



Editorial

Law Reform and Child Protection

Welcome to this special edition of the Institute of Advanced Legal Studies Student Law Review. The focus of this edition is on reforming the law on child protection. This is analysed from the broad perspective of how law reform works, as well as from the specific perspective of the need for enhanced child protection measures, particularly, the case for making it mandatory to report suspected child abuse to the authorities. Mandatory reporting of child abuse is firmly on the political radar now, with all three Westminster parties showing support for amending the law in this regard. This issue is particularly apposite given recent child abuse scandals.

This edition arose out of a workshop organised by the Sir William Dale Legislative Drafting Clinic on mandatory reporting of child abuse held on the 10th of December 2013. Mandatory reporting of child abuse cases is an issue of debate amongst the legislative, professional, and academic community in the UK. There is no statutory obligation to report abuse in the UK. Is there a causal link between this lack of statutory obligation and the historic failure of professionals to report child abuse? Would mandating the reporting of abuse change behaviour? In many of countries in the Commonwealth and in most US states, mandatory reporting is part of statute law. The workshop considered the necessity and content of possible legislative intervention in the UK.

The speakers at the workshop were (in alphabetical order):

Peter Garsden (Partner, Abney Garsden Solicitors, President of the Association of Child Abuse Lawyers)

Laura Hoyano (Senior Research Fellow in Law, Wadham College, University of Oxford)

Dr Mazhar Ilahi (Director, Sir William Dale Legislative Drafting Clinic)

Anne Lawrence (Barrister, advisor to MandateNow)

Sir Stephen Laws KCB, QC (former First Parliamentary Counsel)

Peter Turner (Safeguarding Adviser, Roman Catholic Diocese of Westminster)

The workshop was chaired by Professor Helen Xanthaki and myself.

The methodology of the workshop was developed by the [Sir William Dale Legislative Drafting Clinic](#). The Sir William Dale Legislative Drafting Clinic is part of the Institute of Advanced Legal Studies at the University of London and provides free legislative drafting advice to clients around the world promoting a proactive understanding of quality in legislation.

The methodology was an attempt to replicate the law reform process in microcosm by bringing forward the main questions any legislator should consider when designing or drafting new legislation. The first question was whether there was a need for legislation. This involved identifying the social problem, identifying various solutions to that problem and demonstrating that legislation was a justifiable solution. Legislation, particularly criminal legislation, is generally regarded as the last resort in addressing social problems.

The second question made a rather large assumption that legislation was necessary and asked about the content of that legislation. The basic idea of many law reform projects can often be set out quite

easily. However, the policy needs to be fully developed before legislation can be prepared. In the context of mandatory reporting, it is important to fully set out: the identity of the person who has the duty to report, the circumstances in which they are meant to report, the identity of the person to whom the report must be made, the threshold of suspicion before a report must be made, any defences, what sanctions are to be imposed for failure to report. These questions just scratch the surface of the full policy development that is required.

The third question is the practical one of how legislation is actually made. This was split into two parts. Firstly, the drafting of legislation was explained, how clients prepare instructions, send them to a legislative counsel who drafts legislation in response. Secondly, how Bills get turned into Acts. There are three broad mechanisms for this: (a) lobbying government so that they adopt your policy proposals and incorporate them into their own bills, (b) lobbying parliamentarians so that they introduce a Private Members' Bill or amend a government Bill to give effect to your policy, (c) persuade the Law Commission to adopt your policy proposals and include them in one of their Bills which will then be brought before Parliament.

The speakers in favour of changing the law made clear and cogent arguments for this change. This was tempered by empirical studies showing that a very broad duty of mandatory reporting may not actually work in practice. The speakers who were involved in law reform more generally gave an excellent overview of the process and showed the importance (and difficulty) of getting law reform right. There was no absolute consensus on the way forward, but the broad majority of those attending thought that a limited type of mandatory reporting, in specified circumstances, would enhance the law on child protection.

It is difficult to replicate the entire law reform process in one afternoon, but the methodology used appeared to be sound and could be replicated for other law reform projects. Whatever the subject, the key questions remain: what is the problem, what is the policy to solve that problem, why is legislation necessary, what is the detail of that legislation, how to get the legislation made?

The papers in this edition reflect and continue the debate at the workshop.

The editorial paper by Dr Mousmouti examines what is meant by effectiveness in legislation. Everyone argues for high quality legislation, but often there is no analysis of what this actually means. This paper examines, from a broad perspective, what it is that legislation should actually strive to achieve. If we have some criteria for effectiveness in legislation, we can apply this criteria to any law reform project. Dr Mousmouti is also the guest editor for this special issue of the Review.

The next article is co-authored by Dr Emma Davies, Dr Ben Matthews and Professor John Read. It sets the scene with a very thorough academic survey of the scope of the problem of child abuse and the range of legislative and other responses. It highlights the serious problem of institutions covering up abuse and the need for empirical research on this. It also flags up a classic problem with legislative responses – that legislation designed to solve one particular type of problem doesn't work when applied to another problem. The other classic problem is that legislation by itself will not be enough unless it is backed up by the resources on the ground to properly implement it.

Peter Garsden is a practicing solicitor who specialises in representing victims and survivors of child sex abuse. He is also part of the Mandate Now campaign which advocates mandatory reporting. His article gives the perspective of the practitioner who works in this field and, by contrasting the approach in the UK with the approach in other jurisdictions, he argues forcefully for mandatory reporting.

Abigail Gill works at the charity Action for Children. Her paper is on a different aspect of reforming the law on child protection – updating the law on child neglect to protect children from emotional neglect. It follows the methodology above: pointing out the problem, the need for legislation, the detail of that

legislation and the mechanism for bringing forward that legislative change. This paper gives the perspective of a body campaigning for a change in the law.

Neil Faris is a former Commissioner at the Northern Ireland Law Commission. His article is not about child protection law at all, but analyses the process of law reform. He makes a strong case for the need for independent law commissions to promote high quality law reform. His article gives an idea about how law reform works in practice. Law Commissions provide one route for reforming the law.

Speaking personally for one moment. As an academic and legislative counsel, law reform is sometimes seen as a technical problem to be solved. Hearing the testimonies of those involved on the ground, particularly those who have suffered and survived child abuse was a sobering reminder that this is not simply a dry academic topic. I acknowledge their bravery and indefatigability in putting their case forward. There is clearly a huge problem in our society with child abuse and the cover ups which seem invariably to follow institutional abuse. The difficulty (as ever) for legislators is how to solve this problem with legislation that is effective. Hopefully the workshop (and this issue) can make a small contribution to that end.

Ronan Cormacain (Editor-in-Chief, *IALS Student Law Review*)

IALS Student Law Review

