

NETWORKS, EVIDENCE AND LESSON-DRAWING IN  
THE PUBLIC POLICY PROCESS : THE CASE OF SARAH  
PAYNE AND THE BRITISH DEBATE ABOUT SEX  
OFFENDER COMMUNITY NOTIFICATION

Tobias Jung

A Thesis Submitted for the Degree of PhD  
at the  
University of St Andrews



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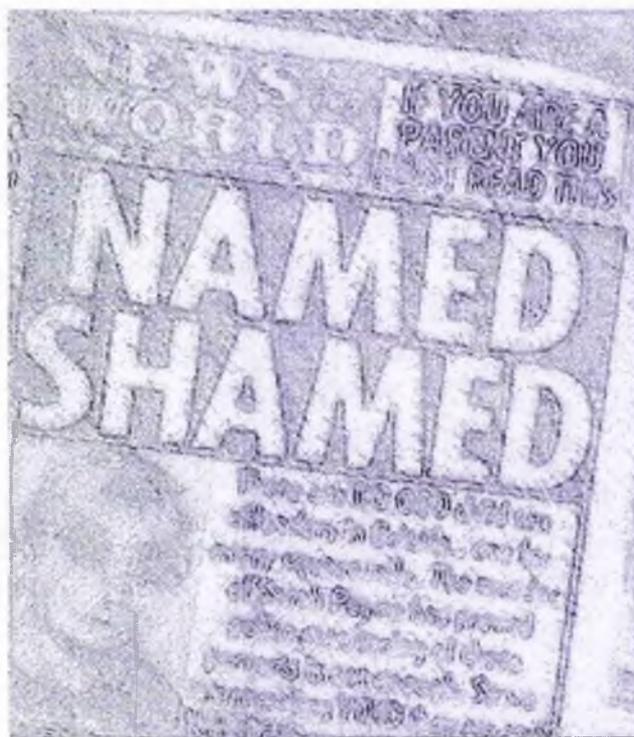
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# **Networks, Evidence and Lesson-Drawing in the Public Policy Process:**

The case of Sarah Payne and the British debate  
about sex offender community notification



Thesis submitted for the degree of PhD

Tobias Jung

4 October 2005



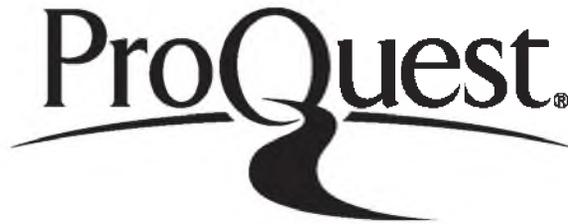
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## Declarations

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I, Tobias Jung, hereby certify that this thesis, which is approximately 82,650 words in length, has been written by me, that it is the record of work carried out by me and that it has not been submitted in any previous application for a higher degree.

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## Abstract

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This thesis examines the public policy process. It explores the role of and relation between three concepts considered important in defining and shaping the making of policies: policy networks, evidence-use and policy transfer. It does this through examining a high profile and controversial area of public policy: the debate about sex offender community notification that resulted from the abduction and murder of eight-year-old Sarah Payne by a convicted sex offender in the summer of 2000. A case study methodology is employed, which includes interviews with key players and extensive documentary analysis.

The study finds that none of the main concepts for understanding policy networks – iron triangles, issue networks, policy communities and advocacy coalitions – provide sufficient characterisation of the policy network involved in the 2000 community notification debate. Areas that these concepts do not fully address include the degree of choice participants have in getting involved in a policy network, the causes and processes of alliance building between network participants and the importance, characteristics and impact of organisational as well as personal links.

Practitioner knowledge emerges as a major influence in policy making with different forms of evidence entering the policy debate in a strategic way – that is to support an argument. Factors that explain the influence of research evidence are its comprehensiveness, its perceived value for future policy debates on the same topic and the assumed integrity of the evidence-provider.

The existing concept of lesson-drawing is found to focus too much on cases in which policy transfer has taken place. It is necessary to develop the concept further to explain situations in which lessons are drawn but where the idea of transferring a policy is dismissed. Finally, lesson-drawing is not limited to the substance of policies and practices but also includes lessons about tactics and processes.

To my parents

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## Abbreviations

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ACOP	Association of Chief Officers of Probation
ACPO	Association of Chief Police Officers
MAPPA	Multi-Agency Public Protection Arrangements
NACRO	National Association for the Care and Resettlement of Offenders
NCH	National Children's Homes
NOTA	National Organisation for the Treatment of Abusers
NSPCC	National Society for the Prevention of Cruelty to Children
SOO	Sex Offender Order
SOTP	Sex Offender Treatment Programme

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## Introduction

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Despite a wealth of literature on policy making our knowledge and understanding of the policy process is still incomplete (see for example Dror 1989; Parsons 1995; Goodin 1996). Three concepts are considered to be important in defining and shaping the modern policy process: policy networks, evidence-use and policy transfer (see for example Marsden and Lin 1982; Pappi and Henning 1998; Dolowitz and Marsh 2000; Davies, Nutley et al. 2000b; Howlett 2002; Bourn 2003). However, to date each of these concepts tends to have been considered in isolation from the other two. This thesis explores their respective roles within the policy process and how they interact with one another. It does so by examining a high profile and controversial area of public policy: the notification of a community that they have a sex offender living within their midst (sex offender community notification). The thesis considers the specific debate about this that occurred in the wake of the abduction and murder of eight-year old Sarah Payne by a convicted sex offender in the summer of 2000.

This introductory chapter first of all explains why policy networks, evidence-use and policy transfer are considered important for understanding the policy process before moving on to address the reasons for choosing sex offender community notification as the specific area for studying these concepts and their interaction. An overview is provided of other research which has analysed the Sarah Payne case, particularly where the focus has been on policy-related issues. Finally, an outline of the thesis' structure is provided.

### ***Why Policy Networks, Evidence-Use and Policy Transfer?***

Since at least the 1970s, an increasing complexity in the way government is organised and society is governed has been notable (Kenis and Schneider 1991; Pappi and Henning 1998; Pal 2002). The key features of this development have been an increasing number of players within the policy arena, partly arising out of an

increasing reliance on non-governmental players to assist in the formulation and implementation of policies, a division of labour, 'sectoralization' and 'functional differentiation' (Kenis and Schneider 1991; Pappi and Henning 1998). This phenomenon has led to the claim that the idea of networks within the policy arena is now more important than ever before (Pal 2002).

The concept of policy networks highlights the relationships between the actors involved in both policy formulation and implementation (Gray 1995; McCool 1990; Hanks 2000), and researchers are increasingly paying special attention to alliances as a tool used by interest groups to influence the policy process (Heany 2001). Because of its portable nature, the idea of policy networks can be applied to any area of public interest (John 1999), making it an ideal framework for any policy researcher's toolbox.

There have been lengthy and not always fruitful debates about the precise role played by the policy networks concept. While some authors appear to argue that the concept amounts to nothing more than some sort of metaphor (Dowding 1995), others maintain that policy networks exist, not only as a model, but as a real influence on the formulation of policy (Potters and Sloof 1996), acting as 'links' amongst the actors in the policy field (John 1999; Lovseth 2000). Overall, the policy network concept has become increasingly accepted as an analytical tool (Heany 2001a). Even those who were strong critics in the past now argue that exploring the networks involved in the policy process is important in both analysing policy formulation and policy implementation (Dowding 2000).

Along with the increasing number of actors within the policy arena, knowledge – especially of an expert and scientific kind, as well as information in general – has started to play an ever-more prominent role: '*Whitehall research is on a roll*' (Walker 24 January 2000) and '*[i]n Whitehall corridors the buzz is "evidence"*' (Walker 15 February 2000).

While 'evidence-based policy making' (EBPM) is a relatively new catchphrase, the underlying notion of research commissioned by and conducted for the British Government goes back to at least Victorian times (Bulmer 1978; Finch 1986; Grayson

and Gomersall 2003). After a climax of interest in social research for government in the 1960s (Bulmer 1978), a failure to deliver the social changes hoped for led to a decline of social science's standing within the policy process during the 1980s (Finch 1986; Bulmer 1986c; Bogenschneider, Olson et al. 2000). This trend of distancing from and frequent dismissal of much social scientific research by government continued into the 1990s (Nutley and Webb 2000; Duke 2001).

Although policy makers slowly started to play 'the research card' (Duke 2001) again from around 1990, with both policymakers and academics becoming increasingly interested in both the theory and practice underlying evidence-based policy making (Amann 2000), the renaissance of research in policy making has been most prominent since the election of the Labour Party in 1997 (Nutley and Webb 2000). The idea of evidence-based policy making emerged alongside the trend to reform and modernize government (Duke 2001), and it has been an integral part of the Blair governments of 1997 and 2001 (Davies 2004). This new dawn for research evidence within the policy process is reflected in slogans like '*what counts is what works*' in official publications such as the White Paper *Modernising Government* and its follow-up *Professional Policy Making for the 21st Century* (Nutley and Webb 2000).

However, evidence-based policy making has developed in different ways within the various sectors of policy making. Unlike, for example, the health care sector where the idea of basing practice and policy on evidence has been established for a relatively long time (Davies and Nutley 1999), a more cautious approach to embracing evidence-based policy making has been evident within the criminal justice sector. People working in this area have been rather careful about claiming specialist knowledge when discussing 'what works' in criminal justice. This can partly be understood in light of the varied role science has played within the criminal justice sector in the past (Nutley and Davies 2000). This ranges from a positive outlook which assumed that offenders could be treated and reformed, which developed out of the work of Cesare Lombroso (Crow 2001), to the 'nothing works' school of the mid-1970s as exemplified in the works of Martinson (1974) and Brody (1976) (for further information see the histories of criminal justice approaches provided in Cavadino and Dignan 1997; Cavadino, Crow et al. 1999; Crow 2001). However, over the last few years of the 20<sup>th</sup> Century, driven by a renewed interest in evidence on what works in

criminal justice, various windows of opportunity for evidence to make a contribution to policy started to arise (Nutley and Davies 2000).

Although it is questionable whether research and evidence were ever as far apart from the policy process as some advocates of the new evidence-based approach have tried to imply (Clarence 2002), the dominant and central role given to evidence in modern policy making does stand out and marks a departure from the more moderate stance occupied by evidence within the policy process during the recent past (Grayson and Gomersall 2003). The major difference is that in a departure from opinion-based policy making, the making of policy and actual practice should now be based explicitly on the best evidence available (Grayson and Gomersall 2003). Similar to the approach taken in Victorian times the perception is once again that better knowledge and understanding will lead to better policies so that '*[a]fter long years of rejection and straitened budgets, happy days are here again for researchers in the social sciences*' (Walker 15 February 2000). In order to arrive at evidence-based policy making government requires a wide range of internal and external partnerships. These include research institutes, think tanks, professional associations and other civil society organisations (Blagescu and Young 2005), which links this approach back to the idea of policy networks.

The third and final concept, policy transfer, addresses another prominent trend that has arisen out of the changing nature of the policy arena. As a result of increased economic integration and globalisation, accompanied by legal restraints and a decrease in states' sovereignty, different countries have started to experience comparable domestic pressures (Dolowitz and Marsh 2000; Hoberg 2001). Along with this, a change in the mindset of politicians has taken place. Increasingly, politicians have started to realize that transferring policies can be an important tool in modern politics since it assists in dealing with the increased speed of change and the enormous level of pressure present in the policy process (Dolowitz, Greenwold et al. 1999; Smith, Baston et al. 2002). Looking at policies and procedures that other countries have put into place to address potentially similar problems can serve as a 'shortcut to problem solving'. This prevents wasting time and resources on reinventing the wheel (Newmark 2002). This trend has been enhanced by faster and easier communication between policy-makers of different countries (Dolowitz and

Marsh 2000). It is likely that a tendency to look abroad for solutions to domestic problems will become more prominent in future. One of the main reasons for this trend, which connects this concept to evidence-use, is the increasing interest in evidence-based policy advice amongst politicians (Pierson 2003) combined with the mounting pressure to come up with 'quick-fix solutions' (Dolowitz and Marsh 1996).

Within the UK an interest in other countries' approaches to policy and the applicability of such tactics to the UK became increasingly popular under the Conservatives led by Thatcher. If anything, the present Labour Government has intensified this trend (Dolowitz, Greenwold et al. 1999; King and Wickham-Jones 1999; Pierson 2003). Looking abroad for political inspiration is now being promoted and actively pursued, as is again illustrated inside the Cabinet Office's *Professional Policy Making for the 21st Century* and the Government's *Modernising Government* documents (Dolowitz 2003).

The important role played by policy transfer in the modern policy process is underlined by the publication of a range of 'guidelines' and 'checklists' for politicians who engage in or think about policy transfer. Such publications outline key issues that should be borne in mind by anybody involved in the drawing of lessons (see for example Mossberger and Wolman 2001; Rose 2001; Dolowitz 2003).

Having outlined the relevance of policy networks, evidence-use and policy transfer for understanding the modern policy process, the next section addresses the question of why sex offender community notification is an appropriate policy arena for researching the role and interaction of these three concepts.

### ***The Choice of Sex Offender Community Notification as the Research Area***

In order to study policy networks, evidence-use and policy transfer, it was necessary to identify an area where evidence could have played a role in the policy process, where policy transfer might have taken place and where a network of people and agencies would have been involved. Additionally, it was envisaged that

concentrating on a high profile policy area would be useful. First of all, due to a broader public interest in a high profile policy area widespread media-coverage is more likely. Consequently, the amount of data available in the public domain would be larger than in policy areas with a lower profile. Secondly, as a result of public interest and media inquiry the actions and views of participants in a high profile policy area, as well as any competing interests, might be more clearly identifiable.

The domain of criminal justice policy seemed likely to contain a specific policy area which fulfilled all of these criteria. It is certainly a high profile policy area because crime, or more precisely the fear of crime, sells (Sussman 1997) – it attracts the attention of news readers and viewers and has been used to sell newspapers (Benyon and Edwards 1997) and political parties (see for example Labour 1997).

There is a large body of ‘folk knowledge’ in the criminal justice field, which is reinforced and distorted by contributions from media reports of crime, docu-dramas and crime fiction. This fosters some stereotypical views about what works best in addressing crime and dealing with criminals (Tilley and Laycock 2000a) and some examples are provided in Table 1.1. However, despite the undoubted influence of this folk knowledge, there has been much interest in the use of research evidence in formulating criminal justice policies over the last few years (ibid.). These different and potentially clashing sources of ‘knowledge’ and ‘evidence’ provide an ideal environment for studying evidence-use in the formulation of policies.

**Table 1.1: A Selection of 'Folk-Knowledge' in Relation to Criminal Justice**

- Offenders are uncommon and substantially different from the rest of us;
- 'Lightening does not strike twice' for most victims;
- An increase in numbers of police officers will produce a commensurate reduction in crime levels;
- The more severe the punishment the lower the crime levels
- Crime levels can only be reduced by tackling the 'root causes' of criminality

(Taken from Tilley and Laycock 2000a, p 214)

The criminal justice field is also a good area for the study of policy transfer. From the 1990s there has been an increasing tendency for British policymakers to look abroad, especially to the US, for inspiration in relation to criminal justice and penal policies (see for example Jones and Newburn 2002; Jones and Newburn 2002b). Although it is not always possible to establish a direct link between North American and British criminal justice policies, policy transfer seems to have taken place in relation to the privatisation of correction services (prisons), 'zero-tolerance' policing and mandatory minimum sentencing, also known as 'three strikes and you are out' (Jones and Newburn 2002).

Finally, the criminal justice area provides the appropriate opportunity to study the role of policy networks. There is a range of statutory agencies, professional groups and other lobby and interest groups operating in this area. The non-statutory bodies include organisations such as the National Association for the Care and Resettlement of Offenders (NACRO), the Lucy Faithful Foundation, and the National Society for the Prevention of Cruelty to Children (NSPCC). Such groups are an integral part of policy networks and the media's interest in this policy area seemed likely to add another dimension to interest group participation.

Having identified criminal justice as the broad area of interest, the next step was to identify a particular aspect of this field for detailed examination. Policies relating to sex offenders were identified as an area within the wider criminal justice domain where the study of policy networks, evidence-use and policy transfer would be especially apt. The hatred of sex offenders as a group is unequalled by popular attitudes to any other kind of offender (Sampson 1994). Consequently, both policies and procedures relating to such offenders are often not so much based on evidence, but driven by and grounded in public outcries following highly publicised sex offences (CSOM 2001). There is, however, some research evidence about effective ways of managing sex offenders (see for example Beech, Erikson et al. 2001; Beech, Fisher et al. 1998; Grubin and Thornton 1994; Grubin 1998; Maguire, Kemshall et al. 2001) and instances of policy transfer in this area have also been documented (see for example Heberton and Thomas 1997; McAlinden 1999).

Originally the intention was to focus on the Sex Offenders Act 1997, which led to the establishment of a sex offender register in the UK. Others had already commented that the measures introduced by this Act seem to have been driven by a political agenda rather than being based on effective practice (see for example Soothill and Francis 1998; McAlinden 1999). The establishment of national sex offender registers was also high on the policy agenda in countries such as Canada, Australia, New Zealand and the US, which offered the opportunity to study policy transfer and lesson-drawing.

Despite this early promise, it soon became clear that studying the policy process around the formulation of the Sex Offender Act 1997 would be too difficult to pursue within the time and resources available for this thesis. One major obstacle was identifying and gaining access to most of the key players involved in the formulation of the Act. Secondly, unearthing documentary information about the policy process, other than that provided in official Home Office publications and the House of Commons and House of Lords Hansards, proved difficult. Consequently it was decided to focus attention on an even more specific and more recent policy development.

During an initial review of the literature on sexual offender policies, an event which emerged as an auspicious area for researching the role of policy networks, evidence-use and policy transfer was the case of Sarah Payne and the related debate about sex offender community notification. While the issue of whether UK communities should be notified about sex offenders living within their locality has been a recurring bone of contention in sex offender policy, particularly since the establishment of the national sex offender register, Sarah Payne's death in 2000 led to one of the most sustained media campaigns for the introduction of such arrangements in the UK.

This campaign was particularly interesting because in many respects it mirrored a campaign in the US which had led to nation-wide compulsory community notification. Pressure was exerted on the British Government to go down the same route but, although at various points during the campaign it publicly appeared as if the campaign was succeeding in its quest, in the end the Government decided against such action. Instead, it introduced various other measures aimed at strengthening existing legislation on sex offenders. Given that public opinion appeared to favour blanket community notification and a general election was likely in the following year, the question arose as to why the Government decided against US-style community notification measures (Jones and Newburn 2002b).

Thus, the events surrounding the abduction and murder of Sarah Payne were considered to provide an appropriate opportunity to examine the role of policy networks, evidence-use and policy transfer. First, there existed a variety of evidence on sex offenders, the nature of sexual offences and ways of addressing such crimes. Second, there was pressure for policy transfer from the US to the UK and, although this did not materialise, it offered the opportunity to examine the transfer process. Third, from an initial examination of newspaper reports on the Sarah Payne case, it was clear that various groups, such as the police and probation services and several children's charities were involved in the policy debate and that a network of players could be identified.

## ***Existing Literature on the Sarah Payne Case***

The case of Sarah Payne has often been cited as an example of a moral panic about sex offenders and it has also served as a backdrop against which some policy outcomes, such as the introduction of Multi-Agency Public Protection Arrangements (MAPPAs) or the effectiveness of community notification, are discussed (see for example Pawson 2001; Grange 2003; Lieb 2003; Matravers 2003b).

The events that followed Sarah Payne's abduction and murder have been used as a basis for a variety of discussions. The public's response to the media's campaign is used by Bell (2002) to conduct a feminist analysis of the role in which women are positioned within contemporary political rationalities. Drury (2002) also focuses on public reaction and uses the case to explore crowd identity and discourses about crowds. Lawler (2002), concentrating on the riots that took place at the time in Paulsgrove, analyses how this was represented within the press. Moving away from these very specific analyses, Silverman and Wilson (2002) use the case for a more wide-ranging criminological examination of paedophilia, the media and society. Finally, Jones and Newburn (2002b) cite the debate about sex offender community notification that arose at the time as an example of the tendency to import criminal justice policies from the US, although in this case policy transfer did not occur. They point out that there were '*certain important forms of "political resistance"*' to this policy transfer (Jones and Newburn 2002b, p 191), but, they do not examine the nature of and underlying reasons for the resistance in more detail. Some aspects of this resistance are touched upon by Silverman and Wilson, but their focus is on addressing how communities can be made safer places for children rather than on the role played by interest groups and evidence within the policy debate.

This thesis, therefore, builds on the work by Jones and Newburn. By using the concepts of policy networks, evidence-use and policy transfer it examines the forms of resistance that occurred to blanket sex offender community notification, the underlying reasons for such resistance and the way in which it expressed itself. As such it enhances understanding about why, despite similarities in 'policy rhetoric' and 'policy style' on sex offender community notification in the US and the UK (Jones and Newburn 2002b), the resulting legislation in the two countries has differed.

## ***Structure of the Thesis***

The main arguments and evidence of this thesis are contained within seven further chapters, which are supplemented by six appendices providing additional background material. Chapter 2 critically appraises the existing literature on policy networks, evidence-based policy making and policy transfer. The main concepts and debates in each of these areas are examined.

Chapter 3 uses the literature reviewed in Chapter 2 to define a framework of research questions for the thesis. It discusses the methodology that was applied in order to explore these questions – a single-case study using documentary analysis and elite interviews – and evaluates this methodological approach. The chapter also discusses the way in which the research was carried out and provides detailed information on the protocol used for presenting the case study material.

The events that occurred in the summer of 2000 are the subject of Chapter 4. Following a brief outline of the Sarah Payne case and an exploration of the policy context within which this took place, the chapter considers the policy-related events that followed. Firstly, the origin and launch of the *News of the World's* campaign for the introduction of US-style sex offender community notification to the UK are explored. Secondly, there is an analysis of the impact this campaign had on those working in the areas of sex offender management and victim protection. This is followed by a discussion of the various reactions and attempts at channelling the ensuing debate. The fourth and final section of the chapter outlines the way in which both the debate on community notification and the campaign by the *News of the World* and Sarah's parents have developed over the last few years.

In Chapter 5, the policy network that emerged in 2000 around the community notification debate is examined in detail. Attention is paid to how the various players got involved in this debate and the actions they took. Furthermore, the chapter provides insights into the various links that existed between the organisations and individuals involved. This raises a number of questions about how such links might have impacted on the debate.

The issues of evidence and lesson-drawing are the topics of Chapter 6. The various types of evidence used in the discussion surrounding the *News of the World's* campaign for community notification are examined, as is the evidence-base that was available from the American context. The awareness of the wider international knowledge-base on community notification by members of the UK policy network is also addressed in this chapter.

Chapter 7 takes the findings and insights of the case study and examines their conceptual and theoretical implications. The findings are related back to the existing literature on policy networks, evidence-use and lesson-drawing. The chapter goes on to consider the interaction of these concepts and how the nexus between them is best conceptualised and explored.

The final chapter of the thesis, Chapter 8, provides an overview of the thesis and the way in which it contributes to existing knowledge on the policy process. The study's strengths and limitations are discussed and potential avenues for further research in this area are outlined.

## **Summary**

This chapter has highlighted the important role of policy networks, evidence-use and policy transfer in understanding the modern policy process. In addition, it has discussed how the Sarah Payne case provides an appropriate policy arena for exploring these concepts in more detail.

The existing literature on the Sarah Payne case either focuses on the moral panic that arose from the *News of the World's* campaign to introduce blanket sex offender community notification or uses the case as a backdrop for discussing some of the resulting criminal justice policy changes. None of the existing studies explore in detail the policy process itself. Examining this process not only provides an opportunity to examine the role of networks, evidence-use and policy transfer in policy making, but also should increase our understanding of the very specific events that took place at the time.

## **Understanding the Policy Process: the existing literature on networks, evidence & policy transfer**

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Following on from Chapter 1, where the importance of policy networks, evidence-based policy making and policy transfer for understanding the modern policy process was outlined, this chapter critically reviews the key literature in each of these three areas. By doing so, a theoretical foundation on which the thesis is based is built.

### ***Policy Networks***

*Looking for the few who are powerful, we tend to overlook the many whose webs of influence provoke and guide the exercise of power*

(Hecló 1978, p 102)

While the concept of policy networks has featured increasingly prominently within academic discourse and has gained widespread acceptance, a lack of agreement on the concept's defining characteristics as regards the terminology, application and understanding of the network approach is notable. Assumptions about the ontological, epistemological and methodological standing of policy networks are diverse and range from positivistic traditions at one end to realists and interpretative ones at the other (Marsh and Smith 2001).

Frequently, the literature on policy networks not only seems to lack '*a cogent underlying function and purpose*' for the examination of policy networks (Hanks 2000, p 2), but also appears to have become preoccupied with definitional disputes, conceptual ambiguities and a proliferation of typologies (Wolman 1992; Lovseth 2000). As a result, a '*Babylonian variety*' of terms and applications within the field has emerged (Börzel 1998). The terminology ranges from 'interest groups', 'political subsystems' and 'policy domains' to 'lobbies', 'pressure groups' and 'organized interests', as is illustrated in Table 2.1.

**Table 2.1: 'A Babylonian Variety': Different Terms for Policy Networks**

<b>Term</b>	<b>Scholar(s)</b>	<b>Year</b>
Policy Whirlpool	Ernest S. Griffith	1939
Subsystem	J. Leiper Freeman	1955
Triple Alliance	Marver Bernstein	1958
Triangular Trading Patterns	Theodore J. Lowi	1962
Subgovernment	Douglas Cater	1964
Iron Triangle	Theodore J. Lowi	1969
Issue Network	Hugh Heclo	1978
Sloppy Large Hexagons	Charles O. Jones	1982
Policy Communities	A. Paul Pross	1986
Advocacy Coalitions	Paul A. Sabatier	1987
Issue Niches	William P. Browne	1990
Epistemic Communities	Ernst B. Haas	1991
Policy Monopolies	Baumgartner & Jones	1993

(Adapted and completed from Hanks 2000)

The danger of such mushrooming terminology within the area of policy networks is that the explanatory power of the concept can easily be inflated (Marin and Mayntz 1991). This risk is especially prominent if there is no coherent school of thought, glossary of terms, or application. A large number of authors, if not most, only have a vague idea of what constitutes a policy network and often fail to state their nebulous assumptions or ideas (McCool 1990; Marsh 1998). It is thus not unheard of that two different authors while using the same term mean two completely different things or, vice versa, that two authors using different terms do actually refer to the same thing (Börzel 1998; Hanks 2000).

This problem is aggravated by the fact that different countries conceive of and use the policy network approach in different ways. There exist at least three different international schools of thought relating to policy networks: the American, the British and the European, the latter of which can again be subdivided into Dutch, French and German traditions (Marsh 1998; John 1999; Marsh and Smith 2000). Within this

study the European understanding of policy networks as a new form of governance, that by way of its non-hierarchical co-ordination constitutes an alternative to markets and hierarchies (Börzel 1998; Marsh and Smith 2000), will not be addressed. Instead, the focus will be on the role policy networks, perceived as various kinds of relationships between interested groups and the state, play in the formulation and implementation of policies, an understanding that is put forward by the British and American approach to policy networks (Börzel 1998; Marsh and Smith 2000).

Despite the great variety of titles applied to policy networks it has been argued that they are more or less variations on four key types of metaphors: iron triangles, issue networks, policy communities and advocacy coalitions (Hanks 2000).

## **Iron Triangles**

The origin of the idea of 'iron triangles' is difficult to identify (Freeman and Stevens 1987), especially in light of the fact that they have confusingly also been referred to as 'networks', 'subgovernments', 'subsystems' and 'whirlpools' within the literature (Browne and Paik 1993). However, it appears to be the case that the concept was originally mainly based on research into agricultural, water and public works policies (Hecló 1978). While the actual components that are nowadays thought of as constituting an iron triangle – interest groups, committees and an executive agency – appear to have been firstly identified by Cater in his examination of policy making in Washington's 'subgovernments' (Cater 1964), the concept as such has become mainly associated with the work of Lowi. Lowi had initially identified 'triangular trading patterns' within the policy arena (Lowi 1962) and started to refer to the metaphorical concept of 'iron triangles' only in subsequent work, where he expanded on his original idea of 'triangular trading patterns' (Lowi 1969).

Traditionally, it has been assumed that iron triangles are very stable tripartite arrangements which operate over a long period of time with little or no outside interference. In this respect they can be considered to be almost autonomous as regards their decision-making abilities (Thurber 1991). Iron triangles normally control a very narrow and small niche within the policy field (Hecló 1978) and the relationships amongst the small number of participants are assumed to be slow-

changing and 'mutually advantageous' (McCool 1990). Although each member of the triangle receives some sort of benefit from the arrangement, benefits are not necessarily distributed equally (Nachamias and Rosenbloom 1980). Because of this benefit-focus, iron triangles most commonly appear in the case of distributive policies, with each side of the triangle supporting and complementing the other two (Jordan 1981).

The idea of iron triangles has been considered to be analytically useful in so far as it helps to simplify complex interactional arrangements. As a consequence, it has been widely referred to. However, academics have questioned the real-world applicability of the concept. First of all, it seems to be difficult to clearly identify the three key groups within iron triangles (Browne and Paik 1993). Secondly, the iron-like structure does not allow for a permeation of it from outside, nor does it account for any relation to the surrounding environment. Rather, the iron triangle appears to be some form of secluded insular arrangement detached from everything else (Stein and Bickes 1995). The major criticism of the iron triangle concept, however, has come from Hecló who has argued that the concept of iron triangles is '*not so much wrong as it is disastrously incomplete*' (Hecló 1978, p 88). Iron triangles cannot take into account the huge level of complexity of the policy process. One of the major problems is that researchers are trying hard to identify the three major players while missing the interactions that take place within the broader networks of people who increasingly have an impact on government (Hecló 1978).

*'Use of the iron triangle metaphor – even as a "straw man" – oversimplifies political relationships so badly as to hide the very consequential local influences in Congress and its network'* (Browne and Paik 1993, p 1075).

Although there have been attempts to make the concept of iron triangles more inclusive by adding extra players, one problem with such modifications is that the defining nature of the concept is lost and the difference to some of the other concepts becomes less clear.

## Issue Networks

The concept of issue networks, which too has become known under a variety of terms (Heany 2001), was proposed by Hecló (1978) as a way of addressing the shortcomings he saw with iron triangles. Although the originality and conceptual contribution of this concept has been questioned in so far as all it appears to do is to change the label of an earlier concept, 'whirlpools', (Freeman and Stevens 1987), it is issue networks that have become widely known while the notion of 'whirlpools', even at the time of its first formulation, has never become a standard term in political science (Hanks 2000). While Hecló considers issue networks to be '*almost the reverse image in each respect*' of iron triangles (Hecló 1978, p 102), other authors have argued that issue networks are '*not discreetly different arrangements from iron triangles*' (Jordan 1981, p 103). Instead, it has been claimed that all they account for are iron triangles with an increased number of participants, larger disaggregation of power, less predictable participants and both lower cohesion and homogeneity (Jordan 1981).

The defining trait of an issue network is the large number of participants involved, ranging from individuals to huge interest groups. Issue networks operate at a multitude of levels and within issue networks the number of participants is in a permanent flux. As a result, no one is really in control of the issue agenda. Whereas involvement in iron triangles is mainly driven by materialistic reasons, it is assumed that the underlying reasons for participation in issue networks are emotional or intellectual factors, with members sharing a specific interest. Although on first impression this seems to imply that issue networks amount to little more than political movements, this is not the case. Policy goals are more specific in issue networks than in political movements, and while one defining trait of political movements is uncertainty about authority within the movement, in issue networks there is no tendency for anybody to obtain perceived or legitimate authority as to what represents the public will (Salisbury 1984).

Although the major advantage of issue networks appears to have been that the concept offered an alternative to iron triangles (McCool 1990), it has also drawn attention to important aspects of the policy process. First of all, it has highlighted that policy is

made in communities, the structure, nature and stability of which all influence the policy process. Secondly, it has drawn attention to the permanent flux within such communities because of players moving in as well as out. Such changes lead to modifications in agendas, interests and linkages between various issues. Thirdly, the concept brings to light a more decentralized understanding of power with no one person being fully in charge (Heany 2001a).

Nonetheless, there are certain problems with issue networks as an analytical concept. It is incredibly difficult to identify a specific issue network since at any point in time only parts of the network might be active. Consequently, there is no clearly identifiable set of participants, links between participants might fade or be strengthened, and there are no clear-cut boundaries between governmental institutions and their environment. As Heclo (1978) himself recognised when trying to examine issue networks it is virtually impossible to state where a network leaves off and its environment starts. Issue networks are therefore '*more like amorphous clouds than geometric designs*' (Browne and Paik 1993, p 1055). As such they do not lend themselves to academic studies.

Although the idea of issue networks has been frequently quoted and accepted (McCool 1990; Heany 2001a), it appears to be the case that so far nobody has managed to identify a specific issue network (Hanks 2000). The most that seems to have been accomplished is to identify structures that display some of the features typical of issue networks (Sabatier and Jenkins-Smith 1993).

## **Policy Communities**

Initially, the idea of policy communities appears to have been a defence of pluralism against its critics and corporatist theory (Jordan 1981) and can be seen as a British re-production and duplication of the American concepts of iron triangles and issue networks (Jordan 1990). Some people, most prominently the authors of the study that put policy networks on the map within the UK, Richardson and Jordan (1979), have pointed out that at the time there was no direct application of American ideas to the British context but that the approach taken was simply a description of structures within British policy-making with a subsequent recognition of American

precedents. Others, however, simply consider it to be a development of the US literature for Britain (Dowding 1995).

Leaving any such disputes aside, this combination of British and American schools of thought has had its own merits. While on the one hand policy communities follow the idea of issue networks by widening the number of participants, they also assume stable relationships that mirror the long-standing relationships within iron triangles, perceived as assisting in the negotiation process. Policy communities are thus a special case of stable networks (Jordan 1990), and, were one to draw a continuum of policy network concepts, policy communities would be placed somewhere between iron triangles and issue networks (Hanks 2000).

Within the literature policy communities are understood to be a sort of '*common culture and understanding*' within specific policy domains as regards problems and decision-making processes (Dowding 1995, p 138). Some of these communities are '*diverse and fragmented*' while others are '*extremely closed and tightly knit*' (Kingdon 1995, p 118). These communities are made up of specialists in any given policy area (ibid.) and if a new policy focus develops, sooner or later a new policy community will evolve around it (Jordan 1990). As a result, '*policy communities are swept by intellectual fads*' (Kingdon 1995, p 127) so that the attention given to certain issues will fluctuate over time (ibid.). As the focus on one policy area becomes intellectually fatigued and routinised, other areas become more interesting.

One of the main difficulties with the idea of policy communities is the variety of ways in which it has been used. This makes it almost impossible to come up with a coherent picture (Campbell, Baskin et al. 1989; Anderson 1990; Rhodes 1990; Marsh and Rhodes 1992). For example Grant et al (1988) identify differentiation, specialisation and interaction as characteristics of policy communities, whereas Rhodes (1988) in his examination distinguishes between interests, membership, resources and horizontal and vertical interdependence. So, while in its original form the concept was '*parsimonious and thought-provoking*' it has been '*complicated and diluted*' in subsequent work (Grant 1995, p 34). In order to come up with a more coherent picture, an attempt to extract the central assumptions has been made by Jordan, Maloney and McLaughlin (1992), which is outlined in Table 2.2.

**Table 2.2: Central Assumptions of the Policy Community Model**

1. Complexity in policy-making so that 'policy emerges from a complicated interaction of parties, political groups, and bureaucrats'
2. Lack of state autonomy, given that the policy community idea is based on an exchange between bureaucrats and interests.
3. Segmentation so that 'policies are made in sectors effectively restricted to those with an interest'
4. Civil servants are key policy-makers and develop mutual support relationships with pressure groups
5. Relations are based on mutual trust
6. There is an exchange-based relationship between civil servants and groups which encourage consensus-seeking
7. Order and routine decisions. 'Both sides' experience leads them to narrow their expectations to areas where accommodation is possible'
8. 'Most of the content of policy communities discussion tends to be minor for society as a whole' - but vital to participants'
9. Restricted consultation so that 'a policy community can be seen as a mechanism for the assimilation of 'legitimate' competing values and the exclusion of those competing values deemed 'illegitimate'

(Jordan, Maloney and McLaughlin, quoted in Grant 1995, pp 35-6)

More recently, the policy community approach has been dominated by the work of Rhodes (1988; 1990; 1992), who considers policy communities as only one sort of network amongst professional networks, intergovernmental networks, producer networks and issue networks, the defining characteristics of these being illustrated in Table 2.3.

**Table 2.3: Policy Community and Policy Network: the Rhodes Model I**

Type of network	Characteristics of network
Policy community/territorial community	Stability, highly restricted membership, vertical interdependence, limited horizontal articulation
Professional network	Stability, highly restricted membership, vertical interdependence, limited horizontal articulation, serves interest of profession
Intergovernmental network	Limited membership, limited vertical interdependence, extensive horizontal articulation
Producer network	Fluctuating membership, limited vertical interdependence, serves interest of producer
Issue network	Unstable, large number of members, limited vertical interdependence.

(Adapted from Rhodes 1990)

As is outlined in Table 2.4, the characteristics that distinguish a policy community from an issue network are the more restricted number of participants, high-quality interaction of all groups on all matters related to policy issues, and a dominance of economic or professional interests, with both values and membership persisting over a long period of time (Rhodes and Marsh 1992). However, these characteristics appear to be problematic. It is questionable whether high-quality interaction of all groups on all matters related to policy issues is even theoretically feasible and also whether it is possible to maintain the idea of stability over time (Richardson 2002). Additionally,

the assumption that only people with some form of technical expertise can participate in policy communities does not seem to hold and a focus on mainly economic or professional interests is dubious (Hanks 2000), with the arising picture resembling an ‘*elite cartel*’ (Grant 1995, p 36) rather than a policy community.

**Table 2.4: Policy Community and Policy Network: the Rhodes Model II**

<b>Dimension</b>	<b>Policy Community</b>	<b>Issue Network</b>
<b><u>Network Membership</u></b>		
<i>Number of Participants</i>	Very limited number, some groups consciously excluded	Large
<i>Type of interest</i>	Economic and/or professional interests dominate	Encompasses range of affected interests
<b><u>Network Integration</u></b>		
<i>Frequency of interaction</i>	Frequent, high-quality, interaction of all groups on all matters related to policy issues	Contacts fluctuate in frequency and intensity
<i>Continuity</i>	Membership, values, and outcomes persistent over time	Access fluctuates significantly
<i>Consensus</i>	All participants share basic values and accept the legitimacy of the outcome	Some agreement exists, but conflict is ever present
<b><u>Network Resources</u></b>		
<i>Distribution of resources (in network)</i>	All participants have resources, basic relationship is an exchange relationship	Some participants may have resources, but they are limited, basic relationship is consultative
<i>Internal distribution</i>	Hierarchical, leaders can deliver members	Varied, variable distribution and capacity to regulate members
<i>Power</i>	There is a balance of power among members. Although one group may dominate, it must be a positive-sum game if community is to persist	Unequal powers, reflecting unequal resource and unequal access – zero-sum game

(Adapted from Marsh and Rhodes 1992)

## Advocacy Coalitions

In order to replace the traditional triangular approach to policy networks and the traditional idea of a stagist policy-cycle, according to which policies can be understood as a set of interdependent phases through which policies go over time (Dunn 1994)<sup>1</sup>, Sabatier, first with Pelkey and later with Jenkins-Smith, developed the idea of advocacy coalitions. These form part of a broader framework, the advocacy coalition framework (ACF), which is illustrated in Diagram 2.1 (Sabatier and Pelkey 1987; Sabatier 1988; Sabatier 1993; Sabatier and Jenkins-Smith 1993).

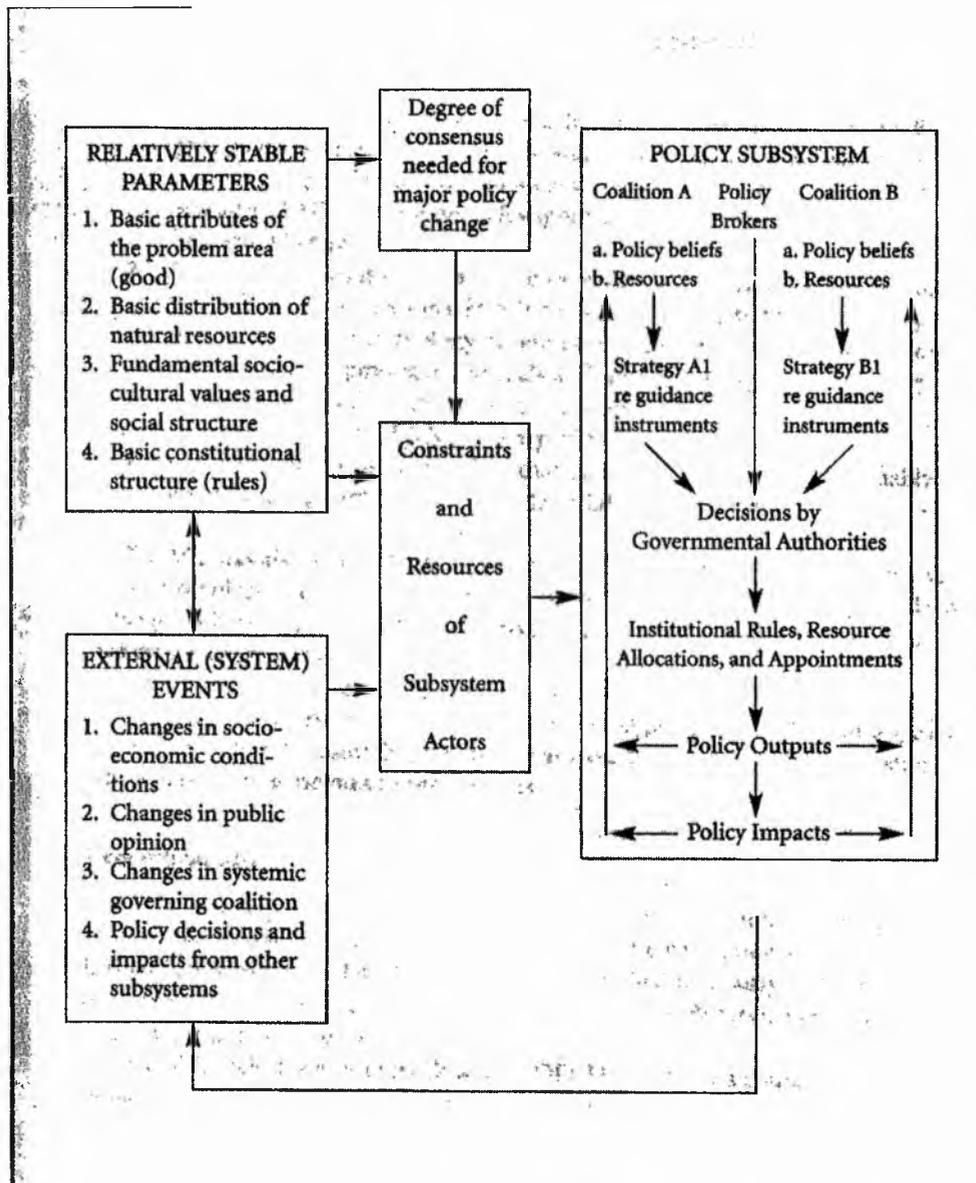
According to the advocacy coalition framework, networks of policy makers, within this approach called policy subsystems, are made up of several competing advocacy coalitions, normally between two to four (Cairney 1997). Each of these coalitions consists of a variety of players, ranging from various governmental to private organisations, who share certain core beliefs. These core beliefs are of a fundamental normative and ontological nature and therefore not very susceptible to change. Advocacy coalitions will try to translate these core beliefs, which act like 'glue' to hold the advocacy coalition together (Sabatier 1993), into policies. In order to do so, they will apply various strategies, such as litigation, lobbying of elected officials, commissioning research or other ways of influencing opinions (Elliott and Schlaepfer 2001b). However, opinions on these secondary, more pragmatic and instrumental, aspects of how to achieve the policy goal, may differ between various players within the same advocacy coalition and are open to change over time (Sabatier and Jenkins-Smith 1993).

As well as those players within the coalitions, the existence of another group of actors, the 'policy-brokers', is assumed. These brokers are considered to be people, such as high civil servants, whose concern it is to keep the level of political conflict within acceptable limits so that a 'reasonable' solution to a perceived problem is reached (Sabatier 1993). It appears that it will usually be difficult to distinguish between these brokers and 'advocates' since they are based on a continuum.

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<sup>1</sup> Some authors have questioned whether advocacy coalitions do actually break out of the policy cycle approach deLeon, P. (1999). *The Stage Approach to the Policy Process - What Has It Done? Where Is It Going?* Theories of the Policy Process. P. A. Sabatier. Boulder, Westview Press: 19-32.

Diagram 2.1: Diagram of the Advocacy Coalition Framework



(Sabatier and Jenkins-Smith 1993, p 224)

Outside the policy subsystem there are two factors that provide both resources and restraints for the actors within. First of all, there are relatively stable parameters that hardly change in the short-run, such as the basic distribution of the natural resources, basic attributes of the 'problem' area, basic legal structure and the fundamental socio-cultural values and structures. Secondly, there are those aspects that are open to major changes in the short-run. These include changes in socio-economic conditions, public opinion, governing coalitions as well as policy decisions and impacts from other

subsystems. It is these aspects which provide the main driving forces behind changes in policies (Sabatier 1993, pp 20-3).

Despite the fact that the ACF comes with a set of 'testable' hypotheses which have been tested through several case studies, the major criticism of this concept has been that it is mainly based on the American system and is consequently difficult to apply to any political system that does not correspond to American-style pluralism (Parsons 1995, pp 200-3). Although an attempt at a 'European' version was published in 1998 (Sabatier 1998), its usefulness is open for debate. Sabatier essentially appeared to ask European researchers to do their own work: '*The real task of European researchers is to develop falsifiable hypotheses based upon the ACF*' (Sabatier 1998, p 121).

While several studies have tried to apply the concept to European structures, mainly the EU itself (see for example Radaelli 1999; Warleigh 2000; Elliott and Schlaepfer 2001b; Weber and Christophersen 2002), questions have arisen about the framework's applicability to an European context. For example, Warleigh (2000) concludes that '*Sabatier's model of the advocacy coalition...appears unable entirely to encapsulate the entrepreneurial dynamics of EU decision-making*' (p 237).

Other problems with this concept arise out of the notion of belief systems. First of all, the grouping of people according to beliefs rather than importance or influence is problematic. Secondly, the idea of core beliefs might not explain the reasons why groups form coalitions. Thirdly, core beliefs might not shape the day-to-day operations and actions of coalitions. Fourthly, the distinction between various levels of beliefs is awkward, and it will be virtually impossible to identify a coalition's core beliefs (Cairney 1997). Fifthly, since no historical context is developed as part of the ACF which allows for an analysis of coalition formation (Sabatier and Jenkins-Smith 1993a), the development of a coalition's core beliefs cannot be analysed (Watt 1997). Given this lack of historical context the ACF lends itself more to established policy networks (Sabatier and Jenkins-Smith 1993a), and thus does not really take into account how different topics can come onto the policy agenda. Finally, other prominent criticisms outlined by Parsons (1995) have addressed the distinction between 'events' and 'stable parameters'. The question is how far the constraints and resources set for the policy subsystem by these two factors exist in a subsystem's

physical environment or if they are cognitive constructs within the individuals and organisations that make up the subsystem? In addition, there is an assumption that non-elites, such as members of the general public, have '*neither the expertise, nor the time, nor the inclination to be active participants in a policy subsystem*' (Sabatier and Jenkins-Smith 1993, p 202).

### **Agenda-Setting within Policy Networks**

As these concepts stand, none of them appears to account for the ways in which the agenda is set within a policy network. It is therefore useful to include some notion of this. In the past public policy researchers have often stressed the stable relationships within policy sectors with change being slow and incremental so that the whole process appears to be marked by 'muddling through' (see for example Lindblom 1959). However, more recently it has been noted that while such sometimes extremely stable arrangements can prevail for a long period of time, they are often disrupted by '*short bursts of rapid change*' (Baumgartner and Jones 1991, p 1044). This idea has to some degree been taken up by the idea of advocacy coalitions, when reference to outside forces that can provide impact for major changes is made. However, the remaining questions are: how can such changes come about; why do certain policy topics suddenly increase in prominence on the political agenda; and why by the same token, can interest suddenly ebb off (Baumgartner and Jones 2004)?

Within the literature there have been several attempts to examine 'agenda setting'. The two most prominent ones appear to be Kingdon's model of policy streams (1984) and Baumgartner and Jones' (1991; 1993) punctuated equilibrium approach.

Baumgartner and Jones (1991; 1993) argue that policy issues have a wave-like developmental pattern; times during which a topic has a high status on the agenda are followed by a fading of the topic from the agenda which allows the newly arrived at arrangements to settle into more stable routines. These can then again last over a long period of time. There are three main reasons for such punctuations. First of all, punctuation can occur due to governmental change, where one party takes over from another and with it changes the preferences of and direction for policies. The second reason for the occurrence of punctuation in an existing equilibrium arises out of

sudden dramatic external changes which destroys existing routines and brings new issues on the agenda. A third and final reason is the emergence of new ideas, either from within or outside the policy arena, and which once caught onto are unstoppable and thereby 'hitting' the political system (John 2004).

According to Kingdon (1984; 1995), the policy process can be understood in light of the way the policy agenda is set. He envisages this process to consist of four factors. The first three factors are 'streams' and include a problem, policy and political one. The 'problem stream' addresses those issues that are recognised as significant problems by policy makers and need to be addressed. The 'political stream' is made up of the wider political arena and incorporates the public mood, pressure groups, campaigns and election results and is the one that can be understood as setting the governmental agenda. The third stream, the 'policy stream', on the other hand deals with the generation of policy proposals. It is assumed that there is some sort of 'policy primeval soup' in which various proposals are floated, examined, discarded or revised before being floated again. This acts as a selection mechanism whereby only those proposals that can be seriously considered survive. While under normal circumstances these three streams operate largely independently of one another at critical points in time, the three streams will come together and a 'policy window' will open. This allows a crossover between these streams so that proposals for a solution become attached to a problem and can be pushed onto the decision agenda.

### ***Evidence-based Policy Making***

*'There is nothing a government hates more than to be well-informed; for it makes the process of arriving at decisions much more complicated and difficult'*

John Maynard Keynes (quoted in Davies 2004, p 2)

While some governments might still rely on '*gut instincts, astrological charts or yesterday's focus group*' in the formulation of policies, in general, a tendency to look for evidence and place a premium on proof and demonstrable results when developing policies has been notable (Mulgan 2003, p 1). Two of the driving forces that have been identified as underlying this trend are societal and economic shifts towards a more systematic creation and usage of knowledge. Governments themselves

have been strong advocates of knowledge and have played an active role in its dissemination. Along with governments' tendency to put a high value on learning, understanding and awareness, citizens have become more educated, knowledgeable and confident (Mulgan 2003). In combination with easier access to information this means that citizens are less likely to accept governments that ignore available knowledge (ibid.). As a result, a departure from opinion-based policy making, where either evidence is used selectively or policies are based on the ideologies and opinions of individuals or groups, has been notable and the notion of evidence-based policy making has emerged (Davies 2004). The latter can be defined as an approach that

*'helps people make well informed decisions about policies, programmes and projects by putting the best available evidence from research at the heart of policy development and implementation'* (Davies 2004, p 3).

The idea of rooting policies in evidence has *'all the appeal of motherhood and apple pie'* (Tilley and Laycock 2000a, p 213) and has experienced popularity throughout the Anglophile world, most prominently in the UK (Marston and Watts 2003). It has its origin in the concept of evidence-based practice which in turn arose out of the evidence-based medicine approach (Marston and Watts 2003). The latter had started around 1992. Being 'problem based', and taking a scientific discourse which combined the epistemologies of positivism and realism (Marks 2002), the underlying idea was to go through a process of *'systematically finding, appraising and using research findings as the basis of clinical decisions'* (Marston and Watts 2003, p 146). From acute medicine, this rationale first spread to other areas within health care before moving into the fields of education and social work (Marks 2002) and finally in to all areas addressing public services and policy (Black 2001).

When looking at the idea of evidence-based policy making one can easily get the impression that the aim of the approach is to maximise the impact that research has on policy making. However, the intention is to have policies that take good information and use it well. Other policies might be evidence-based but not necessarily in the desired way (Shaxson 2005). As there are several justified reasons to question the usefulness of an approach based on evidence, outlined in Table 2.5, the aim should be to optimise, rather than maximise the impact of evidence on policy making (Cookson 2005).

**Table 2.5: Legitimate Reasons to Question the Practicality or Desirability of an Evidence-Based Approach**

- Assembly of evidence may be too costly in relation to the likely benefits such evidence may yield
- There may be only one viable way to proceed, or there may be a universal consensus as to what needs to be done
- There may be political imperatives that override any objective evidence
- The research capacity needed to provide useful evidence may not be available
- The problem to be investigated may defy meaningful research scrutiny, perhaps because objectives are not clear, outcomes are impossible to measure, or technology is changing too rapidly
- There may be insuperable practical constraints to assembling useful evidence, such as fundamental ethical considerations

(Adapted from Davies, Nutley et al. 2000c, pp 352-3)

In light of terminological concerns regarding the notion of evidence-based policy making some authors have argued that it might be more appropriate to talk of evidence-informed or evidence-aware policies rather than evidence-based ones (see for example Nutley 2003b)<sup>2</sup>. Not only does such an approach address potential worries about the role and position attributed to evidence within the policy process, but it also opens up the possibility for analytical distinctions. Proceeding on this basis, Gray (2001) identifies five different analytical concepts regarding the relationship between policy and evidence: (1) evidence-ignorant policy – policy not even aware of relevant evidence; (2) evidence-aware policy – those aware of but not using evidence; (3) evidence-informed policy – policy considering but not substantially shaped by evidence; (4) evidence-influenced policy – policy changed in some identifiable way

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<sup>2</sup> Given that the term evidence-based policy making is the one that has become part of the academic and policy lexicon, in this thesis the approach taken follows Nutley (2003b) who proposes to treat the notion of evidence-based policy making as a convenient shorthand for a process where evidence does and should compete with other forms of knowledge and other interests, rather than imbue it with more deterministic qualities (p 4).

by evidence; (5) evidence-led policy – policy that is for the greater part shaped and embedded in evidence about goals, options and outcomes (p 3).

Despite the fact that the notion of evidence-based policy making can be seen as intuitive and common sense logic (Marston and Watts 2003), it has been met with some scepticism. The '*cheap and easy*' rhetoric often used by advocates of the approach can easily mask the '*expensive and difficult*' reality when trying to apply it (Tilley and Laycock 2000a, p 213). Sceptics have considered the idea of evidence-based policy making as '*a profane arithmetic, a measuring of the unmeasurable, a science that does not add up*' (Gray 2001, p 2), and, in light of the perception that it is hard to imagine that the making of policy can ever be entirely free of evidence, a 'sham' (Perri 2002). The main areas of debate relate to the relationship between policy and science and the nature of 'evidence'.

## **Policy and Science**

*'The great scientists have all the qualities of the gods; they have ways of knowing things that we ordinary mortals could never acquire'*

Adam Phillips, Big Science and Little White Lies

The relationship between policymakers and social scientists tends to change over time, between governments (Coleman 1991), and between various departments of the same government (Ginsburg and Gorostiaga 2001). It is always complex, and never easy (Stone 2001b), and has been described as resembling '*dancing in the dark*' (Klemperer, Theisens et al. 2001, p 197). The dancing parties do not completely see each other, there are complex movements and the flow of the dance is influenced by the environment (ibid.).

On the one hand, social scientists who have demonstrated their competence in various functional roles within the public service, ranging from the more technical to the more policy-oriented ones (Leiserson 1965), assume that they can make important contributions to the formulation of policies and have felt for a long time that the information they provide is underutilized (Patton, Smith Grimes et al. 1977; Oh 1996; Neilson 2001). Policymakers on the other hand have the feeling that the information

they receive from social scientists is unintelligible, esoteric, too theoretical, does not address the problems on the policy agenda and does not take into account the unique pressure for action placed upon policymakers (Oh 1996; Stone 2001).

Part of this frustration can be ascribed to the different analytical paradigms in which policymakers and researchers operate, outlined in Table 2.6. Such differences, paired with cultural and environmental variations, can lead to the creation of a gap between the research and policy communities in need of 'bridging' (Neilson 2001; Stone, Maxwell et al. 2001; Crewe and Young 2002; de Vibe, Hovland et al. 2002) and can present obstacles to research utilisation. Barriers to the uptake of research can exist on both the policy-demand and research-supply side or result from a combination thereof, as can be seen from Table 2.7.

While the research utilization literature has adopted the idea of two more or less distinct communities of policymakers and researchers as a central focus (Webber 1986), the idea has been criticized for several reasons. The main criticisms are that it is built on stereotypical depictions of the two communities by presenting only the dominant portrayals of each culture, and the fact that it ignores the question of heterogeneity of membership in each group while overstating the extent to which individuals are members of only one of these two groups (Ginsburg and Gorostiaga 2001). Any classification into such groups means that artificial polarized distinctions are created, and in-group differences are masked, as are between-group similarities (Garvin 2001). There is also the danger that by focusing on the need to 'bridge' any existing gaps this mindset is reinforced (Stone 2001b) and potentially so are the differences, resulting in a widening of the gap rather than a closing.

**Table 2.6: Differences in the Information Needs, Work Culture and Writing Preferences of the two Communities of Researcher and Policymaker**

<b>Characteristics</b>	<b>Researchers</b>	<b>Policymakers</b>
<b>Information Needs</b>		
<i>Kind of Information</i>	Focus on what we don't know; prefer questions	Focus on what we do know; prefer answers
<i>Level of Detail</i>	More detail on narrow topics	Comprehensive overviews which emphasize malleable factors policy can influence
<i>Source of Data</i>	Focus is representative samples that produce knowledge that can be generalized	Focus is often comparison of how a policymaker's constituency stacks up to a similar city, county, state or region
<b>Work Culture</b>		
<i>Approach and Timing</i>	Cautious; sceptical; tentative; reflective; progress in research can take years to achieve	Reactive; to enhance re-election chances, must respond quickly in a fast paced environment; progress can occur within weeks
<i>Criteria for Decision Making</i>	Statistical probability; sound research methods and designs; publications in peer-reviewed journals	What is possible through negotiation and compromise; persuasive rhetoric and the single anecdote can be powerful
<i>Views of Ambiguity and Complexity</i>	Excited by ambiguity and complexity	Counterproductive to embrace complexity because you have to take firm positions on issues
<b>Writing Preferences</b>		
<i>Emphasis</i>	An emphasis on sample, models and analysis to improve the quality of future research	Little attention to sample, methods and analysis, because scholars can be trusted to review only high-quality studies
<i>Organization</i>	Building in a logical progression to the conclusions at the end	Placing the most important conclusions for policy at the beginning
<i>Writing</i>	In-depth discussions with discipline-specific terminology and technical graphs and illustrations	Concise, easy-to-read reports with accessible language, active voice, short sentences, frequent paragraphing and simple graphs and illustrations

(Adapted from Bogenschneider, Olson et al. 2000, p 334)

**Table 2.7: Problems on the Researcher's and Policymaker's Side affecting the Uptake of Research**

**Supply Side Problem**

- Public goods problem, where there is an inadequate supply of policy relevant research
- Lack of access to research, data and analysis for both researchers and policy makers
- Poor policy comprehension of researchers towards both the policy process and how research might be relevant to this process
- Ineffective communication by researchers of their work

**Demand Side Problem**

- Ignorance of politicians or over-stretched bureaucrats about the existence of policy relevant research
- Tendency for anti-intellectualism in government that mitigates against the use of research in policy making while the policy process itself is riddled with fear of the critical power of ideas
- Governmental capacity - policymakers and leaders being dismissive, unresponsive or incapable of using research
- Politicisation of research. Research findings are easy to abuse, either through selective use, de-contextualisation, or misquotation

**Supply and Demand Side Problems**

- Social disconnection of both researchers and decision-makers from each other and from those who the research is about or intended for, to the extent that effective implementation is undermined
- Domains of research relevance, impact and influence – not simply a question of research having a direct policy impact, but one of broader patterns of socio-political, economic and cultural influence over long term
- Contested validity of knowledge(s), issues of censorship and control, and the question of ideology – question of power relations
- Validity of research, and problems relating to the question - what is knowable?

(Adapted from Stone 2001b, pp 7-10)

Given that a lot of social scientists expect their research to influence policymakers or practitioners (Neilson 2001), there have been various studies and articles addressing 'enemies' of evidence-based policy making and exploring aspects that can improve the dialogue between researchers and policymakers and which might facilitate the uptake and use of research (see for example Chaplan 1977; Patton, Smith Grimes et al. 1977; Coleman 1991; Webber 1991; Garrett and Islam 1998; Leicester 1999; Bogenschneider, Olson et al. 2000; Tilley and Laycock 2000a; Ginsburg and Gorostiaga 2001; Stone 2001; Nutley, Walter et al. 2002; Nutley, Percy-Smith et al. 2003; Davies 2004; Petticrew, Whitehead et al. 2004). In light of the diversity of the

various areas of policy making and the players within them it is unwise to come up with too many notions about the conditions in which policymakers are likely to adopt research findings (Nutley, Davies et al. 2000). Differences in the authority and level of policy- and decision-makers, differences in the nature of policy questions under consideration and differences in issues, such as adoption versus implementation or decision versus action, all influence the degree to which evidence is used (Innvaer, Grunn et al. 2002). Nonetheless, a number of key points that facilitate the uptake of evidence have emerged and broadly speaking the following categories can be identified: (1) timing – the research is available at the right time; (2) relevance – the research relates to a specific environment and addresses an issue currently high up on the policy agenda; (3) clarity – the findings are unambiguous and have clear implications for action; (4) quality – the findings can be trusted and have been produced by an authoritative source; (5) political adeptness – the findings are consistent with national guidance and do not present a major challenge to existing policy; (6) personality – trust in and authority of the findings' producer or supporter (Nutley, Davies et al. 2000; Percy-Smith, Burden et al. 2004).

In addition to the impact any paradigmatic differences can have on the influence and uptake of evidence within policy making, another important factor is the nature of the policy field itself. In general, three types of policy fields can be identified: stable policy fields; policy fields in a flux; and inherently novel policy fields (Mulgan 2003). Within stable policy fields a strong evidence-base has been established so that governments know approximately what to do. Any changes or improvements are usually of an incremental nature and good innovations spread rapidly through formal networks. Policy fields in flux, conversely, are those areas where policies that once worked are no longer adequate and there is a general understanding that things need to change. Although in such areas there is usually a greater deal of fertility and experimentation there is also disagreement over basic theoretical approaches, potential solutions and the overall knowledge-base is contested. The last category, inherently novel policy fields, is made up of those areas where, due to the genuine newness, the existence of a strong evidence-base is precluded. There will be limited, if any, understanding of what does and what does not work (Mulgan 2002; Mulgan 2003). Because of the differences in the available knowledge-base it has been argued that it is only meaningful to speak of evidence-based policy making when referring to

the first category: the one of stable policy fields. Otherwise, the best one can talk about is evidence-informed policy (Mulgan 2003).

Within the research-science relationship various models of research utilization have been proposed. While there does not seem to be as much of a theoretical underpinning as one would hope for, it is generally agreed within the literature that there are at least six different models of research utilization. All of these seem to have their origin in the works of Weiss (Weiss 1995b; Weiss 1972; Weiss 1977; Weiss 1986; Hanney, Gonzalez-Block et al. 2002). These six models can be classed under three broad headings (Ginsburg and Gorostiaga 2001):

1. Instrumental use of knowledge
2. Conceptual use of knowledge
3. Strategic use of knowledge

## 1. Instrumental Use of Knowledge

### Classic/purist/knowledge-driven model

The classic model of research utilization has its origin in the natural sciences and assumes that there is a linear sequence of events, ranging from the production of knowledge to its application. It is the most venerable model in the literature and in its most extreme form would lead to the abdication of political choices (Young, Ashby et al. 2002). Given that for a lot of social scientists the intended result or expectation is to influence the policy maker (Neilson 2001), this model could be seen as the basis of social scientists' ambitions. However, since the mid-1970s this model has been hotly contested. In addition to the assumed linearity, another problem is that it seems to assume a more or less positivistic understanding of science as created in the 19<sup>th</sup> and early 20<sup>th</sup> century. According to this picture, science consists of a universal rationality that is culture and politics-free, calling for a distanced and dispassionate value-free point of view. Thus, as far as possible, any 'subjectivity' is removed while at the same time the findings and finished products are ideally the 'true' representations of things, covered by 'universal' general laws (Ihde 2002). This perception of science does not seem to hold any longer.

### Problem-solving/engineering/policy-driven model

While the problem-solving model, similar to the knowledge-driven one, follows a linear sequence, the steps involved are different. Its starting point can be found in the identification of a problem which in turn leads to a request by a policy maker for the identification and assessment of alternative solutions to this problem by scientists. Research therefore follows policy with policy issues shaping research priorities. Research can enter this process in two ways: firstly, by identifying pre-existing research or secondly, the purposeful commissioning of the required research. The expectation is therefore that the research provides empirical evidence and conclusions that assist in solving a policy problem. The underlying assumption is that there is a consensus on the goal between the policy maker and the scientist. While this is the dominant image of research utilization, the actual number of such cases is small (Weiss 1986).

## 2. Conceptual Use of Knowledge

### Interactive/social interaction model

According to this model, research is only one part of a complex process that also draws on experience, political insights, various pressures, social technologies and judgement. Consequently, all people involved in an issue amalgamate their talents, beliefs and understanding to clarify the situation (Donnison 1978; Ginsburg and Gorostiaga 2001). Instead of a linear process, the assumption is that the process consists of a set of interactions between researchers and policy makers, in turn exposing these two groups to their different worlds and needs. As such both research and policy are mutually influential; the boundaries between the two start to get blurred and it is impossible to discern who influences whom (Young, Ashby et al. 2002).

### Enlightenment/percolation/limestone model

This is probably the way in which social science research enters the policy arena most frequently. Different concepts, theoretical perspectives and research findings percolate into society and shape the general thinking of decision makers in those subject areas that subsequently become relevant to specific decisions regarding policy and practice (Ginsburg and Gorostiaga 2001). It is important to note that there is no assumption that decision-makers will actively seek out social science research

when faced with a policy issue. What is more, it is not even assumed that they are receptive to or actively aware of certain aspects of existing research. Instead, social science research functions more as a backdrop of ideas and orientations, 'pre-digested' in so far as it has slowly percolated through to the policy maker and thus helps to 'illuminate the landscape' for the decision maker (Young, Ashby et al. 2002).

### 3. Strategic Use of Knowledge

#### Political Model

The political model considers research as ammunition to be used in the policy process. Policy makers draw upon research to support pre-determined positions they hold and use a very selective set of research that aids them to reach their goal. Research is considered to be a tool used to '*neutralize opponents, convince waverers and bolster supporters*' (Weiss 1977, p 14).

#### Tactical Model

Unlike the other models, the tactical model does not pay too much attention to the actual content of research. What is important here is the mere fact that research is being done or at least has been commissioned. Despite the fact that this can frequently be considered as a cynical tactic of postponement, in some cases the commissioning of research provides the political system with a '*valuable breathing space*' that helps to reduce the chances of irrational policy making (Hanney, Gonzalez-Block et al. 2002, p 13).

### **The Notion of 'Evidence'**

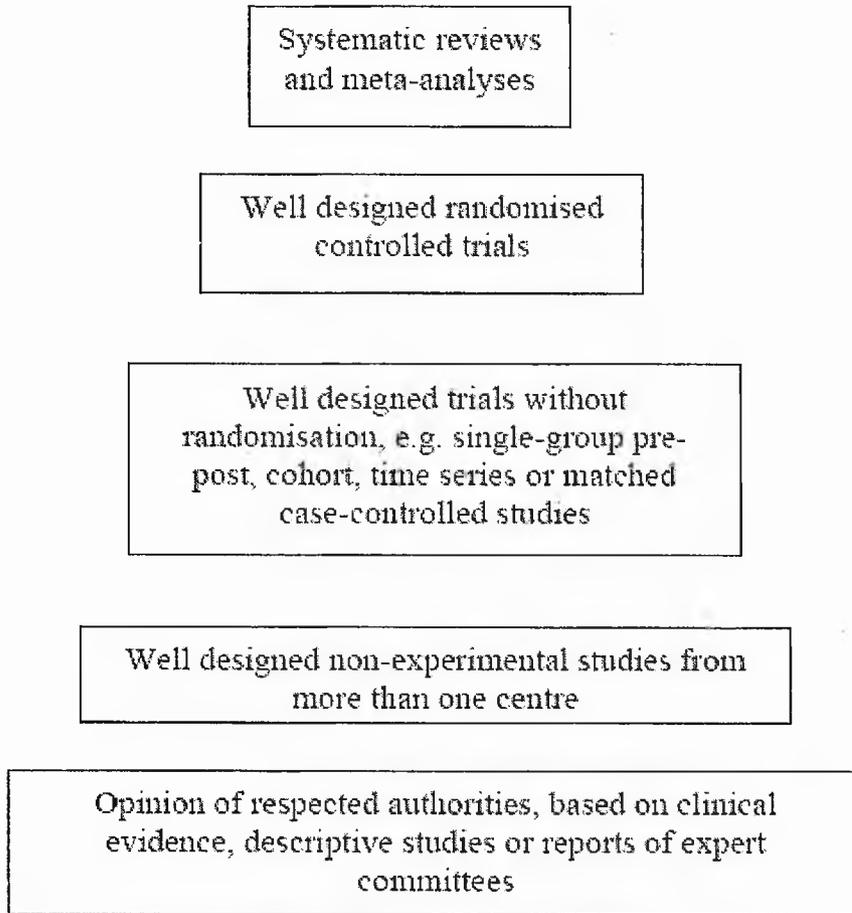
In light of the fact that '*[n]ot all research is evidence and not all evidence is research*' (Cookson 2005, p 119) the evidence-based policy making school of thought faces two challenges. First of all, there is the highly contentious question as to how the notion of 'evidence' is to be understood (Marston and Watts 2003); secondly, given that even researchers do not necessarily produce information that qualifies as being good enough to serve as a basis for the formulation of sound policy (Davies, Nutley et al. 2000b), what can be considered as constituting 'good' evidence?

Within the literature it is often assumed that the term 'evidence' is either self-explanatory, or is simply defined as '*the systematic appraisal and review of empirical research findings*' (Marston and Watts 2003, p 144), '*information that is relevant to making a decision to commit to one policy or another or none, because it indicates the possible or probable benefits, risks, acceptability or status of a policy*' (Perri 2002, p 4) or, on a more popular level as '*research or special study that allows you to say if a, then b follows, or at least finds some correlation between a and b*' (Walker 24 January 2000). Consequently, the problem is that on the one hand almost any observation can count as evidence, while on the other it is assumed that scientific rules of proof are necessary for anything that is supposed to qualify as evidence. There are valid arguments for both points of view (Davies, Nutley et al. 2000; Davies, Nutley et al. 2000b).

According to the scientific approach, evidence is defined as a function of the quality of evidence and the assumption is that higher quality evidence should lead to higher quality decisions within the policy process (Dobrow, Goel et al. 2004). Consequently, as illustrated in Diagram 2.2, a hierarchy of evidence has been drawn up, particularly within the area of health care. At the top of the hierarchy one finds systematic reviews and meta-analyses which are assumed to represent the 'gold-standard', while the lower ranks are occupied by evidence perceived of as having a lesser 'scientific' nature, such as experts' opinions.

Although this approach helps to illustrate the notion of different levels of evidence and tries to assess their quality, its applicability and appropriateness in the area of policy making is open for discussion (Schwartz and Rosen 2004). While within the field of medicine it might be possible to assign and group research findings according to these categories, in the more complex field of social science such an approach is unlikely to succeed (Boaz and Ashby 2003).

**Diagram 2.2: A Hierarchy of Evidence**



Source: Canadian Task Force on the Periodic Health Examination (1979)

(Boaz and Ashby 2003, p 6)

However, other, broader, attempts at defining evidence have problems too. Most importantly, one faces the danger of taking too encompassing an approach; almost any influence can be regarded as evidence. One important thing to bear in mind is that when talking about evidence the reference is not necessarily to research evidence, since other types of knowledge can potentially also lead to 'reputable' evidence (Nutley 2003). Even when talking about research evidence one has to remember that these can take several forms and shapes, such as attitudinal, ethical, economic, statistical, descriptive, or impact evidence (Davies 2004)

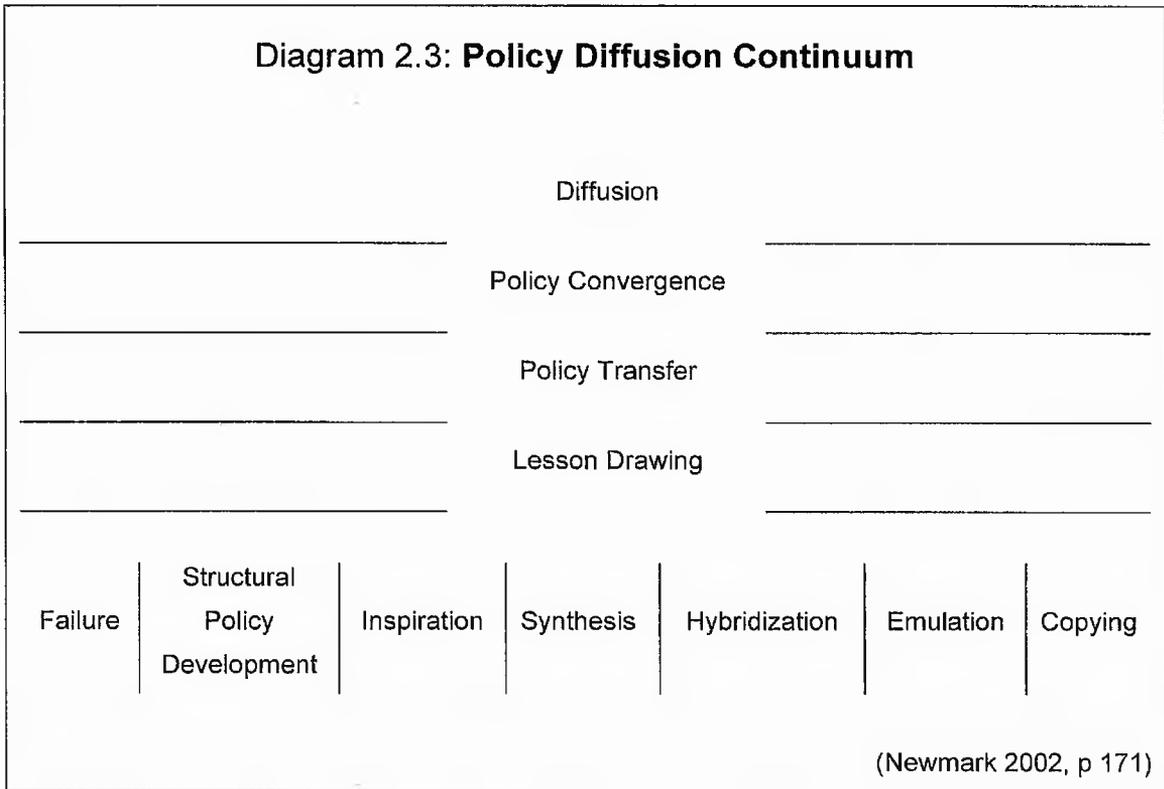
Given these definitional difficulties and the impression that it is highly unlikely that one can reach an agreement as to what constitutes ‘proper’ evidence for any policy field (Humes and Bryce 2001), the way forward seems to be to consider a more fluid and emergent nature when defining evidence rather than a fixed and static one. This means, however, that any definition will be of a provisional nature and therefore is necessarily incomplete and inconclusive (Dobrow, Goel et al. 2004). Given that ‘*nothing works all of the time and many things work some of the time*’ (Nutley 2003, p 18) it might therefore be helpful to define evidence as a ‘*systematic investigation towards increasing the sum of knowledge*’ (Davies, Nutley et al. 2000b, p 3). By following a definition along these lines, it means that the subjective aspect of evidence is being taken care of and refers to the state of knowledge given at a specific time and place, so that different perspectives can produce different explanations for the same decision outcome (Dobrow, Goel et al. 2004).

## ***Policy Transfer***

Along with the renewed interest in evidence-based policy making there has been a renaissance of comparative policy analysis since the early 1990s (deLeon and Resnick-Terry 1999b). This has been accompanied by a multiplication of terminology. When examining the development and flow of policies, authors are thus talking about ‘*policy diffusion*’ (Walker 1969; Gray 1973), ‘*policy convergence*’ (Bennet 1991), ‘*lesson-drawing*’ (Rose 1993), ‘*policy transfer*’ (Dolowitz and Marsh 1996), ‘*policy shopping*’ (Freeman quoted in Stone 2000), or more exotically ‘*systematically pinching ideas*’ (Schneider and Ingram 1988). Despite the fact that these terms are conceptually distinct they are often used interchangeably (Stone 2000). The reason for this confusion is that the concepts cover overlapping areas and it is therefore difficult to draw a precise line between them.

Because of the ‘semantic uncertainty’ in this field (Freeman 1999) and the fact that recently there has been some scholarly competition regarding the standing of the various terms (Stone 2000), it would be desirable to have a more standardised theoretical framework for this area (Newmark 2002). As can be seen from Diagram 2.3, attempts have been made to chart the key concepts on a continuum in order to clarify the different concepts’ positions within the field, starting off with the broadest

at the top, policy diffusion, as a macro-level concept, and then proceeding down to ever more specific micro-concepts.



While this continuum is helpful in providing a rough overview of the approximate standing of the different terms it neither caters for the conceptual and methodological differences inherent in the approaches, nor acknowledges that some of the concepts can operate at both macro- and micro-level. It is misleading in so far as it implies that, like a pyramid, each of the layers builds upon and encompasses the others. It can be argued that it would be better to envisage the field as consisting of three different strands of thinking: policy diffusion, policy convergence and policy transfer.

### Policy Diffusion

Policy diffusion can be defined as ‘[a]ny pattern of successive adoptions of a policy innovation’ (Eyestone 1977, p 441). On first sight it can therefore be misperceived as lesson-drawing. Some authors mistakenly use it synonymously with policy transfer (Kern, Kissling-Naef et al. 2001). It is assumed that policies literally ‘diffuse’ or ‘percolate’ slowly as time proceeds (Stone 2000). As such, it is the most

'passive' of the three concepts. While in general policy diffusion is considered to be a macro concept (Kern, Kissling-Naef et al. 2001), it can embrace both macro and micro levels. When applied to the macro level the concept's focus will be on the broader field of public policy per se, while when applied to the micro level the spotlight will be on the diffusion of individual initiatives or technologies (Freeman 1999).

Essentially, there are three models of policy diffusion. First of all, organisational diffusion examines the people and groups spreading policy through interaction, such as meetings, conferences or other networks. Geographical or regional diffusion tries to determine the impact of geography on the adoption of an innovation, while the third category, the internal determinant model, looks at political, economic and social characteristics in order to come up with predictions as to likely innovators/ adopters of policies (Newmark 2002). In all these cases, rather than focusing on the creation of new policies, the concern is to identify amongst the involved countries 'patterns' by which policies spread in respect to speed, structure and geography (Walker 1969). As such the study of policy diffusion can often be considered to be of an apolitical nature (Stone 2000). If present at all, the interest in substance or content of the policy in question is only marginal (Freeman 1999). Political dynamics that might be involved in the diffusion process are often ignored (Stone 2000). As a result, studies tend to be of a more technocratic character (Rose 1993), involving quantitative methods, a large number of cases and complex mathematical modelling (Newmark 2002).

## **Policy Convergence**

Similar to policy diffusion, policy convergence is mainly a macro concept (Freeman 1999). When applied, the term is frequently used as being synonymous with 'similarity' or 'uniformity' of policies. However, although referring to increasingly similar policies in different countries, in its correct application, the focus of policy convergence is on the temporal aspect of 'becoming' rather than 'being' (Bennett 1991). The concept of policy convergence provides one important aspect completely ignored by policy diffusion. It acknowledges the possibility that similar policies can emerge due to similar structural pressures with or without any connection between different countries (Stone 2000). In other words, while policy convergence can

emerge due to policy diffusion or transfer this is not a necessary requirement. Comparable policies might be arrived at independently by states due to corresponding circumstances, without awareness of other countries' approaches.

In his review of the policy convergence literature, Bennett identified five possible forms of policy convergence, reproduced in Table 2.8: policy goals, content, instruments, outcomes and policy style. There is no clear cut-off point between these categories because they are highly interwoven. Although when seeing them as independent categories the impression might arise that the policy process is rational and linear, they help to organise one's thinking (Bennett 1991).

Causes, other than comparable domestic circumstances that lead to a convergence of policies, can take a multitude of forms. The most prominent driving forces are emulation, penetration, harmonisation and convergence through the activities of political subsystems. In essence, emulation is the drawing of lessons from other countries which in turn can account for a convergence of policy content or instruments but not outcome or style. It can occur at any stage within the policy process. The opposite of emulation is penetration. In the case of penetration similarity is coerced by for example legal measures or constraints, and the work of international organisations. In between these two opposing concepts lies the idea of harmonization. Different states recognize their interdependence and try to avoid the costs and externalities involved in divergence. This is often the case when looking at international economic integration as is for example the case within the EU. The last aspect addresses convergence through the work of political subsystems on both national and transnational levels. This mirrors lesson-drawing in so far as that these political subsystems engage in a joint experience of learning about problems and reach a consensus on how to deal with them (Bennett 1991; Hoberg 2001).

**Table 2.8: Different Forms of Policy Convergence**

Convergence of Policy Goals	Coming together of intent to deal with common policy problems
Convergence of Policy Content	Coming together of the more formal manifestation of government policy – statutes, administrative rules, regulations, court decisions etc
Convergence of Policy Instruments	Coming together of the institutional tools available to administer policy, whether regulatory, administrative or judicial
Convergence of Policy Outcomes	Coming together of the results (positive, negative, ineffective) of implementation
Convergence of Policy Style	Rather diffuse notion addressing the process by which policy responses are formulated (consensual or conflictual, incremental or rational, anticipatory or reactive, corporist or pluralist etc)

(Bennett 1991, p 218)

Within the area of policy convergence important lessons can be drawn from organizational theory, especially when looking at the concept of institutional isomorphism (Radaelli 2000), the constraining process whereby organizations are forced to resemble other organisations facing similar environmental conditions (DiMaggio and Powell 1983). The driving forces towards such homogenisation identified by DiMaggio and Powell (1983) are coercive isomorphism; similarities due to pressures exerted by key organizations or government; mimetic processes which lead to imitation as a result of uncertainty; and finally, normative pressures which stem from increasing professionalization. All of these have at their core the strive for

legitimacy. The lesson to be drawn from this is that the focus of policy convergence should not merely be on effectiveness and efficiency but also on these legitimizing forces which are important when dealing with uncertainty (Radaelli 2000).

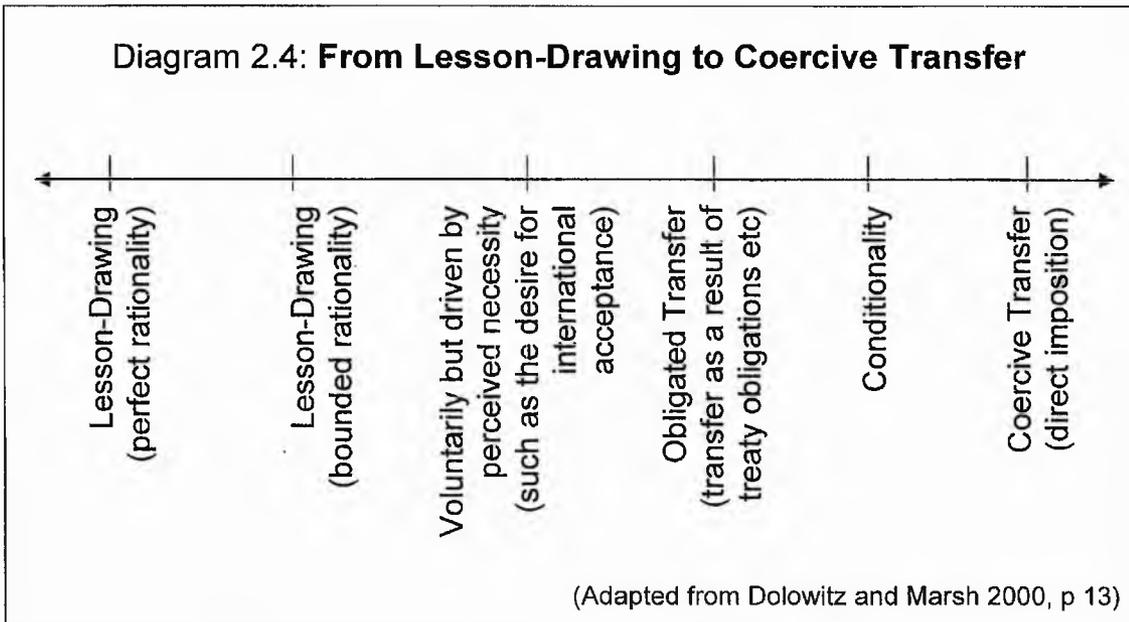
## **Policy Transfer**

While some people have defined policy transfer as '*a more specific form of policy diffusion accounting for only those cases where conscious knowledge of policy is used in policy development elsewhere*' (Newmark 2002, p 171), the concept is analytically distinct from the previous two in so far as policy diffusion and convergence are descriptive categories which examine the subsequent adoption of and trends towards similar policies. Policy transfer on the other hand, while obviously inspired by the ideas of both policy convergence and policy diffusion (Freeman 1999), is based in both actions and actors. Initially, the concept developed out of a dissatisfaction with the process-over-substance approach of the previous two concepts as well as the need to address aspects ignored by them (Clark 1985). So, while within the policy convergence or diffusion approach actors might play a role in the various developments, within policy transfer political players occupy a more central role. Any transfer of policy involves the taking of strategic decisions by actors within and outside government (Dolowitz and Marsh 1996; Stone 2000; Stone 2000b). The focus of studies within this field is mainly on the decision-making process according to which policies and practices travel between various political jurisdictions (Smith, Baston et al. 2002).

Generally, there is now a consensus to define the different forms of policy transfer in the words of Dolowitz and Marsh (Pierson 2003), who state that policy transfer can be understood as:

*'a process in which knowledge about policies, administrative arrangements, institutions etc. in one time and/or place is used in the development of policies, administrative arrangements and institutions in another time and/or place'* (Dolowitz and Marsh 1996, p 344).

The area covered by this definition can be understood as a continuum with voluntary lesson-drawing lying at one end and direct coercive policy transfer on the other (Dolowitz and Marsh 2000), as illustrated in Diagram 2.4.



There is no clear cut-off point between the different categories and it is possible that in any transfer of policy one or more of them apply. Things that lend themselves to transfer include both positive and negative lessons, ideas and attitudes, ideologies and anything that falls under the heading of policies, such as policy goals, content, instruments, programmes or institutions (Dolowitz and Marsh 2000).

Most instances of policy transfer within the UK and other Western countries are of a voluntary nature (Kern, Kissling-Naef et al. 2001), so that within this context the term policy transfer can be used interchangeably with the notion of lesson-drawing. It is this idea of drawing lessons across time and/or space that will be referred to when talking about policy transfer in the remainder of the thesis.

As illustrated in Table 2.9, any policy can be transferred in varying degrees, ranging from a direct and complete transfer, a selective pick-and-mix of different ideas or programmes, to mere inspiration of policy change, with the final version of policy not actually drawing upon the original source (Rose 1993; Dolowitz and Marsh 2000).

**Table 2.9: Alternative Ways of Drawing a Lesson**

Copying	Enacting more or less intact a program already in effect in another jurisdiction
Adaptation	Adjusting for contextual differences a program already in effect in another jurisdiction
Making a Hybrid	Combining elements of programs from two different places
Synthesis	Combining familiar elements from programs in a number of different places to create a new program
Inspiration	Using programs elsewhere as an intellectual stimulus to develop a novel program

(Adapted from Rose 1993, p 30)

**Note:** Dolowitz and Marsh prefer to combine the related concepts of 'making a hybrid' and 'synthesis' under the label of 'combinations' (see Dolowitz and Marsh 1996; Dolowitz and Marsh 2000)

Independently of the degree of transfer, a certain level of awareness and information about the other countries' programmes that are being looked at is required. Ideally, in any instance of lesson-drawing there should be three consecutive steps: awareness, assessment and application (Mossberger and Wolman 2001). The first step, awareness, also known as 'search for information' (Rose 1993), often follows dissatisfaction with an existing practice or policy. Such dissatisfaction can be triggered by evidence that something is not performing as required, politicians' or experts' values, changes within the socio-political environment not reflected in current policies or practices, and electoral competition; it can even be imported from abroad (Rose 1993, pp 60-1). This '*disequilibrium between aspirations and achievements*' (Rose 1993, p 146) in turn leads to a desire amongst politicians to learn

something new (Rose 1993). This desire for change is usually fuelled by the 'threat of pain' if nothing is done rather than any potentially uncertain benefits (Rose 1993, p 61) and can be reinforced by an acute loss of trust in the traditional sources of policy solutions (Pierson 2003, p 95). In addition to dissatisfaction, another force driving the search for solutions is uncertainty (Dolowitz and Marsh 1996) and the wish by politicians to overcome it.

Within the literature it is considered that the search for information can be across both time and space (Rose 1993). Based on the assumption that the process of gathering information is rational, it is assumed that the country's own history is the obvious starting point for examining what the present can learn about what works and what should better be avoided (Dolowitz and Marsh 1996). Once the country's own history of approaches to problems has been examined, the focus is changed to other countries. It is normally the case that the first ports of call are those countries that are perceived to be most similar, rather than those in close geographic proximity (Pierson 2003). Consequently, historically, the UK has looked towards Australia and the US<sup>3</sup>. Their similarity of culture, public service, legal practice, and especially language have traditionally tied Anglophone polities into a special 'family of nations' (Pierson 2003). Although historically Labour had preferred to look at Scandinavian and German democrat programmes (Waltman et al quoted in Common 1998, pp 443-4), due to the strong ties between President Clinton and Blair the Labour Party has increasingly looked '*across the Atlantic for inspiration, not across the Channel*' (Marquand p 20, quoted in Jones and Newburn 2002, p 98).

Once sufficient information has been gathered, or an awareness for another approach has arisen, it is time to evaluate the findings. Evaluation looks at the potential transferability of other programmes and has at least two aspects: political and technological evaluation. Political evaluation examines if something is consistent with the values, goals and aspirations of those evaluating or intending to transfer it. As

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<sup>3</sup> Although the relationship between the US and the UK is often given a 'patina of great antiquity' an active co-operation between the two countries has only existed since around 1940. A notable increase in interest in US policies and their potential applicability to the UK only started under the Conservative Government of Mrs Thatcher, partly due to Mrs Thatcher's '*admiration for President Reagan's brand of conservatism*' which in many ways resembled her own (Watt, D. (1986). Introduction: The Anglo-American Relationship. *The 'Special Relationship'. Anglo-American Relations Since 1945*. W. R. Louis and H. Bull. Oxford, Clarendon Press: 1-14., p 13).

such it looks at the desirability of different policies. Technical evaluation on the other hand looks at the practicality and implementability. The concern is thus about the transferability and in how far things would work in the setting of those trying to transfer policies (Rose 1993). This leads to the four possible scenarios illustrated in Table 2.10.

**Table 2.10: Desirability and Practicality of Transferring Policies**

		Desirability	
		High	Low
Practicality	High	Doubly desirable	Unwanted technical solution
	Low	Siren call	Doubly rejected

(Rose 1993, p 46)

Once a decision has been made as to the desirability and practicality of a policy, the final step of assessment is whether any of the information about the policy in another country is actually used in the decision process (Mossberger and Wolman 2001).

### How to Study Policy Transfer?

Although policy transfer has become increasingly established empirically as an actual process (Pierson 2003), as a concept it is difficult to study. The greatest obstacle for the researcher is the problem of counterfactuals whereby it is assumed that because there is transnational similarity in a policy area, a transfer of policy has actually taken place (Bennett 1991; Jones and Newburn 2002). The difficulty is to demonstrate that developments in politics would not have occurred in any case, which ultimately is impossible to do (Jones and Newburn 2002). Consequently, the different categories of transfer are difficult to assign with any degree of certainty in cases other than a direct copying of a policy.

The second major problem in trying to identify policy transfer addresses the opposite situation, namely the conclusion that since two countries have different policies, no policy transfer has taken place between them. However, in such cases, although there is no evident change in behaviour or adoption of a programme, policy transfer can have taken place if one of the countries has drawn negative lessons from examining another's policy (Newmark 2002).

Both of these problems are reinforced by the fact that learning is usually of a limited and iterative nature so that it is often difficult to establish any direction of transfer (Pierson 2003), especially due to the sheer number of items that can be transferred and routes by which this can take place:

*'[P]olicy transfer does not require anything more than a vacation trip, a stroll along the internet, discussion at a conference, or even ideas gained through the interactions of a given policy network'* (Dolowitz 2003, p 102).

As Blanck pointed out when looking specifically at the influence of the US on the UK, the people involved in policy transfer often do not realize that transfer has taken place: *'America does change people...but in ways so subtle that it is hard to describe'* (Blanck quoted by Smith, Baston et al. 2002, p 456).

The problems with the existing research literature in the area of policy transfer are several: the fact that it is undertheorised; that it is dominated by case studies that do not tell us enough about the circumstances in which policy transfer is likely to arise, who is likely to initiate it and for which reasons; the form policy transfer is likely to take; and the chances of it being successful. Additionally, a clear methodology for assessing the extent and shape of transfer is missing. Lots of the provided evidence is either anecdotal, circumstantial, or both (Pierson 2003).

In order to address these difficulties, it has been pointed out that it is important to take an interdisciplinary approach when looking at the transfer of policies (Radaelli 2000; Smith, Baston et al. 2002). Of special importance seems to be network analysis (Stone 2000; Stone 2000b), which brings us back to the first area of literature outlined in this chapter. Applying a policy network perspective to this field assists in revealing the

underlying dynamics of the processes involved and their impact on different policy sectors (Howlett and Ramesh 2002).

## **Summary**

This chapter has reviewed the literature on the three key concepts that characterise the modern policy process: policy networks, evidence-based policy making and policy transfer. These concepts have had a long history and have featured prominently within political and academic discourses at various points in the past. After a long period of neglect, these concepts have only started to re-emerge as defining traits of policy making again since the early 1990s.

Despite a multitude of terminologies four key groups of policy networks can be identified: iron triangles, issue networks, policy communities and advocacy coalitions. When placing these concepts on a continuum, the notion of iron triangles is the most restrictive, consisting of only three groups of actors – interest groups, committees and an executive agency – while issue networks are the broadest, representing a more diffuse network of actors, whose composition changes significantly over time and from issue to issue, while both policy communities and advocacy coalitions are placed in between.

When looking at the use of evidence in the policy process several questions arise. First of all, what constitutes evidence, most importantly good evidence, and how do policymakers use evidence in the policy process? While three key categories of research utilisation models have emerged – instrumental, conceptual and strategic use of knowledge – the nature of evidence is still contested. In light of the fact that too stringent or too loose a definition is obstructive it was decided to follow Davies, Nutley et al (2000b) and to opt for a more fluid definition considering evidence as a *'systematic investigation towards increasing the sum of knowledge'*.

Similar to policy networks, within the field of policy transfer a multitude of competing terms and definitions is evident. However, it is possible to identify three key concepts: policy diffusion – any pattern of successive adoptions of policy developments; policy convergence – the emergence of similar policies in different

countries with or without any connection between them; and policy transfer – the process through which knowledge about developments in one area or time is used in another one.

Following on from this exploration of the literature, the next chapter considers the research questions and methodology used in order to examine the three concepts of policy networks, evidence and policy transfer in relation to the case of Sarah Payne and the British debate about sex offender community notification.

## Research Questions and Methodology

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*'[T]he truth of what we observe lies less in things themselves, than in the mood of the observer'*

(Andrew Motion, *The Invention of Dr Cake*, p 88)

Within academia, it is frequently argued that the basic beliefs a researcher has about the world, also known as paradigm or worldview, will influence, if not determine, the way he or she sets out to conduct the research and thereby the chosen methodology (Hussey and Hussey 1997; Creswell 1998; Bowling 1997). Building on the work of Guba and Lincoln, Creswell (1998) argues that such a researcher's paradigm consists of five categories of philosophical assumptions: ontological, epistemological, axiological, rhetorical and methodological. Ontological assumptions address the nature of reality; epistemological, the relationship between the researcher and that which is being researched; axiological, the question of values; and rhetorical and methodological, the questions relating to what makes up the language of research and what constitutes the precise nature of the research process.

Relating to these assumptions, two main paradigms have emerged within the social sciences. First of all, there is the 'positivistic' paradigm, also known as the 'quantitative', 'scientific' or 'traditionalist' paradigm. Secondly, there is the 'phenomenological' paradigm, which is also referred to as the 'qualitative', 'subjectivist' or 'interpretivist' one (Hussey and Hussey 1997). The differences between these two paradigms in relation to the five philosophical categories are outlined in Table 3.1.

**Table 3.1: Assumptions of the Two Main Paradigms**

<b>Assumption</b>	<b>Question</b>	<b>Positivist</b>	<b>Interpretivist</b>
<i>Ontological</i>	What is the nature of reality?	Reality is objective and singular, apart from the researcher	Reality is subjective and multiple as seen by participants in a study
<i>Epistemological</i>	What is the relationship of the researcher to that researched?	Researcher is independent from that being researched	Researcher interacts with that being researched
<i>Axiological</i>	What is the role of values?	Value-free and unbiased	Value-laden and biased
<i>Rhetorical</i>	What is the language of research?	Formal, based on set definitions, using an impersonal voice and accepted quantitative words	Informal; Evolving decisions; Personal voice with the use of accepted qualitative words
<i>Methodological</i>	What is the process of research?	<p>Deductive process</p> <p>Cause and effect</p> <p>Static design – categories isolated before study</p> <p>Context-free</p> <p>Generalisations leading to prediction, explanation and understanding</p> <p>Accurate and reliable through validity and reliability</p>	<p>Inductive process</p> <p>Mutual simultaneous shaping of factors</p> <p>Emerging design – categories identified during research process</p> <p>Context-bound</p> <p>Patterns, theories developed for understanding</p> <p>Accurate and reliable through verification</p>

(Adapted from Hussey and Hussey 1997, p 48)

Although such an assumed paradigmatic division, which in this extreme form appears to be unique to the social sciences (Sechrest and Sidani 1995), can be traced back to

the beginnings of the field with positivism represented by the works of Comte, Durkheim and Spencer on the one hand and phenomenology by the works of Weber, Goffman and Garfinkel on the other, the usefulness of such a strict distinction is doubtful. The two paradigms represent extreme cases, lying at opposing ends of a continuum with few people, if any, subscribing to them in their purest form (Hussey and Hussey 1997). In addition, the ability to come up with a clear-cut division between these two paradigms, especially in respect to methodology, has been questioned (Wilson and Natale 2001).

While the various perspectives a researcher holds about the five philosophical categories might provide some impetus regarding methodological choices, it appears that researchers are less rational and fixed in their choices than advocated by this point of view. Albeit looking mainly at examples from the 19<sup>th</sup> century, Bowler found that both the theoretical orientations and methodological choices of researchers are often based more on intuition or instinct with a subsequent philosophical defence instead of a priori principles (Bowler 2000). In addition, it seems that frequently scientists have one or two preferred methodological techniques when doing research, with the favourite techniques sometimes making up the sole tools used in their work (Berg 2004).

Each research method has its own advantages and disadvantages, so that no single method will always be the most useful one, and researchers should ideally be familiar with a variety of research methods (Denzin and Lincoln 2000). Indeed, the determining factor in methodological choices should not be a researcher's paradigm or preferred technique, but the research question(s) or problem(s) under consideration. Rather than rushing from a problem area that has attracted a researcher's interest towards an existing set of methods or a methodological repertoire that is considered to be orthodox, the approach that should be applied is to take a step back and assess for each piece of research which method or methods arise both logically and conceptually from the questions that are being asked (Westbrook 1994; Wilson and Natale 2001).

Following this approach, the remainder of the chapter is structured in the following way. First of all, the research questions are discussed. Thereafter, attention turns towards the case study approach which was considered to be the most appropriate

methodology for exploring these questions. The chapter then goes on to describes how this research methodology was implemented. As part of this description the sources of evidence, documents and interviews are discussed. In the last section of this chapter the protocol used for writing up the case is outlined.

### ***The Research Questions***

As outlined in Chapter 1, the starting point for this research was an interest in understanding the role of policy networks, evidence-use and lesson-drawing within the complexity of the policy making process. From an initial scanning of the literature it emerged that it would be useful to consider this in light of the activities within a given policy sector, that of criminal justice, and more specifically, the field of policies relating to sexual offences.

In defining the focus of the research in this way, four broad research questions emerged: three relating to the three key concepts of networks, evidence and lesson-drawing, and one overarching question asking how one could understand the nexus between these three concepts. In addition to the three concept-specific research questions, another set of more detailed points for inquiry was developed for each of the conceptual areas. This is illustrated in Table 3.2. These research questions in combination with the theoretical concepts that underlie them provide the theoretical lenses for this research.

The research approach that was deemed most suitable for these research questions was the case study approach. In the fields of policy network research and policy transfer the case study has emerged as an important and appropriate research design. Any policy network study is a highly complex and demanding task. Both network processes and context specificity will complicate such a study at all stages. In addition, both studies of policy networks and policy transfer need to be rich in detail regarding empirical and historical aspects (Smith, Baston et al. 2002). As a result, a case approach, and often only a single case study, is not only appropriate but also the only option (Halinen and Törnroos 2004).

**Table 3.2: Outline of General Research Questions**

Level 1: Core Research Question	How can we understand the nexus of networks, evidence and lesson-drawing in the policy process?		
Level 2: Concept Specific Key Question	Policy Networks: What are the key parameters of a policy network?	Evidence-Based Policy Making: How is evidence used within the policy process?	Lesson-Drawing: How are lessons drawn?
Level 3: Detailed Questions	How did the network emerge?	What kind of evidence is used?	Where could any lessons have been drawn from?
	What are the network's characteristics?	Who used which type of evidence in what way and why?	What were the available lessons that could have been drawn?
	What are the links within the network and to what extent, if any, do they impact on the network?	What other sources of influence did the evidence have to compete with?	Which lessons were actually drawn and what were the reasons for this?

In this research project the focus was to be the Sarah Payne case and in order to facilitate data collection a set of case-specific research questions, based on the detailed research questions which make up Level 3 in Table 3.2, was developed. These questions, provided in Table 3.3, were specific to the events surrounding the case of Sarah Payne and the issues that needed to be addressed when examining the policy process around this case. As such, the questions were designed to act as a guidance tool for the process of data collection.

**Table 3.3: Case-Specific Research Questions**

What is the wider policy context within which the debate about sex offender community notification took place in the summer of 2000	What is the existing evidence-base regarding sex offender management?	What are the developments in other countries regarding sex offender community notification?
Who are the key players that are involved in the debate?	Does the evidence point into a specific policy direction?	What are the lessons that could have been drawn across time and space regarding sex offender community notification?
What were the reasons driving players' involvement in the debate and which position did they take?	What is the standing of evidence in the area of sex offender policy?	To which countries did people turn when looking for potential lessons?
How did players contribute to the debate?	What are the other sources of influence with which evidence had to compete?	Were any lessons drawn?
What were the connections between the key players and how did any such links impact on the policy debate?	Which evidence was taken up in the policy process and by whom? What were the reasons for this?	If any lessons were drawn, what were they and how did they feature in the policy process?

Before talking more specifically about the implementation of the case study approach, the general methodological issues associated with case studies are discussed in the next section.

## **The Case Study Approach**

Case studies as a form of research have a long history, over the course of which the extent of their use has oscillated between intense use and disuse (Tellis 1997). Throughout time the notion of case study has been applied in myriad ways with different understandings evident in different social science disciplines and amongst different researchers (Burton 2000). As a result, there is little agreement regarding the term's precise meaning and terminological confusion prevails (Burton 2000; Hammersley and Gomm 2000). Given that there is no standard usage of the concept of case study, one common misperception is that the notion of case study can be used synonymously with the idea of qualitative research in general or it is confused with other research methods, most prominently 'ethnography', 'fieldwork' or 'life history' (Dopson 2003). Another source of confusion that appears to exist within the literature is the question of whether the concept of case study should be understood in terms of a design or a method (Jones and Lyons 2004). Although it has been noted that authors frequently appear to simply use the term interchangeably (Jones and Lyons 2004), it helps to clarify that a case study is simultaneously a process of inquiry about a case as well as the product of that undertaking (Stake 2000). In order to avoid any confusion in the remainder of this chapter, unless reference is made to an instance of a case study and thereby 'the product', the term will be understood as a research strategy that incorporates a variety of measures to collect data (Lewis 2003; Yin 2003; Berg 2004). As such it can be defined as

*'a strategy for doing research which involves an empirical investigation of a particular contemporary phenomenon within its real life context using multiple sources of evidence'* (Robson 1993, p 146).

The aim is to arrive at a holistic and in-depth understanding of the case under discussion (Snow and Trom 2002).

Within the literature different typologies of case studies have been put forward (see for example Robson 1993; Stake 2000; Jensen and Rodgers 2001; Yin 2003). Such categorization usually takes into account the number of cases included in the research, the time-frame covered, or the precise focus of the research, such as individuals or organisations. Another approach for classifying case studies has been put forward by Stake (1995; 2000) who distinguishes three categories which address the researcher's

intention underlying such a study. The first category identified is that of intrinsic case studies. The aim of such studies is to get a better and more detailed insight into one specific case. Secondly, there are instrumental case studies which try to provide insights into a specific issue or to redraw generalizations and thereby broaden our understanding beyond the actual case. Finally, there is the category of collective case studies, which refers to the use of several instrumental case studies. Here, the interest is less of an intrinsic nature, but it is assumed that by using several cases a better understanding about an even larger collection of cases can be made. Given that these categories are put forward as heuristic rather than determinative it will usually be the case that more than one of these categories can be identified within a piece of research (Stake 2000). This is also the situation in this research. As was highlighted in Chapter 1, the interest in the events surrounding the case of Sarah Payne is of both an intrinsic and instrumental nature. On the one hand, the case as such is of interest in respect to its particular nature, while on the other hand it only plays a supportive role in trying to facilitate our understanding of the processes at work in the making of policy.

Although traditionally the case study approach has been associated most strongly with the social sciences (Tellis 1997), where it has been one of the most widely applied research designs (Burton 2000), it is now often considered to be the 'weaker sibling' of research approaches within this field (Snow and Trom 2002; Yin 2003). This image can partly be attributed to a lack of understanding amongst researchers as to what constitutes good case study research, with the result that the approach has often been applied poorly (Cutler 2004). In addition, when judged against stringent measures of quality, the case study approach usually fares badly.

In order to assess the quality of case studies along with that of other approaches, various indicators of quality have been used. These include the existence of an explicit theoretical or conceptual framework to guide the research; obvious flaws in the research; relevance of the findings to theory or practice; the importance of the topic and the overall quality of research (see for example Adams and White 1994). However, various problems arise from the use of such quality indices. These include an absence of agreement amongst authors as to what constitute the 'correct' indicators of quality to apply in the assessment of a study's quality, that the use of identical criteria applied to the same set of studies has yielded inconsistent findings and that

there is no internal validity within the criteria themselves. Finally, even studies that have become widely regarded within the academic domain do not satisfy the standards for quality (Jensen and Rodgers 2001). While methodological rigour is important, the assumption that a generic set of quality indicators is applicable to all methodologies seems to be erroneous. Instead, rigour should be ensured by individual assessment of studies (ibid.).

While this perceived lack of quality is one reason for the poor standing of the case study approach, the most severe criticism of the approach, however, has been the issue of generalizability. Traditionally, generalizations have been understood as context-free assertions of enduring value. Within science it is often assumed that there is a developmental progression in which generalizations will lead to laws, laws support theories, theories allow the deduction of hypotheses which will then provide the foundation for further work (Lincoln and Guba 2000b). Because the focus and interest in case study research is usually on particulars, and that the understanding is of a limited number of cases, such studies appear to provide a poor basis for any generalization (Stake 1995). As Lincoln and Guba (2000b) have pointed out, '*The only generalization is: there is no generalization*' (p 27).

However, such a bleak characterization is unwarranted. Not only is the idea of generalizability contingent on the type of case study, but also on the way in which generalizability is perceived (Snow and Trom 2002). While there will always be a trade-off between particularity and generalizability, given that '*what all should [sic.] be said about a single case is quite different from what should be said about all cases*' (Stake 2000, p 439), it seems to be important to distinguish between analytical and statistical generalization. While the latter is concerned with the enumeration of frequencies, the former deals with the expansion and generalization of theories and is the domain of the case study (Yin 2003).

Another approach has been put forward by Lincoln and Guba (2000) who argue that in light of contextual differences between different situations, generalizability as perceived in its traditional form cannot be achieved and it might therefore be better to refer to 'transferability' and 'fittingness' instead. Transferability is considered to be a direct function of fittingness, where the latter is defined as '*the degree of congruence*

*between sending and receiving contexts*' (p 40). Consequently, if there is sufficient congruence between two contexts, working hypotheses derived from one context may be applicable in another. As a result, it is necessary for any researcher to provide a large amount of substantial information about the context and the nature of the study. Although this is the responsibility of the researcher, due to the fact that the researcher cannot pre-conceive all the possible ways and situations in which other people might want to use his or her findings, it is the user's own judgement if the reported content of the case study is applicable in those cases in which their application is intended (ibid.). Consequently, the 'burden of proof' for any generalizations made lies with the user rather than the original researcher (Gomm, Hammersley et al: 2000b, p 100). As a result, this approach has been criticised on the basis that such measures appear to relax scientific requirements for the researcher by shifting responsibility to the reader or user of research (Gomm, Hammersley et al. 2000).

Rooted in the concerns about generalizability is the argument that unless one of the five rationales outlined in Table 3.4 underlies the work, a multiple-case approach is always analytically preferable. Such preoccupation with multiple-cases instead of single-cases is a recent phenomenon (Chetty 1996). Using multiple cases implies that the study is less vulnerable. Any analytical conclusion will have a broader basis and therefore be more powerful and reliable (Yin 2003). As a result, qualitative studies of single cases are often confined to the less prestigious area of verification-oriented research rather than the hypothesis-generating one, something which appears to be unjustified. The assumption that more cases are always preferable to one due to the assumed added 'safety' provided by greater numbers, is debatable and has been challenged within the literature in light of the fact that the traditional single-case study provides a far more coherent, credible and memorable story due to the level of depth it offers (Dyer jr. and Wilkins 1991). Stake (1995) has drawn attention to the fact that even in single cases some form of generalization takes place, albeit on a smaller scale. Certain inferences are drawn from patterns that emerge within a case and it is possible for people to learn a lot of things that are of a general nature from such single cases, a process to which he refers as 'naturalistic generalization'. One single case can '*score a clear knock-out over a theory*' (Eckstein 2000, p 155) or, in the words of Gluckman '*one good case can illuminate the working of a social system in a way that a series of*

*morphological statements cannot achieve*' (Gluckman quoted in Mitchell 2000, p 165).

**Table 3.4: Five Rationales for Conducting a Single-Case Study**

1. The case is a critical case in testing a well-formulated theory's propositions.
2. One examines an extreme or unique case.
3. The case under study is a representative or typical case where the aim is to capture the circumstances and conditions of a common situation.
4. The case is a revelatory case where the opportunity arises to examine a hitherto unstudied phenomenon.
5. One does a longitudinal study where the same case is being examined over an extended period or at different points in time.

(adapted from Yin 2003 pp 40-2)

Some people have argued that case studies are most valuable in the area where their applicability has been questioned most severely, namely in the development of theories (Eisenhardt 1989; Eckstein 2000). The reasons for this are that due to the close link with empirical evidence, any theory that is developed on the basis of case study research has several important strengths. These include novelty, testability and empirical validity (Eisenhardt 1989, pp 548-9). Any case, if based on a proper theoretical foundation will allow the researcher to identify key operating principles. Any form of extrapolation from a case study is not so much dependent on the typicality or representativeness of the case but rather on '*the cogency of the theoretical reasoning*' that is being applied (Mitchell 2000, p 183). Given that the case study method has been found to be '*a direct and satisfying way of adding and improving understanding*' (Stake 2000b, p 25), most of the initial concerns with such an approach seem to be exaggerated. In addition, given the changing role of social science in light of societal complexity, which has seen a move away from its traditionally assumed role as '*answer-giver*' to its more modern one of '*question-framer*', it might be that the single-case study approach would serve this new role at least as well, if not even better, than more traditional research approaches (Donmoyer 2000).

One possible solution that has been put forward in an attempt to overcome the concerns regarding the generalizability and quality of case study research and tap into the 'intellectual gold' that they offer, is to consider case studies cumulatively rather than looking at each study individually (Jensen and Rodgers 2001). Using meta-analysis to analyse and pool the insights offered by case studies of different formats, designs and methodologies acknowledges the contribution made by individual studies while at the same time aiding in improving the general understanding of an area (Jensen and Rodgers 2001).

### ***Implementation of the Case Study Approach***

One major challenge for the researcher conducting policy network analysis is the question of how to delineate the network, thereby separating the network's content and context from the wider arena (Aldrich 1982; Halinen and Törnroos 2004). As a result of the interconnectedness of players on organisational and personal levels, any network extends without limits so that the researcher will always face the problem of setting artificial boundaries. This can be done either a priori or by using the perceptions of those involved as a guide (Halinen and Törnroos 2004). In this thesis, the approach taken is a combination of these two notions.

As outlined in Chapter 1, after an initial exploration of various policy areas, it was decided to focus solely on that of criminal justice and more specifically on the question of community notification within the UK, thereby setting an a priori boundary to the policy network to be explored. The area covered by the research was then narrowed down further when it was decided to focus on the Sarah Payne case. In order to understand things in detail one needs to look in depth at a critical incident, and this case appeared to have acted as some form of 'catalyst' that brought things into focus within the area of sex offender policy and therefore as an ideal object for exploring the research interest. Although a boundary had thereby been placed around the policy network it was also decided to look at the broader context of sex offender legislation in which the case was situated, albeit not to the same level of detail. Secondly, along with the setting of a priori boundaries, the second delineating factor that was used within this study was the perception of those players that had been

identified within this area as to who played a key role and was part of the network at the time.

Within the case study approach six main sources of evidence have been identified: documents, archival records, interviews, direct observations, participant observations and physical artefacts (Yin 2003). Of these, elite interviews and documentary analysis have become the key sources within the study of policy networks, evidence-based policy making and policy transfer (see for example Rose 1973; Majone 1989; Goddard 1993; Sabatier and Jenkins-Smith 1993; Duke 2001; Hanney, Gonzalez-Block et al. 2002; Jones and Newburn 2002; Pierson 2003).

Due to the complexity of the social world and the knowledge that no one method will provide all the facets of a study, some form of data triangulation is important. This use of multiple data collection techniques assumes that each method will reveal different aspects of the same case, which in turn leads to a more complete and accurate understanding of the object under consideration (Berg 2004).

Bearing these aspects in mind, interviews with key players and documentary analysis were chosen as the most appropriate research methods for this study. Documents are important for the exploration of the history of events, especially as a direct observation of the events was impossible (Ritchie 2003). Individual interviews on the other hand are extremely well suited to gain an in-depth understanding of the complex system processes at work. At the same time, they offer the chance for clarification and detailed understanding.

### **Documentary Analysis**

In Anglo-Saxon cultures in particular, one of the biggest problems when working with textual documents is the perception other researchers have of them (Hughes 2000). It is often assumed that documents are too subjective, descriptive or arbitrary to aid scientific advancement (Plummer 1983). This assumption seems to be partially grounded in the idea that documents are mainly secondary sources of data. It is thereby assumed that they are inferior to primary ones, an idea which seems to be confused (Hughes 2000).

Although documentary analysis is often considered to be a tool most suitable for the historian, linguist or anthropologist, with interviews and questionnaires better serving the interest of the sociologist, many of the latter discipline's 'founding fathers', such as Marx and Engels, Durkheim or Weber, used documents heavily in their research and considered documentary analysis to be an important research tool (Scott 1990; Forster 1994; Macdonald 2001). This perception is shared within this research. In light of the fact that documents can provide the researcher with a multiplicity of information relating to the way events are constructed and the underlying reasons thereof, documentary analysis can be considered to be an important tool, not only as part of a 'first stab', a literature review, or triangulation, but in its own right (Denscombe 1998; May 2001). Not only can documents act as potential goldmines when examining networks and changes therein (Sabatier and Jenkins-Smith 1993c, p 240) but in general documents '*pose considerably fewer problems than people as a source of data for social researchers*' (Denscombe 1998, p 20).

Unfortunately, as a social science research method, documentary research is not well developed. Discussions of it are both sparse and patchy, especially when approaching documents from a qualitative stance. While there exists a discourse on how to approach and utilize quantitative content analysis of documents in research (see for example Hodson 1999) within the qualitative arena of the social sciences, any debate usually focuses on the kinds of documents the researcher might come across and the specific problems they present rather than their actual analysis (Platt 1981b).

Given the huge variety of textual documents that this research project encountered, it is useful to classify them according to authorship and access, as is illustrated in Table 3.5.

**Table 3.5: Classification of Documents**

		Authorship		
		Personal	Official	
			Non-Governmental	Governmental
Access	Closed	A	E	I
	Restricted	B	F	J
	Open-archival	C	G	K
	Open-published	D	H	L

(Modified from Scott 1990, p 14)

Authorship refers to the origin of the document, while access addresses the availability of the documents to people other than the author. The authorship of a document can be either of a personal nature, which includes items such as diaries, address-books, calendars, personal correspondence and notes, etc. or of an official nature. Official authorship of documents is subdivided into documents produced by the government and those by non-governmental organisations. Closed documents are only available to a limited number of eligible people and no outsider can normally gain access. In the case of restricted documents, though, documents that are normally closed to the outsider can be accessed by special permission from insiders. In case of the other two categories, open-archival and open-published, documents can be consulted by anybody, the only difference being that open-published ones were produced specifically for public circulation, while the open-archival ones were not (Scott 1990).

As part of the case's exploration, attempts were made to cover as broad a basis of documents as possible. In order to do so, an extensive search of archives and publications was carried out. The first step was to search for news that covered the events surrounding the case of Sarah Payne in order to arrive at a coherent picture of

the developments and identify key players. This included a detailed examination of the news archives of the *News of the World*, *The Times*, *The Guardian*, *The Daily Telegraph* and the BBC as well as various online news sources.

At the same time the academic, practitioner and political debate surrounding sex offenders, sex offender registers and community notification, with a special focus on developments from around 1996, was explored. The starting point of the mid-1990s was chosen because it was then that the debate about sex offender registers and therewith the questions about public access to such information and community notification started to become increasingly prominent within Britain. The main sources for this were academic publications, research findings, guidelines and governmental publications on the topic. Examples include consultation papers, legislative texts and debates, guidelines on sex offender legislation and the Houses of Commons' and Lords' Hansard, as well as various press releases, briefing notes, internet sites and publicity material published by organisations and charities working in the area of sex offender management and victim protection.

The broader developments and debates regarding sex offender registers and community notification taking place in other Anglophone countries were also examined, looking at the countries' equivalents of the UK sources. The main focus of this was on America, Canada, Australia and New Zealand, all of which emerged as having experienced similar cases of 'predatory paedophiles' that led to outcries about sex offenders, and similar debates about community notification from the early 1990s onwards.

For the obvious reason that the more private a document is, the more difficult it is for the researcher to access it (Denscombe 1998), the majority of documents that were examined consisted of those openly available. However, it was possible to obtain some personal, non-governmental and governmental documents that fall into the categories 'closed' and 'restricted'. While some of the documents were forwarded with the explicit request to '*respect the fact that [these documents are] not for circulation or quotation*' and therefore cannot be referred to directly within this study, they provided some important insights and aided the understanding of the events that took place at the time. Simultaneously, however, it has been possible to access a

variety of documents that fall into categories A, B, E, I and J of the above classification, where the supplier(s) of the documents did not ask for such restrictions. These documents include internal memoranda, notes and draft documents, as well as various pieces of correspondence between stakeholders. As a result, all categories of documents, although to various extents, were drawn upon in the research. This inclusion of multiple layers of documents allowed for an intricate examination of the case, since the various records reveal both public and backstage developments.

To illustrate this further, Table 3.6 maps the used documents against the categories outlined in Table 3.5. In order to maintain confidentiality, the precise details of the documents are not included. The nature of the precise classification of a lot of these documents is also open for debate. Consequently, the sub-classification has in this case been simplified and been subdivided into 'open' and 'restricted' accessibility on the one hand and 'governmental' and 'non-governmental' authorship on the other.

All the documents were analysed manually. Through an iterative process of in-depth reading and re-reading, themes and sub-themes within the documents were identified and avenues for further investigation singled out. The identified themes were then colour-coded and compiled within a number of categories addressing the research themes and questions.

Given that documents are shaped by the structure, agenda and activities of the organization and individuals producing them, it is important to bear in mind that they are not neutral sources of information. Within documentary research things must also be checked from a variety of angles (Macdonald 2001, p 208) and interviews can aid in revealing both the assumptions and the motives behind the documents (Goddard 1993). The identification of such hidden agendas provides an important data source for this study. Consequently, in order to gain further understanding and to add to the insights gained from the documentary analysis, interviews with some of the key players within the policy network were arranged.

**Table 3.6: Kinds of Documents Accessed**

		<b>Authorship</b>	
		<b>Non-governmental</b>	<b>Governmental</b>
<b>Access</b>	<b>Restricted</b>	Internal Memos & Files	Internal Memos & Files
		Dossiers of Evidence	Files
		Correspondence	Correspondence
		Draft Documents & Notes	Draft Documents & Notes
		Personal Files	
	<b>Open</b>	Press Releases & Briefing Notes	Press Releases & Briefing Notes
		Newspaper Archives	Hansards
		Research Reports & Findings	Research Reports & Findings
		Other Relevant Publications	Relevant Legislation & Guidelines
			Other Relevant Publications

**Interviews**

The interview is one of the most important sources in the collection of data for case studies (Yin 2003), and can provide useful insights when analysing the belief systems of individuals within the policy process and their relationship with other players (Goddard 1993). Interviews with ‘elite’ players provide important information

since such people have a very singular view that can arise from their expertise, position or insights (Guba and Lincoln 1981).

Since each interviewee will have had a unique experience of, and position within the case, every interview will be different and of a unique nature, more like a conversation and characterized by a certain fluidity resulting from following leads and probes that arise during the interview (Guba and Lincoln 1981; Stake 1995; Yin 2003). While this inherent flexibility and adaptability is a great advantage, it also presents one of the grave dangers, namely a potential failure to ask the right questions during the limited period of time for which the interview lasts. It is therefore useful for the researcher to have a strong plan of advance (Stake 1995). Bearing this in mind it was decided that a semi-structured approach to interviewing would be the most beneficial one in this study. The main areas that were discussed during the interviews focused on the topics addressed by the research questions as well as additional insights or knowledge a player might have as a result of occupying a certain position within the debate.

In order to identify the key players, two strategies were pursued. First of all, where people were mentioned directly in any of the public documents, attempts were made to track them down. In a lot of instances this proved to be difficult. Since the year 2000 a number of those people had moved on from the positions they held at the time, had retired or fallen gravely ill. Consequently, contact details were not always readily available. However, by following up the last available lead and contacting other people within the organisations at which those people had had a position, attempts were made to overcome this problem. While most of the contacted organizations did not give out any individual's contact details, usually quoting the Data Protection Act, they were happy, where known, to forward information on the study and the researcher's contact details to the person in question, or to provide directions as to other avenues that might be worth pursuing.

In those cases where organizations or generic positions at an organization, rather than individuals, were identified, the organization was contacted directly in order to find out who would have been involved within the organization at the time. These leads were then followed up.

In a few cases, contact details were readily available from the outset. Where possible, the initial contact regarding the interview was made by post, followed by an email or telephone call ten days later. In those instances where only email-addresses or telephone numbers were obtainable, these routes of contact were taken, the emails again being followed up by telephone or further emails.

Secondly, the study sought to identify other key players and organisations using a 'snowball system'. Those people that had been identified and contacted were asked to name anyone else they thought of as playing an important role at the time, and who they thought should be contacted for this study. The people identified in this way were then contacted following the above approach. This way of getting in touch with people proved to be the most useful one in so far as the reference through other individuals appeared to have a positive effect on the target contact. In addition, individuals also proved less reluctant than organisations to share contact details. The main problem, however, that could not be overcome as part of this research, was the identification of key civil servants involved within the Home Office. Despite continuous efforts and a number of contacts obtained through the 'snowball system', only one civil servant working within the Home Office and involved at the time could be contacted.

Overall twenty-one people were contacted who initially seemed to have played an important role at the time of the Sarah Payne case. Of these, fifteen emerged as having been directly involved and occupying key positions. Of those fifteen people, seven individuals were happy to be interviewed; three individuals, mainly from a governmental background, refused to participate; four people, two of whom also had a governmental background, failed to respond despite several follow-ups; and one person could not be interviewed due to serious illness. However, it was possible to obtain some information through the latter person's colleagues.

In face-to-face interviews it is easier to establish rapport with the interviewee, pick up any non-verbal cues which can clarify the meaning of verbal responses and take notes. Furthermore, they allow for a more relaxed overall conversational style which in turn allows the provision of fuller opinions and disclosure of information (Robson 1993;

Bowling 1997). Consequently, the aim was to conduct face-to-face interviews with the key people identified. This was deemed of special importance due to the controversial and emotional nature of the events as well as the high public profile of the policy area. However, it emerged that due to the position and resulting hectic schedules of one of the key stakeholders, a telephone interview rather than a face-to-face one was required. While this meant that potentially important non-verbal nuances for probing might have been lost and that the interview style was more towards the structured than the guided conversational end, with answers being potentially more focused and less rich, it was pragmatically decided that the benefits of conducting an interview with this person over the phone would outweigh the downsides of having no interview at all. While all other interviews were tape recorded in order to simplify the analysis, due to technical obstacles this was not possible in the case of the telephone interview.

The duration of the interviews varied between 50 minutes and three hours and the analysis of the interview material mirrored the manual approach taken in the analysis of the documents. Initially, the interviews were transcribed. The transcriptions were then used as a basis for highlighting the themes that emerged from repeat listening to the interview tapes and as a way to categorize the various points mentioned by the interviewees.

Although interviews have become a widely-used approach not only for studying the beliefs of elites but for gathering information of any kind, so much so that it is possible to speak of '*The Interview Society*' (Fontana and Frey 2000, p 646), their use is not without problems. Along with the everyday use of interviews has come the danger of routine and uncritical acceptance of an interview's content. It is therefore often assumed that the answers provided paint a true and accurate picture of the respondents' selves and lives (Fontana and Frey 2000).

However, while this is a dangerous assumption in general, it is especially so in the case of 'elite' interviews. Not only are there general problems associated with the reliance on memory for providing answers, but there is the inherent difficulty that it is possible for people to re-define situations retrospectively and for their answers to be influenced by the researcher, both of which can happen unknowingly (Goddard 1993).

All information provided in an interview will have been 'filtered' through the interviewee's point of view. Given that people are not similarly articulate and perceptive this will influence the kind of answers they give (Creswell 2003). Additionally, within policy-making it is likely that people will try to increase their own role, their responsibilities and the importance of these aspects in the overall process (Rose 1973, p 88). The interviewee might have his or her own hidden agenda and try to influence the interviewer in one way or another. Consequently, it is generally advisable not to base research solely on interviews since such aspects can 'cripple' or 'sabotage' it (Guba and Lincoln 1981, p 155). The one method that lends itself to counteract these problems is documentary analysis. Since documents are mainly 'non-reactive' sources they provide an ideal complementary source to interviews and counteract any interviewer-bias (Young and Mills 1980, p 17).

As a result the combination of documentary analysis and elite interviews used within this research proved to be a very useful form of triangulation.

### ***Presentation Protocol***

The nature of the research topic necessitates some detailed explanation as to the presentation protocol applied when writing up the case study. First of all, due to the limited number of people involved in this policy network and the controversial nature of the topic, all interviews took place on an explicit basis of confidentiality and anonymity. As a result, throughout this thesis the names of those interviewed have been replaced with the generic parameter of 'Interviewee #', where '#' is replaced with a number from 1 to 7 in the text. This number has been randomly assigned to each interviewee and does not have any significance or role in the text other than to enable the reader to distinguish between the different 'voices'. In addition to this, quotes, where necessary, have been adjusted so as not to reveal the identity of the person making a specific statement.

A second issue that needed to be addressed when devising the protocol for writing up the case was the question of how to refer to the various documents accessed throughout the research process. First of all, there are those documents that are in the public domain and readily available. Examples include news stories and press

releases, leaflets as well as organisational publications. All of these can be accessed by any interested party and the full bibliographic record is provided. Secondly, there are those documents which were forwarded with the specific request of non-inclusion. Again, these did not present any problems given that the issue of appropriate style of referencing did not arise; they could not and were not used in the writing up process.

It was the next categories of documents that presented the main problem. First of all, there are those documents which are not of a public nature such as pieces of correspondence, internal documents and personal files. The dilemma that arises from drawing on such sources is that on the one hand it is necessary to provide details of the documents used in order to show the integrity of the research and its findings as well as supporting any inferences made. At the same time, however, it has to be borne in mind that while these data formed part of the research and analysis they are not publicly accessible. In order to maintain this fine balance the following approach was chosen: in those cases in which documents are of a non-public nature the reference supplied in the text is the generic parameter of 'Document #', where '#' is replaced with a unique number that has been assigned to each document. However, in order to provide some further information on the kind of document referred to a short description of the nature of each document is given in Appendix 7. Given that all documents were assigned a number when they were obtained, i.e. independently of whether they were used in the end or not, the list provided does not show a continuous sequence of numbers. The same protocol has been applied to documents that would probably have been in the public domain at the time of the Sarah Payne case, such as various statements issued on behalf of individuals or organisations. The reasons why it was decided that they should be covered under the same rubric as those applied to confidential documents is that the precise extent of their public accessibility at the time cannot be determined, they are no longer widely available and in all cases were obtained within sets of documents that were not for wider public access.

Finally, throughout Chapters 4 to 6 reference is made to various news stories. The problem that presented itself was that on the one hand the precise date of publication rather than just the year of publication was of interest. At the same time, it was not always possible to identify the precise author of a story. Consequently, the style of referencing that has been adapted is that as far as possible the details of the author as

well as the month, day and year of publication are provided in the text with further information being provided in the bibliography under the author's name. In cases in which this was not possible, the month, day and year are provided in the text with further information listed alphabetically under the month in the Bibliography.

## **Summary**

Despite any methodological preferences a researcher might have, it is important that any chosen research methodology links to the research questions that are being addressed. The overarching research question for this study is how we can understand the nexus of networks, evidence and lesson-drawing in the policy process. In the examination of policy networks, evidence-based policy making and policy transfer the main second-order research questions that arise address the nature of policy networks' key parameters, the ways in which evidence is used within the policy process and how lessons are drawn.

In order to address these second-order questions and the more detailed questions that arise from them, a qualitative case study approach incorporating documentary analysis and interviews with key actors was considered to be the most appropriate research method. It allows for an in-depth examination and understanding of the topic under discussion. Due to the complexity of policy networks and the limited resources available to this study it is useful to concentrate on one single case.

With an increasing trend to become 'more scientific' one can find widespread criticism and concern within the social sciences about the usefulness of the case study approach, mainly in respect to the accumulation of knowledge. The negative image of case study research has been reinforced by poorly conducted research and the application of inappropriate measures of quality. Apprehensions about the approach are often exaggerated and unjustified. Case studies, even of a single-case nature, can provide '*cumulative intellectual gold*' (Jensen and Rodgers 2001).

Having outlined the key research questions and the methodology used to study these questions, as well as the protocol applied in the writing up of the case study, the following chapters turn to the case of Sarah Payne and the events surrounding the

debate about a potential introduction of sex offender community notification in the UK. The next chapter explores the overall events and outcomes of the Sarah Payne case, while Chapters 5 and 6 specifically focus on the policy network, the evidence used and from where it was drawn.

## **The Case of Sarah Payne and the *News of the World's* Campaign for Sarah's Law**

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Chapter 3 discussed the research questions and methodology underlying this research and it is now time to turn to the case of Sarah Payne and the events that followed. In order to provide an understanding of the policy climate in which the events took place it is necessary to contextualise them within the broader developments in the area of sex offender management that had taken place in the UK during the 1990s. These are outlined at the beginning of the chapter with further, more detailed information being provided in Appendix 1. The case of Sarah Payne and the circumstances of Sarah's abduction and murder are then outlined and following on from this, the *News of the World's* campaign, its impact and the various reactions to it are explored.

### ***Policy Context***

The last decade has been marked by a number of developments in the area of sex offender management and victim protection in the UK:

*'If you look at any area of public policy and compare it to public policy on sex offenders you'll see that sex offenders [sic.] has moved further and faster than most other things in the last ten years'* (Document 83).

First of all, the 1990s had witnessed increasing activity in the area of sex offender treatment with a national treatment programme being set up in 1992. This so-called Sex Offender Treatment Programme (SOTP) started to gain international recognition and by 1998 had been widely adopted as a whole or in parts by various other countries (Mann 1998). The British focus on treating sex offenders is important. As will be examined further in Chapter 6, the idea of blanket community notification about sex offenders living in an area can be understood as being based on the assumption that any other approaches to sex offender management such as treatment or deterrence do not work and it is therefore up to the community to protect itself (Simon 1998).

As well as the therapeutic developments, an increasing level of co-operation amongst organisations working in the field of sex offender management and victim protection, especially the police and probation services, had started to emerge. This addressed both, the handling of sexual offenders as well as the gathering and sharing of information and intelligence relating to these offenders. Consequently, by the mid-1990s a relatively good knowledgebase on the nature of sexual offending and ways of dealing with such offences had started to develop (Interviewee 4).

Alongside with various instances of populist media coverage of sexual offences against children, a noticeable trend to look to the United States for inspiration on policies relating to criminal justice developed. From around 1994 the idea of a sex offender register started to gain popularity within the UK (Thomas 2000; Jones and Newburn 2002; Jones and Newburn 2002b). While at the time various lists containing information on sex offenders already existed, the idea of a national sex offender register was taken up in 1996 and after an initial consultation period put forward in the Sex Offenders Bill. This was published in the same year and became the Sex Offenders Act 1997.

As part of the discussion surrounding this Bill the idea of public access to information contained on the register was put into the limelight. Both the wider media and various pressure groups started to focus on the approach to community notification adopted within the US (Kitzinger 1999). Although the overall arrangements within the US are a highly complex set of legislation consisting of a group of various laws and measures aimed at managing sex offenders, they have become commonly known as Megan's Law (Elbogen, Patry et al. 2003). This is named after seven-year old Megan Kanka who was raped and murdered by a twice-convicted paedophile living near her home (CSOM 2000c; Megans-Law.net 2003). Megan's parents argued that had they known about the presence of a paedophile in their area, the crime would not have happened. In order to prevent similar crimes in future they began a highly publicised campaign for the protection of children (CSOM 2000c) with its focus on '*knowledge*' and the public's '*right to know*' (Levi 2000). Following an outrage within Megan's community and a 430,000 signature strong petition, the campaign led to the enactment of active community notification legislation in New Jersey in 1995, only 89 days after Megan's disappearance. A federal version of this legislation was passed within the US

in 1996 (Sorkin 1998). A detailed examination of the various measures and pieces of legislation that make up Megan's Law is provided in Appendix 2.

Despite the anticipation that the British Government would follow this approach and introduce an '*American-style Megan's Law*' with blanket community notification on sex offenders living in an area (HC Debate 1997, c221) a decision was made in 1997 not to go down that route.

The Act which received Royal Assent on 21 March 1997 and came into force on 1 September of the same year was considered as a first step in order to raise the awareness about sexual offences and to serve as a starting point for a wider discussion on the true nature of sexual offences by organisations working in the area of sex offender management and victim protection. Although this anticipated result was achieved, the Act had several legal loopholes relating to registration. Despite having been pointed out to policy makers during the surrounding debate, the inadequacies were not addressed in the Act's final version (Interviewee 5). As a result, the bodies involved in sex offender management and victim protection '*have been playing catch-up*' with sex offender policies ever since (Interviewee 5).

Although some of these issues were addressed in the Crime and Disorder Act 1998, the new Labour Government had decided in 1998 that a review of the legislation surrounding sexual offences and penalties on a broader basis was necessary. The terms of reference for this review were published by Jack Straw at the beginning of 1999. The idea was

*'[t]o review the sexual offences in the common and statute law of England and Wales, and make recommendations that will: Provide coherent and clear sexual offences<sup>1</sup> which protect individuals, especially children and the more vulnerable, from abuse and exploitation; Enable abusers to be appropriately punished; and Be fair and non-*

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<sup>1</sup> The reference to 'provide coherent and clear sex offences which protect individuals' is not an error in the quotation. It correctly quotes the terms of reference of the review as put forward by the then Home Secretary Jack Straw (see also the Home Office publication *Setting the Boundaries*). A less misleading statement would probably be to 'provide coherent and clear categories of sex offences'.

*discriminatory in accordance with the European Court of Human Rights and the Human Rights Act* (HC Debate 1999, c80-81).

The review was to be conducted by two groups. First of all, a Steering Group was established. This consisted of both officials from relevant departments and expert advisers. These included representatives from the Home Office, Department of Health, lawyers, police and charities working within that area, most notably the NSPCC. Secondly, an External Reference Group composed of other individuals and organizations which had experience, expertise and opinions on a range of issues regarding various aspects of sexual offending was to advise the Steering Group (HC Debate 1999; Home Office 2000a, pp 139-140).

Overall, it was expected that the review would take about a year and the recommendations that resulted from the review were to form the basis of a consultation paper (HC Debate 1999, c81). The decision to review the law was based on the understanding that the current legislative framework was incoherent and outdated, resembling a *'patchwork quilt of provisions'*, which only worked *'because people make it to do so, not because there is a coherence and structure'* (Home Office 2000a, p iii 0.2). Most of it had originated from the 19<sup>th</sup> century and no longer adequately reflected contemporary social attitudes and roles (Home Office 2000a, p iii 0.2).

An important part of the review was to consider and ensure compatibility of any arrangements with the European Convention on Human Rights since it was acknowledged that in the case of sex offences

*'a particularly delicate and important interplay between the rights of the individual to the enjoyment of a private life, and the need of the state to provide protection and redress for citizens'* exists (Home Office 2000a, p 4).

A consultation paper which constituted the first stage of the overall review, entitled *'Setting the Boundaries. Reforming the law on sex offences'* (Home Office 2000a), was published on the 26 July 2000, just three days after the beginning of the *News of*

*the World's* naming-and-shaming campaign that followed the abduction and murder of Sarah Payne. In the foreword to this report Jack Straw wrote:

*'We are continuing that open and consultative process by seeking the views of the public and of interested organization on all of the recommendations as well as the individual consultation points set out in the text'* (Home Office 2000a, p i),

It is in this context of political reform that the discussion about community notification of sex offenders took place in 2000. The rest of this chapter explores these events in detail. First of all, the specific case of Sarah Payne is outlined. Thereafter, the focus shifts to the *News of the World's* name-and-shame campaign, its impact and the various reactions are explored.

### ***The Case of Sarah Payne***

On 1 July 2000 at around 7.45pm, while on a family visit to her paternal grandparents, eight-year old Sarah Payne went missing. She had been playing in a field 150 metres from her grandparents' home in Kingston Gorse, Sussex with her brothers since 7pm but after hurting herself and a '*squabble*' with her siblings decided to walk back (December 12 2001; December 13 2001g). While her 13-year-old brother Lee followed her in order to resolve matters he lost sight of Sarah (July 17 2000). However, he did notice a white van driving past (December 13 2001g), the driver of which was described by Lee later as '*a scruffy man with piercing blue eyes wearing a workman's shirt*' (Morrison December 12 2001). Due to Sarah's failure to return home her parents reported her missing to the police and a first search of the area by a small number of officers and volunteers took place (July 17 2000).

The following day a full-scale search was launched involving 300 people, around 150 of whom were police officers (July 17 2000). Simultaneously, a major criminal investigation began, code-named '*Operation Maple*'. This turned into the biggest and most complex crime inquiry in Sussex Police's history, involving 910 police officers as well as 112 members of support staff, and costing the tax-payer over £2m (December 20 2001). The rationale for starting this operation almost immediately was the worry that Sarah might have been abducted by a paedophile and was most likely

dead (Morrison December 12 2001). The police thus set off to check a list of around 30 known sex offenders living in close proximity to the area (December 13 2001g).

At the top of the list was Roy Whiting, a paedophile in his forties (Morrison December 12 2001). Whiting had kidnapped and indecently assaulted a nine-year-old girl in 1995. After admitting to the crime he was sentenced to four years for kidnapping. At the time he was not deemed a paedophile by the psychiatrist who assessed him (Hall December 13 2001b). He spent two years in prison during which he refused to undergo treatment (Hall December 13 2001b), but despite warnings from probation officers that he could strike again was released from prison in 1997 (McDougall and McVeigh December 13 2001; McDougall December 14 2001) and initially supervised. Reports on the length of Whiting's supervision vary between four (McDougall and McVeigh December 13 2001) and 18 months (December 13 2001b).

Outside Whiting's flat in Littlehampton, West Sussex, a white Fiat Ducato van was parked which had been bought by Whiting one week prior to Sarah's disappearance. (FSS 2003; December 12 2001; December 12 2001b). Following previous questioning during which Whiting claimed that at the time of Sarah's disappearance he had been at a funfair in Hove, police continued to watch him. They noticed that he began to remove items from the van before getting into it and driving away. Fearing that he might be destroying evidence he was stopped by the police and arrested for the first time (Morrison December 12 2001). All contents of the van were removed by the police. Amongst other things, these included a red sweatshirt and a petrol receipt. The receipt indicated that Whiting had been only few miles from where Sarah's body was later found (FSS 2003), 20 miles from where she had disappeared the previous night at 10pm (December 13 2001g).

On Monday 3 July 2000 a man in his 30s was arrested in Crawley, West Sussex. However, both he and Whiting were released on police bail on Wednesday 5 July and the investigation turned nation-wide the following day (December 12 2001b; July 17 2000).

Over the next few days several apparent sightings of Sarah were made. The locations of the sightings varied considerably and ranged from Knutsford to Glasgow.

Following an initial plea made by Sarah's parents two days after she went missing various members of her family continued the appeals for her safe return (July 17 2000).

On the morning of 17 July, however, a farmhand found the partially buried naked body of a young girl near Pulborough, north of Littlehampton. The body, which did not display any wounds from an assault and was badly decomposed, was formally identified as Sarah's body on the following day. Although due to the state of the body the precise cause of death could not be identified, suffocation was given as the most likely one. As a result of this the police were now conducting a murder investigation (FSS 2003; December 12 2001; Morrison December 12 2001; December 12 2001b; July 17 2000).

Three days after the discovery of the body, following a clue, police discovered the only piece of Sarah's clothing ever to be found, a black shoe (December 12 2001; December 13 2001g). Forensic examination of the shoe unearthed fibres that matched the fibres of the red sweatshirt, linking Sarah to Whiting's van (FSS 2003).

On 31 July Whiting was arrested once more for further questioning in relation to Sarah's disappearance and murder, but was again released on police bail. However, following further forensic examination of Sarah's body and the other items found in the van, on 6 February 2001 Whiting was arrested for a third time and charged with the murder of Sarah Payne (December 12 2001b). On 12 December 2001, almost one and a half years after the disappearance of Sarah, Roy Whiting was found guilty of her abduction and murder and jailed for life (December 12 2001b).

### ***The Beginning of the 'Name-and-Shame Campaign'***

*'I'm going out to buy the News of the World – and if I'm in it – I'm not coming back'*

(Quote from a convicted sex offender following the News of the World's name-and-shame campaign –

Source: Document 83)

Following the discovery of Sarah's body in the summer of 2000 her parents were inundated with media inquiries. The financial incentives that were offered to

them for exclusive interviews reached up to £100,000 (Payne and Gekoski 2004). However, they refused any such offers by the media at large. When Mrs Payne pointed out to the Sunday-only tabloid *News of the World*, part of Rupert Murdoch's *News International Group*, that they were not doing any exclusive interviews, nor taking money she recalls mentioning to their journalist an interest in Megan's Law and the question of how something similar could be introduced to Britain (Payne and Gekoski 2004).

This idea about the potential introduction of a British version of Megan's Law was taken up by the *News of the World*. According to an interviewee with close knowledge of both the situation and developments inside the *News of the World*

*'public emotion was running high with regards to the missing girl'* and the newspaper had *'very inside knowledge...which at the time was not available to outsiders'* about a *'beast out there'*. *'The News of the World knew from the very beginning that the person under suspicion was a paedophile with a long history of sex offences'* (Interviewee 1).

Within 24 hours of talking to Sarah's parents and taking on board Mrs Payne's question as to how something along the lines of Megan's Law might be introduced to Britain, the *News of the World* had put together an initial design for a proposed campaign that would lobby for a range of measures aimed at the protection of children. This campaign proposal was taken by Rebekah Wade, the *News of the World's* editor, to Sarah's family for further discussion (Payne and Gekoski 2004). In light of the fact that the *News of the World* had been *'aware of Megan's Law at the time and [had] very closely followed it and signed onto that'* (Interviewee 1), the speed with which it developed its own campaign is not surprising. The original Megan's Law-campaign simply could be and indeed appears to have been used as a blueprint.

Part of the *News of the World's* master plan for its 'For Sarah' campaign included a name-and-shame campaign whereby details of known sex offenders would be published. Despite the widespread coverage and impact the *News of the World's* name-and-shame campaign had in the summer of 2000 and the apparent novelty of its approach, the idea to publicize details of sex offenders in the community was not a

new one but had been taken from previous campaigns of a similar format. Name-and-shame campaigns had originated in the south-west of England in the mid-1990s and had subsequently been copied in other parts of Britain. For example, in 1996 the Dorset *Bournemouth Echo*, using confidential files on sex offenders, published 38 pictures and last known addresses of convicted paedophiles (Cross and Lockyer 2004). One year later, in 1997, there was an 'outing' of 28 local convicted paedophiles and other sex offenders by the *Manchester Evening News*, sister paper of *The Guardian*, and in 1998 both the *Hartlepool Mail* and the *Oxford Mail* argued that they had the obligation to notify their readers about any known convicted paedophiles living in their area (Cross and Lockyer 2004).

Just a fortnight before the *News of the World*'s name-and-shame campaign in 2000, the *Peterborough Evening Telegraph* had published, against previous advice by the police, an article on its front page about a local paedophile, Billy Baker. This had resulted in an argument between the *Evening Telegraph* and the Cambridgeshire police (July 26 2000; Tapp July 26 2000c). The feature that the *Evening Telegraph* ran included a picture and the address of the man along with a quote by one of his victims' relatives as saying '*If I get my hands on him I'll kill him*' (Tapp July 26 2000c). The *Evening Telegraph*'s picture was subsequently used on hand-made posters which were plastered outside Baker's house and circulated in the neighbourhood with a group of women gathering outside the man's home. The police reacted to the situation by moving the man from his flat to an address outside the county given that there were not only concerns about the safety of Baker but also the safety of other elderly and vulnerable people who lived in the same sheltered accommodation and who felt threatened by the unwanted attention (Booth July 26 2000b; Tapp July 26 2000c). The editor, Kevin Booth, defended his decision in an article where he stated that

*'If we know that a man with the potential to abuse children is living in your road, I regard it as our role to tell you about it. Not so that you can go along and take vigilante action against him. But so that you might watch over your youngster more carefully, knowing that there is a paedophile in your midst. Knowledge is the only weapon the community needs'* (Booth July 26 2000b).

Furthermore, when addressing the argument that such name-and-shame publicity could have the potential of driving sex offenders underground he pointed out that

*'If these people are on the sex offenders' register, it is a requirement that they must report any change of address to the police. The minute they don't they are committing an offence for which they can be further punished by the courts'* (Booth July 26 2000b).

Despite intending to use a name-and-shame campaign, one major obstacle appears to have been unearthing data that could be used therein. *'[T]his was the missing part of the News of the World's project. They did not have the information'* (Interviewee 7). However, the *News of the World* managed to identify the Boys' Scouts Association as one potential source from which such details could be gathered. For a long time the Scouts had kept a register of sexual offenders. The existence of such a database at the Scouts was easily traceable. For example, their list had been mentioned during the debate preceding the Sex Offenders Act 1997 (see for example HC Debate 1997b, c49-50). The database had been started by the Scouts prior to the setting up of the British sex offender register and had been put together through the cataloguing of newspaper clippings.

*'The Scouts got the newspaper clippings about – it was really court reports – so and so had been convicted for meddling with children. They'd get the name, get the clipping and put it into their file. So, when somebody applied to be a Scout Master, they'd go through this and could do some sort of check and they'd started that pre-sex offender register as a fairly kind of crude attempt at having a child protection protocol'* (Interviewee 7).

It appears that the *News of the World* contacted the Scouts Association's headquarter and that a reporter informed the Scouts about a plan to publicise the details of known sex offenders and in light of this asked for access to their database of newspaper clippings. However, the Scouts, aware of potential problems with such publications, are reported to have been initially reluctant to grant this. Eventually though, it seems that they provided the *News of the World* with some information:

*'[Y]ou see the Scouts were over a barrel...and what the Scouts don't need is a newspaper going on an anti-Scout campaign – you know the*

*power of certain newspapers was very strong and could destroy their public reputation - which is already vulnerable on this front'*  
(Interviewee 7).

Based initially on the information obtained from the Scouts, on Sunday 23 July 2000, very shortly after the discovery of Sarah's body, the *News of the World* started its name-and-shame campaign in memory of Sarah Payne. This appears to have been despite prior talks between senior *News of the World* staff and the Association of Chief Police Officers in which the latter advised against such a campaign (ACPO 2000). On this and the following Sunday the newspaper published the names, photographs and approximate whereabouts of 82 sex offenders. From the very beginning, the *News of the World* pointed out that this step was simply taken in order to provide parents with the knowledge '*who are the monsters in our midst*' (*News of the World* 23 July 2000) and advised against vigilantism:

*'We do NOT want any vigilante acts or violence against these people. We do NOT want our readers to take any action. We do NOT want them to break the law. Knowledge is the only weapon the community needs'*  
(*News of the World* 23 July 2000, original emphases).

The *News of the World* pledged at the time that the campaign would not stop until all 110,000 'proven paedophiles' in Britain had been named and shamed (Taras and McMullan 23 July 2000). The actual style of campaigning by the *News of the World* followed the standard structure of reporting and addressing the topic of sex offenders in the media. Similar to the design of the Megan's Law campaign in the US, the *News of the World* set up a highly publicised petition which was eventually presented to politicians, in the British context to Jack Straw. The format of its petition was highly emotive with the use of evocative language and a picture of the murdered child featuring prominently.

The newspaper also commissioned MORI to carry out an opinion poll. The *News of the World* claimed that the MORI poll showed that 84% of Britons thought paedophiles should be named and 88% would want to know if one was living in their area (*News of the World* 23 July 2000b). In addition, the *News of the World* argued that the name-and-shame campaign was justified because the murder of Sarah Payne

had shown that the monitoring of sex offenders by the police was ineffective (Millward July 24 2000).

The published list was immediately condemned by the National Association for the Care and Resettlement of Offenders (NACRO), the Association of Chief Police Officers (ACPO), the Association of Chief Officers of Probation (ACOP) and several children's charities (July 23 2000; Millward July 24 2000). Two strands of arguments were brought forward. First of all, there was the position that offenders had rights too, a point which mainly seems to have been advocated by NACRO, while the second strand of reasoning focused on public protection, which seems to have been the main concern of the probation service.

*'NACRO's point of view was much more about the offender than public protection. ... You got one argument at one end of the spectrum arguing this is against offenders' rights, you know, offenders have a right to privacy and not to be harassed and all this kind of stuff and to get on with their rehabilitation. Probation's position took some of this into account but...probation was much more interested in the public protection case than the defending offenders' rights and being seen as protecting offenders from the public'* (Interviewee 7).

The perceived threat to public protection was that the list could actually put children at higher risk. This perception was based on evidence obtained as a result of similar incidents and previous name-and-shame campaigns in the United Kingdom. It was pointed out that these campaigns had led to both vigilantism and paedophiles going underground, changing their names or simply moving away, resulting in difficulties in supervising and treating such offenders, which in turn increased the risks to both vulnerable adults and children (July 23 2000; Laville July 31 2000). In addition to that, a spokesman for the NSPCC pointed out that the campaign might create a false sense of security as the published photographs *'do not contain all the people who offer a risk to children'* (Neil Hunt, speaking in a clip on ITV Lunchtime News on 2 August 2000).

Moreover, there was the problem that there were several factual mistakes with the list, as outlined in Table 4.1. '*Some of them [the people on the list] were dead, some were in jail – there were all sorts of flaws*' (Interviewee 5).

**Table 4.1: Some of the Inaccuracies in the Information Published on 23 July 2000 by the *News of the World* as identified by ACOP**

- Two offenders are currently in prison. One has been serving a life sentence since 1989.
- One offender is dead
- A couple said to be in the NE, only spent 24hrs in the town identified, five years ago.
- In one offender, the likeness was so bad a probation officer could scarcely recognise the face of the offender, despite knowing him as a previous case of hers.
- One offender was said to have an additional conviction for an offence of indecent assault. They did not.

(Source: Document 19)

Almost immediately after the publication of the name-and-shame list, several serious acts of vigilantism occurred (see for example *The Daily Mail*, Monday July 24, 2000 '*Paedophile vigilantes attack the wrong man*'). Over the following weeks, the *News of the World* distanced itself on a number of occasions from such acts, stressing that '*unlawful vigilante action*' is '*wholly unacceptable*' (August 4 2000). Over the course of the campaign, the acts of vigilantism included several members of the public who were mistakenly identified as being on the list; two men committed suicide; and four innocent families had to flee their homes as a result of the campaign (Jeffery, Vasgar et al. August 10 2000). The worst and most violent riots took place on Portsmouth's Paulsgrove estate where 150 people attacked the flat of a man who was convicted in 1989 for being a member of Britain's biggest known child sex ring (Gillan August 5 2000). The riots on Paulsgrove estate continued for six consecutive nights (Jeffery, Vasgar et al. August 10 2000). While most of the papers reported in detail on these acts of violence and questioned whether the *News of the World* should be prosecuted for '*inciting public disorder*', other Murdoch-owned titles such as *The Sun*, *The*

*Mirror* or *The Times* seem to have been far less interested in these negative aspects of the campaign (Leonard August 11 2000).

Faced with an escalating situation, sex offenders going underground and scheduled work in sex offender treatment groups coming to a halt, the Association of Chief Officers of Probation (ACOP) wrote to Stuart Kuttner, the *News of the World's* managing editor, on Wednesday 26 July asking for a suspension of its campaign. The complaint to the *News of the World* was based on three main points: the interference the campaign caused to probation services' statutory work in child protection; the negative impact the identification of offenders can have on their families and victims; and the disruption to public order caused by vigilantism (Document 40). This letter was copied to Guy Black at the Press Complaints Commission. The following day Stuart Kuttner, managing editor of the *News of the World*, replied that in light of the enormous public support the "For Sarah" campaign had created, they would continue it for the time being (Document 57).

At the same time, ACOP in collaboration with ACPO started to produce a 'dossier of evidence' to show to the Press Complaints Commission and substantiate their arguments about the dysfunctional nature of the *News of the World's* campaign. When the *News of the World's* editor, Rebekah Wade, found out about ACOP and ACPO's intention to go to the Press Complaints Commission she 'went ballistic' (Interviewee 5). While neither of these organisations had ever given her any indication that they would refrain from doing this, she seemed to feel that they had betrayed her in some way (Interviewee 5).

As well as writing to the Press Complaints Commission, ACOP was looking into potential legal actions that could be taken. Such action also seems to have been considered by the Home Office. It appears that Home Office lawyers were looking into the possibility of an injunction against the *News of the World*. However, the legal advice received by ACOP and the Home Office on the chances of a successful action through courts to prevent further disclosures seems to have differed (Document 22). From a Home Office strategy document that has been obtained during the course of this research it emerges that the Home Office had decided, in light of their lack of reassurance in respect of successful legal action, that it would be tactically inadvisable

for the Government to attempt to take any such action. It was assumed that it would risk opening up an opportunity for the *News of the World* to argue that it was being 'bullied' by the Government on an issue of media freedom. The perceived danger was that this could be used by the *News of the World* in order to drive a wedge between the Government and the wider media (Document 22).

The potential involvement of the Press Complaints Commission was also discussed within Parliament, where it was argued that the press office should send a strong message that the *News of the World's* action, independently of any well-meant intentions or not, was profoundly dangerous and had put children at risk (HC Debate 2000). Within the House of Lords several members raised questions about potential action to be taken by the Press Complaints Commission following the *News of the World's* publication (HL Debate 2000).

The Press Complaints Commission remained surprisingly quiet throughout these events. This was despite the fact that Lord Wakeham, its chairman at the time, had pointed out on 26 July that the Press Complaints Commission '*will hold a preliminary meeting this afternoon to consider these issues*' (HL Debate 2000, c420).

Nonetheless, Ms Wade pointed out, that irrespective of any criticism,

*'The continued support of Sarah's family for our campaign plus the overwhelming public support means that the News of the World will continue its long tradition of exposing and investigating those who are a danger to our society'* (July 25 2000).

The dossier of evidence compiled by ACPO and ACOP consisted of a comprehensive list of cases illustrating the effects and results of previous name-and-shame campaigns against sex offenders in Britain. In addition to being sent to the Press Complaints Commission, the Home Office and other '*appropriate agencies*', it was also discussed at a meeting between representatives of the *News of the World*, ACPO, ACOP, the National Association for the Care and Resettlement of Offenders (NACRO), the National Society for the Prevention of Cruelty to Children (NSPCC), the Suzy Lamplugh Trust and Sarah's parents, Sara and Michael Payne, on Wednesday, 2 August.

## ***The Meeting on 2 August 2000***

The meeting on 2 August at the *News of the World* played a 'crucial role' in shaping the direction of the events that followed (Interviewee 3). It appears to have been the brain-child of NACRO's press officer who was also instrumental in getting the 'coalition of agencies' present at the meeting together (Interviewee 5).

Following an open letter to Rebekah Wade on 28 July, signed by representatives of ACOP, NACRO, the Suzy Lamplugh Trust and Childline, in which another appeal for the suspension of the name-and-shame campaign was made (Document 36), an agreement was reached to meet on 2 August. While in parts of the media the impending meeting seems to have been described as having been arranged in order to 'punish a badly behaved newspaper for stepping out of line' (Harding August 1 2000), in their letter to Rebekah Wade the charities pointed out that the intention was to discuss 'positive measures that would make a difference' in child protection (Document 36). As NACRO's representative Paul Cavadino said in a clip on that day's ITV Lunchtime News:

*'The aim of the meeting is for us to express our concerns about the name-and-shame campaign, for the News of the World to put their views to us, and for us to see if we can reach common ground of any kind about the best ways of reducing the risk to the public from sex offenders'* (Document 82)

In addition, the NSPCC stressed in a letter to the editor of *The Times* that it recognized

*'that the News of the World has helped to push protecting children from abuse further up the national agenda. There is genuine public concern about people who sexually abuse children and the News of the World has tried to address this'* (Harding August 1 2000).

The people who initially attended the meeting were representatives of ACOP, ACPO, NACRO, the NSPCC, the Suzy Lamplugh Trust and the *News of the World*.

The meeting is reported to have started off as very tense and it lasted far longer than initially anticipated. It was a rather stressful experience for most of those involved, given the media attention: '*It was very weird because you knew you had the world's press waiting outside - it was really, really weird*' (Interviewee 5).

According to several of those present at the meeting, it began with the various organizations involved presenting their views to the *News of the World* on why they considered the *News of the World's* actions to be both mistaken and untenable. These points of view were said to have been resisted very strongly by the representatives from the newspaper.

In order to support their position the *News of the World's* representatives used several tactics: '*sort of tricks, ploys*' (Interviewee 5). They presented everybody with a paper written by a reasonably senior ex-Metropolitan Police officer which the newspaper argued provided support for its actions. In this paper the officer pointed out that in his opinion the police had failed to keep communities up-to-date with the movements and activities of paedophiles and recommended several courses of action (Document 46). This tactic by the *News of the World* was said to have backfired though, because despite the officer's senior rank, his expertise had not been within the field of sex offenders when he was in the police force. The points raised in the paper were reportedly taken apart by ACPO's representative at the meeting because they did not reflect recent developments within this field.

Another tactic employed was to bring in a person from the United States via a conference call. The person, who was perceived by some of those present as being '*very in your face*' and '*very tetchy*' (Interviewee 5), was the father of a little girl who had been murdered. As a result of this he had started to run a campaign on child protection and child safety in California. This included further promoting the ideas of Megan's Law and providing communities with proactive approaches to improving their safety.

The combative atmosphere initially resulted in stalemate. '*After a couple of hours we had got absolutely nowhere*' (Interviewee 3). There was no sign that the *News of the World* would change its course of action. While the various agencies considered the

*News of the World's* position to be untenable this perception was not necessarily shared by the paper's representatives who argued '*black and blue that it was not untenable*' (Interviewee 5). One possible explanation that has been offered for this is that '*if you do something like this you have to convince yourself that it is right even though you are doing it for [newspaper] circulation reasons*' (Interviewee 5).

After several hours of impasse, the meeting was said to change for the better at around lunchtime when Sara and Michael Payne, who had been asked by the *News of the World* to attend the meeting, joined the debate. Mrs Payne's subsequent comment on this meeting was:

*'[w]hat struck me immediately was how many egos were around at the table. It was obvious that these people had never sat together in one room before and sensibly discussed child safety issues. They were all too busy fighting their own corners, for the interests of their own agencies, rather than working together for what was best to protect children'* (Payne and Gekoski 2004, p 99),

The impact that the arrival of Sarah's parents made was considered to be positive by some of those present.

*'[T]hings improved a lot after their arrival – well actually because they had to – because they were human beings affected by a human tragedy and were reasonable people – then it was no longer a case of the News of the World simply being very hard-nosed and saying we do not accept these arguments we are not going to change and the representatives of the other organisations trying to persuade them that experience suggested that this was a damaging course of action – the discussion changed as they entered the discussion and it became much more humanly-focused and they were very reasonable. It was quite clear that – you see by then there had been quite a few cases of vigilante attacks not necessarily on sex offenders but by people mistaken for sex offenders who had been named and shamed – it was obvious that Sara Payne [Sarah's mother] did not like these...and felt extremely uneasy about these attacks. So, we discussed these issues in a more reasonable and humanly focused way when they came in and once they were involved in*

*the discussion – her in particular – she did not shift her view that there ought to be a Megan's Law type provision but she clearly did understand all the arguments that were expressed and all the concerns, and we had a much more reasonable discussion after that'* (Interviewee 3).

However, Mrs Payne was later to comment that the presence of her and her husband at the meeting may have been resented by some of the others present (Payne and Gekoski 2004, p 99). This potential resentment was mirrored by some interviewees who reflected that inviting Sarah's parents could be understood as some form of emotional blackmail on part of the *News of the World* (Interviewee 4).

*'You see, what the News of the World thought, was that they could have Sara and Michael Payne as the weeping victims and it would cut the other organisations' legs from under [them]'* (Interviewee 7).

Most importantly, though, the presence of Sara and Michael Payne meant that one of the key questions could not be properly discussed: would a Megan's Law have protected Sarah Payne?

*'[T]he difficulty I found for this debate was that at no point did anybody feel able to say to her "look Mrs Payne, if that man who abducted and killed your daughter had been known in the street it would not have helped you". This child was abducted in a country-lane by a man who was many miles away from where he lived. Knowing that that man lived in a particular street in a town several miles away how would that have – tell me, explain to me how that would have protected your child? But, how do you say to a woman who is bright in the sense of trying to understand the issues, at the same time coming to terms with – one can't imagine, you can't put yourself in that woman's shoes – so, how could anybody say to her, "look, let's be fair about this Mrs Payne, shape up, stop being silly about this, the reality is that what you're proposing would not have saved your daughter". How do you say that to a woman in those circumstances?'* (Interviewee 4).

This point, that neither Sarah Payne nor Roy Whiting were in their 'local' area and that Sarah was 'snatched at random' was subsequently also raised several times in the media (Robson August 7 2000; December 12 2001c; Bunting December 13 2001d).

Although many of those interviewed pointed out that asking Sarah's parents to attend the meeting '*was a pretty cruel thing to do..., especially to Michael Payne, who was absolutely in no shape at all...this man was grieving in a dreadful way*' (Interviewee 7), within the changed atmosphere the debate proceeded sufficiently so that at the end of the day some form of agreement was reached. While both sides insisted on their point of view, the *News of the World* arguing for public access to information held on sex offenders, and ACOP, ACPO, NACRO, NSPCC and the Suzy Lamplugh Trust arguing against it, they said they would go away and reflect on how the wider discussion about sex offender management might be taken forward. According to the statements released following the meeting, the period of reflection would take place up to the weekend (Documents 43 & 44). The aim was to identify which points should be raised in a broader public debate on sex offender management.

One key driving force appears to have been the ACPO representative who seems to have agreed to draft a manifesto for the *News of the World* containing those things that the newspaper should demand from politicians.

*'[H]e was very shrewd about this...He saw that they needed to get out of this without losing face. They could not afford to lose face – so they needed a route out to save face and this mainly came down to the fact that the alliance of organisations wanted them to stop and they the News of the World wanted to suspend'* (Interviewee 7).

*'There was no way the News of the World were going to say sorry we were wrong, so the other agencies needed to give them a way out and that was really what they were trying to do...in order to stop the damn campaign'* (Interviewee 4).

At the time, the *News of the World* also mentioned to those present that it intended to go and see the Home Secretary to argue for Sarah's Law. The other agencies pointed out that while they would support the *News of the World* in arguing for the wider changes regarding sex offender legislation that had been raised during that day, they would not sign up to an automatic '*right to know*' (Interviewee 4). The changes that would be supported were amendments to the existing legislation in order to address

loopholes and strengthen the registration requirements rather than a blanket notification approach.

Following the meeting, a lot of work was done with letters going to and fro between those involved. One day after the meeting the *News of the World* forwarded a page containing a draft of its ideas on changes in sex offender legislation to ACPO. The eleven key ideas raised by the News of the World are reproduced in Table 4.2. ACPO in collaboration with ACOP worked on this draft and rewrote it. The guiding principles that were applied to the re-drafting were the comments made by Sara and Michael Payne during Wednesday's discussion. The key objectives that were extracted in this process were empowerment for parents to protect their children, empowerment for victims and making prevention more effective (Document 14).

Several of the original proposals put forward in the *News of the World's* document were left out or amended. For example, the idea of setting up a new register of paedophiles was considered to be unnecessary. Other items, such as the possibility of sending sex offenders back to prison if they breached a licence requirement, were taken out since they were already reflected in current legislation and procedures. Finally, some aspects were changed in order to make them more practical (Document 14). The final list of campaign objectives that was arrived at is reproduced in Table 4.3. After drafting these objectives ACOP and ACPO also got NACRO and the NSPCC to sign up to this draft (Interviewee 4).

*'What they wrote was the For Sarah Campaign which was like a 10-point manifesto. And point one was public access to the sex offender register which they were never gonna get but from then onwards it became more and more reasonable. Things that were either in the pipeline or they could quite readily get in terms of a policy change. Now that gave the News of the World a bit more of a structured campaign to run. It also very helpfully gave ACPO a lot of the things that they had been arguing for from their point of view. It actually accelerated what they wanted... [A] third of these things were never achievable. A third of these things were - you know interesting and probably would be happening anyway... [A]nd then there was the rest of ACPO's agenda which were all things they wanted but never had the political leverage to get done.*

*So, that kind of 10 point thing went round between the alliance, and to the News of the World' (Interviewee 7).*

### **Table 4.2: The Initial Outline of the News of the World's Proposed Sarah's Law**

- It is every parents [sic.] right to know if there is a convicted or known paedophile living in their neighbourhood and appropriate, responsible members of the public must have controlled access to a new register of paedophiles. Thus giving power to parents to protect their children when introducing a unknown adult into their lives
- There must be severe penalties for any person who abuses access to this register
- When a paedophile is released from prison he should be required to give notification in person of his new address and register on the new register of paedophiles within 72 hours of their release instead of the current 14 day deadline. Failure to comply will result in severe penalties for the offender.
- Paedophiles who are released must be legally barred from ever again approaching their victims. There must be a protective exclusion zone.
- Paedophiles released on license will have that license revoked according to the danger they pose in the community
- Voluntary organisations dealing with children must be given the right to access the new paedophile register free of charge to check potential volunteers who pose a threat to children
- Dangerous paedophiles sentenced to life imprisonment must never [return to their] natural lives. Indeterminate sentences
- A revision of the current vetting system of paedophiles must take into account the degree of danger depending on a personality disorder assessment and not just the level of conviction
- Paedophiles on the register should be graded according to the danger they pose to children and their grading should be reflected in their sentencing
- Any of the 110,000 convicted paedophiles living and working in the community whose conviction remain unspent under the 1987 Rehabilitation of Offenders Act must now be registered retrospectively on the new Paedophile register
- Every child who is sexually abused has the right to victim support which must include trauma counselling.

(Source: Document 45)

### Table 4.3: The Manifesto of the Sarah's Law Campaign

#### **Key Message**

As a result of the meeting held at the offices of the News of the World, the campaign for Sarah's Law has moved into another phase with more details being developed of the steps that must be taken to make child protection more effective in the future. The meeting was not just about naming and shaming of sex offenders, it was a sharing of the collective experience of people in the field of child protection, inspired by the determination of Sara and Michael Payne that the loss of their daughter would leave a legacy that would benefit all children in the future.

#### **Campaign Objectives**

##### Empowering parents to protect their children from risks caused by sex offenders

- It is every parent's right to have controlled access to information about individuals in their neighbourhood including convicted child sex offenders who may pose a risk to their child. In appropriate cases this access should be also given to responsible members of the public who have a responsibility for the care of children.
- There must be severe penalties for any person who abuses access to this information
- Parents should be able to access a local record of all organisations to determine if their employees or volunteers are subject to the child access vetting procedures
- Government should establish a task force to review existing programmes to promote child safety for children and parents

##### Empowering victims of sex abuse

- When passing sentence, courts should have the power to prevent offenders contacting or living near their victims. The orders would be made on the basis of representatives made by the victim.
- Release licence conditions should include restrictions on contact with victims
- Every child victim of sexual abuse as of right receive appropriate support, counselling and therapy.

##### Making prevention more effective

- The existing police vetting arrangements for people intending to work with children should be extended to cover all voluntary organisations. The government should make funds available to allow voluntary organisations to apply for the vetting information free of charge.
- The existing Sex Offender register should be amended to:
  - Require registration to be made within 72 hours.
  - The registration should be in person at designated police stations.
  - The offenders should be required to have his or her photograph taken for identification purposes at the time of registration and at any other reasonable time when his or her appearance has changed.
  - The re-registration of offenders should take place at pre-determined intervals
  - The penalty for failing to comply with the register should be increased from six months to five years imprisonment.
  - Offenders should be required to notify foreign travel.
  - Sex Offenders Orders should be extended to enable high-risk offenders who fall outside the current sex offender registration requirement to be included in the register.
  - Sex Offender Orders should be revised to enable the police to make greater use of them as a proactive tool.
  - It is every victim's right to understand the sentence imposed by the court, victims have a right to know what period in custody the offender will actually serve.
  - Sex offenders should be subject to a risk assessed process at the time of their sentence by the court and indeterminate sentences be imposed in appropriate cases.
  - Where an offender is assessed as suffering from severe personality disorder and as a consequence poses a significant threat to children, he should be detained in secure accommodation.

(Source: Document 51)

On Friday 4 August 2000, after initially remaining defiant, arguing that *'the vast number of people believe that what we are doing is right and support the campaign'* (Millward July 24 2000), but following mounting pressure and threats to members of staff (Gillan August 5 2000; Bright August 6 2000c), the *News of the World* discontinued its name-and-shame campaign and decided to go for a *'Sarah's Law'* campaign instead. Pressing *'the button marked US'* and *'reiterating Megan's Law'* (Preston August 6 2000d), the campaign argued for the introduction of a UK equivalent to the American Megan's Law, entitled Sarah's Law (August 4 2000c).

While the majority of the papers saw this as a climbdown, Ms Wade stated that:

*'This is a tremendous victory for every parent and every child in the country'* (August 5 2000). *'We had another 100 names of convicted paedophiles ready to publish today. But we will put them on hold while the battle for the new laws continues....We will not rest until the new measures are enshrined in law'* (August 6 2000).

The ready availability of such information has however been questioned by some of those interviewed:

*'they tried – this was their fatal flaw you see – they tried to continue with newspaper clippings but the longer that had to go on, the more out of date the newspaper clippings would be that they were gonna get...the older the information, the more they had to research it – the less reliable the information got'* (Interviewee 7).

At the press conference where this change in direction was announced, which was attended and covered by a large international press corps, the set of proposals that had been developed in light of the meeting on Wednesday, 2 August, was also widely publicised. While there was no agreement regarding public notification, everybody involved agreed on the idea that under certain circumstances it was right to tell an individual person about the identity of an offender if that individual person would be at risk or could do something to protect another person, a practice which was in place anyway (Interviewee 3).

*'[T]here was a phrase in the final declaration which was quite vague but basically to the effect that there are situations in which...at the discretion of authorities information could sometimes be given'* (Interviewee 3).

*'[T]hat was not every person going into a police station saying 'can you tell me of any sex offenders living in my street' that was not what it was, but these organizations were in a desperate position if you like. They got all these enormous disruptions going on and they wanted to stop it and that was a compromise – their interpretation was quite clear and I think that is where Stuart Kuttner [of the News of the World] might say well, no actually these organizations are for "I'm going down the police station to get the details" – that was never their position' (Interviewee 4)*

*'These changes would have happened in any event [but] it was useful to crystallize them in a set of proposals' (Interviewee 3).*

In response to the cancellation of the campaign, the Home Office promised to 'urgently' consider improvements to the law on child protection (Jones August 7 2000) and issued a statement saying that *'The Sarah's Law Campaign proposals make an important contribution to the debate and demand very serious consideration'* (August 4 2000b).

### ***The News of the World's 'Sarah's Law Campaign'***

As it says in the *News of the World's* press release of 4 August, *'the fight to create a "Sarah's Law" ...has only just begun'* and the *News of the World* would now begin discussions with Jack Straw and the Home Office (Document 36). According to the *News of the World's* "For Sarah" webpages, the campaign *'calls for a range of measures to curb and control paedophiles'*, at its heart being the reform to bring about *'"Controlled Access To Information", "The LEGAL RIGHT of every parent to know the identity of serious child sex offenders living in their community. However, with severe penalties in place for anybody who misuses this information'* (News of the World 2000, original emphases). Given that the notion of 'controlled access' is rather vague it was followed up for clarification in one interview. From this it emerged that the *News of the World's* understanding could be described as

*'if I had children ... I wanted to know about sex offenders living in my area. So, if I went to the police station or to the probation service I want them to tell me for example there are three sex offenders in your street*

*and so I could warn my children about not accepting sweeties from strangers...I, as a parent want to know about those who pose a serious threat' (Interviewee 1).*

On being asked further what would represent a serious threat the answer provided was that the

*'flasher down the street or the person downloading childporn from the internet is less serious, I mean it's not less serious but the consequences are less serious' (Interviewee 1).*

In letters to Members of Parliament, in which the *News of the World* 'invited' MPs to back the introduction of a Sarah's Law in the United Kingdom (Document 52), as well as in an article by its editor, Rebekah Wade, the *News of the World* pointed out that the Sarah's Law Campaign had the 'public endorsement' and was supported by ACPO, ACOP, the NSPCC, the prison service and charities as well as voluntary organisations working with children (Wade August 13 2000). This was elaborated on and put into context by representatives of these organisations. They pointed out that some of the quotes used by the *News of the World* had been taken out of context and that they did not support a publicly accessible register at all (Laville August 14 2000). While they supported most of the proposals that were developed as a result of the meeting on 2 August, they did not support a blanket policy of disclosing information on sex offenders (Interviewee 4).

Despite its claim of widespread support, the *News of the World* seems to have lacked support from the wider non-*News International* media other than *The Mirror* with which it usually does not work closely together:

*'[Y]ou know The Mirror and the Sun; Mirror and the News of the World were always having a go at each other and they kind of declared a truce over that' (Interviewee 7).*

The most trenchant critics of the *News of the World's* style of campaigning appear to have been *The Independent*, *The Daily Telegraph* and the BBC.

*'One of the things I found fascinating – and ACPO and ACOP representatives were never out of the TV studios at the time – one thing I remember was how vehemently anti-News of the World many journalists*

were and I can remember one Sunday morning being in the BBC studios in Birmingham and this journalist almost pestering me, saying you won't give in will you, you will pursue them, you mustn't give in, this is really important, they are doing terrible things here, that was the most forceful expression of what I got from a lot of journalists – the *News of the World* had very few friends in the journalistic world. That helped us as well, because the pressure was mounting from other quarters' (Interviewee 5).

There are, however, other possible reasons for such antipathy within the wider media towards the *News of the World*'s actions unrelated to any principled stance towards sex offender management. First of all,

'[w]hat you had was the kind of broadsheet liberal approach which was: this is the crassest thing you can do and disliking it partly because it wasn't sensible and partly because it was the *News of the World* who everybody loves to hate - looking down on the *News of the World* is one of the past-times in the country' (Interviewee 7).

Secondly, although Sarah's family had refused financial incentives for exclusive interviews by the media at large, because of their campaigning they had become closely associated with the *News of the World*. The newspaper thereby not only gained preferred access to Sarah's parents but also benefited from the surrounding publicity. It can be speculated that this would have served as an additional bone of contention and envy in the competitive world of news.

One important point that was raised from a political point of view was that the idea of a UK equivalent to Megan's Law was not new. Michael Howard, at the time former Home Secretary, raised the point that the question of a Megan's Law for the UK had been examined in 1997 prior to the introduction of the 1997 Sex Offenders Act. The idea was then rejected after civil servants had told him about the dangers of non-compliance and vigilantism (Ahmed and Bright August 6 2000b). Nonetheless, Howard mentioned that it would make sense to look at the idea again since it had been on the statute book for three years (August 5 2000b). This was done by the NSPCC which started to research the effectiveness of Megan's Law in order to see if such measures would actually enhance the safety of children (Interviewee 2).

At the same time, a spokesman for ACOP brought it to the attention of the public that while not having *'as catchy a title as Sarah's Law'* the UK did have its own version of Megan's Law (Laville July 31 2000). This was *'enshrined in a "Court of Appeal judgement in the case of Thorpe v the Chief Constable of North Wales Police"'* which authorises the police to release information on sex offenders if they deem it to be appropriate. However, unlike in the US, the release of information is not mandatory (Laville July 31 2000). The Sarah's Law Campaign was thus described as just a continuation of a debate that was started in North Wales in February 1999 when Sir Ronald Waterhouse, after looking into abuse in children's homes, decided to name the individuals convicted of abuse. *'The Waterhouse report changed the way everyone thought about the disclosure of the names to the community'* (George Barrow, Spokesman for ACOP quoted in Bright August 6 2000c).

At the beginning of the *'crusade against paedophiles'* there were fears that the Government *'[would] be forced into a knee-jerk response to the campaign by putting in place a version of the law'* (Ahmed and Bright August 6 2000b). Although the Home Office indicated that in spite of the Sarah's Law Campaign the public would not be able to access the paedophile register (Shrimpsley August 7 2000), it does not appear to have made its stance within the debate clear to the wider public: *'they were effectively keeping a kind of no-comment [approach] - or keeping their distance from this'* (Interviewee 7).

This 'no-comment approach' is surprising in so far as the position taken by the Home Office appears to have been very anti-community notification from the outset. For example, despite not being emphasised at the time, there exist two press releases from the summer of 2000, one from 26 June and one dated 2 August 2000, which made the Home Office's position quite clear. In the first of these, which was released in light of the publication of the *Review of Part One of the Sex Offenders Act 1997*, the Home Office Minister Charles Clarke pointed out that the idea was to reach a balance between the protection of children and the opportunity for sex offenders to mend their ways rather than driving sex offenders underground (Home Office 2000b).

In the second press release, which covered the publication of research into the effectiveness of the sex offender register in the UK, Charles Clarke again reiterated this point:

*'The issue of disclosure is a sensitive one and I note the concern highlighted in the report by agencies like the Association of Chief Officers of Probation. The Government remains committed to the view that the decision to disclose information about sex offenders remains one for the police and probation services who are best placed to determine the most effective means of protecting children'* (Home Office 2000c).

Home Office Minister Paul Boateng also pointed out that the Sarah's Law Campaign *'hasn't changed our thinking'* (Shrimpsley August 7 2000) and that the decision to name offenders was a *'law enforcement matter'*, thus resting with the police and probation service (Jones August 7 2000). This statement in turn led to the threat by the *News of the World's* senior columnist that a revival of the name-and-shame campaign would be considered (Jones August 7 2000; Scott August 7 2000).

On 4 August, Home Office Minister Paul Boateng announced that the Government was interested in the proposals put forward in the Sarah's Law Campaign manifesto. While some of the proposed ideas were already being considered, the Government would like *'to hear more about what some of the other ideas entail'*. Consequently, the Home Office would welcome *'quickly'*, the views of the various charities involved in working with young people, police and probation service on how these ideas should work (Home Office 2000e).

While the various press releases make the Home Office's position seemingly very clear, many people involved in the debate voiced their surprise at the Government's failure to take a clearer stance in the debate in general.

*'In public pronouncement terms many commentators were observing how quiet the Government was generally speaking. Behind the scenes there was clear access to officials. In terms of making a public stance they didn't. I mean Jack Straw might have made one or two mild statements about, you know, we must all behave according to the law, but there was no strong public expression'* (Interviewee 5).

In contrast to the Home Office, the Scottish Executive made its position very explicit. Despite having said that it would abide by whatever arrangements were made by Westminster so as to prevent a two-tier system in the UK for dealing with sex offenders (Nelson August 7 2000), the Scottish Executive pointed out that it would not establish a Sarah's Law in Scotland (Laing August 6 2000; Nelson August 7 2000).

With the Sarah's Law Campaign gaining momentum (Ahmed and Bright August 6 2000b) and the question of how to protect children dominating the papers (August 6 2000c), Sarah's parents asked for the help of Tony Blair. Referring to a letter of condolence he sent them, saying '*If there is anything I can do for you, let me know*', they urged him to '*personally support the campaign*' and introduce Sarah's Law (August 6 2000). They also tried to arrange a meeting with him but this did not materialise. Mrs Payne only managed to meet Tony Blair briefly when attending the *Pride of Britain* award for which she was nominated in 2001 (Payne and Gekoski 2004).

Simultaneously, more critical voices regarding Sarah's Law could be heard. On Sunday, 6 August 2000, *The Observer* looked into the effectiveness of Megan's Law (Vulliamy and Paton Walsh August 6 2000). The paper pointed out that the base of the For Sarah Campaign '*has been seriously undermined by evidence that the American scheme is less successful than the existing British system*'. The UK register of sex offenders has a compliance rate of 97% compared to 80% in the US (Ahmed and Bright August 6 2000b). A US expert interviewed by *The Observer* '*warned that the law should not be seen as a panacea. "I don't count on notification to protect anybody"*' (ibid.).

Other more serious problems with the proposed Sarah's Law addressed the legal foundation of such a law and how far the feelings of victims should be considered in a '*fair and impartial*' criminal justice system. '*Legislation should not be enacted because we feel sad or mad, but because it furthers justice – because it will lead to a more fail-proof, just and equitable legal system*' (Birkett August 9 2000). Publicising details of offenders could be challenged as a breach of the right to human privacy, which is granted by the European convention on human rights (Dyer September 13

2000). Recent legal rulings had also confirmed that it was in society's interest for offenders to be allowed to live normal, lawful lives (Jeffery, Vasgar et al. August 10 2000).

In addition to legal aspects, practical problems with a Sarah's Law were raised:

*'No system is 100% effective. It doesn't matter how much legislation you put in place, you can never stop every sex offender. You can monitor him and you can reduce the risk, but you have to be realistic'* (Terence Grange, Chief Constable of Dyfed-Powys and ACPO spokesman quoted in Hall December 13 2001b).

Other problems mentioned were distortions of the perception of the threats posed by sex offenders due to this campaign (Inman August 16 2000) and the question of why sex offenders should be singled out as a group of offenders as opposed to other offenders (Hume December 14 2001). The hypocrisy of parts of the media and society (Watson-Brown December 18 2001c) and government (Hyland August 12 2000; Johnson August 22 2002) were addressed too.

*'As terrible as Sarah Payne's death was, it is important to remember that fewer than 20 children a year are abducted, and about six murdered. Sadly, most sexual and physical abuse is carried out in the home, by family members, and children are at a far bigger risk of being murdered by one of their parents than a predatory paedophile'* (December 13 2001k).

Sarah's Law might lead to further victimisation of children and give parents the wrong impression that their children are safe (Watson-Brown December 18 2001c).

There were continuing protests by anti-paedophile campaigners targeting suspected paedophiles (Jeffery, Vasgar et al. August 10 2000), thus damaging the Sarah's Law Campaign, and Sarah's parents called upon them to end their protests (Gardham August 12 2000), telling them that if the Government had not introduced Sarah's Law within six months, they would stage a protest march on parliament with them (Gardham August 12 2000). On Tuesday, 11 September 2000, Sara and Michael Payne, accompanied by Rebekah Wade and Stuart Kuttner of the *News of the World*, met with Paul Boateng. Unfortunately, it was not possible to learn the precise details

of this meeting during this research. As one person with close inside knowledge pointed out *'I have to be careful what I say here. It did not achieve a great deal'* (Interviewee 1). Prior to the meeting Sarah's parents had met with Jack Straw and handed him a 700,000 name petition in favour of Sarah's Law, containing mainly names of *News of the World* readers (Dyer September 13 2000). Jack Straw *'was obviously sympathetic to Sara and Michael Payne but not enthusiastic about the proposed changes to the law'* (Interviewee 1). One of the aspects discussed during the meeting with Jack Straw appear to have been proposed changes to existing legislation. In a subsequent letter to Jack Straw the *News of the World* pointed out that they and the Payne family were delighted that many of the points proposed in the Sarah's Law manifesto would be incorporated in the Criminal Justice Bill. However, while they could not fully support these proposals since they fell short of *'controlled public access'*, they were willing to cautiously welcome those proposals if the Home Office publicly declared a commitment to finding a way through the obstacles presented by controlled access to such information (Document 29). In the same letter it was pointed out that the *News of the World* had employed lawyers in the US to compile draft legislation on how the notion of Sarah's Law could be defined. This draft legislation is provided in Appendix 3. In her story Mrs Payne states that she got the impression that Jack Straw was *'a true politician'* who never seemed to agree or disagree with anything said by her (Payne and Gekoski 2004). After the meeting, Sarah's parents were reported to have said that they *'have been assured there will be a Sarah's Law. We are very happy indeed. It's what we were all working so hard for'* (September 13 2000).

However, in September the Home Office finally made it clear that albeit intending to give *'[m]ore information about the whole issue of sex offenders, there would be no general public access to details about individuals'* (Johnston September 13 2000). Jack Straw announced a package of measures to strengthen the protection of children and provide better information to the public on the management of sex and violent offenders in the community, but he ruled out Sarah's Law (September 15 2000). He said that:

*'The tragedy of Sarah Payne's death touched everyone's lives. We have I believe recognised the very strong public concern which her murder has evoked. This has been brought home to us very strongly in the discussion*

*we have had with Mr and Mrs Payne about how the law could be improved...These proposals have come about after close consultation with the police and probation services. As part of this, I have considered very closely the question whether there could be some form of controlled access to the sex offender register. But in practice controlling such access would be impossible to enforce. The arguments against a general right of access are well rehearsed. Such an arrangement would not in our judgement assist the protection of children or public safety...Controlled disclosure is I believe the better and safer route. Therefore I have concluded that the professional agencies – the police and probation services – are best placed to determine the disclosure of information on individual sex offenders...But I do believe that the public should have a right to know what measures the police and probation services have in place to protect the public’.* (Home Office 2000d).

The new measures were ‘*to be rushed through Parliament by November*’ (Johnston September 16 2000) and included a ‘*statutory duty on police and probation services to assess the risks posed by all sex offenders in the community*’ as well as the opportunity for victims of sex offenders sentenced to 12 months or longer to be consulted by the probation service prior to the offender’s release (September 16 2000). Additionally, judges would be given new powers, including banning offenders from living near their victims. Furthermore, the police would ‘*make available more information about the presence of sex offenders in the area*’ (Johnston September 16 2000).

While the news was welcomed by offender rehabilitation groups, anti-paedophile activists once again threatened to resurrect their protests. Member of Sarah’s family said that while they were happy with the measures and ‘*the speed with which the Government had acted*’ (Johnston September 16 2000) they would continue their campaign (September 16 2000).

During September and October the new measures were discussed at length in the House of Lords as a late addition to the Criminal Justice and Court Services Act that was going through Parliament. At the time, the addition of such measures at the rather

late stage of the Bill was justified with the argument that it provided an opportunity 'to introduce such additional protections as soon as possible' (HL Debate 2000f, Annex).

Such sudden urgency is surprising. Some of the new proposals<sup>2</sup> had previously been raised on 12 June 2000 in the House of Commons as part of the Report and Third Reading of the Criminal Justice and Court Services Act. At the time Mr Boateng pointed out that there were several concerns about the working of the Sex Offenders Act in practice. He also mentioned that the Government would launch a policy review of the Act. This would consider relevant issues and findings about the Act, taking into account 'the views of a wide range of organisations, including children's charities and the police'. At that point in time, though, the Government believed that any amendments of the Act prior to the consultation would be premature given that it would 'not make sense in our view to consider that one aspect of the Act in isolation, when we have indicated our intention of conducting a more thoroughgoing review' (HC Debate 2000, c708).

Following the discussion of Jack Straw's proposals ministers agreed on a number of statutory changes prior to the completion of a review of the Sex Offenders Act. Despite not including community notification, Mr Boateng, on introducing the changes during the debate on the Criminal Justice and Court Services Bill, advertised the measures in memory of Sarah as *Sarah's Law*. Although this can be considered as a clever 'spin' implying that the Government was following the popular request for community notification, this title for the new measures did not take off. However, the changes to sex offender legislation, discussed in more detail in Chapter 6, were welcomed by Conservative and Liberal MPs (November 14 2000).

In the first week of November, Megan's mother, who had visited the UK in 1997 to support the calls for public access to the sex offender register (Thomas 2000, p 118), condemned the UK Government for its failure to introduce an anti-paedophile law in light of Sarah's death. She said that she was 'appalled that the Paynes' campaign had

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<sup>2</sup> These included the question of changing registration requirements under the Sex Offenders Act 1997 from a fortnight to 48 hours in order to allow the police and other agencies involved to keep a closer eye on paedophiles and to hinder both sex offenders' ability to escape and any 'grooming' of victims.

not been supported by UK politicians' urging them 'to keep up the pressure on Straw' (November 8 2000). She later pointed out that the UK Government 'is putting the offender first' (Ellison December 19 2001).

The *News of the World* undertook several attempts to keep the discussion alive and to influence MPs. For example, the newspaper organised a meeting at Westminster in February 2001 for which it flew over Peter Inverso, senator of New Jersey and described as 'the person who drafted the original Megan's Law' (Interviewee 1). In addition, Sarah's parents were touring various party conferences in their quest to have their version of Megan's Law. Nonetheless, the discussion around Sarah's Law ebbed off until one year later, when Whiting was found guilty of kidnapping and murdering Sarah Payne. It emerged that Sarah was not his first victim. This resulted in Sarah's parents' vow 'to step up their campaign for the introduction of Sarah's Law' (December 13 2001a) and mounting pressure on ministers to re-examine the way 'convicted paedophiles are dealt with' (December 13 2001a). Despite apparent growing support for a Sarah's Law across the UK, Justice Minister Jim Wallace, in line with earlier statements by the Scottish Executive, ruled out such a move for Scotland (December 13 2001e; December 13 2001i).

Following the conviction of Whiting, the *News of the World's* managing editor Mr Kuttner announced that the newspaper would resume its name-and-shame campaign since the conviction was 'a total vindication of the need for Sarah's Law' (Hodgson December 13 2001c). He said that:

*'on balance we're more concerned about the rights and the life and the welfare of innocent children than we are of the perverts, paedophiles and loathsome sex offenders who prey on kids'* (December 12 2001c).

Surprisingly, the usefulness of the idea to revive the campaign was questioned by the *News of the World's* sister paper *The Sun*. There it was argued that tougher sentencing and not Sarah's Law would be the way forward (Hodgson December 13 2001c). This idea was supported by *The Guardian*. Reiterating the ideas that Sarah's Law 'drives offenders underground, it prompts vigilante actions and lynch law and leads to misidentification and innocent deaths', the newspaper argued for no automatic release for sex offenders instead (December 13 2001j).

This shift towards the idea of harsher sentencing seems to have predominated the discussion from then on and was supported by several sides, including Home Office ministers Keith Bradley (December 13 2001c) and Beverley Hughes (December 13 2001h). Further support for harsher sentencing came from the National Association of Probation Officers (NAPO) (December 12 2001c) and to everyone's surprise from the normally liberally-minded lord chief justice Lord Woolf. The latter went a step further and proposed to detain paedophiles and other individuals who posed a clear threat to public safety even if not yet convicted (December 26 2001; Dyer December 27 2001). The Government took up the idea of sentencing reforms and promised new sentencing arrangements instead of Sarah's Law which was considered to be unworkable.

*'There is nothing to stop an offender whose name has been disclosed in one area buying a van and driving 100 miles to another area...Parents themselves also move. They visit family, they go on holiday. The idea that you can give parents all the time the names of people who might be a threat is simply unworkable'* (December 13 2001h).

Under these new sentencing arrangements judges would have to impose an automatic life sentence if there was a risk of re-offending and sex offenders would have to serve their whole sentence rather than being released after serving two-thirds of it (Ford December 14 2001).

Despite the Government's public statements that it would not introduce Sarah's Law Sarah's family was given the *'hope of change'* (McDougall December 14 2001) mainly due to two reasons. Firstly, Scotland Yard Commissioner Sir John Stevens pointed out that it was *'time for debate'* on how to deal with paedophiles. *'It's a very difficult issue. There has to be a balance of us safeguarding society against vigilante action. I believe there is a time for real debate'* (ibid.). The other reason came after the *News of the World* resurrected its name-and-shame campaign following Whiting's conviction. This time the *News of the World* did not use its original strategy but instead published the pictures of seven paedophiles who had failed to register on the sex offender register. Details for four of these offenders were provided by Scotland Yard (Alleyne December 17 2001). Scotland Yard defended this by arguing that it wanted *'help from the public in tracking them [the missing paedophiles] down'* (Alleyne December 17 2001). After their release these offenders *'breached their obligation under the Sex Offenders Act 1997 by failing to sign on the sex offenders*

register' (December 16 2001c). This move by Scotland Yard upset the probation service due to being a breach of protocol between the probation service and the police, according to which, '*information about such offenders is not released unless both the services agree that this should be done*' (Morris December 19 2001). However, the Home Office, rather than criticising the *News of the World*, pointed out that it had '*no objections to the newspaper's campaign*' (December 16 2001c). At the same time as ruling out the possibility of publicising the names and addresses of registered paedophiles, Deputy Prime Minister John Prescott praised the *News of the World* as '*publicly spirited*' (December 18 2001c) and compared the campaign to the way the TV programme 'Crimewatch' functioned (December 16 2001; December 17 2001). This was interpreted as a first indication of a potential change of attitude by the Government (December 17 2001) towards a softer stance on a publicly available paedophile list (December 17 2001b) and a '*warming towards*' the *News of the World's* campaign (December 17 2001a).

Shortly after this, on 18 December 2001, Sarah's parents met with the new Home Secretary David Blunkett, hoping to convince him of the need for Sarah's Law (December 18 2001c). Prior to the meeting they pointed out that they were not in favour of unlimited access but advocated that their campaign was only aimed at '*predatory paedophiles*' and not everybody on the sex offenders register (December 18 2001b). During the meeting, however, rather than discussing Sarah's Law, the major point of discussion was the idea of '*disclosure in the most serious cases*' to a multi-agency protection panel. Blunkett's idea was to give parents a place on such panels (Travis December 17 2001), and to create a 'buddy system' under which convicted paedophiles had a person they could entrust with any feelings of re-offending they might have (December 18 2001d). Although Blunkett told Sarah's parents that he '*was listening and he will listen in the future*' (December 18 2001d) he made it clear that he would not back Sarah's Law (Morris December 19 2001).

At the time of writing this thesis, the Sarah's Law Campaign is still going and there are indications that the *News of the World* is trying to get the topic back onto the policy agenda. Following a poll ICM Research conducted for the *News of the World* in June 2005, the newspaper announced that '*our children are still NO SAFER than in 2000*' (News of the World 2005, original emphasis). In addition, there are reports that

the *News of the World* 'has been sending reporters posing as house buyers into local police stations and asking about MAPPAs [Multi-Agency Public Protection Arrangements] and local sex offenders' (Personal Correspondence).

This renewed prominence ascribed to the question of Sarah's Law comes after a time during which the campaign appears to have lost momentum and had taken the form of 'fringe meetings' and 'talks around the country' (Interviewee 1), with Ms Payne continuing her attempts to convince the Government and the police of the need for a Sarah's Law (see for example May 11 2003; May 13 2003; Beattie October 3 2002). While David Blunkett publicly continued to resist Sarah's Law (Beattie October 3 2002), there were nevertheless still signs of hope for those in favour of Sarah's Law. For example, the *Consultation Paper on the Review of Part 1 of the Sex Offenders Act 1997* commented that while wider access to information held on registered sex offenders had, after careful consideration, been rejected by the Government at the time of the Sarah Payne case:

*'Since then David Blunkett has indicated that he wants to ensure everything is being done to protect the public from sex offenders and will look at a variety of proposals that have been made, including the possibility of controlled access to information held about sex offenders. The issue of wider access to the information on registered sex offenders is not further dealt with in this review'* (Home Office 2001, p 3-4).

There was ample opportunity to discuss further the question of community notification and any feature regarding wider access to information held on sex offenders during the passage of the Sexual Offences Act 2003, as well as the wider issue of reviewing the law on sexual offences. However, there appears to have been only one more time that the position of the Government towards the idea of Sarah's Law as advocated by her parents was raised. This took place when Peterborough's MP, Mrs Helen Clark, asked

*'the Secretary of State for the Home Department [Beverly Hughes], pursuant to her statement of 17 December 2001, Official Report, column 7, on sex offenders, for what reason she has concluded that it is not in the interests of child protection to make people's names and addresses*

*widely accessible in the community; and if she will make a statement'*  
(HC Debate 2002, c180w).

The answer provided mirrored those given on previous occasions. Beverly Hughes pointed out that the Government's conclusion to resist Sarah's Law was

*'borne out by the experience following the News of the World's sex offender campaigns in 1998 and 2000. The Association of Chief Officers of Probation provided anecdotal evidence about the effects of those campaigns, including that a number of high risk sex offenders lost contact with the public protection agencies; many others who were previously participating in treatment programmes stopped doing so for fear of being identified; a number of serious assaults on people who were mistaken for sex offenders took place; and the families, who in some cases had been the victims of sex offenders, were also assaulted and abused by members of the public. All these factors are deeply regrettable but perhaps the most regrettable potential consequence of community notification is that children will be placed at greater risk from sex offenders who are not complying with the requirements of the Sex Offenders Act'* (HC Debate 2002, c181w).

Rebekah Wade during her time at the *News of the World* continued to threaten to use a name-and-shame campaign again if the demands for Sarah's Law were not fully met (Beattie October 3 2002). The Sarah's Law Campaign got renewed support at the time of the *Amanda "Milly" Dowler* and *Jessica and Holly* cases, the *News of the World* asking David Blunkett: *'How many victims, how many broken hearts do you need before you give us Sarah's Law?'* (August 19 2002).

Other than that, there do not seem to have been any further discussions on the topic. As one senior source within the Home Office pointed out, *'In addition, I do not recall that the issue [of community notification] was raised during the passage of the Sexual Offences Act 2003 through Parliament'* (Personal Correspondence).

## **Summary**

This chapter has provided an exploration of the campaign for the introduction of a British equivalent of the United States' Megan's Law, a law providing mandatory community notification about sex offenders living in an area, by the Sunday-only tabloid *News of the World*. This call for a British-style Megan's Law followed the murder and abduction of eight-year old Sarah Payne by a previously convicted sex offender. The debate took place at a time when the British legislation on sex offenders was being reviewed and a dialogue of how to improve existing arrangements had started.

The *News of the World's* campaign, which seems to have been modelled directly on the campaign that led to Megan's Law, started off with a name-and-shame campaign. Accordingly, details of sex offenders, which appear to have been mainly derived from newspaper clippings, were published in two consecutive editions. The publications of sex offenders' details, which, partly due to their origin displayed several inaccuracies, led to widespread disruption to the work of organisations involved in sex offender management and child protection as well as various acts of vigilantism.

Following talks between representatives of police, probation and various other organisations involved in offender management and child protection, a list of proposals was developed with the *News of the World*, addressing potential changes in policy in order to improve child protection. This was a list of changes that the *News of the World* could and did lobby for. Although this resulted in a number of amendments to existing policies, the main concern of the campaign, i.e. controlled access for the wider public to information held on sex offenders, was not translated into legislation. This remains the case at the point of writing this thesis in 2005.

After exploring these events, the next chapter considers the network of players involved at the time and examines their respective actions and positions.

## The Policy Network

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Having discussed the Sarah's Law Campaign and the context within which it took place, this chapter considers in more detail the various agencies involved in the debate surrounding the *News of the World* campaign and their respective courses of action. In addition to analysing the ways in which these organisations got involved in the debate and their position within the emerging network, personal and organisational connections between the players are explored. This in turn allows for a number of tentative explanations regarding their actions during the debate and potential influences thereon.

### ***The Network's Participants***

The data available indicates that the key organisations involved in the events surrounding the *News of the World's* campaigning are the Association of Chief Officers of Probation (ACOP), Association of Chief Police Officers (ACOP), the National Association for the Care and Resettlement of Offenders (NACRO), the National Society for the Prevention of Cruelty to Children (NSPCC), the Suzy Lamplugh Trust, the Press Complaints Commission and the Home Office.

This emerging network of players can be subdivided into three main categories; those opposed to blanket community notification; those in favour; and those whose public stance was not always obvious at the time. The first category is made up of ACPO, ACOP, NSPCC, the Suzy Lamplugh Trust and NACRO. Following the *News of the World's* name-and-shame campaign, these organisations would join forces and make up what has become known as the 'alliance of organisations'. In the second category one finds the *News of the World*, supported by Sarah's parents, Sara and Michael Payne. The last category consists of the Press Complaints Commission and the Home Office both of which surprised observers through their lack of public pronouncements.

## Association of Chief Police Officers (ACPO)

ACPO appears to be the organisation that got to know about the *News of the World's* planned campaign first. One week prior to the beginning of the campaign ACPO had been contacted by the *News of the World* twice. At both times there appear to have been lengthy discussions between senior *News of the World* representatives and ACPO's spokesman and Chief Constable for Gloucestershire, Tony Butler. On both occasions the arguments brought forward by the *News of the World* failed to convince Tony Butler that the planned actions would benefit children's safety and he had thus advised against this course of action (ACPO 2000). However, the *News of the World* informed ACPO that it would go ahead with its planned course of action which, in light of the arguments outlined to the *News of the World*, surprised ACPO. Previous experiences with name-and-shame campaigns in the UK which had illustrated what could happen when communities got to know about sex offenders living in their area, served as an important source of knowledge and as a backdrop around which the police could model its response. Consequently, all Chief Constables were warned about the campaign and the potential impact it might have.

Having warned the various police forces about the likelihood of what was going to happen, as soon as the first list of offenders was published on 23 July it was examined closely by the police. In addition, all police forces were asked to report in detail on the content of the list and the impact it was having on the police's work (Interviewee 4).

The picture that emerged was that not only were there several flaws in the list published by the *News of the World*, but that the offenders listed were not necessarily the 'predatory paedophiles' who had initially provided the impetus for both the Megan's Law campaign in the US and the *News of the World's* campaign. As one interviewee recalls,

*'Tony Butler had one case in Gloucestershire for example who was named and shamed. The offender had committed a relatively low-level crime. It was one of those sort of in-the-family ones or as a friend. I think it was an indecent assault. He was back with his wife and three children and his wife was receiving chemotherapy for cancer. He was so concerned about the potential for vigilantism and so on that he took his –*

*he phoned the police, he phoned the sex offender unit and said 'look I am off' – and took his whole family to Scotland and he left the county. The police had a number of others – the officers contacted the people who were named in the list and those they had knowledge of and so on, trying to reassure them. The thing the police were doing was trying to protect those people [on the list]' (Interviewee 4).*

Although the police were not generally in support of any parental rights to access information on individual sex offenders, they appear to have been willing to examine, as part of the review of the Sex Offenders Act, how far any benefits to child protection might arise out of an extension of the circumstances under which certain information could be disclosed to specific individuals or the public at large (Document 15).

Along with these various activities ACPO publicised information on the developments that had taken place within the field of sex offender management, and those procedures that had emerged as good practices. Special emphasis was placed on inter-agency developments and co-operation amongst those working with sex offenders. For example, in a press release on 2 August 2000, commenting on the publication of the research finding relating to the implementation of the Sex Offenders Act 1997 which was published by the Home Office on the same day, ACPO referred to past and ongoing activities in the area of sex offender management. The key points mentioned in this press release have been summarised in Table 5.1.

**Table 5.1: Recent Approaches to Raising the Profile of Sex Offender Issues**

- In 1999 ACPO introduced a national risk assessment model to all police forces. This was accompanied by a national briefing programme undertaken by Dr David Thornton, a recognised national expert.
- Conferences:
  - There had been two national conferences in the past 12 months dealing with sex offender matters:
    - One in November 1999 which brought together senior investigating officers of police forces throughout England and Wales to share experiences in respect of the investigation of allegations of child abuse in children's homes and other similar establishments.
    - One in February 1999 for child protection officers which included discussions on sex offender issues.
  - Conferences had been held annually for the past 7 years and were an ongoing feature of briefing in relation to sex offender policy and practice. A further conference specifically in relation to the management of sex offenders was to take place in October 1999. The conference would be attended by officers in England and Wales and would provide an opportunity to discuss proposals to strengthen the sex offender legislation in the light of the recently announced government review. The agenda was to include presentations by Joyce Plotnikoff and Richard Wilson on the findings of their research.
- Important initiatives:
  - Nationally, there had been very significant developments in the multi-agency approach to the monitoring of sex offenders in the community. During 1998, there had been some very important developments in operational intelligence systems at both the local and national level. These were contributing to enhancing the effectiveness of the management of sex offenders in the community.
- Considerable work had been undertaken in respect of the control of dangerous offenders with severe personality disorders. ACPO had responded to the government's consultation document and anticipated improved opportunities of dealing with these offenders in some form of secure accommodation thus taking them out of the community.

(Adapted from ACPO 2000b)

## Association of Chief Officers of Probation (ACOP)

While ACPO had been contacted by the *News of the World* prior to the beginning of the name-and-shame campaign and had been asked about their opinion this does not appear to have happened in the case of ACOP. However, the person responsible for work with sex offenders at ACOP seems to have resigned on the Friday prior to the first publication and so there is a theoretical possibility that information about any prior knowledge might have been lost as a result of this. Gill Mackenzie, who had given up her responsibility for work with sex offenders when she had been made chair of ACOP, was put in charge. She only seems to have found out about the campaign when it started.

*'The first Gill Mackenzie knew about it was when she received an early morning phonecall from a journalist on the Sunday saying 'what's your position?' and then all hell broke loose. From then until some time in August it was just a nightmare. It was just a daily nightmare... [I]t was utterly frantic and very worrying... [M]eetings, discussions, receiving information, giving out advice, trying to work with other organizations to work on something... This was a very difficult time'* (Interviewee 5).

The short notice with which ACOP and the majority of the organisations affected initially seem to have found out about the *News of the World's* campaign is interesting in that it mirrors a tactic usually employed by Sunday papers when managing the publication of an exclusive story about a sex scandal. In such cases surprise is an important element. The aim is to inform the victim only at the last possible moment. This leaves the attacked with only a few hours of thinking time before the print run starts. *'In that short, concentrated period many a far-reaching decision has been made in haste'* (Jones 1999, p 190).

With the beginning of the name-and-shame campaign various people started to contact ACOP. In light of the fact that ACOP had commented frequently on previous incidents of name-and-shame campaigns, people were aware that it was *'a probation kind of authority on sex offenders'* (Interviewee 7).

From previous experiences, the people in charge at ACOP had learnt that collating evidence about sex offenders and the impact various name-and-shame campaigns had on the work with them, and then distributing them to the press, could be an important tool in influencing any discussions about offenders and the way they are managed. This was especially important in 1998 when there was widespread press coverage of the release of some sex offenders into the community. Back then local media were outing sex offenders and whipping up campaigns for their expulsion from the community. These activities of the press had resulted in considerable problems for the probation service which in turn produced 'a dossier of evidence' (Document 11). This was made public and used to complain to the Press Complaints Commission. *'Although the Press Complaints Commission was not that receptive [to the dossier] it had a powerful influence on other journalists'* (Interviewee 5). Reference to the information gathered was even made in *The Economist* (Interviewee 5). The move to put together such a dossier of available evidence supporting the arguments put forward by police and probation has subsequently been considered as being a very important one.

*'If there is one thing in Gill Mackenzie's whole time as lead for work with sex offenders that I think she got right ... it was this decision in 1997-ish to start collating the evidence'* (Interviewee 5).

In 2000 ACOP also wrote to the Press Complaints Commission and met up with its director, Guy Black. However, although ACOP was actively pursuing the option of a formal complaint, ACOP was aware that the way in which the Press Complaints Commission's policy was written meant that the Press Complaints Commission would argue that it was not in a position to start an adjudication process (Document 37). At the time the Press Complaints Commission usually did not consider complaints that arose from third parties. In addition, it had granted itself the right to decide whether or not complainants were *'directly affected by the matters about which they complain'* (House of Commons 2002, § 6.16). This question about eligible complainants had already been an obstacle for ACOP in 1998. Back then ACOP had, however, been reluctant to enter into a confrontation with any newspapers that would have resulted from issuing a complaint to the Press Complaints Commission which the latter required in order to take actions (Document 11). As one interviewee recalls:

*'ACOP had enumerated the outbreaks of vigilantism [that resulted from the media's campaign surrounding the cases of Sidney Cooke and Robert Oliver] and took them to the Press Complaints Commission –they didn't get anywhere basically because they weren't the injured party. The Press Complaints Commission listened very politely and one or two things followed from it but then it died down for a while...That's typical I think of the logic of the Press Complaints Commission – what probation got the first time round: "You are not eligible complainants"'*(Interviewee 5).

Fully aware of the question of third-party complaints ACOP seems to have pursued two options in 2000. First of all, it pointed out to its members that if there were any offenders or families directly affected by the *News of the World's* campaign who wished to make a formal complaint to the Press Complaints Commission they should get in touch (Document 65). Secondly, it pointed out to the Press Complaints Commission that although its concerns did not fall under any of the clauses outlined in the Press Complaints Commission's code of conducts the latter could explore a complaint under other sections of its policy: the question of privacy; identification of children in sex cases; and the identification of an offender's relatives and friends without consent (Document 37). However, it seems that within ACOP doubts existed as to any potential actions on side of the Press Complaints Commission.

*'[T]he function of the Press Complaints Commission for the police and probation services was to give the news story another angle...– today police and probation jointly demanded that the Press Complaints Commission look into this because of X,Y and Z and it was better as a news story than in getting something out of the Press Complaints Commission. What you are looking for ...[are]... all sorts of devices to give the story an angle and so writing to the Press Complaints Commission is a great angle. Another journalist will pick that up you know'* (Interviewee 7).

Although eventually the Press Complaints Commission would amend some of its policies and issue guidelines on handling similar case, *'[t]his guidance arrived well*

*after the Sarah Payne campaign, about 8 months after. They made no bearing at the time?* (Interviewee 7).

Along with these activities it appears that ACPO and ACOP and some of the other agencies involved jointly designed a 5-point programme of proposed legislative measures that was forwarded to the Home Office (Document 22) and is reproduced in Table 5.2.

### **Table 5.2: "Sarah's Law" – Proposed Legislative Measures**

- Creation of a duty on chief officer of police and chief officer of probation jointly to establish arrangements for assessing and managing the risks posed by sex offenders with a requirement annually to publish information about those arrangements, coupled with the power for the Secretary of State to issue guidance on such things as the form in which such information is to be published; the other agencies which should be involved; the publication of information about local arrangements, including, for example, information about the number of times disclosures have been made and the categories of people to whom information has been disclosed; information about local treatment programmes etc.
- A power for the Secretary of State to make regulations concerning notification to the police and probation service by those responsible for the detention, discharge and release of sex offenders liable to registration under the Sex Offenders Act 1997
- A duty on the probation service to ascertain from the victim (or, if appropriate, the parent or guardian of the victim) their wish to be informed about the release arrangements for any sex offender serving a sentence of twelve months or more. Where the victim wishes to be informed, a duty on the probation service to take all reasonable steps to notify the victim of the release date, whether any conditions are attached to the license, whether those conditions include any restricting the movements of the offender, and if so, to be told specifically the terms of any conditions which relate to contact with the victim
- A new power for the Crown Court, when convicting an offender who falls within the scope of the Sex Offenders Act, to make a "restriction" order (including requirements about not approaching victims) placing restrictions on the offender which will have effect on release from custody. The order will be capable of being of indefinite duration and of being varied or discharged on application by the offender, the police or the probation service
- Amendments to the Sex Offenders Act to require initial registration in person within 72 hours of sentence or release; to give the police power to photograph and fingerprint the offender on initial registration; to require notification of foreign travel; and to increase the penalty for failure to register to 5 years imprisonment

(Source: Document 31)

Throughout the debate there appear to have been two main reasons motivating ACOP and ACPO. First of all, there was a question of public order and safety:

*'These were individuals [people mentioned on the News of the World's list] who were entitled to being protected. We don't have lynch-law in this country and it does not matter what someone has done, if their house is attacked it is just the same crime as if they throw a rock through the window now here'* (Interviewee 4).

The second driving force spurring police and probation into action was the fact that the working relationship that had been built over time with many sex offenders was broken down by the name-and-shame campaign. Such relationships were an important part of managing sex offenders within the community. As a result of the name-and-shame campaign some offenders started to mistrust police and probation on the basis that they assumed that these organisations had leaked information to the newspaper.

*'A lot of offenders assumed that the News of the World was getting their information from the police – if you are a not very bright offender and the News of the World says that this [the name-and-shame campaign] is a major national campaign to name-and-shame every single sex offender, the offenders think: "shit, someone is telling them - must be the police"'* (Interviewee 7).

In addition, some offenders had started to disappear. This led to concerns amongst the police and probation service that the *News of the World's* campaign was going to create long-term damage to their work with sex offenders.

*'[T]here was this element of trust which they were trying to develop with the sex offenders because it is one thing having a law but it is another one getting people to comply with it – and you only get people to comply with it if there is an element of trust. OK this is a dangerous offender but they have to sort of befriend him – this is the kind of thing they have to do as a police or probation officer – it comes with the job – it makes their job easy... So, there is this element of trust that the services were really concerned that was broken down – following on from this there were people actually disappearing. If people were disappearing they were gonna have to try and find them. There was the potential to prosecute*

*people for failing to register on the basis that they had disappeared because they were in fear of their life. Now how fair is that? They'd say "Sure I disappeared because I don't know whom to trust – I have read about so and so having their house fire-bombed or whatever it is and so I am off!"*" (Interviewee 4).

## **National Society for the Prevention of Cruelty to Children (NSPCC)**

As soon as the *News of the World's* naming and shaming campaign started, the NSPCC was inundated with inquiries. *'There was this real frenzy and panic'* (Interviewee 2). The inquiries did not only address questions about safety issues for children in respect to sexual offending, but also the line the NSPCC was taking in relation to the points addressed by the *News of the World's* campaign. Inquiries came from all sorts of sources, including from general members of the public and volunteers working for the NSPCC, but especially from the media.

*'[W]hen there is anything like this in the news the NSPCC is contacted by members of the public, ... who maybe have some safety concerns they would like to talk through, or they would like more information about, or particular volunteer people, who support us, give money to us, quite often phone up and say what's your opinion on X or Y. So, we had a lot of public inquiries, but we also had a lot of media inquiries'* (Interviewee 2).

When developing the line to be taken by the NSPCC, three main sources of influence seem to have existed. First of all, due to the huge interest displayed by both the media and the public there appear to have been some internal concerns about the work done by the NSPCC with adult sex offenders. At meetings between NSPCC staff some of their people, especially within their adult sex offender group which discussed best practice and issues for NSPCC staff, aired fears about the impact on the NSPCC's work. Of special concern was the safety of some of their clients and their families. A lot of those people were being managed within the community and while their behaviour was considered to be neither a risk nor a threat they were frequently still living at or near the address of their victims and some of them were potentially targeted. Secondly, given concerns voiced by other organizations, especially ACPO

and APOC, the intention was 'to develop a joint sort of police response'. However, there appears to have been divergence as to the position to take vis-à-vis the *News of the World's* campaign within the NSPCC (Interviewee 2).

The third and final influence seems to have been that rather quickly the NSPCC became aware of the fact that the *News of the World* would start to push for a community notification system modelled on the American Megan's Law. While initially there was

*'a fairly strong line of thought that the NSPCC should not go down the community notification route...there was some openness, particularly from certain people within the organization, to "let's see"'* (Interviewee 2).

Consequently, it was decided to conduct some internal research into the effectiveness of community notification and see what the evidence base was.

*'I think there was concern or interest – I mean interest internally about – actually, was there some evidence that suggested it would protect children' so that 'if there had been evidence [about the effectiveness of Megan's Law] then the NSPCC might have thought about supporting it'* (Interviewee 2).

At the same time the NSPCC seems to have done some lobbying for improvements to child protection. As the NSPCC's director and chief executive, Jim Harding, pointed out in a letter to the editor of *The Times*,

*'The Government can do more to protect children from sexual and other forms of abuse. This Government's record on child protection is good, but being good is no excuse for not being better....The NSPCC and the News of the World can agree on one fundamental point – we don't want child abuse to drop down the public and political agenda ever again'* (Harding August 1 2000).

Behind the scenes representatives of the NSPCC were trying to arrange a meeting with the then Minister of State, Charles Clarke, in order to discuss the NSPCC's position towards the *News of the World's* campaign and to exchange views on how

the NSPCC could aid in the development of future policies aimed at the protection of children (Document 53). The NSPCC also informed the Home Office that it had started to look into the idea of 'controlled access'. Research it had commissioned was examining the current position within the USA and other jurisdictions. The NSPCC hoped that this would both forward the debate and play a part in the formulation of relevant Government policies (Document 53) and indeed, the findings of the research seem to have become one of the key documents of reference for both Government and other agencies in the field of sex offender management when talking about sex offender community notification.

### **Suzy Lamplugh Trust**

The involvement of the Suzy Lamplugh Trust in the discussion was very much from a personal safety point of view, which is the main area of its work. The Trust had been set up by Diana Lamplugh in order to highlight the risks to personal safety people face and to give advice on how to minimise them after her daughter Suzy, a 25 year old estate agent, had disappeared when she went to meet an unknown client. The arguments brought forward by the Trust mirrored those of the other charities in so far as there was concern

*'that the introduction of Sarah's law, following on from Megan's law in the US would drive sex offenders underground or cause a vigilante type of action'* (Personal Correspondence).

The key person involved on behalf of the Trust, which did not have a Parliamentary advisor at the time, was Diana Lamplugh herself (Personal Correspondence). Amongst people working within the area of sex offender management and child protection Diana Lamplugh was considered to be somebody *'on the victim side who is very logical about having an approach to policy that works'* (Interviewee 7). It also appears that as someone who had gone through a similar experience as Sarah's parents, she had concerns that although all this was done in the name of Sarah Payne, it might not be the best for her family.

*'I think that partly her point of view was that this was not going to help [Sarah Payne's family] in the slightest as the relatives of the victim – as victims'* (Interviewee 7).

Although aware of the potential consequences of the *News of the World's* campaign, the role assumed by the Suzy Lamplugh Trust in the debate appears to have been one of mediator:

*'[T]he important thing about having Diana Lamplugh there on our side was that Diana was the only person who could look at Sara Payne and Mr Payne and know exactly what they were going through – because she had lost her Suzy, who was an adult, in horrendous circumstances and her body was never found, it was awful. Diana Lamplugh is an amazing woman but she was on the side of reflection and our side and that was valuable because it added credibility, a human credibility, that the likes of ACPO and ACOP representatives just could not because they were just seen as functionists'* (Interviewee 5).

### **National Association for the Care and Resettlement of Offenders (NACRO)**

NACRO's main involvement with sex offenders is in the area of practical services, such as resettlement, housing, education and employment. They first got to know about the *News of the World's* campaign on the Saturday just before the campaign started. On that day key personnel of the organization were contacted by another Murdoch-owned news station, SKY News. SKY News pointed out that

*'they had been told by the News of the World that this [the naming and shaming campaign] is [was] going to start on the Sunday – the news was embargoed till 5pm on the Saturday and they wanted to do an interview with Paul Cavadino commenting on this for the news package that they would broadcast from 5 o'clock that evening'* (Interviewee 3).

Paul Cavadino, NACRO's director of policy, agreed to do this and the official position immediately taken by NACRO was to criticise the campaign and point to potential negative side-effects the campaign could have.

*'[I]t was thoroughly irresponsible – and that it would be likely to – it would reduce public safety rather than increase it and that there would be a risk of vigilante attacks against people who were named – because*

*of that offenders would be more likely to go underground and disappear so that nobody would know where they were so it would be difficult for the police to exercise surveillance and for the probation service to supervise them and the result would be more danger to children from that' (Interviewee 2).*

NACRO's view was also mainly arrived at through previous experience of similar incidents in the British context. In these cases, where newspapers had published details of people and identified them as a sex offender, staff at NACRO had found that those people had subsequently absconded from the hostels in which they were being supervised or had otherwise gone to ground, mainly due to fear. *'[I]n the British context it was clear to NACRO that the Megan's Law's provisions in this climate would be pretty damaging'* (Interviewee 3).

In the previous year, as part of the first stage of the Government's review of legislation regarding sexual offences, NACRO had sent a policy proposal to the Home Office. This proposal included on the one hand arguments for extended supervision of sex offenders and on the other the introduction of certain restrictions and arguments against public notification (Interviewee 2). This time however, NACRO's main contribution to the debate was to comment extensively on the *News of the World's* campaign within the media and there was no feeling that any inquiry into the potential effectiveness of community notification was necessary.

*'Ah – well, Paul Cavadino was aware of the evidence that was around at the time...NACRO produced arguments, certainly, but they did not produce a particular document'* (Interviewee 3).

Instead, NACRO continued to refer to the documents produced by the NSPCC, ACPO and ACOP. It appears to be the case that NACRO considered its own contribution to be one of practical experience which complemented rather than replicated the input provided by the other organizations.

*'Most of the research on Megan's Law on the other side of the Atlantic was done by the NSPCC. So NACRO was aware of that and the different organisations involved had different types of information themselves; so for example APOC had the dossier of evidence, NSPCC had the*

*research on Megan's Law, the police and NACRO had experience of different things – so there was a body of evidence and experience...NACRO's main links were with other organizations, they were the people they were working with – probation, NSPCC, Suzy Lamplugh Trust – and NACRO's main links were with them, in order to try to put great pressure on showing that the view that this was - this view was widely shared amongst several organizations working in the area of crime' (Interviewee 3).*

One way of complementing the arguments put forward by the other organisations was through issuing press releases which pointed out potential ways of improving child protection and emphasised the non-desirability of the American approach:

*'There are positive things that can be done to reduce the risk posed by paedophiles, both those who have offended in the past, and those who have not offended yet, but may. Improving the supervision and treatment of sex offenders, educating parents, teachers and others who work with children to spot early signs of child abuse, teaching children the importance of resisting inappropriate advances and telling someone they trust if it happens will all do much more to reduce child abuse than adopting a dubious approach imported from across the Atlantic' (NACRO 2000)*

At the same time, in order to deal with the problems arising from the *News of the World's* activities it has been said that NACRO intended

*'to have a sort of confrontation with the News of the World and wanted to have a delegation of people and were looking for people to do this' (Interviewee 7).*

Focusing on forming such an alliance was perceived as having priority over trying to lobby the Government on issues of sex offender policy at the time.

*'[T]he Government was arguing on the same side as these organisations were, so the priority wasn't to influence the Government – the priority was to get the News of the World to call this off' (Interviewee 3).*

The main sources drawn upon in getting together such a delegation were organisations already involved and well-established in the area of sex offender management and child protection. One of the main areas of 'recruitment' was the Penal Affairs Consortium, an umbrella body for penal lobbying groups, such as the Howard League for Penal Reform, the Prisons Reform Trust, NACRO and, at the time, ACOP (Interviewee 7).

## **The Make-Up of the Alliance of Organisations**

Within the alliance of organisations the dominant role seems to have been taken on by ACOP and ACPO which also appear to have been the two organisations that co-operated most closely with each other.

*'Probation was the police's partner, not on enforcement, but on risk management, so it was right that [they] put something together...NACRO were concerned about the offenders' protection and so on, quite properly, and rehabilitation. NSPCC was concerned about the children's side and they did not have the professional expertise to know whether if you did X it would protect them [children]. So, as I recall, they basically went along and I don't mean in a sense in that they were not thinking about this, but it was the police's and probation's expertise and they could see this work' (Interviewee 4).*

ACOP's and ACPO's leading role is also reflected in the fact that they were the main organisations involved in talks with the Home Office. Both maintained direct contact with Government officials, including Paul Boateng, who at the time was in charge of sex offender policy as Minister of State.

*'Police and probation were talking with Boateng. They got a direct line to Boateng because they were keeping him aware of what was going on...Police and probation were talking to the officials on the weekends and everything...An ACPO representative brought him [Paul Boateng] down to Gloucestershire before this kicked off and briefed him on all the stuff the police were doing on sex offenders, so he was up to speed. He [Paul Boateng] was already up to speed on all the stuff police and probation were doing nationally' (Interviewee 4).*

While from the available documents the precise standing of the other three organisations within the network cannot be determined precisely it appears that, at least in the eyes of the *News of the World*, NACRO was not considered as an important player.

*'NACRO doesn't feature on the News of the World's worry list. They are doing something about resettling paedophiles but in the News of the World's view paedophiles can't be rehabilitated'* (Interviewee 1).

A key question is why was it ACPO, ACOP, the NSPCC, the Suzy Lamplugh Trust and NACRO who were involved rather than any of the other bodies within the sex offender policy area such as Barnardos, the Lucy Faithful Foundation, the Department of Health or the Prison Service? While the Department of Health and the Prison Service would not have been affected by the disclosure of information on sex offenders to the same extent as the police and probation service, and thus might not have had too great an organisational interest in this discussion at the time, the questions remains as to why neither Barnardos, operating in the area of child protection, nor the Lucy Faithful Foundation, aiding in re-integrating sex offenders into society, nor any of the other organisations in this area appear to have played a more prominent role at the time. This is especially surprising in so far as Barnardos for example appears to have been one of the organisations that would have been able to contribute to the debate. As one interviewee pointed out when asked which other organisations would have been likely to have been involved in the debate in 2000: *'It is difficult for me to say...I wouldn't like to hazard a guess, but I imagine it would be Barnardos and the NCH [formerly known as The National Children's Home]'* (Interviewee 3).

Several potential reasons have been identified for the lack of involvement. First of all, not all of the organisations working in areas affected by sexual offences and the management of sex offenders were necessarily 'campaigning organisations' nor had the resources to partake in the debate. An example of this seems to have been the Lucy Faithful Foundation.

*'[T]hey are very small you see and they are not a campaigning organisation. Although they do a lot more on public education now and*

*have a service called "Stop it Now" they were not at that point then. At that point they were running treatment programmes for sex offenders, principally residential treatment programmes for sex offenders and so they did not have the machinery to get into that sort of media side of it' (Interviewee 7).*

In other cases, the profile and power of those that did play a key role, especially when the topic arose again in the media after the conviction of Roy Whiting, appears to have been an obstacle. As a representative of one organisation working within the area of treating sexual abusers commented:

*'We decided not to issue press releases etc but did a lot of preparation in case we had enquiries from the media. What happened was that the statutory agencies, notably [what is now] the National Probation Directorate, mobilised forces and dominate[d] the media so we didn't get a look in' (Personal Correspondence).*

Another potential reason for why other players who were directly contacted at the time preferred not to get involved, was that public opinion was not clear-cut and the debate as such was quite fierce.

*'[A] lot of voluntary organisations who relied on public support especially for income did not want to be aligned with something that could then get them bad publicity' (Interviewee 7).*

However, while not involved publicly to the same extent as the organisations making up 'the alliance' it appears that other charities were involved in a sex offender disclosure and notification seminar organised by ACOP in September 2000. Delegates included members of 'the alliance', representatives of the Local Government Association (LGA), the National Organisation for the Treatment of Abusers (NOTA) and the Lucy Faithful Foundation. The purpose was not only to provide a briefing on the name-and-shame approach but also to find common ground, develop useful policies, operationalise scenarios and develop ideas for future consultation and legislation (Document 71).

## The News of the World

Although the *News of the World*'s actual actions have been described in detail in Chapter 4, it is necessary to explore the reasons for its campaign. While Sara and Michael Payne were driven by the simple determination that the loss of their daughter Sarah should leave a legacy that would benefit other children in the future (Document 18), the reasons underlying the *News of the World*'s involvement appear to be more vexed.

Despite the fact that the *News of the World* claimed at the time that '*Our aim is safety for our children*' (News of the World 23 July 2000) others have identified more practical reasons as underlying the campaign.

*'There is only ever one reason and that's circulation. All editors, journalists will say to you that the bottom-line is always circulation because that's profit'* (Interviewee 5).

The circulation of the *News of the World* had been in constant decline and there had been a frequent turnover of editors trying to revive the tabloid's readership. Consequently, '*a journalistic coup that dominates rivals' headlines, boosts sales, wins days of TV and radio follow-ups – and makes you a star*' must have been the dream of its new young editor, Rebekah Wade (Preston August 6 2000d). The *News of the World* sold 95,000 extra copies and the campaign helped to promote its '*recently re-launched*' webpages (December 16 2001b), where an interactive map of paedophiles was made available to concerned parents (Hall December 13 2001b).

Several people have also commented about certain discrepancies that could be observed between the *News of the World*'s claim to be interested in child protection and other 'news' it reported. This lack of congruence was perceived to cast doubt on the motivation underlying the campaign. For example, within the *News of the World*'s 23 July edition one of the initial 49 people 'outed' on its name-and-shame list was a female sex offender who, according to the *News of the World*, '*[g]ot probation in 1996 for sex with a 14-year-old boy*' (Taras and McMullan 23 July 2000, p 2). However, on the following Sunday, 30 July, when the *News of the World* went ahead and published the second part of its name-and-shame list, in the newspaper's

accompanying magazine was an article about a 44 year-old woman seducing and having an affair with a 17-year-old schoolboy as part of a column entitled 'What's my secret?' (News of the World July 30, 2000d, p 28).

*'Now, the tone of this story was 'wasn't I daring and adventurous, wasn't this an exciting thing to do'. So, on the one hand they were castigating people...[while at the same time using similar incidents as an exciting story]'* (Interviewee 5).

Whatever the true motivation underlying the *News of the World's* involvement, Rebekah Wade was praised later by publicist Max Clifford for her cunning editorial judgement from '*a circulation and readership point of view*' (December 16 2001b).

## **The Government**

As has been previously outlined, in public pronouncement terms the Government's voice remained surprisingly muted throughout the debate. In addition, when looking solely at reports within the media it is not always clear which stance was supported by the Government: would community notification be introduced to Britain or not?

Behind the scenes, however, the Government appears to have had a very clear strategy. This emerges from a number of confidential documents outlining the Government's approach that have been obtained during the research for this thesis (Documents 22 & 23). From one document produced on 3 August 2000 by the Home Office's Mental Health Unit it emerges that issues surrounding the disclosure of information to the public about sex offenders were actually being analysed. The problem that was identified within this document was that although the police and other services that possessed personal information on sex offenders had the right to reveal such information to the public in cases in which there were good reasons to consider this to be in the public's best interest, there was no way in which the public could make inquiries in order to obtain any such information, even in those cases in which there might be a well-founded need to do so. The idea was, therefore, to set up a mechanism through which a specific member of the public, such as a parent with reasons for concern, could for very specific and limited purposes apply to obtain

information if another person had any relevant previous convictions. The Mental Health Unit's analysis looked at five key areas that arose out of this idea: (1) defining the circumstances in which disclosure would be permissible; (2) how information should be stored and through which channels any information should be obtainable; (3) the nature of information that could be disclosed; (4) ensuring an appropriate use of the information by the person obtaining it; (5) the question of funding any such arrangements. Although highlighting various options and potential ways in which such a mechanism might operate, the conclusion reached in the document was that there were several legislative and practical obstacles to any such scheme including concerns about breaches of the European Convention on Human Rights. It was also argued that existing plans regarding access to information would probably address most of the problems any envisaged limited disclosure scheme would be intended to address, albeit via a different route (Document 23).

Although looking into various issues to do with wider accessibility to information held on sex offenders, from the very beginning the Government does not appear to have had any disposition towards a policy of general community disclosure. One reason that reinforced any reluctance to shifts in policy appears to have been the timing of the *News of the World's* campaigning. The Home Office was aware that during July and August there would be very limited access to Ministers with a firm grounding in the subject area. This was considered as limiting the capacity for strategic decision-taking (Document 22). Instead, the initial approach that was to be taken would be a clear expression of Ministerial support for the *News of the World's* aim of improving child safety, but with criticism of the means employed by the newspaper. Any strident public criticism of the *News of the World* was to be avoided in order to prevent the newspaper moving into 'a more negative defensive posture'. Instead the Government was to put pressure on the *News of the World* behind the scenes and search for means of assisting the *News of the World* to withdraw from its name-and-shame campaign 'gracefully' while at the same time preparing for any coercive action that might become necessary (Document 22).

Simultaneously, it was pointed out that the Home Office was required to

*'play its part in such a way as to ensure that [its] relationship with ACPO and ACOP is not weakened and is if possible [sic.] strengthened'*  
(Document 22).

To this effect the Government, in light of the fact that these organisations were the professional practitioners most closely concerned, was to express support for their actions. This might also be one of the reasons why the Home Office forwarded various pieces of information to these organisations, such as for example a letter to Rebekah Wade and advanced warnings on Home Office actions (Documents 15, 42 & 54). In addition, the Government was considering looking into the 5-point programme, previously outlined in Table 5.2, which had been forwarded to them by ACPO and ACOP (Document 22).

Overall the Government was to express readiness to examine new avenues of improving children's safety where there existed *'evidence to back them'* (Document 22). To this effect, the Government was thinking about inviting the various organisations involved to draw up detailed proposals for discussion after the summer break and presenting these as a new policy review that was brought about by the *News of the World's* campaign (Document 22).

During September various measures were considered. From available documents it emerges that the Home Office appears to have consulted ACPO and ACOP representatives in detail on such measures (Documents 54 & 55). Eventually several additions addressing some of the issues raised by the Sarah's Law Campaign were included in the Criminal Justice and Court Services Act 2000. These are discussed further in Chapter 6.

While so far this chapter has mainly focused on the role played by the various organisations within the Sarah's Law network and has highlighted some of the links that existed during the Sarah's Law debate, the remainder of the chapter explores the wider organisational and personal links that can be identified between the various players in order to get a fuller understanding of the players' position and actions.

## ***Links between the Players in the Network***

Although some of the players within this policy network emerged as relative 'newcomers' in the policy discussion about sex offender management, one of the main sources the network drew upon were organisations already involved and well-established in the area of sex offender management and child protection. As the events unfolded in 2000, some of these organisations were included in the newly emerging network fairly quickly. This new network can therefore be seen as an offspring of the pre-existing, broader policy network dealing with issues relating to sex offenders which was already active in trying to shape relevant policies. This older network had been relatively long-standing and parts of it can be traced back to at least the early 1990s. Given that the newly emerging network drew upon such pre-existing arrangements, several established organisational links can be identified between the public bodies and the agencies opposing Sarah's Law, as well as between Government, the media and the Press Complaints Commission.

### **Organisational Links**

As mentioned in Chapter 4, since the early 1990s an increasing '*working interdependence*' between ACPO and ACOP in respect to sex offender management had taken place, both in relation to exchanging information as well as to actual practices (Interviewee 5). Given that the police and probation service were in charge of co-ordinating various aspects relating to child abuse, child protection and sex offenders, closer co-operation between these organizations was necessary. Both organizations had been lobbying heavily for closing existing loopholes in sex offender legislation and were key players in the 2000 debate. The relationship between ACOP and ACPO during the Sarah's Law debate has been described as a very close liaison of a very constructive nature (Document 72).

Close organizational links had also started to develop between these two organizations and NACRO prior to the *News of the World's* campaign.

*'NACRO works often with ACPO on several issues...NACRO works with them on various crime issues and issues relating to the prevention of crime itself'* (Interviewee 3).

The organisational links between these three organisations seem to have been fostered by developments in risk assessment and the increasing focus on community protection that had taken place in Britain, along with aspects regarding issues of confidentiality which arose from the sharing of information following the Sex Offenders Act 1997 and necessitated closer organizational co-operation.

In respect to the question of public access to information held on sex offenders it seems that there existed previous links between ACOP, ACPO and the NSPCC. In 1997, when the British sex offender register was being considered, *The Guardian* announced that chief constables, chief probation officers and the NSPCC were opposing routine community notification and any automatic right of public access to the sex offender register (Guardian, 19 February 1997, quoted in Kitzinger 1999, p 211).

In addition to this, not only were all of these organisations '*involved in reducing crime and concerned about public safety*' (Interviewee 3) and as such linked by their work, but they also had a history of actively lobbying Government and advising it on policy developments. For example, representatives of ACPO, ACOP and the NSPCC were part of the Steering Group that published *Setting the Boundaries: Reforming the Law on Sex Offences*. The NSPCC produced ministerial briefings to improve the protection of children from sex offences and NACRO, ACPO and ACOP had all been lobbying Government to address the existing shortcomings in sex offender policies (HL Debate 2000; HL Debate 2000d). Furthermore, as previously mentioned, the NSPCC along with the Suzy Lamplugh Trust, NACRO and ACOP were at the time members of the umbrella body of all penal lobbying groups, the Penal Affairs Consortium (Interviewee 7).

The links between these public bodies and charities appear to have been marked by a certain level of co-operation, both prior to the events surrounding the Sarah Payne case and in the summer of 2000 with some members of the Home Office closely liaising with police and probation (Document 72). However, the organizational links between ACOP, ACPO and the *News of the World* as well as with the Press Complaints Commission appear to have been previously somewhat tainted. In a

postscript to a briefing note from 1998, entitled 'ACOP and the Press Complaints Commission' (Document 11), it is pointed out that ACOP was aware that

*'the News of the World is closely following high-profile cases involving probation supervision. Some are relatively low risk...while others have involved more violent offenders...ACOP has received reports from probation areas and others about payments being made to offenders to [for] information on fellow hostel residents and bogus callers requesting staff to divulge sensitive information'* (Document 11).

Such practices would not have helped with either the probation's or the police's work in the management of any offender. As such it can be assumed that the relationship between these organizations and the *News of the World* was at least troubled by such practices.

In the same briefing note, previous events that had influenced ACOP's and the Press Complaints Commission's relationship are summarised, highlighting the considerable difficulties for the probation service in the spring of 1998 that resulted from the impending release of two sex offenders, Sidney Cooke and Robert Oliver. These events are described in more detail in the exploration of the broader policy context provided in Appendix 1.

It seems that differences between ACPO and the Press Complaints Commission can be traced back even further than 1998:

*'At the end of the Fred and Rosemary West case ACPO took 12 substantiated complaints I think it was – witnesses being bought out by newspapers – they took that to the PCC and after several months the Press Complaints Commission wrote back saying "we rejected your complaints because we actually changed the rules now and the rules now would mean that what you complain about would not be a breach". So ACPO said "but they were a breach at the time" and they said "well we are not going into that but you haven't got a complaint because the rules – we altered the rules". Now I was outraged by this but that was how it was'* (Interviewee 4).

While the relationship between these organizations and the Press Complaints Commission appears to have been strained, the Press Complaints Commission seems to have had positive links to the *News of the World*. According to reports in the wider press, Rupert Murdoch's *News International Group* was one of the strongest allies of the Press Complaints Commission prior to the resignation of its Chairman Lord Wakeham in light of the Enron scandal (see for example Wells February 1, 2002). Concerns about the Press Complaints Commission's closeness to the tabloids have also been aired by editors of *The Daily Telegraph*, *The Independent* and *The Guardian* (Wells July 15 2002). There have been statements about a 'smoke and mirrors' culture present at the Press Complaints Commission with which 'non-stick coat'-covered-'Mr Fix-It'-Lord Wakeham obscured the Press Complaints Commission's back-door dealing (House of Commons 2002 § 6.12; Wells February 1, 2002; BBC 9 January 2002).

Another important organizational link that existed prior to the *News of the World's* campaign is the one between *News International* and the Labour Government. While in the 1980s the Labour party had boycotted Murdoch's media because of the way Murdoch treated the print unions, as well as the fact that *News International's* titles mounted media assaults on Labour during every general election from Thatcher's victory in 1979 to Major's in 1992 (Underwood 2005), this changed in the 1990s. At the time, Blair and other senior members of the Labour Party started to woo Rupert Murdoch (Marsden November 20 1998). Their attempts paid off and *News International* titles, most prominently *The Sun*, appear to have been ordered by Murdoch to switch allegiance from the Tories to Labour and thus played a role in getting Labour into power in 1997. The close relationship between *News International* and Labour appears to have continued after the 1997 General Election. It is reputed that Murdoch has been very influential with the Labour Party (Underwood 2005) and Murdoch's media undeniably appears to have had a special relationship with Labour (Johnson 1998).

Murdoch-owned *The Times* and *The Sun* became Labour's favourite newspapers. As Labour MP Alice Mahon said: '*The Sun is the paper which Campbell has put on a pedestal and it's now Blair's house journal*' (quoted in Jones 1999, p 316). A continuous stream of articles produced in the name of Tony Blair and various Labour

ministers appeared in *The Sun* and the *News of the World*. For example, when looking at by-lined articles, articles produced in the name of the Prime Minister and written in a joint effort by governmental and newspaper writers to ‘*prepare the punchiest prose and the snappiest headlines*’ (Jones 1999, p 178), fifteen of the twenty-three published during the first 18 months after Labour came into power were published in *The Sun*, with three more in the *News of the World* (Jones 1999, p 177-179).

In his examination of New Labour and its relationship with the media, Jones argues that both Tony Blair and his ministers have invested so much time and effort into ‘*tailoring the government’s news agenda to win favourable treatment from Murdoch’s newspapers that serious points of conflict have to be addressed*’ (Jones 1999, p 174). While such co-operation between a party and the media are nothing new and various examples of close working relationships between the media and Prime Ministers can be found throughout previous governments, because of the ‘*sheer intensity and regularity of the two-way contact, political historians would be hard pressed to find an example to match the degree of cooperation which has been established between No. 10 Downing Street and the Murdoch empire*’ (Jones 1999, p 175). The key objective was of course to ensure that the Labour Party continued to retain *The Sun*’s support through to the 2001 election (Jones 1999, p 175).

It appears that the special access to information, news-stories and governmental officials granted to *News International* titles was so strong that it can be seen as executives of Murdoch’s media companies having ‘*a hotline to the Prime Minister’s official spokesman [at the time Alistair Campbell]*’ at their disposal (Jones 1999, p 176). As one of *The Sun*’s political correspondents, Martin Bentham, once jokingly said to BBC political correspondent Nicholas Jones: ‘*You do know, don’t you that we only go along to the No.10 lobby briefings now for show?*’ (quoted in Jones 1999, p 180).

## **Personal Links**

While the organisational links paint an intriguing picture, another set of connections that seems to be of importance in this network, and that need to be borne in mind when examining the events, are personal links between the various actors.

Such connections are likely to have provided the players with increased access to people and information, as well as with the potential to exert more influence than would otherwise have been possible. They not only often reinforced the pre-existing organisational links, but in combination with these might explain some of the actions or non-actions taken by those involved.

One link that can be identified appears to be the one between Gill Mackenzie of ACOP and Tony Butler of ACPO. The close link that existed between them and their organisations can be considered as being important in keeping alive the opposition to Sarah's Law. It meant that information obtained would be passed more quickly between the two organizations and that any actions could be co-ordinated more easily.

*'I think the fact that they were locally in Gloucestershire, and it helps that they know each other and so on, but when it got to the crunch both their organisations having been working closely locally as well – more in some areas than in others'* (Interviewee 4).

While this link and its impact on their work can be easily established from the wider media and other publications (see for example Silverman and Wilson 2002) things get rather messy and vague when some of the other personal links are examined within this network. As such, they cannot necessarily be 'proven' in a strict academic sense but often rely on anecdotal evidence. This shortcoming will be returned to in the final chapter of this thesis.

The close working relationship between the Downing street press office and representatives of *News International* resulted in the blossoming of close friendships between members of both of these organisations, with Downing Street representatives becoming regular attendants at the social events hosted by *News International's* editors and executives (Jones 1999, p 178). Any personal links between Tony Blair and Rupert Murdoch or Rebekah Wade are important in so far as they would have placed the Government in a difficult position in light of the *News of the World's* campaigning for Sarah's Law. While overall the principal players have kept silent and have refrained from giving much away, with both Labour and *News International* commanding a great degree of loyalty from those in the know (Jones 1999, p 176), several things can be learnt from the sources available.

Tony and Cherie Blair were invited to dinner by Rupert Murdoch and his wife Anna on several occasions before being flown to Australia in 1995 where Tony Blair was the principal speaker at the *News International Corporation's* triennial conference at the Murdoch-owned Hayman Islands resort (Neil 1997; Pilger 1998; O'Carroll March 19 2004). Also, Andrew Neil, who used to work for Murdoch as editor of *The Sunday Times*, reveals in his autobiography that although '*[t]he extent of the ties that developed between New Labour and News Corp has never been fully revealed there were regular meetings between the two top men*', Tony Blair and Rupert Murdoch (Neil 1997, p xxii).

Such a relationship between Blair and Murdoch might have been a potential problem during the Sarah's Law debate. The *News of the World* frequently campaigns on various topics and some interviewees have expressed doubts as to Rupert Murdoch's initial awareness of the name-and-shame campaign.

*'Why do you tell the kind of most important media mogul in the world what you're doing when it's just one of your little campaigns...I don't think they – he knew because it was just one of the things they did, you know, school dinners, dog shit, ID cards, it's another campaign, sex offenders, it wasn't until the shit hit the fan you know in terms of the big public debate and in putting the News of the World in a rocket position that it really became a big story because what you got and what you don't get with other News of the World campaigns is that you got other newspapers commenting on another newspaper's story'* (Interviewee 7).

However, it appears that once he got to know about the *News of the World's* campaign Rupert Murdoch, unlike the Government, backed it.

*'I also remember, I think it was Stuart Kuttner [the then managing editor of the News of the World] saying, not at that meeting [of 2 August 2000], but that Rupert Murdoch was fully behind it as well – he would have had to have known, they could not do something like this without telling Rupert Murdoch'* (Interviewee 5).

In addition to his link to Rupert Murdoch, Tony Blair at the time also appears to have had good links with the editor of the *News of the World*, Rebekah Wade, especially

through his wife Cherie who is reputed to have had a particularly close relationship with Ms Wade (see for example Leonard 14 January 2003; Frost May 15 2003), and also some connection with Lord Wakeham of the Press Complaints Commission, '*a man so well connected that he probably networks in his dreams*' (BBC 9 January 2002). While the true nature of the personal link between Lord Wakeham and Tony Blair cannot be established, in his position as Chairman of the Press Complaints Commission Lord Wakeham appears to have shown special concerns for '*establishment grandees like the Blairs*' (Chancellor January 31 2002) and was asked by Tony Blair to head the Royal Commission on Lords Reform in 1999 (Jones February 1, 2002b).

Rebekah Wade, in turn, not only had good relationships with Rupert Murdoch, with cynics calling her '*Rupert Murdoch's in-house lap-dog*' (Frost May 15 2003), but also with the Director of the Press Complaints Commission, Guy Black, who in 2000 was contacted by ACOP about potential actions that could be taken against the *News of the World*. While there are only rumours that Rebekah Wade '*holidays with the two former press policemen*' (National Union of Journalists November 11 2003), this definitely appears to have been the case with Guy Black. Guy Black, who became Director of the Press Complaints Commission in 1996 and who went on to become the press secretary for Michael Howard, had another close personal link to Rebekah Wade: he was a '*childhood friend*' of Ms Wade's partner, Ross Kemp (see for example Wells January 17 2002).

*'What ACOP did not know at the time was that the head of the Press Complaints Commission was such a close friend of the editor of the News of the World. They actually went on holiday together'* (Interviewee 5).

As far as the continuation of the debate after the summer and autumn of 2000 goes, there also appears to be an important link between Rebekah Wade and David Blunkett. It appears that starting with her role as editor of the *News of the World* she had regular meetings with him (Maguire January 31 2003), though it is not certain if this link is purely organizational or of a more personal nature too. David Blunkett, however, was an important connection for the *News of the World*.

*'David Blunkett has been very pro [the demands of the For Sarah Campaign] and the News of the World is still in talks with him. It is*

*thanks to him that most of the points have been put through'* (Interviewee 1).

In its continuation of the For Sarah Campaign the *News of the World* itself described '[n]ew, enlightened Home Secretary' Blunkett (News of the World 01 July 2001) as being '*widely hailed as one of the most innovative home secretaries for a generation*' (News of the World 23 December 2001) while both Messrs Straw and Boateng were portrayed in a rather more negative way.

*'[H]apless Mr Straw did not have the guts to implement the core demand of Sarah's Law. Like his sidekick minister Paul Boateng, he waffled and squirmed...but failed to act. Thankfully, the pair [are] no longer in charge'* (News of the World 01 July 2001).

Although the topic of public disclosure no longer appeared prominently on the policy agenda after 2000, on 1 July 2001 the *News of the World* reported that Blair and Blunkett had promised to reconsider Sarah's Law (News of the World 01 July 2001).

One potential reason as to why the *News of the World* might have reported so much more favourably on David Blunkett than on his predecessor, despite no change in policy when he took over as Home Secretary from Jack Straw on 8 June 2001, might have been Blunkett's close connections to *News International*. When examining reports in the wider media it can be learnt that David Blunkett not only had good personal connections with Les Hinton, simultaneously chairman of *News International* and the Press Complaints Commission's Code Commission (Currie December 14, 2004), but that one of his special advisors as a Home Secretary, Katherine Raymond, actually lived with Les Hinton (Glover March 28 2005). This web of intricate relationships can potentially account for some of the actions and inactions at the time.

It is not possible to identify the true position that the Press Complaints Commission took as a regulating body in 2000 and over time improvements to its policy appear to have been established. However, its failure to take a strong stance does raise the question of how far this inaction, combined with the connections between some of its senior members of staff and *News International* staff, indicate a conflicting set of interests.

*'Having said that about the Chief of the Press Complaints Commission being a friend of Rebekah's, in fairness – not redeeming it – which would almost be a sacking situation in my world – it would just be outrageous – they did listen very tentatively and in due course there were modifications to their policy – so there was an improvement in their policy'* (Interviewee 5).

### **The End of the Policy Network**

The policy network that specifically surrounded the Sarah's Law Campaign seems to have disintegrated after March 2001. This might partially be attributable to the fact that some of the representatives involved retired soon after the events of autumn 2000 and any future direction of the relationship with the *News of the World* was dependent on new people (Document 67). More importantly, however, it seems that there might have been a lack of interest in maintaining some of the links.

On 27 March 2001 a meeting took place at the *News of the World*. This appears to have been attended by representatives of ACOP, the NSPCC and members of the *News of the World*. From a document summarising the meeting it emerges that the discussion seems to have focused on two points (Document 67). First of all, there was the initial guidance on Multi-Agency Public Protection Arrangements (MAPPA) – the *News of the World* seems to have been unaware of these and wanted to be briefed on them. The second point that seems to have been discussed was the previously mentioned proposed Bill by *News of the World*, reproduced in Appendix 3, for which the *News of the World* is reputed to have mentioned some parliamentary support. It seems that the representatives of the alliance noticed several divergences in the Bill's wording from those used in the document published on 4 August 2000 with clearly differing views on what constituted controlled access. This meant that while willing to consider some of the points put forward in the Bill and being interested in the *News of the World's* underlying intentions, the representatives of the alliance were unwilling to provide face value support for it. Reputedly one of the *News of the World's* representatives then reminded them that the newspaper's name-and-shame campaign had only been suspended. On the basis of this threat some people later appear to have

had various concerns about staying in a relationship with the *News of the World* (Document 67).

## **Summary**

This chapter has analysed the policy network of key players involved in the Sarah's Law debate. For each of the main players, the way in which they got involved, their motives for involvement and activities, as well as their role within the Sarah's Law network has been examined.

The chapter has also explored the various links that existed within the network. While some of these emerged as a result of the Sarah's Law Campaign, a number of pre-existing personal and organisational links can be identified. On the one hand, such links appear to have aided co-operation between some of the organisations involved, while in other instances they presented potentially conflicting sets of interests.

The final part of the chapter looked at the way in which the specific Sarah's Law network came to an end. Some of the reasons that were identified as underlying this were changes in personnel and an only muted interest in maintaining the network in that specific format.

## Evidence, Lesson-Drawing and Policy Outcomes

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Having explored the roles, actions and links between the various players involved in the Sarah's Law network, this chapter looks at the different forms of evidence used and quoted in the policy discussion surrounding the *News of the World's* "For Sarah" campaign. The chapter starts by analysing the evidence put forward by the *News of the World* in support of public disclosure of information on sex offenders. Thereafter the available evidence on community notification from the US will be explored and the Government's and other participants' awareness of this is addressed. From there, the chapter provides details on the various sources of evidence put forward by those organisations opposing the introduction of Megan's Law-style legislation in the UK, before the final section outlines the policy outcomes that resulted from the debate.

### ***The News of the World's Evidence***

In order to substantiate and lend credibility to its campaign the *News of the World* used a variety of sources, one of the key ones being accounts of various people. These accounts fall into three categories. First of all, there are testimonies by 'expert witnesses' who provide 'information' about certain aspects regarding the nature of paedophiles and sexual offences. Those quoted include Ray Wyre, '*an expert on cases of child abduction*' (Gekoski 23 July 2000), Detective Chief Inspector Bob McLachlan, '*head of Scotland Yard's paedophile unit*' (Taras and McMullan 23 July 2000b), Marc Klaas, '*the key man responsible for giving American parents the absolute right to know the offenders in their midst*' (News of the World 30 July 2000) and Dorothy Grace-Elder, '*Member of the Scottish Parliament and a former UK Investigative Reporter of the Year*' (News of the World 30 July 2000).

Secondly, reference is made to people in 'authoritative' positions or the public limelight who are quoted as expressing their support for certain aspects of the *News of the World's* campaigning or the potential helpfulness of some of the ideas underlying

it. Examples are Childline chairman Esther Rantzen (Kellaway and Begley 23 July 2000), Donna Waler of Justice for Children, '*a national organisation that monitors paedophile activity*' (News of the World 30 July 2000c), '*former High Court judge*' Sir Maurice Drake (News of the World 06 August 2000), '*former Flying Squad Commander John O'Connor, who spent 30 years in the Met[ropolitan Police]*' (News of the World 06 August 2000), '*former head of Scotland Yard's obscene publications unit and author of a book on paedophiles*' Mike Hammes (Kellaway and Begley 23 July 2000), Bishop Pat Buckley (Kellaway and Begley 23 July 2000), '*GMTV star*' Eamonn Holmes, two representatives of an organisation called Mothers Against Murder and Aggression (MAMA), Lyn Costello and Dee Warner (News of the World 30 July 2000), deputy chief executive of Unlock, an association which represents ex-offenders, Bobby Cummines and '*[e]ven a convicted paedophile*', James King (News of the World 30 July 2000).

The third and final category of people referred to by the *News of the World* consists of those who have been affected by sexual offences, either directly or indirectly, and parents whose child was murdered. In the latter cases a sexual motivation might or might not be underlying the offence but this is less obvious to the *News of the World's* reader. While Sarah Payne's family obviously takes centre stage in this category, others who feature are Maureen Kanka, mother of Megan after whom Megan's Law is named, Chris Hook, whose 7-year old daughter Sophie was abducted, raped and killed (News of the World 30 July 2000), Marc Klaas, whose 12-year old daughter Polly was abducted and killed (News of the World 30 July 2000), Winnie Johnson, mother of the Moors Murder victim Keith Bennet (News of the World 30 July 2000) and '*the mother of murdered toddler James Bulger*' (Kellaway and Begley 23 July 2000).

What becomes apparent on closer examination is, however, that a number of the statements attributed to people in groups one and two have a huge potential of being misunderstood in the context in which they are used by the *News of the World*. As a result, those readers of the *News of the World* who do not pay close attention to the nuances and the precise point to which a quote refers or who lack background information might get a distorted impression of a reference's meaning and draw wrong conclusions about the topic under discussion (see for example the *News of the*

*World's* description of events in News of the World 06 August 2000b; News of the World 30 July 2000c; Kellaway and Begley 23 July 2000).

Along with references to miscellaneous people with different levels of expertise in the area of child protection and sex offender management, and examples of people who had lost a family member in child abduction, the *News of the World's* campaign also used various statistics and references to research in support of its views. One of the points of reference used by the *News of the World* throughout its campaign was the number of known paedophiles. The *News of the World's* campaign focused on 110,000 'proven paedophiles' that lived in Britain, 'virtually one for every square mile of the country' (Taras and McMullan 23 July 2000) and it promised that the lists it intended to publish over the following weeks would eventually include 'at least 110,000 names' and would be 'the biggest database on paedophiles in the world' (News of the World 23 July 2000). This is an unlikely promise and contradicts information given in another article within the same paper. According to this article, reporters of the *News of the World* had only access to the Scout Association's 40,000-name files, where, on the authority of the Scout's research manager Richard Thornton, 'anyone who has ever offended against children' was recorded (News of the World 23 July 2000c).

Despite such discrepancies regarding the access to any information on sex offenders, it appears that the *News of the World's* reference to 110,000 'paedophiles' is based on research findings. In 1997, as part of its Research Findings series, the Home Office Research and Statistics Directorate published the findings of a study examining the prevalence of convictions for various sexual offences by men in England and Wales (Marshall 1997). The aim of the report was to provide a reliable estimate as to the numbers of known sexual offenders and link this to the provisions of the Sex Offenders Act 1997. In the report it is said that at least 110,000 people of the studied population had convictions for sexual offences against a child back in 1993 (Marshall 1997). Offences against children that were included in the study did not only cover 'serious sexual offences', but also those that related to indecent photographs of people under 16 years of age. Of the 110,000 men, 100,000 would have needed to register under the provisions of the Sex Offenders Act, while 10,000 would have been exempt due to the nature of the offence committed (Marshall 1997). So, although the *News of*

*the World's* data is based on research findings, the way in which the information is used indicates the addition of a spin in order to provide support for the *News of the World's* arguments.

With regard to the number of paedophiles, it is also important to bear in mind classification problems with sex offenders. Not every sexual offence against a child is necessarily committed by a paedophile, and so further doubt is cast upon the *News of the World's* claim of 110,000 proven paedophiles.

*'When someone is raping a 13-year old girl you may say it's a paedophile but it might be simply because she was available, whereas his last victim was a 24-year old woman'* (Interviewee 4).

While several 'surveys' about public perception of the *News of the World's* campaign took place at the time, such as on Carlton's London Tonight, ITV Teletext, Sky TV and in *The Mirror*, all of which were quoted by the *News of the World* as providing at least a level of 80% support for the campaign (News of the World 06 August 2000), the data most frequently referred to was a MORI poll commissioned by the *News of the World*. The newspaper stated that a 'significant', 'eye-opening public opinion poll' indicated that the wider British public 'voiced huge support' and 'massive backing' for the name-and-shame approach taken by the *News of the World* (News of the World 23 July 2000; News of the World 23 July 2000b). The statistics referred to by the newspaper were that according to this poll a 'massive' 84% of Britons thought paedophiles should be named and 88% would want to know if one was living in their area. Or, as the newspaper entitled its article: '88% say name and shame' (News of the World 23 July 2000b). This led the *News of the World* to conclude that it had 'the support of the people' (News of the World 23 July 2000).

When examining this statement in light of the actual poll, for which 614 adults were interviewed over the phone and the data then weighted to the population, the picture that emerges is the following. The numbers quoted by the *News of the World* refer to questions Q17 and Q18 of the poll which read 'Convicted paedophiles should be publicly named' and 'Local people should know if there is a convicted paedophile [paedophile] in their neighbourhood' respectively, with the respondent being given the option to agree or disagree. Earlier on in the poll, however, people were asked

under question Q3 ‘*What, if anything, do you think could be done to improve the safety of children in your area*’ with the option to provide a spontaneous answer. While 35% argued for ‘*more policing*’ and 16% for ‘*better parenting, responsibility for and care of children*’ only a mere 2% had provided ‘*public naming of paedophiles*’ as an answer in that case.

The same question was put forward in two subsequent polls conducted by MORI for the *News of the World*, one on 20 August 2000 (then question Q1) and one on 16 December 2001 (then question Q3). In the August 2000 poll 3% put forward the public naming of convicted paedophiles as an option to improve child safety. In December 2001, which marked the conviction of Sarah’s killer and by which time the campaigning by Sara and Michael Payne and the *News of the World* for the introduction of a Sarah’s Law had been in process for more than one year, still only 5% provided this as an answer. In addition to this, the December 2001 poll also resurrected questions Q17 and Q18 of the original poll (then questions Q13 and Q14), but only 64% were in favour of naming paedophiles and 72% agreed that local people should know about the presence of convicted paedophiles in their neighbourhood.

One other reason brought forward by the *News of the World* as a justification for the name-and-shame campaign was the assumption that the murder of Sarah Payne had shown that the monitoring of sex offenders by the police was ineffective (Millward July 24 2000), a sentiment shared by only 49% of those asked in the original MORI poll (see question Q11).

It appears that MORI, which is regarded as being very particular about the way in which its statistics are used, was ‘*very upset*’ about the way in which the *News of the World* reported these findings (Interviewee 7).

Of course the *News of the World* attempted to present its reporting as neutral, only revealing the ‘facts’. While this distancing is obvious in those cases in which reference to third parties is made, the *News of the World* considered it necessary to point this out in relation to the MORI poll and told its readers that ‘*[t]he survey was held on Friday by leading pollsters MORI – who are completely independent of the News of the World*’ (News of the World 23 July 2000b).

The *News of the World* promoted the idea that '*[k]nowledge is the only weapon the community needs*' (News of the World 23 July 2000) and in an article dated 23 July the *News of the World's* Los Angeles correspondent Stuart White stated that '*[n]aming and shaming works in America*' (White 23 July 2000c). It was also argued that not only the British, but several other European governments, such as those of France, Denmark, Holland and Italy, could learn a lot from America. According to the article, parents in America had easy access to details on '*every single one of the country's 324,926 registered paedophiles*' (News of the World 23 July 2000).

Given that there was widespread agreement in the summer of 2000 that existing measures to protect children needed to be improved, and that the Government was willing to listen to ideas backed by evidence (Document 22), it is necessary to explore further the evidence that was available on community notification from abroad.

Throughout the 1990s the notion of sex offender registers and questions regarding community notification started to take centre stage in the discourse on sex offender management in Britain, the US, Canada, Australia and New Zealand. Although in each of these countries a widespread discussion about sex offender registers and community notification took place during the 1990s (see Appendix 4) it seems that in the summer of 2000 it was only within the US and the Canadian province of Manitoba that community notification measures including full public notification were in place. Research on the effectiveness of community notification measures appears to have only been available from the US and this is examined in the next section.

## ***Exploring the Evidence-Base on Megan's Law***

### **Programme Structure of Megan's Law**

Megan's Law consists of five broad categorical steps; registration, determination and assignment of risk of reoffense, notification of the registrant about this, hearing and notification of the community (AOC 2001). The actual programme theory on which it builds consists of problem identification, public disclosure, sanction instigation and the offender's response (Pawson 2002). The underlying

rationale of registering sex offenders and informing the community is that by leaving their details with the police, the latter will be aware of the whereabouts of such offenders in its jurisdiction and can use this information when investigating crimes that appear to be sexually motivated or include a sexual act (Farkas and Stichman 2002). The next step, disclosing any information held on such criminals to the wider public, was initially designed to serve two purposes. First of all, the aim was to prevent sexual crimes by increasing the population's awareness of sex offenders living in their area and to act as a deterrent to known transgressors. Secondly, by providing details of convicted sex offenders to people living within a designated area it was assumed that this also could further criminal investigations (Schram and Milloy 1995; Rathbun 1998). Since then an additional feature has been identified, that of educating the public. It is assumed that through the various means of community notification the public can be taught about sexual offending per se, different categories of sexual offenders and the modus operandi of those criminal justice agencies involved in monitoring and supervising sexual offenders (CSOM 1997).

With the key idea underlying registration and community notification being '*risk to the public*', the first step of community notification is to identify the level of risk a sex offender poses and to pool the information in a reliable way (Pawson 2002). This is usually done by examining the criminal history, doing a psychological evaluation and examining details of pre-sentence investigation for any sex offender. Further to this, offenders are then subdivided into different tiers of risk. In order to do this many jurisdictions follow the approach taken by Washington State and identify three tiers of risk: Level I low risk of reoffense, Level II moderate risk of reoffense and Level III high risk of reoffense. However, some jurisdictions leave out the second group so that an offender either has a low or a high risk of reoffending (Matson and Lieb 1996).

Once an offender has been classified, the focus shifts towards disseminating relevant information about the offender. Depending on the level of risk the scope of community notification varies. For the low risk group information will normally be shared with law enforcement agencies and sometimes with victims of or witnesses to the offence. In addition, in the moderate group, certain organizations which are obvious targets for certain groups of sex offenders, such as schools, child care centres, family day care providers, but sometimes also businesses, organizations and

community groups, may be notified of the offender's release. Finally, in addition to all these measures, for the group of offenders classified as high-risk offenders, members of the public who are likely to encounter the offender or even the entire community are informed (Brooks 1995; Matson and Lieb 1996; CSOM 1997; Matson and Lieb 1997).

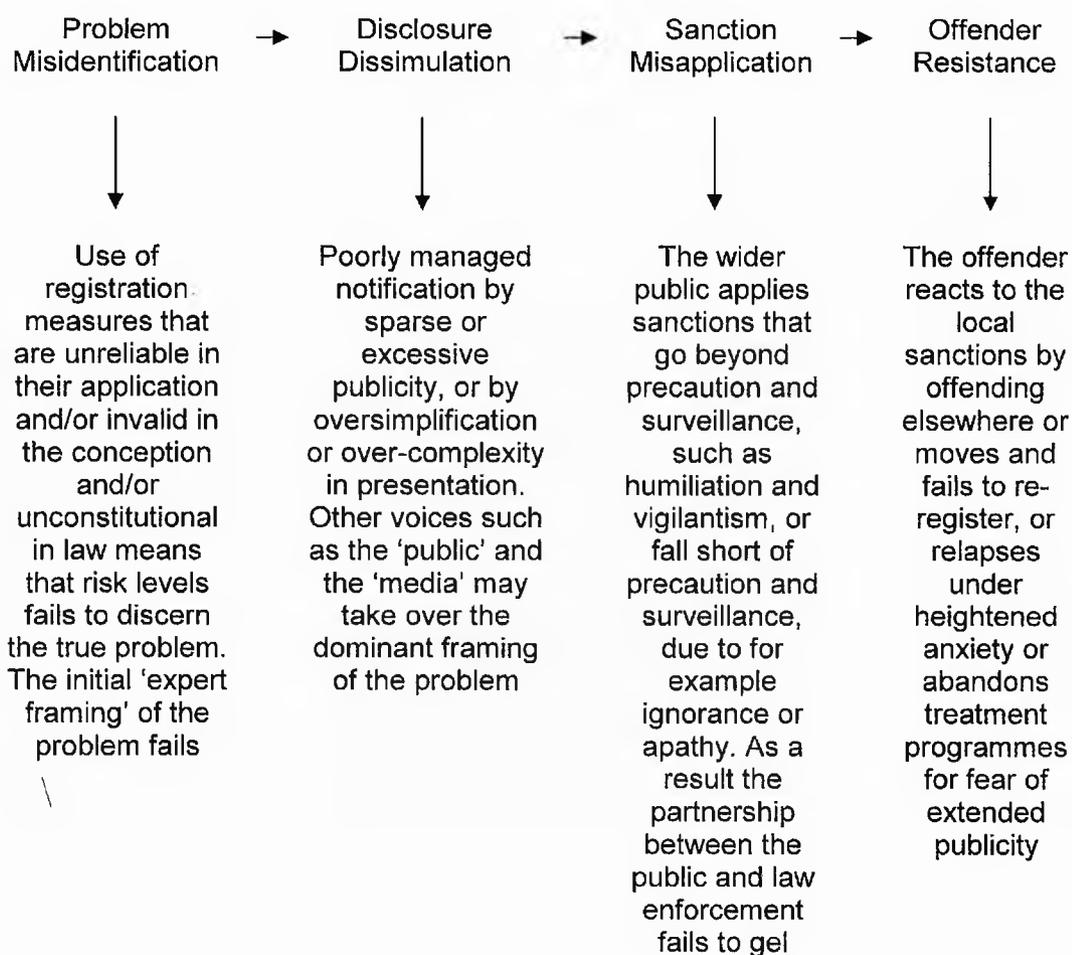
The form of notification can be either of a broad, selective or passive nature depending on the state. If broad notification takes place the information about the sex offender is actively and widely disseminated to members of the public. In case of the second, more selective approach, those required to be protected, such as former victims or vulnerable groups within the population, are notified. Those states that use a passive approach to notification require both individuals and organizations to actively look for information on sex offenders by themselves (CSOM 2001b).

Most commonly, the information that can be obtained, or that is being distributed, consists of a photograph with a physical description of the offender, an outline of the offender's criminal history and details of the offender's current residence. Sometimes though, other aspects such as the offenders' place of employment, vehicle description or behavioural patterns used in previous crimes might also be published (Matson and Lieb 1996). While there are several different ways of disseminating the information, the most widely used ones are: media release, door-to-door flyers, mailed flyers, or internet distribution.

After the community notification has taken place the focus shifts to the community (Pawson 2002). Citizens are asked to assist in the surveillance of the sex offender in the community and to take protective and preventive action in order to prevent further offences. It is assumed that the offender, due to the supposedly increased perception of risk of being caught and the assumption that a bigger effort is required to maintain a sexually offending lifestyle, will accept his guilt and become more ready for treatment of his problem as well as avoid future offending. Should another offence take place, it is assumed that the information gathered about the offender as part of the previous steps can be used to assist tracing and prosecuting the offender (Pawson 2002).

The programme theory of Megan's Law assumes a smooth transition from one stage to the next. However, along each of the four steps there is potential for unintended problems. Such problems can range from errors in the classification process to vigilantism or geographical relocation of offending behaviour, as can be seen from Table 6.1

**Table 6.1: Unintended Consequences of Registration & Notification**



(Adapted from Pawson 2002, p 14)

Revisiting a set of apprehensions about community notification that he had raised back in 1996 when a federal version of Megan's Law was being discussed in the US,

Freeman-Longo (2003) identifies 28 potential areas of concern in respect to community notification that are provided in Table 6.2. While this list provides a thorough basis for exploration, a lot of the points are interrelated. Consequently, it is useful to cluster these points into broader categories: the theoretical origins and basis of community notification programmes; the effectiveness of such interventions; financial, implementation and legal issues; and finally, implications for the offender, the victim and the community. The subsequent discussion will focus on these four areas.

**Table 6.2: Problems with Community Notification**

- Origins of Public Notification
- Lack of Supporting Data Determining the Efficacy of Public Notification
- Cost
- Subsequent Violence
- Extension to Other Crimes
- Confidentiality
- Constitutional Rights
- Beyond Punishment
- Primary Prevention
- False Sense of Security
- Terrorizing the Community
- Impact on Victims
- Impact on Others
- Plea-bargains
- Risk Determination
- External vs Internal Control
- Adversarial Role/ Ethical Dilemma
- Undermining Treatment
- Misplaced Responsibility
- Limiting of the Offender's Ability to Function in the Community
- Age of the Offender
- Mentally Ill Sex Offenders
- Intelligence of the Offender
- Female Sexual Abusers
- Decrease in Reporting
- Real Estate
- Use of Technology
- Abuse of the Law

(Adapted from Freeman-Longo 2003)

## Concerns about the Theoretical Origins and Basis of Community Notification Programmes

Community notification came about as a result of highly publicized sexual offences, often committed by repeat offenders (CSOM 1999c). The sensationalist approach taken by the media led to an overdramatized picture of this specific kind of sexual offence which haunted the public (La Fond and Winick 1998b) and started to drive sex offender policies (English 1998). Any attempts to base a response to crime on '*isolated but highly publicized and emotionally charged crimes is likely to be ill-considered and to create as many problems as it seeks to solve*' (La Fond 1998, p 468). The community notification approach focuses on '*stranger danger*', i.e. those cases where the offender is not known to the victim. This, however, is only a relatively small percentage of all sex offenders. From the very outset then, community notification only has the potential to impact, if at all, on a very limited number of offenders (Steinbock 1995; Becker and Murphy 1998). Despite this limitation, the registration and community notification approach has been applied to all groups of sex offenders, independently of whether they knew their victim or not. This can be explained by a general tendency to 'oversell' any measure aimed at crime prevention (Petrosino and Petrosino 1999, p 142).

Another difficulty of Megan's Law is its very title. Being of a populist nature in '*timing, naming and operation*' (Simon 1998, p 462), the simple fact that such measures are named after victims of extreme sexual crimes means that the political stakes in opposing any such legislation have been raised. Rather than allowing for an objective examination or discussion when considering any aspects of these laws one is literally confronted with the crimes, the suffering of the victims and the popular feelings about these crimes (Simon 1998).

Although one of the basic purposes of these laws appears to be a positive one, to provide citizens with the information to protect themselves and their families and thus to reduce the risk of becoming the victim of a sexual offence, on reflection community notification can be understood as an acknowledgement of failure. The measures are designed to deal with people that are assumed to present a long-term risk to society. Therefore, Megan's Law can be seen to be based on the perception that

other approaches to dealing with sex offenders, such as deterrence or treatment in prison, have failed (Simon 1998, p 461). This is also reflected by the fact that within the classification scheme there is no Level 0, a category where it is assumed that there is no risk of reoffending. '*[A]ll registered sex offenders are presumed to pose some risk of reoffence*' (Levi 2000, p 583). One question that arises from this is that if it is deemed necessary to warn a community about the presence of a sex offender in its vicinity, should this sex offender actually be at large in the community to start with?

While the question about the effectiveness of sex offender treatment is still hotly debated, the defeatist assumption evident in blanket community notification that treatment as an option has failed is questionable in light of the available information. This can be seen from Appendix 5 which provides background information on the nature and extent of sexual offences and explores issues surrounding the effectiveness of sex offender treatment.

Measures provided by Megan's Law have been popular across the board (Proctor, Badzinski et al. 2002). Essentially, they shift the potential responsibility for failure away from the state towards citizens and by doing so, grant the state immunity from any rage resulting from sexual offences once measures for registering sex offenders and notifying the community about them have been put in place. Members of the community are now responsible themselves for taking protective measures (Simon 1998). Nonetheless, a positive perception of Megan's Law continues to exist amongst parts of the US population (Proctor, Badzinski et al. 2002). This picture is reinforced further by the American news media. The danger inherent in a glorification of these measures is that potential shortcomings of Megan's Law are more likely to be ignored and people might be less eager to lobby for more effective approaches when trying to protect the community from sexual crimes (Proctor, Badzinski et al. 2002).

## **Effectiveness of Public Notification**

Given concerns about the theoretical and practical assumptions on which Megan's Law is based, combined with the high costs involved, it is reasonable to assume that all aspects relating to these laws should be permanently assessed and evaluated (Petrosino and Petrosino 1999). However, despite its popularity, huge

commitment of resources, and the fact that community notification in respect to sex offenders has become increasingly widespread over the last 15 years, there is surprisingly little research into the effectiveness of such measures. While the practical difficulties of conducting research on sexual offending will certainly play a role in this, other reasons appear to include the huge differences between and within states with respect to the design and implementation of these measures (CSOM 2001b).

Megan's Law seems to have been enacted without a proper knowledge base about the effectiveness of both registration and community notification. By 1996 only California and Washington State had produced written reviews (Matson and Lieb 1996b) and only one study, by the Washington State Institute for Public Policy, had examined empirically whether community notification helped in protecting citizens by reducing recidivism (Lieb 1998).

Since then, Pawson, in his exploration of the question of whether Megan's Law works (Pawson 2002), argues that when looking at outcome evidence there is only one study by Schram and Milloy, published in 1995, that even '*approximated to the so-called gold standard of the controlled comparison*' (Pawson 2002, p 43). However, even in this study, the outcome evidence on re-offending is difficult to interpret. The two groups used were not randomly assigned, which results in an inherent selection bias in the design of the study (Petrosino and Petrosino 1999). Despite this shortcoming Pawson (2002) defends the quality of the study by pointing out that it would be impractical and ethically dubious to assign offenders randomly to experimental and control groups when dealing with sex offences.

In their study, Schram and Milloy found that it seems to be the case that '*community notification had little effect on recidivism*' (Schram and Milloy 1995, p 20) in respect to both juvenile and adult sex offenders, but that it '*may have had an impact on the timing of new arrests*' (ibid.). Those offenders subjected to community notification '*were arrested for new crimes much more quickly than comparable offenders who were released without notification*' (Schram and Milloy 1995, p 19). One could argue that this leads to the conclusion that the strength of Megan's Law lies with detection rather than prevention (Pawson 2002).

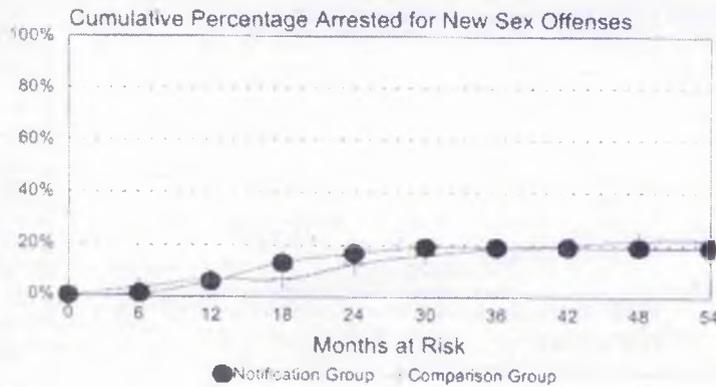
However, there is another theoretical possibility. Behavioural difficulties can be assumed to be aggravated by societal reactions to them (McCaghy and Capron 1994). Community notification measures potentially increase an offender's level of stress and feelings of isolation, shame and rejection (Edwards 2001). As such it can produce negative emotional states in the offender who, even if previously treated and willing to change, might thereby be driven towards a cognitively distorted way of decision making. If maladjustment to the community setting and negative emotional states are potential triggers in reoffending, community notification measures can be perceived as increasing the likelihood thereof (Edwards 2001).

As can be seen from Diagram 6.1 the increase in detection of crimes that results from Megan's Law lies with the amount of crime in general rather than specifically with sexual offences. In the case of sexual crimes, both notification and control group appear to have a comparable rate of recidivism within a similar timeframe. The recidivism rate of around 20% for sex offences is consistent with findings by other studies.

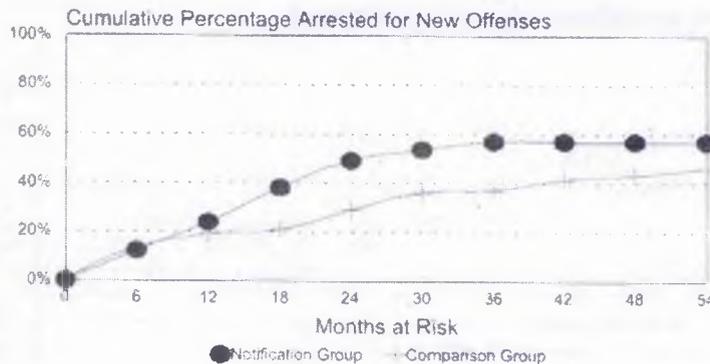
Schram and Millroy (1995) point out that these findings are difficult to interpret without further research into potential changes in law enforcement and the behaviour of the community that might result from notification. Some authors have argued that the findings of this research indicate that community notification is '*producing a different response from the offender, law enforcement and or the community, either in combination or alone*' and therefore can be considered as having an effect (Lieb 1998, p 102). This, however, should not be misperceived as being effective in the sense of achieving the intended goals.

### Diagram 6.1: Findings of Schram & Millroy

ESTIMATED CUMULATIVE PERCENTAGE ARRESTED FOR NEW SEX OFFENSES BY MONTHS AT RISK



ESTIMATED CUMULATIVE PERCENTAGE ARRESTED FOR NEW OFFENSES OF ANY KIND BY MONTHS AT RISK



(Schram and Milloy 1995, pp 17-18)

The next question is whether Megan's Law helps potential victims to protect themselves. An exploratory assessment of Megan's Law's preventive potential was carried out by Petrosino and Petrosino (1999). Examining an existing set of data on sexual offenders, consisting of the relevant criminal history of these offenders and geographical data relating to their offences, their aim was to identify retrospectively the

*'potential of the law for preventing the most recent crimes (the instant offenses) of a sample of serious sex offenders and for the more focused analysis of stranger-predatory offenses'* (Petrosino and Petrosino 1999, p 145).

Out of the 136 cases of serious sexual offences they looked at, 36 had committed an offence in the past that would have required them to undergo registration. Out of these 36 cases they found that the majority of those offenders eligible for registration had not committed stranger-predatory offences. This is outlined in Table 6.3 while the potential effectiveness is illustrated in Table 6.4.

**Table 6.3: Type of Crimes Committed by Registry-Eligible Participants**

<b>Type of Offence</b>	<b>Total</b>	<b>Percentage</b>
Predatory-stranger	12	33
Close family incest (father, stepfather, grandfather or brother)	9	25
Live-in boyfriend, close family friend, or uncle molesting children	7	19
Employer, employee, or co-worker molesting children	5	14
Date rape	3	8
<b>Total</b>	<b>36</b>	<b>100</b>

Note: Numbers do not add to 100% due to rounding

(Petrosino and Petrosino 1999, p 150)

**Table 6.4: Potential of the Massachusetts Registry Law in Preventing Predatory-Stranger Crimes by Registry-Eligible Offenders**

<b>General Type of Crime</b>	<b>Brief Description</b>	<b>Proximity</b>	<b>Potential of Notification Reaching Victim</b>
Abduction (rape)	Offender waited in store parking lot for female shopper to return to car, kidnapped her and raped her	Offender lived in different jurisdiction from victim	Improbable
Abduction (attempted rape)	Offender kidnapped woman from street and took her to secluded place and attempted rape	Offender lived in different state from victim	Improbable
Attempted rape	Offender burgled homes and raped women who were at home	Offender committed his crimes in same jurisdiction but several miles away	Poor to moderate
Child rape	Offender manipulated young boys (age 7 to 11) to come to a secluded area where he raped them	Offender lived in one jurisdiction and committed his crimes in neighbouring city	Improbable
Child rape	Offender lured teenage boy (age 13) to secluded area and raped him	Both victim and offender lived in neighbourhood	Good
Child rape	Offender lured young boys (age 10 to 11) to secluded area and raped one	Offender lived in different town	Improbable
Child molestation	Offender lured 5-year old girl to his apartment	Offender lived upstairs from victim in apartment	Good
Child molestation	Offender lured 7-year-old male victim to secluded area and molested him	Offender and victim lived in same neighbourhood	Good
Rape	Offender raped 78-year-old woman	Both offender and victim lived in same housing complex	Good
Rape	Offender broke in and raped woman, he later robbed the husband at gunpoint	Offender from another state	Improbable
Rape	Offender followed victim on city street, knocked her down and raped her	Offender and victim from different parts of town	Poor to moderate
Sex ring	Offender ran and participated in paedophile sex ring	Offender lived in different state from victims	Improbable

(Petrosino and Petrosino 1999 pp 151-2)

Out of the twelve cases in which a predatory-stranger offence took place only half had the potential for being prevented by community notification. Even then, this would have been '*dependent on police using an effective notification method and the eventual victim receiving it*' (Petrosino and Petrosino 1999, p 150). Out of these six, only in four cases the potential of the notification reaching the victim would have been good. Two further assumptions in assessing these four cases as potentially having had a good chance of being warned must be pointed out. First of all, after the victim obtained the information he or she would have had to act on it. Secondly, it is assumed that none of the preventive measures taken by the potential victim could have been overcome by the offender. However, even when allowing for these two assumptions, the possibility still exists that by a simple displacement of the activity the offender might have targeted another victim. This leads the authors to the conclusion that '*the public safety potential...[of Megan's Law]...is limited*' (Petrosino and Petrosino 1999, p 154).

Although the little evidence that exists does not appear to provide strong support for Megan's Law, practitioners often believe that the danger of notification helps to motivate some offenders who are not subject to notification to behave appropriately (Finn 1997). It might thus be the case that the '*threat of community disclosure is the greatest contribution of notification as a tool for managing sex offenders in the community*' (Finn 1997, p 467).

### **Costs, Legal and Implementation Issues**

Given the relatively low level of recidivism amongst sex offenders, the application of '*blanket policies*', covering all sexual offenders, is questionable in so far as it is resource intensive, even in cases where a minimal level of intervention might have sufficed (Harris and Rice 1998). This is especially noteworthy given that Megan's Law is an unfunded mandate (Poole and Lieb 1995) with states having to pay for these measures themselves.

While the costs to the state of setting up community notification arises mainly out of those incurred by the End of Sentence Review Committee, local costs incurred by community notification vary greatly, mainly depending on the size of the population

of the area and the priority given and approach taken to community notification. One important influence on the budget is the amount of contact that is maintained with the offender (Poole and Lieb 1995). While precise details on costs of setting up such schemes are again difficult to come by and if obtained, difficult to interpret due to different standards within states, initial set-up costs have been estimated to be in the region of \$120,000 in Washington to \$200,000 in Virginia (Poole and Lieb 1995; Freeman-Longo 2003).

Once a registration and community notification system has been set up, the additional operational costs to the state that arise usually relate to data collection and data processing, administration of the central registry, administration of the registration forms, programme evaluation, compliance monitoring and enforcement, and disclosure. In their examination of US sex offender registers Heberton and Thomas (1997) found that on average the cost for processing the initial registration form was between \$15-30 per offender, that the costs incurred by annual postal address verification was \$5-10 per address, and that every actual police verification check cost in the region of \$50-70. The 'average' cost of disclosing details involving postal mailings and a community meeting ranged between \$250-400. Despite these costs, states admit that the maintained registries are not accurate and that probably in excess of 25% of the data may be incorrect (Freeman-Longo 2003), with some states assuming that *'the whereabouts of as many as 50% of registered sex offenders are not known'* (CSOM 2001b, p 14).

In addition to the financial impact, those authorities that have to deal with community notification find it *'very time-consuming and burdensome'* (Finn 1997, p 10; Zevitz and Farkas 2000). This is especially the case when the efforts to keep the data up-to-date are examined. In every state there are problems with regard to the compliance with registration (CSOM 2001b). While in the past most states applied a passive approach for both updating as well as verifying offenders' details (Heberton and Thomas 1997), this has now changed, with states introducing penalties for non-compliance. Nonetheless, since many sex offenders are not under direct community supervision, such as probation or parole, essentially the responsibility for conforming with the registration requirements lies with the sex offender and is influenced by the *'degree to which law enforcement tracks and/or verifies offenders' whereabouts'*

(CSOM 2001b, p 14). Due to its unfunded mandate nature, there is often a '*patchy implementation*' (Pawson 2002) and essentially, the quality of the data a state has on its sex offenders depends on the amount of resources allocated (Hebenton and Thomas 1997).

Another implementation problem relates to the correct attribution of risk to sex offenders. In order for risk assessment to be done correctly, clear definitions of the different risk categories and both '*reliable and valid operational procedures*' for the application of these categories to individual offenders have to exist. This task is extremely difficult (Pawson 2002), especially as no one knows the precise rate of reconviction amongst sex offenders. Those in charge of risk assessment in Washington State did find the process problematic due to '*unclear risk classification guidelines*' (Finn 1997, p 9). Although differences in risks are partially accounted for in the three tiers of risk, assignment to these categories varies hugely across different states (Pawson 2002). While in Washington it was found that '*law enforcement officials were remarkably accurate in their identification of high risk juvenile offenders for community notification*' (Schram and Milloy 1995, p 2), there are several potential pitfalls when assigning risk.

In New Jersey's *Registrant Risk Assessment Scale Manual* which accompanies its *Risk Assessment Form*, it is claimed that '*the panel has formulated a method of objectively placing registrants in tiers*' (Todd Whitman and Farmer jr 2000, Appendix, Exhibit E, p 1). However, it will be difficult to correctly assign values under each of the categories given on the form. When reflecting over potential future offences, it also has to be born in mind that although past offences might impact on future offending, the latter will inevitably be influenced by several other factors, such as treatment, the psychological and emotional state of the offender and the opportunity to offend, all of which cannot be accounted for. Essentially, it appears to be the case that the attempt to arrive at a three-tiered classification in the way it is done, is '*an imprecise instrument on [sic.] a multifaceted phenomenon*' (Pawson 2002, p 17). Given that there does not appear to be any proper assessment of this approach, all that can be done here is to highlight potential pitfalls and dangers.

While it is not the aim of this thesis to assess the legal appropriateness of Megan's Law, some of the aspects challenged before courts are important in so far as they are of a general nature and thus would have to be addressed under both UK and EU legislation in the case of a Sarah's Law. Although the registration aspect of Megan's Law is mainly unproblematic since it usually does not infringe any rights to privacy or lead to vigilantism, the community notification aspect has sparked great controversy (Steinbock 1995). Legal challenges to the community notification aspect of Megan's Law are of a threefold nature and concern punishment, privacy and due process (Sacco 1998).

It is claimed that community notification laws represent an additional punishment to previously imposed punishments such as detention. Rather than addressing the question of additional punishment, the reply given by states is usually of a definitional nature. It is argued that community notification is a regulatory, not a punitive measure (Levi 2000), so that the offender's rights are displaced with the rights of the knowledge-system (Hebenton and Thomas 1996). All that community notification measures are claimed to do are to

*'provide the information necessary to make the public and vulnerable individuals aware of the potential danger posed by sex offenders and let them know how to protect themselves and their families'* (Sacco 1998, p 51).

Since all details of the offender are already in the public domain in so far as they are readily observable information, and since states point out that this information is not to be used for illegal purposes, any negative consequences for the offender arising out of community notification are the offender's own fault, brought about by the offender's previous behaviour and *'not the result of the State notification and dissemination of public information about the crime and the conviction'* (Sacco 1998, p 51). Although it is claimed that *'registration is not extra punishment, that's certainly not what is being said and felt by hundreds of thousands of sex offenders'* (NCIA 1996, p 7).

The second challenge is that community notification invades an offender's constitutional right to privacy. As Supreme Court Justice Louis Brandeis pointed out, *'The right to be left alone is the most comprehensive of rights and the right most*

*valued by civilized man*' (quoted in NCIA 1996, p 8). The response given to the question of infringing privacy is usually that there is no '*constitutionally protected privacy interest*' (Sacco 1998, p 51). As before, it is pointed out that the information is already available in the public sphere. Since rights to privacy involve an act of balance between public and private interests, any constitutionally granted right of privacy would also be limited in the case of sex offenders: the victim's interest would be weighted against the offender's.

The final challenge addresses the right to due process and the claim that community notification infringes on sex offenders' liberty interest. Again the counter-argument is that if there were such a thing it would involve a balancing test. Also, since the laws only provide information, they do not pose any constraints. Any constraints experienced by the offender arising out of community notification are said to be once again the offender's own fault since they arise out of the '*heinous crime*' committed (Sacco 1998).

Overall, Megan's Law therefore reflects a shift away from concerns of the civil liberty of the offender towards greater protection of vulnerable women and children, with the inevitable result that the liberties of sex offenders are being diminished (Brooks 1995). The replies to legal challenges, rather than addressing the question in hand seem to answer the question by re-defining the problem.

As well as these legal problems, there are other features that need to be addressed. First and foremost, it is assumed that the infringement of personal rights to a certain number of offenders is acceptable in light of the idea that the potential harm to children posed by high risk offenders is great. The question then arises that if it is possible to identify such offenders, why are they being released in the first place (Steinbock 1995)? Secondly, it is logically and reasonably possible to argue that

*'it is morally wrong to detain [or for that matter curtail] a demonstrably high-risk offender after the end of his sentence, even though serious crimes against innocent persons will probably be prevented, because that further detention constitutes punishment for a crime that has not yet happened'* (Harris and Rice 1998, p 74).

Finally, the claim most often cited in favour of community notification, that if these measures '*save one child, they are worth it*' is difficult to maintain if these laws harm other people, especially if innocent. One must ask whether any law is '*worth harming others...for the sake of one*' (Freeman-Longo 2003, p 7).

### **Implications for the Offender, the Victim and the Community**

Although research in Washington State found that harassment '*has not been nearly as severe or as frequent as expected*' (Finn 1997, p 14) it seems to be the case that in the US, at least in 10% of the cases of disclosure, some form of harassment takes place (Hebenton and Thomas 1996). It is, however, difficult to assess the true nature of vigilantism since not all instances of harassment will be reported (Matson and Lieb 1996b) and there is only anecdotal evidence on harassment, albeit for almost every state in the US (CSOM 2001b). Most of the harassment seems to involve verbal threats and/or attempts to drive the offender out of the community (CSOM 2001b).

A study on the perception of community notification legislation found that these measures might have positive therapeutic consequences for sex offenders in so far as some participants considered these laws to provide a strong incentive not to reoffend (Elbogen, Patry et al. 2003). Unfortunately, there is no further follow-up data available to examine the actual impact of these measures on treatment and rates of recidivism. The study was also limited to Nebraska and the authors mention the possibility that participants simply attempted to display themselves in a favourable light (Elbogen, Patry et al. 2003).

When examining the attitude of sex offenders towards community notification, Zevitz and Farkas (2000) found that offenders had the impression that community notification had a negative impact on their transition from prison to society. As can be seen in Table 6.5, the main worries were exclusion from accommodation, threats and the negative impact this might have on their family members.

**Table 6.5: Consequences of Notification, as Reported by Sex Offenders**

<b>Problem</b>	<b>Percentage Reporting (%)</b>
Exclusion of residence	83
Threats/harassment	77
Emotional harm to family members	67
Ostracized by neighbours/acquaintances	67
Loss of employment	57
Added pressure from probation/parole agent	50
Vigilante attack	3

(Zevitz and Farkas 2000, p 10)

The authors concluded that it would be necessary to examine in more detail the extent to which any pressures resulting from community notification played a role in offenders' success or failure under their community supervision arrangements and question the idea that community notification will lead to an acceptance of guilt on the part of sex offenders, which is often seen as a first step towards effective treatment (Zevitz and Farkas 2000).

While there do not appear to be any precise details on victims' views in respect to community notification, there is the danger that as a result of these measures victims, especially if related to the offender or living in the offender's neighbourhood, can be identified (CSOM 2001b).

As regards the community in general a lot of speculations and assumptions can be found with little or no supporting evidence. Winick (1998) assumes that there are potentially two positive aspects of community notification. First of all, the community might be positively affected by the feeling of control over its territory that is achieved through obtaining information relating to sex offenders, which in turn might reduce the level of anxiety and fear. Secondly, law enforcement officials might be assisted by

these measures in overcoming '*a heightened sense of helplessness, despair, and depression at their inability to protect the community from the actions of sex offenders*', since Megan's Law assists them in feeling that they can help and protect the community as such: '*Megan's Law thus can be an oasis of job satisfaction in what otherwise often is highly frustrating work*' (Winick 1998, pp 553-554). Despite the perception of increased workload mentioned earlier, it appears that law enforcement officials in general do find Megan's Law useful in locating and apprehending suspected sex offenders (Matson and Lieb 1996b).

In face of any potentially positive impacts, community notification can also have negative impacts on the community. Any information about sex offenders can lead to an increase in '*the saliency of the risk of a sex offense, causing fear, anxiety and sometimes even hysteria*' (Winick 1998; Elbogen, Patry et al. 2003). As Zevitz and Farkas (2000) found, some attendees of notification meetings left those meetings with a feeling of heightened concern about the sex offending. In addition, community notification can lead to a '*fear and suspiciousness of strangers*' resulting in a breakdown of the community (Winick 1998, p 554).

Finally, communities can be provided with details of offenders which, especially as relates to addresses (Sheppard 1997), are out of date or have never been correct. This can lead to unnecessary harm to people, particularly those who happen to occupy the former residence of a sex offender (CSOM 2001b). This and the mere presence of sex offenders in the community also have an impact on the value of real estate (Bell 1998). Although there does not seem to be any empirical research assessing the precise impact of the presence of sex offenders on the value of a property, there have been cases where buyers have filed suit against sellers in cases where they had not been informed about sexual offences taking place in or in proximity to a property, the claim being that this reduced the value. This has led to the recommendation that '*appraisers should address these issues [existence of sex offenders in the community] within their reports*' (Bell 1998, p 40).

## ***Awareness about International Evidence in Britain prior to the Sarah's Law Campaign.***

Although it has not been possible to identify the precise extent to which practitioners and the British Government were aware of the international evidence-base on Megan's Law prior to the Sarah Payne case, it is possible to make some tentative assumptions. The Government is reported to have examined Megan's Law in light of its plans to set up a national sex offender register in the early 1990s. In light of American compliance rates and the danger of vigilantism, a decision was however made not to follow down that route (Ahmed and Bright August 6 2000b). It seems that the British Government and the British police closely observed the American approach to sex offender registration and searched for potential lessons that could be drawn and applied to the British context throughout the late 1990s. For example, the Home Office's Police Research Group commissioned research to gather examples of good practice from the US in order to learn from its approach to policing sex offenders. This was carried out between 1995 and 1996 by Heberton and Thomas and the findings were published in 1997 as part of the Police Research Group's *Crime Detection and Prevention Series* (Heberton and Thomas 1997). In relation to the question of disclosure they found that while overall a lot of American police officers considered the disclosure of offenders' details to be of value, the practice involved a great amount of work and included as one essential aspect the education of the community in order to prevent a false sense of security on the one hand or alarm and vigilantism on the other.

In addition to such research there also appears to have been an examination of the American approach by British practitioners involved in sex offender management. Sponsored by the Fulbright Commission, the management of child sex offenders in the community had been explored as part of professional development programmes. While various parts of the US were visited, the focus seems to have been on Washington State which was considered to be on the forefront of developing approaches to managing sex offenders in the community (Interviewee 6). Within Washington State part of the approach was to hold public notification meetings.

*'They were generally positive events... there was a meeting at school called by the police and correctional services. They had about 100*

*people turn up and there was a joint presentation by police and correctional services about, it was sort of a public information exercise for the main. So they were talking about sexual offending behaviour and who offends and what to look out for and towards the end of the meeting they identified the individual who was returning to the community and tried to put the harm he presented and the nature of the risk into a context so that people did not feel unreasonably anxious about him being in the community. There was quite a high feeling of anxiety when the meeting started but they managed the meeting well and there was a degree of public reassurance when people left and their experience in Washington State was that they had a very low level of offending behaviour against offenders and disruption had not occurred there. But that wasn't so across the states' (Interviewee 6).*

When looking at the broader context within the US, however, the picture that emerged was that

*'sex offender registration in the States is a very mixed bag. So, the accuracy of records, the adherence to registration generally is very poor across the States. I think in California, where they have had the process of registration for some time, around 50 years, the compliance rate is as low 30%. Clearly, if you don't know where people are it's a fairly useless piece of legislation. You just have pictures of people' (Interviewee 6).*

While some of the organisations involved in the debate about Sarah's Law were aware of some of the research on the effectiveness of community notification from the US – for example in a press release on 30 July 2000 NACRO referred extensively to the findings of the aforementioned study by Schram and Milloy (Document 41) – the NSPCC set out to review the effectiveness of Megan's Law and community notification measures.

## **The NSPCC's Research**

Although there appears to be a common trend when doing research within a policy making team that often '*a policy is agreed and some research then is needed to back it up*' (Interviewee 2), this does not necessarily seem to have been the case in these circumstances.

*'With this it did not feel like this because I think the News of the World were moving quite fast and because we had to do this quite quickly it did not feel quite like that and in fact some of the findings were not actually – they were sometimes – how shall I put it – I think some people had been wanting to be more supportive [of Megan's Law]' (Interviewee 2).*

The research started out as a '*very quick fact finding mission...you know, stop what you are doing, do this you have got two or three weeks, see what you can find*' (Interviewee 2). Following earlier discussions within the NSPCC the research appears to have been properly started on Monday 14 August (Personal Correspondence). It is interesting to consider what the importance ascribed to this research within the NSPCC might have been at the time since it was assigned to someone located in a completely different, unrelated field and who was very new to the organization.

*'Elizabeth Lovell did not know at that stage a lot about people's work in that team [the NSPCC's policy and public affairs team] and the connections that they had – say with civil servants, the Association of Chief Police Officers. Elizabeth was not involved in the discussions that were going on at that stage...she was very much coming in new so that she wasn't all so aware of what was going on around her' (Interviewee 2).*

The initial findings were rather short and sketchy because the existing research base seemed to be limited.

*'Elizabeth Lovell produced four sides – maybe eight, but nothing really great, bullet points of what she found from mainly looking at websites, I think there were a few telephone conversations to people in the States – pulling together – and it was clear that there wasn't much [evaluation*

*done], so there really wasn't much evidence to support it [Megan's Law]' (Interviewee 2).*

At the time, researching Megan's Law seemed to be a rich area to develop and to turn the findings into something more substantial appeared to be a good idea. Within the NSPCC it was realized that the debate about community notification would go on rather than go away and always had the potential to be brought up again, especially in reaction to a specific case where it might be relevant. Consequently, the research was extended. Given the very strong public reaction, and in order to come up with a properly defensible position with regard to the *News of the World's* campaign, the research process was marked by '*really, really looking for some robust evidence*' (Interviewee 2).

However, given time constraints, and the impression that community notification initiatives in other countries, such as Canada, Australia and New Zealand were not developed to the same degree as those in the United States, it was assumed that it was unlikely that any useful evaluative material from these countries existed at the time. This, combined with difficulties in obtaining any information relating to community notification for other countries, led to the decision that the most productive and relevant thing to do was to focus the research purely on the United States (Interviewee 2). The main methodology chosen for the research was a literature review which was conducted mainly via the Internet and a series of semi-structured interviews with various people involved in community notification across the United States. Those interviews, twelve of which took place over a timespan of only three days between 23 and 25 August 2000, addressed amongst other things the key questions of vigilantism, compliance rate, potential impacts on levels of recidivism, anxiety within the community and the broader question of the ways in which Megan's Law has helped or hindered the protection of children and the management of sex offenders in the community (Interviewee 2 & Personal Correspondence). Of those contacted quite a number were key people working in the area of sex offender research and management, such as Roxanne Lieb and Scott Matson. The speed with which the interviews were organised and carried out again resulted partly from the fact that for the NSPCC '*speed was of the essence*'. People in the US had heard about the Sarah Payne case and were keen to talk (Personal Correspondence).

By the end of August, all the information required had been amassed and was in good note form. While a couple of key people within the policy and public affairs section of the NSPCC had been continuously updated on the research findings, other people to whom this research was relevant were informed via an internal memo stating the main findings during the first week in September 2000 (Personal Correspondence).

It appears that throughout the progress of this research the NSPCC had been developing its policy line according to the findings, at the same time as keeping the Home Office up-to-date so that other people were aware of them. However, due to other commitments which had been put on hold after the beginning of the *News of the World's* campaign, it took some time before the initial internal document was transformed into the official report *Megan's Law: Does it protect children?* and was more widely disseminated (Interviewee 2). In the meantime, NSPCC's policy advisors were in meetings with civil servants and MPs, were sitting on representative groups discussing this issue and were participating in the overall review of the law on sex offences. Although they were able to use the pre-publication findings in order to inform their discussions and contributions, the official report *Megan's Law: Does it protect children?* (Lovell 2001) was only published in early 2001 (Interviewee 2).

The report's launch took place at a seminar at the NSPCC's main building in London. Key civil servants and people from other organizations, such as ACPO and APOC were invited to this event. There was a presentation,

*'they had discussions, they had lunch, they had more discussion about various lines and approaches – it was that kind of day you know. It was not a huge thing but it was quite a good selection – I don't think it was a chatty kind of meeting but the discussion was very good'* (Interviewee 2).

In addition to those people present at the launch event, the report was also disseminated to several other individuals and organizations, as can be seen from Table 6.6 (Personal Correspondence).

**Table 6.6: Dissemination of the NSPCC's report**  
***Megan's Law: Does it protect children?***

Information was sent to:

- Police
- Probation
- ADSS
- MAPPPs
- Home Office
- House of Commons library,
- Ministers with an interest
- MPs with an interest
- Academics with an interest
- US contacts and clearinghouses
- All interviewed/acknowledged in the paper

(Source: Personal Correspondence)

While some of the above were sent a full copy of the report, others, who were considered to be less likely to read the full report such as MPs and peers in the House of Lords, were sent a 'research briefing' which consisted of the report's executive summary. Following the launch seminar, further presentations on the report were given at the National Organisation for the Treatment of Abusers' (NOTA) annual conference in September 2001, the annual ACPO conference on sexual offences and child protection in October 2001 and in the summer of the following year at the International Society for the Prevention of Child Abuse and Neglect (ISPCAN). However, the NSPCC's dissemination strategy '*missed a trick in terms of the American market*' where it was hardly publicised (Interviewee 2 & Personal Correspondence).

The report, while stating similar findings and echoing earlier conclusions to those given in the internal memos, does contain more details, partly due to the fact that relationships with some of the American contacts had developed further (Interviewee 2 & Personal Correspondence). When comparing the NSPCC's report to the review of

the available research on Megan's Law that was conducted for this thesis, it is evident that the NSPCC's research refers to the key studies available on Megan's Law at the time and can be seen as a thorough review of the available research evidence. In essence, it highlights thirteen key findings, as given in Table 6.7, and concludes that

*'there is very little evidence to substantiate claims that community notification enhances child safety. It is possible that there are both intended and unintended positive and negative outcomes of community notification. We simply do not know enough about these at this time'* (Lovell 2001, p 35).

The report's conclusion that *'we simply do not know'* is an important one in light of practitioners' needs. At several of the conferences and in various discussions people appeared to show a slight frustration with this conclusion, confirming the understanding that policymakers and practitioners favour straight-forward black-and-white conclusions and recommendations.

*'[T]hat researcher's line that there is no evidence to suggest that it protects children – they still want to know does it protect children or not...there is still that sort of...from some of the people in the audience there was that slight frustration that OK you've done this research – does it protect children or not...'* (Interviewee 2).

However, overall the reaction to the report was *'very positive'* with several people from both Britain and the United States sending letters of appreciation to the NSPCC, one of them coming from Roxanne Lieb, one of the key researchers of Washington State's approach (Interviewee 2). In addition, this document was widely quoted by the other organisations involved and appears to have become an important source for lending independent support to the Government's decision of not introducing community notification (Personal Correspondence).

**Table 6.7: Key Findings of Megan's Law: Does it protect children?**

- Figures on stranger abuse are not available and there is no evidence that community notification has resulted in a decreased number of assaults by strangers on children
- Although levels of recorded intra-familial sexual abuse in the US show a marked decline since the early 1990s, the decline predates the introduction of Megan's Law
- There is very little research about how community notification empowers parents, or the ways in which parents use this information in order to protect children
- There is little knowledge about whether and how adults and children change their behaviour as a result of community notification
- There is little to suggest that people are more or less anxious as a result of community notification
- There is no evidence to suggest that community notification procedures have or have not deterred children, siblings or parents from disclosing intra-familial abuse
- There is very little awareness of, or concern about, sex offenders using public information sources in order to network
- There appears to be some indication that community notification may result in harassment and vigilantism. However, there is little empirical quantitative or qualitative evidence about this: the number of reported examples is low and it is difficult to know the level of unreported incidents
- There seems to be little evidence about whether or not community notification drives sex offenders 'underground'
- Despite reports of concerns about the reintegration of sex offenders into the community as a result of community notification, there is very little evidence about this in the literature
- It is difficult to know whether notification impacts on recidivism. To date however, there is no conclusive evidence that community notification reduces re-offending
- Although there is broad agreement that community notification has enhanced the tracking and monitoring of sex offenders, there is little collated information to substantiate this
- The cost of implementing community notification is high both in financial and personnel terms

(Adapted from Lovell 2001, pp 2-3)

## ***The Dossier of Evidence***

Although the research base regarding the effectiveness of community notification measures in child protection appears to have been inconclusive, ACOP and ACPO provided evidence from practice regarding the impact of disclosing sex offenders' details within Britain, which was seen to be very conclusive. Despite being publicly known as the '*dossier of evidence*' several people with close knowledge of this work criticised this choice of terminology. '*I don't like the word dossier because it has a bad connotation...I would not call it a dossier*' (Interviewee 4). '*It was a list at best*' (Interviewee 5). Whatever the most appropriate title, in a joint letter from ACPO and ACOP to Tim Toulmin, Deputy Director of the Press Complaints Commission at the time, the title given to the collected set of evidence provided was a '*dossier of reports and incidents*' (Document 13).

As previously mentioned, the idea for collecting evidence on the impact media campaigns had on the work with sex offenders originated from around the release of Sidney Cooke and Robert Oliver in 1998. The original dossier, on which the one in 2000 would be modelled, was dated 24 April 1998 and listed, over several A4 pages organised by geographical location, ranging from Wales, the South East and the Midlands to the North, various incidents that had resulted from press publications about sex offenders and their offences. In several of the cases innocent people were mistaken for someone on the list and attacked, or as a result of the erroneous identification were in the need of protection; some offenders had to be moved, wrong accusations had to be clarified and surveillance or supervision arrangements that were in place for some offenders were disrupted. Other offenders simply left their assigned accommodation and went underground or broke some of their licensing arrangements. In addition there were letters from anti-sex offender groups to the probation service trying to pressurise the service into supplying a picture of an offender due to be released so that this could be used for press publication (Document 12). At the time, in addition to being forwarded to the Press Complaints Commission, this dossier was actively distributed to some members of the press. It provided ACOP with an important point of reference in dealing with the media.

*'They could actually say to people – "look we have gathered this evidence together". I mean the media is interested in stories and they*

*could say this is the evidence we gathered and these are the stories from this evidence because the media, are not interested in stats but they are interested in human stories' (Interviewee 5).*

The lessons that were learnt from this experience were drawn upon in the response to the *News of the World's* campaign in 2000. As a result, this time round the gathering of information was far more focused (Interviewee 5). Just one day after the *News of the World's* name-and-shame campaign started a letter was sent to all chief probation officers. In the letter, entitled '*(Here we go again...) News of the World: Name and Shame Campaign*' all services were asked to closely examine the developments in their area and to report back any instances of problems that might occur (Document 69). Immediately replies reporting a variety of incidents that had resulted from the *News of the World* campaign started to accumulate at ACOP. All this once again enabled ACOP, in co-operation with ACPO, to produce a '*dossier of evidence*' which they used to argue their position.

The dossier compiled in the summer of 2000 followed a similar layout to the one produced in 1998. It also listed, organised by geographical location, various incidents that occurred as a result of the naming and shaming of sex offenders. The three key themes identified in the dossier of 2000 were that the *News of the World's* actions hindered the probation service's work in child protection, caused harm to third parties and caused violence (Document 19).

The evidence included in the dossier covered a broad spectrum of incidents that occurred from 23 July to around 11 August 2000, all mirroring behavioural patterns and incidents that seem to be a standard result of name-and-shame campaigns in Britain. It also included some correspondence signed '*Vigilantes*' which reads:

*'If the phades [paedophiles] are driven underground they can't do any harm to kids can they? But it is no longer an issue of the police it is an issue of the people and we intend to drive them off this estate even if we are to use violence to do it' (Document 16).*

In addition, there were various letters of appeals from convicted sex offenders. One of these was signed '*A desperate man at his wit's end*'. The letter written by a convicted

sex offender, dated 25 July, was addressed to the Chief Constable of Gloucestershire Tony Butler in person and was an *'appeal for help'*. The sex offender, who, given the circumstances, decided to remain anonymous, reveals throughout the letter that he has one conviction, was released from prison six years ago, is 61 years old, 85% disabled with a serious heart condition and diabetes and is living with his *'dear wife who has stood by him throughout'*. He pointed out that *'after this terrible irresponsibility by the News of the World'* he was in fear for his life and that of his wife and was now, despite never having hidden or changed his name in any way so far, forced to do so. He would move to another part of the country. While pointing out that he was not asking for sympathy, he also recounted some of the experiences that he had during his time in prison which are not an easy read, such as being segregated from the other prisoners for his own protection and finding excreta and urine in his food on several occasions. Pointing out that he had already paid a very high price for what he did he went on to ask that after *'[h]aving paid my Debt to Society – What right does the News of the World have for punishing me all over again?'* (Document 17).

While compiling the dossier, police and probation also made contact with other experts in the area of child protection and sex offender management, as well as those who might know more about Megan's Law, and their expertise was drawn upon (Interviewee 4). The people contacted appear to have included Don Grubin, a British expert working in the area of mental health who had done a lot of research on sex offending against children and sex offender treatment, as well as practitioners that had visited the US.

*'[T]here was a guy who worked in the Met who did go to the States and I think it predated this...he got a scholarship to research Megan's Law and he had been there. Police and probation got in touch with him and the enforcement rate was – the best rate I think was Washington State – but in California for example the enforcement rate was minimal. They were put on the register and that was it. They did not do any follow-up or anything. They did not know where they were. And so it was very, very patchy'* (Interviewee 4).

Drawing on the expertise of such people provided an important source of reassurance and support for the stance taken by ACOP and ACPO in the various discussions, both

with the parents of Sarah Payne and the *News of the World*, as well as with representatives of the Home Office.

*'[W]hen they went into these meetings they were not just on the back-foot you know but they had a lot of knowledge about this. I felt confident that when they were there with Sara Payne they were not making this up and panicking. They had a lot of practice and they had options that they were trying to pursue with Government to get things done'* (Interviewee 4).

## **Policy Outcomes**

The picture that emerges from the analysis of the available evidence throws doubt on the usefulness and appropriateness of introducing sex offender community notification along the lines of Megan's Law, and the question that presented itself to the politicians and practitioners was what to do. There was widespread agreement that child protection measures needed to be improved and that legislation regarding sexual offences needed updating. Consequently, the Government appears to have felt under pressure to address these issues urgently.

*'[C]ritical incidents like Sarah Payne – the pressure that that places on politicians to respond to the public anxiety and the media pressure - politicians feel that they have to be shown to be engaged in what are tragedies and trying to prevent future tragedies from occurring – so I understand the wish for Home Secretaries to do something to make things better – that sort of legislation isn't always good legislation if it is not thought through clearly what the implications are'* (Interviewee 6).

As has been briefly addressed when looking at the events surrounding the Sarah Payne case, as a result of the *News of the World*'s "For Sarah" campaign in Chapter 4, several policy changes were rushed through Parliament. Being included in the Criminal Justice and Court Services Act that was going through Parliament, some of these changes amended sections of Part 1 of the Sex Offenders Act 1997 (see Table 6.8).

**Table 6.8: Changes introduced by the Criminal Justice and Court Services Act 2000**

Four changes to procedures on initial notification:

- a reduction from 14 days to 3 days in the period during which initial notification must be made
- a new requirement that initial notification be made in person
- a new power for the police on initial notification to take fingerprints and photographs of offenders
- a new requirement that notification of relevant information be made at a police station prescribed by the Secretary of State (subject to regulations, which are also coming into effect on 1 June)

and three completely new provisions intended to strengthen court and police powers in respect of relevant offenders

- an increase in the maximum penalty for a failure to comply with the Act's requirements to 5 years imprisonment and/or a fine on indictment
- a new power for courts on convicting an offender of a relevant sexual offence to impose a restraining order on him; and
- a new requirement that a relevant offender must notify the police of his intention to leave the United Kingdom and of his return (subject to regulations, which are also coming into effect on 1 June)

(Home Office 2001a)

Throughout the research for this thesis, these amendments have been considered to be a positive development by those interviewed.

*'They were sensible proposals. The organizations involved – police NACRO etc – were all in favour'* (Interviewee 3).

However, there was also a broad perception that the changes to the Sex Offenders Act that resulted from the events would have occurred in any event.

*'I am sure they would have happened anyway. Before and after there was a process of extension of supervision and restrictions on sex offenders - it has been largely worked out by officials working with offenders and victims'* (Interviewee 3).

Although the *News of the World* subsequently has tried to take a lot of the credit for bringing about these changes (see for example *News of the World* 01 July 2001; *News of the World* 23 December 2001; *News of the World* 15 July 2001), as has been seen, the proposed changes appear to have originated from the organisations working in this area, especially as a result of a contribution made by ACOP and ACPO.

*'I think if something good came out of it, it did strengthen some of the provisions later on, but not in the way – but the alliance of organisations were arguing for them anyway – I mean that was one of the ironies and one thing that annoyed me about Kuttner was that he was claiming that the things that we got, I mean the things that ACOP and ACPO proposed, that stopped the campaign were things police and probation wanted to have anyway'* (Interviewee 4).

While the changes regarding the Sex Offenders Act 1997 were important in addressing existing loopholes that had previously been identified, the main result of the debate in the summer of 2000 was the introduction of Multi-Agency Protection Panels (MAPPA) across England and Wales. Sections 67 and 68 of the Criminal Justice and Court Services Act 2000 imposed duties upon the police and probation services to set up MAPPA in each of the 42 Areas of England and Wales. It also required the authorities responsible for sex offender management in each area to establish arrangements to assess and manage the risks posed by sexual and violent offenders; to monitor those arrangements and make necessary changes; and, to prepare and publish an annual report on the MAPPA (National Probation Service 2004, p 1). This basic legislative outline meant that the necessary arrangements could take shape through a process of professional consultation.

*'What happened then...was that this basic outline [provided in the Criminal Justice and Court Services Act 2000] has been developed by the Public Protection Unit and practitioners, identifying what's good practice, and getting some thing of the sort of thoroughness, the robustness, that you begin to see in the national guidance. And then that is built on by the Criminal Justice Act of 2003 where you see the prison service coming into the part of responsible authority and lay advisors. So it's a sort of incremental development'* (Interviewee 6).

The legacy of Sarah Payne's tragedy within MAPPA can be considered to be twofold. The first part relates to the specific category of sex offenders to which Roy Whiting belonged, while the second addresses the notion of public education and confidence.

*'First of all, Roy Whiting was a convicted sex offender and he was convicted of a similar offence of abduction of a girl and her sexual abuse... He is sort of a – MAPPA, deals well, essentially the structures that were developed deal well with an individual of that nature...The other stream of thought out of the tragedy of Sarah...was the issue of public confidence... [A]n onus was placed on the responsible authority to improve the dialogue, its communication, with the public in order to build up public confidence, maybe even to educate the public about the nature of sexual offending behaviour. So that process of dialogue was intended to start through the requirement of an annual report to be published'* (Interviewee 6).

This theme of building public confidence continued through to the appointment of lay advisors to the strategic level of MAPPA in 2003. The idea underlying these appointments appears to have been sparked off through subsequent talks with the *News of the World*.

*'Representatives of the alliance of organisations went back to meet Andy Coulson [a member of staff at the News of the World] about 4 months later... to give him a progress report. Rebekah Wade wasn't that interested so it was delegated to Andy Coulson...One representative of the alliance of organisations said this is what MAPPA looks like and he [Andy Coulson] said, well where is the public in this, where is the For Sarah representative – I want a For Sarah representative on this – The representatives of the alliance of organisations said, well, it would be very difficult to get a member of the public involved in the casework without them being trained and it's pretty horrible stuff – and he said, no, there ought to be a member of the public on this – although he wasn't very threatening about this the representatives went... to ACOP and they said, "Hmm, well, not a bad idea"'* (Interviewee 7).

This idea was then developed further. A pilot scheme was set up in 2002 in order to examine the feasibility of having lay people involved in overseeing on a strategic level the sex offender management arrangements within an area. The evaluation of this scheme was *'very positive'* and at the time of writing the responsible authorities were in the process of appointing and training 84 lay advisors across England and Wales, two for each area (Interviewee 6).

At one point it was also considered to include journalists at the strategic level of MAPPA. The underlying ideas for this were that firstly, the inclusion of journalists could be very helpful in the public education about sex offenders and their management. Secondly, if a journalist was involved in MAPPA it meant that if a local newspaper *'started going barney'*, the authorities in charge of sex offender management would have *'someone to speak on their own [the media's] terms'* (Interviewee 7). However, this idea did not materialize in the end. *'[T]he politicians did not want a newspaper so [they] only went for lay members'* (Interviewee 7).

These outcomes meant that some of the changes to sex offender legislation ACPO and ACOP had been arguing for since the introduction of the 1997 Sex Offenders Act were finally put into place. At the same time, the Government was given a basis from which it could reply to the *News of the World's* demands for public knowledge about sex offenders.

*'[T]he Government felt safe to argue against the News of the World, it gave them territory to argue on – the publication of the MAPPA reports and you know the reports get published every year with the number of sex offenders in each area and they thought that they could argue that that met what the News of the World wanted so that people had an awareness of what the risk was. But it didn't endanger individuals or offenders by explicitly notifying them, you know, making it educational...And so the kind of general pattern was very much like the sex offender register where you get a piece of policy arrived at from not a very sound point of view but then the policy is refined to have the same sort of public presentation as the original concept but to make it operationally something quite useful - ...it was the same with MAPPA. It started off with something about public notification and access to sex*

*offender register and it ended up with possibly the world's most sophisticated information sharing offender management planning victim contact arrangements you can get' (Interviewee 7).*

## **Summary**

This chapter has explored the evidence-base on Megan's Law and the various sources of evidence used within the debate about the introduction of a British equivalent. The picture that emerges when looking at the research evidence on Megan's Law is that there is no conclusive evidence as to its effectiveness in improving child safety. While there appears to have been some awareness about this in Britain prior to the Sarah's Law Campaign, this perception was reinforced by the findings of the NSPCC's research into the effectiveness of Megan's Law.

In addition to such lessons from abroad, previous name-and-shame campaigns in Britain as well as the impact of the Sarah's Law Campaign indicated that disclosing information on sex offenders in Britain tended to have negative effects on offender management as well as public protection.

The other main focus of this chapter has been an examination of the policy developments that resulted from the Sarah's Law debate. While shortcomings in the existing legislation were addressed, the most important outcome can be considered to be the introduction of Multi-Agency Public Protection Arrangements (MAPPA). Although these had started to emerge prior to the case of Sarah Payne it appears that the latter accelerated their introduction and led to the inclusion of members of the public at the strategic level of MAPPA in order to improve public confidence and understanding.

## Discussion: Learning from the Case Study

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Chapters 4, 5 and 6 have addressed the case-specific research questions outlined in Table 3.3. As such, they examine the events surrounding the Sarah's Law debate, the network of key actors involved, the nature and origin of the various forms of evidence used throughout the debate, as well as the potential lessons that could have been drawn across time and space. This chapter takes the insights that were gained and discusses them in relation to the literature on policy networks, evidence-based policy making and lesson-drawing. Consequently, the focus shifts away from the case-specific research questions towards the more general ones outlined in Table 3.2. The chapter follows the structure of Chapter 2 in that it starts off by looking at policy networks before turning towards the insights on the use of evidence in the policy process and lesson-drawing. The final part of this chapter concentrates on discussing how one can understand the nexus of networks, evidence and lesson-drawing within the policy process.

### ***Policy Networks***

The existing literature on policy networks reviewed in Chapter 2 identifies a set of key parameters or variables that need to be explored when analysing policy networks. First of all, how did the network come into existence? Secondly, what are the key defining characteristics of the network and finally, what are the links that exist within the network and to what extent, if any, do they impact on its operation? As such, these parameters provided the basis for the specific questions about the Sarah's Law network. The detailed account of the Sarah's Law network given in Chapter 4 and 5 is now used to comment on how this case study contributes to the understanding of policy networks.

The review of existing literature on policy networks in Chapter 2 highlighted how four main network metaphors or concepts have emerged as different ways of characterising policy networks and explaining their operation: iron triangles, issue

networks, policy communities and advocacy coalitions. To recapitulate, iron triangles perceive policy networks to be very stable, tripartite arrangements of interest groups, committees and an executive agency, which operate over a long period of time with little or no outside interference within a narrow policy niche. In contrast, the concept of issue networks envisages a huge number of network participants from various backgrounds. The composition of a policy network is perceived to be in a permanent flux as a result of some members leaving and others moving into a policy network. Consequently, no one is considered to be really in control of the agenda and there is an unequal distribution of power and resources. Sitting somewhere between iron triangles and issue networks, the concept of policy communities sees networks as being made up of a limited number of participants from specialist backgrounds. Membership is considered to be reasonably stable over time and it is postulated that there is a balance of power between the network participants. Finally, the advocacy coalition concept of a policy network, while acknowledging a variety of participants within any set of coalitions, also supports the idea of an elite-focused network membership. The overall number of participants is considered to be limited because in order to be effective participants will need to coalesce.

Throughout this section on policy networks reference will be made to each of the four network concepts and the extent to which they help to explain and are supported by the operation of the Sarah's Law network. The section itself, however, is organised around the key parameters or questions for understanding policy networks: network emergence; network characteristics; and network links. The issue of which of the four concepts provides the best overall characterisation of the Sarah's Law network is addressed at the end of the section.

## **Network Emergence**

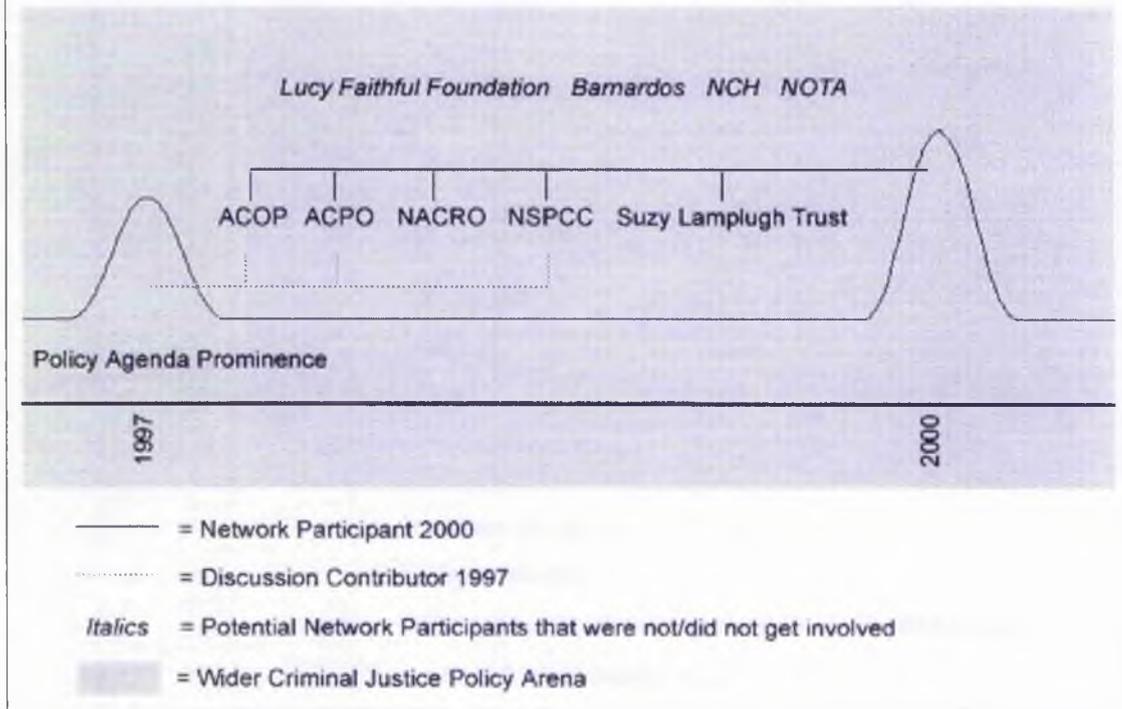
As noted in Chapter 2, one of the existing literature's shortcomings is that it fails to address in detail how a policy network comes into existence. In general, the literature concentrates on policy networks that are already in existence. Two of the four main approaches to the analysis of policy networks, iron triangles and issue networks do not address the question of network emergence. Although the concept of advocacy coalition focuses on established networks, and does not provide a historical

context for analysing the emergence of policy networks, it does seem to assume that new networks form as a result of dissatisfaction amongst some actors with an area of policy who therefore set out to form a new policy network in order to influence policy developments in this area (Sabatier and Jenkins-Smith 1993; Sabatier and Jenkins-Smith 1993a; Watt 1997). To some extent this is similar to the idea of network emergence put forward by supporters of the policy communities concept. According to this concept the emergence of a new policy focus will lead to a new policy community starting to evolve around it (Jordan 1990). This draws attention to the importance of a topic's position on the broader policy agenda prior to network formation and this does indeed appear to have been an important issue when looking at the formation of the Sarah's Law network. However, none of the four concepts pays sufficient attention to the history of a policy topic and the network(s) associated with it.

As was highlighted in Chapter 4, when the topic of blanket community notification arose in the summer of 2000 it was not an entirely new area of concern. It had already been addressed in the British context in light of the debate surrounding the Sex Offenders Act 1997 and the proposed introduction of a sex offender register. While at that time the idea of blanket community notification had been rejected and the topic's prominence on the policy agenda declined, one can note that some of the organisations that were part of the Sarah's Law network also contributed to the debate in 1997. This is illustrated in Diagram 7.1.

This implies that although the precise composition of a policy network which emerges in response to a particular policy issue can differ from previous manifestations of a network addressing the same or similar topic, any prior involvement in a relevant policy debate makes it more likely that those players previously involved will participate the next time the topic gets onto the policy agenda.

**Diagram 7.1: Policy Agenda Prominence of Community Notification and the Wider Criminal Justice Policy Arena**



In addition, although a new policy network can form around a ‘hot’ topic that features prominently on the policy agenda, its origins may have a longer history. Therefore, when studying a policy network surrounding a specific topic, an important research question is whether one is dealing with one overarching single network which addresses that policy issue at different stages of its existence, or whether different networks emerge to address the same issue each time the topic is high on the policy agenda. In the case of the Sarah’s Law network a case can be made that there were two different networks involved in 1997 and 2000. Not only was membership partly different, but in 1997 community notification was addressed specifically in relation to the then envisaged Sex Offenders Act; in 2000 it was addressed as an issue of its own, with the network’s make-up being far more specific as a result. However, there is an overlap in membership in 1997 and 2000 and hence an alternative assessment is that one is dealing with one network adapting over time. Further exploration of the 1997 network would be necessary to address this issue more fully and that is beyond the focus of this thesis.

The antecedents of the Sarah's Law network highlights the importance of taking a longitudinal approach when exploring network origins, which includes studying a policy topic's prominence on the policy agenda over time. This should include an exploration of the various players involved at those instances where the topic took centre stage and how this changes over time. However, the development of a longitudinal approach may just postpone rather than address the question of original network emergence. The use of the agenda-setting theories outlined in Chapter 2 may complement a longitudinal analysis in understanding the emergence of policy networks. Certainly, the wave-like pattern of community notification's prominence on the policy agenda seems to provide strong support for Kingdon's (1984) model of 'policy streams' and Baumgartner and Jones' (1991; 1993; 2004) notion of a 'punctuated equilibrium'.

When exploring the background debate surrounding the Sex Offenders Act 1997 (see Chapter 4), one can identify the development of 'streams', along the lines of those advocated by Kingdon, prior to the summer of 2000: a problem stream addressing areas that are considered to be major problems by policymakers; a political stream setting the governmental agenda in light of the public mood, pressure groups and various campaigns; and a policy stream containing various policy proposals.

In this case, the problem stream that can be identified is the perception amongst policymakers that there were several shortcomings in the existing legislation on sex offenders and that there was a need to improve measures aimed at child protection. This problem stream is closely connected to the political one: the perception of the public as well as practitioners and various organisations working in the area of child protection was that existing measures aimed at sex offender management and victim protection were inadequate. Finally, some of the agencies working in this area had been actively lobbying for different ways of improving current arrangements and legislation, as for example a tightening of registration requirements for sex offenders. The generation of such policy proposals and the various inputs into the policy debate make up Kingdon's third stream, the policy one. This wider ongoing debate meant that the case of Sarah Payne focused attention and reinforced the pre-existing perception of a problem. It thereby opened a wider policy window which allowed the pushing forward of 'pet solutions' (Kingdon 1984, p 173) to address the perceived

problems. According to Kingdon, under normal circumstances, critical or 'focusing events' do not carry a subject to the top of the policy agenda on their own. They only focus attention on a problem which already exists in people's minds (Kingdon 1984, p 103). Based on the analysis of the context within which the Sarah's Law debate took place, this explanation of the role of 'focusing events' is supported.

Although Kingdon draws attention to the idea that some subjects rise on the agenda while others are neglected, his model has been criticised as concentrating too much on constant change and adaptation. It provides an interesting explanation of change, but it does not account for periods of relative policy stability or sectoral differences (John 1998). Here, Baumgartner and Jones' model of punctuated equilibrium is helpful. It describes a pattern whereby within a specific policy sector periods of stability alternate with periods of rapid change during which public interest, media scrutiny and public action all focus on a specific topic. Eventually a topic will again fade from the policy agenda. The reason for the periods of relative stability is that once policy has been developed on a topic at a time of heightened activity, other policy topic areas become more interesting and in the initial topic area the new arrangements settle into more stable routines (Baumgartner and Jones 1991; Baumgartner and Jones 1993). And indeed in this case study, once the question of community notification had appeared high-on the agenda in 1997, as part of the debate on sex offender registers, it indeed faded from the policy agenda after the introduction of the Sex Offenders Act 1997: community notification had been rejected and it was now time to implement the legislative changes brought about by the Act.

This issue of a policy network emerging around a 'hot' topic has already been mentioned, but a question remains about what constitutes a 'hot' topic around which a network will emerge. As has been outlined in Chapter 4, although the issue of improving sex offender legislation and victim protection was on the wider policy agenda, the urgency with which these issues needed to be addressed only came about as a result of the *News of the World's* actions. Initially, when the abduction and murder of Sarah Payne took place the case as such was not immediately linked to the policy issue of sex offender legislation. Instead, it originally was simply another instance of child abduction and murder. It was only after the details surrounding the abduction and murder had started to emerge, and the *News of the World* had decided

to campaign for changes to existing sex offender legislation, that a specific political dimension was added to the case. This campaign and the impact of the name-and-shame campaign very quickly pushed the topic onto the policy agenda and focused the debate. This draws attention to the possibility that within the right context an incident which might initially not be directly connected to a policy debate can become linked to a policy topic, thereby turn into a 'focusing event', and act as a catalyst for network emergence. However, such linking appears to require the activity of a high profile agency, as in this case the *News of the World*. The defining characteristics that are required for such 'linking' need further exploration.

A final area that needs to be addressed when exploring network emergence is how far players have a choice about getting involved in policy networks. Voluntary participation seems to be assumed by at least three of the four network concepts: issue networks, policy communities and advocacy coalitions. In light of this case's findings it seems that network participation is not always voluntary. Those organisations directly affected by the campaign were immediately drawn into the policy network. However, although some of those affected tried to get other agencies working in the areas of child protection and sex offender management to participate in the debate, not all of those who could have participated appear to have chosen that path. This indicates that network inclusion can be of a voluntary or compulsory nature, depending on the degree to which an organisation is directly affected by the topic under discussion. While neither the police nor probation appear to have had a choice about whether to get involved in light of the campaign's impact on their work, other organisations' involvement such as that of the Suzy Lamplugh Trust or the NSPCC can be considered to be of a more voluntary nature.

## **Network Characteristics**

Chapter 2 highlighted several aspects of network characteristics that need to be addressed: the overall nature of a network; the reasons for players' involvement; and the features of network operation.

When exploring the Sarah's Law network it is obvious that it was addressing a very small policy niche within the broader policy field of criminal justice and thus can be

considered as a sub-network within the wider network around that issue. This indicates that different levels of policy networks with different levels of specialisation can exist. Consequently, actors can simultaneously be part of a multitude of networks. However, not only was the policy issue under consideration a specialised one, but the number of active participants was also very limited. On the side proposing blanket community notification one can identify the *News of the World* and Sarah's parents, while the opposition to such an approach was made up of ACOP, ACPO, NACRO, the NSPCC and the Suzy Lamplugh Trust.

One potential criticism of the existing network concepts that was raised in Chapter 2 was the assumption that academic inquiry should focus on elite group membership of policy networks. People without a specialist background are considered to lack the time and resources required to get involved in a policy network.

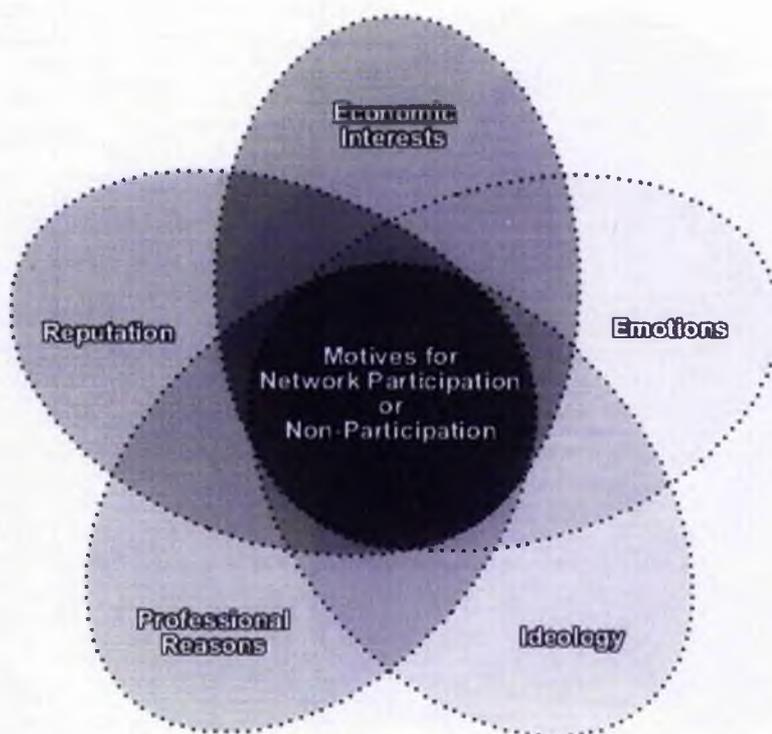
There is some support for this assumption within the Sarah's Law debate. Those people and agencies who were in talks with the Home Office about policy development and who shaped the policy manifesto for the "For Sarah" campaign were indeed experts within this policy area. At the same time, while neither the *News of the World* nor Sara and Michael Payne can be considered as experts in that policy area they did play an important role within the network. However, this might have more to do with the special nature of the events leading to the emergence of the Sarah's Law network rather than being an aspect that is more widely applicable.

The broader policy network on sex offender management and victim protection does indeed also appear to be relatively closed to 'outsiders' in general and to consist of the 'elites' within this area: a very specific set of children charities, governmental departments, various lobbies and interest groups. However, as can be seen in the cases of Diana Lamplugh and over the course of time Sarah's mother, there is the potential for non-elites to become involved more deeply in a policy debate and to gain access to the wider policy network. The question that needs to be addressed then is how far such people should be considered to be 'elites' themselves or can they still be considered as members of the wider public.

When looking at the motives underlying participants' network involvement, the focus within the existing policy network concepts is usually on one or two dominant motives. In the case of iron triangles it is argued that members receive some form of material benefit from participating in such arrangements. Similarly, economic interests or professional reasons are considered to be the driving forces for players in policy communities. On the other hand, the idea of issue networks advocates that actors become attached to a network for emotional or intellectual reasons. This is also supposed to be the case in advocacy coalitions, where the translation of a core belief into policies motivates participants' actions.

Each of these motives is to some extent present as reasons driving actors' involvement in the Sarah's Law network. One could argue that involvement in the Sarah's Law network was primarily driven by ideological reasons in that all organisations involved claimed to be interested in the improvement of sex offender legislation and child protection. However, on closer inspection it seems that different motives underpinned the involvement of different sets of actors. These are outlined in Diagram 7.2, which also highlights the need to consider the reasons for non-involvement as well as involvement. The existing literature seems to ignore the possibility that those aspects driving involvement can also result in actors' deliberate decision not to get involved within a specific policy network.

**Diagram 7.2: Reasons for Participation/Non-Participation in a Policy Network**



The first set of motives is made up of emotional reasons. An example of actors driven by that category, are Sarah's parents, Sara and Michael Payne. Secondly, there are those players motivated by ideology. This appears to have been one of the driving forces behind the contribution and involvement of NACRO which seems to have centred on the idea of offenders' rights. The third category that emerges as spurring network involvement are professional reasons. This is exemplified most prominently by the involvement of the police and probation services as a result of their work being directly affected by the *News of the World's* campaign and the resulting discussion. The fourth set refers to players' reputation. On the one hand the public's perception of an organisation's role can lead to a contribution to a policy debate. For example, in case of the NSPCC it seems that there was a certain expectation amongst various parts of society that the NSPCC would provide some insights into the issue of community notification. On the other hand, reputation also appears to have been one reason as to why some organisations working in the area of offender management or child protection who were provided with the opportunity of getting involved more closely

in the policy network decided not to do so. The reasons underlying such a decision appear to have been concerns about the organisations' public image or reputation and any potential detrimental effects the taking up of a specific stance might have on donations made by members of the public. The last set is that of economic interests. As has been stressed by various commentators at the time and in subsequent discussions, it is arguable that the *News of the World's* involvement can be understood as being mainly driven by the incentive of economic rewards resulting from an increased circulation of the newspaper.

So, rather than having a sole reason that drives a policy network, it seems that participants can get involved in networks for reasons which might differ from the motives of other members of the same network. It seems unlikely that one can clearly demarcate those reasons and draw a line as to where one set of motives starts and another one ends. Instead, although it might be possible to identify one main motive as driving an individual's or organisation's involvement or non-involvement, there is likely to be some overlap between these categories since they are closely connected. For example, professional reasons for involvement may also address areas of ideology and reputation as well as emotions and economic interests so that it is unlikely that there will ever be one 'pure' motive for network involvement.

While so far the focus has been mainly on organisational motives, one also needs to bear in mind that individual sets of motives can exist amongst the various players involved. These may or may not coincide with those of the organisation they represent and there is a need for further consideration of this and its possible implications.

Another aspect that needs to be considered when examining these five sets of motives is the question of how far motives are susceptible to change. The advocacy coalitions concept distinguishes between 'core beliefs' and 'secondary values' with the former being less susceptible to change, similarly the notion of long-standing values is a feature of the policy community approach. On the face of it, one could speculate that some of the reasons for involvement, such as emotion or ideology, are potentially more fixed than others, such as economic interests. However, this and the previous point about differences in organisational and personal motives for an involvement in a policy network need to be explored further in future research.

Within the existing literature on policy networks there is widespread agreement that the values and membership of a policy network are constant over long periods of time. This view is supported by the long-term existence of a broader policy network on sex offenders and child protection prior to the Sarah's Law network, but, it does not apply to the Sarah's Law network as such. As was pointed out in Chapter 5, changes in personnel and an apparent organisational dis-interest in maintaining some of the links within the network meant that players began to withdraw from the network in 2001. As a result, the specific Sarah's Law network ceased to exist. This provides support for the proposition made by supporters of the policy community concept that unless there is a 'positive-sum game', so that each network member benefits from the arrangements, the policy network is unlikely to continue (Marsh and Rhodes 1992).

While the *News of the World* and Sarah's mother continue to promote the idea of access to information on sex offenders living within a community, the actual policy network involved in that debate was relatively short-lived in that it mainly covered the period of summer 2000 to spring 2001. However, should the campaigning of the *News of the World* and Sara Payne increase again in momentum, and as Chapter 4 highlighted there are some indications that this might happen, it will be interesting to examine the composition of any emerging policy network and how far the new network corresponds to the one that emerged in 2000.

## **Network Links**

Within the broader literature on policy networks attention has been drawn to the ways in which alliances are a politically relevant behaviour of interest groups (Heany 2001a). One of the major reasons driving the formation of alliances within a policy arena is the large number of players trying to influence the policy process. As a result, an overcrowding of lobbyists can often be noted. This in turn leads various organisations to form alliances so as to deal with the limited resources available (Heany 2001a). While the tendency to form alliances is no longer disputed, what is missing is a more complete examination of the reasons underlying the formation of alliances: with whom are groups most likely to co-operate and for what reasons (Heany 2001a)?

According to the advocacy coalitions concept, the building of alliances is one potential way in which actors within policy networks try to translate their ambitions into policies. The policy community approach mentions that in relation to the idea of coalition building exchange-based relationships can develop between lobbyists and policymakers.

As mentioned in previous chapters, those organisations working in the area of sex offender management and child protection actively tried to put together an alliance of organisations in order to put pressure on the *News of the World* to stop its name-and-shame campaign. The organisations that formed the alliance were all from within the broader criminal justice policy network and as such had been in contact on previous issues. As has been outlined in Chapter 5, the various charities that got involved in 2000 had been lobbying for various measures to improve sex offender management and victim protection. In many cases, these activities even precede the Sex Offenders Act 1997. In addition, the actors that formed the alliance of organisations were closely connected to the umbrella body for penal lobbying groups, the Penal Affairs Consortium. This appears to have provided a readily available pool of agencies from which those organisations opposing Sarah's Law could draw potential allies.

Since it is usually the case that those organisations which have had positive alliances with each other in the past are likely to renew such co-operation (Heany 2001a), the involvement of ACOP, ACPO, the NSPCC and NACRO does not come as a surprise and supports this perception. All of them had worked closely together on previous occasions and to some extent had been involved in the previous debate about blanket community notification in the UK. Each of these organisations had a unique set of expertise which can be seen as increasing the alliance's resources. In addition to that, it can be postulated that co-operation between these organisations improved their stance in the policy debate by showing that organisations from various backgrounds agreed on the approach to take. In light of the public mood about and attitude towards sex offenders, a very strong lobby would be needed to argue for reasonable changes and to avoid the usual knee-jerk response to such a high profile incident as the murder of Sarah Payne, especially when politicians tend to take on the public's mood (Sampson 1994; Lieb 2000). As such, these agencies had a set of shared interests and

aims. A very smart move in bringing together the alliance appears to have been the inclusion of the Suzy Lamplugh Trust. The latter could offer one strategic advantage none of the other agencies could: an emotional 'link' of a mother who has lost her daughter. In relation to this latter point, it seems that within the alliance different roles and responsibilities can be identified. First of all, there is the mediating role of the Suzy Lamplugh Trust. Secondly, there is the driving force behind the alliance formation, in this case NACRO. Finally, there are the main activists which provide the evidence and arguments, ACOP, ACPO and the NSPCC. As such a unique 'role' can be identified for each member of the alliance of organisations. Indeed, it seems that alliance formation can to some extent be understood as a division of labour between those agencies involved.

At the same time, the formation of alliances does not only appear as a way of overcoming limited resources, but also as a way of increasing political leverage and power as well as access to policymakers. However, alliance membership does not imply that there is total agreement about ends and means. As was discussed in Chapter 5, although the overall aim of the alliance of organisations was initially to stop the *News of the World's* name-and-shame campaign and to argue against blanket community notification measures, within the alliance different perspectives were present: ACOP and ACPO were interested in aspects relating to public protection while NACRO's main focus was the right of the offender.

When looking more broadly at the links between the various organisations within a policy network the literature highlights a number of issues. In general it is assumed that relationships are relatively stable and persist over a long period of time. In addition, the concept of policy community advocates that a mutually supportive relationship can develop between policymakers and pressure groups. Both longstanding and supportive links can be observed in the Sarah's Law network, although they appear to be pre-existent rather than an emergent factor within this network. For example, although it is difficult to ascertain the extent of any mutually supportive links that existed between the Home Office and any of the bodies making up the alliance of organisations, the Home Office briefed the members of the alliance of organisations on some of the steps it was taking and forwarded them various information that might be relevant to the policy debate (see Chapter 5).

In addition, it does seem to be the case that at least some of the relationships within the Sarah's Law network were also marked by mutual exchanges between civil servants and 'pressure groups', as advocated by the policy communities approach. For example the Home Office appears to have drawn heavily on the expertise of both ACOP and ACPO in the formulation of the legislative changes that followed from the Sarah Payne case: in order to instruct Parliamentary Counsel about a proposed 'Sarah's Law' legislative package at the close of play on 19 September, an email was sent from the Home Office to ACOP and ACPO with the request for detailed comments on various parts of this package (Document 55). Such consultation appears to have been on very specific matters and did not necessarily involve all members of the policy network. Although one can identify bilateral supportive relationships, this might have been a result of the special nature of the Sarah's Law network, its short lifespan and the time constraints under which the participants operated, rather than a general defining trait of policy networks.

Along with such 'positive' links, there are however negative ones, such as those cases where previous encounters have tainted working relationships or where obstacles are presented for players. An example of the latter seems to be the Government's links to *News International*. While there does not appear to have been any real interest on side of the Government in pursuing the idea of blanket community notification put forward by the *News of the World* (see Chapter 6), it seems to have been important for the Government not to upset the newspaper or its parent company in light of their past support in the 1997 general election and their political influence in shaping public opinion in the upcoming election in 2001.

Given that both positive and negative relationships between the various players within a policy network can influence the course of a policy debate – in that on the one hand they can provide otherwise unavailable access or options, or on the other block such advantages or place participants in conflicting positions of interests – both types of relationship need to be considered and analysed. Positive co-operation in the shape of alliance-formation is already mentioned within the literature, but the possibility of conflictual or negative links is not clearly addressed.

Personal links that exist over and above those that appear as a result of network interaction between representatives of various organisations are another potentially important aspect of policy networks and one which appears to be generally neglected in the existing literature on policy networks.

As has been discussed in Chapter 5, personal links can provide important insights into the workings of a policy network. Such links can both reinforce existing organisational links and thereby facilitate alliance-building or they can run counter to organisational links and present players with conflicting agendas. Although the act of drawing attention to any personal links and examining how far and in which ways they impact on the operation of a policy network seems to be a rich area to develop, there are several problems that arise for the researcher. First of all it is difficult to 'unearth' all such links given that they are usually not widely publicised. Various people who participate within a network might be willing to reveal some of the information but any such revelations are likely to be confidential, if made at all. It is also debatable whether any individual would reveal personal links that could be considered as 'questionable' or lead to negative consequences for the individual making the revelation. Moreover, even if one manages to identify any links it is difficult to establish the ways in which such links influence the policy debate, especially if 'scientific proof' is required. Evidence is likely to be circumstantial and anecdotal. At the same time, there is the danger of distortion and the danger of 'smear'. This means that any of the anecdotal evidence encountered might be unfounded. Given that the research into such links could easily become too populist and could be seen as operating on a tightrope between popular journalism and 'serious' academic inquiry, the researcher would need to exercise a great degree of caution. This is necessary, not only in the interest of the integrity of the research but also, very pragmatically, in the researcher's own interest given today's litigious culture and any detrimental effects that might result from exploring such links. Nevertheless, there is the danger of ignoring the impact of the personal side of policy networks, should such links not be explored in an analysis of network operation.

In summary, then, each of the four main policy network concepts outlined in Chapter 2 – iron triangles, issue networks, policy communities and advocacy coalitions – capture some of the features evident in the Sarah's Law network. However, the

emergent structure and links in the latter network suggest a number of areas where the existing literature offers only limited insights. First of all, there is the question regarding players' reasons for getting involved in a policy network. While each of these concepts seems to imply a voluntary choice on part of the actors, from the study of the Sarah's Law network it appears that they are not necessarily presented with such an option and might well get automatically drawn into a network. As such it is useful to differentiate between at least two categories for network involvement: voluntary and compulsory. Along with this, a number of motives can be identified amongst network participants including economic, reputational, professional, ideological and emotional reasons. While individuals' motives can coincide with those of the organisation they represent they might be different. The ways in which such motives influence network activities need to be explored further. Thirdly, there is an ongoing problem of defining where a network begins and ends. Policy networks can emerge around a specific issue, in this case Sarah's Law, but such networks need to be considered within the wider policy and policy making context. Fourthly, while alliance formation provides the opportunity to divide tasks within a policy network and to increase the chance of political influence, the question of alliance formation and operation needs to be addressed further in the analysis of policy networks, especially as they can both enable and frustrate players' operation within a network. By the same token, it is necessary to explore further the existence of organisational and personal links within a network and how such links impact on its operation. Although as a result of network operation there will automatically be a plethora of personal and organisational links between members of a network, it is important to understand and examine them in light of any pre-existing connections between network members or connections which develop over and above any reasons relating to the policy issue being addressed by the network.

The question is whether this means that there is a need for a new concept or for further articulation of the existing ones. Given the confusing plethora of existing terminology within the area of policy networks, it seems that the latter is a more desirable approach. The concept that seems to lend itself most for further articulation is that of policy communities. This can partly be ascribed to the fact that it was specifically designed for the British context.

Having examined network emergence as well as the defining characteristics and links within policy networks, it is now time to examine what can be learnt about the way in which evidence is used in policy debate.

## **Evidence**

As has been shown in Chapter 6, a variety of evidence featured in the Sarah's Law debate. Based on the insights that were gained from the case and relating these to the literature reviewed in Chapter 2, the following discussion will address the nature of evidence within this policy area, the use of evidence, and the factors with which evidence had to compete.

### **The Nature of Evidence**

When looking at the nature of the evidence that was used in the Sarah's Law debate, both by those supporting and those opposing Megan's Law-style legislation, three types of evidence can be identified. First of all, there were various research findings and statistics that were used to support the arguments put forward in the debate. Secondly, extensive reference was made to practitioner knowledge and previous experiences with community notification. Finally, there were a number of emotive examples that featured in the debate and points were illustrated through 'first-hand experiences'. These different types of evidence are outlined in Table 7.1. Although both proponents and opponents of blanket community notification seem to have used all three categories of evidence, one can notice that the extent to which this was done differed. The evidence put forward by the *News of the World* in favour of Megan's Law-style arrangements revolved more around emotive examples, while those used by the opponents of a Megan's Law focused more on the other two categories. One reason for this might be a potentially greater interest in emotive examples by the wider public on the one hand and the importance of a more 'objectively' founded way of reasoning when trying to argue against populist criminal justice interventions, especially if they address sexual offences on the other.

**Table 7.1: Types of Evidence Referred to in the Sarah's Law Debate**

	<b>Research Findings &amp; Statistics</b>	<b>Practitioner Knowledge</b>	<b>Emotive Examples</b>
<b>Advocates of Sarah's Law</b>	MORI Poll/ Other Polls  Petition for Sarah's Law  Various Data on Sex Offenders	Quoted 'Experts'	Sarah Payne  Megan Kanka  Polly Klaas  Keith Bennet  James Bulger
<b>Opponents of Sarah's Law</b>	Research for: <i>Megan's Law: Does it protect children?</i>  Research into the Effectiveness of the British Sex Offender Register  Previous Research into the Effectiveness of Megan's Law  Other Research on Sex Offender Management by Experts in the Area	Experiences with Previous Name-and-Shame Campaigns  Practitioner Feedback and Understanding of Best Practice regarding Sex Offender Management, Victim Protection and Community Notification  Practitioner Knowledge-Base on Sex Offender Management  Case Examples in the ACOP/ACPO Dossier of Evidence	Letters/ Telephone calls received from those affected by the <i>News of the World's</i> campaigning

The boundaries between these three categories of evidence are not clearly demarcated, as symbolised by the dotted line in Table 7.1, and some 'evidence' spans more than one category. During the case study interviews some of the interviewees referred to existing research on sex offender management which indicates that for example

practitioner knowledge might not be clearly distinguishable from the category of research findings.

Davies (2004) has pointed out that the privileging of any one type of evidence within the policy process is not desirable in that different types of evidence can provide different insights. Each of the three categories can be understood as serving different purposes. While both practitioner knowledge and research findings and statistics are used in order to rationally substantiate a policy position, the use of emotive examples serves to make any argument not only more accessible but also more appealing to the interests of a wider audience. As such it is arguable that a combination of various types of evidence in support of a policy position is desirable and potentially more beneficial to its uptake than if only one category is used.

If the categories of evidence used in the Sarah's Law debate are compared to the health care hierarchy of evidence outlined in Diagram 2.2, it can be seen that the main emphasis was on what is considered to be the three lower forms of evidence: well-designed trials without randomisation, such as single-group pre-post and time series studies; well-designed non-experimental studies from more than one centre; and opinions of respected authorities, based on practice evidence as well as descriptive studies or reports of expert committees. Although expert opinion fares as the lowest form in health care's hierarchy of evidence, within this specific case it appears to have been one of the main contributions in the debate. The importance ascribed to practitioner and expert knowledge might result from the perceived impossibility of having the same extent of experimentation in the field as found in medicine. In addition, it emphasises the broader understanding of appropriate 'evidence' within policy making than the more restrictive understanding of what counts as good evidence amongst some academics (Davies 2004).

## **Evidence Use**

Based on the work of Weiss (1972; 1977; 1986), six ways in which evidence can enter the policy process were identified in Chapter 2. These can further be classified under three broad categories of evidence use: instrumental, conceptual and strategic use of knowledge (Ginsburg and Gorostiaga 2001).

The picture that emerges from this research regarding the way in which evidence was utilised in the Sarah's Law debate, is that it appears to have been used mainly in a strategic way to support pre-determined policy positions. As was pointed out in Chapters 4 and 6, the main aim of the organisations working in the area of sex offender management and victim protection was 'to stop the damn campaign' (Interviewee 4). At the same time, the *News of the World* used evidence to put across the idea of the 'public's right to know' about sex offenders living in an area. In both cases evidence can indeed be perceived as serving the role of political ammunition in order to counteract the actions taken by opponents. Simultaneously, a tactical use of evidence can be found, namely the importance of assessing available evidence before making any policy decisions, an aspect which was quoted several times during the Sarah's Law debate, thereby indeed providing some 'breathing space' for politicians.

However, the perception of a predominantly strategic use of knowledge might be related to the timescale of the study. The focus on a critical incident, the overall short time span covered by the Sarah's Law debate, as well as the fact that both proponents and opponents had a clear aim, might all have contributed to the more strategic use of knowledge. Both instrumental and conceptual uses of evidence appear to be more applicable in the longer term given their focus on a process of problem identification and solution finding or the percolation of evidence respectively. Such processes need time and appear to be more likely in a relatively stable policy environment (Mulgan 2003), rather than in one that is in need of an urgent solution, as was the case in the Sarah's Law debate.

Bearing this in mind, a more longitudinal case study in this area may find instrumental and conceptual uses of evidence (Weiss 1977). Indeed, an instrumental approach seems to be evident in the Government's review of sex offender legislation that started in 1999. This appeared to embody a policy goal of improving existing legislative measures, which was shared by the Government and by the organisations involved in child protection and sex offender management. Given that a genuinely instrumental use of research is considered to be rare (Weiss 1986), it is even more surprising to find indications thereof within the area of sex offender policies, an area

where evidence can run counter to popular perceptions of the nature of sex offences and what should be done about them.

A conceptual use of evidence also seems to be evident in the broader policy network. For example, the usefulness of multi-agency arrangements in the area of sex offender management and an understanding of the dangers of name-and-shame campaigns appear to have percolated through the various levels of policy making (see Chapters 4 and 6 and for example Kemshall and Maguire 2001). So, in relation to sex offender management, there appear to be many ways in which evidence enters the policy process. Although, at the time of heightened debate, as was the situation with Sarah's Law, the strategic use of evidence seems to be the most prevalent mode of use.

Contrary to some literature on the use of evidence in the policy process, the overall extent of evidence-use during this policy debate appears to have been high. As has been illustrated in Chapters 4 and 6, the use of evidence was seen as an obvious strategy within that policy area and was perceived to be an important part of developing and supporting an argument in light of the topic's sensitivity and high profile.

In Chapter 2 six factors were identified in the literature as facilitating the uptake of evidence: the timing, relevance, clarity and quality of the evidence, and the political adeptness and personality of the evidence provider (Nutley, Davies et al. 2000; Percy-Smith, Burden et al. 2004). When looking at the various sources of evidence identified within the Sarah's Law debate one can see that all of these factors played a role, albeit to varying degrees. First of all, the various pieces of information were available at the right time. For example, the effectiveness of the British sex offender register had just been assessed and the compliance rate of 94.7% was much higher than the best one in America which was only 85% (Dilley July 24 2000). In addition, the information and insights on blanket community notification provided by the NSPCC's research was put together relatively quickly in light of the *News of the World's* campaign. A pre-existing set of information about instances in which communities got to know about sex offenders living in their midst already existed and new insights that emerged in light of the *News of the World's* name-and-shame campaign were quickly documented by the dossier of evidence produced by ACOF

and ACPO. Secondly, the evidence had clear implications for action. Although there was no clear understanding of the effectiveness of Megan's Law, the evidence that existed from within Britain indicated that blanket sex offender community notification was likely to lead to vigilantism and reduce sex offenders' compliance with registration requirements, thereby increasing the risk to society. As such the evidence pointed against the introduction of such measures. Thirdly, the evidence used by the opponents of Megan's Law was consistent with the existing policy approach that community notification should only be used as an exception and must be justified on *'the basis of likelihood of the harm which non-disclosure might otherwise cause'* (Home Office 1997, p 18 – for further details see Appendix 1). The evidence also originated from sources that were trusted and considered to be authoritative in the area of sex offender management and victim protection (Document 22).

While support for the six factors facilitating evidence-use can be found in the overall set of evidence used within the debate, they do not necessarily apply to all individual instances thereof. For example, in its conclusion the NSPCC report points out that

*'[i]t is possible that there are both intended and unintended, positive and negative outcomes of community notification. We simply do not know enough about these at this time...[T]here is clearly a need for further research in the US'* (Lovell 2001, p 35).

As has been shown in Chapter 6, the findings could not provide any clear recommendations regarding the effectiveness of blanket community notification policies. The NSPCC found that policymakers would have preferred black-and-white conclusions and recommendations but this does not seem to have stopped the NSPCC report from becoming influential. While one reason for this appears to be the comprehensive nature of the report, its uptake might also be related to its 'independent' nature. It provided policy makers with an opportunity to refer to an outside, non-governmental source, which implies an objective policy position. For example one Home Office representative pointed out:

*'[W]e have concluded that extending access to the information on the register of sex offenders would not improve child protection. There is no evidence from the United States that their community notification laws reduce offending against children and very little evidence that they enhance child safety in any way. Research by the National Society for*

*the Prevention of Cruelty to Children has confirmed this conclusion'*  
(Personal Correspondence).

The case study stresses that another important point in the uptake and accumulation of evidence on a topic seems to be its perceived importance in the future. As Chapter 6 highlighted, the NSPCC's in-depth research on the effectiveness of Megan's Law was to some extent motivated by the perception that the question of community notification was very likely to arise again in the future, especially following cases similar to the Sarah Payne one, and therefore it merited further exploration.

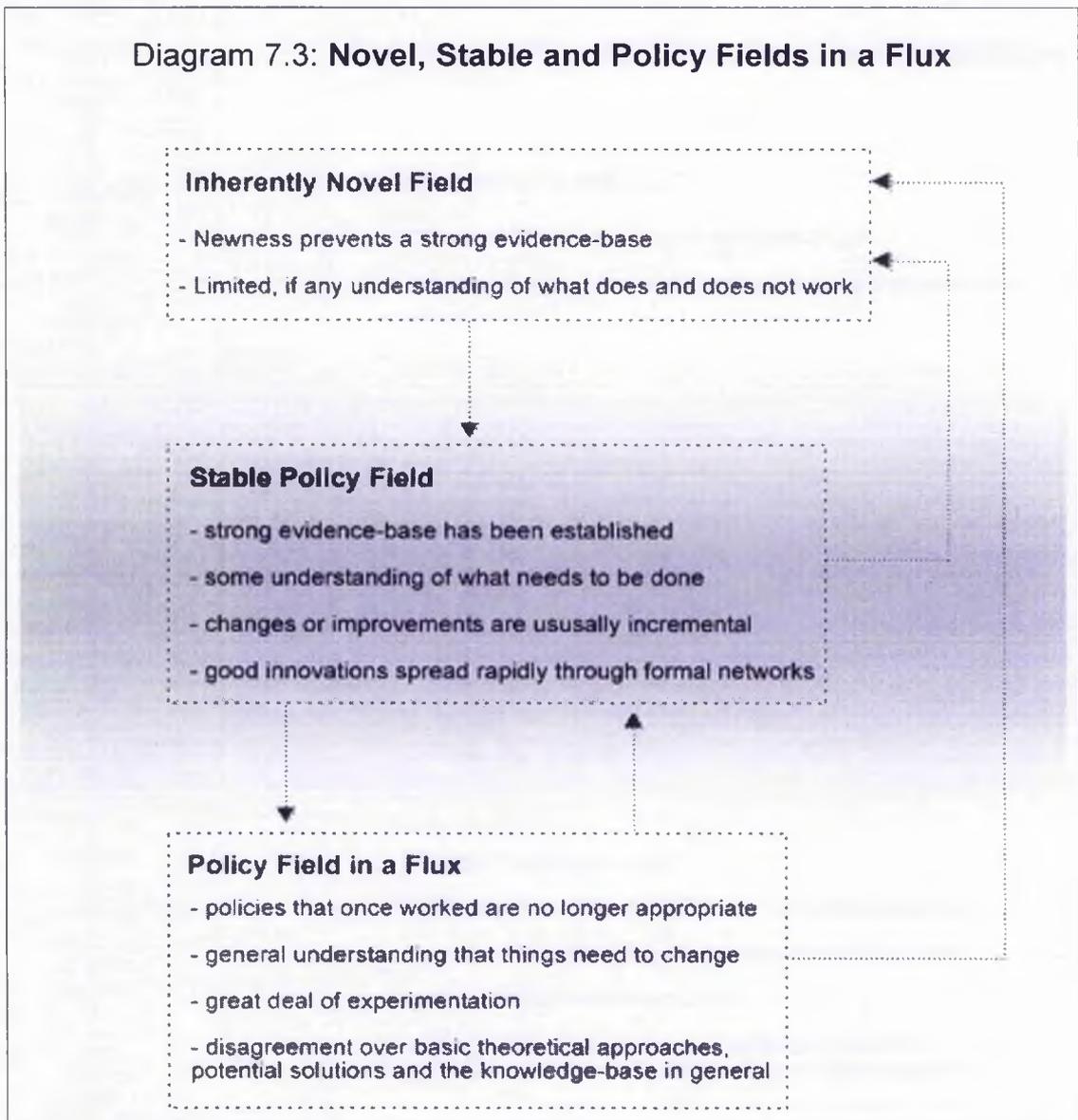
Finally, as can be seen in the case of the dossier of evidence and the experiences of ACOP and ACPO in using that dossier, the use of 'good stories' to exemplify a point is important if evidence is to have an impact.

Chapter 2 highlighted that within the existing literature on evidence-based policy making three types of policy fields have been suggested. These are: stable policy fields, where a well-established evidence base can be found and which provides some directions as what to do; policy fields in a flux, where policies are perceived as inadequate but where despite an understanding that things need to change there is no general agreement on potential solutions and the available knowledge-base is contested; and finally, novel policy fields, where as a result of the novelty of the topic no reliable evidence-base exists (Mulgan 2002; Mulgan 2003).

The Sarah's Law debate was not a novel policy field; neither sex offender management nor community notification policies are recent developments. However, the extent to which it is a stable policy field or one in a flux is debatable. The overall field of sex offender management can be understood to be in a flux, given that there was agreement that existing sex offender policies were inadequate and changes were necessary and the available evidence-base was to some extent contested. However, one can also argue that it is a stable policy field. As mentioned in Chapter 4, from around the mid-1990s a relatively good understanding of effective approaches to sex offender management had started to become established and in the Sarah's Law debate this was combined with the insights from various name-and-shame campaigns. Policy changes within this field were introduced incrementally, especially the amendments to

existing legislation in light of the Sarah's Law debate, providing further support for the stable policy field argument. So it is possible to simultaneously identify support for two different categories of policy fields. While Mulgan (2003) seems to understand these categories to be operating on an either-or nature, so that a policy field is either stable, fixed or in a flux, it seems any such typology needs to treat the resulting categories as far more interlinked and fluent, as illustrated in Diagram 7.3.

**Diagram 7.3: Novel, Stable and Policy Fields in a Flux**



While one can assume that any policy field starts out at some point as an inherently new one, relevant evidence and an increased understanding of what works will begin to build up. Consequently, as indicated by the shaded areas in the diagram, it will start

to evolve into a more stable policy field. By the same token, it is safe to assume that over time and in light of socio-cultural as well as scientific developments, at least some of the aspects of a policy field will take on the shape of a policy field in flux. Once again it is unlikely that there is one single 'swing' moment whereby a stable policy field suddenly becomes one in a flux but rather it may lean more towards one or the other. As such, the fields don't seem to have clear boundaries.

If there is no clearly demarcated border between these three types of policy fields however, the perception that one can only speak of evidence-based policy making in stable policy fields, with the making of policies in other areas at best being policy-informed (Mulgan 2003), is questionable and seems to be too narrow.

### **Competing Influences**

As highlighted in Chapter 2, it is often assumed that evidence has to compete with a variety of other influences in the policy process. Such factors are considered to include lobbyists and pressure groups, habits and tradition, values, resources, judgement as well as pragmatics and contingencies (Davies 2004).

When looking at any other influences with which research evidence had to compete in the Sarah's Law debate, it seems that first and foremost competition arose from other evidence used to substantiate a position. As previously illustrated in Table 7.1, both opponents and proponents of blanket community notification used a comparable set of evidence: research findings and statistics, practitioner knowledge and emotive examples. This means that any piece of evidence was not only competing with any opposing evidence within the same category, such as for example practitioner knowledge supporting community notification competing with practitioner knowledge opposing it, but also with evidence put forward in any of the other two categories.

Given that the habits and traditions within the British penal approach appear to have been based more in ideas of prevention and treatment as opposed to the more punitive approach taken in the US and that the values, resources and pragmatics at the time all seem to have supported the position put forward by the alliance of organisation's evidence, not a lot of other sources of influence with which the evidence had to

compete can be identified. Those that can be identified are some public pressure and potentially any links or interests governmental representatives might have had in relation to the *News of the World*, as discussed in Chapter 5. However, it seems that neither of these aspects presented a real competition for the use of evidence.

The question that emerges is why the available evidence did not seem to face much competition from other sources. Although it is only possible to speculate about the answer to this question it might have something to do with the controversial and sensitive nature of the policy area of sexual offences. From a policy perspective it can be assumed that in light of the sensitive nature of the topic it is in the policymakers' interest to focus the debate around the available evidence and thus make a controversial policy area conforming as closely to Mulgan's idea of a stable policy field as possible. Referring to the available evidence can potentially provide a safeguard in that the policymaker can 'hide' behind evidence and refer to 'expert sources', thereby making him or her less susceptible to any potential attacks. The likely proximity of the next general election (in the event held in 2001) may have heightened this process.

Summarising the main points that have arisen in relation to evidence-use in the policy process, it seems that in the short-term evidence is used in a strategic way by the various players in a policy network but that over a longer period of time instrumental and conceptual use also occur. A reasonable passage of time is necessary for the latter two forms of evidence-use to occur. While to some extent policymakers prefer straightforward black-and-white recommendations that have been extracted from the available information, this does not appear to be necessary for research findings to become influential. Factors identified as facilitating evidence use are the origin, presentation and timing of evidence. The rigid distinction of various policy fields according to the standing and role of evidence was not found to be useful, although a more fluid model for characterising evidence-use in different parts of a policy field and over time may be helpful.

## **Lesson-Drawing**

As was pointed out in Chapter 2, the concept of lesson-drawing could be seen as consisting of three consecutive steps (Mossberger and Wolman 2001). First of all, there is the search for information on what can be learnt from other countries or other points in time. Secondly, there is a need to evaluate the resultant findings. Finally, there is the application of any lessons, and from an academic view the exploration of the extent to which any findings are actually used in the policy process. As a result, the questions of lessons' origin, the characteristics of lessons as well as how and to which extent they are used will be the focus of the following sections.

### **Lesson Sources**

The perception within the existing literature is that there are two main sources for drawing lessons: a country's own history and other countries (Rose 1993). Within the Sarah's Law debate it seems that both sources were drawn upon. On the one hand, this confirms the theoretical assumptions regarding potential sources for drawing lessons. On the other hand, it indicates the importance and breadth of the lesson-drawing concept within the Sarah's Law debate.

Despite the unparalleled impact of the *News of the World's* name-and-shame campaign, the concept of such campaigns was nothing new and had been used in the UK on previous occasions. This has been outlined in Chapter 4. Previous outings of sex offenders had provided a ready pool of information on the effect such campaigns had had on the work with sex offenders and the community at large from which a number of lessons could be drawn. Within the British context potential avenues for improving sex offender policies had also emerged from practice. These could be used in developing a policy response to the Sarah's Law Campaign and were used as a basis for coming up with the concept of MAPPAs. As such lesson-drawing across time and across Britain was possible and indeed seems to have taken place.

Along with this, the search for lessons also covered insights that could be learnt from other countries. In the literature it is argued that a country will normally look towards those countries that are perceived as being most similar rather than those which are

geographically closest, so that the UK has usually turned towards America and Australia instead of, for example, Europe (Rose 2001; Pierson 2003). In this respect the case of Sarah's Law does not seem to be any different and has confirmed this tendency to look towards countries which are considered to be similar to one's own when looking for potential lessons. As has been seen in Chapter 6, the attention focused on America and initially to some extent on Canada, Australia and New Zealand. The focus on these countries also makes sense in terms of policy developments on sex offender management and community notification that had previously taken place within them. As a result of highly publicised sex offences, similar policy pressures had emerged in these countries during the 1990s. Over the last 10 to 20 years in each of these countries there has been an increasing concern about introducing effective measures for managing sex offenders and protecting the community. In all cases, the idea of a national sex offender register was put forward as one step towards achieving this goal. Although it was only in 2004 that all countries had finally set up a national sex offender register, various registers had previously been set up at a local or federal level and the debate surrounding such registers was in all cases under way by the early 1990s. In terms of the five styles of policy convergence, identified by Bennett (1991) and outlined in Table 2.8, in the case of sex offender legislation, there has been a convergence of policy goals, content and instruments between these countries.

While the existing literature seems to assume that it is normally governments who look abroad with the intention to draw lessons (see for example Jones and Newburn 2002; Jones and Newburn 2002b; Dolowitz 2003; Pierson 2003), in this case the driving force seems to have been the *News of the World's* campaign. As such the impetus for lesson-drawing came from outside rather than within government. Policymakers had, however, previously examined Megan's Law in light of the Sex Offenders Act 1997. These points imply that lesson-drawing can arise both as a result of active search for lessons or through a more passive getting to know about lessons and then using them in the current policy context with the driving forces including both governmental and non-governmental players.

## **Lesson Evaluation**

Following on from the gathering of information, the literature argues that potential lessons are examined in light of at least two factors: political desirability and technical feasibility. The former addresses the consistency of potential lessons with existing values, goals and aspirations, while the latter explores the practicalities of any implementation. Once again, it seems that lesson-drawing in the Sarah's Law debate incorporated both types of examination. As has been seen in Chapter 5 the compatibility of blanket community notification with the existing values and goals of the British approach to sex offender management runs throughout the debate. As was pointed out in the same chapter, the Home Office's Mental Health Unit also looked into the feasibility of increasing public access to information on sex offenders and examined various points relating to the implementation and practicality of such schemes.

The literature on lesson evaluation suggests four possible scenarios regarding the desirability and practicality of transferring a policy (highly desirable and practical, highly desirable but not very practical, highly practical but not desirable and neither desirable nor practical – see Table 2.10). The available information on blanket community notification indicated that it had a low desirability and can be classified as having a low practicality too. It was not desirable in that it interfered with the effective management of sex offenders and potentially increased the risks to society; it was not practical in that no possibility of revealing information to some parts of society without risking the leaking of such information could be envisaged. It is therefore understandable that no transfer of blanket community notification policies took place.

## **Lesson Usage**

The picture that has emerged so far is that although extensive lesson-drawing appears to have taken place throughout the Sarah's Law debate, the lessons that were drawn in relation to community notification policies were negative – after considering a policy implemented in another place or at another time a decision is made not to go down that policy route – and did not lead to a policy transfer. This negative outcome, although theoretically possible and mentioned as one possibility by Newmark (2002).

and Dolowitz and Marsh (1996), is not explored in detail in the literature. It is therefore useful to adapt the typologies of usage put forward by Rose (1993) and Dolowitz and Marsh (1996) and include a category for non-implementation in those cases in which the lessons learnt were of a negative nature. This might be referred to as 'dismissal' (see Table 7.2).

**Table 7.2: Alternative Ways of Drawing a Lesson Including Negative Lessons**

Copying	Enacting more or less intact a program already in effect in another jurisdiction
Adaptation	Adjusting for contextual differences a program already in effect in another jurisdiction
Making a Hybrid	Combining elements of programs from two different places
Synthesis	Combining familiar elements from programs in a number of different places to create a new program
Inspiration	Using programs elsewhere as an intellectual stimulus to develop a novel program
Dismissal	Not enacting a policy after it is noticed that the lessons that can be drawn are of a negative nature

(Based on and extended from Rose 1993, p 30)

While so far the discussion about lesson-drawing has been based on the generally accepted perception that lesson-drawing relates to the use of insights gained on policies, administrative arrangements or institutions in the development of other

policies, administrative arrangements or institutions (Dolowitz and Marsh 1996), it appears that lesson-drawing is far more encompassing than this. As can be seen from the Sarah's Law case, it is not limited to the content of a policy issue, but also applies to the tactics used by others in pursuing a particular policy outcome. For example, the *News of the World's* Sarah's Law Campaign seems to have been modelled directly on the campaign for Megan's Law that was run by Megan's parents in New Jersey in 1995. As such, lesson-drawing seems to focus on process issues, such as tactics, and not just on insights about policies, administrative arrangements or institutions.

Some of the shortcomings with the existing literature on policy transfer raised in Chapter 2 were that it does not provide sufficient consideration of the circumstances in which lesson-drawing is likely to arise, who is likely to initiate it and why, or the form it is likely to take (Pierson 2003). This research provides some insights into these areas. Although further findings from other cases are needed, it seems that lesson-drawing in an area is likely to arise at times of heightened policy activity within that area, when 'quick-fix solutions' are required and/or when there is dissatisfaction with existing policies. It appears that lesson-drawing can be initiated by a variety of actors, including the media, as in this case, rather than just policymakers.

When looking at the shape of lesson-drawing, it is important to understand policy transfer both spatially and temporally, that is lesson-drawing across space and across time. The exploration of Megan's Law is an instance of 'traditional' spatial lesson-drawing, where one country analyses another's policy. However, the introduction of MAPPAs, one of the policy outcomes of the Sarah's Law debate described in Chapter 6, appears to have evolved from local initiatives in the UK; promising approaches in dealing with sex offenders were 'transferred' to a national level. Simultaneously, the examination of previous name-and-shame is an example of lesson-drawing across time within the same county. So, it is useful to think of lesson-drawing as comprising local, national and international levels as well as time. The overall insights from the Sarah Payne debate for lesson-drawing are summarised in Diagram 7.4 which moves from the need for inspiration or a dissatisfaction with existing policies or practices through a consideration of various sources to a range of outcomes.

**Diagram 7.4: Understanding Lesson-Drawing**

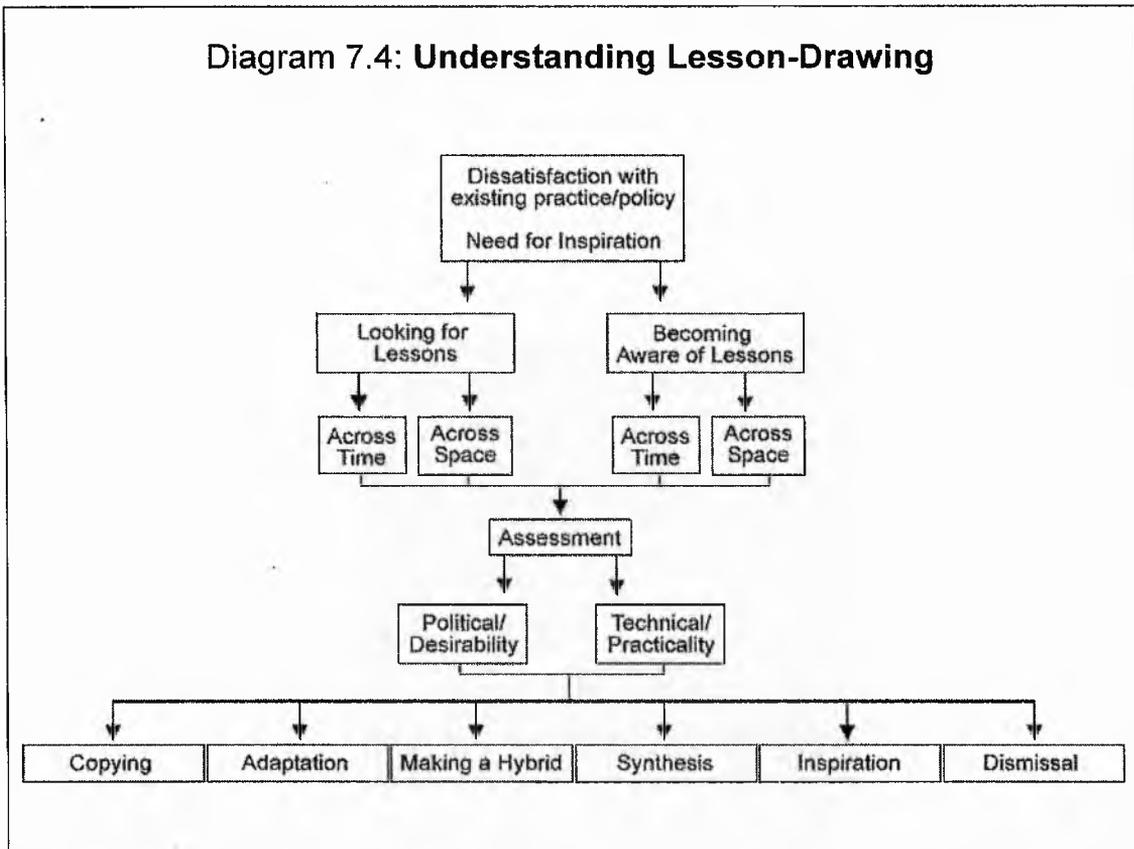


Diagram 7.4 may give the impression that the overall lesson-drawing process is a rational decision-making process. However, as previously mentioned, lesson-drawing is an activity undertaken by all players in a policy network. Although these players may make rational assessments about the relevance and usefulness of various lessons in light of their own interests and motives, this does not mean that the overall lesson-drawing process is best characterised as a rational, problem-solving process. Furthermore, when assessing the desirability of importing lessons from elsewhere, there is potential for the overall lesson-drawing process to be influenced by fads and fashion as well as conscious rational choices.

Having looked at policy networks, evidence and lesson-drawing, the question remains as to how the relationship between the three concepts can be understood.

## ***The Nexus between Policy Networks, Evidence and Lesson-Drawing***

As has been seen throughout the thesis, policy networks, evidence-use and lesson-drawing are important concepts that explain the modern policy process. Policy networks provide an analytical tool through which one can explore the characteristics of the forum in which policy discussion and policy formulation takes place. It highlights the way in which various players get together in order to debate policy issues, the players' background as well as their reasons for participating in the debate. In addition, it draws attention to the actions they take and most importantly how the policy network participants are linked with each other on a personal and organisational level. Analysing the use of evidence highlights the extent to which a policy is based on insights that can be gained from research and practice and the competing role of other influences on the policy process. Simultaneously it draws attention to the way(s) in which research and other evidence is used. Finally, the concept of lesson-drawing prompts a broader examination of the origin of various policy ideas and situates a policy development within a wider geographical and historical context.

Thus, all three concepts of policy networks, evidence-use and lesson-drawing highlight different features of the policy making process. Within the existing literature each of these three concepts tends to be considered in isolation from the others, but the issues they address display a large degree of interconnectedness. The concepts thus act as complementary lenses that provide a richer understanding of the processes at work in the making of policy. It is therefore useful to consider these three concepts in combination when exploring policy making. But how do they fit together?

This question is discussed in the remainder of this chapter. First of all, the relationship between evidence and lesson-drawing is examined. Thereafter, evidence and lesson-drawing are linked to the concept of policy networks. Finally, an emerging model of their interconnection is discussed and further questions that need to be addressed about this relationship are highlighted.

The two concepts of evidence-based policy making and lesson-drawing are closely related. When talking about one of the concepts it is very likely that one automatically addresses facets of the other. For example, when looking at lessons that can be learnt from sex offender policies in the US and their applicability to the British context, one inevitably needs to address the available evidence-base on such policies. At the same time, when trying to base policies in the best available evidence, lesson-drawing is inevitable. Although this might not necessarily include lesson-drawing across international boundaries in that the focus could be solely on one's own country it will, by force of circumstance, at least include the drawing of lessons across time within that one country. The concepts of evidence-based policy making and lesson-drawing can thus potentially be used interchangeably in that they both address the search for effective policies and practices.

In Chapter 2, 'evidence' was defined as a '*systematic investigation towards increasing the sum of knowledge*' (Davies, Nutley et al. 2000b, p 3), while the activity of lesson-drawing was described as

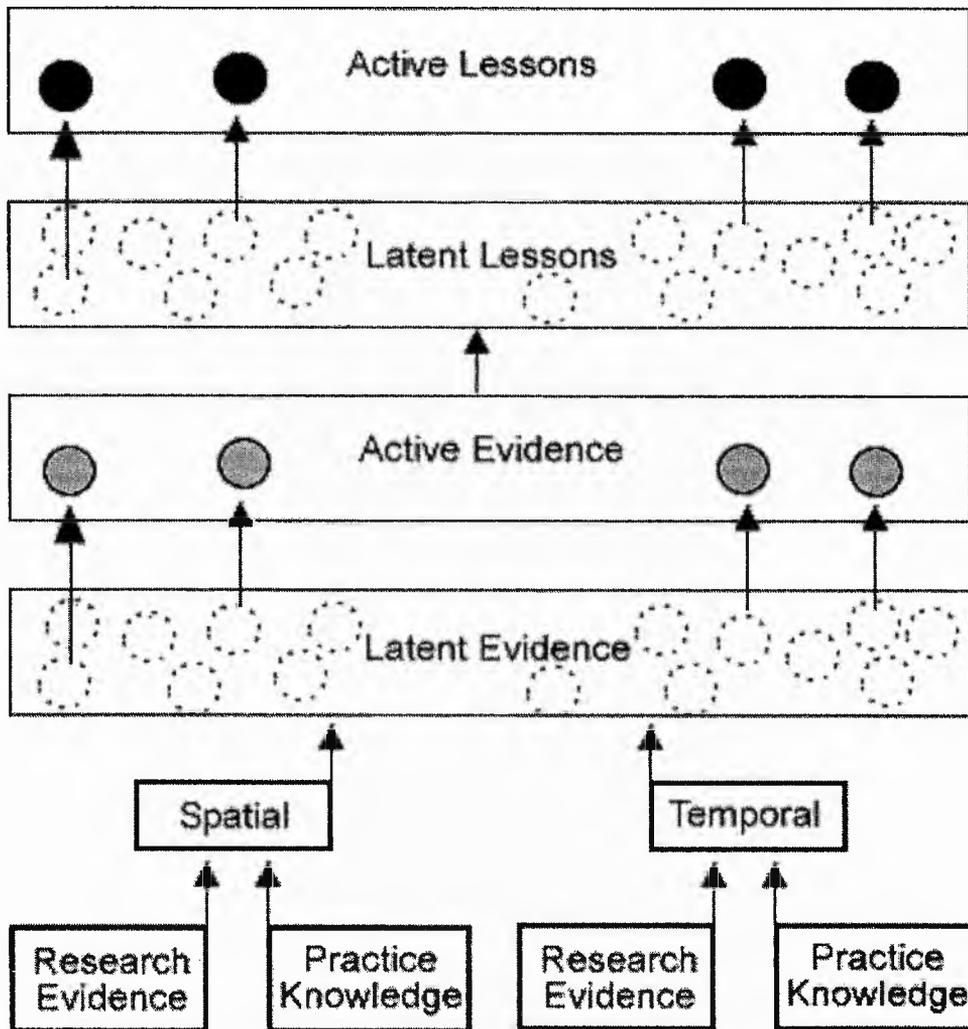
*'a process in which knowledge about policies, administrative arrangements, institutions etc. in one time and/or place is used in the development of policies, administrative arrangements and institutions in another time and/or place'* (Dolowitz and Marsh 1996, p 344).

Albeit addressing similar issues, unlike their parent concepts of evidence-based policy making and the concept of lesson-drawing, these two terms, when approached from a process perspective, cannot be used interchangeably. Rather, it seems that they complement each other in that evidence provides the basis for lesson-drawing; had there not been any indication as to the impact of name-and-shame campaigns in the British context nor any signs as to what constitutes effective sex offender management and victim protection, it would have been impossible to draw any lessons. Nonetheless, the evidence-base could have existed without any lessons being drawn. Given that lesson-drawing necessitates evidence but evidence does not require lesson-drawing it seems that lesson-drawing might be conceptualised as a second step that may follow on from the collection of evidence. Although they address different aspects, it might therefore be useful to combine the notion of evidence and the act of lesson-drawing, and to understand them as two parts that potentially make up the knowledge-base on an issue.

However, although lessons can be drawn from any available evidence, it is possible that the same piece of evidence can lead to different lessons. While the *News of the World* argued that the lesson from the American Megan's Law was that community notification is an efficient measure in child protection, this view was not shared by the other organisations involved in the policy network.

It is thus useful to differentiate between latent evidence, that which could be used and active evidence, that which is used. These two categories are related to latent lessons, those that could be drawn, and active lessons, those that are drawn. These points are summarised in Diagram 7.5.

**Diagram 7.5: The Relationship between Evidence and Lesson-Drawing**

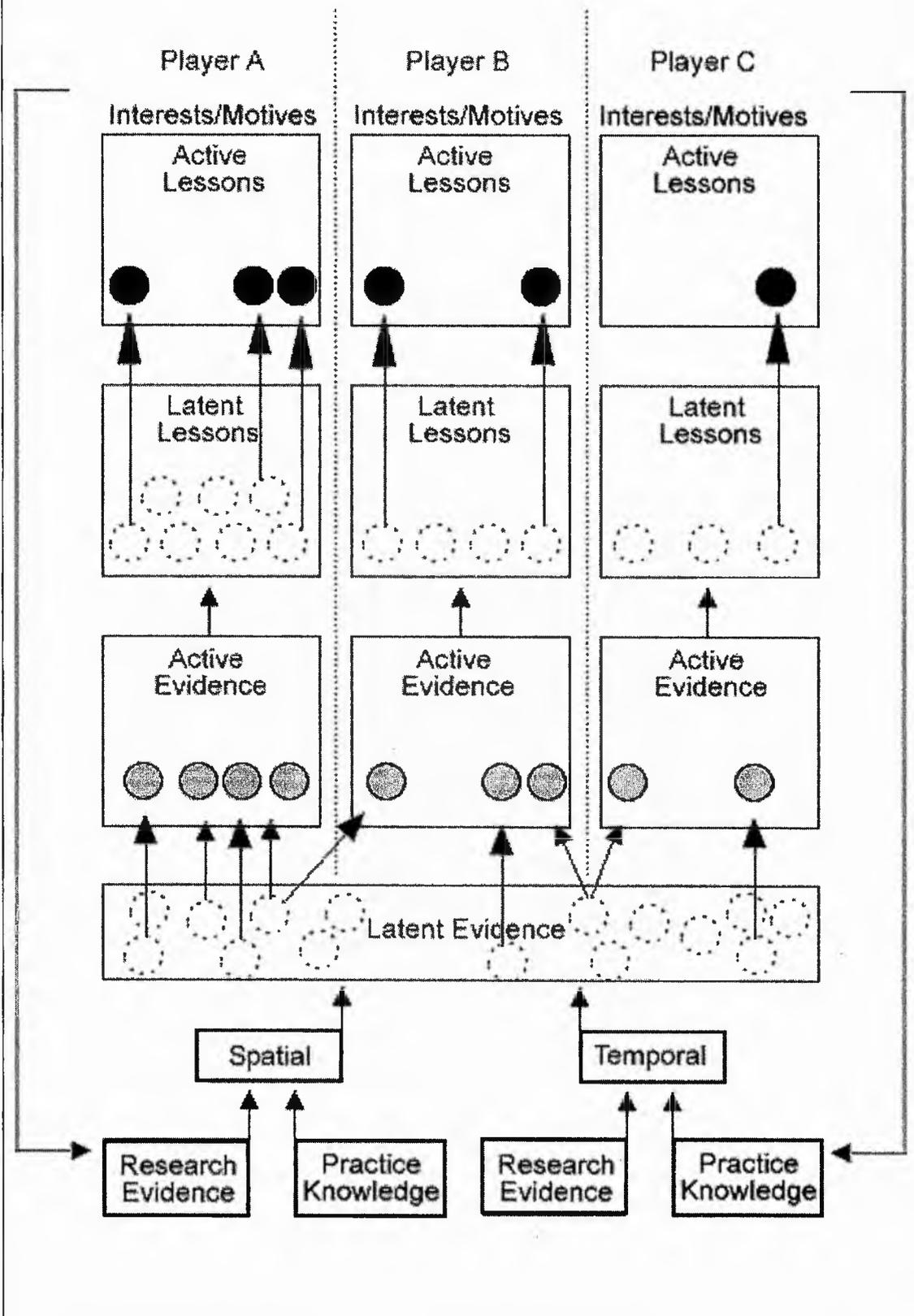


The discussion so far paints the picture of an evidence and knowledge-base existing independently of the policy networks which might make use of this evidence-base. However, the analysis of the Sarah's Law network suggests at least three ways of envisaging the links between a knowledge-base and a policy network: first, knowledge exists independently from a policy network and its actors and is used by them; second, knowledge is dependant on a policy network; and third, knowledge is a determinant of a policy network's characteristics. Each of these categories is considered in more detail below.

In relation to the first point, knowledge on sex offender community notification had started to accumulate nationally and internationally in detail during the 1990s. As such, evidence had started to build up with the result that a variety of lessons could be drawn therefrom. Part of this knowledge existed independently of any of the organisations involved in the Sarah's Law network or any of its players. At the same time, some of this knowledge had started to be taken up by a number of the organisations working in the area of sex offender management and victim protection. Additional insights, such as the effects of name-and-shame campaigns within Britain had been gained by for example ACOP and ACPO. Although there was a certain degree of overlapping knowledge, such as the understanding by members of the alliance of organisations that community notification could lead to sex offenders going underground, one can also identify some player-unique knowledge such as the lessons learnt by ACOP and ACPO from previous name-and-shame campaigns.

So, different players will bring various sets of active evidence and lessons regarding a policy topic to a policy network. From the broader pool of evidence on a policy topic different players will identify various sorts of evidence. These can be different from those identified by other players or the same. In addition, the scope of the identified evidence can differ. The evidence will become each player's 'active evidence'. Within these sets of evidence various latent lessons exist that could be drawn. Depending on each player's interests, background and operational context the sort of lessons drawn from the evidence by each player can again be the same or differ and be higher or lesser in number. Those lessons that are drawn then represent a player's active lessons. Different constellations of actors can thus result in diverse knowledge-bases within a policy network. This is illustrated in Diagram 7.6. While it can be assumed that the lessons that are drawn from a set of evidence can be influenced by player's motives and interests, this is an area that needs further research.

Diagram 7.6: Policy Actors and their Knowledge-Base



Although the knowledge within a policy network is thereby partly pre-determined it can develop further as the policy network operates. This is illustrated in the Sarah's Law network by the information-gathering and knowledge-creating activities by members of the alliance of organisations. As a result of these activities the knowledge-base within the policy network was expanded further. Once again, knowledge-creation is likely to be linked to the interests of network members. This means that the composition of a policy network will in turn again influence the knowledge-base referred to in the policy discussion within that network.

Finally, the knowledge-base of various potential network members also seems to influence the shape of the policy network. As can be seen from Chapter 5's discussion of how the various players became involved in the Sarah's Law network, the perceived knowledge and expertise that an organisation had on the topic of sex offender management and victim protection was one reason why an organisation got drawn into or became voluntarily involved in the policy debate and had thereby become part of the policy network.

A number of points have arisen from this discussion. First of all, it is useful to consider the relationship between policy networks, evidence and lesson-drawing concepts in combination when exploring the policy process. Secondly, the concepts of evidence and lesson-drawing appear to be intrinsically linked in that lesson-drawing is dependent upon evidence. It is useful to consider potential evidence and lessons as well as the evidence that was actually used and the lessons that were drawn in order to compare possibilities with actualities and thereby gain an understanding of the robustness of the latter in light of the former. The resulting knowledge-base that players can arrive at collectively determines the overall knowledge-base within a policy network on the one hand, while at the same time, the extent of knowledge a player is perceived to have can determine the composition of the policy network. In other words, the knowledge-base both determines the shape of the policy network and vice versa.

While the emerging points provide some insights into the relationship between the policy network, evidence and lesson-drawing, further research is needed in order to explore these insights more broadly.

## **Summary**

This chapter has used the Sarah Payne case to critically assess and augment the existing three concepts of policy networks, evidence-use and lesson-drawing. Each of these concepts has emerged as an important aspect of policy making that needs to be addressed when trying to understand the policy process.

What emerges from the application of the policy network concepts of iron triangles, issue networks, policy communities and advocacy coalitions to the Sarah Payne network, is that although each of them explains some of the features that were found, none of them is all-encompassing. The areas that present concepts neglect include the question of each player's degree of choice in network involvement, the variety of reasons that can drive players' participation, issues of alliance formation, the role of organisational and personal links within the network and their impact on network operation.

Another area that has not been paid sufficient attention to in the literature is the issue of network emergence. Some support was found for the wave-like nature of policy topics' presence on the policy agenda and the importance of examining policy networks within their broader policy context as well as their history within that policy context if one is to understand network emergence.

Evidence appears to have featured prominently in the policy development surrounding the Sarah's Law debate. This is a surprising feature in that policies regarding sex offenders are frequently a result of a knee-jerk reaction and driven by public outcries rather than being based in evidence. Overall, three types of evidence can be identified as having been used: research findings and statistics; practitioner knowledge; and emotive examples. Of these, the major source of evidence drawn upon in the policy debate appears to have been practitioner knowledge. Support was found for the importance ascribed to the presentation and availability of evidence within the existing literature on evidence-use and policymakers' apparent preference for straightforward recommendations that have been extracted from the available evidence. However, the latter does not seem to be a necessary requirement for

research in order for it to be influential, as illustrated by the NSPCC report on the effectiveness of Megan's Law.

In respect to lesson-drawing, some support was found for the assumption that psychological rather than geographical proximity is likely to influence a country's choice of focus when looking for potential lessons. Another important point that emerged was that lesson-drawing needs to be understood more broadly. It is not only governments who draw lessons, all players within the Sarah's Law debate drew lessons from elsewhere, albeit to a different extent. Within the concept of lesson-drawing it also seems necessary to incorporate the idea of negative lesson-drawing which addresses the situation in which lessons were drawn, but it was decided not to transfer a policy as a result thereof.

Finally, it emerged that the three areas of policy network, evidence-based policy making and lesson-drawing are closely connected and need to be addressed in combination when looking at the policy process. Both evidence and lesson-drawing make up the knowledge-base on a topic and that knowledge-base can both be determined by a policy network's make-up as well as determine it. It is influenced by a policy network's composition in that each participant will have a certain amount of individual knowledge, which in total specifies the network's overall knowledge-base. At the same time, the perceived and actual knowledge of an actor on a policy issue will have an effect on the perceived desirability of that player's involvement in a specific policy network.

## Conclusion

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This concluding chapter provides an overview of the thesis and its main findings before moving on to reflect on the research's contribution, its strengths and limitations, and the avenues it suggests for further research.

### ***Thesis Overview***

The starting point for this thesis was an interest in improving our understanding of the policy process by exploring the influence and interconnection of policy networks, evidence and lesson-drawing on policy making. Each of these concepts has had a long history in relation to the formulation of policy but it has been mainly over the last decade that the three concepts have achieved particular prominence in descriptive and normative models of the policy process.

From the literature on policy networks, evidence-based policy making and lesson-drawing, a set of research questions emerged: What are the key parameters of policy networks? How is evidence used within the policy process? How are lessons drawn? These questions were developed further into a set of more detailed questions which, along with the theoretical content of the concepts of policy networks, evidence-based policy making and lesson-drawing, provided the theoretical lenses for the empirical research project. Due to the nature of the questions that were being asked it was decided that the best way of exploring these was through a case study using documentary analysis and elite interviews.

After looking into various options, an area identified as a promising one for exploring these research questions was the field of criminal justice. The relationship between evidence and criminal justice has often been a strained one in the past and the existence of various popular misperceptions about effective policies in offender management appeared to have acted as an obstacle to evidence-based policy making, especially in the area of sex offender policies.

Within the criminal justice field the case of Sarah Payne and the debate about sex offender community notification was selected for detailed case consideration. The reason for this was that this case addressed an area in which public opinion and insights from research and practice frequently clash; policies relating to sex offenders are often perceived as being driven by public outcries rather than being based on evidence of what works best. In addition, the case was considered to be particularly interesting in that despite some initial indications that the British Government might introduce blanket sex offender community notification, modelled on the American Megan's Law, in the end it resisted such calls. Instead, a number of other measures aimed at managing sex offenders and protecting the community were introduced.

When exploring the debate about community notification following Sarah Payne's death, it emerged that the decision not to introduce blanket community notification in the UK was influenced by the pre-existing British knowledge-base on sex offender management and victim protection. This knowledge-base consisted of various pieces of research, documented practitioner experience, and previous British experiences of cases in which communities got to know about sex offenders living in their midst. In addition, evidence on the effectiveness of blanket community notification available from the US played a supporting role; the campaigns for and against the introduction of blanket community notification in the UK drew on evidence from the American debate and approaches used there. As such, lesson-drawing both across time and space could be identified as an important aspect in the policy debate and policy development.

Another key factor that influenced the nature and flow of the policy debate was the structure and nature of the network of players involved. One network characteristic that emerged as being especially important was the nature and extent of personal and organisational links within the policy network. These related both to pre-existing and emerging links amongst network participants as well as those that existed for reasons other than the policy debate that was taking place. Such links provided both opportunities and obstacles for the players involved and the operation of the overall network. A combination of different motives, ranging from economic to emotional reasons, can be identified as underlying the involvement of key players in the Sarah's Law network and these too are important in explaining network interactions.

All of this provided a number of insights in relation to the existing literature on policy networks, evidence-based policy making and policy transfer which are discussed in the next section.

### ***Research Contributions***

This research makes various contributions towards our understanding of the policy process, the operation and influence of policy networks, the use of evidence within the policy process and the drawing of lessons. And, in analysing the Sarah Payne case, it also contributes a clearer understanding of those particular events.

First of all, in relation to this latter point, the research provides some detailed insights into the reasons why, despite similarities in policy rhetoric and style between the debates on sex offender community notification in the US and the UK, there have been differences in policy outcome. It thus provides an answer as to why, in the face of an overall tendency within Britain to import criminal justice policy approaches from the US, no policy transfer took place in this case.

In addition to such case-specific insights, a number of theoretical contributions emerge from the exploration of the Sarah Payne case. First of all, it has reinforced the perception that policy networks, evidence and lesson-drawing are three key defining features of the modern policy process and that they are closely related to one another. As a result, it is important to consider them in combination when exploring the policy process.

Within the area of policy networks, it was found that although each of the main concepts for understanding networks – iron triangles, issue networks, policy communities and advocacy coalitions – highlight some important aspects of policy networks, when analysing the Sarah's Law network none of the concepts and the assumptions that underpin them provided a sufficient characterisation of that network. Several aspects of the Sarah's Law network are not fully addressed by these existing concepts, such as the degree of choice participants have in getting involved in a policy network, the causes and processes of alliance building between players within a

network, and the importance, characteristics and impact of organisational and personal links that exist in such a network.

Furthermore, while taken together the four main concepts for understanding policy networks stress different reasons for players' involvement in a network, each concept makes an argument for there being one defining reason for involvement. In contrast the study of the Sarah's Law network demonstrates that there was a variety of organisational reasons for network participation rather than one defining one. And it is likely that on top of this there were particular personal reasons for involvement as well.

The research highlights the difficulties in defining a network's origin, in that a policy topic can have a longer history than an individual policy network. However, the exploration of the various points at which sex offender community notification played a prominent role on the British policy agenda provides some support for agenda-setting theories as put forward by Baumgartner and Jones (1991; 1993) and Kingdon (1984), which explain why and when a topic rises up the policy agenda. Specific policy networks, it appears, emerge as a topic becomes prominent, and these specific networks draw upon ongoing networks of interaction amongst the key organisations working in the particular policy field.

In relation to evidence-based policy making evidence appeared to play an important role in shaping policy formulation in the Sarah's Law debate. The standard societal response to sex crimes is that a sexually motivated murder of a child or woman by someone who happens to have a record of sex crimes throws a community into panic, this is then given huge publicity before the quest for effective social response by the agitated community leads to political knee-jerk reactions of tougher policing or harsher sentencing (Sutherland 1950; Sampson 1994; Lieb 2000). However, in the Sarah's Law case the debate focused on presenting 'evidence-based' arguments about the most effective ways of managing sex offenders.

The evidence that was used within the Sarah's Law debate falls into three categories: research findings and statistics; practitioner knowledge; and emotive examples. The most prominent role appears to have been played by practitioner knowledge, an area

that is not fully explored within the literature on evidence-based policy making. Although practitioner knowledge is considered to be one of the lower forms of evidence in the hierarchy of evidence used within medicine, it seems to be a useful one in this policy area.

Within the existing literature a number of ways in which evidence can enter the policy process have been identified. In the Sarah's Law debate the way in which evidence entered the policy process was mainly of a strategic nature – that is, to support an argument. However, this might be attributable to the controversial nature of the case and the short timescale it covers. There are some indications that when looking at sex offender policies over a longer period of time both instrumental and conceptual use of evidence occurred. It may be that various categories of evidence-use can be identified more clearly if one looks at a broader timescale.

Some support was found in the case study for the view that the format and accessibility of evidence are important factors in explaining the uptake of evidence. There is also some evidence that policy makers and practitioners prefer clear-cut recommendations that have been extracted from research. However, the absence of clear-cut findings does not mean that a piece of research will not become influential. Instead, the determining key factors explaining the influence of research evidence in this case were its comprehensiveness and its perceived value for future policy debates on the same topic as well as the assumed integrity of the evidence-provider.

One of the key insights to emerge from the case analysis is that the concept of policy transfer is intrinsically linked to the idea of evidence-based policy making, although the two areas have largely been treated as separate concerns in the existing literature. The drawing of lessons is dependent on the existence of evidence and can therefore be understood as a sub-set of evidence-based policy making.

The existing notion of lesson-drawing focuses too much on cases in which policy transfer has taken place. It is necessary to develop the concept further by including instances in which lessons were drawn but the idea of transferring a policy was dismissed in light of the emerging picture. Lesson-drawing is not limited to practice and policies but also includes issues of tactics and process that can be employed to

initiate the formulation of new policies or practices. From this case it can be said that lesson-drawing is as an action pursued by all members of a policy network and not just those in governmental positions.

Although the purpose of this thesis is primarily to develop academic understanding of the policy process, it also provides the basis for some lessons for practice, i.e. for those engaged in the policy process. First of all, the case study emphasises the importance of understanding the reasons why people and organisations participate or do not participate in a policy network. There are likely to be multiple reasons and an exploration of these is helpful when seeking to build alliances and reach consensus.

Furthermore, in order to fully understand the policy field in which one is operating, special attention should be paid to any pre-existing or ongoing organisational or personal links that might exist between actors within a policy network. These links may not relate to the issue at hand but they can impact on network operation.

As regards evidence-based policy making, the importance of appropriate formats and channels of distribution in the dissemination of evidence has been confirmed. It is useful for evidence producers to bear in mind the timing, relevance, clarity, quality and political adeptness of their output as well as their reputation within the policy arena. Various forms of evidence will compete with one another for attention. As such it is useful to combine different formats of evidence presentation to increase impact, like for example including knowledge-based statements and emotive examples in reports of research findings. Using real life examples to which people can relate seems to be an important strategy to increase the influence of research findings, especially when wider distribution through the media is envisaged. Furthermore, given that evidence enters the policy process via a range of network actors, as part of any dissemination process it is important to target all network actors and not just governmental ones.

Finally, on the subject of policy transfer and lesson-drawing the thesis reiterates the importance of bearing in mind the socio-cultural context within which any lessons that have been drawn from abroad would be placed: not everything that could be transferred, even if it might be politically desirable and technically feasible, should be

transferred. In addition to considering the cultural environment, ethical and moral issues need to be examined too.

### ***Research Limitations***

As a result of this research a more in-depth understanding of the events surrounding the case of Sarah Payne and the British debate about sex offender community notification has been achieved. And this understanding of the specific events has been used to enhance conceptual understanding of the policy process. Although a lot of hitherto unavailable information and insights have been gained through conducting the research, there are limitations to what has been achieved. One limitation relates to the restricted accessibility of documents and individuals' willingness to participate in the research project. This was especially so in the cases of the *News of the World* and the Government. While a lot could be learnt from the available documents it would have been beneficial to have gained more insights into the *News of the World's* motivation and politicians' perceptions and attitudes, as well as the extent and nature of the organisational and personal links between these two. Gaining such access to the media and politicians is, however, always likely to be fraught with difficulties.

A second issue that arises from the restricted accessibility of documents is the issue of selectivity. In most of the instances where individuals, usually interviewees, forwarded information to the researcher, people seemed to try to provide as much information as possible and a great degree of willingness to assist was noticeable. However, there is the possibility of conscious and/or unconscious selectivity, so that some of the important documentary information available was not included. Although there is the possibility that as a result of such selectivity some important insights that could have been gained have not been, the main problem likely to result from a selective forwarding of data is that the obtained information is skewed, thereby leading to a distorted picture of the events. While this cannot be ruled out, every attempt was made to counteract this danger by triangulating the data from various sources wherever possible.

Another limitation relates to the chosen research methodology. As was mentioned in Chapter 3, the case study approach, especially if of a single-case nature, is not regarded as providing a good basis for generalisations. In this instance the problem could be confounded by the fact that it is not only a single-case study but also one that focuses on a rather exceptional instead of a more standard case of policy development. However, despite the uniqueness of the Sarah Payne case, policy formulation in light of 'shock' events seems to be more widespread. In addition, as was pointed out in Chapter 2, such shock events frequently offer the opportunity for policy change. In this respect, the characteristics displayed within this case might be less exceptional than they appear at first sight. However, further research into similar catalytic events in the same or other policy areas is required in order to assess this.

### ***Methodological Reflections***

Overall, it was found that the single-case study approach, using documentary analysis and elite interviews, is a useful way of analysing policy networks, evidence-based policy making and policy transfer. Despite its reputation as an historian's rather than a social scientist's tool, documentary analysis proved very useful in understanding the case. A qualitative analysis of available documents can make a better contribution to the social sciences than is sometimes assumed, especially when used in combination with elite interviews. Given its usefulness, documentary analysis warrants better consideration in research methods texts and more widespread application in research practice.

Despite the usefulness of documentary analysis, interviews with elite players were essential and documentary analysis alone would not have sufficed. Interviews with key players not only served the important function of providing further insights into and triangulation of the data obtained from documentary sources, but they were also an important means of gaining access to otherwise restricted documents. Given that access to such documents always followed the interview it meant that individuals could not be interviewed about the content of these documents at the time. It would therefore have been ideal to have had follow-up interviews with each of the players towards the end of the research in order to address issues arising from the emerging analysis but, due to resource constraints, this was not possible.

Although the overall experience was that documentary analysis and elite interviews were useful research method, their use in a high profile or controversial policy area is problematic since the researcher is dependent on gaining access to individuals and potentially restricted documents. This access is likely to be more difficult to negotiate in such policy areas.

A final methodological reflection relates to the benefits of studying the policy process retrospectively. The retrospective analysis of the Sarah Payne case was beneficial for two reasons. First, the Sarah's Law debate has lost some of its sensitivity and as a result a more detailed documentation of the events was available than would probably have been available at the time. Second, retrospective analysis meant that it was possible to situate the case in its broader policy context by addressing prior and subsequent developments. However, in relation to researching such cases it is important to bear in mind that as temporal distance between a piece of research and its object of enquiry increases the reliability of recall accuracy by interviewees is likely to decrease. In addition, as was experienced throughout this research, documents relating to events that took place some time ago do get lost, destroyed or misplaced. As a result, the researcher needs to make a difficult judgement when researching a controversial topic: when is the point at which enough time has elapsed so that people are willing to talk and share their insights into what took place, while at the same time the event(s) are not too distant for people to remember intricate details and documents are not considered to be obsolete and therefore destroyed? While no generally applicable advice can be given, judging from the experiences of researching the Sarah Payne case three to five years distance between the original events and the detailed examination seems to be about right.

### ***Potential Areas for Further Research***

As has been indicated in this and the preceding chapter, a number of avenues for further research have opened up in light of this research. Of these, three areas for further research deserve to be highlighted: the extent and nature of organisational links within a policy network; the combination of different formats of evidence in policy debates; and the shape and extent of lesson-drawing by non-governmental players.

Chapter 5 highlighted that pre-existing personal and organisational links between network actors, which do not relate directly to the policy issue under consideration, can potentially have a huge influence on the way in which a policy network operates. This includes the courses of action taken by network participants and the formulation of policies. Within the existing policy network literature this issue does not appear to be addressed well enough and warrants further exploration. Such research needs to consider the precise ways in which organisational and personal links influence policy networks and any actions other players might take in order to establish links of their own or counteract those of others.

A lot of the literature on evidence-based policy making is concerned with the evaluation of research findings within policy implementation. What is needed is a more detailed examination of how different forms of evidence are accessed, weighted and combined in the development of policies. This would be of special interest to evidence-providers and those trying to influence the policy process.

Since lesson-drawing appears to be a much broader activity than assumed in that all participants within a policy network seem to be doing this, the exploration of lesson-drawing within policy networks merits further attention. Of special interest are the sources from which lessons are drawn, their nature, and the question of how and to which extent they are used and by whom.

Finally, given that the focus of this research was on a single case, there is always the issue of replication. It would be beneficial to compare and contrast the findings of this case study with other cases which investigate policy network activity when a policy topic is pushed on the policy agenda through a critical and controversial incident. There is also the need to further investigate how far the findings from this case relate to the ongoing, more 'low-profile' policy making process within the area of criminal justice and social policy more broadly.

## **The Broader Policy Context of the Sarah Payne Case: practice and legislative developments in the area of sex offender management and victim protection**

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### ***Developments in Practice***

In Britain the 1990s had witnessed an increasing level of developments in the practice of sex offender management, both within prison and on release. Of special importance in this context is the *Sex Offender Treatment Programme* that had been set up in prisons, and the increasing co-operation and interdependence of the work done by the probation and police service (Interviewee 5).

The Sex Offender Treatment Programme (SOTP) started in 1991 as a result of the Woolf report and the Criminal Justice Act 1991, both of which provided specific recommendations for the management of sex offenders held in prisons. The programme was centrally designed and took into account research evidence on the effectiveness of various treatment approaches for sex offenders. A cognitive-behavioural approach was taken, which has been shown to be one of the most promising approaches for reducing recidivism (Mann 1998; Friendship, Mann et al. 2003). The programme is centred around group work and is made up of five parts, outlined in Table A1.1. It was set up on a national scale in 1992 and its CORE programme was modified in both 1996 and 2000. These modifications extended the number of hours of treatment and introduced an accreditation system to ensure persistent quality of the programme (Friendship, Mann et al. 2003). The programme has gained international recognition and has been widely adopted either in its entirety or in parts in several other countries (Mann 1998).

**Table A1.1: Components of the Sex Offender Treatment Programme**

1. Assessment of potential treatment effectiveness for each sex offender using interviews, psychometric testing, personality assessment, medical assessment and psycho-physiological testing of sexual arousal via penile plethysmograph. This leads to a decision regarding treatment suitability.

2. **CORE Programme** – First treatment programme an offender has to undertake with the goals of

- Reducing denial and minimisation
- Enhancing understanding of the victim's experience
- Developing strategies for avoiding reoffending

3. **ADAPTED CORE Programme** – modified version of the CORE programme for offenders with an IQ of less than 80.

4. **EXTENDED Programme** – A second stage programme for offenders with high levels of deviance who successfully completed the first part but require further treatment not covered thereby. The goals are:

- Identifying and challenging patterns of dysfunctional thinking
- Improving management of emotions
- Improving relationship and intimacy skills
- Addressing deviant fantasies and sexual arousal
- Understanding the links of all these factors to sexual offending

5. **BOOSTER Programme** – A programme designed for those who successfully finished the CORE section and are about to be released from prison. The idea is to freshen up the lessons from previous sections as well as developing and practising aspects of the strategies developed to avoid reoffending

(Adapted from Mann 1998, pp 347-349)

Evaluations of the SOTP's CORE Programme so far have indicated that it is successful at reducing reconvictions for low-risk offenders and has a significant impact on sexual and violent reconvictions for medium-risk offenders. While the

focus is explicitly on sexual offending, violent offending appears also to be reduced in those who participated in the programme. Unfortunately, it is not sufficient at reducing reconvictions for high-risk offenders (Friendship, Mann et al. 2003).

Along with the setting up of a national treatment programme within prisons, from the early 1990s a growing co-operation started to emerge between various organizations involved in sex offender management, especially between police and the probation service. This related both to the actual management of sex offenders, as well as to the accumulation and sharing of information and intelligence on these offenders. Increasingly, the focus was on best practice. As a result, by the mid-1990s a relatively good understanding of the nature of sexual offences and offenders and how to deal with them, combined with ways of assessing the risk they posed to society, was in place (Interviewee 4).

On top of wider inter-agency co-operation there was also the development of various local practices when dealing with sex offenders, especially following the introduction of the Sex Offenders Act. One of the key developments appears to have been in the West-Midlands. A number of hospitals and other agencies involved in child protection were working closely together in the management of sex offenders. This had been developed informally by the probation and police services of West-Midlands and while similar arrangements had been set up across the country this one was working particularly well and provided the embryonic basis on which the Multi-Agency Protection Panels (MAPPAs) would be modelled following the Sarah Payne case (Interviewee 4).

## ***Legislative Developments***

### **The Sex Offenders Act 1997**

The registration of criminals and the compilation of such information on a national register have a long history in the United Kingdom. The first notification system was set up in 1864 by the Penal Servitude Bill. This required 'ticket-of-leave' offenders to register with the police within three days of leaving prison and then on a monthly basis unless they changed address, in which case they were required to report

to the police within 48 hours (Thomas 2000, p 41). Unfortunately, due to communication difficulties amongst the police and the lack of a central register the system did not work in maintaining accurate information on released prisoners. Consequently, in 1869 the Habitual Criminals Act established a national register of criminals within England, Wales and Ireland, extended to Scotland in 1871 by the Prevention of Crimes Act, that was to be held at Scotland Yard and expected to be updated regularly. The success of this system was questionable and it was eventually dismantled by Winston Churchill in 1910 (Thomas 2000, pp 42-3). Eighty years later such a registration scheme, this time focusing on sex offenders, was back on the agenda with some of the key themes and arguments, resonating the concerns voiced in Victorian times.

While from the mid-1960s there appears to have been a tendency by the Home Office to inform local authorities about the release of certain kinds of sex offenders (Crow 2001) and there are indications that the police has always kept records of people for sexual and other offences (Berman and Danby 2003), from around 1994 calls for a register of such offenders, especially of paedophiles, were increasingly aired. This idea had first been put forward at the annual general meeting of the British Association of Social Workers in 1988 (Thomas 2000). The increased popularity of such a register can partly be ascribed to the prominent media coverage of paedophilic cases, the impact this had on public understanding, as well as the increasing tendency to look to the United States for inspiration regarding criminal policies (Grover and Soothill 1995; Jones and Newburn 2002; Jones and Newburn 2002b; Soothill and Walby 1991).

In 1996 two private Members' Bills, The Sexual Offences Against Children (Register of Offender) Bill 27 February 1996, and the Paedophiles (Registration and Miscellaneous Provisions) Bill 12 June 1996, had failed to introduce a national register. In the same year, however, the Home Office published a consultation document in which the idea of a register was mentioned. At that time, an array of other lists containing sex offenders' details, especially paedophiles', already existed. These were the Police National Computer List, the National Identification Service List, the National Criminal Intelligence Service List, Scotland Yard's National Paedophile Index List, List 99 of the Department for Education and Employment, and

the Department of Health Consultancy Index List. Local police stations held a variety of additional lists as did voluntary organizations such as the Scout Association and the National Society for the Prevention of Cruelty to Children (HC Debate 1997b, c49-50).

The arguments for setting up a national register mirrored those in the US. It might assist the police in identifying suspects following a crime and it might help to prevent crime, thereby giving added protection and security to the wider public. Such a register could have a deterrent effect, especially in addressing reoffending (HC Debate 1997b, see for example c26). Despite initial reluctance by Michael Howard to proceed with the consultation due to the proximity of a general election and worries that the required legislation might not be passed in time (Cobley 2000), in the end the Government published the Sex Offenders Bill on 18 December 1996. During the resulting debate in the House of Commons the main criticisms focused on the timeframe of the Bill – which was not supposed to be applied retrospectively – the way in which the gathered information should be used, and the usefulness of such a register in light of the arguments put forward in favour of the Bill (HC Debate 1997; HC Debate 1997b).

The publicity surrounding this Bill seemed to have raised expectations amongst the public that the Government would follow the American approach and introduce an ‘*American-style Megan's Law*’ with public notification about paedophiles moving into an area (HC Debate 1997, c221). Across the UK, the idea of paedophiles living within the community received extensive regional media coverage with journalists and pressure groups increasingly picking up on Megan's Law (Kitzinger 1999). Within Parliament a lot of the arguments on sex offender registers and community notification addressed key questions of civil liberties, the underlying concepts and philosophical dimensions of punishment and rehabilitation, the effectiveness of treatment and aspects relating to vigilantism (HC Debate 1997; HC Debate 1997b). Opinions were divided. Some members argued that in the cases of sex offenders, especially against children, ‘*we should seriously examine our normal concerns about protecting civil liberties*’ (HC Debate 1997b, c64) and that not only the public has a right to know but that ‘*The rights of children – the most vulnerable group in our*

*society – must come before those of convicted criminals*' (HC Debate 1997b, c58).

Others took a more moderate view and argued that:

*'the Bill is akin to branding them on the forehead. In effect, the Bill states that prison cannot rehabilitate, that there is no cure and that there is no chance of rehabilitation...[W]hen a person has been punished and the punishment is finished, he has paid his debt to society and the slate should be wiped clean. That is not to say that we should forget everything, but we should keep that in mind'* (HC Debate 1997b, c62).

Given the constraints of time and the societal pressures at the time the Bill was discussed, a certain degree of eagerness seems to have dominated the discussion (see for example HC Debate 1997b, c57 & c58), which has been commented on by various authors when examining the Bill (see for example Selfe and Burke 2001). On 21 March 1997 the Sex Offenders Act (1997) received Royal Assent and came into force on 1 September of the same year.

Behind the scenes, things had not been running smoothly during the debate. While the Association of Chief Police Officers (ACPO) was sent a copy of the Bill it did not have any consultation on it. Instead, ACPO was informed that this Bill would go before Parliament at the beginning of the Parliament session in January 1997. This led to some disgruntlement on ACPO's side given that they had identified several major problems with the proposals put forward in the Bill (Interviewee 4).

One major problem was the timescale under which the new measures should be introduced. Those involved in the implementation of the Act had about six weeks to bring about the necessary changes and the deadline of 1 September meant that this needed to be carried out at a time in which lots of people were on holiday. *'It was a hell of a job'* (Interviewee 5).

Following discussion in the House of Commons it had been decided that in order to save on bureaucracy, new software and thereby costs, the easiest way of keeping such a register would be to include the information on the police national computer (PNC) (HC Debate 1997, c215ff). However, experts estimated at the time that it would take up to two years to configure and set up the PNC. To guarantee compliance with the

deadline the PNC was *'cobbled up'*. This meant that there was no search facility regarding sex offenders whatsoever. In order to monitor sex offenders the police needed to have *'a physical dump of the PNC'* each time they intended to check something. The result was that in order to find out about registration requirements, location and other details on offenders they would get *'a massive bunch of paper through which the police then had to go by hand'* (Interviewee 4). It was even impossible to find out about relatively simple points, such as the overall number of offenders. *'You could not search it to see how many people are on the register. You had to physically dump it and then count them'* (Interviewee 4).

Along with such practical problems there were several serious flaws within the original draft of the Bill. These were discussed at length between the police and the civil servants involved. Areas that were identified as problematic were the *'foreign element'* which was *'almost un-enforceable'* but *'had to be there because morally it made some very good statements about "look if you are going abroad don't think you can abuse children and get away with it"'* and aspects relating to registration. There were several loopholes, mainly resulting from the timescales within which offenders had to register, which enabled sex offenders, if sly enough, to legally avoid registration despite any requirements thereto (Interviewee 4).

While these deficits were pointed out to the civil servants involved, in March, a few weeks into the discussion, some of the key organizations affected by this Act got a phonecall saying:

*'Right, you've got two options with this Bill, because John Major has called an election. Option one is that you accept it with all its faults on [sic.] or it is dumped. You know, we loose it this week and we don't know when it will be put in place again'* (Interviewee 4).

Faced with the dilemma of losing the Bill altogether or simply accepting the identified shortcomings, the criminal justice organizations decided that it would be better to opt for getting the Bill through Parliament and having it passed, since at least this would start to raise awareness about sex offenders and put a basis for discussions on the true nature of dangerous sex offenders into place. Although this anticipated result was achieved, the identified loopholes meant that the bodies involved in sex offender

management '*have been playing catch-up*' with sex offender policies ever since (Interviewee 5).

## Content of the Act

The rather brief Act consists of two main sections. While the second section addresses sexual offences committed outside the United Kingdom, it is Part 1 of the Sex Offenders Act 1997 that is of relevance to this thesis. Part 1 deals with the registration requirements for sex offenders. According to it, all offenders who are either cautioned or convicted for a sexual offence as given in Schedule 1 to the Act, outlined in Table A1.2, and not found guilty for reasons of insanity or disability, fall under the notification requirements, the time period of which is given in Table A1.3.

The Act works on an '*either-or-nature*'. This does not provide the courts with any discretionary power regarding registration requirements. Either a person is cautioned or convicted for one of the specific offences outlined in the Act and thereby will automatically be subject to registration, or the person is not, in which case no registration requirement can be imposed upon that person (Berman and Danby 2003). Those to which the Act applies are required to provide the police with their name and home address within 14 days of the conviction or commencement of the Act. In addition, if the offender has a change in name, home address or has resided or stayed at an address other than the home address provided for 14 days or longer the police needs to be informed about this within 14 days, too.

**Table A1.2: Sex Offenders Act 1997: Sexual Offences to which Part 1 Applies**

1. Rape
2. Intercourse with a girl under 13
3. Intercourse with a girl between 13 and 16 except when the offender was under 20
4. Incest by a man unless the victim of or, as the case may be, the other party to the offence was 18 or over and unless the offender is or has been sentenced to imprisonment for a term of 30 months or more or is or has been admitted to a hospital subject to a restriction order
5. Buggery except in cases where the offender was under 20 or where the victim of or, as the case may be, the other party to the offence was 18 or over and unless the offender is or has been sentenced to imprisonment for a term of 30 months or more or is or has been admitted to a hospital subject to a restriction order
6. Indecency between men except in cases where the offender was under 20 or where the victim of or, as the case may be, the other party to the offence was 18 or over and unless the offender is or has been sentenced to imprisonment for a term of 30 months or more or is or has been admitted to a hospital subject to a restriction order
7. Indecent assault on a woman unless the victim of or, as the case may be, the other party to the offence was 18 or over or unless the offender is or has been sentenced to imprisonment for a term of 30 months or more or is or has been admitted to a hospital subject to a restriction order
8. Indecent assault on a man unless the victim of or, as the case may be, the other party to the offence was 18 or over or unless the offender is or has been sentenced to imprisonment for a term of 30 months or more or is or has been admitted to a hospital subject to a restriction order
9. Assault with intent to commit buggery unless the victim of or, as the case may be, the other party to the offence was 18 or over or unless the offender is or has been sentenced to imprisonment for a term of 30 months or more or is or has been admitted to a hospital subject to a restriction order
10. Causing or encouraging prostitution, intercourse with, or indecent assault on, girl under 16
11. Indecent conduct towards young child
12. Inciting girl under 16 to have incestuous sexual intercourse
13. Indecent photographs of children
14. Offences relating to goods prohibited to be imported under section 42 of the Customs and Consolidation Act 1876 (prohibitions and restrictions)
15. Possession of indecent photographs of children

(Adapted from TSO 1997, Schedule 1 Section 1)

**Table A1.3: Sex Offenders Act 1997: Notification Period**

<b>Sentence</b>	<b>Applicable Period</b>
Imprisonment for life	Indefinite
Admitted to a hospital subject to a restriction order	Indefinite
Imprisonment for more than 6 but less than 30 months	10 years
Imprisonment for 6 months or less	7 years
Admitted to a hospital without being subject to a restriction order	7 years
Any other sentence or caution	5 years

(Adapted from TSO 1997 Part 1.(4))

### Use of Information on the Register

Within the actual Act there are no guidelines on how to use the information held on the register, a point of criticism which was not only widely discussed during the House of Commons debate, since this ‘glaring hole’ meant that questions relating to individual responsibilities and procedures were left unclear (HC Debate 1997, c218), but also within academic circles (see for example Soothill and Francis 1997; Soothill, Francis et al. 1997; Soothill and Francis 1998).

Just before the Act came into force, the Home Office and the Department of Health did however publish some guidelines on managing information acquired under the provisions of the Act (DOH 1997; Home Office 1997). The guidelines were only considered to be of an interim nature. More detailed guidance was to follow once the operation of the Act had been scrutinized and further discussions with relevant agencies and departments had taken place (Home Office 1997, p 4). As a result the instructions are of a rather sketchy nature. Within Appendix A of the Home Office’s circular it is written that

*‘Ministers have made it very clear that information must not merely be recorded or filed: it is essential that risk assessment should be undertaken by the police working with other child protection agencies, in*

*order to protect children and vulnerable adults. Information should not be handed out gratuitously, however and assessment of risk is at the heart of the process which should be adopted...Ministers consider it essential that information is passed to other agencies in accordance with the guidance in order to protect the public as effectively as possible'*  
(Home Office 1997, p 16)

In addition to this, some general principles regarding the disclosure of information are given, as provided in Table A1.4. However, precise details or instructions on the disclosure of information and mechanisms for assessing the risk posed by sex offenders are lacking.

Essentially, the new arrangements should be '*an extension of current good practice*' (Home Office 1997, p 17) and any disclosure should be based on a case-by-case basis. Things that should be considered in each case and form part of the risk assessment were:

- the nature and pattern of previous offending;
- compliance with previous sentences or Court Orders;
- the probability that a further offence will be committed and the harm such behaviour would cause;
- any predatory behaviour which may indicate a likelihood of reoffending;
- potential victims and whether they are children or otherwise especially vulnerable;
- any potential consequences of disclosure to the offender and the offender's family;
- and finally any potential consequences of disclosure in the wider context of law and order (Home Office 1997, p 19).

**Table A1.4: Principles relating to the Disclosure of Information  
obtained through the Sex Offenders Act 1997**

- Disclosure to third parties of personal information about individual offenders should be exceptions to a general policy of confidentiality
- Each decision on whether or not to disclose has to be justified on the basis of the likelihood of the harm which non-disclosure might otherwise cause
- Disclosure should be seen as part of an overall plan for managing the risk posed by a potential offender and the need to protect an individual child, a group of children or other vulnerable persons
- There will always be a risk of legal action by an offender against the police relating to disclosure
- In some circumstances it may be appropriate to warn an offender that disclosure is to be made to encourage different behaviour
- Decisions should be based on an assessment of the seriousness of the risk, or displacing the offending, of the continuing visibility of the offender and any other operational considerations in respect of the management of the risk posed by the offender

(Adapted from Home Office 1997, p 18)

Given the assumption that disclosure to a member of the general public would be the exception rather than the norm, the three key areas identified within the circular in which disclosure might be especially justified are the workplace in general, schools and playgroups and youth groups. In each of the cases disclosure should be made to individuals at a senior level or individuals directly affected and the police is expected to provide guidance and advice on the appropriate actions to be taken by the receiving party. Again the expectations as to the precise nature of this are rather vague, and given that the way in which sensitive and confidential information is handled varies between different organizations, it was expected that the precise policies would '*evolve in the light of experience*' (Home Office 1997, p 24).

## Assessment of the Register's Use

The police's use of the information accumulated under the Sex Offenders Act was evaluated for the first time between 1998 and 1999. The results were published in 2000, three days after the commencement of the *News of the World's* name-and-shame campaign, as part of the Home Office's *Police Research Series* (Plotnikoff and Woolfson 2000). This report highlighted that while the compliance rate for those required to register ranged between 85.4% and 100% amongst different forces, overall the national rate of compliance was very high at 94.7%. Despite finding that on balance the majority of police officers felt that the Act's contribution to policing justified the efforts involved, with the main benefits being improved quality of information and working relationship with other agencies, several areas of concerns were identified. These related to deficiencies in the current legislation, inadequate resources for monitoring offenders, increased workloads, fears that resources had been diverted away from other categories of higher risk offenders, timeliness and quality of the flow of information from courts, prisons and hospitals regarding offenders required to register and the creation of unrealistic expectations on the part of the public and other agencies. While all forces had established a policy on community notification few had used it, and even the disclosure of information to all local officers was not a standard practice in all police forces. Only 30% of the forces provided cases in which monitoring activity triggered by the register was assumed to have contributed to crime prevention and only 23% stated that they were using information from the register in their investigations (Plotnikoff and Woolfson 2000).

Independently of the official review, amongst researchers the Act has been widely criticized for a variety of reasons, mainly relating to dilemmas in establishing and operating a sex offender register, ethical objections and a lack of clarity underlying the precise purpose of the Act (see for example Soothill and Francis 1997; Soothill and Francis 1998; McAlinden 1999).

## Crime and Disorder Act 1998

Following the implementation of the Sex Offenders Act (1997) and several highly publicised cases of sex offenders in the community, the Government found that there remained serious gaps in the provisions of the Act and that communities were

still not getting 'adequate' protection from the activities of sex offenders, particularly those 'who prey on children and other vulnerable people' (Home Office 1997b, p 1). Part of this problem could be ascribed to the non-retrospective nature of the Sex Offenders Act which meant that anybody convicted prior to the enforcement of the Act was exempt from the registration requirements.

After further consultation and discussion, the Crime and Disorder Act (1998) introduced the notion of Sex Offender Order (TSO 1998, Section 2). These orders were aimed at protecting the public from the risk of sexual offences by placing restrictions on the behaviour of sex offenders and required the offender to register with the police under the provisions of the Sex Offenders Act 1997. Further details on these orders are set out in Table A1.5. One problem with these arrangements was, however, that '*a Sex Offender Order made in England could not be implemented in Scotland and vice versa which is crazy*' (Interviewee 5).

The Crime and Disorder Act 1998 also addressed the question of sharing information and extended existing arrangements for disclosing information. While no duty for such disclosure was imposed on anybody, section 115 of the Act states that both persons and organisations which previously might not have been allowed to disclose information were, for the purpose of the Act, given powers to disclose information to the police, probation service, local authorities or health authorities (TSO 1998, Section 115).

In addition to this, the Act provided courts with the power to pass 'extended sentences' on both sexual and violent offenders. This meant that offenders in these categories could be subjected to an extended period of post-release supervision. This was in addition to any existing terms of imprisonment and post-release supervision that would have been imposed under the Criminal Justice Act 1991. Once again it was decided that it would not be possible to apply for such sentences retrospectively.

### Table A1.5: **Basic Principles for Sex Offender Orders**

- Orders can be sought against anyone who has been convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged, or cautioned for an offence covered by the Part 1 of the Sex Offenders Act 1997 either in the UK or overseas. This includes offenders whose convictions etc predate the commencement of the Act . One of the requirements of a SOO is to register for the duration of the order.
- Given that the fundamental purpose of a sex offender order is to protect the public from serious harm, a key factor to be considered by both the police, in preparing a case file, and by the court in determining the application, is the risk presented by the defendant since the relevant date, as defined in the Act. To secure an order the police will need to establish there is a reasonable cause to believe that an order is necessary to protect the public, or individual members of the public, from harm.
- Care needs to be taken that the prohibitions in the order can be justified by the assessment of risk. While there is a difficult balance to be struck between the rights of the defendant and the need to protect the community, the need for such orders is dictated by the importance of protecting the public, in particular children and vulnerable adults. As a prohibitive rather than a punitive measure, the sex offender order enables this to be done without recourse to the criminal law. It must be remembered that the only prohibitions which can be imposed by a sex offender order are those necessary for the purpose of protecting the public from serious harm from the defendant. The behaviour prohibited by the order might well be considered unproblematic if exhibited by another member of the public – it is the offender's previous offending behaviour and subsequent demonstration that he may pose a risk of further such behaviour, which will make him eligible for an order.
- A SOO is a serious matter and breach of any prohibition contained in them gives rise to criminal proceedings and penalties. Every effort needs to be made to ensure the defendant understands this, and that he attends the hearing of the application and is given the opportunity to state his case.

(Adapted from Home Office 2002b)

## ***The Case of 'Regina -v- Chief Constable of North Wales Police and Others Ex Parte Thorpe and Another'***

Another development when looking at the debate surrounding the Sarah's Law Campaign is the case that had shaped the British approach to dealing with information held on sex offenders: *Regina -v- Chief Constable of North Wales Police and Others Ex Parte Thorpe and Another*, more widely known as the 'North Wales case'.

On 17 July 1996 a married couple, Peter Thorpe, 46, and his wife Christine, 42, (19 March 1998) who had each served seven years and four months of an eleven year prison sentence following their conviction for various sexual offences against children, were released from prison (19 March 1998). Prior to their release, Northumbrian Police prepared a document for the probation service in which it was indicated that both offenders, at the time referred to as AB and CD for reasons of anonymity, were considered to be extremely dangerous and would pose '*a considerable risk to children and vulnerable adults in the community*' whom they would '*target and procure*' for sexual offences (BAILII 1998, p 3).

Following their release, the couple had been provided with a flat but after several articles about the couple had appeared in the local newspaper they had to leave due to fear of reprisal from members of the community. After several attempts by the couple to find other accommodation, which were thwarted by various reports in local newspapers and angry responses by members of the community, the couple eventually bought a caravan and moved to a site at Ruabon near Wrexham at the beginning of October 1996 (BAILII 1998).

The local police force, North Wales Police, was aware of the couple's presence at the caravan park as well as of the Northumbrian Police's report. Following further discussions about the presence and background of the couple with various agencies and organizations involved in the management of sex offenders in the area, it was decided that all these agencies should know the whereabouts of the couple in order to monitor their activity. With the Easter holidays coming up there were also various concerns about the couple staying at the caravan park. The park would be frequented by many children during that time. Consequently, contact was made with the couple

in order to encourage them to move to a place where their chances of coming into direct contact with children would be smaller. A number of meetings took place between the couple, their solicitor, members of the police and the probation service during which the couple had been informed that their identities might be disclosed to the owner of the site. Although the couple opposed this and stated that in order to prevent this they would move somewhere else, they were still living on the site at the end of March 1997, shortly before the Easter holidays (BAILII 1998).

Consequently, following further discussions between probation and police it was decided to inform the owner of the caravan site about the couple's history. This was then done by a member of the police force. This decision was based on a newly developed policy by North Wales Police which was finalised on 19 March 1997. According to this policy, which referred back to Home Office circular 45/1986 where it stated that '*police information should not be disclosed unless there are important considerations of public interest to justify departure from the general rule of confidentiality*', any disclosure should only be made on a '*need-to-know basis*'. The disclosure of the couple's past to the owner of the caravan site was done using material that had previously appeared in the press and as such was part of the public domain. The owner of the caravan site revoked the couple's license to stay and they moved elsewhere (BAILII 1998).

After their eviction from the caravan park the couple went to High Court, seeking an order to the effect that the action taken by the police was unlawful, constituted harassment and was in breach of the European Convention for the Protection of Human Rights and Fundamental Freedom. The ruling judge Lord Bingham rejected this in July 1997, but pointed out that

*'It would plainly be objectional if a police force were to adopt a blanket policy of dissemination of information about previous offenders regardless of the facts of the individual case or the nature of the previous offending or the risk of further offending'* (quoted in Legal Constitutional and Administrative Review Committee 1998, p 41).

This judgement was upheld in the Court of Appeal by the Master of the Rolls Lord Woolf in March 1998, who pointed out that while '*[e]ach case must be judged on its*

*own facts...[d]isclosure should only be made where there is a pressing need for that disclosure'* (BAILII 1998, p 9). He also pointed to the additional guidance on disclosure that had subsequently been given by the Home Office in circular 39/1997 (Home Office 1997).

Along with the Case of '*Regina -v- Chief Constable of North Wales Police and Others Ex Parte Thorpe and Another*' the circumstances surrounding the releases of Robert Oliver and Sidney Cooke are important in understanding the Sarah's Law debate in that they provided insights as to what happens when communities get to know about details on sex offenders.

### ***The Cases of Robert Oliver, Steve Barrell, Lesley Baily and Sidney Cooke***

On 13 November 1985 the police found the body of 14-year old Jason Swift who, following the separation of his parents, had gone missing and was earning money as what the media called a '*rent boy*' (see for example 13 March 1998). While probably not homosexual himself, being paid to commit homosexual acts allowed Jason to buy food and sometimes gave him somewhere to stay for the night (Deputy Chief Superintendent Roger Stoodley in Panorama 11 May 1998).

In November of 1985 Jason had been taken to a flat on the Kingsmead Estate in the East End of London where he was drugged, violently abused and killed by a group of men. While the police believed others to be involved there was only evidence to convict Steven Barrell, Lesley Bailey, Robert Oliver and Sidney Cooke. The latter three had previous convictions for sexual offences (Panorama 11 May 1998). Because the sentencing had taken place prior to the coming into force of the 1991 Criminal Justice Act and the 1997 Sex Offenders Act, it was impossible to place any restrictions or supervision requirements upon any of them on their release (Interviewee 4).

One of the four, Lesley Bailey appears to have been killed in prison (April 26 1998).

Robert Oliver, despite going through the Sex Offender Treatment Programme was still considered to be a high-risk offender on his release in September 1997. Both his release from prison and whereabouts were covered widely in the press with various forms of community notification also taking place. This led to widespread protests with the result that Oliver kept on moving from London to Swindon, Dublin, Manchester and finally Brighton where, having been '*publicly identified as a menace and having been hounded and pursued across the country*' he turned himself in to the Brighton Police with the request for protection. There, due to serious difficulties the probation service faced in arranging somewhere for Oliver to stay, he was kept in a cell for four months before being moved to Glenham House in Milton Keynes, a medium-secure unit for mentally disordered offenders (Panorama 11 May 1998).

The police did not disclose any information on the release of the third offender, Steven Barrell. Despite by then having been granted the power to disclose information under certain circumstances, the police did not consider this to be necessary in Barrell's case. He was seen as a '*minor player*' in the death and abuse of Jason Swift (Deputy Chief Superintendent Roger Stoodley in Panorama 11 May 1998). However, a local newspaper in Northamptonshire, *The Northampton Chronicle*, discovered the presence of Barrell in the area and, despite the fact that he had lived there for three years after his release from prison without being involved in any further incidents, named and shamed him on its front page in March of 1998. As a result of this 'outing' Barrell quickly '*went on the trot for about six weeks because he was being intimidated*' (Interviewee 4). Along with moving away, he also changed his surname with the effect that both police and probation service temporarily lost track of him (Panorama 11 May 1998).

The fourth person, Sidney Cooke, was also considered to be both dangerous and predatory by the probation service (4 April 1998). When he was released from prison on Monday 6 April 1998, something which was covered widely by the media, he had previously voluntarily agreed to be both supervised and electronically tagged (4 April 1998). In order to avoid confrontations with protesters, he had been secretly transferred from Wandsworth prison, where he had spent most of his time, to an unnamed secure institution on the Saturday prior to his release (6 April 1998). Having previously informed the authorities that he would like to go to Bristol, Cooke was

eventually taken to a police station in the Somerset and Avon area (Panorama 11 May 1998) where he was housed in a prison cell. While the Chief Constable of Somerset, where Cooke was held in custody, kept his presence quiet, throughout the entire Bristol area police stations were picketed with people demonstrating outside and some of the protests turning nasty with bricks and other objects being thrown at police stations (Interviewee 4). One of the main problems faced again by the services in charge was finding provisions for Cooke and organising long-term arrangements.

## The Pieces of Legislation Making Up Megan's Law

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Although Megan's Law is the one usually cited when referring to sex offender registration and community notification (Elbogen, Patry et al. 2003), it is only one part of a highly complex set of legislation. Consequently, when talking about Megan's Law, the reference is usually to a group of laws and various measures aimed at managing sex offenders (Matson and Lieb 1997). These measures should more appropriately be named 'The Wetterling Scheme' because they are essentially amendments to a piece of legislation called The Wetterling Act.

In 1990 Washington State issued the Community Protection Act, America's first law to authorize public notification on the release of sex offenders into the community (Megans-Law.net 2003). As part of this, convicted sex offenders on release from custody, or while under supervision, had to register with local law enforcement agencies. It also authorized public officials to inform the public of 'dangerous' sex offenders moving into their midst (Matson and Lieb 1996).

Despite the difficulties inherent in designing an effective sex offender registration and notification programme that is able to withstand legal challenges while meeting the requirements of a community (Chaiken 1998b), President Clinton set out on an *'aggressive three part plan to stop sexual predators'* (Clinton 1996). As a result, as part of the Violent Crime Control and Law Enforcement Act 1994, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (The Jacob Wetterling Act) was passed (Sorkin 1998). The act, named after 11-year old Jacob Wetterling, who was abducted by an armed, masked man in 1989 (Wetterling 1998), required in its original version that states set up registers of those offenders convicted of sexually violent offences or crimes against children and that they establish tighter registration requirements for highly dangerous sex offenders. Offenders were required to verify their addresses on an annual basis for ten years and sexually violent predators were required to verify their addresses on a quarterly basis for the rest of their life (CSOM 1999b).

States were put in charge of distributing information on these registers to law enforcement agencies and in cases where such information was necessary for public safety also to disclose this information to the public (Sorkin 1998). Initially, the deadline for compliance with the Act was September 1997. However, those states that were making '*good faith efforts to achieve compliance*' were later given a two-year extension (Matson and Lieb 1997). States that did not conform faced a 10% cut in their Edward Byrne Memorial Grant funding (Scholle 2000), which forms part of the budget to tackle crime. This money was to be redistributed to those states that had met the requirements (CSOM 1999c)<sup>1</sup>.

In May 1996, amending the Wetterling Act by making community notification mandatory rather than optional in those cases where states considered it to be warranted, a federal version of New Jersey's Megan's Law was passed (Sorkin 1998). It had the same deadline for compliance and set of consequences as the Wetterling Act, given that the federal version of Megan's Law was considered to be part of the 'Wetterling scheme' (Sorkin 1998; CSOM 1999c). This meant that the loss in case of non-compliance was still an overall 10% of the Edward Byrne Memorial Grant funding rather than an additional 10% on top of the 10% faced as punishment in case of non-compliance with the original Wetterling Act (Sorkin 1998).

Further to these developments President Clinton asked for a national register of sex offenders to be set up. This followed a first examination by the Federal Bureau of Investigation's (FBI) Criminal Justice Information Service's Advisory Policy Board (CJIS APB) into the advantages of a national sex offender register in 1995 (Rathbun 1998). Clinton asked the Attorney General to come up with an outline for such a register, giving her 60 days to do so (Clinton 1996a), and eventually decided to go ahead with the framework she provided (Clinton 1996). In October 1996, the Pam Lyncher Sexual Offender Tracking and Identification Act was enacted which gave the

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<sup>1</sup> The Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program (Byrne Formula Grant Program) is a partnership among federal, state, and local governments to create safer communities. The Byrne Formula Grant Program was created by the Anti-Drug Abuse Act of 1988. In 2003 funding was \$487,577,733. From this allocation, each state receives a base amount of 0.25 percent of the total allocation. Remaining funds are allocated according to each state's population. BJA (2004). Overview and History of the Jacob Wetterling Act. <http://www.ojp.usdoj.gov/BJA/what/2a1jwacthistory.html> (Accessed 16 January 2004), Bureau of Justice Assistance.

FBI three years to set up a national database of sex offenders (Matson and Lieb 1997). In those states where a '*minimally sufficient sex offender registration program*' was missing the FBI would be put in charge of handling sex offender registration (Sorkin 1998; Scholle 2000). Additionally, this act prescribed '*more stringent registration requirements*' (Sorkin 1998). Those offenders that were convicted of extremely serious sexual offences or committed several registerable offences were now subjected to lifelong registration (CSOM 1999c).

So far the Wetterling Act has been amended twice more: first of all, in 1998 by Section 115 of the General Provisions of Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act (CJSA). This act amended the registration requirements given under the Wetterling Act in order to include tighter registration requirements for sexually violent offenders and added a registration requirement for federal and military sex offenders as well as those sex offenders who are non-resident students or workers. While making participation in the National Sex Offender Registry (NSOR) compulsory it also provided states with increased discretion in respect to some of the original aspects of the Wetterling Act, such as the approaches taken to verify the details of registrants (CSOM 1999c; BJA 2004).

The second amendment took place in 2000. Under the Campus Sex Crimes Prevention Act offenders are required to report information regarding any enrolment, employment or voluntary activity at any institution of higher education even if they are already required to register. States are required to make sure that this registration information is passed on to those law enforcement agencies whose jurisdiction includes the institution of higher education at which the offender is present and that this information is entered into the appropriate records and data systems within the state (BJA 2004; SOC 2004).

Despite this federal legal framework, the precise form and nature of arrangements for sex offender registration and community notification differ between the various states, as can be seen from the following diagram.



## **Sarah's Law - The News of the World's Draft Bill**

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### DRAFT BILL - Protection of Children

**Draft**

of a

**bill**

for

An Act to make further provision for the protection of children.

Be it enacted .....

#### ***Disclosure of names of sex or violent offenders***

1. The following section shall be inserted in the Criminal Justice and Court Services Act 2000 after section 64-

#### **“Carers entitled to know of offenders living locally**

64A.-(1) A person caring for a child living within the area of a responsible authority (“the relevant area”) may apply to be given the names and addresses of any relevant sexual or violent offenders know to the authority to be living in that area.

(2) An application under subsection (1) shall be made in writing to a police constable stationed in the relevant area and shall state-

- (a) the name and address of the applicant;
- (b) the name of the child or children cared for by the applicant, and the address of the child or children if not living with the applicant; and
- (c) the name and address of any school attended by the child or children,

and, subject to subsections (4) to (6), the applicant shall be entitled to be given (in writing) the names and address of all relevant sexual or violent offenders known to the responsible authority to be living within one mile of any address given in the application.

### ***Draft Bill – Protection of Children***

(3) Each responsible authority shall make arrangements with respect to applications under this section, and such arrangements must ensure-

- (a) that, subject to subsections (4) to (6), the information required to be given to the applicant in accordance with subsection (2) is given within 5 days of the date the application is made (disregarding weekends and bank holiday), and
- (b) that there are nominated constables at each police station in the authority's area responsible for dealing with such applications (referred to below as "nominated constables").

(4) A person who is not caring for a child living within the relevant area or who is a relevant sexual or violent offender is not entitled to be given any information under this section.

(5) The name of an offender shall not be given to an applicant if the offender has not been convicted of any offence involving a child and is considered by the responsible authority unlikely to be a danger to children.

(6) The applicant shall not be given any names and addresses under this section if the nominated constable has reasonable grounds for believing that the applicant is not entitled to be given that information, and if-

(a) further information is required to be provided by the applicant, or

(b) an investigation is carried out by the police,

to determine whether or not the applicant is so entitled, the information shall be provided as soon as is reasonably practicable once the authority is satisfied that the applicant is entitled to the information.

(7) Any investigation carried out by the police as mentioned in subsection (6) must be carried out expeditiously.

(8) An applicant is not, by virtue of this section, entitled to see any records kept by the authority other than the names and addresses, if any, provided under subsection (2).

(9) An applicant must not disclose any information given to him under this section except to a child whom he is caring for.

(10) An applicant must not-

(a) visit the place where an offender, whose name and address have been given to the applicant under this section, is living, or

(b) take part in any demonstration of any kind in the vicinity of that place.

(11) A person who contravenes subsection (9) or (10) shall be guilty of an offence and liable on summary conviction to a fine not exceeding £10,000.

(12) For the purposes of the section-

(a) a person cares for a child if he has full or partial responsibility for the day to day care of a child (disregarding any time the child spends with a child-minder or in school);

(b) "child" means a child under the age of 16 years;

(c) "relevant sexual or violent offender" has the meaning given by section 66; and

(d) "responsible authority" has the meaning given by section 64.

(12) This section shall come into force on 1<sup>st</sup> September 2001."

#### **Amendment of section 77.**

2. In section 77(3) of the Criminal Justice and Court Services Act 2000 the following paragraph shall be inserted after paragraph (b)-

"(ba) section 64A;"

***Extend***

3. This Act extends to England and Wales only.

***Citation and commencement***

4.-(1) This Act may be cited as the Protection of Children Act 2001

(2) This Act shall come into force on 1<sup>st</sup> September 2001.

## **Sex Offender Registration and Community Notification: Developments in Canada, Australia and New Zealand**

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### **Canada**

Over the last 20 years public concerns about sex offenders in Canada have been comparable to those in the United States. Although by the early 1990s most of the Canadian provinces had established child abuse registers, from the mid-1990s onwards calls were increasingly made for the introduction of a national sex offender register. Huge variations in standards and procedures among the existing arrangements within the various provinces meant that it was difficult, if not impossible to share information between jurisdictions (The F/P/T Working Group on High Risk Offenders 1998).

### **Federal Developments**

The defining moment in the discussion about sex offender registration and community notification within the Canadian context occurred when Christopher Stephenson, an 11-year old boy from Toronto, was abducted from a shopping mall by Joseph Fredericks in 1988. Fredericks had a long history of sexually assaulting children and had spent most of his life in the Canadian mental health system. At the time of the abduction he was on mandatory supervision. He had previously been diagnosed as suffering from psychopathy, paedophilia, sexual sadism and was considered to be a '*dangerous, mentally disordered person*' (Petrunik 2001, p 6). Over a two-day period Fredericks raped Christopher several times before strangling him, splitting his throat and leaving him in a wooded area where he bled to death (Petrunik 2001). While it took four years before a provincial coroner's inquest into Christopher's death took place, the coroner's jury finally recommended in 1993 the establishment of a national sex offender register, an idea that was supported by

Christopher's family, victim support groups and law enforcement agencies (Ministry of Community Safety and Correctional Services 2004b).

The setting up of a national register of convicted child abusers was also supported by the Liberal Party, which at the time was in opposition. This was expressed in a document published in 1993 with the title *A Liberal Perspective on Crime and Justice Issues*. On gaining power in the autumn of 1993, the Liberal Party set up a Federal/Provincial/Territorial Working Group on High Risk Offenders. The group consisted of government officials and did not include any members of victims' organizations or the medical profession (Petrunik 2001).

The group reported back twice, once in 1995 and again in 1998. The conclusions reached in both cases were of a similar nature. Essentially, it was argued that the establishment of a new national register of sex offenders or paedophiles '*would not significantly improve upon the status quo*' in protecting the public. The argument was that there existed already a substantial basis for achieving the aim of protecting the public. These measures included the existing Canadian Police Information Centre (CPIC) which contained criminal history information, the active background-screening of people working in positions of trust, and the existing public notification schemes that had been set up in the majority of jurisdiction (The F/P/T Working Group on High Risk Offenders 1998, pp 17-18). In addition, the Working Group put forward 10 Recommendations to further improve the level of protection which are provided in Table A4.1. Of special interest is the second recommendation which actively encourages dialogue and lesson-drawing between different jurisdictions when designing a register of paedophiles.

**Table A4.1: Recommendations by the Federal/Provincial/Territorial Working Group on High Risk Offender**

1. It is recommended that Ministers endorse the Canadian Police Information Centre data system, with enhancements identified in this report, as a sound basis for screening systems to protect children and other vulnerable groups from convicted sexual offenders.
2. It is recommended that any jurisdiction considering a provincial paedophile registry that would contain information generated by other jurisdictions and to which the public would have direct access, consult fully with all other jurisdictions during the development phase.
3. It is recommended that the Community Notification Advisory Committee continue to examine the issue of standardized policies and procedures and, at its request, that CPIC consider whether it could facilitate the transfer of information about public notifications among jurisdictions.
4. It is recommended that all jurisdictions support, help develop and promote public education initiatives that would promote parental involvement and practical steps that they can take to protect their children from victimization, including the request that youth organizations (that are supported by the jurisdictions) adopt adequate screening policies and practices.
5. It is recommended that all jurisdictions:
  - o establish policies that define and promote the adoption of adequate screening policies and procedures by organizations and agencies who place volunteers and employees in positions of trust with children and other vulnerable individuals; and
  - o consider making such screening systems mandatory for agencies under their direct control, license or in receipt of public funding.
6. It is recommended that all jurisdictions support the involvement of the Criminal Intelligence Service Canada in using police intelligence information to assess the risk posed by known and suspected sex offenders against children. Further development of this capability could be addressed in the context of the National Police Services Review that is currently underway by Solicitor General Canada in consultation with partners and stakeholders.
7. It is recommended that CPIC policy be amended so that a notation is placed on the CPIC system when a sex offender whose victim was a child or member of another vulnerable group receives a pardon and his or her criminal history record is sealed (Option 6).
8. It is recommended that, where the legal authority exists, all police agencies take fingerprints in every case where an offender is charged or convicted of a sex offence where the victim is a child or a member of another vulnerable group.
9. It is recommended that all jurisdictions encourage or require local police to:
  - o conduct thorough background and record checks when conducting pardon application investigations,
  - o share all relevant information with the National Parole Board, and
  - o assign particular priority to cases of sex offenders who have victimized children or other vulnerable persons.
10. It is recommended that the National Parole Board continue to carefully review all available information when considering the application for a pardon by a sex offender who has victimized a child or member of another vulnerable group and exercise the highest standard of caution in these cases.

(The F/P/T Working Group on High Risk Offenders 1998, pp 20-22)

While over the course of the next few years modifications and additions to existing legislation were made, critics pointed out that the Liberal Government seemed to have a 'short term memory' about its plans for a national register of convicted child abusers (Statement by Myron Thompson in Government Orders 2001, @1540). Only in February 2004 the Canadian House of Commons finally passed Bill C-16 which led to the Sex Offender Information Registration Act (SOIRA) in April 2004. The Act was proclaimed as law and came into force on December 15, 2004 (Royal Canadian Mounted Police 2005).

### **Provincial and Territorial Developments**

On the provincial level, especially in provinces with a Conservative government, the situation has been different and far more proactive. Over several years, justice ministers of various provinces urged the federal government to set up a national register of sex offenders (Manitoba Government 1998; Manitoba Government 2001; Ministries of the Solicitor General of Ontario and Alberta 2002). This lobbying was also supported by the Canadian police force. The police did not think that the existing Canadian Police Information Centre (CPIC) was providing police agencies with enough information and notification about the release of sex offenders and their arrival in a community (CPA 2003). The main argument brought forward was that in cases of child abduction for sexual purposes, 91% of those victims that were murdered were dead within 24 hours of their abduction. A register of sex offenders would enable the police to respond more speedily (Ministry of Community Safety and Correctional Services 2004).

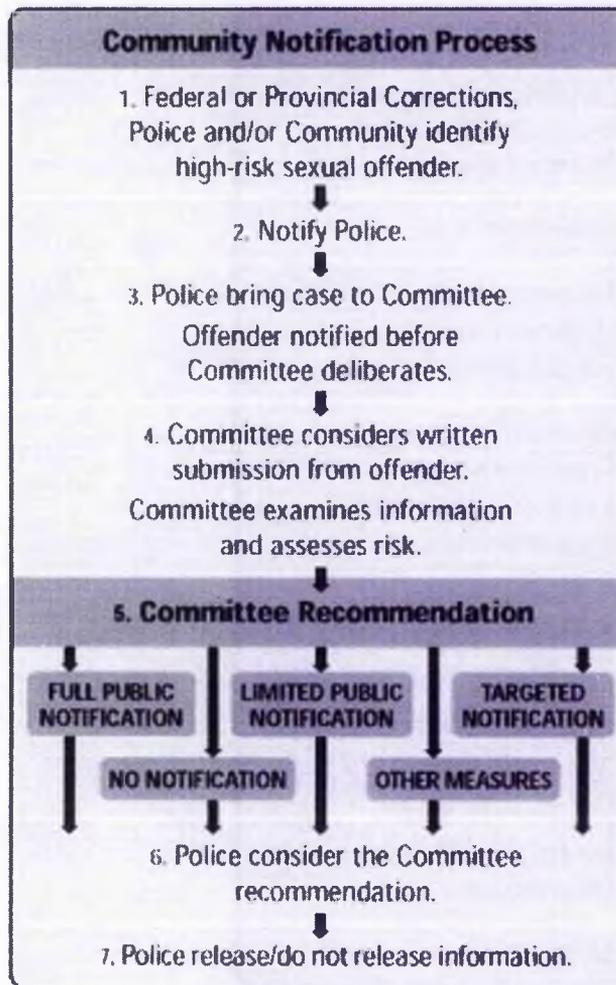
Despite the efforts of provincial governments, police associations and victims' groups, the federal government was reluctant to set up a national register of convicted sex offenders. A lot of the provinces therefore decided to act alone (Petrunik 2001). While various arrangements were made in British Columbia, Saskatchewan, Nova Scotia and New Brunswick which allowed the disclosure of information about dangerous offenders to the community under certain circumstances (John Howard Society of Alberta 1999), the main developments have taken place in the provinces of Manitoba, Ontario and Alberta.

## Manitoba

In February 1995 Manitoba set up the Community Notification Advisory Committee (CNAC). This was made up of people from the criminal justice and mental health system. The primary objective of the committee is to balance the offender's right to privacy with the community's right to protect itself. The committee reviews the cases of those offenders that have been identified by the police as being at a risk of committing further sexual offences. If possible, offenders are informed that their case has been referred to the committee and that a public notification may be made. Offenders are then given an opportunity to make a written submission to the committee or to get someone to do so on their behalf. After reviewing the case, the committee advises the police if a community should be warned about such an offender in their midst and what format the notification should take (Manitoba Government 1995; Manitoba Justice 2004). The whole process is outlined in Diagram A4.1.

Despite the introduction of this review process, Manitoba did not set up an independent sex offender register at the time but rather appears to have relied on the information gathered by the police. It is also important to note that the final decision about which action to take remained with the police (MacKay 2003).

Diagram A4.1: Manitoba Community Notification Process



(Manitoba Justice 2004)

## Ontario

In 2001 the government of Ontario enacted Christopher's Law (Sex Offender Registry), named in honour of Christopher Stephenson. This established a provincial register of sex offenders living within Ontario (Ministry of Community Safety and Correctional Services 2000; Ministry of Community Safety and Correctional Services 2004) and made Ontario the first Canadian province with a register of convicted sex offenders (MacKay 2003; Ministry of Community Safety and Correctional Services 2004).

The requirement to register applies to all sex offenders living in Ontario and was retroactive in so far as that it did not only apply to sex offenders convicted on the day of or after the introduction of Christopher's Law, but also to those who were already serving a sentence at the time (MacKay 2003). While local police forces are allowed to disclose information about sexual offenders considered to pose a serious risk to the community in general, the public does not have access to the database (Ministry of Community Safety and Correctional Services 2004b). Any disclosure made has to be in accordance with Canadian legislation about freedom of information and protection of privacy (Ministry of Community Safety and Correctional Services 2000). The Ontario register has been ascribed a compliance rate of between 93-95%, making it one of the most effective registers in North America. The high rate of compliance is partly ascribed to the fact that the contained information is not publicly available (September 16 2003a; Ministry of Community Safety and Correctional Services 2004c).

## **Alberta**

Following the death of a five-year old girl in Alberta, the provincial government decided to go ahead with the establishment of a sex offender registry and co-ordinating its efforts with other provinces (John Howard Society of Alberta 2001). In 2002 the Solicitor General of Alberta made available on the internet information on high-risk offenders in order to enhance public safety and '*enable members of the public to take suitable precautionary measures*'. While these webpages provide information on the most serious offenders not all dangerous or serious offenders are included (Solicitor General 2004).

## **Australia**

One of the main driving forces behind the public discussions about sex offenders and paedophiles in the Australian context has been the media, with reports about Australians participating in sex tours to Asia, abuse of children by members of the clergy, a variety of other paedophile activities and reports into an alleged protection of paedophiles by the police (James 1996; Wood 1997b; Smallbone and Wortley 2001). As in the United States and Canada, a lot of the criminal law is being

made by the governments of the different states and so there have been a variety of developments on the federal, provincial and even private level.

During the 1990s several official inquiries into sex offender legislation and arrangements for dealing with such offenders took place, all addressing the notion of a register of sex offenders. In 1995, the Parliamentary Joint Committee on the National Crime Authority published a report entitled 'Organised Criminal Paedophile Activity'. The Committee's inquiry had followed calls from police agencies for an improved way of sharing information amongst different police services and a great number of proposals by non-governmental organisations, especially the National Association for Prevention of Child Abuse and Neglect (NAPCAN), for a national register of child sex offenders. In order to allow an improved screening of people coming into contact with children, NAPCAN proposed that the register should include not only convicted sex offenders, but also people who in the past had been accused of sexual offences against children or against whom there was evidence of sexual offending without conviction. Access to such a register should not be restricted to police agencies but ideally be extended to all parents in order to provide them with *'the means to ascertain the safety of their children'* (Parliamentary Joint Committee on the National Crime Authority 1995, Section 4.20). The data should also contain details of non-child sexual offences such as indecent exposure or aggravated assaults. These proposals were supported by the representatives of other non-governmental organizations that reported to the Committee (Parliamentary Joint Committee on the National Crime Authority 1995, Section 4.21).

The Committee looked into a wide spectrum of evidence from a variety of sources, especially paying attention to trends and developments in the United States and Canada. While acknowledging and broadly supporting *'an improved method of recording those convicted of child-sex offences'* (Parliamentary Joint Committee on the National Crime Authority 1995, Section 4.29), the Committee did not recommend the establishment of a register along the lines proposed by NAPCAN. The main areas of concerns were the accessibility and costs of such a register, questions relating to constitutional rights of those on the register, the range of offences to be included and the contentious question of including both suspected and convicted sex offenders (Parliamentary Joint Committee on the National Crime Authority 1995).

In the same year, however, the Victorian Parliamentary Crime Prevention Committee, after a 12-month inquiry, stated in its report to the Victorian Parliament that *'The Registration of sex offenders as a management tool is considered essential in the long term reduction in sex offending rates'* (Victorian Parliamentary Crime Prevention Committee 1995, p 262). The committee consequently recommended that the Victoria Police should set up a register of sex offenders. The recommendations made were mainly based on the notion that

*'[g]iven the high recidivism rate of sex offenders and their propensity to continue to reoffend over their lifetime, the State must take whatever steps necessary to reduce the incidence of child sexual abuse and protect the community'* (Victorian Parliamentary Crime Prevention Committee 1995, p 260).

In order to ensure objectivity the Committee consulted a diverse range of sources, including victims and offenders, health professionals, government officials and child protection workers (Smith 1995). However, the foreword to the report written by the Committee's chairman casts doubt upon its objectivity:

*'The horror stories relayed by victims and investigators cry out for an emotional response to the problem...The scales of justice have weighed too long in favour of the accused, to the detriment of both the victim and the community. The Committee's recommendations redress this imbalance whilst still providing adequate protection for the rights of the accused'* (Smith 1995).

Another recommendation made by the committee was that both the Attorney General and the Police Minister should lobby for the establishment of a national register (Victorian Parliamentary Crime Prevention Committee 1995).

Two years later, in 1997 another report was published, this time by the Wood Royal Commission into the New South Wales Police Services. The origin of this inquiry was the arrest of a police officer suspected of supplying a prohibited drug in March 1988. In light of emerging evidence however, the inquiry soon turned into a full investigation into alleged police protection of paedophiles. Following an initial investigation supervised by the Independent Commission Against Corruption (ICAC),

and due to overlapping responsibilities with the work done by the Royal Commission into the New South Wales Police Services which had been set up in 1994, the latter took over the entire inquiry.

Over the course of the inquiry the focus on issues relating to paedophilia increased, and during the final two years of its investigation this was the almost exclusive concern of the Commission (James 1997; Wood 1997b). During that time, the Commission received a larger variety of submissions by various organizations supporting the formation of a sex offender register, and the Commission found itself under great internal pressure to set up a register (Wood 1997, p 1174). Following an examination of sex offender registers in existence at the time, with a special focus on the United States' Megan's Law and the United Kingdom's Sex Offenders Act 1997 as well as the 1995 Parliament of Victoria Crime Prevention Committee Report, the commission concluded that while it did not favour any legislation mirroring Megan's Law it had fewer concerns about an approach along the requirements of the British approach to sex offender registration. To some extent the line of action taken by Australia already paralleled British practices, especially in the areas of probation and parole supervision. The Committee did however point out that even British-style registration could be of limited value since it risked driving offenders across states and provide a false sense of security unless it formed part of a broader uniform national system (Wood 1997, pp 1180-1181). The conclusion reached by the commission was that a system for the compulsory registration of convicted child sexual offenders with the Police Service should be considered (Wood 1997, p 1198) and that in light of the mobility of paedophiles and potential recidivism a national register of paedophiles should be created (Wood 1997, p 1194). Information stored on this register could be used both to inform certain approved parties as well as to issue warnings to the wider public under specific circumstances and in accordance with guidelines that would be required.

In November 1997 a Private Member's Bill, the Criminal Law (Sex Offences Reporting) Bill 1997, was introduced into the Legislative Assembly of Queensland, which necessitated that people convicted of certain paedophile offences report their personal details to the police and which gave the police the power to keep a register of sex offenders. The Bill was referred to the Legal, Constitutional and Administrative

Review Committee which was given a relatively short timeframe to investigate the Bill. Following some background research into this area of offences, the Committee consulted key bodies who might have an interest in this Bill, such as legal and community organisations, academic faculties and schools as well as governmental departments (Legal Constitutional and Administrative Review Committee 1998). The Committee compared the Bill with existing legislation in other countries, especially again the US and the UK, and concluded that the proposed Bill resembled the UK Sex Offenders Act 1997 more closely than Megan's Law in so far as no public access was envisaged. Due to the short timeframe in which the Sex Offenders Act had existed, however, it was difficult to assess its effectiveness. The resulting recommendations addressed similar issues to the ones previously raised by the Wood Commission but instead of endorsing the Bill, the Committee simply outlined potential areas of concerns and questions that would need to be addressed in the existing draft of the Bill and argued that the future of the Bill was essentially an issue for Parliament, rather than this Committee (Legal Constitutional and Administrative Review Committee 1998, p 89).

In Australia, following the meeting of the Australasian Police Ministers Council in 2003, it was agreed that a national system for registering the details of child sex offenders should be set up. Access to this would be restricted to police in Federal, State and Territory jurisdictions (Minister of Justice and Customs 2003). The resulting Australian National Child Offender Register (ANCOR) was launched on 1 September 2004 (Minister of Justice and Customs 2004).

## ***New Zealand***

The case of New Zealand is fascinating in that in 1996 the lack of any register of sex offenders or paedophiles drove the then journalist Deborah Coddington to publish a book entitled 'The New Zealand Paedophile & Sex Offender Index', followed one year later by 'The Australian Paedophile & Sex Offender Index' (Coddington 2003b; Coddington 2003f). These publications provided alphabetical lists on a number of sex offenders, totalling around 500 in the New Zealand and 650 in the Australian version, including some information on the offence, ranging from sexual assault to exposure and homicide, and a summary of the disposition (Ronken

and Lincoln 2001; Coddington 2003f). Coddington collected the information in a two stage process. First of all, she sifted through newspapers in order to identify case names. Once this had been done she contacted the relevant courts for further information. The content of the indexes is legally justified since it only uses publicly available information contained in the media and law reports (Ronken and Lincoln 2001).

The publication of the Index had a mixed reception. From some parts of the media and several official organisations, such as the New South Wales Council for Civil Liberties and the Office of the Federal Privacy Commissioner, strong criticisms were voiced (Wood 1997). A *'torrent of abuse'* from *'all the bien.pensant chattering class brigade who believe if we just be nice to criminals, they'll behave themselves and stop offending'* descended on her (Coddington 2003d). However, on the other hand it was welcomed by organisations such as the Movement Against Kindred Offenders (MAKO) and For Love of Children (FLOC), both of which subsequently started to prepare similar lists for publication on the internet (Ronken and Lincoln 2001; see for example <http://www.mako.org.au/makoniti.html>).

The Wood Commission concluded in its 1997 report after having examined this kind of private register that

*'[a]part from the common dangers concerning double punishment, discrimination (compared with other offenders), negative impact on rehabilitation, encouragement of vigilantism, and unfair flow-on to relatives, additional disadvantages flow from the circumstances that:*

- *any entry sourced to media coverage risks inaccuracy in reporting, and in failing to detect reversal of a conviction on appeal, a circumstance only rarely reported;*
- *the entries are not specific as to the actual facts of the offence, and include many items which are relatively trivial, or which from the bare statement of the offence in its short form may present a very misleading picture of the actual conduct involved;*
- *this type of index may also present a false picture, and a false sense of security so far as it does not report the outcome of the*

*many matters determined in closed court, through pre-trial diversion programs, or subject to restrictions on reporting;*

- *its availability to the public may prejudice a jury trial where jurors empanelled in such a trial tempted to read the book to determine whether an accused in their hands had a prior record for sexual offences;*
- *such a register being publicly available, may be used by paedophiles to establish links or networks;*
- *this kind of register is very difficult to correct, given the fact that it may be in currency for some years between editions; and*
- *while an incorrect entry may lead to an action for defamation, such proceedings are beyond the reach of most persons, are uncertain in their outcome, and any injury sustained is unlikely to be adequately compensated by an award of damages' (Wood 1997, p 1180).*

Undeterred, by any such criticisms, Deborah Coddington has since published subsequent versions of her Index, the most recent one in 2003 which contained almost 1900 entries (Coddington 2003e).

In 2002 Deborah Coddington, who by then had become Member of Parliament for the liberal party ACT New Zealand, tabled a Bill entitled the Sex Offenders Registry Bill. The aim of the Bill was to set up a registry of sex offenders and was modelled on Ontario's 2000 Christopher's Law and the United Kingdom 1997 Sex Offenders Act (Coddington 2002; Coddington 2002b). While one of the principles underlying the Bill is that '*the community's interest must come first*', thereby subsuming the privacy interests of sex offenders to the interests of the community (Coddington 2002b), it is more moderate than Coddington's publications; information on the registry may normally not be disclosed and access to any information would be restricted (Coddington 2002b, Section 13). The Bill was subsequently examined for consistency with existing privacy legislation in New Zealand and no problems were found (Bennett 2003). At the time of writing, the Bill was before a select committee (<http://publications.clerk.parliament.govt.nz.clients.intergen.net.nz/BillsBeforeSelectCommittees.aspx>).

## **Sex Offences and Offenders: A Background**

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### ***The Extent of Sexual Offences***

The number of reported sex offences in the United Kingdom is relatively small. It constitutes only around one per cent of all recorded crimes (Fisher and Mair 1998). This number has been relatively stable over the last 40 years (West 2000) and with an average annual increase of four per cent the amount of recorded sex offences has risen at a similar rate to other recorded crimes in Britain (Perkins, Hammond et al. 1998). However, these totals do not necessarily reflect the true extent of sexual offences. There is widespread understanding that the number of incidents is seriously underreported in official statistics. The main reasons for this discrepancy are the willingness of the victim to report, terminology and methodology.

Victims' willingness to report sexual crimes appears to be one of the most prominent reasons why sex offences are underreported. Despite indications that in recent years the willingness of sufferers to report such incidents has increased (Myhill and Allen 2002), the experience of shame and guilt following sexual assaults combined with the desire to get over the experience means that frequently victims do not make any charges (CSOM 2001). Such reluctance is reinforced by fear of further victimization as well as worries about not being believed, or disruption to family life, and is particularly prominent if the victim is acquainted with the offender (Myhill and Allen 2002). However, even if a sexual assault is reported to the police, it does not mean that it will be recorded as a sexual crime or even as a crime in general. Discretionary powers of the police, insufficient evidence, lack of witnesses, problems in classifying sexual offences and demarcating them from other types of offences, or withdrawal of accusation by the victim, are just some of the reasons for this (Sampson 1994; West 1996; Cobley 2000; Home Office 2000).

Terminological issues affecting figures on sexual offences arise from official and victims' choice of words. Changes in legal definitions or statistical categories mean

that numbers for different years cannot necessarily be aggregated or compared (Marshall 1997; Cobley 2000; Soothill 2003). In addition, victims are often either unwilling to use, or experience difficulties with, certain terms. For example, in their examination of the British Crime Survey Myhill and Allen found that less than 60% of female rape victims self-classified the offence as rape (Myhill and Allen 2002, p vii). Such problems might arise out of the stigma attached to sexual crimes or difficulties in labelling acquaintances as sex offenders (Myhill and Allen 2002).

Finally, statistics often only report principal crimes. These are those crimes that receive the most severe sentence. As a result, any convictions for sexual crimes that carry a less severe sentence than those for any other offences committed will be concealed (Marshall 1997). Along with this, the timeframe and method used to collect any data plays an important part in the compiling of numbers. Quite often it is the number of cautions or convictions, thus the number of occasions, rather than the number of individuals committing crimes (Marshall 1997), that are recorded.

Consequently, the question as to the true extent of sexual offending arises, and estimates differ. In a study comparing official and unofficial numbers, Marshall and Barbare concluded that the prevalence of sexual offences can be assumed to be 2.4 times higher than those given in official records (Marshall 1997). However, given that the ratio of recorded crimes to crime incidents is considered to be the lowest for sexual offences (Home Office 2000), the extent of such crimes might be far greater. Some findings indicate that in cases of adult sexual victimisation, only one in five incidents – a mere 18% – were reported to the police (Myhill and Allen 2002), and some authors have argued that in cases of child sexual abuse the number of unreported incidents might be as high as 93% (Abel, Becker et al. 1984).

### ***Characteristics of Sex Offenders***

Sex offenders are frequently seen as a homogenous group of offenders whose crimes focus almost exclusively on sexual ones. Because of this, they are normally treated by the legal and medical professions as '*specialists*' (Sampson 1994; Simon 1997). However, doubt has been cast upon this idea. Within criminological circles it is assumed that any criminal specialization by offenders is the exception rather than the

norm (Simon 1997). The general illusion of specialization amongst malefactors can partly be explained by referring back to the statistical procedures involved collating data on criminals. Given that the official focus is commonly on the most serious crime, any other offences committed by the same individual can easily be overseen (Simon 1997). While studies of sex offenders indicate that a lot of them have a history of committing non-sexual crimes (see for example Becker, Kaplan et al. 1986; Fehrenbach, Smith et al. 1986; Loucks 2002), implying that they are '*generalists*', other findings support the idea that there must be offender-specific differences amongst various types of sex offenders. For example, those who commit sex crimes against children appear to have a lower rate for other non-sexual offences (Grubin 1998) and there appear to be important differences regarding recidivism between these different groups (Boyd, Hagan et al. 2000). If there are criminal category specific differences, however, support seems to be given to the specialization hypothesis.

One solution to this apparent contradiction has been provided by Soothill, Francis, et al. (2000), who argue that part of the problem is the fact that the question whether sex offenders are generalists or specialists is exclusive. By introducing a two-level analysis it can be acknowledged that sex offenders can be specialists and generalists simultaneously. As such, sex offenders might be generalists in so far as that they can commit a range of offences while simultaneously specializing within this range and focusing on certain subcategories.

Despite several attempts to extract sex offender specific characteristics, in general as well as those of potential subgroups within this population, the picture that emerges is one of heterogeneity rather than homogeneity. As can be seen from the list in Table A5.1, offender characteristics differ a lot and most of the ones identified are equally applicable to groups of non-sexual offenders.

The difficulty in identifying any typical characteristics appears to be especially problematic with child sexual abusers who have been found to be extraordinarily heterogeneous in respect to their personal characteristics, life experiences and criminal histories (Glaser 1997; Prentky, Knight et al. 1997; Grubin 1998). Given that

no single molester profile appears to exist (Prentky, Knight et al. 1997), one is led to conclude that *'there is no such thing as the typical paedophile'* (Glaser 1997, p 6).

**Table A5.1: Characteristics of Sex Offenders**

- Socially isolated individuals
- Possess feelings of inadequacy
- Low self-esteem
- Fear of rejection
- Feeling of anger towards women
- Depression and other negative affective states
- Antisocial qualities
- Atypical and persistent erotic fantasies
- Deviant sexual preferences
- Lack of social competence and assertiveness skills
- Deficits in information processing skills
- Lack of empathy
- Lack of impulse control
- Poor attachments to parents during childhood
- Difficulties with inter-personal relationships
- Loneliness and lack of intimacy skills
- Hold a variety of distorted attitudes, beliefs and perceptions about their offending
- Are highly manipulative
- Denial, minimization and other cognitive distortions are common and serve to maintain their behaviour
- Are likely to underreport or minimise the actual number of offences, the number of victims and in the case of child victims the age of the children abused
- Are unlikely to take responsibility for their behaviour, are likely to blame the victim or deny any harm caused to the victim.
- Are likely to show little awareness of guilt or remorse toward their victims
- Tend to come from abusive and dysfunctional homes
- Parental violence, substance abuse and involvement in the criminal justice system is not uncommon in the offender's background
- Have a greater incidence of lower intellectual functioning
- Have histories of school and behavioural problems, delinquency and criminal behaviour, diagnoses of conduct and personality disorders and substance abuse

(Adapted from Simon 1997, pp 41-2)

Such problems, however, have not deterred multitudinous attempts at coming up with classification schemes for sex offenders. These commonly started off by crudely

dividing them into two categories based on the age of the victim, thereby discounting the nature of the sexual act. Thus, independently of the fact of whether a rape took place or not, sex offenders whose victims were 16 years or older were classified as 'rapists', whereas offenders whose victim was below the age of 16 were referred to as 'paedophiles' or 'child molesters' (Mair 1993). Such crude classification according to the age of the victim is counter-productive when trying to design appropriate responses and preventive measures to sex offences. As a result, more complex classification schemes have developed over time.

Typologies derived from psychometric testing, psychiatric schemes or specific classification schemes focusing on only one type of offender, such as rapists or child molesters, have all been applied to sexual offenders. Along with the progressive complexity of these approaches, an increasing difficulty in administering them has been noticeable. In their widely regarded review of classification schemes for sex offenders, Fisher and Mair, concluded that

*'[a] good classification scheme should be reliable, efficient, pertinent to a large number of offenders, and cheap and simple to administer. None of the classification schemes reviewed fulfilled all these characteristics. While some of them could serve as a basis for further developments, all were flawed to some extent'* (Fisher and Mair 1998, p 3).

The main areas of concern were the number of samples around which the schemes were designed, a focus on convicted and sentenced offenders, a tendency to concentrate on a limited category of offenders, aspects of validity and reliability and the complexity involved in applying and administering such schemes. All this led the authors to believe that none of the schemes were appropriate for use in a criminal justice setting (Fisher and Mair 1998). Similar findings have been reported more recently by Bickley and Beech (2001) in their review of procedures aimed at reducing the heterogeneity of child sexual offenders. Using as their criteria reliability, consistency, ease of use, pertinence to a large number of individuals, valid distinction between types, relevance to treatment and theoretical relevance to explanation and prediction, the authors concluded that none of the approaches are adequate.

## ***Treating Sex Offenders***

Treatment approaches are restricted by the limited understanding of sexual offenders and the causes underlying their behaviour. Consequently, treatment of sex offenders is frequently considered to be inappropriate. Sex offenders are seen as unmotivated for change (Tierny and McCabe 2002) and treatment is perceived as an evasion of '*just deserts*' (West 1996, p 63). When treatment is considered an appropriate way of dealing with such offenders the question arises as to what form it should take.

Over time a multiplicity of different approaches to treating sex offenders has been used, ranging from pharmacological and surgical approaches on the one hand to cognitive-behavioural ones on the other, as illustrated by Table A5.2.

Independently of the precise nature of the approach taken, treatment always needs to address a given set of factors associated with reoffending. These factors incorporate both static factors, also known as fixed factors, and dynamic factors, that are changeable through intervention. Fixed factors include the offender's criminal history, childhood maladjustment and are those associated with long-term criminal behaviour. While playing an important role, these static aspects do not necessarily determine the impact any treatment has on an offender nor the offender's potential for re-offending. This is done by the dynamic factors. When these are addressed correctly they can lead to a decrease in recidivism. The dynamic factors consist of stable and acute determinants. The former can be changed eventually but are very persistent, whereas the latter are changing rapidly and immediately precede sexual assaults (Hanson 1998).

The majority of sexual assaults appear to be preceded by some degree of planning or forethought rather than be committed on the spur of the moment, a behaviour which goes through a cyclical pattern and that might start days, weeks or months prior to the actual offence (CSOM 1997). One key approach therefore seems to lie in providing sex offenders with tools to address and deal with the different stages of this cycle.

**Table A5.2: Various Treatment Models Employed with Sex Offenders**

- **Bio-medical treatment model:** primary emphasis is on the medical model, and disease process, with a major focus on treatment with medication.
- **Central treatment model:** multi-disciplinary approach to sex offender and sexual abuser treatment that includes all program components (e.g. clinical, residential, educational, etc.).
- **Cognitive/behavioural treatment model:** comprehensive, structured treatment approach based on sexual learning theory using cognitive restructuring methods and behavioural techniques. Behavioural methods are primarily directed at reducing arousal and increasing pro-social skills. The cognitive behavioural approach employs peer groups and educational classes, and uses a variety of counselling theories.
- **Family systems treatment model:** primary emphasis is on family therapy and the inclusion of family members in the treatment process. The approach employs a variety of counselling theories.
- **Psychoanalytic treatment model:** primary emphasis is on client understanding of the psychodynamics of sexual offending, usually through individual treatment sessions using psychoanalytic principles.
- **Psycho-socio educational treatment model:** structured program utilizing peer groups, educational classes, and social skills development. Although this approach does not use behavioural methods, it employs a variety of counselling theories.
- **Psychotherapeutic (sexual trauma) treatment model:** primary emphasis is on individual and/or group therapy sessions addressing the sex offender's own history as a sexual abuse victim and the relationship of this abuse to the subsequent perpetration of others. The approach draws from a variety of counselling theories.
- **Relapse prevention (RP) treatment model:** a three dimensional, multimodal approach specifically designed to help sex offenders maintain behavioural changes by anticipating and coping with the problem of relapse. Relapse Prevention: 1) teaches clients internal self-management skills; 2) plans for an external supervisory component; and 3) provides a framework within which a variety of behavioural, cognitive, educational, and skill training approaches are prescribed in order to teach the sex offender how to recognize and interrupt the chain of events leading to relapse. The focus of both assessment and treatment procedures is on the specification and modification of the steps in this chain, from broad lifestyle factors and cognitive distortions to more circumscribed skill deficits and deviant sexual arousal patterns. The focus is on the relapse process itself.
- **Sexual addiction treatment model:** structured program using peer groups and an addiction model.

(CSOM 1999, p 22)

## **Obstacles in Assessing Treatment-Effectiveness**

A lot of the existing research on sex offender treatment effectiveness has been poorly designed (Craissati and McClurg 1997; Marques 1999; Maltzky and Steinhauer 2002). Within existing studies, samples are often very small, and differ widely with regard to the type of offence, sociodemographic and personal characteristics as well as offence severity and frequency. While some studies include all reoffences, others focus solely on sexual reoffences. In addition, while some forms of sexual offences are easier to detect or have a higher probability of being reported, the heterogeneity of the samples used frequently does not take these aspects into account (Lievore 2004). For example, child molesters, for a variety of reasons mainly relating to difficulties in obtaining convictions, have a relatively low rate of reconviction cases; others, such as indecent exposure, have a relative high one. This means that if combined in a single category, the probability of reconviction rate given for child sex offenders would be exaggerated, while the one for indecent exposure would be underestimated (Lievore 2004). Finally, there are problems relating to the transferability and generalizability of the findings. While there have been some studies assessing prison-based treatment in the UK, only a negligible amount of non-prison-based work has taken place (Craissati and McClurg 1996). Evaluations of treatment effectiveness have been done most widely within specialist treatment centres in the US and Canada. While the underlying concepts of sex offender treatment are comparable across the Western world, socio-cultural or compositional differences in the characteristics of those offenders entering treatment cast doubt on the wider applicability of findings made within such contexts (Grubin and Thornton 1994).

Given that the aim of most treatment approaches is the prevention of future criminal offences, the concept most commonly used for assessing treatment success is that of recidivism. In particular, from a public policy perspective, recidivism is an invaluable notion because it provides a guide as to the impact of various measures and interventions (CSOM 2001). However, despite appearing to be a straightforward idea and the common understanding of recidivism to be the '*committing of a further offence*', there are several obstacles when trying to operationalise the idea (Lievore 2004).

As can be seen from Table A5.3, recidivism can be defined in a variety of ways. Most commonly it is defined as subsequent arrest, subsequent conviction or subsequent incarceration. While each of these concepts is valid in its own right and each has its own advantages and disadvantages, they measure different things and thereby lead to different results.

### **Table A5.3: Different Notions of Recidivism**

**Subsequent arrest** – using new charges or arrests as determining criteria for recidivism. This will lead to a higher rate of recidivism given that not all arrests will result in a conviction

**Subsequent conviction** – more restrictive than subsequent arrest resulting in a lower rate of recidivism. It offers the advantage, however, that the involved process means that the person is found guilty and thereby the data might be more reliable

**Subsequent Incarceration** – While in general appearing to be the most restrictive measure of the three one has to bear in mind that return to prison might not necessarily be caused by a reoffence but could result from technical violations of any restrictions place upon the offender.

(Adapted from CSOM 2001, p 2)

Related to this is the question of the sort of offences taken into account. While in this area recidivism is usually defined as '*The conviction of another sexual offence during a specified follow-up period*' (Furby et al. quoted in Cann, Falshaw et al. 2004), there have been arguments for considering other, non-sexual, offences. The underlying rationale for this is that charges for sexual crimes might be dropped in court proceedings or through plea bargaining, and that reconviction rates frequently only take the first reconviction during the follow-up time into account (Lievore 2004).

On top of such fundamental definitional difficulties, one key factor in examining recidivism is the time of follow-up or length of supervision. In general it is assumed

that the rate of recidivism often increases slowly but steadily over time. While frequently a follow-up period of five years is quoted as sufficient, a longer timeframe might be necessary (Hedderman and Sugg 1996; CSOM 2001; Cann, Falshaw et al. 2004). Cann, Falshaw et al (2004) found in their study that while the majority of reconvictions for sexual offenders appear to take place during the first five years, a sole focus on five years would have resulted in missing over one third of new sexual reconvictions for their sample. Long follow-up times, however, present various problems. First of all, funding agencies are usually impatient to wait for results. Secondly, if research is supposed to provide feedback on various treatment approaches, short follow-up periods might be more suitable given that they provide more timely feedback. Thirdly, there is the question of how far the results of a group of offenders treated 20 or more years ago can inform work with sex offenders at present. Finally, over a long period of time some offenders might be imprisoned for other offences so that they are not 'at risk' of reoffending which again might result in an underestimation or distortion of numbers (CSOM 2001; Cann, Falshaw et al. 2004)

The last set of problems arises from the kind of data that is used for assessing treatment. Arriving at a baseline which allows for a comparison between the treatment group and a set of non-treated offenders is difficult (Craissati and McClurg 1997; Perkins, Hammond et al. 1998). As mentioned beforehand the true extent of sex crimes is difficult, if not impossible to arrive at and the same applies to numbers of reconvictions which are influenced by the same aspects previously outlined. This problem is compounded by the data source used. In the United Kingdom the source most widely used is the Offender Index which, unlike the Police National Computer, can be accessed by independent researchers and is not restricted to certain Home Office personnel. However, the Offender Index might not be the most adequate source. Falshaw, Friendship et al. (2003) found that when compared to the Offender Index the Police National Computer identified a far greater number of offenders who had received a sexual reconviction, 5.3 times higher, than the one given on the Index.

## **Research Findings on Recidivism and Treatment Effectiveness**

One of the most important factors to bear in mind is that recidivism for sex offenders, while increasing over long periods of time, is relatively low, even in the

absence of any treatment (Grubin 1998; Hanson 1998; Hanson and Bussiere 1998b; Hood, Shute et al. 2002; Loucks 2002; Friendship, Mann et al. 2003; Lievore 2004). While commonly reconvictions amongst sex offenders are for non-sexual offences (Loucks 2002), in those cases where a reconviction is for a sexual crime the offence is often quite severe (Hood, Shute et al. 2002).

The probability and frequency of recidivism seems to be related to the offender's preferred type of victim, the victim-offender relationship, history of sexual offences and attitude, and the treatment package received. Demographic variables that appear to be related to recidivism are the age and marital status of the offender, with younger unmarried ones more likely to sexually reoffend (Hanson and Bussiere 1998b; Scalora and Garbin 2003). Other factors that appear to be linked to higher levels of recidivism are prior sexual offences, early onset of sexual offending and focusing on extrafamilial, unacquainted or male victims (Harris and Rice 1998; Hanson and Bussiere 1998b; Boyd, Hagan et al. 2000).

For example, in the case of child sexual abuse, heterosexual father-daughter incest offenders with no other victims seem to have the lowest rate of recidivism, heterosexual extrafamilial offenders an intermediate one, and extrafamilial homosexual offenders the highest rate of recidivism (Harris and Rice 1998; Hanson and Bussiere 1998b). While findings differ, there are indications that another important factor is treatment completion and the offender's level of self-esteem prior to the commencement of therapy. Those who fail to complete treatment can be understood as being at a higher risk of reoffending than those who did not (Hanson and Bussiere 1998b) and there seems to be clear support for the assumption that a low level of self-esteem prior to treatment is associated in a linear way with higher levels of sexual recidivism (Thornton, Beech et al. 2004).

The question of treatment effectiveness is still hotly debated and one has to decide what to consider as successful treatment. As Grubin and Thornton ask, is '*treatment success the individual who reoffends but in a less violent manner or the offender whose reoffending is delayed over time*' (Grubin and Thornton 1994, p 69)? There are few well-designed studies of treatment effectiveness in respect to sex offenders in general and even less focusing on specific categories of sex offenders. Conclusions

drawn from meta-studies and literature reviews about the effectiveness of treatment in reducing recidivism are inconsistent and ambiguous (Polizzi, Layton MacKenzie et al. 1999; Lievore 2004). One of the first reviews, done by Furby, Weinrott et al. (1989), found that there was no convincing evidence to assume that treatment reduced further sexual offending, a conclusion which was also reached by Quinsey et al (1993) as well as by Harris and Rice (1998). At the same time, however, other meta-analyses have been cautiously optimistic about treatment effects (Hall 1995; Perkins, Hammond et al. 1998; Grossman, Martis et al. 1999).

In general, it seems to be the case that cognitive-behavioural treatment programmes have a positive impact in reducing recidivism of offenders who complete such programmes (Hall 1995; Polizzi, Layton MacKenzie et al. 1999; Maltzky and Steinhauser 2002; McGrath, Cumming et al. 2003) and that over the last 25 years treatment has become increasingly successful (Maltzky and Steinhauser 2002). While the best treatment effect appears to be with low-deviance offenders, treatment also seems to impact on medium- and high-deviance offenders, but with a longer timeframe needed (Beckett, Beech et al. 1994; Beech, Erikson et al. 2001). A good treatment effect can also be found on those sex offenders who committed crimes against children (Beckett, Beech et al. 1994; Maltzky and Steinhauser 2002) and with circumstantial offenders rather than predatory offenders in general (Maltzky and Steinhauser 2002).

In conclusion, it seems safe to say that there is *'sufficient evidence to warrant optimism about treatment efficacy with sexual offenders'* (Abracen and Looman 2004), a conclusion which was available at the time of the Sarah Payne case. However, as several authors have pointed out, more work needs to be done in this area. Special focus should be paid in future examination to the precise nature of treatment provided, such as timing, length, duration, nature and the location treatment (Grossman, Martis et al. 1999; Abracen and Looman 2004). Given that offenders might have different causes for offending, they will require different treatment approaches, so that applying a blanket approach is unlikely to be useful (Hanson 1998; Seto 2003).

## List of Documental References

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Document Number	Type of Document
11	Briefing Note: ACOP and the Press Complaints Commission A document published by ACOP, providing background information on the relationship between the two agencies and the actions taken in light of the <i>News of the World's</i> name-and-shame campaign
12	ACOP Dossier of Evidence 1998
13	Letter to the Press, Complaints Commission by ACOP/ACPO regarding the <i>News of the World's</i> name-and-shame campaign
14	Correspondence between <i>News of the World</i> and ACPO
15	Correspondence between Home Office and ACPO
16	Part of the Dossier of Evidence 2000 produced by ACOP/ACPO
17	Part of the Dossier of Evidence 2000 ACOP/ACPO
18	Draft for the Sarah's Law Campaign that was forwarded from ACPO to the <i>News of the World</i>
19	News release by ACOP regarding the dossier of evidence
22	Home Office strategy document assessing the circumstances, outlining the approach to be taken and highlighting various options in light of the <i>News of the World's</i> campaigning
23	Home Office Mental Health Unit document assessing aspects regarding the disclosure of information on sex offenders to the public
29	Correspondence between <i>News of the World</i> and the Home Office following the meetings with Home Office representatives

- 31 Outline of proposed legislative measures that could be called Sarah's Law by members of the alliance of organisation
- 36 Open Letter from representatives of the alliance of organisation to Rebekah Wade, editor of the *News of the World*, highlighting the problems arising from the name-and-shame campaign and asking for the opportunity to discuss potential ways of improving child protection
- 37 Correspondence between ACOP and the Press Complaints Commission
- 40 Correspondence between ACOP and the *News of the World*
- 41 News release by NACRO stating that Megan's Law could be counter-productive in fighting child abuse
- 42 Correspondence between the Home Office and members of the alliance of organisations
- 43 Statement on the meeting with the *News of the World* issued by representatives of the alliance of organisations
- 44 News release by the *News of the World*
- 45 The *News of the World* initial draft for its Sarah's Law Campaign
- 46 Documentation handed out by the *News of the World* at the meeting on 2 August 2000
- 51 The *News of the World*'s official Sarah's Law Campaign leaflet
- 52 Correspondence between the NSPCC and ACOP
- 53 Correspondence between the NSPCC and the Home Office
- 54 Correspondence between the Home Office and ACOP
- 55 Correspondence between the Home Office and ACOP and ACPO
- 57 Correspondence between the *News of the World* and ACOP
- 65 ACOP internal correspondence
- 67 Correspondence between the NSPCC and ACPO
- 69 Correspondence from ACOP to its members
- 71 ACOP Memorandum on sex offender disclosure and notification seminar

- 72 ACOP internal correspondence
- 82 Public Affairs briefing by DeHavilland
- 83 ACOP internal correspondence

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