Disrupting sexual grooming

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Crime analysis: Does the existing law adequately protect children from sexual grooming? David Sleight, partner at Kingsley Napley, comments on the existing legislation and the possible implications of so called 'disruption orders'.

Original news

LGA calls for new orders to curb sexual predators, LNB News 26/03/2015 72

The next government should introduce a new type of banning order to stop those suspected of grooming children for sexual exploitation, the Local Government Association (LGA) has said. The LGA is calling for the introduction of 'disruption orders', which would be backed by the courts and give social workers and police a way of intervening in child sexual exploitation when they suspect something is going on, but cannot provide evidence to bring a criminal prosecution without a child having been already harmed.

Is the current law inadequate in protecting children from grooming?

In a word, no. However, due to the publicity surrounding Operation Yewtree and the criticism made of the police in respect of high profile investigations such as the Rochdale abuse inquiry, there is a public and political motivation to ensure that more is done (and seen to be done) to protect children from sexual exploitation. However, extending the substantial powers already in existence beyond law enforcement agencies to local councils is not necessary and risks opening the floodgates.

What are the existing powers? What is driving the calls for the introduction of 'disruption orders'?

It is a criminal offence to meet/arrange to meet with a child 'following sexual grooming' under the Sexual Offences Act 2003, s 15 (SOA 2003). This offence is designed to prosecute adults who have communicated with children (by the internet or any other means) with the intention of meeting with them to commit a sexual offence. There is no requirement for them to have actually met, or for the communications to be sexual for the offence to have been committed. Similarly, SOA 2003, s 14 deals with 'arranging and facilitating a child sex offence'. Again, there is no requirement that any meeting actually takes place, just an intention to commit or facilitate a sexual act. Such offences attract maximum sentence of ten and 14 years respectively.

Sexual Risk Orders (SROs) were introduced by the Anti-Social Behaviour, Crime and Policing Act 2014 and came into force on 8 March 2015. They replace the previous Risk of Sexual Harm Orders introduced by SOA 2003. SROs can be made where a person has done an act of a sexual nature as a result of which there is reasonable cause to believe that it is necessary for such an order to be made, even if that person has never been convicted. Breaching the terms of such an order can result in a prison sentence of up to five years.

The motivation in supplementing the existing legislation with so called 'disruption orders' appears to be borne out of a perception that the police powers are insufficient and to ensure that other interested stake holders, such as local councils who may be aware of grooming behaviour but are currently 'powerless' to stop it, are able to apply to the courts directly for orders preventing such behaviour.

What form could disruption orders take? How would grooming be framed?

If the disruption orders were to be enacted, it is likely that they would be in similar form to SROs--albeit that they would be capable of being applied for by other stake holders such as local authorities, schools and the NHS. It appears that the LGA is calling for such orders to be granted where there is a 'suspicion' that grooming is taking place. However, such a test is likely to be too nebulous for it to be practically applied. As per the requirements under an SRO, there would need to be evidence that some form of sexual act had taken place, even if that act did not amount to a criminal offence (for example sexual communication between an adult and a child).

Could an individual challenge a disruption order?

A disruption order is likely to be challengeable in the same way as provided under the SROs--ie by applying to the court 'by complaint' for a variation or discharge of such an order. Such arguments will be based around the suggestion that a court cannot be satisfied that the order is necessary for protecting children (or any other vulnerable person) from sexual harm from the defendant.

What are the concerns around the possible introduction of such orders?

The primary concern of introducing such orders is that local authorities are not best placed to gather intelligence and carry out investigations in relation to sexual grooming. If such powers were enacted, there is a real risk that ill-founded and evidentially weak cases could be brought to court. While, of course, councils should not ignore child exploitation, reporting concerns and suspicions to the police in a timely manner and then working with the police to bring prosecutions is likely to be a far more effective strategy. The police are duty bound to investigate those cases where there is suspicion that criminal activity is taking place, and even if there is insufficient evidence for a prosecution the police can still apply to the magistrates' court for an SRO, if appropriate.

Is there the political appetite to introduce such legislation?

Whether or not the LGA's cause has any political currency remains to be seen. The reality is that the police now have the powers and tools at their disposal to enact orders that will prevent those who are a genuine risk to the community from potential grooming behaviour. Granting further draconian powers to local authorities who do not have the necessary experience or training in applying for and deploying such orders is a step too far.

Interviewed by Nicola Laver.

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