qualification training should be compulsory for all social workers in child protection teams.

The judiciary also needs to be able to access further training and information to support them in identifying and understanding the nature of neglect.

The NSPCC is currently working with the Family Justice Council on a process by which the Council can review and circulate approved research and evidence among the judiciary to support improved awareness and understanding of neglect.

Improving the training, information and support available to social workers and the judiciary will support effective and timely decision making within the care proceedings process facilitate more effective and efficient protection of children from harm as a result of neglect.

The provision of enhanced training is in line with the action points highlighted to improve efforts in protecting and promoting the rights of children in the 2011 European Commission Communication "An EU Agenda for the rights of the child".

### *Lead practitioners for neglect appointed at a local level*

Social work practitioners lack confidence that appropriate and timely action is being taken to protect children suffering neglect. Social work professionals report that this lack of confidence stems from a range of issues including:

- Lack of confidence in their own knowledge and understanding of neglect.
- Lack of confidence in the knowledge and understanding of neglect within the courts.
- A sense that the burden of evidence to take cases to court is too high.
- An awareness that the management of neglect cases can become overwhelmed by the needs and issues of the parents.
- A lack of available tools to effectively measure and evidence neglect.

These issues are preventing effective and appropriate understanding and interpretation of the law in relation to neglect and subsequently is resulting in neglect cases drifting and becoming subject to the revolving door syndrome whereby cases move on and off child protection plans in absence of decisive action during which time the cumulative impact of the child of the repeated patterns of neglect can be profoundly damaging. The provision of training and support to both social work professionals and the judiciary and legal professionals will assist in addressing some of these issues to some extent.

### *Recommendation*

All local authorities should consider appointing a lead practitioner for neglect. We welcome discussion about the level at which these advanced practitioners should sit. In some areas it may be appropriate to have one or two champions across the authority in others it may be better to have a lead practitioner in each child protection team.

As our survey of social care professionals shows there is an acute lack of confidence that appropriate and timely action is being taken to tackle neglect. Professionals have expressed a desire for more training, tools and advice to be available to support them to address neglect effectively. Achieving this will require champions to drive training, knowledge development and support.

### Revisions to the definition of neglect

*Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children* (DfE, 2010), commonly referred to as „Working Together’ sets out how organisations and individuals should work together to safeguard and promote the welfare of children and young people in accordance with the Children Act 1989 and the Children Act 2004. Within the statutory guidance provided by „Working Together’ a definition of neglect is provided as:

*Neglect is the persistent failure to meet a child’s basic physical and/or psychological needs, likely to result in the serious impairment of the child’s health or development. Neglect may occur during pregnancy as a result of maternal substance abuse. Once a child is born, neglect may involve a parent or carer failing to:*

- *provide adequate food, clothing and shelter (including exclusion from home or abandonment);*
- *protect a child from physical and emotional harm or danger;*
- *ensure adequate supervision (including the use of inadequate care-givers); or*
- *ensure access to appropriate medical care or treatment.*

*It may also include neglect of, or unresponsiveness to, a child’s basic emotional needs.*

This definition is used by local authorities, social workers and the courts when implementing duties and taking action in accordance with the Children Act 1989 and the Children Act 2004. The NSPCC proposes that the wording of the definition should be amended to reflect our current understanding of the nature of neglect and the challenges social workers and local authorities face when taking appropriate action for children suffering neglect.

Our consultations have revealed the benefit of assessment of neglect incorporating the consideration of „patterns’ of neglectful behaviour’ rather than „persistent neglectful behaviour’. We have found the use of the term „persistent failure’ within the definition of neglect to be problematic. Persistent is defined as: *Persisting; enduring; constantly repeated (Concise Oxford Dictionary)*.

However, neglectful behaviour is not always constant. With support, neglectful parents may demonstrate improvements in behaviour only to relapse once support is reduced or withdrawn (the „revolving door syndrome’). As a result neglectful behaviour may be more appropriately defined as a „pattern of behaviour’.

### Recommendation

The NSPCC has proposed that the definition of neglect currently outlined in „Working Together’ guidance be amended to incorporate „patterns of behaviour’ in addition to „persistent behaviour’. Our suggested revision is included in the NSPCC response to the „Working Together’ Consultation.

Refining the definition of neglect within „Working Together’ will support social workers to identify and make the case for intervention and/or action to protect children suffering neglect as „patterns of behaviour’ reflects the nature of neglect more accurately.

***Consideration of a legal ‘Practice Direction’ to clarify the test for removal of a child suffering or likely to suffer significant harm***

In the NSPCC and Community Care’s survey, 62% of responding social work practitioners told us that they felt the burden of evidence to take neglect cases to court was too high and proved to be barrier in taking appropriate and timely action to protect children suffering neglect.

Neglect cases can be particularly challenging when local authorities come to consider whether they will be able to persuade a court that a child has remained in a neglectful situation for too long or the level of neglect is so high that the child must be removed from their family in consequence.

When determining whether to remove a child from his or her family, the court must act in accordance with Section 31 of the Children Act 1989 (see Box 2). In deciding whether to grant removal the court must balance the severe nature of that step with due regard to Article 8 (1) of the European Convention on Human Rights which stipulates an individual’s rights to "private and family life, his home and his correspondence". When balanced against this powerful consideration, there is a risk that neglect which may appear subjectively „low level’ will not tip the balance in favour of removal even though, objectively, the neglect in question can result in very significant harm if allowed to persist.

**Box 2: The Children Act 1989, Part IV Care and Supervision General, Section 31 Care and Supervision**

- (1) On the application of any local authority or authorised person, the court may make an order—
  - (a) placing the child with respect to whom the application is made in the care of a designated local authority; or
  - (b) putting him under the supervision of a designated local authority F1. . . .
- (2) A court may only make a care order or supervision order if it is satisfied—
  - (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
  - (b) that the harm, or likelihood of harm, is attributable to—
    - (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect apparent to give to him; or
    - (ii) the child’s being beyond parental control.

In making decisions about whether to seek a care order, the local authority will refer to the established legal test for removal. However, the legal test for whether a child should be removed from his or her family has been articulated in a number of cases and at present it is arguable that the law on removal is not clear and capable of consistent application.

The test to be applied in considering the question of removal is at present articulated in six Court of Appeal authorities:

- Re H (A Child) (Interim Care Order) [2003] 1 FCR 350 the Court of Appeal stipulated that separation is only to be ordered **if the child's safety demands immediate separation**.
- In Re M (Interim Care Order: Removal) [2006] 1 FLR 1043 Thorpe LJ stated that a local authority in seeking to justify the continuing removal of a child from home **necessarily must meet a very high standard**.
- In Re K and H [2007] 1 FLR 2043 the Court of Appeal held that at an interim stage the removal of children from their parents is not to be sanctioned unless **the child's safety requires interim protection**.
- In Re L-A (Care: Chronic Neglect) [2010] 1 FLR 80, the Court of Appeal reviewed the foregoing authorities and made it clear that the words of Ryder J in Re L (Care Proceedings: Removal of Child) [2008] 1 FLR 575 requiring **"an imminent risk of really serious harm"** were not intended to "raise the bar" for a new standard to be reached before the making of an interim care order, but were simply intended to restate the test defined in the appellate cases.
- In Re B (Interim Care Order) [2010] 2 FLR 283, Wall LJ reviewed the jurisprudence and held that the continued removal of a child must be **proportionate to the risk of harm to which she would be exposed if she were allowed to return to the parent's care**.
- In the Re G (Interim Care Order) [2011] 2 FLR 955 the President summarised the authorities on removal as requiring the court to ask itself the questions **(i) whether the children's safety (using that term to include both psychological and physical elements) requires removal, and (ii) whether removal is proportionate in the light of the risks posed by leaving the children where they are**.

If the law which addresses the particularly difficult issue of removing children who are suffering neglect is to provide an effective framework within which important decisions about the safety and wellbeing of children can be taken, the law must be clear and capable of consistent application. In the context of neglect, this means a local authority must be able to decide by reference to clearly established legal principles, and ideally by reference to a clearly articulated single test, when and to what extent they will achieve the support of the courts to remove the child from a neglectful environment.

At present it is evident that the law on removal is not clear and not capable of consistent application within the context of the test for removal being either "the child's safety requires removal" **or** "the child's safety requires interim protection" **or** "the removal of the child must be proportionate to the risk of harm" **or** "the child's safety widely interpreted requires removal provided that removal is proportionate". This range in interpretation can result in delays in proceedings and ultimately delays in appropriate action being taken to protect the child. Consultees have reported to NSPCC that, in practice, lawyers continue to attempt to apply the now discredited Re L (Care Proceedings: Removal of Child) [2008] 1FLR 575 test of "an imminent risk of really serious harm" or engage in protracted arguments about whether the risk to the child's safety needs to be immediate or not.

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## Response

We are exploring whether a Practice Direction from the Family Division would help provide a clear, concise statement of the legal test for removal of a child.

A Practice Direction is a supplementary protocol to the rules of civil and criminal procedure in the courts. Practice directions provide practical advice on how to interpret the rules themselves. They are issued by the President of the family Division for the purpose of enabling courts to deal with cases justly, expediently and fairly by directing and guiding legal practice

We are developing a paper to be submitted to the Family Division asking them to consider the provision of a Practice Direction.

The provision of a definitive, clear and concise statement of the applicable test for removal of a child could remove the current confusion and variation in approach and could support local authorities to make appropriate and timely decisions about when to issue care proceedings and take timely appropriate action to protect a child suffering neglect.

### For further information, please contact:

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### About the NSPCC

The National Society for the Prevention of Cruelty to Children (NSPCC) is here to end cruelty to children in the UK by fighting for their rights, listening to them, helping them and making them safe.

We share our experience with governments and organisations working with children so together we improve the protection of children and we challenge those who will not learn and change. We campaign for better laws and we educate and inform the public to improve understanding about child abuse.

Our services include the NSPCC Helpline, for adults worried about a child, and ChildLine, the UK's free, confidential helpline for children and young people.

The NSPCC is committed to ending cruelty to children in the UK. There is no single, simple solution to stop child abuse. It remains widespread and mostly hidden. We need to find the best, most effective ways of helping children so we're focussing our work on seven priority areas where we believe we can make the biggest difference. These are: neglected children; sexually abused children; physically abused children in high risk families; children under one; looked after children; children with disabilities; minority ethnic children.

### NSPCC services to protect children from neglect

The NSPCC is testing a number of services across the UK to help tackle child neglect. These services are designed to work with different levels of concern about neglect. We will be evaluating the success

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of these programmes and sharing what we learn with policy-makers and professionals. The NSPCC services to protect children from neglect are:

- **Graded Care Profile:** An assessment tool to help practitioners assess whether a child is at risk of neglect.
- **SafeCare®:** A home visitation parenting programme that works with families with children under 5 where there are early concerns about neglect.
- **Improving parenting, improving practice:** A programme working with families where they are concerned of significant harm from neglect, but the threshold for child protection arrangements has not yet been met. One of two approaches, Video Interaction Guidance (VIG) or Pathways Triple P (PTP), are used to improve the way in which parents bond with their children and understand their needs.
- **Evidence-based decisions for children in complex neglect cases - using the North Carolina Family Assessment Scale (NCFAS):** An assessment tool to help professionals make effective, evidence-based decisions where children are subject to child protection plans for complex neglect cases.

For more information on NSPCC services on child neglect please contact the NSPCC Information Service on 0808 800 5000 or email [help@nspcc.org.uk](mailto:help@nspcc.org.uk)

ChildLine is a service provided by the NSPCC. Registered charity numbers 216401 and SC037717.