Old Deanery Care Home Southbank International School

Clifton College *Royal Masonic Girls School* Winterbourne View

Headlands School *Little Teds* Addenbrooke's Hospital

Little Stars Orchid View Care Home Little Heath Primary School

Nothing has Changed

Mandate Now

Medway Secure Training Centre Wellington College Kings School Rochester

Westgate College and the Royal School for Deaf Children - Margate

Royal Alexandra and Albert School Church of England Jesuits

St Mary's Hall Prep Medomsley Detention Centre *Chetham's*

Ashdown House **Cottessy High School** Thorpe Hall School

Gatehouse School **St William's Catholic care home** Stony Dean School

Bishop Bell School Keldgate Manor Residential Care Home

Diocese of Chichester British Judo Association *St Katherine's School*

Stanbridge Earls School **Football Association** Morriston Hospital NHS Wales

Ampleforth College Caldicott School St Pauls School **Mill View care home**

Hillside First School *St Benedict's School* St Paul's Cathedral School

ENGLISH CONGREGATION OF BENEDICTINES *Solar Centre Doncaster*

Lawn Tennis Association Leighton Hospital NHS The Scout Association

Princess of Wales Hospital NHS Wales **Hillcroft Nursing Home** The Boys Brigade

Shirley Oaks Children's Home *Swaylands School* Woodford School for Deaf

Date: 6th October 2016

Submission from Mandate Now to the

Open consultation:

Reporting and Acting on Child Abuse and Neglect

PART 1

PART 2

PART 1

About Mandate Now

Mandate Now ("MN")is a pressure group comprising survivors of abuse in Regulated Activities[1] ("RAs"), parents who discovered and exposed abuse in their children's schools, barristers, social workers, teachers, healthcare employees, and academics in child protection and related fields. On 2/12/15 a petition signed by more than 200,000 members of the public supporting the introduction of Mandatory Reporting ("MR") of suspected and known abuse by RA's, was presented on the floor of the House of Commons by the Rt Hon Cheryl Gillan MP. who as a former Minister at the DfEE (now DfE) had responsibility for List 99. We are fortunate to have excellent cross party support for this initiative.

Statement

The Government granted the consultation on **Reporting and Acting on Child Abuse and Neglect** on 28th October 2014 during the debate on amendment 43 tabled by Baroness Walmsley (LD) in the Serious Crimes Bill. The amendment sought the introduction of MR on the following basis. This submission varies in a number of respects from Lady Walmsley's amendment.

The "statutory guidance" which masks the absence of a statutory child abuse reporting requirement has for decades misled most people employed in child centred professions, and failed staff and children alike. The current expectation that adults working in RAs ***'should'*** report concerns of abuse indicates the discretionary nature of the expectation to report. The failure of statutory guidance to deliver a child protection culture on which reliance can be placed is a key reason for the Government having to launch the Independent Inquiry Into Child Sexual Abuse ("IICSA") which is investigating whether public bodies and other non-state institutions have taken seriously their duty of care to protect children from sexual abuse in England and Wales. The repeated claim that child protection 'is all different now' is mistaken because there has been no change in the relevant law. There is still nothing in the child protection framework that requires, supports, and legally protects staff who work in Regulated Activities to report suspected or known abuse.

An irreconcilable difference in current reporting arrangements is that if a doctor is presented with a girl whom she suspects is being abused and whom medical examination establishes to be genitally mutilated, the doctor is legally required to report FGM but is not required to report the additional suspected child abuse.

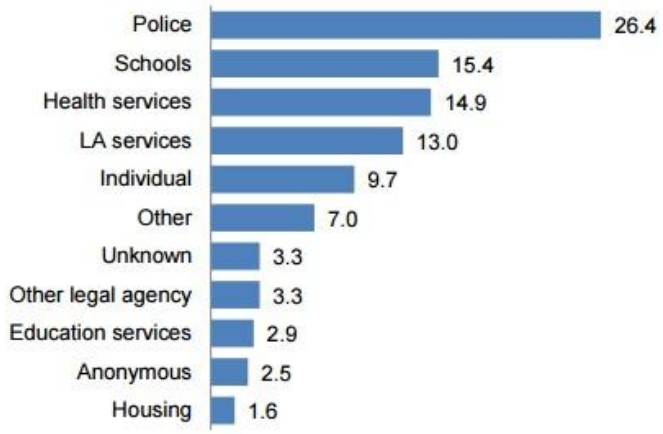
[1] Regulated Activities are defined in the Safeguarding Vulnerable Groups Act 2006

Conclusion

Mandatory reporting of suspected and known abuse within RAs is an essential component of a functioning child (and vulnerable adult[2]) protection system on which greater reliance can be placed. Its introduction, as set out in our submission, must be accompanied by the introduction of an accreditation scheme for trainers and training companies which provide services to RA staff. MN outlined this in a meeting with the NSPCC on 29/6/2015 and confirmed by letter. The charity has a role to play in this initiative, as do all training providers with expertise in this area.

A significant shortcoming in the current regime is the lack of detailed data capture from referrals made to the LADO[3]. However some limited data does exist in the statistical first release (SFR) document 22 October 2015 titled "Characteristics of children in need: 2014 to 2015"[4], Figure J on page 32.

Figure F: The police are the most common source of referral
Referrals in 2014-15 by source of referral (percent)



Most referrals are from the police – this year 26.4% of referrals were from the police, followed by schools with 15.4%, and health services with 14.9%.

The source of referral was collected for the first time last year. It can take a year or two for new data items to 'bed-in' so caution should be taken when comparing to last year's data.

Where there is more than one referral for the same child, it is the referral source of the first referral reported in the children in need census.

Please note the chart says that "The source of referrals was collected for the first time last year. It can take a year or two for new data items to 'bed-in' so caution should be taken when comparing to last year's data."

MN therefore proposes that detailed data capture both for RA referrals and outcomes is placed on a national mandatory footing in order to make it functional and effective. In addition the retention of Local Authority Designated Officers ("LADOs") who provide RA specific triage is essential. Our submission seeks to enhance their role to the single point of contact for all

[2] BBC File on 4 'The Last Taboo' 20/9/16. >2000 sexual offences committed in the 3 years (police FoI by BBC), the trend is rising | 25 Convictions and 21 cases unsuccessful in last financial year| Low level reporting of known and suspected abuse | Care Homes are the second highest source of such crimes.

[3] Research Report DFE-RR192 **Para 3 -** There has been no centralised national data collection on the number and nature of allegations of abuse referred to Local Authority Designated Officers (LADOs) since a 2007 Department for Children, Schools and Families (DCSF) survey1. So poor is the data collection at Local Authorities **Para 24** informs us: *"Interpretation of allegation outcomes following investigation is clouded by both recording and definitional issues. In 21% of cases LADOs recorded the outcome of an allegation as 'unknown'. This reflects deficiencies in tracking systems."*

[4] 'Characteristics of Children in Need'2015 2015

reportable child protection matters arising in RAs. They will of course retain their current role as a valued adviser to RAs.

Sensibly the LADO has been retained by many Local Authorities. A valued aspect of LADOs is speed of response to concerns and referrals arising from RAs. The relationship between LADO and RA is valued. The LADO is often seen as a rock in the very confused and confusing child protection landscape that 'statutory guidance' delivers. In 2013 Chris Husbands, the Director of UCL Institute of Education, wrote a blog[5] titled 'Child protection: Schools want and need clear statutory requirements, not freedom to do their own thing.'

'There are areas where deregulation, school autonomy and diversity are to be celebrated as markers of a vigorous and dynamic school system, and where differences between the practice of different schools are important. Child protection and the arrangements which underpin it are not such areas. We know that teachers, school leaders and governors find safeguarding and child protection difficult and troubling. Clear statutory requirements are actually seen as helpful.'

LADO Training

LADOs have never had a national accredited training programme. This has led to unsatisfactory variability even between neighbouring local authorities. We wish to see a training programme introduced with a test. We also wish all LADOs to be qualified social workers which is not required at present. We wish them to be exclusively tasked to the RA 'triage' role which has quite different characteristics.

RAs not only have the important function of protecting the young (and old) while they are in the care of the Regulated Setting, they also perform the role of 'sentinel' reporters of abuse concerns which arise outside the setting but which come to their attention. Daniel Pelka is an example of the failure of an RA to report a concern to the Local Authority.

The sentinel reporting role is important and appears underutilised. It must be seized upon by Government and made effective. MR is the essential primer for a functioning child protection culture in these settings, since no other measures can have any effect on children unless they first come to the attention of LA children's services.

Proposed legislation for the introduction of mandatory reporting of abuse

(1) Subject to the provisions of sub-sections (6) (7) and (8) providers of any one or more of the activities set out in the Schedule hereto whether or not such activities are defined in any enactment as regulated activities involving children or vulnerable adults and persons whose services are used by such providers being persons who stand in a position of personal trust toward such children or vulnerable adults who while such children or vulnerable adults are in their care have reasonable grounds for knowing or suspecting the commission after the date of this enactment of physical or sexual abuse or abuse by way of wilful neglect on such children or

[5] Child Protection: Schools want and need clear statutory requirements, not freedom to do their own thing.5/8/2013

vulnerable adults while the same are in their care whether such commission of abuse shall have taken place or be alleged to have or be suspected of having taken place in the setting of the activity or elsewhere have a duty as soon as is practicable after it shall have come to their knowledge or attention to inform the Local Authority Designated Officer (LADO) or children's services in the case of adults the Designated Adult Safeguarding Manager or such other single point of contact with the Local Authority as such Authority may designate for the purpose of reporting to it any such matter allegation or reasonable suspicion and if made orally to confirm such report in writing no later than [7 days] thereafter.

(2) Failure to fulfil the duty set out in subsection (1) before the expiry of the period of [10] days of the matter or allegation or suspicion first coming to the knowledge or attention of the provider or of any person whose services are used by the provider as defined in subsection (1) is an offence.

(3) For the purposes of sub-section (1) the operators of a setting in which the activity takes place and staff employed at any such setting in a managerial or general welfare rôle are deemed to stand in a position of personal trust and are deemed to have direct personal contact with such children or vulnerable adults as are in their care whether or not such children or vulnerable adults are or have been personally attended by them. In the case of Schools, Sixth Form Colleges, and Colleges of Further Education in private ownership the expression "the operators of a setting" shall include the proprietors, members of governing bodies, and board members in the case of ownership by a limited liability company.

(4) For the purposes of sub-section (1) all other employed or contracted staff or voluntary staff and assistants are deemed to stand in a position of personal trust only if and for the period of time only during which they have had direct personal contact with and have personally attended such children or vulnerable adults.

(5) For the purposes of subsection (1) children or vulnerable adults are or are deemed to be in the care of the providers of the activities set out in the Schedule hereto:

(a) In the case of the operators of any setting in which the activity takes place and of staff employed by the operators at any such setting in a managerial or general welfare rôle for the period of time during which the operators are bound contractually or otherwise to accommodate or to care for such children or vulnerable adults whether such children or vulnerable adults are resident or in daily attendance wherever the activity is provided, and

(b) In the case of all other employed or contracted staff or voluntary staff and assistants for the period of time only in which they are personally attending such children or vulnerable adults in the capacity for which they were employed or their services were contracted for.

(6) It shall be a defence to show that the Local Authority Designated Officer or that Children's Services or that in the case of adults the Designated Adult Safeguarding Manager or

that such other 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 subsection (2) or had been so informed prior thereto.

(7) 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 subsection (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 subsection (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 subsection (1) provided always that no allegation is made against such entity or organisation or member thereof or against such medical officer.

(8) It shall be a defence for any person to show that a Secretary of State acting pursuant to subsection (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 subsection (1).

(9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(10) In this section "providers of activities" has the same meaning as in section 6 of the Safeguarding Vulnerable Groups Act 2006 and "vulnerable adults" has the same meaning as in section 59 of the Safeguarding Vulnerable Groups Act 2006 and "children" means persons who have not attained the age of 18 years.

(11) No action shall lie against any person who in pursuance of the duty set out at subsection (1) informs all or any of the entities to whom report is by subsection (1) required to be made arising out of the making of such report provided the same was made in good faith and all such reports and the identities of the persons making them shall be received and held by their proper recipients in confidentiality.

(12) A Secretary of State having responsibility for the welfare safety and protection of children and of vulnerable adults may without the approval of a resolution of each House of Parliament make an Order varying or adding to or deleting from the list of activities set forth in the Schedule hereto whether or not such activities are defined in any enactment as regulated activities involving children or vulnerable adults and persons whose services are used by such providers being persons who stand in a position of personal trust towards such children or vulnerable adults.

The Schedule

Education including

I. Schools
II. Sixth Form Colleges
III. Colleges of Further Education
IV. Pupil Referral Units
V. Residential Special Schools
VI. Hospital Education Trusts
VII. Settings of Education other than at Schools
VIII. Private Tuition Centres

Health Care including

IX. Hospitals
X. Hospices
XI. G.P. Surgeries
XII. Walk-in Clinics
XIII. Outpatient Clinics

XIV. Child Nurseries and Kindergarten provision
XV. Childminders and childcare providers registered on the Early Years Register or the Compulsory or Voluntary Part of the Childcare Register
XVI. Registered social care providers and managers for children
XVII. Children's Homes
XVIII. Children's Hospices

XIX. Youth Offender Institutions

XX. The Probation Service

XXI. Private Institutions contracted by public bodies to provide services to children or vulnerable adults

XXII. Organisations providing leisure activities to children or vulnerable adults, such as sports clubs, music, dance or drama groups, youth clubs, Boy Scouts and Girl Guides.

XXIII. Organisations providing holidays for children or supervising children while on holiday

XXIV. Churches, Mosques, Synagogues, Temples, and other places of worship and religious organisations[6]

XXV. Services offered to children or vulnerable adults by Local Authorities outwith their statutory duties

[6] In the USA, 27 jurisdictions include clergy as mandated reporters (Children's Bureau, Clergy as Mandated Reporters of Child Abuse and Neglect, Child Welfare Information Gateway, Washington, 2012).

XXVI. Services offered to children or vulnerable adults by the Police outwith their statutory duties

XXVII. Adult Care Homes

XXVIII. Transport services including taxis and coaches commissioned by the providers of the Regulated Activities in this schedule.

Local Authority Thresholds for Intervention on RA Referrals

In our submission the threshold for RAs to refer to the Local Authority is "reasonable grounds for knowing or suspecting" the commission of physical or sexual abuse or neglect. Accredited training, as detailed in our submission, will assist RA staff deliver their statutory obligations.

An important aspect of any mandatory reporting system is defining the thresholds at which intervention by the Local Authority occurs. At present these change for many reasons leading to inconsistencies and therefore opportunities for failure. It is no way to run a safety critical service on which the safety of the vulnerable is dependant and it often leaves RA staff and the public confused and children at risk.

Enhanced LADO triage [as explained below] will assess whether intervention is necessary. An early referral, for instance when grooming activity is starting, might not result in enough evidence for prosecution but might well protect the child from abuse. (This is an example of where an "unsubstantiated" report is highly valuable. We discuss the use / misuse of substantiated and unsubstantiated report terminology in PART 2 'Response to Mandatory Reporting Child Abuse and Neglect)

We wish to see these LADO intervention thresholds clearly set out, applied consistently to all local and unitary authorities to remove inconsistencies, and then maintained. It has to be understood that in the short term the introduction of mandatory reporting will likely cause a spike in the number of reports, and that an increase in reports will be of little help unless there are resources to investigate them. Mathews' 7 year study in Western Australia found that in the year following the introduction of mandatory reporting, the proportion of reports investigated dropped markedly until increased investigatory resources could be put in place.[7]

[7] Mathews, B., Lee, X., & Norman, R. (2016). Impact of a new mandatory reporting law on reporting and identification of child sexual abuse: a seven year time trend analysis. Child Abuse & Neglect, 56, 62-79. **Proportion of reports investigated:** In the year after the introduction of the mandatory reporting law, there is a decline in the proportion of mandated reports that were investigated. This proportion decreased significantly by 26.9 percentage points from 64.8% in 2008 to 37.9% in 2009 ($p < 0.001$). There was no statistical evidence of a difference in the proportions of reports that were investigated from 2009 to 2010 ($p = 0.108$) although the level remains constant, sustaining the initial decline. This is then followed by significant increases from 40.3% in 2010 to 64.4% in 2011 ($p < 0.001$) and 75% in 2012 ($p < 0.001$). If we use 2008 as the pre-law baseline then it took 2 years for the proportion of reports that were investigated to reach pre-law levels as the proportion in 2011 is not statistically different from the proportion in 2008 ($p = 0.891$).

Preparedness for MR is essential, and needs to be well planned in marked contrast to the introduction of FGM MR on the 31/10/15. All that existed the day FGM law started was 'guidance.' No training had been provided, and there was no plan to roll out training to mandated reporters.

Feedback to Regulated Activity from Local Authority following Referral

A repeated concern expressed by RAs is the lack of feedback to the setting following a referral. This common lack of communication causes concern, and disengagement with the referrers. It is also unhelpful. The child can sometimes be returned to a school for example, and the referrer is unaware and uninformed of what, if anything, has happened and what on going engagement the child might or might not be having. It is vital that the local authority keeps RAs apprised and engaged otherwise it is perfectly possible that some will become disengaged with child protection. The detailed data capture we propose should also be two-way so the RA receives collated publicly available statistics on itself. This enables comparison between RAs which in turn can also inform government policy. Only government has the authority to order this.

Explanatory Notes for the Mandate Now Legislative Proposal

(1) There are many examples of failure to report suspicions of abuse. Hillside First School [8] in Weston Super Mare is a demonstration of the failure of 'discretionary reporting' which does not provide legal immunity for staff making the report. Only 11 of 30 incidences of suspected abuse involving Nigel Leat were reported to the Head during a fifteen year period. The Head used his discretion when considering whether to report any of the eleven concerns to the LADO and decided to report none putting the would-be reporting staff in a difficult position within the school. The Serious Case Review reached the conclusion that events at the school were a failure of the staff. No explanation was given on the 19 identified concerns that were not reported by staff to the Head. No mention was made in the Serious Case Review of the dysfunctional child protection framework that fails to require and to support staff in reporting their 'reasonable' suspicions.

Serious Case Reviews do not address or criticise the child protection framework because it is excluded from the terms of reference of these soon to be scrapped reviews. When staff do report a concern, they report to the administration of the RA who don't welcome hearing the worst news that can arise in any setting which has to operate on a commercial or quasi commercial footing. The administration is currently under no legal obligation to convey the report to the Local Authority or indeed to the Police even on the rare occasions that criminal events are known to have occurred. Southbank International School[9] in London, where in excess of 53 boys were abused by William Vahey in a four year period, is another example of

[8] Nigel Leat sex abuse: 'Lamentable failure' of school management

[9] Southbank International School - FINAL REPORT - Hugh Davies OBE QC. 25 November 2014

discretionary reporting failing staff and children. A report in The Times[10] on 26.4.14 revealed an incident had been reported and investigated by the school in 2012, but because the parent did not want to take any further action, the school decided not to contact the LADO and immediately put Vahey back to work with the very pupils he was abusing. He continued his employment at the school until June 2013. Child protection in these settings is not 'all different now.'

Mandatory reporting[11] of suspected money laundering was introduced in 2002. Furthermore companies employing more than 250 persons will have mandatory reporting of gender pay gap starting in 2018[12]. The Government addresses the abuse of financial regulations with robust and clear law that professionals and employees in the financial services sector understand. Meanwhile, good staff employed in RAs have discretionary reporting as detailed in 'statutory guidance' and 'Keep Children Safe in Education.' This is a highly emotive safety critical discipline with guidance instead of essential law the existence of which would change the culture of child protection and help all involved.

Fig.1

The UK (excluding N.Ire which has MR and prescriptive child protection in education) lag most of the rest of the world with the introduction of MR. Of course in each of these

[10] School Head meets parents over abuse - Times 26.04.14
[11] Proceeds of Crime Act 2002 - Section 330
[12] Gender pay gap reporting for big firms to start in 2018

jurisdictions in Fig1 the law varies. Our proposal seeks the introduction of MR into specified RAs, described by lawyers as particularity.[13]

Currently staff who report suspected abuse are by default whistleblowers. Without knowing it some risk their career to do the right thing. They are often concerned about being wrong, and being alienated by all of their colleagues if they are. The only protection they have is the Public Interest Disclosure Act ("PIDA") which is of little value in this context.

The known presence of a reporting law can influence what would otherwise be a reluctance to report. Studies have found that when asked if their decision not to report a suspected case would be changed if they knew at the time they were under a legal duty to report, a substantial number of initial non-reporters would change their mind and make a report[14]

The effect can be seen in teaching staff in New South Wales data in Fig 2 and Fig.3

Further evidence of underreporting emerged in Western Australia when MR for specific professions was introduced in January 2009. Fig.2 shows the year before MR commenced and and Fig.3[15] the year after.

Investigations and substantiation rates (nb caveat) BEFORE MR LAW: 2008				
	Total Reported	Total Investigated	Investigated – Substantiated (of total reports)	Investig'd – Substant'd (of investigated reports)
Medical Practitioners	42	25 59.5%	4 9.5%	4 16%
Nurses	17	13 76.5%	4 23.5%	4 30.7%
Police	405	276 68%	103 25.4%	103 37.3%
Teachers / Principals	232	132 56.9%	41 17.7%	41 31%

Fig 2.

[13] 'Unreliable Evidence' – Professor Andrew Ashworth CBE QC and Lord Hoffmann

[14] Webberley 1985; Shamley et al 1984

[15] Fig.1 data, Fig.2 + 3 data and graphics, courtesy Professor B. Mathews

Investigations and substantiation rates AFTER MR LAW: 2009				
	Total Reported	Total Investigated	Investigated – Substantiated (of total reports)	Investig'd – Substant'd (of investigated reports)
Medical Practitioners	304	102 33.6%	33 10.9%	33 32.4%
Nurses	183	74 40.4%	16 8.7%	16 21.6%
Police	853	345 40.4%	136 15.9%	136 39.4%
Teachers / Principals	433	150 34.6%	33 7.6%	33 22%

Fig.3

Data from the first year only of a new procedure is rarely representative. Professor Mathews has since conducted a seven year longitudinal study pre and post the introduction of MR in Western Australia[16]. The conclusion said:

> **"The results of this research suggest a mandatory reporting law for CSA is associated with a substantial and sustained increase in identification of cases of CSA. Societies which are considering the introduction of a mandatory reporting law for CSA should find support for this policy intervention from these findings, while recognizing the associated needs for reporter education, investment in agency capacity and service provision, and the need to implement responses to reports with sensitivity."**

MR initially produces a higher rate of referral. With the child abuse discovery rate between 5% for UK (NSPCC) and 12.5% in England (Office of the Children's Commissioner[17]) it is in interests of all that suspicions of child abuse which 'should' be made, are made. As Australian data reveals MR is a major contributor to achieving more reports because of the legal obligation which also supports and protects all staff including the administration of the setting.

In Australia, key reasons for the accentuated rise of notifications in some jurisdictions following the introduction of MR, which have since been addressed, included (i) double counting of the same child/ren notified to children's services by multiple agencies; (ii) excessive reporting stemming from the introduction of custodial sentence for failure to

[16] Mathews, B., Lee, X., & Norman, R. (2016). Impact of a new mandatory reporting law on reporting and identification of child sexual abuse: a seven year time trend analysis. Child Abuse & Neglect, 56, 62-79.

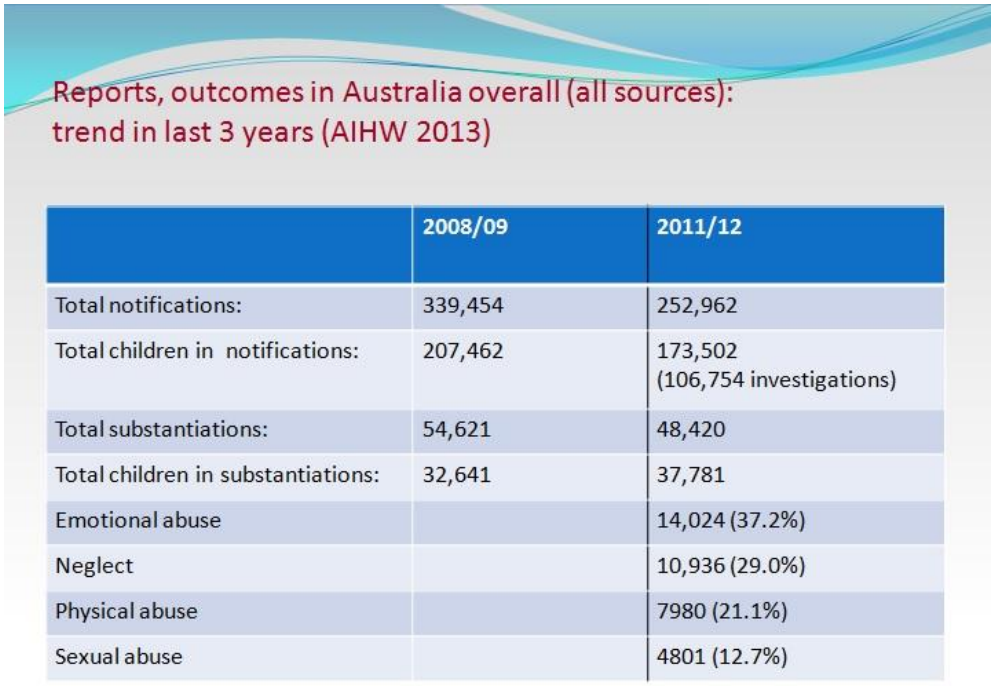
[17] Protecting Children From Harm 2014. Para 9.1.

report in some jurisdictions. **Mandate Now therefore proposes criminal sanction with a fine which also keeps cases for non-reporting within the jurisdiction of the magistrates court.**

The trend of reports in post MR Australia between 2008/9 and 2011/12 is revealing - See Figure.4 below

- Notifications are down by more than 25%
- Proportionately substantiations have risen from 13% to 19% of Notifications
- Total children in substantiations risen from 9% to 14%

From fewer Notifications than existed pre MR, more children are being placed into a position of safety earlier.



	2008/09	2011/12
Total notifications:	339,454	252,962
Total children in notifications:	207,462	173,502 (106,754 investigations)
Total substantiations:	54,621	48,420
Total children in substantiations:	32,641	37,781
Emotional abuse		14,024 (37.2%)
Neglect		10,936 (29.0%)
Physical abuse		7980 (21.1%)
Sexual abuse		4801 (12.7%)

Fig 4

In 2014 the NSPCC conservatively estimated the cost of child abuse in the UK to be £3.2bn per annum[18].

[18] NSPCC Estimating the cost of child sexual abuse in the UK 2014

Explanatory notes continued**:**

(2) The penalty for failure to report is a stand-alone criminal offence within the jurisdiction of the Magistrates Court. Prosecutions for failure to report in common law countries are rare. We do not expect any difference in the UK. **It is important to remember the law also provides staff with legal protection.**

(3) Requires no supplementary explanation

(4) Requires no supplementary explanation

(5) Requires no supplementary explanation

(6) Requires no supplementary explanation

(7) Suspension Orders are a tool for the Secretary of State to use in particular instances. This might involve exemption from MR for a survivor/perpetrator services in one of the specified healthcare services included in The Schedule of mandated reporters.

(8) Requires no supplementary explanation.

(9) High penalties for non-reporting, including custodial sentences, can produce hypersensitive reporting as experienced in Australia. It is a question of striking a balance. The penalty in our legislative proposal uses precedent from common law jurisdictions that do not appear produce hypersensitive reporting.

(10) Requires no supplementary explanation

(11) "

(12) "

Only very rarely is the crime of child abuse witnessed. RA employees mostly hold suspicions which they decide, on a discretionary basis, either to report or not. 'Discretionary reporting' is ineffective as research data in Figs 1-3 indicate. A body of research from Mathews specifically on the effects of MR (Footnote 9 of this of this submission), and a cross jurisdictional analysis of sexual abuse reports[19] between Western Australia and Ireland (pre the introduction of MR in that jurisdiction via referendum in 2012) reveal the effectiveness of MR.

Part of the conclusion of the cross-jurisdictional analysis informed us**: In the jurisdiction with mandatory reporting, double the number of reports were made (with 53% of these made by mandated reporters); a substantially higher number of sexually abused children were identified (the proportional difference was 4.73; the numerical difference was over 700); 54% of confirmed cases were identified as a result of reports by mandated reporters (2.5 times the entire amount identified by all reporters in the other jurisdiction); and additional substantial systems burden and net widening was not apparent.**

The fear of being wrong combined with primary motivation for self-protection are often reasons for not reporting a suspicion. Cumulatively the reasons for not reporting can be gathered under 'gaze aversion.' Reports which rarely provide contemporaneous evidence of a crime having been committed are a very challenging prospect for a mandated reporter. During the debate on Amendment 43 in the Serious Crimes Bill Baroness Finlay of LLandaff explained these circumstances from personal experience when she was a General Practitioner.

[19] Mandatory Reporting Laws and Identification of Child Abuse and Neglect: Consideration of Differential Maltreatment Types, and a Cross-Jurisdictional Analysis of Child Sexual Abuse Reports

In Australia the introduction of MR transformed the culture of child protection in RAs. Data in Fig. 4 reveals notifications are below pre MR levels and yet the number of children in substantiations per 1000 notifications has risen. Of these reports it must be recognised that 'Mandated Reporters' as these RAs are defined in Australia, account for only 52% of these numbers.

The Schedule

The definition of Regulated Activities contained in SVGA 2006 (Schedule 4) is unclear which makes the schedule necessary. Our submission includes a more comprehensive range of Regulated Activities than the government's limited proposals **which seem to have the sole objective of minimising the number of referrals.**

Faith Settings and Religious organisations: The Church of England through the Lord Bishop of Durham sponsored Amendment 43 in the Serious Crimes Bill. On 4/11/13 in BBC Panorama Danny Sullivan Chairman at the time of the National Catholic Safeguarding Commission said the introduction of MR 'would be a healthy and right thing to do.'

We have excluded Social Workers from MR.

Also excluded are confidential helplines such as Childline.

This is our submission for the introduction of mandatory reporting within specified Regulated Activities. It will transform the culture and effectiveness of child protection by supporting and protecting staff and reducing the consequential cost of the crime of child abuse by placing more children into safety earlier. Precedent exists that demonstrates MR - supplemented by important changes to the role and training of LADOs, and changes to the delivery of staff training - is a vital component of a functioning and effective child protection system.

Mandate Now

Anne Lawrence
Tom Perry
William Pumfrey
Jonathan West

The Mandate Now proposal for MR is supported by more than 200,000 people who signed the Mandate Now petition for the introduction of this law which was presented on the floor of the House of Commons by the Rt. Hon Cheryl Gillan MP on the 2nd December 2015.

The following people support this submission:

Baroness Walmsley (Lib Dem)

CIS'ters
MACSAS - Minister and Clergy Sexual Abuse Survivors
The Survivors Trust

James Rhodes – Pianist and author

Dr Mike Hartill
Dr Melanie Lang
Dr Helen Owton

Part 2

Mandate Now Review

of

Consultation Proposals

for

Mandatory Reporting of Child Abuse and Neglect

Duty to Act in Relation to Child abuse and Neglect

Observations on Content and design of the Consultation

The Consultee proposes one of two options featured in the consultation to be applied to those gathered under the newly created definition 'Practitioner.'

Unfortunately the proposition that one of two options can fit all 'practitioners' is flawed. The options proposed fail each of the distinct and different roles they seek to include.

The introduction of the term 'Practitioner'

The term has been created specifically for the consultation. It permits the consultee to assemble many disparate child protection roles under one definition for no good reason. It serves to confuse. Perhaps it is driven by a wish to achieve a 'one initiative fits all' proposition that will 'fail each.' We detail why in the our reviews of the proposals.

It is known and understood that social workers are against the principle of MR for familial settings. We agree, which is why our proposals only address MR in RAs. Social workers have nothing to do with either the creation of child protection policies or their delivery in RAs. The terms of reference for the *The Munro Review of Child Protection* for example, excluded this very different and specific area of child protection.

The consultation definition of 'practitioner' lists the following roles.

- Director of Children's Services - The recipients of referrals. MR law therefore inappropriate
- Social Workers - employed by the LA who receive and deal with referrals
- Housing Officers
- Police Officers / Community Support Officers / Civilian Police staff. (An agency that deals referrals)
- Probation Officers.

With the exception of Housing and Probation Officers (All these are listed in Section A2, P5 of Impact Assessment) all are agencies that **receive allegations** from RAs (and elsewhere), and provide appropriate responses. An entirely different role to those performed by RAs.

A number of Child Sexual Exploitation cases have highlighted a lack of response and accountability in referral receiving roles, Rotherham to highlight one. **Option 3,** 'Duty to Act,' which is a variation of wilful neglect suggested by David Cameron in the House Of Commons following the release of the Serious Case Review into the Oxford Child Sexual Exploitation case 3/3/2015, is after the event legislation that will make no difference to the culture of child protection at the Local Authority. We provide an explanation in our review.

Meanwhile the proposal in **Option 2** is inappropriate for non-Regulated Activities as we explain in our review.

Mandate Now response to:

Consultation proposal for Mandatory Reporting Duty in relation to Child Abuse (Option2)

Conclusion : Mandate Now rejects the proposal **as stated in the consultation document**

- ➢ Through the definition of the term "practitioner" LA children's services will both be mandated reporters and the recipients of their own reports.
- ➢ The proposal allows no flexibility in LA arrangements for triaging and handling reports for instance using the LADO or a Multi-Agency Safeguarding Hub.
- ➢ Less serious cases of non-reporting will be addressed by disciplinary rather than criminal sanctions. Such sanctions have failed to influence child protection. Sanctions depend on organisations acting potentially against their own interests to apply disciplinary sanctions. There is no proposed sanction on an organisation for failing to take disciplinary action, therefore this is not "mandatory" reporting but a minor variation to the discretionary reporting arrangements currently in existence.
- ➢ The consultation proposal provides little or nothing in the way of legal protections for those who report.
- ➢ The proposal covers only a limited number of Regulated Activities

There are three curious things about the consultation proposal for mandatory reporting.

The first is the brevity of the description, about two pages out of a consultation document of 36 pages (excluding another 45 pages of annexes).

The second is how negative the language is that is used to describe mandatory reporting. From reading the proposal one could think the Home Office wants to solicit arguments *against* mandatory reporting and for what appears to be its favoured and flawed option of "duty to act".

The third is how little the MR proposal resembles the draft amendment on mandatory reporting in amendment 43 tabled by Baroness Walmsley (LD) , in the Serious Crimes Bill and withdrawn in exchange for the promise of this consultation.

The description starts badly, in paragraph 45.

"Mandatory reporting is a legal requirement imposed on certain groups, practitioners or organisations to ***report*** *child abuse and neglect. If such a duty were to be introduced in England, reports would be made to local authority children's social care."*

The first problem is the words "report child abuse". That requires fairly certain knowledge of abuse to exist in the mind of the reporter. In practice it rarely exists, especially in cases of child sexual abuse, where the initial evidence is often equivocal.

What needs to be reported is a *reasonable suspicion* of child abuse or neglect, i.e. not something that by itself would justify prosecution, but might be the starting point for an investigation.

The second problem is the use of the word "practitioners". We detailed our misgivings about this newly created term earlier in this submission. "Practitioners" is defined (in a consultation footnote) as follows.

"The term 'practitioners' is used throughout the consultation to refer to individuals who work with children in any capacity."

Note: **any** capacity. By the consultation's own definition of mandatory reporting, that would require those working with children in local authority children's social care both to be mandatory reporters and the recipients of their own reports. This is clearly nonsense. Moreover, it is likely to be interpreted by the social work profession as yet another unreasonable demand being made on a stretched profession, so as to give politicians an easy target for when (as inevitably happens from time to time) a child is harmed who might have been protected.

So let's be clear, a reasonable mandatory reporting regime will have local authority children's social care as the ultimate *recipients* of reports, rather than as mandated originators. Local authority children's social care already has a statutory duty to investigate child protection concerns that are brought to its attention, and there is no reason for mandatory reporting to change anything about that.

And there is a third problem, that it is assumed that local authority children's social care will be the recipients of the reports. While they will be the ultimate recipients, many local authorities have defined a single point of contact for a variety of reports (sometimes called a Multi-Agency Safeguarding Hub) where reports are triaged and then passed to the most appropriate agency. The definition in the consultation does not appear to allow for this kind of flexibility in where reports by mandated reporters should be sent. Triage of reports is a vitally important and necessary function.

It is important that mandatory reporting is not discarded simply because the description of it in this consultation paper is poorly thought-out.

Paragraph 46 is simply a statement of fact that there are different mandatory reporting arrangements in place in different countries, and that different proposals exist for how mandatory reporting should be introduced here.

Paragraph 47 describes the range of possible sanctions. The proposal states that "These could range from employer and/or regulatory sanctions to criminal sanctions".

If we are talking of "employer and/or regulatory sanctions" then it quite simply is not mandatory reporting. We already have employer and regulatory sanctions, they are rarely applied (in fact they seem sometimes to be applied more often to whistleblowers who *do* report than to those who fail to report). So employer and/or regulatory sanctions is actually the existing system of discretionary reporting that we have now. It is the status quo with new words to describe it.

Therefore, if we are talking about effective *mandatory* reporting there needs to be a criminal sanction. Talk of anything else can serve only to sow confusion. With so many shortcomings in just

three paragraphs the proposal is either the product of a frightening degree of ignorance of the subject or is designed to be rejected.

We then get to **paragraph 49**, which is actually a reasonable (if brief) description of the possible benefits of a mandatory reporting system. It's worth looking at each point in turn.

"…increase awareness of the importance of reporting child abuse and neglect, both by those under a duty to report and the general public;"

Perfectly true, though it is a bit odd to start with this somewhat indirect and intangible benefit.

"…lead to more cases of child abuse and neglect being identified, and at an earlier point in a child's life than is currently the case;"

Also perfectly true. We have previously referred to the latest and very specific research on the introduction of mandatory reporting in Western Australia by Professor Ben Mathews.[20] *"…create a higher risk environment for abusers or potential abusers because the number of reports being made would be likely to increase;"*

This is another indirect but probable effect. If mandatory reporting brings about a culture of vigilance in institutions such as schools, then the abusers who are most prolific because they work their way into a position of trust within an institution may be deterred from trying to abuse. In certain ways child abusers are much like other criminals, in that they don't want to get caught and will avoid taking unreasonable risks of being caught.

"…ensure that those best placed to make judgements about whether abuse and/or neglect is happening – social workers – do so. Practitioners (i.e. those who work with children in any capacity) have not always been able to confidently conclude when a child is being abused or neglected or is at risk of abuse or neglect. Requiring a wide range of practitioners (see part D) to report would enable these difficult cases to be examined by social workers."

This is actually the most important and direct benefit of mandatory reporting, and should have been placed first. We need these reports to be in the hands of those equipped to evaluate them. We propose the LADO for very clear reasons. Teachers for instance are primarily trained to teach. They are not trained to investigate or evaluate cases of children at risk of abuse.

The present discretionary system provides far too many brakes on reporting. Evidence (particularly of sexual abuse) is often not very clear cut, and could consist of something as vague as age-inappropriate sexual knowledge or behaviour which might indicate abuse or might possibly have a more innocent explanation.

A suspicion /allegation of abuse is such a horrible thing that a person will very naturally wonder "what if I'm wrong?" and think of all the adverse consequences, from accusing an innocent person, wrecking somebody's career, being themselves accused of making a malicious accusation, being labelled a troublemaker or whistleblower possibly against a trusted colleague.

[20] Mathews, B., Lee, X., & Norman, R. (2016). Impact of a new mandatory reporting law on reporting and identification of child sexual abuse: a seven year time trend analysis. Child Abuse & Neglect, 56, 62-79.

The general public assume that anybody would instantly report abuse if they saw it. However the general public are rarely faced with circumstances in which that assumption gets tested. Moving from the general belief that one would always report to the specific case of actually having to do so is a far greater step than many realise. What if you're wrong?

At present, the consequences to the reporter for failing to report are relatively small, and so the question "What if I'm right?" gets somewhat less of an airing.

The main effect of a well-implemented mandatory reporting scheme is to create an environment which protects those who would report but currently have fears about doing so. They will know precisely what is expected of them, and know that sanctions can hardly be brought against them for performing their legal obligation. The "what if I'm wrong" question loses much of its worry.

Paragraph 50 lists what the author believes to be the "possible risks and issues". There were only four items in the list of positives, the author has included no fewer than eight negatives. The author believes mandatory reporting could:

"…result in an increase in unsubstantiated referrals. Unsubstantiated referrals may unnecessarily increase state intrusion into family life and make it harder to distinguish real cases of abuse and neglect. Appropriate action may not be taken in every case as a result"

If there is an increase in total referrals then there is almost certain to be an increase in the absolute number of cases that are unsubstantiated. The research by Mathews[21] referred to above suggests reports from mandated reporters more than triple, and the substantiation rate remained roughly constant.

The statement however appears to be implying without quite openly saying that the proportion of unsubstantiated referrals will rise, and that children's services will be swamped with a flood of trivial referrals. It is true that an exceedingly badly designed mandatory reporting system might have that effect, by defining an extremely low threshold for a suspicion of abuse and an extremely onerous sanction, such as imprisonment, for failure to report. But there is no reason to design mandatory reporting in such a foolish way.

But even if the proportion of unsubstantiated cases does rise, this is not necessarily a bad thing. In his paper Mathews makes the point that substantiation rates are not all that useful a measure of effectiveness. Other research has already discovered that ***"Many reports of abuse and neglect that are investigated but unsubstantiated do involve abuse and provide opportunities for early intervention" and as a result have concluded that substantiation is "a distinction without a difference[22]" and that it is "time to leave substantiation behind[23] and that "substantiation is a flawed measure of child maltreatment. . .policy and practice related to substantiation are due for***

[21] We analysed data about numbers and outcomes of reports by mandated reporters, for periods before the law (2006–2008) and after the law (2009–2012). Results indicate that the number of reports by mandated reporters of suspected child sexual abuse increased by a factor of 3.7, from an annual mean of 662 in the three year pre-law period to 2448 in the four year post-law period.

[22] Hussey, J., Chang, J., & Kotch, J. (2006). Child maltreatment in the United States: Prevalence, risk factors, and adolescent health consequences. Pediatrics,118(3), 933–942. http://dx.doi.org/10.1542/peds.2005-2452

[23] Kohl, P., Jonson-Reid, M., & Drake, B. (2009). Time to leave substantiation behind: Findings from a national probability study. Child Maltreatment, 14, 17–26 http://cmx.sagepub.com/content/14/1/17

a fresh appraisal[24]". For instance, a report of suspected CSA is frequently based on the reporter observing the child's adverse health symptomatology, behaviour, and social context. In such circumstances, there is often a health and welfare need whether or not the CSA is substantiated. Mathews also points out that substantiation rates can also be markedly affected by such things as policy variations in setting evidentiary thresholds, the capacity of agencies to investigate, and whether there is an emphasis on evaluating existing harm or assessing the risk of future harm.

Mathews: ***"there is not firm ground for concluding that when exploring trends in reporting and report outcomes, the sole measure of the soundness of a report of suspected CSA is whether it is substantiated. Outcomes such as actual service provision to the child, and perceived need for service provision even if this is unable to be provided, are among those that are also relevant."***

Mathews' conclusion is supported by the Government's (SFR) document "Characteristics of children in need: "22 October 2015 (Footnote 4 on page 2). Figure G indicates that almost half (49.4%) of referrals are for "abuse or neglect" but Figure G below indicates that the most common factor identified at the end of assessment is domestic violence at 48.2% with emotional abuse at 18%, neglect 16.5%, physical abuse 13.4% and sexual abuse 5.8%.

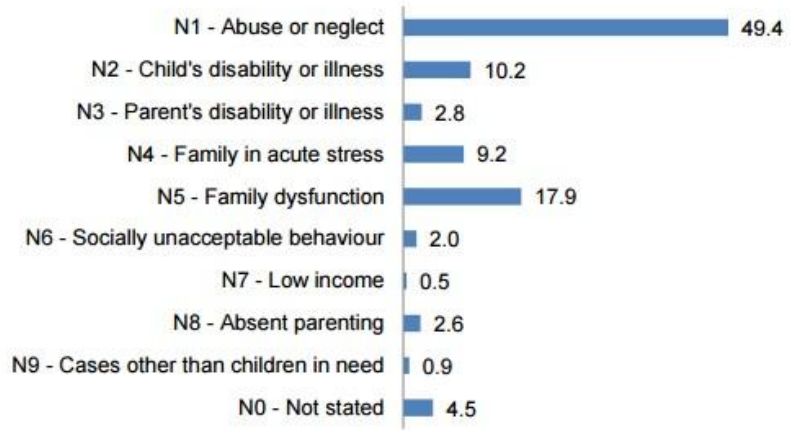
Figure G :

Primary need identified at assessment (Tables B3)

When a child is assessed following a referral, the practitioner determines the child's **primary need at this first assessment.** Only one need can be reported here and the list of primary needs is hierarchical, so in cases where multiple needs are identified, the need highest in the list is reported in the census.

The categories are designed only to identify what kinds of pressures are placed on children's social services. The order of the categories relate to the specificity of the description and not necessarily importance. However, the order is fixed so that there is consistency.

Figure G: "Abuse or neglect" is the most common primary need
Children in need at 31 March 2015, by primary need at first assessment



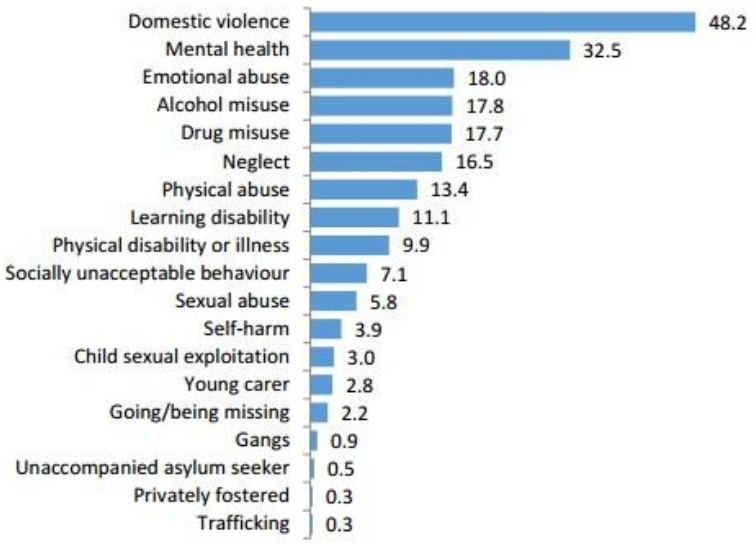
Most children's primary need is due to abuse or neglect and the proportion is up on last year, from 47.2% to 49.4%. Family dysfunction is the second most common need, 17.9% this year down from 18.6% last year.

[24] Cross, T., & Casanueva, C. (2009). Caseworker judgments and substantiation. Child Maltreatment, 14(1), 38–52. http://dx.doi.org/10.1177/1077559508318400

Domestic violence, which includes that aimed at children or other adults in the household, was the most common factor identified, flagged in 48.2% of episodes assessed in the year and with assessment factors recorded.

This was followed by mental health at 32.5%, which incorporates mental health of the child or other adults in the family/household.

Figure H: Domestic violence is the most common factor identified
Factors identified at the end of assessment as a proportion of episodes assessed in the year



The figures aren't directly comparable because more than one factor can be identified at the end of assessment so the categories in Figure H add up to more than 100%. Even so, it appears that abuse or neglect is sometimes not a factor identified at the end of the assessment even though that is what was referred. However, children need protection from domestic violence even if the assessment concludes that the original referral for abuse or neglect is unsubstantiated

"…lead to a diversion of resources from the provision of support and services for actual cases of child abuse and neglect, into assessment and investigation"

This is essentially a repetition of the "swamping" argument of the first point, that children's services will be overwhelmed by a surge of trivial reports.

"…result in poorer quality reports as there might be a perverse incentive for all those who may be covered by the duty (from police officers to school caterers) to pass the buck. This might mean the children are less protected than in the current system;"

In saying that mandatory reporting might encourage people to "pass the buck", it appears to be saying that people will be encouraged to report suspicions rather than attempting to handle the problem directly. But this is exactly what we *want* people to do, and so does the Government[25]. We want child protection concerns to be brought to the attention of those with the training and authority to properly investigate. Quite how this could mean that "children are less protected than in the current system" is left unexplained.

According to recent research for the Office of the Children's Commissioner for England, approximately seven out of eight abused children do not come to the attention of children's services. Therefore our current problem is that we have far too *few* reports of suspected abuse and we need many more. In all too many recent cases, when abuse was discovered, it was subsequently

[25] Govt (Home Office) print media advertising 2016 (b) Govt (Home Office) radio advertising 2016 'If you suspect abuse visit (website) to find out who to call.'

found that the evidence was there and went unreported for some considerable time. Recent examples include

- Nigel Leat, who sexually abused children at Hillside First School for most of the 14 years he taught there. Behaviour of concern was noticed by other staff on 30 occasions. Reports were made to the head teacher eleven times, none reached children's services. Leat was eventually caught when a girl told her mother who called the police directly without involving the school.

- Daniel Pelka, who was killed by his mother and her partner. Daniel attended school during the last six months of his life. During that time, staff noticed that he was emaciated and seriously underweight, that he was constantly hungry and trying to steal food from other children's lunchboxes, and that he had unexplained bruises including what appeared to be strangulation marks on his neck. The school's safeguarding arrangements were described as "dysfunctional" in the subsequent serious case review, a word that is rather kind given that they should more properly have been described as "nonexistent".

- Jimmy Savile, who abused in just about every institution that he came into contact with. Most notable perhaps is the fact that nurses at Stoke Mandeville hospital, feeling unable to report their concerns about him, would tell patients to pretend to be asleep when Savile visited so that he would take no notice of them.

- Jeremy Forrest, a teacher at Bishop Bell Academy in Eastbourne, who formed a relationship with a 15 year old pupil and fled to France with her. Evidence of the relationship was known to staff for some time but not reported to children's services.

Given present circumstances, anything that increases people's willingness to report concerns should be welcomed.

"…focus professionals' attention on reporting rather than on improving the quality of interventions wherever they are needed. This might encourage behaviour where reporting is driven by the process rather than focusing on the needs of the child;"

Before we had "practitioners", now we have "professionals". Let's make a few appropriate distinctions here in order to avoid everyone becoming as hopelessly confused as the author of the consultation appears to be.

We don't want teachers, nurses etc investigating abuse[26]. It's not their job and they aren't trained for it. Their unguided attempts at intervention are likely to be ineffective or possibly even actively harmful. We have quite enough cases now where schools or other institutions believe that they can effectively protect children (and also the institution's own reputation) by dealing with abuse "in house". However they end up protecting the abuser more than anybody else.

[26] Refer P17 Keep Children Safe in Education -
If, at any point, there is a risk of immediate serious harm to a child a referral should be made to children's social care immediately. Anybody can make a referral. If the child's situation does not appear to be improving the staff member with concerns should press for re-consideration. Concerns should always lead to help for the child at some point.

Instead we want these people passing concerns to children's services who *are* trained to investigate and intervene. Therefore appropriate reporting can both be process driven and focus on the needs of the child, since an abused child needs to come to the attention of children's services who are best placed to make an effective intervention.

Moreover, early reporting to children's services will reduce the harm done to a child either by directly triggering an intervention, or less directly by providing children's services with a pattern of behaviour on which they can eventually act. In either case, intervention can occur sooner than it otherwise might, both reducing the harm to the abused child and also preventing abuse of other children by earlier identification of the abuser.

This is all so obvious that to phrase this as a negative suggests that the consultation author is scraping the barrel for disobliging things to say about mandatory reporting.

"…lead to those bound by the duty feeling less able to discuss cases openly for fear of sanctions, hinder recruitment and lead to experienced, capable staff leaving their positions"

This happens now, but to those who wish to report but fear to for a variety of reasons. Quite why a reporting duty could lead to those to whom the duty applies becoming *less* willing to discuss cases openly is not explained. It is merely asserted as if it were self-evident fact. There is no evidence from the world's MR countries (the majority of nations in the world) that supports this claim.

"…dissuade children from disclosing incidents for fear of being forced into hostile legal proceedings"

Few children disclose even now. **The Royal Commission into Institutional Responses to Child Sexual Abuse in Australia** has suggested that (for those who do eventually disclose) it takes an average of 22 years to disclose child sexual abuse to the authorities. No evidence is provided by the consultation author to explain why children may be less willing to disclose if mandatory reporting were to exist, and no evidence is given to the effect that children are sufficiently sophisticated to even think about "hostile legal proceedings". If we believe that legal proceedings are hostile to children, then we should change them so that they become more child friendly. We don't instead make it even harder for crimes against children to be prosecuted. The Royal Commission is about to release a paper on this subject.

Overall, children tell somebody about abuse because they want to be protected from it. They want something done so the abuse will stop. Because so few children disclose, every disclosure is immensely valuable and must get into the hands of those who can intervene effectively.

"…undermine confidentiality for those contemplating disclosure of abuse. Victims may be more reluctant to make disclosures if they know that it will result in a record of their contact being made"

This is a repetition of the previous argument. Moreover, since very few children disclose, even if this concern were valid then any effect would be marginal. Far more important to the effectiveness of mandatory reporting is that other signs of abuse are reported, those noticed by adults who have personal responsibility for children as defined in our draft legislation in Part 1.

"…have limited impact on further raising awareness of child abuse and neglect given the new Government communications activity, the existing high level of media scrutiny and the work of the Independent Inquiry into Child Sexual Abuse."

Awareness has increased. We now need to turn that awareness into action so that reasonable suspicions actually get reported and acted on. Mandatory reporting is primarily about stimulating appropriate action. This is the missing link in the present arrangements. Far too few children who are at risk of abuse or who are being abused are coming to the attention of the Local Authority. Media scrutiny will not of itself cure the fears of those who ask themselves "What if I'm wrong?" on seeing indications of abuse. The IICSA is going to be in session for years to come and may yet conclude that our awareness needs to be raised much higher than it is even after the recent high profile cases.

Paragraph 51 makes comparisons between referral rates in England and some jurisdictions which have mandatory reporting. The figures are worthless because, as Professor Mathews has stated the rates can be ***"markedly affected by such things as policy variations in setting evidentiary thresholds, the capacity of agencies to investigate, and whether there is an emphasis on evaluating existing harm or assessing the risk of future harm"***. If you want a valid comparison between systems with and without mandatory reporting, you need to have a like-for-like comparison. You need cases counted the same way and for the laws and other arrangements to be otherwise similar except in respect of the presence or absence of the mandatory reporting duty. Furthermore the paucity of child abuse data gathered from Regulated Activities in England is astonishing.

The figures quoted in **paragraph 51** have been used to misleadingly suggest that mandatory reporting would not in fact result in much of an increase in referrals at all, and that mandatory reporting is therefore a useless measure. But for this argument to be true, the other arguments offered against mandatory reporting, such as the swamping argument, must be false. LA children's services could hardly be swamped by a measure that makes no change in the number of referrals.

For two mutually conflicting arguments to be made against mandatory reporting suggests that the consultation author has no significant evidence in favour of either argument, and/or that he is sufficiently against mandatory reporting for reasons unaffected by evidence that he is prepared to throw even mutually conflicting arguments at the issue in the hope that nobody will notice. Well, it didn't work. We noticed.

Fortunately we have a like-for-like comparison available to us in Professor Mathews' study.. **Curiously it is not included in the annexes to the consultation documents.** There is an underlying assumption in the consultation description of mandatory reporting that the reporter's duty ends when the report is made. This is not so, or at least it need not be so. Once children's services investigate, there may be a need for a child protection plan or other measures which will require attention by schools or other institutions which care for the child. Mandatory reporting should not affect these arrangements. The wording of the proposal implies that these existing arrangements would get abolished or at least ignored as a result of mandatory reporting. The suggestion is of a false dichotomy of a choice between mandatory reporting and other measures, whereas mandatory

reporting should be implemented *in concert* with other measures designed to make the best possible use of the reports generated.

Mandate Now response to:

Duty to Act Offence in relation to child abuse and neglect (Option 3)

Conclusion : Mandate Now rejects the proposal.

The proposal requires no one to report anything because there is no legal mandate to report. No one is protected if they do report a concern because the report remains discretionary since the required action under the duty is unspecified. If they don't act in a way they should have acted, and with the benefit of hindsight and possibly years later, the failure to act 'could' be criminalised.

The proposal is designed to achieve nothing; it is an exercise in afterthought that contributes nothing to the long-needed change to the culture in child protection.

- ➢ It is after the event child abuse legislation that might scapegoat the odd person.
- ➢ It cannot positively impact the culture of child protection.
- ➢ The specific action to be taken is unspecified and leaves staff once again unprotected if they decide to take action. (gaze aversion)
- ➢ It is a duty to take unspecified "appropriate action" which varies according to circumstance. It would be an extremely challenging offence to prove. Nothing so vague could have a criminal sanction attached.
- ➢ In less serious cases it is proposed that the duty to act will be enforced by disciplinary sanctions rather than criminal sanctions. This depends on organisations acting potentially against their own interests to apply disciplinary sanctions. There is no proposed sanction on an organisation for failing to take disciplinary action.
- ➢ The cases where the proposal anticipates criminal sanctions will be used are narrow and require such a degree of knowledge of the abuse by the accused as to be almost impossible to prove. No prosecutions will occur
- ➢ Having an unspecified duty to act is an open invitation to some RAs to handle abuse cases "in house", rather than report to the LADO in the case of schools or the the Local Authority MASH. They will claim that they were acting reasonably and in good faith, and it will be in almost all cases be impossible to prove otherwise.

Assessment

The problem with the duty to act is clear from the first paragraph of the description (paragraph 53).

*"The introduction of a duty to act would impose a legal requirement on certain groups, professionals or organisations to **take appropriate action** where they know or suspect that a child is suffering, or is at risk of suffering, abuse or neglect."*

The problem is compounded with the clarification in the next paragraph (para 54).

*"Making decisions about what action to take in response to abuse and neglect is not always straightforward. What would be considered to be **appropriate action** under the duty to act would therefore depend on the particular circumstances of each case."*

In essence, an unspecified "appropriate action" which will vary between individual cases is being defined as a *legal* duty possibly subject to prosecution and criminal sanctions for failure. A more unworkable basis for a law is hard to imagine.

It is stated in paragraph 54 that "Practitioners working with children would be responsible, as they are now, for considering what action is needed to protect them from harm and acting accordingly." And it is claimed that "The duty to act would make practitioners more accountable for such decisions." Quite apart from the tautology involved since practitioners are *defined* as being those working with children, this quite frankly is nonsense. **Unless the duty is made specific, then accountability is absent because there will almost always be ways of arguing that a person was acting reasonably in good faith.**

If improved outcomes in terms of protecting children are going to be achieved, what is needed above all is *clarity* in what responsible the adults are expected to do when suspecting harm. Such a nebulous "duty to act" provides the opposite of clarity.

The description of grounds for prosecution in paragraph 57 makes it even more clear how unworkable this proposal would be in practice.

"This means that an individual would have to consciously take a decision not to take action, or take action which was clearly insufficient or inappropriate, in the knowledge that they were not doing the right thing or reckless as to whether they were."

That degree of knowledge is going to be almost impossible to demonstrate, and so prosecutions are going to be rare bordering on non-existent.

Paragraph 58 does allow that a person could fail to act in a way less culpable.

"In many cases, failures to take appropriate action to protect children will not be deliberate or reckless in nature. Sometimes the reasons might relate to failures of professional practice or because of organisational dysfunction. In cases like these, existing sanctions available to employers or regulators would continue to be available. The introduction of a new statutory duty to act might increase the use of such sanctions by employers and/or regulators."

This shows what appears on the face of it to be a complete misunderstanding of what a law can do. A law cannot oblige an organisation to take disciplinary measures against a person for a failure which the state itself is unable or unwilling to punish. Part of the problem of child sexual abuse within organisations is that the reputation of the organisation is too often put ahead of the welfare of the children in the organisation's care, and that those who try to report or take other appropriate action to protect children are currently whistleblowers and all-too-frequently sacked or otherwise disciplined. Relying on organisations to police an unspecified duty to act is giving a new name to the status quo, where there is in fact no specific duty to report abuse. Moreover, expecting organisations to act this way *against their own interests* is quite clearly futile.

A vital aspect of improving outcomes is maximising the number of abuse cases that reach the attention of those trained to assess the situation properly and who have the power and authority to

intervene effectively. Recent figures produced by the Office of the Children's Commissioner for England suggest that only 1 in 8 victims of child sexual abuse actually comes to the attention of the authorities[27]. **An unspecified duty to act is an open invitation for organisations to fulfil that "duty" by investigating and handling allegations of abuse in-house without contacting the authorities and having to deal with the consequent bad publicity. Of course the Government may see this as useful in order to keep referrals to the LA artificially low.**

Such an approach by organisations might not necessarily be maliciously intended. They might quite genuinely believe that they are acting in such a way as to both protect the children in their care and the reputation and operation of the organisation. In practice, the only person they are protecting is the abuser. Once an abuser finds that he is not being reported the first time he is caught, he will realise that he can abuse again with impunity. Moreover, any other potential abusers working for the organisation will also realise their chances of being caught and prosecuted are minimal. The organisation having failed to report the first incident will be on the horns of a terrible dilemma if another incident occurs with either the same or a different abuser. If they now report the second incident, they can hardly prevent their earlier bad decision from coming to light, and the reputational damage to the organisation will be much greater. Hillside First School in Weston-Super-Mare had precisely this shortcoming[28]. The temptation will be to find a way of continuing not to report while making what the organisation genuinely believes are valid good faith attempts to protect the children in its care. And so over years or decades of non-reporting an organisation becomes a honey-pot to abusers who are confident they will not be reported or prosecuted. This is why when a case of institutional abuse comes to light, it often transpires that several abusers have been active in the same place by the time the abuse is finally uncovered.

A classic example of this came to light a few years ago. Richard White (also known as Father Nicholas White) was a monk at Downside Abbey and a teacher at Downside School, an independent Roman Catholic boarding school run by the monks of the abbey. He was caught sexually abusing a pupil. Rather than report the matter, they continued to allow White to teach, but barred him from contact with the youngest boys. He abused again the following year, and again rather than report the matter the abbey sent White to another monastery, Fort Augustus Abbey in Scotland, where White remained for several years before returning to Downside when Fort Augustus closed.

The abbey and school took advice from their solicitors about whether they had a legal obligation to report, and were advised (quite correctly in law) that no obligation existed. The police stumbled across the case some years later going through school records in the course of another unrelated investigation. White was sentenced to 5 years. **Nobody in the school was prosecuted for failure to report as no law had been broken.** Soon after, it emerged that seven or eight abusers had been active at the school over a period of decades, though not all of them at the same time.

Since the 'duty to act' is so unspecific in the action required, it is likely that the same course of events would occur under a duty to act law. If the duty does not necessarily include reporting incidents or suspicions to the authorities, then an organisation could act as described above and could claim that they were acting in good faith in protecting the children in their care. A prosecution

[27] [1] Protecting children from harm: A critical assessment of child sexual abuse in the family network in England and priorities for action, November 2015, Children's Commissioner for England

[28] Serious Case Review | The Sexual Abuse of Pupils in a First School - Overview Report 25th January 2012

would be most unlikely since an action was actually taken to protect children, and they would argue that they were not to know that it would turn out to be inadequate.

Paragraph 59 described the "possible benefits" of a duty to act law. The first one is to "strengthen the existing mechanisms for ensuring accountability arrangements in the child protection system". **A prerequisite of accountability is that there is clarity in the action required**, so people know exactly what is expected of them. The duty to act proposal is so unclear that no improvement in accountability can possibly be achieved.

The second *"possible benefit"* is to *"aim to increase awareness of the importance of taking action in relation to child abuse and neglect, both by those under a duty to act and the general public"*. There is no reason to think there is any lack of understanding *in principle* of the need to act. The problem is turning principle into practice, in that people are not clear about what action is expected of them in specific circumstances they might reasonably expect to encounter when at work, and are fearful of the consequences of raising a false alarm even in good faith. The lack of clarity in the duty to act proposal will do absolutely nothing to remedy this. Please refer to footnote 5 on page 3 the comments of Chris Husbands, Director of the Institute of Education at the time.

The third possible benefit is to *"change the behaviour of those covered by the duty by putting in place a clear requirement to take action in relation to child abuse and neglect."* The duty will obviously fail in this aim because it simply doesn't provide the *"clear requirement to take action"* on which the change in behaviour is predicated.

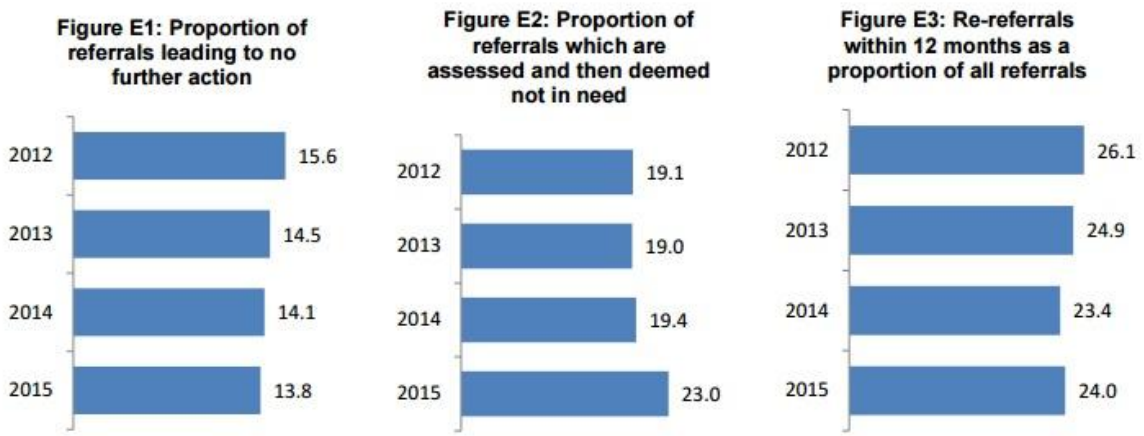
The benefits are so obviously illusory that it almost seems unnecessary to look at the stated possible risks and issues in paragraph 60, but there are in fact some very serious misapprehensions there as well.

The first risk is that there could be "*an increase in unnecessary state intrusion into family life by increasing inappropriate activity throughout the system. In some circumstances this might make it harder to distinguish real cases of abuse and neglect. Appropriate action may not be taken in every case as a result*". If the standard of success is that appropriate action is taken in *every* case then almost any initiative can be condemned as inappropriate. It is a damning reflection on the authors of this document that in a situation where an estimated 7 out of 8 abused children never come to the attention of the authorities, their first concern is false alarms. This concern can always be used as a justification for doing nothing.

Any action that might lead to more cases coming to light is likely to involve at least some more false alarms. It is as if the author is looking to address a newly-discovered major fire hazard primarily by devising measures to reduce the number of false alarms lest the fire service are unable to respond as fast as they might in the event that a fire actually starts. In fact, what is needed is first to take measures to address the hazard itself in order to prevent a fire from starting and spreading.

Even now, according to Figure E.1 (SFR) document 22 October 2015[3] titled "Characteristics of children in need: 2014 to 2015[3]", for the year of 2015: 13.8% of referrals lead to no action and a further 23% were assessed and the child deemed as "not in need" (over a third in total).

Figure J : Characteristics of Children in Need 2014 - 2015



The great majority of referrals are from groups Mandate Now proposes should be included in the mandatory reporting requirement: the police, schools, health services and LA services between them account for 70% (see Figure G page 2.) of all referrals. Although these groups originate the great majority of referrals, we know from investigations into failings of the system that very many more cases could and should be reported from these sources and that that Mathews *et al* study in Western Australia suggests that numbers of reports from these groups can be tripled with no loss of quality.

In the context of child protection, the only way to avoid any false alarms is effectively to dismantle all child protection services so there are no resources to discover that any false alarms have occurred. Unfortunately this means that instead of merely 7 out of every 8 abused children not coming to the attention of the authorities, we would bring the figure up to 8 out of 8.

The second possible risk is this action would "*lead to those bound by the duty feeling less able to discuss cases openly for fear of sanctions, hindering recruitment and leading to experienced, capable staff leaving their positions*". This happens already. The best that can be said is that a duty to act requirement as vaguely stated as is described here would make not one whit of difference to the situation.

The third possible risk is to "*allow scope for those bound by the duty to make incorrect judgements about what action is appropriate in some cases*". Perfectly true, and if anything somewhat understated given how uselessly vague the duty is.

The last possible risk is that the new duty to act would "*have limited benefits for further raising awareness of the importance of taking action in relation to child abuse and neglect given the new Government communications activity, the existing high level of media scrutiny and the work of the Independent Inquiry into Child Sexual Abuse*". The statement that about "limited benefits for further raising awareness" is true, but the reasons for it go far deeper than new government communications and the work of the IICSA. The limited benefits simply result from a vague, comprehensively flawed and muddled concept.

The comparison between duty to act and mandatory reporting in paragraph 61 introduces a false dichotomy, as if we could introduce one measure or the other but not both. The problem with the duty to report proposal as stated is its vagueness. The mandatory reporting option (as proposed by Mandate Now if not as described in the consultation document) has the admirable benefit of clarity. In the specific circumstance in which a mandatory reporting duty applies, it is crystal clear what is expected of people. Only that clarity can affect behaviour.

It is accepted that mandatory reporting is not a magic bullet that will cure all the failings of the child protection system. It is designed to deal with one specific but critical issue, in ensuring that more reasonably grounded suspicions of abuse come to the attention of those with the training and authority to respond effectively and to protect those who act to achieve this. With the present system missing an estimated 7 out of 8 abused children, it is clear that urgent action is needed on this point.

The duty to act proposal is trying to be that magic bullet, by making a duty in law to act in some unspecified but appropriate fashion at *all* points in the child protection system. The aim is laudable but the method proposed is useless and doomed to failure. If it were so simple it could have been done years ago and there would not be any need for the IICSA to be investigating decades of failure. And where in the world is such a system operating? Where is the evidence of its effectiveness?

The failure to bring many children to the attention of the authorities so that they can be better protected is obviously not the only weakness in the system. Other weaknesses will have to be targeted by other specific and clearly defined measures. Where the individual weaknesses occur and what are the appropriate measures to address them is outside the scope of this consultation. The introduction of mandatory reporting does not obviate the need to identify and rectify those other weaknesses. In fact mandatory reporting, by bringing more cases to light, may cause other weaknesses to become more obvious if the largest remaining failure point in the system is now elsewhere.

No analysis is made here of the proposals in part D concerning to whom the duty would apply to and when it would apply. The proposals here are very similar to the proposals for mandatory reporting and are analysed elsewhere. Since the duty to act is essentially meaningless and unenforceable, it doesn't much matter who it applies to or when, since it will have no effect whatever choices are made in these matters.

However the proposals concerning sanctions (para 71-74) are worthy of separate comment. The suggestion in para 72 is that "Sanctions for breach of either of the new statutory measures could be subject to the existing practitioner and organisation specific sanctions". **In other words we are talking of disciplinary sanctions rather than criminal sanctions.** Such disciplinary sanctions already exist, but depend for the effectiveness on public and private institutions being prepared to apply them. The problem is that in too many cases the institutions are either too disorganised to apply sanctions effectively, or will choose not to apply sanctions where it perceives the resulting publicity may be adverse. The possibility also needs to be considered that with such a vague "duty" disciplinary sanctions may be misused for reasons of internal organisational politics.

Furthermore, if the sanctions are merely disciplinary rather than criminal, the duty to act is not a statutory legal duty. It is a behavioural expectation dressed up in legal language and having no force.

It is a maintenance of the existing unacceptable status quo. Let nobody be misled on this point. This kind of pseudo-legal sleight of hand is visible in successive editions of the documents '**Working together to protect children**' and "**Keeping children safe in education**' which have been labelled "statutory guidance" even though they contain almost nothing that has any legal force. Continuing with more of the same sort of thing is certain to achieve the same unsatisfactory outcomes.

Paragraph 73 proposes additional processes involving the disclosure and barring service. However regulations already exist requiring organisations to notify DBS (or its predecessor organisations) and to the best of our knowledge no organisation has ever been prosecuted or otherwise sanctioned for failing to make a notification to the DBS despite it being a legal requirement. In any case, what is being described here is not a sanction, but in fact a new duty to make DBS notifications of 'practitioners' who fail to act. Since the existing arrangements for notifying DBS of people who have abused or are suspected of abuse are as full of holes as a colander, extending it to cover people who have merely failed to act looks like window dressing with no possible practical effect.

Paragraph 74 does mention possible criminal sanctions, but as described above within the context of the duty to act, the circumstances necessary to prosecute and apply a criminal sanction are impossible to achieve in practice. The range of sanctions for such an impossible case therefore becomes irrelevant and merely hypothetical.