

Seminar briefing note
Mandatory reporting: Existing obligations to report child sexual abuse

Introduction

This briefing note accompanies the Inquiry's seminar on 'Existing obligations to report child sexual abuse', to be held on 27 September 2018. This is the first of two seminars in which the Inquiry will examine the topic of mandatory reporting, the second being scheduled for April 2019. This note provides a broad overview of the topics for discussion at the September 2018 seminar.

1. What is a mandatory reporting law?

A mandatory reporting law is a legislative duty to report known or suspected child abuse or neglect. Whilst the parameters of such duties vary (see Section 4), they are normally imposed on members of particular occupations who deal with children in the course of their work. Reports have to be made to a designated child protection authority. The authority receiving the reports will assess each report and determine what, if any, further action to take. Legislative duties are generally accompanied by formal education for mandated reporters, and supported by sanctions (e.g. fines) set out in law.

The first mandatory reporting laws were enacted in the United States in the mid-1960s, in response to the recognition of severe physical abuse inflicted on children by their parents (so-called 'battered child syndrome') as a public health issue. It became clear that medical professionals, when confronted with the evidence of children subject to severe physical abuse, were not generally or consistently taking any action to raise a concern.¹ In consequence, a duty was imposed which required them to do so. Similar laws were enacted in Australia, and then Canada. Over time, in these jurisdictions and others, the laws were expanded to apply to more groups of mandated reporters and to different types of abuse and neglect, including sexual abuse.²

2. The law in England and Wales

England does not have legislative mandatory reporting of child sexual abuse. The UK Government held a consultation on *Reporting and Acting on Child Abuse and Neglect* in 2016.³ Following that consultation, the UK Government's position is that there is widespread support for allowing the existing programme of child protection reforms time to take hold, and that the case for mandatory

¹ Mathews, B. (2015). Mandatory Reporting Laws: Their Origin, Nature and Development over Time. In B Mathews and D Bross (Eds) *Mandatory reporting laws and the identification of severe child abuse and neglect*, Dordrecht: Springer, 3-27

² *ibid.*

³ [Reporting and acting on child abuse and neglect: Government consultation](#) H M Government (2016)

reporting has not been made.⁴ The Welsh Government introduced a legislative duty to report child abuse and neglect in 2016 (see Section 2.1).

The UK Government introduced mandatory reporting for female genital mutilation (FGM) in 2015, which applies in both England and Wales (see Section 2.2).

In common law jurisdictions like England and Wales, laws relating to negligence require any person to take reasonable steps to prevent harm to those to whom they owe a duty of care. These are not, of themselves, considered mandatory reporting laws. In jurisdictions that have mandatory reporting, the relevant legislation coexists with these more general duties and does not replace them.

There are a wide variety of non-legislative obligations to report, such as those that appear in occupational policies or professional standards (see Section 3).

2.1. The duty to report in Wales

Section 130 of the Social Services and Well-being (Wales) Act 2014 created a duty on certain public bodies to inform the local authority if they have ‘reasonable cause to suspect’ that a child within the local authority’s area is ‘at risk of abuse, neglect or other kinds of harm’.⁵ The duty came into effect on 6 April 2016. It applies to local authorities, police, providers of probation services, local health boards, NHS trusts and Youth Offending Teams, who are all defined as ‘relevant partners’ of the local authority.⁶ The duty applies at an organisational level, rather than to individual professionals working within these organisations.⁷ The Act did not create a sanction for failing to report a child at risk.

The Department of Health and Social Services issued statutory guidance under the Act, which specifies that there should be ‘clearly identifiable points of contact within the local authority and the relevant partners’ to enable them to comply with the duty to report.⁸ On receipt of a report, the local authority must consider whether there are grounds for carrying out an investigation under Section 47 of the Children Act 1989.⁹

⁴ [Reporting and acting on child abuse and neglect: Summary of consultation responses and Government action](#) H M Government (2018)

⁵ [Social Services and Well-being \(Wales\) Act 2014 s 130](#)

⁶ [Social Services and Well-being \(Wales\) Act 2014 s 162\(4\)](#)

⁷ [Reporting and acting on child abuse and neglect: Government consultation: Supporting annexes](#) H M Government (2016)

⁸ [Social Services and Well-being \(Wales\) Act 2014, Working Together to Safeguard People, Volume I - Introduction and Overview](#) Welsh Government (2014), pp. 22-3

⁹ Section 47 of the Children Act 1989 (which applies in both England and Wales) requires the local authority to make the necessary enquiries and, if need be, to take action to safeguard or promote the child’s welfare, where it has reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm.

2.2. Mandatory reporting of female genital mutilation (FGM) (England and Wales)

Section 74 of the Serious Crime Act 2015 created a legal duty for all regulated health and social care professionals¹⁰ and teachers¹¹ in England and Wales to notify the police of a discovery that FGM has been carried out on a girl under the age of 18. ‘Discovery’ may occur either if a girl informs the practitioner that FGM has been performed on her, or where the practitioner ‘observes physical signs on the girl appearing to show that an act of female genital mutilation has been carried out on her’ (where this is not for medical purposes). The duty came into force on 31 October 2015.

Statutory guidance produced under the Act requires the professional to make the report to the police themselves, within one month; the duty applies to the individual and not the organisation, and it cannot be transferred to someone else. The duty only applies in cases where FGM has already taken place (or is thought already to have taken place).¹²

The Act did not introduce any new sanctions for failure to report FGM. The statutory guidance states that ‘failure to comply with the duty will be dealt with in accordance with the existing performance procedures in place for each profession’. It also reminds employers and professional regulators that ‘FGM is child abuse’ and that they are expected ‘to pay due regard to the seriousness of breaches of the duty’.¹³

Guidance issued by the College of Policing states that police forces should identify a relevant team to deal with all mandated reports of FGM, and that they should establish joint processes with children’s social care to identify any immediate safeguarding needs and initiate a multi-agency response following receipt of a report.¹⁴

3. Non-statutory obligations to report child sexual abuse in England and Wales

Those who work with children in England and Wales are subject to various non-statutory obligations to report child sexual abuse.

¹⁰ Regulated professionals are defined in the FGM Act 2003 (s 5B(2)(a), (11) and (12)) as those who are regulated by the following bodies: General Chiropractic Council; General Dental Council; General Medical Council; General Optical Council; General Osteopathic Council; General Pharmaceutical Council; Nursing and Midwifery Council; Health and Care Professions Council; Social Care Wales. The Health and Care Professions Council regulates social workers (but not social care workers) in England. In Wales, the duty applies to social workers and social care workers.

¹¹ This includes ‘qualified teachers or persons who are employed or engaged to carry out teaching work in schools and other institutions, and, in Wales, education practitioners regulated by the Education Workforce Council’. [Mandatory Reporting of Female Genital Mutilation – procedural information](#) Home Office (2016), p2

¹² [Mandatory Reporting of Female Genital Mutilation – procedural information](#) Home Office (2016)

¹³ [Mandatory Reporting of Female Genital Mutilation – procedural information](#) Home Office (2016), p11

¹⁴ [Authorised Professional Practice on Female Genital Mutilation](#) College of Policing (2016)

Those who are registered with professional bodies - which includes healthcare professionals, social workers (and social care workers in Wales), police and teachers - are expected to adhere to professional standards or codes of conduct issued by the relevant body or regulator. Most codes of conduct or standards require professionals to report concerns about a colleague's fitness to practise, which would include any concerns related to sexual abuse of children or adults. A number of professional regulators and bodies (predominantly those in the health and social care sectors) specify that their members should report *any* concerns about a child's safety or well-being, regardless of the identify of the suspected perpetrator or the setting. A professional's failure to adhere to standards or codes of conduct may result in misconduct or fitness to practise proceedings against them.

Other professional associations, as well as individual settings and employers, will also have their own policies, procedures and good practice guidance for reporting concerns about a child. Further, formal obligations and guidance on how and when to make a safeguarding referral are set out in statutory documents such as *Working together to safeguard children* (2018),¹⁵ which applies to all those involved in local safeguarding arrangements in England, and *Keeping children safe in education* (2018), which applies to school and college staff in England and Wales.¹⁶ Typically, the law requires that those who are subject to statutory guidance 'have regard to' that guidance.

4. Variation in mandatory reporting laws

Mandatory reporting laws exist in a large number of countries internationally, including Australia, Brazil, Canada, Denmark, France, Hungary, the Republic of Ireland, Israel, Norway and the United States.¹⁷ Legislation may exist at either a federal / country level or a state / territorial level, or sometimes a combination of the two. Whilst there is significant variation in how mandatory reporting works - both between and within countries - it is possible to identify the core components of mandatory reporting laws, as follows:

4.1. Mandated reporters

Most mandatory reporting laws specify a list of mandated reporters, who are generally individuals who come into contact with children in the course of their work and are therefore assumed to be in a position to spot the signs of abuse. Mandated reporters are most commonly those employed in education, health, and social care. Some jurisdictions have a relatively lengthy list of mandated reporters that includes people employed in or associated with non-public bodies, such as providers of leisure activities for under-18s and members of the clergy. The Child, Youth and Family Services

¹⁵ [Working Together to Safeguard Children: A guide to inter-agency working to safeguarding and promote the welfare of children](#) H M Government (2018), p.17, s 17ff

¹⁶ [Keeping Children Safe in Education: Statutory guidance for schools and colleges](#) Department for Education (2018), p.10, s 28

¹⁷ Mathews, B., & Kenny, M. (2008). Mandatory reporting legislation in the USA, Canada and Australia: a cross-jurisdictional review of key features, differences and issues. *Child Maltreatment*, 13, 50-63

Act (2017) in Ontario, Canada, for example, includes youth and recreation workers (although not volunteers), childcare providers, religious officials, mediators / arbitrators, and lawyers.¹⁸ Typically, mandatory reporting duties apply to individuals but it is worth noting that the duty to report in Wales applies instead to organisations. In a minority of jurisdictions, including Australia's Northern Territory, mandatory reporting applies to all (adult) citizens.¹⁹

4.2. Nature of reports

Mandatory reporting laws can focus on different categories of child abuse - physical abuse, sexual abuse, psychological abuse and neglect. As noted above (Section 1) the first mandatory reporting laws concerned only physical abuse, as the recognition of (familial) physical abuse as a public health issue was the impetus for their introduction. Now, it is common for reporting laws to cover all forms of abuse, although they may use different thresholds for different forms of abuse. Most mandatory reporting laws use the concept of 'significant harm', but it is common for laws *not* to require a particular level of severity or harm in the case of sexual abuse.²⁰

Further sources of difference include whether known, alleged, and/or suspected abuse must be reported and whether the abuse must have occurred already or whether mandated reporters must also inform authorities of a risk of future abuse. In the Republic of Ireland, for example, the Children First Act (2015) requires reports from a mandated person who '*knows, believes or has reasonable grounds to suspect [...] that a child - (a) has been harmed, (b) is being harmed, or (c) is at risk of being harmed*'.²¹

4.3. Recipients of reports

All mandatory reporting laws specify the agency to whom the report must be made. This may be the police or, more commonly, social services or child protective services.

In some jurisdictions, there is a dedicated agency whose remit is to receive reports - and sometimes also to monitor and produce statistics on the number of reports received - in addition to assessing and acting upon them as required. One example is the CyberTipLine operated by the National Center for Missing and Exploited Children (NCMEC) in the United States. Federal law requires electronic service providers to report any apparent online child sexual abuse images to the CyberTipLine.²² NCMEC receives and investigates these reports and makes referrals as necessary

¹⁸ [Child, Youth and Family Services Act, S. O. 2017, c. 14, s. 125, par. 6](#)

¹⁹ Mathews and Kenny 2008 *op. cit.*

²⁰ Mathews 2015 *op. cit.*

²¹ [Children First Act \(2015\)](#) s.14(1)

²² [U. S. Code § 2258A](#)

to law enforcement in the relevant jurisdiction (whether within the United States or internationally). NCMEC periodically publishes analysis of the reports it receives.

In general, it is seen as key to mandatory reporting laws that they have a practical purpose as a response to abuse or neglect - that is, they are a means to put in place support and safeguarding for a child victim. As such, the authority receiving the mandated report has the power and ability to take action to safeguard the child, where necessary.

4.4. Sanctions for failure to report

Most, but not all, mandatory reporting laws are supported by a sanction for failure to report. Such sanctions may be criminal in nature - i.e. a fine or custodial sentence. According to Article 434-3 of the French Penal Code, for example, failure to report allegations of sexual abuse to the relevant authorities carries a three-year prison sentence, and a €45,000 fine. This was recently increased to five years imprisonment and €75,000 where the offence concerns a child aged under 15.²³ Some jurisdictions do not impose a sanction; for example, New South Wales, Australia, removed the penalty from its mandatory reporting legislation in 2010.²⁴

²³ [Art. 434-3 C. pén.](#)

²⁴ Mathews 2015 *op. cit.*