



# **Department for Justice**

## **A Call for Evidence Abuse of Position of Trust Offences: Extension of the Law**

**Response from the Commissioner Designate for  
Victims of Crime for Northern Ireland**

**December 2022**



## **About the Office of the Commissioner Designate for Victims of Crime**

The Commission for Victims of Crime is an independent body which represents the interests of victims of crime in Northern Ireland.

The Commissioner Designate was appointed by the Minister of Justice in March 2022 to be an independent voice for victims of crime. The overarching purpose of the Commissioner Designate is to represent the needs and interests of all victims of crime and help drive systemic improvements across the criminal justice system. This will include helping to identify any areas where victims are not consistently being provided with their entitlements set out within the Victim Charter and ensuring that their issues and experiences are raised in the public arena, with Government, with criminal justice organisations and organisations that support and represent victims, in order to bring forward effective change.

### **Question 1: Do you consider that there are any additional environments/ settings that should be provided for within the abuse of position of trust provision? If so, please detail what these are and why they should be included.**

1.1 The Commissioner Designate welcomes the opportunity to respond to the Department of Justice's Call for Evidence on the extension of the abuse of position of trust amendments under Section 5 of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022. The Department is to be commended for taking this work forward and for exploring ways to secure more robust protections for children and young people who are vulnerable to abuse through positions of trust.

1.2 Given the relative infancy of the Commissioner Designate's office, there has been no engagement any individuals who have been affected by this issue. Any remarks within this response is based on a general understanding of the potential serious vulnerability of children and young people who are currently not protected from abuse by adults in a position of trust to them in non-statutory settings, outside of religion and sport.

This response has been informed by existing available literature as well as engagement with relevant stakeholders (NSPCC and Barnardos).

**1.3 Abuse of trust protection should be extended to include anyone with any caring responsibilities for children and young people in non-statutory settings not just within certain named categories.**

- 1.4 The Commissioner Designate is of the view that the amendment as currently drafted is too narrow in scope and will not protect all children and young people who are at risk of abuse by an adult in a position of trust.
- 1.5 Undoubtedly, adults who regularly coach, teach, train, supervise or instruct a child in a sport or a religion are particularly influential over a child's development. They have very high levels of trust, influence, responsibility, power and authority and as such, there is a significant power imbalance between the adult and young person.
- 1.6 However this is also true of adults working with children in a range of other non-statutory settings and as such, it is crucial that abuse of trust protection is extended to include anyone with any caring responsibilities for children not just within certain named settings. Abuse of trust protections should reflect the position of trust and authority that the adult holds with the child, rather than a specific job title or name of the sector.
- 1.7 Barnardos highlight how perpetrators of child abuse and exploitation deliberately seek out loopholes in the law and settings where they will go undetected. As the law currently stands, perpetrators may still have a wide range of organisations they can target to avail of those many remaining loopholes.
- 1.8 The Northern Ireland Commissioner for Children and Young People (NICCY) Barnardos and the NSPCC have highlighted a range of other non-statutory settings outside of religion and sport where children and young people could be exposed to harm by an adult in a position of trust, including but not limited to: dance; drama; musical and academic tuition; scouting; and driving instruction. These types of activities are provided by many organisations in the private and voluntary sectors and are not covered in the abuse of trust offences.
- 1.9 NICCY has cited a number of sources of evidence including: work undertaken by NSPCC in England which found that police were unable to investigate over 650 complaints made to local authorities concerning adults having sex with children aged 16 and 17 years in their care as their roles were not within the scope of position of trust definitions;<sup>1</sup> the Independent Commission into Child Abuse in England and Wales, which has heard testimony from victims subjected to sexual abuse in a wide range of settings, including sporting

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<sup>1</sup> The Independent Inquiry into Child Sexual Abuse, Anglican Church Investigation, Witness Statement of Almudena Lara, Head of Policy and Public Affairs, NSPCC [NSP000071 \(iicsa.org.uk\)](https://www.nspcc.org.uk/press-releases/2018/07/18/nspp000071-iicsa.org.uk)

organisations and uniformed bodies;<sup>2</sup> and the reviews and investigations into Scouting Ireland which identified over 317 alleged victims and 212 alleged perpetrators with one review author noting that allegations include victims and perpetrators living in Northern Ireland.<sup>3</sup>

- 1.10 Furthermore, the Department in its Call for Evidence document, refers to the Freedom of Information analysis conducted by NSPCC England mentioned above as evidence of why religion and sport should be the areas that are covered:

*“There were 653 complaints of this nature made to local authorities. Of the 495 cases where the adult’s role was recorded, the majority were in sport and religious settings”.*<sup>4</sup>

While sport and religious settings were the most frequently recorded, at 26% and 12% respectively, other categories were close behind with transport/drivers at 11%, voluntary/charity work at 5.7%, and cadets at 5.7%.

- 1.11 There is no explanation provided within the Call for Evidence document to explain the rationale for excluding these types of settings, particularly given cases of transport/drivers is only 1% less than those of religion and sport.

It is clear from the evidence available that abuse by adults in positions of trust can occur across a range of settings. Limiting the legislation to named settings exposes children and young people outside of those categories to unnecessary risk and provides a loophole for potential perpetrators to exploit.

**1.12 Addressing the fear of over-criminalisation of young people and raising age of consent by stealth**

- 1.13 From the Department’s Call for Evidence document, it is clear that the main driver for limiting non-statutory settings to religion and sport is based on a concern that extending the abuse of trust offences beyond religion and sport could over-criminalise young people who enter into genuine relationships or raise the age of sexual consent by stealth thus interfering with Article 8 of the ECHR – the right to private and family life.

- 1.14 However, Barnardo’s and the NSPCC have highlighted that the current legislation has been tightly drafted to ensure that genuine, healthy and honest

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<sup>2</sup> Independent Inquiry into Child Sexual Abuse [The Report of the Independent Inquiry into Child Sexual Abuse | IICSA Independent Inquiry into Child Sexual Abuse](#)

<sup>3</sup>Scouting Ireland review finds historical evidence of 71 alleged abusers [Scouting Ireland review finds historical evidence of 71 alleged abusers \(thejournal.ie\)](#)

<sup>4</sup>The Independent Inquiry into Child Sexual Abuse, Anglican Church Investigation, Witness Statement of Almudena Lara, Head of Policy and Public Affairs, NSPCC [NSP000071 \(iicsa.org.uk\)](#)

relationships are not accidentally swept into this offence. An additional safeguard also exists through the PPS's test for prosecution which will examine both the evidential and public interest elements of any case before determining whether an individual would be prosecuted.

- 1.15 The legislation clearly sets out the activity and categories that are regulated, that the activity between the child and adult must be carried out on a regular basis, and the adult must have knowledge of the child undertaking the activity in their remit. All elements of the offence (setting, activity, regularity and knowledge) need to be met for the offence to be committed. Therefore, even in an expanded format, the tight framing of the legislation means that it is unlikely that genuine relationships would unwittingly be captured where a legal position of trust exists.
- 1.16 Meeting all of the required elements also means that only genuine positions of trust abuse will be captured by the legislation, thus addressing the concern that criminalising sexual relations between young people and adults in a position of trust is raising the age of consent by stealth.
- 1.17 Outcomes for victims of abuse by adults in positions of trust highlight the need for comprehensive protection across all non-statutory settings.**
- 1.18 The effects of sexual exploitation on victims are far reaching. Children, young people and adults who have been subject to abuse by those in a position of trust may live with:
- Anxiety and depression;
  - Feelings of shame and guilt;
  - Post-traumatic stress;
  - Suicidal thoughts;
  - Relationship problems with family, friends and partners; and
  - Self-harm.<sup>5</sup>
- 1.19 One of the key outcomes is that the survivor is left carrying the shame of the events, often represented in a sense of complicity – that you let it happen. This self-blame once again makes the abuse difficult to talk about. Abuse of a position of trust makes it more difficult to identify when abuse is happening, and more difficult to identify and talk about in retrospect.
- 1.20 Extending the scope of the amendment will encourage a wider public conversation and generate awareness of the potential for adults to abuse their

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<sup>5</sup> [THE IMPACT OF CHILD SEXUAL EXPLOITATION - SAFE AND SOUND \(safeandsoundgroup.org.uk\)](https://www.safeandsoundgroup.org.uk)

position of trust regardless of the setting. Children and young people may be less likely to be shamed and manipulated into hiding abuse of their trust by adults as a result.

**Question 2: Do you know of any particular complaint made or concerns raised within these settings? Please provide detail**

- 2.1 As mentioned, the Office of the Commissioner Designate for Victims of Crime is newly established and as such engagement with any individuals who have been affected by this issue has not occurred. However, the Commissioner Designate has grave concerns about the weighting being given to the need for evidence of abuse of a position of trust before it can be considered as a named setting in legislation.
- 2.2 As mentioned above, victims are often shamed and manipulated into hiding abuse of their trust by adults and in some instances are not even aware that abuse is taking place. Victims are therefore less likely to report at the time the abuse is happening. Furthermore, it is impossible to have a clear picture of the scale and nature of the abuse of positions of trust occurring in other non-statutory settings outside of religion and sport as it is currently not reportable as a crime. As a result, data collection on this area will be inadequate, and certainly not a true reflection of the actual picture.
- 2.3 It should also be noted that the recent inclusion of non-statutory sport and religious settings took place because the original 'list' based approach proved to be too restrictive and manifestly failed to protect victims.
- 2.4 The Commissioner Designate has serious concerns about continuing with an approach that suggests that children and young people must become victims of trauma and abuse, which can have life changing consequences, before a decision can be made to afford them greater legislative protection. 'Future-proofing' the law to cover as yet anticipated circumstances, without waiting until abuse occurs, offers the most robust protection for children and young people.<sup>6</sup>

**Question 3: Is there any further information that you consider relevant in support of extending the scope of the abuse of position of trust provisions through this call for evidence? Please provide detail.**

- 3.1 In order to effectively monitor outcomes for children and young people, ensure transparency and make evidence informed decisions, the Department must

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<sup>6</sup>Northern Ireland Assembly, Committee for Justice. Justice (Sexual Offences and Trafficking Victims) Bill Evidence Submission from Professor Clare McGlynn, Durham Law School, Durham University [20210924-mcglynn-ni-intimate-image-abuse-and-upskirting-sept-2021.pdf](https://www.niassembly.gov.uk/20210924-mcglynn-ni-intimate-image-abuse-and-upskirting-sept-2021.pdf) ([niassembly.gov.uk](https://www.niassembly.gov.uk))



collect and share meaningful data when carrying out its statutory duty to conduct an annual review as set out in section 5(6) of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022.

- 3.2 Barnardo's have urged the Department to ensure that their review is not just based on quantitative data, and instead reflects the reality of children's lives in Northern Ireland. Barnardo's have recommend that the Department develops a framework for how children's input will be collected and considered, and how the Department will work to ensure their voice and lived reality is central to the monitoring process. This Call for Evidence is supported by the NSPCC who have asked for clarity regarding the operation of the annual review mechanism and assurances that data will be collected and monitored consistently.
- 3.3 In conclusion, we would call on the Department to act decisively in response to the gaps in the law highlighted herein and to use its powers under section 5(4) of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 to extend the abuse of trust offences to include all adults in a position of trust to a child.

If you would like to discuss any of these points in further detail, please do not hesitate to contact the office via:

Tel: 028 9052 6607

Email: [policy@cvocni.org](mailto:policy@cvocni.org)

Regards,

**Office of the Commissioner Designate for Victims of Crime**