

Home Affairs Select Committee – Sexual Offences Bill

THE NEED FOR THE NEW CLAUSE 17 GROOMING OFFENCE

Briefing paper by Childnet International

1. Introduction

This briefing paper is by Childnet International, the children's Internet charity that exists to help make the Internet a great and safe place for children¹. The paper will

- provide the background to the proposed offence in Clause 17 of the Sexual Offences Bill²
- explain the need for the offence in terms of the circumstances where children are not protected by the law
- illustrate initiatives taken in other countries
- analyse the proposed offence and explain how it will work

Internet chat can be used in creative ways to connect children together. However, there are dangers for children using chat unsupervised, especially where adults use it as a means of seeking to strike up sexual relationships with young teenagers or children. Paedophiles³ have recognised the opportunity the Internet affords them to contact children at a safe distance, building up a relationship with them for the sole purpose of persuading them into sexual activity. The techniques which sex offenders use to entice children into sexual activity are known as 'grooming'. The current law in the UK does not afford children the protection they need with regard to online grooming. Clause 17⁴ of this Sexual Offences Bill attempts to fill the current 'gap' in the law, enabling the law to step in before the physical harm and damage at the end of the grooming process has been wreaked on the child. Thus the new Clause will afford a much-needed degree of protection for the ever-growing numbers of children online.

¹ See www.childnet-int.org for details about Childnet's work.

² Though the new clause is technologically neutral, and applies equally to the 'offline' world as the 'online' one, this paper will give support to this new offence with reference to the online world.

³ Unfortunately the term 'paedophile' is often misused in a pejorative sense. However, we use it here as shorthand for 'adults with a sexual interest in children'.

⁴ Clause 17 relates to the 'grooming' offence.

It should also be noted that Clause 110 of the Sexual Offences Bill includes a new Risk of Sexual Harm Order. This can be applied in circumstances where an adult is sexually harassing a child online but has not (yet) arranged a meeting. This paper will not consider that Clause, but Childnet supports its introduction.

2. Background to the proposed offence

In February 2000, Patrick Green, a thirty-three-year-old export clerk, made contact with a twelve-year-old girl⁵ in a teenage Internet Chat Room. The initial contact led to e-mails every day over a two-month period and then to regular conversations on a mobile phone. In this way the girl was groomed from this initial Chat Room contact to the point where she actually met Green offline, and thus also to the point where she was sexually assaulted.

After the initial contact through a Chat Room, through a clever and relentless process of manipulation via e-mail and then mobile phone, Green convinced the girl that he was in love with her. The girl initially resisted Green's requests for a meeting but finally acquiesced to meet in a public place. Green arrived by car, identified himself to his victim and drove her to his flat many miles away where he began a series of indecent assaults.

After four meetings in quick succession, the increasingly confused girl broke down and told everything to her mother. Her parents were shocked and immediately informed the police. Some days elapsed before Green was arrested, and, pending further investigation and the result of the laboratory analysis of his computer, he was released on bail.

Within days he had used the computer at his place of work to contact another underage girl and, using similar tactics, drove hundreds of miles across the country to commit a similar assault. Green's work colleagues discovered some disturbing e-mails and tipped off the police who mounted a surveillance operation and rearrested him, just as the next young victim was getting into his car.

⁵ The girl was twelve at the time of the initial contact from Green, but was thirteen at the time of the assault.

This case described is a real case⁶, and was the first case in the UK where a predator lured a child to an offline sexual assault from an initial contact made in an Internet chatroom. Although the Patrick Green case was the first of its kind in the UK, 'grooming' was not a new phenomenon. Many cases had previously occurred in the US, and in the UK since Patrick Green there have been 16 cases⁷ where the offender has been convicted of an offline offence⁸. While the circumstances of each individual case differ, it would appear that some common techniques are adopted by adults trying to arrange to meet children for sexual purposes. The basic technique for the 'perpetrator' is to hang around in a public Internet Chat Room, on the lookout for a child that seems 'vulnerable'. Ruben Rodriguez, director of the US NCMEC's (National Centre for Missing and Exploited Children) Exploited Child Unit, explains "Predators like to go after kids who tend to express agreement in Chat Rooms but not say a lot because they know these kids are vulnerable"⁹, children that would perhaps really value attention, understanding and friendship. When they find such a child they invite them into a private area of the Chat Room to get to know them better. Next in the grooming sequence comes private chat via an instant messaging service, and then e-mail, phone conversations (often on mobile phones) and finally a face-to-face meeting. The grooming process may take only a few days, but it can go on for weeks and months, as it may take this long for the child to feel truly comfortable. The patience of the predator may also be explained partly by the fact that it is not uncommon for them to be grooming several children at the same time. In this way, even if a child begins to feel uncomfortable and breaks off the relationship there are others lined up.

It is in this context that the Internet has been called the 'school playground of the 21st Century'. Chat Rooms can afford the predator invisible access to children from a safe distance, allowing contact to be made even while the

⁶ Childnet International were contacted by the father of the child victim of Patrick Green. The father worked in the IT industry and had done for years. He felt that if he hadn't known about the potential dangers of interactive Internet services, then many other parents would not be aware of these or what their kids were getting up to online. He contacted Childnet because he wanted to use this tragic event that had hit their family to help raise awareness of this issue and help to prevent such a tragedy happening to others.

In response to this appeal, and working closely with the family, Childnet set up the Chatdanger website, www.chatdanger.com, in October 2000, in order to inform parents and children of the potential dangers in chatrooms and also to advise on how to keep safe while chatting online. This website has proved to be a valuable resource, and we have received almost 2000 e-mails via the Contact Form on the website from concerned children and parents, asking for advice and sharing their experiences.

Childnet also submitted a paper on online grooming to the Home Office calling for an amendment to UK law, which was influential in the genesis of the Task Force⁶ looking at this issue. Childnet feel that the new 'grooming' offence will enable the law to better protect children that had been victim to paedophile approaches from sexual harm.

⁷ These are the cases of which Childnet are aware that have been reported in the press. There may have been other cases.

⁸ There have been cases in other parts of the world too, including Australia, Norway and Israel.

⁹ Quoted in 'Help your child know the risks of chat rooms' by Larry Magid in the San Jose Mercury News, at www.larrysworld.com/articles/sjm_chatrooms.htm.

child is using the Internet in the secure surroundings of their own home, even their own bedroom. The online situation gives the paedophile the possibility of daily contact with a child, an amount of contact that would otherwise be impossible unless the paedophile was family or a care worker. The online situation also allows the paedophile the opportunity to manipulate the emotions of a young child over a long period of time to the point that they feel safe to have a face-to-face offline meeting.

3. The need for the new offence

The new 'grooming' offence is designed to step in order to protect children **before** they come to any physical or sexual harm. Currently the law has only been applied successfully once the abuse has occurred. One can see in the situations described below that predators who targeted children and had actually met children with the clear intention of abusing them were unable to be prosecuted.

Situation A - Milton Keynes

In April 2000, a thirteen-year-old girl met a '15 year-old' boy in an Internet Chat Room. Their online relationship developed and the girl arranged to meet the boy. Very wisely the girl had told her mother who decided to tag along to the rendezvous. Instead of a fifteen-year-old boy, awaiting the girl was a forty-seven-year-old man who had travelled all the way from Newcastle to Milton Keynes to meet the girl. The man was arrested but was released later without charge.

Situation B – Crewe

The Crewe incident is similar to what took place in Milton Keynes. A thirteen-year-old-girl met a 'friend' in an Internet Chat Room who said he was 'fifteen'. Chatting on the Internet moved on to text-messaging and then mobile phone calls, and the young girl declared that she was 'in love' with this 'boy'. In the course of their conversations he admitted that he was '27'. Luckily, the parents found out a meeting was being planned and contacted the police, and the police continued the messaging to the point of the meeting. The police were lying in wait for him when he turned up to meet the girl. He was thirty-eight years-old, and he had a palm-sized computer with him that had lists of young children aged between six and sixteen, with their contact details, in addition to lists of numerous child sex websites. This man was released without charge.

Situation C - Cumbria

This is the case where Patrick Green was re-arrested when a girl was getting into his car (see page 2), a situation for which he was not convicted, even

though police found various items like condoms in a hotel room where he intended to take the girl.

These three examples are situations where a child has been groomed by an adult to the point of an offline meeting and the police have only stepped in to release the man in each case without charge. Criminal law as it stands currently was unable to be put into effect¹⁰, whereas the new Clause 17 would provide adequate grounds for charging the men in these cases.

There are two different issues raised by the current form of UK law. The first concerning a situation before an offline offence has been committed. For example where the family have evidence that their child is being groomed and inform the police who may bring the predator to a meeting, but are unable to charge him with any offence. The second concerns the situation after an offline offence has been committed. For example, the family discover that an offence has taken place and have e-mail evidence. This was actually what happened in the Patrick Green case, when an offence had clearly been committed. The girl had told her parents what had happened and the father

¹⁰ In the UK, the Indecency with Children Act 1960 is the main relevant piece of legislation, particularly Section 1:

“1. (1) Any person who commits an act of gross indecency with or towards a child under the age of fourteen, or who incites a child under that age to such an act with him or another, shall be liable on conviction to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months, to a fine not exceeding one hundred pounds, or to both”.

It has been suggested that online grooming is already covered by the category of ‘incitement’ to commit a sexual offence, and in theory it is perhaps possible to envisage this. However, there are real obstacles to a successful prosecution. To prove the case, the prosecution would have to show that there was “an act of gross indecency” which the child was being incited to allow or participate in. If the law is construed narrowly (as is almost always the case with serious criminal offences) then the prosecution must prove an intention to commit, and an incitement to be involved with, a specific act of indecency. Thus if evidence could be adduced that the perpetrator invited the young person to touch his genitals or to allow sexual penetration then that would be an incitement to an act of gross indecency. But if the only evidence is that he had a general intent to persuade her to have sexual relations of some kind with him, without any specific evidence of incitement to commit particular unlawful acts, then the charge could not be made out.

The narrowness of the law gives rise to serious ethical problems for the police. If they are shadowing a planned meeting between the perpetrator and the child, then to get their evidence of incitement to commit an act of indecency, they might need to allow the perpetrator to meet alone with the child, with the risk that a sexual assault could occur. The police would not do this. The case of Patrick Green and the girl in Cumbria would be a case in point here, and other incidents in Milton Keynes and in Crewe also demonstrate situations where a child has been groomed to the point of an offline meeting and the police have stepped in only to release the man in each case without charge.

b) Attempt to commit a sex offence

The other possibility is that the man could be charged with an attempt to commit a sex offence against the child. Again, the man must proceed sufficiently far down the path of seeking to commit the offence that an attempt to commit a particular unlawful act can be said to have been made.

of the girl had access to the e-mails, which had many sexual references. But the police were focussed on the offline sexual offences and were concerned that they needed to prove these. Naturally the father was extremely concerned that Green was going to try to meet the girl again, and he was urging them to charge Green and to use the fifty-odd e-mails he had as evidence. The police, however, felt they needed more time to collect the evidence for the offline sexual offence.

The new Clause 17 offence would have allowed the police to charge Green much more quickly while they continued to gather forensic evidence for the actual physical sexual assaults.

In summary, the addition of an offence of 'grooming' would offer children a degree of protection in the UK from online sexual predators that at present is not available. In the Crewe and Milton Keynes cases outlined above one can clearly see the new 'grooming' offence would have removed for a while the threat of two paedophiles from contacting, grooming and approaching children online.

In addition, the new offence would succeed in bringing a deterrent to predators where currently there is none. The examples given illustrate how predators are able to arrange to meet and even meet children offline with the intention of sexually abusing them, and even when the police step in at the point of the meeting, they are not charged.

4. Online grooming and the law elsewhere

Other countries have already taken steps to counter the grooming or luring of children for sexual purposes. In the USA for example Federal Law states:

"a) Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce,¹¹ or in any Territory or Possession of the United States, to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both.

b) Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.¹²"

US state law often goes further than this. For example, state law in Georgia states:

¹¹ The reference here to "interstate or foreign commerce" is necessary to allow federal jurisdiction under the commerce power of the US Constitution.

¹² 18 U.S.C. 2422: Coercion and Enticement.

“It shall be unlawful for any person intentionally or wilfully to utilize a computer online service, Internet service, or local bulletin board service to seduce, solicit, lure or entice, or attempt to seduce, solicit, lure, or entice a child or another person believed by such a person to be a child, to commit sodomy or aggravated sodomy, child molestation or aggravated child molestation, enticing a child for indecent purposes, public indecency, or to engage in conduct that by its nature is an unlawful sexual offence against a child”¹³.

The laws in the US have made it possible for people to be arrested and imprisoned before the offline offence is actually committed. Thus it seems that not only in theory but also in practise US law actually offers children a degree of protection that does not currently seem to be offered in the UK. One can see a similar degree of protection offered in Australia’s Northern Territory where there is an offence of “enticing away a child under 16 for immoral purposes”¹⁴. The Canadian Government introduced ‘luring’ legislation in March 2001¹⁵.

5. How the offence would work:

The new ‘grooming’ offence would enable the police to arrest the predator before the child was physically or sexually abused. The police would be empowered to make an arrest once the predator met, or travelled with the intention of meeting, a child under 16 with the intention of committing a sexual offence. The intent would be drawn from a course of conduct, either the communication itself (and there must be two earlier communications) or other circumstances, such as going to the meeting with pornography, condoms or lubricants for example.

Some have argued that the new offence equates in some way to creating a thought crime. This is simply inaccurate, as it ignores the fact that the contacts and communication are linked incontrovertibly to arrangements for a meeting with the purpose of committing a sexual crime in order for the new grooming offence to have been committed.

The online nature of the communication between the suspect and the child can be very helpful for evidential purposes. Proving offline communication can be very difficult, and often comes down to taking one person’s word against another’s in the absence of witnesses, but in communication by e-mail, text message, voice message, instant messenger, and even chat, the possibility exists of the actual communication being recorded and kept. Records may exist in the victim’s or the perpetrator’s computers¹⁶.

¹³ Ga. Code Ann. § 16-12-100.2 (1999).

¹⁴ Section 201 of the Northern Territory of Australia Criminal Code Act, para 3.4.2, as in force 1.1.97.

¹⁵ See <http://www.media-awareness.ca/eng/webaware/parents/safe/ppredator.htm>

¹⁶ The requirements on the Internet Service Providers to help will differ little from the current cooperation they provide in cases of alleged serious crime identifying their customers on presentation of appropriate documents for the police.

The new offence would enable law enforcement to become proactively involved in catching and deterring online predators. For example, where a predator has been grooming a child, but the child has told their parents, and the parents have contacted the police, the police can step in and continue the communication with the predator to the point where the predator arranges a meeting. The police can therefore ensure that they have got all the evidence they require from the communication before they agree to the meeting, where they would then arrest the predator.

The new offence in conjunction with Clause 15 – Arranging or facilitating commission of a child sex offence - would enable the type of operation that has been used to great effect in other parts of the world by law enforcement¹⁷ – covert sting operations. Covert sting operations in this context refer to the practice of police entering Internet chatrooms and pretending to be children – ironically a technique used by paedophiles at present to great advantage. To avoid defence pleas of enticement to commit a crime or entrapment, the police should only respond to invitations and offers made to them in these Chat Rooms and not take the initiative or approach someone they suspect of paedophile activities to arrange a meeting¹⁸. The suspect should take the first step that leads to a criminal act. The police must prove beyond reasonable doubt that the defendant was ready and willing to commit the crime prior to being first approached by the police, in other words that the suspect was predisposed to commit the crime.

The most readily obvious advantage of covert sting operations is that they allow the police to be proactive in their fight against online paedophiles. They enable the police to use the online predators most potent tool, anonymity, against them¹⁹.

The advantages are more far-reaching than that. With the police on the end of, and able to monitor the entire grooming process they can be sure they possess all the necessary documentary evidence needed for successful prosecution.

The presence of covert sting operations on the Internet could have a powerful deterrent effect on any prospective online predators, as it would introduce an element of uncertainty into their online grooming activities which simply is not there at present. It is possible to see the immunity with which they currently feel on the Internet in the fact that they will very often be grooming several children simultaneously.

It seems readily apparent that covert sting operations add a valuable component to the protection of children. Internet users with legitimate reasons for meeting children, eg counsellors, youth group workers, have no

¹⁷ For example, USA, Canada and New Zealand.

¹⁸ It would of course be necessary to ensure transparency and accountability of police actions, to ensure that ‘entrapment’ techniques were not being used.

¹⁹ A recent BBC News report highlighted how adults with a sexual interest in children do respond to the presence of ‘young people’ in chatrooms, even though in the case in question the ‘child’ was a 25 year-old private investigator.

fear of such operations. The police could not act unless there was clear evidence of intent to commit a sexual offence at a meeting with the child.

6. Conclusion

The problem of grooming children online for sexual purposes has emerged in the last few years in the UK. The number of cases is increasing and there is no evidence to suggest the problem is a short term one or one that will disappear quickly. The current law is inadequate to deal with the grooming behaviour of perpetrators online. A new offence of 'grooming' a child with intent to have sexual relations would provide greater protection for children. This would bring UK law closer to that of other countries who have had greater success in bringing online predators to justice. It would also enable covert operations by police to be more effective.

Childnet believes this offence would provide a significant additional mechanism for law enforcement to act against those seeking to exploit children online. This would afford a much-needed degree of protection for the ever-growing numbers of children online.

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