

## **Barnardo's response to Department of Education consultation on reporting and acting on child abuse and neglect**

**October 2016**

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### **Introduction**

Last year Barnardo's provided services to over 248,000 children, young people, parents and carers. We run 996 vital projects across the UK, including counselling for children who have been abused, fostering and adoption services, vocational training and disability inclusion groups. Barnardo's purpose is to transform the lives of the most vulnerable children.

Barnardo's believes that the Duty to Act has some merit and is worth further in depth exploration. The consultation document concerns top level principles and as such does not include much detail about how the duty would work in practice. Barnardo's would welcome the opportunity to work with Government to discuss and develop how this might work in practice, and explore any unintended consequences.

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### **What should be the aims of any changes to the current system?**

Barnardo's welcomes the opportunity to respond to this consultation on reporting and acting on child abuse and neglect. Like many organisations working to protect children from abuse, we have been concerned by a number of cases in recent years where unacceptable behaviour by adults has continued to put children at risk despite there being knowledge or suspicion that this abuse was happening. In the worst of these cases certain individuals seem to have deliberately turned a blind idea to abuse. Covering up abuse to protect a perpetrator or protect an organisation is clearly wrong and it is important that we consider what we need to do as a society to ensure that these type of cover ups – which can be so damaging to children – never happen again.

However, while we share concerns about the need to protect children from abuse and neglect, we are also aware that the causes of any failures in the current system are likely to be complex and varied. It is unlikely that a single solution exists which will serve as a panacea to improve child protection systems in the UK. We would urge the Department of Education to consider children's services in the round. The experiences of children suffering from abuse and neglect sit on a continuum and the aim should be to ensure that all children get the right type of help at the right time. A narrow focus looking at one particular stage of the system - such as when a report is made to local authority child protection teams - will not, in itself, achieve meaningful long term change.

We therefore urge the government to take this review as an opportunity to consider all aspects of what can be done to keep children safe from abuse and neglect. The consultation helpfully highlights a number of changes to the structures and procedures which have either been introduced recently or are due to come into force. In addition Barnardo's, along with others, is contributing to the government's high profile Independent Inquiry into Sexual Abuse. This inquiry is welcome and will hopefully take a complete look at recent cases and learning which can take place from them. It will be important that any changes to the law surrounding reporting does not pre-empt the findings of this review. Any changes to the child protection system should take place in a joined up and consistent way if we are to ensure the system works effectively.

While there may be a minority of cases where professionals chose for whatever reason to withhold information on abuse or neglect, we believe this is not the reason for most failings in the child protection system. For example if we look at serious case reviews from 2015/16<sup>1</sup> we can see a number of common themes; these point on the whole to procedural failures, rather than deliberate malpractice. For example, common problems identified include multiple agency working, particularly when responding to complex needs; and a loss of focus on the child particularly when services were primarily working with adults. The problem is often therefore not about reporting of a problem, but understanding what is going on, and how to effectively respond to it, when the issues are complex and there are many organisations involved.

Working together to Safeguard Children (2015)<sup>2</sup> emphasises what those of us who work with vulnerable children on a daily basis already know - that safeguarding can only work effectively when it is seen as everybody's

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<sup>1</sup> Recent serious case reviews can be found at <https://www.nspcc.org.uk/preventing-abuse/child-protection-system/case-reviews/2015/>

<sup>2</sup> See [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/419595/Working\\_Together\\_to\\_Safeguard\\_Children.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419595/Working_Together_to_Safeguard_Children.pdf)

business. To best protect children we need to strive toward an open culture where it is expected that children will be listened to when making disclosures and will be believed. Achieving this type of cultural change can never happen as a result of legal changes alone and we would urge the government to consider the full range of measures which would need to happen to bring about this cultural change. These would include better training to a range of professionals and volunteers who have contact with children, so they know how to spot the signs of abuse. It would also include good relationship education in schools so children themselves are more aware of the signs of abusive relationships. Finally we need effective public information campaigns aimed at encouraging members of the public to think about what they are seeing and to come forward with suspicions when they are concerned for a child's welfare.

In addition to ensuring that everyone is encouraged to play a role in protecting children, we also need to ensure that there are the support services in place for families in need. Public investment in early help for families, including continued funding of children's centres is essential to ensure that some level of support can be put in place as soon as a need is identified. Reform should aim to help families at the right time, and not focus only on what should be done when a family reaches crisis point.

The measures of success for any changes should be the extent to which children are safer and the extent to which those are getting the help they need when they need it. Narrow measures of success, for example that professionals are making more reports of abuse, do not of themselves demonstrate that children are safer and should not be the goal of any reform.

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### **Would a new Duty to Act improve child protection systems?**

Barnardo's believes that the Duty to Act has some merit and is worth further in depth exploration. The consultation document concerns top level principles and as such does not include much detail about how the duty would work in practice. Barnardo's would welcome the opportunity to work with Government to discuss and develop how this might work in practice, and explore any unintended consequences.

Barnardo's believes that a new Duty to Act as outlined in the consultation document may help to overcome some of the concerns about the introduction of mandatory reporting systems into the UK (see next section). A broader emphasis on action, not simply reporting will provide a more joined up approach to child protection. It will require all professionals to use their judgment in determining the best course of action for a child. It would reduce the risk of non-social work professionals abdicating responsibility or failing to exercise their judgments by just simply making a report to children's services to protect themselves.

Duty to Act would thus provide greater respect for professional discretion. It would allow professionals working with a child to talk through the range of options that would be available to them to help, including but not exclusively reporting to child protection social workers. Thus children may be provided with the necessary space to make disclosures without fear of immediate involvement with child protection teams. However it would also provide consequences in the most extreme cases where professionals have a clear knowledge that child abuse is occurring, but chose not to take any action to protect the child (for example to protect the perpetrator, or an organisation's reputation). In these cases of deliberate or reckless failure to act there could be legal consequences including criminal sanctions. However at a lower level Duty to Act should not be covered by criminal sanctions but by other sanctions as at present, such as through employment contracts or professional bodies.

In order for Duty to Act to work effectively it would need to apply to a wide scope of sectors and levels of responsibility. This should include those who deal with children all the time – such as schools – as well as those who see them only sporadically – for example housing services. It should also include those at all levels including senior level CEs and lower level staff. We also believe if introduced it should work at both an individual and organisational level. This would recognise that individual failings can be symptomatic of wider organisational issues and failings.

However, while we see merit in further exploring the option of introducing a duty to act we would be cautious about recommending immediate progress to introduction without further consideration of the detail. The consultation document is about high level principles and as such does not include much detail about how the duty would work in practice.

It would be important that the legislation and accompanying guidance should be enforceable. It will be challenging to both provide for professional judgement (as currently), whilst giving certainty to those facing possible criminal prosecution what their duties are and what they must do to discharge them; but this balance must be found.

There are a number of questions which would need to be answered before a duty to act could be introduced for example:

- What would be the trigger for duty to act for known/suspicion of abuse and would these be different for different types of abuse?
- If duty to act is not linked to a particular action or outcome, how would a practitioner know when they had fulfilled their duty?
- What standard of evidence would professionals be required to provide in cases where they were accused of failing in their "duty to act"?
- How would a duty to act work alongside the duty to report in relation to FGM?

Given a lack of clarity and the possible technical difficulties we would urge the government to ensure a full exploration of the issue before legislation is brought forward. Alongside this, the independent inquiry into sexual abuse may well provide some insight into the issue of reporting, what is happening with current practice etc. This could help inform how a duty to act may work in practice. In any case we would expect a further full consultation on a duty to act if this was decided as the best course of action to get a clearer idea how this would work and fit with the existing child protection regime.

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### **Would Mandatory reporting help improve child protection systems?**

As highlighted above, Barnardo's believes that the key test for any reform should be whether it makes children safer. We do not believe that it can yet be proven that a mandatory reporting regime will achieve that aim.

As highlighted in the consultation document England already has a high level of reporting (54.8 per 1000 children in 2014-15 compared 47.1 per 1000 children in the USA<sup>3</sup>). This suggests that the UK does not have a problem with serious underreporting of child abuse.

There is not a great amount of published evidence about reporting practices in the UK beyond how many reports are made. Mandatory reporting will not improve child protection practices in the UK if for example professionals are not referring because they are failing to spot or understand the different signs of different types of abuse. Barnardo's believes more research needs to take place on what motivates professionals to refer; Are some groups of professionals more likely to refer? Are some types of abuse more likely to be referred? Unless there is greater understanding of this picture it will continue to be difficult to understand whether putting further duties on professionals will necessarily make children safer.

What evidence there is for mandatory reporting comes from other jurisdictions, such as the USA and Australia. The evidence from these places is mixed but does suggest there is a risk that mandatory reporting can result in some unintended consequences.

When mandatory reporting is first introduced, it is often accompanied by a spike in the number of unsubstantiated reports of abuse. Professionals covered by the duty can adopt a "play it safe" attitude reporting minor incidents to ensure they are protected should a problem arise later on. For

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<sup>3</sup> *Characteristics of children in need: 2014 to 2015* Department for Education, 22<sup>nd</sup> October 2015, available on line at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/469737/SFR41-2015\\_Text.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/469737/SFR41-2015_Text.pdf)

example analysis in 2002<sup>4</sup> of the experience in different Australian territories shows a substantial difference in the number of unsubstantiated reports between different territories based on whether or not they had mandatory reporting. In New South Wales, which had mandatory reporting, 45.2% of reports were unsubstantiated, whereas in Western Australia which at the time did not have mandatory reporting only 25.1% of reports were unsubstantiated. This risks front loading the system requiring substantial resources to be ploughed into investigation of claims which turn out to have no basis. In New South Wales it was estimated that 75% of the budget was being used to investigate unsubstantiated cases. In a child protection environment suffering from serious budget pressures this could take money away from actual protection work, and could put children who actually are in danger at risk of not receiving the help they need.

It is also likely that mandatory reporting will result in multiple professionals making similar reports regarding the same child, or even the same incident. Given that each individual will be separately mandated to report, rather than working together, the impetus would be on each professional to ensure they had complied with the regulations. The onus would be placed on child protection teams specifically to bring these concerns together and consider what action to take. This would likely increase paper work in child protection services and result in a less joined up approach to safeguarding.

Mandatory reporting could also allow professionals working outside child protection teams to believe that safeguarding is not their business, and that by making a report they will have discharged their duty. However reporting alone can never make children safer and some of the interventions which could make a difference, particularly in low level cases, may be better provided by other services working with the families. Thus mandatory reporting may serve to simply shift the emphasis for helping these families entirely to high end child protection teams. This is a particular concern if the new duty was not accompanied by an increase in investment in child protection services to take into account this increased work load.

Barnardo's is also concerned about the implications the introduction of mandatory reporting may have on the willingness of children to make disclosures. Disclosing abuse can be difficult for a child, they may have many fears and anxieties over what they are going to say and the consequences for both themselves and the abuser. Children often make disclosures on a piecemeal basis, as they build trust. This can be a difficult process and require some discretion on the part of the professional as to when is the right time to discuss matters with a third party. Certain options for children to make disclosures, such as the NSPCC's Child Line helpline, rely upon allowing children a confidential space to talk. Mandatory reporting risks removing all professional discretion in this area, requiring a report the

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<sup>4</sup> *Mandatory reporting of abuse and neglect: does it really make a difference?* Frank Ainsworth Child and Family social Work vol 7, p57-63 (Feb 2002)

moment a threshold is crossed. This may well make children more reticent to discuss abuse knowing that the only option if they do will be high end intervention.