Telling secrets to protect children?

Mandatory reporting is again being considered, despite children's services leaders rejecting the idea as unworkable. ***Peter Jenkins*** *reports on how we got to this point, and the possible implications*

The controversial issue of mandatory reporting of child abuse is back in the headlines again. In the wake of the post-Savile era, there have been increasing calls for discussion about introducing a legal requirement for all professionals working with children to report abuse, or to face, in some cases, potential criminal sanctions. These calls have ranged from Her Majesty's Inspectorate of Constabulary,[1] to Keir Starmer, former Director of Public Prosecutions.[2] This call was then buttressed by a *Panorama* programme endorsing this position.[3] The NSPCC has long held back from calling for mandatory reporting. This is despite its high-profile role in challenging all forms of child abuse. However, it now seems to be cautiously edging towards supporting this measure.[4] Victims' groups working with the Independent Inquiry into Child Sexual Abuse (IICSA) have strongly supported these moves.[5]

IICSA has launched a consultation process to gather evidence and to take soundings on the options available for introducing a mandatory reporting system.[6] This policy document is paired with a more detailed background analysis, which discusses research on the effectiveness of comparable systems in countries such as the US, Canada and Australia.[7] Mandatory child abuse reporting, as a policy option for the UK, was last briefly considered – and even more briefly dismissed – in the mid 1980s.[8] This followed growing public and professional awareness of the extent of such abuse at that time.

Current child protection and safeguarding arrangements

This heightened awareness resulted in the child protection and safeguarding legal framework in operation today. In England and Wales, child protection is framed by the Children Acts (CA) of 1989 and 2004. Under s47 CA 1989, local authorities have a legal duty to investigate where a child (ie a person aged under 18) is likely to suffer 'significant harm'. The CA 2004 set up Local Safeguarding Children's Boards (LSCBs) on a statutory basis, to coordinate interagency responses to child abuse. At an operational level, practice and policy for professionals in health, education, social care and many funded third sector agencies are spelled out in detail, in the key document *Working Together*.[9] The principles of child protection are to be found in distinct, but parallel, legislation and similar policy documents for Wales, Scotland and Northern Ireland. In a nutshell, *statutory agencies* are under a legal obligation to cooperate, with regard to sharing information on child abuse. *Professionals*, however, are under a more limited obligation, via their contract of employment, to follow reporting and investigation policies, but are not currently under a legal obligation, as such, to report child abuse.

This situation is set to change drastically, should mandatory reporting of child abuse be introduced for England. Some counsellors may have assumed that mandatory reporting is already in operation within the UK. Many school counsellors, for example, seem to assume that reporting child abuse is a non-negotiable legal requirement.[10] Arguably, much counselling with children and young people is already carried out within the context of a 'culture of reporting', regardless of whether this is a formal legal requirement. For parents, employers and many therapists, the working assumption may well be that all abuse should be reported, end of story, as this newspaper headline powerfully illustrates: 'School counsellor "failed to report sex attack on girl"'.[11]

Reporting abuse as an ethical imperative

From this perspective, there really is no need to debate the finer niceties of mandatory reporting. One survivor puts it in graphic terms, that professionals can witness another adult actually abuse a child, but still fail to act, simply because there is no *legal* obligation to do so.[5] From an ethical (indeed, *human*) point of view, reporting thus becomes an absolute moral imperative. Anything short of intervening and reporting, in order to protect the child, smacks of collusion, or worse.

However, within counselling practice, the issues may well be less clear-cut. For therapists working with younger children, the focus on reporting will be more urgent and immediate, given the markedly greater physical vulnerability of the child. Yet, in working with older children, we find that disclosures may be unclear, partial or diffuse in nature, or even retracted, before perhaps becoming more assured over time. Young people may want to negotiate the process of disclosure and be afraid of losing control of their material, their confidentiality and their newly acquired autonomy. Therapists may opt in some cases for managing high levels of risk, in partnership with their adolescent clients, rather than rapidly moving into reporting *without* client consent.

Effectiveness of mandatory reporting

In addition, the evidence for the effectiveness of mandatory reporting seems unclear. The second consultation document provides a very thorough survey of the data. It concludes, however, that there is 'no academic consensus' regarding the effectiveness of mandatory reporting in providing better protection for children.[7] Current reporting and referral rates for children are, perhaps surprisingly, higher in England than in the US and Australia, both of which operate mandatory reporting systems.[6] A relatively high proportion of referrals to Children's Social Care result in the child or, more rarely, the young person, being placed on a Child Protection Plan (see diagram: Children's Social Care referrals and outcomes in England for 2014–15).

Then there is the somewhat mixed example of mandatory reporting of Female Genital Mutilation (FGM). This was introduced for registered healthcare professionals, ie those registered with the General Medical Council, or Health and Care Professions Council etc. Despite this being a legal requirement, there is still substantial under-reporting of FGM cases by healthcare professionals. More than 20,000 girls are thought to be at risk of FGM, but only 5,700 cases were recorded in England for 2015–16.[12] The reasons for under-reporting may be complex. Still, the experience of mandatory reporting for this issue does suggest that changing the reporting behaviour of professionals may take more than simply imposing a threat of legal sanctions.

Policy options for consultation

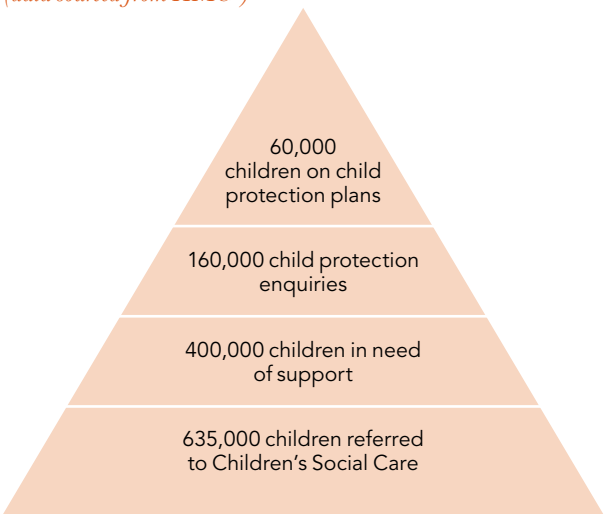
So, what are the policy options up for consultation? The supporting document makes a clear distinction between imposing a mandatory 'duty to report child abuse', whether by an organisation, or by an individual practitioner, and the corresponding 'duty to act' (see table on page 42: Key differences between mandatory reporting and a duty to act). 'Practitioner' refers here to 'individuals who work with children in any capacity'.[6] Mandatory reporting is defined as 'a legal requirement imposed on certain groups, practitioners or organisations to *report* child abuse or neglect'.[6] This is contrasted with a 'duty to act', ie 'which would require certain practitioners or organisations to *take appropriate action* (which could include reporting) in relation to child abuse or neglect if they knew or had reasonable cause to suspect it was taking place'.[6] Reporting abuse *internally* within agencies, such as hospitals, children's homes, schools etc, or *externally* to authorities, such as the police or social services, has not always resulted in children being protected. Professionals and managers have, in some cases, just not *acted* on the information received.

Mandatory reporting options

The sheer difficulty of introducing mandatory reporting quickly becomes apparent, as the options are set out.

Children's Social Care referrals and outcomes in England 2014–15

(data sourced from HMG[6])



There is no obvious 'one size fits all' approach, which will necessarily cover *all* practitioners working with children. The options include:

- **an organisational duty to report:** this already applies for agencies in Wales, under the Social Services and Wellbeing Act (Wales) 2014;
- **a 'regulated activities model':** this would include all those providing services to children, or working in specified places, such as schools, children's homes etc, in a manner broadly similar to those covered by the existing Disclosure and Barring Scheme (DBS);
- **a 'regulated professionals model':** this would be restricted to the registered healthcare, social work and teaching professions;
- **a 'closed institutions model':** this would cover boarding schools, children's homes, hospitals and young offender institutions.

Each model would seem to cover some practitioners and yet exclude others. Counsellors working in private practice would not necessarily be covered by any of the options above. Some counsellors and psychotherapists are registered with HCPC – in reality, this is probably a very small minority, given that counsellors, in the main, are not regulated by this body. Counsellors working for organisations, or for 'closed institutions', would be covered in much the same way as they are currently. This would be via their contract of employment, except that their agency's requirement to report would now carry additional legal weight.

The ultimate effect of introducing mandatory reporting would be to apply serious sanctions for failing to report or to take action. For individuals found to have failed to report abuse, the existing sanctions include disciplinary action brought by an employer,

ranging from an initial verbal, or written, warning, up to dismissal for gross misconduct. For regulated professionals, as under the HCPC, disciplinary action could then require the familiar sanctions of requiring retraining, or additional CPD, or undergoing supervision, or, finally, of being 'struck off' the register and therefore being legally unable to practise. Individuals could be subject to 'barring' under the Safeguarding Vulnerable Groups Act 2006, and be unable to work again, within the strict terms of the DBS scheme. Individuals and organisations could be subject to criminal prosecution, for example for wilful neglect, and subject to a fine or prison. Statutory organisations could be subject to intervention by the Secretary of State, leading to the appointment of commissioners to take over the running of the organisations. Other agencies could be subject to inspection by the Care Quality Commission and deregistered if found to be at fault for failure to report, or to act.[7]

Key differences between mandatory reporting and a duty to act

Mandatory reporting	Duty to act
Focused on reporting child abuse and neglect	Focused on taking appropriate action at all points in the system in relation to child abuse and neglect
Action taken under the duty is limited to reporting	Action taken under the duty would cover a wider spectrum of safeguarding activity, reflecting the different types of issues that have been highlighted in past cases
Requires a report to be made in every case where there are suspicions or knowledge of child abuse or neglect (ie limited professional discretion)	Places responsibility with practitioners to decide what action is appropriate to protect children from harm. It would allow for the particular circumstances of each case and the child or children involved to be considered before determining next steps
The duty would be discharged once a report had been made	The duty would continue to apply after the report had been made. If further action was needed to protect a child, a duty to act would require this action to be taken
Sanctions relating to the duty would not be limited to cases of wilful, deliberate or reckless failures to report	Sanctions relating to the duty would apply only with regard to deliberate or reckless failures (although existing sanctions would continue to apply below this threshold for other failures, as they do currently)

What are the implications for counsellors?

What may have seemed at the beginning to be a relatively simple policy option now appears more and more complex. At least, this seems true in terms of the fine detail of its application. For counsellors, it is a familiar problem. The sheer diversity of our practice settings makes it extraordinarily difficult to 'capture' (in the words of the consultation) *all* practitioners via a single regulatory model, or one approach. Clearly, counsellors could assume a self-imposed ethical and professional 'duty to report'. This would be consistent with the BACP *Ethical Framework*.[13] However, this would simply represent a continuation of the currently existing situation. It would be subject only to professional disciplinary sanction by BACP, rather than to legal proceedings as such.

One of the weaknesses of the mandatory reporting model, as seen by counsellors, could lie in its very pronounced emphasis on *procedure*, at the possible expense of *relationships*. This may be inevitable in trying to introduce changes to the law. In terms of procedure, many therapists will be familiar with the sequence of actions and responses associated with child abuse, set out in the diagram on page 43.

Ideally, the risk of child abuse taking place is minimised at Step 1, via a wider process of education and prevention. At Step 2, abuse might be *identified* in the case of a younger child, or *disclosed* by a child or young person. In these consultation documents, mandatory reporting focuses its attention largely on Step 3, namely by imposing a legal *duty to report* the abuse. The consultation also focuses on Step 5, ie the *duty to respond*. Ideally, Step 3 (reporting) and Step 5 (responding) then trigger Step 6, intervention to protect the child. In turn, this may lead to Step 7, criminal prosecution of the alleged offender, with appropriate witness support for the child, and finally, Step 8, access to Criminal Injuries compensation. Perhaps surprisingly in an otherwise comprehensive consultation, there is little attention on Step 4, ie the formal *logging* of reports of child abuse. There is some evidence of abuse reports having been made in the past to agencies, such as the police or social services, which cannot later be traced, as with the Savile case in 1998.[14]

Procedural versus relational models

Counsellors clearly need to be aware of this kind of procedural model for responding to abuse, and of the proposed changes, such as introducing mandatory reporting. However, there is a missing dimension to the discussion, given that therapy is very solidly based on a *relational* model of communication between therapist and client. Interestingly, the *relational* dimension has been increasingly highlighted within social work practice, as part of the influential Munro review. This argues that 'the centrality of forming relationships with

Procedural model of potential responses to child abuse

1	2	3	4	5	6	7	8
Education and prevention	Disclosure of abuse	Duty to report abuse	Official logging of report	Agency duty to respond	Investigation and protection of child	Criminal prosecution and witness support	Criminal injuries award application

children and families to understand and help them has become obscured', given the overwhelming focus on increasingly complex child protection procedures.[15]

Research suggests that the relational dimension plays a crucial part in the process of young people disclosing abuse. Rees et al found that 'for young people, the relationship with social work practitioners was central to disclosure and protection', in terms of the young people valuing 'a consistent relationship with a professional they felt they could trust'.[16] Other research suggests that mandatory reporting systems may conflict with more informal and relationally based adolescent patterns of disclosure.[17] For some teenagers, 'disclosure is an interactive process', where the young people 'disclosed incrementally, using a number of different strategies'.[18] A key factor here is the young person's wish 'to retain control over the material which they disclosed'.[19]

Conclusion

Proposals for introducing mandatory reporting of child abuse are very firmly back on the policy agenda. This comes after a marked absence of some 30 years. The proposals cover a range of possibilities. They include an individual duty for regulated professionals, or for practitioners working in DBS-related activities. In addition, individuals and organisations may be covered by a legal 'duty to act' on reports received. A range of civil and criminal sanctions is considered, extending to the potential use of 'wilful neglect' charges. The consultation understandably focuses on a *procedural* approach. However, it remains less clear how these changes could apply to *all* counsellors, without exception. Exactly how these procedural changes will mesh with our primarily *relational* approach as therapists, remains, as yet, a crucial, but unanswered, question.

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