



Out of place:

The policing and criminalisation of sexually exploited girls and young women

Summary

the **Howard League** for **Penal Reform**

Key points

- New strategies need to be developed to protect young women and girls from both commercial sexual exploitation (prostitution) and other forms of sexual exploitation e.g. girls who are sexually abused in what they believe to be ‘relationships’ with their exploiters, or who are sexually vulnerable but are not directly exchanging sex for money etc.
 - England and Wales have tried to adopt a victim-oriented approach but this is undermined by the disjuncture between the law and policy. The Policing and Crime Act 2010 does not age-restrict prostitution-related offences so anyone over the age of criminal responsibility can be prosecuted for these; whereas key policy documents define sexual exploitation as a form of sexual abuse. Children must always be treated as victims, never as criminals.
 - Often girls and young women come to the attention of the authorities due to offences they have committed as a result of their sexual exploitation.
- Many girls use crime as a means to escape their exploiters or as a cry for help. Some use it as a way to express a sense of justice as they feel excluded from traditional mechanisms of justice. These girls are criminalised when they should be recognised as victims.
- Specialist services should be gender specific and should address commercial sexual exploitation and other forms of sexual exploitation separately.
 - Links between agencies and youth justice need to be improved. Too often the youth justice system fails to recognise girls and young women as victims of sexual exploitation because existing legislation allows them to be punished for crimes committed as a result of it.
 - Criminal justice agencies should be child-centred in their approach to girls who come to their attention and should introduce more training to enable girls to be referred to more appropriate services.

Introduction

England and Wales have a victim and child-oriented approach to girls' involvement in prostitution. The Sexual Offences Act 2003 and two key policy documents have framed this approach. *Safeguarding Children in Prostitution* (Department of Health and Home Office, 2000) and *Safeguarding Children and Young People from Sexual Exploitation* (Department of Children, Schools and Families (DCSF), 2009) instruct all agencies that sexual exploitation is a form of sexual abuse and that any interventions should be based on a young person's needs.

The Sexual Offences Act 2003 provides a set of offences for dealing with the commercial sexual exploitation of anyone under the age of 18. Yet *Safeguarding Children and Young People from Sexual Exploitation* (DCSF, 2009) also notes that a child (i.e. anyone over the age of ten) can still be prosecuted for a variety of prostitution-related offences, including persistently soliciting and loitering for the purposes of prostitution (see Section 16 of the Policing and Crime Act 2010 which replaced Section 1 of the Street Offences Act 1959).

For adults, persistence is demonstrated when two officers bear witness to the activity and issue a non-statutory 'prostitutes' caution'. There is no similar guidance for children beyond the DCSF statement that:

Although the offence remains available for under 18s, this guidance echoes the message included in the earlier version that the criminal law is rarely an effective or appropriate response to children and young people under the age of 18 found loitering or soliciting for the purposes of prostitution and that the responsibility for the sexual exploitation of children or young people lies with the abuser: either the person who pays for sex, in some way, or the person who grooms the child and/or organises the exploitation (DCSF, 2009).

This has become known as the 'persistent returners' clause'. This clause permits law enforcement and criminal justice agencies to bring charges against children and young people for prostitution-related offences on the basis that some children and young people might freely and knowingly be involved in exchanging sex for money.

It means that the victim and child-oriented approach to sexual exploitation adopted by England and Wales is framed within a wider

criminal justice approach that still retains the capacity to criminalise children as a result of their sexual exploitation.

Research aims, data and analysis

The overarching aim of this research was to find out if sexually exploited girls and young women were being criminalised for behaviour linked to their sexual exploitation and how this was happening. Further aims were to describe the links between sexual exploitation and offending, and the links between specialist exploitation services working with girls and youth justice agencies. The study also aimed to examine processes that might help explain the (potential) criminalisation of sexually exploited girls and young women.

In order to address the aims two datasets were collected. The first was a national survey of individuals and organisations who were members of the National Working Group for Sexually Exploited Children and Young People¹. The survey asked participants to describe local issues and focused on the links between sexual exploitation services and youth justice agencies.

The second dataset was a series of in-depth, detailed interviews with specialist services and police constabularies in three areas of England and Wales. Both of these datasets were supplemented by Freedom of Information requests which asked for records of proceedings of all those found guilty of soliciting and loitering for the purposes of prostitution by age from 1990 – 2011. The data was analysed thematically and the analysis was supported by a review of existing literature and policy documents.

Measuring the extent and prevalence of sexual exploitation

In the last five years there has been a proliferation of reports from researchers, campaigning groups, children's charities and other NGOs commenting on the UK's crisis in protecting girls from sexual abuse and exploitation. They promote the view that the problem is large, hidden and growing. Yet the official statistics show that fewer than 400 individuals were charged with abuse of a child through sexual exploitation or sexual grooming in the year 2010–11. The gap between media and NGO reports and the official statistics arguably results from:

- the lack of any robust methods for counting sexual exploitation

¹ See www.nationalworkinggroup.org

- the political purchase that sexual exploitation has in terms of grabbing headlines
- broader changes in relation to how commercial sexual exploitation takes place (i.e. a shift from formal street-based prostitution to indoor and/or informal social group based sexual encounters)
- changes to the ways prostitution is policed.

Since the introduction of *Safeguarding Children Involved in Prostitution* (Department of Health and Home Office, 2000) which recommended that children are not in the first instance criminalised, there have only been 46 cases of under 18s found guilty of persistent soliciting or loitering.

No robust data sources exist which can adequately identify the prevalence of sexual exploitation or how many sexually exploited girls and young women are being criminalised for law breaking which, whilst not soliciting or loitering, is nevertheless connected to their sexual exploitation.

Key legislation and policy

The legal and policy frameworks operate within vastly different definitions of sexual exploitation. The legal framework uses the term 'commercial sexual exploitation' to refer to children's exploitation in prostitution or pornography. *Safeguarding Children and Young People from Sexual Exploitation* (DCSF, 2009) adopted a very broad definition that focuses on vulnerability:

Sexual exploitation of children and young people under 18 involves exploitative situations, contexts and relationships where young people (or a third person or persons) receive 'something' (e.g. food, accommodation, drugs, alcohol, cigarettes, affection, gifts, money) as a result of them performing, and/or another or others performing on them, sexual activities.

The policy framework does not provide coherence in guiding the interventions of local authorities, third sector organisations or criminal justice agencies when dealing with the full range of issues in prostitution, commercial sexual exploitation and sexual exploitation. Practitioners and criminal justice agencies are responsible for protecting young people from an almost endless set of circumstances in which they might be experiencing exploitative sexual relationships. Yet, the legal framework that they can use to bring offenders to justice refers only to young people's commercial sexual exploitation.

Models of practice and intervention

The majority of services that provide for sexually exploited young women are alliances of multi-agency partnerships between local authority social services and other statutory services working with children. Third sector non-statutory organisations are also actively engaged (e.g. Barnardo's and The Children's Society).

Non-statutory specialist agencies offer a range of services for statutory sector employees and work directly with young people, providing awareness, training and education.

The national survey indicated that few third sector specialist services or statutory specialist teams worked closely with youth justice agencies or fed into youth justice decision making processes. High levels of cooperation were reported between non-youth justice agencies where information was shared in order to better protect young women and to help facilitate the prosecution of their sexual exploiters. However, there was little evidence that specialist services had input into routine youth justice practices, such as risk assessments, pre-sentence reports and interventions as part of a court disposal.

While there is evidence of multi-agency partnerships between police, social services and non-statutory specialist services, there is little evidence of strong partnerships between non-statutory specialist services and youth justice services, including youth offending teams or youth custody providers. There are notable exceptions to this general pattern, and those exceptions are almost always the result of a serious case review.

The lack of strong partnerships with youth justice has had a serious impact, meaning the context that surrounds girls and young women's law breaking is not taken into account by youth courts or youth justice services when there are breach proceedings. It means that much of the work of youth justice services to reduce these young women's risk of re-offending is possibly irrelevant due to failure to provide appropriate support.

Kim's story

'Kim', who is now 18 years old, is one of the youngest of seven children and still lives in her family home. When Kim was 14 years old, her father and oldest brother were in prison. Kim's mother and older siblings were rarely at home. Kim started 'partying' with older boys and men, often staying out very late and seldom going to school. No one reported her missing from home

despite the fact that she would often be gone until the very small hours of the morning. The school referred Kim to a specialist sexual exploitation service who started working with her on 'staying safe' and 'appropriate sexual relationships'. Her sexual exploitation case worker described her as "very difficult to engage" because at that time, she did not think there was anything wrong with what she was doing.

Her boyfriend would buy her alcohol, take her shopping and tell her he loved her. For Kim, this was the first time anyone paid attention to her. Kim's 'boyfriend' was 35 years old. The first time she got into trouble for breaking the law, Kim was 15 years old. Her neighbour accused her, on a popular social networking site, of being a 'slag' and Kim went to her house and got into a fight.

About a year later, when Kim was nearly 16 years old, she told the case worker that some time ago her boyfriend took her to a house in a neighbouring city to meet another man. That man took her shopping and wanted to have sex with her. Kim refused and she was raped. Although she told no one about the rape, Kim decided to stop seeing her boyfriend. She went back to partying, which meant hanging out with older boys, drinking, having a good time and exchanging sex for MDMA, MCAT, cannabis, or £5. She didn't think there was anything wrong with this.

By the time she was 18 years old, Kim was regularly exchanging sex for money, drugs and alcohol, had been raped several times by some of the older men she partied with and by the 'friends' of her older boyfriends. She also had several prosecutions for being drunk and disorderly, for criminal damage (against the car of one of the men who raped her), was regularly fighting with other girls and continuously breached her youth justice orders. All of this was indirectly related to Kim's sexual exploitation. Throughout Kim's passage through youth justice, no one knew about her sexual exploitation.

Understanding the criminalisation of sexually exploited young women

Official statistics confirm that sexually exploited girls and young women are not routinely arrested and charged with prostitution-related offences. However, there is anecdotal evidence which suggests that they are disproportionately criminalised for offending behaviour that is related to their vulnerabilities and their sexual exploitation.

Two of the key ways that practitioners are alerted to the fact that attention that needs to be paid to any particular young woman are (i) if a missing person report is filed about them and (ii) if they are seen 'hanging out' in places deemed inappropriate and dangerous.

One of the social conditions experienced by both sexually exploited girls and young women and children in prostitution is that they live their life in a manner that exposes them to a high degree of public policing. Economically and socially marginalised, often not in school, training or employment, they spend much of their leisure time in public places (parks, street corners, in front of or behind fast-food restaurants) 'hanging out'.

The out-of-doors public social life of teenagers has long been the cause of an intense social anxiety. Such governmental concerns with working class youth, their 'unrespectable' leisure activities and their links with crime and nuisance have arguably lead to a decade marked by the intensification of the surveillance and criminalisation of young people.

This means young women in places that are deemed 'typically' inappropriate and dangerous come to the attention of police and other agencies in ways that result in their criminalisation. In an effort to 'protect' these young women, police will often act to remove those deemed 'out of place' or 'ill-placed' using traditional policing methods. The consequence is that young women whose social lives take place outdoors and in public places are at far greater risk of being criminalised than those socially included young women who have the resources to conduct their leisure and social lives away from the attention of the police.

Links between crime, criminalisation and sexual exploitation

The complex links between crime, criminalisation and sexual exploitation are not easily accommodated by current models of multi-agency partnership in which there are only limited links between youth courts, youth justice and specialist exploitation services. This is important as many sexually exploited young women have already had substantial support from children's services or sexual exploitation services, but have lacked appropriate support in terms of access to justice, housing and income.

Interviews with specialist service providers confirmed that the young women they came into contact with had often broken the law. In some cases these convictions were for public order offences that resulted from conflicts occurring within girls' friendship circles: conflicts which took place in public, whilst 'hanging out'. Shoplifting was the most common type of offending, driven by the need to obtain alcohol and drugs (a key coping strategy).

The context that shapes girls and young women's sexual exploitation is not, contrary to media reports, their existence in a state of sexual slavery. Rather the sexual exploitation takes place within the social context of friendships and relationships, albeit exploitative and occasionally coercive or violent. Within this context, girls will use crime as a resource to make themselves safe, knowing that in being arrested, they will be removed from the situation in which they find themselves, for example, shoplifting in front of security guards.

Some offending is also a means by which girls and young women obtain a measure of justice for the crimes committed against them. The most common story recounted by practitioners across the country was one in which a young woman would commit criminal damage against the property of her exploiters.

In this case, the link between sexual exploitation, crime and criminalisation is the way in which many sexually exploited young women are routinely denied access to formal justice. Where police and statutory agencies work hard to bring cases to justice, they often break down because of the difficulty of collecting robust evidence and because these young women are not seen as credible witnesses.

This denial of justice is a result of a number of important factors: (i) the gap between the broad definition in policy and the very specific definition of commercial sexual exploitation (ii) the gendered ideologies and age-related assumptions about sexual innocence which serve to shape how young women are perceived by critical decision makers (particularly when decisions are made about their 'reliability' as a witness) and (iii) the complexity of cases in terms of how they do (or do not) map against the Sexual Offences Act 2003.

Conclusion

The most critical finding of this report is the complete absence of the recognition in policy, law and practice of child prostitution. Whilst sexual exploitation may well be one component, there are some fundamental differences; not least the young person's own sense of agency.

Two decades of research has confirmed that many girls and young women become involved in prostitution for economic reasons. This is not to deny that young women in prostitution also experience highly exploitative relationships. It is simply to note that there are differences between sexual exploitation as defined in policy and young women's involvement in prostitution.

At the moment, sexual exploitation services and the police help young women understand that they are vulnerable. This ensures that they receive support to make different choices through direct work. This may provide a level of appropriate support for girls who go to parties, get drunk and have sex with older boys or find themselves involved with men who are keen to exploit them. However, it is unlikely to provide the level of support needed for girls who are engaged in the direct exchange of sex for money due to economic drivers. To be clear: the needs of the 16 year old girl who exchanges sex for a wrap of heroin or £15 are not the same as the needs of the 14 year old girl who has sex with a 35 year old man she believes to be her boyfriend in a hotel for cigarettes.

One particular concern is that in practice, it is perfectly possible that such young women can be prosecuted in the future for prostitution-related activities simply because the persistent returners' clause permits such prosecutions. It is only the exploitation or coercion of individuals and not the force of necessity that is recognised within current legal and policy frameworks.

The second key finding is that there are few links between specialist sexual exploitation services and youth justice. This means that there is limited scope for critical decision makers in youth justice to understand the specific circumstances and contexts that surround the criminalisation and offending of sexually exploited girls.

The third key finding is that the links between crime, criminalisation and sexual exploitation are not of a causal nature. Contemporary models of policing and dealing with sexual exploitation actually put in place the very conditions that generate a disproportionate rate of criminalisation. Police and agencies look out for girls in public places, deemed vulnerable and 'out of place'. Such intensive surveillance on young women's public leisure activities will mean that their less than law abiding behaviour is witnessed, with criminalising effects. Sexually exploited young women also resource

themselves in the face of a lack of appropriate support through crime. Just as the police are concerned about removing vulnerable and visible young women from places deemed dangerous, the young women themselves will use the police to remove them from situations they know to be risky.

Recommendations

- Remove the legal possibility of ever prosecuting a child for prostitution-related offences by providing clear guidance, removing the persistent returners' clause and age restricting any prostitution-related offence to those over the age of sexual consent.
- Clear guidance is required from central government to distinguish sexual exploitation from youth prostitution.
- Specific cross-government department guidance is required to deal with supporting children and young women in prostitution through appropriate support services. This should be distinct from the services offered for sexually exploited girls and young women.
- Develop formal police diversion schemes for girls and young women, particularly those charged with public order offences.
- Develop court diversion schemes for girls and young women whose offending is linked with either sexual exploitation or commercial sexual exploitation (i.e. prostitution).
- Provide youth justice magistrates, solicitors and youth offending teams with high levels of appropriate training in the links between sexual exploitation, commercial sexual exploitation and girls' involvement in prostitution.
- Provide clear guidance to youth justice agencies to ensure that specialist sexual

exploitation service providers are consulted in the process of assessing risk of reoffending and the production of pre-sentence reports.

References

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About the Howard League for Penal Reform

The Howard league is a national charity working for less crime, safer communities and fewer people in prison.

We campaign, research and take legal action on a wide range of issues. We work with parliament, the media, criminal justice professionals and members of the public, influencing debate and forcing through meaningful change.

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