The Need for Policy Development for the Risk Management of Sex Offenders in Ireland

Dr Joseph Duffy

Summary: Since the early 1990s sexual offending has been acknowledged as a major social issue in Ireland, however there is little or no explicit policy for the risk management of sex offenders in Ireland. This article briefly outlines the nature of sexual offending in Ireland before considering current practice in the management of sex offenders and reviewing international perspectives on managing sex offenders. Finally it explores policy dilemmas in the complex area of managing sexual offending and argues the need for the development of innovative policy in this area.

Keywords: Sexual offending, policy, risk management.

Sexual abuse in Ireland

The nature and extent of sexual offending in Ireland have been highlighted by the publication of The SAVI Report: Sexual Abuse and Violence in Ireland, the largest ever study into unwanted sexual experiences in Ireland (McGee et al. 2002). Historical accounts of sexual abuse among religious-run institutions have also received widespread publicity (Goode et al. 2003). The state responded by setting up the Commission to Enquire into Child Abuse and the National Counselling Service for people who have been abused. Individual cases of sexual abuse have received considerable media coverage and consequently have highlighted the effects of sexual abuse for the public (see McGuinness 1993; McKay 1998).

*Joseph Duffy, a Senior Clinical Psychologist with the Irish Prison Service, is on secondment as Director of Professional Development with the Psychological Society of Ireland. Email: joseph.duffy@psihq.ie
Current practice for the management of sex offenders in Ireland

Sex offenders, arguably the most feared and loathed category of offender in society (Petrunik 2001), are treated unlike any other criminals (Eisenberg 2001). Widespread public concern, reflected in the media, about the management of sex offenders and the protection of the public was partially responsible for the development and enactment of the Sex Offenders Act 2001. Among the provisions of this Act there is, for the first time, a statutory requirement for sex offenders to notify the Garda Síochána of their address upon leaving prison.

It has been argued that there is an overwhelming need to provide mandatory community follow-up for sex offenders upon their release from custody (Murphy 2002). International best practice supports mandatory community follow-up (Eisenman 1991; Marshall and Pithers 1994) and its positive contribution to improving community safety. In Ireland there is little or no provision for mandatory support or supervision once a sex offender is released from prison, thus increasing the risk of future reoffending. The practice of not granting temporary release to sex offenders results in state agencies having no influence over where an offender lives or works (Murphy 2002). It can be argued that this situation compromises public safety.

Walsh (1998) states that present efforts to deal with sexual crimes in Ireland are inadequate and unsatisfactory in that the main sentencing option for convicted sex offenders is imprisonment. However, given the large number of unreported cases of sexual crime, very small numbers of those who commit sexual abuse are imprisoned (McGee et al. 2002). One important implication of this situation is that attempts to reduce ‘sexual victimisation in society will require a lot more in terms of social policy than simply focusing on imprisoned or indeed convicted sex offenders’ (Murphy 2002, p. 708). Interventions with perpetrators of sexual abuse are in their infancy in Ireland. Many people, including clinicians, the judiciary, others in the criminal justice system and the general public, remain to be convinced of the role of clinical interventions in the prevention of sexual crimes (Walsh 1998).

Need for policy development

There is a significant lack of co-ordination and integration by statutory and voluntary services in the management of sex offenders in Ireland,
particularly when compared to international practice (Travers 1998). Managing the risk posed by sex offenders is a serious public policy issue that has implications and links with other important social policy areas such as child protection. Travers argues that if the state is serious about preventing child abuse a ‘comprehensive approach to the problem must be initiated’ (p. 227). She further argues that the benefits of multi-agency working must be reflected in policy.

There are several offices of the state charged with the legal responsibility for the provision of services for managing offenders and there are many other voluntary and interest groups who seek and have obtained a role in this area. Managing the risk posed by sex offenders in Ireland is a complex topic that gives rise to significant public and professional interest. The key services (the courts, prison, probation, health and voluntary organisations) have begun to link together. Those sex offenders who are subject to post-release supervision orders are now supervised in line with agreed protocols and this promotes greater inter-agency co-operation. However, not all sex offenders are subject to post-release supervision orders. Although effective interventions with sex offenders rely on inter-agency co-operation, such agencies usually operate independently of each other (Sheerin 1998). There is no systematic, organised, centrally funded, through-care management of a sex offender from the time an allegation is made, through investigation, prosecution, trial, sentencing, imprisonment and eventual release back into the community. From a public safety and policy perspective, any increase in co-ordination and development of services in this area would be welcome.

Policy development for the risk management of sex offenders in Ireland has received no attention from the academic community. Geiran (1996) explores the development of policy and practice for the treatment of sex offenders and concludes that while punitive responses will continue to be required for some sex offenders ‘such measures alone will neither reform offenders nor prevent future re-offending’ (p. 153). He argues that if society aims to reduce the incidence of sexual abuse, there needs to be a co-ordinated move to develop more than interventions for ‘a relatively small number of individual perpetrators after they have offended’ (p. 154). He observes that ‘policy development [in Ireland] in relation to the treatment of sex offenders has been cautious, fragmented and incremental. It has been and continues to be characterised by a series of ambiguities, contradictions and dichotomies
existing side by side’ (p. 151). In the ten years since Geiran made this statement, little has changed in terms of policy and decision-making regarding the risk management of sex offenders in Ireland. Action is now required that will go beyond focusing on the treatment of sex offenders and examine the development of policy for the risk management of sex offenders in Ireland.

**International perspectives on managing sex offenders**

The incarceration of sex offenders results in particular management, ethical and political issues (Birgden and Vincent 2000). Many countries have legislation providing sanctions for those who commit sexual offences but few require registration and community notification (Lieb *et al.* 1998). In Canada and some US states (for example Vermont) there is a seamless transition from prison to community-based sanctions for convicted sex offenders (Lundstrom 2002). The seamlessness is facilitated by having shared databases on offenders, and laws, policies and structures which aid co-operation between criminal justice and community agencies. In the UK there have been recent moves to increase co-operation between agencies responsible for the management of offenders in prison and in the community. Policies for the management of sex offenders in the US, Australia, UK and Canada are outlined below.

**United States**

Since the early 1990s every US state has introduced legislation creating registers for convicted sex offenders and provisions for notifying members of the community of the presence of high-risk sex offenders (Petrunik 2002). In more than 30 states access to sex offender registers is provided through state-sponsored websites (Logan 1999). Legislation passed in 15 states allows for the indeterminate commitment under civil law of persons who are found to meet the criteria for a violent sexual predator\(^1\) (Petrunik 2002). Several states have passed laws making the imposition of chemical castration as a condition of parole mandatory for repeat sex offenders against children and an option in the case of other sex offenders (Logan 1999).

---

\(^1\) A violent sexual predator is considered to have a psychological abnormality or personality disorder.
Australia
The community response to the management of sex offenders in Australia is marked by ‘uncertainty as to whether offenders should be incarcerated as punishment or provided treatment in order to reduce the likelihood of re-offence’ (Birgden and Vincent 2000, p. 479). In 1997 a royal commission recommended that police register convicted paedophiles and notify government officials and community groups of their presence (Lieb et al. 1998). Imprisonment can provide the mechanism to encourage an offender to participate in a sex offender programme while also delivering punishment for wrongdoing and acting to protect the public. In the Australian state of Victoria a therapeutic jurisprudence\(^2\) framework is used to assess, manage and treat sex offenders in custody and in their transition back to live in the community (Birgden and Vincent 2000). Under this framework the law actively seeks to promote therapeutic objectives through balancing public protection and individual needs (Wexler 1990).

United Kingdom
In the UK in the 1990s there was growing concern about sexual and violent offenders, with those committing sex offences against children attracting extensive political, media and policy attention (Kemshall and Maguire 2001). As a result extensive legislation focusing on sex offenders was passed, including the creation of a mandatory life sentence on a second conviction for a serious violent or sexual offence, a sex offender register and a civil sex offender order.

• England and Wales
Perhaps the most significant change to social policy in England and Wales was contained in the Criminal Justice and Courts Service Act 2000, which introduced statutory responsibility for joint risk assessment and management of sex and serious offenders by police and the probation service and the creation of Multi-Agency Public Protection Panels (MAPPPs). These panels arose from local initiatives that eventually developed into a central policy of multi-

\(^2\) Therapeutic jurisprudence is defined as the analysis of the positive (therapeutic) and negative (anti-therapeutic) effects of the laws, legal procedures and enforcement practices on the mental health and wellbeing of those affected, including offenders, victims and other members of the community (Winick 1998).
agency working. MAPPPs developed on the premise ‘that shared information, joint risk assessments and co-ordinated risk management plans across relevant agencies would enhance the effective management of a critical few high-risk offenders in the community’ (Kemshall 2003, p. 2).

Two further pieces of legislation have significantly contributed to the management of sex offenders in England and Wales. The Criminal Justice Act 2003 modernised the English and Welsh justice system and sought to deliver justice more often and more consistently. In particular the Act ensures that punishment is appropriate for the offender and the offence and focuses strongly on rehabilitation to reduce reoffending. The Sexual Offences Act 2003 strengthened the registration requirements for sex offenders. It allows, among other changes, Sex Offender Preventative Orders to be imposed on anyone convicted of a serious sexual offence if there is evidence that they pose a risk of causing serious sexual harm. This legislation also contains a new civil preventative order, the Risk of Sexual Harm Order, which when imposed prevents adults from engaging in inappropriate behaviour such as sexual conversations with children online.

• Scotland

The Report of the Committee on Serious Violent and Sexual Offenders (Maclean 2000) and the subsequent establishment of the Risk Management Authority (RMA) may revolutionise the management of serious violent and sexual offenders in Scotland. The report highlighted the need for an independent body, the role of which would be to ensure that statutory, voluntary and private sector agencies worked together systematically to address the risk posed by serious offenders (RMA 2006). The RMA has been established to ensure the effective assessment, management and minimisation of risk of serious violent and sexual offenders in Scotland.

The Order of Lifelong Restriction (OLR) was introduced in Scotland in June 2006 as part of a package of measures to deal with high-risk offenders. The OLR is a new sentence which provides for lifelong supervision of high-risk violent and sexual offenders and allows for a greater degree of intensive supervision than was previously the norm. The OLR is designed to ensure that offenders,
after serving an adequate period in prison to meet the requirements of punishment, do not present an unacceptable risk to public safety once they are released into the community (RMA 2006).

- **Northern Ireland**
  Community supervision of sex offenders in Northern Ireland is organised and administered under the Multi-Agency Sex Offender Risk Assessment and Management (MASRAM) system. The MASRAM system plays a significant role in enhancing community safety by ensuring that representatives from the probation service, police, social services and other bodies co-operate in exchanging information and devising risk-management plans for convicted sex offenders (NISOSMC 2005). MASRAM functions in a similar way to the Multi-Agency Public Protection Arrangement (MAPPA) system in England and Wales. However, MAPPAs have a legislative basis whereas MASRAM does not and there have been calls for placing MASRAM on a statutory footing (CJINI 2005).

**Canada**
In Canada the premise is adopted that a period of supervised release from prison to the community enhances public safety and the rehabilitation of offenders (Lundstrom 2002). The Corrections and Conditional Release Act 1992 outlines the responsibilities of the Correctional Service of Canada, which is required to give relevant information regarding decision making on the release, supervision or surveillance of an offender to the National Parole Board, provincial governments and parole boards, and law enforcement and other agencies authorised to supervise offenders (Lieb et al. 1998). Canada has no federal mandate requiring sex offender community notification, however some provinces are notifying the public about the release of sex offenders who pose a risk of harm to the public (Lieb et al. 1998). Control measures for the management of high-risk sex offenders in the community have been increased during the 1990s in Canada. Such measures include detention until warrant expiry, peace bonds, long-term supervision orders and legislation requiring the collection of DNA samples from persons convicted of violent sex offences and other serious offences (Petrunik 2002).
Risk management of sex offenders

The risk management of sex offenders involves services provided by corrections personnel, treatment providers, community members and others to manage risk presented by sex offenders (CSOM 1999). Risk-management approaches include supervision and surveillance of sex offenders in a community setting (risk control) and requiring sex offenders to participate in rehabilitative activities (risk reduction). Risk controls are external conditions placed on a sex offender to inhibit reoffending. Conditions may include levels of supervision, surveillance, custody or security. In a community setting, conditions are part of supervision and are developed by the individual charged with overseeing the sex offender’s placement in the community. Risk reduction includes activities designed to address the risk factors contributing to the sex offender’s sexually deviant behaviour. These activities are focused on rehabilitation and provide the sex offender with the necessary knowledge, skills and attitudes to reduce the risk of future reoffending.

Research indicates that imprisoned sex offenders represent a subgroup of the total sex-offending population (Murphy 2002), the characteristics of which provide particular consequences for their risk management. Imprisoned sex offenders are usually serious offenders and their offending is commonly categorised by features such as repetition and persistence and the use of violence or the threat of violence (Ellis 1989; Weinrott and Saylor 1991). Cann et al. (2004) examined reconviction data in a 21-year follow-up of released sex offenders in the UK. They reported that one-quarter of the sample of 419 offenders received a reconviction for a sexual offence during the follow-up period. Of those sex offenders that reoffended on release from custody, almost one-fifth received their first sexual reconviction between 10 and 12 years after release. These findings, highlighting the long-term risk posed by a subgroup of convicted sex offenders, have implications for risk management practice in this area.

Policy dilemmas and sexual offending

Sex offenders are treated unlike any other criminals, particularly in the area of punishment and rehabilitation. Often society will continue to punish sex offenders long after they have completed their time in prison. Attempts at community rehabilitation have been hindered by negative
public reactions. Eisenberg (2001) outlines the difference in approach to the community reintegration of offenders by giving the following examples:

Drug dealers are released into the community after completion of their sentences with little ado. They can return to neighbourhoods ripe with drug contacts and teeming with eager customers. Likewise, bank robbers can live beside banks, ‘hate criminals’ can live among the targets of their anger and batterers can return to their wives. For a so-called sexual predator, however, release from prison is not the end of the punishment (p. 1).

Releasing a sex offender into the community creates concerns not associated with the release of other criminals. Sex offenders inspire a fear of further criminal activity, a fear that is not associated with other types of crime. These concerns have led to policy dilemmas on the release of sex offenders.

The growing problem of how to manage a sex offender released into the community in a climate of increasing public opposition to community reintegration of convicted sex offenders is another area that will require policy attention. Eisenberg (2001) draws attention to this issue, arguing that the punishment of sex offenders is becoming increasingly extra-judicial with public campaigns of open hostility towards these offenders and calls for indeterminate sentencing for sex offences.

Significant drivers usually influence policymaking. Policy development for the management of sex offenders is influenced by unique dilemmas where there is no lobby group for abusers and possible advocates of change may only represent one viewpoint, public opinion. Gusfield (1989) suggests that two groups, the ‘troubled persons professions’ (those working with marginalised groups) and the ‘image-making industries’ (the media), influence social problems and subsequent policymaking. Professionals are slow to make claims for the management of sex offenders because of the inherent complexity of the issue and the significant consequences of even a single failure.

Hall (1986) outlines three conditions for social policy change (quoted in Geiran 1996, p. 148). First, the issue must be perceived as legitimate, to the extent that a government considers it should be involved with it. The second condition is feasibility, which is defined as the possibility of taking steps to deal with a problem and achieve the desired outcome.
Third, there must be support for the government incorporating an understanding of ‘whose discontents and whose satisfactions are involved’. A case was argued in these terms for the establishment of a state-sponsored sex offender programme within the Irish Prison Service in the early 1990s. It is important that a similar case is now made for the development of policy for the management of sex offenders in Ireland, both in prison and in the community, in which the problem is regarded as legitimate, feasible and worthy of support.

**Conclusion**

Knowledge of sexual offending has moved from treatment aimed at providing a cure to interventions that emphasise the control or management of risk posed by sex offenders, both in prison and in the community. This change of direction has resulted in an international move from a medical model to one of multi-agency risk management focusing on sexual abuse as a public health problem. Imprisonment of offenders is not the sole answer to the problem and consideration has been given in many jurisdictions to managing sex offenders within the community. In some cases this community supervision is mandatory.

There is little or no mandatory community supervision of sex offenders in Ireland. The provisions of the Sex Offenders Act 2001 allow for community supervision but in practice only a small percentage of sex offenders receive court-mandated post-release supervision. Compounding the lack of mandatory community supervision and the insufficient number of specialised programmes addressing sexual offending, are the difficulties in integrating services for this high-risk population. Among the general public there are many misperceptions regarding sexual abuse and a lack of faith in the state’s ability to address this issue adequately. Little academic debate exists concerning the need for policy in this area. There is a lack of leadership in advocating a superordinate view, which would link the criminal justice, health and education agencies operating in this complex arena. Published work focuses on the benefits or otherwise of community versus prison-based treatment programmes, and fails to tackle the bigger issue of how to manage sex offenders successfully within the community. Lead agencies in other jurisdictions, for example the UK Home Office and the US Center for Sex Offender Management, have initiated debate in this area.
and provided policy for the multi-agency management of sexual offenders. It is now time to give attention to policy development for the risk management of sex offenders within an Irish culture in a manner that reflects the complexity of the issues involved.

References


Center for Sex Offender Management (CSOM) (1999), *Glossary of Terms Used in the Management and Treatment of Sexual Offenders*, Silver Spring, MD: CSOM


