



HM Government

Reporting and acting on child abuse and neglect

Government consultation

Launch date 21 July 2016

Respond by 13 October 2016



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Introduction

This consultation outlines options for reform of the child protection system in England, specifically in relation to reporting and acting on child abuse and neglect. This includes consideration of the introduction of **mandatory reporting** of child abuse and neglect or an alternative **duty to act** which focuses on taking appropriate action in relation to child abuse and neglect. This consultation also seeks views on whether the scope of these possible changes should extend to vulnerable adults.

Any information received which includes a specific allegation of child abuse will be referred to the police/the relevant local authority's children's social care department. In such cases, the correspondent will be informed that the information has been referred, and to whom. If a broad allegation is included in any material received (i.e. without specific details to enable police inquiry or local authority investigation), the correspondent will be advised that they should raise these matters directly with the police/ local authority children's social care themselves.

Scope of this consultation

TOPIC: The consultation seeks views about whether it is necessary to introduce one of two possible new legal requirements focused on reporting and acting on child abuse and neglect in addition to the Government's programme of whole system reforms.

SCOPE: The consultation covers all forms of suspected and known child abuse and neglect. The new statutory duties under consideration would not apply to the general public. They would not apply retrospectively to cases that occurred prior to their introduction. This consultation also seeks views on whether the scope of these possible changes should extend to vulnerable adults.

GEOGRAPHICAL SCOPE: England only. The Welsh Government will consider the consultation outcome in relation to the duty to act to inform decisions about any future legislative change in Wales.

IMPACT ASSESSMENT: A consultation stage impact assessment is published alongside this consultation document.

WHO THIS CONSULTATION IS FOR: This consultation is open to the public and all responses will be reviewed carefully. We are particularly interested to hear from children and young people; social care, education, criminal justice, and healthcare practitioners; the police; and from victims and survivors of child abuse.

DURATION: The consultation starts on 21 July 2016 and will run for 12 weeks, concluding at 12:00 noon on 13 October 2016.

ENQUIRIES AND RESPONSES: The consultation materials are available on-line (www.gov.uk) and in hard copy (available for collection from the Home Office or by request from the email address below). Responses to the consultation can be returned online. Any other enquires about the consultation should be directed to:

reportingandacting@homeoffice.gsi.gov.uk

Printed/ hard copy responses can be posted to:

Safeguarding Unit,
Crime and Policing Group
Home Office
5th Floor, Fry Building SW
2 Marsham Street
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Foreword

Every child deserves to be protected from abuse and neglect. Social workers, teachers, police officers, doctors and countless others across the country work together every day to achieve this goal. This is not a simple or straightforward task. Signs of abuse and neglect can be hard to identify and judgements about the best interests of the child are rarely clear-cut. The problems faced by children can be multi-faceted and the cost of failure extremely high.

This Government is leading work to make improvements across every area of the child protection system. From targeted recruitment and retention of high calibre social workers into children's social care, to improved multi-agency approaches to early prevention and detection of abuse. As a result of our reform programme and the tireless efforts of practitioners we are seeing some truly fantastic child protection work happening across the country.

We will continue to introduce improvements that we expect will bring real benefits to children, but we must not be complacent and will always consider what more can be done. There have been too many cases over recent years that have highlighted serious failings to protect children. These failings result from a variety of different factors, from not recognising abuse for what it is to incorrect assessments of risk and from failures to properly share information between agencies to deliberate cover-ups. Given that failings can be a result of so many different factors, there is no single solution.

High profile cases have led to calls for specific reforms to our child protection system. In particular, the introduction of a new mandatory reporting scheme or other measures focused on taking action on child abuse and neglect have been suggested and we are grateful to MPs, Peers, campaign groups and members of the public who have raised these issues. The issues involved are complex and the evidence for such schemes is mixed. We need to consider carefully all the available evidence and views of a range of experts, children, families, survivors and practitioners so that any changes we make to the system do deliver the best outcomes for children. This is why we want to hear your views before deciding on next steps.

We urge everyone – children, young people, practitioners or members of the public – with a view about these issues to consider the materials here carefully and respond to the consultation so that we can take account of your views on this critical issue.

Sarah Newton, MP
Parliamentary Under Secretary of State,
Home Office

Edward Timpson, MP
Minister of State, Department for Education

Part A: The current child protection system

1. Our children deserve to be safe from harm. Since 2010 and the Munro Review of Child Protection,¹ the Government has been overseeing significant reforms to the child protection system. We want a system that is more responsive to the needs of individual children and where children get the best social workers to support them and their families. Practitioners² working with children and families should recognise needs early and ensure that help is provided at the right time. Our child protection system needs to have clear accountability and be better at identifying problems early and putting them right.
2. We already have some really effective child protection practice but we need this to be effective **everywhere**. Safeguarding children – the action we take to promote the welfare of children and protect them from harm – is everyone’s responsibility. Everyone who comes into contact with children and families has a role to play in identifying concerns, sharing information and taking appropriate action.
3. Practitioners and agencies work within a robust legislative and structural framework summarised in the *Working Together to Safeguard Children*³ (*Working Together*) statutory guidance (see annex A for further details). They are led by two fundamental principles:
 - the welfare of the child is the paramount consideration; and
 - wherever possible, children should be brought up and cared for within their own families.

Reporting and acting on child abuse and neglect

4. Practitioners should make an immediate referral to local authority children’s social care if they believe that a child has suffered harm or is likely to do so. This is clearly set out in the cross-sector *Working Together* statutory guidance and is supplemented by *What to do if you’re worried a child is being abused*⁴ which aims to help practitioners identify when abuse or neglect might be occurring and provide advice on what to do next. Other guidance for specific practitioner groups reinforces this message.
5. Decisions about what steps to take in response to abuse and neglect are not always straightforward. **A warning sign or indicator of abuse or neglect may be difficult to spot and does not automatically mean that a child is or will be abused or neglected.** Practitioners need to use their professional judgment, based on the circumstances of each case and the information available to them, to decide on the best course of action for the child:

‘instead of “doing things right” (i.e. following procedures) the system needed to be focused on doing the right thing (i.e. checking whether children and young people are being helped).’
Munro Review of Child Protection: Final Report

¹ <https://www.gov.uk/government/publications/munro-review-of-child-protection-final-report-a-child-centred-system>.

² The term ‘practitioners’ is used throughout the consultation to refer to individuals who work with children in any capacity.

³ <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

⁴ <https://www.gov.uk/government/publications/what-to-do-if-youre-worried-a-child-is-being-abused--2>.

6. There is currently no general legal requirement on those working with children to report either known or suspected child abuse or neglect. Statutory guidance, however, is very clear that those who work with children and families should report to the local authority children's social care **immediately** if they think a child may have been or is likely to be abused or neglected. While statutory guidance does not impose an absolute legal requirement to comply, it does require practitioners and organisations to take it into account and, if they depart from it, to have clear reasons for doing so. The existing disciplinary system for failures to do so is outlined at annex C.
7. In 2015 the Government introduced a specific requirement on teachers, health professionals and social workers to report **known** cases of female genital mutilation (FGM)⁵ on girls under 18 to the police. This was in order to address the particular issue of a lack of successful prosecutions. The requirement is intended to ensure that girls subject to this horrific practice get the help and support they need and help to eradicate this crime in England and Wales. As with any other suspected forms of child abuse, suspected cases of FGM should be referred to local authority children's social care, in line with the cross-sector *Working Together* statutory guidance. The Government will continue to work with the police and relevant professional bodies to review the implementation of the FGM mandatory reporting duty.

How is the system working?

8. There are 152 local authorities in England with overarching responsibility for safeguarding and promoting the welfare of all children and young people in their area. These responsibilities are set out in the 1989 and 2004 Children Acts. Local agencies, including the police and health services, also have a duty under section 11 of the Children Act 2004 to ensure that they consider the need to safeguard and promote the welfare of children when carrying out their functions. Local authorities work through their social workers, in partnership with other agencies such as the police, the health service, and schools, to keep children safe.
9. Government data show that practitioners working with children and families are making referrals to local authorities, as are members of the public. These referrals are made when individuals are concerned about the welfare of a child. The figures also show that social workers, with the support of police and health workers and other practitioners, are taking action to support vulnerable children:
 - last year, over 635,000 referrals were made to local authority children's social care departments requesting support for children, including those who may have been abused or neglected, or were at risk of such abuse or neglect (up 5% since 2010 and at their second highest recorded level);
 - over 400,000 children were assessed by social workers as needing support during the year (up 7% since 2010 and, like referrals, at their second highest recorded level);
 - over 160,000 child protection enquiries were carried out (up over 12% on the previous year and at a record high); and
 - over 60,000 children were placed on child protection plans during the year (up just over 4% on the previous year and at a record high).

⁵ This new requirement came into force on 31 October 2015.

10. The vast majority of teachers, doctors, health visitors, police and social workers are in their jobs because they care about what happens to children and their families. The figures above show that when concerns for the welfare of an individual child arise, people pick up the phone and try to get them some help. Assessing the nature and level of abuse or neglect a child may be facing requires a strong assessment and analysis by skilled social workers. That is why we are improving the quality of social work so that children get the best assessments that identify their needs and provide appropriate intervention as quickly as possible.
11. Practitioners constantly seek to act in the best interests of the child, balancing the need to minimise the risk of harm and the goal of supporting parents to properly care for their children. Sometimes, despite their best efforts and intentions, abuse and neglect persist and children continue to be harmed. It is crucial that reforms to the system look not only at the reporting of abuse but also at **how** abuse and neglect are identified, the action taken in response, and what types and level of support are put in place for children and families.
12. Despite the best efforts of practitioners working with children and families, we know that some abuse and neglect continues to go undetected by statutory agencies. A recent report by the Office of the Children's Commissioner for England highlighted that only one in eight victims of sexual abuse are likely to come to the attention of the police.⁶ This can be for a variety of reasons; referral into the system is just one part of the picture. Even when a concern is raised, the level and nature of the response might not be good enough for the individual child. Some of the cases we have seen recently have highlighted an inability to perceive abuse or understand the level of risk a child is facing. Other cases show failures to share information at the right time, resulting in missed opportunities to make the right intervention. In a few cases, there have been allegations of deliberate cover-ups or malpractice.
13. A number of high profile cases have put a spotlight on these issues. These cases include:
 - **Jimmy Savile**; the television personality who abused his celebrity status and fundraising roles to gain access, influence and power to abuse vulnerable children;
 - **Daniel Pelka**; who despite being known to the authorities, was not adequately protected by practitioners who failed to share information and take appropriate action to keep him safe; and
 - **Rotherham, Rochdale and Oxfordshire**; where practitioners failed to see child sexual exploitation for what it was and subsequently failed to take action to stop and prevent it. In Rotherham there was also evidence which suggested that senior local officials had recklessly or deliberately covered up abuse.
14. These cases highlight a wide range of different issues. No single solution would have stopped these cases from occurring. Whilst no system can ensure that abuse will never occur, it is crucial that we do all that we can to strengthen our arrangements to minimise the risks as far as possible.

The consultation questions relating to this section seek your views about where the main issues in the current child protection system lie.

⁶ <http://www.childrenscommissioner.gov.uk/learn-more/child-sexual-exploitation-abuse/protecting-children-harm>

Part B: Child protection reforms

15. It is essential that our child protection system works as effectively as possible to keep children safe from harm. The status quo is not good enough. The scale and changing nature of child abuse demands a significant and sustainable transformation in our approach. It is right that we continue to reform the child protection system so that professional practice improves and children and families get effective help and protection.
16. We can and should do more to highlight that if practitioners and the public have a concern about a child, they should report it immediately to children's social care. We want practitioners and members of the public to pick up the phone and talk to someone about a child if they are worried about them. And we need to make sure that when abuse or neglect is reported, children get an effective response from statutory services. Tackling child abuse and neglect requires a collective effort. We all need to be working together.
17. We are introducing a number of wide ranging reforms aimed at strengthening and improving the whole child protection system. These reforms are designed to protect children from all forms of abuse and neglect. They are outlined in more detail below.

The child protection system reforms

People and leadership

18. One of the biggest factors in making sure that children are as well protected as possible is ensuring that those who work with children and families are well trained, can respond well to the needs of children and can access support for their needs.
19. We need social work practice that is strong and robust. Better trained and better qualified social workers will lead to a higher quality of social work overall, and social workers who are able to make the right decisions for children, at the right time.
20. We are setting out clearly the knowledge and skills needed to perform effectively in child and family social work.⁷ There are three levels of knowledge and skills statements to match the three new levels of social work – frontline practitioner, practice supervisor and practice leader. The knowledge and skills statements will be supported by an assessment and accreditation system for child and family social workers to deliver decisive, expert and consistent social work practice across the country. This work will be overseen by a new regulator, which will have a relentless focus on raising the quality of the social work profession.
21. Alongside this, we are recruiting the best graduates into social work through the Frontline and Step Up fast track programmes and, through teaching partnerships between employers and universities, we are equipping them to make an immediate impact with families when they qualify.

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/379033/Consultation_on_knowledge_and_skills_for_child_and_family_social_work_-_government_response.pdf and <https://www.gov.uk/government/consultations/social-work-knowledge-and-skills-for-supervisors-and-leaders>

22. Doing our best for children cannot rely on social workers alone. We need police who can respond effectively and health visitors, GPs and teachers who can recognise the early warning signs of abuse and neglect and who know what to do. That is why we are delivering a real change in the quality of frontline practice to make sure that vulnerable children are treated appropriately by those best placed to help them.
23. The police are driving change across their workforce. We are seeing police ranks open up with flexible entry and exit paths, encouraging diversity of experience and backgrounds amongst police leaders and developing a culture of challenge, particularly in the senior ranks. The positive impact of Direct Entry and Police Now is clear; bringing people from a range of backgrounds into the police, where they can bring a fresh perspective and new ideas. This includes opening up senior policing positions to those who have experience in child protection.
24. Her Majesty's Inspectorate of Constabulary and the College of Policing are prioritising how the police workforce improves its identification and protection of vulnerable people. Police forces are improving the skills of all police officers so they can identify vulnerability and respond more effectively to children who are victims of abuse, making sure that children at risk are better identified and at an early point in their lives. The police have launched a national safeguarding action plan which describes how officers will be equipped with the skills to identify abuse, intervene at the earliest stages and move beyond simply reacting to abuse as it is reported. This includes working with schools to identify and deter abuse, and developing a national response to online abuse which enables coordinated use of new investigative tools to identify offenders who are using the internet to exploit children.
25. Similarly, we have rolled out a number of guidance and training packages to healthcare workers to improve early identification of and response to child abuse and neglect, including child sexual abuse and exploitation. This includes:
 - specific guidance for school nurses on understanding and spotting signs of child sexual exploitation and what to do if they suspect a child is being abused; and
 - training materials for healthcare staff providing services used by sexually abused children so that they can better understand how children are experiencing their service, and help them to create a better environment for disclosure.

Practice and systems

26. The standard of the organisations in which social workers operate can have just as much of an impact on children's lives as social workers themselves. Social workers will thrive in organisations which are well led and continuously striving to improve and learn. We have already invested over £100m in over 50 projects through the Innovation Programme, which are piloting new ways of delivering social work. We will be investing a further £200m in our innovation and improvement work over the next four years. This will allow us to strengthen and spread the best ideas, bringing them to more areas, and ensure that the principles of innovation and creativity are driving whole-system redesign across children's social care.
27. We will be working with a number of the best local authorities in the country to support them to improve still further and to model excellence. These authorities will receive support to trial new ways of working, remove bureaucratic or legislative barriers and develop new operating models and structures. We want to create a system which frees up excellent frontline social workers and their leaders to focus on the needs of children and families.

28. We will replace the Serious Case Review system with a new system of national and local child safeguarding practice reviews. The new system will improve the quality and timeliness of reviews of serious incidents and support the development of both national policy and local practice and improve outcomes for children. We will make sure that the outcomes of these reviews are properly analysed and disseminated through a new What Works Centre for children's social care. The What Works Centre will create a sustainable, long term mechanism for identifying and disseminating best practice and embedding evidence-based approaches throughout the system. The What Works Centre will work together with the Centre of Expertise on Child Sexual Abuse announced in the Tackling CSE report in March 2015. The Centre of Expertise will initially focus specifically on child sexual exploitation and will provide pragmatic and action orientated support, guidance, tools and training to relevant practitioners across sectors. Together, these Centres will increase our understanding of problems in the system, transform the way services are delivered and help us to stay ahead of those who are using new methods of abuse and exploitation.

Governance and accountability

29. Child protection is a multi-agency endeavour, involving not only social workers and local authorities but a range of local partner agencies such as schools, the health service and the police.
30. Partnership working between agencies must operate as effectively as possible, with close and ongoing collaboration and the proper sharing of information. We have therefore introduced a new system of joint targeted multi-agency inspections⁸ to provide ongoing external scrutiny of multi-agency arrangements for keeping children safe. It is essential that, in the spirit of changes implemented following the Munro Review, any new inspection framework strongly supports innovation and evidence-based practice.
31. We also commissioned a review by Alan Wood CBE of the role and functions of Local Safeguarding Children Boards in December 2015. The review was published in May, together with the government's response. As a result, we are seeking to introduce a stronger statutory framework which will introduce greater accountability on the three key agencies involved in safeguarding children, namely local authorities, the police and the health service. As well as being stronger, the arrangements will be more flexible and enable local areas to determine the best way to organise themselves. These new arrangements will support local partners to work together more effectively to protect and safeguard children and young people, embedding improved multi-agency behaviours and practices.
32. We will also work with the best local authorities to streamline 'checks and balances', ensuring sharper and more focused accountability, as well as exploring the potential for making better use of data to drive performance. We will support new collective arrangements between local authorities for commissioning or delivering services, including the development of combined models across elements of children's social care, including through 'city deals'.⁹
33. We will support local authorities who wish to develop and implement new and innovative delivery models. This includes the establishment of organisations, mutuals and trusts covering all, or part, of their children's social care functions, working with children's charities to explore the scope for their involvement.

⁸ Involving Ofsted, The Care Quality Commission (CQC), HM Inspectorate of Constabulary (HMIC) and Her Majesty's Inspectorate of Probation (HMIP).

⁹ City Deals give local areas specific powers and freedoms to help the region support economic growth, create jobs or invest in local projects.

34. Where there is persistent or systemic failure to keep children safe we will intervene immediately and robustly to turn around performance. This includes, if necessary, enforcing new delivery models by removing children's social care services from local authority control, enabling services to be run by a better performing local authority or by an independent organisation or Trust.

Tackling child sexual exploitation

35. We are leading a comprehensive and wide ranging programme to tackle child sexual exploitation. We have three clear objectives:

- Tackling offending: We will improve the ability of our government and law enforcement agencies to identify, pursue, investigate and prosecute offenders.
- Reducing vulnerability: We will identify and work to eliminate the conditions that give offenders the opportunity to commit child sexual exploitation.
- Supporting victims and survivors: We will support victims and survivors of child sexual exploitation.

36. In a range of measures announced in March 2015,¹⁰ we have sought to strengthen accountability and leadership in professions and local government; improve joint working and information sharing; strengthen the protection of children at risk; and reinforce law enforcement efforts to stop offenders. For example, we have:

- prioritised child sexual abuse as a national threat in the Strategic Policing Requirement, setting a clear expectation on police forces to collaborate across force boundaries, to safeguard children from sexual abuse, to share intelligence and to share best practice;
- launched a new national whistleblowing helpline for any employee who wants to raise a concern about how their organisation is dealing with cases of child abuse and neglect. This offers a new, additional, confidential route and will help shine a light on problems and help authorities to address them quickly; and
- developed a new "Together we can tackle child abuse" communications campaign to encourage the reporting of child abuse and neglect. This will help practitioners to respond and take action to protect children more quickly and launched in March 2016. We will run the campaign again in 2017.

37. Through embedding this programme of work we are seeking to reduce the number of children who are victims of child sexual abuse, prevent potential offenders from offending and mitigate the harm caused to those who are or have been victims. The Government will publish a progress report on all actions within the programme later this year.

¹⁰ <https://www.gov.uk/government/publications/tackling-child-sexual-exploitation--2>

Impact

38. The package of reforms will deliver improvements across the entire child protection system, ultimately improving outcomes for vulnerable children. In particular:
- better training for frontline staff will help them identify signs of abuse and get the right help to children at the right time;
 - improved regulation will ensure that our new, higher standards are maintained; from working with the best local authorities to help them get even better by delivering innovative new approaches, to relentlessly focusing on driving up the performance of areas where services are failing; and
 - introducing joint targeted multi-agency inspections to look at the experiences of children and young people in a local area, with a focus on how local agencies work with each other to safeguard children.
39. These reforms will make a real difference to children's lives. They will help to protect children from harm and make a difference to their outcomes and life chances. They will also free up professionals and give them the skills and expertise to operate effectively, as recommended in the Munro review.

Part C: Other measures that could be introduced

40. As outlined in the previous section, the Government is undertaking a wide-ranging and substantial reform programme to deliver improved outcomes for children. It will need time to embed but the message is clear: we will take radical action should any organisation fail to take its responsibilities to protect children seriously.
41. There are other measures that could be considered to address particular failings by practitioners or organisations within the child protection system. Introducing new legislation in this complex landscape is a decision that should not be taken lightly. Our existing statutory guidance is very clear about the legal duties placed on organisations and the procedures that practitioners and organisations **should** follow. Agencies like the police, the health service, schools and local authorities must take the guidance into account and, if they decide to depart from it, have clear reasons for doing so. Statutory guidance does not, however, impose legal requirements itself. A legal duty would create a new requirement for practitioners/organisations to do something, meaning that they **must** act accordingly.
42. Any additional legislation needs to bring benefits and not create perverse incentives or unintended consequences. We want people to actively identify child abuse and neglect and not turn a blind eye. Practitioners need to concentrate on cases where the issues are genuinely concerning and be empowered to use their professional judgement and discretion.

The consultation questions relating to this section seek your views about whether a new statutory measure should be introduced in addition to the wide-ranging reform measures outlined in part B.

43. The following new statutory measures could be considered:
- **a mandatory reporting duty**, which would require certain practitioners or organisations to **report** child abuse or neglect if they knew or had reasonable cause to suspect it was taking place; or
 - **a duty to act**, which would require certain practitioners or organisations to **take appropriate action** (which could include reporting) in relation to child abuse or neglect if they knew or had reasonable cause to suspect it was taking place.
44. Part D of the consultation outlines the scope of these potential measures, including who might be subject to them, where accountability might rest and the possible sanctions for breaches.

Mandatory reporting of child abuse and neglect

45. Mandatory reporting is a legal requirement imposed on certain groups, practitioners or organisations to **report** child abuse and neglect. If such a duty were to be introduced in England, reports would be made to local authority children's social care.

46. There are a variety of mandatory reporting systems, notably in the United States, Australia and Canada. A number of different mandatory reporting models, including the ‘closed institutions’¹¹ and the ‘regulated activities’¹² models advocated by some groups are outlined in more detail at annex B. We are not proposing a specific mandatory reporting model in this consultation. However, we have developed broad elements of the scope of a potential mandatory reporting model (see part D) which we specifically seek your views on.
47. A range of sanctions for those who breach the duty (i.e. fail to report child abuse or neglect) could be made available. These could range from employer and/or regulatory sanctions to criminal sanctions and are outlined in more detail in part D and annex C. Sanctions could be used for those who failed to report for any reason (other than genuine errors or mistakes, e.g. if an individual mistakenly thought that a report had been made, or because a practitioner/organisation knew that a report had already been made). This could include, but would not be limited to, deliberate or reckless failures.
48. If mandatory reporting were introduced, it could either replace the existing FGM mandatory reporting duty in England and Wales or operate alongside it. There is opportunity within the consultation to feed in views on this.

Possible benefits

49. A mandatory reporting duty could:

- increase awareness of the importance of reporting child abuse and neglect, both by those under a duty to report and the general public;
- lead to more cases of child abuse and neglect being identified, and at an earlier point in a child’s life than is currently the case;
- create a higher risk environment for abusers or potential abusers because the number of reports being made would be likely to increase; and
- ensure that those best placed to make judgements about whether abuse and/or neglect is happening – social workers – do so. Practitioners (i.e. those who work with children in any capacity) have not always been able to confidently conclude when a child is being abused or neglected or is at risk of abuse or neglect. Requiring a wide range of practitioners (see part D) to report would enable these difficult cases to be examined by social workers.

Possible risks and issues

50. A mandatory reporting system could, however, also:

- result in an increase in unsubstantiated referrals. Unsubstantiated referrals may unnecessarily increase state intrusion into family life and make it harder to distinguish real cases of abuse and neglect.¹³ Appropriate action may not be taken in every case as a result;
- lead to a diversion of resources from the provision of support and services for actual cases of child abuse and neglect, into assessment and investigation;

¹¹ A closed institution is a setting that has an element of physical containment, such as a boarding school or care home.

¹² Defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

¹³ In 2013-14, South Australia (the first Australian state to introduce mandatory reporting) had over 44,000 referrals. Only 44% of these were ‘screened in’ (accepted) and only 15% were investigated. South Australia is reviewing mandatory reporting.

- result in poorer quality reports as there might be a perverse incentive for all those who may be covered by the duty (from police officers to school caterers) to pass the buck.¹⁴ This might mean the children are less protected than in the current system;
- focus professionals' attention on reporting rather than on improving the quality of interventions wherever they are needed. This might encourage behaviour where reporting is driven by the process rather than focusing on the needs of the child;
- lead to those bound by the duty feeling less able to discuss cases openly for fear of sanctions, hinder recruitment and lead to experienced, capable staff leaving their positions;
- dissuade children from disclosing incidents for fear of being forced into hostile legal proceedings;
- undermine confidentiality for those contemplating disclosure of abuse. Victims may be more reluctant to make disclosures if they know that it will result in a record of their contact being made;¹⁵ and
- have limited impact on further raising awareness of child abuse and neglect given the new Government communications activity, the existing high level of media scrutiny and the work of the Independent Inquiry into Child Sexual Abuse.

51. International comparisons show that the current referral rate in England – 54.8 per 1,000 children in 2014–15¹⁶ – is higher than the rate in the USA – 47.1 per 1,000 children in 2012–13¹⁷ – and Australia – 37.8 per 1,000 children in 2013–14¹⁸ – both of which have mandatory reporting systems.

52. A more detailed analysis of the academic and statistical evidence on mandatory reporting schemes is available at annex D.

The consultation questions relating to this section seek your views about:

- **the extent to which you agree with the possible benefits, risks and issues identified in relation to mandatory reporting;**
- **the extent to which you think that mandatory reporting would improve outcomes for children; and**
- **whether there are possible benefits, risks and issues in relation to mandatory reporting not identified in the consultation document.**

¹⁴ In 1999-2000, New South Wales (a jurisdiction with mandatory reporting) had significantly lower substantiation rates (i.e. reports of children at risk that were later confirmed) than Western Australia (which at the time did not) – 21% against 44%.

¹⁵ <http://www.childrenscommissioner.gov.uk/publications/it-takes-lot-build-trust-recognition-and-telling-developing-earlier-routes-help>

¹⁶ <https://www.gov.uk/government/statistics/characteristics-of-children-in-need-2014-to-2015>

¹⁷ <http://www.acf.hhs.gov/sites/default/files/cb/cm2013.pdf>

¹⁸ <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129550859>

Duty to act in relation to child abuse and neglect

53. The introduction of a duty to act would impose a legal requirement on certain groups, professionals or organisations to take appropriate action where they know or suspect that a child is suffering, or is at risk of suffering, abuse or neglect. This option was developed following consideration of an extension of the existing wilful neglect offences – which apply in relation to healthcare and adult social care – to child abuse and neglect. The duty to act applies the same principles as wilful neglect, but is specifically focused on the protection of children rather than the provision of health and adult social care services. It would cover a broader range of behaviours and practitioners/organisations than wilful neglect and would provide a more comprehensive response to the institutional failures we have seen in Rotherham and elsewhere. The introduction of a new duty would also avoid any unintended consequences of extending the scope of the wilful neglect offence beyond its original purpose (see annex B for further details).
54. Making decisions about what action to take in response to abuse and neglect is not always straightforward. What would be considered to be **appropriate action** under the duty to act would therefore depend on the particular circumstances of each case.¹⁹ Practitioners working with children would be responsible, as they are now, for considering what action is needed to protect them from harm and acting accordingly. The duty to act would make practitioners more accountable for such decisions.
55. Appropriate action may include reporting, but it would not be limited to this. In cases where a report has already been made, for example, the duty to act would require further action to be taken if that was appropriate. This might include sharing information with other agencies – an issue highlighted in a number of Serious Case Reviews – which can help social workers to reassess risk and, if necessary, take further protective action. It might also include providing timely and appropriate help to a child or stepping in to protect a child in a domestic violence incident.
56. Responsibility for taking appropriate action would not be limited to a single point in time, nor would it end when certain steps had been completed. In this way, the duty to act would emphasise the importance of the ongoing relationship between a practitioner and a child. It would reflect the importance of the role practitioners play in each child's life and their ongoing responsibility for ensuring that any action taken has been purposeful, and fully focused on the child's needs; rather than on bureaucratic processes.
57. As the focus of the duty to act would be broader than mandatory reporting, sanctions for breaches would apply differently. Under the duty to act, sanctions for breaches would be focused on cases where there were **reckless reasons for failure to act, or because practitioners and/or organisations were indifferent to the harm, or potential harm, that might be caused**. This means that an individual would have to consciously take a decision not to take action, or take action which was clearly insufficient or inappropriate, in the knowledge that they were not doing the right thing or reckless as to whether they were. The consultation seeks views on the type of sanction that would be most appropriate in these circumstances. These are discussed in more detail in part D and include using existing employer sanctions only or supplementing these with sanctions through the Disclosure and Barring Service or criminal sanctions.

¹⁹ As outlined in the Government's *What to do if you're worried a child is being abused* guidance.

58. In many cases, failures to take appropriate action to protect children will not be deliberate or reckless in nature. Sometimes the reasons might relate to failures of professional practice or because of organisational dysfunction. In cases like these, existing sanctions available to employers or regulators would continue to be available. The introduction of a new statutory duty to act might increase the use of such sanctions by employers and/or regulators.

Possible benefits

59. The introduction of a new duty to act could:

- strengthen the existing mechanisms for ensuring accountability arrangements in the child protection system (see part A);
- aim to increase awareness of the importance of taking action in relation to child abuse and neglect, both by those under a duty to act and the general public; and
- change the behaviour of those covered by the duty by putting in place a clear requirement to take action in relation to child abuse and neglect. This could further clarify the expectations placed on individual practitioners and the organisations that they work for.

Possible risks and issues

60. There are also a number of possible risks and issues that might be relevant to a duty to act. It could:

- result in an increase in unnecessary state intrusion into family life by increasing inappropriate activity throughout the system. In some circumstances this might make it harder to distinguish real cases of abuse and neglect. Appropriate action may not be taken in every case as a result;
- lead to those bound by the duty feeling less able to discuss cases openly for fear of sanctions, hindering recruitment and leading to experienced, capable staff leaving their positions;
- allow scope for those bound by the duty to make incorrect judgements about what action is appropriate in some cases; and
- have limited benefits for further raising awareness of the importance of taking action in relation to child abuse and neglect given the new Government communications activity, the existing high level of media scrutiny and the work of the Independent Inquiry into Child Sexual Abuse.

Mandatory reporting or duty to act: key differences

61. The key differences between a mandatory reporting duty and a duty to act are outlined below:

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)

The consultation questions relating to this section seek your views about:

- the extent to which you agree with the possible benefits, risks and issues identified in relation to a duty to act;
- the extent to which you think that a duty to act would improve outcomes for children; and
- whether there are possible benefits, risks and issues in relation to a duty to act not identified in the consultation document.

Part D: Scope, accountability and sanctions

62. This section sets out the scope of the two potential measures outlined in part C. It considers:

- different options for who should be accountable for failures under either a mandatory reporting duty or a duty to act; and
- what the sanctions could be if a mandatory reporting duty or a duty to act are breached.

What would either new duty cover?

63. Subject to the outcome of the consultation, a new statutory measure could, if introduced, apply to:

- all forms of child abuse and neglect (including online abuse and grooming), because they can all be equally harmful to children;
- both suspected and known child abuse and neglect, because in many high risk cases practitioners will not categorically 'know' that abuse is occurring;
- abuse or neglect encountered during the course of a practitioner's day-to-day role only, because the duty would apply directly to their working context;
- abuse or neglect within the home and within organisations or institutions, e.g. boarding schools or hospitals, because abuse and neglect is harmful to children wherever it occurs;
- present day abuse and neglect only. It would not apply retrospectively; and
- children under 18 only (but the consultation seeks views as to whether a new duty should also apply to vulnerable adults).

When would a new duty apply?

64. If a practitioner had 'reasonable cause to suspect' a child was being abused or neglected, they would be expected to take appropriate action under a duty to act or to make a report under mandatory reporting. This would apply the same level of trigger as is currently used for initiating a local authority child protection investigation under section 47 of the Children Act 1989.

The consultation questions relating to this section seek your views about whether you agree with the broad proposed scope of either potential new duty.

Who would a new duty apply to?

65. Although the scope of either duty could be more broadly or narrowly defined (see annex B), our starting position is that practitioners or organisations who undertake activities which bring them into close and frequent contact with children could be within scope of any new statutory measure. This includes the delivery of **education, childcare, social care and healthcare and law enforcement**. Practitioners or organisations delivering these activities are well placed to recognise risk factors, triggers of concern, and signs of abuse and neglect, as well as protective factors, and are often the first to recognise that the risk of harm to children has

escalated to the point that safeguarding procedures need to be implemented. There are also other activities which may bring practitioners into close, but infrequent contact with children. These activities could also be within scope and include the delivery of **probation services and housing services**.

66. In addition, those at **senior levels within organisations such as local authorities, the health service and the police** could be within scope (e.g. Chief Executives, Directors of Children’s Services, Chief Constables). Even if senior managers are not delivering such activities themselves, but are in purely managerial positions, they should still be held accountable for the activities of their staff. Furthermore, as noted in the Jay Report into child sexual exploitation in Rotherham,²⁰ there were clear and identifiable failures attributable to senior officers in both the local authority and the police service which could have stopped abuse from escalating to the extent that it did.
67. Those in **administrative or other support roles** for practitioners or organisations delivering the activities outlined above could also be within scope. School secretaries, caterers or caretakers, for example, may be in a position to identify and take action in relation to child abuse and neglect because of the nature of their working environment.
68. Table 1 (below) shows how these defined activities would map on to job roles, and how they would relate to organisations. **The table provides the main examples only and is not intended to be exhaustive.**

Table 1

Defined activities	Organisations	Professional roles	Senior managerial and administrative/support roles
Social care	<ul style="list-style-type: none"> Local authorities Schools Care homes Voluntary sector organisations Health organisations (see below) 	<ul style="list-style-type: none"> Social workers Care assistants Care home managers 	
Housing services	<ul style="list-style-type: none"> Local authorities 	<ul style="list-style-type: none"> Housing officers 	
Primary, secondary and further education	<ul style="list-style-type: none"> Schools (maintained schools, independent schools (including academies, free schools)) 16–19 academies, FE colleges and sixth form colleges 	<ul style="list-style-type: none"> Teachers Teaching assistants 	
Early years education and childcare	<ul style="list-style-type: none"> Private, voluntary, independent and maintained sector early years providers (including childminders and children’s centres) 	<ul style="list-style-type: none"> Early years teachers Nursery staff Childminders 	
Emergency services	<ul style="list-style-type: none"> Police forces (including British Transport Police) Fire authorities Ambulance services (NHS trusts) 	<ul style="list-style-type: none"> Police officers Community support officers Fire-fighters Paramedics Civilian police, ambulance and fire service staff 	

²⁰ http://www.rotherham.gov.uk/downloads/file/1407/independent_inquiry_cse_in_rotherham

Defined activities	Organisations	Professional roles
Health care	<ul style="list-style-type: none"> Health organisations (including the NHS England, clinical commissioning groups, NHS trusts and foundation trusts) 	<ul style="list-style-type: none"> GPs Primary care professionals Paediatricians Nurses Midwives Health visitors Paramedics Allied Health Professionals²¹
Probation services	<ul style="list-style-type: none"> National Probation Service (NPS) and Community Rehabilitation Companies (CRCs) 	<ul style="list-style-type: none"> Probation officers

The consultation questions relating to this section seek your views about whether:

- the above activities should all be within scope of a possible new statutory duty; and
- there are other activities that should be within scope.

An individual or organisational requirement – or both?

69. A new duty could apply at an individual or organisational level or both. At an individual level (e.g. the FGM mandatory reporting model), the responsibility for reporting or taking action would rest with practitioners themselves. This would place accountability on the individuals who are likely to identify or know about child abuse. However, given the multi-agency nature of safeguarding and child protection, and that some factors are outside the control of individual practitioners – workload, culture, organisational management – it may not be appropriate, constructive or proportionate to focus on individual failings.
70. An organisational level duty (e.g. the Welsh mandatory reporting model) would recognise that individual failings can be symptomatic of wider organisational issues and failings. It would place the responsibility for complying with the duty at the top of the organisation rather than directly with practitioners themselves. This may, however, weaken the potential impact at an operational level. Alternatively, the duty could apply to both individuals and organisations (e.g. the wilful neglect offences²²). Please see annex B for further details about the models mentioned in this section.

The consultation questions in this section seek your views about whether accountability should rest at an individual level, an organisational level, or both, if a new duty is introduced.

²¹ For example, speech and language therapists, physiotherapists and occupational therapists.

²² See sections 20-25 of the Criminal Justice and Courts Act 2015.

What type of sanction could be appropriate?

71. The consultation seeks views about whether sanctions should apply at an individual level, an organisational level or at both; and which level of sanction would be appropriate. Further detail on the risks and benefits of the possible sanctions are provided at annex C.
72. Sanctions for breach of either of the new statutory measures could be subject to the **existing practitioner and organisation specific sanctions** outlined at annex C. This includes employer and professional regulatory sanctions for individual practitioners and inspection/regulatory and statutory intervention for certain organisations.
73. For practitioners, additional processes involving the **Disclosure and Barring Service (DBS)** could be used. A requirement could be placed on employers to make a report to the DBS where practitioners had failed to comply with a new duty, with an indication of the severity of the breach. Depending on the DBS assessment, additional sanctions could be imposed on individual practitioners. This might, for example, involve placing an individual on a list held by DBS of those who had breached one of the possible new duties. **This could not apply in relation to organisations.**
74. **Criminal sanctions** for breach of either duty could also be possible at both individual and organisational levels. The maximum sentences could vary in their severity, but for both individual practitioners and organisations they could involve **finances**. **Imprisonment** would also be an option for individual practitioners. **Remedial orders**²³ and **publicity orders**²⁴ could be made available for organisations. In certain circumstances an organisation could also be criminally liable without a specific corporate criminal offence through offences targeted at individuals (a fine would be the only sanction available for an organisation in these circumstances).

The consultation questions in this section seek your views about what type of sanction(s) would be appropriate for breaches of a new duty, if one is introduced.

²³ A remedial order would require an organisation to take action to put right the organisational failings that led to a breach of either of the new duties. This could include addressing failures in the organisation's policies, systems or practices.

²⁴ A publicity order would require an organisation to publicise the fact that it had been found guilty of breaching one of the possible new duties and details about the offence. This might be done by publishing a notice in newspapers or on the organisation's website.

Part E: Consultation questions

Please read the accompanying consultation document before you answer the following questions.

The current child protection system

1. To what extent do you agree or disagree with the following statements about the current child protection system?

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
Child protection training for practitioners should be improved so that they are better qualified and able to provide the right help at the right time to keep children safe.						
More needs to be done within the child protection system to encourage new and innovative systems to better protect children.						
Organisations with child protection responsibilities need to work better together.						
Practitioners and organisations with child protection responsibilities sometimes recklessly fail to take proper action (including reporting) to stop or prevent child abuse and neglect.						
Child abuse and neglect is generally under-reported by practitioners involved in children's lives.						

Other measures that could be introduced

It is important to consider fully the consultation materials before answering the questions in this section. In order to inform your answers to these questions, you will need to balance evidence of potential positive impacts of mandatory reporting or a duty to act against possible risks and issues that may be associated with their introduction.

The introduction of a mandatory reporting duty

The following questions seek your views on of the possible introduction of a mandatory reporting duty.

2. To what extent do you agree or disagree with the following statements?

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
Mandatory reporting will generate more reports of suspected and known cases of child abuse and neglect.						
Increased reporting may divert attention from the most serious child abuse and neglect cases.						
Increased reporting could mean that abuse and neglect would be captured at an early point in a child's life.						
Mandatory reporting could have an adverse impact on the child protection system (e.g. impacting recruitment and retention of staff, creating a culture of reporting rather than acting, negatively impacting the serious case review process).						
Mandatory reporting could dissuade victims from disclosing incidents of abuse and reduce 'safe spaces' for children.						
Mandatory reporting could lead to greater prevention and awareness of abuse and neglect.						
The introduction of a mandatory reporting duty would not in itself mean that appropriate action would be taken to protect children.						

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
A mandatory reporting duty would ensure that those best placed to make judgements about whether abuse or neglect is happening – i.e. social workers – do so.						

3. To what extent do you agree that the introduction of a mandatory reporting duty would directly improve outcomes for children?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know

4. Please outline any risks or benefits regarding the introduction of a mandatory reporting duty that haven't been articulated in the consultation.

[Free text box]

The introduction of a duty to act

The following questions seek your views on the possible introduction of a duty to act.

5. To what extent do you agree or disagree with the following statements?

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
A duty to act could strengthen accountability on individuals and organisations in protecting children from abuse and neglect.						
A duty to act could have an adverse impact on the child protection system (e.g. impacting recruitment and retention of staff, and negatively impacting the serious case review process).						
A duty to act on child abuse and neglect would be more likely to lead to better outcomes for children than a duty focused solely on the reporting of child abuse and neglect.						

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
A duty to act allows professionals discretion to decide what action should be taken to best protect children in each case.						
The focus of sanctions for the duty to act on deliberate or reckless failures would ensure that those responsible for the very worst failures in care would be held accountable.						

6. To what extent do you agree that the introduction of a duty to act would directly improve outcomes for children?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know

7. Please outline any risks or benefits regarding the introduction of a duty to act that haven't been articulated in the consultation.

[Free text box]

8. Having considered the issues outlined in the consultation and your answers above, which of the following would be most preferable? Please choose **one** option only.

	Please tick
Allowing the package of reform measures focused on improving how the whole system responds to child abuse and neglect to be implemented before considering the introduction of additional statutory measures.	
The introduction of a mandatory reporting duty focused on increasing the reporting of child abuse and neglect.	
The introduction of a duty to act, focused on taking appropriate action in relation to child abuse and neglect, with sanctions for deliberate and reckless failures.	

Scope, accountability and sanctions

This section is optional and relates only to the possible introduction of a mandatory reporting duty or a duty to act.

9. If a new statutory measure is introduced, do you agree with the following elements of the proposed scope?

A new statutory measure, should, if introduced:

	Please tick
Apply to all forms of child abuse and neglect (including online abuse and grooming).	
Apply to both suspected and known child abuse and neglect.	
Apply to abuse or neglect encountered during the course of a practitioner’s day-to-day role only.	
Apply to abuse or neglect within the home and within organisations or institutions, e.g. boarding schools.	
Apply to present day abuse and neglect only (i.e. it would not apply retrospectively).	
Apply to children under 18 only.	
Be triggered if a practitioner had “reasonable cause to suspect” a child was being abused or neglected, or was likely to be abused or neglected.	

10. If there are aspects of the proposed scope that you disagree with, or you would like to provide further information to support your answer to question 9, please do so here:

[Free text box]

11. If you believe new statutory measures should extend to adults, please provide further information, taking into account the existing wilful neglect offence.

[Free text box]

12. Should the proposed activities outlined in paragraphs 65–68 of the consultation and table 1 be included if a new statutory measure were to be introduced?

Yes/No

13. Please provide your views, noting if any activities listed should be removed, and if there any other activities that should be included.

[Free text box]

14. If a new statutory measure is introduced, where do you think accountability should rest (see paragraphs 69–70 of the consultation)?

	Please tick
At an individual level.	
At an organisational level.	
At both an individual level and an organisational level.	

15. If a new statutory measure is introduced, what do you think the type of sanction should be if it is breached (see paragraphs 71–74 of the consultation)?

	Please tick
Existing practitioner and organisation specific sanctions only.	
Existing practitioner and organisation specific sanctions plus additional sanctions involving the Disclosure and Barring Service (available only at an individual level).	
Existing practitioner and organisation specific sanctions plus criminal sanctions.	

16. Please provide further information about the reasons for your answers to the above questions on scope, accountability and sanctions, if you would like to do so.

[Free text box]

Additional information

17. Please detail any additional information that you feel should be taken into account in this consultation. This could include, but is not limited to:

- the operational impact of introducing a new statutory measure including on small businesses such as nurseries or children’s homes;
- how the new duty should interact with the existing FGM mandatory reporting model; and
- any additional research/evidence not referred to in the consultation document.
- The operational impact of extending either of the statutory measures to vulnerable adults

[Free text box]

