

The Sex Offender Register

A measure of public protection or a punishment in its own right?

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Abstract

The sex offender register has been in existence for eleven years as a measure of public protection. It has never been a punishment for the offender but always an addition to the actual punishment given. During the last eleven years the register has been the subject of small incremental changes. This paper examines those changes and the influences on policy that have resulted in those changes and asks the question as to just how far they have taken us from the original idea of a register. In particular it poses the question 'has the register now moved so far that it has become a punishment in its own right?'

Key Words: sex offender register, public protection, surveillance, sexual offending, sex offenders

Introduction

The aim of this paper is to consider the nature of the UK sex offender register¹ introduced in 1997 and to ask questions about its changing nature. It is a commentary on the last ten to eleven years in which we have had a sex offender register and it is contested that, in that time, the register has moved slowly from being a measure of public protection to potentially being one of punishment.

The register was never intended to be a punishment – only a measure of community protection. The punishment was the sentence of the

¹ The register was for the whole UK from the start - a Schedule at the end of the 1997 Sex Offenders Act gives the different offences for England and Wales, Northern Ireland and Scotland.

court (e.g. a custodial sentence or a community sentence). The intention of the register has been explained by the Home Office: 'It is a measure aimed at protecting the community from sex offenders not an additional penalty for the offender' (Home Office/Scottish Executive, 2001:11).

The register keeps police records up to date by getting the offenders themselves to report their current whereabouts - i.e. their name, and their address - and to notify the police every time these details changed. The police are the custodians of the register, which has never been a register as such but an annotation of the national collection of criminal records stored on the Police National Computer (PNC) - to show that certain people were statutorily required to 'notify' on the basis of their offence being a designated sexual offence². Sanctions are applied to those who fail to comply. The requirement to notify changes lasts for a given period of time dependent on the seriousness of the original offence and the punishment incurred. Sometimes registration can be for life. Juveniles have their time periods halved.

The register has become part of what is sometimes known as the 'community protection' approach to regulating sex offenders - as opposed to the 'public health' approach of say organisations like 'Stop It Now'.

A question that arises when looking at the register is whether or not it makes a difference? Does it work? Can it be evaluated? To do that we need to go back to what the register was originally designed to do.

The origins

Going back to the mid 1990s we have to ask the question why the Home Office considered it necessary to create a sex offender register. What were the forces in play and the influences on policy makers at that time?

We know that some local authorities were keeping their own registers of sexual offenders and that the Home Office disapproved of this development (Home Office et al., 1991: paras. 6.52-6.54). We know that social workers were supportive of a register on the basis that it made as much sense - if not more sense - as keeping child protection registers on abused children (Thomas, 2004). We know that some police were quite keen on the idea of a register to keep their records up to date and to track the mobile offender (Hughes et al., 1996) but that it was the Police Superintendents Association (PSA) that were publicly most vocal in calling for registration and the Association of Chief Police Officers (ACPO) that eventually got the job of implementing it.

If we examine the 1996 Home Office Consultation Paper that first formally proposed the idea we find the primary aim to be that of simply:

... requiring convicted sex offenders to notify the police of any change of address ... to ensure that information contained within the

² For ease of expression this paper refers to 'the register' throughout.

police national computer was fully up to date (Home Office 1996: para 43).

there are three ancillary 'aims' for the register outlined as:

- "To help [the police] identify suspects once a crime had been committed;
 - Possibly help them to prevent such crimes; [and]
 - It might act as a deterrent to potential re-offenders."
- (*ibid*: emphasis added)

The language used in the Consultation Paper is tentative. A register might 'possibly' help with prevention and it 'might' act as a deterrent – a degree of uncertainty is present from the outset. The aims are not clearly espoused and the plural policy objectives are vague. Even the identifying of suspects after a new crime would mean the register had not helped in any way to prevent that crime or make the community any safer.

The parliamentary debate on the Sex Offender Bill during 1996–1997 looked at the possibility of open access to the register and community notification (or Megan's Law³) and decided against such a policy (but as we shall see this remained a theme behind forthcoming changes). The debate also decided against retrospective registration to include the estimated 110,000 convicted sex offenders who would not be required to register and against the inclusion of those not convicted but where there were serious concerns including, for example, the fact that a child had been protected by civil measures (see Thomas, 2004).

Opposition in Parliament was otherwise muted - a general election was in the offing and no one wanted to look 'soft on crime' - especially when it came to paedophiles (often seen as synonymous with sex offender). The sex offender register has often been mistakenly referred to as the paedophile register.

Some background research at this time carried out for the Home Office looked at the experience of registers in the USA. This was after the decision had been made to implement a register. 'Keeping Track? Observations on sex offender registers in the US' (Hebenton and Thomas, 1997) looked at what lessons we could learn from the USA. One of the findings was that no research had ever been carried out on the effectiveness of registers even though the first registers in the USA had been created as long ago as the 1940s:

In reviewing the available published literature on evaluation of registration as an investigative and preventive tool, one is struck by

³ Megan's Law is the colloquial name for Community Notification laws in the USA whereby the public have access to the State sex offender register. This is a Federal requirement made in 1996. Each State is allowed some discretion as to how the access is given and there are slight variations in each state (see Thomas, 2003b).

the dearth of good research studies. With few exceptions, no substantial effort has been devoted to examining base-rates for offending and the scientific literature on long term re-conviction data, nor even to looking at the career path of offenders and the efficacy of registering all (as opposed to some) sexual offenders. Neither indeed have there been any published workload analysis across states in respect of this rapid expansion of registration (Hebenton and Thomas, 1997:34).

The British police were soon to find out how significant those final words about workload would be.

The Sex Offenders Act 1997 that introduced the register was one of the last acts of the Conservative administration that had started back in 1979 and was inherited by Labour for implementation in September 1997. Alun Michael for the new Labour Home Office was as hesitant and tentative in his language as the White Paper had been. He wanted the register to work 'fairly and effectively' (Home Office, 1997a), but when he announced implementation said:

There is no magic wand – so we will be open to new ideas and initiatives – if changes are necessary I will look at how it can be developed and improved (Michael, cited in Home Office 1997b).

The register started slowly and steadily without great fanfare. By 2000 the register reportedly held some 8,608 names and the compliance rate amongst those required to notify was put at 94% (Plotnikoff and Woolfson, 2000:5-6). The compliance rate rose to 97% a year later (Home Office/Scottish Executive, 2001:5) and the total numbers registered put at 29,973 in 2006 (NPS, 2006).

'Strengthening', 'toughening' and 'tightening' the Sex Offender Register

Since its inception the sex offender register has been regularly 'strengthened', 'toughened' and 'tightened'⁴. When the register was reviewed in 2001 the terms of reference of the review were quite specifically 'to strengthen [its] operation and effectiveness' (Home Office /Scottish Executive, 2001:3). David Blunkett saw the register as 'a valuable tool' that 'could be strengthened' (*ibid*, p.1) (see also Home Office, 1997; 2002; and 2007).

Even the original parliamentary Bill had contained new elements that were never in the White Paper. Cautions for example, were never mentioned as being criteria for inclusion on the register but they appeared unannounced in the Bill and were put into the law. Cautions are arguably

⁴ The words are put in quotation marks because this is the language of successive Home Secretaries when they announce changes to the register.

for people thought unlikely to re-offend and therefore not needing to be prosecuted. Registration is premised on precisely the opposite idea that sex offenders will re-offend. The sanctions for non-compliance were also strengthened during the parliamentary debate before we had any experience of the register in practice; this was done at the suggestion of the police (Home Office, 1997c).

In summer 2000 one high profile case in particular was the trigger for the start of more strengthening and tightening of the register and a process that has continued till today. The abduction and murder of eight year old Sarah Payne became the focus of an immediate newspaper campaign demanding open access to the register and a Sarah's Law comparable to Megan's Law in the USA. The riots and recriminations of the campaign by the News of the World have been well documented (see e.g. Thomas, 2001; Silverman and Wilson, 2002 chapter 8); but within two months of the campaign's start (23 July 2000) the Home Office announced changes to the register (Home Office, 2000).

Over the next eight years incremental changes have been made to the register and duties imposed upon those required to register; these changes are listed in Figure 1.

Figure 1. 'Strengthening' and 'tightening' the Sex Offender 'Register' 1997-2008

(1) 2001 Criminal Justice and Court Services Act 2000 introduced five new conditions that registrants are obliged to comply with:

- Initial reporting must be within 3 days;
- The initial reporting must be in person;
- Reporting must be to prescribed police stations;
- Police given new powers to photograph/fingerprint on initial registration;
- New duty to notify police if going abroad more than 8 days.

Non-compliance is made an arrestable offence and sanctions for non-compliance are increased (6m custody goes up to 5 years max.); the new Multi-Agency Public Protection Panels come into being and Restraining Orders introduced as an option.

(2) 2001 Home Detention Curfew (i.e. early prison release with an electronic tag) is denied to sex offenders.

(3) 2001 – lay people are to join Multi-Agency Public Protection Panels – announced within days of the conviction of Roy Whiting for the murder of Sarah Payne – they will have an advisory role only and not be privy to information on individual cases.

(4) 2003 - Sexual Offences Act - a further five new conditions placed on the registrants:

- All changes must be notified within 3 days;
- Annual verification exercises introduced – personal visits required – no emails or letters;
- Must notify any change of address of longer than 7 days;
- New offences added (created by the Act);
- Notification Orders (putting them on the register) may be placed on people who have offended abroad when they either visit or come home;

as well as higher penalties for non-compliance for young offenders

(5) 2003 Criminal Justice Act s 327 requires all those on the register to be 'risk assessed' annually by the Multi-Agency Public Protection Panels.

(6) 2006 in June John Reid demands all those on the register living in probation hostels be moved out of that hostel if it was near a school.

(7) 2006 Violent Crime Reduction Act (passed in November) allows the police to apply to a magistrate for powers to force entry to the home of a registered sex offender to carry out a risk assessment – introduced May 2007

(8) 2006 in December it was announced* that another six offences were being added to the designated offences leading to registration:

- Outraging public decency;
- Theft;
- Burglary with intent to steal;
- Child abduction;
- Harassment; and
- Sending prohibited articles by post

(9) 2007 a Home Office review** recommends the collection of five more pieces of information from those on the register: DNA sample be taken;

- E-mail addresses taken;
- Passport numbers;
- Bank account numbers;
- Notify the police of any children under 18 living in the same household; and
- Notify the police of any foreign travel - of whatever length

and two more obligations be placed on them:

- to report regularly to a police station if homeless;
- to inform the police of any risk factors that might lead to re-offending.

Plus – possible new drug treatments, satellite tracking using GPS, and polygraphs ('lie detectors') and more disclosures on request to those with a need to know (see below)

(10) 2008 new disclosure powers in Criminal Justice and Immigration Act 2008 s140 amending the Sexual Offences Act 2003 with a new s327A – contains a new duty to disclose information to the public on request if they have a legitimate concern; a presumption to disclose if children are known to be in a household, whether or not there is a request.

Notes:

* Home Office (2006) Sex offender register to expand to include more offences (press release) 18 December

Vernon Coaker for the Home Office explained that 'the offences may not seem inherently sexual, but could have had a sexual motive. These changes are necessary to strengthen the monitoring and management of sex offenders'

** Home Office (2007) Review of the Protection of Children from Sex Offenders, June, London (p18)

The underlying themes to the changes

A number of themes can be distinguished that lie behind these 'strengthening' and tightening' exercises.

1. The lack of evidence

The lack of any evidence base to demonstrate that sex offender registers make any difference to community safety has already been noted in looking at experiences in the USA. What subsequent UK evaluation there has been has also noted that:

Forces had no agreed way of quantifying the contribution of sex offender monitoring to improving community safety. In some forces, senior officers had asked for measures to be developed to support cost-benefit analysis ('Best Value'). No single measure of effectiveness emerged from this study as suitable for performance measurement (Plotnikoff and Woolfson, 2000:50).

The problem is a difficult one – how do you demonstrate a negative and show that nothing happened (i.e. further offences) because of your interventions? How do you demonstrate links between registers and recidivism when there are so many other factors to consider? It leaves the register more as an act of faith. Ministers have talked of success in terms of high compliance rates but that is not necessarily the same as a desistance from offending. No one - to the author's knowledge - is researching the degree of re-offending by those currently required to register⁵.

Using the Sarah Payne case again we could say that the furore over community notification and a Sarah's Law overlooked and marginalised the fact that the register in itself had been no help at all. The perpetrator of the offence - Roy Whiting - was on the register when he re-offended to abduct and murder and the fact of being required to notify had had no effect on his propensity to re-offend. The furore - if it noted this at all - did so only to argue for community notification as the answer.

We might also note the marginalisation of what evidence exists on the more micro scale.

The reduction of the initial reporting time from 14 days to 3 days in 2001 ignored the evidence that the police were sometimes unprepared for a person coming in to register within the 14 days they originally had:

Many designated officers mentioned that they first heard about a registration requirement from the offender himself ... [and] failed to receive timely notice from the official sources in the majority of register cases (Plotnikoff and Woolfson, 2000:21).

When the reporting time for all reporting (i.e. not just initial) was reduced to three days in 2003 this ignored the Consultation Paper that had

⁵ At the time of writing – August 2008

suggested it be eight days because three days 'is too short to enable effective action to be taken and would make unreasonable demands on police resources' (Home Office/Scottish Executive, 2001:23).

When the Home Office invited views on the registration of young people (under 18) it again ignored the responses made. A series of more welfare-orientated proposals had been made for young sex offenders (Home Office/Scottish Executive 2001: chapter six) which had received a generally warm welcome from respondents⁶. The Home Office then simply ignored its own proposals and the positive response and even increased the sanction on young people for non-compliance, despite having a compliance rate of 97% (Thomas, 2003a).

As a digression we might also note here why it is that the length of time for registration for young sex offenders is simply halved compared to that of adults. Arguments could be made, for example, that the time periods for young offenders should be longer than for adults given the greater potential for change; especially if a welfare element were added in to this time period. The simple 'halving' exercise was carried just to mirror the Rehabilitation of Offenders Act 1974 (Home Office, 1996: para 54).

2. The influence of the media and the lobbyists

The government has been far more comfortable in responding to media influences rather than research and evaluation evidence where it existed. The reduction of reporting times from 14 days to 3 days (see above) had been demanded by newspapers and the Home Office has been very conscious of a need to appear tough; as Garland says:

Acting out the punitive urges ... [to] assuage popular outrage, reassure the public, and restore the credibility of the system, all of which are political rather than penological concerns (Garland 2001:173).

The ACPO spokesman on sexual offending has himself accused the government of following media agendas at the expense of more considered sources (BBC, 2006). We might also surmise that the quiet rejection of a welfare approach to young people on the sex offender register (see above) reflected a populist need to be seen to be tough on young offenders rather than show any understanding.

The spectre at the feast, always waiting in the background for the last eight years, has been the media demand for Community Notification or Megan's Law with the press even claiming a victory for their campaign when the government announced greater rights of information disclosure to certain sectors of the community ('It's Victory for Sara' News of the World 17 February 2008⁷. These 'rights' are now embodied in the

⁶ A summary of the responses was made available by the Home Office at www.sexualoffencesbill.homeoffice.gov.uk

⁷ Sara was Sarah Payne's mother

amendments made to the Criminal Justice Act 2003 by the Criminal Justice and Immigration Act 2008 (s140).

The more specialist lobbyists have also been successful in influencing policy. The NSPCC came out against community notification⁸ but in favour of tightening up the requirements to notify foreign travel arrangements (Gillan, 1999); such notification has duly been tightened up.

3. The retrospective legitimating of practices already developed

The activities of some practitioners in this field have strayed to the limits of their own guidance and the law. The response has been not to sanction these activities but to legitimise them with changes in the guidance and law. The police photographing, fingerprinting, and taking of DNA swabs of those on the register, for example, was reported in 2000 (Plotnikoff and Woolfson, 2000:35) and later legitimated by the Criminal Justice and Courts Services Act 2000 (s66 and Schedule 5)).

In similar fashion the discretionary disclosure of sex offender registration to certain parties was supposed to be with the authorisation of senior officers. Research found that this was not always happening and that junior officers were taking it upon themselves to make this decision – often spontaneously (Cann, 2007:6). The new law now requires these disclosures to be ‘as soon as practicable’ (Criminal Justice and Immigration Act 2008 (s140)) which seems to cover the spontaneous disclosure and retrospective authorisations.

We might also speculate that there is still no real oversight on the risk assessment process whereby sex offenders are categorised as more or less of a risk to the community. This categorisation usually implies a system of grades Level 1, 2 or 3 with 3 being the offenders most likely to pose a risk and therefore most likely to have information disclosed on them. The process of categorisation is a closed process yet the consequences of a disclosure based on it might have far reaching consequences for the offender being so assessed. An offender, for example, who lost his home following a disclosure of information, might question the process that saw him classified as ‘high risk’. A process that is potentially carried out behind closed doors and that appears to have no legal ‘due process,’ or ‘right of redress’ built into it⁹.

Discussion

The sex offender register is arguably a prime example of criminal justice policy made at a political level in response to perceived populist demands and with no real supporting experience or research to support it. Policy is

⁸ A study for the NSPCC confirmed a further lack of research in this area and that ‘Megan’s Law’ is not an evidence-based policy, but rather a reaction to a series of high-profile crimes against children. Since its implementation, there has been little detailed monitoring and evaluation to ascertain its effectiveness’ (Fitch, 2006: para 8.1)

⁹ The existing system of risk assessment itself seems to suffer from a lack of rigour and supervisory oversight within the police (Home Office, 2005: paras. 7.4-7.6)

made in a vacuum, with ill-defined and hesitant aims, which is then left 'hanging in the air' to be adjusted and amended by politicians listening to the practitioners and specialist lobby groups as well as the public reactions to the latest high profile crime against a child.

Policy created in response to public demand and media recommendations and with no reference to the evidence, is not confined to policies on sex offenders. We have seen the same policy formulation processes in place elsewhere based on populist demands and no evidence. As Tonry has put it, policy is based on a 'belief that [the government's] own continuation in office justifies the unnecessary human suffering and waste of public resources that its policies produce' (Tonry 2004:ix). Or Garland's contention that governments today are:

Highly attuned to public concerns, particularly to the sentiments that offenders are being insufficiently punished or dangerous individuals inadequately controlled (Garland 2002:172).

The sex offender register has moved on the back of these pressures and has incrementally become far more onerous for those required to register. The Home Office has itself speculated about its continuing compliance with human rights regulation:

Challenges to the SOA on human rights grounds have been successfully resisted because the registration requirement has been seen as an administrative consequence of a sentence passed by the court, rather than being a separate sentence in its own right. Were the registration requirement to become more onerous, there could come a point at which the Act could no longer be seen as an administrative requirement (Home Office/Scottish Executive, 2001:13).

This statement was made in 2001 and there have been further changes since that date that arguably make the register more onerous.

As the Home Office says, what legal challenges there have been to the register have been successfully resisted. For instance, in the case of *Adamson v UK* (1999) the European Court of Human Rights has ruled that the requirements to notify do 'engage' Article 8 of the European Convention on Human Rights – the right to a respect for a person's private and family life - but that the requirements are otherwise proportionate (*Adamson v UK* [1999] 28 EHRR CD 209). Others have been unsuccessful in challenging life time registration requirements when there is no court or appeal tribunal that can be approached at any point during that indefinite period (re. Kevin Gallagher [2003] NIQB 26).

A very expensive bureaucracy in the form of Multi-Agency Public Protection Arrangements (MAPPA) has been built up with little or no evidence to demonstrate its worth. Politicians have pushed it in directions that suit their own purposes and practitioners and campaigners have been

able to push it in the directions that they want. The pushing in question has often been based on a high profile crime against a child and that is very difficult to argue against. In the meantime the register has become more burdensome and pressing on the human rights of those required to notify.

References

BBC (2006) 'Media 'dictates paedophile plans'', *BBC New Online*, 19 June. Available at: http://news.bbc.co.uk/1/hi/uk_politics/5096542.stm

Cann, J. (2007) *Assessing the Extent of Discretionary Disclosure Under the Multi-Agency Public Protection Arrangements (MAPPA)*, Home Office Online Report 13/07, London: Home Office.

Fitch, K. (2006) *Megan's Law: Does it Protect Children? (2)*, NSPCC: London.

Garland, D. (2001) *The Culture of Control: Crime and Social Order in Contemporary Society*, Oxford: Oxford University Press.

Gillan, A. (1999) 'Paedophile law change sought', *The Guardian*, 23 July.

Hebenton, B. and Thomas, T. (1997) *Keeping Track? Observations on Sex Offender Registers in the US*, Crime Detection and Prevention Series Paper 83, London: Home Office.

Home Office (1996) *Sentencing and Supervision of Sex Offenders: A Consultation Paper*, Cm 3304, London: Home Office.

Home Office (1997a) *Guidelines for Operating Sex Offenders Register*, press release, 11 August, London: Home Office.

Home Office (1997b) *Sex Offenders Register Comes into Effect*, press release, 31 August, London: Home Office.

Home Office (1997c) *Sex Offenders to Face Tougher Penalties – MacLean*, press release, 27 January, London: Home Office.

Home Office (2000) *Government Proposals Better to Protect Children from Sex and Violent Offences*, press release, 15 September, London: Home Office.

Home Office (2002) *New Moves to Tighten Sex Offender Register*, press release, 2 October, London: Home Office.

Home Office (2007) *The Home Office has Unveiled a Range of Tough New Measures to Enhance the Protection of Children from Sex Offenders*, press release, 13 June, London: Home Office.

HMIP/HMIC (2005) *Managing Sex Offenders in the Community: A Joint Inspection*, London: HM Inspectorate of Probation/HM Inspectorate of Constabulary.

Home Office/Scottish Executive (2001) *Consultation Paper on the Review of Part 1 of the Sex Offenders Act 1997 July*, London: Home Office.

Home Office, Department of Health, Department of Education and Science and Welsh Office (1991) *Working Together: a guide to arrangements for inter-agency cooperation for the protection of children from abuse*, London: HMSO.

Hughes, B., Parker, H. and Gallagher, B. (1996) *Policing Child Sexual Abuse: The View from Police Practitioners*, London: Home Office Police Research Group.

NPS (National Probation Service), (2006) *Keeping Communities Safe: Multi-Agency Public Protection Arrangements*, press release, 20 October.

Plotnikoff, J. and Woolfson, R. (2000) *Where are they Now?: An Evaluation of Sex Offender Registration in England and Wales*, Police Research Series Paper 126, Home Office, London.

Silverman, J. and Wilson, D. (2002) *Innocence Betrayed: Paedophilia, The Media and Society*, Cambridge: Polity.

Thomas, T. (2001) 'Sex Offenders, the Home Office and the Sunday Papers', *Journal of Social Welfare and Family Law*, 23(1) 103-108.

Thomas, T. (2003a) 'The Sex Offender Register: The Registration of Young People', *Childright*, 194, 10-11.

Thomas, T. (2003b) 'Sex Offender Community Notification: The American experience', *Howard Journal of Criminal Justice*, 42(3) 217-228.

Thomas, T. (2004) 'Sex Offender Registers and Monitoring', in H. Kemshall and G. McIvor (eds.) *Managing Sex Offender Risk*, London: JKP.

Tonry, M. (2004) *Punishment and Politics: Evidence and Emulation in the Making of English Crime Control Policy*, Cullompton: Willan Publishing.

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