

EMAIL

Mervyn Storey, MLA
Chair
Committee for Justice
Room 242, Parliament Buildings
Stormont
Belfast BT4 3XX

Ref: 22/CJS/KY/01

10 January 2022

Dear Chair

Re: Abuse of Trust - Justice (Sexual Offences and Trafficking Victims) Bill

I would like to thank the Committee for sharing the Department's proposed amendment regarding Abuse of Trust and for providing opportunity to comment on this. As previously noted, due to the timeframe we were regrettably unable to provide this by 6 January 2022 but hope that Members will still be able to consider my comments.

As the Committee will be aware, and as outlined in our written and oral evidence on the Bill I am deeply concerned that provisions to address current legislative gaps in safeguarding children and young people from abuse and exploitation by those in positions of trust should not be limited only to certain settings, such as sporting and religious settings. This position has also been outlined to the Department in detail in our written advice to the 2019 consultation on review of the law¹ and in more recent discussion regarding the Bill.

NICCY notes that abuse of trust protections in law should take account of the power dynamics of sexual abuse and exploitation and reflect that children and young people can be subject to abuse by those in positions of trust across a wide range of relationships and activities rather than instead focusing on a limited number of settings. Indeed, as we have previously highlighted, the UK ratified the Council of Europe Convention on the Protection of Children against Sexual Abuse and Sexual Exploitation (the Lanzarote Convention) in 2018 and Article 18(1b) of the Convention sets out that necessary legislation must be in place to ensure that abuse of a recognised position of trust, authority or influence over a

¹ NICCY (2019) Advice on the Review of the law on Child Sexual Exploitation:
[Review of the law on Child Sexual Exploitation \(niccy.org\)](https://www.niccy.org/review-of-the-law-on-child-sexual-exploitation)

child is criminalised.² The Lanzarote Committee who monitor implementation of the Convention provide detailed direction on this and define ‘the circle of trust’ as including a relationship of trust which has been established with the child in the context of a professional activity or where unequal physical, economic, religious or social power is exploited and abused. The Convention’s Explanatory Report sets out that such relationships of trust include caring for children, educating or providing emotional, pastoral, therapeutic or medical care, employing or having financial control over or otherwise being in a position to exercise control over a child and notes that relationships and activities outside the statutory sector and across public, private, voluntary and youth organisation settings, are in remit of the Convention.³ The Lanzarote Committee also note that the primary focus should remain on the broader position of trust due to concerns that seeking to create a closed list of settings within scope of protections may then lead to the inadvertent exclusion of certain activities or relationships of trust.⁴

We are mindful that Members have been considering this area in detail and that the Committee is aware of similar debates in relation to the Westminster Police, Crime, Sentencing and Courts Bill and of calls to ensure proposed amendments include extra-curricular or hobby activities or all adults in positions of trust who care for, supervise, train or are in charge of a child and we welcome these discussions. NICCY has significant concerns about the position of the Department that there must be further evidence provided that children have been sexually abused by adults in positions of trust outside of sporting and religious settings before further amendments can be considered and **urges the Committee to continue to explore how broader abuse of trust protections can be effectively secured within the Bill.**

In relation to the amendment proposed by the Department in regard to consent to serious harm for sexual gratification which is also included in the information the Committee has provided, I welcome this in principle and will not be providing more detailed comment.

I hope that the Committee will continue to consider our comments in relation to other aspects of the Bill, particularly our concerns regarding the current defence of reasonable belief and the uneven protections provided by grooming provisions and child abduction legislation as well as

² <https://www.coe.int/en/web/children/lanzarote-convention>

³ Council of Europe (2007) Explanatory report to the Council of Europe Convention on the Protection of Children against sexual exploitation and Sexual Abuse, para 123 and 124.

⁴ Lanzarote Committee (2015) First implementation report
<https://rm.coe.int/1st-implementation-report-protection-of-children-against-sexual-abuse-/16808ae53f>

the urgent need to ensure Equal Protection for children from all forms of assault, including physical punishment.

Please do not hesitate to contact my office if you require any further information.

Yours sincerely

Koulla Yiasouma
Commissioner for Children and Young People

CC: Lorraine Ferguson, Department of Justice