

# Attitudes to Sentencing Sexual Offences

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## Research summary

This report outlines findings of research conducted by Natcen Social Research on victim/survivor<sup>1</sup> and public attitudes to sentencing sexual offences. This research was conducted on behalf of the Sentencing Council for England and Wales, to inform their current review of guidelines on sentencing sexual offences, and in accordance with their statutory duties to “*produce analysis and research on sentencing*”, “*promote a clear, fair and consistent approach to sentencing*”, and “*work to improve public confidence in sentencing*.”<sup>2</sup>

An evidence review was completed as phase one of the research, and suggested that there was a need for up-to-date and methodologically robust research on public and victim/survivor views and sexual offences sentencing. The review identified that new research was needed to explore a range of offences and that not only concentrated on offences such as rape. Qualitative research was the favoured methodology as it allowed research participants the opportunity to provide explanations for the reasons given for suggested sentences, discuss their level of awareness of sentencing, and in the case of research with victim/survivors, enabled interviews to be conducted that were responsive and tailored to personal experience.

There are, however, limits to the scope of any research project and this study is no exception – the focus here was on exploring public and victim/survivors’ attitudes and experiences of the sentencing of different sexual offences, and there was not scope to explore a range of additional issues, such as views on the existing sentencing guidelines for sexual offences or the effectiveness of different sanctions.

## Aims and objectives

In this context the aims and objectives of the research were to:

- map awareness of the various sanctions for sexual offences that are available;
- understand what are considered to be appropriate sanctions and sentences for a range of sexual offences, the reasons for this and the relative gravity of sexual offences against each other and in comparison to other offences;

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<sup>1</sup> Please note, while the terminology to describe those affected by sexual offences within the criminal justice system is victim, the preferred term with which some victims describe themselves is that of survivor. To take this into account the term victim/survivor is used throughout.

<sup>2</sup> Further details of the statutory duties and functions of the Sentencing Council of England and Wales can be found at: <http://sentencingcouncil.judiciary.gov.uk/about-us.htm>

- identify the range of aggravating and mitigating factors that influenced the nature of participants' responses to the appropriate type and length of sentence, including which factors are more or less important when considering the sentence; and
- discuss the purpose of sentencing sexual offences.

**And in addition, with victim/survivors of sexual offences and their family:**

- describe the experiences of people affected by sexual offences and the seriousness and harm of the offence; and
- where relevant, understand their experience of the sentencing process and the personal impact of the sentence.

## Methodology

The research consisted of two phases. Phase one, the evidence review, set in context existing evidence. This informed the need for, and methodology of, phase two – qualitative research with the public and victim/survivors of sexual offences. Phase two adopted two distinct strands, described below:

- focus groups (12 in total) with 82 members of the public across England and Wales. The focus groups were used to explore general perceptions of sentencing sexual offences, the sentence suggested for a set of vignettes and the reason(s) given for suggested sentences. In total, seven vignettes were discussed in the groups, covering the offences of: rape; sexual assault of an adult; sexual assault of a child; sexual grooming of a teenager; voyeurism; administering a substance with intent; and, possession of indecent images (see Appendix B.2). In addition these offences were compared with two comparator offences: grievous bodily harm (GBH) and intent to supply class A drugs, to enable comparison between the perceived seriousness and suggested sentences for sexual offences with other offences.
- discussions with 46 victim/survivors or parent/guardians of victims of sexual offences. The main method used was in-depth interviews, which allowed for a personal and detailed account of their experiences and views to be discussed. However flexibility was also adopted to enable victim/survivors to participate in the manner most comfortable to them. This resulted in two group interviews with existing users of a support service, and two written submissions. The offences included in the research tended to be offences such as rape and sexual assault. Other offences included possession of indecent images, inciting a child into sexual activity, and administering a substance with intent. In addition, the within-offence features varied considerably and included childhood sexual abuse, single rapes or sexual assaults of adults, serial

rape cases, ritual abuse, male and female victim/survivors and single or multiple offenders involved. The cases of 27 of the victim/survivors had been sentenced to date.

## **Research findings**

The public and victim/survivors are not homogenous groups and so bring diverse experiences and viewpoints. The experience of victim/survivors clearly differed from that of the public – they had direct experience of a sexual offence and the impact of this.

Nevertheless, findings did emerge from across the different participant groups, with views shared by both the public and victim/survivors. Where appropriate, these findings have been reported thematically throughout the report. Where the findings refer to one or the other (public or victim/survivor perceptions only) this has been specified.

### **Victim/survivor perceptions**

#### ***Impact of sexual offences***

- Victim/survivors articulated the long term harm of sexual offences, whereby the effect could be felt on a number of levels. For example they may have actual physical injuries, experience psychological distress or post-traumatic stress disorder and then an inability to work or form relationships. They may also have felt they had to move homes or employment when an offender was released to live near them. They regularly described the aftermath of a sexual offence as a ‘life sentence’ for the victim/survivor.
- Victim/survivors were also at pains to point out that sexual offences directly harm a wide circle of people such as parents of children who have been abused.

#### ***Impact of sentencing sexual offences***

- Victim/survivors consistently noted that the sentence could not change or make up for the offence that had occurred. However among those whose cases had been sentenced there was a clear divide between victim/survivors who had felt satisfied by the sentence and those who felt deeply dissatisfied. Those who were satisfied said this was due to the length of the custodial sentence given, comments made by the judge indicating the culpability of the offender and harm of the offence, and the level of support and advice they were provided with during the investigation and court case. Conversely, those who were deeply dissatisfied focussed particularly on what they felt were lenient sentences even when they had obtained some support and advice – although the most dissatisfied were those for whom both the process and sentence were felt to be inadequate.

- Victim/survivors who felt the sentence for their offence was too short felt longer sentences should be given for these offences to accurately reflect the harm the offences cause.

### ***Appropriate sentences***

- Victim/survivors noted that rape has a life-long impact on victims and therefore to them could warrant a life sentence for the offender. Those whose cases had been sentenced reported sentences of seven to 22 years, and indeterminate sentences.
- Assault by penetration had been experienced by victim/survivors in the sample and there was confusion over why it was perceived to be different from rape. They felt this behaviour warranted a similar sentence to rape.
- Although sexual assault was also experienced as a harmful and traumatic experience, victim/survivors felt it may warrant a slightly lesser sentence than rape in order to be proportionate.
- Preparatory offences such as grooming were felt to be serious and warranting custodial sentences (with grooming singled out as being particularly insidious, as it can lead to a victim/survivor feeling complicit in the offence).

### **Public perceptions**

#### ***Attitudes towards sentencing options***

- The public conceded that they often had limited awareness of sentencing processes although some information was provided during the focus group discussions.
- The purpose of sentencing sexual offences was felt by focus group participants to be public protection, punishment, acknowledgement of the harm and seriousness of the offence, and in some cases to provide a locus for treatment and rehabilitation whilst ensuring repeat offending cannot occur. There were also suggestions that sentences should send a societal 'message' about the unacceptability of these offences and to act as a deterrent to sex offenders.
- Custodial sentences were felt to meet these aims and were widely supported by participants.
- There were mixed views about the efficacy and appropriateness of treatment as a sentencing option for sexual offences. Where treatment was supported participants tended to assume it was widely available and effective and favoured it as a means to prevent reoffending. However participants could also hold the view that treatment was ineffective and therefore a 'waste of time'.

- Other sentencing options such as restriction orders, whereby the offender could have no contact with victims or young people for example, were strongly supported, but only as an additional component to the sentence following release after a custodial sentence and not as an alternative to custody.

### **Perceptions of harm**

- The public perceived sexual offences as harmful. However, public perception tended to focus on any immediate harm (such as physical injury) or broader harm to society (such as increased fear of crime) rather than the long term impact that victim/survivors themselves described (see previous section).

### **Sentences suggested for specific sexual offences by focus group participants**

The suggested sentences given by the public were based on vignettes with specific offences described (see Appendix B.2). There was also wide variation in the suggested sentences across the focus group sample even for the same offence, with participants finding it difficult to reach consensus.

Where custodial sentences are discussed throughout the report, the convention used is to report the total sentence length (including time in custody and on licence upon release from custody) rather than the time spent in custody that was being described in the focus groups<sup>3</sup> to reflect how sentences are served in reality.

- Rape: suggested custodial sentences for rape ranged from six years to life sentences. Consensus appeared to be a custodial sentence of a *minimum* of 10 years for the offence (to ensure at least five years was spent in custody), with custodial sentences that ranged from 10 up to 20 years often suggested. There was also an emphasis on ensuring rehabilitation before release to promote public safety. Rape was viewed as the most serious sexual offence, and akin to or only slightly less serious than murder.
- Sexual assault of an adult: sexual assault was perceived to be a serious offence, but custodial sentences slightly less than that for rape were suggested. Custodial sentences with a range of six to 10 years were suggested as appropriate for this offence as it was described in the vignette, though much was felt to hinge on the

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<sup>3</sup> Sentences have been reported in this manner to describe as accurately as possible the suggested sentences participants felt were appropriate for this offence. Participants tended to favour sentences being served entirely in custody although conceded when this was probed in the focus group discussions that if some time was to be spent on licence then the length of sentences reported here were appropriate if it was to account for both the time in custody and on licence.

specific details of the sexual assault in deciding a sentence. This suggested sentence was also felt to be proportionate to the suggested sentence for rape.

- Sexual assault of a child: was considered more serious and warranting longer custodial sentences than sexual assault of an adult. Custodial sentences with a range of 10 to 20 years were suggested for this offence.
- Assault by penetration: the public perceived this to be similar in seriousness as rape and warranting a similar minimum custodial sentence.
- Preparatory offences – administering a substance with intent and grooming: preparatory offences provoked wide debate. On the one hand they were perceived to be less serious, as a contact offence had not occurred; on the other hand, the intent to commit the offence had been there, but was prevented from occurring for some reason. The vignette for administering a substance with intent featured an adult victim and attracted suggestions of custodial sentences by the public with a range of one to 10 years (four to 10 year custodial sentences being favoured). The sexual grooming vignette involved a teenage victim, and suggested custodial sentences for this behaviour ranged from one to 20 years (four to 15 years being favoured suggestions).
- Exploitation offences – possession of indecent images: exploitation offences (especially those involving children and young people) were also felt to be serious because the offender was complicit in a sexual offence occurring. However the public tended to accept mitigating factors for these offences to a greater extent than for other offences. For example, only one image being stored *and* it being a first offence might warrant a lesser or non-custodial sentence. This may explain the high level of variance in suggested custodial sentences for this offence. For example, custodial sentences that ranged from four to 20 years were suggested (10 year custodial sentences were most prevalent).
- Other offences – voyeurism: if such offences involved children they were viewed as serious. However, there was concession that offences such as voyeurism, if against an adult and a first offence, may not be as serious as contact offences or may not always require a custodial sentence. However, these views were underpinned by an acknowledgement that such offending behaviour could be a precursor to further sexual offending. As such, there was a strong sense that offenders should be subject to careful monitoring and rehabilitation following the offence, irrespective of whether a custodial sentence was administered. A custodial sentence was however felt to potentially act as a deterrent to any escalation in offending behaviour. Consequently, the public who took part in the research tended to suggest custodial sentences of around five years for voyeurism (a range of five to 10 years).

- Comparator offences: members of the public that took part in the focus groups were also asked the sentences they considered appropriate relative to two other offences discussed – grievous bodily harm (GBH) and possession with intent to supply class A drugs. Rape was perceived by the focus group participants to be a more serious offence than drug dealing or GBH. However specific aspects of the comparison offences did alter perceptions – for example heroin addiction was perceived to ‘destroy lives’ and therefore selling heroin was *almost* as serious as rape. GBH was considered less serious than rape or sexual assault if in the context of an argument or between two people who knew each other. However if it was a random attack by a stranger that could have been potentially life threatening it was felt to be potentially almost as serious as rape. Unequivocally rape or sexual assault was described as more ‘intimate’ and therefore more violating than other forms of violence discussed. It was described by some victim/survivors as harm to the ‘psyche’.

## **Overarching findings from both public and victim/survivor participants**

### ***Attitudes to sentences for sexual offences***

There were a number of findings regarding sentencing sexual offences which were held by both the public and victim/survivors.

- The fact that determinate sentences are often served partially in the community on licence was felt to effectively shorten or halve the actual sentence given. This led to perceptions that the sentence was unduly lenient.
- There was little support for a period of the sentence being spent on licence in the community other than to ensure restriction orders imposed were upheld by the offender. In other words participants wanted sentences to reflect the actual time spent in custody as opposed to time in custody and on licence, as they currently do.
- Victim/survivors also discussed concurrent sentences (this was not raised in the public focus groups). Sentences for sexual offences being served concurrently as opposed to consecutively was not supported. This was on the basis that this would shorten the length of time in custody to one felt to be unduly lenient and that did not reflect the harm and seriousness of each individual offence or to each victim.
- The desire from participants was for sentences that they felt reflected the harm and seriousness of a sexual offence, which was not unduly shortened due to some time being served on licence or sentences being served concurrently.

### *Aggravating and mitigating factors*

- There was rarely complete consensus among participants as to which factors would aggravate or mitigate a sexual offence, with much hinging on specific details of the offence. Victim/survivors were keen that the overarching harm of sexual offences is acknowledged regardless of the details of the offence.
- Aggravating factors that were agreed by the public and victim/survivors tended to be those:
  - relating to the nature of the offence such as premeditation, length and number of offences and multiple offenders taking part;
  - repeat offending;
  - offences against younger, elderly or vulnerable victims;
  - violence including use of weapons and torture, or abduction and detention;
  - illness via sexually transmitted disease and ejaculation; and
  - producing and/or distributing images of the offence.
- Importantly, whilst these factors aggravated an offence (and were therefore felt to warrant longer custodial sentences) an *absence* of these factors was not felt to mitigate. For example, even if a single sexual offence was committed and there was no explicit violence used this was still felt to be a serious and harmful offence. Consequently participants felt that the recommended custodial sentence should not be reduced but start at the suggested minimum. Both victim/survivors and the general public shared this view.
- Both the public and victim/survivors were reluctant to identify mitigating factors, with the only broadly agreed mitigation being the mental capacity or mental health of the offender. This was felt to influence the nature not duration of the custodial sentence suggested, with an emphasis on treatment or care under supervision.
- Of particular note, participants felt strongly that young offenders committing a sexual offence should *not* be sentenced differently from adult offenders unless they acted under duress.
- Where victim/survivors had been in court to hear their case sentenced they felt that the mitigating factors given by the judge were unfair and should not have reduced the sentence given.
- It was felt that aggravating factors should take precedence over mitigating factors.

# 1. Introduction

This chapter introduces the context in which the research occurred, provides an introduction to the sentencing of sexual offences, outlines the aims and objectives of the research and summarises the methodology and limitations of the study.

## 1.1 Background to the research

In recent years there has been considerable legal and policy debate over the extent to which sentencing guidelines are sensitive enough to the specific circumstances and facts of each case and match public expectations on sentencing; this debate has also included sentencing relating to sexual offenders (Lovegrove, 2010; Young and King, 2011). A key landmark relating to sexual offences was the Sexual Offences Act 2003 (which came into force in 2004). This Act outlines a range of sexual offences, some of which had not existed under the earlier legislation and for which there were no existing sentencing guidelines. The 2003 Act was followed by the definitive guidelines on the sentencing of sexual offences issued by the Sentencing Guidelines Council in 2007 (replaced by The Sentencing Council for England and Wales which was established on 6 April 2010).<sup>4</sup>

Another significant recent development in sentencing options was the Government Green Paper, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, launched by the Ministry of Justice in December 2010.<sup>5</sup> The Green Paper noted that victims' views should be taken into greater account in the sentencing process. There has also been speculation about the extent to which sentencing guidelines and the criminal justice system are in step with public and victim views in relation to sexual offences sentencing. As such, the Ministry of Justice Structural Reform Plan 2011, now superseded by the Ministry of Justice Business Plan 2011 – 2015, set out clear objectives to review sentencing practice.<sup>6</sup>

In this context, an evidence review conducted during phase one of this research identified an absence of up-to-date, methodologically robust research on public and victim views on sexual offences sentencing that could address these debates and inform future sentencing guidelines. The Sentencing Council therefore commissioned Natcen Social Research,

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<sup>4</sup> At which point, the Sentencing Council's predecessors, the Sentencing Advisory Panel and Sentencing Guidelines Council ceased to exist.

<sup>5</sup> The relevant provisions from the Green Paper are now contained in the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Bill 2010–11.

<sup>6</sup> <http://www.justice.gov.uk/publications/corporate-reports/moj/2010/structural-reform-plan/index.htm>

in collaboration with Professor Marianne Hester at the Centre for Gender and Violence Research, University of Bristol, to undertake research specifically into public and victim/survivor attitudes to sentencing sexual offences. This also served to meet the Council's statutory duties to “*produce analysis and research on sentencing*”, “*promote a clear, fair and consistent approach to sentencing*”, and “*work to improve public confidence in sentencing*”<sup>7</sup> in relation to their explicit examination of sentencing sexual offences. The findings from the research are presented in this report.

## 1.2 The sentencing process

Sentencing occurs when a person has pleaded guilty to an offence or has been found guilty of an offence following a trial. The key purposes of sentencing are: the punishment of offenders; the reduction of crime; the reform and rehabilitation of offenders; the protection of the public; and, the making of reparation by offenders to persons affected by their offences.

In addition to these key purposes, a judge or magistrate will use sentencing guidelines for offences where they exist, which set out the steps that they should follow and the factors they should consider when determining an appropriate sentence in terms of the length and the various different types of sanction available. Factors that may determine the sentence include:

- the seriousness of the offence;
- whether the offender has a previous conviction and of what kind;
- aggravating and mitigating factors;
- personal mitigation relating to the offender and his/her family;
- whether the offender pleaded guilty (which normally results in a reduced sentence);
- totality, that is to say, whether an offender is being sentenced for more than one offence (although offences can be served concurrently);
- relevant law including maximum, and in some cases minimum, sentences; and
- specific sentencing guidelines relevant to the offence committed.

The key document in relation to guidance on the sentencing of sexual offences covered by the 2003 Act is the Sentencing Guideline Council's *Definitive Guideline for the Sexual Offences Act (2003)* issued in 2007 (Sentencing Guidelines Council, 2007). The guidelines provide a framework for the sentencing of offences and make a number of points in relation

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<sup>7</sup> Further details of the statutory duties and functions of the Sentencing Council of England and Wales can be found at: <http://sentencingcouncil.judiciary.gov.uk/about-us.htm>

to the sentencing of such offences. Firstly, the suggested starting points and sentencing ranges contained in the offence guidelines should not be treated as rigid, rather movement within and between ranges will be dependent on the circumstances of individual cases and, in particular, the aggravating and mitigating factors that are present. Secondly, the guidelines for sentencing for serious sexual offences are based on the guideline judgement on rape (*Millberry and others*), in which the Court of Appeal stated there are, broadly, three dimensions to consider in assessing the seriousness of an individual offence: *harm* to the victim; *culpability* of the offender; and *risk* posed by the offender to society.

Aggravating and mitigating factors (those factors that may lead to a more or less severe sentence) are of particular interest for this research. Whilst such factors tend to be understood intuitively they can also be problematic – for example what may appear to one person or in certain circumstances to intuitively make an offence less severe, such as intoxication of the offender, may in another circumstance, be seen to aggravate the offence (Roberts, 2011). Indeed exploring the types of factors the public and victims feel aggravate or mitigate in sexual offences was found to be complex and at times inconclusive in this research too.

### 1.3 Types of sexual offences

There are a wide range of sexual offences, some of which have been explicitly explored in this research. These offences include:

- **non-consensual offences** – offences in this category include rape (intentional non-consensual penile penetration of the vagina, anus or mouth); assault by penetration (non-consensual penetration of the vagina or anus with objects or body parts (for example, fingers, toes, tongue)); sexual assault (non-consensual sexual touching that can be of the genitalia or other parts of the body); and causing a person to engage in sexual activity without consent (forcing someone else to perform a sexual act on himself or herself or another person).
- **offences involving ostensible consent** – these offences involve people under the age of consent regardless of whether it appears that they gave consent. They include sexual activity with a child; abuse of trust; arranging or facilitating the commission of a child sexual offence; and, offences related to sexual activity with people who have a mental disorder.
- **preparatory offences** – this refers to offences characterised by the intention to commit a sexual offence that was not, in fact, carried out, either because the act was

interrupted or because of a change of mind. These include sexual grooming,<sup>8</sup> trespass with intent and, administering a substance with intent, for example, plying a person with alcohol or drugs to facilitate a sexual offence.

- **exploitation offences** – where offenders intentionally exploit vulnerable people for sex, and sometimes, for financial gain. This could include taking or storing indecent images of children; exploitation of prostitutes and trafficking (intentionally arranging or facilitating a person's arrival, travel within or departure from the UK, intending or believing that a sexual offence will be committed).
- **other types of offences** – include prohibited adult sexual relationships (such as sex with an adult relative); sexual activity in a public lavatory; exposure; voyeurism; intercourse with an animal; and sexual penetration of a corpse.

## 1.4 Sentences for sexual offences

The broad range of sentencing options available to sentencers are custodial sentences (including suspended sentences), non-custodial sentences and orders aimed at preventing re-offending. Types of custodial sentences include determinate (for a set period of time), indeterminate (where the offender will have to serve a minimum amount of time in custody but the maximum length is not decided at the time of sentencing), and suspended, when a court imposes a sentence of between 14 days and one year (six months in a magistrates' court) but the court may choose to suspend the sentence. This means the offender does not go into immediate custody provided they comply with requirements set by the court.

Non-custodial sentences include community sentences (carrying out unpaid work, attending treatment or rehabilitation programmes and adhering to curfews or supervision requirements and so on) and ancillary orders where, in addition to the sentence imposed, the judge or magistrate may also impose other orders. Such orders aim to prevent future re-offending, with particularly relevant orders in relation to sexual offences including disqualification orders (preventing sexual offenders working with children), deprivation orders (these include depriving offenders of equipment used to commit an offence such as computers) and sexual offender prevention orders (SOPOs) which prevent the offender from doing anything described in the order for a period of not less than five years or until further notice. Sex

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<sup>8</sup> Meeting, communicating with or travelling to meet a child aged under 16 (after contact on at least two previous occasions) with the intent to commit a sexual offence.

offenders will also usually be included on the Sex Offenders Register<sup>9</sup> following their conviction.

The current treatment of sexual offenders, delivered using programmes with cognitive-behavioural methods, is well established practice in the management and rehabilitation of sexual offenders by the National Offender Management Service in England and Wales. Depending on the nature of the sentence given to an offender, treatment may be offered in a community or custody setting. There is a suite of different treatment interventions available to sexual offenders. The type, dose, sequence, and ultimately efficacy of programmes offered is underpinned by a 'risk, need, responsivity' principle (Andrews and Bonta, 2003). Risk is established by the use of static and dynamic measures. Static risk instruments contain historical variables that significantly predict future offending (for example offender age, victim gender and so on). Dynamic assessments measure features that also predict future offending, but are amenable to treatment change (for example, the nature and extent of an individual's sexual interest, beliefs which support their offending behaviour and so on). Evidence has shown that medium and high risk sexual offenders benefit most from treatment. Low risk sexual offenders show negligible benefits and may therefore not benefit from intensive treatment intervention (Mailloux et al., 2003; Lovins et al., 2009; Friendship et al., 2003).

## 1.5 Research aims and objectives

Within this complex context, the overarching **aim** of the research with the public and victim/survivors of sexual offences was to:

- map awareness of the various sanctions for sexual offences which are available (for example, community sentences, custody, treatment orders);
- understand what are considered to be appropriate sanctions and sentences for a range of sexual offences, the reasons for this and the relative gravity of sexual offences against each other and in comparison to other offences;
- identify the range of aggravating and mitigating factors which influenced the nature of participants' responses to the appropriate type and length of sentence, including which factors are more or less important when considering the sentence; and

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<sup>9</sup> The Sex Offenders Register, established under the Sex Offenders Act (1997) as amended by the Sexual Offences Act (2003), contains the details of anyone convicted, cautioned or released from prison for sexual offences against children or adults since 1997. Convicted sex offenders must register with the police within three days of their conviction or release from prison or hospital. The length of time a person remains on the register varies according to the length of sentence and age when convicted but is indefinite for sentences of 30 months or more. See [http://www.prisonersfamilies.org.uk/uploadedFiles/Family\\_Zone/sex%20offenders%20register.pdf](http://www.prisonersfamilies.org.uk/uploadedFiles/Family_Zone/sex%20offenders%20register.pdf)

- discuss the purpose of sentencing sexual offences.

**And in addition, with victim/survivors of sexual offences and their family:**

- describe the experiences of people affected by sexual offences and the seriousness and harm of the offence; and
- where applicable, explore their experience of the sentencing process and the personal impact of the sentence.

With any research there are limitations and this study is no exception. The lack of existing evidence on public and victim/survivor attitudes to sentencing sexual offences meant that it was important the study included a range of sexual offences across the focus groups. However, this strategy did come at the expense of depth when exploring certain issues around sentencing – for example, it was not possible to cover views on existing sentencing guidelines or any deliberation on the effectiveness of sentencing options. Research with victim/survivors also necessitated a different approach from that with the public as it explored what was a personal and potentially traumatic experience for the participants. As such, although the research covered similar themes with both the victim/survivors and the public who took part, essentially two research projects were completed. The data has been synthesised within this report to develop key findings which meet the objectives of the research and needs of the Sentencing Council. These cover a wide range and do point to the need for further research in the area to gain ever more nuanced and detailed understanding of the issues.

## **1.6 Methodology**

This section provides a brief overview of the methods and approach used in the research. Further detailed information relating to the methodology and sample can be found in Appendix A.

The research comprised two phases. Phase one involved a literature review of existing evidence related to public and victim/survivor views of sexual offences sentencing to determine whether primary research was needed; and, if so, what questions needed to be addressed and the most appropriate methodology to answer them. Phase two followed this and involved primary research, including focus groups with members of the public and in-depth interviews with victim/survivors of sexual offences. Twelve focus groups involving 82 members of the public were conducted; 46 victim/survivors of sexual offences (the parents/guardians of victim/survivors where the offence was against a person currently under

16) were interviewed. Of these participants, 27 had experienced their case reaching the sentencing stage. Fieldwork for phase two took place between June and September 2011.

### **Phase one: literature review**

The literature review involved detailed scoping of existing evidence sources focusing on public and victim/survivor awareness of, and attitudes to, the sentencing of sexual offenders. Sources of evidence reviewed were: relevant peer-reviewed research articles and discussion pieces; policy reports and key texts such as recent Government Papers and reviews; recent media coverage; and case law. The phase one review principally included literature post-2005 so that it was relevant to the current socio-legal context. However, some literature prior to this period was also included where it was particularly pertinent to the research aims and objectives and/or where it provided the best information available in the absence of relevant material since 2005.

Having reviewed the articles and documents for relevance, 29 journal articles and 60 media articles were selected to be reviewed in-depth; 28 purposively sampled case law examples were also selected by the Sentencing Council and reviewed by the research team. The literature was summarised thematically in a matrix according to a range of criteria such as: type of article (for example, primary research, review, media article and so on); whether it involved primary research; the quality and limits of the methodology and key tools used; a summary of the key findings (particularly relating to public and victim/survivor awareness and views on sexual offences sentencing).

The main finding was that there was limited up-to-date evidence on public and victim awareness of, and views on, sexual offences sentencing. This suggested that the primary research here was timely and needed. The review also suggested that greater emphasis needed to be placed on the rationale for the public and victims' views on appropriate sentences and sentencing – and in relation to a range of different sexual offences. Because of this, a qualitative methodology was deemed most appropriate and therefore adopted for phase two of the study. Here participants in the focus groups with the public could discuss their reasons for sentences in-depth. In addition, different features of offence vignettes could be introduced to ascertain if these affected the suggested sentence. A qualitative methodology also enabled in-depth interviews to be conducted with victim/survivors that were responsive to their experiences and circumstances and did not rely on set questions being answered. This was identified as the most appropriate methodology to adopt from the evidence review (for example, Clarke et al., 2002).

## Phase two: focus groups with the general public

Focus group participants were recruited by following up a sample of people who had participated in the British Social Attitudes Survey in summer 2010 and who gave their consent to be re-contacted about new research conducted by NatCen. The sample was selected and monitored to achieve a diverse sample in terms of gender, age, ethnicity, children in the household, socio-economic activity and educational level. This monitoring indicated that greater numbers of male, younger people and people with fewer higher level educational qualifications should be incorporated into the sample to ensure an adequate range and diversity of characteristics, and a recruitment agency assisted to recruit further participants with these characteristics. People who had been a victim of a sexual offence or who had committed a sexual offence were excluded from the groups using a short screening questionnaire.

The focus groups were conducted using a topic guide and vignettes of different types of sexual offences agreed with the Sentencing Council (see Appendices B.1 and B.2). The sexual offences discussed across the 12 groups were:

- rape;
- sexual assault of an adult;
- sexual assault of a child;
- online grooming of a teenager;
- administering a substance with intent;
- possession of indecent images of a child; and
- voyeurism.

At least two different sexual offences were discussed in each focus group (covering issues such as the most appropriate type and length of sentence), with each specific sexual offence being discussed in at least two of the 12 groups. It should be noted that this meant that specific offences (other than rape which was discussed at each group) were only discussed two to three times within the focus groups overall, and with a sample of around 15 to 20 participants. Although this is a relatively small sample, this approach enabled a range of different offences to be explored in-depth, within the parameters of the research.

The order in which the vignette offences were discussed was varied across the groups to ensure that views on the appropriate length or type of sentence given by participants were not influenced by the perceived 'seriousness' of the offence that preceded it (for example, in some cases rape was discussed before another offence while in others it was discussed

after to see if this affected the views expressed). Specific aspects of the offences in the vignettes were then explored (for example, the age of the victim, level of violence used, level of planning, the personal circumstances of offender, and so on) to stimulate further discussion on factors linked to perceptions of culpability, harm to victim/survivors and the things which might be considered aggravating or mitigating factors.<sup>10</sup> The vignettes were kept intentionally brief at the beginning of the discussion so that these additional components could be introduced as consideration of the offence developed.

Other issues discussed in the groups included knowledge of sexual offences and the sentencing process and the perceived purpose of sentencing sexual offences. Some basic information about types of sexual offences and the sentencing process was discussed at the start of the groups in order to ensure a common level of understanding within the groups but detailed information about current sentencing ranges within the guidelines was withheld until the end so that it did not influence the views of participants. Information on the apparent effectiveness of different sentencing options was also not provided.

There were benefits and limits to this approach. The benefit was that this enabled the research to explore public perceptions which were not biased by the information provided; the limitation is that the approach did not model the realities of sentencing that exists whereby judges use existing guidelines and aim for consistency. Having noted this limit, the findings did illustrate that even with a limited knowledge of sentencing, the participants' responses did offer a degree of consistency and proportionality across different offence types, and with some similarities to sentence lengths in existing guidelines. There can also be confidence due to the purposive sampling strategy that the findings reflect a range of different public perceptions and the participants were not unduly influenced by facts beyond those necessary to promote a basic understanding and stimulate a full discussion.

Other offences, specifically the possession with intent to supply of a class A drug and grievous bodily harm (GBH), were also discussed. The aim here was to compare their perceived seriousness and harm with sexual offences, and the sentences that were regarded as appropriate for each offence.

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<sup>10</sup> Details of the variations are discussed in the relevant findings chapters and can be found in Appendix B.2 in relation to moderator guidance on how details of each scenario described could be changed.

## Phase two: interviews with victim/survivors

Victim/survivors were contacted via organisations supporting people who had experiences of sexual offences – via advertisements and leaflets distributed online and in relevant locations and via those participants from the focus group sample who were screened out of taking part in a group because they had experienced a sexual offence. Support organisations distributed information about the research that included a freephone number and email address that prospective participants could contact if they wished to ‘opt in’ to the research interview. A member of the research team then contacted the person to discuss the research with them, check their eligibility to take part and make interview arrangements where applicable. Participants with experience of rape, sexual assault, assault by penetration, incitement of a child to sexual activity, offences involving possession of an indecent image, administration of a substance with intent and other offences (for example grooming and voyeurism), were included in the sample (further details of the victim/survivor sample can be found in Appendix A). The cases of 27 of the participants had been sentenced.

Given the sensitivity of the subject matter the research team was as flexible as possible in terms of recruitment and modes of participation. Though the main focus was on including those who had experienced a conviction for their case in the previous eight years (which captured offences included in the 2003 Act), those who had experienced longer term cases or cases that had not resulted in a conviction were also included to ensure a diversity of views and experiences. Participants were also offered different ways in which they could participate including an individual face-to-face or telephone interview, a written submission or participation in a focus group with other service users). The research team were drawn from staff with experience of conducting sensitive interviews and with knowledge of working with survivors of sexual offences and met regularly to ensure strict ethical protocols were adhered to (see Appendix A).

Interviews were conducted using a topic guide agreed with the Sentencing Council. Discussion focused on the experience of sexual offences and sentencing and/or what participants regarded as an appropriate sentence for the offence or offences committed against them and the factors that should be taken into consideration when reaching this view. Broader issues relating to the purpose and effectiveness of sentencing options were also discussed. Victim/survivors also recounted, unprompted, examples of positive and negative experiences of the criminal justice system during the interviews and of voluntary sector support they had received following the sexual offences. Some of this data is reported here. However, it is important to note that the research was not intended to collect specific

information on the nature or extent of support victim/survivors had received. Consequently, the extent to which this data can be compared systematically across the sample is limited.

### **Analysis and reporting of focus groups and interviews**

All focus groups were digitally sound recorded and transcribed verbatim. Interviews were digitally sound recorded or written up as detailed notes where the participant did not want to be recorded. Transcripts and notes were analysed using *Framework*, a data management technique developed at NatCen which allows thematic matrices to be developed and emerging patterns and themes to be explored.

The findings that follow are organised thematically across the report, with the findings from the research with victim/survivors reported alongside the focus group data, rather than being reported separately. This strategy recognises the fact that many of the key findings were similar across the sample, although where appropriate, the perceptions of the different participant groups have been reported separately.

Where specific findings emerged relating to the public *or* victim/survivors (for example only the public were given vignettes of cases to discuss) but not both, then these are differentiated between the two groups. Sub-headings have also been used to differentiate participants, where appropriate. Of note, victim/survivors and the public could share views around the sentencing of sexual offences and it was therefore not necessarily helpful to report findings from the two separately throughout the report. However, it is respectfully acknowledged that victim/survivor experiences refer to a highly personal and traumatic issue, and that they bring a particular understanding to this research.

An important limitation to the research is that, while the qualitative approach adopted is able to demonstrate the range of views on sentences considered appropriate for certain types of sexual offences, it is not possible to say without further quantitative research how statistically representative those views are of victims or the general public as a whole. Therefore the findings are not reported numerically but represent the range and diversity of views expressed.

Reporting data that has been collected using a qualitative methodology, but that referred to numerical data, such as the length of sentence suggested, also required careful interpretation. For example the public were clear that the initial sentences they suggested and wrote down in the focus groups referred to the time that should be spent entirely in custody. As such, time an offender then spent on licence in the community should be

additional to this. To ensure clarity and consistency, and to enable comparison with the sentences mentioned by victim/survivors, the sentences suggested during the focus groups have been interpreted and reported to reflect this – that is, providing the length of sentence that would be required to cover both custody and time spent on licence. For example if a sentence of five years, all to be spent in custody, was suggested by a participant for sexual assault, this has been converted to a 10 year sentence – five years in custody and five years on licence. The researchers in the focus groups asked participants if this interpretation led to an accurate representation of the sentence they had suggested in terms of length of time in custody it would equate to and confirmed this was the case. They would check in the manner of: *“so this could be a 10 year sentence if they served half of this on licence?”*

This approach incorporated participants’ desire for a certain length of sentence to be served in custody for the specific sexual offence in focus. This is how the sentences have been reported to enable comparison with how sentences are served in reality whilst retaining an accurate representation of participants’ desired custodial sentences. Of course the actual amount of time spent in custody for an offence relates to a number of factors and may not simply be half that of the sentence given, although this is the most common outcome.

In the report, the minimum and maximum suggested sentences and the most prevalent suggestions are presented. However, it should be remembered that the sample was not selected according to statistical principles, so the ranges presented **should not** be interpreted as statistically representative. For statistically meaningful frequency data to be reported, a random probability survey would have to be conducted. The main objective of this research was to understand the reasons given for the suggested sentence and the aggravating and the mitigating factors that may affect this.

### **Terminology and language used in this report**

This report has been written to be accessible to a wide range of audiences. Legal terminology has been used as sparingly as possible. The term victim/survivor is used throughout to indicate those who have experienced a sexual offence against them or a member of their family. This is to reflect that while the people affected by sexual offences who were interviewed for this research are considered victims or witnesses within the criminal justice system, the term some prefer to use to describe themselves is survivor, with some reporting they can find the term victim offensive. The term offender is used to indicate the person who has committed the sexual offence being discussed.

## 1.7 Report structure

In **chapter two** of this report we set the research in context with a summary of findings from the evidence review. As noted above, findings in each chapter are reported thematically across the sample, though where relevant they have been separated into the views of victim/survivors and that of the public. In **chapter three** victim/survivor experiences and the impact of sentencing is reflected upon as background to the findings. **Chapter four** focuses on participants' general attitudes to different sentencing options for sexual offences. In **chapter five** suggested sentences for different sexual offences, the reason for these suggestions, and how offences compared is outlined, alongside a consideration of the key overarching attitudes to sentencing sexual offences to emerge from the research. In **chapter six** specific aggravating and mitigating factors that were felt to affect the sentence are discussed. **Chapter seven** provides a conclusion to the research.

Case studies are presented throughout the report to illustrate key findings from the perspective of participants.

## 2. Evidence review

This chapter provides a brief review of existing research evidence on public and victim/survivors' attitudes to sentencing sexual offences and summarises key evidence from the evidence review conducted at phase one. As outlined in chapter one, this part of the research aimed to determine whether primary research was needed on public and victim/survivor views of sexual offences sentencing; and, if so, what issues needed to be addressed and the appropriate methodology to answer them.

The literature review involved detailed scoping of existing evidence sources focusing on public and victim/survivor awareness of and views on the sentencing of sexual offences (detailed information about the conduct and scope of the review is outlined in chapter one and the methodological appendix, Appendix A).

The main finding was that there is limited methodologically comparable and/or up-to-date evidence on public and victim/survivor awareness of, and views on, sexual offences sentencing, particularly relating to offences other than rape. Some of the research on sexual offences sentencing was not designed to capture diversity of views, or focused on homogenous populations such as students based at a single university or college. Another limitation was that the majority of the research was North American and so its relevance to the legal and political context in England and Wales and to the linked social concerns, attitudes and behaviours of the British public could be questioned. New primary research in England and Wales on these topics, taking a qualitative approach (which was deemed the most ethical and responsive manner to explore a sensitive topic such as sexual offending) was therefore timely. Key relevant findings from the evidence review are summarised below.

### 2.1 Evidence on perceptions of sentencing sexual offences

The review found that existing evidence on attitudes to sexual offences tended to focus on public perceptions. It also tended to concentrate on rape and other serious sexual offences (for example Brown, 1999; Clarke et al., 2002). Sexual offences were often conflated with rape without taking into account the myriad of other offences that this term refers to. Recent comprehensive reviews (such as Stern, 2010; HMCPSI and HMIC, 2007) had tended to concentrate on rape and on the reporting and trial processes rather than sentencing. The Stern Review and other research (for example Rights of Women, 2008; McMillan and Thomas, 2009) has explored victim/survivor experiences, including that of reporting and being a witness in a sexual offence case. Recent research has also examined the impact of sexual violence (for example, Race on the Agenda, 2010) or provided evidence on how

significant the timely provision of support and advice for survivors of sexual violence can be to assist them to negate the negative impacts of such violence (research includes evaluations of Sexual Offence Referral Centres (Lovett et al., 2004) and Independent Sexual Violence Advisers (Robinson, 2009)). Literature in this area also comes from evaluations of services for women who have experienced domestic violence (Parmar et al., 2005; Robinson, 2009).

However the evidence review conducted for this research found a remarkable dearth of research evidence focussing specifically on victim/survivors' views on *sentencing* sexual offences they had experienced (with the exception of Clarke et al., 2002). Therefore the evidence referred to in this chapter, which focuses on attitudes to sentencing sexual offences, tends to reflect the views of the public alone.

## 2.2 Public perceptions of sentencing sexual offences

Existing research tended to provide evidence that suggested the public were punitive in their views towards sexual offenders; that they felt sentences given for convicted offenders were too lenient; and that, consequently, there was a gap between the public and for example, judges in terms of views on appropriate sentences. For instance, Felizer (2007) in the UK found that, although attitudes are complex and not always homogenous, 55.9 per cent of participants thought that sentences were too lenient and 66.9 per cent thought sentencers were out of touch with public views on crime.<sup>11</sup> A previous review based on the British Crime Survey 1996 also found that widespread dissatisfaction with sentencing among the public particularly related to the view that sentences were too lenient (Hough and Roberts, 1999).<sup>12</sup> However these studies, while providing robust statistical data, has less information on why the public held these views.

Some research had attempted to survey and interview jurors as a better way to assess public opinion on sentencing. The perceived advantages of using jurors is that they would have greater commitment to the judicial process and make more informed judgements rather than uninformed, intuitive judgements, because of a more detailed knowledge of an offence and a sense of the offender as a real person (Warner et al., 2009).<sup>13</sup> In relation to most offences,

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<sup>11</sup> Based on a survey of 943 participants in Oxford, England. The study notes that the local population was not representative of the wider UK population.

<sup>12</sup> Hough and Roberts' findings were based on analysis of a 50 per cent sub-sample of 8,365 respondents from the British Crime Survey, itself based on a wider survey of 16,348 nationally representative households in England and Wales.

<sup>13</sup> Warner et al.'s findings are based on the views of 257 jurors from 51 trials in Tasmania, Australia in which a guilty verdict was imposed. This represented a 42 per cent response rate to the survey.

these researchers found that 50 per cent of jurors sampled gave sentences less severe than judges, 46 per cent gave sentences that were more severe and the remainder gave sentences of the same severity. Sexual offences were the only exception to this pattern with 53 per cent proposing more severe sentences than judges, 38 per cent giving sentences that were less severe and nine per cent giving sentences of the same severity. However, the approach of using jurors in this research as a measure of public views was in its infancy, still subject to sampling problems (such as exclusions from jury service) and did not fully explore the reasons for the differences in views between sexual and non-sexual offences sentencing.

### **2.3 Reasons for public views on sexual offences sentencing**

Part of the literature was concerned with trying to understand the possible reasons for public dissatisfaction with current sentencing practice. One explanation was that the public had a lack of knowledge or misunderstood recent sentencing practices and was therefore ill-informed. For example, one review found that members of the public had a common belief that people convicted of sex offences were not punished severely and were ill-informed about sentences given for sexual assault (Roberts et al., 2002). Hough and Roberts (1999) suggest that the public may not be aware of sentences that are actually given for different offences. Another explanation was that the public base their views of appropriate sentencing on stereotypical and sensationalist views of sexual offending, these views being particularly informed by the popular news media. An example of a stereotypical view is that most sexual offences are committed by strangers when in fact they are more often committed by family members, friends and acquaintances (Brown, 2008; Myhill and Allen, 2002). However Clarke et al. (2002)<sup>14</sup> found that their focus group participants and interviewees tended to see all rapes as serious regardless of who committed them indicating the public may be less swayed by such details than assumed.

Of course the view exposed in existing evidence that the public feel sentences are too lenient may be a reflection of genuine views these members of the public hold, and no amount of additional information or knowledge of sentencing may alter this.

Taken collectively, these findings suggest that research on sentencing should provide at least some basic information about types of sexual offences and sanctions to try to address the worst aspects of stereotypes surrounding these offences. At the same time such research should be cautious that providing too much information, which could be seen to

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<sup>14</sup> The research by Clarke et al. (2002) used 28 focus groups and 62 depth interviews with victim/survivors of rape.

'direct' the public involved into a perception led by the researchers and convince the participants of a particular view on sentencing, could undermine the findings. The approach taken in this research was to provide some brief information and discussion on sanctions and offences to ensure a basic common knowledge among the public who took part. It also included the views of victim/survivors who had personal knowledge of sexual offending and in some cases of the actual sentencing of these offences not based on misinformation or stereotypes (27 of the victims interviewed reflected upon actual sentences that had been given in their cases and therefore their views were not based on assumed levels of sentencing but actual experience). It is acknowledged however that wider discussion of different sexual offences and provision of information on sentencing options in this research may not have been able to completely address selective reporting of sexual offences in the media or its effect on public views or the effect of participants' own personal views and differing levels of knowledge and understanding of sentencing.

## **2.4 Support for different types of sentence**

As set out in chapter one, there are a wide range of sentencing options available including custodial sentences, various orders, and sex offender licensing and registration.

### **Custodial sentences**

Hough and Roberts (1999) argue that public support for custodial sentences is often strong because the public are unlikely to consider other possible sanctions, whether they are community-based sanctions or a combination with prison such as treatment or rehabilitation. Drawing on the 1996 British Crime Survey, these researchers found limited public awareness of non-custodial options; although 69 per cent of respondents identified community service; 58 per cent a fine; 35 per cent probation; 16 per cent compensation; eight per cent conditional discharge; seven per cent electronic tagging; and 30 per cent suspended sentences. Without the benefit of a 'menu' of sentencing options, they suggested that people are more likely to favour custodial sentences. In this research the different sanctions available were discussed with focus group participants at the outset, though given the nature of the offences in focus (rape, sexual assault and so on) it is not unsurprising that custodial sentences continued to be favoured. The range of reasons for favouring custodial sentences were explored at length with participants and are reported in the following chapter.

## Custodial sentences and treatment/rehabilitation

Existing evidence here in support of either custodial sentences or treatment by the public was mixed. For example, Mears et al. (2008)<sup>15</sup> found 94 per cent of their US sample supported a prison sentence for rape and 68 per cent for accessing child abuse images. Wnuk et al. (2006),<sup>16</sup> in a survey of students, found they favoured containment and monitoring of sexual offenders rather than treatment and rehabilitation as a sentencing response.

By contrast, research in the UK indicated that the public wanted custodial sentences and treatment combined. For example, a study by Clarke et al. (2002) found support among the UK public for mandatory custodial sentences for rapists; and that five years as a minimum sentence for rape was not considered enough, with 10 years being suggested as a more appropriate alternative. The same study found the public supported treatment alongside a custodial sentence because it was thought to be important that offenders were given assistance to change. Church et al., (2008)<sup>17</sup> also found that their student sample supported treatment alongside prison for sexual offences, provided rehabilitation was considered alongside a custodial sentence and not instead of.

## Sex offender registration and community notification

Research in the UK has also indicated a high degree of public support for sex offender registration and community notification of sex offenders living in the community. For example, polls conducted by Mori in 2000 and 2001<sup>18</sup> showed that 76 per cent of the sample agreed that people should know if there is a convicted paedophile in their neighbourhood; from a separate question it was found 52 per cent 'strongly supported' and a further 30 per cent 'tended to support' the introduction of the so called *Sarah's Law*.<sup>19</sup> Some reviews have noted public support as high as 95 per cent for the names and photographs of sex offenders to be available to the public (see Kernsmith et al., 2009). However, concerns were also raised in the literature about the fact that such policies would be likely to drive sex offenders 'underground' as they become more desperate to avoid detection and how the information would be used or misused by the public (for example, by the public attacking people they

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<sup>15</sup> Based on a random sample of 425 people in the USA surveyed by telephone.

<sup>16</sup> Based on a sample of 170 undergraduates at a US university who were asked to read a vignette and then respond to a written survey.

<sup>17</sup> Based on a survey of 347 US psychology students.

<sup>18</sup> Based on opinion polls in the UK of 1,004 participants in 2000 and 614 participants in 2001, respectively.

<sup>19</sup> These polls were conducted following the murder of Sarah Payne and the subsequent News of the World 'naming and shaming' of paedophiles campaign. *Sarah's Law* was the idea that parents of children could ask the police under specified circumstances if a person with regular, unsupervised access to their child has a conviction for a sexual offence against a child.

believed to be paedophiles; Brown, 2008). Kernsmith et al. (2009) also reported that the popularity of sex offender registries did not appear to be linked to an adequate assessment of their actual effectiveness in preventing violent sexual offences.

More recent research by Kemshall and Wood (2010) for the Home Office, exploring the Child Sex Offender Review (CSOR) Public Disclosure Pilots,<sup>20</sup> also found some evidence to support satisfaction with such pilots among people who had applied for the disclosure of sexual offending history of an individual who had access to their children, although care should be taken in interpreting these results.<sup>21</sup> Comparable research in the USA also suggested a high level of support for the registration of sex offenders. This is perhaps understandable given the profile of *Megan's Law*<sup>22</sup> within North America. For example, Comartin et al. (2009)<sup>23</sup> explored attitudes to different sanctions in the US and found strong support for residency restrictions and community notification when a sex offender was living in the community.

## 2.5 Methodological issues

The evidence review also revealed that apparently punitive public views could be an artefact of the sample and/or the methodological approach used. Where research did focus on public and victim/survivor views, sample sizes in quantitative research were often too small for robust statistical analysis or to be generalised to the wider population, with opportunistic samples often using undergraduate students. Public opinion surveys in particular were criticised for providing little opportunity for considered approaches that explored reasons for suggested sentences or methods that explored a range of sexual offences (Hough and Roberts, 1999). There is a danger that public views can be presented as a single view when there is no single entity of 'the public' (Felizer, 2007) with the public in the 1996 British Crime Survey indicating both more punitive and more lenient views than actual sentencing practice at the time (Hough and Roberts, 1999).

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<sup>20</sup> The pilots were trialled in four police authority areas and allowed a member the public to make an application to the police requesting disclosure of sexual offending history of any individual whom they were concerned about having unsupervised access to their children. Where there was a history of sex offending and the person was considered a risk there was a presumption in favour of disclosure of this information to the person making the application.

<sup>21</sup> Care should be taken in interpreting this finding from the small sample size. Of the 315 applicants for disclosure in the pilot areas only 104 consented to be interviewed and only 43 had been interviewed at the time that the findings were reported.

<sup>22</sup> *Megan's Law* in the USA is the idea similar to *Sarah's Law* in the UK (referred to earlier) that would allow parents of children to apply to the police under certain circumstances for disclosure of information about past convictions for sexual offences for people who have regular and/or unsupervised contact with their children.

<sup>23</sup> Based on a telephone survey of 703 general population respondents in one US state.

Qualitative methods that focus entirely on the experience of victim/survivors and do not try to introduce additional stimuli or exercises have also been identified as being inappropriate for research with victim/survivors of sexual violence and abuse (Clarke et al., 2002).

Consequently, it is argued that qualitative approaches would provide better evidence of the range of views on appropriate sentencing for different sexual offences, and more nuanced understanding of the reasons for these views. Based on this, qualitative methods (focus groups and depth interviews) were the approach taken in this research. Brief factual information (the nature of different sexual offences; sentencing options) was provided to the public in this research at the outset of the discussion. Therefore qualitative methods were seen as the most ethical approach for researching sensitive issues because they enable the researcher and participants to enter into a collaborative discussion, and provide flexibility to explore the issues most relevant to the participant or omit discussion of issues that do not relate to their case. In this way the research interviews with victims could be tailored to the circumstances of the participants thus enabling the data collection to be sensitive and personal in approach.

The fact that there is often no single, homogenous view on an appropriate sentence for each sexual offence (Felizer, 2007), and that views on sentences change depending on knowledge of the specific circumstances and factors involved in each case (Clarke et al., 2002), was also reflected in this research. There was a diverse range of sentences and reasons for the sentences suggested across both the public and victim/survivors who took part in the research, and recognition from them about the complex and sensitive nature of the issues being discussed. This can be challenging to research and report and throughout we try to make the limitations of the research clear.

### 3. Victim/survivor experiences

Two specific aims of the research were to explore victim/survivor experiences of a sexual offence and the related sentencing process (27 of the victim/survivors interviewed were involved in cases that had reached the point of sentencing). Findings focussing on these aspects of victim/survivor experiences are presented in this chapter. The chapter concludes by outlining the value that victim personal statements were felt to have.

#### 3.1 Sexual offences and experience of harm

Victim/survivors were at pains to point out that sexual offences should be acknowledged as having a long lasting harmful effect on a much wider circle of individuals than the immediate victim – their family and friends for example, which they felt should be taken into account when sentencing:

*Rape has a massive impact, that person has to live with that for the rest of their life and their family has to live with the fact that they know; if it was a husband, he knows what happened to her; if it was her dad or her mum they know what happened to her; you live with that, that can break people.*

(Parent of child that had been raped)

Victim/survivors were able to reflect in detail on the impact of the offence. Irrespective of the number of offences experienced, victim/survivors and their family consistently reported that following the offence(s) they had a 'life sentence' (and in this context it warranted a life sentence for the offender), the offence had been life changing, and that it had "*ripped their life apart*" (female parent of a child that had been raped). Victim/survivors stressed the long term psychological impact of being the victim of a sexual offence. The offence may have caused injury and alarm at the time it occurred and the survivor may have experienced numerous episodes of sexual abuse or violence. Survivors identified post-traumatic stress disorder, depression, anxiety, inability to sleep and other effects such as physical disability, as the long term effects they directly attributed to the offence. These had the secondary effect of reducing their ability to work or study, to forge new relationships or maintain positive relationships with family and friends, or their ability to care for others, such as their children. Suicide attempts were also reported. Victim/survivors also may have felt they had to move to a new area if the offender was released and returned to live in the same area as before.

They therefore could describe an offence having an impact on every aspect of their life:

*I think for what my child had gone through [it should be a longer sentence], and not only what he went through; through this process I lost my marriage,*

*I lost my business, I lost my son, I lost my home. And I lost my life, basically, apart from losing my child. My whole life came crumbling down.*

(Mother of child raped and exploited by a group of adults)

The public also acknowledged that sexual offences would be harmful to the victim, and that sexual offences can have harmful consequences for wider society, such as an increased fear of crime. However the public tended to have monolithic views of the type of harm the offence may have to victims, relating it to the immediate details and aftermath – the fear and distress the victim would feel, the injuries sustained due to violence – rather than the long term harm that victim/survivors described and ensuing effect on their day to day life.

### **3.2 Experiences of sentencing**

The cases of 27 of the victim/survivors interviewed had reached the sentencing stage and their experiences are focussed on for the remainder of this chapter. Not all of the victim/survivors who had experienced an offence that had been sentenced were in court for the sentencing process. Reasons for this included: a wish to avoid any contact with the offender or their family; a desire to avoid the case as it was too distressing; or because the sentence was given immediately rather than waiting for reports, and they were unaware this was occurring. For these cases the participants were not usually aware of comments the judge made regarding the case.

There were victim/survivors who felt that it had been very important for them to be in court for the sentencing. This was so they could 'see with their own eyes' the offender being sentenced, and when the sentence was given this could also provide comfort as they had 'proof' they were indeed in custody. However experiences of being in court for the sentencing were mixed. On one hand, when the judge had made comments as to the severity of the offence, a lengthy sentence was given to reflect this, and the outcome was clearly explained to the victim/survivor, they described the process as fairly positive and a 'relief' that the case was over. On the other hand however, victim/survivors expressed deep disappointment if the judge described mitigating factors which they felt at their best deemed their experience less serious, and at their worst, indicated they were also culpable. When this was accompanied with a sentencing decision they felt did not reflect the magnitude of the offence (in effect they felt it was too short to do so) this sense of dismay and disappointment was compounded further and was reported in some cases to 'devastate' the victim/survivor. In some cases the victim/survivor felt the offender had 'worked the system' due to the explanations they had given for the circumstances of the offence being taken into account and used to reduce the sentence length. Consequently this led to a sense of being 'laughed at' or taunted by the

offender when the sentence was handed down. Finally, the comments made by the judge about the reduced culpability of the offender was described as another form of 'attack' on the victim. Case study A illustrates an interviewee's view on the sentencing process.

### Case study A

#### **Sexual assault of an adult**

The victim interviewed was a 25 year old female. She reported that she had been sexually assaulted by a neighbour to the police. The police investigated this and the offender was charged with sexual assault and assault by penetration. At the court stage, she was asked to drop the assault by penetration charge if he pled guilty to sexual assault. Below is how she described the outcome of sentencing:

*"I went to the hearing for his plea, and he got seven years on the Sex Offenders [Register], nine months imprisonment, so he will have served four and a half months [in prison] for anal penetration and serious sexual assault".* Asked how they felt about the sentence she noted: *"I felt like [going to court] was a waste of time. I felt like I have struggled for a longer amount of time than he's got, to get it where it is, and to go through like waiting for the forensics, knowing it'd be dropped if they didn't come through. Having people talk about me, being scared all the time, the longer process than what he's had to deal with. I just think it [the sentence] it's ridiculous. What is the point in making out they're going to be serving nine months when they're gonna be serving four and a half? Is it just to try and like make you feel better about it? I don't understand why it's done".*

Victim/survivors also talked about having very little awareness of what the sentence actually meant – for example they were not aware the sentences would be served concurrently. As is discussed in chapter five, after initially being pleased at the outcome of sentencing they could feel 'let down' once they learnt the sentence given would not relate to the actual time the offender would spend in custody. For example, an initial sense of satisfaction with the sentence was described by one participant, because of the length they perceived it to be (three counts of rape being given a nine year sentence each, which may have initially been perceived to be a 27 year sentence). However, significant dissatisfaction prevailed when they discovered the actual number of years in custody (in this instance it could for example have meant the offender served nine years and were released from custody on licence in four and a half years).

Conversely when victim/survivors had a reasonable understanding of sentencing prior to attending the sentencing of their case (for example they were aware of existing sentencing

guidelines) and they had received support and information throughout the case they tended to be more satisfied with the outcome and able to follow proceedings in the court. These findings indicate that victim/survivors of sexual offences do appreciate having support, information, advice and advocacy about the court and sentencing process and it can have a significant impact on their experience when they feel well informed or otherwise. Indeed such support and information (where it had occurred) was praised by victim/survivors for assisting with a difficult process and enabling them to have a realistic understanding of the criminal justice system, as well as feel they were being treated fairly within it. This could also have an impact on how satisfied they felt with the sentencing, and though outside of the remit of the Sentencing Council, the provision of such support (such as Independent Sexual Violence Advisors (ISVAs)) has been identified from research as an important aspect of victim/survivors' experiences (Robinson, 2009). Having noted this however, even when victim/survivors had a positive experience in court up to the point of sentencing, or had received support, the length of sentence remained a key factor underpinning the extent of individuals' satisfaction.

### **3.3 Effect of sentencing on victim/survivors**

The victim/survivors whose cases had been sentenced were asked what the effect of sentencing had been. The overarching finding was that the sentence could not actually change what had happened to them, although they were relieved the court process was over when the case was sentenced. However, for those who were satisfied with the sentence due to its length, there was an additional sense that 'justice had been served' and that their experience and the harm caused had been acknowledged.

However as noted throughout the report, victim/survivors tended to have been very disappointed at the sentences and reported feeling 'let down' – that the sentence had not reflected the harm they or their family had experienced or the seriousness of the offence. When the custodial sentence was felt to be fairly short they also described ongoing concerns that the offender may soon be released, and fear that they may meet them again.

There was a strong sense from victim/survivors who were not satisfied with the sentence that the long term effects of sexual offences and the significant impacts this has on them (as explored above, such as the inability to work) was not taken into account in the sentencing. Instead the onus may have been on the physical details of the offence (such as level of violence). As already noted above, victims consistently reported that the offence had "*ruined their life*", "*ripped their family apart*". In this context they felt a life sentence for the offender would have been appropriate. They did not think the sentencing they experienced reflected

this type of harm or acknowledged that sexual offences can affect the entire family of a victim. When experiences had been negative, victim/survivors felt that the criminal justice system was not set up in a manner that encapsulated an understanding of the real impact or nature of sexual violence and abuse from the victim's perspective and suggested it was important reform was consistently implemented to address this. In contrast, victim/survivors who described positive experiences of being well informed and supported throughout the court case noted they had been pleasantly surprised by this and felt recent changes to how sexual offence cases were dealt with may have improved this in some areas.

### 3.4 Victim personal statements

Participants (both the public and victim/survivors) also raised their views on the value and role of victim personal statements in the sentencing process. These statements allow victims to outline the effect of the offence on them to the judge. Generally it was felt that the victim should be able to have the opportunity to provide a statement as this would be further evidence of the harm of the offence. This was reported to be particularly important for cases where the victim/survivor felt disappointed with the sentence, as they felt that the judge had not taken the nature of the offence and harm caused into account. They in effect felt 'silenced' in the process.

However there was also another view from participants that victim personal statements, though important, should not necessarily determine the sentence. The reason for this was three fold: the victim may be felt to be too emotionally involved in the case; taking into account the harm caused to individuals could run the risk of an offender being given a shorter sentence for a similar offence as another, because the victim was more 'resilient'; and, victim/survivors also reported that at the time of sentencing (for example a year after the offence) the profound and lasting impact of the offence may not be realised. So the statement could only be partial. As a victim/survivor described:

*The nature of these crimes are such that the actual impact is often not apparent until many years after the event. At the time of the trial, I was still working full time; a recent psychiatric report showed that my post traumatic disorder did not manifest itself until a year later. This would not have been reflected in my relatively mild impact statement that was provided at the time of trial.*

(Female, case involving rape and sexual assault of multiple victims)

Consequently, the key finding from victim/survivors was that sexual offences should be viewed as inherently having a lasting harmful effect that cannot be distilled within a certain

time period or statement, and that should always be acknowledged across the sentencing of these offences.

In the next chapter specific findings relating to support for different sentencing options available for sexual offences are explored.

## 4. General attitudes to sentencing options for sexual offences

In this chapter participants' general perceptions of different sentencing options for sexual offences are explored. In the next chapter suggested sentences for specific offences are outlined. It should be reiterated that these findings represent public and victim/survivors perceptions of sentencing sexual offences. Their views may not have been informed by expert knowledge of the criminal justice system, of sentencing, or of the efficacy of different sentences. However the aim of the research was to provide basic information<sup>24</sup> to enable views to be discussed in an unbiased manner, and to explore with participants what they felt was an appropriate sentencing response to different sexual offences. As such participants gave a range of sentencing suggestions, which included custodial sentences of different lengths and varying degrees of support for additional sanctions such as treatment or monitoring of offenders on release.

### 4.1 Favoured sentences

The public focus group participants often assumed that sentencing referred to custodial sentences, despite a range of additional sentencing options being outlined briefly with them at the beginning. Participants (both victim/survivors and public participants in the focus groups) favoured custodial sentences for all of the sexual offences explored in the research, though this may be understandable as most of these offences would incur a custodial sentence of some length as it stands. Exceptions to a custodial sentence being favoured only occurred if a participant felt prison was not effective as a sentence for *any* offence, and was against their general principles.

In addition, participants did not just favour custody because this was typically the type of sanction the offence attracted – they had very specific reasons for supporting custodial sentences for sexual offences. Participants felt this would achieve certain key aims of sentencing which can be summarised as follows:

- provide **protection to the public** and the victim by removing the offender from mainstream society (this was also felt to act to prevent reoffending and further harm to new victims); while the offender was in custody they could not reoffend;

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<sup>24</sup> As noted in the methodology some basic information was provided on sentencing options, sexual offences and other aspects of the sentencing process during the focus groups or discussions to ensure there was some common understanding. However, the existing guidelines, details of the criminal justice system and sentencing processes and apparent effectiveness of different sanctions was not covered within the discussions.

- **enable the victim enough time to be able to recover or rebuild their life** with the knowledge that the offender would not be released. This was felt to be particularly pertinent in cases where the victim was a child or young person under 25, so that they could finish education and ‘grow up’ knowing the offender would not be in the community;
- reflect the perceived **harm** to victim/survivors in terms of violation of their body and invasion of their privacy, its likely impact on their life and relationships, and the likely imbalance of power and strength between offender and victim (especially where the offender was male and the victim female);
- provide a message about the **seriousness of the crime to the offender**;
- signal the **seriousness of the crime to society** and to act as a future deterrent; and
- for some participants, to provide sufficient **time for treatment** that was likely to be effective in changing the offender’s future behaviour.

For those participants that favoured custodial sentences, the only exceptions to a custodial sentence being recommended for a sexual offence were where the offence was a first offence; *and* the offence was non-contact such as voyeurism. They did not favour community sentences for any other of the sexual offences. In addition, participants were clear that in such cases, counselling or treatment should also be provided to ensure the offender realised sexual offending was serious and to prevent repeat offending and future sexual offence escalation. If the offender was very young or mentally incapable the public and victim/survivors suggested that treatment and rehabilitation in a secure unit (hospital/youth detention) should be used instead as this would maintain their overarching desire that risk reduction be the key aim of sentencing.

## 4.2 Treatment

While the public did express their views regarding treatment of sexual offenders as part of their discussion on sentencing, they were also clear that they held limited knowledge or understanding of the nature and impact of such treatment.

Participants (both the public and victim/survivors) had mixed views of treatment for offenders being suggested as part of a sentence. This also supports the previous literature outlined in chapter two. Those who were in favour of treatment recognised that an offender would be released from prison at some point in the future. It was thought that there was no point in simply ‘locking people up’ when prison could provide an opportunity for the offender to address their behaviour. That is, addressing why they had committed the offence and its

negative impact on the victim; reflecting on the nature of what they had done with the potential to feel remorse; dealing with distorted views of sexuality more generally; and changing their likely future behaviour in order to prevent them reoffending and protect the public.

The participants least in favour of custodial sentences tended to favour treatment and rehabilitation to a greater extent, though they still favoured this treatment occurring within a custodial setting such as a secure hospital. Participants that supported treatment also conceded that they were unsure of the types of treatment available or how successful they were (further information on treatment programmes are included in the introduction). Indeed across the participants there was very limited awareness of the type, nature and availability of treatment in prison for sexual offenders, with an assumption that treatment would be widely available, when in fact this is not often the case. In addition, treatment programmes should also be willingly entered into by a sexual offender to have an effect and therefore may be difficult to impose as a sentencing option.

The following quote illustrates these mixed views on the value of treatment, alongside the reason why custodial sentences were supported:

*We should be putting [sex offenders] away for long enough – the only way to stop most of them is to keep them off the street. If the sexual offence [treatment] work that they were doing in the prisons was working then people wouldn't be going back in for second rapes, but we know that they are. It's not just justice for the victim, it's preventing future victims. It's making [the offender] have enough time to go inside and actually think about what they've lost; because isn't that the whole point? It's punishment.*

(Adult female who had experienced sexual assault by a serial rapist).

Some of the participants also held the view that sex offenders may be unlikely to change, and feared they could 'play the system' by pretending treatment had worked. In this case treatment was felt to be a waste of resources that could instead be used to support victim/survivors of sexual offences. If repeat offending had occurred there was also less support for treatment orders as part of the sentence because it was felt the offender had already had a chance to be rehabilitated and repeat offending indicated this had not been effective. Across the participants, treatment was not felt to be a substitute for a custodial sentence but something that could occur at the same time – to ensure the offender did not have the opportunity to reoffend or be a risk to the public while serving a custodial sentence.

### 4.3 Additional sentencing options

The Sex Offenders Register or electronic tagging were both seen as important sentencing options to supervise and monitor sex offenders *after they were released* from prison and prevent them re-offending (although there was some scepticism regarding how effective this would be and an acknowledgement from participants that they could have limited understanding of exactly how the Sex Offenders Register operates in practice). The public and victim/survivors also wanted supervision or the agreement of the licence period to be 'for life', to reflect the 'life sentence' the offence had inflicted on the victim/survivor and enable them to have a sense of security in the future, because they knew the offender remained under certain terms of their licence.

Other important sentencing options were thought to be restriction orders (for example that prevented the offender entering the county where the victim/survivor lived or that prevented him or her using computers to access child abuse images). In particular preventing the offender from having any contact with the victim, living in the same area as the victim, or working with vulnerable adults or children were strongly supported prevention orders across all of the offences discussed by the participants and it was suggested that these restrictions should be 'for life'. Banning offenders from social media sites such as Facebook was also suggested, even in cases where social media had not been used to facilitate the offence, as this was a means by which victims could find out offenders had been released and were living a 'normal life'. Participants did concede that this may not be enforceable but a key point was the acknowledgment that social media enables new ways in which to communicate which can have unanticipated future impacts on victims.

Other sentencing options supported by participants reflected the desire to see justice for victim/survivors in a form of restorative justice. The offender explaining why they had committed the offence and apologising for the harm caused could be suggested by victim/survivors as therapeutic for them (though it should also be countered that some were *strongly* against this idea and wanted no contact with their offender).

It was also suggested by both the public and victim/survivors that the offender could be forced to sell some or all of their possessions to provide financial compensation to the victim/survivor. There was a sense however that taking this approach, more affluent offenders would be punished to a greater extent than those who had no assets. So compensation orders were not widely supported and victim/survivors (including those who had been provided with compensation) were unsure if this was an appropriate interaction. Generally victim/survivors reported being uncomfortable feeling a connection still existed

between them and the offender because of compensation they had obtained. However there was support for funds being taken from offenders and used to fund support services for victims more generally.

Therefore custodial sentences were favoured, with a package of treatment orders, and a range of restrictions on offenders after release to reduce the risk they posed of re-offending or having any contact with the victim. Participants did concede they could have limited awareness of the nature or impact of different sentencing options. However they had clear justification for why they favoured long custodial sentences for sexual offences – regardless of whether they would prevent an offender reoffending once more, this was felt to be the appropriate response to a serious offence, and a way to ‘send a message’ about the seriousness inherent and ensure they could not reoffend while in custody. Exceptionally there were participants (both victim/survivors and the public) who did not support custodial sentences at all – but this was as a response to any offence and not just sexual offending. In the next chapter participants’ attitudes to sentences for *specific* sexual offences are outlined.

## 5. Attitudes to sentencing specific sexual offences

This chapter outlines the sentences suggested by participants in the public focus groups for a range of sexual offences described in the vignettes. The chapter then goes on to describe the sentences suggested by victim/survivors who had experienced these offences. It should be noted that given the nature of some of the offences explored in the vignettes – such as rape – it may be unsurprising that custodial sentences were favoured, so the issue explored here is the length of sentence and reasons given for this. It should also be noted that the sentences suggested by the public related to specific examples of the offence outlined in the vignette. How specific offences compared to each other and other non-sexual offences is also discussed in this chapter and in the final section general findings about sentencing that applied across different sexual offences and across both the public and victim/survivors are reported.

It should be noted that where custodial sentences are discussed, throughout the chapter, it is the total sentence (including time in custody and on licence upon release from custody) rather than the actual amount of time spent in custody that is being referred to. The methodology and rationale for this approach is discussed in chapter one.

### 5.1 Views on sentences for specific offences

The participants in the public focus groups were all asked to suggest an appropriate sentence for two or three of seven vignettes (presented in Appendix B.2). In the ensuing sections of this chapter the attitudes towards sentencing these specific offences that emerged, are outlined. Where victim/survivors interviewed had experienced the same offence, their views on sentencing this offence are then included separately in the relevant section.

#### Rape

##### *Public perceptions*

All focus group participants were given a vignette (vignette one, Appendix B.2) to consider which consisted of the rape of an adult woman who was walking home, by a stranger in a park. The attacker ran off immediately after the rape. The length of sentence the public thought appropriate for this offence varied considerably from a custodial sentence of life, to an indeterminate custodial sentence (until an offender was considered fit for release) and a range of determinate custodial sentences spanning a minimum of six to a maximum of 30

years. A recurrent suggestion from the public was a custodial sentence of 10 to 20 years.<sup>25</sup> The existing guidelines suggest a custodial sentence with a starting point of five years to a maximum of life for the offence of rape.

All focus group participants felt the offence described in the vignette was serious. They were asked if additional factors would affect the length of a custodial sentence or type of sentence they suggested, some of which are outlined below (aggravating and mitigating factors are also focussed on in the next chapter). The victim knowing the offender was felt to make no difference to the sentence. Being raped by someone known to the victim was felt to constitute an abuse of trust and be as harmful, but a 'different sort of harm', as if the attacker was a stranger. Additional degradation and violence were felt to increase the suggested custodial sentence a little but the public were reluctant to indicate that a lack of these additional factors would necessarily make the offence a great deal less serious. Consequently, they were keen that there should be a starting point for a conviction of rape that was of an adequate length to reflect the seriousness of the crime, regardless of the details of the offence.

### *Victim/survivor perceptions*

Of the victim/survivors interviewed, 23 had been involved in cases of rape. Of these, 14 cases had been convicted and sentenced, with sentences ranging from seven to 22 years, and three indeterminate sentences (indeterminate sentences have a minimum custodial term set before offenders are eligible for parole but no maximum term set. The offender could remain in prison indefinitely). These offences encompassed a diverse spectrum – from rape of a child aged under eight, to high profile serial 'stranger' rape cases with multiple victims, cases of historic childhood abuse, ritual abuse, rape of teenagers (both male and female) and adult women by single and multiple offenders, including partners in the context of domestic abuse.

Clearly the victim/survivors of rape had a greater understanding of the complexity and nature of the offence than members of the public were likely to have when discussing an offence of rape. Those who had experienced their case being sentenced were able to discuss how appropriate the sentence for the offence they had experienced was felt to be. Those whose case had not been sentenced could still reflect upon the real impact of the offence on them when considering appropriate sentences for this type of offence. All felt the offence of rape

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<sup>25</sup> Please note the comments in chapter one about this data not being statistically generalisable due to the nature of this sample.

warranted a custodial sentence and among those whose case had been sentenced, the main theme was that of disappointment and feeling 'let down' by the criminal justice system due to the perceived shortness of custodial sentences given for this offence. However there were also those who reported being satisfied at the sentence as case study B, below describes.

### **Case study B**

#### **Historical child sexual abuse and conviction of rape**

The interviewee, a middle aged woman, had been repeatedly raped by a closely related male adult throughout her childhood. She reported the offences for the first time a few years ago. This was investigated by the police and a number of additional victims came forward. The offender was charged with over 20 offences, of which a number were offences of rape. He was found guilty at trial and sentenced to an 18 year custodial sentence with sentences for additional offences to run concurrently<sup>26</sup> to this. The interviewee was positive about the sentencing, describing the moment she heard the sentence as:

*“And then we heard this 18 years, and we all gasped, I don’t know about anybody else, but I, we were then expecting that he would say, ‘But we’re going to take this off for that and...’ But it wasn’t. It was 18 years.”* And their overall view of the sentencing as: *“I felt [the Judge] did us a damn good job. He was firm, he was fair, he gave a responsible sentence and the general feedback I got in the immediacy after it is that we [the victims] all felt satisfied with that. So, yeah, you know, it was a positive.”*

In cases where the victims were satisfied, the custodial sentences were considered by them to be lengthy. These victim/survivors also noted that they felt the judge had taken the severity of the crime into account and had often made strong statements during sentencing as to the nature of the crime and failings of the offender.

Victim/survivors who had experienced rape discussed the impact this had had on them and how it could be considered a 'life sentence'. In this context they felt the most appropriate response to the offence was a custodial life sentence – though they conceded this would not necessarily mean the offender would remain in custody for life, they felt this was the most appropriate way to reflect the impact of the offence.

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<sup>26</sup> Concurrent sentences run at the same time. Where there are differences in the length of the concurrent sentences, for example, one sentence of five years concurrent with another sentence of 10 years, the defendant will be subject to the longer sentence.

## Sexual assault and assault by penetration

### Public perceptions

In relation to public attitudes to sentencing sexual assault, focus group participants were asked to consider two scenarios, one involving an adult woman (vignette two) and the other a 12 year old girl (vignette three, Appendix B.2). This scenario involved the victim going to a neighbour's house to pick up a DVD and then being exposed to an eight minute assault where the offender tried to remove her clothes and make her touch his penis.

The scenario of sexual assault of an adult was thought by focus group participants to deserve a custodial sentence with a range of between six and 10 years. The consensus for a starting point for a custodial sentence for this sexual assault was six years. By contrast sexual assault of a 12 year old girl attracted suggestions of much longer custodial sentences that could be indeterminate or between 10 to 20 years. This was because of the perceived greater 'innocence' and 'vulnerability' of children and culpability of the offender because it was felt there could never be any ambiguity over whether a child had consented. Sexual assault was also felt by the public to indicate potential intent to commit rape, and therefore be 'almost as serious' as rape. The existing guidelines currently have a starting point of a community order for the offence of sexual assault (if the victim is over 13 years old and no genital contact has occurred), to a maximum penalty of 10 years custody for sexual assault of an adult and 14 years custody for sexual assault of a child.

Participants in the focus groups were asked to consider variations for the offence of sexual assault as described in the vignette. Much of the discussion around sexual assault in terms of different sentences focussed on the previous history of the offender or characteristics of the victim/survivor. If the offender had previous convictions, if the victim was vulnerable or young, or if there was violence, this was felt to warrant a longer sentence, though this was not to say the vignette of an offence against an adult with no additional violence was not viewed as serious by the public in the focus groups, as the following quote from one participant illustrates:

*I think if somebody has done potentially what is more violent or more sustained [an offence], and with more women, they should get much more [in terms of the sentence]. Not that he [vignette perpetrator] should get less; he should be punished. But 'cos I think people who've done these things over years and years and have a history of being violent, or abusing people in their care, they ought to get a massive, big sentence.*

(Female participant in focus group; sexual assault of adult vignette)

Changes in details of the offence, such as whether the offender had previously had a relationship with the victim, were not felt to make a difference to the sentence, though focus group participants did concede sexual assault could have many different facets that made it difficult to suggest a sentence without knowing all the details of the offence. The level of nudity or extent to which the genitals of the victims were touched were also explored as factors which may affect the sentence – these are taken into account in the existing sentencing guidelines. The public felt that a lack of nudity or genital contact did not necessarily lead to sexual assault not being a serious offence; however they did concede that brief contact through clothing may not be as serious as other types of sexual assault discussed.

Assault by penetration was also discussed with focus group participants. They felt that assault by penetration was akin to rape and should be sentenced accordingly. Penetration by objects such as bottles or knives was described as a particularly aggravated form of rape by participants – potentially more serious and more physically damaging than penetration with a penis.

### ***Victim/survivor perceptions***

Of the victim/survivors interviewed, 26 reported they had experienced sexual assault and five had experienced assault by penetration. Many of the sexual assault cases were convicted alongside other offences (for example, four counts of sexual assault and two counts of rape).

Victim/survivor attitudes to sentencing for assault by penetration and sexual assault were similar to those for rape: sentences they had experienced for these offences were generally perceived to be too short in duration to reflect the harm of the offence and ensuing process that had led to the conviction. An example of this is given in case study A on page 23.

Assault by penetration was also discussed with victim/survivors who had experienced it. They did not feel that penetration, particularly genital penetration, should necessarily be with a penis to be considered rape – being penetrated vaginally or anally by a tongue or finger, or by any other object without consent was felt to be akin to rape due to the level of psychological and physical violation inherent.

### **Preparatory offences**

Two preparatory offences were considered in vignettes with the public focus groups – administering a substance with intent to an adult woman and the online sexual grooming of a teenager.

### *Administering a substance with intent – public perceptions*

The focus group participants were given a scenario to consider the offence of administering a substance with intent (vignette four, Appendix B.2). This scenario involved a woman going for a social drink with a man she knew. She began to feel ill and her neighbour who was also in the bar took her home. After tests by the police the victim found she had been given rohypnol. The length and type of sentence seen to be appropriate for this offence among participants varied considerably. Custodial sentences of between one to 10 years were suggested, with about four to 10 year custodial sentences being prevalent suggestions. In the current sentencing guidelines administering a substance with intent has a minimum of four years and maximum of 10 years suggested as a custodial sentence.

If longer custodial sentences were suggested by the focus group participants for this offence this was, they explained, to reflect the perceived *intention* to rape; that the offence was premeditated in the sense that it required pre-planning and the possession of a drug; and that the act of administering the drug itself was seen as a violation of the victim. Shorter custodial sentences and non-custodial sentences were suggested due to a perceived need for consistency with previous longer sentences suggested for rape and sexual assault, and recognition of the fact that in this example a physical attack had 'not actually happened'. In reality the offence of administering a substance with intent may occur alongside offences such as rape or sexual assault and be sentenced alongside these offences. It does not necessarily indicate that additional sexual offences have not occurred although this was the case in the vignette used.

Focus group participants discussed whether additional factors would change the sentence they suggested for the offence of administering a substance with intent presented in the vignette. The offender having previous convictions, acting in a group or making images of the offence were all felt to potentially increase the custodial sentence suggested:

*... Well, if it was video, if the rape was videoed for instance, then yes, that makes it worse; that's another two, you know, that's another two years.*

(Female focus group participant; administering a substance with intent vignette)

The need to prevent the offender moving from the intention to commit an offence to actually committing a sexual offence in the future was also reflected in a desire to monitor and restrict their behaviour as part of the sentence, for example, through inclusion on the Sex Offenders Register or a ban from premises licensed for selling alcohol. Custodial sentences in this context were also felt to potentially act as a deterrent to re-offending. Additional aggravating

and mitigating factors for this and the other offences in this chapter are explored in chapter six.

### ***Administering a substance with intent – victim/survivor perceptions***

Victim/survivors who had been drugged often had another offence committed against them – they had been raped or assaulted following this. Therefore it could be difficult to extrapolate the sentence they would suggest for administering a substance alone. However their views tended to be similar to that of focus group participants. Victim/survivors felt that the intention to commit a sexual offence is serious as it indicates the offender poses a risk, even if the actual offence they planned to carry out was not carried out in this instance. In addition, victim/survivors noted that drugging someone could be considered a crime in itself, such as grievous bodily harm, because it could cause poisoning or sickness, regardless of the intent to then commit another offence.

### ***Sexual grooming – public perceptions***

Focus group participants were also asked about a scenario involving online grooming of a teenager (vignette five, Appendix B.2). In this scenario the victim had arranged to meet someone she thought was a 14 year old boy but when her parents alerted the police, they found he was in fact an adult man with a prior conviction for a sexual offence. The discussion for this offence again indicated a custodial sentence was favoured as a response, with a range from one to 20 year custodial sentences suggested. Within this wide range, custodial sentences of between four to 15 years were favoured. The current guidelines suggest custodial sentences of 18 months as a minimum and 10 years as a maximum for the offence of sexual grooming.

The great variation in the suggested length of custodial sentences suggested by focus group participants for this offence stemmed from two perspectives held about the offence. On the one hand some felt that the offence had not escalated into a contact offence and the victim was essentially 'unharmd'. On the other hand, a perspective more strongly held, was that the intent to commit the offence had been there. This meant the culpability of the offender and the risk they posed as an offender was felt to hold the same gravitas as if they had committed the offence they intended to. That the victim was a young person was also felt to add to the seriousness. So for the purpose of public safety as well as to indicate the severity of the offence, a long custodial sentence was generally suggested for grooming. In addition, the pre-meditated or predatory nature of the offence, the potential psychological and physical harm to the victim and the fact that the offender had a previous conviction for sexual assault

in the vignette given, all contributed to the custodial sentences recommended by the public for grooming:

*Three months is a long time to continue to deceive and attempt to groom a young girl, and knowing that she's a young girl and he's 40, so he could have actually switched off that computer and thought, 'I'm not going to do it anymore'*

(Male focus group participant; online sexual grooming vignette)

The focus group participants were also asked to comment on variations in the vignette. The fact that in this scenario the offender had previous convictions and knew the victim was under 16 affected the suggested sentences. If there were no previous convictions *and* the victim had also lied about her age and stated that she was aged 18 to a 25 year old male for example, then the behaviour invoked in the vignette was felt to warrant a much shorter or no sentence.

### **Sexual grooming – victim/survivor perceptions**

Though none of the victim/survivors had experienced a case in which a conviction for sexual grooming had occurred, a number discussed experiencing sexual grooming. This included cases where teenagers had been raped, sexually assaulted and exploited following the grooming. Survivors of childhood sexual abuse also described at length how grooming had been an integral component of the abuse.

A strong theme to emerge from these discussions was that victim/survivors felt grooming should be considered a very serious offence, though they defined the offence in much wider terms than the legal definition and associated it with the offender befriending the young person and manipulating them via friendship and gifts to believe they wanted to engage in a sexual relationship. This form of grooming was described to be a highly insidious and harmful offence which has long standing emotional and psychological effects on the victims. It was reported by victim/survivors that such grooming behaviour could also prevent the offence being reported because the victim has been 'brain washed' into thinking they consented.

For the offence of grooming, there was also a strong emphasis given by participants in the focus groups and victim/survivors to on-going supervision of the offender, and restrictions on their behaviour and/or actions, once released from prison. This included inclusion on the Sex Offenders Register, and a total ban on the use of social networking sites and the internet. However participants also conceded that this ban may be difficult to implement but felt

internet providers could play a stronger role in doing so in the context of the increasing availability of the internet (for example via mobile phones).

### **Offences involving ostensible consent**

An exception to custodial sentences being suggested for sexual offences from the focus group participants was in the situation of the offender and victim being nearly the same age and both consenting (in other words a 15 year old female having sex with her 18 year old boyfriend). In this type of case the offence was not deemed one that should have charges brought, and to be completely different from the other sexual offences discussed. If the age difference between victim and offender widened (for example a 15 year old and a 25 year old) this was felt to become an increasingly serious offence, and akin to the other sexual offences discussed even if the victim ostensibly consented.

### **Possession of indecent images**

#### ***Public perceptions***

The scenario involving possession of indecent images of a child (vignette six, Appendix B.2) involved indecent images being uncovered by a technician when an adult male brought his PC to be repaired. There was a wide variation in the recommended custodial sentence length for this offence given by the public, with a range from 20 to 40 years, with a 10 year custodial sentence a prevalent suggestion. The existing guidelines for offences involving indecent images of children cover a range of offence types – commissioning images, storing a high or low number of images, and for content at different levels of explicitness (level one to five).<sup>27</sup> The minimum sentence for this offence suggested in the existing guidelines is a community order, and the maximum penalty for possession of images, a custodial sentence of five years.

Custodial sentences for this offence were viewed by focus group participants as necessary to provide sufficient punishment that may act to prevent the offender's behaviour escalating to more serious crimes and to act as a deterrent to others considering committing the same offence, given the relative accessibility of such material online. Longer custodial sentences were also recommended if it was felt that the behaviour of the offender, in looking at the images, was fuelling demand for this type of image and therefore causing child abuse. Shorter custodial sentences being suggested reflected the view held by a minority of participants that the offender had not physically committed the offence, and the perception

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<sup>27</sup> Level one images are considered to involve the lowest level of seriousness and level five the most serious.

from those participants that *“there was a big difference between looking at an image and actually abusing a child”* (female participant; focus group). One further restriction on the offender that was suggested was a lifetime ban from internet use.

Compared to contact offences such as rape, this offence could be considered to have attracted fairly long custodial sentences from some participants. However the reason given for these lengths of sentences being suggested was that a child was the victim (even if this was not a contact offence). As already noted sexual offences committed against children (for example sexual assault of a child compared to an adult) were felt by participants to be particularly serious and warrant long custodial sentences regardless of the specific details of the offence. This attitude was due to the perceived vulnerability and innocence of children, and an ensuing attitude that sexual offences against children and young people always involved a high level of culpability and deviance by the offender.

The public that participated in the focus groups were also asked to consider variations to the offence and what factors may change the sentence they had suggested (explored in more detail in the next chapter on aggravating and mitigating factors). They noted that for the offence of possession of indecent images the nature of the image could be a factor that increased the length of custodial sentence, for example an explicit image of abuse, contrasted to one of a naked child on a beach:

*I just think it all depends to me, I can't make a judgement because it all depends to me on what the images were; how indecent they were.*

(Male focus group participant; possession of indecent images vignette)

Focus group participants tended to regard treatment and rehabilitation as a vital part of the sentence for this offence. There were two reasons for this: to ensure the offender didn't reoffend when they were inevitably released from custody, along with the view that these types of offenders may not yet have escalated to a contact offence and may still, with treatment, be able to change a distorted view of sexuality. Though participants may have felt that all sexual offenders had a distorted view of sexuality, offences such as rape or sexual assault were felt to have already escalated and therefore there was less emphasis on treatment or explanations for the offence made by participants, and greater emphasis on punishment in the sentences suggested for these other offences than that of possessing indecent images.

### ***Victim/survivor perceptions***

For three of the victim/survivors interviewed, their cases included a conviction for possession of indecent images. Sentences given for this offence ranged from a 12 month conditional discharge to a six months custodial sentence. Sentencing the offence of possession of indecent images was discussed generally with victim/survivors and their views were that sentences for possessing indecent images should be custodial although, like the public, they conceded that the nature of the offence (and with it the length of custodial sentence suggested) differs greatly depending on the content, and number of images stored. However, also like the focus group participants, the view was that an offence had occurred to make these images (even if they were of an unidentified victim and may have been made in another country). In possessing them they felt the offender should be viewed as complicit in the offence and sentenced accordingly with a custodial sentence.

### **Voyeurism and indecent exposure**

#### ***Public perceptions***

Participants in the focus groups were presented with a scenario of voyeurism of an adult (vignette seven). In this vignette a woman had found that a neighbour had made a concealed hole in the wall and had been watching her in her bathroom. A variation of the vignette involved video recording equipment also being present. If a custodial sentence was recommended, participants suggested maximum lengths of between five and 10 years, with a five year custodial sentence favoured. Some participants who recommended custodial sentences thought that counselling and treatment should form part of the sentence. A number of non-custodial sentences were also suggested by participants, including: community service, treatment and counselling for the offender, parole, tagging of the offender (with the offender to spend one year in prison if they reoffend), the offender to be banned from using computer or video equipment and re-housing the offender so they would no longer live near the victim. In the current guidelines the sentence suggested for the offence of voyeurism starts at a community order, with a maximum custodial sentence of two years.

The premeditated nature of the offence was a factor in the recommendation of custodial sentences by the public, along with the invasion of privacy suffered by the victim/survivor and the psychological impact this may have had on their ability to feel safe in their own home (where the offence occurred). Shorter or non-custodial sentences were suggested where it was felt that voyeurism was not as harmful as offences such as rape and sexual assault, though there was some disagreement on how harmful the offence may be, as the following quote from a focus group illustrates:

*M1: He hasn't hurt no-one, has he, really and the woman's going to be majorly pissed off. But it's not going to ruin her life, is it, like someone being raped?*

*M2: But on the other hand, how will it affect you mentally? Will she feel safe wherever she lives?*

(Male focus group participants; voyeurism vignette)

The focus group participants were also asked to consider variations to the offence of voyeurism. They noted that if the offence was watching someone in a public place it may not warrant as long a custodial sentence as the example given of watching someone in their bathroom. The latter was felt to also be an invasion of privacy. Making images of the victim was felt to increase the custodial sentence because it was a greater violation and the images could then be distributed.

### ***Victim/survivor perceptions***

No cases where a conviction for voyeurism or exposure had occurred were included in the research with victim/survivors. Attempts were made to recruit victim/survivors who had experienced these offences but no one was identified within the sample. However victim/survivors interviewed could discuss the experience of being the victim of voyeurism (including offences against them being recorded on video), and indecent exposure having occurred as part of the long term abuse they experienced.

Both offences were felt to be serious and harmful by victim/survivors, and if they were to experience them following the main offence they had experienced these could trigger memories of the original abuse. However, survivors conceded that people who had not previously experienced a sexual offence may be less affected by such behaviour as voyeurism or exposure.

In the case of voyeurism, making or storing images was felt to be a particular violation, as the images could continue to be accessed long after the offence, effectively humiliating the victim each time they were viewed. These offences were also perceived to sit within a spectrum of inappropriate behaviour and attitudes towards sexuality. For this reason, whilst not as 'serious' as rape it was felt they needed to be taken seriously and sentenced as such with a custodial sentence – as a deterrent and to prevent escalation of offending behaviour. Interestingly, there were victim/survivors who felt voyeurism may be increasingly difficult to legislate and criminalise in a context of a society that encourages observation and a fetishisation of sexualised images. They therefore found it difficult to class voyeurism as being as serious as other offences because the culpability of the offender was less due to

this behaviour being increasingly normalised. This was felt to be a broader societal issue to be addressed via the banning of such images.

## 5.2 Comparison between rape and other offences

### Public perceptions

Members of the public who took part in the focus groups were also asked the sentences they considered appropriate relative to two other offences discussed – grievous bodily harm (GBH) and supplying class A drugs. Rape was perceived by the focus group participants to be a more serious offence than drug dealing or GBH. However specific aspects of the comparison offences did alter perceptions – for example heroin addiction was perceived to ‘destroy lives’ and therefore selling heroin was *almost* as serious as rape. GBH was considered less serious than rape or sexual assault if in the context of an argument or between two people who knew each other. However if it was a random attack by a stranger which could have been potentially life threatening it was felt to be almost as serious as rape. Unequivocally rape or sexual assault was described as more ‘intimate’ and therefore more violating than other forms of violence discussed. It was described by some victim/survivors as harm to the ‘psyche’.

### Victim/survivor perceptions

Victim/survivors also discussed, unprompted, comparison offences, such as comparing sexual offences to that of stealing a car, fraud, or murder. Their view was that offences against property should never be considered more serious (and sentenced as such) than offences against a person – “*you can buy another car*” (female, victim/survivor of rape) but possibly never get over a sexual offence. Homicide was viewed as one of the only offences which could be considered more serious than sexual offences such as rape. However victim/survivors also noted that in some ways, compared to the long lasting effect of sustained physical and sexual abuse, homicide at least meant the victim no longer experienced the pain or aftermath of the offence:

*...getting your son back after something like that, you wish he had died.  
Because he would be at peace. It's worse than murder. At least with murder,  
the person that's been murdered is now at peace. This is a life sentence for  
my son. He will remember it, and I will, and the whole family, you know, will  
remember it, and we carry it every day of our life*  
(Parent of child who was raped by multiple offenders)

The mother quoted above felt that losing her son to homicide (which had been threatened by his abusers), although very distressing for her and the wider family, would at least have

meant her son would not have had to endure the ensuing years of depression, suicide attempts and the related impact this had on the family. A number of survivors and their families shared this view.

### 5.3 Overarching views on sentencing specific sexual offences

Though specific sexual offences were discussed in focus groups and interviews, when considered thematically the findings raised a number of issues that were cross-cutting regardless of the specific offence in focus or participant group. These issues are listed below, and tended to be a reflection of the view that regardless of the actual sentence given, the length of time spent in custody by an offender who has committed a sexual offence was felt to be inappropriately short in duration.

- **The sentence given does not reflect time spent in custody.** There was an overwhelming sense of dissatisfaction from victim/survivors when they found out that a custodial sentence would refer to time spent in custody *and* time in the community on licence. This was effectively felt to 'halve' the sentence, and lead to a custodial sentence that was unacceptably short in duration in relation to the severity and harm of the offence. Victim/survivors who had been unaware that this is a standard process in sentencing also noted that they felt 'betrayed' by the criminal justice system and could no longer trust it. Public participants in the focus groups also reported a sense of dissatisfaction with sentencing when they discovered the sentence given equated to time in custody and time living in the community on licence.
- **The sentence does not reflect the seriousness, harm or duration of the offence.** Victim/survivors felt that the sentences given for sexual offences they had experienced were not long enough in duration to reflect the severity of the offence and the harm to them and their family. This was particularly in relation to the effect of the point made above – that time spent in custody was not of the same duration as the sentence. Victim/survivors could find it difficult to identify the exact length of sentence that would adequately reflect the harm of the offence to them however. They did suggest the length of sentence could be considered in relation to the duration of the abuse. For example, if childhood sexual abuse had occurred over six years the victim/survivors felt that the custodial sentence should be at least that, and time served in prison, not on licence. Another suggestion for defining the length of the sentence in relation to the harm related to the age of the victim or offender. For example, if a child had been raped the custodial sentence should last until the child is an adult so there would be no risk of the offender 'bumping into them'. In cases where the offender was fairly young it was also felt that a longer sentence for the offence

could be justified because otherwise they would still have 'their whole life to lead' by the time they were released, which was again felt to not reflect the 'life sentence' faced by the victim/survivor.

- **The sentences are concurrent.** There were cases included in the research where the offender was convicted of multiple counts of combinations of rape, sexual assault, attempted rape and preparatory offences. Concurrent sentences<sup>28</sup> had usually been given in these cases. Concurrent sentences were not discussed with the public, but victim/survivors who had experienced them could express dismay at them, as they were not felt to take into account the harm to *each* victim or *each* offence committed. Consecutive sentences were felt to be fairer and more adequate as a reflection of the totality of the offending that had occurred.

The evidence review illustrated that there is concern that the public may base their perceptions of sentencing on misinformation and an assumption that sentences are overly lenient (Hough and Roberts, 1998; Hough and Roberts, 1999). However the perspectives on sentencing expressed by victim/survivors was, in 27 cases, a reflection of actual sentences they had seen given in their cases. Therefore these views were not due to misinformation on their part, but on actual fact. What was clear however is that it was not necessarily the sentence *per se* that was the cause of the reported dissatisfaction with sentencing but the length of time this equates to in custody.<sup>29</sup>

Throughout this report the suggested sentences are intended to represent the custodial sentence the participants would favour for the offence, taking into account time spent in custody and time spent on licence in the community. Case study C illustrates an example of how the situation of an offender being released on licence affected victim/survivors' views of the sentence from a parent of a child who had been raped. It also illustrates that participants attempted to provide what they felt were sensible suggestions for sentences taking into account issues such as cost to the State of custodial sentences.

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<sup>28</sup> Concurrent sentences run at the same time. Where there are differences in the length of the concurrent sentences, for example, one sentence of five years concurrent with another sentence of 10 years, the defendant will be subject to the longer sentence.

<sup>29</sup> This point has relevance to the wider criminal justice system as agencies such as parole boards and probation offices play a role in determining the sentence length served.

## Case study C

### **Conviction for repeated rape of a child**

An adult relative was accused of abusing a child within the family. This was investigated by the police and photographic evidence of the abuse discovered. By this point the child was a young teenager, but the abuse had been occurring since they were under the age of five. The offender was charged and found guilty of multiple counts of rape and a related sexual offence. The offender was sentenced to nine years in prison (nine years for each count of rape). Each sentence was to be served concurrently so the total sentence was nine years. The offender was released on licence after four and a half years (they had recently been released from custody at the time of the interview). The parent of the victim described their view of the sentence as follows: *"I think it's [the sentence] a joke, isn't it? I mean the whole thing you know the sentencing doesn't reflect the crime. Then they reduce it by half, so it minimises the impact of that significantly."*

Asked what sentence they would suggest they gave the following response: *"I think that it's unrealistic to expect the State to have somebody in prison for life. I'm sensible enough to realise that's not going to happen, but I presume, a life sentence, isn't it 15... between 15 and 20 years? I would have thought, you know, 15 years –[in prison] would have at least reflected better on [the offence], four and a half is just ridiculous."*

## 6. Aggravating and mitigating factors

This chapter examines the range of specific factors that victim/survivors and the participants in the focus groups thought should be taken into account when considering the length and type of sentence for different sexual offences. To avoid undue repetition these have been explored thematically, as most factors were felt to apply across different sexual offences and were explored with both the public and victim/survivors. This means that 'participants' in this chapter refers to both the public and victim/survivors. A number of these aggravating and mitigating factors have already been mentioned in the previous chapter to contextualise the different sentence lengths suggested, but are explored in greater depth here.

Aggravating and mitigating factors were explicitly discussed with the participants during the focus groups with the public and interviews with victim/survivors; if they were not raised spontaneously a small number were raised by interviewers. The factors raised were varied to reflect those already discussed spontaneously or that had relevance to the offence. Which factors were raised spontaneously was varied.

During the vignette discussions in the focus groups, personal information about the offender and nature of the offence was gradually introduced to aid debate around aggravating and mitigating factors. It is acknowledged that in reality all the information about an offender would be available at the time of sentencing to the judge, but this convention was used in the focus group discussions to ensure each additional factor could be discussed clearly with participants. This included introducing individual factors relating to the offender's past and present circumstances, as well as personal mitigating circumstances which can be a significant factor in sentencing (Jacobson and Hough, 2007).

### 6.1 Distinguishing between public and victim/survivor views

It is worth noting that the aggravating and mitigating factors the focus group participants were confident identifying tended to be those that aligned with what could be considered a normalised, 'traditional' depiction of sexual offences (particularly rape). This traditional depiction of rape tended to assume that sexual offences are facilitated by physical violence, coercion or detention for example, and are discrete one-off offences, rather than multiple offences over time. This finding mirrors Brown (2008), who argued media coverage of cases colours perceptions of sexual offences to fit stereotypical views, when in fact sexual offences can also occur without physical violence, or occur a number of times before being reported. The narratives from the victim/survivors painted a different picture of the reality of sexual offences. When committed against children or young people they could be part of a

widespread and long running campaign of physical, psychological and sexual abuse covertly or overtly committed within the family or by trusted adults, including organised groups; abuse of a young person could lead to multiple sexual offences being committed by multiple offenders which the young person could not recall with accuracy; offences against adults may have occurred as part of a longer cycle of domestic abuse. Thus the experience and understanding of sexual offences displayed by participant groups varied here considerably. As explored in chapter three, there were a range of long term harmful effects of sexual offences reported by victim/survivors. These negative effects were reported regardless of the explicit details of the offence. As such, for victim/survivors, specific aggravating and mitigating factors were difficult to categorise. Rather they wanted the overarching harm of sex offending (to victims, their family and the wider community) to be acknowledged as a generic aggravating factor when a sexual offence was committed. Despite this caveat, certain factors that were felt to aggravate the offence were identified in the research interviews however and are explored below.

## **6.2 Aggravating factors**

### **Premeditation, planning and intention**

Evidence of premeditation or planning an offence was seen to increase the culpability of the offender and to require a relatively long custodial sentence. Rape of a stranger, sexual grooming or putting in place circumstances or equipment that facilitated a sexual offence or filming of the offence were thought to demonstrate such forethought. Victim/survivors felt that most sexual offences involved a degree of premeditation, whatever explanation for the offence was later given by the offender. Explanations for offending behaviour (such as perceiving the victim/survivor had consented) were felt to be untrue and only used by the offender after the offence in an attempt to avoid conviction. Focus group participants however indicated more ambiguous views when offences were committed against adults, noting that there may be occasions where consent is unclear or misunderstood and offences may occur in the 'spur of the moment', which was why clear premeditation was seen to aggravate for them – there had been an intention to force someone to engage in a sexual act without their consent. The following case study from the focus group discussions illustrates this point:

## Case study D

### **Premeditation, planning and intention, in relation to voyeurism of an adult**

In an all male focus group the participants discussed the length of sentence they would give for the offence of voyeurism depending on the extent to which the offence was seen to be premeditated or opportunistic. If the offence was premeditated the members of the group thought the offender should receive between five and eight years in prison; for opportunistic voyeurism members of the groups reduced the length of sentence to two to three years, usually combined with counselling.

*Researcher: So what's your thinking about why this offence deserves eight years?*

*M3: Well, it's probably still premeditated, to actually have drilled through to watch them having a shower, and then obviously still be watching the tapes as well.*

*Researcher: Okay, so the, the premeditation bit seems to be important in terms of your eight years. What about other people who didn't put that length? [...] why have you given it a relatively low length of time?*

*M6: Well, is it low? I mean, he's basically a peeping Tom [...].*

*Researcher: Okay, and, and is there anything that might be considered mitigation, from your point of view?*

*M3: Well, if he came across the hole by accident and he just thought, "ooh, what's this?" and had a quick look, if it was accidental...*

*M4: But if someone's drilled a hole in the wall and using it for, their own self-gratification. That's premeditated; there isn't [sic] any mitigating...circumstances, I don't think.*

## **Length and number of offences**

Sustained or repeated rapes or sexual assaults of the same victim were generally thought to be deserving of longer custodial sentences because of the prolonged harm to victims. Where a number of people had been raped, sexually assaulted, groomed, watched by a voyeur or a higher number of indecent images were stored, focus group participants also felt this aggravated the offence.

An alternative view however was that all rapes or sexual assaults are harmful to the victim and the duration of the offence (if it is short) should not necessarily lead to a shorter custodial sentence. It was highlighted that even if only one offence had been experienced this could have a long lasting harm on the victim/survivor and their family, and therefore a single offence should not automatically be viewed as less serious.

## Multiple offenders

It was felt by some participants that if more than one offender was involved in a sexual offence the experience would be more frightening, disturbing, humiliating and degrading for the victim, which therefore required a lengthier custodial sentence for the offence for each offender involved. Focus group participants could be prepared to accept mitigation in specific circumstances involving multiple offenders, for example, where a member of the group tried to stop the offence, helped to convict other offenders or proved to be a vulnerable person led on by a more 'dominant personality'. However if they were involved in factors that may have aggravated (for example they video recorded the offence although they did not take part) this mitigation became negligible.

## Previous convictions or evidence of previous offending

The participants thought that previous convictions should always be taken into account when sentencing sexual offences and result in longer custodial sentences for repeated offences. Previous convictions for offences such as rape were thought to show that offenders had not 'learnt their lesson' and could not be rehabilitated. Suggestions were made for a 'two strikes and they're out' system for sexual offences whereby a second offence leads to a life sentence. Notably, focus group participants thought a first offence could potentially mitigate but only if the offence was not considered serious *and* did not have additional aggravating factors. An example would be explanations by the offender that they did not realise an offence was being committed such as having possession of one indecent image but not realising it was actually of a child; or believing a young person to be over the age of 16 and making sexually explicit contact online. In these cases it is questionable whether a conviction for an offence would have occurred. Having noted this point the participants also did argue that, given their assumed difficulty in obtaining a conviction for sexual offences, a first conviction may not mean that the offender had not committed similar offences before (although they did concede that this may not be taken into account at sentencing). Furthermore participants could also note that for offences such as rape or sexual assault, even if it was a first conviction, the harm to the victim would be the same regardless of whether the offender had previous convictions. Therefore while repeat offending was viewed as an aggravating factor, a single, first offence being committed was not felt to mitigate either. Instead it was felt sentencing should start at the minimum term set for a custodial sentence.

## Age or vulnerability of the victim

Focus group participants and victim/survivors felt that rape or sexual assault of a child was a very serious offence and the younger the victim the longer the custodial sentence should be. There was thought to be no scope for questions of consent to be a mitigating factor, as sexual relationships with children are known to be illegal regardless of the circumstances of the case. Focus group participants thought sexual offences against children (any kind of sexual offence) should carry an automatic custodial sentence and that rape of a child could increase the custodial sentence to up to 30 years without licence or a life sentence. As case study C illustrated, parents of abused children interviewed reported being very disappointed with actual sentences given, indicating that the view that sentences for offences against children were at times felt to be too lenient could be based on the facts of a case and not necessarily assumptions about sentences.

Elderly people or people who had learning difficulties were also regarded as vulnerable by participants and longer custodial sentences when a sexual offence was committed against them were therefore suggested. Where offenders were responsible for the care of older or young people this was considered a breach of trust and therefore an aggravating factor. Being in any position of trust was described as an aggravating factor, because the offender may not have had access to the victim if they had not been in that position. Victim/survivors with learning difficulties were given as an example of vulnerable people; however if the offender had a position of trust such as a doctor or teacher, this was also felt to aggravate even if the victim did not have any additional vulnerabilities.

## Violence

Victim/survivors tended to make less clear-cut distinctions between what is an aggravating factor in relation to violence than the members of the public that took part in the focus groups. A key issue for victim/survivors was identifying the long term and deep rooted harm of having a sexual offence committed against an individual, rather than focussing on the specific facets of the offence. They were reluctant to concede that physical harm or injury made an offence necessarily more serious (and warranting a longer sentence) when the psychological harm of another offence, such as long term abuse where such violence had not occurred, may be as great. They did however support aggravating factors relating to violence being charged as additional offences (and sentenced as such) thereby adding to the seriousness of the offending behaviour exhibited.

The following factors relating to violence were also felt to be aggravating features, particularly by focus group participants.

- *Use of violence, torture or weapons*; premeditated *intention* to use violence was thought to require an addition to the suggested sentence for the offence, especially if this was a key component of the offence (in other words the offender enjoyed inflicting pain). Notably, participants thought that where an offence involved violence, the violence should be treated as a separate offence, such as grievous bodily harm, and that this should incur an additional custodial sentence to be served consecutively with the custodial sentence for rape.
- *Abduction and detention*; abduction required further physical abuse of a victim to force them to another location while detention was regarded as a form of 'mental torture'. However it was felt these could be sentenced as separate offences, adding the recommended custodial sentence for this offence alongside that of the sexual offence that had occurred rather than as an aggravating factor to the sexual offence.

Participants also stressed that in cases where the victim has complied with the offender without actual threats or violence, because they were so fearful of antagonising the offender, this should not warrant a lesser sentence than if threats or violence occurred. Again it was felt custodial sentences should start with a minimum (in line with the participants' suggested sentence for the offence) and then increase with aggravating factors.

### **Illness via a sexually transmitted infection**

Ejaculation during rape was seen as an aggravating factor because of the risk of infecting the victim with a sexually transmitted infection. Knowingly infecting a victim with HIV was seen as particularly aggravating because of the likely impact on the person's life, and thus it was suggested this could be considered attempted murder of the victim.

### **Producing and distributing images**

Producing and/or distributing images of sexual offences such as rape and sexual assault were seen as aggravating factors by participants. There was particular concern that social media and technology, such as camera phones, could increasingly facilitate the recording and publication of a sexual offence. The harm to the victim would therefore be compounded because the images could be viewed for years in the future and they would never feel free from the humiliation the images could cause them. Thus, taking photographs or filming a sexual offence was seen to add to the degradation and humiliation of victims and this was reported to be the case by survivors who had experienced it. If the case involved a person

filming the offence who did not take part in the actual offence, a custodial sentence for their role was still recommended by the public and victims who discussed this issue (see above on multiple offenders). In addition it was felt by participants that making and storing images of an offence should warrant long custodial sentences to act as a deterrent and 'send a message' that this is inappropriate and harmful in the context that it may be becoming increasingly easy to do so.

Though none of the victim/survivors interviewed had experienced this offence, distributing pictures or a film of an offence for commercial gain was also felt to be an aggravating factor as it indicated clear culpability and planning. Those distributing images of offences were felt to be complicit in the actual offence committed, even if they were not physically present, because this perpetuated the offence.

### 6.3 Mitigating factors

Focus group participants and victim/survivors were unable or unwilling to identify clear factors that would mitigate the offence, even when issues of personal mitigation were introduced into the focus group discussion such as family responsibilities or good character. Victim/survivors who had been in court during the sentencing of their case could also report feeling the mitigating factors considered were unfair and should not have been used to justify a reduction in sentencing. The factors that were discussed as being potentially mitigating are outlined below.

**Learning disability or mental health** – the only factor that both the public participants and victim/survivors agreed could mitigate the offence was the offender having a mental illness or learning difficulties. Underpinning this view was acceptance that the offender was unaware the act they had committed was an offence. However this did not change the sentence recommended, only the setting for serving the sentence. Here it was felt appropriate for custodial sentences to be served in a hospital or secure care facility rather than a prison, with an emphasis on ensuring the offender had access to counselling or treatment.

**Previous consensual sex** – on the one hand focus group participants did note that previous consensual sex could be viewed as mitigating an offence, where consent has been 'misunderstood'. However some participants also felt that this *did not* mitigate – stating 'no means no' and 'rape is rape'. Victim/survivors had also experienced being raped or attempted rapes from individuals they had been in a relationship with, and felt this should not mitigate the nature of the offence (and indeed could be an aggravating factor because of the abuse of trust that had occurred, having previously consented to sexual contact with an

individual in an intimate relationship). Case study E illustrates the complexity of the discussion around this from a public focus group.

### Case study E

#### **Relationship between offender and victim**

In a mixed gender group participants discussed whether previous consensual sex between the offender and victim should act as a mitigating factor and should lead to a reduced sentence compared to the offender being a stranger.

*F1: I think it is pretty well known that actually rape isn't okay. I think that's clear to most people. I think for me it's the difference between... he didn't know the woman so it's not as though there was a previous relationship there, it is with a complete stranger [in the vignette] so that's why I've put a higher [sentence]... put seven years.*

*F2: So if she knew that person, would you decrease it, then?*

*F1: There is an element to it being different; again it's kind of looking at the circumstances.*

*F2: Yeah, but would you decrease the custodial years?*

*F1: Probably.*

*F2: You would? [shocked] [...] But what if knowing them was more of a negative than a positive?*

*F3: Oh, it could be because it could've been a domestic violence relationship.*

*F2: It [knowing each other] might increase it [the sentence].*

**Guilty plea** – focus group participants and victim/survivors raised discussion around offenders receiving a shorter custodial sentence for pleading guilty. While participants did identify that this may mean victims could avoid going to court – which may be distressing for them – they were reluctant to suggest that a custodial sentence should be reduced due to the offender pleading guilty.

Victim/survivors were also not in favour of a reduced custodial sentence due to pleading guilty. They could give examples from their own cases of an offender pleading guilty on the morning of the trial and receiving a shorter custodial sentence as a result. They felt in these circumstances they had still endured the stress of waiting for the trial and attending court anyway. Generally therefore, there was little support for guilty pleas reducing the length of custodial sentence for an offence, from either victim/survivors or members of the public who participated in the focus groups.

**Offender age** – focus group participants noted that an offender being aged under 16 may be a potential mitigating factor but in some cases only. As discussed below there was less sympathy for age mitigating in rape or sexual assault cases, where participants thought that offenders should receive a custodial sentence the same as that suggested for offences committed by an adult due to the seriousness of the offence. Participants were not provided with any information about sentencing regimes for young people, but unprompted felt that sentences for sexual offences should generally be the same regardless of the age of the offender. Indeed where age was noted as making a difference it was argued by victims that the younger the offender the more of a ‘normal’ life they would be able to have once released from prison, which could warrant a longer sentence for younger offenders. The parents of abused children felt the harm to the victim was the same whether the offender was an adult or teenager, and therefore the sentence should be the same. This included cases where the offender was a young person.

**History of sexual abuse against the offender** – there were mixed views on whether a history of sexual abuse having been experienced by the offender may mitigate both from focus group participants and victim/survivors. Where such a history was evident it was felt that the same custodial sentence was appropriate for the offence, regardless, but that this should place greater emphasis on treatment rather than a straightforward prison sentence. Other participants were sceptical and felt that disclosing a history of abuse was simply an ‘excuse’ for committing a sexual offence, emphasising that not all people who are abused go on to then offend themselves. The exception to this raised was someone being under duress from an adult offender, for example a teenager being made to commit a sex act on a child by an adult.

**Character of offender** – on balance participants in the research (both victim/survivors and members of the public) thought that the character of the offender (whether they are in employment, have a family, are of good standing in the community) should not be taken into account when sentencing as a mitigating factor. Indeed the participants could report ‘good character’ to be an aggravating factor because the offender had essentially been in a position of trust and also let down their own family and community to a greater extent by committing a sexual offence. It was also felt this may indicate greater culpability as they were hiding behind a ‘cloak of respectability’ but knew the offence was wrong.

## **6.4 Relative weight of aggravating and mitigating factors**

Where the weight of aggravating and mitigating factors was discussed with focus group participants there was a consistent view that more weight should be given to aggravating factors, as these particularly characterised the offence (the seriousness and harm) as experienced by the victim. It was also felt there should to be a minimum sentence for each offence and that no amount of mitigating factors should reduce the sentence below the minimum. In addition it was felt that other factors such as violence (for example GBH) should be sentenced as separate offences and be served consecutively.

Victim/survivors, as already discussed, took a slightly different view of aggravating and mitigating factors from the public, finding it particularly difficult to identify specific factors that would increase or decrease the sentence. For them the sentence should reflect the overarching harm to individuals and their family, which may include having to move house and an inability to work and many years of trauma following the offence.

## 7. Conclusion

Sexual offending is an emotive issue. This research aimed to explore public and victim/survivor perceptions of sexual offence sentencing, including their understanding of issues such as seriousness, harm and aggravating and mitigating factors. Gaining a nuanced understanding of such a sensitive and complex issue brought challenges. The public and victim/survivors are not homogenous groups and so bring a multiplicity of experience and viewpoints. Victim/survivors in particular may have experienced intensely personal and traumatic offences and ensuing investigations. Given the breadth of the research, its timetable and budget, there were also clear limits to the extent to which each issue could be explored in depth. Nevertheless, in the face of little existing evidence on public perceptions and even less on victim/survivors' perceptions and experience of sentencing sexual offences this research has begun to develop greater understanding of these issues in a way that puts the views of the participants rather than the existing sentencing process and guidelines to the forefront.

In terms of the findings, both the public and victim/survivors suggested sentences they felt would address the key aims of sentencing they sought – public protection, punishment, acknowledgement of the harm and seriousness of the offence, and in some cases, to provide a locus for treatment and rehabilitation whilst ensuring repeat offending cannot occur. For those who were less in support of treatment, custodial sentences were strongly supported and felt to be a means to attain the other aims of sentencing listed. Some victim/survivors interviewed spoke about how completely 'let down' by the sentencing process they had felt due to the perceived leniency of the sentence given. Their views were not based on assumptions about a sentence but actual fact, albeit relating to their case only.

Dissatisfaction was sometimes levied not at the sentence *per se* but at the length of time in custody this actually equated to, or dissatisfaction when sentences were felt to be too short in duration to reflect the harm and seriousness of the sexual offence that had occurred. In some cases victim/survivors suggested that life sentences for sexual offences was a way in which the harm to the victim (the 'life sentence' of the impact of the offence) would be acknowledged.

The research also included cases where victim/survivors were satisfied with the sentence given in their case. These were cases where they felt the custodial sentences given were long enough to reflect the nature and harm of the offence and where the custodial sentence had reflected the maximum the offender could have been given. The level of support and information that was provided to victim/survivors in the lead up to and during their case (or

the lack of) could also affect their level of satisfaction. Therefore both adequate information and support to victim/survivors, alongside the actual length of sentence, underpinned the extent of satisfaction with sentencing from individuals whose cases had been sentenced.

The circumstances or characteristics of the offender or victim could also play a strong role in defining what both sets of participants felt were aggravating and mitigating factors to take into account – with offences against children and young people felt to be particularly serious, and repeat sexual offending warranting long custodial sentences. Videoing an offence, using extreme violence and clear premeditation were also agreed to be aggravating factors, though a lack of these elements in the offence was not felt to mitigate. Rather, clear minimum custodial sentences for sexual offences being set, was supported.

Overall a lasting issue to emerge from the research was encapsulated in the strong desire from victim/survivors for the criminal justice system to demonstrate an accurate understanding of the overarching and long term harmful effects of sexual violence and abuse, of how it impacts on the life of the victim and their family, and to consider this to a greater extent within the sentencing process.

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# Appendix A

## A.1 Methodology

This appendix provides further detail about the way in which the research was conducted. The research comprised two phases. Phase one involved a literature review of existing evidence related to public and victim/survivor attitudes towards sexual offences sentencing to determine whether primary research was needed; and, if so, what questions needed to be addressed and the methodology to answer them. Phase one identified a lack of relevant methodologically robust and up-to-date research and so phase two was developed. This involved primary qualitative research including focus groups with members of the general public and in-depth interviews with victim/survivors of sexual offences.

### Literature review

The literature review involved a detailed scoping of existing evidence sources, focussing on public and victim/survivor attitudes to and awareness of sentencing sexual offenders. Additional key documents such as the existing guidelines, and recent government papers and reviews, were also included.

The review focused on four key sources of evidence:

- relevant peer-reviewed research articles and discussion pieces;
- policy reports and key texts such as recent government papers and reviews;
- recent media coverage; and
- case law.

Existing sentencing guidelines for sexual offences and dangerous offenders were also included. To ensure that literature was scoped and collected; comprehensive searches of databases (ASSIA, Criminal Justice Abstracts, Law Abstracts, Google, SAGE journals and LexisNexis) were conducted using keywords:

- sentencing and sexual offences;
- sexual offences and attitudes;
- sexual offences and harm;
- victim, attitudes and sentencing; and
- public attitudes and sentencing.

This generated a high volume of literature. The abstracts of these were then each individually reviewed and assessed for relevance by a member of the research team. The relevant literature was summarised thematically in a matrix, with review criteria agreed among the team and subsequently with the Sentencing Council. After examination of the literature searches, 29 journal articles and 60 media articles were reviewed in-depth. In addition a number of relevant reports and policy documents were included; where relevant references from pre-2005 were identified, they were also included in the review. In total, 28 purposively sampled case law examples were also analysed.

The review was conducted by drawing out the following criteria from each relevant article and comparing these with a summarised matrix:

- source;
- type of article within range (primary research, review, media article and so on);
- method used (if primary research);
- quality or limits of the method/approach (which included an assessment of the methodology, sample size, sample characteristics and response rate);
- type of offending/sentences discussed (such as sexual offences in general, rape, sexual assault, child sexual offences and so on);
- summary of the main findings;
- impact on victims and society from the offence(s);
- public and victim attitudes to sexual offences and type of convictions or sanctions;
- discussion of consent, culpability, aggravating and mitigating factors;
- any recent changes in attitudes to sentencing reported;
- cost-benefit analysis of sentencing options;
- methodological issues and tools identified;
- summary of learning arising; and
- additional relevant references.

On completion of the review, the entire data set of summarised evidence was merged and used to develop a report for the Sentencing Council. This was then used to hone the development of stage two of the study – qualitative research with the public and victim/survivors. The main finding was that there was a lack of accurate, methodologically robust and up-to-date evidence on public and victim/survivor awareness of and views on sexual offences sentencing. This means that primary research on these topics was timely and potentially valuable.

Public opinion surveys in particular were criticised for providing little opportunity for considered approaches that explored reasons for suggested sentences or methods that addressed the range of sexual offences (Hough and Roberts, 1999). There is a danger that public *views* can be presented as a single view when there is no single entity of ‘the public’ (Felizer, 2007) with the public in the British Crime Survey 1996 indicating both more punitive and more lenient views than actual sentencing practice at the time (Hough and Roberts, 1999). Qualitative methods that focus entirely on the experience of victim/survivors and do not try to introduce additional stimuli or exercises have also been identified as being inappropriate (Clarke et al., 2002). Consequently, it is argued by Clarke et al., that qualitative approaches would provide: better evidence of the range of views on sentencing; more nuanced understanding of the reasons for these views; and be the most ethical approach to researching sensitive issues because it enables a tailored approach to interviewing that ensures it is relevant and responsive to participants’ personal experiences. Qualitative methods (focus groups and interviews) were the approach taken in this research.

### **Focus groups with the public**

The aims of the focus groups were to:

- map public knowledge and understanding of the sentencing of sexual offences;
- explore the sentences that the public regarded as appropriate for different types of sexual offences and the reasons why;
- the relative gravity of different types of sexual offences when compared to each other and to other non-sexual offences;
- the range of aggravating and mitigating factors that should be taken into account when considering an appropriate sentence for the offences in focus; and
- views on the purposes of sentencing.

Given the breadth of issues to cover in the discussion, two to three different sexual offences were covered in each group, with each compared to one other non-sexual offence. Brief factual information of this type (nature of different sexual offences; sentencing options) was provided to the public in this research at the outset of the discussion. A strength of this approach was that a range of different sexual offences could be compared and contrasted, all of which would assist to meet the overarching objectives of the Sentencing Council. In total, 12 focus groups were conducted with members of the general public in June and July 2011.

### ***Sampling and recruitment***

The ability to draw wider inference from qualitative research depends, in part, on the nature and quality of sampling. The rationale in selecting those to be included was to ensure diversity of coverage across certain key variables rather than to select a sample that was statistically representative of the wider population. Purposive sampling of this kind provides the opportunity to identify the full range of factors, influences and experiences in relation to the research questions.

Groups were conducted in England and Wales in areas selected to reflect different parts of the country. Most participants were recruited by following-up a sample of people who had participated in the British Social Attitudes Survey (a representative general population survey) in the summer of 2010 and who had given their consent to be re-contacted for further research by NatCen. A letter was sent providing information about the research, explaining that participation was voluntary and that people might receive further contact to invite them to take part. Participants who fitted specific selection criteria were then contacted by telephone to discuss the research.

People with experience of a sexual offence were screened out of the groups because it was thought that taking part in a group discussion could be inappropriate for them, and that other group participants might defer to their views. A short screening questionnaire was used to identify such people. Where the offence against them fitted the criteria for taking part in an individual interview (for example, in terms of timescale, reporting of the offence and so on) prospective participants were offered the possibility of taking part in an interview instead. Where further discussion revealed that individuals did not fit these criteria, the reasons were explained and the researcher offered to provide a leaflet with helpline information. The screening questionnaire was also used to screen out people who had been convicted of a sexual offence or offences by explaining that the focus groups were for members of the general public and not for people who had direct experience of sexual offences.

Contact with prospective participants was monitored to try to achieve a range of experience within and across groups according to gender, age, ethnicity, whether or not participants were parents with children living in their household, educational level and current economic activity. The final sample achieved according to these sampling criteria is shown in Table A.1. In total 82 people participated across the 12 groups.

**Table A.1 Achieved sample characteristics for focus groups with the general public**

**Gender**

Female	38
Male	44
<b>Total</b>	<b>82</b>

**Age**

Under 40	31
40 and over	51
<b>Total</b>	<b>82</b>

**Ethnicity**

White	70
Asian (Pakistani)	3
Asian (Bangladeshi)	1
Asian (Afghanistani)	1
Black	2
Black (Caribbean)	3
Black (African)	1
Mixed ethnicity	1
<b>Total</b>	<b>82</b>

**Children in house**

Yes	30
No	52
<b>Total</b>	<b>82</b>

**Educational level**

Degree	25
Higher below degree	6
A Level or equivalent	17
O Level or equivalent	15
CSE	7
No qualification	10
Unknown	2
<b>Total</b>	<b>82</b>

**Socio-economic activity**

Working	51
Looking after home	6
Student	4
Retired	14
Sick/disabled	1
Unemployed	5
Unknown	1
<b>Total</b>	<b>82</b>

Initial monitoring of the sample in the first six groups showed that there was a need to recruit more men, younger people and people with lower levels of educational qualifications.

A recruitment agency was employed to recruit participants to fit this profile within the final six groups. A similar screening exercise was conducted as with the telephone recruitment, the only significant difference being that a 'show card' was used so that people could identify if they had experience of a sexual offence or had been convicted of a sexual offence without having to verbalise their answers.

Two groups were deliberately female only with female facilitators and two groups male only with male facilitators, in order to examine if gender influenced views on the sentencing of sexual offences. One group was also exclusively with people over 40 years old and one with people under 40 years only to also explore if age was relevant. We found that gender and age did not particularly influence the views of participants.

The number and mix of participants taking part in each group is shown in Table A.2. Unfortunately at group five, only two of nine participants recruited attended on the evening of the group discussion. This discussion therefore took the format of a two-person interview, covering the relevant vignettes and areas of discussion, albeit with a smaller number of participants.

**Table A.2 Number of participants taking part in each focus group and type of group**

Group 1	4, <b>female only</b> , mixed age
Group 2	9, <b>male only</b> , mixed age
Group 3	7, mixed gender and age
Group 4	6, mixed gender and age
Group 5	2, mixed gender and age
Group 6	9, mixed gender and age
Group 7	6, <b>female only</b> , mixed age
Group 8	8, <b>male only</b> , mixed age
Group 9	8, mixed gender, <b>under-40s only</b>
Group 10	7, mixed gender, <b>over-40s only</b>
Group 11	8, mixed gender and age
Group 12	8, mixed gender and age

Participants were given £25 for taking part in the group as a thank you for their time and as a contribution towards travel and other expenses incurred.

### *Conduct of the focus groups*

The focus groups lasted two hours with a short break in the middle. They were facilitated using a topic guide and vignettes agreed with the Sentencing Council that related to specific scenarios involving different sexual offences (see Appendix B).

In order to give some context to the discussion participants were asked to discuss what they already knew about the process of sentencing and types of sexual offences. Basic information (such as a hand out of the legal definitions of the sexual offences discussed and a factual outline of the sentencing process verbally recounted by the researcher) was also provided at the start of the group to correct factual inaccuracies and to ensure a more informed discussion. Information on current sentencing guidelines for specific sexual offences was withheld until the end of the groups so that this did not influence participants' thinking on what they regarded as appropriate sentences. The reason for taking this approach was explained to participants during the early discussion of their knowledge of sexual offences and sentencing.

As outlined in chapter two there were strengths and limitations to this approach. However, it was felt to be appropriate to ensure the suggested sentences reflected perceptions that had not been unduly biased by the introduction of specific information. This was especially pertinent given the existing lack of research evidence on public perceptions of sentencing sexual offences. Future research on public perceptions to sentencing sexual offences may wish to use findings from this research as a starting point to hone their discussion further and may then have scope to introduce more detailed information on factors such as: the operation of the criminal justice process or effectiveness of sanctions to participants and specific offences rather than a range of offences, using similar methods. This would enable a more focussed set of findings but would cover less breadth.

Discussion of the vignettes formed a substantial part of the group discussion and covered the offences of:

- rape;
- sexual assault of an adult or a child;
- preparatory offences including online grooming of a teenager and administering a substance with intent;
- possession of indecent images of children; and
- voyeurism.

At least two sexual offence vignettes were discussed in each group with three being discussed where time permitted and participants were willing to do so. Rape was discussed in every group but the order in which it was discussed was varied to examine if this had an effect on sentences given (no effect was found). All other offences were discussed in at least two groups with participants being encouraged to compare the length and type of sentence given for the different offences. Participants were also asked to compare the sentences they regarded as appropriate to non-sexual offences. The comparison offences discussed were grievous bodily harm (GBH) and a drugs offence (possession of heroin with intent to supply). These offences were also varied across the groups. The sexual offences and non-sexual offences discussed in each group and the ordering of the discussion of the sexual offences are shown in Table A.3.

**Table A.3 Sexual offence and comparator vignettes and order of discussion for each focus group**

Group 1	Rape, sexual assault of a child, voyeurism of an adult, drug offence
Group 2	Rape, voyeurism, GBH
Group 3	Sexual assault of a child, rape, voyeurism, drug offence
Group 4	Voyeurism, rape, drug offence
Group 5	Rape, sexual assault of an adult, drug offence
Group 6	Possession of indecent images of a child, rape, sexual assault of an adult, GBH
Group 7	Sexual assault of an adult, rape, possession of indecent images of a child, GBH
Group 8	Rape, possession of indecent images of a child, GBH
Group 9	Online grooming of teenager, rape, administering a substance with intent, drug offence
Group 10	Rape, administering a substance with intent, GBH
Group 11	Rape, online grooming of a teenager, drug offence
Group 12	Administering a substance with intent, rape, GBH

Participants were asked to give what they thought would be an appropriate sentence according to each offence described in the vignette (for example length and type of sentencing option). In order to ensure participants' views were not unduly influenced by each other, participants were asked to first write their suggested sentences on a piece of paper and to hand them back to the facilitator who then read them out. The facilitator then asked the groups to explain their reasons for different lengths and types of sentencing options, for example, why they gave longer or shorter sentences or custodial or non-custodial sentences. The specific details of the offences in the vignettes were then varied (for example, age of perpetrator or victim, the level of violence used, the level of planning, and so on) in order to stimulate further discussion of factors linked to perceptions of culpability, harm to victim/survivors and factors that might be considered aggravating or mitigating in the circumstances.

Each vignette discussion lasted around 35 minutes. The vignette presented to the focus group participants was kept deliberately brief at the start of the discussion. Additional information was then added to build up and develop a detailed picture of the offence, the offender's personal circumstances and the victim's circumstances, with the group. Some of this discussion was led by the participants (who may have suggested additional details in the case that would affect the sentence given) and some led by the researcher using the prompts included with the vignettes. The actual focus group discussion of the offence therefore developed this into a more detailed account of a sexual offence, with more features than that indicated by the written vignette alone.

Further details of variations to the vignettes for each sexual offence can be found in Appendix B.2 in relation to moderator guidance on how details of the scenario described could be changed. Other general areas of discussion in the groups included knowledge and awareness of sentencing and sexual offences and the perceived purposes of sentencing.

### ***Analysis of the focus groups***

All of the groups were digitally sound recorded and transcribed verbatim. The groups were charted using a template under broad themes and analysed thematically using a 'Framework' approach. Framework is a method developed at NatCen (Ritchie, Spencer and O'Connor, 2003). The first stage involves familiarisation with the data and identification of emerging issues. This informs the development of a thematic framework and data is summarised. This produces a series of thematic matrices or charts, each chart representing a key theme. The headings on each thematic chart relates to key sub-topics and the rows to individual respondents or cases such as a group discussion. Data from each case is then summarised in the relevant cell. Data is then reviewed in relation to the key aims of the research and analysed in relation to emerging patterns and themes. Data is not represented statistically.

The findings that emerged are presented in chapters four and six. The range of sentences seen as appropriate for each sexual offence (for example, in terms of length and sentencing options) and reasons for them were noted separately and are discussed in chapter five. The report deliberately avoids giving numerical findings, since qualitative research cannot support numerical analysis. This is because purposive sampling seeks to describe the range and diversity among sample members rather than to build a statistically representative sample, and because the questioning methods used are designed to explore issues in depth rather than to generate data that can be analysed numerically. Qualitative research provides in-depth insight into the range of experiences, views and recommendations. Wider inference can be drawn on this basis rather than on the prevalence of responses. Given the nature of

this research, which did collect numerical information on the length of suggested sentences, there has been a greater level of reporting of numerical findings than would usually be the case in qualitative studies. Nevertheless the focus of the findings presented has been on the perceptions and experiences of the participants, which have been evidenced with quotes and case studies and numerical weight not given to these.

### **Research with victim/survivors**

The aim of the research with victims/survivors was to:

- explore victim/survivor experiences of sexual offences and the sentence that was given (if relevant) and/or the sentence they would regard as appropriate for the offence(s) they experienced;
- the reason(s) why they would recommend a particular length or type of sentence for the offence(s) they experienced;
- the factors that should be taken into account when sentencing sexual offences, including their own, and sexual offences more broadly; and
- views on the purpose of sentencing.

A total of 46 victim/survivors, or the parents of victims/survivors under 16, took part in the research; 32 of these were individual in-depth interviews, two written submissions, and 12 took part in two focus groups, with six participants in each group.

### **Sampling and recruitment**

A number of key organisations supporting victim/survivors of sexual offences were contacted by the research team to discuss how they might be able to help recruit people to take part in the research. Contact was made with 16 organisations initially, and 13 of these assisted by posting information on their websites or in e-bulletins or newsletters; putting up posters in their offices or support spaces; passing information leaflets to clients and/or discussing the research with their clients directly. Further support organisations were contacted through these initial contacts and individual participants also spread word of the research among themselves, via email and leaflets. This meant participants who took part opted into the research from a wide variety of sources.

Victim/survivors were provided with a freephone number, project email address and a web address where they could seek further information. The research used an opt in approach and prospective participants were asked to contact the research team directly. A member of the research team would then discuss the research with the participant and check their

eligibility to take part (for example in terms of when the offence occurred, the type of offence, and so on). Participants were also purposively monitored to try to achieve diversity in terms of type of sexual offence; the stage the offence reached in terms of being reported and sentenced; and other demographic factors such as gender, age, ethnicity and location. Where it was not appropriate or possible for victim/survivors to be included in the research the reasons were clearly explained and helpline information offered to them.

Given the sensitivity of the subject matter the research team were as flexible with interview arrangements as possible. Interviewees were given the option of a face-to-face or a telephone interview and two participants made a written submission. They were also offered the opportunity of the interview taking place at their home, at an organisation where they were receiving support (if relevant) or at another suitable venue (for example local community centre, NatCen offices) and of bringing someone to the interview with them for support if they wanted to. Two focus groups with victim/survivors were organised where opportunities arose through specific victim/survivor organisations and victim/survivors expressed an interest in participating in this way. While not all interviewees expressed a preference for a female or male interviewer all female participants were interviewed by a female researcher and all male participants by a male researcher.

Given the sensitivity of the subject matter and the difficulty of reaching victim/survivors it was important for the research team to be as responsive and flexible as possible in terms of who was included in the research. There was also a desire to ensure that victim/survivors included represented a range of views, although the primary focus of sampling was on those whose cases had reached a sentencing conclusion in the previous 10 years. Consequently a small number of victim/survivors were included who had not reached the sentencing stage in relation to the offence they had experienced but who had valuable experiences to discuss. We also included people whose offence had not occurred in the last 10 years but had been sentenced, where it proved particularly difficult to recruit people with a specific type of experience (for example, we included two men whose experience of the sexual offence happened more than 10 years ago because recruiting male survivors of sexual offences is known to be particularly difficult and it was important to try to obtain some diversity of gender in the sample).

The victim/survivors had often experienced a range of different sexual offences and it was not possible to extrapolate one offence per participant in a meaningful way. For example a case could have involved multiple victims, with one offender charged with three counts of sexual assault and three counts of rape, of which the participant had experienced one. The

offence could involve one offender and one victim but the offender had committed a range of different sexual offences over different time periods, or the offence could have involved multiple perpetrators and victims, with a range of different sexual offences committed by each of the offenders against each victim. The cases that had been sentenced therefore often referred to a sentence being given for more than one offence. In table A.4 an attempt to outline the offences which had been experienced across the participants that took part is outlined, with the caveat that the research covered a range of complex cases. The types of sexual offences included were therefore diverse, spanning, for example, serial rapes, ritual abuse, childhood sexual abuse as well as single and unreported offences.

**Table A.4 Achieved sample characteristics for interviews**

<b>Type of sexual offences</b>	
Rape	23
Sexual assault or assault by penetration	26
Possession of indecent images	3
Administering a substance with intent	2
Inciting a child to engage in sexual activity	2
Other offences (inc. grooming, voyeurism, exposure)	Had been experienced across the sample
<b>Stage reached in terms of reporting and sentencing of main sexual offence(s) reported</b>	
Not reported	9
Reported but did not go to court	10
Convicted and sentenced	27
<b>Total</b>	<b>46</b>
<b>Gender</b>	
Female	43
Male	3
<b>Total</b>	<b>46</b>
<b>Age</b>	
Under 16, parent interviewed	5
16–20	3
21–30	4
31–40	10
41–50	16
51+	4
Not disclosed	4 (inc. one child whose parent was interviewed)
<b>Total</b>	<b>46</b>
<b>Ethnicity</b>	
White	42
Asian (Indian)	1
Mixed ethnicity	1
Not disclosed	2
<b>Total</b>	<b>46</b>

### ***Conduct of the interviews and groups with victim/survivors***

Interviews lasted between an hour to an hour-and-a-half (the groups lasted over two hours) and used a topic guide agreed with the Sentencing Council to guide the discussion (see Appendix B.3). The in-depth interviews were conducted using responsive questioning and probing so that all relevant issues were explored as fully as possible while retaining a focus on the aims of the study. Care was taken to explain to victim/survivors that participation was voluntary and that they could take a break at any time. It was also explained that the focus of the research was on the sentencing of sexual offences so that it was not necessary for them to raise or relive traumatic experiences other than in ways they felt were directly relevant to the research. At the end of the interview participants were provided with information about helplines they could contact. They were given £25 as a thank you for their time and as a contribution towards expenses incurred. Participants were also offered the option for payment to be given to support groups or charities.

### ***Analysis of the interviews and groups with victim/survivors***

Interviews were transcribed verbatim or written up as detailed notes where participants did not want their interview recorded despite assurances of confidentiality and anonymity. Interviews and notes were then managed using '*Framework*' (outlined in the previous section) software.

## **Reporting**

The findings have been organised thematically across the report, with the findings from the research with victim/survivors reported alongside the focus group data, rather than being reported separately. This strategy recognises the fact that many of the key findings were similar across the sample, although where appropriate, the perceptions of the different participant groups have been reported separately.

Where specific findings emerged relating to the public *or* victim/survivors (for example only the public were given vignettes of cases to discuss) but not both, then these are differentiated between the two groups. Sub-headings have also been used to differentiate participants, where appropriate. Of note, victim/survivors and the public could share views around the sentencing of sexual offences and it was therefore not necessarily helpful to report findings from the two separately throughout the report. However, it is respectfully acknowledged that victim/survivor experiences refer to a highly personal and traumatic issue, and that they bring a particular understanding to this research.

An important limitation to the research is that, while the qualitative approach adopted is able to demonstrate the range of views on sentences considered appropriate for certain types of sexual offences, it is not possible to say without further quantitative research how statistically representative those views are of victims or the general public as a whole. Therefore the findings are not reported numerically but represent the range and diversity of views expressed.

Reporting data which has been collected using a qualitative methodology, but that referred to numerical data such as the length of sentence suggested required careful interpretation. For example the public were clear that the initial sentences they suggested and wrote down in the focus groups referred to the time that should be spent entirely in custody. As such, time an offender then spent on licence in the community should be additional to this. To ensure clarity and consistency, and to enable comparison with the sentences mentioned by victim/survivors, the sentences suggested during the focus groups have been interpreted and reported to reflect this – that is, providing the length of sentence that would be required to cover **both** custody and time spent on licence. For example if a sentence of five years, all to be spent in custody, was suggested by a participant for sexual assault, this has been converted to a 10 year sentence – five years in custody and five years on licence. The researchers in the focus groups asked participants if this interpretation led to an accurate representation of the sentence they had suggested in terms of length of time in custody it would equate to and confirmed this was the case. They would check in the manner of: “so *this could be a 10 year sentence if they served half of this on licence?*”

This approach incorporated participants’ desire for a certain length of sentence to be served in custody for the specific sexual offence in focus. This is how the sentences have been reported to enable comparison with how sentences are served in reality whilst retaining an accurate representation of the participant’s desired custodial sentence. Of course the actual amount of time spent in custody for an offence relates to a number of factors and may not simply be half that of the sentence given, although this is the most common outcome.

In the report the minimum and maximum suggested sentences and the most prevalent suggestions are presented. However, it should be remembered that the sample was not selected according to statistical principles, so the ranges presented **should not** be interpreted as statistically representative. For statistically meaningful frequency data to be reported, a random probability survey would have to be conducted. The main objective of this research was to understand the reasons given for the suggested sentence and the aggravating and the mitigating factors that may affect this.

## Ethical considerations and data security

Research always requires careful consideration of ethical practice. However research such as this, focussing on sensitive but important issues requires particularly careful management. Enhanced data protection protocols were adhered to throughout the research, with for example all files and contact details password protected and only accessible to the research team, and laptops locked and files locked away when not in use and only accessible to individual team members who held the key. The research team had extensive experience of conducting sensitive research including that with survivors of sexual abuse and the research was approved by the NatCen Ethics Committee (which consists of internal and external experts on ethical practice).

Recruitment was conducted in an 'opt-in' basis. For the focus groups, potential participants were provided with information regarding the research, who it was being conducted for, the nature and content of the group discussion, and how data would be used and stored. They were then asked if they would be willing to take part and if they agreed, provided with information on the date and location of the focus group. Focus groups took part in neutral, accessible public venues such as hotel and library conference rooms. The consent process was repeated before the group discussion commenced and participants were informed of the voluntary nature of their contribution and that they could leave the room, or take a break and return at any point in the discussion.

The victim/survivor interviews were also recruited with an 'opt-in' method. The research was advertised via support services for victims and also widely circulated online via information bulletins and the NatCen website. Professionals working with victim/survivors were also contacted and asked to assist with recruitment by advertising the research, and the researchers spent time in support centres (such as Rape Crisis centres) explaining the research to staff and service users to promote trust. Potential participants could either express an interest in taking part and attend the service on a day when the researcher would be present, or could contact the researchers directly and set up an interview with them at a time and location that suited them. Information about the research was circulated and included details of who was conducting the research, who it was being conducted for, the aim of the research, the nature of the interview and how the data would be used and stored. This was reiterated during recruitment and before commencing an interview. Victim/survivors were not asked to provide a full name or contact details if they preferred not to, to ensure their confidentiality and anonymity.

# Appendix B

## B.1 Topic guide for focus groups with the general public<sup>30</sup>

### The study

#### Aims:

- explore awareness of sex offending, and the type of sanctions available;

#### Via focussed discussion of vignettes:

- map and explore the range and diversity of views on what appropriate sanctions/sentences are for the offences in scope and how these compare to each other and another offence (GBH or drugs);
- explore what makes the offence more serious in terms of culpability and harm;
- explore awareness of and views on mitigating and aggravating factors taken into account and how important these are;
- explore awareness of and views on other factors that are/should be taken into account; and
- ascertain what the appropriate sentence would be for the offence.

#### Generally:

- explore the purpose/aim of sanctions/sanction recommended; and
- explore views on the effectiveness/cost effectiveness of sentences.

### 1. Introduction (10 minutes)

- Introduce researcher(s) and NatCen
- Explain who the research is for (describe Sentencing Council and their role)
- Explain research:
  - *SC reviews the appropriate sentence for different offences;*
  - *examining sex offences because review of existing guidelines is planned;*
  - *not a response to the recent media coverage of rape cases – commissioned before and separately to this;*
  - *duty to incorporate views of the public;*

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<sup>30</sup> This document was a guide used by NatCen focus group facilitators to guide discussions and is therefore written in note format throughout.

- *group discussion allows these views to be explored; and*
  - *selected randomly from the BSA sample to represent a range of different members of the public in different locations.*
- Explain the discussion will last between *one-and-a-half* to two hours. The discussion will focus on:
    - *two or three vignettes (explain – examples of) of different types of sex offences;*
    - *ask about the different type of sentences deemed appropriate for these offences, how these may change depending on different factors and why they are decided as appropriate; and*
    - *Will explain that the current sentences for these offences will be provided as a handout at the very end of the discussion as we would like to explore what is felt to be appropriate regardless of existing recommendations.*
- Emotive issue for some and potentially sensitive/distressing to discuss:
    - *no right or wrong answers – wish to hear from everyone;*
    - *participation is voluntary – can leave the room, have a break or choose not to discuss any issue;*
    - *short scheduled break in the middle of the discussion;*
    - *participants should speak one at a time, listen to what other people have to say and respect one another’s answers and different opinions;*
    - *would like an open discussion and debate – feel free to add your comments; and*
    - *media coverage – recent debate on guilty pleas. Do not wish to focus on this as previous research has done so. Focus here on sentences for different offences and circumstances regardless of whether found or pleaded guilty and on their personal views as opposed to those presented in the media or elsewhere.*
- Explain recording, data storage and confidentiality.
  - Explain reporting process and that individuals will not be identified in the report or the location of the group.
  - Check if any questions before we start (remind them they can have a break or stop at any time).
  - Ask for permission to start recording.

**START RECORDING**

## **2) Participant introduction (8 minutes)**

*Aim: to obtain information about the participants, introduce participants to one another and allow them to feel at ease in the group situation.*

- Participant backgrounds – very briefly ask each participant to give details of:
  - *name; and*
  - *how they feel about taking part in a group discussing sexual offences (acknowledge/address concerns).*

## **3) General awareness of sentencing and sex offences (10 minutes)**

*Aim: to allow the group to begin discussion on a neutral topic and set context of existing knowledge/awareness of sentencing process*

- Describe process when someone is sentenced for an offence:
  - *found/pleaded guilty;*
  - *reports to judge; and*
  - *decision on sentencing made on different occasion.*
  
- Specific types of sentences or penalties for sexual offenders (specific). *Prompts:*
  - *custodial (prison) sentence;*
  - *registration (Sex Offender Register);*
  - *prevention order/disqualification order (for example, cannot work with children);*
  - *Sex Offender Treatment Programme (SOTP);*
  - *curfew, confiscation or deprivation (cannot own/access something that may enable offending); and*
  - *compensation order (to victim).*
  
- **Custodial sentences and licence** *(aim here is to briefly ensure the group are aware that not all time sentenced may be spent in custody – in other words, they may serve half in custody and half on licence where they are released provided they adhere to certain conditions and recalled if they don't.*
  
- **What is taken into account when sentencing?**
  - *Different types of sexual offences*

Give handout to group describing different types of sexual offences.

- Are these the expected or anticipated offences?

*Explain we will explore sentencing two or three of these in detail in the following discussion.*

- Views on what the **purpose** of sanctions for sex offences should be. *Prompts:*
  - *punishment;*
  - *rehabilitation and treatment;*
  - *reduce risk;*
  - *prevent offending again (recidivism);*
  - *retribution; and*
  - *other.*
- Relative weight given to each (i.e. is one more significant an outcome than others?)

#### **4) Vignette one – first offence**

**FOR GROUPS 1, 2, 5, 8, 10 and 11 this will be rape (25 minutes)**

**For other groups this will alternate and rape will be vignette 2. Please consult moderator guide.**

*Aim: to explore one sex offence in detail with the group*

Hand out a copy of the vignette to each member.

#### **Sentence (10 minutes)**

- *Ask each member to write the sentence they would recommend for this offence on a piece of paper (provided) and hand them back to the moderator (folded if they prefer).*
- *Moderator sets out the range of sentences suggested*
- *Check sentence expectation (in other words, if five years suggested, is this five in custody or two-and-a-half and two-and-a-half on licence?)*

Probe

- Reasons for suggested sentences (range):
  - *purpose/aim of sentences (range);*
  - *agreements/disagreements;*
  - *perceived harm/seriousness of the offence; and*
  - *try to obtain a general consensus (length of sentence/type of sanctions).*

### **Culpability and harm (10 minutes)**

- Elements that could add to how **serious** the offence is. *Prompts:*
  - *age of victim;*
  - *location of offence;*
  - *planning offence;*
  - *threat of or actual violence;*
  - *relationship between victim and perpetrator;*
  - *repeated or sustained rape;*
  - *additional sexual acts; and*
  - *additional acts of humiliation (taking photographs; urinating on victim).*
- Harm to victim increases/remains the same with these factors?

### **Aggravating and mitigating factors (10 minutes)**

- Explore extent the factors listed as increasing seriousness should be taken into account for sentencing as aggravating factors.

*Moderator:*

- *select at least two aggravating/altering factors from the vignette;*
- *remind of sentence previously agreed; and*
- *how should these factors affect the sentence previously agreed (suggested increase/change/additional condition to sentence).*
  - Probe reasons for suggestions
- Identify factors to be taken into account that decrease sentence (ask group to identify a list of factors then use prompts). *Prompts:*
  - *age of perpetrator;*
  - *mental capacity or disability;*
  - *immediate previous consensual sexual activity between the offender and victim;*
  - *minor role in offence; and*
  - *provocation/shared responsibility.*
- Relative weight to give to each (which issue should be taken most into account – mitigating or aggravating?)
- Other factors that should be taken into account when sentencing this offence:
  - *list any identified by group and probe on reasons for suggestion.*

### **Comparison offence (5 minutes)**

*Read out description of drug offence or GBH*

- Seriousness of offence compared to offence just discussed
  - *reason for response; and*
  - *probe on additional factor (see description).*

Any final comments on sentencing for this offence.

*\*Suggest five minute comfort break for participants at this point*

### **5) Vignette two – second offence (25 minutes)**

*Consult sample matrix to confirm vignette to use and refer to moderator vignette for specific prompts relating to this offence*

**For groups 3, 4, 6, 7, 9, 12 the second vignette will be rape**

*Aim: to explore contrasting sex offence in detail with the group*

*Hand out a copy of the second vignette to each member.*

### **Sentence (10 minutes)**

- *Ask each member to write the sentence they would recommend for this offence on a piece of paper and hand them back to the moderator (folded if they prefer).*
- *Moderator sets out the range of sentences suggested.*

Probe:

- *reasons for suggested sentences;*
- *agreements/disagreements;*
- *perceived harm/seriousness of the offence; and*
- *try to obtain a general consensus (in other words length of years in prison) among group.*

### **Culpability and harm (10 minutes)**

- *Elements that could add to how serious the offence is (ask group to identify a list of factors and use prompts on the moderator vignette card).*
- *Harm to victim increases/remains the same with these factors?*

### **Aggravating and mitigating factors (10 minutes)**

- Revisit the suggested sentences
  - *Extent factors listed as increasing seriousness should be taken into account for sentencing*

*Moderator:*

- *select two factors from the vignette guide that alters the offence;*
  - *remind of suggested sentence; and*
  - *how should this affect the sentence previously agreed (suggested increase/change to sentence).*
  - *Probe reasons for suggestions.*
- 
- Identify factors to be taken into account that decrease sentence/seriousness (ask group to identify a list of factors then use prompts from moderator card that accompanies vignette)
  - Relative weight to give to each (which issue should be taken most into account – aggravating or mitigating).
  - Other factors that should be taken into account when sentencing this offence.

### **Comparison offence**

*Read out description of drug offence or GBH:*

- seriousness of offence compared to offence just discussed:
  - *reason for response;*
  - *probe on additional factor (see description).*

Final comments on sentencing second offence.

### **6) Vignette three – third offence (10 minutes)**

*Aim: to explore third contrasting sex offence with the group. Please note that the third offence should only be explored if the group agree they are willing/have time to do so.*

*Ask group if they would be willing to explore a third offence briefly (for 10 minutes) or if they would now prefer to move onto the final general discussion. Explain to group third offence – will not be explored in as much detail as the previous two.*

*Hand out vignette three:*

- Suggested sentence:
  - *probe reasons; and*
  - *factors to take into account that may increase/decrease sentence.*
  
- Seriousness compared to rape:
  - *probe reasons.*
  
- Seriousness compared to offence two:
  - *probe reasons.*
  
- Final comments on vignettes.

### **7) Effectiveness of sentencing (15 minutes)**

*Aim: to ascertain general views on the purpose, effectiveness and cost of sentencing sex offences*

- Views on effectiveness of each sentence or penalties to achieve stated purpose:
  - *prison;*
  - *treatment;*
  - *prevention orders;*
  - *registration;*
  - *combination of sanctions; and*
  - *anything else suggested as sentence in discussion.*

### **Costs**

- Should cost be taken into account?

### **8) Conclusion (5 minutes)**

*Aim: to summarise key issues that have come up, give participants the opportunity to raise anything that has not been covered and to wind down*

- Single message about sentencing sex offences they would communicate to the Sentencing Council.
- Anything to add?
- How does each feel about having taken part in the group now (return to round robin introduction process)?

**Explain that handouts on the actual recommended sentence for the offences discussed are available at the front of the room and they are welcome to take these with them.**

Thank participants \* Reassure about confidentiality \* Explain next steps of research

Encourage participants to remain for further refreshments or to ask questions/chat.

## B.2 Vignettes and moderator guidance used in the focus groups<sup>31</sup>

*N.B. participants were given the vignettes in the grey boxes only. Other prompts were used to vary the circumstances of the vignette to see how this might affect the sentence(s) given within the group.*

### Rape

#### The offence

A is an adult woman. She was walking home in a secluded area when she was grabbed by B, an adult man she did not know, who threatened her and raped her before running off as soon as the attack was over. B has been convicted of the offence of rape.

#### **Culpability and harm**

- Elements that could change how serious the offence is:
  - *repeated rape of same victim a number of times or multiple victims;*
  - *abduction or detention;*
  - *abuse of trust;*
  - *more than one offender acting together;*
  - *sustained attack; and*
  - *motivated by prejudice.*

#### *Additional aggravating factors:*

- *threats to prevent reporting offence;*
- *use of drugs or alcohol; and*
- *ejaculation.*

#### *Mitigating factors:*

- *engaged in consensual sexual activity immediately prior to offence; and*
- *consensual act between two children or reasonable belief both are over 16.*

#### *Ask group views on sentence if (select two to four per group and alternate):*

- *victim is aged 11;*

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<sup>31</sup> This document was a guide used by NatCen focus group facilitators to guide discussions and is therefore

- *violent attack, repeatedly punched in face and injured victim;*
- *took photographs on mobile phone of attack and threatened to send to others;*
- *took place in victim's home after they followed them home;*
- *knew victim;*
- *detained victim after the attack for two hours; and*
- *previously stalked victim and planned offence, carried weapon and tape to detain them.*
- ***The offence was 'assault by penetration' via an object or finger not rape***

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written in note format throughout.

## **Sexual assault of an adult**

### **The offence**

E is an adult woman. She was asked by her neighbour, F to come round to his house because he had some DVDs he thought she would like. When she arrived he grabbed her hand and forced her to hold his penis while he groped her through her clothes and tried to remove them. The assault lasted for about eight minutes after she was able to run out of the house and alert the police. F has been convicted of the offence of sexual assault.

### **Culpability and harm**

- Elements that could change how serious the offence is:
  - *contact of naked genitalia (victim/perpetrator).*

#### *Aggravating factors:*

- *ejaculation;*
- *intimidation or coercion;*
- *use of substances to facilitate attack;*
- *abduction or detention;*
- *offender has STI;*
- *physical harm (violence); and*
- *prolonged activity or contact.*

#### *Mitigating factors:*

- *consensual contact immediately previously (if over 16);*
- *youth of offender; and*
- *sexual activity between two consenting under 16s or reasonable belief victim is over 16.*

#### *Could ask group opinion on sentence if:*

- *victim under 16;*
- *stranger in the street;*
- *physical violence; and*
- *levels of contact/nakedness.*

## Sexual assault of a child

### The offence

E is a 12 year old girl. She was asked by her neighbour, F, an adult man to come round to his house because he had some DVDs he thought she would like. When she arrived he grabbed her hand and forced her to hold his penis while he groped her through her clothes and tried to remove them. The assault lasted for about eight minutes after she was able to run out of the house and alert her parents who called the police. F has been convicted of the offence of sexual assault.

### **Culpability and harm**

- Elements that could change how serious the offence is:
  - *contact of naked genitalia (victim/perpetrator).*

#### *Aggravating factors:*

- *ejaculation;*
- *intimidation or coercion;*
- *use of substances to facilitate attack;*
- *abduction or detention;*
- *offender has STI;*
- *physical harm (violence); and*
- *prolonged activity or contact.*

#### *Mitigating factors:*

- *consensual contact immediately previously (if over 16);*
- *youth of offender; and*
- *sexual activity between two consenting under 16s or reasonable belief victim is over 16.*

#### *Could ask group opinion on sentence if:*

- *victim is adult woman;*
- *stranger in the street attacked her;*
- *violence; and*
- *types of contact/nakedness (in other words penis naked or through clothes, contact with face).*

## **Administering a substance with intent to an adult**

### **The offence**

K is an adult woman. She went out for drinks with L, a man that she had recently met. After one drink she began to feel very unwell and dizzy and he offered to take her to his house which was nearby. She was leaving with him when her neighbour (who was also in the bar) stopped them and said they would be able to drive her home instead as she looked awful. She was unable to remember what happened after that but her and her neighbour were concerned and called the police the next day. After tests she found out she had been given a rohypnol in her drink by L. L has been convicted of the offence of administering a substance with intent.

### **Culpability and harm**

- Elements that could change how serious the offence is:
  - *intended offence is rape; and*
  - *intended offence is sexual assault.*

#### *Additional aggravating factors:*

- *threats to prevent reporting offence;*
- *abduction or detention; and*
- *targeting victim.*

#### *Additional mitigating factors:*

- *offender intervenes and prevents sexual offence taking place.*

#### *Could ask group views on sentence if:*

- *previous conviction of rape by perpetrator/compared to no previous conviction;*
- *three perpetrators were involved not one; and*
- *stranger applied drugs when she was not looking and was going to follow her home and commit offence.*

## Sexual grooming online of a teenager

### The offence

H is a 14 year old girl. She used a lot of social networking sites and came into contact on a site with someone who she thought was a 14 year old boy called I. They were in contact for three months and during this time he began to ask her if he could become her boyfriend and ask her about her sexual experiences. He then asked if she could travel to his house to meet him one day in a nearby town when his parents were out and they made plans for her to do so. She asked her parents if she could go and they became suspicious and alerted the police who discovered that I was in fact a 40 year old man called J, who had a previous conviction for sexual assault. J has been convicted of the offence of sexual grooming.

### **Culpability and harm**

- Elements that could change how serious the offence is:
  - *where intent is to commit rape; and*
  - *where intent is to coerce child into sexual activity.*

### *Additional aggravating factors:*

- *intimidation or coercion;*
- *use of substances; and*
- *abduction or detention.*

### *Could ask group opinion on sentence depending on:*

- *offender is 18 and victim 15;*
- *offender pretended to be 14 year old boy;*
- *victim was stating they were 17 years old;*
- *threats made that she had to come or he would distribute images;*
- *threats made she had to come or he would kill her;*
- *previous conviction for child sex offences;*
- *no previous conviction and perpetrator is in employment and a relationship with an adult woman/compared to previous conviction for sex offence; and*
- *young person played a part because of the extended length of contact and messaging.*

## **Possession of indecent photographs of a child**

### **The offence**

O is an adult man. When he took his PC to be repaired the repair staff found on the hard drive pornographic images of young children that had been downloaded online, and alerted the police. O has been convicted of the offence of possession of indecent photographs of children.

### **Culpability and harm**

- Elements that could change how serious the offence is:
  - *offender commissioned or made the images;*
  - *nature (level) of images (age of victim, acts and so on);*
  - *distribution of images; and*
  - *possession of large amount of images.*

### *Additional aggravating factors:*

- *distribute or show to others especially children;*
- *systematically stored, indicating trading;*
- *images accessible to others;*
- *use of substances to facilitate offence making or taking;*
- *intimidation or coercion; and*
- *financial gain.*

### *Additional mitigating factors*

- *few images solely for personal use;*
- *images viewed but not stored; and*
- *images for personal use and consenting 16 or 17 year old.*

### *Could ask difference for:*

- *perpetrator made the images;*
- *images contain no sexual activity/actual penetration (nature of image);*
- *evidence of violence in images;*
- *evidence of distributing images;*
- *financial gain;*
- *only one image; and*
- *perpetrator is married and has teenage children and only one image.*

## Voyeurism of an adult

### The offence

R is an adult woman. When clearing out her bathroom cupboard she found that a hole had been made by her neighbour Q (an adult male) which would enable him to see her having a shower. She alerted the police who found evidence he had been watching her and using it for his sexual gratification. Q has been convicted of the offence of voyeurism.

### **Culpability and harm**

- Elements that could change how serious the offence is.

#### *Additional aggravating factors:*

- *recording person and placing on website or circulating for commercial gain;*
- *recording and circulating that may cause distress (for example to friends); and*
- *threats to prevent reporting.*

#### *Examples of mitigating factors:*

- *age of perpetrator; and*
- *mental capacity or vulnerability of perpetrator.*

#### *Could ask group opinion on sentence if:*

- *stranger looking through window;*
- *evidence of video and posting on website;*
- *neighbour had been in a relationship with victim, previously;*
- *victim was 13 years old (or 10 years old); and*
- *perpetrator is aged 13.*

## Comparator offences

### GBH (grievous bodily harm)

L has been convicted of badly beating someone they did not know, in a park. The victim's injuries required hospital admission and a weapon was used to beat them.

### Drug offence

H has been convicted of possessing drugs with intent to supply. They were caught by the police with a large amount of heroin and with lists of people they sold drugs to and amounts they had been paid.

Questions to consider:

- seriousness compared to sex offence just discussed; and
- seriousness compared to sex offence if the GBH injuries are life threatening.

## B.3 Topic guide for victim/survivor in-depth interviews<sup>32</sup>

### **The study**

The aims of the interview are to:

- explore their or their children's experience of sex offence(s);
- explore the sentence that was given for the offence(s);
- discuss if this sentence was felt to be appropriate, or what would be appropriate if the offence has not been sentenced;
- identify key factors that made the offence more or less serious from the participant's perspective;
- identify the key (aggravating and mitigating) factors that the participant thinks should be taken into account when making sentencing decisions for this offence;
- discuss the effect the sentence had or would have had on them/their family (if sentenced);
- explore awareness of different types of sentences or sanctions for sex offences;
- explore the purpose of sentences for sexual offences (rehabilitation/punishment/risk management);
- explore the perceived effectiveness of different sanctions or sentences; and
- and compare the sentence of the offence they experienced to that of sentences they would suggest for other sexual offences.

**It is important to note that the interviews may deal with highly sensitive and upsetting information for the participant. Researchers should allow participants to lead on the discussion and make clear they do not have to answer any question they do not wish to. Probing should be done sensitively. Researchers should also plan time for general chatting at the beginning and end of the interview to create a safe discussion space for participants.**

### **1. Introduction (10 minutes)**

- Introduce researcher(s) and NatCen
- Explain who the research is for (describe the Sentencing Council and their role)
- Explain research:

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<sup>32</sup> This document was a guide used by NatCen interviewers to guide discussions and is therefore written in note format throughout.

- *SC review the appropriate sentence for different offences;*
  - *examining sex offences because review of existing guidelines is planned;*
  - *not a response to the recent media coverage of rape cases – commissioned before and separately to this;*
  - *duty to incorporate views of the victim/survivors;*
  - *one to one interviews allow views to be explored in depth and privately; and*
  - *potentially sensitive issue to discuss – reassure that they can lead the discussion and choose to have a break or not answer any questions.*
- Explain the interview will last between 1–1.5 hours. The discussion will focus on:
    - *their experience, and the sentence that was given for the offence (if relevant), and what they would recommend for the offence;*
    - *the reason they would recommend this sentence and factors to take into account that make the sentence more severe (in other words the offence is more serious or harmful);*
    - *the factors that should be taken into account that effect the appropriate sentence to give; and*
    - *their views on the purpose and effectiveness of different sanctions for sex offences.*
- Potentially sensitive/distressing to discuss but they are in control of the interview:
    - *no right or wrong answers;*
    - *participation is voluntary – can have a break or choose not to discuss any issue;*
    - *please avoid using names if they can, so we can promote complete confidentiality.*
- Explain recording, data storage and confidentiality.
  - Explain reporting process and that no individual will be identified in the report or details of their offence that may identify them. Data will be destroyed on completion of the research.
  - Check if there are any questions before we start (remind them they can have a break or stop at any time and only answer questions they wish to).
  - Ask for permission to start recording.

**START RECORDING**

## **2) Background information (5 minutes)**

*Aim: to obtain information about the participant, how they heard about the research and allow them to feel at ease in the interview situation.*

- Ask to describe themselves – age, what they do with their time, who they live with and anything else they think is important.
- Confirm where heard about the research.
  - *Assessing any support due to the sex offence they have experienced.*

## **3) The offence they have experienced (approx 15 minutes)**

*Aim: to briefly explore the offence that was committed against them and how far along the criminal justice system it proceeded. Some participants may wish to recount this in some detail and the researcher should balance active listening and allowing them to ‘control’ the interaction with ensuring they do not become overly focussed or upset by the description.*

- Ask to confirm what the sex offence(s) they have experienced was/were.

*Note: we do not want a detailed account of the offence, which may be distressing, just to clarify the key issues below:*

- Confirm the following:
  - *when occurred;*
  - *who committed offence (please note they can avoid using actual names and instead use a label – i.e. stranger, partner, friend, relative);*
  - *nature of offence(s) (i.e. rape, sexual assault, voyeurism);*
  - *was/were offence(s) reported to police?*
    - *what happened then?*
  - *how feel now following the offence(s)? and*
  - *effect of offence(s) on them/family/day to day life.*

If reported to police:

- *investigation/charges brought;*
- *court appearance; and*
- *outcome (i.e. guilty or not)?*

If not reported to police:

- *reason?*

#### **4) Sentencing (approx 15 minutes)**

*Aim: to explore the appropriate sentence for the offence they have experienced and reasons they give for this; where relevant ascertain sentence actually given for offence and how this affected them.*

***The questions in this section require extensive probing and exploration and are central to the research aims.***

**Only ask the following if the offence was sentenced:**

- Sentence for offence given (if relevant):
  - *views on sentence?*
  - *were they in court to hear the sentence? What was that like? If not how did they hear?*
  - *what factors do they understand were taken into account by the judge?*
  - *what was the effect of sentence on them:*
    - *at the time? and*
    - *now?*
  - *sentence proportionate to the effect/harm (as described previously)?*
  - *how important was the sentence to them?*
  - *or was the conviction more important (the recognition that offender guilty)? and*
  - *anything else on how sentencing has affected them?*

**Ask to all (and probe fully):**

- *sentence they think should have been given/think most appropriate.*

*Probe:*

- *reason for suggested sentence;*
- *factors to take into account (list and discuss in detail with participant);*
- *factors that warrant different sentence (such as age of victim, violence); and*
- *if this sentence had been given do they think that would have impacted on them differently, or how would the sentence have impacted on them?*

### **5) Purpose and effectiveness of sentencing (15 minutes)**

*Aim: to ascertain general views on the purpose, effectiveness and cost of sentencing sex offences with reference to the offence they have experienced.*

- Ask if aware of different types of sentences or penalties for sexual offenders not already discussed.

*Prompts:*

- *custodial (prison) sentence;*
- *registration (sex offender register);*
- *prevention order/disqualification order (for example cannot work with children);*
- *Sex Offender Treatment Programme (SOTP);*
- *curfew, confiscation or deprivation (cannot own/access something that may enable offending); and*
- *compensation order (to victim).*
  
- Ask views on whether these would have been appropriate for offence they experienced.
  
- Views on what the **purpose** of sanctions for sex offences should be. *Prompts:*
  - *punishment;*
  - *rehabilitation and treatment;*
  - *reduce risk;*
  - *prevent offending again (recidivism);*
  - *retribution; and*
  - *other.*
  
- Which has most weight (if any)
  
- Purpose the sentence for their offence should/did serve.
  
- Views on **effectiveness** of each sentence or penalties to achieve stated purpose:
  - *prison;*
  - *treatment;*
  - *prevention orders;*
  - *registration;*
  - *combination of sanctions; and*
  - *anything else suggested as sentence in discussion.*

## **6) Comparison of offences (10 minutes)**

*Aim: to explore key factors that should be taken into account when sentencing a generic sexual offence from the point of view of someone who has experienced a sex offence. For comparison with focus group and other interview discussions.*

*Only ask these questions if participant is engaged/not unduly distressed by discussing the offence committed against them. Explain to participant that you would like to cover a general discussion on sentencing for one sexual offence to conclude the interview.*

*Check they are comfortable doing so before proceeding.*

## **7) Culpability and harm**

**Ask the participant to consider sex offences per se and whether they think there are any factors that may lead to the sentence for these types of offences being higher or lower.**

- Elements that could affect how **severe the sentence is** (allow free discussion).  
*Issues that may be raised:*
  - *age of victim;*
  - *location of offence;*
  - *planning offence;*
  - *threat of or actual violence;*
  - *relationship between victim and perpetrator;*
  - *repeated or sustained rape;*
  - *additional sexual acts;*
  - *additional acts of humiliation (taking photographs; urinating on victim);*
  - *mental capacity/vulnerability of offender/victim; and*
  - *age of offender.*
  
- For each issue they raise, probe fully on the reason this issue has been raised and how it should affect the sentence.

### **8) Conclusion (approx 5 minutes)**

*Aim: to summarise key issues that have come up, give participant the opportunity to raise anything that has not been covered and to wind down.*

- What single message about sentencing sex offences would they communicate to the Sentencing Council?
- Anything to add?

**Stop recording \* Thank participant \* Reassure about confidentiality \* Explain next steps of research**

**Encourage participant to chat and pass on helpline numbers if they would like them.**

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