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Sex Offender Community Notification in Scotland

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This briefing reviews some of the recent developments relating to the management of registered sex offenders in Scotland. It focuses on processes of information sharing between responsible authorities and third parties, deemed necessary as part of an overall risk management strategy. It then explores the Community Notification Pilot which has the potential to extend and enhance these processes and in so doing may provide greater public reassurance, build public confidence, increase public involvement in the protection of children, and generate increased intelligence relating to registered sex offenders.

1. Introduction

In June 2007, the Home Office published its Review of the Protection of Children from Sex Offenders[1]. The review explored how child protection mechanisms might be improved with a related emphasis on increasing public involvement in this process, and in so doing providing greater reassurance to the public. The review also considered the way in which the risks presented by child sex offenders in the community are managed, including the amount of information about child sex offenders that is disclosed to the public. The review concluded that more information can and should be placed in the public domain where in so doing it can be evidenced that such measures of information sharing contribute to and enhance existing strategies of public protection. In consideration of the efficacy of the various community notification strategies employed in the U.S and the current mechanisms of public disclosure in the U.K., the Government concluded that 'greater use should be made of controlled disclosure of information about child sex offenders to those who need to know'. In so doing, the Government committed to strengthen Multi-Agency Public Protection Arrangements (MAPPA), with specific reference to the disclosure of information, but also and particularly to:

> *'Pilot a process where members of the public can register their child protection interest in a named individual. Where this individual has convictions for child sex offences and is considered to be a risk, there will be a presumption that this information will be disclosed to the relevant member of the public'.*

As a result, in February 2008 the Home Secretary announced that four police force areas in England; Cleveland, Cambridgeshire, Warwickshire and

[1] www.homeoffice.gov.uk/documents/CSOR/child-sex-offender-review-130607

Hampshire (including the Isle of Wight); would pilot the disclosure model as detailed in the Review with a view to extending the scheme nationally should the pilot prove successful. The Home Office pilot was launched in September 2008 and although the evaluation outcomes of this pilot have not been published early findings would appear to indicate that the pilot has been successful in its aim of enhancing child protection, suggested by the extension of the pilot's geographical scope and provisional management information provided by the four police force areas at the interim stage[2]. Over a six month period, across all four police force areas, 153 enquiries and 79 applications had been received from parents, carers and guardians, resulting in 10 disclosures.

In Scotland, Ministers are committed to pilot a similar scheme to reflect a Scottish perspective and / or to identify any distinct Scottish issues. Following discussion with the Association of Chief Police Officers in Scotland (ACPOS) and the Association of Directors of Social Work (ADSW), agreement was secured for Tayside police force to pilot the Community Notification model. The pilot will run for nine months, from September 2009 to May 2010.

2. Arrangements for Managing Registered Sex Offenders

In Scotland, in recent years, there have been a number of significant improvements to systems that protect the public from sex offenders. In particular, the Management of Offenders (Scotland) Act 2005 conferred an obligation on the Police, the Scottish Prison Service and Local Authorities (the 'Responsible Authorities') to create joint arrangements for the assessment and management of the risks posed by registered sex offenders in the community[3]. The term Registered Sex Offenders refers to those individuals who are subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (as defined within Section 10 of the Management of Offenders etc (Scotland) act 2005[4]).

MAPPA: Multi-Agency Public Protection Arrangements

In April 2007, Multi-Agency Public Protection Arrangements (MAPPAs) were established in Scotland in fulfilment of the statutory obligations as delineated in the Management of Offenders (Scotland) Act 2005. The fundamental and overarching purpose of MAPPA is public safety and the reduction of serious harm within our communities. Sexual and violent offences cause considerable anxiety and although reconviction rates are very low the public is understandably concerned about such offenders and the risk they may present. Managing the risks posed by sexual offenders within the community is a complex task cutting across the organisational boundaries of local authorities, police, prisons, housing, health and other services. The MAPPA exist to ensure that protection of the public is paramount, and thus a priority objective for all agencies with a duty or responsibility to protect the public from harm. Co-ordinated information sharing, risk assessment and risk management planning informs the work that such agencies undertake with offenders and ensures that the needs of the victims, and potential victims, are central at all times to how

[2] http://press.homeoffice.gov.uk/press-releases/Child-sex-offenders-disclosure

[3] The current arrangements were extended on 30 April 2008 to include Restricted Patients, in addition to Registered Sex Offenders.

[4] www.opsi.gov.uk/Acts/acts2003/ukpga_20030042_en_1

agencies work together to manage offenders. It is never possible to eliminate risk entirely, but through collaborative working and effective communication, risks can be more effectively managed.

Registered sex offenders, eligible for management within the MAPPA, are identified and information is gathered and shared about them across relevant agencies. The nature and level of the risk of harm they pose is assessed and a risk management plan is implemented to protect the public. The arrangements are overseen by a local strategic group with representation from all the responsible authorities. In most cases, the offender will be managed under the ordinary arrangements applied by the agency with supervisory responsibility. A number of offenders, though, require active multi-agency management and their risk management plans will be agreed via MAPPA meetings [5].

Community based Supervision of Sex Offenders

In addition to the implementation and development of MAPPA, statutory agencies have specific responsibilities for the management of sex offenders within the community. When an offender is subject to statutory measures of supervision in the community, they are supervised by Criminal Justice Social Work Services. Sex offenders are subject to a range of conditions attached to their statutory orders, which may be 'constructive' in that they seek to enhance the development of internal controls, which seek to enhance the offender's capacity to self-risk manage through, for example, participation in treatment programmes. Alternatively, they may be 'restrictive', in that they impose 'external controls' on an individual's behaviour, for example, prohibiting unsupervised contact with children and young people.

Notification Requirements

Notification requirements were introduced in Part 1 of the Sex Offenders Act 1997 and were re-enacted with amendments in Part 2 of the Sexual Offences Act 2003. The Police, Public Order and Criminal Justice (Scotland) Act 2006 further extended the notification requirements in Scotland in line with a number of Professor Irving's (2005[6]) suggestions, such as submission of passport details and donation of DNA samples, and further to the Sexual Offences Act 2003 (Notification Requirements) (Scotland) Regulations 2007, bank account and credit card details also now need to be provided. Notification requirements provide the authorities with an additional means to continue protecting the public from sex offenders. The provision of such details helps the authorities keep track of registered sex offenders and effectively monitor their risk. Indeed, the Scottish Government, ACPOS and the Home Office are considering further extensions to the notification requirements in relation to the provision of information relating to household and social data, and email addresses, for example.

Civil Preventative Orders

In addition to the statutory provisions imposed at the point of sentencing or prior to release, if Police consider that a

[5] For further information on the operation of MAPPA in Scotland see: SCCJR briefing paper No. 01/2010 (forthcoming) - www.sccjr.ac.uk/pubs/; MAPPA Guidance v.4 - www.scotland.gov.uk/Publications/2008/04/18144823; MAPPA Annual Reports - www.scotland.gov.uk/Publications/2008/10/Q/Page/2)

[6] www.scotland.gov.uk/Publications/2005/10/19111606/16070

registered sex offender has acted in a certain way that gives serious cause for concern that the individual may reoffend, they can apply for a Sexual Offences Prevention Order (SOPO). The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 also extends the use of SOPO's so that they can be imposed on those convicted of sex offences by the Courts at the point of sentencing. A SOPO is a civil preventative order that places a number of tailored prohibitions or restrictions designed to prevent the offender from engaging in risky behaviour that could lead to offending, breach of which is punishable by up to five years in custody. A SOPO also serves to extend an individuals period of registration for the duration of the SOPO. A Risk of Sexual Harm Order (RSHO) is another civil preventative order that places restrictions on someone who is behaving in such a way which suggests that they pose a risk of sexual harm to a particular child or to children generally. The person's behaviour need not constitute a criminal offence, and s/he need not have any previous convictions.

3. Current Processes of Information Sharing with the Public

In addition to the statutory and civil mechanisms implemented for the monitoring and supervision of sex offenders within the community, there are already processes in place to facilitate the sharing of information about sex offenders with the public. This includes the Child Exploitation and Online Protection Centre (CEOPC), the Victim Notification Scheme and the use of Formal and Discretionary Disclosure.

The CEOPC

Where registered sex offenders fail to cooperate with the relevant authorities on matters of significance or where offenders abscond or go missing, their details are made widely available via the internet, through the CEOPC. In November 2007, all eight of Scotland's police forces signed off a formal contract that allows them to publish photographs of high risk child sex offenders on the internationally recognised CEOPC 'most wanted' website provided by the U.K. charity 'CrimeStoppers'.

The Victim Notification Scheme

The Victim Notification Scheme (VNS) is provided for in S. 16 of the Criminal Justice (Scotland) Act 2003, and provides a lawful basis for the disclosure of information to victims, within limits defined in the Act. The Victim Notification (Prescribed Offences) (Scotland) Order 2004 which prescribed the offences covered by VNS came into effect on 01.11.04 (SSI 2004 No.411).

Formal and Discretionary Disclosure

Under MAPPA, the responsible authorities share information with other relevant agencies about individuals who represent a risk to the community, in order to reduce the likelihood of re-victimisation or other people becoming the victims of crimes. The authorities can also use discretionary powers to proactively disclose information regarding an offender to a third party (e.g. community-based agencies, voluntary groups or family members) when deemed necessary to enhance public protection.

Under the ACPOS Manual of Guidance Relative to the Management of Sex Offenders, the police in Scotland disclose information about registered sex offenders in a controlled way. There is a direction to employ the 'formal Chief Constable's disclosure' process to a third party when

deemed necessary to enhance public protection and to safeguard children and vulnerable adults (this is commonly referred to as formal disclosure). Initiation of disclosure is either through a MAPPA meeting, where consideration of disclosure forms part of an overall plan for managing risk posed by a registered sex offender, or in response to intelligence received by the police. Scottish Local Authorities also have powers to disclose information to third parties when child protection issues have been identified, under child protection protocols. Registered sex offenders are often encouraged to self-disclose, for example to a new partner or employer. Self disclosure may take place in the presence of a Police Officer or a Criminal Justice Social Worker, for example, but in all instances, the details and accuracy of the disclosure is confirmed and corroborated. Any disclosures to third parties are always supported with the provision of information and advice around risk management. These disclosures are governed by general principles[7] which must underpin any decision to disclose and a series of criteria[8] to be met before disclosure is initiated to ensure that the disclosure of information is lawful, proportionate, accurate and necessary to protect victims, potential victims, communities and professionals.

The extent, however, to which information is disclosed and the way decisions are recorded varies across and within areas, although the MAPPA Guidance Version 4 (2008)[9] requires the responsible authorities to record the rationale underpinning decisions either to disclose or not to disclose for those offenders subject to MAPPA. Individual decisions to disclose are based on the existence of specific intelligence and the responsible authorities' assessment of the potential results of disclosing or not disclosing. The principle and over-riding concern informing this assessment and decision making process is public protection. The only available information on the extent of disclosure in the U.K is from a Home office research study (Cann 2007[10]), which aimed to assess the extent of discretionary disclosure under MAPPA guidance in England and Wales. Information from a self completed questionnaire to all police force areas (40 out of 43 responded) indicated that 11 forces did not disclose any information within the reporting period (January to June 2006). Among the remaining 29 forces, the number of disclosures ranged from one to 52. Of particular relevance for the community notification pilot are Cann's findings that emerged from this study in relation to the identification of the common recipients of disclosures, which included new partners of sex offenders and families of children known to but unrelated to an offender. It should be borne in mind however that these disclosures were pursued by the

[7] For example decisions surrounding disclosure should take cognisance of the Common Law power for police to share information for policing purposes for the prevention and detection of crime; the Data Protection Act 1998; Article 8 of the Human Rights Act 1998 and the Children's (Scotland) Act 1995

[8] For example: The offender presents a risk of serious harm to the person or those for whom the recipient of the information has responsibility; There is no other, practicable and less intrusive means of protecting the individual(s) and failure to disclose would put them in danger; The risk to the offender should be considered although it should not outweigh the potential risk to others were disclosure not to be made; That disclosure is made to the right person who understands the confidential and sensitive nature of the information provided; Whoever is provided with the information knows what to do with it and they are provided with a point of contact for further advice and guidance.

[9] www.scotland.gov.uk/Publications/2008/04/18144823

[10] www.homeoffice.gov.uk/rds/pdfs07/r286.pdf

responsible authorities based on existing or officially generated intelligence, as opposed to intelligence that may be generated through other channels i.e. following specific enquiries by the public in relation to persons potentially unknown to the authorities and whose behaviour causes concern or in relation to those offenders not subject to notification requirements. It is through these channels of communication that the community notification pilot has the potential to lead to the identification of such persons, and in so doing, generate increased levels of intelligence and thus enhance and contribute to existing processes of disclosure. Whilst no parallel study examining the extent of disclosure has been conducted in Scotland, the 8 MAPPA Annual Reports, published annually since the inception of MAPPA in Scotland, (in October 2008 and 2009) provide information on the use of formal disclosures. These reports confirmed that between April 2007 and March 2008, some 13 Chief Constable formal disclosures were instigated across Scotland, whilst in the period April 2008 to March 2009, the use of formal disclosures increased to 22. Although, as previously indicated, this is only one method of disclosure, these statistics serve to highlight the selective use of formal disclosure in Scotland.

4. Positive and Negative Consequences of Disclosure

The primary consequence of disclosure reported in Cann's (2007) study was enhanced child protection, which was accomplished where disclosure limited opportunities for offenders to access risky situations or where disclosure facilitated the implementation of controls over risky situations through the provision of knowledge in the public domain to specific third parties, or where the offender modified their concerning behaviours in response to disclosures being made. Cann further puts forward evidence that disclosure led to the generation of intelligence about specific offenders from third parties, who had been recipients of disclosure, which contributed to the overall risk management strategies and capacities of the responsible authorities. However, Cann's findings acknowledge that a number of police force areas reported negative consequences of disclosure, as a result of the impact that disclosures had on protective factors, which can reduce re-offending. Such protective factors include for example meaningful personal relationships or employment and it was noted that where relationships or employment concluded as a result of the disclosure, this can increase an individual's risk of offending. It might be inferred that these consequences have relevance for the Community Notification Pilot.

5. Community Notification

In Scotland, communities have concerns surrounding the presence of sex offenders and the attendant risks they pose and as such they rightly have high expectations that public agencies will implement effective arrangements for the monitoring and supervision of those offenders. It is recognised that one of the most important partners in public protection are members of the public and it is vital that they are aware of their responsibility to protect vulnerable members of the community and have confidence to report any concerns they may have. Although risk can never be eradicated, the authorities are continually strengthening their co-operative arrangements and are agreed in their commitment to improving public information. The Sex Offender Community

Notification Pilot is an important development in the actualisation of this.

For Scotland, the Cosgrove Report[11] and the Irving Report (2005) did not support a policy of widespread notification as practised in the U.S for example, under Megan's Law where members of the public can request from the police or access for themselves information which identifies convicted child sex offenders. There is evidence to suggest that such action may bring serious consequences of it's own that serve to undermine the capacities and efforts of the Responsible Authorities to manage the risks posed by sex offenders (Anderson and Sample 2008[12]). For example, widespread and uncontrolled community notification strategies increase the likelihood that sex offenders will go underground and withdraw from the agencies involved with them to the overall detriment of ongoing risk management and public safety (see also Fitch 2006[13]). Rather, the Irving Report (2005) recommended a case by case approach to disclosure as proposed by the Community Notification Pilot, and as pursued through existing measures of disclosure of information to third parties. Indeed, Fitch (2006) argues that by focusing on a small number of known offenders, the widespread and uncontrolled disclosure of information in relation to those known offenders may detract attention from more common crimes such as intra-familial abuse, leaving parents and children vulnerable to abuse from people known to them. The Community Notification Pilot will assist in focussing attention on those people.

The Community Notification Pilot

The community notification pilot in Scotland aims to enhance and not replace existing child protection and disclosure processes, as outlined in Getting it Right for Every Child[14]. The criteria for those eligible under the pilot scheme is therefore quite narrow but there is potential for the model to have wider influences on members of the public and to robustly contribute to existing child and public protection strategies.

The pilot will enable parents, carers or legal guardians of children under 18 years of age to register a formal request for the disclosure of information about a named individual who has access to their child(ren). The individual must be someone who they have a personal relationship with, and who has regular unsupervised access to the child in a private context. This reflects research findings which posit that at least 75 % of child sex offenders are in fact related or known to their victim[15]. The pilot aims to enhance existing child protection strategies through the mutual sharing of information between the public and the responsible authorities where there are identified concerns surrounding a given individual's behaviour placing a child at risk of harm.

There will be a presumption that relevant information will be disclosed to the parent, carer or guardian if the subject of the disclosure report has convictions for child

[11] www.scotland.gov.uk/Resource/Doc/158890/0043160.pdf

[12] Anderson A L and Sample L L (2008) 'Public Awareness and Action Resulting from Sex Offender Community Notification Laws' *Criminal Justice Policy Review* 19 (4): 371-96

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

[14] www.scotland.gov.uk/Publications/2008/05/16160941/0

[15] Grubin D (1998) *Sex Offending Against Children: Understanding the risk* Police Research Series Paper 99, Home Office.

sex offences[16] and if it is decided that the disclosure will protect the child. Disclosure may also take place in other circumstances, through existing MAPPA, Police or Child Protection structures. If it is found that the child is at risk then a range of child protection measures will be instigated.

Potential Outcomes of the Community Notification Pilot

There are a number of potential outcomes of the Community Notification Pilot that would enhance existing Public and Child Protection processes. It might be argued, for example, that this pilot has scope to increase the use of civil preventative orders based on intelligence generated through implementation of this scheme that might not be otherwise forthcoming through extant mechanisms. It may assist in the identification of those persons, who may not otherwise be known to the responsible authorities but whose behaviour presents significant concerns. Furthermore, the Community Notification pilot may provide additional sources of information in relation to those offenders already known to the responsible authorities but whose notification or statutory supervision has concluded and thus enhance and contribute to existing information vital to ongoing risk management. For known offenders subject to statutory supervision and / or notification requirements, the community notification pilot might generate knowledge that an individual is displaying concerning behaviour indicative of a risk of sexual harm to children that would suggest the need for increased levels of monitoring, supervision and management under MAPPA. It might be speculated that that knowledge of the pilot might serve as a deterrent to registered sex offenders, or promoted increased incidence of self disclosure (Anderson and Sample 2008). In this sense, the community notification pilot has the very real potential to contribute to a proactive and preventative approach to child and public protection. However, Cann found that a number of police force areas reported negative consequences of disclosure, as a result of the impact that disclosures had on protective factors, which can reduce re-offending. There is also evidence from the U.S to suggest that where such information pertaining to registered sex offenders enters the public domain the potential for individual or collective reaction from members of the public may bring serious consequences of its own that undermine the capacities and efforts of the Responsible Authorities to manage the risks posed by sex offenders.

6. Conclusion

This briefing paper reviewed recent developments in public and child protection in relation to the management of registered sex offenders. It focused on processes of information sharing between the responsible authorities and third parties as part of an overall risk management strategy. The Community Notification Pilot has the potential to extend and enhance these processes and in so doing may serve to provide greater public reassurance, build public confidence, increase public involvement in the protection of children, and generate increased intelligence relating to the behaviour and movement of registered sex offenders.

[16] For the purposes of the pilot a child sexual offence is any sexual offence where the victim was under 18 years old (including offences relating to indecent images)