

Peter Wanless
Chief Executive Officer
NSPCC
Weston House
42, Curtain Road
London
EC2A 3NH



12th August 2015

Dear Peter,

Mandate Now and NSPCC meeting 29th June 2015

It was a pleasure to meet you and your colleagues at Gray's Inn. We found it to be helpful to explore our respective understandings and views on this subject of Mandatory Reporting. It appeared to us from a number of comments made by the NSPCC that your collective appreciation of the MandateNow position was incomplete. In order to assist with this I attach our response to your 'Strengthening Duties' paper together with a full copy of the draft Section 43 amendment to the Serious Crimes Bill tabled by Baroness Walmsley. As you know it was withdrawn when the Government ceded a consultation. We are presently in communication with Hansard because part of Lady Walmsley's amendment appears to have been omitted.

We hope that you share our view that a further exchange of ideas between us would lead to a deeper mutual understanding of this admittedly difficult and complex subject, and could lead perhaps to common ground for legislative and other purposes. It must at least be worth exploring where we differ.

Statutory Defences

In an effort to clear away a couple of possible misunderstandings, or perhaps just simply a lack of information on our respective positions, we consider it could be useful to share our thinking a little further where the proposed statutory defences are concerned.

You shared with us that your proposed statutory defence is to show adherence to an approved child protection policy. We expressed the view at the meeting that this would not be adequate.

In our current drafting, we have three proposed statutory defences, which are as follows:

It shall be a defence to show that the Local Authority Designated Officer or that Children's Services or that such other single point of contact with the Local Authority as such Authority may designate for the purpose of reporting

was or were duly informed by any other party during the [10] days referred to at sub-section (2) or had been so informed prior thereto.

A Secretary of State having responsibility for the welfare safety and protection of children and of vulnerable adults may in exceptional cases by a letter or other instrument under his hand (hereinafter referred to as a "Suspension Document") rescind or temporarily suspend the duty referred to at sub-section (1) in the case of any specified child or children or of any specified vulnerable adult or adults concerning whom it appears to him that the welfare safety or the protection of such child or children or of such vulnerable adult or adults would be prejudiced or compromised by the fulfilment of the duty referred to at sub-section (1) and may where it appears to him that the welfare safety and protection of children is furthered thereby exempt any specified entity or organisation and the members thereof that works with children generally in furtherance of their welfare and safety and protection or any specified medical officer from compliance with the duty referred to at sub-section (1) provided always that no allegation is made against such entity or organisation or member thereof or against such medical officer.

It shall be a defence for any person to show that a Secretary of State acting pursuant to sub-section (7) has issued a Suspension Document and it shall be a defence for any person employed by or operating as an entity or organisation that works with children or for any medical officer to show that a Secretary of State has by such Suspension Document whether temporarily or permanently exempted it and its members or any medical officer from compliance with the duty referred to at sub-section (1).

In our current drafting, we also propose the following limitations on the penalties for breaching the duty to report, as follows:

Subject to (i) and (ii) below, a person guilty of an offence under this section is liable

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 3 years or to a fine, or both ;

but so that :

- (i) *No penalty or term of imprisonment shall exceed that actually imposed or exigible on the person whose conduct or behaviour toward children or vulnerable adults has been established as the commission of a criminal offence for the purposes of sub-section (ii) below, and*
- (ii) *No person shall be liable to any penalty greater or other than an absolute discharge or a conditional discharge unless within the period of 5 years of the matter or allegation or suspicion first coming to the knowledge or attention of that person it shall have been established by a Court of Law or by a signed and duly witnessed confession that the conduct or behaviour toward children or vulnerable adults known or suspected for the purposes of sub-section (1) is a criminal offence actually committed by the party suspected thereof on such child or children or vulnerable adult or adults*

We would welcome your observations on the above. We think it answers some of the points raised at the meeting about how exactly the offence of failure to report would operate in practice, and would be glad to know whether you felt able to agree.

Within the S43 amendment you will also see the ten day period we discussed at the meeting relating to the 'catch breath' moment that Laura Hoyano raised and Phil Noyes also discussed. I refer to this in greater detail later in this letter.

Abuse types

We are pleased we concur on the abuse types that should be included in the ambit of MR – sexual, physical, neglect.

Protection of Freedoms Act

Stemming from the Protection of Freedoms Act further weaknesses have been introduced to the DBS system which was already far from robust. Since our meeting yet further issues have been discovered which indicate the government's lack of support for it which is clearly not shared by the Scottish Government's equivalent system.

"Closed" Settings

The MandateNow view is that the NSPCC's restriction of MR to 'closed' settings as you presently define them is flawed. These settings account for only a very small proportion of children cared for by adults on a daily basis, and your proposal adds significant complexity to a framework which already confuses many who are supposed to operate it. This 'framework' was described as 'a thicket' by Sir Roger Singleton in 2009. The coalition government has since introduced changes which delivered significant 'pruning' to guidance, but it is still hard to find people in Regulated Activities who understand it.

There are three key reasons why the NSPCC proposal will be ineffective:

- i. Its limitation to the leadership team which carries real weaknesses and dangers because the far greater majority of staff will remain in the awkward position of being whistleblowers since the statutory duty and protection it provides staff will not apply to them .
- ii. The very small number of settings the proposal addresses.
- iii. MR applying only to alleged abuse which occurs within the setting which introduces yet further complication to the child protection framework.

If the intention of the NSPCC is to ensure the smallest possible increase in referrals to Local Authorities, this will succeed. However, I am not sure this ought to be the NSPCC's objective in light of your important child advocacy role. It will not introduce culture change to child protection and it can have no reliance placed upon it. It is the status quo in new clothes. It won't work.

Organisations excluded from Mandatory Reporting

We agree with the NSPCC about not placing organisations such as Childline under the duty of MR. The drafting of the S43 amendment enabled Regulated Activities that have good reason not to be included, to be suspended from MR by the Secretary of State. See Clause 8:

" (8) It shall be a defence for any person to show that a Secretary of State acting pursuant to sub-section (7) has issued a Suspension Document and it shall be a defence for any person employed by or operating as an entity or organisation that works with children or for any medical officer to show that a Secretary of State has by such Suspension Document whether temporarily or permanently exempted it and its members or any medical officer from compliance with the duty referred to at sub-section (1)."

Childline is in fact in breach of Statutory Guidance on a daily basis for the right reasons. But many Regulated Activities break statutory guidance for the wrong reasons. This demonstrates the inadequacies of the current system that the Department for Education suggests is a credible foundation for child protection.

Professional duty as opposed to statutory obligation

There can be little realistic expectation that 'professional duty' and its enforcement through disciplinary proceedings by professional bodies can have reliance placed upon it, and neither can it deliver culture change. It has for decades been failing in teaching, the church, medicine, and nursing. Stanbridge Earls is an example of this failure in three areas - teaching, healthcare, and trustees of a Regulated Activity. On oath the doctor of the school admitted he had seen three girls a year over an eight year period for unlawful sexual activity at the school – he was the safeguarding lead at the Practice and an 'accredited' safeguarding trainer. Accredited by who is a moot point. During the GMC hearing he

admitted not reporting any of the cases including one in which he treated an underage pupil for vaginal tears. He remains in practice. A former Head from the school has left the teaching profession and therefore cannot be taken to the NCTL. Four nurses are being taken to the Nursing + Midwifery Council for their alleged breach of professional standards and it appears this weak sanction did not influence their actions. Until very recently the Royal College of Nurses was informing its members that mandatory reporting existed, and as most of us who were at the meeting know, the College is wrong.

Reporting abuse occurring outside the setting ("Sentinel" reporting)

The sentinel¹ role of RA staff is very important. Anecdotally these referrals form the largest number of referrals from schools which are in turn the largest Regulated Activity and therefore ideally placed for such an important policing role. Historically the NSPCC has acknowledged and promoted this concept via such schemes as the 'dinner ladies' of the 80's. It is vital that MR includes all pupils (and Regulated Activities) wherever the concern arises. At present the NSPCC proposal excludes children at risk of harm from outside the RA. We can see no reason for this other than to ensure referrals stemming from your proposal are kept to a minimum. The Serious Case Review into the death of Daniel Pelka found that signs of abuse (his bruises including apparent strangulation marks on his neck, his emaciation and constant hunger) were noticed by staff at his school but not passed on to children's services. Two paragraphs out of six of the report's executive summary were devoted to this failure by the school. This is contrary to the understanding stated during the meeting by Alan Wardle (NSPCC Head of Policy) and which apparently informed your MR policy, that the school had reported its concerns. There are very clear reasons why the outcome for Daniel Pelka might have been very different had the matter been referred to the Local Authority.

Delayed reporting

We discussed the 'catch breath' moment relating to Mandatory Reporting by 'Sentinel' reporters within Regulated Activities. The NSPCC and Professor Hoyano expressed a concern about a child possibly entering the criminal justice system ill-prepared. Our position is that the mandated report must be made in accordance with the mandatory requirement as we have defined. Any reporting which is delayed by the Regulated Activity for the 'catch breath' reasoning you expressed, is ill-conceived. We said that we considered that any 'catch breath' moment has to be the responsibility of the Local Authority / Social Services who receive the report from the RA. Staff in Regulated Activities must be given a clear and simple role. Social Services Departments' are equipped with the necessary training, access, authority and inter-agency relations to make informed decisions about the

¹ Sentinel reporter is a member of staff within an organisation performing a Regulated Activity, who holds a concern about the welfare of a child who s/he suspects is being abused somewhere other than Regulated Activity and by someone not connected with the Regulated Activity.

potential involvement of the police and the best interests of the child at risk. Furthermore our MR proposal carries the 10 day period to report as previously mentioned.

Recipients of mandatory reports

In keeping with the proposals on our website – we are keen to see a significantly beefed up ‘triage’ role for the LADO who we wish to see as the first point to contact for all referrals emanating from Regulated Activities. LADOs should be the initial one stop assessors. For Regulated Activities the relationship with the LADO is vital and it is essential that it is maintained and developed. LADOs must be provided with a uniform training programme. This does not presently exist and it leads to variability which is unsatisfactory for RA staff and children. Your position on reporting lines was unclear.

Training in child protection for RAs

On training we provided an initiative in which we believe the NSPCC should be involved. This needs to be a democratic arrangement in which all training companies can be involved. It is a matter of driving up standards, rather than the lacklustre standards that presently exist. As you know Peter, I wrote you about John Cameron's "off-piste excursion" at an Ineque conference ‘Glimpse’ on 17th June. To an audience of people defined as ‘professionals’ he claimed that in his opinion mandatory reporting already does exist. At our meeting Lisa McCrindle, who you informed me by email has led NSPCC’s work on mandatory reporting to this point, claimed there is a ‘statutory duty’ to report concerns of abuse as set down in statutory guidance. As you know she is wrong. So here are two senior executives of the country’s largest child protection charity, the only one that has statutory status, making incorrect statements about the current legal position on perhaps the most important single matter at the heart of the child protection debate. It does also prompt one to speculate about the content of training provided by the NSPCC if such senior people are erring as they are.

Laura Hoyano's individual contributions

The contribution of Laura Hoyano, who was speaking for herself, contained a number of interesting points. Obviously there was a great deal of discussion about whether Regulated Activities as *per* the SVGA as amended by the Protection of Freedoms Act afforded a good practical and workmanlike parameter upon which to ground the offence of failure to report (Professor Hoyano thought not on the ground of its inherent statutory instability, possibly rightly - and also because the statutory complications are now almost Byzantine, *e.g.* the sheer difficulty of working out what the position of psychoanalysts and psychotherapists is) ; the definition of "closed institutions" (as previously mentioned) Professor Hoyano suggests "*any institution with care and control over children*" or similar wording) ; what drives the failure to report ; the functions of "sentinel" reporters and how best to deal with familial abuse which is outwith the ambit of MR ; and the duties resting on and the statutory powers of Social Workers where familial abuse is concerned in the light of their being a reporting agency.

Professor Hoyano's proposal that a report *by anyone* for child protection purposes should attract legal immunity was considered a good idea in principle - but we feel the current Bill would not bear such an addition being made to its legal subject-matter. Mandate Now needs to further consider this proposed extension of immunity to those persons who are not placed under a duty to report or are not envisaged by the current statutory guidance as a person who ought to report.

A number of Professor Hoyano's points concern a wider review and reform of many aspects of child protection legislation and practice rather than the narrower issue of mandatory reporting within Regulated Activities which is the subject of the forthcoming review, the terms of which may be available at the end of August. If, as we speculate, the terms are narrow then Professor Hoyano's contribution will be highly relevant to the academic arm of the Independent Inquiry into Child Sexual Abuse chaired by Justice Goddard, and with which we hope she will be communicating.

Conclusion and future meetings

It was thought by all that the meeting had been useful and the likelihood of another meeting in September was agreed in principle.

Yours Sincerely



Tom Perry

Founder Mandate Now

Cc. (i) Dr. Mike Hartill, (iii) Anne Lawrence, (iii) William Pumfrey, (iv) Jonathan West.

Encls: (i) Mandate Now Response to: NSPCC Policy briefing: 'Strengthening duties on professionals to report child abuse.' (ii) Final draft of S43 amendment – we have recently noticed Hansard seems to have omitted an important section of the amendment. We are seeking an explanation and correction.