Issue 3 - Safeguarding

AWARE

Keoghs
a Davies business

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Welcome

Welcome to another edition of the Keoghs Safeguarding Aware newsletter. In this third edition, the focus will be on the Crime and Policing Bill 2024-2025 which is currently progressing through Parliament.

The Bill contains a significant number of proposals and measures which, if passed, present several key changes in safeguarding. Lauranne Nolan, Associate Solicitor and Safeguarding Lead, provides us with an overview of the contents of the Bill.

There are also a number of additional articles providing additional information and complimenting the topics and issues raised in the Crime and Policing Bill.

We hope you find the newsletter contents informative and helpful. If you would like to discuss any of it, please do not hesitate to contact our Safeguarding Lead, Lauranne Nolan.

For more updates be sure to listen to our Safeguarding Matters podcast which can be found here alongside all of the other podcast from across Davies.

Safeguarding Matters

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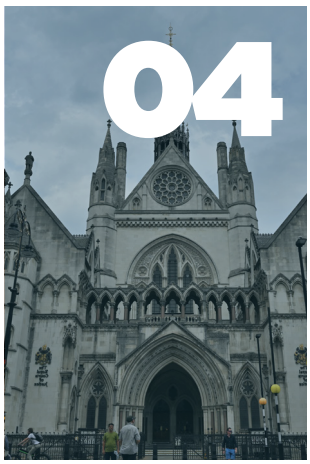

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Crime and Policing Bill 2024-25

The Crime and Policing Bill ("the Bill") has been framed by the government as legislation that supports the delivery of its "safer streets" mission. To this end, the Bill includes measures aimed at addressing knife crime, violence against women and girls, antisocial behaviour, retail crime, serious and organised crime, fraud, theft, public order, terrorism, sexual offending, and more. The Bill in its current form includes a number of election manifesto promises as well as many provisions proposed by the Conservative government under the Criminal Justice Bill 2023-2024 which did not become a formal Act due to the dissolution of Parliament ahead of last year's general election.

There is currently a call for evidence to scrutinise the contents of the Bill, with the Public Bill Committee having met for the first time on Thursday 27 March 2025. The Committee intends to report with its findings no later than 5pm on Tuesday 13 May 2025.

The Bill

In relation to safeguarding, the following key changes are proposed in parts 4 and 5 of the Bill:

- New offences of child criminal exploitation and cuckooing (Part 4).
- New offences around using or promoting the use of AI to generate child sexual abuse material (Part 5).
- A new statutory aggravating factor of grooming, applicable in sentences surrounding child sexual abuse offences (Part 5).
- Introducing mandatory reporting of child sexual abuse for certain individuals (Part 5).
- Placing the child sex offender disclosure scheme or "Sarah's Law" on a statutory footing (Part 5).
- New offences in relation to the taking of intimate images and exposing of genitals (Part 5).
- Introducing a new offence of spiking (Part 5).
- Proposing that adults working in regulated activity under supervision will be eligible to enhanced DBS checks (Part 5).
- New provisions for the management of registered sex offenders (Part 5).

Part 4 of the Crime and Policing Bill

Child criminal exploitation

Criminal exploitation of children is a form of abuse where a child or young person is forced or coerced into taking part in criminal activity, often by organised crime groups. Child criminal exploitation does not yet have a legal definition but currently, depending on the circumstances, someone who exploits children into criminal activity could be committing:

+ Offences of intentionally encouraging or assisting crime under sections 44 to 46 of the Serious Crime Act 2007.
+ Offences under the Modern Slavery Act 2015.

In the absence of a clear and consistent definition of the criminal exploitation of children there is a barrier to protecting children. In addition, there is no consistent strategy, leadership and focus on tackling child criminal exploitation.

The proposed offence

Under clause 17 of the Bill, it would create a specific offence of child criminal exploitation. Any adult over the age of 18 would commit an offence should they do anything to a child with the intention to cause the child to engage in any criminal activity where the adult reasonably believes that the child is under 18. An offence is automatically committed where the child is under 13. It is interesting to note that as currently drafted, the offence does not require the child to actually commit any offence, only that the adult intended them to.

In terms of the sanctions, it would be triable either way, meaning it could be tried in either a magistrates' or the Crown Court. A maximum penalty on summary conviction would be the limit in a magistrates' court. The maximum penalty on indictment in the Crown Court would be 10 years' imprisonment.

We refer you to the article located later in this newsletter that discusses how children can be protected from child criminal exploitation.

Cuckooing

Cuckooing is a term used to refer to instances where drug dealers will take over a local property, normally belonging to a vulnerable person, and use it to operate their criminal activity from. Cuckooing is not yet a specific criminal offence and, like child criminal exploitation, is not defined in legislation.

Depending on the specific circumstances of each case, someone responsible for 'cuckooing' could be committing a range of other offences, such as:

- Theft or the handling stolen goods, under the Theft Act 1968.
- Possession of controlled drugs, or with intent to supply, under the Misuse of Drugs Act 1971.
- Developing offences under sections 44-46 of the Serious Crime Act 2007.
- Holding someone in servitude or subjecting them to forced or compulsory labour, under section 1 of the Modern Slavery Act 2015.

The proposed offence

It is proposed in the Bill that someone commits a criminal offence of cuckooing if:

- they exercise control over the dwelling of another person;
- they do so for the purpose of enabling that dwelling to be used in connection with specific offences; and
- the person whose dwelling it is does not consent to the activity.

All three conditions must be met for an offence to be committed.

The offence of cuckooing would carry a maximum penalty available on summary conviction in a magistrates' court, a fine, or both, and in the Crown Court of five years' imprisonment, an unlimited fine, or both.

Part 5 of the Crime and Policing Bill

Child sexual abuse material ("CSAM")

The creation, possession and distribution of CSAM is already illegal, including where it has been generated by Artificial Intelligence ("AI"). However, in recent years, the use of AI to create and generate CSAM has been identified as a "significant and growing threat".

The proposed offences

In February 2025, the government announced that it would legislate to introduce the following measures

- an offence of possessing, creating or distributing AI tools designed to generate CSAM;
- an offence of possessing an AI 'paedophile manual';
- an offence of operating a website to share CSAM or to give advice on grooming children; and
- a new power for Border Force officers to inspect the digital devices of individuals who they reasonably suspect pose a sexual risk to children, to tackle the distribution of CSAM filmed abroad.

In order to do this, the Bill will add new sections 46A and 46B to the Sexual Offences Act 2003. It is proposed that the sections would also set out several defences for a person charged with the new offence, including:

- that they had been sent the CSA image-generator without having requested it and they did not keep it for an unreasonable time;
- that they did not know, and did not have cause to suspect, that the thing possessed, supplied or offered to be supplied was a CSA image-generator;
- that their conduct was for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings in any part of the world;
- that they were a member of the Security Services, the Secret Intelligence Service or GCHQ, and their conduct was for the purposes of the exercise of any function of those bodies; and
- that they were a member of the media regulator Ofcom (or were employed or engaged by Ofcom or assisted it in the exercise of any of its online safety functions), and their conduct was for the purposes of Ofcom's exercise of any of its online safety functions.

The maximum penalty for the offence would be five years' imprisonment and/or a fine. It would also have extra-territorial jurisdiction, meaning it would be an offence in England and Wales for a British citizen or UK resident to commit the offence overseas.

Grooming as an aggravating factor

The NSPCC defines grooming as a process that "involves the offender building a relationship with a child, and sometimes with their wider family, gaining their trust and a position of power over the child, in preparation for abuse".

An aggravating factor is a feature that increases the seriousness of an offence and justifies increasing the severity of the sentence to be imposed (albeit within the maximum sentence available for the offence in question).

The proposed offence

The courts would be required to apply the statutory aggravating factor when sentencing an adult aged 18 or over for a specified child sex offence, where that offence had been facilitated by or involved the grooming of a child under 18. However, the Bill does not provide a definition of grooming.
In addition, there would be no requirement for the grooming itself to have been sexual and the person groomed would not need to have also been the victim of the offence.

Mandatory reporting

There has been a lot of debate and attempts to introduce this duty into legislation. It is proposed that the Bill would introduce a new statutory duty in England for certain individuals to report child sexual abuse.

The duty to report

Under the provision, a person would be required to make "a notification" to the police and/or a local authority if, in the course of engaging in a "relevant activity" in England, they are given "reason to suspect" that a child sex offence may have been committed at any time.

"Relevant activity" would be defined as:

+ Regulated activity relating to children within the meaning of part 1 of schedule 4 to the Safeguarding Vulnerable Groups Act 2006, which covers roles such as teachers and healthcare professionals; or
+ An activity specified in part 2 of schedule 7 to the Bill, which includes certain positions of trust not covered by the 2006 act.
+ Police Constables

The notification would have to be made "as soon as possible" either orally or in writing.

The duty would only arise where a person engaging in a relevant activity has "reason to suspect" a child sex offence has been committed. A person (P) would be given "reason to suspect" in the following circumstances (and no others):

+ where P witnesses conduct constituting a child sex offence (including by seeing a still or moving image or hearing an audio recording); or
+ where a child or a suspected perpetrator communicates something to P that would cause a reasonable person engaging in the same relevant activity as P to suspect that a child sex offence may have been committed.

It is important to note that observing recognised indicators of child sexual abuse but not otherwise witnessing or receiving information about a child sex offence does not give rise to a "reason to suspect" and therefore does not trigger the duty to report.

The Bill also proposes implementing the ability to delay reporting for an initial seven-day period from when the reason to suspect arises where the person reasonably believed that making a notification would "give rise to a risk to the life or safety of a relevant child".

Exceptions to the duty

The duty to report would be subject to three exceptions. A person would not have a duty to report if:

- their suspicion related to consensual sexual activity between children aged 13 to 17 and they were satisfied that making a report "would not be appropriate; taking into account the circumstances and risk of harm to those involved";
- their suspicion resulted from a disclosure by a child that they may have committed a child sex offence (provided the others involved in the potential offence were aged 13 or over); or
- the duty would not apply to a person providing a service or description of service specified in regulations made by the Secretary of State.

Sanctions of failing to report

The Bill proposes to make it a criminal offence for a person who knows that someone is under a duty to report to "engage in any conduct with the intention of preventing or deterring that person from complying with that duty". However, it would be a defence for a person charged with this offence to show that their conduct only amounted to making representations about the timing of a notification "in light of the best interests" of the child involved.

The maximum sentence would be seven years' imprisonment and/or a fine.

Rather interestingly, the Bill does not include a criminal offence of failing to report. Instead, the Bill would amend the Safeguarding Vulnerable Groups Act 2006 so that "failing to comply with the duty to report is a behaviour that should be considered relevant for considering inclusion on the children's barred list maintained by the Disclosure and Barring Service".

The government's reasoning is that following a period of consultation it was determined that a significant proportion of people covered by the proposed duty would be "volunteers, giving up their time to support their child's sports team, for example". It did not therefore consider criminal sanctions for a failure to report to be a proportionate response.

The Child Sex Offender Disclosure Scheme ("the Scheme")

The scheme, which is often referred to as 'Sarah's Law' after Sarah Payne, enables parents, guardians and carers to access information about sex offenders who may pose a risk to their children. The Bill proposes to put this scheme on a statutory footing.

We refer you to the article located later in this newsletter that discusses the Scheme in more detail.

Intimate images and voyeurism

There is currently no single criminal offence that covers intimate image abuse. Instead, the Sexual Offences Act 2003 sets out several offences covering different types of image and different types of conduct such as when a person shares (or threatens to share) photographs or films that show, or appear to show, another person in an "intimate state", without the consent of the person depicted and the recording and taking of intimate images without consent, for example by installing or operating equipment to do so.

A new set of offences on sharing (or threatening to share) intimate images was subsequently introduced through sections 188 and 190 of the Online Safety Act 2023.

The intention in this Bill is to introduce "a range of complementary offences to tackle the 'taking or recording' of such images and installing equipment to enable a person to commit a 'taking or recording' offence" by adding new sections to the Sexual Offences Act 2003. New section 66AA would set out three offences of taking or recording an intimate photograph or film:

- An offence of intentionally taking a photograph or recording a film that shows another person in an intimate state, without that person's consent (or a reasonable belief in their consent).
- An offence of intentionally taking a photograph or recording a film that shows another person in an intimate state, without that person's consent and with the intent to cause them alarm, distress or humiliation.
- An offence of intentionally taking a photograph or recording a film that shows another person in an intimate state, without that person's consent (or a reasonable belief in their consent) and for the purpose of obtaining sexual gratification for themselves or another person.

The first of these offences would carry a maximum sentence of six months' imprisonment and/or a fine, while the others would carry a maximum sentence of two years' imprisonment and/or a fine.

Under new section 66AB similar exemptions would apply to these offences as apply to the offences of sharing (or threatening to share) intimate photographs and films set out in sections 66B to 66D of the 2003 act:

- where the image was taken in a public place where the person in the image had no reasonable expectation of privacy and was in an intimate state voluntarily;
- where the image is of a person under 16 who lacks capacity to consent to the taking or recording of the image, and the image was taken or recorded by a healthcare professional acting in that capacity or otherwise in connection with care or treatment by a healthcare professional; and
- where the image is of a child in an intimate state and is "of a kind ordinarily taken or recorded" by family or friends, such as "a family member taking a photograph of a group of toddlers in a paddling pool at a family barbeque".

Exposure

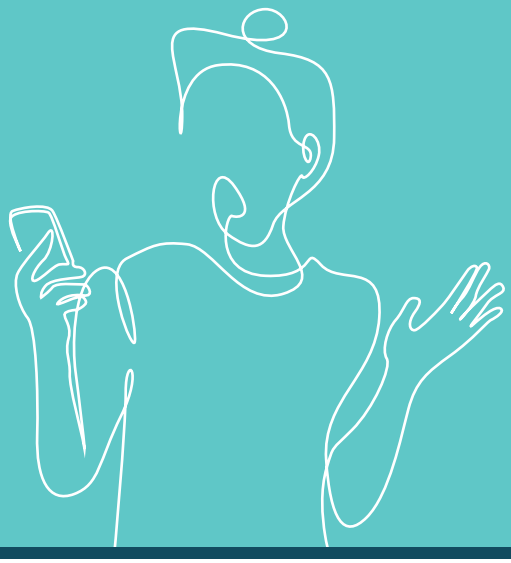
It is an offence for a person to intentionally expose their genitals if they intend that someone will see them and be caused alarm or distress. It is also an offence for a person to send a photograph or film of any person's genitals to another person either:

- with the intention that the other person will see the genitals and be caused alarm, distress or humiliation; or
- for the purpose of obtaining sexual gratification and being reckless as to whether the other person will be caused alarm, distress or humiliation.

The offence is often referred to as 'cyberflashing' and was created as part of the Online Safety Act 2023. The Bill now proposes to amend this so that an offence would be committed either where a person:

- intends that someone will see their genitals and be caused alarm, distress or humiliation; or
- exposes their genitals for the purpose of obtaining sexual gratification, and does so:
  - with the intention that someone will see them; and
  - being reckless as to whether someone who sees them will be caused alarm, distress or humiliation.

A person would not commit an offence under the second bullet (for sexual gratification) if they intend that only a particular person (or persons) will see their genitals, unless they are reckless that that particular person (or at least one those persons) will be caused alarm, distress or humiliation.



Spiking

Spiking refers to the practice of administering a substance to a person without their knowledge or consent. It can be perpetrated in two main ways:

- drink spiking, which involves adding alcohol or drugs to a person's drink with the intention of intoxicating them; and
- needle spiking, which involves injecting a person with drugs or other substances.

Currently, there is no single offence that covers spiking. Instead, a range of more general offences can potentially be used to prosecute perpetrators. The Bill propose a single new offence of administering a harmful substance (including by spiking). The offence would be committed where a person:

- unlawfully administers a harmful substance (defined as "any poison or other destructive or noxious thing") to, or causes a harmful substance to be administered to or taken by, another person; and
- does so with intent to injure, aggrieve or annoy the other person.

The new offence would be triable 'either way', meaning it could be tried in either a magistrates' court or the Crown Court. The maximum penalty in the Crown Court would be ten years' imprisonment and/or a fine.

The DBS barred list

Section 2 of the Safeguarding Vulnerable Groups Act 2006 requires the DBS to maintain a 'barred list' of people who are barred from undertaking "regulated activity relating to children". If a person applies for a role (paid or unpaid) involving regulated activity with children, the recruiting body can apply to the DBS for the highest level of criminal records check (an 'enhanced with barred list' check) to check if the person has been barred.

It is an offence for a person on the barred list to engage in (or to seek or offer to engage in) regulated activity from which they are barred. It is also an offence for a person to use a barred person for regulated activity.

Regulated activity, in broad terms, covers certain roles that involve close contact with children (such as teaching or training children or providing healthcare), or roles in specific places (such as schools or children's homes).

In 2012, the definition of regulated activity was amended to exempt the following roles if they are subject to "day to day supervision" by another person who is engaging in regulated activity relating to children:

- teaching, training or instruction of children;
- care for or supervision of children (other than personal care or healthcare); or
- unpaid work within any of the establishments listed in the Act.

The Bill proposes to remove the 'supervision exemption' outlined above from the definition of regulated activity relating to children. This change would bring supervised roles back within the scope of regulated activity, which would have the following implications:

- organisations would be able to access 'enhanced with barred list' DBS checks for such roles (the highest level of check);
- the roles would be within the scope of the existing offences committed when a person on the barred list engages in (or seeks or offers to engage in) regulated activity from which they are barred; and
- the roles would be within the scope of the proposed new mandatory duty to report.

We would refer you to the article on the vital importance of DBS checks, which provides an example of the need for constant vigilance on the issue.

Management of offenders

The Bill includes measures that would change how people who have committed certain offences will be managed in the community and proposes to strengthen existing notification requirements to enable the police to manage sex offenders effectively in the community.

Sex offender notification requirements are an automatic consequence of a conviction or a caution for a schedule 3 offence under part 2 the Sexual Offences Act 2003. The principle of notification was introduced in 1997 but since then has expanded and increased the range of information that must be supplied to the police. The police record of this information is often referred to as the 'sex offenders register'.

Currently, anyone sentenced to 30 months or longer in prison for a sex offence will be required to be on the sex offenders register indefinitely. Adults sentenced to between six months and 30 months in prison are required to be on the register for 10 years and adults sentenced to under six months are required to be on the register for seven years. The individual is required to notify the police of personal information such as their name, address and bank and credit card details, and to update the police whenever this information changes.

Following media reporting and a Safeguarding Alliance campaign relating to concerns about sex offenders being able to change their name to facilitate reoffending, secondary legislation was passed in August 2022 requiring people released from prison to inform their probation officer or the police if they change their name or contact details.

The Bill would give specific notice periods for informing the police about using a new name (usually seven days prior to beginning to use the name, unless this is not practical). It also proposes to introduce a new process whereby certain people on the sex offenders register will have to apply for permission to access a new identity document in a new name. This applies to passports, immigration documents and driving licenses, and other documents can be added.

The new process would be that people must make a written application for a new name or a new identity document and chief officers may only grant authorisation if certain conditions are met. The first condition is that the chief officer is satisfied that:

- the new name is for marriage, civil partnership or religious reasons; and
- accepting the application will not impact on protecting the public or create a risk.

We will be sure to keep you up to date with any changes and/or further developments in the Bill as it makes its passage through parliament.

Protecting children from child criminal exploitation

What is child criminal exploitation?

As stated earlier in this newsletter, child criminal exploitation is a form of child abuse where a child or young person is forced or coerced to engage in criminal activity or commit any type of crime – but it does not yet have a legal definition, which makes it difficult to protect children from it.

Despite this lack of legal definition, common types of exploitation are what is known as county lines, which is a form of criminal exploitation where highly organised criminal networks persuade, coerce or force children and young people to store or move drugs and money.

Children and young people might also be exposed to, or forced to use, a wide variety of weapons such as knives, firearms and harmful sprays and liquids. They can sometimes be made to store weapons or transport them from one area to another. They may also carry a weapon, such as a knife, because they fear for their own personal safety.

Who are the likely perpetrators of child criminal exploitation?

Organised crime networks or groups ("OCGs") are often made up of 'professional' criminals, are well-funded, and can operate at a national or international level to carry out serious criminal activity. Children and young people can be exploited by OCGs when, for example as part of county lines exploitation, OCGs use children and young people to maximise profits and distance themselves from the criminal act of physically dealing drugs.

'Gangs' usually operate on a much smaller scale to OCGs and within a local area. However, it should be kept in mind that not all people who carry out child criminal exploitation are linked to organised crime groups or gangs. Perpetrators can also be individuals who exploit children or adults within their families or communities.

What is the impact of child criminal exploitation?

Child criminal exploitation can involve various types of harm. As well as being exposed to danger, threats and violence, children may experience long-term harms impacting their wellbeing, their futures and the way they interact with services. As well as experiencing abuse and violence, they may also be coerced or forced to physically harm or attack other children or young people.

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Sexual abuse and exploitation

Child sexual abuse can often occur alongside child criminal exploitation through:

- being forced into sexual activity with their exploiter or for the exploiter's financial gain;
- being made to work off drug debts through sexual exploitation as 'payment'; or
- being groomed into what they believe is a romantic relationship which then leads to exploitation.

Mental health problems and trauma

Children and young people may develop mental health problems or experience a worsening of them as a result of exploitation. The criminal activity children are forced to carry out can be distressing. It may also result in distressing or traumatic encounters with services, such as the police. Children and young people may experience being seen and treated as criminals if the professionals working with them don't understand that child criminal exploitation is a form of abuse. This can then lead to a mistrust in services that could support and protect them.

Who is vulnerable to child criminal exploitation and how can we recognise it?

It is important to keep in mind that any child from any background can potentially be at risk of criminal exploitation. However, there are factors in a child's life that may increase their vulnerability to exploitation. These factors include:

- experience of neglect, physical and/or sexual abuse;
- a lack of a safe and stable home environment including homelessness or insecure accommodation status;
- social isolation or social difficulties;
- feeling that they are marginalised by society;
- experience of economic vulnerability or poverty;
- connections with other people involved in gangs;
- having a physical or learning disability;
- experiencing mental health problems;
- having problems with substance use;
- being in care or having a history of being in care;
- being excluded from mainstream education; or
- having contact with the criminal justice system.

It therefore follows that the key places where vulnerable young people are targeted and approached are:

- schools and further and higher educational institutions;
- special educational needs schools;
- places for alternative provision outside of mainstream education;
- foster homes; and
- homeless shelters.

Online platforms can also be used by perpetrators of child criminal exploitation to groom, coerce, threaten and manipulate children and young people into becoming involved in criminal activity. This can happen in a number of different ways:

- using social media platforms to glamorise, promote or normalise 'gang life' or criminal activity;
- legitimate-looking job adverts shared to manipulate children into engaging;
- through gaming platforms where electro-currencies, credits, and rewards are used to groom children; and
- technology and social media platforms used to monitor where a child is and what they are doing – this can keep them trapped in exploitation.

The following signs may indicate that a child is experiencing child criminal exploitation:

- frequently going missing from school, home or care;
- travelling to locations, or being found in areas they have no obvious connections with;
- unwillingness to explain their whereabouts;
- acquiring money, clothes, accessories or mobile phones which they seem unable to account for;
- receiving excessive texts or phone calls at all hours of the day;
- having multiple mobile phone handsets or sim cards;
- appearing anxious or secretive about their online activities and receiving or sending money, gifts or gaming currency to someone online;
- withdrawing or having sudden changes in personality, behaviour or the language they use;
- having relationships with controlling or older individuals and groups;
- unexplained injuries;
- carrying weapons;
- significant decline in school results or performance; and
- self-harming or having significant changes in mental health.

Prevention

Schools and education

Schools and colleges can help raise awareness of child criminal exploitation. This can be done through assemblies, class discussions or smaller group work. As well as discussing what child criminal exploitation is and the process of how child criminal exploitation can occur, schools should ensure children know who they can talk to if they have any concerns. Schools are also well placed to identify any children who may be at risk of child criminal exploitation.

Working with parents and carers

Engaging with parents and carers can help protect children and young people who are at risk of criminal exploitation. It's important for services working with children at risk of child criminal exploitation to understand what barriers might be in place for parents and carers. These might include fears around:

+ feeling blamed or judged for what is happening to their child;
+ not being taken seriously by services when they report concerns;
+ their child being criminalised by agencies rather than supported;
+ their child being excluded from school; and
+ recriminations from the perpetrators of child criminal exploitation.

Responding to concerns about child criminal exploitation

If you're worried that a child or young person might be or is at risk of experiencing child criminal exploitation, you must share your concerns. If you think a child is in immediate danger, contact the police on 999. If you're worried about a child but they are not in immediate danger, you should share your concerns by:

+ following your organisational child protection procedures;
+ contacting the local child protection services; or
+ contacting the police.

The Child Sex Offender Disclosure Scheme

The Child Sex Offender Disclosure Scheme ("the scheme") is often known as Sarah's Law after Sarah Payne. The aim of the scheme is to provide parents, guardians, and carers with information that will enable them to better safeguard their children's safety and welfare by empowering members of the public with the opportunity to ask about the history of a person who has access to their child.

What is the Child Sex Offender Disclosure Scheme?

The scheme builds on existing law and procedures to provide a clear access route for the public to raise child protection concerns. It recognises two procedures for disclosing information:

1 "Right to Ask" -

triggered by a member of the public applying to the police for a Disclosure

2 "Right to Know" -

triggered by the police making a proactive decision to protect a potential victim and takes the following route.

Right to ask

- **Initial contact made**
  Direct information received
- **Step 1**
  Initial Contact checks
  Completed within 24 hours from initial contact made
- **Step 2**
  Face-to-Face meeting
  Completed within 10 days from initial contact
- **Step 3**
  Full Risk-assessment
  Completed within 28 days from initial contact

Right to know

- **Initial contact made**
  Direct information received
- **Intelligence checks made**
  Completed within 28 days from indirect information received

Referral to local multi-agency forum occurs no later than 28 days from either step 3 - full risk-assessment (Right to Ask) or intelligence checks made (Right to Know)

The scheme focuses on disclosure and risk-management where the subject is identified as being convicted (including cautions, reprimands, and final warnings) of child sexual offences.

Initial checks should be made within 24 hours to assess whether there is an immediate or imminent risk of harm to the child or children named in the application. The police should then aim to complete the follow-up contact within 10 days, although there may be extenuating circumstances that increase this timetable.

The Process

Anyone is able to make an application about a person (subject) who has some form of contact with a named child or children. This could include any third party, such as a grandparent, neighbour, or friend.

In the event that a subject has convictions for sexual offences against children, poses a risk of causing harm to the child concerned, and disclosure is necessary to protect the child and is a proportionate response to manage that risk, there is a presumption that this information will be disclosed. However, it is important to note that any disclosure will only be made to the person best placed to protect the child and this may not necessarily be the individual that made the application.

Subjects who do not have convictions for sexual offences against children but may still pose a safeguarding risk to the named child or children could include (but are not limited to):

- persons who are convicted of other offences, for example serious domestic violence or child cruelty/neglect; and
- persons who have not been convicted but on whom the police or any other agency holds intelligence or other information indicating that they pose a risk of harm to children.

While information that is not a conviction for a child sexual offence is not covered by the presumption to disclose as set out within Section 327A of the Criminal Justice Act 2003, disclosures should be considered on a case-by-case basis when such information is held. This is to ensure that appropriate action is taken to protect children wherever possible.

Categorising a "concern" or "no concern"

The application will be one raising "concerns" where:

- the subject has convictions for child sexual offences as listed under Schedule 34A to the Criminal Justice Act 2003;
- the subject has other convictions relevant to safeguarding children (e.g. adult sexual offences, violence, drugs or domestic abuse);
- there is intelligence known about the subject relevant to safeguarding children (e.g. cases not proceeded with or intelligence concerning sexual or violent offences, or previous concerning behaviour towards children); and/or
- there is concerning behaviour relevant to safeguarding children now being displayed by the subject or child that has been disclosed as part of the disclosure application (e.g. grooming or changes in behaviour that indicate sexual harm to children might be likely or sexual harm may have occurred).

There will need to be an identifiable line of risk between the subject and the named child or children to categorise the case as one of "concern". If there is no contact between the subject and the named child, nor is there sufficient likelihood of contact between the subject and the named child in the future, the case may fall into the "no concern" category.

The application will be one raising "no concerns" where:

- the subject has no convictions that raise child safeguarding concerns;
- there is no other intelligence held by police that would indicate that the subject raises child safeguarding concerns; and
- the application has not revealed any concerning behaviour relevant to safeguarding children or the application has not revealed any connection between the subject and the named children that would justify disclosure.

Three-stage disclosure test

The following three-stage test will need to be satisfied before a decision to disclose is made:

1. it is reasonable to conclude that such disclosure is necessary to protect a child from being the victim of a crime;
2. there is a pressing need for such a disclosure; and
3. interfering with the rights of the subject, including their rights under Article 8 of the European Convention on Human Rights, is necessary and proportionate for the prevention of crime.

Disclosures should be limited to only that information that is necessary to protect a child from harm.

Information considered for disclosure may include sensitive, personal data. Therefore, the police must also be satisfied that disclosure is in accordance with the Data Protection Act 2018. Consideration must be given to seeking representations from the subject before a decision is made to disclose, in order to ensure that all of the information necessary to make a properly informed decision is available.

However, there might be occasions when it is not possible or safe to do so. These might include, but will not be limited to, those where involving the subject would:

- risk prejudicing an ongoing or prospective criminal investigation;
- give rise to or increase the risk of harm to children or the applicant;
- give rise to or increase the risk of harm to a new partner;
- risk reinforcing grievance thinking on the part of the subject in a way that would increase the risk presented by them generally;
- mean disclosing information of which the subject is not aware, and informing the subject would risk compromising intelligence sources or putting such sources at risk;
- delay the process where disclosure is necessary to avoid an imminent risk of harm and therefore there is not enough time to seek representations; or
- not be possible as the subject cannot be traced.

What will be disclosed?

A form of specific wording is likely to be authorised for use and recorded on the case management system. The wording must be sufficient to allow the recipient to understand the risks and then be able to use the information to safeguard the child/children. The wording authorised must be no more than is necessary to achieve this aim but must be clear and concise. The disclosure of information should be accompanied by details of how the recipient can and cannot use the disclosure, along with what other support provisions are available.

If a disclosure is to be made, then the person receiving the disclosure will receive the following information:

- the disclosure must only be used for the purpose for which it has been shared i.e. to safeguard the child or children;
- the person to whom the disclosure is to be made will be asked to sign an undertaking that they agree that the information is confidential and they will not disclose the information further;
- legal proceedings could result if this confidentiality is breached, which should be explained to the person before they sign the undertaking; and
- if the person receiving the disclosure believes that further children are at risk and further disclosure is required to safeguard them, they should talk to the police who will then make a decision about whether the information needs to be disclosed to others. It should be explained that the recipient should neither make that decision nor make any further disclosure themselves.

If a person is not willing to sign the undertaking, the police will need to consider if the disclosure should still take place. The outcome should be recorded and considered in the risk assessment and decision-making process. At no time will written correspondence be sent out or left with the applicant or recipient in relation to the disclosure of information, as there would be a potential risk should such written information get into the wrong hands.

If a decision is made not to disclose information, then:

- the applicant should be told that there is no information to disclose to them based on the information provided by the applicant and the result of checks made on that information;
- the applicant should also be told that the lack of information to disclose does not mean there is no risk of harm to the child and the applicant should remain vigilant and report any future concerns;
- the subject will not be notified where there is no disclosure made; and
- a. the case should be finalised by the applicant being provided with a letter covering that there will be no disclosure and given a case reference number.

The Vital Role of Disclosure and Barring Service ("DBS") Checks

The importance of DBS check has been highlighted in the recent case of Rashid Zaman. Mr Zaman is a convicted murderer serving a life sentence. It was found that he had been permitted to work with children and vulnerable young people for a period of nearly two years with a charity as part of a programme focused on rehabilitating ex-offenders, despite being added to the barred list in 2023.

Zaman's initial DBS check in 2021 did not flag any issues, but a subsequent check in March 2023 revealed he was barred from working with children, a status which he was aware of.

The case highlights the significance of conducting thorough and regular checks and serves as an important reminder that a DBS check is only valid on the day it is issued and diligent monitoring is required.

The following lessons can be learnt:

1. DBS checks are not just simply something to be completed at the point of recruitment but should be regularly updated. As part of the service account, when a DBS certificate is added to the system, DBS will make regular services to see if new information has come to light since it was issued. The frequency will depend on the level and type of certificate, but barring information will be searched for on a weekly basis.

2. Implement and maintain robust processes and policies. Mr Zaman was aware of his barred status but failed to notify the charity, which allowed him to continue in his role. He was dismissed when the issue was discovered, but it shows the need for ongoing diligence and should never solely rely on an individual to report any changes.

3. Adopt a multi-agency approach. It is not clear when the charity intended to conduct updated DBS checks given that there is no official expiry date, only a recommendation that they be reviewed every three years. The trigger in this case actually came from a partner organisation requesting confirmation of his status, which identified the issue. This shows the importance of multi-agency sharing, providing an additional layer of protection against this oversight.

4. Transparency and clear reporting systems: once the breach was identified, the charity took swift action. They launched an internal investigation and reported the incident to the relevant authorities. Having a clear, formal process for reporting and escalating safeguarding concerns can help prevent issues from becoming public crises.

5. External oversight: the involvement of the Charity Commission and police in this case highlights the essential role of external oversight in safeguarding practices. When the charity reported the incident, both the Charity Commission and police launched investigations. External oversight provides an additional layer of accountability that can help ensure that organisations are adhering to safeguarding laws and best practices.

6. The need for robust risk assessments: Mr Zaman's case also raises important questions about the role of people with lived experience as perpetrators of crime in working with vulnerable people. Risks should not be taken with the safety of children and adults at risk in order to further the mission of a charity or contribute to an individual's rehabilitation.

The case of Mr Zaman is a stark reminder of the need for regular DBS checks. It also highlights the value of multi-agency collaboration and information sharing and the checks and balances that they provide.

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