

Consultation

CoramBAAF response to the mandatory reporting of child sexual abuse consultation

30 November 2023

Question 1. Your name

Coram BAAF

Question 2. Address and postcode

41 Brunswick Square, London WC1N 1AZ

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

Charity, voluntary, community and social enterprise sector representative

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

Front line worker

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.

Coram BAAF is the UK's leading membership organisation for professionals working across adoption, fostering and kinship care. We provide information, best practice guidance, advice, training and resources to support our members and influence policy to improve outcomes for children and young people. Our corporate members in England, Wales, Scotland and Northern Ireland represent 94% of all local authorities as well as regional adoption agencies, health and social care trusts, independent fostering providers and voluntary adoption agencies, and cover 88% of all children and family social workers. Our 650+ individual and associate members - comprising lawyers, health professionals,



educational institutions, therapeutic and family support services, and more - reflect the multidisciplinary nature of our work.

Question 6. What is your sex?

Prefer not to disclose

Question 7. What is your ethnic origin?

Prefer not to disclose

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:

The proposal to introduce a mandatory reporting duty to any person undertaking regulated activity in relation to children and any person in a role considered relevant to the duty, would capture local authority foster parents, kinship foster carers, private foster carers, and situations where a child has been placed with foster parents by a voluntary organisation. It is our view that the comprehensive application of this duty is essential to improving safeguarding.

The Safeguarding Vulnerable Groups Act 2006 does not apply to any activity which is carried out in the course of a family relationship. Additionally, individuals applying to be adoptive parents or special guardians are not classified as carrying out a regulated activity with children, thereby exempting them from the mandatory reporting duty. While there are compelling reasons for these exemptions, it is important to acknowledge that certain groups of children may transition from their immediate family to private kinship or fostering arrangements, and subsequently become looked after by the local authority and accommodated with a foster carer, before a special guardianship order or adoption order is made by a court. These children sometimes constitute the same cohort of children, with shared vulnerabilities to child sexual abuse. The progression of children through various familial, non-familial and institutional care settings highlights the importance of the application of the mandatory reporting duty being proportionate but also expansive enough.



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?

We welcome the government's commitment to ensuring that reporters are protected from personal detriment when making a report under the duty in good faith; or raising that a report required under the duty has not been made. Appropriate ways to ensure this could include:

- Confidentiality safeguards – ensuring that the identity of reporters is kept confidential, to the extent permitted by the law.
- Education and training – providing comprehensive training to individuals subject to the mandatory reporting duty. There will be a strong need for guidance and training relating to the new duty as well as clear, consistent processes and thresholds.
- Independent reporting channels – where possible, establishing reporting channels that enable individuals to report concerns safely and anonymously.

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?

The consultation outlines that:

“For the purposes of the duty, ‘child sexual abuse’ should be interpreted as any act that would be an offence under the Sexual Offences Act 2003 where the alleged victim was under the age of 18 at the time the abuse occurred; and ‘witnessing’ child sexual abuse should include viewing indecent images of children.

A report will not need to be made under the duty if those involved are between 13 and 16 years old, the relationship between them is consensual and there is no risk of harm present.”

The Sexual Offences Act 2003 incorporates a long list of sexual offences, some of which are common amongst children who display inappropriate, problematic or harmful sexual behaviour, including those who are themselves victims of child sexual abuse, child sexual exploitation, or those with learning disabilities/complex needs.

Research by the Centre of Expertise on Child Sexual Abuse ([Di McNeish and Sara Scott, DMSS Research – Second edition, February 2023](#)) highlights that:

“Children and young people with learning disabilities are more vulnerable both to being sexual abused (Sullivan and Knutson, 2000) and to displaying inappropriate or problematic sexual behaviour; in one large UK study, 38% of under-18s referred to specialist services because of harmful sexual behaviour were assessed as having a learning disability (Hackett et al, 2013). However, it is likely that the high level of adult supervision of children and young people with learning disabilities means that their sexual behaviour is more likely to be observed and problematised (Allardyce and Yates, 2018).

Reasons why some children and young people with learning disabilities may be more likely to display harmful sexual behaviour include having less understanding that some sexual behaviours are not



acceptable, and fewer opportunities to establish acceptable sexual relationships; receiving less sex education; struggling with social skills; and relating more easily to children younger than themselves (Allardyce and Yates, 2018; O'Callaghan, 1998).

(...) The most valuable approaches are structured and holistic, considering the child or young person's whole situation (not just their problem behaviour), equipping them with interpersonal skills as well as knowledge, and underpinned by a therapeutic relationship built on trust (Chaffin et al, 2002; Hackett et al, 2006; Fonagy et al, 2017; Campbell et al, 2016; Faure-Walker and Hunt, 2022)."

We are concerned that the mandatory reporting duty could lead to increased criminal justice interventions in relation to children. While there are situations where the reporting of child sexual abuse by children will be necessary, careful consideration of a 'public interest exemption for children' following referral is warranted, particularly when a criminal justice intervention is neither in the public interest nor in the best interests of the children involved.

Even though the Association of Chief Police Officers [Child Gravity Matrix](#) and Crown Prosecution Service [Legal Guidance](#) account for public interest considerations, the implementation of the mandatory reporting duty should go further to ensure that, wherever possible, children are dealt with in a therapeutic, supportive, and rehabilitative manner, steering away from criminalisation. Efforts should be made to divert children from formal criminal justice interventions by utilising appropriate crime outcomes, such as Outcome 21 or Outcome 22, in line with the [Home Office Crime Recording Rules](#).

This aligns with the findings of the report titled '[Now I know it was wrong: report of the parliamentary inquiry into support and sanctions for children who display harmful sexual behaviour](#)'. The report acknowledges that children "make mistakes as they start to understand their sexuality and experiment with it", and "these children are unlikely to pose further risk to the public, given appropriate support, but unnecessarily criminalising or stigmatising them as a sex offender at such a young age makes it more likely that they will struggle to regain a normal life, and increases their propensity to re-offend".

The National Institute for Health and Care Excellence has produced a [guideline on harmful sexual behaviour among children and young people](#), outlining proposals to prevent problems from escalating to criminal charges while ensuring children and young people are not unfairly stigmatised or referred to specialist services when unnecessary. Extensive guidance emphasises dealing with children informally to avoid stigmatisation, labelling, and the long-term consequences of criminal records for sexual offences.

Numerous offenses under the Sexual Offences Act 2003 are included in the category of offenses that will never be filtered from a Disclosure and Barring Service (DBS) certificate, even when committed by children. Currently, the Police National Database (PND) collates police intelligence held locally by various police forces, ranging from arrests with no further action taken to unsubstantiated allegations that the police never pursued, including in relation to children. This information could be disclosed as part of an enhanced criminal record check if deemed relevant and necessary by the police or in the presence of further incidents. This highlights the importance of examining circumstances that may potentially lead to lifelong uncertainty concerning future employment etc, which would have disproportionate and significantly adverse impact on children.



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?

Other: The default for offences of similar nature is a fine or up to 6 months' imprisonment, and we believe this range of sanctions should apply here, not one or the other, depending on the severity of the offence.

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

We are concerned about the impact of sanctions on recruitment and retention of foster carers. Situations where a reporter has been obstructed due to active indifference or negligence should be clearly differentiated from other situations, for example, where deliberate action has been taken to obstruct a report being made. Foster carers operate in unique and challenging circumstances, sometimes being employed by the local authority and navigating complex relational dynamics. A thorough examination of the implications and potential unintended consequences of extending sanctions to situations where a reporter has been obstructed due to active indifference or negligence, should carefully consider the distinct circumstances of different types of reporters.

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?

Given their expertise, organisations such as the Disclosure and Barring Service and regulating bodies may be well placed to determine suitable actions in such cases. Recognising the need for flexibility, different situations will warrant varying penalties, requiring a responsive and proportionate framework.

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?

The introduction of the proposed duty, extending to foster carers as well, is likely to generate both costs and benefits.

According to Ofsted national statistics as of 31 March 2022, there were 43,905 fostering households in England, with 7,855 being family and friends households caring for around 11,210 children. During the 2021-2022 period, there were 3,010 allegations of abuse made against foster carers, with sexual abuse allegations accounting for 8%.

Adequate funding and resources will be essential to provide comprehensive education and training for foster carers on the new mandatory reporting duty. This will involve costs associated with developing and delivering training programs. Additionally, there will be a strong need for clear and consistent



guidance, as well as well-defined processes and thresholds. Developing, disseminating, and maintaining such guidance will require financial resources.

While there are associated costs with training and guidance, the potential benefits include improved safeguarding, enhanced awareness, and more effective prevention and intervention measures. Enhanced awareness amongst foster carers about their role in reporting child sexual abuse could contribute to early identification and intervention in cases of child sexual abuse, leading to better prevention and intervention measures.

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?

The proposed mandatory reporting of child sexual abuse is essential to improving safeguarding. This change is particularly welcomed due to the prevalent issue of underreporting, which obscures the full scale of the problem, hindering the allocation of necessary resources, funding, and expertise to support affected children and young people, as well as to provide trauma-informed therapy and parenting.

While most foster carers do fully comprehend their critical role in safeguarding children, we have concerns regarding potential apprehensions arising from perceived criminalisation for failure to report. It will be extremely important that messaging and campaigns surrounding this change strike a delicate balance — being robust and clear without discouraging prospective and existing foster carers or professionals from working with children due to fears of criminal sanctions, criminal records, or professional and barring measures.

The implementation process, including guidance, briefings, and training, will require nuanced and sophisticated communication. The messaging should be centred on the child's well-being while acknowledging the fears that foster carers and others might experience if, for example, they make mistakes as these new duties are implemented.

The consultation outlines that:

“The Inquiry recommended that a mandatory reporting duty apply in cases where a reporter is told about abuse, witnesses abuse or recognises signs which may indicate abuse is taking place. We believe that the duty should be limited to disclosures (where a child or perpetrator tells the reporter about child sexual abuse directly) and incidents they have personally witnessed. This means that breaching the duty will involve deliberate inaction in the face of disclosures rather than a subjective assessment of indicators; and acknowledges the strong feedback we have received that recognising child sexual abuse is likely to be difficult for those without formal training or who see children infrequently. We recognise the importance of supporting people to recognise indicators of abuse and will continue our work to upskill those working with children through training and awareness raising.”

Given the infrequency of verbal disclosure, relying solely on this method (and witnessing abuse) poses risks, potentially leaving children exposed to child sexual abuse while waiting for verbal disclosure (or to witness abuse). Moreover, relying on verbal disclosure of abuse may exclude non-verbal children, very young children, those with learning disabilities, and children who do not speak English as their first language. It is crucial to consider alternative forms of communication, such as drawings, to ensure inclusivity.



While acknowledging the challenges in recognising the signs which may indicate abuse is taking place, especially for individuals without formal training or with infrequent interactions with children, ongoing efforts to upskill individuals through training and awareness programs should be prioritised and allocated adequate funding and resources.