

OFFICIAL RESPONSE to the call for evidence

Mandatory reporting of child sexual abuse

November 2023

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the UK General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential.

If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Home Office.

The Home Office will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

About you

Question 1. Your name

Martin Hodge

Question 2. Address and postcode

Community Trade Union

465c Caledonian Road
London
N7 9GX

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

Trade Union: Education and Early Years section

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

Head of Education Policy

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.

Formerly PAT/PANN and latterly Voice, the Education and Early Years section of **Community Union** represent thousands of serving teachers and support staff, headteachers, lecturers, nursery and early years workers, nannies and other education professionals in schools and academies, nurseries and early years settings, colleges and universities across the whole of the UK.

Community provide legal and casework support to our members and regularly engage with them in determining our response to policy proposals.

This Official Response has been prepared on behalf of members of the Education and Early Years section of Community Union as such this is a public document which will be published on our website following the consultation close.

The information shared within this response may be used and quoted as appropriate for the purposes it was gathered, and **Community Union** should be acknowledged as a contributor.

Diversity

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.

Question 6. What is your sex?

This Official Response has been prepared on behalf of members of the Education and Early Years section of Community Union.

Question 7. What is your ethnic origin?

Our members are drawn from all sections of society, all nations of the UK and represent a wide range of ethnicities, heritage, faiths, beliefs, and backgrounds.

The mandatory reporting duty

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

Yes – attribute to my organisation.

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:

Community is committed to safeguarding of all children and adults at risk and therefore we believe that those working or volunteering in regulated activity in relation to children provides a practical framework of roles which should be subject to safeguarding legislation.

We do not feel that a list of job roles would be helpful, since the specifics of job titles can vary widely which may mean that some roles fall out of remit on a technicality, and this should be avoided.

However, Community is of the view that, like in Wales, there is no need to introduce a mandatory reporting duty upon staff working in regulated activity. Early Years settings, schools, colleges, Hospitals etc. already all have dedicated safeguarding procedures which – on the whole – work well. Where safeguarding sometimes fails is at institution level. Therefore, we do not support a system which could make our members personally liable without there being significant safeguards to protect them and their liberty.

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?

Keeping Children Safe in Education is very clear about the need to report safeguarding concerns. It is very clear that children should be protected from further harm and that their concerns be treated seriously. It is also clear that those who are the subject of allegations be protected – indeed reporting of cases is during investigations is forbidden and enshrined in law.

Whistleblowing legislation protects an individual making a disclosure that is in the public interest, but this is not always appropriate in safeguarding cases as described above.

There is limited protection for reporters, and in many instances, this is reasonable, since disclosures should not be made in secret. There is currently a duty upon those working in regulated activity to report safeguarding concerns to a designated person, who has received specific training in the safeguarding duty. If there is to be a mandate upon individuals to report, there must be a transparent procedure to prove they have made such a report, and this is impractical and at vulnerable.

We do not feel that mandating those working in education and early years to report will enhance safeguarding protections. Education settings already have robust procedures in place together with comprehensive training for Designated Safeguarding Officer who will lead on this in the setting. We fear that in some instances these proposals will worsen safeguarding processes because the proposals would bypass the role of DSO by encouraging individuals to take action themselves. This is impractical, time and resource heavy, and risks reports not being gathered by the employer leading to delayed action to safeguard children from harm.

It is imperative that the safeguarding processes currently in place are not removed or undermined as this would put vulnerable children at risk.

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?

Please provide details to explain your response.

As noted in our previous answers, we believe that it is the responsibility of everyone working in a school to report an incident that they observe or have reported to them. This should be done by following the setting's robust and transparent reporting protocol to ensure that all safeguarding concerns are centrally managed and can be reported on to LADO/statutory agencies as determined by the trained DSO.

We do not believe that reporters should be expected to make the distinction between the age of children, nor to determine whether an incident is/was consensual or not.

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?

Fines - NO

Custodial sentences - NO

As has been previously mentioned, we believe that it is the responsibility of everyone working in a school to report an incident that they observe or have reported to them. This should be done by following the setting's robust and transparent reporting

protocol to ensure that all safeguarding concerns are centrally managed and can be reported on to LADO/statutory agencies as determined by the trained DSO.

Once this report has been completed, the responsibility of the reported has ended and it is the responsibility of the DSO and the organisation to follow up.

We do not feel that it would enhance safeguarding procedures to have an individual held personally responsible.

Fines and criminal sanctions can already be levelled at those who wilfully obstruct criminal investigations with the police, and we do not feel that further criminalising those working in education would lead to improvements in safeguarding.

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

Education settings are very busy places and the demands placed upon staff are never-ending. The current rules, contained within Keeping Children Safe in Education, require that staff maintain an attitude of *'it could happen here'* where safeguarding is concerned, and that staff should always act in the best interests of the child.

To this end, organisation policies recommend that safeguarding concerns be reported to the DSO as soon as is practicable, and usually before the end of the working day. Indeed, KCSIE goes on to state that in the event that the DSO or their deputy is not available, staff should consider taking advice from the local authority children's social care.

It must be acknowledged though, that sometimes it can take a couple of days for reports to be completed due to the huge demands placed upon staff. A mandatory duty would not remove these demands and would only contribute to them. Further, it may take staff away from duties which safeguard the child and others in their care.

Processes are already in place to safeguard our children, and it is not clear what this mandatory duty would provide to enhance it, but sanctions would not enhance it.

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?

As with our previous answers we must make it clear that we do not believe that a mandatory duty placed upon an individual will improve the safeguarding provisions for children in our nurseries, schools, colleges or universities. Indeed we feel that placing a duty upon the individual is the wrong approach and that criminalising a

reporter for failure to make an appropriate report under the duty will worsen the workforce crisis that the sector is already facing, worsen workload and force effective practitioners out of the sector due to fear.

As previously mentioned, there are already criminal sanctions which exist and can be levelled at those who deliberately interfere with a police investigation. Our education settings have appropriate disciplinary measures for those who fail to follow the safeguarding policy - including failure to make a timely report.

Just because someone has failed to make a timely report, does not automatically make them a risk to children, indeed the fact that they have observed or that a child has chosen them to make a disclosure to suggests precisely why they should remain in the sector and not have their career put at risk through a referral to DBS. We would strenuously object should this be introduced without the due process and the right of reply.

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?

Please provide details to explain your response.

As previously mentioned, Community does not feel that a mandatory duty placed on individuals is necessary, nor proportionate for those working in regulated education settings in England.

We have significant concern about the cost impact to settings in managing two distinct systems of reporting which sit at odds with each other – one a collective approach through a DSO, the second an individual approach, and feel that this will lead to huge workload burdens for all staff which will take them away from the children they are working with. Furthermore, we feel that this dual system will overload DSO and LADO systems which are already under huge pressure.

Finally, the individual burden which is proposed to be placed upon staff will exacerbate the recruitment and retention crisis we are seeing in our Early Years settings and schools and colleges. Workforce issues will become worse, leading to some early year's settings closing and placing the very youngest of our children at greater risk instead of strengthening safeguarding.

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?

Please provide details to explain your response, including practical examples wherever possible.

To be clear, regulated education settings must implement a safeguarding policy and follow KCSIE. Therefore, there is already a robust process in place to channel and gather safeguarding reports and to funnel them through the DSO to LADO as appropriate.

Community do not feel that the case for mandatory reporting in schools is clear indeed the Home Office's own view back in 2016 was that it was not necessary. We believe there is no benefit to confusing the process by adding a mandatory duty onto the individual.

As has been noted the unintended consequences for the individual could be life changing and the implications for the workforce quite profound. We fear that the implementation of such a statute would lead to a further exodus from the profession, worsening an already critical workforce crisis.

How to respond

Please email this response as an attachment to: mr_csa@homeoffice.gov.uk

Or you can print it and return to:

IICSA Response
Tackling Child Sexual Abuse Unit
Home Office
5th Floor, Fry Building
2 Marsham Street
London
SW1P 4DF