

Mandatory reporting of child sexual abuse: call for evidence
Nagalro response
14 August 2023

About You

Q1: To help us analyse our responses, could you please tell us in what capacity you are responding to this consultation

Nagalro is a professional association for social work practitioners who work in the field of children and families and represent children in public and private court proceedings. It has a reputation for excellence in the services it provides: its training, journal, and the influence of its campaigning and responses

Q2. If you are responding on behalf of an organisation, what is your role within that organisation?

Senior Leader

Q3. We know that we deliver better services when we receive feedback from a full range of backgrounds and experiences in the society we serve. We would be grateful if you could complete the following diversity questions.

N/A

Q4. In sharing findings from this consultation, may we quote from your response?

Yes - Attribute to my organisation

Section 1: Who the duty should apply to

Q5. Is the range of 'mandated reporters' set out by the recommendation (people working in regulated activity with children under the Safeguarding and Vulnerable Groups Act 2006, people in positions of trust as defined by the Sexual Offences Act 2003 and police officers):

Too broad

Although we can understand why the Inquiry drafted the proposals as it did, we would argue that registered social workers should be excluded from the range of mandated reporters for the following reasons:

- 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.
- We would support the views set out by the ADCS who say that:
'Mandatory reporting undermines the judgement of a range of skilled professionals and is highly likely to result in use of defensive practice. This runs counter to the findings of the Munro Review of Child Protection (2011) which were widely supported by the sector and received cross-party support at the time of publication'

Q6: At what level should mandatory reporting apply?

Both individual and organisational level

Q7: [If respondent selected 'Only at an organisational level (bodies, institutions or groups)' or 'Both individual and organisational level' in response to the above question] Which organisations or groups should it apply to?

We do have concerns that the burden of criminal sanctions may fall upon more junior 'front-line' staff members and exempt those responsibility for training and setting up the operating ethos of an organisation. We would propose borrowing from established models such as the role of the Money Laundering Reporting Officer in the financial sector and the role of the Designated Safeguarding Officer in schools. Under our proposal, every organisation with staff subject to mandatory reporting obligations should be required to appoint a person of sufficient seniority and experience to act as (we would call) a Mandatory Reporting Officer (MRO). The role and responsibility would be directly comparable to that of the Money Laundering Reporting Officer (MLRO) in the financial sector. Under this approach, a member of staff who becomes aware of a matter to which mandatory reporting may apply would discharge their duty if they reported the information to their MRO. If the MRO failed, in an appropriate case, to pass the information to the police or local authority, then any criminal sanction would also fall upon the MRO and the organisation.

Q8: If there was a mandatory reporting duty at an organisational level, should those impacted be required to report on their activity annually?

Yes

Q9: [If respondent selected 'Yes'] What form should that reporting take?

We would argue that this should be made to an appropriate central body able to collate all reports and provide an overview of the operation of the scheme.

Section 2: Scope of the duty

Q10: Should a mandatory duty to report go beyond the scope recommended by the Inquiry and cover other/all types of abuse and neglect?

No

Q11: [If respondent selected 'Yes'] Which types of abuse and/or neglect do you think should be covered?

N/A

Q12: What impacts (positive or negative) do you think a mandatory reporting duty would have on:

- **Children choosing to make a disclosure, either partially or in full**

The evidence taken by the Inquiry shows, very clearly, that the impact on children, when they are courageous enough to tell someone that they are being abused, is appalling. The Final Report says:

'Amongst those who did disclose child sexual abuse at the time, the majority said that they did not receive the help and protection that they needed. Victims and survivors often said that the person to whom they disclosed responded inadequately. Many victims and survivors were accused of lying, were blamed or were silenced. These experiences were common, whether victims and survivors disclosed as children in the 1950s or 2010s. Victims and survivors commonly said that negative responses to disclosures meant they never wanted to talk about their experiences of child sexual abuse again.'

This cannot be allowed to continue. If a child tells someone that something has happened to them they must know that people will act. We do appreciate that the reality is more complicated than this. If the report is not dealt with sufficiently skilfully, the perpetrator may be alerted but the child still returned home leading to them enduring further abuse. In some cultures, the victim may be the one ostracised by the family rather than the perpetrator. Some children are terrified of repercussions such as breaking up the family or a fear that if they are 'rescued' the abuse may shift to a younger sibling. Other children may fear blame or rejection by other siblings who are either not being abused or do not wish the abuse to be disclosed.

Once a duty to report is in place, the focus then shifts to the actions expected from those who receive such reports. The people dealing with these reports must be properly trained because (as we have alluded to above) how those reports are dealt with may involve the balancing of

two unattractive options for the child. Those receiving the report must have the skill to determine whether and if so what action should be taken.

One of the things that we know that abusers will say to their victims is that 'No one will believe you' and this is a way of exercising control. The existence of a mandatory duty to report will make a small, but significant, shift in the power dynamics in favour of the victim.

- **Individuals within scope of the duty reporting known / suspected incidents**

The whole point about this is that, without a personal duty to report, individuals can decide that they 'don't want to get involved' or that they 'don't want to cause trouble'. The point about a mandatory reporting duty is that the person receiving the information is immediately 'involved' and that they *personally* have something to lose if they do not act. Many of the people who have failed to act when children have made disclosures, such as leaders of schools, churches and other religious organisations, have significant personal and/or professional standing and so the possibility of criminal sanctions should focus their minds very sharply. A comparison with the impact of mandatory reporting of money laundering on financial professionals is likely to be instructive.

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.

- **Organisations within scope of the duty reporting known / suspected incidents**

We would anticipate that this would concentrate the minds of senior leaders on the consequences for the organisation of being publicly sanctioned for protecting those who were known to be abusers of children

- **Individuals outside the scope of the duty reporting known / suspected incidents**

We would anticipate that there would be a generalised increased awareness of the importance of reporting child sexual abuse even amongst those not subject to a mandatory duty.

- **Organisations outside the scope of the duty reporting known / suspected incidents**

With the increased awareness (referred to above) we would hope that organisations employing individuals subject to the mandatory duty would wish to avoid the damage to their organisation which would follow if members of that organisation were prosecuted for choosing to act illegally covering up criminal activity.

- **Agencies in the wider safeguarding system that are required to respond to reports of abuse**

There will, inevitably, be a need for some additional resources for local authorities and police to deal with these matters. We can look to the experiences of other countries, such as

Australia, to give an indication of the resources needed. There does not seem to be any good evidence that local authorities will be inundated with false reports. What the experience of other jurisdictions shows is that more children are identified and protected from harm. So far as the actual resources required are concerned, do we say to children that we cannot afford to protect them?

- **Members of the public**

This should feed into Recommendation 4 of the Final Report to increase public awareness of child sexual abuse

Q13: At what level of knowledge should a mandatory reporting duty apply?

- Both known and suspected incidents of abuse (based on recognised indicators of abuse)

We can do little more than to reiterate the reasoning of the Final Report's authors in the relevant sections of their report. We would, however, point out that there will be a significant time and effort required to ensure that anyone subject to reporting duties is sufficiently well trained to know what the 'recognised indicators or abuse' actually are.

Q14: What should be considered a 'disclosure' of abuse?

We suggest that disclosure is now widely used and understood and should not require any gloss on the word. If a definition were required, Nagalro would be happy to adopt the definition used by the Joshua Centre on Child Sexual Abuse Prevention that: 'Disclosure refers to the process of coming to tell others that one has been sexually abused or senses that they are at risk of being sexually abused.'

Q15. The Inquiry calls for 'recognised indicators of child sexual abuse', which are unspecified, to be set out in guidance and regularly updated – how would you rate your own personal level of confidence in spotting indicators of child sexual abuse?

This is a response by an organisation not individual. Such responses will always be based on each individual's experiences and expertise. Given the issues of disguised compliance by some parents identified in a number of child death cases, no professional would be sufficiently confident to score themselves at 10. One would, however, hope to see scores between 8 and 9.

Q16. How would you rate your sector's current level of confidence in spotting indicators of child sexual abuse?

Since Nagalro does not oversee the practices of its individual members it would be inappropriate for us to answer this question.

Section 3: Sanctions for failure to report

Q17. What is your view on the Inquiry's proposal that a breach of the mandatory reporting duty should constitute a criminal offence?

Agree

The Inquiry is not proposing a completely novel development. The Inquiry has carefully examined the experiences in other countries such as Australia, Canada and Ireland and built the recommendations around what the evidence shows is effective. It is only by the employment of criminal liability that the consequences of failing to report can be patently worse than the consequences of reporting. As previously mentioned, we already have a tried and tested model for reporting money laundering which similarly employs criminal sanctions for those who do not report economic crime. Our response to the Call for Evidence reflects the previously indicated complexities of the proposed duty. There should, additionally, be a requirement for employers to provide training and support for staff who are subject to such duties. Training which is brief or superficial, simply will not do because this is a complex area. It is possible that if staff members have failed to make a mandated report a defence may be available where they have not been sufficiently trained about their duties and responsibilities with sanctions against the organisation responsible for that failure.

Q18: Do you believe that any other types of sanction should apply to breaches of the mandatory reporting duty (for example professional disqualification for individuals, or regulatory action in respect of organisations)?

Yes

Once the issue of a criminal sanction is accepted it inevitably follows that there would be professional consequences, in terms of fitness to practice, for anyone convicted of such an offence. For cases where the report recommends a duty but no criminal sanction for breach, this would be the area where professional bodies would have a larger role to police the duty. This is also an area where regulatory bodies should be able to highlight failures in training.

Q19: What is your view on the exception to the duty described in the recommendation (to avoid capturing consensual peer relationships)?

Strongly agree

Q20: Is this exception likely to cause any particular difficulties

No

Allowance has always been recognised and allowed for sexual experimentation that goes further than would have been wished. A certain discretion to the police and Crown Prosecution Service has long been allowed in these circumstances. The Inquiry has tried to codify that approach and to define those relationships which should not have the same duty. Most professionals would say that they would recognise such relationships when they see

them and the Inquiry's recommendation has done well defining that. That being said, it is important to keep in mind that age in itself is not necessarily the sole determinant in consensual relationships, capacity is also important.

Q21: Do you think there should be any other exceptions to the duty which mean sanctions should not be applied?

- No

Section 4: How to ensure successful implementation

Q22: Can you foresee any overlap or tension with your or others' existing duties or professional requirements which may be introduced by a mandatory reporting duty?

- No

Q23: Do you believe the introduction of a mandatory reporting duty raises any equalities considerations? For example, positive or negative impacts on groups with protected characteristics.

- No

Q24. What, if any, kind of protections do you think would need to be in place to ensure individuals making reports in good faith do not suffer personal detriment as a result?

Whistle-blower protection so that anyone making a report cannot be dismissed, harassed or held back from promotion – even if the subsequent investigation goes nowhere.

Q25: Should any additional reforms should be implemented to ensure that a mandatory reporting duty successfully safeguards and protects children?

- Yes

Resources for local authorities and police and the specialist training for employers in the fields of education and health, whose staff will be subjected to the proposed mandatory reporting duties.

We would also urge the government to revisit the third recommendation of the Inquiry urging the appointment of a Minister for Children. These reforms need to have someone with a seat in cabinet who can speak for the needs of the children. The evidence taken by the Inquiry very clearly shows that the current system of responsibilities is not operating sufficiently well for children's needs.

We would also argue that there is scope for an enhanced role for the Children's Commissioner to assist with the implementation.

Q26: Where should reports be made to?

- Local authority and the police

Arrangements also need to be made for good and effective communications between the police and local authorities. Far too often, these have found to be wanting. We know that an effective investigation into child sexual abuse is most likely to occur when there is strong co-operation between police and local authority social workers pooling their respective areas of expertise.

Q27: The Inquiry recommended that “reports from suspicions or knowledge of abuse should be made as soon as practicable”. Should timescales from the point of suspicion/knowledge be defined more specifically?

- Maybe

The concept of “as soon as reasonably practicable” is well understood legally. We would, however, suggest a backstop of no more than three working days for reporting, so that there cannot be any argument about possible justification for prolonged delay or prevarication. If we are trying to protect a child from ongoing harm then time is of the essence.

Q28: Would your organisation need to make any changes in order to ensure the successful implementation of a mandatory reporting duty?

- No

This response is based on our contention that registered social workers should not be included in the pool of mandated reporters

Q29: Would you as an individual need to make any changes in order to ensure the successful implementation of a mandatory reporting duty?

- No

This response is based on our contention that registered social workers should not be included in the pool of mandated reporters

Q30: Are there any concerns, including the need for additional support, that you would like to flag for your sector?

- Yes

As we have already indicated, this reform will need to be supported with significant, high quality training and education. Even if our proposal to exclude registered social workers from the definition of mandated reporters were to be accepted, training will be needed to understand the operation of the intended system. For independent social workers, working

outside local authorities or Cafcass, Nagalro will consider how we can assist in providing training following the enactment of any legislation

Q31: Are there any additional considerations to ensuring that your sector's workforce or volunteers can meet any new mandatory reporting responsibilities?

- No

Q32: Besides introducing mandatory reporting, are there any changes that could improve disclosures / reporting / investigations and prosecution of child sexual abuse?

What we know is that children need to know the outcomes in order that they feel safe enough to speak out. This involves training and support from those within both local authorities, the police and Crown Prosecution Service in order to deal with this. Developments such as pre-recording of cross-examination and the use of intermediaries will assist. We are also encouraged by the trials of Justice Support Dogs for vulnerable witnesses during ABE interviews to help fearful children without fear of contamination of evidence.

Nagalro
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