



Mandatory Reporting - the Legal Case for Change

by Peter Garsden

Introduction

At a time when the media is full of stories about child abuse, particularly in institutional settings, the question posed is whether a new law should be introduced which imposes a mandatory and statutory obligation to report abuse. In the last 12 months we have heard of:

- Stoke Mandeville, Leeds Hospital and the BBC, where Jimmy Savile seemed to have abused with impunity, and without restriction, sometimes under the noses of employees of public bodies,
- Celebrities such as Stuart Hall for crimes committed many years ago,
- Various members of clergy who have selected members of their congregations to defile allegedly discovered and moved on by church hierarchy
- Teachers such as Nigel Leat who was convicted 36 offences of abusing girls at Hillside First School, leading to a lifetime ban of Chris Hood, the head for failing to act when it was known that abuse was taking place¹
- The 2011 Penn State University case in America where the football coach Jerry Sandusky was witnessed abusing a boy in the showers many years ago by a colleague who failed to report what he had seen. In this case criminal proceedings were brought against those who allegedly orchestrated a cover up and failed to disclose.

I have been specialising in child abuse cases on behalf of victims in claims against various institutions such as the church, local authorities, individuals, and charitable bodies, often leading group actions comprising hundreds of victims for the last 20 years. I have come across many examples of abuse being committed by several individuals at a children's home at the same time, where there multiple complaints ignored by senior management, and where it was so obvious that other care workers at the home would have been aware of what was going on by virtue of the behaviour of the paedophile care workers. The favouritism shown to certain boys, unexplained visits by them to a male care worker's living quarters late at night must have put them on notice that abuse was being committed, to which they were turning a blind eye.

Many abuse support groups are calling for a change in the law related to mandatory reporting. Such a law would require certain classes of individual who know, suspect, or have reasonable grounds for knowing or suspecting child abuse, to make a report to a person or body specified in legislation. Failure to make a complaint would be a criminal offence punishable by a specified penalty. Proponents of such a law claim that it would bring England and Wales in line with most countries around the world where a law has existed for many years. The Mandate Now Campaign², to which I am a signatory, currently contains more than 6,500 signatures. Similar petitions exist.

On the other hand, until recently, the British Government with the support of the NSPCC opposed the introduction of mandatory reporting. They argued that the current discretionary obligations imposed on professionals to report abuse suffice. However, political opinion does seem to be

¹ Further details can be seen in the Serious Case Review for Hillside First School Weston Super Mare <http://www.northsomersetscsb.org.uk/uploads/files/283.pdf>

² <http://www.change.org/en-GB/petitions/educationgovuk-introduce-law-requiring-adults-working-with-children-to-report-alleged-abuse-mandatenow> is the URL but it is easier to find by searching for "Mandate Now" on Twitter.

changing. At Prime Minister's Questions on the 9th July 2014, David Cameron told the House of Commons that 'it may well be time' to reform the law to make it mandatory to report child abuse. The chief of the NSPCC, Peter Wanless also stated that there should be a duty on certain institutions to report child abuse.³ On the 2nd September 2014, Shadow Home Secretary Yvette Cooper argued in the Commons for a law on mandatory reporting.

This article examines the issues surrounding a change in the law, what presently exists around the world and brings forward concrete proposals for improving the existing statutory framework.

Part One - Reporting of child abuse in the United Kingdom

1.1 England, Wales, Scotland

In England, Scotland and Wales there is no formal requirement in law to report child protection concerns to the statutory authorities. There is rather a system of voluntary reporting in which professional reporting obligations are emphasised through national and local guidance. The development of inter-agency protocols emphasise information sharing and inter-agency co-operation.

In the field of education, presently, the guidance advises staff working in Regulated Activities '**should**' inform their Designated Safeguarding Officer (DSO) of any disclosures, concerns, or known abuses but this is not statutorily underpinned. There exists therefore nothing more than a behavioural expectation on staff to report such concerns. So, the April 2014 Guidance from the Department for Education states

If staff members have concerns about a child they should raise these with the school's or college's designated safeguarding lead. This also includes situations of abuse which may involve staff members. The safeguarding lead will usually decide whether to make a referral to children's social care, but it is important to note that any staff member can refer their concerns to children's social care directly.⁴

After the DSO has assessed a report, usually with the principal of the Regulated Activity, the principal and the Chair of Governors (in the case of a school) make a decision whether the incident has reached subjective thresholds that indicate it '**should**' be referred to the Local Authority Designated Officer (LADO). This assessment '**should**' consider whether an adult has:

- acted in a way that has harmed or may have harmed a child
- possibly committed a criminal offence related to a child
- behaved in a way that indicates that s/he is unsuitable to work with children

This is guidance, not obligation. It is 'soft law' not 'hard law'. Soft law comprises such things as codes of conduct, industry standards, best practice, professional obligations etc. However, it doesn't have the force of law, it is not a statute, there is no criminal responsibility for failure to follow it. Soft law is appropriate in certain circumstances and can sometimes work. However, in my opinion it is manifestly not working in this situation where there are countless cases of child abuse being observed by those in positions of authority but who yet do nothing about it.

The lack of legal obligation means that reporting doesn't always happen. For example, when investigating one children's home in the North West, Merseyside Police were so convinced that a certain Head Warden was shutting his eyes to the obvious by refusing to believing boys complaining

³ <http://www.bbc.co.uk/news/uk-28213318>

⁴ Department for Education *Keeping Children Safe in Education: Statutory Guidance for Schools and Colleges* (April 2014) page 6.

of abuse by his abuser staff, that they tried to persuade the Crown Prosecution Service to charge him with "gross negligence". There is not, of course, such a crime, and no charges were brought despite his obvious guilt by knowledge. Had there been mandatory reporting at the time, then the complaints may have been passed on, the abuse exposed, and countless teenage boys spared serious sexual abuse by various paedophile care workers who were operating with impunity at the home.

1.2 Northern Ireland

By contrast, in Northern Ireland section 5(1) of the Criminal Law Act 1967 makes it a criminal offence to fail to disclose certain offences to the police.

"5. (1) ...where a person has committed a relevant offence, it shall be the duty of every other person, who knows or believes—

(a) that the offence or some other relevant offence has been committed; and

(b) that he has information which is likely to secure, or to be of material assistance in securing, the apprehension, prosecution or conviction of any person for that offence;

to give that information, within a reasonable time, to a constable and if, without reasonable excuse, he fails to do so he shall be guilty of an offence."

A 'relevant offence' is defined in section 4(1) as an offence for which a person may be sentenced to imprisonment for a term of more than 5 years. This definition covers a great many of the offences against children discussed in this paper. However, this provision in Northern Ireland is of very broad ambit, and is not specifically aimed at the reporting of child abuse. It is unclear if this broad law has had the effect in Northern Ireland of improving reporting rates.

Part Two – Mandatory reporting in other jurisdictions

The USA, Australia and Canada are the main countries with Mandatory Reporting laws. There are a range of other countries including Argentina, Sweden, Denmark, Finland, Israel, Kyrgyzstan, the Republic of Korea, Rwanda, Spain and Sri Lanka and the Republic of Ireland which also have it in their legislation.

2.1 United States of America

In the USA, the first mandatory reporting laws were drafted in 1963. At present, every state in the USA has laws that require *some* adults to alert authorities when they suspect a child has been abused or neglected. The pattern of which group of adults and professionals is disparate across the country, and not all categories are required to report in every state⁵.

In all states, teachers, principals, doctors and nurses are required to report the abuse. Alaska is the only state where Social Workers do not have to report; Colorado is the only state where Child Care workers are not required to report abuse and Ohio is the only state where Law Enforcement workers do not have to report.

In the majority of states, recreational groups and parents do not have to report suspected abuse. Only 19 states expect all categories of adults and professional to report suspected abuse.

⁵ See <http://usatoday30.usatoday.com/news/nation/story/2012-01-02/unreported-child-abuse/51981108/1> which contains a very useful chart to show the coverage in the different categories.

The law is written so that someone may report with suspicion only, not certainty but it appears that many do not because of a fear that they might be wrong.

Number of States and Categories of Persons legally obliged to report abuse state by state

All persons	Most Professionals	Parents	Clergy
18 states (36%)	50 states (100%)	25 states (50%)	40 states (80%)

The sanctions against anyone not reporting are minimal. Only 3 states have laws that make failing to report abuse a felony and those laws generally apply when the abuse is particularly severe or the person has been convicted before. Most of the remaining states make failure to report a misdemeanour or a civil infraction - the rough equivalent of a speeding ticket.

The next table analyses the consequences of not reporting in terms of a penalty.

Not Reporting a is a Crime	Enforcement Action can be taken
41 states (82 %)	25 states (50%)

Mandatory reporting laws are being scrutinised anew after the case in Penn State University, Pennsylvania where a football coach abused 10 boys. Two officials have been charged with perjury and failing to report suspected child abuse as they had been told about the abuse by another student in 2002 but did nothing about it. Lawyers in at least 6 states and members of Congress are trying to expand the reach of the mandatory reporting laws and to have them effectively enforced. However, it appears that even when people are charged with breaking this law, ie not reporting abuse, the chances of a conviction are remote and the most that anyone receives is a fine.

To conclude, in America, the majority of states make mandatory reporting legally required for most professionals but in only a minority do the public also have this obligation, but in the majority of states (82%) failure to report is a criminal offence.

2.2 Case study: comparison of mandatory reporting law in Florida, Vermont and Pennsylvania

This case study focuses on **Florida, Vermont** and **Pennsylvania** which represent different legislative solutions to the issue of mandatory reporting. The comparison examines the persons who have a duty to report, the authority they report to, the circumstances and the penalties and defences provided for in the law.

It is interesting that in the state of Pennsylvania where the Jerry Sandusky case took place, in reaction thereto, the law was deemed not enough of a deterrent, and the punishment elevated from a fine of \$375 to between \$250 and \$5000 or imprisonment for 90 days or both, and higher still for repeat offences.

It is also interesting to note that the state with the widest reporting obligation and the highest penalty (Florida) has the highest child death rate. I happen to think, however, that the child death rate is not directly or indirectly connected with mandatory reporting

American State	Who has a duty to report?	Who to?	In what circumstances ?	Penalties & Defences
<p>Pennsylvania</p> <p>The statute in question can be found online at http://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/23/23.HTM</p>	Teachers/ Principals , Doctors and Care Workers	Dedicated hotline “The Childline and Abuse Registry Intake Unit”. The advisor discusses the next steps with the reporter	Any suspicion of child abuse must be reported orally immediately, and in writing within 48 hours	<p>Misdemeanour of 3rd degree (a fine \$250 to \$5,000, or imprisonment not exceeding 90 days, or both) and 2nd degree (\$500 to \$5000, 2years) for repeat offences.</p> <p>Previous to new Act (Jan 2013) a fine of \$375</p> <p>Defences – solicitor/client privilege, clergy confession privilege, immunity from criminal or civil claim for reporters. Protection for whistle blowers</p> <p>Child Death Rate -1.04 deaths per 1000,000 children</p>
<p>Vermont</p> <p>The legislation can be found online at http://www.leg.state.vt.us/statutes/fullsections.cfm?Title=33&Chapter=049&Section=04913</p>	Librarians , Clergy, pharmacists, and hospital interns	Specialist 24 hour hotline manned by social workers then a fax to the Commissioner.	Any suspicion of child abuse must be reported orally immediately, and in writing within 48 hours.	<p>Penalty</p> <p>A fine of not more than \$500.</p> <p>A person who violates the reporting laws with the intent to conceal abuse or neglect of a child shall be imprisoned no more than 6 months, fined for no more than \$1,000, or both.</p> <p>Defences – immunity for reporter from any civil or criminal liability, whistle blowing protection, anonymity (subject to exceptions) for reporter, clergy confessional.</p> <p>Child Death Rate - 3.17 deaths per 1000,000 children</p>
<p>Florida</p> <p>The legislation can be found online at http://www.flsenate.gov/laws/statutes/2011/39.201</p>	Any person - certain professionals required to give their name	Florida 24 hour Hotline at the Department of Children and Families	Any person who knows, or has reasonable cause to suspect, that a child is abused, neglected, or abandoned by a parent, legal custodian, caregiver, or other person responsible for the child's welfare	<p>Penalty</p> <p>In 2012, the knowledge and wilful failure of a person, who is required to report known or suspected child abuse, abandonment, or neglect is elevated from a first degree misdemeanor to a third degree felony.</p> <p>As a result, the potential prison sentence is raised from 1 year to 5 years, and the potential fine is raised from a maximum of \$1,000 to a maximum of \$5,000 (<i>reporting > by 25% as a result</i>)</p> <p>Child Death Rate - 4.44 deaths per 1000,000 children (highest rate in USA)</p>

According to the “We Can Do Better: Child Abuse and Neglect Deaths in America” 2012, Florida has the highest child abuse and neglect death rates, at 4.44 deaths per 1000,000 children. In 2010 there were 180 deaths as a consequence of neglect or abuse. Despite this Florida has one of the highest rates of reports for abuse, with 193,339 being made in 2010.⁶ Following the introduction of a felony offence for failure to report in late 2012, child abuse reports increased by 25%.⁷ The Law of the state of Florida provides the following:

“39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.

(1) (a) Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child’s welfare, as defined in this chapter, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

(b) Reporters in the following occupation categories are required to provide their names to the hotline staff:

1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons;
2. Health or mental health professional other than one listed in subparagraph 1;
3. Practitioner who relies solely on spiritual means for healing;
4. School teacher or other school official or personnel;
5. Social worker, day care center worker, or other professional child care, foster care, residential, or institutional worker;
6. Law enforcement officer; or
7. Judge.

The names of reporters shall be entered into the record of the report, but shall be held confidential and exempt as provided in s. 39.202.

(c) A professional who is hired by or enters into a contract with the department for the purpose of treating or counselling any person, as a result of a report of child abuse, abandonment, or neglect, is not required to again report to the central abuse hotline the abuse, abandonment, or neglect that was the subject of the referral for treatment.....

(2) (a) Each report of known or suspected child abuse, abandonment, or neglect by a parent, legal custodian, caregiver, or other person responsible for the child’s welfare as defined in this chapter, except those solely under s. 827.04(3), and each report that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall be made immediately to the department’s central abuse hotline. Such reports may be made on the single statewide toll-free telephone number or via fax or web-based report. Personnel at the department’s central abuse hotline shall determine if the report received meets the statutory definition of child abuse, abandonment, or neglect. Any report

⁶ Children’s Bureau *Child Maltreatment 2010* (Children’s Bureau, December 2010)

⁷ <<http://www.wtsp.com/news/reporter/article/277062/79/Child-abuse-reports-increase-under-new-Florida-law>>

meeting one of these definitions shall be accepted for the protective investigation pursuant to part III of this chapter.”

2.3 Australia

In Australia, legislation was first enacted in 1972. All jurisdictions in Australia possess mandatory reporting requirements of some description. The people mandated to report, however, as in the USA, varies across Australian states and territories. The groups required to report range from the generic description "professional working with children" to "police, doctors, nurses and teachers" to "employees of licensed residential care services". Under the Family Law Act 1975, personnel associated with the family courts, such as dispute counsellors and family lawyers, also have mandatory reporting obligations.

There is, however, some confusion regarding the obligation of a group to report abuse. Some professional groups such as psychologists, for example, have protocols which outline their moral ethical or professional responsibility to report abuse but they may not be mandated under the relevant legislation. Similarly, in Queensland, school principals and teachers are required to report suspected abuse and neglect under the Education Queensland policy, but again, not under the relevant legislation have been identified as adopting some form of mandatory reporting legislation. Nonetheless, voluntary reporting systems are considered to be more common.

The relevant laws that govern the mandatory reporting are specific to each territory. In Queensland for example, it is the Child Protection Act 1999. There is no overarching legislation for the whole of the country. The example below is from the Children and Young People Act 2008 for Australian Capital Territory.

“356 Offence—mandatory reporting of abuse

- (1) A person commits an offence if—
 - (a) the person is a mandated reporter; and
 - (b) the person is an adult; and
 - (c) the person believes on reasonable grounds that a child or young person has experienced, or is experiencing—
 - (i) sexual abuse; or
 - (ii) non-accidental physical injury; and
 - (d) the person’s reasons for the belief arise from information obtained by the person during the course of, or because of, the person’s work (whether paid or unpaid); and
 - (e) the person does not, as soon as practicable after forming the belief, report (a **mandatory report**) to the director-general—
 - (i) the child’s or young person’s name or description; and
 - (ii) the reasons for the person’s belief.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Note 1 A person who gives information honestly and without recklessness under this section does not breach professional ethics and is protected from civil liability (see s 874).

Note 2 Giving false or misleading information to the director-general is an offence (see Criminal Code, s 338).

(2) In this section:

mandated reporter—each of the following people is a **mandated reporter**:

- (a) a doctor;
- (b) a dentist;
- (c) a nurse;
- (d) an enrolled nurse;
- (e) a midwife;

Note **Doctor, dentist, nurse, enrolled nurse** and **midwife** are defined in the Legislation Act, dict, pt 1.

- (f) a teacher at a school;
- (g) a person authorised to inspect education programs, materials or other records used for home education of a child or young person under the Education Act 2004;
- (h) a police officer;
- (i) a person employed to counsel children or young people at a school;
- (j) a person caring for a child at a childcare centre;
- (k) a person coordinating or monitoring home-based care for a family day care scheme proprietor;
- (l) a public servant who, in the course of employment as a public servant, works with, or provides services personally to, children and young people or families;
- (m) the public advocate;
- (n) an official visitor;
- (o) a person who, in the course of the person's employment, has contact with or provides services to children, young people and their families and is prescribed by regulation.

person caring for a child at a childcare centre includes a childcare assistant or aide caring for a child at the childcare centre if the assistant or aide is in paid employment at the childcare centre, but does not include anyone caring for a child as an unpaid volunteer.

teacher, at a school, includes a teacher's assistant or aide if the assistant or aide is in paid employment at the school."

2.4 Republic of Ireland

In the Republic of Ireland, Henry McDonald highlights forthcoming legislation on the back of constitutional amendment, which will make it mandatory to report any complaint from any child about

abuse, thus enshrining children's rights in the constitution.⁸ The 1937 constitution requires amendment as it put more emphasis on privacy and the authority of the family than on the rights of the child. This change has been championed after the widespread child abuse that was identified in the Catholic Church.

Part Three: Proposals for reform

3.1 MandateNow's proposal for reform

MandateNow makes a concrete proposal for legislative change. It asks for a law which requires professionals who work with children in 'Regulated Activities' who know, suspect, or have reasonable grounds for knowing or suspecting child abuse, to inform the Local Authority Designated Officer ('LADO') or in appropriate circumstances children's services. Failure to inform would be a criminal offence.

'Regulated Activities' are already defined in Schedule 4, Part 1 and Part 2 of the Safeguarding Vulnerable Groups Act 2006. They include schools, faith organisations, children's homes, health organisations including the NHS, national sports bodies and similar institutions where children are cared for *in loco parentis* by adults other than their parents.

Thus the proposal is intended to apply to professionals only, and not to members of the public. It is designed to increase the number of instances of reporting, and is clearly not intended to attempt to criminalise professionals, quite the reverse, it is intended to remove the stigma

Here are some of the reasons for staff not reporting to their Designated Officer:

- Confusion and disbelief at what has been witnessed / reported
- Self-doubt
- Alleged perpetrator is a colleague and possibly a friend
- Alleged perpetrator is more senior and more powerful than witness
- Alleged perpetrator is an aggressive parent
- Witness or concerned staff member (to abuse) is sole wage earner in family
- Fear of ostracisation / repercussions for making a report
- Fear of the consequences
- Cannot be bothered

Here are some of the reasons for the Administration of a Regulated Activity failing to report to the LADO:

- Lack of experience and understanding of subject
- Desire to protect the reputation of the institution
- Defence of balance sheet and other financial incentives if the setting is a fee receiving institution/quasi-independent setting (Academy/Free School/Trust)
- Loyalty / friendship with the abuser
- Not believing the child
- Don't want the inconvenience of an investigation

Thus by reporting to an independent officer outside of the sphere of employment (the LADO) takes away all the barriers which exist in day to day employment situations, and protect the employee.

⁸ Henry McDonald 'UK "should follow Ireland by making it mandatory to report child abuse"' (The Guardian, 9/11/12).

This legislation would introduce a much stronger culture of abuse prevention as well as support and protect staff. In the absence of law those staff who do report presently are, by default, whistle-blowers with very little protection. Law can be a catalyst for behavioural and cultural change. The aim of the proposal is not to criminalise staff but to support them when they are faced with the most challenging circumstances - concerns of potential or known child abuse. Being legally mandated to inform a Designated Officer, who must then inform the 'LADO,' removes an enormously challenging set of decisions staff are currently being asked to make and for which they are ill-equipped.

This proposal simplifies 18 pages of the Department for Education's current guidance for schools.⁹ It will ensure that an experienced LADO who is independent of the setting in which the allegation has arisen, assesses all allegations as a matter of course. Presently the decision whether to even inform the LADO is being taken by staff at the setting who are neither independent of the child nor those who are likely to be involved, nor do they possess the specialist training that is so important in these situations.

3.2 Suggested wording of the new law

There is existing similar legislation in the area of money laundering, see section 330 of the Proceeds of Crime Act 2002. The law as it exists compels certain professionals including solicitors to make disclosure to the Inland Revenue of any information which leads them to believe that money laundering is taking place. If that person does not make a report they themselves, with the knowledge they have, commit an offence of permitting. It is not such a quantum leap to extend the law to mandatory reporting. I have amended s. 330 to substitute appropriate words to cover abuse.

Failure to report child abuse

- (1) A person commits an offence if each of the following three conditions is satisfied.
- (2) The first condition is that he—
 - (a) knows or suspects, or
 - (b) has reasonable grounds for knowing or suspecting,that any child has been abused or neglected.
- (3) The second condition is that the information or other matter—
 - (a) on which his knowledge or suspicion is based, or
 - (b) which gives reasonable grounds for such knowledge or suspicion,came to him in the course of a regulated activity.
- (4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

⁹ Department for Education Dealing with Allegations of Abuse against Teachers and other Staff (Department for Education, October 2012).

Obviously the law would have to be amended to define what a regulated activity meant – and that is intended to include any professional engaged in a position of loco parentis towards a child, there are many examples in the American legislation that could be used.

3.3 Counter-arguments and opposition to the proposed reform

Several objections to these proposals have been expressed. These pertain mainly to over-reporting, a possible surge or spike in reports, the possibility of unfounded allegations and the breach of counsellor/patient relationship of trust. These are examined in turn below.

Objection 1: What if many more minor reports are made by staff, and this overwhelms the LADO? Could it mean that serious cases are more likely to be missed?

The proposed reform builds on a strengthening of the role of LADOs along the lines of the Australian 'triage' model currently in development. This would require a uniform and high quality training programme for LADOs that does not presently exist. The proposed system of prompt reporting ensures that serious cases are more likely to be picked up sooner. The preventative influence of the proposed legislation is expected to deliver a positive cultural change to safeguarding as it has done in Regulated Activities in Northern Ireland which has also developed prescriptive child protection policies that deliver so many benefits.

Objection 2 – Spike in reports

A spike in reports following the introduction of this law looks inevitable. This has been the case in all countries that introduced mandatory reporting. However, legislation in other countries often includes Mandatory Reporting in familial settings which is not currently included in the proposal discussed. Like for like statistical data for Regulated Activities only, is not available to assist accurate forecasting of any potential spike.

The social cost of child abuse is significant and includes NHS treatment for abused persons particularly mental health, drug and alcohol addiction which often has links to crime, lost work days and sadly suicide. And this is before one considers the cost and consequences of abuse on the families and extended networks around each abused person. Child abuse casts a shadow the length of a lifetime.

Objection 3 – will lead to unfounded allegations?

Some media commentators wrongly suggest that 'false allegations' are common, but Department for Education research states that false allegations account for 2% of all cases received by LADOs.¹⁰ These statistics apply to schools, the Regulated Activity in which children spend most time (180 days per annum). No research exists for allegations from other Regulated Activities such as faith settings, hospitals or sports bodies. Therefore this particular objection does not appear to have a solid foundation.

Objection 4 - breach of counsellor/patient relationship of trust

Some commentators argue that mandatory reporting will interfere with the relationship of counsellor and patient because the counsellor will be unable to keep any allegation of abuse confidential. He/she will have to report it to the authorities because of the mandatory reporting law. Thus this will breach any relationship of trust and counselling will no longer work. Additionally patients will no longer be prepared to make disclosure in fear of the consequences.

¹⁰ York Consulting LLP 'Allegations of abuse against teachers and non-teaching staff' Research Report DFE-RR192 (Department for Education, March 2012), in particular paragraph 10.

One can see from the existing legislation from America that exemptions can be made for certain types of relationship such as solicitor/client, and priest confessionals. One must also assume that the counsellor will be working with the victim towards disclosing to the authorities in any event.

In any event, under existing professional guidelines, psychologists in particular, have to breach the professional trust of confidentiality if he/she knows that an offence a child has taken place. He/she is not allowed to withhold the information from the police, and to do so would breach ethical guidelines. General practitioners have similar ethical guidelines, and patient confidentiality is not seen to be as important as child safety.

Conclusions

1. Mandatory Reporting is the law in many countries, and in particular Commonwealth Countries around the world, even Northern Ireland.
2. A new mandatory reporting law will not criminalise professionals. If other countries are a good model then, following the introduction of the law, reporting will go up.
3. Investment must be made in the same sort of Hotline as exists in the American states quoted from, eg funding for the LADO must be made available by Central Government. I think that this cost in a climate of cut backs is what the government fears most.
4. Training must be given on the new law and reporting in general.
5. Abuse will be uncovered in institutional settings much sooner than at present. The vision of cover ups and abusers being moved on, should disappear because the person covering up will lay themselves open to a criminal offense.
6. In America, far from abolishing the laws because they do not work, penalties seem to be going up to make the fear factor more real.
7. It is difficult to construct an argument against making illegal the actual witnessing of abuse of children by an individual who then remains silent, the effect of which is to allow the abuser to carry on abusing children for many years unchecked.

Peter Garsden

Principal, QualitySolicitors Abney Garsden & President of the Association of Child Abuse Lawyers

Peter Garsden is the sole principal of Quality Solicitors Abney Garsden (www.abneys.co.uk) of Cheadle Hulme in Cheshire. The firm has the largest dedicated child abuse compensation department in the country (www.abuselaw.co.uk). They run several group actions. The firm were the winners of a Claims Technology award in 2010 for most innovative use of Legal Software, Personal Injury Team of the Year 2010, and Legal Aid Lawyer of the Year (2013) and Small Firm of the Year (Manchester Legal Awards) 2011 & 2013. Email peter@abneys.co.uk