



Appendix H3

Report of a consultation seminar for Parliamentarians

18 May 1999

Methodist Central Hall, Westminster



Introduction

Betty Moxon opened the seminar by explaining the work of the Sex Offences Review, and in particular its terms of reference, scope, and what it hoped to achieve. She welcomed the positive input of Members of both Houses to the review. This seminar demonstrated the importance that policy advisers placed on involving Parliamentarians at an early stage of the consultation process.

Discussion Groups:

The meeting divided into discussion groups to consider the four topics of equality, protecting children, rape and sexual assault and sexual exploitation. Paul Boateng MP, Minister of State at the Home Office, joined them in some of the discussion. The discussion in each group focussed on a set list of key questions. Points arising from discussions are outlined below. Where more than one group was involved in discussions on a particular topic, the points of the second group are bulleted *.

Group A – Equality:

1. What are the problems in the current law?

- The marked inequality of treatment between homosexual and heterosexual sex. There ought to be one legal position. The focus of the law should be on protection – the criminal law should not interfere in the sexual behaviour of consenting adults.

2. Should any of the new sex offences be gender neutral, or is there an argument for having different offences for boys and girls, men and women?

- There would have to be very exceptional differences. Rape might need to be extended to include other forms of penetration, and some argued that there might be a need to distinguish between male and female rape. Article 14 of the ECHR was a reminder that a good reason is needed for such distinctions.

3. How far should the criminal law enter the private life of adults?

- Not at all. The criminal law did not have a role in the private lives of adults, unless there was abuse or exploitation, although there could be an exception for vulnerable adults. The issue of consenting to personal violence, i.e. sado-masochism, was mentioned.

4. When does affectionate behaviour in public cross the line into sexual behaviour?

- Offensive behaviour should be outlawed, probably by use of Public Order Act offences. It was difficult to give absolute definitions – individual members of the public could be offended by fairly innocuous behaviour such as two men kissing in public. The consensus was that sexual behaviour in public should be treated in the same way whether it was heterosexual or homosexual behaviour. It was pointed out that relying on offending others would set differential standards across the country, and that had problems so far as equality before the law was concerned.

5. How should the law treat sexual behaviour in public places that causes nuisance or offence?

- The minority has to respect the rights of the majority not to see sexual activity. Public order offences might be used, but there should be equality of treatment regardless of whether it was heterosexual or homosexual behaviour.

Group B – Protecting Children:

1. What are the problems with the current law – does the present law on incest protect children adequately?

- The law on incest only relates to blood relatives, but the review should look at the ‘wider’ family to include step-parents, step-siblings, etc. In the Commons debates Members had expressed the desire to widen the ‘abuse of trust’ provisions to step-relatives and others such as uncles. Incest though, was a ‘loaded’ and emotive term, and it may be better to define an offence which involved sexual activity within the family unit. Abuse of trust was not comparable to a teacher or social worker when there was a family relationship (irrespective of blood ties) – there was a need to define the relationship of trust within families. In Scotland the law on incest already included step-parents.
- The current law does not protect children adequately.
- There was some uncertainty about whether the criminal law should extend to incestuous behaviour between consenting adults. Did society disapprove because of the potential damage to the gene pool? Would this influence who would be able to marry? Scientific evidence about the potential effects of incestuous relationships on the progeny of blood relatives might be needed.
- This raised the question of whether there should be differential treatment for blood and non-blood sexual relationships when both took place within family units. The consensus was that one group should not be treated any more leniently because incest was often a form of abuse.
- * Incest described a power relationship such as that of a father over his child, and was definitely still needed.

2. Given the Government’s commitment to not reducing the age of consent below 16, should there be a lower age threshold below which the law should treat an offence as being particularly serious or should a large age gap be regarded as particularly serious (or both)?

- There was some discussion over whether there should be a 5 year or 10 year age gap for ‘consensual’ relationships, but the consensus was that a 10 year age gap would not be acceptable.
- * There was a suggestion that any age gap should widen with age, protecting those aged 16-18 for example from much older partners. Age, development and context would have to be considered in drawing a distinction between cases (which would need to be heard soon after the offence).
- * More serious crimes would involve a pre-pubertal child or a mentally impaired child. The distinction in the current law was at the age of 13, but this did not necessarily make underage sex with a child over that age any more acceptable. Penalties should be sufficient to allow the most serious abuse of young children to be appropriately punished.
- * Abuse of trust was an additional harmful factor in sexual offences against children.



3. Should we consider any intercourse with an under-age child statutory rape?

- Some legal practitioners would argue for statutory rape. If a 15 year old boy had sexual intercourse with a 14 year old girl the offence would have been committed, but would probably not get to court on the grounds that it was not in the public interest to prosecute. The law at present was still weighted against protection. The offence of unlawful sexual intercourse could still be used, but as a girl approached her 16th birthday there was more likelihood that the activity was consensual. The consent issue should be determined and shown as an element in sentencing, but it was apparent that rapists were 'getting off' on the lesser charge of unlawful sexual intercourse because the prosecution did not want to pursue issues of consent.
- In the USA statutory rape was seen as different to normal rape, although either could be aggravated. Statutory rape should be a lesser charge, and where there was a clear case of rape it should be charged as such.
- * No, the conviction would remain despite the context and would make the law a nonsense to both parties. Clarity was needed – consensual sexual activity by a 15 year old was different to a coercive act.

4. How should the law apply when both parties are under the age of 16?

- There was a difference of opinion relating to public policy. Where both are consenting 15 year olds there seems to be no advantage in criminalising, but there must be a means of catching the 13 year old rapist. There was a need to look at other processes where underaged children were involved – the criminal justice system may not be in the best interests of the children.
- The criminal law was less appropriate when children were involved, and the review should specifically address this problem. However, statutory rape or an equivalent should apply to an adult having sex with a vulnerable child.
- * The issue was really one of child protection. The Scottish system used child welfare alongside the legal system.
- * Age was not the only relevant factor, disparity in development should be considered. This may be an issue for guidance rather than the criminal justice system. Clarity was needed – the age of consent of 16 was helpful, but guidance was required for activity below that age.

5. Should there be a defence that would enable an older person to claim a lack of knowledge of the age of a child?

- It would be offensive to most lawyers to withdraw a statutory defence. The onus could be placed on the defendant to put forward an argument and allow the jury to decide. Others thought that the 'young man's defence' was not reasonable.
- * Others questioned whether such a defence should be available. The older person should have the responsibility to check the age of the younger partner. The seeking as well as obtaining of consent should also include checking the age of the person – this would show reasonable care had been taken and could form the basis of a defence.

Group C – Rape & Sexual Assault

1. What problems are there in the present law?

- Inconsistent and divergent sentencing across the country. The relatively high minimum penalty may make juries reluctant to convict. This could be overcome by having two degrees of rape – ‘stranger’ rape and ‘acquaintance’ rape. As a defence, honest belief in consent made it difficult to prosecute.
- * It was difficult to see the distinction between rape and indecent assault, as some indecent assaults could be just as traumatic as rape. The seriousness of rape had to be maintained. Indecent assault could be subdivided with higher penalties for the more serious category.

2. Should the definition of rape be extended to other kinds of penetration?

- Oral penetration was not included in the current definition of rape, but some people believe that rape should be confined to the act which can lead to the risk of conceiving a child, with everything else regarded as a form of indecent assault. There may need to be a different kind of offence for penetration with objects.
- Although it was recognised that concentrating on these elements (rape with risk of conception and penetration with objects) would cover neither anal penile penetration nor oral penetration.
- * Other forms of penetration could be as traumatic as rape. We should maintain the present law of rape, but have a two-tiered offence of indecent assault. (The law should also remove mistake of fact in rape and deal with it under a general offence.)

3. Should the concept of consent to sexual intercourse be strengthened to an agreement between partners?

- The word agreement could be used – it had an accepted meaning in contract law.
- * Some thought that agreement was not necessarily better than consent. By changing the terminology there was a risk of devaluing the offence. It was not clear that the word consent denoted submission.

4. Should there be different degrees of sexual assault?

- What might be required would be an offence between indecent assault and rape, e.g. an aggravated indecent assault.
- * ‘Aggravated’ indecent assault might include factors such as abuse of trust, use of a weapon, threat and coercion. The offence of giving drugs to a woman for the purposes of having sexual intercourse with her ought to be made gender neutral.

5. How should the law treat indecent exposure?

- There was some discussion as to whether indecent exposure and other offensive acts (stripograms in inappropriate places) should be included as an indecent assault or a public order offence; but no firm conclusions were drawn.
- Some other offensive behaviour such as ‘peeping’ was not within the scope of the current law. Both this and indecent exposure could be treated in the way that stalking had been under the Prevention from Harassment Act.



- * Indecent exposure should be gender neutral and an arrestable offence, although there may be a need to distinguish between individuals meaning to offend and high spirits (e.g. coach-load of rugby players mooning). There may need to be a new offence of 'sexual nuisance' which might be used for streakers where there would be difficulty in deciding whether the intention of the act was to cause offence. This should be a summary offence, but there would need to be very strong public policy grounds to create such an offence.
- * Consensual sexual intercourse between underage children should not be regarded as rape. It was also felt that use of the term assault was inappropriate in respect of consensual sex involving underage children.

Group D – Sexual Exploitation:

1. What problems are there in the present law?

- The law included pimping and coercion, etc., but did not deal effectively with the common pimping relationship which was a boyfriend exploiting his girlfriend, rather than a pimp using or controlling a number of women. Often the activity was drugs related.

2. How seriously should the law deal with pimping and procuring?

- The current legislation did not order the man/pimp to keep away from the girl. There was a possibility of using something like an antisocial behaviour order to break the pattern of procuring women for men – but, there was a conflict when a man was in a genuine loving relationship with a prostitute. It was very difficult to differentiate between a coercive and consensual relationship between a prostitute and her partner.
- The current legislation made it very difficult to find a way to prove that a person was pimping without the help of the prostitute.
- Pimping was often linked with other violent offences or criminal activity and often the easiest route for prosecution was 'living off the earnings of a prostitute'.

3. Should there be different offences for exploiting children and adults or simply different penalties?

- This was seen as an issue of child protection. Prevention was probably better than cure, but there was a need to make pimping, particularly of the young, criminally culpable.

4. Should there be a specific offence of trafficking people for the purposes of sexual exploitation into the UK?

- There was a need to define the exploitation involved. Where non-consensual prostitution was involved, it should be an offence.

5. Should the law assume that a man living with a prostitute is living off her earnings and should this continue to be an offence?

- No firm conclusions were drawn.

Closing Session:

All those present appreciated the opportunity to consider the issues and contribute to the review. They would like to be kept in touch with the work of the review, and to know about the emerging findings later in the year.

The Chair thanked Tim Sanders of the Special Conferences Unit for making all the arrangements for the seminar, and also the ‘shepherds’, David Cheesman, Gerry Ranson and Kevin Burt, all loaned from the Sentencing & Offences Unit of the Home Office.

Chair:

Betty Moxon (Sex Offences Review, Home Office)

Facilitators:

Equality – Shami Chakrabarti (Legal Adviser’s Branch, Home Office)

Protecting Children – Bruce Clark (NSPCC)

Rape & Sexual Assault – Betty Moxon

Sexual Exploitation – Debby Grice (Sentencing & Offences Unit, Home Office)





Appendix H4

Report of a consultation conference on sex offences against children

28-29 June 1999

Stakis Hotel, York



Introduction

Betty Moxon welcomed all those attending, and described the work of the Sex Offences Review: in particular its terms of reference, scope, what members of the review hoped to achieve, and how the delegates could provide a positive input to the review. It was important to recognise concerns that the law at present was not meeting the needs of children and other vulnerable people. The conference provided a rare opportunity to tackle a difficult and demanding area of the law. It was hoped that delegates would feel able to contribute their views in a full, frank and open way.

Please note that the report on the speech as given below is not a verbatim transcript.

Valerie Howarth – Protecting our Children

The conference is lucky to have a huge wealth of experience represented in the delegates attending. For those of us who are not experts, we try to develop the instinct of when to talk to the technicians, when a child should take centre stage in the criminal justice system. What I hear discussed rings many bells – experiences shared down the years. I think that it is a privilege to bring our knowledge from child witnesses of family abuse and serial offending to help frame offences for the future.

To establish a legal framework we must first look at society. Public attitudes towards child abuse have changed, and have been influenced by the media, but we must continue to listen carefully and think about what we hear. Any law reform must be set in the context of children. Home Office statistics confirm that the current law is not framed properly – it is very much from the point of view of the perpetrator.

ChildLine hears from children and families every week who are bewildered by the criminal justice system. There is a real sense that it lacks common understanding: the phrase most often used is that it does not make sense. Our calls indicate a wide range of abuse which never gets to court. The response is inconsistent; a number of families feel that the CPS fails them by saying that they do not have a case, and charges are not pressed. I have many examples of letters from people saying how the system has failed them. Even if a case comes to trial, remarks by the judiciary can be harmful. Last week's press covered a case where some teenage boys had held and sexually assaulted a girl. The Judge when sentencing commented that this was a game that went wrong – youthful exuberance. The message from the media is almost that it is alright for young women to be groped by young men, and where the victim complains, they are spoilsports.

In 1997/98 ChildLine received 115,146 calls – a first indication that anything was happening. Of these, 9,608 concerned sexual abuse and 2,346 sexual assault. The breakdown within these figures was, for sexual abuse 7,064 girls and 2,544 boys; for sexual assault 1,991 girls and 355 boys. This is proof enough that something needs to be done. The range of offences concerned was huge. Many of the children had been raped. There was a lot of abuse by young people – and of course there were the sordid bits at the bottom end, ritual abuse and sexual contact with animals.

It is interesting to see who those children confided in.

Friend	48%
Mother	22%
Parent	12%
Sister	7%
Social services	2%
Father	2%
Brother	2%
Boyfriend	2%
Someone in authority	1%

Young people are still not believed. Another problem was that boys were more likely to endure abusive situations for far longer than girls before telling somebody – over five years on average. They are now telling of such abuse sooner.

Of the perpetrators who abuse, there is still a huge block of abuse by fathers. This brings us into the technical arguments of framing offences. I had a letter from a daughter who had been sexually abused by her father for ten years from the age of three. Her father was eventually charged with incest, not rape (considered less harmful behaviour) and was convicted and sentenced to four year's imprisonment, of which he served two. He did not undertake any therapy. The girl feels that her childhood was stolen and that the legal process has failed her. Her father is back in the community after two years and his life is intact. This is one of a sheaf of letters – it is a strange outcome when the father is guilty yet the child's consent is implied. I hold the view that any intercourse with a child is statutory rape – adults have the responsibility not to sexually abuse children. There should never be a defence that a person was 'led on' by a child. An adult should not engage in sexual activity with a child even if that child is a mature and knowing 15 year old. We should get rid of the bargaining which accepts that incest does not mean rape.

Changes to drop specimen charges would help, but I would like to see the implementation of Piggot. I hear all the time that there is a lack of understanding of the criminal justice process. Society expects sex offenders to be prosecuted and sent through the criminal justice system – if not, affected children are doomed. The work on indeterminate sentences for dangerous psychopaths is interesting. Developing risk assessment may confirm that some offenders are so dangerous they need to be kept away from the community for the security of society.

We could have a long and involved discussion about children in prostitution. Why not decriminalise them? There needs to be a different way of framing offences around them. I have some experience of the complex issues faced by children and young women in the sex industry. A customer may beat a child prostitute but not be charged because she has withdrawn a previous complaint and her plight fails to provoke sympathy. A child prostitute may be subject to physical or sexual abuse from her pimp, and feel desperate, terrified – yet not report it because she is afraid he will kill her. Barnardo's work with children in prostitution shows that children are not hardened prostitutes. They often depend on their pimps and regard them as boyfriends, although on the telephone they might express serious doubts and wish to escape from their situation. Social and legal policy needs to give careful thought to this – the sex industry is very difficult to get out of. Users create demand. Where they use child prostitutes they are child abusers, and perhaps we should find a way of framing the law to reflect that.

Children also abuse each other. Our records up to the end of March 1998 show over 1,000 calls about this. The public response to this is inconsistent – they find it hard to conceive that offenders can be so young, and think that assaults carried out by them are not as serious as an assault carried out by an adult. My view is that such perpetrators need early assessment and treatment, but the climate is that all abusers should be punished. Often young abusers have themselves been abused. What they need is a system of punishment and treatment, and any sentence should include treatment. Eileen Vizard champions this move, to prevent the young growing into hardened abusers.

In this half hour I have only been able to give a very broad brush assessment before our discussions. The review of sex offences provides an opportunity to frame sex offences in such a way that children no longer feel betrayed by the criminal justice system.

General Discussion:

In discussion the following points were raised:



- The perception is that the criminal justice system is fairer to the defendant. The concern is that reform of the criminal law would only be ‘tinkering at the edges’ when the criminal justice system itself needed fundamental reform. Victims feel abandoned. It was recognised that the criminal justice system needed a huge amount of work to improve it – it was a little like getting a supertanker to change course. A lot of work has already been carried out – Pigot, Speaking Out for Justice and changes in court to make it easier for witnesses to give evidence, but we are not there yet. The task of the review is to look at the substantive law.
- The criminal justice system should continue to work towards improvement during the time that the any changes are being made to the substantive law. Young people feel that they are being placed on trial, especially in sexual assault cases. Current court procedures are too intrusive, even to the extent of having members of the public listen to the most intimate details.
- Although the review itself is not looking at evidential issues, there is a perception that the CPS will not accept the evidence of children. The CPS has to weigh up the facts to determine whether a case has a chance of proving the offence to a jury beyond reasonable doubt. Prosecutors have great difficulties where the complainant is young – the court process can be difficult for adults, let alone children. If the process is to be so traumatic that it is detrimental to the well-being of the child, is there any point in proceeding?
- Paediatricians have pointed out the health consequences of abuse. There are also issues surrounding the impact on families – some children choose not to tell if they think that it is likely to break their family up, or this can be used as a threat to keep them quiet. One focus of the criminal law is the importance of expressing society’s abhorrence.
- There is concern about the entry of child sex offenders on to the Sex Offenders Register, which contributed to the demonising of child offenders. Therapy should be used more widely.
- Current sentences for sex offences include a life sentence. Investigators often find it difficult to get sex offenders to admit to anything. Although it is claimed that the court process is bad for children, but some children may benefit from the feeling of empowerment. Sex offenders are aware of the reluctance to put children through the court process and remain silent – if it is not that damaging, push the boundaries and let cases run. Comments on procedural evidence provides a focus that it is important that the law needs to be made as simple as possible.
- There are changing attitudes about the role of women as sexual abusers. At first it was thought that women could not do such awful things to children, but as more cases come to light the public realises that women can and do.

There were two sets of questions for discussion in each session. Groups A & C considered the first set, and Groups B & D the second.

Discussion One

(Question Set One)

1. What are the problems with the present law?

Group A

There was concern that there was not enough skill at evidence gathering. There are difficulties relating to unlawful sexual intercourse (usi) between peers. Adults should always be held responsible for sexual activity with children in the criminal law. The law needed to be simple with clear framing of offences. Standard offences could have exhaustive lists of aggravating features. Consensual sex is happening between children below the age of consent, and the law should recognise this by retaining the discretionary element of prosecution. There is also evidence that boys abuse by women are more traumatised – this is not reflected in the law (research carried out in the State of New York showed that a high percentage of prisoners on death row had been abused by their mothers).

Group C

The current problems included the criminalisation of children in prostitution and the arbitrary age limits. There were also concerns that many cases were not prosecuted, and that where they were, the offender would often be charged with the lowest offence (e.g. usi rather than rape). Offences were so broad and so ‘old’ that they did not reflect current attitudes towards children. There were anomalies between usi and indecent assault in terms of sentencing. Offenders did not want to admit to serious sexual crimes. The nature of the punishment needed to be reconsidered – should it change from imprisonment to the use of hospital orders and treatment programmes? There seemed to be an inability to keep in custody those that needed to be kept in to protect society with a lack of post-sentence provision – e.g. an order to say that the offender cannot live in the vicinity of the victim.

2. Is there any justification for having different offences against boys and girls?**Group A**

No.

Group C

No. The experience of many working with victims was that boys did not admit to abuse. This was partly because fewer people expected boys to be victims, and the fact that abuse could cause a lot of confusion about sexuality, etc.

3. Is there an age below 16 where the law should treat an offence as being particularly serious? And if so what is it?**Group A**

All adolescents are vulnerable and there was concern about children with learning difficulties. There needed to be a line below which a child could not give informed consent. The group was uncomfortable with the notion of setting an absolute lower limit under 16 – they wanted to retain some discretion for prosecutors. An offence could be treated as less serious if there was an age gap of two years or less, and the activity was freely consenting.

Group C

The change to a lesser degree of severity between the ages of 13 and 16 reflected questions about adolescence, with some expressing the view that this was the time when children required more protection. There were also concerns about power relationships, e.g. age, the young man’s defence, and vulnerable adults. The Group suggested an aggravated offence where the seriousness of the offence increases to reflect the age or vulnerability of the victim, or where an abuse of power had taken place. This would need a series of definitions in statute and codes for the judiciary. They would need to take account of the circumstances of each case, especially concern about adolescents who were being harassed; date rape; and peer pressure in institutional settings.

**(Question Set Two)****1. Should the law recognise difference in ages so that peer activity is regarded as less serious than seduction by an older person?*****Group B***

Age is only one differential to be considered. There has been a huge drop in reporting under-age sexual activity. If both parties were under the age of 16 and one set of parents complained then the criminal culpability would only be on one party and not the other. Should consensual sex between children be criminalised? Is it in the public interest? The question was whether these children could give informed consent. We know that the activity exists – the Teenage Pregnancy report confirms it. Most children do not know what the current law is. Most of the group felt that a two-year age gap might be acceptable and there should be no prosecution if both parties were freely consenting. Other factors which needed to be considered were the level of learning disability, if any, with effect on capacity to consent.

Group D

The majority of the group felt that the age limit should be up to the age of 14, but we were reminded by our colleague from the Home Office that we needed a good reason for changing the existing age limit. We did not find an overwhelming reason in the course of our discussions. When the complainant was below the age of 13 we did not feel that the law should consider peer sexual activity as less serious than seduction by an older person.

2. How should the law take account of any age differentials between a child and the person who has sex with them? If so what should they be?***Group B***

Taking the two year age differential there would be no criminalisation of consensual activity between a 17 year old and a 15 year old. The review should recommend guidance to be given in the law as to what is 'consent'. Rape cases are often lost in the courts on the consent point, and this is even more difficult in cases involving children.

Group D

When complainants were under the age of 13 we felt that, on the evidence, they were not emotionally mature enough to deal with the consequence of sex and that the law should recognise this. We also felt that there must always be considerable ambiguity about whether a child had given true consent when aged under 13. In the light of this and in an effort to move away from the term 'unlawful sexual intercourse', which we felt carries connotations that the complainant did indeed consent, we favoured the creation of an offence of statutory rape of a child under the age of 13.

3. Should we consider any intercourse with an under-age child statutory rape – i.e. that consent is immaterial?***Group B***

Personal views expressed on this issue were that it should be considered as statutory rape, with the proviso of the age difference discussed above. There would need to be a clear distinction in the law between rape and statutory rape, with simple, straight-forward categories to clarify the issues to the public. There were suggestions of one offence (similar to the US) of unlawful sexual assault. Under-age sex would be a strict liability offence with the possibility of grading.

There was some discussion about malicious allegations, e.g. a girl falling out with her boyfriend. Rape as a word carried a certain stigma and there was thought that a definition other than statutory rape could be used. Consent should be immaterial in these cases.

Group D

For those aged 13 and over we wished to abolish the young man's defence. Where the complainant was 13 and above we would ideally have liked to introduce a defence available to a person under the age of 18 that the sexual act took place with the consent of the complainant. However, recognising that this would change the age of consent we concluded that the police should continue to operate their discretion not to prosecute in some cases and that a recognition of the nature of the relationship between the parties should be included as a mitigating factor in sentencing guidelines, where relevant.

General Discussion:

In discussion, the following points were raised:

- There should be an offence of sexual abuse of a child. This would give a clear message that children were off-limits to sexual activity, particularly by adults. Adolescents in particular were very confused about sexual issues and could easily be manipulated into saying yes. The responsibility had to lay with the adult.
- It was difficult to tell whether sexual activity between children was consensual or not. The message of the Teenage Pregnancy report was that most early sexual experience was not willing but grudging or forced. This implies that we should retain the age of consent in the criminal law. There was also a need for more public education so that young people had respect for themselves and the sexual autonomy of themselves and others.

Discussion Two**(Question Set One)**

1. Should children who offend against other children be required to register with the police, or be regarded as Schedule One Offenders.

Group A

Many members thought that the registration of children was not useful, with comments that the police themselves do not want mandatory registration. Because of the wide range of offences there should be discretion. It could be dealt with as a child protection issue. Schedule One lasted for life, and impacts on people wanting to work with children in later life. It is a crude and blunt instrument which should be replaced with a 'record of relevant offences against children'. Registration or the use of Schedule One should only be used where there was considered to be a risk of reoffending and to deal with those children who can be dangerous..

Group B

The consensus of the group was that there should be some discretion as to whether or not a child who committed a sex offence against another child should be registered with the police, taking into account all the circumstances of the offence. There were obviously individuals who would need to be registered or regarded as Schedule One Offenders because they represented a real danger to other children.

2. Where offences are defined by age should there be a 'mistake of fact' defence available?

Group A

The law should be tightened up to equate with alcohol offences. The present definition is too lax. The 'young man's defence' was originally intended to make the point that sexual activity between persons of a similar age was regarded as less serious. We should remove the defence of a mistake of fact or bring the age down from 24. Some felt that the onus should be on the defendant to prove the mistake of fact.

**Group B**

The existing defence proved a real hindrance to successful prosecution and the age limit that it was available to was too wide.

3. How should the law treat consensual under-age activity when both partners are under 16?**Group A**

The age of consent was set to protect children from adults. There was no overall agreement to this discussion. It was thought that the introduction of some form of age differential could also cause problems, and this could not be made available if there were any aggravating features to the offence.

Concern was based on having a law which is only rarely used. Questions were asked whether this then weakens the whole aim of sexual education if you say that the age of consent is 16, but that you won't be punished if you ignore this.

Group B

There was some discussion about the rights of third parties such as parents from interfering with the private lives of children, but most people felt that it was important to maintain the age of consent. The worrying factor was the potential for criminalising young people when the activity was 'consensual'. Ideally the aim should be to deter children being involved in sexual activity, but there should be a way other than the criminal justice route for doing so. Members thought that it would be better to use some form of diversion but there was no consensus as to what this might be.

(Question Set Two)**1. Should the law make specific provision for sexually exploiting and pimping children?****Group C**

The law should prosecute the men as abusers and recognise that the child is being abused. There is a need to remove the pimp because the child is often too frightened to say anything. Pimps of children are less likely to be prosecuted than pimps of adults. Pimping a child should be an aggravating feature of the offence and this should be reflected in sentencing. Pimps themselves may not actually have sex with the child, therefore there is a need to clarify the offences.

We considered whether the burden of proof should be reversed to place the onus on the defendant in a case where a girl lives with a pimp, and this was strongly supported by the group.

The group was concerned about the requirement for disclosure of files on children under the care of the social services. This often means that children are not considered to be good witnesses and the CPS will not proceed with a prosecution. We also need to look at the procedural rules, especially to ensure that the information given to the defendant will not be used to fuel their paedophile tendencies. There also appears to be a lot more organised abuse (e.g. through information technology) and new challenges, e.g. encryption.

We wondered if there were other ways to tackle child prostitution, e.g. civil injunction, or through family circumstances and child protection. 'Users' should be charged under the child sexual abuse offence, previously suggested, but this would be an aggravating factor. We could widen offences, similar to the way drug trafficking offences have been. We would need to consider what evidence would be required. Use of the terminology 'prostitution' is wrong when it relates to children – it is abuse of children.

There should be an assumption that sexual exploitation is depraving and corrupting, but not a provable part of the offence. The group was also concerned about parental involvement, or lack of it.

Group D

The law should make special provision for sexually exploiting and pimping children. A child should be defined as under 18. The offence should not just be limited to occasions when the child has been coerced into prostitution, but also acts of grooming. We prefer an offence which includes ‘encouraging, inducing or coercing’.

We wished to move away from the term prostitution which labels victims of child abuse as willing actors and may limit the range of acts of child exploitation that the act covers instead we prefer that the offence be framed in terms of ‘encouraging, inducing or coercing a child to offer sexual services’.

We considered whether the person had to offer the child’s services for their own or another’s gain as part of the offence but rejected it as we wished to move away from the test of living off immoral earnings with all its probative difficulty. Even if the person offering the sexual services of a child is another child we decided that this should still be an offence, even though in many circumstances children are merely the ‘middlemen’ for exploitative adults. Any mitigating factors such as this could be reflected in the sentence. The crime should, however, remain recordable.

We also wished to criminalise the customer, for as many said without them there would be no crime. Again we favoured an all-encompassing offence of ‘using or attempting to use the sexual services of a child’. The criminal attempt would of course come into existence if there was a criminal offence of using the sexual services of a child.

2. How should the law be structured to avoid labelling a child as a prostitute in order to prosecute a coercer?

Group C

See the comments to Question 1 above. We should change the terminology from prostitution to abuse. Prostitution sounds like the child is taking responsibility. Penalties need to be increased to provide a deterrent. Other types of penalty were discussed – should men be named? The general feeling was no.

Group D

Half of the group felt that the only way to prevent children from being labelled as prostitutes was to abolish any law which held them criminally liable for their acts. It was felt very strongly that all sexual acts involving children should be seen for what they are, child abuse, and should not result in the child being labelled as a criminal. It was also felt that if the child could be convicted of an offence it would send the message to the child that what had happened was indeed her/his fault. A message that was entirely wrong. The presence of such a crime on the statute books would deter children from coming forward to speak about their exploitation and abuse.

The other half of the group felt that an offence of offering sexual services should apply to children for use as a ‘last resort’. They felt that without any offence children might be encouraged by others to offer sexual services and would be more persuadable because there was no criminal offence in existence. They suggested that children convicted of this offence need not carry the label with them forever if the offence was non-recordable.

3. Are the abduction provisions in the Sex Offences Act 1956 still relevant in the light of the Child Abduction Act?

Group C

We felt that the Child Abduction Act was more to do with ‘tug of love’ families. Abduction for sex offences needs to be a separate offence from the Child Abduction Act, it should be brought under sex offences against children and have a serious penalty. We discussed how the offences should be structured, whether there should be graded offences or a single offence with aggravating



factors. There was a preference for a graded offence. We also thought that some form of incitement/encouraging offence was needed along with a 'grooming' offence. Whatever the structure, it needed to protect boys and girls equally.

Group D

We concluded that the provision of each Act relate to different circumstances. The Child Abduction Act makes no specific reference to abduction for the purposes of sexual exploitation of a child. We felt that it was important to have a specific provision relating to exploitation. However, the offences under the Sexual Offences Act as defined are now anachronistic. We believe that instead section 2 of the Child Abduction Act should be amended to include abduction for the purposes of sexual exploitation of a child as an aggravating factor.

Conclusions:

The Chair thanked the speakers who had freely shared their experience, and all those who had attended for their hard work over the two days. She also gave particular thanks to Linda Bateman of the Special Conferences Unit for the smooth running of the conference.

Working Group Chairs and Rapporteurs:

Conference Chair: Betty Moxon

Group A: Chair – Betty Moxon

Rapporteur – The Rev Canon Donald Gray

Group B: Chair – Mel Barker

Rapporteur – Helen Goodman

Group C: Chair – Bruce Clark

Rapporteur – Claire Wilson-Thomas

Group D: Chair – Debby Grice

Rapporteur – Caroline Keenan



Appendix H5

A consultation seminar on rape & sexual assault

2 July 1999

Marriott Hotel, Leeds



Introduction

Betty Moxon welcomed all those attending. She set out the background to the Sex Offences Review, and its terms of reference, scope, what it hoped to achieve and how all those attending could provide a positive input to the review. Rape was the most serious of the sex offences, and the context of the review was the need to increase protection. Although most offences were defined in the Sexual Offences Act 1956, which was relatively modern, it had been a consolidation of existing nineteenth century law – and that in turn was derived from the common law. So there had been no substantive Parliamentary consideration on what sex offences should be for a long time.

The implementation of the ECHR would create a new environment for the development of the criminal law. In the context of sex offences it offered a framework of principles to provide justice, fairness and respect for the private life of the individual.

The ‘attrition in rape’ report (Home Office Research Study 196 – A Question of Evidence? Investigating and Prosecuting Rape in the 1990s) had attracted a great deal of media attention. Although there were some fairly lurid headlines about the introduction of a new offence of “date rape”, it was important to recognise that the review was considering the whole range of options. Members of the review recognised that there were strong arguments for and against the grading of rape. Whatever course was finally recommended, the review was adamant that any reform would not devalue the seriousness of the offence of rape.

Discussion Groups:

Most of the day was spent in 4 discussion groups considering the same set of questions on rape and sexual assault. Points arising from discussions are outlined below.

Rape:

1. Should the definition of rape be limited to penile penetration?

Group A

- The consensus was that although other kinds of penetration could be as traumatic as penile penetration, the public had a good understanding of what rape meant and the review should ensure that this was maintained. Representatives of victim’s groups in particular felt that rape was an offence by men against women and men, and that it therefore should remain as a gender specific offence.
- Penile penetration carried the risk of pregnancy or the transmission of disease.

Group B

The symbolism of rape was that it was an offence which was carried out by men against both men and women, therefore it was probably right to retain the offence of rape as a gender specific offence of penile penetration.

Group C

- There was no consensus on whether penetration by objects etc. should be included in rape or form part of a separate offence. Penetration by objects was a very serious violation and should be treated as seriously as rape with potentially equal penalties, e.g. that a life sentence could be possible.

Arguments put forward for keeping rape as penile penetration included:

- there was a difference between penetration with objects and the penis;

- rape reflected a particular case of bodily invasion by a particular part of the body with the possibility of the emission of semen and transmission of STDs;
- every offence could include behaviour of different levels of seriousness, including aggravated sexual assault;
- digital penetration was more like penetration with objects;
- if it was all made one offence, as in some other countries (e.g. Canada), attention could focus on the injuries, devaluing the sexual violation;
- if a woman had agreed to digital penetration but was forced into full sexual intercourse could rape be proved because she would have already consented to an act included as rape.

Arguments put forward for including other forms of penetration in the offence of rape included:

- this act could be as serious for the victim;
 - it could cause more damage in some cases;
 - a child might not be able to differentiate between penetration by a penis or some other object;
 - in a date rape drug offence, the victim might not have any memory and would also be unable to state what any penetration had involved;
 - to include object penetration in rape and to call it rape would be to upgrade object penetration, not devalue rape – otherwise non-penile penetration would always be seen as a lesser offence;
 - the public could be educated that this offence was rape.
- One question was whether a woman (particularly prostitutes) who agreed to sexual intercourse with a condom and was forced to have sex without came within the definition of rape. If lack of a condom meant there was no free agreement it would be rape anyway.

Group D

- All in the group agreed that the definition of rape should be confined to penile penetration.

2. If so, should forced penile penetration include forced oral sex?

Group A

- This sparked considerable discussion. Some did not believe that this was as serious as other penile penetration. Others felt that it was equally as serious. On balance, it was felt that forced oral penile penetration should be included as rape.

Group B

- Although this might seem a lesser offence, it was a degrading and unpleasant bodily invasion for the victim. Cross examination about this was unlikely to be any more difficult than that experienced in rape cases at the moment.

Group C

Yes



Group D

- After considerable discussion it was decided that this should fall under the heading of a new offence of non-consensual penetration. Rape was understood by the public in its current form and is well drafted.

3. Should penetration by objects, etc., be in a new offence of aggravated sexual assault or as part of the definition of rape?

Group A

- The consensus was that there should be a new offence of aggravated sexual assault with the same range of penalties as that available for rape. Although there was some concern that this might be seen as a lesser offence, it was felt that courts should be able to deal with a specific offence with guidelines to enable appropriate sentencing. In some instances, such penetrative acts could be more traumatic and physically violent and harmful than some rapes.
- This approach was preferable than to widen the definition of rape (thereby introducing the concept of women as rapists), which would reduce the seriousness of rape as an offence.

Group B

- There was a need for a new gender-neutral offence to cover penetrative assaults other than rape. It was unclear whether the terminology 'aggravated sexual assault' was best.

Group C

- See comments at '1' above.

Group D

- Injuries caused by use of objects were often very serious. A different substantive offence for such violations should be drafted, called non-consensual penetration, which specifically excluded penile penetration. The group envisaged a tier system not unlike the Offences Against the Persons Act. Rape at the top would carry life imprisonment – non-consensual penetration should also carry life imprisonment. Indecent assault would then deal with all other situations, carrying a maximum sentence of 10 years.
- Some in the group felt that a maximum sentence of life imprisonment should also be available for indecent assault in order that the sentencing Judge could reflect the seriousness of situations which are equally horrific but where no penetration had occurred.

4. Do we need to divide the offence of rape and create a 'date rape' offence to take account of the increase in intimate rapes reported to the police?

Group A

- There was a unanimous 'no' to this question. Rape is sexual violation, and that rape by an acquaintance could be more traumatic than stranger rape because that might involve the violation of a relationship of trust. It was recognised that by far the most difficult legal hurdle was the issue of consent when it was one person's word against another's. It would be a retrograde step to create lesser rape offences as these would only cause confusion and ultimately water down the offence as a whole.

Group B

- A definite no to this question – it was the wrong way to go. Where other countries have tried to grade the offence of rape, it has not increased convictions. It would open the door to plea-bargaining down to the lesser offence. There was scope for a fuller use of indictments so that juries could see the totality of the behaviour of the defendant.

Group C

No. Unanimous agreement.

Group D

All agreed that this should not be a separate offence. Various representatives from such bodies as the NSPCC, Victim Support, etc., felt that the problem lay with the prosecuting body not being fully aware of the facts of each case. There was a general unhappiness in the way cases were being prosecuted. Victims wanted increased support and contact with counsel.

Consent**5. Should consent in sexual offences be defined in statute? If so how?****Group A**

- Some thought it would be difficult to define consent in statute because it was not just a word but a feeling in the mind of victim and attacker. Although the group had some information about the way definitions had been attempted in other jurisdictions such as Canada and parts of Australia, it might be useful to see if it had been tackled amongst our European partners. The present common law doctrine was to leave it to the jury. On the whole, it was felt that a definition might be helpful. Phraseology such as ‘free agreement’ could be used.

Group B

- There was a detailed discussion on consent, whether it should, as at present, be left to judges (who tended to sum up in broad terms), or defined in statute. Although the word consent was widely understood by the legal profession, some kind of positive consent inferred a balance between partners, rather than the passive/submissive nature of consent which could be implied by the present statute. The consensus was that a definition in law would be better.

Group C

There was a very wide-ranging discussion. Prosecutors could see advantage in having consent defined by statute – currently they had to search through Archbold and case law. It would also be valuable for the public to have some clarity about what behaviour carries the risk of criminal culpability. There was agreement that it should be codified.

Group D

Opinion was divided on this subject. On the one hand consent, it was felt, was a term people understood. To try and redraft it would cause more difficulties and might result in the loss of quite a substantial body of case law. The other half felt it should be defined as it is in other jurisdictions. An explicit statutory definition should be drafted, along the lines of free agreement, with a list of what amounts to consent. Some felt free agreement was a better term, as it would assist the prosecution of date rape/partner situations. A half-way house was agreed, that an ‘interpretive’ section should be put in the act, which used the term free agreement.



6. How would defining consent as a free agreement between the parties work?

Group A

- At least the words ‘free agreement’ implied mutual agreement. Lists of examples could be valuable by providing education and guidance – although it would probably be easier to set out examples of when free agreement might not exist which could then be built up by case law.

Group B

- Again it was felt that a list of examples, particularly of when free agreement was not present, could help and educate juries. In a way free agreement went further than consent. It could be given verbally or by bodily action, but the important element was that it was mutual.

Group C

- Most participants did not seem to think that any possible changes would have much effect in practice. It was suggested that the introduction of a definition of free agreement in the State of Victoria, Australia, had led to more men pleading guilty, but this would need to be verified.

Group D

- Examples would help juries to reach informed decisions. In addition people felt it better reflected the concept of sexual autonomy.

7. Should a defendant’s ‘honest belief’ in consent be retained, or should any belief be required to be reasonable?

Group A

- Some thought that the concept of honest but mistaken belief was outdated, although the consensus was that honest belief which was reasonable should be retained, but the Morgan defence (unreasonable) should be removed. Rape was an offence of intention, not strict liability, and it was always possible for a man to make a mistake, especially within an intimate relationship. The test of reasonableness would make it easier for juries to consider whether there was consent by giving what was almost a two-step process – was the belief honest? was the belief reasonable?

Group B

The defence should be honest and reasonable belief. This would survive the ECHR test. Morgan was outdated – it extended beyond any other law in the country. A defendant would not be able to claim ignorance of the law when accused of any other offence.

Group C

- The group was divided on this issue – lawyers wanted to retain the Morgan ruling and the non-lawyers thought that it was absurd.
- Arguments for requiring belief to be reasonable included:
 - The use of honest-but –unreasonable belief in consent undermined the concept that rape is intercourse without the victim’s consent. It allowed the offender to think he was entitled to sex. This should not be socially acceptable;
 - It effectively supported the distorted belief systems of sex offenders;

- some men believed that sex with an unconscious woman was acceptable. This may be an honest belief but was it acceptable?
- Honest-but-unreasonable belief was often used when a woman resisted because it was believed that she liked rough sex;
- the message to men who were acquitted was that they could carry on raping.
- Arguments for retaining honest belief included:
 - There needed to be mens rea for such a serious crime; this was an intrinsic part of the law of England and Wales. No exception could be made for rape – individuals should not be criminalised because they had made a mistake.
 - if the test of consent was reasonable belief it might place undue burden on the defence. It would be shifting the burden of proof by making the defendant show that the belief was reasonable. Other examples where the reasonableness test was used was in assessing provocation in murder – this was an issue raised by the defence and not part of the definition of the offence.
- One suggestion was to define the offence of rape in a way that did not say that honest belief in consent had to be reasonable, but include that element in the direction which judges gave to juries before they began their deliberations. There were concerns that judges' directions to juries were not monitored – there was inconsistency of application. There were arguments for more consistent monitoring of cases, particularly after legislative changes, in order to evaluate the effectiveness of the law.

Group D

- Various theories were discussed. All felt *Morgan v DPP* should be overturned. Honest belief as a term was acceptable: the difficulty was whether it should be reasonable. Most felt that the current situation was unfair. Some wanted the test of whether a defendant's belief was reasonable to be an objective test. Others felt that it should be a mixed test, which allowed for the characteristics of the individual defendant to be considered. A further discussion was had as to whether the test should be one of *Wednesbury* reasonableness, and a two-stage test akin to the manslaughter test was considered.

8. Would defining consent as free agreement reduce the importance of an honest belief defence?

Group A

- The prosecution would still have to prove that the defendant did not have an honest but reasonable belief. Defining consent as free agreement might help juries to understand the issues.

Group B

- There were differing views as to the effect of free agreement. The main difference would be that consent would be negotiated and not coerced in any way. A prosecution barrister would have to prove that the alleged offender had not verified agreement. There would be no reverse burden of proof and the defendant would be innocent until proven guilty. The Youth Justice & Criminal Evidence Bill would reduce the use of previous sexual history in court.

Group C

- See comments at 6 above.



Group D

- It would be a further appropriate test of honest belief by determining whether the belief was reasonable in the eyes of an ordinary person. It was important not to bring in negligence, which had civil liberties implications. The Wednesbury test (where something is so unreasonable that a reasonable person would not have come to that decision) may suffice. A lot would rest on the definition of consent.

9. Impersonation of a husband/partner counts as fraudulent consent – are there any other forms of fraud or misrepresentation that should negate consent?

Group A

- Suggestions included the false promise of marriage. There was some discussion as to whether the law on procurement ought to be changed to reflect the seriousness of the offence, but on balance it was felt that it should remain separate. There was also discussion about the potential of fraud surrounding HIV status, but it was felt that not only might this dilute the offence of rape, it also raised difficult public health issues.

Groups B and C did not specifically comment.

Group D

- The extension to the current situation that was canvassed was that any lie as to identity or as to the nature and consequence of the act should be an offence. How far this should go was difficult – should it include therapist and client? What about promises of material goods, or as to HIV status? All were keenly aware of the difficulties of criminalising behaviour which it was not in the public interest to prosecute.

Sexual Assault/Indecent Exposure

10. Should the offence of indecent assault be divided with a new and more serious ‘aggravated’ offence for most serious penetrative assaults with objects?

Group A

- The earlier discussion about aggravated sexual assault had dealt with penetrative assaults that were presently in indecent assault. Other sexual assaults could be as serious, for instance, if a weapon was used in the commission of an offence, or there was extreme violence used. However, the average sentence given for the existing offence of indecent assault was two years and two months, so there was scope for the use of aggravating factors to increase the length of sentence to reflect increased seriousness.

Group B

- It had been agreed that there should be a new aggravated offence. The terminology indecent was unhelpful. Sexual assault was a diverse range of acts from a pinch to penetration. There were concerns about the use of the word aggravated, as there was a risk that this sent a message that trivialised other sexual assaults. The Sentencing Advisory Panel may have a role in ensuring that penalties were appropriate and that there were clear sentencing guidelines.

Group C

- There was no need for subdivision beyond that already agreed.

Group D

- Yes, along with sentencing guidelines, outlining tariffs and gravity factors. Penetration with objects should be removed from indecent assault and either made a separate offence or included in rape. There was some discussion about what constituted penetration in law – it was penetration to any extent.

11. Should indecent assault be renamed ‘sexual assault’?**Group A**

- It was felt that terminology such as sexual assault, or sexual violation were much better than the existing term indecent assault. It was not clearly understood by the public what an indecent assault was, and on the whole it inferred a fairly trivial offence.

Group B

- Much better than indecent assault.

Group C

- Yes. This would fall into line with reform of gross indecency of all kinds. There was also discussion about the coercion of women over the age of 16 to masturbate men, an act which was not covered by statute, although the consensus was that this sort of behaviour should be made criminally culpable.
- The acts of urination or defecation on a person without their consent was an indecent assault. This behaviour could accompany rape, and in many cases the offender was charged only with the most serious offence. The consensus was that the offender should be charged with all the offences committed, which would then give juries the full picture of what had been done to the victim.
- There was further discussion about alternative charges / verdicts. These could be made available, but should be very carefully constructed. Although some were already available in Crown Court, they were not available in magistrates’ courts. This required further consideration.

Group D

- The term indecent assault was outdated. The group could see a three tiered approach to sex offences: rape; aggravated sexual assault; sexual assault. These would need guidelines on aggravating factors, with the first two sets of offences carrying a maximum penalty of life imprisonment.

12. How should the law treat indecent exposure? Is it akin to indecent assault or to a public order offence?**Group A**

It was agreed that indecent exposure should be treated similarly to an indecent assault. It was sexual offending, and could be a predictor of more serious offences. But it should not catch inadvertent cases of exposure. It should include an element of aggression or intent to shock or threaten, suggestions were for something like ‘insult or offend’ or wording similar to that in the Protection From Harassment Act. The offence should apply to exposure against male children at the very least. The police would like it to be an arrestable offence and those convicted should be placed on the Sex Offenders Register.

Group B

- The police would like indecent exposure to be an arrestable offence. It was felt that the offence should only apply to men and exposure of the penis – probably an erect penis deliberately exposed to a woman or a child of either sex.



Group C

- There was consensus that where people were carrying out a sexual act in a place accessible by members of the public, but they had taken reasonable steps to avoid being seen, there should be no criminal culpability. There were difficulties about the definition of public and private places which needed to be resolved. There was discussion about sexual activity in the presence of children, which was thought by some to be indecency with a child.
- There was consensus that indecent exposure as currently defined was a different offence from other kinds of public nudity – a man exposing himself to a lone woman or child on a towpath was not the same as a man streaking across a cricket field. It was agreed that indecent exposure should be treated as a sex offence and not an offence of public order. This should provide the option of entry on to the Sex Offenders Register. It was known that some indecent exposers went on to commit more serious sex offences.
- The consensus was that the offence should remain gender specific. Streaking was not done to humiliate, alarm or distress. The intent was different. One suggestion was that there might need to be two offences, the first akin to the current definition, whilst other public nudity/indecency could be a lesser sex offence or public order offence – although no conclusions were drawn.

Group D

- Indecent exposure was a sex offence. It should be retained as a gender specific offence and the language modernised so that the public clearly understood the offence. HRA implications were discussed, and it was felt that its retention as a gender specific offence could be justified and thus would not offend ECHR.

13. Should deliberately spying on others for sexual gratification be criminally culpable?

Group A

- There was no offence of voyeurism at present. Thus using any form of electronic equipment to spy on others was not illegal as long as the images were not recorded. It was felt that spying on others for sexual gratification should be criminally culpable where there was a reasonable expectation of privacy. It would need to be carefully worded – sexual gratification should not feature as an element as that would be extremely difficult to prove. An Offence could rely on the deliberate spying on someone who had a reasonable expectation of privacy.

Group B

- Spying should be treated like sexual harassment.

Group C

- There was agreement that this should be a criminal offence but no agreement about the form it should take. Amongst the difficulties raised were how to prove an element of sexual gratification unless caught masturbating, etc. The existing stalking/harassment legislation could provide a possible avenue, but that would not cover instances where the victim was unaware of the activity. (There could be no offence because it would be impossible to prove that any harm had been done.) It was suggested that the invasion of privacy should make it an offence whether or not that person was aware; the difficulties of framing an offence were recognised. The group felt that this was unwelcome sexual activity, that could be a precursor of more serious sex offending.

Group D

- Cameras or any type of spying which required structural change was an invasion of privacy. Harassment research showed that many who were ‘peeping toms’ graduated to more serious sex offences, but some felt that they should be dealt with under the provisions of the Harassment Act. If it were to be made a sex offence, some sort of rehabilitation should be built in to the offence – entry on to the Sex Offenders Register was regarded as too punitive. Any offence would have to be framed carefully – part of the gay scene was to ‘note the talent in the locker room’, (just as other men and women note the talent on the beach) and it would be retrograde to create an offence which could be used to penalise gay men and women.

Associated Offences**14. Do we still need offences of assault with intent to commit rape/buggery, or burglary with intent to rape?****Group A**

- It was agreed that these offences were still required.

Group B

- If no other statute law covered the scope of these offences they should be retained.

Group C

- The consensus was that these should be retained. Attempt to commit any act was very narrowly defined in law as being more than a preparatory act. In order to prove attempted rape, the act had to be close to penetration. There were cases where an assailant had been disturbed or the victim had managed to fight him off and escape – otherwise rape would have been committed.
- Burglary was not intrinsically connected to theft. Breaking and entering for a number of purposes constituted burglary and was not currently a sex offence. The group agreed that breaking and entering with intent to commit rape should be a sex offence. This was particularly important in the context of rape of a wife or partner, where assailants broke into the houses of their ex-partners in order to commit the offence. This was fairly common, but the Court of Appeal had reduced sentences on appeal by as much as 50%. It was agreed that breaking and entering a property with the intention to commit rape should be an aggravating feature in sentencing.
- It was agreed that guidelines on mitigating and aggravating factors should be open.

Group D

- No comments.

Closing Session:

The final session was a general discussion following the report back from the syndicates. The use of the *Billam* guidelines on sentencing for rape was discussed, with some concern that they were not always being followed. The new Sentencing Advisory Panel might have a role in recommending new guidelines following a change in the law. They may be able to monitor sentencing patterns, especially the comparative sentencing of stranger and acquaintance rapes.

The meeting agreed unanimously that the offence of rape should not be subdivided, and that creating a date rape offence would be a retrograde step.



It was also noted that a great deal of time had been spent in discussing the language of the current offences. It was vital that any new offences were clear and comprehensible to ordinary people.

The Chair thanked Tim Sanders of the Special Conferences Unit for making all the arrangements for the seminar, and all those attending for contributing to a very interesting and informative day. The work done today would inform the thinking of the review. If any of those attending had any further thoughts following the seminar, the review team would welcome those views.

Chair:

Betty Moxon (Sex Offences Review, Home Office)

Facilitators:

- Group A: Rape – Catherine Allen (Women’s Unit, Cabinet Office)
Sexual Assault – Su McLean-Tooke (Sex Offences Review)
Rapporteur – Robina Rand (Magistrate’s Association)
- Group B: Rape – Stephen Dawson (Metropolitan Stipendiary Magistrates)
Sexual Assault – Sally Cole (Crown Prosecution Service)
Rapporteur – Alan Armbrister (Justices’ Clerks’ Society)
- Group C: Rape – Betty Moxon
Sexual Assault – Betty Moxon
Rapporteur – Sandra McNeill (Campaign to End Rape)
- Group D: Rape – Shami Chakrabarti (Legal Adviser’s Branch, Home Office)
Sexual Assault – Liz Kelly (University of North London)
Rapporteur – Gillian Jones (Red Lion Court)