

How implementing a duty to report child sexual abuse is likely to impact children, organisations, and affected workforces and volunteers; and how different aspects could be implemented.: Call for Evidence 2023

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 24,000 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.

B. Response to specific questions

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

Select all that apply:

- Child or young person under age 18
- Care leaver
- Birth parent
- Adoptive parent
- Foster carer
- Social Worker
- Family support worker

- Charity / voluntary sector
- Educational institution (e.g. early years setting, school, alternative provision setting, college, university)
- Sport sector
- Academic
- Health practitioner
- Police officer
- Youth justice worker
- Probation officer
- Other – trade union/professional association representing over 24,000 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

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

Select one from:

- Front line worker
- Manager – ASCL Senior Solicitor
- Senior leader (Director, Chief Executive)
- Corporate / Administrative

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. You can select 'prefer not to disclose' if you would rather not answer any question.

Your sex

Select one from:

- Male
- Female
- Prefer not to disclose

Your ethnic origin

Select one from:

- White - English
- White - Welsh
- White - Scottish
- White - Northern Irish

- White - Irish
- White - Gypsy or Irish Traveller
- White - Roma
- Any other white background
- White and Asian
- White and black African
- White and black Caribbean
- Any other mixed or multi ethnic background
- Asian or Asian British - Bangladeshi
- Asian or Asian British - Indian
- Asian or Asian British - Pakistani
- Chinese
- Any other Asian background
- Black or black British - African
- Black or black British - Caribbean
- Any other black background
- Arab
- Other ethnic group
- Prefer not to disclose

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

Select one from:

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

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):

- Appropriate
- Too narrow
- Too broad
- Don’t know

Please provide details to explain your response.

ASCL fully recognises the importance of ensuring sexual abuse is properly identified and reported. Keeping children safe in schools and FE institutions is fundamental. As such, the proposed definition of a 'mandated reporter', to include any person working in regulated activity in relation to children (under the Safeguarding and Vulnerable Groups Act 2006, as amended), any person working in a position of trust (as defined by the Sexual Offences Act 2003, as amended); and police officers is appropriate. However, given the broad nature of the definition for what constitutes a 'mandated reporter', and potential sanctions being considered for failing to meet the duty, it is essential that careful consideration is given to the overall scope and obligations under the duty to ensure a disproportionate, imbalanced expectation is not placed on school leaders who are already required to comply to obligations as set out within other statutory guidance such as 'Keeping children safe in education (KCSIE)' and 'Working together to safeguard children'.

Q6: At what level should mandatory reporting apply?

- Only at an individual level
- Only at an organisational level (bodies, institutions or groups)
- Both individual and organisational level
- General duty on adult population
- Don't know

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?

As referenced above, within the education sector, there are provisions in place, such as relevant statutory guidance, aimed at ensuring those within educational settings are properly safeguarded. These provisions already place strict individual obligations on those working in schools. On the basis that those individuals would also now be categorised as 'mandated reporters' under these proposals, it is crucial to ensure that overlapping of potentially varied and nuanced obligations are not imposed on individuals.

It is respectfully suggested that each relevant sector should have specific safeguarding guidance which addresses individual responsibilities/duties in relation to mandatory reporting sexual abuse, as is the case in the education sector. This would ensure that the duty, as imposed, is able to fully consider the nature of the setting in which it is being imposed.

In light of the above, if a separate mandatory duty is introduced, given safeguards and provisions already in place in the education sector, it is ASCL's position that such a duty should be at an organisational level.

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

- Yes
- No
- Don't know

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

Whilst ASCL's position on this is neutral, ASCL would such that if a duty to report is considered necessary, it should be done so with a specific and necessary objective in mind. To stress, ASCL and its members fully support attempts to tackle sexual abuse. However, the counterpoint to this is that ASCL's members are also facing other challenges such as a lack of resources and time due to funding challenges. Therefore such a reporting obligation should only be considered where it is deemed to be necessary.

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?

- Yes
- No
- Don't know

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
Children may become more reluctant to make disclosures knowing that they must be referred on (although this is not overly different to the current situation). Alternatively, it may give a child more confident in making a disclosure knowing that it will be reported.
- Individuals within scope of the duty reporting known / suspected incidents

It may lessen the likelihood of failing to disclose however it may also result in a very cautious approach where there is a mass increase in disclosures, even where some may not be entirely necessary.

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

See above

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

n/a

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

n/a

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

There may be confusion due to overlapping responsibilities.

- Members of the public

There may be an increased confidence in systems in place.

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

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

If Mandatory reporting is to be introduced, it seems illogical for it to exclude suspected incidents. However, there is a caveat to this which needs to be incorporated into any duty which is introduced.

Firstly, the distinction between the duty to report known incidents and suspected incidents must be recognised. The duty to report suspected incidents must reflect the fact that identifying recognised indicators itself is a subjective test and not every mandated reporter will have a uniformed interpretation and/or approach towards this. As such, failure to report a suspected incident should certainly not attract an identical sanction to a failure to report known incidents.

Secondly, if a mandatory duty to report suspected incidents is to be introduced, detailed and clear guidance/training regarding recognised indicators must be produced to assist mandated reporters. It is not sufficient, or appropriate, to leave it solely to the judgement of a mandated reporter to determine whether a suspected incident should be reported.

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

Direct or indirect communication from the child that abuse has taken place. However once again, it is stressed that guidance and training must be provided to ensure recipients of the disclosure are able to identify and respond to these accordingly.

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?

Option to score 1-10 [1: low confidence, 10: fully confident]

On the basis that ASCL is responding on behalf of members who deal with indicators of child sex abuse on the frontline, ASCL is unable to respond to this specific question. However, ASCL is relatively confident that its members, where they have received appropriate training, would be able to identify indicators of child sexual abuse.

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

Option to score 1-10 [1: low confidence, 10: fully confident]

See answer to question 15

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?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don’t know

Members within the education sector that are represented by ASCL place safeguarding of children as their highest priority.

Failure to meet safeguarding responsibilities already carries very punitive sanctions such as the potential loss of employment and regulatory referrals to the DBS and also individual teaching regulators which may result in individuals being prohibited from being able to continue in the profession due to professional failings. On reflection, in the education sector, these sanctions may be considered as already being sufficient as they are ultimately overseen by the Department for Education and/or the Home Office.

If mandatory reporting is to be applicable at an individual level, sanctions in place should be considered and a decision to impose a criminal sanction should only be

considered where it would be deemed proportionate to do so; and where there is a vacuum in which no effective sanction is already available.

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
- No
- Don't know

See response to question 17 – these already exist within the education sector.

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

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Any proposed duty must acknowledge the existence of consensual relationships. In schools, these clearly exist between pupils. However, there is a possibility that a consensual relationship between children can also develop into a situation in which child sexual abuse takes place and caution must be taken when dealing with this.

'Keeping children safe in education' expressly deals with 'child on child' abuse and sets out responsibilities on those within the education sector.

Q20: Is this exception likely to cause any particular difficulties?

- Yes
- No
- Don't know

This does not mirror obligations within statutory guidance and as such, may potentially cause confusion. The following sections are from KCSIE 2022:

32. All staff should be aware that children can abuse other children (often referred to as child-on-child abuse), and that it can happen both inside and outside of school or college and online. All staff should be clear as to the school's or college's policy and procedures with regard to child-on-child abuse and the important role they have to play in preventing it and responding where they believe a child may be at risk from it.

33. All staff should understand that even if there are no reports in their schools or colleges it does not mean it is not happening, it may be the case that it is just not being reported. As such it is important if staff have any concerns regarding child-on-child abuse they should speak to their designated safeguarding lead (or a deputy).

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

- Yes
- No
- Don't know

Given the subjective nature of the test of identifying indicators where abuse is suspected, discretion to avoid sanctions, subject to the circumstances of each individual case, should be available.

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?

- Yes
- No
- Don't know

These have been outlined above.

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.

- Yes
- No
- Don't know

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?

The tension of maintaining sensitivity and confidentiality needs to be considered however no easily identifiable resolution is obvious and apparent.

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

- Yes
- No
- Don't know

Q26: Where should reports be made to?

- Local Authority
- Police
- elsewhere (please specify)

From our experiences, Local Authorities are already stretched and the impact which mandatory reporting would have on workloads, without further investment in resource, would be hugely problematic. However similar concerns may exist within the police and how infrastructure to cater for reports must be duly considered.

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?

- Yes
- No
- Maybe
- Don't know

Given that criminal sanctions are potentially being considered, absolute clarity is necessary.

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

- Yes
- No
- Don't know

As a trade union/professional association, specific attention will need to given to ensure members are fully aware of the duty and its potential implications.

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

- Yes
- No
- Don't know

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

- Yes
- No
- Don't know

Based on potential sanctions already in place within the sector, combined with workload/funding/recruitment issues, there is a concern that the implementation of a further duty will create a further challenge for our members.

There is a need for further guidance and support under the current frameworks in place within schools concerning this issue and to add a further obligation, without required training/clarity/guidance, would only further compound this issue.

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

- Yes
- No
- Don't know

The provision of enhanced training and guidance, the availability of a helpline where further support/guidance is necessary, along with ongoing continuous support and development.

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

N/A

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