



MandateNow

@MandateNow response to:

NSPCC policy position "Mandatory reporting: a consideration of the evidence"

There are three possible categories of argument for keeping the disclosure of abuse in Regulated Activities¹ discretionary.

1. That the reporting rate is already so high that no compulsion is required.
2. That although the reporting rate is not very high, mandatory reporting would not increase it significantly
3. That a low rate of reporting is acceptable or even desirable for various reasons, and that no effort should be made to increase it.

Both government and NSPCC guidance is that child protection concerns "**should**" in all cases be passed to the LADO or children's services so that the situation can be handled by experienced and trained personnel. Therefore it is clear that Argument 3 is not supported either by NSPCC or by government policy.

Multiple Serious Case Reviews and other reports offer significant evidence that non-reporting is widespread. The NSPCC itself acknowledges the need for increased reporting, and has taken initiatives such as the Now I Know campaign <http://www.nowiknow.org.uk/> in an attempt to increase reporting rates. Therefore the evidence seems to be conclusive and also to be accepted by NSPCC that the facts do not support **Argument 1**.

Therefore the only remaining argument that would justify the maintenance of discretionary reporting is **Argument 2**, that mandatory reporting will not significantly increase reporting rates.

This response concentrates on the key section of the NSPCC position paper "Why doesn't mandatory reporting have the intended impact?" and considers its position in the light of these alternative arguments.

¹ See Schedule 4, Part 1 (and Part 2), SAFEGUARDING VULNERABLE GROUPS ACT 2006 – Typically these are institutions and settings where children are looked after in the care of adults other than their parents. Examples of Regulated Activities include NHS Trusts, sports organisations, schools, churches, early year's settings.

Below, the NSPCC's position is indicated in italics and our response is in ordinary text.

a) Children fear implications of disclosure

A recent NSPCC study into the experiences of disclosure for young men and women found that for some children concern about lack of confidentiality was a key reason that prevented their disclosure to professionals, particularly following previous breaches of trust¹⁹. Arguably placing professions under the threat of a criminal sanction if they fail to report abuse may reduce children's willingness to disclose. Certainly confidential services and spaces for children and young people, such as ChildLine, a helpline for children in the UK that received 1.5 million contacts in 2012/13, have been shown to be important in encouraging children to speak out.²

Of course children who have been abused have been subjected to a breach of trust, initially by their abuser. If their previous disclosure was not handled in a way that treated the child's interests as paramount then their trust in the adult world is inevitably going to be further damaged.

Furthermore, disclosures by the child are not the only source of information which may give rise to child protection concerns. Other sources of information include bruising or other injury to the child, behavioural issues, or even direct observations of inappropriate behaviour by an adult towards a child. In all these cases, the child's willingness to disclose is currently almost zero, but this does not justify non-reporting.

There is a clear requirement that mandatory reporting will need to be accompanied by a statutory duty on social services and others to whom the reports are provided to act in the best interests of the child. That legal requirement already exists under the Children Act 1989 as variously amended. In fact this rather sounds as if the NSPCC is reworking Argument 3, in suggesting that non-reporting is actually in the interests of the child which is contradicted by the NSPCC's efforts to increase reporting.

b) Heightened reporting levels overwhelm the child protection system

Evaluations of the experience of introducing mandatory reporting in parts of Australia suggest that increased reporting may overwhelm 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, although this view has been contested.

It does appear that under a system of mandatory reporting, the role of social care professionals is changed as they spend more time investigating and assessing reports rather than providing direct services and support. It has been suggested that due to the subjectivity and the contextual variability in reporting, an inordinate amount of time and money is spent on attempting to "investigate" what reports mean rather than looking after children and families.

² ChildLine is not a 'Regulated Activity' and therefore the proposals promulgated by @MandateNow will have no impact on the confidential services operated by this charity or similar services.

There are two possible aspects to this "overwhelming". The first is that trivial reports may be generated. This happens in any mandatory reporting environment – it occurs for instance in the financial services industry where banks and other institutions have a statutory obligation to report suspicious transactions which might involve money laundering. Almost any large transaction involving an international company which has operations in certain countries will be reported simply because those countries are known to have high levels of corruption, even though the reporting body has no other reason to suspect that the specific transaction is in any way suspicious. The FCA is experienced in this and knows how to **triage** the reports and discard those which are deemed not to have met the threshold and yet the financial services industry has not ground to a halt. LADOs can be similarly trained to triage 'out' such reports without there being a significant additional drain on the agencies. We are seeking a significant change to the role of the LADO to LADO + which will be modelled on developments in Australia to address precisely these challenges,

The second possible aspect is the possibility that abuse is at present grossly under-reported and that mandatory reporting will increase the rate at which serious and justified reports are generated, to the extent that social services departments with their present levels of resourcing cannot cope. The Office of the Children's Commissioner for England has offered the most appropriate response to this concern:

"We consider that if child protection services become overwhelmed with genuine cases of abuse, then resources must be used to address these in accordance with the UK's commitment under the United Nations Convention on the Rights of the Child to protect children from all forms of harm."

In essence, the NSPCC is putting Argument 3 again, this time using lack of resources as a justification for not supporting measures that would increase the reporting rate. However, the position seems to be inconsistent in that this justification appears to be applied only to mandatory reporting and not to any of the other initiatives in which the NSPCC is involved to increase reporting rates which could themselves "swamp" social services in just the same way if they were to become overly successful.

c) Heightened reporting levels are not matched by an increase in services

In Queensland, where mandatory reporting legislation is in place and different professionals are required to report different types of abuse to different thresholds²⁴, data shows an almost threefold increase in child protection intakes over the last ten years. (Note: 'intakes' are comparable to 'referrals' in England). Between 2002–03 and 2011–12 total intakes increased from 40,202 to 114,503. Child protection related expenditure more than doubled between 2004/5 and 2011/12.

The large increases in intakes between 2002-03 and 2011-12 were predominantly recorded as 'child concern reports', which generally elicit no response from child protection services. In contrast to the trend in 'child concern reports', the number of intakes recorded as notifications, which do elicit a response from child protection services, has decreased since 2004–05. It seems that in Queensland mandatory reporting has led to increased number of reports of children who are vulnerable or at risk, rather than children who meet the current threshold for a child protection response. It has exposed the lack of adequate and accessible family support services across the continuum for vulnerable and at-risk families.

This is actually a counsel of despair. It is Argument 3 all over again. If we don't have the resources to address the larger number of incidents that mandatory reporting will generate, then why would we want to learn of more children being abused than we know about already?

In fact, this argument can be made to apply to any initiative to improve reporting, whether it be an attempt to improve safeguarding training in schools, or the NSPCC's own initiatives such as Now I Know <http://www.nowiknow.org.uk/> . If we don't want to improve reporting by one means, then it follows that we don't want to improve reporting by any other means either, since we don't have the resources to handle the extra cases.

d) Despite increased reporting, many professionals still fail to report abuse

This section is in fact the only one of the four to attempt to make the case for Argument 2. As such, this section should be considered more carefully than the others.

Evidence suggests that although all States and territories in the USA require professionals to report child maltreatment, they often fail to comply with this mandate. A 2008 study in the United States that examined decision making by primary health care providers found that 27% of primary health care providers did not report injuries to child protection services, despite believing that they were "likely" or "very likely" to be caused by child abuse. Post hoc evaluation of some visits in this study by child abuse experts and primary health care providers found that the experts agreed with the primary health care providers' reporting decisions to report in 84% of the cases, but also indicated that 21% of non-reported cases should have been reported.

That a law may not be effectively enforced in other countries is not of itself an argument not to have a law here. It is merely an indication that if we are to have a law here, it will require that the necessary infrastructure is put in place to enforce it.

We note that no comparison is made in the NSPCC paper between the 2008 US study and reporting rates in a non-mandatory jurisdiction such as the UK. Is the reporting rate higher in a mandatory reporting regime? If the reporting rate is significantly higher it can be argued that mandatory reporting is achieving its aim even if the rate does not reach 100%. Errors can never be entirely eliminated, and neither can differences of opinion in marginal cases, and so expecting a 100% reporting rate is unrealistic.

A study of the incidence of maltreatment reviewed the children identified as maltreated but not reported to child protection services. This study concluded that at least two-thirds of children suspected of having been the victims of maltreatment may not be reported to child protection services by mandatory reporters.

The abstract of the paper referred to by the NSPCC states "Health professionals working with children and their families are often required by law to report to governmental authorities any reasonable suspicion of child abuse and/or neglect. Extant research has pointed toward various barriers to reporting, with scant attention to positive processes to support the reporting process."

We entirely agree with the need for "positive processes to support the reporting process" in a mandatory reporting environment. The aim is to ensure that as much abuse as possible is reported, rather than that maximum numbers of non-reporters are prosecuted.

A study of 480 teachers in the United States showed that one third of all teachers were likely to under report and 4% were likely to over-report. Instead of adhering to mandatory reporting laws, teachers showed discretion in not reporting child abuse they had recognised or suspected. Teachers with less training, in administrative positions, those with beliefs that reporting would cause problems for the teacher and/or the child and those teachers who had never reported a child abuse incident were likely to under-report.

This is not quite what the study states. This was a "factorial survey" in which the 480 teachers were presented with a range of hypothetical scenarios in which the various factors in the scenario were systematically varied, and the teachers' statements as to whether they would report in these circumstances were recorded.

The problem with such a survey is that the subjects' responses may not be realistic since nothing actually rides on their answers, whereas real professional situations do have real-life consequences, both for the person making the report and those who are the subject of the report.

The numbers quoted by the NSPCC are the results of the experiment, which may or may not reflect real-life conditions. It is rather naughty of the NSPCC not to make this distinction. Moreover, again the NSPCC has not provided any figures for comparison from a non-mandatory jurisdiction.

A further US study showed that 31% of a sample of Advanced Practice Nurses did not report a case of suspected child maltreatment.

The author's abstract of this paper states "The authors present the results of a survey of child maltreatment reporting by advanced practice nurses. They note that a significant percentage of respondents chose not to report their suspicions even though mandated to report by state law, and they identify several potential barriers to reporting, such as lack of education and training about child maltreatment, negative perceptions of child protective services, and lack of physical evidence indicating child maltreatment occurred. They conclude that identifying reporting barriers is essential for implementing effective interventions to improve reporting among ad practice nurses."

In any mandatory reporting regime, these kinds of barriers to reporting need of course to be addressed. But again, the NSPCC offers a single cherry-picked number without offering any context or any comparison with the equivalent rate in a non-mandatory reporting jurisdiction such as the UK.

A study in New South Wales, Australia showed that 8% of GPs have suspected child abuse or neglect and not reported it, as had 6% of emergency department doctors. No nurse in the sample had suspected child abuse and neglect and had not reported it. The comparatively low failure to report rate may be due to recent changes in mandatory reporting legislation in the state, although consideration should be taken of a sample based on self-reporting professionals.

This study seems to indicate that there is a high level of reporting in NSW. The abstract of the paper indicates it could be raised further with improved training.

It appears the threat of criminal prosecution is not sufficient to ensure reporting of abuse. Indeed very low rates of prosecutions may undermine this threat. While little academic research has been done on the data, an investigative report compiled by USA Today, based on a survey of 25 US states between 2001 and 2011, shows relatively low levels of prosecution in comparison to the number of suspected cases of child maltreatment identified. From the sample selected, there was an average of 10 prosecutions per year. Of this sample, many states had no examples of prosecutions at all and only 14 people have been sent to jail in this time period. Instead, the majority of guilty individuals received civil punishment, including fines.

The report suggests that the unclear threshold and conceptualisation of maltreatment is a likely reason for this.

“The line separating what has to be reported from what can be ignored is often unclear. As a result ... it's difficult to prove that someone's suspicions were strong enough that they should have made a report”.

Low levels of prosecution should not automatically be regarded as an indication of failure. Prosecutions generally will only occur when non-reporting occurs for malicious reasons, for instance putting the reputation of the institution ahead of the welfare of the children in its care. Failure to report in marginal cases would not normally result in prosecution.

Mandatory reporting is intended to prevent malicious non-reporting (which is undoubtedly a feature of the situation in the UK, with cases such as Downside School, Caldicott School, St Benedict's School Ealing, St Bede's College and Chetham's School in Manchester, Stony Dean School, GateHouse School and many others, at all of which pupils experienced abuse that was unequivocally known to management but not reported to the Local Authority or the police.

Mandatory reporting is also intended to foster a climate of awareness of the issue, so that failure to report through gross incompetence is reduced, avoiding cases such as Daniel Pelka and the 12 years of abuse committed by Nigel Leat at Hillside First School.

That only 14 people have been sent to jail in the US in a 10 year period for non-reporting may be an indication that schools and other institutions have understood their legal obligations and that malicious non-reporting is now rare. That would be a significant advance on the present situation in Britain. More recently numerous States have increased the penalty for non-reporting, having realised that the consequences for failing to report previously presented no deterrent to either staff or 'Regulated Activities.' These include for example the States of Florida, Illinois, and Pennsylvania.

Conclusion

The NSPCC paper is putting up two conflicting justifications for opposing mandatory reporting, i.e. that reporting rates while low should not be raised because the resources don't exist to handle the additional cases, and the conflicting position that mandatory reporting

won't have much effect anyway. Only one of these arguments can possibly be true, if the facts that would justify one argument are true, then the facts cannot possibly support the other argument. So if NSPCC genuinely thinks that mandatory reporting won't much affect reporting rates, they can hardly claim that social services will be swamped. Conversely if they think social services will be swamped, it is hardly possible to claim that mandatory reporting will have no effect. NSPCC needs to alight on one argument and adhere to it.

In reading the paper, one gets the strong impression that the author has been told that the NSPCC is against mandatory reporting, that this position is not going to be changed, and therefore arguments to justify the position must be found and that the author has been briefed to produce those arguments. This appears to be a case of backwards reasoning, starting with the conclusion and then finding cherry-picked arguments to justify it. If the NSPCC were to start from a position where they were prepared to examine the cases for and against mandatory reporting on their merits, they would not have produced this positioning paper.

It is accepted that simply passing a law on mandatory reporting and then putting no effort into implementation and enforcement may have little effect. A comparison can be made with drink-driving laws introduced some decades ago. The aim of the laws was to change the behaviour of drivers so that they didn't drink and drive. A 100% reduction in drink driving was never achievable, and not reaching that rate should not be regarded as a sign of failure. The law on drink driving was part of a co-ordinated campaign to reduce drink driving. This campaign also contained other elements including public education, police powers to stop suspected drunk drivers, and technology such as breathalysers which could quickly assess whether a driver had been drinking.

However, it is likely that a public education campaign without the legal sanctions and enforcement would have had a much smaller effect, with tragic consequences in terms of increased deaths and injuries resulting from alcohol-related road accidents.

The case for mandatory reporting can only be fairly assessed when a law on mandatory reporting is treated as part of a co-ordinated campaign in the same way. It appears that the NSPCC is deliberately avoiding considering mandatory reporting in this context. The first sentence of the Conclusion of the NSPCC paper states *"The evidence suggests that mandatory reporting in isolation does not increase the safety of children in those jurisdictions that have it."* That "in isolation" phrase is the giveaway. The NSPCC is setting up a false dichotomy, between mandatory reporting with no other measures, and all the other measures it can think of in the absence of mandatory reporting. There is a third option, mandatory reporting properly supported by other measures involving enforcement and education. This has not been addressed by the NSPCC paper.

Please see the @MandateNow 5 minute guide to Mandatory Reporting which is available by following this link: <http://goo.gl/iEjOoO>

Mandate Now is supported by The Survivors Trust (TST), a national umbrella agency for over 150 specialist rape, sexual violence and childhood sexual abuse support organisations throughout the UK and Ireland. www.thesurvivorstrust.org

13.01.14