

# **Catching Innocent People in the Net for Child Abusers and Sex Offenders: Policy and Legal Developments**

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# The ideal conditions

‘All in all, if a deliberate attempt were made to create the kind of environment in which false allegations tend to flourish, it would be difficult to better the conditions...’ (Richard Webster, 1998)

Overview:

**General features** and **specific developments** that make allegations of sexual and child abuse prone to mistakes and criminalisation of innocent people.

# Claiming an Offence Occurred is sufficient for Prosecution and Conviction

- No physical evidence required
- And no requirement for corroboration by another person

# Open season to come forward & report abuse

- Call outs and Helplines



Image: BBC/NSPCC

# Open season to come forward & report abuse

- Call outs and Helplines
- Reassurances and promises
  - “...must not allow these allegations to go unanswered
  - ...urge anybody who has information relating to these allegations to go to the police
  - ...will not shirk our duty to support you
  - ... must do everything in our power to do everything we can to help you...” (Theresa May in Nov 2012)
- Anonymity (lifelong, regardless of outcome)

# A Culture of Suspicion and a Duty to Report

- Media coverage + feminist and victims movements
- Hypervigilance:  
sexual abuse antennae / Suspicion'R'us
- A civic duty and moral imperative

# It's never too late...

- There is no Statute of Limitations for bringing prosecutions
- Death is no object
  - s 33 of the Limitation Act 1980
  - National Inquiries into historical abuse
- Counselling to recover childhood memories

# Availability of Compensation

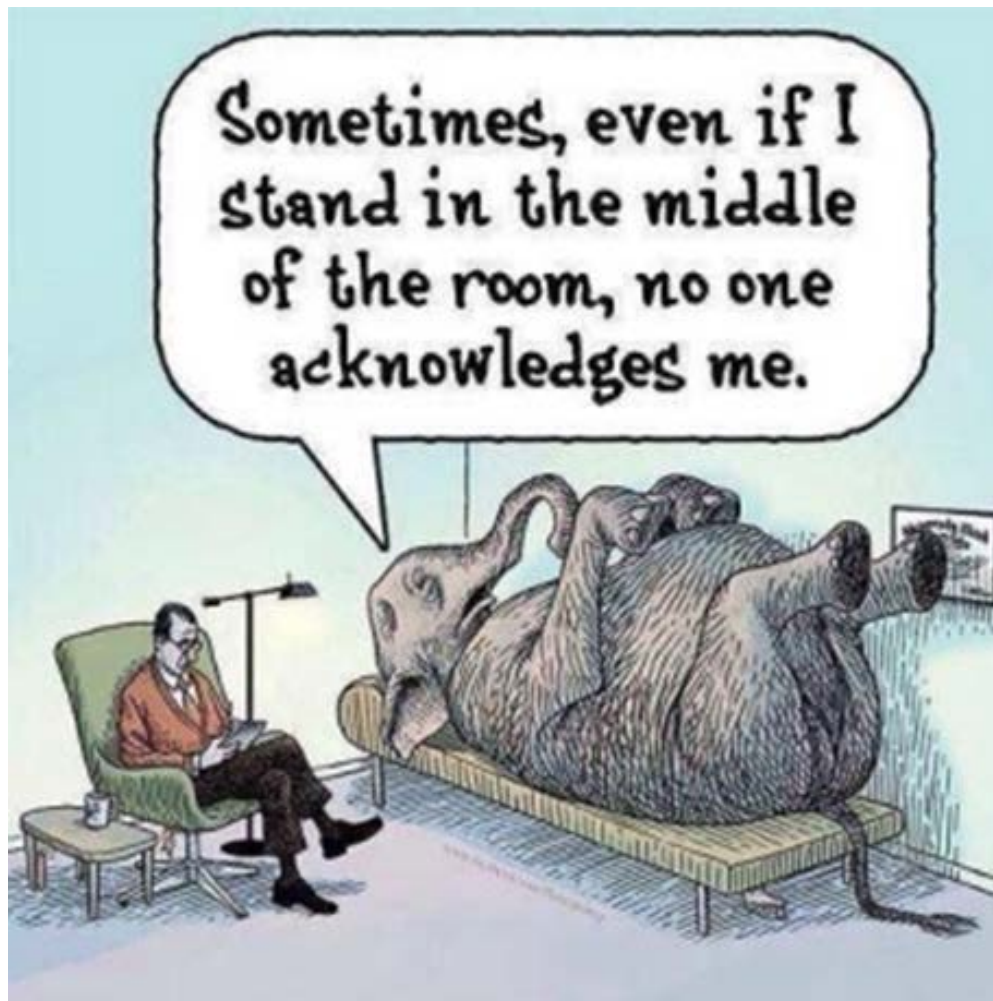
- Criminal Injuries Compensation Act, 1995
  - the ‘Tariff’
- Introduction of ‘No-win, No fee’ claims
  - CFAs – Conditional fee agreements
  - DBAs – Damage based agreements
  - s 33 of the Limitation Act 1980
- Widening the scope
  - Lister v Hesley Hall Ltd [2001] UKHL 22
  - JGE v Trustees of the Portsmouth Roman Catholic Diocesan Trust [2012] EWCA Civ 938
- Personal injury solicitors and ‘Group actions’



# Criminalised by ‘preventive justice’

- Being listed (e.g. PND)
- Being labelled (e.g. ‘insufficient evidence’)
- Being sentenced before an offence has been committed (SROs)

# The absence of warnings about false allegations



Cartoon by Dan Piraro, Bizarro Comics

# **SPECIFIC DEVELOPMENTS that have facilitated reporting, prosecution and conviction**

- Corroboration
- Similar Fact Evidence
- Bad Character Evidence
  - Propensity
  - Cross-admissibility

## References:

Edge, R. and Mills, A. (eds.) (2016) **Evidence, 18th Edition**. Oxford: OUP.

Judicial College (2016) **The Crown Court Compendium Part I: Jury and Trial Management and Summing Up**, London: Judicial College.

# Corroboration

- Removal of the corroboration warning
  - Section 32 of the Criminal Justice and Public Order Act 1994
- No requirement for corroboration?
  - Sexual Offences Act 1956
  - Section 33 of the Criminal Justice and Public Order Act 1994

# Similar Fact Evidence

- Modifications to Similar Fact Evidence
  - ‘striking similarities’ between provable **facts** (became **allegations**)
  - 1991, in *DPP v P* – no need to be **strikingly** similar
  - 1994, in *DPP v H* – judges can assume them to be true

# Bad Character Evidence

- Bad Character Evidence (Criminal Justice Act, 2003)
  - ‘evidence of reputation for misconduct’
  - ‘an offence for which the defendant has never been prosecuted’
  - ‘an offence for which the defendant was acquitted’
- Cross-admissibility
  - the evidence in relation to one count is admissible as evidence of bad character in relation to other counts
  - ‘the judge is required to assume that the evidence is truthful unless no jury could reasonably believe it’

# The Victims' Code and Special Measures

- 'Code of Practice for Victims'
  - Introduced by the Domestic Violence, Crime and Victims Act 2004
- Special Measures
  - referral to 'victim services organisations that can provide you with practical and emotional support'
  - advice on obtaining compensation
  - Special measures during trials: screens; pre-recorded victim impact statement; televised link; use of intermediaries; pre-recorded cross-examination (being piloted)

# Crown Prosecution Service policies

- Keir Starmer's Call for a National Consensus, 2013
  - ‘a clear line now needs to be drawn in the sand and we need to redouble our efforts to improve the criminal justice response to sexual offending.’
- Guidelines on Prosecuting Cases of Child Sexual Abuse, 2013
- Victims' Right to Review, June 2013,
- Joint CPS and Police Action Plan on Rape, 2015



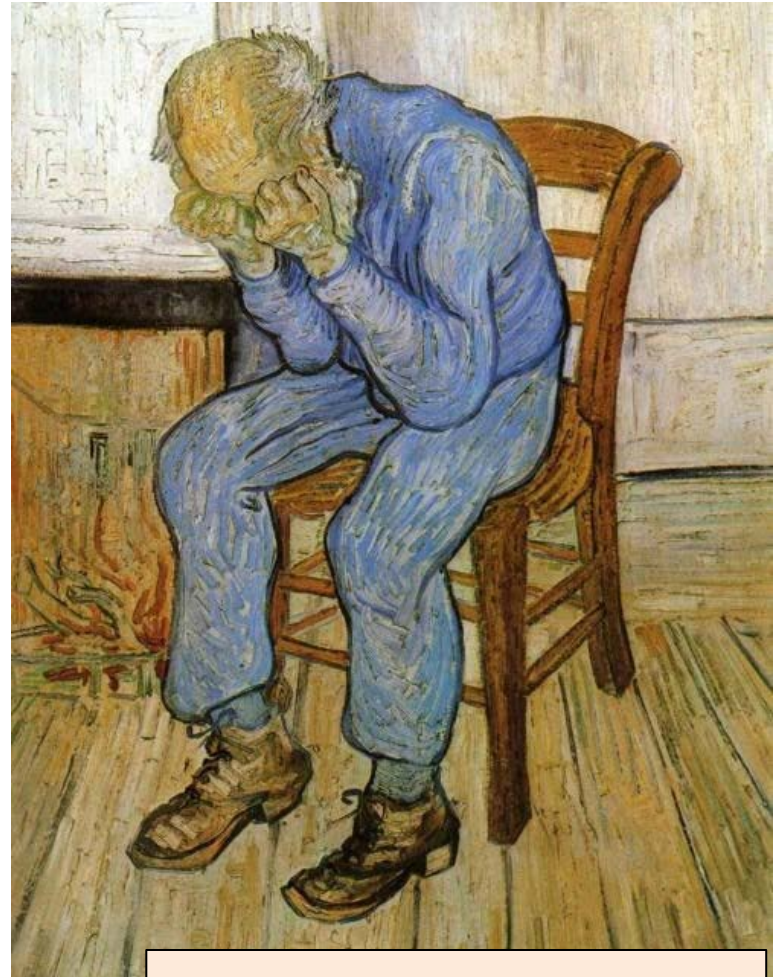
# Policing policies

- Guidance for investigating officers
  - ‘Operation Hydrant’
    - The therapeutic needs of victims
  - HMIC (2014) ‘Crime Recording: Making the Victim Count’  
‘The presumption that the victim should always be believed should be institutionalised’
  - National Crime Recording Standard 2016  
‘The intention is that victims are believed’ (p.3).
- Henriques Report (2016) into MPS Handling of VIP HSA cases
  - 25 Recommendations
  - Pre-conviction naming: “Complainants” not “Victims”
  - College of Policing response to Henriques Report

# Concluding thoughts



Mads Mikkelsen in Danish film *The Hunt*



*Sorrowing Old Man (At Eternity's Gate)*

by Vincent Van Gogh