

Jim McMahon OBE MP



HOUSE OF COMMONS

LONDON SW1A 0AA

Dr Carolyn Wilkins
Chief Executive
Oldham Council
Civic Centre
West Street
Oldham
OL1 1UG

4 October 2019

Ref: JM26360

Dear Carolyn

Please find enclosed a copy of the response I have received from the Minister with regard to the Council's resolution in support of the NSPCC's Close the Loophole campaign.

Kind regards

A handwritten signature in cursive script that reads "Jim McMahon".

Jim McMahon OBE MP
Member of Parliament
Oldham West & Royton

Serving the Communities of Chadderton, Royton and Oldham



Ministry
of Justice

Chris Philp MP
Parliamentary Under-
Secretary of State for Justice

Jim McMahon OBE MP
House of Commons
London
SW1A 0AA

MP ref: JM2630
MoJ ref: MC72846

27 September 2019

Dear Jim,

POSITION OF TRUST

Thank you for your letter of 20 September addressed to the Lord Chancellor, on behalf of Dr Carolyn Wilkins OBE, CEO of Oldham Council, in support of the NSPCC's "Close the Loophole" campaign. This calls for the definition of "position of trust" under the Sexual Offences Act 2003 to be extended to cover a range of jobs or voluntary posts where people aged 18 or over may come into contact with 16- and 17-year olds, for example sports coaches, youth leaders and driving instructors. I am responding on behalf of my colleague as the Minister responsible for criminal law.

I share the NSPCC's commitment to protecting children and young people from abuse. The criminal law already provides a number of protections to deal with non-consensual and unwanted sexual activity and abuse. You may be reassured to know that we also have clear laws in place criminalising grooming of, and sexual communications with, children. We remain determined that such activity should be investigated, prosecuted and punished, no matter what the perpetrator's occupation or relationship to the individual might be.

I recognise that there are growing concerns about those who might abuse their position of power over a 16- or 17-year-old to pressure them into engaging in a sexual relationship. Such behaviour is likely to be caught by the robust laws we already have in place, and I want to actively encourage anyone who feels that they are a victim of sexual abuse to contact the police.

We want to ensure that existing offences are being used effectively to tackle this behaviour, and that those working with young people understand their responsibilities and act appropriately. Therefore, I am pleased to inform you that my department, working closely with colleagues across government, is taking forward a review of the existing law, to ensure that it is working effectively and is clearly understood. We have already reached out to the Police and Crown Prosecution Service (CPS) to get their valuable input into how the law is working in practice and how we can raise awareness of the existing law and the protections it already offers to young people. We will analyse their responses and continue to work with them on identifying any further action that might need to be taken.


Another key part of this review is our engagement with organisations that work with young people to understand their concerns and ensure that the right measures are in place to protect young people from inappropriate behaviour. We have scheduled a number of roundtables and smaller meetings with representatives working with young people across a wide range of sectors and in a range of capacities. These will be vital to inform our thinking and actions going forward.

If it appears that there are gaps in our current provisions or practice, we will consider very carefully how to address these. I will keep you updated as this work progresses, and I thank you for sharing our commitment to ensuring young people are suitably protected.

With this letter I have included a factsheet to explain how the law already tackles this type of behaviour, for your reference.

With best wishes,

CHRIS PHILP MP

Jim - This is under active review. 

FACTSHEET: ABUSE OF POWER IN SEXUAL RELATIONSHIPS

1. The key legislation is the Sexual Offences Act 2003, which followed a full and extensive consultation ("Setting the Boundaries") and significantly modernised and strengthened the laws on sexual offences in England and Wales.
2. All of the measures in the Act were designed to provide a clear and effective set of laws to deter and punish abusers, giving the police and the courts the up-to-date offences they need to do their job, and ensuring that children and adults have the strongest possible protection under the law. These laws are possibly the most comprehensive in the world.
3. Non-consensual sexual activity, whatever the age of the victim and whatever their relationship to the perpetrator, is illegal.
4. Sexual activity with someone under the age of 16 is a crime whether or not they consented to that activity, and whatever the relationship with the child.
5. "Consent" is a main factor in a range of sexual offences. It is defined in section 74 of the 2003 Act, which states that, for the purposes of the 2003 Act, a person consents *"if he agrees by choice, and has the freedom and capacity to make that choice."*
6. In interpreting this definition, the Court has held that *"the evidence relating to 'choice' and the 'freedom' to make any particular choice must be approached in a broad common-sense way"*.
7. There are a number of issues which can impact on a person's ability to give "consent". For example, the Crown Prosecution Service's guide to "consent" highlights a range of factors that should be taken into account, including the age, maturity and understanding of the victim, any position of power the suspect held over the victim, and whether the suspect was in a position of power where they could abuse their trust, especially because of their position or status.
8. The Act contains a range of offences which criminalise sexual activity with children along with robust sentences to deal with this serious offending. It includes offences to protect children from manipulation or "grooming" for sexual purposes, for example Section 15.
9. Section 15 of the Act criminalises adults who communicate with children under 16 and then arrange to meet them with the intention of committing a sexual offence against them, either at that meeting or subsequently. The offence is committed when the offender meets the child or travels with the intention of meeting the child, or arranges to meet the child, or the child travels with the intention of meeting the offender. The offence attracts a maximum penalty of 10 years imprisonment.
10. Where a manipulative offender grooms a child prior to them reaching the age of consent and then engages in a sexual relationship with them when they are over 16, we have offences that could be used, for example, Section 15A of the Sexual Offences Act 2003.
11. Section 15A criminalises a person over 18 years of age who communicates with a child under 16 (who the adult does not reasonably believe to be 16 or over), if the communication is sexual or if it is intended to elicit from the child a communication which is sexual. The offence carries a two-year maximum prison sentence.

12. The 2003 Act also contains a number of offences (see s.16 – 24) which criminalise sexual activity with a young person under the age of 18 by people who hold a “position of trust” in respect of that child, even if such activity is consensual. The policy aim is to stop people abusing such positions by manipulating young people to consent to sex. These offences build on the “general” child sex offences, which make it a crime for anyone to engage in sexual activity with someone under the age of 16.
13. The current “positions of trust” offences are additional to this and are targeted at situations where the child has some dependency on the adult involved, often combined with an element of vulnerability of the child. They are directed at those who are employed to look after children under the age of 18, for example those providing care for a child in a residential care home, hospital or educational institution. The offences deliberately do not cover all posts in which a person might have contact with, or a supervisory role of, a child aged under 18.
14. The definition is drawn in a measured way to recognise the need to balance the legal right to consent of those aged 16 and over with the desire to protect young people from manipulation.
15. We are carrying out a review to ensure that existing offences are being used appropriately and effectively, and that those working with young people understand their responsibilities and need to act appropriately.
16. The review will allow us to test how effectively the current law is working and how well it is understood. It will also allow us to engage with organisations that work with young people across a range of sectors to understand their concerns and ensure that the right measures are in place to protect young people from inappropriate behaviour. It will give us a platform to review any gaps in law or practise.
17. We have been considering the findings of the review in detail with Ministers and will announce next steps in due course.