



Northern Ireland
Assembly

Research and Library Service Briefing Paper

Paper 138/10

21 May 2010

NIAR 226-10

Aidan Stennett

Positions of Trust Legislation and Sports Coaches

1 Position of Trust Provisions

1.1 UK

Position of Trust provisions in the UK are set out in three pieces of legislation which correspond to the three separate jurisdictions:

- Northern Ireland – The Sexual Offences (Northern Ireland) Order 2008, sections 28 and 29;
- England and Wales – The Sexual Offence Act 2003, sections 21 and 22; and
- Scotland – The Sexual Offence (Scotland) Act 2009, sections 43 and 44.

The terms of all three pieces of legislation are similar. The primary purpose of such provisions is to:

...provide protection for young people aged 16 and 17, who are considered to be particularly vulnerable to exploitation by those who hold a position of trust or authority in their lives.ⁱ

That is, the legislation is designed to protect 16 and 17 year olds from engaging '*in sexual activity, which would not be criminal expect for*' the perpetrators '*position of trust in relation to the victim*'.ⁱⁱ

In this sense the provisions are distinct from legislative provisions which seek to protect the rights of children under the age of 16.

In Northern Ireland *Position of trust* status applies if:

- an individual looks after a person under 18 in an institution where the young person is detained in that institution by virtue of a court order or statutory provision;
- an individual looks after a person under 18 in a resident home or other institution provided by an '*authority*' or voluntary organisation;
- an individual looks after a person under 18 in a hospital, independent clinic, residential care home, private hospital, voluntary home, children's home or family centre;
- an individual looks after a person under 18 receiving education at an educational institution (at which that individual is not themselves receiving education);
- an individual is appointed guardian of person under 18;
- an individual has regular unsupervised contact with a person under 18 (under the terms of the Children (Northern Ireland) Order 1995);
- an individual is a appointed personal adviser to a person under 18 (again, under the terms of the Children (Northern Ireland) Order 1995); or
- an individual looks after a person under 18 under the terms of a care order, a supervision order or an education supervision order.

The other two legislative documents contain a broadly similar definition of *positions of trust*, although the specific terminology differs between all three provisions. Similarly, in all three documents '*looking after*' a person under 18 is defined as *caring for, training or supervising*' in a situation where there is regular unsupervised contact.

On the basis of the above a sports coach would be included within the positions of trust provisions in the context that they are a sports coach operating within an educational institution.

Significantly, however, none of the provisions above includes sports coaches (outside of educational institutions) within their broad definition of position of trust.

1.2 Republic of Ireland

The situation in the Republic of Ireland is different, largely because the age of consent within the region is older than in the UK (17 rather than 16). The Criminal Law (Sexual Offences) Act, 2006, however, distinguishes between sexual offences in two contexts

– were the victim is 15 years or younger and were the victim is older than 15 and but younger than 17.

In the case of the latter, sexual offences carry a higher penalty if the perpetrator is considered to be in a *'position of authority'*, that is:

- a parent, step-parent, guardian, grandparent, uncle or aunt of the victim,
- any person who is, for the time being, in *loco parentis* to the victim, or
- any person who is, for the time being, responsible for the education, supervision or welfare of the victim.ⁱⁱⁱ

The Department of Criminal Justice has been contacted for advice on how the third point is to be interpreted in relation to sports coaches. Research is awaiting their response.

2 Discussion

The case for extending positions of trust regulations in the UK has been put forward by the National Society for the Prevention of Cruelty to Children (NSPCC). Specifically, the NSPCC *'would like the categories for abuse of trust to be extended to cover others in positions of trust, such as sports coaches, doctors, clergymen, and youth and community, who have considerable influence and authority over children and young people'*.^{iv} The NSPCC have stated:

We would argue that sports coaches due to the nature of the activity have substantial influence over young people. Many sports coaches have great amounts of power and influence over young athletes particularly those at elite sport level.^v

A 2007 report by the Northern Ireland Assembly Ad Hoc Committee on the Draft Sexual Offences (NI) Order 2007 echoes the concerns of the NSPCC, stating:

With regard to positions of trust referred to in the Draft Order not including sports coaches, the Committee, while content to acknowledge the difficulties, would strongly urge the Minister to give further serious consideration to the inclusion of sports coaches within the legislation.^{vi}

The view of the UK Government in passing the 2003 act was that *'there did not appear to be sufficient evidence to suggest that children over the age of consent were "routinely" being abused in a sports setting'* and they *'did not consider that the position of vulnerability would be sufficiently strong to justify bringing "consensual" relationships between 16- and 17 year olds and their coaches within the scope of criminal law'*. The NSPCC is in disagreement with both of these positions arguing that:

...the (UK) Government's view that until a group of children are "routinely" abused in a particular environment no action should be taken to safeguard them.^{vii}

And that:

...to use the term “consensual” to defend taking no action demonstrates a lack of understanding of the entrapment process and why ¾ of children do not disclose sexual abuse at the time it occurs.^{viii}

The inclusion of sports coaches within the legislation has also been rejected on the basis of definition. That is, it was thought ‘*difficult to define in law what is meant by a sports coach^{ix}* and that if legislation was extended to ‘*this non regulated sector, it would need to be extended to a range of other sections*’. Again, the NSPCC are in disagreement with the above stating that the legislation should be extended to include sports coaches, based upon the following definition:

An individual who [has] obtained a recognised National Governing Body coaching award, certificate or licence to a Level 1 standard.^x

During January 2010 DCAL held a consultation with representatives of sporting bodies in Northern Ireland. In March of the same year the Minister wrote to the Committee for Culture, Arts and Leisure outlining the results of this process.

The Minister stated:

...sports bodies, whilst supportive of the principle of extending abuse of trust provisions to sports coaches under the sexual offences order, have a number of issues with regard to scope, practicality and definition.^{xi}

These issues include:

- sports bodies could not support an extension of provision which applied ‘*singularly to sport*’;
- an acceptable extension would ‘*cover all circumstances where an adult, from any sector or in any position (voluntary or professional), may be deemed to be entrusted with power/authority in relation to a young person aged 16 or 17*;
- sports bodies expressed a wariness over legislation which *appeared to them to unclear*, suggesting that such an occurrence would deter future coaches;
- positions of trust in sport need not necessarily be between coach and athlete, in certain sports other adults (national selectors, leaders, physiotherapists etc) ‘*could arguably have equal or greater access to and influence over young people*’;
- the definition of sports coaches put forward by the NIO (that recommended by NSPCC, above) was thought ‘*not adequate and not appropriate*’;
- self-regulation within sports bodies has been effective; and
- should additional safeguards be required, these would be better achieved through the ‘*practical outworking of the DHSSPS’s Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 rather than through the NIO’s Sexual Offences Order*’.

A similar debate has occurred in Scotland. The Scottish Law Commission considered 'positions of trust' in its 'Discussion Paper on Rape and Other Sexual Offences' (2006) and, subsequently, in its Report on Rape and other Sexual Offences (2007). The discussion paper notes that;

...breach of trust offences which do not involve persons living in the same family unit...are different in that they involve a position of trust and authority in which one person holds a specific role, such as a carer or a teacher [...].^{xii}

In the Law Commission's report, it was noted that the Draft Criminal Code's definition of 'position of trust' included instances where:

...the person is the teacher, instructor or religious advisor of that other [...]

Whilst many of the Commission's consultees were of the opinion that this definition should be adopted for offences under consideration, the Commission decided;

'...on further reflection...that the current method of defining a relationship of trust should be retained'.^{xiii}

ⁱ The Crown Prosecution Services, *Legal Guidance: Sexual Offences Act 2003* (updated 14/07/2009) http://www.cps.gov.uk/legal/s_to_u/sexual_offences_act/ (accessed 19/05/2009)

ⁱⁱ *Ibid*

ⁱⁱⁱ The Bar Council, The Law Library of Ireland, *Criminal Law (Sexual Offences) Act, 2006* http://www.lawlibrary.ie/documents/memberdocs/legislation/SEXUAL_OFFENCES2006.doc (accessed 19/05/10)

^{iv} NSPCC *Policy Summary – Abuse of Trust*

http://www.nspcc.org.uk/inform/policyandpublicaffairs/policysummaries/abuseoftrust_wdf61907.pdf (accessed 19/05/10)

^v NSPCC, *Sports Coaches Abuse of Trust extension of definition in the Sexual Offences (Northern Ireland) Order 2008 – paper prepared for the NIO and Minister Paul Goggins MP by NSPC Child Protection in Sport Unit*

http://www.nspcc.org.uk/Inform/policyandpublicaffairs/NorthernIreland/briefings/sportscoaches_wdf54979.pdf (accessed 19/05/10)

^{vi} Ad Hoc Committee on the Draft Sexual Offences (NI) Order 2007, *Report on the Draft Sexual Offences (NI) Order 2007* (January 2008)

http://www.niassembly.gov.uk/adhocs/2007mandate/sexual_offences/reports/report15_07_08R.htm (accessed 19/05/10)

^{vii} NSPCC, *Sports Coaches Abuse of Trust extension of definition in the Sexual Offences (Northern Ireland) Order 2008 – paper prepared for the NIO and Minister Paul Goggins MP by NSPC Child Protection in Sport Unit*

http://www.nspcc.org.uk/Inform/policyandpublicaffairs/NorthernIreland/briefings/sportscoaches_wdf54979.pdf (accessed 19/05/10)

^{viii} *Ibid*

^{ix} Briefing Paper to the CAL Committee of Consultation with Sport on Sexual Offences (Northern Ireland) Order 2008

^x NSPCC, *Sports Coaches Abuse of Trust extension of definition in the Sexual Offences (Northern Ireland) Order 2008 – paper prepared for the NIO and Minister Paul Goggins MP by NSPC Child Protection in Sport Unit*

http://www.nspcc.org.uk/Inform/policyandpublicaffairs/NorthernIreland/briefings/sportscoaches_wdf54979.pdf (accessed 19/05/10)

^{xi} Letter from the Minister for Culture, Arts and Leisure to the Committee for Culture, Arts and Leisure, *The Sexual Offences (Northern Ireland) Order 2008: Application Abuse of Trust Offences to Sports Coaches – Consultation with sport* (9 March 2010)

^{xii} Scottish Law Commission, Discussion Paper on Rape and other Sexual Offences (January 2006), paragraph 5.107; http://www.scotlawcom.gov.uk/downloads/dp131_rape.pdf (accessed 20/05/2010)

^{xiii} Scottish Law Commission, Report on Rape and Other Sexual Offences (December 2007), paragraphs 4.129 and 4.130; <http://www.scotlawcom.gov.uk/downloads/rep209.pdf> (accessed 20/05/2010)