

Mandatory Reporting Seminar 1 – Existing Obligations to Report Child Sexual Abuse: A Summary Report

December 2018

INTRODUCTION

1. This report provides a summary of the first seminar on mandatory reporting of child sexual abuse, which the Inquiry held on 27 September 2018.
2. The purpose of this document is to summarise the discussions at the seminar and to highlight key areas for future work. It is not intended to be a comprehensive analysis of all the views expressed at the seminar. The seminar did not constitute a formal evidence-gathering session.
3. The Chair and Panel of the Inquiry were present at the seminar. Proceedings were facilitated by a member of the Inquiry's legal team.
4. The seminar was attended by representatives from government departments and academics from England and Wales and overseas, practitioners, campaign groups and victims and survivors of child sexual abuse. The full list of participants can be found on the Inquiry's website.¹
5. The seminar was made up of two sessions. The morning session covered the existing obligations on professionals in England and Wales to report child sexual abuse. The afternoon session explored how mandatory reporting laws operate in a number of countries outside England and Wales and the impact these laws may have had on preventing and responding to child sexual abuse.
6. Each session contained a number of presentations that were followed by questions and a discussion with other participants. Core participants and other attendees in the public gallery were invited to make comments or observations halfway through, and at the end of, each session. The presentations and all materials and transcripts from the seminar are available on the Inquiry website.²
7. The Inquiry would like to thank everyone who contributed to or attended the seminar.

¹ Mandatory Reporting Seminar 1: List of participants. Available at: <https://www.iicsa.org.uk/key-documents/7024/view/mandatory-reporting-seminar-existing-obligations-reporting-child-sexual-abuse-participant-list.pdf>

² Mandatory Reporting Seminar 1: Documents. Available at: <https://www.iicsa.org.uk/research-seminars/mandatory-reporting-seminar>

Session 1: Existing child sexual abuse reporting obligations in England and Wales

8. The first session explored the adequacy of existing obligations in England and Wales to report child sexual abuse. Participants discussed the legislation and guidance set at a national level by the UK and Welsh governments, and the reporting duties of specific organisations and professionals with responsibility for children. The Inquiry also heard about the legislative framework and guidance underpinning the legal duty to report female genital mutilation, and the impact of this duty on reporting.
9. Graham Archer, from the Department for Education, said that obligations in England stemmed from the Children Act 1989 and 2004, and the Children and Social Work Act 2017, and were stated in further detail in statutory guidance.^{3,4} The guidance included the safeguarding policies and procedures that organisations should have in place and details of when and how professionals should report child sexual abuse. Additionally, the UK government had issued non-statutory guidance⁵ that offered further advice to practitioners on their reporting responsibilities. Mr Archer told the Inquiry that organisations and professionals were expected to comply with the guidance unless there were “*very good reasons to do otherwise*” and sanctions were available in the event of failure to comply. Sanctions included the removal of the functions of a local authority, closure of an independent school and discipline, dismissal or barring of individuals from all regulated activity with children. Criminal sanctions were also available for deliberately withholding information from the Disclosure and Barring Service or for shielding an offender. Mr Archer suggested that reporting levels indicated professionals were aware of their reporting responsibilities.
10. The Inquiry was told that in July 2016 the Department for Education and the Home Office launched a joint consultation on mandatory reporting⁶ in response to concerns that some cases of abuse were not being reported. Respondents were asked about the current system and the potential impact of the introduction of a mandatory reporting duty or a duty to act. Mr Archer said that only 12% of the 750 responses were in favour of a mandatory reporting duty and that 25% were in favour of a general duty to act. The majority of concerns expressed about a new mandatory reporting law related to the potential adverse impact on the child protection

3 Department for Education statutory guidance: *Working Together to Safeguard Children*, 2018. Available at: <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

4 Department for Education statutory guidance: *Keeping Children Safe in Education*, 2018. Available at: <https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>

5 Department for Education guidance: *What to Do if You're Worried a Child is Being Abused: Advice for Practitioners*, 2015. Available at: <https://www.gov.uk/government/publications/what-to-do-if-youre-worried-a-child-is-being-abused--2>

6 Department for Education and Home Office consultation: *Reporting and Acting on Child Abuse and Neglect*, 2016. Available at: <https://www.gov.uk/government/consultations/reporting-and-acting-on-child-abuse-and-neglect>

system. In response to the consultation, the UK government had made changes to the current system of reporting. It was also continuing to monitor and evaluate evidence to identify gaps in the child protection system and was in contact with the Welsh government about its own evaluation of the duty to report in Wales.

11. Albert Heaney, from the Welsh government, said obligations on professionals and institutions in Wales also stemmed from the Children Act 1989 and 2004. In addition, the Social Services and Well-being (Wales) Act 2014 created a legislative duty (rather than an expectation) on certain groups of professionals to report a child at risk to the local authority. Mandated groups included local authority staff; police; probation and offender services including youth offending; health staff working for Local Health Boards and NHS trusts; and those discharging their functions under the Learning and Skills Act 2000. Statutory guidance on the duty to report was set out in the revised Wales safeguarding procedures. Mr Heaney said that the legal duty arose from concerns and failures identified in non-recent abuse cases, a consideration that reporting should not be “*a matter of personal choice*” and a recommendation by an expert ministerial safeguarding advisory panel that the expectation to report should be strengthened to a duty. Mr Heaney said that the duty in Wales was to report ‘concerns’ rather than ‘known facts’ because
- it was considered that evidence of harm might not always be present.
12. The Inquiry was informed that practitioners in Wales had received training on their reporting responsibilities. Any failure of a professional to report concerns was dealt with through agencies’ own existing fitness to practise and internal disciplinary processes and referral to professional regulators.
13. Inspector Allen Davis, from the Metropolitan Police Service, spoke about mandatory reporting of female genital mutilation from a policing perspective. He informed the Inquiry that the duty was introduced by the Serious Crime Act 2015 and applied to all regulated professionals and any teachers in England and Wales. These professionals were required to report ‘known’ cases of female genital mutilation to the police within one month, using the 101 number to help ensure a consistent response from police forces. The Act defined ‘known’ cases as those involving either a direct disclosure from the child or visual identification of female genital mutilation.
14. Inspector Davis indicated that there was confusion among health professionals about how the mandatory reporting legislation applied to them, particularly around the distinction between the duty to report known cases to the police and the pre-existing duty to report through other

channels if children are 'at risk' of female genital mutilation.

15. Inspector Davis said that the introduction of mandatory reporting had not improved information sharing between those who were required to report and the police, particularly with regard to health professionals who sometimes felt that reporting would break patient confidentiality.
16. To address any potential concern that nothing would come of reports of female genital mutilation, the police had created a 'feedback loop' to keep those making reports informed of the outcomes of their cases.
17. Inspector Davis told the Inquiry that the number of mandatory reports of female genital mutilation made to the police had reduced. In the first two years after the introduction of the duty, up until 1 November 2017, 51 known cases of female genital mutilation had been reported. Since then, only four cases had been reported.
18. At the end of the session the Inquiry heard views from other participants and from the public gallery. During this discussion participants acknowledged that female genital mutilation continued to be an issue, despite the low number of mandated reports received by the police. Since 2015 the National Female Genital Mutilation Centre had received 345 referrals for consultation and support, supported 22 female genital mutilation protection orders, and heard from 165 female genital mutilation survivors who were over the age of 18 and 12 who were under the age of 18.
19. It was suggested that the statutory guidance in England was unclear and weakened by the use of 'should' rather than 'must' when setting out the responsibilities of professionals, and that the responsibilities of faith organisations were particularly unclear. One participant also suggested that the government had omitted a key piece of research (a longitudinal study on the introduction of mandatory reporting in Western Australia) from the supporting materials to its consultation on mandatory reporting.
20. Another view expressed was that the focus of improvements should be on addressing the barriers to children reporting abuse and ensuring that, when they do report, their disclosure is dealt with quickly and effectively by staff who are trained and supported. It was suggested that the introduction of mandatory reporting might discourage children from disclosing abuse in the first place for fear of the potential consequences, such as being placed into care.
21. One participant said the absence of a statutory duty to report child sexual abuse led to an absence of societal accountability and an over-reliance on professional sanctions. They suggested that mandatory reporting was needed to support and

- protect professionals who made disclosures, as the protection offered by the Public Interest Disclosure Act was insufficient.
22. Participants said that the police were subject to guidelines and national standards set by the College of Policing. Serious breaches of the guidelines or standards would result in internal disciplinary procedures. Criminal sanctions were also available for potential incidents of corruption or concealment. It was suggested the police guidance clearly stated that direct disclosures of abuse or observations of concerning behaviours indicative of child sexual abuse should always be reported.
 23. The Inquiry was told that the number of reports of child sexual abuse offences received by the police had increased. In 2016/17 the police received around 47,000 reports of offences, which it was noted represented a 172% increase on the number of reports made in 2011/2012. Also the number of reports of child sexual abuse images received by the National Crime Agency had increased by around 700% since 2013. The Inquiry heard tackling child sexual abuse was a national priority and continued to receive more investment. It was also suggested that more investment should be channelled into available tools, training, research and evaluation of current practice, including sex and relationship education as part of a wider personal, social, health and economic (PSHE) education programme.
 24. Rosie Hancock, a primary school teacher and special educational needs co-ordinator, presented to the Inquiry on the reporting obligations on teachers and other school staff, and on how knowledge of child sexual abuse was dealt with in the school in which she worked. Ms Hancock said the principles of safeguarding children in schools were set out in the government's statutory guidance, and that schools set their own individual policies based on that guidance.
 25. Ms Hancock said that if a member of staff had received a disclosure of abuse from a child, or had concerns about the conduct of another member of staff, they must immediately report it to the school's designated safeguarding lead, who was responsible for passing information to the local authority. The local authority would then make any further enquiries and carry out an assessment, keeping the school informed at all times.
 26. If a member of staff had not received a direct disclosure, but had observed changes in a child's behaviour that made them suspicious that abuse was taking place, Ms Hancock said they were encouraged by the school to obtain further information by asking questions of the child, the child's friends or another adult who had also observed the child. These concerns were recorded in an electronic system that helped the school to build a profile of a child's behaviour.

27. Stuart Gallimore, from the Association of Directors of Children's Services, discussed the existing guidance for social care professionals in England and their obligations in relation to the reporting process. Mr Gallimore suggested there was no recent evidence of significant levels of undisclosed child sexual abuse in the UK or that professionals were routinely failing to report. He suggested that the introduction of mandatory reporting measures could potentially undermine the judgement of social care professionals, who were skilled in knowing when to build a trusting relationship with a child to enable a disclosure of abuse and when to report their concerns.
28. Mr Gallimore said that the child protection system in the UK was sophisticated and well established and that children's social care was heavily regulated and routinely inspected. The obligations on children's social care were set out in statutory guidance and included carrying out assessments for all referrals received, convening strategy discussions if significant harm was suspected and holding child protection conferences and implementing child protection plans if cases were substantiated.
29. When local authorities or their staff failed to carry out their duties correctly, the sanctions available were thought to be sufficiently severe and wide ranging. These included barring, dismissal and criminal sanctions for individuals, and removal of services and responsibilities for organisations.
30. Mr Gallimore suggested that, rather than introducing mandatory reporting, the focus should be on tackling the root causes of the sexual abuse of children.
31. The Inquiry heard that the volume of initial contacts made to children's social care in England increased from 1.2 million in 2007 to 2.4 million in 2017/18, although it was not possible to know how many of these related to concerns about possible child sexual abuse.
32. Alison Steele, Officer for Child Protection for the Royal College of Paediatrics and Child Health, spoke about the national and local guidance for medical practitioners on reporting concerns about child safety. Dr Steele described the duty on all doctors to report to the appropriate agency any concerns about the safety or welfare of a child, including any concerns about the conduct of colleagues (doctors or others). Doctors were advised that they should try to obtain consent before sharing information, unless there was a compelling reason not to do so, but that this should not cause any delay in reporting.
33. Failures of doctors to report child sexual abuse were dealt with through internal disciplinary and fitness to practise procedures, which could result in retraining, suspension, dismissal or barring. The Inquiry was reminded, however, that regulatory

sanctions were in place to protect the public and were not designed to be punitive.

34. There followed discussion about an ethical framework set by the Health and Care Professions Council, along with standards of conduct, performance, education and training. Professionals had to declare that they understood and could adhere to the standards when joining the relevant professional register and every two years on renewal of their registration. This included an understanding of the referrals process for child sexual abuse. The Health and Care Professions Council also had a policy enquiry line for referral responsibilities, which received a high number of calls. However, it was also suggested that the reporting framework was nebulous and complex, and that professionals were unclear on their reporting responsibilities, in particular the threshold beyond which they should report.
35. In response to the earlier suggestion that the introduction of mandatory reporting would undermine the judgement of professionals, one participant suggested that it would in fact reinforce decision-making by making everyone's responsibilities clear. They said mandatory reporting would also increase accountability and grant immunity to mandated reporters who were afraid of whistleblowing repercussions.
36. Participants discussed the apparent variation in the standard of safeguarding at different schools. It was observed that safeguarding might be a higher priority at an organised and well-resourced school than at one that was badly organised or struggling financially. One participant noted that the education system was the largest area of regulated activity and, as a sector, the second largest source of referrals to local authorities after the police.
37. One participant said that a freedom of information request to police forces (to which half the forces in Scotland, England and Wales responded) revealed that 125 people had come to police attention between 2012 and 2017 accused of recent child sexual abuse in boarding schools. Another freedom of information request to local authorities (to which 60 out of 375 local authorities in England and Wales responded) revealed 400 reports of sexual abuse in boarding schools had been made to them in the same period. It was suggested that reporting requirements were unclear and that different approaches were taken by different local authorities. The freedom of information requests to local authorities revealed a disparity between the number of boarding schools in an area and the number of reports of child sexual abuse received by local authorities. For example, a local authority that had 19 boarding schools in its area had received 60 complaints between 2012 and 2017; another that had 20 schools had received only two complaints in the same period.

38. It was suggested that the structure of academies, free schools and independent trusts gave rise to a culture that was not good for child protection. The pressures of reputation and finance also led schools to continue to protect their reputation rather than make information freely available. An example was provided of schools using court orders (which exist to protect the identity of children) to stop the naming of their school when a teacher was convicted of a crime. It was suggested that the Department for Education and Ofsted were unaware of how bad school safeguarding measures could be.
39. One participant said there was a need to talk about 'obligations to resource' as well as obligations to report. A Barnardo's survey showed that 40% of teachers, social workers and police thought that children were waiting too long on waiting lists and experiencing further abuse and neglect as a result of not having access to services.
40. Barnardo's research showed that a third of recorded sexual offences against children in the last year were peer on peer, and that the vast majority of perpetrators of peer-on-peer abuse had experienced chronic neglect, abuse and often sexual abuse themselves. Barnardo's was therefore calling for more resources and training of professionals to be dedicated to recognising harmful sexual behaviour.
41. Participants also discussed the need to train professionals on their obligations and to support people whose work deals with child sexual abuse. Participants agreed that the amount of training on spotting the signs of abuse was increasing, but that this needed continued focus and investment. One participant suggested there should be an accreditation scheme for safeguarding training to standardise the quality in England and Wales, particularly for Local Authority Designated Officers. They also suggested that the language used to describe reporting should be consolidated to ensure clarity and understanding of what was being said.

Session 2: International models of child sexual abuse mandatory reporting

42. In the second session the Inquiry heard how mandatory reporting laws operated in a number of countries outside England and Wales, and about the impact these laws may have had on responding to child sexual abuse. The structure of this session was adjusted on the day because the seminar needed to conclude early. As a result, this session did not take place as set out in the seminar running order.
43. Joan Forner Rovira presented to the Inquiry on the expectations set out in the Lanzarote Convention⁷ in relation to reporting child sexual abuse. The Inquiry heard that Article 12 of the Convention created a requirement on signatory countries to ensure that their national laws did not create obstacles to professionals reporting child sexual abuse, and that countries would also encourage “*any person*” to report knowledge or suspicions of child sexual abuse.
44. Mr Rovira informed the Inquiry that, when drafting the Lanzarote Convention, the Council of Europe initially intended to create a mandatory reporting duty, but the text of the Convention needed to be flexible to allow for the different legal positions in member countries. The Council decided that implementation of the Convention was a matter for individual countries and did not provide guidance on thresholds or definitions. However, it did provide advice on best practice – for example, that reports of child sexual abuse should be made to organisations equipped to assess the risk to the child, sufficient resources should be dedicated to training professionals to detect child sexual abuse and countries should have clear rules and procedures regarding reporting. Mr Rovira stated that the Lanzarote Convention had found that when there was mandatory reporting a larger number of cases are reported.
45. The position in Ireland was presented by Joseph Mooney, who said that the need for mandatory reporting had arisen from a number of inquiries and reports of institutional, familial, state and clerical abuse of children in Ireland that had highlighted a culture of non-reporting and continuing abuse. Dr Mooney said that mandatory reporting was introduced by the Children First Act 2015 partly as a result of the findings of an inquiry into the Diocese of Cloyne in County Cork, which found that, despite the existing obligations on professionals, reports were still not being made.
46. The duty commenced in December 2017 and mandated a wide range of professionals to report known, believed or suspected cases of child sexual abuse (either where the abuse had already taken place or where there was a risk of it taking place in the future) to the Child and Family Agency.

⁷ The Lanzarote Convention is also called the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and requires signatory countries to criminalise all kinds of sexual offences against children.

Mandated professionals included health and social care; organised sports and religion; teachers; law enforcement; and managers of language schools, domestic violence shelters and accommodation for asylum seekers and those who were homeless. The duty also required mandated reporters to continue to co-operate with child protection assessments that took place as a result of their initial report.

47. Dr Mooney said that sexual activity with a 15 to 17-year-old child, where the other party was no more than two years older and there were no issues regarding capacity to consent or a relationship of power over the younger party, was exempt from the mandatory reporting duty.
48. The Child and Family Agency developed a suite of documents and online training to assist mandated professionals in their reporting duty, and introduced designated points of contact in each jurisdiction to provide advice and clarification. Dr Mooney said that failures to report were dealt with through organisations' own internal disciplinary procedures and there were no legal consequences of not reporting.
49. The Inquiry was told that Ireland had seen an increase in reporting since the introduction of the mandatory reporting duty in December 2017, with 892 mandated reports received by the Child and Family Agency in January 2018 and 1237 in May 2018. However, he noted that the impact was difficult to estimate

at such an early stage. Dr Mooney also suggested there was more contact with child protection services by agencies and professionals seeking information and clarification regarding their reporting responsibilities and the thresholds for reporting.

50. Since the introduction of mandatory reporting in Ireland, professionals have had multiple legal responsibilities to report offences against children – both to the police, under the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012, and to child protection services, under the Children First Act. Therefore, the Inquiry was advised that countries seeking to adopt mandatory reporting should conduct a review of their current legal and policy obligations to avoid duplication and multiple obligations to report.
51. Emmanuelle Wachenheim informed the Inquiry that everyone in France was subject to mandatory reporting of child sexual abuse. The French Penal Code imposed a legal responsibility on all citizens to prevent child sexual abuse and to report it to the administrative or judicial authorities. Failure to prevent a “*crime or an offence against the bodily integrity of a person*” was punishable by up to five years' imprisonment and a fine of €75,000 (approximately £65,000). When the victim was under 15 years old, penalties increased to seven years' imprisonment and a fine of €100,000 (approximately £87,000). Similarly, failure

to report child sexual abuse was punishable by three years' imprisonment and a fine of €45,000 (approximately £39,000), which increased to five years' imprisonment and a fine of €75,000 (approximately £65,000) when the victim of the crime was under 15 years old. The Inquiry heard that there were 88 convictions for failing to report "*mistreatments, deprivations, sexual assaults or abuse committed against a minor*" in 2016.

52. All state employees – for example, judges, teachers and some doctors – were also under a legal obligation to report to the district prosecutor knowledge of child sexual abuse that they had gained as part of their professional duties.
53. Certain groups of professionals were also under a civil obligation to report child sexual abuse, and French law contained provision for those groups to be able to share information which would in other circumstances be kept confidential.
54. The French government had also issued two directives on the subject of protecting children from sexual abuse in the education system. These set out reporting and information-sharing procedures for child sexual abuse, made support and training for professionals compulsory and required all schools to establish a free enquiry line for child abuse.
55. The Inquiry heard that the framework for child and adolescent rights in Canada was based on the United Nations Convention on the Rights of the Child, to which the

UK was also a signatory. Christine Wekerle told the Inquiry that the Convention tasks signatory countries with ensuring specific protections for children and specifically mentions child sexual abuse.

56. Dr Wekerle explained that mandatory reporting laws in Canada varied between provinces and territories, mostly with regard to how a 'child' was defined and who was mandated to report. The range of professionals who were mandated to report included those who worked in healthcare, education or child care, religious officials, lawyers, government employees and police officers. Dr Wekerle told the Inquiry that to address this disparity, Canada was creating the Canadian Children's Charter to introduce a national approach and shared commitment to child protection. She also said that the lack of evidence-based, standardised training for professionals in how to identify and report abuse had proved challenging, but that the World Health Organization and Canada's Public Health Agency had established guidelines for professionals in this area.
57. Dr Wekerle focused on mandatory reporting in Ontario, which she stated was provided for in the Ontario Child, Youth and Family Services Act 2017. In Ontario, both the public and professionals were mandated to immediately report reasonable suspicions that a child (up to the age of 16) had been, or was at risk of being, sexually abused to the Children's Aid Society, or to the police if there was immediate danger.

The law imposed an ongoing duty on the mandated reporter to report any additional information they received. There was no sanction on members of the public who failed to report, but professionals were liable for a fine of up to \$5000 (approximately £3000).

58. The Inquiry heard that, similar to Ireland, Canada also had a 'close in age' exception rule, where sexual activity between a child of 14 or 15 years (i.e. up to two years below the age of consent) and another person who was less than five years older was not required to be reported.
59. Liana Buchanan, Commissioner for Children and Young People in Victoria, explained that the reform of the child protection framework in Australia was a result of the findings of inquiries that organisations had failed to prevent child abuse by their workers or their volunteers, and failed to act when suspicions or allegations were raised, allowing the abuse to continue.
60. Ms Buchanan explained that the failure of organisations to report abuse could have been due to active concealment and prioritisation of organisational reputation above the needs of children, a lack of understanding or awareness of child sexual abuse or no systems and processes to ensure allegations were treated correctly.
61. Ms Buchanan described the three forms of mandatory reporting in Victoria and said that failure to comply with any of these

duties was a criminal offence. First, all adults were mandated to report the sexual abuse of a child under 16 years old to the police "*unless they [had] a reasonable excuse*" that did not include "*consideration of the interests of the alleged perpetrator or the organisation in which abuse [had] occurred*". Failure to report was punishable by up to three years' imprisonment. Second, certain professionals (including teachers, doctors, nurses and police) were required to report to child protection services when they believed a child had suffered, or was likely to suffer, sexual abuse. Failure to report was punishable by a fine. Third, the heads of certain organisations with responsibility for children (for example, schools, out-of-home care providers, health and disability services, and religious organisations) were mandated to report any child abuse or neglect that had been perpetrated by their workers or volunteers (including that which took place outside the organisation) to the Commission for Children and Young People within three days. This was known as the Reportable Conduct Scheme and a failure to report was punishable by a fine.

62. Ms Buchanan reported that since the introduction of the Reportable Conduct Scheme, a variation in responses to allegations had come to light. However, the Commission's intervention had led to significant improvement in the way organisations dealt with child sexual abuse.

Future work

63. This seminar has given the Inquiry valuable insight into the existing obligations to report child sexual abuse in England and Wales and into the experiences of other countries where mandatory reporting legislation exists. Valuable discussions were held on the adequacy of existing duties and the impact of the introduction of mandatory reporting abroad.
64. This seminar formed part of the Inquiry's wider consideration of the important issue of mandatory reporting of child sexual abuse. A further seminar will be held in April 2019, at which the Inquiry will consider the arguments for and against the introduction of mandatory reporting legislation in England and Wales and the practical considerations involved in introducing such a law.
65. The Inquiry will also consider experiences of reporting as shared by victims and survivors through the Truth Project and will ask the Victims and Survivors Forum for their views.