

# Safeguarding Aware

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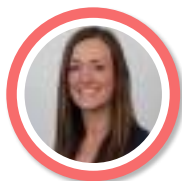
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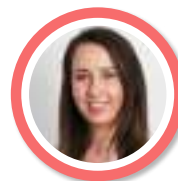
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# Welcome



**Welcome to the first edition of Keoghs Safeguarding Aware newsletter. We hope you find the contents informative and helpful. Safeguarding is an area of critical importance and this newsletter aims to highlight some of the ongoing safeguarding changes and implementations across a number of sectors and provide a valuable insight.**

**If you would like to discuss any of the articles or their implications, please do not hesitate to contact our Safeguarding Lead, Lorraine Nolan.**

**For more updates be sure to listen to our Safeguarding Matters podcast which can be found [here](#) alongside all of the other podcast from across Davies.**

In this debut edition, we are delighted to present a collection of articles from our team, covering various topics such as:

**Patrick Williams, Associate** provides us with an overview of the new safeguarding policies created by British Gymnastics to help keep gymnastics a safe and fair sport.

**Anna Churchill, Chartered Legal Executive** provides her views on the Lucy Faithfull report into the first 12 months of work in schools following “Everyone’s invited” and the NSPCC and Action for Children’s report “Home Again” on reunification of children in care to their family home.

**Shannon Boyce, Case Handler** considers the issues with the “loophole” in registered sex offenders being able to change their identity by deed poll.

**Lorraine Nolan, Associate** provides information and updates on the Online Safety Act 2023. She also considers current consultation regarding the guidance issued by the Government in relation to Gender questioning Children.

# Safeguarding in British Gymnastics

## - An Update

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In August 2022, Patrick Williams, Associate in the specialist abuse team at Keoghs, considered the Whyte Review, which was a UK Sport and Sport England co-commissioned thorough and impartial review by Anne Whyte QC into the allegations of physical, emotional and mental abuse by gymnastic coaches.

### Recommendations made in the Whyte Review

While a number of important recommendations were made, one of those recommendations related to hydration, weighing gymnasts and academic education. The Whyte Review recommended that:

“BG [British Gymnastics] must review the types and level of support provided to non-Olympic disciplines and ensure these are improved in light of the findings of this report.”

### New BG safeguarding policies

On 17 November 2023, at their first-ever National Welfare Officer Conference, British Gymnastics (BG) unveiled the #BeTheChange campaign, created to help keep gymnastics a safe and fair sport.

As part of the campaign and in response to the recommendations set out in the Whyte Review, BG has introduced the first of its series of newly implemented safeguarding policies focusing on the protection of the welfare of gymnasts in regards to hydration, weighing gymnasts and academic education. BG aims to introduce further policies over the next 12 months.

In regard to the newly introduced policies relating to hydration and weighing gymnasts, BG aims to build on and strengthen the initial position statements they released in 2022, while the academic education policy has been introduced to make clear that BG does not believe that a child missing regular formal education for gymnastics club training is necessary in the pursuit of achieving their gymnastics ambitions.

While a copy of the full policies can be viewed here [<https://www.british-gymnastics.org/safe-and-fair-sport/policies-procedures>], a summary of each of the newly introduced policies is as follows:

#### Hydration policy:

- Gymnasts must be provided with opportunities to drink regularly throughout a gymnastics session or activity, with gymnasts encouraged to consume fluids as they feel comfortable to.
- If a gymnast requires the toilet during a gymnastics session or activity, they must be able to go at the earliest available opportunity.
- Appropriate supervision must be put in place within clubs and venues to ensure gymnasts are not denied access to fluids or the toilet throughout a gymnastics session or activity.

### **Weighing gymnasts:**

- It is always the gymnast's choice whether they are weighed. Their decision must always be respected and acted upon.
- Coaches must not weigh gymnasts. Gymnasts can choose to self-report their weight in a gymnastics setting. Other than self-reporting, in a gymnastics setting only qualified sports science or medical practitioners are permitted to weigh gymnasts.
- The gymnast must be over the age of 10 to be weighed in a gymnastics setting.
- The weighing of gymnasts must only be undertaken with the gymnast's optimal long-term development in mind and with a clear, scientifically valid rationale. A gymnast must only be weighed for growth/maturation or performance purposes.
- Written consent must be gained from the gymnast and parent/carer (in the case of minors) every year by the qualified sports science or medical practitioner, outlining the reason for weighing.

- Verbal consent must be gained from the gymnast and this must happen each time a gymnast is to be weighed.
- Qualified sports science or medical practitioners must not share the gymnast's weight data with anyone other than the gymnast.

### **Academic education policy:**

- British Gymnastics does not believe that a child missing formal education for gymnastics club training is necessary for the pursuit of achieving their gymnastics ambitions.
- Gymnastics clubs and coaches must ensure that missing formal education for gymnastics club training must not be a mandatory requirement for any child.
- Gymnastics clubs and coaches must not schedule gymnastics club training during school hours for children under the age of 12.
- Gymnastics clubs and coaches must only schedule gymnastics club training during school hours under exceptional circumstances for a child who is over the age of 12, but it will always be at the discretion of the child's school.

## **Comment**

The introduction of the new and amended BG policies above will no doubt be welcome news for all BG clubs and their coaches, and any other gymnastics organisation which, while they might not be BG members, may choose to adopt BG policies to help keep children safe in gymnastics. Further, BG's transparent approach to the current and future improvements to their safeguarding policies will likely provide parents/carers of children in gymnastics perhaps much-needed confidence to allow their children to continue to train and compete in a BG environment.

While this is just the first in a series of new/updated safeguarding policies by BG, we will wait with anticipation of the further planned developments throughout the year.

Author:



**Patrick Williams**

Associate

# Lucy Faithfull Report into a year of work in schools following ‘Everyone’s Invited’

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In June 2020, on the back of the ‘me too’ movement, Everyone’s Invited made headlines, highlighting the extent of harmful sexual behaviour in schools. This led to the Government instructing Ofsted to carry out a rapid review of sexual abuse, including peer-on-peer harassment, sexual violence and online abuse, in schools and colleges.

Ofsted produced their report in June 2021, with guidance to be applied from the start of the September 2021 school year. Each year since then the Department of Education has released safeguarding guidance ‘Keeping children safe in education’, which focuses on managing incidents of harmful sexual behaviour in schools.

It was apparent at the time when the Everyone’s Invited organisation was founded and from the subsequent Ofsted investigations that sexual harassment and abuse in schools was a widespread issue. Indeed, Ofsted found that it was so widespread that all schools should act as though sexual harassment and online sexual abuse were happening even if there were no specific reports. Ofsted guidance was to make a number of changes to combat this issue.

Following the above, in January 2022, The Lucy Faithfull Foundation undertook a three-year action-research project in collaboration with the University of Surrey. On 19 October 2023, they published the findings of the first 12 months of this project.

## The Project

The Lucy Faithfull Foundation worked in 10 diverse secondary schools in the West Midlands and provided support to 40 others with their ‘Stop It Now!’ helpline.

### The project had four main goals:

- To support schools when a harmful sexual behaviour incident occurs and ensure that all involved are well supported;
- Ensure that schools benefit from the experience of others;
- Help statutory agencies understand key issues faced by schools so they can provide better support; and
- Share evidence from the project to contribute to the body of knowledge about dealing with harmful sexual behaviour in schools.

The project continues over the next two years, with additional findings to be published in due course.

## The key issues noted

Through working with the schools, the Foundation noted issues identified by staff, students and parents. They went on to identify three promising areas where the work undertaken was being well received and having a positive impact.

Staff saw the key issues as relating to image sharing, consent and the impact of pornography. They identified personal challenges in responding to safeguarding concerns, which was complicated by needing to liaise with numerous interested parties when dealing with these concerns, and issues with getting support from outside agencies which often had high thresholds for assistance or capacity issues. On a personal level, staff also reported the substantial individual emotional impact of dealing with safeguarding incidents.

Students raised numerous concerns relating to online sexual harassment. They also described issues reporting harmful sexual behaviour, where they saw teachers normalising sexist comments and failing to intervene. This led to students feeling unable to express themselves. Students also felt RHSE lessons did not reflect the reality of their lives.

The Foundation stated that they were encouraged by the desire of everyone involved to find solutions; however, that commitment needs to be met with the necessary training, resources, and recognition of the emotional impact on staff.

## The promising areas identified

As well as identifying issues, the Foundation identified three promising areas where action taken in schools has thus far been shown to be effective.

### Protective behaviours training

Protective behaviours training explores the right to feel safe on a personal level. It helps young people to identify boundaries and helps them manage their boundaries. If a young person describes feelings of being unsafe, or that a behaviour is harmful, it teaches them that these feelings should be addressed on that basis and should never be minimised or denied.

This training was highly valued in the schools the Foundation worked with due to its widespread application in direct work with students, benefits to staff in understanding the protective behaviours process when managing harmful sexual behaviour and safeguarding, and the fact that staff shared common principles and terminology with colleagues and other agencies. It was found that this training supports youth-led action to deal with harmful sexual behaviour.

### Bystander education

Bystander education encourages people to take action if they witness harmful sexual behaviour. On a school level this empowers students to intervene in situations, which in turn reduces the likelihood of similar situations arising by challenging the culture within the school and what is deemed acceptable and appropriate. It is important to note that this does not transfer responsibility to young people to tackle harmful sexual behaviour alone, but does empower them and integrate them into the process.

Delivering bystander education in schools made a positive difference in the schools where the Foundation worked over this year. However, the Foundation notes that to be effective this has to go hand in hand with participatory RHSE.

### Participatory RHSE

A common theme in the report was the RHSE curriculum. Students raised concerns that it was not always relevant to them. There is a lack of teacher training and specialists and teachers may lack expertise and understanding, especially in new and emerging issues. Teachers need to feel confident in these complex and sensitive situations. The report found that RHSE has a key role but its value is not currently recognised.

A unique and participatory approach to RHSE is recommended, as it is unlike other subjects which can be teacher-led. A participatory approach to RSHE to engage students, involving active discussion and deliberation among students, was found by the Foundation to be the most effective way of teaching RHSE – especially as students are more likely to be able to engage in debate and discussion about emerging and nuanced issues.

## Conclusions

The first year of the Foundation's project found that schools are dedicated to tackling harmful sexual behaviour but there was a lack of support. Further funding and guidance are necessary to ensure a robust response to harmful sexual behaviour in school. Staff also require additional support due to the emotional impact of dealing with such incidents.

Students, although concerned about harmful sexual behaviour, were optimistic and wanted to find solutions. Clearly, the emphasis cannot be on students to solve the issue, so there is a need for a collaborative approach, empowering students while strengthening reporting processes and trust in staff. The three promising areas above have been identified as helpful first steps towards improving the situation.



## Keoghs comment

These preliminary findings show that schools and their students are eager to make positive changes in the wake of Everyone's Invited and the subsequent Ofsted reports.

This is a complex issue and there is no simple solution. However, the report sheds light on some areas of best practice and training that had a positive impact on the schools the Foundation focused on. This can improve experiences for students as well as staff.

In previous articles (linked above), we considered the prospect of civil claims arising from peer-on-peer allegations, such as those made in Everyone's Invited. To best protect from such claims, schools and Local Authorities should consider implementing new strategies around RHSE and some of the training suggested by the Foundation.

This is a developing area of pastoral support, and, understandably, these measures take time to implement; however, taking early action can protect students and staff now, and consequently minimise the risk of civil claims, now and in the future.

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# Gender Questioning Children – Non-statutory guidance for schools and colleges in England

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The Department for Education has issued non-statutory guidance to provide practical advice to help schools and colleges make decisions regarding children who are questioning their gender. There is a fine balancing act to be undertaken in relation to this highly sensitive and complex issue which is not yet fully understood. The guidance, which has been promised since 2018, confirms that schools and colleges should make decisions to ensure that everyone is kept safe and treated with respect and understanding, within an environment that protects the rights of children fairly.

There is now an open consultation seeking views on the content of the guidance and whether it will help to support schools and colleges to make considered and lawful decisions in relation to children who are questioning their gender, and the wider school and college community.

The guidance is based on a set of five general principles which aim to provide schools and colleges with a framework to respond to requests.

## The principles

- **Schools and colleges have statutory duties to safeguard and promote the welfare of all children.** Consideration needs to be given to how best to fulfil that duty to the child who is making the request and to their peers, ensuring that any agreed course of action is in all of their best interests but also realising that this may or may not be the same as a child's wishes.
- **Schools and colleges should be respectful and tolerant places where bullying is never tolerated.**
- **Parents should not be excluded from decisions taken by a school or college relating to requests for a child to 'socially transition'.** Parents should be engaged and involved, other than in circumstances where involving parents would constitute a significant risk of harm to the child.
- **Schools and colleges have specific legal duties that are framed by a child's biological sex.** While legislation exists that allows adults to go through a process to change their legal sex, children's legal sex is always the same as their biological sex. Knowing a child's sex is critical to safeguarding duties.
- **There is no general duty to allow a child to 'social transition'.** If a school or college decides to accommodate a request, a cautious approach should be taken that complies with legal duties.

## The guidance states that if a school or college receives a request they are advised to:

- **Wait:** Acknowledge the request but wait for a period of time before considering further action to ensure it is a sustained and properly thought-through decision.
- **Make parents aware:** Discuss the matter with parents and provide details of external organisations that can offer support for both the child and parents. As stated above, the only exception to this is where informing parents might raise a significant risk of harm to the child.

## The factors

If, after a period of waiting, the child would still like their request to be granted, schools and colleges are advised to take into account the following factors:

- **The school or college's safeguarding obligations:** Legal duties will differ depending on the request. Safeguarding requires an individual to consider what is in the best interests of the child, which may not be the same as the child's wishes.
- **The view of parents:** It is important that the views of the child's parents should carry weight and be properly considered. The guidance states that in the vast majority of cases they would expect parental consent to be obtained.
- **The age of the child:** Requests from younger children in primary schools should be treated with greater caution.
- **Any relevant clinical information that is available:** While neither the child nor their parents are obliged to share medical advice with schools and colleges, where such advice is available, schools and colleges should factor it into their decision-making.
- **The seriousness and context of the request:** Schools and colleges should take into consideration whether the child has previously made similar requests, and whether the child has properly considered the impact of their requests.
- **The long- and short-term impact on the child:** There is no definitive evidence on the long- and short-term impact of changes on children at this time other than an indication that it could have significant psychological effects on a young person.

- **The impact on other pupils:** Schools and colleges should consider the impact on other pupils, including any safeguarding concerns.

## Potential requests

The following is a list of potential requests schools and colleges may receive and what the guidance currently says in relation to these.

**Changing Names** – It is a statutory requirement for every school to know and accurately record the legal name and biological sex of every pupil in the admissions register. Schools may allow pupils to change their informal ('known as') name if they believe it is in the best interests of the child to do so. Having fully consulted with the child's parents, schools and colleges can allow a child to change the name by which they are known. It is not uncommon for people to be known by names other than those on their birth certificate.

**Pronouns** – Agreeing to a child's request to have others use different pronouns about them is a significant decision. Primary school-aged children should not have different pronouns to their sex-based pronouns used about them. For older children, schools and colleges should only agree to a change of pronouns if they are confident that the benefit to the individual child outweighs the impact on the school community. However, no child should be sanctioned for honest mistakes when adapting to a new way of interacting with another pupil.

**Single-Sex Spaces** – Schools must always protect single-sex spaces with regard to toilets, showers and changing rooms, as set out below.

- **Toilets** – Schools are required to provide separate toilets for boys and girls aged 8 years and over. While colleges are not subject to the same legal requirements, they should take the same approach given the same safeguarding considerations apply. If a child does not want to use the toilet designated for their biological sex, the school or college may wish to consider whether they can provide or offer the use of an alternative toilet facility. This should be secured from the inside and for use by one child at a time. These alternative arrangements should not compromise the safety, comfort, privacy or dignity of the child, or other pupils.
- **Changing Rooms and Showers** – Schools have a statutory duty to have suitable washing and changing facilities for pupils aged 11 years and over. Schools must not allow a child aged 11 years or older to change or wash in front of a child of

the opposite sex, nor should they be subject to a child of the opposite sex changing or washing in front of them. If a child does not want to use the changing rooms and showers designated for their biological sex the school or college may wish to consider whether they can provide or offer the use of an alternative changing or washing facility, while continuing to ensure spaces are single-sex. This could mean a facility intended for use by one child at a time that can be secured from the inside or allowing access to facilities at an alternative time.

- **Boarding and residential accommodation –**

In allocating sleeping arrangements such as dormitories, tents or shared rooms for school trips, each child's sex is relevant. No child should be allowed to share a room with a child of the opposite sex. If a child questioning their gender does not wish to share a room with another child of the same sex, where possible, and only after the school has considered the relevant factors outlined above, alternative arrangements should be sought. These alternative arrangements should not compromise the safety, comfort, privacy or dignity of the child, or other pupils, for instance finding a suitable separate room for the pupil.

**Uniform –** Schools determine their own uniform rules and may have different uniform requirements for girls and boys. Many schools have a unisex uniform that can be worn by either sex or offer significant flexibility. Where flexibility does not exist, schools and colleges may look at how the child could be accommodated but would not be expected to develop new uniform policies as a result and it should only be allowed following a proper consultation with the child's parents. It may be that a child who wishes to adjust their uniform may simply not wish to conform to expectations related to their sex.

**Physical Education and Sport –** the main aim is for all children to participate in sport safely while encouraging maximum participation. As children get older, the size, speed and strength of boys and girls begins to differ. For all sports where physical differences between the sexes threaten the safety of children, schools and colleges should adopt clear rules which mandate separate-sex participation. There can be no exception to this. To consider any requests regarding sports participation, schools and colleges should take into account: the age of the child making the request, and how safe and fair it would be to allow mixed-sex participation.

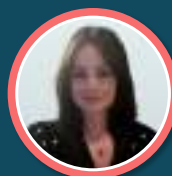
## Conclusion

The guidance only applies to schools in England, as other nations have devolved education systems. Northern Ireland and Scotland have already released their guidance on this issue. The Welsh Government has not yet published guidance on the matter but has stated that it is currently being developed. It may be that they await the outcome of this consultation and will factor in any feedback.

The consultation closes on 12 March 2024 and the Government is keen to seek views on whether the scope of the guidance is right, and that it covers all the necessary considerations for schools and colleges. In addition, it also seeks views on whether the guidance contains enough practical support and detail for schools and colleges.

The outcome of the consultation remains to be seen in due course, but it has been noted that certain elements of the advice in its current form could put the Government and schools at risk of a legal challenge. In addition, to date, there has been no engagement with children or young people in the development of the guidance to seek their views and input on the issue.

Author:



**Lauranne Nolan**

Associate

# Closing the Loophole: An Update

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Following years of campaigning by The Safeguarding Alliance and several other organisations, Suella Braverman had announced a ban on registered sex offenders changing their identity. This announcement was made on 3 October 2023 as part of the Conservative Party Conference in Manchester. Shannon Boyce previously discussed this issue in her article dated 13 March 2023 which considered the details of the parliamentary debate.

## The Loophole

The general rule in the UK is that any person is entitled to change their name by deed poll. The present position is that under the Sexual Offences Act 2003, the onus is on the offender to notify the police of any name change or change of address.

As the onus is entirely on the offender to make a notification of change to the relevant authorities, this is a loophole which has enabled offenders to essentially go missing in the system. Breaching this rule has led to significant safeguarding concerns over the years, with offenders being able to create a new means of identification and undergo a Disclosure and Barring Service (DBS) check under their new name. In the most serious cases, this has allowed previous offenders to obtain jobs working with vulnerable children and adults.

## Prohibition of Name Change

In an attempt to close this loophole, the Government has now accepted the amendment as part of Clause 24 of the Police, Crime, Sentencing and Courts Bill. This ensures that a registered sex offender will not be able to change their identity.

Relevant data held by HMRC, DWP, HM Passport Office and the DVLA will be merged with that held by the DBS so any change made on these platforms will alert the DBS. This is an important development as multi-agency information sharing is key to making sure safeguarding and child protection is working as effectively as possible. The Government has also advised they will strengthen background checks so they can catch any undisclosed changes of identities.

The Safeguarding Alliance, which has spent years campaigning for this change, released a press statement saying: "This change, which could not have come quick enough, is the biggest change to safeguarding legislation to date and we are proud to have been at the forefront in pioneering such change."

## Potential Issues

While this is a step in the right direction to improve safeguarding, there are still loopholes which can be exploited. There are concerns that an individual could still change their personal details if they claim they are doing so in respect of a protected characteristic under the Equality Act 2010 such as gender. It remains to be seen if this avenue will now be utilised by offenders.

## Other Developments

Alex Chalk MP has announced an amendment to The Victims and Prisoners Bill, known as Jade's Law, which will, by the end of this year, automatically take away parental rights from a parent who has been found guilty of murder or manslaughter of the other parent. It should be noted that there is an exemption in place in cases where a domestic abuse victim has ended the life of their abuser.

Author:



**Shannon Boyce**

Case Handler

# Reunification of children in care to their families – analysis of the ‘Home Again’ report

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**In January 2024, the NSPCC and Action for Children published ‘Home Again’, a report considering the potential benefits of reunification, following research conducted into local authorities’ existing reunification practices.**

**Reunification refers to children in care returning to the family home and the care of their parent(s) following a period in care.**

The report is related to the ‘Big Ask’ survey, and ‘Stable Homes, Built on Love’, two publications from early 2023. The picture from these reports was one of a system that is not currently sufficiently protecting children or ensuring that children in care are given the best opportunities.

The concerns in these reports have not improved. The number of children in care continues to rise and is at a record level. Sir Andrew MacFarlane recently opined that austerity was contributing to the record number of children in care. The cost-of-living crisis compounds this and further contributes to both the number of children in care and the issues faced by local authorities trying to care for children.

Numerous recommendations were made within the ‘Stable Homes, Built on Love’ report. Generally, these focus on preventing children from entering care. However, the NSPCC and Action for Children have identified a potential gap in the recommendations that could have benefits for both families and local authorities: the reunification of children with their families. They published their research and recommendations in ‘Home Again’ in January 2024.

## Findings of the research

Primary research was completed by the NSPCC and Action for Children, although they acknowledge that further research is necessary. A survey drew responses from 75 of 153 local authorities and they also conducted semi-structured interviews with senior staff from some local authorities.

Some of the key findings of the research were:

- There was a growing interest in reunification across the country but a lack of consensus about how best to do it
- Only 19% of the authorities that responded had a specific reunification team
- There is a lack of national direction around reunification
- A lack of capacity and resources was often a barrier to authorities providing the reunification support they would like to; local authorities have faced years of funding cuts amid a growing demand – this often means that they must prioritise statutory duties over reunification or preventative measures
- Teenagers were often ‘voting with their feet’ and returning home in an unplanned way, leading to less chance of a stable reunification
- Unplanned reunification is much less likely to lead to stable reunification
- 58% of those surveyed advised that a key cause of breakdown was a lack of robust preparation and planning of reunification

In short, there is interest in and recognised benefits of reunification, but on the whole local authorities lack guidance and resources to develop clear reunification strategies to unlock its potential.

Some local authorities had taken novel approaches and reported good results. For example, one respondent advised that in some cases they had assisted families with financial barriers to reunification, such as rent arrears preventing parents getting social housing. This authority noted that it is worth paying for this to have a child

reunified and save on the cost of an expensive local authority placement. This pragmatic approach is something for authorities to consider in appropriate cases.

## Conclusions

The report notes that it is a key principle of the Children Act and international law that children should live with their families wherever possible. A good reunification practice significantly increases the prospects of children remaining at home and not re-entering the care system.

The benefits of this are twofold:

- Families are reunited, which is recognised as being in children’s best interests wherever possible
- There are potentially huge costs savings to local authorities who are currently dealing with a lack of placements and a high-cost placement market

The NSPCC and Action for Children argue that resources can be better spent on reunification rather than funding placements which may well break down. Placement breakdown is common and can cause harm to children in care.

Local authorities that were focusing on reunification reported both benefits – they were seeing more children successfully returning home and making savings which one authority reported amounted to £2m per year.

However further research is needed, and funding is crucial. It appears the authorities who responded to the survey appreciated the possible benefits, but a lack of funding and resources were significant barriers to them implementing changes. The NSPCC and Action for Children call for help from the Government, political parties and local government leaders to further explore reunification and assist local authorities with implementing new guidance.

## Keoghs comment

On reading the report it is clear that the benefits of reunification are such that this is undoubtedly an area worthy of further research and funding.

Reunification reaps multiple benefits for the children, their families and the local authority. However national guidance as to best practice would be beneficial. Reunification must be done in a planned manner with support for families to have the best chance of success. A failed reunification may cause further damage to children. Furthermore, it must be ensured that children are only reunified in appropriate cases. Care will need to be taken where there are any concerns of abuse or neglect to ensure that additional harm is not caused to vulnerable children.

To date the Government has provided no response to this report. We await any comment they may have with interest. It is clear that there is potential for significant benefits if reunification is encouraged on a national level, with the requisite support for families and children both before and after reunification.

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# UK Online Safety Act 2023

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**After years of campaigning, the UK Online Safety Act 2023 (the Act) received Royal Assent on 26 October 2023. The Act is a significant piece of legislation with the potential to transform children’s experiences when interacting online and takes a zero-tolerance approach to protecting them by making social media platforms and technology companies legally responsible for the content they host.**

They will be expected to:

- Remove illegal content quickly or prevent it from appearing in the first place, including content promoting self-harm
- Prevent children from accessing harmful and age-inappropriate content
- Enforce age limits and age-checking measures
- Ensure the risks and dangers posed to children on the largest social media platforms are more transparent, including by publishing risk assessments
- Provide parents and children with clear and accessible ways to report problems online when they arise

As well as its commitment to its firm protections for children, the Act empowers adults to take control of what they see online. It provides three layers of protection for internet users which will:

- Make sure illegal content will have to be removed
- Place a legal responsibility on social media platforms to enforce the promises they make to users when they sign up, through terms and conditions

- Offer users the option to filter out harmful content, such as bullying, that they do not want to see online

## Potential consequences

If platforms do not act quickly to either prevent or remove illegal content and comply with the requirements set out in the Act they could face significant fines from Ofcom of up to £18m or 10% of their global annual revenue, whichever is larger. In addition, technology executives face the threat of a two-year jail sentence if they persistently ignore Ofcom enforcement notices telling them they have breached their duty of care to children unless they can show that they have acted in good faith to comply proportionately with their duties. Senior employees could also be jailed if they hinder an Ofcom investigation or a request for information.

## The Implementation of the Act

Ofcom has been given the responsibility of acting as the safety regulator. It will not have the power to remove content but intends to tackle the root causes and set new standards online. While the bill was progressing the Government began working closely with Ofcom to ensure changes would be implemented as quickly as possible when it became an Act of Parliament, given the extensive amount of work that is going to be required to set up the new regulatory regime.

The implementation is a rollout of the new rules in three phases, with the timing driven by the requirements of the Act and relevant secondary legislation. Those phases are:

- **Phase one:** Illegal harms duties
- **Phase two:** Child safety, pornography and the protection of women and girls
- **Phase three:** Transparency, user empowerment, and other duties on categorised services

## New criminal offences

As of Wednesday 31 January 2024, a number of new criminal offences were made law and will assist in protecting people from a wide range of abuse and harm online, including threatening messages, the non-consensual sharing of intimate images known as 'revenge porn', and sending fake news that aims to cause non-trivial physical or psychological harm.

Many will recall the recent case of Stephen Bear which saw him being convicted of voyeurism and two counts of disclosing private photographs and films of his ex-girlfriend, Georgia Harrison, with intent to cause distress. He was sentenced to 21 months' imprisonment. He has also been ordered to pay Miss Harrison £207,900 in damages, which is the largest sum to be awarded in an image abuse case. Following Miss Harrison's campaign, ex-partners and other abusers who share, or threaten to share, intimate images on or offline without the consent of those depicted will now face jail time. Criminals found guilty of sharing intimate images could face up to six months in prison. If it can be proven that an individual has threatened to share such images or shared them with the intent of causing distress, alarm or humiliation, or to obtain sexual gratification, they could face up to two years behind bars.

A new criminal offence has been created which is referred to as 'cyberflashing'. This offence criminalises intentionally sending or giving a photograph or film of any person's genitals to another person, either with the intention that the recipient will see the image and be caused alarm, distress or humiliation, or for the purpose of obtaining sexual gratification while reckless as to whether the recipient will be caused alarm, distress or humiliation. This also covers cyberflashing on dating apps, AirDrop and other platforms, with perpetrators facing up to two years behind bars.

As stated above, the offences became criminal as of 31 January 2024 and it is clear that this is having an immediate impact as the first conviction happened less than two weeks later. A registered sex offender by the name of Nicholas Hawkes sent unsolicited photos of his erect penis to a 15-year-old girl and a woman. The woman took screenshots of the images and reported the offence to the police on the same day. Hawkes pleaded guilty to two counts of sending a photograph or film of genitals to cause alarm, distress or humiliation and has been remanded in custody awaiting sentencing.

Sending death threats or threatening serious harm online will also carry a jail sentence of up to five years under a new 'threatening communications' offence that will completely outlaw appalling threats made online that would be illegal if said in person.

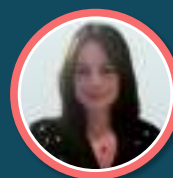
A new false communications offence also outlaws the intentional sending of false information that could cause 'non-trivial psychological' or physical harm to users online. This new offence will bolster the Government's strong commitment to clamping down on dangerous disinformation and election interference online.

## Conclusion

The Act clearly remains a priority for the current Government, but with the announcement of a general election later in the year it remains to be seen if the implementation of the phases outlined in the Act will retain the same momentum.

Many of the Online Safety Act's protections are intended to hold tech companies and social media platforms to account for the content hosted on their sites, whereas the new offences referred to above will apply directly to individuals. Many campaigners consider that at the same time, the focus must remain on tech companies and their duty under the Online Safety Act to design safety into their platforms and stop this content from being suggested and shared in the first place.

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