

Commentary

Abuse allegations are an ever-developing field in legal and public discourse.

This section provides in-depth commentary on current issues analysing leading controversies and legal decisions.

The Rotherham Report – a critical perspective

The Jay inquiry into child sexual exploitation (CSE) in Rotherham¹ signalled a step change in how the phenomenon was viewed.

While a number of high profile trials have highlighted the criminal abuse of vulnerable teenage girls by men predominantly of English Pakistani ethnicity, the Rotherham report concluded that a large number of girls had suffered horrendous abuse going back to 1997, that this was or should have been known to the authorities and politicians, and that effectively, nothing was done.

The shockwaves ripple down from the report in its opening two paragraphs.² At least 1400 children exploited between 1997 and 2013 is the conservative estimate. The abuse was appalling:

‘They were raped by multiple perpetrators, trafficked to other towns and cities in the north of England, abducted, beaten and intimidated. There were examples of children who had been doused in petrol and threatened with being set alight, threatened with guns, made to witness brutally violent rapes and threatened they would be next if they told anyone. Girls as young as 11 were raped by large numbers of male perpetrators.’

That such a catalogue of widespread iniquity could have taken place under the noses of the police and child protection system provoked horror and outrage. There are suggestions of cover-ups by officials, politicians and the Pakistani community in Rotherham.

¹Independent Inquiry into Sexual Exploitation in Rotherham (1997-2013)
http://www.rotherham.gov.uk/downloads/file/1407/independent_inquiry_cse_in_rotherham

² Executive Summary p1.

Such fears are understandable – for if such a litany of horrific crimes was taking place for so long, it is almost inconceivable that there was not some form of protection of the perpetrators from being held to account.

However, when the report is read in full questions arise. Notwithstanding the failure of the welfare and criminal justice systems to protect vulnerable teenagers, how reliable are the findings? What proportion of victims suffered the heinous crimes alleged? And how reliable are the figures?

Background to the report

Although there was a successful prosecution of five men from Rotherham in 2010, it attracted little publicity nationwide. But over the next three years one Times journalist, Andrew Norfolk, highlighted a number of historic cases and failings by the authorities. These provided graphic descriptions of a catalogue of serious crimes related by adult complainants.

While the authorities appeared to be wilfully blind to the extent and depth of depravity within their midst, a council run youth outreach service, Risky Business, appeared to be well-informed as far back as 2001, but the warnings had been unheeded, referrals dismissed, with data lost or destroyed.

The Times reports came to the attention of the Home Affairs Select Committee who held a number of hearings into the issues. There were resignations by senior council officials and councillors.

By the time the report was commissioned in October 2013 there was already a perception that Rotherham had made catastrophic failures and that one particular group, the 8,000 strong Pakistani community in the town were shielding the culprits.

The methodology

The inquiry examined the evidence from a wide range of sources but there is a lack of clarity as to how the number of victims postulated was arrived at.

Some of the cases were drawn from a list of 988 children known to social care or the police (4.3). However it is clear that CSE was not recorded consistently as a risk factor by either agency and the number of cases classified as CSE fell well below this figure (4.2).

Thus how it came to be that all the case files randomly read were CSE is a mystery. Social care had stated that CSE was only a small proportion of their caseload –just over 2 per cent (4.8) – with the major part neglect. How come none of the 38 cases randomly selected from the list fell into another category?

It is said that 66 case files were read and in the 14 summary examples they go back to 2000. However what is not clear is at what stage the information covered was available.

In the sections 'Experiences of Exploited Children' (5.6) and 'Grooming' (5.15) generalisations are made about the worst kinds of cases with children refusing to engage with the police or withdrawing statements 'as a direct result of threats, intimidation and assaults against them or their families'. (5.14)

What is not clear is how much of this information came from contemporaneous sources. If victims refused to name perpetrators, then it would seem likely that the extent and nature of the alleged abuse was hidden from the authorities at the time. Likewise threats and intimidation would not be revealed.

For although it is said that the police refused to act in cases because of the perceived unreliability of the victims, it is hard to imagine that they would not act if in receipt of evidence of witness intimidation, threats and violence – and indeed no examples are given of this happening.

One particular mention of intimidation is particularly puzzling. In 2002 Rotherham was to be part of a Home Office study with a researcher from the outreach project Risky Business deputed to profile perpetrators involved in young people and prostitution.(10.2)

Risky Business had been set up in 1997 by the council as an advocacy service for young people engaged in prostitution. Covering the ages of 11 to 25 it relied on trust to engage and was confidential. It is not clear how such a service could have

operated successfully with children at risk without referrals to the statutory services which would inevitably breach confidentiality.

The source of Risky Business information was therefore from meetings with young people, some of whom were under 16 or 18 while others would have been adult sex workers.

According to the report the researcher began to produce intelligence about perpetrators that the police refused to act on. It would therefore seem it was the research which generated the intelligence which the police subsequently dismissed as being 'inaccurate' and 'exaggerated'.(10.14)

The female researcher told the inquiry that a particular case was the 'final straw':

"In 2001, a young girl who had been repeatedly raped had tried to escape her perpetrators but was terrified of reprisals. They had allegedly put all the windows in at the parental home and broken both of her brother's legs 'to send a message'. At that point, the child agreed to make a complaint to the Police. The researcher took her to the police station office where she would be interviewed in advance in order to familiarise her with the place and the officer who would be conducting the interview. Whilst there, the girl received a text from the main perpetrator. He had with him her 11-year old sister. He said repeatedly to her 'your choice...'. The girl did not proceed with the complaint. She disengaged from the pilot and project and is quoted by the researcher as saying 'you can't protect me'. This incident raised questions about how the perpetrator knew where the young woman was and what she was doing."

(10.11)

The overriding question to be asked is why didn't the researcher immediately report the alleged intimidation offences to the police? If the perpetrators were known, it would be unimaginable that the police would not have acted in respect of the offences alleged which included grievous bodily harm.

The case is highlighted as being one of the case studies in Chapter 5 and would appear to correlate with Child B (2001) (5.22). This is certainly one of the most horrific cases detailed involving trafficking, assaults, stalking and petrol being poured over the victim with threats to set alight.

However the case study also says that '*She and her family were too terrified to make statements to the police*' with the family '*completely failed by all services with the exception of Risky Business*'.

If the family refused to engage with the police, the alleged offences not reported by the Risky Business researcher with the victim remaining anonymous, it is hard to see how effective action could have been taken.

How reliable was the information? At this remove it is hard to say. Certainly it would be unwise to accept the allegations without question, much less generalise from this case to suggest that a large number of victims were subjected to a similar fate.

A further puzzle has arisen subsequently with it being alleged after the report was published that the researcher's data was stolen³. This is not stated in the inquiry report.

Much of the force of the report's findings in terms of extent and severity rests on the claims made by the researcher. Accountability therefore rests not just with the authorities but with the researcher herself both at the time of the unpublished research and subsequently – including the post-report claims of stolen data.

Yet the researcher remains anonymous. Given the severity of the claims and the weight attached to them in the findings of the report, this seems unfair and unsatisfactory. It is both reasonable and justified in the public interest that her identity be made public.

Risky Business

The question of the reliability of some of the Risky Business information is crucial to the reliability of the inquiry report. Throughout it would appear that relations between the service and the statutory authorities were strained, if not hostile. There is one exception to this when Risky Business were responsible for working with complainants in Operation Central in 2008.

³ <http://www.theguardian.com/society/2014/sep/01/home-office-rotherham-child-abuse-research-stolen-claim-panorama>

However Risky Business were not used in the subsequent two mass investigations which failed and the service has now been disbanded and incorporated into the statutory services.

The inquiry report states where available Risky Business records were verified and found to be accurate. (5.2-3) But the difficulty with this assertion is, verified with what? If there is no police investigation then verification may rest on subjective assertion and repetition.

There is another potential pitfall in the records. Risky Business's original brief was prostitution in children and young adults. The personnel were youth workers who were untrained in interviewing techniques. Engagement included group work.

There is an inherent danger in such an approach. Notwithstanding vulnerability and exploitation of young girls, it is possible that group work led by an untrained counsellor can nurture and inflate a stereotype that may belie the reality.

When recounting their experiences, some victims may feel pressured to exaggerate or copy those of others. Thus there may be a tendency to adopt a more extreme version of events in some instances than actually was the case.

Risky Business were instrumental in the Operation Central prosecution. Although 5 offenders were convicted the most serious allegations resulted in acquittal. These involved a 'Jekyll and Hyde' alleged perpetrator who passed one of the victims on to numerous other alleged perpetrators, some wearing balaclavas to hide their identity (Times 15.1.11)

We do not know why the jury were unconvinced in this instance. However since they convicted five men it must be said that they considered the evidence carefully.

The report on Operation Central dismissed notions of organised child prostitution. Drugs and gifts were marginal. (3.35) The contribution of Risky Business was praised but they were not retained for the subsequent investigations.

Operations Czar and Chard followed Central but resulted in no prosecutions.

The inquiry report states that the failure to involve Risky Business was a mistake and that the statutory social workers were ill-equipped to adduce the evidence (13.32-4).

This may be the case, but another possibility is that the evidence was insufficient.

Gangs, networks and organised crime

The process of 'grooming' is typified as being a systematic process of entrapment.

"Typically, children were courted by a young man whom they believed to be their boyfriend. Over a period of time, the child would be introduced to older men who cultivated them and supplied them with gifts, free alcohol and sometimes drugs. Children were initially flattered by the attention paid to them, and impressed by the apparent wealth and sophistication of those grooming them. " (5.17)

Children in care are said to be 'targeted' because they are vulnerable as are those with previous backgrounds of abuse and neglect.

But how prevalent is this pattern of premeditation? Many young people with chaotic backgrounds are pleasure-seeking and may already have contacts through family and friends with undesirable types of people, drugs and drink. That they may become sexually active at an early age is not unusual.

In such circumstances it may be that some of these cases are simply sexual encounters or relationships without any sinister premeditation. This is not to condone the offences, particularly if they involve adults with underage girls. Indeed such relationships may be damaging simply because they encourage teenagers to see themselves as being more emotionally mature than they in fact are.

With hindsight it may be all too easy to characterise these encounters as 'grooming' – particularly if the offender is Asian Pakistani. They are then bracketed with cases at the extremities – the multiple rapes, violence, threats and trafficking.

Such a potential misapprehension is underpinned by the definition of CSE formulated in 2008 by a national working group and adopted by the inquiry
'The sexual exploitation of children and young people under 18 involves exploitative situations, contexts and relationships where young people (or a third person or

persons) receive 'something' (e.g. food, accommodation, drugs, alcohol, cigarettes, affection, gifts, money) as a result of performing, and/or others performing on them, sexual activities. Child sexual exploitation can occur through the use of technology without the child's immediate recognition, for example by persuading them to post sexual images on the internet/mobile phones with no immediate payment or gain. In all cases, those exploiting the child/young person have power over them by virtue of their age, gender, intellect, physical strength and/or economic or other resources. Violence, coercion and intimidation are common, involvement in exploitative relationships being characterised in the main by the child or young person's limited availability of choice resulting from their social/economic and/or emotional vulnerability'.

This wide-ranging definition covers a multitude of crimes of ascending seriousness. The fact that it extends to under 18s effectively criminalises legal sexual activity and by stating 'violence, coercion intimidation are common' tends towards identifying all potential cases of CSE as being examples of serious violent crime.

Whose cultural attitudes?

Although the inquiry addresses the experiences and reports of victims, the alleged offenders remain in shadow. What does emerge is that the majority are said to be 'Asian' and there is a perception that they are part of the British Pakistani Kashmiri community in Rotherham.

To what extent this is the case remains unknown. One group of four brothers involved in other criminal activity is mentioned in connection with the Risky Business findings. The five convicted in Operation Central were from Rotherham but to what extent they constituted a stereotypical grooming 'gang' remains unknown since the most serious charges resulted in acquittal.

Indeed to what extent the offenders can be said to constitute 'gangs' or networks remains unknown, as does the extent to which involvement resulted in the type of serious abuse highlighted in the inquiry report.

Many observers think that cultural sensitivity played a role in failing to address the problem, though the inquiry is satisfied this did not occur in individual cases. However, since it is clear that the phenomenon in some sense was widely recognised for more than a decade, the question is prompted as to why the potential victims were not better protected.

The answer to this may lie in cultural attitudes of the host community. Britain is in fact deeply ambivalent about teenage sex and promiscuity. While abuse and exploitation are prime concerns, underage sexual activity including intercourse is still widely tolerated even though it has been made explicitly illegal through the 2003 Sexual Offences Act.

The inquiry mentions exasperation of parents with the authorities who failed to protect children at risk. But key policy shifts in the late 1980s and early 90s undermined not only parental control, but that of social welfare agencies and the police.

In 1985 the House of Lords made a ruling as to the right of children under 16 to obtain medical contraception services without parental permission. Termed 'Gillick competence' it left the discretion with the professionals as to whether the child had reached a stage of maturity to make their own decisions. The case was the end stage of a long-running legal battle fought by Mrs Victoria Gillick. She challenged a change in Department of Health guidelines which allowed for discretion in prescribing underage contraception without parental consent as it affected her as a mother of teenage girls.

http://healthlaw.swan.ac.uk/resource_files/sexual%20health/gillick.PDF

Mrs Gillick was widely disparaged in her attempt. There was a general attitude, prominent in the social welfare field, that such an obligation would be oppressive, undermining the self-determination of young people and subjecting them to a form of parental control that could be abusive in itself. There was little or no recognition that such laxity might lead to unbridled promiscuity and exploitation.

The Gillick decision had a far-reaching effect on the rights of underage teens and was echoed in the reforms in the 1989 Children Act. Parents, careworkers and foster carers found themselves excluded from effectively controlling the sexual activities of wayward teenagers.

At the same time as Gillick competence was gaining ground, campaigns for 'safe sex' proliferated to counter the AIDS and HIV epidemic. This meant that advocacy projects such as Risky Business facilitated the availability of condoms and contraception to minors.

The question arises as to what extent these developments encouraged and 'normalised' sex among vulnerable minors and undermined safeguards by parents and the statutory authorities.

If underage girls were under the apprehension that they had a right to sex and promiscuity, then they were open to behaving in ways that were damaging to their emotional development and which they might subsequently regret. Likewise the police and social welfare agencies felt inhibited from intervening because of the perceived rights of the child.

The 2003 Sexual Offences Act effectively revoked all consent to sexual activity under 16 (though rape is still subject to consent as a defence over 13 it is possible to bring alternative charges of sexual assault by penetration carrying heavy custodial penalties). Paradoxically however there are sections legitimising giving contraception advice and provision, confirming the continued ascendancy of the Gillick effect.

We submit that it cannot be right to encourage minors to engage in unlawful activity in this way without parent consent. Just as there are strict laws on licensing the selling of alcohol and cigarettes to minors, even though they may consume these stuffs, it ought to be forbidden to allow the State to sanction underage contraception.

We repeat that while the responsibility remains that of an offender, the possibility of engaging in sexual activity because it was available and freely offered cannot be

excluded in some cases. Furthermore while the age of the victim may have been known, it cannot be assured that was the case in all cases. Pleasure-seeking teenage girls may lie about their age and use fake ID.

Differential criminalisation?

CSE and the concept of 'grooming' has become associated with Asian boys and men over the past decade. But underage sex and exploitation is not specific to any particular ethnic group. The difference is that the Asian offenders are perceived as acting in groups, gangs or networks to systematically entrap and abuse the victims.

With this stereotype in mind, it is possible that incidences of sexual activity became differentially classified as CSE if the contact was perceived to be 'Asian' rather than white British whether or not the more serious forms of exploitation were evident. The presumption may have taken hold that if the suspected offender was Asian, then it automatically signalled group activity and exploitation, whereas underage sex with white British offenders was a 'one-off' illicit relationship.

In this way a particular section of the community may have been over criminalised, with another under criminalised.

Stereotypes and expectation

Once a particular stereotype has taken hold, it is all too easy for investigators and prosecutors to seek to confirm a preconception and disregard contrary evidence.

With the inquiry report highlighting a small and extreme sample of potential cases, the expectation of the stereotype being prevalent has been established.

When complainants are prepared to give evidence they also conform to the expectation, exaggerating or fabricating incidents and perpetrators.

Large-scale investigations may exacerbate the risk of a false stereotype. An example is provided by the children's homes investigations into historical abuse in the 1990s. The fact of some isolated convictions led to the presumption of organised rings and networks abusing children in care.

Following media reports the police launched a wide-scale investigation into alleged abuse in North Wales⁴. A large number of former residents were contacted with information about the nature of the inquiry provided – the method became known as ‘trawling’ and was subsequently discouraged following a critical Home Affairs Select Committee report.

As a result of trawling several trials followed and the pattern was repeated throughout the country. Although convictions were secured, there were concerns about the safety of some and the fairness of trials. A number of convictions were overturned on appeal. Compensation was said to be a major factor in eliciting false complaints. Despite the exhaustive investigations no rings or networks were discovered. However the presumptive created widespread injustice.

In Rotherham the inquiry report with its sweeping findings has already created a widespread stereotype. The need for trawling has been rendered redundant. To what extent can subsequent complaints be regarded as reliable and how may this prejudice suspects and defendants at trial?

Furthermore group civil compensation claims have been launched against the authorities on the strength of the report. With six figure sums at stake, the risk of claims inflation is manifest, as is the danger of compromising the integrity of any subsequent criminal trials.

Conclusion

While the inquiry report highlights multiple failures of the police and social services to investigate claims of extreme abuse, and the failure to protect children from harm and underage sexual activity, it errs in the direction of confirmation bias.

The methodology used to estimate potential victims is obscure and may present a distorted picture of the nature and extent of the alleged abuse.

⁴ For an analysis of this see *The Secret of Bryn Estyn – the making of a modern witchhunt* by Richard Webster, Orwell Press (2005).

All allegations are presumed to be true even though the vast majority had not been subject to police investigation.

While the work of Risky Business may be commended in drawing attention to the problem, it cannot be assumed that untrained youth workers with a stereotyped notion of exploitation will necessarily produce consistently reliable reports. There is also the danger of group work reinforcing a stereotype and encouraging exaggerated and fabricated reports.

Given the weight attached to Risky Business claims and the Home Office researcher's 2002 findings it is submitted that continued anonymity is not justified in the public interest.

The presumptive bias of the inquiry may compromise the integrity of police investigations and trials and result in unfairness to potential defendants.

Chris Saltrese Solicitors

December 2014

