

Mandatory reporting of child sexual abuse consultation

Response of the Association of School and College Leaders

A. Introduction

1. The Association of School and College Leaders (ASCL) is a trade union and professional association representing over 25,000 education system leaders, heads, principals, deputies, vice-principals, assistant heads, business leaders and other senior staff of state-funded and independent schools and colleges throughout the UK. ASCL members are responsible for the education of more than four million children and young people across primary, secondary, post-16 and specialist education. This places the association in a strong position to consider this issue from the viewpoint of the leaders of schools and colleges of all types.
2. ASCL welcomes the opportunity to contribute to this consultation. Our response is based on the views of our members, obtained through discussions at ASCL Council, with relevant advisory groups, and prompted and unprompted emails and messages.
3. When considering the impact of any proposals on different groups, it is ASCL's policy to consider not only the nine protected characteristics included in the Equality Act 2010, but also other groups which might be disproportionately affected, particularly those who are socio-economically disadvantaged. We have answered any equality impact questions on this basis.
4. ASCL is keen to strengthen safeguarding and fully supports measures to enhance safeguarding of pupils in schools. However, in our response to this consultation we contend it is unclear what problem this is trying to, or will, resolve for schools already implementing KCSIE and Safeguarding/Child Protection. The risks of putting children and young people at risk by overwhelming the system as a result of schools cautiously reporting everything is significant. ASCL is particularly uncomfortable with the ambiguity of the 13-16 exemption, which places schools and especially DSLs / leaders in an invidious position and it is not a professional judgement schools should be making. ASCL believes that implementing this policy also risks exacerbating the recruitment and retention crisis, especially for DSL/leaders, as well as teachers and support staff.
5. ASCL's recommendation to the Home Office would be to exempt schools from the blanket changes on the basis that KCSIE should be the statutory framework through which any further expectations of education are made.

B. Responses to specific questions

About you

Question 1. Your name

6. Faisal Sameja

Question 2. Address and postcode

7. Association of School and College Leaders, Peat House, 2nd Floor, 1 Waterloo Way, Leicester, LE1 6LP

Question 3. To help us analyse our responses, could you please tell us in what capacity you are responding to this consultation.

8. Other

If you chose 'other' or wish to clarify your response, please describe the role that best describes you.

9. Our response to the consultation is submitted on behalf of the Association of School and College Leaders; a trade union and professional association representing over 25,000 education system leaders, heads, principals, deputies, vice-principals, assistant heads, business leaders and other senior staff of state-funded and independent schools and colleges throughout the UK.

Question 4. If you are responding on behalf of a group or organisation, what is your role within that organisation?

10. Other

If other, please let us know more about your role.

11. Senior Solicitor within the organisation.

Question 5. If you are a representative of a group or organisation, please tell us its name and give a summary of the people or organisations that you represent.

12. Association of School and College Leaders representing over 25,000 education school leaders including system leaders, heads, principals, deputies, vice-principals, assistant heads, business leaders and other senior staff of state-funded and independent schools and colleges throughout the UK

Diversity

Question 6. What is your sex?

13. Prefer not to disclose

Question 7. What is your ethnic origin?

14. Prefer not to disclose

The mandatory reporting duty

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

15. Yes – anonymously

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:

16. Our response is on behalf of senior leaders within the education profession who must ensure compliance with existing and established statutory guidance issued by the Department for Education. In particular, people working in the education sector are lawfully obliged to comply with the following:

- *Keeping Children Safe in Education* – which sets out that all staff have a responsibility to provide a safe environment for children and requires any staff member who has any concerns about a child’s welfare to follow a defined follow up process¹; and
- *Working Together to Safeguard Children* – which applies to all schools.

17. The statutory guidance also sets out that safeguarding systems and requirements which are in place must be set out in any contract between the contractor and the school. These requirements also apply to agency/supply staff in schools.

18. As such, the definition of ‘regulated activity in relation to children’ in conjunction with existing statutory guidance is sufficient for those in school.

19. Notwithstanding the above, our position is that clarity and certainty is necessary as to whom the duty applies to. There are nuanced roles in schools that must be properly considered, such as support staff and volunteers, when considering the duty and we would request that a definitive and clear position be agreed before any new duty is introduced.

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?

20. By ensuring that existing protective safeguards and frameworks available to staff are extended to cover those making a mandatory report under any newly

¹ Keeping Children Safe in Education 2023 ([Keeping children safe in education 2023 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/115111/keeping-children-safe-in-education-2023.pdf)) sets out what actions need to be followed where there are concerns about a child. A flow chart summarising steps which need to be taken can be located on page 22 of the guidance.

introduced duty. For example, any existing whistleblowing policy within an organisation should be amended and strengthened to incorporate the same.

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?

21. We feel it would be appropriate and necessary to consider situations in which abuse is alleged to have been perpetrated and/or reported by pupils with special educational needs (SEN). Whilst an outright exception is not being suggested, it would be appropriate to carefully consider how situations involving SEN pupils would need to be handled, and whether this should differ from any reporting process which will eventually be prescribed.
22. We also wish to stress that the proposed exception relating to consensual peer relationships needs clarity in respect of the ages it would be applicable to – is this 13-15 or 13-16?

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?

23. It is ASCL's position that both fines and custodial sentences should be available, subject to the circumstances of each individual case. In order to impose such a sanction, careful consideration would need to be given on a case-by-case basis, and such a sanction should only be imposed where proportionate and necessary.
24. A fair and reasonable assessment process would be needed to establish whether a sanction is indeed necessary, and if so, what the level of the sanction should be. Furthermore, any assessment process would need to ensure that those accused of failing to have reported abuse are afforded a fair process in line with their ECHR Article 6 rights (to a fair trial).

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

25. Once again, this would be dependent on the circumstances, context, and severity of each case. It is impossible to provide a response to this question which is applicable across the board.
26. It goes without saying that higher fines/custodial sentences should be reserved for and considered in the most serious of cases where the act of negligence/indifference is severely gross and appears to have been wilful and/or deliberate.
27. However, care must be taken in how failure to report is assessed and by whom, and the way it is determined to warrant/attract such a sanction. We echo our representation above that ECHR Article 6 rights must be provided for.

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?

28. This is the current position within the education sector, with DBS/TRA already being responsible for dealing with referrals involving a failure to report – where a referral is received. It is, of course, agreed that consideration must be given on a case-by-case basis and any measures taken must be proportionate and fair. There is a concern that making a referral mandatory in such circumstances could result in overreporting, which would add to what is an already stretched and strained regulatory system.

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?

29. Within the education sector, there are appropriate safeguards in place, which were not previously in place during a large number of cases considered during the IICSA Inquiry (involving schools). ASCL therefore defers to its primary position that the introduction of a mandatory duty to report is neither necessary nor applicable to school settings, as statutory guidance (KCSIE) is robust and likely to suffice, and/or can be amended if there are any clear and obvious identifiable gaps.

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?

30. It is unclear as to how the duty, and policing of the same, is to be introduced and implemented. The education sector is already a highly regulated environment, in which staff are subject to regulation by the DBS and the TRA. The strain on the existing regulatory framework is already evident, with members having to wait several years before their cases are resolved.

31. As such, there would be a clear resourcing issue which would need to be properly considered – both in terms of resourcing within schools (to provide for further training etc) and also with the regulator. Who would be responsible for overseeing and investigating alleged failures in the discharge of this duty?

32. Placing a further financial strain on schools during periods where funding is clearly an issue would also need to be properly addressed in a wider and more meaningful way.

33. We have concerns that the introduction of a new duty will also potentially blur the lines between requirements on schools under KCSIE and under an additional/parallel system. For example, under KCSIE, reports must be made to the school DSL, whereas under the proposed new duty reports must be made to the police or social services. Understanding and implementing existing guidance (which is updated annually) is already difficult for schools. Adding further avoidable

confusion would serve no beneficial purpose and could potentially damage established safeguarding processes, which are already mandatory in schools.

C. Conclusion

34. ASCL questions whether, within the education sector specifically, there is a need for mandatory reporting to be introduced. The historical concerns which came to light during the IICSA Inquiry were extremely serious. However, a significant number of those concerns arose during a period where there was either an absence of statutory guidance, or guidance available was not as robust and clear as it currently is.
35. The obligations placed on staff within schools and colleges in respect of reporting sexual abuse are strict and clear at present. The introduction of a mandatory duty in this specific sector may give rise to more complexities (as opposed to its intended positive effect) due to its interplay with existing safeguarding frameworks. It would also be sensible to add to the whistleblowing procedures/policy that they are in place to ensure that hierarchical concerns can be raised safely by all staff whatever their role in school. Whistleblowing policy and procedures must accommodate the mandatory duty and ensure the concerns of all staff can be raised safely without fear of repercussion.
36. We hope that this response is of value to your consultation. ASCL is willing to be further consulted and to assist in any way that it can.

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