

# PRISON SERVICE JOURNAL

May 2012 No 201



# The Management of Sexual Offenders in the Community:

## Austerity, Engagement, Interaction and The 'Big Society'

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*'Big Society we will tackle these root causes of poverty and criminality... In the Big Society ... criminals will live in fear of the people — because there is nowhere for them to hide.'*

Sexual offenders, especially child sexual abusers, are among the most reviled and ostracised offenders in society, making their reintegration into and their management within the community problematic<sup>2 3</sup>. The reintegration of sex offenders back into the community has always been a difficult balancing act between risk management and public protection, requiring the engagement of multitude Criminal justice agencies<sup>4 5</sup>. This reintegration and management is made more difficult in the United Kingdom (UK) as Child sexual abuse, especially paedophilia, is a high profile social issue and media story<sup>6 7 8</sup> which has come about as a consequence of a number of factors, including, perceived increases in the rates of reporting, recording and responding to child sexual abuse; a number of high profile media stories; reactionary public attitudes; evidence based research<sup>9 10 11</sup> and the highly politicised nature of sexual offending (i.e., general election debates, political spin and coverage, inclusion on policy agendas). These societal factors have meant that understanding and responding to child sexual abuse has become a core policing issue, a public protection and a public health issue over the past decade; leading to a number of high profile legislative changes and public campaigns in UK.

The UK does not have a single national Criminal Justice System (CJS); rather it is split into three separate jurisdictions (i.e., England and Wales, Northern Ireland and Scotland) each with their own distinctive laws, legislation, legal systems and criminal justice agencies; although, at times these can overlap. A series of sex offender policy developments have been spearheaded in England and Wales over the past two decades, including but not limited to the implementation of a national sex offender's register, an expansion of the Criminal Records Bureau (CRB) checks, the introduction of Multi-Agency Public Protection Arrangements (MAPPA) and the limited public disclosure of sex offender information. Most of these legislative changes, to date, have been implemented in both Scotland and Northern Ireland either at the same time as England and Wales, or slightly later; therefore indicating that regional, or jurisdictional, differences do come through in the management and monitoring of sexual offenders in UK<sup>12 13</sup>.

### **Different 'voices' and discourses around child sexual abuse in modern society**

Responding to sexual offending, especially child sexual abuse is an often complex, controversial and difficult line for the government and the CJS to walk. This is partly because of the variety of diverse understandings of and reactions to child sexual abuse by separate actors or groups in society<sup>14</sup>;

1. May, T. (2010). Speech to the Police Federation, 19th May 2010. Polfed.org [online] 19 may. Available from [http://www.polfed.org/Home\\_Secretary\\_\\_2010.pdf](http://www.polfed.org/Home_Secretary__2010.pdf) [accessed 18 August 2011].
2. McCartan, K. F. (2010). Media Constructions and reactions to, paedophilia in modern society. In Harrison, K. (Ed) *Dealing with High-Risk Sex Offenders in the Community: risk management, treatment and social responsibilities*, p 248-268. Willan: Cullompton.
3. McCartan, K. (2011). *Public and Practitioner attitudes towards the limited disclosure of sex offender information scheme in use in the UK: A Northern Irish & Welsh Perspective*. Early Career Research Grant 2010/11: Research Summary, unpublished report to the University of the West of England: Bristol.
4. Harrison, K. (2010) *Dealing with High-Risk Sex Offenders in the Community: risk management, treatment and social responsibilities*. Willan: Cullompton.
5. Nash, M. (2010) Singing from the same MAPPA hymn sheet – but can we all hear the voices? In Pycroft, A., & Gough, D. (Ed) *Multi-agency working in criminal justice: Control and care in contemporary correctional practice*, p111-123. Bristol: Policy Press.
6. Davidson, J. C. (2008) *Child Sexual Abuse: Media Representations and Government Reactions*. UK; Routledge-Cavendish.
7. See Footnote 2.
8. Thomas, T. (2005) *Sex Crime: Sex Offending and Society (2nd Ed)*. Cullompton: Willan. *violence against children*. London: Pluto.
9. Grubin, D. (1998) Sex offending against children: Understanding the risk. *Police Research Paper, Paper 99*. London: Home office.
10. Pawson, R. (2001) *Evidence and Policy and Naming and Shaming*. ESRC UK Centre for Evidence Based Policy and Practice: Working Paper 5. Available from <http://evidencenetwork.org/Documents/awp5.pdf> [accessed 14 April 2007].
11. Davidson, J. C. (2008) *Child Sexual Abuse: Media Representations and Government Reactions*. UK; Routledge-Cavendish.
12. Northern Ireland Office (2006). *Reforming the Law on Sexual Offences in Northern Ireland: A Consultative Document*. Northern Ireland Office.
13. Official inquiry into NI sex offender cases (2010) BBC.CO.UK [online] 20 September. Available from <http://www.bbc.co.uk/news/uk-northern-ireland-11371282> [accessed 18 August 2011].
14. McCartan, K. F. (accepted). Professionals' understanding of government strategies for the management of child sexual abusers. *Probation Journal*.

- ❑ The public are concerned about child sexual abuse, often promoting a punitive response and wanting sex offenders isolated from communities<sup>15 16</sup>;
- ❑ professionals tend to have no cohesive 'voice' on child sexual abuse, instead having a widespread and varied series of 'voices' dependent on their area of expertise, experience and outlook on offenders<sup>17</sup>;
- ❑ official discourses tend to view child sexual abuse as a public protection and risk management issue, therefore responding in terms of risk reduction and public protection not treatment, prevention and/or reintegration<sup>18</sup>; and
- ❑ media professionals tend to see, and represent, sexual abusers in negative, putative and emotional terms viewing them as a homogenous group<sup>19 20</sup>.

These disjointed discourses have resulted in an understanding of child sexual abuse that is somewhat detached from the reality of the offending, particularly in regard to paedophilia, leading to poor societal understanding, emotional and restrictive responses, reactionary politics and media misdiagnosis. Consequentially, this means that discussions around how to respond to child sexual abusers becomes confined and limited to the most socially acceptable response.

#### **(Limited) Public disclosure of sex offender information in the UK**

Unsurprisingly members of the public and professionals who work with sex offenders have different attitudes to the management of sexual offenders who have offended against children<sup>21</sup>, especially in regard to community reintegration. The public do not want child sexual abusers back in their communities, whereas professionals feel that community reintegration is an important and central step in offender rehabilitation<sup>22</sup>. One of the most debated, controversial and punitive strategies for the management and monitoring of child sexual abusers in the community, both internationally and in the UK, is the public disclosure of sex offender information (known as

'Sarah's Law' in the UK and 'Megan's Law' in the USA). This legislation was first developed in the USA, where any member of public at large can have easy and unlimited access to the names as well as addresses of all known sex offenders within their communities<sup>23</sup>. After much debate, research and political flip flopping<sup>24</sup> the previous labour government piloted a limited public disclosure of sex offender information scheme in England and Wales, arguing that they wanted to see if limited disclosure could work while emphasising that the proposed approach was not an attempt *'..to introduce a US-style Megan's Law or automatic disclosure of sexual offenders details to the general public.'*<sup>25</sup>.

The sex offender disclosure scheme was piloted in England, Wales and Scotland at various stages in 2009 — 2010, with the English and Welsh pilot taking place in four English (Warwickshire, Cleveland, Hampshire and Cambridgeshire), but no Welsh, police forces and the Scottish pilot taking place in one police force (Tayside). The piloted, and now implemented, limited disclosure scheme is based on the premise that parents, or primary caregivers, who are concerned about the behaviour of a known individual towards their child can ask for past sexual offence information about this person<sup>26 27</sup>. Therefore it's not a means to find out the number and locations of sex offenders in your area, unlike the American version, it is disclosure with a purpose (i.e., to find out direct information regarding a specific child and a named, potential, offender). The English, and Welsh, pilot took the form of an analysis of application forms and a series of qualitative interviews with practitioners, stakeholders, offenders and applicants. There were 585 applications made under the pilot with 21 of these resulting in disclosures being made and a further 43 leading to other child protection actions; there were no breaches of applicant confidentiality and no negative public/community action (i.e., protests, vigilantism, etc)<sup>28</sup>. The Scottish pilot was nearly identical leading to similar results with 52 applications being made which resulted in 11 disclosures<sup>29</sup>, with a full, simultaneous Scottish roll out of the scheme happening as a result. However, there are

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15. McCartan, K. F. (2004). 'HERE THERE BE MONSTERS'; The public's perception of paedophiles with particular reference to Belfast and Leicester. *Medicine, Science and the Law*, 44, 327-342.

16. See Footnote 3.

17. See footnote 14.

18. McCartan, K. F. (forthcoming, 2011). Professional responses to contemporary discourses and definitions of paedophilia. *International Journal of Police Science & Management*.

19. See footnote 8.

20. See footnote 2.

21. See footnote 3.

22. See footnote 18.

23. Fitch, K. (2006) *Megan's Law: Does it protect children? (2) An updated review of evidence on the impact of community notification as legislated for by Megan's Law in the United States*. London: NSPCC.

24. See footnote 14.

25. Home Office (2010). *The Child Sex Offender (CSO) Disclosure Scheme Guidance Document*. London: Home Office. Page 2.

26. Kemshall, H., Wood, J., Westwood, S., Stout, B., Wilkinson, B., Kelly, G., & Mackenzie, G. (2010) *Child Sex Offender Review (CSOR) Public Disclosure Pilots: a process evaluation*. Research Reports 32. London: Home Office.

27. Chan, V., Homes, A., Murray, L., & Treanor, S. (2010). *Evaluation of the Sex Offender Community Disclosure Pilot*. Ipsos MORI: Scotland.

28. See footnote 26.

29. See footnote 27.

currently no plans to develop and/or roll out a pilot study in Northern Ireland<sup>30</sup>.

As a direct result of the pilots, which were hailed as a success<sup>31 32</sup>, the limited disclosure scheme was introduced in England, Wales and Scotland. The current scheme has five stages<sup>33</sup>, with the applicant making a written enquiry to the police about a specific person coming into contact with a specific child. Which, if successful, then proceeds to the applications stage where a formal face-to-face application done with a trained/specialised police officer and a background check is done on the applicant; leading on to the next stage where the applicant is given an information pack on the disclosure pilot scheme as well as general safeguarding advice. At this point a full risk assessment is done on the target of the enquiry, and then a final decision is made on whether the said individual poses either a 'concern' or 'no concern'. The resultant decision and related information is then disclosed to the person best suited to protect the child, not necessarily the applicant, in a secure setting after they have signed a sworn statement indicating that they will not discuss this information with anyone else and if they do they could face criminal proceedings. If the applicant is not willing to agree to the conditions of disclosure or seen to be troublesome the police will need to consider if disclosure should take place and if they are not to be told then who is best placed to be told<sup>34</sup>.

### **Limited disclosure, public protection and austerity measures**

The public disclosure of sex offender information, whether through full or limited disclosure, raises a series of concerns surrounding community responses to information regarding sex offenders, the appropriate managing and monitoring of disclosure, as well as concerns over the successful management of known child sexual abusers in the community<sup>35 36</sup>. One of the main arguments against the disclosure of sex offender information, particularly in regard to full public disclosure but also relating to partial disclosure, is whether the

government is shifting responsibility for the management of sex offenders into the public arena, onto community groups and away from the state<sup>37</sup>? Is the government dressing up a populist policy as a public protection and community safety issue? Although, these concerns are topical and high profile in and of themselves, they are particularly resonant given the current social and economic climate within the UK. Recently, as a result of austerity measures and cost saving exercises, the coalition government has sanctioned public sector cuts, both nationally and regionally, in regard to the police, prisons, probation and counter intelligence<sup>38</sup>. This means that with fewer resources potentially the CJS may struggle to control and monitor offenders effectively, which could have a significant impact upon the management of certain, resource insensitive, offending populations (i.e., sex offenders). The current author believes that the potential for problems in sex offender management raised as a consequence of cuts could potentially be further inflated by the current limited disclosure scheme as practitioners are dubious of where the additional resources and funds are coming from to administrate scheme currently<sup>39</sup>, never mind the injection of money and resourced that would be required to make the scheme run as effectively as possible (i.e., publicity, more support for applicants, increased policing of offenders, managing confidentiality and the issues resulting from breaches in it)<sup>40</sup>. Hence, the limited disclosure of sex offender information could end up being fiscally expensive for government to run, especially if the scheme has a high take up and is not administrated, regulated and policed correctly.

### **Limited disclosure, public protection and the 'Big Society'**

The limited disclosure of sex offender information, regardless of cost and social reaction does tie into the Conservative party's, and therefore the coalition's governments, ideas and vision of the 'Big Society'<sup>41</sup>. Big society aims 'to create a climate that empowers local

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30. Police doubt 'Sarah's Law' will cause vigilante attacks. (2010, August 1). BBC [online] 1 August. Available from <http://www.bbc.co.uk/news/uk-10827669> [accessed 23 August 2010].
31. Travis, A. (2010) Tories back plan to extend 'Sarah's law' sex offenders checks. *Guardian* [online] 24 January. Available from: <http://www.guardian.co.uk/society/2010/jan/24/sex-offenders-check-parents-children> [accessed 26 February 2010].
32. Roberston, A. (2010). Extension of sex offenders disclosure welcomed. *Thecourier.co.uk* [Online] 26 October. Available from: <http://www.thecourier.co.uk/News/article/6741/extension-of-sex-offenders-disclosure-welcomed.html> [accessed 26 February 2010].
33. See footnote 26.
34. See footnote 26.
35. See footnote 18.
36. See footnote 3.
37. Levi, R. (2000) The mutuality of risk and the community: the adjudication of community notification statutes. *Economy & Society*. 29(4) pp 578-601.
38. Spending Review 2010: George Osborne wields the axe (2010). *BBC.co.uk [online]* 20 October. Available from <http://www.bbc.co.uk/news/uk-politics-11579979> [accessed 18 August 2011].
39. See Footnote 3.
40. See footnote 3.
41. Cabinet office (2010) Building the Big Society. *Cabinetoffice.gov.uk [online]* 18 may. Available from, <http://www.cabinetoffice.gov.uk/news/building-big-society> [accessed 18 August 2011].

people and communities, building a big society that will 'take power away from politicians and give it to people'<sup>42</sup>, which means the transferring of decision making to communities, encouraging people to take an active role in their communities as well as greater support for co-ops, mutual's, charities and social enterprises. Hence, the limited disclosure of sex offender information reflects the core ideas of the 'Big Society' by promoting greater community partnership, greater civil/social responsibility and the promotion of state trust in the public. In doing so limited disclosure reinforces the coalitions belief that social repair is a process based upon community engagement, restorative justice and successful reintegration<sup>43</sup>. This desire to get the public and communities more involved in local affairs and take responsibility for themselves is also tied up in the coalitions approach to policing, which aims to reduce the numbers of paid officers, increase the number of police volunteers, make the CJS more public as well as victim focused. Therefore indicating that the coalition wants to get the public, and communities, more involved in policing<sup>44</sup>, offender management and offender reintegration in their local area, and therefore by default leading them to be more engaged nationally.

The potential outcome of this marriage between austerity, limited disclosure and the 'Big Society' is the notion that offender management, policing and justice will become community partnership issues rather than simply state/CJS ones. Which could potentially result in the broader public, particularly community groups, offender outreach charities and/or related NGO's, being expected to partly or entire manage their local offenders themselves. However, for this to work there needs to be an implicit trust in, as well as between, the public, communities, partner organisations and the CJS. In reality this degree of implicit trust does not exist, for instance, research in Northern

Ireland and Wales has shown that the public do not think that the state, or practitioners, trust them with sex offender information fearing that they will retaliate against these offenders. Which resulted in the participants stating that they would be disinclined to accept the responses that practitioners give them regarding sex offenders in their local areas, instead preferring to trust their own instincts. This was reinforced by practitioners, especially in Northern Ireland, stating that they were not sure that they could trust the public to react appropriately and felt that disclosure would lead to community conflict and problems for ground level staff<sup>45</sup>.

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### Limited disclosure, the 'Big Society' and the 'rehabilitation revolution'

If the limited disclosure of sex offender information indicates a greater potential sharing of offender information with certain narrowly defined members of the community this could impact upon organisations that take on the management of offenders as part of the rehabilitation revolution in penal policy<sup>46 47</sup>. The rehabilitation revolution means that offender management will be farmed out to independent contractors and judged through a payment through results process. This means that independent contractors will take on traditional CJS roles in a similar vein to what happened when the NHS was privatised by the previous conservative government, albeit

this time the process is labelled as community partnership and engagement. When the idea of the rehabilitative revolution is married to notions surrounding the 'Big Society' and greater partnership working it emphasises that the public, community groups, charities, NGO's and private companies (i.e., partner agencies) maybe increasingly responsible for offender management, potentially including child sexual offender management<sup>48</sup>.

42. Cameron, D. (2010). Government launches big society programme. *Number10.gov.uk* [online] 18 may. Available from <http://www.number10.gov.uk/news/big-society/> [accessed 18 August 2011].

43. Hebert, N. (2011). Restorative Justice, Policing and the Big Society. *Homeoffice.gov.uk* [online] 25 February. Available from <http://www.homeoffice.gov.uk/media-centre/speeches/Herbert-Restorative-Justice> [accessed 18 August 2011].

44. See footnote 18.

45. See footnote 3.

46. UK prisons 'costly and ineffectual', says Clarke (2010). *Channel4.com* [online] 30 June. Available from <http://www.channel4.com/news/articles/uk/prisons+in+the+uk+are+a+costly+and+ineffectual+failure+according+to+justice+secretary+ken+clarke/3696277.html> [accessed 18 August 2011].

47. Kemshall, H., Mythen, G., & Walklate, S. (2011). *Decentralising risk: the role of the voluntary and community sector in the risk management of offenders*. Paper given at the British Society of Criminology annual conference, Northumbria, July 3rd – 6th.

48. See foot note 47.

This means that partner organisations could have greater access, or perceived access, to sex offender information by the public which could result in increased formal or informal disclosure to the public as a result of increased personal or professional pressure, issues with legitimacy, poor standardization of practices, and deficits in corporate responsibility for managing sex offenders in the community. Hence, if as a result of the

Big Society and the 'rehabilitation revolution' offender management, and potentially sex offender management, in the community is potentially going to be run through an amalgamation of partnership organisations, charities and community groups (i.e., potentially groups like NARCO, Circles UK, etc) what should their role be?

### **Outcomes and considerations for the broader public as well as partner organisations**

Both historically and currently there is a background of partner organisations working with the CJS around offender management and reintegration (i.e., NACRO, Circles UK, Howard League). However, given the current austerity cuts, the rehabilitative revolution and greater devolvement of state powers through the Big Society these organisations need to be careful not to take on responsibilities which are outside of their jurisdictions. There are a number of potential scenarios that could play out for partner organisations, both old and new, in regard to the management of sexual abusers against children in the current climate; (1) these groups could assist victims, offenders, associated people and communities in understanding as well as responding to child sexual abuse; (2) these groups could replace the work done by existing CJS agencies in regard to child sexual abuse; or (3) these groups could become involved in partnership working with CJS agencies. All of which fit in with the coalition's Big Society, increased partnership and public involvement manifesto. The most likely scenario seems to be that these groups would continue to be involved in partnership working with CJS agencies, as they or others have done historically, helping to respond to sexual abuse at a grass roots level; but with the caveat of possibly taking on more responsibility and therefore having more accountability. These organisations, whether new or historical partners, should be engaging with;

- ❑ Public education on the reality of sex offenders, sexual offending, sex offender management and the 'appropriate' use of disclosure.
- ❑ Brokering between sex offenders and their victims/communities (with police/CJU support).
- ❑ Reinforcing, not replacing, the role of the CJS.
- ❑ Encouraging best practice among those organizations involved in the management of sex offenders and questioning bad practice.

- ❑ Helping convicted sex offenders reintegrate into society, and the community, through offering advice, support, counseling and life skills.
- ❑ Continuing to offer broad, as well as personalized, victim and community support.

However, despite the positive impact that community groups, charities, NGO's, private businesses and/or private criminal justice groups can have in assisting the CJS manage responses to sexual violence in the community there are potential problems;

- ❑ they should not be confronting, policing and/or monitoring sex offenders themselves, particularly if they do not have a criminal justice mandate to do so;
- ❑ There is a greater possibility of sex offender information sharing with the community, especially through informal methods;
- ❑ There may be pressure, either internally and/or externally, for the organization to pass on any sex offender details or confidential information that they have on to the community;
- ❑ This could result in a 'postcode lottery' of sex offender management, as has happened with the NHS and in Care, with different areas of the UK getting different forms and standards of care in offender management;
- ❑ The farming out of offender, and potentially sex offender management, to independent contractors which is managed through a payment by results process may lead to a reduction in the overall care and control of sex offenders potentially resulting in breaches of public protection.

### **Conclusions**

The limited public disclosure of sex offender information seems to lend itself, almost by chance, to the coalition governments' emphasis on the 'Big Society', greater public working and the 'rehabilitation revolution'. In addition, the introduction of harsher austerity measures and cuts in the CJS budget means that the public may have to rely on voluntary agencies, community groups and committed citizens more for the management of sex offenders in the community; potentially creating a perfect storm for the management of sexual abusers against children in the community. Hence organizations who plan to get involved in this field, or are already working in this field, need to be aware of what is, need to realistically understand what is expected of so that they do not over step professional boundaries, break the law or take on, possibly unwittingly, roles which are not part of their responsibilities.