

Mandate Now – Written evidence (NPS0161)

Submission to:

The House of Lords Sport and Recreation Committee

Is safeguarding in sport fit for purpose?

About Mandate Now

Mandate Now is a pressure group that leads the agenda for the introduction of well-designed Mandatory Reporting ("MR") of suspected and known child abuse by Regulated Activities ("RA"). With additional components, significant improvement will be made to safeguarding children in institutional settings, including sport, in England and Wales.

The genesis of Mandate Now was a meeting with senior civil servants at the Department for Education in April 2005 when it became apparent that the safeguarding framework applied to education and other settings where children are in the care of adults other than their parents, was incapable of delivering reliability.

In December 2013 Mandate Now became a visible entity following the final criminal trial of two former teachers at Caldicott School. The sexual abuse perpetrated on pupils by these men centred on the boys in the 1st XV rugby team and 1st XI cricket. It was the subject of a documentary titled '[Chosen](#)' broadcast on Channel 4 in 2008. It won the BAFTA for best single documentary. Tom Perry, the founder of Mandate Now, was captain of both teams. Several former pupils represented their country in these sports.

Mandate Now is privately funded and fortunate to have dedicated people who coalesce around our objectives. These include solicitors, barristers, several politicians, employees involved in different aspects of safeguarding, academics, and others.

Is safeguarding in sport fit for purpose?

1. Sport is a Petri dish for those with an unhealthy interest in the young. It provides the key ingredients of power, opportunity, and secrecy all contained in a target rich setting. Sports costume can be a further attraction.
2. Following the evidence given to the committee on 28 April 2021, Mandate Now wrote to Lord Knight regarding his question to the witnesses about the safeguarding framework:

"why do Government not do more on this when it looks like a 'win win' for them?"

3. No answer was forthcoming. Few in safeguarding explore the politics of the subject. They are too busy trying to deliver safeguarding as best they can with the available tools and resources, in the belief that Government would not provide anything that is structurally dysfunctional. Lord Knight's question is at the root of the safeguarding shortcomings that exist in sport and all other '[Regulated Activities](#)' ("RA") which include schools, healthcare and faith settings, taxi firms and many more.
4. The absence of a well-designed Mandatory Reporting law that requires an adult working in a position of trust in a Regulated Activity to refer known or suspected child abuse on reasonable grounds to the Local Authority Designated Officer ("LADO"), is at the heart of the safeguarding shortcomings in these complex institutional settings. [England and Wales are outliers in not having MR.](#)
5. [It was not until 21 July 2016 that Government first admitted publicly that no law to report child abuse existed.](#) This occurred thanks to [Baroness Walmsley \(LD\) tabling Amendment 43 to introduce "MR" for Regulated Activities](#) during the passage of the Serious Crimes Bill (28 October 2014). In the face of strong support from peers, the Government committed to a thirteen-week public consultation.
6. The long-delayed consultation was finally launched on the last day of Parliament 21 July 2016 and closed when Parliament was again in recess for the conference season. [The publicity announcing the launch was designed to strike fear into consultees](#) and was untrue.
7. In April 2016, four months before the consultation began, the journal Child Abuse and Neglect published a paper '[Impact of a new mandatory reporting law on reporting and identification of child sexual abuse : A seven year time trend analysis.](#)' The jurisdiction was Western Australia which was the last State to introduce MR in 2009. The article was by [Professor Ben Mathews](#) the pre-eminent academic on law applied to safeguarding. It and other relevant academic papers on MR were omitted from consultation documents.
8. 'REPORTING AND ACTING ON CHILD ABUSE AND NEGLECT' was designed to achieve one outcome – no change. [Importantly no sports organisation made a submission to the consultation.](#) An FOI request provided us (after our

appeal to the Information Commissioner) with all the submissions which mostly echoed the Government's script. Is sport merely paying lip service to safeguarding? Why else would not a single submission have been made by a sports organisation or National Governing body?

9. At one time all Australian States, Canada and the USA had essentially the same or similar safeguarding model as the UK for their equivalents of Regulated Activities. But since 1967 all jurisdictions in these countries have gradually adopted MR because it is such a **key component** of functioning safeguarding. Well-designed MR delivers clarity to safeguarding which simply does not exist in England and Wales.
10. In late 2008 Sir Roger Singleton, the former CEO of Barnardo's, was commissioned to undertake a review of safeguarding in Independent Schools which was sensibly extended to include all schools. Coincidentally, this followed the broadcast of 'Chosen'. Sir Roger described the statutory framework in "Keeping our School Safe"¹ in the following terms:

"Governors, headteachers, currently have to find their way through thicket of statutory regulations which carries with it a risk of confusion, mistake and non-compliance."

11. All RAs (including those in sport) operate under the same framework and experience the same challenge. In an email to Mandate Now in 2009, Dr Caroline Keenan – co-author of the seminal book: *Child Abuse: law and policy across boundaries* (2008) described the framework in these terms:
 - *It is a patchwork of different types of law often created as a specific reaction to a particular scandal. It has no cohesion and can be contradictory. It is, for want of a better description, the Dangerous Dogs Act writ large.*
 - *It is unwieldy. There are hundreds of different rules in different places.*²
12. No structural improvements have since occurred to safeguarding by Regulated Activities, as the **Independent Inquiry into Child Sexual Abuse** has discovered during its hearings. The absence of MR causes immense shortcomings in safeguarding in these complex and strategically important settings which can so positively contribute to safeguarding all children if suitably equipped.
13. As Dr Keenan's email to Mandate Now² reveals, a most important aspect of well-designed MR is that it supports good personnel and provides legal immunity should a referral (made in good faith) not be made out in law. MR also gets everyone in the organisation facing in the same direction and it is a disruptor to anyone with an unhealthy interest in the young. It dismays us that on the one hand there is mandated reporting of money laundering under the '[Proceeds of Crime Act 2002 – s.330](#)' with a potential jail

¹ <http://mandatenow.org.uk/wp-content/uploads/2019/06/Keeping-Our-School-Safe-Singleton-Review.pdf>

² <http://mandatenow.org.uk/wp-content/uploads/2020/08/Keenan-extract-MR-seminar-submission-EDIT.png>

sentence for anyone in financial services, including lawyers, for failing to report. Yet reporting child abuse is discretionary. We give better protections to money than to children.

14. We continue to read the outcomes of 'independent' safeguarding inquiries commissioned by umbrella organisations of the clubs in which systemic and systematic child abuse occurred. The next will be the Whyte Review into gymnastics. In MR jurisdictions such reviews are rare – the statutory agencies are involved at the outset because of the mandate to report. The FA's report into abuse in football is dominated by recommendations that call for 'better training' and better communication which are little more than safeguarding clichés.
15. Sheldon said nothing about the statutory framework and how it may or may not have contributed to the failure of safeguarding in football. He certainly could have, the terms of reference permitted it. Mandate Now provided evidence in person to Mr Sheldon which included data on how safeguarding is hampered by the Government's trenchant resistance to well-designed MR and the improvements that stem from it.
16. The key question to ask of Sheldon's recommendations is this: How much training will it take to change the behaviour of someone who knows how to report abuse, knows they should report abuse, but chooses not to?
17. Understandable fear is the most common problem, worrying 'what if I'm wrong?' A reporter is a 'whistle-blower' without any legal protection. [PIDA doesn't assist](#). Whistle-blowers are people forced to go rogue to do the right thing and for some RAs such as education and healthcare it is 'professional expectation'. For many, fear trumps professional expectation. And everyone has heard of whistle-blowers being 'got rid of.' [Here's a chilling example from a Regulated Activity on BBC Radio 5Live \(2013\)](#). This is the current foundation of safeguarding in RAs in England and Wales. It has the appearance of having been designed to fail, and it is achieving that end.
18. When a 'discretionary' referral is made it is not a neutral act, not least because of the high bar in 'guidance' before a referral 'should' be made. [Richard Scorer explained in his closing argument during the IICSA Residential Schools Hearing citing abuse perpetrated on more than thirty primary school children by Nigel Leat over fifteen years at Hillside First School in Weston-Super-Mare \(highlighted section\)](#). Eleven reports were made to the Head of the school who referred none to the Local Authority. A further nineteen incidents were never referred to either the Head or to the Local Authority by teachers as 'professional standards' expect. With a statutory obligation to report known or suspected abuse a referral is a neutral act.
19. [In an article in The Athletic on 17 May 2021](#), David Ornstein informed readers of the news that Bennell was identified as a potential offender even before he entered professional football. Manchester Schools Football Association (MSFA) in 1975 barred him from school grounds and schoolboy games. He was not a teacher and therefore could not be reported by MSFA

to the Teacher Misconduct Section at the DfE (the forerunner of the DBS, operating exclusively in education). MR did not exist in England and still does not. But what might have happened had it existed given his involvement in schools' **football** which is a RA? Children would have been protected, subsequent crimes prevented and an immense and continuing cost to the public purse would have been avoided.

Reasons why the dysfunctional safeguarding framework exists

20. The design of the safeguarding framework is dominated by social work practice which is itself dominated by considerations of neglect and abuse in the family. It is then misapplied to complex institutional settings which have entirely different demands. Whilst well-designed MR law cannot possibly work in families and neither do we seek it, it is a vital 'component' of functioning safeguarding in RAs. Social workers neither design nor deliver safeguarding in schools, faith settings, sport, healthcare etc. They become involved when a referral from an RA is received by Local Authority or the LADO or when advice is being sought by an RA from the LADO. [Here is an email from Mandate Now to Professor Mathews](#) expressing our concern about the influence of social work practice on Regulated Activity safeguarding. His reply is [here](#).

"Why doesn't the Government do more - it looks like a 'win win' for them?" – Lord Knight

21. The Government's response to well-designed mandatory reporting is:
 - a. an irrational and exaggerated fear of cost increases for MR
 - b. a fear of capacity shortcomings in the relevant agencies.

The latter has some merit because of the impact of austerity measures on the agencies involved in safeguarding and the fact that prisons are full ([March 2021 précised prison occupancy data](#)). But Government provides no evidence to underpin its reasons. In any case, these are short-term considerations. The Australian experience (as described by Mathews) is that after an initial surge, reports gradually trend towards a lower level. This presumably reflects a reduced underlying incidence of offending as potential abusers are deterred.

22. MR law is not 'off the peg'. There are many possible versions of 'Mandatory Reporting' some of which do not function effectively or at all. In its submission to REPORTING AND ACTING ON CHILD ABUSE AND NEGLECT consultation, the NSPCC decided to embrace the Government's unique proposal for 'Duty to Act.' We reviewed the NSPCC submission in this article: [Government Secures NSPCC Support for Child Protection Proposal Designed to Fail](#). Conclusions are in bullet point format at the top of the page. The proposal is incoherent and neither Government nor the NSPCC produced any peer-reviewed evidence or precedent to support it.
23. On 2 March 2015 we published an article '[Successive Governments flee Mandatory Reporting for reasons other than safeguarding](#)'. It is data rich and includes a letter from the Rt Hon Michael Gove to my MP (Dame Cheryl

Gillan decd.). It underpins our assertion about Government’s irrational fear of capacity which helps address Lord Knight’s question.

24. Meanwhile, Government spent a fortune running an [18 month advertising campaign on independent radio stations nationwide throughout 2019/20 calling for more referrals](#) so it could say England receives more referrals than Australia ‘which is a Mandatory Reporting jurisdiction.’ Sport was mentioned in the advertisements which had the strapline ‘*if you think it, report it.*’ The low referral bar presented in the advert is in stark contrast to the written ‘guidelines’ for RAs.
25. But the number of referrals is not the only issue, the quality of them is critically important. Referrals made by professionals in receipt of accredited training and supported by MR are strikingly better than those from the public. viz: following the extension of [MR to education in New South Wales in 1987, Lamond was commissioned examine the resulting data.](#)

In brief:

- **Teachers’ referrals rose from 11.1% to 15.8% of total**
- *There was a decrease in public referrals from 52.1% to 46.9%*
- **Teachers detected type of abuse in 54% of cases**
- *Public detections by type 36.8% - 37.9%*
- **Teachers detected some form of abuse in 67% of cases**
- *Public some type of abuse 47.5% - 50.1%*

26. The impact of MR in NSW education was immediate. **This is repeated in each RA to which well-designed MR is introduced:**

NSW data: 1987 MR by teachers of sexual abuse

Teachers’ reports in 3 month period <u>before</u> mandatory reporting, by type and outcome				
	Reports	Substantiated (same; or different, type as suspected: subtotal)	Not substantiated	Substantiation rate
Sexual abuse	98	(62;7): 69	29	70.4%
Teachers’ reports in 3 month period <u>after</u> mandatory reporting, by type and outcome				
	Reports	Substantiated (same; or different, type as suspected: subtotal)	Not substantiated	Substantiation rate
Sexual abuse	286	(165;23): 189	85	68.8%

27. In the graphic, please note the before/after ‘substantiation’ rates. Those who oppose MR often claim that MR will prompt so many spurious referrals that it will stop ‘genuine cases’ reaching the attention of the local authority. The data above from Lamond shows that this claim is mistaken, and

Government has never provided evidence to support its assertion. [The letter from Mr Gove is an example](#). The topic of substantiations is complex and has prompted several [academic articles](#). Those not well-acquainted with safeguarding mistakenly use substantiations as a weapon against MR. It merely underlines a commentator's absence of knowledge.

28. Quantitative evidence supporting the retention of 'discretionary reporting' of suspected and known abuse by Regulated Activities in England and Wales does not exist.
29. The Disclosure and Barring Service was introduced in the Safeguarding Vulnerable Groups Act 2006 by the Labour Government and amended in 2012 by the Coalition in the Protection of Freedoms Act. It was significantly weakened. Two sporting peers spoke out about some of the problems that were being introduced in the bill – Baroness Rachael Heyhoe Flint (decd) and one of your committee members Baroness Grey-Thompson – [extracts are here](#). More recently Baroness Grey-Thompson in the Queen's Speech Debate on 11 May 2021 said she "[sought the introduction of mandatory reporting.....](#)"
30. Ironically, a referral to the Disclosure and Barring Service in prescribed circumstances is mandatory and no one complains. Failure to provide prescribed referrals is a criminal offence delivered through a summary conviction and a fine to level 5. But no one has ever been prosecuted for failing to make a referral despite there being known examples of it happening.
31. Shortly before Dr Suzanne Smith, Director of Safeguarding at the Disclosure and Barring Service, was due to give evidence in the Residential Schools strand at IICSA, [Mandate Now wrote to Professor Jay about DBS shortcomings and cited football and sport throughout the letter](#). Sports organisations face a particular challenge with potential failure to make a mandated referral to DBS as the letter explains. The real-life consequences of breaking the law and recycling perpetrators are significant and the letter provides an example. [Parts of our letter were used to question Dr Smith](#). The absence of prosecutions for failure to return referrals to the DBS is a serious concern for Regulated Activities which perform safety critical roles involving children. Such laxity would never be tolerated in the aviation industry. Why is it in child safeguarding?
32. Mandate Now recently [wrote to the Rt Hon Baroness Berridge](#), Parliamentary Under Secretary of State for the School System at the Department for Education, about Ampleforth College being put under a restriction. The letter raises several matters which are equally relevant to sporting RAs. We have highlighted the relevant passages to assist the Committee.

The Political Parties.

33. The Lib Dems adopted well-designed mandatory reporting as [party policy in 2014](#). Labour had MR in its manifesto in 2015 but sadly its proposal ([tabled via NC17 during the passage of the serious Crimes Bill](#)) was not MR.

Mandate Now met Yvette Cooper a few days later to explain why. Interestingly the Labour Government introduced MR to Northern Ireland following the peer-on-peer abuse scandal at Cabin Hill School Belfast. Barry Gardner MP, then a junior minister to NI used blunt anti-terrorist legislation in the [Criminal Law Act \(Northern Ireland\) 1967](#) which provides for a criminal offence of failing to disclose an arrestable offence to the police. Gardner applied it to the largest Regulated Activity (education) with rigour. The prescriptive safeguarding policy was extremely good. On assuming power, the Coalition dropped it in 2010.

What should law look like?

34. [Here is our submission to the consultation.](#) For convenience [this is our legislative proposal which varies from Amendment 43](#) as a result of practice development, evidence and data. Precedent for this model exists in multiple common law jurisdictions.

Mandatory Reporting seminars IICSA in 2018 and 2019

35. We successfully lobbied IICSA for Professor Ben Mathews to contribute in person to the MR seminars held by the inquiry. Few in England and Wales have much understanding of the subject. Here are his slides.
- [Mandatory reporting laws and child sexual abuse.](#)
 - [The impact of mandatory reporting laws in Australia - results of five different empirical studies into mandatory reporting of child sexual abuse at national and state levels.](#)
36. From our website: ['It's inconceivable IICSA will not recommend well-designed mandatory reporting but must we wait until 2022?'](#) The article contains a link to the IICSA MR webinars which include Mathews' presentations and transcripts over the two days. The Mathews presentations are first up on Day 1.

24 May 2021