

Thursday 6 October

By email to: reportingandacting@homeoffice.gsi.gov.uk

Reporting and acting on child abuse and neglect A joint response by ADCS and the LGA

1. Introduction

- 1.1 The Association of Directors of Children's Services Ltd (ADCS) is the professional association for directors of children's services (DCS) and their senior management teams. Under the provisions of the Children Act (2004), the DCS is the chief officer responsible for the discharge of local authority functions with regard to education and children's social care and champion for children across wider children's services.
- 1.2 The Local Government Association (LGA) is the national voice of local government. We work with councils to support, promote and improve local government. We are a politically-led, cross party organisation which works on behalf of councils to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems. The LGA covers every part of England and Wales, supporting local government as the most efficient and accountable part of the public sector.
- 1.3 ADCS and the LGA welcomes the opportunity to make a submission on the government's draft proposals for changing the way in which child abuse and neglect is reported and acted upon. Our members appreciate the thoughtful and comprehensive way that this consultation has been framed - the supporting annexes are helpful and further illuminate the complexities of the issues at hand. The independent literature review is rigorous and provides a welcome addition to this important debate.

2. Summary position statement

- 2.1 ADCS and the LGA oppose the introduction of mandatory reporting or a duty to act for the following reasons:
 - a. There is no evidence that mandatory reporting systems will provide greater protection for children and young people nor lead to better outcomes. We are concerned that the resulting increase in inappropriate contacts / referrals risks weakening the child protection system in this country, a system that is widely recognised as one of the safest and most successful in the world.
 - b. Introducing mandatory reporting (or a duty to act) will not address the current challenges in protecting children in the UK. This system was introduced in other countries in response to significant levels of undisclosed abuse and a perceived failure by some professionals to report concerns about the neglect and abuse of children and young people. There is no evidence that this is the case here, referrals to the police and children's social care are already higher than in comparable jurisdictions with mandatory reporting systems and rates continue to increase year-on-year.
 - c. Existing measures are sufficient to address professional negligence in reporting the neglect and abuse of children, through the Local Authority Designated Officer (LADO) process; investigation and potential de-registration by professional bodies and through employer sanctions including dismissal.

- d. 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. Play-it-safe practice driven by fear risks overwhelming a system that is already under significant strain due to increased demand, rising expectations and reducing resources.
- e. We advocate the investment of efforts and available resources in prevention, early identification and early help through a whole host of measures aimed at children and young people themselves, professionals and the general public. An unintended consequence of mandatory reporting could be distortion of social responsibility. Communities should be empowered to recognise the early signs of all forms of abuse and neglect and be confident in responding appropriately to this risk instead of being reliant on the state to act at all times.

3. An overview of the current child protection system

- 3.1 As the consultation document rightly notes, models of mandatory reporting are best considered alongside a country's overall approach to safeguarding. The UK has a sophisticated child protection system with an established multi-agency operating framework set out in Working Together to Safeguard Children (2015). It is well understood that "safeguarding is everybody's business," and this is reflected in year-on-year growth in contacts and referrals received from the police, health partners and schools as well as members of the public, the voluntary sector, clubs and societies.
- 3.2 Despite the public narrative to the contrary, England remains one of the safest countries in the world for children to grow up in. According to the NSPCC's latest 'How Safe Are Our Children' research, the five-year average rate of child deaths due to assault and undetermined intent has fallen by 60% over the past 30 years and is continuing to decline. On top of this, recent LGA analysis suggests that 20 of the 29 key performance indicators in children's services have improved between 2007 and 2014.
- 3.3 The profile of referrals received by children's social care has shifted over the last 20 years or so, in part thanks to changing societal norms. The physical chastisement of children is no longer acceptable, for example, and public health campaigns, such as 'don't shake the baby,' have had a significant and long-lasting impact on behaviour. Whilst the vast majority of child protection concerns relate to neglect and non-sexual abuse, neither mandatory reporting nor a duty to act seems to be able to address the changing nature of grooming and sexual exploitation – increasingly it is technology-enabled.

4. Commentary on the introduction of mandatory reporting

- 4.1 Many of the countries that have introduced a system of mandatory reporting did so in response to significant levels of undisclosed abuse, such as the United States of America or Australia. The rising number of referrals to children's social care in this country suggests that awareness of child protection is already high amongst professionals and members of the public, and appears to be increasing further. As the consultation document acknowledges, the referral rate in the UK was 54.8 per 1000 children in 2014/15, which is significantly higher than the rates in the USA (47.1) and Australia (37.8).
- 4.2 Whilst this move may undoubtedly have some impact in terms of raising awareness of child protection issues, mandatory reporting systems demand an overwhelming focus on the investigation of families rather than the provision of support and the promotion of wellbeing. The majority of Australian states had to significantly increase expenditure on social work assessment and investigation following the introduction of this duty, yet the substantiation rate remained as

low as 1 in 5 in the state of New South Wales and 40% of notifications were not investigated at all. Munro and Parton (2007) noted that one of the most common criticisms of mandatory reporting systems, in other jurisdictions, is that they have contributed to a lowering of the threshold for making a report and so cause a steep rise in the number of reports made, a large percentage of which are not substantiated. Consequently, there is an adverse impact on resources available to help families. This is very worrying.

- 4.3 It is unclear from the consultation document how the government proposes to measure the effectiveness of mandatory reporting - increased reporting rates may come at the cost of investigation and/or substantiation rates.
- 4.4 Under the draft proposals an individual's duty would be discharged as soon as a report is made. This will not in itself keep children safe and there is the very real risk that it will have the opposite effect if the number of initial contacts doubles (as was the case in some Australian states upon introduction). The UK government does not collect data on the volume of initial contacts made to children's social care, but this information is captured in Safeguarding Pressures, an ongoing longitudinal study conducted by ADCS. According to the fifth iteration of this research (due to be published in autumn 2016), local authorities in England handled over two million initial contacts in 2015/16, up 65% from 1.2 million in 2007 when the study first began.
- 4.5 A new mandatory reporting duty for female genital mutilation (FGM) was introduced in the UK in the autumn of 2015, in response to a concerning lack of successful prosecutions. While the intention behind this duty was positive, research from Barnardo's shortly after its introduction found that the new, parallel reporting regime had caused considerable confusion amongst practitioners, with over 70% of health, social care and education professionals unclear on what, when or how they needed to make their report.
- 4.6 The introduction of statutory measures would mean that breaches become a criminal offence. In such cases the standard of proof is rightly very high meaning prosecutions would be extremely rare. This threat of criminalisation may unintentionally destabilise the workforce - a number of key roles in children's services are already challenging to recruit to, particularly health visiting and social work. We are worried that recruitment could become yet more difficult if individual professionals are threatened with the introduction of additional legal consequences, including criminalisation, over and above the professional and employment sanctions that already exist. The social work workforce is particularly fragile at this time, as evidenced by rising vacancy rates and an increasing reliance on agency staff.
- 4.7 One of the long-term consequences of mandatory reporting in other countries has been the distortion of social responsibility. By its very nature, mandatory reporting places an obligation on the state to intervene, yet we no longer have the resources to act in this way. We strongly believe that communities must be empowered to recognise, and where appropriate, address issues themselves.
- 4.8 An overview of the government's wide-ranging package of reforms in children's social care was included in the consultation document. We suggest that these measures are fully implemented and crucially, their effectiveness independently evaluated before the introduction of any additional statutory measures is considered. These developments include the 'What Works Centre for Children's Social Care,' the 'Centre of Expertise for CSE/CSA,' the assessment and accreditation of social workers and the Innovation Programme. A number of groundbreaking projects utilising restorative practices to proactively engage with children and families just below the threshold for statutory intervention have been funded by the DfE's Innovation Programme. We are concerned that new legal sanctions could undermine the confidence of frontline practitioners to use their professional judgement in this way which would result in a culture of reporting rather than supportive action.

- 4.9 The introduction of a mandatory reporting duty would represent a new and unfunded burden. ADCS and the LGA would therefore expect the costs of this to be met with additional funding from central government. The scale of the investment required is difficult to calculate at this time, but it is clear that additional social workers would be needed to handle the resulting rise in initial contacts and to carry out the necessary assessments. Further investment in early help and support would similarly be required to ensure that those families who do not meet the threshold for formal interventions are able to access support to prevent the further escalation of issues in the future. These services are already under significant pressure as a result of year-on-year cuts to local government funding since 2010.
- 4.10 Should mandatory reporting be enacted, it has the potential to overwhelm both our systems and staff. This measure overlooks the needs of children and the role skilled professionals play in building a trusting relationship to enable a disclosure of abuse to take place. Inspectors leading the first round of Ofsted's new joint targeted area inspection noted that tackling child sexual exploitation requires those working with children to build effective, trusting relations with children and young people. Where relationship building is not effective, it is difficult to provide the help and support needed. We believe that the result of mandatory reporting will be a diminished ability to protect the most vulnerable children and young people from all forms of harm. It is on this basis, ADCS and the LGA do not support the introduction of mandatory reporting.

5. **Commentary on the introduction of a new duty to act**

- 5.1 Social workers, teaching staff, police officers, GPs and other professionals who routinely come into contact with children and young people have a moral and legal obligation to act when concerns arise. The '*Working Together*' statutory guidance is clear that professionals should refer any concerns about the welfare of a child or young person directly to LA children's social care. Several whistle-blowing vehicles have been established for children and young people themselves, members of the public and most recently for practitioners concerned that their employer is not dealing with the sexual abuse of children and young people at an organisational level.
- 5.2 It is worth emphasising that any individual professional who knowingly and willfully fails to act on information about the abuse of children already faces serious repercussions. Existing sanctions against practitioners include dis-barring; employer sanctions (including dismissal) and, in extreme cases, to the courts through the civil law concept of duty of care and negligence. We do not believe that the introduction of additional sanctions to these already heavily regulated professions is either proportionate or necessary.
- 5.3 Additionally, children's social care is heavily regulated, routinely inspected and in cases of failure, authorities are subject to a range of intensive government interventions (including the removal of statutory services and responsibilities) to a level unmatched by any other public body. Organisational level sanctions could hardly be more punitive than the current arrangements and a fine would only serve to further diminish our capacity to effectively safeguard and protect children. It is on this basis that we do not support the introduction of a new duty to act.

6. **A set of alternative proposals to prevent abuse and neglect taking place**

- 6.1 Recently published research from the University of Central Lancashire found that "of the half million or so children born in 114 council areas in 2009-10, one in five had been referred to social services by the age of five". Earlier this month Sir James Munby, President of the High Court Family Division, warned of a "clear and imminent crisis" in the care system due to sustained increase in the number of child care cases coming before family courts in England and Wales, rising from an average of around 6,500 a year before 2009 to about 15,000 this year. The number of child protection enquiries per 10,000 children in England has increased by 124% over

the past ten years, and the rate of children starting on child protection plans has risen by 94% over the same period. An unprecedented volume of abuse and neglect is already being reported and acted upon by local authorities, and it is unclear how the proposals presented in this paper will help to address the concerns highlighted by Sir James. Rather than seeking to further increase levels of state intervention we believe that any available resources allocated to the development and introduction of a new mandatory reporting duty would be better utilised in taking a 'public health' approach to addressing the prevalence of abuse and neglect.

- 6.2 Barlow and Calam (2011) argued that safeguarding cannot be addressed by high-risk approaches that focus primarily on the identification of children who are being abused with little evidence-based intervention thereafter suggesting instead that there is a case for the delivery of safeguarding using a public health, population-based strategy that is aimed at ensuring that all parents are able to develop the skills they need to parent effectively.
- 6.3 As part of this public health approach we propose the development of tailored work programmes and awareness campaigns aimed at professionals, parents / carers, schools, the wider community and children and young people themselves in order to raise awareness of child protection issues and how best to act when concerns arise:
- A broader range of professionals and volunteers who come into regular contact with children and young people should be offered training, information and advice to help spot the signs of all forms of abuse and neglect and know how to act on any concerns.
 - More work with the wider community is needed to help them play an active role in the fight against exploitation along with a campaign to tackle misconceptions around children being able to consent to their own abuse.
 - Children and young people should be helped to understand what healthy relationships look like and taught to recognise the signs and symptoms of grooming in themselves and their friends with suitable educational experiences at school. Inspectors taking part in Ofsted's new joint targeted area inspection noted that schools played an essential role in raising awareness among large numbers of children about the risks of grooming and exploitation.
 - We must also look to address the broader cultural, moral and social issues at the heart of grooming and sexual exploitation e.g. the over sexualisation of children, young people and women in the media, as a matter of urgency. Social media has contributed to the normalising of abusive behaviours and this can no longer be ignored if we are to tackle the root causes of this issue instead of simply treating the symptoms.
- 6.4 Children are best protected when we intervene early to stop abuse and neglect taking place or to prevent lower level concerns from escalating further. That is why local authorities place such importance on having early help and child protection together as part of a continuum of safeguarding services. There is little or no empirical evidence linking mandatory reporting or a duty to act with the reduction of child maltreatment or deaths, and we believe that the significant time and resources involved in introducing such duties would be better invested in preventative measures instead.
- 6.5 ADCS and the LGA do not support the introduction of mandatory reporting on child abuse and neglect, nor do we support the introduction of the alternative, a duty to act. We believe any failure to report concerns is not likely to be a matter of political correctness or indifference but one of ignorance of the signs and symptoms of abuse in the first place. We believe that this can and should be addressed in different ways (see above).
- 6.6 Members of ADCS and the LGA would welcome the opportunity to discuss any of the points raised in this response further with representatives from the Home Office and the Department for Education. Please contact katy.block@adcs.org.uk or ian.dean@local.gov.uk to arrange.