

MANDATORY REPORTING OF CHILD MALTREATMENT

Improving the flow of information about suspected child maltreatment to the responsible authorities is an issue for recurring discussions in all European States both on the political and practical levels. Especially in high profile cases, when the public becomes aware that a child has suffered severe abuse or death, the question arises: could child protection agencies have done more, intervened earlier and put a stop to the maltreatment? Recently, the wave of revelations about past sexual and physical abuse in schools, residential care and in churches across many European countries has sparked debate about the duties of those who knew or ought to have known about the abuse. Mandatory reporting not only to child protection agencies but also to police and criminal justice has been proposed as one response linked to potential legal measures. Its surface attraction is the suggestion that it could lead to better protection for children.

In the evaluation of child protection systems and in political debates about strengthening protection, systems of “mandatory reporting” have been identified as mainstream responses. Comparative research in the Feasibility Study (European Commission, 2010)¹ and in the project “Realising Rights?” (Meysen & Hagemann-White, 2011) found a remarkably wide range of policies and laws on this issue across Europe, from a strict legal duty for all citizens to notify both child protection agencies and the criminal justice system, underpinned by criminal penalties for failing to report, at one end of the scale, to no legal obligations and a duty to maintain confidentiality at the other.

THE MEANINGS OF “MANDATORY”: WHO SHOULD OR COULD REPORT?

When considering duties to report and the flow of information, careful thought is needed on who might be expected or required to inform authorities of their suspicions of child maltreatment.

- All citizens may have a moral or a legal duty to report knowledge of a (possible) crime of violence against a child or suspicions that a child is at risk of harm.
- Professionals in contact with children who recognise signs of abuse may be required to inform authorities so that the competent authorities can undertake protective action or investigation.
- Certain professions, especially in health and social care, may have a legal obligation to professional secrecy or an ethical duty to maintain confidentiality; this can be partially addressed through a clear legal definition of when it is admissible for them to share information, as well as specific clarification on the threshold for reporting.
- Child protection services in some States have a duty to inform the criminal justice system of child maltreatment as a (potential) crime that can be investigated for prosecution.

The rules should pay attention to the differences with respect to the ethical requirements for professional discretion alongside the knowledge and responsibilities among these groups.

WHO SHOULD RECEIVE INFORMATION?

There is an important difference between informing social services or child protection agencies, responsible for ensuring children’s development and welfare, and reporting to the authorities responsible for criminal investigation and prosecution. Each brings the matter to the attention of different professions, and each will set different trains of action into motion.

Sophisticated child protection systems lay the decision to report suspicions to the criminal justice system in the hands of social services. They are considered competent to judge professionally whether prosecution, and possible conviction, for child maltreatment are reconcilable with the child’s best interests. This will function best when staff and training are at a level that ensures careful assessment and timely intervention. Well established cooperation with the criminal justice system seems to be another important factor.

¹ European Commission (2010). Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on violence against women, violence against children and sexual orientation violence. Hagemann-White, C., Kelly, L., Römkens, R., Meysen, T. Brussels: European Commission. http://ec.europa.eu/justice/fundamental-rights/document/index_en.htm

WILL MANDATORY REPORTING OF SUSPECTED CHILD MALTREATMENT PROTECT MORE CHILDREN?

The high expectations often attached to the idea of mandatory reporting are based on the assumption that the flow of information to authorities will increase and improve the chances of timely intervention. This could not be confirmed in our study, even in countries where failure to report is penalised. The frequency with which suspected child maltreatment is brought to the attention of competent authorities, either by ordinary citizens or by professionals, seems to bear little or no relationship to whether there is a mandatory reporting requirement. Thus, provisions for mandatory reporting cannot be considered a necessary component in assessing the quality of national responses to child maltreatment.

There is little evidence that abuse or neglect will be identified more readily where citizens or professionals are under a legal obligation to report suspicions, and indeed, the opposite may be the case. When child care workers, teachers, health care professionals or neighbours associate reporting with potentially negative consequences, they may be deterred from recognising risk of harm. Furthermore, legal obligations to report seem to have little effect when the provision of child protection services is generally weak and is not trusted to take appropriate and/or effective action. Mandatory reporting systems may also be ineffective in contexts where cultural attitudes oppose state intervention into the family.

With or without mandatory reporting, there will be cases in which professionals simply fail to take proper action despite knowledge about (potential) ongoing abuse or neglect. As both approaches cannot rule out the risk of failure to notify, a culture of assigning blame in cases of failed protection should be avoided. Instead of allocating blame for specific mistakes, the system as a whole should be reviewed regularly to identify barriers to more effective and systematic good practice. Research is needed on how to best empower and encourage professionals to follow up on all suspicions and act appropriately.

SELF-REFERRAL AND SELF-SIGNALLING AS QUALITY INDICATORS FOR CHILD PROTECTION SYSTEMS

In the majority of cases identifying child maltreatment is only possible if either the child or a parent is able and willing to disclose the situation. This is most likely to be possible in relationships of trust and confidentiality, encouraged when child protection agencies are perceived as offering help. Assisting parents to change their childrearing practices and to develop emotional and cognitive abilities and skills for non-violent parenting also requires establishing a relationship with professionals they can trust. Alongside regulations that define a duty to report there should be confidential low-threshold services for children and families where the fear of reporting and its consequences does not stand in the way of a search for support; this applies not only but especially to child sexual abuse. The percentage of cases that enter the child protection system via self-referral and self-signalling could be considered a strong indicator of the quality of the system as a whole.

RECOMMENDATIONS FOR POLICY MAKERS AND LEGISLATORS

There are two essential components to an effective reporting system: (1) ensure that confidentiality rules required for certain professionals that work with children do not prevent them from reporting when they have reasonable grounds to suspect abuse or neglect and that the flow of information is necessary to protect the child; (2) encourage any person who knows about or suspects abuse or neglect, in good faith, to inform the competent services of their concern.

Across the many differences among legal and institutional frameworks, it seems that the most effective systems provide and encourage:

- reporting of suspicions to child welfare and child protection agencies, in which trained social workers have the responsibility to decide whether the situation calls for the involvement of the criminal justice system;
- self-referral and self-signalling to relevant authorities;
- easily accessible low-threshold services for children, parents or other carers.

The most important factor for early intervention appears to be that citizens and professionals perceive child protection agencies as trustworthy, committed and competent, and that they have an opportunity to consult with such agencies about their impressions and concerns before taking steps that infringe on the privacy rights of parents and children. Well-functioning structures of cooperation are the foundation for referral of children or families, and clear rules and responsibilities are needed for sharing information between agencies.