

Victims, Public Protection and Risk

“Examine why sexual offenders attract so much attention these days. How has the Criminal Justice System responded to societies anxieties?”

In preparing for this essay it has been identified that sexual offenders are not a homogenous group of individuals and that this is an umbrella term used to describe a range of behaviours ranging from acts of voyeurism and exhibitionism, to more serious acts of pedophilia and rape.

For the purpose of this essay I have chosen to focus on the more serious forms of sex offending which in my opinion, are the cause of much of the current attention. In order to understand why sexual offenders attract so much attention I will begin by considering today's society and the emergence of post-modernist values and the preoccupation with risk. I shall then go on to consider the factors which have influenced this current climate. These include the media and its portrayal of high-profile cases like that of Sarah Payne and Sidney Cooke, actions taken in the USA to manage dangerous offenders and the introduction of new offences of 'grooming' spurred by the growth of the internet.

Following this I shall concentrate on how the Criminal Justice System has responded to society's anxieties and public protection needs. I will consider the range of strategies implemented to manage and reduce risk, including new legislative provisions, the creation of a Sex Offender Register, development of risk assessment tools, Multi-Agency working and accredited programmes.

Finally I will consider the effectiveness of such interventions and whether the current preoccupation with public protection and management of offenders has been introduced at the expense of this category of offenders, who are now at risk of over inclusiveness and erosion of their human rights.

Social Theorists have noted a shift from what was once a 'modernist' society to one with post-modernist values (Beck 1986, Giddens 1990 & Garland 1985). It was during the period of "modernity" which stems back to the 18th century, that notions of tradition, feudalism and superstition began to be replaced by reasoning, science and exploration. There was a move away from harsh penal conditions and a move towards reforming individuals. It was during this period of modernity that there existed societal consensus and a general air of optimism which generated high levels of trust and respect for people in authority.

During the mid-1980s post-modernism emerged as an area of academic study, and it is this which currently describes today's developed world. Attempts have been made to chart the shift from modernism to post-modernism, however this is largely attributed to the work of Ulrich Beck and what he describes as the emergence of a 'risk society' (Beck 1986). Beck argued that the public are constantly being "confronted with socially created risks which endanger survival" (Beck 1986, p32). He saw one of these being globalisation, whereby communication is now effortless, thus increasing the risk of messages being distorted and information saturated which hence has the potential to perturb (Beck, 1986). Another was the creation of moral panics, first introduced by Stanley Cohen in his book "Folk Devils and Moral Panics" in 1972. He identified a universal tendency for society to focus all its fears on one identified group. This he noted, shifts overtime in accordance with societies level of tolerance of certain behaviours. For example drug users and single parents were once the target of much condemnation, however currently, it is paedophiles that have been elevated to position

of 'modern folk devil' (Cohen, 1972).

Much of this attention has been stimulated by our sensationalist media, and the increased reporting of sex crime which has not only increased visibility, but has created a public fascination with sex crime. Media coverage tends to be largely stereotypical, portraying sexual offenders as 'bad, mad, or sad' (Kitzinger & Skidmore 1995, p276) and pays little attention to causation. According to Cobley (2000, p2), 'paedophile' has become a household word, with computer research revealing that 712 articles mentioned 'paedophiles' during a four month period in 1998, where as it appeared only 1,312 times between 1992 and 1995.

Media coverage has raised public awareness and discontent, especially regarding release arrangements from prison (Home Office 2001c) and the perceived failure of community agencies to manage such offenders effectively. A key example being the case of Sidney Cooke, a convicted paedophile who operated a huge paedophile ring, in which they kidnapped, raped and killed children. Sidney Cooke was a known serial sex offender, however he was repeatedly released from prison into the community and once free continued to commit further sexual offences (BBC News, 1999).

High-profile cases like that of the murder of 8 year old Sarah Payne by paedophile Roy Whiting in 2000, whom it was later revealed had previous convictions for an earlier sexual crime, has stimulated debate about the appropriate monitoring of sexual offenders (Thomas 2003, p217). It has also led to calls for a Sarah's Law, whereby local communities would have the right to be informed of the details of those convicted for sexual offences. This demand for the "right to know" (Jackson & Scott 1999, p86) was further exacerbated by the News of the World's 'name and shame' campaign (2000, cited Matravers 2003, p74), which generated a growing moral panic around 'stranger danger' and resulted in vigilante action.

This was eventually suspended after protests by police and probation, stating that such media attention served only to “drive offenders underground” (Kemshall & Maguire 2002, p71).

Part of the current mistrust in the management of sexual offenders and the call for stricter control has been encouraged following developments in the USA. The creation of Megan’s Law after the abduction and murder of Megan Kanka by a man living in the same street, has placed an obligatory duty on fifty states to allow the public a right of access to the sex offender register (Kemshall, 2003 p90). This has prompted activists to campaign for similar actions to be taken in the UK (Kemshall, 2003). Whilst the campaign for Sarah’s Law was rejected, it did result in the major review of current legislation surrounding the management of sexual offenders.

Another cause of much of the current attention has been following the emergence of ‘grooming’, whereby adults endeavour to build relationships with children online, in an attempt to develop inappropriate relationships offline. It is reported that one in five children have been approached by paedophiles online and there are examples of cases such as that of Patrick Green who sexually abused a young girl following initial contact in a chatroom (The Guardian 2001). Due to its level of interactivity, with provisions for online chat, instant messaging and online gaming, the internet is a very attractive medium for children and hence makes it the ideal place for sexual offenders to groom children.

It would appear that the media plays a key role in framing public perceptions of crime and law, and particularly framing negative perceptions of crime management. Hence, the aftermath of such has left the fear of crime as high and confidence in those charged with working with it low. As a result the Criminal Justice System has attempted to respond to

society's anxieties by producing a range of interventions and restrictions for the management of offenders and to reduce the likelihood of re-offending.

The Sexual offenders Act (1997) introduced the Sex Offenders Register, designed to monitor and track those convicted or cautioned of certain sexual offences (defined by schedule one of the Act) (Cobley 2003, cited Matravers 2003, p51). This however, failed to specify police duties following registration and there was a lack of legal sanction and control for those who did not meet with the requirements (Maguire, Kemshall, Noaks & Wincup, 2001). This was rectified by the Crime and Disorder Act (1998) which removed registration anomalies and introduced the Sex Offender Order for offenders whose behaviour justified more intrusive measures. Subsequently, the registration requirements have been strengthened by the Criminal Justice and Court Services Act (2000) and Sexual Offences Act (2003) and there now exists a penalty for non-registration, a requirement to notify foreign travel, and provisions for photographs and finger printing. Also it has shortened the period of time for initial registration from 14 days to 72 hours and has made breach of the requirements an arrestable offence.

We have witnessed the emergence of extended sentences, if deemed commensurate with the seriousness of the offence (Criminal Justice Act 1991) and extended periods of post-release supervision for work to be undertaken with the offender in the community (Crime & Disorder Act 1998). Furthermore, the Crime (Sentences) Act (1997) changed the double jeopardy rule allowing for mandatory life sentences for offenders convicted for a second time of certain serious sexual and violent offences. Recently, the Criminal Justice Act (2003) has introduced Extended sentences for Public Protection (EPP) and Indeterminate sentences for Public Protection (IPP) to further restrict liberty in the interest of public protection. Decisions on who may be sentenced to such will be dependent upon the level of risk they pose, and

whether or not they can be managed in the community. The Criminal Justice Act (2003) also introduced 'grooming' as a criminal offence, following heightened awareness of the dangers of this. The aim is to proactively monitor those who make contact with children online in order to engage in sexual activity offline and to intervene to protect the child before any physical or sexual harm is caused. The Sexual Offences Act (2003) also modernises the law on sexual offences and introduces new offences designed to protect complainants of either gender who suffer from mental disorder.

Multi-Agency Public Protection Panel Panels (MAPPPs) have been introduced under the Criminal Justice Court Services Act (2000) to create a seamless approach to the management of sexual offenders (Home Office 2001a). Police, probation and prison officers (following implementation of the Criminal Justice Act 2003), have a statutory duty to implement inter-agency arrangements for the assessment and management of 'the risks posed by sexual and violent offenders' (Home Office 2001a). The government now allows representatives of local communities to sit in on MAPPPs meetings so that a local community view on risk management can be expressed. Furthermore MAPPPs are required to produce and publish annual reports of their activities both of which demonstrate a marked attempt to ensure greater accountability (Kemshall 2003, p90).

To reduce the likelihood of sex offender recidivism a number of Interventions have been introduced under the Sexual Offences Act (2003). These include; Sex Offender Treatment Programmes (SOTP) run in prisons which aim to assess and treat all sexual offenders serving a sentence of four or more years (Craissati, 1998). There also exists residential services exclusively targeting sexual offenders run by the Faithful Foundation in South East England and three accredited 'Pathfinder Programmes' in the West Midlands Programme, Thames Valley Programme and Northumbria Programme. Additionally, the 42 areas of the

National Probation Service are in the process of implementing one of these 'geographically near programmes' (Beech & Fisher 2002 p143).

The act also establishes a number of prevention orders including; Notification Orders intended to protect the UK citizens from the risks imposed by sexual offenders who have been convicted of sexual offences overseas. Sexual Offences Prevention Orders, which update, replace and combine the Sex Offender Order and the Sex Offender Restraining Order (Criminal Justice and Court Services Act 2000) to protect the public from serious sexual harm. Additionally, there is the Foreign Travel Order, intended to prevent those with convictions for sexual offences against children from travelling abroad, where there is evidence that they intend to commit sexual offences against children (sex tourism). Finally, Risk of Sexual Harm Orders, another civil preventative order, which can be made when the person is thought to pose a sexual risk to children under 16 years.

The role of risk assessment has become increasingly important in what has emerged as an era of 'zero tolerance'. This has led to the development of more advanced and timely risk assessment tools, including; OASys (Home Office 2001b), Risk Matrix 2000, Structured Risk Assessment (SRA) and Acute Risk Checklists all of which hope to make risk assessments more accurate and reliable (Kemshall 1998, p67). The intention is that more accurate risk assessments will provide practitioners with a base score on which decisions can be made regarding appropriate management, interventions and treatment needs.

Other strategies for effective management include; stricter use of curfews, electronic tagging, the development of VISOR database, a single national database for registered and non-registered sexual offenders. Also researchers are currently considering the use of lie-detector tests (Polygraph) (Grubin 2003, cited Matravers 2003 p p86) which it is said would make a

vast difference in preventing re-offending (BBC News 2001).

Chief probation officers are required to establish an 'Early Warning System' (Probation Services Division 1999) to inform the Home Office of those offenders due for release from prison or hospital to enable them to prepare for those cases likely to "present media scrutiny of accommodation or supervision plans" (Kemshall 1990, p90). Probation officers also have a duty to contact victims of serious sexual or other violent offences prior to release (Criminal Justice & Court Services Act 2000). Furthermore, the Victims Unit has lead responsibility for implementing the Victims and Witnesses Strategy and to co-ordinate the work of Government departments (both criminal justice and more widely) in taking forward initiatives to develop services that support victims and witnesses in order to improve confidence and satisfaction in the Criminal Justice System.

Work to help victims of sexual offending forms an important part of the Government's strategy to ensure that the new, tougher legislation introduced in the Sexual Offences Act (2003), is fully utilised. Many sexual offence cases have been abandoned due to lack of evidence, especially as many victims are children and are less able to provide clear explanations, or due to the victim being too scared to enter the Court setting (Matravers, 2003). The Criminal Justice System has thus attempted to rectify this by developing video links in Court to make giving evidence a less harrowing requirement. Also, the Home Office has placed £4 million derived from the recovered proceeds of crime, into a new Victims Fund to support the development of community-based services for victims of sexual offending, including Sexual Assault Referral Centres, a 'one stop' location where victims of sexual assault can receive help and advice (CJS online, 2004).

Whilst these strategies for effective management may appease a discontented public, what

has resulted, is a criminal 'apartheid' approach towards them with new policies allowing for extended periods of incarceration and placing further restrictions of liberty on the basis of risk. This reflects a primary concern with public opinion and a disregard towards the adverse side effects experienced by offenders, such as over inclusiveness and violation of Human Rights. For example, the Sex Offender Register has wide ranging application, currently incorporating offences of indecency between men, causing or encouraging prostitution of a girl under 16 and the taking indecent photographs, crimes that stretch the bounds of what might be considered dangerous.

The current agenda appears to be preoccupied not with reforming offenders who have committed such offences but on the risk management of those who may go on to commit offences in the future. This pro-active approach, for example in the offence of 'grooming' places restrictions on those who may not actually commit further offences and risks impinging on human rights (Craissati, 1998). Also whilst MAPPPs are designed for the seamless management of the risks posed by sexual offenders, the decisions and actions taken to this are heavily reliant upon good communication between agencies and joint decision making, which itself may be hindered by underlying organisational cultural differences.

There appears to be an ascendancy of punitive strategies for managing risk on the basis of perceived dangerousness, including extended sentences, lengthy periods of post-release supervision and restriction orders. These may obscure the individuality of the case and hide the social origins of the behaviour (Horsefield 2003, p376). Furthermore the use of more external and punitive controls may increase the offenders social and emotional instability paradoxically increasing the risk of re-offending (Craissati, 1998).

Programmes designed to reduce the likelihood of re-offending may help to re-integrate offenders into the community, however interventions do not occur in a vacuum and offenders should have the opportunity to use their new skills and be challenged and reinforced. Consideration needs to be given to the design of programmes, which are originally compiled with male sexual offenders in mind. Whilst it is acknowledged that there are significantly less female sexual offenders, reports indicate that approximately 50-100 sexually offend each year (Kemshall 2003), therefore provisions need to be made to cater for this group and also those with learning difficulties or cultural differences. Furthermore at present the probation service can only offer one programme designed to cater for the plethora of sexual offences due to financial restraints, therefore the effectiveness of this is questionable.

Regarding risk assessment tools, these undoubtedly sharpen the assessment process by providing for a structured assessment with less risk of bias. However, it is not a straightforward task both theoretically or procedurally (Kemshall & McIvor, 2004) and failure to recognise its various nuances may lead to mistakes in management, prediction and also to legal challenge. Even the most careful assessments may be obscured by external factors such as personal feelings, time constraints, caseloads and the social context in which the assessment is being considered (Von Hirsch & Ashworth 1996). Also, risk levels are not static, therefore offenders must be subjected to regular risk reviews in order to proactively identify any changes in the level of risk they pose.

In order to conclude, it has been identified that we are currently living in a post-modernist society obsessed by risks which threaten our existence. These risks have been further exacerbated by globalisation and the onslaught of saturated and distorted messages of risk. Also by the creation of moral panics spurred via our sensationalist media portraying sexual offenders as 'mad, sad or bad' and a dangerous risk to society which has elevated them into

the position of 'folk devil'.

This has led to the creation of a wealth of legislative provisions, including the introduction of a Sex Offender Register, extended sentences, multi-agency working and the formation of new sexual offences. Interventions have also been designed in an attempt to reduce the risk of re-offending, including accredited programmes, restriction orders and increased use of electronic monitoring.

However, in adopting these new ways of working we have had to swallow a number of principles including innocent until proven guilty, proportionate sentencing, avoidance of double jeopardy and balance of individual and community rights, including right to know and offenders right to privacy.

Primary support appears to be in the willingness of successive governments to endorse a populist, tabloid driven agenda in order to promote itself as an effective organisation. Whilst this may appease the public, such attempts to curb sexual offences by incarceration and placing restrictions on liberty may not be as effective as perceived. In my opinion, greater provisions for management in the community may prove to be more effective and could aid the successful re-integration of this category of offenders. However, this will not be achievable until the media finds another group of individuals on which it can focus its attention, or until we have a better understanding of sexual offenders making us less fearful and more tolerating of such offenders.

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