

Mandate Now
Submission

to

Independent Inquiry into Child Sexual
Abuse

Mandatory Reporting Seminar 1

27/9/18



“While some have opposed mandatory reporting laws (Hansen & Ainsworth, 2013; Melton, 2005), these claims have been challenged (Drake & Jonson-Reid, 2007; Mathews & Bross, 2008) and opponents have not explicitly made their claim in relation to mandatory reporting of CSA. There are at least three reasons for this. First, CSA is qualitatively very different from other instances of other types of maltreatment (Mathews, 2014). Second, the well-established gap between the real and disclosed incidence of CSA nullifies Melton’s (2005) claim that case-finding is not a challenge. Third, reports of CSA to government agencies account for a very small proportion of all reports of child maltreatment, repelling any claim that CSA reports intolerably overwhelm child protection systems or divert resources from other priorities. Mandated reports of CSA across Australia over a 10 year period accounted for just 6% of all reports of child maltreatment from all reporter groups (Mathews, Bromfield, Walsh, & Vimpani, 2015), and USA annual data are similar (U.S. Department of Health and Human Services, 2009). In Australia, government inquiries have supported mandatory reporting of CSA as a necessary component of social policy, even after scrutinizing the validity of child protection systems and attempting to control expenditure (Carmody, 2013; Cummins, Scott, & Scales, 2012; Layton, 2003; Wood, 2008).” Matthews et al., 2016

This submission provides evidence for the following fundamental points:

- There is no current clear legislative requirement to report suspected child sexual abuse in Regulated Activities (‘RAS’) e.g. schools, healthcare, faith settings to suggest a few. RAs are poorly defined by the SAFEGUARDING VULNERABLE GROUPS ACT 2006. There is no statutory protection / immunity for good faith reporters of suspected abuse in RAs and no statutory accountability / sanction for failing to report known or suspected abuse in England. The current law is an unwieldy patchwork of inconsistencies.
- Legal obfuscation has been used by some institutions to cover up abuse.
- Improving training and interagency communication is not a replacement for mandatory reporting; it is a complement to it.
- The current statutory framework and accompanying guidance has been created with due consideration to familial abuse and child neglect, which make up the vast majority of cases investigated by statutory social workers. It has not been developed with due attention to sexual abuse, particularly within RAs.
- Mandatory reporting of child sexual abuse has not swamped social services with reports that are not substantiated in either Australia or the USA. The introduction of mandatory reporting in Australia doubled the number of sexually abused children identified, and sexual abuse cases were 6% of the cases dealt with by social services (similar figures in the USA).

- An opportunity exists to recommend how society deals with child sexual abuse. Cuts in social services and related agencies should not be a rationale for the independent Inquiry to avoid recommendations that are in abused children's interests.

There is currently no clear legislative requirement

In 2008 Mandate Now commissioned counsel's opinion on the statutory framework for the safeguarding of children in schools and in particular to consider the statutory requirements for all allegations of child abuse made within schools to be reported to external agencies such as social services, police, and the Local Authority Designated Officer. Counsel's opinion established no law requiring the reporting of known or suspected child abuse in RAs existed. Reporters are therefore defined as whistleblowers with very limited legal protection.

On 21st July 2016, the Government published its consultation documents entitled: 'Reporting and Acting on Child Abuse and Neglect.' It acknowledged publicly for the first time that no law to report exists¹.

Dr Caroline Keenan, co-author of the seminal book on child protection law and policy in common law jurisdictions², emailed the following comment to *Mandate Now*:

"Reporting Suspicions of Child Abuse

What would be the purpose of a statutory requirement to report suspicions that a child is being abused?

- *To make professionals report suspicions in instances in which they would not normally do so.*
- *To protect those who do report suspicions made in good faith which are not then validated in law.*
- *To gain redress for injuries sustained after a professional had been made aware of suspicions or problems, but after they have chosen not to take the matter further.*

What is the current law?

- *To start it is important to recognise two problems in the current law relating to child abuse:*
- *It is a patchwork of different types of law often created as a specific reaction to a particular scandal. It has no cohesion and can be contradictory. It is, for want of a better description, the Dangerous Dogs Act writ large*
- *It is unwieldy. There are hundreds of different rules in different places."*

(Keenan, 2009)

Personnel working in Regulated Activities ("RA") today are still without a statutory obligation to report known or suspected abuse (sexual, physical or neglect). Instead there exists an expectation that a report 'should' be made in appropriate circumstances, according to existing guidelines. Nevertheless, reporting of known or suspected abuse is discretionary. Our focus is child sexual abuse, for which the lack of clarity is of most concern.

IICSA has so far heard a spectrum of reasons for employees in RA's failing to report incidents of abuse. Failure to report can occur in any link in the reporting chain and for any number of varying reasons. The failure of Abbot Richard Yeo of Downside School to report Father Nicholas White, first revealed in White's trial in 2011/2012, is important. Having consulted solicitors in Bristol³ about whether he needed to report an incident involving White to the authorities, Abbot Yeo was informed that while the Childcare Standards Act 2000 conferred on him a duty to safeguard and protect the welfare of the pupils, he was not under a legal duty to make a report to the police. He was informed that if he did, White would likely be charged and face trial. Abbot Yeo decided not to refer the incident to the authorities and White later abused another pupil at the same setting. At this point White was sent to an Abbey in Scotland which also had a boarding school attached to it. The absence of a legal requirement to report fails children and good staff who care for them.

In contrast to England and Wales, some form of MR law exists in most jurisdictions on all four continents⁴. The only jurisdictions that have felt the need to have national inquiries into child abuse are those which have, or have had, discretionary reporting of child abuse. A number of these jurisdictions have switched to MR. These include: Canada, Australia (all States), the Republic of Ireland where MR became operational in December 2017, and Northern Ireland which changed in 2005 and of course, is a self-governed jurisdiction within the UK.

England and Wales are out of step in that there is:

- a. No statutory protection / immunity for good faith reporters of suspected abuse in RA's.
- b. No statutory accountability / sanction for failing to report known or suspected abuse.
- c. A significant increase in the complexity of so termed 'statutory guidance' which has obfuscated the absence of reporting law for so long. Stemming from the government 'guidance,' RAs often produce confused and confusing safeguarding policies which fail staff and children. Many policies are unclear. Here are some examples which Mandate Now has reviewed :
 - i. The Church of England Safeguarding Policy⁵ that we reviewed in advance of the Anglican hearing in March 2018. Richard Scorer acting for Core Participants abusees submitted our review to IICSA having quoted from the summary⁶ in his opening statement.
 - ii. The Football Association's policy which we reviewed⁷ to coincide with the 'Child Abuse in Football Debate' in the House of Lords on 15.12.2016. Our review revealed a confused appreciation of the Disclosure and Barring Service scheme and who clubs needed to be checked, and a policy that claimed there

is a *'legal and moral responsibility to report any concerns about a child or young person in any context.'*

- iii. Stoke Mandeville's revised policy released to coincide with the long delayed Lampard Review, contained many similar shortcomings⁸ and Reporting procedures were vague.
- iv. The BBC revised safeguarding policy prepared in time for the Dame Janet Smith report into BBC safeguarding failures. The BBC's policy was reviewed by the Good Corporation and certainly involved another subcontractor of whom we became aware. Multiple serious shortcomings contained in the policy share much with the preceding three policies. Our review explains.⁹

Mandatory reporting complements improved training and interagency communication

Mandatory reporting ('MR') is not a 'magic bullet'. Nevertheless, law influences behaviour as we have seen with seatbelt legislation, drink driving, smoking, gender pay gap, computer data breaches and money laundering – all of which have guiding legislation, the last three of which specifically include MR obligations on certain individuals. Law is particularly effective where value judgements are called upon, not least because everyone's values are different¹⁰. During the Anglican hearing Sir Roger Singleton talked of changing the culture of the Church towards child protection but offered no suggestion as to how it might be achieved despite empirical data from common law jurisdictions showing the positive impact of MR in institutional settings.

If 'better training and better communication', frequently recommended in reports in and on many institutions over decades, had delivered more effective child protection, there would have been no need for the Inquiry. In cases such as Ampleforth and Downside on which IICSA has taken evidence, the problem was not a lack of training in how to report abuse, but rather a fixed determination to avoid reporting if at all possible. It is hard to see how improved training or anything else short of legal compulsion will alter that determination. It is now time to place enhanced training and communication in the context of MR.

The statutory framework and accompanying guidance does not take due account of sexual abuse, particularly that reported in Regulated Activities

The statutory framework and accompanying guidance has been created with due consideration to familial abuse and child neglect, the majority of cases investigated by statutory social workers. However, it is unfortunately misapplied to RAs. Children spend most time in RAs after time with their families. In these settings they are in the care of adults other than their family. Yet there is a dearth of research on safeguarding in these complex environments and absolutely nothing on factors that inhibit or assist the reporting

of abuse by staff in RAs. There is no research on the challenges faced by those good staff who attempt to deliver functioning safeguarding in these settings.

RAs gamely attempt to make the guidance work, unaware that the absence of reporting law undermines their ability to deliver reliable safeguarding.

MR cannot work behind household doors. However, it is an essential component of a functioning safeguarding framework in RAs, as empirical evidence and data reveal¹¹.

Mandatory reporting of child sexual abuse does not “swamp” social services with children who have not been abused

There is concern that MR in RAs will “swamp” social services, so that the most vulnerable children will not get the services they need because too much statutory social work time will be focused on conducting investigations. We disagree in relation to child sexual abuse for the following reasons:

- 1) Much sexual abuse remains hidden. The Children’s Commissioner’s 2015 investigation found that only one in eight child sexual abuse victims come to the attention of social services. There is also considerable research evidence from many countries that at least half of children who experience child sexual abuse do not disclose during childhood.
- 2) Professor Matthews and colleagues (2016) provided systematic evidence that introduction of MR significantly doubled the number of **substantiated** cases of child sexual abuse.
- 3) Professor Matthews and colleagues (2016) also found that child sexual abuse is a small percentage of the work of statutory social work in Australia and the USA:

“Mandated reports of CSA across Australia over a 10 year period accounted for just 6% of all reports of child maltreatment from all reporter groups (Mathews, Bromfield, Walsh, & Vimpani, 2015), and USA annual data are similar (U.S. Department of Health and Human Services, 2009).”

- 4) Some argue that current guidance already makes reporting a requirement. The argument that simply clarifying this in the law will swamp social services doesn’t seem to be logical, unless helping more sexually abused children is less important than budgetary constraints.
- 5) Investigations are 5-10% of the costs of child protection in the USA. As Professor Matthews and colleagues (2016) put it:

“Some have argued that the cost of investigation and its impact on other areas of the child protection system is also an important consideration. Yet, Drake and

Jonson-Reid (2007, 2015) have argued that the actual cost of investigating cases in the USA is an extremely small proportion of the child protection budget, “most likely below 10% of total costs, and possibly below 5%” (2015, p. 41). Others have concluded that in Australia mandatory reporting is not producing excessive rates of reports and investigations in relation to identified cases (Segal, 2015).

- 6) The independent Inquiry has a once in a lifetime opportunity to make a step change in the way that it recommends the country addresses child sexual abuse. It should be feasible to make recommendations that identify and address the needs of many sexually abused children without the need for lengthy statutory child abuse investigations. However, to do so requires children’s experiences to be known by those agencies so that adult professionals have a clear mandate to do something about it.
- 7) The question of what should be done with reports in RAs, how cases should be investigated and by whom is a matter for thoughtful and well-constructed implementation. The Local Authority Designated Officers may well have views about how this can most effectively and efficiently be done. Swamping social services is not inevitable, though resources matter.

Austerity should not be a reason to keep abused children at risk, nor a reason for the Independent Inquiry to avoid recommendations in children’s interests. Certainly ‘austerity’ has adversely impacted local authority budgets¹² and the BBC and Local Government Association reports that things are scheduled to get worse. We have already seen:

- 1) Social services stretched to capacity and beyond¹³
- 2) Police similarly affected with numbers reduced by 29,000¹⁴
- 3) The CPS under severe strain and having to seek extra money from Government because of non-recent abuse cases¹⁵
- 4) Courts packed to capacity, 40% of cases being sex crimes of all types with a significant number being non-recent abuse cases¹⁶
- 5) Prison occupancy of 99% for most of the time out of an operational capacity of 86,500 (i.e. 1,000 spaces available).¹⁷ It perhaps explains why for some years there have been so few custodial sentences for making and distributing indecent images of children.

This is a précis of the landscape into which the Government released its summary of consultation¹⁸ responses and ‘action’ plan which *Mandate Now* reviewed¹⁹.

Conclusion

Government has sidestepped the very reason Baroness Walmsley tabled Amendment 43²⁰ during the passage of the Serious Crimes Bill, which was designed to ensure good staff are protected and supported to report suspected abuse, and deliver contemporaneous statutory accountability. Instead Government has decided to focus its efforts on inter-agency practice and communications once referral has been received by the statutory agencies. These two approaches are not in conflict. Obfuscating the law is unhelpful. Mandatory reporting of child sexual abuse in RAs should be accompanied by initiatives designed to improve practice, including inter-agency cooperation and communication.

1 <https://bit.ly/2Ok3ISU> - Extract from 'Reporting and Acting on Child Abuse and Neglect' consultation.
2 Child Abuse - Law and Policy Across Boundaries (Inner Temple Book Prize 2008)
3 Paragraph 86 page 118 – Ampleforth and Downside (English Benedictine Congregation study)
4 <https://bit.ly/2MjCnhY>
5 Daro.D World Perspectives on Child Abuse 7th ed. International Society for the Prevention of Child
6 Abuse and Neglect 2006 .26 - <https://bit.ly/2CBrfh6>
7 Mandate Now review of Church of England Safeguarding policies 2/3/2018 <https://bit.ly/2OfivOK>
8 Summary of Mandate Now review Church of England Safeguarding policies <https://bit.ly/2x7KdXh>
9 Confused Football Association Safeguarding Policy Fails Children –15/12/2015
10 <https://bit.ly/2MtQJwB>
11 Still no reliance can be placed on Stoke Mandeville Child Protection procedures despite Savile and
12 Salmon. 14/2/2015 <https://bit.ly/2xb6bbX>
13 BBC Child Protection Policy. Perfectly Legal but Useless 21/1/2016 <https://bit.ly/2Qs8u2s>
14 Few Believers When Company Preaches Values – Prof Adrian Furnham 16/2/2014
15 <https://bit.ly/2OodkMH>
16 Impact of new mandatory reporting law on reporting and identification of child sexual abuse: A seven
17 year time trend analysis <https://bit.ly/2QxvlnN>
18 DfE warns of uphill struggle to secure children's services funding 9/7/2018 <https://bit.ly/2OE7UNG>
19 More Social Workers Taking Sick Leave 9/1/2018 <https://bbc.in/2Qs2oyV>
20 Police Officer Numbers Hit Record Low 25/1/2018 <https://ind.pn/2xh43yG>
DPP: We need more cash to prosecute crimes. Times 29/1/2015 <https://bit.ly/2xaT7mZ>
Britain's Courts are Full of Sex Offenders 27/1/2015 <https://dailym.ai/2xa52kP>
Prisons full to bursting 10/10/2017 <https://bit.ly/2N9MF9G>
Reporting and Acting on Child Abuse and Neglect - Summary Consultation Responses and
Government Action 5/3/2018 <https://bit.ly/2xiHR6V>
Mandate Now Review – Reporting and Acting on Child Abuse and Neglect – Summary of consultation
responses and Government Action 26/9/2018 <https://bit.ly/2polFng>
Amendment 43 tabled by Baroness Walmsley (LD) 28/10/2014 <https://bit.ly/2DbzS2f>