

Mandatory reporting of child sexual abuse consultation Confidentiality

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The mandatory reporting duty

Question 8. In sharing findings from this consultation, may we quote from your response?

(Please delete the responses which don't apply.)

- Yes – anonymously
- Yes – attribute to me
- Yes – attribute to my organisation
- No

Question 9. In addition to the definition of 'regulated activity in relation to children' provided by the Independent Inquiry, the government is proposing to set out a list of specific roles which should be subject to the mandatory reporting duty. Which roles do you consider to be essential to this list:

From Table 6 of the Impact Assessment, we assume that the government is actively considering including social workers in the list of roles. We would direct you to our response to Q5 of the *Call for Evidence* in which we said:

- *'It would be a professional disciplinary matter for any registered social worker to fail to respond to any of the matters which, it is proposed, should be included within the mandatory reporting duty. To fail to act on such information would be likely to lead to an investigation into the individual's fitness to practice. The disciplinary sanction would arise if the allegation were established on the civil standard of the balance of probabilities rather than the criminal standard of the matter being proved beyond reasonable doubt.'*
- *'We can foresee detrimental consequences for investigations into child sexual abuse if social workers were subject to the proposed duty. If a social worker receives what appears to be a suggestion of a disclosure of abuse from a child, the social worker would be expected to close that conversation down and to pass the information to the local authority's child protection team so that they can arrange an ABE video-recorded interview with properly trained social workers and police officers. If social workers were subject to the proposed duty there is a risk that they would be tempted to ask too many*

unrecorded questions which would contaminate a subsequent ABE interview and risk the failure of a subsequent prosecution or care proceedings to protect the child.'

It is important to note that our argument does not solely rest upon the regulated nature of the social work profession but, additionally, the second limb of risking good practice when matters are investigated. Good practice in and leading up to video-recorded ABE interviews with children who may have been abused has been stressed many times by the courts and professionals have been subject to adverse comments by judges where their actions have made an interview with a child unsafe to rely upon.

Beyond this, rather than setting out a proposed list of those who should be included in the list, we would suggest that those responsible for preparing such a list begin with reading the IICSA reports. A study of those reports will lead to a clear picture of the groups that have been found to have consistently failed to disclose information about child abuse. Any definition of those who are to be mandated reporters must include those groups. Our answer to Q14 (below) expands on this issue.

Question 10. What would be the most appropriate way to ensure reporters are protected from personal detriment when making a report under the duty in good faith; or raising that a report as required under the duty has not been made?

Please provide details to explain your response.

In our response to the earlier *Call for Evidence*, we said that whistle-blower protection would be required so that 'anyone making a report cannot be dismissed, harassed or held back from promotion – even if the subsequent investigation goes nowhere.' We also highlighted:

'There is a need to protect and support reporters, particularly, for example, teachers, who do not have the same structural support in place that social workers in Local Authorities do. They may be afraid of assaults from abusive parents and may have genuine grounds to be fearful for themselves if they report abuse.'

Question 11. In addition to the exception for consensual peer relationships, are there any other circumstances in which you believe individuals should be exempt from reporting an incident under the duty?

Please provide details to explain your response.

Firstly, we do not believe that there are any other circumstances in which exemptions should apply.

Secondly, we are very concerned that the government proposals, if we have understood them correctly, do not include the requirement in Professor Jay's report for there to be 'no material difference in capacity or maturity between the parties engaged in the sexual activity concerned' Omitting this will leave children with, for example, learning difficulties exposed to sexual exploitation.

Question 12. We are proposing that there would be criminal sanctions where deliberate actions have been taken to obstruct a report being made under the duty. What form of criminal sanction would you consider most appropriate?

(Please delete the responses which don't apply.)

- Fines
- Custodial sentences

Question 13. Should situations where a reporter has been obstructed due to active indifference or negligence also be subject to these sanctions?

Under English common law, a crime requires a mental element which must be either intent or recklessness. We take the reference to 'active indifference' to be a reference to recklessness. Where a mandated reporter is responsible for a failure to report child sexual abuse through active indifference, we would support this to be subject to criminal sanctions. We would not support criminal sanctions when the individual has simply been negligent.

To avoid any evidential difficulties about whether a report was, or was not, made, we would suggest that a report should be made in writing. It would be a relatively straightforward matter for local authorities and police forces to have and to publicise, dedicated email addresses for the sole purpose of mandatory reporting.

Question 14. We would like to test the view that professional and barring measures apply to those who fail to make an appropriate report under the duty. Do you agree with this approach? Would different situations merit different levels or types of penalty?

Nagalro does not agree with the proposal that the sanction for an individual who fails to report child sexual abuse should be limited to 'professional and barring measures'. Our reasons for this stance are as follows:

- Nagalro is very concerned that the government proposal in this regard seeks to regulate those who are already regulated whilst failing to regulate those who have been responsible for concealing and supporting the most egregious child abusers.

- Child sexual abuse is based on a power imbalance between the perpetrator and victim. Legislative action can help to change that imbalance and can strengthen the resolve of those who are told about it to put the welfare of the child first, rather than the reputation of their institution or misplaced loyalty to a colleague. With the chance of criminal proceedings, those who might have chosen to 'pass by on the other side' will have something to lose and can no longer say that they are not involved.
- Some of the most horrific and sustained child abuse has been actively concealed by church leaders, allowing further children to be abused by abusers who were well-known to them. Although the Anglican and Catholic Churches have been particularly criticised, almost all religious organisations have had to accept similar grave failings. The government's proposal to limit the sanctions to professional and barring measures will do nothing in such cases as these. Church leaders are not subject to any independent regulatory jurisdiction. The sanction of a barring order will be of little more than a minor inconvenience since church *leaders* are much less likely to carry out regulated work or activities.
- We can only speak authoritatively on the position of social workers*. If a social worker received a disclosure of child sexual abuse and failed to pass that on to the police or the relevant child protection social workers that failure would, almost inevitably, result in that social worker facing a fitness to practice investigation. Our position is in accordance with the House of Commons Library Research Briefing *Duties to report child abuse in England* published on 21 November 2023. Like the author of the Research Briefing, we believe that many of the professionals set out in Table 6 of the Impact Assessment would currently be subject to professional disciplinary action if they failed to report evidence of child sexual abuse. In those circumstances, the proposed measures achieve little or nothing.
- In our response to the earlier *Call for Evidence* and in our reply to Question 9 above, we have set out clear, child-welfare-based reasons why social workers should not be included in any mandatory reporting duty.
- Nagalro has studied, with some care, the various reports prepared by Professor Jay. With the exception of some staff members of private schools, these reports do not highlight a significant issue of professionally regulated individuals failing to report disclosures of child sexual abuse.

**In this response, when we refer to social workers, we are referring to a social worker registered with Social Work England or the equivalent in other parts of the UK. We appreciate that 'social worker' is a protected title, however, this is not always appreciated by the wider public and so we wish to ensure that there is no ambiguity in our response.*

Question 15. Are there any costs or benefits which you think will be generated by the introduction of the proposed duty which have not been set out in the attached impact assessment?

In this section, we would only wish to add one matter to the submissions we have made elsewhere in this Response. That is to remind you of a paragraph from Professor Jay's final report which sets out the cost of doing nothing. She said:

'While many may think that child sexual abuse is not a matter that affects them, the economic and social costs of child sexual abuse affect everyone. In December 2021, the Home Office published a study into the costs relating to children whose contact sexual abuse began or continued in the year ending March 2019. The estimated cost to society exceeded £10 billion.'

Question 16. In the light of the proposals outlined in this paper, what are the key implementation challenges and solutions reporters and organisations will face?

Please provide details to explain your response, including practical examples wherever possible.

The Impact Assessment, in our view, considerably underestimates the training needs of those who are to be subject to mandatory reporting duties. Paragraph 42 suggests that nothing more than reading a document of less than 100 words will be necessary, taking less than 2 minutes. Discussing the proposed duty with practising social workers, including with colleagues in the Irish Republic who are already subject to mandatory reporting duties, we cannot agree. Professionals who may face career-ending sanctions if they do not act appropriately will require a detailed understanding of their responsibilities. We would contend that there should be nationally based, standardised training, regularly updated and refreshed, which should be mandatory and to be completed within a clearly announced time limit.

How to respond

Please email this response as an attachment to: mr_csa@homeoffice.gov.uk

Or you can print it and return to:

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