



Her Majesty's
Inspectorate of
Probation

Refining processes in policy and practice in working with people accused or convicted of a sexual offence

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HM Inspectorate of Probation

Academic Insights 2022/01

JANUARY 2022

Contents

Foreword.....	3
1. Introduction.....	4
2. Sexual abuse and the Council of Europe recommendations	5
2.1 The complex landscape of sexual abuse.....	5
2.2 The changing landscape	6
2.3 The Council of Europe recommendations.....	8
3. Conclusion	13
References	14

Foreword

HM Inspectorate of Probation is committed to reviewing, developing and promoting the evidence base for high-quality probation and youth offending services. *Academic Insights* are aimed at all those with an interest in the evidence base. We commission leading academics to present their views on specific topics, assisting with informed debate and aiding understanding of what helps and what hinders probation and youth offending services.

This report was kindly produced by Kieran McCartan, summarising the new Council of Europe recommendations on the assessment, treatment and reintegration of people accused or convicted of a sexual offence. The paper outlines the current landscape on sexual abuse research, its evolving nature, the challenges faced, and how the recommendations align to current thinking about desistance, life course perspectives, trauma-informed practice, Epidemiological Criminology (EpiCrim) approaches, strengths-based models, restorative justice, professional practice, and community inclusion. The importance of a holistic, rounded, person-centred, multi-agency approach is highlighted, with individuals being offered interventions that are fit for purpose. To support professional practice, the need for continual training and support for staff is also emphasised. Crucially, the adoption of a more evidence-informed and structured approach to managing people accused or convicted of a sexual offence will support reductions in offending and reoffending, and provide the necessary tools to improve, and maintain, public protection.



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Dr Kieran McCartan is a Professor of Criminology at the University of the West of England in Bristol, an Adjunct Professor at the Queensland University of Technology in Brisbane, and a Visiting Research Fellow at the University of Huddersfield. He has a track record of public, academic, and professional engagement on criminological issues, including the origins and causes of sex offending, and societal responses to sex offenders. Professor McCartan is the international representative on the Association for the Treatment of Sexual Abusers board, the Conference Chair of National Organisation for the Treatment of Abuse, Chair of the Confederation of European Probation working group on sexual offences, Research chair of Circles Europe, Deputy chair of Circles South West, a member of the ethics committee of Bravehearts, and has advised the Council of Europe, New Zealand Police, Bravehearts, as well as the Department of the Prime Minister and Cabinet, Australia.

The views expressed in this publication do not necessarily reflect the policy position of HM Inspectorate of Probation.

1. Introduction

Sexual offending is a commonplace occurrence in modern society with research indicating that a significant cross section of the global population, but particularly women and girls, are impacted by sexual abuse, directly or indirectly, at some point in their lives (World Health Organisation, 2021; Dworkin, Krahe and Zinzow, 2021). Consequently, preventing and responding to sexual abuse is a central concern of society, with governments and related bodies publicly committing to tackling the issue.

However, ending sexual violence is not as straightforward as it sounds as it is a complex and multifaceted area with many drivers, large amounts of research which can sometimes be conflicting, and the social as well as political dialogue that surrounds it. It is an ever-evolving landscape, and the challenges faced in preventing and responding to sexual abuse are even more evident when we start to think transnationally about the relevant issues.

This *Academic Insights* paper will focus on the new Council of Europe recommendations on the assessment, treatment and reintegration of people accused or convicted of a sexual offence. The paper will outline the current landscape on sexual abuse research, the challenges that it faces, its evolving nature, and how the recommendations are a response to this.

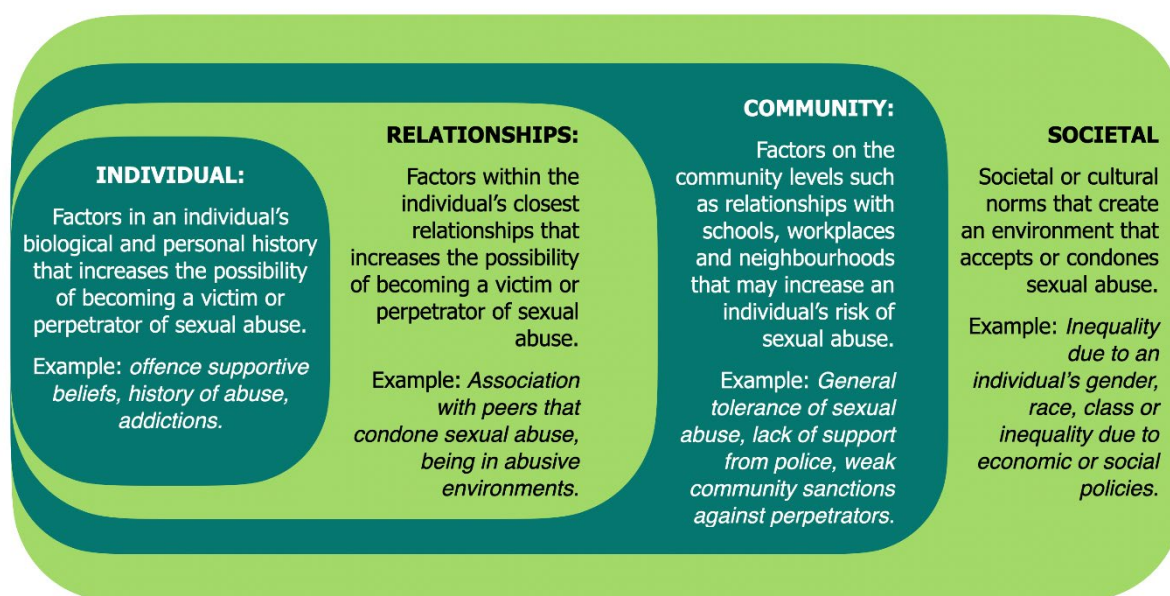
2. Sexual abuse and the Council of Europe recommendations

Sexual abuse is a global issue and a research area covering varying disciplines (*i.e.*, *psychology, sociology, criminology, social work, and policy studies etc*) and areas of professional practice (*i.e.*, *psychology, police, prisons, probation, victim services, youth services, and the charitable sector etc*), with the aim of reaching a common understanding and developing a bespoke, allied approach. Responding to sexual abuse needs a co-ordinated effort, recognising the competing voices, views, evidence and practices.

2.1 The complex landscape of sexual abuse

Sexual abuse has individual, interpersonal, community and societal levels (McCartan and Kemshall, 2021). It impacts every level of the socio-ecological model and interplays across them. This means that it is as much about the actions and behaviours of individuals as it is about cultural beliefs and attitudes, and the ways that our communities frame and respond to the issue as well as how we consider it within all our relationships and interactions. One consequence is that the challenge of responding to sexual abuse may seem too large to respond to as it is everyone's issue while being no-one's responsibility.

Figure 1: Socio-ecological model and sexual abuse



The reality of what this means though is that we as individuals and as communities need to come together to change the approach to sexual abuse in the UK, and internationally, so that it is fit for purpose and tangible. We need to consider several different areas in doing so, recognising the complex, intertwined and competing interests.

In respect to sexual abuse, there are several significant issues and topics that need to be considered, including the following:

- definitions of sexual crimes
- sentencing of sexual offences (including the length of sentence)

- reporting, recording, and sentencing of sexual abuse (the challenges of reporting to the police, police referrals to the CPS, the court processes, and legal outcomes)
- victim support (including how victims are treated and supported by the criminal justice system)
- the assessment, treatment and the reintegration of people convicted of a sexual offence (the assessment tools that are used; the balance between professional judgement and actuarial tools; whether current treatment programmes work and how they relate to risk levels and risk management strategies)
- public and media understandings of and responses to sexual abuse (media and community narratives around sexual abuse, whether they are realistic and/or evidence based, and how these feed into trust in the system and community management).

2.2 The changing landscape

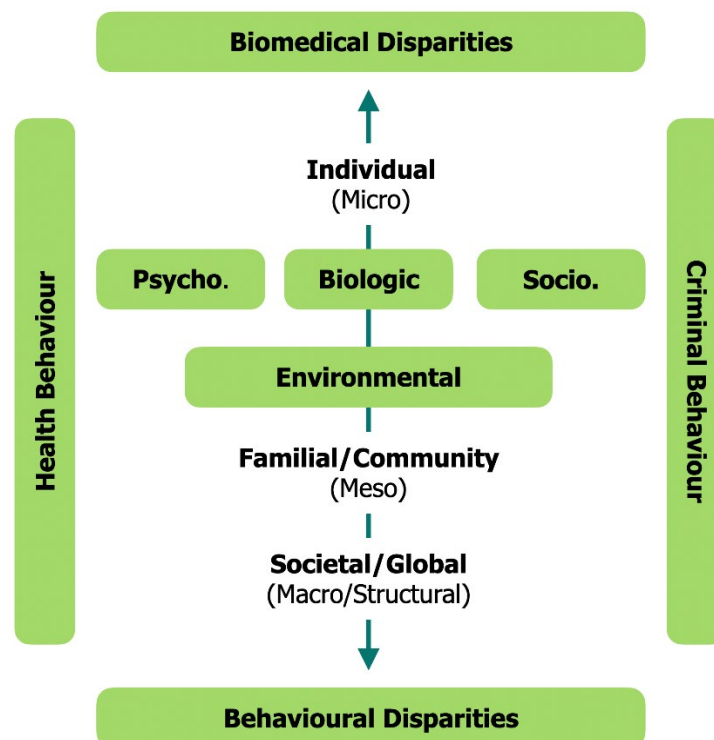
In recent years, there have been several significant theoretical, empirical and practice shifts in the way that we understand as well as respond to sexual abuse. These shifts feed into practices and policies linked to treatment, public protection, and risk management.

Theories of desistance (Kemshall, 2021; Wong and Horan, 2021; Maruna and Mann, 2019) have continually fed into our thinking about individuals' journeys in and out of crime, and offending behaviour (Harris, 2021; McCartan and Richards, 2021). We have also seen increased conversations about the relationship between desistance and risk management (Kemshall, 2021; Harris, 2021) as well as desistance and harm reduction (Maruna and Mann, 2019; McCartan and Richards, 2021; McCartan and Kemshall, 2021). These discussions help us recognise that desistance is a journey that is situated within a life course framework and that time is required to help people move out of crime. This also means that understanding the causes of sexual abuse, whether it be past trauma, personality, social experiences, biological causes, and/or mental health (McCartan, 2020; Proulx, Cortoni, Craig and Latourneau, 2020) is essential, as it is important to understand the causes of criminality to help individuals understand and stop their offending in the future. Additionally, understanding the causes of offending behaviour allows us to plan and develop early intervention, or prevention, strategies to stop offending before it occurs. Taking a life course approach is important as it emphasises the need to balance punishment and rehabilitation in working with people convicted of a sexual offence that is rooted in a rounded, holistic approach, reflecting current multi-disciplinary approaches in HM Prison & Probation Service and the bio-psycho-social approach (HM Inspectorate of Probation, 2019).

One clear example of this is the use of recovery capital as a way of embodying a rounded approach to understand desistance and a model to reduce reoffending (i.e., the greater levels of positive, pro-social recovery capital you have, the more likely you are to desist from offending and reintegrate; Hennessy, 2017), encompassing social, cultural, physical and human capital (McCartan and Kemshall, 2019). A recent expansion to the recovery capital model emphasises the importance of good professional practice in the criminal justice system (Best, Hamilton and Hill, 2021), reinforcing research on the impact of professional practice as a success factor in the treatment of people who have committed a sexual offence (Gannon, Oliver, Mallion and James, 2019). The role of professional practice is also evident in emerging debates about the role of rehabilitation in prison and changing policy and practices in rehabilitative culture, especially in prison with people who have been convicted of a violent and sexual offence (Blagden, Winder, Hocken, Lievesley, Banyard and Elliott, 2019).

The increased focus on developmental and life course perspectives coupled with trauma-informed care, service user experience and desistance models has coincided with a growing recognition that there are accompanying health and wellbeing issues, both in terms of causes and outcomes (Akers and Lanier, 2009; Lainer, 2010; Lanier and Henry, 2010) which is embodied in Epidemiological Criminology (EpiCrim) (Lainer, 2010; McCartan and Kemshall, 2019, 2021; McCartan and Richards; 2021). An EpiCrim approach to understanding sexual abuse is important as it allows for a multi-disciplinary approach that ties together existing and emerging theories of sexual offending in a way that opens funding opportunities, practice conversations, and policy developments beyond criminal justice (i.e., health, education, social care etc).

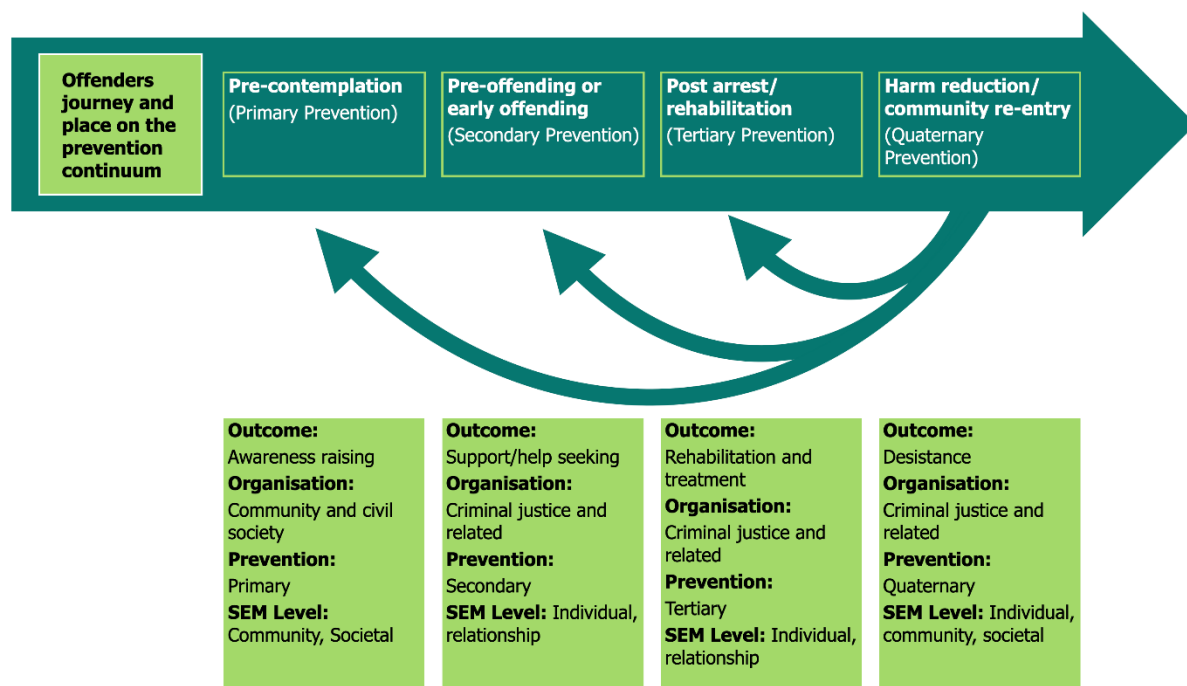
Figure 2: The Epidemiological criminology framework (Lainer, 2010)



One of the most significant practice and policy conversations opened by EpiCrim is the prevention of sexual abuse. Research and practice on the prevention of sexual abuse is well established in policy and practice circles, but the evidence base needs development and expansion, with many studies being small scale and preliminary, although they show promise (McCartan, Uzieblo and Smid, 2021). An EpiCrim approach suggests that crime, including sexual offending, can be prevented and that there are four stages of prevention that tie to different stages of the offending cycle (pre, early stages, and post) and link into different stages of the socio-ecological model (McCartan and Kemshall, 2021; McCartan and Richards, 2021). These stages are (McCartan and Kemshall, 2021):

- **primary** (broad-based interventions to prevent sexual abuse and/or victimisation taking place)
- **secondary** (early detection of sexually abusive behaviour, or potential for sexually abusive behaviour)
- **tertiary** (responding to perpetration and victimisation)
- **quaternary** (ongoing, supportive interventions that streamline criminal justice responses to reduce risk of sexual offending).

Figure 3: Continuum of sexual offending prevention (McCartan and Kemshall, 2021)



This changing landscape of preventing and responding to sexual abuse opens opportunities to create bespoke policies and practices that can support victims, reduce offending (as well as reoffending), and develop fit for purpose treatment and risk management strategies.

2.3 The Council of Europe recommendations

The context of the recommendations

As indicated previously, sexual abuse is a commonplace international and transnational offence. Consequently, it is important that governments and international, as well as transnational, bodies have insights, evidence, and evidence-based policies in response to it.

The Council of Europe is an important transnational body which is comprised of 47 member states, covering the European Union, European Commission, and other broader European countries (for more information, see Council of Europe, 2021). It is important to state that although the UK has left the European Union, it has not left the Council of Europe (for more information, see European Commission, 2020). Given the extent of sexual violence across the Council of Europe geographical footprint and its links to related social justice, equality, child protection, and safeguarding agendas, it was felt that this was a significant issue for the Council to address. As such, the Committee for Penological Co-operation (PC-CP) invited McCartan and Fuglested to present on the nature, scale, and impact of sexual abuse in early 2018. In the conversations and meetings that followed it became clear that there was a great degree of international variability in the policies and procedures surrounding the assessment, treatment and integration of people convicted of a sexual offence back into the community, which raised several concerns and debates for the PC-CP because of the impact that it could have on criminal justice responses in the Council of Europe area. The PC-CP decided that a series of recommendations based on research and good professional practice, as well as new and existing policy, was required.

In developing the recommendations, the PC-CP felt that it was important to focus on processes required in responding to sexual abuse rather than definitions of sexual abuse or the related offences as well as sentences. One of the main reasons for not focusing on

definitions of sexual offending and related laws was because they were so variable from country to country, as well as from legal judication to legal jurisdiction (meaning that they could change between different parts of the same country, for instance, Belgium). By developing recommendations based around the processes of what should be done with people accused and convicted of a sexual offence, it meant that we could focus on professional practice, the service user experience, community safeguarding, and public protection from a practical point of view.¹

The overarching principles

The recommendations are founded on several clear basic principles that are very much in line with current thinking about trauma-informed practice, EpiCrim approaches, strengths-based models, restorative justice and community inclusion. It was important to the authors that the document be evidenced-based and reflective of good professional working.

- **Risk levels and risk management:** People accused and convicted of a sexual offence should be worked with in line with the risk that they pose – different levels of risk require different responses and procedures. It is the risk that the person poses that needs to be considered and not the actual offence that they have committed. In thinking about risk and response, we need to look beyond the offence.
- **Person-centred approach:** The assessment, treatment and integration of people accused or convicted of a sexual offence should take place in a person-centred fashion that considers the risk, needs, and requirements of that person. A holistic, rounded approach is required, with individuals being offered interventions that are fit for purpose. People accused and/or convicted of a sexual offence should be worked with in a comprehensive manner, which takes account of behavioural, social, psychological and health factors. Additionally, this approach reinforces the need for a balance between punishment and rehabilitation in prison and probation, and what that means for public protection.
- **Professional practice:** The recommendations recognise the need to train and support professionals who work with people accused and/or convicted of a sexual offence so that they are best able to assist them in their rehabilitation and community integration, while holding them accountable for their behaviours. The support and work should be ongoing.
- **Multi-disciplinary approaches:** The recommendations recognise that a multi-agency approach is the most effective in responding to complex social issues and needs, such as sexual violence. The recommendations stipulate that a balanced approach needs to be taken to working with people accused or convicted of a sexual offence, with statutory and non-statutory organisations being part of the process, sharing information freely, and working in partnership. The multi-agency approach

¹ The Recommendation was drafted by the Council for Penological Co-operation (PC-CP) between 2019 and 2020 assisted by three Scientific Experts: Dr Kieran McCartan, Professor in Criminology, Department of Health & Social Sciences, University of the West of England (United Kingdom); Marianne Fuglestad, Specialist in Psychotherapy and Clinical Sexology, Psychologist, Directorate of Danish Prison and Probation Service (Denmark); and Harvey Slade, Consultant (United Kingdom). Additional help, support and input was gained from representatives of the Confederation of European Probation (CEP), the European Organisation of Prison and Correctional Services (EuroPris), the Registry of the European Court of Human Rights, the Committee for the Prevention of Torture (CPT) Secretariat, the European Union, the United Nations, the International Association for the Treatment of Sexual Offenders (IATSO), the National Organisation for the Treatment of Abuse (NOTA), Les Centres Ressources pour les Intervenants auprès des Auteurs de Violences Sexuelles (CRIAIVS), the Netherlands Chapter of the Association for the Treatment of Sexual Abusers (NL-ATSA), and the Association for the Treatment of Sexual Abusers (ATSA). For more information please see the explanatory note - <https://www.coe.int/en/web/portal/home>.

also raises questions of ownership, responsibility, data sharing and enforcement which can differ across agencies within the same country and/or jurisdictions, as well as across countries and jurisdictions.

- **Evidence-based practice:** The recommendations emphasise the importance of evidencing good practice and using established, as well as emerging, research evidence. This is particularly important in the assessment of people accused and/or convicted of a sexual offence in determining their risk level and the resultant treatment programme or intervention. It was decided that clear, standardised evidence-based assessment tools and treatment techniques are the most advantageous in terms of successful integration. It is important to state that the role of the recommendations is to emphasise important practice rather than promote specific tools, treatments, or interventions.

The core recommendations

The Council of Europe document contains 34 recommendations across eight different sections that go into detail regarding good practice across the process of assessing, treating and reintegrating people convicted of a sexual offence. The explanatory notes accompanying the recommendations provide in-depth analysis and considerations for the individual recommendations and their implementation. In this paper, an overview of each of the eight sections is provided.

- **Risk and needs assessment:** This section states that all people accused or convicted of a sexual offence should receive a structured, evidence-based risk assessment, that it should be updated regularly, and that it should inform their treatment as well as reintegration. In cases where individuals have additional needs (i.e. mental health), these should be considered in line with the risk assessment, with appropriate tools and procedures used. Importantly, the recommendations state that all risk assessments should be undertaken by trained individuals and that they need to be impartial and evidence based in their execution.
- **Management, interventions, and treatment in prisons:** This section focuses on the need for risk assessments upon entry and exit to/from establishments, with thought being given to the individual needs of the person while incarcerated. The recommendations state that people accused or convicted of a sexual offence should not get additional restrictions or procedures based on their offence while in prison, but rather based on their need (i.e. segregation should only happen if the person is deemed vulnerable and not because they have committed a sexual offence). Individuals should be offered treatments, interventions and programmes that enhance their rehabilitation and promote desistance upon release. Staff should work with the individual in a positive and informed way that enables the individual to feel part of the process, and that they have some say in their rehabilitation. Prisons should be pro-social, engaged and rehabilitative.
- **Management, interventions and treatment under probation:** This section focuses on the need for probation to be engaged and able to work with people accused or convicted of a sexual offence in a pro-social strengths-based way that is supportive of community integration while in line with risk levels, protecting the public. Probation should always inform and support people by letting them know of their license conditions and when they change, reducing the likelihood of breach and recall. The recommendations also emphasise that probation staff need to create and own the sentence plan, that they need to make sure that the client understands and adheres to it, and that it is constantly reviewed and updated in terms of risk and the individual's social as well as psychological context. It is important to note that risk

management, especially in the community, is dynamic and that effective planning and response requires adaptation. The recommendations also emphasise the importance of end of sentence planning, considering how probation stops working with clients, what they are informed of, and what is done with their information. Additionally, the recommendations emphasise the importance of third-party organisations and charities supporting individuals on license, while noting that these services should not assume the job of probation in risk management or community integration, but rather work to nuance and complement it.

- **Data collection, information sharing and work in partnership:** The focus of this section is the collection of necessary data in a safe, secure fashion that can be justified by the owning agency. The recommendations offer advice and insights into the careful collection, storage, transfer and destruction of personal and sensitive data. The challenges and requirements of data sharing between agencies in the same country and across countries are recognised, emphasising the importance of bilateral agreements.
- **Victims and community support:** This section discusses the importance of keeping the victim appropriately informed of what is happening with the person that offended against them and their progress, or not, through the system. It is suggested that restorative justice could be used, if done appropriately and with due consideration as well as the consent of all parties, in cases of sexual abuse and that it should be available to victims as an outcome. The recommendations also emphasise the importance of third-party organisations and charities in working with and supporting victims, but that these cannot and should not replace probation, merely parallel it.
- **Staff selection and training:** This section highlights the need for trained, informed and flexible staff that are aware of the challenges of working with people accused or convicted of a sexual offence and are supported by their organisation in doing so. The recommendations recognise the vicarious trauma, and potential stigma, that staff working with people convicted of a sexual offence face and how this can impact them professionally and personally. As well as training and providing staff with the relevant evidence and skills to do their jobs, employers need to support them psychologically and emotionally. Importantly, staff training should be ongoing, and staff should have access to the latest evidence-based theories, policies and practices.
- **Media and communications strategy:** This section emphasises the importance of a clear, informed media strategy around the release of people accused or convicted of a sexual offence, especially high-profile or high-risk cases. There is a need to work with the media in a proactive engaged manner.
- **Research, evaluation, and development:** This section highlights the importance of research and evaluation, stating that it is imperative that we use evidenced-based knowledge in our practice and that we generate new evidence to sustain and develop practice as well as policy. The recommendations enforce the importance of training, partnership and collaboration in the development as well as maintenance of rigorous fit for purpose research.

Impact of the recommendations on the UK

The recommendations from the Council of Europe emphasise the importance of developing good processes and practices in the assessment, treatment and management of people accused or convicted of a sexual offence, most of which the UK already adheres to. For example:

- the UK champions evidence-based practice, partnership working and robust data sharing conventions
- the UK are moving towards a more service user informed and trauma-informed service, with prisons moving towards a more rehabilitative culture and probation reconsidering, in the light of unification, the balance between accountability and support in risk management
- additionally, the use of public health approaches and person-first language is increasing across the UK in line with a resurgence in life course criminology and its links to harm reduction and desistance.

However, the UK needs to develop and do more work around the role of restorative justice when working with people accused or convicted of a sexual offence as well as continue to develop policy and practice linked to sexual abuse harm reduction processes.

3. Conclusion

The way that we are thinking about policy and practice with people accused and convicted of a sexual offence is changing; it is becoming more health and life course informed, which in turn means that we need to adapt and develop our legislation. The Council of Europe thus wanted to develop recommendations that reflect these changes and emphasise good practice so that member countries can work towards parity.

As set out in this paper, the recommendations highlight the importance of a holistic, rounded, person-centred, multi-agency approach, with individuals being offered interventions that are fit for purpose. To support professional practice, the need for continual training and support for staff is also emphasised. Crucially, the adoption of a more evidence-informed and structured approach to managing people accused and/or convicted of a sexual offence will aid the prevention of first-time offending and reductions in recidivism, and provide the necessary risk management tools to improve, and maintain, public protection.

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Published by:

Her Majesty's Inspectorate of Probation

1st Floor Civil Justice Centre

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Manchester

M3 3FX

ISBN: 978-1-914478-58-1

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