

The new offence created by the Bill

The Bill makes it a criminal offence for adults in certain positions of responsibility to have sexual relations (homosexual or heterosexual) with a young person aged under 18 in their care.

The situations covered are tightly defined in Clause 4. They include full time education, young offenders' institutions, children's homes, foster care and hospitals. The narrowness of the provisions is revealed in the Bill's explanatory notes which state that the Home Office only predict 10-15 prosecutions a year.¹⁷ Of course, not all prosecutions will end in convictions.

The new abuse of trust offence runs in parallel with the age of consent offences. A full time teacher who has sexual relations with a 14 year old pupil will be committing both offences. If the pupil was aged 16, only the abuse of trust offence would have been committed.

A specific intention of the abuse of trust offence is to protect young people aged 16 and 17 from an adult who could exploit a position of responsibility. The great benefit of the offence is that (like the age of consent) it is automatic. It only has to be proved that the sexual act took place. The Court does not have to consider arguments about whether the young person consented.

Strengthening the abuse of trust clauses

Lady Young and other peers have proposed amendments which closes loopholes in the Bill's abuse of trust provisions.

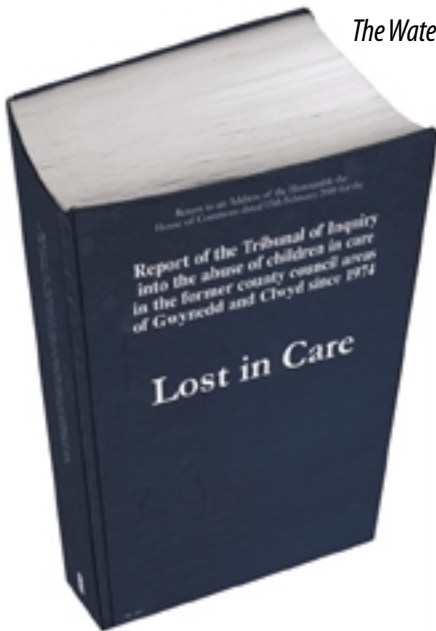
By far the most important are those amendments which deal with the systematic abuse which was uncovered by the Waterhouse inquiry into child abuse in North Wales children's homes. Sir Ronald Waterhouse has particularly pointed out the vulnerability of young people when they leave care or before they go into care.

Abuse uncovered by the Waterhouse Inquiry

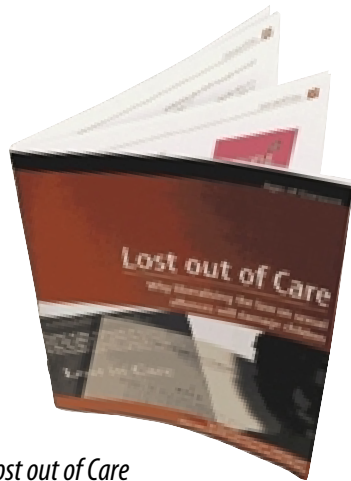
“We have concentrated our attention on evidence relating to children who were in care at the time, having regard to our terms of reference, but we have necessarily heard some evidence about others who were on the fringe of the care system, that is, children who were later committed to care and youths who had recently been discharged from care. In our judgment, the perils for such persons are as great in this respect as for those actually in care and our findings emphasise the importance of continuing support by social services for those who are discharged from care.

We draw the attention of Parliament also to the abuse suffered by B between the ages of 16 years and 18 years, in circumstances which appear to have made him question his own sexuality for a period. Much of the later abuse was not inflicted by persons in a position of trust in relation to him and there can be no doubt that he was significantly corrupted and damaged by what occurred.”¹⁸

The Waterhouse Tribunal of Inquiry into the North Wales child abuse scandal.



The Waterhouse Report



Lost out of Care

The Christian Institute's response to the Waterhouse Report is available on request

The report into Child Abuse in North Wales drew attention to the following types of abuse **not covered** by the Bill's abuse of trust provisions:

- **'Grooming'**
preparing a young person for abuse after they have left the home
- **'Farming out'**
children from one home were abused by care staff from another home
- **Absconders**
these cease to be "resident" at the home and so can be abused by the care staff from the home without committing an abuse of trust offence
- **Abuse by ancillary staff**
- **Abuse by a social services inspector**
(including the man who became the Deputy Chief Inspector of Social Services in Wales)
- **Abuse in youth organisations**
(paedophiles got involved in youth club leadership)

Other loopholes not covered by the Bill's abuse of trust provisions

- religious organisations
- part time pupils
- part time teachers
- "personal advisers" as appointed under the Children (Leaving Care) Act 2000
- "personal mentors" as appointed under the Learning and Standards Act 2000
- adults *in loco parentis*
- abuse by step-parents
- homosexual incest (the incest laws only cover heterosexual incest)

The Home Office Review

Several of Lady Young’s amendments reflect recommendations of the Home Office’s own enquiry into sexual offences. The Home Office paper “Setting the Boundaries” produced in July, proposed a series of new offences. The table below compares some of the proposals with Lady Young’s own amendments.

Lady Young’s Amendments	Sexual Offences Review Proposals
Extend abuse of trust to cover ancillary staff in residential homes	New offence of breach of relationship of care to cover all staff in residential care homes (Recommendation 32)
Extend abuse of trust to cover all social care workers	New offence of breach of relationship of care to cover designated care providers (Recommendation 32)
Extend abuse of trust to cover adoptive-, foster- and step-relations, aunts and uncles and those living in the same household	New offence of familial abuse of trust to cover adoptive relations, step-parents, foster parents, aunts and uncles and those living in the same household. (Recommendations 35, 36, 37, 38, 39, 41 and 42)

Given the similarities between the Home Office’s own proposals and Lady Young’s amendments, the Government should have no difficulty in accepting them.

References

- ¹⁷ The Sexual Offences (Amendment) Bill, Explanatory Note, para 21
- ¹⁸ Waterhouse, Sir Ronald, *Lost in Care: Report of the Tribunal of Inquiry into the abuse of children in care in the former county council areas of Gwynedd and Clwyd since 1974*, The Stationary Office, 2000, para 52.86,87