Barnardo’s Scotland: response to petition for Mandatory Reporting

Summary

- Barnardo’s Scotland welcomes the opportunity to comment on this complex issue.
- Although very well intended, the introduction of mandatory reporting in Scotland could have numerous, and perhaps serious, unintended consequences on how we well we are able protect children.
- Mandatory reporting may not be a panacea in tackling child abuse; there is a need for a broader cultural shift to children who report abuse being believed. Training and guidance also play a vital role.
- Any consideration of mandatory reporting should be accompanied by a focus on awareness raising, improving identification of child abuse, and on prosecuting perpetrators of child abuse.
- It is important to be clear as to what scenarios mandatory reporting would address in the current legislative, practice and policy context in Scotland.
- We would be concerned about any potential impact of mandatory reporting on the recruitment and retention of child protection professionals, and social workers, in particular.
- It is critical that any consideration of introduction of mandatory reporting in Scotland would be preceded by a public consultation, particularly on what any offence may look like.
- Given concerns about impact and effectiveness, there is a need to review evidence emerging from other countries where mandatory reporting is in place.
- We need to ensure that professionals from across agencies, and our communities in Scotland, are aware of the signs of child abuse and are vigilant. We also need to ensure that people know how to raise their concerns with the appropriate agency, and those who are perpetrators of child abuse are deterred by being brought to justice.
Introduction

1. Barnardo’s Scotland welcomes this petition on Mandatory Reporting. We hope that the Public Petition’s Committee spotlight on this issue will allow for informed discussion about the place of mandatory reporting in protecting children from abuse, in Scotland.

2. This subject has rightly been the focus of some political and media attention over the last few months, in the wake of numerous child sexual abuse scandals, cover-ups and organisations’ failures to protect children. As an organisation that has been delivering services to children and young people affected by child sexual exploitation for the last 20 years, we, like many others, found the failures highlighted by the Rotherham Inquiry to be particularly shocking. We recognise that the Committee has previously been proactive in tackling issues relating to child sexual abuse in its two year Inquiry into Child Sexual Exploitation, and welcome the Committee’s attention to mandatory reporting also.

3. Barnardo’s Scotland’s priority is to keep children safe and to put the best interests of the child first, both in our practice and policy. At a glance, a mandate on individuals and/or organisations to report child abuse, coupled with the imposition of sanctions where they fail to do so would seem obvious. Moreover, criminalising those who would take active steps to cover up abuse or to safeguard their own or their organisation’s reputation seems a simple solution to tackling the cover up of institutional abuse. We also understand that many members of the public may think that such a mandate is already law in Scotland, and would be surprised to hear that it is not.

4. The reality however, is that mandatory reporting may not be a panacea in tackling child abuse and any moves to introduce is in Scotland, should be approached with some degree caution. The unintended consequences for children that might follow from the very good intentions of policy makers need to be considered in some detail.

5. It is difficult to provide a view on whether or not mandatory reporting is required in Scotland to better protect children, without a clear understanding of what the problem is that mandatory would solve, and to whom and to what scenarios it would apply. Therefore, we would like to highlight some of the complexities around this debate for the consideration of the Public Petitions Committee.

6. We will also suggest that should the Committee consider that there is need for a mandatory reporting in Scotland, that they should urge the Scottish Government to conduct a full public consultation on all aspects of what such an offence should look like, and who it would be applicable too.
Scotland context- child protection

7. Currently, in Scotland, the Police and Fire reform (Scotland) Act 2012 places a duty on police officers to investigate criminality; and the Children’s Hearings (Scotland) Act 2011, sets out the duties on and powers of local authorities, police constables, and other persons to refer children who may need compulsory measures of supervision, to the Children’s Reporter. The National Child Protection Guidelines, refreshed in 2014, also makes it clear that all agencies have a shared responsibility to protect children. All organisations should have a clear child protection policy which spells out how to raise concerns with local authorities, Police Scotland, or in some cases, with third sector organisations like the NSPCC.

8. The enactment of the Children and Young People (Scotland) Act 2014, will enshrine the principles of GIRFEC, embed the SHANARRI wellbeing indicators in legislation as well as practice, and introduce the Named Person role within our universal health and education services. Notably, Section 26 of the Children and Young People (Scotland) Act 2014 will introduce a new duty on staff in public bodies, or within an organisation like Barnardo’s, to share information with the Named Person, where there is a wellbeing concern with regard to a child (with the exception that sharing that information would prejudice a criminal investigation). It will be the responsibility of the Named Person to act on that information.¹

9. These developments will positively challenge all agencies in Scotland to be proactive and to work together to address the wellbeing needs of children and young people. Barnardo’s Scotland hopes that the introduction of the Named Person, in particular, to the child protection system in Scotland, will lead to improved prevention, identification, and early intervention in tackling child abuse, and perpetrators will be brought more swiftly to justice.

10. It is also important to also mention that if any individual, whether a parent, carer, police officer, social worker, teacher, GP, sports coach etc., or any member of the public abuses a child, there is a legislative framework in place in our Criminal Justice System to hold perpetrators to account. Indeed, those who are perpetrators of abuse and are in ‘positions of trust’ e.g Part 5 Sexual Offences Act (Scotland) 2009 can face significant custodial sentences, if convicted.

¹ In addition, there is also the Protection of Vulnerable Groups (Scotland) Act 2007, which places a duty on public bodies and organisations to ensure that individuals are disclosure checked and deemed suitable to work with children and are enrolled on the PVG scheme, prior to their being allowed to undertake ‘regulated work’ with children. If an individual who is barred from working with children, seeks work/attempt to work with or do so, or an organisation knowingly allows a barred person to work with children, then this is an offence (section 37) which could lead to up to 5 years imprisonment, a fine, or both.
11. However, it is true that there is no legislation in place that would mean that failure to report abuse, or active cover up of institutional abuse, will lead to a criminal conviction and imprisonment; that said, a practitioner’s failure to report child abuse would likely constitute a breach of their employment contract, initiate disciplinary action, or give rise to a claim for civil damages. Also, practitioners can also be struck off from social work, teaching or medical registers for gross misconduct.

Key questions about mandatory reporting and scope:

What problem would mandatory reporting solve?

12. There has been a tendency in recent months for the issue of institutional cover-up and, individual failures to recognise, or act on reports of abuse, to be conflated. In relation to the first issue, where an individual working in an institutional setting with children fails to report abuse and takes steps to actively cover-up abuse, it is understandable that criminal sanctions may be something that the Scottish Parliament may wish to consider (although, even a more specific focus on institutional settings would need to be carefully thought through by way of how wide any duty should be, to whom it would apply, and in what circumstances).

13. If however, it is the case that in Scotland, the issue mandatory reporting might be thought to address is an individual’s failure to recognise and report abuse appropriately, and the aim is therefore to see better reporting procedures, improved recognition of abuse amongst professionals and those working with children, then it may be that training and awareness raising, rather than criminalisation, would be more effective.

What forms of abuse are covered?

14. Would a mandatory reporting offence relate to all forms of child abuse, or child sexual abuse?

To whom should the duty apply?

15. Would mandatory reporting apply to individuals working in particular institutions, or to anyone working in a regulated activity to capture a broad range of professionals including for example child-minders, teachers, therapists and sports coaches? There is also a question as to whether individuals or organisations, or both, should face criminal sanctions.

What is the threshold?

16. The Committee may want to consider what, from the perspective of a practitioner, the threshold should be for reporting abuse. Would a mandatory
reporting offence relate to a failure to report ‘known’ or ‘suspected’ abuse? ‘Known’ abuse may set the bar too high *i.e.* may require hard evidence that a practitioner may not have, or to even have personally witnessed abuse. On the other hand, our concerns about a threshold of ‘suspected’ abuse are that we would imagine that this would lead to a significantly higher level of reports and might present definitional and evidential challenges, as to what would constitute suspicion.

*To whom is a report made?*

17. Who would receive reports, someone within a Local Authority, an external body or other person? There may be issues, for example, in a social worker acting as the designated person to whom reports should be made. That is, social workers would be those likely to be making and acting on the majority of those referrals, whilst at the same time, being those who would also be subject to criminal sanctions for failing to report.

**Making Children Safer- the impact of mandatory reporting in referrals**

18. Children being safer must be the overriding driver for any change. We would be concerned that criminalising failure to report might lead to a significant increase of referrals and overwhelm the child protection system. The consequence of this may be that children might be less safe than is currently the case, because the children at higher risk may still not be identified in the high volumes. Although finances must never be an excuse for failing to protect children, the current context of increasing demand on local authorities at the same time as reduced budgets, there is understandable concern about the impact on resources of this change and, importantly, whether available resources will be sufficient to safeguard children effectively.

**Recruitment and retention of child protection professionals**

19. There has been significant concern in the sector about the impact on recruitment and retention in professions, particularly social work which already faces significant challenges in this respect.

Mandatory reporting is no panacea; there is a need for a broader cultural shift of children who report abuse being believed. Training and guidance also play a vital role.

**Evidence of effectiveness of mandatory reporting**

20. A number of other countries have introduced mandatory reporting systems in different ways. It is very difficult to make comparisons between them due to different approaches and contexts. The lack of a counter-factual also presents a challenge in terms of assessing effectiveness. It may be the case
that the Committee would consider undertaking a review of the evidence about the impact and effectiveness of mandatory reporting. Due to our significant concern about the unintended consequences of mandatory reporting and child protection, Barnardo’s would strongly advise the Scottish Government to ensure that such a review of available evidence from other countries, such as Northern Ireland, would be undertaken before any steps are taken to implement it in Scotland.

Conclusion

21. Barnardo’s Scotland wants to ensure that our child protection system is robust and effective in tackling abuse. Above all, we want children in Scotland to be safe. Mandatory reporting should be approached with some caution, and an informed debate needs to take place as to whether, when we drill down into the detail, it would be lead to children being better protected.

22. In any case, we do need to ensure that professionals from across agencies, and our communities in Scotland, are aware of the signs of child abuse and are vigilant. We also need to ensure that people know how to raise their concerns with the appropriate agency, and those who are perpetrators of child abuse are deterred by being brought to justice.