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**A critical evaluation of the current use of out of court disposals
for low-level sexual offences**

And recommendations for future use and development

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ABSTRACT

Sexual violence is experienced by thousands every year and regularly causes severe trauma for victims. Feminist movements and media attention to sex offence cases such as the cases against Jimmy Saville are recognised as conducive to a rise in reports to police of recent and historical offences. Despite this, sex crime experiences serious underreporting and only a minority of reported cases continue to court with even fewer ending in conviction. Several aspects such as an often revictimising court process, low conviction rates and risk of not being believed contribute to this. Out of court disposals (OOCs) are judicial measures police can use to respond to certain offences with a low level of harm and which can be appropriately dealt with through either a community resolution or a conditional caution. The National Police Chiefs' Council's strategy for charging and OOCs has the objective of increasing the use of OOCs due to their focus on rehabilitation and education of offender, their cost-effectiveness and the inclusion of the views of victim.

This project critically evaluates the current use of OOCs for low-level sexual offending through three research questions focusing on: understandings of low-level sexual offending; considerations and consequences of using OOCs for low-level sexual offences and; recommendations for future use and development of these. This project finds that a definition of low-level sexual offending may remove focus on the context of each case and is therefore not suitable. However, this project has found broad support across Youth Offending Teams, specialist services and police for the use of OOCs for sexual offences for various reasons including victim's view and avoiding going through a court process.

This project provides recommendations such as developing interventions designed for sexual offenders focusing on education and the formulation of specific considerations within the current gravity matrixes used by police officers to establish if offences are suitable for OOC outcomes.

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Declaration and Copyright Statement

I hereby declare this paper has been written and composed solely by myself. Whole or any part of this paper has not been submitted or published before or in any previous application for a degree. The content is the result of work carried out since the beginning of my work placement with the Police and Crime Commissioner for Hampshire.

All ethics procedures and guidelines have been followed to the best of my knowledge.

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Abbreviations

ACPO – Association of Chief Police Officers

APPG – All-Party Parliamentary Group

CJS – Criminal Justice System

CPS – Crown Prosecution Service

CSEW – Crime Survey for England and Wales

HPCC – Police and Crime Commissioner for Hampshire

MoJ – Ministry of Justice

NPCC – National Police Chief's Council

OOCD – Out of Court Disposal

P1, P2 ... P7 – Participants in focus group interview

PCC – Police and Crime Commissioner

Project CARA - Conditional Cautioning and Relationship Abuse, Hampton Trust

RJ – Restorative Justice

RSE – Relationship and Sex Education

SOR – Sexual Offender Register

YD1 and YD2 – Individual participants in interview with specialists from Yellow Door

YDs – Both participants from interview with specialists from Yellow Door

YOT – Youth Offending Team

Introduction

The need for being able to deal with certain offences outside of court has been recognised since the mid-18th-century (NPCC, 2018). The current national strategy of out of court disposals (OOCs) sets out a goal of increasing the use of OOCs as a response to crime arguing these offer proportionate, cost-effective, rehabilitative and reparative outcomes (NPCC, 2017). OOCs can be used for all offences where certain criteria, e.g. admission of guilt, are met and where it is deemed the severity of the offence can be appropriately dealt with outside of court (ibid.). This includes summary and indictable offences, though indictable and some either way offences must be referred to the Crown Prosecution Service (CPS) (NPCC, 2019).

Recognition and research of sexual offences has increased following historic and recent feminist campaigns bringing awareness to the prevalence and impact of gendered and sexual violence (e.g. Clair et al., 2019; Hague and Sardinha, 2010; Gelsthorpe, 2002). Sexual violence is a contested topic with acknowledged and significant difficulties in estimating level of harm, prevalence and suitable outcomes and processes for both offenders and victims (e.g. Walklate, 2011; Ward et al. 2006).

The use of OOCs for sexual offences is uncommon (MoJ, 2017). However, it is important to scrutinise how these are being employed and justified and what measures can or should be taken in order to improve and increase the utilisation of OOCs as per the national OOC strategy (NPCC, 2017). Furthermore, attention will be given to the matter of OOCs being advocated for low-level offences whilst there is currently no definition of low-level sexual offences.

This project has been developed in collaboration with the Police and Crime Commissioner in Hampshire (HPCC) and will provide a critical evaluation of the current use of OOCs for low-level sexual offences and give recommendations for future use and development. In order to appropriately reach this aim three research questions will be employed:

What issues surround the notion of ‘low-level’ sexual offending?

What considerations and consequences surround the use of OOCs for ‘low-level’ sexual offending?

What recommendations can be provided for the future development and use of OOCs for 'low-level' sexual offences?

A literature review will create the research foundation for this project. This chapter is divided into two sections, focusing on notions of low-level sexual offences and OOCs respectively. This is followed by a methodology chapter outlining and justifying the methods used and limitations present in this project. Findings will then be discussed and juxtaposed with literature in order to answer the three research questions above. Lastly, a conclusion to this critical evaluation and the research questions will be given followed by recommendations for future use and development of OOCs.

Literature review:

The aim of this literature review is to create a knowledge base on which to conduct this research. As this research project will investigate the use of OOCs for low-level sexual offences it is necessary to cover related aspects. In the guidance provided by the Ministry of Justice (MoJ), OOCs are to be used for lower-level offending (MoJ, 2015). However, research conducted for this project has found that there are no clear definitions of what constitutes a low-level sexual offence despite OOCs being employed in sexual offence cases. Thus, the first section of this chapter will investigate notions of low-level sexual offending through historical and contemporary perspectives including methods employed by the police to assess appropriate outcomes.

The second part of this chapter will focus on OOCs, their development, limitations and benefits. Current practice and prevalence for the use of OOCs for sexual offences will be investigated. This section will furthermore include some of the common restorative conditions used in cases where OOCs have been given for a sexual offence.

Low-level sexual offending

Various academics acknowledge that feminist breakthroughs in the 1960's-1980's significantly contributed to an increase in research into gendered violence and particularly into the area of sex crime (e.g. Greer, 2013; Newburn, 2013; Hague and Sardinha, 2010; Gelsthorpe, 2002). Through the slogan of 'The Personal is Political' feminists argued that behaviours in spaces such as the home and the bedroom, which were normally not included on the political agenda, were indeed political (Edelstein, 2007 p. 166). Gendered violence and especially sexual violence are complex and constantly evolving areas with multiple legislative changes here in the United Kingdom in the past fifty years and massive legislative differences across the world (Greer 2013; Edelstein, 2007; Ward et al. 2006). Greer (2013) and Gelsthorpe (2002) both present the argument that criminological research before the 1970's was predominantly conducted by men researching other men and link this to the lack of focus on sex crimes as these are disproportionately committed by men against women.

Changes and differences in legislature reflect changes in the culture surrounding these and thus geographical and historical changes in legislation benefit from being understood in a cultural context (Sumner, 2013). The feminist wave pushing for awareness surrounding sexual

violence can therefore be seen as sparking the cultural change which then brought about changes in legislation (Heidensohn, 2002). McGlynn et al. state there is a clear causal link between the focus in feminist campaigns and changes in legislation and public attitude (2012). However, they also state that despite these changes there is little evidence of a decline in the prevalence of sexual violence or conviction rates (ibid.).

The #MeToo campaign is seen as a current example of a feminist movement raising awareness of the prevalence of sexual abuse and aiming to spark cultural change surrounding unwanted sexually motivated behaviour (Krook, 2018; Clair et al., 2019). Krook further argues that 'the aim is less to 'out' particular individuals than to demonstrate the extent of the problem' (2018 p. 65). The #MeToo campaign focus on validating victim's experiences by saying that all sexually abusive or harassing behaviour is valid whether or not it has been reported and by creating a space filled with empathy through shared narratives (Clair et al., 2019). Other prominent cases such as the victims of Larry Nasser and, particularly in a British context, Jimmy Saville, have further created awareness of the underlying power structures of sexual offences and encouraged others to come forward with their own experiences (National Police Chiefs' Council (NPCC), 2015; Clair et al., 2019). This encouragement can be seen as necessary considering the costs to the victims such as loss of privacy, reliving the experience and not being believed (Allen, 2007; Cook, 2011). Krook argues that the feminist movements of the 1970s sparked change in negative perceptions of victims of sexual harassment and assault, which had been deterring victims from reporting (2018). However, according to Edelstein, 'the concept of 'innocent until proven guilty' with regards to the accused perpetrator is inverted for sexual offences, such that the alleged victim of a sexual attack is assumed to be guilty of coercion, lying and sexual impropriety until overwhelming proof can be produced that she was attacked' (2007 p. 164). Thus, there are still considerable costs and risks associated with reporting and going through the court system as a victim of a sexual offence.

The above risks can be seen to be part of the reason for the notorious 'dark figure of crime', which refers to the large number of sexual offences that are not reported and sometimes never disclosed to anyone (Walklate, 2011). Allen state that underreporting of sexual offences is a recurring tendency in the western world (2007). The Crime Survey for England and Wales (CSEW) for 2017 estimated that approximately 650,000 adults experienced some type of sexual offence up to the year ending March 2017 and that there has been no significant change since 2005 (CSEW, 2018). The vast majority, 510,000, were women (ibid.). In the year ending March

2017 121,200 sexual offences were reported to and recorded by the police (ibid.). Of these, over a third related to rape (ibid.). Additionally, between 25%–27% of the instances reported to police related to non-recent offences and therefore the number of reported cases may be skewed due to this (ibid.). The CSEW 2011/12 showed that the vast majority of offences committed did not belong in the categories of either rape or sexual assault despite these categories taking up 71% of cases reported to police (MoJ, 2013a). Furthermore, according to the numbers provided in the 2013 overview, just over 11% of sexual offences were recorded by police and roughly 1 out of 50 sexual offences committed proceeded to court (ibid.).

Underreporting therefore significantly influences official statistics, which draw on cases recorded by police. This in turn affects the attention given to sexual offences, for example politicians and the media. There are several explanations and circumstances that can influence whether a victim decides to report or whether they themselves recognise their experience as sexual assault (McMullin and White, 2006). McMullin and White note that ‘approximately half of women who [in research surveys] report an experience that meets the legal definition of rape do not label it rape’ (2006: 96). This naturally affects whether the victim goes on to report to the police or list their experience in national crime surveys. Aside from this, Topping has found that senior figures in the CPS have been urging the specialist rape and sexual offence units in England and Wales to only continue investigating cases with strong evidence bases in order to improve conviction rates (2018). Additionally, the CPS recently reviewed all their sexual offence cases following instances where not all evidence had been submitted to both defence and prosecution and where the cases were subsequently dropped in court under heavy media attention (Bowcott, 2019; CPS, 2018). As such there are several structural, organisational and societal circumstances and conditions which influence the number of sexual offences reported to police and estimated in surveys.

Rape myths and general bias from society and professionals are also considered a significant deterring factor for victims to report (e.g. Suarez and Gadalla, 2010; Brown and Horvath, 2009; Lonsway and Fitzgerald, 1994). Rape myths are ‘attitudes and beliefs that are generally false but are widely and persistently held, and that serve to deny and justify male sexual aggression against women’ (Lonsway and Fitzgerald, 1994 p. 134). Arguably, the absence of male victims in rape myths and rape scripts can be seen as a prejudice on its own as men are rarely, if ever, considered a possible victim by the public and professionals (Suarez and Gadalla, 2010). Brown and Horvath argue that ‘rape myths may inhibit women from reporting rape’ and

that further inhibitors include: media coverage focusing on false rape reports; police dropping cases based on weak evidence and; cases not going to court, due to prosecutors not expecting juror support as their case does not fit the stereotypical rape script (2009 p. 328). Cases that match rape myths or rape scripts are incredibly rare with Waterhouse et al. investigating 463 rape cases all reported within one police force in the United Kingdom over a two-year period and where no case had all the features needed (2014). These prejudices and biases are being targeted in Scottish law where the 2016 Abusive Behaviour and Sexual Harm Act for Scotland provides guidance for how judges need to give directions to juries to prevent influence of rape myths and other bias in their decision making (Abusive Behaviour and Sexual Harm Act (Scotland) 2016; Callandar, 2016).

The research above is focused on what is referred to as ‘most serious sexual offences’ i.e. rape and sexual assault. However, it is clear from the CSEW that those most serious types of sexual offences suffer the least from underreporting (MoJ, 2013a). Furthermore, some of the reasons given for not reporting these most serious offences was that their experiences were ‘too trivial’ or that police would not be able to do anything to help (ibid.). This is particularly concerning when considering how these types of perceptions might then apply to other types of sexual offences.

Sexual harassment has become a more recognised type of sexual offending which has received attention in recent years through campaigns such as the abovementioned #MeToo, the Everyday Sexism and Stop Street Harassment projects (Krook, 2018; Clair et al., 2019; Everyday Sexism Project, n.d.; Stop Street Harassment, n.d.). In France this led to the introduction of a new law to tackle sexual harassment in public (Clair et al., 2019). Sexual harassment has previously been seen as an organisational issue and therefore mostly used in workplace situations but has become recognised as also happening in the public sphere and schools (Clair et al., 2019; Krook, 2018; Parliament, 2016). Carline et al. have found that up to 68% of female students had experienced verbal or physical sexual harassment on university campuses (2018). Further to this, Pina et al. have found that more than 90% of women state their harassers were male (2008). Whilst Pina et al. use the term of physical sexual harassment to cover unwanted sexual touching this would be labelled sexual assault under the Sexual Offences Act 2003 (2008). Krook note how victims of sexual harassment face difficulties responding to and standing up against sexual harassment as they risk being called ‘killjoys’ and accused of misunderstanding jokes when not laughing along (2018). Krook further argues that

‘sexual harassment should be understood as a systemic, cultural problem, rather than a question of problematic individuals’ (2018, p. 65). This is echoed by Pina et al. in their evaluation of sexual harassment theories where most see this as a societal issue linked to male dominance (2008).

The Sexual Offences Act includes rape; sexual assault with or without penetration and; causing sexual activity without consent (2003).¹ The Equality Act covers sexual harassment which is defined as any unwanted sexual behaviour from one party which either aims to or causes the receiving party to feel their dignity has been violated and/or creates ‘an intimidating, hostile, degrading, humiliating, or offensive environment’ (2010). The Criminal Justice and Courts Act 2015 covers image-based sexual abuse. However, as McGlynn et al. argue, this legislation focuses on the intent to cause distress for the victim and not when the abuse aims to blackmail or gain notoriety (2017). The CSEW separates rape and sexual assault including attempts from indecent exposure and unwanted touching in their statistics whilst both categories are used to estimate the full extent of sexual offences (2018). Presently there is very little official data on the prevalence and experiences of harassment in the United Kingdom, sexual or not (CSEW, 2018; Davidson et al., 2019). One reason for this is likely to be that the CSEW covers the main categories and subcategories of crime and has been investigating trends since 1981 and therefore expanding the survey following the above-mentioned recent focus on sexual harassment is unlikely (CrimeSurvey, n.d.). Despite this, Pina et al. have found that knowledge and awareness of sexually harassing behaviours has increased between 1980 and 1994 (2008). Furthermore, they found that sexual harassment and coercive behaviours were far more common than physical and aggressive sexual violence (ibid.).

OOCs are meant to provide an appropriate response to low-level offending including summary only and some indictable or either way offences (NPCC, 2017; MoJ, 2015; MoJ, 2013b). In order to assess whether an offence can be dealt with through an OOC the police use gravity matrixes which grade various offences on a scale from 1-4 depending on severity (ACPO, 2013). There are separate gravity matrixes for adult and youth offenders (ACPO, 2013; NPCC, 2019). Both adult and youth OOCs have similar requirements which must be met including admission of guilt, sufficient evidence to charge had the offender not admitted guilt, the offender accepting caution and any consequences this may incur and the viewpoints of the

¹ The Sexual Offences Act 2003 covers various other sexual offences such as: offences against children, corpses and animals; trafficking; prostitution and voyeurism or offences aided by abusing positions of trust or against mentally disabled people.

victim must be taken into consideration (ACPO, 2013; MoJ, 2013b; MoJ, 2015). The gravity score matrixes set out an initial score for sexual offences as defined in the Sexual Offences Act, the Equality Act and other relevant legislation and use aggravating and mitigating factors to establish the final score (ACPO, 2013; NPCC, 2019). If the final score is 1 a community resolution or simple caution is likely to be appropriate for first time offenders or any suitable minimum response (ACPO, 2013; MoJ, 2015; NPCC, 2019). If the final score is 4 the offender should be charged and if it is between 2-3 an OOC is likely to be suitable (ACPO, 2013; MoJ, 2013b; MoJ, 2015). Indictable offences must be referred to the CPS (ACPO, 2013; MoJ, 2013b; MoJ, 2015; NPCC, 2017).

When attempting to differentiate between low-level and serious sex offending it might seem appropriate to categorise based on those sexual offences for which an OOC is a possibility as these are aimed at low-level offending (NPCC, 2017; MoJ, 2015; MoJ, 2013b). However, as indictable offences can be dealt with out of court depending on a case-by-case review from the CPS, this categorisation is not wholly suitable. McGlynn et al. state that ‘from victim-survivors’ perspectives, the continuities and similarities between various forms of sexual violence provide little basis for differentiating provision between ‘serious’ and ‘less serious’ sexual offences’ (2012, p. 238). Further to this Pryor has found a link between sexual harassment and rape behaviours which indicates an overlap between what is otherwise referred to as the most serious sexual offences (rape and sexual assault) and sexual harassment (1987). This link is partially based on a strong correlation between high scores in Pryor’s (1987) ‘Likelihood to Sexually Harass Scale’ and Malamuth’s (1981) recognised ‘Likelihood to Rape Scale’. Both scales have furthermore undergone rigorous testing and have been found to be reliable estimates of behaviours associated with sexually harassing and abusive activities (Pina et al., 2008). Furthermore, sexual offences such as image-based sexual abuse and groping are referred to as sexual harassment and sexual abuse interchangeably where a consistent similarity is the acknowledgement of the severe consequences all types of sexual abuse can have on victim-survivors (McGlynn et al. 2019; Clair, 2019; McGlynn et al., 2017). It is therefore necessary to focus on the level of harm to the victim-survivor based on their personal experience in order to understand the extent of trauma caused by any sexual abuse.

Out of Court Disposals

Neyroud states in his review commissioned by the NPCC that it has been necessary for the police to be able to deal with certain crimes without having to go through the court system since the 18th century (NPCC, 2018). He further states that whilst there are several studies about central factors for diversion for offenders there has been no research comparing the effectiveness of OOCs and prosecution (ibid.). Dingwall and Hillier further describe how the police have long dealt with young offenders informally though still ensuring offences are recorded in case this becomes relevant for possible future offending (2015).

In the CPS Guidance on Charging it is clearly stated that a main concern with criminal cases is to keep the interest of the public in mind (CPS, 2013). It is further stated that in order to do this, it must be considered whether a case is most appropriately dealt with out of court, i.e. through an OOC (ibid.). It is stressed that this will need to be evaluated on a case-by-case basis taking into account 'the seriousness of the offence, the results of the offending behaviour, the antecedents of the offender and the likely outcome at court' (ibid., section 9). The results of the offending behaviour include the impact on the victim. The CPS emphasise this by stating the need to obtain and take into account any viewpoints of victim(s) whenever possible (ibid.). Furthermore, a prerequisite for an OOC is the admission of guilt by the perpetrator (MoJ, 2015; MoJ, 2013). This admission of guilt is being referred to as one of the main reasons that comparing reoffending data between cases being resolved with an OOC or in court is difficult (Daly, 2006; NPCC, 2018).

Across England and Wales there are different OOC frameworks (NPCC, 2017). Some counties use a seven-tier model for adult cautions including cannabis and khat warnings, community resolutions and simple and conditional cautions (NPCC, 2018). However, the national strategy as laid out by the NPCC is to move to a simpler two-tier model for adults and three for youth (2017). This is to serve multiple purposes such as ensuring same processes across the country for issuing conditions and recording these and being simpler for both the public to understand and professionals and police to use (NPCC, 2018). Another expectation was for the two-tier framework to be more cost effective than the previous frameworks, however, Neyroud found in his review of the two-tier pilot forces that this did not seem to be the case due to expenses related to all disposals carrying a condition compared to previous warnings (ibid.). It is expected that the additional expense related to the two-tier model can be negated by utilising

police officers' body worn cameras to provide documentation for street resolutions and by improving the cost-effectiveness of case file preparation (NPCC, 2018; NPCC, 2017). Hampshire has already implemented the two-tier framework and have a scrutiny panel in place evaluating the use of these on a bi-monthly basis (HPCC, n.d.a; HPCC, n.d.b).

There are currently several trials being conducted for early intervention programmes for e.g. domestic violence (e.g. Project CARA in Hampshire) or deferred prosecution (e.g. Checkpoint in Durham and Turning Point in West Midlands) which encourage the offender to engage in programmes and not reoffend as the consequence will be for them to be prosecuted for original and subsequent offences (NPCC, 2018). These trials are showing promising results and further underline the benefits and need for tailored interventions and disposals (ibid.). There are currently no regulations for how interventions and programmes should be funded, and it is therefore up to the police forces and Police and Crime Commissioners (PCC) across individual counties to decide whether these are paid by the offenders or by the PCC (ibid.). Hampshire has both self-funded and non-self-funded interventions (Haggar, 2019). In October 2018 the HPCC conducted a Community Remedy Survey which found support for self-funding for interventions when the costs were up to £50.00 (HPCC, 2018).

OOCDs for sexual offences requires the authorisation of a Police Inspector as these offences are recognised as particularly high risk of harm to the victim and society (NPCC, 2017). OOCDs are rarely used for sexual offences with just over 300 given in Hampshire between 2007-2017 out of almost 59,000 (MoJ, 2017). This reflects a national trend where less than 12,000 OOCDs out of more than 2.3 million were given for sexual offences (ibid.)². OOCDs are seen as a cost-effective way of dealing with crime, reducing reoffending and satisfying victims through the opportunity to have a say in the outcome of the offence committed against them (NPCC, 2018; NPCC, 2017). This is part of the reason the NPCC aims to increase the use of OOCDs (2017). Despite this, there has been a gradual and significant decline in the use of OOCDs between 2007-2017 (MoJ, 2017).

² Sex offences has been determined to be all offences containing 'sex' or 'rape' in the offence type. The total number of sex offences resolved with an OOCD in Hampshire was 309 out of 58,741 spread over the years 2007-2017 equal to 0.53%. The total number of sex offences for England and Wales resolved with an OOCD was 11,787 out of 2,316,367 spread over the years 2007-2017 equal to 0.51%. Calculations made based on numbers from Criminal Justice Statistics Quarterly: Out of Court Disposals (2007 to 2017), Pivot Table Analytical Tool for England and Wales (MoJ, 2017)

Appendix 4 contains six examples of sexual offence OOCs for 2018. Half of these include conditions with an element of restorative justice (RJ).³ There is no data available to see breakdowns of OOC conditions given for sexual offences, however, examples for the scrutiny panel are chosen with the intention to provide a generalisable overview of cases within a specific theme. Furthermore, it became clear from those attending the scrutiny panel and who regularly work with OOCs for sexual offences, they found RJ conditions common and suitable. RJ is defined as a process where parties involved in a crime work together to resolve the aftermath of the offence (Marshall, 1999). RJ is often exemplified as a mediation, or conference, between victim, offender and representatives of these (CPS, 2019; McGlynn et al., 2012). However, indirect RJ such as restorative letters can include letters of apology (Calkin, 2015). McGlynn et al. state that it is particularly important to prepare and assess possible outcomes when using RJ in cases of sexual offending (2012). RJ can be initiated at any stage throughout the criminal justice process or if no report has been made to police (Shapland, 2006). RJ can normally be initiated by either the offender or the victim (McGlynn et al., 2012). However, due to the sensitive nature of sexual offences RJ must be requested by the victim (Restorative Justice Council, n.d.).

Daly states that central to RJ is the explicit or implicit admission of guilt from the offender and that the aim is to hold the offender accountable for their behaviour (2006). As mentioned above, some victims of sexual violence do not wish to go through the criminal justice system due to processes which can be seen as harmful to the victim (Edelstein, 2007). There has been research discussing whether RJ is appropriate in cases of sexual violence due to the risk of revictimization and the underlying power imbalances (Daly, 2006; Hudson, 2002). However, as the Stern review (Government Equalities Office, 2010) has found, some victims want their experience to be recognised and as McGlynn et al (2012) state, not giving victims the option of pursuing justice through RJ would be to belittle them and imply victims are unable to make their own rational choices. Furthermore, as Michael Lane, Police and Crime Commissioner in Hampshire, queries: 'If Restorative Justice is about giving victims back control, is it right to control who can access it?' (HPCC, 2019). The HPCC found that following a conference with professionals, which had the aim of challenging misperceptions of the use of RJ for sexual and

³ HPCC have provided 6 anonymised examples where an OOC has been given for a sexual offence. The examples were also the ones covered by the Hampshire OOC scrutiny panel in March 2019 under the theme of sexual offences. 3 cases resulted in letters of apology, a type of restorative justice and 2 cases did not clearly state whether restorative justice measures were included in conditions for community resolutions.

domestic violence, that 94% of those attending were more likely to consider RJ an outcome in those types of cases (HPCC, 2019).

Special precautions and considerations are necessary when using RJ for sexual offences, however, McCartan and McKenzie state there are few specialised RJ programmes within the UK aimed at this (2014). The HPCC has commissioned services from Restorative Solutions who provide specialist training including sexually harmful behaviours for RJ facilitators (Restorative Solutions, n.d.). This shows the focus given by the HPCC to provide suitable options for victims of sexual offences.

This literature review has presented insight to how ‘low-level’ is used within sex crime and some of the difficulties associated with using this term. This has been used to introduce OOCs which are a way for police to deal with less serious crime without going through the court system. There are several benefits and costs for victim, offender and society regarding the use of OOCs for sexual offences some of which have been covered here. Lastly, this literature review has briefly covered RJ which often form part of outcomes for OOCs given for sexual offence cases.

Research methodology and methods

This section will present the methodological considerations underlying this research project and the methods used to collect and analyse data that will enable a critical evaluation of the current use of out of court disposals for low-level sexual offences. This section will furthermore include an overview of some of the central limitations to this study and ethical reflections regarding the area of study and collection of primary data.

Methodology

This research project investigates OOCs and recognises that both objectivist and constructivist ontological approaches may be suitable for this. OOCs can be seen as ‘a constraining force that acts on and inhibits its members’ as OOCs are judicial measures used by the Police to deal with crime and thus aims to inhibit all members of society from committing crime (Bryman, 2012 p32). From an objectivist standpoint, OOCs belong to the legal foundation of society which can be considered as an entity that exists separately from members of society and as having ‘an almost tangible reality of its own’ (ibid.). Becker, however, would argue that a constructivist approach is more suitable to researching entities such as OOCs (1982). Similar to culture, the legal foundation of a society ‘persists and antedates the participation of particular people’ (Becker, 1982 p 521). However, culture, and subsequently the legal foundation of society, is in constant review and therefore continuously being constructed thus becoming a product of its society at any given time (Becker, 1982). This research pays attention to recent developments in the use of OOCs for low-level sexual offences and recognises that OOCs are under continuous review. Thus, this study takes a constructivist ontological approach.

An interpretivist epistemological methodology further enhances the focus on ‘the subjective meaning of social action’ (Bryman, 2012 p 30). This means that throughout the research process the aim has been to understand the subjective effect of OOCs for low-level sexual offences for offenders, victims and society. This includes a hermeneutic process where literature is understood in relation to previous research conducted which then influences the understanding of this project’s research area and the findings (Bryman, 2012). Gelsthorpe furthermore argues that feminism, and specifically feminist standpointism, has brought attention to the importance of acknowledging the gendered standpoint and experiences of researchers’

(2002). This is particularly relevant to research into sexual offences as these are disproportionately being committed by men against women (Greer, 2013). Thus, being a cis female is likely to allow me to make observations and notice features which might not normally be possible from other gender perspectives (Gelsthorpe, 2002). These epistemological and ontological considerations enable this project to view OOCs for low-level sexual offences in relation to their application in society and the specific features that are related to sexual violence.

Research design

In this project a cross-sectional research design is utilised as this is suited for speaking to various actors and researching literature relating to a specific topic at a single point in time (Bryman, 2012). The aim of this research project is to provide a critical evaluation of the current use of OOCs for low-level sexual offences and while evaluation-oriented research projects often utilise various types of experimental research designs this has been neither the aim nor a possibility for this paper (*ibid.*).

This project has been created in collaboration with HPCC and therefore reflects their interest in ensuring evidence-based policing and intervention for crime. The HPCC expressed a general interest in research into options available for receivers of an OOC with particular focus on options for offenders of low-level sexual crime; cybercrime, revenge porn and; difficulties ensuring options are equally available to marginalised groups. In collaboration with HPCC the focus was narrowed down to a critical evaluation of current application of OOCs for low-level sexual offending as there are no bespoke interventions in place in Hampshire.

In order to provide an in-depth critical evaluation, it has been necessary to research various areas related to OOCs, low-level sexual offences and the type of OOC interventions currently being used for low-level sexual offences. These areas are vast each on their own and reaching knowledge saturation for the literature review has therefore been difficult (*ibid.*). Investigating the area of low-level sexual offences proved particularly challenging as there is no acknowledged definition of what constitutes 'low-level' sexual offences. Various sources such as the gravity score matrixes used by the Police when deciding the severity of offences and methods used by the CSEW in their questionnaires regarding sexual offences are used to narrow down an understanding of what constitutes low-level sexual offences (e.g. ACPO, 2013 and CSEW, 2018).

Qualitative research

This research project uses a qualitative approach to data collection as OOCs for low-level sexual offences are uncommon and it was therefore decided in-depth information from professionals and specialists working within this area would best enable a critical evaluation and provide ideas for recommendations.

The literature review is based on a cursory descriptive and qualitative content analysis of a wide range of literature to create the knowledge base for key areas of this research (Bryman, 2012). Research databases such as SCOPUS, EBSCOhost and JSTOR have been searched with terms such as 'low-level sexual violence', 'out of court disposals; sex* crime' and 'restorative justice; sex* crime'. Government websites and reports have been used to understand official strategies and aims relating to OOCs. Through the collaboration with the HPCC it has been possible to review six anonymised cases where OOCs have been used for low-level sexual offending. This has enabled a better understanding of the application of gravity scores; considerations made by officers and inspectors regarding outcomes for both offender and victim and; insight into which interventions are used for low-level sexual offences.

Conducting a qualitative focus group, an interview and an open-ended survey was chosen partly due to the low occurrence of OOCs for low-level sexual offences, partly due to the wish for in-depth knowledge from professionals and specialists and partly due to availability of participants. As OOCs are not often given for low-level sexual offences, conducting questionnaires or interviews with members of the public would likely cause misunderstandings as their opinions on the topic may be more heavily influenced by the type of questions asked and it might cause those participating to believe OOCs outcomes for sexual offences are common, which they are not (Bryman, 2012; MoJ, 2017). This paper furthermore concerns itself with the topic of sexual violence which is a sensitive subject and can cause distress or biased opinions from members of public (Bryman, 2012). Professionals, i.e. police and prison officers, and specialists, i.e. victim and offender advocates, are expected to have certain biases, but these are anticipated and more likely than for a member of public to be based on academic and/or working knowledge of the area. This project aims to mitigate the effects of bias by including professionals and specialists who are working with both offenders and victims.

In a focus group interview or an interview with more than one interviewee the interviewer aims to perform the role of moderator and participants are to a high degree

encouraged to debate between participants (ibid.). This is particularly useful for this research as participants might not have had the opportunity to previously discuss this topic with each other and it may encourage collaboration and knowledge sharing between participants and a deepening of participants' knowledge on the topic. The setting of a focus group also allows the individual to listen to others' responses before voicing their own views which can be beneficial to those who prefer to have time to think before speaking (ibid.). This also applies to an interview with two participants. Bryman advises that in order to conduct a successful focus group interview it is necessary to use ground rules such as requesting participants to always respect the opinion of others and to avoid interruption (ibid.).

The choice to have a focus group and an interview separating professionals and specialists was made on the basis 'that relatively homogeneous groups are more likely to lead to disclosure, particularly on topics of a sensitive nature, as participants feel more comfortable' (Steward and Shamdasani, 2015 p305). An interview guide was made prior to interviewing. Questions included: What does Out of Court Disposals mean to you in your day to day work; What do you define as a low-level sexual offence and; What benefits/limitations do you see in using OOCDS for low-level sexual offences? Both professionals and specialists were given the same introduction at the beginning of the interview and questions were phrased in a manner to not exclude or show any bias (Bryman, 2012). This was done with an aim to create discussion amongst participants and open questions were therefore used (ibid.). To ensure all participants felt able to voice their opinions each topic question would be summarised following discussion and ended with the encouragement for any to include their views if they had not already been expressed (ibid.).

Due to availability members of Youth Offending Teams (YOT) were not able to attend interviews. Therefore, a short survey focusing on open-ended questions similar to those asked in the interviews were shared with Hampshire YOT officers.

By using qualitative methods to gather primary data this research paper is able to use the detailed information gathered from interviews and survey to gather the views of those who can be expected to know the most about the topic due to participants working with OOCDS and/or sexual offences.

Ethics

This research project was reviewed and passed by the Department of Applied Criminology and Forensic Studies Ethics Committee on 22 May 2019.

Participants of both interviews and survey were given information sheets providing them with an introduction to this research project and contact details for researcher, supervisor with the University of Winchester and mentor with the HPCC. Consent forms were signed by participants of focus group and interview and all were offered redacted transcripts and informed they could retract their participation or request amendments to their own statements before specific dates. These steps were taken to ensure participants were fully informed about the aim of this research project and in order to comply with GDPR legislation. The interview recordings and transcriptions were stored separately from consent forms and in a manner, which would not aid identification of each participant to statements in transcripts and recordings.

The collaboration with HPCC has allowed access to restricted information. In order to ensure confidentiality is kept all information used that has been derived from restricted programmes or collected in restricted circumstances will be passed to the HPCC for approval before being included in the final report (McBride and Gordon, 2008).

Reliability and validity

The quality of a research project relies heavily on its reliability and validity (Bryman, 2012). As this research project benefits from a collaboration with the HPCC in order to gain access to restricted data and providing contacts to obtain interview participants it will be difficult for most to replicate the primary data collection in this paper. However, a high level of transparency is employed by providing information as to how research was carried out for the literature review, how the interview guide was created and this report includes the anonymised transcripts in the appendixes (ibid.). The validity and reliability of this research is affected by the limited amount of low-level offences being dealt with out of court (ibid.). Thus, despite speaking to professionals and specialists who are knowledgeable in the areas of OOCs and/or sexual offences, each participant may not have sufficient knowledge of OOCs for low-level sexual offences to be able to provide fully reliable data. The low frequency of OOCs for low-level sexual offences can be seen to affect the usefulness of this study. However, it arguably indicates an opportunity, if not a need, to deal with this type of offences in a manner which is

proportionate, appropriate, takes the wishes of the victim into account and which may divert offenders from escalating their behaviours.

Triangulation has been used in the literature review to ensure the topics of OOCs, low-level sexual offences and restorative justice measures have been researched from various perspectives (ibid.). This is in order to prevent conscious and unintentional bias.

Lincoln and Guba argue for a different way of estimating the worth of qualitative research through 'trustworthiness' (1985). This relates to the credibility of how the conclusions of research are reached; transferability, i.e. whether it is possible to use the results of this research in other similar circumstances and; dependability, whether the results would be found by using the same processes at a different time (ibid.). This paper stays credible by being transparent about how decisions are made and how knowledge is gained. As argued in the literature review, there are currently multiple OOCs frameworks being employed across the country and it is therefore unlikely that recommendations made in this paper would be easily transferred to another county. Likewise, Hampshire is continuously developing and reviewing their OOC processes and implementing results from and conducting pilots in order to keep providing evidence-based solutions (e.g. Project CARA via Hampton Trust) which affects the dependability of this research project.

Limitations

There are several limitations that affect this research. As mentioned above, there are various OOC frameworks across the country which makes it difficult to research and compare approaches in different counties. This research project is further limited in time and scope due to it being a MSc dissertation. Additionally, this project has been created in collaboration with the HPCC and whilst the research area has been decided in collaboration between researcher and the HPCC this needed to be approved by the University of Winchester.

Another main limitation has been the difficulties surrounding defining what constitutes 'low-level sexual offending'. This has been discussed at length in the literature review, touched upon in the focus group, interview and survey and advice gotten from external partners to the HPCC. However, a working definition has not been found for this research project. Furthermore, there are cases where OOCs have been given for 'rape' (MoJ, 2017). These do not include any context and might relate to statutory rape where a couple, one being 15 years

old and the other 16 years old, have consensual sex but due to one party being underage this amounts to rape. Whilst this is still illegal, victim may not wish to go to court and due to mitigating factors in the gravity score matrix an OOCB became an opportunity after approval by CPS. Thus, only referring to low-level sexual offences may not be fully appropriate when researching OOCBs for sexual offences.

Findings and discussion

This section will be shaped around the three research questions. Findings from the focus group interview with professionals including police and probation officers, the interview with two specialists from Yellow Door and the survey sent out to various Hampshire YOTs will be critically examined and contextualised using various academic and public literature and six anonymised examples where an OOCd has been given for a sexual offence. These examples have been provided by the HPCC and were evaluated in scrutiny panel on March 11th, 2019.

Findings from this research project's data collection will be referred to as P1, P2, etc. for the focus group, YD1 and YD2 for the interview with Yellow Door and YOT will refer to all survey responses.

What issues surround the notion of 'low-level' sexual offending?

All participants were reluctant to try and define 'low-level' sexual offending. However, YOT stressed the importance of context and provided examples such as posing a low risk of harm to the victim, no violence or threats, and first-time offences, P6 stated that it 'clearly' would not include rape but low-level sexual touching such as being groped in a nightclub would fit in the category of low-level sexual offending. There is a general agreement in the data collection that rape should not be defined as a low-level sexual offence, however, between 2007-2017 there were eight instances in Hampshire, and 248 instances nationally, where an OOCd was given for rape (MoJ, 2017). As has been mentioned in the literature review for this project, OOCds are meant as a tool to deal with low-level offending (NPCC, 2017; MoJ, 2015; MoJ, 2013b). Whilst the MoJ (2017) statistic does not include any context we can see from the skills matrix's for adult and youth offenders that some offences such as rape must be referred to CPS (NPCC, 2019; ACPO, 2013). This can be seen as an additional level of scrutiny in order to assess whether an OOCd would be the most appropriate outcome for offences normally categorised as 'serious'. For adult offenders, sexual offences with penetration must also be referred to CPS whilst only some penetration offences need to be referred for youth offenders (NPCC, 2019; ACPO, 2013).

Within the adult two-tier OOCd framework there are certain crime categories (including: hate crime; domestic abuse; traffic offences and; knives and offensive weapons) which each have a section with special considerations (NPCC, 2019). Domestic abuse has

specific aggravating and mitigating factors which include the abuse of trust and power (ibid.). These are factors which are also recognised as present in many sexual offences (e.g. Clair et al., 2019). Despite this, there are no specific considerations relating to sexual offences (NPCC, 2019). However, indictable offences, which account for the majority of sexual offences listed on the matrix, must be referred to the CPS and all sexual offence cases must be approved by an officer of the rank of Inspector or higher (NPCC, 2019; NPCC, 2017).

YD1 argued that a blanket definition of low-level sexual offending would not be suitable as it would need to be phrased according to the audience and setting e.g. public or professional. YD1 further stated it would be based on the current legislation and any definition would be limited as it is impossible to estimate the impact on victim and thus risk of harm for sexual offences. These considerations were also brought up by P1, P3, and P6. There was general agreement in both interview and focus group that the public would likely disagree to any definition of 'low-level' sexual offending due to the possible severe impact on the victim. P3 provided examples of arguments such as 'any sexual offence is an invasion of my privacy ... it's an objectification of me as a person and therefore should never be classed as low ... and should never be given an OOC'D'. Throughout the OOC'D examples in appendix 4 the offences are referred to as 'low-level' or 'very low-level', thus despite there being no official definition of such, the notion of low-level sexual offending is used to justify disposals.

The literature review touched on issues contributing to the underreporting of sexual violence. Clair et al. note how victims of sexual violence are constantly reminded of their trauma through media and that whilst some victims are diagnosed with PTSD this does not fully recognise the serious implications specific to sexual trauma (2019). They state that military veterans suffering from PTSD do not face the same level of (public) questioning of the validity of their experience(s) as victims of sexual violence (ibid.). Clair et al. further argue that the significant differences between PTSD for veterans and sexual violence victims merit its own diagnosis due to victims often being disbelieved and the fear of revictimization by media and court systems (ibid.). This is reflected by P6 when they note how an incident of groping in a night club may be considered low-level and insignificant by the victim in the moment which may affect potential reporting and outcome, but they may then experience flashbacks and anxiety when they are next in a nightclub. Clair et al. argue that media attention on sexual violence, with prominent cases such as Dr C. Ford testifying against the then US supreme court nominee Brett Kavanaugh, is an example of victims being asked to relive their trauma, being

disbelieved, and that this can cause other victims of sexual violence to relive their own sexual trauma and reinforce their fear of not being believed (ibid.).

YD2 considered how a definition of a sexual offence as ‘low-level’ might influence public opinion of the criminal justice system (CJS). The expectation being that if a person has their offence classed as ‘low-level’ despite suffering a severe impact, that person, and those they share their experience with, may not seek the assistance of police in future as they do not expect a response which recognises the impact of the incident. YDs further argued that this should be seen in the context of current underreporting due to victims not believing the police would be able to investigate and/or not wanting to go through the CJS. In the CSEW sexual offences are currently split in two groups: rape and sexual assault including attempts and; indecent exposure and unwanted touching (CSEW, 2018). Whilst this categorisation matches some statements given by professionals, YDs and by YOT it does not provide information on how many times each respondent has experienced sexual violence or whether this was the first offence committed by the offender. These factors are seen as important in this projects’ data collection.

P6 stated that there is currently a large gap in sexual offences resulting in ‘no further action’ and those going through court. P6 states that being able to target ‘low-level’ sexual offences with OOCs would provide a possible solution for victims who do not wish to go to court but still want a meaningful outcome. This is also reflected by Herman, who found that victim-survivors main priority was the validation of having the offence recognised and having the burden of guilt transferred to the offender (2005).

McGlynn et al. have explored the serious impact image-based sexual abuse can have on victims whether images are digitally created or authentic (2019). Some of these pictures and videos are taken without the victims’ knowledge or created superimposing the victims’ body and/or face onto a pornographic image (ibid.). McGlynn et al. found that ‘[m]any victim-survivors experience this abuse as a form of sexual assault’ and that some describe their experience as a digital rape (ibid. p.2). Similar to academics such as Herman (2005), Allen (2007) and Cook (2011) and the findings in this project, McGlynn et al. also stress the importance of being taken seriously by police and having something meaningful done about sexual abuse (2019). Image-based sexual abuse is currently not fully covered in British law and officers are therefore limited in their responses with some officers giving informal warnings (ibid.).

This project has found that level of harm for sexual offences cannot be predicted and thus a definition of low-level sexual offending is not suitable.

What considerations and consequences surround the use of OOCs for 'low-level' sexual offending?

Appendix 4 contains six examples where an OOC has been given for a sexual offence in Hampshire. These are anonymised versions of the cases which were evaluated at an OOC scrutiny panel in March 2019. They show some of the considerations made by police, YOT and other organisations involved in the decision-making process. These examples underline Hampshire Constabulary's focus on using gravity matrixes as a starting point for deciding appropriate outcomes whilst ensuring consistency. Considerations include previous criminal history, presence of aggravating/mitigating factors, victim's wishes and how interventions are expected to reduce risk of further offending. The YDs noted several benefits of listening to and following the victim's wishes including giving control back to the victim and letting them be heard which can aid their healing process and may prevent trauma resurfacing. The significance of the victim feeling validated and acknowledged through the offence being marked and their opinion taken into account is also stressed by YOT and agreed by participants in the focus group interview. YD1 voiced the concern whether the victim would be sufficiently able to speak about the full impact of a sexual offence shortly after the incident as initial response to trauma often minimises the impact and therefore level of harm may not be accurately reflected in the victim's view shortly after.

The focus group interview touched on the issue of media coverage sensationalising the use of OOCs for sexual offences and the media presenting Hampshire Constabulary as 'being soft' without considering the context of each case. YOT argued that OOCs can be seen as non-punitive by the public. This is seen in some local media who refer to OOCs as 'controversial policing powers', allowing offenders to 'dodge court' and as being 'bad for justice' (Orde, 2019; Cotterill, 2019). Media is known to frame and exaggerate issues about crime and particularly sex crime in a manner which influences public perception, endorse various rape myths and create a fear in society by sensationalising stories as this catches the interest of readers and increases sales (Klein, 2017). This type of coverage can affect public opinion in regard to milder forms of criminal sanctions and can be seen as part of the 'tough on crime' discourse (ibid.). However, the collected data stresses the benefits of using appropriate rehabilitative and

restorative measures which reflects the aims presented in the NPCC Charging and OOCB strategy (NPCC, 2017).

YOT and YDs stress the importance of not criminalising young people who may not understand the consequences of their behaviour. This reflects a need for educational and awareness increasing disposals within the OOCB framework. Focus on education and awareness of healthy relationships and understanding notions of consent has been a main focus area with the HPCC's Youth Commission in 2015-2016 and 2017-2018 (HPCC, n.d.c). Moreover, Relationship and Sex Education (RSE) is becoming mandatory in primary and secondary schools from next year (PHSE Association, 2019a). RSE will include consent as a central topic and the guidance states this should be revisited regularly in order to deepen understanding and help young people apply this knowledge to their own lives (PHSE Association, 2019b).

The collected data agrees that the ability of providing education to offenders is likely to prevent escalation and lower risk of reoffending. YD1 further provides an example of a 'serious' sexual offence where they believe an OOCB would have provided the most appropriate response for both offender and victim despite the severity of offence. Having not worked with OOCBs before, YD1 reflected that an OOCB might have enabled seeing nuances through e.g. mitigating and aggravating factors, considering what would be the best outcome for the offender and not causing the victim to feel guilty for the penalty given to a person they cared for.

Professionals and YDs voiced concerns regarding the OOCB framework initially being intended to provide quick responses to crime types such as antisocial behaviour and vandalism and therefore might not be fully suited to deal with the sensitive nature of sexual offences. P6 argues OOCBs provide a quicker resolution to offences that were likely to result in community orders in court often resulting in a similar outcome to an OOCB except with a longer and more expensive process. Additionally, YD1 and P6 state that in the case of sexual offences an OOCB outcome would spare the victim having to revisit the traumatic experience in court, giving statement in front of a jury and risking being revictimised by having their personal history scrutinised. This is stressed in the literature where the substantial emotional burden on victims of going through the court system is considered one of the main reasons for the significant underreporting and dropping of sexual offence cases (e.g. Allen, 2007; Walklate, 2011 and Clair et al. 2019). It could therefore be theorised whether advocating for the benefits of OOCBs could increase the reporting of sexual offences and lower the proportion of cases dropped before court by victims.

Additionally, Dingwall and Hillier argue the CJS process facilitates and encourages avoiding trial (2015). They argue that there are various steps leading up to court where victim, offender and police are given resolution options that would prevent the case from proceeding to court (ibid.). For example, the victim can choose to drop their support for the case at any point, the offender can plead guilty which, depending on the type of offence, can result in an OOC or the police and CPS can decide to not take the case further due to evidence thresholds (Dingwall and Hillier, 2015; CPS 2013 and 2018).

There are countless considerations which can be considered reasonable for the use of OOCs in cases of sexual offences each with accompanying consequences. This section has considered some of these including advantages and limitations from societal, offender and victim perspectives.

What recommendations can be provided for the future development and use of OOCs for 'low-level' sexual offences?

The literature review presents the cost-effectiveness of using OOCs for low-harm offences as a main advantage (see e.g. NPCC, 2017 and NPCC, 2018). P6 notes a potential connection between the decline in the overall use of OOCs to cuts in police staffing levels stating that with less police officers, forces tend to focus on more serious crime types which are not normally appropriately dealt with by OOCs. P3 further argues that for OOCs to be appropriately used for low-level sexual offences, interventions and support projects need to be planned and executed by skilled practitioners which requires long-term funding. YDs, professionals and YOT all stated that appropriate disposals for low-level sexual offending need to be bespoke in order to target underlying attitudes, lack of knowledge and raise awareness of the impact of this type of offending on victims.

An All-Party Parliamentary Group (APPG) report looking into funding and commissioning of services for victims of sexual violence found it is unlikely the government will reach its aim of not turning victims away from services by 2020 (APPG, 2018). The report found waiting lists of over a year for some services and that certain services had had to close their waiting lists (ibid.). This is linked to a lack of funding, particularly long-term, and confusion of how local and national governmental organisations share responsibility for this (ibid.). This shows substantial issues concerning funding for victim-oriented services and it can be assumed there will be similar, if not bigger, complications gaining political support for robust funding for

offender programmes. There are examples of trials of offender interventions such as Hampshire Constabulary's Project CARA (Conditional Cautioning and Relationship Abuse) with the Hampton Trust which provides group based conditional caution interventions for low-harm domestic offences (NPCC, 2017; NPCC, 2018). Evaluation of this project has found the specialised programme far more effective than other interventions (NPCC, 2018). This project has been funded by HPCC with support from the CPS (ibid.).

A recent conference hosted by HPCC focused on the use of restorative justice in cases with sexual and domestic violence (HPCC, 2019). A main argument for offering restorative justice to victims of these types of crime was giving the control of the situation back to the victim by them being able to accept or decline the offer (ibid.). As stated in the literature review this conference resulted in 94 % saying they were more likely than before to offer restorative justice to victims of sexual and domestic violence (ibid.). Similarly, McGlynn et al. argue that not giving victims the opportunity to use restorative justice is patronising and can be seen to imply 'that victims [are] not able to make a 'rational choice'' (2012 p 231). The Stern Review, whilst not mentioning restorative justice, still stresses the importance of giving victims the power to make their own decisions in their pursuit of justice (Government Equalities Office, 2010). These arguments strengthen the previous statements from YDs explaining how giving the control back to the victim can aid their healing process.

YDs argued for a separate OOCd framework for sexual offences and both YOT and professionals suggested bespoke interventions including compulsory attendance for community resolutions and the possibility to continue interventions for longer than the current 16- and 20-week programmes for community resolutions and conditional cautions respectively. YD1 advocated for the involvement of specialist services prior to victims giving their views on OOCd outcomes. This would be able to assess the motivation for the victim to report to police, which YDs argue is central in order to understand how the victim may best progress from their experience. It would enable specialists to gauge if the victim is being coerced to minimise the harm caused by the offence when speaking to police. YDs also mention how incorporating specialist services in the OOCd process for low-level sexual offending could improve the public opinion and counter criticism as it would demonstrate the careful consideration taken.

P1 raised the issue of when to list an offender on the sexual offender register (SOR) arguing that the lives of offenders are significantly affected by this. YD1 also noted how there are no nuances to the SOR and that being listed on this causes social stigma and can make the

future feel 'bleak' for the offender. The social and financial costs to the offender are described as so significant that some American research has found recidivism can increase for offenders registered whilst at the same time working as a deterring factor for non-offenders (Prescott and Rockoff, 2011).

P6 argued that as long as all police forces consistently use gravity matrixes and host Scrutiny Panels, the police can justify their decision-making processes to the public whilst still keeping the details of individual cases confidential. P3 suggested group interventions for sexual offenders would be effective due to peer challenge, which is considered a central element of the success of the Project CARA by Hampton Trust providing OOCd interventions for domestic abuse. P3 further stated that any group intervention should be risk focussed e.g. the Risk Matrix 2000 could inform appropriate OOCd interventions.⁴ Various other assessments, such as the 'likelihood to sexually harass' scale by Pryor mentioned in the literature review, could also improve interventions to suitably target the underlying attitudes and beliefs that might have influenced the offending behaviour (1987).

YOT indicates a national approach is needed to create appropriate interventions due to the low number of OOCds given for low-level sexual offences. This is mirrored by P3 stating a service provider would not be interested in setting up a programme without enough participants. P3 further argues that officers may be reluctant to give OOCds for low-level sexual offences when they know there are no bespoke interventions. These statements suggest that a pilot similar to Project CARA may be successful and could encourage officers to offer OOCd measures in cases of sexual violence. This could be funded by HPCC as a local pilot or it could be a collaboration across multiple constabularies. However, it is evident that a pilot will require enough participants to justify the investment which may be an issue with the current amount of OOCds given for sexual offences (MoJ, 2017).

There is broad support for OOCd outcomes for certain sexual offences and various recommendations have been given to increase and improve current OOCd practice.

⁴ The Risk Matrix 2000 is used to assess the risk of recidivism of adult sexual offenders (Helmus et al., 2013)

Conclusion and recommendations

This project has uncovered various problems regarding the notion of low-level sexual offending such as difficulty estimating and predicting level of harm for sexual offences and its link to severity of offence, concerns of responses to ‘low-level’ terminology in professional and public settings and, the influence a definition of low-level sexual offending may have on public opinion of the police. This project has found that due to sexual offences’ varying impact on victims any definition of low-level sexual offending is unlikely to be suitable. Arguably, any definition of low-level or serious sexual violence could risk less attention being given to the specific context of each case.

There is wide support for OOCs being used for sexual offences stressing the benefits of following victim’s wishes as much as possible and having the aim of education and rehabilitation for the offender. The current gravity matrixes for youth and adults require impact on and views of victim to be taken into consideration whenever possible and it is encouraged to let this inform outcome. The importance of ensuring victims have access to specialist services is stressed. Despite this, research establishes the government’s aim of providing this by 2020 is highly unlikely. It is found that for certain sexual offences OOCs can be a more suitable outcome than court for offender, victim and society for various reasons including the above and by avoiding a possible traumatising and revictimizing court process.

However, this project has not found any explicit justifications regarding the use of OOCs for sexual offences nor any specific guidance of when an OOC is appropriate with current justifications including stating offences are ‘low-level’ despite no definition of this. Development of specific considerations and interventions is therefore needed to fully take advantage of the opportunities OOCs present to sexual offences.

Below are the main recommendations found in this research for the future use and development of OOCs for low-level sexual offences:

- Bespoke group intervention programmes taking inspiration from e.g. Victim Awareness Courses and Project CARA. Interventions should target underlying attitudes, educate on the impact sexual violence can have on victims and notions of consent. This is limited by the current low volume of OOCs given for sexual offences and interventions might

therefore benefit from being developed and trialled across counties to ensure enough participants.

- Develop ‘specific offence considerations’ in the adult gravity matrix for sexual offences. Similar to domestic violence, sexual violence between acquaintances may include psychological elements and coercive and controlling behaviours.
- Incorporate specialist services from point of reporting to ensure offenders and in particular victims receive the support they need when agreeing to or giving statements of consent to use of OOCd.
- Consider whether there should be categories within the SOR to signal OOCd rather than e.g. prison sentence as this may influence whether offenders admit guilt and therefore whether they qualify for OOCd.
- Use tools such as the Risk Matrix 2000 and Pryor’s ‘likelihood to sexually harass scale’ to assess proportionate disposals aiming to prevent recidivism.
- Research should be conducted into the satisfaction of offenders and victims following OOCds for sexual violence to ensure victims and offenders find the outcome appropriate. This is particularly important considering the influence an appropriate outcome can have on victims’ trauma.

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