



Briefing for the Public Petitions Committee

Petition Number: [PE1717](#)

Main Petitioner: Maryanne Pugsley

Subject: Inquiry into the abuse of children in Scottish state schools

Calls on the Parliament to urge the Scottish Government to endorse a public inquiry into the abuse of children within Scottish state schools, faith or otherwise, including a review of the law of corroboration

Introduction

The petition seeks a public inquiry into the abuse of children within Scottish state schools. It includes reference to the ongoing Scottish Child Abuse Inquiry. That inquiry is looking at the abuse of children in care. As noted below, this may include the abuse of children in “state, private and independent boarding schools”, but not “schools, whether public or private, which did not have boarding facilities”. Further information on the current inquiry is set out below.

In addition, the petition seeks a review of the law of corroboration. Information about ongoing work in this area is also included below.

Scottish Child Abuse Inquiry

The [Scottish Child Abuse Inquiry](#) is an independent inquiry tasked with investigating the abuse of children in care in Scotland.

In May 2015, the then Cabinet Secretary for Education and Lifelong Learning (Angela Constance) made a [statement](#) setting out plans for the child abuse inquiry. She indicated that it would be asked to report within four years of its commencement, later that year. However, that timescale was subsequently relaxed, to require it to report as soon as reasonably practicable.

The inquiry website notes (under the heading of [What we do](#)):

“Our task has been set by the Scottish Ministers and written down in what are called our ‘terms of reference’. Only the Scottish Ministers can change the terms of reference. The chair does not have the power to do so.

In summary, we are looking at the abuse of children in care in Scotland. We look at what happened, why and where abuse took place, the effects of abuse on children and their families and whether the organisations responsible for children in care failed in their duties. We look at whether

any failures have been corrected and if changes to the law, policies or procedures are needed.

At the end of the inquiry we will publish a report with recommendations. We must present the report to the Scottish Government and the Scottish Parliament.”

The inquiry’s terms of reference include the following on the definition of children in care:

“For the purpose of this inquiry, ‘children in care’ includes children in institutional residential care such as children’s homes (including residential care provided by faith based groups); secure care units including List D schools; borstals; young offenders’ institutions; places provided for boarded out children in the Highlands and Islands; state, private and independent boarding schools, including state funded school hostels; healthcare establishments providing long term care; and any similar establishments intended to provide children with long term residential care. The term also includes children in foster care.

The term does not include: children living with their natural families; children living with members of their natural families, children living with adoptive families, children using sports and leisure clubs or attending faith based organisations on a day to day basis; hospitals and similar treatment centres attended on a short term basis; nursery and day-care; short term respite care for vulnerable children; schools, whether public or private, which did not have boarding facilities; police cells and similar holding centres which were intended to provide care temporarily or for the short term; or 16 and 17 year old children in the armed forces and accommodated by the relevant service.”

In November 2016, the Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney) commented on a range of matters relating to the inquiry. He noted that some survivors had sought an extension of the inquiry remit to include “abuse that took place in non-residential settings such as local parishes, day schools and youth organisations” (col 40). In not agreeing to this, he said:

“I have to ensure a remit that is deliverable within a reasonable timescale. I have concluded that there is a clear distinction between in-care settings and non-in-care settings. In-care settings are those where institutions and bodies had legal responsibility for the long-term care of children in the place of the parent, with all the legal and moral obligations that that status carries. That is different from the position in non-in-care settings, such as day schools and youth groups, where others had a duty of care on a short-term basis but, crucially, did not replace the role of parents. In too many cases, terrible crimes were committed in those settings, too. Criminal behaviour should be referred to the police and I hope that, where the evidence exists, it will be energetically pursued through the criminal courts.

If we set a remit that, in practice, would take many more years to conclude, we fail to respond to the survivors of in-care abuse who have taken us at

our word, in Government and in Parliament, that we will learn from their experience and, by addressing the systematic failures that existed, ensure that it can never happen again.” (col 41)

Corroboration

Broadly speaking, the current rules on corroboration mean that proof of a criminal offence requires at least two sources of evidence.¹ This requirement applies to the ‘essential’ or ‘crucial’ facts of the case (generally that the offence was committed and that the accused committed it). The evidence may be direct or circumstantial.²

The Scottish Government’s [Criminal Justice \(Scotland\) Bill](#), as introduced in 2013, included provisions seeking to abolish the general requirement for corroboration in criminal cases.

Stage 2 consideration by the Scottish Parliament’s Justice Committee was postponed given concerns about those provisions. During that postponement, an [independent review](#), led by Lord Bonomy, was conducted into what additional measures might be needed given the planned abolition of the corroboration requirement. When the Committee returned to stage 2 scrutiny of the Bill, the Scottish Government supported amendments to remove the provisions of the Bill providing for abolition of the general requirement for corroboration.

Thus, the Bill as passed (now the Criminal Justice (Scotland) Act 2016) did not reform the law in this area. More detailed information is set out in a 2015 [SPICe briefing](#) produced for stage 3 of the Bill.

The debate over whether a general requirement for corroboration should be retained extends beyond the focus of the petition. However, the particular impact of the requirement on the prosecution of offences which tend to occur in private has been a key element of that debate.

One of the recommendations of the independent review was that jury research should be undertaken. That research is underway and is expected to take until Autumn 2019 to complete. The Scottish Government’s position is that any future consideration of corroboration reform needs to await the findings of jury research and be considered in the wider context of that and the other recommendations of the independent review.³

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19 March 2019

¹ There are some limited statutory exceptions to this requirement.

² Examples of direct evidence include eye witness testimony identifying the accused as the perpetrator of the offence. Examples of circumstantial (or indirect) evidence include testimony relating to facts (eg the identification of fingerprints) from which other facts (eg the presence of the accused at the scene of an alleged crime) may be inferred.

³ For example, see parliamentary question [S5W-18180](#) (answered August 2018).

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