Sex Crime, Third edition offers a comprehensive and integrative introduction to sex crime, written by an expert in the field. The third edition has been fully expanded and updated to include further coverage of a range of critical topics, including child sexual exploitation, child pornography, female sex offenders, treatment approaches such as the ‘Good Lives Model’ and the European Convention on Human Rights.

Delving into and beyond the news headlines about sexual crimes that seem to appear on our screens and in our newspapers almost every day, this third edition draws on a range of high profile case studies, such as Vanessa George, Stuart Hall, Jimmy Savile and Operation Yewtree and also offers a review of all relevant legislation. This new edition also includes an analysis of possible causes of sex offending, as well as public and professional responses to sex crime. Including an examination of the policing of sexual crime; the prosecution of the accused; the sentencing and punishment of sexual offenders; and ‘public protection’ measures, this new edition covers all of the key aspects of sex crime and how it is dealt with.

Wide-ranging and authoritative, Sex Crime, Third edition presents a complex area in a straightforward and understandable manner. Thomas guides the reader through the range of policies and laws which have accumulated over the years, making this essential reading for academics and students engaged in the study of sex crime, sexual violence and the treatment of sex offenders. It will also be of great interest to criminal justice practitioners.

Terry Thomas was awarded the title of Emeritus Professor of Criminal Justice Studies, Leeds Beckett University in 2014. His major research interests include sexual offending, the policing of sexual offenders, and the ‘management’ of sexual offenders living in the community; he has also researched domestic violence; the use of criminal records to screen people for working with children and vulnerable people; and ‘sex work’. He is a member of the Howard League for Penal Reform, and Liberty and is a member of the expert Advisory Group to the campaign group FACT (Falsely Accused Carers and Teachers).
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Contents

List of tables vii
Acknowledgement viii
Abbreviations ix

1 Introduction 1

PART 1 17
2 The sex offender ‘problem’ – and responses 19
3 Social responses to the sex offender: a historical perspective 36

PART 2 55
4 Policing sexual offending 57
5 The search for justice – at court 83
6 The search for justice – punishment or treatment? 108
7 The victims of sexual offending 131

PART 3 143
8 Protection in the home 145
9 Protection in out of home settings 159
<table>
<thead>
<tr>
<th>vi</th>
<th>Contents</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Protection in the community</td>
</tr>
<tr>
<td>11</td>
<td>Conclusion</td>
</tr>
</tbody>
</table>

*References* 220  
*Index* 246
1.1 Offences leading to registration as a sex offender in England and Wales
Acknowledgement

Thanks are offered to Bill Hebenton, Sarah Kingston, Elena Laurri, Dave Thompson, Daniel Marshall, Colin Webster, Paul Blackledge, Nicola Groves, Dalia Osman and Terry Brix (aka ‘the Australian’), for their help and support in various and different ways.
### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ACOP</td>
<td>Association of Chief Officers of Probation (PCA Probation Chiefs Association)</td>
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<td>ACPO</td>
<td>Association of Chief Police Officers</td>
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<td>ACR</td>
<td>Automatic Conditional Release</td>
</tr>
<tr>
<td>CBT</td>
<td>Cognitive Behaviour Treatment</td>
</tr>
<tr>
<td>CICA</td>
<td>Criminal Injuries Compensation Scheme</td>
</tr>
<tr>
<td>CJI</td>
<td>Criminal Justice Joint Inspection</td>
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<tr>
<td>COS</td>
<td>Charity Organisation Society</td>
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<td>CPA</td>
<td>Contract Package Areas</td>
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<tr>
<td>CPS</td>
<td>Crown Prosecution Service</td>
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<td>CRB</td>
<td>Criminal Records Bureau</td>
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<tr>
<td>CRC</td>
<td>Community Rehabilitation Company</td>
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<tr>
<td>CROP</td>
<td>Coalition for the Removal of Pimps</td>
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<tr>
<td>CSI</td>
<td>Crime Scene Investigator</td>
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<tr>
<td>CSM</td>
<td>Crime Scene Manager</td>
</tr>
<tr>
<td>CSOD</td>
<td>Child Sex Offender Disclosure Scheme</td>
</tr>
<tr>
<td>DBS</td>
<td>Disclosure and Barring Service</td>
</tr>
<tr>
<td>DCR</td>
<td>Discretionary Conditional Release</td>
</tr>
<tr>
<td>DENI</td>
<td>Department of Education, Northern Ireland</td>
</tr>
<tr>
<td>DFEE</td>
<td>Department for Education and Employment</td>
</tr>
<tr>
<td>DFES</td>
<td>Department for Education and Skills</td>
</tr>
<tr>
<td>DHSS</td>
<td>Department of Health and Social Security</td>
</tr>
<tr>
<td>DHSS (NI)</td>
<td>Department of Health and Social Services (NI) (Northern Ireland)</td>
</tr>
<tr>
<td>ECPAT</td>
<td>End Child Prostitution, Pornography and Trafficking</td>
</tr>
<tr>
<td>ECRIS</td>
<td>European Criminal Record Information System</td>
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<tr>
<td>EDS</td>
<td>Extended Determinate Sentence</td>
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<tr>
<td>EER</td>
<td>Early Evidence Kits</td>
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<td>ENU</td>
<td>European National Unit</td>
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<td>Europol</td>
<td>European Police Office</td>
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</table>
FACT  Falsely Accused Carers and Teachers
FP    Forensic Physician
FSS   Forensic Science Service
FTO   Foreign Travel Order
HDC   Home Detention Curfew
HMCPSI HM Crown Prosecution Service Inspectorate
HMG   HM Government
HMIC  Her Majesty’s Inspectorate of Constabulary
HMIP  Her Majesty’s Inspectorate of Probation
HMIP  HM Inspectorate of Prisons
HTVC  Hampshire Thames Valley Circles
ICAIM Interpol’s Child Abuse Image Database
Interpol International Criminal Police Organization
IO    Investigating Officer
IOM   International Organisation for Migration
IPCC  Independent Police Complaints Commission
IPP   Imprisonment for Public Protection
ISA   Independent Safeguarding Authority
ISVA  Independent Sexual Violence Advisor
LADO  Local Authority Designated Officer
LASPO Legal Aid, Sentencing and Punishment of Offenders Act
LDU   Local Delivery Unit
LGA   Local Government Association
MACSAS Minister and Clergy Sexual Abuse Survivors
MAPPA Multi-Agency Public Protection Arrangements
MARAC Multi-Agency Risk Assessment Conferences
MASH  Multi-Agency Safeguarding Hub
MoJ   Ministry of Justice
MWO   Mental Welfare Officer
NACRO National Association for the Care and Resettlement of Offenders
NAHT  National Association of Head Teachers
NAO   National Audit Office
NAPAC National Association for People Abused in Childhood
NCA   National Crime Agency
NCB   National Central Bureau
NCCL  National Council for Civil Liberties
NCIS  National Criminal Intelligence Service
NHTCU National Hi-tech Crimes Unit
NIB   National Identification Bureau
NIO   Northern Ireland Office
NIS   National Identification Service
NO    Notification Order
NVA   National Vigilance Association
<table>
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<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>NWNJ</td>
<td>No Witness No Justice</td>
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<tr>
<td>PACE</td>
<td>Parents against Child Sexual Exploitation</td>
</tr>
<tr>
<td>PCSOT</td>
<td>Post-Conviction Sex Offender Testing</td>
</tr>
<tr>
<td>PD</td>
<td>Preventive Detention</td>
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<tr>
<td>PNC</td>
<td>Police National Computer</td>
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<td>PND</td>
<td>Police National Database</td>
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<tr>
<td>PPU</td>
<td>Public Protection Unit</td>
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<tr>
<td>PRT</td>
<td>Prison Reform Trust</td>
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<tr>
<td>PSR</td>
<td>Pre-Sentence Report</td>
</tr>
<tr>
<td>RASSO</td>
<td>Rape and Serious Sexual Offences Unit</td>
</tr>
<tr>
<td>RIO</td>
<td>Rape Investigating Officer</td>
</tr>
<tr>
<td>RMG</td>
<td>Rape Monitoring Group</td>
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<tr>
<td>RO</td>
<td>Restraining Order</td>
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<tr>
<td>RSHO</td>
<td>Risk of Sexual Harm Order</td>
</tr>
<tr>
<td>RTO</td>
<td>Rape Trained Officer</td>
</tr>
<tr>
<td>SAFARI</td>
<td>Supporting All Falsely Accused with Reference Information</td>
</tr>
<tr>
<td>SAP</td>
<td>Sentencing Advisory Panel</td>
</tr>
<tr>
<td>SARC</td>
<td>Sexual Assault Referral Centre</td>
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<tr>
<td>SCAS</td>
<td>Serious Crime Analysis Section</td>
</tr>
<tr>
<td>SCPO</td>
<td>Serious Crime Prevention Order</td>
</tr>
<tr>
<td>SHPO</td>
<td>Sexual Harm Prevention Order</td>
</tr>
<tr>
<td>SOCA</td>
<td>Serious Organised Crime Agency</td>
</tr>
<tr>
<td>SOCO</td>
<td>Scene of Crime Officer</td>
</tr>
<tr>
<td>SOIT</td>
<td>Sexual Offences Investigation Technique</td>
</tr>
<tr>
<td>SOLO</td>
<td>Sexual Offences Liaison Officers</td>
</tr>
<tr>
<td>SOO</td>
<td>Sex Offender Order</td>
</tr>
<tr>
<td>SOPO</td>
<td>Sexual Offences Prevention Order</td>
</tr>
<tr>
<td>SOTP</td>
<td>Sex Offender Treatment Programme</td>
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<tr>
<td>SRO</td>
<td>Sexual Risk Order</td>
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<tr>
<td>SSOU</td>
<td>Serious Sexual Offences Unit</td>
</tr>
<tr>
<td>STO</td>
<td>Specially Trained Officer</td>
</tr>
<tr>
<td>TPN</td>
<td>Transnational Policing Network</td>
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<tr>
<td>TST</td>
<td>The Survivors Trust</td>
</tr>
<tr>
<td>UKCA-ECR</td>
<td>UK Central Authority for the Exchange of Criminal Records</td>
</tr>
<tr>
<td>VBS</td>
<td>Vetting and Barring Scheme</td>
</tr>
<tr>
<td>ViCLAS</td>
<td>Violent Crime Linkage System</td>
</tr>
<tr>
<td>VLO</td>
<td>Victim Liaison Officers</td>
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<td>WCU</td>
<td>Witness Care Unit</td>
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Chapter 1

Introduction

Sexual crime is often considered as somehow inherently ‘different’ from other forms of crime and sexual offenders occupy a special place in contemporary society’s secular demonology. It is seen as a more invasive and intrusive crime and an altogether more serious crime. It is a form of offending that attracts widespread attention. The aim of this book is to get below the headlines about sex crime, and go a bit deeper into the phenomenon of sexual offending and the UK’s response to it.

Sexual crime some 40–50 years ago was mostly only reported by certain Sunday newspapers where court cases were almost a form of titillation and entertainment. The newspaper *The News of the World* was affectionately known by a rhyming soubriquet. Today sex crime has become a mainstay of the tabloid and broadsheet newspapers with stories of celebrity prosecutions, teenage gangs grooming vulnerable girls and hundreds of computer users downloading child pornography. Now it is reported with an air of seriousness and moral disapproval. According to one senior police officer:

> The abuse scandals that have rocked the UK recently have fundamentally damaged trust and confidence in our institutions, and in the fabric of our society.

*(Bristow 2014)*

The Prime Minister calls a crisis meeting at 10 Downing Street to discuss ‘child sexual exploitation’ (CSE) and tells us that:

> Child sexual abuse will now be prioritised as a national threat, like serious and organised crime which means police forces now have a duty to collaborate with each other across force boundaries to safeguard children including more efficient sharing of resources, intelligence and best practice, supported by specialist regional CSE police coordinators.

*(Home Office 2015)*

Sexual crimes are being reported in the media almost every day. A particular hostility has been directed at the sex offender who offends against children.
Although we may debate the exact definition of the word ‘paedophile’ (see Chapter 2), there is little doubt that the ‘paedophile’ has become the ‘hate figure’ of our time in the popular imagination. Sexual crime is good for sales and ratings because sexual crime sells. The more salacious the story the better and there has been no shortage of stories.

Intense media coverage takes place when children are abducted. In the summer of 2000 the search for 8-year-old Sarah Payne in Sussex made headlines day after day and two years later the same happened when Holly Wells and Jessica Chapman, both aged 10, were abducted in the Cambridgeshire village of Soham. The respective trials and convictions of the abductors and murderers of the children are equally high profile (‘A cunning and glib liar who should never be set free again’, The Independent, 13 December 2001; ‘Beyond belief’, Daily Mail, 18 December 2003).

When a school teacher in Sussex forms a sexual relationship with his 15-year-old pupil the media follow every move of the law enforcement officials charged with tracking him down and bringing him to justice as the couple ‘elope’ into France (Pugh 2012).

After the Jimmy Savile exposure in 2012 (Quinn 2012) celebrities with household names became headline stories for all the wrong reasons as they were arrested and charged for sexual offences committed years earlier (Saul 2014). A professional footballer convicted for rape finds it impossible to resume his career on leaving prison (Riach 2014) and the Pope apologises for sexual offences committed by priests:

Before God and his people I express my sorrow for the sins and grave crimes of clerical sexual abuse committed against you. And I humbly ask forgiveness.

(cited in Day 2014)

Local gangs of Asian youth are identified as ‘grooming’ vulnerable girls and drawing them into prostitution. The new terminology of ‘child sexual exploitation’ comes into being. Often the girls in question are already in the care of local authorities. Trials in Derby, Rochdale, Oxford and Rotherham are reported in detail and questions asked of the police and Crown Prosecutors who seem to have acted slowly or not at all (Evans M 2014).

Information technology and the Internet became a new means of distributing illegal child pornography. An ageing rock star takes his personal computer in for repairs and is arrested because of the indecent images found stored there (‘Glitter jailed for child porn charges’, The Guardian, 13 November 1999) and police Operation Notarise in July 2014 leads to the arrest of 660 people suspected of viewing child pornography (Halliday 2014). A chief constable reports that nationally the police ‘had a database of 50,000 people who regularly viewed indecent images of children’ (Ramesh 2014).

Online technology is also misused by adult males who use forms of social media pretending to be the same age as other young people. Children are
‘groomed’ online with a view to meetings and eventual abuse. When new mobile telephones were developed with a capacity to take and send pictures and also access the Internet, the same thing happened. Abusers found they could use the new technology to target children (Hill 2003) and new activities such as ‘sexting’ came into being with their associated crimes of blackmail and so-called ‘revenge porn’ (Sanghani 2014).

Mostly the offenders reported are men but sometimes the offender has been a woman. A woman is arrested at a nursery called Little Ted’s in Plymouth where children have been sexually abused. Vanessa George aged 40 is imprisoned after admitting to abusing toddlers at the nursery and photographing the activities (Morris 2009).

Despite the demonology and the hatred, the sex offender today is also noted for his or her ‘invisibility’. At one time he was the stereotype of the ‘man in the grubby raincoat’ hanging around street corners, but in truth the sex offender now appears in all walks of life and in all guises. Indeed the transformation of the sex offender from the 1970s’ pathetic, sad individual to today’s intelligent, manipulative and dangerous manifestation is remarkable in itself.

The law may tell us in detail what a sexual offence is but an abstract definition remains nebulous. Here we might suggest only that it is the inducement or coercion of adults and children into sexual activities to which they have not consented. This might include the exploitative use of children in prostitution or other unlawful sexual practices, including the production of child pornography. The absence of a true consent to sexual activities is the overarching feature of sexual offending. The harm caused includes the violation of a person’s sexual autonomy, the exploitation of a vulnerable victim, psychological distress and fear.

Alongside all this growing awareness of sexual crime are the associated questions of what we do about the sex offender. How do we identify the offender in the first place and bring them to justice? Should that justice involve treatment, containment or straight punishment? How do we monitor the known offender after his treatment or punishment in order to bring him back into society and at the same time protect ourselves and children from him in the future?

**Forms of sexual offending**

What constitutes a sex offence has varied over time and place. An existing offence may be decriminalised at the stroke of a statute (e.g. same-sex activities in England and Wales in 1967), and existing behaviour may be recognised as needing to be criminalised (e.g. male rape in 1994). In 2000 the UK completed an extensive review of all its laws on sexual offending (Home Office 2000a) and consolidated the previously fragmented laws in the Sexual Offences Act 2003.

The UK law on the sex offender ‘register’ (see Chapter 10) lists all the offences that are designated as leading to inclusion on that register. In England and Wales there are some 40 offences (see Table 1.1), and in Scotland 66 offences (Sexual Offences Act 2003 Schedule 3). The point is made here that
Table 1.1 Offences leading to registration as a sex offender in England and Wales*

<table>
<thead>
<tr>
<th>Offences leading to registration as a sex offender in England and Wales*</th>
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<tbody>
<tr>
<td>Rape</td>
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<tr>
<td>Interourse with girl under 13</td>
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<tr>
<td>Interourse with girl under 16</td>
</tr>
<tr>
<td>Incest by a man</td>
</tr>
<tr>
<td>Buggery</td>
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<tr>
<td>Indecency between men</td>
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<tr>
<td>Indecent assault on a woman</td>
</tr>
<tr>
<td>Indecent assault on a man</td>
</tr>
<tr>
<td>Assault with intent to commit buggery</td>
</tr>
<tr>
<td>Causing or encouraging the prostitution of, intercourse with or indecent assault on girl under 16</td>
</tr>
<tr>
<td>Indecent conduct towards young child</td>
</tr>
<tr>
<td>Inciting girl under 16 to have incestuous sexual intercourse</td>
</tr>
<tr>
<td>Indecent photographs of children</td>
</tr>
<tr>
<td>Indecent or obscene articles</td>
</tr>
<tr>
<td>Possession of indecent photograph of a child</td>
</tr>
<tr>
<td>Abuse of a position of trust</td>
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**Offences under the Sexual Offences Act 2003**

Rape, assault by penetration

Sexual assault

Causing sexual activity without consent, rape of a child under 13, assault of a child under 13 by penetration

Causing or inciting a child under 13 to engage in sexual activity, child sex offences committed by adults

Child sex offences committed by children or young persons

Meeting a child following sexual grooming, etc.

Abuse of a position of trust

Familial child sex offences

Offences against persons with a mental disorder impeding choice, inducements, etc. to persons with mental disorder

Offences committed by care workers for persons with a mental disorder

Paying for sexual services of a child

Causing or inciting child prostitution or pornography

Controlling a child prostitute or a child involved in pornography

Arranging or facilitating child prostitution or pornography
sex offending is not a narrow monolithic activity and sex offending is not just about adult rape or child sexual abuse but a host of other activities. One way of categorising sexual offences is to consider them as ‘contact’ or ‘non-contact’ offences.

**Forms of sexual offending – contact offences**

As the name suggests, ‘contact offences’ imply a degree of physical contact. This would range from rape with full penetration through to more limited forms of contact that still result in sexual assault. The common theme is the lack of consent to these activities. Adults may be coerced into sexual activities against their will by threats or violence of varying degrees.

Rape and sexual assault where the victim is over 16 but has not consented to the activity in question are probably the most familiar offences (Sexual Offences Act 2003 ss. 1–4). There have been attempts to categorise rape with the implication that some forms are more serious than others. The counter argument is that there should be no differentiation and that rape is always rape. Even experienced politicians have run into difficulties with this argument. In May 2011 Kenneth Clarke the veteran Conservative Cabinet Minister and then Minister of Justice found himself at the centre of a media storm when he said in a radio interview that there were different types of rape. He apologised the following day saying he had chosen his words badly (Garner 2011).

Children and young people below the ‘age of consent’ are deemed to lack the capacity to consent (Sexual Offences Act 2003; ss. 8–15). Sexual offending with children can take place within a family (‘intra-familial’) or outside the family (‘extra-familial’); within a family it may be incestuous, or what the law now calls ‘familial child sex offences’ (Sexual Offences Act 2003 ss. 25–29).

Allegations have been made that children have been subjected to ‘ritual’ or ‘satanic’ abuse, whereby the sexual abuse is subsumed into ceremonies that
serve to frighten the children into saying nothing afterwards. The truth of these allegations has been hotly disputed (La Fontaine 1998).

Children and young people also attend various institutions outside the family, such as nurseries, schools, youth clubs and sporting clubs; sometimes they require substitute care – when for various reasons their parents are unable to care – which might include a children’s home or foster care. The extent of sex offending against children in all these settings has been ‘discovered’ in the last 30 years and various safe-guards put in place to reduce the risk to children in these ‘out-of-home’ settings. Some of this workplace sex offending can constitute complex or organised abuse, sometimes referred to as ‘rings’ or ‘networks’ of offenders working together in various ways (see Chapter 9).

Teachers, residential care workers and other workers with children have in the past formed relationships with the children in their care; sometimes these children have been over the age of 16. This behaviour was made illegal by the Sexual Offences (Amendment) Act 2000 as ‘an abuse of trust’ (now in the Sexual Offences Act 2003 ss. 16–24).

Sexual activity even with consent might still be a contact offence if that activity has been legally declared as occurring within a ‘prohibited relationship’. This might involve sexual activity between adults within the same family or otherwise related and be deemed incestuous (Sexual Offences Act 2003 ss. 64–65).

Sexual activity where one of the parties is a person with a mental disorder or learning disability which has impeded their capacity to consent is a sexual offence (Sexual Offences Act 2003 ss. 30–44) as are offences involving animals or corpses where there is obviously no consent (Sexual Offences Act 2003 ss. 69–70).

One form of contact sexual offending that has been causing a great deal of concern in recent years has been that of ‘child sexual exploitation’ (CSE) involving the sexual exploitation of children and young people under 18. This is where young girls – often described as ‘vulnerable’ – have been drawn into relationships they believe to be consensual at first but which then evolve into a more sinister form of exploitative prostitution. The consensual element is replaced by situations that can involve violence, coercion and intimidation.

The knowledge that vulnerable young people from local authority care homes have been lured towards sex work has long been recognised and this appears to be a continuing theme (see e.g. Kennedy 1996). This form of offending has often been by gangs of young men of Pakistani origin acting in concert. It has also been the subject of much reporting and concern about the appropriate response of the authorities (see e.g. Jay Report 2014 and Casey Report 2015 on the events in Rotherham, South Yorkshire).

**Forms of sexual offending – non-contact offences**

Non-contact sexual offending includes such activities as the possession or dissemination of child pornography, indecent exposure and voyeurism. There is a
continuing debate as to whether ‘non-contact offences’ are a preliminary stepping stone to ‘contact offences’ (see e.g. Jones and Wilson 2009).

The production, dissemination and ownership of pornographic images has been a criminal offence for some time; particular attention is focussed on such images if they are images of children. The harm caused by images of children is now accepted because they are often images of child abuse. Some people prefer the terminology ‘Child Sexual Abuse Images’ or CSAI to that of ‘child pornography’ to make the point that these are images from a crime scene.

At one time the policing of all forms of pornography – adult or child – was more straightforward when the images were only hard copy pictures, photographs, magazines and books. Policing has become more difficult with the arrival of the Internet and digital ways of exchanging pornographic images:

Child pornographers were among the first to see the potential of [internet] … technology to facilitate an escalation of their activities. They used the new tools to increase exponentially the trade in images, to widen their appeal and to frustrate attempts at detection. This put police forces all over the world under severe pressure.

(O’Donnell and Milner 2007: 153)

The laws covering images of children and adults are to be found in the Obscene Publications Act 1959, the Protection of Children Act 1978, the Criminal Justice Act 1988 s160 and the Sexual Offences Act 2003 ss. 45–51.

The Obscene Publications Act 1959 makes it illegal to publish obscene material, including child pornography and extreme adult pornography. The Act applies to Internet publication but there are clear jurisdictional difficulties arising from the availability of pornography from websites across the world coming into the UK.

The 1978 Protection of Children Act penalises the taking, making, showing, distribution, possession with a view to distributing, and publishing any advertisement of indecent photographs of children and the Criminal Justice Act 1988 penalises the offence of possession of indecent photographs of children.

The courts originally ruled that there were five basic categories of indecent images in ascending seriousness (R v Oliver, Hartrey and Baldwin [Times Law Report, 6 December 2002]); these have now been reduced to three by the Sentencing Council that advises on appropriate sentences for offenders:

- Category A – images involving penetrative sexual activity including images involving animals or sadism
- Category B – images involving non-penetrative sexual activities
- Category C – other indecent images not falling within categories A or B

(Sentencing Council 2013: 76)

The age of the child is also classified as an aggravating factor and investigating police officers should be encouraged to ensure that images are divided not only
according to the categories set out but also as to the age of the child if known (ibid.: 78–79).

The statutory law was added to when the Criminal Justice and Immigration Act 2008 recognised ‘extreme pornography’. This had been campaigned for after the death of Jane Longhurst killed by a man said to have been influenced by watching such images:

He had taken her back to his own home and killed her as he acted out storylines from necrophilia websites to which he paid hundreds of pounds in subscriptions. Police … found hundreds of disturbing images on his home computer.

(Sapsted 2004)

The Home Office conducted a consultation exercise (Home Office 2006a) and new laws appeared in the Criminal Justice and Immigration Act 2008 ss. 63–67. Extreme images are defined as those depicting life-threatening acts, acts which cause or could cause serious injury to a person’s anus, breasts or genitals, and acts of necrophilia or bestiality. A pornographic image is defined as one that appears to have been produced solely or principally for the purpose of sexual arousal.

The 2008 Act also extended the definition of child pornography to images of children ‘derived’ from photographs; these included computer generated images (CGIs), drawings and animations sometimes called ‘pseudo-photographs’ (Criminal Justice and Immigration Act 2008 ss. 69–70).

Indecent exposure is another non-contact offence and consists of a person intentionally exposing their genitals intending someone would see them and that that person would be caused ‘alarm or distress’ (Sexual Offences Act 2003 s. 66). Stephen Gough, the so-called ‘naked rambler’, has not been prosecuted using this section because his behaviour – walking – has been considered non-sexual in intent; he has been imprisoned for other offences.

Voyeurism is also taken to be a non-contact offence involving as it does the offender observing another person carrying out a private act either by direct observation or through the medium of technology that records or photographs the other person. The offender knows they have no consent to do this and are doing it for their own sexual gratification (Sexual Offences Act 2003 s. 67). Landlords, for example, have been prosecuted for installing secret cameras to record their tenants in a bathroom or other area they should have been able to regard as private (Edwards 2005).

In January 2013, the Ministry of Justice and the Office for National Statistics (ONS) published its first ever joint Official Statistics bulletin on sexual violence, entitled An Overview of Sexual Offending in England and Wales. The bulletin only divided sexual offences into ‘most serious’ (rapes and sexual assault cases) and ‘other sexual offences’ (exposure, voyeurism, etc.) and reported that:
• Approximately 85,000 women are raped on average in England and Wales every year
• Over 400,000 women are sexually assaulted each year
• 1 in 5 women (aged 16–59) has experienced some form of sexual violence since the age of 16.

The bulletin said that females were much more likely than males to have reported being a victim of a sexual offence (MoJ et al. 2013).

**Consent**

The concept of consent is central to understanding sexual offending. Sexual activities between people are expected to be consensual, and we speak of ‘consenting adults’ and an ‘age of consent’ at which children are presumed to have achieved the capacity to consent. When one party to a sexual act has not consented, or is unable to consent, we are moving into the realms of sexual offending. The sexual offence of rape clearly occurs when penetrative sexual activity takes place without consent from the victim, and that victim has been overcome by physical force or immediate threats of violence or does not have the capacity to consent.

Consent also implies that a person knows the full consequences of what they are doing. A consent is invalidated if it is given under duress; lawyers talk of the consent being ‘negatived’ by the presence of ‘force, fear or fraud’. There is some comparison here to the consent we give for medical treatment, where patients are said to give ‘informed consent’ (i.e. knowing the full implications of what they are consenting to) or ‘real consent’ (i.e. where no duress or coercion has been applied).

Consent has also been depicted as a continuum, with a positive consent at one end through to a reluctant agreement or submission at the other end; the latter can also be given without consent at all, which would mean a sexual offence has been committed. A growing number of rapes are being reported that have been committed by people known to the victim and have sometimes been referred to as ‘acquaintance’ or ‘intimate’ rapes as opposed to ‘stranger’ rapes (see Harris and Grace 1999: 5–7); the criminal law does not acknowledge this difference.

Consent to sexual activities is largely gender specific and socially constructed. The law may now recognise the crime of male rape but when it comes to consent we are mostly talking about women saying ‘yes’ or ‘no’ to heterosexual activity. Men have been culturally subsumed into being the partners that somehow ‘always’ want sex and indeed are sometimes said to have a ‘sex drive’ that is ‘uncontrollable’.

**Consent and the UK law**

The meaning of consent has not always been clear in law. The Sexual Offences Act 1956 did not attempt to define it and left it to the courts to determine on
the basis of the case before them. The Sexual Offences Act 2003 which is now the mainstay of our criminal law on sexual offending tried to clarify the concept of ‘consent’. The Act states that consent means a person ‘agrees by choice, and has the freedom and capacity to make that choice’ (Sexual Offences Act 2003 s. 74).

Prosecutors are expected to look at this in two stages:

1. Whether a complainant has the capacity (i.e. the age and understanding) to make a choice about whether or not to take part in the sexual activity at the time in question; and
2. Whether he or she was in a position to make that choice freely, and was not constrained in any way.

**The capacity to consent**

From a position where capacity to consent is taken as ‘a given’, degrees of ‘incapacitation’ may intervene to jeopardise a true consent. People with mental health problems or learning disabilities may be found to lack the capacity to consent. The law on sexual offences particularly covers those who work with people needing care because of their mental disorder (Sexual Offences Act 2003 ss. 38–41).

Some rape complainants have been incapacitated and unable to consent because of drinking too much alcohol or drugs. In such circumstances any sexual intercourse that took place would constitute rape. In the early noughties there was much concern in the media about men ‘spiking’ the drinks of women in order to facilitate rape or sexual assault by reducing their capacity to make a reasoned consent. Student Unions started issuing lids to fit on the glasses of alcohol consumed in their bars. How much of this was actually going on remained uncertain (see e.g. Burgess et al. 2009) but the fear has remained with the law now recognising this ‘spiking’ activity as a ‘preparatory offence’ and as ‘administering a substance with intent to engage in sexual activity’ (Sexual Offences Act 2003 s. 61–63 and s. 75 (2) (f)).

In the case of alcohol impairing capacity to consent the problem for the courts has been where to draw the line. In a case in Swansea Crown Court it was ruled that the complainant was certainly drunk but was still ‘conscious’ and therefore capable of consenting even though she was so intoxicated she could not remember the incident:

The prosecution against Mr Dougal, 20, collapsed on Wednesday at Swansea Crown Court after the woman admitted under cross-examination that she could not be sure she had not consented because she was too drunk to remember. The prosecuting counsel, Huw Rees, asked the judge, Mr Justice Roderick Evans, to halt the case, arguing that ‘drunken consent is still consent’. The judge directed the jury to deliver a verdict of not guilty ‘even if you don’t agree’.

(see Dyer and Morris 2005; R v Dougal [2005] unreported)
The Court of Appeal case of *R v Bree* a few years later tried to clarify the law. Bree had pleaded not guilty to raping a 19-year-old woman who had drunk cider and vodka and said she had not consented to sex. He was convicted at Bournemouth Crown Court and jailed for five years. Bree appealed:

The judge said that the key test was whether the alleged victim had through drink or other substances lost her capacity to consent. If, through drink a woman had lost her capacity to consent, sexual intercourse would be rape. Conversely, an alleged victim who had drunk ‘substantial quantities’ could still consent to sex. The capacity to consent, said the judge, could evaporate before sexual intercourse took place.

(‘Court of Appeal rules on rape cases involving alcohol’ *Solicitor’s Journal* 27 March 2007)

Effectively the argument was that drunken consent might still be consent but at the same time the capacity to consent might be lost; the problem was in knowing when exactly it was lost. The conviction was quashed (*R v Bree* [2007] EWCA 256). Further attempts were made to clarify the law in early 2015 (see Chapter 5).

**Children and consent**

Children and young people are held to be unable to give a full autonomous consent because they lack the capacity to consent and they lack the necessary ‘competence’ and the ‘understanding’ to make the decision until they have reached a certain age – the age of consent. The age of consent for heterosexual activities in England, Scotland and Wales was fixed at 10 in 1285, raised to 13 in 1875 and to 16 in 1885, where it still stands (Sexual Offences Act 2003, s. 9).

The age of consent has been examined from time to time to see if it should be altered (see, e.g. Policy Advisory Committee on Sexual Offences 1981; Law Commission 1995), but it has remained at 16 for some time now. The review of the law on sexual offences that preceded the passing of the Sexual Offences Act 2003 always excluded any discussion on changing the ‘age of consent’ (Home Office 1999a).

More recently individuals have made calls to lower the age but apart from the reactions of newspaper columnists they have so far remained lone voices. Barrister Barbara Hewson suggested it be lowered to 13 (Hewson 2013) and Professor John Ashton then President of the Faculty of Public Health for England recommended a new age of 15 (Templeton 2013). Ashton’s call for change was promptly rejected by Prime Minister David Cameron’s office (Watt 2013). There appears to be no great political will in the UK to change the age from 16.

The age of consent varies from country to country from 17 in the Republic of Ireland to 15 in Poland, Sweden and Denmark and 14 in Portugal and Italy.
The age of consent in Germany is 14 but with qualifications attached; provisions protecting children against abuse apply until the age of 18. In the Netherlands the age is 12 but again with qualifications; complaints about sexual activity between 12 and 16 could still be the subject of investigation and prosecution if there was evidence of exploitation.

In the UK sexual activities, of whatever orientation, with young people below the age of consent is a criminal offence even if a form of consent – an ‘ostensible consent’ – has been given and, in the case of a child under 13, such activity may be defined as rape (Sexual Offences Act 2003 s. 5).

While most people would regard ‘under-age’ sexual activities as exploitation or criminal, arguments have sometimes been made that there should be no age of consent at all and that ‘children should have some say in what they do with their own bodies. They should be free to decide, as a matter of right, whether or not they want a sexual relationship’ (O’Carroll 1980: 127; see also Brongersma 1988).

Discretion in the implementation of the law may be used when young people are only just below the age of consent and the defendant just above. A man under 24 years of age used to be able to use the defence that he had ‘reasonable cause’ to believe a girl was over 16 (Sexual Offences Act 1956, s. 6(3)); that so-called ‘young man’s defence’ has now been repealed (Sexual Offences Act 2003, s. 9).

Consent to same-sex activities

Consent to same-sex activities was once a criminal offence in itself regardless of the capacity to consent. It was effectively a ‘prohibited relationship’ (see later). That position changed in 1967 when the activity was de-criminalised (Sexual Offences Act 1967).

The age of consent for same-sex activities was fixed at 21 for England and Wales by the Sexual Offences Act 1967, s. 1, with the same age being brought into Scottish Law in 1980 and Northern Ireland in 1982. Amending legislation lowered it to 18 in 1994 for all parts of the UK (Criminal Justice and Public Order Act 1994, s. 145) and to 16 in 2000 (Sexual Offences (Amendment) Act 2000 s. 1).

Consent is not always acceptable as a defence against accusations of sexual offending. In what became known as the ‘Spanner Case’ (named after the police operation), in 1990 a group of men were successfully prosecuted on charges of causing actual bodily harm and wounding under the Offences Against the Person Act 1861, s. 47. The men’s defence, that they all had an interest in sadomasochistic activities and that they had all consented to the acts, was not accepted; the prosecution was based on a home-made video of them that had come into the hands of the police.

On appeal the convictions were held to stand, but the custodial sentences imposed were reduced in length; the law appeared no clearer (R v. Brown
[1993] 2 WLR 556 HL). With the support of Liberty, the civil rights organisation, the men went to the European Court of Human Rights in Strasbourg, but that court too upheld the rights of the government to prosecute in its role of protecting public health and morals; consent was not relevant (Laskey, Jaggard and Brown v. UK [1997] Times, 20 February). A later case did rule that consent was all important and overrode the numbers of people present (The Case of A. D.T. v. the United Kingdom [Application no. 35765/97] Judgement Strasbourg 31 July 2000). The 2003 Sexual Offences Act made the changes and the 2012 Protection of Freedoms Act provided for a person to apply to the Secretary of State for a conviction or caution for an offence under section 12 or 13 of the Sexual Offences Act 1956, and certain associated offences, involving consensual gay sex with another person aged 16 or over, to become a disregarded conviction or caution. These disregarded convictions and cautions were to be deleted from the Police National Computer (PNC).

**Consent and ‘prohibited relationships’**

Consent is also declared invalid if people are entering into a ‘prohibited relationship’; the capacity to consent is not relevant. This would be a relationship, for example, between parents and their own children or with an adult relative. The ‘incest taboo’, the fear of in-breeding and the simple revulsion of the idea that those charged with caring for children should seek to have sex with those children are all reasons cited for prohibiting certain relationships (Sexual Offences Act 2003, ss. 25–29 and 64–65).

Sexual relationships between teachers and other people employed to work with children are also ‘prohibited’ if they are working with these children. The child concerned may be over 16 but their consent in the relationship is not relevant, and the adult concerned has committed the offence of ‘abuse of trust’ (Sexual Offences Act 2003 ss. 16–24).

Consensual activities in public toilets are also prohibited. There may be consent between the adult parties concerned but the activities are committed in a public place where they are deemed to offend our concepts of public decency (Sexual Offences Act 2003 s. 71). This is one of the few sexual offences that does not lead to inclusion on the sex offender register.

**Consent and marriage**

The opposite side of the coin to a ‘prohibited relationship’ is the idea that some recognised relationships give ‘automatic’ consent to sexual relations. For many years this was the case for married couples where the man had the relationship itself as a defence against a charge of rape; it was the orthodoxy that a man could not be charged with raping his own wife. The Law Lords overturned this common law idea that marriage means a man has a ‘continual’ consent from his wife for sexual activity at any time (R v. R (Rape: marital exemption) [1992] 1
AC 599), and this was later brought into statute law in 1994 (and is now in the Sexual Offences Act 2003, s. 1).

Present approaches

This book introduces the reader to an overview of sexual offending as we have come to understand it today. The book has been divided into three parts looking at explanations and historical content (Chapter 2) criminal justice elements (Chapters 4, 5 and 6) and public protection (Chapters 7 to 10).

Chapter 2 explores the explanations and responses made and put forward by the public, the press, politicians and the ‘experts’. These different voices are often in competition with each other to try to define and ‘claim’ the phenomenon of sexual offending, and to say what should be done.

An illustrative history of sex offending is offered in Chapter 3, insofar as it can be distilled from historical sources. Particular attention is paid to themes and responses that have been made in the past which continue to have a resonance today. Such themes include the fear of the ‘dangerous’ person at large in the community and the need for the ‘authorities’ to identify him or her so that protective measures can be taken, and the need for ‘experts’ to understand what sexual offending is all about.

Chapter 4 outlines the current role of the police as the agency brought in to investigate sexual offending and detect those responsible for the crimes. Chapter 5 carries the story on to the prosecution process and various difficulties encountered in the ‘search for justice’ where sexual offending is concerned. This ‘search’ ends with an examination of appropriate sentences for the convicted offender and (Chapter 6) how the agencies charged with carrying out those sentences go about their work. Throughout the book there are references to the victims of sexual offending but in Chapter 7 these references are consolidated and reported on in their own right.

The remaining chapters (8–10) move beyond the criminal justice system to examine the civil measures put into place to achieve better public protection from the sex offender. Chapter 8 focuses on protection in the home for children and victims of domestic violence. Chapter 9 examines protection in institutional and care settings and especially the developments in pre-employment screening through the Criminal Records Bureau which came online in 2002 and its successor, the Disclosure and Barring Service that started in 2012. Pre-employment screening to achieve safer environments in schools, children’s homes, hospitals and other care settings has now become a multi-million pound industry with the full implementation of the Police Act 1997 Part V.

Chapter 10 looks at the spread of the civil law into a range of other areas of life to try to achieve better public protection in the wider community. Central to this spread has been the sex offender ‘register’ and its associated measures. The Sexual Offences Act 2003 and later laws have introduced other civil measures to help contain the sex offender.
The book concludes with some speculation on future directions and developments, and an assessment of the role of ‘personal information’ and ‘data’ as the key to future regulation of the sex offender. Throughout, the book seeks to act as a ‘sourcebook’ guiding the reader to other references for more detailed study.
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Part 1
The sex offender ‘problem’ – and responses

Introduction

The explanations for sexual offending and the appropriate answers to it are somewhat contentious. There are popular explanations based on ‘common sense’ and expert explanations. In this chapter, we try to disentangle some of the threads of thought that overlap and pull these different constituencies in different directions: the local neighbourhood with genuine fears to express about the safety of their children; the politicians and press trying to voice those fears and at the same time take a lead in what we should be doing; and the professionals, researchers and practitioners such as probation officers, police officers, doctors and therapists trying to understand and contain and regulate the activities of the sex offender while at the same time hoping to rehabilitate them into an offence-free life. The aim is to reflect these different constituencies and their varying explanations and responses, rather than to lay claim to any single explanation and response that carries the imprint of a definitive ‘truth’.

The emotive nature of sex offending has caused the formation of angry street crowds to protest against the crimes and the criminals; the communal anger
increases when the victim has been a child. Crowd reactions of this kind can be noted throughout history, with the precipitating event being the arrest of a sex offender, the trial, or the simple knowledge that a sex offender is living in a given locality.

The traditional role of the press has been to report such crowd disturbances. Probation officers and police officers, on the other hand, have complained that the press reporting of sex offenders has prevented them from carrying out their duties.

**Popular explanations**

At the Conservative Party annual conference in October 1991, the MP for Littleborough and Saddleworth, the late Geoffrey Dickens, famously advised the government how to combat sex offending:

> If you want to stop child abuse and rape of women, pass legislation and, on the second offence – not the first in case there is a mistake – put it before Parliament that you can castrate the buggers.

(cited in Sampson 1994: 45)

Dickens’ speech was well received and widely reported. It was a popular viewpoint to be hard and decisive on sex offenders, and it appealed to the crowd and the press alike. Dickens’ name would re-emerge years after his death as the man who had given the Home Office a dossier on child sexual offending going on in high places (BBC [2014], Geoffrey Dickens ‘said paedophile dossier was explosive’, 3 July, available at http://www.bbc.co.uk/news/uk-politics-28141531, accessed 10 February 2015).

The popular explanation is a viewpoint repeated often, and a viewpoint that challenges the ‘expert’ view that sex offenders can be understood, helped and treated; it is a viewpoint that sees them as constantly re-offending and that wants sex offenders ‘locked up and the key thrown away’; or simply wants them ‘away from here and out of our neighbourhood’. As one MP put it during the 1997 debate on the sex offender register ‘once a paedophile, always a paedophile’ (Hansard House of Commons Debates 27 January 1997 col. 41). When the UK Supreme Court ruled that registered sex offenders required to register for life should be given the right to appeal against such requirements Home Secretary Theresa May declared that she was ‘appalled by that ruling’ (Hansard House of Commons Debates 16 February 2011 col. 959).

Communities have a genuine fear for their children and demonstrating is one way to voice it. The press and politicians will represent those fears and add their own motivations for taking up the cause. An intricate three-way relationship builds between these constituencies, which belies any direct power the media has to influence people. In turn, the audience reception of media reports and their own ‘reading’ of those reports to align them with existing knowledge and attitudes all play a part (see Eldridge et al. 1997: esp. pp. 168–179).
The reporting of sex crime by the media and the double-edged relationship the media has with such offending have been well documented (see, e.g. Soothill and Walby 1991; Greer 2003). On the one hand is the self-righteous indignation that such horrific crimes take place, and on the other, the knowledge that readers are compulsively fascinated with these stories and circulation figures may well depend on a regular supply of them; The Sun newspaper headline reported the conviction of Rose West for the sexual crimes committed at 25 Cromwell Street (‘Burn in Hell’, The Sun, 25 November 1995) accompanied by a 24-page special insert on ‘the crime of the century’.

Some older research has found a decline in the quantity of media reports on rape between 1978 and 1992, accompanied by a tendency ‘to concentrate on the more sensational cases’ (Grover and Soothill 1995). One reason put forward for this fall-off has been ‘boredom’ and ‘reader-fatigue’ (Skidmore 1995). Other trends have been noted:

The continued reporting of such notorious cases as the Yorkshire Ripper and the Moors Murderers is akin to a ‘sex offender soap’. Certainly, tabloid reporting of trivia helps to maintain a public interest in certain well-known cases.

(Grover and Soothill 1995)

Even the death of one of the Moors Murderers in 2002 did not stop her being the centre of continuing stories (see, e.g. ‘Myra “confessed to victim no. 5”’, Daily Mirror, 14 February 2004).

‘Reader-fatigue’ has now declined. An analysis of articles about paedophiles in six leading British newspapers found nothing less than ‘an explosion of interest in the topic [of paedophiles] among all these newspapers since 1996’ (Soothill et. al. 1998). Paedophiles were big news; they were ‘evil’, ‘monsters’, ‘beasts’ and ‘fiends’ – the latter a word surely only ever used by journalists.

The other effect of this ‘name calling’ of the individual who committed sex offences was to put them beyond the pale and out of reach of ordinary treatments and civil liberties. It also helped push the country into something of a ‘moral panic’ about sex offending, especially when that offending was against children. The social theory of the moral panic as originally put forward by Cohen is the interaction between events on the ground, and their interpretation by ‘primary signifiers’ like courts, MPs, and inquiry reports and the media as ‘secondary signifiers’ in an escalating spiral of concern and outrage accompanied by demands that ‘something must be done’. The triggering events invariably involve an element of violence, and that violence is on a scale that has crossed a threshold of acceptability and legality. The transgression of childhood innocence by adult aggressors was one such threshold (Cohen 1972; Parton 1985, chapter 2; Garland 2008).

In 1996 and 1997, the UK saw a series of popular ‘uprisings’ directed against sex offenders. A key element in these crowd reactions was the part played by the press and media reporting of sex crime and in particular the new role the
press appeared to have taken upon themselves, actually to identify and publicise the whereabouts of sex offenders in the community. This ‘outing’ of sex offenders by the press was made against the backdrop of the political debate which had started on whether or not the police and other professionals should tell the public where ‘known’ sex offenders lived; the practice in the USA called ‘community notification’ or Megan’s Law (see Chapter 10). It was as though the national and local press felt a need to go beyond just reporting the news and that it was their duty to protect the community if the professionals were going to prevaricate.

The *Sunday Express* was amongst the first of the national newspapers to enter the fray with its campaign ‘Will your child be next?’ The paper published five photographs and details of men with a record of sex offending whose addresses were unknown; readers were invited to identify their whereabouts: ‘They could be living next to you, targeting your children right now. But you will not know their background – nor will your local police’ (‘Could these evil men be living next to you? *Sunday Express*, 19 May 1996). These men were all free citizens who had been punished by the criminal justice system and could be said to have ‘done their time and paid their dues to society’. The reporting carried an accusatory tone that further implied the professionals had somehow ‘got it wrong’ and ‘we’, the public, were going to be suffering as a result.

The *Manchester Evening News* ran a front-page picture of a sex offender named by them a few days earlier sitting in his vandalised car, and ran an editorial in the same edition justifying its actions:

> Once a paedophile always a paedophile … we are well aware that our action creates a civil rights problem, but we believe the safety of young children overwhelmingly outweighs the rights of a convicted paedophile … there have been far too many cases in recent years of perverts obtaining jobs working with children.

(‘Why we did it’, *Manchester Evening News*, 30 August 1996)

Later the same editor explained the demands being put on him by members of the public: ‘The only time we have named individuals is when the public come to us and tell us they have serious concerns about a person living near them … they were absolutely livid and they contacted us’ (quoted in Potter 1997).

These press activities were mirrored by local community activities involving demonstrations, protests and vigilante action against sex offenders. In Manchester, a group of parents stormed the house of a known sex offender and marched on the local authority housing department to ask how many more there were (‘Parents storm sex fiend’s flat’, *Manchester Evening News*, 7 November 1996). In Leeds, a gang burnt down the house of suspected child abuser (“Child abuser” flees as vigilantes burn his home’, *The Guardian*, 8 July 1997) and protests were reported in Birmingham and Essex (‘Nowhere to hide’, *Daily Telegraph*, 22 March 1997).
Some of these activities were large and got beyond control. On the Logie estate in Aberdeen, a crowd of one hundred, described as mostly teenagers and young women, destroyed a house where they thought an offender was living. They described their estate as a ‘dumping ground’:

At first it was disciplined – loud but disciplined. ‘Perverts out!’ was the most popular chant among the children and parents … no one knew if the person whose blood they were baying for was inside. The whole affair was based on rumour and speculation. In the end brute force brought all the answers.

(‘The day fury erupted on a city estate’, Aberdeen Evening Express, 9 June 1997)

As with all crowds, the motives for gathering and demonstrating are never clear-cut. Boredom and a search for action and ‘something to do’ could be as much a part of it as drunkenness and a desire to ‘have a go’ at authority, let alone demonstrate against sex offenders:

their demonstrations have shades of political rallies, religious ceremonies, union meetings – all those group experiences which used to define people’s sense of selves, and which are no longer available to them … now, people … organise against paedophiles. In a few years the cause will be something else.

(‘Paedophiles are one of the few groups you can respectfully hate’, The Guardian, 24 April 1998)

The press coverage and communal demonstrations started to have an impact on the activities of practitioners trying to work with sex offenders. Hostels refused to take sex offenders for fear of hostility from the local community and housing authorities started to do the same. For their part, sex offenders – high profile or not – were fearful of coming forward for help and, at worst, were being ‘driven underground’ where no one knew their whereabouts. A spokesperson for the Association of Chief Officers of Probation said:

there is firm evidence that real damage is being done to innocent children and adults by people taking the law into their own hands. Existing vital and effective supervision and surveillance operations are being destroyed.

(cited in O’Neill 1998)

and the Chief Inspector of Probation added that hostels were refusing to take offenders:

not because they can’t handle them but because of the consequences from the local community doing something very stupid and silly to the hostel and staff there.

(cited in Johnston 1998)
In August 1998, the Association of Chief Officers of Probation (ACOP) announced its intention to meet with the Press Complaints Commission. A spokesman for ACOP said: ‘We want to get some sort of guidelines and reach more of an understanding with the press so that journalists can cover the stories without scuppering the arrangements made by police and probation services to supervise offenders’ (‘Call for media curb on paedophile releases’, PA News, 13 August 1998). Gill Mackenzie, ACOP Vice-chair, said:

> We must keep pressing for a more sophisticated debate to keep things in proportion. We must have a constructive dialogue with community groups without constantly finding ourselves deadlocked in stand-offs and threats of mob action.

(ibid.; see also ‘Press gag sought to stop paedophile lynch mobs’, *The Independent*, 14 August 1998)

Following these disruptions, protocols on the disclosure of information by the police and reporting by the press were agreed with a view to minimising disruption and out of control demonstrations. In Liverpool for example, the Merseyside Police drew up a ‘Sex Offender Media Protocol’ between themselves and Radio City, *Liverpool Echo and Daily Post*, Century Radio, Radio Merseyside, BBC TV North West and Granada TV; other forces did the same with their local media outlets.

The protocols did not stop the *News of the World* newspaper starting more demonstrations and vigilantism in 2000. In reporting the abduction of 8-year-old Sarah Payne in Sussex the newspaper took it upon itself to again start publishing the photographs and details of known sex offenders (‘Named, shamed’, *News of the World*, 23 July 2000). The newspaper started a campaign for a ‘Sarah’s Law’ comparable to ‘Megan’s Law’ in the USA. For a week demonstrations had to be carefully watched by the police, especially in the Portsmouth suburb of Paulsgrove (Perry 2000). In the middle of it all a paediatrician in South Wales had her house vandalised by people who reportedly confused her title with that of a ‘paedophile’ (Allison 2000); this news story went on to become something of an urban legend. Eventually order was restored after discussions between the newspaper, the police, probation and the NSPCC (Thomas 2001a; see also Silverman and Wilson 2002: esp. chapters 7–8).

Some fatalities did take place including 73-year-old Arnold Hartley, who was also a convicted child sex offender and lived in Redcar. Hartley had been victimised by local people since his return home from prison and was eventually found dead from head injuries inflicted with a heavy object. Three days after the murder the response from the local public to police inquiries was described as ‘one of deafening, resolute silence’ (Addlley 2003). Throughout the noughties the reporting of sexual offending continued but without the public demonstrations and protests seen in the summer of 2000.
A different form of community hostility directed at a convicted sex offender was that experienced by the professional footballer Ched Evans who was released from prison in October 2014. Evans had been convicted of rape but always denied that he was guilty. This time communities of interest using social media networks used their powers of influence to stop Evans returning to his work as a footballer. Each time a club showed interest in re-employing him petitions would be started against him and sponsors threatened to withdraw their connections to clubs (‘Oldham Athletic deal to sign convicted rapist Ched Evans is off’ Manchester Evening News 8 January 2015).

‘Expert’ explanations and responses

The term ‘expert’ has been used here to encompass different disciplines, including medical, psychological and social. As already suggested, there is arguably a struggle going on between the ‘experts’ and the more ‘populist’ explanations of sexual offending; each lays a claim to define the truth. To whom should we give credence? We can only say that the ‘populist’ explanations appear more subjective and prone to propagating ‘mythologies’ of ‘strangers who lurk in shadows’ like ‘monsters’, compared to the – hopefully – more informed and objective research that comes from the various ‘expert’ disciplines.

The medical professionals

The general medical profession has a forensic role in helping the police to gather evidence following a sexual assault, and has tried to take a lead on understanding why some people commit sexual crimes. Psychiatry is the branch of the profession that might have been expected to throw light on sexual deviance and behaviour, and to some extent it has fulfilled this role. On the other hand there is growing consensus that sexual offending is more often unconnected to mental illness.

The Mental Health Act 1983 had appeared to formally disconnect the mental health services from sex offenders. Section 1(3) of the Act specifically stated that those engaging in behaviour that was only ‘promiscuous’ or considered ‘sexual deviancy’ were not covered by the Act. People who were diagnosed as psychopaths could not be detained under the Act unless their condition was considered ‘treatable’ (s. 3 (2) (b)). This criterion of ‘treatability’ could be used by psychiatrists to opt out of engaging with sex offenders who might be psychopaths. In the mid-1990s the term psychopath appeared to become synonymous with the ‘personality disorder’ which was deemed equally untreatable; in turn ‘personality disorder’ became applied to sex offenders.

In the courts probation officers described what they saw as the ‘classic situation’ when psychiatric reports to court would end with the conclusion: ‘this person is not mentally ill under the meaning of the 1983 Mental Health Act
but has a personality disorder; therefore I cannot offer any treatment. However, he might benefit from a period of probation’ (Gosling 2002).

The Home Secretary at the time, Jack Straw, confirmed a picture whereby in ‘the opinion of many experienced observers of the system … psychiatrists are all too often using the treatability test in the Act as a way of absolving themselves from their duty of providing health care’ (cited in ‘Treatability row leads to war of words over service funds’, Community Care, 5–11, November 1998: 1). One way forward was to review the working of the Mental Health Act 1983 and find a way of incorporating a service to people with a ‘dangerous severe personality disorder’.

Such a review started in late 1999 culminating in a Draft Mental Health Bill published in June 2002. This Bill did not become law and it was not until 2007 that a new Mental Health Act was passed amending the 1983 Act. The new law re-defined mental disorder as now meaning simply ‘any disorder or disability of the mind’ and this new definition left out any references to sexual deviancy as being ‘excepted’ (Mental Health Act 2007 ss. 1–3 amending the 1983 Act s. 1). The definition of ‘treatment’ was also changed in the new law to mean not just narrow medical treatments but to include the wider ‘psychological intervention and specialist mental health habilitation, rehabilitation and care’ and ‘medical treatment the purpose of which is to alleviate, or prevent a worsening of, the disorder or one or more of its symptoms or manifestations’ (Mental Health Act 2007 s. 7 amending the 1983 Act s. 145). The result of these changes is to make it easier to justify the detention of sex offenders in hospital (see also Mental Health Act 2007 Explanatory Notes para. 24, available at http://www.legislation.gov.uk/ukpga/2007/12/notes/contents, accessed 12 February 2015).

Some people with a mental illness and in need of treatment – including the new wider definition of treatment – may commit sexual offences, but the treatment is for the person and may or may not remove the propensity to offend. The distinction may not always be clear to a public still confused about the nature of mental disorder and when there is still talk of ‘sex maniacs’ and ‘dangerous’ people, plus the fact that sometimes mentally ill people do commit sexual offences. Even if it could not offer explanations, psychiatry still felt able to offer some treatments, and psychiatric skills in ‘risk assessment’ were still taken into account by courts and the Parole Board when it came to decisions on a person’s sentence and civil liberties.

Treatments could include a general medical approach to organic or genetic factors that were in turn leading to sexual offending. Some patients with a ‘hormone imbalance’ could be helped by being given ‘suppressants’ to minimise their sexual drive (see, e.g. Fennell 1988). These treatments needed the consent of the patient. If there was going to be a surgical implant of a suppressant under the Mental Health Act, a second doctor needed to approve it, even if consent had been given (Mental Health Act 1983, s. 57).

In the 1920s and 1930s, castration became confused with sterilisation as part of the eugenics debate that, at its extreme, wanted to control the reproduction
of people with mental impairments (see King 1999: chap. 3). King cites evidence that illegal sterilisations were not uncommon at this time (ibid.: 92) and in 1923, in Derbyshire, the county council wanted changes in the law ‘to empower a court to order the sterilisation of mental defectives convicted of sexual offences’ (Fennell 1996: 81).

Fennell recounts the story of actual castrations carried out in the Public Assistance Institution in Gateshead in 1930. A Ministry of Health inspection found three people to have been operated on, including a 14-year-old boy charged with indecent assault. The Ministry warned Gateshead that even with the consent of the boy’s mother, these castrations were illegal and could result in prosecution; the medical officer confirmed that there would be no more operations of this kind (ibid.: 86).

Today surgery for sex offenders is very rare but the use of medications does take place and the government has expressed a wish to develop the use of drug treatments to support existing psychological treatments. (Home Office 2007a: 14)

A variety of drugs are available to reduce the male testosterone levels that is seen as suppressing sexual desires and urges. Two in particular are used:

1 SSRIs (Selective Serotonin Reuptake Inhibitors): These drugs are commonly prescribed for depression, anxiety, and obsessive compulsive disorder. They have a relatively mild side effect profile. They act by increasing the concentration of serotonin, a neurotransmitter (or chemical messenger) found in the brain that is related to mood, impulsivity, appetitive behaviours such as eating and sleeping, and sexual activity (amongst other things). Serotonin systems are known to interact with testosterone in the brain in the regulation of sexual behaviour.

2 Antilibidinal medication: These drugs reduce testosterone levels to those found in prepubescent boys, thereby decreasing sexual interest and arousal. Although offenders can still be sexually aroused by relevant stimuli, they are generally less interested in sex, and there is a great reduction in spontaneous sexual behaviour. Response is not instantaneous, and it may take a number of months before effects are maximal. The most common of the antilibidinals is cyproterone acetate (Androcur), which is taken orally (NOMS 2007: 2–3).

In England and Wales these medications can only be administered to convicted sex offenders and with their consent (Harrison 2010).

**The paedophile**

One contribution to the debate that has come from the medical professionals has been that of the person said to be a ‘paedophile’. The word was first used in
the late nineteenth century and is now used widely in all sorts of areas of life beyond that of the medical world. Indeed it could be said to be a word used too widely and too indiscriminately and applied to any person who has committed a sexual offence against a child. It is not, however, a term recognised in UK law where the term ‘child sex offender’ is used.

Paedophilia is now described as a psychiatric disorder in which an adult or older adolescent experiences a primary or exclusive sexual attraction to prepubescent children, generally aged 11 years or younger. Paedophilia is termed a ‘paedophilic disorder’ in the ‘Diagnostic and Statistical Manual of Mental Disorders’ (DSM-5) drawn up by the American Psychiatric Association. The World Health Organisation (WHO) in its ‘International Classification of Diseases’ (ICD-10) defines paedophilia as a sexual preference for children of pre-pubertal or early pubertal age. The person attracted to children aged 11–14 years of age is referred to as a having the disorder of Hebephilia.

One danger in the use of the word paedophile is that it can be used as an excuse. The use of the word ‘paedophile’ implies that the man is ‘ill’ and cannot help his behaviour. It is not something he can control unless he has some kind of ‘treatment’. In other words the man is let off from having any responsibility for his behaviour (see, e.g. ‘Paedophile begged for jail, to save children’, The Guardian, 2 March 2004).

The therapists

Therapists and psychological explanations of sex offending tend to locate the problem with the individual. Personality traits of the individual, such as an extrovert personality that seeks to dominate others, or a lack of social skills to contain anger and violence, all contribute to the development of a person prone to sex offending. Problem-solving skills with adults are poor or non-existent in these offenders.

Alternative personality traits could be a lack of self-esteem and a poor self-image, which leads on to, once again, poor problem-solving skills with adults and a preference for relationships with children who are seen as ‘weak’ and ‘non-threatening’ by comparison. The presence of so-called dis-inhibitors like alcohol or drugs, or the presence of ‘stress’ in various forms, then become facilitators of sexual offending.

These personality traits are seen as developing slowly through childhood and are linked to inappropriate parenting or theories of the ‘dysfunctional family’. Associated features would include a ‘distortion’ of thinking that sees offending behaviour as not really offending at all, as well as an accompanying ‘denial’ of a problem.

Cognitive behavioural approaches

The ‘cognitive-behavioural’ approach to treating male abusers appears to work best with those who offend against children. It is an eclectic approach, drawing
on a variety of ‘treatments’, including some of those we have just looked at as ‘behavioural approaches’. ‘Cognitive-behavioural’ work can be carried out by probation officers, prison officers, social workers and psychologists and can be delivered in either an individual ‘one-to-one’ format, tailored to the particular offender, or on a group-work basis. It has been posited that a multi-agency approach to this work has the positive advantage of drawing in various perspectives and skills. Beckett has summarised the essentials of cognitive-behavioural treatment:

these interventions focus on altering patterns of deviant arousal, correcting distorted thinking, and increasing social competence, with educational input assisting offenders to gain knowledge in sexual matters, the effects of sexual abuse and sexual assault cycles.

(Beckett 1994)

The sessions with the offenders, whether individual or group work, are linked together by intervening ‘homework’ sessions which have to be completed: sometimes these programmes are called ‘personal change programmes’. We should also note that, although we are looking at treatments here, practitioners such as probation officers and prison officers have other roles to perform in the containment and punishment of sex offenders (see Chapter 6).

‘Cognitive-behavioural’ approaches take the starting point that the offenders know what they are doing and are making a conscious decision to commit sexual offences. This decision-making is, however, qualified by the fact that the offender bases it on distorted thinking (‘cognitive distortion’) that becomes ‘hardened’ into ‘fantasies’ and ‘anti-social personalities’. In the end, they may believe they have done no wrong, or that the victim ‘led them on’, or they are in total denial about the crimes.

The starting point for ‘cognitive-behavioural treatment’ – or CBT – is that the offender is willing to accept that an offence has taken place and is willing to enter into a ‘contract’ with the therapist to uncover the true motivation for the offending and to start confronting some of the distorted thinking that has formed around that offending. Once that has been achieved, an input of ‘avoidance’ and ‘coping’ mechanisms can be attempted, as well as general ‘social skills training’ to improve social competence, and also the developing of an understanding and empathy with the victim of the crimes (Beckett et al. 1994; Clark and Erooga 1994).

One technique of ‘cognitive-behavioural treatment’ is to introduce offenders to the idea of the ‘model of change’ developed by Prochaska and Di Clemente. Within this model, the offender is seen to move through various phases with respect to his behaviour:

1 Pre-contemplation: the offender is unaware of his ‘problem’; in denial; defensive.
2 Contemplation: the offender decides to change.
3 Action: the ‘rehearsal’ of the change.
4 Maintenance: sustaining the new behaviour.
5 Relapse: giving up and returning to old behaviour.

The model, first developed with alcoholics and drug users, invites the offender to place himself in one of the various phases with a view to understanding his progress. As relapse is built into the model, it can be anticipated and foreseen by worker and offender (Prochaska and Di Clemente 1986).

Another frame of reference used by therapists with a ‘cognitive-behavioural’ approach is that of the ‘pre-conditions’ for child sexual abuse identified by Finkelhor. The starting point for this analysis is a person who is motivated to offend against children, but is prevented from doing so by ‘internal’ and ‘external’ obstacles. The ‘internal’ are personal to the offender and, once they are overcome, he looks to circumvent whatever ‘external’ obstacles exist by way of parents or other adult carers or guardians. If the ‘external’ obstacles are successfully overcome, there is only the child’s own ‘resistance’ to be worked on before abuse takes place (Finkelhor 1986).

The big question remains – does ‘cognitive-behavioural treatment’ work? The popular argument is that nothing changes these men and, as we have seen, ‘once a paedophile, always a paedophile’. Evaluative studies would suggest otherwise, albeit with caution. The consensus appears to be that sexual offending behaviour can be controlled and contained, if not completely removed: ‘whilst no treatment approach is 100 per cent effective for all offenders all of the time, certain offenders do appear to benefit from particular types of intervention, as indicated by reduced recidivism’ (Beckett 1994). For Beckett, those ‘particular types of intervention’ favoured a ‘cognitive-behavioural’ approach (see also Beech et al. 1998).

‘Risk, Needs and Responsivity’ and the ‘Good Lives Model’

Therapists have traditionally seen their work with sex offenders as meeting deficits in the offender; deficits that they are trying to make good. This model of working had been described as the ‘Risks, Needs and Responsivity’ (RNR) model of working and the aim is to reduce the risk by meeting the needs (Bonta and Andrews 2007). The RNR was accepted as the orthodoxy from the mid-1980s onwards but was later challenged by various critics who advocated an approach based not on a sex offender’s ‘deficits’ but on their ‘strengths’ (see e.g. Ward and Stewart 2003). The ‘strengths based’ approach started by looking at offenders’ strong points rather than their deficits and then tried to build on them to bring out those strengths. This was known as the ‘Good Lives Model’ (GLM) of working (see e.g. Ward and Gannon 2006; Willis and Ward 2011).

These two models of working have been at odds with each other and formed the basis of on-going discussions (see e.g. Ward et al. 2012) but there
are thoughts that the two should be integrated and that one is not necessarily to be seen as ‘better’ than the other.

**Children and Young People who Sexually Offend**

One other aspect of treatment that has come to the fore is the idea of ‘early’ treatment for young sex offenders. Although the emphasis inevitably falls on adults, the extent of sexual offending by children and young people has long been recognised, with some estimates suggesting it could account for up to a third of all sexual offending (see, e.g. Grubin 1998). Early Department of Health guidance looked to a multi-agency approach involving education authorities, psychologists and adolescent mental health services alongside youth justice and child welfare agencies and:

> an assessment should be carried out in each case, appreciating that these children may have considerable unmet developmental needs, as well as specific needs arising from their behaviour.

*(Department of Health 1999: para. 6.33)*

Services for this group were patchy (Coombes 2003; Masson and Hackett 2004) but some specialist agencies, such as G-MAP in the Manchester area, have been developed to take on the treatment of young sex offenders (see [http://www.g-map.org](http://www.g-map.org), accessed 16 March 2015).

Overall progress has not been good. A multi-inspectorate report led by Probation in 2013 found that interventions with young sex offenders could have been earlier if there had been better communications between agencies and that these children did benefit from work with Youth Offending Teams. It was therefore all the more troubling that:

> A sizeable number of them had been referred on previous occasions to children’s social care services but the significance of their sexual behaviour was either not recognised or dismissed. This, to us, represented a lost opportunity, both for the children and young people themselves and their potential victims.

*(HMIP 2013)*

**The social analysis**

Feminists have argued that the label of ‘paedophile’ obscures the normality of the male perspective, which sees young girls as attractive and desirable, and overlooks the ‘normality’ of sexual offending being almost wholly a male activity, and one in which they choose to engage.

In the same way Cameron and Frazer, in their book on sexual murder, indict criminology for overlooking and obscuring the gender-specific nature of
murder: ‘there are various social constraints on who is a killer and who gets killed. One of these is, quite simply, gender: killers are mostly male, victims mostly female’ (1987: 30). A large study of 500 known child sex abusers in Scotland found 99 per cent of them to be male and three-quarters of the abused children female (Waterhouse et al. 1994), and in Northern Ireland, an estimated 95 per cent of serious assaults categorised as ‘domestic’ were by men (McWilliams and Spence 1996: 49).

Kelly has put forward the idea of male violence and sexual assault as being on a ‘continuum’ from so-called normal behaviour through to a generally recognised deviant and criminal behaviour. Forms of male behaviour at one end of the continuum are just a different version of behaviour to be found at the other end, and the idea of ‘types’ of sex offender becomes redundant. Male domination of women thus becomes normalised in all areas of life, as does the expectation of women’s subordination and the requirement that they ‘fall into line’ almost as ‘property’ of men. These cultural expectations are supported by patriarchal norms that are to be found in institutions, language and customs wherever we look (Kelly 1988).

The ‘continuum’ idea explains how women experience male violence in various forms and as being all-pervasive. Male expectations of women are backed up by attitudinal, verbal and actual violence in all areas of life. Thus, women experience violence and domination in the home, in the workplace through limited career opportunities, sexual harassment and actual violence, and on the streets in generalised hostility towards women and the idea that some public places are safer than others. Many of these activities may fall short of being sexual offences as defined by a criminal court, but the ‘continuum’ provides a framework that circumscribes sexual offending.

If women are male ‘property’ they can be ‘objectified’ and in turn become ‘dehumanised’, making offending more likely. As the women’s movement has analysed this phenomenon and challenged it, the very challenge has ‘threatened’ male dominance and led to a renewed effort – including violence – on the part of men to reassert their position.

Within the idea of a ‘continuum’ of sexual violence and assault, the very word ‘paedophile’ becomes unhelpful. As Kelly has pointed out, the labelling of a man as a ‘paedophile’ – invariably by male ‘experts’ – takes him outside the continuum by focusing on the person rather than the behaviour and marks him out as being intrinsically ‘different’ from other men. By classifying the paedophile as ‘different’ it lets all other men and their ‘normal’ behaviour off the hook. This ‘difference’ gets elaborated to suggest that the paedophile never has sex with adult partners, invariably prefers boys and usually operates outside the family. All this is distracting us from the ‘normality’ of men targeting young girls, acting within the family and having adult relationships at the same time. Kelly quotes a worker with child prostitutes in Bradford: ‘What is a paedophile anyway? As far as we can see on this project, he’s over 30, drives a nice car and has a wife and kids’ (Kelly 1996).
An inquiry into safe-guards for children in Scotland had a similar experience. The committee of inquiry received various submissions on how to identify ‘the paedophile’, mostly in the form of ‘check lists’. The committee was sceptical: ‘There are checklists in existence which would probably allow every adult in Scotland to be seen as a potential paedophile’ (Kent Report 1997: para. 6.6.7).

This analysis challenges the ‘need for treatment’ by emphasising the normality of the behaviour and by insisting that men could control it if they chose to. This challenge is also made to the ‘cycle of abuse’ concept – victims of abuse go on to become abusers – when it is pointed out that most victims of abuse are girls, and yet it is the men who are said to suffer most from being abused, when they go on to become child abusers (Kelly 1996).

In this way the position of all women becomes one of vulnerability if they allow it to be; as one worker in a Rape Crisis Centre has put it:

> Whether or not we have been raped ourselves, we all share the experience of the threat of male violence, the sense of smallness and powerlessness constructed by the ideology of male authority, and the actualities of male social and economic power.

(Anna 1988)

Along the ‘continuum’, specific forms of sexual violence are thus connected to more common everyday aspects of male behaviour that include abuse, intimidation, coercion, intrusion and threat. The continuum is not about the relative seriousness of male activities or the idea of a hierarchy of abuse, but more an illustration of the prevalence of the phenomena (Kelly 1988). In turn it is suggested that:

> Society does not want to hear what women have to say about this subject, and men have a vested interest in keeping definitions of sexual violence as narrow as possible. It is vital that women continue to speak, to tell their stories.

(Hague and Malos 1998: 8)

Radford and Kelly have elaborated on the experiences of women when ‘nothing really happened’ to show how women’s minimising and discounting of their experiences is effectively a ‘silencing’ exercise by society:

> Men, who as the perpetrators of sexual violence have a vested interest in women’s silence have in a range of ways and in a range of contexts, constructed ‘knowledge’ about sexual violence, crime and women’s sexuality; through institutions such as the law, medicine, psychiatry as much as the ‘common sense’ that is promoted by the media, including pornography.

(Kelly and Radford 1990–1)
All the time, women’s experiences are coming up against the ascendancy of the male perspective. Gender-based street harassment consisting of unwanted comments, gestures, and actions forced randomly on women in public places had long been a familiar experience. Unwanted whistling, leering, sexist, homophobic or transphobic slurs, persistent requests for someone’s name, number or destination after they’ve said no, sexual names, comments and demands, have long been experienced by women.

Building sites had been known as places where women could be shouted at or whistled at with impunity. In 1997 steps had been taken to get site managers to try and improve the behaviour of their staff and a Code of Considerate Practice was drawn up by a consortium of building site managers called the ‘Considerate Construction Scheme’; behaviour has reportedly improved (Ford Rojas 2012).

The ‘Everyday Sexism Project’ started in 2012 was a way of women sharing their experiences of what happens in the streets and elsewhere. Initially it was for just a few women who knew each other but it has rapidly expanded and gone international. One of the organisers reported that the hostile response of some men came as a surprise to her and ‘the sheer level of vitriol took me by surprise, as hate-filled missives poured in, ranging from graphic descriptions of domestic violence to threats of torture, death and rape’ (see ‘The Everyday Sexism Project: a year of shouting back’, available at http://www.theguardian.com/lifeandstyle/the-womens-blog-with-jane-martinson/2013/apr/16/everyday-sexism-project-shouting-back, accessed 17 February 2015).

Other groups have formed to take on street harassment in the USA and the UK. Some have issued cards to women to give out to the men harassing them advising them of their behaviour and its unwelcome impact (Stephenson 2014). In October 2014 an actress called Shoshana B. Roberts walked through New York City carrying two microphones and being secretly filmed by a man walking in front of her with a camera in his rucksack. The amount of street harassment revealed in the resulting film became a popular item on You Tube (available at http://www.ihollaback.org/blog/2014/10/27/new-street-harassment-psa, accessed 14 February 2015).

Summary

In this chapter we have sought to find explanations for sexual offending that have been offered by the public, the press, and the politicians on the one hand, and by ‘experts’ such as doctors, therapists and scholars and activists on the other. The former have offered us a simplistic model of ‘monsters’ and ‘beasts’ that has sometimes led to direct action to identify and deal with these offenders. The latter have attempted to offer a more considered and scientific look at the phenomenon, although the ‘experts’ inevitably disagree amongst themselves.

A number of different constituencies are competing with each other to claim and explain the phenomenon of the sex offender and to say how we should be
responding to sexual offending. Criminologists sometimes refer to this as the struggle for ‘dominion’. In its broadest terms, there are community groups representing grass-roots; public opinion; the press and other media outlets; politicians seeking to be representative and responsible at the same time; and the ‘experts’ and practitioners in the form of doctors, penologists, therapists, police officers and others. The interaction between them all is complex – this is not a simple stand-off where the loudest voice gets to define what is happening.
Chapter 3

Social responses to the sex offender: a historical perspective

Introduction

The idea of sex offending as we know it today has evolved slowly over the course of history and is still evolving. The definitive history of sex offending has yet to be written, and this chapter attempts only an outline of developments to define and respond to the sex offender, and the culture, mores and legal provisions that were in place at the time. Many of these provisions from the past have a continuing resonance today; the perceived need to identify, label and regulate the ‘dangerous’ person, the competing definitions put forward by popular opinion, the press and politicians and by the medical and penal ‘experts’.

Pre-industrial times to 1800

Criminal behaviour that was apprehended in thirteenth-century Britain was brought before either the secular courts or the church courts. In general terms, the former examined crimes against property or public order, the latter examined crimes against morality, including sexual offences. This distinction does get confused because married women and children were often formally considered as ‘property’ in those times and therefore marital separations, for example, might not necessarily end up in the church courts. The laws to be implemented were a mixture of common law, statutory law and church law.

The emerging ideas of ‘the market’ and private ownership of property, to replace that held in ‘common’, fed into the notion that sex offending was not just rape or sodomy and the crimes we know today, but could also include adultery, fornication, sex outside wedlock and bigamy. One early form of regulation of sexual behaviour was the parish register of births, deaths and marriages. This early form of registration could help decide subsequent property transactions and, according to the historian Christopher Hill:

…declared who had and who had not a ‘settlement’ in any given parish, and so prevented false claims to poor relief … [and so] the discipline of
parish registers and parochial assumption of control over the marriage of the poor complemented the discipline of the market.

(Hill 1996: 202)

The Statute of Westminster 1285 had made rape an offence punishable by death and put the ‘age of discretion’ (consent) at 10. Children aged 10–12 were given some protection, but claiming consent had been given was a valid defence for a man. The age of consent rose to 12 in 1576 (see also Jackson 2000: 12–14).

Sex between family members – or incest – was historically an ecclesiastical offence, triable before a church court and incestuous marriages could be declared null and void. Offenders – or sinners – ‘were forced to do penance either by public confession in the parish church or in the marketplace … in bare feet, clothed in a white sheet and clutching a white wand’ (Bailey and Blackburn 1979). Ex-communication from the church could be added. Parents who sexually abused their own children might be similarly punished, but, given the poor levels of housing and accommodation and lack of ‘policing’, such offences rarely came to light.

Sodomy, or anal intercourse, was made an offence by an Act of 1533 and persons – male or female – convicted were sentenced to death. It has been reported that such harsh sentences were reinforced by the belief that sodomy was associated with witchcraft and was, in fact, the way in which witches had communion with the devil ‘who with his forked penis committed sodomy and fornication at the same time’ (Bancroft 1974: 8).

There is evidence to suggest that women were less in fear of sexual attack and rape than in fear of straight violence in these pre-industrial times. Historians have found few writings expressing such fears of sexual assault, and the conclusion has been drawn by some writers that male domination was so clear-cut that men had little need to employ the threat of rape to maintain their dominance (Porter 1985).

The natural hazards of life meant that children were always at risk from illness and disease, as well as injury from accident. Risk from adult offenders outside the family seems to have been relatively rare. One early example of a recorded abduction of a child is that of Alice de Salisbury: ‘who in 1373 stole Margaret Roper, the little daughter of a London grocer, carrying her away and stripping her of clothes so that she might not be recognised by her family’. The abduction was to use the child for begging purposes, but the offender was caught and spent one hour per day in the stocks (Heywood 1959: 6).

In 1645, Parliament was informed that ‘divers lewd persons do go up and down the city of London and elsewhere, and in the most barbarous and wicked manner steal away many little children’. Constables were to apprehend anyone stealing, buying or receiving stolen children (Laurence 1994: 84–85). The state of policing through the local constables and ‘night watch’ was, at these times, primitive, and the prevention and detection of crimes was difficult.
An Act of 1604 required the whole community to assist, when necessary, in the apprehending of criminals.

It is probably at this time also that the spectre of the individual dangerous person – as opposed to groups – first appears as a nomadic figure which could threaten communities anywhere. The vagrant was a particular demonised figure of the times. A figure that blends in with mythical tales of demons, werewolves and those, like the ‘raggle-taggle gypsies’, who would steal our children.

Vagrancy Acts were introduced to impose some order and improve public protection. The Vagrancy Act 1714 identified the mentally disordered person – ‘the furiously mad and dangerous’ – as requiring restraint as a matter of urgency to protect the community. The Vagrancy Act 1744 allowed for restraint of the mad, along with an element of ‘curing’ in such establishments as the emerging county workhouses. Children as well as adults could end up in workhouses, where their treatment was quite miserable. Many children in these early institutions ‘were the victims of murder, manslaughter, assault and rape’ (Heywood 1959: 19).

The mid-eighteenth century saw the vagrancy problem worsen with the influx of many Irish people on to the British mainland. The idea of a register was proposed in 1748 to help deal with the problem:

Vagrants released from the county workhouses should be made to appear at the Quarter Sessions to be ‘registered and recorded’ so that their offending might be more easily convicted, which Register, and proving the identity of the Persons, shall be sufficient Evidence for convicting such Vagrant in order for Transportation.

(cited in Radzinowicz 1948: 19)

Other suggestions of the time included the need to require ‘servants and labourers’ to have a certificate signed by a magistrate, minister or churchwarden should they wish to move from their place of residence (ibid.: 20).

The earliest attempts at policing, as we now recognise it, also included the idea of a register. Henry Fielding, the Chief Magistrate of Bow Street (1748–1754), started his reform of the police in London in the 1740s with the creation of the Bow Street runners, which included the innovation of the post of ‘Register Clerk’. This particular register was to be a record of crimes reported, goods lost and names and descriptions of people both suspected and convicted. Sir John Fielding, Henry’s brother, later suggested that one of its purposes was to help identify those who should be shown mercy, instead of being executed:

Wisdom, policy and humanity dictate that the most abandoned, dangerous people and incorrigible offenders should be pointed out for this melancholy purpose, the knowledge of which cannot be obtained with any degree of certainty but from the valuable register of offenders.

(Radzinowicz 1956: 47)
The idea for a sex offender register in 1997 had a long pedigree.

A variation on the use of a register for helping to detect crime and for influencing sentencing was the early idea of a register to assist with pre-employment screening. In 1749, the Fieldings established the Universal Register Officer ‘as a labour exchange where employers might examine prospective servants and study their character references’, and published a bulletin called *The Public Advertiser* providing information on the servant labour market (Linebaugh 1991: 252).

Later developments from the Fielding brothers included dissemination of information through the *Weekly Pursuit*, the *Quarterly Pursuit*, and *Lists of Offenders at Large* (Radzinowicz 1956: 48). Later still, another ‘founding father’ of early policing, Patrick Colquhoun, developed the register idea and organised ‘a continually expanding inventory of all that was noxious in society, so as to serve the purposes of his General Police Machine’ (ibid.: 295).

**1800 to 1900**

The start of the nineteenth century found the UK still without a regular police force yet with an emerging working class being ‘created’ from the Industrial Revolution, living in rapidly growing cities and in housing that was insanitary and squalid. Criminality was considered endemic amongst the dispossessed ‘dangerous classes’, where it went hand in hand with the immorality of ‘demoralised’ communities.

New prisons were being built to complement the ‘bridewells’, and the houses of correction and the old debtor’s prisons were being overhauled after the reforming interventions of such as John Howard, the Sheriff of Bedfordshire, and the Quaker, Elizabeth Fry; the aim was to introduce order into the prison system, which previously seemed only to offer chaos. By the end of the century, the prison system had been reformed, an organised police force was in place and laws protecting children and defining sexual offending had been passed.

Forms of detention for the criminal lunatic were limited. Madhouses, licensed houses or Poor Law establishments existed but this seemed insufficient. The County Asylum Act 1808 permitted the building of local asylums to increase the number of beds for these patients. Later amendments to the law allowed for the transfer of the criminally insane from prisons to hospitals. In 1862, building started on Broadmoor as a special institution to hold the dangerous criminally insane.

The ruling class was slowly coming round to the idea that new forms of public policing were needed. People with money might buy their own private policing protection, but it was clear that more was needed. The Peterloo killings in Manchester had shown the shortcomings of the military’s ability to keep public order, and the increased vagrancy from soldiers returning from the Napoleonic Wars suggested that new measures were needed. The Metropolitan Police Act 1829 brought into being the first regularised police force on
mainland Britain for the London area, to be followed by enactments to create provincial forces across the country. A police force for Ireland had already been established in 1786.

These early forms of policing would inevitably involve the collation of information on people, but it was to be some time before a formal national collection of criminal records was started. There is evidence that in these pre-computer days, employers were already looking to the police for information on the trustworthiness of potential employees, perhaps prompted by the early experiments of Fielding with his Universal Register Office:

In 1857 the Chief Constable of Bedford gave confidential information to a local employer about one of his workmen [and] ... in 1863 the Chief Constable of Lincolnshire protested that his men were constantly receiving letters from private enquiry offices seeking information as to the character, respectability, and money value of persons residing in the towns and villages. (Emsley 1991: 107)

It is probable that the screening out of sex offenders from employment was not a priority for these employers, but it was clear that in some quarters, at least, police records from an early age were seen as not just being for the police to use for policing purposes, but were legitimate information for others who had to weigh up risks about people.

After the 1857 Obscene Publications Act was passed the Metropolitan Police formed an Obscene Publications Squad in 1863. The advent of photography had brought a new dimension to this particular ‘art’ and the term ‘pornography’ was passing into common usage. In 1870, the Obscene Publications Squad mounted a joint operation with a voluntary organisation called the Vice Society against the sellers of obscene material, but not long after the squad was disbanded until its re-emergence in the late 1880s in response to public demand (Bristow 1977: 47).

Police progress against brothels remained notoriously uneven. Prostitution had yet to be conceived as a form of economic violence against women and was seen rather as a crime without a victim. Bristow reports that the slow progress was due to ‘a vexed tale of Home Office delay, badly drafted legislation, unfavourable judicial rulings and police corruption’ (ibid.: 57). By the late 1850s, a concerted effort was made for action when the Vice Society joined forces with other campaigners, rescue houses and local authorities in London to press for better policing of the brothels. Together they formed what later would be loosely called the ‘Social Purity’ movement.

of the continuing problem with regulating prostitution in all its forms was the Victorian double standards surrounding sexual matters, and the latent belief that prostitution might even enable ‘the family’ to exist in a more perfected form. In practical policing terms, there was the problem of
obtaining evidence and the overall hostility to the police, especially when they entered brothels. Added to this was an age of consent of 12, which was only raised to 13 in 1875 (objections were raised that young men would be entrapped and blackmailed by girls if the age was raised any higher).

(ibid.: 91; see also Bartley 2000)

It was the outraged mob who also still saw it as their role to let the perpetrators of sex crime know exactly what they thought of them. In working-class communities in Wales, we are told that ‘generally the community, embodied in the mob, intervened on the side of women, upbraiding wife beaters and punishing adulterers’ (Jones 1982: 111). In Dowlais, a man who lived off immoral earnings had a crowd of some 500 put his doors and windows through (ibid.), and when two men were publicly hanged for killing their wives because they suspected infidelity, ‘it needed all the efforts of the constables … to keep the angry spectators at a distance’ (Jones 1992: 74).

Behind many Victorian reforms of this period were the organisations of the ‘Social Purity’ movement. The Vice Society, formed in 1802, was a central agency of this movement, but so too were organisations like the London Society for the Protection of Young Females, the Guardian Society, the Rescue Society, the Midnight Meeting Movement and a host of others. Their rise should be seen against the declining influence of the church courts and the desire for something to replace them. Towards the end of the century, they would be complemented – or replaced – by such as the National Vigilance Association, the White Cross League and the Social Purity Alliance (see Bristow 1977: passim) and, ultimately, by the rise of the authority of the academic hierarchy and the professional ‘experts’.

The ‘Social Purity’ movement saw their role as being to ameliorate the worst excesses of Victorian high liberalism and laissez-faire, and saw immorality and criminality being closely entwined, with the former usually a precursor to the latter. They campaigned for tighter laws on pornography, prostitution and brothel keeping and sought to enforce the law through private prosecutions or in tandem with the police. For their part, the police seemed happy with this arrangement and to leave these aspects of law enforcement to these vigilant – ‘vigilante’ – groups who could only enhance the efforts of the police. Bristow offers further explanation:

Officials left the initiative for law enforcement as well as legal reform to the vigilantes. Did the State acquiesce with a cunning understanding of the function obscenity played in the social system, as was the case with prostitution? Perhaps more relevant in explaining official reticence was the availability of a strong voluntary effort, the tradition of private initiative, the unpopularity of using the police to entrap people and the very magnitude of the task.

(ibid.: 45)
The Vice Society campaigned for a number of legislative initiatives. The Vagrancy Act 1824, for example, included for the first time ‘streetwalking’ as an offence.

Victorian authors at this time wrote stories about children that have been revisited with our modern sensibilities and re-examined for signs of inappropriate interests in children. J.M. Barrie wrote about ‘Peter Pan’ the child who never grew up in ‘Neverland’ and Charles L. Dodgson wrote about ‘Alice in Wonderland’ under the name of Lewis Carrol (Kincaid 1992).

Prisons had been a ‘secondary’ arm of penal policy that ‘held’ people for short periods in local debtors’ prisons, bridewells and houses of correction; the more serious offenders were ‘held’ on a temporary basis to await transportation or execution. The loss of transportation by the 1850s and the accompanying reduction in the use of capital punishment caused the Victorians to rethink the role of the prison. Now, the prison would move to centre stage as a ‘primary’ arm of penal policy and as penitentiaries in their own right. The prison would no longer be the place where you waited for punishment but would now be that punishment.

The period between 1780 and 1850 had already seen reforms and experiments in prison design and regimes. Sophisticated systems of surveillance were designed, such as Jeremy Bentham’s panopticon, which allowed the prisoner no privacy or escape from the all-seeing warders; an actual panopticon-style prison was never built in the UK but the ideas were taken on board (Ignatieff 1978: 109–113).

As the prison became more central to penal policy, the Victorians started to worry about what happened when prisoners came out and went back into the community; a worry that never existed with high levels of capital punishment and transportation for the serious offender. Within the prisons, a new rising class of prison administrators also saw the need for systems of remission and early release to help control the conduct of individual prisoners and to regulate the growing size of the prison population (McGowen 1995).

The Penal Servitude Act 1853 increased prison sentences and created a system of licensing for discharged prisoners, known as ‘ticket-of-leave’; this was a crude form of community supervision by the police. Despite amendments to the law in 1857, the ‘ticket-of-leave’ system never really worked and the public had little faith in these new arrangements. The press blamed ticket-of-leave men for all manner of crimes and the general feeling was that they were dangerous and had been discharged too early. Letters to The Times described them as ‘creating terror in the public mind’ and said the public was ‘becoming thoroughly frightened’ (Bartrip 1981: 164). The failings of the system were revealed most starkly when the Home Office asked the Commissioner of the Metropolitan Police for a report on the ticket-of-leave men; the Commissioner had to acknowledge that ‘the police could not find or produce a single man of them’ (Radzinowicz and Hood 1990: 249).

The government reviewed the whole system of penal servitude with a Royal Commission in 1863. The report came down in favour of continuing the
system, but with a more rigorous supervision of ticket-of-leave men by the police. The new, enhanced supervision was to be based on systems developed in Ireland by Sir Walter Crofton (Hansard House of Lords Debates, 7 June 1864, col. 1339). The Penal Servitude Bill was published in 1864.

The new system required ticket-of-leave men to report to the police within three days of leaving prison, and thereafter on a monthly basis or within 48 hours if they should change address. Once again the resonance with today’s sex offender register and management by police Public Protection Units is clear to see (see Chapter 10).

The system was immediately criticised as an infringement of civil liberties and for being ‘un-British’:

> to make it a misdemeanour for a discharged criminal not to report himself to the police was a regulation far better adapted to the police systems of other countries than of our own.

(Hansard House of Lords Debates, 7 June 1864: col. 1342)

Others disagreed. Lord Cranworth thought protection of the public was paramount and he

> … had no sympathy with those who advanced the argument, that to require a convict to place himself under supervision would interfere with the rights and liberties of the subject. The matter properly to be considered was, what system would answer best for the public.

(ibid.: col. 1345)

In practice even with the new Penal Servitude Act 1864, the ticket-of-leave arrangements did not work. The police found it hard to communicate between themselves and had no central register they could refer to. In 1869, Parliament heard that the system verged on ‘absolute failure’ (Hansard House of Lords Debates, 5 March 1869, col. 691ff; see also Bartrip 1981).

The Habitual Criminals Act 1869 repealed the ticket-of-leave arrangements except for those with two felony convictions who had been given absolute prison discharge; police supervision continued for them. The major innovation of the 1869 Act, however, was to be the compilation of a national register of offenders – the Habitual Criminal Register – to assist the police in general matters relating to crime detection and prosecution, as well as supervising those remaining hard core ticket-of-leave men. In time this would eventually become the national collection of criminal records as we still know them today.

Within the Parliamentary debate on the 1869 Act, cautious voices were raised:

> A man watched at every step and moment of his existence, and becoming more notorious, as he is sure to be before long by the action of the police,
and a thousand other circumstances, will find the door of ordinary employment shut against him, and will be driven to the choice between violence and starvation.

(Hansard House of Lords Debates, 5 March 1869, col. 697)

Such arguments were lost and the Habitual Criminals Act 1869 introduced a national register of criminals (England, Wales and Ireland) to be held at Scotland Yard and to be regularly added to and updated by contributing forces. According to one MP, it was to be nothing less than ‘a wholesale system of police surveillance, so that another considerable portion of the people would be in a state of out-door imprisonment, tied, as it were, by the leg to the police’ (Hansard House of Commons Debates, 4 August 1869, col. 1261). The Prevention of Crimes Act 1871 extended the system to Scotland. Ticket-of-leave men were rarely charged for failing to report, although most did, in fact, do so; the strictness of the supervision was always ‘greater on paper than in practice’ (Bartrip 1981: 172).

The Metropolitan Police were amongst those forces having difficulty with their supervisory role. In 1880, attempts were made to try to remedy the position by the creation of a specialised Convict Supervision Office, made up of a chief inspector and three sergeants. The new office improved the maintenance of the register and dissemination of relevant information to other officers, and also improved the efficacy of home visits to ensure compliance. It also worked more closely with the emergent Societies for the Aid of Discharged Prisoners. The new arrangements were generally considered successful by the police, although offenders at the time could still point out that ‘if a man is determined to do wrong all the supervision in England will not prevent it. They cannot always watch a man’ (cited in Petrow 1994: 80).

This particular form of police supervision was effectively dismantled in 1910 by the Home Secretary, Winston Churchill. Had it been successful? Some think not:

On balance police supervision, while theoretically valuable, had been practically useless. It helped the police manufacture a criminal class, without really deterring criminals or diminishing crime.

(ibid.: 82)

The Victorians passed laws to help protect children from the worst excesses of child labour and to give them rights of elementary education. The Prevention of Cruelty to Children Acts 1889 and 1894 were also passed, but their implementation was left largely in the hands of voluntary agencies like the NSPCC, formed in 1889, or the Waifs and Strays Society, founded in 1881; the latter went on to become the Children’s Society of the Church of England. Other notable ‘rescue’ organisations included Dr Barnardo’s Children's Homes, which started in 1870, and the Charity Organisation Society (COS) in 1869. Later,
these ‘casework’ experts would evolve into the child care officers and social work experts of the new century (see also Bartley 2000 for an account of rescue work with women prostitutes).

Looking back, Mrs Bosanquet, one of the founders of the COS, describing London in the late 1860s, saw only: ‘a confused mass of poverty, crime, and mendicancy living side by side with the independent wage earners under conditions of overcrowding and insanitation, and baffling all the efforts of authority and benevolence’ (Bosanquet 1914: 17). Mrs Bosanquet also noted that one of those involved in the discussions to start the COS was Sir Walter Crofton, the architect of the ticket-of-leave supervision policy (ibid.: 18).

In 1885, the position of children as victims of sex offending was to be given massive publicity by what became known as ‘The Maiden Tribute of Modern Babylon’. This was a series of special editions of the Pall Mall Gazette, edited by William T. Stead, which highlighted the extent of prostitution that existed in London and the large numbers of young girls being drawn into it. By the third edition in July, ‘mobs were rioting at the Pall Mall Gazette offices in an attempt to obtain copies’ (Bristow 1977: 110), and although other newspapers and publications were slow to follow, Stead could eventually boast that his revelations had been printed ‘in every capital of the Continent, as well as by the “purest journals in the great American republic”’ (Walkowitz 1992: 82).

Stead had been briefed in advance of publication, by campaigners in London and it was they who continued the agitation in the post-publication phase; the Salvation Army was reported to be particularly active at this time. Overflow meetings were addressed throughout the country. At Manchester Free Trade Hall, for example, the campaigner James Wookey was heard by a crowd of 6,000 when he spoke on ‘The Massacre of the Innocents’; Wookey ‘harangued against the privileged who abused poor girls but whose own daughters were protected by footmen’ (Bristow 1977: 111).

The result of all this public pressure and campaigning was the Criminal Law Amendment Act 1885. The Act, amongst other things, raised the age of consent to 16, and made illegal acts of gross indecency between males (the law had previously only covered acts of buggery and sodomy). To ensure the Act was implemented ‘vigilance committees’ started to appear across the country and were ultimately absorbed into the newly formed National Vigilance Association (NVA), which took over the mantle of the Vice Society. The Act was used to prosecute Oscar Wilde.

In 1888, the serial murder of five women prostitutes in the Whitechapel area of London was taken up by the press and public to cause a wave of panic throughout the capital and beyond. The police failure to solve these so-called ‘Jack-the-Ripper’ murders only added to the sense of awe and mystery.

As the press reporting of the murders intensified, a picture emerged of the squalid conditions of the housing in Whitechapel and the contrast and similarities with other parts of London. The ineptitude of the police in being unable to find a suspect was reported, alongside the grisly nature of the sexual
mutilation carried out and the facts of why women had to resort to prostitution as a means of income. The press speculated on possible suspects and one, John Pizer, named by *The Star*, had to turn himself into the police to escape the fury of a mob (Walkowitz 1992: 203).

The respectable citizens of Whitechapel organised themselves into self-protection patrols, and called for the closure of brothels and common lodging houses, described as ‘nurseries of crime’. Walkowitz suggests these activities were not just about self-protection but about ‘surveillance of the un-respectable poor and low-life women in particular’ (ibid.: 213).

The un-respectable poor of Whitechapel contented themselves with violent rioting and the victimisation of Jewish immigrants and doctors (both considered possible suspects, according to the press) as well as police officers (for their inability to find the killer). The funerals of the victims produced large crowds and outpourings of sympathy (ibid.: 216–17).

Cameron and Frazer (1987) have pointed out that a Robert Louis Stevenson story published in 1886 may have fed into the hysteria of this time. *The Strange Case of Doctor Jekyll and Mr Hyde* is the story of a respectable doctor who is transformed by various medications into an evil monster. The story has taken a hold on popular imagination to this day, to support the idea that there is, within us all, an evil side that may come through at any time.

Meanwhile, within the hospital systems, further changes were taking place in the care of the criminally insane. The new profession of psychiatry, having got a foot in the door in 1845 to detain people, was anxious to try to treat as many as possible as early as possible. Arraigned against them were the lawyers, upholding principles of Victorian liberty and due process of law, and conscious that the public was somewhat alarmed at the ease with which people could be detained in hospitals (Unsworth 1979; Wise 2013).

The lawyers won out and the doctors had to stand back. The Lunacy Act 1890 eventually put legal safeguards above the doctors’ desire to treat. Coercion and therapy did not have to go hand in hand and even the medical journal *The Lancet* agreed that ‘no single power is needed by physicians engaged in the medical treatment of the insane which the common law does not give every citizen’ (editorial, 7 February 1885).

Violence towards women – including sexual violence – was endemic throughout Victorian times. The philosopher John Stuart Mill joined the campaign to highlight the extent of the problem and, in the 1870s, the feminist campaigner Frances Power Cobbe published her pamphlet ‘Wife Torture’ (republished 1992). Men who raped their wives could not be prosecuted following a rule laid down as early as 1736 by Sir Matthew Hale, which stated that a wife gave a general consent to all future sexual intercourse when she married him; this common law ruling was only abandoned in 1992. As late as 1915, a London magistrate was still able to say that ‘the husband of a nagging wife … could beat her at home provided the stick he used was no thicker than a man’s thumb’ (Wilson 1983: 84–86; see also Ross 1982).
The position of children was not much better:

Until late in the nineteenth century, both Parliament and the national press were largely unconcerned with the way in which parents treated their children, regarding even the most barbarous cruelty as beyond public intervention since children were not then regarded as citizens in their own right.

(Pinchbeck and Hewitt 1973: 611)

It was known that sex offending against children did take place within the home, and references to it start to emerge at this time. Andrew Mearns, who would go on to be a founder of the National Vigilance Association (NVA), had produced in 1883 his ‘Bitter Cry of Outcast London’, drawing attention to the poverty, overcrowding and the moral corruption that inevitably went with it; amongst it all Mearns reported that ‘incest is common’ (ibid.: 1883). Apart from protection in the public sphere, children appeared to need protection in the private sphere of the home (Jackson 2000).

In 1885, the Royal Commission on Housing reported that incest appeared to be a constant feature in overcrowded accommodation (RCHWC 1885: 267) and, in 1890, William Booth produced similar findings in his report, deliberately entitled to mock the then fashionable explorers of Africa, In Darkest England and the Way Out. According to Booth, ‘incest is so familiar as hardly to call for remark’ (Booth 1890: 65).

There is also evidence to suggest that, however much campaigners might be offended by incest, the same feelings were not always experienced by those who had been victims of it. Beatrice Webb recalls talking to:

Young girls, who were in no way mentally defective, who were, on the contrary, just as keen witted and generous-hearted as my own circle of friends [yet] could chaff each other about having babies by their fathers and brothers.

(cited in Wohl 1978)

Webb could only attribute this to the general debasing effect social environment could have on personal character and family life.

In terms of legalities, incest was in the anomalous position of being outside the criminal law. Incest was an offence against morality and as such had, in the past, been dealt with by the ecclesiastical courts or bawdy courts and politicians appeared in no hurry to change this situation: ‘legislating authority in the home was entirely different from legislating public morality and perhaps if the official policy was to let sleeping siblings lie, it was because “laissez faire” was preferable to state intervention’ (Wohl 1978). The NVA turned its attention to putting this anomaly to right and, in doing so, ‘found a valuable ally in the NSPCC’ (Bailey and Blackburn 1979). Their continued efforts were to take them into the new century.
1900 to 1970

Moving into the modern era, this narrative divides into: 1) the policy area we now know as criminal justice studies or penal policy; and 2) what starts out as child care policies and becomes a more generalised child and public protection exercise.

**Criminal justice**

At the start of the century, the NSPCC and the NVA continued their efforts to get incest made a criminal offence. MPs referring to ‘this rather disagreeable subject’ thought the policing of the new proposals constituted the main stumbling block (see, e.g. *Hansard House of Commons Debates, 5 March 1903, col. 1683*). A better approach might be through education or moral instruction rather than law enforcement, because even if one caught the offenders one ‘might thrash and imprison people, but [still] not make them good’ (*Hansard House of Commons Debates 26 June 1908, col. 288*).

The Home Office was eventually won over by the arguments that ‘it was exceedingly necessary to add to the law … [as] the offence was by no means rare’ (ibid.: col. 284). A secondary consideration hovering in the background was the eugenics argument that inbreeding led to degeneration and weak mindedness, although these arguments did not come to the fore (Bailey and Blackburn 1979); in 1908 the Punishment of Incest Act became law for England and Wales. Scotland continued to use the common law until the passing of the Incest and Related Offences (Scotland) Act 1986.

Putting a law into place was one thing; enforcement of that law was another. The British police, are arguably, still today trying to get to grips with sexual offending against children and adults in the early decades of the twenty-first century. No doubt investigations and prosecutions took place in the years following the 1908 Act, but throughout this period sexual offending was perceived more as prostitution or homosexual activities. Even with this focus, police interventions were often seen as callous or indifferent.

A 1928 parliamentary report on soliciting and other street offences had gone out of its way to mention the need for police tact, especially when there was the chance of wrongly accusing innocent people: ‘No class of crime requires more tact and discretion on the part of the police and any failure in this respect on their part in dealing with such cases is visited with public condemnation’ (Report on the Street Offences Committee 1928: para. 53). The comments of one police officer writing in the 1930s makes the point:

Now and again they brought in a Nancy-Boy as they were then called, and treated him as though he were an inanimate object without feeling. They rubbed his face with toilet paper to procure evidence of make-up, joked and laughed about him as if he were not present and always found the same sized tin of Vaseline in his pocket.

(Daley 1986: 101)
Or consider the following reflections in a training manual for the Scottish Police, published as recently as 1980:

the terms ‘sodomy’, ‘indecent exposure’, ‘lewd and libidinous practice’ and ‘gross indecency’ etc. which are used in law give but little indication of the nature of these offences; the manner in which they are usually committed, and the veils they are liable to bring in their train … the movement of persons of manifestly lewd disposition should always be closely watched as many and varied are the artifices employed by these persons to achieve their evil objectives.

(cited in Crane 1983: 41–42)

Crane gives a number of examples of poor policing practice against homosexual activities that still breach the law despite the Sexual Offences Act 1967.

At the turn of the twentieth century, the police shared concern with the public that all classes of offenders were getting more mobile and more anonymous with the growth of public transport and the expansion of urban conurbations. The spectre of the invisible sex offender moving around at will took up the mantle of the dangerous vagrant.

One response was the merging of the Habitual Criminals Register, the Convict Supervision Office and the new Fingerprint Registry into a national Criminal Record Office; in 1901, the Fingerprint Registry had started using the Henry System of Classification. The Police Gazette, which circulated to all forces lists of wanted men, was revamped and re-launched by 1910 with supplements on ‘travelling criminals’ and details of ‘expert criminals’ recently released from prison (Petrow 1994: 99–101). The Criminal Record Office remained more or less unchanged until its merger into the National Identification Bureau (NIB) in 1980: the NIB subsequently became the National Identification Service in 1995, by which time the whole national collection of criminal records was being transferred to the Police National Computer.

The Probation of Offenders Act 1907 introduced the modern Probation Service to take over the earlier work of the Court Missionary Service; supervision of offenders to keep them out of prison was a new item on their agenda. The Prevention of Crimes Act 1908 brought in separate custodial facilities for young offenders, named after a pilot scheme in the Kent village of Borstal, and included the new idea of supervised after-care on a compulsory licence basis, with the possibility of recall for any breach of supervisory requirements.

After-care supervision was not totally novel and we have earlier described the ticket-of-leave system, whereby ex-offenders from prison had to report monthly to the police and notify the police whenever they changed address. The new arrangements for young prisoners leaving Borstal combined this straight policing role with a general helping role from probation officers. Any help that the old ticket-of-leave prisoners got did not come from the police, but might come from such voluntary organisations as the local Discharged Prisoners Aid Society.
The Prevention of Crimes Act also introduced the idea of preventive detention (PD). This was to be a measure for tackling the ‘habitual’ offender – including the sex offender – by not just punishing them for what they had done, but by recognising their previous convictions and to give them longer prison sentences in order to better protect the public (Prevention of Crimes Act 1908: s. 10(1)). The courts were not really sure about PD and it seems to have had an uncertain start in life. In 1911, the then Home Secretary, Winston Churchill, said it should only be used for the older offender (over 30) who had already had one sentence of penal servitude and had now committed another serious offence. It was not for the public nuisance but for the persistent dangerous criminal.

Despite this guidance, there was variation in the use of PD and arguments emerged that perhaps it was not such a good idea after all. Some judges hardly used it, as it seemed to contradict the principle that an offender be sentenced for the charge on which he or she came to court and not for things they had already been punished for. After the Second World War, the Criminal Justice Act 1948 restricted the use of PD to the serious persistent offender only, and it was eventually abolished by the Criminal Justice Act 1967 (see also Home Office 1963).

A new sentence was created by the 1967 Act, which had a resonance with PD, and this was the ‘extended sentence’ which could be passed on people who already had three or more previous convictions. In practice, ‘extended sentences’ were hardly used and the government decided to repeal the power to pass them: ‘to the extent that [an extended sentence] may have been useful for dealing with persistent violent or sexual offenders and protecting the public, it will be replaced by [a] new Crown Court Power’ (Home Office 1990a: para. 3.17). The Criminal Justice Act 1991 duly repealed the extended sentence, but within a few years the idea of preventive detention – now in the form of Imprisonment for Public Protection (IPP) sentences for sex offenders – was back on the agenda (see Chapter 6).

Penal policy had started to receive an input from the medical and psychiatric services from the 1930s onwards, premised on the idea that offenders could be ‘treated’ rather than just punished (see, e.g. East and Hubert 1939). The idea of treating prisoners in ‘therapeutic communities’ found its fullest form at the prison opened in 1962 at Grendon Underwood in Buckinghamshire. Grendon took sex offenders and other prisoners who suffered from various neuroses or personality disorders; the inmates were transferred there from within the prison service rather than going directly from the courts (Parker 1970).

For all prisoners on discharge from prison, there has always been a tradition of helping the offender and his or her family. This has included voluntary arrangements through the Discharged Prisoners Aid Societies. The concept of the Borstal Licence introduced an element of control and sanctions into custodial after-care, and these two dimensions of both helping and controlling the ex-prisoner have always rested uneasily alongside each other.
The licence system applicable to young men leaving Borstal was eventually adapted for adult prisoners leaving prisons. The Criminal Justice Act 1948 brought in the new sentence of corrective training to run alongside preventive detention, and along with it came new arrangements for release on licence after two-thirds of the sentence or five-sixths of a PD sentence. Further reforms in the 1960s saw the Probation Service move more centrally into the after-care of prisoners’ field, and a merging of the care and control elements.

In due course, the Criminal Justice Act 1967 replaced the 1948 Release on Licence arrangements with the concept of parole. As Parsloe put it:

Licence is a right – or an obligation – for certain prisoners but is in almost all cases unavoidable. Parole, however, is widely held to be a state which a prisoner can earn.

(Parsloe 1979)

The Criminal Justice Act 1967, Part III established the Parole Board to consider the discretionary release of ‘Life’ prisoners for post-custodial supervision; the formulation of parole policies has to be seen in the light of the abolition of capital punishment for murder which preceded it (see Coker and Martin 1985). Life prisoners, however, could also encompass serious sex offenders and not just murderers. The current position on the sentencing of sex offenders is returned to in Chapters 5 and 6.

Protecting children and the public

The Children Act 1908 consolidated what law there was on child protection and was a public indication that children were important and that their care and protection should be taken seriously, but enforcement of the law at this time was often left to voluntary agencies, such as the NSPCC, when not left to the police.

A parliamentary report in 1925 looked specifically at sexual offences committed against children and young persons, and noted the high number of acquittals that seemed to take place. Overall, it reported a decrease in sexual crime accompanied by violence, but an increase in such crime committed against children under the age of 16 (Departmental Committee 1925: para. 18). The report also noted the wide variety of male offenders who came from all classes of society (ibid.: para. 75) and recommended long prison sentences as the best punishment for them; probation was an alternative to be used with ‘caution’ and probably worked best with young offenders (ibid.: para. 87).

The report suggested that the police or the courts should notify schools when a pupil had been the victim of sexual abuse. This was to facilitate the teacher giving assistance to a child who was ‘unsettled’ by the experience and to ‘prevent contamination of other children’ by the possible spreading of ‘debased tendencies’ (ibid.: paras. 110 and 114). As for the very young child, it was thought that the experience would be ‘quickly forgotten’ (ibid.: para. 93).
A similar report the following year on sex offences against children in Scotland came to similar conclusions, but made the wider comment on sex offending generally that it was ‘no more than the surface manifestation of the irregular habits and secret moral standards of a considerable section of the community – a mere symptom of a larger disorder’ (Departmental Committee 1926: para. 141).

The civil law on child care and protection was consolidated in the Children and Young Persons Act 1933. The Act introduced its ‘Schedule 1’, which would pass into the everyday language of child protection workers for the next 70 years and more, being the list of offences it is possible to commit against a child and which, in due course, led to various prohibitions on activities that can be engaged in by ‘Schedule One offenders’ if those activities should bring them into contact with children. In the same year, the Children and Young Persons (Boarding Out) Rules prohibited anyone from becoming a foster parent if they had offences which rendered them ‘unfit’, and this was upheld a few years later in primary legislation by the Public Health Act 1936, s. 210(c), which prevented anyone being a foster parent who had: ‘been convicted of any offence under Part I of the Children and Young Persons Act 1933, or Part 2 of The Children Act 1908’. Presumably, some form of criminal record information disclosure took place to ensure these requirements were met.

Hospital confinement remained an option for sex offenders who were also assessed as being mentally disordered. The Lunacy Act 1890 and the Mental Deficiency Act 1913 provided the legislative framework for compulsory detention, and for those considered the most ‘dangerous’, there was Broadmoor ‘criminal asylum’ (opened in 1863), Rampton Hospital (built in 1910) and Moss Side Hospital (built in 1914, but only taking mentally disordered patients after 1933). These three hospitals – later designated ‘special hospitals’ – would be joined by a fourth, Park Lane Hospital in Lancashire (in 1974), and in Scotland by Carstairs State Hospital. Ultimately, Moss Side and Park Lane – physically adjacent to each other – would amalgamate and form Ashworth Hospital in 1990.

The Mental Health Act 1959 introduced some new sexual offences; it made it an offence for a male member of staff at a hospital to have sex with a woman under treatment for a mental disorder and a similar offence was introduced for a male guardian (s.128). In the case of R v. Goodwin (unreported, 19 May 1994) a male nurse who developed a sexual relationship with a patient that continued after her discharge received two years in prison. The court held ‘this was as gross, deliberate and wicked breach of trust as one might regret to see’ (Hill and Fletcher-Rogers 1997: para. 11.14). The 1959 Act also amended the Sexual Offences Act 1956 by making it an offence for any man to have sex with a woman he knows is ‘defective’ or mentally impaired (s. 27).

Mental health legislation received a further overhaul in the 1980s. In England and Wales the new law was the Mental Health Act 1983, in Scotland the Mental Health (Scotland) Act 1984 and in Northern Ireland the Mental Health (Northern Ireland) Order 1986. Common to them all was a focus on the rights
of hospital in-patients and improved training for those empowered to take away the right of freedom to live in the community. In England and Wales, the 1983 Act introduced a right of after-care for previously detained patients and new supervisory arrangements for those who had been detained on a Hospital Order with added restrictions (Home Office/DHSS 1987). Later, the after-care of former mental health patients would be strengthened by yet another new register – the ‘supervision register’ for those still ‘at risk’ (Department of Health 1994); the ‘supervision registers’ were subsequently found to be not very useful and were wound up in 2001.

The Mental Health (Patients in the Community) Act 1995 amended the 1983 Act (with new sections 25A-J) to introduce tougher regimes of supervision in the community in the form of ‘supervised discharge’. But further amendments in 2008 in turn replaced ‘supervised discharge’ with the ‘supervised community treatment’. This scheme was based on new Community Treatment Orders introduced by the Mental Health Act 2007 amending the 1983 Act (Mental Health Act 1983 ss. 17A-G).

The Mental Health Act 1983 has proved less than helpful in dealing with many sex offenders. As we have seen (Chapter 2) the Act specifically excluded ‘sexual deviance’ as a condition the Act should apply to (Mental Health Act 1983, s. 1(3)) and also required the detention of psychopaths only to take place when ‘treatment is likely to alleviate or prevent a deterioration of his condition’ (Mental Health Act 1983, s. 3(b)). This has allowed some psychiatrists to say that sex offending was not something they needed to be involved with, especially if there was no clear mental illness present. Ultimately this has led to attempts to change the mental health law so that psychiatrists could not walk away from the problem.

What psychiatric interventions did take place, were a mixture of medication and individual and group therapeutic work. Experiments with various forms of aversion therapy were falling into disuse by this time (see Chapter 2).

The post-war years saw the enlargement of the personal social services to be ‘administered’ locally by health and local authorities. Community mental health services employing mental welfare officers (MWOs) came under the health service and local authorities had charge of welfare departments for elderly and disabled people and children’s departments for children and families. The war years had created a greater awareness of the conditions of city life, when thousands of child evacuees had been relocated to rural areas and fostering had become a way of life for the children and their host families. Ultimately, the Children Act 1948 created local authority children’s departments in England, Wales and Scotland which were centrally accountable to the Home Office.

In 1971, children’s departments were incorporated into the new social services departments along with the mental health departments and welfare departments. The rationale was to have a more integrated service, meeting all personal needs under one roof through the ‘generic’ social worker, who replaced the child care officer, welfare officer and mental welfare officer. The Social Work
(Scotland) Act 1968, based on the Kilbrandon Report (1964), had made similar arrangements for north of the border, with the added embellishment of including the Probation Service into their social work departments.

In terms of law, the Children and Young Persons Act 1963 had defined the circumstances whereby a child might need ‘care, protection or control’, and those circumstances would include the presence in a child’s household of someone convicted of a ‘Schedule 1 offence’, including sexual offences against a child. The 1963 Act was replaced by the Children and Young Persons Act 1969, with its ‘grounds’ for care including a child being in ‘moral danger’ (s. 1(2)(c)) or being harmed by a ‘Schedule One offender’ joining the household (s. 1(2)(bb)).

Summary

In this chapter, we have considered a selective outline of historical aspects of sexual offending and the social response to it. Certain themes can be seen to have a resonance with contemporary preoccupations. The keeping of registers on certain criminals and the requirement for ticket-of-leave offenders to report to the police have a clear link to our current sex offenders register (see Chapter 10); we have also noted early attempts at pre-employment screening by reference to conviction records and the attempts by the police to enhance the quality of their record keeping. Populist agitation against the sex offender also has a long history, and the sensationalising of such offenders by the press is also a well-established phenomenon, as witnessed in the ‘Jack the Ripper’ murders of 1888. Current concerns to find a way to incarcerate the ‘dangerous’ person before he or she offends also have earlier attempts at ‘preventive detentions’ to guide their deliberations.
Part 2
Chapter 4

Policing sexual offending

Introduction
The police are the initial ‘gateway’ for everyone coming into the criminal justice system. The police receive reports of new crimes, investigate and detect and if necessary detain who they think are responsible and, when satisfied, pass their work on to the Crown Prosecution Service for possible prosecution. For present purposes, police activities are considered on three levels – local, national and international. The police approach to sexual offending on all three levels is outlined, and the emerging importance of ‘personal information’ on offenders for purposes of policing is drawn out.

Local policing
The initial decision to be made following a sexual crime being committed is for the victim who has to decide whether to report it or not. This is a decision that can be influenced by the way the police will deal with the report or how the victim thinks they will deal with it.

Reporting
Initial crime reports of sexual offending are made to the local police for them to investigate and put together a case for possible prosecution in the courts. The way in which the police received these reports and acted upon them has, in the past, been criticised as clumsy and insensitive, and the number of reports never getting to the police or beyond the police has been a cause for concern. Critics started to talk about an unacceptable ‘attrition’ rate to describe the way in which the police failed to act – decided there was no case to answer or found other reasons to file cases rather than ensure they went forward for prosecution. In turn, the attrition rate was blamed for making many victims of sexual assault decide not to bother reporting it to the police in the first place.

The general feeling in the 1970s was that the police ‘did not take reports of sexual assault as seriously as they should have done’. Investigating officers were
often unsympathetic men who had little empathy with the ‘stories’ they were hearing; ‘stories’ they sometimes believed the women made up to get themselves out of various scrapes they should never have got into in the first place. The apocryphal police approach seemed to be ‘listen to the story, then drive a coach and horses through it’; women complainants were faced by a police ‘culture of disbelief’ (see Temkin 2002: 4–6).

The end product of attitudes like this was the police decision to not even record a crime as having taken place – the practice of ‘no-criming’. If the police did record it as a crime, it still often resulted in ‘no further action’ being taken. Either way, it led in turn to an under-reporting of sexual crimes once women realised what they had to face when they did report.

The police did not help themselves with stories of them using confiscated pornographic films for their own police station ‘stag’ parties (Cox et al. 1977: 168), or of male officers sexually harassing female officers (Hilliard and Casey 1993). More recently the phenomenon of police officers abusing their positions to sexually harass vulnerable women members of the public has been brought to light. The IPCC and ACPO were prompted to produce a report with case studies of inappropriate sexual behaviour by police officers towards members of the public which they regarded as ‘a distinct area of corruption’ (IPCC 2012: 1); police officers had even used the police computer systems to identify vulnerable women (ibid.: 5). Police managers were advised to institute more effective staff selection and supervision and to watch for patterns of behaviour amongst officers.

Returning to the 1980s the Thames Valley Police had invited a television documentary crew in to film them at work and the resulting series of programmes were shown in January 1982; one episode included footage of insensitive police handling of a woman reporting a rape. The impact of the film was all the greater because the police obviously knew they were being filmed, but had not thought to change their approach or temper their attitudes of disbelieving the woman. The impression given was that this was a perfectly normal policing technique.

Away from the media, more considered criticism came from the women’s movement that had emerged from the 1960s. A sophisticated analysis of male domination and oppression was being backed up by the stories told by women coming to the new network of women’s refuges which had sprung up throughout the 1970s. In academia, women researchers started to make inroads into a male-dominated criminology to throw light on the poor quality of the policing of sexual assault.

Research commissioned by the Home Office would later find that only 25 per cent of cases of rape reported to the police in 1985 resulted in a conviction. The key points of attrition were identified as:

- the practice of ‘no-criming’, which helped the ‘clear-up’ rate because the police could not be accused of failing to clear up a crime that had not happened;
• the practice of ‘no further action’ and therefore not proceeding to prosecution; and
• the down-grading of charges to lesser offences by the time they got to court (Grace et al. 1992).

Earlier research in Scotland had confirmed similar levels of poor decision-making (Chambers and Millar 1983). Critics argued that this was an artificial categorisation and that the essential element of rape – the lack of consent – was the same whatever the circumstances.

Research has shown that the reporting of rape increased threefold between 1985 and 1996, and a more receptive attitude on the part of the police had doubtless contributed to this increase (Harris and Grace 1999). In terms of the categorisations of rape, the main increase was in ‘acquaintance’ and ‘intimate’ rape, with the figures for stranger rape staying roughly the same; some researchers have suggested male rapists may deliberately ‘find out’ details about their victims to get themselves actively into these categories to help any defence they may need (Gregory and Lees 1999: 100). If a man could be filmed on CCTV in a club or pub having amicable conversations with a woman, it could help his defence if that woman later became a victim of rape or sexual assault. Of more concern was the finding that conviction rates were not keeping up with this increase, and the attrition rate in terms of police decisions was still high (Harris and Grace 1999).

Another report for the Home Office in 2005 entitled A Gap or a Chasm? came up with similar findings on attrition in reported rape cases and cited what became an often repeated statistic that only 5.6 per cent of rapes investigated by the police resulted in a conviction in the courts. This study involved the tracking of 3,500 rape cases through the criminal justice system, supplemented by data from 228 complainants and 120 professionals; 80 per cent of these cases did not proceed beyond the police stage due to a combination of ‘no-criming’, evidential issues and victims withdrawing their support from the criminal justice process. Only a minority of cases reached the trial stage, and here an acquittal was the more likely outcome, especially with respect to adults (Kelly et al. 2005).

Individual examples of ‘no-criming’ or ‘no further action’ still come to light. In London a Detective Sergeant was criticised for not properly investigating a rape by ruling it to be consensual. The initial account given by the woman to the Sexual Offences Investigation Technique (SOIT) officer clearly contained an allegation of rape involving threats of violence which was neither recorded nor investigated. The SOIT officer said that a supervisory officer told him that the circumstances did not constitute a rape because the woman had ‘consented’ and that the matter would not be investigated and ‘as a result, the scene was not forensically examined, no forensic samples were taken and the suspect was not interviewed about the allegation of rape’ (IPCC 2013).
Investigations

The Home Office responded to the criticisms of police investigations with two circulars giving advice to Chief Constables. The first, in 1983, called for an improvement in the investigation of rape allegations, including more sensitive interviewing and the need for early medical examinations to allow the victim to get washed and changed more quickly (Home Office 1983). The second, a few years later, addressed the wider crimes of violence towards women and recommended better training for officers, systems to keep the victim informed of the progress of the investigation and the need for separate examination suites for women away from police stations; no-criming was to be exceptional and only when a woman completely retracted a complaint (Home Office 1986a).

The problem with Home Office circulars was that they were just circulars, and were aimed at Chief Constables. They did not have the status of substantive law and their impact had to trickle down through a male-oriented organisation, which had other priorities to consider and was not always sympathetic to such crimes.

More circular advice to the police in 1988 gave advice on how they should investigate sexual offences against children. The police had been participating members of local child protection arrangements since 1974, but the new advice came after the Cleveland affair of 1987 (see Chapter 3) and called for better training, joint investigations with social workers where appropriate and, once again, for the provision of separate examination suites away from police stations (Home Office 1988).

The Police and Criminal Evidence Act 1984 s80 also introduced new powers to compel a woman victim of violence or sexual assault to give evidence in court against her husband. This new provision promised a way to reduce the number of women who chose to withdraw their complaints, leaving the prosecution high and dry. Later legislation enabled a woman’s police statement to be used as evidence in court as an alternative to her attendance (Criminal Justice Act 1988, s. 23).

The first response to an allegation of a sexual offence may be dealt with by any police officer. They have access to Early Evidence Kits (EEKs) which were introduced for immediate use by first response police officers or members of police staff who deal with victims prior to the formal forensic medical examination. Evidence suggests, however, that the EEKs are used inconsistently and sometimes not at all (HMCPSI/HMIC 2007: paras 5.6–5.9). From the first response officer the complainant is passed to a Specially Trained Officer (STO).

The Specially Trained Officer (STO)

The improved training of police officers in sexual assault investigations was led nationally by the Association of Chief Police Officers (see ACPO 2005 and ACPO/CPS 2009) but carried out mostly at local force level with a range of new titles being introduced including Sexual Offences Liaison Officer (SOLO),
Rape Trained Officer (RTO) and Sexual Offences Investigative Techniques (SOIT) officers. The HM Inspectorate of Constabulary recommended a standardised form of title – the Specially Trained Officer (STO).

The STO is expected to be able to:

i brief the forensic physician;
ii ensure exhibits and samples from the victim are secured;
iii brief the IO (Investigating Officer) and investigation team;
iv communicate forensic information to the Crime Scene Investigator (CSI) (to enable all possible forensic evidence to be collected), Crime Scene Manager (CSM) and IO;
v inform the forensic physician of the investigation’s progress (as instructed by the IO); and
vi take statements of withdrawal of support for the prosecution (as directed by the IO) (ibid.: 55).

The area where a sexual assault has taken place will be preserved for a Scene of Crime Officer (SOCO) to examine for further forensic evidence. The STO will arrange for a forensic medical examination.

**Historical investigations**

Complex cases of institutional abuse, sometimes involving organised criminal activities, can take up months of police time as officers go through old records of children and staff, links are made and victims and suspects tracked down. Investigations of this kind took place during the 1990s in Leicestershire, Castle Hill School, Shropshire, North Wales children’s homes and Cheshire (see Oates 1998 for an account of the latter).

In 1995, the NSPCC had set up the first of its Regional Investigation Units – later renamed as Special Investigation Services – to help the police make sense of the world of residential child care and the circumstances in which this sort of sexual offending is taking place. The local authorities as the main employers in these investigations have to agree to the NSPCC workers coming in and having access to the records (Gallagher 1998).

The Waterhouse Report into physical and sexual abuse in the children’s homes of North Wales devoted three chapters (Chapters 50–52 and Appendix XII) to the way in which these particular police investigations were best carried out. The report emphasised the importance of police training to ensure ‘appropriate sensitivity’ in investigations and the need for ‘close liaison between the police and other agencies, particularly social services departments’ (Waterhouse Report 2000: para. 5.38).

One criticism of these ‘historic’ retrospective police investigations was that the police appeared to be looking – or ‘trawling’ – for crimes rather than offenders:
Police forces normally spend their time collecting evidence in relation to crimes whose reality no-one doubts. They embark on retrospective investigations, however, without knowing whether the crimes they are investigating have taken place at all.

(Webster 1998: 22)

Webster also believed that some victims made false allegations because they believed there would be financial compensation on offer, and if that was so we have ‘one of the most dangerous developments in methods of police investigations which has ever taken place’ (ibid.: 33; see also Webster 1999).

The House of Commons Home Affairs Committee conducted an inquiry into the difficulties for the police and possible miscarriages of justice arising from this form of investigations. The committee’s final report felt the police investigations were necessary and the process of ‘trawling’ was acceptable if there was an initial clear justification (House of Commons 2002; the Appendix to this report gave a list of all police institutional abuse investigations in England and Wales between January 1998 and May 2001). One newspaper at this time revealed that the police were engaged in almost one hundred inquiries into past abuse in children’s homes and schools (‘Serial abuse inquiries “will top 100”’, The Independent, 8 January 2001).

The government’s response was relatively muted. It accepted that this was an important area where care was needed, and rejected the word ‘trawling’ in favour of the term ‘dip sampling’ to describe these retrospective investigations. In general the Home Office, while respecting the committee’s views did ‘not share its belief in the existence of large numbers of miscarriages of justice’ (Home Office 2003a: para. 10). By this time the Home Office had also teamed up with the Department of Health to produce guidance on these investigations (Home Office/Department of Health 2002) and the Association of Chief Police Officers (ACPO) had produced its own guidance for officers (ACPO 2002).

Miscarriages of justice did appear (e.g. Woffinden 2004) and a campaign group was started called Falsely Accused Carers and Teachers (FACT) which continues to this day (see their website at http://www.factuk.org, accessed 23 January 2015); another campaign group called SAFARI (Supporting All Falsely Accused with Reference Information) joined them later (see http://safari-uk.org, accessed 23 January 2015). Richard Webster produced an extensive critical enquiry of his own into the police methods used in North Wales (Webster 2005).

The police have argued that they sometimes need to encourage other victims to come forward with their evidence which could then support a prosecution by establishing a pattern of behaviour with multiple victims. This tactic has helped with historic abuse in children’s homes and also in historic abuse concerning celebrities. In the aftermath of the Jimmy Savile revelations in 2012 the Metropolitan Police and the NSPCC confirmed that there had been:
A significant rise in the level of reporting of past sexual abuse of children. This is believed to be the result of media coverage about Jimmy Savile and victims increased confidence that they will be listened to by the authorities.

(Gray and Watt 2013: para. 10.4)

**Specialist arrangements**

The effect of Home Office circulars led some forces to form specialist teams of officers: Domestic Violence Units came into being for investigating offences against women, and Child Protection Units for offences against children. The actual names of the units might vary (e.g. Family Support Unit) and sometimes the two were joined together (e.g. in Northern Ireland, the RUC’s CARE Units [Child Abuse and Rape Enquiry Unit]). Some units had uniformed officers, some had non-uniformed detectives or a mixture of both. When another Home Office circular appeared on domestic violence, it was able to note that ‘some forces [had] dedicated domestic violence units with specially trained officers’, and all chief constables were ‘urged to consider setting up such Units where it is practicable and cost effective to do so’ (Home Office 1990b: para. 10; see later).

**Domestic Violence Units**

The 1990 domestic violence circular recommended that each force draw up a policy statement to help influence the attitudes and behaviour of officers who are called on to deal with cases of domestic violence. The policy statement was to emphasise the duty to protect victims and children, treat the crime seriously, to use powers of arrest, to be wary of trying for reconciliation and keep good records to assist policy evaluation (Home Office 1990b: para. 11). Early reports suggested that adult women victims of sexual assault and violence were happier with the new initiatives taken by the police (see, e.g. Adler 1991).

Domestic Violence Units had improved the knowledge and skills of officers, but they could still feel marginalised by ‘mainstream’ policing. Separate examination suites and the move of some officers out of police stations had been isolating, but cultural attitudes of senior managers were also said to be part of the problem:

> We all do our own thing in this position. Nobody would have a clue if I was doing nothing. As it is I’m tearing my hair out … There is no credibility in dealing with domestic violence as far as my colleagues are concerned … the uniformed officers just don’t want to get involved … I talk at divisional meetings to inspector rank and below to raise awareness of domestic violence. I still get comments like ‘didn’t you used to be a policeman?’

(Plotnikoff and Woolfson 1998: 11–12)
Yet further guidance in the form of a circular was issued to the police (Home Office 2000b). The 2000 circular again outlined the action police should take in investigating domestic violence in terms of initial response, the use of bail and support for victims. The police had again to be reminded to come up with force policies on domestic violence and senior officers and managers again reminded to give a lead to this work and accord it some priority. Liaison with statutory and voluntary bodies was encouraged but the police were warned ‘not to try and perform the roles of other agencies, in particular counselling roles’; their priority was stated to be protection of the victim and children, if applicable, and where a power of arrest exists, an alleged offender ‘should normally be arrested’ (ibid.: Part 4).

Changes began to be noted. The 2003 White Paper on domestic violence was optimistic that ‘in recent years the police have been making strenuous efforts to improve their response to domestic violence’ (Home Office 2003b: 25) and that most ‘forces now have either specialist domestic violence units or domestic violence co-ordinators’ (ibid.). The White Paper still felt new powers were needed and these duly appeared in the Domestic Violence, Crime and Victims Bill published in December 2003 (for more details, see Chapter 7).

The idea that there had been a cultural change in policing attitudes was confirmed by a Chief Constable’s evidence to the Home Affairs Select Committee:

Yes there has been a change and I advance four reasons for it: first there has been a change in social attitudes and political engagement in this very serious crime; second, the prevention of violence has become a clearer priority for the Police Service anyway; third, there are clear performance requirements upon the Police Service to eradicate domestic violence where it comes across it; and fourth, the focus of senior managers in the police Service and HM Inspectorate of Constabulary.

(House of Commons 2008: Ev.1)

The introduction of non-statutory domestic violence Multi-Agency Risk Assessment Conferences (MARACs) also helped the police towards further understanding of this area of work. MARACs brought together agencies involved with families where there was a high-risk of domestic violence who could share information, put together a more complete picture of what was happening and help decide the best form of intervention. They were first piloted in Cardiff in 2003 and by 2009 there were over 200 local MARACs across England and Wales (Home Office 2009; see also Westmarland 2011).

**Child Protection Units**

Child Protection Units (CPUs) dealing with child abuse suffered the same feelings of marginalisation by their colleagues in ‘mainstream’ policing. Officers within them might be fully committed and have raised their levels of skill and
knowledge, but outside the CPU the allegations continued that it was the ‘Andy Pandy Squad’ and ‘not real police work’. Researchers at the University of Manchester identified possible reasons:

- CPU work was seen as ‘a cushy number’ because staff worked a ‘days and lates’ system;
- CPUs were mostly staffed by women officers;
- Within CPUs women officers dealt with the victims, and male officers with the suspects; and
- Work with children was low status and ‘unskilled’ insofar as ‘anyone can talk to children. Can’t they?’ (Hughes et al. 1996: 13).

CPUs could become isolated and demoralised. One unit worker expressed the lack of interest shown by the senior management, who never came near them: ‘It shows in who visits you. We’ve never had a commander at the Unit, ever. But he visits other places’ (ibid.: 16).

The Manchester research summarised a common management view:

They applauded the creation of … Units as an important advance in the policing of child sexual abuse but most felt that more senior management now believed that ‘child protection is sorted’ and the Units … therefore, receive little attention ‘as long as a wheel doesn’t come off’.

( ibid.: 11)

CPUs have, none the less, continued to progress and develop, albeit with ups and downs. Comprehensive record systems of children and families have been developed and used to complement the mainstream systems of the local force. The police have been criticised for the over-deployment of women police officers to CPUs, leading to the ‘feminisation of policing’ within child protection (Adams and Horrocks 1999). Police Child Protection Units have also often found themselves excluded from investigations into sexual assault on women and children which takes place outside the home. Extra-familial abductions and assaults by strangers acting in public places continue to be the province of the CID or vice squad as though this is ‘real’ police work rather than child protection work.

**Multi-Agency Safeguarding Hubs (MASH)**

The realisation that children and young people were being sexually exploited and drawn into prostitution by gangs of youths has led to another form of police collaboration with other agencies. This behaviour was referred to as ‘child sexual exploitation’ or ‘localised grooming’ when the male youth – often Pakistani youth – targeted girls considered ‘vulnerable’ because of their youth or family circumstances; they included many who were in the care of the local authority.
Advice from the government was issued and a priority was stated as achieving better coordination between agencies:

It is important that the police work closely with partner agencies to develop a coordinated response to any concerns about child sexual exploitation, and to ensure that the response is in the best interests of the child whose welfare and safety should be paramount.

(HMG 2009a: para. 4.41)

Similarly partner agencies need to involve the police as early as possible to ensure that no information is lost that may be critical to a prosecution case, and so that a disruption plan can be put in place for the perpetrator (see para. 7.4).

In some areas Multi-Agency Safeguarding Hubs or Child Sexual Exploitation Hubs have been developed bringing together all the different agencies on a regular basis to share information. In Bradford a hub meets daily to exchange information in a way of working that has been commended by Ofsted:

BSCB [Bradford Safeguarding Children Board] has a good understanding of children missing from home or care, and services to support such children are in place. The Board has been instrumental in improving inter-agency responses to child sexual exploitation. The development of the effective CSE Hub involving colocation of police, social care and a voluntary organisation has improved information-sharing and identification of young people at risk of sexual exploitation. This has enabled the Board to build a local understanding of high risk areas and the characteristics of local challenges.

(Ofsted 2014: 31–32)

A Home Office funded review of these arrangements to provide a national picture of developments has been published (Home Office 2013b).

**Sexual Assault Referral Centres (SARCs)**

The Sexual Assault Referral Centre (SARC) is another initiative based on collaborative working and the SARC model has been adopted by the Home Office and the NHS. SARCs involve a partnership approach between the police, health services, and good liaison with other statutory and voluntary agencies. The victims of sexual assault can either go straight to them or be referred there by the police.

The two main priorities of SARCs are:

- Forensic examination so that evidence can be collected for use in the investigation of crime (police and Forensic Physician [FP] role);
- Care of the victim to minimize the risk of subsequent physical and mental difficulties and promote recovery (health and social care role).
The first SARC started in Manchester in 1986 at St Mary’s Hospital and early evaluations found the integrated experience to be valued by victims and to be better at obtaining convictions in court (Lovett et al. 2004) and:

Such centres are widely regarded as the ideal environment for quality forensic examinations while ensuring that the victim has access to the skills and professionalism of a range of agencies, including health, as well as the services of counsellors and trained volunteers.

(HMCPSI/HMIC 2007: para 7.1)

By 2008 there were 19 SARCs in England and Wales and the Home Office were committed to ‘more than doubling this number’ (HMG 2008: 46); guidance was produced on how SARCs should be established (Home Office et al. 2009).

Criticisms of SARCs could still be made, however, and lack of resources and geographical inconsistency in their provision has been a continuing problem. There was little consistency in the way in which Forensic Physicians (FP) were employed. In one area with a SARC, FPs worked on an ad hoc basis. They were not contractually bound to work for the police, and the service appeared to rely on their goodwill. As a result, there were occasions when there were gaps in the rota that could not be covered by FPs in the area, resulting in the police having to take the victim to a neighbouring force for an examination (HMCPSI/HMIC 2007: para. 7.4).

No one seemed to be managing the FPs or offering any supervisory oversight. In one case, an FP had carried out an examination of a victim and then admitted that he did not have the necessary experience to do so, resulting in the victim having to be re-examined by another FP. In another case, an FP and a paediatrician gave expert opinion that supported allegations of rape on a number of siblings but later defence experts cast such doubt on the opinion that it was not relied upon at trial (ibid.: para. 7.5–6).

A review by Baroness Stern entitled a ‘Review of Rape Reporting in England and Wales’ made similar criticisms:

The medical examination is a vitally important part of the evidence-gathering process. Forensic physicians have to take the appropriate samples, assess any injuries, reassure and provide care to the victim and sometimes give an opinion on the evidence that the victim presents. The police have a range of arrangements for getting access to forensic physicians. We heard of problems with the quality of the physicians involved, delay in finding one and difficulty in obtaining the services of female physicians (who are preferred by both male and female victims). We join with others in recommending that the NHS should take over responsibility for this service.

(Stern Review 2010: 14)
The Stern Review also prioritised the need for a greater focus on victim care acknowledging that justice for victims needs to be much wider than just focusing on getting a conviction – getting support and being believed was also vitally important (ibid.).

Sara Payne the Victims Champion in her report ‘Rape: the victim experience’ followed suit:

> it was also clear to me that, at times, some of the areas on which the police were receiving criticism were areas in which they were trying to take on tasks that did not fall to them … police officers told me it was not uncommon for them to find themselves making endless telephone calls to try and find a doctor willing to travel to examine a victim, or to try to find some form of counselling or support for the victim.

(Payne 2009: 18)

Eventually the NHS was given the task of leading the development of SARCs. In June 2013 NHS England published its guidance ‘Securing Excellence in commissioning Sexual Assault Services for people who experience sexual violence’. The NHS would now take the commissioning lead and provide a consistent SARC service across the country and would offer ‘victims a total service’ regardless of whether they want the police to investigate (NHS England 2013).

Today provision is still patchy and in some areas non-existent. West Yorkshire with an urbanised population of over two million still has no SARC (see ‘Setback for sex assault victims centre plan in West Yorkshire’ Yorkshire Evening Post, 15 December 2014). The private sector has been brought in to provide SARCs and that brings its own problems with it. The campaign group Rape Crisis have been among those critical of this privatisation:

> Our concern is that commissioning generic private contractors such as G4S to run SARCs will lead to a focus on cost-efficiency above the needs of sexual violence victims and, in particular, that crucial long-term support services will be sacrificed in the name of cost-cutting.

(cited in Travis 2013a)

**Public Protection Units**

These Units have been started by the police to assess risk and manage sex offenders on the sex offender register. They are not concerned with reporting and investigating and are mentioned here only as another example of police specialist arrangements regarding sex offenders; they will be returned to in Chapter 10.

**Arrest and detention**

The Police and Criminal Evidence Act 1984 was substantive law (for England and Wales) that carried provisions that the police could use in tackling violence
against women. Section 17 of the Act empowered an officer to enter premises for purposes of saving life and limb, and to arrest for an arrestable offence such as assaults or wounding. Section 24 gave the powers for an arrestable offence, which at that time were offences attracting a five-year sentence or more but also includes indecent assault on a woman, and s. 25 introduced the so-called ‘protective arrest’, where the officer thinks it necessary to prevent injury to another person or to protect a child or other vulnerable person.

As a police criminal investigation proceeds, the actual holding of a suspect at a police station is governed by the time limits set down in the Police and Criminal Evidence Act 1984 (ss. 42–5). The custody officer at the police station ensures that the time limits are kept to, that evidence exists for charging and that the general welfare of the prisoner is seen to. The custody officer will also be instrumental in decisions to charge a suspect and bring him or her before a court, or to release him or her with or without a charge being made (see later).

Once a police investigation is completed, the ‘case file’ has to be prepared by them for submission to the Crown Prosecution Service (CPS) for furtherance of the prosecution. This work is normally carried out by the police Administrative Support Unit (ASU), who are responsible for liaison with the CPS and can consult them for advice on whether or not they have sufficient evidence or what is the ‘best’ charge. One thing the police should not be doing at this stage is taking ‘no further action’ because they have tried to ‘second guess’ whether the CPS will take it on to court and decided it is not going to be worth it. ‘Gatekeeping’ only adds to the police attrition rate and recommendations have been made that they should always pass it through if there is any ‘case to answer’ (Harris and Grace 1999: 24).

**Pre-Charge Bail**

Pre-Charge Bail – or ‘police bail’ as it is often referred to – could be imposed by police whilst they investigated a sexual offence or any other form of offence; the suspect is assessed as not needing to be held in custody. This form of bail could be with or without conditions attached (Police and Criminal Evidence Act 1984 s. 37).

The HM Inspectorate of Constabulary and the HM CPS Inspectorate have pointed out that in the case of sexual offences:

In the large majority of cases, the suspect and the victim are known to each other in some way. It is essential, therefore, that every effort is made to consult with victims prior to a bail decision being made and that bail conditions are designed to protect the victim, witnesses and members of the public.

(HMCPSI/HMIC 2007 para. 6.32)

Conditions of police bail of relevance to a suspected sexual offender might be a curfew to remain indoors after a specified time in the evening until a specified
time in the morning; an exclusion zone to, for example, stay away from a witness’s home or place of work; a requirement not to associate with named people; or a condition of regular reporting to the police station (Bail Act 1976, s. 3, as amended; Police and Criminal Evidence Act 1984, s. 47, as amended).

Local authority social services departments are empowered at this point to offer assistance to help a man move out of accommodation where children are still living who have been his suspected victims (Children Act 1989, Sch. 2, para. 5) and, since 1996, courts have also had powers to add ‘exclusion requirements’ to an Interim Care Order or Emergency Protection Order granted to a local authority (Children Act 1989, s. 38A and s. 44A(2); see also Children (Scotland) Act 1995, s. 76).

Following the arrests of some celebrities for allegations of ‘historical’ sex offences concern was expressed about the length of time they could be held on police bail while the investigation continued. The police have a free hand to extend this bail for as long as they want to and this appeared particularly unfair when months or even years later the police dropped the case. Home Secretary Theresa May said she was looking at imposing time limits on police bail:

Her promise to introduce statutory time limits follows several high-profile cases such as those of the comedian Jim Davidson and the broadcaster Paul Gambaccini, who both faced up to a year on bail in connection with alleged historical sex offences before being told no further action would be taken.

(Travis 2014a)

Gambaccini later told the House of Commons Home Affairs Committee that he had felt like ‘flypaper’ on bail:

The broadcaster Paul Gambaccini has told MPs he was used as human ‘flypaper’ by prosecutors for almost a year in relation to a now-dropped allegation of historic sex abuse, with his arrest publicised in the hope that other people would come forward to make allegations against him.

(Travis 2015a)

The Committee recommended:

Newspapers and the media are prohibited from revealing the name of a person who is the victim of an alleged sexual offence. We recommend that the same right to anonymity should also apply to the person accused of the crime, unless and until they are charged with an offence.

(House of Commons 2015b: para. 8)

In their defence the police argued that ‘historical’ sexual abuse enquiries were particularly onerous and time-consuming and that they did not always get
cooperation from third parties like doctors or children’s services as swiftly as they would like.

The Home Secretary had already asked the national College of Policing to look into aspects of good practice and now opened a consultation exercise of her own on how time limits could best be imposed. The options given were a time limit of 28 days extended by either authorisation by a senior police officer or judicial authorisation. Historic cases of sexual abuse were cited in the consultation paper as examples of ‘extenuating circumstances’ where extension might be needed (Home Office 2014a: 20); at the time of writing (March 2015) that consultation continues.

**Police cautions**

At the end of an investigation one option for the police has been for them to issue a formal caution as an alternative to a prosecution and the necessity of going to court. The police caution has been an administrative device for the police to deal with the less serious offender who was, perhaps, a first-time young offender and seemed unlikely to reoffend. The caution has been a formal affair delivered by a senior officer and could be brought up and cited in court if there was later reoffending.

Police cautions originally only appeared in Home Office circulars rather than substantive law. A 1994 circular advised against cautions being used for serious sexual offences:

> Cautions have been given for crimes as serious as attempted murder and rape: this undermines the credibility of this disposal. Cautions should **never** be used for the most serious indictable-only offences such as these.  
> (Home Office 1994: para. 5, emphasis in original)

This did not stop sexual offenders being the subject of police cautioning (‘Police forces allow rapists to go free with a caution’, *The Sunday Times*, 18 February 1996).

The government replaced cautions for children and young people with its ‘Final Warning Scheme’ introduced by the Crime and Disorder Act 1998 ss. 65–6. This scheme allowed the police to administer ‘reprimands’ and ‘final warnings’ if the young person admitted the offence, the evidence for a prosecution existed and it was felt not to be in the public interest to prosecute.

Since 1997 cautions for adults, and reprimands and final warnings for children and young people could all result in an individual being placed on the sex offender register and, to that extent have all been seen as appropriate ways of dealing with some sex offenders (Sexual Offences Act 2003, s.80(1)(d)). Sometimes the person being cautioned might be unclear of the registration consequences of accepting the caution. Two juveniles had their names removed from the register by a court when they argued that the police had not told them this would be a consequence of their ‘final warning’ (Alleyne 2002).
The Criminal Justice Act 2003 introduced a new Conditional Caution for Adults. Conditions could be attached to the caution to help modify future behaviour or make reparation to an individual or the community. Failure to complete the Conditional Caution could lead to arrest and prosecution for the original offence. The old cautions without conditions were now renamed as Simple Cautions and the police were reminded to always tell the person concerned that in cases of sexual offending registration would follow:

In common terms, the offender will be put on the ‘sex offenders register’. It is especially important that an offender is informed of the consequences of accepting a Simple Caution before accepting such a disposal for a sexual offence that makes them subject to these requirements. If the offender is not informed of this, they may, at a later date, have a case for having the Simple Caution removed.

(Home Office 2005a: para. 28)

The same point was re-emphasised in subsequent guidance (Home Office 2008a; MoJ 2013a: para. 70). The Ministry of Justice guidance in 2013 also advised that Simple Cautions should not be used for sexual offences unless there were special circumstances (ibid.: para. 17 and 23).

The coalition government now decided that ‘reprimands and final warnings’ for children and young people should be replaced by Youth Cautions and Youth Conditional Cautions comparable to that for adults. New sections 67ZA and ZB were inserted into the 1998 Crime and Disorder Act by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s135 and guidance published (see MoJ/YJB 2013 esp. para. 4.14 and 11.9–11.11 on sex offenders and MoJ 2013b para. 16.1).

Having introduced these new forms of cautions the government decided, a year later, that they would do away with all cautioning. A new two-tier system would be devised based on (a) a form of statutory community resolution – aimed at first-time offenders, this will be used to resolve minor offences through an agreement with the offender and (b) a suspended prosecution – designed to tackle more serious offending; this will allow the police to attach one or more conditions to the disposal which must be reparative, rehabilitative and/or punitive in nature. Trials were to be held in three police force areas before any permanent changes were introduced (MoJ 2014a).

**National policing**

British policing has always prided itself on being local policing. Local communities had their own local forces in what became known as the Anglo-Saxon model of policing. If anything more substantial were needed, local police forces could assist each other through the doctrine of ‘mutual assistance’. Centralised policing was otherwise held to be best left to other countries. If any such
central policing was needed it would come from the Metropolitan Police in London.

This position has been slowly changing. Regional Crime Squads had been started in the 1960s to track the more mobile and organised offenders. In 1974, many of the smaller police forces disappeared by being amalgamated into larger units that still exist today in England and Wales and the eight Scottish forces created in 1974 became one force – Police Scotland – in 2013.

Various national units have come into being. The national Criminal Records Office had been held by the Metropolitan Police since its inception in 1913. The Police National Computer (PNC), came online in 1974, as a national unit, jointly financed by all 52 local forces to their common benefit. It is an apocryphal story that the PNC was not named the ‘National Police Computer’ deliberately to downplay the word ‘national’ by hiding it in the middle and keeping the mythology of local policing alive.

More substantial models of national policing started to appear in the 1990s. In 1992 the National Criminal Intelligence Service (NCIS) was formed and in 1997 the National Crime Squad (NCS). These two national initiatives were both intended to take on ‘serious organised crime’, and in 2006 they were amalgamated into the Serious Organised Crime Agency (SOCA) which in turn became the National Crime Agency (NCA) in 2013.

From the National Criminal Intelligence Service (NCIS) to Serious Organised Crime Agency (SOCA)

The National Criminal Intelligence Service had from the outset a Paedophile Section which was later renamed the Serious Sex Offenders Unit (SSOU). The NCIS Unit held ‘soft’ information or intelligence, as opposed to ‘hard’ verifiable information such as criminal conviction histories. The idea was that they would provide local forces with ‘packages’ of intelligence for local officers to act on.

In the early days the relationship between NCIS and local forces was not always harmonious.

NCIS is a waste of time. We need a proper national Intelligence system to assist in tracking paedophiles. The paedophile index? Where is it? Can someone give me the phone number?

(Hughes et al. 1996: 31)

One area of sexual offending that looked as though a national approach was going to be the best way forward was that concerning child pornography exchanged over the Internet. In 1996 NCIS had begun a review of all possible crimes connected to computers and the then emergent Internet. This review – known as Project Trawler – led to the creation of the police National High-tech Crimes Unit (NHTCU), which started operation in 2001. The aim was to
track users of child pornography and also those adult men who ‘groomed’ children on-line with a view to possible meetings and sexual abuse. On 1 April 2006, the NHTCU was incorporated into the e-crime unit of the UK’s new Serious Organised Crime Agency (SOCA).

The HM Inspectorate of Constabulary made a further criticism of NCIS records on sex offenders when they found that the information being held was mainly on individual offenders. This presented something of a quandary because the NCIS terms of reference required it only to be dealing with ‘serious organised crime’, which involved two or more participants. At worst NCIS was just duplicating what went on at local level. On balance the Inspectorate decided to turn a blind eye (HMIC 1997: 20). The introduction of the sex offender ‘register’ in 1997 arguably, had left NCIS even further out on a limb, because local police could have access to the register as a national resource without any reference to NCIS.

Later when local forces had to field national press inquiries, contain vigilante crowds, and offer protection to unwanted child sex offenders discharged from prison, many had wondered where the NCIS Serious Sex Offenders Unit was. The HM Inspectorate of Constabulary found many forces by this time had started compiling their own local paedophile index which, in turn, ‘minimised their incentive to update the NCIS database’ (HMIC 1999: para. 4.15).

The whole question of police-held information and intelligence on potential sex offenders – and indeed other would-be offenders – held at local and national level, came under the spotlight in the wake of the Soham child murders in 2002. Ian Huntley was convicted for the murder of two children in the Cambridgeshire village of Soham but during the trial it became apparent that information on Huntley had been available at another police force – Humberside – that might have given the Cambridgeshire police some forewarning of his propensity to commit sexual crime. The information in Humberside had not been collated properly and analysed and it had not been shared with Cambridgshire when Huntley had sought a job with a local school.

The Bichard Inquiry which followed took evidence from various quarters about the haphazard way police information was kept – or not kept – on Huntley and recommended that a national computerised intelligence-sharing system be created by the police (Bichard Inquiry Report 2004: Recommendation 1). An interim national police system called IMPACT (Information Management, Prioritisation, Analysis, Coordination and Tasking) was soon started and the fully-fledged national system of intelligence exchange proposed in the form of a new Police National Database (Home Office 2006b). The PND was launched in 2010 with one of its stated priorities being:

Protecting children and vulnerable people, by being better able to understand the risk they are facing, and by more thorough vetting of people in positions of responsibility and trust.

(NPIA 2010: para. 2.2(a))
The Bichard Inquiry hardly mentioned the role of NCIS as it was then operating. In 2006 NCIS was merged with the NCS to form the Serious Organised Crime Agency but the SSOU did not form part of this merger and was now hived off to form a new body called the Child Exploitation and On-line Protection Centre or CEOP.

**Child Exploitation and On-line Protection (CEOP)**

The Child Exploitation and On-line Protection (CEOP) Centre started in April 2006 from an office in London’s Vauxhall Bridge Road building on the work of the NCIS SSOU. CEOP’s role was to work in partnership with local forces as well as local authorities, the Department for Education and others. Their work was based on the assessment and dissemination of intelligence, the raising of public awareness in the interests of prevention, direct operations and the investigation of the travelling sex offender who crossed international borders to facilitate their offending.

One of CEOP’s more high profile exercises was to put photographs on its website of registered sex offenders who had not complied with their requirements to notify the police of their whereabouts (see Chapter 10). Five portrait photographs were accompanied by brief details of these people now wanted by the police (Johnston 2006).

In July 2010 following the formation of the UK’s first coalition government the Home Secretary announced that CEOP would be merged into the new National Crime Agency that was being formed (Home Office 2010: para. 4.32). Jim Gamble the CEOP Chief Executive was critical of the merger which he had argued against. He saw it as a dilution of the service that could be offered and the potential loss of CEOP’s identity to protect children amidst all the other crimes the NCA would be dealing with. Gamble resigned from his position in October 2010 telling the Home Affairs Committee that:

> I have resigned because I’m concerned about the direction of travel that CEOP is moving in … The National Crime Agency is not right for CEOP. It’s not right for CEOP because it will not work for children, but it won’t work for the National Crime Agency either.

(House of Commons 2010: Examination of Witnesses Q3 and Q27)

Three years later CEOP was incorporated into the National Crime Agency (NCA).

**From Serious Organised Crime Agency (SOCA) to the National Crime Agency (NCA)**

After just six years SOCA was replaced by the National Crime Agency (NCA). The statutory basis for the NCA is to be found in the Crime and Courts Act
2013 Part One. The NCA was to have a wider remit than SOCA to tackle serious and organised crime at the borders, fight fraud and cybercrime and protect children from sexual exploitation. Its strategic priorities would be set by the Home Secretary (Crime and Courts Act 2013 s. 3) and it was to improve the coordination of local, national and international police activities; to enable this the NCA would have the power to direct local forces to do things; this ‘tasking’ ability was a new power that had not been available to SOCA (Crime and Courts Act 2013 s. 5).

The Serious Crime Analysis Section (SCAS)

The NCA is also now home to the Serious Crime Analysis Section (SCAS) formed in 1998. SCAS collates information on all cases which involve a serious sexual offence on a national basis. The cases are mainly ‘stranger’ offences, but other cases are selected on an individual basis. The details are entered on to a database where they undergo comparative case analysis, to identify any similar offences or to see if they are part of a series of offences; the analysis is carried out using a Canadian system called ViCLAS (Violent Crime Linkage System). If any cases are found with matching characteristics, SCAS will inform the officer in the case directly.

An inspection report in 2012 was critical of the Serious Crime Analysis Section:

We found that the unit directs too much resource towards assessing force compliance with the process for supplying information to the unit. This bureaucratic process consumes police and SCAS resources which would be better directed at identifying potential perpetrators.

(CJJI 2012: 7–8; see also paras 2.23–2.38)

The inspection recommended that SCAS conduct a review of its services and functions.

The SCAS database in October 2013 held over 11,000 stranger rapes and attempted rapes (approximately 5,800 solved), more than 1,200 abductions or attempted abductions (approximately 250 of which are solved), and approximately 950 murders (approximately 600 solved). The database held over 22,600 cases in total (NCA 2013a: 4).

CEOP became one of the NCA’s four Commands from 6 October 2013. From its new home it has produced a series of publications including its annual ‘Threat Assessment of Child Sexual Exploitation and Abuse’ (all available at http://ceop.police.uk/publications, accessed 27 October 2014). In mid-2014, however, CEOP was criticised for failing to act on information received about child pornography.

The information, in question, had come from the Toronto Police in Canada in June 2012 and consisted of a list of 2,235 names following a raid on the
headquarters of a website selling child pornography. On receipt of the names it was alleged that CEOP did nothing with them for over a year. It was only when the Toronto Police announced that they had disclosed these names as part of their Operation Spade in November 2013 that the NCA made a statement on the matter the very next day saying the material in question had been misclassified as low risk and that a review was being undertaken (NCA 2013b). Later it came to light that more immediate action could have prevented Myles Bradbury, a hospital consultant in Cambridge, who was on the list, from continuing to sexually abuse some of his child patients before his eventual conviction; a spokesperson for the Toronto police said CEOP had ‘dropped the ball’ (Cawley 2014).

Keith Bristow, the head of the NCA, now admitted there were so many people in the UK accessing child pornography through the Internet that the police could not deal with them all and many ‘will not end up facing justice’; the figure of 50,000 users was cited by Bristow (Quinn 2014). Simon Bailey, Chief Constable of Norfolk and the ACPO spokesperson on child protection, appeared to confirm this picture when he told The Guardian that many users of child pornography would not go on to become ‘contact’ offenders and speculated whether they would be better referred to the health services rather than the criminal justice system:

[This group] poses a threat … [but do not] need to come into the criminal justice system in terms of being put forward before a court.

(Ramesh 2014)

A few days later Prime Minister David Cameron announced a new national unit was being formed to tackle child sexual exploitation on line. The new unit would be a joint venture between the NCA and the Government Communications Headquarters (GCHQ) usually used for national security matters:

The new unit will bring together GCHQ’s technical expertise with NCA’s investigatory prowess to develop new high tech capabilities to address the challenges of analysing vast volumes of child abuse imagery hidden on the ‘dark web’. They will focus on the most prolific offenders.

(Prime Minister’s Office 2014)

The ‘dark web’ was the name for the parts of the Internet that traditional police surveillance methods could not reach.

**The Forensic Science Service**

The UK’s Forensic Science Service (FSS) was a further arm of national policing offering a support service to the police with a staff of over 1,200 scientists and their assistants at six regional laboratories. The service analysed the contents of
drugs and other evidence from scenes of crime, including the analysis of body fluids such as blood and semen.

The FSS was home to the National DNA Database (NDNAD) (Home Office 1995a). DNA was considered an important component in the investigation of sexual offences. Legislation followed to allow the taking of DNA samples from sex offenders in custody in the form of the Criminal Evidence (Amendment) Act 1997 and the Crime and Punishment (Scotland) Act 1997, s.48.

Concerns about DNA samples started to emerge when it became apparent that the police were keeping samples that should have been disposed of. A man suspected of a burglary in 1998 but then acquitted, had given a DNA sample which should have been destroyed. The sample was not destroyed but instead was later used by the police to match him to the scene of a rape; the subsequent prosecution for the rape collapsed because of its reliance on the illegally held sample. The Attorney General appealed against the decision to the House of Lords which overturned the earlier judgements and allowed the conviction (R v. B Attorney-General's Reference No. 3 of 1999, Times Law Report, 15 December 2000; Pickover 2001).

The HM Inspectorate of Constabulary was asked to look into the question of unlawfully held DNA and found ‘many thousands of samples, perhaps as many as 50,000, may be being held on the database when they should have been taken off’ (HMIC 2000: para. 2.23). The Inspectorate wondered if ‘perhaps the time has come to revisit the legislation’ (ibid.: para. 2.31). The Criminal Justice and Police Act 2001, ss. 82–83 duly legalised these illegalities as long as the retention of samples was only for purposes of the prevention or detection of crime.

The popularity of DNA testing had now achieved a momentum of its own and by 2003 the NDNAD had reached a total of two million samples (Travis 2003). The Criminal Justice Act 2003, s. 10 went further and enabled the police to take DNA samples from any arrested person (for a general account of the developments at this time, see McCartney 2006).

This momentum was slowed in 2008 by two people from Sheffield. A man named Marper and a child referred to only as S had both been arrested and DNA tested but neither had been convicted or cautioned. As innocent people they challenged the right of the police to retain their DNA and took the case to the European Court of Human Rights who found in their favour (S and Marper v UK [2008] ECHR 1581). The government had to introduce the Protection of Freedoms Act 2012 (Part 1) to prevent the permanent retention of innocent people’s DNA profiles by the police.

announced that the FSS service was to be closed down completely by March 2012. The National DNA Database was to be taken over and managed directly by the Home Office. Other forensic services would be provided by the private sector and the open market and a new ‘forensic procurement framework’ would be overseen by the post of the Forensic Science Regulator (see also House of Commons 2011).

This market arrangement has caused continuing concern because the police have been going outside the ‘forensic procurement framework’ to purchase forensic services and have also been developing their own in-house forensic services. The Home Office have been criticised for having only a tenuous grasp on what the police are actually doing and because it ‘considers decisions about how to purchase forensic services should be made locally by police and crime commissioners and chief constables’; others argue that the Home Office should at least have a strategy in place for forensic science, which at present they do not have (NAO 2014: 1–3).

**International policing**

Policing has increasingly become an international activity with the dialogue between police forces the subject of international treaties and conventions to improve the efficiency and effectiveness of the communications, and the police have formed permanent transnational policing networks (TPNs) to formalise these communications. The two best known TPNs are Interpol (the International Criminal Police Organisation) and Europol (the European Police Office) (see later).

Policing is usually by definition restricted to a given nation-state and police officers are not allowed to operate outside their authorised jurisdictions. In practice, they often have a need to work across national borders with their counterparts in other countries, but this work has to be largely restricted to the communication of personal data on individuals or groups wanted or suspected of crimes. Sexual offending is one of the few areas that permits the British police to investigate crime committed by British nationals in other countries; a process formally described as ‘extra-territorial policing’.

**Extra-territorial policing**

When the Sex Offenders Act 1997 was implemented on 1 September 1997, most of the attention was on the introduction of the ‘sex offenders register’ in Part I of the Act. Part II of the Act, however, gave UK courts the right to hear prosecutions of those who commit sexual offences against children in other countries; the offence had to be a crime in both countries, and the Act applied only to British citizens or people resident in the UK, but the penalties for a crime would be the same as if the offence had been committed in the UK. A growing area of concern was that described as ‘sex tourism’.
‘Sex tourism’ referred to the practice of men from developed industrialised countries, such as the USA, Japan and western Europe, travelling to less developed countries, such as Thailand, Sri Lanka and the Philippines, to use prostitutes – including child prostitutes. Sometimes these men were taking advantage of permissive legislation in these countries and sometimes the law was simply not enforced as it should have been. Non-governmental organisations such as ECPAT (End Child Prostitution, Pornography, and Trafficking) and the Preda Foundation started to raise international awareness, culminating in the 1996 Stockholm World Congress against Commercial Sexual Exploitation of Children (Kane 1998; Alexander et al. 2000).

Interpol had by this time already formed its own Standing Working Party on Offences against Minors (Interpol General-Secretariat 1995). ‘Sex tourism’ was high on its agenda, and when London hosted one of the Working Party’s regular meetings in November 1995, police officers from Sweden explained how they had successfully prosecuted a man in Sweden for sexual offences against children committed abroad (NCIS 1995).

As a first step into these waters, the British government preferred the approach of trying to prevent men going overseas in the first place for purposes of ‘sex tourism’. They supported a private member’s bill, which allowed the prosecution in Britain of people who organised overseas travel to enable people to commit sexual offences. The Sexual Offences (Conspiracy and Incitement) Act 1996 was aimed at the organisers of these travel arrangements for purposes of ‘sex tourism’; the Act was implemented from 1 October 1996.

The Home Office published an extensive consultation paper to see what other options existed (Home Office 1996b) and the Sex Offenders Act 1997 introduced the necessary law to allow the police here to prosecute people for offences committed abroad. Since then the police have developed their expertise to act under the law. The first prosecution under the Act was reportedly against a man who had offended in France (Bennetto 2000).

A later case investigated by Hertfordshire Police resulted in the conviction of a man from Watford in St Albans Crown Court for the rape of a 10-year-old girl in India (BBC News ‘Hertfordshire man jailed for raping girl in Goa’, 10 December 2010, available at http://www.bbc.co.uk/news/uk-england-beds-bucks-herts-11971829, accessed 27 October 2014). The campaign group ECPAT welcomed the prosecution but pointed out that ‘successful cases like this are extremely rare’ (ibid.).

Earlier the same year the difficulties for the police and Crown Prosecution Service were revealed in a case at Bristol Crown Court. Here a prosecution for an alleged child sex offence in India had collapsed at trial; the judge was critical of the bureaucratic nature of the process, and the failure to secure sufficient evidence from India. This despite ‘a team of officers from Gloucestershire Constabulary [having] visited India to interview victims and witnesses during 2009, as part of the lengthy and thorough investigation’ (CPS 2010). Other reported cases have been successful (see e.g. Morris 2014).
Given the complexities of bringing overseas cases to court in the UK further measures were introduced to try and stop people going abroad if they were likely be a sexual risk to children. Changes in the law were introduced that required registered sex offenders to (a) inform the police if they were going abroad (Criminal Justice and Court Services Act 2000, Schedule 5, para. 4) and (b) empowered the police to apply for Foreign Travel Orders which could ban some registered sex offenders going abroad at all (Sexual Offences Act 2003 ss 114-122) (see Chapter 10).

**Interpol**

The origins of Interpol can be traced back to 1914 and a meeting in Monaco; the organisation recently celebrated its one hundredth anniversary. Interpol has always been non-governmental and strictly by the police, for the police. It currently claims to have 190 countries world-wide signed up as members each with its own Interpol office – known as a National Central Bureau (NCB) – and a head office in Lyon, France. The UK’s Interpol NCB is located at the National Crime Agency.

Interpol is essentially a means of secure communication between police forces. In the past, Interpol has suffered from a poor image, and would be criticised for being not much more than a ‘post-office’. Today this image has been shaken off and Interpol is now said to have:

…one of the most sophisticated automated search and image transmission systems in the world. It enables rapid reliable and secure exchange of information. NCB’s will have access to an enormous store of data.

(Benyon et al. 1993: 226)

The current communication system used by Interpol is known as I24/7 and links all the world’s police forces and enables them access to Interpol held databases (see Interpol website, available at http://www.interpol.int/INTERPOL-expertise/Data-exchange/I-24-7, accessed 27 October 2014; see also CJII 2012: paras.2.40–2.44). One of these databases is Interpol’s Child Abuse Image Database (ICAID) enabling a digital comparison of images received and stored in ICAID from around the world.

**Europol**

Europol has its political origins in the European Union and emerged from the 1991 Maastricht Treaty. As a TPN, it operates just between the 28 EU Member States and only deals with serious organised crime from its headquarters in The Hague; in contrast, Interpol will deal with any sort of crime. Each Member State has its own national office referred to as the European National Unit (ENU); the UK’s ENU is based in the National Crime Agency alongside the Interpol NCB.
Europol is ‘governed’ by the Europol Convention, which came into force on 1 October 1998 and includes within it a mandate to deal with organised trafficking in human beings defined as:

[The] subjection of a person to the real and illegal sway of other persons by using violence or menaces or by the abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children.

(Europol Convention 1995 [as amended], Annex to art. 2)

This mandate on human trafficking was added to the Convention after the events of 1996 in Belgium when 200,000 people had demonstrated in the streets of Brussels on 20 October against the crimes of alleged child sex offender Marc Dutroux and the apparent ineffectiveness of the criminal justice system to stop his activities; in 2004 – some eight years on – Dutroux finally came to court to answer his accusers (‘Dutroux is given life sentence for child murders’, The Independent, 23 June 2004).

Europol is also involved in work to combat trafficking in human beings, whereby women and children are coerced across international frontiers by organised criminals who force them into prostitution. The extent of such trafficking is hard to define accurately, but the International Organisation for Migration has estimated some 300,000 women a year are trafficked within and into Europe every year (IOM 1998; see also Kelly 2002). The European Union adopted its ‘Brussels Declaration’ in 2002 as a blueprint for future actions to prevent and prosecute trafficking. Within the UK laws against trafficking have been passed in the Sexual Offences Act 2003 (ss. 57–60).

**Summary**

Most policing activities in the UK, whether for action against sex offending or any other form of crime, take place at a local level. Criticisms of police attitudes towards the investigation of sexual crime have caused them to rethink their approach to this work over the last 30 years. Specialist units and more training have been developed to improve the level of intervention required and to make the police more sensitive to the needs of women and child victims of sexual offending.

What has also become increasingly important to the policing of sex offenders – at local, national and international levels – is the obtaining, collating and analysis of ‘personal information’ on sex offenders. This increased importance of the database has been facilitated by the advances in information technology and the ability to retrieve or exchange data in ‘real time’, and by the specific advances in the use of DNA sampling technology in order to identify more easily the person to whom ‘personal information’ should be attached. These advances bring with them issues of civil liberties (for more on police management of sex offenders in the community see Chapter 10).
Chapter 5

The search for justice – at court

Introduction

When the police have completed their investigations and they believe they have a case to present to court, that case is passed to the Crown Prosecution Service (England and Wales), the Procurator Fiscal (Scotland) or the Director of Public Prosecutions (Northern Ireland). In turn, these prosecuting agencies make their own independent decisions, based on the evidence given to them, as to whether a prosecution is worthwhile in terms of a likely conviction or whether it is in the ‘public interest’ to prosecute.

The Crown Prosecution Service

The Crown Prosecution Service came into being following the recommendation of the 1981 Royal Commission on Criminal Procedure that the investigation of crime should be separated from the prosecution of offenders; the aim was to end the system of police prosecutions that had been in place almost since the origins of police forces. The Prosecution of Offences Act 1985 created the Crown Prosecution Service (CPS), which started work in October 1986.

From the outset the new CPS had a rocky ride. Police resentment at the loss of their prosecuting role and the new demands the CPS was putting on them led to allegations of police obstruction. A 1992 Parliamentary Select Committee inquiry into what was going on aired some of the grievances and, by the mid-1990s, the CPS was more established as a part of the criminal justice system. Further reform was recommended by the Glidewell Report, which called for greater decentralisation, better liaison arrangements with the police and the ending of the division of work into magistrates’ and Crown Court (Glidewell Report 1998).

Aside from general organisational problems has been the CPS’s seeming inability to successfully prosecute sex offenders. An early critical report from two women’s groups accused the CPS of regularly failing to prosecute rape crimes, and stated that the chances of justice for women and children who were raped or sexually assaulted were unacceptably low. The report also
highlighted what it saw as the reluctance of the CPS to get involved in sex offending where there was a ‘domestic’ context or the alleged attacker was known to the women:

Those who have been convicted of a crime they didn’t commit are not the only victims of a ‘miscarriage of justice’; so are those who have suffered a crime and are denied justice.

(WAR/LAW 1995)

Others picked up on the fact that the first version of the Code for Crown Prosecutors had a clear statement that:

sexual assaults upon children should always be regarded seriously, as should offences against adults, such as rape, which amount to gross personal violation. In such cases, where the Crown Prosecutor is satisfied as to the sufficiency of the evidence there will seldom be any doubt that prosecution will be in the public interest.

(CPS n.d.: para. 8(vi)(b))

Yet in a revised later edition, this statement had been deleted (CPS 1994). The CPS felt obliged to put out a further explanation that ‘sexual assaults … are always serious offences and the service is committed to making sure that appropriate action is taken’ (CPS 1996: para. 5.2).

At the heart of the criticism was the CPS practice of ‘downgrading’ charges in order to improve the chances of a successful prosecution, or the outright ‘discontinuance’ of proceedings because there was insufficient evidence, irregularities in its collection or it was not, somehow, in the public interest. It all added up to a continuation of the process of attrition started by the police.

Research examining possible reasons for discontinuance found ‘evidential difficulties’ to be a prime reason for the CPS not taking a case to court. Evidential difficulties included:

- Victims who are vulnerable in terms of age or learning disabilities;
- The victim’s previous sexual history;
- A prior relationship between victim and offender which can test the victim’s willingness to give evidence – if the victim pulls out, the prosecution has no case;
- When the case turns on the issue of ‘consent’ it is often one person’s word against another (Harris and Grace 1999: 26).

The CPS’s instructing of barristers had been favourably commented upon by researchers, with perhaps only the need for more case conferences between them, and involving the police, to seek out any evidential weaknesses (ibid.: 36). The CPS maintained that it always tried to proceed to court and only
'discontinue' with 'very good reason' (ibid.: 25); court proceedings were more likely to take place when the victim was slightly older or very young (ibid.: 27).

Two further reports of the prosecution of sexual offenders were made in 2002 and 2007 jointly by the Inspectorates of the CPS and the police. They found a possible CPS preoccupation to discontinue cases where a conviction may be difficult to secure and a need to be more proactive in seeking information and building a case (HMCPSI/HMIC 2002).

The 2007 report found that implementation of good policies was often the problem:

> in many cases it is not necessarily about changing what is done, but ensuring instead that what is done is effective and is carried out to a consistently high standard, and that the efforts of those involved are properly supported and co-ordinated. In many respects, the policies are sound and in place. It is not a question of changing the approach, but of ensuring that what should be done is actually done in practice and that full effect is given to the existing sound policies and good practice.

(HMCPSI/HMIC 2007: 5)

The prosecution of sexual offences

The criticisms of the CPS and its prosecution of sexual offenders continued to be heard. The CPS responded with its own consultation exercise on ways forward (CPS 2003) and subsequent new policy statements (CPS 2004a – updated as CPS 2012). In 2005 the CPS created its central Sexual Offences Team within its Policy Directorate.

The Stern Review reported that the CPS was under great pressure from politicians and pressure groups to improve the number of cases going to court to such an extent that:

> It was suggested to us by some that the CPS had become nervous about deciding not to take a rape case, and would prefer to take it and see it collapse for lack of evidence rather than turn it down. We heard that on occasion the CPS seems to prosecute rape cases where the evidence is so flawed that the prosecution is doomed from the outset. This, it was said, was doing the complainant no favours and in the end made the ordeal worse.

(Stern Review 2010: 87)

One way forward was to raise the levels of expertise in the CPS with more training and the development of specialist units. Today every CPS office has its own Rape and Serious Sexual Offences Unit (RASSO). Talking of the London RASSO Alison Saunders, then Chief Crown Prosecutor for London, outlined their guiding principles as:
Continuing to work in close partnership with police from early stage and increase the number of early consultations;

- A reduction in number of cases discontinued or on which no evidence offered post charge but prior to trial full case building pre charge;
- Increase the charge:NFA (No Further Action) ratio;
- Full compliance with policy concerning conferences in all contested cases;
- Continuity of prosecutor and counsel;
- Written feedback from counsel in all cases (not just unsuccessful) to develop best practice and learn lessons;
- Better communication with victims – including a post charge letter as recommended by the Stern review.


**Prosecuting child sexual abuse and sexual exploitation**

The policing and prosecution of sexual offences against children was brought sharply into focus by a series of events in 2012:

- May 2012 – nine Asian youths in Rochdale were found to have been part of a child sexual exploitation network and guilty of offences including rape, trafficking girls for sex and conspiracy to engage in sexual activity with a child (BBC [2012] Nine found guilty of child sex charges, 8 May, available at http://www.bbc.co.uk/news/uk-england-17989463, accessed 11 November 2014). The CPS convened a panel to re-examine this case because an earlier decision in 2009 not to prosecute in the same case had been made by the CPS.

- October 2012 – an ITV documentary *Exposure: The Other Side of Jimmy Savile* made allegations of child sexual abuse by the broadcaster Jimmy Savile who had died 12 months earlier. The CPS decided to re-examine their decision not to prosecute Savile for allegations brought to their attention in 2009 by the Sussex police and the Surrey police.

- November 2012 – the Home Secretary asks the National Crime Agency to re-examine allegations of historic sexual abuse in North Wales children’s care homes

- November 2012 – the CPS were asked to re-examine allegations of child sexual abuse by the late Cyril Smith, MP which had not been acted upon in 1970.

The CPS decided they had been too cautious in their approaches in 2009 to both the Rochdale allegations and the Savile allegations; they also felt that

Keir Starmer the then Director of Public Prosecutions later described these events as being a ‘watershed’ moment for the CPS and jointly with the ACPO he announced the need for a new approach that focussed more on the victims and especially when those victims were young and vulnerable as in cases of child sexual exploitation. An over cautious approach was ‘not generally justified’ (CPS 2013).

Together the two agencies agreed:

- A radical clearing of the decks in relation to policy and guidance. All existing policy would be decommissioned, with one overarching and agreed approach to investigation and prosecution of sexual offences to be applicable in all police forces and agreed by the CPS. This will be supported by the College of Policing. The CPS will also draft new guidance to ensure consistent best practice, which will be open to public consultation.
- Training will ensure there is no gap between policy and practice. The training will be hands on and provide practical advice to police and prosecutors about when a complainant can and should be told about other complaints, among other things.
- To propose the formation of a national scoping panel, which will review complaints made in the past which were not pursued by police and prosecutors, if requested (ACPO 2013).

The CPS consultation paper was duly published in June 2013 (available at http://www.cps.gov.uk/consultations/csa_consultation_index.html, accessed 16 March 2015) and the new CPS guidance completed in October 2013. This guidance outlined the new priorities which included:

- Allocation: All child sexual abuse cases must be dealt with by specialist prosecutors based in the CPS Rape and Serious Sexual Offences (RASSO) Units.
- Early consultation: In large or complex child sexual abuse cases, there should be early consultation between the police and the CPS. Joint case review meetings should take place periodically so that progress can be checked and advice on case issues given.
- Support: Victims and witnesses should be made aware from the outset of the investigation exactly what is expected of them, particularly in terms of attending court and giving evidence, and they should be offered support to help them in the process.
- Identifying risk: Prosecutors should be aware of typical vulnerabilities exhibited by children who may have been abused. These include, but are
not limited to: being missing from home, school, or care; drug or alcohol misuse; being estranged from family; self-harm; being involved in offending; and physical injury. Prosecutors should have regard to the list of signs and behaviours typically seen in children who are being sexually exploited which was published by the Office of the Children’s Commissioner in England in 2012.

- Credibility: When assessing the credibility of a child or young person, police and prosecutors should focus on the credibility of the allegation, rather than focusing solely on any perceived weaknesses in the victim. In particular, police and prosecutors should avoid making assumptions about victims. A reluctance to co-operate with those in authority, failure to report allegations of abuse swiftly, and providing inconsistent accounts are not uncommon in victims of child sexual abuse, especially during initial interviews.

- Taking the victim’s account: Particular care should be exercised when deciding how to take the victim’s account. A video recorded interview is often the most appropriate means, but may not always be so. Consideration should be given to the use of a Registered Intermediary at an early stage. Prosecutors should be familiar with police Achieving Best Evidence (ABE) procedures and mindful of the need for a clear and focussed ABE interview to be presented at the trial.


**Prosecuting adult sexual assault and rape**

The rate of attrition in rape cases had caused concern for some time and the police and CPS were aware of the low conviction rates in cases of rape (Kelly et al. 2005; HMCPSI/ HMIC 2002 and 2007). As far back as 2002 a joint CPS/Police ‘Rape Action Plan’ had been formulated and progress on its implementation carried out in 2005 with a ‘stock-take’ (available at https://www.gov.uk/government/publications/introduction-to-stock-take-of-the-implementation-of-the-rape-action-plan-2002, accessed 24 March 2015) and in 2007 with another inspection (HMCPSI/HMIC 2007).

The 2007 Inspection found attrition but with qualifications:

> Although figures from research present a picture of high levels of attrition and declining conviction rates set against a background of decreasing detection rates, Home Office figures show that the actual number of convictions is increasing year on year – from 640 in 2002 to 728 in 2005 (rape of a female only). However, this increase is not keeping pace with increased reporting, and therefore the justice gap for victims of rape is widening.

(HMCPSI/HMIC 2007: 21)
At the same time the central National Cross Government Action Plan on Sexual Violence and Abuse recognised the need to ‘increase reporting and improve the way in which sexual offence cases are investigated and prosecuted’ (HMG 2007: para. 10); the Action Plan also saw the need for ‘developing a comprehensive assurance regime to ensure that rape cases are managed in accordance with CPS guidance and good practice’ (ibid.: p32). ACPO established a Rape Working Group to develop the police approach to rape investigation and the HM Inspectorate of Constabulary started chairing a Rape Monitoring Group (RMG).

The RMG published figures in January 2014 on all 43 police forces that demonstrated some forces were still writing off up to a third of all allegations reported to them (available at http://www.justiceinspectorates.gov.uk/hmic/publication/rape-monitoring-group-digests-data-and-methodology-2014, accessed 24 March 2015). Further discussions between the police and CPS took place and a new national Rape Action Plan between the two agencies was drawn up. The plan included:

- Steps to ensure better application of the legislation on consent and that police and prosecutors focus on steps taken by a suspect to seek consent from their alleged victim where this is an issue.
- Steps to monitor police decisions to take no further action in rape cases, including the quality of record-keeping and authorisation of decision making.
- New practical guidance for frontline police officers and prosecutors.
- A National Conference later this year with all specialist rape prosecutors and police rape leads to raise awareness of key issues.
- Reviews of the operation of CPS rape and serious sexual assault units and the instruction of appropriate advocates in rape trials (CPS 2014b).

The National Conference referred to took place in January 2015 with ‘consent’ as the focus of attention (CPS 2015b).

**Reviewing the decisions of crown prosecutors**

**Victim’s Right to Review Scheme**

The Victim’s Right to Review Scheme started in June 2013. It followed on from recommendations made in the Appeal Court in the case of *R v Killick [2011] EWCA Crim 1608* which concerned a male rape where there had been something like a five year indecision as to whether the CPS were going to prosecute or not. The Court considered in some detail the right of a complainant of crime to seek a review of a CPS decision not to prosecute and recommended that a complainant should have a right to review and that clear procedures should be produced on how this would work. The scheme allows
victims to appeal against a decision not to bring charges or to discontinue a case once a prosecution has begun (CPS 2014a).

By the end of the first year some 1,186 appeals were lodged, of which 162 were upheld, a success rate of 13.7 per cent. Sixteen of the successful appeals involved cases where charges had been brought and then dropped, so a prosecution could not be re-started leaving 142 successful appeals that included 27 involving alleged sexual offences (statistics available from CPS website at http://www.cps.gov.uk/victims_witnesses/victims_right_to_review/vrr_data/index.html, accessed 12 January 2015).

**Child Sexual Abuse Review Panel**

A more specialist form of review is provided by the Child Sexual Abuse Review Panel which also started in June 2013 and takes a second look at older cases where a person is concerned that they have made previous allegations of being a victim of a sexual offence when they were under the age of 18, and the police or CPS decided that no action should be taken at the time. The Panel has the power to refer cases back to the police or CPS.

The panel consists of a Chief Crown Prosecutor, an ACPO rank police officer, a specialist prosecutor, an experienced child abuse police investigator, and an appropriate independent representative. The panel reviews information requested from the relevant police force or CPS Area, to decide whether to advise that the original decision was correct or if further action should be taken by the police force or CPS Area. Sole responsibility for taking this decision in the panel rests with the police and CPS members. The independent representative in the panel plays a purely advisory role. For further details see CPS website at: http://www.cps.gov.uk/victims_witnesses/child_sexual_abuse_review_panel/index.html, accessed 12 January 2015.

**The Trial**

The conduct of court proceedings involving sexual offenders has been the subject of much debate. Women victims have felt more on trial than defendants, and the problem of an adult court hearing evidence from a child victim has been equally fraught. In the adversarial criminal justice system that we have, with the presumption that the accused is ‘innocent until proved guilty’, the onus is on the prosecution to prove the allegations made and on the defence to mount a reasonable opposition to the allegations.

**Remands**

Before the point of conviction and sentence is reached, however, the court will probably require an adjournment whilst the case against the accused is put together and, similarly, a defence is organised. The court must make decisions
about whether or not to remand on bail or remand in custody until the case is ready to proceed. The Bail Act 1976, s. 4 gave the defendant a ‘presumption’ of bail unless circumstances dictate otherwise. Bail is not, however, available to a man charged with rape or attempted rape if he already has previous convictions for similar offences (Criminal Justice and Public Order Act 1994, s. 25). If he has no previous convictions but still faces the same charges, any court granting bail, where the prosecutor has raised objections, must state the reasons for giving bail in open court (Bail Act 1976, Sch.1, Part 1, para. 9A).

If a remand on bail is granted over a remand in custody, conditions may be attached to that bail. As with police pre-charge bail, this might include a condition of residence, a curfew, an exclusion zone which the defendant must not enter, a condition of non-association or the regular reporting to a specified police station (Bail Act 1976, s. 3, as amended). Research does exist from South Wales on how bail conditions have been imposed, and the findings suggest it is a haphazard process that is sometimes used excessively; at worst it has been described as ‘a pre-conviction punishment’ (Hucklesby 1994).

A case in 2010 drew attention to the consequences of not remanding in custody. This was the case of Jane Clough, who was murdered by her former partner eight weeks before he was due to stand trial for her rape and sexual assault (Carter 2010). In response Helen Goodman, MP moved an amendment to the Legal Aid, Sentencing and Punishment Bill, that would have introduced a new right of appeal for the prosecution in cases where a defendant was granted bail rather than being remanded to custody. Ms Goodman explained the background:

Jane Clough was murdered on 25 July last year by her ex-partner, Jonathan Vass, who was out on bail, despite the large number of charges against him. In fact, he had been charged with nine counts of rape and four counts of common and sexual assault against Jane. The case in which he was to be tried for those counts of rape and assault was due to be heard, but the judge decided, notwithstanding what the Crown Prosecution Service had told him, that Jonathan Vass should not be remanded to prison and should be released on bail (Hansard Public Bill Committee 11 October 2011 col. 695).

The amendment was withdrawn and the government said it would look further at the implications of such a move (for full debate see Hansard Public Bill Committee 11 October 2011 cols. 695–701).

Organisational support for witnesses

Witness Care Unit

The Courts provide help to victims as witnesses through their Witness Care Units (WCU); the Witness Care Officers that work for these Units are either
CPS employees or police employees. Their role is to act as a single point of contact for witnesses and to offer them guidance and support.

Witness Care Units came into being after the so-called No Witness, No Justice (NWNJ) project which had sought to test the hypothesis that improving the care of victims and witnesses and enabling them to attend court was an effective means of narrowing the justice gap and increasing public confidence in the criminal justice system (CJS). In March 2003, five NWNJ pilot sites were selected in England and Wales in Essex, Gwent, North Wales, and parts of South Yorkshire and the West Midlands. The results showed an immediate improvement and saving of money on trials not going ahead; £27 million were allocated to fund the new Units (CPS 2004b).

The Code of Practice for Victims of Crime now states that the Witness Care Unit has a duty to provide certain information and services to victims. The relevant Witness Care Unit must, for example:

- inform victims of the outcome of any bail hearing (any relevant bail conditions and any relevant changes to these bail conditions) with reasons within one working day of receiving the information from the court for victims of the most serious crime, persistently targeted victims and vulnerable or intimidated victims. All other victims must be provided with this information within five working days;
- notify victims of the time, date, location and outcome of any criminal court hearing no later than one working day after receiving this information from the court;
- inform all victims within five working days of receipt from the court and within one working day of receipt for victims within the three priority categories, if an arrest warrant has been issued for a suspect who failed to attend court and the outcome of a hearing if the suspect is re-arrested;
- following a not-guilty plea, discuss any needs the victim may have and refer the victim to victims’ services where appropriate;
- notify victims who are required to attend court to give evidence within one working day of receiving the notification from the CPS and inform them what to expect, including how they can access the ‘Witness in Court’ leaflet;
- offer a full needs assessment to those victims who are required to attend court to give evidence to assess what support they may require;
- inform victims of the outcome of Special Measures applications (MoJ 2013c: Part A).

At the end of a trial Witness Care Units must notify victims of the outcome of the hearing within one working day of receiving the information from the court and must direct victims to victims’ services where appropriate and available. If the police are acting as a single point of contact for the victim and agree with the Witness Care Unit to provide this information to victims instead, they must tell victims that they will do so (ibid.).
Witness Service

On a non-statutory level, adult complainants could also be helped by the Witness Service; this service is offered by Victim Support. It is a voluntary service to help vulnerable witnesses through the ordeal of appearing in the Crown Court or Magistrates Court. The Witness Service helps people before, during and after their attendance at court, explaining the layout of the court, going on ‘familiarisation’ visits and talking through the experience afterwards (see Victim Support at https://www.victimsupport.org.uk/what-we-do/national-services/witness-service, accessed 9 November 2014).

Independent Sexual Violence Advisors (ISVAs)

One way of assisting the victim was the introduction of Independent Sexual Violence Advisors (ISVAs). The ISVA could be sited in a Sexual Assault Referral Centre or another voluntary agency such as a Rape Crisis Centre. The Home Office recognised their value from 2006 onwards as practitioners who provided guidance to victims of sexual assault through the maze of the criminal justice system as well as offering:

Specialist advice, advocacy and practical and emotional support to victims, help them access the healthcare and services to which they are entitled and work to ensure their on-going safety.

(HMG 2008: 47)

The stated aim was to have an ISVA available to all sexual violence victims by 2011 (ibid.: 48).

Subsequent evaluation confirmed the value of the ISVA; according to one victim of sexual violence:

Yeah, because what it is, when I get involved with the Police I don’t get any answers. But when [ISVA] does, I get all the answers I need, like what it was, she arranged a meeting with the CID, herself and myself, so she could find out from them what was going on, because they wasn’t telling me anything.

(Robinson 2009: 29)

The evaluation commended the ISVAs for their work in raising the profile of sex crimes and the need for a positive pro-active form of help. Good training and supervision were seen as essential to the role to give it a clear identity to avoid any duplication with other roles; as one ISVA put it:

I think probably, things with Victim Care, Witness Care and Victim Support sometimes you think … we all slightly overlap a little bit … maybe we all tread on each other’s toes a little bit towards the end, when it’s
going to go to court or whatever. Sometimes maybe I think, is the victim getting a little too much, I’m ringing them, Witness Care are ringing them up, Victim Support are ringing them up, is it a bit too much? (ibid.: 40)

The government has stuck by the ISVAs and stated its commitment to them. In 2013 it was announced that they would attempt to raise the profile of ISVAs even further with statutory agencies through an e-newsletter and with support for the establishment of an ISVA national network. A register of ISVAs would also be compiled and an update of the required National Occupational Standards for ISVAs would be made (HMG 2013: 16).

**Procedural support for witnesses**

In addition to what has been called the ‘organisational support for witnesses’ support has also been included into the court procedures themselves.

**Special measures for vulnerable and intimidated witnesses**

Some complainants acting also as witnesses in a sexual offences trial may feel particularly vulnerable; others may feel intimidated in the presence of the person alleged to have committed the crime. The whole experience of a criminal court can also be intimidating. The surroundings are unfamiliar and the formalities of the court itself can be threatening.

Fierce cross examination by barristers is not a pleasant experience. In one child sexual exploitation hearing a barrister mocked some children that they were ‘enjoying all the attention from police and social services’; another told them he supposed ‘it’s better to be a victim than a slag’ (Norfolk 2015). The problem of lawyer language and behaviour has been recognised and suggestions on ways forward have been made (ATC 2011) and what are now called ‘special measures’ have been introduced into courts to make the experience easier for both adults and child witnesses in court.

**Children’s evidence**

The Home Office published a short briefing on the subject of ‘live’ video-links, allowing child witnesses to speak to a court from a room removed from the court environs; comments were also invited on the idea of pre-recorded video tapes of testimony. The balance that had to be struck was between the needs of children in court as witnesses and the traditional safeguards afforded the accused by English criminal procedure. The briefing reminded its readers that the defendant still has: ‘an unfettered right to cross-examine by counsel of the defendant’s choice [and this], is an indispensable part of our system of justice’ (Home Office 1987: para. 27).
The Criminal Justice Act 1988, s. 32 introduced live video-links for children under 14 to give their evidence to court. The same Act (s. 34) also abolished the need for a judge to give a warning when a child’s uncorroborated evidence had been heard; s. 34 did not extend to sexual offences, but the later Criminal Justice and Public Order Act 1994, ss. 32–33 did make that extension. The government held back from introducing any pre-recorded tapes of statements or cross-examinations being used as evidence in court.

Chelmsford Crown Court achieved the distinction of being the first UK court to hear evidence on a live video-link from a 13-year-old victim in a rape case; the judge reportedly tried to put the girl at ease with the words ‘What’s it like being on the telly, not too bad?’ (‘Girl gives evidence by video link’, The Independent, 10 January 1989).

The arguments for and against pre-recorded testimony continued. The Children’s Legal Centre was in favour (‘CLC calls for legal reform to end trauma for child witnesses’, Childhood, October 1987) but the chair of the Criminal Bar Association was clear that the defence lawyer’s right to cross-examine a witness must be preserved, and challenged what he described as the ‘dangerous climate of opinion that children virtually never lie about sexual abuse’ (‘Warning on child video evidence’, The Guardian, 2 October 1989).

The Home Office convened an Advisory Group, chaired by Judge Thomas Pigot, which was asked to review the practical implications of allowing pre-recorded video statements. The resulting Pigot Report came down in favour of pre-recording statements and even in favour of the possibility of pre-recording a cross-examination (Pigot Report 1989). On this basis the Criminal Justice Act 1991 introduced the use of pre-recorded video interviews of children in court by amending the Criminal Justice Act 1988 with a new s. 32A; the child was still expected to be available for cross-examination. The Act did not contain provisions for pre-recorded cross-examinations.

The Home Office and the Department of Health jointly produced a Memorandum of Good Practice for police officers and social workers who would be conducting the video sessions. (Home Office/Department of Health 1992). In practice, the police, with their greater understanding of criminal evidence and the needs of the criminal courts, tended to take the lead over social workers when it came to videoing, and today the taking of recordings is a standard part of the investigation of sexual offences against children. The Pigot Report recommendation that cross-examinations could be pre-recorded was put on hold, despite intermittent proposals that it should be implemented (see, e.g. CPSI 1998: Recommendation 45).

After the change of government in 1997 the Inter-departmental Working Group report Speaking up for Justice re-examined the procedures for taking evidence in court from complainants and witnesses of sexual offences (Home Office 1998a); this in turn led to new law in the form of the Youth Justice and Criminal Evidence Act 1999, and later to new guidance replacing the
Memorandum of Good Practice on videoing children’s evidence (Home Office, 2002a; this guidance has been re-produced in subsequent new editions [see MoJ 2011a]).

The Youth Justice and Criminal Evidence Act 1999 introduced eight ‘special measures’ for what it termed the ‘eligible witness’ (ss. 16–17); in effect this meant the child witness and the vulnerable or intimidated adult witness and the ‘special measures’ were designed to improve the quality of their evidence. They were:

- screening to prevent the witness seeing the defendant (section 22);
- live CCTV links to speak to the witness in another room (s. 23);
- the witness giving evidence in private (s. 25);
- the removal of wigs and gown by court personnel (s. 26);
- pre-recorded witness statements (‘evidence in chief’) (s. 27);
- pre-recorded cross-examination of the witness (s. 28);
- use of an ‘intermediary’ by a witness (s. 29); and
- use of an aid to communication by a witness (s. 30).

The use of an ‘intermediary’ (s. 29) was to assist a witness with, say, learning disabilities or other communication problems to present their evidence as clearly as possible to the court. A ‘Witness Intermediary Scheme’ was started and all intermediaries had to be accredited and registered; a ‘match’ was made between the witness and an appropriate intermediary. The ‘special measures’ were initially the subject of ‘pilot schemes’ but were all up and running by 2007 with just the exception of the pre-recorded cross examination of witnesses (s. 28). The pilot schemes were evaluated (Plotnikoff and Woolfson 2007).

Although the use of pre-recorded cross-examinations of witnesses were now on the statute book the government still held back from implementing the relevant sections of the Act. The position was explained by the Under-Secretary of State at the Home Office:

> The Government are disappointed not to be implementing one of the eight special measures for vulnerable or intimidated witnesses that we provided for in good faith five years ago. But we believe it is better to take the advice of one of the leading experts in the field and many senior practitioners, and revisit this complex issue.

*(Hansard House of Commons Ministerial Statement 21 July 2004 cols. 41WS – 42WS)*

Three years later the government returned to the subject of achieving best evidence in the criminal courts. The Coroners and Justice Act 2009 made further amendments to the Youth Justice and Criminal Evidence Act 1999 and the ‘special measures’ provisions and:
• raised the upper age limit of child witnesses automatically eligible for special measures from those under 17 to include those under 18;
• provided child witnesses with more choice and flexibility about how they give their evidence;
• made specific provision for the presence of a supporter to the witness in the live link room;
• relaxed the restrictions on a witness giving additional evidence in chief after the witness’s video-recorded statement has been admitted as evidence in chief;
• make special provision for the admissibility of video-recorded evidence in chief of adult complainants in sexual offence cases in the Crown Court.

(Coroners and Justice Act 2009 ss. 98–103; see also MoJ 2011b).

The search to make life easier for vulnerable and intimidated witnesses in criminal courts has continued. The government’s 2012 paper on Getting it Right for Victims and Witnesses: the government’s response the question of pre-recorded cross-examination was returned to:

We are working to resolve the complex issues associated with implementation of pre-trial video-recorded cross examination (section 28 of the Youth Justice and Criminal Evidence Act 1999) with a view to establishing whether the provision can be made to work in practice.

(MoJ 2012a: para. 94 – see also para. 91)

Pilot measures for recorded pre-trial cross-examinations of children and other vulnerable witnesses eventually started in Leeds, Liverpool and Kingston on Thames in April 2014 (MoJ 2014b); 15 years after the Pigot report had recommended it.

Arguments have continued to be made for greater use of intermediaries and for special courts when a child is a victim (Hansard House of Commons Debates Crime and Courts Bill 18 Mar 2013: Cols. 738–744). The former head of the CPS Keir Starmer has also suggested that ‘perhaps judges should be given the task of questioning young and vulnerable witnesses’ to avoid aggressive questioning by barristers (Starmer 2014); an idea at present resisted by the Attorney General (Bowcott 2014).

Restricted press reporting

In 1975, the case of R v. Morgan ([1975] 2 All ER 347) generated a wide debate on the definition of rape and the defence of the man believing he had consent; questions were also raised about the extent to which a woman’s previous sexual behaviour could be admitted as a defence and to what degree there should be press reporting restrictions in rape cases. A committee of
inquiry was asked to formally look into these questions and recommend accordingly (Heilbron Committee 1975).

The question of restrictions on reporting was resolved by the Sexual Offences (Amendment) Act 1976, s. 4 which introduced anonymity into rape proceedings for both complainant and defendant. The press could still report proceedings, but not identify any of the parties involved during the trial. This policy had not been recommended by the Heilbron Committee which had only advised on anonymity for the complainant on the grounds that the potential harm and distress caused by publicity could discourage complainants from reporting rape and that anonymity could help ensure perpetrators did not escape prosecution (ibid.: para. 177).

The Criminal Law Revision Committee in 1984 re-examined all aspects of sexual offending and returned to the question of press reporting. The Committee recommended the removal of the right to anonymity from the defendant (CLRC 1984). In 1988 this right was duly repealed, on the grounds that being accused of rape was no different from being accused of other serious crimes and did not warrant special treatment (Criminal Justice Act 1988 s. 158). The Sexual Offences (Amendment) Act 1992 extended these provisions on anonymity to sexual offences hearings other than rape. Trials continued to crop up where defendants were found not guilty but felt their reputations remained damaged because they had had no anonymity protection (see e.g. R v Blackwell [2006] EWCA Crim 2185). Inevitably at these times the anonymity debate would be re-started.

The coalition government announced within days of their election that they intended to reintroduce anonymity for defendants (HMG 2010b: 24) and the controversy took off again (see e.g. Jones 2010). The Ministry of Justice acted with caution, however, and commissioned a review of the evidence before taking any action; the findings did not support the need for change and the government dropped the proposal (MoJ 2010a).

Anonymity for defendants continues to emerge for discussion and during 2014 it was argued for by two Conservative MPs who had either been arrested or prosecuted and charged for rape. Nigel Evans MP was found not guilty of any offences at Preston Crown Court (Evans, N. 2014) and Mark Pritchard MP was arrested for a similar offence but then not even charged (Halliday and Mason 2015); both had borne the full glare of the media spotlight.

**Defendants conducting their own defence**

Some defendants in rape cases had been known to dismiss their defence lawyers and conduct their own defence. This move has been permissible in British law, but has been criticised in rape cases because it puts the alleged offender in a face-to-face confrontation with the victim for purposes of cross-examination. Much publicity was given to the defendant Ralston Edwards in 1996 when he cross-examined his victim for several days, causing her great distress and taking her through the ordeal a second time; Edwards reportedly wore the same
clothes in court as he had worn during the attack (‘Inquiry into rape victim’s court ordeal’, *Daily Telegraph*, 23 August 1996).

The Home Office Interdepartmental Working Group recommended a mandatory prohibition on unrepresented defendants personally cross-examining the complainant in cases of rape and serious sexual assault (Home Office 1998a: para. 9.39); such a prohibition already existed where the victim was a child (Criminal Justice Act 1988, s. 34A). The Youth Justice and Criminal Evidence Act 1999 in due course introduced measures that prohibited a defendant from personally cross-examining a witness who was the victim of an alleged sexual offence; powers were given to the court to appoint a legal representative to test the evidence if the defendant refused to be represented.

**Sexual histories**

The Sexual Offences (Amendment) Act 1976 Act Section 2 prohibited any references to the woman’s previous sexual conduct being used by a man in his defence; judges could still allow such references on application if they considered it might reveal previous similar conduct to the present proceedings.

The implementation of s. 2 in the courts was criticised as still failing to protect a woman and making her feel that it is she who is actually on trial. Lawyers found ways round it and judges seem too ready to give exemptions (see, e.g. Adler 1987; Temkin 1993). An unsuccessful attempt was made to strengthen s. 2 with amendments to the 1996 Criminal Proceedings and Investigations Bill; the opposition spokeswoman accused the government of ‘indifference, and [refusing] to do anything about one of the most serious problems besetting women in the criminal justice system’ (*Hansard House of Commons Debates* 12 June 1996, col. 363). In Scotland, there was a change to the law in the Criminal Procedure (Scotland) Act 1995, ss. 274–275.

In time, the Youth Justice and Criminal Evidence Act 1999 did tighten up on the exemptions with its s. 41 that further restricted what evidence about a complainant’s sexual behaviour could be considered relevant in a trial for sexual offences; such evidence would now only be admitted where it is relevant to the alleged offence.

S. 41 came into force in December 2000 and within weeks was being challenged in the House of Lords as being a breach of a defendant’s right to a fair trial (Dyer 2001). The Lords ruled that s.41 would not be a breach of the European Convention on Human Rights, Article 6 (the right to ‘a fair trial’) and for the time being the section remains in place (*R v. A* [2001] UKHL 25, 3 All ER 1; see also Temkin 2002: 224–225; Kelly et al. 2006).

**REPORTS TO COURT**

Following a conviction, the courts may read a Pre-Sentence Report (PSR) prepared by a probation officer or social worker before deciding on the
appropriate sentence. In the 1960s, when the idea of reports to the criminal court started to take off, the reports were variously referred to as the Social Inquiry Report or simply Court Reports. The officers writing them had a relatively free hand in how they wrote them and what recommendations they made on possible sentences, but by 1990 the government was clear that we needed to take ‘a fresh look at the purpose, content and format of these reports’ (Home Office 1990a: para. 3.10).

When ‘National Standards’ were introduced in 1992, they gave advice on how to write PSRs. The focus was to be on the offence rather than the offender, and the views of victims were to be included in the report. The National Standards were revised in 1995, 2000 and again in 2002, when they stated that the report should ‘assess the consequences of the offence, including what is known of the impact on any victim, either from the CPS papers or from a victim statement where available’ (Home Office 2002b: B7). Another addition to the PSR, made by the revised National Standards, was the inclusion of a risk assessment. Every PSR is now expected to:

- Contain an assessment of the offender’s likelihood of re-offending based on the current offence, attitude to it, and other relevant information;
- Contain an assessment of the offender’s risk of causing serious harm to the public;
- Identify any risks of self-harm (ibid.: B9).

The PSR requirements to look at the victims’ views and to include a risk assessment clearly have direct relevance for PSRs on sex offenders.

**Principles of sentencing sexual offenders**

Following a finding of guilt (a conviction) and the reading of any reports to the court, a sentence has to be decided upon. Before moving on to the principles of sentencing, we cannot pass by without at least a reference to the sexist comments of some of our judges presiding over cases of sexual assault. Sampson, for example, cites the almost caricature comments of Mr Justice Wild in 1982:

> Women who say no do not always mean no. It is not just a question of saying no, it is a question of how she says it, how she shows it and makes it clear. If she doesn’t want it she only has to keep her legs shut and she would not get it without force and there will be marks of force being used.

(Sampson 1994: 57)

Judges in the Crown Court must now complete a Serious Sexual Offences course and be authorised by the Lord Chief Justice before taking such cases; this is known as getting their ‘sex ticket’.
In general terms, the principles of sentencing require a balance between the need for retribution and ‘just deserts’ against the need for reform and the reduction of future crimes (Criminal Justice Act 2003 s. 142). Unless the criminal law specifies certain sentences, the autonomy of the courts in passing sentences means that there is no such thing as a ‘correct’ sentence for a given offence, and the belief that the courts have got it ‘wrong’ yet again is the staple diet of our tabloid press. The principles of sentencing that we do have are based on guidance from the Sentencing Council and the precedent of previous court judgements and especially those of the Courts of Appeal. Since 1980, the Court of Appeal has periodically produced what are called ‘guideline’ judgements, which go beyond the confines of the immediate case to guide other courts coming across similar cases.

A guideline judgement on the appropriate sentencing in cases of rape was made in the case of Billam in 1986. The judgement defined five types of rape, graded in order of seriousness, and laid down the initial sentence that could then be raised or lowered depending on aggravating or mitigating factors (R v. Billam (1986) 82 Cr App R.347):

1. The least serious was a rape in wholly exceptional circumstances and the sentence might be non-custodial.
2. A single rape with no aggravating factors should lead to five years’ imprisonment.
3. A single rape with aggravating factors (e.g. two or more men acting together, a break-in to the victim’s home, etc.) should lead to eight years’ imprisonment.
4. Multiple rape should lead to 15 years’ imprisonment.
5. Multiple rape with ‘perverted’ or ‘psychopathic’ tendencies should lead to life imprisonment.

The aggravating factors that might raise these sentences included additional violence, use of a weapon, careful planning or a very old or very young victim; the mental or physical effect on a victim could also be taken into account. Mitigating factors would include a guilty plea, which reduced the victim’s need to be in court.

The Billam guidelines were followed closely in 1987 during the sentencing of offenders in what became known as the ‘Ealing vicarage rape’. The sentences were immediately picked upon by the press as being too lenient, and later research has revealed that the courts thereafter (until 1991) chose to depart from the guidelines in favour of their own heavier sentences. For the researchers, ‘the Billam judgement is not shaping sentencing practice in the way intended … [and] raises the issue of the value of current guideline judgements’ (Ranyard et al. 1994).

The Criminal Justice Act 1988 had introduced to British law the concept of an appeal being made against a sentence considered too lenient, and the first
use of this section was against a custodial sentence of three years for a man who had pleaded guilty to three counts of incest on one daughter and one count of incest with another daughter. The sentence was duly increased to six years, but at the same time, Lord Lane, the Lord Chief Justice, now set out sentencing guidelines for similar crimes.

In summary the maximum penalties were:

- Incest by a man with a girl under 13 – life imprisonment.
- Incest by a man with a girl over 13 – seven years.
- Attempted incest by a man with a girl under 13 – two years.
- Attempted incest by a man with a girl over 13 – two years.
- Incest by a woman – seven years.

The guidelines were not universally welcomed, as they suggested that differing ages meant that the offender might see this as an ‘excuse’ for his own behaviour. The founder of Childline, Esther Rantzen, said they implied ‘the offender is a victim and can be seduced by a child. It detracts from the fact that it is a man’s responsibility not to abuse children, whatever the age’ (cited in ‘Project to educate judges on handling child sex offenders’, The Independent, 25 September 1989).

Lord Lane responded later the same year with yet further guidelines, making the point that all incest cases varied and were often very complex; the sentencing judge was reminded that ‘a rigid arithmetical approach’ was not the best way to approach them. Aggravating factors might include threats and violence, psychological damage to the child and the frequency of offending; mitigating factors were a plea of guilty, otherwise good relationships or where the girl had had previous sexual experience (Attorney-General’s Reference (No. 4 of 1989) (1989) 11 Cr App R (S) 517). Two years later, this guidance was extended to cover non-incestuous sexual offending (Attorney-General’s Reference (No. 4 of 1991) (1992) 13 Cr App R (S) 182).

The government was approving of these guideline judgements but was now prepared to impose its will on the courts to ensure sentencing was based on the seriousness of the offence – the ‘just deserts’ approach took over from an earlier treatment-orientated approach which had become increasingly discredited. The 1990 white paper explained the new way forward:

The recent guideline judgements, such as those on rape [and] incest … have provided much clearer guidance on how sentencing decisions should be reached … To achieve a more coherent and comprehensive consistency of approach in sentencing, a new framework is needed for the use of custodial, community and financial penalties.

(Home Office 1990a: para. 2.3)
Part of this new framework was to give the courts new powers to sentence according to seriousness of offence, and, in so doing, to sentence persistent violent and sexual offenders to longer custodial sentences. The target was ‘a small number of offenders who became progressively more dangerous and who are a real risk to public safety’ (ibid.: para. 3.13). The new sentencing provisions duly appeared in the Criminal Justice Act 1991.

The 1991 Act was clear that offences of violence or sexual offending could always result in a custodial sentence (s. 1(2) (b)) and that that sentence could be lengthened if necessary in order to protect the public from serious harm (s. 2(2) (b)); in the latter case the court had to explain in open court why it was of the opinion that s. 2(2) (b) applied (s. 2(3)).

Before deciding on the length of a custodial sentence, the court had to consider a Pre-Sentence Report (1991 Act, s. 3(1)). There was no requirement in the Act that the court should consider medical reports, but the Court of Appeal has stated its opinion that ‘if the danger is due to a mental or personality problem, the sentencing court should, in our view always call for a medical report before passing sentence under section 2(2) (b)’ (R v. Fawcett (1995) 16 Cr App R (S) 55).

The just-deserts approach to sentencing takes little or no account of ‘treatment’ approaches; the whole idea has been to replace the ‘treatment’ approach which begged too many questions about ‘what works?’ The Criminal Justice Act 1991, however, coincided with the launch of the Prison Service ‘sex offender treatment programmes’; the problem occurred when the programmes turned out to be longer than the sentences. The more serious sex offenders got treatment because of their longer sentences, but the less serious did not (Henham 1998).

In the light of mounting public disquiet about sex offending, and in keeping with the just-deserts approach, the government now moved forward with its most controversial proposals for sentencing. This was the idea for automatic life sentences for persistent violent or sexual offending, based on the American model of similar legislation, where it was known as ‘three strikes and out’ (a reference to the sport of baseball). For this country, the recommendation was that it be just ‘two strikes and out’ (Home Office 1996c).

One of the underlying premises of the proposal was the political policy slogan that ‘prison works’ and that public confidence in sentencing needed to be restored; treatment approaches had fallen into disrepute. The arguments against it were that longer sentences did not deter crime, prisons would become overcrowded, and sexual offenders who have already been convicted would now be more likely to kill their victims, either to avoid detection, or because they know they are going to get a life sentence whether or not they kill. Some believed the idea was inconsistent with the interests of justice and the judiciary, which was having its discretion to consider individual circumstances taken away.

The government view prevailed and the Crime (Sentences) Act received the Royal Assent on 21 March 1997. Section 2 of the Act requires a court
to impose an automatic life sentence for a second serious violent or sexual offence, unless there are exceptional circumstances relating to either offence or offender which justify it not doing so. If a life sentence is not imposed, the court must state what the exceptional circumstances are in open court.

It was left to the incoming Labour government of 1997 to think about the ‘two strikes and out’ laws, which they eventually implemented. They also introduced the ‘extended sentences’ of the Crime and Disorder Act 1998 for sexual offenders and the new sentence of ‘imprisonment for public protection’ in the Criminal Justice Act 2003 (these subjects will be returned to in Chapter 6).

The Sentencing Advisory Panel established by the Crime and Disorder Act 1998 to offer advice to the courts started to produce its own guidance in May 2002 on the offence of rape (SAP 2002) and on aspects of sentencing all sexual offenders when the Sexual Offences Act 2003 became law (SAP 2004). A Sentencing Guidelines Council worked in parallel with the Advisory Panel (see Sentencing Guidelines Council 2007). The Sentencing Advisory Panel eventually merged with the Sentencing Guidelines Council in 2010 to form the Sentencing Council. It is this body that will provide definitive guidance on sentencing from now on and the courts are legally obliged to follow their guidance (Coroners and Justice Act 2009 Part 4 Chapter 1).

The Sentencing Council started a consultation on what new guidelines were needed in sexual offence cases in December 2012. The aim was to give more focus to the impact on victims and deal with advances in technology used in sexual offending. The approach to assessing what victims have been through both physically and mentally was expanded to take into account a full picture of the harm suffered (Sentencing Council 2012).

The Council’s final guidelines appeared in 2013 and became effective from 1 April 2014. They were said to be the largest and most complex guidelines the Sentencing Council had ever produced covering more than 50 offences in 160 pages; they are more detailed than the old precedent cases. The aim was to make the victim more central and threats of violence were added as aggravating factors. It was recognised that a child can never consent and any ‘ostensible consent’ was to be regarded as invalid. There was also an increase in the sentencing starting points with 15 years for a single rape being the new starting point; previously 15 years had only been for multiple rapes. The use of technology such as web cams, phone cameras, etc. to film sexual attacks was also to be taken into account as an aggravating factor (Sentencing Council 2013).

The Sentencing Council guidelines recommend sentencing for rape of an adult based on a series of steps to be followed. Step 1 is an initial assessment of the rape, in terms of harm and culpability:

Harm is assessed as:

Category 1 – the more extreme rape based on one or more Category 2 factors;
Category 2 – the Category two factors are

- Severe psychological or physical harm
- Pregnancy or a Sexually Transmitted Infection (STI) as a consequence of offence
- Additional degradation/humiliation
- Abduction
- Prolonged detention/sustained incident
- Violence or threats of violence (beyond that which is inherent in the offence)
- Forced/uninvited entry into victim’s home
- Victim is particularly vulnerable due to personal circumstances

Category 3 – the factors in categories 1 and 2 are not present

Culpability is assessed as Category A –

- Significant degree of planning
- Offender acts together with others to commit the offence
- Use of alcohol/drugs on victim to facilitate the offence
- Abuse of trust
- Previous violence against victim
- Offence committed in course of burglary
- Recording of the offence
- Commercial exploitation and/or motivation
- Offence racially or religiously aggravated
- Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity)
- Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)

Category B – the factors in Category A are not present

At Step 2 each Category is then given an appropriate range of years for custodial sentences with a suggested mid-way starting point from which to calculate the sentence to be given. This calculation is then based on Aggravating Factors to drive it up and Mitigating Factors to reduce it. The Aggravating Factors are:

Statutory aggravating factors

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail
Other aggravating factors

- Specific targeting of a particularly vulnerable victim
- Ejaculation (where not taken into account at Step 1)
- Blackmail or other threats made (where not taken into account at Step 1)
- Location of offence
- Timing of offence
- Use of weapon or other item to frighten or injure
- Victim compelled to leave their home (including victims of domestic violence)
- Failure to comply with current court orders
- Offence committed whilst on licence
- Exploiting contact arrangements with a child to commit an offence
- Presence of others, especially children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence
- Commission of offence whilst under the influence of alcohol or drugs

Mitigating factors that might reduce the sentence are:

- No previous convictions or no relevant/recent convictions
- Remorse
- Previous good character and/or exemplary conduct
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability, particularly where linked to the commission of the offence

Further steps to be followed include consideration of assistance given to police or prosecution, time spent on bail or a guilty plea; all these factors might lead to a reduction in sentence; whether the offender committed more than one offence and whether they should be classed as ‘dangerous’ and in need of a life sentence or an extended sentence. The court must also consider the need for an ancillary order such as a Preventive Order; for more on Preventive Orders see Chapter 10.

These guidelines on sentencing for rape are based on the Sentencing Council’s Sexual Offences: Definitive Guidelines (2013: 9–12); similar guidelines to all other sexual offences are in the same document.

**Summary**

The Crown Prosecution Service and the police have recognised the importance of working closely together to ensure appropriate prosecutions take
place and acceptable conviction levels are achieved in sexual offences cases. Action Plans and monitoring systems have been put into place to ensure that changes are not just on paper but are carried out in the act of implementation. In the trial itself numerous practical and procedural measures have been put into place to assist the intimidated or vulnerable witness having to give evidence in court hearings.
Chapter 6

The search for justice – punishment or treatment?

Introduction

At the end of the court process the person now convicted has to be sentenced for a sexual offence and passed into the hands of the penal system. This system is today made up of such services as the prison service, the probation service, and the police service. Together, they provide for community sentences, suspended sentence orders, custodial sentences and periods of community supervision and management following a custodial sentence. Although we always thought we knew what the aims of sentencing were the Criminal Justice Act 2003 was the first attempt to put these aims in to law:

Purposes of sentencing

Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing –

a the punishment of offenders,
b the reduction of crime (including its reduction by deterrence),
c the reform and rehabilitation of offenders,
d the protection of the public, and
e the making of reparation by offenders to persons affected by their offences.

(Criminal Justice Act 2003 s. 142 (1))

These ‘purposes’ are potentially overlapping and conflicting and the courts will make their own decisions as to which applies. The actual sentence varies with the seriousness of the offence, the degree of harm caused and the culpability of the convicted person. It will also vary with the conviction history of the offender, the vulnerability of the victim and other aggravating and mitigating circumstances. This chapter starts by looking at the various sentences theoretically available to the courts to be imposed on sex offenders.
The sentences

The sentences available are broadly divided into those that require a term of imprisonment (custodial sentences) and those that punish a person but leave them in the community (community sentences); both are available to sexual offenders. Other sentences like fines may be available albeit rarely used for sex offenders. The Police Cautions referred to in Chapter 4 might be seen as a form of punishment but coming from the police rather than the courts are not really sentences.

Community sentences

Community sentences mean the offender may continue living at home. In theory, all community sentences are available for sex offenders. Here we look at the two most significant orders – the Community Order (formerly the Probation Order) and the Suspended Sentence Order.

Community Orders

Community Orders are the current format for what used to be called ‘being on probation’. Offenders put ‘on probation’ in the 1970s and 1980s were supervised by probation officers very much according to the professional judgements of those officers. Probation officers received a social work education which gave them various forms of ‘intervention’ or ‘treatment’ which they could apply within the general framework ‘to advise, assist and befriend’ the offender.

The offender had to consent to be ‘on probation’ and was expected to report to his or her probation officer as required and to receive the officer on home visits. Failure to comply might lead to a reappearance in court for ‘breach’ of probation.

At the end of the 1980s, this relatively laissez-faire approach became the subject of criticism. The government wanted probation orders to be community sentences of the court rather than – as they currently appeared – an alternative to sentence. It also wanted to promote probation as a form of ‘punishment in the community’ rather than just treatment, and for the probation service to work more collectively with other agencies in the community: ‘one to one work with individual offenders will not usually be enough to turn [offenders] away from crime’ (Home Office 1990a: para. 7.20).

The Criminal Justice Act 1991 introduced the Probation Order as a direct sentence of the court for the first time, and defined its aim as securing the rehabilitation of the offender and protecting the public from harm from him or her and preventing the committing of further offences. At the same time the ‘National Standards for the Supervision of Offenders in the Community’ were introduced to try and standardise probation work (Home Office 1992). In 1995, the government removed the necessity to receive a social work education.
to become a probation officer; for probation the age of professionalism was giving way to the age of managerialism (see Worrall 1997; esp. Part 2).

The Criminal Justice Act 1991 also allowed a range of ‘additional requirements’ to be attached to Probation Orders, including requirements as to activities to be undertaken, activities to be refrained from, attendance at a probation centre, a specified residence, or treatment for drugs and alcohol dependency. These additional requirements could last for a maximum of 60 days, but this could be extended in the case of the sex offender (Criminal Justice Act 1991, Sch. 1, Part II, para. 4); offenders could also be required to attend for psychiatric treatment.

The sort of ‘additional requirements’ a sex offender might expect to see could include:

- Not to seek or undertake employment which would bring the offender into direct contact with young people under the age of 16 years.
- Not to receive visits at home from any child under the age of 16 years and not to visit the home of any child without prior permission from the supervising officer.
- Not to undertake any leisure pursuit or hobby which brings the offender into direct contact with any child.
- To reside where approved by the supervising officer.
- To attend group work sessions to confront sex offending, and not to have any contact with group members between sessions, etc. (see HMIP 1998: para. 4.31).

Achieving compliance and ensuring enforcement of orders and any additional conditions became progressively more central to probation work; probation officers were encouraged to be tougher and to return offenders to courts more readily if in breach of orders (ibid.: D21ff).

Probation officers could carry out individual one-to-one work with the offender or, increasingly, could become ‘case managers’ who involve others in different parts of the work. Specialist workers with sex offenders carried out both ‘direct’ and ‘indirect’ work as advisers to colleagues.

Community-based treatment for sex offenders could be group work carried out on an interdisciplinary basis by probation, social services and voluntary agencies (ACOP 1996). The Home Office commissioned an independent evaluation of these community-based treatment programmes through its Sex Offender Treatment Evaluation Project (STEP) study. Reports were generally favourable:

While offenders became more able, after treatment, to admit to having planned their sexual offences and have an improved appreciation of their offence antecedents, there was little evidence that they had developed skills to cope with ‘risk’ situations in the future.

(Beckett et al. 1994; see also Barker and Morgan 1993)
HM Inspectorate of Probation was able to report more positively with the publication of a thematic report on the supervision of sex offenders. High levels of ‘rigour’ and ‘vigilance’ were noted with just a few gaps, such as the lack of provision for adolescent sex offenders and a lack of integration with prison treatment programmes, to take away from the overall good impression (HMIP 1998). Home Office Minister Joyce Quinn said:

“This report is a testament to the dedication and professionalism of probation staff and sends a clear and reassuring message to the public that sex offenders are being supervised to an excellent standard in the community.  

(Home Office 1998b)"

The Criminal Justice Act 2003 (s. 177) sought to simplify the orders of the court by creating Community Orders. The Community Order contained ‘requirements’ within them to address the persons’ offending behaviour. These ‘requirements’ included:

- an unpaid work requirement (as defined by the Criminal Justice Act 2003 section 199–200),
- a rehabilitation activity requirement (s. 200A – added by the Offender Rehabilitation Act 2014 s. 15),
- an activity requirement (s. 201),
- a programme requirement (s. 202),
- a prohibited activity requirement (s. 203),
- a curfew requirement (s. 204),
- an exclusion requirement (s. 205),
- a residence requirement (s. 206),
- a mental health treatment requirement (s. 207),
- a drug rehabilitation requirement (s. 209),
- an alcohol treatment requirement (s. 212),
- a supervision requirement (s. 213),
- in a case where the offender is aged under 25, an attendance centre requirement (s. 214).

**Suspended Sentence Orders**

The Criminal Justice Act 2003 (ss. 189–194) introduced the Suspended Sentence Orders. When a Crown Court imposed a custodial sentence of between 14 days and 12 months (or six months in the magistrates’ court), the court could suspend the sentence for up to two years. This meant that the offender did not go to prison but was given the chance to stay out of trouble as long as they complied with any of the specified same 12 ‘requirements’ available to a Community Order (see above). If the offender does not comply with the requirements or is convicted of another offence during the suspension period,
they could be returned to court and sentenced to the original custodial term in addition to any sentence they got for the new offence.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 increased the length and flexibility of Suspended Sentence Orders, so that judges have more options when sentencing offenders whose crimes merit custody, but whose circumstances mean that it should not be served immediately. It is now possible for courts to suspend sentences of up to two years in prison (s. 68). This has the advantage that suspension is now an option for offenders who have committed a crime that on the face of it deserves a substantial period of custody, but whose circumstances make suspension appropriate. The Act also removed the necessity to comply with any ‘requirements’ which became discretionary add-ons.

Breaches of Suspended Sentence Orders could still result in a return to court but whereas previously a breach resulted in the imposition of the custodial sentence or the amendment of the community requirement, the Court now has the power to impose a fine of up to £2,500 as an alternative.

**Electronic monitoring**

An adjunct to probation supervision is that of electronic monitoring or ‘tagging’ of offenders; from the outset, sexual offenders were seen as candidates for tagging (see ‘Rapists tagged for life’ *Today*, 27 July 1989). When electronic monitoring originally became a possibility, there was talk of it being used in its own right as a stand-alone technique. Today, there is a consensus that it needs to be accompanied always by appropriate supervision arrangements (Whitfield 1997).

Experiments with the electronic tagging of offenders had been tried in 1989–90 and again in 1995. Systems generally worked on the basis of a person being subject to a curfew requiring him or her to be at home during certain hours of the day, and this requirement could be confirmed by a monitor permanently attached to the wrist or ankle and equipment placed in the home, which ‘reported’ to a local control centre. The first experiments had proved problematic, but later pilots looked more promising (Mair and Mortimer 1996) and in late 1997, the government announced plans to extend the use of tagging to those on bail, fine defaulters, juveniles and persistent petty offenders; the original legal arrangements were put into the Criminal Justice Act 1991, s. 13 and the Crime and Punishment (Scotland) Act, s. 5 (Home Office 1997a).

Further developments for tagging might include using GPS technology already in use for mobile phones to devise systems for tracking offenders across wider geographical areas, rather than just confirming their whereabouts at a given point (‘500 paedophiles to be tracked by satellite tags’, *The Observer*, 21 September 2003). Hertfordshire Police have reportedly been trialling such equipment and the South London and Maudsley NHS Trust has used the technology to monitor patients released from psychiatric units (Whitehead 2012); but progress has not been without its difficulties (Travis 2014b).
In the case of sex offenders, the piloting of so-called ‘reverse-monitoring’ systems might also offer new options. In the USA, reverse-monitoring has been tried in domestic violence cases, giving the potential victim – usually a woman – a device in her home that is triggered off by the approach of a person who is tagged. It is not too fanciful to imagine, for example, a school having such a device to give warning when a tagged sex offender came within a certain range of it (see Whitfield 1997: 111–112).

Electronic monitoring is provided by private companies which of itself has caused some problems when it came to light that these companies were defrauding the Ministry of Justice when putting in their payment claims. Claims were being made on offenders still in prison, some who had left the country and some who were even dead (Barrett 2013).

**Custodial sentences**

Custodial sentences means a period of imprisonment and they may be divided into three categories – determinate, indeterminate and life sentences.

**Determinate sentences**

When an offender is given a determinate sentence it means a fixed period of time in custody has been decided on.

Sentences of less than 12 months had meant for many years the person was normally released automatically halfway through the sentence and with no follow up supervision. This changed in February 2015 when the Offender Rehabilitation Act 2014 was implemented. The new Act extends statutory supervision after release to the estimated 50,000 offenders a year who are released from short prison sentences of less than 12 months. The Offender Rehabilitation Act also introduced a new Rehabilitation Activity Requirement that can be imposed on offenders serving sentences in the community.

For prison sentences of 12 months or more the person spends the first half of the sentence in prison and the second half in the community ‘on licence’. Half of the sentence is served in custody and half of the sentence in the community on licence and under supervision by the probation service. If they break any licence conditions – e.g. they commit another crime – they could go back to prison.

**Extended determinate sentences**

The Extended Determinate Sentence was introduced specifically for violent or sexual offenders on 3 December 2012 (Legal Aid Sentencing and Punishment of Offenders Act 2012 s. 124 amending the Criminal Justice Act 2003 with new sections 226A (for adults) and 226B (for persons under 18) and new Schedule 15B.
The Extended Determinate Sentence may be imposed where the offender is

- guilty of a specified violent or sexual offence;
- the court assesses the offender as a significant risk to the public of committing further specified offences;
- a sentence of imprisonment for life is not available or justified; and
- the offender has a previous conviction for an offence listed in schedule 15B to the Criminal Justice Act 2003 or the current offence justifies an appropriate custodial term of at least four years.

Schedule 15B lists over 40 sexual and violent offences. These sentences were introduced to provide extra protection to the public from sex offenders where the court has found that the offender is dangerous and an extended licence period is required to protect the public from risk of harm. The judge decides how long the offender should stay in prison and also fixes the extended licence period up to a maximum of eight years. The offender will either be entitled to automatic release at the two-thirds point of the custodial sentence or be entitled to apply for parole at that point.

**Indeterminate sentences**

Some sex offenders leaving prison have been considered to be still dangerous and liable to reoffend. In the late 1990s policy-makers started to look at the possibility of some form of ‘indeterminate sentences’ for those people, which would result in their release only when the risk they pose had been reduced and they were no longer considered dangerous.

Minister of State at the Home Office, Alun Michael acknowledged the seriousness of the problem and said the government ‘was looking closely at the scope for further action on mental health and the criminal law to safeguard the public from people with apparently untreatable psychopathic disorders, particularly in relation to sexual offences’ with one of the options being ‘the possibility of using indeterminate sentences’ (Hansard House of Commons Debates, 7 July 1997, cols. 748–749).

The terms ‘personality disorder’ and ‘anti-social personality disorder’ had been around for some time, but the addition of the word ‘severe’ now found favour, and not least when applied to sex offenders. The dilemma was that those with ‘severe personality disorders’ might not be detained for mental health treatment and might not be arrested because they had committed no crime, although, given time, they almost certainly would – including possibly a sexual crime. Although it meant anticipating crimes before they were committed and taking action against people who had not actually done anything, the search was on for a ‘third way’ to deal with people with severe personality disorders.

Various states in the USA had by this time introduced ‘civil commitment’ laws to achieve this end. Sexual offenders, coming to the end of a prison
sentence (imposed by a criminal court) but still assessed as potentially dangerous and continuing to pose a risk, could be referred to a civil court to be detained by ‘civil commitment’ when their prison sentence had ended. Washington State had been amongst the first to pass such laws in 1990, but in 1997, when Kansas appealed to the Supreme Court for a test of the legitimacy of what they were doing, some 38 other states joined them in the appeal. The Supreme Court duly ruled in their favour in the case of Kansas v. Hendricks (Kansas v Hendricks 521 U.S. 346 [1997]; see also Janus 2000; Jackson and Covell 2013). ‘Civil commitment’ has never been seriously considered in the UK and the position was clarified by the UK Supreme Court in 2012.

Shawn Eugene Sullivan, a US citizen aged 43 living in the UK was wanted to face charges of child sexual offending back in the USA. The American authorities applied for his extradition and Home Secretary Theresa May signed an Extradition Order on 10 February 2011 allowing the extradition. Sullivan successfully appealed against the Order. Part of his appeal was premised on the possibility that he might eventually have been the subject of a ‘civil commitment’ and this would be a ‘flagrant denial of his rights’ under Article 5 of the European Convention on Human Rights; his appeal was upheld and Sullivan was not extradited (Sullivan v The Government of the USA and the Secretary of State for the Home Department [2012] EWHC 1680 (Admin)).

**Imprisonment for Public Protection (IPP)**

The Criminal Justice Act 2003 did introduce new measures to indefinitely detain those assessed as posing a risk and being ‘dangerous’ but only after they had committed a specified sexual or violent offence. The specified offences were listed in Schedule 15 of the Act and the sentence imposed on an adult known as ‘Imprisonment for Public Protection’ (IPP) (s. 225). A further sentence ‘Detention for Public Protection’ (DPP) was available for people under 18 (s. 226).

The court had to make the risk assessment and:

> take account of all such information as is available to it about the nature and circumstances of the offence … any pattern of behaviour of which the offence forms part, and … any information about the offender which is before it.

(Criminal Justice Act 2003, s. 229)

Any release from ‘Imprisonment for Public Protection’ was only after review by the Parole Board (Schedule 18).

The IPP was soon identified as one of the causes of the growth in the prison population that took place in the years following the passing of the 2003 Act. Whilst the courts were happy to commit people for indefinite IPP, those with the authority to release these prisoners were less forthcoming; the result was far
more IPP prisoners being held than had been anticipated and criticisms of the new sentence started to mount (see e.g. Jacobson and Hough 2010).

Another problem with the IPP was identified. It was argued that the government having set up this system of indefinite imprisonment then had a duty to help prisoners reach a stage whereby they could legitimately apply for release because they were no longer a risk. But the reality was that IPP prisoners were unable to access sufficient forms of treatment programmes or courses that would enable them to provide evidence to the Parole Board that they were now fit for release. The argument was taken to court and the courts agreed ([Wells v Parole Board [2009] UKHL 22]). The European Court of Human Rights also agreed that no realistic consideration had been given to the impact of the sentences of IPP when they were introduced; Article 5 (the right to liberty) of the European Convention on Human Rights had been breached (James, Wells and Lee v UK ECHR 340 (2012)).

The court’s decisions signalled the end of the IPP project and the sentence was eventually repealed by the Legal Aid Sentencing and Punishment of Offenders Act 2012 s. 123. The government’s response to this setback in the courts was to introduce new forms of Life Sentences and Extended Determinate Sentences. These two sentences were introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which made the necessary amendments to the Criminal Justice Act 2003.

**Life sentences**

Life sentences are also indeterminate unless they are designated as full-life sentences. The mandatory life sentences available to the courts in England and Wales are now four in number:

- Imprisonment for life is the only sentence that can be imposed on anyone over the age of 21 who is convicted of murder and was made mandatory at the same time as ‘capital’ punishment was abolished in 1965.
- Detention during Her Majesty’s Pleasure is the mandatory sentence for a person convicted of murder who was aged 10 or over but under 18 at the time of the offence.
- Custody for life is the mandatory sentence for a person aged 18 or over but under 21 at the time of the offence who is convicted of murder and sentenced while under 21. These sentences for murder may be for crimes that may or may not have had a sexual component.
- Life sentence for someone who has committed a second ‘listed offence’.

The last of these sentences was a new mandatory life sentence for serious sexual offenders introduced by the LASPO Act 2012 s. 122 which inserted a new s. 224A and Schedule 15B into the Criminal Justice Act 2003. This new sentence became available for offences committed after December 3, 2012 and
is mandatory for someone who has committed a second ‘listed offence’ i.e. a second very serious sexual or violent offence as listed in the new Criminal Justice Act 2003 Schedule 15B.

Two conditions have to be met:

1 The ‘offence condition’:
   a a person aged 18 or over is convicted of an offence listed in the new Schedule 15B of the Criminal Justice Act 2003;
   b the offence is such that the court would have imposed a determinate sentence of 10 years or more (including an extended sentence where the custodial term would have been 10 years or more), and
   c the offender has a previous conviction for an offence listed in Schedule 15B for which he received a life sentence (with a minimum term of at least 5 years) or a determinate sentence of 10 years or more (including an extended sentence where the custodial term was 10 years or more).

2 The ‘previous offence condition’:
   a at the time the offence was committed, the offender had been convicted of an offence listed in Schedule 15B, and
   b a relevant life sentence, or a relevant sentence of imprisonment or detention for a determinate period, was imposed on the offender for the previous offence.

Schedule 15B lists 40 plus sexual and violent offences (England and Wales) that will be applicable.

Where the court determines that the provisions of s. 224A are applicable, the court must impose a life sentence unless the court is of the opinion that there are particular circumstances which (a) relate to the offence, the previous offence, or to the offender, and (b) would make it unjust to do so in all the circumstances (s. 224A(2)).

An automatic life sentence used to be available for anyone who was 18 or over on or after 1 October 1997 who was convicted of a second serious violent or sexual offence (Crime (Sentences) Act 1997). The automatic life sentence was replaced by the indeterminate sentence of Imprisonment for Public Protection (IPP) for offences committed on or after 4 April 2005. Automatic life sentence prisoners will continue to be in the system for some years to come.

Courts have the discretion to impose sentences of imprisonment for life for adults (over 21) convicted of a serious offence, e.g. manslaughter, attempted murder, rape, armed robbery, arson etc. Similarly offenders under 18 committing the same offences may be sentenced to detention for life or custody for life if aged 18 or over but under 21 at the time of the offence.
The agencies of penal policy

The two prime agencies of penal policy are the Prison Service and the Probation Service.

The prison service

Sex offenders in prison have traditionally been given a rough ride. For many years they were offered no particular treatment programmes, were widely despised by other prisoners and received open hostility if their victim had been a child. The prison service often had to class them as ‘vulnerable prisoners’, while other prisoners classed them as ‘nonces’:

hostility towards ‘nonces’ from ‘straight’ prisoners is routine. It is usually expressed in straightforwardly vehement moral terms … to emphasise a sense of frustration at having to share their living space with men whose crimes they consider monstrous. By tradition ‘nonces’ are expected to know their place and keep out of the way of ‘straight cons’.

(Sparks et al. 1996: 179)

Faced with such a threatening environment, the sex offender, as a ‘vulnerable prisoner’, has often had to be ‘removed from association’ with other prisoners for his own protection; this used to be done under Prison Rule 43 which became Rule 45 under the revised Prison Rules introduced 1 April 1999 (S.I. 1999, No. 728).

The propensity for the sex offender to turn in on himself in the face of constant harassment and bullying has also been noted. Suicides and self-inflicted injury have been a recurring factor of prison life. The prison service has tried to address the problem and has given guidance to officers on suicide risk indicators; one such indicator being ‘a conviction for homicide, sexual offences or offences against a child’ (HM Prison Service 1989: para. 8; see also NOMS 2013). Conversely suicides in prison, especially amongst young men, often follow on from the prisoner having been the victim of childhood sexual abuse (INQUEST 2015).

Prison sex offender treatment programmes

What many in the prison service wanted in the 1980s were some systematic treatment programmes for sex offenders. HM Prison Whatton near Nottingham became a specialist resource for sex offenders since 1990. Some other programmes did exist, but it was all a bit of a hit and miss. The Home Office actually claimed as many as 60 programmes existed at this time, but ‘they have failed to mention that “treatment” in this respect might simply mean the provision of social skills training by a part time teacher for an hour, once each week’ (Seven 1991). What was needed was a fully worked out strategy.
The prison service strategy for sex offenders, including their treatment, was unveiled in June 1991. The main features of the strategy were to:

- hold sex offenders in fewer prisons to enable consistency of approach, effective use of skills and resources in working with them and the promotion of a safe and supportive environment to counter the worst excesses of violence towards them;
- provide Sex Offender Treatment Programmes (SOTPs);
- give priority to treatment for those likely to represent the greatest risk to the community on their release; and
- assess which prisoners are most in need of treatment in terms of previous offending patterns.

The SOTPs were to be of two kinds, with a ‘Core Programme’ for most offenders and an ‘Extended Programme’ for the more serious offenders. Both programmes were to be built around group work based on cognitive-behavioural principles to reduce the risk of offending (HM Prison Service 1991; Guy 1992).

The prison service has put a lot of effort into its SOTPs to make them meaningful and practical. Teams of staff involving psychologists, probation officers, prison officers and others are carefully selected and trained, and the programmes are monitored for ‘programme integrity’ to ensure that they are delivered as designed.

The ‘Core Programmes’ were seen as a ‘responsibility-building’ strategy, which may not ‘cure’ sex offenders, but should develop their self-control and help them recognise situations where offending might take place. Men with a mental illness, insufficient intelligence or assessed as having ‘severe personality disorders’ were debarred from the programme (HM Prison Service 1996: 2).

Other programmes have been added since the strategy was first drawn up. The ‘Better Lives Booster’ programme was a follow-up to the ‘Core Programme’ for prisoners coming into the last 12 months of their sentence and needing some revision of key treatment concepts and a rehearsal of their relapse prevention plan. An ‘Adapted Core Programme’ was also designed to help those prisoners with learning and communication difficulties (HM Prison Service 1998; see also MoJ 2010b).

The Ministry of Justice now lists no less than 14 different treatment programmes for sex offenders under its accredited Offender Behaviour Programme including specialist courses for those with learning difficulties, those who commit Internet offences, etc. (for further details see https://www.justice.gov.uk/offenders/before-after-release/obp, accessed 20 January 2014; see also Hansard House of Commons 16 Jun 2014: Cols 470W – 476W).

Evaluation of the prison service SOTPs offered to child sex offenders has found evidence of success. As the prison service itself had predicted, an outright ‘cure’ was never a realistic possibility but the SOTPs did make some progress:
• there was an increase in the level of admittance of sexual offending behaviour;
• offending attitudes were reduced and there was more awareness of the impact on victims;
• overall levels of social competence were increased;
• 67 per cent of the sample evaluated were judged to have shown a treatment effect; and
• longer term treatment programmes produced better results (Beech et al. 1998).

In general terms the Ministry of Justice has declared itself content with the SOTP work being carried on in its prisons:

Public safety means effective management and reduction of risk both in custody and in the community. Sex offender treatment programmes, for example, have proven their worth in reducing the risks these offenders pose to the public, and we remain committed to providing programmes to reduce sexual and violent offending.

(MoJ 2010c: para. 181)

The lack of SOTPs in some prisons has caused problems. When the Imprisonment for Public Protection (IPP) sentences were challenged in court it was partly on the grounds of no Programmes being available (see earlier). A 2012 Inspectorate report on Wakefield prison found almost half the 750 men held there, many of whom were serious sex offenders, were in denial about their crimes. Nothing was available for these men despite accepted expert opinion that useful work can be done even with men in complete denial. The report criticised the decision to concentrate so many men who refuse to take responsibility for their crimes at Wakefield (HMIP 2012: 17).

The Ministry of Justice has now created an internal Sex Offender Management Board to increase the availability of treatment programmes (BBC News [2013] ‘HMP Whatton sex offenders “wait two years for treatment”’, 29 October, available at http://www.bbc.co.uk/news/uk-england-nottinghamshire-24723605, accessed 23 March 2015) but problems continue to be reported (Dugan 2014).

One controversial element of work with sex offenders in prisons was the use of the device known as the penile plethysmograph (PPG). Staff assessing sex offenders, either in advance of a treatment programme or during a programme, have sometimes used a PPG. This device consists of a loop of rubber tubing containing a mercury column which is placed around the subject’s penis. Instruments monitor the electrical resistance of the mercury as the subject’s penis volume increases in response to stimuli he is shown. The PPG had been used by medical staff at Wormwood Scrubs Prison between 1970 and 1981, when questions were asked about the ethics of its use. The Prison Reform
Trust has described it as ‘a degrading breach of human rights’ (PRT 1995). More recent reports suggest the PPG is still used in some UK prisons:

In North America the PPG is routinely used in many treatment programmes, including those for adolescent offenders, but its use in Britain is limited, being used in some prisons and psychiatric facilities for mentally disordered offenders.

(Craig et al. 2008: 96)

The probation service

The probation service has traditionally been the lead agency for supervising offenders in the community. Probation supervision was offered in place of a sentence; people were ‘on probation’ with the Probation Officer offering to ‘advise, assist and befriend’. The Probation Service was expected to: prepare the way for the offender’s return to the community, and to give him that guidance, moral support and practical help which will assist him to get through the difficult initial period, and to face the longer-term problems of resettlement in normal working and social life.

Probation Officers

The late 1980s and early 1990s saw attempts to toughen probation and to prioritise ‘public protection’. The Home Office suggested that the aims of probation supervision should be:

- Protection of the public;
- Prevention of re-offending; and
- Successful re-integration of the offender in the community

and that of these three aims ‘the protection of the public must be the first thought in the supervising officer’s mind’ (Home Office 1990a: paras 7.3–7.4). Within a few years reports suggested that ‘probation services were successfully developing their assessment and supervision of sex offenders in response to [public and media] expectations’ (HMIP 1998: para. 1.3).

Probation officers have continued to provide community-based sex offender treatment programmes for appropriate offenders; mostly these are general sex offender programmes with different pathways suitable for all levels of risk (see MoJ 2010b: para. 6.5)

The National Probation Service was now formed as a unified service for England and Wales, and Probation Boards introduced (Criminal Justice and Court Services Act 2000 Part One). The idea that the probation service would benefit from integration with the private sector and the voluntary sector started to be heard and Probation Trusts introduced to replace Probation Boards as part
of the move towards opening up the probation services market; Probation Trusts were created by the Offender Management Act 2007.

In 2012 the government’s thinking on the future of probation was outlined in the document *Punishment and Reform: Effective Probation Services*; the high reoffending levels for all offenders – not just sex offenders – were central to the new thinking:

> to free up a traditional, old fashioned system and introduce new ways of operating and delivering that will help drive a reduction in reoffending… the prize is a more dynamic and effective Probation Service – one that keeps the best of the public sector, but that also benefits from the innovative thinking and flexibility of business and charities.

(MoJ 2012b: 3)

The Crime and Courts Act 2013 s. 44 and Schedule 16 implemented one proposal of *Punishment and Reform: Effective Probation Services* which sought to ensure a clear punitive element in every community order made by a court.

In 2013 the number of people being supervised by the probation service after a custodial sentence has been fairly constant over the last seven years:

> ranging from between 2,750 and 3,024. As a proportion of all offenders subject to post release supervision the number has fallen from 11% in 2005 to 7% in 2011.

(MoJ et al. 2013: 52)

**Approved Premises**

Approved Premises is the formal name given to probation hostels and bail hostels (Offender Management Act 2007 s. 13). The use of these hostels run by the probation service for housing offenders, including sex offenders, is seen as an extension of supervision arrangements rather than simply a form of housing. Similar hostels are often provided by the voluntary sector but strictly speaking they are not Approved Premises in the same sense, even though they may be housing people supervised by the probation service.

Staff in Approved Premises can monitor and make risk assessments which are constantly discussed with the probation officer. The problem has sometimes been the reluctance of hostels to accommodate sex offenders when they know it will cause public disquiet in their local community and ultimately could distract them from carrying out their work with other offenders (see e.g. HMIP 1998: paras. 4.67–4.73).

The problem for the hostel and the probation service is to get the correct balance between supervision and allowing the ex-prisoner a degree of independence. In the case of Anthony Rice a 48-year-old registered sex offender, the balance was not achieved and he went on to commit further sexual assault
and a murder within six months of taking up residence in a voluntary sector hostel (HMIP 2006).

In June 2006 amidst a degree of public concern Home Secretary John Reid ordered that all convicted sex offenders in Approved Premises located near schools should be moved from those hostels to hostels in less proximity to a school. Some 70 people were so moved from 11 hostels deemed to be in the wrong place even though it disrupted some of their supervision and treatment programmes (Doward 2006).

A BBC Panorama programme also in 2006 again revealed a lack of supervision by hostels including that of sex offenders. ‘Exposed: the Bail Hostel Scandal’ was broadcast 14 November 2006 and involved five months of secret filming in two hostels in Bristol. Child sex offenders were filmed talking to children and staff were filmed admitting they did not know where their residents were during the day (Oliver 2006).

**Transforming rehabilitation**

Throughout the noughties there was continuing concern expressed about the number of offenders who re-offended within a few years of leaving prison. This was not a concern limited to sexual offenders but covered all types of offenders. Various reports examined ways to improve this re-offending rate (e.g. Cabinet Office 2002). The improved rehabilitation of offenders became a political priority.

The Carter Report (2003) opened the debate. The strategy that emerged had a number of themes to it. Designated ‘resettlement prisons’ were to be formed and rehabilitation support was to be provided to short-term prisoners. The probation service was to be restructured and reduced and the private sector invited in to provide probation services; in effect there would be a public and a private probation service. The private probation service would be provided by companies who would be ‘paid by results’.

The coalition government produced a Strategy Document called *Transforming Rehabilitation: a strategy for reform* which confirmed the way forward by extending rehabilitation to offenders released from short custodial sentences; at the time those sentenced to 12 months or less got no post-custody supervision; opening up the market for the competing delivery of rehabilitation services for the majority of offenders with providers to come from the private and voluntary sectors and by introducing a ‘payment by results’ regime. The Probation Service as we had known it would be reduced to 30 per cent of its previous size and be focussed on protecting the public and managing offenders who pose the highest risk of serious harm; this included sex offenders. For some it was not an attractive prospect:

bleak visions of a rump [probation] service, shorn of its most positive activities whose main functions will be to maintain surveillance and control
of offenders, carry the risks they pose, and take the blame when things
go wrong.

(Maguire 2012)

The Offender Rehabilitation Act 2014 was to bring about the first of these
changes (post-custody supervision for short-term prisoners). Probation Trusts
were to be wound up and the National Probation Service (NPS) taken in as a
part of NOMS; England and Wales was to be divided into 21 designated
Contract Package Areas (CPA) each with its own set of ‘resettlement prisons’.
Probation services would be delivered through Local Delivery Units (LDU)
and alongside them would be the new Community Rehabilitation Companies
(CRC) in the private sector.

The scheduled date for the existing contractual arrangements with Probation
Trusts to end was to be April 2014; the date was later put back to 1 June 2014.
A number of commentators noted that that was a very short space of time for
such large changes (see e.g. Maguire 2012). Senior officials in the Ministry of
Justice were quoted as calling the transformation project a ‘complex large scale
change programme to be completed within an aggressive timetable’ (Travis 2013b
emphasis added).

**Post-custodial ‘supervision’ of the sex offender**

The sex offender in the community following a period in prison is strictly
speaking ‘supervised’ by the probation service and ‘managed’ by the police
service but even before his or her discharge a preliminary check is made on the
address that person is going to stay at if their offences were against children.

**Checking home arrangements**

Before a child sex offender leaves prison, a check is made on the home address
he says he will be going to live at to ensure the safety of any children who may
be living there. The system whereby this is done applies to anyone who has
committed any offence against a child and not just sexual offences. Originally
the systems covered any offence against a child that was listed in Schedule One
to the Children and Young Persons Act 1933.

The origins of these checks on home circumstances can be traced back to the
1960s, when a Home Office circular confirmed that the police would notify
local authorities when a person was convicted of incest, a child sexual offence
or any offence involving cruelty or ill-treatment of a child, whenever it was
believed a child at risk was still living in the household; the notification took
place whether or not the sentence was a custodial one. The circular also noted
that it had been the practice ‘for many years’ to notify local authorities when
people convicted of incest offences were leaving prison (Home Office 1964:
para. 6–7).
These systems were reviewed in 1975 after the death of another child at the hands of her parent. John Auckland from South Yorkshire had served time in Durham Prison after killing his 15-month-old daughter in 1968. On his release, Auckland had gone on to kill a second daughter, only nine weeks old, in 1974. One feature that bothered the committee of inquiry set up to examine what had happened was the lack of communication between the prison and community-based services, which could have alerted practitioners that a child was potentially at risk; the committee recommended:

when a prisoner is discharged who has been serving a sentence of an offence against a child we would like to see more information passed to agencies outside the prison so that they may be aware of any potential risk and takes steps to guard against it.

(DHSS 1975: para. 151)

The new arrangements now entered into consisted of a triangular exchange of information between prison, probation service and social services departments to identify any possible child protection questions arising from the address at which a prisoner says he is going to live on release (DHSS 1978). These arrangements were revised in 1994 (HM Prison Service 1994) and are now to be found in the Public Protection Manual (available at https://www.justice.gov.uk/offenders/public-protection-manual, accessed 31 January 2015).

**Early release**

Arrangements for leaving prison may include an element of ‘early release’, accompanied by a form of continued supervision. In Chapter 3 we noted the Victorian ticket-of-leave system and the Borstal innovation of licensed release. For most of the twentieth century prisoners were given ‘remission’ on their sentences and since 1967 ‘parole’ arrangements allowed prisoners to be released ‘early’.

The Criminal Justice Act 1991 tried to clarify the arrangements for England and Wales with its philosophy of a sentence being part custodial and part community based. The offender was not getting out early, but was still having a form of ‘punishment’ in the community by having his or her freedom curtailed by continued supervision. Sentences had different forms of release:

- **Automatic Unconditional Release Scheme** – was for people sentenced to less than 12 months who were released automatically and unconditionally without supervision at the halfway point of the sentence.
- **Automatic Conditional Release (ACR)** – for people sentenced to 12 months to four years in custody, release was to be automatic on licence at the halfway point of their sentence on their Conditional Release Date. These prisoners were to be subject to compulsory supervision.
Discretionary Conditional Release (DCR) – for people sentenced to four years or more (but not life) for offences committed were subject to discretionary conditional release (DCR); the prisoner becomes eligible for release at the halfway stage but release is not automatic, but at the discretion of the Parole Board. Any such release is on licence and the period of post-custody supervision could be extended to a maximum of 10 years if the original offence was a sexual offence (Criminal Justice Act 1991 Act as amended by the Crime and Disorder Act 1998, ss. 58–66 (England and Wales) and ss. 86–88 (Scotland)).

**Home Detention Curfew (HDC) electronic monitoring**

One further attempt to manage the release of prisoners back into the community in a structured way was the decision to use electronic monitoring to allow prisoners to complete their sentences in the community. Until now, electronic monitoring had been restricted to a condition of bail or as an enforcement of curfews (see earlier). The idea now was to use it on prisoners in custody in England and Wales to help them out of prison.

The use of electronic monitoring in this way was known as the Home Detention Curfew (HDC) scheme and provisions for it had been included in the Crime and Disorder Act 1998, ss. 99–105. Three private companies provided the service covering the North, the South and the Midlands and Wales respectively. The scheme was launched on 28 January 1999, with all prisoners being first subject to a risk assessment and a home circumstances report by the probation service (*Hansard House of Commons Debates 18 January 1999, col. 353 WA*).

Sex offenders required to register with the police could originally be eligible for HDC but only in ‘exceptional circumstances’. Any such offenders were to be subjected to a ‘rigorous enhanced risk assessment’ and would only be released following authorisation by the Director General of the Prison Service (*Hansard House of Commons Debates, 25 February 1999, 72369 WA*). This option was later completely closed off and ‘registered’ sex offenders are now statutorily debarred from even being considered eligible for HDC (Criminal Justice and Court Services Act 2000 s. 65).

**Licence conditions**

All life prisoners may be liable for early release and follow-up licence or supervision in the community. All prisoners may also be liable to ‘extra licence conditions’ being added on to their supervision arrangements. The imposing of extra licence conditions is made after discussion between the supervising authorities and the prison governor or Parole Board.

The 1995 edition of the National Standards listed the sort of conditions that could be imposed, and these included conditions of particular relevance to sex offenders:
not to engage in any work or other organised activity involving a person under a given age, either on a professional or voluntary basis;

- not to reside in the same household as any child under a given age; or

- not to seek to approach or communicate with family members including children without permission of the supervising officer (Home Office et al. 1995: s. 7, Annex A).

The decision to add on extra licence conditions for sex offenders is made after an assessment of the prisoner’s progress in custody and the likelihood of any continuing risk he may pose. The decision also takes into account the views of the offender’s victim or victims; although this is only a viewpoint and the victim has no final say in the matter.

**Polygraphs**

A more innovative parole condition for some sex offenders has been the introduction of the requirement to submit to examination by a polygraph or ‘lie-detector’. The probation service had begun testing polygraphs on volunteer supervisees as early as 2003 (Hansard House of Commons Debates 13 October 2005 col. 562W). Probation officers reported that this so-called Post-Conviction Sex Offender Testing (PCSOT) in England revealed that new disclosures relevant to treatment or supervision were made in 70 per cent of tests, compared with 14 per cent of non-polygraphed offenders. The odds of a polygraphed offender making a disclosure relevant to his treatment or supervision were 14 times greater than they were for non-polygraphed ones (Grubin 2006).

The evaluation from the voluntary PCSOT was sufficient to convince the government that mandatory polygraph testing could be introduced and a review of services to protect children from sex offenders also recommended that pilot schemes should test the use of polygraphs as a ‘risk management tool’ (Home Office 2007a: 23). The Offender Management Act 2007 ss. 28–30 duly allowed for people over 18 convicted of sexual offences and on post-custody licences to have conditions written into those licenses requiring them to attend for polygraph testing. The 2007 Act s. 30 prevented any information obtained from a polygraph test from being used in criminal proceedings against the offender or for any re-call to prison or breach proceedings. The law would not be implemented immediately but only after further pilot studies had been carried out.

Further polygraph testing for post-custodial sexual offenders was piloted between April 2009 and October 2011 with equipment and training provided by the University of Newcastle and an evaluation commissioned from the University of Kent. New statutory rules were published to guide the practitioners (The Polygraph Rules 2009 SI no. 619).

The evaluation study found that of the 300 sex offenders who took the tests twice as many made ‘clinically significant disclosures’ to probation staff such as
admitting to contacting a victim or entering an exclusion zone, or thoughts that could suggest a higher risk of reoffending (Gannon et al. 2012).

The arrangements for mandatory polygraph tests to be rolled out across the country were finalised in July 2013. Some 750 high risk sex offenders were reported to be going to be compelled to take routine polygraph tests while they were under the supervision of probation officers (Whitehead 2013). In parliament the figure was put higher at 980 and the tests were to be an integral part of the supervision experience for offenders. Under-Secretary of State for Justice, Jeremy Wright explained:

As part of the supervision of sex offenders, it is not the detection of deception that is the critical factor. It is the information disclosed by the offender before, during or after the polygraph test, which is used to inform decisions about their supervision. In other words, it is less about detecting lies and more about gathering useful information to properly manage risk.

(Hansard House of Commons Debates Third Delegated Legislation Committee 2 July 2013)

The cost of rolling out these new arrangements was said to be in the order of £3 million; training was to be provided by the University of Newcastle and compulsory lie detector testing as a parole condition started from October 2014 (MoJ 2014c).

**Post-custodial ‘management’ of the sex offender**

If the probation officer ‘supervises’ the sex offender in the community the police have acquired the job of ‘managing’ the sex offender in the community. In practice supervision and management seems very similar to the lay person but the law is quite clear that they are different and carried out by different agencies. This police ‘management’ is not part of the sentence but an exercise in public protection.

The police had become custodians of the UK ‘sex offender register’ in 1997 and at the same time acquired the ‘management’ role for sex offenders. People cautioned or convicted for a designated sexual offence were made subject to the register and automatically required to notify the police when their details changed. The police also implement the Child Sex Offender Disclosure Scheme (CSOD) whereby there is an arrangement to disclose information on identified adults to parents or guardians whose children may have close contact with their children. The new duty to hear appeals against lifetime sex offender registration had also fallen on the police (for more on the register and these police ancillary management tasks see Chapter 10 on protection in the community).

**A voluntary sector initiative with sex offenders**

One of the perennial problems for people with convictions for sexual offences coming back into the community from prison has been their resettlement into
an often hostile community. This is a problem for all offenders but the sex offender has his or her own particular problems to deal with. This includes the stigma attached to sexual offending and the probability of being personally known in a small community even without the additional publicity accorded by press reporting of the original court case. The effect can range from feeling uncomfortable just walking in the street, to losing old friends, isolation and through to being subjected to verbal abuse and even physical abuse by strangers.

Some sex offenders in this position find it easier to re-locate to other towns or communities where they are not known and where they feel more secure; this, of course, may also be accompanied by an even greater feeling of isolation, loss of social networks and alienation from the local community.

One initiative using volunteers to try and counter this loss of ‘social capital’ has been the idea of Circles of Support and Accountability (COSA). This initiative, originally from Canada, came to the UK around 2001. The aim is to provide the newly discharged sex offender with a group of people (the circle of volunteers) who will meet with him on a regular basis to offer advice and friendship and whatever support they can to help him make a successful transition to the community and to stop any re-offending. In return the offender is held accountable for his behaviour and will, if necessary, be reported to the Circle’s ‘coordinator’ and in turn to those authorities responsible for his formal custodial aftercare, supervision and management (the police and Probation Service).

The whole enterprise can be envisaged as a series of three concentric circles from the outer circle of the police and probation service through the Circle’s ‘coordinator’ to the inner circle of the five or six volunteers meeting regularly with the offender and with the offender right at the centre; the offender is referred to as the ‘Core Member’ of the arrangements. Formal meetings take place every week between the volunteers and the ‘Core Member’ and this constitutes the heart of Circles of Support and Accountability. These meetings may be complemented by visits to coffee bars, restaurants, ten-pin bowling or any other activities the Circle might agree on and the use of mobile phones enables a degree of contact to continue throughout the week away from the meetings (Nellis 2009; Hanvey et al. 2011).

Evaluations of Circles of Support and Accountability have produced encouraging results and lower re-offending rates (see e.g. Bates et al. 2007 and 2013) and the Circles ‘movement’ has gathered pace across England and Wales guided by a centralised body known as Circles UK to accredit local arrangements (for more details on Circles UK see http://www.circles-uk.org.uk, accessed 5 February 2015).

Scotland has been hesitant about using Circles (see e.g. Armstrong et al. 2008) but a pilot Circle was organised by the NGO SACRO (Safeguarding Communities Reducing Offending) in the Fife area (Armstrong and Wills 2014).
The court has the choice of custodial or community sentences for sex offenders and the amount of ‘personal information’ available on the offender and any risk assessment based on that information will determine which form of sentence is appropriate; mandatory custodial sentences are now prescribed for the more serious sexual offender. The probation service is the agency responsible for ensuring that community sentences are completed and that any conditions attached are complied with; the same agency has responsibility for any post-custody period of ‘supervision’ in the community and, again, for ensuring that any conditions are met. Within a custodial prison sentence, Sex Offender Treatment Programmes are well established and a degree of continuity is now required between the practitioners within the prison walls and those outside to ensure that positive work is carried out. In May 2004 the prison and probation service were brought together as the National Offender Management Service (NOMS) to yet further improve liaison and information flows. The police have a parallel ‘management’ role over sex offenders.
The victims of sexual offending

Introduction

The victims of crime were for many years the ‘forgotten player’ in the criminal justice system whether they were the victims of sexual crime or any other crime. That position has changed over the last 30 years and increasing provisions have been made to assist the victim of crime; additional measures have been made for the victims of sexual crimes. Some politicians have now called for the victim to be made the centre-point of the criminal justice system although such a call has brought its own difficulties.

Throughout this book the victim of sexual crime has been referred to (e.g. see section on ‘special measures’ in Chapter 5). This chapter seeks to focus solely on that victim and the services and entitlements available to him or her.

Compensation schemes

The earliest attempts to help victims were made in the form of financial compensation. This was started in the 1960s to compensate victims of violent crime through the Criminal Injuries Compensation Scheme. This Scheme was made a statutory Scheme by the Criminal Injuries Compensation Act 1995 and reaffirmed by similar 2001 and 2008 Acts. The Scheme is operated by the Criminal Injuries Compensation Authority (CICA) based in Glasgow. Compensation is given to victims of violent crime that includes rape and sexual assault in recognition of a sense of public sympathy for the pain and suffering of the victim; victims can also apply for payments for loss of earnings.

Applicants for Criminal Injuries Compensation are themselves subject to a criminal record check and this has always been the case since the introduction of the Scheme. If a criminal record exists compensation awards may be reduced. One newspaper making their own enquiries found that over two years 29 victims of sexual assaults lost a total of £75,000 because of previous conviction records (Pettifor 2015; see also Mullin 2015).

Financial compensation might also be ordered to be paid directly by the offender in court. Compensation Orders were introduced by the Criminal
Justice Act 1972 s. 1. The prosecution has to demonstrate the loss and produce evidence to this effect. There was a degree of derision in 1993 when a judge in Newport Crown Court ordered a 15-year-old boy to three years’ supervision and to pay his victim £500 compensation ‘to give her a good holiday’ (Sampson 1994: 46). The evidence these days will often be in the form of a statement from the victim detailing the type and extent of personal injury sustained.

In terms of personal injury magistrates will look to their guidelines to ascertain the amount payable up to a maximum of £5000; there is no upper limit on Compensation Orders made in the Crown Court. From 3 December 2012 a court must consider making a Compensation Order in any case where the law empowers it to do so (Legal Aid, Sentencing and Punishment of Offenders Act 2012 s. 63 which inserts section 130(2A) into the Powers of Criminal Courts (Sentencing) Act 2000).

**Organisations for victims**

Women’s Aid, the organisation offering help to women victims of domestic violence, is usually considered to be the first national organisation and campaign group established for victims of crime. Women’s Aid started in 1974 and was soon followed by the first Rape Crisis Centre in 1976; both groups helped the victims of sexual crimes.

Victim Support was the more general voluntary agency for victims of all crimes and individual branches started appearing in the 1970s with the ‘umbrella body’, the National Association of Victims Support Schemes being formed in 1979. Funding now comes from private trusts and the Home Office’s Voluntary Services Unit. In recent years Victim Support has developed services specifically for victims of sexual offences (see more at https://www.victimsupport.org.uk, accessed 5 December 2014).

Since the 1970s more groups have evolved for victims and the terminology ‘the victim’s movement’ started to be used. The Victims of Crime Trust was a charity which started in the 1990s aimed at providing care assistance to victims of all serious crime, as well as raising awareness of the issues that are faced by victims of sexual crimes. It was wound up in 2010.

Self-help groups for those who have been abused have started to be formed and now include such bodies as NAPAC (National Association for People Abused in Childhood). NAPAC offers a range of direct services to ‘survivors’ as well as campaigning for and representing their interests among those who are in a position to help improve their lives. The term ‘victim’ has been questioned by campaign groups for those experiencing sexual abuse and many now prefer the word ‘survivors’ (for more on terminology see later).

The group known as ‘One in Four’ offers support for men and women who have experienced sexual abuse and sexual violence. They take their name from research that has shown that one in four children will experience sexual abuse before the age of 18. Their website reports that:
One in Four is an organisation run for and by people who have experience of sexual abuse. We exist to give voice to the experience of people who have been sexually abused and to provide a space which by its very existence challenges feelings of shame and self-blame.

(http://oneinfour.org.uk/wordpress/?page_id=47, accessed 5 January 2015)

There are self-help groups for those sexually abused as children or adults by priests and members of churches. MACSAS (Minister and Clergy Sexual Abuse Survivors) is a support group for women and men from Christian backgrounds who have been sexually abused by Ministers or Clergy.

The Survivors Trust (TST) is a national umbrella agency for over 135 specialist rape, sexual violence and childhood sexual abuse support organisations throughout the UK and Ireland. They state that they:

provide support and networking for member agencies; deliver accredited training; raise awareness about rape and sexual abuse and its effect on survivors, their supporters and society at large; promote effective responses to rape and sexual abuse on a local, regional and national level.


As a response to the growing national concerns about child sexual exploitation by gangs of youths the government has directed additional funds to voluntary organisations supporting young people who have been the victims of sexual violence or exploitation. An amount of £1.2 million was allocated in 2012 for a three-year period from the ‘Ending Gang and Youth Violence’ programme (Home Office 2013a).

On a wider front the Home Office established two further national sources of funds to support victims of child and adult sexual abuse across England and Wales. The Child Abuse Inquiry Support Fund of £2m and the Child and Adult Victims of Sexual Abuse Support Fund of £2.85m were both overseen by a Sexual Abuse Fund Oversight Board chaired by the Norfolk Police and Crime Commissioner Stephen Bett; bidding was invited in early 2015 (see http://www.norfolk-pcc.gov.uk/sexual-abuse-victims-fund, accessed 20 March 2015).
Victims Charter

Home Office recognition of victims came in form of the Victims Charter. The first Victims Charter was published in 1990 (Home Office 1990c) and further editions were published in 1996 and 2002. The Charters explained what should happen after an offence has been reported to the police and the standard of service that could be expected and also placed a responsibility on the probation service to contact the victims of life-sentence prisoners to ascertain whether they had any concerns about conditions attached to an offender’s release. The Charters could not be said to represent any ‘rights’ for victims because they had no legal standing and were not enforceable and referred throughout only to ‘entitlements’.

The 1996 Charter did introduce the Victims Statement which allowed victims to express their experience of being a victim to a particular crime. The Victims Statements were later strengthened to become the Victims Personal Statements scheme which started in 2001. The police are responsible for obtaining the VPS and for providing it to the CPS for production in court.

The government remains supportive of Victim Impact Statements to this day:

All victims of crime should have an opportunity to explain how a crime has affected them through a VPS. Evidence suggests that the number of victims who recall being offered a VPS may be low. We are intent on improving this. (MoJ 2012c para. 99)

The government has also stated its intention to review the VPS scheme to identify where improvements may be made. These would include improved understanding of its purpose and the ability to increase the number of victims able to complete a VPS (ibid.: 28; see also Roberts and Manikis 2013).

Domestic Violence, Crime and Victims Act 2004

The Labour government in 2000 and the years following asserted its belief that the victim of crime and witnesses needed to become the centre point of the criminal justice system. The victim should no longer be the ‘forgotten’ player in the system but should be moved to the centre ground. This would not only be good for the victim and witnesses but also the criminal justice system would be better able to reduce crime and bring offenders to justice. The government’s views were outlined in its strategy document A New Deal for Victims and Witnesses (Home Office 2003b) and the White Paper Justice for All:

The people of this country want a criminal justice system that works in the interests of justice. They rightly expect that the victims of crime should be at the heart of the system. This White Paper aims to rebalance the system in favour of victims, witnesses and communities … We will put victims and witnesses at the heart of the CJS. We will support and inform them,
and empower both victims and witnesses to give their best evidence in the most secure environment possible.

(Home Office 2002c, foreword)


The Domestic Violence, Crime and Victims Act 2004 introduced a number of new measures to help the victims of crime. It brought in provisions concerning ‘representation and information’ for victims, the Code of Practice for Victims to replace the Charters, a new Commissioner for Victims and Witnesses, and a new Victims Advisory Panel.

The 2004 Act was amended by the Domestic Violence, Crime and Victims (Amendment) Act 2012 and in the run up to the 2015 General Election both the coalition government and the opposition Labour Party have stated their intention to yet further strengthen the law for victims and give them more substantive rights (MoJ 2014d; Labour Party 2014).

**Representations and information**

The Domestic Violence, Crime and Victims Act Part 3 chapter 2 entitles the victim to make representations and to be given information concerning the offender’s supervision after imprisonment if the original crime was a sexual or violent offence and the custodial term was at least 12 months; similar entitlements apply to Hospital Orders. Victims cannot insist on supervisory conditions but they can make their views known. Victims’ views should also be sought if a registered sex offender exercises his or her right to a review of lifetime registration (Sexual Offences Act 2003 s. 91D (2) (i)); this is not in the 2004 Act but is referred to in the Code (see Chapter 10).

**The Code of Practice for Victims**

The Domestic Violence, Crime and Victims Act 2004 required the Secretary of State for the Home Office to publish a Code of Practice for Victims of Crime; this duty has now passed to the Secretary of State for Justice. The Code replaced the earlier Victims Charter and has already appeared in two editions (Home Office et al. 2005; MoJ 2013c). The Code states that all the agencies of the criminal justice system ‘must communicate with you in simple and accessible language’ (ibid.: 2) and outlines a victim’s ‘entitlements’ as an adult victim or child victim and the expectations that are placed on the various service providers such as the police, probation service and CPS.

Adult victims of sexual offences will only be referred to Victim Support with their consent (MoJ 2013c, Chapter 2 Part A para. 1.2; Chapter 3 Part B para. 1.1); they will also be entitled to partake in the Victim Contact Scheme (Chapter 2
Part A (paras 6.7 to 6.16 and Chapter 3 Part B paras 6.9–6.14)); and also, as noted earlier, have their views taken into account in reviews regarding appeals to come off the ‘sex offender register’ (Chapter 2 Part A para. 6.21–6.23 Part B 6.18–6.19). The Code was considered stronger than the old Charters and any breaches of the Code may be investigated by the Parliamentary Ombudsman (Domestic Violence, Crime and Victims Act 2004 s. 47).

The Code of Practice was reviewed and updated following a consultation exercise in 2013 (MoJ 2013c and 2013d). This new edition of the Code was able to incorporate the requirements of the European Union Directive ‘establishing minimum standards on the rights, support and protection of victims of crime’. The new Directive replaces an earlier 2001 Framework Decision and was adopted on 25 October 2012 and entered into force on 15 November 2012. The EU Member States had to implement the provisions into their national laws by 16 November 2015. The Directive calls upon them to ensure there are targeted and integrated support systems for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling (see EU Directive 2012/29/EU: Article 8 (2)(b) and 22(3)).

**The Commissioner for Victims and Witnesses**

The Domestic Violence, Crime and Victims Act 2004 introduces the Commissioner for Victims and Witnesses. Before the first Commissioner was appointed a so-called Victims Champion was created as a forerunner to the Commissioner. The Victims Champion appointed in January 2009 was Sara Payne who was the mother of Sarah Payne the eight-year-old who was sexually assaulted and murdered in 2000 (see Chapter 1). The Champions role lasted for just a year but during that time did result in the publication of a useful commentary called *Rape: the victim experience* (Payne 2009; see Chapter 4).

The first Commissioner for Victims and Witnesses was Louise Casey who was appointed in May 2010. Casey resigned in October 2011 and the post was unfilled until taken by Baroness Newlove in March 2013. The statutory duties of the Commissioner are that they:

- promote the interests of victims and witnesses;
- take such steps as they consider appropriate with a view to encouraging good practice in the treatment of victims and witnesses; and
- keep under review the operation of the Code of Practice for victims (Domestic Violence, Crime and Victims Act 2004 s. 49 (1)).

The Commissioner for Victims and Witnesses is required to make an annual report to the Secretary of State for Justice and Lord Chancellor, copied to the Home Secretary and the Attorney General (for more details see website [http://victimscommissioner.org.uk](http://victimscommissioner.org.uk), accessed 6 January 2015).
The Victims Advisory Panel

The Victims Advisory Panel had been established in 2003 to be consulted by government and to give a victims’ perspective. The 2004 Act strengthened the Panel by reaffirming its functions and making it a statutory body (Domestic Violence, Crime and Victims Act 2004 s. 55). The coalition government later decided that the Advisory Panel effectively duplicated the work of the Commissioner and decided to abolish it (The Public Bodies (Abolition of Victims’ Advisory Panel) Order 2013 No. 2853).

The Victim Contact Scheme

In the late 1980s, pressure started to build that victims of sex offenders should know when an offender was due for release from prison, and should have their views taken into account regarding any post-custody conditions imposed on the offender. The aim was to remove any possibility of the victim accidentally bumping into the offender in the same street when they did not even know he had been released. In 1993, a 14-year-old boy had committed suicide in Mid-Glamorgan when he found out that his sexual assailant was coming out of prison (‘Boy hanged himself over fear of sex offender’s release’, The Times, 11 November 1993).

An unsuccessful attempt was made to amend the Criminal Justice and Public Order Act 1994 to make it a statutory requirement to notify victims of release dates (Hansard House of Commons Debates, 28 March 1994, cols. 747–56). Instead, reformers had to content themselves with administrative guidance that this should be done.

Victims were to be contacted during the initial part of an offender’s prison sentence and given general information about likely timescales of custody and release considerations. Nearer to the time of release, they were to be contacted again and invited to comment on any conditions of release which might be imposed. The victim had to accept that a prisoner was entitled to know the grounds on which release conditions are decided, but in exceptional circumstances the victims’ concerns could be withheld (Home Office 1995b; ACOP/Victim Support 1996).

Victim Liaison Officers (VLOs) became the designated probation staff who were to work with victims in the Victim Contact Scheme. VLOs had been created by the Criminal Justice and Court Services Act 2000 s. 69 and kept victims of serious sexual offences informed about key stages or events in the offenders’ sentence and ensured that victims’ views and concerns were conveyed to the prison or Parole Board when release was being considered (see also Domestic Violence, Crime and Victims Act 2004 ss. 35–45).

The Victim Contact Scheme is now offered by probation officers (VLOs) to victims of offenders who have committed a specified violent or sexual offence and been sentenced to 12 months or longer in custody or been detained in a
hospital for treatment. It enables victims to be informed of key developments in the offender’s sentence, and to make representations on conditions which the offender may be subject to on release.

The Victims’ Commissioner, Baroness Newlove, was asked by justice ministers to look into the Victim Contact Scheme and how it operates in practice. Baroness Newlove submitted her initial findings in May 2013 to help inform the revision of the Victims’ Code. She made eight key recommendations including better training for VLOs, a statutory right for victims to read their Victim Impact Statements in the presence of an offender and more thought given to electronic tagging when conditions to stay away from a victim are imposed (for full details of the eight recommendations see Victims Commissioner letter 23 May 2013 Information Provision for Victims on the Release of Offenders, available at https://www.justice.gov.uk/downloads/about/victims...

The National Victims Service

The National Victims Service was one of the last acts of the Labour government before it lost power in 2010 (BBC News (2010) ‘Jack Straw unveils new National Victims Service’ 27 January, available at http://news.bbc.co.uk/1/hi/uk/8482245.stm, accessed 8 February 2015). Starting with the families of murder and manslaughter the aim of the new service was to offer generalised support and help. Specially trained case workers were to provide a range of specialist and practical support that included:

- protection and security
- child care or other care needs
- informing family members of the death
- everyday needs such as shopping
- accessing financial support
- help to deal with interest from the media

Justice Secretary Jack Straw said the service would ensure that

the justice system is better focused on people’s needs, and that everyone who works on crime – from the police to probation, from court staff to volunteers – understands that supporting victims is a central part of what they are there to do. Victims of crime deserve nothing less.

(MoJ 2010d)
Victims, survivors, or complainants?
Criminologists today refer to three distinct ways of looking at victims:

- positivist victimology;
- radical victimology; and
- critical victimology.

The positivist victimology tradition initiated the discussion on victims but was largely quantitative in trying to address numbers of victims and types of victims. It led to victims as being seen in a hierarchy of victimisation from the ‘ideal victim’ through to the ‘non-deserving’ victim who brought crime and harm upon themselves. The epitome of the ‘non-deserving victim’ was the victim who had their criminal injuries compensation reduced because of their own criminal activities. The ‘ideal victim’ was often the personification of innocence such as a child victim of sexual abuse (Christie 1986) and it was this end of the hierarchy that lent itself to more punitive punishments being introduced; what Ashworth termed ‘victims in the service of severity’ (Ashworth 2000).

It was radical victimology that looked more at the less visible forms of victimisation and the idea that victims were not just victims but ‘survivors’; and not least survivors of low visibility sexual crimes and crimes committed behind closed doors. Critical victimology raises the question of whether victims have rights and whether there is a link here with concepts of citizenship and the role of the state in its dealings with victims (Davies M. 2013).

The word ‘victim’ has in turn become the centre of arguments about terminology. Victims of sexual offending, in particular, have said they prefer to be called ‘survivors’. The word ‘victim’ is said to imply a certain passivity and acceptance of one’s position. The word ‘survivor’ on the other hand implies an element of agency and inner strength on the part of the person concerned to take at least some control over their circumstances and to take action to survive the trauma that has come their way.

In the 2015 parliamentary debate on the appointment of a chair for the independent inquiry into child sexual abuse in England and Wales (see Chapter 11) all the politicians referred to ‘survivors’ rather than ‘victims’. Caroline Lucas, MP noted this change of terminology:

The Home Secretary and all hon. Members have used repeatedly the word ‘survivor’, which is wonderful. May I make a quick plea to the press and the media who are following this debate and this issue to use the word ‘survivor’ and not the word ‘victim’, because every time they use that word, it adds to the hurt and the disrespect?

(Hansard House of Commons Debates
4 Feb 2015: Col. 285)
The victims of sexual offending

Home Secretary Theresa May responded that:

the hon. Lady is absolutely right about language. It is important that we use the language of survivors or, in some cases, of victims and survivors… I say to the House and to all outside who comment on this matter that we should be very careful about the language we use. We should not use inappropriate terms that are hurtful and that could cause harm to individuals. (ibid.)

If ‘victims’ was the wrong word to be replaced by ‘survivors’ it was also considered the wrong word when used in the early stages of the criminal justice process. Critics argued that the word was being used prematurely and before any due process of law and court proceedings had been started to determine whether someone was actually a victim or not. The correct word, it was suggested, was ‘complainant’ until such time as proof had been established.

This confusion was seen in the case of Jimmy Savile who died before any of his numerous complainants could have their case settled in court. Savile had died in October 2011 with a clean criminal record and although many complainants started to come forward after his death none of their complaints could be heard. This did not stop people referring to these complainants as his ‘many victims’ said to number in the hundreds. In their 2013 joint report the NSPCC and the Metropolitan Police reporting on investigations into Savile’s activities explained why they used the word ‘victim’:

On the whole victims are not known to each other and taken together their accounts paint a compelling picture of widespread sexual abuse by a predatory sex offender. We are therefore referring to them as ‘victims’ rather than ‘complainants’ and are not presenting the evidence they have provided as unproven allegations.

(Gray and Watt 2013: para. 2.4 emphasis added)

Barbara Hewson, a barrister, accused both the police and NSPCC of playing the roles of judge and jury and that national trawls for victims were:

an open invitation to all manner of folk to reinterpret their experience of the past as one of victimisation. It’s time to end this prurient charade, which has nothing to do with justice or the public interest. Adults and law-enforcement agencies must stop fetishising victimhood.

(Hewson 2013)

The arguments have continued. What appeared to be missing was any recognition that people could lie and make false witness statements that needed to be examined in court; at worst, this could result in miscarriages of justice. In December 2014 the Metropolitan Police sought possible victims of abuse from
the 1970s in connection with three children having been reported murdered. Detective Superintendent Kenny McDonald appeared on television to reassure any possible victims who might come forward that ‘you will be believed, you will be supported’ (BBC News (2014) Child abuse inquiry: Police investigate three alleged murders, 18 December, available at http://www.bbc.co.uk/news/uk-30534235, accessed 15 February 2015, emphasis added). The better terminology might have been ‘you will be taken seriously, you will be supported’ and the increasing ease with which testimony might be ‘believed’ spread concern amongst people who thought testimony should always be questioned to arrive at the truth.

At the start of 2015 former head of the CPS, Keir Starmer said we had to go even further to assist the victim in the court:

> The prosecution puts up its case and the defence tries to knock it down. As they collide, [supposedly] the truth pops out. For 200 years the only interest we have had is the prosecution and the defence. Victims are playing catch-up. We need to be more innovative.

(cited in Bowcott 2015)

At the same time the current head of the CPS, Alison Saunders started a consultation exercise to see how being in court could be made easier for complainants (or victims) as witnesses:

> New proposals outline for the first time the need to better assist victims and witnesses so they know more about what to expect before they give evidence. If implemented, the guidance will ensure victims are, for example, informed of the general nature of the defence case or if their own character is to be questioned in the witness box. In a rape case a complainant may be told if the likely defence was to be, for example, on the issue of consent or identity. The guidance makes clear that assisting witnesses in this way is not coaching or telling them what to say.

(CPS 2015c)

Not everyone is happy about this move to ‘believe’ complainants before their evidence and statements have been exposed to rigorous cross-examination in the interests of justice (see e.g. Gittos 2014).

**Summary**

The position of the victim in criminal justice systems has slowly changed from a marginalised one to a position more recognised. In the last chapter we considered the measures now in place to help victims as witnesses in the courts. Here we have examined compensation for victims, and the growing number of organisations that now exist to help victims of crime and not least sexual crimes. The first laws to recognise victims have been passed and charters have evolved into Codes of Practice.
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Part 3
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Introduction

This chapter considers measures in place to protect children and young people from sexual and violent offences that take place in their own home. Although the sexual assault of children by strangers always seems to be in the forefront of the public imagination, it has also become the conventional wisdom that children are far more at risk of sexual abuse from members of their own household and extended family. The protection of adults – and particularly women – from violent and sexual offending in the home is also considered here.

The dilemma for front line professionals in protecting children from sexual abuse in their own home is that of intervening in a space – the home – usually defined as ‘private’. The sexual abuse of children would be grounds for intervention entering into that private space but the evidence required to permit such entrance may not be so easily obtained. The Saving Lives. Reducing Harm. Protecting the Public government Action Plan covering all forms of violence published in February 2008 classified violence as ‘public space violence’ and ‘private space violence’ (HMG 2008: 9); this chapter covers ‘private space violence’.

The private and the public

The privacy of the home and the idea that ‘an Englishman’s home is his castle’ is part of the folklore of Britain. What that epithet overlooks is that the Englishman’s freedom to think and do as he pleases behind his front door may impact upon the women and children who might live in the same household and be in some form of relationship with him. Whilst the police and social workers will invariably be invited in with the consent of the householder they cannot just assume a right of entry.

UK law offers no definitive statement of privacy although it mentions it in passing in a number of laws. The main legal definition of ‘privacy’ we have is that laid down in the European Convention on Human Rights Article 8. Here it is stated that:

Right to respect for private and family life
Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. (ECHR Article 8)

This makes it clear that Article 8 is a ‘qualified’ right and that a ‘public authority’ may interfere for the prevention of crime and other reasons. Laws exist for the formal entrance to a household regardless of the residents not wanting such an entrance. A police officer has powers of forced entry without a warrant in an emergency where ‘life and limb’ may be at risk (Police and Criminal Evidence Act 1984 s. 17 (1)); no application to a magistrate is needed in these circumstances. An Emergency Protection Order may be applied for from a magistrate by ‘anyone’ – but it mostly will be applied for by social workers – and it may have powers of entry added to it using reasonable force if necessary (Children Act 1989 s. 44).

Protecting children and young people

The protection of children from physical, emotional, psychological and sexual abuse within their own homes has always posed problems for the authorities. In general terms, we believe that families and households should be free to bring up their children the way they want to without ‘official’ interference. If it becomes apparent that they are struggling to meet identified levels of ‘reasonable care’, the children may be designated ‘children in need’ and we can offer them ‘family support’, such as substitute day care for children or other support in cash or kind, on the basis that the children are still best cared for by their family. If the official concerns rise sufficiently, the state may intervene to protect the child by removing it from the household and providing it with substitute care in the way of a foster home or children’s home. Whilst these different positions on intervention are easily written down and an awareness of children’s rights brought in to play, the actual implementation of child protection arrangements is invariably a complex operation.

The death of 7-year-old Maria Colwell at the hands of her stepfather, and the resulting public inquiry in 1974 to investigate why this had been allowed to happen, led in turn to the formalisation of child protection arrangements as we know them today. Area Child Protection Committees (originally called Area Review Committees) were established in England and Wales, with a membership of senior officers from all the local agencies in a local authority area likely to have contact with children and thereby child protection matters. Written policies and procedures were to be produced to guide all the practitioners of
those local agencies in what to do in individual cases, and child protection conferences were to be convened when there was a need to discuss a particular child or family (DHSS 1974, 1976). These basic arrangements are still in place today, albeit with various additions and refurbishments (HMG 2013). In Scotland, the Area Child Protection Committees were called simply Child Protection Committees, but in Northern Ireland they took the same name as in England and Wales.

In simplified form, the police investigate the criminal aspects of abuse and local authority social workers take on the civil aspects of child care, with a duty to investigate and invoke procedures of child protection. Social workers act under the relevant laws for England and Wales (Children Act 1989 as amended), Scotland (Children (Scotland) Act 1995) and Northern Ireland (Children (Northern Ireland) Order 1995).

An innovative feature of the 1974 arrangements was the introduction of the local child protection register (originally named the ‘at risk’ or ‘child abuse’ register), containing the names of all children in the area where there were child protection issues. The decision to add a name to the register was made by a child protection conference; any local agency with concerns for a child could then check the register to see if he or she were already ‘known’ and who the ‘key’ or ‘focal’ agency was. The register was to be maintained by the local social services department as a mechanism to help identify the child where there are child protection concerns.

In keeping with the times, the original 1970s guidance on registers said nothing about sexual abuse as a category of abuse needing registration. The sexual abuse of children in the 1970s was still well hidden away, and social workers, along with everyone else, were said to be culturally blind to its existence. Further guidance on registers issued by the DHSS in 1980 even made a point of saying that sexual abuse was a category that did not need registering (DHSS 1980: para. 2).

This position changed slowly during the first half of the 1980s, as child sexual abuse was ‘discovered’ by those professionals who had previously overlooked it. Until that time, the sexual abuse of children would need to have been clear cut and obvious for actions to have been taken. Then, as it came on to the professional agenda, practitioners could start to recognise symptoms, listen more carefully to children and seek out sexual abuse. Early surveys suggested that Area Review Committees were unprepared for child sex abuse and had few procedures in place to guide practitioners (Mrazek et al. 1983). In America Professor David Finkelhor was influential at this time in opening up the debate in that country (Finkelhor 1986).

Two paediatricians in Leeds drew attention to a medical test they thought revealed evidence – or at least suspicions – of a child having been sexually abused. This was the so-called Anal Dilatation Test, whereby the anal canal remained open on buttock separation rather than closing (Hobbs and Wynne 1986). The same two paediatricians also noted the increasing awareness of child
sexual abuse, which they attributed to 'doctors and others' willingness to confront an old problem and intervene' (Hobbs and Wynne 1987).

In 1986 the BBC had broadcast its television programme Childwatch, presented by Esther Rantzen, to launch the organisation 'Childline'. 'Childline' was a national free-phone help-line for children to use if they felt they were in trouble or danger. Appropriate referrals were passed on to the relevant social services departments (see Macleod 1996).

Parton has described the Childwatch programme, which had an estimated audience of 16.5 million, as 'a significant intervention into the issue of child abuse, particularly in relation to sexual abuse … its timing in late 1986 served both to raise public awareness but also disturb many previously untouched sensitivities' (Parton 1991: 93). This slowly wakening awareness of child sexual abuse was to be given a massive push the following year with the breaking of what came to be known as the 'Cleveland affair'.

In June 1987, local newspapers in the Middlesbrough and Cleveland area started reporting huge numbers of children being admitted to local hospitals diagnosed by doctors as having been sexually abused. By the end of the month, the story had gone national and questions were being asked in the House of Commons ('Hand over your children, Council orders parents of 200 youngsters', Daily Mail, 23 June 1987).

The paediatricians in Cleveland were using the Anal Dilatation Test described in the Leeds studies, and had found enormous numbers of children displaying the symptoms of sexual abuse. The local social workers had accepted this diagnosis from the doctors, but the police had not. A major inquiry was mounted to try to unravel what had gone on, and child sexual abuse would never be hidden away again.

The resulting Cleveland Report sensitised all child care practitioners to the possibility of sexual abuse. All agencies were asked to rethink their approach to the problem, work more closely with parents and make better efforts at meaningful inter-agency work. The report reasserted the primacy of the child with its oft-repeated dictum:

> there is a danger that in looking to the welfare of the children believed to be the victims of sexual abuse, the children themselves may be overlooked. The child is a person and not an object of concern.

(Cleveland Report 1988: 245)

The particular problems for the police were outlined by one commentator as being linked to their own macho police culture:

> For the police there is a particular problem: as a praetorian guard of masculinity, sexual abuse faces them with an accusation against their own gender. Police and judicial mastery of evidence has for over a century
enabled them to banish the sexual experiences of women and children. Was that mastery threatened in Cleveland?

(Campbell 1988: 78)

A flurry of Whitehall circulars were sent to the police, schools and everyone working with children. The key phrase was that we were all ‘working together’ for the welfare of the child (DHSS 1988; Home Office 1988; DHSS (NI) 1989; Scottish Office 1989a). Sexual abuse was now a category of abuse that needed to be registered.

Work on the new Children Bill being put before Parliament was held up so that the Cleveland Report recommendations could be included where appropriate, and the new Children Act finally became law in 1989. Sexually abused children were now defined as children having suffered ‘significant harm’ or ‘likely to suffer significant harm’ (s. 31) and local authorities given the duty of investigation (s. 47). New guidance replaced previous versions when the Act was implemented in 1991 and emphasised the general point that:

Public confidence in the child protection system can only be maintained if a proper balance is struck avoiding unnecessary intrusion in families while protecting children at risk of significant harm.

(Home Office et al. 1991: iii)

The new guidance also made reference to abuse of children by groups using ‘bizarre or ritualised behaviour, sometimes associated with particular “belief” systems’ (ibid.: para. 5.26.2). Everyone else referred to this as ‘ritual’ or ‘satanic’ abuse.

The essence of ritual or satanic abuse was that the child was sexually abused as part of some ceremony hinting at ‘witchcraft’, which was supposed to frighten the child into silence when it was over. The arguments over whether or not this sort of abuse actually did exist or was imagined continued for some years, most infamously in the Orkney Islands, where a number of children were removed from home on the basis of such allegations (Clyde Report 1992). The government commissioned independent research to look at the phenomenon, but the research concluded that there was little evidence for satanic abuse (La Fontaine 1994; see also La Fontaine 1998); the most recent edition of Working Together to Safeguard Children omits any reference at all to this kind of abuse (HMG 2013).

The problem of child abuse related to belief and faith has subsequently emerged in different forms and a ‘National Working Group on Child Abuse Linked to Faith or Belief’ chaired by the Department of Education has produced its own National Action Plan to Tackle Child Abuse linked to Faith or Belief. The plan explains that:

The beliefs which are the focus of this action plan are not confined to one faith, nationality or ethnic community. Examples have been recorded
worldwide among Europeans, Africans, Asians and elsewhere as well as in Christian, Muslim, Hindu and pagan faiths among others.  
(National Working Group on Child Abuse Linked to Faith or Belief 2012: para. 6)

**Child sexual abuse**

Today, the routine investigation of child sexual abuse goes on within Children’s Departments – the successors to social services departments – as a normal part of their work. Most of this goes on unheralded and makes no headlines; an account of this work using research based on 40 case studies can be found in Corby (1998).

Following the report into the death of 8-year-old Victoria Climbié at the hands of her carers (Laming Report 2003) the government decided yet again to reorganise the child protection system and outlined its plans in the consultation paper *Every Child Matters* (Chief Secretary to the Treasury 2003). An attempt was now made to involve all agencies in child protection rather than just the police and social workers at ‘the sharp end’.

The Children Act 2004 introduced the new Children’s Departments and Local Safeguarding Children Boards to replace the Area Child Protection Committees; new Directors of Children’s Services would become accountable for both local authority education and children’s social services. Information was to be collated on all children in a given area and that information would be more freely available to all the agencies coming into contact with children.

The latest edition of *Working Together to Safeguard Children* does offer a definition of child sexual abuse which:

> Involves forcing or enticing a child or young person to take part in sexual activities, not necessarily involving a high level of violence, whether or not the child is aware of what is happening. The activities may involve physical contact, including assault by penetration (for example, rape or oral sex) or non-penetrative acts such as masturbation, kissing, rubbing and touching outside of clothing. They may also include non-contact activities, such as involving children in looking at, or in the production of, sexual images, watching sexual activities, encouraging children to behave in sexually inappropriate ways, or grooming a child in preparation for abuse (including via the Internet). Sexual abuse is not solely perpetrated by adult males. Women can also commit acts of sexual abuse, as can other children.  
> (HMG 2013: 86)

A new edition of this document is expected later in 2015.

The main problem for social workers remains that of identifying child sexual abuse within a ‘closed’ household and not least when the perpetrator of the abuse goes out of their way to ensure visibility is difficult to the extent of even frightening the victims into silence. Inter-agency work becomes all important
because much depends on professionals working with children outside of the home being able to pick up the signs or voices of the children involved in order to start an investigation. Teachers, for example, may see the sort of disturbed behaviour – including self-harm, inappropriate sexualised behaviour, sexually abusive behaviour, depression and a loss of self-esteem – that has been linked to sexual abuse.

The Children Act 1989 ss. 47 (9–11) had placed a duty on local education authorities, housing authorities, and health authorities to assist the local authority in making a child protection investigation. The Children Act 2004 ss. 10–11 had gone further to state that there was a duty on all specified agencies to make arrangements to ensure that their functions are discharged having regard to the need to safeguard and promote the welfare of children.

An extreme case in Sheffield and the Lincolnshire area illustrated the difficulties. Here a man sexually abused two of his own children over a 20-year period before discovery. Reporting restrictions were placed around the court hearing to protect the victims but the judge was reported to say ‘As a result of this case, questions will inevitably be asked about what professionals, social and medical workers, have been doing for the last 20 years’ (Brown and Green 2008).

A further review of all child protection systems took place in 2011. The resulting Munro Report made 15 recommendations and wanted the child to be more at the centre of professional activities rather than the excessive bureaucracy and procedures. Form filling, box-ticking and computer-based work were seen as diverting social workers away from their real task of face-to-face work with families and at-risk children (Munro Report 2011). The government was persuaded by these arguments (DfE 2011) and this was reflected in the updated version of the Working Together guidance (HMG 2013).

**Mandatory reporting**

One aspect of inter-disciplinary working in child protection was concerning to the politicians and that was the apparent blind-eye that some professionals seemed to be turning to all aspects of child abuse including sexual abuse. The answer was to introduce ‘mandatory reporting’ into the UK whereby the professionals who did this would themselves be committing an offence by not reporting what they had seen.

Mandatory reporting was also seen as fulfilling another purpose. An increasing frustration had set in that those professionals who had not acted when they should have were seen as not being held accountable for a child dying. Those who failed to protect them saw no personal consequences.

The idea for a new law followed the case of Daniel Pelka. Daniel was not a victim of sexual abuse but of protracted physical abuse and neglect which led to his death in his own home in Coventry in March 2012 (Morris 2013). Teachers, youth workers, probation officers and others would be under a duty to report any child abuse concerns they come across to the police or local authority

The Prime Minister announced his thinking on the matter from 10 Downing Street (Prime Minister’s Office 2015). Such ‘mandatory reporting’ laws had been considered before and some people had wanted ‘mandatory reporting’ to be written in to the Children Act 1989. A preliminary discussion paper looked at the idea but ruled it out arguing that reporting on a legal basis was unnecessary because we could depend on the professional judgement of the workers concerned (DHSS 1985: paras 12.3–12.4).

Practitioners and professionals have always prided themselves on providing a confidential service to members of the public, qualified only by the need to breach that confidentiality when someone was seemingly at risk of harm. The interaction between worker and service user was accorded a form of ‘confidential space’ where the boundaries were known and crossed only if necessary. Mandatory reporting will arguably reduce the size of that ‘confidential space’ requiring professionals to act before trying to resolve a situation.

One of the problems of reporting child abuse in general has always been how you define child abuse. There is no problem when the abuse is extreme and obvious but often it is not. The recent emphasis on ‘emotional abuse’ as child abuse, for example, is going to need some defining. Bumps and bruises are not always evidence of physical abuse but could have innocent explanations. Child abuse is not a legal term. If reporting becomes an obligation then more reporting is likely to take place just ‘to be on the safe side’ and to avoid any possible prosecution. Who would want to be the first practitioner prosecuted for not reporting?

The police and local authorities could find their workload in this area growing rapidly. That in turn could mean investigating a flood of reports which will overwhelm both agencies already hit by reduced resources. When many of those reports are vague and ill-founded workers could be performing extensive investigations that could take them away from the serious allegations.

Amidst headlines of social workers going to prison (see e.g. Chapman 2015) others called mandatory reporting a ‘craze for gesture-jailing’ (Jenkins 2015) and the idea has been criticised as yet another attack on the professionalism of many workers who are considered incapable of making reporting decisions without a law. Already surrounded by bureaucracy, guidance, managerialism and procedures this will be another form of direction imposed on the practitioner.

Other questions arise. Will mandatory reporting have an impact on the therapeutic process? Will people be less open with their therapist knowing the worker has no margin of discretion and less ‘confidential space’ to work in? If a report has to be made what will happen to the working relationship that had been established?
Child sexual exploitation

Mandatory reporting was also seen as a response to the perceived poor performance by professionals to the newly emerging problem of child sexual exploitation. This could involve young people still living at home or living in local authority care. Either way these were young people who were seen as ‘vulnerable’. It involved a degree of ‘grooming’ by gangs of young men who then induced or coerced the girls involved into prostitution or sex work.

Child prostitution has been with us since Victorian times at least (Brown and Barrett 2002). In recent years, a campaign had gathered momentum to force a rethink on our approaches to young people below the age of consent who resort to prostitution or sex work. In essence, the argument has been that the selling of sexual services by these young people and any associated criminal behaviour by them should be reconstituted as a form of child abuse.

As far back as 1959, the Home Office had advised the police when cautioning prostitutes to ensure:

That no opportunity should be neglected of putting a girl or young woman who is in danger of drifting into prostitution into touch with a social welfare agency which may be able to persuade her to take up regular employment or to go home to her parents.

(Home Office 1959: para. 5)

During the 1980s, a loosely co-ordinated campaign was started to improve the lot of child prostitutes. Non-governmental organisations took a lead in this campaign. The Children’s Society ‘Safe in the City’ project in Manchester found schoolgirls, engaged in prostitution, whom they felt needed protection rather than punishment (Chamberlain 1993; Lee and O’Brien 1995). Barnardos set up its ‘Streets and Lanes’ project in Bradford in 1994 to work directly with these young girls on a multi-agency basis; they too argued for protection over punishment (Barnardos 1998). The argument was that any criminality going on here should be ascribed to the male purchasers of sexual services, who should be re-categorised as child abusers. Lynne Ravenscroft, a magistrate, put the subject on the agenda of the Magistrates’ Association to add weight to the campaign (Ravenscroft 1997).

The position of the parents who tried to get help for their children was exemplified in a book at the time by the mother of an exploited child who was murdered aged 17 by someone who had purchased sexual services from her. The author Irene Iveson went on to found the organisation CROP – Coalition for the Removal of Pimps which later became PACE (Parents against Child Sexual Exploitation, http://www.paceuk.info, accessed 22 February 2015) (Iveson 1997).

What was coming to light were the dreadful social circumstances of the young girls and boys (rent-boys) that were turning them to prostitution:
runaways from home; children leaving local authority care; children using
drugs; and children being ‘groomed’ into forms of sexual exploitation.

The police launched two pilot schemes in Nottingham and Wolverhampton
in mid-1997 to try to take a different approach and to take the ‘victims’ not
‘criminals’ line. In February 1998, the government accepted the ease with
which young people could become ‘trapped in an unhealthy and illegal lifestyle’
which led to prostitution, and saw the case for moving the focus of attention to
the abusing adult: ‘Children who become involved in prostitution should be seen
primarily as children in need of welfare services and in many instances protection
under the Children Act’ (Department of Health 1998: para. 5.40).

At the end of 1998, a set of draft guidelines were introduced on how the
police and other agencies in England and Wales could change the focus of their
work with child prostitutes. These were duly finalised in 2000 and became sup-
plementary to the Working Together to Safeguard Children guidance. The govern-
ment held back from actually decriminalising under-age prostitute activities,
because it was thought that this would ‘send out the wrong message’, but they
did favour a more child-centred approach, with multi-agency co-operation to
develop expertise, consider individual cases and devise overall strategies. The
offering of individual ‘exit strategies’ for those caught up in sex work was
considered the best way forward (Department of Health et al. 2000; see also
Phoenix 2004). The law was changed to make it an offence to pay for the
sexual services of a child (Sexual Offences Act 2003 s. 47).

The terminology now changed and ‘child sexual exploitation’ has become
the preferred way of talking about child prostitution. Child sexual exploitation
now became an activity synonymous with gangs of youths who targeted girls
considered particularly vulnerable. The girls were befriended and given presents,
including alcohol and drugs and this befriending – or grooming–later turned to
coercion where necessary.

Child sexual exploitation has resulted in trials of these gangs in Torbay,
Derby, Rochdale and Oxford (see e.g. BBC News 2010 ‘Derby rape gang
“targeted children”’, 24 November; Pilling 2013; Laville 2013). It has also
resulted in major questions being asked of the police and other local services when
there have been no trials despite the experiences of vulnerable girls and young
women coming under the influence of these gangs. Eventually Rotherham
became the byword for indifference and an inability to work with the victims
of these activities.

In Rotherham a major report estimated some 1400 local girls (and some
boys) had been the victims of ‘child sexual exploitation’ by gangs of boys and
men of Pakistani origins over a 15-year period. The report also suggested that
this had gone virtually unnoticed by an indifferent police force and Children’s
Department who had not listened to the children involved or had simply not
recognised the problem (Jay Report 2014).

The report revealed that the inquiry team had read details of inaction when
there was a clear case for action:
In two of the cases we read, fathers tracked down their daughters and tried to remove them from houses where they were being abused, only to be arrested themselves when police were called to the scene. In a small number of cases (which have already received media attention) the victims were arrested for offences such as breach of the peace or being drunk and disorderly, with no action taken against the perpetrators of rape and sexual assault against children.

(Jay Report 2014: paras. 5.8–5.9)

In Rotherham the situation was regarded as serious enough to make the government send in commissioners to take over the running of the Council (see Casey Report 2015 and statement to the House of Commons by the Secretary of State for Communities and Local Government Hansard House of Commons Ministerial Statement 26 February 2015 col. 17WS to 19WS).

The government has published regular guidance on how to combat child sexual exploitation (see e.g. HMG 2009a and 2015) but the problem seems to lie in the implementation of this guidance. The police and social workers have sometimes found it hard to work with young people who are partly involved in consensual activities or otherwise ‘out of control’ in other ways; it made them a difficult group to work with. As one girl said in court about her experiences of being interviewed by a police officer – his first reaction was to yawn (‘Yawning cop who seemed to sum up how the grooming gang victims were not taken seriously’ Manchester Evening News, 9 May 2012).

**Protection of adults**

Domestic violence within households is said to lead on average to two fatalities a week in the UK. What starts as an argument between husband and wife, civil partners or just partners can deteriorate into physical exchanges and worse. Some studies have suggested that one in four women experience domestic violence in their lifetime (Council of Europe 2002).

The term ‘domestic violence’ has been criticised as being too ‘cosy’ and not illustrative of the raw violence that can result. Other terms have been used including:

- Domestic abuse
- Intimate partner violence
- Family violence
- Forced marriage
- Honour based violence
- Gender violence and
- Coercive control

Police arriving at the scene of domestic abuse (the term now preferred by the police) who are denied access to a household have common law rights of entry
to prevent or deal with a breach of the peace. As with children, statutory powers of entry also exist in order to arrest a person for an indictable offence or to save life or limb (Police and Criminal Evidence Act s. 17 (1)). The first police response officers to arrive on the scene have to identify the victim, the suspect, and any other witnesses. The protection of the victim from further injury takes priority and the police have long been advised that it is their:

… immediate duty … to secure the protection of the victim and any children from further abuse and then to consider what action should be taken against the offender.

(Home Office 1990b: para. 8)

Further than this the officers should on arrival:

- Distinguish violent from non-violent incidents
- Check any previous history of the relationship
- Protect the victim by using refuge facilities, etc.
- Always consider the arrest of the assailant
- Establish whether there are any other victims (ibid.: paras 12–17).

More recently ACPO has given detailed advice that includes making an immediate assessment of the need for first aid or other medical assistance (at a SARC, through a police forensic examiner [FE] or NHS facility), confirm the identity of the suspect and if they have left the scene ensure a description is circulated and at the same time find out what more is known about them from existing police intelligence. The officer is also expected to make accurate records of everything said by all parties present, to record the demeanour of the suspect, victim and any other witnesses and to consider taking photographs or making appropriate video recordings (ACPO 2008: para 3.4). The police are expected to assess the position of any children at the scene and to ensure their safeguarding if that is necessary (ibid., para 3.6).

Complaints have been made that the police have sometimes been slow to arrive at a scene of domestic violence or slow to take action and on occasions that has been with fatal results (see e.g. Rose 2007). The Independent Police Complaints Commission says that allegations of police failure to help in incidents of domestic violence have risen and according to their website they now make it one of six priority areas of police work to come under their scrutiny (IPCC https://www.ipcc.gov.uk/reports/learning-the-lessons/bulletin-11-gender-and-domestic-abuse-october-2010, accessed 27 July 2014).

The individual police officer has the discretion to make an arrest at the scene of any possible crime, dependent on his or her assessment of the situation. No one can tell the police they ‘must’ make an arrest of a certain person unless they are acting on a warrant issued by the courts. The police arrest of men suspected of abusing their wives or partners has always been a contentious area.
The situation had to be really serious and there had to be a good chance of a successful prosecution before the police would arrest. The police were particularly wary of the victim withdrawing their complaint rendering evidence less useful. A senior police officer had outlined the problem:

> We go to the scene then the woman backs out. A fortnight later we are called again because he [the husband] is doing the same thing again. You have to appreciate how a police officer feels when he or she goes to the same scene over and over again and the woman backs out.

(cited in Borkowski et al. 1983: 115)

A vicious circle was established whereby police became ambivalent that no action would be taken because of anticipated withdrawal and women picked up on this ambivalence, lost confidence in the police and did not report in the first place. The result was the police description of domestic violence as ‘just a domestic’ or ‘rubbish work’.

The Home Secretary asked the police in 2009 to consider what new laws were needed and to focus on the perpetrators of domestic violence including serial offenders who move from one abusive relationship to another. The review was to be led by Brian Moore, Chief Constable of Wiltshire who at the time took the lead on domestic violence matters for ACPO (HMG 2009b: 19). Chief Constable Moore reported back later in 2009 with his report entitled *Tackling Perpetrators of Violence against Women and Girls*. The report made 10 key proposals:

1. to put Multi-Agency Risk Assessment Conferences (MARACs) on to a statutory footing
2. to give potential victims a ‘right to know’ about an individual’s background
3. to be able to register and track serial perpetrators of violence against women and girls
4. to introduce a new offence of ‘course of conduct’ based on interpersonal violence
5. to give witnesses direct access to their own statements
6. to give the police the so-called ‘go-orders’
7. to introduce a new Order that would protect women and girls from serial perpetrators if proposals two to four above were not adopted
8. to make Conditional Cautions available as a disposal
9. to require that health care professionals report all signs of genital mutilation to the police
10. to introduce a new offence of causing suicide by abuse (ACPO 2009).

More background and relevant research on MARACs can be found at Steel et al. (2011) and the idea of giving potential victims a ‘right to know’ about an
individual’s background came to fruition in the adoption of Clare’s Law that will be discussed in Chapter 10.

Female Genital Mutilation (FGM) is defined as the carrying out of procedures that intentionally alter or cause injury to the female genital organs for non-medical reasons. The practice is illegal in the UK and health care professionals coming across it must now report it to the police (Serious Crime Act 2015 s. 74). The same Act also criminalised ‘controlling and coercive’ behaviour as an element of domestic violence where there may be no actual physical harm caused but the emotional and mental stress could be serious (Serious Crime Act 2015 s. 76).

**Domestic Violence Protection Notices and Orders**

The ‘go-orders’, recommended by the police in turn became Domestic Violence Protection Notices (DVPN) and Domestic Violence Protection Orders (DVPO). These are Notices which the police can issue themselves (the DVPN) or Orders applied for by the police but issued by the courts (Crime and Security Act 2010 s. 24–33). The police could issue an on the spot Notice to exclude the perpetrator from the home for 48 hours, and the courts could issue an Order for exclusion from 14 to 18 days.

**Summary**

Over the last 30 years there has been a growing awareness that victims of sexual offending are more than likely to know their abuser and even to share the same household as that abuser. The privacy of the home has been used to excuse the abuse and exclude formal investigation and protective interventions. Such exclusion is slowly being broken down and abuse – sexual or domestic – within the home is recognised and dealt with. In this chapter we have looked at child sexual abuse, including child sexual exploitation and domestic violence.
Introduction

In a general sense all the activities of the criminal justice system and those civil measures covered in the rest of this book contribute to the greater protection of the public. This chapter considers those measures specifically formulated to protect children and vulnerable adults who need out of home care in social care settings, schools, hospitals, youth clubs, leisure centres and day centres. The sexual exploitation of children, in these settings, by the people who work in them, has been a source of concern for many years, giving rise to one popular theory that these workplaces – schools, children’s homes, etc. – have acted as a ‘honey pot’ attracting would-be offenders to them because it gives them access to children.

The out of home settings

Children’s homes

Residential care for children unable to live with their families takes a number of forms but, in essence, they are all children’s homes. Most children’s homes are run by local authorities through their Children’s Departments (England and Wales), Social Work Departments (Scotland) or Health and Social Services Boards (Northern Ireland); some children’s homes are independent or in the voluntary sector. Children’s homes have been accused of providing a haven for the abuse of children.

Reports of sexual crimes against children in residential care came to light periodically in the 1970s, but were mostly dealt with on an individual basis. It was not seen as the endemic problem it was to become. A 1984 parliamentary review of all forms of care for children, including residential care, made no mention of sexual abuse as a problem area but the imbalance between care staff as figures of authority and vulnerable children was noted:

The risk of abuse of power by social workers and other adults concerned with children in care is … sufficiently serious for there to be a need for
some means by which a child can contact, without fear of reprisal, their local authority parent.

(House of Commons 1984: para. 364; see also paras. 360–365)

The slow realisation that children’s homes could be prime sites for sexual offending has been described by a former Chief Inspector of Social Services:

The subject of sex abuse of children in institutions did not really become an issue until the early 1980s … and there were tremendous pressures, I think, on everybody in the system at that time, to deny that those of us working in the system and accepted by the community as being devoted to the interests of children were in fact exploiting them and abusing them.

(House of Commons 1998: para. 799)

In Belfast, there were continuing stories emerging about the Kincora children’s home and the long-term abuse of its residents. The Dublin-based Irish Independent had first published stories in January 1980 about Kincora being the centre of a homosexual vice-ring, but the true extent of the activities there and the alleged ‘cover-ups’ have continued to mystify for many years (see e.g. Rafferty 1986). The Home Affairs Committee meeting in 2015 wanted the Independent Inquiry into Child Sexual Abuse that had been established to include Kincora in its terms of reference (House of Commons 2015a para. 26–27).

The pre-employment screening of staff going to work in children’s homes in England and Wales started in 1986 (see later), but incidents of abusing staff continued to be reported (see e.g. ‘Head of Children’s Homes jailed for life, five times’, Independent, 30 November 1991).

Frank Beck abused children for over 13 years in the Leicestershire area (D’Arcy and Gosling 1998). The Beck case led directly to two reports on improving residential care for children (Department of Health 1991c; Warner Report 1992) and the establishment of a Central Support Force for Children’s Residential Care; the Support Force produced further guidance on recruitment and selection of residential care staff (SFCRC 1997).

The Children Act 1989, with its greater emphasis on listening to children, was implemented in 1991 and its accompanying guidance outlined what should be done if staff in a children’s home suspected that one of their colleagues was abusing children (Department of Health 1991b: paras. 1.34–1.37 and 1.179–1.192; the advice was updated in later versions of this guidance – see e.g. HMG 2010a: paras. 6.32–6.42).

What everyone agreed was that the child sex offender was effectively ‘invisible’ once he had gained work with children in residential care and that many were very good at that work:

paedophiles tend to work verysecretively, planning to gain the confidence of children and those responsible for their care over a long period. They
groom and seduce the children into sexual activities gradually by means of involvement in other activities which themselves may be acceptable and even commendable and they win the confidence of colleagues by taking on extra duties and responsibilities.

(SFCRC 1997: 88)

The Waterhouse Report, appearing after three-and-a-half years of deliberation, was an exhaustive account of child physical and sexual abuse in the former local authority areas of Gwynedd and Clwyd in North Wales; the full report was over 900 pages long, and tracked events back to 1974 in all forms of residential child care and fostering, provided by the councils concerned, the private sector and the health services.

The report found evidence of ‘widespread sexual abuse of boys … in children’s residential establishments in Clwyd’ (Waterhouse Report 2000: para. 53–10) and singled out two institutions for particular attention: the local authority community home Bryn Estyn near Wrexham, and the private homes run by the Bryn Alyn Community, also in the Wrexham area. The report made 72 recommendations on recruitment, selection, screening, management, and inspection.

Later the Waterhouse Report came in for some criticism for having been little more than an official ‘witch hunt’ based on some initial false allegations that had brought ‘false’ complainants forward who were just looking for financial compensation (Webster 2005). When still more complainants came forward to allege further sexual crimes the Home Secretary announced a review of the Waterhouse Report and its findings:

… the Government will ask a senior independent figure to lead an urgent investigation into whether the Waterhouse inquiry was properly constituted and did its job. Given the seriousness of the allegations, we will make sure that that work is completed urgently.

(Hansard House of Commons Debates 6 Nov 2012: Cols. 734–735)

The new Waterhouse review was to be led by Mrs Justice Julia Macur. At the same time the National Crime Agency was asked to assess the new allegations and review the historic police investigations in north Wales. This police review was known as Operation Pallial and was to run in parallel with the Macur review. The police reported that 275 people had come forward to allege crimes against them as children (Symonds 2014); at the time of writing (March 2015) neither review had been completed.

In 2008 the media attention turned to the Channel Islands. The Haut de la Garenne children’s home on the island of Jersey had been closed for 20 years but had long been the source of rumours about child abuse. The police started a retrospective inquiry code named Operation Rectangle and the media went into overdrive when the police announced they had found evidence of bone
fragments in the cellar. The Jersey police chief Graham Power was then sus-
pended from his post amidst allegations that he was not managing the inquiry
properly amid counter allegations that there was political interference on the
island trying to cover up the truth.

Wiltshire police were brought in from the mainland to look at the police
investigation and later it was discovered that the bone fragments were in fact
wood fragments (Jowit 2008). Another report looked at the suspension of
Chief Officer Power (Napier Report 2010). When the Jimmy Savile scandal
started to break in late 2012 his name was now linked to Haut de la Garenne.
In March 2013 the State Assembly of Jersey decided to commission a new
independent inquiry into historical abuse on the island going back to 1945 and
the Independent Jersey Care Inquiry eventually got underway in 2014 chaired
by Frances Oldham QC (see Chapter 11).

The Republic of Ireland had appointed a major Commission to Inquire into
Child Abuse in 2000 to inquire into all the sexual abuse allegations related to
Catholic run children’s homes; the terms of reference allowed them to go back
over a 60-year period. The resulting Ryan Report was published in 2009 and
found that in their institutions:

Sexual abuse was reported by more than half of all the witnesses. Acute
and chronic contact and non-contact sexual abuse was reported, including
vaginal and anal rape, molestation and voyeurism, in both isolated assaults
and on a regular basis over long periods of time. The secret nature of
sexual abuse was repeatedly emphasised as facilitating its occurrence.
(Ryan Report 2009: 394)

**Schools**

The British private boarding school has long held a special place in the popular
imagination as a location for the sexual abuse of children. Abuse by teaching
staff and other pupils has allegedly been ‘covered up’, dealt with internally and
otherwise ‘denied’, or else seen as part and parcel of normal life in a boarding
schools (see e.g. ‘Sex abuse “at 75% of boarding schools”’ The Independent, 9
December 1989). An organisation was set up in 1990 to help ‘survivors’ of

The Children Act 1989 s. 87 gave local authorities the duty to inspect
the residential care provisions of private boarding schools. Starting in 1991,
regular inspections were now made to ensure the welfare of the children in any
school with more than 50 boarders; the educational side of the school remained
the responsibility of HM Inspectorate of Schools. As if to emphasise the
importance of this work, an experimental telephone helpline for boarding-
school children reported receiving over 10,000 calls (‘Boarding school abuse
help-line gets 10,000 calls’, The Observer, 29 September 1991). The Department
of Health published guidance on how the new inspections should work (Department of Health 1991a).

Teachers in day schools as well as boarding schools, on the other hand, often thought it had become too easy for children to make allegations of sexual abuse, and that teachers were vulnerable to malicious accusations against which they were unable to defend themselves; any child or young person wanting to ‘have a go’ at a teacher had only to report inappropriate behaviour, which led to suspension and investigation (see Hansard House of Commons Debates, 16 January 1992, cols. 1207–16); careers were said to be ruined (‘False abuse charges “ruin careers of 350 teachers each year”’, Daily Telegraph, 10 April 1999).

The complexity of this area was illustrated in the summer of 1998, when it was discovered that the Health Education Authority was drawing up guidelines to protect children from strong sunlight, which might cause skin cancer. On behalf of teachers, the Local Government Association jumped in to say the guidelines should not ask teachers to apply sun-tan creams to pupils for fear of being accused of child abuse:

School teachers are very vulnerable to accusations of physical and/or sexual abuse. Their reluctance is well-founded … we would counsel strongly against any suggestion that teachers, with or without parental consent, should apply sunscreen products to children in their care.

(LGA 1998)

According to the National Association of Schoolmasters and Union of Women Teachers (NASUWT) only 69 of the 1,782 allegations of abuse made by children against their members in the past 10 years have led to convictions (‘Teachers call for right to sue fake accusers’, The Guardian, 15 April 2004). The self-help group Falsely Accused Carers and Teachers (FACT) had been started in 1999 (details at http://www.factuk.org, accessed 5 November 2014).

Another complication was when relationships started between teacher and pupil that seemed on the surface to belie any criminal intent. New laws introduced in 2000, however, further protected children in schools – and other care settings – by prohibiting sexual activity between staff and young people under 18 – even if the latter were over 16. Such activity in future would be interpreted as committing an offence of ‘abuse of trust’ (Sexual Offences (Amendment) Act 2000, s. 3; now in the Sexual Offences Act 2003, ss. 16–24).

Jeremy Forrest, a 30-year-old Maths teacher in East Sussex formed a relationship with one of his 15-year-old pupils and the two of them left the country for France to avoid possible prosecution. The police and the press sought them out and he was arrested in Bordeaux in September 2012 and later sentenced to five-and-a half years imprisonment (Walker 2013).

In March 2013 a former teacher at Chetham’s independent School of Music in Manchester was sentenced to six years imprisonment. An adult who had given evidence in the court on her experiences as a child revealed the degree of
stress witnesses could be under and later committed suicide. The school’s safeguarding arrangements were later found to be satisfactory on paper but not implemented very well (Pidd 2013).

**Hospitals**

Individual acts of sexual abuse are from time to time reported to take place in hospitals. A male nurse in a psychiatric setting in Hertfordshire (Gye 2014) and a consultant paediatrician who admitted to sexual offences against his child patients at Addenbrookes Hospital in Cambridge (Shute 2014). One newspaper using the Freedom of Information Act revealed the figures on sexual abuse in hospitals overall to be on the rise with some 1,615 incidents reported to the police in the three years 2011–14. In London the Metropolitan Police had investigated 17 rapes and 124 other sexual crimes in one year; people in mental health units were said to be at particular risk (Williams 2014).

The biggest number of sexual offences in hospitals by one person is now attributed to the celebrity Jimmy Savile. Savile died in 2011 but within a year of his death was exposed as a serial sex offender. Savile had seemingly used his position as a volunteer and charity worker in numerous hospitals to gain access to people to abuse. Inquiry reports were produced on 28 different hospitals outlining his behaviour (all of these reports are available at: https://www.gov.uk/government/collections/nhs-and-department-of-health-investigations-into-jimmy-savile, accessed 20 October 2014). Inquiries at two of the biggest hospitals at Stoke Mandeville Hospital and Rampton were still ongoing at this time. Secretary of State for Health Jeremy Hunt made a public apology:

> Today, I want to apologise on behalf of the Government and the NHS to all the victims who were abused by Savile in NHS-run institutions. We let them down badly and however long ago it may have been, many of them are still reliving the pain they went through. If we cannot undo the past, I hope that honesty and transparency about what happened can at least alleviate some of the suffering. It is the least we owe them.  
>  
> *(Hansard House of Commons Debates 26 Jun 2014: Col. 483)*

The Inquiry Report from Savile’s behaviour at Stoke Mandeville Hospital with its national spinal unit was published in February 2015. The report stated that

> It is difficult to understand how a man of such seemingly poor moral character was lauded and accepted by all levels of society; but he was, and this probably has much to do with the social mores of the 1960s, 70s and 80s.  
>  
> *(HASCAS 2015: para. 13.12)*
Sports clubs and voluntary organisations

Sports clubs have also been identified as places where the sexual exploitation of children may take place. The ambition of young sportsmen and women to achieve at the highest levels, together with the authority of the sports coach has led to situations of ‘grooming’ and ‘entrapment’. The closeness of the young athlete’s bond with the adult figure has led some to describe any sexual abuse taking place as ‘virtual incest’ (Brackenridge 1997).

A great deal of work in this area was carried out by Professor Celia Brackenridge. Professor Brackenridge has outlined the way in which an initial analysis of sex discrimination in organised sport had led to an understanding of sexual abuse in sport. The opening of the subject, however, had not been easy and sporting authorities had been, at best, slow to respond (but see, e.g. NCF/NSPCC 1995) and at worst have denied there has been a problem:

[It] has been indeed a struggle to get the subject out of the ghetto: it is ironic, for example, that during a period when moral panics about ‘stranger danger’ and sexual abuse have escalated in society at large, many sport and leisure organisations have failed to acknowledge or confront sexual exploitation.

(Brackenridge 1998)

Despite revelations at the highest levels, including the 17-year prison sentence passed on a former Olympics swimming coach for convictions of rape and indecent assaults (‘Swimming chiefs face legal action’, Daily Telegraph, 29 September 1995), sports organisations were criticised for playing down the problem. Arguments at this time summoned against sexual abuse taking place include the idea that overall more people benefit from sport; the problem is exaggerated or ‘couldn’t happen here’; people who allege it are ‘trouble-makers’; and, even if it does take place, it’s not the responsibility of the sports authorities (Brackenridge 1998).

That position has slowly changed over the ensuing decade. The Football Association was one of the first sports authorities to include a statement of commitment to child protection in its policies for the development of young players (FA 1997: Appendix G), and Bristol Rovers was the first professional club to launch its ‘Child Safe’ programme in early 1999 (‘FA hunts out the football sex abusers’, The Independent, 15 February 1999). The FA now has a full section on its website covering child safeguarding issues (available at http://www.thefa.com/football-rules-governance/safeguarding, accessed 5 November 2014). The Rugby League has followed suit (http://www.therfl.co.uk/the-rfl/child_welfare, accessed 5 November 2014). At an international level organisations like the Olympic movement itself have similar websites (http://www.olympic.org/sha, accessed 5 November 2014).

The church

One particular ‘workplace’ where child abuse was not anticipated was the church and a series of scandals has shown that even here children have not been safe.
In the USA the same phenomena took hold as Catholic priests were accused of sexual abuse across the country, and millions of dollars had to be paid out in compensation. What bothered some observers was the apparent ability of the churches to cover up the activities of their employees by moving them to different geographic locations to put off complaints and disrupt investigations.

The independent Churches Child Protection Advisory Service was formed in 1983 and produced its own guidance on child protection within church organisations, with particular reference to appointing workers with children (CCPAS 1998). Its latest policy statement is called ‘Safe and Secure’ (CCPAS 2006). On sexual abuse specifically the organisation ‘Churches Together in Britain and Ireland’ that tries to coordinate the different Christian churches and denominations published their booklet ‘Time for Action’ on how the church could better provide pastoral care for the victims of child sexual abuse (CTBI 2002). The Church of England drawing on the CTBI publication produced its own ‘Responding Well’ policy (C of E 2011).

None of these initiatives stopped the Church of England from having its own child sexual abuse scandals. The Reverends Colin Pritchard and Roy Cotton from the Diocese of Chichester were both convicted for child sexual abuse but had been allowed to carry on working. The Archbishop of Canterbury sought further details in a report that called for more rigorous child protection measures to be implemented. The report warned that there could be no compromise on raising the child protection standards and that:

If such a compromise were to occur, the time bomb buried within that compromise will necessarily be detonated by the first case of abuse that reveals the weakness in what has not been done. Positive action is essential.

(Archbishop of Canterbury cited in Davies M. 2013: 8)

Further concerns arose when Robert Waddington, the Dean of Manchester, was found to have been in post despite allegations of child abuse at his previous post with the Archbishop of York. The Archbishop of York at the time had seen no cause to refer the allegations to police or social services but to just allow Waddington to move to Manchester (Batty 2013). The revelations came after Waddington had died but the need for another inquiry was recognised and the report from Judge Sally Cahill was formally handed to the Archbishop of Canterbury in October 2014. The report is available at http://www.chbookshop.co.uk/books/9786000008000/cahill-report, accessed 23 February 2015; the current Archbishop of York has said:

I am deeply ashamed that the Church was not vigilant enough to ensure that these things did not happen, failing both to watch and to act, where children were at serious risk.

Prisons

The deprivation of sexual relations in prison is almost seen as part of the punishment. In truth, however, sexual behaviour does take place and this will include consensual and coercive sexual behaviour between both prisoners and prisoners and staff.

The campaign group the Howard League for Penal Reform started a Commission of Inquiry into the nature and extent of sexual behaviour in prisons in 2012. The Commission initially reported in the form of Briefings which stated that there was no specific prison rule to ban sexual activities although prisoners were ‘policed’ by the Governors and staff of the prison and the participants could be separated and disciplined; Government sources were clear that this was the correct approach (Mason and Winnett 2012). The Governors were reported to find it difficult to distinguish consensual from coercive sex (see Howard League for the Briefings at http://www.commissiononsexinprison.org/1710, accessed 17 February 2015).

Coercive sexual assaults often went unreported because the prisoners felt it a difficult subject to talk about. The Howard League Commission estimated that 1 per cent of prisoners experienced coercive sexual assaults but that this could involve as many as 850 to 1650 prisoners; this was a similar figure found by earlier research (Banbury 2004). The Howard League also found a reluctance on the part of the Governors to involve the police, and the police, for their part, seemed to be dilatory in investigating crimes of this nature in prison.

Sexual abuse was reportedly widespread in the Medomsley Detention Centre for young men in County Durham in the 1970s and 1980s. This time it was by staff towards the prisoners. Some convictions did take place and one officer was convicted in 2003 but the rumours of the extent of sexual abuse going on in Medomsley did not go away; in 2009 the government paid out £512,000 in compensation (Allison and Hattenstone 2014).

In 2012 the police reopened the files on Medomsley yet again as complainants continued to report their experiences and by 2014 the Durham Constabulary reported the numbers coming forward to be over 900 (Durham Constabulary 2014). The officer in charge of the investigation admitted that ‘the sheer number of victims who have come forward has been a shock’ (Gander 2014).

The response to out of home abuse

Efforts have been put into making institutions safer for children (see e.g. Erooga 2012) and one of the first things the National Crime Agency did when it started was to publish an assessment of child sexual abuse in out of home settings of all kinds:

In the first thematic assessment published by the National Crime Agency (NCA) since it went live three weeks ago, child protection experts at the
agency’s CEOP Command have warned that institutions such as schools, churches and care homes are still not safe from child sex abusers despite high profile media coverage of historical offences.

(NCA 2013c)

The report, *The Foundations of Abuse*, warns that more needs to be done by institutions, including sports clubs, youth groups, charities and companies, to protect children. It warned that children are not only at risk from those directly abusing them but also from ‘bystanders’ who are aware of the abuse but fail to report it.

The main way of dealing with people unsuitable to work with children, however, has been to strengthen the selection process to stop them obtaining work with children in the first place. A task easier said than done and one which presupposes you can identify someone who may go on to sexually abuse a child they are working with.

In order to prevent known sex offenders getting work with children where they might abuse those children, mechanisms have been put into place to screen them out. In broad terms these mechanisms divide into two blocks – the ‘discretionary’ and the ‘mandatory’. The ‘discretionary’ vetting block consists of information made available to employers to help them make a selection decision on a potential new member of staff; this information is primarily criminal conviction records, police intelligence and information from other government-held databases. The ‘mandatory’ barring block is a non-discretionary legal bar on certain people working with children; the individual and the employer both commit an offence if employment with children takes place.

**Vetting**

**The police check (1986–2002)**

Since the mid-1980s, applicants for work as teachers, social workers, probation officers, youth workers, children’s homes workers, or any other public employment giving them ‘substantial access to children’ have been subject to pre-employment screening by means of a ‘police check’; in effect a check made against any possible criminal record plus any other non-conviction information the police may have. The employer in receipt of this information takes it into account in deciding whether or not to employ the applicant. These vetting arrangements entered into in the 1980s were to ensure that people unsuitable for work with children never got that work in the first place.

**NORTHERN IRELAND**

Northern Ireland was first into the field. The impetus for action came from the long-running allegations of sexual abuse emerging from the Kincora children’s home in Belfast. Various forms of inquiry tried to ascertain exactly what had
gone on at Kincora, but one report had suggested the introduction of effective pre-employment screening (Sheridan Report 1982: para. 60).

The Northern Ireland Department of Health and Social Services instituted its Pre-employment Consultancy Service (PECS) in October 1983. Designated employers could now request background information from PECS on all applicants for a child care job. That information included all relevant offences – obtained by PECS from the Royal Ulster Constabulary (RUC) and with the relevance being decided on by PECS officials – and other information from the Department of Health and Social Security’s Consultancy Service in London (see later). The system at this time did not include the vetting of teachers.

Northern Ireland reviewed the PECS arrangements in 1988. Changes were made to ensure that the full record was disclosed rather than a selected version (NI Working Party 1988). PECS was also now supplemented by a separate system for vetting teachers; records were disclosed by the RUC directly to employing authorities (DENI 1990).

Access NI is now a branch within the Northern Ireland Department of Justice, established in April 2008. Its job is to supply certificates that show whether people who want to work in certain types of jobs, for example with children and/or vulnerable adults, have a criminal record or if other important information is known about them.

ENGLAND AND WALES

Police checks on child care workers in England and Wales started in 1986. The impetus for these checks is attributed to the murder of 4-year-old Marie Payne by Colin Evans in 1984. It emerged that Evans had a record of previous offences against children, but that had not stopped him obtaining voluntary work in the course of which he was able to associate with young children. Evans had not met Marie through his work, but concern was aroused (see ‘List of errors that ended in child’s death’, The Guardian, 18 December 1984) and the Home Secretary announced the forming of a working party to look at how criminal records could be disclosed. The working party’s report formed the basis for pre-employment screening in England and Wales (Home Office/DHSS 1985).

Screening was to be a localised non-statutory arrangement, laid down in government circulars outlining how local authorities as employers would have Senior Nominated Officers who would liaise with their local police forces and establish a channel of communication for requests going one way and criminal record information going the other; requests were supported by the written consent of the applicant concerned. The full criminal record was disclosed and the employing authority would make its appointment decision based on this information. Adjustments were made to build ‘exemptions’ into the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders (NI) Order 1978 so that past convictions could never be considered ‘spent’ when applying for work with children (Home Office 1986b; see also Home Office 1986c).
The police were also asked to disclose other information which might give ‘cause for serious concern’ that a person was unsuitable to work with children. This other non-conviction information would be made up of police intelligence or other information such as acquittals on technicalities. It was often called ‘soft’ information and it constituted a very grey area. Critics suggested it should not be used for employment screening but the government of the day did not agree and thought ‘a check of recordable offences only, would be insufficient’ (Home Office 1990d: para. 12).

SCOTLAND

Scotland started its police checking system in 1989 (Scottish Office 1989b); some vetting already existed in residential establishments and schools (SWSG 1985). Instead of liaising with their local police forces, Scottish authorities contacted the central Scottish Criminal Record Office (SCRO) in Glasgow. Today the service is administered through Disclosure Scotland.

Other screening databases

Apart from police-held information, employers had two other sources of information they could access to screen would-be employees. The Department of Health’s Consultancy Service was an index made up of names sent to them by employers where, for example, a member of staff had been dismissed or resigned after a child’s welfare had been put at risk or someone had been disciplined and re-deployed away from work with children.

It was originally up to employers to decide when to submit information to the index, but if it was an employee in a children’s home it became a legal duty to submit (Children’s Homes Regulations 1991, S.1. No. 1506, reg. 19(2) (b) and later the Children’s Homes Regulations 2001 SI 3967 Regulations 10 and 26); this position changed again when the Protection of Children Act 1999 was implemented and it became a duty to submit on all staff.

‘List 99’ was the second source of information open to employers to consult. It was much like the Consultancy Service, but applied to teachers only and was held by the then Department for Education and Employment. The Secretary of State had powers to ‘direct’ that certain people were ‘unsuitable’ and should have their names added to the list (Education (Teachers) Regulations 1993, S.1, No. 543), although this power applied only to England and Wales; the list itself covered the whole of the UK.

The critics

Critics of all these new bureaucratic arrangements were heard. The civil liberties questions of privacy and rehabilitation rights were raised (see e.g. NCCL 1988) and the inclusion of posts outside the ‘access to children’ criteria, the
taking into account of non-relevant offences and the relatively powerless position of the job applicant in terms of effective redress were examined (Hebenton and Thomas 1993: esp. chap. 6).

Organisations representing the interests of ex-offenders produced guidance of ‘damage limitation’ to help ex-offenders into work (e.g. NACRO 1996). Researchers produced evidence to show the wide-variation in decision-making based on criminal record disclosure, including the continuing possibility of sex offenders getting through (Smith 1999), and even a government-appointed task force reported that it was unhappy with the ‘varying interpretations’ and ‘geographical inconsistencies’ of checking arrangements (Better Regulation Task Force 1999: para. 4.3.4).

None of it made any difference. The conventional wisdom prevailed that criminal record checks were essential and should be an integral part of selection procedures, that information technology would improve things and the only real question was how we could possibly have managed without the checks before the 1980s.

**A burden on the police?**

In 1993 the Home Office started a review of the use of police records for pre-employment screening. With seven years’ experience of operating the new systems it was now clear that the number of checks was rising dramatically and the burden on the police was considerable (Home Office 1993b).

A White Paper was eventually published in 1996 suggesting an overhaul of all criminal record checks for employment screening, whether or not children were involved. A new Criminal Records Agency was proposed to take this work away from the police. The Agency would make three sorts of disclosures to employers – ‘enhanced’, ‘full’ and Criminal Conviction Certificate (see Home Office 1996d).

A similar consultation paper was published for Scotland, making matching proposals (Scottish Office 1996). The other major innovation was that in future employers would pay for each check to effectively make the new Agency self-funding. The Criminal Records Agency was later renamed as the Criminal Records Bureau.

**The Criminal Record Bureau (2002 to 2012)**

The Police Act 1997, Part V gave the statutory underpinning for these new ‘three-tier’ arrangements. The Act itself made no reference to a Criminal Records Bureau but the CRB was to be based on Merseyside as a private–public partnership enterprise, would have direct access to the Police National Computer and was expected to start operations in July 2001; the private company Capita won the contract to create the new agency. Scotland was to have a similar system but based on the Scottish Criminal Record Office in Glasgow.
rather than the Bureau (Scottish Office 1998b). Voluntary sector organisations immediately started campaigning against the cost element which had been introduced and which they foresaw as putting many volunteers off; this campaign was eventually successful and the government agreed to make checks free for the voluntary sector (DfEE 2001).

Enhanced disclosure was very similar to the old police check on child care workers started in 1986. Instead of going to local forces, employers simply went to the central CRB. The CRB had PNC terminals to read off conviction records and approached local forces for ‘any other relevant information’ or intelligence; this information was now renamed as ‘Approved’ or ‘Additional’ information depending on whether the job applicant was informed of its existence (‘Approved’) or denied knowledge of its existence because it might hamper ongoing police investigations (‘Additional’) (Police Act 1997 s. 113–115).

The difficulties for the police in deciding whether or not to release ‘Additional’ and ‘Approved’ information were deep-seated. When it was not released in the case of Ian Huntley who went on to murder two children in Soham, there was an outcry and an inquiry (Bichard Inquiry Report 2004). At more or less the same time, much less attention was paid to a High Court decision that the West Midlands Police had been wrong to release information on a man investigated for ‘indecent exposure’ allegations; the man was neither charged or prosecuted but the disclosures had effectively ended his social work career (X v. Chief Constable of West Midlands Police [2004] EWHC Admin. 61). This decision was, however, later reversed on appeal the courts agreeing with the police that the protection of children took priority over the job applicant (R (X) v Chief Constable of the West Midlands Police and another [2005] 1 All ER 610 Court of Appeal).

Enhanced disclosure also required the CRB to access the old ‘Consultancy Service’ and ‘List 99’ which had now been put on a statutory footing by the Protection of Children Act 1999. Inclusion on these lists also meant you were effectively barred from working with children. The 1999 Act renamed the lists as the Protection of Children Act List or POCA List and the Department of Education and Employment List (but often still usually referred to as ‘List 99’). Regulations now placed a duty on educational employers always to submit information to the Secretary of State on people considered unsuitable to work in teaching and always to ensure a check has been made against ‘List 99’ (Education (Restriction of Employment) Regulations 2000 SI 2419 Reg. 11; see also DfES 2002).

Employers were also required by law to input information on employees considered unsuitable to work with children regardless of any criminal proceedings having been instituted. The Secretary of State made the final decision on inclusion and individuals had the right of appeal to the new Protection of Children Act Tribunal (later renamed as the Care Standards Tribunal).

The Care Standards Act 2000 created a similar list of individuals unsuitable to work with vulnerable adults – the Protection of Vulnerable Adults or POVA List (Department of Health 2003). Listed individuals could also appeal to the
Care Standards Tribunal. It was possible to be included on both the lists for children and adults and given the difficulties of deciding if you went on both or just one the possibilities of combining the various lists was a matter for continuing debate.

Even before the Criminal Record Bureau (CRB) started its work, questions had been raised about its ability to cope with the demands that would be put on it and the quality of the data it would be disclosing; evidence had emerged of a high level of inaccuracy within the criminal record database (Thomas 2001b). The Home Affairs Select Committee suggested a delayed start in order to get everything right (House of Commons 2001). The government listened to the committee but was primarily concerned to proceed as fast as possible (Home Office 2001a).

The three tiers of disclosure were now renamed as:

1. Enhanced Disclosure;
2. Standard Disclosure; and

Employers had to register – and become Registered Bodies – to receive the first two forms of disclosure at a fee of £300 and thereafter pay £12 for every check carried out (for further general details, see Thomas 2007, esp. chapter 7).

In March 2002 – a year behind schedule – the CRB made a delayed start on issuing Enhanced Disclosures. Standard and Basic Disclosures were put on hold. By August the whole system was teetering on the verge of breakdown as the CRB was overwhelmed by demand. Some schools were unable to start the new academic year because new teachers were unchecked and the backlog seemed to grow by the day. The government responded by sending in an Independent Review Team (IRT) to sort out the CRB but meanwhile the CRB was allowed to quietly increase its fees from £12 to £29 per enhanced check and increase it again to £33 from April 2004 (Home Office 2003e). Having once been a free service, the commodification of criminal records was becoming a lucrative business.

The CRB and Capita, the private company supporting it, were heavily criticised for their ineptitude (see, e.g. ‘Capita punishment’, The Observer, 8 September 2002) and the failure was said to have ‘a weary sad inevitability about it’ (Bentley 2003):

following the report on the CRB, the government is now paying Capita more money to do less … it seems that in this case Capita has been rewarded for its failures.

(ibid.)

A later report from the National Audit Office was less critical, believing the CRB to have achieved a ‘more comprehensive and consistent [system] than
that which existed before it was set up’ (NAO 2004a, 2004b). The India-based company Tata Consultancy Services took over the CRB contract from Capita in 2012 (du Preez 2012).

The matter of disclosing non-conviction information alongside criminal records has remained a matter of concern. The Home Office issued advice to the police on the making of these decisions (Home Office 2005b) but appeals to the courts that the police had got it wrong continued; the question remained one of balancing the impact on the job applicant with the interests of the people he or she might be working with. The very nature of non-conviction information made this a difficult decision (see e.g. R (L) v Commissioner of Police of the Metropolis [2009] UKSC 3). After more consultation and changes in the law (see Protection of Freedoms Act 2012 Part 5 Chapter 2) a statutory guide was produced for police to follow (Home Office 2012a).

Whatever the pros and cons of the new centralised CRB system were, it remained a fact that employers in receipt of disclosures from the CRB had still to make their selection decision on the basis of the information received. This was the ‘discretionary’ element of vetting that would now be complemented by the ‘mandatory’ barring block on working with children.

**Barring**

**Barring by professional groups**

Sex offenders from numerous professional groups stand to be barred from their professions following their convictions. This includes doctors, nurses, teachers and social workers most of whom have to be registered in order to practice and are therefore struck off that register for their conduct. The headlines tell their own story:

‘Jailed paedophile doctor struck off medical register’ *ITV News* 28 January 2015  
‘Drama teacher struck off for trying to seduce pupil’ *Daily Telegraph* 16 November 2013  
‘Social worker struck off for improper relationship’ *The Press* (York) 23 October 2014  
‘Nurse struck off after police find child abuse images on his iPad’ *Manchester Evening News* 4 March 2015

**Barring from child care work**

The Home Office’s 1996 consultation document on the *Sentencing and Supervision of Sex Offenders* had proposed making it a criminal offence for a convicted sex offender to apply for work with children (Home Office 1996a: paras. 64–77). This proposal was refined in yet another consultation paper, which tried to
define more accurately concepts that included ‘seeking work’ and ‘accepting an offer of work’ involving contact with children (Home Office/Scottish Executive 1997).

In general terms the civil liberty lobby and campaign groups for offenders and ex-offenders were critical of the new proposals but child care organisations were happier with them. The government now formed an Interdepartmental Working Group to take the proposals forward. The group published two reports covering a number of questions including that of a legal ban on working with children (Home Office 1999b, 1999c); key recommendations were:

1. to identify and ban unsuitable people from working with children;
2. to create a new criminal offence which the ‘unsuitable person’ would commit if they worked with children; and
3. to provide a new definition of ‘working with children’.

Disqualification Orders barring people from working with children were introduced by the Criminal Justice and Court Services Act 2000 s. 26. The Act enabled courts when sentencing to add on a Disqualification Order if the offence is an ‘offence against a child’ and the sentence is one of 12 months or more in custody, or a hospital or guardianship order is made within the meaning of the Mental Health Act 1983. This 12-month requirement was removed by the Criminal Justice Act 2003, s. 229, Schedule 30 making it even easier to make a Disqualification Order. The Order was eventually repealed and replaced by the new barring scheme that emerged from the Safeguarding Vulnerable Groups Act 2006 (see later).

**The Bichard Report**

At the same time as the new CRB arrangements were slowly coming together and the Disqualification Orders came into being, over the summer of 2002 the nation’s attention turned to the murder of two 12-year-old girls in the Cambridgeshire village of Soham. Ian Huntley was later convicted of the crimes but after his trial it was revealed that police held intelligence on him regarding nine earlier suspected sex crimes and that this information had not been disclosed to his employers when he had applied for a caretaker’s job in a school (Morris 2003). Humberside police held the information but had not passed it to their colleagues in Cambridgeshire for the relevant disclosure. Huntley had not met his victims directly through his employment but an inquiry was now called to see how this failure to communicate had been allowed to happen.

The resulting Bichard Report was published in June 2004. Amongst its 31 recommendations was the proposal that a new statutory body be set up to strengthen vetting and barring and to register anyone wishing to work with children or vulnerable adults; this central body would be authorised to approve or not approve an individual’s registration. Failure to register or be registered...
would bar people from working with children and vulnerable adults (Bichard Inquiry Report 2004: Recommendation 19).

The overseas job applicant

One area of concern that had been identified was the difficulty of vetting overseas workers who came to the UK to work in the health and caring professions. The Bichard Report had made reference to this concern and had recommended that ‘proposals should be brought forward as soon as possible to improve the checking of people from overseas who want to work with children and vulnerable adults’ (Bichard Report 2004: Recommendation 30). The expansion of the European Union to 24 Member States in 2004 and later to 28 in 2013 with its lowering of border control and free movement of people seemed only to exacerbate the problem.

The case of Michel Fourniret was frequently cited as the example of what could happen in Europe. Fourniret was convicted of sexual offences against children in France in 1987. On his release from prison he moved across the border to Belgium and obtained work in a school without any checks being made on his background. In June 2003 he was arrested by the Belgian police and sentenced to life imprisonment for sexual assault and murder (Samuel 2008).

In the UK the CRB had developed its Overseas Information Service but this was of limited value. Individuals with a record of sexual offending in their own European countries were convicted of more sexual crimes in the UK (see e.g. Cowan 2006; Dudgeon 2009). The NSPCC revealed a total of 17,013 people coming into the UK from Europe to work with children (Fitch 2007: 2). More robust systems were sought by the EU.

An EU Framework Decision (2009/315/JHA) required EU Member States to exchange criminal records when the national of another country was convicted in their jurisdiction. Each Member State was to identify a ‘single point of contact’ to facilitate this exchange to be formally known as the Central Authority for the Exchange of Criminal Records (UKCA-ECR). In the UK this was to be the newly formed ACRO (ACPO Criminal Record Office) based in Farnham, Hampshire (see Jacobs and Blitsa 2008 and 2012).

The Coroners and Justice Act 2009 Section 144 and Schedule 17 implemented the EU Council Framework Decision 2008/675/JHA allowing previous convictions in other EU Member States to be taken into account in the course of new criminal proceedings in the UK in the same way that domestic convictions are already taken into account.

Regulating workers with children under eight

The Childcare Act 2006 was heralded as a pioneering piece of legislation. It was the first ever act to be exclusively concerned with early years and child care
for children under eight years. Part 3 of the Act dealt with new forms of regulating child care provision and brought in its own form of registration and disqualifications. All providers caring for children up to the age of five were now required to register on the Early Years register and five to eight year olds on the Later Years register. The Act was aimed at child care settings and childminders and was overseen by the Ofsted inspectorate who had the power to cancel or suspend registrations.

At first the new regulation applied only to people caring for children under eight in their own home as child-minders but then they were extended to anyone working in a school which had children under the age of eight attending. At this point a realisation set in that the new law had introduced the concept of ‘disqualification by association’. This meant a person could have their registration cancelled if they only lived ‘in the same household as another person who is disqualified from registration; or (b) in a household in which any such person is employed, is disqualified from registration’ (Regulation 9 of the Childcare (Disqualification) Regulations 2009 (SI 2009: 1547) introduced by the Childcare Act 2006 s. 75 (4)). People could be suspended or lose their jobs not for any wrongdoing on their part but through the actions of someone they shared a house with (‘Teachers to be barred for living with offenders under new rules’ The Independent, 30 November 2014; BBC News (2015) ‘Schools suspend staff in child protection confusion’ 20 January, available at http://www.bbc.co.uk/news/education-30897127, accessed 25 March 2015). The only redress was a right of appeal to Ofsted.

Further Department of Education guidance explained the thinking behind the law which:

guards against an individual working with young children who may be under the influence of a person who lives with them and where that person may pose a risk to children i.e. by association.

(DfE 2014)

What exactly ‘under the influence’ means is not elaborated on.

‘Disqualification by association’ was further highlighted in the case of a male teacher who lost his job following conviction for ‘abusing a position of trust’ (Sexual Offences Act 2003 s. 16). The headlines followed up with the news that his wife, who worked in another school, was to be suspended from her job working with children (Daily Mail online, 20 January 2015: http://www.dailymail.co.uk/news/article-2918079/Wife-standing-teacher-husband-took-16-year-old-pupil-s-virginity-school-store-cupboard-suspended-job-acting-headteacher-complaints-parents.html#ixzz3PpNkkZKv, accessed 23 February 2015.)

The campaign group UNLOCK for ex-offenders called the arrangements ‘ridiculous’ (UNLOCK 2015). At the time of writing (March 2015) this discussion continues.
A vetting and barring scheme

Of all the Bichard Report’s recommendations it was clear that Recommendation 19 – a new statutory registration, vetting and barring authority – was going to be the most difficult. From the outset the Home Office acknowledged Recommendation 19 as ‘this large and complex project’ (Home Office 2005c: para. 4.12). The Safeguarding Vulnerable Groups Act 2006 was passed to facilitate building the new central registration body which was to be known as the Independent Safeguarding Authority (ISA). This would be the Authority to register all workers in child care and workers with vulnerable adults and to deregister them and bar them from such work where necessary; it would be responsible for England and Wales and similar bodies would be developed for Scotland and Northern Ireland (Protection of Vulnerable Groups (Scotland) Act 2007 and the Safeguarding of Vulnerable Groups (Northern Ireland) Order 2007). It was estimated that the ISA would be ready to go live in 2010.

The Safeguarding Vulnerable Groups Act 2006 divided child care work into ‘regulated’ activity and ‘controlled’ activity; ‘regulated’ activity meant mainstream work giving direct contact to children on a frequent basis and ‘controlled’ activity meant more marginal work giving only slight contact with children; Schedule 4 of the Act tried to explain in more detail what this meant. Employers had to start deciding which category their employees fell into which was not always as straightforward as first appeared.

Concerns now started to come from the general public when it dawned on people just how wide the scope of this new ISA was going to be. Estimates suggested over 11.3 million people would end up on the ISA database and be subject to registration and vetting; a quarter of the adult population (Hope 2008). It was thought the effects would put people off volunteering to work with children and even ‘poison’ relationships between adults and children. Sociologist Frank Furedi suggested that:

From Girl Guiders to football coaches, from Christmas-time Santas to parents helping out in schools, volunteers – once regarded as pillars of the community – have been transformed in the regulatory and public imagination into potential child abusers, barred from any contact with children until the database gives them the green light.

(Furedi 2008: x)

Stories emerged of child care volunteers having to wear different coloured T-shirts depending on whether they had been CRB checked or not. A young child needing help to go to the toilet had to be accompanied by an adult wearing the appropriate coloured T-shirt whilst the others could only stand by and watch (Piper and Stronach 2008: 30).

More headlines followed when children’s author Philip Pullman refused to be vetted for the occasional visits he made to schools and called the plans ‘outrageous, demeaning and insulting’.
You ought to be able to trust people, so to say to a child that you’re having someone to talk to you but don’t worry, we’ve checked him out and he’s not a paedophile, implies that everybody who isn’t checked is. (Flood 2009)

Pullman encouraged other authors to boycott school visits until changes were made to the system. ‘Why,’ asked Pullman, ‘should I pay £64 to a government agency to give me a little certificate to say that I’m not a paedophile?’ (quoted in Garton Ash 2009).

The government eventually conceded to the criticisms and asked Sir Roger Singleton who was leading the development of the ISA to look at the growing concerns and review what could be done to make things simpler. Singleton’s report called Drawing the Line appeared in December 2009 and made a number of recommendations about what should and should not require registration with ISA; this included a review as to whether the ‘controlled’ category of child care work was needed at all. If Singleton’s report was implemented the numbers involved with the ISA were estimated to drop from 11.3 million to 9 million (Singleton 2009). The government accepted all the Singleton recommendations (Hansard House of Commons Debates 14 Dec 2009: Column 52WS) and the construction of ISA continued. The start date was now set at 26 July 2010.

Scaling back to ‘common-sense levels’

The new coalition government elected in May 2010 wasted no time in declaring the end of the Vetting and Barring Scheme as it had been designed. An initial statement said they would ‘scale it back to common sense levels’ (HMG 2010b: 10). The Home Secretary went on to say:

The Government have made clear their intention to bring the criminal records and vetting and barring regimes back to common-sense levels. Until this remodelling has taken place, we have decided to maintain those aspects of the new scheme which are already in place, but not to introduce further elements.

(Hansard House of Commons Debates 15 June 2010: Column 46–47WS)

The Home Secretary’s way forward was to put in place two reviews. A review of the criminal records vetting regime was to be undertaken to examine the balance between civil liberties and public protection and whether that balance could be improved by scaling back the amount of CRB vetting now undertaken. If the vetting was really needed the review would look at how it could be made more proportionate and less burdensome.

At the same time the Home Secretary started a second review into the whole Vetting and Barring Scheme. This review was to look at the fundamental
principles and objectives behind the vetting and barring regime, including the
most appropriate function, role and structures of any safeguarding bodies and
the most appropriate governance arrangements (for terms of reference of both
reviews see Hansard, House of Commons Debates, 22 October 2010 col. 77WS to
78WS).

The review of the criminal records regime was published in two parts, both
entitled A Common Sense Approach (Mason 2011a and 2011b) and the govern-
ment responded to them on the same day as the publication of part two (Home
Office 2012b). Most of the recommendations of the review were accepted as
contributing to the ‘scaling back’ that was being called for; the Protection of
 Freedoms Act 2012 introduced them.

The second review was published five months later as the Vetting and Barring
Scheme Remodelling Review. It con-
fi-
rmed that a government body should continue
to provide a barring service but registration as such was not recommended. The
way forward was to be achieved by merging the CRB and the Independent
Safeguarding Authority (ISA) – in so far as it existed – into a new self-funding
body that would be known as the Disclosure and Barring Service (DBS). Crim-
nal records and police intelligence disclosures should continue to be
available to employers and voluntary bodies and the new barring regime should
cover only those who would have regular or close contact with vulnerable
groups (for full details see DfE et al. 2011: 4).

The Disclosure and Barring Service (DBS)
The Protection of Freedoms Act 2012 Part 5 provided the framework for the
new vetting and barring scheme and established a new organisation, to be known
as the Disclosure and Barring Service (DBS), to replace and combine the functions
of the ISA and the CRB; the Disclosure and Barring Service started business
1 December 2012. Broadly similar changes were made by the Safeguarding
Vulnerable Groups (Northern Ireland) Order 2007 for the arrangements in
Northern Ireland and the Protection of Vulnerable Groups (Scotland) Act 2007
for Scotland’s scheme.

The Safeguarding Vulnerable Groups Act 2006 required that automatic barring
from work in a ‘regulated activity’ would now take place when certain con-
victions or cautions for relevant offences were made. The DBS now produced
a list of the relevant offences; there was no right of representation against this
automatic form of barring. The Disqualification Order was no longer going to
be needed and disappeared 17 June 2013; although existing DOs were still
valid to run their course.

The DBS produced a second list of offences which did not lead to automatic
inclusion on the barred list but could lead to barring from ‘regulated’ activity at
the discretion of the DBS. The person concerned was allowed to make repre-
sentations as to why he or she should not be barred and the DBS then made a
final decision. These two lists of offences can be seen on the DBS website
(available at https://www.gov.uk/disclosure-barring-service-check/dbs-barred-lists, accessed 25 March 2015). Similar arrangements were put in place for people working with adults and two further lists drawn up.

The DBS announced that it had issued 8 million disclosure certificates and processed 735,000 barring referrals in its first two years of operation up to December 2014 (DBS News 2015: 1). Just how much actual ‘scaling back’ of criminal record checks has taken place has been disputed (Appleton 2014).

**Summary**

Out of home settings in schools, children’s homes, hospitals and elsewhere have all been sites of sexual offending against both children and adults. Adults working in schools, children’s homes, day nurseries and other statutory settings have been convicted of offences against children. The same has happened in voluntary settings, sports clubs and even the church. This chapter has outlined the measures now in place to identify and screen out known sexual offenders and other individuals deemed unsuitable to work with children or vulnerable adults and to prevent them getting such work. In particular it has looked at the rise of criminal record disclosures as a means of pre-employment screening and the advent of the Criminal Records Bureau which started work in 2002, the ill-fated Independent Safeguarding Authority and its successor, the Disclosure and Barring Service which was launched in December 2012.
Chapter 10

Protection in the community

Introduction

This chapter explores the growing use of the civil law to contain and manage the sex offender or potential sex offender who lives in the community. These measures complement the investigation and punishment of the sex offender using the criminal law and do so in order to prevent sexual crimes, protect the public and improve public safety. In the UK a series of preventive civil arrangements and Orders have been put into place, including the sex offender ‘register’, Sex Offender Orders, Restraining Orders, Notification Orders, Sexual Offences Prevention Orders (combining the Sex Offender Order and Restraining Order), Foreign Travel Orders and Risk of Sexual Harm Orders; some of these have in turn now been subsumed into the Sexual Risk Orders and Sexual Harm Prevention Orders contained in the 2014 Anti-Social Behaviour, Crime and Policing Act.

The sex offender ‘register’

Home Secretary Michael Howard announced his intention to introduce a UK sex offender ‘register’ in March 1996 at a meeting of chief probation officers in Coventry (Bennetto 1996). His announcement was followed by the Home Office consultation document on the Sentencing and Supervision of Sex Offenders which proposed that convicted sex offenders should be required to notify the police every time they changed address. In effect these ‘notification’ arrangements would become known as the sex offender ‘register’; it was to be a police-held ‘register’ that would effectively be compiled and kept up to date by the sex offenders themselves (Home Office 1996a: paras 41–62). It is appropriate to put quotation commas around the word register because the relevant law refers only to ‘requirements to notify’ and never mentions the word register; the term sex offender ‘register’ has only come in as a form of shorthand.

The rationale for registration was better ‘public protection’ and was tentatively premised on three arguments:

...
• it would help police identify suspects after a crime;
• it could help prevent crimes; and
• it might act as a deterrent (ibid.: para. 43).

The police were to be the custodians of the register and proposals included the requirement that the offender should notify the police of any change of address within 21 days of the change; special arrangements would exist for those of ‘no fixed abode’. The requirement to notify would continue for a period of time, depending on the severity of the original sentence. Any custodial sentence of more than 30 months meant a lifetime’s requirement to notify changes to the police. Lesser sentences would result in fixed time periods; all these time periods would be halved for juvenile offenders.

The consultation document was silent on the role of the police in using the information they received and on how they might disseminate it. It said nothing on the role of the police in actively enforcing the registration requirements and said only that defaulters should be fined up to £1,000 or imprisoned for a month.

The Sex Offenders Bill published in December 1996 pretty well reflected the proposals in the consultation document, and there was a broad consensus in the press on the need for the Bill. Only Matthew Parris in The Times was willing to criticise the Bill, which he dismissed as meaningless and ‘there is no reason for this Bill. No reason at all. It is simply a piece of electioneering’ (Parris 1997); a general election was just four months away.

On some matters the Bill revealed departures from the consultation document. The document, for example, had never mentioned offenders who had received a police caution as being in need of going on the register; the Bill now included such offenders and made them liable to register. As noted in Chapter 4, part of the rationale for a police caution was that the offence was minor, ‘atypical’ and unlikely to be repeated. The rationale for registration was, if anything, the exact opposite; it was considered a serious, often typical offence and the offender was likely to do it again. As Liberty put it:

Cautions are supposed to act as a salutary warning … if cautions are being used for sexual offences deemed so serious that they merit notification, they should not be.

(Liberty 1997: para. 1.5)

The Bill also departed from the consultation document on the question of qualifying offences. The document’s original list of 32 offences in England and Wales was reduced in the Bill to just 14. The time period for registering changes had been 21 days in the consultation document, but in the Bill it came down to 14 days.
The parliamentary debate

At the outset of discussions, the government announced an increase in the penalties that would apply for failing to register – the original £1,000 rising to £5,000 and one month in prison rising to six months in prison; this decision was made ‘after receiving representations from the police … to stop sex offenders from flouting the registration requirements’ (Home Office 1997a; Hansard House of Commons Debates, 27 January 1997, cols. 30–31). Perhaps the police had realised the resource implications of what they were taking on.

The parliamentary committee discussions on the Bill otherwise made no reference to the qualifying offences left out from the consultation document and virtually no reference to the decision to include cautions as criteria for registering. The debate did not consider the ways in which the police would ensure verification and compliance with requirements to register and whether or not they would be active in searching out defaulters and, if so, what extra resources they would need.

The main debates on the Bill as it passed through the House of Commons focussed on the facts that:

1. it was not retrospective;
2. in concentrating only on convicted sex offenders it was missing out thousands of other potentially dangerous people; and
3. it was unclear on how the police should use the information registered with them, and whether or not this might include public disclosure.

All three points were left unresolved; the law could not be retrospective and it was not possible to register ‘suspects’ as well as the convicted. On the question of ‘community notification’ to let neighbourhoods know when a registered sex offender has moved into the area, the view was expressed that this was not appropriate for the UK even if it existed in the USA. The preferred option was that of ‘controlled’ or ‘selected disclosure’ that would possibly include disclosure to one or two particular members of the community, but not to everyone. In the main, information of this nature would remain for use by professionals and practitioners only.

The ‘registration’ law

The Sex Offenders Act 1997 s. 1 introduced the UK’s sex offender register from 1 September 1997 and it applied to all those convicted or cautioned of an offence outlined in Schedule 1 to the Act. It also applied to those with mental health problems where there has been no finding of guilt but a hospital order had been made under the Mental Health Act 1983 for reasons of insanity or being unfit to plead, and where an offence as listed in Schedule 1 would otherwise have been committed. The time periods for which the Act applied...
commenced from the day of conviction or caution, with subsequent time spent in custody or hospital being discounted. The Sexual Offences Act 2003 later replaced the Sex Offender Act 1997 and the list of designated offences leading to registration is now in the 2003 Act’s Schedule 3.

Those given a prison sentence of more than 30 months for sexual offending are placed on the register indefinitely. Those imprisoned for between six and 30 months remain on the register for 10 years, or five years if they are under 18. Those sentenced to six months or less are placed on the register for seven years, or three-and-a-half years if under 18. Those cautioned for a sexual offence are put on the register for two years, or one year if under 18.

The 1997 Act had originally set out the details which had to be given to the police within 14 days of conviction or change of address; these were simply the person’s name, or any other used names, and address. Date of birth and address at the time of conviction or caution would be required for purposes of identification. The details could be given in person, by a visit to a police station or in writing. The police had also to be notified if the offender stayed at any other address for longer than two weeks in a 12-month period. Any failure to comply was punishable by a fine up to £5,000 and/or a period of imprisonment of up to six months.

For young sex offenders below the age of 18, all determinate registration periods were to be halved. The NSPCC was amongst those that thought young offenders should not be on the register at all and that alternative arrangements should have been devised (NSPCC 1997); the Sexual Offences Act 1993 had abolished the presumption that boys under the age of 14 were incapable of sexual intercourse, and enabled charges to be brought against them for the first time for rape and various forms of unlawful sexual intercourse.

When the register was later reviewed proposals were put forward to remove children and young people from the register altogether. One idea was to have a completely separate register for young people held by a welfare agency rather than the police (Home Office/Scottish Executive 2001: chapter 6). Many child care organisations were enthused by these proposals but were left disappointed by the resulting White Paper containing changes that made no mention at all of the young sex offender except to increase the sanctions for non-compliance by them (Home Office 2002d). This focus on non-compliance was even more surprising because the 2001 consultation paper had put the compliance rate as high as 97 per cent and ‘steadily improving’ and at the same time admitted that ‘it is not currently possible to interrogate the [register] data … to produce collated statistical information about particular groups of offenders, for example, the number of them below the age of 18 years’ (Home Office/Scottish Executive 2001: 11; see also Thomas 2009).

**Implementing the ‘sex offender register’**

The Home Office published guidance on the new law for the police in England, Wales and Northern Ireland (Home Office 1997b) and the Scottish Office did
the same for Scotland (Scottish Office 1997; see also NIO 1997). The register itself was, from the outset, to be held on the Police National Computer (PNC). Later the police developed the Police National Database and ViSOR – the Violent and Sex Offender Register – as a new database to store more information on registrants in a way accessible to the police, probation and prison services (Home Office 2005d; see also Chapter 4).

Since its inception the sex offender register has been strengthened in three broad but identifiable phases. The first changes to the register came in 2000 when new legislation introduced a strengthening of the requirements placed on registrants, the second in 2003 through the Sexual Offences Act and the third in 2012 with additional information being required from registrants.

**Strengthening the register – Phase one**

In 2000 initial reporting was changed to be within three days rather than the original 14 and was in future to be in person at a prescribed police station, rather than by mail or email. The police were also given new powers to photograph and fingerprint offenders on initial reporting. All these changes were contained in Schedule 5 of the Criminal Justice and Court Services Act 2000, which amended the Sex Offenders Act 1997. Home Secretary Jack Straw said these changes were a direct response to the abduction and murder of 8-year-old Sarah Payne in July 2000, and its accompanying extensive media coverage:

> We have I believe, recognised the very strong public concern which her murder has evoked. This has been brought home to us very strongly in the discussions we have had with Mr and Mrs Payne about how the law could be improved.

(Home Office 2000c; see also Home Office 2002d: 34, Annex 1)

The public concern at this time had been mostly expressed through the headlines of the *News of the World* newspaper, which had started a campaign for public access to the register. Such access was refused (see later) and the changes to strengthen the register were arguably to deflect the demands for open access (see Thomas 2004).

One other innovation brought in by the Criminal Justice and Court Services Act 2000 was that of the Multi-Agency Public Protection Arrangements or MAPPA. The MAPPA formalised the previously informal arrangements that had grown up between police, probation and sometimes other agencies like social services departments, since the advent of the register. The work of the MAPPA will be considered in more detail later.

At the same time as devising and implementing these changes the Home Office published its own commissioned evaluation of the working of the register. The evaluation found the police to be supportive of the register despite the
extra work it gave them, and encouraged by the better multi-agency working it had created with the probation service. They did have difficulties in getting information on new registrants within the 14 days allowed, and sometimes sex offenders could turn up at a police station and be the first the police knew of it (ibid.: 21); how that now squared with reducing the initial reporting time from 14 days down to three was never made clear (Plotnikoff and Woolfson 2000).

One thing the evaluation report felt unable to comment on was the overall effectiveness of the register. Was it making communities any safer? The authors were pessimistic because:

> forces had no agreed way of quantifying the contribution of sex offender monitoring to improving community safety … no single measure of effectiveness emerged from this study as suitable for performance measurement.

(ibid.: 50)

It could safely be said that 94 per cent of those required to notify were doing so, but the success of the procedural operation of the register is not the same as its overall effectiveness as an instrument of public protection.

**Strengthening the register – Phase two**

The second phase of changes to the register was instigated by a Home Office formal review of its work. A consultation paper had been published in July 2001 outlining various options but premised on the idea that, once again, ‘some aspects [of the register] could be strengthened’ (Home Office/Scottish Executive 2001: 1). Views were sought on the range of offences that should lead to registration, the nature of the registration requirements, the position of sex offenders under 18, and the position of sex offenders who travelled abroad. The compliance rate was now put at 97 per cent (ibid.: 5).

Proposals coming out of the review were contained in a chapter of the White Paper on sexual offences that was to become the basis for the new Sexual Offences Bill. It was now suggested that registrants be asked to notify all changes within three days – not just the initial reporting; be asked to report annually – in person – to a prescribed police station where they might be photographed and fingerprinted annually; finally, additional identification might be sought in the form of National Insurance numbers and biometric scanning of the iris (Home Office 2002d: paras. 23–4).

These exercises in strengthening the register and making notification requirements ever more onerous were carried out with a degree of apprehension by the Home Office. The fear was that the register might be losing its ‘civil’ status as a public protection measure and becoming almost a punishment in its own right:
Were the registration requirement to become more onerous, there could come a point at which the Act could no longer be seen as an administrative requirement.

(Home Office/Scottish Executive 2001: 13; for more on register strengthening at this time see Thomas 2008)

Most of these changes were incorporated into the Sexual Offences Act 2003. A police power of entry to a registered sex offender’s home was also introduced through the Violent Crime Reduction Act 2006 s. 58 which added a new section 96B to the Sexual Offences Act 2003. Applications had to be made for a magistrates order if police felt they were being excluded (Home Office 2007b). An unsuccessful attempt to challenge this new power in the courts was made (The Queen (on the application of H) v the Chief Constable of Hampshire and Secretary of State for the Home Department [2014] EWCA Civ 1651).

Strengthening the register – Phase three

The final phase of strengthening came when registered sex offenders were asked to provide yet more information on themselves to the police. This included information on all international travel (see later), on bank accounts, debit and credit cards, information on children under 18 living in the same household, and details of passports (Sexual Offences Act 2003 (Notification Requirements) (England and Wales) Regulations 2012 – SI 2012 No.1876). An unsuccessful attempt to challenge the right of the state to take such personal details of banking, debit and credit card details was made (R on the application of Christopher Prothero v Secretary of State for the Home Department [2013] EWHC 2830 (Admin)).

The numbers of registered sex offenders has grown incrementally. By February 1999, 8,161 individuals were recorded on the PNC as having notified the police in England and Wales of their details (Hansard House of Commons Debates 12 May 1999, col. 159 WA). On 31 March 2014 the numbers of registered sex offenders stood at 46,102 (MoJ 2014e: 6).

A useful guide for people on the register has been produced by the Prison Reform Trust (PRT 2013).

Police management of the registered sex offender

Whilst the registered sex offender remains on the register the police are required to continue assessing the risk he or she poses and to manage the person concerned in the community in the interests of public protection (implicit in the Sex Offenders Act 1997 and made explicit in the Criminal Justice and Courts Services Act 2000 s. 67). This new role was a consequence of the register whether it was seen as forthcoming by the police or not:
At a stroke this measure ensured that the police were no longer responsible only for the investigation of sexual crimes and the apprehension of sexual offenders but also for their risk assessment and on-going management in the community.

(Nash 2014)

In research carried out by the author one police officer recalled the start of this work:

So in 1997 the register came in and the police had no idea what to do with it and they didn’t do anything with it … It was a complete and utter shambles. No records were kept, it was awful, not just here, it was the same everywhere …

(Thomas et al. 2014: 144)

The police subsequently organised Public Protection Units (PPUs) – or similarly named units – to carry out this task. The National Policing Improvement Agency (NPIA) produced guidance for the police on how this ‘management’ role should be carried out in 2007; which has now been updated (NPIA 2010).

A central feature of the work is the home visit by the managing police officer. These increased in frequency with the higher risk offenders and the purpose was to gather risk-related information that might indicate a risk level was rising. The officer is expected to go in plain clothes and use an unmarked police car in order to not attract undue attention to the registrant. Nash reports one police officer view that ‘the whole object of the home visit, in my opinion, is to see subtle differences in their behaviour and presentation’ (Nash 2014; see also NPIA 2010: paras.7.4.1–7.4.9).

This management role has been given another form of technology to help the police in their work. Hertfordshire Police were the first British police force to enter the field of polygraphy or lie-detector testing as an aid to managing registered sex offenders. As there was no supporting legislation they could not compel offenders to submit to the lie-detector test and could only use it with the consent of the offender:

Polygraph testing will also now be used alongside existing measures to assess the risk posed by Registered Sex Offenders living in our communities where appropriate

(Hertfordshire Police 2014)

South Yorkshire Police followed suit in 2013; Hertfordshire Police said that South Yorkshire officers were joining the training being offered in Hertfordshire:

The 11-week course, which started earlier in the month, is the first of its kind for British policing and will be led by Professor Don Grubin, a
leading polygraph expert. It will attach to an intensive Quality Assurance Programme to ensure its effective application and integrity... [It] has attracted considerable interest from other forces including South Yorkshire who have sent two officers on the course.

(ibid. 2014)

At present these are the only two forces who have publicly declared that they are using the technique on this voluntary basis.

**Applying to come off the register**

From its inception the law on the register contained no provisions for appeals to be allowed to come off the register. Only the successful appeal and quashing of the original conviction would permit someone to forego registration. This lack of an appeal mechanism was most onerous for those required to register for life.

Angus Aubrey Thompson from Newcastle was one of the earliest people to go on the sex offender register; his length of sentence meant he was on for life. In 2008 he started a legal challenge that he should at least have the right to appeal against his requirement for indefinite notification. Mr Thompson regarded himself as no longer a risk to anyone.

Thompson’s legal challenge was joined by a child referred to only as ‘F’; ‘F’ had gone on the ‘register’ as an 11 year old following conviction for two offences of rape of a six-year-old boy. He was convicted after a contested trial on 17 October 2005 and his length of sentence also meant he was on the register for life. He regarded himself as no longer a risk to anyone.

All three levels of the UK courts considered the matter and the UK Supreme Court agreed that there should be a form of appeal and that at present the Sexual Offences Act 2003 was incompatible with Article 8 (the right of privacy) of the European Convention on Human Rights (R (on the application of F (by his litigation friend F)) and Thompson (FC) (Respondents) v. Secretary of State for the Home Department (Appellant) [2010] UKSC 17).

The Home Secretary Theresa May announced her response to the Supreme Court’s ruling on 16 February 2011. She was not happy. Her statement was prefaced by the comments that ‘the government is disappointed and appalled by the ruling’ and intended to make ‘the minimum possible changes to the law’ (Hansard House of Commons Debates 16th February 2011 col. 959); the Home Secretary made reference to the fact that Scotland had already (quietly) responded to the judgement but as far as she was concerned in England and Wales ‘we will implement a much tougher scheme’ (ibid.).

In order to correct a declaration of incompatibility with the European Convention on Human Rights the government had to ‘remedy the incompatibility’ and a draft Remedial Order was duly laid before parliament 14 June 2011. An appeal procedure was to be put in place whereby the police would decide on any applications by life-time registrants to come off the register after
15 years; there would be no right of appeal against the police’s decision. Scotland had introduced a similar police decision arrangement but with a simple appeal system to a Sheriff.

The House of Lords/House of Commons Joint Committee on Human Rights examined the draft Remedial Order and found it wanting. The main flaw was in not having a clear independent and impartial appeals system from the police review decision (House of Lords/House of Commons 2011: para. 29). The government revised their Remedial Order and this time included a right of appeal against a police decision. In parliament Junior Minister James Brokenshire said:

A route of appeal to a magistrates’ court has also been included. We are clear that we have developed a process that is robust, workable and makes public protection a central factor, while at the same time preventing sex offenders being able to waste taxpayers’ money by repeatedly challenging our laws. Sex offenders who continue to pose a risk will remain on the register and will do so for life if necessary.


One disadvantage for the applicant is that an appeal to the magistrates’ court puts the process in the public domain where it may be subject to press reporting. This will no doubt deter some people from applying.

The Sexual Offences Act 2003 (Remedial) Order 2012 No. 1883 duly amended the Sexual Offences Act 2003 by introducing new sections 91A-F which came into force 30 July 2012; this meant the first applications for review could be heard from 1 September 2012 as the first date on which it was possible to have been on the register for 15 years since implementation day 1 September 1997. The Home Office has produced guidance on how the reviews should work (Home Office 2012c). Similar arrangements have been made for Scotland with new sections 88A-I inserted into the Sexual Offences Act 2003.

If a person on the register for life now believes they no longer pose a risk to society they can apply to have their continued need for registration reviewed with a view to coming off the register. The police will consider their application and let them know if it has been successful or not. The appeals process applies only to life-time registrants and not to anyone with a lesser determinate period of registration. The application can only be made after 15 years on the register; or after eight years if the person concerned was a juvenile at the time of initial registration.

The police will decide if the application can be accepted or refused; this is referred to as the ‘determination’ and involves the police contacting other relevant bodies who may be able to assist them. The police should take into
account the seriousness of the original offence, the time that has passed since then, the age of the victim, any offences committed relating to notification requirements, an assessment of risk of future harm, any offences committed overseas and any views expressed by the victims of the person applying. The registrant may also input any evidence that indicates that he is no longer a threat to anyone and the police will take that into account. (The full legal requirements of a ‘determination’ are listed in the new Section 91D of the Sexual Offences Act 2003.)

In considering the ‘risk of sexual harm’ the police will use their existing RM 2000 instrument of risk assessment (see also MoJ 2012d Section 11 on police risk assessment) and their overall final ‘determination’ must give their considered written reasons for the decision to stop registration or require it to continue. The final decision has to be signed off by an officer of at least Superintendent rank.

A year after implementation a newspaper Freedom of Information Act request revealed that the police had received 91 applications to come off the register and had agreed to 43 of them (‘Child Rapists taken off Sex Offender Register in Secret’ Mail online 6 May 2013, available at http://www.dailymail.co.uk/news/article-2320483/Child-rapists-taken-Sex-Offenders-Register-secret-police-say-protect-human-rights.html, accessed 26 January 2015). One person had successfully appealed to magistrates (‘Landmark register victory for child sex offender’, Yorkshire Post, 11 March 2013). There had been one application for a judicial review of a magistrate’s decision to disallow an appeal; the judicial review decided that the appeal should be re-referred to a different magistrate’s court (Hamill and the Chelmsford Magistrates Court and Chief Constable of Essex Police [2014] EWHC 2799 (Admin)).

**Sex offenders and community notification**

‘Community notification’ is the American terminology for the public disclosure of sex offender register information. As we have noted, such disclosures were debated during the parliamentary discussions on the bill, and any general right of access was precluded. Home Office guidance was, however, able to shed some more light on the public’s right to know whether sex offenders were living amongst them.

Even before the register was implemented, the police had been giving information to the public about known sex offenders. Information on child sex offenders had been disclosed to schools in Hampshire (‘Schools sent lists of local paedophiles’, Daily Telegraph, 18 October 1996) and schools in Wales had duly passed such information on to parents when they had received it (Streeter 1996).

The ‘community notification’ debate was fuelled by reports of ‘Megan’s Law’ coming across the Atlantic from the USA. In 1994, a Federal law (the Jacob Wetterling Crimes against Children and Sexually Violent Offender Registration Act) had required all states of the USA to enact laws creating a sex
offender register; many had already had them in place for a number of years, but now all were encouraged to do so. In 1996, Megan’s Law amended the Jacob Wetterling Act to require all states to allow public access to, or dissemination of, the registration information. The law was named after Megan Kanka, a 7-year-old girl from New Jersey who had been sexually assaulted and killed by a convicted sex offender living in the same street as his victim and her family (Thomas 2003).

When the North Wales Police disclosed information on two sex offenders to a local community in the summer of 1997, the two people concerned sought a judicial review of the police decision. In July, the High Court ruled that the North Wales Police had acted properly in alerting people of the conviction record of their neighbours (R v. Chief Constable of North Wales Police, ex p. AB (1997) Times, 14 July).

The High Court stated that, as a general principle, and in terms of good public administration, the police should keep criminal record histories confidential, but if there was specific reason to disclose, then they could do so. The specific reason would normally be a risk to the public, and that risk should be carefully assessed before any such disclosure.

The two people involved later unsuccessfully appealed against the decision. The Court of Appeal discussed the sensitive balance involved in disclosure, the problems of accommodating such offenders and the possibility of others being driven ‘underground’. They also thought the police should discuss disclosures with offenders in advance of taking any action, but that ultimately the police had to adopt ‘a proactive rather than a reactive policy for dealing with offenders who had committed offences against children in the past’ (R v. Chief Constable of North Wales Police, ex p. Thorpe (1998) Times, 23 March).

An earlier judicial review, not referred to in the ruling but which arguably had some relevance, was that made in favour of Devon County Council when that local authority’s social services department was found to have been acting properly in disclosing information to the public about a man only suspected of having committed sex offences against children (R v. Devon CC, ex p. L [1991] 2 FLR; see Hayes 1992 for a critique of this ruling).

Although the North Wales case did not relate specifically to sex offender ‘register’ information – the Act was as yet unimplemented – the 1997 Home Office guidance was able to draw on the judgement – and indeed the Devon judgement – to give its interim guidance to the police on public disclosure from the register. The police were to make a risk assessment, involving other agencies as appropriate, make the information available to identified people and be prepared to give advice on how that information should be used (Home Office 1997c: Appendix A).

In the summer of 2000 more unrest broke out over child sex offenders and public information. The Sunday newspaper, the News of the World, led demands for community notification of sex offenders in the wake of the abduction and murder of 8-year-old Sarah Payne. In Paulsgrove near Portsmouth demonstrations lasted a week as a wave of ‘paedophile panic’ ran round the country.
At the moment the move towards any form of general public access to the UK sex offender register seems to have gone as far as it is going. The then Home Secretary David Blunkett reiterated the belief that ‘we cannot open the register to the vigilantes who do not understand the difference between paediatricians and paedophiles’ (2002). Home Secretary John Reid sent his junior minister Gerry Sutcliffe to the USA in 2006 to take another look at Megan’s law but again the verdict was that it would not be appropriate here (Home Office 2007a: 9–12; see also Fitch 2006). The UK approach has always been towards ‘controlled’ or ‘selective’ disclosure.

Controlled disclosure

The UK way forward on notifying people in the community of the whereabouts of a convicted sex offender has been more circumspect than the ‘community notification’ schemes of the USA. The UK police will release information they hold in a ‘selective’ or ‘controlled’ manner rather than in the ‘universal’ form entered into in America.

Under ‘common law’ the UK police are able to release information on known sex offenders in the interests of crime prevention and child protection. As noted earlier this practice has largely evolved since the police took on the responsibilities of managing the UK sex offender register in 1997 (R v Chief Constable of North Wales ex p Thorpe [1999] QB396).

Sarah’s Law

The Child Sexual Offender Disclosure (CSOD) scheme also enables the police to disclose background information on certain people with a history of offending against children. These arrangements are sometimes referred to as ‘Sarah’s Law’ named after Sarah Payne.

After initial pilots the CSOD scheme received a positive evaluation (Kemshall and Wood 2010). Separate guidance was issued to the police on how the scheme should be implemented (Home Office 2010) and it was duly rolled-out nationally on 4 April 2011. After one year it was claimed that ‘Sarah’s Law’ had helped in the protection of 200 children (Home Office 2012e).

It should be noted that although the Child Sexual Offender Disclosure scheme is known as ‘Sarah’s Law’ it is not actually based in any statutory law and is a purely administrative arrangement followed by the police. It has also been challenged once by a man who resented having his background brought up and given to someone; the court was critical of the Home Office’s procedural guidance but the challenge was otherwise unsuccessful (X (South Yorkshire) v. Secretary of State for the Home Department and Chief Constable of South Yorkshire [2012] EWHC 2954 (Admin)).
Other ways

Other ways in which the police can disclose information on sex offenders is through their participation in the MAPPA arrangements (see later). MAPPA refers to the Multi-Agency Public Protection Arrangements brought in by the Criminal Justice and Court Services Act 2000 to improve partnership working between the police, probation and prisons when it came to ‘managing’ dangerous offenders in the community.

The MAPPA agencies are given guidance on the conduct of their ‘working together’ by the Ministry of Justice that includes guidance that ‘the disclosure of information’ to third parties is a useful ‘restrictive intervention’ to reduce opportunities for harmful behaviour (MoJ 2012d: para. 12.22); since 2008 the MAPPA agencies are legally obliged to have regard to this guidance (Criminal Justice Act 2003 s. 325 (8A)).

In 2008 the Criminal Justice Act 2003 was amended to impose a further duty on MAPPA agencies to consider disclosing information to individuals in the interests of child protection:

1. The responsible authority for each area must, in the course of discharging its functions under arrangements established by it under section 325, consider whether to disclose information in its possession about the relevant previous convictions of any child sex offender managed by it to any particular member of the public (Criminal Justice Act 2003 s. 327A).

The new law placed a ‘presumption to disclose’ on the MAPPA agencies regardless of whether it had been requested and an assessment had to be made if they could see a child being at risk and that information disclosure would help protect a particular child or children generally.

Clare’s Law

The Domestic Violence Disclosure Scheme is similar to the CSOD and has the informal name of ‘Clare’s Law’. Clare Wood was a woman living in Salford who had started a relationship with George Appleton in April 2008. He had a history of violence that Clare was not aware of and had served two terms of imprisonment for harassing another woman and breaching a Restraining Order imposed using the Protection from Harassment Act 1997. She ended the relationship in October 2008 but Appleton’s harassment and violence continued. The Greater Manchester Police were contacted by Clare but she was murdered by Appleton on 2 February 2009; George Appleton committed suicide a week later.

Clare’s father, Michael Brown, started a campaign to ensure that women should be able to more easily find out about their new partners’ backgrounds. ACPO had earlier proposed such a scheme in their report to the Home Office Tackling Perpetrators of Violence against Women and Girls (ACPO 2009: paras.2.1–2.7) The
government published a consultation paper on the subject in October 2011 (Home Office 2011a).

There had been mixed reactions to the proposal. A clear majority of respondents supported introducing a scheme, albeit with qualifications in some cases but some major domestic violence organisations were strongly opposed, arguing that it represented a waste of resources which would be better spent improving the basic police response to domestic violence. The campaign group ‘Refuge’ was very critical and their chief executive Sandra Horley said ‘We are at an absolute loss as to why the government is introducing the new disclosure scheme,’ adding that most abusers were not known to police and when they were, legislation was already in place to give police powers to disclose information about previous convictions or charges to prevent further crimes from taking place (cited in ‘Clare’s Law’ plans criticised by violence charities Daily Telegraph, 5 March 2012).

Four pilot schemes started in the summer of 2012; Home Secretary Theresa May said:

This pilot scheme is designed to prevent tragic incidents from happening, such as that of Clare Wood, by ensuring that there is a clear framework in place with recognised and consistent processes for disclosing information.  

(Home Office 2012f)

The Domestic Violence Disclosure Scheme was launched nationwide in November 2013 (Hansard House of Commons Ministerial Statement 25 Nov 2013: Columns 5–6WS). It is again worth noting that, ‘Clare’s Law’, like Sarah’s Law is not actually a statutory law and is only an administrative arrangement carried out by the police following Home Office Guidance. It was said to have protected over 1,300 women by January 2015 (Grierson 2015).

Multi-Agency Public Protection Arrangements (MAPPAs)

An unforeseen consequence of the Sex Offenders Act and the ruling in the North Wales decision that police could disclose information to the public on particularly dangerous sex offenders was the requirement now to set up mechanisms to help police decide when they actually had a dangerous offender on their hands. Risk assessments had to be made on all new entrants on the register if the police were to fulfil their newly acquired role of ‘controlled disclosure’ to inform the public.

Some police forces already had public protection panels where they met with other agencies, such as the probation service, to make multi-agency risk assessments of all kinds of dangerous offenders. Others were moving into the risk assessment business for the first time and wide variations were being noted:

The most obvious example of lack of consistency was the way in which risk assessments were being undertaken. The speed with which the |Sex
Offender] Act was introduced had led many forces to adopt their own risk assessment models drawing on the experience and expertise of specialists outside the police service.

(HMIC 1999: 5.10)

The Association of Chief Police Officers moved in response to these criticisms and developed a standardised risk-assessment model, based on the good practice of various forces and the model used by the Home Office’s Prison Department. By June 1999, it was reported that the model – MATRIX 2000 – had been sent to all forces and training needs were being determined (‘Risk model approved to identify sex re-offenders’, Policing Today 5 (2), 1999: 9).

In 2001 new Multi-Agency Public Protection Arrangements (MAPPAs) were created. This was an attempt to bring in further agencies and put informal ‘public protection panels’ on to a statutory footing. MAPPAs required the police to liaise with the probation service and the two agencies were known as the ‘responsible authorities’ (Criminal Justice and Courts Services Act 2000 ss. 66–68).

The Home Office decided to include lay members on MAPPAs to help give a general oversight at a Strategic Management Board level. This appeared to be a political move to head off more calls for public access to the register. The announcement about lay members was made by Home Secretary David Blunkett in the News of the World, on 16 December as that newspaper renewed its campaign for open access to the register. The man responsible for the abduction and murder of Sarah Payne had been convicted on 12 December (see ‘He’s done it before’, Daily Express, 13 December 2001; ‘Named, shamed’, News of the World, 16 December 2001). Non-readers of the News of the World were informed by a Home Office press release dated 18 December 2001 (Home Office 2001b). Pilot schemes followed (Hebenton and Thomas 2004) and the Home Office began recruiting lay people in April 2004 (Home Office 2004) by which time the necessary law was in place (Criminal Justice Act 2003, s. 326(3)).

The Criminal Justice Act 2003 ss. 325–327 also added the prison service as a third MAPPAs ‘responsible authority’ and placed a statutory duty on the police to ‘assess the risk’ posed by all sex offenders on the register; for the higher risk offenders this was to involve home visits by the police at regular intervals.

MAPPAs would look at three groups of offenders:

- the registered sex offenders;
- violent and other sexual offenders; and
- other offenders considered to pose a risk to the public

(Criminal Justice and Court Services Act 2000, ss. 67–68)

and in so doing arrange to assess and manage any risks they might continue to pose; an annual report was to be published by each MAPPAs on its work (see Bryan and Doyle 2003). Any comprehensive evaluation of MAPPAs remains to be completed, but concerns about their resourcing were soon aired.
Preventive Orders

The use of civil preventive orders to contain and control people’s behaviour was a feature of the first decade of the century. The prototype was the Anti-Social Behaviour Order (ASBO). These Orders were not criminal prosecutions but were civil injunctions that were applied for and, if made, they stated the behaviour that in future was to be prohibited or the geographic areas that had to be avoided; these prohibitions could only ever be ‘negative’ in nature saying what could not be done and were never ‘positive’ in making requirements of people saying what had to be done. People in breach of these civil prohibitions could become the subject of criminal proceedings; some people referred to it as the two-step prohibitions (Simester and von Hirsch 2006).

Sex Offender Orders

The Sex Offender Order was partly created to allay fears about the register not being retrospective. One estimate from the Home Office had put the number of convicted sex offenders in the community at over 100,000 (Marshall 1997). The vast majority of these would not be on the register simply because their offences had been committed too early for inclusion; they were not ‘in the system’ – in custody or under supervision – at the time of implementation on 1 September 1997. The problem had been raised during parliamentary discussion on the Sex Offenders Bill, but once the Act was in place it was seen as something still requiring resolution.

The Sex Offender Orders were designed to rein in all those convicted sex offenders in the community who were not required to keep their details up to date on the register. If a so-called ‘trigger event’ was spotted by the police, such as a person acting suspiciously near a playground or school, and the police knew the person concerned had previous convictions for sex offences against children, an application could be made to a court for a Sex Offender Order. The Order would initiate a requirement on the person concerned to register, but also could lay down prohibited activities they must desist from and possibly areas of the community which they could not enter because of the risk they posed to children. Failure to comply was a criminal offence.

By June 2002, the Home Office was aware of 170 Sex Offender Orders having been applied for with a success rate in the courts of around 94 per cent (Home Office 2002e); overall the police were finding them to be useful instruments to help manage sex offenders (Knock 2002). The Sex Offender Order was later replaced by the Sexual Offences Prevention Order (see later).

Restraining Orders

Restraining Orders were introduced by the Criminal Justice and Court Services Act 2000 (s. 66 and Schedule 5) amending the Sex Offender Act 1997 with a
new s. 5A. The Restraining Order was made on a sex offender at the point of sentencing at the discretion of the court; no one had specifically to apply for it (see, e.g. Sapsted 2003). The court had to be satisfied that the order was needed to prevent risk of serious harm to the general public or to an individual; the latter would most likely be the victim of the crime. As with the Sex Offender Orders, the Restraining Order could only make ‘negative’ requirements for an offender to desist from certain activities and not ‘positive’ requirements that they do something. The order could be for a specific time or for an indefinite period, and breach of the order would be dealt with as a criminal matter with sanctions of imprisonment or fines.

**Sexual Offences Prevention Orders**

The Sexual Offences Act 2003, ss. 104–113 introduced the Sexual Offences Prevention Order (SOPO) which replaced and combined the earlier Sex Offender Order and Restraining Order. The SOPO was applied for by the police on anyone with a history of convictions who was demonstrating the ‘trigger’ activities as outlined for Sex Offender Orders, and it could also be made on an offender at the time of conviction. The SOPO contained prohibitions on a person’s activities in order to protect the public or any particular members of the public from serious sexual harm from the defendant, and required registration as a sex offender if that requirement did not already exist. Failure to comply was a criminal offence. The first SOPO was reportedly made in Bristol (Travis 2004).

The Appeal Court was not happy with one police force who appeared to turn a SOPO’s negative prohibition into a positive requirement which was not permitted. The police wanted a permanent right of entry to a sex offender’s home to check his computer use. In order to comply with the requirement that this be worded as a negative prohibition it was written into the SOPO that ‘he could not deny them entry’. The courts construed this as creating a permanent right of entry and search and as such was overly ‘draconian’ (Thompson [2009] EWCA Crim 3258).

The courts later ruled that all prohibitions contained in a SOPO needed to be ‘tightly drafted after considerable thought’ and feared that that was not always happening. The courts agreed with a sex offender who appealed against his SOPO which imposed a blanket ban on using the Internet; such a ban was ruled as impermissible:

> It is disproportionate because it restricts the defendant in the use of what is nowadays an essential part of everyday living for a large proportion of the public, as well as a requirement of much employment. Before the creation of the Internet, if a defendant kept books or pictures of child pornography it would not have occurred to anyone to ban him from possession of all printed material. The Internet is a modern equivalent.

(R v Smith and others [2011] EWCA Crim 1772; see also Walden and Wasik 2011)
Foreign Travel Orders

The Foreign Travel Order was introduced by the Sexual Offences Act 2003 to prevent known sexual offenders travelling abroad. The sex offender register already required people to inform the police if they were going abroad. A consultation paper was now published by the Home Office (Home Office 2003d) and the necessary sections added to the Sexual Offences Act 2003 (ss. 114–122) to prevent sexual offenders – the ‘qualifying offenders’ – from travelling abroad.

The police applied to magistrates for the Foreign Travel Order which, if granted, lasted for six months. During this time the subject of the order was unable to leave the UK for either a specified country or indeed anywhere in the world. Failure to comply was a criminal offence.

Originally registered sex offenders only had to notify the police of their international travel plans if they were going abroad for more than eight days (2001) but after campaigning by ECPAT this eight-day period was reduced to three days (in 2008). This was still not enough for ECPAT who continued campaigning to get the time period down to zero and therefore for any travel by registered sex offenders to be notified. The police supported the ECPAT campaign:

The recommendation to introduce a requirement to notify the Police of all travel outside of the United Kingdom, regardless of the duration of the trip, is strongly supported.

(ACPO cited in Home Office 2011b: 6 emphasis added)

The campaign was successful. Since August 2012 notification is required from registered sex offenders for ‘any’ time period at all spent abroad (Sexual Offences Act 2003 (Notification Requirements) (England & Wales) Regulations 2012 no. 1876). Although little evidence had been produced to show that people were travelling abroad for less than three days to abuse children Christine Beddoe Director of ECPAT UK clearly regarded it as a victory declaring ‘we are … delighted that the government has finally heeded ECPAT UK’s call to close the ‘3-day loophole’’ (ECPAT 2012).

Notification Orders

The Notification Order came into effect on 1 May 2004 along with most of the other provisions of the Sexual Offences Act 2003. The Notification Order could be applied for by the police on anyone known to have committed relevant sexual offences in another country and who was considered a risk to the public; the subject of a Notification Order could be a British national returning to the UK having offended overseas, or a foreign national taking up residence here. There had been a great deal of hostility aimed at the Home Secretary for the boxer Mike Tyson’s two visits to the UK within five months when he had
convictions for sexual offences at home in the USA (‘Anger as Tyson is granted visa for Glasgow fight’, *The Independent*, 19 May 2000). The new Notification Orders meant the subject had to be on the UK sex offender register and abide by all its requirements (Sexual Offences Act 2003, ss. 97–103).

The main problem for law enforcement authorities was knowing when a person was arriving in the country who had the qualifying criminal record. There was no problem when well-known people came into the UK such as Paul Gadd (better known as pop-star ‘Gary Glitter’) (Lewis 2008) but otherwise it could be problematic; the Home Office has produced some guidance to help the authorities (this first appeared in 2004 but is now to be found in Home Office 2012c: 39–40).

**Risk of Sexual Harm Orders**

One troubling aspect of sexual offending for legislators was the practice of ‘grooming’ a child for sexual activity by lengthy befriending and often deception. Sex offenders had long been thought to do this but the use of the Internet and ‘chatrooms’ whereby adult men could anonymously pretend to be of the same age as their intended victims made the problem seem more urgent. A former US marine – Toby Studabaker – triggered an international search when he abducted an English girl met this way; he was eventually found in Germany (Carter 2004).

The proposed answer was the Risk of Sexual Harm Order (RSHO) introduced by the Sexual Offences Act 2003 (ss. 123–129). The police can apply for these Orders if they see a pattern developing and there is an identifiable sexual component to the behaviour whether online or offline. The Order seeks to prevent adults from initiating contact with children to ‘groom’ them in order to initiate the sexual abuse of a particular child or group of children. Fines or imprisonment can be imposed for non-compliance with the Order.

The application for a RSHO has to demonstrate that a person has on at least two occasions been:

- a engaging in sexual activity involving a child or in the presence of a child;
- b causing or inciting a child to watch a person engaging in sexual activity or to look at a moving or still image that is sexual;
- c giving a child anything that relates to sexual activity or contains a reference to such activity;
- d communicating with a child, where any part of the communication is sexual (Sexual Offences Act 2003 s. 123 (3)).

RSHOs have been criticized for not actually offering a meaningful level of prevention. The first two items on this list of required evidence, for example – (a) and (b) – are actually offences in their own right in the Sexual Offences Act 2003. Critics believe that they are acts that could have led to a prosecution but have not
done so; possibly because of lack of evidence for the higher standard of proof. In effect the civil RSHO is then being used as a ‘softer’ alternative to prosecution. The need for evidence of ‘sexual communication’ item (d) also suggests Internet grooming is getting a greater priority in the law than its lower rate of incidence warrants, compared to face to face grooming (Craven et al. 2006 and 2007).

Guidance has again been provided by the Home Office on what the police should examine to suggest the person is likely to harm a child or group of children (this again first appeared in 2004 but is now to be found in Home Office 2012d: 58–59).

A RSHO can be made on anyone; there is no necessity that the person already be ‘known’ and convicted for earlier sexual offences, as is the case with the SOPO. Applicants have only to demonstrate the behaviour patterns listed earlier; to now say that anyone could be a potential child sexual offender is recognition of, and a tacit widening of, the scope of just who might be a sex offender.

**Sexual Risk Orders and Sexual Harm Prevention Orders**

The Anti-Social Behaviour, Crime and Policing Act 2014 contained provisions for two new Orders for the regulation of behaviour likely to cause sexual harm. The Orders would replace the existing Sexual Offences Prevention Orders, Risk of Sexual Harm Orders and Foreign Travel Orders available in the Sexual Offences Act 2003.

The Bill had been first published on 4 June 2013 and Home Secretary Theresa May gave notice of amendments to the Bill to include these new Orders on 8 October 2013.

The two Orders are:

- the Sexual Risk Order; and the

The prime movers for the new orders were the Association of Chief Police Officers (ACPO) who published a report in May 2013 calling for a review of the present arrangements. The existing regime was dismissed as reflecting ‘the historic origin of the legislation rather than any purposive logic’ (Davies Report 2013: para. 5.2). Campaign groups such as ECPAT UK and ‘Childhood Lost’ joined the call for change.

The Report recommended that only one previous conviction would in future be required and that the need to prove ‘serious’ sexual harm should be dropped:

We resist the term ‘serious’, borrowed from existing legislation, since it presupposes that there is some category of sexual harm that may be caused to a child that is not intrinsically serious or that is not worthy of prevention.

(ibid.: para. 2.6)
The Sexual Risk Order and the Sexual Harm Prevention Order can now be made if there is a risk of sexual harm taking place. The old regime of civil orders (see earlier) required there to be the possibility of ‘serious sexual harm’ taking place for the making of a SOPO or a RSHO; the word ‘serious’ has now been dropped.

The Sexual Harm Prevention Order is contingent upon a conviction or caution but the Sexual Risk Order requires no such pre-requisite. Neither is confined to child sex offenders but could cover sexual offending against anybody of any age. Both require any behaviour described in the Order to stop or a criminal offence is committed which could lead to a custodial sentence.

The new powers were soon criticised by the Chair of the Law Society’s Criminal Law Committee:

it is a dangerous move to take away the requirement for a conviction to make a restrictive order, not least because the order will be interpreted as proof that you committed the offence and that you are indeed a paedophile. (‘Guilty until proved innocent’, Law Society Gazette, 28 August 2013)

The Anti-Social Behaviour, Crime and Policing Act received its Royal Assent on 13 March 2014 and the relevant sections on the Sexual Harm Prevention Order and the Sexual Risk Order were implemented from 8 March 2015 (see also Thomas and Thompson 2014).

**Serious Crime Prevention Order**

The Serious Crime Prevention Order (SCPO) is an Order to help prevent a range of serious offences being committed. These include offences of arranging, or facilitating sexual offences against children or similarly organising offences of prostitution including child prostitution (Serious Crime Act 2007 s. 19 and Schedule 1 Para. 4).

**Summary**

The civil law has increasingly been turned to as a means of protection from sex offenders. A raft of civil measures has now been put into place to help regulate the activities of the sex offender – not as a punishment – but in the interests of greater community protection. Starting with the sex offender ‘register’ in 1997 as a way of knowing where convicted sex offenders are living at any one time, we have had Notification Orders, Sexual Offences Prevention Orders, Foreign Travel Orders, and Risk of Sexual Harm Orders which all placed restrictions of various kinds on the sex offender and are now replaced by Sexual Risk Orders and Sexual Harm Prevention Orders. The common feature of all of them is that failure to comply brings the individual subjected to them into the criminal courts where they will be dealt with as an offender.
Chapter 11

Conclusion

Introduction

At the start of this book one of the aims of writing it was stated as ‘getting below the headlines about sex crime’. Whilst updating it for this third edition, those headlines have continued unabated and if anything increased in frequency by the month. If there was a ‘paedophile panic’ in 1998 (‘Paedophile Panic “harming a generation of children’”, *The Independent*, 21 July 1998) then by 2015 sexual crime as a news item was simply there every day.

Celebrity sex crime, often of a historic nature, has become a new phenomenon and so has child sexual exploitation. We have continuing problems with the investigation of sexual crimes and bringing offenders to justice. We still have concerns about how to ‘treat’ them and whether that ‘treatment’ is making any difference and we have concerns about them leaving prison and resettling into the communities we have taken them from. We have tried to keep sex offenders from working with children and vulnerable adults with ever more labyrinthine systems of vetting and barring. We have registered sex offenders and brought in new laws to try and limit their behaviour and contain them in the community. So complex do our public protection arrangements become that they are ever more confusing. Kafka’s short story *The Burrow* comes to mind where an animal builds such a complicated defensive burrow to defend against an unnamed threat that he gets confused by his own arrangements (Kafka 2008).

In Downing Street in early March 2015 Prime Minister David Cameron said he wanted child sexual abuse to be given the status of ‘a national threat’ in the Strategic Policing Requirement so that it is prioritised by every police force (HMG 2015: para. 2). National inquiries have been started into historic sexual crimes in high places (see later). The Home Secretary writing in the *Daily Telegraph* told us that ‘abuse is woven covertly into the fabric of our society’:

> During one of my first meetings with survivors, one lady said to me: ‘Get this inquiry right and it will be like a stick of Blackpool rock. You will see abuse going through every level of society.’ I fear she is right. (May 2015).
National initiatives

Politicians have been drawn ever more into the controversies of how best to protect children and indeed adults from becoming the victims – or survivors – of sexual crimes. Sometimes this has been as representatives in localised areas such as Nicola Blackwood (MP for Oxford), Sarah Champion (MP for Rotherham) and Simon Danczuk (MP for Rochdale). Each has had to deal with crimes of child sexual exploitation in their constituencies and Danczuk has followed up claims of historic abuse involving children committed by the late Cyril Smith, MP for Rochdale.

At a national level the Ministers and Secretaries of State for the Home Office, Ministry of Justice, Department of Health, Department of Education and Department of Communities and Local Government have all been called upon to face the problems of sexual abuse and child sexual exploitation. An Inter-departmental Ministerial Group on Sexual Offending was formed in 2006 to enable Ministers from all government departments to bring together their relevant policy initiatives and to work together to ensure they are effectively joined up strategically and in practice at national and local levels. A collective Action Plan on Sexual Violence and Abuse was drawn up in 2007 (HMG 2007).

Outside of government the Association of Chief Police Officers, Crown Prosecution Service, Her Majesty’s Court Service, National Offender Management Service (NOMS) and the Voluntary and Community Sector have all become part of the national response.

The National Group on Sexual Violence against Children and Vulnerable People was formed in April 2013. This was to be a panel of experts to coordinate and implement lessons from current cases and historic inquiries; its convenor from the Home Office, Damien Green outlined its work:

> We want to ensure that all victims of sexual violence and domestic abuse are listened to, dealt with appropriately and sensitively and that they have sufficient confidence in the police and criminal justice system to report the crimes in the first place.

> We want every report of rape to be treated seriously from the point of disclosure, every victim to be treated with dignity, and every investigation and every prosecution to be conducted thoroughly and professionally. All rape cases are now handled by prosecutors who have undertaken special bespoke training.

(Home Office 2013c)

The Group was to meet every three to four weeks and started its work with a review of nine areas:

- prevention
- cyber-crime
- policing
Organisations on the National Group included representatives from the Home Office, the Department for Education, the Department for Communities and Local Government, the Cabinet Office, the Department of Health, Department for Culture, Media and Sport and the Ministry of Justice. It also included representatives from Rape Crisis, Barnardo’s and the National Society for the Prevention of Cruelty to Children.

**National inquiries: cleaning out the Augean stables?**


Northern Ireland had already started with its Hart Inquiry announced in 2011; England and Wales followed with its *Independent Inquiry into Child Abuse* to commence in 2015 and Scotland announced its own inquiry in December 2014.

**Northern Ireland**

In September 2011, the Northern Ireland executive confirmed it would set up an inquiry to examine allegations of abuse at children’s homes and care institutions between the years 1922 and 1995. Retired High Court judge Sir Anthony Hart was chosen to chair the Inquiry which was given statutory underpinning by the passing of the Historical Institutional Abuse Act (Northern Ireland) 2013. The Inquiry was to take the form of:

a an Acknowledgement Forum where victims and survivors can recount their experiences to a panel;

b a Research and Investigative Team which will:

- Assemble and provide a report on all information and witness statements provided to the Acknowledgement Forum;
- Provide an analysis of the historical context that pertained at the time the abuse occurred; and
- Provide a report of their findings to the Acknowledgement Forum and to the Chair of the Inquiry and Investigation.

c An Inquiry and Investigation Panel that will coordinate the reports of the Acknowledgement Forum and the Research and Inquiry Team to produce a final report and findings which will then be considered by ministers who will decide the way forward.

The Hart Report would be looking at the Kincora Children’s Home in Belfast as far back as the early 1980s but Sir Anthony had already revealed that ‘much of the state material on the [Kincora] home remains in the hands of the Home Office and cannot be disclosed to his inquiry’ (McDonald 2014).

Some former residents of Kincora wanted the Independent Inquiry in England and Wales (see later) to look at Kincora because of its possible links to establishment figures. This had already been ruled out by the Home Secretary Theresa May (Hansard House of Commons Debates 4 February 2015 col. 277) but in February 2015 the High Court in Belfast granted the residents a judicial review into her decision (McDonald 2015).

**England and Wales**

When child sexual abuse was alleged within the realms of government and the ‘establishment’ itself the problems of investigation became equally more difficult. In England and Wales allegations were triggered in the mid-1980s by Geoffrey Dickens, MP, who gave a series of files naming names to the Home Secretary, at the time Leon Brittan. Brittan himself was the subject of rumours regarding child sexual abuse. Dickens died in 1995 and nothing more was ever heard of the allegations until 2013 when a renewed effort was made by politicians to find out what had happened to it. A search was made but the files were lost and all that was found were letters from Dickens making some allegations.

Following more political pressure the Home Secretary ordered an inquiry into the missing files to be conducted by Peter Wanless, head of the NSPCC. The Wanless–Whitham inquiry (available at https://www.gov.uk/government/publications/the-peter-wanless-and-richard-whittam-qc-review, accessed 26 March 2015) failed to find the missing files or any ideas of what might have happened to them:

Peter Wanless … concludes in his inquiry report into 114 missing Home Office files relating to child abuse in the 1980s that there is no evidence that they were ‘deliberately or systematically removed or destroyed to cover up organised child abuse’.

(Travis 2014c)
At the same time the Home Secretary announced a major Independent Panel Inquiry into Child Sexual Abuse on the wider front. The terms of reference were extensive:

To consider the extent to which State and non-State institutions have failed in their duty of care to protect children from sexual abuse and exploitation; to consider the extent to which those failings have since been addressed; to identify further action needed to address any failings identified; and to publish a report with recommendations.


In doing so the inquiry would consider all the information which is available from the various published and unpublished reviews, court cases, investigations, etc. which have so far been completed. It would also advise on any further action needed to address any institutional gaps or failings within our current child protection systems on the basis of the findings and lessons learnt from these reports and consider whether these institutions failed to identify such abuse and whether there had been an inappropriate institutional response to allegations of child abuse. The Inquiry Panel was to consider these matters from 1970 to the present.

This wide ranging scope was seen by many as nothing less than the ‘establishment’ of the country being examined for child sexual abuse allegations. As such, problems immediately arose with finding a suitable chair for the Panel. The first two chairwomen appointed resigned before the Inquiry had started. Baroness Butler-Sloss because her brother, Michael Havers, had been a government colleague of Leon Brittan and Fiona Woolf (a corporate lawyer and Lord Mayor of London) – because of social connections to Leon Brittan (Gillespie and Shipman 2014).

Allegations and rumours had long circulated about Brittan and were expressed again using parliamentary privilege:

The rumours that Sir Leon Brittan was involved in misconduct with children do not come as news to miners who were on strike in 1984, because when miners were going into the dock in magistrates courts we were aware and miners were declaring … throughout the strike that they objected to the instructions coming from the Home Secretary when there were reports of child abuse linked with that same Home Secretary.

(Jimmy Hood, MP, House of Commons Debates 28 October 2014: col. 255)

Sir Leon Brittan died on 21 January 2015. Eventually a chair for the Inquiry was found in New Zealand where High Court Judge Lowell Goddard agreed to take on the role (Travis 2015b).
Scotland

The Scottish government has announced its own statutory public inquiry into the historical abuse of children in care. Education Secretary Angel Constance told the Scottish parliament that the terms of reference were still to be decided upon but any criminal activity unearthed would feel the full force of the law:

Of course, the case for an inquiry is strong. I am sure that I do not need to tell members of this chamber that we owe it to survivors to find the truth, to speak that truth wherever it needs to be heard, and to listen and learn from what we hear. However, we must also be mindful of the fact that inquiries are major undertakings. The decision to launch them cannot be taken lightly, and the planning around them must be careful and inclusive. They must have a clear focus and not be open-ended in either remit or timescale.

(Angel Constance, Scottish Parliament 17 December 2014)

At the time of writing (March 2015) the terms of reference are still being drawn up but the Education Secretary has already stated her belief that a cross-border element will be needed in the inquiry:

My officials have already been in touch with officials in Northern Ireland, for example, because an inquiry is continuing there on that basis, and we will of course have discussions and share information and experiences as appropriate with our colleagues in the UK Government.

(ibid.)

Jersey

On 6 December 2010 the Jersey’s Chief Minister made a formal apology to all those who suffered abuse in the States’ residential care system. His statement followed the conclusion of an investigation by the States of Jersey Police, named Operation Rectangle, into historical child sexual, emotional and physical abuse in a number of institutions in Jersey. Operation Rectangle reported and recorded a total of 553 alleged offences between September 2007 and December 2010. Of these, 315 were reported as being committed at Haut de la Garenne Children’s Home. Eight people were prosecuted for 145 offences and seven convictions secured. The Police identified 151 named offenders and 192 victims (website of the Jersey Care Inquiry, available at http://www.jerseyca reinquiry.org/about-us/history-of-inquiry, accessed 23 February 2015).

In his apology the Chief Minister promised that the Council of Ministers would consider whether there remained any ‘unanswered questions’ that required further investigation by a Committee of Inquiry and on 2 March 2011 the States Assembly formally requested the Council of Ministers to establish a
Committee of Inquiry to investigate a number of ‘unresolved issues’ in relation to historical abuse on Jersey. The States Assembly duly agreed the Terms of Reference (also available at http://www.jerseycareinquiry.org/about-us/history-of-inquiry, accessed 23 February 2015) for the Committee of Inquiry to undertake a wide-ranging investigation into historical child abuse in Jersey. The Inquiry was to allow victims and others to recount their experiences, to establish how institutions caring for children were managed and to compare this to the norms of the time.

The role of personal information

As risk assessment and management moves to centre stage in sex offender law enforcement and public protection, it brought with it the role of personal information to inform those risk analysis tasks. But what actually is ‘personal information’?

Personal information relates to a particular individual and includes all that information we might expect to be considered private or personal, such as information about health, sexual matters or family. It would include all that information about which the community at large has no particular interest, because it holds no significance for the community. According to the academic Raymond Wacks, we might define it as follows:

Personal information consists of those facts, communications, or opinions which relate to the individual and which it would be reasonable to expect him (or her) to regard as intimate or sensitive and therefore want to withhold or at least to restrict their collection, use, or circulation.

(Wacks 1989: 26)

The individual sex offender would probably subscribe to this definition. His intentions are personal to him, his activities carried out in private and his victims – especially children – are asked or threatened to keep ‘the secret’. Wider cultural forces (male) may support this ‘containing’ of information, narrowing of the definition of a sexual offence and refusal to take the victims’ views seriously.

The role of the law enforcement and other public protection agencies has been to move this personal information on the sex offender from the private to the public domain. In this instance, public domain is only the various agencies who have a ‘need to know’ in order to identify, track and intervene in the sex offender’s activities as appropriate. As the sex offender seeks to restrict the ‘collection, use or circulation’ of personal information about him, so these agencies are trying to do the exact opposite by collecting, using and circulating that same information.

To this end, we have seen the creation of the sex offender ‘register’, the promotion of ‘intelligence-led’ policing, the build-up of the NCIS Serious Sexual Offences Unit database and its successor at the NCA CEOP command. We have seen the development of the police-probation-prison database
ViSOR and the more active use of the national collection of criminal records and their routine dissemination to other agencies and employers to help them make their risk assessments. Elsewhere, we have seen the upgrading of the Department of Health Consultancy Service Index and the ‘List 99’ into statutory ‘barring lists’ for both work with children and adults; we have seen the importance of the Forensic Science Services National DNA Database, and the Bichard Inquiry Report call for a National Intelligence Service now operating as the Police National Database. All these initiatives put personal information at the centre of activities to combat the sex offender.

This personal information is not being collated for its own sake, but is increasingly being actively used and also exchanged between agencies charged with law enforcement or public protection. This inter-agency work is all aimed at trying to get the right information to the right agency at the right time to enable them to do their job.

At one time, police-held criminal record repositories were for the police alone, to help them do their work and for the police to produce them in court (as antecedents) to help those deciding on sentences to make appropriate decisions. Today, police-held criminal records are available to numerous other agencies throughout the criminal justice system and beyond. The national criminal record collection was renamed as PHOENIX and computerised in 1995, when, significantly, it took on the subtitle ‘The Criminal Justice Record Service’ to reflect the changing priorities.

Personal information becomes the ‘currency’ that all agencies value, and personal information thereby facilitates the overall interactions that make up inter-agency work. To use another metaphor, personal information is the oil that keeps the cogs of the inter-agency machine working. Traditional frictions and ‘turf-wars’ are reduced as personal information is put into circulation to make manifest the old cross-discipline cliché that ‘at the end of the day we are all working to the same end’.

The circulation of personal information has been furthered by changes in the law (see, e.g. the Crime and Disorder Act 1998, s. 115, implemented 30 September 1998) and by information technology which gives real-time information exchange rather than the old index cards, microfiche and telephone.

Traditional ideas of ‘confidentiality’ and ‘privacy’ are breaking down as ‘serious crime’ demands the production and exchange of personal information. Data Protection Acts offer some safeguards, but exceptions exist for investigating crimes and protecting children. Anne Worrall was an early critic to note her pessimism about any future positive work with sex offenders:

> the debate on working with sex offenders in the community has been virtually foreclosed … official government discourse now rejects the language of rehabilitation in favour of the language of surveillance and control through information.

(Worrall 1997: 125)
The wide variety of working together and information sharing in the need to safeguard children and vulnerable people has been noted (Home Office 2014b), but contradictory situations have nonetheless arisen. A report on police child protection procedures in West Yorkshire found police attending only a small percentage of child protection conferences.

... inspectors had significant concerns about how little the police were involved in longer-term plans for children who were most at risk. If a child is considered to be at risk of significant harm there may be a need for a child protection plan and an initial case conference will be arranged. In Calderdale, police attended most case conferences (30 out of 38 in a three-month period). However, in Leeds, police attended just 8 of 160 conferences, in Bradford 3 of 66, in Kirklees 13 of 45 and in Wakefield 10 of 59.

(HMIC 2015: 11)

Whilst in the neighbouring force of South Yorkshire Police:

The fact that police in Rotherham were forced to seek information from the Freedom of Information team in the council rather than accessing it directly from the social workers themselves sums up the ineffectiveness of local multi-agency working.

(HMG 2015: 5)

Much of this information exchange is to allow agencies to intervene appropriately; to make an arrest, remove a child from a harmful situation, make a sentencing decision, make an employment selection decision or a housing decision. All these interventions are made on the basis of the information in question being used for risk assessment and risk management.

**The role of the media**

The press and media representations of sexual offending has been criticised for its sensationalism and its demonization of the person who commits a sexual crime (Soothill and Walby 1991; Greer 2003). In research carried out by the author some volunteers working with sex offenders spoke about their images of sex offenders taken from the media compared to the reality:

we were all worrying about what it would be like going into this room and that there would be this monster coming into the room and he would be scary but they are just normal people and in a sense that is more scary isn’t it because then you just don’t know do you.

(Thomas et al. 2014: 105)
This media distortion of the sex offender has extended to the media demand made for better policies of management and public protection.

At various points in this book references have been made to the Sarah Payne abduction and murder in 2000 when the *News of the World* newspaper started a campaign for open access to the sex offender register so that everyone could know who was living on their street; the simplistic jingle ‘named and shamed’ became their slogan. No one wanted sex offenders living near them. The newspaper’s ‘For Sarah’ campaign led to vigilantism and demonstrations throughout the country but especially in the Portsmouth suburb of Paulsgrove; it was:

... an ugly situation threatening to become even uglier every day. All over the country, probation and police officers involved in child protection were being distracted from their job in order to prevent sex offenders abandoning treatment courses and, in some cases, fleeing their homes.

(Silverman and Wilson 2002: 156)

The *News of the World*’s campaign was eventually ended after discussions between the paper and senior police officers and probation officers (Thomas 2001a).

Later analysis of this period revealed the extent of the power of the press in these situations. The *News of the World* had commissioned market research in advance of the campaign they were considering and found that it would play well with their readers (Silverman and Wilson 2002: 150). In the middle of the mayhem and disruption caused by the newspaper, Tony Butler the Chief Constable with responsibility for sexual offending, found it hard to get hold of anyone in the Home Office to discuss what should be done when the newspapers seemed to have ready access to the home secretary:

... at the height of the controversy Tony Butler sent a letter to the ‘duty’ Home Office minister and did not even get a reply. However, when it came to responding to communications from the *News of the World*, all speed was the watchword.

(ibid.: 154)

Looking back Gill MacKenzie, Chief Probation Officer, said of the newspaper:

They gave parents false ideas about where the real risk to their children lay. They disrupted the treatment of paedophiles and thus increased the risk to the community. They created a climate of vigilantism and lawlessness and caused pain and suffering to innocent people.

(ibid.: 166)

Protocols on how local press and police might better work together in the future on reporting sexual offending and sex offenders followed (see Chapter 1).
The *News of the World* failed in its initial attempt to bring ‘community notification’ to the UK but it continued to pursue the Home Office on its policies towards sex offenders. In 2006 the newspaper found 60 sex offenders who had been housed at sites near schools which led to the then Home Secretary John Reid ordering the removal of sex offenders from ‘approved premises’ that were close to schools (see Chapter 6). Meanwhile it was still pursuing its campaign for a Sarah’s Law – ‘community notification’ – causing Reid to send his junior minister Gerry Sutcliffe off to the USA to see ‘community notification’ in action; Sutcliffe advised against it being a suitable policy for the UK.

Reid was accused of playing to the media gallery and even that the media were dictating policy to him. Terry Grange, the Chief Constable with ACPO responsibility for sexual offending, at this time said Reid had surrendered power over policy to the *News of the World* and ‘accused the Home Office of responding to pressure from the *News of the World* allowing the newspaper to dictate a shift in government policy’ (BBC 2006a); according to Grange Home Office officials were ‘attending meetings at the behest of a newspaper to discuss what the newspaper wants and then surrendering to their wishes’ (ibid.). Not surprisingly a spokesman for Downing Street immediately denied that this was the case (BBC 2006b).

Two years later a new Home Secretary – Jacqui Smith – demonstrated how politicians could be more pro-active in dealing with the media. Ms Smith announced proposed changes in the law regarding travelling sex offenders to coincide with the day that Paul Gadd – the pop celebrity ‘Gary Glitter’ – returned to the UK from a Vietnamese prison where he had served a custodial sentence for sexual offences against children. On 20 August 2008 she announced the new laws:

- Requiring registered sex offenders to notify the police earlier of their intentions to travel abroad;
- Automatic removal of an individual’s passport when they are subject to a blanket foreign travel order; and
- Extending the duration of a foreign travel order (from the current six months) (Home Office 2008b).

The 20th of August 2008 was exactly the day that Paul Gadd flew into Heathrow airport in a blaze of publicity. The new statutory provisions eventually appeared in the Police and Crime Act 2009 ss. 22–25.

Home Secretary Theresa May also took a proactive approach when in 2012 two announcements were made on the same day concerning sex offenders and the sex offender register. One gave details of the new arrangements to allow registered sex offenders to appeal to come off the register and the other gave details of a toughening of the register by requiring offenders to provide more information to the police.

Mrs May had already told the House of Commons that she was appalled at the idea of having to introduce an appeal system for sex offenders following the
Supreme Court judgement against the government (see Chapter 10) and media reaction had been hostile to the Supreme Court judgement and the very need for an appeal system. It was seen as weak and pandering to the ‘undeserving’ sex offender.

The Ministerial statement on the two changes to the register being made at the same time somewhat obfuscated the two and arguably allowed the perceived ‘weak’ announcement to hide behind the ‘strengthening’ announcement. James Brokenshaw, the Under-Secretary of State at the Home Office, was given the task of making the announcement which started by saying:

The Home Office is today introducing tough new measures in The Sexual Offences Act 2003 (Notification Requirements) (England and Wales) Regulations 2012 which will extend and strengthen the system of notification requirements placed on registered sex offenders (commonly referred to as the sex offender register).

(Hansard House of Commons Debates 5 March 2012 col. 52WS)

Only by reading on did the Ministerial Statement reveal the new appeal system tucked in behind this robust opening sentence. It might be added that there was no particular reason for making the strengthening changes as and when they were, and arguably the only reason they were brought forward was to cloud the issue of the appeals.

**The sex offender as homo sacer**

The person who commits sexual offences is – to say the least – not a popular person; even more so when the victim has been a child. Indeed for many people the sex offender is synonymous with the child sex offender or paedophile. The idea of there being some 40 sexual offences that lead to sex offender registration in England and Wales still surprises people.

In prison stories emerge of the sex offender’s poor treatment at the hands of other prisoners who regardless of what they have done still see themselves as superior:

[the] sex offender runs considerable risk of being attacked with razor blades, hot fat or boiling water, invariably while prison officers are conveniently looking in another direction.

(Coggan and Walker 1982: 119)

As Yar has said:

This unambiguous shared view of the sex offender as malevolance incarnate devoid of any human qualities serves to further propel sex offences to the apex of the hierarchy of standing as regards ‘serious crimes’.

(Yar 2013)
The press have turned them into ‘monsters’ and ‘animals’ who are no longer people. Politicians find it ‘appalling’ that they should have to introduce appeal systems for people to leave the register and, indeed, sex offenders are the only class of offender to have their own laws that seek to register them and place bans on them that include movement and travel. Complex policies are put in place in the interests of child protection and public protection and those charged with implementing those policies are threatened with imprisonment themselves if they get it wrong.

The American academic Dale Spencer has referred to the sex offender as *homo sacer*. This is the Latin term for the man – or woman – considered by the rest of society as being so depraved and such a pariah as to have no place in that society and who is therefore to be displaced to an area of life where he or she lives almost outside the law:

the sex offender can be conceived of as *homo sacer* – that is life without form or value, stripped of political and legal rights accorded to the normal citizen. Through community notification and civil commitment laws, statutes dedicated to restricting the movement or exclusion of sex offenders from communities, respectively, there is the production of a ban, whereby the sex offender is displaced into a lawless place – a camp.

(Spencer 2009)

Spencer draws on the work of Agamben (1998, 2005) and his idea of ‘states of exception’. The ban or the expulsion of the sex offender marks him or her out as the person beyond rehabilitation and suitable only for the ‘camp’. The ‘camp’ not as a fixed spatial location such as the concentration camps that have been used in the past for people considered beyond rehabilitation but a distancing of the sex offender from the community of ‘normal people’ and a form of abandonment: ‘the camp is the space that is opened up when the state of exception begins to become the rule’ (ibid.).

Spencer also points out that this pushing of the sex offender away from society – and especially the child sex offender – is assisted in America by the naming of sex offender laws after child victims. In the USA both State and Federal laws are littered with the names of children and adults.

Eleven-year-old Jacob Wetterling was abducted in Minnesota in 1989 and was never found. The Federal Jacob Wetterling Act of 1994 encouraged all states to have a form of sex offender registration in place; even though there was never any evidence that Jacob was sexually assaulted. Two years later a new Federal law required all sex offender registers to be open to the public in a policy of ‘community notification’ – the new law was named Megan’s Law after seven-year-old Megan Kanka, a child victim from New Jersey.

The American law on registers was updated in 2006 by the Adam Walsh Act named after the son of John Walsh, abducted from a Florida store and murdered in 1981. John Walsh had gone on to be the host of TV’s ‘America’s Most
Wanted’. Part of the Adam Walsh Act was called the Sex Offender Registration and Notification Act and the preamble in the Declaration of Purpose to the Act contained the names of no less than 17 child victims of sexual assault or violence.

Sometimes the names of adult victims have been used. The US national sex offender register is named after Dru Sjodin who was 22 years old, when sexually assaulted and murdered in 2003 (for details see http://www.nsopw.gov/en/Home/DruSjodin, accessed 24 February 2015). In the UK we have been more hesitant about naming laws after victims. We now have ‘Sarah’s Law’ and ‘Clare’s Law’ but neither are actually laws and are only procedural arrangements that we have entered into.

Calling a law after a child – or adult – is a form of memorial to these individuals who died in tragic circumstances. It is also a way of saying we have done something about it in the hope that these laws will prevent anything similar happening again. It is also injecting emotion into the cold letter of the law as a way of saying these laws should not be tampered with or changed. Other laws may be amended or repealed but not these laws – there is no countervailing argument against them and as Professor Wayne Logan of Florida has said:

> Any effort to dismantle a provision designated as ‘Megan’s’ or ‘Zachary’s’ Law would be viewed as more than a mere policy shift. Rather it would be seen as a personal assault on the victims’ memories and legacies.

(Logan 2009: 166)

Spencer sees this naming of laws as even going beyond the memories and legacies of the victims to be part of the exclusionary process giving ‘these legal regimes a pure sanctified face and any opposition to such laws are challenges to the moral order’ (Spencer 2009: 220); they push the offender even further away from us.

In general terms, the aim of penal policy has been, and still is, to identify and punish those who break the criminal law. Punishment, in turn, involves a degree of censure, containment and attempts to circumscribe and reduce the activities of the offender. At one end of the spectrum is the custodial sentence and at the other the community sentence, which still tries to delimit and reduce the offenders’ activities. Since the early 1970s, there has been a retreat from sentences designed to reform or rehabilitate the offender in favour of sentences commensurate with the seriousness of the crime and which deliver ‘just deserts’. This retreat has been accompanied by a questioning of the value of treatment – ‘what works?’ – the rediscovery and renaissance of dangerousness and the rise of the ‘victim movement’, which prefers to see some direct redress for the victim rather than help for the offender. The ‘law and order’ political lobby has been able to mobilise these features to argue for longer sentences, electronic tagging, more active databases, extended supervision and
indeterminate sentences. The sex offender has been a prime candidate for all these measures.

More recently, these moves to commensurate punishments have been complemented by new forms of ‘regulation’ to ensure sufficient degrees of public protection and safeguards are in place to reduce the risk posed by offenders. As with punishment, regulation seeks to contain and circumscribe the activities of offenders. Registers tell us where they are and DNA databases confirm their identity. ‘Paedophile enclaves’ may not yet exist, but electronic tagging, preventive orders and pre-employment screening all help to reduce the risk they pose by circumscribing their activities.

The detection and prosecution of sex offenders and the measures of protection from them have, none the less, to accept that the offenders concerned are still entitled to the ‘due process’ of law and other rights enjoyed by all citizens. However awful the crimes, and however much we give priority to the rights of the victims or potential victims – especially children – the residual rights of the sex offender remain. Freedom of movement, for example, is usually considered a fundamental right, even if not always spelt out in statutory form. Sex offenders may find their freedom of movement curtailed in the UK by conditions attached to supervisory arrangements, electronic tagging or preventive orders that require them to stay away from certain localities and not to travel outside the country.

Privacy is held to be another basic right and is outlined in Article 8 of the European Convention on Human Rights (Council of Europe 1950). From privacy has emerged the additional right to ‘information privacy’ and ‘data protection’ when that information – personal information – is held on computer (Council of Europe 1980) and most industrialised countries now have data protection legislation. In turn, this legislation becomes qualified when it comes to the ‘suppression of criminal offences’ (ibid.: art. 8(2)), and separate recommendations may be made on law enforcement-held information (see, e.g. Council of Europe 1988). A balance must be struck between the need to ‘know’ and the individual’s right to privacy.

The right to rehabilitation or to be accepted back into society after a period of punishment – custodial or non-custodial – is another ‘right’ that is not clearly defined. The old adage that once you have ‘paid your debt to society’ you are a free man or woman again has been stated more fully:

Rehabilitation implies the action of re-establishing a degraded person in a former standing with respect to rank and legal rights and to attempt to ensure that those rights are maintained over time.

(McWilliams and Pease 1990)

The sex offender thought to be ‘once a paedophile always a paedophile’ and hounded out of his home by vigilante crowds, newspaper reporting, and social media attacks may find this statement has a somewhat hollow ring to it.
What McWilliams and Pease are saying is that the ending of a period of punishment, whether or not the offender is ‘reformed’, should still be marked by that offender’s ‘rehabilitation’ to society in terms of the restoration of all his civic and legal rights and duties. In this sense, rehabilitation serves as a means of limiting the extent of the punishment to that time period decreed by the court; without it the punishment continues.

The offender, having to submit to a DBS pre-employment criminal record check years after the end of his sentence, might argue that his punishment continues. The sex offender subject to regular home visits by probation officers or police officers or required to ‘register’ for life might feel the same way. People in the public eye like the professional footballer pressured out of re-employment will feel aggrieved. The argument that these community interventions are still less of an imposition than a custodial sentence, or that certain activities are for purposes of ‘regulation’ rather than ‘punishment’, might not lessen the degree of grievance they believe they are experiencing.

Information technology now provides us with an everlasting ‘memory’ to counter possibilities of allowing details of an offence to be forgotten and fall naturally behind a veil of confidentiality about the past. It is doubtful if the Rehabilitation of Offenders Act 1974 with its ideas of ‘spent’ convictions would ever have become a law if it was introduced today. As it stands it is has been battered and bruised by so many regulations over the years building ‘exceptions’ into it that it is hardly recognisable as the law it once was. But the man or woman as sex offender and therefore ‘outside the law’ is regarded as undeserving of such legal assistance in their rehabilitation from Spencer’s spatial area of ‘the camp’.
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References 229


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236 References


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Aberdeen Evening Express 23
abuse of trust 6, 13, 52, 163
Action for Prisoners Families 133
Adam Walsh Act 216–17
Addenbrookes Hospital 164
Administrative Support Units 69
after-care for mentally ill offenders 53
after-care supervision of offenders see post-custodial offender supervision and management
age of consent 11–13; contact offences 5; Criminal Law Amendment Act 1885 45; Statute of Westminster 1285 37
agencies of penal policy 118–23
aggravating factors in sentencing 101, 102, 105–6
Alice de Salisbury 37
Anal Dilatation Test 147, 148
anonymity in reporting of court proceedings 98
antilibidinal medications 27
Anti-Social Behaviour, Crime and Policing Act 2014 202
Anti-Social Behaviour Orders 198
Appleton, George 195
Approved Premises 122–3
Area Child Protection Committees 146–7, 150
arrests: domestic violence 156–7; police procedures 68–9
Ashton, John 11
Association of Chief Officers of Probation 23, 24
Association of Chief Police Officers: child sexual abuse cases 87, 90; domestic violence 156, 157; Multi-agency Public Protection Arrangements 197; sexual harassment by police 58; Sexual Risk Orders and Sexual Harm Prevention Orders 202; training of police officers 60–1
asylums 39
attrition rates, case 58–9, 88
Auckland, John 125
Automatic Conditional Release 125
automatic life sentences 103–4
Automatic Unconditional Release Scheme 125
bail 69–70
Bail Act 1976 91
Bailey, Simon 77
Barrie, J.M. 42
barring offenders from employment 174–5, 178–81; see also pre-employment screening
BBC Panorama (television programme) 123
Beck, Frank 160
Beddoe, Christine 200
Belgium 82
belief- and faith-related abuse 149–50
Bentham, Jeremy 42
Bett, Stephen 133
Bichard Inquiry Report 74–5, 175–6, 178
Billam guidelines 101
‘Bitter Cry of Outcast London’ 47
Blackwood, Nicola 205
Blunkett, David 197
boarding schools 162–4
Booth, William 47
Borstal 49, 51
Bosanquet, Mrs. 45
Brackenridge, Celia 165
Bradford Safeguarding Children Board 66
Bradford ‘Streets and Lanes’ project 153
breach of trust see abuse of trust
Bristol Rovers 165
Bristow, Keith 77
Brittan, Leon 207, 208
Brokenshire, James 191, 215
Brown, Michael 195
Brussels Declaration 82
building sites 34
Butler, Tony 213
Butler-Sloss, Baroness 208
Cahill, Sally 166
Cambridgeshire police 74
Cameron, David 11, 77, 205
Canada 76–7, 129
capacity to consent 6, 10–11
Capita 173
Care Standards Act 2000 172–3
Carrol, Lewis 42
Carter Report 123
Casey, Louise 136
castration 26–7
cautions, police 71–2
celebrities 2, 62–3, 70–1
Central Support Force for Children’s Residential Care 160
Champion, Sarah 205
Channel Islands 161–2
Chapman, Jessica 2
Charity Organisation Society (COS) 44–5
Chelmsford Crown Court 95
Chetham’s School of Music 163–4
Chief Inspector of Probation 23
Child Abuse Inquiry Support Fund 133
Child and Adult Victims of Sexual Abuse Support Fund 133
child care settings see out-of-home settings
Child Exploitation and On-line Protection Command 76–7
child pornography: definition 8; Interpol 81; national policing 73–5; non-contact offence types 7–8; online technology 2–3; Serious Crime Analysis Section 76–7
child prostitution see child sexual exploitation
child protection: Child Protection Units 64–5; home arrangements of released offenders 124–5; police child protection procedures report 212; see also in-home protection; out-of-home settings, protection in
Child Sex Offender Disclosure Scheme 128
child sexual abuse: historical investigations 61–3; national inquiries 206–10; news media coverage of 1–2; out-of-home settings 162–7; prosecution of 86–8; protecting children from 146–52; support groups for victims of 133; terminology 27–8; women offenders 3
child sexual abuse images see child pornography
child sexual exploitation 153–5; consent 6; crisis meeting concerning 1; extra-territorial policing 79–81; human trafficking 82; prosecution of 86–8; support groups for victims of 133; witness support 94; youth gangs 2, 65–6; see also child pornography
Child Sexual Offender Disclosure scheme 194
Childcare Act 2006 176–7
‘Childhood Lost’ 202
Childline 148
Children Act 1908 51, 52
Children Act 1948 53
Children Act 1989 151, 152, 160, 162
Children Act 2004 150, 151
Children and Young Persons Act 1933 52, 124
Children and Young Persons Act 1969 54
children and youth: consent 11–12; contact offence types 5–6; history of protection policies 51–4; in-home protection of 146–52; multi-agency safeguarding hubs 65–6; nineteenth century laws 44–5; nineteenth century position of 47; police cautions 71; prosecution of offences against 86–8; Risk of Sexual Harm Orders 201–2; social services 53–4; young sex offenders 31, 185; see also youth gangs
Children Bill 1989 149
Children’s Departments 150
Children’s Legal Centre 95
Children’s Society 153
Childrenwatch 148
Church of England 166
Church settings, sexual abuse in see clergy, child sexual abuse by
Churches Child Protection Advisory Service 166
‘Churches Together in Britain and Ireland’ 166
Churchill, Winston 44, 50
Circles of Support and Accountability 129
civil commitment 114–15
civil law 52; see also community protection
civil liberties 218–19; barring offenders from employment 175;
pre-employment screening 170–1;
‘ticket-of-leave’ system 43
Clare’s Law 158, 195–6, 217
Clarke, Kenneth 5
clergy, child sexual abuse by 133, 165–6
‘Cleveland affair’ 60, 148–9
Climbié, Victoria 150
Clough, Jane 91
Coalition for the Removal of Pimps 153
Cobbe, Frances Power 46
code of practice for Victims of Crime 92, 135–6, 138
cognitive-behavioral therapy 28–31
College of Policing 71, 87
colquhoun, Patrick 39
Colwell, Maria 146
Commission to Inquire into Child Abuse 162
Commissioner for Victims and Witnesses 136
A Common Sense Approach 180
communal demonstrations 22–4, 213
community mental health services 53
community notification 22, 192–6, 214
Community Orders 109–11
Community protection: community notification 192–6;
Foreign Travel Orders 200; Multi-agency Public Protection Arrangements 196–7;
Notification Orders 200–1; Preventive Orders 198; Restraining Orders 198–9;
Risk of Sexual Harm Orders 201–2;
Serious Crime Prevention Orders 203;
Sex Offender Orders 198; sex offender register, rationale for 182–3; sex offender register appeals 190–2; Sex Offenders Act 1997 184–5; Sexual Offences Prevention Orders 199–200;
Sexual Risk Orders and Sexual Harm Prevention Orders 202–3
Community Rehabilitation Companies 124
community sentences 109–12
community-based treatment 53, 121
compensation for victims 131–2
complainants see victims
conditional cautions 72
consent 9–14; children 5; rape case attrition rates 59; sexual offence definition 3; sexual offences with consent 6
Conservative Party 20
Constance, Angel 209
Consultancy Service, Department of Health 170
contact offences 5–6
continuum of sexual violence 32–3
‘controlled’ activity, child care work 178
controlled disclosure 194
controlling and coercive behavior 158
Convict Supervision Office 44, 49
Coroners and Justice Act 2009 96–7
Cotton, Roy 166
County Asylum Act 1808 39
Court Reports 100
courts: ecclesiastical courts 37;
proceedings 90–9
Cranworth, Lord 43
credibility 88
Crime (Sentences) Act 1997 103–4
Crime and Courts Act 2013 122
Crime and Disorder Act 1998 71, 72, 104, 126
Crime and Punishment (Scotland) Act 1997 78, 112
Criminal Bar Association 95
Criminal Evidence (Amendment) Act 1997 78
Criminal Injuries Compensation Act 1995 131
Criminal Justice Act 1948 50, 51
Criminal Justice Act 1967 50, 51
Criminal Justice Act 1972 131–2
Criminal Justice Act 1988 95, 101–2
Criminal Justice Act 1991: community orders 109–10; early release 125; electronic monitoring 112; sentences 50, 103

Criminal Justice Act 2003: Community Orders 111; Conditional Caution for Adults 72; Disqualification Orders 175; Imprisonment for Public Protection 104, 115; Multi-agency Public Protection Arrangements 197; sentencing, purposed of 108

Criminal Justice and Court Services Act 2000 175, 186, 198–9

Criminal Justice and Immigration Act 1994 137

Criminal Law Amendment Act 1885 45

Criminal Law Committee, Law Society 203

Criminal Law Revision Committee 98

Criminal Procedure (Scotland) Act 1995 99

Criminal Proceedings and Investigations Bill 1996 99
criminal record checks of compensated victims 131

Criminal Records Bureau 171–4, 179

Criminal Records Office 73
criminally insane 46
critical victimology 139
Crofton, Walter 43

CROP see Coalition for the Removal of Pimps

cross-examination 94–9
crowd violence see mob violence

Crown Prosecution Service 83–9;
case files 69; extra-territorial policing 80; police, work with 106–7; Victim’s Right to Review Scheme 89–90
culpability 105
curfews 69–70, 126
custodial sentences 113–15
cycle of abuse 33

Danczuk, Simon 205
databases: Child Abuse Image Database 81; National DNA Database 78–9; offenders’ personal information and privacy 210–12; Police

National Database 74–5; screening databases 170; Serious Crime Analysis Section 76; sex offender register 186

Davidson, Jim 70
defendants 98–9
demonstrations and protests 22–4, 213

Department of Education 177

Department of Health, Consultancy Service 170

Department of Health and Social Services, Northern Ireland 169
detention, arrest and 68–9

Detention for Public Protection 115
determinate sentences 113

Dickens, Geoffrey 20, 207

Discharged Prisoners Aid Society 49, 50

Disclosure and Barring Service 180–1

Disclosure Scotland 170
discontinuance of proceedings 84–5

Discretionary Conditional Release 126
disqualification by association 177

Disqualification Orders 175, 180
dNA database 78–9
domestic violence: Clare’s Law 195–6; Crown Prosecution Service 84; police units 63–4; protection of adults from 155–8

Domestic Violence, Crime and Victims Act 2004 135, 136

Domestic Violence Disclosure Scheme 196

Domestic Violence Protection Notices and Orders 158
downgrading charges 84

Drawing the Line 179
drunken consent 10–11
due process of law 218
duress, consent under 9

Dutroux, Marc 83

‘Ealing vicarage rape’ 101

Early Evidence Kits 60
early release 125–6
early treatment for young offenders 31

Early Years register 177
ecclesiastical offences 37, 47

ECPAT see End Child Prostitution, Pornography and Trafficking

Edwards, Ralston 98–9
eighteenth century 38–9
electronic monitoring 126, 138, 218

Emergency Protection Orders 70, 146
employment see barring offenders from employment; pre-employment screening
End Child Prostitution, Pornography and Trafficking 80, 200, 202
Ending Gang and Youth Violence programme 133
England: Area Child Protection Committees 146–7; national inquiries 207–8; Post-Conviction Sex Offender Testing 127; pre-employment screening of child care workers 169–70; Sexual Assault Referral Centres 67; sexual offences, forms of 3, 4–5; sexual violence statistics 8–9
enhanced disclosure 172, 173
entry, police rights of 146, 155–6
European Convention on Human Rights 115, 145–6, 218
European countries, age of consent in 11–12
European Court of Human Rights 116
European Union 136
Europol 81
Evans, Ched 25
Evans, Colin 169
Evans, Nigel 98
Evans, Roderick 10
Every Child Matters 150
‘Everyday Sexism Project’ 34
evidence: child and vulnerable witness support 94–7; discontinuance of proceedings 84–5; prosecuting child sexual offences 87–8
ex-offenders see offenders and ex-offenders
‘expert’ explanations and responses: medical professionals 25–8; social analysis 31–4; therapists 28–31
extended sentences 50, 104, 113–14
extra licence conditions 126
extradition 115
extra-territorial policing 79–81
extreme pornography 7, 8
FACT see Falsely Accused Carers and Teachers
faith-related abuse see belief- and faith-related abuse
Falsely Accused Carers and Teachers 62, 163
familial child sex offences see incest
families of offenders 133
female genital mutilation 157, 158
feminists 31
Fielding, Henry and John 38–9
‘final warning scheme’ 71
financial compensation for victims 131–2
Fingerprint Registry 49
Finkelhor, David 147
Football Association 165
Foreign Travel Orders 81, 200
Foreign visitors 200–1
forensics: Forensic Physicians 67; Forensic Science Service 77–9; police investigations 60; Sexual Assault Referral Centres 66
Forrest, Jeremy 163
foster care 52
The Foundations of Abuse 168
Fourniret, Michel 176
Freedom of Information Act 192
freedom of movement 218
Fry, Elizabeth 39
funding of victims’ organizations 132
Gadd, Paul 201, 214
Gambaccini, Paul 70
Gamble, Jim 75
A Gap or a Chasm? 59
‘gatekeeping’ of cases 69
genre: child sexual offences 3; consent 9; social analysis 31–4
genital mutilation 157, 158
George, Vanessa 3
Getting it Right for Victims and Witnesses: the government’s response 97
Glidewell Report 85
Glitter, Gary see Gadd, Paul
Goddard, Lowell 20
‘good lives model’ 30–1
Goodman, Helen 91
‘go-orders’ 157, 158
Gough, Stephen 8
Government Communications Headquarters 77
GPS technology 112
Green, Damien 205
Grendon Underwood prison 50
Grubin, Don 189–90
The Guardian 23
Habitual Criminals Act 1869 43–4
Habitual Criminals Register 49

250 Index
Hale, Matthew 46
Hampshire Thames Valley Circles see
HTVC
harassment of women 34, 58, 195
harm and rape sentencing 104–5
Hart, Anthony 206
Hartley, Arnold 24
Haut de la Garenne children’s home 161–2
Havers, Michael 208
hebephilia 28
Hertfordshire Police 189
Hewson, Barbara 11, 140
Hill, Christopher 36–7
historical abuse investigations 61–3;
children’s homes 161–2; national
inquiries 206–10; news media 2;
pre-charge bail 70–1; prosecution
86–7; terminology regarding
complainants 140–1
Historical Institutional Abuse Act
(Northern Ireland) 2013 206–7
history: modern era 48–54; nineteenth
century 39–47; pre-industrial times to
1800 36–9
HM Inspectorate of Constabulary 69,
78, 89
HM Inspectorate of Probation 111
Home Affairs Committee 62, 160, 173
home arrangements, post-custodial 124–5
Home Detention Curfew 126
Home Office: barring sex offenders in
child care work 174–5; child sexual
exploitation 153; child witnesses 94–5;
circulars and police cautions 60, 71;
community notification 193;
defendants conducting their own
defence 99; extra-territorial policing
80; extreme pornography 8; historical
investigations 62; home arrangements
of released offenders 124; incest as
criminal offence 48; Multi-agency
Public Protection Arrangements
197; National DNA Database 79;
news media policies 213, 214;
non-conviction information disclosure
174; Notification Orders 201; prison
sex offender treatment programmes
118; probation supervision, aims of
121; rape case attrition rates 58–9; rape
case convictions and attrition rates 88;
Risk of Sexual Harm Orders 201; Sex
Offender Orders 198; sex offender
register 186–7; sex offender register
implementation 185; sex offender
register reviews 191; Sexual Assault
Referral Centres 66, 67; Voluntary
Services Unit 132
Home Secretary: historic investigations
204; national inquiries 207–8;
pre-charge bail 71; vetting and barring
scheme 179–80
home settings, protection in see in-home
protection
home visits of offenders 189, 219
homosexuality see same-sex activities
Horley, Sandra 196
hormone suppressants 26–7
hospitals: abuse in 164; mentally
disordered offenders 46, 52–3
hostels 23–4, 122–3
House of Commons: Home Affairs
Committee 62, 160, 173; Sex Offender
Bill 184
Howard, John 39
Howard League Commission 167
HTVC 133
human trafficking 82
Hunt, Jeremy 164
Huntley, Ian 172, 175
identifying child victims 87–8, 149, 150–1
Information, Management, Prioritisation,
Analysis, Coordination, and Tasking
(IMPACT) system 74
Imprisonment for Public Protection 50,
115–16, 117, 120
incest: consent 13; contact offence types
5; as criminal offence 48; as
ecclesiastical offence 37; nineteenth
century 47; sentencing guidelines 102
Incest and Related Offences (Scotland)
Act 1986 48
indecent exposure 8
Independent Inquiry into Child Sexual
Abuse 160
Independent Jersey Care Inquiry 162
Independent Panel Inquiry into Child Sexual
Abuse 208
Independent Police Complaints
Commission 58, 156
Independent Safeguarding Authority
178–9, 180
Independent Sexual Violence Advisors
92–4
indeterminate sentences 114–15
India 80
information privacy 218
information technology 219
in-home protection 146–52, 155–8
intelligence and national policing 73–5
Interdepartmental Working Group, Home Office 99
Interim Care Orders 70
intermediaries and witnesses 96
International Organisation for Migration 82
international policing 79–82
Internet: Child Exploitation and On-line Protection Centre 75; child pornography 2–3; Evans, Ched, campaign against 25; national policing 73–4; Risk of Sexual Harm Orders 201–2
Interpol 80, 81
intoxication and capacity to consent 10–11
investigations: police 60–3; rape cases 89; see also historical abuse investigations
Iveson, Irene 153

‘Jack-the-Ripper’ murders 45–6
Jacob Wetterling Crimes against Children and Sexually Violent Offender Registration Act see Megan’s Law
Jersey 161–2, 209–10
Joint Committee on Human Rights 191 judges 100
just deserts approach to sentencing 103, 217
Justice for All 134–5

Kanka, Megan 216
Kilbrandon Report 54
Kincora Children’s Home 160, 168–9, 207

Labour government 134–5, 138
Lane, Lord 102
Later Years register 177
Law Society, Criminal Law Committee 203
learning disabled victims see capacity to consent
Legal Aid, Sentencing and Punishment Bill 91

Maastricht Treaty 81
McDonald, Kenny 141
MacKenzie, Gill 24, 213
Macur, Julia 161
mental illness and offenders 25–6, 52–3, 114–15
mentally disabled victims see capacity to consent
Metropolitan Police: Criminal Records Office 73; hospitals, abuse in 164; nineteenth century 44; Savile, Jimmy, case of 140
Metropolitan Police Act 1829 39–40
Michael, Alun 114
Mill, John Stuart 46
ministers, sexual abuse by see clergy, child sexual abuse by
Ministry of Justice: Multi-Agency Public Protection Arrangements 195; rehabilitation reform 124; Sex Offender Treatment Programmes 119–20
miscarriages of justice 62
mitigating factors in sentencing 101, 102, 106
mob violence 24, 41
modern era, criminal justice in the 48–51
Moore, Brian 157
moral panic theory 21
movement, freedom of 218
Multi-Agency Public Protection Arrangements 186, 195, 196–7
Multi-Agency Risk Assessment Conferences 64, 157–8
multi-agency safeguarding hubs 65–6
multi-agency working 212
Munro Report 151
murder 24, 45–6

naming of sex offender laws 216–17
National Association for People Abused in Childhood (NAPAC) 132
National Association of Schoolmasters and Union of Women Teachers 163
National Association of Victims Support Schemes 132
National Audit Office 173–4
National Central Bureau, Interpol 81
National Crime Agency 75–7; Interpol National Central Bureau 81; Operation Pallial 161; response to out-of-home abuse 167–8
National Crime Squad 73
National Criminal Intelligence Service 73–4
National Cross Government Action Plan on Sexual Violence and Abuse 89
National DNA Database 78–9
National Group on Sexual Violence against Children and Vulnerable People 205–6
National Health Service 66, 67, 68
National High-tech Crimes Unit 73–4
National Identification Service 49
national inquiries 206–10
National Offender Management Service (NOMS) 124, 130
national policing 72–9
National Policing Improvement Agency 189
National Probation Service 121–2, 124
National Society for the Prevention of Cruelty to Children (NSPCC): formation of 44; incest laws 48; National Vigilance Association’s work with 47; residential child care case 61
National Standards: licence conditions 126–7; Pre-Sentence Reports 100
‘National Standards for the Supervision of Offenders in the Community’ 109
National Victims Service 138
National Vigilance Association 45, 47, 48
A New Deal for Victims and Witnesses 134–5
Newlove, Baroness 136, 138
news media: child sex offences, reporting of 1–2; ‘Cleveland affair’ 148; community notification 193–4; court proceedings 97–8; historical investigations 62–3; Multi-agency Public Protection Arrangements 197; nineteenth century 45; pre-charge bail 70; and public reactions 20–5; role of 212–15; sex offender portrayals 212, 216; sex offender register 186, 192
News of the World 24, 186, 193–4, 197, 213, 214
nineteenth century 39–47
No Witness, No Justice project 92
‘no-criming’ 58, 59
noncompliance, offender 183, 184, 185, 198
non-contact offences 6–9
non-conviction information disclosure 174
non-governmental organisations 80
North Wales children’s homes 61–2, 86–7
North Wales Police 193
Northern Ireland: Area Child Protection Committees 147; Historical Institutional Abuse Act 206–7; pre-employment screening of child care workers 168–9
notification, community see community notification
notification, victim 137–8
Notification Orders 200–1
Nottingham 154

Obscene Publications Act 1857 40
Obscene Publications Act 1959 7
Offences Against the Person Act 1861 12
Offender Management Act 2007 122, 127
Offender Rehabilitation Act 2014 113, 124

offenders and ex-offenders: barring in employment 174–5; Bichard Report 175–6; community notification 192–6; demonstrations and protests against 22–5; Disclosure and Barring Service 180–1; as homo sacer 215–19; mental illness and hospitalization of 52–3; ‘outing’ of 22; personal information and privacy rights 210–12; police management of registered offenders 188–90; popular viewpoint of 20; post-custodial supervision and management of 124–9; pre-employment screening 168–74; regulating workers with children under eight 176–7; regulation of 218; support groups for families of 133; terminology 27–8; vetting and barring scheme 178–80; victims’ rights to information regarding 135; see also treatment

Oldham, Frances 162
‘One in Four’ 132–3
Operation Notarise 2
Operation Pallial 87, 161
Operation Rectangle 161–2, 209–10
Operation Spade 77
Orkney Islands 149
‘ostensible consent’ 12

out-of-home settings, protection in: barring offenders from employment in 174–5; children’s homes 159–62; churches 165–6; contact offences 6; Disclosure and Barring Service 180–1; historical investigations 61–3; hospitals 164; national inquiries 206–10; pre-employment screening 168–74; prisons 167; regulating workers 176–7; schools 162–4; sports clubs and voluntary organisations 165; vetting and barring scheme 178–80
overseas job applicants 176
An Overview of Sexual Offending in England and Wales 8–9

paedophilia see child sexual abuse

Pall Mall Gazette 45
Parents against Child Sexual Exploitation (PACE) 153
parliamentary debate on the sex offender register 184
parole 51, 125–6, 127–8
Parole Boards 115, 116
Payne, Sara 68, 136
Payne, Sarah 2, 24, 186, 193–4, 197, 213
Pelka, Daniel 151
penal policy see sentencing
penal policy agencies 118–23
Penal Servitude Act 1853 42
Penal Servitude Bill 1864 43
penalties for sex offender register noncompliance 184, 185
penile plethysmography 120–1
personal injury compensation 132
personality traits 28
Peterloo killings 39
pharmaceutical treatments 26, 27, 53
PHOENIX 211
Pigot, Thomas 95, 97
Pizer, John 46
Police Act 1997 171
Police and Criminal Evidence Act 1984 60, 68–9
police and policing: child abuse investigations 147; Child Sex Offender Disclosure Scheme 128; child sexual exploitation 153, 154; ‘Cleveland affair’ 148–9; community notification 192–4; and Crown Prosecution Service 106–7; domestic violence 155–8; entry, rights of 146; Foreign Travel Orders 200; home arrangements of released offenders 124–5; international policing 79–82; local policing 57–63; Metropolitan Police Act 1829 39–40; modern era 48–9; national policing 72–9; nineteenth century 44; offender’s...
personal information 210–12; police checks 168; post-custodial management of offenders 128; prosecution and 86–8; rape cases 89; registered sex offenders, management of 188–90; seventeenth and eighteenth century 37–9; sex offender register 191–2; Sexual Offences Prevention Orders 199; specialist arrangements 63–72; Victims Personal Statements 134; video interviews 95
Police National Computer 49, 73, 171–2
Police National Database 74–5, 186
Police Scotland 73
politics: national initiatives 205–6; news media 214; ‘popular punitiveness’ 19; sex offender register 184
polygraphs 127–8, 189–90
‘popular punitiveness’ 19
pornography: child pornography and the Internet 2–3; nineteenth century 40; non-contact offence types 7–8
positivist victimology 139
Post-Conviction Sex Offender Testing 127
post-custodial offender supervision and management 49–51, 124–9
Power, Graham 162
pre-charge bail 69–70
‘pre-conditions’ for child sexual abuse 30
Pre-employment Consultancy Service 169
pre-employment screening 168–74;
children’s homes 160; Disclosure and Barring Service 180–1; history 39, 40; offenders as homo sacer 219; vetting and barring scheme 178–80; see also barring offenders from employment
preparatory offences 10
prerecorded cross-examinations 96, 97
prerecorded testimony 94, 95
Pre-Sentence Reports 99–100, 103
Prevention of Crimes Act 1871 44
Prevention of Crimes Act 1908 49–50
Prevention of Cruelty to Children Acts 44 preventive detention 50
preventive orders 198, 218
Prison Department, Home Office 197
Prison Reform Trust 121, 188
prisons: early release 125–6; nineteenth century 39, 42; preventive detention 50; ‘resettlement prisons’ 123–4; sex offenders, treatment of 215; sexual abuse in 167; treatment programmes 118–21
Pritchard, Colin 166
Pritchard, Mark 98
privacy issues 145–6, 210–12, 218
private sector rehabilitation companies 124
private space violence, protection from see in-home protection
Probation of Offenders Act 1907 49
probation officers: education of 109–10; home visits 219; Pre-Sentence Reports 99; Victim Contact Scheme 137–8
Probation Orders 110
Probation Service 121–3; history 49; rehabilitation reform 123; social work departments 54
Probation Trusts 121–2, 124
professionals, mandatory reporting by 151–2
professions, barring offenders from 174 ‘prohibited relationships’ 13
Project Trawler 73–4
prosecution 84–90
Prosecution of Offences Act 1985 84
prostitution: international policing 80, 82; ‘Jack-the-Ripper’ murders 45–6; multi-agency safeguarding hubs 65–6; nineteenth century 40, 45; ‘Social Purity’ movement 41; see also child sexual exploitation
Protection from Harassment Act 1997 195
Protection of Children Act 1978 7
Protection of Children Act 1999 170
Protection of Freedoms Act 2012 180
Protection of Vulnerable Adults List 172–3
protection orders 158
protests see demonstrations and protests
psychiatry 25–8; history 50; nineteenth century 46; treatment 53
Public Assistance Institution 27
public awareness of child sexual abuse 148
Public Protection Units 68, 189
public responses 19–25
public toilets, activities in 13
Pullman, Philip 178–9
punishment see sentencing
Punishment and Reform: Effective Probation Services 122
Punishment of Incest Act 1908 48
Quinn, Joyce 111
radical victimology 139
Rantzen, Esther 102, 148
rape: case attrition rates 58–9;
categorisation 5, 59; consent and marriage 13–14; defence by defendants 98–9; Independent Sexual Violence Advisors 92–4; intoxication and consent 10–11; investigations 60–1; nineteenth century 46; police attitudes towards women complainants 57–8; prosecution of 88–9; sentencing 101, 104–6; Sexual Assault Referral Centres 66–8
‘Rape Action Plan’ 88
Rape and Serious Sexual Offences Units 85–6, 87
Rape Crisis Centres 93
Rape Monitoring Group 89
Ravenscroft, Lynne 153
Rees, Huw 10
reform: rehabilitation reform 123–4;
vetting and barring scheme 179–80
Regional Crime Squads 73
registers: child protection registers 147;
history 38–9, 43–4, 49; see also sex offender register
‘regulated’ activity, child care work 178, 180
rehabilitation 123–4, 218–19; see also treatment
Rehabilitation Activity Requirement 113
Rehabilitation of Offenders Act 1974 169, 219
Rehabilitation of Offenders Order 169
Reid, John 123, 194, 214
release on licence arrangements see licensed release
remands 90–1
Remedial Order 190–1
re-offending 123, 129
reporting 57–9; female genital mutilation 158; mandatory reporting of child abuse 151–2; rape cases 89
representations of victims 135
resettlement of offenders, post-custodial 128–9
‘resettlement prisons’ 123
residential care see children’s homes
Restraining Orders 195
‘reverse monitoring’ 113
review of case prosecutions 89–90
‘Review of Rape Reporting in England and Wales’ 67
Rice, Anthony 122–3
‘Risk, Needs and Responsivity’ model 30–1
risk assessment and identification 87–8, 196–7
Risk of Sexual Harm Orders 201–2
ritual abuse 149–50
Roberts, Shoshana B. 34
Rochdale 86
Roper, Margaret 37
Rotherham 154–5
Royal Commission on Criminal Procedure 84
Royal Commission on Housing 47
Ryan Report 162
SAFARI 62
‘Safe in the City’ project 153
Safeguarding Vulnerable Groups Act 2006 178, 180
St Mary’s Hospital 67
same-sex activities 12–13, 48–9
Sarah’s Law 194, 217
satanic abuse 149
Saunders, Alison 85, 141
Savile, Jimmy: Exposure: The Other Side of Jimmy Savile 86; Haut de la Garenne children’s home 162; hospitals, abuse in 164; media coverage 2, 62–3; national inquiries 206; ‘victim’ terminology 140
Schedule 15B 113–14, 116–17
schools, child sexual abuse in 162–4
Scotland: Child Protection Committees 147; Circles of Support and Accountability 129; national inquiries 209; pre-employment screening of child care workers 170; rape case categorisation 59; Scottish Criminal Record Office 171–2; sexual histories of victims 99; sexual offences, forms of 3
Scottish Criminal Record Office 170
self-help groups: Falsely Accused Carers and Teachers 163; victims groups 132
self-inflicted injury of prisoners 118
sentencing: child sexual offences 51; community sentences 109–12; custodial sentences 113–15; ecclesiastical offences 37; electronic
monitoring 112–13; history 50; life sentences 116–17; nineteenth century 42–4; Pre-Sentence Reports 99–100; principles of 100–6; purposes of 108, 217–18; rehabilitation reform 123–4; sex offender register 185; Suspended Sentence Orders 111–12
Sentencing Advisory Panel 104
Sentencing Council 104
serial murders 45–6
Serious Crime Analysis Section 76–7
Serious Crime Prevention Orders 203
Serious Organised Crime Agency 74, 75–6
Serious Sex Offenders Unit 73, 75
Serious Sexual Offences course for judges 100
seventeenth century 37–8
Sexual Offences Bill 187
Sex Offender Management Board 120
Sex Offender Orders 198, 199
sex offender register: appeals 20, 190–2; extra-territorial policing 79; Foreign Travel Orders 200; implementation 185–90; National Criminal Intelligence Service 74; noncompliance penalties 175–6; offences included in 3–5; photographs of non-compliant offenders 75; police cautions 71–2; Public Protection Units 68; rationale for 182–3; sex offender as homo sacer 215, 218; Sex Offenders Act 1997 184–5; victims’ rights regarding 135–6; workers with children under eight 177
Sex Offender Registration and Notification Act see Adam Walsh Act
Sex Offender Treatment Evaluation Project (STEP) study 110
sex offender treatment programmes 118–21
Sex Offenders Act 1997 79, 80, 184–5
Sex Offenders Bill 183–4
sex tourism 79–80
sex work see child sexual exploitation; prostitution
Sexual Abuse Fund Oversight Board 133
Sexual Assault Referral Centres 66–8, 93, 156
sexual harassment: by police 58; street harassment of women 34
Sexual Harm Prevention Orders 202–3
sexual offences: contact offences 5–6; definitions 3; forms of 3–9; non-contact offences 6–9
Sexual Offences Act 1956 9–10
Sexual Offences Act 1967 12, 49
Sexual Offences (Amendment) Act 1976 99
Sexual Offences (Amendment) Act 1992 98
Sexual Offences (Conspiracy and Incitement) Act 1996 80
Sexual Offences Act 2003: appeals 190, 191; consent 10; Foreign Travel Orders 200; Notification Orders 200; notification requirements 215; Risk of Sexual Harm Orders 201; same-sex activities 13; sex offender registration law 185; strengthening the sex offender register 188
Sexual Offences Investigation Techniques 59, 61
Sexual Offences Liaison Officers 60–1
Sexual Offences Prevention Orders 199, 202, 203
Sexual Risk Orders 202–3
Singleton, Roger 179
Sjodin, Dru 217
Smith, Cyril 86, 205
Smith, Jacqui 214
social analysis 31–4
Social Inquiry Report 100
social media 25
‘Social Purity’ movement 40–2
social services 53–4, 70
social theory 21
Social Work (Scotland) Act 1968 53–4
social workers: Pre-Sentence Reports 99; video interviews 95
sodomy 37
Soham 74
South Yorkshire Police 189, 212
‘Spanner Case’ 12–13
Speaking up for Justice 95
Special Investigation Services 61
specialist arrangements, police 63–72
Specialist units, Crown Prosecution Service 85–6
Specially Trained Officers 60–1
Spencer, Dale 216–17
spiking activity 10
sports clubs, abuse in 165
SSRIs 27
Standing Working Party on Offences Against Minors 80
Starmer, Keir 87, 97, 141
Statute of Westminster 1285 37
Stead, William T. 45
Stern Review 67–8
Stevenson, Robert Louis 46
Stoke Mandeville Hospital 164
The Strange Case of Doctor Jekyll and Mr Hyde 46
Straw, Jack 138, 186
street harassment 34
‘Streets and Lanes’ project 153
Studabaker, Toby 201
suicide of prisoners 118
Sullivan, Shawn Eugene 115
Sunday Express 22
supervision: mentally ill offenders 53; post-custodial 49–51, 124–9; probation 121, 122–3
support groups for victims 132–3
surgical treatment 26–7
survivors see victims
Survivors Trust 133
Sutcliffe, Gerry 194

Tackling Perpetrators of Violence against Women and Girls 157, 195–6
tagging see electronic monitoring
Tata Consultancy Services 174
teachers 163–4, 177
terminology: child sexual abuse 27–8; child sexual exploitation 154; offenders 27–8; victims 139–41
Thames Valley Police 58
therapy and therapists 28–31, 50, 53
Thompson, Angus Aubrey 190
ticket-of-leave system 42–3, 49
Toronto Police 76–7
training: Independent Sexual Violence Advisors 93–4; police 87; polygraphs 189–90; probation officers 109–10; Serious Sexual Offences course 100
Transforming Rehabilitation: a strategy for reform 123
trawling see historical abuse investigations
treatment: cognitive-behavioral therapy 28–31; community-based treatment 110–11; history 50; nineteenth century 46; prison sex offender treatment programmes 118–21; sentencing approaches 103; surgical and pharmaceutical treatments 26–7; ‘treatability’ 25–6; see also rehabilitation trials 90–9
trust, abuse of see abuse of trust
‘two strikes and out’ laws 103–4
Tyson, Mike 200–1

United States: Catholic priests, sexual abuse by 166; ‘civil commitment’ 114–15; community notification 192–3; Megan’s Law 194; sex offender laws 216–17
Universal Register Office 39, 40
UNLOCK 177

Vagrancy Acts 38, 42
Vass, Jonathan 91
Vetting and Barring Scheme Remodelling Review 180
vetting of employees see pre-employment screening
Vice Society 40, 41–2, 45
ViCLAS 76
Victim Contact Service 135
Victim Impact Statements 134, 138
Victim Liaison Officers 137–8
victims: anonymity 98; child sexual offences 87; Code of Practice for Victims of Crime 135–6; compensation schemes 131–2; Domestic Violence, Crime and Victims Act 2004 134–5; National Victims Service 138; organizations for 132–3; Sexual Assault Referral Centres 66–8; sexual histories 99–100; terminology 139–40; Victim Contact Scheme 137–8; Victims Advisory Panel 137; Victims Charters 134; Victim’s Right to Review Scheme 89–90; witness support 91–8
Victims Advisory Panel 137
Victims Champions 136
Victims Personal Statements 134
Victim’s Right to Review Scheme 89–90
Victorian era see nineteenth century
video-recorded testimony 95–7
vigilantism 24, 41, 213
violence, mob see Mob violence
Violent and Sex Offender Register 186
Violent Crime Linkage System (ViCLAS) 76
Violent Crime Reduction Act 2006 188
voluntary agencies and volunteers: abuse in 165; child sexual exploitation prevention 153; children, protection of 51; history 44–5, 49, 50; Independent Sexual Violence Advisors 93; nineteenth century 44–5; post-custodial resettlement of offenders 128–9; vetting and barring scheme 178–9; vetting of volunteers 172; victims, organizations for 132–3
voyeurism 8
vulnerable adults, screening for employment with 172–3
‘vulnerable prisoners’ 118
vulnerable witnesses 94–8

Waddington, Robert 166
Wakefield Prison 120
Wales: Area Child Protection Committees 146–7; national inquiries 207–8; nineteenth century vigilante groups 41; pre-employment screening of child care workers 169–70; Sexual Assault Referral Centres 67; sexual offences, forms of 3, 4–5; sexual violence statistics 8–9; Waterhouse Report 161
Walsh, John 216–17
Wanless, Peter 207
Waterhouse Report 61, 161
Webb, Beatrice 47
Webster, Richard 62
Wells, Holly 2
West, Rose 21

West Yorkshire 68
Whatton Prison 118
Whitechapel area 45–6
Whitehall circulars 149
Wild, Justice 100
Wilde, Oscar 45
Witness Care Units 91–2
Witness Service 93
witnesses 91–8, 98–9, 141
Wolverhampton 154
women: child sexual offenders 3; Clare’s Law 195–6; domestic violence, protection from 155–8; police attitudes towards women complainants 57–8; silencing of 33; street harassment of 34
Women’s Aid 132
Wood, Clare 195
Wookey, James 45
Woolf, Fiona 208
Working Together to Safeguard Children 150, 154
Wormwood Scrubs Prison 120
Worrall, Anne 211
Wright, Jeremy 128

‘young man’s defence’ 12
young sex offenders 31, 185
youth see children and youth
youth gangs: child sexual exploitation 2, 6, 65–6, 154–5; Ending Gang and Youth Violence programme 133; prosecution of 86
Youth Justice and Criminal Evidence Act 1999 95–6, 99
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