Title  Children, sex and the law

Name  L K Janes

This is a digitised version of a dissertation submitted to the University of Bedfordshire.

It is available to view only.

This item is subject to copyright.
CHILDREN, SEX AND THE LAW

by

Laura Kerner Janes

A thesis submitted to the University of Bedfordshire, in partial fulfilment of the requirements for the Degree of Professional Doctorate in Youth Justice

December 2013
CHILDREN, SEX AND THE LAW

L. K. JANES

ABSTRACT

Anxieties about the premature sexualisation of children (Bailey, 2011) and the prevalence of abuse among children (Radford et al, 2011) have coincided with ongoing attempts through legislation and policy to protect children from sexual abuse by adults and children alike since the early 1990s (Masson, 2006). As the legal framework has expanded in scope, research by psychologists, criminologists and social scientists suggest that children convicted of sexual offences have low rates of recidivism (Hargreaves and Francis 2013), reduced further by interventions that meet their needs as young people in a holistic fashion (Rich, 2011; Hackett, 2004).

Against this background, Children, sex and the law explores the complex issues that emerge when the law is used to respond to sexual activity by children. The research comprises a combination of secondary research of the legal framework and direct inductive qualitative research through in-depth semi-structured interviews with ten young people, followed by interviews with ten professionals to contextualise their experiences. The findings provide a unique insight into the experience of ten young people with histories of harmful sexual behavior in contact with the criminal justice system and their experiences of the legal processes. The findings consider the journeys of these ten young people in three distinct phases, each marked by legal events: in the lead up to contact with the criminal justice system, their navigation through the system and their preparation towards reintegration. The study concludes that the current legal framework is ill suited to achieving its aim of protecting children and preventing reoffending.
DECLARATION

I declare that this thesis is my own unaided work. It is being submitted in partial fulfilment of the requirements for the Degree of Professional Doctorate in Youth Justice at the University of Bedfordshire.

It has not been submitted before for any degree or examination in any other University.

Name of candidate: Laura Kerner Janes Signature:

Date:
Contents

Contents........................................................................................................................................... iii
List of figures ................................................................................................................................... vii
Acknowledgements.......................................................................................................................... viii
Chapter 1: Introduction ................................................................................................................... 1
Chapter 2: Literature review .............................................................................................................. 4
  2.1 Children and sex: the social context .......................................................................................... 5
    2.1.1 How often children have sex and early sexual experiences ........................................... 5
    2.1.2 Social attitudes to children and sex: sexualisation of young people ......................... 7
    2.1.3 Sex education .................................................................................................................... 9
  2.2 Experiences of children in the criminal justice system ............................................................ 14
    2.2.1 The police ....................................................................................................................... 16
    2.2.2 Court and preparing for Court ....................................................................................... 18
    2.2.3 Criminal justice alternatives to custody ......................................................................... 21
    2.2.4 Custody ............................................................................................................................ 22
    2.2.5 Reintegration and risk management ............................................................................... 24
  2.3 Risk of labelling/spoiled identities ......................................................................................... 25
  2.4 Children with harmful sexual behaviour in conflict with the law in England and Wales ....... 28
    2.4.1 Prevalence of harmful sexual behaviour—abuse by children ...................................... 28
    2.4.2 Arrest and conviction rates for child perpetrators of sexual offences ......................... 31
      2.4.2.1 Initial contact with the police .................................................................................... 31
      2.4.2.2 Proven offences ......................................................................................................... 32
      2.4.2.3 Disposals and nature of offences ............................................................................ 34
      2.4.2.4 The use of custody .................................................................................................... 38
    2.4.3 Characteristics of children with harmful sexual behaviour ........................................... 40
      2.4.4.1 Recidivism ................................................................................................................ 41
      2.4.4.2 Risk assessment ........................................................................................................ 43
      2.4.4.3 Intervention .............................................................................................................. 44
    2.4.5 Reactions to children with harmful sexual behaviour ..................................................... 45
Chapter 3: Methodology .................................................................................................................. 47
  3.1 The aim of the research and an overview of the methodology .............................................. 47
  3.2 Methods ................................................................................................................................... 49
    3.2.1 Paper based research on the legal framework ................................................................. 50
    3.2.2 Interviews ......................................................................................................................... 51
      3.2.2.1 Selecting the data sources ......................................................................................... 51
      3.2.2.2 Interviews with young people ................................................................................... 53
      3.2.2.3 Research with professionals ................................................................................... 55
  3.3 Limitations on the research ...................................................................................................... 57
  3.4 Ethical considerations .............................................................................................................. 58
    3.4.1 Access to participants ...................................................................................................... 58
    3.4.2 Informed consent ............................................................................................................ 58
    3.4.3 Confidentiality and disclosures of harm or illegal activity ........................................... 60
    3.4.4 Ensuring safety of researchers and participants ............................................................. 61
    3.4.5 Mechanisms to withdraw from the research ................................................................. 61
3.5 Analysis of data ........................................................................................... 61

Chapter 4: Understanding the legal framework .................................................. 63
4.1 Role and purpose of the law in regulating behaviour .................................... 63
4.2 Role and purpose of the law in regulating children's sexual behaviour .......... 65
4.3 Criminal responsibility and consent ................................................................ 69
4.4 A distinct youth justice system ....................................................................... 72
4.5 The law on sexual offending by children ....................................................... 76
4.5.1 What sexual behaviour amounts to a criminal offence? ............................ 76
4.5.2 Strict liability and mens rea ........................................................................ 76
4.5.3 The statutory framework: offences ............................................................. 77
4.5.4 When does the law bite? The decision to prosecute .................................... 79
4.5.5 Alternatives to prosecution: diversion and welfare interventions ............ 82
4.6 Punishments ................................................................................................... 82
4.6.1 Pre-court disposals ..................................................................................... 82
4.6.2 Court disposals .......................................................................................... 84
4.6.2.1 Post court community disposals ........................................................... 86
4.6.2.2 Custodial options .................................................................................. 90
4.7 Managing risk in the community .................................................................... 92
4.7.1 Sexual offences prevention orders (SOPO) and foreign travel orders .... 93
4.7.2 Multi-agency public protection arrangements (MAPPA) ......................... 93
4.7.3 Sex offender registration (notification requirements) ............................... 94
4.7.4 Schedule 1 or 'presenting a risk to children' ............................................. 95
4.7.5 Disclosing information about sex offenders ............................................... 97
4.7.6 Licence conditions and recall .................................................................... 98
4.8 The history of the legal regulation of sex: The development of the law on sexual offences affecting children as perpetrators .......................................................... 98
4.8.1 Resistance against legislating sexual behaviour ....................................... 99
4.8.2 State regulation of sex ............................................................................... 99
4.8.3 From sexual violence to consent .............................................................. 100
4.8.4 The history of regulating sex by age restrictions ...................................... 101

Chapter 5: Findings from interviews with young people and professionals .... 103
5.1 Overview ....................................................................................................... 103
5.2 Data sources and analysis ............................................................................. 103
5.2.1 Young people and the placement ............................................................. 104
5.2.2 Professionals ............................................................................................ 107
5.3 Knowledge and experiences prior to contact with the criminal justice system .............................................................................................................. 109
5.3.1 Previous sanctions for sexual behaviour .................................................. 109
5.3.2 The potential for work on harmful sexual behaviour pre-charge .......... 111
5.3.3 Preventative work ..................................................................................... 113
5.3.4 Victim turned offender issues ................................................................... 115
5.3.5 Sexual and legal knowledge at point of offence ..................................... 118
5.3.6 Limited understanding of sex ................................................................... 121
5.3.7 Sexual activity as normalised behaviour .................................................. 122
5.3.8 Understanding legal terms ....................................................................... 123
5.3.9 The role of instinct ................................................................................... 125
5.3.10 Sex education ......................................................................................... 126
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.3.11 The role and message of the law</td>
<td>128</td>
</tr>
<tr>
<td>5.4 Contact with the criminal justice system</td>
<td>132</td>
</tr>
<tr>
<td>5.4.1 Admitting the offence</td>
<td>132</td>
</tr>
<tr>
<td>5.4.2 Experiences at the police station</td>
<td>135</td>
</tr>
<tr>
<td>5.4.2.1 Feelings at the police station</td>
<td>135</td>
</tr>
<tr>
<td>5.4.2.2 Understanding the charge</td>
<td>137</td>
</tr>
<tr>
<td>5.4.3 Experiences of the court process</td>
<td>140</td>
</tr>
<tr>
<td>5.4.3.1 Preparing for court</td>
<td>140</td>
</tr>
<tr>
<td>5.4.3.2 Feelings at court</td>
<td>141</td>
</tr>
<tr>
<td>5.4.3.3 Understanding proceedings in court</td>
<td>143</td>
</tr>
<tr>
<td>5.4.3.4 Adult Help with understanding what was happening at court</td>
<td>145</td>
</tr>
<tr>
<td>5.4.3.5 Where young people sat in court</td>
<td>146</td>
</tr>
<tr>
<td>5.4.3.6 Wigs</td>
<td>148</td>
</tr>
<tr>
<td>5.4.3.7 Delays at court</td>
<td>150</td>
</tr>
<tr>
<td>5.4.4 Sentences</td>
<td>150</td>
</tr>
<tr>
<td>5.4.4.1 Describing/understanding the sentence</td>
<td>151</td>
</tr>
<tr>
<td>5.4.5 Treatment once the criminal justice process has commenced</td>
<td>156</td>
</tr>
<tr>
<td>5.4.5.1 Perceptions of treatment</td>
<td>157</td>
</tr>
<tr>
<td>5.4.5.2 Delays in treatment</td>
<td>157</td>
</tr>
<tr>
<td>5.4.6 Experiences of parole</td>
<td>161</td>
</tr>
<tr>
<td>5.4.7 Reflections on the effectiveness of the criminal justice system for the young people in the sample</td>
<td>165</td>
</tr>
<tr>
<td>5.5 Leaving the criminal justice system</td>
<td>171</td>
</tr>
<tr>
<td>5.5.1 Understanding risk management provisions</td>
<td>171</td>
</tr>
<tr>
<td>5.5.1.1 Knowledge of sex offender registration requirements</td>
<td>172</td>
</tr>
<tr>
<td>5.5.1.2 Disclosure of status as a registered sex offender</td>
<td>175</td>
</tr>
<tr>
<td>5.5.2 Reactions to risk management provisions</td>
<td>177</td>
</tr>
<tr>
<td>5.5.2.1 Perceptions of effectiveness of the sex offenders’ register</td>
<td>177</td>
</tr>
<tr>
<td>5.5.2.2 Feelings about being on the sex offenders register</td>
<td>178</td>
</tr>
<tr>
<td>5.5.2.3 Perception of impact of registration on life chances</td>
<td>179</td>
</tr>
<tr>
<td>5.5.3 Senses of self and other sex offenders</td>
<td>181</td>
</tr>
<tr>
<td>5.5.3.1 Thoughts on sex offenders generally</td>
<td>181</td>
</tr>
<tr>
<td>5.5.3.2 How young people saw themselves and how they perceived others</td>
<td>181</td>
</tr>
<tr>
<td>saw them</td>
<td></td>
</tr>
<tr>
<td>5.5.4 Impact of conviction on life chances</td>
<td>185</td>
</tr>
<tr>
<td>5.5.5 Hopes for the future</td>
<td>191</td>
</tr>
<tr>
<td>5.5.6 Realities</td>
<td>193</td>
</tr>
<tr>
<td>Chapter 6: Conclusions and recommendations</td>
<td>196</td>
</tr>
<tr>
<td>6.1 Knowledge and experience prior to contact with the criminal justice system</td>
<td>196</td>
</tr>
<tr>
<td>6.1.1 The general deterrent/social message function of the law may not work for children with harmful sexual behaviour</td>
<td>196</td>
</tr>
<tr>
<td>6.1.2 Understanding harmful sexual behaviour in the context of sexualised culture and having the knowledge to avoid offending</td>
<td>197</td>
</tr>
<tr>
<td>6.1.3 Young people’s decision making capacity and understanding and the attribution of criminal responsibility for sexual acts</td>
<td>200</td>
</tr>
<tr>
<td>6.1.4 Transitions from victim to offender</td>
<td>200</td>
</tr>
</tbody>
</table>
6.2 Contact with the criminal justice system .................................................. 201
  6.2.1 First impressions: the police.............................................................. 201
  6.2.2 Effective participation.......................................................................... 203
  6.2.3 Counter productive possibilities......................................................... 204
  6.2.4 Autonomy and rehabilitation.............................................................. 206
6.3 Leaving the criminal justice system......................................................... 206
  6.3.1 Negative transitions........................................................................... 206
  6.3.2 Complexity in risk management......................................................... 207
  6.3.3 Shaping Identities and hopes for the future........................................ 208
6.4 Conclusion................................................................................................. 209
Bibliography.................................................................................................... 210
Appendix 1: Questionnaire .......................................................................... 232
List of figures

Figure 1: Offenders cautioned by sexual offence type and age group, 2011........ 35
Figure 2 Findings at Court and pre-court disposals for adults and children....... 36
Figure 4 International Ages Of Criminal Responsibility Compared To Ages Of
Consent.................................................................................................................................. 72
Figure 5: The young people ................................................................................................. 106
Figure 6: The professionals interviewed.............................................................................. 108
Figure 7: Sources of adult help at the police station ......................................................... 139
Figure 8: length and estimated cost on incarceration in the four parole board cases
............................................................................................................................................. 165
Figure 9. Understanding of registration requirements ...................................................... 173
Figure 10 Who young people think can find out whether they are on the Sex
Offenders’ register .................................................................................................................. 175
Figure 11: How young people saw themselves and how they perceived others saw
them....................................................................................................................................... 182
Acknowledgements

Thank you to Danny, Sheila and Tim.
Chapter 1: Introduction

Anxieties about the premature sexualisation of children (Bailey, 2011) and the prevalence of abuse among children (Radford et al, 2011) have coincided with ongoing attempts through legislation and policy to protect children from sexual abuse by adults and children alike since the early 1990s (Masson, 2006). As the legal framework has expanded in scope, research by psychologists, criminologists and social scientists suggest that children convicted of sexual offences have low rates of recidivism (Hargreaves and Francis, 2013), reduced further by interventions that meet their needs as young people in a holistic fashion (Rich, 2011; Hackett, 2004).

Against this background, Children, sex and the law, explores the complex issues that emerge when the law is used to respond to sexual activity by children. The background to this research was the author's experiences as a legal practitioner working with a large number of children convicted of serious sexual offences who appeared to struggle with almost every aspect of the criminal justice and rehabilitation journey. In the absence of any known research revealing the experiences of this group of children, the following questions arose:

• What is the role of the law in regulating sexual activity by children?
• Does the law work effectively and fairly for children who commit sexual offences?
• What is the impact of the law’s attempts to regulate and punish sexual activity by children?

In order to understand the legal framework, an in-depth analysis of the legal principles underpinning the law surrounding children convicted of sexual offences was conducted, including a survey of the historical development of the law and its relationship to social values.
Despite the questions in the author's mind, an inductive approach was adopted to the research with young people and professionals in the hope that young people's experiences of the criminal justice process would emerge to complement existing literature and studies the effectiveness of interventions and factors for recidivism for this group (Hackett, 2004).

The findings are presented across three phases of the criminal justice journey, providing a unique insight to the experiences of legal processes for the young people in this study. The research with professionals was used to contextualise and complement the emerging findings from the young people, most of whom were insulated from some aspects of the system by being in a therapeutic placement.

An analysis of the findings set against the literature review revealed a number of broad concerns about the extent to which the criminal justice system is capable of fulfilling its aims of deterrence and avoidance of harm for children with harmful sexual behavior, especially in the context of an increasingly sexualized culture where children still often lack sufficient knowledge to avoid breaking the law by the time they reach the age of criminal responsibility. The findings also suggest that children's inability to effectively participate undermine the due process to the disadvantage of young people, while at the same time neglecting their needs for support and treatment. This is especially problematic for children who have also been victims of sexual abuse. Thus, many aspects of the system appear counterproductive by preventing progress and rehabilitation through the fostering of a positive identity.

Various recommendations are made.

**Some definitions**

According to *Working Together* (Department of Education, 2013) sexual abuse:

"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.

Despite the reference to it being possible for children to commit acts of sexual abuse appearing as a bit of an afterthought, at its highest, Radford et al, (2011) estimate that around 65% of contact sexual abuse experienced by children is perpetrated by other children. This in turn begs the question of what we are in fact talking about when we consider sexual abuse between children: if it is so common, does that mean we are criminalising ‘normal’ behaviour or is it indicative of a serious social and criminal problem that needs to be urgently addressed.

Identifying terminology that is accurate but avoids ascribing blame or value judgements has been anxiously considered by a number of academics and experts (Hackett, 2004). In line with other commentators on the subject, this thesis uses the term ‘harmful sexual behaviour’ as it acknowledges the harm associated with the behaviour rather ascribing harm or blame to the young person. Although this term necessarily involves ascribing a certain level of harm to behaviour, it appears to be generally accepted as a suitable ‘umbrella term’.

In the context of interactions between children, harmful sexual behaviour involves one or more children engaging in sexual discussions or acts that are inappropriate for their age or stage of development. These can range from using sexually explicit words and phrases to full penetrative sex with other children or adults (Rich, 2011).
Chapter 2: Literature review

Any consideration of the relationship between children, sex and the law leads to a wide range of material, not all of which relates directly to sexual offending, but provides an essential contextual framework.

The literature on children and sex suggests that children's early sexual experiences do not match the legal restrictions on sexual activity, with a significant number of young people having sexual intercourse before the age of consent (see Chapter 2.1.1). Popular and political responses to the prevalence of sexual activity by young people are coupled with concerns about their premature sexualisation, resulting in the loss of childhood (see Chapter 2.1.2). However, at the same time, despite the risk that in an increasingly sexualised culture children will engage in harmful and possibly unlawful sexual activity, it appears that content and nature of sex and relationships education is a matter of debate (see Chapter 2.1.2).

Children are liable to prosecution for sexual offences from the age of ten, regardless of their knowledge and understanding of sexual matters. Although there is no research on the experiences of children accused of sexual offences in navigating the legal system, the experiences of children in the criminal justice system generally have been the subject of research studies. The literature suggests that children, on the whole, find the criminal justice system confusing and overwhelming (see Chapter 2.2). Moreover, the literature suggests that system contact generally may have long lasting impacts identified in labelling theory (see Chapter 2.3).

There is a growing body of literature that examines the specific issues pertaining to children with harmful sexual behaviour. This includes a spectrum of studies that have considered the prevalence of harmful sexual behaviour (see Chapter 2.4.1) by children which appears to be far greater than the recorded conviction rates, although the rates of conviction are much higher than those for adults in this
offence category (see Chapter 2.4.2). The phenomenon of children who commit sexual offences has been considered in detail from a range of perspectives, mainly concerned with the prevention of harm. In particular several studies have tried to identify the classic characteristics of children with harmful sexual behaviour with a view to predicting or managing future risk and treating young people (Worling, 2012; Hackett, 2013). Finally, reactions to children with harmful sexual behaviour have been documented and analysed providing a helpful backdrop to the challenges faced by young people in reintegration and rehabilitation.

2.1 Children and sex: the social context

2.1.1 How often children have sex and early sexual experiences

The reality is that many children are sexually active. Setting the Boundaries accepts that there is little doubt that teenagers are sexually active” (Home Office, 2000, p.36), citing various research projects to back this up. The research relied on includes a teenage pregnancy report concluding that 28% of underage boys and 19% of underage girls were sexually active in 1991 (Social Exclusion Unit, 1999). It also referred to evidence that on average teenagers in the UK have their first sexual experience at 15.3 years (Durex, 1999).

The prevalence of sex before the age of 16 is borne out in a range of studies and the research suggests that the average age at which young people start to engage in sexual activity has decreased in recent years. For instance, 48% of girls and 36% of boys have had penetrative sex before the ‘age of consent’ (Bremner and Hillin, 1994, as cited in Stainton Rogers and Stainton Rogers, 1999). According to the a study published in the Lancet in 2001, drawing on a pool of 11,161 men and women (4762 men, 6399 women), the proportion of those aged 16–19 years at interview reporting first heterosexual intercourse at younger than 16 years was 30% for men and 26% for women; median age was 16 years. The proportion of women reporting first intercourse before 16 years increased up to, but not after, the mid-1990s (Wellings et al, 2001). A further study published in the Lancet in November 2013 (Mercer et al, 2013) found that the median age at first
heterosexual intercourse in the UK was 17 years in both sexes generally but was 16 years for those aged 16—24 years at interview and that the proportion reporting first heterosexual intercourse before age 16 years increased in successive birth cohorts in both men and women.

Some studies suggest that sexual activity at a young age is more prevalent in the UK than elsewhere: Almost 40% of young people in the UK report having had sex by the age of 15, compared to between 15–28% for 16 other countries including most of Europe and Canada (UNICEF, 2007).

In her report on sexualisation of young people, Dr Papadopoulos reports under the heading 'Early sexual activity' that the 'UK has the highest teenage pregnancy rate in western Europe' and notes high incidences of teenage pregnancy and sexually transmitted infections (STI) among young people despite young people aged 16 - 24 making up just 12% of the population in 2008 (Papadopoulos, 2010).

Studies often tend to measure the prevalence of sexual activity before the age of 16 in the UK as that marks the 'age of consent'. However, there is some evidence to suggest that a significant minority of young people may be having sex substantially before the age of 16. A report by Human Rights Watch in the U.S.A. cites a survey conducted by the US Department of Health and Welfare in 2000 which found that 'by age 14, more than one-third of the survey’s respondents reported genital play with another youth under the age of 18, and about one-fifth had started having sexual intercourse' (2007, p.72).

In recent years the development and accessibility of new technologies has increased the potential for young people to be exposed to sexual images at an earlier age.

A study of the use of 'sexting', based on focus groups with 150 children from year six (aged 10 and 11) and year nine pupils (aged 13 and 14), concluded that there was a high prevalence of sexting to the extent that it had become normal and even 'mundane' for most children by the age of 14 (Phippen, 2012). The report also
concluded that girls would generally create pictures of themselves as a result of a request from a boy whereas boys would self-generate unprompted in most cases.

There is an assumption that early sexual contact between peers is harmful and, by definition, abusive (see, for instance Papadopoulos, 2010 and Bailey, 2011). Therefore, one of the more surprising findings from Phippen is the level of resilience among this age group and the development of coping mechanisms to issues that might arise as a result of the sexting and their willingness to talk about it. Phippen also found that, although young people tended not to seek adult support for fear of reprimand, they were willing to discuss these issues and want to learn about them in school but don’t get the opportunity.

2.1.2 Social attitudes to children and sex: sexualisation of young people

Baroness Walmsley, speaking in the House of Lords acknowledged the prevalence of sexual activity between children, commenting that:

"Sexual activity between the ages of 13 and 16 is fairly common...Mutually agreed experimentation is a normal part of sexual development and, as long as precautions are taken against unwanted pregnancy and sexually transmitted diseases, it does not do any harm in most cases between young people close in age" (House of Lords, 2003, col. 869).

Yet, as set out at Chapter 4, such activity is technically unlawful. Further, there are many who would disagree with the proposition that some sexual activity between young children can be harmless.

According to Ringrose et al (2012) the 'sexualisation of culture' has become a major focus of interest and concern in the last decade and can be broadly described as the 'growing sense that western societies have become saturated by sexual representations and discourses, with pornography increasingly influential and porous, permeating contemporary culture' (2012 p.16). This has been
reflected in both the media and popular studies, and also by a series of Government Commissioned reports (Ringrose et al, 2012).

The Home Office report by Dr Linda Papadopoulos (2010) charts the pervasive commercialisation of sex aimed at young people and notes ‘empirical research and clinical evidence that premature sexualisation is harmful’. Similar conclusions in were drawn in a further report commissioned by the Government (Bailey, 2011). Such assumptions underpin both government policy and law, although as Ringrose et al (2012) notes there is an absence of rigorous research on this issue.

Critically, there is a preliminary difficulty in even determining whether, and if so, what types of sexual or sexualised behaviour are harmful at various points in a child’s development, especially as children develop at different rates and in different environments (Stainton Rogers and Stainton Rogers, 1999).

Some of the discourses on early sexualisation focus on the notion that girls are entering puberty at a younger age than previously. In her essay ‘Early puberty, ‘sexualisation’ and feminism’, Celia Roberts (2013), charts the international research underpinning the notion of early puberty, citing North American and European Research which suggests that the average age of puberty commencing has reduced by about a year to around the age of nine years over the last decade and a half (2013). While the causes of this are largely unknown, Roberts also acknowledges that this trend is routinely raised in public policy debates, concerned about the negative impact of early sexualisation.

Roberts urges us to examine the phenomenon on the basis that issues of class, racialisation and agency are central to understanding and challenging normative concerns about girls’ early sexual development. That is to say, the fear of early or ‘precocious’ puberty is that it is a symbol of the early sexualisation of children and the loss of childhood that goes with that. Yet, citing Mitchell and Reid-Walsh, (2009) Roberts highlights how western concerns about ‘death of childhood’ and ‘hurried childhood’ have always been a concern for the majority of girls in
developing countries throughout the world. Citing a study by Kristina Pinto (2007), *Growing up young: The relationship between childhood stress and coping with early puberty*, Roberts highlights how early puberty may become a physical embodiment of a sense of being more grown up than age-peers in the case of girls who are required to take on heavy social responsibilities. Roberts concludes that it important to “resist overarching discourses of alarm about early sexual development, instead contextualising such development in the life histories of particular girls. Socioeconomic deprivation or childhood neglect, for example, may play important roles both in how sexual development is experienced and in when it occurs” (Roberts, 2013, p.149).

While the social and political context of early sexualisation is rarely considered, it may be that as our society becomes more and more unequal, we need to learn to expect unanticipated consequences such as this, or at any rate to deal with them better.

Yet media responses to the sexualisation of young people tend to start on the assumption that it is bad: in fact, sexualised behaviour may cover a broad spectrum of behaviour from behaviour that is sexual (but assumed to be harmful because it concerns children below the age of consent) to behaviour that is harmful because it is considered to be coercive or violent in nature.

### 2.1.3 Sex education

Archard points out that ‘we educate children about sex within a society which is both sexualised and yet deeply confused about how it understands childhood and its sexuality’ (2000, p.12). Yet it is far from clear that sex education as a discipline routinely deals with anything more than what Coy et al (2013) describe, citing Powell (2010), as ‘plumbing and prevention’ approach. It is also widely acknowledged that there is no statutory requirement to go beyond the mechanistic approach to sex education which involves human biology and reproduction as part of the science curriculum and information for secondary school pupils about HIV/AIDS and STIs (Coy et al 2013; Family Planning Association, 2007). The
mechanistic approach, was summarised in Secretary of State guidance issued in 1994, which also refers to the need for awareness of the law:

"The Secretary of State believes that schools programme for sex education should therefore aim to present the facts in an objective, balanced and sensitive manner, set within a clear framework of values, an awareness of the law on sexual behaviour. Pupils should be encouraged to appreciate the value of stable family life, marriage and the responsibilities of parenthood. They should also be helped to consider the importance of self-restraint, dignity, respect for themselves and others, acceptance of responsibility, sensitivity towards the needs of others, loyalty and fidelity" (Department for Education and Employment, 1994, paragraph 6).

The tone of this guidance is mirrored in the Learning and Skills Act 2000 which requires that young people learn about the nature of marriage and its importance for family life and the bringing up of children and that young people are protected from teaching and materials which are inappropriate, having regard to the age and the religious and cultural background of the pupils concerned. Although sex and relationships education was introduced at around the same time in order to contextualise this learning within the framework of relationships (Macdonald, 2009) and was strongly recommended within Government SRE Guidance (Department for Education and Employment, 2000), it has never been made compulsory, despite calls from professionals and young people for such a move (Martinez, 2006, as cited by Sex Education Forum, 2008; UK Youth Parliament, 2007; Macdonald, 2009). At present, the legal framework does not appear to encourage an emphasis over and above the ‘plumbing and prevention’ routine. This is because there is no legal requirement to do so, yet teachers must actively avoid the use of inappropriate materials, which are bound to be a matter of subjective debate in any sex and relationships course. Research suggests that anxiety amongst educators can result in young people not receiving the sex education they needed (Thomson and Scott, 1992, as cited in Sex Education Forum, 2008). The first ever National Survey on Sexual Attitudes and Lifestyles (NATSAL) found that 70% of respondents felt that they had
insufficient information available to them when they first had sex (Johnson et al., 1994, in Sex Education Forum, 2008).

Yet the challenge of getting sufficient information to children cannot be underestimated. Even in 2000, Archard warned that new media and technology made it ‘hard if not impossible now to insulate children from the adult world of knowledge’ (p.12). Research by Coy et al (2013) and Phippen (2012) exploring the impact of new social media and the phenomenon of ‘sexting’ would suggest that this is even more difficult a task today.

Despite a growing awareness by government of the phenomenon of sexualisation of youth (Papadopoulos, 2010; Bailey, 2011) and prevalence studies indicating that a significant proportion of children have sex before the age of consent (see chapter 2.1.1), current government guidance on sex and relationships appears not to acknowledge the prevalence of underage sex but rather provides categorical reassurance from the outset that sex and relationship education does not encourage early sex:

“Effective sex and relationship education does not encourage early sexual experimentation. It should teach young people to understand human sexuality and to respect themselves and others. It enables young people to mature, to build up their confidence and self-esteem and understand the reasons for delaying sexual activity.” (Department for Education and Employment, 2000, p.4)

This reassurance is clearly designed to counter the assertions, recognised by Archard (2000), that some would argue teaching people about something leads them to do it; that ignorance prevents temptation and that sex education corrupts by making it more likely that young people will engage in the sex they are taught about. Recognising this, Archard argues that instead, “sex education must work with, and not against the grain of the social realities in which young persons find themselves” (2000, p.13).
Yet those social realities may be legal as well as cultural. In tandem with, or perhaps in response to, growing concerns about the sexualisation of youth culture described at Chapter 2.12, the codified Sexual Offences Act (SOA) 2003 set out for the first time specific offences where the perpetrators were children and the offence of strict liability rape, including where the perpetrator was a child (see Chapter 4.5). This in turn generated a new level of anxiety as to whether professionals could continue to provide information and advice without fear of criminalisation, prompting guidance and reassurance for professionals from the Sex Education Forum (2004).

Despite these reassurances, as described in Chapter 4, the law provides ample opportunity for minors engaging in consensual sexual behaviour to be prosecuted. While the Secretary of State’s view in 1994 that sex education should present ‘an awareness of the law on sexual behaviour’, a review of the compulsory national curriculum and the non-compulsory personal social and health education framework (Department for Education and Employment, 2000), reveals virtually no legal content other than a broad aim that it should ‘ensure young people understand how the law applies to sexual relationships’. There is limited discussion in the literature as to how young people are taught to understand how the law applies to sexual relationships:

“Consider then how one might teach young people about the agreed wrong of rape…. There are within society very different views about the nature of relationships between men and women, about who has power in such relationships, about how one gender should or can communicate with the other, about what silence means, about what counts as coercion, and so on, such that it is very difficult to see how someone teaching SRE could assume an agreed understanding about what is and what is not rape…. One sex educator has written that ‘[c]onsent is as culturally defined, as is sex’ (Lamb, 1997: 308)’. (Archard, 2000, p.30)

Research by Coy et al (2013) suggests that understanding consent remains a significant issue in that young people were ‘more likely to recognise non-
consensual sex where it fits with a template of ‘real rape’; involving strangers, alcohol and/or multiple perpetrators’... and ‘for many young people, only physical resistance is evidence that someone does not want to have sex’ (p.68). The research also indicated that young women who responded were more able to recognise where consent has not been sought or given than the young men and that younger respondents, aged 13-14 were less likely to recognise non-consent than older age groups. As a consequence, the research recommended targeted sessions with younger teenagers about the boundaries between consent and coercion.

Archard (2000) argues that as children are citizens in a polity, capable of making mistakes with harmful consequences, even if they are not recognised as being capable themselves of consent, education has a role in warning children of the possibility of such harm so that it can be minimised:

“There is no clear bright line here... Of course we must prepare them for the time when they can make considered choices. But we must also be realistic about what they can do even if they do fully appreciate what it is they are doing. Warning children of the dangers of early sexual activity may not be sufficient to deter them from such an activity.” (Archard, 2000, p.37)

The stark reality is that the law is full of bright lines that children, and indeed many adults, are insufficiently aware of them until it is far too late. A recent study by Beckett et al (2013) is unusual in its explicit reference understanding the harm caused by sexual offending in its recommendation that:

“Every school, education and health provider, youth service and other relevant universal service needs to promote understanding of healthy relationships, the concept of consent and the harm caused by rape and sexual assault.” (Beckett et al, 2013, p.8).

The legal framework outlined at Chapter 4 is complex and enduring: the sex education literature is full of references to the meaning of consent but the meaning
of ‘strict liability rape’ or the extent to which exposing oneself in public is an offence are conspicuously absent.

A review of the literature exploring young people’s experiences and understanding of the criminal justice system accordingly emanates from criminologists rather than educationalists.

2.2 Experiences of children in the criminal justice system

There is a growing body of research and academic writing about the established legal requirement for children in conflict with the law to be treated differently from adults with an emphasis on their needs rather than their behaviour (see for instance, Easton and Piper, 2012; Muncie, 2009; Newburn, 2007 and Chapter 4.4). However, despite this widely accepted distinction, a number of commentators have identified serious weaknesses in the youth justice system and its ability to deal effectively with children in conflict with the law (see for instance, Centre for Social Justice, 2012; The Michael Sieff Foundation, 2013; Justice and The Police Foundation, 2010; Royal College of Psychiatrists, 2006).

There is also some research to indicate that contact with the system is inherently damaging (McAra and McVie, 2007; McAra et al, 2013). Based on a longitudinal programme of research on pathways into and out of offending for a cohort of around 4300 young people who started secondary school in the City of Edinburgh in 1998, when they were aged around 12, McAra and McVie suggest that youth justice systems ‘may be congenitally unable to deliver the reductions in offending’. Not only do they conclude that system contact does not work for young people, but they suggest it is positively damaging, arguing that “[S]ystems appear to damage young people and inhibit their capacity to change” (2007, p.340). Their advice is that “the key to tackling serious and persistent offending lies in minimal intervention and maximum diversion” (2007, p.319). The authors argue that this “raises broader questions about what the aim of youth justice ought to be” (2007, p.339).
McAra and McVie appear to measure ‘damage’ by recidivism. However, the actual impact or long term effects of contact with the criminal justice system, other than recidivism, on children is relatively unknown. Nevertheless, it would appear to be reasonable to suppose that system contact is likely to impact on the child’s development, sense of self or the way that society treats the child as a consequence. Citing Clarkson, 1995, p.202, Bandalli highlights the extent to which criminal processes are “highly intensive and in themselves involve stigma and humiliation” and argues that for this reason enforcement of the criminal law should be avoided wherever possible (2000, p.92).

As Kilkelly (2010) records in her international review of child friendly justice, there has been a move by researchers to gather the views of children and young people who have experience of the formal justice systems. While more research is needed, “a picture is slowly emerging about the quality of this experience for children and young people” (Kilkelly 2010, p.18). Key emergent themes include that children do not always understand formal decisions made about them and that on the whole they want more involvement in the legal processes along with specialist child-friendly support to enable this and that adults frequently do not understand how little children understand about legal processes (Kilkelly, 2010).

Specific research exploring young people’s experiences of the criminal justice system in the England and Wales is even more limited and appears to be very general in nature. Research by Hazel et al in 2002 included an in-depth survey of the literature on children’s experiences of the criminal justice system at that time, supplemented by interviews with 37 young people. The authors claim that, at the time, their research constituted the most comprehensive survey involving young people themselves. Since then academic research has paid greater attention to the importance of youth participation in research. However, much of the contribution from young people in relation to their experiences of the youth justice system takes the form ad hoc anecdotal evidence gathered through Youth Participation projects. These include reports by the U R Bos!-> project run by the Howard League for Penal Reform such as Life Inside detailing young people’s experiences

Drawing on the Children’s Workforce research (Botley et al, 2010), Hazel et al (2002), the conclusions of the review of the youth justice system commissioned by the Centre for Social Justice (2012) and Kilkelly (2010), there emerges a clear picture that children generally perceive the criminal justice system as negative and confusing.

### 2.2.1 The police

Home Office research (Home Office Statistics Unit, 2011) suggests high levels of satisfaction with and confidence in the police by young people within the general population.

However, according to the literature review conducted by Hazel et al (2002) perceptions of the police by young people caught up in the criminal justice system were ‘on the whole negative and hostile’ with ‘a common theme of unfair discrimination (as young people, as black, because of previous convictions, as working class etc)’ (2002, p.9). Their own research concluded that much of young people’s ‘police contact was perceived as unjustified discrimination...(as a result of their young age, their local estate, their family, or previous offending)’ (2002, p.11). Their research identified five particular strands of concern. The first was ‘police abuse of power’ such as unnecessary aggression and humiliation by police at arrest or later, or police collusion, complaints of not being dealt with and of deliberate delays in access to legal support. The second was ‘Confusion’ based on anxiety through not understanding what was happening to them, or what would happen next, during police contact. The third related to ‘Difficulties in police cells’ including the often lengthy and isolated time in police cells which provoked boredom, frustration and more anxiety. The fourth concerned ‘Difficulties in police interviews’ which some found verbally and physically intimidating,
especially where rapid and confusing questions, combined with threats of custody, and the dominating presence of the police at the interview table, led to the young person feeling like they were losing control over what they were saying. The final stand was the 'Impact of families', which included worry about parental reactions, and additional pressures from their actual involvement, including being chastised in the police station, having parental exerted pressure on them in police interviews, and parents 'breaking down' at the police station.

The 2010 children's workforce research concluded that 'Most of the young people's experiences of the police station were negative – they chose adjectives such as 'bored', 'angry', 'stressed', 'frustrated' and 'ashamed' when asked to describe how they had felt (Botley et al, 2010, p.8). Often, these feelings were associated with a perceived lack of respect from police officers' and that 'young people reported being told to do things by the police, rather than being asked, and this was interpreted as further evidence for a lack of respect. The police were perceived as being able to 'get away' with this due to their position of authority, and this had resulted in some of the young people feeling disempowered'. Finally, they also reported that 'it was felt that the police treated all young people the same, rather than viewing them as individual people.'

These broad conclusions were echoed in youth participation findings by U R Boss for the Howard League for Penal Reform, which 'worked with over 100 young people across the country, specifically finding out about their perceptions and experiences of the police' and found 'some 92% of comments from the young people we have spoken to are overwhelmingly negative' (2011, p.5).

The negative perceptions of the police by young people have been recognised by the Police Foundation (2010) which has noted that 'government and policing policy has tended to focus on young people as offenders and, perhaps as a reflection of this, young people are now less likely to have confidence in the police than other age groups.' A more sensitive approach by the police that distinguishes developmental behavior from criminal behavior is clearly possible. Thus a representative from the Association of Chief Police Officers commented
that proposals to curb anti-social behaviour by children risked penalising "growing up behaviour" (Travis, 2013).

2.2.2 Court and preparing for Court

There is very limited direct research on children's experiences of preparing for court and their interaction with lawyers. A notable exception to this is the report prepared to inform the Council of Europe's child friendly guidelines which highlights a number of concerns by children about their interaction with lawyers (Kilkelly, 2010):

"Some children interviewed complained about the ineffectiveness of their lawyers and other advocates who they did not consider helpful. They complained about the lack of meaningful contact with their lawyers while they were in detention. The children interviewed for this research also complained that their lawyers failed to prepare them for custody (i.e. suggested they would get bail leaving the young people devastated when they did not), complained about their lawyer being replaced during their proceedings without their lawyer being sufficiently informed about their case and their situation." (Kilkelly, 2010, p.35)

Concerns about the absence of any requirement for specialist lawyers for children were echoed in Rules of Engagement (Centre for Social Justice, 2012) leading to a recommendation that "all defence lawyers appearing in youth and Crown Court proceedings should complete specialist youth training before they are allowed to practice" (p.92):

"Youth-specialised training and expertise is minimal amongst sentencers and defence practitioners who participate in youth proceedings. Whilst magistrates and district judges must undertake specialist youth training to practice in the youth court it includes little or no content on issues such as child development, welfare, and speech, language and learning needs." (Centre for Social Justice, 2012, p.16)

Direct research with young people by Hazel et al (2002) also emphasised the
importance to them of a good lawyer, who is reassuring, takes control when necessary and keeps the person informed. However, reflections on the potential positives and negatives of parental support ranged from reassurance to pressure to admit guilt. Botley et al (2010) also highlighted the importance of good legal representation concluding that opportunities to discuss their case with their lawyer had minimised anxiety.

The requirement for a specialist and adapted approach for children has also been advocated by members of the judiciary (see Judge, 2013; Thomas, 2009; The Michael Sieff Foundation, 2013). The judiciary has tended to focus on the practicalities of the courtroom, and the difficulties faced by young people in that environment. Speaking before the Bar Council Lord Judge (2013) anticipated that in 2014, approximately 40,000 children and very young adults will give evidence in criminal cases and warned that “our long term ambition must be that not one single one of those lives will be distorted by the forensic process”. Although the thrust of his speech concerned child victims appearing as witnesses before the Courts, Lord Judge could not “see why the processes which protect the child witness or victim should not be available to the child defendant”, nothing that “the defendant who is a child is a child like the complainant who is a child. Neither is a little adult.” According to Plotnikoff and Woolfson (2011) steps are in progress for the Court Service to publish its young witness policies under the safeguarding ‘umbrella’ which will also cover young defendants.

In relation to young people’s experiences of legal proceedings, the literature review by Hazel et al (2002) revealed an underlying stress caused by the system for young people, including fear of custody, delays in the system, resignation as to the outcome and confusion about procedures. They also noted as a common theme the lack of awareness of their own behaviour as a crime.

Hazel et al (2002) identify feelings of confusion and isolation amongst the young people in their research, including a reported a lack of understanding of the legal proceedings or language, with events often only explained after court, combined with distress heightened by being patronised, intimidated and isolated. In
research by Botley et al (2010), some participants also reported that they felt ‘confused’ and ‘nervous’, both in terms of actually standing up in court, but also in terms of more practical issues, such as travelling to the court and knowing what to do on arrival.

In their own research Hazel et al concluded that young people ‘felt they were non-participants, with no role (apart from deciding plea) beyond projecting submission’ and that proceedings generally ‘passed in something of a blur’ (2002, pp.10-11). This frustration at being marginalised through not feeling involved in the process included, for example, not being able to correct witness lies and having others making ‘uninformed’ decisions over their future. Botley et al (2010) also highlighted the absence of information about the court process and concerns that the process did not result in children being treated in a ‘fair and respectful manner’.

Botley et al, (2010, p.3) also found that for most young people court was a ‘daunting experience’ with participants describing feeling ‘sorry’ and ‘ashamed’, but also ‘worried’, ‘frightened’ and ‘unhappy’ at the thought of potentially being taken into custody. However, this research did not especially link the distress to sentencing.

Hazel et al (2002) also found that young people felt distressed by sentencing, with this aspect consistently related as the most traumatic aspect of the court process, dominated by a fear of custody. The distress appears to have been compounded where participants were unable to understand what the judge was saying to them and feelings of shock, fear, and confusion about what would happen next.

Delays in the youth justice system have previously been highlighted as an issue of concern (Home Office, 1997; Justice and The Police Foundation, 2011), and it is well acknowledged that delays are a common feature in the Crown Court with over 100,000 cases dropped or delayed in 2012 (Arbour, 2013). Hazel et al highlighted participants’ describing their life as being ‘on hold’ while waiting for court dates, unable to make plans for their future, and noted that delays during legal proceedings therefore caused distress (2002, p.13). Botley et al, (2010) also
noted that children’s general concerns were compounded by a long wait for their case to be heard and this left the young people feeling ‘bored’ and ‘annoyed’.

2.2.3 Criminal justice alternatives to custody

In contrast to Court processes for children, which appear to be a modified version of an adult process, there are a number of community disposals that are specifically designed to cater for children. Botley et al, (2010) provide a snapshot of children’s experiences of referral orders. The referral order is described at Chapter 4.0.2. This research confirmed that while there has been an increasing emphasis on the importance of young people’s participation in the youth justice system as demonstrated by the advent of the referral order itself, few studies have asked young people about their experiences of referral orders. The research utilised focus groups to explore the experiences of young people currently on referral orders.

Botley et al (2010) found “it was evident that the young people lacked understanding about how some aspects of the system worked, and this in turn served to increase the perceived power imbalance” (2010, p.4). The research found that while children’s experiences of Panel meetings were more positive, they “were not playing as participatory a role as originally intended during panel meetings; in part, this was because they were not fully aware of the purpose of such meetings” (2010, p.4). The Botley research corroborates earlier findings by Newbury (2008) who found that although instilling an understanding of others in young people who have offended is clearly a desirable outcome and can be successful in some cases, it is on the whole problematic due to the difficulties children face in grasping the higher-level thinking and understanding of ‘the other’ that the concept of taking responsibility for your actions requires. Newbury (2008) concludes that this is especially true of younger children aged between ten and twelve.

There are a number of other community alternatives to custody for children which are outlined at Chapter 4.6. However, in terms of gauging young people’s experiences of community supervision other than Referral Orders, evaluations of
intensive supervision and surveillance programmes provide the best insight. The model of integrated supervision and support, with an electronic monitoring element to it, was described by the Youth Justice Board (YJB) as “the most robust community programme available for young offenders” (YJB, 2004, p.3).

In an evaluation report commissioned by the YJB in 2005 (Gray et al, 2005), young people were interviewed to ascertain their perceptions of the programme. The report noted that young people frequently complained of the restrictiveness and the difficulties they had in complying with curfews for long periods of time, concluding that this was to be expected and may have indicated that the requirements were being firmly applied (see for instance, p.122 and p.124).

However, the views of young people who left the order early through breach (p.84) were not captured and the report does not appear to draw any particular conclusions as to the nature or range of their experiences.

A report by the Howard League for Penal Reform’s youth participation project, Life Outside (U R Boss, 2011) found that although young people were

“...mostly positive about the contact and relationships they had with the ISS workers, they were extremely negative about the programme itself. One young person went as far as to say, ‘I’d prefer a couple of months in jail than a year here’.

Young people’s views about the restrictive nature of the programme are to a certain extent corroborated by Bateman’s analysis that ‘practitioner responses to children’s non-compliance became increasingly rigid and punitive, swelling the numbers in the secure estate’ (Bateman, 2011, p.129).

2.2.4 Custody

Concerns about the experiences of children within the secure estate have been the subject of extensive consideration (see for instance, the Howard League for Penal Reform, 2006; Centre for Social Justice, 2012; Murray, 2012), especially in light of the comparatively high rates of incarceration in England and Wales (The Howard League for Penal Reform, 2008; Muncie, 2006). These reports tend to
raise broad concerns about the over use of custody, recidivism following custody, violence in custody and lack of education within custody.

Although the numbers of children in custody have declined in recent years (Bateman, 2011), there is no evidence of a significant improvement in children’s experiences of custody. For instance, the most recent report on the experiences of young people by Her Majesty’s Inspectorate of Prisons (Murray, 2012) suggests that many young people do not feel safe and that in general the experiences of black and minority ethnic (BME) children are more negative than the general incarcerated population.

The limited direct research with young people about their general experiences had tended to raise issues of emotional difficulties and a need for more support (Hazel et al, 2002 and U R Boss, 2010). Hazel et al (2002) found that the early hours and days of custody were related as a particularly distressing time, characterised by the anxiety of separation from the child’s familiar life, confusion about what was happening to them, and uncertainty for the immediate future. The sheer loneliness of incarceration is raised by a young person in Life Inside:

‘My first night in custody was the worst night of my life. I’d never been lonely before. I felt so lonely.’ (U R Boss, 2010, p.10)

Research on the impact of incarceration on children in New Zealand from a psychological perspective concludes that as the ‘sentence time progresses, adolescents become more deeply immersed in the criminal justice system and move further from prosocial involvement in society, thus limiting opportunity for the individual to ‘age out’ of their delinquent behaviour’ (Lambie and Randell, 2013, p.451). Citing Lane et al (2002), the authors note that many juveniles in the United States who were incarcerated felt that their childhood and positive aspirations for the future had been taken away from them and the pain and loss experienced during incarceration may increase the resentment and hostility towards ‘the system’, resulting in further antisocial behaviour. Lambie and Randell also refer to research in the United States by Kilgore and Meade (2004),
which found that extremely structured environments (which remove all decision-making opportunity) are likely to be counterproductive to preparing young people for the real world. Bateman and Hazel (forthcoming) citing (Nacro, 2007; Bracken 2000; Mears and Travis, 2004; Nurse, 2001; Farrant, 2006) conclude that the practical consequences of incarceration compound existing disadvantages, severing positive links with the community and interfering with processes thought to promote desistance.

2.2.5 Reintegration and risk management

Returning to the community from custody has been an increasing object of academic focus in recent years (Bateman et al, 2013a). Research by Gyateng et al (2013) found that fewer than half (45%) of children who reported that they would need help with accommodation on release had received it.

A study on the resettlement needs of girls and young women based on in-depth interviews with 17 year old girls in detention highlights the extent to which leaving custody is a ‘weird’ and disorientating experience (Bateman et al, 2013b). Moore et al (2013) report on an 18-month qualitative study carried out in Canberra, Australia, with a group of young people who had been in juvenile detention. The study found that young people require assistance to sustain and develop relationships; to maintain links with critical institutions such as work, school, and informal support; to resolve the effects of detention; and to access support to live successfully in the community.

The sense of personal agency and control that young people want to have over their resettlement plans (Bateman et al, 2013b) is complicated by the fact that most young people leave custody under licence or supervision requiring them to stick to certain conditions. Bateman and Hazel (forthcoming) highlight the problem of non-compliance by young people, citing the fact that young advisors for the Howard League for Penal Reform’s UR Boss chose this as a key issue in their ‘manifesto’ (U R Boss, 2013b). Bateman and Hazel (forthcoming) consider that the manifesto reinforces many of the messages from research as to what constitutes effective resettlement, such as the importance of maintaining contact.
with family and friends and of increased flexibility within custody to avoid damaging relationships the need to improve education chances, as well the need to ensure practical issues such as housing, bank accounts and benefits are in place prior to release with particular care given to helping young people who do not have a family to provide a safety net. It argues that professionals need to listen to young people and not set them up to fail, a theme also present in Life Outside (U R Boss, 2011). One young person is cited as observing that a licence is ‘not hard to follow but it’s easy to break’ (U R Boss, 2013b p.3).

In addition to licence and supervision conditions, there are a number of other mechanisms designed to enhance public safety and ensure child protection, such as sex offender registration or decisions triggered under child protection protocols in respect of ‘Schedule 1 offenders’ or those ‘deemed to present a risk to children’ (Janes, 2011). The public protection legal framework manifests itself in MAPPA (U R Boss, 2013a). The Howard League for Penal Reform’s U R Boss project has produced a leaflet on what MAPPA is following concerns raised by young people that it appeared to have influence on their lives but they did not know what is was (Fleming et al, forthcoming). It appears that direct research with young people about little understood restrictions on their lives constitutes a specific gap that will be hard to fill without an intense programme of information and education to first explain what these phenomena are.

For instance, the ascription of Schedule 1 status to children convicted of offences against other children is little understood by professionals but potentially far reaching (Nacro, 2003a). Government guidance on whether schedule 1 status continues to apply lacks clarity. In this context, it would be unreasonable to expect that the provisions are known to the children to whom they pertain. The implications for such children in later life have not been researched.

2.3 Risk of labelling/spoiled identities

The research by McAra and McVie (2007) and McAra et al (2013) indicating that system contact is positively damaging, inhibits young people’s capacity for change and risks stigmatising and labelling children might be regarded as
empirical support for ‘labelling theory’. This theory or perspective holds that labels, especially deviant labels resulting from official decisions made in childhood or adolescence, are capable of substantially altering a person’s chances of a conventional life (Becker, 1963; Link, 1982). This in turn is considered to lead to “cumulative disadvantage” or snowballing in future life chances, with an increased risk of delinquency and deviance during adulthood (Sampson and Laub, 1997). The result is a ‘spoiled identity’ (Goffman, 1961).

The idea is that the assignation of the ‘deviant’ label is a dramatic event that can have a profound, detrimental impact on the person’s social standing and may be a key step in developing a consistent pattern of deviant behaviour, especially when the label is assigned at a crucial period in a person’s life course such as adolescence (Becker, 1963; Lemert, 1967). The consequences of a deviant label or a spoiled identity tend to include marginalisation from conventional opportunities in education and employment.

According to Bernberg and Krohn (2003, p.1290), citing Schwartz and Skolnick (1962) and Link (1982), incarceration can ‘directly impede educational opportunities’ and ‘impede employment opportunities’ because many employers may avoid hiring known delinquents and those who are labelled may less likely to apply for good jobs because they expect and fear rejection from conventional others, including employers. The authors conclude that social marginalisation caused by the stigma attached to the deviant label raises the likelihood of subsequent involvement in deviant activity.

Labelling theory is also affected by pre-existing stereotypes. For instance, Bernberg and Krohn (2003), citing Gans (1995), suggest that deviant labeling of disadvantaged youths who are processed by the juvenile justice system is enhanced by the negative stereotypes already associated with these youths in the mainstream culture. The authors’ study considered the effects of police intervention and juvenile justice intervention on involvement in serious crime at ages 19-20. It found that contact with the police increased the predicted number
of crime events at ages 19-20 but that educational attainment significantly mediated this. The study also considered the impact of the young person’s background, concluding that official intervention by criminal justice agencies has a significantly stronger labeling effect among males with impoverished backgrounds.

Smith et al (2001, p.62) suggest ‘there is a large body of evidence that demonstrates a close relationship between offending and victimisation’. Smith et al explain this on the basis that some kinds of crime, such as pub fights, arise out of mutual interactions between people and that even where the crime does not arise immediately out of interpersonal interactions, people often tend to commit offences on others within their social circle, either due to accessibility or unresolved issues. There is also evidence that a high proportion of young people convicted of serious crimes had experiences as victims of loss or abuse (Boswell, 1995). Smith et al also point out that ‘feelings of fear, anxiety, and persecution (characteristic of those who score highly on alienation) may both arise from victimisation and make further victimisation (such as bullying) more likely’ (2001, p.199) which could indicate a parallel labeling or stigmatisation experience for young victims, albeit on a less formal basis for lack of ‘official’ recognition of that status.

Shifting identity from ‘victim’ to ‘offender’ is thus common. However, the label ‘offender’ is dichotomously opposed to that of victim so that ascription of the former tends to undermine ascription of the latter. Young people who offend are thus typically stripped of their victimhood. The discourse that surrounds deviant behaviour consequently tends to undermine consideration of victimisation as an explanatory or contributory factor to offending.
2.4 Children with harmful sexual behaviour in conflict with the law in England and Wales

2.4.1 Prevalence of harmful sexual behaviour—abuse by children

The possibility of convergence of victim and offender status in the case of children with harmful sexual behaviour is powerfully described in a case study from his own practice by Hackett, (2004):

"Case Example

A social worker was concerned about where to place Stephen, a 7 year old boy who had been sexually abused by his older brother. After the older brother, aged 14, had been removed from the home, Stephen began in turn to behave in a sexually aggressive way to his younger 4 year old brother. This behaviour continued for several months until the 4 year old was able to communicate his experience to his mother. The social worker sought consultation on her plan to place Stephen in the same foster placement as his older brother (the original abuser) as Stephen had now 'crossed over the line' between victim and perpetrator. It was as if, in being identified as someone who had abused another child, Stephen’s own vulnerability did not matter any more.” (Hackett, 2004, p.3)

This case study, describing two incidences of serious harm caused (and experienced) by children, highlights the inter-changeability of victim and offender status in this area as well as some insight into the extent to which outcomes may be very different depending on the stage at which the behaviour comes to the attention of professionals. While the analysis of the legal framework at Chapter 4 reveals unlawful sexual behaviour by children can cover a wide range of behaviours, from experimental to violent, there is clearly a stark difference between how workers might approach behaviours at the two ends of the spectrum and the individuals involved once the criminal law has been transgressed, depending on whether they are deemed offenders or victims.
As Hackett et al (2013) have observed, it is sometimes assumed that harmful sexual behaviours by children are experimental or of a minor nature. Such an assumption is supported by the comments of Baroness Walmsley referred to at 2.1.2. However, in their analysis of 700 British child and adolescent abusers, while noting that some of the case papers were missing, the authors conclude that these assumptions were not borne out in the findings. However, these findings were drawn from samples connected to treatment and intervention services as opposed to criminal justice data. Moreover, as observed by Hackett (2004), intervention services in the UK are patchy generally. For those in custody, intervention can be difficult to secure (Janes, 2007). It may be that the assumptions concerning experimental behaviour are difficult to test but may be borne out by analysis the children with a criminal justice outcome who do not receive intervention. This may be a significant cohort given the YJB and Ministry of Justice (2013b) data asserting that there were 1,888 ‘proven’ sexual offences on Youth Offending Team (YOT) caseloads in 2011 and data from the Ministry of Justice et al (2013) suggesting there were around 490 sentences for sexual offences (see Chapter 4.2.2).

From any perspective, any sexualised behaviour displayed by a child is likely to be of concern, even if the actions would not be an issue when committed between two consenting adults or appear to be low level or experimental in nature given the difficulties that children may have in discerning what is and is not acceptable (Archard, 2000).

Statistics as to the prevalence of sexual abuse suffered by young people are varied and are likely to be an underestimate as much sexual abuse goes unreported or is not recognised or dealt with as sexual abuse. For instance, a prevalence study of child maltreatment in the UK by Cawson et al (2000), found that around 16% of young people surveyed had been abused under the age of 16 and that three quarters of this abuse was unreported at the time.
Relying on a range of studies, the National Society for the Prevention of Cruelty to Children (NSPCC) considers that between 25% and 35% of all alleged sexual abuse against children involves young, mainly adolescent, perpetrators (Lovell 2002). Other academics have come to broadly similar conclusions based on both UK and North American studies (Erooga and Masson, 2006; Finkelhor et al, 2009).

A more recent NSPCC study of child maltreatment in the UK (Radford et al, 2011) that considered the experiences of children under the age of 18 found that 65.9% of contact sexual abuse experienced by children is perpetrated by under 18s, demonstrating the need for effective prevention, public education and support for young people in negotiating respectful relationships. This includes contact sexual abuse by any person under 18 to another child or young person, siblings, peers and intimate partners.

These much higher rates of sexual abuse among peers were also found in a study of child sexual abuse among pupils at a secondary school in Zimbabwe, Gwirayi (2013) found that 56.3% of pupils had experienced some form of contact or non contact sexual abuse. Gwirayi points to high prevalence rates of child sexual abuse being reported in a range of countries including Sweden (45.2%), Mexico (18.7%), China (21.9%), United States (38.1%) and Vietnam (19.7%), although questions whether the reported prevalence rates are lower than in his study due to the tendency for researchers to focus on contact abuse. In his study, he found high levels of sexual abuse by peers and he reports a range of studies that have made similar findings in Ethiopia, Sweden and South Africa. The Gwirayi study included a range of specific acts in its definition of child sexual abuse, ranging from showing a child pictures of sexual activity to making a child have sex. Depending on how sexual abuse is defined, increased sexualised activity ranging from around 40% of children engaging in sexual intercourse before the age of consent (Mercer et al, 2013 and UNICEF, 2007) to ‘sexting’ being normal among 12 – 13 year olds (Phippen, 2012) could present the criminal justice system with essentially unmanageable levels of alleged victims and perpetrators.
2.4.2 Arrest and conviction rates for child perpetrators of sexual offences

The crystallisation of harmful sexual behaviour as a transgression of the criminal law rather than an immoral act, a treatment need or developmental behaviour occurs at the point of arrest and the criminal justice processes that follow.

An overview of the available data (YJB and Ministry of Justice, 2013a and 2013b; Home Office, 2013) suggests that, if some of the prevalence rates are correct, only a very small proportion of children with harmful sexual behaviour are dealt with by the youth justice system.

This is in line with the assertions of Lovell (2002) that children who come to the attention of services are as likely to be dealt with by child protection agencies as by criminal justice agencies. This also chimes with the findings in Hackett et al (2013), of the 650 cases in their study where data was available, only 42% had been convicted of a criminal offence at point of referral for intervention.

It also appears that while just under half of young people get pre-court disposals for sexual offences, the rate of convictions for children is proportionately higher than for adults. Nevertheless, the number of children processed by the criminal justice system for harmful sexual behaviour is declining in line with the fall in the numbers of first time entrants to the system (Bateman, 2012).

2.4.2.1 Initial contact with the police

The police recorded 53,665 sexual offences in total in England and Wales for 2011 – 2012, amounting to 1% of all police recorded crime (Ministry of Justice et al, 2013).

Recorded crime differs from arrest rates. According to Government analysis (Ministry of Justice et al, 2013a), 4564 children were arrested for sexual offences, of which 2% (n = 111) were females. Therefore young people arrested for sexual offences made up 2% of all notifiable offences resulting in arrests of 10 to 17 year olds (n = 210,660), (YJB and Ministry of Justice, 2013b). The number of people of all ages arrested for sexual offences in 2010/2011 was 32,000 (Home Office,
2013): therefore children accounted for approximately 14% of all arrests for sexual offences. According to the Office for National Statistics mid-2010 population estimates, children aged between 10 and 17 accounted for approximately 9.62% (n = 5,359,900) of the general population of England and Wales in mid-2010 (which is estimated to be 55,692,400) (Office for National Statistics, 2012). These figures suggest that children are more likely to be arrested for sexual offences than adults.

2.4.2.2 Proven offences

While data on arrests are collated by the Ministry of Justice, the YJB provides information derived from YOT caseloads. According to the YJB, “there were 1,888 proven sexual offences associated with young people on the YOT caseload” in 2011/2012 (YJB and Ministry of Justice Youth Justice, 2013b, p.27).

Although not directly comparable, the number of offences recorded on YOT caseloads is considerably lower than the number of children arrested for sexual offences in the same period, suggesting that many of the episodes leading to arrest do not result in a formal sanction. Information is not available that would allow an analysis of the reasons for this gap. But it would seem likely that at least part of the attrition is explained by there being insufficient evidence in some cases for a youth justice disposal or the incidents being deemed too minor to warrant a formal sanction in others.

The 1,888 proven sexual offences associated with young people reported to be on the YOT (YOT) caseload represented a small proportion (1.4%) of the total of 137,335 proven offences by young people reported to be on the YOT caseload which resulted in a formal disposal, either in or out of court (YJB and Ministry of Justice, 2013a).

Of the 1,888 proven sexual offences associated with young people, only 1% (n = 19) were committed by females (YJB and Ministry of Justice, 2013a). By contrast, females made up 17.9% of all proven offences committed by young people.
In terms of ethnicity, 83.3% of young people committing proven sexual offences were white (n = 1,574), 4% were Asian (n = 77), 6% were Black (n=116), 2% were of mixed heritage (n= 40), 1% were ‘other’ (n=21), and ethnicity was unknown in 3% of cases (n=60) (YJB and Ministry of Justice, 2013a). This pattern is broadly similar to the ethnic breakdown for all proven offences, except that white young people are account for a slightly larger proportion of sexual offences and black young people a slightly smaller proportion. Across the range of all offences, white young people made up 79.8% of all offences, with 4% being Asian, 8.5% Black, 5.5% Mixed, 0.6% were other and 1.7% unknown (YJB and Ministry of Justice, 2013a). It is perhaps surprising that ethnicity was more likely to be unknown for the much smaller group of children committing sexual offences than for the total youth offending population.

Children receiving a disposal for sexual offences tend to be slightly younger than the general offending population. Ten to fifteen year olds accounted for 44.2% of proven sexual offences by young people in 2010/11. The same age group accounted for 42% of all proven criminal offences generally (including sexual and non-sexual) (YJB and Ministry of Justice, 2013a).

It is hard to compare the age for proven offences data for other jurisdictions due to the very low age of criminal responsibility in England and Wales (see Chapter 4.3). However, Finkelhor et al (2009) describe the age pattern of those who come to the ‘attention’ of the police in the United States in the following terms:

“The number of youth coming to the attention of police for sex offenses increases sharply at age 12 and plateaus after age 14. Early adolescence is the peak age for offenses against younger children. Offenses against teenagers surge during mid to late adolescence, while offenses against victims under age 12 decline.”
2.4.2.3 Disposals and nature of offences

YJB and Ministry of Justice *Statistical Bulletin for 2011/2012* summarises the number of cautions, reprimands and warnings for sexual offences:

"Between 2010/11 and 2011/12 there was a seven per cent increase in the number of young people given a final warning, reprimand or conditional caution for robbery. There was also a two per cent increase in young people given out of court disposals for sexual offences, from 414 to 424; however these numbers are small and tend to fluctuate year to year. All other offence types showed a decrease.” (2013b, p.18)

In addition, according to supplementary table Chapter 5.2 (Court disposals), supplied by YJB and Ministry of Justice, 494 young people were found guilty of sexual offences at Court (2013a). No explanation is provided for the discrepancy between the 1888 proven offences and the combined total number of young people with cautions or court disposals of 918. However, it is possible this is due to the difference between data relating to offences and data relating to perpetrators given that those accused of sexual offences may be charged with multiple offences. It is also possible that the proven offences referred to in the YJB/Ministry of Justice *Statistical Bulletin* (2013b) relate to offence classifications historically used by the YJB and emanating from YOTs whereas data on convictions and pre-court disposals outlined in the overview of sexual offences provided by the Ministry of Justice *et al* (2013a) and supplementary tables come from courts and police respectively.

In any event, it is clear that almost half of young people with a recorded outcome for sexual offending get pre-court disposals. Data produced by the Ministry of Justice, the Home Office and the Office of National Statistics (2013b) provides a detailed break down of the number of cautions administered to children and adults for different categories of sexual offences.

Figure 1 shows the proportion of cautions given to children are much higher than those given to adults where the offence is more serious.
Figure 1: Offenders cautioned by sexual offence type and age group, 2011

<table>
<thead>
<tr>
<th>Offence type</th>
<th>Total sexual offences (pre-court disposals and convictions)</th>
<th>Percentage of sexual offences resulting in pre-court disposal</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Children aged 10-17 years</td>
<td>Adults aged 18+ years</td>
</tr>
<tr>
<td>Rape of a Female</td>
<td>68</td>
<td>1,006</td>
</tr>
<tr>
<td>Rape of a Male</td>
<td>17</td>
<td>81</td>
</tr>
<tr>
<td>Sexual assault on a female</td>
<td>391</td>
<td>2,474</td>
</tr>
<tr>
<td>Sexual Assault on a Male</td>
<td>53</td>
<td>247</td>
</tr>
<tr>
<td>Sexual Activity with Minors</td>
<td>258</td>
<td>1,334</td>
</tr>
<tr>
<td>Other sexual offences</td>
<td>114</td>
<td>1,450</td>
</tr>
<tr>
<td>Total sexual offences</td>
<td>901*</td>
<td>6,592*</td>
</tr>
</tbody>
</table>

Source: Ministry of Justice et al (2013b, Chapter 4)

*Some of the data in this table does not correspond to the totals referred to elsewhere in the Overview of Sexual offences, Ministry of Justice et al (2013). This may be due to the fact that the tables that break down offences by pre-court disposal and conviction have slightly different figures in them which may relate to problems in classifying offences. In any event, the total number of sexual offences recorded here is slightly lower both for adults and children than elsewhere in the same data set.

The data here has been drawn from supplementary tables accompanying An Overview of Sexual Offending in England and Wales (Ministry of Justice et al, 2013b). The data on sentences following Court proceedings is derived from Table 4.8. The data concerning pre-Court disposals is derived from Table 3.6.

35
An analysis of the data also suggests that children represent a disproportionate number of those formally held responsible for strict liability rape of a child under 13 (Ministry of Justice et al, 2013b, Tables 4.8 and 3.6). In 2011, a total of 55 children received either a pre or post court disposal for the strict liability rape of another child. This was out of a total of 266 such disposals in total and therefore children were held responsible for 20.7% of all disposals for this offence.

According to the government’s overview of sexual offences (Ministry of Justice et al, 2013a), in 2011 just 13.8% of juveniles were sentenced to immediate custody and 80.9% of juveniles were sentenced to community sentences.

Of the 491 young people who were found guilty at Court of sexual offences, only five were female, and none of those females were under 15 years of age. By contrast, six of the convicted males were aged ten and eleven years old, and 130 of those found guilty at Court were boys aged 12 to 14 years.

Figure 2 shows the breakdown between guilty findings at Court and pre-court disposals for adults and children.

**Figure 2 Findings at Court and pre-court disposals for adults and children**

<table>
<thead>
<tr>
<th>Disposals for sexual offences 2011</th>
<th>Children</th>
<th>Adults</th>
<th>Adults and Children***</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre- Court disposals</td>
<td>412*</td>
<td>1115</td>
<td>1527</td>
</tr>
<tr>
<td>Sentences following Court</td>
<td>489**</td>
<td>5,477</td>
<td>5966</td>
</tr>
<tr>
<td>proceedings</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>0</td>
<td>6,592</td>
<td>7493</td>
</tr>
</tbody>
</table>

Source: Ministry of Justice et al, 2013b

* It is noted that this figure varies from the number (424) set out in YJB and Ministry of Justice, 2013b, p.18
The figure of 489 concerning children’s sentences following court proceedings varies from the figure of 491 at page 44 of the analysis, An Overview of Sexual Offending in England and Wales (Ministry of Justice et al, 2013a).

The total figures vary from the total figures listed in the supplementary tables; the data source suggests this is due to the presence of some records where gender has not been recorded.

The data here has been drawn from supplementary tables accompanying An Overview of Sexual Offending in England and Wales (Ministry of Justice et al, 2013b). The data on sentences following Court proceedings is derived from Table 4.8. The data concerning pre-Court disposals is derived from Table 3.6.

The table above shows that for records where gender is known, children accounted for 901 of 7493 of all disposals – i.e. 12% of all disposals formally designating the person as having committed the offence.

This data contrasts to findings by Vizard et al (2007) which, relying on Home Office data from 2003, state that “of those convicted of a sexual offence, 20% are under 18 years of age” (2007, p.59). The number of young people being sentenced for sexual offences has seen a decrease of 11.9% from 556 in 2005 to 491 in 2011 (Ministry of Justice et al, 2013b). It may that there has been a decline in the proportion of sexual offences attributed to children or this may reflect a general decline in offences recorded against children falling which is not the case for adults (Bateman, 2013).

Between 2005 and 2011, 36,629 individuals were found guilty in court of a sexual offence. Of these, 3,684, or approximately 1 in every 10 found guilty and sentenced were under 18 (Ministry of Justice et al, 2013b). Therefore, children under the age of 18 accounted for an annual average of 11.2% of all findings of guilt for sexual offences as a result of the court process during that period. The number of sexual offences found guilty in Court by young people under the age of 18 is higher than would be anticipated given that children account for only 9.62%
of the population and given the high number of out of court disposals awarded to children.

This is despite the fact that according to the Home Office (2013), the number of adults sentenced for sexual offences has increased by 30.9% between 2005 and 2011, from 4,173 to 5,464 and the number of children sentenced for sexual offences has decreased by 11.9%, from 556 in 2005 to 491 in 2011.

The relatively high conviction or admission rate in respect of children may warrant further exploration. According to the Home Office (2013) in 2011, 2713 out of 6944 defendants tried in the Crown Court charged with a sexual offence gave a guilty plea. The majority of defendants (4231 or 61%) gave a not guilty plea. Of these, 2,592 were acquitted. The data does not break down the plea by age. However, in the description of the research sample for this project, it is noted that only one out of ten participants pleaded not guilty.

2.4.2.4 The use of custody
The number of children in custody for sexual offences at any one time is small. In 2011-2012, according to the YJB, 4% (n = 79) of the under 18 custody population were in prison for a primary offence which was a sexual offence. Of these, 48 were white, 4 were Asian, 10 were Black and 2 were of mixed heritage. The ethnicity of 14 young people (18%) were unknown, which makes it difficult to draw any conclusions from this data (YJB and Ministry of Justice, 2013a).
Only 13.8% of children convicted of sexual offences were sentenced to immediate custody, compared to 61.7% of adult sexual offenders sentenced to immediate custody (Ministry of Justice et al., 2013a).

Of all offenders sentenced to immediate custody, 300 indeterminate sentences and 23 life sentences were given for all sex offences in England and Wales (i.e. committed by adults and children) (Ministry of Justice et al., 2013b). There is no published data recording the number of children sentenced to indeterminate sentences for sexual offences.

The low numbers of children convicted of sexual offences in custody, which may reflect the decline in the prison population generally, poses unique problems in meeting the particular needs of this group (Janes, 2007).
2.4.3 Characteristics of children with harmful sexual behaviour

One of the difficulties in meeting the needs of children with harmful sexual behaviour is that is difficult to know who these children are. Chaffin (2008), a citing extensive research by Becker and others in the US, points out that there is in fact a 'misperceived homogeneity':

“[Y]outh captured under the sex offender label, although presumed to share common features, are actually incredibly diverse and may have little in common with each other aside from their administrative classification under law and policy.” (Chaffin, 2008, p.117)

Nevertheless, the research that exists in relation to UK samples shows some 'remarkably striking' similarities in the core demographic data:

“A high proportion of the young people across the studies had extensive prior involvement with health and social care professionals prior to the emergence of adolescent sexual aggression, as well as extensive histories of adversity, loss and discontinuity of care.” (Hackett, 2004, p.27).

Manocha and Mezey (1998) also found high levels of social disadvantage and previous sexual experiences, which were by virtue of age, illegal.

This social disadvantage is at the heart of Marshall and Barbaree’s integrated theory of sexual offending (1990), which explains how young people growing up in neglectful and abusive environments can develop psychological vulnerabilities that can predispose them to behave in a sexually harmful way. Marshall and Barbaree’s integrated theory of sexual offending also highlights how boys with these sorts of psychological vulnerabilities are likely to enter puberty with skills deficits that make it harder for them to negotiate adolescence.

Recent research has been conducted in the UK by Hackett et al (2013) who have studied a 700 strong sample of adolescents referred for treatment. In general the research corroborated Chaffin’s concept of misperceived homogeneity, finding that children with harmful sexual behaviour constitute a diverse group with a
complex set of motivations, background experiences and varying types of abusive behaviour. However, the research noted in particular high levels of learning difficulty amongst this group, high instances of abuse of both females and males, and high levels of past victimisation, either sexual or non-sexual. The study also concluded that girls were generally referred for treatment at a younger age, less likely than boys to have criminal convictions and more likely to have sexual victimisation in their histories.

The relationship between harmful sexual behaviour and a history of being a victim has been a persistent matter of debate and contention in the juvenile sexual aggression field (Hackett, 2004). In the 700 strong sample, Hackett et al (2013) found that the total group was almost equally split between young male sexual abusers with and without prior sexual victimisation experiences. The authors note that this overall rate of victimisation is significantly higher than any other large scale study they are aware of.

The relationship between victimisation and serious offending was considered in a study of 200 young people convicted of serious crimes and found that high proportions had experienced abuse or loss of a person to whom they were emotionally attached and that violence can be linked to unresolved fear or grief (Boswell, 1995).

2.4.4 Recidivism, risk assessment and treatment

According to Chaffin (2008) while ‘the facts’, by which Chaffin means scientific data, are ‘considerably more robust’ and capable of leading to firmer conclusions about the nature of the risk posed by children with harmful sexual behaviour, ‘the facts have hardly mattered at all in the public policy arena’. He argues that ‘moral panic’ has clouded the assessment and treatment of young people with harmful sexual behaviour (2008, p. 111).
2.4.4.1 Recidivism

Recidivism studies of those who committed sexual offences as children have concluded that child sex offenders are likely to desist in adulthood. So Beckett (2006, p.233) finds that 'studies to date suggest that most adolescents who sexually abuse will cease this behaviour by the time they reach adulthood, especially if they are provided with specialised treatment and supervision.' Similarly, Smallbone (2006, p.111) asserts that 'juvenile sex offender recidivism studies clearly show that relatively few go on to be reconvicted of a new sexual offense as adults'. Weinrott's extensive literature review (cited in Righthand and Welch, 2001, p.31) concludes that 'virtually all of the studies show, contrary to popular opinion, is that relatively few JSOs [juvenile sex offenders] are charged with a subsequent sex crime.' This is consistent with research that suggests that general criminal behaviour by juveniles is 'adolescent-limited', generally peaking at the age of 17 and declining as adulthood approaches (Beckett, 2006).

This view of the future risk of sexual offending by adolescents who commit sexual offences is endorsed by Chaffin (2008, p.112) who concludes that children with sexual behaviour problems, as a group, 'pose a low long-term risk for future child sexual abuse perpetration and sex crimes.' Chaffin states that decades of U.S. studies typically report long-term future sex offence rates in the range of 5%-15%. Like Beckett, Chaffin, notes that the lower end of this range will be characterised by those who have completed a treatment programme, whereas those with a higher likelihood of reoffending tend not to have completed treatment.

The most recent long term study of recidivism among children who have been convicted of sexual offences concludes that the research cited above has been correct, placing recidivism at around 7% for this group over a five year period and rising to 13% over a 35 year period (Hargreaves and Frances, 2013). The authors compare their findings to a long term study of adult sex offenders which found that found all 419 male sexual offenders discharged from prison in 1979 in England and Wales were followed up until 2000 had sexual reconviction rates after 5 and 20 years were 16% and 25% respectively. The results suggest that
reconviction rates for children are substantially lower (almost half) than those for adults.

2.4.4.2 Risk assessment

Set against the low statistical risk of sexual reoffending are a number of concerns about the challenges of predicting sexual reoffending in adolescents. This is in part due to the enormous developmental changes that occur during this period (Caldwell et al, 2008). In addition, it is difficult to distinguish general features of adolescence such as immaturity, poor decision-making, risk taking and intense and fluctuating emotions from behaviour that poses a specific risk of sexual offending (Prentky et al, 2009).

As a result, compared to adults, there are relatively few empirically driven and validated risk assessment instruments for young sexual abusers.

Although in his survey of risk assessment tools Richardson (2009) raises concerns about the reliability of and consequently the reliance on such tools for life changing decisions, recent research provides increased support for the use of the Estimate of Risk of Adolescent Sexual Offence Recidivism (ERASOR) in assessing the risk of sexual re-offending in adolescents (Viljoen et al, 2012; Worling et al, 2012).

The ERASOR (Worling, 2012; Worling, 2013) provides a framework for understanding both the static historical risk factors that were present at the point of the offence and dynamic on-going risk factors that may be relevant to the sexual offending for adolescents. As a consequence, the tool can assist in identifying treatment targets for young people. Based on what is known from recidivism studies, factors that the ERASOR takes into account include, whether the young person has completed treatment and whether the young person received sanctions from an adult before committing the index offence. These factors are based on the notion that adolescents who continue to commit sexual offences after
they have been detected and warned by police, parents, residential staff or teachers, or completed treatment, are more likely at risk of continued sexual aggression towards others.

The tool has also recently been further developed in light of the recognition that risk assessment is more accurate where the presence or absence of protective factors are taken into account (Beech et al., 2009; Worling, 2013).

2.4.4.3 Intervention

According to Rich (2011), studies in the US have shown that recidivism rates for children with harmful sexual behaviour are significantly lower where they have received intervention.

The challenge of how to deliver effective interventions for young people with harmful sexual behaviour has been considered in depth (see, for instance, Hackett, 2004, Erooga and Masson, 2006 and O'Reilly et al, 2004).

The disadvantaged backgrounds of many of the young people with harmful sexual behaviour require that treatment should involve a holistic approach and not just attempt to change the child's behaviour but must examine and treat any factors that could be causing the child to engage in harmful sexual behaviour (Hackett, 2006).

One approach that attempts to deal with the child as a whole is the Good Lives Model (GLM), which gives consideration to the evaluation of risks alongside the identification of strengths, needs and goals (Yates et al, 2009). The GLM (Ward and Gannon, 2006; Ward and Stewart, 2003) is a theory of offender rehabilitation based on the notion that sexual offenders strive to meet a range of core personal and social needs, described as 'primary goods', in order to achieve a sense of wellbeing and meaning in their lives. However, those who offend sexually do not have the external resources and internal skills to meet obtain primary goods through prosocial means (Ward and Gannon, 2006). In view of this the GLM
aims to address offending by intervention focused on helping offenders to attain these primary goods in appropriate ways, guided by an individualised Good Lives plans (Ward and Stewart, 2003). This does not preclude discussion of the offence cycle but the focus is different from traditional forms of intervention, which tend to focus on the facts of the offence and the offender’s attitude to it (see for instance, Finkelhor, 1984).

While denial is often associated as a common feature amongst sex offenders generally and is commonly considered a block to risk reduction and successful rehabilitation (Hudson, 2012), there is considerable evidence that there is no relationship between denial and recidivism in either adults (Hanson and Morton-Bourgon, 2005) or children (Worling, 2002).

2.4.5 Reactions to children with harmful sexual behaviour

One of the reasons why people deny harmful sexual behaviour is because they are scared about how family, friends and the world at large will react. Such fears are borne out by research into family reactions to children who display harmful sexual behaviour (Hackett et al, 2012). Hackett et al find that such responses are varied, for example by denying the abuse, by seeing the child as a ‘monster’ and rejecting him or her; or by supporting the child (Comartin et al, 2009; Heiman, 2002, as cited in Hackett et al, 2012). The response of the family often depends on whether or not the victim is a close family member. Where the victim and perpetrator are within the family, the response by the parents can be ‘especially complex’ - even if families choose to support the child, they may struggle with the emotional burden of accepting that the abuse has happened (Hackett and Masson, 2006, as cited in Hackett, 2012) or of meeting the demands of the complex welfare and justice systems that seek to intervene to address the abuse (Hackett, 2001).

New research by Hackett et al (2012) categorise family reactions into three groups supportive, ambivalent and negative and concludes that parental responses were highly differentiated by abuse type. Hackett et al also highlight that family reactions, often trigger profound shock, even trauma on discovery but can change...
over time in response to new events or as they became more aware of the causes of the abuse and thereby more accepting of what the child has done. As Heiman (2002) notes, parents are likely to experience feelings such as shame, guilt and anger.

Family reactions to a child’s harmful sexual behaviour can have a tremendous impact on how the young person responds to treatment (Letourneau et al, 2009, as cited in Hackett 2012). Reactions to harmful sexual behaviour by society at large mirror family reactions and are often characterised by commentators as ‘moral panic’ which often cloud our understanding of the critical issues affecting young people with harmful sexual behaviour (Chaffin, 2008).
Chapter 3: Methodology

3.1 The aim of the research and an overview of the methodology

Children, sex and the law is an exploration of the complex issues that emerge when the law is used to respond to sexual activity by children.

The starting point for the research was the author's experiences as a legal practitioner working with a large number of children convicted of serious sexual offences: these experiences suggested that this group struggles with almost every aspect of the criminal justice and rehabilitation journey, as illustrated by their persistent and consistent need for legal intervention, whether it related to understanding or challenging their sentence, obtaining appropriate intervention in custody or resettlement packages, understanding or challenging their notifications requirements, struggling to understand or vary restrictive licence conditions or challenging decisions to disclose their past thereby restricting opportunities for progress and development. There is very little evidence as to how a conviction for a sexual offence and liability to registration affects young people and the extent to which these might affect development and rehabilitation.

The obvious questions that arose for the author were:

- What is the role of the law in regulating sexual activity by children?
- Does the law work effectively and fairly for children who commit sexual offences?
- What is the impact of the law’s attempts to regulate and punish sexual activity by children?

However, an inductive approach was adopted to the project, based in part on the apparent absence of in depth research on the interplay between the legal and criminological, sociological and psychological impacts on this distinct group of young people. A further reason for this approach was the apparent absence of young people’s voices in this discourse. While it is accepted that much of the research in this field is based on qualitative studies relying on subjective clinical
judgement most of these appear to be concentrated on around the ‘what works’
literature concerning the effectiveness of interventions and factors for recidivism
(Hackett, 2004). None of these studies appear to focus on the young people’s
experience of the legal processes or provide a platform for the voices of young
people with any proximity to their youth.

Any practitioner working regularly with children convicted of sexual offences is
likely to be struck by how complex each case appears and how little is known or
understood about this group of young people and the legal framework that
governs them.

The legal framework and the rationale behind it is complex and the result of
developing social concerns over time, often heavily influenced by wider concerns
about the need to prevent sexual activity between adults and children. Initial
information gathering during the literature review revealed that while the broader
context in which the legal framework is situated has been widely discussed in the
literature itself (see for instance Hackett, 2004), there is no single text that appears
to draw together the specific legal framework, including its theoretical
foundations and historical development, for this group.

To provide an original perspective as to the practical operation and consequences
of the legal framework, it seemed appropriate to elicit the views of young people
convicted of sexual offences as they navigate the legal system. The literature
review revealed that the only comprehensive research that comes close to
providing an insight into young people’s experiences of being sex offenders
emanate from social science or psychological disciplines and relate to either long
term quantitative studies considering recidivism (see for instance, Hargreaves and
Francis, 2013) or more in depth studies aimed at better understanding this group
so as to be in a better position to ‘treat’ them or predict risk (see for instance
Hackett, 2013; Worling et al, 2012; Richardson, 2009; Vizard et al, 2007). There
appears to be no research at all as to young people’s views on the legal process
and how it impacts on them.

48
In order to explore young people’s and practitioners’ views in context, the first, paper based, phase of this research was therefore an analysis of the legal framework and history governing children who have committed sexual offences, including the relevant theoretical foundations underpinning the law.

The second phase involved direct research with young people, on the basis that it seemed at least possible that in depth discussion with young people with convictions for sexual offences, set against a clear understanding of what the legal framework is trying to achieve, could provide a greater understanding of their perceptions of the system and whether it is working effectively. To that end, a sample of young people with convictions for harmful sexual behaviour was interviewed in depth.

The final phase of the investigations for this research was designed to situate the young people’s responses within the context of professional observations and experiences. It was anticipated that for a number of reasons young people’s experiences might not tell the full story. Therefore, professionals were also interviewed for the research to illuminate and develop ideas provided by the young people.

Finally, the findings from the desk based and field based research were analysed in light of the information gathered for the literature review and conclusions and recommendations were drawn.

### 3.2 Methods

In view of the novelty and inter-disciplinary nature of the issues to be answered and the gaps in knowledge, a single method of data collection and analysis seemed inadequate to obtain a comprehensive understanding of the issues faced by young people convicted of sexual offences. Therefore this study utilised a range of methods to collect and analyse the data (Murray Thomas, 2003). These
methods, ranging from paper based research for the legal framework to semi-
structured in-depth and open-ended qualitative interviews with young people and
professionals respectively, were suitably adapted to generate the information
grounded to the research questions and gaps in our knowledge and understanding
(O’Leary, 2004).

3.2.1 Paper based research on the legal framework

While there is a growing body of literature based on the phenomenon of young
people with harmful sexual behaviour (see for instance Hackett 2013; Calder
2009; Masson and Erooga 2006) as revealed in the literature review, these tend to
focus on treatment, intervention and recidivism. The studies tend to focus on
clinical, sociological and psychological discussions of who these children are,
what causes them to offend, what interventions work and how to predict
recidivism (Hackett, 2004; Hargreaves and Francis, 2013).

A range of sociological and legal texts look at historical and legal issues, such as
concepts concerning consent (Waites, 2005), the historical development of law to
regulate sexual activity (Temkin, 2002; Weeks, 1989) or the law itself, (Card,
2004; Bennion, 2003). However, no single text appears to draw together the
specific legal framework, including its theoretical foundations and historical
development, for this group.

Therefore original analysis of the legal developments affecting young people with
harmful sexual behaviour was a necessary and novel way to provide a context for
understanding the criminal justice system’s treatment of this particular group of
children.

An initial review of relevant literature, policy, guidance, statute and case law, with
a specific focus on children’s liability to life long notification as a sex offender
and life long status as a schedule 1 offender was undertaken. This work
culminated in a paper on this subject, which was published in the Howard Journal

50
of Criminal Justice (Janes, 2011). This was original research that required in depth consideration and coordination of various legal sources. Building on this approach, this phase of the research considered the criminal justice journey for children from the theoretical principles underlying the youth justice system, to the range of offences and disposals available and how these legal frameworks emerged over time. This phase of the research involved detailed consideration of existing secondary data within a particular analytic framework to enable informed exploration of the issues and predicaments relevant to young people with harmful sexual behaviour.

3.2.2 Interviews
Given the inductive nature of the aim of the research, it seemed appropriate to adopt qualitative methods to enable a critical or standpoint perspective resulting in data comprised of descriptive analysis, suitable for small scale studies (here a necessity for convenience, ethical and practical reasons) and a holistic focus with an emergent research design rather than a pre determined research design, (Denscombe 2007, Brannen 1995). Qualitative studies are better suited to exploring meaning and phenomena within their natural setting, (A vegard, 2008) using the words and descriptions given by the participants to understand the situation under research. Given the nature and aim of the research a quantitative or more ‘scientific’ approach would not be possible or appropriate.

3.2.2.1 Selecting the data sources
The study used purposive sampling (Avegard 2008) to ensure that the participants’ responses would be data rich.

A convenience sampling approach was adopted (Gray, 2004). A single placement was identified on the basis of its reputation for providing specialist services to boys with harmful sexual behaviour. All those connected with the unit would therefore have both relevant experiences and perspectives, making them appropriate targets for inclusion. There were also important ethical reasons for
this approach (see Chapter 3.4 below).

The young people who participated in the research were therefore selected for their connection to a specialist open children’s home for children with harmful sexual behaviour. This resource, which provides specialist care and therapeutic intervention, necessarily meant that the young people represented the more serious end of the offence spectrum (see below, Figure 5.2.1, Chapter 5.2). The drawbacks of this setting, which included the fact that the sample was skewed to the more serious end of the spectrum, the young people were still immersed in parts of the experience under surveillance and that the young people were to a certain extent insulated from the full experience of wider community rehabilitation. These were offset by the benefits of access in an environment where the researcher could be confident that they were appropriately supported through the experience. The fact that the young people had been convicted of offences at the more serious end of the spectrum allowed for comparison within the group of experiences, and a focus on how the more serious end is dealt with; by implication this would lend itself to an understanding of the way children at the lower end of the spectrum might be dealt with.

Another consequence of selecting a data source connected to a supported therapeutic placement was that the sample size was relatively small, but out of a small pool (they represent around 10% of all those in their serious category).

In order to situate the young peoples’ responses in a wider and professional context, it seemed appropriate to interview a range of professionals to ascertain their views and experiences of the way the young people were dealt with. This was particularly important in view of the relatively small sample size and the fact that the young people were still in the system and might not be able to take a broader or more reflective perspective.

The professional group were selected for their proximity or relationship to the sample. In some cases, professionals were one step removed, having been recommended by a colleague connected to the sample.
3.2.2.2 Interviews with young people

In view of the inductive nature of the research, the interviews with young people were designed to be young person led and provide scope for discussion. However, in order to allow for robust and comparative analysis a questionnaire seemed appropriate. The method for gaining access to participants is considered under ‘ethical considerations’ below. A summary of the young people interviewed is set out at Figure 5.2.1, Chapter 5.2.

3.2.2.2.1 Third party information

In addition to gaining information from young people through the structured interviews, the inevitably complex nature of the histories and characteristics of young people with harmful sexual behaviour (Dolan et al, 1996; Richardson et al, 1995) meant that it seemed appropriate to undertake some initial information gathering by talking to staff and perusing case papers with consent. This obviated the need to spend large amounts of time in the face to face interviews clarifying information and instead allowed for exploration of the young person’s understanding of their own situation. It also allowed for early identification where the young person had a particular disability or sensitivity (for example bereavement or denial).

3.2.2.2.2 Questionnaire design/location

A questionnaire was devised (appendix 1) with a view to conducting in depth and structured interviews. The questionnaire was designed as an aide to the interview, to be completed in the course of the face to face interview. The questionnaire used a variety of question designs depending on what was being asked and included open, closed, Likert scales and free text to allow greater description.

The fields allowing for greater description were interspersed throughout the entire questionnaire. However, in recognition that more complex and less
tangible issues which explore beliefs and deeply held values is limited (Marshall and Rossman, 1999), it was anticipated that young people may simply want to develop free-ranging discussion prompted by specific questions or clusters of questions.

For ethical reasons it was not possible to pilot the questionnaire directly with young people. However, in view of the critical importance of the questionnaire design and the inevitable difficulties most researchers face in designing and writing a good questionnaire (Oppenheim, 1992), extensive reviews of the questionnaire were made in consultation with the head of the unit where the research sample was based.

The main focus of the interview was designed to explore:

• Young people's understanding of the charge, the criminal process (including the trial process) and the extent to which they felt they understood what was happening to them,
• the extent to which the child felt they had been fairly treated,
• the consequences of the conviction,
• Young people's understanding of risk management provisions, including what it means to be a Schedule 1 offender/notification requirements,
• Young people's views as to how the risk management structures/conviction will affect them later in life in terms of employment, personal development, forming relationships etc.

As demonstrated by the findings, although the questionnaire was designed with only limited reference to young people's experiences prior to contact with the criminal justice system, rich data, in relation to this area, emanated from the discussions during the interviews.
3.2.2.3 Details of facilities available for the investigation at the collaborating establishment

The interviews took place at the unit. The placement is very well respected and is run by experienced staff. The home had facilitated research in the past and has agreed to assist with this project. Staff at the home were consulted on the project and have assisted with the design of the project to ensure the safety and well-being of all involved.

Interview rooms were made available and staff were available to support the young people as required before, during and after the interviews. The placement also provided space for case papers to be reviewed in private.

3.2.2.3 Research with professionals

As noted above, interviews with professionals were designed to complement and illuminate the responses provided by the young people. Ten professionals were selected and interviewed for this purpose. A summary of the sample is set out at Figure 6. Gaining access and consent to this group is considered under ethical considerations below.

3.2.2.3.1 Selecting professionals for interview

The sample was purposive given the very limited number of professionals with significant and relevant experience in this field. This ensured, as with the young people, a data rich sample capable of providing an informed view, rather than a sample representative of all professionals in general.

The nature of the cases within the sample of young people meant that there was an extensive range of professional involvement. This allowed for identification of a range of different professionals who would be able to provide light on the experiences of children in the criminal justice system. The professionals selected were either involved with the young people in the sample, or they were able to identify appropriate colleagues to assist.
3.2.2.3.2 Appreciative inquiry

Given that the professionals were selected for their expertise in a particular aspect of young people's experiences and that the research was to be primarily young person led, it seemed inappropriate to use the same method of interview.

Appreciative inquiry (Cooperrider and Srivastva, 1987) was selected as an appropriate theoretical foundation for an open ended method of interviewing professionals. Appreciative inquiry has been considered an appropriate model to use in interviewing professionals in institutional settings (Liebling et al, 1999) and aims to encourage a reflective and creative approach, allowing the subject to draw on their own chosen narratives (Ludema, 2002; Khalsa, 2002).

The method is particularly well suited to qualitative inductive research, designed to explore new ideas and possibilities. In this case professionals were asked two questions:

- What is the nature and extent of your experience working with young people with harmful sexual behaviour?
- What are your main reflections?

The professionals were assured of their anonymity at the beginning of the interview to ensure that each felt at ease to speak their mind. They were also provided with a full transcript of the interview and an opportunity to further reflect and comment on the final piece.

3.2.2.3.3 Seminar feedback

In order to test the extent to which the findings from the young people's responses were likely to reflect the views and experiences of other children with harmful sexual behaviour, the interim findings were tested at a workshop attended by practitioners from a broad range of backgrounds. The broad questions put to the young people were posed to the seminar audience, comprised of around thirty professionals from a range of backgrounds including residential care homes, therapeutic service providers, YOT workers, probation officers and child and adolescent mental health workers. The participants discussed what they would
expect the young people to say in response to the issues raised based on their own experiences from practice and then relayed these to the group. The responses were broadly in line with the responses and issues raised by the young people.

3.3 Limitations on the research

The study is based on a small number of boys connected to a single establishment, complemented by the reflections of a range of professionals in this specialist field. The findings cannot accordingly be considered representative of the experiences of young people with harmful sexual behaviour in the criminal justice system, especially in light of the varied outcomes for such children noted in the literature (Lovell, 2002).

On the other hand, the sample size represents a significant proportion of children convicted of serious sexual offences given the relatively low numbers of children convicted of serious sexual offences at any given time. This is demonstrated by the fact that most of the sample (n=7) had been in detention prior to being placed in the unit. Recent Ministry of Justice data suggests that the number of children in the secure estate for 2011–2012 where the primary offence is a sexual offence was just 79 (Ministry of Justice, 2013). Therefore the sample represents a significant proportion of children sentenced at the higher end of the spectrum for sexual offences. Further, the experiences of those at the more serious end of the spectrum provide an opportunity for full analysis of the criminal justice journeys of those children including examination of their experiences in the build up to the offence and their experiences as their risk is deemed to have reduced and they prepare to return to the wider community.

In these circumstances, the findings fill a considerable gap in the literature and provide useful insights into the perspectives of experiences of children with harmful sexual behaviour in the criminal justice system that may form the basis for wider research.
3.4 Ethical considerations

The sensitive nature of the research raised a number of ethical issues which required careful planning.

3.4.1 Access to participants

A process of seeking willing consent from young people to participate in the project was devised with assistance from staff at the placement. Young people were asked if they were willing to take part by unit staff that they knew well and then again at the beginning of the interview.

Unit staff were briefed in writing about the research in advance of asking the young people to engage. The rationale behind this approach was so as to ensure that the young people did not feel obliged to take part in the interview when faced with the presence of an eager researcher.

As noted above, access to professional participants was based on their connection to the sample. Professionals were approached by the researcher and offered an opportunity to be interviewed on an anonymous basis. In some instances, colleagues were recommended instead or in addition.

3.4.2 Informed consent

It was essential to obtain informed and willing consent from the participants. Information about the project was generated and participants were informed that their identity would be protected. This was essential given the relatively specialist nature of the work and the group, a decision was made at an early stage not to describe details of the offences or other features that would lead to the identification of the young people or professionals.

In many cases, due to the age of the young people, it was also necessary to obtain the consent of parents or guardians. Again, unit staff approached the young
people's parents or guardians, including their local authority if applicable, to seek consent where required.

As part of the process informed consent was obtained from each young person to view their pre-sentence report, their asset core profiles and other relevant case papers.

The purpose of obtaining this information was in order to verify factual aspects relating to the young people's criminal justice experiences and to situate the young people's responses in the context of information gathered by professionals working with them. For instance, access to this information allowed verification as to whether a young person had correctly understood their sentence. Similarly, an independent point of reference to understand whether their perception that they had not previously been in trouble for sexualised behaviour was matched with (objective) information gathered by professionals on early instances of sexualised behaviour. Another benefit derived from considering third party information was to minimise the risk of referring to issues and that would be distressing the person during the interview. This was an important ethical consideration as many young people have suffered from neglect, abuse and bereavement and may find passing references to related topics traumatic.

Young people were asked for their consent for consideration of this information on the understanding that there would not be an in-depth analysis of it in the resulting research. The decision was also made not to discuss the information contained in these documents with the young people so as not to detract from the interview research being young person led.

The nature of the research was explained to young people along with the possibility that it would be published. All young people were asked if they would like to be kept informed of progress and whether they wished to remain contactable if possible for this purpose.
In order to ensure informed consent, the nature of the research project was explained personally to each professional prior to the interview and each professional was provided with an opportunity to consider the written transcript of their interview.

The only exception to this concerned the information gathered at the seminar where it was made clear at the beginning of the session that feedback would be incorporated into the project if appropriate.

3.4.3 Confidentiality and disclosures of harm or illegal activity

Interviews took place in a private setting with support available if requested. Careful consideration was given to whether or not interviews should be recorded and staff at the placement were consulted. It was felt that the young people would not feel at ease with their conversations being tape-recorded. Therefore detailed notes were made by hand and typed up as soon after the interview as possible. Several young people found the interview experience intense and the interviews were sometimes split over several sessions to avoid overloading.

It was explained to each young participant at the beginning of the interview that if he disclosed anything that suggested that a child, young person or vulnerable adult may be at risk of serious harm, the child protection policy of the placement would be followed and that this would become a matter for unit staff.

To avoid problems concerning data storage of anything of the factual information gathered by professionals, this information was simply viewed on site and absorbed by the researcher.

The transcripts of interview did not provide any details on them that could identify the young person but were nevertheless stored in a locked office.

Professional interviews were conducted at mutually agreed times and places.
3.4.4 Ensuring safety of researchers and participants

It was agreed that prior to interview, placement staff would undertake a risk assessment of each individual young person and inform the researcher of any precautions or actions that need to be undertaken to ensure the safety of the participant and the researcher. When the researcher was alone, she was provided with access to a cordless phone with an emergency button on it to ensure that she was safe at all times: this is standard practice for those attending young people alone at the unit. The safety of participants was in accordance with the unit's own working practices. All young people had access to support from a key worker or therapist before, during and following the interview if they wanted. Any concerns that arose as a result of the interview were discussed in a de-briefing and, if appropriate, measures could be put in place to monitor and assist the young person. This included raising issues with staff where pockets of confusion arose about the young person's legal issues, such as understanding of the notification requirements or confusion between the register and Sarah's law.

3.4.5 Mechanisms to withdraw from the research

Every participant was informed at every stage of the process of their ability to withdraw from the research at any stage and, in the case of young people, placement staff were be asked to ensure that participants continued to be aware of this and offer assistance in achieving this.

3.5 Analysis of data

Interview material was analysed using a "framework" approach (Ritchie and Spencer, 1994) and considered the context of the secondary data that had been collated and assessed. This approach has been identified as appropriate for analysing qualitative data in applied social policy research (Srivastava and Thomson, 2009). Following a process of immersion in, or 'familiarisation' with, the data, the researcher developed a 'thematic framework' reflecting the dominant themes emerging from the participants' responses. Interview transcripts were then subject to 'indexing' and 'charting' (a form of qualitative coding) to illuminate
participants’ perspectives in relation to the identified themes. As noted in the methodology, the young people’s perspectives have not been presented following the rigid structure of the questionnaires. This is because the responses to various questions and issues overlapped and provided different layers of understanding and perspectives at various points in the interview. The professionals’ perspectives have been interspersed as appropriate to illuminate or contextualise issues raised by the young people. In order to allow for better analysis and structured argument the data was presented in three chronological stages, replicating the way that the criminal justice system somewhat artificially slices young people’s lives into segments.
Chapter 4: Understanding the legal framework

The law attempts to deal with the concern that sexualised behaviour can be harmful by designating such behaviour capable of criminal sanction. The law also criminalises behaviour that might be acceptable between adults but is not acceptable between adults and children or between children. The impact of the legal framework on child perpetrators, many of whom fall between the age of criminal responsibility at ten and the age of sexual consent at sixteen, can only be understood by a thorough examination of the principles underpinning the law, the legal framework that applies and some consideration of the historical development of the law.

4.1 Role and purpose of the law in regulating behaviour

Bandalli (2000) defines the criminal law as a method of social control, prohibiting certain conduct, defining states of mind and capacities in order to secure liability. Yet, Bandalli argues, the criminal law is “only one method of social control” applied to children who are regulated by many alternative methods including family, peers and schools (2000, p.92). Bandalli argues that the negative associations of stigma and humiliation that attach to the use of the criminal law mean that it should be avoided wherever possible.

This notion of last resort has the potential to be particularly effective with young people in light of the research that children tend to naturally grow out of crime. Such evidence goes some way to support Edwin Schur’s admonition that public policy should be guided by the injunction to ‘leave the kids alone’ wherever possible ((Schur, 1973) as cited by Bateman, 2013, p.119).

As Padfield (2004, p.2), citing Ashworth, outlines, the criminal law in England and Wales is founded on a number of key principles. While the notion of ‘last resort’ features in this list, it is just one of many, including:
• The principle of welfare, upholding the common good
• The principle of prevention of harm to others
• The principle of minimal intervention: the law should not criminalise too much behaviour
• The principle of social responsibility: society requires a certain level of cooperation between citizens
• The principle of proportionate response: the response of the criminal law should be reasonably proportionate to the harm committed or threatened
• The principle of maximum certainty: people should have fair warning about the criminal law
• The principle of fair labelling: offences should be labelled so as to reflect the seriousness of the law breaking

Many of these principles cannot be straightforwardly applied to young people engaged in unlawful sexual activity where the circumstances are often disputed, and knowledge and understanding may be hazy. However, decisions to criminalise certain forms of sexual behaviour may reflect a tendency to put the principle of preventing harm above other principles.

Easton and Piper argue that developments in criminal law, especially following the sentencing framework provided in the Criminal Justice Act (CJA) 2003, have ‘reinforced the utilitarian aspect of sentencing and punishment’ (Easton and Piper, 2005, p.101).

A utilitarian approach can be loosely described as prioritising the ‘deterrence’ element of punishment. Bentham is regarded as the source of modern utilitarianism and his arguments were based on the principle of utility described by Easton and Piper as the ‘minimisation of pain and suffering and the maximisation of pleasure’ (Easton and Piper, 2005, p.104). In order to achieve the greatest happiness for the greatest number, utilitarianism may involve punishment of those whose behaviour jeopardises the happiness of the many, even though it will result in pain and suffering for the offender. An extension of this
line of reasoning concludes that punishment is justified as it is ‘good for society, sacrificing a few individuals for the greater good of others’ (Easton and Piper, 2005, p.106). However, Bentham allows room within his theory for the principle of proportionality so that the utilitarianism is not used to justify disproportionate punishment, and proportionality in sentencing is also recognised as a general principle of sentencing and protected under the Human Rights Act 1998. However, there is some room for justifying disproportionate penalties in Bentham’s theory where the positive outcome is for the good of society at large. Easton and Piper point out that this could include instances of punishing the innocent (Easton and Piper, 2005). They identify four consequences that justify punishment under a contemporary utilitarian approach: general deterrence, special deterrence, incapacitation and rehabilitation.

4.2 Role and purpose of the law in regulating children’s sexual behaviour

Each of the four consequences identified by Easton and Piper that justify punishment under a contemporary utilitarian approach can be applied to the application of the criminal law to children engaging in harmful sexual behaviour:

(i) General deterrence: it is arguable that the very existence of a robust legal framework criminalising harmful sexual behaviour could deter children from engaging in it. However, the critical questions here will be whether children have sufficient knowledge of precisely what the law prohibits for it to function effectively as a general deterrent and disseminator of information.

(ii) Special deterrence: it is clearly arguable that a child convicted of harmful sexual behaviour and punished for it is likely to be deterred from repeating the act in the future.

(iii) Incapacitation: the range of punishments available to children for harmful sexual behaviour are outlined at Chapter 4.6. They range from community sanctions to life imprisonment. Clearly, a child who
is detained or placed under robust supervision will be restricted from repeat offending for the duration of the restriction imposed.  

(iv) Rehabilitation: children convicted of harmful sexual behaviour will as a consequence come to the attention of authorities. This may increase the likelihood of professional assistance towards rehabilitation, although equally the criminal justice process may delay such steps or create problems of its own. As Muncie, (2006) argues, the role of the criminal law in rehabilitation means that “to gain access to welfare services, or perhaps more accurately be ‘targeted’ by an ‘intervention’, children and families must be seen to have ‘failed’…” (p.36). Thomas argues that ‘there is even a case for lengthening the period of registration for young offenders rather than halving it, in order to support treatment . . . ’ (Thomas 2009, p.493). The literature around the potentially negative consequences inherent in system contact (McAra and McVie, 2007; 2010) and the notion of spoiled identities outlined at Chapter 2.3 pose serious questions about the efficacy of rehabilitation in a criminal justice context.

Beyond these aims, a broader justification for the intervention of the criminal law in the regulation of sexual behaviour is the view espoused by Durkheim, that the law is to ‘reflect the moral climate already existing in society’ (Cotterrell, 1999, p.168). This would accord with judicial comment about the need to send out ‘messages’ to society about acceptable behaviour. A striking example of this approach can be seen in the judicial comments by the Lord Chief Justice in R v Blackshaw and others [2011] EWCA Crim 2312 where the Court of Appeal considered ten sentences imposed in respect of offences committed during nationwide riots in 2011. The Court of Appeal held that even though the sentences departed dramatically from the guidelines in relation to the offences when viewed in isolation, they were justified and lawful in the context of nationwide unrest. In passing judgment, Lord Justice Judge referred to “an

---

1 See 6.2 below for the number of children convicted under s5 and the estimated number of children incarcerated for it. See also 2.1 above.
overwhelming obligation on sentencing courts to do what they can to ensure the protection of the public...” through the “imposition of severe sentences, intended to provide both punishment and deterrence” and concluded that the “sentences should be designed to deter others from similar criminal activity” (paragraph 4).

In *R v G* [2009] 1 AC 92 Baroness Hale made similar observations about the social function of the law in sending out a strong message:

“[T]he message of sections 9 and 13 is that any sort of sexual activity with a child under 16 is an offence, unless in the case of a child who has reached 13 the perpetrator reasonably believed that the child was aged 16 or over. There are many good policy reasons for the law to convey that message, not only to adults but also to the children themselves.

49. S5 reinforces that message. Penetrative sex is the most serious form of sexual activity, from which children under 13 (who may well not yet have reached puberty) deserve to be protected whether they like it or not.” (paragraphs 48 and 49)

However, Durkheim does not suggest that the law shapes moral standards and argues that ‘[w]hen the law forbids acts which public opinion considers inoffensive, we are indignant with the law not with the act it punishes’ (cited in Cotterrell, 1999, p.168). A particular difficulty may arise when social realities appear to clash with stated public opinion. For instance, Durkheim uses the example of legislation that would facilitate divorce by mutual consent on the basis that it would send a negative signal about society’s willingness to defend the sanctity of marriage. In the same way, there is arguably a strong role for the law in reassuring society about what is and what is not acceptable behaviour between children, even if the practical application of the law may not always provide the most effective way of rehabilitating the children involved.

*Setting the Boundaries* (Home Office, 2000), a government paper reviewing sexual offences and a precursor to the SOA 2003, explicitly deals with the role of the law to set ‘standards of acceptable and unacceptable conduct’ and to protect
children in the ‘field of sexual relations because they are physically and emotionally dependent and not yet fully physically or psychologically mature’. Similarly, Crown Prosecution Service (CPS) guidance on child sex offences committed by children or young persons states that:

“The overriding purpose of the legislation is to protect children and it was not Parliament’s intention to punish children unnecessarily or for the criminal law to intervene where it was wholly inappropriate. Consensual sexual activity between, for example, a 14 or 15 year-old and a teenage partner would not normally require criminal proceedings in the absence of aggravating features” (CPS, 2013b).

The Constitutional Court in South Africa commenced its judgment in the Teddy Bear Clinic For Abused Children and Another v Minister of Justice and Constitutional Development and Another [2013] ZACC 35 with a note on the role of the law in protecting children:

“Children are precious members of our society and any law that affects them must have due regard to their vulnerability and their need for guidance. We have a duty to ensure that they receive the support and assistance that is necessary for their positive growth and development. Indeed, this Court has recognised that children merit special protection through legislation that guards and enforces their rights and liberties. We must be careful, however, to ensure that, in attempting to guide and protect children, our interventions do not expose them to harsh circumstances which can only have adverse effects on their development.” (paragraph 1).

The recognition by the South African constitutional court of the potential adverse effects that the imposition of the criminal law can have on children’s development is borne out to a certain extent in the literature on spoiled identities (see Chapter 2.3). However, research by Coy et al (2013) highlights the possibility that the presence of a strict legal framework regulating young people’s sexual behaviour has inhibited important research in this area. The authors comment that research
on how young people negotiate consent is still rare and, citing Thomson (2004), note that “the legal framing of an ‘age of consent’ is a form of prohibition which has, to date, precluded a positive discussion of consensual sex” (Coy et al, p.87).

However, the research with young people that does exist on role of the law in regulating their activity does suggest that young people question the authority of the law to police their decision-making (Coy et al, 2013, citing Thomson, 2004 and Smette et al, 2009).

4.3 Criminal responsibility and consent

The particular role of the law in protecting children must also be considered in the context of the different approach that the law applies to children as distinct from adults. This phenomenon of a distinct youth justice, referred to briefly at Chapter 2.2 and outlined below at Chapter 4.4, is framed by the rigid or bright lines that mark out certain actions as permissible or punishable by virtue of a person’s age.

A particular feature of English law is the different ages which appear to apply in different legal contexts, presenting an impression of inconsistency or fickleness within the legal approach. For instance, while children are legally defined by the Children Act (CA) 1989 s105(1) as those under the age of 18, criminal responsibility in England and Wales begins at the age of ten (Children and Young Persons Act (CYPA) 1933 s50, as amended by CYPA 1963 s16(1)), which is the lowest in Europe and a child must wait for a further six years before being able to engage in sexual activity lawfully (SOA 2003 ss9 and 13) and a further eight years until they can marry without parental consent (Marriage Act 1949 ss2 and 3) or vote until they are 18 (Janes, 2009).

A review by the Electoral Commission in 2003 concluded that the voting age should remain at 18 based predominantly on perceptions of maturity and readiness for decision-making (Janes 2009). If the age of criminal responsibility were to be determined by perceptions of children’s maturity and readiness for decision-
making, the debate as to what age it should fall at might be simpler to grapple with. However, as Church et al (2013) observe, the age of criminal responsibility is “one of the most complex, contested and controversial questions confronting modern juvenile/youth justice systems” (p.99). While the authors define the minimum age of criminal responsibility as “the age at which a child is deemed to be sufficiently ‘mature’ to be held responsible before the substantive criminal law” (p.99), since the abolition of doli incapax (meaning ‘incapable of crime’) and in light of the presence of strict liability offences affecting children that take no account of their frame of mind (see Chapter 4.5.2), it appears problematic to accept this definition. Unless a statute explicitly precludes a child from its scope, any law passed applies to a child over the age of criminal responsibility.

In fact, there is no evidence in the extensive literature on this subject that the designation of the age of ten for criminal responsibility followed such a rationale. As noted in ‘Rules of Engagement’ (Centre for Social Justice, 2012), it appeared that the decision to increase the age of criminal responsibility in 1963 from eight to ten was reached on “a somewhat arbitrary basis” (2012, p.201). This view is corroborated by the fact that the CYP A 1969 did contain provision to raise the age of criminal responsibility to 14. However, this was never implemented and the provision was repealed in the CJA 1991. Thus, it appears decisions about the age of criminal responsibility are more about politics than scientific evidence in relation to maturity. However, there is a growing body of evidence that maturity and readiness for decision making are qualities that develop substantially after the age of criminal responsibility (Delmarge, 2013).

Conversely, as the legal history of the age for sexual consent outlined at Chapter 4.8 reveals, anxious scrutiny has been lavished on determining the age at which it should be considered appropriate to engage in sexual activity. Similarly, contemporary debates about the age of consent appear to engage in thoughtful discussion about the realities of young people’s lives and their readiness for sexual activity (see, for instance, BBC, 2013).
A comparison with other countries reveals a very different approach to the age of criminal responsibility and consent. A review of the ages of consent in European countries that have such an age, reveal that nowhere is this age set lower than 12 years (Graupner, 2002).

A brief survey of international ages of criminal responsibility compared to ages of consent reveal that England is the one of the only countries in Europe that has an age of consent that is significantly higher than the age of criminal responsibility (Hazel, 2008; Howard League for Penal Reform, 2008; Bunting, 2013; Graupner, 2002). A child becomes criminally responsible at the age of ten but must wait for some 6 years before being able to engage in sexual activity without fear of criminal sanction. The closest position to this is Ireland where the age of consent remains 17 and the age of responsibility is 12, and The Netherlands, where the age of consent is 16 and the age of criminal responsibility is 12. Elsewhere, the gap between criminal responsibility and the age of consent narrows, with countries such as France having a two year difference between criminal responsibility and the age of consent. In some jurisdictions the two relevant ages are aligned. In other countries, such as Luxembourg and Portugal, one is able to consent to sexual activity before becoming criminally responsible.
<table>
<thead>
<tr>
<th>Country</th>
<th>Age of Criminal Responsibility</th>
<th>Age of Consent</th>
</tr>
</thead>
<tbody>
<tr>
<td>England and Wales</td>
<td>10</td>
<td>16</td>
</tr>
<tr>
<td>France</td>
<td>13</td>
<td>15</td>
</tr>
<tr>
<td>Germany</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>18</td>
<td>16</td>
</tr>
<tr>
<td>Portugal</td>
<td>16</td>
<td>14</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>12</td>
<td>16</td>
</tr>
<tr>
<td>Ireland</td>
<td>12</td>
<td>17</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>14</td>
<td>14</td>
</tr>
</tbody>
</table>


The contrast between the age of consent and criminal responsibility is England and Wales suggests that the system lacks coherence and runs contrary to the requirement of international law to treat children differently from adults (Bateman, 2012).

4.4 A distinct youth justice system

The development of a distinct youth justice system both in international law and in England and Wales with a “distance, conceptually and spatially from the adult criminal justice system” is well recognised (Easton and Piper, 2012, p.226).

Citing Professor Radzinowicz and Professor Hood in his lecture ‘Justice for the Young’, 1997, Lord Bingham noted that there were no differentiations in the trial process or punishments that could be imposed based on the age of the offender until well into the nineteenth century:
"[B]y the beginning of this century it was accepted that young offenders formed a distinct category of offenders from whom special arrangements were necessary. The Children Act 1908 was a major reforming measure which reflected this change of attitude to young offenders." (p.3)

The English courts have repeatedly acknowledged that young people should be treated differently from adults (see for example, R v. Lang and 12 others [2006] 2 All ER 410 and R (on the application of Smith) v Secretary of State for the Home Department [2005] UKHL 51 at paragraph 23).

As recognised by Lord Justice Thomas in his lecture to the Young Defendants' conference, 'like much else in the law, there has been no straight line logical development' (2009, p.3). For instance, although the legal definition of a child was clarified as 18 by the Children Act 1989, it was not until the passage of the CJA 1991 that many of dividing lines between adult and youth provisions in the criminal law were re-drawn at 18.

While a number of anomalies remained (and some still remain), it is arguable that legislation, policy and practice have been adapted over time towards achieving a coherent youth justice system where those under the age of eighteen are treated differently from adults. Where anomalies have continued, attempts to iron them out have been largely successful, as demonstrated in the recent case of R on the application of C v Secretary of State for the Home Department [2013] EWHC 982 (Admin) where the Court accepted that seventeen year olds should be entitled to appropriate adults at the police station along with other children. In passing judgment the Court categorically stated "since the Children Act 1908, the criminal justice system has acknowledged that young offenders should receive different treatment from adults" (paragraph 31).

The rationale behind a separate system for children has varied over time and jurisdiction. However, in the case of England and Wales it is possible to discern
trends in youth justice, influenced by notions of ‘welfare’ and ‘justice’ (Muncie, 2009; Easton and Piper, 2012).

According to Muncie (2009) citing Stewart and Tutt (1987), the ‘welfare approach’ is based on assumptions including the notion that delinquency is a product of neglect and unmet needs that require rehabilitation and that young people who offend and other children in need share many characteristics and can effectively be dealt with through a single system.

According to Easton and Piper the welfare approach to justice is ‘associated with interventionist measures of care, protection and rehabilitation which have drawn on knowledge from medicine and criminology since the early twentieth century’ (2005, p.194). Predicated on the assumption that “all interventions should be directed to meeting the needs of young people, rather than responding to their deeds” (Muncie, 2009, p.282), some criticise the welfare approach as ignoring children’s rights and capacity for autonomous action.

According to Muncie (2009) citing Stewart and Tutt (1987), the ‘justice approach’ is based on assumptions including the notion that delinquency is a matter of choice and that people should be accountable for their actions. The punishment should fit the crime and there should be a strong focus on due process and the rule of law. The right of a child to participate effectively is guaranteed by Article 6 of the European Convention on Human Rights, just as it is for an adult. The European Court of Human Rights has set out the full extent of what this means:

“[E]ffective participation in this context presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed.” (SC v UK, 2005 40 EHRR 10, paragraph 29)

In that case the particular disadvantages of the young defendant meant that he could not participate effectively. The Court concluded at paragraph 35 that it was essential SC be tried in a
“[S]pecialist tribunal which is able to give full consideration to and make proper allowance for the handicaps under which he labours, and adapt its procedure accordingly”.

Even if the justice model could be adapted to achieve procedural fairness, it has been criticised as unable to deliver ‘substantive justice’ as it fails to take into account the social disadvantages and development of children (Easton and Piper, 2012, citing Scraton and Haydon 2002, p.246).

The welfare model of justice should not be confused with the application by the Courts of the welfare principle, recognised by the Courts in R (F and Thompson) v Secretary of State for the Home Department [2008] EWHC 3170:

“[T]he courts have consistently approached consideration of measures which are to be applied to children on the basis that the immaturity of a child offender must be taken into consideration as being of prime importance.” (paragraph 19)

A similar approach was advocated by Mr Justice Collins in R(M) v the Chief Magistrate [2010] EWHC 433 (Admin):

"The welfare of the child is an important and indeed fundamental consideration in determining how a child who has committed offences should be dealt with” (paragraph 7).

The development of the application of the welfare principle in decisions affecting children across all areas of law should not be confused with the nature of the youth justice system itself. In fact, the statutory purpose of the youth justice system, as set out at s37 of the Crime and Disorder Act 1998, simply states that its purpose is to prevent reoffending – an aim that can arguably accommodate either welfare or a justice approach.

Despite powerful comments about the application of the best interests and welfare principles in the higher courts, there is evidence that as a matter of policy and
practice, youth justice has taken a punitive turn (Muncie and Goldson, 2006). Muncie and Goldson describe how there existed a remarkable consensus internationally that “care and control of young offenders was thought best placed in the hands of social service agencies and professionals” until at least the 1970s. However, they comment that, by 1980s, “this consensus began to unravel” as the emphasis shifted from care to control (Muncie and Goldson, 2006, p.197).

It is within this context that the specific legal framework that deals with sexual offending by children must be considered.

4.5 The law on sexual offending by children

4.5.1 What sexual behaviour amounts to a criminal offence?

The definitions of sexual offending as a matter of law and sexually abusive behaviour generally differ. Ryan and Lane (1997) as cited in Whittle et al (2006, p.9) a joint report commissioned by the Department of Health and the Home Office, have offered an explanation of sexually abusive behaviour, defining it as:

“any sexual interaction with person(s) of any age that is perpetrated (1) against the victim’s will, (2) without consent, or (3) in an aggressive, exploitative, manipulative or threatening manner.”

By contrast, sexual offending that transgresses the law will amount to any conduct that falls within any of the numerous sexual offences defined by law conducted by a person over the age of ten.

4.5.2 Strict liability and mens rea

Most criminal offences require the accused to intend to commit the offence. Thus the need for a person to have the mens rea to commit rape means that the accused must have intended to have sexual intercourse either in the absence of consent or in the absence of a reasonable belief in consent.
However, there are a number of strict liability offences, such as rape of a child under 13 (s5, SOA 2003). In the case of this offence, the usual abusive features of rape such as absence of consent or aggression need not be present for the offence to be committed: the action will be deemed ‘exploitative’ by virtue of the child’s age, regardless of whether or not the offender knew that the child was under 13 and regardless of the age of the offender.

4.5.3 The statutory framework: offences

The SOA 2003 was an attempt to codify the law on sexual offences. It repealed most of the relevant previous acts and created a number of new offences, as well as a new scheme to deal with children who commit sexual offences.

The SOA 2003 finds its origin in a government review of sexual offences (Home Office, 2000). The review was in part a response to the continuing debate about equalising the age of consent for homosexuals (Waites, 2005) and also in recognition of the pressing need to reform the law relating to sexual offences. The SOA 2003 was therefore designed to consolidate sexual offences in England and Wales and to iron out absurd inconsistencies in the pre-existing legislation. For instance, an offence of unlawful intercourse with a girl under 16 carried a maximum penalty of two years whereas an offence of consensual indecent assault, such as “petting” a 16 year old, carried a maximum penalty of ten years.

In the introduction to the green paper, Setting the Boundaries (Home Office, 2000) the then Minister, Jack Straw explained the purpose of the sex offences review:

‘to consider the existing law on sex offences, and to make recommendations for clear and coherent offences that protect individuals, especially children and the more vulnerable, from abuse and exploitation, and enable abusers to be appropriately punished.’ (Home Office, 2000, p.1).
The emphasis on specific protection for vulnerable children is a theme that continues throughout the consultation documentation and into the final Act with the specific crimes against children appearing prominently in the new Act. The Act included for the first time a statutory definition of consent, as well as new offences concerning grooming and internet offences, trafficking and voyeurism and statutory rape of a child under 13. Many of the offences would technically criminalise consensual activity between children. Professor Spencer has commented that other jurisdictions have avoided the ‘undesirable results this Act produces’ by citing the Criminal Code enacted in France in 1994 which contains an offence of consensual sexual behaviour with persons who are under the age of 15 (Spencer, 2004, p.355). He also notes that, in contrast with the earlier law, it can only be committed by those aged 18 or over.

Although the review committee’s overriding concern was to protect children from adult sexual abuse, some consideration was given to sexual activity between children. In fact the green paper made a recommendation that an offence of sexual activity between minors be introduced and used for cases where children engaged in sexual intercourse (Home Office, 2000). It was envisaged that such an offence would be able to deal sensitively and appropriately with consensual sex between minors with an emphasis on diversion and alternative disposals. Eventually, this recommendation materialised in the form of s13 of the Act which allows certain offences by adults committed with children to apply where the defendant is a child. These offences are set out at ss9 to 12 of the Act and include:

- sexual activity with a child,
- penetration of a child
- causing or inciting a child to engage in sexual activity,
- engaging in sexual activity in the presence of a child and
- causing a child to watch a sexual act.
However, s13 of the Act provides a special framework to enable children convicted under ss9 to 12 to be charged under s13 and treated in a more lenient way by capping the maximum sentence available to five years:

"Section 13: Child sex offences committed by children or young persons
(1) A person under 18 commits an offence if he does anything which would be an offence under any of sections 9 to 12 if he were aged 18.
(2) A person guilty of an offence under this section is liable—
(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years."

While the range of punishments permitted for child defendants under s13 is significantly less than those available to adults, there does not appear to be any emphasis on diversion and alternative disposals in the legislation itself. Further, there is nothing to stop children being prosecuted under ordinary provisions for serious sexual offences, including rape under s1 or strict liability or statutory rape of a child under 13 under s5. As the analysis of data at Chapter 2.4.2 shows, children accounted for around 20% of pre and post court disposals for this offence in 2011. The case of R v G, analysed below, highlights some of the concerns connected to this offence.

However, the broad construction of s9 to include almost all forms of sexual activity means that any offence could be prosecuted under s13.

4.5.4 When does the law bite? The decision to prosecute

It will be a matter for the prosecution to decide the appropriate section for charging. This gives the prosecutor deciding the appropriate charge an element of control as to the parameters of the sentence.

In R v G it was argued, both in the House of Lords and the European Court, that the Crown acted unduly harshly by prosecuting G under s5 rather than under s 13,
given the limited scope for punishment under s13. The Lords could not agree on the answer. However, Lord Hope, concluded that the existence of s13 suggested:

“that a child under 18 ought not to be prosecuted under section 5 for performing a sexual act with a child under 13 of the kind to which that section applies unless the circumstances are such as to indicate that it plainly was an offence of such gravity that prosecution under section 13 would not be appropriate” (paragraph 23).

However, the majority of the Lords found nothing wrong in the prosecutor’s decision to charge G under the more serious s5. The European Court of Human Rights agreed (G v UK [2011] ECHR 1308).

Thus the SOA 2003 leaves enormous scope for prosecutorial discretion, both in whether to prosecute at all and in respect of which section of the Act to prosecute under. The central role of prosecutorial discretion was envisaged by the Government as a sufficient safeguard to prevent injustice where children engage in truly ‘mutually agreed’ sexual intercourse. CPS guidance refers to the sentiments expressed by the Lord Chancellor during the passage of the Act that its ‘overriding concern is to protect children, not to punish them unnecessarily.’

CPS guidance now requires a special approach to the consideration of children accused of harmful sexual behaviour:

“Youth Offender Specialists should review all files involving youth offenders and take all major decisions in relation to those cases, in particular, whether or not a prosecution should take place...[It is] essential that before any decision is made on whether or not to prosecute, prosecutors have as much information as possible from sources, such as the police, YOTs, and any professionals assisting those agencies about the defendant's home circumstances and the circumstances surrounding the alleged offence, as well as any information known about the victim. Failure to do so may lead to judicial review of any decision.” (CPS, 2013b)
The guidance sets out the factors that may be taken into account when deciding whether to prosecute a child. These include

- The age and understanding of the offender. This may include whether the offender has been subjected to any exploitation, coercion, threat, deception, grooming or manipulation by another which has lead him or her to commit the offence;
- The relevant ages of the parties, i.e. the same or no significant disparity in age;
- Whether the complainant entered into sexual activity willingly, i.e. did the complainant understand the nature of his or her actions and that (s)he was able to communicate his or her willingness freely;
- Parity between the parties in regard to sexual, physical, emotional and educational development;
- The relationship between the parties, its nature and duration and whether this represents a genuine transitory phase of adolescent development;
- Whether there is any element of exploitation, coercion, threat, deception, grooming or manipulation in the relationship;
- The nature of the activity e.g. penetrative or non-penetrative activity;
- What is in the best interests and welfare of the complainant; and
- What is in the best interests and welfare of the defendant.

In *R (E) v DPP* [2011] EWHC 1465 (Admin), the Court considered the lawfulness of a decision to prosecute a 14-year-old girl (E) her alleged sexual abuse of her two younger sisters. The challenge was brought by all three siblings on the basis that the CPS had failed to heed the advice of a multi-agency strategy group to avoid prosecution. In addition, E had also been a victim of adult grooming. The Court held that the CPS guidance failed to address and give special recognition to the special status of a child who was both defendant and victim. The case illustrates the dangers of broad laws reliant on prosecutorial decision-making to achieve justice.
4.5.5 Alternatives to prosecution: diversion and welfare interventions

In the E case, diversion was ultimately pursued, albeit after the Court process was initiated. Lovell (2002) found the decision about whether a child or young person is directed towards the child protection or criminal justice system was highly variable, with children of similar sexual behaviour profiles being as likely to go down one pathway as the other.

The consequences are vastly different: a child or young person in the criminal justice system may be sentenced to a term of imprisonment, which may have an enormous impact on this child’s development in general, depending on where the child is placed and what interventions, if any, will be made available. A child dealt with in the criminal justice system may be subject to notification requirements (sometimes indefinitely – see below). A child who is diverted will not be exposed to the criminal justice system and may be able to undertake community based interventions. However, the facts that gave rise to the concern will be sufficient to trigger a child in need assessment or child protection procedures which may in turn lead to further services.

4.6 Punishments

Where a child is not diverted from the criminal justice system and faces either a pre-court disposal or a sentence following conviction at court, there are a large range options available. These can include a range of interventions offered by the YOT and sentences imposed by the court.

4.6.1 Pre-court dispositions

Pre-court disposals will be at the discretion of the CPS. Ordinary cautions are not available for young people under the age of 18 (Crime and Disorder Act (CDA) 1998 (s65(8))).

However, a youth conditional caution was introduced by s48 the Criminal Justice and Immigration Act (CJIA) 2008, initially under a pilot scheme for 16 and 17
year olds. The scheme was extended by ss136 to 138 of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012. It mirrors the adult conditional caution and allows a young person who would otherwise face prosecution an opportunity to receive a caution if they comply with certain conditions over a period of time. The conditions may be approved by the police and may include a financial penalty and/or a requirement that a young person attends a specified place at specified times for a maximum of 20 hours. If the young person does not satisfy the conditions within a specified period, he or she can be prosecuted for the original offence.

LASPO 2012 also introduced youth cautions (s135) where there is sufficient evidence to charge the young person with an offence but the child or young person admits the offence and the constable does not consider they should be prosecuted or given a youth conditional caution.

The youth caution replaced the reprimands and warnings, sometimes known as the ‘Final Warning Scheme’. A reprimand was a formal verbal warning given by a police officer to a young person who admitted guilt of a minor first offence. Sometimes the young person would be referred to the YOT to take part in a voluntary programme to help them address their offending behaviour. A reprimand could only be administered if the young person had not already received one and where the police were satisfied that although there would be a realistic prospect of conviction, it is not in the public interest to prosecute.

A final warning was a formal verbal warning given by a police officer to a young person who admitted guilt for a first or second offence. The same test applied as for a reprimand, although the circumstances in which it could be administered were more restricted. A young person with a final warning would be required to undertake a programme of activities to deal with their offending behaviour.

As confirmed in the case of R(T) v Chief Constable Of Greater Manchester and others [2013] EWCA Civ 25, simple cautions, warnings and reprimands are
deemed to be spent as soon as they are administered (paragraph 1 of Schedule 2 of the Rehabilitation of Offenders Act (ROA) 1974). However, these pre-court disposals represent a formal admission of guilt which remain on a person’s record for the purposes of child and public protection investigations and, in certain circumstances, must be disclosed to employers.

4.6.2 Court disposals

The law is administered by judges who are trained as lawyers engaged in the business of defensible decision-making according to the strict letter of the law. Even where the longer term rehabilitation of a young person and their consequent risk may appear to be better served by a community sentence, the law, as prescribed by developing case law inevitably informed by public opinion and policy, simply may not allow for it. The framework that guides judges in their sentencing decisions is derived from sources of law and judicial guidance.

Law that applies to adults also applies to children unless statute explicitly prohibits this. Therefore the principles of minimum sanction and that custody should be a last resort applies equally to children and adults (s152 of CJA 2003). However, in the case of children, international law underlines the importance of custody as both a last resort and for the shortest appropriate period of time (Article 37, United Nations Convention on the Rights of the Child).

The purposes of sentencing for adults are set out at s142 of the CJA 2013 and include principles of both retribution and rehabilitation. However, they do not apply to children. S142A, which was designed to explicitly temper these aims with the welfare principle in respect of children, has never been brought into force. However, s143, which is essentially retributive in nature, applies equally to adults and children:

“The Court ‘must consider the offender’s culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have caused.’”
In addition, s37 of the CDA 1998, which provides that the purpose of the criminal justice system for young people is to prevent reoffending, applies to judges sentencing children. How that is to be achieved through sentencing is a judicial matter of discretion. The House of Lords has identified that a key aim 'of any sentence imposed should be to promote the process of maturation, the development of a sense of responsibility, and the growth of a healthy adult personality and identity' (R v Secretary of State, Ex parte Maria Smith [2005] UKHL 51, paragraph 25).

This aim is consistent with s44(1) of the CYPA 1933 (the ‘welfare principle’), which must also be applied in the sentencing of children:

‘(1) Every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.’

Sentencing Guidelines Council’s Guideline, *Overarching Principles: Sentencing Youths* (2009) emphasises the need for judges to apply the ‘welfare principle’ in the sentencing of children and provides a comprehensive overview of the special considerations that apply for children. However, as they form a distinct piece of guidance, there is a real risk that judges will sentence young people convicted of sexual offences with reference in the first instance to the guidance pertaining to sexual offences and then moderate the sentences by considering the *Overarching Principles*. The consultation paper for a new sexual offences guideline (Sentencing Guidelines Council, 2013) purposefully refrained from considering children in anticipation of a revised overarching guideline for youths. However, this risks an overly mechanistic approach of the kind explicitly avoided by the Lord Chief Justice in resetting the minimum term for the two children convicted of killing Jamie Bulger (*Re Thompson and Venables (Tariff recommendations)* [2001] 1 Cr App Rep 40). In that case, Lord Woolf substantially reduced the
minimum terms in view of the fact that both boys were on the cusp of adulthood which would have in turn resulted in a transfer to the ‘corrosive atmosphere’ of adult prison and ‘undo’ much of the good work they had achieved.

4.6.2.1 Post court community disposals
The Youth Rehabilitation Order (YRO)

The YRO is a generic community order that replaced most previous community sentences. The sentence provides a ‘menu’ of requirements intended to allow a more individualised approach to sentencing. The following requirements can be attached to a YRO:

- activity requirement
- supervision requirement
- unpaid work requirement (16/17 year olds)
- programme requirement
- attendance centre requirement
- prohibited activity requirement
- curfew requirement
- exclusion requirement
- residence requirement (16/17 year olds)
- local authority residence requirement
- mental health treatment requirement
- drug treatment requirement
- drug testing requirement (14 years and over)
- intoxicating substance requirement
- education requirement
- electronic monitoring requirement

Extended activity requirements can include either intensive supervision and surveillance (ISSP) or intensive fostering, where the offences are imprisonable and so serious that if the extended activity requirements were not available, a sentence of custody would be appropriate. For under 15 year olds, the young person must also be a persistent offender.
There are no restrictions on the number of times a young person can be sentenced to a YRO. Courts would be expected to use the YRO on multiple occasions, adapting the menu as appropriate to deal with the offending behaviour. The legislation also contains provision for breach of a YRO. A warning is required if the supervising officer finds there is a failure to comply with a YRO without reasonable excuse. If following a further second warning, within the 12 month ‘warned period,’ there is a third failure to comply without reasonable excuse, the officer must refer the case to court for breach proceedings. YOTs have additional discretion in exceptional circumstances following a third failure to comply. The officer also has the discretion to refer the case to court at an earlier warning stage.

The YRO replaced the Supervision Order, which was essentially the same in nature and allowed for a structured package of intervention in the community for up to three years.

**Referral Order**

A young person who is given a Referral Order is required to attend a youth offender panel, which is made up of two volunteers from the local community and panel adviser from a YOT. The panel, with the young person, their parents/carers and the victim (where appropriate), agree a contract lasting between three and twelve months. The aim of the contract is to repair the harm caused by the offence and address the causes of the offending behaviour. The conviction is ‘spent’ once the contract has been successfully completed.

The combined effect of CJIA 2008 and LASPO 2012 was to extend the circumstances in which a court may make a referral order. A referral order is now available at any point where there is a guilty plea. However, it should be remembered that a referral order is not strictly speaking a community sentence and can be imposed for minor matters.

**Reparation Order**
Reparation Orders require the young person to repair the harm caused by their offence either directly to the victim (this can involve victim/offender mediation if both parties agree) or indirectly to the community. Examples of this might be cleaning up graffiti or undertaking community work. The order is overseen by the YOT.

**Fine**

A young person can be ordered to pay a fine as punishment. The size of a fine reflects the offence committed and the offender's financial circumstances. For offences dealt with in the Youth Court there is a maximum fine for people under 18. In the case of a young person under 16, the court is required to order the parent or guardian to pay, whereas the court may require a child aged 16 or 17 to pay.

Whereas adults can often be offered a short term of imprisonment instead of the fine, this option is not available for anyone under 18. Under the ROA 1974, a fine following conviction will mean that the conviction is not 'spent' for two and a half years after the date of conviction.

**Compensation Orders**

A court may make a compensation order requiring the offender to pay compensation for any personal injury or damage caused, or in respect of funeral or bereavement expenses relating to the offence (Powers of Criminal Courts (Sentencing) Act (PCC(S)A) 2000, s130(1)). In the case of a young person under 16, the court is required to order the parent or guardian to pay, whereas the court may require a child aged 16 or 17 to pay.

**Conditional Discharge**

A young person receiving a Conditional Discharge receives no immediate punishment. A period of between six months and three years is set and, as long as the young person does not commit a further offence during this period, no
punishment will be imposed. If the young person commits another offence during this period, the Court can reconsider the sentence.

Under the CDA 1998, courts can only use this sentence in exceptional circumstances.

**Absolute Discharge**

A young person is given an Absolute Discharge when they admit guilt or are found guilty, but no further action is taken against them. An absolute discharge is one of the only disposals that will mean that a young person convicted of a sexual offence will not have to become a registered sex offender.

**Deferred Sentence**

A court may defer sentence to enable the court in determining the sentence to consider the offender’s behaviour since conviction and any change in circumstances PCC(S)A 2000 s1(1) as amended by CJA 2003, s278 and schedule 23). The options available to a court in deferring sentence were substantially changed by the CJA 2003, to allow the court to outline requirements to be complied with and to appoint a supervisor to monitor compliance. A court can only defer sentence if the defendant consents and undertakes to comply with any requirements imposed by the Court and the Court believes that it is in the interests of justice to impose this power. The Court should set out the sentence it would have imposed if it had not deferred the sentence so that the young person has an understanding of the consequences of breaching the sentence.

It is generally considered that deferred sentences should be used in limited circumstances given the range of alternative community sentences available. However, as the suspended sentence is not available to children, it is arguable that deferred sentences should be used more frequently in the case of children. The deferral may last for up to six months and include a residence requirement. A deferred sentence may provide the Court with an opportunity to see if a young person will engage with therapeutic interventions in the community before
4.6.2.2 Custodial options

The case of Attorney General's Reference (No.29 of 2008) illustrates the Courts' emphasis on custodial sentences, albeit in relation to a young adult: a 19 year old, with no previous convictions was convicted of a range of serious sexual offences against an 11 year old child and sentenced to a three year community sentence with supervision. The judge, in setting the community sentence had taken into account the fact that the defendant's childhood had been troubled, that he had been assessed as requiring a statement of special educational needs (SEN) by the local education authority when he was eight, had low intelligence, was immature and was a loner. The judge also relied on the consensual nature of the contact.

The sentence was appealed to the Court of Appeal and was replaced with a two year prison sentence on the basis that the law existed to protect children from adults with unacceptable sexual intentions. The court found that even despite powerful mitigation, a non-custodial sentence would not vindicate the essential principle that children need to be protected and held that a non-custodial sentence would be suitable are 'vanishingly rare'.

The law governing detention for children is complex and has changed frequently over the last decade (Nacro, 2002; Howard League for Penal Reform, 2008 and 2010).

Detention and Training Orders (DTO)

The DTO, introduced by the PCC(S)A 2000 enables a child to receive a sentence of between 4 and 24 months, half of which is served in a custodial establishment, with the other half to be served in the community. There is a presumption of early release of up to one month for most trainees serving sentences of 8, 10 or 12 month sentences and of up to two months for trainees serving sentences of 18 months or more. However, children who are convicted of sexual offences will not
enjoy a presumption in favour of early release, although they will remain eligible for consideration (Home Office, 2003).

**Fixed term sentences for ‘grave crimes’ – standard and extended**

For those sentenced under the grave crimes procedure a determinate sentence under s91 of the PCC(S)A 2000 is available, which will mean that the child is released at the half way point, unless the sentence is an extended sentence over a certain length imposed after December 2012. Children convicted of sexual offences are excluded from consideration for early release on Home Detention Curfew. This arguably flies in the face of logic as a young person whose offence is considered sufficiently serious to justify a s91 sentence may be exactly the sort of person who would benefit from graduated, risk assessed release into the community under electronic tagging. New extended sentences introduced by LASPO 2012 are available under this provision where the seriousness of the offence is considered to warrant an extended licence period. The release provisions for extended sentences are complex and may attract release at the discretion of the parole board prior to automatic release in certain circumstances.

**Life sentences: discretionary and mandatory**

Since the implementation of LASPO 2012, the only indeterminate sentences available for children are the discretionary life sentence under s90 of the PCC(S)A 2000 and the mandatory life sentence which only applies to children convicted of murder. The discretionary life sentence can be imposed for serious sexual offences and the test that the judge applies concerns the seriousness of the offence, the risk presented by the individual and whether or not it is possible to foresee when the danger might subside. A person can only be released from custody at the discretion of the parole board once the minimum term has been served and will remain on licence forever. At a parole board review, the board can either direct release or decide that the young person should remain in closed conditions. It can also recommend that the Ministry of Justice transfer the young person to open conditions. If the parole board does not release the young person at the first review, it will review the application periodically.
Public protection sentences

Until the implementation of LASPO 2012, indeterminate and extended sentences for public protection were available under ss226 and 228 of the CJA 2003 respectively where a young person was considered dangerous under s229 of the CJA 2003.

The indeterminate sentence for public protection operated in the same way as the discretionary life sentence, except that there will be an opportunity to apply for the licence to be cancelled ten years after release. Following the implementation of the CJIA 2008, indeterminate detention for public protection was only available if the offence merited a notional determinate sentence of at least four years, equating to a minimum custodial period of two years.

The extended sentence for public protection operated in a similar way to other extended sentences. Those serving the extended sentence will be eligible for parole at the half way point but automatically released at the end of their custodial period if they were sentenced before 14th July 2008. Those sentenced to the extended sentence on or after 14th July 2008 are automatically released half way through the custodial period. Following the implementation of the CJIA 2008, extended sentences for public protection were only available if the offence merited a notional determinate sentence of at least four years.

4.7 Managing risk in the community

There are a large number of mechanisms that can be used to ‘manage the risk’ posed by people who have displayed harmful sexual behaviour. These mechanisms are not restricted to people convicted for sexual offences. Some can only bite following an application to court, others are applied as an automatic consequence of the sentence and others may simply be applied administratively at the behest of professionals.

---

2 See s25 Criminal Justice And Immigration Act 2008
4.7.1 Sexual offences prevention orders (SOPO) and foreign travel orders

S 104 of the SOA 2003 grants power to a magistrates' court to make a SOPO in relation to a qualifying offender who has acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made. Those subject to notification requirements are qualifying offenders.

S 114 of the SOA 2003 grants power to a magistrates' court to impose a foreign travel order in respect of a qualifying offender where his behaviour makes it necessary to make such an order for the purpose of protecting children generally or any child from serious sexual harm. Such an order prevents the offender from travelling to the countries specified, which may be all countries, outside the United Kingdom.

New proposals were announced in October 2012 as part of the Antisocial Behaviour, Crime and Policing Bill to make it easier to restrict the activities of anyone who poses any risk of sexual harm to children and adults.

4.7.2 Multi-agency public protection arrangements (MAPPA)

S 325 of the CJA 2003 requires statutory agencies in each area to establish arrangements for the purpose of assessing and managing the risks posed in their area by relevant sexual and violent offenders. These duties apply to the police, the probation service, local authorities and health services. Registered sex offenders fall under the MAPPA requirements. S 327A of the same Act, as inserted by s 140(1) of the CJIA 2008, requires the responsible authority for each area, in the course of discharging its functions under s 325, to consider whether to disclose information in its possession about the relevant previous convictions of any child sex offender managed by it and goes on to make detailed provision for circumstances in which there is a presumption that this should be done.
4.7.3 Sex offender registration (notification requirements)

Hargreaves and Francis (2013) summarise the use of what they term ‘sex offender registration and notification (SORN)’, now common throughout the western world as a means of keeping track of recently released or sentenced sex offenders. The UK equivalent was largely adapted from the US system following an in-depth analysis of commissioned by the Home Office (Hebenton and Thomas, 1997). Unlike the arrangements in the US where registration usually involves publication of a sex offender’s details, there is no public access to the register, which is designed to enable the police to locate those with a history of harmful sexual behaviour resulting in a caution or conviction (Janes, 2011). However, in the case of R (F (A Child) and another) v Secretary of State for the Home Department [2010] 2 WLR 992, the F case, the Supreme Court accepted that the notification requirements carry a real risk of third party disclosure. The requirements mainly concern duties to notify the police of certain information at certain times. However, they are so complex that in R (on the application of JF and Thompson) v. SSHD [2009] EWCA Civ 792, the “JF” case, Lord Justice Hooper considered that an ordinary person would require legal advice simply to understand their obligations (Hearn, 2009).

The notification requirements in the UK were introduced by the SOA 1997 and have been subsequently amended to form part of the Violent and Sexual Offender register (ViSOR). The length of time that a person is required to notify for is purely determined by the offence and the disposal (see s82(2) SOA 2003; Nacro, 2004). The requirements do not relate to any assessment of risk posed by an individual and there is no judicial discretion to disapply them (see R v Longworth [2006] 1 WLR 313). Those under 18 at the time of conviction are required to register for half the registration time that adults are required to register for. However, children are liable to notification for life if they are sentenced to 30 months or more.

The imposition of indefinite registration on children was debated in Parliament during the passage of the SOA 1997 and an amendment seeking to provide for a
review mechanism was resisted on the basis that “in convicting an under-16 of such an offence, the court will already have considered whether the child appreciated that the action was wrong” (Thomas, 2009, p.259; House of Commons, 1997, col. 238). Although since that time the concept of doli incapax has been abolished and strict liability sexual offences have been introduced that may apply to very young children, there is still no established review mechanism to enable most offenders to be removed from the register. However, lifelong liability to sex offender registration without any mechanism for review was declared unlawful by the Supreme Court the F case in April 2010 and a mechanism for review was introduced in August 2012 by the SOA 2003 (Remedial) Order 2012. It allows for adults to apply to the police to be removed from the register after fifteen years following release from prison and for children to apply after eight years. While disclosure forms no part of the notification requirements, a scheme known as ‘Sarah’s Law’ has been rolled out, with the aim of “giving parents, carers and guardians a more formal mechanism for requesting information about people that are involved in their family life, specifically if they are concerned that a person is a child sexual offender” (Home Office, 2008, p.2). Children with harmful sexual behaviour are subject to the scheme. The lawful authority for disclosure under the scheme is the MAPPA provisions described above.

4.7.4 Schedule 1 or ‘presenting a risk to children’
The term ‘schedule one offender’ refers to schedule one of the CYPA 1933. The Act was intended to protect children from ‘cruelty and exposure to moral and physical danger’ (YJB, 2006). The schedule is simply a list of offences, since updated by amending acts. These offences, mainly consisting of sexual and violent offences, are considered sufficiently serious to trigger a special status upon the offender where the victim is a child.

Arguably, schedule one status has no statutory force since the Act makes no explicit reference to it nor does it place any prohibitions on persons convicted of a listed offence. Schedule one status thus appears to be a matter of policy and practice. However, subsequent legislation takes the schedule as a starting point.
For instance, schedule 4 of the Criminal Justice and Court Services Act 2000 is a comprehensive list of offences against a child that might prompt an order disqualifying the offender from working with children. The list specifically includes any offence contained within schedule one. The Disqualification from Caring for Children (England) Regulations 2002 provide that anyone convicted of any schedule 4 offence (which includes all schedule one offences) or indeed any offence involving bodily injury to a child is disqualified from being a private foster carer under s68 of the Children Act 1989.

The lack of statutory guidance, any review mechanism, and confusion as to what offences attract schedule one status has caused some to conclude that it can lead to 'unfair consequences' (Home Office, 2005b, p.2). This is particularly given that the status applies equally to adult and child offenders (Nacro, 2003a; Thomas, 2005).

Although the term schedule one offender has “passed into the everyday language of social workers and other child protection professionals” (Thomas, 2005), there is very little information as to how it is used and by whom. However, guidance suggests that schedule one status (if it exists at all) is for life. There is no mechanism for schedule one status to be reviewed, regardless of when it was imposed.

The Government confirmed in 2009 that:

“[o]n its own, schedule 1 represents no legal bar to working with children, nor does it carry any specific obligations to register with the police ... any subsequent action should be based upon the ongoing risk that the individual poses. We have no current plans to review schedule 1” (HM Government, 2009, paragraph 9.9).

Working Together 2010 (Department of Children, Schools and Families, 2010), highlights that a conviction for a schedule 1 offence where the offender was a child may not mean that the young person poses a continuing risk to children (paragraph 12.7):
'An offender who has harmed a child might not continue to present a risk or harm towards that child or other children. Where a child or young person (aged under 18 years) offends against another child, a thorough and specialist assessment should be undertaken to establish the extent to which the young person who has offended continues to pose a risk of harm to other children and young people. They should be alert to the possibility that there may be little or no continuing risk of harm to other children and young people, but never losing sight of taking all possible actions to ensure that children are adequately protected from any future harm.'

4.7.5 Disclosing information about sex offenders

However, there is no prohibition on services from disclosing information other than the common law right to privacy and the requirements under Article 8 ECHR. In addition the potential for disclosure outlined above, social services and/or police may decide that they need to make disclosures in relation to certain people to protect identified children. There is very little guidance for social workers about when and how to disclose information. However, the ACPO has produced guidance (2010) which includes checklist with key questions for the police to ask when considering whether or not to make disclosure (see checklist 9 of the 2010 guidance):

- Why should information be shared?
- How would sharing information reduce the risk to the public?
- Is there another practical and less intrusive means of reducing risk to the public?
- What is the legal basis for sharing information in this particular case?
- Is there a possibility of increasing the risk of violence against an individual(s)?
- Could the offender be driven underground?
- What would be the effect on the victims?
- What would be the effect on the offender’s family?
- What would be the effect on the offender’s ability to lead a normal life?
- Exactly what information should be shared and with whom?
• Has the offender been consulted about the proposed information sharing as part of the risk management plan and asked their views?

However, this guidance is not statutory and very little is known about the decisions by authorities to disclose information to third parties.

4.7.6 Licence conditions and recall
All children sentenced to detention are released initially under a set of conditions set by the Secretary of State that they must comply with or risk being returned to detention. For those sentenced to DTOs, these are called ‘supervision notices’ (s103 PCC(S)A 2000). For those serving all other sentences, they will be released on licence (s250(1) of the CJA 2003).

Those on licence can be automatically recalled to prison by the Secretary of State for Justice if they breach the terms and conditions. The recall will be initiated by the YOT and the child or young person does not have to go to court before being returned to prison. This contrasts to the position of those on supervision who must be brought before a court before being recalled to custody. Once recalled to custody under licence, a young person can only be released by the Parole Board or the Secretary of State prior to the expiry of their sentence.

Licence conditions can be standard or bespoke. Prison service instruction 40/2012 outlines the types of conditions that offenders can expect to be subject to. Common conditions include restrictions in access to computers, telephones and requirements to notify the supervising officer of any developing intimate or personal relationships.

4.8 The history of the legal regulation of sex: The development of the law on sexual offences affecting children as perpetrators
The development of the law tells us something about the message society is attempting to portray about sexual activity at any given time. The current state of the law is therefore a snapshot of where we are now, just as the development of the law may also chart societal changes or public concern about children and sex.
4.8.1 Resistance against legislating sexual behaviour
There appears to have been concern throughout the nineteenth century that the penalties for sex with a ten or eleven year old girl were too harsh leading to a reduction in the penalties in 1841 and 1861 (Temkin, 2002).

Weeks (1989, p.88) cites one member of the Lords in speaking in 1884, presumably during the passage of 1885 Criminal Law Amendment Act as stating:

‘Very few of their Lordships...had not, when young men, been guilty of immorality’ and hoping that they would ‘pause before passing a clause within the range of which their sons might come’.

4.8.2 State regulation of sex
According to Weeks (1989) it was not until the mid nineteenth century that there was a ‘highly uneven, but nevertheless very important formal assumption of responsibility by the state for many areas of sexual unorthodoxies’ (1989, p. 83). Weeks places this in the context of reluctance by the state to intervene in the private, family sphere which continued alongside the regulation of sexual activity for many years and was evidenced by the fact that enforcement of transgressions concerning extramarital sex was ‘sporadic’ and ‘uneven’ (Weeks, 1989). Weeks cites the legislative attitude to prostitution as evidence of:

‘an underlying implicit acceptance of the double standard... and a tacit assumption that the function of the machinery of the state, local and national, was to regulate the public sphere and not the private’ (1989, p.83).

The most comprehensive attempt to legislate sexual behaviour came with the Contagious Disease Acts in the 1860s which essentially required women prostitutes to be subject to a police registration scheme on the grounds of public health. The Acts, which Weeks describes as ‘manifestly unfair’ (1989) and which were the subject of profound criticism of double standards by feminists such as Josephine Butler, were quickly repealed. A further tranche of law reform followed in the 1880s, which Weeks attributes to the rise of the social purity
movement which, by 1885, was able to ‘tap’ into a public “anxiety which found a symbolic focus in the ‘twin evils’ of enforced prostitution and the exploitation of minors.” The subsequent Criminal Law Amendment Act 1885 raised the age of consent to 16 and introduced the offence of unlawful sexual intercourse with a girl under 16 as a misdemeanour with a defence of genuine belief as to age. S4 of the same Act provided that it was an offence to have intercourse with a child under 13.

4.8.3 From sexual violence to consent
The requirement of consent and a legal minimum age of consent in order for sexual activity to take place legally was a relatively late development in English law (Waites, 2005). The criminal law was primarily concerned with sexual violence, and only then outside of marriage: it was only in 1991 that rape was recognised within marriage (Temkin, 2002). The word rape originates from the Latin verb rapere meaning ‘to seize or take by force.’ An element of ‘force’ was considered necessary for the offence of rape to be made out until the mid nineteenth century, when case law determined that rape could take place in the absence of force (R v Camplin (1845) 1 Cox CC 220).

It was not until 1875 that the age of consent was confirmed as 13, although intercourse with a 12 year old was classed as a misdemeanour rather than a serious crime. The same Act allowed intercourse with a girl under 12 to be punished with penal servitude for life. In 1885, after much debate, the age of consent was raised to 16, creating the offence of unlawful sexual intercourse. Paradoxically, the age for marriage remained at 12 until 1929. The requirement of consent appears to have first recognisably come into force by way of the Offences Against the Person Act 1861.

According to Waites (2005) from the early nineteenth century boys under 14 were deemed incapable of penetrative intercourse. The result was that from the mid nineteenth century boys over the age of 14 were dealt with indistinguishably from male adults, with consent being a ‘gendered concept’, exclusively applied to heterosexual women.
4.8.4 The history of regulating sex by age restrictions

Notwithstanding the relatively late development of the notion of consent as a prerequisite to lawful sexual intercourse, there is a longstanding tradition of restrictions on sex with a child below a certain age. For many years, the minimum age restriction related only to a female child. Waites (2005) attributes the development of these laws to the patriarchal context in which they were introduced where girls were the property of their father, with their virginity a valuable commodity. According to Waites, the first such law was the Statute of Westminster 1275 which prohibited that anyone ‘ravish...any Maiden within age’. Scholars have taken the age threshold at this time to be 12 as this was the age of marital capacity (Temkin, 2002). In 1285, intercourse with an under-age female became an offence punishable by death. A later law passed in 1576 set the age at which carnal knowledge was a felony as 10 (Waites, 2005).

By 1828, carnal knowledge of a girl under 10 was confirmed as an offence punishable by death and such knowledge of a girl under 12 but over 10 was an imprisonable offence. The 1861 Act appears to have introduced offences under the title of ‘carnal knowledge’ as opposed to ‘rape’ for those who had intercourse with girls under ten or between ten and twelve.

To a certain extent then, any prohibition against sexual intercourse with children under a certain age prior to the mid nineteenth century would have been effectively ‘strict liability’ and given that the age of criminal responsibility was only raised from 7 to 8 in 1933 and from 8 to 10 in 1963, could have applied to child defendants of a very young age.

The first explicit prohibition on the accused from asserting that the young victim consented as a defence appears in Clause 2 of the Criminal Law Amendment Act of 1880:

“It shall be no defence to a charge or indictment for an indecent assault on a young person under the age of thirteen to prove that he or she consented to the act of indecency.”
This provision mirrors the rationale behind strict liability rape of a child under 13 under s5 SOA 2003 discussed and provides no scope for a different approach in the case of child perpetrators.
Chapter 5: Findings from interviews with young people and professionals

5.1 Overview

As outlined in the methodology, the responses that emerged in the interviews with young people and professionals raised a number of discrete and interlinked issues. For ease of analysis, the responses here are presented in three discrete phases:

- Knowledge and experiences prior to contact with the criminal justice system
- Contact with the criminal justice system
- Leaving the criminal justice system

5.2 Data sources and analysis

The findings discussed in this chapter draw on an analysis of primary data from three sources, as outlined in the methodology chapter.

Interviews were conducted with ten young people using a structured questionnaire with opportunities for in depth discussion and comment. Ten professionals with a particular expertise in work with children who commit sexual offences were also interviewed, but in this case were simply invited to outline their reflections on this issue.

In addition, the chapter is informed by data elicited from delegates attending a session presenting the preliminary findings of this research at the National Organisation of the Treatment of Abusers (NOTA) in 2012. Delegates included a wide range of professionals including therapists, residential workers, social workers and YOT workers. Views were collected during the seminar style presentation on a flip chart.

Analysis of the data identified a range of themes that clustered around a three stage chronological progression from the young people’s perspective: knowledge
and experiences prior to contact with the criminal justice system, contact with the criminal justice system and leaving the criminal justice system. As acknowledged in the methodology chapter, there is a sense in which this classificatory framework imposes artificial boundaries on a process that is experienced rather less neatly by the young people concerned. Many of the themes recur at different points in the progression. Nonetheless, it is considered that the stages provide a useful framework for considering the findings in a structured manner.

5.2.1 Young people and the placement

All young people were placed in a specialist residential unit for young people with harmful sexual behaviour with the exception of one who had recently left the unit and was living in the community. The residential unit was an open unit. The unit allowed for varying levels of independence throughout the site. All young people living in the unit were still in receipt of therapeutic services from a specialist therapeutic provider.

All young people had committed sexual offences. All of them had received a criminal justice disposal in the form of a sentence of detention or a community sentence. The offences ranged from sexual assault, sexual touching to rape. All of the offences were serious sexual offences. All ten of the young people were sentenced in the crown court. One child had been tried in the youth court but sentenced in the crown court due to the gravity of the offence and the possibility for harsher sentencing in the crown court.

Within the sample a number of the sentences outlined at Chapter 4.6 were represented, demonstrating the variable use of sentencing for this group who appeared to present with similar levels of risk and complexity. Of the ten young people, three had been given community sentences in the form of supervision orders and seven had been sentenced to detention; of those only two had received ordinary determinate sentences, three had extended sentences for public protection and two had been sentenced to indeterminate sentences (although one of these had subsequently been quashed by the Court of Appeal and substituted for a ‘longer
than commensurate’ extended sentence). All of the young people who had been to custody had been released from custody to the placement.

All young people interviewed had been subject to the sex offenders’ register – six of them for life.

The age of the young people at the time of the interview ranged between 15 and 20, with an average (mean) age of 17 years and three months and a median age of 17 years and six months. The average age that each child committed the offences was 12 years and nine months with a median of 13 years: the children had been aged between 11 and 14 at the time of their offences, with one aged 11, one aged 12, seven aged 13 and one aged 14. Nine of the young people had offended as children against other children. One had (unusually) offended as a child against an adult.

All the young people were male. Nine out of ten of the young people described themselves as “white English” and one boy described himself as being of “mixed” background. Nine out of ten young people interviewed described themselves as having communication difficulties or mental health problems. This was verified by care staff.

For the purpose of this research each young person has been allocated a pseudonym.
Figure 5: The young people

<table>
<thead>
<tr>
<th>Name</th>
<th>Age at time of main offence</th>
<th>Sentence type</th>
<th>Sentence – length/registration length</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peter</td>
<td>13</td>
<td>Extended sentence for public protection</td>
<td>6 year minimum term with a 6 year extension period. Subject to indefinite notification requirements.</td>
</tr>
<tr>
<td>Daniel</td>
<td>12</td>
<td>Extended sentence for public protection</td>
<td>5 year minimum term with a 5 year extension period. Subject to indefinite notification requirements.</td>
</tr>
<tr>
<td>Sam</td>
<td>14</td>
<td>Indeterminate sentence</td>
<td>2 year minimum term. Subject to indefinite notification requirements.</td>
</tr>
<tr>
<td>William</td>
<td>13</td>
<td>Indeterminate sentence</td>
<td>2 year minimum term. Subject to indefinite notification requirements.</td>
</tr>
<tr>
<td>Charlie</td>
<td>9-11</td>
<td>Extended sentence for public protection</td>
<td>3 year minimum term with a 5 year extension period. Subject to indefinite notification requirements.</td>
</tr>
<tr>
<td>Harry</td>
<td>14</td>
<td>Community sentence</td>
<td>Sexual Offences Prevention Order and 18 months’ detention. Registration period unclear.</td>
</tr>
<tr>
<td>Patrick</td>
<td>13</td>
<td>Detention and Training order</td>
<td>12 months 5 years of notification requirements.</td>
</tr>
<tr>
<td>Max</td>
<td>12</td>
<td>Supervision order</td>
<td>2 years 5 years of notification requirements.</td>
</tr>
<tr>
<td>Oliver</td>
<td>13</td>
<td>Community sentence</td>
<td>3 year supervision order and 2½ year notification requirement</td>
</tr>
<tr>
<td>Thomas</td>
<td>15</td>
<td>Community sentence</td>
<td>3 years 5 years of notification requirements.</td>
</tr>
</tbody>
</table>

The placement is a highly specialised therapeutic setting where each young person has intense supervision, support and therapy as part of an individualised package. The cost of this provision is significant and generally met by local authority children’s services departments. It was therefore not surprising that the offences were invariably serious offences by children committed at a young age. This is

---

1 Rounded up to the nearest year; this sentence had been subsequently varied on appeal
2 Charlie originally received a three year supervision order which was substituted by the extended sentence following a breach.
because decisions to fund such packages generally only take place where professionals in the youth justice system cannot recommend a home based or less specialised, and therefore cheaper package.

The benefits of selecting from this sample were that the young people were appropriately supported through the research process and that the sample allowed for in-depth study and analysis of the experiences faced by children over a long period of time as most young people had served a lengthy custodial sentence and been released to this provision, although some were completing their community sentences while at the placement.

It was also felt that young people whose behaviour was at the more serious end of the spectrum of harmful sexual behaviour would enable a greater level of analysis of the problems faced by this group.

5.2.2 Professionals

The professionals interviewed represented a range of disciplines and experiences. As outlined in the methodology, the professionals were selected for their experience of working with this group of young people.

Figure 6 sets out the range of the ten professionals interviewed and a summary of the nature and experience of working with this group.
### Figure 6: The professionals interviewed

<table>
<thead>
<tr>
<th>Professional</th>
<th>Nature and extent of experience of working with young people with harmful sexual behaviour</th>
</tr>
</thead>
<tbody>
<tr>
<td>YOT Caseworker</td>
<td>Involved with YOT for 11 years managing higher end cases within the criminal justice system.</td>
</tr>
<tr>
<td>Youth justice worker</td>
<td>Worked with young offenders for the past 12 years both in the community and in a custodial setting, providing support to young people in dealing with issues arising out of the offence.</td>
</tr>
<tr>
<td>Parole Board member</td>
<td>Worked for several decades with juveniles in the criminal justice system within the probation service before joining the Parole Board.</td>
</tr>
<tr>
<td>Child protection specialist</td>
<td>Experienced professional working over several years on issues concerning harmful sexual behaviour as a policy lead for a charity concerned with child protection with direct operational experience working in multi-agency child protection teams.</td>
</tr>
<tr>
<td>Adolescent forensic psychiatrist 1</td>
<td>Worked for the past 16 years in child and adolescent forensic psychiatry, the last 11 of which has been working with children in the criminal justice system as a Consultant Psychiatrist.</td>
</tr>
<tr>
<td>Adolescent forensic psychiatrist 2</td>
<td>Worked with children and young people with harmful sexual behaviour throughout consultant career, having started as child psychiatrist and then trained in youth risk. Involved in working with young people and families in assessment and treatment, and also has experience of working with young people through setting up services.</td>
</tr>
<tr>
<td>Clinical psychologist</td>
<td>A consultant clinical psychologist with twelve years of direct clinical work with young offenders and young sexual offenders and the preparation of expert reports for those groups for the Parole Board and for Courts at sentencing.</td>
</tr>
<tr>
<td>Forensic psychologist</td>
<td>Two decades of experience as a qualified professional working in a wide range forensic settings, including a Youth Offending Service and local authority secure children’s units. Specialises in risk assessment and treatment planning for sexual offenders and has developed particular expertise in working with children and young people.</td>
</tr>
<tr>
<td>Residential home manager</td>
<td>38 years working in childcare, 30 of which have been in the juvenile justice system managing secure accommodation facilities in London and the north of England. Initial years were mainly with juvenile offenders on remand to a secure children’s home, but was involved in setting up and running a residential unit where there was daily contact with young people with harmful sexual behaviour.</td>
</tr>
<tr>
<td>Barrister</td>
<td>Working as a lawyer for the past thirteen years with direct contact with young people either through representing children in parole or briefly in the context of youth court work. Also has indirect contact through Criminal Appeal work or prison law</td>
</tr>
</tbody>
</table>
5.3 Knowledge and experiences prior to contact with the criminal justice system

5.3.1 Previous sanctions for sexual behaviour

It is commonly assumed that serious sexual offending may have pre-cursors: that the young people will have engaged in sexually harmful behaviours prior to the conviction for the index offence that led to therapeutic intervention. This is an important issue since it throws light on the extent to which it might have been possible to identify young people as posing a risk of inflicting sexual harm and whether there were missed opportunities for early intervention that may have prevented later offending. In particular, the risk assessment tool, ERASOR, described at Chapter 2.2.4.2 takes into account failures to respond to previous sanctions for harmful sexual behaviour. The assumption is that risk is higher where a young person has failed to modify his or her behaviour following a sanction.

Young people were asked whether they had been 'in trouble' about their sexual behaviour before they were charged with a sexual offence. The question was framed in this broad way to allow young people’s reports of sanctions in response to harmful sexual behaviour by any person: including police, family, teachers or children’s services.

Reviews of the young people’s papers suggested that in most cases there had been displays of harmful sexual behaviour prior to the index offence. This accords with the literature as to the presence of displays of sexual behaviour in the majority of cases where children go on to offend (see for instance, Manocha and Mezey, 1998; Hackett, 2004).

It was therefore surprising that seven out of ten denied being ‘in trouble’ prior to the index offence. An analysis of three responses by young people who said they
had been in trouble prior to the index offence revealed that being in trouble was considered synonymous with contact by the police.

It may be that the young people’s recollections were correct and that sanctions were rarely administered for sexualised behaviour and only then mainly by the police. Alternatively, it may be that children had contact with the system, but the contact they had did not appear to them to be a sanction. It appears that interaction with the police appeared to leave a stronger impression on the young person than contact with other agencies such as the YOT or social services.

William indicated that he had been in trouble about his sexual behaviour prior to his charge on several occasions. On these occasions, he recalled being dealt with by a range of professionals including a police officer, social workers and YOT workers. He was unclear about the nature of the contact with social workers and the police but was clear that he had been bail for a sexual offence at the time he committed the index offence. As far as William could recall, he was simply being investigated and therefore there was no discussion about his sexual behaviour. He certainly could not recall feeling as though he was ‘in trouble’ with anyone other than the police and he could not recall discussing his behaviour with anyone. William subsequently received an indeterminate sentence for his index offence.

Thomas was also able to recall an occasion where he had prior contact with police and social workers. He remembered that they took him to the police station and that he was reprimanded but was unable to provide any further information. Thomas subsequently received a three year community sentence for the index offence.

Only one young person, Sam, reported being ‘told off’ by teachers for a playground kiss in addition to receiving police intervention for an earlier incident:

“police arrested me when I was 12 and said I touched my cousin up but that they had no evidence – no one in my family or social services talked to me about it. The only other thing was that I got told off by my teacher
when I was 13 or 14 for kissing my girlfriend on the cheek in the playground – they said don’t and I said it’s my girlfriend and that was it”.

Sam subsequently received an indeterminate sentence for his index offence.
The three young people who described contact with the police went on to commit offences that attracted indeterminate sentences in two cases and the longest possible community sentence in the other. This might be thought to indicate that criminal justice sanctions did not have the desired preventive or deterrent effect.

5.3.2 The potential for work on harmful sexual behaviour pre-charge

It is also commonly thought that a young person who has successfully completed interventions in the form of therapeutic work for harmful sexual behaviour is less likely to reoffend. This is also a factor used in the ERASOR tool as an indicator that risk has reduced.

In only three cases did young people disclose episodes of harmful sexual behaviour that might have offered a prospect of engaging in previous therapeutic work. However, as already indicated, this does not reflect the case notes or the literature on the prevalence of episodes of harmful sexual behaviour prior to the commission of a serious sexual offence.

Young people were asked whether or not they did any ‘work’ about their sexual behaviour before they were charged. This question was based on the assumption that the children in this sample who all committed serious sexual offences were likely to have displayed some harmful sexual behaviour prior to their offence and possibly before reaching the age of criminal responsibility and that they may have been offered some early intervention with the aim of diverting the young person from the risk of offending.

All young people said that they had not done any work on their offending before they were charged and there was nothing in the case notes to suggest this was not the case. Therefore, young people were asked whether they thought work might have helped them.
The kind of 'work' that might have been beneficial was not prescribed in the question. However, it became clear that young people drew on their experience of undertaking work post sentence in answering this question.

Four young people were simply unable say whether they felt work might have helped before being charged (i.e. declined to answer the question). It is unclear whether this was because they were unsure or simply felt unable to deal with the hypothetical nature of the question.

Thomas said he was 'not sure' whether work would have helped. This response was based on a combination of his positive recent experience of residential therapy set against his young age at the point where pre-charge intervention would have been offered:

"Being here [i.e. in residential treatment] has helped. The work helps a lot – some of it helps some of it doesn’t. When I was 13, I was probably too young to have bothered".

One young person, Charlie, felt confident that it would not have helped as he was too young at the time.

The remaining four young people felt work on their behaviour at this early stage would have helped them. The reasons for this view were quite diverse. Young people’s comments during interview, combined with responses from some of the professional sample, raised three important issues.

First, direct early therapeutic work with young people displaying harmful sexual behaviour may have assisted in preventing the index offence. This emerged from contributions by two professionals spontaneously raising the importance of preventative work, providing examples of successful intervention projects. These views were broadly supported by comments from two of the four young people who felt work might have helped, although in both cases the young person
appeared to reflect on the benefits of early work following the offence but prior to the completion of the criminal justice process which raised some interesting issues around the possibility of diversion rather than prevention. The possibility of intervention to prevent offending is explored below under the sub-heading 'preventative work' below.

Second, where young people had been victims of sexual abuse, work to address that experience may have prevented further offending or at least assisted the young person to better understand their dual status as both a victim and an offender. This issue was raised by one young person who had been sexually abused by a relative as a young child over a long period of time and prior to committing a serious sexual offence himself. This is explored below under the sub-heading 'victim turned offender issues'.

Third, in responding to this question and others, several young people highlighted that they would have benefitted from more information about sex and healthy relationships. It became apparent that at least two young people felt that information over and above what they learned in sex education would have been helpful. While young people did not explicitly raise this point, it was clear from responses to other questions that their understanding of the kind of information that they might have been provided with was informed by the sex education elements of their therapeutic interventions. This issue is explored further below under sub-heading 'sex education'.

5.3.3 Preventative work

The YOT caseworker raised the issue of early preventative intervention:

"For those cases which are identified earlier, our Youth Justice, Liaison and Diversion teams are engaged to do prevention work with family members and get things in place to support and intervene. This is especially the case in lower risk cases. This helps everyone including the young person."
The Youth Justice Liaison and Diversion team referred to by the YOT caseworker operates a scheme designed to facilitate help for children and young people with mental health and developmental problems, speech and communication difficulties, learning disabilities and other similar vulnerabilities as soon as they enter the youth justice system. The scheme has a specific focus on working with young people in the early stages of the youth justice system and aims to ensure that resources are not solely concentrated on children under a statutory order (Haines et al, 2012).

The potential value of preventative work was also highlighted by adolescent forensic psychiatrist 2:

"I worked with a family therapist and YOT workers and we set up a family therapy session, which included cases where both perpetrator and victim were within the family. It was really quite difficult to begin with, but it really gave you a handle on the experiences of the family. I was able to see the process that the families have to go through of demonstrating love for the child but also what was and was not unacceptable. There is some evidence to show that this sort of family work is helpful. Those young people were not engaged at that stage in the criminal justice system."

These positive experiences by professionals clearly warrant further exploration. Comments by young people as to the benefit of therapeutic interventions during or after their sentence suggested that they valued this work.

While some of the value placed on this work by young people may have related to the functional benefit of getting them out of prison in some instances where this was a consideration, it should be remembered that all young people had continued to engage in therapy at the open placement where the interviews took place.

In addition, Sam’s comment that he “wouldn’t have been able to keep it inside if I was seeing someone every week” suggests that early intervention may be able to elicit a level of openness from a young person required to address and possibly
prevent further offending behaviour. Max's openness to the prospect of diversion and 'doing the work quicker' would also appear to support the notion that preventive interventions might be a positive way forward.

Both concrete examples from professionals of the positive benefits of preventative intervention arose from work carried out by the YOT, which is itself part of the criminal justice system and may run the risk of the negative associations that attach to be involved with the criminal justice system (McAra and McVie, 2007).

5.3.4 Victim turned offender issues

The literature suggests a close correlation between victimisation and offending (Smith, 2004). The relationship between serious youth crime and previous experiences of victimisation has also been demonstrated (Boswell, 1995). Some discourses in relation to sexually harmful behaviour similarly emphasise a cycle of abuse (see for instance O'Callaghan and Print 1994, as cited in Erooga and Mason, 2006).

William had been the victim of sexual abuse by a close relative who had received a criminal conviction and a prison sentence for their behaviour. The abuse had been prolonged and William had been taken into care as a consequence. He had also been subjected to physical abuse. William felt that early work would have helped him to cope with the impact of on him of abuse he suffered, commenting that "it would have been good to go through what happened with [the person who abused me]."

William raised further concerns about the differences in the treatment that his victim had received in respect of the offences he had committed and the way he has been treated as a victim of the offences committed against him:

"My victim knows all about me even which prisons I was in when but I was the victim of abuse ... and I don't know anything about [my abuser]. I would like to know what [my abuser] is like, what [my abuser is doing]"
is doing. I don’t know sweet FA about [that person]. What happens if I see [my abuser]?"

It was particularly poignant that the issue of William’s dual status arose later in the interview when he was asked whether he understood the charge at the time. He confirmed that he did, commenting:

“I knew sort of – it was forcing yourself. Police told me – they were telling me what it was like forcing someone to have sex when they don’t want to do it. It all seemed like mad stuff. It was the first time I ever talked about what rape is even though it had been done to me in the past”.

William then discussed how the first time he had actually made the connection between being raped himself and committing the rape was when he was alone in the police cells.

This raised an important issue about children who turn from being victims of sexual abuse to perpetrators and whether or not intervention might break what is sometimes referred to as cycles of abuse.

The child protection specialist provided some useful insights to this issue, noting that:

“in discussing cases with senior officials regarding all the classic background to child sexual offenders, they will usually accept these points but end by saying ‘but they still did it’. It is hard to get people to see treatment and diversion as a useful intervention.”

The child protection specialist described working on:

‘a dual status case where a child was believed to have been groomed into committing a sexual act, but there was nevertheless an unwillingness to see the child as victim first and foremost. There were strong professional disagreements about the handling of the case. In the end the child went down that whole criminal justice route until it was finally thrown
out. Nonetheless she had been arrested and I heard was in pieces over it—
highly distressed. It will take her a long time to get back on track. Her
family was struggling to find ways to bring her back into the
family because the act was made towards another family member.
However she was about 12 at the time, and I believe had little
understanding of its significance. With support and social work
intervention, it was possible to understand what happened and help her and
her family move on.”

The clinical psychologist, while discussing the issue of sentencing, also raised the
extent to which the Courts struggle to modify their approach in such dual status
cases, even when risk is low:

“Sentencing is very erratic. There are some cases I can think of where a
detailed expert report sets out how the abuse is linked to the young
person’s own abuse etc.; and that there is a low risk of reoffending
sexually; but then they still get sentenced to 6 years.”

The link between those that suffer from sexual exploitation and those that go on to
sexually exploit others was also noted by the child protection specialist as an
important issue for the police, especially in light of recent high profile cases:

“The issue of children who are themselves sexually exploited has been
highlighted in Derbyshire, Oxford, and Rochdale and there is pressure on
police to prevent these kinds of situations escalating. I think this is leading
to a culture shift where they are slowly beginning to see vulnerable,
challenging children as not just trouble makers — acting out, with antisocial
behaviour and involved in crime, but as being victims that will need to talk
in court. Police are capable of change.”

These findings suggest that there may be a great deal more work to be done by
professionals at an early stage where victims of sexual abuse are identified and
that this in turn may prevent or at least make offending by the abused at a later
stage less likely. For instance, the barrister commented:
“In my direct experience of [working with] children who have abused, I have found they have often been victims of abuse themselves. ...[but] often [that] abuse comes alongside other social issues such as poverty, unemployment and other difficulties families may face, such as violence or ... an undiagnosed mental health issue [and these] accompanying situations ... may prevent the family from being able to stop abuse or ensure that child receives safeguarding.”

One key benefit of preventative work is that the public stigma that attaches to being a perpetrator of abuse, regardless of the age or reasons for it, does not apply. In addition, dual status cases highlight the arbitrary nature of criminal justice responses, which do not always respond effectively or directly to prevent potential harm.

5.3.5 Sexual and legal knowledge at point of offence

The whole notion of an age of criminal responsibility, the need for most criminal acts to have a mental, as well as a physical, element and the availability of defences relating to mental impairment in certain situations illustrates that the criminal law is ultimately designed to deal with behaviour that is blameworthy. Even strict liability offences can only be committed by those above the age of criminal responsibility.

Culpability in turn presupposes competence and a basic level of practical and moral knowledge. However, the responses from young people suggested that most young people did not fully appreciate the import of their behaviour at time of offence. Feedback from the professionals at the seminar to the question ‘what are young peoples’ understandings of what is against the law when offences are committed and on charge?’ anticipated young people’s difficulties:

“Misunderstanding social cues; Gaps in knowledge – especially new offences – everyone doing (them); Lack of overt coercion; TWOCs [offences of taking without consent] and burglaries are okay – but sexual
The young people were asked whether they knew they were breaking the law at the time of the offence. They were also asked whether they understood why the sexual act was against the law at the point when they committed their offence. The rationale behind these questions was to flush out young people’s legal knowledge and how or whether they were able to apply it to their own lives and actions at the point of the offence.

It was clear from the answers provided that young people’s knowledge of both sex and the law was hazy at the point where the offence was committed.

Although all young people had admitted the offence by the point of interview and all of them appeared to take responsibility for their behaviour, only Harry said that he felt sure he knew he was breaking the law when he committed the sexual act offence. Even then Harry qualified his response, adding “I can’t remember what I was thinking at the time. I was 14 years old. I have blocked it out”. Sam was uncertain, responding “half and half – didn’t have much of an understanding but I knew a bit that it was wrong but didn’t really understand what was legal and what wasn’t”.

The remaining eight were clear that they did not know they were breaking the law at the time of the actual offence. For instance, Peter, described the index offence in a matter of fact way, responding to the question of whether he knew he was breaking the law at the time, “not really – I asked them and one said yes and so I thought that was what you were supposed to do.” Charlie also stated that he was not aware of the illegality of his actions at the time, stating “I thought it was okay.” Daniel, Patrick and Oliver simply did not see their behaviour as anything other than ‘fun’, part of a ‘game’ or as being ‘that serious’. Max simply saw his behaviour as normal behaviour that he witnessed amongst this group of friends. William was clear that he did not think at all claiming, he “didn’t think about
anything – I was just angry and I didn’t care.” Thomas also gave the impression that at the time he acted without thinking about the law, stating “I did it and then about two hours later I forgot about it. I wasn’t then arrested for two to three months later – I didn’t know why at the time”.

However, when asked to recall their legal knowledge and whether they understood why the offences that they committed were against the law at the time, some of the responses were different. Four young people said they understood why the sexual act they committed was against the law at the time. Six young people said they did not understand why the sexual act they committed was against the law at the point in time where they offended.

Of the six who said they did not understand why the offence they committed was against the law at the time, responses ranged from complete ignorance of the language (“I had never heard of rape before”) to confusion between the difference between legal terms and the young person’s own behaviour. For instance, some young people knew that ‘rape’ was against the law but did not know that what they had done was rape. Some did not actually know what rape was.

Of the four young people who claimed they knew why the offence they were later convicted of was against law at the time, only one was confident that at the time of the offence he would have been able to link his own actions to the illegal act and that, at the time, he understood why that act was wrong. That is to say the other three were aware that the sexual offence was illegal but not aware that their own actions amounted to the sexual offence, until this was explained to them. For instance, Peter said he “knew that rape was wrong, even though I didn’t know why”. Similarly, Oliver claimed he knew why rape was wrong but he “just didn’t see what I did as serious as doing rape”.

Some answers suggested that young people’s views and understanding of sex and the law were heavily influenced by what levels of sexual activity appeared normal behaviour within their peer groups. The issue of the normalisation of sex is
discussed below. Other answers suggested that the legality of sexual activity was simply not on young people’s radar. Many did not understand legal terms associated with sexual offences. Even where young people had some legal knowledge they struggled to link legal terms to their own activities, simply not seeing their activities as ‘serious enough’ to break the law.

5.3.6 Limited understanding of sex

The age at which children are expected to have sufficient knowledge about sex is an area of controversy, as illustrated by debates on when and whether sex education should be available to children and concerns about the over or early sexualisation of children (Papadopoulos, 2010; Archard, 2000).

Although the young people were not explicitly asked about their knowledge of sex at the point that they committed the offence, several young people offered comments about their lack of sexual knowledge. In some instances, there was a sense that the level of understanding about sexual behaviour was so minimal that at the time of the offences, the children simply did not understand the gravity of what they were doing.

For instance, Daniel stated that at the point of the offence “I just thought it was fun – didn’t know what I was doing”. Peter confirmed that when he did the offence he did not know what he was doing:

“I asked them and one said yes and so I thought that was what you were supposed to do.”

Charlie talked about his general ignorance of sex:

“I just didn’t really know about sex. I had had sex with someone else – a girl the same age as me. We were going out and she agreed to it. They didn’t do anything about that although they spoke to her mum. She had asked me for sex. That’s what gave me the idea to do it.”

All of the young people in this study committed their offences between the ages of criminal responsibility (at ten) but before the age of consent (at sixteen). Three
volunteered the limits of their sexual knowledge and it is highly likely that the others had very limited knowledge and understanding of sexual behaviour.

5.3.7 Sexual activity as normalised behaviour

Young people’s knowledge of sexual behaviour needs to be considered in the context of the extent to which they are likely to be aware of sex from their personal and social environments. The literature around early sexualisation is predicated on the assumption that the exposure of children to sexualised imagery is both increasing and harmful (Bailey, 2011).

Young people were not specifically asked about early exposure to sexual activity or imagery. However, this was brought up by several respondents. Other questions raised similar responses and it appeared that the normalisation of sex was an important factor for the group.

Max implied that everyone else was doing it and so it seemed natural for him to do the same. When asked whether when he did the offence he knew he was breaking the law, he replied no, adding:

“I was in a gang and all the lads who I was with were having sex with other people. So I thought I would have a try. Most of the gang were my age and they were mainly having it with girls”.

Charlie explained that sex was normal amongst his friends: “Most of my friends were having sex aged 10 and 11. Out of my close friends, around 9 out of 13 had sex at that age.” He also described early exposure to porn and the impression it made on him:

“The porn I saw had a lot of violence and I thought it was real. I thought people were supposed to get upset when they had sex. But I didn’t learn that wasn’t true until I got locked up. I did it with Lucy Faithfull when I was in foster care. Groups of boys would be watching porn. The girls would join in and then we would all sort of act it out. We didn’t have proper sex all together – the time I did it with a girl – she agreed and I wasn’t violent but maybe that was because I was too scared. I didn’t use

122
contraception. I think if I had got more confident then I would have probably started to act it out more. I was about 8 or 9 years old. She was my girlfriend – but then she moved away.”

It was clear from these responses that the sexualised behaviour and imagery the children had been exposed to made a strong impression on them. Although some of the behaviour described by the young people here and their index offences were clearly harmful, the forensic psychologist warned about the dangers of labelling all sexual behaviour as deviant because of the offence history:

“Sometimes an incident happens and people say it is offence paralleling; they make it deviant. I think that this is making assumptions when there may be alternative explanations for it, such as just being a teenager. I think that people expect things from young people who have offended that they do not expect from anyone else.”

5.3.8 Understanding legal terms

The literature on the sexualisation of young people tends to focus on the moral ills and the potential harm to children of this development rather than the extent to which a hyper sexual culture may lure children themselves into committing criminal offences. This is probably because most people are primarily concerned about adults abusing children. However, as indicated in the legal framework, the drive towards widening the legal net in order to deal with the historically low conviction rate inevitably means that a great deal of sexual behaviour between children has become technically unlawful, leaving it to the discretion of the prosecutor as to whether or not the child should feel the full force of the criminal law. It therefore seems that as well as protecting children from the risks posed to them as victims of unlawful sexual activity, if they are to avoid becoming perpetrators, it is essential that they understand precisely what the law says.

The young people in this study suggested that the legal terms that attached to their activities were either not on their radar at the point of the offence or that their
knowledge of law and sex was too limited for them to link their own activity to the legal terms for the offences they committed.

Thomas stated that he “never thought about it, never watched the news” implying that was how he would have known what was and was not allowed.

When asked whether at the time he understood why the sexual act was against the law, Max indicated that he did not, commenting: “I had never heard of rape before”. This echoed William’s response to another question where he confirmed that he did not know what rape was until he was being charged with it at the police station - even though he had himself been the victim of rape.

Peter said he had some knowledge of word ‘rape’ at the time of the offence, although he would not have been able to explain why rape was wrong at that time: “I knew that rape was wrong, even though I didn’t know why”. He also explained that at point when he committed the offence he didn’t know that what he did was rape.

The responses indicated that even where legal terms were known to young people, they were unable to link them to their own actions.

Young people’s inability to link legal terms to their behaviour was mirrored in some instances by their inability to understand the seriousness of their sexual behaviour. Oliver maintained that when he did the offences he did not know that he was breaking the law. He stated that he did not think that it was ‘that serious’…. He clarified that at the time he committed the offences he did understand that rape was against the law. However, he added that he did not understand that what he was doing was rape. He stated that he “just didn’t see what I did as serious as doing rape”. When asked whether he now feels that he understands why rape is against the law he was emphatic that he did and stated that this was “because it is wrong and hurtful”.

124
Charlie indicated that he did not understand why the sexual act was against the law at the time of the offence: “I just thought it was okay. She didn’t seem upset – not bothered. It went on over a few months and I think she thought it was a game.”

The failure by many of the young people to understand that their behaviour was illegal was also reflected in their lack of understanding as to the seriousness with which such activities are regarded.

5.3.9 The role of instinct

As indicated above, most young people in the sample were far from clear as to the illegality of their behaviour. However, knowledge of the law may not, in itself, have prevented the activities in question since behaviour by children of that age is not determined purely by rational thought processes.

One young person, William, acknowledged that he was acting instinctively without thought or care. When asked whether he understood that he was breaking the law at the time he committed the offence William commented that he didn’t because he “didn’t think about anything – I was just angry and I didn’t care”.

This acknowledgement of the impulsive or instinctive response by young people was illuminated by Adolescent forensic psychiatrist 1:

“I’m also of the opinion that “instincts” drive behaviour but “instinct” is not a consideration in court. Nonetheless, children act instinctively. They act automatically and without much thought and the sanctions society places on children prompt further intuitive action. The fact a child “knows that his/her actions are wrong” does not necessarily mean they meant to do what they did but in my opinion courts do not extend considerations of guilt beyond that of the cognitive and instinct is of course not cognitive. Instead, I think courts place undue emphasis to the fact that doctors can talk about biology, genetics and individual psychological aspects of sex and gender.”
This observation raises concerns about the validity of presumptions about children’s behaviour made by the criminal justice system.

5.3.10 Sex education

Children’s limited understanding of sex and the law, combined with their tendency to act without thought in the absence of adult guidance, would indicate the potential importance of reliable information and guidance to help young people to understand their environment, physical changes and to make more informed decisions.

Young people were not specifically asked about sex education. However, the two young people that mentioned sex education raised two separate issues. The first, Charlie, suggested that it was only through sex education that he knew how to commit the offence. The other young person, Sam, indicated that sex education at school was insufficient.

Charlie explained the process by which he came to engage in the index offence as resulting from a combination of exposure to porn and sex education:

“We used to mess about. It mainly started when we were in Year 5, around aged 9. That’s when we did sex education which showed what sex really was – that’s when we first knew how to do it. So I guess we started having sex about aged 10. We didn’t know much. There is this programme on TV called Generation Sex that is on at around 11pm. I had a TV in my room. There is another one called How to Do It. I also started nicking DVDs from dad on porn. I just wrote Simpsons on the side of it. I think I was about 9 then. Most of my friends were looking at porn – looking at it on phone. The porn was the thing that gave me the most information about sex. I think this is a bit early. I read in the papers about 13 year olds being pregnant. In my sister’s class, around four 13 year olds are pregnant – but we never thought about that part of it really”.

126
Charlie's observations imply that the biological nature of his sex education in combination with his exposure to porn provided him with the necessary knowledge of the mechanics of sex to offend. The negative consequences in Charlie's case need to be considered in the context of the limited nature of the education provided. As Charlie makes clear, his sex education was purely about the mechanics. He did not learn about the law, relationships or what is not normal or acceptable.

The limits of school sex education were also outlined by Sam who commented that he "learnt a bit at school – but not much". The potential contribution that sex education could make was underlined by Harry in his description of what he had learned in his therapeutic intervention where he described, as did other young people, a good understanding of the legal issues around sex, describing that was "where G-map came in handy. The sexual age is 16. Because any younger than that, you have not really grown up and you can't know what you are doing properly".

This raised questions about the extent to which sex education is coupled with understanding what is and is not lawful and the potential for sex education in schools to borrow from the content of therapeutic interventions designed for young people with harmful sexual behaviour in terms of educating children about relationships, sex and the law.

The youth justice worker also raised the issue of poor education in the context of poor parenting skills as a particular issue for children with harmful sexual behaviour:

"It seems to be a class issue. I wonder whether it is a special problem with lower economic group families since authorities appear to be more involved with them; and also sometimes parenting issues are often an issue. Alongside that is the less parenting skills: they are distracted by their own problems; poverty; lack of education generally; cycle of poverty; welfare
dependency – all of these things affect the awareness, understanding and knowledge of everyday matters that affects their ability to care for the children.”

This observation suggests that the need for statutory sex education to be revised to cover a greater spectrum of related issues is especially important as some children will not be able to rely on parents to fill the gaps.

5.3.11 The role and message of the law

Young people’s limited understandings of their own behaviour and the legal implications of it appeared relevant to the role of the law in moderating and preventing harmful sexual behaviour. In order to ascertain young people’s views about the role of law on reflection, young people were asked whether they now understood why their own offence was against the law. In order to test whether they felt the law was fair, they were asked about the fairness of it being illegal for two 12 year olds to have sex, even if the both ‘agree’.

Young people were asked if they understood why their offence was illegal at the point of the interview. All young people said that they understood why the sexual act was against the law at the point of the interview for this research.

Max said “because it is hurting someone and will wreck someone’s life – while they are growing up and in the future because they might remember stuff about it.”

Oliver said he now feels that he understands why rape is against the law and stated that this was “because it is wrong and hurtful”.

Sam stated that he now felt that he understood why the act was against the law commenting that “children’s bodies are still developing under 16 and they can’t give consent until then because they don’t have a full understanding”.

128
Charlie said he was clear that he now understood why the sexual act was against the law, adding “probably because you are not fully developed and all that. But it just happens.”

Thomas said that he now understands why the sexual offence was against the law adding “because I’m older”.

It was clear that the young people had all completed a journey which led them to believe that the law was correct in their own cases. This is in some ways not surprising as they had all engaged in therapy and it would be very difficult for them to go through life without any sense that the criminal justice response, including their punishment, was not justified. Even so, it was clear that this position had been arrived at through a combination of therapy, and, importantly, maturation. This was clear when set against their responses to their understanding of the offence at the time.

It also chimed with professional views about children’s developing understanding as part of a process of trial and error. The adolescent forensic psychiatrist I stated:

“Individual psychology also plays a role in helping us understand how children acquire knowledge. Children test their sexual knowledge by comparing their understanding of a fact with the outside world. Consider, for example, how a story or tale is processed. Bruno Bettelheim in “The Uses of Enchantment” asks the question: Why do children love to hear tales? He argues that children grapple with fantasy (sometimes harrowing fantasy) in a symbolic fashion, in imagination often manifested in play and just knowing the difference between right and wrong may be meaningless exercise for children. Children “practice” and try things out because that’s how they grapple with knowledge. For example, when one reads children a story in which a wolf eats Little Red Riding Hood, they are fascinated. Little children who kill do the same thing. Most of the children I see in criminal justice are emotionally, morally and cognitively
below their chronological age. They can grasp the cognitive basics i.e. that x is wrong and if I do it I could go to prison; but they cannot stop symbolic play because it is part of how they learn.”

In order to test young people’s views on whether the law itself is fair, the young people were presented with the legal fact that it is against the law for two 12 year olds to have sex, even if they both agree. All ten young people confirmed that they knew this was illegal at the point of the interview. When asked whether they understand why it is against the law, nine young people said yes; one young person said no. They were then asked whether they felt this was fair. Six young people said yes; two said no; and two were not sure, one saying both yes and no.

When Sam was asked whether he understood why it’s against the law for two 12 year olds to have sex. He stated yes and commented:

“[T]he law is protecting children. If I had a daughter or a son, I would stop them. I wouldn’t want them to have kids. I agree with what the law is doing.”

Thomas thought this was fair on the basis that “you’ve got to be 16”. He said he did understand why it was against the law adding, “[C]hildren at 12 don’t know and they shouldn’t know about sex at that age”.

Patrick said that he understood why this was against the law and explained that it was probably because if they are young they would need to have their parents there to make sure they are safe. He then went on to say, “Yes 12 was too young to have it and that you need to get education first as you might not have the right information about how to do it”.

Charlie reflected that the law is fair in criminalising two 12 year olds who have sex “because they are under age and they don’t know what they are doing”. However, although Charlie was able to understand why the law criminalises this
activity, he had strong views about whether the law should punish children for this behaviour:

“Looking back on my mates having sex when we were young I don’t think they should all have to go back to Court because we were all doing it and we didn’t know what was happening. If people don’t really know what is happening, they shouldn’t be punished.”

Daniel also commented that he thought this was fair:

“Because potentially they could have been raped – they both could be doing something they just don’t like. Quite young girls have sex – it’s not right – they could be getting abused – they might change their minds later on”.

When asked if he understood why it was against the law Daniel stated ‘yes’ and commented that “It’s just to keep people safe – that’s why the law is in place”.

Harry also thought that this was fair. He explained that this is “where G-map [therapy] came in handy. The sexual age is 16. Because any younger than that, you have not really grown up and you can’t know what you are doing properly”.

Peter felt differently, commenting that the law was “stupid” and asking:

“Who’s to say how old you have to be? Although I wouldn’t want my kids to do it at 12 ... it seems a bit stupid I guess it’s to try and stop under age pregnancy and 12 years olds don’t really know what they’re doing but some people don’t know what they’re doing even when they’re 18 and the age limit is 16.”

Oliver was also not sure whether or not this was fair. He added that this was a “tricky one”:

“Sex is getting younger and younger – but 12 is too young. Would you punish both of them? What is the consequences? You need to look at the
bigger picture as in their background. Becoming a rapist at 12 is a bit harsh – better to do therapy and talk”.

Max was also uncertain, answering ‘yes and no’:

“because their body hasn’t actually grown up until they are 16 – then you can have sex with consent. But if they both agree, it is unfair for them to be punished”.

When asked whether he understood why this is against the law, he answered yes but commented “probably is because they don’t want them to rush into it”.

William did not think that the law was fair commenting that “if two 12 year olds are consenting then I think it’s ok”. He said he understood why it’s against the law explaining that it is because “they’re minors – but everyone does it though – it’s stupid.” However, he also further reflected that the children “could be vulnerable though but if they are together then maybe it’s ok. I wouldn’t want my kid doing it”. We talked about how if a boy and a girl have sex when they are underage then the boy becomes a rapist whatever happens especially if the young person is under 13 and he responded that he wouldn’t want his own kid to be called a rapist either for doing that. The various strands in William’s thinking on this issue demonstrated what a complicated issue this is.

5.4 Contact with the criminal justice system

5.4.1 Admitting the offence

Denial is often associated as a common feature amongst sex offenders and commonly considered a block to risk reduction and successful rehabilitation (Hudson, K (2012). However, there is considerable evidence that denial is unrelated to sexual recidivism (Hanson and Morton-Bourgon 2005).
Nonetheless, the point of admission clearly affects the nature of a young person’s criminal justice experience, including whether it is necessary for the child to go through a trial process, hurdles to work, discretionary release by the parole board and management on licence. Therefore all the young people were asked whether they admitted their offence, and if so, at which stage in the criminal justice process they did this.

All of the young people had admitted the offence by time of interview. This is not surprising as the placement offers therapy and is expensive so it is unlikely that that placing authorities would have invested in the placement unless the young person had admitted the offence and could ‘benefit’ from therapy in the traditional sense. On the other hand, as the clinical psychologist noted, denial in young people with harmful sexual behaviour is not a block to treatment:

“One of the common questions when people call about treatment is that the young person is ‘in denial’ but really all we need is for a young person to say in being assessed for treatment is that something happened, nothing was clear but they were present. Denial is a protective, normal (and very adolescent) response and it does not have any bearing on how well they might do in treatment. We can run with it if they ‘were there’. We have many examples of young people ‘denying’ because that is what has worked in terms of the family/community pressures upon them - young people know very well that there is a very different stigma about sexual crimes and it would be more acceptable to commit a violent offence than the sexual crime. This is born out in terms of the prison experience.”

Within the sample:

- two had admitted the offence before the police were involved
- two had admitted the offence at the police station
- five had admitted the offence between the police station and before trial
- one had admitted the offence after sentence
Only one child, Sam, in the sample denied the offence and went through a trial process. The trial took place in the youth court. Notwithstanding the comments about the eventual admission of all applicants given their therapeutic placement, it was surprising that almost all the children pleaded guilty at Court given that almost half of all sex offenders plead not guilty (see Chapter 2.4.2). Statistics for the pleas of children do not appear to be available. The barrister noted that children are more likely to plead guilty to sexual offences compared to adults:

“In my experience from dealing with parole cases, a very large number of adult sexual offenders will have pleaded not guilty at trial and will go on to maintain innocence. With children that I have dealt with, in the majority of cases I have seen they have pleaded guilty.”

Thomas described how he felt compelled to plead guilty because the court process was dragging on:

“In Court, I went guilty. I thought that it was taking forever to get through Court so I might as well just say it. The Solicitor told me to go not guilty but I didn’t take any notice of her – I didn’t like her.”

It is hard to imagine an adult pleading guilty to a serious sexual offence because the case is taking too long. However, Thomas’ comment suggests that the reasons for children pleading guilty to sexual offences need to be further explored, particularly in relation to how the inadequacies of the process itself may affect young people’s choice of plea.

For instance, it appeared that William admitted the offence at court and before trial based on advice from his legal team that proved not to be correct: “they had evidence – the solicitor said I would get less time if I went guilty – fucking hell – I got the longest possible sentence”.

On the other hand Daniel admitted the offence at the police station, at a time when he was feeling ‘suicidal’.
5.4.2 Experiences at the police station
The literature suggests that a child's experience at the police station can have a major impact on their experience of the criminal justice system and that many children experience a number of difficulties at the police station (Hazel et al, 2002; The Howard League, 2012). However, there appears to be an absence of specific research into the particular experiences of children with harmful sexual behaviour at the police station.

5.4.2.1 Feelings at the police station
The structured questionnaire, to a certain extent guided by the literature on this subject focused on whether or not children understood what was happening at the police station and the adult help they received. However, several young people provided powerful narratives about their experience and how they felt at the police station. It would seem important to consider questions about levels of understanding and assistance against this backdrop.

Daniel explained his "suicidal" feelings at the police station:

"I didn’t want to be in them cells; I was cold all the time; I was in there from 9.30 am Friday until Saturday 1 pm".

He went on to talk about the way the police officers treated him:

"[T]elling me off - even though I was only 12 years old - it was because I was a sex offender - I remember them telling me that".

Charlie described in vivid detail the entire experience of arrest and detention:

"[My dad]... called the police. They came out and put me in handcuffs. Neighbours and friends were looking at me. I felt really wound up... I was only 11, but I had handcuffs and leg restraints on me. They are like a stretchy band with Velcro to stop you from kicking out at the police. The police came out, asked my dad a few questions on the doorstep and then came in and grabbed me. I struggled and swore and then they just came out with all the gear. I was in the back of the unmarked police car."
It was clear that this experience differed immensely from other contact he had had with the police in the past:

"I had already been arrested four times. As soon as I turned 10, I started getting arrested. The worst thing was that it was early in the morning. They [the offences] had happened in the night and she said she was going to tell in the morning. She did it before I woke up. Looking back, I think it would have been better if they had sat down and talked to me. When I went into the police station, they took all my clothes, laces, shoes, stuff. I didn't see a social worker that day at all. I had to sleep in the police station for three nights — four days.

Charlie explained the kind of thoughts that he experienced when detained for his index offence:

I found the interview bit really tough — in the cell I was okay. They gave me cups of tea and food and that was okay. It was quite friendly but I was thinking shit — what is going to happen to me? Will I be allowed back home? That [the night before his arrest] was the last time I slept at home.

Peter described his feelings at the police station and how these differed from a previous arrest:

"I had been arrested for vandalism and shoplifting in the past — but it was different this time. In the past I had been cautioned. This time I was in the cell for ages — I'm not sure how long. I got arrested at school and when I came out of the police station it was night time. I was scared, I think it was for more than 6 hours that I was stuck in there."

The feelings of anxiety raised by Daniel, Peter and Charlie from being detained at the police station indicate that in at least some cases, young people might be especially disadvantaged in understanding the legal processes. It may be that police responses in these cases, which appear to go against accepted good practice,
reflected an inability to see these young people as children. The child protection specialist noted:

‘Working with the police have I been really challenged by a tendency to have a black and white view around children who offend and a scepticism about accepting the vulnerability of those children.’

The police responses in these cases may also have reflected their unfamiliarity in dealing with such cases and their alarm at the nature of the offence. It is possible that the reactions of some YOT workers noted by the clinical psychologist also applied here:

“YOT practitioners often panic because they don’t get so many of these top end cases. They demonise the behaviour of the young person because there are so few of them.”

5.4.2.2 Understanding the charge
Understanding the charge at the police station is such an essential pre-requisite of a justice system based on notions of culpability, accountability and commitment to a fair process, that it was considered important to check young people’s views on this. Only half the young people felt that they understood the charge at the time.

Young people who said they did not understand the charge at the time described experiences that ranged from complete ignorance to being overwhelmed by law. Peter explained that he simply “didn’t understand what had happened” and suggested that he did not get any help from the police other than the title of the charge:

“[The police appeared to be] more interested in taking my fingerprints. I had a social worker there I think but they didn’t explain it to me. The police explained I had been arrested for rape but not what it was.”
Similarly, Sam explained he “didn’t have a clue what rape was to be honest”, although he did receive some more information from the police (see below). Charlie and Thomas gave similar responses.

Max and Daniel appeared to feel bamboozled by the legal jargon. Max talked about various legal sections that he appeared unable to relate to his own life:

“They were saying all sections and stuff – section 4 and section 6 they said section 10 and 13 too. I didn’t know what they meant. All I know is that section 20 is about being voluntary and I can walk out of care if I want.”

Daniel commented that he could not “remember what they [the police] said – it was just all long words – but I knew I did something wrong”.

Further exploration with young people who said they did understand the charge at the time suggested that this was because an adult had explained it to them. Given the literature on the need for young people to have assistance at the police station (HMI Constabulary, 2012) and the availability of a number of adults, including parents, appropriate adults and solicitors, entitled to be at the police station young people were specifically asked to identify the sources of help.

Three young people said that they had no help at all to understand the charge. Seven said they had received help with this. The most common source of help identified by the young people was the police. William confirmed that it was his solicitor and the police who gave him the most information, with his solicitor doing the most talking. Daniel commented that his solicitor was “not helpful and I can’t really remember who else was there”.

138
William, who had said he did understand the charge at the time, outlined how the police explained it to him:

"I knew sort of — it was forcing yourself. Police told me — they were telling me what it was like forcing someone to have sex when they don't want to do it. It all seemed like mad stuff. It was the first time I ever talked about what rape is even though it had been done to me in the past."

Patrick also said he understood the charge because it was explained to him at the Police Station. He confirmed that he was 13 at the time and that he had heard of rape on the news and all of that. He said he knew a bit about it but at the time of the offence he did not know what he was doing was rape. He confirmed that the Police explained it nicely to him, helping him to understand 'how bad the offence was' by explaining it was '10 out of 10' for being bad.
Sam recalled the words the police had used to explain the charge:

"They said 'I am arresting you for attempted rape'. They explained it as having sex with someone under the age of 16. I had never heard of rape before that."

Oliver highlighted that he was only 13 at the time. He thought that the police were the main people who helped him to understand the charge but there was "another lady" present. He thought that this on reflection was an appropriate adult. He added that "she was okay – the police brought her in. It was a bit embarrassing". Max was the only other young person who raised the possibility that an appropriate adult might have been present: "there was a fella there but he didn’t really help me. I think it was the appropriate adult".

HMI Constabulary (2012) record that the 'key element of AA ['appropriate adult'] independence was found to be variable', causing inspectors to be concerned about their ability to ‘focus on the needs of the child or young person rather than the needs of the police’ and that ‘AAs did not take the opportunity to explain the complex and legal language used by the police and were generally found to be passive throughout the interview’ (p.33).

5.4.3 Experiences of the court process
The literature suggests that, despite the right for children to participate effectively under Article 6 ECHR and in accordance with the SC case, many children find the court process overwhelming (Botley et al, 2010; Hazel et al, 2002). The young people were therefore asked about their experience of the court process including their experience of preparation for court.

5.4.3.1 Preparing for court
The limited research on children’s experiences of preparing for court and their interaction with lawyers highlights a number of concerns (Kilkelly, 2010). Young people were therefore asked about the number of times they saw their solicitor before being sentenced for their index offence. Within the sample:
• one young person said that they saw their solicitor only twice;
• two young people said that they saw their solicitor three times;
• four young people said that they saw their solicitor more than three times;
• three young people said that they didn’t know.

A number of young people appeared to hardly remember anything about their interactions with their lawyer before sentence. For instance, Peter did not know how many times he had seen his solicitor but commented that it was “not that much – can’t really remember anything about him – I think it was a man.”

Daniel confirmed that he saw his solicitor more than three times prior to sentence. He went on to comment that he “probably saw him about nine times”. He described his solicitor as “fine” and “supportive”. Thomas claimed his “solicitor and social worker wanted me to get locked up. They made it clear to my foster carer who told me that – they were twats”.

5.4.3.2 Feelings at court
Given the judgment in SC holding that children should not be tried in adult courts, young people were asked which court they were tried in. Young people were also asked how the court experience felt, in light of the ruling of the European Court in T v UK (1999) 30 EHRR 121 and the subsequent practice direction by the Lord Chief Justice (now incorporated in to the consolidated Criminal Practice Directions [2013] EWCA Crim 1631, requiring the court process to be adapted to take into account a child’s age, maturity and development.

Nine of the young people said that they were sentenced in the Crown Court. One young person did not know. As noted above, all children were sentenced in the Crown Court. Sam, the one young person who did not plead guilty was tried in the Youth Court.
When asked how they felt during the court proceedings, nine young people said that they felt confused, eight said that they felt scared, and seven said that they felt bored. Only one young person said that they felt interested.

Even though Oliver explained he felt “nervous – didn’t like it – sometimes didn’t understand why there were different Judges or arguments and technical terms”. He also added that he felt slightly scared and slightly confused by it all.

Several young people described a long, drawn out process which they did not understand. Information about what was happening and when it would end appeared to be particularly absent.

Charlie described the experience as follows:

“At first I didn’t know what the hell was going on. I thought I was in a dream. It only became clear after. It was like some bloke talking to me behind a desk – didn’t feel real. At that point I was not able to understand but when you are 12 and going every day, you kind of understand.”

Patrick recalled feeling upset while at Court. He was not sure why this was but said “it was one of them scary places”. He also described feeling bored, scared and confused a bit while at Court. Harry said he did not feel good “at all because I was worried I could get locked up”. He was the only young person who said he felt interested, but he also said he felt bored, scared and confused. Daniel also felt scared:

“I was just scared about what was going to happen. I was scared each time I went in that I wouldn’t come out again – I didn’t know when I was getting sentenced.”

He added that he felt “very emotional at all times”. He said that he was thinking “what have I done?” and how he felt “scared of losing my mum – I thought I had lost contact with her because she was cross with me”. In numbering his feelings by order of strength of feeling he commented that his primary feeling was that of confusion followed by being scared. Sam also felt scared at Court, as well as
feeling confused and then downright bored because he didn’t know what they were saying and basically “worried about what would happen”.

William added that when he was at court his overwhelming feeling was that of being “scared”. He also said that at times he felt bored and confused. The confusion, boredom and fear that appears to have dominated the young people’s court experiences is also noted in the literature (Hazel 2002).

5.4.3.3 Understanding proceedings in court
Given the extent of confusion, it was not surprising that, when asked, seven of the young people said that they did not understand what was happening in court. One said that he did not know. Just two young people said that they did understand what was going on, although both appeared to later indicate that they in fact struggled to understand some aspects of the process.

Peter summarised the experience as confusing:

“When I got prosecuted I just didn’t understand. It was all confusing to me”.

When asked whether anyone explained what was happening at Court he stated “no”, adding “not until after.”

A number of young people commented on the language used at court. For instance Thomas said he “didn’t understand the Judge – too much jargon”. Similarly, William said “I couldn’t even understand the Judge because he was just posh. I couldn’t understand the words that they were all saying”. Patrick said he could only understand what was happening in Court “a bit”, adding that sometimes he did not really listen because it was a “bit boring” and they seemed to be talking about “something random” so he “switched off”. Sam confirmed that he did not feel he understood what was happening at court adding “the judge just freaks you out with that thing he has on – I didn’t understand the words he was saying – too bloody posh”.

143
Several young people felt confused about what was happening when and the reasons for adjournments. Peter described the process as drawn out and confusing:

“I used to go in and sit down and they would say a load of stuff and then call me back again. Probably went about 6 or 7 times over a year’s period. They should have sorted it out faster. When I finally got my sentence, I wasn’t really prepared for it – just thought it was another session and I would be sent home again. I don’t know why they kept stopping and starting. It felt like a whole long time and went on for over a year – I was living with my Gran to start with and then I was in a care home.”

Daniel also found the number of hearings and the reason for adjournments confusing:

“I was more confused because I didn’t know what was happening – there were lots of hearings and they kept adjourning and adjourning it and I didn’t know why.”

One of William’s key memories was that “they don’t tell you when you will be seen and all that”. He seemed to be commenting on all the waiting around without knowing when you will actually be going into court.

Max said he didn’t really feel confused but that was because he had “no idea what was going on so couldn’t be bothered going”. The YOT caseworker also noted the delay, especially where cases are dealt with in the Crown Court:

“It takes longer if the case is in the Crown Court ... We need to put support in place quicker because the cases can go on for years.”

Oliver was the only young person who felt he understood what was happening in court “most of the time”.

144
5.4.3.4 Adult Help with understanding what was happening at court
In light of the legal requirements that children must be able to participate effectively, young people were also asked whether anyone explained what was happening in court. Six young people said that someone did explain what was happening in court. Four young people said that what was happening in court was not explained to them. When asked who provided explanations, the following responses were given:

- four young people said that solicitors helped them
- two young people said that a parent helped them
- two young people said that a barrister helped them
- one young person said that a social worker helped them
- one young person said that a YOT worker helped them

None of the young people said that they received help from an appropriate adult or a judge. In addition, in response to other questions, some young people referred to being provided with advice and assistant by security guards that sat next to them in the courtroom.

Young people were also asked whether they understood what they were told by the person who tried to explain it to them. Only three out of ten young people said that they understood what they were told. Four young people said that they did not understand, and one said that they understood sometimes. Comments included ‘too much jargon’, and ‘[understood] some of it’.

When asked whether anybody explaining what was happening at Court, Charlie stated:

“Yes, but I didn’t understand a word of what he was trying to say – he was talking quite quick – I tried to keep up. I got a couple of things including stuff like – you were going in that room or you are pleading guilty but that was about it.”
When asked who this person was, he thought it was his barrister. Sam noted he “didn’t have a clue what words the solicitor was using – even if I asked her to explain things in a different way, I still didn’t understand”. William confirmed that while he was at court his solicitor explained what was going on. However, he said that he did not understand what he was told. He described how he did not understand that he had an indeterminate sentence even after the solicitor explained it (see below).

When asked whether anyone explained what was happening at court, Max said yes and added “my mum and aunty tried to explain the best they could but they didn’t really know either”.

Max added, “[m]y Barrister explained it to me at the end by saying that I was going to foster care for two years and could see my mum once a week. That’s all”. When asked whether he understood what he was told he said “yes – some of it”.

When asked whether anybody explained what was happening at court, Daniel stated no. He went on to comment “I think they should have done – I would have felt more secure then”, begging the question as to whether any of the many agencies involved considered it their job to ensure a child understands what is happening at court.

5.4.3.5 Where young people sat in court
The possibility that children may sit next to their solicitor or another adult at court rather than in the dock allowed for in The Criminal Practice Directions and recommended in T v UK is presumably to facilitate effective participation. Young people were therefore asked a series of questions about the court layout, who they sat next to and whether they could speak freely to that person.

Answers demonstrated considerable variation in practice in seating arrangements:

- Two young people sat next to solicitors,
- Two young people sat next to social workers;
- Three young people sat next to a parent or carer;
- Two young people said they were not sure.
• Three also said that they sat next to ‘transport people’, guards, and a keyworker.

These figures reflect the fact that most young people went to court on several occasions and would often sit between two people. Some young people also described being physically separated by glass or plastic screens.

Six of the young people said that they were able to speak with the person they sat next to, and three said that there were not. Sam explained that he sat in the dock with the guards and that these were the people he could speak to during the proceedings:

“They were the people who brought me from the escort company – I did not really know them but I clearly explained that I didn’t have a clue and then they would tell me to listen or just to ask my solicitor but when I did I still didn’t get it.”

William also described sitting next to the transport people from Securicor. He was sandwiched between them. He confirmed that he did not know them but that they were there in case he ‘did a runner’. When asked whether he was able to speak to whoever he sat next to in court he understandably replied “no”.

By contrast, Peter stated that he sat next to his solicitor and social worker for most of the time but added that when he was sentenced he sat “on his own in a glass box”. He added that this felt “scary” that he didn’t “know what it was for - then they opened the door behind me and put cuffs on me and took me to secure. I was crying.”

Thomas also described being physically separated in court, sitting in the dock behind a plastic screen. He said he was not able to speak to whoever he sat next to in Court while the Judge was in the room.
Harry was the only young person who described the experience of appearing by video link:

“I didn’t like the video link at all. I have been in court as well. If something is said in court you can say something back. On the video link my solicitor was in the courtroom and I was alone. I felt inhibited to request anything as I would have to ask the Judge and then set up a new link in a new room if I wanted to ask my solicitor something or speak in private.”

Patrick could not remember who he sat next to at Court but thought he sat next to somebody such as his Solicitor or his YOT Worker. He felt that he was not able to talk to whoever he sat next to while the Judge was in the room and waited until the end for them to explain. He felt shy to talk while the Judge was in the room.

Oliver thought that he sat next to his solicitor or parents in Court but could not recall exactly. He confirmed that he was able to speak to whoever sat next to him in Court while the Judge was in the room.

The young people’s responses indicated that judicial guidance that children’s hearings should be adapted to be more informal, practice varied considerably and that the Court retained an intimidating atmosphere for most young people. The responses also indicated that decisions to physically separate young people which had possibly been made without thought may have the effect of alienating young people, as might the practice of having young people under guard.

5.4.3.6 Wigs
TvUK recommended that the antiquated practice of wearing wigs in court should be dispensed with in hearings concerning children and this approach was accepted as appropriate in the practice direction. Young people were asked about their experiences of this to test the extent of compliance.
Eight of the young people said that the judges and or barristers wore wigs when they were in the Crown Court. Comments ranged from ‘scary’ to ‘funny’.

Daniel recalled that the Judge and the barristers were wearing wigs. At first, in relation to the impact of this he stated that “[i]t was the last thing on my mind”. He added “But it did make things worse because the people I remember seeing were scary. It would be better for them not to wear them”.

Charlie stated:

“They all wore wigs when they walked in and then took them off. I thought it was weird. Not sure what that’s all about. Thought what the hell?! Found it weird. I thought they shouldn’t bother wearing them at all. I thought it was a woman.”

Sam confirmed that the judge and the barristers did wear a wig and commented:

“It was horrible, freaky, scary and terrifying. It freaked the hell out of you with their wigs and suits. Little ones would be really scared and maybe they might cry their eyes out. It made me feel scared.”

Oliver confirmed that the barristers were told to take their wigs off but the Judge who he described as a “strict one” kept his wig on. Thomas confirmed that the Judges and Barristers wore wigs and commented “stupid! They look daft. Are they made of wool?”.

Patrick clearly remembered the Judge and the Barrister wearing a wig and said that he had wanted to try it on but was not allowed.

Max confirmed that the Judge and the Barristers did wear a wig but “it didn’t bother me. They looked funny. They never took their wigs off”. Harry confirmed the Judge and barristers wore a wig and that he thought that this was fine.
5.4.3.7 Delays at court

General concerns about the length of the court process (Nacro, 2002) were widely reflected in the sample. Most children raised the number of adjournments in the context of not understanding the reasons for the delays. However, two young people specifically commented on the general frustration created by delay and the fact that the greater the delay the more assessments need to be revised or updated.

Oliver specifically raised his frustration at the slow speed of the criminal justice system, the number of adjournments in his case and the total uncertainty. Oliver noted that the proceedings “went on for about a year and kept adjourning”. The length of the proceedings and the number of different hearings appeared to have troubled him extremely.

Max also added how “if you keep going back to scratch over and over again, it takes longer for them to come and see you and keep wanting assessments – it is long”.

It is not clear whether young people prosecuted for harmful sexual behaviour experience more delays than other young people. However, given the experiences of this group and the complexity of the issues concerning the assessment and planning needs of young people with sexually harmful behaviour it is at least a possibility that delays and adjournments will be more likely.

What is clear however is that Crown Court cases involve significantly more delay than youth cases. Thus, if sexual offences are more likely to lead to Crown Court hearings, children accused of sexual offences are more likely to experience delay.

5.4.4 Sentences

Consistency in sentencing, combined with the importance to both the public and defendants understanding the rationale behind a sentence, has been recognised as desirable features of a fair punishment system (Leveson, 2013).
The young people were asked about their experience of being sentenced, whether they understood the sentence at the time and their reflections on the fairness of the sentence in order to gauge their personal experiences and views of the sentencing process. Where appropriate, the case papers were considered alongside their responses to gain a better understanding of the young people’s responses.

5.4.4.1 Describing/understanding the sentence
Young people were asked to simply describe their sentence. Each response was considered against the information available from the case papers. Seven young people were able to describe their sentence accurately without assistance. Two were unable to describe their sentence at all. One young person was able to describe his sentence with assistance. Several young people who now understood their sentence, having experienced it through to release from custody, reflected on their lack of understanding at the time the sentence was handed down.

William, Daniel, Peter and Sam were given sentences which involved a level of scrutiny by the parole board, with William and Sam’s release being only possible following a parole board direction for release.

A striking feature emerging from the case papers was that in three of these four cases where indeterminate or extended sentences were imposed, the YOT workers had in fact presented alternative packages of residential supervision and therapy to the Court. In Sam’s case the same placement had in fact been put to the court as an alternative to custody in the pre-sentence reports. Similarly, in Daniel’s case a similar package of residential supervision and therapy had been proposed as an alternative to custody. Peter’s pre-sentence report also outlined an alternative community package comprising of a children’s home plus therapeutic intervention and access to education. In these cases, non custodial sentences set out at Chapter 4.6.2 would have been available. It is not clear whether in any of these cases the Court considered whether the public could be sufficiently protected within these robust packages of supervision, therapy and support. Instead it appears the
punishment was a primary driver in the sentencing exercise. Options such as a deferred sentence that would allow for greater judicial oversight do not appear to be considered. For instance, a deferred sentence would have allowed for the package that was eventually required to be provided initially. If the young person failed to respond, the harsher sentence would be available. Equally if successful a lighter punishment could follow.

The residential home manager raised concerns about judges’ approaches to sentencing:

“I think there is a bias around sex offenders – a sense that it is safer to lock them up than to lead them down the therapeutic path – they or their managers and judges saw it as too big a risk; that was a very short term view because most of them ended up with determinate sentences which meant they would return to the community with no work being done and that is when the panic would set in... I would like to see the Court taking more of a direction and actually call back the professionals to report back on progress, which I have seen done in the Republic of Ireland. That might encourage a more progressive approach.”

In each case the Court imposed a custodial sentence instead and these four young people were eventually released on licence by the parole board with a requirement to reside at the placement and engage in therapy. Young people’s views on this rather ironic situation are considered below in the sections headed ‘treatment’, ‘parole’ and ‘effectiveness of the criminal justice system’.

In relation to the experience of sentencing itself, Sam’s sentencing transcript provides an illustration of the challenge in explaining what a sentence is and how it works at point of sentencing:

“[Sam], I’ve reached my decision and I am about to explain it in detail. I don’t think you are likely to understand my explanation because I will have to use quite complicated language so for that reason when I’ve
finished I’ll tell you very simply what it means. All right? Until then, until I tell you, you can sit down. All right.”

The judge then proceeded to explain his reasoning which has been transcribed into approximately three pages of text. He determines Sam to be dangerous. He then considers that adult sentencing guideline for sentencing sexual offenders, noting a starting point of 8 or 9 years for an adult for the offence he has committed. He reduces this to four years in light of Sam’s age. He then considers whether the sentence should be an indeterminate sentence for public protection or a fixed, but extended, sentence for public protection. In determining this, the judge considered the likelihood of the danger subsiding. He stated:

“I have no doubt that the defendant currently poses a significant risk of serious harm and will continue to do so for the foreseeable future. It may well be that he will always present such a danger. It is to be hoped that as he grows up to maturity with the benefit of assistance from others the risk will diminish, but there is nothing before me to indicate that it will....It seems to me however that while the risk posed by the defendant may diminish as he reaches full maturity, it is more likely that it will not.”

The judge therefore decided to impose an indeterminate rather than a fixed sentence. At the end of the hearing the judge addressed Sam as initially promised:

“[Sam], will you stand up please. What you did... was very wrong and you have to be punished for it. In addition, I think you are a serious danger...and likely to carry on being a serious danger...I have decided you should go to detention until it's safe for you to be released. You'll spend at least two years in custody less the ...days you’ve already spent locked up but you must understand that the authorities will only release you after that if and when they’re satisfied that it’s safe to do so. All right? That’s all.”

When asked about his reflections on the experience of being sentenced, Sam commented:
“All I heard was 2 years and an IPP. I was like, what’s an IPP?”

William also did not understand the nature of an indeterminate sentence at first:

“I didn’t have a release date. At first I thought I just had one year nine months but one of them blokes – the transport people – explained I had a life sentence. I felt gutted.”

These experiences appear to support the views of respondents interviewed for the Council of Europe Research on child friendly justice about the “failure to fully explain the sentence being passed – the inability to fully understand the sentence passed appeared common – and about the failure of the judges and others responsible to take account of their views.” (Kilkelly, 2010, p. 35).

The young people’s experiences would suggest that, without any adult assistance, at least some children come away from sentencing hearings without a clear understanding of what their punishment is or how it translates to their day to day life.

For that reason young people were asked about whether they received adult help in understanding sentence. Only one young person said that they did not receive any help in understanding their sentence. Of the nine young people who said that they received help. The following people were said to have given help:

- Solicitor (two young people)
- Barrister (one young person)
- Social worker (one young person)
- Parent/carer (one young person)
- YOT worker (four young people)
- Key worker in secure (three young people)
- Not sure (one young person)
- Security guy/transport (one young person).
However, this in itself did not always guarantee a realistic understanding of the sentence. For instance, William described how he misunderstood his solicitor’s explanation of his sentence, stating “I thought I just got a one year nine month sentence”. This is significant because in fact he got an indeterminate sentence.

Peter also described how his YOT worker explained his sentence to him but it did not really sink in:

“My YOT worker sat down and explained to me that I would have to serve a minimum of 3 years and then I would be considered for parole – but I didn’t know what that meant until staff in my secure children’s home explained it to me.”

Peter later clarified that he only really understood what parole meant about a year into his sentence after staff in his secure children’s home kept explaining it to him.

Six young people thought that their sentence was fair at the point when it was handed down whereas seven young people felt the sentence was fair on reflection at the point of interview.

Peter was among those who felt his sentence was not fair at the time adding when asked, that it “just wasn’t – too long!” He added:

“I didn’t understand it at first – but once I understood it, I was surprised because I saw other people come through the unit who had done a lot worse things than me and got much less time.”

When asked whether he thought his sentence was fair William commented that he “didn’t think about that at the time and just got on with it”. When asked whether he thought his sentence was fair now, he stated no commenting:

“It was too long. I didn’t even kill anyone. My offence was bad but I shouldn’t have been given that long. I have seen people who have killed get out before me. That’s how shit the justice system is.”
Sam commented that at the time he “felt it was too long and that’s when I thought it was only a two year sentence”. He continued to believe that the sentence is unfair:

“Basically I can’t do anything. I can’t even leave the UK to go anywhere. I want to go abroad and watch concerts. My sister wants to come too. I want to go to a concert in a park but I have to be careful as there are children there.”

Some young people had a strong sense that they needed to be punished. Daniel commented that although he was not sure whether he thought it was fair at the time he now felt that his ten year extended sentence was fair: “For the crimes I’ve done, I deserved that long”. Similarly, Harry felt his sentence was fair because “what I did was wrong”.

Charlie appeared only to be able to measure the fairness of his own sentence in comparison to others stating that at the point of sentence he did not think it was fair:

“I thought, hang on a minute – 8 years – bloody hell. There are people that I’ve seen on TV who only get a year and a half...I was surprised it was so long – at the time I didn’t think what I had done was that bad.”

However when asked now whether he thought his sentence was fair, he said yes “Because I know there is another lad in the same boat as me who had a longer sentence of ‘8 do 4’ plus 6 years [an extended sentence].”

5.4.5 Treatment once the criminal justice process has commenced
Research on effective treatment for children with harmful sexual behaviour suggests a holistic approach is required (Hackett, 2006). The recidivism evidence also suggests that at least some young people will grow out of sexual offending (Hargreaves and Francis, 2013) although there is also evidence to suggest recidivism is substantially lower if treatment is completed (Rich, 2011; Worling, 2012). The timing and impact of treatment was therefore explored in some detail
with young people and several professionals raised issues concerning the availability of treatment.

5.4.5.1 Perceptions of treatment
Young people were asked about their views on treatment. Two children did no work during their sentence. Of the remaining eight, two only commenced treatment towards the end of their sentence. All of them would have been able to commence work earlier had they been given community sentences or been dealt with outside the justice system. In particular, the case papers revealed that plans had been in place for Sam and Peter to do such work had they been given community sentences (see below). Sam eventually commenced the work just before release on licence and continued it on licence:

“It has helped me to work out who I like, helped me to realise that I like boys more than girls and that’s been hard to come to terms with – I think I knew but felt scared about what people would say.”

The young people who had completed therapeutic work as part of their sentence, were generally positive about it. Daniel explained how it “helped me a great deal” and was adamant that “otherwise I wouldn’t be here – out on parole and rebuilding my life again. I remember that my main thing was that I wanted to go to college and this is about to happen. Things are working out at last”. Oliver, who had received a community supervision order commented that his therapists had “helped me to realise what I did was wrong and how to cope with it”. Max reported that the intervention started “two weeks after I was sentenced” and noted that it was helpful and that the workers ‘make it fun and easy so that I enjoy the work’. Charlie confirmed that he did do work to address his sexual offending while he was detained and that it was ‘helpful’.

5.4.5.2 Delays in treatment
A feature of the adversarial system is that treatment will not generally commence until the criminal trial or disposal is completed. A report by HMI Probation and
HMI Constabulary (2010) was critical of delays in accessing treatment for young people in light of the importance of the timing and amount of treatment that a young person receives to ensure treatment is effective.

Only two of the four young people released at the direction the parole board, William and Daniel, had managed to undertake a significant amount of intervention while in custody: in any event both were required to continue with this on release. The other two, Sam and Peter had hardly commenced therapeutic work in custody but were released on the condition that they would do this work on licence (which they both did).

In Peter’s case his local authority had agreed to fund treatment as part of a community sentence and he reflected that this would have been preferable:

“It probably would have been better for me to come straight here to the open unit [referring to the unit where we were conducting the interview and where he was released on parole]. I had to wait 2.5 years to do the work and I would have started it faster in the community.”

Patrick also confirmed that he had not done any work during his sentence to address his sexual offending. Patrick considered it would be better to do a little bit rather than absolutely nothing.

Max raised the point that intervention would have been a better option as an alternative to prosecution:

“What would have helped was, instead of going through Court, I could have done the G-map or Barnardo's [specialist therapy providers for children with harmful sexual behaviour] instead of going through all that trauma with my family and then I could have got the work done quicker. I was in and
out of Court for two years without doing the work. So when I came to do
the work, it was hard to really remember anything”.

Oliver also raised the possibility of diversion, commenting:
“[It] would have been much easier to have come here anyway without
having to go through the Court process. It did give me time though to get
my head around the idea of coming here”.

William also highlighted that his treatment, which he found helpful, was delayed,
commenting that “working with the specialist helped but it didn’t start until I was
about 15 and a half years old. I waited for over two years”.

The clinical psychologist made some observations relating to the timing of
treatment, noting that where a child is very young, the approach will be
completely different:

“Equally, treatment for younger age groups is going to be very different
from treatment for an older child. Treatment for younger age groups is
likely to be more about safeguarding and family work, redirecting normal
developmental pathways and working things such as out why it happened,
rather than talking treatment. The therapy would be very here and now but
also work with the carers.”

This in goes some way to dealing with Thomas’s observation that he may have
been too young to have bothered with therapy if offered it when he was just 13
years old.

The delays experienced by young people in the sample begs the question as to
whether it is appropriate or effective to treat someone for sexual offences
committed a few years previously if in the mean time the young person has
crossed into a different treatment zone by virtue of age. On the other hand, it
cannot be assumed that undertaking work in a custodial setting will always be
appropriate, especially if a young person does not feel sufficiently safe to explore traumatic issues.

The clinical psychologist also raised the issue about the timing of treatment and the potential negative impact that can have on children when they are not feeling safe or stable:

“A young person with a deprived background may not be ready until their early 20s and not everybody needs therapy. Other things can be and are therapeutic, such as good foster care, active involvement with those teaching and training young people and these all ‘count’ as treatment.”

Sam recognised that it would have been difficult for work to commence at an early stage because he was in denial but nevertheless thought it would have helped him to admit the offence earlier:

“It was harder because I was denying it but I reckon if I did G-map before, I would have admitted it. I wouldn’t have been able to keep it inside if I was seeing someone every week. Especially if they had said I wouldn’t have to go to prison if I had admitted it and did the work. I denied it because I was scared my family would never talk to me again. It would have been scary at first but I think it would have been worth it.”

This response it interesting in that it touches on the core of the problem of offending work where a criminal charge is likely to occur. In essence, the young person is suggesting that had the work started he would have admitted it earlier. Sam had pleaded not guilty, was tried in the youth court but sentenced in the crown court. After being sentenced to an indeterminate sentence for public protection, he went through a long and painful process of admitting his offence and then coming to terms with it. He in fact was considered suitable to start work before he admitted the offence (which is not an approach usually taken with adults) although he admitted the offence before the work actually started. If his statement here is true, it is likely he would have pleaded guilty from the outset.
While in hindsight early intervention leading to admission would have made his life easier, it would have deprived him of due process, creating a tension between justice and welfare. Ultimately Sam received an indeterminate sentence so depriving him of due process without a guarantee of diversion would have been out of kilter with a justice-based system.

The forensic psychologist also raised concerns that the criminal justice process can delay treatment to the detriment of the young person, suggesting that the criminal justice system should not delay treatment where a guilty plea has been entered:

"Young people often wait for over a year to complete the trial process. For example, I had a recent case where a whole family's life was put on hold for 20 months. They received no treatment; they weren't allowed to talk about it; and the young person was not allowed to go to school. The vast majority of cases are just for sentencing but they can still take years. Where there is a guilty plea, why not start with treatment straight away? Lots of the kids that I worked with [in welfare settings] ... had committed sexual offences."

The extent to which such shifts in practice are possible and the impact such shifts may have had on outcomes for children with harmful sexual behaviour is clearly an area for further investigation.

Another way to avoid undue delay or possibly inappropriate treatment might be to allow interventions as an alternative to a criminal justice disposal. The attraction of this is that from a risk management perspective, is that therapy can be a condition of diversion and avoid the delays in treatment experienced by many of the young people in the sample.

5.4.6 Experiences of parole

Four of the young people, William, Sam, Peter and Daniel, had appeared before the parole board and had resided at the placement under licence conditions stipulated by the parole board. One possible explanation for this is that the
children would not have been released by the parole board in the absence of the on-going support, therapy and supervision provided at the placement. From reviewing the parole board decisions for these young people, it was clear that ‘plans to manage risk’ through the robust structures available at the placement had been influential in the decision to direct the young person’s release. This implies that, if this placement, or something similar, had not been available to these young people, they may still have been detained at the point of interview.

The four young people who experienced parole reviews were asked whether they understood how the parole process would work at the point of sentence. All said that they did not understand it.

All of the young people had been represented at their parole reviews and all of them had an oral hearing. All of the young people had been released on parole eventually, although most had experienced set backs and delays in the process so that none of them were released at the earliest opportunity.

William had two parole reviews; his second one was delayed although he was not sure of the reasons for this. Daniel was initially refused parole and only granted it following a challenge by his solicitor and a fresh review. Peter and Sam both experienced delays in the parole process for assessments and release plans to be finalised.

All four young people who went through the process considered that the final decision by the parole board was fair. This was not surprising as all young people were released.

Young people were asked about the experience itself. All young people found the process scary. Peter stated that he felt scared and nervous:

"[It was] too stressful – too hard on people – they ask you a lot of questions that are really personal in a room full of people you don’t know. They also shouldn’t be so harsh on licence. Stupid conditions like you
can’t be around people of a certain age and you can’t see cousins until your licence has finished just separates me from my auntie because she has nowhere to put my cousin when she wants to visit me.”

Daniel said he felt a mixture of interested scared and confused, upset and worried, during his parole hearing. He highlighted feeling personally upset by a professional witness:

“I felt confused when my YOT was talking and saying that she didn’t want me to come out [of jail] – it made me feel all horrible inside”.

As he had two parole hearings as part of his first review he was able to compare the two experiences:

“At first I didn’t get it and I felt gutted and then we applied again for a second chance. The second time the Parole Board member came in and met me and just made me feel more settled. That was because he came to me, rather than me going before them. That made me feel so much more at ease!”

William also had two hearings, although these were for separate reviews, as he did not get released on parole at his first review. William explained that he did not understand how the parole process worked at the time he was sentenced and this was confirmed in the case papers. When asked what help he got working towards his first parole review he commented, “I can’t remember. I think the criminal solicitor came to see me before the parole. I was just too young and they didn’t really make much effort”. The review had taken place a few days after his 15th birthday. He remembered his solicitors came to his first hearing but “they just said that I wouldn’t get it so we just sat down and talked and that was it”. He explained that the ‘woman in the middle’ came late and they ‘talked about football’. He described a very different experience for his second review, aged 17 confirmed that his solicitor for his second hearing was good and that she explained exactly what would happen and prepared him properly. Despite this, when asked how he felt during his second parole hearing he stated:
“[I felt] nervous – my legs were shaking. I thought the manager of the open unit where I am now was in fact from the Ministry of Justice. There were a lot of awkward questions. I felt embarrassed with all the people there behind me. There were mad questions. It was like an interview but with loads of people there and all really personal stuff. I had tears in my eyes – I have never been through anything like that before. But the worst thing of all was just waiting for it and not knowing when it was going to be.”

The frightening experiences outlined by the children give weight to concerns raised by a number of professionals about problems with the parole process for children. The parole board member also highlighted how hearings are geared towards adults:

“The hearings [before the Parole Board] are geared for adults. I would like to see more opportunities for young people to communicate by other means such as drawing. I also think that sensitive information is sometimes inappropriately revealed during the course of a hearing.”

Some professionals noted the voyeuristic nature of parole board hearings. The clinical psychologist commented:

“I have been taken aback about the level of detail to which a young person is expected to describe about offences committed eight years ago. Remorse and empathy are important but not robust predictors of recidivism. The Parole Board experience is so outside anything that you are trained to deal with in clinical work…. It is a curious combination of a group of adults trying to put young person at ease and then being very unpredictable about what was being asked.”

Similar concerns were aired by the forensic psychologist:

“Lots of Parole Board members don’t know how to risk assess children. They apply adult models of risk assessment to children; this doesn’t work. The parole process is hugely anxiety-provoking for everyone and I am not sure that we do enough to prepare young people for it. For some young
people, I believe that their anxiety on the day means that they cannot give the evidence that they are capable of.”

5.4.7 Reflections on the effectiveness of the criminal justice system for the young people in the sample
Young people’s responses to questions about their experiences of contact with the criminal justice system suggested that although the process is not intended to be punishment in itself, it appears to have been frightening for most of the children involved. In some cases, it appears that in addition the system delayed access to interventions that most children found helpful and in the case of children subject to parole board oversight was considered essential, either in custody on or licence, to ensure confidence that the public would be adequately protected.

Figure 8 shows the length and estimated cost on incarceration in the four parole board cases.

<table>
<thead>
<tr>
<th>Young Person</th>
<th>Length of time in detention before being released to therapeutic placement</th>
<th>Cost estimate* (excluding cost of therapy)</th>
</tr>
</thead>
<tbody>
<tr>
<td>William</td>
<td>52 months</td>
<td>£557,583.26</td>
</tr>
<tr>
<td>Sam</td>
<td>32 months</td>
<td>£495,413.44</td>
</tr>
<tr>
<td>Peter</td>
<td>40 months</td>
<td>£619,266.80</td>
</tr>
<tr>
<td>Daniel</td>
<td>41 months</td>
<td>£263,553.25</td>
</tr>
<tr>
<td><strong>Total financial cost</strong></td>
<td></td>
<td><strong>£1,935,816.75</strong></td>
</tr>
</tbody>
</table>

* Estimate based on figures presented to Parliament in 2004 that a local authority secure children’s home place costs £185,780 and a place in a Young Offender Institution run by the Prison Service costs £50,800 (National Audit Office, 2004) (These figures are per child per annum).

Adolescent forensic psychiatrist 2 noted the value of community sentences as opposed to detention, stating a strong feeling that:

“Long community sentences are very helpful in putting a structure around a young person to help them change...if young people are in a
developmental stage then locking them away with other perpetrators is not a good environment. I also used to do a lot of court reports and I felt that provided risk could be managed then long community sentences are the best way to go. They are much better than a short prison sentence (and even a long one) because you can insist on a long term of treatment. You also have the structure of the Order and living in a hopefully reasonable environment.”

In light of the potential difficulties and cost related to criminal sentences, young people were asked for their own reflections on whether their sentence made the people around them safer. It was anticipated that young people might appreciate an opportunity to air any concerns that the system might not be achieving its purpose. However, eight young people said that they think that people around them would be safer as a result of their sentence. Only one said no and one said that they were not sure.

William was very clear that he did not think people around him would be safer purely because of his sentence. He added, “Time in jail is easy. It’s the work that I’ve done that’s changed me. I didn’t need to be on a life sentence to do that”.

William was the only one of the four cases that attracted parole board scrutiny where an alternative package of support had not been put forward by his YOT at the point of sentence, despite the fact that his need for ‘counselling’ as a result of being a victim of abuse had been clear from the reports.

In relation to whether or not people around him would be safer due to his sentence, Peter was not sure and commented, “In a way because a sentence meant I didn’t do it again”. He may have been indicating that the sentence had a personal deterrent effect or that it incapacitated him from offending by depriving him of his liberty.
Daniel appeared to be of the view that he now feels “more secure in myself and less likely to do anything like that again”. However it was unclear whether he felt this was directly related to having been sentenced for his crime.

Young people were directly asked whether they thought they had changed during their sentence. All ten young people said yes. Young people were asked to identify what had brought about this change and were provided with a range of options as well as an opportunity for free comment. The options included:

- I have learnt my lesson from being here
- I have done work on my offence
- Support from staff
- Because I have grown up
- Because I have time to think about my behaviour

Some young people found it hard to pin the change down to predominantly one reason. However, all young people named work on their offence as either their first or second choice as being responsible for the change. Free comments to this question clearly demonstrated the importance of the maturation process itself. Peter stated that he had changed during his sentence citing the fact that he had learnt his lesson, done work on his offence, received support from the staff and had grown up. He did not think that having time to reflect on his behaviour had helped particularly. He commented, “I grew up. I was really childish and naughty when I first came to secure - I had just turned 15.” Daniel felt that he had changed during his sentence. Numbering the reasons in order the most important was that he has done work on his offence, followed by learning his lesson, followed by having time to think, followed by support from staff and finally due to just growing up. He commented:

“Everything in my life has changed. Now I’m not a sex offender. I have so many things to look forward to in my life, college, contact with my mum, meeting new friends like friends at college and being able to enjoy football.”
Harry thought he had changed during his sentence, implying by his comment that it had a deterrent effect on him as it was a “learning curve for me and a really negative experience – I wouldn’t want it to happen again”. He also stated “I have learnt my lesson through being in the system and losing people and I don’t want to go through the court system again”.

Charlie felt that he had changed during his sentence mainly because he had had time to think about his behaviour and completing work. However, his comment indicated that he had matured: “When I first went in I was an awkward so and so. I refused to do anything for anyone. I started being nice, doing what I was told.” However, later in the interview he put a greater emphasis on the deterrent effect of his sentence, “But before I got punished it [sex offender notification requirements] wouldn’t have [made a difference]. Now I realise it [sexual offending] can get you in deep shit.”

Max believed he had learnt his lesson from the restrictions placed upon him, from doing work on his offence and from getting support from staff. Max was the only young person who stated that support from staff was particularly important and added that he had been through three foster places before coming to the current residential unit which was the “best placement of all”. He also felt that growing up had an impact and having time to think about his behaviour. He added, “because I am older and more responsible young man now”.

Harry felt that people around him would be safer because of his sentence “because I now realise what I done was wrong and definitely never do it again. Not so sure what would have happened if I had not been sentenced”. Sam commented that the people around him “would have been safer even earlier if I had been able to do the work straightaway. It was about a year and a half before I started doing any work on my offending”.

Oliver talked about the hope that one day he would want to be assessed as no longer posing such a risk and also explained that he would first “want to be sure
of myself that I had changed. I’m getting there but a lot of work that we do here is not just about not re-offending it’s also about getting rid of unhelpful behaviours such as attraction to children”. He thought that the knowledge that he would be a Schedule 1 offender forever might make him more motivated to do sex offending work but then added that “I just want to do the work to change myself any way”.

The responses indicated that the fact of the sentence had an enormous impact on the young person, that they valued work but that positive change was very much a part of maturation. There was also a general sense that young people wanted to take a personal responsibility for their change.

In order to further understand the extent to which the young people considered detention an effective way of dealing with harmful sexual behaviour they were asked whether they thought sex offenders should be locked up. Most young people gave nuanced responses, often distinguishing between types of sex offender.

William initially said that sex offenders should be locked up but then added that this should only apply to “some – people that do kids and horrible stuff”. Daniel also said that he did think sex offenders should be locked up but went on to comment “But they should also be given a chance to prove themselves and to move on from what they’ve done to build a better future. It is right that they locked me up – it helped me to make progress”. Thomas also responded that “some of them – not all of them” should be locked up, marking a distinction between “the ones who know it’s wrong and just do it” who should in his view be locked up and “the ones like me who had a bad childhood” who he felt should not be locked up.

Peter’s initial reaction was that sex offenders should not be locked up be this was followed by further reflection: “suppose it depends on what they have done. Most
serious crimes should get locked up – that includes me. Although I didn’t want it.”
Max also felt sex offenders should not be locked up but then reflected as further:
“IT depends. Well they should start off somewhere like this and if they
misbehave go to secure. Yes even grownups. Everybody should be given
a second chance – think that is a better way.”
5.5 Leaving the criminal justice system

Leaving the criminal justice system behind is fraught with difficulties (UR Boss, 2011; Bateman et al. 2013b). The transition is most pronounced where a young person leaves custody because of the physical changes (Bateman et al., 2013a). Yet those with criminal convictions face a number of difficulties in reintegrating and rehabilitating (Bernburg and Krohn, 2003; Nacro, 2003b). This problem is particularly pronounced for people with convictions for sexual offences due to additional concerns and restrictions (Hargreaves and Francis, 2013). In addition to practical hurdles, there a conviction for a sexual offence will create a spoiled identity or stigma leading to negative perceptions both by the offender and society as a whole (Goffman, 1961).

In this context, part of the research, was designed to probe young people’s knowledge and experience of leaving the system, including their views about their identity and their anxieties and hopes for the future. Given that the research was tied to the placement for ethical reasons, all of the young people interviewed were still under supervision. Two young people, William and Peter, had recently left the placement and were able to provide some insight into that experience.

5.5.1 Understanding risk management provisions

Young people convicted of sexual offences will, as a matter of course, be subjected to a number of risk management procedures, including supervision and oversight from MAPPA, multi-agency responses to those who are deemed ‘to present a risk to children’ (or ‘schedule one’) and sex offender notification requirements (see Chapter 4.7). Young people were asked specifically about schedule 1 and the sex offenders’ register.

Young people’s responses on the whole suggested a hazy understanding of these provisions with a great deal of misunderstanding about what they were and what they were intended to achieve. Although all young people were asked about schedule one and whether or not they had heard the term or knew what it meant,
answers to these questions were so vague that there is little that could be drawn from an in-depth analysis to these questions. This analysis therefore focuses on young people’s understanding of notification requirements, referred to here by the colloquial term, ‘sex offenders’ register.’

5.5.1.1 Knowledge of sex offender registration requirements
As all the young people had convictions for sexual offences and none had an absolute discharge, they would all have been subject to notification requirements at the point of conviction. However, only eight of the young people said that they knew what the register was and what they had to do as a registered sex offender. One young person, Oliver, claimed that he was not on the register and never had been. In fact, following further inquiries, it emerged that he had been required to register (and probably had) but that at the point of interview his registration requirement had already expired. However, as he felt it did not apply to him, Oliver declined to answer most of the questions concerning registration.

Young people were asked a number of detailed questions to test their knowledge against the legal requirements of notification. They were also asked how long they thought they were on it for. All nine young people who were subject to requirements claimed to know how long they would be on the register for although only five young people gave the correct answers based on an analysis of the case papers. There was some general confusion about whether those who were subject to indefinite registration could apply to come off, compounded by the fact that the law in fact changed during the research period following the case of F in the Supreme Court.

Young people’s responses to their understanding of the registration requirements are set out at Figure 9.
Figure 9. Understanding of registration requirements

<table>
<thead>
<tr>
<th>Legal Requirement</th>
<th>Did the young person know of the requirement?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>The initial notification of name, date of birth and home address or any notification of a change of details has to be completed within 3 days and the offender's National Insurance Numbers must now be given</td>
<td>6</td>
</tr>
<tr>
<td>Notification is required of any UK address in which the person resides for 7 days or more, whether consecutive or not, within a 12 month period</td>
<td>5</td>
</tr>
<tr>
<td>All relevant offenders must confirm their notified details annually</td>
<td>7</td>
</tr>
<tr>
<td>Notification must be given in advance of foreign travel, and return to the United Kingdom in accordance with the requirements of the Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004</td>
<td>6</td>
</tr>
<tr>
<td>All notifications have to be made in person at a police station; and police may take fingerprints and photographs at initial notification and at any further notification, annual or otherwise</td>
<td>9</td>
</tr>
</tbody>
</table>

Thomas was one of two young people who did not claim to not know what the sex offenders register was “except that it exists and I have to sign it”.

Despite eight young people claiming to understand the registration system, when asked about the detail only five were confident about the most provisions and only four were clear about the travel restrictions.

Peter confirmed that he knew what the register was and described it as “some annoying bullshit stuff you have to sign on to”. He said that he did know what someone had to do as a Registered Sex Offender explaining this as “tell them if I move, or stay out anywhere overnight.” However, as noted below, he did not understand who could in fact find out about his registration.
Daniel also claimed to know what the Sex Offender Register was but while his explanation that it was “for people who have committed sexual offences to keep a track on you”, it later emerged that he had conflated the requirements with those of his licence supervision stating that you have to “sign on, see YOT (now Probation for me), have meetings, appointments”.

Oliver claimed to know what the sex offender register was, describing it as a “register with names and locations of sex offenders”. However, he had completely misunderstood the requirements in practice, stating that you have to “check in with the police every week and that you can’t go to certain places” whereas the requirement to check in with the police is annual and there is no restriction on where you can go other than a requirement to notify the police in certain circumstances.

Max also claimed to understand the requirements of the register but incorrectly explained it as “having to sign on every three weeks or six weeks or every year” and “every time that the Court or Police says so”. He was also unclear on probing about the residency requirements.

Harry provided the most accurate understanding of the register and its requirements. However, even he revealed some important gaps in knowledge. He thought it existed as an actual list and was also unaware of the requirement to notify if you reside away from home for more than 7 days or more, whether consecutive or not, within a 12 month period. He had thought the requirement was only to notify where you stayed away for more than seven days in one go. He also was not really sure about the requirement to advise foreign travel in advance. These gaps in knowledge were critical because it only takes one breach of the requirements to make a person liable to be sentenced for a breach, with a penalty of up to five years’ imprisonment.

William also claimed to understand the registration requirements summarising them as, “can’t work with kids, police know where you are, you go every year and
they keep checking on you". This betrayed some gaps in knowledge as there is nothing in the registration requirements to prevent you from working with children. When probed further, William was not aware that your National Insurance number must be given. This was of significant concern as at the point of interview William had left the placement and was in the transition to independent living.

5.5.1.2 Disclosure of status as a registered sex offender
Young people were also asked about who could find out about their status as a registered sex offender; young people were presented with a list of various options of professionals and lay people who might be able to find out. Their responses suggested that they perceived that this information was available to a wide range of people (see figure 10).

Figure 10 Who young people think can find out whether they are on the Sex Offenders' register
Not all young people realised that youth justice and social care professionals could know about their position on the register. Six young people thought that the general public could find out and a further two were unsure. Three young people felt sure that friends could find out and further two thought friends might be able to find out.

For instance, Peter, who had ceased to reside at the placement and was aware of all 5 requirements outlined, was of the view that everyone listed would be able to find out if he was on the Register and commented that everyone can “just go to the police and ask”.

Thomas was not sure about whether parents or friends could find out about him being on the register but added, “because of Sarah’s Law, I think the public can”.

Max thought that all professionals could find out that he was a registered sex offender. He thought that friends and the public could find out in certain circumstances and that this depended on whether “they had kids and if they was warned. They could phone the Police. It is called Sarah’s Law. The general public can too – it is the same thing”.

Charlie raised “this new Sarah’s Law” twice during the interview explaining that “they have got to apply and write a form out and the police will take the form and if it concerns the police then the person gets to know.” His clear view was “that’s okay” although he reflected that “For me, most people know anyhow. If I went to a new place I think I would be more worried” and that “it might be a problem in the future.”

Charlie’s reflection raised an important reminder that the young people were all in a very specialised placement and issues that would be very concerning to most young people without that level of support were managed on the whole for them. As a consequence, most of the young people in the sample were still insulated from the hurdles that they might later face in the wider world.
5.5.2 Reactions to risk management provisions

Emerging research suggests that risk management provisions such as registration requirements can be counterproductive in terms of failing to manage risk effectively and increasing risk by restricting the availability of protective factors (Tewksbury and Lees, 2007; Hargreaves and Francis, 2013 and stuff cited in Janes, 2011).

The young people were therefore asked whether they felt that they were effective, whether they ‘minded’ being subject to them, whether they would like a chance to come off the register if they were on it forever and whether risk management provisions provided an incentive for them to change the young person to change.

5.5.2.1 Perceptions of effectiveness of the sex offenders’ register
In terms of effectiveness, Max was the only person who felt confident that people would be safer because he was on the sex offenders register.

Max explained the reasoning for this as “because the Police knew where I was all the time. I could have been anywhere which could have put people at risk. I could have done more offending”. He further elaborated:

“because then they know if you are living with someone with kids and can make sure that the person you are living with knows. For me, I want to have kids and I would tell them but it would be helpful for services to do it first”.

It was interesting to note that Max had, by the point of his interview, completed his criminal justice supervision order and remained at the placement as a voluntarily looked after child. However, it also appeared that he had to a certain extent muddled the function of the register with the triggers for disclosure.

Four of other young people were confident it would not and the others were unsure or did not know. Those that were confident that there was no relationship between safety and the register either felt that on the basis that it was ineffectual
and simply increased the risk of third party disclosure or on the basis that the risk reduction work was something that they had to take control of rather than to be controlled by external forces.

Peter was clear that other people would not be safer because he was on the Register commenting “not really – I don’t think it really does anything – it’s just one of those things where people can nose in on what you’re doing.” William was also firmly of the view that people would not be safer just because he was on the register. He commented that “you are still the same as other people. It doesn’t stop you offending”.

Daniel was quite clear that he did not think that people would be safer just because he’s on the Register. He commented, “I am not a risk compared to what I was – I feel a lot better and I don’t want to do that again any way. I know that I would just get more time in prison and on licence”.

Similarly, Harry thought that other people would not necessarily be safer just because he had been on the register “because I would not re-offend whether I am on it or not.” However, he did not feel the same way about other people with convictions for sexual offences, adding that “other people who are on it are a risk. I don’t know how exactly it makes people safer though”. The implication was that he associated being on the register with presenting a risk but was unclear as to how being on the register assisted with managing that risk.

5.5.2.2 Feelings about being on the sex offenders register
Unsurprisingly all those were subject to indefinite notification requirements said they would like to come off it, with one person commenting, ‘everybody would’. Despite the clear enthusiasm for being removed from the register in the future, when asked whether they minded being on the register, only three young people said they minded ‘a lot’, two said they minded ‘a bit’; three said that they didn’t mind; and one said that they thought it was a good thing. Oliver did not express a
Harry was one of the young people who said he ‘did not mind’ being on the sex offenders’ register. However, he commented that this was because “it doesn’t really affect my day to day life.” It was possible that position might change once he left the placement.

William was one of the young people who ‘minded a lot’ being on the register adding “I don’t like it. I don’t know – it does nothing. I think there should be one for where there’s an adult victim and another one for where there are child victims. I feel like I am lumped in with people who have done sex offences against kids”.

The five young people subject to indefinite notification were also asked about whether the knowledge that they would be on the register forever affected their motivation to do sex offending work. Two said that they were more motivated by this knowledge, but three said that it made no difference to them.

Peter felt that being on the sex offenders’ register forever did not make any difference to his motivation to do sex offending work as he said that he would just “do it anyway”. However, Daniel was extremely clear that he would like a chance to come off the sex offenders’ register. He commented that he was “not sure how”, he would be able to do this. Daniel was clear that the option of coming off the register was “a massive incentive even though you get rewarded just by making progress but it takes it one step further because I don’t want to be on the Sex Offender Register all my life”.

5.5.2.3 Perception of impact of registration on life chances
Although sex offender registration is a simply a notification scheme the public perceptions surrounding it and the risk of third party disclosure recognised by the Supreme Court in *F* made it at least possible that young people would see it as having a negative impact on life changes (Hargreaves and Francis, 2013).
In order to test out young people’s perceptions of this, they were asked whether they felt being on the register would make it harder to get a job, make friends and have a sexual relationship in the future.

Daniel thought that being on the Register would all of these things harder. However, when he explained his reasoning, it also appeared that he had confused the implications of the register with the requirements flowing from the fact of his conviction and the requirements of supervision on licence.

Max and Peter confirmed that they thought being on the Register would make it harder to get a job, move to a new home and have a sexual relationship. However, most of their answers also appeared to relate to the fact of their conviction and, in Peter’s case, his on-going supervision on licence.

Thomas and Patrick both thought that being on the register would make it harder to get a job, but felt that other aspects of their lives would not be particularly affected by the registration requirements. Again, these responses betrayed a basic misunderstanding as to the restrictions flowing from the register.

Harry was the only young person who had clear ideas about the limits of the register. However, even he associated the register with restrictions on employment and education stating “most jobs are okay – so long as they don’t relate to children, there shouldn’t be a problem” and reflecting that it might not affect college seeing that he was at college at the moment while being closely supervised. In terms of whether or not it would affect getting a place to live he was firm that it would not “because they can’t stop you living in an area just because you are on the register”. He did not think that it would make it more difficult to make friends because “they don’t have to know about it – I’ve got loads of friends in college”. In relation to whether it would make it more difficult to have a sexual relationship or not, he was not sure. He commented that he had not been in a sexual relationship yet and whether or not that has an impact would be down to how disclosure with your partner went.
While the young people had misunderstand the requirements of the register and its strict legal purpose, it is understandable that they saw the measures of public protection representing a single package and realistic that being on the register would be likely to lead to disclosures under MAPPA or child protection provisions.

5.5.3 Senses of self and other sex offenders
The potential stigma of being a sex offender is well documented in the literature (Goffman, 1961, as cited in Newburn, 2007) Young people were asked both how they felt generally about sex offenders, whether they thought of themselves as sex offenders, and whether they thought other people would think of them as sex offenders. These questions were designed to understand the young people’s perceptions about how they viewed themselves in light of their conviction of a sexual offence.

5.5.3.1 Thoughts on sex offenders generally
Daniel said when he hears the word “sex offender” he feels “disgusted. Both thinking of myself and of others”. When asked what he thought of when he heard the word sex offender Oliver commented “bad – not a good thing. Something that doesn’t want to be talked about – kind of bad”. Max said that the term sex offenders:

“can be two different things. It could be rape or that you have just offended. There is rape sex offenders and there is normal sex offenders. With rape you raped a person and with the others you have just touched them”.

William associated the words “sex offender” with “someone who has done a sex offence”. He said it made him feel “angry” and that he “didn’t like it and doesn’t want to be one but has no choice now”.

5.5.3.2 How young people saw themselves and how they perceived others saw them
The ‘what works’ literature places great emphasis on self-esteem in the rehabilitation process (Hackett, 2004). Yet there is some evidence in the criminological literature as to the negative impact of system contact (McAra and McVie, 2007) and spoiled identities (Goffman, 1961, as cited in Newburn, 2007). It seemed important to gain an understanding as to how young people saw themselves and how they perceived others to see them.

Young people were therefore asked whether they thought of themselves as a sex offender: four said yes; six said no. They were then asked whether they thought other people thought of them as a sex offender: seven said yes; one said no; two said that they didn’t know.

Daniel, Patrick and Peter did not see themselves as sex offenders and either did not know or care whether other people saw them as sex offenders. Daniel stated that he did not think of himself as a sex offender commenting “I just feel like I’ve moved on”. When asked whether other people think of him as a sex offender he commented “I don’t really know. You don’t know what other people think”.
Patrick did not see himself as a sex offender. He also felt that other people would not see him as a sex offender, responding “not really” to this question. Peter stated that he did not think of himself as a sex offender and commented that he has “never really thought of it although probably I am”. In whether other people think of him as a sex offender, he stated ‘yes’ and commented, “If they know what I’ve done. But in a way I’m not fussed and I don’t care what other people think.”

Thomas, William and Harry did not see themselves as sex offenders but felt that other people saw them as sex offenders. Thomas stated:

“I thought about this for a long time until I was about 17. I used to think like this but now I just think it’s something I’ve done wrong and now I have to live with all the consequences. The work I have done here has made me change my view”.

However, he did think that other people would think of him as a sex offender commenting “the Police and that lot, MAPPA, Social Worker – it’s fair because I’ve done the crime and they haven’t”. Harry did not see himself as a sex offender. Although he was sure other people did see him as a sex offender, he added: “it doesn’t really bother me because it is the opinion of staff here mainly and they are just doing their jobs”. William also said he did not think of himself as a sex offender. But when asked whether other people think of him as one he said yes. He commented “I don’t like it. I want to try and get a normal life. I can have one sort of but it is hard”.

Max, Charlie and Oliver did see themselves as sex offenders and felt that others would see them in that way too. Max confirmed that he did think of himself as a sex offender but added “in the past. But not now. Because I have done the work and I have a clean slate”. But when asked whether other people thought of him as a sex offender, he answered yes and added “not all people. Probably 25% would and everyone else might give me a chance staff just see me here as [Max].”
Charlie was clear that he thought of himself as a sex offender, “[b]ecause I have done it in the past”. When asked whether other people think of him as a sex offender he said yes but added “Not all people, but some people might. I am okay with it personally.”

Oliver also saw himself as a sex offender. However, he added:

“I know I am but if I was asked to describe myself that’s not the first thing that comes to my mind. I have my own personality. All that ties in with not judging people straightaway”.

Oliver was sure that other people do think of him as a sex offender. He added:

“Obviously certain people – mainly professionals – do think that. It’s not really a problem. People who know about what I’ve done, but not everyone. I would like to hope my family don’t think of me as a sex offender”.

The youth justice worker suggested that children with harmful sexual behaviour in the criminal justice system experience a distorted development process, influence by perceptions of themselves and perceptions of others:

“Their personal development cannot continue naturally. They can’t have a ‘normal’ development and opportunities to develop. Their innate development is hindered. The problems that face HSB young people are;

(1) often think there is something ‘wrong’ with them;
(2) they presume everybody will have a very negative view of them;
(3) views of people around them actually are mixed.”

The child protection specialist raised concerns about public perceptions about children with harmful sexual behaviour:

“Public perceptions are more worrying, or at least equally worrying. I wanted the national charities to be more vocal about this but it is difficult as they do not present as victims. We need to say that there will be less
victims if they get treatment. It is a hard sell because of our anxiety about children and sexuality, sexual offending and risk.”

This view was reinforced by the forensic psychologist who noted the very different nature of children with harmful sexual behaviour compared to adults:

“There is a panic about children who commit sexual offences against other children. In my view it is often a transient state and the children are often trying to meet their needs in an appropriate way but they cannot or do not want to control their behaviour. Once they can control their behaviour, they refrain from the abusive behaviour and they also just grow up and out of those interests. Let’s contrast that to an adult with an interest in children. An adult would usually have a range of appropriate sexual partners available (even if it is a prostitute) and would nonetheless choose children. By contrast, children often don’t have appropriate sexual outlets available to them.”

The young people’s answers demonstrated fairly strong negative views about sex offending and in some cases sex offenders generally but also suggested that they mainly were able to distinguish themselves and those who had committed offences in similar circumstances from the group as a whole. This could indicate that for even this group who had committed serious offences there was genuine hope for rehabilitation.

5.5.4 Impact of conviction on life chances

There is a growing body of literature that suggests that the administrative and legal consequences that flow from the fact of a conviction for a sexual offence make it difficult for children to make a fresh start in life (Hargreaves and Francis, 2013; Nacro, 2003a). As the YOT caseworker noted, “The sticking point, especially for young people with long custodial cases, is the resettlement.”

Young people were specifically asked about the impact of their convictions for a sex offence on life chances, including employment, education, housing, friendships and sexual relationships (although several also talked about their
perceived impact of the sex offenders’ register on these things). One said not at all; two said a little bit; seven said ‘a lot’. Oliver felt that his conviction for a sex offence would affect him “a lot” in the future. He stated that it was:

“One of those things that is always going to be hanging over my head. I’m not 100% used to the idea because I’m not used to living outside of here. I will have to get used to the reality of it once I leave here. It will be a struggle at first”.

Max had similar views about his conviction:

“It is going to affect me a lot. I won’t be able to get a good job and a nice house and stuff. I don’t think it is fair but at the end of the day I made a mistake and I am paying for it”.

Employment, education and housing

Nine young people felt that their conviction would make getting a job harder. Just five young people felt it would have an impact on education or housing. It should be noted that at the point of interview some young people were in education arranged by the placement. Only two had sought accommodation in the wider community.

Patrick seemed to think that it would make it harder for him to get a job because “you have to tell them everything you have done and if you do not and they find out later they can sack you.” He did not seem to think his conviction could affect his life in other ways.

Max thought that his sex offence would make it harder to get a job – “because if you see a sex offence it is harder to get a job because of the nature of the offence”. In relation to education, he commented “depends. If you are already in school they could kick you out. I am doing education now but with help from staff to sort it out”. In relation to a place to live he thought the conviction would make it
“quite harder. Because you can’t get any places when you try to find a house. I have to tell G-Map, Social Worker and MAPPA and they are all helping me”.

Daniel also felt registration would make it harder to get a job “because if you are working, they would have to check out your records or something”; harder to do education “because they will find out about your offence because of being on the Register”; harder to get a place to live “because on the Council they can look at it and they might reject you”. Harry thought that his conviction for a sex offence would make it harder for him to get a job. He did not think it would make it harder for him to do education.

Charlie also thought registration requirements and his conviction make harder to get a job because: “If going for a job even like in catering where there is someone with the same grades as me but no crimes then they would probably get the job before me”. However he was unsure about the impact on education and housing. At the point of interview, Charlie had not attempted to join mainstream education or resettle into the wider community. Peter also thought the register would make it harder to get a job “cause it always comes up that I have a record”. However, he did not think that it would make it harder to do education and confirmed that he was “starting college again next week”. Peter did, however, think it would be harder to get a place to live because “I have to speak to my Offender Manager before I can move into a new area.”

Oliver thought his conviction might make it harder to do education and commented that “It would make it a bit harder – not impossible – as you’ve got to do all the disclosures in interviews”.

William considered that being on the register would affect getting a job due to the need to make disclosures. Likewise he thought it would affect education as there could be “young ones” at college, he thought it might affect getting a place to live because “coppers check it all out with MAPPA and all that”.

187
The residential home manager highlighted the difficulties in helping children with harmful sexual behaviour to access mainstream education:

“Getting young people with harmful sexual behaviour into education in the community is a big issue. Colleges are very reluctant because of the anxiety and fear around juvenile sex offenders; they fail to see them as young people who need education and opportunities but instead see them just as sex offenders.

Friends
William felt that his conviction wouldn’t stop him making friends. Max did not think it would make it harder to make friends and commented:

“You don’t actually tell your friends because they don’t need to know and you don’t trust them yet. I have told five friends and all of them have been quite good about it and said as long as you have changed. I did this by myself. They are friends from home”.

Charlie thought it might make it harder to make friends although he qualified this by commenting: “As long as they don’t know. But you have old friends who know about it and don’t mind it’s okay but brand new friends – well it might make it difficult.”

Daniel felt it would be harder for him to make friends, “because you may have to tell them”.

The YOT caseworker, referring to a case where a 13 year old had been told to have no contact with peers, commented on the importance of social integration:

“This meant that he could not go to school or do the things 13 year olds usually do. This was really isolating; this 13 year old needed peer group. In this case, his risks were to much younger children and he could have
been managed within a peer setting. Sometimes services over manage and over emphasise risk and don’t give them any leeway as a child. What scares me is the idea that by over managing we can risk making things a lot worse. Are we isolating these young people? When you look at some of the traditional characteristics of adult sexual offenders they tend to have poor social skills. Are we creating adult sex offenders instead of supporting young people through integration?”

Sexual relationships
Five young people felt that their conviction or status as a registered sex offender would make it harder to have a sexual relationship. However, a number of young people envisaged a relationship as part of their future hopes once they left the placement.

William said he was about relationships as he was “scared that they will find out and you could lose them”. He felt that it would affect a sexual relationship as “if they find out, you could get locked up for just having a one night stand which is something that loads of people do”.

Charlie also felt sexual relationships would be harder “[p]robably because if a girlfriend found out they may be like oh my god – it would be embarrassing.” Max felt that “if you are trying to get a relationship going, when you tell them, they will just leave. You need to tell them before you have sex and it will be hard”.

Daniel was also clear about the difficulties of having a sexual relationship because:

“they would have to know that. More than that they would have to know what my offence was and that I’m on the Register. The hardest bit would be saying what my offence was”.
Oliver was also concerned about the impact of his conviction on having a sexual relationship. This was 'serious'. He felt it was “definitely something that you would have to speak about eventually”. He referred to the disclosing as a shock for the other person. He added that it “definitely puts restrictions on you”. You just have to learn to live with the consequences. You shouldn’t use it as an excuse to hold your life back.”

Peter was so negative about his prospects of a sexual relationship that he felt he would not even attempt it.

Too hard to bother
Thomas thought a conviction for a sex offence or a history of sexual offending would affect him in the future ‘a lot’, adding “because you have to tell people and stuff will be hard”. However, in response to questions about sex offender registration earlier in the interview Thomas had contemplated that one way to avoid these difficulties would be just not to tell friends and partners about his past.

Although Peter did not think that it would make it harder to make friends, he did believe that it would be harder to have a sexual relationship because:

“You have to tell them about my offence after a certain time. I’ve not been in that situation yet but that is partly because I don’t want to have to tell them. A few months ago somebody liked me and I liked them back but I said just to be friends which is what we did. Although we don’t see each other much now. I don’t think I will ever have a relationship – it’s too much hassle”.

It should be noted that Peter was one of two young people that had left the placement and was living in the wider community. This could indicate that young people had unrealistic expectations about the possibility of sexual relationships as long as they remained in the protected environment of the placement. Peter also commented that he was only 13 and that “it’s nearly 10 years since I did it – it’s all gone on for too long and it will keep on going for years to come.” William,
who had also left the placement at the point of interview, felt that as a result of his sex offence it would make it harder to get a job, do education, get a place to live, make friends and have a sexual relationship.

The YOT caseworker observed the difficulties of reintegration and the need for support:

"In terms of development and education, a year or two is a massive period for young people – it is very different from an adult’s experience. So when young people come out of prison they can feel that they are almost alien, or at least things are very very different for them. Young people need a lot of help with peer group development and social development."

5.5.5 Hopes for the future

There is an increasing recognition that risk of sexual reoffending should be assessed with reference to protective factors that predict desistence as well as the identification of factors that predict risk rather than on the identification of protective factors that predict desistence from reoffending (Miller, 2006; Rogers, 2000; Farrington, 2007, as cited in Worling, 2013). Worling (2013) has produced a check list of protective factors specifically designed to accommodate this view. The check list includes items such as ‘hope for a healthy sexual future’ and ‘pro-social peer activity’.

Young people were therefore asked about their hopes for the future in order to get a view as to the extent to which they were able to envisage a good life for themselves despite some of the potentially negative or damaging aspects of the criminal justice processes they had experienced. Young people were asked where they saw themselves in one year, five years and ten years’ time.

Charlie envisaged that he would still be at the placement in a year’s time, that in five years time he would be living back in his home area “on my own, probably at Uni doing catering.” His ambition in 10 years’ time was: “To have a job, girlfriend, car. Sorted!”
Patrick saw himself in one year’s time at the age of 16 trying to get a house and a job – hopefully song writing if he did not become a singer himself. In five years’ time at the age of 20 he hoped to be writing songs for other singers and living in a rural town. By the age of 25 he hoped to be married.

Oliver saw himself in one year’s time his “own place – probably still in college and having small part time jobs”. In five years’ time, he also saw himself in his “own place – by then hopefully working in animal care and possibly with a partner”. He considered that in 10 years’ time, he “definitely hoped to have a job, a long term partner and his own place”.

Thomas saw himself at the residential home still in one year’s time. However, in five years’ time he wished to have his own place and be looking for a job with animals in his home area. In 10 years’ time he hoped to have won the lottery.

Max wanted to be in a ‘good job’ brick laying or plumbing within the year. In five years’ time he wanted to be in his own home and having his own business and in 10 years’ time he wanted the same plus a wife and kids – although one he thought would be enough. He said that he would “really like a clean state instead of me having to keep the slate as clean as possible”.

Harry explained that on a year’s time he would be in a secure mental health placement. In five years’ time, he thought he might still be there or have settled into a particular city, at college “just doing a course and sticking with it – or getting a job in drama”. In 10 years’ time he wanted to be based in a particular city with a good family and to be “rich and famous”.

William saw himself in one year’s time as being “freer”, in five years’ time as having ‘a job and everything’ and in 10 years’ time being off licence with a job
and wife and kids but only once he was actually off licence as there was such a risk of being recalled.

Daniel thought he would still be at his current residential placement and in college in one year’s time. In five years’ time, he hoped to be in University and in 10 years’ time he hoped to be working in music and living in his own flat.

Peter was unable to say where he would see himself in 1 year’s time. However, he hoped that in both 5 years and 10 years’ time he would be back home, off licence and working.

Sam saw himself in one year’s time in another house on the site of the current placement with more independence or possibly being outside “with a Mazda 6 on the front drive and in college. By the age of 22 or 23 in five year’s time he wanted to have kids two to three years of age, a house, a job, a boyfriend or a girlfriend. He added that “you can have kids with a boyfriend and that he would like to adopt a child because there are so many children without proper parents”, although he added “if I wasn’t a sex offender I would definitely do that”. In ten years time at age 28, he hoped to have brand spanking new car, be in a job and with kids aged around 7. He also hoped that maybe by then he would be able to go on holidays, be off licence and be off the register.

5.5.6 Realities  
In order to gauge whether hopes matched reality, the current position for each young person was ascertained at point of submission.
Charlie has been recalled to custody twice since the interview, the first time to an secure children’s home and the second time to a YOI; he is currently in the adult estate. He has not been charged with any further offences.
Patrick has moved on to a specialist residential college in the community.

Oliver is at university, studying at degree level.

Thomas has moved on and is in the community in a supported transition package while studying at college.

Max is living in the community with support and attending college.

Harry is in a secure mental health placement as he anticipated.

William continues to do well in the community, enjoying regular visits to his family. He has managed to have a girlfriend and some temporary jobs.

Daniel made it to college where he did really well; unfortunately, he was recalled to adult custody for not disclosing the names of friends under the age of 18; he was not charged with any further offences.

Peter remains in the community under supervision, attending night college and planning to move back to his home area. He is looking for work and has made some friends.

Sam is preparing to move and has been at college and undertaking work placements.

The parole board member noted the difficulties young people face with transitions between different sections of the system:

“There are also issues with transitions between one section of the system to another. This plays havoc with the young people in terms of their sense of security and their ability to be open and honest, and it is problematic when new professionals do not recognise the value of the previous work.”
The varied outcomes indicate the pitfalls and possibilities for young people with harmful sexual behaviour in the criminal justice system.
Chapter 6: Conclusions and recommendations

6.1 Knowledge and experience prior to contact with the criminal justice system

6.1.1 The general deterrent/social message function of the law may not work for children with harmful sexual behaviour

The law has developed over centuries with the clear purpose of protecting children both through removing those (including other children) likely to cause harm through sexual offences from general circulation in such a way as to deter the perpetrator from further offending on their return to the community and through general deterrence designed to prevent sexual crimes being committed in the first place (Easton and Piper, 2012).

The responses by children in this research raise questions about the extent to which the deterrent social messages associated with the criminal justice system have their anticipated effect. For this sample at least, it appears that at best, the deterrent function of the law has been limited to reducing the likelihood of repeat offending by individual children. However, taking on board their own perspectives and the research on recidivism and treatment, the impact of maturity and intervention cannot be ruled out.

There is nothing in the latest research on recidivism rates for this group, which suggests naturally low rates of sexual reoffending and even lower rates where intervention is completed (Hargreaves and Francis, 2013; Rich, 2011), to indicate that punishment, let alone incarceration, makes any contribution to making society safer apart from incapacitation.

The literature on the prevalence of sexual activity among young people suggests we are dangerously close to the situation described by Zimring (2004) where ‘if partners are the same age or younger, at least 50 per cent of all boys at some period of adolescence have committed sexual felonies with girls under eighteen’ (2004, p.52).
While the young people in this sample had been convicted of serious offences, it is highly unlikely that harsh punishments delivered by the courts would have deterred them from their behaviour. On the other hand, it appears that a combination of therapy and maturity had a positive effect on at least their self-reported willingness to refrain from offending.

Recommendation: Legal guidance, such as CPS guidance and Sentencing Council guidelines, should be revised with a view to reconsidering the utility of punitive deterrent approaches to this group in light of the research concerning recidivism and treatment.

6.1.2 Understanding harmful sexual behaviour in the context of sexualised culture and having the knowledge to avoid offending

Although this research did not set out to investigate the early exposure of sexual behaviours to children, many respondents volunteered information about exposure to sexual behaviour and images at an early age. In some cases, this arose during questioning about understanding the offence because there was an assumption that if everyone was doing it, it could not be against the law: 'all the lads who I was with were having sex with other people. So I thought I would have a try' (Max).

Whether or not this is plausible explanation in this particular case, a number of studies have pointed to the 'sexualisation of culture' (Ringrose et al. 2012; Papadopoulos, 2010; Bailey 2011).

Some of the young people in this sample struggled with laws that seemed intuitively unfair when matched against what they perceived to be everyday experiences. For instance, when asked about whether two 12 year olds should be allowed to have sex Oliver commented:

"Sex is getting younger and younger - but 12 is too young. Would you punish both of them? What is the consequences? You need to look at the
bigger picture as in their background. Becoming a rapist at 12 is a bit harsh – better to do therapy and talk”.

The intuitive ‘harshness’ of a law that punishes as a 12 year old must be considered in the context of what is considered ‘ordinary’ sexual behaviour. Yet, as Phippen’s research on ‘sexting’ suggests (2012), notions of ordinary sexual behaviour are also shifting. Thus Charlie’s unsettling assertion that from his experience of viewing porn, he ‘thought people were supposed to get upset when they had sex’, suggesting a highly distorted view of sex, is also an important context in which his harmful sexual behaviour should be considered. In addition, Charlie and other young people indicated a distinct lack of knowledge about the law concerning sexual offences.

Charlie’s offending behaviour may have been very different from that of two other children under the age of 13 engaging in mutually agreed sexual activity. However, it is important to understand the combination of his distorted view of sex, his perceptions of the ordinariness of early sexual activity and his lack of knowledge about the legal boundaries of sex, in order to consider what kind of response might make sense to young people and help them to avoid further harm.

The literature on sex and relationships education described at Chapter 2.1.3 corroborates his knowledge deficit in terms of relationships, sex and the law on sexual offences. A significant proportion of children in this sample claimed not to know what was acceptable and what was against the law at the point of the offence.

However, once equipped with knowledge about sexual harm and the law, several of the young people were at least able to think independently about the justice of the law on sexual offences that would enable informed decisions about their own behaviour.
It seems that something has to change: either the law must change so as not to cast so a wide net over a significant proportion of children as they grow up, or information and education provided to children must be adapted so that children are taught precisely what the law is and how to avoid breaking it.

All the children in this sample were engaging in therapeutic interventions which gave them very clear ideas about what was acceptable from a sexual perspective, indicating that it is possible to explain this to young people in ways that can be applied to their life. For instance, all the children understood the rationale behind the law prohibiting sexual contact under the age of 13, regardless of whether or not they agreed with it.

This indicates that children are capable of understanding legal restrictions and the reason behind them if they are taught about it. Current sex education appears to take the form of streams of information such as biological, health and relationships with legal information being virtually non-existent in the curriculum. If we expect children to face the consequences of the legal system, they should be taught what the parameters of it are in a way that makes sense. This is not to say that the serious harmful sexual behaviour perpetrated by the children in this sample could have been prevented simply by a more robust and comprehensive system of sex education. However, that such an approach could minimise the risk of environments where such behaviour occurs.

Recommendation: Sex education should be broadened out to include relationships and clear legal information about what constitutes a sexual offence and the law on sexual offences affecting child perpetrators should be reviewed.
6.1.3 Young people's decision making capacity and understanding and the attribution of criminal responsibility for sexual acts

In the sample all but one child would have been within the 10 – 14 age group at the point of the offence. As a consequence, the prosecution would have to have proved that they were sufficiently capable of committing the crime under the doctrine of doli incapax had they committed the offences before it was abolished by the CDA 1998. Recent developments in neuroscience have validated the rationale behind doli incapax in recognition of the on-going development of the cognition and reasoning in young people into their late teens and early twenties (Delmage, 2013). As noted in the legal framework at Chapter 4.3, the rationale behind the ages of consent that a child should be sufficiently mature to engage in sexual activity does not apply to a child's readiness to be responsible before the criminal law.

Recommendation: the age of criminal responsibility should be increased or disapplied in sexual offence cases.

6.1.4 Transitions from victim to offender

For ethical reasons, it was not appropriate to ask respondents whether they were victims but some volunteered this information. When they did, they made the important point that they were dealt with exclusively as offenders. Although only two young people in this sample made such disclosures, Boswell (1995) and Hackett et al (2013) highlight the significant overlap between offenders and victims.

Yet there is a bifurcation in the approach of the criminal justice system towards these two groups. By ignoring the needs of children as victims of offences themselves just because they have gone on to offend creates an obvious disparity in treatment and a sense of injustice, exemplified by William's comments that he
did not know what rape was until he was charge with it at the police station, even though he had been a victim of rape himself.

Recommendation: Practices and procedures should be put in place to ensure that child victims of sexual abuse should be treated as victims even when they go on to offend.

6.2 Contact with the criminal justice system

6.2.1 First impressions: the police

Despite the small sample size, the research provided some case studies demonstrating the critical role of the police as first points of contact and the need for training to provide a specialist child friendly service.

The research with children revealed that in many instances the police were the key source of information in relation to what the offence was. For instance, Oliver, described the police as ‘the main people who helped him to understand the charge’. Max described being told about different ‘sections’ by the police. Thomas felt that he did not understand the charge at the time, adding “didn’t really understand what the Police were saying’. Patrick explained that he understood the charge at the time because it was explained to him ‘nicely’ at the Police Station aged 13. He was able to recount how the police did this by explaining that this particular offence was ‘10 out of 10’ for being bad.

Charlie, aged 11 at the time of arrest, described the police as ‘quite friendly’ but revealed a plethora of unanswered questions and anxieties that were going through his mind at the time such as ‘what is going to happen to me? Will I be allowed back home?’

The experiences of contact described in the sample were very negative experiences and made an enduring impression. Several young people described
terrifying experiences at the police station, some of them being visibly moved to tears while describing their experiences in interview. Peter described being in a cell ‘for ages’ and it being ‘nighttime’ when he was finally released. He thought he had been there for more than 6 hours and described feeling ‘scared’. Daniel described ‘feeling suicidal’ in the cells and recalled feeling ‘cold all the time. He was able to recall that he was locked in the cells ‘from 9.30 am Friday until Saturday 1 pm’.

Others described feelings of being judged and humiliated by the police, especially through the interview process (what was said to them) and the way in which they were arrested. Daniel described the police “telling me off” and recalled them telling him that he was “a sex offender”, even though he was only 12 years old at the time. Charlie vividly described being arrested by the police and placed in handcuffs and leg restraints in front of neighbours and friends aged 11.

Feedback from professionals at the NOTA conference revealed a general consensus that the impact of early experiences with police are underestimated and require ‘undoing’ in therapy. The need for police to change their approach combined with capability of the police to change arising from this research is supported by other research (HMI Probation, 2013) which raised a number of concerns about the treatment of this group as mini adults rather than a group requiring a different approach.

Overwhelmingly negative experiences of police contact by children who are alleged to have committed offences is corroborated by existing research on children’s experiences with the police generally (see Hazel 2002; Botley et al, 2010; U R Boss, 2012). However, from this small sample, which differs from the other research in that the respondents were all arrested for harmful sexual behaviour, it appears possible that the experiences of children accused of sexual offences arouse not only negative views of the police but, in addition, intensely negative views of themselves. The young people in this research described experiences of shame and embarrassment which appeared in some cases to be linked to the sexual nature of the crimes they had been accused of.
Recommendation: Specialist training for police dealing with child perpetrators of harmful sexual behaviour is needed.

6.2.2 Effective participation

Within this sample, the young people were clear that the criminal justice process on the whole went over their heads. Thomas ‘didn’t understand the Judge – too much jargon’ and Sam couldn’t understand the judge because he was ‘too bloody posh’. Patrick felt professionals ‘seemed to be talking about something random’ causing him to switch off. Max felt he could not understand what was happening at Court because ‘he felt scared and worried’.

Despite the rulings by the European Court of Human Rights in T v UK and SC v UK and the Criminal Practice Direction concerning vulnerable defendants, the system in England and Wales essentially remains an adult system. The findings in this study mirror other studies described at Chapter 2.2 which conclude that children find the process overwhelming and confusing (Hazel et al, 2002).

In cases involving sexual offences which attract additional layers of complexity and emotional distress, for both child victims and child perpetrators, it is even more critical that effective participation is facilitated to secure justice.

A common theme raised by the respondents in this study was that children perceived the system to be against them and were sometimes not even able to identify who was on their side. For instance Thomas firmly believed that both his ‘solicitor and social worker wanted’ him ‘to get locked up.’ It is difficult to see how an essentially retributive system can meaningfully facilitate the due process regarded as essential for a justice model (Chapter 4.4) when children do not understand that offences they are charged with, the reasons for delays in the system or what is at stake in terms of sentence. The high proportion of guilty
pleas in this survey (nine out of ten children) cannot be extrapolated across the
general population of child sex offenders. However, the fact that half of all
criminal justice outcomes for children associated with sexual offences are pre-
court disposals suggests that children are much more likely to plead guilty than
adults. This in turn raises further questions about the suitability of a retributive
and adversarial system for children with harmful sexual behaviour.

Recommendation: The application and operation of the youth justice system
to children with harmful sexual behaviour should be reviewed in its entirety.
One simple measure would be for professionals to clearly identify themselves
to young people, and where appropriate, whether they are supporting the
young person – even if this may seem obvious.

6.2.3 Counter productive possibilities
Young people in this sample raised a number of examples where it appeared that
criminal justice process were running counter to the aim of the system to prevent
offending (s37 CDA 1998). For instance, almost all respondents complained
about the length of the court process. Apart from the frustrations and
uncertainties this caused, in a number of cases, delays at court followed by
difficulties in accessing treatment in the prison system resulted in children not
getting treatment at the earliest possible opportunity. In the cases of Peter, Sam
and Daniel, all of whom received long-term sentences and significant delays in
obtaining treatment, community sentences including therapy had been available to
the Court. In all three cases, the young people were released following years in
custody to virtually the same packages that had originally been proposed. Some
young people commented on their frustration at being unable to access therapy
sooner. For instance, Patrick confirmed that he had not done any work during his
sentence to address his sexual offending and in fact had to wait until he had been
released from secure to do this. Max wished he could have started the therapy
straight away complaining that as he was in and out of Court for two years
without doing the work, when he came to do the work, it was “hard to really
remember anything”. However, one young person thought he might not have been ready to ‘bother’ when he was first convicted. The link between recidivism and treatment has been highlighted by Rich (2011). Moreover, while none of the young people raised any concerns about the efficacy of treatment in custody, there is some evidence that treatment is most effective when it deals with all of a young person’s needs in a holistic fashion (Hackett, 2006). The requirements of custody may make this difficult if a young person does not feel safe or supported (U R Boss, 2010).

Although the particular needs of the complex group interviewed for this research are unlikely to be replicated to the same extent in the general population of child perpetrator of sexual harm, it stands to reason that if a child’s court case needs to take such a long time to be dealt with this would obviously indicate a level and degree of complexity in the case and/or disposal. Therefore, it would be reasonable for excessive delay to trigger a review as to whether the prosecution is in the public interest. Further, as delay is generally associated with the crown court, the venue for sentence in all ten children in the sample, this may indicate that the venue for such offences needs to be reconsidered, in line with Lord Carlile’s current review of the youth court.

If a case is complex and likely to be subject to delay consider whether should be in the criminal justice system at all, or whether the Crown Court should be used. Given the clear detriment of day on justice, it is at least arguable that a certain level of delay should trigger a reconsideration by the CPS of the interests of justice test.

**Recommendation:** The criminal justice system processes should be reviewed to eliminate or minimise counter productive aspects such as delay in treatment.
6.2.4 Autonomy and rehabilitation

One emerging theme from the data was a sense of autonomy and ownership over their rehabilitation and progress from the young people, who often talked about their maturation or 'growing up' as the key reason for their progress. They appeared highly motivated to change for themselves. For instance, when discussing the possibility of shedding his status as a Schedule 1 offender, Oliver added that he would first ‘want to be sure of myself that I had changed’.

While, given the size of this sample, it is not possible to generalise about this sentiment, which could relate to the ethos of the placement, a similar focus on agency, empowerment and self-determination emerged as a theme in research on the resettlement needs of girls in custody by Bateman et al (2013b).

If this is the case, it may be that aspects of the criminal justice system that press in the opposite direction, such as removing responsibility from children for even the most basic features of their lives through incarceration or restricting opportunities to learn through conditions, impede effective rehabilitation.

The importance of agency in the rehabilitation process is central to the Good Lives Model discussed at Chapter 2.2.4. As noted in the desistence literature, the notion of agency is central to effective rehabilitation (McNeill, 2009).

Recommendation: The legal framework needs to be reviewed so it can operate in conjunction with best practice and the most effective pathways to rehabilitation.

6.3 Leaving the criminal justice system

6.3.1 Negative transitions

While this data sample concerned young people who had committed offences at the serious end of the spectrum, their experiences of transitions between the wider
community, custody and therapeutic residential placements revealed intense fears of the unknown that would be understandable in the case of any child in the same position. Transitions were often dramatically marked by a criminal justice event. For instance, children’s experiences at the police station and in court were characterised by fear of not knowing what was going to happen to them. Young people’s experiences of the parole process, which were the gateway to their release, were on the whole negative and scary. Comments from the professional sample highlighted the negative impact of risk aversion as professionals managed their own inexperience in dealing with children with harmful sexual behaviour, often leading to overly cautious decision making.

 Recommendation: Practitioners should develop policies and practices to ensure continuity of care and support for young people with harmful sexual behaviour as they move through the criminal justice system.

6.3.2 Complexity in risk management

Young people in this sample were well aware that the fact that they had committed an offence would cause problems for getting jobs and going to college. The difficulties envisaged were mainly related to having to make disclosures. However, the young people in this sample struggled to understand the legal frameworks designed to manage their risk, such as the notification and disclosure requirements. Thus, Thomas said he did not know what it was ‘except that it exists and I have to sign it’. Several young people were confused about how long they would be on it for, who could know about it and whether or when they might apply to come off it. There was a lot of confusion about the differences between the register and so-called Sarah’s Law, which enables disclosure in certain circumstances. Due to the fact that the sample was based for ethical reasons in a supportive therapeutic environment, many of the young people were essentially insulated from the consequences of their lack of understanding. The two young people who had left the placement at the point of the interview appeared to have a
greater insight into the problems they were likely to face in effectively reintegrating.

Both of these young people anticipated intense problems with education, employment, housing and forming sexual relationships, with Peter stating that it was ‘too much hassle’ to have a relationship and William outlining his fear of recall if in a relationship.

Professionals who raised the issue of risk management pointed to frustrations in the process caused by ‘panic’, inexperience and risk aversion. This inexperience in managing young people with harmful sexual behaviour in the community was recognised in the report by HMI Probation (2013).

Recommendation: Management of young people with harmful sexual behaviour in the community needs a child-centred framework in line with the purported aim of other agencies. In addition, the MAPPA guidance (Ministry of Justice, 2012) should be revised to explicitly reflect a different approach to children throughout, rather than the general approach outlined in four of the 145 pages, as is currently the case.

6.3.3 Shaping Identities and hopes for the future

Within this sample, the young people provided some strong views on how their offences and their experiences had affected their sense of self and how they imagined other people saw them. Many young people demonstrated a strong positive self identity with clear plans and dreams for the future, including the possibility of sexual relationships. However, when children thought about it, most of them had a strong awareness of the fact that they would be seen very differently by others. Again, as most of the young people in the sample were mainly insulated from outside labelling by virtue of living in a specialist residential setting, it is difficult to know whether the consequences of their conviction would be more difficult for them to cope with in the wider community. As the follow up stories suggested, some of the young people’s hopes had not been realistic as they had been recalled to custody, even though no further
offences had been committed. On the other hand, others had moved on as they had hoped they would.

Recommendation: Practitioners should be working towards a framework where young people with harmful sexual behaviour can be reassured that, provided that they don’t reoffend, they can realistically hope to live a normal life in the foreseeable future.

6.4 Conclusion

This small scale study illustrates some of the pitfalls of the legal framework when applied to children with harmful sexual behaviour, many of whom are children in need with histories of victimisation. It suggests that, for children who are the perpetrators of serious sexual harm, the criminal justice system is a blunt tool that can inhibit the prevention of further offending rather than facilitate rehabilitation.
Bibliography


Bateman, T. (2011) "'We now breach more kids in a week than we used to in a whole year': The punitive turn, enforcement and custody", *Youth Justice*, 11 (2), pp.115-133.


Newbury, A. (2011) "I would have been able to hear what they think": Tensions in achieving restorative outcomes in the English youth justice system', *Youth Justice*, 11 (3), pp.250-265.


Office for National Statistics (2012) 'Mid-2002 to mid-2010 population estimates: England and wales; estimated resident population by single year of age and sex;


227
User Voice (2012) "Why are they going to listen to me?": Young people's perspectives on the complaints system in the youth justice system and secure estate. London: Children's Commission.


**Cases**

*Attorney-general's reference no. 29 of 2008 (Jon Peter Dixon) [2008] EWCA Crim 2026*

*B (a minor) v Director of Public Prosecutions [2000] 2 Cr App R 65*

*G v the United Kingdom [2011] ECHR 1308*

*Matadeen v Pointu [1999] 1 AC 98*

*R on the application of C v Secretary of State for the Home Department [2013] EWHC 982 (Admin)*

*R(T) v chief constable of greater Manchester and others [2013] EWCA Civ 25*

*R(E) v Director of Public Prosecutions [2011] EWHC 1465 (Admin)*

*R v Blackshaw and others [2011] EWCA Crim 2312*
R v Camplin (1845) 1 Cox CC 220
R v B [2008] EWCA Crim 830
R v Lang & 12 others [2006] 2 All ER 410
R v Longworth [2006] 1 WLR 313
R (on the application of Smith) v Secretary of State for the Home Department [2005] UKHL 51
R v Secretary of State, ex parte Maria Smith [2005] UKHL 51
Re Thompson and Venables (tariff recommendations) [2001] 1 Cr App Rep 40
R v chief constable of Kent ex parte L; R v Director of Public Prosecutions, ex parte B [1991] 93 Cr App R 416
R (F (A child) and another) v secretary of state for the home department [2010] 2 WLR 992
R (F and Thompson) v Secretary of State for the Home Department [2008] EWHC 3170
R(M) v the Chief Magistrate [2010] EWHC 433 (Admin)
SC v the United Kingdom [2005] 40 EHRR 10
T v the United Kingdom [1999] 30 EHRR 121
Teddy bear clinic for abused children and Another v minister of justice and constitutional development and another [2013] ZACC 35
T v the United Kingdom (Application no. 24724/94), 16 December 1999, unreported
V v the United Kingdom (Application no. 24888/94), 16 December 1999, unreported

UK Legislation
Criminal Justice Act 2003, Ch. 44. London: The Stationery Office.
Criminal Justice and Court Services Act 2000, Ch. 43. Elizabeth II.


Marriage Act 1949 Ch. 76. London: The Stationery Office.

Offences Against the Person Act 1861, Ch. 100. London: The Stationery Office.


International law


Appendix 1: Questionnaire

Questionnaire

PART 1
To be completed in advance with the relevant professional or using documentary information

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Initials</td>
<td></td>
</tr>
<tr>
<td>2. Date of birth</td>
<td></td>
</tr>
<tr>
<td>3. Gender</td>
<td>Male □ Female □</td>
</tr>
</tbody>
</table>
| 4. Ethnicity | White □  
|              | English □  
|              | Scottish □  
|              | Welsh □  
|              | Irish □  
|              | Any other white background (specify) |
|              | Asian or Asian British □  
|              | Indian □  
|              | Pakistani □  
|              | Bangladeshi □  
|              | Any other Asian background (specify) |
|              | Black or Black British □  
|              | Caribbean □  
|              | African □  
|              | Any other black background (specify) |
|              | Chinese or Chinese British □  
|              | Chinese □  
|              | Mixed □  
|              | Mixed white and Asian □  
|              | Mixed white and black □  
|              | Mixed white and Chinese □  
|              | Any other mixed background (specify) |
|              | Any other ethnic group (specify) |
5. Is the young person considered disabled?
   No □

   Yes:
   Physical disability □
   Visual impairment (not corrected by spectacles or contact lenses) □
   Hearing impairment □
   Learning difficulty □
   Mental health disability □
   Other disability (specify)

5a. What help do you think the young person might need with communication for the purposes of this research? (e.g. does the young person have a particular learning style?)
5b. How well do you think the young person understands criminal justice processes, e.g. court processes, sentencing etc?
   Poor understanding □
   Good understanding □
   Unable to say □
   OK understanding □

Comment:

6. Consent to see ASSETT? Yes □ No □

7. Consent to see sentence report? Yes □ No □

8. Main offence/sexual harmful behaviour

9. Date of first sexual offence

10. Date of last sexual offence

11. Type of sentence
    Community sentence □
    DTO □
    s91 determinate sentence □

If community sentence – what type?
Extended sentence □  
DPP □  
Discretionary life sentence □

12. Length of sentence or minimum term (in months): _______________

13. Length of extended licence (in months) (if applicable): _______________

14. a  
Has the term Schedule 1 offender ever been used to your knowledge in respect of the young person?  
Yes □  No □

14. b  
Ever convicted of a violent or sexual offence against a child?  
Yes □  No □

15. Length of notification requirements  
Indefinite □  
Definite (length in months):  
Unclear □  Please state why: ____________________________

SOURCES USED IN THIS SECTION:

PART 2  
To be completed with the young person in a face-to-face interview

These questions are to help understand more about:  
- how being in trouble with the law has changed your life  
- how much you understand about what happened to you when you got in trouble with the law  
- whether or not the way you were treated helped make things better both for you and everyone else
Your answers might be written down and maybe put in a booklet. Anyone will be able to read it, including you. But your name and any details about you that could give people clues about who you are will be kept PRIVATE. You do not have to answer these questions. If you change your mind later and don’t want to be involved in this project, you can say so at any time.

There is more information in the leaflet.

**Prior to charge**
These questions are about being in trouble with adults for sexual behaviour before you were charged with a criminal offence.

16. Had you been in trouble about your sexual behaviour before you were charged with a sex offence?

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*If yes:*

(i) **How many times had you been trouble before you were charged/dealt with?**

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Once before</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2-5 times before</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6-10 times before</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not sure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>More than 10 times before</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(ii) **Who were you in trouble with/dealt with by?**

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td></td>
<td></td>
</tr>
<tr>
<td>YOT workers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Social workers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Teachers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not sure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Others (specify):</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(iii) **In what way were you dealt with?**

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reprimanded</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Final warning</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Told off by parent/teacher</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not sure</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Other (specify):

Comment

---

235
17. When did you admit that you did the offence?
   Before the police were involved  
   At the police station  
   After the police station and before trial  
   After conviction but before the end of the sentence  
   After the sentence  
   Never  

Comment

18. Did you do any work about your sexual behaviour before you were charged?
   No  
   Yes  

If not, do you think it would have helped you?
   Yes  
   No  

If so, do you think it helped you?
   Yes  
   No  

Reasons for your answer:

Understanding the charge

19. Did you feel you understood the charge at the time?
   Yes  
   No  

Comment:

If no, do you now feel you understand?
   Yes  
   No  

Comment:

19A. When you did the offence, did you know you were breaking the law?
   Yes  

236
19B. At the time did you understand why the sexual act was against the law?
   Yes □
   No □
Comment:

19C. Do you now feel you understand why the sexual act was against the law?
   Yes □
   No □
Comment:

20. Did anyone help you to understand the charge?
   No □
   Yes □
   If yes, who?
   Solicitor □ Barrister □
   Social worker □ Parent/carer □
   Friend □ Police □
   YOT worker □ Other (specify)
   Not sure □
Comment:

21. If your case went to court, did you plead guilty or not guilty?
   Guilty □
   Not guilty □
   Don’t know □

22. If you were convicted of a sexual offence, were you sentenced in the youth court or the Crown Court?
   Youth □
   Crown □
   Don’t know □
23. If you were sentenced for a sexual offence, how many times did you see your solicitor before you were sentenced?

- Once 0
- Twice 0
- Three times 0
- More than three 0
- Don’t know 0

Comment:

---

If you attended court...

24. Did you feel you understood what was happening at court?

- No 0
- Yes 0
- Not sure 0

Comment:

---

25. How did you feel when you were at court?

Comment:

---

[number in order of strength of feeling]

- Interested 0
- Bored 0
- Scared 0
- Confused 0
- Other (specify)

---

26. Did anyone explain what was happening at court?

- Yes 0
- No 0

Comment:

---
**If yes, who?**
[number in order of who provided the most information]
- Solicitor □
- Patent □
- YOT worker □
- Appropriate adult □
- Judge □
- Social worker □
- Barrister □
- Not sure □
- Other (specify):

27. Did you understand what you were told?
- Yes □
- No □
- Sometimes □
- Comment: 

28. Generally did you feel you understood what was happening when you were in court?
- Yes □
- No □
- Sometimes □
- Comment: 

[if it helps, go through various stages]

<table>
<thead>
<tr>
<th>Stages</th>
<th>Yes □</th>
<th>No □</th>
<th>Comment:</th>
</tr>
</thead>
<tbody>
<tr>
<td>At first appearance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Remand decisions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mode of trial</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>During trial</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>At sentence</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

29. Who did you sit next to in court?
- Solicitor □
- Social worker □
- Parent/carer □

239
30. Were you able to speak to whoever you sat next to in court while the judge was in the room?
   Yes ☐
   No ☐
Comment:__________________________________________________________

31. If you were in the Crown Court, did the judge and/or barristers wear a wig?
   Yes ☐
   No ☐
Comment:__________________________________________________________

Understanding the sentence (applicable only if sentenced)

32. Please describe your sentence.
   Able to describe sentence ☐
   Unable to describe sentence ☐
   Able to describe sentence with help ☐

33. At the time you were sentenced, did you understand when you could be released or return to living normally?
   Yes ☐
   No ☐
Comment:__________________________________________________________

34. Did anyone help you understand your sentence?
   No ☐
   Yes ☐

   If yes, who?
   [in order of who provided the most help]
   Solicitor ☐
   Barrister ☐
   Social worker ☐

240
Parent/carer □
Friend □
YOT worker □
Key worker in secure □
Not sure □
Other (specify)

Comment (including when they helped you understand it): ________________________ 

35. At the time of your sentence did you think your sentence was fair?
   Yes □
   No □

Comment: ________________________________________________________________

36. Do you now think your sentence was fair?
   Yes □
   No □
   Not sure □

Comment: ________________________________________________________________

37. Were you surprised at your sentence?
   Yes □
   No □
   Not sure □

Comment: ________________________________________________________________

38. Do you think that people around you (including people who live with you now and people in the wider community) will be safer because of your sentence?
   Yes □
   No □
   Not sure □

Comment: ________________________________________________________________

241
39. Have you done work during your sentence to address your sexual offending?
   Yes ☐ No ☐
Comment:__________________________________________________________

If yes has it been helpful?
   Yes ☐ No ☐
Comment:__________________________________________________________

40. Do think you have changed during your sentence?
   No ☐ Yes ☐
If yes, why? [number in order of most important]
   I have learnt my lesson from being here ☐
   I have done work on my offence ☐
   Support from staff ☐
   Because I have grown up ☐
   Because I have time to think about my behaviour ☐
   Other:

Comment:__________________________________________________________

Understanding parole (if applicable)

41. Did you go through parole?
   Yes ☐ No ☐

42. Did you understand the parole process from the time you were sentenced?
   Yes ☐ No ☐
Comment:__________________________________________________________

43. What help did you get in working towards parole?
44. Were you represented for your parole application?
   Yes [ ]
   No [ ]
Comment: ________________________________

If no, did you know you could have a solicitor?
   Yes [ ]
   No [ ]
Comment: ________________________________

45. Did you have an oral hearing?
   Yes [ ]
   No [ ]

46. Did you understand the sorts of reasons why the parole board would or
would not let you out? Give examples.
   Yes [ ] Examples:
   No [ ] Examples:

47. How did you feel during the parole hearing?
   Interested [ ]
   Bored [ ]
   Scared [ ]
   Confused [ ]
   Other (specify) [ ]

Comment: ________________________________

48. Were you released on parole?
   Yes [ ]
   No [ ]

49. Did you think the parole board’s decision was fair?
   Yes [ ]
   No [ ]
Sex offenders’ register

50. Do you know what the sex offender register is? If so, explain.
   Yes ☐ Explanation:
   No ☐

51. Do you know what someone has to do as a registered sex offender?
   No ☐
   Yes ☐
   If yes, explain

51A. Did you know that you have to do the following as a registered sex offender?

   (i) The initial notification of name, date of birth and home address or any notification of a change of details has to be completed within 3 days and the offender’s National Insurance Numbers must now be given.
       Yes ☐ No ☐

   (ii) Notification is required of any UK address in which the person resides for 7 days or more, whether consecutive or not, within a 12 month period.
       Yes ☐ No ☐

   (iii) All relevant offenders must confirm their notified details annually.
       Yes ☐ No ☐

   (iv) Notification must be given in advance of foreign travel, and return to the United Kingdom in accordance with the requirements of the Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004.
       An offender who intends to leave the United Kingdom for a period of 3 days or longer must notify the date on which he will leave the UK, the country to which he will travel and his point of arrival in that country and if more than one country his point of arrival in each such additional country, the identity of any carrier or carriers he intends to use, details of his accommodation for his first night outside the United Kingdom.
       Yes ☐ No ☐
Kingdom, the date upon which he intends to return and the point of arrival.
The travel notification can lead to the police making an application for a foreign travel order under s. 114 of the 2003 Act which entitles the Chief Officer of Police to make an order preventing the offender from leaving the United Kingdom, or restricting any destination to which he might go if it is necessary to do so for the purpose of protecting children generally, or any child, from serious sexual harm from the offender outside the United Kingdom.

Yes ☐ No ☐

(v) All notifications have to be made in person at a police station; and police may take fingerprints and photographs at initial notification and at any further notification, annual or otherwise.

Yes ☐ No ☐

52. Who do you think can find out if you are on the sex offenders' register?
Solicitor ☐
Barrister ☐
Social worker ☐
Parent/carer ☐
Friend ☐
YOT worker ☐
General public ☐
Secure staff ☐
Not sure ☐

Other (specify) __________________________________________
Comment: __________________________________________

53. If you are on it, do you know how long you will be on it for?
Yes ☐
No ☐

54. How long?
As long as my sentence ☐
One year ☐
Two and a half years ☐
Three and a half years ☐
5 years ☐
forever ☐
other ☐

54.A Was the answer to the length of time on the register correct?
55. If you are on it forever, do you think you can ask to come off?
   Yes □
   No □
Comment: ______________________________________________________

56. If you are on it forever, would you like the chance to come off?
   Yes □
   No □
   Don’t mind □
Comment: ______________________________________________________

Explain the law in relation to this if young person is interested.

57. Do you think other people will be safer because you are on the sex offenders register?
   Yes □
   No □
   Don’t know □
Comment: ______________________________________________________

58. If you are on it, do you mind being on the sex offenders’ register?
   Yes, I mind a lot □
   Yes, I mind a bit □
   Don’t mind □
   I think it is a good thing □
Comment: ______________________________________________________

59. If applicable, how does the knowledge that you will be on the register forever affect your motivation to do sex offending work?
   More motivated □
   Less motivated □
Comment: ______________________________________________________
60. If applicable, do you think being on the sex offenders' register will make it harder to:

(a) get a job
   Yes □
   No □
   Comment:

(b) do education
   Yes □
   No □
   Comment:

(c) get a place to live
   Yes □
   No □
   Comment:

(d) make friends
   Yes □
   No □
   Comment:

(e) have a sexual relationship
   Yes □
   No □
   Comment:

Other comments:

Schedule 1

61. Do you know what ‘schedule 1’ means?
   No □
   Yes □
If yes, explain

62. Have you come across the expression ‘presenting a risk to children’?

Yes [□]
No [□]
Comment:

63. Do you know what someone has to do as a schedule 1 offender?

No [□]
Yes [□]

If yes, explain

64. Do you know if other people can find out if someone is a schedule 1 offender?

Yes [□]
No [□]
Not sure [□]

Explanation of Schedule 1 offender

One of the problems with schedule 1 is that it is not really clear what it means! It refers to schedule 1 of an old act which was a list of violent and sexual offences. It has been updated over time by new laws but there has never been a law saying exactly what happens to you. If you commit these offences against children (under 18s) you can be called a ‘schedule 1 offender’.

Common practice in respect of schedule one usually involves the maintenance of a register of offenders by local authorities. If the local authority becomes aware that a schedule one offender is living with children, a child protection investigation may follow. Information about a person’s schedule one status may be disclosed to third parties such as partners with children. Serving prisoners who are schedule one offenders may be prevented from activities that involve contact with children, including visits from their own children, and the prison is required to inform relevant agencies of their schedule one status prior to release (Prison Service, 1994; Nacro 2003; Home Office, 2005).
65. Do you know if you are a schedule 1 offender?
   Yes  □
   No  □
   Not sure □

66. Is the young person a schedule 1 offender?
   Yes □
   No □
   Not sure □

67. If applicable, do you know how long you will be a schedule 1 offender for?
   Yes □
   No □
   If yes, how long?

68. If applicable, do you think other people around you now and in the wider community will be safer because you are a schedule 1 offender?
   Yes □
   No □
   Do not know □
   Comment:________________________________________

69. If applicable, do you mind being a schedule 1 offender?
   Yes, I mind a lot □
   Don't mind □
   I think it is a good thing □
   Comment:________________________________________

70. If applicable, would you like the chance to stop being a schedule 1 offender one day?
   Yes □
   No □
   Not bothered □
   Comment:________________________________________
71. If applicable, how does the knowledge that you will be a schedule 1 offender forever affect your motivation to do sex offending work?

More motivated □
Less motivated □
Comment: ____________________________________________

---

Sex offenders
72. What do you think of when you hear the words 'sex offender'?

Comment: ____________________________________________

---

73. Do you think sex offenders should be locked up?

Yes □
No □
Not bothered □
Comment: ____________________________________________

---

Identity
This part is about how you see yourself and how other people see you.

74. Do you think of yourself as a sex offender?

Yes □
No □
Comment: ____________________________________________

---

75. Do you think other people think of you as a sex offender?

Yes □
No □
Comment: ____________________________________________

---

76. If applicable, do you think your sex offence will make it harder to:
(a) get a job
   Yes ☐
   No ☐
   Comment: ____________________________

(b) do education
   Yes ☐
   No ☐
   Comment: ____________________________

(c) get a place to live
   Yes ☐
   No ☐
   Comment: ____________________________

(d) make friends
   Yes ☐
   No ☐
   Comment: ____________________________

(e) have a sexual relationship
   Yes ☐
   No ☐
   Comment: ____________________________

Other comments: ____________________________

77. Do you know it is against the law for two 12-year olds to have sex even if they both agree?
   Yes ☐
   No ☐

78. Do you think this is fair?
   Yes ☐
   No ☐
   Not sure ☐
79. Do you understand why it is against the law?
   Yes □
   No □

Comment:

80. If applicable, how much do you think your conviction for a sex offence or history of sexual offending will affect you in the future?
   Not at all □
   A little bit □
   A lot □

Comment:

81. Where do you see yourself in:
   (a) 1 years time:

   (b) 5 years:

   (c) 10 years time: