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Preventing the criminalisation of children who have been victims of group based sexual exploitation involving grooming tactics – understanding child sexual exploitation as enslavement

Raymond Arthur & Lisa Down

Abstract

The United Kingdom has been beset by a series of moral panics concerning grooming gangs sexually exploiting young girls. These moral panics derive from a number of well-publicised cases, the most infamous of which took place in Rochdale, Greater Manchester. Further grooming rings have been exposed in Rotherham, Oxfordshire, Oldham, Derby, Huddersfield and Newcastle. Grooming children has been criminalised by section 15 of the Sexual Offences Act 2003 and section 67 of the Serious Crime Act 2015. These offences apply to online and offline communication, including social media. Adult groomers face up to two years in prison and being automatically placed on the sex offenders register. These laws are intended to protect children from abuse and exploitation. However child victims who have been abused by gangs and coerced into offending may still be liable for prosecution for any offending they have engaged in. These offences will also be recorded on their criminal records. Fear of being prosecuted may stop victims coming forward and prevent survivors from moving on with their lives. This article will examine how the law can be reformulated to ensure protection of children from sexual exploitation and also ensuring children are not charged for committing crimes whilst being groomed or coerced. The article will consider whether the Modern Slavery Act 2015, and in particular the statutory defence available under section 45 of the 2015 Act, potentially offer a means of protecting victims of grooming without the risk of criminalisation.

Introduction

As a result of national media reporting of criminal prosecutions in Rochdale that led to the convictions of nine men in 2012,¹ the term ‘grooming’ has gained widespread currency as a synonym or euphemism for child sexual exploitation. Other high profile cases include

¹ M. O’Hara ‘Making pimps and sex buyers visible: Recognising the commercial nexus in ‘child sexual exploitation’ (2018) *Critical Social Policy* 1–19; Rochdale Borough Safeguarding Children Board *Review of Multi-agency Responses to the Sexual Exploitation of Children*. (Rochdale Borough Safeguarding Children Board: Rochdale, 2012); T. Airey ‘Rochdale Grooming Case: Victim’s Story’, *BBC News, Manchester*, 8 May 2012 www.bbc.co.uk/news/uk-england-manchester-17914138

Rotherham,² Oxfordshire,³ Oldham, Derby, Huddersfield⁴ and Newcastle.⁵ These cases all involved organised child sexual abuse by grooming gangs that occurred from the late 1980s until the 2010s and the failure of each of the local authorities to act on reports of the abuse throughout most of that period. Although the processes of grooming are complex and multifaceted,⁶ all of these examples shared common features, namely groups of men gaining the trust of children, mainly young white girls, in order to subsequently subject the children to repeated sexual abuse. Drugs and alcohol were frequently used to control girls and lower their inhibitions, as well as emotional exploitation which convinced victims they were in relationships with their abusers. The children involved may not have even considered themselves to have been exploited or coerced and are often perceived as having made a choice. Rape, gang-rape, threats, violence, and child pregnancies, miscarriages and abortions were frequently associated with this abuse. In order to understand grooming and consent in the context of child sexual exploitation, the article will consider the patterns of coercive control and coerced consent which are used to groom children for the purposes of sexual exploitation. It will examine the motivations of perpetrators and the complex linkage between grooming, sexual exploitation and youth offending behaviour.

² A. Jay *Independent Inquiry into Child Sexual Exploitation in Rotherham 1997–2013* (Rotherham Metropolitan Borough Council: Rotherham, 2014); L. Casey *Return to an Address of the Honourable the House of Commons dated 04 February 2015 for the Report of Inspection of Rotherham Metropolitan Borough Council*. House of Commons: London, 2015).

³ Oxfordshire Safeguarding Children Board *Serious Case Review into Child Sexual Exploitation in Oxfordshire: From the Experiences of Children A, B, C, D, E, and F*. Oxfordshire Safeguarding Children Board: Oxford, 2015).

⁴ J. Halliday 'Huddersfield grooming gang jailed for abusing vulnerable girls' *The Guardian* 19th October 2018 https://www.theguardian.com/uk-news/2018/oct/19/yorkshire-grooming-gang-jailed-rape-abuse?CMP=Share_iOSApp_Other

⁵ F. Perraudin 'Eighteen People Found Guilty Over Newcastle Sex Grooming Network', *The Guardian*, 9 August 2017 <https://www.theguardian.com/uknews/2017/aug/09/newcastle-sex-grooming-network>

⁶ H. Whittle, C. Hamilton-Giachritsis, A. Beech, G. Collings 'A review of online grooming: characteristics and concerns', (2013) 18 *Aggression & Violent Behaviour* 62 - 70.

Grooming children has been criminalised by section 15 of the Sexual Offences Act 2003 and section 67 of the Serious Crime Act 2015. These offences apply to online and offline communication, including social media. Adult groomers face up to two years in prison and being automatically placed on the sex offenders register. However victims of grooming and child sexual exploitation may become involved in offending behaviour, either alongside their abusers or as a consequence of their abuse. Child victims who have been abused by gangs and coerced into offending may be liable for prosecution for any offending they have engaged in. These offences will also be recorded on their criminal records. Fear of being prosecuted may stop victims coming forward and prevent survivors from moving on with their lives, consequently child victims of grooming and exploitation are being stigmatised as well as potentially criminalised. The Modern Slavery Act 2015 was designed to combat modern slavery. Slavery, according to the 2015 Act, includes sexual exploitation, as well as servitude, forced labour, securing services by force, threats or deception, securing services from children and vulnerable adults.⁷ However no separate offence has been proposed for child sexual exploitation. Recognising child sexual exploitation as a form of slavery, could lead to victims being protected rather than criminalised themselves for any offending behaviour they have engaged in as a consequence of their exploitation. This article will consider the limitation of the statutory defence available under section 45 of the Modern Slavery Act 2015 and examine how the law can be reformulated to ensure protection of children from sexual exploitation and also ensuring children are not charged for committing crimes whilst being groomed or coerced.

Understanding techniques of grooming and child sexual exploitation

⁷ Modern Slavery Act 2015, s. 3

Given the complexity of grooming processes and the multiple manifestations of grooming and the ambiguities and uncertainty surrounding grooming, there is no universal or commonly accepted definition of the term. However McAlinden defines grooming as:

“the use of a variety of manipulative and controlling techniques ... with a vulnerable subject ... in a range of inter-personal and social settings ... in order to establish trust or normalize sexually harmful behaviour ... with the overall aim of facilitating exploitation and/or prohibiting exposure”.⁸

Despite the lack of settled meaning of the term, grooming children has been criminalised by section 15 of the Sexual Offences Act 2003 which covers:

“the behavior of an offender who meets, or seeks to meet, a child with the intention of committing a sexual assault, if he has met or communicated with that child on at least two earlier occasions”.

There is no requirement that the actual communication be sexual in nature as this behaviour “may well be deliberately non-sexual in nature in order to build a relationship of trust with the child by discussing innocuous topics”.⁹ The offence requires face-to-face meeting to have occurred or be arranged. Moreover section 67 of the Serious Crime Act 2015 makes it a criminal offence for anyone aged 18 or over to intentionally communicate with a child under 16, where the person acts for a sexual purpose and the communication is sexual or intended to elicit a sexual response. This offence applies to online and offline communication, including social media. Adult groomers face up to two years in prison and being automatically placed on the sex offenders register. These laws are intended to protect children from abuse and exploitation.

⁸ A. McAlinden ‘*Grooming and the Sexual abuse of children: institutional, internet and familial dimensions*’ (Oxford University Press: Oxford, 2012) 11.

⁹ D. Ormerod, ‘Case Comment—Sexual Offences: Meeting a Child Following Grooming’, (2011) *Criminal Law Review* 340, 342.

Craven et al. characterise grooming as a threefold process: (1) grooming the self, (2) grooming the surroundings including significant others and (3) grooming the young person.¹⁰ These processes facilitate the meeting of the child and ultimately the control of the victim's behaviour.¹¹ Barnardo's developed a model of entrapment into sexual exploitation, known as the 'prostitution triangle', which grew from their work in supporting sexually exploited young women who were controlled by pimps.¹² The Barnardo's model for the 'routes into prostitution', is now commonly called the 'grooming model'.¹³ This grooming model describes a four-stage process of entrapment which explains the process of how an abusive adult entices a young person into becoming dependent upon them. They called the first stage "ensnarement". This involved the young female falling 'in love' with an older man. The abuser flatters the young person with attention and gifts. This leads to the second stage which is 'creating dependency', when the man becomes very possessive and destroys the young person's ties with her friends and family. The third stage is 'taking control', when the man begins to control all aspects of the young person's life and becomes violent and encourages them to become dependent upon drugs and alcohol. The fourth stage is 'total dominance', when the young person is pressurised or coerced into agreeing to have sex with someone else. Once this line had been crossed, the young person is regularly coerced into having sex with other men for money, all or most of which is kept by the 'boyfriend/pimp'. This grooming process, involving networks or gangs of men, is evident in the child sexual exploitation cases in Rochdale, Rotherham, Oxford, Huddersfield and Newcastle.

¹⁰ S. Craven, S. Brown, E. Gilchrist 'Sexual grooming of children: review of literature and theoretical considerations', (2006) 12 *Journal of Sexual Aggression* 287-299.

¹¹ H. Whittle, C. Hamilton-Giachritsis, A. Beech, G. Collings 'A review of online grooming: characteristics and concerns', (2013) 18 *Aggression & Violent Behaviour* 18, 62-70; M. Ioannou, J. Synnott, A. Reynolds, J. Pearson 'A comparison of online and offline Grooming characteristics: An application of the victim roles model', (2018) 85 *Computers in Human Behaviour* 291-297.

¹² A. Van Meeuwen, S. Swann, D. McNeish, S. Edwards *Whose Daughter Next? Children Abused through Prostitution*. (Barnardo's: Basildon, 1998).

¹³ J. Pearce *Young People and Sexual Exploitation: 'It's Not Hidden, You Just Aren't Looking'* (Routledge: Abingdon, 2009) 21.

These networks or gangs of men often used the grooming strategies of the boyfriend/pimp, in which one man would groom the young person initially, following which other men would become involved in controlling and exploiting her.¹⁴ These networks may be informal clusters of people linked through a set of victims or “friendship” groups or they can be more organised criminal groups or gangs. With the latter, child sexual exploitation is sometimes seen as their “relaxation” as opposed to a commercial enterprise. Offenders may avoid suspicion by taking victims to be abused only for a short time, or during school hours or returning them home before anyone considers them to be missing or absent. Alternatively children and young people may be groomed into “party” lifestyles where they go to houses, flats, hotels and bed and breakfast accommodation with numerous men and other child victims. No single relationship is formed but a general network is created. The “parties” are usually organised by adults with young people sometimes being coerced into bringing friends along. Offenders may use various control elements as a tool to stop a victim reporting the sexual abuse such as threatening to publish photographs or recordings of them being abused or threatening harm to the victim and/or their family.¹⁵ These examples all involved processes of entrapment characterised by the initial creation of dependency, isolation from friends and family, and the use and threat of violence. These are also the main features of the patterns of coercive control involved in pimps’ entrapment of adult women.¹⁶ In this sense, perpetrators of grooming share many of the psychological characteristics of perpetrators of exploitation and domestic abuse.¹⁷

¹⁴ M. O’Hara ‘Making pimps and sex buyers visible: Recognising the commercial nexus in ‘child sexual exploitation’ (2018) *Critical Social Policy* 1–19.

¹⁵ Director of Public Prosecution *Interim Guidelines on Prosecuting Cases of Child Sexual Abuse* (CPS: London, 2017).

¹⁶ K. Barry *Female Sexual Slavery* (Prentice-Hall Englewood Cliffs: NJ, 1979); T. May, A. Harocopos and M. Hough *For Love or Money: Pimps and the Management of Sex Work*. (Home Office: London, 2000); L. Okun *Woman Abuse: Facts Replacing Myths*. (State University of New York Press: New York, 1986).

¹⁷ Child Exploitation and Online Protection Centre *Out of Mind, Out of Sight*. (CEOP: London, 2011).

Following the Rochdale case, the Office of the Children’s Commissioner for England (OCC) undertook a two year inquiry into child sexual exploitation in gangs and groups. Child Sexual Exploitation (CSE) is defined in the latest Department for Education supplementary guidance in the following way:

Child sexual exploitation is a form of child sexual abuse. It occurs where an individual or group takes advantage of an imbalance of power to coerce, manipulate or deceive a child or young person under the age of 18 into sexual activity (a) in exchange for something the victim needs or wants, and/or (b) the financial advantage or increased status of the perpetrator or facilitator. The victim may have been sexually exploited even if the sexual activity appears consensual. Child sexual exploitation does not always involve physical contact; it can also occur through the use of technology.¹⁸

The programme of joint targeted area inspections which brought together four inspectorates – Ofsted, Care Quality Commission (CQC), HMI Constabulary and Fire & Rescue Services (HMICFRS) and HMI Probation (HMIP) recommended that understanding exploitation of children “is not simply about identifying the characteristics of children who are vulnerable to abuse ... it requires a wider perspective and understanding of the contexts, situations and relationships in which exploitation [of children] is likely to manifest.”¹⁹ On 21st November 2012 the OCC published its interim *Child Sexual Exploitation Inquiry Report*²⁰ where it was noted:

The vast majority of the perpetrators of this terrible crime are male. They range in age from as young as fourteen to old men. They come from all ethnic groups and so

¹⁸ Department of Education *Child sexual exploitation Definition and a guide for practitioners, local leaders and decision makers working to protect children from child sexual exploitation* (HMSO: London, 2017) 5.

¹⁹ HM Inspectorate of Probation, Her Majesty’s Inspectorate of Constabulary and Fire and Rescue Services Care Quality Commission, Ofsted *Protecting children from criminal exploitation, and human trafficking and modern slavery: an addendum* (Ofsted: Manchester, 2018), 4.

²⁰ S. Berelowitz, C. Firmin, G. Edwards, S. Gulyurtlu “*I thought I was the only one. The only one in the world*” *The Office of the Children’s Commissioner’s Inquiry into Child Sexual Exploitation In Gangs and Groups thought I was the only one, the only one in the world*’ (OCC, London ,2012).

do their victims – contrary to what some may wish to believe. The failure of agencies to recognise this means that too many child victims are not getting the protection and support they so desperately need.

Offenders have been found to experience some of the following deficiencies: low self-esteem, problematic relationship with adults, poor problem solving abilities, feelings of inadequacy, loneliness, deep-rooted deviant sexual behaviour and a complete lack of empathy for the victims.²¹ Victims are specifically targeted because of their vulnerability and many offenders seem to derive satisfaction from exerting control over victims through coercive and manipulative behaviour as an end in itself. An example of this type of behaviour is graphically illustrated in the case of *R v Bassam, Karrar, Jamil, Dogar, Dogar*.²² The appellants had taken vulnerable young girls and treated them in a depraved, sadistic and brutal fashion; not content with using them as their own sexual objects, they encouraged others to do the same, often for money by selling their sexual services to other men. Their conduct involved the commission of numerous other offences, many of which were grave in their own right; they included offences not far removed from torture using a variety of objects such as knives, meat cleavers, baseball bats and various sex toys that caused physical injury, gang rapes, supplying Class A drugs to children and false imprisonment. This behaviour was often accompanied by humiliating and degrading conduct such as the girls being bitten, scratched, urinated on, suffocated, tied up and burnt. The appellants targeted vulnerable girls as young as 11 with troubled upbringings. Once they had recruited and groomed them, the girls would be sent out to recruit others. The first appellant was convicted of conspiracy to rape, rape, rape of a child

²¹ D. Canter, D. Youngs 'Sexual and violent offenders' victim role assignments: A general mode; of offending style', (2012) 23(3) *Journal of Forensic Psychiatry and Psychology* 297-326; K.J. Terry *Sexual Offences and offenders: theory, practice and policy*. (Wandsworth: Belmont, CA, 2006); G. Robertiello and K.J. Terry 'Can we profile sex offenders? A review of sex offender typologies' (2007) 12 *Aggression & Violent Behaviour* 508-518.

²² *R v (1) Assam Abdu Karrar (2) Kamal Jamil (3) Anjum Javaid Dogar (4) Akhtar Javid Dogar* [2015] EWCA Crim 850.

under 13, conspiracy to rape a child under 13, arranging child prostitution and trafficking within the UK for sexual exploitation. He was sentenced to life imprisonment with a minimum term of 15 years. The second appellant was convicted of conspiracy to rape, rape and arranging or facilitating child prostitution. He was sentenced to life imprisonment with a minimum term of 12 years. The third and fourth appellants were convicted of conspiracy to rape, rape, arranging or facilitating child prostitution and trafficking within the UK for sexual exploitation. Both received life sentences with minimum terms of 17 years.

Victims of grooming and offending behaviour

Victims of grooming and child sexual exploitation may become involved in offending behaviour, either alongside their abusers or as a consequence of their abuse. Many young people who were victims of sexual exploitation were known to youth offending services for criminal activities, ranging from shoplifting to criminal damage. Crimes of aggression, escapism and acquisition may all be linked to common behavioural and psychosocial disturbances associated with sexual exploitation, such as angry outbursts, erratic behaviour and substance abuse.²³ Sexual abuse can also affect girls' ability to form the attachment bonds needed to deter anti-social behaviour.²⁴ However child sexual exploitation victims are typically recognised as *offenders* before they are recognised as *victims*. For example, Halter in a US study of young people involved in prostitution in six major US cities found that 40% of young people were identified as offenders, rather than victims, by law enforcement agencies.²⁵

²³ Child Exploitation and Online Protection Centre *Out of Mind, Out of Sight*. (CEOP: London, 2011)

²⁴ L. Paskol, M. Chesney-Lind 'Running the Gauntlet: Understanding Commercial Sexual Exploitation and the Pathways Perspective to Female Offending' (2016) 2 *J Dev Life Course Criminology*:275–295.

²⁵ S. Halter 'Factors that influence police conceptualizations of girls involved in prostitution in six U.S. cities: child sexual exploitation victims or delinquents?' (2010) 15 *Child Maltreatment* 152-160.

Cockbain and Bradley, in their English study, analysed a leading child sexual exploitation service provider and Youth Offending Team for the period 2001–2010 inclusive. Of the child sexual exploitation victims, 40% had offending records and recidivism rates were high. The 211 children involved in the study were recorded as having committed a total of 1586 offences, which represented 5% of all 31,349 youth offences recorded over this period.²⁶ Cockbain and Bradley concluded that greater attention should be paid to links between child sexual exploitation and youth offending. With 40% of identified child sexual exploitation victims implicated in offending behaviour, an appreciation of the impact of youth offending on exploitation and vice versa should inform responses to both issues as child sexual exploitation and youth offending seemed ‘to coexist in a state of twisted symbiosis’.²⁷ Pasko and Chesney-Lind characterise the interconnection and intensity of pathway factors for girls who experience a combination of severely disrupted family life, drug abuse, trauma, violence, abandonment, sexual exploitation, and early child protection system involvement as a developing ‘gauntlet’ which interact to erode the girl’s sense of agency and power to change directions in their lives.²⁸ Sometimes the people who were exploiting them told their victims to offend (for example to steal alcohol), and on other occasions they would offend as a result of their abuse (for example self-medicating with drugs, or damaging property in anger). Having been involved in, or coerced into, this type of offending, they may think that if they report their exploitation to the police, they will also get into trouble for offences they have committed. Families may not want to disclose abuse or seek help for victims for fear of placing family members in trouble with the police. In these circumstances, sexual violence forms part of the context of gang-association, in the same way as knife or gun crime.

²⁶ E. Cockbain, H. Brayley ‘Child sexual exploitation and youth offending: A research note’ (2012) 9(6) *European Journal of Criminology* 689– 700, 692.

²⁷ *Ibid.* p. 697

²⁸ L. Pasko, M. Chesney-Lind ‘Running the Gauntlet: Understanding Commercial Sexual Exploitation and the Pathways Perspective to Female Offending’ (2016) 2 *J Dev Life Course Criminology* 275–295, 277, 292

Understanding victims of grooming and consent in the context of child sexual exploitation

The complex set of dynamics underlying the victim-offender relationship in grooming, including the young person's dependence on the abuser and the imbalance of power, makes this form of child exploitation closely aligned to intimate abuse and coercive control.²⁹ Coercive control involves a pattern of behaviour that interweaves the use of violence and other forms of controlling behaviour to create a situation of entrapment from which the abused person finds it very difficult to escape. Stark conceives of coercive control as a gendered form of human rights violation which depends for its maintenance on structural gender inequality both in individual relationships and in the wider society.³⁰ Grooming of children for the purposes of child sexual exploitation could also be viewed through Stark's lens as a generational form (parallel to the gendered form that Stark refers to) of human rights violation, dependent for its continuation on a particular social order which maintains the unequal configurations of power and authority between children and adults, state and other organised authorities. A common feature of all of the cases which occurred in Rotherham, Oxfordshire, Oldham, Derby, Huddersfield and Newcastle was that the children and young people who were being sexually exploited were frequently described by childcare professionals in many of these localities as being "promiscuous", "liking the glamour", engaging in "risky behaviour" and being generally badly behaved. Some of the most common phrases used to describe the young

²⁹ J. Montgomery-Devlin 'The Sexual Exploitation of Children and Young People in Northern Ireland: Overview from the Barnardo's Beyond the Shadows Service', (2008) 14 *Child Care in Practice* 381, 383; Barnardo's *Puppet on a String: The Urgent Need to Cut Children Free from Sexual Exploitation* (Barnardo's: Barking, Ilford, 2011) 6; A. McAlinder 'Grooming' and the Sexual abuse of children: institutional, internet and familial dimensions' (OUP: Oxford, 2012) 238.

³⁰ E. Stark *Coercive Control: How Men Entrap Women in Personal Life*. (Oxford University Press: New York, 2007).

girl's behaviour were: "prostituting herself", "sexually available" and "asking for it".³¹ Thus, those responsible for protecting young people assumed that the children had consented and consequently failed to identify and challenge child sexual exploitation. This disbelief of victims represents a "conspiracy of silence" and denial and minimization of allegations of abuse,³² it simultaneously ignores the multi-faceted realities of engaging in child sexual exploitation and renders victims responsible for their own abuse. An independent inquiry into the handling of the child sexual exploitation of girls in Rotherham was highly critical of the local authority and the police's role in handling child sexual abuse investigations, accusing them of blatant collective failures.³³

The young victims involved in the cases which occurred in Rotherham, Oxfordshire, Oldham, Derby, Huddersfield and Newcastle did not fit the 'ideal' victim³⁴ and were held to blame for their plight.³⁵ Christie identified a number of characteristics of the ideal victim – that the ideal victim is weak compared to the offenders, the ideal victim has taken steps to prevent themselves becoming a victim, the ideal victim should also be sufficiently powerful to make their case known and claim the status of ideal victim and not be opposed by strong counter-powers that deny a voice to the victim.³⁶ Although as Simpson notes, 'the law has struggled with the autonomy of the child in sexual matters',³⁷ it is primarily sexual innocence which has

³¹ S. Berelowitz, C. Firmin, G. Edwards, S. Gulyurtlu "I thought I was the only one. The only one in the world" *The Office of the Children's Commissioner's Inquiry into Child Sexual Exploitation In Gangs and Groups thought I was the only one, the only one in the world'* (OCC, London, 2012) 12

³² A. McAlinden 'Grooming' and the Sexual abuse of children: institutional, internet and familial dimensions' (Oxford University Press: Oxford, 2012) 7.

³³ A. Jay *Independent Inquiry into Child Sexual Exploitation in Rotherham 1997–2013* (Rotherham Metropolitan Borough Council: Rotherham, 2014) 1.

³⁴ N. Christie 'The Ideal Victim' in E.A. Fattah (ed.) *From Crime Policy to Victim Policy* (Macmillan: London, 1986) 17-30.

³⁵ A. Choi-Fitzpatrick 'The Good, the Bad, the Ugly: Human rights violators in comparative perspectives' (2016) 2 *Journal of Human Trafficking* 1-14.

³⁶ N. Christie 'The Ideal Victim' in E.A. Fattah (ed.) *From Crime Policy to Victim Policy* (Macmillan: London, 1986) 17-30, 19-21

³⁷ B. Simpson B (2013) 'Challenging childhood, challenging children: Children's rights and sexting' (2013) 16(5/6) *Sexualities* 690–709.

demarcated the boundary between social constructions of childhood and adulthood.³⁸ Experience of sexual activity has acted as an arbitrary marker between an innocent childhood and a sexually knowing adulthood,³⁹ effectively excluding sexually active young people from the protection and empathy of child protection agencies. Pearce's concept of 'coerced consent'⁴⁰ is closely aligned to the concepts of 'coercive control'. Coerced consent refers to where the child is subtly and/or violently manipulated into consenting to sexual activity.⁴¹ Pearce believes that current understanding of young people's consent to sexual activity is based on a medical model which assesses their intellectual capacity to understand and use contraceptives which is an inadequate framework for understanding the pressures, coercion and control that may be experienced by those who are being sexually exploited. Similarly Lacey rejects the standard liberal view of autonomy and consent as individualistic and the view that they can be evaluated outside of their social context. She states that "[i]n focusing on an individualised notion of consent, rather than the conditions under which choices can be meaningful, the prevailing idea of sexual autonomy assumes the mind to be dominant and controlling, irrespective of ... circumstances".⁴² For example, young people who are homeless may choose to take a bed for the night in exchange for some sexual activity or they may sell sex as a means of getting money, alcohol or drugs.⁴³ Young people in these situations may be making constrained, but rational, choices within the context of highly diminished

³⁸ S. Angelides S. 'Feminism, child sexual abuse, and the erasure of child sexuality', (2014) 10(2) *Gay and Lesbian Quarterly* 141–77.

³⁹ M. Gubar 'Innocence' in P. Nel, L. Paul, M. Gubar, M. (eds.) *Keywords for Children's Literature* (Routledge: New York, 2011); L. Kokkola, *Fictions of adolescent carnality: sexy sinners and delinquent deviants* (John Benjamins: Amsterdam/Philadelphia, 2013).

⁴⁰ J. Pearce *Young People and Sexual Exploitation: 'It's Not Hidden, You Just Aren't Looking'*. (Routledge: Abingdon, 2009); J. Pearce 'A Social Model of Abused Consent', pp. 52–68 in M Melrose and J Pearce (eds) *Critical Perspectives on Child Sexual Exploitation and Related Trafficking*. (Palgrave Macmillan: Basingstoke, 2013).

⁴¹ *Ibid.* .53

⁴² N. Lacey *Unspeakable subjects feminist essays in legal and social theory*. (Hart: Oxford, 1998).

⁴³ J. Phoenix, 'In the name of protection: youth prostitution policy reforms in England and Wales' (2002) 22(2) *Critical Social Policy* 353-375.

circumstances and opportunities.⁴⁴ O'Connor and Healy argue that “consent” and “choice” are “misleading and inaccurate terms when applied to the constrained and limited contexts in which women and girls are lured or forced into sexual exploitation.”⁴⁵ A contextualised model of consent would enable consent to be understood within the context of the abusive, exploitative and coercive relationships⁴⁶ and appreciate that autonomy must itself be understood to be socially and inter-subjectively constituted.⁴⁷ Autonomy requires not just a suite of internal agential competencies but also, crucially, the right kinds of social conditions, relationships, and institutions, and access to a decent range and quality of options, resources, and opportunities.⁴⁸

Pearce identified a range of reasons for vulnerability to child sexual exploitation including economic inequality, familial problems, drug and alcohol dependency, mental health problems, problems experienced by young people looked after and in care with the local authorities, low self-esteem, self-harming and problems with attachment, assertion of perceived agency in achieving independence and freedom through sexual activity.⁴⁹ The Child Exploitation and Online Protection Center (CEOP) studied on-street grooming to examine patterns of vulnerability and found that 842 of the over 2000 victims had been reported missing prior to their abuse and 311 were in care at the time of the exploitation.⁵⁰ Furthermore, the majority of victims were disengaged from school as manifested in truanting, poor behaviour and engaging

⁴⁴ M. Melrose, D. Barrett, I. Brodie. *One Way Street: Retrospectives on Childhood Prostitution* (The Children's Society: London, 1999); H. Montgomery 'Children, Prostitution and Identity: A Case Study from a Tourist Resort in Thailand', in K. Kempadoo and J. Doezema (eds) *Global Sex Workers: Rights, Resistance and Redefinition*, (Routledge: London, 1998).

⁴⁵ M. O'Connor, G. Healy *The links between prostitution and sex trafficking: A briefing handbook. Report of the Swedish and United States Governmental and Non- Governmental Organization Partnership CATW*: Brussels, 2006)

⁴⁶ J. Pearce 'A Social Model of Abused Consent', pp. 52–68 in M Melrose and J Pearce (eds) *Critical Perspectives on Child Sexual Exploitation and Related Trafficking*. (Palgrave Macmillan: Basingstoke, 2013) 52-53.

⁴⁷ M. Lotz, 'Vulnerability and resilience: a critical nexus' (2016) 37(1) *Theoretical Medicine and Bioethics* 45, 57

⁴⁸ *Ibid.* 45, 53

⁴⁹ J. Pearce *J Young People and Sexual Exploitation: 'It's Not Hidden, You Just Aren't Looking* (Routledge: Abingdon, 2009).

⁵⁰ Child Exploitation and Online Protection Centre *Out of Mind, Out of Sight*. (CEOP: London, 2011)

in, and victims of, bullying.⁵¹ Many victims in the CEOP study feared that their exploiter would be violent towards them if they failed to comply with their demands or contacted the police. In the US, Boxhill and Richardson found that poor family functioning, history of sexual abuse, lower socioeconomic status and poor school achievement were factors associated with child sexual exploitation.⁵² Ahrens *et al.* also found that young people who had a history of sexual abuse and had been in the care system, have an increased chance of being vulnerable to the manipulations of an exploiter.⁵³ For many of these young people the perpetrators of the abuse appear to offer a way out of, and protection from, their difficult life situation, real friendship, a sense of being appreciated and excitement and money. The groomer would typically identify the victim, flatter them with promises of love, make them feel special and cared for, offer gifts, separate them from their school, friends and family and eventually begin to abuse them.⁵⁴ Jülich compares this aspect of the grooming process to the emotional bonds that develop between victims and abusers that are seen in Stockholm Syndrome.⁵⁵ This emotional bond enables the sexual exploitation of children and serves to protect the offender. De Young and Lowry define this traumatic bonding as “the evolution of emotional dependency between two persons of unequal power— an adult and a child, within a relationship characterized by periodic sexual abuse”.⁵⁶ Dutton and Painter’s research indicated that “powerful emotional attachments are seen to develop from two specific features of abusive relationships: power imbalances and intermittent good-bad treatment.”⁵⁷

⁵¹ Child Exploitation and Online Protection Centre *Out of Mind, Out of Sight*. (CEOP: London, 2011)

⁵² N. Boxhill, D.J. Richardson, D.J. ‘Ending sex trafficking of children in Atlanta’ (2007) 22(2) *Affilia* 138-149.

⁵³ K.R. Ahrens, W. Katon, C. McCarthy, I.P Richardson, M.E. Courtney ‘Association between -childhood sexual abuse and transactional sex in youth aging out of foster care’, (2012) 36(1) *Child Abuse & Neglect* 75-80.

⁵⁴ S. Scott, P. Skidmore *Reducing the Risk: Barnardos Support for Sexually Exploited Young People: A Two-Year Evaluation* (Barnardos: Barkingside, 2006).

⁵⁵ S. Jülich ‘Stockholm syndrome and child sexual abuse’ (2005) 14(3) *Journal of Child Sexual Abuse* 107–129.

⁵⁶ M. De Young, J.A. Lowry ‘Traumatic bonding: Clinical implications in incest’ (1992) LXXI(2), *Child Welfare*, 165–175, 167

⁵⁷ D.G. Dutton, S. Painter ‘Emotional attachments in abusive relationships: A test of traumatic bonding theory’ (1993) 8(2), *Violence and Victims*, 105–120, 105.

In the US, the FBI identified various ‘hubs’ in which the sexual exploitation of children was particularly concentrated – Atlanta, Oakland and Minneapolis.⁵⁸ Walker’s studied confirmed that these urban ‘hubs’ were characterised by extreme poverty.⁵⁹ Similarly in England, Rochdale has repeatedly been one of the most deprived areas of England.⁶⁰ Walker found that poverty was linked with the breakdown of the family with stress and violence that is indicative of the urban inner-city; the multigenerational lack of viable education in the area; the lack of viable work, forcing men and women in the inner-city areas to seek illegal means for food, shelter, and clothing; and the breakdown of sexual barriers related to respect. All of these factors were found to provide a vast grooming ground for child sexual exploitation.

In November 2013, the Office of the Children’s Commissioner published its Final Report which was undertaken by a team of researchers from the University of Bedfordshire.⁶¹ This report revealed that throughout Britain thousands of girls had become associated with gangs and were being abused on a massive scale. Deputy Children’s Commissioner Sue Berelowitz⁶² stated:

“We are talking about rape, including gang rape, of girls as young as 11 ... In London alone the police have identified 2500 male gang members who are not in prison. If each of these has a girlfriend, that puts 2500 girls at risk. These girls don’t tell and don’t

⁵⁸ A Corbett ‘The voices of survivors: An exploration of the contributing factors that assisted with exiting from commercial sexual exploitation in childhood’ (2018) 85 *Children & Youth Services Review* 91-98.

⁵⁹ K. Walker *Ending the commercial sexual exploitation of children: A call for multi-system collaboration in California.* (California Child Welfare Council: Sacramento: CA, 2013).

⁶⁰ Public Health England ‘Rochdale Unitary Authority Health Profile 2017’ (HMSO, London, 2017); English Indices of Deprivation 2015 <https://www.gov.uk/government/statistics/english-indices-of-deprivation-2015>; Rochdale Borough Profile (2011) <http://www.rochdale.gov.uk/pdf/2011-borough-profile.pdf>;

⁶¹ H, Beckett, I. Brodie, F. Factor, M. Melrose, J.Pearce, J.Pitts, L. Shuker, C. Warrington ‘*It’s Wrong ... But You Get Used To It*’ A qualitative study of gang-associated sexual violence towards, and exploitation of, young people in England (OCC, London, 2013).

⁶² S. Berelowitz, C. Firmin, G. Edwards, S. Gulyurtlu “*I thought I was the only one. The only one in the world*” *The Office of the Children’s Commissioner’s Inquiry into Child Sexual Exploitation In Gangs and Groups thought I was the only one, the only one in the world*’ (OCC, London ,2012).

complain because this is just something that happens. Saying no is not an option, because once a girl has had sex with a gang member, whether it be forced or otherwise, as far as the other gang members are concerned she has no right to refuse sex from anyone under any circumstance ever again.”

This report involved in-depth interviews with 188 young people aged between 13 and 28 years across England. During their interviews, the young people identified many different forms of sexual victimisation within the gang environment, where young women were pressured or coerced into sexual activity. These included sex in return for status or protection; sex as payment for drugs, alcohol or the clearance of a debt, as well as numerous instances of multiple rape. A number of instances were quoted of young women being expected to have sex with a number of gang members as part of a membership initiation to gain admittance. Significantly, many of the young people who were interviewed saw rape and sexual assault as perfectly “normal” sexual behaviour, with no conception that it was actually an offence. One young woman’s comment at one of the focus groups was: “I’m used to it ... it’s normal ... it’s wrong, but you get used to it”.

The statutory defence available under section 45 of the Modern Slavery Act 2015

Theresa May introduced the Modern Slavery Act 2015 as Home Secretary and stated that one of its aims was to prevent young girls being “raped, beaten, passed from abuser to abuser and sexually exploited for profit”.⁶³ In relation to protection of victims, under section 45, victims who have committed certain criminal offences will be found not guilty if the offending act is

⁶³ HM Government *Modern slavery strategy* (The Stationery Office, London, 2014) 5; J. Hayes, ‘The Modern Slavery Act (2015): A Legislative Commentary’ (2016) 37 *Statute Law Review* 33. See also A. Weatherburn, ‘Using an Integrated Human Rights-Based Approach to Address Modern Slavery: The UK Experience’ (2016) *European Human Rights Law Review* 184.

attributable to (or done as a direct consequence of) slavery or to relevant exploitation and is predicated on the reasonable person having no realistic alternative but to commit the crime.⁶⁴ Slavery includes sexual exploitation, as well as servitude, forced labour, securing services by force, threats or deception, securing services from children and vulnerable adults.⁶⁵ An element of compulsion must be present where the victim is over 18, however this element is unnecessary where the victim was under 18 at the time the offence was committed. Offences subject to this defence include the theft (pick pocketing), cultivation of cannabis, offences related to prostitution and immigration offences. However, schedule 4 of Modern Slavery Act 2015 lists 140 offences that are exempt from the statutory defence including arson, murder, kidnap, false imprisonment, wounding with intent to cause grievous bodily harm, malicious wounding, possession of firearms, robbery, burglary, aggravated burglary, blackmail, destroying or damaging property for example. Laird points out that such exclusion “has the potential to undermine the effectiveness of the defence”.⁶⁶ Clearly, the legislators have not understood that pressures can be brought to bear on victim/offenders caught in slavery, and trafficking, regardless of any particular criminal offence which they may be compelled to commit.⁶⁷

The Modern Slavery Act 2015 could act as a powerful deterrent to those responsible for child sexual exploitation as the Act provides harsh penalties for those convicted of slavery offences - it has a maximum sentence of life imprisonment. The 2015 Act also offers opportunities for prevention and not just prosecution. The 2015 Act created civil orders designed to prevent

⁶⁴ S. Edwards ‘Coercion and compulsion – re-imagining crisis and defences’ (2016) 12 *Criminal Law Review*, 876-899, 888-889; Her Majesty’s Inspectorate of Constabulary and Fire and Rescue Services *Stolen Freedom: The policing response to modern slavery and human trafficking* (HMICFRS: London, 2017).

⁶⁵ Modern Slavery Act 2015, s. 3.

⁶⁶ K. Laird ‘Evaluating the relationship between section 45 of the Modern Slavery Act 2015 and the defence of duress: an opportunity missed?’ (2016) 12 *Criminal Law Review* 395, 396.

⁶⁷ S. Edwards ‘Coercion and compulsion – re-imagining crisis and defences’ (2016) 12 *Criminal Law Review*, 876-899, 888-889.

slavery, forced labour and human trafficking. The Slavery and Trafficking Prevention Order prevents further slavery, and human trafficking offences, being committed by someone who has already committed such offences. This order can be made by a Court at the time of conviction where there is a risk that the defendant may commit another slavery or human trafficking offence and poses a risk of harm to the public in doing so. Slavery and Trafficking Risk Orders can be made by a Court in respect of an individual who has not been convicted of a slavery, or trafficking, offence. The Court must be satisfied that there is a risk that the defendant may commit a slavery or human trafficking offence and that the order is necessary to protect against the risk of harm from the defendant committing the offence. These orders enable action to be taken where this is necessary to prevent serious harm to the public notwithstanding the absence of a conviction. However no separate offence has been proposed for child sexual exploitation. Recognising child sexual exploitation as a form of slavery, could lead to victims being protected rather than criminalised themselves for these offences. Such recognition could also help to create the will to address structural factors, including legal structures, that create vulnerability to exploitation. Using the label of slavery is an apt label as it specifically focusses attention on the experiences of the victims – experiences which were initially overlooked and diminished in many of the investigations discussed earlier.

Conclusion

The Office of the Children’s Commissioner Final Report made a number of recommendations of ways that different agencies might enhance preventive initiatives; schools have a particular part to play.⁶⁸ The Secretary of State was recommended to ensure that schools adopted a

⁶⁸ H, Beckett, I. Brodie, F. Factor, M. Melrose, J.Pearce, J.Pitts, L. Shuker, C. Warrington *‘It’s Wrong ... But You Get Used To It’ A qualitative study of gang-associated sexual violence towards, and exploitation of, young people in England* (OCC, London, 2013).

consistent whole-school approach to safeguarding that would address all forms of sexual violence and exploitation, including sexualised bullying and coercive behaviour. This should be delivered to both young men and young women in a form appropriate to their age and gender. Government guidance entitled *Working Together* sets out how organisations and individuals should work together to safeguard and promote the welfare of children and young people in accordance with the Children Acts 1989 and 2004. It includes the advice that “every Local Safeguarding Children Board (LSCB) should play a strong role in supporting information sharing between and within organisations and addressing any barriers to information sharing” which “should include ensuring that a culture of information sharing is developed”. LSCBs assumed responsibility for overseeing and coordinating a multi-agency response to child sexual abuse and exploitation and to ensure their effectiveness in safeguarding and promoting the welfare of children in its area. Local Safeguarding Children Boards (LSCBs) should facilitate multi-agency training opportunities that would enable staff from different professions to meet to consider their shared responsibilities in identifying and working with gang-affected young men and women at risk of sexual exploitation or violence. The Office of the Children’s Commissioner Final Report, *See Me, Hear Me*, presents a new framework for those who provide protective services. Developed with victims of child sexual exploitation, the model is designed to ensure that professionals focus firmly on the child and bring the child’s voice right into the centre of the child protection process. It also means that rather than responding to instances of individual risk behaviours, schools and social service programs need to address the wider social contexts to which these behaviours are likely a response.

The failure in responding to child protection concerns in the cases in Rochdale and Rotherham resulted from blame being apportioned towards young people. This meant that young people

were left in abusive situations and experienced ongoing abuse. Blaming young people as engaging in lifestyle choices and wilfully misconstruing both abuse and coercion as consent are deeply concerning factors which underpinned these cases. This signals an urgent cultural shift is required in believing young people when they say they are being harmed, but also to seriously question how we perceive contemporary childhoods and adolescence, innocence and sexual experience. The Modern Slavery Act treats slavery and trafficking, servitude and forced labour as distinct phenomena. Child protection law, namely the Children Acts 1989 and 2004 as well as Department for Education guidance,⁶⁹ recognise child trafficking and slavery as a form of child abuse. This article advocates that child sexual abuse and exploitation should be seen as a form of slavery as such children are experiencing physical, emotional, sexual abuse, neglect and exploitation.

⁶⁹ Department for Education *Safeguarding Children Who May Have Been Trafficked*. (DfE: London, 2011).