

# **Women's Policy Group NI**

## **Women's Policy Group Response to call for evidence on: Abuse of Position of Trust Offences: Extension of the Law**

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## 1. Introduction & Endorsements

The Women's Policy Group (WPG) is a platform for women working in policy and advocacy roles in different organisations to share their work and speak with a collective voice on key issues. It is made up of women from trade unions, grassroots women's organisations, women's networks, feminist campaigning organisations, LGBTQIA+ organisations, migrant groups, support service providers, NGOs, human rights and equality organisations and individuals.

The WPG uses our group expertise to lobby to influence the development and implementation of policies affecting women. The WPG is endorsed as a coalition of expert voices that advocates for women in Northern Ireland on a policy level. This group has collective expertise on protected characteristics and focus on identifying the intersectional needs of all women; in line with international human rights mechanisms.

This response has been endorsed by the following WPG organisations:

- Women's Resource and Development Agency
- Raise Your Voice NI
- Women's Platform

The WPG also endorses responses submitted by Women's Platform and by the NSPCC.

## 2. General Comments

The WPG was and remains supportive of the efforts of the former Justice Minister and Department of Justice in bringing forward the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 to which this consultation refers. We also support the 'Close the Loophole' campaign by the NSPCC.

We also commend the effort made and responsiveness to demand shown by this present consultation, which recognises that there are ways that the Act can be extended to protect more children and young people. With this in mind, we have written the following responses in the hope that the Minister (when in place) and Department will consider them.

## 3. Responses to Survey Questions

**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**

The Women's Policy Group welcomes the addition of religious and sporting settings to the abuse of position of trust provision. As noted in our response to the Justice (Sexual Exploitation and Trafficking Victims) Bill, we support the NSPCC's

recommendations and their 'Close the Loophole' campaign.<sup>1</sup> That said, we propose additional clarity on the definitions of the proposed additional settings, as well as the extension of the provision to cover additional settings.

Under the legislation, 'sport' is defined as including 'any game in which physical skill is the predominant factor' or 'any form of physical recreation which is also engaged in for purposes of competition or display.' As defined, it is not clear that this will include practices that are not competitive, such as yoga, pilates, dance, aerobics, etc. Nor does it explicitly include the practice of using personal trainers where the end goal is not competition, but improved personal fitness or flexibility.

This addition will extend protection to more young people and especially girls than would be reached through the current working definition; girls are generally less likely to be involved with competitive sport than their peers who are boys<sup>2</sup>, Australian statistics indicate that boys are twice as likely to be involved in organised sporting activity<sup>3</sup> of a competitive nature, with that gap widening after puberty. Broadening the definition of sport to include the kinds of physical activity that are more popular with girls and young women will widen the safety net and protect more girls and young women.

Also under the legislation, 'religion' is defined as including 'a religion which involves belief in more than one god' or 'a religion which does not involve belief in a god.' This is a valuable clarification, and means that sufficient protection should be extended to all.

With regards to additional environments not currently covered, the relevant Act provides that a person is in a 'position of trust' if they are 'regularly involved in caring for, training, supervising or being in sole charge of such persons,' within the statutory settings set out in Article 28.

This would benefit from clarification so as to cover the widest range of cases possible, including mentorships, apprenticeships, and volunteer spaces and organisations where an individual may not be protected as an employee or as a student, but who may nonetheless be meaningfully said to be receiving training or supervision that would put the trainer, mentor, organiser or supervisor in a position of trust.

We also note that Article 28 part 4 reads:

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<sup>1</sup> <https://wrda.net/wp-content/uploads/2021/09/WPG-Written-Evidence-Submission-to-Justice-Sexual-Exploitation-and-Trafficking-Victims-Bill-24-September-2021-1.pdf> p.43-44

<sup>2</sup> <https://www.youthsporttrust.org/programmes/girls-active>

<sup>3</sup> <https://www.vichealth.vic.gov.au/media-and-resources/media-releases/analysis-shows-boys-participate-in-organised-sport-more-than-girls>

*(4) This paragraph applies if A looks after persons under 18 who are accommodated and cared for in one of the following institutions—*

- (a) a hospital,*
- (b) an independent clinic,*
- (c) a residential care home or private hospital,*
- (d) a voluntary home or children's home, or*
- (e) a residential family centre,*

*and B is accommodated and cared for in that institution*

While entirely supporting the provisions of this clause, we would suggest that this be expanded to cover patients at the named facilities and services who are not resident in the care of the service. Medical professionals and care professionals can still have - and therefore still abuse - a position of trust in relation to their patients. The fact that some of these patients will be relatively vulnerable, occasionally not fully conscious, and often unsure of the boundaries of acceptable touching in certain contexts, makes this a simple but important addition. Outpatients can also experience inappropriate behaviour, and should not be excluded from this provision, as the relationship between them and the medical professional is the same.

For this reason we also propose adding dental surgeries explicitly, in case that is not included in the definition of “independent clinic”, which should include any situation in which a person received medical treatment from a licensed professional.

We therefore propose rewording this clause as follows:

*(4) This paragraph applies if A looks after persons under 18 who are accommodated and cared for or treated in one of the following institutions—*

- (f) a hospital,*
- (g) an independent clinic or dental surgery,*
- (h) a residential care home or private hospital,*
- (i) a voluntary home or children's home, or*
- (j) a residential family centre*

*and B is accommodated and cared for or treated in that institution.*

Taking all of the above recommendations as a whole, we propose making the above mentioned changes to the legislation, as follows:

**We propose:**

1. **Defining sport as ‘any game in which physical skill is the predominant factor’ or ‘any form of physical recreation which is also engaged in for purposes of competition, display, increased fitness or flexibility’.**
2. **Clarification of the statutory settings set out in Article 28 to explicitly include spaces where a child or young person may fall between the status of a student or an employee, such as volunteer spaces, apprenticeships and mentoring programmes.**
3. **Including non-residential medical settings explicitly in Article 28, as set out above.**

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

The WPG has no specific case studies relating to these kinds of offences. With that said, there are examples of such cases that have sometimes taken many years to be revealed to the public and that have seriously damaged the well-being of the young people involved.

Wikipedia has a long article covering sexual abuse cases involving yoga gurus, and there have been specific well-known cases of serial predators engaged in the practice to access victims under the guise of improving their health<sup>4</sup>. This would not be covered explicitly in the existing phrasing about competitive sport but would be by adopting our amended phrasing.

There have also been extensive cases where apprentices, mentees, volunteers and more have been subjected to violent abuse<sup>5</sup>, psychological violence and sexual abuse<sup>6</sup>. Many of these cases highlight the tension between the opportunity and promise offered on one hand, and the power that control of these coveted positions can hand to abusers. Extending the legislation to cover these kinds of cases can be only a positive.

In terms of harassment and sexual violence within a medical context, data from 2020 indicates that there is a “widespread” and “cultural” issue within the medical profession. The data indicates that, of the upheld complaints, which resulted in doctors losing their licenses, approximately half were made by patients, where this data was made available<sup>7</sup>. This indicates that there is good reason to extend the provision at Article 28 as outlined in our response to Q 1, because while some

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<sup>4</sup> <https://www.theguardian.com/film/2019/nov/20/bikram-choudhury-yoga-founder-abuse-netflix-documentary>

<sup>5</sup> <https://www.smh.com.au/business/workplace/young-apprentice-suffered-physical-emotional-abuse-for-years-20160606-gpccmw.html>

<sup>6</sup> <https://www.theguardian.com/australia-news/2016/jun/23/man-worked-with-army-abusers-decades-after-horrific-apprentice-ritual>

<sup>7</sup> <https://www.independent.co.uk/news/health/sanction-doctors-sexual-misconduct-b2015338.html>

patients will have been adults, and some resident in the medical facility, there is no reason to believe that none of the patients were outpatients. These people deserve the same provision in the law as those currently covered by the provision.

**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**

In addition to the recommendations in response to Question 1, we note that there are exceptions noted to Article 28, listed in Articles 30 and 31.

Article 30 states, as follows:

*Conduct by a person (A) which would otherwise be an offence under any of Articles 23 to 26 against another person (B) is not an offence under that Article if at the time—*

*(a) B is 16 or over, and*

*(b) A and B are lawfully married or civil partners of each other<sup>8</sup>*

While the reasons for these exceptions are understood, they must also be read in the light of the fact that we now recognise the nature of coercive and controlling relationships, both in public discourse and in law. We must consider, therefore, that some marriages, civil partnerships and relationships are abusive or controlling, and that young people who are old enough to legally consent may still be vulnerable to ostensibly consensual relationships that began due to the undue influence or indeed are predicated on the position of trust that one party had over the other.

**We therefore propose that clause 2 of Article 30 be amended from:**

***In proceedings for such an offence it is for the defendant to prove that A and B were at the time lawfully married or civil partners of each other.***

**to**

***In proceedings for such an offence it is for the defendant to prove that A and B were at the time lawfully married or civil partners of each other and that the defendant is not also alleged to have engaged in coercive or controlling***

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<sup>8</sup> <https://www.legislation.gov.uk/nisi/2008/1769/part/3/crossheading/offences-against-children-under-18-abuse-of-position-of-trust>

***behaviour before or during that marriage or civil partnership.***

Related to this, Article 31 states:

*Conduct by a person (A) which would otherwise be an offence under any of Articles 23 to 26 against another person (B) is not an offence under that Article if, immediately before the position of trust arose, a sexual relationship existed between A and B.*<sup>9</sup>

It is quite feasible that a sexual relationship may be entered into as a condition of a certain position of trust (for example, used against a sporting hopeful, or used against a person hopeful of an educational opportunity, with the promise of those opportunities withheld unless the young person enters a sexual relationship) and as such, while it may precede the formal establishment of the position of trust, the promise of what such a relationship could offer was weaponised against a young person.

In recognition of this **we also recommend the following amendment to clause 3 of Article 31, changing it from**

***In proceedings for an offence under any of Articles 23 to 26 it is for the defendant to prove that such a relationship existed at that time.***

**to**

***In proceedings for an offence under any of Articles 23 to 26 it is for the defendant to prove that such a relationship existed at that time, and that this relationship was not entered into on the basis of a promise of reward or favour that would flow from the position of trust held by the defendant.***

Ends.

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<sup>9</sup> <https://www.legislation.gov.uk/nisi/2008/1769/part/3/crossheading/offences-against-children-under-18-abuse-of-position-of-trust>