



HM Government

# Reporting and acting on child abuse and neglect

Government consultation: Supporting annexes



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## ANNEX A: The legal framework and key principles

1. The legislative framework for the child protection system in England is provided largely by **the Children Act 1989** (the 1989 Act) and **the Children Act 2004** (the 2004 Act).
2. One of the fundamental principles of the 1989 Act is that children are best looked after within their families, with their parents playing a full part in their lives, unless compulsory intervention in family life is necessary. Under the framework set by the 1989 Act, parents should be encouraged to exercise their responsibility for their child's welfare in a constructive way. Where compulsory intervention in the family is necessary it should, where possible, support rather than undermine the parental role. The 1989 Act places a strong emphasis on the local authority working in partnership with parents when undertaking their statutory functions.
3. The legislation sets out the overarching responsibility of local authorities for safeguarding and promoting the welfare of all children under 18 in their area. This includes specific duties in relation to 'children in need' or children suffering, or likely to suffer significant harm, regardless of where they are found, under sections 17 and 47 of the 1989 Act.
4. Other local agencies, including the police and health service, also have safeguarding statutory duties, particularly under the 2004 Act. These include:
  - **Section 10**, which requires each local authority to make arrangements to promote cooperation between the authority, each of the authority's relevant partners and such other persons or bodies working with children in the local authority's area as the authority considers appropriate. The arrangements are to be made with a view to improving the well-being of all children in the authority's area, which includes protection from harm and neglect;
  - **Section 11**, which places duties on a range of organisations and individuals to make arrangements to ensure their functions, and any services that they contract out to others, are discharged having regard to the need to safeguard and promote the welfare of children; and
  - **Section 13**, which requires each local authority to establish a Local Safeguarding Children Board (LSCB) for their area and specifies the organisations and individuals (other than the local authority) that should be represented on LSCBs. Such Boards have a range of roles and statutory functions including developing local safeguarding policy and procedures and scrutinising local arrangements.

### Duty of care

5. The duty of care exists in common law. This means that it is not set out in written statutory law, but is derived from historic judgments made by the courts. The duty of care is a civil (rather than criminal) law concept. It is considered to represent the circumstances/relationship that place an obligation upon an individual or organisation to take proper care to avoid causing some form of foreseeable harm to another individual. An individual may bring a claim in the civil courts against an individual or organisation for breach of a duty of care and be awarded damages for that breach by a court – this is often referred to as a claim for 'negligence'.

6. In order for a claim to be successful:
  - a duty of care must have been owed to the individual bringing the claim;
  - that duty must have been breached;
  - harm (damage) must have been caused as a result of that breach; and
  - that harm must have been reasonably foreseeable.
7. The courts will also consider whether it is fair, just and reasonable to impose a duty of care. This means that a duty of care will exist for some practitioners/organisations when they are providing a service to children and/or families, in certain circumstances, but not others. This is not consistent across all types of practitioners/organisations and the courts will look at the specific facts of the case when making a decision as to whether a duty of care applies in a particular case.
8. The case law is complex but, for example, a duty of care will not always be considered to be owed by local authorities or social workers investigating allegations of sexual abuse against children. A duty of care may apply in relation to social workers and local authorities where the child in question is a child in care, however. The courts have decided that the police do not generally owe a duty of care to individual members of the public for their activities in the investigation and suppression of crime, although a duty may arise in specific circumstances if the police were aware of particular threats against individual claimants.

## ANNEX B: Examples of different statutory models in relation to reporting and acting on child abuse and neglect

### An organisational duty to report

9. A legal obligation to report any child believed to be at risk of abuse or neglect has been introduced as part of the Social Services and Well-being (Wales) Act 2014, which received Royal Assent on 1 May 2014.
10. In Wales, the organisations within scope of the duty to report children at risk are those under co-operation duties with the local authority and the youth offending team. This covers organisations including other local authorities, the police, the health service and the local probation board.

#### Duty to report children at risk

- (1) If a relevant partner of a local authority has reasonable cause to suspect that a child is a child at risk and appears to be within the authority's area, it must inform the local authority of that fact.
- (2) If the child that the relevant partner has reasonable cause to suspect is a child at risk appears to be within the area of a local authority other than one of which it is a relevant partner, it must inform that other local authority.
- (3) If a local authority has reasonable cause to suspect that a child within its area at any time is a child at risk and is living or proposing to live within the area of another local authority (or a local authority in England), it must inform that other authority.
- (4) In this section, "a child at risk" is a child who—
  - (a) is experiencing or is at risk of abuse, neglect or other kinds of harm, and
  - (b) has needs for care and support (whether or not the authority is meeting any of those needs).
- (5) For the purposes of this section a relevant partner of a local authority is—
  - (a) a person who is a relevant partner of the local authority for the purposes of section 162;
  - (b) a youth offending team for an area any part of which falls within the area of the authority.
- (6) For provision about a local authority's duty to investigate children at risk, see section 47 of the Children Act 1989.

### A 'regulated activities' duty to report

11. This model would apply a mandatory reporting duty to those engaging in 'regulated activity' in relation to children, as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (the **SVGA 2006**).

12. ‘Regulated activity’ is work that a barred person must not do. In relation to children this includes:

- a) teaching, training, instructing, caring for (see below) or supervising children if the person is unsupervised, or providing advice or guidance on well-being, or driving a vehicle only for children;
- b) work for a limited range of establishments (known as ‘specified places’, such as schools, children’s homes and childcare premises), with the opportunity for contact with children, but not including work done by supervised volunteers;

Work under (a) or (b) is ‘regulated activity’ only if done regularly.<sup>1</sup> Some activities are always ‘regulated activities’, regardless of their frequency or whether they are supervised or not. This includes relevant personal care, or health care provided by or provided under the supervision of a health care professional.<sup>2</sup>

13. A duty based on those engaging in ‘regulated activity’ would aim to focus directly on those who have close and potentially unsupervised contact with children, and who are likely to be well placed to spot signs and warning indicators of abuse and neglect. However, it would present some practical complications due to the definition of who is included in ‘regulated activity’. For example, an individual undertaking teaching activities or child care activities is not considered to be providing ‘regulated activity’ if he/she is supervised, unless they are doing this in certain specified establishments such as schools, in which case they will be ‘regulated activity’ unless they are volunteers.

14. Whether activities are regulated or not can also depend on how frequently such activities are undertaken. The SVGA 2006 provides that the type of work referred to at (a) or (b) above will be regulated activity if “it is carried out frequently by the same person” or if “the period condition is satisfied”. Although frequency is not defined in law, guidance states that activities are regulated if they take place once a week or more often. In addition, there is a period condition which defines whether activity is regulated or not. The period condition is considered to be satisfied where regulated activity is undertaken on more than 3 days in a 30 day period; for the purposes of the work referred to at (a), apart from driving a vehicle only for children, where it is carried out between 2am and 6am and this gives the person the opportunity for face to face contact with children. These conditions may mean that some practitioners who are well placed to spot signs of abuse (e.g. police officers and housing officers) may not be captured by the reporting duty. Some may argue that a duty based on this model would not go far enough to protect children.

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<sup>1</sup> The SVGA 2006 provides that the type of work referred to at (a) or (b) will be regulated activity if “it is carried out frequently by the same person” or if “the period condition is satisfied”. Paragraph 10 of Schedule 4 to this Act says the period condition is satisfied if the person carrying out the activity does so at any time on more than three days in any period of 30 days and, for the purposes of the work referred to at (a), apart from driving a vehicle only for children, it is also satisfied if it is done at any time between 2am and 6am and it gives the person the opportunity to have face to face contact with children. “Frequently” is not defined in the Act, but the Guidance Regulated Activity in relation to Children: scope describes “frequently” as doing something once a week or more.

<sup>2</sup> Personal care includes helping a child, for reasons of age, illness or disability, with eating or drinking, or in connection with toileting, washing, bathing and dressing. Health care means care for children provided by, or under the direction or supervision of a regulated health care professional.

## A ‘regulated professionals’ duty to report

15. This model specifically defines the groups of professionals that would be in scope of the reporting duty. It is the model used for the FGM mandatory reporting system, which was introduced into the Female Genital Mutilation Act 2003 through the Serious Crime Act 2015.

### Duty to notify police of female genital mutilation

- (1) A person who works in a regulated profession in England and Wales must make a notification under this section (an “FGM notification”) if, in the course of his or her work in the profession, the person discovers that an act of female genital mutilation appears to have been carried out on a girl who is aged under 18.
- (2) For the purposes of this section—
  - (a) a person works in a “regulated profession” if the person is—
    - (i) a healthcare professional,
    - (ii) a teacher, or
    - (iii) a social care worker in Wales;
  - (b) a person “discovers” that an act of female genital mutilation appears to have been carried out on a girl in either of the following two cases.
- (3) The first case is where the girl informs the person that an act of female genital mutilation (however described) has been carried out on her.
- (4) The second case is where—
  - (a) the person observes physical signs on the girl appearing to show that an act of female genital mutilation has been carried out on her, and
  - (b) the person has no reason to believe that the act was, or was part of, a surgical operation within section 1(2)(a) or (b).
- (5) An FGM notification—
  - (a) is to be made to the chief officer of police for the area in which the girl resides;
  - (b) must identify the girl and explain why the notification is made;
  - (c) must be made before the end of one month from the time when the person making the notification first discovers that an act of female genital mutilation appears to have been carried out on the girl;
  - (d) may be made orally or in writing.
- (6) The duty of a person working in a particular regulated profession to make an FGM notification does not apply if the person has reason to believe that another person working in that profession has previously made an FGM notification in connection with the same act of female genital mutilation.  
For this purpose, all persons falling within subsection (2)(a)(i) are to be treated as working in the same regulated profession.

- (7) A disclosure made in an FGM notification does not breach—
  - (a) any obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of information.
- (8) The Secretary of State may by regulations amend this section for the purpose of adding, removing or otherwise altering the descriptions of persons regarded as working in a “regulated profession” for the purposes of this section.
- (9) The power to make regulations under this section—
  - (a) is exercisable by statutory instrument;
  - (b) includes power to make consequential, transitional, transitory or saving provision.
- (10) A statutory instrument containing regulations under this section is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (11) In this section—
  - “act of female genital mutilation” means an act of a kind mentioned in section 1(1);
  - “healthcare professional” means a person registered with any of the regulatory bodies mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (bodies within remit of the Professional Standards Authority for Health and Social Care);
  - “registered”, in relation to a regulatory body, means registered in a register that the body maintains by virtue of any enactment;
  - “social care worker” means a person registered in a register maintained by the Care Council for Wales under section 56 of the Care Standards Act 2000;
  - “teacher” means—
    - (a) in relation to England, a person within section 141A(1) of the Education Act 2002 (persons employed or engaged to carry out teaching work at schools and other institutions in England);
    - (b) in relation to Wales, a person who falls within a category listed in the table in paragraph 1 of Schedule 2 to the Education (Wales) Act 2014 (anaw 5) (categories of registration for purposes of Part 2 of that Act) or any other person employed or engaged as a teacher at a school (within the meaning of the Education Act 1996) in Wales.
- (12) For the purposes of the definition of “healthcare professional”, the following provisions of section 25 of the National Health Service Reform and Health Care Professions Act 2002 are to be ignored—
  - (a) paragraph (g) of subsection (3);
  - (b) subsection (3A).

## A ‘closed institution’ model

16. A duty based on this model would apply to abuse within a defined setting, or abuse that takes place where a child is in the care of such a setting, whether by someone employed by the setting or who otherwise has access to children.
17. The definition of a ‘closed institution’ could be very broad. Institutions could be closed in the psychological sense (e.g. identified through organisational denial or defensive behaviour) or in the physical structural sense (such as a boarding school or a children’s home). A range of such ‘closed institutions’ could be covered by such a duty including, in addition to the examples above, hospitals, care homes, young offender institutions and other custodial settings.
18. The rationale for introducing this type of model focuses on high profile cases such as child abuse carried out by Jimmy Savile and child abuse at Stanbridge Earls School where there seems to have been a perceived conflict of interest between reputational damage to the institution or the individual’s place within it (e.g. staff fearing loss of employment if they report), and protection of the child. The nature of these institutions could be argued to cause professionals within to ‘close ranks’ and take a defensive approach when allegations of abuse are made. It could be argued that it is in these circumstances that failures to report child abuse and neglect are most likely to occur.
19. While these sorts of closed environments are clearly toxic for vulnerable children, it is difficult to argue that the conflict of interest issue represents the totality of the issue of not reporting and acting on child abuse. The variety of failings that have been exposed over recent years show that these failings can occur due to a number of individual, organisational and contextual reasons.
20. This model also poses difficulties due to its potential scope. Keeping the definition of ‘institution’ broad would mean that a huge number of organisations would be covered (e.g. extending to all churches, sports and voluntary establishments). Narrowing the definition (e.g. to cover residential care settings only) increases the risk of creating national inconsistencies in the way child abuse is handled.

## Organisational and individual level measures – wilful neglect

21. The *Tackling child sexual exploitation* report tied consideration of imposing sanctions for failure to take action on abuse or neglect where it is a professional responsibility to do so to a possible extension to the wilful neglect offences. The wilful neglect offences were introduced through sections 20 to 25 of the Criminal Justice and Courts Act 2015.<sup>3</sup> The offences were designed to help prevent failures in administering direct care in institutional settings, for example in Mid Staffordshire. They apply in relation to both the care of adults and children in healthcare settings, but to adults only in social care.
22. While it would be technically possible to extend this offence as outlined in the *Tackling child sexual exploitation* report, the Government's view is that doing so may present technical difficulties. These include:
- That the current definition of 'care worker' (see definition below), i.e. to whom the offence applies, would be too narrow for it to be used in for child abuse and neglect purposes. For example, in order for a teacher or a police officer to be caught by the 'care worker' offence it would be necessary to define them as a care worker for the purposes of that offence. It would also be questionable whether, even if teachers or police officers were so defined, they would be caught by the offence given that it relates to the care of individuals. It would be difficult to show that a teacher ill-treated or wilfully neglected an individual child (as opposed to turning a blind eye to failures more generally);
  - Similarly, for the 'care provider' (see definition below) offence to apply as we would need it to in order to use the wilful neglect offences for child abuse and neglect purposes, it would involve defining organisations like police forces or schools as care providers; and
  - That the offence would be unlikely to capture the alleged behaviours in Rotherham and therefore would not act as an effective deterrent. A simple extension to the wilful neglect offences would not necessarily criminalise failing to act on information a practitioner held about current abuse. For example it is unlikely that a doctor, even though they are currently covered by the offence in relation to children in healthcare settings, would be guilty of wilful neglect if that doctor provided the required standard of healthcare to the child but did not disclose that the child had likely (or definitely) been abused.
23. Extending this offence therefore involves stretching it beyond its original purpose, which could have unintended consequences. Given these complexities, we decided, instead, to design a bespoke measure focussed on taking appropriate action in relation to child abuse and neglect, as reflected in the consultation document.
24. The wilful neglect offences nevertheless are a useful illustration of a statutory measure with both individual level and organisational level aspects. There are offences both in relation to care workers "an individual who has the care of another individual by virtue of being a care worker" and care providers "a body corporate or unincorporated association which provides or arranges for the provision of health care (other than excluded health care) or adult social care, or an individual who provides such care and employs or otherwise makes arrangements with other persons to assist in providing that care".
25. While the wilful neglect provisions are framed as criminal offences, the same principle – i.e. a statutory measure with both individual and organisational elements – could be used to construct a statutory duty, with or without an associated criminal offence.

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<sup>3</sup> <http://www.legislation.gov.uk/ukpga/2015/2/contents>

## ANNEX C: Existing and possible future sanctions

### Existing sanctions

26. In some instances, the actions of those working with children may fall so far below the standards expected that it may amount to misconduct. In certain cases criminal sanctions might also apply. The sanctions currently available in such cases – which are generally distinct from practice failings, where learning for the future can be identified and systems improved – are outlined below.

### For individuals

#### Disciplinary sanctions

27. All employers are able to take disciplinary action in the case of misconduct. Employers should have written disciplinary rules and procedures to deal with employee performance and conduct, of which staff must be made aware. These rules should follow the Acas (Advisory, Conciliation and Arbitration Service) code of practice on disciplinary and grievance procedures,<sup>4</sup> which provides practical guidance to employers, employees and their representatives and sets out principles for handling disciplinary situations in the workplace. In addition, many of the practitioners working with children are professionally regulated. In cases of misconduct, regulatory bodies such as the General Medical Council for doctors, the Health and Care Professions Council for social workers and the National College of Teaching and Leadership for teachers can take disciplinary action.
28. These disciplinary processes are designed to be rigorous, with decision making panels which are trained and practiced in making assessments about whether or not it is appropriate to sanction the professional in question. Police officer Standards of Professional Behaviour, for example, are set out in law.<sup>5</sup> Failure to meet these standards can lead to disciplinary, or in the worst cases criminal, action. There are many serving and former police officers subject to ongoing investigations as a result of past child abuse investigation failings.
29. However, many practitioners working with children or in related roles are not professionally regulated, for example teaching assistants. Professional regulatory processes do not apply to such practitioners.

#### Barring

30. Any practitioner engaging in regulated activity<sup>6</sup> relating to children can be barred from engaging in such work if they have received certain criminal convictions or cautions or there are other concerns about their suitability to work with children and/or vulnerable adults. If an individual is convicted of certain serious criminal offences they will also be barred, regardless of whether they are engaging in regulated activity or whether they are likely to do so in the future. Such concerns might arise when, for example, an individual has harmed a child in the past or presents a future risk of harm to a child.

<sup>4</sup> See: <https://www.gov.uk/taking-disciplinary-action/overview>

<sup>5</sup> Schedule Two, Police (Conduct) Regulations, 2012

<sup>6</sup> Section 5(1) and Part 1 of Schedule 4 to The Safeguarding Vulnerable Groups Act 2006.

31. An organisation must make a referral to the Disclosure and Barring Service (DBS) if it removes an individual (paid worker or unpaid volunteer) from regulated activity (or would or might have, had the person not left first) because the person has been convicted or cautioned of certain criminal offences, has engaged in relevant conduct (e.g. which has harmed a child or vulnerable adult, or poses a risk of harm to children or vulnerable adults), or has satisfied the harm test (e.g. there has been no conduct but the individual may harm a child or pose a risk of harm). The DBS will decide whether that individual should be barred from working with children. It is an offence to fail to make a referral without good reason.

### **Criminal sanctions**

32. Criminal sanctions are available for some types of malpractice, although there is no single criminal sanction which could be used in cases of failures more generally to protect a child. Examples of current relevant criminal offences include:

- A new police corruption offence came into force on 13 April 2015 (section 26 of the Criminal Justice and Courts Act 2015). This makes it an offence for a police officer to exercise the powers and privileges of a constable in a way which is corrupt or otherwise improper. This offence could be applied if an officer knew a suspect did not commit a crime but hid that knowledge because they have a relationship with the guilty party; and
- the ‘concealment’ offence under section 5 of the Criminal Law Act 1967, which makes it an offence for any person to conceal an arrestable offence, which might include the sexual assault of a child, for example, where they have accepted money or some other form of compensation for doing so.

33. There is also a common law offence of misconduct in public office. This means that the offence is not set out in an Act of Parliament. The offence is confined to those who are public office holders and is committed when the office holder acts (or fails to act) in a way that constitutes a breach of the duties of that office. This could be used in relation to an individual within scope who failed to act to stop or prevent child abuse in the course of their work and exposes the relevant organisation to a potential judicial review and both the office and individual to a civil claim for damages.

34. It is not clear however which ‘public office holders’ are covered by this offence. There is particular ambiguity around whether teachers, doctors or social workers would be included and, if they are, exactly what type of failure to report or act on child abuse or neglect might amount to this offence.

35. The Law Commission is consulting on whether the existing offence of misconduct in public office should be abolished, retained, restated or amended. For more details please access the Law Commission consultation at <http://www.lawcom.gov.uk/project/misconduct-in-public-office/>.

## For organisations

36. The Secretary of State may intervene using legal powers if satisfied that a “best value local authority” – which includes local councils in England – has failed to comply with its ‘best value’ duty.<sup>7</sup> Such an intervention may take a variety of forms (e.g. the appointment of Commissioners to exercise some or all functions). The Secretary of State may also intervene using legal powers where a local authority is failing to perform children’s services functions to an adequate standard.<sup>8</sup> This intervention could include a range of activity to help turn around the performance of the local authority, including the possibility that responsibility for the running of child protection services is removed from the local authority.
37. In addition, the Secretary of State has legal powers to direct a Police and Crime Commissioner (PCC) to take action where a police force or a PCC is failing to carry out its functions effectively.<sup>9</sup> This intervention is on a case-by-case basis, and is considered as a last resort when all other options have failed.

## Possible future sanctions

38. The sanctions available for breaching either of the new duties under consideration will depend, in part, on whether a new duty is applied to individuals, organisations or both (see part D of the consultation).
39. The following tiers of sanction could be made available, but not all of these will be applicable to both individuals and organisations.

	For individuals	For organisations
Tier 1	Practitioner specific	Organisation specific
Tier 2	DBS referral	N/A
Tier 3		Criminal

<sup>7</sup> See sections 1, 3 and 15 of the Local Government Act 1999

<sup>8</sup> Section 497A of the Education Act 1996 and section 50 of the Children Act 2004

<sup>9</sup> Sections 40 and 40A of the Police Act 1996 (as amended by section 91 of the Police Reform and Social Responsibility Act 2011)

## Tier one: Practitioner/organisation specific

40. Sanctions under tier one could apply to individual practitioners, organisations, or to both. This includes sanctions available to employers in relation to their employees and, in some cases, sanctions that may be available for some practitioners through professional regulatory bodies. For organisations, it covers inspection, regulation and intervention regimes. **These sanctions are not new and would be delivered via mechanisms that are already in place.**

### Individual practitioners

41. For practitioners, this tier covers sanctions that would be applied by the practitioner's employer and/or their professional regulatory body. Sanctions may vary depending on the individual practitioner role, including whether the practitioner is subject to professional regulation (e.g. teachers, social workers, the police) or not (e.g. teaching assistants, childminders). The FGM mandatory reporting duty (see annex B) applies to practitioners that are professionally regulated, and is an example of a duty that uses practitioner specific sanctions (via professional regulators).
42. Common to all practitioners that may be the subject of a new statutory measure (with the exception of single person businesses, such as childminders), is the ability of employers to take disciplinary action in the case of misconduct. This is covered in the existing sanctions section above.
43. The sanction applied would depend on the specifics of each case. In the case of a first time, accidental failure to report under a mandatory reporting duty, a verbal or written warning might be appropriate. A more serious failure, including deliberate, wilful or reckless failure to act to stop or prevent child abuse or neglect, would amount to gross misconduct. In such cases dismissal may be appropriate.
44. Practitioners who are professionally regulated will also be subject to sanction by their professional regulatory body. The process and sanctions available to professional regulators vary by sector but they could include periods of re-training and supervision, or suspension. In the very worst cases, practitioners could face being 'struck off' the professional register, meaning that the practitioner would be unable to work in their chosen profession, for any employer.

### Organisational

45. Employer organisations cannot be subject to the same sort of disciplinary sanctions as described above. Organisations are, though, regulated and inspected, and in some cases subject to intervention by the Secretary of State (see above). These existing organisational level regulatory and inspection systems would remain available, and they could identify specific failures relating to either of the potential new duties under consideration. In some cases, for example in relation to registered childminders and for organisations providing health and care services regulated by the Care Quality Commission, sanctions are available directly through the inspection and regulation system, with the possibility of deregistration if requirements are not met. In other cases, e.g. for local authorities, sanctions would be available through the use of non-statutory or statutory intervention powers by the Secretary of State. The Welsh mandatory reporting duty (see annex C) is an example of a duty that relies on these existing organisational level sanctions.

### Tier one sanctions: benefits and risks

The benefits of this option include:

- Uses existing, well understood disciplinary and regulatory processes. Failures under one of the new duties would be treated in the same way as other similar individual or organisational level failures;
- At an individual practitioner level, some employer sanctions could be applied relatively quickly; and
- The potential negative impact in relation to recruitment and retention of practitioners would be minimised.

The risks of this option include:

- There is considerable variability in disciplinary and regulatory procedures across different sectors. This could result in a large degree of inconsistency in the sanctions imposed on different practitioners and organisations;
- Relying on sanctions administered at the discretion of individual organisations without independent checks and balances may lead to failures not being appropriately addressed.
- The process for professional regulators and inspection and intervention could be quite lengthy;
- Individual level sanctions imposed by one regulator may have no bearing if an individual moves to work in another sector; and
- These sanctions might not be seen to be sufficiently punitive, meaning that the perceived benefits of either new duty may be reduced.

### Tier two: Cross-sector disciplinary

46. **This tier cannot apply to organisations.** It would involve using the Disclosure and Barring Service (DBS) to administer sanctions in addition to those that are already currently available to an employer or professional regulator.
47. A requirement would be placed on employers to make a report to the DBS where practitioners had failed to report or failed to act, with an indication of the severity of the breach. Depending on the DBS assessment, additional sanctions could be imposed on individual practitioners. This might, for example, involve placing an individual on a list held by DBS of those who had breached one of the possible new duties.
48. If the same individual breaches the duty again, additional sanctions could be applied by the DBS including issuing an order recommending retraining for the individual or for that the individual to be supervised for a period of time. In extremely serious cases, a failure to report or act could lead to a DBS assessment which could result in an individual practitioner being 'barred' by the DBS. The 'bar' could apply in relation to the specific range of activities that might be made subject to a mandatory reporting duty or to a duty to act (see part D of the consultation) and/or to regulated activity under the SVGA 2006. This would mean that practitioners subject to such a sanction would be unable to work in activities within scope of one of the new measures or 'regulated activity' for a set period of time. This could have a severe and lasting impact on an individual's career. The decision to temporarily bar a practitioner would not be taken lightly. In reaching a decision the DBS would consider criteria such as actual or likely risk to vulnerable persons and the proportionality of barring. It would also be subject to existing appeal arrangements.

49. This option would be a significant expansion of the role of the DBS, and would require changes to primary legislation.

### Tier two sanctions: benefits and risks

The benefits of this option include:

- Employer and regulator disciplinary procedures can vary greatly. Using DBS sanctions would give greater consistency in approach;
- This option could be seen to offer a much stronger deterrent than is available currently; and
- Maintaining DBS records in addition to those held by the employer/regulator allows for the sanction to be portable across employers and employment sectors.

The risks of this option include:

- A notice on a practitioner's DBS certificate, even if temporary, may be regarded by practitioners as overly punitive, with potential wider repercussions for their career. This could have a negative impact in terms of recruitment and retention of practitioners;
- A large volume of cases could overload the DBS system, potentially diverting resources from more high risk assessments and barring decisions;
- Although this option would offer greater consistency in approach, it would not necessarily lead to a fairer outcome for all those subject to a new statutory measure. For example, some of the roles outlined in Part D of the consultation document (e.g. middle management or senior roles in local authorities) may not necessarily be engaging in regulated activity. A DBS bar from such activity would potentially be less serious for these individuals than for practitioners themselves; and
- The DBS process could be lengthy and take some time to complete, and practitioners could be unable to practice until it was concluded.

## Tier three: Criminal offences

50. The criminal tier would involve the creation of specific criminal liability for a breach of either of the possible new additional statutory measures, with sanctions imposed by a court. The consultation seeks views about whether criminal sanctions should be available instead of, or in addition to, the options outlined above.

### Individual practitioner

51. The criminal sanctions for practitioners could vary in their severity. At the bottom end of the range a fine could be imposed, while the top end would involve imprisonment. A combination of a fine and imprisonment could be made available. A court would have discretion to impose a sentence commensurate with the severity of the offence and which takes into account the personal circumstances of the individual. If criminal sanctions are deemed appropriate, the Government will consider the severity of the sanction in light of existing related offences.

### Organisational

52. An organisation could be made criminally liable for failures in relation to a mandatory reporting duty or a duty to act. This might be appropriate if a practitioner working in an organisation within scope breached one of these duties, and this was due, in part or in its entirety, to the way in which the organisation organises or manages its activities. Sanctions could include unlimited fines, remedial orders and publicity orders.

53. Remedial orders and publicity orders are sanctions which can only be imposed by a court.

A **remedial order** would require an organisation to take action to put right the organisational failings that led to a breach of either of the new duties. This could include addressing failures in the organisation's policies, systems or practices.

54. A **publicity order** would require an organisation to publicise the fact that it had been found guilty of breaching one of the possible new duties and details about the offence. This might be done by publishing a notice in newspapers or on the organisation's website.

55. An organisation could also be criminally liable without a specific corporate criminal offence through offences targeted at individuals. Criminal acts by certain very senior officers within organisations will not only be offences for which they can be prosecuted as individuals, but also offences for which the organisation can be prosecuted because of their status within it. In these circumstances (i.e. where there is no specific organisational level offence), the only sanction available for the organisation would be a fine.

### Tier three sanctions: benefits and risks

The benefits of this option include:

- Court decisions on sanctions would mean greater consistency and fairness across sectors; and
- A criminal sanction would provide a strong penalty and make clear that a breach of either duty would be considered to be extremely serious.

The risks of this option include:

- A criminal sanction could be seen as overly punitive and could have a negative impact in terms of recruitment and retention of practitioners;
- A criminal standard of proof is a high bar. It is not likely that there would be many cases that would meet this standard; and
- The court process could take quite some time, meaning that sanctions would not be delivered swiftly. At an individual level, this is likely to mean that practitioners would be taken out of the workforce while their case is pending.

## ANNEX D: Summary of the evidence on the effectiveness of mandatory reporting in addressing child abuse and neglect

This section provides a broad overview of evidence on the effectiveness of mandatory reporting schemes for tackling child abuse and neglect. In compiling this evidence, three main research questions were explored:

- What different models for mandatory reporting of child abuse and/or corresponding sanction for failure to report are in place internationally?
- What have the effects of mandatory reporting been on outcomes for children? Are outcomes improved by mandatory reporting regimes?
- What attributes might contribute to the utility of mandatory reporting models?

To answer these questions, a search of the literature was undertaken, using key academic databases. The purpose of this was not to carry out a systematic review but to give an overview of the literature on this subject. The summary considers papers published in the last ten years (2005 to 2015), whilst a review published by the National Society for the Prevention of Cruelty to Children (NSPCC, 2007) was used to summarise the research prior to the search period. While the conclusions of the NSPCC review were not taken at face value, the review formed the research context for the present overview. A summary of the methodology is set out at the end of this Annex, and a more detailed description is available on request.

The study of outcomes from mandatory reporting is a complex area of research, with no academic consensus on whether mandatory reporting contributes positively to child protection or not. It is therefore not possible to firmly recommend or advise against the introduction of mandatory reporting of child abuse on the basis of the available evidence.

### Different models for mandatory reporting

#### Summary:

- **Reporting child abuse is mandatory for selected professionals in many jurisdictions internationally, including states in the USA, Canada, Australia and Europe.**
- **Many jurisdictions have sanctions for non-reporting (including misdemeanour charges, fines, and imprisonment).**
- **The implementation of mandatory reporting differs between jurisdictions, sometimes quite considerably.**

While there is a diverse range of contexts for mandatory reporting, it is possible to define key overarching elements of mandatory reporting systems. According to the available literature, such models of mandatory reporting may vary according to:

1. **The types and extent of maltreatment** people are mandated to report – for example, physical abuse, sexual abuse, or both.
2. **The thresholds for reporting** – for example, the degree of harm caused by the abuse; the degree of suspicion the reporter must have; whether the abuse has to have already occurred, or perceived risk of harm is also included.

3. **Who is mandated to report** – ranging from all citizens in all Canadian provinces and a significant minority of US states, to specific professions. The choice of who is mandated seems to be based not only on who has regular contact with children, but also on who may be sensitive to particular indicators of abuse (particularly health professionals).
4. **Where the reports have to be sent** – for example, the police, child protection services, head/manager of the professional's institution/organisation.
5. **What the penalties are for not reporting**, and whether there is immunity from liability and confidentiality.<sup>10</sup> While most mandatory reporting laws have penalties for knowingly failing to report, prosecutions for this are very rare. This may be in part due to a focus on encouraging reporting rather than policing it.<sup>11</sup> It is also very difficult to prove that someone knew something that they did not report.

Most international models for mandatory reporting can be categorised according to these criteria. A matrix of a selection of such systems using this typology, with some additional criteria to provide further detail, is included in Table 1 at the end of this Annex.

Although such categorisation can be useful to broadly conceptualise mandatory reporting, care should be taken in generalising features of reporting systems across cultural/legal/organisational contexts. Models of mandatory reporting might best be understood alongside a jurisdiction's overall approach to child protection.<sup>12</sup> The additional context of the overall policy approach may help explain why particular jurisdictions have mandatory reporting while others do not, as well as differences in practical implementation between jurisdictions with mandatory reporting systems.

For example, some approaches are best conceptualised as family/child welfare oriented, with services provided to families to strengthen bonds and improve home life. Abuse is seen as part of a wider pattern of problematic relationships and behaviours. Areas with this type of system that have mandatory reporting include Denmark, Finland and Sweden; while Belgium, Germany and The Netherlands are examples of countries with similar systems but no mandatory reporting.

Other types of approaches can broadly be conceptualised as child protection oriented, where abuse is seen as an aberrant behaviour that needs to be identified and acted upon. Particular families are identified as a 'problem' and then monitored.<sup>13</sup> This is the type of system that would best describe that in England. Other examples include Canada, USA and Australia.

There is, however, decreasing differentiation between systems as investigative systems seek to become more family support oriented and welfare centric systems implement greater regulation and process.<sup>14</sup> As such, various Canadian, Australian and American jurisdictions are increasingly opting for an approach known as differential response, which allows for different types of response to be made to reports of child abuse or neglect based on an assessment of individual family situations and underlying needs.<sup>15</sup>

Mandatory reporting tends to be more prevalent in investigative systems, which focus on identifying abnormal behaviours rather than necessarily working systematically with families to improve home life. It is also helpful to note that Canada, the USA and Australia are likely to be

<sup>10</sup> Mathews (2015) in B. Mathews & D.C. Bross (eds)

<sup>11</sup> Mathews (2014b)

<sup>12</sup> Centre for Social Research and Evaluation (2012).

<sup>13</sup> Buckley and Buckley (2015) in B. Mathews & D.C. Bross (eds)

<sup>14</sup> Gilbert (2012)

<sup>15</sup> This is not an exhaustive account of child protective services systems but is intended to serve as a basis for considering mandatory reporting in the context of different approaches to child protection.

more reliable indicators of the potential effects of mandatory reporting in England than European countries, due to the greater similarities in approach to child protection.

## Effects of mandatory reporting

### Summary:

- **There is no academic consensus concerning the effects of mandatory reporting on child safety outcomes.**
- **We therefore cannot make firm conclusions about whether such schemes improve, worsen, or have no affect on child safeguarding outcomes.**

A major weakness of the available research is that little attempt is made to measure the introduction of mandatory reporting against the existing organisational context. While mandatory reporting per se may not exist in jurisdictions, there may be other features of child protection systems that encourage reporting – for example, cultural norms, professional guidance, and/or potential misconduct hearings if reporting does not occur. Hence, simply comparing areas where mandatory systems are in place to those where they are not (as published studies have done) may not provide a reliable picture of the impact of mandatory reporting itself.<sup>16</sup> In England the current framework is summarised in *Working Together to Safeguard Children (Working Together)*, and this is set out in Part A of the main consultation document.

Box 1 summarises methodological issues around measuring the effects of mandatory reporting. It highlights that the effects of mandatory reporting can be measured in terms of impact on child safety (although there are severe limitations to the available outcome measures) and impact on child protection systems/processes.

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<sup>16</sup> Instead, studies should look in a more nuanced way at the systems of child care in place, and the behaviours and expectations of professionals working within them.

### **Box 1: Measuring the effects of mandatory reporting**

#### **Issues**

It is challenging to measure the effectiveness of mandatory reporting for improving child safety, primarily due to the difficulty of producing a counter-factual against which to compare jurisdictions with mandatory reporting (and hence gauge its impact). For example, issues include:

- Change over time (alone) is not enough to show the effect of the introduction of mandatory reporting. There are likely to be many factors affecting child safety that may change over the period when mandatory reporting is introduced (awareness of abuse amongst practitioners, for example). Not least, what the pre existing frameworks and practices were prior to the introduction of mandatory reporting.
- Comparing jurisdictions with and without mandatory reporting is difficult, as there are few comparable child safety outcomes between jurisdictions (especially those that are recorded over a long time period). For example, the presence or absence of child abuse may be defined in different ways according to the jurisdiction, and potentially according to the time period (for example due to legal or cultural changes).<sup>17</sup>

#### **Measures / outcomes**

The second bullet above highlights the difficulty of defining reliable outcome measures to assess the impact of mandatory reporting. Child mortality has been used as a child safety outcome which is directly comparable between jurisdictions and recorded reasonably consistently over time. However, there are severe limitations to this measure – for example, (1) the relatively low numbers experienced in most jurisdictions make it difficult to discern any clear trends in mortality statistics; and (2) it is not sensitive to all aspects of abuse (for example where abuse does not end in a child's death).

The effect of mandatory reporting is sometimes measured in terms of impact on child protection systems. However, this does not constitute a direct measure of child safety and there are various limitations to the conclusions that can be drawn. Process measures used include:

- **Number of reports;**
- **Reporting rates** – number of abuse cases actually reported/notified, relative to the total number that could be reported;
- **Investigation rates** – rate of the reported cases subsequently investigated;
- **Substantiation rates** – rate at which reports are actually substantiated as cases of abuse; and
- **Impacts (deterrent or incentivising) on children reporting their concerns** – when they know there is mandatory reporting.

#### **Child safety outcomes**

Limitations with the available research, as noted above, mean that no firm conclusions can be drawn about any potential effects (positive, negative, or no impact) of mandatory reporting on child safety outcomes.

In terms of what has been published, in both the NSPCC review and the current overview, no evaluations were identified that isolate the impacts of mandatory reporting on outcomes for children. To plug that gap, the NSPCC report drew comparisons between child abuse-related

<sup>17</sup> Mathews (2012), in M. Freeman (ed).

mortality in countries with and without mandatory reporting. Whilst acknowledging the limitations of this measure, no correlation was found between countries with lower rates of child-abuse related deaths and those with mandatory reporting legislation.<sup>18</sup> However, given the limitations with the research it is difficult to interpret this finding – it could be, for example, that mortality would have increased without mandatory reporting in the countries that introduced it, so a ‘no change’ finding may actually be very positive. Looking at trends in child abuse related deaths (CARD) in England and Wales, these compare favourably to those of other major developed countries (MDC), many of whom have mandatory reporting laws.<sup>19</sup>

Overall, the literature seems to show that “there remains some question about the efficacy of reporting laws in achieving their ultimate goal: protecting children from harm”.<sup>20</sup> In the absence of clear data showing a positive impact, ethical concerns and issues highlighted by process-orientated studies have led to an ambivalent view of mandatory reporting. It should again be noted, however, that the strength of evidence does not firmly support either a positive or a negative view of mandatory reporting in addressing child abuse and neglect.

### **Process outcomes**

While there is a lack of evidence around the effects of mandatory reporting generally, in terms of impact on both child safety and child protection systems, the research on process outcomes is more developed. In considering this, it is important to consider what frameworks were in existence prior to the introduction to mandatory reporting. For example, if there had been little or no established mechanism for reporting, mandatory reporting would have a greater effect than if the previous framework included robust established reporting practices.

Various studies have put forward data on process outcomes (such as those outlined in Box 1) as evidence either for or against the effectiveness of mandatory reporting regimes. However, while informative, this does not form conclusive evidence as to whether mandatory reporting serves to better protect children from harm. This is further highlighted by the lack of consensus on the conclusions drawn.

There is some evidence that mandatory reporting may increase the volume of reports of abuse (i.e. the number of notifications made to child protection agencies by reporters).<sup>21</sup> Examples include:

- Notifications almost doubling from 140,000 reports in 2001/02 to 270,000 in 2005/06 across all Australian States and Territories, as many extended the scope of their mandatory reporting legislation and practices.<sup>22</sup>
- Reports to Child Safety increasing from 40,000 in 2002/3 to 114,500 in 2011/12 in Queensland, Australia.<sup>23</sup>
- Increased notifications in Saudi Arabia following mandatory reporting.<sup>24</sup>

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<sup>18</sup> NSPCC (2007).

<sup>19</sup> Pritchard and Williams (2010).

<sup>20</sup> Kapoor and Zonana (2010).

<sup>21</sup> This is consistent with findings from other literature reviews on mandatory reporting of child abuse (e.g. NSPCC, 2007; Centre for Social Research and Evaluation, 2012). However, it should be noted that the link to mandatory reporting itself has not conclusively been made.

<sup>22</sup> Australian Institute of Health and Welfare (2007).

<sup>23</sup> Queensland Child Protection Commission of Inquiry (2013)

<sup>24</sup> Al Eisa and Almuneef (2010). Given the lack of jurisdictional similarities between Saudi Arabia and the UK, the ability to generalise these findings to an English setting are limited.

This pattern of apparent increases has led to changes being made in mandatory reporting systems post-introduction. In New South Wales and Queensland (Australia), for example, the threshold for reporting child maltreatment was raised from ‘risk of harm’ to ‘risk of significant harm’ to reduce the number of reports.<sup>25</sup>

The impact of this apparent increase is debated in the literature (i.e. whether it is positive<sup>26</sup> or negative<sup>27</sup>). While the number of reports may go up, which would seem to be beneficial, this may overwhelm child protection services. If, as the case in New South Wales and Queensland, in order to cope with the influx of reports the threshold of abuse reported and / or investigated is raised, then the system overall is arguably desensitised.<sup>28</sup> Critics of mandatory reporting also associate an increase in the number of reports with smaller proportions being investigated and or substantiated, and some reports being ‘false’ or ‘unnecessary’. Findings include:

- A small proportion (17.8% in the USA in 2014<sup>29</sup>, 26% in Canada in 2008<sup>30</sup>) of investigated reports being substantiated.
- A comparatively small increase in investigations and substantiated cases in Victoria, Australia (following full implementation of mandatory reporting) compared to marked increases in reports.<sup>31</sup>
- A decline in the number and proportion of reports resulting in action in Queensland, Australia between 2004/05 and 2011/12, accompanied by a steep rise in reports, with only 22% of reports resulting in any follow-up action in 2011/12.<sup>32</sup>
- Lower substantiation rates in New South Wales, Australia, which has mandatory reporting legislation, than in Western Australia, which at the time did not (21% compared with 44%, 1999 to 2000).<sup>33</sup>

However, there is a lack of agreement as to whether substantiation rates serve as a good indicator of the success or failure of mandatory reporting. In some instances it has been concluded that unsubstantiated reports divert resources away from areas of need.<sup>34</sup> Some argue for the paring back of mandatory reporting laws, with the emphasis and investment of resources instead being on early detection, prevention or diversion, rather than overburdening child protection.<sup>35</sup> Other evidence shows unsubstantiated cases often receive a follow-up response from child protective services in many cases as part of preventative efforts<sup>36</sup>. This is likely to vary greatly by jurisdiction and the way child protective services are structured following a report. Furthermore, whilst it is suggested that substantiation rates may fall following the introduction of mandatory reporting, a number of jurisdictions have noted an increase in the actual volume of both substantiated and

<sup>25</sup> Centre for Social Research and Evaluation (2012); Carmody (2013)

<sup>26</sup> Drake and Johnson-Reid (2007); Mathews (2015) in B. Mathews & D.C. Bross (eds)

<sup>27</sup> Ainsworth and Hansen (2006), Melton (2005).

<sup>28</sup> Raising the threshold of abuse to be reported under a mandatory approach need not necessarily desensitise a child protection system – abuse cases that are under the threshold can still be reported / investigated under mandatory reporting legislation. However, in practice, these ‘below-threshold’ cases may be seen to be lower priority.

<sup>29</sup> US Department of Health and Human Services (2016).

<sup>30</sup> Lefebvre *et al.* (2012)

<sup>31</sup> Centre for Social Research and Evaluation (2012).

<sup>32</sup> Carmody (2013).

<sup>33</sup> Ainsworth (2002).

<sup>34</sup> Carmody (2013).

<sup>35</sup> Cummins *et al.* (2012); Carmody (2013).

<sup>36</sup> Child Welfare Information Gateway (2012).

unsubstantiated referrals, as well as comparison between mandated and non-mandated jurisdictions pointing to a higher level of substantiated reports in those with mandatory reporting.<sup>37</sup>

It should also be noted again that the link between mandatory reporting and increased reporting is not conclusive. There is some debate as to whether large increases in reporting can be attributed to the implementation of mandatory reporting, as trends do not seem to mirror legislation.<sup>38</sup> Technical issues with the research mean that it is not possible to say that any apparent changes were due to mandatory reporting alone. Other factors (such as increased awareness of child abuse as a result of work around new mandatory reporting laws, for example) may be responsible for any changes. This may be supported by the following:

- Exceptions to the rule – in Cyprus, the introduction of mandatory reporting did not lead to increased reporting – possibly due to gaps in the policy, poor planning on behalf of the law services and lack of coordination and communication between the services involved.<sup>39</sup>
- Unexplained increases in reports of abuse – a marked increase in notifications was seen in Victoria, Australia *regardless* of whether the reporter was mandated or not.<sup>40</sup> Data in the USA shows the volume of reports only began to increase dramatically 10 years after mandatory reporting was introduced and have tailed off in the last decade.<sup>41</sup>
- Questionable stability of the trend – older evidence from Victoria, Australia<sup>42</sup> and also Canada<sup>43</sup> shows that the initial increases in reporting associated with the introduction of mandatory reporting can tail off.
- Under-reporting is argued to still be more of a problem than over-reporting – over-reporting has been shown to be relatively rare with professionals (e.g. teachers) using their discretion to not report suspected child abuse, whilst under-reporting is argued to be a continuing problem.<sup>44</sup>

There is also evidence that certain ethnic minorities and socioeconomic classes are over-represented in child protection systems (for example in Australia, Aboriginal children are often over-represented at all stages of the child protection systems<sup>45</sup> and data from the USA shows African-American children are more likely to be reported about than non-African-American children<sup>46</sup>). It is argued that mandatory reporting in systems where such inequalities exist serves to ‘accentuate overrepresentation for groups that already experience substantial inequality and disadvantage’.<sup>47</sup>

In addition to studies of the number, substantiation and potential inequality of reports, some limited research has also suggested a potential deterrent effect of mandatory reporting on the willingness of children and young people to report abuse they have experienced.<sup>48</sup> However, these are self-report studies asking about a hypothetical scenario so the conclusions that can confidently be

<sup>37</sup> Mathews (2008); Mathews (2015). 2014a).

<sup>38</sup> Drake and Johnson-Reid (2015). In B. Mathews and D.C. Bross (eds)

<sup>39</sup> Panayiotopoulos (2011).

<sup>40</sup> Centre for Social Research and Evaluation (2012).

<sup>41</sup> Drake and Johnson-Reid (2015) in B. Mathews and D.C. Bross (eds)

<sup>42</sup> Centre for Social Research and Evaluation (2012).

<sup>43</sup> Harries and Clare (2002).

<sup>44</sup> Webster *et al* (2005).

<sup>45</sup> Queensland Child Protection Commission of Inquiry (2013), Protecting Victoria's Vulnerable Children Inquiry (2012)

<sup>46</sup> Flaherty *et al.* (2008) – using data from the Child Abuse Reporting Experience Study

<sup>47</sup> Lonne (2015) in B. Mathews and D.C. Bross (eds) p.250.

<sup>48</sup> Lawson and Niven (2015), Sandor and Bondy (1995).

made are limited. No studies have analysed actual differences in children disclosing abuse to professionals who are mandated to report.

## Efficacy of different models of mandatory reporting

### Summary:

- Limitations in the evidence base on the effectiveness of mandatory reporting in general prohibit an assessment of the relative efficacy of different models.<sup>49</sup>
- This, along with context differences between models (as highlighted above), makes it difficult to recommend one model over another. There is limited evidence on process outcomes that we can use to highlight elements of models that may be expected to deliver greater benefits.<sup>50</sup>

### Who should report

This varies between jurisdictions from any person (Alberta, Canada) to a professions working with children (for example Western Australia) (see also Table 1).

There are consistent accounts that mandated reporters are more likely to have their notifications substantiated than non-mandated reporters.<sup>51</sup> This may be because professional reports (comprising most mandated reporters) may be more detailed and / or systematic than non-professional reports.

Some studies have attempted to examine the effects of universal reporting, which mandates all adults to report. However, findings from studies in the US are mixed. These include:

- No significant effects found for universal reporting on referral rates, percentage of referrals accepted for investigation, the screened in report rate and substantiation rates.<sup>52</sup>
- Significantly higher rates of total and confirmed reports for counties in US states mandating all adults to report after controlling for several demographic factors associated with child maltreatment. For different child maltreatment types, universal reporting was only associated with higher rates of confirmed neglect (not other child maltreatment types). This study therefore concludes that although more additional reports may be made for more serious maltreatment types such as sexual and physical abuse where universal reporting is in place, this may not necessarily lead to more maltreatment cases being identified for such abuse.<sup>53</sup>

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<sup>49</sup> The NSPCC (2007) report does not address this question directly.

<sup>50</sup> A review by the Centre for Research and Evaluation (2012) for the New Zealand government examines these issues and optimum conditions for mandatory reporting that it identifies has been used to frame this section. These include: identifying, sourcing and combining multiple sources of information to recognise an accumulation of risk factors for children; enhancing collaboration and communication; enhancing collaboration and communication; ensuring the continuum of services for child welfare includes a broad range of community-based, interagency services to support families and promote the wellbeing of children; addressing workload issues through differentiated responses at tiers of a system; ensuring data used for mandatory reporting is comparable and valid; addressing negative attitudes to mandated reporting of child abuse and neglect; and addressing training.

<sup>51</sup> Sinanan (2011); McDaniel (2006); Suge-Castillo (2009).

<sup>52</sup> Steen and Duran (2014) – using multiple linear regression analysis from a sample of 44 US states).

<sup>53</sup> Palusci and Vandervort (2014) – using county level data from the US National Child Abuse and Neglect Data System in linear regression model.

Some studies argue that certain professional groups should be exempt from reporting (for example lawyers) due to particular ethical/moral/professional dilemmas.<sup>54</sup> In most jurisdictions with mandatory reporting, the legal professional privilege is upheld, meaning solicitor-client communication is not subject to mandatory reporting requirements (see Table 1 for examples). It has also been argued that giving some groups discretion on whether to report may actually increase the number of reports.<sup>55</sup>

The available literature does not focus on mandatory reporting in specific settings or institutions (for example care homes, hospitals, etc.), tending to look instead at particular professional groups. Where particular groups are mandated to report, these tend to be professionals that have a lot of day-to-day contact with children (for example teachers<sup>56</sup>).

### **Encouraging reporting**

A substantial issue for mandatory reporting systems is reducing under-reporting, with under-reporting persisting despite legislation. For example, US research suggests that, nationally, 40% of mandated professionals will fail to do so at some point in their careers and 6% will consistently not report.<sup>57</sup> However, as set out previously, sanctions against those failing to report are rare.

Several studies focus on reasons for under-reporting, including: fear of invading privacy; inadequate training; lack of knowledge and recognition of child abuse; vague and complex legislation; frustration with child protection services when reports are not investigated; previous negative experiences dealing with child protective services or courts; misunderstanding of the role of child protective services; fear of physical or legal reprisal; fear of having to testify in court; lack of access to expert advice; reluctance to report some types of abuse (for example sexual and physical abuse maybe more likely to be reported than emotional abuse or neglect); uncertainty about the child's history; and the potential loss of the relationship with the child and family subsequent to making a report.<sup>58</sup>

Particular areas affecting likelihood of reporting include:

#### **i) Negative culture / attitudes**

While putting in place legislation for mandatory reporting of child abuse might arguably affect attitudes towards child abuse, research has shown that not all practitioners support mandatory reporting. Across disciplinary boundaries, research has indicated that mandated reporters may not have faith in child protection services, experience practical difficulties with reporting (including ensuring own anonymity), and, ultimately, may not believe that reporting abuse will help the child.<sup>59</sup> Conversely, positive attitudes to mandatory reporting have been associated with increased likelihood of reporting.<sup>60</sup>

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<sup>54</sup> Lockie (2006).

<sup>55</sup> For example, Kearney (2007).

<sup>56</sup> For example, Centre for Social Research and Evaluation (2012).

<sup>57</sup> Kenny and McEachern (2002), cited in Sinanan (2011).

<sup>58</sup> Stein and Nofzinger (2008); Strozier *et al.* (2005); Tonmy *et al.* (2010); Pietrantonio *et al.* (2013); Theodore and Runyan (2006); Talsma *et al.* (2015).

<sup>59</sup> Fraser *et al.* (2010); Bryant and Baldwin (2010); Mallén, 2011.

<sup>60</sup> Fraser *et al.* (2010).

## ***ii) Ethical considerations***

Many professional groups (for example nurses, dentists, psychiatrists, lawyers, and teachers) have been mandated reporters. However, the mandatory duty to report can place them in an ethical dilemma depending on their roles, particularly with regard to confidentiality.<sup>61</sup> This has continued to be debated in the literature across professional domains,<sup>62</sup> although the moral obligation to report sexual abuse has been seen in many jurisdictions (for example in the USA) to trump confidentiality concerns.<sup>63</sup> Nevertheless, ethical dilemmas persist. Difficulties have been identified in balancing autonomy, the need to do good by others (beneficence), avoiding harm to others (nonmaleficence), and justice. Mandatory reporting of child abuse has been seen to be unpopular because it concerns a situation where it may not be possible to 'do no harm'.<sup>64</sup> In this context, clear professional guidance may encourage adherence to reporting legislation.

## ***iii) Clarity of legislation***

The clarity of mandatory reporting legislation potentially affects levels of reporting as well as the quality of the reports. Mandated professionals have expressed preferences for mandatory reporting models where legislation is clear and unambiguous.<sup>65</sup> Where this is not the case, reporting levels and quality of reports may suffer. Several commentators have examined how mandated reporters apply particular aspects of the reporting requirements, suggesting that there may be a lack of consistency as a result of uncertainties around the legislation. For example, in parts of the USA a 'reasonable suspicion' test is applied to gauge whether or not to report abuse, but this has been interpreted in a variety of different ways.<sup>66</sup>

## ***iv) Training / awareness***

The perceived clarity of legislation may also be affected through training packages and awareness-raising programmes. Mandated professionals have expressed preferences for mandatory reporting models where training is offered.<sup>67</sup> Lack of confidence in the ability to identify child abuse and neglect (and knowledge about how to do so) and also to respond appropriately to suspicions of it has been seen as a barrier to reporting.<sup>68</sup> Elsewhere it has been suggested that confidence in the ability to identify child abuse is likely to positively affect likelihood of reporting.<sup>69</sup> Training may therefore be of benefit in addressing this. An important consideration for developing effective training may be how to tailor it for particular professional groups. Different groups of mandated reporters may have diverse training needs, depending on their role, levels and type of contact with children, and organisational environment. For example, Australian teachers have been shown to prefer training on mandatory reporting that includes: a focus on the aftermath of the reporting and experiences of the reporting process; looks at specific, practical issues with reporting (and getting a report investigated); and highlights the teacher's role in reporting.<sup>70</sup>

<sup>61</sup> Leung *et al.*, (2011). This is also an issue for the clergy, concerning the clergy-penitent privilege (Goldenberg, 2013; Parkinson, 2015).

<sup>62</sup> For example, Anderson *et al.* (2007); Dixon and Dixon (2006); Hall (2006); Leetch and Woodridge (2013); Katner and Brown (2012); Kapoor and Zonana, (2010).

<sup>63</sup> For example, Kearney (2007).

<sup>64</sup> Feng *et al.* (2012).

<sup>65</sup> Mathews *et al.* (2008); Cukovic-Bagic *et al.* (2013).

<sup>66</sup> Levi and Brown (2005); Levi and Crowell, (2011); Levi *et al.*, (2006).

<sup>67</sup> Mathews *et al.* (2008); Cukovic-Bagic *et al.* (2013).

<sup>68</sup> Goldman (2007); Eisbach and Driessnack (2010).

<sup>69</sup> Schweitzer *et al.* (2006).

<sup>70</sup> Goldman and Grimbeek (2014); Bryant and Baldwin (2010).

## Conclusion

While it was possible to identify and describe different models for mandatory reporting, there is no academic consensus as to whether mandatory reporting improves child protection. Some evidence has been put forward about the process outcomes of mandatory reporting, but there has been no empirical evaluation of mandatory reporting carried out in any jurisdiction implementing it.

As well as difficulties with outcome measures, other limitations with the evidence available include; uncertain reliability of comparisons; failure to control for other influential factors; and failure to take account of the context of child protection policy prior to the introduction of mandatory reporting. There are often issues with data collection across jurisdictions in the same country, and over time within a jurisdiction, that limit the conclusions that can be drawn about outcomes relating to mandatory reporting.<sup>71</sup>

In addition, studies in other jurisdictions have varying degrees of pertinence to England. Even those considered fairly similar (Canada, USA and Australia) are likely to have differences in their child protection systems that mean not all findings can be easily generalised. Where there are fewer parallels to be drawn (for example with Saudi Arabia), while findings are interesting, they may have less relevance to the situation in England.

Therefore, no firm conclusions can be drawn about any potential effects (positive, negative, or no impact) of mandatory reporting on child safety outcomes, or about which particular mandatory reporting systems may be more effective than others.

Systems can be defined in terms of types of maltreatment people are mandated to report; thresholds for reporting; who is mandated to report; and, where the reports have to be sent. They should also be understood in the context of overall child protection policy – for example, family/child oriented (focusing on supporting good family relations) or child abuse oriented (focusing on identifying abuse). However, the literature does not provide any strong evidence of particular aspects of mandatory reporting models being linked to effectiveness. Rather, it has been suggested that mandatory reporting systems and child protection referral pathways need to work in tandem to be successful.<sup>72</sup>

While the evidence is not able to support a causal relationship, there is some indicative evidence that mandatory reporting may increase the numbers of submitted reports without resulting in high substantiation rates. It is unclear whether this should be seen as a success or a failure of mandatory reporting, predominately due to the difficulty of proving that cases of abuse went undetected due to an influx of reports. The literature also disagrees about the importance of substantiation rates as an indicator, whether mandatory reporting causes large increases in reporting, and whether this would be positive or negative.<sup>73</sup>

Nevertheless, mandatory reporting may still be linked to increases in the overall number of cases of abuse that child protection services are aware of. In making a decision about whether to support mandatory reporting, it may be important to consider the existing child protection system and its capacity to deal with increased numbers of reports if this was to occur.

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<sup>71</sup> Mathews (2012), in M. Freeman (ed).

<sup>72</sup> Bromfield (2015) in B. Mathews & D.C. Gross (eds).

<sup>73</sup> Drake and Johnson-Reid (2015), in B. Mathews & D.C. Gross (eds)

Even with mandatory reporting of suspected abuse in place, international experience suggests that professionals may still under-report. The literature highlights barriers to reporting, including:

- Previous bad experiences with engaging child protection services and beliefs that reporting will not have a positive impact.
- Ethical dilemmas to reporting (such as ensuring confidentiality).
- Lack of training, and lack of confidence in reporting abuse and knowledge about abuse.

While addressing these barriers to reporting may serve to improve outcomes in mandatory reporting regimes, there are no studies that assess the impact of doing so. It should also be noted that these issues, and any potential benefits from overcoming them, are not limited to mandatory reporting systems.

## Search methodology

The literature search was intentionally limited to research published between 2005 and 2015<sup>74</sup> in English. Where it was possible to specify in the databases' search engines, searches were also limited to health / medicine, criminology, sociology, legal or social work journals. However, systematic review repositories (the Campbell Collaboration and the Cochrane Library) were also used.

Search terms used were<sup>75</sup>:

- i. Mandatory AND Reporting AND Child AND Abuse AND (Model OR Framework)
- ii. Mandatory AND Reporting AND Child AND Abuse AND (Offence OR Sanction)
- iii. Mandatory AND Reporting AND Child AND Abuse AND (Effect OR Evidence OR Evaluation OR Study)
- iv. Mandatory AND Reporting AND Child AND (Neglect OR Maltreatment OR Ill-treatment)

The results of the search were refined by relevance. Studies reported in peer reviewed academic journals were preferred to Government policy papers but research published by other Governments was included. These were supplemented with papers summarised in the NSPCC (2007) review.

No attempt was made to sift further based on level/robustness of evidence, or to conduct meta-analysis to assess findings from a range of studies. This was because: (1) findings from a range of methodologies were wanted (not just quasi-experimental); (2) few papers were found on the effects of mandatory reporting; and (3) the quality of the quasi-experimental studies was quite low. As an indication of research quality, the search found no quasi-experimental studies above two on the Maryland scale (Sherman *et al.*, 1997). Where results of particular studies have limitations, this is noted.

Further details of the search methodology are available on request.

This overview of the literature on mandatory reporting of child abuse and neglect has been independently peer reviewed.

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<sup>74</sup> Some papers identified through "snowball" (i.e. in references of reports) were outside of the time-frame for the search (2005 to 2015), but have been included to illustrate particular points made in the review.

<sup>75</sup> The current review did not use the search terms "maltreatment" or "neglect" as although their inclusion may have increased the number of papers found, they were seen to deviate from the focus of the research.

**Table 1: Selected examples of mandatory reporting models<sup>76</sup>**

State / Province and relevant act	Types of maltreatment covered <sup>77</sup>	Threshold for reporting	Perpetrator has to be...	Those mandated to report	Reports made to whom	Threshold level of risk	Obligation to investigate	Sanction	Immunity to civil or criminal liability	Privileged communication	Reporter's identity <sup>78</sup>
<b>Alberta <i>Child, Youth and Family Enhancement Act 2000</i></b>	Neglect Physical Abuse Sexual Abuse Emotional Abuse Abandonment	Requires the reporter to have reasonable and provable grounds Report should be made immediately	Guardian of the child who is unwilling or unable to protect the child from abuse	Any person	Unclear – those designated as a director by the Minister but likely a director of children's services	Child is currently endangered	Yes unless believed to be unfounded	Fine of up to \$2000 for failure to report	Immune as long as report is not malicious or without reasonable and provable grounds	Solicitor-Client reports are privileged	Not mentioned
<b>Ontario <i>Children and Family Services act 1990</i></b>	Physical harm Sexual molestation or exploitation – including through pornography Possession of child pornography Emotional harm Neglect – including denial of medical treatment Child behaviour problems Abandonment	Reporter has reasonable grounds to suspect	Parent/guardian or where this person knows or should know of the abuse	Any person though failure to report is only an offence for those with professional duties to children or their directors. Also an ongoing duty to report any further concerns	Agency designated as a Children's aid society	Where child has suffered harm or is likely to suffer harm	Not mentioned	Fine of up to \$50,000 and/or two years imprisonment	Immune as long as report is made in good faith	Solicitor-Client reports are privileged	Identity confidential to child, child's family and suspect of report

<sup>76</sup> Information on these systems was derived directly from the statutes/acts given in the first column, as opposed to through literature search

<sup>77</sup> Note: Definitions of particular types of abuse vary by jurisdiction. Please see acts referenced for definitions

<sup>78</sup> To note: this column refers to protection mentioned in these specific acts. This identity may have other protections in law in certain jurisdictions, for example common law protections

State / Province and relevant act	Types of maltreatment covered <sup>77</sup>	Threshold for reporting	Perpetrator has to be...	Those mandated to report	Reports made to whom	Threshold level of risk	Obligation to investigate	Sanction	Immunity to civil or criminal liability	Privileged communication	Reporter's identity <sup>78</sup>	
<b>Canada</b>	<b>Saskatchewan</b> <i>Child and Family services act 1990</i>	Physical harm Sexual Harm Impairment of emotional/mental functioning Denial of medical treatment Abandonment	Reporter has reasonable grounds to believe	Child's parent or through an omission by the parent	Any person	Those designated as a director or officer by the Minister responsible for child protection	Child has suffered or is likely to suffer harm	Yes unless believed to be unfounded	Fine of up to \$25,000 and/or two years imprisonment	Immune unless report is malicious and without reasonable grounds for belief	Solicitor-Client reports are privileged Crown privilege is retained	Reporter can request that their name is kept confidential
	<b>Quebec</b> <i>Youth Protection Act 1979</i>	Neglect Sexual abuse Physical Abuse Serious behaviour problems Children going missing Psychological abuse Abandonment	Reporter has reasonable grounds to believe Report must be made immediately	Child's parents or where child's parents have failed to act to stop the abuse	Professionals working with children are required to report all forms of abuse, general public required to report sexual and physical abuse	A director of youth protection	Child is in danger or is at serious risk of danger	At director's discretion	Fine of between \$625 and \$5,000	Immune as long as report is in good faith	Advocate reports are privileged	Name can only be revealed with the consent of the reporter

	State / Province and relevant act	Types of maltreatment covered <sup>77</sup>	Threshold for reporting	Perpetrator has to be...	Those mandated to report	Reports made to whom	Threshold level of risk	Obligation to investigate	Sanction	Immunity to civil or criminal liability	Privileged communication	Reporter's identity <sup>78</sup>
Australia	<i>Western Australia Children and Community Services Act 2004 Family Court Act 1997 Approved Education and Care Services Providers Act 2012</i>	Sexual abuse Physical abuse Psychological distress to the child Neglect Sexually transmitted infections	Reporter has reasonable grounds to believe  Report should be made as soon as practicable	Any perpetrator  Court personnel or family counsellors (all)	Doctors, nurses, midwives, teachers and police officers (sexual abuse only)  Professionals providing education and care of children (any incident where medical or emergency services would be required while child is being educated/cared for)	Chief executive officer of department for child protection or person approved by this	All - abuse has happened or is occurring  Court personnel or family counsellors – Abuse is likely to happen	Yes	Doctors, nurses, midwives, teachers and police officers – fine of up to \$6,000  Court personnel or family counsellors – varies depending on whether reporter has reasonable excuse for not reporting. Education or care providers - \$4,000 for an individual failing to report	Court personnel or family counsellors – immune for all reports of abuse. Immune if report is made in good faith with regards to psychological distress or ill-treatment  Not mentioned for others	None mentioned  Not mentioned for court personnel or family counsellors	Doctors, nurses, midwives, teachers and police officers – reporter's identity only disclosable where it is necessary for the investigation  Not mentioned for court personnel or family counsellors

State / Province and relevant act	Types of maltreatment covered <sup>77</sup>	Threshold for reporting	Perpetrator has to be...	Those mandated to report	Reports made to whom	Threshold level of risk	Obligation to investigate	Sanction	Immunity to civil or criminal liability	Privileged communication	Reporter's identity <sup>78</sup>
Australia	New South Wales <i>Children and Young Persons (Care and Protection) Act 1998</i>	Physical Abuse Sexual Abuse Emotional/psychological abuse Neglect including exposure to domestic violence Child was subject of prenatal report and parent did not address concerns raised	Reasonable grounds to suspect and those grounds arise during the course of or from the person's work  Report should be made as soon as practicable  Reporter maintains obligation to protect child	Any perpetrator     	Professionals working with children or directors or their managers     	Secretary of the Department of Family and Community Services     	Child is currently at risk of significant harm     	Yes     	Not mentioned – fine of \$550 for misleading information (5 penalty units)     	Immune from prosecution if the report is in good faith – this also extends to professional disciplinary action as well as criminal and civil     	None mentioned     
	Tasmania <i>Children, Young Persons and Their Families Act 1997</i>	Physical Abuse Sexual Abuse Emotional/psychological abuse Exposure to domestic violence	Reporter has a belief, suspicion, reasonable grounds or knowledge  Report should be made as soon as practicable	Any perpetrator     	Professionals working with children, government agency workers or volunteers, state funded workers or volunteers     	Secretary of the Department of Family and Community Services or a service nominated by the department     	Child is being, has been or is at risk of being abused or would be at risk after birth     	Yes but not if Secretary feels there were no reasonable grounds or the child is already protected     	Fine of 20 penalty units (\$3080) or imprisonment for up to 6 months for failure to report     	Immune as long as report made in good faith     	Legal professional privilege is maintained     
	South Australia <i>Children's Protection Act 1993</i>	Physical Abuse Sexual Abuse Emotional/psychological abuse Neglect	Reporter suspects on reasonable grounds and this comes about as part of the persons work.  Report should be made as soon as practicable	Any perpetrator     	Professionals working with children, government agency workers or volunteers, state funded workers or volunteers, religious ministers.	Department for Child Protection     	The child is being, has been or is likely to be abused or neglected     	Yes but not if Secretary feels there were no reasonable grounds or the child is already protected     	Fine of \$10,000     	Immune as long as the report is in good faith     	Clergy penitent     

	State / Province and relevant act	Types of maltreatment covered <sup>77</sup>	Threshold for reporting	Perpetrator has to be...	Those mandated to report	Reports made to whom	Threshold level of risk	Obligation to investigate	Sanction	Immunity to civil or criminal liability	Privileged communication	Reporter's identity <sup>78</sup>
USA	<i>Idaho</i> <i>Idaho Code § 16-1605</i>	Physical abuse	Reporter has reason to believe	Any perpetrator	Any person	Professionals report to head of institution, who is required to report to authorities.	Child has been abused or is in circumstance which would reasonably result in abuse	Yes	Misdemeanor – up to 6 months imprisonment and/or fine of up to \$1000 Knowingly false reporting punishable by fine of up to \$2,500	Immune as long as in good faith	Lawyer-client, clergy-penitent	Reporter must state name alongside report. But disclosure not addressed in statute <sup>7</sup>
		Sexual abuse										
		Neglect										
USA	<i>California</i> <i>Penal Code § 11165-11167</i>	Emotional abuse	Report should be made within 24 hours									
		Abandonment										
USA	<i>New York</i> <i>Soc. Serv. Law § 413-415</i>	Sexual abuse	Reporter has knowledge or reasonably suspects and this has come about as part of their professional capacity.	Any perpetrator	Extensive variety of professionals working with children. Also includes professionals involved in sports and computer/video technicians	Police or county welfare department	Child has been abused	Yes	Up to 6 months in jail or \$1,000 fine Wilful failure to report or impeding a report punishable by \$5000 fine or 1 year in prison	Immune as long as report is not malicious or knowingly false	Clergy penitent	Identity confidential unless waived by the reporter, ordered to be disclosed by a court but can also be disclosed to prosecutors
		Physical Abuse										
		Neglect										
USA		Abandonment										

State / Province and relevant act	Types of maltreatment covered <sup>77</sup>	Threshold for reporting	Perpetrator has to be...	Those mandated to report	Reports made to whom	Threshold level of risk	Obligation to investigate	Sanction	Immunity to civil or criminal liability	Privileged communication	Reporter's identity <sup>78</sup>
<b>USA</b> <i>Florida Ann. Stat. § 39.201</i>	Physical abuse Sexual abuse Neglect Abandonment Human Trafficking	Reporter knows or has reasonable cause to suspect  Report should be made immediately	Any perpetrator	Any person but health professionals, school workers & police officers required to give name	Child protection department	Child is abused or in need of supervision/care	Yes	Knowingly failing to report or falsely reporting punishable by \$5,000 fine and/or up to 5 years imprisonment	Immune from prosecution as long as report is made in good faith	Court and criminal justice officials are exempt as long as the case is being investigated	Identity confidential unless reporter gives permission
<b>Republic of Ireland</b> <i>Children First Bill 2014</i>	Physical abuse Sexual Abuse Neglect Abandonment	Reporter has reasonable grounds to suspect in the course of their professional capacity.  Report should be made as soon as practicable	Any perpetrator	Health professionals, Education professionals, Criminal justice workers, youth workers, foster carers	Child and Family Services	Child has been harmed or is being harmed or is at risk of harm	Yes	None mentioned but offence of 'Withholding Information on Offences against children' is applicable	Reporter is immune from prosecution if contacted by agency investigating report	Not mentioned	Not mentioned

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