Civil Prevention Orders Sexual Offences Act 2003

ACPO COMMISSIONED REVIEW OF THE EXISTING STATUTORY SCHEME AND RECOMMENDATIONS FOR REFORM

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1. INTRODUCTION

1.1 This report was commissioned by the ACPO Child Protection and Abuse Investigation Working Group (ACPO CPAI WG). The authors' biographical details are reflected in Appendix 1.

1.2 The issues raised in this report are well-documented. An urgent response is needed. The sexual harm to children is immediate, extensive and serious. Failing adequately to prevent it will (does) attract legitimate criticism. The UK's reputation as a champion of children's rights is being tested by the existing arrangements and resourcing.

1.3 The report reflects detailed consideration by the authors of extensive material and, more widely, is based on their existing and collective experience and expertise. A survey was conducted of individual forces across the UK. Not every such force responded, which may of itself tend to illustrate the lack of a specialist capacity in these forces in terms of civil prevention orders. We are satisfied that the responses we received provide a sufficient empirical basis to draw wider conclusions.

1.4 The report is directed primarily at the law in England and Wales. This is partly for ease of analysis. It also reflects the separate powers under the primary legislation applicable to Scotland (particularly) and Northern Ireland, each of which of course has considerable powers under devolved legislation. We anticipate however that the underlying theme of what is rehearsed in this report will apply equally to these countries.

1.5 The report represents the collective and unanimous opinion of the authors in their personal capacities. In terms of corporate responses, CEOP and ACPO will review the report, we hope over a short time frame, and determine whether and to what extent the proposals are presented to Government for adoption by way of reform to primary legislation. A draft report was submitted for comment to members of the multi-agency ACPO CPAI WG, and this final version integrates the comments that were received. The report is made public to promote informed debate by NGOs, child protection agencies and legislators. As a minimum, we invite a formal review by Government of the issues we have raised, both as to (i) the suggested reforms of the civil prevention order regime and (ii) the arrangements and resourcing of the UK's policing of extra-territorial sexual offending against children by British Nationals (and, to a lesser extent, non-British Nationals resident in the United Kingdom). The first may require legislation: the second does not.

1.6 Whilst policing is traditionally regarded as a matter for the Home Department, some of the issues identified in this report for action, not least extra-territorial resources and deployment, may equally be seen as legitimate areas of funding for international development under the Department for International Development (DFID). The wider public may well be surprised that many existing aspects of the UK's engagement with international child protection are contingent either on discretionary, and reducing, year-on-year funding from the Foreign and Commonwealth Office (FCO), and/or third-party corporate sponsorship.

2. EXECUTIVE SUMMARY

In producing this report we reached the following central conclusions:

2.1 That the existing statutory regime presents unnecessary and unreasonable obstruction to the objective of preventing sexual abuse of children, most particularly in vulnerable jurisdictions, and that otherwise preventable sexual abuse of children is occurring on a significant (if unquantifiable) scale;

2.2 Individual police forces should, even within the existing statutory regime, take more informed and less risk-averse approaches to using the existing regime;

2.3 Alternative secondary forms of prevention (such as Interpol notices; international co-operation; and/or attempting prosecutions for extra-territorial sexual offending against children under the combined provisions of section 72 of each of the Sexual Offences Act 2003 and the Criminal Justice and Immigration Act 2008 [removing the dual criminality requirement]), are simply neither adequate nor effective in practice in preventing sexual exploitation internationally;

2.4 The statutory regime insofar as it applies to the protection of children (we do not advocate reform so far as the orders apply to adult victims) should be simplified so as (i) to create a single, and straightforward, evidence-led test justifying a prevention order without other pre-conditions, and (ii) that the range of applicants should be extended;

2.5 The proposed simplification in relation to orders protecting children (we repeat that we do not advocate reform so far as the orders apply to adult victims) is that the existing three forms of civil prevention orders (Sexual Offences Prevention Orders ["SOPOs"]; Foreign Travel Orders ["FTOs"]; and Risk of Sexual Harm Orders ["ROSHOs"]) be abolished and replaced with a single "[Child] Sexual Offences Prevention Order" in the following terms:

"On the application of a qualifying person [Chief Officer of Police or other qualified person [CEOP/SOCA/NCA/CPS, etc]], or on conviction for a qualifying offence, a court may make a child sexual offences prevention order in respect of any person if it is satisfied that it is necessary to make such an order for the purpose of protecting a person of under 18 years' from [serious] sexual harm from the defendant/respondent"

2.6 We resist the term "serious", borrowed from existing legislation, since it pre-supposes that are there is some category of sexual harm that may be caused to a child that is not intrinsically serious or that is not worthy of prevention. Equally, we recognize that term "sexual harm" requires statutory definition;

2.7 Such simplification would be wholly compatible both with the duties of the State in terms of international human rights (i.e. to take positive action to protect the basic human rights of children internationally) and, equally, the rights of those subject to such orders not to be made subject to such restriction without a determination by an independent court with associated rights of appeal and review;

2.8 An alternative approach is simply to re-draft the provisions relating to Foreign Travel Orders (section 114 of the 2003 Act) so as to remove the necessity of either (i) a qualifying conviction, or (ii) evidence that since the "appropriate date" (usually the date of conviction) the subject of application has "acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made". FTOs should be available (i) without prior conviction; and (ii) on any date, including the "appropriate date" (i.e. at date of sentence if there has been a qualifying conviction), and without the need to prove conduct since the appropriate date. The threshold would be that a court "..is satisfied that it is necessary to make such an order for the purpose of protecting a person of under 18 years' from [serious] sexual harm" from the subject of the application;

2.9 There should be power to impose an interim FTO and to require surrender of passports pending determination of any application for an FTO, and the procedure to achieve this should prevent a person leaving the United Kingdom before the application is determined;

2.10 The protection of children in the United Kingdom would be promoted by revision to the ROSHO regime. As the data demonstrates, although not contingent on a preceding qualifying conviction, the other requirements are such that the orders seldom arise in practice. A more open-ended basis of application is appropriate for situations where there is no qualifying previous conviction;

2.11 We do not propose any change to the associated statutory regimes directed at child protection, most particularly those that are in law (or at least in practice) an automatic consequence of conviction for qualifying offences. As applied to the protection of children in the United Kingdom these regimes, coupled with the law as to SOPOs (see *R v Smith and others*[1] for recent welcome clarification) provide a coherent and principled regime following conviction. These are (i) the notification requirements pursuant to sections 80 – 102 of the 2003 Act (as amended in 2012)[2]; (ii) orders disqualifying work with children pursuant to a court order under section 28 of the Criminal Justice and Court Service Act 2000 and/or a decision of the Independent Safeguarding Authority under the Safeguarding Vulnerable Groups Act 2006; and/or (iii) licence conditions if an offender is sentenced to a term of imprisonment;

2.12 Importantly, we both observe and emphasise that these regimes operate only to regulate conduct in the United Kingdom, and provide no extra-jurisdictional control. Consideration should accordingly be given to extending jurisdiction to cover extra-jurisdictional breaches of orders;

[1] *R v Smith and others*, [2012] 1 WLR 1316, CA.
[2] *The Sexual Offences Act 2003 (Notification Requirements)(England and Wales) Regulations 2012*, SI 1876/2012, in force 13 August 2012.

2.13 A systematic review is required of the existing UK arrangements in terms of policing international sexual offending against children. The existing arrangements (largely dependent on resourcing by local forces; without any dedicated national investigation team; and without any permanent UK police resources extra-jurisdictionally) appear inefficient; ineffective; and badly resourced. This review should include the exchange of information between UK agencies (such as ACPO[3]/SOCA/CEOP, and the ISA) and by such UK agencies to extra-jurisdictional agencies and/or charities/schools;

2.14 The resources required to produce material and necessary improvement to the policing of extra-jurisdictional sexual offending against children are relatively modest set against the national resourcing of policing and international development; and

2.15 Whilst the existing ACPO policy (arguably by force of necessity) promotes investigation by local forces, the creation of a permanent, centralized, national investigation team directed at extra-territorial sexual offending against children by UK nationals is wholly consistent with the statutory obligations on individual forces to enter collaborative arrangements, and the expressed statutory purpose of the National Crime Agency. On balance, and recognising that investigations will require collaboration with local forces, relative to the existing model/policy we have concluded that such a permanent national resource would actively promote the protection of children internationally from sexual abuse by UK Nationals. Suitably coordinated and devised, we believe it may not involve any net increase in overall expenditure (and/or may be seen as part of legitimate international development and resourced as such by DFID). Other EU member states have done this and seen a significant improvement in the detection of their travelling sex offenders.

2.16 The protection of children from sexual abuse, nationally or internationally, should not represent an area of political dispute. Accordingly, it is hoped that the basic recommendations would, at least in principle, attract cross-party support. Human rights obligations would be more adequately met, and the rights of those potentially subject to an order fully protected.

[3] Throughout this document ACPO should be taken to include the Scottish equivalent, namely ACPOS.

3. WORKING ASSUMPTIONS AND LIMITATIONS OF DATA

3.1 No informed party would dispute either (i) that the sexual exploitation of children is an endemic problem internationally; or (ii) that there is a combination of factors that is promoting an expansion, rather than reduction, in such abuse being conducted extra-territorially by UK (and other) Nationals.

3.2 Whilst there is a wealth of literature and data available (originating from international organisations such as United Nations; individual countries; and the NGO community) the intrinsic nature of the offending (covert; much under-reported; in jurisdictions with highly variable systems of policing and criminal enforcement and/or different cultural norms as to child protection) is such that hard quantitative data is, and will remain, elusive.

3.4 This fact must be recognised as a corollary of the mischief(s) we are addressing. It cannot however operate as a licence for inaction by any State, including the UK, to fail to ensure an effective regime is in place to address travel to vulnerable countries by likely offenders. Mature and well-resourced (by international standards) States such as the countries constituting the UK must take active responsibility for the known risks of extra-territorial sexual offending against children represented by their citizens.

3.5 The problem is widely documented. From a relatively recent American academic perspective the underlying themes are conveniently rehearsed in *Sex offenders and Child Sex Tourism: The Case for Passport Revocation*[4] ["Hall"] and, more generally, UN reports; US Annual ICE reports; and reports and published analysis by multiple international charities and NGOs including ECPAT International and ECPAT UK. These reports reflect some consistent themes and some headline data may usefully be rehearsed.

3.6 The United Nations estimates that as many as two million children are employed in the commercial industry of sexual abuse of children internationally. Hall observes [page 155] that "Sex tourism offers pedophiles [*sic*] and other child sex offenders easy access to vulnerable children, while imposing on them minimal risk of exposure, arrest, or successful prosecution".

3.7 The United Nations Special Rapporteur has observed that offenders (although a graphic description, we do not adopt the term "sex tourist", since many extra-territorial offenders are permanently or semi-permanently resident abroad, often exploiting charitable work to facilitate systematic long-term sexual abuse of children, or visiting on business rather than recreationally) "…may travel virtually anywhere to engage in sexual abuse of children", and that they frequently seek destination countries that are poor and offer "high levels of anonymity and exclusion".[5]

3.8 Other factors documented from multiple sources by Hall include the global disparity between the wealth of adults in the North and poor children in the South; the disparity between the putative offender

[4] John A. Hall, D.Phil., Virginia Journal of Social Policy and the Law, Winter 2011, at 156 – 160

[5] *The Protection Project, International Child Sex Tourism: Scope of the Problem and Comparative Case Studies 32 – 33* (2007).

and the victim creating a "power imbalance" promoting access to children and a corresponding reduction in the probability of intervention by local authorities; and that the commoditization of children is facilitated by the "diminished social, economic and political status" of children in receiving countries

CASE STUDY 1 - DF

DF was convicted of unlawful sexual intercourse with a 15 year-old girl prior to the 1997 Act. In 2006 he moved to Cambodia and set up a charity on an industrial rubbish dump near Phnom Penh. These dumps are the source of work and large populations of vulnerable and financially impoverished people and children live on them permanently. DF was able to groom children for sexual abuse under cover of charity over a period of years. The girls he abused were typically in their early teens and they and their wider families/siblings often wholly dependent on DF financially. Eventually DF was exposed by a newspaper and fled to Thailand where he was arrested. He was tried in his absence and sentenced to eight years' imprisonment. Extradition proceedings are pending.

3.9 The ACPO CPAI WG agree and endorse each of these conclusions. They reflect some uncomfortable truths. Those with a sexual interest in children can travel with relative impunity to certain jurisdictions confident that there will be a ready supply of children available to hire for negligible sums, in the context of a civil society where the probability of detection and conviction is equally negligible, and the cultural norms are antipathetic to child protection.

3.10 It is, and remains, a well-documented problem. The scale of it is intrinsically difficult to quantify but on any view the figures are both staggering and appalling.

3.11 Borrowing some of the aggregated data from Hall's analysis, the numbers of prostituted children in Thailand alone is estimated at between 60,000 and 800,000, with ECPAT International estimating it at 200 – 250,000, including tens of thousands of children trafficked for that purpose from Burma, Laos and China; Government and non-government sources estimate the numbers in the Philippines at 50 – 60,000; the Bangladesh government accepts a domestic figure of 10,000, with a further 40,000 trafficked to Pakistan; the figure in India is estimated at 400 – 500,000; in China the estimated figure is between 200 and 500,000 children; in Brazil "as high as 500,000"; and UNICEF estimates that 35% of Cambodia's 55,000 prostitutes are children under the age of 16 years'.

3.12 Coupled with this is the number of orphaned children in countries with limited or non-existent structures for adoption and accordingly hopelessly vulnerable to sexual exploitation. These include some of the poorest countries in the Continents of Asia and Africa, including the Asian sub-continent. It is not however limited to these regions: it will be recalled, for example, that following the catastrophic earthquakes in Haiti in late 2009 hundreds of thousands of orphans were produced to add to the estimated 380,000 preceding the event. Ordinary systems of adoption collapsed and international agencies had to call

for a moratorium on international adoptions not already in progress before the earthquake to ensure criminals did not exploit expedited emergency systems for international adoption.[6]

3.13 These estimates for the numbers of children involved in commercial sexual exploitation – even if, which we do not accept, they are over-estimated – do not include non-commercial victims of such sexual abuse, such as child residents of orphanages abused by resident foreign charity workers. History demonstrates that this is, and remains, an endemic problem. There is no single international database and the system, based on unaccountable ad hoc local volunteering, is easily exploited.

3.14 Those abusing the cover of charity to obtain contact to children do so in a relatively unregulated market and in a context where a foreign charity's ability to access recorded information is hopelessly limited. The existing arrangements are addressed in more detail below (Parts [10] and [11]), and it is recognized that the introduction of International Child Protection Certificates ("ICPCs") does not provide more than a qualified (although significant) improvement pending reform to primary legislation regulating the right to disclose data generally, and the effect of intelligence specifically, to third-parties.

3.15 We recognise that the European Criminal Records Information System provides UK authorities with EU-wide access to criminal records. Since April 2012 it has enabled the UK to obtain notifications of 1,700 British nationals convicted of crimes elsewhere in the EU, and nearly 1,600 non-UK EU nationals who are being pursued in the UK.

3.16 There is no wider international database recording convictions and, even if there were, the consequences of it would be easily avoided by a change of identity. A UK police officer would be breaching the Data Protection Act 1998 if he provided such data to a third party from in or outside the jurisdiction (it would not qualify as a "police purpose", and communication to a third party would be an offence in any event). A charity located abroad, even if it asked (which is a remote probability given the reality of these charities in vulnerable jurisdictions) has no right to access the UK Criminal Records Bureau ["CRB"] data. The flow of data between CEOP/SOCA and the Independent Safeguarding Authority is compromised by data protection legislation.

3.17 As with ordinary criminal proceedings, the truth of the risk posed by an individual more than usually lies in the wider intelligence picture. Simply certifying that an individual has no formal convictions or other findings in that context would risk being positively misleading as to the reality.

3.18 Many British offenders simply set up their own children's charities and co-reside with orphaned or other children with impunity. There is often little or nothing to regulate such charitable activity.

[6] See *The Guardian*, 20 and 21 January 2010, Ed Pilkington.

CASE STUDY 2 - NR 2006

NR, 56 at the date of his suicide in July 2006, was the deputy director of a children's home in Islington in the 1980s. He was one of a number of members of Islington Social Services accused of abusing boys in their care. He was not charged but was placed on the statutory list preventing work with children. He nonetheless set up a children's activity centre in Sussex and allegations of further sexual abuse surfaced. His home address was searched in 1991 and hundreds of images of young boys and gay pornography recovered. He was again not prosecuted. He travelled to Thailand where he enticed hundreds of boys aged between 6 and 10 years' to his home supposedly to play video games. The boys would be paid to perform sexual acts and a commission for introducing others. Complaints were made to the school but teachers reported that the affected boys would then return to school with pockets full of money. His house was raided and games consoles, sweets, bags of children's clothes and sexual lubricant recovered. He then committed suicide.
Even under the existing UK legislation neither a SOPO nor an FTO would be available. A ROSHO would only be available if the acts (some extra-jurisdictional) were proved to the criminal standard. NR had bribed his foreign victims. The ROSHO would not prevent foreign travel.

CASE STUDY 3 - LG, 2007 - 2009

LG, in 2009 a 37 year-old German, was convicted in his absence in Cambodia for a series of sexual assaults on children. The underlying offending was sufficiently serious to result in a sentence of 10 years' imprisonment. He entered the United Kingdom in his own name and sought and obtained work as a paediatric nurse at Northwick Park Hospital, Harrow. The employing health authority had conducted full "enhanced" CRB checks before so employing him. In the absence of a single international (or even European) database however the Cambodian conviction was not disclosed by the enhanced CRB check. He was arrested in October 2008 after applying for a UK visa for a 14-year-old Burmese boy he wanted to bring here. Simply by chance a UK official recognized his name in connection with his enforced departure pending trial in Cambodia. His trial for a false job application at the Crown Court collapsed in consequence of deficient documentation from Cambodia. He is believed to have been deported to Germany thereafter.

CASE STUDY 4 - PM, 2010

PM, now aged about 62 years', is a British National with no convictions and, so far as UK offending is concerned, no incriminating police intelligence. In the United Kingdom he worked as a teacher for many years at a school. He responded to a website advertisement in 2003 for teachers at a charity funded Anglo-Indian boarding school for all ages in Chennai, India. He had "glowing references" and was effectively given the job following a telephone interview. He appears to have had a small house in the area for many years. He stayed in a room at the end of a dormitory 2-3 times a week and alternated between India and England. In 2006 allegations of sexual abuse were made by a number of boys at the school and, possibly, at a different school in Kovalem. In 2007 the Indian authorities indicated that in the absence of a complaint from the school it would not investigate further. Gloucestershire Constabulary then adopted the investigation. The initial statements taken by the school involved many boys rehearsing their accounts in front of each other. Using section 72 powers the trial was listed for 16 June 2010. The prosecution, inexperienced in these procedures, had not secured the necessary formalities under ILOR procedures to use videolink to India and a delay of a least 6 more months was predicted. The judge refused an adjournment: whilst the investigating police were exonerated, he ruled that the "CPS could not escape responsibility by seeking to blame Indian officialdom" and that "it had moved too slowly and ineffectively to secure permission for child witnesses to give their evidence via a videolink from India". He was formally acquitted.

We observe that many UK forces would not have investigated this offending. Following acquittal, with no qualifying conviction there was no power to apply for a SOPO or an FTO. He was free to travel. He

was not subject to the statutory notification requirements. A ROSHO could not be sought since there was insufficient evidence of risk to UK resident children.

CASE STUDY 5 – DG and AW 2006 – 2012

In 1995 DG retired from the Royal Navy but active with Sea Cadets, went to India to set up an orphanage. He also had sole financial control of a UK registered charity with a bank account in Jersey that was funding his work. DG established 3 centres in Bombay which accommodated over 150 street children. Rumours circulated for years about DG abusing boys and taking them to Goa to be abused by other Western men. In 2001, and with the support of Childline India, five boys lodged complaints with police regarding physical and sexual abuse, organised paedophilia and trafficking boys out of the Anchorage Shelter in Mumbai (Bombay). The allegations also involved AW, a navy and sea cadet contact of DG who was a frequent visitor to the Anchorage shelter. At the time of the complaint both DH and AW were abroad, AW back in the UK and DG (who had initially travelled to Kenya) was by then in Tanzania and had set up another orphanage. AW was eventually detained by US authorities and extradited back to India having been flagged by an Interpol red notice. Tanzania and India had no extradition agreement and DG freely travelled back and forth to the UK without being detained by the UK until he voluntarily returned to India where he was arrested in 2005. This was despite the Interpol red notice being active since 2002.

In 2006 DG and AW were found guilty by the Bombay High Court and sentenced to six years' imprisonment and asked to pay compensation to the boys. In 2008, the High Court overturned the conviction and released the accused. An immediate appeal application to the Indian Supreme Court by the children's lawyers required the men hand over their passports and wait in India for the case to be heard. The Supreme Court also ordered the British High Commission not to issue new travel documents. In March 2011, in a landmark decision, the Indian Supreme Court upheld the appeal and sent the two men back to prison to serve the remainder of their sentence. Neither man paid any compensation to the boys despite the original High Court order. These appeals were actively promoted by local jurisdiction NGOs coupled with international pressure through other NGOs.
DG was released in December 2011 and returned to the UK. The Metropolitan Police applied for a maximum 5-year worldwide Foreign Travel Order. DG challenged the duration of the FTO but was unsuccessful. The five-year FTO is accompanied by a requirement to surrender his passport. AW was released from prison several months later and has returned to the UK.

3.19 Commercially motivated sexual exploitation of children correlates with the associated international industry in human trafficking for this purpose. The United Nations has estimated that the value of the international traffic in human beings for sexual exploitation is measured at $5-7 billion/year, with other NGO estimates hugely exceeding this. The UN International Children's Emergency Fund (UNICEF) estimates that 30% of trafficked females are children; the UN Office of Drugs and Crime (UNODC) concluded that 79% of human trafficking is for a sexual purpose, and that between 2003 and 2007 the proportion of children involved increased from 15% to 22%; and up to 200,000 are trafficked internally for exploitation every year in India, many sold by their parents for as little as £11.00.[7]

3.20 Hall rehearses that "the perpetrators of child sex tourism are overwhelmingly male, from a variety of socio-economic backgrounds, and typically from wealthy, industrialised nations such as the United States

[7] See *The Guardian*, 4 August 2012, *India targets the traffickers who sell children into slavery*, Gethin Chamberlain. The report rehearses that 20 traffickers were arrested in connection with a single train from Bihar to Delhi carrying dozens of children in desperate conditions. Chamberlain reports "…the reality of the Indian justice system is that within months most, if not all, will be out on bail. Few will ever face court".

and Western European nations, including the United Kingdom, Germany, and France, as well as Australia and Japan". *Todres*[8] calculated (in 1999: there appears to be no better subsequent data) that of individuals arrested in South East Asia for sexual abuse of children during the 1980s and 1990s 24% were Americans; 16% were Germans; 13% were British and 13% were Australian.

3.21 ECPAT International reported in 2009 that the commercial sexual exploitation of children was expanding and that governments were not doing enough to address their global responsibilities. This expansion is multi-factorial, and no doubt a product of the continuing disparity between the resources of the offenders and that of the victims. Detection and prosecution rates remain extraordinarily low.

3.22 Coupled with these economic and enforcement considerations is the unquestionable role of the internet and mobile communication in facilitating contact with children (directly with individual victims, or more generically through unlawful information websites) before travel. Such pre-travel facilitation can only increase and, as will be demonstrated, is invariably not reflected as a criminal offence (either substantive; inchoate; or conspiracy) under existing UK legislation.

3.23 It is to be observed that in many destination countries there is no prohibition against so-called child pornography.[9] In 2009 the United Kingdom Internet Watch Foundation found that some that some 69% of the children depicted in such images appeared to be under 10 years', with some 24% of these under 6 years'; it found an increase in the proportion of the most serious images (i.e. those showing penetration of a child and/or sadism or bestiality with a child in a sexual context) on websites from 7% to 23% between 2003 and 2007.

3.24 This is the reality of the climate into which a putative offender is travelling. The law is often either undeveloped or unenforced or both.

3.25 We observe that whilst a significant proportion of offenders may only do so extra-jurisdictionally by way of applying a risk assessment based on this reality, it is naïve to assume that such offending will not subsequently be promoted domestically by such criminality. Even if it were legitimate to value the obligation to protect a child from such abuse within the domestic jurisdiction differently than a child outside the jurisdiction, a proportion at least of such domestic offending will be the product of conduct first practiced and learnt abroad. An offender's basic motivation to engage in sexual contact with children

[8] B.U. PUB. INT. L.J. 1, 3 (1999)

[9] *The International Centre for Missing and Exploited Children Model Legislation and Global Review 2008* identified 5 features of criminal legislation by which to evaluate the enforcement of offences relating to the possession, making and distribution of indecent pictures of children. These were legislation specific to child pornography; whether child pornography was defined; the existence of computer facilitated offences; whether simple possession was an offence; and whether there was a duty on an ISP to report such criminality. Whilst many countries scored only 1/5, the following countries scored 0/5: Antigua & Barbuda; Bahamas; Bangladesh; Belize; Botswana; Cameroon; Dominica; Fiji; Ghana; Grenada; Guyana; Jamaica; Kenya; Lesotho; Malawi; Malaysia; Maldives; Mozambique; Nauru; Nigeria; Pakistan; Rwanda; St Kitts & Bevis; St Lucia; St Vincent & the Grenadines; Seychelles; Sierra Leone; Singapore; Swaziland; Tonga; Trinidad & Tobago; and Uganda.

crosses such borders. It is only the equality of opportunity to do it without material risk of enforcement that changes.

3.26 We contend that, assuming such a significant risk is proved to exist, the legal process should be driven by the simple practical objective of protecting highly vulnerable children from such criminal sexual conduct. The legal process to restrict travel of those representing a significant risk should of course be contingent both on admissible evidence and the right for any person who may be made subject to restriction to participate sufficiently in the process before such restriction is imposed. The burden of establishing that any restriction is necessary must be on the party seeking to impose it. We do not contend that a restriction on the right to travel is ever automatic on conviction: the right to travel is important and any restriction must be strictly justified.

3.27 There must be a role for an independent decision-maker, probably judicial, as some part of the process. Whilst we do not suggest any revision so as to make the decision-maker in the United Kingdom the applicant rather than a court, this is not an inevitable structure. In theory it would be possible, and compliant with human rights obligations, to have a non-judicial decision-making body coupled with rights of appeal to, and/or review by, an independent court.

3.28 However achieved, what is surely unacceptable is a process that impedes the decision-making process by the erection of artificial pre-requisites to making an application and/or procedures on application that frustrate the objective to be achieved e.g. by permitting travel pending determination of an application once made on complaint to the court.

3.29 As we contend the following analysis demonstrates, the existing regime in England and Wales fails each of these tests.

4. THE EXISTING STATUTORY REGIME: ANALYSIS

4.1 The existing regime was introduced by Part 2 of the Sexual Offences Act 2003, in force from 1 May 2004. The 2003 Act reflected an extensive consultation as to sexual offences more generally, and Part 1 introduced a series of new offences and statutory definitions. It was a welcome piece of legislation in terms of modernising the definitions of sexual offences.

4.2 In terms of the civil prevention order regime rationalisation and modernisation were less dramatic in ambition and effect, although the 2003 Act did extend the circumstances in which such orders were available. It can be seen that the language and apparent philosophy of the 2003 Act represents something of an amalgam of preceding legislation.

4.3 Under section 5A of the Sex Offenders Act 1997 restraining orders could be made by the Crown Court and youth court only where the adult offender had been made subject to a term of imprisonment; a hospital order; or guardianship order (and where not guilty by reason of insanity where the relevant substantive criminal act was proved) and, in respect of the youth court, a detention and training order for a term of twelve months or more or equivalent hospital/guardianship/insanity led orders as for an adult. The order could be made [section 5A(2)] if the court was satisfied that is was "necessary to do so in order to protect the public in general, or any particular members of the public, from serious harm".

4.4 Section 2 of the 1997 Act provided the statutory basis for the old notification requirement regime. Notification requirements arose under section 1 on conviction (but not, at that stage, when sentenced to other than a term of imprisonment or a community order). It is right to recognize that the notification requirements under the 2003 Act are significantly more robust, most particularly following the implementation of the 2012 amendments under secondary legislation.[10]

4.5 What remains consistent however is that breach of these requirements extra-jurisdictionally does not represent an extra-territorial offence. Whilst section 7 of the 1997 Act provided welcome extensions to extra-territorial criminal liability for defined substantive sexual offences, and created a notification requirement in terms of limited classes of foreign travel, the wider prohibitions under section 5A (such as prohibiting work with children) were not extra-jurisdictional offences. The same situation applies under the 2003 Act regime.

4.6 Similarly, some of the language of the 2003 Act is clearly modeled on, possibly directly adopted from, sections 2 and 20 of the Crime and Disorder Act 1998, the relevant provisions of which were abolished on implementation of the 2003 Act.

[10] *The Sexual Offences Act 2003 (Notification Requirements)(England and Wales) Regulations 2012*, SI 1876/2012, in force 13 August 2012.

4.7 The basic provisions presupposed that the subject of any application was already a sex offender (i.e. that he had a qualifying conviction) and that the application would be made on complaint to a magistrates' court by a chief officer of police if he believed the subject "[was] in, or [was] intending to come to, his police area" and that the sex offender in question "[had] acted, since the relevant date, in such a way as to give reasonable cause to believe that an order under this section is necessary to protect the public in the United Kingdom, or any particular members of that public, from serious harm from him".

4.8 The obstructions to child protection inherent this approach are reproduced under the 2003 Act and analysed in that context to avoid repetition.

4.9 It is right to recognise welcome additional legislative reform subsequent to the implementation of the 2003 Act. Some further detail is rehearsed in context later.

4.10 The more significant developments include sections 72 of the Criminal Justice and Immigration Act 2008 (extra-territorial offending for defined sexual offences against children committed by UK Nationals without the necessity of dual-criminality); the extension of the duration of an FTO from 6 months to five years, and disapplication of the six month limitation period for making a complaint (i.e. an application for a prevention order) under section 127 of the Magistrates' Courts Act 1980 introduced by sections 24 and 22 of the Policing and Crime Act 2009; the barring provisions under the Safeguarding Vulnerable Groups Act 2006; the reforms to the notification requirements introduced by the 2012 regulation; and the possibility of extending section 107 of the 2003 Act (SOPOs) to include "requirements" as well as simply "prohibitions" [see draft Criminal Justice Bill 2012].

4.11 Equally, however, the best available empirical data provides a stark basis from which to start any analysis of the question of reform. Insofar as data is collected, the numbers of those made subject to prevention orders as recorded on the police database ViSOR are wholly discordant with the numbers of those known (though prior criminal conviction, police intelligence, or both) to represent a significant risk to children.

4.12 In a Parliamentary question[11] on 3 September 2012 Fiona Mactaggart MP asked the Secretary of State for the Home Department "(1) how many foreign travel orders of each duration have been issued to sex offenders convicted of sexual offences against children *(a)* in the UK and *(b)* abroad in each year since the Sexual Offences Act 2003 came into force [118428]"; and "(2) how many foreign travel orders have been issued to sex offenders convicted of sexual offences against children *(a)* in the UK and *(b)* abroad in each year since the Sexual Offences Act 2003 came into force [118429]".

4.13 The relevant Minister, Lynne Featherstone, answered that "The total number of foreign travel orders issued per year (and by duration) can be found in the table A. The Violent Sexual Offenders Register

[11] Hansard, 3 Sep 2012: Column 193W

(ViSOR) database is a management tool and not designed as a statistical data tool. As such it has not been possible to differentiate between offences committed in the UK and those committed overseas."

TABLE A:

Foreign travel orders issued by year and length/duration								
Number								
	Calendar year							
Duration	*2005*	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012 (1)*
2 weeks	—	—	—	—	—	1	1	—
2 months	—	—	—	—	—	2	1	—
3 months	—	—	—	1	—	—	1	—
4 months	—	—	—	—	1	2	—	—
6 months	1	3	—	1	8	4	—	—
10 months	—	—	—	1	—	—	—	—
1 year	—	—	—	—	1	1	—	—
2 years	—	—	—	—	—	—	—	1
2 years, 6 months	—	—	—	—	—	—	1	—
3 years	—	—	—	—	1	1	1	—
5 years	—	—	—	—	—	4	6	4
6 years, 6 months	—	—	—	—	1	—	—	—
Total	1	3	0	3	12	15	11	5
(1) 2012 figures are for the four months from January to April.								

4.14 This was followed by a question from Sir Paul Beresford, MP. He asked, "(1) how many of the Britons arrested and charged abroad between April 2011 and March 2012 for the rape and sexual abuse of minors under the age of 18 had previously received a foreign travel order [118352]; (2) how many of the Britons arrested and charged between April 2011 and March 2012 for the rape and sexual abuse of minors under the age of 18 were on the Violent and Sex Offenders Register at the time the offences took place [118356]; and (3) how many Britons arrested and charged abroad between April 2011 and March 2012 for the rape and sexual abuse of minors under the age of 18 had previously been reported missing by the UK police?" [118370]

4.15 The Minister's answer was as short as it was surprising. Reproduced in full, she said, "The statistical data requested is not held centrally".

4.16 Finally, Fiona MacTaggart MP asked "Which agency is responsible for meeting sex offenders at UK airports following their conviction abroad and deportation to the UK?" [118427]

4.17 The answer was again commendably short. It simply provided, "The management of registered sex offenders is an operational matter for the police. Where a sex offender who has committed a crime abroad

returns to the UK the police are able to make an application to the court for a Notification Order, which will bring that offender within UK management."

4.18 What is not addressed is the fact that unless the "sex offender" is a convicted sex offender, no such application for a notification order could in fact be made.

4.19 More generally, a number of other obvious points arise from this data:

i. Relative to the numbers known to commit sexual offences against children, whether convicted or unconvicted, and the documented scale of the industry of child sexual exploitation internationally, the aggregate numbers of orders is absurdly small. This is both self-evident and shocking;

ii. Given the importance of the issue, the quality of data collection is wholly unsatisfactory. There is no differentiation between domestic and extra-jurisdictional offending on ViSOR. When the Minister said that the "statistical data requested is not held centrally", this is to be interpreted as "the data is not collected at all". In terms of what is implied as to the UK's commitment to compliance with international human rights obligations to children, this of itself is disturbing;

iii. An offender, most particularly one without qualifying convictions, can presently safely assume that they will not be made subject to travel restriction. Even if they offend abroad, this will not be recorded as such on ViSOR; and

iv. Local forces simply do not retain data as to applications that they have not made because the statutory pre-conditions were not met.

4.20 NGO open-source (i.e. media-led) data demonstrates a much more extensive international problem of reported cases. Many such cases will of course never be reported in the media. If reported, it is quite probable that local newspapers will not be known to the NGOs reviewing the media for relevant reports.

4.21 According to the FCO, in 2007 some 86 British nationals sought consular assistance following arrest for offences relating to the sexual abuse of children. For obvious reasons, this will be a small proportion of the whole. Countries linked to this activity are disproportionately popular with convicted UK sex offenders required to notify travel. CEOP found that 70% of high and very high risk convicted offenders travelled abroad when breaching their notification requirements.

4.22 More recently, *Geden*[12] established (via Freedom of Information Act requests of the FCO) that in 2010 some 119 British Nationals were known by Consulates to have been arrested and detained in connection with child sexual offences. This data is contingent on the arrested British National seeking Consular assistance.

4.23 A review of cases over 18 months by CEOP's Overseas Tracker Team in December 2009 identified 33 cases that involved British Nationals employed as teachers, or other occupations working with children overseas, of which 23 had been arrested or convicted for sexual offences against children in the United Kingdom.

4.24 There has also been a series of instructive recent Parliamentary questions and answers.

4.25 On 10 September 2012 Paul Beresford MP asked the Secretary of State for Foreign and Commonwealth Affairs, "How many of the arrests and detentions of Britons abroad between April 2011 and March 2012 were for (a) rape, and (b) sexual abuse of minors under the age of 18?"[13]

4.26 The reply (Mark Simmonds MP, Parliamentary Under Secretary of State) was that "During the period April 2011 and March 2012, 66 cases of Britons arrested on accusations of child sex offences were opened on Compass, the Foreign and Commonwealth Office Consular assistance database. We do not hold information on Compass on the number of Britons arrested specifically for rape".

4.27 On 17 September 2012 Fiona Mactaggart MP asked Mr Simmonds "How many UK nationals have been prosecuted outside the UK for the sexual abuse of children while they were working or volunteering in children's homes and schools in the last five years?"[14]

4.28 The reply was that the "FCO Consular database, Compass is used to record individual Consular case handling. They collate statistics on British nationals who are reported to us as having been arrested for sexual abuse of children. However, Compass does not capture information about the number of prosecutions".

4.29 The number of arrests in each of the last five years is as follows:

	Total
2008	61
2009	64
2010	63
2011	72
2012 (until 31 July)	43

[12] Geden, *Home and Away: the divergent responses to prosecuting British child sex offenders offending in the UK against those offending abroad*, 2010, [43] and appendix 6.
[13] Hansard HC Deb, 10 September 2012, c1W.
[14] Hansard source (Citation: HC Deb, 17 September 2012, c466W)

4.30 On the same date Ms Mactaggart asked "What discussions he has had with the government of India on facilitating investigations of UK nationals who have been arrested in India for the sexual abuse of children in schools and orphanages?"[15]

4.31 The answer from Hugo Swire MP (Minister of State, Northern Ireland)) was that "…both the former Minister of State for Foreign and Commonwealth Affairs, Mr Browne, and the Director of Consular Services have stressed the importance of police to police co-operation on UK/India cases with high-level Government representatives in India. SOCA works with CEOP in liaison with the Indian authorities on a number of issues, including cases involving the arrest of British nationals for sexual offences in schools and orphanages. In addition, CEOP continues to develop means to prevent unsuitable UK nationals from having access to children abroad".

4.32 Ms Mactaggart continued by asking *the* Minister for the Cabinet Office "…what recent discussions he has had with the Charities Commission regarding the monitoring of registered charities that have been alleged to be funding orphanages and children's homes in countries such as India and Nepal that have facilitated the sexual abuse of children?"[16]

4.33 Nick Hurd MP (Parliamentary Secretary (Civil Society), Cabinet Office), answered "I have regular discussions with the Charity Commission ("the Commission") on a range of topics. As a risk based regulator the Commission's powers of intervention are reserved for cases where there is clear and serious misconduct or maladministration within a charity leading to considerable harm to the charity or its beneficiaries which cannot be resolved by other means. If the hon. Member has any specific concerns about a registered charity, then I would encourage her to raise them direct with the Commission".

4.34 Finally, Ms Mactaggart asked the Secretary of State for the Home Department (in fact, Jeremy Browne MP (Minister of State (South East Asia/Far East, Caribbean, Central/South America, Australasia and Pacific), Foreign and Commonwealth Office) "(1) how (a) she and (b) the Association of Chief Police Officers, will advise police forces on the use of foreign travel orders for sex offenders; (2) if she will review the effectiveness of legislation aimed at preventing and prosecuting sexual offences against children overseas by UK sex offenders?"[17]

[15] Hansard source (Citation: HC Deb, 17 September 2012, c467W)

[16] Hansard source (Citation: HC Deb, 17 September 2012, c521W)

[17] Hansard source (Citation: HC Deb, 17 September 2012, c511W)

4.35 The answer was:

> "The Sexual Offences Act 2003 contains a number of civil preventative orders to provide the police with a range of tools to manage the behaviour of sex offenders, including Foreign Travel Orders (FTOs).
>
> FTOs are intended to prevent offenders, with convictions for sexual offences (under Schedule 3 of the Sexual Offences Act 2003) against children, from travelling abroad where there is evidence that they intend to commit sexual offences against children, while abroad.
>
> The Home Office has published "Guidance on Part 2 of The Sexual Offences Act 2003", which includes guidance on Foreign Travel Orders, for the police and other practitioners. The National Policing Improvement Agency, as part of their Initial Police Learning and Development Training Programme, provides information and training to public protection unit staff on Foreign Travel Orders.
>
> The Government continually reviews the effectiveness of legislation and is doing everything it can to tighten the law on sex offenders and protect children both in the UK and abroad. As a consequence, we recently introduced new measures under the Sexual Offences Act 2003, requiring all registered sex offenders to inform the police of all foreign travel. This information enables the police, where appropriate, to inform other jurisdictions that a sex offender is intending to travel to their area, further enhancing the tools to prevent crime and increase the effectiveness of the management of the risk of harm to the public posed by sex offenders.
>
> We will continue to monitor and review all the available tools and powers in this area to ensure the police and practitioners can robustly manage offenders and prevent serious sexual crimes, both in the UK and overseas".

4.36 These themes are reflected in CEOP's June 2012 *Threat Assessment of Child Sexual Exploitation and Abuse* report. Under "Priority Themes" [p. 31] the report rehearses that "Countries with low socio-economic conditions, low ages of consent, no offender management regime or extradition treaty in place are targeted by offenders, as are locations that are easy to travel to. South East Asia and Europe remain common destinations, and over the last year India, Bangladesh and Nepal have also emerged as significant locations that multiple offenders have travelled to. Conversely offenders convicted abroad for child sexual offences are known to have entered the UK undetected, posing a risk to children".

4.37 Under "Current picture" the report states [108]:

> "At the beginning of 2011 ECPAT reported that 135 British nationals were detained in foreign countries in relation to offences of child sexual abuse, with CEOP receiving 61 notifications regarding British nationals who had been arrested abroad for child sexual abuse offences during

> that year. These notifications covered 26 different countries, the most common being the USA, Spain, Australia, Netherlands, France, Germany, Cambodia and Thailand; however this may reflect the efficiency of notification procedures rather than more prevalent offending".

4.38 Amongst other points of concern, the Parliamentary questions and answers serve to highlight the limitations of the available data. In terms of the effectiveness of extra-territorial UK policing resources, and the capacity of the UK to regulate charities abroad, the answers do not provide more than generic, somewhat "purposive", assertions. This report is intended to be a reasoned response to the Parliamentary questions and answers reflected above. The reality is that the UK's ability effectively to police the conduct of high-risk offenders abroad is highly compromised. At highest – beyond diplomatic agreement that the problem of such extra-territorial offending is real – the permanent UK presence abroad is limited to a limited number of SOCA liaison officers, covering extensive geo-political areas, and having substantial (predominant) concurrent duties in terms of other international offending (terrorism; drug trafficking, *etc*).

4.39 The nature and effectiveness of alternative law enforcement measures directed at extra-territorial offending, including the limits of CEOP's International Child Protection Network (ICPN), is addressed in more detail below. Stated shortly, Interpol is not designed to operate in emergency situations and may rather be said to be a background distribution hub between international police forces, without the sender knowing more than that the recipient (after some significant delay) has received the intelligence (but not what actions were taken). Police-to-police communication outside the Interpol regime is often weak or wholly non-existent in relation to remote jurisdictions or developing countries.

4.40 The reasons why an arrested British National may not self-report to their Consulate are obvious, and include the fact that they may have travelled in breach of UK notification requirements. We observe that such a breach would not appear to be an extraditable offence from many jurisdictions. The data as to what proportion were bailed and/or ultimately convicted is almost entirely lacking. As is perhaps self-evident, even when criminal offending is reported to local jurisdiction law enforcement agencies (and it often is not, for a variety of cultural reasons)[18] such reporting and associated recording is often wholly inadequate or completely non-existent, and reports of convictions in non EU countries in particular are rarely made to UK authorities: see *Geden* at [43]-[44].

4.41 Even on this data the contrast between the number of FTOs and the numbers of those arrested is striking. The inadequacy of the UK's recording systems for such offending is reflected by *Geden* at [41]-[43]. Even within the EU the records are not fully computerized and reflect only convictions rather than intelligence. One contributor to *Geden* stated baldly [43] that from known non-EU vulnerable countries "we receive very little data".

[18] See, for example, Hilton, A: *I thought it could never happen to boys: sexual abuse and exploitation of boys in Cambodia* [2008, the Survivors Trust]. The research demonstrated that within Khmer culture it is believed that it is impossible for a man and boy to have sex; that if money is exchanged it is not harmful; and that sexual activity it is only abusive if the boy ejaculates. This – coupled with known corruption in local law enforcement - contributes to systematic under-reporting of the sexual abuse of boys.

4.42 ECPAT UK's 2008 report[19] highlighted – necessarily based on open source material, since there is no central collation by Government – that since the enactment of the 1997 Act there had only been 5 UK prosecutions for extra-territorial sexual offending against children. Whilst the principle of local jurisdiction prosecutions is recognized and agreed where this is practicable, the figure is nonetheless extraordinarily low. It cannot be said that hundreds of British offenders have been prosecuted out of the jurisdiction: for a number of reasons, reflected in summary below, they simply have not. The irresistible conclusion is that serious sexual offending against children has occurred – is occurring – in many jurisdictions in a culture of near impunity.

4.43 It begs the obvious question: what proportion of this offending could have been prevented by a different prevention order regime? The fact the data is so intrinsically unsatisfactory does not avoid the inevitable conclusions (i) that it is a high proportion (in any event, in this context, any proportion is a significant proportion); and (ii) that the figures outlined are likely to represent a very small fraction of the whole.

[19] Beddoe C. (2008) *Return To Sender British Child Sex Offenders Abroad Why More Must be Done,* London, ECPAT UK.

5. INDIVIDUAL FORMS OF ORDER

5.1 Before addressing the individual forms of prevention order, and associated notification requirements, a prior question arises. This is, "Why are there three species of prevention order at all?"

5.2 As already stated, whilst we do not contend that the statutory notification requirements should arise other than on conviction, in other cases prevention orders could and should be drafted to reflect what is necessary in any particular set of circumstances to prevent the sexual abuse of children where a significant risk of this is proved to exist. The existing regime reflects the historic origin of the legislation rather than any purposive logic.

5.3 It is time to re-draft the legislation in a purposive manner. The simplification would promote child protection; eliminate the existing distinction between UK and non-UK child victims; and be wholly consistent with the State's human rights obligations.

5.4 We contend that there is no human rights argument mandating conviction as pre-condition to a State imposed restriction on travel. Although we do not propose that the prevention order is made other than judicially, there is not even a requirement in human rights jurisprudence that the original decision is a judicial rather than executive function; or that any such order should be made on the criminal standard of evidence. To that extent our proposals are demonstrably human rights compliant.

5.5 Equally, we do not in this report seek to consider the creation of new criminal offences. Other jurisdictions, such as Australia, are implementing radical and aggressive reform to address the problem: see *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cth) inserting Criminal Code (Cth) sch 1 div 272. In summary, this creates a new species of inchoate or preparatory criminal offences relating to the extra-jurisdictional sexual abuse of children. The Explanatory Memorandum justifies the pre-emptive quality of the offences by stating it is "directed at behaviour at the planning, or formulative, stage".

5.6 McNicholl and Schleonhardt reflect the detail of the Australian approach in *Australia's Child Sex Tourism Offences*.[20] The criminal offences created are controversial and impose criminal liability at a significantly earlier preparatory stage than the UK equivalent. We observe that the Australian offences are coupled both with (i) a more aggressive attitude to passport control for high-risk (but unconvicted) Australian nationals; and (ii) a significantly more extensive, and permanent, Australian policing presence in vulnerable destination countries.

5.7 It is accordingly clear that what we propose, whilst undoubtedly significant, is modest relative to this comparator.

[20] University of Queensland human trafficking working group, August 2011, www.law.uq.edu.au/humantrafficking.

6. SEXUAL OFFENCES PREVENTION ORDERS

6.1 Context

6.1.1 For present purposes, the key provisions as applicable to England, Wales and (to some degree) Northern Ireland are reproduced in Appendix 2 to this report.

6.1.2 Part 2 of the Sexual Offences Act 2003 contains detailed, essentially equivalent, provisions relating to Scotland but these are not rehearsed. The conclusions we express are likely to apply equally to the Scottish provisions.

6.1.3 Similarly, we do not seek to analyse the provisions reflecting defendants who are either are being dealt with by a court following a finding either (a) that a defendant is not guilty of an offence listed under Schedule 3 or 5 by reason of insanity, or (b) that he is under a disability and has done the act charged against him in respect of such an offence. In simple terms such defendants are dealt with as if they had been convicted. Our proposals are driven by evidence of risk of harm and would apply equally to such defendants.

6.1.4 The provisions are rehearsed relatively extensively in Appendix 2 for ease of reference.

6.2 The statutory provisions

6.2.1 The core provision in this context is section 104 of the Act, "Sexual offences prevention orders: applications and grounds". It provides as follows:

> **Section 104 Sexual offences prevention orders: applications and grounds**
>
> (1) A court may make an order under this section in respect of a person ("the defendant") where any of subsections (2) to (4) applies to the defendant and –
>
> (a) where subsection (4) applies, it is satisfied that the defendant's behaviour since the appropriate date makes it necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant;
>
> (b) in any other case, it is satisfied that it is necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.
>
> (2) This subsection applies to the defendant where the court deals with him in respect of an offence listed in Schedule 3 or 5.
>
> (3) This subsection applies to the defendant where the court deals with him in respect of a finding –
>
> (a) that he is not guilty of an offence listed in Schedule 3 or 5 by reason of insanity, or;

(b) that he is under a disability and has done the act charged against him in respect of such an offence.

(4) This subsection applies to the defendant where –

(a) an application under subsection (5) has been made to the court in respect of him, and;

(b) on the application, it is proved that he is a qualifying offender.

(5) A chief officer of police may by complaint to a magistrates' court apply for an order under this section in respect of a person who resides in his police area or who the chief officer believes is in, or is intending to come to, his police area if it appears to the chief officer that –

(a) the person is a qualifying offender, and;

(b) the person has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.

(6) An application under subsection (5) may be made to any magistrates' court whose commission area includes –

(a) any part of the applicant's police area, or;

(b) any place where it is alleged that the person acted in a way mentioned in subsection (5)(b).

6.2.2 These provisions are supplemented by other sections of the Act under Part 2.

6.2.3 Section 106, "Section 104: supplemental", provides (in part):

106 Section 104: supplemental

(1) In this Part, "sexual offences prevention order" means an order under section 104 or 105.

(2) Subsections (3) to (8) apply for the purposes of section 104.

(3) "Protecting the public or any particular members of the public from serious sexual harm from the defendant" means protecting the public in the United Kingdom or any particular members of that public from serious physical or psychological harm, caused by the defendant committing one or more offences listed in Schedule 3.

(4) Acts, behaviour, convictions and findings include those occurring before the commencement of this Part.

(5) "Qualifying offender" means a person within subsection (6) or (7).

(6) A person is within this subsection if, whether before or after the commencement of this Part, he –

(a) has been convicted of an offence listed in Schedule 3 (other than at paragraph 60) or in Schedule 5;

(b) has been found not guilty of such an offence by reason of insanity;

(c) (c) has been found to be under a disability and to have done the act charged against him in respect of such an offence, or;

(d) in England and Wales or Northern Ireland, has been cautioned in respect of such an offence.

(7) A person is within this subsection if, under the law in force in a country outside the United Kingdom and whether before or after the commencement of this Part–

(a) he has been convicted of a relevant offence (whether or not he has been punished for it);

(b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of insanity;

(c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence, or;

(d) he has been cautioned in respect of a relevant offence.

(8) "Appropriate date", in relation to a qualifying offender, means the date or (as the case may be) the first date on which he was convicted, found or cautioned as mentioned in subsection (6) or (7).

6.2.4 Section 107, "SOPOs: effect", provides (in material part):

107 SOPOs: effect

(1) A sexual offences prevention order–

(a) prohibits the defendant from doing anything described in the order, and;

(b) has effect for a fixed period (not less than 5 years) specified in the order or until further order.

(2) The only prohibitions that may be included in the order are those necessary for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.

6.2.5 Section 108, "SOPOs: variations, renewals and discharges" permits the defendant or qualifying chief officers to vary, renew or discharge the order. Section 109 addresses "Interim SOPOs". Section 110, "SOPOs and interim SOPOs: appeals" gives a defendant, but not an applicant chief officer, the right to appeal to the Crown Court against the making of a SOPO or interim SOPO by a Magistrates' Court. The jurisdiction appears to be one of appeal rather than review, which may imply the need for all evidence to be called *de novo*. The practical implications of this are obvious.

6.2.6 In terms of breaches of these orders, the relevant provision is section 113, "Offence: breach of SOPO or interim SOPO". This provides maximum term for breach of 6 months' imprisonment on summary conviction and 5 years' on conviction on indictment. The offence may only be committed in the UK.

6.3 SOPOs: analysis

6.3.1 These detailed provisions merit analysis in order to understand the reality of their availability and enforcement.

6.4 Judicial determination; defendant's rights of participation and appeal

6.4.1 The first, and not inevitable, point is that these orders always reflect a judicial determination by a court. Unless imposed on conviction by a Crown Court, they will be imposed at the first instance by a Magistrates' Court either on conviction (s. 104(1)(b)), or subsequent to the "appropriate date" under s.104(1)(a) by way of "complaint" to the Magistrates' Court by a chief officer falling within s.104(5).

6.4.2 The defendant, but not either the prosecution (if imposed on conviction) or chief officer under s.104(1)(a), may appeal to the Crown Court. Subject to some qualifications either side may apply to vary, *etc* under section 108.

6.4.3 We make the observation that these are civil prevention orders. If child protection is the overriding consideration there is no obvious reason why the original applicant (the CPS or chief officer) should not have a right of appeal to the Crown Court. It is an appeal against the exercise of discretion by a court in terms of a civil order, not sentence. Once the wider context has been reviewed, we consider the practical difficulties arising in terms of the identity of the applicant, and the process of making application by way of "complaint", below.

6.5 Jurisdictional application; qualifying harm; necessity; standard of proof; civil regime

6.5.1 As significantly, the second obvious consideration is the category of child that will be protected by a SOPO and the quality of harm that is covered. As rehearsed, s.106(3) provides that, "Protecting the public or any particular members of the public from serious sexual harm from the defendant" means protecting the public "…in the United Kingdom or any particular members of that public from serious physical or psychological harm, caused by the defendant committing one or more offences listed in Schedule 3."

6.5.2 These orders are accordingly only available to protect children in the United Kingdom. This lack of extra-jurisdictional purpose is a significant deficit. We take no argument however with the offences contained in Schedule 3: they cover all material sexual offences against children.

6.5.3 Similarly, we do not seek any revision of s. 106(3): the courts have defined "serious physical or psychological harm"[21] broadly enough to cover the psychological harm caused by knowledge that indecent pictures taken of them will be available on the internet.

[21] *R v Terrell* [2007] EWCA Crim 3079, CA, [27] "…A child groomed or made to participate in sexual acts for those purposes may suffer serious harm of one sort or another, depending on the activity. A child who becomes aware that he or she has been

6.5.4 There is however a caveat. The definition requires the prevention of "serious" sexual harm. This can prevent an order where one may otherwise appear to be fully justified: see case study AB, below. It is a little difficult to see why such conduct should be excluded from regulation when it is directed against a child.

CASE STUDY 6 - AB

AB was a qualifying offender by virtue of a conviction for attempted sexual assault. He had put his hand up the skirt of a 13 year-old girl at a bus stop. Several incidents post-dating sentence led to an application for a SOPO. Three girls, aged 12 – 16 years', reported separate incidents where they had been called over to his car and the defendant was masturbating. Quite separately, four girls at a school reported him loitering at bus stops over a period of three weeks, staring at them, and on occasion sitting next to them and trying to look up their skirts or down their tops. Finally, he was arrested (but not prosecuted) for touching a 13 year-old girl on the hip when boarding a train, and touching her again when she was sitting on the train. The District Judge was satisfied that there was a risk of repetition but that the conduct did not amount to serious sexual harm. No SOPO was ordered. An ASBO is being considered.

6.5.6 Recent case law has defined the circumstances in which SOPOs will be appropriate and the standard of proof that must be met in order to obtain one.

6.5.7 In terms of necessity and scope, much needed clarification was achieved by the Court of Appeal in *R v Smith and others* [2012] 1 WLR 1316.[22]

6.5.8 The judgment reiterates the test of "necessity", and the fact that SOPOs should not duplicate other mandatory post-conviction regimes (notification requirements under sections 82-102 of the 2003 Act; disqualification from working with children orders under section 28 of the Criminal Justice and Court Service Act 2000 or a decision of the Independent Safeguarding Authority under the Safeguarding Vulnerable Groups Act 2006; and/or licence conditions following release from a term of imprisonment).

6.5.9 We agree with the judgment: equally, we observe that such regimes only apply to convicted (qualifying) defendants and are only enforceable in respect of conduct in the United Kingdom. A defendant who travels out of the jurisdiction may work with children without committing a criminal offence under any of these statutory regimes and without breaching his SOPO.

6.5.10 The standard of proof required to obtain a SOPO is also well-established in law. Although a civil order (rather than a sentence of the court), the standard of proof that must be met both to prove the underlying conduct ("…that he has acted in such a way since the appropriate date…") is to the criminal standard: see *R (on the application of Cleveland Police) v Haggas* [2009] EWHC 3231 (Admin) and

photographed for the sexual gratification of an adult, who may not even be known to them, may suffer serious psychological harm."

[22] [2012] EWCA Crim 1772, CA, 19 July 2011.

Metropolitan Police Commissioner v Ebanks [2012] All ER (D) 45. This Court justifies this standard by reference to the sanction of imprisonment for breach of the order, and it is accordingly consistent with the approach of the courts in other civil prevention order regimes where the sanction for breach includes imprisonment, for example football banning orders and anti-social behaviour orders.

6.5.11 On balance, although we would welcome a straightforward civil standard in the context of the specific harm sought to be prevented by a SOPO (i.e. the sexual abuse of children, as distinct from social disorder of different sorts) we have elected not to develop suggestions for reform on this narrow point. We recognize that prevention orders need to be strictly justified: they represent a restriction on conduct, with imprisonment for breach. We also recognize that the criminal standard may be achieved through hearsay evidence admitted under the *Magistrates ' Courts (Hearsay in Civil Proceedings) Rules 1999*, and the Civil Evidence Act 2005 and associated Rules.

6.5.12 This is subject to one important qualification. Although the acts giving rise to the evaluation of necessity need to be proved in practice to the criminal standard, in many cases whilst individual acts may not be capable of proof to that standard the history of reported offending will demonstrate beyond argument that the person concerned represents a risk to children. Several such examples are reflected in the case histories in this document. Such a history of "similar fact" complaints, that cannot be explained by coincidence, should be sufficient to prove that over time the person has acted criminally towards children even if no one specific act is any longer capable of proof.

6.5.13 An obvious restriction is that s. 107 is presently restricted to imposing necessary "prohibitions" as distinct from creating positive obligations. We understand that the pending Criminal Justice Bill will seek to add "requirements" ("to do anything described in the order") to the existing power to impose prohibitions. We positively endorse these amendments and it is unnecessary to rehearse the obvious justifications for them.

6.6 Pre-requisite of a qualifying conviction

6.6.1 Other elements of the SOPO regime are however less readily understood in the context of the presumed objective of preventing such sexual harm.

6.6.2 The first and most fundamental objection relates to the necessity of a qualifying conviction before a SOPO may be obtained. There are multiple situations where evidence could be admitted (and tested) under the applicable civil rules to prove [to the criminal standard] that the requisite risk exists but where there is no qualifying conviction. This proposition appears to us to be so obvious as to be described as self-evident. In such a situation, and assuming (as we do) that the subject of application will have full rights to challenge the evidence before the court, how is the public interest possibly met by the requirement of a qualifying conviction?

6.6.3 Whilst we rehearse some individual case histories to demonstrate the point, the following are obvious examples of when the test for risk would be met but there is no qualifying conviction. They are common in practice.

i. In domestic proceedings, where the family court has ruled that a person has systematically sexually abused children (or will) but it is not in the public interest to prosecute him. This may be to protect existing child victims from the trauma of giving evidence;

ii. An offender has been convicted of a qualifying offence but his conviction has been quashed on appeal (often for "technical" reasons wholly unrelated to the truth of the allegation) and there is no re-trial;

iii. An offender is proved to have secured an acquittal abroad through corruption, either of the victim's family; the police; or the court (or any combination thereof);

iv. The police have intelligence to the effect that an offender has been convicted of a qualifying offence abroad but is unable to produce proof of conviction;

v. The evidence is in a form that is admissible in civil proceedings but is not admissible in criminal proceedings (this will be a common situation in terms of extra-jurisdictional evidence);

vi. There is a pattern of offending reflected in prosecutions and acquittals, or more generally in multiple reliable police intelligence (admissible as hearsay in civil proceedings), but not sufficient for a prosecution in a particular case [see e.g MK]; and

vii. A prosecution has not proceeded for reasons unrelated to the underlying truth of the allegation [e.g. PM, accused of sexually abusing boys in India, where the prosecution was forced to offer no evidence because it had not ensured video-link facilities under an ILOR in time for trial and the judge refused an adjournment to do this].

6.6.4 In each of these situations we contend that the public interest demands that the court has power to impose a SOPO. Whether or not it does so would, of course, involve a judicial evaluation of the evidence relied on, including the weight to be attached to hearsay evidence or intelligence. There would be a right of appeal to a Crown Court judge.

CASE STUDY 7 - MK 2006 - 2012

Essex Police investigated the reported and proven criminal activity by an adult offender, MK. MK was referred to the Essex Police MAPPA team for two offences of robbery of adult females. On release from his term of imprisonment he was subject to licence. The supervising officer was then notified of a history of reported offending that had not resulted in conviction.

In 2008 MK was found not guilty for an offence of robbery and sexual assault. He was alleged to have approached the 56 year-old female victim in an underpass and placed a bag over her head, and then to have grabbed her breasts and stolen her handbag. Later in 2008 a 73 year-old woman was emptying rubbish bags in the early morning. She was grabbed from behind and a hand placed over her mouth. She was pulled into a bush, her breasts were grabbed and she was orally raped. MK admitted speaking to her immediately prior to the offending but was again acquitted.

There were additionally numerous other arrests of MK that did not result in charge. In 2007 a 63 year-old female was grabbed from behind by a black male (MK is black) while cycling and a hand placed across her face. The victim was bundled into a bush and attempts made to steal her bag. In 2006 and 2007 MK, then resident in Manchester, was suspected of two street robberies against females and a penetrative sexual assault of a 22 year-old victim. The latter victim was approached from behind, a hand placed over her mouth, her breast licked and she was penetrated digitally.

Notwithstanding this compelling history, in the absence of a qualifying conviction there was no power to obtain a SOPO or an FTO.

A ROSHO would require proof of individual criminal acts to the criminal standard. If that were possible he would have been prosecuted. His force advised the investigating officer that no application for a ROSHO could be made.

He ordered an expensive covert surveillance operation to attempt to mitigate the risk. MK's licence conditions for robbery prevented him entering parks. Under surveillance he was seen to breach this twice and was recalled on licence.

On release, other than short-term licence conditions (none if his sentence is served in full following recall) he will not be subject to any preventative regime

6.7 Requirement of "behaviour since the appropriate date"

6.7.1 There are other fundamental objections to the existing SOPO regime.

6.7.2 Unless the SOPO is obtained at the date of conviction, it may only be obtained under s.104(1)(a) on application by the relevant chief officer "it is satisfied that the defendant's behaviour since the appropriate date makes it necessary".

6.7.3 The requirement for "behaviour" (what does this mean? Rehearsing a lack of remorse or insight into past offending?) "since the appropriate date" (s.106(8): "…the first date on which he was convicted, found or cautioned") excludes the possibility of a post-conviction application for a SOPO where evidence of earlier conduct (i.e. that preceding the date of conviction) is only made known to the chief officer after that date e.g. evidence from abroad of systematic sexual abuse or disclosures by the convicted defendant during cognitive therapy.

6.7.4 We can see no credible justification for this limitation. Plainly, if evidence to justify a SOPO Is known to the CPS/chief officer at the appropriate date it should be relied on then. If, however, the requisite evidence sufficient to found an application is not then known, why should it not be incorporated into an application by complaint thereafter?

6.8 Limitations on identity of applicant

6.8.1 Other than immediately on conviction, when the CPS makes the application, s. 104(5) prescribes that the applicant is the chief officer of police "in respect of a person who resides in his police area or who the chief officer believes is in, or is intending to come to, his police area".

6.8.2 Whilst there is no reason to exclude such a chief officer, in reality there are obvious reasons to extend the range of potential applicants.

6.8.3 As matters stand, even within the domestic jurisdiction a chief officer may well not be aware that a person either resides in his area or intends to. Whilst the notification requirements prescribe a duty to inform within a fixed period, some offenders nonetheless move regularly in order to seek to stay ahead of the information required to make a complaint. The inefficient exchange of relevant intelligence and evidence between force areas using different databases is an obvious area for such a manipulative offender.

6.8.4 Further, following the creation of CEOP (and the same will apply under the pending NCA regime) the law enforcement agency with both (i) the most expertise, and (ii) the capacity to co-ordinate and present evidence on a national basis, may (probably will) be CEOP and or any equivalent under the NCA. As a minimum we recommend that the class of applicants is extended to include suitable nominees within CEOP, SOCA and the NCA.

6.8.5 The existing residence-led limitation to force areas is anachronistic and only serves to frustrate the process at the expense of child protection. We can see no competing argument against extending the class of applicants. The precise class no doubt could reflect consultation with these law enforcement agencies. It could include the CPS.

6.9 Proceeding by "complaint"

6.9.1 Although we regard this as materially more significant to the effectiveness of the Foreign Travel Order regime, we observe that the procedure to be followed by a chief officer is that of complaint to a Magistrates' Court. This is probably necessary, although it should be possible to circumvent the timetable for service and notification in situations justifying judicial intervention amounting to an emergency injunction.

6.9.2 The other consequence is that the chief officer incurs the risks and obligations of civil litigation. Given that the obligation is to produce evidence to the criminal standard, some of which may be resource intensive (foreign evidence; historic evidence; force lawyers to draft the application) many forces we suspect are risk-averse in respect of these applications. This is more likely when (i) the applicant is not yet in the force area, or may not stay; (ii) the costs of making the application are high; and (iii) the subject is likely to appeal and/or seek costs.

6.9.3 We question whether it is appropriate for police forces to incur court fees in order to make these applications. The fees could be removed from the Magistrates' Court Fees Order 2009 to achieve this. The present liability is a disincentive to application.

6.9.4 For obvious reasons the evidence as to these procedural matters tends to be anecdotal. The problems are even more acute in relation to FTOs, since there is no such thing as an interim FTO and the evidence relating to the offender may require expensive and resource intensive foreign inquiry that is beyond the capacity and budget of a local force.

6.9.4 As will be seen, offenders travel abroad between service of complaint and the substantive court hearing without committing a breach of notification requirements. This is obviously unacceptable.

6.9 SOPOs: conclusions relating to the statutory provisions

6.10.1 The existing SOPO regime, and associated case law, has much to its credit. Any such order is made through a judicial process; on notice to the subject; with full rights of participation, representation and appeal. The test is one of necessity. Underlying facts and necessity must be proved to the criminal standard applying the civil rules of admissibility.

6.10.2 The fundamental flaws with it are however serious and in need of immediate remedy.

6.10.3 The most serious matter is the requirement of a qualifying conviction. This is compounded (other than on conviction) by the need to prove actions or behaviour "since the appropriate date".

6.10.4 We observe that a defendant convicted of any Schedule 3 offence – which can include possessing or making (downloading) indecent pictures of children, with no "contact" offending – rightly activates the mandatory statutory child protection regimes in terms of notification requirements (now strengthened); disqualification from working with children; barring orders under the Safeguarding Vulnerable Groups Act 2006; and any post-imprisonment licence conditions.

6.10.5 Without a qualifying conviction however there is simply no power to seek such a prevention order. This is regardless of the quality of evidence that may exist to prove the necessity of such an order in civil

proceedings. The admissible evidence that a person represents a risk of committing serious sexual offences against children may be overwhelming, and admitted to be. Despite this, not only is such a person not subject to the mandatory provisions of the wider statutory regimes, he is not even liable to an evidence-led prevention order.

6.10.6 Whilst we accept that the mandatory statutory regimes may rightly be contingent on conviction, necessary bespoke prohibitions and requirements should be available to law enforcement agencies from a court regardless of a qualifying conviction. The existing regime simply serves to compromise effective child protection. Removal of this requirement would be a simple, but fundamental, reform.

7. FOREIGN TRAVEL ORDERS

7.1 Context

7.1.1 As will be seen, these flaws are even more acute in relation to Foreign Travel Orders. The consequences are even more serious since in the most vulnerable destination countries the quality of wider child protection systems falls well below those that exist in the United Kingdom. The extraordinarily low numbers of FTOs sought and imposed (see [4.13] above: in some years, not a single order nationally) relative to even the lowest estimates of extra-territorial offending by identifiable British Nationals tends to demonstrate without more that the orders are intrinsically flawed.

7.1.2 Stated very shortly, unless such high-risk British subjects are prevented from travelling, in many destination countries there is simply no wider functioning system of law enforcement and children are readily available for sexual exploitation. It is a known, and disastrous, combination.

7.2 The statutory provisions

7.2.1 The basic provisions are sections 114 – 117 of the 2003 Act and reproduced in material part in Appendix 2.

7.2.3 Section 114 provides:

> **114 Foreign travel orders: applications and grounds**
>
> (1) A chief officer of police may by complaint to a magistrates' court apply for an order under this section (a "foreign travel order") in respect of a person ("the defendant") who resides in his police area or who the chief officer believes is in or is intending to come to his police area if it appears to the chief officer that–
>
> (a) the defendant is a qualifying offender, and;
>
> (b) the defendant has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.

(2) An application under subsection (1) may be made to any magistrates' court whose commission area includes any part of the applicant's police area.

8. On the application, the court may make a foreign travel order if it is satisfied that–

(a) the defendant is a qualifying offender, and;

(b) the defendant's behaviour since the appropriate date makes it necessary to make such an order, for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom.

7.2.4 Section 115 provides:

115 Section 114: interpretation

(1) Subsections (2) to (5) apply for the purposes of section 114.

(2) "Protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom" means protecting persons under 16 generally or any particular person under 18 from serious physical or psychological harm caused by the defendant doing, outside the United Kingdom, anything which would constitute an offence listed in Schedule 3 if done in any part of the United Kingdom.

(3) Acts and behaviour include those occurring before the commencement of this Part.

(4) "Qualifying offender" has the meaning given by section 116.

(5) "Appropriate date", in relation to a qualifying offender, means the date or (as the case may be) the first date on which he was convicted, found or cautioned as mentioned in subsection (1) or (3) of section 116.

7.2.5 Section 116 provides (in material part):

116 Section 114: qualifying offenders

(1) A person is a qualifying offender for the purposes of section 114 if, whether before or after the commencement of this Part, he –

(a) has been convicted of an offence within subsection (2);

(b) has been found not guilty of such an offence by reason of insanity;

(c) has been found to be under a disability and to have done the act charged against him in respect of such an offence, or;

(d) in England and Wales or Northern Ireland, has been cautioned in respect of such an offence.

7.2.6 Section 117 provides (in material part):

117 Foreign travel orders: effect

(1) A foreign travel order has effect for a fixed period of not more than 5 years, specified in the order.

(2) The order prohibits the defendant from doing whichever of the following is specified in the order –

(a) travelling to any country outside the United Kingdom named or described in the order;

(b) travelling to any country outside the United Kingdom other than a country named or described in the order, or;

(c) travelling to any country outside the United Kingdom.

(3) The only prohibitions that may be included in the order are those necessary for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom.

7.2.7 Section 117A addresses surrender of passports (when ordered as part of the FTO) and section 118 addresses variations, renewals and discharges.

7.2.8 Section 119 provides for appeals by the subject of the application to the Crown Court.

7.2.9 Section 122 provides for penalties for a breach of an FTO. Again, the maximum sentence is six months imprisonment following summary conviction and five years' following conviction on indictment.

7.3 Analysis

7.3.1 The primary objections to the existing statutory regime arise under section 114. Particularly when coupled with the enhanced post-conviction notification requirements under the 2012 regulations, the regime following the imposition of an FTO is relatively uncontentious.

7.3.2 As we have observed, however, the requirement of a qualifying conviction prevents the court imposing obligations equivalent to the notification requirements as necessary when the evidence justifies it in the absence of a qualifying conviction. In other words, for offenders capable of being proved to be at high risk of travelling out of the jurisdiction sexually to abuse children, there is no power to require pre-notification of travel to the police.

7.3.3 Other elements of section 114 deserve separate consideration.

7.4 The applicant

7.4.1 The only qualified applicant is the chief officer of police "in respect of a person ("the defendant") who resides in his police area or who the chief officer believes is in or is intending to come to his police area".

7.4.2 As already articulated, this limitation is discordant with the reality of national expertise, most particularly at CEOP (which, post-introduction of the NCA, may alter) and the desirability of national

policing agencies co-ordinating the investigation and control of extra-territorial offending. Extra-territorial offending is particularly ill suited to the residence-led test for prevention orders.

7.4.3 In certain situations there may not be clear evidence as to the intended future residence of an offender. The potential subject of an application may simply be in the UK in transit between jurisdictions, or making a short visit without declaring in advance any address. Whilst the "local" chief officer is certainly amongst the class of applicants, the existing defendant's residence requirement serves no useful purpose as drafted.

7.4.4 Further, in terms of sharing intelligence, one police area identified that even as between agencies forming regional MAPPA teams (Multi Agency Public Protection Agency, including the chief officer applicant) and, whatever the urgency, before a minute of a meeting may be used the individual agency involved in that part of the agreed minute must give consent. This appears bureaucratic and obstructive, and could be avoided by a local protocol governing use of these minutes for civil prevention orders.

7.5 Subjects of orders: "qualifying offender"

7.5.1 Only a "qualifying offender" may be subject to an FTO. We have already rehearsed that this pre-requisite operates directly against the interests of child protection and, subject to any fundamental human rights objection (and we identify none), may be said to be irrational. It gives wholly disproportionate significance to a qualifying conviction (which may be for a single, non-contact, downloading offence) relative to overwhelming, admissible, evidence of risk of contact offending.

Qualifying offences and FTOs

CASE STUDY 8 - DS

CEOP has a wealth of intelligence that a British National, DS, is repeatedly travelling to a Kenyan orphanage sexually to abuse children. He has been the subject of repeated previous allegations and police investigations over time that originate from unrelated sources and each relate to similar extra-jurisdictional offending. With no qualifying conviction there is simply no power to obtain an FTO. Even if a ROSHO were treated as appropriate to regulate foreign travel, the necessity of proving two or more specific sexual acts to the criminal standard remains an obstacle. Anyone evaluating the overall history would however conclude that he is a real and immediate risk to children. He is free to travel and the UK authorities are dependent on the limited Kenyan resources to monitor his conduct.

CASE STUDY 9 - The Reverend D

West Yorkshire Police notified CEOP of concerns about Reverend D. He ran a church and charity associated with various orphanages in the Philippines, Africa and India. He had twice been interviewed in connection with separate allegations of indecent assault, in 1998 the girls were over 16 years' and, in 2003, under 16 years'. Through the Charity Commission he was suspended as director of the charity. There was no basis to obtain an FTO and he was able to return to the Philippines. The under 16 year-old complainant declined to give evidence and the Reverend received a caution for the historic indecent assault of an over 16 year-old. He was accordingly not within the criteria to obtain an FTO and he is free to travel. He is no longer subject to the notification requirements.

CASE STUDY 10 - B

The police intelligence relating to B is extensive and demonstrates a high risk of sexual offending against children overseas. He has no qualifying conviction.
B arrived in Cambodia in about January 2010. He was seen in the company of six boys aged between about 7 and 17 years'. Intelligence suggests he touched their penises through clothing and sniffed their groin areas. He was seen to take photographs of them swimming. B states that he had a private school in Spain and had visited 60 countries. He had been to Cambodia four times for two month visits. He claimed to have known many boys in Thailand and Cambodia and to have been especially in love with a 10 year-old Vietnamese and 13 year-old Cambodian. Two children were interviewed by the Cambodian NGO APLE and sexual offending for payment disclosed.

He was arrested at Heathrow and his home address searched. His travel baggage contained few clothes but much camera equipment. Although not indecent, many of the recovered pictures were of children in swimwear.
He is on bail. The probability of a successful prosecution arising from the Cambodian conduct appears low. He has been the subject of previous UK allegations of sexual assault of children aged 8 to 10 years' [in 1999] and, separately, in 2000 for sexual assault of boy scouts aged 8 – 14 years' when he was scout leader. Although charged, the prosecution did not proceed.
He is known to have travelled every couple of months in the last five years to vulnerable destinations including Cambodia, Vietnam, Thailand, South America and Egypt.
With no qualifying conviction there is no basis to obtain either a SOPO or an FTO. A ROSHO requires proof of two specific contact offences to the criminal standard. B is accordingly free to travel and is not subject to any notification requirement.

CASE STUDY 11 - T

T has no qualifying convictions. He was investigated in 2000 for displaying indecent pictures to a child under 14 years' in Portugal. 6500 indecent images of children were recovered from a computer at his UK address but the prosecution failed through delay.
He is known to have enrolled a Portuguese boy at a school in the UK who was found to have suffered anal injuries consistent with abuse. There was however no prosecution. He has introduced other foreign children to UK schools. He appears to be associated with a Romanian network that is trafficking children to the UK having engaged them in child pornography in Romania. T has admitted he intended to bring one of the rescued Romanian children to the UK and to put him through school. T is able to travel pending resolution of the Romanian investigation. Unless subsequently convicted of a qualifying offence, he will not be liable to a SOPO, FTO or ROSHO.

CASE STUDY 12 - G

G was wanted for arrest and questioning in the United Kingdom in relation to a historic allegations of sexual abuse of children arising in the context of his role as a scoutmaster. He had no qualifying offences. He resided in Cambodia from 2006 and started a charity which funds an orphanage housing 35 children and educating 100. He was arrested by the Cambodian National Police in 2008 after three 12 year-old boys complained that he had sexually assaulted two of them whilst the third watched. For unknown reasons the investigation was dropped. Surveillance was maintained by an NGO and further similar complaints made in 2010. Statements and corroboration exist. The allegations include masturbation and oral sex. Following a CEOP deployment in 2010 G was finally arrested and the charity and orphanage taken over by reputable organisations. G was seeking Cambodian nationality. Notwithstanding attempts at corruption, and coupled with a close UK operational policing engagement in the investigation and prosecution, G was convicted and sentenced to 12 months'

imprisonment in Cambodia. He is in the UK and the investigation into the historic UK offending is pending.
There is no power to obtain an FTO since there is no evidence of him acting in a qualifying way since his date of conviction in Cambodia. Foreign schools and orphanages are often dependent on funding by the abuser.

CASE STUDY 13 - P

P was convicted in 2007 in relation to indecent photographs of children. These images included indecent photographs taken by him of boy scouts on a trip in his capacity as scoutmaster. He was concurrently employed as a teacher; youth club worker; and youth sports referee. He is subject to indefinite notification requirements and disqualified from working with children in the United Kingdom.
In May 2010 he notified the police pursuant to the notification requirement that he intended to holiday with his family in Spain between 6 and 27 June 2010. He in fact travelled with an unrelated 16 year-old boy on a one-way ticket. He is seeking work with a school in Barcelona to teach English to boys aged 10 – 14 years'. Although he may otherwise have breached his notification requirements by lying, the SOPO is directed at working with children in the United Kingdom. An FTO was not available on conviction and required actions since conviction. Whilst it may now be available, it appears that sexual offending against children abroad was made easier by these strict requirements.
It is far from clear that breach of a notification requirement is a matter that will qualify for extradition in its own right because of the requirement of dual criminality.

7.6 <u>When the application may be made</u>

7.6.1 Extraordinarily, and in contra-distinction to a SOPO, an FTO is not available on conviction. However compelling the evidence of propensity sexually to abuse children at the date of conviction, the chief officer must produce evidence that since that "appropriate date" (s. 114(1)(b)) the defendant has "acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made". Under s. 114(3)(b) the court "may" make the order if "the defendant's behaviour since the appropriate date makes it necessary to make such an order, for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom."

7.6.2 The meaning of "acted" and "behaviour" (the reason for the difference within the section is not clear) is such that it requires proof of positive conduct by the defendant post-dating conviction before an order can be imposed. In reality – whether because the defendant has been in prison; or the chief officer simply has not had the resources or power to investigate – such evidence will be lacking. The objective evidence of risk (based, for example, on a documented history of recidivism pre-dating conviction, or simply the intrinsic nature of the qualifying offending) may be overwhelming. There will be no power to apply for an order to prevent foreign travel even if such travel is notified to the police.

7.7 How the application must be made: complaint

7.7.1 There is no interim FTO and nothing approximating to an emergency injunction. The chief officer must proceed by way of complaint. This inevitably generates delay between service of the Magistrates Court summons to attend and determination of the application. Pending determination there is no power to prevent travel.

7.7.2 This is not a theoretical problem: see case studies 14 and 15, below.

CASE STUDY 14 - CD

CD has dual UK/Australian Nationality and has current and valid passports for both the UK and Australia. CD was residing in Thailand. On 19 June 2008 he came to the notice of the Thai police and was arrested for the molestation of a child under 15 years'. CD pleaded guilty and the sentence was commuted to one year in prison and a 4000 Thai baht fine. The final sentence was two years' probation and he was entitled to leave Thailand.
This information was passed to the Metropolitan Police and it was established that CD was residing in the UK. On 10 December 2009 CD was summoned to the City of Westminster Magistrates' Court where, on 17 December 2009, a notification order was made against him. It was not possible to obtain an FTO since there was no evidence that he had acted in the requisite specific manner since the date of conviction. CD left the UK and took up residence in Cambodia.
In September 2011 Action Pour Les Enfants (a children's charity in Cambodia) contacted CEOP in London saying that it had information that CD was involved sexually with a 13 year-old-boy, and that there were thought to be up to six other others boys being subjected to sexual abuse by CD that it intended to interview. The 13 year-old boy told APLE that CD gave him $100 cash every month and that he would sometimes perform sexual acts. He explained that CD masturbated him recently.
Ongoing surveillance by APLE showed CD was regularly seen to have to Western male visitors. He was observed to collect them from the airport.
CD was interviewed but denied any sexual contact with the boys; denied his conviction in Thailand; and said that it was all a misunderstanding. Due to lack of further evidence and financial constraints, the Cambodian police took no further action.
CD came to the UK to visit his family. The MPS became aware of his whereabouts and the reported history of his criminal conduct in Cambodia. CD had a return flight for Thursday 20 June 2012. A decision was taken to apply for an FTO by way of complaint. A summons was obtained and served on him at 1500 hrs on Thursday 14 June 2012. The hearing was set for Tuesday 18 June 2012. As a civil application there was no power to seek bail conditions (such as surrender of passports) and no power to obtain an interim order (there is no such thing as an interim FTO).

On the morning of Friday 15 June 2012 the MPS received an E-Borders alert confirming the subject had re-booked his travel and left the United Kingdom at 2100 on Thursday 14 June 2012. CD remains somewhere in South-East Asia.

CASE STUDY 15 - GH

GH was born in 1952. In 2004 he was convicted in France, where he had lived for 30 years, for sexually assaulting his Goddaughter, aged 13. He received 2 years' imprisonment. In 2009 he was convicted in France for the sexual assault on his new partner's granddaughters, aged between 6 and 8 years'. He received 3 years' imprisonment. Each case involved a pattern of grooming women to obtain access to children.
ACRO was notified of the latter conviction and placed him on HOWI (the Home Office Warnings Index).

On 17 April 2012, and without any prior notice to UK authorities, he was deported (under escort of the Gendarmerie) and arrived at Heathrow. Although the UKBA alerted ACRO of his arrival, he had already entered the UK and his whereabouts were unknown for two months.
In June, the MPS (through the dedicated specialist Jigsaw team) confirmed his location and successfully obtained a Notification Order under section 97 of the 2003 Act. GH had found both his own accommodation (in a shared house) and employment.
Once subject to the notification requirements GH moved across London to another borough. He informed his supervising officers of his resentment at supervision and being subject to the notification requirements. On questioning as to how he might seek to avoid the notification requirements, he disclosed that he had a Russian partner (through the internet) and that he wanted her to travel to marry him in Europe rather than the UK. He was obviously alive to the fact that enforcement in Russia would be difficult for UK authorities. He refused to disclose more information about his intended wife or whether she had children.
On Sunday 26 August 2012 GH attended his prescribed police station and gave notice of intention to travel to France on Saturday 1 September 2012. He only gave partial information to the station officer. This was a Bank Holiday weekend during the Olympics when he would have known that police resources were minimal. The directly relevant supervising case-officers only received notice on Thursday 30 August 2012. Numerous attempts to contact GH were unsuccessful until around 1930 hours. He informed the police officers that he wanted to marry; was not coming back; and they could not interfere further in his life.
The specialist MPS Jigsaw team was alerted on Friday 31 August 2012 regarding strategic options. A decision was taken to apply for an FTO. An urgent application was drafted and direct liaison with the relevant court made. The application was based on his history of grooming women to obtain access to children. A summons was obtained by 1100 and the court facilitated a hearing for 1400 hours that same day. The summons was delivered to GH's home address but he was not present. Numerous telephone messages were left. By 1430 hours the police could not prove effective service of the summons and the application could not proceed.
GH's flight was due to depart Gatwick at 2355 on 1 September 2012 i.e. the next day.
The applicant police officer informed the Court that if the subject ever contacted his monitoring officers it was usually in the evenings. The officer proposed that the summons be re-issued for a hearing on Saturday morning at the nearest Court that was sitting for overnight cases and that, if service could be proven, the hearing could proceed the same day. The District Judge (equally concerned about risk represented by GH, but otherwise powerless) agreed.
GH did make contact with officers on the Friday evening and was informed of the application and hearing. Had he not done so there would have been no proof of service of the summons. There is no power to obtain an interim FTO or otherwise to prevent travel. He was angry and accused the police of trying to ruin his life before ending the conversation.
Officers attended Highbury Corner Magistrates' Court on Saturday 1 September 2012. By 1030 GH had not appeared. The application was heard in his absence and a worldwide FTO imposed for a period of two months. This would enable each party to re-apply to vary the order at a contested future hearing.
In fact GH then attended, one hour late. The FTO was served on him and, on request; he surrendered his passport to police officers at Court. If he had not done so, contact had been made with ports officers at Gatwick to intercept him when he booked in for his flight later that night. The ports officers had agreed to serve a copy of the FTO on him and seize his passport.

Had this matter (i) not been addressed by a specialist team, or (ii) had GH either (a) not notified an intention to travel; (b) telephoned his monitoring officer in order to prove service; or (c) attended at Court and surrendered his passport; or (iii) had a Court not been sitting on Saturday with time to determine the application (and taking exceptional steps to list the matter), it is unlikely that his departure from the United Kingdom would have been prevented. He would have departed without breach of either the notification requirements or an FTO since he had notified travel, and an FTO may not necessarily have been obtained by date of travel in the absence of proof of service of the summons.

7.7.3 We accordingly recommend that an emergency power is considered both to injunct travel and to require the surrender of any passports pending determination of the complaint in appropriate cases.

7.8 Other elements: renewals; variations; appeals; offences

7.8.1 We do not make further representation as to these elements. We observe that it is only the defendant that enjoys a right of appeal. Given the civil context, the reasons are again not wholly transparent. Rightly, the defendant again enjoys full rights of participation and representation.

7.9 Conclusions re FTOs

7.9.1 The existing statutory regime is deeply flawed and easily remedied. It fails adequately or at all to prevent the travel of identifiable high-risk offenders to intrinsically vulnerable jurisdictions sexually to abuse children. The negligible number of such orders in force relative even to the numbers of qualifying offenders (i.e. those with qualifying convictions) speaks for itself in terms of the effect of the obstacles engrained in section 114.

7.9.2 Repetition does not improve the general points already made. As many commentators have observed, the legislation is not only inadequate, it discriminates against children extra-jurisdictionally relative to those in the United Kingdom. Coupled with the weaker systems of civil society in these destination countries, this continues to appear indefensible.

8. RISK OF SEXUAL HARM ORDERS

8.1 Context

8.1.1 As with FTOs, albeit the requirements are different, the specific pre-requisites to obtaining a ROSHO mean that they have only rarely been either sought or imposed since they were introduced by the 2003 Act. We do not doubt that certain police forces could have been more proactive in terms of applying, but this does not begin to explain fully the very low numbers of orders made under this provision. Many forces do not apply for any in a whole calendar year. The reality is that the prerequisites usually obstruct otherwise well-founded applications.

8.1.2 Although there is no requirement of a qualifying conviction, the limitations in terms of the applicant remain.

8.1.3 More fundamentally, the fact that there is a distinct FTO regime means that ROSHOs are simply not sought to address the specific risk of extra-jurisdictional offending. Police forces, and the Courts, adopt the approach that foreign travel is addressed by the specific FTO regime and to use a ROSHO (or to impose the equivalent of a notification requirement regime as a ROSHO) is inappropriate and possibly unlawful. A person that is not subject to the statutory notification requirements will quite simply be under no obligation to notify the police of plans to travel abroad.

8.1.4 Equally, the fact that a prevention order may arise in defined circumstances without a qualifying conviction tends to prove that there is no fundamental human rights objection to such an order. Our basic contention is to extend the same principle to the regulation of foreign travel.

8.2 The statutory provisions

123 Risk of sexual harm orders: applications, grounds and effect

(1) A chief officer of police may by complaint to a magistrates' court apply for an order under this section (a "risk of sexual harm order") in respect of a person aged 18 or over ("the defendant") who resides in his police area or who the chief officer believes is in, or is intending to come to, his police area if it appears to the chief officer that –

(a) the defendant has on at least two occasions, whether before or after the commencement of this Part, done an act within subsection (3), and;

(b) as a result of those acts, there is reasonable cause to believe that it is necessary for such an order to be made.

(2) An application under subsection (1) may be made to any magistrates' court whose commission area includes

(a) any part of the applicant's police area, or;

(b) any place where it is alleged that the defendant acted in a way mentioned in subsection (1)(a).

(3) The acts are –

(a) engaging in sexual activity involving a child or in the presence of a child;

(b) causing or inciting a child to watch a person engaging in sexual activity or to look at a moving or still image that is sexual;

(c) giving a child anything that relates to sexual activity or contains a reference to such activity;

(d) communicating with a child, where any part of the communication is sexual.

(4) On the application, the court may make a risk of sexual harm order if it is satisfied that –

(a) the defendant has on at least two occasions, whether before or after the commencement of this section, done an act within subsection (3); and

(b) it is necessary to make such an order, for the purpose of protecting children generally or any child from harm from the defendant.

(5) Such an order –

(a) prohibits the defendant from doing anything described in the order;

(b) has effect for a fixed period (not less than 2 years) specified in the order or until further order.

(6) The only prohibitions that may be imposed are those necessary for the purpose of protecting children generally or any child from harm from the defendant.

(7) Where a court makes a risk of sexual harm order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

124 Section 123: interpretation

(1) Subsections (2) to (7) apply for the purposes of section 123.

(2) "Protecting children generally or any child from harm from the defendant" means protecting children generally or any child from physical or psychological harm, caused by the defendant doing acts within section 123(3).

(3) "Child" means a person under 16.

(4) "Image" means an image produced by any means, whether of a real or imaginary subject.

(5) "Sexual activity" means an activity that a reasonable person would, in all the circumstances but regardless of any person's purpose, consider to be sexual.

(6) A communication is sexual if–

(a) any part of it relates to sexual activity, or;

(b) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider that any part of the communication is sexual.

(7) An image is sexual if –

(a) any part of it relates to sexual activity, or;

(b) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider that any part of the image is sexual.

8.2.1 Other sections need not be rehearsed in full. For completeness the other sections are sections 125 "RSHOs: variations, renewals and discharges"; 126 "Interim RSHOs"; 127 "RSHOs and interim RSHOs: appeals"; and 128 "Offence: breach of RSHO or interim RSHO".

8.2.2 As with other prevention orders, applying *Haggas* the standard of proof will be to the criminal standard. For reasons we have already given, in that the civil rules of evidence apply to these applications this is not the primary point of concern in this paper. Equally, we question whether the criminal standard is genuinely appropriate to the proof of underlying acts, and the test of necessity, where the harm to be avoided is the sexual abuse of children rather than other forms of anti-social behaviour.

8.2.3 There are some basic flaws with these provisions.

8.2.4 The subject of the application must be at least 18 years' of age. Whilst the circumstances in which a ROSHO for an unconvicted person under this age may be rare, and other forms of intervention may be used concurrently to address certain risks, the fact is that those under 18 do represent a risk of committing sexual offences against other children. For example, we received evidence of multiple, and very serious, penetrative sexual offending against young children by other children acting as babysitters.

8.2.5 There appears to be no compelling reason to restrict the use of ROSHOs to those that are 18 years' even if applications in this category will be rare. The problem is not purely hypothetical, since prosecution of children for sexual offences against other (often much younger) children is not always in the public interest applying the Code for Crown Prosecutors and associated specific guidance. For a paradigm illustration of the hard issues that arise see the case of GM, below.

CASE STUDY 16 - GM: juvenile offending

West Mercia Police is responsible for managing an adult male offender, GM, who was convicted as an adult for a series of rapes on an 11 year-old girl and is sentenced to 10 years' imprisonment.
As an under 18 year-old [16 years'] he had been reported to the police on a number of occasions in respect of separate allegations of sexual assault, rape and sexual activity with a child. All the victims were young girls. He was not charged in any of these cases, either because the CPS advised no further action or the child victims declining to co-operate. The supervising officer was informed that a ROSHO required conduct when the offender was at least 18 years'. In any event a ROSHO may have required the reluctant victims to give evidence in order to meet the criminal standard.

8.2.6 Further to the issues associated with the limited class of applicant, there are other intrinsic problems.

8.2.7 The class of qualifying conduct is highly limiting. As can be seen, it requires evidence of direct or contact offending with children before the conduct will qualify. Leaving aside that if the police were in a position to prove conduct to the criminal standard they would usually prosecute (we accept that not every such situation will result in prosecution, for the multiple reasons we have set out), the requirement of direct criminal contact with a specific child as a pre-requisite to a ROSHO is often unachievable in practice.

8.2.8 There seems to be no logic why the qualifying conduct should require proof of such direct sexual conduct with specific children. To take some obvious examples, it would exclude a person with a proven history of making indecent pictures of children, or more generally a proven ambition/intention sexually to abuse children, but in respect of whom no child specific contact could be proved. It would exclude a person who was openly discussing with adults online a strong and immediate intention to find children to abuse.

8.2.9 The present categories accordingly exclude a wide range of non-contact sexual offending with children that may otherwise clearly demonstrate a high risk of future offending. Without the power to apply for a ROSHO to prevent such offending the chief officer has to wait for contact offences to occur. This appears indefensible. The most recent, and ACPO approved, risk assessment model[23] addressing the association between non-contact downloading offences and future contact offending demonstrates an empirical link between the one (non-contact) activity and the probability of the other.

CASE STUDY 17 - CD

CD was a male taxi driver. The complainant was a 15 year-old vulnerable girl in care who disclosed she had been meeting CD for some time after he initially offered her a lift home. He had thereafter repeatedly offered her free lifts home; given her cigarettes; and graduated to offering her money to bring her friends with her to his house. Although the girl said there had been no actual sexual activity, she disclosed that CD was talking of getting "something in return" and asked to kiss her. CD had threatened her not to inform either her school or her carers. She was unwilling to substantiate a formal complaint.
There was only one clearly arguable specific act within section 123(3), namely the request to kiss him. The residue was not overtly sexual but as a pattern demonstrated sexual intent. No ROSHO was applied for.

This pattern of grooming is obviously of wider concern given the pattern of organized street grooming of vulnerable girls by adult groups across the United Kingdom. Two or more specific contact offences are required. The wider pattern of grooming is often obvious even if not directed at one child for the substantive section 15 grooming offence.

[23] KIRAT: the Kent Internet Risk Assessment Tool. This ACPO approved risk-assessment model promotes informed decision-making by police forces seeking to predict the probability of contact offending by those with a history of downloading offending.

8.2.10 These apparent absurdities are further compounded by the need to prove at least two such qualifying contact offences. A person who is proved (albeit not convicted for one reason or another) to have raped a child, but only once, will thus not be liable to a ROSHO. A person who has had one wholly unambiguous sexual communication with a child will similarly not be liable to a ROSHO. We observe that the need for at least two acts of communication with a child, and an arrangement that one of the correspondents travel, are required for the section 15 SOA 2003 grooming offence: again, this is an obstruction to child protection and obtaining a qualifying conviction.

8.2.11 Finally, the definitions of "image" and "communication" ("A communication/image is sexual if (a) any part of it relates to sexual activity, or (b) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider that any part of the communication/image is sexual") rightly appears to include such communication and images if, whilst not overtly sexual, are made so by all the circumstances.

8.2.12 The one caveat we express on this point however is that it is often the person's sexual purpose that converts an otherwise objectively innocent communication into a proper basis to conclude it is part of a grooming process. In the context of prevention orders, it appears to us that a person's purpose is relevant to the circumstances that may or may not justify intervention.

8.2.13 We repeat the impression – which is necessarily anecdotal – that given these intrinsic obstacles, and the inherent difficulties proving the underlying two contact offences to the criminal standard, many forces are underusing the ROSHO regime. Whilst it does not appear to apply in practice to prevent non-UK offending, this risk aversion should be recognised and addressed by all forces. There are marked differences between forces as to the relative number of applications. Some forces have only applied for a small handful: others none at all.

8.3 Prevention orders: further points of general application

8.3.1 As matters stand, and leaving aside the limited application and effect of ROSHOs, the requirement of a qualifying conviction means that the statutory regime is not fit for purpose in relation to many high risk offenders, and most particularly insofar as it relates to FTOs. The numbers – inadequate as they are in terms data collection – do not lie.

8.3.2 The disproportionate significance of a qualifying conviction in obtaining a prevention order is compounded further by contrasting the mandatory consequences of conviction for any qualifying Schedule 3 offence, whether or not this includes contact offending. Even for a qualifying non-contact offence (e.g. possession of indecent pictures of children) the full rigour of the various statutory regimes (notification requirements; disqualification from working with children orders; barring

orders: *etc*) is applied without either qualification or distinction automatically to each offender. By contrast, an objectively much higher risk (but unconvicted) person will in practice not be subject to any of these provisions, and will only be subject to a ROSHO in tightly defined circumstances, and even then never to prevent foreign travel.

8.3.3 We can see no underlying justification for these distinctions.

8.3.4 We also repeat that a civil process that begins by complaint by the local chief officer; that has to be resourced exclusively by the local force; and where acts must be proved to the criminal standard, is always likely both to miss some of the nationally (rather than locally) available police intelligence/evidence and, more particularly, promote a risk-averse culture in respect of making applications in a period of acute pressure on policing budgets. There may be no simple answer to the resource implications, beyond consideration (most particularly for FTOs, which are properly an international, rather than local police force, issue) of a central policing resource dedicated to investigating extra-territorial offending and promoting its prevention.

8.3.5 The benefits of a national policing resource, and/or extending the functions of CEOP (and the NCA) to include responsibility for all FTOs coupled with improved UK resources abroad (possibly as part of an international development programme under DFID), are considered below.

9. HUMAN RIGHTS CONSIDERATIONS

9.1 General

9.1.2 We have already indicated that we perceive no fundamental human rights objection to the primary reform we propose, namely the removal of the requirements of a qualifying conviction and, when applicable, conduct since the appropriate date. As already observed, if either was a human rights pre-requisite the ROSHO regime itself would be non-compliant, and this has never been suggested in practice.

9.2 Relevant human rights instruments

9.2.1 Article 13 of *The Universal Declaration of Human Rights* provides:

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

9.2.2 Article 12 of the *International Covenant on Civil and Political Rights* provides:

1. Everyone shall be free to leave any country, including his own.

2. The above mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

9.2.3 Article 8 of *The European Convention on Human Rights and Fundamental Freedoms*, 1950, integrated into English law by the Human Rights Act 1998, provides:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

9.2.4 It will be seen that these instruments, individually and collectively, reflect the human right to travel. This right is however expressly qualified by the right of a State to restrict this freedom of movement (i) in accordance with law, and (ii) to protect the legitimate human rights of others.

9.2.5 The protection of children from sexual abuse is unquestionably justified as a restriction. As was said by the Court of Appeal in relation to football banning orders under the Football Spectators Act 1989 in *Gough v Chief Constable of the Derbyshire Constabulary*, [2002] EWCA Civ 351, "…restraint on freedom of movement could be justified on the grounds of public policy. Preventing football hooligans from taking part in crime and disorder was an imperative reason of public interest capable of justifying restrictions on their freedom of movement…" The same logic surely applies - with interest - to the protection of children.

9.2.6 We observe that there is nothing in these human rights instruments, beyond the recognized and uncontroversial requirements of "in accordance with law" and necessity, to mandate what procedure a State must adopt before it imposes a restriction. The instruments do not mandate that the primary decision-maker must be a member of the judiciary rather than the police or the Executive.

9.2.7 Further, there is absolutely no provision, express or implied, that in order to impose a restriction on freedom of movement there must have been a qualifying criminal conviction. The human rights considerations are driven by what is necessary to protect the rights of others. We contend for the same purposive starting point.

9.2.8 Coupled with this basic "balancing" framework are a series of positive duties on States to take protective measures. The relevant international instruments, to which the UK is a signatory, include the *United Nations Convention on the Rights of the Child*, 1989/1990; the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, 2000 [in force 2002]; the *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*, 2007 [ratified by the UK 2008]; and the *EU Directive on combating the sexual abuse and sexual exploitation of children and child pornography,* [13 December 2011].[24]

9.2.9 Paragraphs [5] and [6] of the 13 December 2011 Directive merit rehearsal:

> (5) In accordance with Article 34 of the United Nations Convention on the Rights of the Child, States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. The 2000 United Nations Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and, in particular, the 2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse are crucial steps in the process of enhancing international cooperation in this field.
>
> (6) Serious criminal offences such as the sexual exploitation of children and child pornography require a comprehensive approach covering the prosecution of offenders, the protection of child victims, and prevention of the phenomenon. The child's best interests must be a primary consideration when carrying out any measures to combat

[24] Directive 2011/92/EU of the European Parliament and of the Council, of 13 December 2011.

> these offences in accordance with the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child. Framework Decision 2004/68/JHA should be replaced by a new instrument providing such comprehensive legal framework to achieve that purpose.

9.2.10 Applying *Gough* and *Haggas,* proportionality to the underlying public policy objective is achieved where a criminal sanction for breach may arise by imposing the criminal standard of proof to all requisite findings of fact and determinations.

9.2.11 When that is coupled with (i) a judicial decision-maker; (ii) full rights of disclosure, participation and appeal; (iii) the right to seek to vary or end the prevention order, we can see no possible human rights objection to a prevention order regime that is not contingent on either (i) a qualifying conviction; or (ii) conduct since an "appropriate date"; or (iii) the necessity of any arbitrary number of preceding sexual acts, or restricting decision-making to narrow classes of sexual conduct against children (ROSHOs).

9.2.11 The admissible evidence should be completely flexible and directed at a single test of necessity of restriction given the quality of risk that has been proved to exist. This approach is fully compliant in human rights terms, and better meets the positive duties of the State to potential victims of abuse.

10. WIDER POLICING CONTEXT

10.1 General observations

10.1.1 It is beyond the scope of this document to address the detail of the national and international policing arrangements in respect of the protection of children from sexual abuse, and the use of the prevention order regime generally. We do however make some general observations that further promote our wider conclusions as to the need for legislative reform.

10.2 National and international resources

10.2.1 Certain aspects of the existing arrangements would, we believe, cause both surprise and dismay to the general public. Whilst no doubt a product of history in terms of the division of national policing into 43 individual forces in England and Wales, and further promoted by the definition of applicant as the chief officer of police for the offender's present or likely residence, these local forces/applicants simply too often lack a combination of resources, experience or (frankly) motivation to prioritise at their own expense the prevention or investigation of extra-territorial offending by British Nationals that happen to reside (or to have last resided, often historically) in the force area.

10.2.2 We do not expect such offenders to be a greater priority with the introduction of Police and Crime Commissioners. For understandable reasons, and most particularly given the need to secure election locally, the priorities will be on addressing local crime. An extra-territorial investigation into the conduct of someone that historically resided in the force area is unlikely to be a local policing priority. We contend it should be a national priority. Equally, we do not regard it as either acceptable or rational that these very demanding international investigations have to be resourced locally (many are accordingly not investigated at all), and invariably are conducted by well-intentioned officers on a dangerously steep learning curve. Nearly every post-investigation de-brief recognizes these points.

10.2.3 More generally, although CEOP is recognised as a national centre of excellence in child protection (with defined national duties; the necessary central role it plays in terms of controlling and disseminating intelligence to forces; and working in collaboration in a limited number of extra-territorial investigations with local UK investigating police forces) the dedicated resources in respect of conducting criminal investigations are very limited. In theory CEOP's investigative capacity consists of just two (small) teams of officers to cover all national and international investigations. We observe that even this limited number of posts is presently not filled, and the use of experienced officers from local forces "on secondment" has reduced in the context of cutbacks to police budgets.

10.2.4 There is no permanent CEOP or SOCA investigative ("operational") team abroad. In fact, there is not a single permanent child protection operational UK police officer posted extra-territorially. CEOP cannot resource it. There is presently no suggestion that this deficit will be remedied within the NCA.

10.2.5 Perhaps surprisingly, *Geden* [45] found that a significant number of local forces were resistant to a national, and nationally resourced, police unit directed at international offending against children on the purported basis that it would "remove developmental opportunities" from local forces. We reject this approach as insular and myopic.

10.2.6 Further, there are important adverse consequences if a national policing agency (presently CEOP/SOCA, in future the NCA) is not directing the operation. CEOP is a SOCA affiliated agency under the Serious Organised Crime and Policing Act 2005 and section 33 permits international disclosure as such.

10.2.7 The position of local forces – i.e. those not covered by section 33 – is less clear, certainly to local force investigators. The procedure that should be followed is that local forces submit a graded intelligence log to their international liaison officer, who is the force's SPOC ("single point of contact") in relation to Interpol London. Responsibility then transfers to Interpol London, which will assess the information and determine what is communicated to the relevant overseas Interpol bureau, based on assessment of risk in terms of how the intelligence may be handled. As *Geden* found [54], the ability to share intelligence and information is at the core of any investigation but local forces perceive that they are not permitted to share information with foreign law enforcement agencies or others.

10.2.8 Situations of acute emergency may permit direct police-to-police information sharing outside the Interpol regime, and even to third-parties such as employers. The latter is obviously exceptional since control of sensitive data is lost.

10.2.9 More generally a national policing resource will promote efficiency and expertise, not least in the notoriously difficult MLA (mutual legal assistance, including MLAT and ILOR) procedures that must be followed to ensure that evidence is obtained from abroad.

10.2.10 The benefits of a national resource include (i) a single, and experienced, point of contact for all international inquiries; (ii) incentivizing police officers interested in this form of investigation; and (iii) promoting constructive relationships with law enforcement agencies abroad so as to improve the outcomes of extra-jurisdictional prosecutions of UK Nationals. Corruption is less likely if there is obvious home country interest in the prosecution.

10.2.11 The existing model – with CEOP as a pre-cursor UK based agency, and the primary extra-territorial investigative responsibility falling to local forces – appears to reflect the lack of a national agency resourced to perform this role, rather than a considered position from ACPO that it is necessarily the preferred (or optimum) approach if one were to start from first principles. It will always be necessary for a central policing resource to work collaboratively with local forces: it is equally necessary for local forces to train officers to conduct extra-territorial inquiries. What is obvious however is that a single point of corporate expertise should exist nationally and that this should have a genuine capacity both to conduct and to direct

investigations into extra-jurisdictional offending. Local forces will simply not be, and are not, resourced to develop this corporate expertise and knowledge.

10.2.12 These points are coupled with the necessity of an improved UK policing presence in the local extra-jurisdictional countries to promote the successful investigation and prosecution of offending UK Nationals. We agree – not least in the interests of the child witnesses – that local jurisdiction prosecutions are preferable to using section 72. Equally, if the offender is no longer in the country where the alleged offending occurred (for example if he has returned to the UK) the strategic considerations may be different and the most practical venue for trial may be the UK. International liaison should put the interests of the child witnesses first, which will include seeking to reduce delay.

10.2.13 We also readily accept that any such permanent UK policing resource would need to be carefully calibrated so as to be effective, building on the partnerships that have been developed to promote trust with local law enforcement agencies and NGOs (which operate as *de facto* investigating officers in some jurisdictions).

10.2.14 Equally, we are satisfied that this model can work. In other areas of law enforcement SOCA has an effective permanent presence abroad directed at offending including drug trafficking and terrorism.

10.2.15 Other obvious comparators are Sweden (in which the previous fragmented regional force approach was replaced by a dedicated extra-territorial task force within the Federal Police National Child Protection Unit in Stockholm), and Australia.

10.2.16 As to Sweden, *Geden* records [56], by the end of a two-year pilot no less than 10 investigations were current and one member of the unit describes that s/he "…worked in child protection for 15 years and did not receive any training, nor did I know about extra-territorial [powers]. Here we are establishing best practice and protocols with each new case".

10.2.17 This unit has been widely welcomed by Swedish politicians, the NGO community and police officers. There is the possibility of a combined multi-national "Nordic taskforce" further to demonstrate the benefits of a dedicated, substantial, expert national investigating unit.

10.2.18 Australian authorities have adopted a different approach, in that dedicated "Transnational Crime Teams" are permanently located in vulnerable countries with the active support of the local agencies. Whilst technically attached to their local forces, these officers are funded directly by the Australian Federal Police.

10.2.19 Coupled with this is *Project Childhood.* We need do no more than reproduce the website:

> Project Childhood ($7.5 mill, 2010–2014) builds on more than ten years of the Australian Government's efforts to combat child sexual exploitation in tourism in South East Asia. The project's highly focused work streams aim to deliver protection from and prevention of child sexual exploitation in tourism in the Greater Mekong Subregion. Partner countries in Project Childhood are Cambodia, Lao PDR, Thailand and Vietnam.
>
> The program was informed by an AusAID-funded project to develop an ASEAN-wide plan to combat child sex tourism. The United Nations Office on Drugs and Crime is implementing the Protection Pillar, which commenced in 2010. This Pillar will strengthen law enforcement capacity to combat child sex tourism, working with Interpol and with assistance from the Australian Federal Police.
>
> The Prevention Pillar is being implemented by NGO World Vision Australia. This pillar will focus on building the resilience and awareness of communities to child sexual exploitation, and working with governments to develop effective national preventative measures, including reporting hotlines

10.2.20 By comparison, CEOP has conducted a relatively limited number of extra-territorial investigations and invariably has to work with local UK forces with no meaningful prior experience. Fixed extra-jurisdictional SOCA liaison officers do exist, but with a range of other duties across wide geographical areas and not in practice appearing as a single point of contact for foreign agencies. These liaison officers are not trained in child protection.

10.2.21 Given the scale of the challenge, and the clear advantages of centralization, we believe that a fully resourced national policing unit is essential adequately to protect children abroad and to ensure that British Nationals offending abroad cannot take advantage of weak local systems of policing.

10.2.22 Making these investigations the responsibility of local forces is both inefficient and ineffective. It does nothing to promote learning, expertise, or satisfactory case outcomes.

11. ALTERNATIVE INTERNATIONAL MECHANISMS

11.1 Interpol

11.1.1 As stated, Interpol is best seen as a distributor of police intelligence between law enforcement agencies in different jurisdictions. It does not co-ordinate investigations and neither does it inform the sending country of more than the fact that the information has been distributed to one or more recipient countries.

11.1.2 According to its website:

> "INTERPOL is the world's largest international police organization, with 190 member countries.
>
> Our role is to enable police around the world to work together to make the world a safer place. Our high-tech infrastructure of technical and operational support helps meet the growing challenges of fighting crime in the 21st century.
>
> We work to ensure that police around the world have access to the tools and services necessary to do their jobs effectively. We provide targeted training, expert investigative support, relevant data and secure communications channels.
>
> This combined framework helps police on the ground understand crime trends, analyse information, conduct operations and, ultimately, arrest as many criminals as possible.
>
> At INTERPOL, we aim to facilitate international police cooperation even where diplomatic relations do not exist between particular countries. Action is taken within the limits of existing laws in different countries and in the spirit of the Universal Declaration of Human Rights. Our Constitution prohibits 'any intervention or activities of a political, military, religious or racial character'."

11.1.2 In practice the reality of working with Interpol from the operational UK policing perspective is that it provides a vehicle for the transfer of intelligence to specific countries overseas. They are a hub by which policing agencies can, albeit indirectly, communicate intelligence. There are agreed and applied protocols.

11.1.3 In a typical case a UK policing agency will have intelligence that a high-risk person is travelling to a vulnerable destination but there is no power to obtain an FTO to prevent travel. An intelligence log (a so-called "5x5x5" document) and risk-assessment will be prepared and submitted by the force's international liaison officer who will forward it to Interpol London for a further risk-assessment review.

11.1.4 If satisfied with the materials (and it invariably is) Interpol London disseminates the materials to the Interpol bureau in the destination country. The destination country may or may not acknowledge receipt and is under no duty to liaise with the United Kingdom. Sending the intelligence ordinarily is perceived as discharging the United Kingdom's duty of care.

11.1.5 The quality of response of the recipient destination country is highly variable. In practice, most particularly in vulnerable developing countries, unless the package is associated with a personal contact or

"flash message" denoting acute urgency, the intelligence enters a slow bureaucratic process that, even with specific inquiry from the UK, may take many months to get a basic response. Similar delay occurs with inquiries of Interpol London.

11.1.6 Whilst the well-known "colour" notice system operated by Interpol has merit, as do its other international coordinating and educational initiatives, Interpol does not in practice provide a practical alternative to direct policing in individual cases by UK authorities. It is a useful, if imperfect, international vehicle for the exchange of intelligence, with a limited pro-active investigative function.

11.2 Other liaison/exchange of intelligence

11.2.1 Outside the exchange of intelligence through Interpol, SOCA (and as part of SOCA, CEOP) is entitled to disclose information to third-parties pursuant to section 33 of the Serious Organized Crime and Policing Act 2005. The observation is repeated that although disclosure may be possible under other regimes to foreign police forces, this statutory power to disclose intelligence to non-police agencies resides solely with SOCA and CEOP. Local forces must rely on powers under Common Law and this power may not be fully understood by every force.

11.2.2 Certain information is excluded from disclosure by subsection (4) (namely, (a) a disclosure, in contravention of any provisions of the Data Protection Act 1998 (c. 29), of personal data which are not exempt from those provisions; (b) a disclosure which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000, or (c) a disclosure in contravention of section 35(2)). Since in practice most information relating to the threat of sexual harm to children will be disclosable in one form or another we do not address further these exclusions.

11.2.3 The residual part of the section provides as follows:

> **33 Disclosure of information by SOCA**
>
> (1) Information obtained by SOCA in connection with the exercise of any of its functions may be disclosed by SOCA if the disclosure is for any permitted purposes.
>
> (2) "Permitted purposes" means the purposes of any of the following—
>
> (a) the prevention, detection, investigation or prosecution of criminal offences, whether in the United Kingdom or elsewhere;
>
> (b) the prevention, detection or investigation of conduct for which penalties other than criminal penalties are provided under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom;
>
> (c) The exercise of any function conferred on SOCA by section 2, 3 or 5 (so far as not falling within paragraph (a) or (b));

(d) the exercise of any functions of any intelligence service within the meaning of the Regulation of Investigatory Powers Act 2000 (c. 23);

(e) the exercise of any functions under Part 2 of the Football Spectators Act 1989 (c. 37);

(f) the exercise of any function which appears to the Secretary of State to be a function of a public nature and which he designates by order.

(3) A disclosure under this section does not breach—

(a) any obligation of confidence owed by the person making the disclosure, or;

(b) any other restriction on the disclosure of information (however imposed).

11.2.4 Self-evidently the power of disclosure of such sensitive information by SOCA must be reviewed against the reality of how effectively it is handled once provided. The quality of response internationally is highly variable and we do not attempt a comparative exercise.

11.2.5 It is however equally self-evident that (i) there are many vulnerable jurisdictions where the provision of information is not supported by effective intervention by local law enforcement agencies; and (ii) (we contend) a more effective response would be promoted by a permanent UK law enforcement capacity in targeted vulnerable countries to receive the information and to seek to ensure that it is acted on locally.

11.2.6 As to the latter, we have already rehearsed the extra-territorial resources of countries including Australia. The CEOP-led International Child Protection Network ("ICPN") is coordinated by CEOP and its characteristics may usefully be summarized.

11.2.7 At CEOP there is a single dedicated senior party responsible for developing the network. He is funded from CEOP's budget. Coupled with him is a single administrative assistant, a role that is funded by corporate sponsorship. There is core funding from CEOP for operational deployments abroad, but not for wider extra-jurisdictional capacity building and training programmes.

11.2.8 As already stated, there is however not a single permanent CEOP operational officer abroad, and the regional SOCA liaison officers are not child protection specialists and have extensive other SOCA duties (terrorism; drugs, *etc*). International capacity building and training programmes have to be funded by sponsorship (the entire ICPN European programme is funded by Visa Europe) or discretionary year-on-year grants from the FCO. Since many of the capacity and training programmes are most effective over a five-year or more timescale the compromise is obvious.

11.2.9 We believe that these funding and resourcing limitations would both surprise and concern the public.

11.2.10 Within these limitations the existing framework of the ICPN is serving to demonstrate the positive progress that may be made with targeted activity, most particularly when it is conducted in partnership with local stakeholders. These relationships are central to effective engagement, prevention and prosecution. They would be enhanced by a permanent operational resource extra-jurisdictionally.

11.2.11 In absolute summary, the ICPN model is to establish groups of partners in vulnerable jurisdictions to promote inter-agency liaison directed at preventing the sexual abuse of children by British Nationals. Such groups have been established in both South East Asia and Europe.

11.2.12 In terms of South East Asia, specific ICPN groups have been established in Vietnam, Cambodia, Thailand and the Philippines. Although the constituent membership varies according to the host country, in general terms it includes the local police; the United Nations; NGOs; Government; the British Embassy; the British Council (which part funds some training and capacity building programmes on an *ad hoc* basis); and the judiciary.

11.2.13 The ICPN is developing training and capacity building programmes with these partners, wholly funded from non-CEOP resources. Corporate (i.e. third party commercial) engagement is being promoted. Programmes include the delivery of training and making and distributing a locally made film in Thailand that helps teachers warn children of the risk of abuse and trafficking.

11.2.14 As applied to Europe, the capacity building and training is entirely funded by Visa Europe. Specific countries targeted for involvement include Romania, Ukraine, and Spain (with a low age of consent and a popular destination for those subject to notification requirements).

11.2.15 Whatever the success of these training and partnership arrangements, they are essentially non-operational and presently funded as such. Whilst the partnerships may promote liaison on individual operations, we contend (i) that there should be a permanent operational resource in many of these vulnerable countries (if necessary concurrently promoting the training and capacity building initiatives of the ICPN); and (ii) operationally or not these resources should attract fixed, long-term guaranteed funding from central Government. They appear to fall squarely within the concept of international development.

11.3 Intelligence from other jurisdictions; the International Child Protection Certificate

11.3.1 As to approaching the exchange of intelligence from the destination country, we revert to the question of British Nationals working abroad as teachers and under cover of charity, typically in orphanages. Many British Nationals operate in such employment for periods of many years without returning to the United Kingdom. By definition, many of the schools and orphanages will be established in remote and unsophisticated locations without access to modern forms of communication or any understanding of the UK regulatory regime.

11.3.2 Before addressing the recent (October 2012) introduction of the UK "International Child Protection Certificate", and the necessary limitations of it, we summarise the existing bases of access to information about employees by foreign charities and schools.

11.3.3 According to research by CEOP (October 2012), and based on information obtained from the Council of British International Schools ("COBIS"), in 2012 there were some 6064 English medium international schools of which 115 were members (obviously the larger figure is in no way exhaustive of the real number, and is limited to English medium schools in any event). Over 90% of these schools had no entitlement to obtain information from the UK Criminal Records Bureau. In 2010 the identified schools employed over 74,000 teachers from the UK, a number that is expected to increase to some 115,000 by 2013. It is a growth industry.

11.3.4 These schools are likely to represent the better-established international schools with a substantial UK connection. The figure does not include many smaller schools and/or locally resourced (i.e. home country) schools or (of any size) those that are resourced by countries other than the United Kingdom.

11.3.5 In addition, the figures do not reflect the many hundreds, if not thousands, of essentially unregulated local orphanages in many destination countries, either set up by British Nationals, or employing them. CEOP has identified a trend in UK offenders seeking employment in such orphanages, and criminal offending against children in this context is also a historically well-documented phenomenon. The reality of the local recruitment processes is that foreign volunteers are welcome with few questions asked at point of recruitment.

11.3.6 A high proportion of these establishments do not provide any child protection training and many have no child protection policies.

11.3.7 With all these obvious vulnerabilities in mind, the ability of a charity or school to obtain information about a potential British National in advance of employment is very limited.

11.3.8 Unless the charity is either providing services or registered in the United Kingdom it will have no right to request CRB data from the police under Part V of the Police Act 1996. COBIS estimated that this covered some 90% of its identified schools. Basic CRB checks do not in any event cover intelligence matters (rather than recorded convictions, cautions and reprimands) and so anything other than an enhanced CRB check (which does cover intelligence matters) is liable to be misleading. There is a charge for the enhanced check and obviously some delay in providing it.

11.3.9 Even for those charities that ask (we observe, a small proportion) it follows that unless they are effectively based in the UK there will be no right to conduct the check. For a potential employee presenting for employment abroad the reality of waiting for the check to be conducted is such that it will not be sought. Offenders will seek out schools and orphanages that make no inquiry.

11.3.10 Further, as between the Independent Safeguarding Authority and SOCA/ACRO the exchange of intelligence is compromised by data protection legislation. The ISA and CRB are merging into a new non-departmental public body, namely the Disclosure and Vetting Board.

11.3.11 Under the Safeguarding Vulnerable Groups Act 2006 an individual may be barred from working with children either automatically (for proven criminal conduct) or, as a matter of discretion, where the ISA has received evidence of other relevant conduct. Clearly this underlying intelligence material is of potential relevance to other prevention orders than the regulated UK activity covered by the 2006 Act. There is however no right for the police to obtain and consider it without specific operational justification.

11.3.12 As matters stand the ISA does not provide its list to any other body, save that the CRB may access the data when conducting enhanced checks. The police, including CEOP, are not entitled to access the ISA data for anything other than a specific investigative purpose i.e. in connection with a specific operation rather than as general background intelligence. Even then the data has to be specifically requested of ISA. A request for intelligence to support an application for a SOPO or FTO would not qualify as a specific police operation in practice. CEOP would not have a sufficient interest in an individual simply because they are seeking employment with a third party such as a school: the employer may be able to ask, but CEOP could not.

11.3.13 If specific intelligence is received about an individual CEOP can seek intelligence from ISA under section 34 of the Serious Organized Crime and Policing Act 2005.

11.3.14 In order to seek to address the perceived gap, i.e. the fact that non-UK registered charities/schools/other organisations cannot access the CRB data or request CRB checks (basic or enhanced), CEOP has led the introduction (18 October 2012) of the International Child Protection Certificate (ICPC).

11.3.15 This certificate will be issued to the individual potential employee (n.b. not the potential employer) in respect of a specific, named, potential employer. It will simply record that, on a given date, the subject of the certificate has no recorded child sexual offences, cautions or reprimands. Employers will be registered and will receive an information pack and telephone contact details at ACRO.

11.3.16 Additionally and importantly, the applicant will not receive a “No Trace” certificate even in the absence of such formal findings against him if the wider intelligence picture suggests a significant degree of risk.

11.3.17 Taken together this will allow intervention by CEOP before employment is achieved at the specific institution in respect of which application is made.

11.3.18 CEOP recognizes the potential risk of manipulation by such offenders; most particularly if what the certificate is and, as importantly, is not saying is not fully appreciated by the potential employer.

11.3.19 Obviously, once a person has a certificate he can use it at a sequence of organisations in order to obtain employment if the organisations do not seek an updated certificate. CEOP will only be notified of the first such application for work when the application for the ICPC is made.

11.3.20 Whatever the merits of the certification scheme, common ground between the authors is that it should become easier for all extra-jurisdictional schools and orphanages, as well as hospitals, *etc*, to obtain a meaningful and up to date assessment of risk in terms of any British National or Resident from UK law enforcement based on the whole intelligence picture. This requires legislative reform.

11.3.21 Equally, if CEOP is to be able to take meaningful preventive measures when notified through the certification process of future high-risk employment, improved operational and practical resources in the local jurisdiction will be necessary. Intelligence that is not coupled with the capacity to intervene is of little value.

11.3.22 The certification scheme is a well-intentioned attempt to mitigate obstructive underlying legislation. In addition to the need for the employer to obtain a meaningful assessment from UK agencies, data protection principles should also permit the open exchange of information between the police and the ISA in the interests of child protection. This appears to us to be consistent with the principles of data sharing rehearsed in the Bichard Inquiry report.

12. REFORM/HUMAN RIGHTS/POLICING RESOURCES: SUMMARY AND ANALYSIS

12.1 Structural changes to policing extra-territorial offending to be considered

12.1.1 We have concluded that the existing regime actively obstructs international child protection, and may mean that the UK's basic human rights obligations are not being met.

12.1.2 The problems are compounded by (i) the "local force" led obligation to apply for orders and/or to investigate extra-territorial offending; (ii) the lack of single, dedicated national police investigation team directed at extra-territorial sexual offending against children; (iii) the relative lack of permanent UK policing presence extra-jurisdictionally to promote extra-jurisdictional liaison and successful prosecution of UK offenders; (iv) the insufficient use of existing legislation by some local forces; and (v) the inefficiency of alternative international police enforcement/liaison methods such as Interpol (which cannot provide real-time assistance, and is best seen as an international police intelligence distribution hub) and local jurisdiction forces (with almost no effective investigative capacity and/or international communications).

12.1.3 Part of the remedy is a national policing resource directed at extra-jurisdictional offending against children, coupled with strategic (permanent) UK law enforcement resources on the ground abroad to promote partnership building and effective policing of UK Nationals.

12.1.4 We do not perceive that the cost of such provision is prohibitive. It may reflect collaborative funding by local forces, CEOP/NCA, and a contribution from DFID since the benefits may properly be classed as international development. DFID – unlike the Home Department – has the guarantee of a fixed % GDP budget. We believe the public would welcome allocating a relatively modest part of it annually to these strategic international child protection objectives.

12.2 Simplification of prevention order regime

12.2.1 We do not propose any significant reform of the wider processes of appeal and review of any prevention order that is imposed, save that the applicant should have a right of appeal against refusal to the Crown Court. The existing rights ensure compliance with human rights and independent judicial scrutiny.

12.2.2 The simplification we propose removes arbitrary pre-requisites that have no logic within the reality of the criminality involved. The test is evidence-led and the class of applicant is extended from chief officers (led by the chance event of where the offender did, does or may reside) to one reflecting the person with control of the evidence and intelligence.

12.2.3 As revised, we propose a change to the legislation such that the basic order would read (very broadly) as follows. It would be available for any potential offender over the age of 13 years', and would cover the protection of children equally in and outside the United Kingdom;

> **Child sexual offences prevention order**
>
> "On the application of a Chief Officer of police or other qualified person [CEOP/SOCA/NCA/CPS etc], or on conviction for a qualifying offence, a court may make a child sexual offences prevention order in respect of any person if it is satisfied that it is necessary to make such an order for the purpose of protecting a person of under 18 years' from [serious] sexual harm from the defendant/respondent"

12.2.4 Most if not all the other statutory definitions could remain. The mandatory consequences of conviction for a qualifying offence would remain (notification requirements, *etc*). A power is needed to impose an emergency interim order, and the right to demand surrender of passports, pending determination of the main application. The standard of proof required will continue to reflect the case law although this could itself be reviewed.

13 CONCLUSION

13.1 In 2009 two of the immediate authors concluded, "The sexual abuse of children is a combination of orientation and opportunity. Those with the former travel in the confident expectation of the latter. They are a toxic export we can and must control. Children abroad deserve no lesser protection than that afforded in Britain".[25]

13.2 In making these recommendations, we repeat and adopt these propositions. These straightforward changes, long demanded by NGOs and informed members of the police service, would produce real benefits at no threat to human rights legislation. Coupled with improved national and international police resources, the United Kingdom's duties to the world's most vulnerable and sexually exploited children would come closer to matching the public's legitimate expectations.

HUGH DAVIES OBE QC
CHRISTINE BEDDOE
STEPHANIE McCOURT
JANET McINTYRE
DCI JOHN GEDEN
DC ALAN MORGAN

5 March 2013

[25] Hugh Davies and Chris Beddoe, *The Guardian*, 9 March 2009.

Appendix 1

Authors' biographies

Hugh Davies OBE QC

1990 Called to the Bar, Lincoln's Inn. Tenant at 3 Raymond Buildings, Gray's Inn, London.
27 March 2013 Queen's Counsel

Hugh Davies has extensive experience of conducting proceedings involving allegations of serious and organized crime, including leading prosecutions on behalf of the National Crime Squad and the National Hi Tech Crime Unit (now SOCA). This has included prosecuting offences involving child exploitation, either involving the internet, or by way of extra-jurisdictional contact offending against children. He is head of the Bar Human Rights Committee Child Rights Unit and an independent member of the ACPO child protection executive board. He delivers training to judges and other professionals in relation to crimes involving indecent photographs of children. He was made an OBE in 2011 for services to children and young people.

Additionally, he specialises in proceedings relating to the actions and accountability of police forces and police officers, including defending charges of manslaughter, corruption, attempts to pervert the course of justice, and misconduct in public office. He also has extensive associated experience advising and representing police officers at public inquiries; inquests; IPCC supervised investigations; internal disciplinary proceedings and associated judicial review proceedings. He is Counsel to the Inquest in relation to the death of Alexander Litvinenko, and co-author of *Police Misconduct, Complaints, and Public Regulation*, OUP, 2009.

Christine Beddoe

Christine has had almost 20 years' experience campaigning against the sexual exploitation of children. With work experience in Thailand, Cambodia, Vietnam, Kenya, India, Sri Lanka and Nepal to name a few, Christine has an established a reputation for developing ground breaking responses to cross-border child protection. Having published numerous highly regarded research reports and policy papers for ECPAT and others, Christine is also called on as an expert advisor on child sex tourism/travelling sex offenders for the Council of Europe Parliamentary Assembly, the UN World Tourism Organisation, UNICEF, the European Economic and Social Committee (EESC) and numerous travel industry companies. Christine's evidence as expert witness has been used to support criminal convictions and civil matters. ECPAT UK campaigns since 1993 have been responsible for the introduction of extra-territorial legislation, monitoring international cases, and closing loopholes in law so that children overseas can be better protected from British sex offenders.

In addition, Christine's high profile work within the UK on child trafficking has led to changes in legislation, more targeted child safeguarding responses across central and local government and extensive media coverage across the UK.

Stephanie McCourt

Stephanie McCourt is Operations Manager at the Child Exploitation and Online Protection Centre (CEOP), leading their investigation teams as Senior Investigating Officer (SIO) with particular specialism in international and extra-territorial investigations. She joined West Midlands Police in 1995, becoming a CID Detective in 1999 and working in a wide range of areas of serious crime investigation, including a three-year secondment to the Hi Tech Crime and Paedophile Unit. In 2005, she joined the National Crime Squad (and remained under SOCA) as a Detective Sergeant, leading drugs and people trafficking investigations into significant Organised Crime Groups and deploying nationally as a Surveillance Ground Commander.

Between 2007 and 2008 she volunteered to work with the NGO *Actions Pour Les Enfants* (APLE) and South East Asia Investigations into Social and Humanitarian Activities (SISHA) for 5 months in Cambodia. During this period, she offered full time pro bono consultancy to these agencies, delivering capacity building training, mentoring and guiding civilian investigation and surveillance teams and working closely with the Cambodian National Police.

She returned to SOCA in 2008 writing policy for SOCA's Enforcement HQ and conducting internal investigations. In 2009 she joined CEOP as team leader of the Overseas Tracker Team, the only dedicated team in the UK which specialised in tracking, developing intelligence on and investigating extra-territorial sexual offending by British nationals and residents. In 2011 she was appointed Intelligence Manager for CEOP, and was further promoted in 2012 to her current position of Operations Manager. She has deployed operationally and led high profile investigations overseas for CEOP on numerous occasions, including to Cambodia; India; Bangladesh; Romania and

Ukraine.

Stephanie founded CEOP's International Child Protection Certificate (ICPC), launched by CEOP and ACRO in October 2012, following three years' research and multi-agency contribution/ project work. She is a regular speaker on SOCA's overseas liaison officer pre-deployment courses in relation to extra-territorial sexual offending by British nationals and residents.

Janet McInytre

Between 2007 and 2012 Janet McIntyre was Team Leader of CEOP's Offender Management Team, dealing with both UK Nationals suspected of travelling overseas to target and abuse children, and non-compliant UK Registered Sex Offenders who have gone missing. The majority of these were found to have travelled overseas extensively. More recently, she has lead for strategic intelligence and knowledge of one of the key threats within CEOP, namely "offenders who cross borders to abuse children". She is employed by Border Force National Intelligence with responsibility for intelligence in respect of importations of indecent images of children.

DCI John Geden

Detective Inspector John Geden is a Hampshire Police Officer and has an extensive background in child protection. A former Royal Military Police Captain, he was educated at RMA Sandhurst and served throughout the United Kingdom (including Northern Ireland) and Germany. He joined Hampshire Constabulary in 1992 and worked in a variety of roles prior to joining the CID. He is a senior investigations officer (SIO) and has investigated several serious crimes that have gained national attention. Between 2007 and 2009 he was the head of the Police Public Protection Investigation Unit in Portsmouth, responsible for the investigation of serious sexual and violent crime; high risk missing people; and the management of violent and sexual offenders under MAPPA.

Between 2009-2011 John completed an 18-month secondment to the Child Exploitation and Online Protection centre (CEOP) as the Head of Offender Management, during which time he led several investigations abroad working with foreign law enforcement agencies targeting UK citizens who were actively abusing foreign children. He completed a postgraduate degree (MSc) in Criminology and Criminal Justice at Portsmouth University, gaining an overall distinction. His extended dissertation focused on the management and control of travelling sex offenders. He is currently in the first year of a professional doctorate in criminal justice.

John is currently the head of the Hampshire Police Eastern Area Child Abuse Investigation Unit, responsible for investigating child deaths and the worst cases of physical and sexual abuse of children. John is a regular speaker at national conferences and is regarded as a leading authority in the management, and prosecution, of travelling sex offenders. He is registered with the NPIA as a specialist advisor on this subject. He is currently working on a project to map best practice in relation to extra-territorial investigation in Australia, Sweden and the USA. He is researching the concept of forming a Europol based investigation team to provide an EU response to intelligence management, investigation and capacity building with foreign police forces. He was awarded a travelling fellowship by the Winston Churchill Memorial Trust allowing him to conduct much of this research and travelled to the USA, Australia, the Philippines, Vietnam, Cambodia and Thailand.

DC Alan Morgan

DC Morgan has specialized in public protection policing for nine years with the MPS. He has applied for more civil orders, and certainly more FTOs, that any other officer in the country. He received an ACPO award in recognition of this expertise. He compiled and wrote the ACPO Travelling Sex Offenders Working Group Best Practice guide to civil orders, and co-designed and delivered the CEOP training course on the use of civil orders under the Sexual Offences Act 2003. He has developed important contacts with agencies and other countries directed at promoting effective use of UK legislation.

Appendix 2

Extracts of legislation

Sexual Offences Act 2003

Sexual offences prevention orders

104 Sexual offences prevention orders: applications and grounds

(1) A court may make an order under this section in respect of a person ("the defendant") where any of subsections (2) to (4) applies to the defendant and–

(a) where subsection (4) applies, it is satisfied that the defendant's behaviour since the appropriate date makes it necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant;
(b) (b) in any other case, it is satisfied that it is necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.

(2) This subsection applies to the defendant where the court deals with him in respect of an offence listed in Schedule 3 or 5.

(3) This subsection applies to the defendant where the court deals with him in respect of a finding–

(a) that he is not guilty of an offence listed in Schedule 3 or 5 by reason of insanity, or;
(b) that he is under a disability and has done the act charged against him in respect of such an offence.

(4) This subsection applies to the defendant where–

(a) an application under subsection (5) has been made to the court in respect of him, and;
(b) on the application, it is proved that he is a qualifying offender.

(5) A chief officer of police may by complaint to a magistrates' court apply for an order under this section in respect of a person who resides in his police area or who the chief officer believes is in, or is intending to come to, his police area if it appears to the chief officer that–

(a) the person is a qualifying offender, and;
(b) the person has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.

(6) An application under subsection (5) may be made to any magistrates' court whose commission area includes–

(a) any part of the applicant's police area, or
(b) any place where it is alleged that the person acted in a way mentioned in subsection (5)(b).

106 Section 104: supplemental

(1) In this Part, "sexual offences prevention order" means an order under section 104 or 105.

(2) Subsections (3) to (8) apply for the purposes of section 104.

(3) "Protecting the public or any particular members of the public from serious sexual harm from the defendant" means protecting the public in the United Kingdom or any particular members of that public from serious physical or psychological harm, caused by the defendant committing one or more offences listed in Schedule 3.

(4) Acts, behaviour, convictions and findings include those occurring before the commencement of this Part.

(5) "Qualifying offender" means a person within subsection (6) or (7).

(6) A person is within this subsection if, whether before or after the commencement of this Part, he–

(a) has been convicted of an offence listed in Schedule 3 (other than at paragraph 60) or in Schedule 5,
(b) has been found not guilty of such an offence by reason of insanity,
(c) has been found to be under a disability and to have done the act charged against him in respect of such an offence, or
(d) in England and Wales or Northern Ireland, has been cautioned in respect of such an offence.

(7) A person is within this subsection if, under the law in force in a country outside the United Kingdom and whether before or after the commencement of this Part–

(a) he has been convicted of a relevant offence (whether or not he has been punished for it),
(b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of insanity,
(c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence, or
(d) he has been cautioned in respect of a relevant offence.

(8) "Appropriate date", in relation to a qualifying offender, means the date or (as the case may be) the first date on which he was convicted, found or cautioned as mentioned in subsection (6) or (7).

(9) In subsection (7), "relevant offence" means an act which—

(a) constituted an offence under the law in force in the country concerned, and
(b) would have constituted an offence listed in Schedule 3 (other than at paragraph 60) or in Schedule 5 if it had been done in any part of the United Kingdom.

(10) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (9), however it is described in that law.

(11) Subject to subsection (12), on an application under section 104(5) the condition in subsection (9)(b) (where relevant) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice–

(a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met,
(b) showing his grounds for that opinion, and
(c) requiring the applicant to prove that the condition is met.

(12) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (11).

(13) Subsection (14) applies for the purposes of section 104 and this section [...]

(14) In construing any reference to an offence listed in Schedule 3, any condition subject to which an offence is so listed that relates—

(a) to the way in which the defendant is dealt with in respect of an offence so listed or a relevant finding (as defined by section 132(9)), or
(b) to the age of any person, is to be disregarded.

107 SOPOs: effect

A sexual offences prevention order–

(a) prohibits the defendant from doing anything described in the order, and
(b) has effect for a fixed period (not less than 5 years) specified in the order or until further order.

The only prohibitions that may be included in the order are those necessary for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.

(3) Where–

(a) an order is made in respect of a defendant who was a relevant offender immediately before the making of the order, and
(b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of this Part while the order (as renewed from time to time) has effect,the defendant remains subject to the notification requirements.

(4) Where an order is made in respect of a defendant who was not a relevant offender immediately before the making of the order–

(a) the order causes the defendant to become subject to the notification requirements of this Part from the making of the order until the order (as renewed from time to time) ceases to have effect, and
(b) this Part applies to the defendant, subject to the modification set out in subsection (5).

(5) The "relevant date" is the date of service of the order.

(6) Where a court makes a sexual offences prevention order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

(7) Section 106(3) applies for the purposes of this section and section 108.

108 SOPOs: variations, renewals and discharges

(4) Subject to subsections (5) and (6), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the sexual offences prevention order, that the court considers appropriate.

(5) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant (and any renewed or varied order may contain only such prohibitions as are necessary for this purpose).

(6) The court must not discharge an order before the end of 5 years beginning with the day on which the order was made, without the consent of the defendant and–

(a) where the application is made by a chief officer of police, that chief officer, or
(b) in any other case, the chief officer of police for the area in which the defendant resides.

109 Interim SOPOs

(1) This section applies where an application under section 104(5) or 105(1) ("the main application") has not been determined.

(2) An application for an order under this section ("an interim sexual offences prevention order")–

(a) may be made by the complaint by which the main application is made, or
(b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.

(3) The court may, if it considers it just to do so, make an interim sexual offences prevention order, prohibiting the defendant from doing anything described in the order.

(4) Such an order–

(a) has effect only for a fixed period, specified in the order;
(b) ceases to have effect, if it has not already done so, on the determination of the main application.

Section 110, "SOPOs and interim SOPOs: appeals" gives a defendant, but not an applicant chief officer, the right to appeal to the Crown Court against the making of a SOPO or interim SOPO by a Magistrates' Court. The jurisdiction appears to be one of appeal rather than review, which may imply the need for all evidence to be called *de novo*. The practical implications of this are obvious.

113 Offence: breach of SOPO or interim SOPO

(1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by–

(a) a sexual offences prevention order;
(b) an interim sexual offences prevention order;
(c) an order under section 5A of the Sex Offenders Act 1997 (c. 51) (restraining orders);
(d) an order under section 2, 2A or 20 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders and interim orders made in England and Wales and in Scotland);
(e) an order under Article 6 or 6A of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders and interim orders made in Northern Ireland).

(2) A person guilty of an offence under this section is liable–

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

(3) Where a person is convicted of an offence under this section, it is not open to the court by or before which he is convicted to make, in respect of the offence, an order for conditional discharge or, in Scotland, a [community payback order].

Foreign travel orders

114 Foreign travel orders: applications and grounds

(1) A chief officer of police may by complaint to a magistrates' court apply for an order under this section (a "foreign travel order") in respect of a person ("the defendant") who resides in his police area or who the chief officer believes is in or is intending to come to his police area if it appears to the chief officer that–

(a) the defendant is a qualifying offender, and
(b) the defendant has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.

(2) An application under subsection (1) may be made to any magistrates' court whose commission area includes any part of the applicant's police area.

On the application, the court may make a foreign travel order if it is satisfied that–

(a) the defendant is a qualifying offender, and
(b) the defendant's behaviour since the appropriate date makes it necessary to make such an order, for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom.

115 Section 114: interpretation

(1) Subsections (2) to (5) apply for the purposes of section 114.

(2) "Protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom" means protecting persons under 16 generally or any particular person under 18 from serious physical or psychological harm caused by the defendant doing, outside the United

Kingdom, anything which would constitute an offence listed in Schedule 3 if done in any part of the United Kingdom.

(3) Acts and behaviour include those occurring before the commencement of this Part.

(4) "Qualifying offender" has the meaning given by section 116.

(5) "Appropriate date", in relation to a qualifying offender, means the date or (as the case may be) the first date on which he was convicted, found or cautioned as mentioned in subsection (1) or (3) of section 116.

116 Section 114: qualifying offenders

(1) A person is a qualifying offender for the purposes of section 114 if, whether before or after the commencement of this Part, he–

(a) has been convicted of an offence within subsection (2),
(b) has been found not guilty of such an offence by reason of insanity,
(c) has been found to be under a disability and to have done the act charged against him in respect of such an offence, or
(d) in England and Wales or Northern Ireland, has been cautioned in respect of such an offence.

(2) The offences are–

(a) an offence within any of paragraphs 13 to 15, 44 to 46, 77, 78 and 82 of Schedule 3;
(b) an offence within paragraph 31 of that Schedule, if the intended offence was an offence against a person under 18;
(c) an offence within paragraph 93 or 93A of that Schedule, if–
  (i) the corresponding civil offence is an offence within any of paragraphs 13 to 15 of that Schedule;
  (ii) the corresponding civil offence is an offence within paragraph 31 of that Schedule, and the intended offence was an offence against a person under 18; or
  (iii) the corresponding civil offence is an offence within any of paragraphs 1 to 12, 16 to 30 and 32 to 35 of that Schedule, and the victim of the offence was under 18 at the time of the offence.
(d) an offence within any other paragraph of that Schedule, if the victim of the offence was under 18 at the time of the offence.

(2A) In subsection (2)(c) references to the corresponding civil offence are to be read, in relation to an offence within paragraph 93A of Schedule 3, as references to the corresponding offence under the law of England and Wales.

(2) A person is also a qualifying offender for the purposes of section 114 if, under the law in force in a country outside the United Kingdom and whether before or after the commencement of this Part–

(a) he has been convicted of a relevant offence (whether or not he has been punished for it),
(b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of insanity,

(c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence, or
(d) he has been cautioned in respect of a relevant offence.

(4) In subsection (3), "relevant offence" means an act which–

(a) constituted an offence under the law in force in the country concerned, and
(b) would have constituted an offence within subsection (2) if it had been done in any part of the United Kingdom.

(5) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (4), however it is described in that law.

(6) Subject to subsection (7), on an application under section 114 the condition in subsection (4)(b) above (where relevant) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice–

(a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met,
(b) showing his grounds for that opinion, and
(c) requiring the applicant to prove that the condition is met.

(7) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (6).]

117 Foreign travel orders: effect

(1) A foreign travel order has effect for a fixed period of not more than 5 years, specified in the order.
(2) The order prohibits the defendant from doing whichever of the following is specified in the order–

(a) travelling to any country outside the United Kingdom named or described in the order,
(b) travelling to any country outside the United Kingdom other than a country named or described in the order, or
(c) travelling to any country outside the United Kingdom.

(3) The only prohibitions that may be included in the order are those necessary for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom.

(4) If at any time while an order (as renewed from time to time) has effect a defendant is not a relevant offender, the order causes him to be subject to the requirements imposed by regulations made under section 86(1) (and for these purposes the defendant is to be treated as if he were a relevant offender).

(5) Where a court makes a foreign travel order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

(6) Section 115(2) applies for the purposes of this section and section 118.

117A Foreign travel orders: surrender of passports

(1) This section applies in relation to a foreign travel order which contains a prohibition within section 117(2)(c).

(2) The order must require the defendant to surrender all of the defendant's passports, at a police station specified in the order—

(a) on or before the date when the prohibition takes effect, or
(b) within a period specified in the order.

(3) Any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a foreign travel order containing a prohibition within section 117(2)(c).

(4) Subsection (3) does not apply in relation to—

(a) a passport issued by or on behalf of the authorities of a country outside the United Kingdom if the passport has been returned to those authorities;
(b) a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.

(5) In this section "passport" means—

(a) a United Kingdom passport within the meaning of the Immigration Act 1971;
(b) a passport issued by or on behalf of the authorities of a country outside the United Kingdom, or by or on behalf of an international organisation;
(c) a document that can be used (in some or all circumstances) instead of a passport.

118 Foreign travel orders: variations, renewals and discharges

(1) A person within subsection (2) may by complaint to the appropriate court apply for an order varying, renewing or discharging a foreign travel order.

(2) The persons are–

(a) the defendant;
(b) the chief officer of police on whose application the foreign travel order was made;
(c) the chief officer of police for the area in which the defendant resides;
(d) a chief officer of police who believes that the defendant is in, or is intending to come to, his police area.

(3) Subject to subsection (4), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the foreign travel order, that the court considers appropriate.

(4) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom (and any renewed or varied order may contain only such prohibitions as are necessary for this purpose).

(5) In this section "the appropriate court" means–

(a) the court which made the foreign travel order;
(b) a magistrates' court for the area in which the defendant resides; or

(c) where the application is made by a chief officer of police, any magistrates' court whose commission area includes any part of his police area.

119 Foreign travel orders: appeals

(1) A defendant may appeal to the Crown Court–

(a) against the making of a foreign travel order;
(b) against the making of an order under section 118, or the refusal to make such an order.

(2) On any such appeal, the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.

(3) Any order made by the Crown Court on an appeal under subsection (1)(a) (other than an order directing that an application be re-heard by a magistrates' court) is for the purposes of section 118(5) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Crown Court).

122 Offence: breach of foreign travel order

(1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by a foreign travel order.

(1A) A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement under section 117A(2).

(2) A person guilty of an offence under this section is liable–

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

(3) Where a person is convicted of an offence under this section, it is not open to the court by or before which he is convicted to make, in respect of the offence, an order for conditional discharge

Risk of sexual harm orders

123 Risk of sexual harm orders: applications, grounds and effect

(1) A chief officer of police may by complaint to a magistrates' court apply for an order under this section (a "risk of sexual harm order") in respect of a person aged 18 or over ("the defendant") who resides in his police area or who the chief officer believes is in, or is intending to come to, his police area if it appears to the chief officer that–

(a) the defendant has on at least two occasions, whether before or after the commencement of this Part, done an act within subsection (3), and
(b) as a result of those acts, there is reasonable cause to believe that it is necessary for such an order to be made.

(2) An application under subsection (1) may be made to any magistrates' court whose commission area includes–

(a) any part of the applicant's police area, or

(b) any place where it is alleged that the defendant acted in a way mentioned in subsection (1)(a).

(3) The acts are–

(a) engaging in sexual activity involving a child or in the presence of a child;
(b) causing or inciting a child to watch a person engaging in sexual activity or to look at a moving or still image that is sexual;
(c) giving a child anything that relates to sexual activity or contains a reference to such activity;
(d) communicating with a child, where any part of the communication is sexual.

(4) On the application, the court may make a risk of sexual harm order if it is satisfied that–

(a) the defendant has on at least two occasions, whether before or after the commencement of this section, done an act within subsection (3); and
(b) it is necessary to make such an order, for the purpose of protecting children generally or any child from harm from the defendant.

(5) Such an order–

(a) prohibits the defendant from doing anything described in the order;
(b) has effect for a fixed period (not less than 2 years) specified in the order or until further order.

(6) The only prohibitions that may be imposed are those necessary for the purpose of protecting children generally or any child from harm from the defendant.

(7) Where a court makes a risk of sexual harm order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

124 Section 123: interpretation

(1) Subsections (2) to (7) apply for the purposes of section 123.

(2) "Protecting children generally or any child from harm from the defendant" means protecting children generally or any child from physical or psychological harm, caused by the defendant doing acts within section 123(3).

(3) "Child" means a person under 16.

(4) "Image" means an image produced by any means, whether of a real or imaginary subject.

(5) "Sexual activity" means an activity that a reasonable person would, in all the circumstances but regardless of any person's purpose, consider to be sexual.

(6) A communication is sexual if–

(a) any part of it relates to sexual activity, or
(b) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider that any part of the communication is sexual.

(7) An image is sexual if–

(a) any part of it relates to sexual activity, or
(b) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider that any part of the image is sexual.
(c)

Appendix 3

CIVIL PREVENTION ORDERS
SEXUAL OFFENCES ACT 2003

SUMMARY OF REPORT AND RECOMMENDATIONS FOR REFORM OF LEGISLATION

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1. Introduction

1.1 This document identifies the key recommendations for legislative reform made in a wider ACPO commissioned review ("the ACPO review"), namely *Civil Prevention Orders, Sexual Offences Act 2003; A review of the existing statutory scheme and recommendations for reform*. The statutory civil prevention order regime covers sexual offences prevention orders ("SOPOs"); risk of sexual harm orders ("RoSHOs"); and foreign travel orders ("FTOs").

1.2 Whilst I was the lead author in relation to the ACPO review, it was co-authored by others with multi-disciplinary expertise in the relevant areas. Each of the authors agreed with the analysis and various recommendations for reform rehearsed in the review. It has been adopted and endorsed by the multi-agency ACPO child-protection working group, which group includes statutory agencies and child protection NGOs. Obviously the corporate responses of CEOP and ACPO are distinct from the opinions expressed by contributing authors, and the report sets this distinction out in terms (paras [1.4] and [1.5]).

1.3 The ACPO review was commissioned primarily to address the operation of the civil prevention order regime under the Sexual Offences Act 2003. Accordingly the formal recommendations for reform to be adopted as policy by ACPO and/or Chief Constables are those relating to legislative reform.

1.4 The wider analysis in terms of the United Kingdom's policing of extra-territorial sexual offending against children, and the possibility of DFID funding to address the protection of children in developing countries from sexual harm caused by UK nationals, is intended (i) to provide the necessary context for our recommendations for legislative reform, and (ii) to promote a wider review of the UK's response to this category of harm by the police and Government. What is recommended is a review by Government and ACPO: we obviously cannot impose on either the outcome of any such review since the issue is complex.

1.5 It will be seen that the review's central conclusions are that the existing legislative regime is not fit for purpose and is failing to deliver the quality of protection children deserve from sexual abuse. This applies most particularly when such abuse is committed extra-jurisdictionally in countries with limited capacity to prevent, investigate or prosecute such offending. The scale of

such offending is intrinsically difficult to quantify. It is beyond argument however either that the sexual abuse of children internationally is any less than a substantial industry, or that the United Kingdom has positive obligations to vulnerable children to prevent harm from UK nationals that represent a significant risk of such offending.

1.6 The authors of the review have no doubt that the existing legislation fails adequately to address the interests of child protection. It is over-complicated and includes a series of pre-requisites to obtaining any form of civil prevention order that are not either justified or proportionate to the risk and type of harm addressed.

1.7 Whilst we concluded that certain police forces might not be using the existing legislation to full effect, the fundamental problems are with the legislation itself. The number of recorded civil prevention orders reflected in the review are grossly disproportionately low relative to the numbers of offenders representing a significant risk of harm to children.

1.8 We have recommended simple, but fundamental, reform of the existing civil prevention order regime relating to children (we do not address the protection of adults) such that the various pre-requisites are removed and an evidence-led risk of harm test substituted.

1.9 We recommend that the existing orders are replaced with a single "[Child] Sexual Offences Prevention Order" in the following terms:

> "On the application of a qualifying person [*Chief officer of police or other qualified person (CEOP/SOCA/NCA/CPS,* etc)], or on conviction for a qualifying offence, a court may make a child sexual offences prevention order if it is satisfied that it is necessary to make such an order for the purpose of protecting a person of under 18 years' from [serious] sexual harm from the respondent/defendant"

1.10 We recommend that the range of those qualified to apply for such orders is extended to include those best qualified to know and evaluate the merits in any individual case, such as for example those of sufficient authority within CEOP and/or the NCA. Whilst we advocate interim measures to ensure the purpose of any application is not defeated (e.g. by the subject of application travelling before the order is determined by the court), the reforms we suggest preserve the necessary procedural rights of any person subject to application, not least the fact that the imposition of any such order would remain a matter of independent judicial determination. What we propose is fully compliant with human rights obligations both towards (i) the potential child victims of sexual abuse; and (ii) the subject of any such application.

1.11 Further, I observe that the law is clear that the facts underlying any application for a civil order with penal sanction for breach must be proved to the criminal standard. Any change to this would have to be a matter for Parliament and the review made no recommendation one way or the other.

1.12 Even taken in isolation the legislative reforms we recommend would significantly improve the capacity of the police to prevent the sexual abuse of children in the UK and internationally.

1.13 We concluded that such reform should be coupled with a national approach to the policing of extra-territorial sexual offending against children, rather than the existing archaic "local force" strategy, and that additional (suitably calibrated) UK police resources should be funded as part of the UK's substantial (and guaranteed) international development budget in vulnerable developing countries. Such a strategy, and commitment of a relatively modest part the international development budget, would actively promote the protection of children and improve the local jurisdiction policing of sexual crime against children by UK nationals abroad.

1.14 The public would be surprised to learn that, at present, there is no full-time police resource extra-jurisdictionally specific to the protection of children. Given the documented scale of the problem this appears difficult to justify. Any extra-territorial UK police resource would, of course, have to integrate with the local law enforcement regime in a sensitive manner so as to promote local jurisdiction prosecution of offenders. We believe the public would actively, and strongly, support these measures.

1.15 In this context I rehearse and repeat the recommendation made at [1.5] – [1.6] of the ACPO review:

> 1.5 …As a minimum, we invite a formal review by Government of the issues we have raised, both as to (i) the suggested reforms of the civil prevention order regime and (ii) the arrangements and resourcing of the UK's policing of extra-territorial sexual offending against children by British Nationals (and, to a lesser extent, non-British Nationals resident in the United Kingdom). The first may require legislation: the second does not.
>
> 1.6 Whilst policing is traditionally regarded as a matter for the Home Department, some of the issues identified in this report for action, not least extra-territorial resources and deployment, may equally be seen as legitimate areas of funding for international development under the Department for International Development (DFID). The wider public may well be surprised that many existing aspects of the UK's engagement with international child protection are contingent either on discretionary, and reducing, year-on-year funding from the Foreign and Commonwealth Office (FCO), and/or third-party corporate sponsorship.

2. <u>Structure and overview of the ACPO commissioned review</u>

2.1 It will be seen that the review has 13 chapters and 3 appendices (this summary included as the third). No attempt at a detailed summary is made in this report.

2.2 The chapters are respectively (1) introduction; (2) Executive Summary; (3) working assumptions and limitations of data; (4) the existing statutory regime: analysis (5) individual forms of order; (6) sexual offences prevention orders; (7) foreign travel orders; (8) risk of sexual harm orders; (9) human rights considerations; (10) wider policing context; (11) alternative international mechanisms; (12) reform/human rights/policing resources: summary and analysis; and (13) conclusion.

2.3 The appendices are (1) authors' biographies; (2) extracts of legislation and (3) this summary report and recommendations.

2.4 Chapter 2 is the Executive Summary and speaks for itself.

2.5 Chapter 3, "Working assumptions and limitations of data", provides a useful starting point in defining the nature and scale of the industry of international child sexual exploitation. Intrinsically difficult though it is to quantify this type of sexual offending, most particularly in jurisdictions with poorly developed structures for civil society, the data is objectively appalling. To take but one measure, the United Nations estimates that as many as two million children are employed in the commercial industry of sexual abuse of children internationally [3.6].

2.6 At [3.9] we observed:

> "Those with a sexual interest in children can travel with relative impunity to certain jurisdictions confident that there will be a ready supply of children available to hire for negligible sums, in the context of a civil society where the probability of detection and conviction is equally negligible, and the cultural norms are antipathetic to child protection."

2.7 Chapter 3 contains multiple specific case studies and analysis of the wider (well documented) international context for this offending, including the trafficking of children for this purpose internally (e.g. within India) and extra-jurisdictionally. It addresses the exploitation of charitable work as cover for systematic abuse of vulnerable children, and the limitations of data available to law enforcement agencies. We observe that patterns of sexual offending against children are often acquired (and mastered) by UK nationals in low-risk jurisdictions and then practiced on children within the United Kingdom.

2.8 Chapter 4 provides analysis of the existing statutory regime. The documented numbers of foreign travel orders obtained nationally between 2005 and (part of) 2012 are reflected at [4.13]. The maximum figure was 15 (2010); the minimum 0 (2007). Between 2005 and 2011 there was an aggregate of only 45. Self-evidently, given the scale of the industry of sexual exploitation of

children abroad, and the known numbers of those representing a significant risk to children within the United Kingdom, these figures are disproportionately low and betray a fundamental problem with the system of international child protection.

2.9 Although systems of data recording are inadequate, at [4.37] we rehearse that CEOP's June 2012 *Threat Assessment of Child Sexual Exploitation and Abuse* report recorded that at the beginning of 2011:

> "ECPAT reported that 135 British nationals were detained in foreign countries in relation to offences of child sexual abuse, with CEOP receiving 61 notifications regarding British nationals who had been arrested abroad for child sexual abuse offences during that year. These notifications covered 26 different countries, the most common being the USA, Spain, Australia, Netherlands, France, Germany, Cambodia and Thailand; however this may reflect the efficiency of notification procedures rather than more prevalent offending."

2.10 Chapter 5 reflects our assessment that whilst statutory notification requirements should not apply other than following conviction, a purposive approach is required in terms of civil prevention orders that is not contingent on pre-requisites such as a prior qualifying conviction. Our approach is human rights compliant and modest relative to some international comparators.

2.11 Chapters 6 – 8 address the three existing individual forms of order.

2.12 In relation to sexual offences prevention orders (chapter 6), and leaving aside important considerations relating to procedures and identities of applicants, the fundamental problems are (i) jurisdictional (the orders only operate so as to protect children within the United Kingdom: see [6.5]); (ii) the pre-requisite of a qualifying conviction before a SOPO may be imposed, thereby excluding a wide category of demonstrably very-high risk persons: see [6.6]; and (iii) the requirement (if the order is not imposed on conviction) of "behaviour since the appropriate date", which is illogical given the known patterns of criminal conduct by offenders: see [6.7].

2.13 In relation to foreign travel orders (chapter 7), and again leaving aside important considerations relating to procedures and identities of applicants, the fundamental problems are (i) the requirement of a previous qualifying conviction: see [7.5]; (ii) the lack of power to impose an FTO on conviction and the need for proof of "behaviour since the appropriate date": see [7.6]; and (iii) the lack of power to obtain an interim order: see [7.7].

2.14 Our conclusions in relation to FTOs merit rehearsal:

> 7.9.1 The existing statutory regime is deeply flawed and easily remedied. It fails adequately or at all to prevent the travel of identifiable high-risk offenders to

> intrinsically vulnerable jurisdictions sexually to abuse children. The negligible number of such orders in force relative even to the numbers of qualifying offenders (i.e. those with qualifying convictions) speaks for itself in terms of the effect of the obstacles engrained in section 114.
>
> 7.9.2 … As many commentators have observed, the legislation is not only inadequate, it discriminates against children extra-jurisdictionally relative to those in the United Kingdom. Coupled with the weaker systems of civil society in these destination countries, this continues to appear indefensible.

2.15 As to risk of sexual harm orders (chapter 8), we found [8.1.3] that:

> "[T]he fact that there is a distinct FTO regime means that RoSHOs are simply not sought to address the specific risk of extra-jurisdictional offending. Police forces, and the Courts, adopt the approach that foreign travel is addressed by the specific FTO regime and to use a RoSHO (or to impose the equivalent of a notification requirement regime as a RoSHO) is inappropriate and possibly unlawful. A person that is not subject to the statutory notification requirements will quite simply be under no obligation to notify the police of plans to travel abroad."

2.16 Aside from important considerations limiting the class of applicant and age of the subject of application (see [8.2.4] – [8.2.5]) the fundamental problem is that the chief officer applicant must prove, to the criminal standard, at least two qualifying offences involving sexual contact with a child before a RoSHO can be obtained.

2.17 We concluded that even if the criminal standard of proof is appropriate for such prevention orders (it certainly represents the law in relation to civil orders with penal sanction for breach) the restrictions of qualifying conduct to contact offending, and the necessity of two such acts, are not sensibly capable of justification.

2.18 As we rehearse in the report:

> 8.2.9 The present categories accordingly exclude a wide range of non-contact sexual offending with children that may otherwise clearly demonstrate a high risk of future offending. Without the power to apply for a RoSHO to prevent such offending the chief officer has to wait for contact offences to occur. This appears indefensible. The most recent, and ACPO approved, risk assessment model addressing the association between non-contact downloading offences and future contact offending demonstrates an empirical link between the one (non-contact) activity and the probability of the other.
>
> 8.2.10 These apparent absurdities are further compounded by the need to prove at least two such qualifying contact offences. A person who is proved (albeit not convicted for one reason or another) to have raped a child, but only once, will thus not be liable to a RoSHO. A person who has had one wholly unambiguous sexual communication with a child will similarly not be liable to a RoSHO. We observe that the need for at least two acts of communication with a child, and an arrangement

that one of the correspondents travel, are required for the section 15 SOA 2003 grooming offence: again, this is an obstruction to child protection and obtaining a qualifying conviction.

3. Conclusions as to the civil prevention order regime

3.1 Our clear conclusion was that the existing civil prevention order regime is failing to avoid sexual harm children where such risk is capable of proof and a prevention order should arise.

3.2 As we set out at [8.3], the pre-requisites to obtaining a prevention order contrast somewhat with the (justifiably demanding) mandatory notification requirements that arise for qualifying offending on conviction.

3.3 As we rehearsed:

> 8.3.1 As matters stand, and leaving aside the limited application and effect of ROSHOs, the requirement of a qualifying conviction means that the statutory regime is not fit for purpose in relation to many high risk offenders, and most particularly insofar as it relates to FTOs. The numbers – inadequate as they are in terms data collection – do not lie.
>
> 8.3.2 The disproportionate significance of a qualifying conviction in obtaining a prevention order is compounded further by contrasting the mandatory consequences of conviction for any qualifying Schedule 3 offence, whether or not this includes contact offending. Even for a qualifying non-contact offence (e.g. possession of indecent pictures of children) the full rigour of the various statutory regimes (notification requirements; disqualification from working with children orders; barring orders: etc) is applied without either qualification or distinction automatically to each offender. By contrast, an objectively much higher risk (but unconvicted) person will in practice not be subject to any of these provisions, and will only be subject to a RoSHO in tightly defined circumstances, and even then never to prevent foreign travel.
>
> 8.3.3 We can see no underlying justification for these distinctions.
>
> 8.3.4 We also repeat that a civil process that begins by complaint by the local chief officer; that has to be resourced exclusively by the local force; and where acts must be proved to the criminal standard, is always likely both to miss some of the nationally (rather than locally) available police intelligence/evidence and, more particularly, promote a risk-averse culture in respect of making applications in a period of acute pressure on policing budgets. There may be no simple answer to the resource implications, beyond consideration (most particularly for FTOs, which are properly an international, rather than local police force, issue) of a central policing resource dedicated to investigating extra-territorial offending and promoting its prevention.

4. Other aspects of the ACPO commissioned review

4.1 The recommendation sought is in relation to reform of domestic legislation. This reform necessarily involves consideration of the human rights context, and wider resourcing of policing of such offending. Although the authors of the review express clear conclusions as to these matters, and these conclusions are known to be supported more widely by others including specialist children's rights NGOs, these elements of the review were raised for further consideration by both ACPO and Government. Accordingly I do not address them in any detail in this document.

4.2 In summary, however, chapter 9 addresses human rights considerations (the proposed measures are fully compliant, and arguably necessary to ensure that the UK meets its treaty obligations).

4.3 Chapter 10 addresses the wider international policing context.

4.4 Chapter 11 addresses the limitations of alternative international mechanisms of detection, prevention and enforcement, including Interpol; section 33 of the Serious Organized Crime and Policing Act 2005; the CEOP-led International Child Protection Network; and the United Kingdom's recently introduced International Child Protection Certificate.

4.5 Chapter 12 crystallizes the two themes of reform we recommend in the review. I rehearse two extracts for ease of reference.

4.6 In relation to the recommended simplification of the prevention order regime, we concluded:

> 12.2.1 We do not propose any significant reform of the wider processes of appeal and review of any prevention order that is imposed, save that the applicant should have a right of appeal against refusal to the Crown Court. The existing rights ensure compliance with human rights and independent judicial scrutiny.
>
> 12.2.2 The simplification we propose removes arbitrary pre-requisites that have no logic within the reality of the criminality involved. The test is evidence-led and the class of applicant is extended from chief officers (led by the chance event of where the offender did, does or may reside) to one reflecting the person with control of the evidence and intelligence.
>
> 12.2.3 As revised, we propose a change to the legislation such that the basic order would read (very broadly) as [*set out above*]. It would be available for any potential offender over the age of 13 years', and would cover the protection of children equally in and outside the United Kingdom.
>
> 12.2.4 Most if not all the other statutory definitions could remain. The mandatory consequences of conviction for a qualifying offence would remain (notification requirements, etc). A power is needed to impose an emergency interim order, and

the right to demand surrender of passports, pending determination of the main application. The standard of proof required will continue to reflect the case law although this could itself be reviewed.

4.7 Our other recommendation was "Structural changes to policing extra-territorial offending to be considered".

4.8 As rehearsed in the review:

> "12.1.1 We have concluded that the existing regime actively obstructs international child protection, and may mean that the UK's basic human rights obligations are not being met.
>
> 12.1.2 The problems are compounded by (i) the "local force" led obligation to apply for orders and/or to investigate extra-territorial offending; (ii) the lack of single, dedicated national police investigation team directed at extra-territorial sexual offending against children; (iii) the relative lack of permanent UK policing presence extra-jurisdictionally to promote extra-jurisdictional liaison and successful prosecution of UK offenders; (iv) the insufficient use of existing legislation by some local forces; and (v) the inefficiency of alternative international police enforcement/liaison methods such as Interpol (which cannot provide real-time assistance, and is best seen as an international police intelligence distribution hub) and local jurisdiction forces (with almost no effective investigative capacity and/or international communications).
>
> 12.1.3 Part of the remedy is a national policing resource directed at extra-jurisdictional offending against children, coupled with strategic (permanent) UK law enforcement resources on the ground abroad to promote partnership building and effective policing of UK Nationals.
>
> 12.1.4 We do not perceive that the cost of such provision is prohibitive. It may reflect collaborative funding by local forces, CEOP/NCA, and a contribution from DFID since the benefits may properly be classed as international development. DFID – unlike the Home Department – has the guarantee of a fixed % GDP budget. We believe the public would welcome allocating a relatively modest part of it annually to these strategic international child protection objectives."

5. <u>Conclusion</u>

5.1 I hope that ACPO can adopt as policy the recommendations in this document and the associated review. I regard the proposed legislative reform as urgent and manifestly justified in the interests of protecting children internationally from serious sexual harm. It is compatible with the United Kingdom's basic human rights obligations to such vulnerable children.

5.2 Whilst I do not underestimate the challenge of reviewing the existing structures of policing, and the competing demands in terms of resourcing international development, I am confident that both ACPO and Government (defined to include all Parliamentarians on what should be an

intrinsically a political issue) will give the recommendations as to structural reform and international resourcing genuine consideration.

5.3 I repeat and adopt the unanimous conclusions of the authors of the ACPO commissioned review:

> "13.1 In 2009 two of the immediate authors concluded, "The sexual abuse of children is a combination of orientation and opportunity. Those with the former travel in the confident expectation of the latter. They are a toxic export we can and must control. Children abroad deserve no lesser protection than that afforded in Britain".[26]
>
> 13.2 In making these recommendations, we repeat and adopt these propositions. These straightforward changes, long demanded by NGOs and informed members of the police service, would produce real benefits at no threat to human rights legislation. Coupled with improved national and international police resources, the United Kingdom's duties to the world's most vulnerable and sexually exploited children would come closer to matching the public's legitimate expectations."

23 April 2013

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[26] Hugh Davies and Chris Beddoe, *The Guardian*, 9 March 2009.