

Children and the Sex Offender Register: Prevalence and Experiences

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March 2024



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Abstract

This report investigated how many children are Registered Sex Offenders (RSOs) in England and Wales and used police data to establish that the number who are under 18 is, arguably, low. A range of professionals who work in this area were then interviewed, and there was a consensus that the design of the UK Register, put together with the principles that govern sentencing in the Youth Courts, ensure that registration is not applied over-zealously to this age group. Given these safeguards, the interviewees believed that the protection of future victims merited the registration of children in those rare cases where the threshold was reached. Nevertheless, they identified aspects of the Register that they believed were poorly designed for this age group, including the existence of indefinite registration, the notification process, the complexity of restrictions, and the use of Sexual Harm Prevention Orders.

Why did we carry out this research?

Sexual abuse and sexual offending are much researched and much published on. The same goes for children with harmful sexual behaviours¹ – there is a good deal of literature that examines this population and their treatment. However, there are aspects that remain virtually unaddressed, and there has been no information in the public domain regarding the number of children who are on the Sex Offender Register. We were interested to find out the prevalence of children on the Register, and what their experiences are like.

¹ Barnardo's define harmful sexual behaviours as 'sexual behaviours expressed by children under the age of 18 years that are developmentally inappropriate, may be harmful towards themselves or others, or be abusive towards another child, young person or adult. This definition of HSB includes both contact and non-contact behaviours.'



How does the Sex Offender Register operate when it comes to children?

The Sex Offender Register was planned by the Conservative government under John Major in the 1990s, and implemented under Tony Blair's Labour government. It was enacted by the 1997 Sex Offenders Act, and later incorporated into the 2003 Sexual Offences Act. In fact, the phrase 'Sex Offender Register' is not mentioned once in the legislation – that is how it is routinely referred to, but the legal terminology is the 'requirement to notify'.

If you are convicted of an offence that features in Schedule 3 of the 2003 Sexual Offences Act (a comprehensive list of sexual offences ranging from exposure to rape) it is highly likely that you will be legally required to 'notify'. There are some 'thresholds' in Schedule 3 that mean that for lesser offences you must receive a sentence of a certain gravity to be required to notify. There are only a small number of thresholds that apply to adults, but there are many more that apply to under 18-year-olds. So, for instance, if you are under 18 and are convicted of possessing indecent images of children there is no requirement to notify (whatever the young person is sentenced to). Similarly, for offences of sexual assault, exposure, voyeurism or extreme pornography those who are under 18 have to receive a minimum of a 12-month custodial sentence to be required to notify.

The rationale behind the Register was that it would protect the public. And it was made explicit that it was not intended as an extra layer of punishment for sexual offenders. However, over the years there have been regular changes regarding, for instance the offences that trigger a requirement to notify, or the range of information that RSOs have to disclose. This has led some to question whether it has arrived at a point where it is driven by punitive motives, and has moved beyond a strictly protective mechanism (e.g. Thomas, 2008).

Being on the Register means you have to provide a range of information to the police, and you have to receive police visits to your home.





The notifying of information must be done yearly, and this is the list of information that must be provided:

- name and aliases
- date of birth
- address
- any other address you spend 7 or more non-consecutive days at
- National Insurance number
- passport details
- bank account and credit card details

If any of this information changes during the year (e.g. a new bank card or passport) that must be notified to the police. Any intention to travel abroad, or an intention to spend more than 12 hours at an address where there is someone under 18 must be notified to the police in advance.

RSOs are also required to receive home visits from the police and each RSO will have an allocated officer who works in a specialist unit. The frequency of visits will be determined by an assessment of risk.

The length of time that must be spent on the Register depends on the sentence received. For adults, at the lower end a caution means you must notify for two years, and for any sentence of 30 months or more registration is indefinite. In between those points duration periods are staggered – for instance a Community Order means five years' notification. For under 18s registration periods are halved, with the exception of indefinite registration requirements, which apply regardless of age. Since 2012, those required to notify indefinitely (of any age) can apply to be removed from the Register after 15 years. This was introduced after two indefinite registrants took their case to the Supreme Court, and it was ruled that indefinite registration was incompatible with Article 8 of the 1998 Human Rights Act (the right to respect for a private and family life).



How was our research carried out?

There were two parts to our research methodology. Firstly, we had anonymised data released to us by the police regarding children who were required to notify. Secondly, we gathered a large amount of qualitative interview data from professionals within agencies where there was real experience and expertise on this subject. We interviewed a total of 64 people comprising:

- police officers from two separate constabularies, mainly from Public Protection Units but also specialisms like CID and Safer Neighbourhood Teams
- probation officers from two separate areas
- youth justice workers
- staff from residential treatment centres for children with harmful sexual behaviours
- staff from the Lucy Faithfull Foundation
- staff from Circles
- one solicitor who specialised in defending individuals charged with indecent images of children offences.

Their interviews were transcribed and analysed. This project did not set out to capture the perspectives of service users partly because of the sensitivity of the subject matter but also because of the practical challenges in recruiting children subject to notification requirements.



How many children are Registered Sexual Offenders?

We were interested to find out how many children are on the Sex Offender Register. Although the annual Multi-Agency Public Protection report states the total number of RSOs nationally and locally, there is no break down by age. There was no information elsewhere in the public domain on this point when we started the research, and the police agreed to provide us with anonymised data.

We had speculated that there might not be large numbers of under 18-year-olds required to notify, and there were several reasons for this. One reason was the thresholds in Schedule 3 of the 2003 Sexual Offences Act which have already been mentioned, and which were specifically designed to keep some under 18s off the Register.

However, there were two other reasons to expect low numbers. Firstly, the overall numbers of children in the Youth Justice system has shrunk considerably over recent years. The latter years of the Conservative Government (1979-97) and most of Labour government's rule (1997 – 2010) saw high numbers of children being criminalised, but 2009 marked the start of a dramatic drop - as just one example, in the year 2006-7 there were 110,784 First Time Entrants to the Youth Justice System, and just eight years later (2014-5) that figure had dropped by 80% to 20,544. There have also been reductions in young adults in the criminal justice system over the same period (Hughes and Hartman, 2000). The reasons for this shrinkage are complex; the arrival in recent years of 'Child First' principles may have confirmed a more de-stigmatising approach that saw children as children, but in reality the reduction in numbers predated this initiative. The start of the decline in numbers is usually agreed to have more to do with austerity and the need for a leaner Youth Justice System rather than any explicit de-criminalising policy, or any drop in youth offending (Goldson, 2020). Returning to this research, it was logical that if numbers of children being criminalised in general had dropped, then that trend would be the case for children being criminalised for harmful sexual behaviours (and of course a criminal conviction or a caution is a pre-requisite for being on the Sex Offender Register).

The second reason to expect low numbers was the existing research that indicated that large numbers of children who are manifesting harmful sexual behaviours are not prosecuted or convicted. A study by Hackett et al (2013) studied 700 British child and adolescent sexual abusers (under 18) who had been referred to treatment services, and just one of his findings was that just 42% had a conviction of any sort – the majority were unconvicted.

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The police data that was disclosed to us confirmed that numbers were indeed low, and probably lower than we had anticipated. The numbers of children and young people on the Register in England and Wales, as of January 2020 were:

■ 10-14 years: 7

14-18 years: 228

18-21 years: 820

Although every young person showing harmful sexual behaviours is concerning, these figures struck us as exceptionally low. To put the figures into context, there are 355 local authorities in England and Wales, and so there is an average of less than one young RSO under the age of 18 years for each local authority. Clearly the numbers rise considerably once individuals pass 18 and are beyond the sentencing principles of the Youth Courts, and the thresholds contained in Schedule 3 of the 2003 Sexual Offences Act.

When we were looking for participants for our research, we contacted 25 Youth Justice Services in the South East of England, but a common response was that there was nobody in that office currently supervising a young person subject to the notification requirements. One Youth Justice worker had been in the job for 23 years, and the case we discussed was her first RSO in all that time. Yes, she had worked with children with harmful sexual behaviours during that time, but the emphasis on diversion and the use of out of court disposals, meant that few children are required to notify. Sentencing guidelines ensure that those who are convicted are kept low down the tariff (Sentencing Council, 2023). For instance a Referral Order is mandatory for a first offence in most circumstances (an exception would be if the offence is one that requires immediate custody such as rape). To take the example of sexual assault, referral orders are thus given for many first convictions, and for this offence a minimum of 12 months custody is needed to trigger notification.

This picture was further confirmed by our interviews with staff at residential treatment centres for children with harmful sexual behaviours – and the downward trend over time was clear to them:

"I've been here 16 years and it changed dramatically – maybe for the first sort of eight years, it would be about 70% or more on the Register. Now we're probably around 25% of our cohort are on the Register."

Clinician at residential treatment centre for children

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Such treatment centres deal with cases that are serious enough that a Local Authority pays for residential treatment, usually for 2 years. And yet even amongst this group there are only a minority of children who are required to register.

In fact we heard that agencies and courts are really quite unfamiliar with the issues, to the extent that a good deal of research needed to be done by court clerks and youth justice workers to clarify the situation. Occasionally errors occur that need to be returned to court and rectified, for instance a court pronouncing that a child was required to notify, and then realizing that they fell below the threshold.

In sum then, we believe that the low numbers of under 18-year-olds who are required to notify represent a clear endorsement of the principles of diversion, out of court disposals and low tariff outcomes that govern the UK's Youth Justice system. Most children with harmful sexual behaviours are being worked with in ways that do not require them to be on the Sex Offender Register. It is interesting that in America there have been a group of academics and organisations campaigning against the inclusion of minors on registers (e.g. Letourneau et al, 2018; Juvenile Law Center, n.d). Apart from the obviously stigmatising effect of registration, and the impact this has on essential developmental challenges, they argue that it distorts the way that prosecutions are made, and the way that pleas are bargained. However, this seems to be one situation where trans-Atlantic parallels are unhelpful; the numbers of children on American registers are far higher than they are in the UK. The Juvenile Law Centre estimates that in 2020 there were 200,000 individuals who were placed on US registers as children (Pickett et al, 2020), and the impact of their registers more damaging, with compulsory public access (something which has never been allowed here) and extreme restrictions on residence.



When should the requirement to notify start?

Given that the numbers of children on the Register in England and Wales are very low, we were interested to see what our participants said about the age at which children should ever be required to notify. Currently, any child who is above the age of criminal responsibility (10) is liable to notify if they satisfy the conditions set out in the 2003 Sexual Offences Act. The short answer to this is that most participants thought no change was necessary, with some interviewees preferring the age to be raised to 14 or 16. Comments often started with an acknowledgement that it was a disturbing idea to put a child of 10 on the Register, and sometimes a wish that there was an equivalent system for children that did not have the stigmatising impact of the Register:

"I think there needs to be, there needs to be some kind of separate Register for kids. But something similar."

Police Officer in Public Protection Unit

However, when talking through the few cases that do end up on the Register it was concluded that cases only reached the threshold for registration when the gravity genuinely justified it.

These are the words of a police officer who worked in a Public Protection Unit:

"I don't like the idea of under 18s being stigmatised, but if they've got to that point there have been a lot of discussions trying to divert. So I think it should start at the age of criminal responsibility – if that event is so awful."



What sort of cases were on the Register?

Despite the overall low numbers, we heard about a number of children who were required to notify. Their victims ranged from younger family members, fellow pupils at school, or someone they had met online and then gone on to commit a contact sexual offence against. Staff at residential treatment centres were working mainly with children who had abused within the family. Under 18 year olds were unlikely to be convicted or on the Register for online offending, whereas it was a common reason for registration amongst adult ROSs (particularly downloading indecent images of children). This does not necessarily mean that children are not accessing child sexual abuse materials, and several professional expressed their concern about the effect online pornography was having on childrens' relationships and sexual behaviour. However, the thresholds in Schedule 3 of the 2003 Sexual Offences Act meant that even if children were convicted of downloading indecent images of children (and we heard of no examples of this) they would be very unlikely to meet the requirements for registration.

In fact, there were a small number of comments to the effect that children received such a light touch that it sometimes went too far. For instance, the 'Youth Produced Sexual Imagery' police guidance from 2016 allows for an 'outcome 21' (where parents are notified, but essentially no action is taken), and the view was expressed that this had given children a free pass for sexting:

"They produced the thing on 'Youth produced sexual imagery' so the kids knew that even though they did it and they could have hundreds of pictures they know they're not gonna get prosecuted. Now is that fair?"

Police Officer, Criminal Justice Unit, previously a Schools Liaison Officer

We also heard that children on the Register frequently have developmental or learning difficulties. We spoke to staff at two residential treatment centres, and one said that over half of their residents were on the autistic spectrum or had a mixture of autism and Attention Deficit and Hyperactivity Disorder, and the other one estimated that around 75% of residents were autistic (as stated, not all of the children at the treatment centres would be on the Register).





One of these interviewees recognising that the effects of abuse and neglect can end up looking very much like more text book autism:

"I think some would be environmental, growing up in very chaotic homes, didn't learn to regulate all of those things, rather than organically experiencing neuro-diversity."

Clinician at residential treatment centre for children



This finding was congruent with previous research, but the estimates even more extreme; in Hackett's sample of 700 children and adolescents under 18 years referred for treatment for harmful sexual behaviours 38% had a learning difficulty. (Hackett et al, 2013)



What was life like for the children who were on the Register?

We heard regularly that children on the Sex Offender Register encounter problems in building friendships and relationships, and in accessing education and employment:

"For those that leave us and want to continue in education that's not straightforward or easy, sometimes they really struggle to get into colleges. And jobs – in fact, I bumped into an ex-resident the other day in his home town, in the car park... and he'd been left I think he said five or six years and he hadn't worked. Couldn't get a job, he said. With my convictions I just can't. Won't even look at me. Don't short list me."

Clinician at treatment centre for children

These were not surprising findings, and neither are they new ones. For instance, Hackett et al (2022) followed up their sample of children with harmful sexual behaviours into adulthood, with a follow up of between 10 and 20 years. There was very little sexual recidivism, but generally poor outcomes in all other respects including relationships and employment. Hackett's sample included children who were not serious enough to go on the Register, so it is safe to assume that children on the Register would have challenges at least as severe.

Of course, the problems encountered by young sexual abusers is a vast subject, and to do it justice we would have to unpick why sexual offences are viewed as the worst of all offences and carry such stigma – the existence of the Sex Offender Register is just a small part of this exceptionalism. We would also have to weigh up the real world task of criminal justice agencies who have to place restrictions on some children to protect potential victims. The aim of our research was actually more specific and pragmatic than that. We wanted to find out what aspects of the Register were working well for young offenders, and which aspects were not productive, or were pointless or even counter-productive. There were four areas in particular where the Register was particularly poorly designed for children:



1. The existence of indefinite registration periods for children

The general principle of the 2003 Sexual Offences Act is that registration periods for under-18s are half the length of adults. However, the exception to this is where registration is indefinite, and this is triggered when a custodial sentence of 30 months or more is passed. In this case indefinite registration applies regardless of age. We heard of only a few under-18s who had received sentences of this length and were subject to indefinite registration, and although the total number of RSOs is published every year in the annual MAPPA report the figure is not broken down by duration of registration period or age, so it is not possible to know how many there are. However, where it did occur the professionals we interviewed described young adults who had been convicted as children feeling despair at the intrusion and labelling of registration which stretched ahead of them in perpetuity:

"I had a 15-year-old who was convicted of a gang rape. There were four of them and they gang raped a 15-year-old girl and he's now a registered sex offender and he will be indefinitely... he's 22 now and he's recently come out of prison and he absolutely hates the fact that he's a registered sex offender. He's like, I'd never do this again, I was 15 when it happened. They were all drunk in the park and it shouldn't have happened. But he's now got to carry around this sexual registration with him for the rest of his life, you know? I think, put him on the Register for maybe 10 years and then see how he uses it, when he's completed his prison sentence and license and then review it... but he's now got to have this registration follow him around forever for an offence committed when he was a child himself."

Probation Officer

Individuals subject to indefinite registration can apply to be removed after 15 years, but there is no guarantee the request will be approved. This aspect of the Register struck many of our interviewees as incongruent with current approaches, and particularly counter-productive with adults who were placed on the Register as children:





"My knowledge of young persons is pretty much based on the research about anchoring desistance and the factors of desistance, which all seem to be about having an opportunity just to be a normal person and put it all behind you. When I started, if anyone said 'I wanna put it all behind me', I'd go, 'oh my God, you can't do that. We've got to really get it in front of you and analyze it to death. Stop being in denial'. But I appreciate that research seems to suggest that for young people, putting it all behind them, with suitable caveats, is probably the best thing, so I would say just instinctively long-term registration probably wouldn't achieve that goal."

Lucy Faithfull Foundation worker

The Sex Offender Register was designed in the 1990s, when the climate in the criminal justice system was more singularly focused on risk, and when sexual offending was high on the political agenda – it was an era that Nash has referred to as the 'the decade of the predatory sex offender' (1999, p 45). Since then a seismic shift has occurred; risk and public protection are still core components in youth justice and probation work, but are now balanced by trauma-informed approaches, desistance theory and the Good Lives model (Day, 2023). Viewed from this perspective, the duration of notification periods, and particularly the existence of indefinite registration for children, seems strikingly out of step with contemporary approaches.



2. The notification process

When RSOs of any age do their annual notification, they must attend a police station in person. Usually notification is done by general station staff and not staff from the Public Protection Unit or the RSOs individual Public Protection Officer. Depending on the building and how busy it is they may be taken to a side room, but they may just complete the process at the counter. None of our participants thought it was good practice to notify at the front desk. The feeling was that it was exposing, a poor use of resources and that announcing the purpose of the visit at the front desk threatened confidentiality. Another factor was the number of police stations that have closed, making it a long journey for some RSOs. Here is one Safer Neighbourhood Team Officer who had been a station officer:

"...getting them to report to the police station is just silly."

It really is silly."



The view was expressed by some that the process of going to the police station was a symbolic statement that the young person had committed a very grave offence, and that the process should not be made easier – but even then the need for a private space was vital:

"From a confidentiality point of view, I think it's not OK because that you know you'll go up to the desk, you'll say I'm here to register and they will say for what? And that puts a young person of 15 in a waiting room with other people. They don't know how to say 'for the sex offender registration'. And I think that's not OK. I think there should be a way to be able to do that in a discrete way where they still have the experience of going in and dealing with that."

Clinician at residential treatment centre for children

The most obvious solution was to introduce a requirement that a private space be made available to go through the notification process, but other suggestions ranged from providing the option to notify remotely by arrangement with the Public Protection Officer, or that it should take place during a home visit.



3. The use of Sexual Harm Prevention Orders (SHPOs)

SHPOs are civil orders which can be taken out against anyone who has a conviction for a sexual offence. They can be issued at the point of sentence or any time afterwards. If the SHPO exceeds the automatic registration period, or if it is taken out after the automatic period of registration has lapsed, the existence of a SHPO makes that individual an RSO for the duration of the SHPO. An order is applied for at magistrates court by the police, and if the court agrees that the individual presents a risk of sexual harm, they issue the Order with a list of things that the RSO cannot/must do. For instance, they may be prevented from going to certain locations or using public transport, depending on the nature of their offending. SHPOs can vary from 5 years in length to indefinite duration, and if the Order is breached, then a criminal offence has been committed that carries with it a maximum of five years in prison. They are used very commonly and 5,753 fresh SHPOs were issued in 2021-2 alone (Ministry of Justice/Office for National Statistics 2022) but our interviewees indicated that they did not seem to be issued as routinely for children as they were for adults. However, where they were issued, professionals often viewed them as more intrusive and damaging than the Register itself, particularly when the court ordered them for a lengthy period. Case law (R v Smith, 2011) has established the principle that a SHPO should not exceed the automatic registration period unless there is a very specific justification, but we heard of instances where this did not seem to have been applied:

"...it significantly impacts upon life chances and should never ever be applied to children... we had one young person who had a 12 year SHPO, though, I mean, that's a demotivator, isn't it? Come this way for two years and work really hard to try and reduce the risks that you present and whatever. But by the way, you've got another 10 years of restriction... absolutely incredible to do this to children."

Clinician at a residential treatment centre for children

This project took a particular interest in children who were required to notify, but the research clearly indicated that the use of SHPOs with RSOs of all age groups, particularly with regard to their length, deserves more scrutiny.



4. Complexity of language

We frequently heard that the requirements of the Register are worded in legalistic language that can be difficult for children to understand. Additionally, they may have licence conditions and possibly SHPO conditions to stay within as well, and this makes for a confusing and long list of restrictions. These are the words of a probation officer who had taken over a young offender from a youth justice team:

"I'm pretty convinced lots of people do not understand their SHPO... if you've got a SHPO and licence conditions, you can have like 30 conditions or something ridiculous. And it's very legalese. The way it's written as well... we try and get easy read versions from our autism team and then they're saying to us, but this person's only capable of understanding four things at the most..."

The requirements of the Sex Offender Register are identical for all RSOs and each police constabulary will have its own guidance for RSOs. Post-custody licences have standard requirements but may have additional ones that are ratified by the Governor of the youth custody establishment. SHPOs are tailored to the individual and so vary in their conditions. There seemed to be a lack of communication between agencies to ensure that additional requirements were kept to a workable minimum and couched in accessible language.



Court delays

Our interviewees' strength of feeling regarding the four points above was far outstripped by their concern expressed around court delays, and the impact that has on children who were going through the youth justice system because of harmful sexual behaviours. These views were particularly expressed by the clinicians at the residential treatment centres, as they were one of the few agencies who worked with children before they went to court:

"you think about children who are traumatised and distressed and the manifestations of that is their behaviour – any adult would have serious difficulty in being able to cope with it. Well, our young people can't cope, and why would you bother to engage in a programme of work if actually in 18 months time you may well have a different result. So what we get is a lot of... not guilty pleas, and no comment things that go on forever... so that's one of the major areas of difficulty – the notification isn't an area that's difficult because there are so few of them now."

Clinician working at residential treatment centre for children

In one case the child had been waiting for nearly two years since his arrest to appear in court. In the meantime he was at a residential treatment centre, but they were very limited in what work they could do with him because discussion of the allegations might be seen as contaminating the evidence he was to give in court:

"He's living on... anxiety... he's with us to address his harmful sexual behaviours but we are not allowed to talk about those until the court case is concluded. Now he's due to leave us in September this year. I'm not hopeful that we'll do any work with him and yet the local authority have paid top dollar for our services..."

Clinician at residential treatment centre for children

That case was extreme, but one year plus between arrest and court case was quite routine, and this delay was particularly counter-productive and demotivating for children.



Conclusion

Our research examined the views of a large sample of professionals working with children and young adults subject to notification requirements. There was a consensus that the Register was necessary for this age group, and that it was designed so that it did not inappropriately catch under-18s in its net.

Reassuringly, most professionals felt that out of court disposals and low tariff outcomes were used whenever appropriate with this age group. Even so, our participants identified aspects of the Register that were not child centred, were redolent of the more punitive, risk-focused era when it was created and would benefit from review. The dominant concerns expressed by our participants were around the existence of indeterminate registration periods for those who are placed on the Register as children, the nature of the notification process, the excessive use of SHPOs and the multiple, confusing sets of restrictions that can face children. These are all areas that would serve children better if they were reviewed. However, there was one issue that was even more problematic for this group, and it had nothing to do with the Sex Offender Register. That was the backlog in the judicial system, which meant that one or even two years could pass before conviction and sentencing, when little meaningful work could be undertaken. In our interviewees' opinion it was crucially important that cases were dealt with speedily so that children could be worked with as soon as possible and build towards their futures.



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