Half the population have their first sexual experience before the age of 16, according to The National Survey of Sexual Attitudes and Lifestyles, which interviewed nearly 19,000 men and women in 1990-91. The most comprehensive sex research ever conducted in Britain, it found that among the younger generation of 16 to 24 year olds, the average age of first sexual experience (not necessarily intercourse) is 13 for men and 14 for women.

David Kidd-Hewitt

# Consent at 16: protection or persecution?

**Peter Tatchell** argues that young people under 16 have a right to make their own sexual choices without being victimised by the law.

Under Britain's antiquated sex laws, however, any sexual contact involving a person under 16 is illegal, even mere caresses and petting. No one below that age - no matter how mature and well-informed - is deemed capable of consenting to a sexual act. Consensual sex involving under-age youths is automatically branded a crime by the law. It is either indecent assault, unlawful sexual intercourse or buggery (depending on the nature of the sexual act and the sexes and ages of the participants).

Consenting sex with a girl or boy under 16 is deemed an indecent assault and is punishable by up to 10 years jail. Life imprisonment is the maximum penalty for both anal intercourse with a person (male or female) under 16 and for vaginal intercourse with a girl under 13.

These draconian penalties apply where one partner is under 16 and the other is over 16, and also where *both* partners are below the age of 16 and of similar ages. This legal harshness doesn't protect young people; it victimises them.

***"Contrary to unfounded fears in Britain, lower ages of consent have not increased the sexual abuse of young people."***

## Sexual human rights

Our society should, surely, uphold the sexual human rights of *all young* people, not just the over-16s. But, terrified of being accused of condoning child sex abuse, most civil liberty and child welfare organisations refuse to support the right of the people under 16 to make their own decision about when they are ready for sex.

It was not always like this. Many well respected and responsible organisations and individuals have, in the past, urged a rethink on the age of consent. Back in 1976, the National Council for Civil Liberties (now Liberty) campaigned for an age of consent of 14. Its aim was to reduce the criminalisation of young people involved in consenting sex, and lessen the legal obstacles to earlier, more effective sex education in schools. A similar policy of consent at 14 was adopted by the Howard League for Penal Reform in its 1985 manifesto, *Unlawful Sex*, which set out proposals for revision of the criminal law.

An age of consent of 14 was also supported by the former Bishop of Woolwich, the late John Robinson, and is currently advocated by the ex-Bishop of Glasgow, Derek Rawcliffe.

What is somewhat surprising is that, today, none of the child protection and human rights organisations seem willing to question the ban on sex before 16. The lesbian and gay rights group OutRage! is more or less alone in challenging the conservative consensus. It argues that young people below the age of 16 should be free to enjoy sexual relationships without being penalised by the law, providing both partners give their consent and are mature enough to understand the implications of their actions.

## The age of consent: European comparisons

An age of consent of 16 is unfair and unrealistic. It is a head-in-the-sand attitude which does not reflect the behaviour and experience of at least 50 per cent of the younger generation, who have sex before their sixteenth birthday and do not feel abused. The issue is not whether these young people *should* have sex, but whether they should be criminalised for consensual relations, which may often be mutually sincere, loving and supportive.

Most other European countries have far more sensible policies. In 20 neighbouring states, the age of consent is already lower than 16. The minimum age is effectively (with some qualifications) 12 in the Netherlands, Spain, Portugal and Malta. It is 14 in Slovenia, Iceland, Montenegro, Serbia, Italy, San Marino, Albania and, in certain circumstances, Germany. All these laws apply equally to hetero and homo sex.

None of the governments backing these comparatively low ages of consent did so without careful research and consideration. Their parliaments would have never voted for such age limits if

they thought it would put their young people at risk.

Contrary to unfounded fears in Britain, these lower ages of consent have not increased the sexual abuse of young people. They have adequate protection through the laws against rape and indecent assault. Moreover, contrary to the claim that Britain's tough consent laws exist to protect youngsters against exploitation by adults, the very young also get penalised. Indeed, the law is very confused and contradictory. It may sometimes protect, but it can also persecute.

## The age of responsibility

The double-standards are startlingly evident with regard to the definition of when a person is deemed to be legally responsible for their behaviour. Although the age of criminal responsibility is ten, people under the age of 16 are said by the law to be incapable of sexual consent. The implication is that a decision to have consensual sex is more serious and complex than a decision to commit robbery or rape. The 10 year old killers of James Bulger were declared old enough to know what they were doing and be convicted of murder. But if they had had sex with each other, and said they had consented, the courts would have ruled that they were too young to understand what is involved in a sexual relationship.

Since children can be held responsible for criminal behaviour from the age of ten, it is surely illogical for the legal system to maintain the fiction that everyone below 16 is unable to consent to sex.

The law needs to be consistent. Lifting the blanket ban on sex under 16 would begin to tackle this anomaly, removing the threat of criminalisation from sexually-active under-age young people. Nevertheless, any minimum age - whether it is 16 or 14 - is inevitably arbitrary and fails to acknowledge that different people mature sexually at different ages. A few might be ready for sex at 12; others not until they are 20. Having a single, inflexible age of consent doesn't take into account these differences. It dogmatically imposes a limit, regardless of individual circumstances.

## A new legal framework

There should be an element of flexibility in the age of consent. Whatever we decide the age of consent should be, sex involving young people under that age could cease to be prosecuted, providing both partners consent and there is no more than three years difference in their ages. A mutually agreed relationship between a 13 year old and a 15 year old, for example, perhaps should not result in legal action. Similar flexibility in the age of consent already exists, to varying degrees, in German, Swiss and Israeli law.

Reform along these lines would acknowledge the reality that many under-age young people have sexual feelings, and some experiment sexually with each other, even before their teenage years. Having a maximum three-year age gap would give the under-aged greater legal leeway to make their own choices about who they have sex with, while also offering them protection against pressure and manipulation by those much older.

If the objective is to prevent the penalisation of victimless sex, then changes in the age of consent need to be backed up with legally-binding guidelines to judges; where the three-year age difference is violated, any punishment should, arguably, be contingent on, and commensurate with, harm being done. In other words, if no harm has been inflicted, punishment is inappropriate and the courts should, at most, impose a counselling order to ensure that the pair are advised about contraception and safer sex.

Additionally, any lowering of the age of consent needs to go hand-in-hand with candid, compulsory sex education in all schools, from primary classes onwards.

An age of consent of 16 is unsatisfactory in every respect. It criminalises consensual sex and inhibits the provision of detailed advice on how to deal with unwanted sexual advances, contraception, safer sex and problems in relationships. What is needed is a new legal framework for the age of consent that can balance the sexual rights of youth (which include both the right to say 'yes' to sex and the right to say 'no'), with laws that protect them against sexual manipulation.

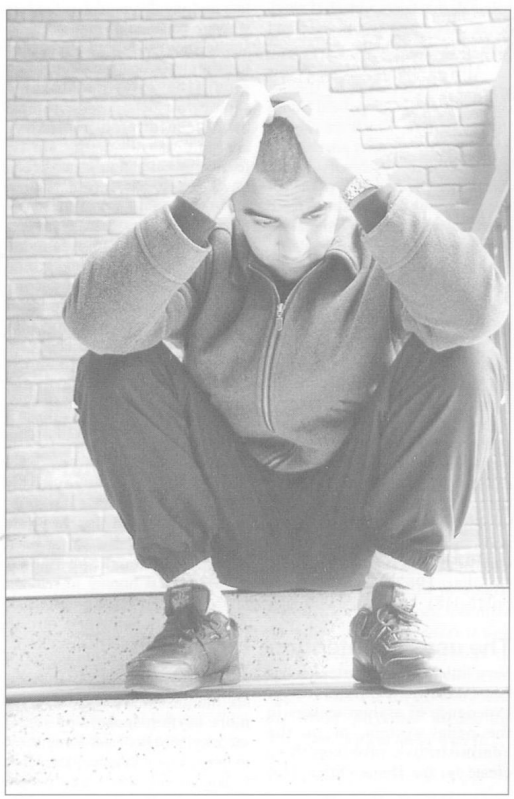
■

***Peter Tatchell** is a spokesperson for the queer rights group OutRage! and the author of the gay sex education manual,* Safer, Sexy - The Guide to Gay Sex Safely *(Freedom Editions/Cassell, 1994).*

# How Britain imprisons asylum-seekers

**Max Travers** considers British policy in detaining people who seek refugee status in Britain.

The United Nations Convention on Refugees which Britain signed in 1951, gives anyone in the world the right to claim asylum if they have a 'well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a political social group or political opinion'. An average of 20-40,000 people a year, from countries all over the world, have



David Kidd-Hewitt

***"The argument made against detentions is that asylum-seekers have committed no crime, and should not be deprived of their liberty. Nothing distinguishes the few who are detained, from those who are at liberty while they wait for their appeals hearing."***

claimed this right since the late 1980s (in total about 270,000 people). In recent years about twenty per cent have been recognised as refugees or granted Exceptional Leave to Remain. The remaining eighty per cent have exercised a right of appeal to an administrative tribunal, but only sixty per cent have been successful. At any time 800-1,000 people are detained by the British government, in detention centres or prisons.

The Home Office does not publish information about the total numbers who have been detained, or the average length of detention. It is known, however, that some detainees have been imprisoned for years, owing to the slowness of the system of administrative tribunals that hears appeals. Others are detained for short periods and then released on bail.

The majority of asylum-seekers are detained in special centres, such as Campsfield House in Oxfordshire, which are usually converted low security prisons, run by private security firms. Although the Home Office has a policy of separating asylum-seekers from people convicted or on remand for criminal offences, the shortage of places in detention centres has resulted in some being allocated to ordinary prisons (many of which are already overcrowded according to official reports). However, the difficulty of finding places has led governments to pursue imaginative measures. Robin Cohen reports that in the late 1980s, about 120 asylum seekers were detained aboard a converted car-ferry anchored at Harwich. This was used as a detention centre until it broke free of its moorings and ran aground on a sandbank during the freak storm of 15th-16th October 1987 (Cohen, 1994 pp116-118).

## The uses of detention

Very little academic research has been done on the treatment or experience of asylum-seekers in the penal system, or on the administrative problems they create for the Home Office. HM Inspectorate of Prisons visited Campsfield House in Oxfordshire in 1994, and were highly critical of conditions. One issue raised by campaign groups opposed to detentions is that detainees are not medically examined on arrival (even though many claim to have been tortured in their own countries), and there is no psychological counselling or support. The HM Inspectorate Report found that the Campsfield House staff had recorded fourteen incidents of attempted suicide or self-injury between December 1993 and September 1994.

The argument made against detentions is that asylum-seekers have committed no crime, and should not be deprived of their liberty. It has also been suggested that nothing distinguishes the few who are detained, from those who are at liberty while they wait for their appeals hearing. Campaign groups have offered to give sureties for detainees, and most have been offered alternative accommodation with family, friends or campaign groups. The government, on the other hand, views detention as one means of discouraging people from coming to Britain who have unfounded claims. The Home Office would ideally like to detain more people, which would also make it easier to deport those who are not recognised as refugees. There are currently plans to convert an ex-P.O.W. camp in Dover into a large detention centre, although it is unclear how this will be financed.

## Immigration and Asylum Bill

It should be noted that very few asylum-seekers have so far been deported, although the Labour government is hoping to remedy matters in the Immigration and Asylum Bill published on 9th February 1999. This seeks to establish a faster system which will hear all appeals within a period of six months. It will also deprive more asylum-seekers of social security benefits (and force them to live off food vouchers) which it is hoped will deter more people from claiming asylum in Britain.

The new Bill will be supported by the Conservative Party in parliament (in contrast to Labour's opposition to the 1993 and 1996 *Asylum and Immigration Acts*). However, it seems likely that it will suffer the same fate as previous attempts to establish a speedy and effective system. The number of new asylum-claims shows no signs of falling despite the tough messages sent out by successive governments, perhaps because so few are actually deported. As in other areas of public policy, ministers are required to make promises, and present new initiatives, without being allocated sufficient resources to do much in addressing large and intractable problems.

## A question of human rights

How you assess the treatment of these detainees will, of course, ultimately depend upon your political views, and I would expect that most readers of *Criminal Justice Matters* will be sympathetic towards the position of asylum-seekers. It is, however, worth noting that most respondents in a survey conducted for *The Guardian* newspaper on 8th February 1999 believed that the majority of asylum-seekers were 'bogus' (the government's position), and that detention was necessary to maintain immigration controls. Pressure groups would argue that most asylum-seekers should be recognised as Convention refugees, and that a 'culture of refusal' operates in the tribunals which hear asylum appeals. My own study of the appeals system questions how easy it is to determine genuine from fabricated claims (Travers, forthcoming). However, even if one accepts that we need strict immigration controls, and that most applications for asylum are unfounded, there is no need to accept that detention is either an effective deterrent, or an acceptable way of treating human beings. ■

*Max Travers is Reader in Sociology and Criminology at Buckinghamshire Chilterns University College.*

**References:**

Cohen, R *Frontiers of Identity: The British and Others*, Longman, London (1994).

Travers, M *The British Immigration Courts: A Study of Law and Politics*, The Policy Press, Bristol (forthcoming, July 1999).