Labour Response to the Consultation on 'Reporting and Acting on Child Abuse and Neglect'

1. Summary

In the Labour Manifesto 2015 we committed to, *'introduce mandatory reporting of child abuse'*. We have therefore focussed our response on how the mandate should be introduced. We have set out the pre-conditions, which we know from the responses we have received to be essential.

The Consultation offered an alternative to a compulsory Duty to Report. This broader Duty to Act included a voluntary option to report based on professional judgment. We do not support a voluntary reporting option. There is already a choice in existing law as to whether or not to report. The under reporting of child abuse would not be aided by a duplicate voluntary option.

The Duty to Report will strengthen the protection of professionals when making complex judgements about reporting child abuse and neglect to qualified and experienced social workers. While we were told sanctions should include a criminal penalty this was for reporters who deliberately and recklessly failed to report abuse or neglect. Evidence is clear that such a penalty has very rarely been used in jurisdictions with mandatory reporting. All reports made in good faith should be protected from civil and criminal sanctions.

The Duties in the consultation should not have been presented as alternatives. We reframe the Duty to Act in this response. It should focus on preventing children at risk suffering abuse or neglect. They are children in need of services and should not have to wait until matters deteriorate before they receive them. The pathway from report to a child's needs being met will depend on the analysis by the recipient of the report, who must be a suitably qualified and experienced social worker. The analysis must include the scope to provide supportive and preventive services to a child in need of protection from the risk of significant harm and/or neglect. The Duty to Report should therefore result in either preventive, early interventions or in enquiries as expected under S 47 Children Act 1989 unless no further action is required.

2. Context

The context in which a mandatory reporting duty is introduced informs how that duty is introduced. The current context is of overworked and stressed staff both those expected to report and the proposed recipients; a lack of available, high quality and accredited training and a lack of overall capacity in the system to make the immediate introduction of a mandate to report viable.

The years of 'austerity' led by the Coalition and Cameron Governments have left local authorities with insufficient capacity to ensure little more than their statutory duties are met.

Deeply concerning is the recent attempt by Government to remove the statutory protections for children at risk of abuse and neglect and those in care, if asked to do so by a well-meaning local authority wanting to innovate. The scope for innovation within the law already exists (Localism Act 2011). Allowing innovation outside the law is unacceptable. To go down this road would be the antithesis of strengthening the

law to protect children as is intended by the introduction of a mandate to report and our reframed Duty to Act.

If the Government really means its headline 'Putting Children First' it must invest in local delivery. This does not mean wasting public funds through allowing new providers into this 'marketplace' who will strip children's services further by diverting funds into profit lines. Crippling local authority and other public service provision cannot continue.

Austerity, marketisation and deregulation have to be replaced by investment plus clarity, on reporting and action.

3. Detailed response

3.1 Duty to Act

Already in place is S47 Children Act 1989 is a Duty to Act where the local authority, as a result of enquiries concludes that they *'should take action to safeguard or promote the child's welfare they shall take that action*'

S10 Children Act 2004 developed the matter of 'action' further by setting out that 'relevant partners' , ' *MUST make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children'* . Such partners' *MAY provide staff, goods, services, accommodation or other resources'*

Experts state that a further Duty to Act is needed to strengthen Section 10 of the 2004 Act. The intention the Labour Government had in 2004 was to ensure that all agencies involved with children in need of safeguarding and of having their welfare promoted would co-operate and deliver together shared resources and activity to the benefit of those children. If '*relevant partners'* and others are failing to deliver goods, services, accommodation or other resources in a spirit of co-operation to the measurable benefit of children then we agree a strengthening of the legal framework is needed.

The Duty to Act proposed by Government makes individual practitioners accountable for the decisions they take to protect children. Where this includes a decision that the child requires goods, services and other resources surely the agency which employs them and other relevant partners must be held to account if the provision the professional believes to be in the best interests of the child is simply not available. The proposed Duty to Act risks placing greater delivery pressure on individuals who lack any control over the resources available to meet the needs of children. Many child protection social workers are worryingly overworked. We are concerned that the Duty to Act as proposed will do nothing to support a struggling workforce unless it is radically reframed.

The prevention of child abuse and neglect should be an absolute priority. Preventive interventions to divert a child at risk from harm, which could be significant or an early intervention to stop another incidence of abuse or neglect occurring, should be

central to any Government's strategy. The incumbent President of the Association of Directors of Children's Services recently said, ' *We've got to change the shape of children's social care not through the lens of the Government's touching faith in structural reform, but by investing prevention and early help'*. It is therefore proposed that the Government should introduce a Duty to Act with the expressed intention of requiring early action by relevant partners and others.

This will require investment in resources in all relevant partner agencies. A great deal needs to be considered before a Duty to Act to prevent abuse and neglect could be drafted in law. We must not create a bureaucracy. We need practical delivery. We propose that a further consultation is undertaken which focusses a Duty to Act on prevention and early intervention.

3.2 Duty to Report

We congratulate the Government in making clear that currently there is no duty to report child abuse or neglect. To have left those working with children worried about possible or actual abuse and neglect with a legal framework which only says that they 'should' report has let down thousands of children who as adults have been able to talk about the abuses they suffered as children. We have to change the present law to make the future safer and less costly in human and financial terms. A leading child abuse lawyer when asked how many cases would have been diverted from civil litigations if there had been a Duty to Report said to us ' *I would be out of a job'.*

While we have heard concern that a report will not be followed up with action we trust that by binding together existing law, a Duty to Report and a revised Duty to Act as we present it here, this will not be the case. Paper passing from one desk to another will never be sufficient.

The actions social workers are expected to take as a consequence of a report need to be diverse and appropriate to meeting the needs of the child. Diversion from abuse rather than waiting for it to occur must be the priority. We have been told of frustration among professionals that their early reports to social workers are not acted upon as they do not meet a 'significant harm' threshold. It seems that there is a willingness in the system to wait until abuse can be proven beyond doubt to be imminent or have occurred before there is action. We know that professionally qualified social workers do not wish this to be the norm any more than reporters. Rather we have heard how they want (and do) assist and support children but are frustrated by the lack of resources or inadequate staffing on which they can draw to take anything more than remedial action. We do not support the criticism of social workers nor of the many other professions that work with children but we do challenge the context they work within which is not of their making.

Protecting not criminalising professionals.

A Duty to Report can give more junior professionals a lever with which they can legitimately report concerns outside the organisation without the need to get the prior agreement of senior managers, trustees or governors which we have heard in too

many instances not to be forthcoming. A Duty to Report can protect professionals who work in hierarchical organisations where their senior managers may be balancing concerns about reputation or income and hence reluctant to report. The Duty also removes the ambiguity in current law, for Trustees, governors and senior staff who do not work directly with children.

Who should be required to report?

The requirement to report suspicions or actual abuse should be placed on those professionals working in loco parentis with children and young people under the age of 18 in regulated settings. We have heard and support particular concerns about some children who live away from family and friends, who would typically look out for their welfare and safety, in boarding and residential settings. We do not support the report being extended to members of the public. The identity of reporters and the fact of a report should be kept confidential.

To whom should a report be made?

As a number of reports will be from people who are unsure about whether the child is truly at risk of significant harm (s47 threshold) we suggest that there is a need for a process of triage managed by the most highly qualified, social work professionals employed as local authority designated officers. This can be built on existing mechanisms which we are told work well in some areas but not all. Such a referral may not lead directly to a S47 enquiry but to consideration of other interventions which may divert a child from abuse. The recipient of the report should assess what they are told against other reports of either the same establishment or the same child. They can then refer on for a S47 enquiry if deemed the best course of action or to relevant partners invoking the Duty to Act as referred to above or if appropriate propose no further action is necessary. A child of whom a report is made may have needs while not being at risk of significant harm. These needs must be addressed.

Types of abuse and neglect to be reported

Some types of abuse may seem better placed than others to be the focus of mandated reports e.g. child sexual abuse which is a secret crime named as a 'national threat' has an agreed definition whereas sexual exploitation as yet has no agreed definition. There are other examples. By being too specific about the nature of the suspected abuse to be reported we could be inhibiting those mandated to report from doing so early. We do not want them to wait until the 'metaphorical bruises appear' before they report but to pick up the phone and talk to an expert and discuss their suspicions.

Building the model of mandatory reporting on definitions or the lack of them, about particular experiences of children which we deem to be harmful for them risks becoming a bureaucratic diversion. In introducing mandatory reporting we must not become obsessed with labelling and categorisation.

Malicious reports are a tiny minority of reports and their occurrence should not be used as a deterrent from instituting mandatory reporting.

Timing of reports

There needs to be a level of professional judgment about when a report is made. To prescribe reporting within x hours or y days could serve to profoundly undermine a professional's relationship with the child. Where it is possible for a child to be engaged in conversation about the concerns and the intention to report then their views and wishes must be taken into account. Following discussion with 49 children aged 11-15 the Children's Commissioner concluded that young people, '*wanted professionals to exercise good judgement, develop good relationships with young people in their care, speak with children before reporting any concerns, give young people an opportunity to ask for help or speak out, ensure that concerns are well-founded, and to take the appropriate action to keep them safe while respecting their confidentiality.'* But where a child does not have the capacity to engage then the decision to report remains wholly with the professional. We acknowledge that determining the risk faced by children is not a simple task. It may take time to acquire sufficient evidence to justify a report.

Sanctions

There already exist sanctions through employment law and professional bodies. These can be used where there is a failure to report. There are areas where the current practice needs to be strengthened such as in relation to Disclosure and Barring. Criminal sanctions are very rarely applied in other countries where mandatory reporting exists. Nevertheless we heard that there is support for criminal sanctions if it can be proven that a person acted deliberately and recklessly in failing to report. Any professional subject to such an accusation should be able to use a defence of 'acting *in good faith*' where they can show this to be the case. Sanctions may also fall upon the institution, for example, if it failed to ensure its staff had access to and could complete the accredited training programme. A balance between sanctions on the professional and those on the institution will need to be struck. It should not simply be one or the other. We heard that the chances of justice for the child increase if sanctions apply to both individuals and organisations.

4. Pre-conditions for introduction

1. Accredited staff development/training programme for reporters. Those professionals who fall under the Duty to Report must attend and pass an accredited course of study prior to becoming subject to the sanctions of such a duty. For recipients of reports, whom we anticipate are qualified and experienced child protection social workers, there may be no need for further training but this is probably a matter for their regulatory body to determine. We would expect the Government to provide financial investment to meet this increased demand for staff development placed upon employers.
2. Investment in capacity. The evidence from the longitudinal study produced by Professor Ben Mathews of Queensland University was not included in the Government's consultation document even though it was available. Professor Mathews makes clear that there will be a spike in reports following the introduction of mandatory reporting. This may last up to three years. There will also be more children identified. It would be irresponsible to introduce mandatory reporting without investment in the recipient capacity. This may mean additional supervision or additional staff to respond effectively. These should be qualified professionals and not call-centre style arrangements with

sign-posters unqualified in the complex needs of children at risk of abuse and neglect. There should be no short cuts.

5. Next Steps

1. Building capacity as outlined above
2. Phased introduction. We appreciate that a 'toe in the water' approach may not be agreeable to all those who support a mandate to report. However we have learnt from the nations with the mandate in place that the types of abuse, types of reporters and recipients as well as the scope for action following a report, is extremely varied. For example the excellent work of Professor Mathews only looks at child sexual abuse not all forms of abuse. Some other nations lack the two pronged model established in the UK of children in need and children suffering significant harm. Therefore it seems appropriate to pilot the introduction of mandatory reporting rather than step fully into the water and drown. We have made clear there is a current deficit in staff development and in capacity. While these are being addressed plans should be put in place to undertake a staged introduction with full evaluation. The first stage should be a mandate for those working in boarding and residential settings.
3. Evaluation and measurement. We understood from those who have experience of the introduction of mandatory reporting in the context of FGM that insufficient thought and preparation was given to introducing the mandate. We heard repeatedly that the measures for assessing mandatory reporting are inadequate. For example, measuring its impact by the numbers of 'substantiated reports' of abuse takes no account of the early reports that prevented abuse or of other interventions which followed from a report. New measures are required and should form part of the commissioning of an evaluation.

6. Conclusion

A Duty to Act and a Duty to Report are required. The underlying intention should be to prevent or reduce the risk of further child abuse and neglect. But where there are suspicions of, or abuse is known to have occurred the duty to report must be unequivocal. Unless we adopt mandatory reporting it remains equivocal. We know there is a cost to introducing mandatory reporting. We believe that the safety and protection of children and of those professionals with concerns about safeguarding children the cost must be paid.