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How far is England in the process of introducing a mandatory reporting system?

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MANDATORY REPORTING IN CHILD WELFARE: DEVELOPMENTS IN ENGLAND

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Abstract

This article demonstrates how England is in the process of introducing a mandatory reporting system, not based in the requirement to report child abuse but on the basis of 'a cause for concern' for a child's welfare. It describes Section 12 of the Children Act 2004 which is fundamental to the development and the rationale upon which it is based. The second part of the article summarises the key criticisms that have been made of mandatory reporting systems and discusses how these are likely to apply in the English situation.

Introduction

In many countries the introduction of a mandatory reporting system provided a central pillar in the emergence of new policies and practices in response to concerns about child abuse from the early 1960s onwards. Ever since then such systems have come in for considerable and often heated debate with regard to their effectiveness and efficacy. England has never had such a mandatory reporting system and as a consequence has rarely been involved in these debates. However, the 2004 Children Act has changed this irrevocably. While it received considerable attention in the passage of the Bill in the House of Lords, the implications of these changes for professionals, parents and children have received very little public debate. However, the new mandatory system being introduced in England is far more inclusive and wide-ranging than any other system in the world. Rather than its focus being child abuse and neglect, as in other jurisdictions, the focus here is upon reporting professionals' contact with a child and 'the existence of any cause for concern in relation tohim [the child]'. The purpose of this paper is to consider these developments in England. The first part of this article outlines the new system and explains its rationale while the second part discusses the criticisms levelled at mandatory reporting systems in general and considers how they will apply to the English system. Many of the details of the system are yet to be determined and so much of the discussion will centre on the options being discussed and how they might help or hinder effective service provision.

Part 1 The English system and its rationale

Section 12 Children Act 2004

The mandatory reporting system for England and Wales is set out in Section 12 of the Children Act 2004 that empowers the Secretary of State to establish and operate databases about children. Draft regulations have been issued for consultation and will be put before Parliament for affirmative action early in 2007 (Section 12 is a devolved matter and so the National Assembly for Wales will make its own regulations if they decide to implement the Index). The national database for children will be called the Information Sharing Index (England). Each local authority (150 in total) will be responsible for compiling a database on *all* children in their area. The database will contain the child's name, address, gender and date of birth; a number identifying the child; the name and contact details of any person with parental responsibility or who has care of him/her at any time; and the name and contact details of any educational institution, primary medical services, or any specialist or targeted service which is, or has been, provided to the person by, or on behalf of, a local authority; the name and contact details of a lead professional for that child (if appointed); if Child Benefit is being claimed, the name and address of the claimant. Disclosure of this information is mandatory and regulation 4 provides that it may be made even if a rule of common law might otherwise prohibit or restrict the disclosure or provision of information.

Section 12 also allows for the inclusion of any other information, excluding medical records or other personal records, as the Secretary of State may specify by regulation. For sensitive services (i.e. those relating to sexual health, mental health, and substance abuse) information will only be included on the database with the consent of the parent or young person (Hansard, 26.04.06, Column 43WS). The lack of consent can be overridden in certain circumstances to be specified in future regulations, but will include cases where there are genuine child protection concerns. Access to the contact details of personnel in sensitive services will be restricted to index management teams.

The element with the clearest link to traditional mandatory reporting systems is that ,in addition to the information about services in contact with the child, Section 12 allows for inclusion of ‘information as to the existence of any cause for concern in relation to him [the child]’. The draft regulations amplify this in paragraph 10 under the heading ‘Information to be included in the index’:

10. Where any person or body specified in Schedules 2 or 3 -

(a) considers that he or it has important information to share relating to the person, or

(b) has undertaken an assessment of the person under the system known as the Common Assessment Framework, or

(c) has taken any action relating to the person.

Category (a) involves a degree of professional judgment in deciding what information counts as ‘important’ but the other two categories as worded here appear to have the same mandatory character as the preceding paragraphs on information to be included. This is in keeping with the tenor of the government’s view expressed when the Bill was going through Parliament. When the Bill was being discussed at the Standing Committee stage in the House of Commons on 21 October 2004, the Minister for Children, Margaret Hodge, made it clear that she

> believed entering data into the system should be mandatory, not left to professional discretion:
>
> We should not say to professionals: ‘you can choose whether or not you put onto the information database that you are working with a child’. All professionals need to know that (Hansard col 233 FF).

And similarly in rejecting an amendment allowing professionals discretion in entering information, she said:

> The amendment would cause confusion because it would mean that practitioners would have to think about whether they should enter the fact that they are working with a child onto the database. The practitioner would have to apply a test whether disclosing the information that they were asked to disclose would be detrimental to the child’s welfare. We want to provide practitioners with certainty about using the database, not uncertainty.

A benefit for the government in making entering data on the database mandatory is that it becomes compliant with the Data Protection Act 1998 which allows for information sharing if there is a statutory duty to do so. Whether this strategy is compliant with the Human Rights Act 1998 is a moot point that is likely to be settled through court action.

A ‘cause for concern’ includes concerns about abuse and neglect but such concerns are not treated any differently from other problems in a child’s health and development since the Index cannot contain sensitive case information. Therefore, a social worker seeing an indication flagged against a child will not know the nature of the concern until he or she contacts the professional who entered the indication.

Rationale for Section 12

The genesis of the English mandatory reporting system is radically different from the systems focusing specifically on child abuse and neglect. These had their origins in the USA following the rediscovery of child abuse by Henry Kemp and his colleagues in Denver (Kempe *et al.*, 1962). Model statutes for laws designed to introduce this process were first drafted in the USA in 1963 (US Dept of Health, Education and Welfare, 1963) and every state had passed a child abuse reporting law by 1967 (Hutchison, 1993). Just over ten years later, a similar process took place in Australia. In 1977 New South Wales was the first Australian state to pass comparable legislation and other states have followed, so that all Australian states now have some form of mandatory child abuse reporting laws, all except Western Australia (Ainsworth, 2002). Denmark, Sweden and Finland also have such laws but their role and function is somewhat different to those in the USA and Australia because of the different histories and nature of their respective child welfare systems (Gilbert, 1997).

However, until the 2004 Children Act, England had no mandatory reporting laws and, as Berridge (1997) has noted, seemed to have no significant interest in moving in such a direction. The issue was considered by the Inter-Departmental Review of Child Care Law (DHSS, 1985), but was rejected for several reasons. Principally, it was felt that the structure of health and social services care in England, which was primarily provided by public sector agencies, would render a mandatory system unnecessary because of the built-in channels of communication and the nature of professional accountability. It was also felt that a mandatory approach would have the effect of diminishing individual professional responsibility, for example on the part of doctors or health visitors, by being able to automatically refer suspected problems to the designated statutory agency. The Review also felt that much good work had already been done to enhance interprofessional and interagency communication, which would make the introduction of a mandatory reporting system redundant. As David Berridge has noted (1997), up until the mid 1990s these arguments had never been particularly challenged. While the child protection system introduced in England following the public inquiry into the death of Maria Colwell in 1974 (Secretary of State for Social Services, 1974) had been subject to continual development and detailed refinement, there had never been felt the need to introduce a mandatory reporting system.

Child abuse has not been the main driving force behind Section 12. As one of us has argued elsewhere (Parton, 2006a; 2006b), while the changes were presented by government as being a direct response to the inquiry into the tragic death of Victoria Climbié (Laming, 2003), the changes have a much longer genealogy and are much more concerned with developing policies and practices of early intervention in order to prevent criminal activity, anti-social behaviour, under-achievement at school, and ensuring that all children fulfil their potential than they ever are concerned with responding to child abuse. The introduction of computerised databases, what is now called the Information Sharing Index (ISI), has its roots in debates about the development of an Information Referral and Tracking system (IRT) in 2002 and was signposted in the 2002 Spending Review in the chapter entitled 'Children at Risk' (HM Treasury, 2002). Such a system was seen to play a role in identifying the early risk factors that might make children and young people vulnerable to negative outcomes, such as being excluded from school, running away from home, or becoming involved in crime.

The broad remit of the databases echo the widening of goals for children's services implicit in the safeguarding children agenda. Instead of a reactive, often crisis-driven, approach, the aim is to develop preventive and early interventions so that all children are helped to reach the government's five outcomes: be healthy, stay safe, enjoy and achieve, make a positive contribution, and achieve economic well-being. The index is intended to contribute to achieving better outcomes through increasing the amount of information shared between agencies:

> The index will enable practitioners delivering services to children to identify and contact one another easily and quickly, so they can share relevant information about children who need services or about whose welfare they are concerned (www.everychildmatters.gov.uk , downloaded 27.4.06).

The Index is part of a larger set of electronic forms being introduced, the most important of which are the Common Assessment Framework (CAF) and the Integrated Children's System (ICS). In combination, these are designed to improve communication and shared understanding between professionals and agencies, to increase co-operation in assessing and providing help, and so to improve outcomes for children.

Within the broad remit of safeguarding children, child protection is defined as: 'a part of safeguarding and promoting welfare. This refers to the activity which is undertaken to protect specific children who are suffering or are at risk of suffering significant harm' (DfES, 2006, p. 5). In relation to child protection, the main thrust of the safeguarding agenda is preventive: it is hoped that providing early intervention for family problems will help support parents and so reduce the number who become abusive.

Part 2 Criticisms of mandatory reporting

The danger of information overload

The most common criticism of mandatory reporting systems, in other jurisdictions, is that they have contributed to a lowering of the threshold for making a report and so cause a steep rise in the number of reports made, a large percentage of which are 'not substantiated'. Consequently, child protection services are subjected to a huge overload of work in investigating reports with an adverse impact on the resources available to help families.

The dangers of information overload seem even more striking in relation to the English system where all contact with children and all ‘causes for concern’ should be reported . This will mean that other professionals accessing the information will have to make further inquiries to ascertain whether the information is relevant to them or not. The precision with which the criteria for entering an indication on the database are defined will be crucial in determining how many indications are entered and how much practical value they have in improving outcomes for children.

The impact of introducing mandatory reporting has been particularly evident in both the USA and Australia where, over the last 30 years, there has been a massive explosion in the number of child protection reports, together with an increased proportion of these being not ‘substantiated’. In the USA the number of official reports of child abuse to child protection agencies increased from 9,563 in 1967, to 669,000 in 1976, and to over three million in the mid 1990s. Similarly, while in 1976 60 per cent of reports were subsequently classed as substantiated, by 1987 this had dropped to 40 per cent (Parton *et al.*, 1997). In New South Wales, Australia, of the 30,398 total reports in 2001, just 6,477 (21.3 per cent) were ever substantiated. Of the total, there were just 18,107 (59.6 per cent) which were ever investigated at all (Ainsworth, 2002).

From his comparative analysis of child protection services in Western Australia (which does not have a mandatory reporting system) and New South Wales (which does have a mandatory reporting system), Frank Ainsworth has concluded that mandatory systems have a range of deleterious effects. He argues that mandatory reporting systems are overburdened with notifications, many of which prove to be not substantiated, but which are time consuming and costly. As a result, he suggests that it is more likely that mandatory reporting overwhelms services that are supposed to be targeted at the most at risk children and families who then receive less attention than is required to prevent neglect or abuse. He concludes that mandatory reporting systems have to be characterised as inefficient and ineffective.

Sharing responsibility or 'passing the buck'?

A fundamental expectation in the safeguarding agenda is that better agency communication will increase co-operative working. However, the experience from mandatory reporting systems is that increased sharing of information may have the opposite effect. Instead of increasing responsibility, it can reduce it, with practitioners believing that they have done their duty by making a report. This has been a concern voiced in the trailblazer areas where the IS Index has been trialled (DfES, 2005a). Moreover, the risk of no-one taking responsibility is particularly great in the English system because the report is not made to an agency with a clear responsibility to respond but to a database where the information may or may not be noticed and acted on by other agencies. Practitioners will also face the difficult judgment of when information about a cause for concern is serious enough to warrant entering an indication but not serious enough to warrant immediate action. Concern that a child is suffering significant harm, for instance, should be immediately communicated directly to the child protection agency, not merely noted on a database.

The government believe that improved communication between agencies will lead to improved collaboration and, in turn, this will lead to improved outcomes for children. They cite no empirical research to support this claim and, indeed, such research in other countries tells *against* their claim. In the USA, for example, a study comparing 12 counties with child welfare coordination teams with 12 counties without found that coordination was negatively associated with service quality, a finding that the authors attributed to decreased individual accountability for care (Glisson and Hemmelgarn, 1998). In the related context of children's mental health care, systems integration has been associated with some improvements in access and satisfaction, but has not improved children's clinical outcomes (Bickman, Noser and Semmerfelt, 1999, Bickman, Semmerfelt and Noser, 1997).

Impact on providing help

The overall goal of the current changes in England is to improve outcomes for all children. However, a common criticism of mandatory reporting systems is that they only apply to the sharing of information; there is no equivalent mandatory duty to offer help when needs are identified. Because resources are limited and professionals will need to be seen to be ‘doing the right thing’ in case, at some future date, things go wrong, there is a real danger that increased reporting will lead to more time spent on investigating and assessing and that this will lead to reduced time for helping and providing direct services.

The most comprehensive recent review of mandatory reporting of child abuse is that carried out by Maria Harries and her colleagues at the University of Western Australia, for the Western Australian Child Protection Council (Harries and Clare, 2002). They conclude that the overwhelming evidence demonstrates that mandatory reporting systems are ‘in chaos’ worldwide.

> Fundamentally, there is no evidence that the forensic reporting system that is called mandatory reporting, and which was initially used as a mechanism to force medical practitioners to report ‘battered children’, is effective in protecting children. Mandatory reporting is just that – a reporting system. It is not a service provision system and may have little connection with the provision of services. Most jurisdictions that have mandatory reporting as a legislative framework do not compel statutory or other systems to provide, let alone evaluate, services to the children who are reported as being at risk (Harries and Clare, 2002, pp. 48-49).

They argue that what mandatory reporting systems attempt to do is two-fold. First, they attempt to convey the important message that children should be protected, that governments believe this, and that it is the duty of certain people to be vigilant about protecting children. Second, such systems attempt to compel people to report, record, investigate and remove children if they are at risk. There is considerable evidence that mandatory reporting increases reporting figures, but, as Harries and Clare comment, this is inevitable once one legislates in this respect. There is also evidence, they argue, that the subjectivity plus the contextual variability for reporting means that an inordinate amount of time and money is spent on attempting to understand what reports mean rather than looking after children and families. Crucially, they argue that there is no evidence that mandatory reporting increases the quality or quantity of benefits to children who are 'at risk of harm', or to families who are vulnerable. Indeed, they suggest, there is some evidence that it does the reverse.

In the English safeguarding system that has so much wider a remit of concern for all aspects of children's health and development, the system of entering 'indications' on the database may well lead to a steep rise in reports of professional concern but with no commensurate rise in services to respond to those concerns, this will have little benefit for the families concerned.

Impact on working relationships with families

The IS index amounts to a radical reduction in family privacy. Agencies will be able to find out many details of a child's life without the family knowing and certainly without giving their consent. The basic information about a child being known to an agency will be available to other agencies but, if one agency contacts another, there will still be a need for the professionals to decide whether consent is needed to share more detailed information. The guidance on this is not straightforward. The revised government guidance on the legal basis for sharing information reiterates the traditional guidance that information can be shared where there is a concern that a child is suffering or is at risk of suffering significant harm but also adds a somewhat vague additional criterion:

> You should, where possible, respect the wishes of children, young people or families who do not consent to share confidential information. You may still share information, if in your judgement on the facts of the case, there is sufficient need to override that lack of consent (HM Government, 2006a).

As a result of the varying degrees of confidentiality in the system, it means that, if one professional follows up an indication of concern on the database, the professional who entered the indication may decide that he or she is unable to say any more about their concern without the family's consent. This could be a very frustrating experience for all concerned.

Confidentiality is known to be an important factor in people seeking help. Children's willingness to ask for help, for example, is known to be reduced by denying them access to confidential help (Butler and Williamson, 1994, Wattam, 1999, Weyman and Davey, 2004). Indeed, a number of studies have recently been conducted with children seeking their views on the proposed databases and the unanimous finding is that confidentiality is of crucial importance for many children and young people and lack of it will make them reluctant to use a service when they need help (CRAE, 2006; Hilton and Mills, 2006).

However, the basic message in the government policy ignores this and asserts that sharing information is a ‘good’ that will lead to improved outcomes. This confidence in the merits of information sharing affects the way that guidance talks about gaining consent. Indeed, the phrase ‘obtaining consent’ is always used rather than the more neutral ‘seeking the views of the family on whether to share information’. The bias towards assuming that sensible parents and children will agree to sharing is illustrated in the phrasing of a key competence for all professionals working with children: they need to ‘understand how to present genuine choices to young people and how to obtain their consent to sharing information’ (DfES, 2005b, p.8). In this context, it is questionable whether either families or professionals will feel that seeking consent to sharing information is a neutral issue on which children, young people and parents have genuine choice. For many children and parents, and indeed for many professionals, it may seem that refusal will be taken as an adverse sign against them. In the light of the power imbalance between the various parties, there is reason to doubt whether consent will be truly free and informed as required by data protection legislation.

Conclusion

It is clear that a major effect of the changes will be to fundamentally reconfigure the relationship between the state, professionals, parents and children and that new and wide-ranging systems of surveillance are being introduced. England is in the process of introducing a mandatory reporting system but not based on any notion of child abuse but on the basis of ‘a cause for concern’, which is not defined in the legislation. The new policy of ‘safeguarding’ children has a much wider remit than just ‘protecting’ children from abuse or neglect. It aims to ensure all children reach the government’s ‘preferred outcomes’ in terms of achievement at school, health, and behaviour. The accumulation and exchange of information about children takes on a key role to ensure that children do not fall through the various nets designed to protect them from social exclusion, delinquency, or poor educational achievement and ensure that they receive early help and thereby fulfil their potential. Abuse becomes only one of many causes for concern. In the process the role of the state thereby broadens and becomes more interventive and regulatory at the same time.

In the light of the evidence that we have discussed above, we can anticipate that the newly reconfigured children’s services are likely to be subject to a huge growth in activity on the basis of these new reporting arrangements. At the same time, however, we can also anticipate that there will not be sufficient resources to allocate. It is notable that while there is a mandatory requirement to report ‘causes for concern’, there is not an equivalent legal duty to offer any service for those so identified.

Such changes also pose a major threat to the civil liberties and human rights of parents, children and young people. These concerns were clearly expressed by Earl Howe in the debate about the Children Bill in the House of Lords:

> We have here what is potentially a very large-scale system of data recording by the state on its citizens. The system is to be set up in the name of improving the welfare of all children. The names and key personal details of all 11 million children are to be recorded for access by professionals from a wide variety of disciplines. The vast majority of children so recorded will not be at risk of suffering significant harm or anything approaching it. The human rights aspect of that point is a question in itself which perhaps the Minister would be kind enough to comment on. But even if we set the human rights issue aside, how can we not regard this mammoth information gathering and information sharing exercise as anything other than grossly intrusive on the privacy of the family? (Earl Howe, Hansard, HL (Series 5) No 1661, Col 1154, 24 May 2004).

Similarly the House of Commons Education and Skills Committee (2005) concluded from its investigation of the changes that it had ‘significant reservations’ about costs and certainly did not feel it the most effective way of improving outcomes for children. It also had significant concerns ‘about the security, confidentiality and access arrangements’. Certainly the guidance document on sharing information on children and young people demonstrates the considerable complexities involved in sharing information in the context of Data Protection Legislation (HM Government 2006b).

England has embarked on the most radical set of changes for children’s services for well over a generation and the introduction of a mandatory reporting system lies at its heart.

While there are many positives to the changes being introduced, we are extremely concerned that this emphasis on the need to share information and the mandatory nature of this could well undermine many of these positive possibilities.

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