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Editorial: Mandatory Reporting of Child Abuse in Ireland: Some Cautionary Comments

Niall McElwee
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Abstract

The last year of the previous Millennium saw the publication of the latest government document on mandatory reporting of child abuse titled the National Guidelines for the Protection and Welfare of Children. This issue has come to dominate the minds of social care workers and child protection and welfare professionals. This editorial is an edited version of research conducted for a conference on child abuse and sexual offences held in Waterford, Ireland.

Mandatory reporting has become a mantra and is now part of a highly politicised debate in this country. It seems to me that mandatory reporting should not be seen as a cure for child abuse, but is, in principle, something to which I subscribe. Nonetheless, we require a fundamental shift in the way we understand childhood and treat children in this country if it has any chance of being effective. We also need more accurate and consistent statistics covering a wide range of data on child abuse, the victims of child abuse and the perpetrators of child abuse.

Introduction:

Taking account of the needs and views of children is problematic, particularly in Ireland where children have been ‘owned’ by their parents and social policy has been directed at the family rather than the individual child (see Sophia’s Story, 1998). There has been a significant amount of literature devoted to exploring child abuse both in academic research and in the media over the past two decades. The 1980’s and 1990’s may be said to be the decades where abuse, in its many forms, reared its head and society was forced to sit up and take notice.¹ One might be forgiven, then, for thinking (a) mandatory reporting of child abuse is a ‘cut and dry issue’ and (b) everyone agrees that abuse of children is a ‘bad thing’. This is not the case. In fact, when it comes to any debate on children and social policy the one thing most systems have in common is that there are significant actors who disagree with each other (McElwee, 1997). For example, a group called VOCAL (Victims of Child Abuse Laws) has been formed to name ‘so called experts who have whipped up hysteria about child sexual abuse’ (see Irish Times 25.6.1996).

To be a child is to be of low status (U.S. Department of Education, 1997) as may be seen by provision for services for children when compared to adults. The rights of the child is still a developing area with the ‘fact’ that a child is an individual recently recognised. Indeed, the United Nations Convention on the Rights of the Child has had to distinguish between four major

¹ Indeed, a cursory search through Internet search engines in February 1999 yielded 3,568 entries in Yahoo Search, 96,725 entries in Alta Vista and 52,235,273 entries in Infoseek when ‘mandatory reporting of child abuse’ was entered.
areas of children's rights; survival, protection, development and participation.

In an Irish context, the influential Task Force Report on Child Care (1980, p. 33) noted that childhood is understood differently depending on what status is conferred by the meaning. For example, a child may leave school at fifteen years of age, but cannot marry until the age of sixteen, cannot vote until the age of eighteen and cannot achieve independent contractual capacity until aged twenty-one years of age. The Report elucidates that the terms 'child' and 'young person' have various meanings in law according to context. Indeed, the Report itself, states that it understands 'child' to mean, a person under fourteen, fifteen, sixteen or seventeen years of age, depending on context (1980, 2.1.2, p. 34 italics throughout my emphasis). The Children Bill, 1996 differentiates between a protection and welfare understanding of childhood and a juvenile justice understanding moving the age up and down accordingly.

Understanding Child Abuse

My experience is when most people hear the term child abuse; they tend to think of sexual abuse rather than physical abuse, emotional abuse or neglect. This was the case when I engaged in a search of the World Wide Web and in the articles in the Irish Times newspaper (the paper of record in this country) over the period 1996-1998. Indeed, an official focus began in Ireland on child abuse only when the Irish Association of Social Workers held a conference on Incest in 1983, just sixteen years ago, from which a number of initiatives were developed.

The total number of cases of child abuse reported to health boards increased almost ten-fold during the 1980's (from 406 cases in 1982 to 3,856 cases in 1991). In 1995, alone, 2,300 cases of child abuse (including emotional, physical and sexual) were confirmed. Between 1986 and 1995 reports of all categories of child abuse increased fivefold. But, statistics are worth further examination. In 1995, there were approximately 5,000 reports of child abuse of which 3,500 were unconfirmed. In some parts of the Eastern Health Board (1998 figures) the rate of substantiation was at 12.7% i.e. only one in eight cases confirmed with 'vagueness' being cited as a main reason for the lack of confirmation in reported cases. In the United States in 1992, nearly two-thirds of allegations of child abuse were unsubstantiated and in Australia the situation is similar (see Administration, 1996).

There is an issue of children's involvement in inflicting child abuse on peers (which may surprise some), but illustrates the complexities in exploring abuse of any kind. For example, in the United States juveniles account for approximately 30% of rapes and between 30% and 60% of child abuse cases (the Irish Times, 19.8.1996). Finally, there is the issue of women abusing children which is a controversial and emotive area.

A Social and Political Climate for Public Inquiries Develops

The litany of cases where blame has focused on child care professionals has entered the public consciousness and we have a number of inquiries stocking library shelves throughout this country. The Jasmine Beckford, Cleveland affair, Pindown scandal, Orkney affair and the Kincora Boys Home in the UK
Mandatory Reporting of Child Abuse: Conflicting Sides of the Divide

Mandatory reporting of child abuse involves a mandatory investigation of an alleged abuse followed by mandatory adjudication concluded by a mandatory consequence. An immediate problem presents itself when attempting any discussion on mandatory reporting of child abuse. As with childhood itself, the understanding of child abuse (with various emphases on physical abuse, sexual abuse, emotional abuse and neglect) differs, sometimes considerably, depending on where one looks around the world. In 1983, 'Non-Accidental Injury Guidelines' were published by the (Irish) Department of Health. The Irish Guidelines on Procedures for the Identification, Investigation and Management of Child Abuse (1987) was a vast improvement on its 1983 predecessor and defined child abuse as:

Parents, carers, (i.e. persons who while not parents have actual responsibility for a child) or others can harm children either by direct acts or by a failure to provide proper care, or both. Such acts include physical injuries, severe neglect, and sexual and emotional abuse.

The 1989 Law Reform Commission concluded mandatory reporting ‘may, on balance, do more harm than good’ and by June 1996, the Department of Health had received over 150 submissions from around the country making ‘a very strong case for both sides’ (Irish Times, 20.6.1996). The Reporting of Child Abuse – The Contribution of Mandatory Reporting forum held in September 1996 had representation from over 400 delegates across the caring professions. A consensus emerged that ‘key areas of child protection should be changed before the
The introduction of mandatory reporting (Irish Times, 17.9.1996). Two years later Minister Fahey was quoted in the Irish Times of 17.1.1998 as saying, "There are genuine fears that mandatory reporting could lead to less cases of child abuse being reported, for example it could be counter-productive". He was roundly criticised for articulating such caution, but he is not alone in this opinion.

Crenshaw et al (1994) surveyed mental health practitioners and found strong support for mandatory reporting as opposed to other ways of dealing with child abuse despite the number of unsubstantiated cases. Fruniss (1996, p. 118) argues that mandatory reporting has become both problematic and a victim of its own success by identifying abused children much more effectively than other systems. By the early 1990's, the UK had 4 in every 1,000 children placed on child protection registers.

Mandatory reporting should concentrate the minds of those in government to provide services, as the experience internationally is that both mandatory reporting and quasi-mandatory reporting yield high rates of child abuse reports. To take the case of North America, there are an estimated 15 million children ‘at risk’ with 3 children dying on a daily basis (McElwee, 1998). The country had approximately 2,900,000 child abuse reports in 1992 alone of which approximately 40% were unproven (O’Tighearnaigh, 1996).

Kieran McGrath pointed out in a 1998 editorial in the Irish Social Worker that the Irish government had, by this stage, entertained two policy U-turns on mandatory reporting. In terms of social work practitioners who bear the brunt of the responsibility for work in this area, McGrath (1998) noted 'the vast majority of social workers saw this as a victory for professional wisdom over bureaucratic wisdom'.

It is worth noting that a decade prior to this politicisation of child abuse, 60% of all reported cases in a five year period (1982-1987) were recorded as coming from professional sources (Ferguson, 1995) so professionals were not inactive. Of course, proponents of mandatory reporting have asked, what about the other 40%? There is, however, the point that professionals should be reporting alleged abuse anyway, and legal emphasis merely proceduralises a process that should be considered 'good practice' in this first place. An analysis of the Irish Times newspaper shows that there was significant room given to those not advocating mandatory reporting with a range of opinions expressed. I include a selection in the appendix section:

The Professional Players

It is a cause for concern that various professional and voluntary bodies have ended up on opposing sides in this particular debate. The Rape Crisis Centre, Barnardos and the Irish Society for the Prevention of Cruelty to Children all favour the immediate introduction of mandatory reporting, whilst the Irish Association of Care Workers and the Irish Association of Social Workers oppose it. All agree that they want 'a powerful message to be

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2 In this country, the Putting Children First (DOH, 1996) suggests, ‘the number of unsubstantiated cases has risen from 35% in 1976 to 65% in 1992.'

3 The complete analysis was presented at the Conference of Child Abuse and Sexual Offences in Waterford, Ireland and is available at the Centre for Social Care Research at the Waterford Institute of Technology.
sent out to abusers', but they disagree as to how this might be brought about in practice.

The debate has been heated. Early on, the ISPCC accused the Department of Health of 'spreading misinformation about mandatory reporting' (Irish Times 10.6.1996) and published its own position document entitled Another Brick From the Wall. The ISPCC claim that the government's failure to introduce mandatory reporting was:

'Symptomatic of a childcare culture which identifies adults rather than children as its primary clients, a system which is still in denial and operating in a defensive, ineffective and secret way' (Irish Times, 10.6.1996).

In an address to a Department of Health seminar in September 1996, Cian O’Tighearnaigh (the chief executive of the ISPCC) stated, 'The ISPCC are not aware of a single sustainable child centred argument against the introduction of mandatory reporting' (1996, p. 96). He suggests many critics of mandatory reporting are interested in maintaining 'existing practice and political complacency'. O’Tighearnaigh suggested that the problem in Ireland is one of under reporting rather than over reporting (child abuse reports for 4.5% of the U.S. child population as compared to 0.5% in Ireland). In light of recent developments within the ISPCC, it seems bitterly ironic that he goes on to say, "A report is not an allegation. Nor is a reporter an investigator, judge or jury" (1996, p. 98).

Health Board Response

Health Boards are currently spending more than 80% of their resources on dealing with abuse and neglect rather than on preventive services. It is well accepted that child protection and welfare practice has become proceduralised, legalised and defensive in orientation over the past decade and this is painful for all concerned – professionals and clients.

Individual Health Boards tend to respond individually to collective decisions made at Department of Health and Children headquarters in Hawkins House, Dublin. Some Health Boards are better resourced than others (per capita) and some Health Boards are more politicised than others are. It is true 900 additional child protection staff have been employed since 1992 in a range of areas, but we need more. A concern raised by Ferguson (1996, p. 18) is that, 'the management of child abuse and the culture of Irish child protection became inseparable from the culture of the health boards, the Irish State and the system principles on which policy traditionally developed'. What guarantees do we have that there will be a co-ordinated response between the eight health boards? (see Kenny, 1995; Clarke (1996).

Rather than focusing on individual actors within the Health Boards (as has been the case in some sections of the media), I suggest it would be more pertinent to challenge government resourcing for child protection and welfare. Resources will determine the success or failure of mandatory reporting more than anything else and will enable best practice amongst professionals to be independently evaluated.
Conclusion

I am continually asked by students on social care (child and youth care) courses, did child abuse always exist? This is an interesting question from a philosophical viewpoint as well as a practical one in terms of (re)frame care workers work ethics. Both Finkelhor (1992) and Lalor (1998) suggest child sexual abuse went unnoticed for centuries and only by highlighting it can we undo the consequences of its invisibility. In this process an informed public awareness is essential.

Mandatory reporting of child abuse has to be seen as part of a wider strategy enabling and facilitating children’s participation in social and political life. Children and young people deserve to be heard as individuals in their own right, not as something they might eventually become – adults. A word of caution. It has been said to me on my visits to social care placements around Ireland, what is the point in reporting alleged or suspected abuse if nothing can be done? If I have learned anything from the last eight years researching children ‘at risk’, it is that we should not promise children something we cannot deliver. We should not raise children’s expectations when we know that in our hearts we will fail them. We must ensure child abuse, in all four categories, stays on the political agenda of all parties.

The recently published ‘Sophia’s Story’, is a heartbreaking read and there are several lessons we can learn from it. A clear message is that the McColgan children despaired of the professionals (adults) who entered and exited their lives and still the officially documented abuse continued. One of the chapters entitled, ‘Trapped in a System’, elaborates on this point. It documents the family’s total of 392 contacts with the North Western Health Board between 1977-1993. Sophia continually searches for a reason the abuse continued despite the intervention of various professionals. The very last line in the book speaks volumes. “There was a lot of flurry and after that, nothing”, said Sophia. “A big zero”.

Mandatory reporting will, at the very least, politicise child abuse and will document children’s experiences. In the context of this editorial, it is unsurprising that Sophia’s Story is on the best seller list as it subscribes to the public appetite for scandal and a climate of moral panic. The media has played a key role in bringing institutional and individual child abuse into the public domain, but we should not have to rely on the media to do the work of the State.

My analysis of the Irish Times newspaper ultimately comes down on the side of mandatory reporting of child abuse:

‘Ample evidence exists that guidelines for professionals do not work, did not work in the past and will not ever work... Mandatory reporting of child sexual abuse will be one important step towards accountability (Irish Times, 5.2.1998).

Two days later, the editorial notes, ‘those arguing against mandatory reporting have an increasingly difficult position to sustain (Irish Times, 7.2.1998). All things considered, I cannot disagree in principle, but I am left wondering what will the relevant authorities do to ensure every alleged case gets pursued to a satisfactory result? Two years ago (1998), the Eastern Health Board admitted it had 1,000 cases of child abuse waiting to be processed. Here in the South-Eastern Health Board area, for
example, there was a 14.5% increase in notifications of all types of abuse over 1996, with a 33.2% increase in child sexual abuse notifications (see appendix three). The SEHB Review of 1997 suggests:

...These figures taken together suggest a service that is operating beyond capacity as a result of which emphasis is on emergency responses rather than on formal procedural requirements (SEHB, 1998, p. 45).

Perhaps the greatest irony in child protection and welfare is the idea that children ‘at risk’ of abuse can be reached in time, as professional practice has evolved so much over the past few decades. The greatest tragedy is that we cannot even guarantee the safety of children ‘at risk’ whom we have removed from abusive environments. We have seen this from the high-profile cases of child abuse over the past two decades in an increasingly de-institutionalised, liberalised and distrustful society. At a recent conference on child protection and welfare in Scotland where we ‘experts’ yet again debated child care strategy, I visited the birthplace of Robert Louis Stevenson and read an inscription on a card there, ‘To travel hopefully is a better thing than to arrive’. In the context of mandatory reporting of child abuse, the quote seems apt.

Appendix One: The Protections for Persons Reporting Child Abuse Act 1998

This Act came into operation at the end of January 1999. The Act provides immunity from civil liability to any person ‘who reports child abuse reasonably and in good faith’. Importantly, one of the provisions of the Act is the protection of those who report suspected child abuse from being penalised by their employers. In terms of protecting the innocent, the Act makes provision for false reporting of child abuse by imposing a fine of up to £15,000 imprisonment of up to three years and/or both. To whom does one report?

Social Workers
Child Care workers
All Health Board Medical and Dental personnel
All Health Board Nursing personnel
Psychologists
Physiotherapists
Radiographers
Occupational therapists
Health Education Officers
Substance Abuse Counsellors
Care Assistants
Appendix Two: Child Abuse Notifications to SEHB 1997 (Waterford Statistics)

<table>
<thead>
<tr>
<th>Regional Total</th>
<th>Waterford</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Notifications Received</td>
<td>413</td>
</tr>
<tr>
<td>Types of Abuse</td>
<td></td>
</tr>
<tr>
<td>Physical</td>
<td>99</td>
</tr>
<tr>
<td>Sexual</td>
<td>152</td>
</tr>
<tr>
<td>Emotional Neglect</td>
<td>41</td>
</tr>
<tr>
<td>Neglect</td>
<td>121</td>
</tr>
<tr>
<td>Notifications to Gardai</td>
<td></td>
</tr>
<tr>
<td>Physical</td>
<td>39</td>
</tr>
<tr>
<td>Sexual</td>
<td>78</td>
</tr>
<tr>
<td>Emotional</td>
<td>7</td>
</tr>
<tr>
<td>Neglect</td>
<td>18</td>
</tr>
<tr>
<td>Notifications From Gardai</td>
<td></td>
</tr>
<tr>
<td>Physical</td>
<td>9</td>
</tr>
<tr>
<td>Sexual</td>
<td>26</td>
</tr>
<tr>
<td>Emotional</td>
<td>20</td>
</tr>
<tr>
<td>Neglect</td>
<td>17</td>
</tr>
<tr>
<td>No. Case Conferences Held</td>
<td>62</td>
</tr>
<tr>
<td>Court Orders - Applications</td>
<td></td>
</tr>
<tr>
<td>Emergency Order</td>
<td>5</td>
</tr>
<tr>
<td>Interim Order</td>
<td>10</td>
</tr>
<tr>
<td>Care Order</td>
<td>6</td>
</tr>
<tr>
<td>Supervision Order</td>
<td>7</td>
</tr>
</tbody>
</table>

Extrapolated from SEHB Review of Child Care and Family Services 1998

Appendix 3: Selection of Comments Anti Mandatory Reporting in The Irish Times 1996-1998

*‘Swamping the system with referrals’*
*‘It will divert resources away from treatment and support of confirmed cases’*
*‘It will drive cases underground’*
*‘It will erode professional autonomy and discretion’*
*‘It will lead to unnecessary distress among innocent people’*
*‘It involves forcing people to do what they should do anyway’*
*‘Professionals... may have little understanding of the implications of abuse’*
*‘They, literally may not know what to do’*
*‘There is the fear of legal liability’*
*‘The fear of disgruntled family members’*
*‘The fear of looking foolish if their concerns prove unfounded’*
*‘Lack of confidence that the “system” will respond helpfully’*
*‘Reporting will inevitably land the child and themselves in court’*
*‘Mandatory reporting ...will result in widespread implications of guilt unless proven otherwise’*
*‘The definition of abuse is arbitrary and subjective’*
*‘What constitutes child abuse?’*
*‘Should she...statutorily report all such parents on first offence?’*
*‘The sad truth of Ireland 1996 is that many children are reared in situations that render them at risk of abuse or neglect’*
*‘Children may not lie, but they are very capable of repeating lies fed to them by one or other parent’*
*‘Mandatory reporting will employ battalions of social workers, demand caseloads of data collection, involve Gardai in...’*
numerous domestic squabbles and require counsellors galore to calm the falsely accused.

* ‘Generally about a third of the reported cases of abuse were confirmed’

* ‘It was not possible to provide a quality service in the social welfare system if quantity is the prime mover’

* ‘Gardai need more training and better liaison with health board workers to help them deal with child abuse cases’

* ‘So called experts who have whipped up hysteria about child sexual abuse will be named and held up to public scrutiny’

* ‘Services would have to be place to deal quickly and effectively with abuse reports’

* ‘Young people would be less likely to confide in teachers’.

References and Further Reading


Irish Times 19.8.1996
Irish Times 17.1.1998
Irish Times 22.1.1998
Irish Times 5.2.1998
Irish Times 7.2.1998


