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**What's been did and what's been hid:
Current legal responses to sexual offending
By Peter Jenkins**



After decades of delay, the current rapidly growing scale of sexual offence reporting in the UK threatens to outstrip the resources available to make an effective response. This article will look at some of the main legal and policy responses to sexual offending and their potential implications for therapists working with victims of sexual abuse. In broad terms, societal response has been mainly in relation to fostering a greater awareness of the scale of abuse and offending, and in providing resources for more effective prosecution of offenders, rather than for prevention, rehabilitation of perpetrators, or provision of therapeutic support for victims and survivors.

We now live in what might be termed a 'post-Savile era'. There is much greater public and professional awareness of the sheer extent of sexual offending against both children and adults. There was a 60% increase in the number of cases of child sexual abuse reported to the police between 2011-14. Police sexual abuse caseloads doubled during this period. Recent cases of abuse accounted for 80% of this increase. This was distinct from 'historic' (or non-recent) cases, such as those triggered by Operation Yewtree, linked to the activities of Jimmy Savile. This represents a dramatic sea-change in public attitudes towards the disclosure and reporting of sexual crime, a change borne out by the media publicity afforded to victims of sexual abuse within the football industry. By mid-January of this year, more than 500 potential (largely male) victims had come forward.

Together with the overall increase in the reporting of sexual offences against children, there has been a growth in previously unrecognised forms of sexual offending, principally mediated by electronic means. Social media have provided opportunities for greater social and sexual intimacy. They have also opened up the possibility for new forms of sexual abuse, such as sexting and sextortion, which are discussed further below.

Growing awareness of the sheer scale of child sexual abuse is reflected in the current National Inquiry into child abuse. It is likely that one outcome of this enquiry will be the mandatory reporting of child abuse. This would parallel reporting systems which already operate in the US,

Canada and parts of Australia. Abuse reporting rates in the UK are already high. A mandatory duty is, perhaps, unlikely to increase these rates much further, and would arguably represent a significant legal challenge to the current boundaries of therapeutic confidentiality. At present, therapists working for the NHS or other agencies need to report child sexual abuse as a condition of their contract of employment, or to comply with agency safeguarding policy. Psychologists who are regulated by the Health and Care Professions Council also have a duty to report. However, it is different for therapists in private practice, who have no legal duty to report child sexual abuse, although obviously, they may decide to report this 'in the public interest'.

Key to the national picture is the growing proliferation of new forms of sexual offending, often on social media. This includes the use of online abusive activities such as sexting, sextortion and revenge porn. One sample survey of 50 schools identified 1,218 pupils, who had either sent or received a 'sext', since 2012. A 'sext' was defined as sexual or indecent imagery of minors, shared via a mobile phone, webcam, digital camera or website. More than one in ten cases involved a 'non-school adult'. Extrapolated, this small sample would suggest that up to 44,000 secondary school pupils were affected by sexting during the period 2012-16 (Mostrous and Rigby, 2016). Sexting, in turn, can lead to what is known as 'sextortion', where the shared images are used for blackmail purposes, often by organised crime groups. The number of webcam blackmail victims has increased from 385 in 2015 to 864 in 2016, an exponential rise from only nine cases reported in 2011 (Laville, 2016).

There have also been major changes in the way that the police and the Criminal Prosecution Service (CPS) respond to, investigate and prosecute reports of rape and sexual assault. This applies both for adults and children under 18. The CPS have brought an added policy emphasis and drive in prosecuting cases of alleged rape and sexual assault. The number of CPS specialist rape lawyers has been doubled to 80 in the last year. However, both the CPS and police force have been adversely affected by a reduction in resources, due to public sector cuts. This presents something of a contradiction, as their joint efforts become much more carefully calibrated, but the overall impact of these efforts is then severely constrained by resource considerations.

The picture regarding the reporting and prosecution of rape reveals the real complexity of some of the social, psychological and legal processes at work here. The number of rape claims (almost exclusively by women) recorded by the police in England and Wales has more than doubled, from 10,000 in 2011-12, to 24,000 in 2015-16. Recorded rapes of children also doubled, rising from 5,878 to 11,947, during the same period. (Dodd and Bengtsson, 2016).

The actual *number* of convictions for rape has increased, but the *ratio* of convictions compared to recorded allegations has dropped by half. The CPS contest this critical interpretation, claiming that the conviction rate has increased marginally to 58%. The crucial issue at stake, raised by women's organisations, is whether the conviction rate is calculated according to the number of cases *charged* with rape, or to the original *reporting* of the rape to the police.

More widely, the CPS report an increase in successful prosecutions for child sexual abuse offences: a conviction rate of 75%. Any rehearsal of official statistics tends, however, to raise other, more complex, questions, which are not easily answered, or resolved. At the very least, rising conviction rates for sexual offences point to an increased policy awareness of the need to address the previously neglected area of sexual crime. Similarly, CPS policies have been revised to enable

victims of historic or non-recent sexual offences to challenge a past CPS decision not to prosecute. CPS prosecution efforts are now to be evidence-led, and to focus on the credibility of the *evidence* and not on the so-called 'lifestyle', or credibility, of the *victim*, as a *witness* in court.

Many therapists will be familiar with the stress faced by by past and current clients who have experienced sexual abuse. Such clients may then support the police and CPS in bringing a criminal prosecution for rape and sexual assault. This stress can be increased by delays, the intense scrutiny of witness testimony, and by a fear of not being believed in court. These fears may have grown following the extensive media publicity given to a recent footballer's successful appeal against his conviction. This appeal relied upon the use of sexual history evidence, in order to challenge the witness testimony. Previously, a victim's prior sexual history had been barred, under section 41 of the Youth Justice and Criminal Evidence Act 1999, unless authorised by a judge. The successful appeal now appears to re-introduce the prospect of sexual history being used on a much wider scale, in order to defend those accused against rape allegations. One survey of rape trials found that rape stereotypes, damaging to the complainant's case, were found in 26 out of 30 cases observed, including one young person under 18 (Durham et al, 2017: 15). This has prompted a Private Member's Bill by Plaid Cymru MP, Liz Saville-Roberts, designed to prevent the use of evidence concerning the alleged victim's past sexual history in this way. However, cross-examination of witnesses can now take place prior to the trial on video, limiting potential distress and risk of re-traumatisation.

Therapists will also be aware of the impact of criminal proceedings on their clients, when acting as witnesses. The CPS's Practice Guidance on pre-trial therapy for children and for vulnerable adult witnesses specifies that certain types of therapy be avoided, to avoid 'contaminating' their evidence. However, therapy *can* continue prior to a criminal trial, but the CPS needs to be informed of the therapy (obviously with client consent). Records of therapy may be made available both to the prosecution and defence, as potential evidence within the criminal trial.

Given the increasing attention on sexual abuse and exploitation in the media, disclosure of past abuse seems increasingly likely to figure in the work of many therapists. This raises the question of whether *all* therapy now needs to be considered as, at least potentially, moving onto the terrain of Pre-Trial Therapy? Therapists working with non-recent disclosures of childhood sexual abuse, can face the prospect of past notes becoming evidence in a criminal trial. This can occur many years after the completion of the therapeutic work in question, with therapists then being called as a witness. This raises important and challenging questions for therapist training and CPD, at least in relation to record-keeping and acting as a professional witness in criminal trials.

The post-Savile era has produced a growing professional and public awareness of the incidence of sexual offending against both adults and children. Policy and legal responses have largely centred on more effective prosecution of offenders, rather than on prevention, rehabilitation, or in providing therapy. The recent period has seen a proliferation of new categories of sexual offending, often carried out via social media. Sexual offending raises acute challenges for therapists in supporting clients who have been victims of sexual abuse, through pre-trial therapy, with attendant court access to client records, and implications for therapist training and continuing professional development.

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Durham, R., Lawson, R., Lord, A. and Baird, V. (2017) The Northumbria Court Observers Panel: Report on 30 Rape Trials 2015-16. Northumbria Police and Crime Commissioner: Durham.

Laville, S. (2016) "Police caution for revenge porn perpetrator sparks anger", Guardian, 9th May.

Mostrous, A. and Rigny, E. (2016) "Schools hit by sexting epidemic", The Times, 12th March.

Travis, A. (2015) "Child sexual abuse reports have risen 60% in four years", Guardian, 9th April.

Resources:

For CPS Guidance on pre-trial therapy, see:

<https://www.cps.gov.uk/publications/prosecution/therapychild.html>

<https://www.cps.gov.uk/publications/prosecution/pretrialadult.html>

For relevant CPS statistics, see:

http://www.cps.gov.uk/publications/docs/cps_vawg_report_2016.pdf

https://www.cps.gov.uk/publications/docs/annual_report_2015_16.pdf

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