

Barnardo's Northern Ireland

**Department of Justice – Call for Evidence
Abuse of Position of Trust Offences: Extension of the Law**

Barnardo's NI is the largest children's charity in Northern Ireland. Every year we work with more than 18,000 children, young people and families across more than 45 different services and programmes. We are a leading provider of schools-based support, reaching more than 32,000 children in schools across the UK and Ireland through our NI-managed social and emotional literacy programmes.

We deliver a wide range of services, from providing family support and early intervention, to working directly with children and families who have experienced adversity and need our support. Our goal is to achieve better outcomes for more children. To achieve this, we work with partners to build stronger families, safer childhoods and positive futures.

Barnardo's NI welcomes the opportunity to respond to the Department of Justice's call for views on the extension of abuse of position of trust amendments. We supported the introduction of the amendment in the Justice (Sexual Offences and Trafficking Offences) Act 2022, and we commend the Department and Minister for taking this work forward. However, then and now, we strongly urge that abuse of trust protections should go further and reflect the position of trust and authority that the adult holds with child, rather than a specific job title or name of the sector.

Barnardo's NI delivers a regional service, SEEN (Sexual Exploitation Ends Now), which is a specialist child sexual exploitation service, supporting children, young people and families affected by, or at risk of, sexual abuse, and delivering specialist therapeutic support for children who have experienced sexual exploitation. However, our comments in this call for evidence are informed by our work with children and young people more broadly over the many and varied services that we deliver. In speaking to our services when preparing this response, many senior practitioners were astonished that the recent legislation had been scoped so narrowly and feel that there was a missed opportunity to protect children whose trust in a respected and trusted figure of authority could be manipulated and abused, without consequence, so long as the relationship was deemed 'consensual'.

1. Relationships matter

- 1.1. Barnardo's NI welcomes the Department's public engagement to explore widening of the current regulations in relation to positions of trust. The legislation is currently too narrow in scope and does not protect all children who are at risk of abuse by an adult in a position of trust. It is crucial that abuse of trust protection is extended to include anyone with any caring or mentoring responsibilities for children and is not limited to sporting or religious settings.
- 1.2. The protections in legislation should reflect the importance of relationships for children, particularly vulnerable children, and the lasting impact that abuse of trust within an adult-child relationship can have on that child. The focus of abuse of trust cases should be on the trust and relationship between the adult and child, rather than the job title that the adult holds or the name of the sector that they work in. In cases captured under abuse of trust offences, the adult is abusing both their position of trust, and the trust placed in them by the child.
- 1.3. We know that perpetrators of child abuse and exploitation deliberately seek out loopholes in the law, and settings where they will go undetected. As the age of consent to sexual activity is 16 years old, children who are 16 and 17 years old do not have as much protection in the law as children under the age of 16. The argument of consent can be used as a defence by perpetrators in those settings that are not covered under the legislation. As the law currently stand, perpetrators may still have a wide range of organisations they can target to avail of those many remaining loopholes.

2. Proportionality and evidence

- 2.1. Barnardo's NI is concerned about the disproportionate weight that the Department is placing on quantitative evidence of abuse occurring outside of sport or religious settings. Before the evidence emerged from sport and religious settings which prompted the Department to bring in protections for children in both these settings, abuse of trust had occurred. Even while there was no public conversation, even when children were shamed and manipulated into hiding abuse of their trust by adults, abuse was occurring. We should not wait for evidence of trauma and abuse, and evidence of children who have been manipulated before we act to protect children in the law.

- 2.2. Barnardo's NI is aware of the concerns that by widening the scope of this legislation, the age of consent in Northern Ireland would be 'raised by stealth'. We believe these concerns have taken priority over the concern to protect children, at an age when they are developing personal relationships and understanding their own relationships and sexuality. Additionally, a young person aged 16 or 17 would still be able to have consensual relationships so long as that person did not have a position of authority over the child.
- 2.3. In examining the current legislation, it has been tightly drafted to ensure that genuine, healthy and honest relationships are not accidentally swept into this offence. 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. Therefore, even in an expanded format, the tight framing of the legislation, means that the pool of adults that a 16 or 17 year old could not have a relationship with would consequently be very small.
- 2.4. Given that a relationship between a 16 or 17 year old and an adult in a the broad range of settings not included in the legislation are currently legal, the Department will be aware that collection of statistical evidence on the number of relationships impacted by a change in the law is extremely challenging. However, given the tight scoping of the law the number of genuine relationships that fall within this narrow scope could be small, whereas we know that the number of children whose trust could be abused by a person in a position of authority is very high given the number of children who engage with adults in other activities not covered by the law.
- 2.5. It would be helpful if the Department could share the evidence it has on the genuine relationships in sport or religious settings that are impacted by the current legislation, and how it weighted the need to protect children, against the desire to protect those relationships. This would allow us to understand the balance of evidence, and how to best assist the Department in the identification of additional categories.
- 2.6. Additionally, in the consultation document, the Department points to a Freedom of Information analysis conducted by NSPCC England 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".

- 2.7. From our examination of this Freedom of Information project¹, it is unclear why the Department settled on sport and religion as the only two categories to be included. While they were indeed 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%.
- 2.8. The Department will be well aware that the very nature of perpetrators, and this type of manipulation of a child, means that often the child believes they are in a genuine relationship, or they are too scared or ashamed to tell anyone what is happening. Furthermore, even if the relationship became known, if it is not in a sport or religious setting, it is not illegal, therefore there would be no duty to report it to any authorities, and no case to bring to their attention.
- 2.9. Ultimately, we know that data collection on this area will be inadequate, and certainly not a true reflection of the actual picture. Furthermore, the central question remains, why should we have to wait for evidence of abuse to occur, before we act to protect children from abuse in the first place. Protecting children should be the first priority and main consideration.

3. Ongoing monitoring

- 3.1. As set out in the consultation document, the Department is required to review annually the application of the legislation and consider whether any additional categories should be brought into scope. It would be helpful if the Department could outline how it intends to conduct this annual review, what information they will be considering and who they will be consulting.
- 3.2. Barnardo's NI urges 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. We 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 this process. If we can learn anything from those examples of abuse of children's trust, it is that we must listen to children and act when they tell us they need our help.

¹ NSPCC evidence available here: <https://www.iicsa.org.uk/key-documents/19229/view/NSP000071.pdf>

- 3.3. While Barnardo's NI is disappointed that the Assembly missed the opportunity to protect more children in the Justice (Sexual Offences and Trafficking Victims) Act 2022, we urge the Department not to repeat this, and to take decisive action now to protect our children.

For further information, please contact:

Trása Canavan

Senior Policy & Public Affairs Lead

trasa.canavan@barnardos.org.uk