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Dangerous Liaisons: Child Sex Offending and Underage Sex in the Media and the Law

Abstract

Since the mid 1990s, the sexual abuse of children has become a high-profile topic and concern in UK society. For the media the enemy is obvious: outrage focuses on the paedophile, an evil, cunning and highly dangerous stranger who attacks, sexually abuses and even kills children. In this scenario children are innocent and vulnerable victims in need of protection. The UK government has responded to these concerns through legislation, most notably the Sex Offenders Act 1997, the Sexual Offences Act 2003 and the Criminal Justice Act 2003. These legal measures have shaped the entire field of children and sex in complex ways. On the one hand, legislation has increasingly brought young people into the reach of the law by criminalising and punishing much *consensual* underage sex. On the other hand, special premises are applied to young perpetrators of *coercive* sex, effectively treating them more leniently than adult offenders.

This paper traces the dynamics shaping this complex and often contradictory legal approach to young people and sex. One important factor concerns the law dealing with a reality of child sexual abuse which is much more complex than the media image of evil adults forcing innocent children into sex. A quarter of all child sex offences are committed by minors (Cawson et al. 2000), but they do not conform to the stereotype of the paedophile. A second influence concerns media opposition to all underage sex, including consensual sex, grounded in moral concerns about teenage pregnancy or childhood innocence. In conjunction these factors create twin pressures for the government to legislate against all underage sex yet exempt young people from being treated as 'proper' child sex offenders by the law.

INTRODUCTION

"Conviction for any sex offence against a child carries heavy consequences in terms of both a requirement to register with the police under the Sex Offenders Act 1997 and in imposing Schedule One offender status under the Children and Young Persons Act 1933." (2000: 36)

“An Act to make new provision about sexual offences, their prevention and the protection of children from harm from other sexual acts, and for connected purposes”
(Sexual Offences Act 20th Nov 2003)

NEEDS SOME WORK, JUST A COUPLE OF KEY QUOTES SO FAR. INTRODUCE KEY QUESTIONS what is the role of the media in the construction of sex offenders and what is the role of the law in this construction?

MEDIA REPRESENTATIONS OF UNDERAGE SEX

'My teen girl's a hooker, so what?' News of the World March 2009-09-27

Story about the 15 year old daughter of a Russian immigrant who worked as a prostitute. Much of the commentary on this story and reader's comments focused on the fact that immigrants should not be in this country rather than welfare of the girl or the fact that her clients were breaking the law.

'Pupils told they have a 'right' to a good sex life: That's the advice for youngsters from the NHS' Daily Mail July 2009-09-27

Story advising that there are benefits in having an orgasm twice a week, suggesting 'what about sex or masturbation twice a week?' Much of the editorial ignores the fact that there are no risks attached to masturbation and focuses on risks associated with sexually transmitted diseases.

'Britain has worst underage sex rates' Daily Telegraph Jan 2008

The editorial here focuses on spiraling teenage pregnancy rates and the broken families this leads to. This article criticises government initiatives offering counselling advice to teenage mothers to ensure they don't get pregnant again.

'Binge Drinking, Underage Sex, Drugs and even thought of suicide: Inside the secret lives of teenage girls, Daily Mail, April 2009

In another article from the Daily Mail the focus is on teenage lifestyles which include drinking alcohol, having sex, smoking cannabis and using internet chat rooms to meet potential partners. One teenager talks about 'pervy blokes in their 30s' saying they don't mind an age gap but no mention is made of paedophilia as the emphasis is on the 14 year old girl's unacceptable behaviour.

LEGISLATIVE BACKGROUND

The Sexual Offences Act 2003 had four main priorities, which were, protection of children and other vulnerable people, widening the law on rape and changing the permissible defences in relation to consent, making the law more gender-neutral, repealing, for example, offences applying specifically to gay men and finally tightening notification requirements on sex offenders and widening registration to those convicted overseas (House of Commons 2003). For the purposes of this paper the first priority concerning children and other vulnerable people¹ is relevant. Prior to the Sexual Offences Act 2003 being passed a document entitled 'Setting the Boundaries' was published in July 2000. This document consisted of the recommendations from a number of relevant bodies and a public consultation (ending in March 2001) on Setting the Boundaries was also conducted.

Present law on sex offenders ensures that records are stored on the police National computer, moreover, if a conviction triggers inclusion in the database then certain employers (particularly those working with children) can request details on potential employees. This is only where the risk to the public outweighs the privacy of the sex offender. The public does not have any right of access to info held by the police on the whereabouts of sex offenders. This is despite public pressure for such information in 2000 under a campaign known as Sarah's Law (Thomas 2005) to mirror the American Megan's Law. The News of the World newspaper played a key role in vigilante activity by publishing photographs of known sex offenders under the headline 'Named and Shamed'. The campaign also resulted in a number of mistakes of identity and also included a paediatrician, not a paedophile, in fact quite the opposite of a paedophile in South Wales (Thomas 2005). Jack Straw (then Home Secretary) did not permit some form of controlled public access to the sex offenders register, although he did agree that the public should know the measures police and probation were taking to protect public. The police do have the power to disclose relevant information to communities if this will aid crime prevention (House of Commons 2003).

CONSENT

"The concept of consent is central to defining sexual offending. Sexual activities are expected to be consensual, and we speak of 'consenting adults'. When one party to a sexual act has not consented, we are moving into the realms of sexual offending" (Thomas 2005: 8)

During the consultative process prior to the Sexual Offences Act 2003 there was a discussion around the fact that people do have underage sex and 'Setting the Boundaries' aimed to recommend *"a more minor offence of sexual activity between children to apply to those under the age of 18 who have sex with children under the age of 16"* (2000: vi). However, this consideration was rejected as it was important to be clear that whilst two people over the age of 16 can consent to sex, minors (those under

16) cannot. Therefore having sexual relations with someone under the age of sixteen is classed as statutory rape whether they consent or not. In UK law

“it is illegal for a man, or boy, to have sexual intercourse with a girl under the age of sixteen. The maximum penalty is two years’ imprisonment. There is the so-called “young man’s defence” – applicable to a man between 16 and 24 who has reasonable grounds for believing the girl was above the age of consent.” (House of Commons 2003: 8)

The ‘young man’s defence’ and changes to this defence will be discussed in more detail shortly. Whilst the law is clear that underage sex is a crime there is also the recognition that when both parties are under age it may be a lack of education which is to blame. Setting the Boundaries recommended “ *further considerations be given to **appropriate non-criminal interventions** for young people under 16 engaging in mutually agreed under-age sex who are not now, and should not in future, normally be subject to prosecution* (Para 3.9.19) “ (2000: xiv) Whilst this was just a recommendation and is not replicated in law, the courts do still have some autonomy

“In fact very few boys under 16 are ever prosecuted for under-age sex (though it may additional charge on an indictment with a rape charge). The numbers of complaints and cautions have dropped. At present, a case will only be instigated if a complaint has been made, there is sufficient evidence to proceed, and the prosecution is in the public interest. The final decision rests with the Crown Prosecution Service “ (House of Commons 2000: 52)

Thus it is possible that two people under the age of sixteen would not necessarily be criminalised for their activity but receive some other kind of intervention.

In UK law there is also a distinction between girls ages sixteen and under and aged thirteen and under. Having intercourse with a child under the age of thirteen is viewed and punished more seriously than with a girl over thirteen and under sixteen. For example, if a male has intercourse with someone under the age of thirteen this is a felony under section 5 of the 1956 Sexual Offences Act and the young man’s defence does not apply. In actual fact having sexual intercourse with a girl aged under 13 is one offence where consent does not apply and is treated as statutory rape (Stevenson et al 2004). There is a clear statement that

“there should be an offence of adult (over 18) sexual abuse of a child (under 16). The offence would cover all sexual behaviour that was wrong because it involved a child” (House of Commons 2003: 9)

As a result of this the law has tightened on anyone having underage sex, which has serious consequences, including being put on the sex offenders register regardless of

the act if it involved a minor. It should be noted that for less serious offences the length of time on the register is more limited but inclusion on the register is still a requirement.

THE YOUNG MAN'S DEFENCE

The starting point of UK law is that it should offer protection to every child under the age of 16. The young man's defence has been criticised because whilst it offers protection to girls there is no equivalent for boys. In addition no under age girl can be charged with aiding and abetting a man's unlawful sexual intercourse with her as the male always carries the criminal liability. Whilst generally speaking penalties for under age sex are low and varied (the maximum sentence for unlawful intercourse with girl under 16 is 2 years and buggery with a boy or girl could result in a life sentence) one commonality for all sex offenders is that it

" carries heavy consequences in terms of both a requirement to register with the police under the Sex Offenders Act 1997 and in imposing Schedule One offender status under the Children and Young Persons Act 1933." (2000: 36)

At present the young man's defence is only applicable to sex with girls and the 2003 Act recommended that this would be replaced with a restricted defence covering children of either sex. In addition

"a mistake of fact in age should be available, but with the following restrictions: that it should be limited to honest and reasonable belief and that the defendant has taken all reasonable steps to ascertain age" (House of Commons 2003: 10)

Therefore anyone entering into sexual relations with an individual they have reason to believe may be under the age of sixteen must take steps to ascertain the age of this person. There is a possibility that honest mistakes can be made, for example, a fifteen year old drinking in a pub may be picked up by an eighteen year old and the fifteen year old may claim to be older than they are. However, there are some who specialise in targeting young girls, so defence of an honest mistake can only be made once in court. If someone persistently uses this defence then they will not be believed under the 2003 act. The defendant must show that he took reasonable precautions to ascertain the person's age. Also it is possible to limit age by defendant e.g. implementing a five year differential, so a twenty year old and fifteen year old may be credible, but a twenty five year old and fifteen year old would not.

Concern about underage sex was one of the areas to be addressed by the 2003 Sexual Offences Act, not least because of increasing teenage pregnancy rates and other risks

attached to early sexual behaviour such as cervical cancer and the transmission of Sexually Transmitted Infections (STIs). The Act states that

“there should be an offence of sexual activity between minors to replace the existing offences of unlawful sexual intercourse, buggery, indecency with children and sexual activity prohibited for children. It should apply to children under the age 18 and those under the age of consent” (House of Commons 2003: 10)

UNDERAGE SEX: A GREY AREA?

Statistics indicate a sharp decline in the use of some offences such as unlawful sexual intercourse with girls under 13 and unlawful sexual intercourse with a girls under 16 for 1988-1998. This maybe due to changing social attitudes to under-age sex, however, there is little doubt that teenagers are still sexually active as the teenage pregnancy report indicates 28% of boys and 19% of girls are having underage sex. In addition the Durex Global sex Survey shows most people have their first sexual experience at 15.3 years. During public consultation some called for decriminalisation of sex between juveniles of roughly the same age and some found it condescending that a person below 16 is incapable of consent. In addition

“there was also real concern about the potential impact of legislation intended to protect children or those who were not engaged in genuinely criminal behaviour – like 15 year olds mutually agreeing to sex in private. Was this genuinely culpable, and deserving of a criminal sanction?” (2000: 38)

Whilst there was much debate about whether fifteen years olds should be criminalised there was strong agreement that there is an age when it is absolutely wrong for teenagers to have sex, this age being 13. It should be noted that if one or both parties are under 13 then child protection laws/guidelines apply. Ultimately *“the age of consent is a formal statement about society’s view of acceptable behaviour.”* (2000: 38). As part of the consultation involved in ‘Setting the Boundaries’ focus groups were conducted in PSHE classes with 14-16 year olds. The overwhelming message from the discussions was that more and better sex education was needs, particularly for boys (House of Commons 2000).

Organisations such as the NSPCC were particularly concerned about ‘consenting sex’ when one partner was slightly older than the other, as such relationships may be exploitative and involve some degree of coercion (House of Commons 2000). It cannot be denied that today children mature physically at earlier than 16 and are exposed to sexual imagery before this age. There is also pressure for peers and the media to engage in sexual activity. Society has a role to play in protecting children from any psychological, physical and emotional harm. There are a particular set of physical risks when engaging in underage unprotected sexual activity including pregnancy, cervical

cancer and Sexually Transmitted Infections. One of the main points here is that young people should not feel they could not access sexual health services for fear of being criminalised, as it is important that sexually active youngsters feel confident enough to ask for advice from health professionals. It is not a criminal offence to seek or give advice on sexual health to a minor (House of Commons 2000). Discussions around subdividing penalties for sexual acts into age bands were rejected, as this may create the impression that underage sex/sexual activity is only serious when carried out with the very young.

THE CONSEQUENCES OF SEX OFFENDING: SELECTED STATISTICS, RECORDS AND PROSECUTIONS

So let us look at how prolific the sex offender is in the UK. This table indicates that there has certainly been a rise in sexual offences over the years, though admittedly much of this increase can be attributed to changing social norms, more emphasis on recording incidents due to advances in technology and the changing classifications of sexual offences and their accompanying legislation.

| Year | Indecent assaults on males | Indecent assaults on females | Unlawful sexual intercourse with a girl under 13 | Unlawful sexual intercourse with a girl under 16 | Total sexual offences |
|-----------|----------------------------|------------------------------|--|--|-----------------------|
| 1900 | 63 | 727 | 149 | 131 | 1,582 |
| 1920 | 192 | 1,372 | 80 | 155 | 3,070 |
| 1940 | 808 | 2,381 | 65 | 433 | 4,626 |
| 1960 | 3,095 | 9,663 | 232 | 3,608 | 19,937 |
| 1980 | 2,288 | 11,498 | 254 | 3,109 | 21,107 |
| 1990 | 3,043 | 15,783 | 300 | 2,471 | 29,044 |
| 2000/2001 | 3,530 | 20,301 | 155 | 1,237 | 37,311 |

Sexual Offences Recorded by the Police 1898-2001/2 (adapted) (House of Commons 2003)

If we look at the actual outcome of sexual offences, i.e. those cases which made it to court and were found guilty it is clear that females rather than males are much more

likely to be the victims of a sexual offence. This is unsurprising but noteworthy nonetheless and does fit with the media construction of the male predatory paedophile.

| Offence | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 |
|--|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Indecent Assault on a Male | 710 | 720 | 667 | 635 | 668 | 631 | 608 | 565 | 606 | 510 |
| Indecent Assault on a female | 3,791 | 3,695 | 3,471 | 3,390 | 3,321 | 3,344 | 3,401 | 3,246 | 3,189 | 2,924 |
| Unlawful Sexual Intercourse with a girl under 13 | 168 | 148 | 143 | 109 | 122 | 94 | 60 | 78 | 76 | 73 |
| Unlawful Sexual Intercourse with a girl under age 16 | 1,073 | 924 | 723 | 705 | 603 | 576 | 472 | 511 | 436 | 449 |
| Total Sexual Offences | 8,843 | 8,386 | 7,619 | 7,480 | 6,932 | 6,453 | 6,441 | 6,293 | 5,773 | 5,244 |

Offenders found guilty at all courts or cautioned for indictable sexual offences (House of Commons 2003)

When analysing who is actually committing these offences the largest group for most offences seems to be over 21s. However, nearly half (41%) of acts of unlawful intercourse with a girl under age 13 were committed by 10-18 year olds. This is something which the media rarely focus on and prefer to perpetuate the myth that all sexual offences with female minors are committed by adults.

| Offence | Aged 10 & Under 12 | Aged 12 and Under 15 | Aged 15 and under 18 | Aged 10 and under 18 | Aged 18 and under 21 | Aged 21 and over | Total |
|----------------------------------|--------------------|----------------------|----------------------|----------------------|----------------------|------------------|-------|
| Rape of a female | 0% | 2% | 7% | 9% | 6% | 85% | 100% |
| Indecent Assault on a female | 1% | 9% | 11% | 21% | 6% | 73% | 100% |
| Unlawful Intercourse with a Girl | 0% | 11% | 30% | 41% | 21% | 38% | 100% |

| | | | | | | | |
|--|----|----|-----|-----|-----|-----|------|
| under 13 | | | | | | | |
| Unlawful Sexual Intercourse with a Girl under 16 | 0% | 3% | 21% | 24% | 25% | 51% | 100% |
| Gross Indecency with Children | 2% | 4% | 7% | 13% | 5% | 83% | 100% |

Offenders found guilty at all courts or cautioned for indictable sexual offences against females or children by age group (House of Commons 2003)

Media constructions of the evil paedophile and the innocent child

Discourses around paedophiles

The British media circulate a number of discourses around paedophiles which portray them as a distinct type of person, different from the rest of humanity. These discourses are constructed through language as well as images.

Evil

Paedophiles are commonly portrayed as evil, wicked, malicious – especially in tabloid press.

Consequently, paedophiles have been identified as classic folk devil of our times (Critcher, 2003).

Linguistically the demonisation works through lexical items which directly associate them with the realm of the satanic, such as ‘devil’, ‘evil’, ‘(sex) fiend’, ‘depravity/depraved’ or ‘vicious’.

e.g.

*‘For these **evil** perverts there must be no hiding place’ (Editorial, 16 July 2000)*

*‘The **fiend** spent 15 years indulging his **depraved** desires before being caught’ (O’Dorman, 6 April 2008)*

Demonisation is also effected through a terminology which equates paedophiles with animals. Words such as 'monster', 'predator/predatory', 'beast', 'lurk', 'den', 'lair', 'prey' or 'pounce' usually refer to animals but have become common language in the discussion of paedophiles.

Perversion and pathology

Paedophiles are also portrayed as perverted.

Paedophiles are defined as adults who are sexually attracted to children.

This sexuality is constructed as deviant and abnormal through the discourses of perversion.

The discourse of perversion describes paedophiles as sick and perverted through nouns such as 'pervert' or 'perv' and adjectives such as 'sick', 'vile', or 'disgusting'.

The *News of the World* frequently displays sensational headlines such as:

*'What to do if there is a **pervert** on your doorstep' (News of the World, 23 July 2000b)*

*'Schools put on red alert; Fear as **vile** paedophile is released from prison' (Ferry, 1 February 2009).*

The discourse also frames the 'perverted' sexuality as an obsessive, compulsive lust which drives paedophiles to perpetually offend.

Paedophiles are seen as incapable of changing their behaviour and therefore incurable: 'once a paedophile, always a paedophiles' is a popular soundbite which sums up this view.

As a consequence of this incurability, paedophiles are a permanent risk and ordinary penal measures are declared ineffective.

Cunning

The discourse of cunning constructs paedophiles as meticulously and carefully planning their actions, as being very smart, clever, organised, strategic and difficult to catch.

Indicative of this is their supposed use of strategies to facilitating sexual abuse, such as frequenting or living near typical children's places, organising themselves in paedophile rings

'Grooming' strategy:

refers to a process in which paedophiles are said to befriend children or their parents in order to gain their trust, get close to them and sexually abuse the children (Lumby, 1997).

The term 'grooming' is used by newspapers to refer to processes of befriending children both online (e.g. via internet chatrooms) and in the 'real' world.

The other strategy refers to paedophiles actively seeking out jobs involving children to create opportunities of abuse.

*'The **boy scout movement**, aware it has long been a **target** for sexual predators, has amassed the most complete list of child sex offenders in Britain. [...] **Five in every 1000 applications** are singled out as having more **sinister intentions** and barred.'* (News of the World, 23 July 2000a)

Newspapers create the impression that these are not one-off incidents but that paedophiles systematically infiltrate certain professions by repeatedly covering numerous cases and the News of the World uses words such as 'target' and 'sinister intentions' to render explicit that paedophiles deliberately and systematically apply for jobs which involve children with the intention of sexually abusing them.

Innocent children

In contemporary society children are predominantly understood through a discourse of innocence (Jenks 1996).

This discourse constructs children as inherently virtuous, pure, angelic and innocent.

Children are defined through what they lack:

They are constructed as lacking adult skills, knowledge and competencies: such as intellectual reasoning or life experience

Children are immature: physically, emotionally, cognitively

The key lack is sexuality: children are seen as a-sexual in the sense of having no sexual desires, knowledge or experiences

Children not only lack adult skills but adult vices: they are good, innocent, uncorrupted by the evil world of adults, naïve

This naivety (goodness) and lack of competencies makes children vulnerable and generates a need for adult protection: they are easy victims and cannot defend themselves on their own against the adult world.

This has led to child abuse stories being framed in black-and-white terms in the media: Kincaid (1998) identifies a gothic narrative of innocent children vs evil paedophiles, e.g.:

*For too long the nation has endured the pain of seeing **innocents** such as Sarah Payne snatched from streets to become victims of paedophiles. For too long not enough has been done to **protect our young ones**.
(Editorial, 'Our aim is the **safety** for our children', 23 July 2000, p. 6)*

Consequences

The media story of child sexual abuse features adults in the role of villains and children in the role of victims

The evil, cunning, dangerous paedophile is an adult stranger male who sexually abuses a child

These media discourses create a situation in which readers simply do not expect young people to be perpetrators of CSA, they do not fit the image

However, the reality is much more complex

- ¼ of all CSA offences committed by young people under age of 18 (Cawson et al 2000) – large scale survey

- In cases of CSA within the family (the majority of cases – Grubin 1998), the biggest proportion was committed by brothers and step-brothers (38%), followed by fathers and step-fathers (23%) (Cawson et al 2000)
- A pilot study by Davidson et al (2006) into 53 cases of reported CSA in London showed that the largest group of alleged perpetrators were fathers and surrogate fathers but the second largest group only shortly behind were male peers (siblings, cousins etc) (Davidson 2008, pilot study p 49/50)

But media images create pressure on government and the law to treat young offenders differently: they are not 'proper' paedophiles

Non-consensual child sex offending: differential treatment of young (under 18) and adult (over 18) offenders

This section focuses on non-consensual sexual offences against children.

These are the offences which the law intends to criminalise and punish and which the public would consider 'proper' child sexual offences (unlike consensual underage sex).

The age of criminal responsibility in the UK is ten years.

But not all child sex offenders are treated alike:

there is a clear trend in which juvenile offenders, i.e. those under 18, are treated more leniently than adult sex offenders.

Reasons

1. This partly resides in the discourse of childhood innocence which acts as a mitigating circumstance. The discourse constructs children and young people as not fully mature and as a consequence their offences are seen as more likely to be a mistake, or something they 'grow out of' when they become fully mature adults. Their responsibility is diminished by their youth (Thomas 2003).

2. Moreover, awareness of the unintended negative consequences of coming into contact with the law, such as labelling, high re-offending, becoming career criminals, leads to a willingness in the criminal justice system to give young offenders another opportunity to become law-abiding citizens by treating them more leniently.
3. However, aside from these reasons which generally apply to the law, there is a specific reason in the case of child sexual offences.

Media

Young people do not fit the media and public image of what a 'proper' paedophile or child sex offender is.

The media and the public demand tougher laws to deal with paedophiles but who they have in mind is a very specific figure.

Reality

In reality, many offenders of coercive child sex offences are minors themselves and this means the government is faced with the fact that the laws it creates under the pressure of the media and the public then apply to a large group of young people who the media and public do not have in mind as targets.

The law 'resolves' this conflict by treating young child sex offenders more leniently, not as 'proper' child sex offenders.

This is highly questionable given that the aim of recent legislation, especially the 2003 Sexual Offences Act, is to protect children who are victims of sexual abuse.

The Sexual Offences Act: Types of Offences

The Sexual Offences Act 2003 developed three major categories of child sex offences:

- child sex offences against children between 13 and 16 – FOCUS: exemplary of the principles applied
- sexual offences against children under 13 (not discussed here)
- familial sexual offences against children under 18 (not discussed here)

Child sex offences against children aged 13-16: lenient punishment

Maximum penalties

The category of child sex offences against children aged 13 to 16 includes seven specific offences:

1. Sexual activity with a child (e.g. intentional sexual touching) – max 14 years
 2. Causing or inciting a child to engage in sexual activity – max 14 years
 3. Engaging in sexual activity in the presence of a child – max 10 years
 4. Causing a child to watch sexual act – max 10 years
 5. Arranging or facilitating commission of child sex offence – max 14 years
 6. Meeting a child following sexual grooming – max 7 years
-
7. Child sex offences committed by children or young persons – max 5 years

These 6 offences can *legally* only be committed by someone aged 18 years or over.

However, if any of these 6 offences are *practically* committed by someone under 18 then they fall into the seventh specific offence called ‘child sex offences committed by children or young persons’.

Whichever of the six offences has actually been committed, the maximum penalty for the offender is five years, i.e. half or even a third of the maximum sentence specified for adult offenders (Stevenson et al 2004).

I.e. juvenile offenders are treated more leniently in terms of maximum sentences

Sex offenders registers

Those convicted of child sex offences have to go on the sex offender's register

A centrally held list which requires those on it to present themselves regularly to the police and keep their personal details updated

There is a direct link between the severity of the sentence and the period for which individuals have to register: the more severe the offence, the longer the registration period.

However, young offenders under 18 automatically have their registration periods halved, no matter which offence has been committed (Thomas 2003).

As Thomas (2003) points out this blanket leniency is not grounded in any rational thinking but 'common sense' that somehow young offenders are not as bad or entrenched as adult offenders.

He argues that in fact it may be argued that young people should register for *longer* periods than adults because their youth make a change in behaviour more crucial and possible.

Sentencing guidelines

Young offenders are also treated more leniently when it comes to the actual sentences given out.

The sentencing guidelines issued for the Sexual Offences Act 2003 recommend monthly custodial sentences for specific elements of sexual offending within offence categories (Rook and Ward 2004).

These guidelines differentiate between juvenile (under 18) and adult (over 18) offenders and recommend lesser sentences for juveniles in all cases.

Juveniles should be given shorter custodial sentences and cautions.

For example, if the offence of 'sexual activity with a child' includes penetration of the victim's vagina, anus or mouth:

the guidelines recommend 3 years custody for over 18s and 9-12 months custody for under 18s.

This principle runs through the entire guidelines, effectively meaning that juvenile offenders will be punished less severely than adult offenders for the same crime.

The reasoning of sentencing advisory panel is that the Sexual Offences Act should punish offences proportionately to the harm caused to the victims (Davidson 2008).

Two assumptions regarding the 'size' of harm are made.

- Firstly, the younger the child, the more harm has been caused.
- Secondly, the older the perpetrator or the greater the age gap between offender and victim, the more harm has been caused.

As a consequence, the panel recommend that the:

younger the victim the more severe the punishment should be and

the older the offender or the greater the gap between offender and victim, the more severe the punishment should be.

The implication and understanding is that juvenile sex offenders are not as bad, even if sex was coercive.

This seems peculiar and only makes sense if young sex offenders are understood as not proper paedophiles.

In any case, this understanding results in more lenient sentences being recommend for and given the juvenile sex offenders.

Sentencing options and orders which apply to adult sex offenders only

The lenient treatment of juvenile child sex offenders also manifests itself in certain sentences and orders regarding child sex offenders only being available for offenders over the age of 18.

This applies to:

- Indeterminate sentences (not discussed here)
- Extended sentences (not discussed here)
- Risk of sexual harm orders (RSHOs) (not discussed here)
- Disqualification from working with children orders: FOCUS – good example

Disqualification from working with children orders

The Criminal Justice and Court Services Act 2000 gave courts the power to legally ban 'unsuitable' people from working with children (Thomas, 2005).

At the sentencing stage, a 'disqualification from working with children order' can be imposed on those who are convicted of a sexual offence against children and receive a custodial sentence of 12 or more months (Rook and Ward, 2004).

These orders can be imposed on offenders of all ages, however:

- a juvenile is much less likely to receive a custodial sentence of 12 months or more because of more lenient treatment recommended by sentencing guidelines
- Moreover, instructions regarding the issuing of disqualification from working with children orders differ depending on the age of the offender:

Courts are *expected to ban* offenders over 18 and have to provide an explanation if they do not issue such an order.

Conversely there is a *presumption* that courts will *not* impose such orders on offenders under 18; courts have to provide reasons for disregarding this rule and imposing orders on juvenile and are instructed to only impose disqualification from working with children orders on offenders under 18 if they are considered very likely to commit future offences (Rook and Ward 2004).

‘Disqualification from working with children’ orders last indefinitely.

What we can see here is that again young offenders are treated more leniently than adult offenders as the law make is very unlikely, if not impossible, that these orders will be imposed on juvenile offenders.

Again it almost seems as if young offenders do not fit the image of the paedophile who informs this order, i.e. the cunning stranger who systematically infiltrates certain professions to work with children.

This order is especially peculiar when we consider that these measures are meant to protect children from sexual offences:

- Juvenile offenders who technically qualify for this order by receiving a custodial sentence of 12+ months will actually have committed a more serious offence than adults with the equivalent custodial sentence because sentencing guidelines recommend lower custodial sentences for young offenders.
- This means that an adult offender can be given a disqualification from working with children order for an offence that is less serious than one committed by a young offender who does not have an order imposed on him.

Discussion/conclusion

We need to emphasised that in this section I have been looking at non-consensual sex, i.e. where one person has coerced another person into some kind of sexual activity.

We may or may not agree with the fact that under 18 year-olds are treated more leniently.

However, there are 3 points to be made.

1. Firstly, this lenience regarding young people's non-consensual sexual offences is peculiar given the criminalisation of much consensual underage sex. This tendency to 'excuse' coercive sex and criminalise consensual sex just seems misguided and contradictory.
2. Secondly, the Sexual Offences Act 2003 in particular was meant to protect children from sexual abuse. However, the lenient treatment of young sex offenders (which is not necessarily grounded in any convincing reasons) seems to counter that.

E.g. if we really want to protect children from sex offenders working with them, why do we make it so difficult to apply the relevant orders to young offenders?

3. Seems that reasons are not necessarily rational: but based on young people not fitting the media stereotype (e.g. not as evil etc)

It does seem at times that the government legislates with the media figure of the paedophile in mind, e.g. the cunning paedo who gets jobs working with children (DWCOs) or who grooms them (RSHOs) but then does not want to apply this legislation to young sex offenders who do not fit the image of the evil, cunning, perverted monster.

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ⁱ It should be noted that much of the legislation on vulnerable people concerned adults with mental health impairments and not specifically minors, therefore vulnerable people are not a key focus of this paper in the terms laid out by the 2003 Act.