A critique of the outcome of the government's consultation on reporting and acting on child abuse and neglect.

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Abstract

In recent years, several high-profile scandals of child sexual abuse and exploitation have been revealed in the UK, along with the institutional failures which enabled the abuse to occur. In response to a proposed amendment to the Serious Crimes Bill 2014, the government conducted a public consultation seeking views on new measures to address the issue of child abuse concerns going unreported in the workplace. One of these measures was the introduction of mandatory reporting throughout the UK. The outcome of this consultation became available in March 2018.

The aim of this dissertation is to examine the mandatory reporting debate presented by the consultation, in light of the available evidence. As there is currently no legal duty to report known or suspected child abuse and neglect in England, Scotland and Wales, evidence from other countries are explored in Chapter 1. The possible benefits and pitfalls of new reporting legislation are examined in Chapter 2, and counter-arguments from sources cited in the consultation are addressed in Chapter 3. Chapter 4 explores the safeguarding reforms pledged by government as an outcome of the consultation, and as an alternative to both the proposed mandatory reporting legislation and the duty to act.

From drawing on evidence presented by both advocates and critics of mandatory reporting, including literature reviews and quantitative studies, issues of poor implementation of reporting legislation have been identified. However, it is argued that, on balance, mandatory reporting has been shown to produce beneficial safeguarding outcomes for children, by enabling cases of abuse to be investigated sooner and providing legal immunity to reporters, amongst other benefits. This is the case even where reports are unsubstantiated. By being one of the last developed nations to enshrine a duty to report in law, the UK can benefit by learning from the implementation issues experienced by other jurisdictions and strike the best possible balance between different models. It is recommended that the UK legislate for the introduction of mandatory reporting, alongside new data collection measures and training for professionals.

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Introduction

The Independent Inquiry into Child Sexual Exploitation (CSE) in Rotherham (Jay, 2014) conservatively estimated that over 1,400 children were victimised there across a 16-year period. During this time, there were repeated and “blatant” (p. 1) failures of agencies to report and act on incidents of abuse, with over a third of victims being known to social services. One of the statements in the executive summary of the report was “nobody could say we didn't know” (p. 2). The following year, the government responded with Tackling Child Sexual Exploitation (HM Government, 2015a), pledging to “strengthen accountability arrangements (p. 3), “consult on options for imposing sanctions for failure to take action” (p. 3) and that “the government is determined that this will not be allowed to happen again” (p. 1).

It is happening again. At the time of writing, a CSE scandal thought to be of comparable scale to Rotherham is being uncovered in Telford (BBC, 2018). It remains to be seen if and how these revelations will be attributed to failures of the current child protection framework, which is based on a discretionary model of reporting. Under the current arrangements, there is no legal duty to report known or suspected child abuse to a local authority (HM Government, 2016a), except for cases of female genital mutilation (Female Genital Mutilation Act, 2003 as amended by section 74 of the Serious Crime Act, 2015). There is a subtle but important distinction between 'should' and 'must' in the current framework. Documents of statutory guidance do not amount to a legal duty. They serve as guidelines to suggest ways that professionals might decide to report, and the circumstances in which they ought to do so. Whether or not the introduction of mandatory reporting would be beneficial to safeguarding children is the subject of this dissertation, as framed by the recently concluded government consultation.

The consultation Reporting and Acting on Child Abuse and Neglect (HM Government, 2016a) came about as a result of Amendment 43 tabled by Baroness Walmsley, during the passage of the Serious Crimes Bill 2014. As part of that discourse, it was noted that “time and time again, individuals in institutions have failed the most vulnerable in their care... Regulated activity providers and those who are in a position of personal trust must be held accountable if they fail to report” (HL Deb, 2014, col. 1074). The consultation launched nearly two years later, from 21 July 2016 until 13 October 2016 (HM Government, 2016a). It sought public and professional views on *two* proposed measures in order to meet the aims of the Serious Crime Act 2015 and respond to the findings of the Rotherham Inquiry: the introduction of a 'duty to act' or a version of mandatory reporting legislation. These proposals, as defined by the consultation, will be explored in more detail in Chapter 4.

The outcome of the consultation became available seventeen months after it closed (HM Government, 2018). In the report, the government explains its reasons for rejecting both of the proposed new measures and details alternative solutions instead. This dissertation will analyse the mandatory reporting debate, drawing on and evaluating empirical evidence from other countries and exploring how their learnings could be applied to the UK. Arguments against mandatory reporting as cited in the consultation documents will also be explored, and there will be an analysis of the government's alternative measures. The intended outcome of writing this dissertation is to understand the mandatory reporting debate in light of available evidence and arrive at a reasoned conclusion (Hart, 2005). This will help to inform future advocacy work and campaigning around the issue.

Chapter 1: Mandatory reporting around the world

There is some form of mandatory reporting in over 80% of developed nations worldwide (Daro, 2006). Reporting laws are not meant as a predictive tool for future abuse; rather, they oblige a referral for known or suspected abuse which has already taken place (Mathews, 2015). These are different from laws requiring any indictable offense to be reported to authorities when they become known, such as section 5(1) of the Criminal Law Act 1967 as amended by the Serious Organised Crime and Police Act (2005) in Northern Ireland, which was conceptualised with the interest of reducing crime generally rather than protecting children specifically. It is nevertheless inaccurate to say that there is no mandatory reporting in the UK; instead, there is no legal duty to report known or suspected child abuse or neglect in England, Scotland or Wales. In countries which have incorporated mandatory reporting into their child protection framework, the specific legal requirements such as who is mandated to report, and when, can vary between jurisdictions. This allows for what Mathews (2015) calls a "spectrum of choice" (p. 6), depending on the societal conditions of each jurisdiction. It also demonstrates the flexibility of federal law to serve as a response to current knowledge and policy which is specific to the area, instead of taking a one-size-fits-all approach (Fluke et al, 2013). By exploring how different jurisdictions incorporate reporting laws, insights can be gleaned about their effectiveness and potential functioning in England, Scotland and Wales. The government's use (or non-use) of these sources for the purposes of the consultation will be explored in Chapter 3.

Mandatory reporting in Australia

The Australian Institute of Family Studies (AIFS) details the differences between jurisdictions in 'state of mind' and 'extent of harm' which must be present before a report becomes obligatory by law (AIFS, 2017). In Australian Capital Territory, a mandated reporter is "a person who, in the course of the person's employment, has contact with or provides services to children" (section 356 of the Children and Young People Act 2008 ACT). The types of abuse which must be reported are limited to sexual and physical abuse. It is not legally obligatory to report even life-threatening cases of neglect (AIFS, 2014), which seems contradictory given the legislation's overall purpose of safeguarding children. The reasons for these exclusions are difficult to identify (see Appendix 1 for a chart showing differences in scope of mandatory legislation between Australian jurisdictions).

By contrast, the Northern Territory mandates any person with "a belief on reasonable grounds" (sections 15, 16 and 26 of the Care and Protection of Children Act 2007 NT) that a child is at risk of harm to make a report, and the types of harm are listed in more detail to include psychological abuse, neglect and being exposed to violence (e.g. witnessing violence between caregivers), which broadens the requirement from being a direct victim of violence. In all cases, reports must be made to statutory child protection services, and failure to do so constitutes a criminal offence which carries a maximum penalty of three years imprisonment. The legislation also contains measures to protect the reporter's identity as well as reasonable excuses for not reporting, such as fear for one's own safety or the safety of the child involved (Children and Young People Act 2008 ACT). The Northern Territory is unique within Australia as the only jurisdiction which places a legal obligation to report *any* type of abuse or neglect, or exposure to abuse, on all citizens, regardless of profession or proximity. This form of universal mandatory reporting (UMR) represents the next level in the overall debate. In the US, a comparative data analysis found no significant difference in the number of reports for all

forms of abuse between universal and non-universal mandated jurisdictions, but did find an increase in substantiated reporting in states with UMR (McElroy, 2012). Objections to universal reporting laws broadly follow similar lines as those against introducing any form of mandatory reporting, in places where it does not currently exist, such as England, Scotland and Wales. These objections will be explored in Chapter 3.

Australia's evolving legal landscape, with shifting emphases between jurisdictions about what must be reported and when, has made it a suitable subject for comparative research on the effectiveness of mandatory reporting provisions. Mathews at al (2016) conducted a statistical analysis of longitudinal data across a period of seven years, both before and after the implementation of the Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008, which created a mandatory duty to report in the state of Western Australia. The research did not require active participants, drawing instead on existing data held by the government of Western Australia. The premise of the study was to investigate whether the new legislation increased numbers of reports to a local authority (police or other child protection agencies). The study used descriptive statistics and data mining to ascertain both numbers of reports and their outcomes, for each professional group of mandated reporters separately and for all mandated reports as a whole (see Appendix 2 for precise numbers as revealed by the study). The totals were triple-checked by two researchers, both independently and together. Such a quantitative approach aims to generate new knowledge by identifying patterns in numerical data. However, a qualitative study of the human experiences of children whose cases have been identified and referred by a mandated reporter would help to clarify whether 'automatic' reporting is beneficial from their point of view (Frost, 2011).

The findings showed that the total number of substantiated reports of child abuse per year more than doubled by the end of the third year, from 159 to 378, after the introduction of mandatory reporting legislation. This increase was proportionately higher than the overall increase in all reporting (whether substantiated or not). Whilst significant, the new reporting law was unlikely to be the exclusive factor causing this increase, and the difficulty of isolating the impact of mandatory reporting is one of the challenges posed by conducting research in this area (Wallace & Bunting, 2007). Other contributing factors may have included increased media exposure and changes in the ongoing cultural dialogue regarding child sexual abuse as a 'taboo' issue which is not to be discussed openly, particularly amongst Asian communities (Gilligan & Akhtar, 2006).

However, repeated failures in the UK to identify and act on abuse (explored in Chapter 2), in contrast to the higher rates of reporting in countries which carry a legal obligation to report, call the tangible impact of subjective factors such as social climate and culture into question. Whether culture or hardline law has a greater impact on reporting child abuse is unclear, as is the question of whether new laws lead the way for a change in culture, or whether a cultural shift sets the agenda towards new laws. Saguy & Forrest (2006) argue that these questions are tangential to the more recent socio-legal perspective that a nation's legal climate *is* an expression of its culture. However, given the tensions between national laws and cultural attitudes towards some issues (Post, 2003), it is posited here that they do not amount to the same thing, and are distinct demographic factors, even if one does tend to follow the other in a linear fashion during the course of a society's development.

The above study built on earlier comparative research (Mathews, 2014) between the Australian state of Victoria, which had implemented mandatory reporting legislation, and Ireland, which relied on discretionary reporting at the time. Whilst geographically far apart, these areas were chosen due to their comparable demographic characteristics including well-

funded institutions, access to healthcare, and child population. The study focused on child sexual abuse and found that twice the number of reports were made in Victoria than in Ireland during 2010 – within these, there were more than four times as many substantiated reports. Ireland has since implemented mandatory reporting as part of its Children First Act, taking effect from December 2017. The Act protects mandated reporters from civil liability and, whilst carrying no formal criminal sanction for failing to report, does carry professional sanctions, such as being registered on the National Vetting Bureau as failing to adhere to reporting obligations (Daly, 2017). Whether this provides the necessary clout required to incentivise an increase in reporting such as that observed in Australian jurisdictions post-implementation, compared to the previous situation of no mandatory reporting at all, remains to be seen.

Mandatory reporting in the United States of America

The US was the earliest adopter of any form of mandatory reporting, deriving from 'battered child syndrome' and the role that physicians play in keeping children safe from physical harm (Kempe et al, 1962). Today, physicians remain the group of mandated reporters who are most likely to face imprisonment for failing to report (Giardino & Giardino, 2002), which is classified as a misdemeanour in law. Mandatory reporting in some form is implemented throughout the US on various groups of professionals or the general public and, as in Australia, autonomy is given to each federal state to legislate who should report and when (Mathews & Kenny, 2008). There have been some adaptations of legislative developments in some states. For example, the original version of the Child Abuse Prevention and Treatment Act (1974) did not require a suspected risk of 'serious harm' (Kalichman, 1999), whereas the current version includes serious harm as part of its definition of child abuse and neglect. Universal mandatory reporting, where every citizen is required to report suspected child abuse of any kind, is present in 18 states and is therefore more prevalent in the US than in Australia, where only the Northern Territory sits on that end of the legislative spectrum (Raz, 2017).

As in all jurisdictions which implement mandatory reporting (Mathews, 2015), mandated reporters in the US are granted qualified immunity provided that they act on good faith. The case of *Wenk v. O'Reilly* (2014) demonstrated situations where civil immunity is withdrawn. In that case, a school teacher made a report against the father of a pupil with special needs, after the pupil disclosed details of her family life which indicated the occurrence of sexual abuse. The father submitted that these accusations were being made in retaliation against his demands that his daughter be given more opportunities for socialisation at school. Due to the series of tension-filled encounters between the father and school staff prior to the report being made to Ohio County Children Services, the manner in which the mandated reporter disclosed details that were not strictly relevant to the report which was being made (such as the father's unkempt appearance, staff finding him 'creepy' and his denigrative behaviour towards his wife) and the delay between when suspicions were raised and the report, it was held that the teacher had not acted in good faith. Immunity was therefore withdrawn, which had the effect of making the teacher personally liable for the father's damages claims. The court examined the teacher's motivations to report, rather than seeking to establish the truth or falsity of their claim. As Conn (2016) writes, it seems that “no good deed goes unpunished” (para. 1). The outcome of this case stresses the importance of swift and objective reporting, instead of allowing the situation to fester until the occurrence of some interpersonal exchange which could compromise the immunity normally granted to reporters.

Some critics argue that thresholds for central terms in the legislation, such as 'reasonable

suspicion' and 'reasonable cause' are in need of refinement, and that the current lack of clarity leads to different decision making in practice (Besharov, 2005). One qualitative study found broad disagreements between groups of mandated reporters about their legal responsibilities (Deisz et al, 1996). These findings are backed up by Levi, Brown & Erb (2006), who also conducted qualitative research to capture paediatrician's interpretations of 'reasonable suspicion' and found no consensus for a standard meaning or application of that term. Whilst this can be seen as an issue of applied linguistics, Waldron (1994) argues that "there cannot be a rule to tell us how to apply every rule: sooner or later one simply makes a judgment" (p. 511). These criticisms of how the laws operate in practice are examples of how mandatory reporting is not a cure-all solution to the issue of child abuse. It aims to create an effective societal and governmental response to suspicions of abuse which might otherwise go unreported and which enables earlier intervention on behalf of the child. It is essential that professionals fully understand their role in relation to their legal responsibilities, including correctly interpreting the provisions, and this could be provided by comprehensive training alongside the implementation of the new laws.

Another variable within existing reporting laws in the US is how the relationship of the perpetrator to the child affects whether there is a duty to report or not. Mathews & Kenny (2008) conducted a legal analysis of the various state laws throughout the US, Australia, and Canada. One part of their review focussed on the source of abuse, and the impact of limiting suspicions which must be reported only to cases where the perpetrator is, for example, a parent or legal guardian as opposed to a staff member working within an institution. Whilst plausibly motivated by "normative preference and practical considerations" (p. 11), this limitation may not reduce the number of reports in practice, since reporters are not required to investigate the identity of the perpetrator/their relationship to the child; only that they suspect abuse has taken place. Other legislatures within the US have different motivations and choose to either omit any mention about who the perpetrator must be before a duty to report is activated or to expressly mention 'a person' or 'any person'. Where the 'status' of the perpetrator is omitted, then its omission implies that it is an irrelevant detail. From an ethical perspective, making a distinction based on who the perpetrator is seems arbitrary because it takes the focus away from the harm caused to the child. However, it could be intended to avoid misallocation of resources to cases outside of the remit of child protective services e.g. school bullying amongst pupils.

As early adopters of mandatory reporting laws, the US has influenced the debate in other countries. Following the case of *Martinelli v Bridgeport Roman Catholic Diocese Corporation* (1998), O'Reilly & Eichman (2014) noted that "the impact of abuse reporting laws on the clergy sexual abuse cases in the American courts are worth reviewing, as Ireland deals with the sad legacy of its own clergy sexual abuse cases" (p. 76). The case concerned a Diocese who became aware of one of their priests perpetrating sexual abuse against a child. Instead of fulfilling their reporting obligations, the Diocese were shown to have actively participated in concealment of the abuse. The court considered that a fiduciary duty would have been owed to the victim, due to CT Gen Stat § 17a-101(1997) which a creates a reporting duty on clergy members (O'Reilly & Chalmers, 2014), but for the fact that more than ten years had elapsed since the abuse and the former victim's claim. This rendered the fiduciary duty null and void. The case highlights the ethical problem of setting a time limit for when a reporting law can be applied retroactively, and also demonstrates the vicarious liability of employers to report suspicions of abuse perpetrated by their employees. It also exemplifies how, even in jurisdictions which have implemented a system of mandatory reporting, professionals or organisations may still choose not to report known incidents.

Mandatory reporting in Saudi Arabia

The law in Saudi Arabia derives from Sharia law, which had been adopted in an uncodified form with no unified written document until January 2018 and the publication of a book of legal precedents (Arab News, 2018). Esmaeili (2009) writes that “tribal law or custom is significant in Saudi Arabia in relation to the country’s political and governmental structure as well as private and personal law areas” (p.18), yet it seems that Sharia is the central feature, complemented by regulations which govern modern aspects of life and business not accounted for by the Qur'an or Sunnah (van Eijk, 2010). The nation is ruled by an absolute monarchy, with no separate legislature, although there is an advisory body called the Consultative Assembly of Saudi Arabia which may propose, but not pass or enforce, new laws. Citizens are not subject to the rule of law; a study carried out by the Albert Shanker Institute (2010) found that “appeals to the King are usually based on mercy, not on justice or innocence” (para. 23). There is no separation of powers between institutions, since the King retains both legislative and executive powers.

Whilst there has been awareness of the existence of child abuse and neglect in Saudi Arabia throughout the decades (with some forms of abuse, such as female infanticide, being socially acceptable prior to the spread of Islam during the 20th century), the first case of (physical) child abuse was not reported until 1990 (Al-Mugeiren & Ganelin, 1990). Six years later, Saudi Arabia became a signatory to the United Nations Convention on the Rights of the Child (UNCRC). Al-Muneef & Al-Eissa (2011) describe how Saudi society has historically viewed child abuse as a private family concern rather than a societal problem in need of a multidisciplinary approach from the state, and how these cultural attitudes still inhibit the development of child protective services and efforts.

Despite the cultural, legal and institutional differences between Saudi Arabia and the aforementioned western nations, Saudi Arabia introduced a form of mandatory reporting in 2008 (Al-Muneef & Al-Eissa, 2011). The law places a reporting duty on healthcare professionals only, though there is some ongoing debate about whether to expand the duty to include school staff. Al-Buhairan et al (2011) describe how these changes are being driven as a result of UNCRC ratification. Yet, international safeguarding legislation does not create a legal duty on professionals to report suspicions of child abuse. Article 19 of the UNCRC specifically refers to protective measures which “should, as appropriate, include effective procedures for... identification, reporting, referral... of instances of child maltreatment” (UNICEF, 1990, para. 2). This does not create an explicit duty on states to incorporate mandatory reporting, and even if it did, it would not necessarily happen in practice.

Despite being the most widely ratified treaty in the world, the UNCRC has proven difficult to implement in full. Laws deriving from its ratification tend to be adopted gradually over time (Alderson, 2000) rather than applied in a uniform fashion. Whilst Bennett (1987) criticises the UNCRC for, among other things, being too vague and unwieldy to make a difference on the ground, Alderson (2000) argues that it has set a global standard for children's rights amongst signatory nations, created clarity and influenced the creation of new domestic laws and interventions. It could be said that the UNCRC implies a duty to report, but this does not amount to a mandatory duty carrying sanctions for noncompliance. The difference between implication of duty and actual legal duty, and whether the latter is necessary, is at the heart of

the mandatory reporting debate.

By looking at mandatory reporting systems in other countries, it can be seen that there are sometimes vast differences between jurisdictions in both the emphases of the legislation, in terms of which types of abuse must be reported and by whom, and how it is applied in practice. Mandatory reporting is not a measure which is set in stone; rather it is open to review, evaluation and change according to new findings. This allows for organic progress in how suspicions of abuse are responded to by institutions and wider society (Mathews, 2008). The following chapter will focus on the mandatory reporting debate in England, Scotland and Wales, and explore how it might work in practice.

Chapter 2: The case for mandatory reporting in England, Scotland and Wales

Child protection laws applicable throughout the UK were passed by Westminster until the devolution of Scotland, Wales and Northern Ireland in 1999. The Children Act (1989) created the legal framework for child protection in England and Wales, whilst the Children (Northern Ireland) Order 1995 and the Children (Scotland) Order 1995 legislated for similar frameworks, based on the same principles, in the devolved nations (NSPCC, 2018). At the time of writing, the Scottish parliament is considering a petition lodged by an activist calling for the Scottish government to introduce mandatory reporting (Scottish Parliament, 2018). Meanwhile, Wales has enacted a "duty to report children at risk" contained in section 130 of the Social Services and Well-being (Wales) Act 2014, which obliges professionals to report suspicions of any kind of child abuse to the local authority. However, since there are no sanctions for failing to comply, it does not seem to amount to a mandatory requirement. This chapter will explore recent failures in the current child protection framework, and how a new mandatory reporting law might replace the existing discretionary system.

Institutional failures to report, and their consequences

When examining the lines of causation of child abuse within institutions, it can be seen that a crucial factor is whether or not suspicions or known incidents were reported to a local authority. Following the revelation of child sexual abuse which took place at Hillside First School, the serious case review (SCR) revealed that multiple staff members had cause for concern over a teacher's behaviour, which only came to light when one of the victims disclosed to her mother (NSSCB, 2012). Incidents known to the various staff members (other teachers, learning assistants, an IT technician and others) include, but are not limited to, inappropriate images of pupils taken on the teacher's phone, an image of a naked adult being shown by the teacher to children using a projector and, on one occasion, a girl seen stroking the teacher's leg during a class. Of the 30 recorded incidents, 11 were reported to the school but not to the local authority designated officer (LADO) or the police. Where did these reports go? The SCR describes a mixture of responses from the school, such as informants being told that they "should not accuse (the teacher) of things" (p.10), the school issuing a verbal warming or, in many instances, no further action being taken. Complaints by parents were also ignored.

The SCR notes that “some of the allegations were of such a serious nature, particularly those from children themselves that they constituted matters that should have been investigated under the child protection procedures” (p.12). The procedures to which the SCR refers are 'What to do if You're Worried a Child is Being Abused' (DfH, 2003), 'Guidance for Safe Working Practices for the Protection of Children and Staff in Education settings' (DfE, 2005) and 'Guidance for Safer Working Practices for Adults who Work with Children and Young People in Educational Settings' (DCFS, 2009). These pieces of statutory and non-statutory guidance have since been updated (see the reference list for current versions, as earlier versions were irretrievable online), though they still do not create a legal duty to report. It is also important to note the oxymoronic nature of the term 'statutory guidance', since the guidance is not enshrined in statute and carries no sanction for noncompliance. It is therefore just guidance.

Whilst the teacher was given an indeterminate sentence following a guilty plea of 36 sexual offences, including “eight counts of sexual assault by penetration of a child under 13” (NSSCB, 2012, p.2) and one attempted rape, the SCR does not mention any sanctions, either professional or criminal, for any of the staff who had reasonable suspicions of abuse but did not report them even to the school. By not doing so, they were in clear breach of the guidance which states, in numerous places and in various reiterations, that “all concerns should be reported and recorded” (DCFS, 2009, p.4.). This demonstrates how optional the guidance is in practice.

The current framework allows institutions to respond to internal reports of abuse, or not, at their discretion. Although one can technically only speculate on the hypothetical impact that mandatory reporting would have had in this case, the evidence explored from other countries so far ought to plausibly suggest that the abuse may have come to the attention of the local authority sooner if the duty to report had been backed by law, rather than amounting to a suggestion. In addition, some studies in Australia have found that those who initially chose not to report suspicions of abuse would have taken a different decision if there had been a known legal duty (Shamley et al, 1984; Webberley, 1985). Following the investigation into institutional failures at Hillside First School, the SCR recommends a “compulsory reporting system for designated teacher into central LADO indicating nature of allegation and action taken” (NSSCB, 2012, p.31).

Another SCR concerns the abuse of at least 53 pupils by one teacher, William Vahey over a period of almost four years at Southbank International School (HFLSCB, 2016). Vahey, who had previously been punished for sexual offences against boys in the USA before taking up a role at Southbank (though this was unknown to the school at the time), organised eleven school trips with pupils during which various inappropriate behaviours were noted, but not reported to a local authority. The SCR details how colleagues either made no report until after the abuse was revealed, or reported to such staff members as the Head of Pastoral Care or the child protection lead, who kept a record of a meeting to discuss Vahey's behaviour in a drawer. It is difficult to distinguish the specific role of a designated safeguarding lead from other professionals working in the same environment, if the role does not include a duty to record and report suspicions of abuse. Vahey's abuse was discovered after he left Southbank with good references to take up a post in Nicaragua. His USB stick was stolen and abusive images were found, which led to an investigation of abuse throughout his career. Vahey committed suicide before he could be charged.

To understand where mandatory reporting might fit in to an existing organisational context,

one might consider the precondition model posited by Finkelhor (1984), which outlines the four aspects for explaining incidences of child sexual abuse, and apply it to Vahey's behaviour and the decision-making of the professionals concerned. These aspects are understanding the abuser's motivation, overcoming internal inhibitors which would otherwise prevent abuse by others with the same motivation, overcoming external inhibitors and methods for overcoming any resistance from the child. Applying this model to Vahey, it can be seen that he had already overcome any internal inhibitors prior to starting at Southbank school; The SCR notes how his previous conviction had "resulted in a 90 day jail sentence and five years' probation with a condition that he should be supervised in the company of males younger than 16 during that time" (p. 7). Given the environment at Southbank, characterised in the SCR by a culture which "was such that the pendulum was firmly at the more informal, flexible end of the spectrum" (p. 9), the external inhibitors failed to prevent Vahey from carrying out the abuse.

The final aspect, the child's resistance, is not considered in the SCR and perhaps with good reason: the concept that a child can 'resist' abuse and therefore prevent it raises an uncomfortable implication that *some* children are able to protect themselves. This takes responsibility away from the abuser and from professionals who have a duty to safeguard the children who are in their care. Whilst Ward & Hudson (2001) argue that the absence of sex education in schools is one of the "socio-cultural factors that contribute to sexual abuse" (p. 297), a literature review carried out by Pennsylvania Coalition Against Rape (2016) found that "insufficient published research exists to support or reject the hypothesis that healthy sexuality educational efforts are effective tools for promoting primary prevention and risk reduction of sexual abuse" (p. 14). Education with a preventative purpose therefore cannot be conclusively cited as an effective response or solution to abuse. However, a duty to report, put on a statutory rather than policy footing, may have aided in the detection and investigation of Vahey's suspicious behaviour, by strengthening the 'external factors' a person must overcome before carrying out abuse. Although mandatory reporting legislation only comes into effect after at least a first incidence of abuse has already occurred, the preventative impact should not be seen as limited to repeat offences; Mathews (2014) found that it also engenders "cultural, attitudinal and behavioural" change (p. 474).

There have been other cases where institutional failures to report have had the consequence that abuse is revealed later than it may otherwise have been, and for which it was not possible to retrieve a SCR online to analyse for this dissertation. However, cases with a similar theme of failing to report can be followed through ongoing media reporting on the issue: a teacher who worked at Stony Dean School in Amersham pleaded guilty to six sex offences against boys, where suspicions had previously been internally investigated but no reports made to a local authority (BBC, 2009). At Caldicott school between1959-1970, a teacher abused several children, one of whom now campaigns for mandatory reporting and comments that "fee-receiving institutions are presented with a conflict of interest over reporting, because it is discretionary" (Channel Four News, 2014). Jimmy Saville's behaviour was considered an "open secret" amongst staff at Stoke Mandeville hospital (BBC, 2015, para. 1). Millar (2018) writes of the "lessons to be learned" (para. 1) and the need for a "clear line of accountability within organisations that receive concerns or reports of abuse" (para. 2) following recent revelations of sexual abuse within football, and media reports of alleged abuse cover-ups by officials from within the Church of England are too numerous to cite, but are readily available via a simple google search. All of these cases, and those which are not considered serious enough for review (Radford et al, 2011, found that 1 in 20 children in the UK experience sexual abuse, based on reported figures only), ought to demonstrate the need for a new approach in how suspicions of abuse are responded to.

How might mandatory reporting work in practice?

From exploring how mandatory reporting functions in other countries, considerable differences in how the legislation is written can be observed. Comprehensive legislation needs to address each of the following components: who must report, what types of abuse must be reported, when they must be reported, penalties for failing to report, protections given to reporters (e.g. confidentiality and civil immunity) and practical considerations regarding how to make the report (Mathews, 2008).

One submission to the government consultation offered an example of specific legislation which would enshrine a legal reporting duty in the UK (Mandate Now, 2016). The proposed legislation limits the duty to those working in Regulated Activities (RA's) as defined in the Safeguarding Vulnerable Groups Act (2006) and listed in the submission's accompanying Schedule (pp. 6-7) to include all health care and education staff, youth offender institutions, the probation service, all places of worship and others. Types of abuse which must be reported are listed as 'physical or sexual abuse or abuse by way of wilful neglect on such children or vulnerable adults while the same are in their care, whether such commission of abuse shall have taken place or be alleged to have or be suspected of having taken place in the setting of the activity or elsewhere' (pp. 3-4). Failure to report suspicions to the LADO within ten days (p. 4) would be an offence incurring a fine not exceeding £1000 or level 3 on the standard scale (p.5). Mandated reporters, and those not required by law to report but who are making a report in good faith would be granted legal immunity and confidentiality (p. 5). The proposed legislation also provides definitions of key terms (mostly taken from existing statutes) and a number of defences/exemptions, including where a report has already been made within the 10 day limit or where there has been a “suspension document” (p. 5) issued by a Secretary of State. This would occur in exceptional cases where the making of a referral to a local authority would compromise the vulnerable person's safety.

The value of the suggested legislation is that it considers each of the necessary components and learns from the pitfalls of the mandatory reporting systems in other countries, based on the available evidence. For example, Mathews et al (2016) identified that one reason for the rise in number of reports made following the introduction of a legal duty in some states in Australia was the fear of a custodial sentence, which resulted in practitioners over-reporting cases and setting the bar for 'reasonable suspicion' too low. By taking this evidence into account, the Mandate Now submission proposes a fine instead of imprisonment, which keeps such cases within the magistrate's court and so avoids overburdening the higher courts which deal with more severe criminal charges.

Another example of the submission's attempt to strike a balance in the legislation is in deciding the groups of people who would become mandated reporters under the new law. Unlike in the Northern Territory and other jurisdictions with a broad provision, it is not proposed that all citizens should be required to report all suspicions of any kind of abuse. Whilst all kinds of abuse or neglect are included, the submission limits the law only to practitioners who come into contact with children as part of their role. Although this covers a wide remit of professions, it's important to note that the submission does not call for mandatory reporting within familial settings. The reason for this is not stated, however a roundtable hosted by the NSPCC found universal mandatory reporting to have adverse consequences in cases of intra-familial abuse (NSPCC, 2014). These included increased stigmatisation, a perception of health staff as prosecutors rather than supporters and and

families actually being deterred from reporting. This would suggest that the threat of legal sanction is not enough to compel family members to report intra-familial abuse. A study by Goodman-Brown et al (2002) found that intra-familial abuse is even more likely to go undetected than abuse in institutional settings, due to the increased dependency of the child and reluctance on the part of family members to make a report, amongst other factors. However, the NSPCC does not cite any empirical research when making the above assertions.

Aside from drafting the legislation for the new reporting duty, Mandate Now (2016) also include other components to the proposal which aim to complement the change and ensure its assimilation with as much ease as possible. These include the accompaniment of “an accreditation scheme for trainers and training companies which provide services to regulated activity staff” (p. 2) and a centralised data collection system. A research report (DfE, 2012) found that “in 21% of cases, LADOs recorded the outcome of an allegation as unknown. This reflects deficiencies in tracking systems” (p. 3). The submission argues that both of these new measures should be put on statutory footing, and is in agreement with Husbands's (2013) assertion that “there are areas where deregulation, school autonomy and diversity are to be celebrated as markers of a vigorous and dynamic school system... child protection and the arrangements which underpin it are not such areas” (p. 2). The proposal draws on evidence (Mathews & Kenny, 2008) which demonstrates the need for comprehensive training to help professionals overcome psychological barriers to reporting such as cognitive dissonance (Festinger, 1962) and 'gaze aversion', which Davies et al (2014) cite as a key influence in Kempe's recommendation for the first ever mandatory reporting laws (Kempe et al, 1962).

By looking at institutional failures to safeguard children in the UK, and the extent to which these are attributable to a failure to report suspected or known incidents of inappropriate behaviour, a need for change in the child protection framework can be identified. The Mandate Now (2016) submission to the government consultation provided a comprehensive overview of how such a change might work in practice. Yet it is necessary to address the arguments against mandatory reporting in order to balance the debate before deciding whether it can be part of the solution.

Chapter 3: Addressing the counter-arguments from the consultation: what does the research say?

The supporting annex to the government consultation contains a “summary of the evidence” (HM Government, 2016b, p.18) which explains the counter-arguments relied upon when arriving at the decision to reject mandatory reporting. These arguments can be categorised into three overarching issues: the impact of mandatory reporting in terms of increased unsubstantiated reports and the associated costs, the lack of evidence of the effectiveness of existing mandatory reporting in other jurisdictions and ethical considerations raised by a change from 'should' to 'must'. This chapter will explore each of these issues in turn, including the evidence cited by government and how this research has been interpreted. By analysing the evidence, criticisms of implementation will also be revealed, which provide avenues for further evaluation of how mandatory reporting may work in practice in England, Scotland and Wales.

Mandatory reporting causes “an increase in the number of reports with smaller proportions being investigated and/or substantiated” (HM Government 2016b, p. 23), and there are insufficient resources to handle the increased number of reports

Critics of mandatory reporting claim that it causes an increase in unsubstantiated referrals, and that this reduces the resources available to respond to serious cases of child abuse and neglect. Ainsworth (2002) carried out a statistical comparison between the jurisdictions of New South Wales, which implemented mandatory reporting, and Western Australia which, at the time, was considering introducing it. The comparison found that there was a higher rate of unsubstantiated reporting in the state which had a mandatory reporting duty. That mandatory reporting causes an increase in both substantiated and unsubstantiated reporting is not in dispute amongst academics (Davies et al, 2014). However, Ainsworth's assertion that this causes a significant burden on the system was rejected by Wood (2008) during the course of a government enquiry in New South Wales, on the grounds that around half of all reports were made by non-mandated reporters, and that many reports were multiple inputs about the same children.

Research by Tilbury (2003) also found that children were being reported by more than one mandated reporter, and argued that “a high re-notification rate indicates inefficient use of resources” (p. 8). Although the findings highlight a problem of implementation – that reports are not always recorded accurately – it also seems to suggest that mandatory reporting does not cause a diversion of resources from where they are needed through unsubstantiated reports. In the meantime, Western Australia, the subject of Ainsworth's (2002) review used to critique the existence of mandatory reporting in New South Wales, incorporated mandatory reporting in 2004 via sections 124A and 124B of the Children and Community Services Act. The UK government consultation nevertheless cited Ainsworth (2002) as evidence despite the rejection of its arguments.

The argument that enforcing a legal duty to report suspected or known child abuse causes too much reporting specifically refers to the rise in unsubstantiated reporting identified by research; if every new report was substantiated, then presumably there would be no objection. However, the presumption underneath this argument is that substantiated reports are 'good' and unsubstantiated reports are a waste of resources. The reality seems less polarised, with child protective benefits often arising even from unsubstantiated reports. Kohl et al (2009) conducted a national probability study in the US to test whether recidivism rates differed between substantiated and unsubstantiated cases of child abuse. As a result of their findings of similar recidivism rates regardless of substantiation status, they argue that “it is time to leave substantiation behind” (p. 1), and suggest a new label of “appropriate for court intervention” (p. 25) instead. Abuse can occur in situations where there is insufficient evidence to meet the threshold of substantiation, but which still provide opportunities for earlier intervention. A report which goes unsubstantiated does not prove that abuse has not occurred; only that there is insufficient evidence to prove that it has. The hidden nature of child abuse, particularly sexual abuse, means that it is difficult to prove conclusively (Myers, 2016), which is why mandatory reporting sets the evidentiary threshold at the point of suspicion, rather than certainty.

There seems to be a discrepancy in how the consultation relies on its cited sources and the

full picture of what those sources actually say. For example, a report by Carmody (2013) found that “Queensland’s real expenditure per child was below the national average but for the statutory component of child protection services it was above the national average” (p. 67). However, it also cited several reasons for this over-expenditure of which mandatory reporting was just one, and rather than serving as a criticism of mandatory reporting as a whole, the report actually calls for a consolidation of “all existing legislative reporting obligations into the Child Protection Act” (p. 504). This is another issue of implementing or improving the existing laws, rather than an argument against those laws in principle. The report means only to clarify the existing arrangements in order to ensure that reports are not made unnecessarily. Yet the supporting annex of the consultation refers to it anyway, as evidence of the law's “overburdening” effect on available resources (HM Government 2016b, p. 23), whilst at the same time noting that underreporting is “more of a problem than over-reporting” (p. 24) which, in light of the government's overall standpoint, seems to confuse matters. If the report had called for a dismantling of mandatory reporting legislation, as a result of too much expenditure, then it would have been solid evidence to support this point.

The argument that mandatory reporting, and the associated increase in referrals, is too costly on services relies on an evaluation of the cost of child abuse and neglect on society compared with the cost of all those extra referrals which would not have otherwise been made. There is a general scarcity of research which compares the economic cost of child abuse and neglect with the cost of interventions designed to prevent it (Corso & Lutzker, 2006). It is therefore not possible to conclude whether mandatory reporting is too expensive, as one would first need to understand the costs of abuse over a person's lifetime (such as mental health service provision and unemployment resulting from health problems), and then the extent to which mandatory reporting reduces those costs through earlier intervention. Heckman (2006) found that the 'return on investment' on intervention is high when compared to the costs related to resolving problems caused by dysfunctional family environments, but this was not specific to mandatory reporting. However, there is evidence that investing in services to support disadvantaged young children (up to age six, which is when gaps in cognitive skills become apparent, according to Caniero & Heckman, 2003) yields an overall economic return (Knudsen et al, 2006). More research on the economic implications of mandatory reporting is needed before the cost argument can be clarified in either direction.

Another source submitted in the consultation as evidence against introducing mandatory reporting is Harries & Clare (2002). Their report lacks any empirical data and admits that “the period for consultation and bibliographic searching was short” (p. 3). It cites secondary literature sources, but does not analyse the arguments presented by those writers. The methodology for the report seems fragmented, in that it is unclear whether it is meant to be a literature review or a collection of views collected via interviews with unnamed stakeholders. The methods of analysis or codification of interview results are not discussed. However, the report does note that “the opinion was very strong that child sexual abuse was a critical threshold issue for reporting... the significance and the criminality of this act was such that adults should be compelled to report it” (p. 7). The overall content of Harries & Clare (2002) seems to contain a cluster of remarks about mandatory reporting, including repeated comments on the lack of existing quantitative data. Yet, the writers state the existence of “overwhelming evidence that mandatory reporting systems are in chaos worldwide” (p. 56), without explaining what that evidence is. In defence of Harries & Clare (2002), their claims about the lack of quantitative data at the time seem accurate, and were backed up later by other commentators (Melton, 2005). However, this claim was made prior to the work of Professor Mathews and his associates, whose quantitative research is central to the current debate due to his having led some of the largest-scale longitudinal studies on mandatory reporting available (Mathews et al, 2016; Mathews et al, 2017). The findings from these were

inexplicably omitted from the government's consultation documents (HM Government, 2016a; 2016b).
Melton's (2005) thesis, in turn, cites Ainsworth (2002) and Harries & Clare (2002), repeating their flawed arguments and methodology without an analysis of the merits and limitations of those sources, as proof of “analogous problems” (Melton, 2005, p. 10) existing in Australian jurisdictions, despite Western Australia having since ignored Ainsworth's (2002) conclusions by deciding to implement mandatory reporting in 2004 (see above). Melton (2005) does not address child sexual abuse and instead focusses on physical abuse and neglect. He asserts that “even if neglect is substantiated, there is a good chance that no further service will be offered” (p. 12), an argument which was later rejected by Kohl et al (2009) and Drake & Jonson-Reid (2007), which was a direct response to Melton (2005) and found that unsubstantiated reports have resulted in more provision of services, numerically, than substantiated reports.

Despite the title of his work, “Mandatory reporting: A policy without reason”, Melton (2005) does not seem applicable to the current debate of whether mandatory reporting should be introduced in regulated activities as per the proposed legislation discussed in chapter 2 (Mandate Now, 2016). He largely discusses issues of implementation in the US and critiques the investigative 'culture' of child protection there, which he argues is exemplified by the existence of a legal requirement to report. His thesis does not provide data about whether mandatory reporting is effective at safeguarding children or not. It is posited here that these are two separate issues: the effectiveness point (in terms of process outcomes i.e. numbers of reports, investigations, substantiation rates etc) is one, and the broader safeguarding culture is another. Melton (2005) seems to assume that mandatory reporting is automatically symptomatic of a framework that relies too heavily on investigation and adversarial legal proceedings, at the expense of families in need of supportive services. Yet even Harries & Clare (2002) use places such as the Netherlands as an example of a “family service orientated system” (p. 18), and the Netherlands has had mandatory reporting since 2013, via the Mandatory Reporting Code (Domestic Violence and Child Abuse) Act. So, those two factors are not mutually exclusive. it is possible to have both a mandatory reporting requirement *and* a welfare model which emphasises supportive rather than punitive measures.

Once again, it seems there are valid criticisms of mandatory reporting implementation, but not of the principle behind it that suspected or known abuse should not be kept to oneself. In a direct response to Melton (2005), Mathews & Bross (2008) argued that the main issue is how reports are responded to, rather than how they are made. They assert that “the claims strike at undesirable features of response methods after referrals, which are not flaws in mandated reporting, but challenges in administration of child protection systems post-referral” (p. 5). Instead of being introduced in isolation, any new provision ought to be brought into effect alongside systematic training for professionals and a means by which the new laws can be evaluated. Introducing a centralised system of data collection may improve accuracy and multi-agency cooperation, avoid wasting time on double-counting and ensure that cases are only investigated when necessary, thus reducing costs.

There is 'no academic consensus' (HM Government, 2016b, p. 28) on what the impact of introducing mandatory reporting would be on safeguarding children

Wallace & Bunting (2007) conducted a literature review and stated that “few countries appear to have mandatory reporting laws covering child abuse” (p. 4), without providing a source for this assertion. It directly contradicts Daro (2006) who, as previously mentioned, found that there is some form of mandatory reporting in over 80% of developed countries around the world. This work is not mentioned in the review, which also found that “there is little empirical evidence to support or disprove the hypothesis that such legislation better protects children and young people” (p. 17). Despite the assertion of a lack of existing evidence either way, they conclude that “based on the available evidence a voluntary system of reporting strengthened by inter-agency protocols and guidance would appear to provide an effective but flexible framework for child protection” (p.29). The results ought to have been as inconclusive as the the evidence base. There is a contradiction between citing a lack of evidence in either direction, whilst also going on to suggest that Section 5(1) of the Criminal Law (Northern Ireland) Act (1967) ought to be repealed as it relates to child protection interfaces, which is one of the authors' listed recommendations. One needs evidence to argue the case either way.

Since 2007, new evidence has emerged which uses primary data to demonstrate the effectiveness of mandatory reporting (see Appendix 2 for the statistical data as collected during the course of the study). This seven-year longitudinal study, and its results, have already been explored in chapter 1 (Mathews et al, 2016), and it provides interesting insights into the impact of new reporting laws on a jurisdiction which is demographically comparable to the UK. The supporting annexes (HM Government, 2016b), when providing a summary of the evidence, states that “a major weakness of the available research is that little attempt is made to measure the introduction of mandatory reporting against the existing organisational context” (p. 20). Yet this is precisely what Mathews et al (2016), which was available prior to the launch of the consultation in the same year, provides. It is a before-and-after comparison within a single jurisdiction with the aim of isolating mandatory reporting as a factor.

A question one might ask in response to the 'lack of evidence' criticism is, how much is enough? Chapter 2 explored how institutional failures to report abuse in the UK have allowed widespread abuse to go undetected in places such as Rotherham (Jay, 2014), Hillside First School (NSSCB, 2012) and others (the 'problem'). Empirical evidence from other countries, Australia in particular, which show that mandatory reporting has led to a rise in substantiated reporting in those jurisdictions has also been identified (part of a possible 'solution'). We have seen that beneficial child protection outcomes are derived even from unsubstantiated reporting. The governmental consultation does not provide a threshold which must be met before the existing evidence is sufficient to change their stance, so in theory, any amount of research may fall short of their unspecified requirement of 'consensus'.

From reading the consultation document and supporting annex (HM Government 2016a and 2016b respectively), it is interesting to note that where mandatory reporting *does* seem to show an increase in substantiated reporting, within an empirical context which sought to isolate its impact as far as reasonably possible (by using primary data from the same jurisdiction both before and after implementation), the government seems to attempt to nullify the findings with statements like “there are likely to be many factors affecting child

safety that may change over the period when mandatory reporting is introduced" (HM Government 2016b, p. 21), and describes some of these other factors in detail. Yet where mandatory reporting is identified as causing a significant increase in reporting generally (such as in the Wallace & Bunting 2007 literature review), the government accepts this as evidence of its detrimental impact, and does not mention any other factors which could explain the increase. This may reveal a bias, in that the government looks to find other explanations when mandatory reporting seems to be beneficial, but does not also question evidence which, at first, seems to show its disadvantages.

The supporting annex states that the "lack of jurisdictional similarities" (HM Government 2016b, p. 22) between the UK and some places which implement mandatory reporting, such as Saudi Arabia, limits the ability to generalise findings. This seems sensible, however, it is posited here that another developed, commonwealth, English-speaking nation like Australia is demographically comparable for the purposes of exploring the impact of mandatory reporting (once adjusted for differing population sizes). In future, it will be possible to explore research from a mandatory reporting jurisdiction much closer to home: if the research exploring the impact of new reporting laws in Ireland follow the trend set by empirical evidence obtained from Australia then, over time, the objection of 'lack of evidence' may wear thin.

On the other hand, there are genuine gaps in knowledge identified by critics which require attention and which would elucidate the debate further. For example, studies which have carried out pre-and-post mandatory reporting comparisons, or cross-jurisdictional analyses (Mathews, 2014), have focussed on what the supporting annex calls "process outcomes" (HM government 2016b, p. 22) such as investigation and substantiation rates. They have not focussed on service provision for children and families made known to local authorities via mandatory reporting. The government therefore argues that there is no conclusive evidence over whether mandatory reporting better protects children from harm. However, taking into account the increase in substantiation rates in jurisdictions with mandatory reporting, the benefits to children's welfare deriving from unsubstantiated reports and the harmful consequences of institutional failure to report suspicions, it is difficult to understand this line of argument.

The purpose of mandatory reporting is to ensure that certain groups of professionals or all citizens generally (depending on jurisdiction) report suspicions of abuse which may not otherwise reach a local authority for investigation. It is not meant to be an absolute solution, to include social service provision, for all the problems of, and arising from, incidents of child abuse (Falkiner et al, 2017). Therein lies a valid criticism: that although mandatory reporting may cause more cases of abuse to be investigated, without a consideration of the mechanisms in place to support children and families following those investigations, the overall framework remains incomplete. More research into service provision is necessary to understand the needs of children and families who, as a result of mandatory reporting, may not be experiencing abuse anymore but who still need supportive interventions to help deal with the aftermath.

Davies et al (2014) make the point that since there is no detailed recording of data in the UK about which groups of professionals (or family members) make reports, which types of abuse are reported and what the outcomes of those reports are, it is not possible to evaluate how effective the current mechanisms are at identifying and responding to child abuse and neglect. The NSPCC does publish statistical data, including the number of police-recorded offences against children, but does not provide data about who makes the initial referrals to the local authority (Bentley et al, 2017). It is therefore vital that the introduction of mandatory reporting is implemented alongside a detailed system of data collection (within a multi-agency

context) which would allow for robust evaluation of the new measures.

Mandatory reporting places professionals in an "ethical dilemma depending on their roles" (HM Government, 2016b, p. 27)

In nations which do not have a legal duty to report child abuse, practitioners use their discretion to come to a decision about whether or not to report. Aside from the legal case, there are ethical principles which can be used to aid in decision-making. The principles of respect for autonomy, beneficence, non-maleficence and justice (Beauchamp & Childress, 2013) can be weighed up to assess each case on its individual circumstances. However, these concepts can conflict with each other. For example, where a child is afraid of the possible consequences of disclosure to a local authority, the practitioner must decide between respect for autonomy (respecting the child's wishes for confidentiality) or beneficence, which obliges them to act on behalf of the child's best interests. It is plausible that Pellegrino & Thomasma (1987) would agree with a legal duty to report in this case, as they advocate for the practitioner to act, "if need be, without the patient's participation'" (p. 25). However, Munyaradzi (2012) argues that beneficence ought to be overridden when necessary, and is not the supreme ethical principle in every situation. In the case of mandatory reporting, it is posited here that, given the difference between child and practitioner understanding and vulnerability (Herring, 2018), respect for autonomy ought to play a secondary role.

A practitioner may also be motivated by the principle of justice to make a report and pursue the court process on the child's behalf. Yet, where such an ordeal causes emotional harm to the child, then the principle of non-maleficence becomes relevant. In systems devoid of mandatory reporting, the professional must balance competing ethical imperatives, perhaps arriving back at the primacy of beneficence, which in this case seems to dictate that the child's safety is the first priority (HM Government, 2015b). The absence of any established procedure for considering each ethical principle in turn before reaching a well-reasoned conclusion leaves the decision to the individual's own beliefs and biases. A system of mandatory reporting, backed up by evidence from other countries and responsive to new developments may serve to clarify what Kalichman (1999) also calls an "ethical dilemma" (p. 62) over whether or not a report should be made.

A legal duty to report appeals to a professional's self-interest in wanting to avoid being sanctioned, which may counter-balance a potential desire to preserve relationships with other colleagues, organisational reputation or to avoid acting on a wrong suspicion, which HM Government (2016b) identifies as a professional barrier to disclosure. Several of the barriers it lists could be directly addressed by a new mandatory reporting provision which includes civil immunity for reporters; namely, "vague and complex legislation... reluctance to report some types of abuse... fear of legal reprisal" (p. 26). Whilst HM Government (2016b) argues that mandatory reporting places professionals in an ethical dilemma, the opposite is posited here. It seems that the *absence* of clear reporting obligations, backed by law, creates confusion about ethical considerations amongst would-be reporters. This is supported by research across different professional domains which explore the barriers to reporting (Haines & Turton, 2008; Walsh et al, 2009). It is also demonstrated by the serious case reviews explored in chapter 2: the NSSCB (2012) report notes that "school staff expressed concern that including their adverse feedback... would compromise already strained working relationships" (p. 22) and that "he process of reporting and acting on concerns was positively hindered by a culture that discouraged comment, challenge and open communication" (p. 28). Evidently,

when considering whether to make a report or not, there may be concerns amongst professionals which are unrelated to safeguarding children. Civil immunity as offered by existing mandatory reporting legislation in other countries may solve this problem, by protecting reporters from whistleblowing repercussions.

Commentators such as Melton (1992) and Mathews (2008) cite philosophical grounds underpinning their differing views on mandatory reporting. The former considers the role of law as a means of creating consistency with established community values which are designed to promote human welfare (Melton, 1992, p. 384), whereas Mathews (2008) takes an experiential approach, where human rights are identified through human experiences of situations we wish to avoid. Rorty (1999) held a similar view, and stated that “what matters for pragmatists is devising ways of diminishing human suffering and increasing human equality, increasing the ability of all human children to start life with an equal chance of happiness” (p. 29). The difference in these approaches seems to be the difference between law as a 'provider' of conditions which lead to equality of opportunity, and law as a 'remover' of obstacles which compromise that equality. By punishing citizens who commit unfair behaviour at others' expense and offering recompense to victims, the law can be seen as serving to re-balance the impact of adverse conditions. Critics of mandatory reporting are more concerned with creating the right 'conditions' and 'culture' which result in reports being made at the right time. This view is demonstrated in the consultation outcome report (HM Government, 2018), which states that “mandatory reporting will not itself improve the quality of practitioners’ judgement about whether what they are seeing is abuse or neglect, and how best to respond; this remains the ultimate focus for best supporting children at risk of harm” (p. 6). Whereas, advocates for mandatory reporting consider the law's preventative role and how it may be used to ensure that child abuse and neglect is identified, and therefore stopped, at the earliest point, thus removing the 'obstacle' to equality of opportunity for the victims.

Why do England, Scotland and Wales still differ when compared to the majority of other first world nations (Daro, 2006) by having a discretionary, rather than mandatory, model of reporting suspicions of child abuse? Aside from the direct counter-arguments discussed in this chapter, one might look at the broader political tensions mixed up in the debate. The UK takes a more libertarian stance than other European nations (Flanagan & Lee, 2003), with lower taxes, generally less welfare provision and a perceivably more meritocratic 'flavour'. These differences seem to affect every aspect of social provision, including how children and families are treated by social services. Take, for example, Germany: also a capitalist nation, but with an 'institution model' of welfare provision which provides support to families at an early stage (Sainsbury, 1991). This differs from the UK's 'selective provision' model, which relies on assessment and an adversarial judicial system with accompanying stigma for those who need support from the state (Doolan & Connolly, 2006). The cultural emphasis in the UK seems to be on family privacy and professional autonomy rather than enforced state intervention.

Philosophers such as Locke (2003) posited that parental authority should only extend so far as facilitating children's “help, instruction and preservation” (p. 176), and could be revoked if this power was used unconscionably. The philosopher John Stuart Mill (1998) viewed family life as a domain where state control was imperative to preventing an abuse of power, which seems contrary to notions of parental liberty. If the institution of family (Goodsell, 1915) is not exempt from state intervention, then such philosophers would presumably agree that the role of professionals in institutions such as schools ought to be even less immune to governmental measures which seeks to secure children's safety. The absence of mandatory reporting may be symptomatic of the political tensions between individualism and state regulation, or the UK's cultural reluctance to legally 'force' practitioners to do something which their professional

judgement ought to be relied upon to compel them to do anyway. However, as has been demonstrated by the SCR's in the previous chapter, the current framework begets a professional environment where key information is not always shared between agencies and cases of abuse go undetected as a consequence. For this reason, notions of professional autonomy and discretion should not be automatically privileged over children's right to safety.

The situations where mandatory reporting would apply do seem to concern scenarios where harm is caused to at least one party either way, and is unavoidable (Feng et al, 2012). For example, a mandated reporter may, as a result of being obliged to report, cause harm by breaching a child's confidentiality. It is posited here that, where both an action or its equivalent inaction would result in unavoidable harm, then one must weigh up the level of harm in each case, and take the decision which results in the least harm. It is also worth noting that the MandateNow submission (2016) does exclude confidential helplines, such as Childline, from the proposed mandatory reporting legislation. This means that there would still be avenues for children and adults to seek confidential support and advice without fear of automatic reporting, though Mathews (2014) argues that children disclose because they *want* action to be taken and for the abuse to stop; not merely to vent their worries. Melton (2005) admits that, were the US to shift to a voluntary model of reporting, it would "result in circumstances in which society knowingly accepts egregious mistreatment of some individual children who would have come to the attention of public authorities in a system of mandated reporting and investigation" (p. 15). This would be an unacceptable compromise in favour of an alternative strategy which, unlike mandatory reporting, is genuinely lacking in quantitative research because, at least in the UK, there is limited record keeping in relation to child protection outcomes (Davies et al, 2014). Society must not turn a blind eye by accepting a system which is known to leave some children vulnerable. The aspiration should be to protect all children; not to safeguard the interests of some whilst ignoring others.

Chapter 4: The consultation's suggested alternative measures and government action

The government consultation sought views on two new proposed new measures: one was a version of mandatory reporting, and the other was a "duty to act in relation to child abuse and neglect" (HM Government 2016a, p. 15). The first things to note are the differences between the version of mandatory reporting described in the consultation, and the original proposal tabled in the House of Lords during passage of the Serious Crimes Bill 2014, which prompted the government to consult (HL Deb, 2014). Whilst the author of the consultation document states that "we are not proposing a specific mandatory reporting model in this consultation" (HM Government 2016a, p. 13), the model that they have broadly offered is missing the important specificity of the original proposal; it does not mention the threshold of suspicion rather than certain knowledge, the focus on Regulated Activities as defined in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006 or the protection that would be offered to mandated reporters by law (HL Deb, 2014, col. 1069). Each of these are important factors, as they demonstrate that, under a new mandatory reporting system, reporters would not be expected to take an investigative role, that the new law would be limited in application only to those in a position of personal trust and that reporters would be given immunity to protect their interests, provided the report was made in good faith. Instead, the consultation seeks

views on each of these separate components. Participants in the consultation faced a series of closed questions rather than being able to give their views on a clearly-defined piece of draft legislation, which was what Baroness Walmsley originally offered (HL Deb, 2014).

The main document (HM Government, 2016a) makes only a few references to research. All of these show mandatory reporting negatively, without any analysis of their arguments. Half of the document's length is used to detail the current child protection system and how well its working (which raises the question of why the consultation is necessary), and the “child protection reforms” (p. 7) that the government is already committed to, regardless of the consultation outcome. Taken as a whole, from reading the document, one could argue that the government did not hold a neutral position on mandatory reporting prior to the consultation, despite rhetoric such as “we will take radical action should any organisation fail to take its responsibilities to protect children seriously” (p. 12). Institutional failures to protect children have been identified, with recent figures suggesting that only 1 in 8 victims of child sexual abuse are identified by authorities (Children's Commissioner for England, 2015), but the radical action has not been forthcoming.

The other proposed new measure was the duty to act. Helpfully, the government included a chart of “key differences” (HM Government 2016a, p. 17) between its version of mandatory reporting and the duty to act (see Appendix 3 for the full chart). This chart illuminates the bias against mandatory reporting quite clearly, by comparing a potential positive of the duty to act only with the perceived limitations of mandatory reporting. Their assertion that “mandatory reporting (is) focused on reporting child abuse and neglect” (p. 17) seems a truism. New reporting laws need not exist in isolation. Researchers of mandatory reporting in other countries have highlighted the need for responsive services following a report and robust data collection for evaluation purposes (Drake & Jonson-Reid, 2007; Mathews & Kenny, 2008); it is unclear why the consultation seems to set up the discussion as if these measures are mutually exclusive.

It may have been more challenging for the government to provide a chart of differences between the proposed duty to act and the existing system, since both leave the decision to report to individual discretion and both offer no legal protection to reporters. The duty to act is posited in the consultation outcome document as being “focused on taking appropriate action” (HM Government 2018, p. 12) and “placing responsibility with practitioners to decide” (p. 17), yet the ongoing revelations of abuse within institutions show that appropriate action is not being taken and, if left to decide, practitioners sometimes take decisions which have the detrimental consequence of abuse continuing where it may have otherwise been reported and stopped. History has shown that writing another policy document requiring professionals to take unspecified appropriate action is insufficient (NSSCB, 2012), and the duty to act is too vague to result in criminal sanction. As defined in the consultation, the duty to act does not propose any sanction, criminal or otherwise, for failing to act. As the MandateNow (2016) submission argues, “having an unspecified duty to act is an open invitation to some regulated activities to handle abuse cases 'in house', rather than report to the local authority designated officer in the case of schools or the the local authority multi-agency safeguarding hub” (p. 28). By the government's own admission, “the status quo is not good enough” (HM Government, 2016a, p. 7). Yet the distinction between the proposed duty to act and the framework which is already in place, the status quo, is difficult to identify.

However, the consultation also describes the government's commitment to reforms above and beyond the scope of the mandatory reporting debate. Details of these plans have become available from March 2018 (HM Government, 2018). They include updating the existing

guidance to emphasise “an already strong focus on the importance of referrals and information sharing” (p. 8), replacing Local Safeguarding Children Boards with “new multi-agency safeguarding arrangements” (p. 8), though how these will differ from the LSCB's is unclear, and a “strengthening” (p. 9) of the requirements in Working Together To Safeguarding Children (HM Government, 2015b). It is difficult to understand how guidance devoid of any legal backing or sanction can become strengthened without the introduction of any legal backing or sanction. The guidance is “incorporated from practice guidance now into statutory guidance” (p. 9), but neither of these categories of guidance carry legal consequences for non-compliance. This is not the “radical action” (HM Government 2016a, p. 12) that was promised. Individuals and institutions can still choose to withhold suspicions or knowledge of child abuse and neglect without fear of consequence if their information should later be revealed by a public inquiry. Some are fully aware of this fact: during a controversial radio show appearance, a member of the Irish clergy, when defending his decision to withhold information about known child sexual abuse committed by a colleague, correctly asserted that “there is no law in Ireland or statute that requires that clergy report crimes to the police” (O'Doherty, 2010). Mandatory reporting has since been implemented in Ireland so that this is no longer the case (Daly, 2017).

As a result of the new reforms, government will also make relationships education and relationships and sex education (RSE) mandatory in all schools (HM Government 2016a, p. 7). It states that “there is a particularly compelling case to act so that children are better equipped to protect themselves” (p. 7) and to make “safe choices” (p. 8). It is posited here that the author of the document does not have an understanding of what Finkelhor & Browne (1985) first conceptualised as the “traumagenic dynamics” of child sexual abuse, which include stigmatisation and powerlessness. To suggest that it is the child's role to protect themselves from abuse is also to suggest that those who are abused have failed to do so. To include the notion of choice from the child's point of view is to imply that the child's choices are partly responsible for the abuse, in that different choices could have avoided it. This is harmful territory for a child victim who typically already feels responsible for the abuse (Feiring & Lewis, 1996). One could imagine how, given the apparent emphasis of children's choices in preventative efforts, a cross-examining barrister might say to a child in court “but you attended three RSE lessons at school and still didn't choose to tell someone until years later. If you were *really* being abused, then you would have protected yourself.” Therefore, the government should be extremely careful to avoid any language in its reforms which imply victim blaming (Ullman, 2010) by placing the emphasis on the child's actions, rather than the actions of the professionals around them, or the actions of the perpetrator.

There is a distinction, of course, between factual causation and moral causation (and a concurrent distinction between factual and legal causation established in common law, to distinguish what happened from where criminal culpability lies); it may be factually true that, had the child acted differently, the abuse would not have occurred. However, given the abuse of power (Pereda et al, 1994) between children and the people who abuse them, and given victims' proclivity to blame themselves (Filipas & Ullman, 2006), it is posited here that state efforts to prevent child abuse ought to be focused on the adults in the child's life who can play a sentinel role in protecting them, and the perpetrators, rather than what the victims could do differently. Rudolph & Zimmer-Gembeck (2016) found that current child abuse awareness sessions in schools have no proven impact on rates of disclosure, and that they can even have adverse effects by re-traumatising a child who has been victimised (Zuethen & Hagelskjær, 2013). Without a clear given strategy for how these RSE lessons will be conducted and evaluated, it is difficult to take an optimistic view of these measures, particularly in light of the absence of mandatory reporting. Even if the lessons can be shown to yield ancillary, subjective benefits in terms of staff confidence to identify and respond to abuse in the workplace, these

may still go unreported. The absence of a legal duty to report remains an obstacle in the chain of communication from a child's first (and perhaps only) disclosure to reaching the attention of a local authority. Paine & Hansen (2002) found that children are rarely the source of their own referrals to an investigative authority; most often, the information needs to come from professionals or family members.
Having just rejected mandatory reporting proposals, the consultation outcome document goes on to promise an assessment of whether "the current legislative framework is able to deal appropriately with concerns about concealment of child abuse and neglect" (HM Government 2018, p. 10). This is confusing because one would imagine that such an assessment was the purpose of the present consultation. There is a pledge to identify and remedy "gaps in the current statutory framework" (p. 10), despite a gap having already been identified. Finally, the new reforms include the creation of a "safe space" (p. 8) for whistleblowers, in the form of a helpline, to counter cases where the "imperative to report and act on child abuse is wrongly counterbalanced, or even outweighed, by a desire to safeguard personal status, institutional reputation or profitability" (p. 8). The government has invested £500,000 for this purpose (Home Office, 2016), and there will presumably be ongoing staff and infrastructure costs as the new helpline is rolled out nationally. However, callers will not be offered any legal protection from civil claims made against them should they report, because there is no reporting law to provide these benefits to would-be whistleblowers.

Overall, it is difficult to understand the basis on which the government has refused to introduce a new legal provision which would directly address an acknowledged gap in the current reporting arrangements (Mathews, 2008). The reforms it proposes are difficult to distinguish from the current framework as it applies to reporting and acting on child abuse and neglect, and the reforms outside of this area are outlined without a clear explanation of how they might tangibly affect children's safety.

Conclusion

From exploring the mandatory reporting debate in detail, several potential pitfalls have been identified in relation to the implementation of a potential new legal duty to report suspicions or known child abuse and neglect. These are related to data collection, which would enable an evaluation of new measures, and service provision following the making of a report. Questions have also been raised regarding the resourcing of a new mandatory reporting framework, though whether it truly would overburden the system, when compared with the overall cost of child abuse (which Saied-Tessier, 2014, conservatively estimated at £3.2bn per year for sexual abuse only), is inconclusive. The evidence so far does not seem to support this claim, once the source of referrals are taken into consideration (Wood, 2008). Following the recent introduction of mandatory reporting in Ireland, a dramatic rise in reports has not occurred, with reported figures being well below what was expected (Loughlin, 2018).

The potential benefits of introducing mandatory reporting, as identified by longitudinal research carried out in different jurisdictions of Australia, include an increase in substantiated reports, an increase in unsubstantiated reports, which nevertheless lead to positive child protection outcomes, and a perceived change in social climate which discourages institutional abuse (Mathews et al, 2016). In addition, whistleblowers are protected under the law so that they need not fear professional or legal repercussions. Given the government's apparent desire to remedy the issue of non-reporting and poor information-sharing amongst professionals (HM Government, 2018), their decision to reject mandatory reporting at this

time could only be explained by motives outside of the question of whether it would benefit children's safety. It is the opinion of some commentators that a desire to limit referrals as much as possible in order to reduce costs underpins this decision and is therefore political, rather than practical, in nature (MandateNow, 2016, p. 14), particularly as the cost argument is inconclusive.

The response to an ever-growing and complex area of research where commentators contradict each other with different interpretations should not be to throw ones arms up in the air and say “it looks like the evidence is inconclusive, so there is no need to change anything”. Instead, policymakers ought to consider all of the empirical research carefully without inexplicable omissions of key evidence and from a genuinely neutral position. A full and complete justification for decision-making should be provided to stakeholders. Instead, the consultation seemed to either omit or misinterpret the research in several places, and to selectively refer to parts of sources whilst ignoring the full context of the researchers' findings and recommendations. In the words of Davies et al (2014): “it should be remembered that the fair measure of a policy’s success is not whether it is ever unsuccessful... rather, it should be approached on the basis of whether, on balance, the policy creates a better situation for those whose welfare it is developed” (p. 14).

On this basis, the recommendations from this dissertation are that a mandatory reporting duty should be introduced in *law* (not policy) in England, Scotland and Wales which mirrors the original amendment 43 proposed during the House of Lords debate (HoL, 2014), and alongside a system of recording data so that process outcomes can be understood following its introduction. In addition to such measures, there would be a need for comprehensive training amongst professionals who would be required to report, so that they can understand their responsibilities clearly. Future research should focus on service need for children and families who have been referred to a local authority following a mandated report, and a continuing evaluation of the effectiveness of new measures so that the UK might learn from, and avoid the problems of implementation experienced by, other mandatory reporting jurisdictions.

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Appendix 1: Differences in mandatory reporting legislation between Australian states

Fig. 1: Differences in groups of mandated reporters, and types of abuse which must be reported - taken from Mathews et al (2015).

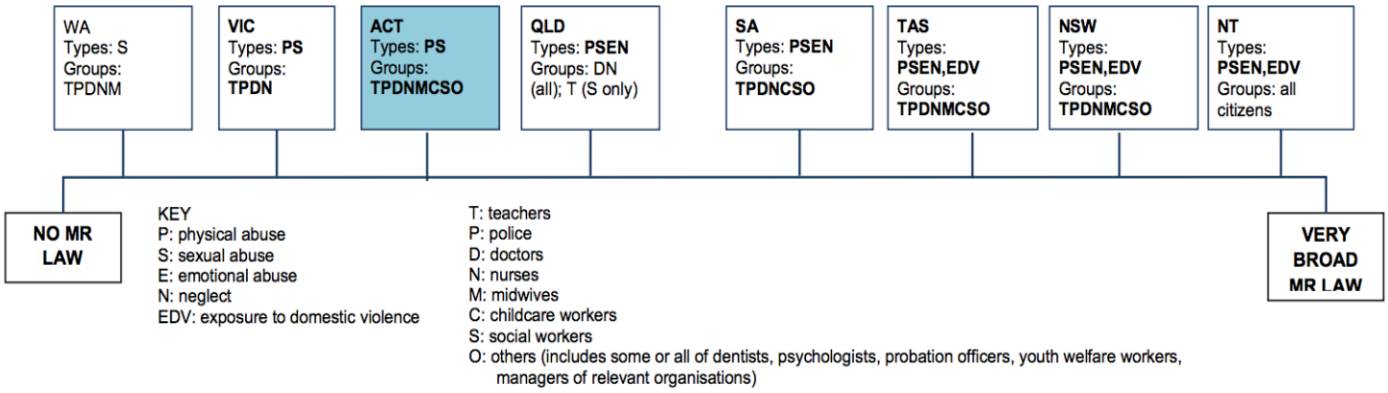

Fig. 2: Differences in a person's state of mind and extent of harm which need to be present for there to be a legal duty to report – taken from AIFS (2017).

Jurisdiction	State of mind	Extent of harm
ACT	Belief on reasonable grounds	Not specified: "sexual abuse ... or non-accidental physical injury"
NSW	Suspects on reasonable grounds that a child is at risk of significant harm	A child or young person "is at risk of significant harm if current concerns exist for the safety, welfare or wellbeing of the child or young person because of the presence, to a significant extent, of ... basic physical or psychological needs are not being met or at risk of not being met ... not receiving necessary medical care ... not receiving an education in accordance with the *Education Act 1990* ... physical or sexual abuse or ill-treatment ... serious physical or psychological harm as a consequence of living in a household where there have been incidents of domestic violence ... serious psychological harm ... the child was the subject of a prenatal report under section 25 and the birth mother did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical the risk factors that gave rise to that report"
NT	Belief on reasonable grounds	Any significant detrimental effect caused by any act, omission or circumstance on the physical, psychological or emotional wellbeing or development of the child

(Fig. 2 continued)

Qld	Has a reasonable suspicion	Detrimental effects on the child's body or the child's psychological or emotional state that are evident to the person or that the person considers are likely to become evident in the future
SA	Suspects on reasonable grounds	Any sexual abuse; physical or emotional abuse or neglect to the extent that the child "has suffered, or is likely to suffer, physical or psychological injury detrimental to the child's wellbeing; or the child's physical or psychological development is in jeopardy"
Tas.	Believes, or suspects, on reasonable grounds, or knows	Any sexual abuse; physical or emotional injury or other abuse, or neglect, to extent that the child has suffered, or is likely to suffer, physical or psychological harm detrimental to the child's wellbeing; or the child's physical or psychological development is in jeopardy
Vic.	Belief on reasonable grounds	Child has suffered, or is likely to suffer, significant harm as a result of physical injury or sexual abuse, and the child's parents have not protected, or are unlikely to protect, the child from harm of that type
WA	Belief on reasonable grounds	Not specified: any sexual abuse
Australia	Suspects on reasonable grounds	Not specified: any assault or sexual assault; serious psychological harm; serious neglect

Appendix 2: Numbers of reports, and their outcomes, both before and after the introduction of mandatory reporting legislation in Western Australia – taken from Mathews et al (2016).

Year	Reports	Not investigated	Investigated	Not substantiated	Substantiated
Police					
2006	308	102	206	128	78
2007	389	105	284	161	123
2008	409	129	280	177	103
2009	856	511	345	209	136
2010	1277	775	502	346	156
2011	1287	486	801	593	208
2012	1287	262	1025	820	205
Doctors					
2006	44	14	30	20	10
2007	53	12	41	28	13
2008	58	18	40	31	9
2009	326	209	117	76	41
2010	339	182	157	110	47
2011	396	131	265	191	74
2012	342	101	241	177	64
Nurses[b]					
2006	28	5	23	10	13
2007	21	4	17	10	7
2008	22	6	16	12	4
2009	193	110	83	66	17
2010	188	113	75	51	24
2011	190	56	134	106	28
2012	243	69	174	120	54
Teachers					
2006	171	64	107	77	30
2007	240	70	170	124	46
2008	244	105	139	96	43
2009	614	407	207	154	53
2010	738	449	289	217	72
2011	644	219	425	359	66
2012	832	243	589	536	53
Total: mandated reporters combined[a]					
2006	551	185	366	235	131
2007	703	191	512	323	189
2008	733	258	475	316	159
2009	1995	1239	756	508	248
2010	2550	1522	1028	728	300
2011	2528	899	1629	1251	378
2012	2719	679	2040	1660	380

[a] Includes reassignment of several incomplete data records where it was ascertained to be a mandated report: 2006: 2; 2008: 1; 2009: 3; 2010: 2.
[b] Does not include reports by midwives, who made only 6 reports in 2009; 8 in 2010; 11 in 2011; and 15 in 2012.

Appendix 3: Chart showing the differences between mandatory reporting and duty to act - taken from HM Government (2016a)

Mandatory reporting	**Duty to act**
Focused on **reporting** child abuse and neglect	Focused on **taking appropriate action at all points in the system** in relation to child abuse and neglect
Action taken under the duty is limited to reporting	Action taken under the duty would cover a wider spectrum of safeguarding activity, reflecting the different types of issues that have been highlighted in past cases
Requires a report to be made in every case where there are suspicions or knowledge of child abuse or neglect (i.e. limited professional discretion)	Places responsibility with practitioners to decide what action is appropriate to protect children from harm. It would allow for the particular circumstances of each case and the child or children involved to be considered before determining next steps
The duty would be discharged once a report had been made	The duty would continue to apply after the report had been made. If further action is needed to protect a child, a duty to act would require this action to be taken
Sanctions relating to the duty would not be limited to cases of wilful, deliberate or reckless failures to report	Sanctions relating to the duty would apply only in relation to deliberate or reckless failures (although existing sanctions would continue to apply below this threshold for other failures as they do currently)