

School counselling, mandatory reporting and Daniel Pelka some thoughts

Peter Jenkins deliberates on the questions of confidential counselling in schools and the proposed 'Pelka's Law' – mandatory reporting of suspected child abuse. Would this have prevented the latest tragic outcome?

Following recent child abuse tragedies, the discovery of child sexual exploitation and the re-emergence of historic child abuse, there is renewed interest by the media in the topic of the state's responsibilities for the welfare of children and young people. Within the UK as a whole, there are signs of progress towards more universal school counselling provision and the extension of the IAPT programme to younger clients. Recent child abuse inquiries, notably that of Daniel Pelka, a four-year-old who died after years of neglect and abuse, have kick-started public pressure to introduce 'Pelka's Law', namely mandatory reporting for suspected child abuse. A coalition of charities, lawyers and abuse survivors has recently launched an online petition, which has rapidly gained 50,000 signatures, in favour of mandatory reporting of child abuse.

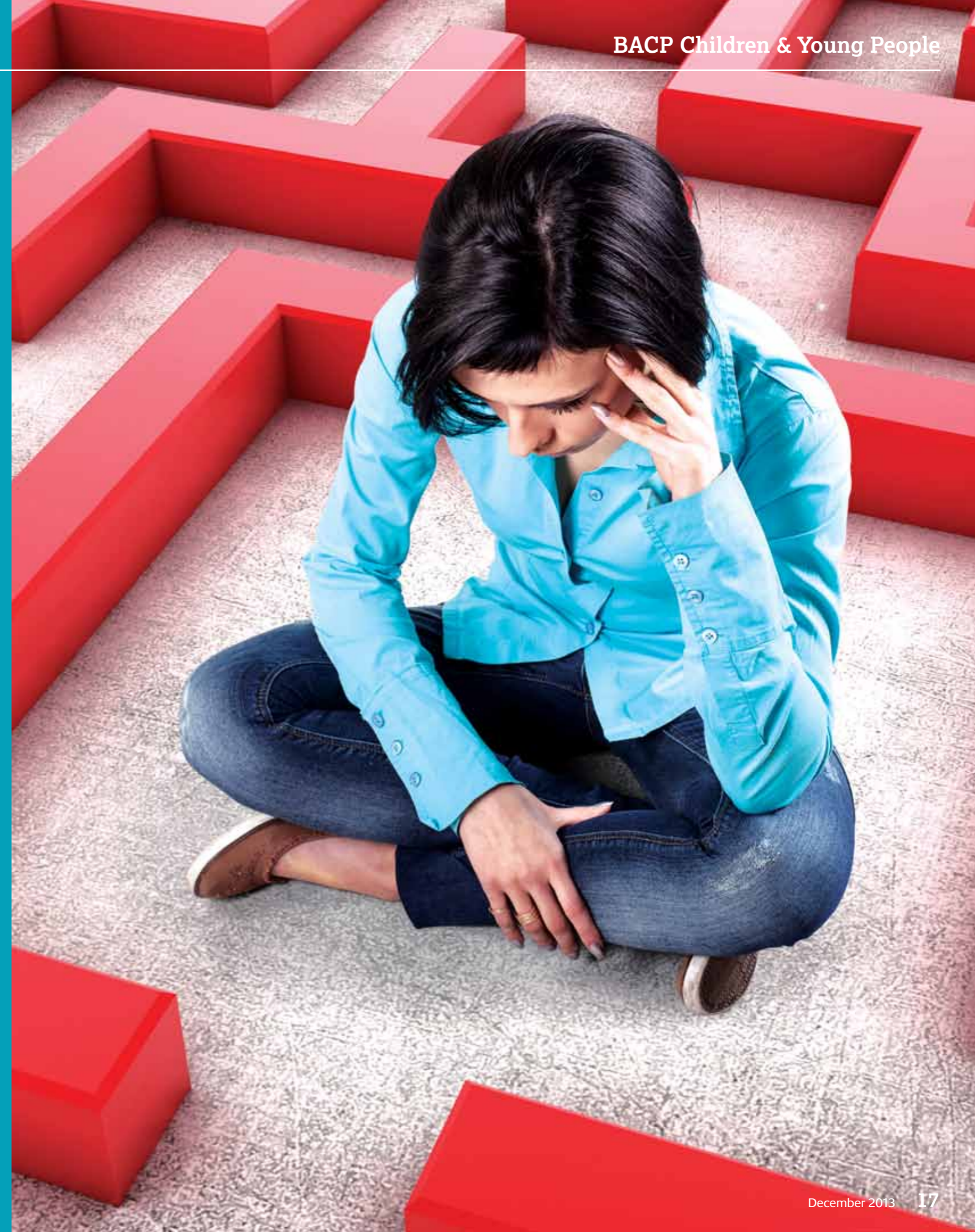
School counselling in UK

School counselling has undergone massive growth and expansion over the last decade, now approaching 80 per cent coverage in secondary schools in England and Scotland, and 100 per cent in Wales¹. However, while school-based counselling is widely seen as making a major contribution to the health and welfare of young people, it is not necessarily seen as the state's responsibility to provide it in all four parts of the UK. In Northern Ireland, post-primary school counselling has been funded by the Department of Education since 2007. In England, there is no centrally funded provision of school counselling, other than sporadic provision in schools, via Child and Adolescent

Mental Health Services (CAMHS). Schools fund counselling services out of their own budgets, without central direction from the Department for Education, reflecting government preference for promoting the managerial autonomy of head teachers. In Wales, schools are now under a statutory duty, via s.92, School Standards and Organisation (Wales) Act 2013, to make 'reasonable provision' of counselling for post-primary pupils from 11 to 18 years. And while Scotland has increasingly high levels of provision of counselling at secondary level, it has failed to make this a formal statutory requirement in the recent Children and Young Persons (Scotland) Bill, despite urging in this direction by BACP.

So far, Wales stands out, in terms of its unwavering commitment to fund and protect school counselling provision by the state. This may, in turn, have been heavily influenced by the origins of the push for such counselling provision. This was a key conclusion of the *Clywch Report* into child abuse in a secondary school setting². The Report had the effect of raising both the issue of abuse within schools, and the need for confidential counselling. School counselling was thus seen as a vital, protective measure for young people. In the rest of the UK, the alarm over the apparently growing extent of child abuse in its many forms has instead taken the form of renewed calls for the introduction of mandatory abuse reporting. This has been sparked, in particular, by the publicity around the Jimmy Savile inquiry. Following media publicity and initial investigation, there were calls by both the police and a key Parliamentary Committee for the introduction of mandatory reporting by professionals of child abuse^{3,4}.

Right: for illustration purposes: posed by model



Mandatory reporting

So what is 'mandatory abuse reporting' and how would it work? At present, professionals in the UK, including counsellors, are often bound by the terms of their contract of employment, or by their agency's policy, to report suspected child abuse to the authorities. However, this is not a formal legal obligation as such. Failure to follow such a reporting policy would constitute grounds for disciplinary action, or sacking, by an employer, but would *not* constitute a criminal offence. The situation is slightly different in Northern Ireland, where citizens *do* have a legal obligation to report *all* illegal activity to the authorities. This could be argued to represent a form of mandatory reporting of child abuse, though this was not necessarily intended by the framers of the original law.

But what about a professional's 'duty of care', even if there is currently no *criminal* sanction for failing to report abuse? Surely a counsellor, or other professional worker, who failed to report would run the risk of being sued? Leaving aside, just for the moment, ethical considerations, in a narrow legal sense individual counsellors do *not* carry personal liability for failing to report abuse. At least, the courts have not so far decided that they could be deemed negligent for failing to do so. Some lawyers would strongly disagree with this view, no doubt. There is no case law, so far, that would establish a duty of care under civil law to report abuse, other than via a contract of employment. In fact, the Education Act 2002 was specifically framed so as to leave responsibility for implementing safeguarding policies with the *local authority*, rather than push it down to the level of *individuals*, such as heads, teachers or counsellors.

No doubt this could change in the future. The law is not fixed for all time and is subject to constant change, via decisions in the courts and via legislation. However, the UK Government has been very reluctant to introduce mandatory reporting of *any* kind within the UK, with the notable exceptions (clearly known to every trainee counsellor) of terrorism and drug money laundering⁵. Mandatory reporting of abuse was considered prior to the introduction of the Children Act 1989, but was then rejected as a policy option.

The earlier experience of mandatory reporting of abuse in the US is quite mixed. This produced an increase in the

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numbers of cases reported to the child protection authorities, but with a high proportion of unfounded allegations and consequent overloading of social services' already limited resources⁶.

Within the UK context, Lord Laming produced a major review of child protection systems, following the tragic case of 'Baby P'. He decisively rejected the need for further legislative changes to protect children⁷. In tune with this, under the current Government, the main thrust in relation to child protection has been to radically slim down the weighty tomes of child protection manuals, into something more user-friendly. Eileen Munro has been given the brief to cut a swathe into existing protocols, arguing for a more humane, relational model of child protection. This would ideally be an approach that is less procedurally driven, where social workers can easily spend up to 80 per cent of their time in front of a computer, filling in forms⁸. A crucial factor may well be that Michael Gove, Secretary of State for Education, is generally opposed to increasing state intervention, as, for example, into the press. Instead, he favours increasing the autonomous powers of head teachers to manage schools. It seems very unlikely that he would support a radical strengthening of the interventionist duties of local authorities, despite the current calls in the media for mandatory abuse reporting.

Arguments for mandatory reporting

There are several types of argument in favour of mandatory reporting. One is often framed as simply a moral absolute, ie 'you *must* report abuse, otherwise you collude in the abuse'. Clearly, this has some moral force. No counsellor would want

to place, or leave, a child of any age in a situation of continuing risk or abuse. However, there are often situations, in the experience of counsellors working with mid-range teenagers, where the immediate risk to the client disclosing may be less evident, or where the abuse is historic rather than current, and where, crucially, the young person refuses, or withdraws, their consent for onward reporting. Reporting abuse, in the absence of consent in such a situation, runs the risk of the young person later retracting the allegation and of breaking the therapeutic alliance as a form of ongoing support. Clearly, reporting without consent might equally have very positive outcomes for client, counsellor and the therapeutic work. However, posing abuse reporting as simply an *ethical* imperative, even *without* the force of law, may also understate some of the key *therapeutic* issues at stake.

A review article in *The Lancet* put both sides of the case for mandatory reporting very succinctly (see Table 1).

This takes the debate out of a purely moral and ethical arena, important though that is for counsellors, and takes a wider policy view. Mandatory reporting, in the absence of increased resources, must surely lead to raised thresholds for accessing social work investigation. This is at a time when social services are already buckling under the pressure of increased public awareness of child abuse in the wake of 'Baby P' and the Jimmy Savile investigations.

Missing jigsaw piece

Finally, there is the 'missing bit of the jigsaw' metaphor, strongly favoured by child protection trainers. If counsellors fail to report abuse disclosed by their clients, in a mistaken loyalty to client confidentiality, it may well be that they deprive social workers of the key bit of information. This is described as the missing piece of the jigsaw, which would complete an emerging picture of abuse. Any argument by metaphor carries a strong appeal, and this one is clearly stronger than most. However, it does assume that there is,

in fact, a jigsaw to be completed and that the single disclosure that is reported will fit neatly into a missing gap, and provide an instant gestalt of abuse.

The 'jigsaw' argument claims to rest on the evidence of a long line of child abuse inquiries, dating back to the early 1970s. Here, there has long been a conclusion that professionals involved with the abused child have failed to share information effectively. However, this view is challenged by well-informed critics, such as Eileen Munro. She has pointed out that the same inquiries were, in fact, much less focused on the failure of agencies to *share information* and much more on the criticism that the information, which agencies already possessed, had not been accurately *assessed* in terms of risk to the child¹⁰.

Assessing abuse indicators

Tragically, this does seem to have been the case with Daniel Pelka. Daniel, aged four, came from a Polish immigrant family, with a long history of exposure to domestic violence, and, unknown to the authorities, neglect, malnutrition, possible salt poisoning, and frequent physical abuse. A close reading of the Coventry Serious Case Review suggests that the school was the main agency that had close contact with Daniel on a day-to-day basis. However, the dominant view amongst teaching staff was that his mother was a caring and concerned parent. His frequent bruises and his scavenging for food were *not* identified as symptoms of physical abuse and extreme neglect, because of this relatively benign view of his parenting. According to the Review, 'if the practitioners were not prepared to accept that abuse existed for Daniel, then they would not see it'¹¹. Only a radical reframing of accidents and scavenging, as potential indicators of abuse, could have changed this. Mandatory reporting, arguably, would not have saved Daniel, and perhaps other children in a similar situation, precisely because they are already too well known to the professionals and agencies involved. ●

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Table 1: Benefits and Disadvantages of Mandatory Reporting of Child Abuse.

(Adapted from: Gilbert et al.⁹)

Benefits of mandatory reporting	Disadvantages
<ul style="list-style-type: none"> • Clearly states that governments take child abuse seriously • Encourages early notification to protect children and prevent child deaths • Leads to increased reporting to child protection agencies 	<ul style="list-style-type: none"> • Overloads child protection services • Inhibits self-referrals by children and parents because they will lose control of what happens to them • Resources are dominated by the need to investigate and little remains for intervention