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The Police Perspective on Sex Offender Orders: A preliminary review of policy and practice

Katy Knock

***The views expressed in this report are those of the
authors, not necessarily those of the Home Office
(nor do they reflect Government policy)***

*Editor: Lawrence Singer
Home Office
Policing and Reducing Crime Unit
Research, Development and Statistics Directorate
Clive House, Petty France
London, SW1H 9HD*

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The Policing and Reducing Crime Unit (PRC Unit) is part of the Research, Development and Statistics Directorate of the Home Office. The PRC Unit carries out and commissions research in the social and management sciences on policing and crime reduction.

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Foreword

There has been growing concern about the risk that sex offenders pose in the community and their effective management is undoubtedly of considerable interest. The government has responded by introducing a range of legislation to aid the monitoring and management of such offenders. Sex Offender Orders (SOOs) were one example of the government's response to this area, and were introduced under the Crime and Disorder Act (1998). They serve to prohibit an offender from certain types of behaviour that have previously been a precursor to offending, and, in this way, help prevent further serious offences before they are committed.

This PRC report examines the use of SOOs by the police since their inception. It looks at the way in which the legislation had been implemented by forces and offers possible solutions as to how it may be improved in the future. While this study reveals a diversity of the use of SOOs across the different force areas, it also identifies areas of good practice. It is anticipated that the findings from this research will help contribute to the development of more effective practices for dealing with the management of sexual offenders across the police force. The report will be of interest to all those involved in the policy and practice of managing sexual offenders in the community.

LAWRENCE SINGER

Head of Policing Group

Policing and Reducing Crime Unit

Research, Development and Statistics Directorate

Home Office

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The author

Katy Knock is a research officer in Home Office Policing and Reducing Crime Unit, within the Research, Development and Statistics Directorate.

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Executive summary

Background

Over the past few years there has been a growing concern about the risks posed by sex offenders in the community. In response to this, the government has introduced a range of legislative and other measures to aid the management and monitoring of sex offenders. One such response was the introduction of Sex Offender Orders (SOOs) which came into force on 1 December 1998 under the Crime and Disorder Act (1998). The aim of SOOs is to provide an additional measure of protection to the public from sex offenders by prohibiting an offender from certain behaviours that had previously been a precursor to offending. In this way, it was intended that SOOs would help prevent further serious offences from being committed.

The decision to apply for a SOO lies with the police. It can be used against anyone with a previous caution or conviction for an offence listed in Schedule 1 of the Sex Offenders Act 1997. A SOO is a civil order that requires the civil standard of proof, however a breach constitutes a criminal offence, triable either way, and attracts a maximum penalty of five years imprisonment.

This report provides an overview of the use of SOOs in England and Wales since their inception to 31 March 2001. It draws on the findings of a telephone survey of all forces in England and Wales and interviews conducted with key personnel in 16 police forces.

Key findings

Take-up of SOOs across England and Wales

Between 1 December 1998 and 31 March 2001, a total of 92 SOOs had been awarded. Thirty-eight out of 43 forces had applied for an Order and the success rate of applications at court was high (94%). Of the orders identified in the study, almost half (46%) had been prosecuted for a subsequent breach.

The pattern of SOO applications is not uniformly distributed across the country with six forces alone accounting for nearly half (46%) of all SOOs. Several forces had been particularly enthusiastic in applying for SOOs. Various reasons were suggested as to why some forces had been particularly active in pursuing Orders, and were successful at court:

- a central point of contact co-ordinating Orders across the force;
- an emphasis on sex offenders within overall force policy;
- the enthusiasm of individual officers and the force solicitor; and
- the accumulated experience of getting a series of successful Orders through court.

The low take-up of Orders by some forces needs to be carefully interpreted. There were clearly some factors that had actively discouraged forces from making applications. These included:

- a general lack of understanding about the SOO process;
- confusion around the legislation and the Home Office guidance;
- concerns about inadequate resources for monitoring the Order; and
- cautious force solicitors.

Applying for an Order was, however, widely seen as a last resort and some 'low' and 'no' order forces emphasised that other strategies for managing sex offenders were often felt to be sufficient without having to apply for an order. Furthermore some forces had applied the principles behind a SOO informally, through voluntary agreements with sex offenders to encourage them to modify their behaviour.

The SOO process

The initial impetus for a SOO application usually came from the police. However, the prison service, probation service and the general public also played important roles in bringing individual cases to the attention of the police. Once a decision had been made to pursue an application for a SOO, evidence had to be gathered to support this. This evidence had two functions: to show risky behaviour had taken place and to inform the development of suitable prohibitions. The evidence is required to be of the civil standard of proof (although this is a flexible standard).

Although the process of evidence gathering was generally straightforward, issues were raised over both the practical application of the civil standard of proof in these cases (in reality evidence submitted in SOO applications tended towards the criminal standard), and the timing of a submission in relation to risky behaviour.

Drafting effective prohibition.

Prohibitions were usually drafted by the police officer most familiar with the offender's behaviour and the evidence and then received by the force solicitor.

Legally, prohibitions need to be drafted as negatives as they need to prohibit certain forms of activity clearly related to an offender's past and current offending behaviour. Officers also suggested that prohibitions needed to be practical (i.e. the police or others can monitor the prohibitions effectively, within reasonable resource constraints); understandable and clearly defined; and reasonable and proportionate. Drafting effective prohibitions meant balancing competing objectives. For example, prohibitions that were specific (for instance relating to defined geographical areas or named individuals) were easier to monitor. However, if they were too specific, there was a risk that an offender might change his offending behaviour so as to circumvent the Order.

Issues at court

In general, interviewees felt that obtaining a SOO at court was a relatively straightforward process, particularly if most eventualities had been accounted for prior to the hearing. Perceptions of the court process, however, varied across forces and in a handful of cases, the initial experiences of officers and force solicitors had resulted in them being dissuaded from making a further application.

Officers suggested a variety of actions to ensure the court process ran smoothly. These included incorporating 'expert evidence' from an independent risk assessor to improve the court's understanding around 'risk'; and taking all the relevant case law to court to combat any misinterpretation of the legislation. While in general, the time between the initial application and an Order being granted was not felt to be excessive, it still meant that offenders identified as 'risky' were not covered by legal constraints until an Order was successfully granted. In Scotland the legislation allows for the provision of Interim Orders to cover the period prior to the granting of the Order at court.

The monitoring of SOOs once successfully obtained

Officers emphasised the need to ensure that Orders were monitored properly. In the majority of cases the responsibility for monitoring lay with the divisional inspector in the area where the offender lived, although in some circumstances a multi-agency approach had been taken. Strategies used to monitor Orders were found to be broadly similar to those used to manage sex offenders generally. However, the intensity and nature of the monitoring appeared to be dependent on two factors. First the specific prohibitions within the Order; it was a lot easier and arguably less resource intensive to monitor a prohibition which specifies no contact with a

named individual or location. Second, monitoring was influenced by the perceived likelihood that an offender would breach an Order. In line with the legislation, officers applied SOOs as a means to intervene in an offender's pattern of risky behaviour before this amounted to a criminal offence, or to provide an incentive to the offender to stop engaging in risky behaviour. Several officers, however, explained that in some cases, SOOs had been used with the hope principally of achieving a criminal conviction for a breach when the offender's ability to desist from offending behaviour was thought to be particularly weak.

Breaches of SOOs

A breach of an Order is a criminal offence and occurs if, without reasonable excuse, an offender does anything which he is prohibited from doing by the Order. Of the breaches identified in this study that had been tried at court, 97 per cent resulted in a guilty verdict. However, court sentencing for breaches was variable ranging from fairly lengthy custodial sentences to small fines. Some of the variation in breach sentences would simply reflect the nature of the breach and the original prohibition(s). However, some officers also felt that a lack of understanding of Orders by the broader criminal justice system, contributed to what they saw occasionally as 'erratic' sentencing for breaches. Police and force solicitors felt that such cases seriously undermined the entire SOO process and might inhibit future applications.

Press coverage of SOOs

It was originally argued that Orders being heard in open court might discourage forces from making applications for fear of offender's details being released to the public via the press. While some interviewees highlighted this, it was not found to be an overwhelming constraint to applications. An analysis of written press coverage of SOOs suggests press coverage of these cases has been modest. Less than half of a sample of SOOs had received any kind of written press coverage (40% of 72 Orders). Furthermore, the majority of articles focused on the breach aspect of a SOO, rather than the initial application, while only a handful of all articles (14%) gave precise details of where the offender lived. The early involvement of force media specialists in the SOO process was highlighted as a potential area of good practice.

Overall perceptions

Overall, the police and related agencies' response to the introduction of SOOs was found to be positive. Orders represent one of the most practical illustrations of a

policy shift towards measures that protect the community through the prevention of sexual offences (Kemshall, 2001). The majority of interviewees placed importance upon the enhanced powers that Orders gave them; in effect it enabled them to do something practical to prevent serious harm, where previously they had often felt impotent. Orders have been particularly valued as an 'active' response to higher risk sex offenders in the community who, for whatever reason, are under no statutory supervision. Furthermore, a clear advantage of the legislation is the freedom with which it can be applied to sex offenders regardless of when a precursor offence took place. Finally, Orders were perceived to be a practical mechanism for a multi-agency approach to the management of high-risk sex offenders, particularly strengthening the relationship between the police and the probation service.

Recommendations

The report provides the following recommendations.

The Home Office should consider:

- Taking steps to clarify specific aspects of the relevant legislation and related guidance. This would include the standard of proof required for a SOO, who is responsible for applying for a SOO, and the jurisdiction of the legislation;
- Examining how Orders made in England and Wales could be legally binding in other parts of the United Kingdom (and vice versa);
- Introducing Interim Orders to manage an offender's risky behaviour between the summons and the final hearing, when the Order is granted. These may be introduced earlier on in the process to allow preparation of the case and to notify the individual that the case for an Order has been initiated; and
- Establishing a central point for advice to disseminate information on good practice.

ACPO should consider:

- Developing the most appropriate package for the training of multi-agency staff on the application for and monitoring of SOOs. A number of options might be explored including ad hoc special interest seminars arranged by the National Crime Faculty (NCF), or the inclusion of SOO training as part of a more general national training programme on managing sex offenders.

Forces should consider:

- Spreading knowledge of the potential application of SOOs to other force units and departments (e.g. Vice, obscene publications, child protection);
- Routinely using expert evidence, from an independent risk assessor, to support SOO applications in court including the nature and extent of prohibitions and length of Order being sought;
- Keeping the CPS informed of applications for Orders as they progress through court given that, if breached, they will be responsible for prosecuting this;
- Whilst experience will inevitably play an important role, practical training for officers with responsibilities for sex offenders in designing effective media strategies should be considered;
- That officers ensure that force media liaison officers are involved at the earliest possible stage in the SOO process so a press strategy can be developed;
- As the Multi –Agency Public Protection Panel (MAPPP) holds responsibility for a risk management plan, of which SOOs may be a part, the MAPPP should work jointly with the police to devise a media strategy. It is at such a forum that consideration should be given to establishing a protocol/agreement with local editors to manage potential press coverage of SOOs; and
- Consideration should also be given to establishing a protocol/agreement between the police and the Magistrates’ Court to establish standard procedure and practice across Police Force Areas as to the issue of summons, listing and management of SOO applications.

Other bodies:

- Relevant Prison Service staff (officers, seconded probation officers, psychiatrists and psychologists) should be (a) better informed about the potential that SOOs provide for management of sex offenders on release; (b) encouraged to take a more active role in identifying high risk offenders who have demonstrated ‘risky’ behaviours in prison; and (c) encouraged to share this information to appropriate police/probation staff on release;
- The Dangerous Offenders Group could raise the profile of SOOs by integrating them formerly into the MAPPP annual reporting system;
- The judiciary should consider devising a training strategy to train a cohort of legal advisers to magistrates so that necessary expertise is brought to the bench through specially trained court staff. LCD could also organise the training of a limited number of lay magistrates in various areas to whom SOO applications would be referred; and
- The Crown Prosecution Service should consider training staff so they are better equipped to deal with SOOs at the breach stage.

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1. Introduction

Background

Over the past few years there has been a growing concern about the risk posed by sex offenders in the community. In response to this, the government introduced a range of legislative and other measures to aid the management and monitoring of sex offenders (Table 1). For example, the Criminal Justice Act (1991) included 'provisions for preventative sentencing and supervision', and the Sex Offenders Act (1997) established arrangements for a Sex Offender Register designed 'to monitor and track sex offenders' (Kemshall, 2001, p.5). The latter requires offenders to notify the police of their name and address within a specific time period and applies to all those convicted of, or cautioned for, a Schedule 1 offence¹.

¹ See Sex Offenders Act (1997) for a list of Schedule 1 offences.

In addition, the Criminal Justice and Courts Services Act (2000) placed a statutory duty jointly on the police and probation to establish arrangements for assessing and managing the risks posed by all sex offenders and other dangerous offenders released into the community. This has been formalised by the development of Multi-Agency Public Protection Panels (MAPPPs), and the need for multi-agency co-operation for public protection. The Criminal Justice and Courts Service Act (2000) also gave the court power to issue a 'Restraining Order' against an offender at point of sentencing, if it was felt necessary to protect the public from serious harm, on his/her release. A Restraining Order is similar to a Sex Offender Order in that it prohibits an offender from certain behaviours.

SOOs were introduced under the Crime and Disorder Act 1998 and came into force on 1 December 1998. As stated in the Home Office Guidance (1998, p.4), their aim is to 'provide an additional measure of protection to the public from sex offenders'. They serve to prohibit an offender from certain types of behaviour that have previously been a precursor to offending, and, in this way, are intended to help prevent further serious offences from being committed.

Legislation	Policing/Practical Consequence
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 10px auto;">Sex Offenders Act 1997</div>	<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 10px auto;"> <p>Sex Offender Register Requires offenders to notify the police of their name and address within a specific time period</p> </div>
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 10px auto;">Crime and Disorder Act 1998</div>	<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 10px auto;"> <p>Sex Offender Orders Prohibits an offender from engaging in risky behaviour</p> </div>
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 10px auto;">Criminal Justice and Courts Services Act 2000</div>	<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 10px auto;"> <p>MAPP Arrangements Statutory duty on the police and probation to jointly assess and manage sex offenders</p> <p>Restraining Orders Prohibits an offender from engaging in risky behaviour on release</p> </div>

An Order is applicable to anyone with a previous caution or conviction for an offence listed in Schedule 1 of the Sex Offenders Act 1997, or the equivalent offence overseas. Orders can only be granted on the basis of current risk: the defendant must have acted in *‘such a way as to give reasonable cause to believe that an Order is necessary to protect the public from serious harm’* (Home Office SOO Guidance, 1998, p.5). In other words it is a person’s current behaviour which gives rise to concern and this needs to be viewed in the context of the sex offender’s previous offences/behaviour. The decision to apply for an Order lies with the police. In determining whether an Order would be appropriate, they are obliged to undertake an assessment of ‘risk’, which Kemshall (1996) defines as a:

...probability calculation that a harmful behaviour or event will occur, and involves an assessment about the frequency of the behaviour/event, its likely impact and who it will affect (p.11).

In general, this takes into consideration the views and concerns of other agencies involved in the management of sex offenders in the community.

A SOO is a civil order, to be applied for by the police to the magistrates' court in the area where the offender has demonstrated signs of risky behaviour. The police will be acting upon the civil standard of proof, i.e. the balance of probabilities. An Order prohibits the offender from doing anything prescribed in it. The prohibitions sought by the police are those believed necessary to protect the public from serious harm, for example the requirement for a person to stay away from a certain location. If granted, the Order also carries with it the requirement to register under the Sex Offenders Act 1997. Although a SOO is a civil Order, a breach constitutes a criminal offence, triable either way, and attracts a maximum penalty of five years imprisonment.

Aims of the study

Although many aspects of the recent changes to sex offender management in the community have been studied (e.g. Maguire *et al.* [2001]; Plotnikoff and Woolfson [2000]) there has been little substantive work on Sex Offender Orders (although anecdotal evidence suggested a low and variable up-take). This study aims to fill this gap.

The main aims of this study were:

- to examine the take-up of SOOs and explore the reasons for their variable use across police forces in England and Wales;
- to take stock of practitioners' views about the legislation, including issues arising from its implementation;
- to identify good practice for the preparation and management of SOOs;
- to examine the characteristics of offenders on SOOs and the relationship between 'risky' behaviour and the prohibitions within SOOs; and
- to examine SOOs that have been breached;

In addition, particular attention was paid to the role of the media, through both local and national newspapers, in their reporting of SOOs.

Methodology

The fieldwork for the study was undertaken between January 2001 and November 2001. The first stage of the research was a national telephone survey to ascertain the total number of SOOs at 1 April 2001² in which all 43 forces in England and Wales participated. Information was also collated on the general process of obtaining a SOO; unsuccessful applications; breaches; and appeals. Copies of each force's SOOs were also requested.

² Information on the total number of SOOs per force in the period between 1 April 2001 and 31 March 2002 will be collated under the Criminal Justice and Courts Services Act (2000).

INTRODUCTION

The second stage incorporated semi-structured interviews with key individuals at a sample of police forces. In total 16 forces were visited. Forces were selected to reflect a range of factors: urban/rural make-up; 'high', 'low' and forces with no Orders; forces known to have made unsuccessful applications at court; and those where the police force solicitor has advised against making an application.

In each of the case study forces, interviews were held with some or all of the following:

- officers who have responsibility for overseeing the management of sex offenders in the force;
- sex offender register officers who have been involved in the initial stages of applications for SOOs;
- force solicitors who have responsibility for proceeding with SOOs at court;
- representatives from the probation service;
- media liaison officers or equivalent; and
- staff with child protection responsibilities.

The force interviews were supplemented by observations at the pre-court and court stage in the SOO process. In addition, some forces provided copies of their force guidance on how to apply for and manage a SOO.

It is important to state that, in so much as this study records the views of those using SOOs, it primarily reflects the perceptions of the police service and to a lesser extent the probation service. Others in the Criminal Justice System (who are actively involved in handling SOOs) are likely to have a different perspective. This needs to be remembered when considering the findings.

Structure of the report

This report comprises of seven sections. The following section describes the number and distribution of SOOs in England and Wales. Section 3 describes in detail the process of preparing an application for a SOO, including the drafting of prohibitions. Section 4 focuses on the court process and the response of the court to SOOs. It also examines unsuccessful applications. Section 5 describes the monitoring of Orders and provides details on breaches. Section 6 deals with the press coverage of SOOs and media handling strategies, while the final section concludes the report, summarising briefly the main issues involved in the use of SOOs.

2. Overview of the take-up of Sex Offender Orders

The national picture and timing

This section provides an overview of the use of SOOs across police forces in England and Wales. It provides a national picture of the total number of SOOs applied for, those which have been successful and unsuccessful at court, and Orders which have been appealed against. In addition, it will examine the reasons why some forces have been more proactive than others in seeking SOOs.

A useful starting point for the study was information held by the National Probation Directorate on forces' SOOs. This information was not actively sought, it relied on forces sending information when an Order was granted. These data, in conjunction with information passed direct from forces to either the Home Office or ACPO, estimated the number of Orders to be in the region of 45 at the start of 2001. This suggested a low uptake of Orders. A telephone survey of all forces revealed a slightly different picture. Looking at the period from 1 December 1998 to 31 March 2001 there were found to be a total of 92 Orders in place. Furthermore, it showed that 38 of the 43 forces (86%) have applied for SOOs. The success rate of applications for these Orders at court was very high (94%) with only six being refused. In comparison, between April 1999 and September 2001 a total of 466 Anti-Social Behaviour Orders (ASBOs) were granted and 18 (4%) refused (Campbell, 2002).

Total number of forces who applied for a SOO	38
Total number of Orders applied for ³	98
Total number of Orders granted	92 ⁴
Orders rejected at court	6
Percentage of Orders successful at court	94%

³ Total applied for refers to those orders which were heard at court.

⁴ One particular sex offender is subject to 2 SOOs.

*1 December 1998 – 31 March 2001

Whilst these figures will certainly provide the most accurate picture of the take-up of SOOs currently available since the Act, it can only be stated with certainty that they represent the minimum number of Orders in existence during the reference period. Since responsibility for the management of sex offenders is devolved to division in many forces, data on SOOs are often not recorded centrally. When conducting the telephone survey, a trawl of divisions was frequently required to obtain a force total of Orders, and this approach can be unreliable. In at least one instance, this resulted in an inaccurate number of SOOs being initially reported.

OVERVIEW OF THE TAKE-UP OF SEX OFFENDER ORDERS

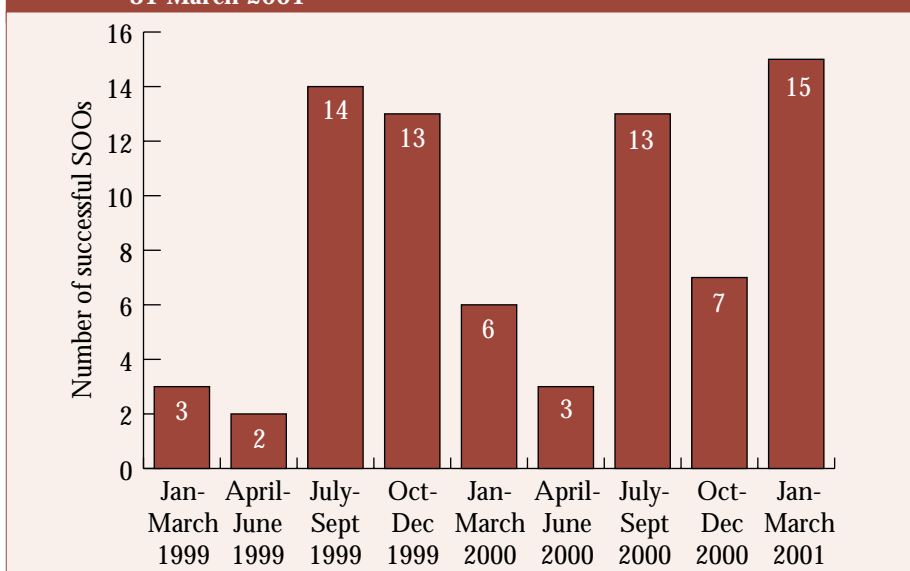
Although no firm data have been collected on the number of Orders which have been appealed, only six cases have been identified through the research. The grounds for appeals include:

- the application was not made by the Chief Officer of Police, but by an officer to whom authority had been delegated⁵;
- the credibility of witnesses (usually professionals) who provided risk assessments were questioned;
- compatibility with the European Convention of Human Rights; or
- the wording of the prohibitions (in that they were argued to be hard for the offender to understand).

⁵For further information see *Donald Ross vs. Cheshire Constabulary*, April 2000 where the court overturned an appeal for a SOO on the grounds that the application had not been made by the Chief Constable. The court was satisfied that the Chief Constable had the power to delegate responsibility.

Details of the dates when SOOs were granted at court were available for 76 (83%) of the 92 SOOs (Figure 1). The distribution of when SOOs were granted at court does not appear to follow any obvious trend. Four main peaks, however, can be identified: July 1999–September 1999; October 1999–December 1999; July 2000–September 2000; and January 2001–March 2001. If analysed on a month by month basis, it can be seen that the highest numbers of SOOs granted were in September 1999, October 1999 and January 2001.

Figure 1: The number of successful SOOs granted at court, 1 December 1998 – 31 March 2001



Offenders subject to a SOO

Some general observations can be made about the types of offenders subject to SOOs. As at 1 April 2001, all SOOs which had been applied for were against male offenders. Although comprehensive age data were not available, information on age was available for 40 of the 92 SOOs⁶. All of these were adult offenders (over the age of 18) with the majority aged between 35 and 54 (60%) (see Table 3). This compares to 38 per cent of all males convicted of a sexual offence in England and Wales being within this age group (Home Office Statistics). In contrast, the younger (18–24) and older (65+) offenders are both under represented in terms of receiving an Order, 7.5 per cent compared to 13 per cent and 19 per cent compared to 18 per cent .

⁶ Not all orders stipulated date of birth of the offender.

Age of offender	Number (n=40)	Percentage
18–24	3	7.5
25–34	6	15
35–44	12	30
45–54	12	30
55–64	3	7.5
65+	4	10

*1 December 1998–31 March 2001

From looking at the prohibitions it would appear that the majority of Orders were taken out on offenders who target children and adolescents.

Geographical take-up of SOOs

As illustrated in Figure 2, applications for SOOs across forces have been unevenly distributed across the country. Six forces alone account for almost half (46%) of the total number of SOOs with one force, Lancashire, responsible for 12 Orders. On the other hand, a total of 17 forces (40%) had successfully applied for one Order during the target period, whilst eight forces⁷ (18%) had no Orders (two of which had made an application but had been unsuccessful at court) (see Table 4).

⁷ Surrey, North Yorkshire, City of London, Leicester, Humberside, Gloucestershire, Cumbria and Cleveland

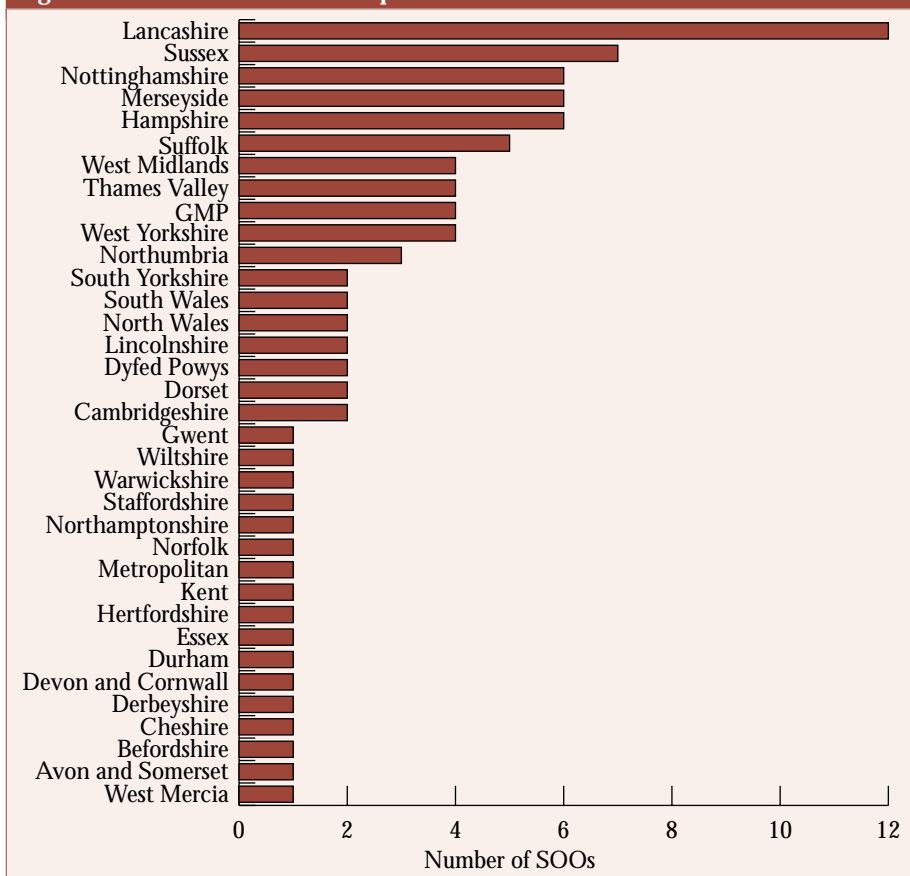
OVERVIEW OF THE TAKE-UP OF SEX OFFENDER ORDERS

Table 4: The total number of SOOs per force*

Number of SOOs	Number of forces	Percentage of all forces
0	8	18
1	17	40
2	7	16
3-4	5	12
5-6	4	9
7+	2	5

*1 December 1998–31 March 2001

Figure 2: The number of SOOs per force*



*1 December 1998–31 March 2001

Although it would have been helpful to have related the SOO figures to the number of high-risk sex offenders in each force area, this was not possible to do (data were not readily available). The degree of unevenness does however suggest that, on the one hand several forces were particularly enthusiastic about SOOs, while others appear to have been less so. The factors contributing to this pattern were explored in the force interviews.

Inhibiting factors

Predictably perhaps, and as with much new legislation, some interviewees admitted a lack of understanding and knowledge about SOOs, the process of applying for one, and the consequences of the outcome. This had made some police officers and legal advisors initially apprehensive about applying for their first Order. Some officers found both the legislation and guidance confusing and occasionally admitted to being 'frightened' by it.

Various factors contributed to this sense of confusion. Some officers argued that it was simply the novel nature of civil injunctions (with a criminal sanction for a breach), within the context of human rights legislation that discouraged forces from pursuing Orders more aggressively. For others, it stemmed from the ambiguity of specific elements of the legislation, particularly in relation to who should apply for a SOO. The Act stipulates:

If it appears to a chief officer of police that the following conditions are fulfilled with respect to any person in *his police area*, namely...
(Crime and Disorder Act, 1998, 2[1])

However several officers and solicitors were unsure about the precise meaning of '*his police area*'. They were not clear as to whether the authority should come from the chief officer of the force in which the offender *resides*, or the force in which he carried out his *risky behaviour*. In one instance this led to prolonged discussions about who had ownership of the Order, which delayed the application process.

Some forces have been critical in what they saw as a lack of clarity in the initial Home Office Guidance on SOOs. Many forces adapted it for their own purposes, although in some cases this redrafting had distorted or emphasised particular aspects of the legislation. Not all of these had been positive. For instance, one placed considerable stress on the cost and resource implication of an Order:

However, it must be appreciated that there will be a considerable cost involved in obtaining the Orders.

Having obtained the Orders the responsibility will rest with the police to initiate and sustain this monitoring and failure to do so may leave the Service open to considerable public criticism.

While some of this advice might be reasonable in terms of encouraging officers to think sensibly about the resource and wider consequences of decisions, it has been interpreted by operational officers as at best ambivalent and at worst dissuasion from taking out an Order.

A second inhibiting factor was felt to be concerns over resources. While resource issues affect all areas of policing, there were some specific issues raised in relation to SOOs. Indeed, as is noted above, sometimes the resource consequence of gaining an Order had been explicitly highlighted in force guidance. Orders were perceived by some to be both expensive and labour intensive to the extent that some of the 'low Order' forces were more cautious in pursuing Orders. Resource issues were cited as important at the application stage, as well as the subsequent monitoring and managing of the Order. Officers in one force expressed their curiosity as to how forces which had many more Orders managed to monitor their Orders effectively. Campbell (2002) drew similar conclusions in relation to ASBOs. She found that some areas believed that the reason why they had fewer ASBOs was because partnerships did not have the resources to cope with them.

Concerns about resources were particularly heightened in forces where there had been difficulties in securing an Order, an Order had been rejected at court, or a breach had been treated with a 'minimal' sanction. In such cases it was widely felt that a substantial amount of police time and effort had been invested for a 'pointless end result'. In at least three of the forces visited, this had subsequently dissuaded them from pursuing additional Orders.

Echoing research undertaken on other aspects of sex offender management (Maguire *et al.*, 2001), interviewees claimed the low take-up of Orders was, in part, a consequence of a performance indicator culture which focused on the policing of high volume crime. This meant sufficient resources were rarely deployed to areas such as sex offenders. As one officer explained:

Sex offenders are not high on the priority list, they aren't a tick box...we don't get judged on how well we manage sex offenders.

Attitudes towards resourcing this area were not, however, universal (see below).

A third issue highlighted by interviewees related to the media aspects of a SOO. Concern was initially raised by ACPO during the drafting of the legislation about SOOs being heard in open court. Their anxieties centred around the details of the identity and whereabouts of sex offenders being disclosed in court and reported by the press. This could contribute to driving sex offenders underground (which would make them harder to monitor), and also might give rise to incidents of public disorder. Several officers repeated these concerns during the interviews. They believed SOOs would be prone to local and possibly national press coverage, particularly any details of the offender's past offending behaviour. As a result, some interviewees restated their concerns about potential vigilante activity, the possibility that offenders may go to ground, and implications for the victim/victim's family. However, as demonstrated in Section 6, the issue of media coverage is not as clear-cut as this.

A final inhibiting factor identified in the interviews related to the pivotal role of the force solicitor, or counsel if instructed, in the process of applying for a SOO. Since it is the force solicitor who makes an application for an Order, he/she generally plays a key gatekeeper role in the process. In a handful of forces, force solicitors were felt to be too obstructive in the SOO application process. Their approach was sometimes described as cautious, the suggestion being that they rejected 'appropriate' SOO applications before embarking on a court hearing or requesting far more evidence than was felt necessary for the civil standard of proof (as with the media the standard of proof issue is complex and is discussed further in Section 3).

Other strategies to manage risk

While there were clear perceptions that the low uptake of Orders in some forces was the consequence of a range of inhibiting factors, this was only part of the picture. All forces were using a variety of techniques to manage their sex offenders usually facilitated through Multi Agency Public Protection arrangements (MAPP) (for a more detailed discussion on MAPPs, see Maguire *et al.*, 2001). In this respect, SOOs were perceived to be 'another tool in the tool box'. Several 'low Order' forces simply argued that the circumstances in which a SOO might be applied had not arisen yet. They were viewed by the majority of officers as a last resort in the management of

sex offenders. In 'low' and 'no Order' forces, it was sometimes argued that they were managing their offenders effectively through other strategies with no, or few, circumstances where a SOO was deemed appropriate.

One force argued that its 'intrusive' monitoring, particularly of offenders post-release from prison, had meant that it had few occasions when a SOO would have been worthwhile. This particular force had dedicated prison intelligence officers to work with all the prisons within the force area. Intelligence was collected whilst the offender was in prison and included details on general behaviour, attendance at Sex Offender Treatment Programmes, any visitors and any phone calls made. The prison service would notify the police when a sex offender or dangerous offender was coming out of prison, so a management strategy could be planned. Prior to release offenders were told that they would be subject to a very intense level of monitoring. SOOs were not in this instance viewed as something which would enhance the process of sex offender management.

Other specific routes for control included voluntary agreements, both written and verbal, and community disclosure.

Voluntary agreements

Sometimes, as a precursor to a full SOO, some forces used voluntary agreements as a way of getting sex offenders to desist from risky behaviours. Voluntary agreements are similar to SOOs in format, although the offender is under no legal obligation to comply. Suggested restrictions were agreed between the offender and the police, and all parties signed a declaration. Interviewees in forces felt using this approach gave offenders the opportunity to change their behaviour before resorting to a legal sanction which was seen as a 'serious indictment'.

An even more informal approach to encouraging desistance was used elsewhere. In quite a few forces, officers recalled how the 'threat' of a SOO was used as a means to persuade offenders to desist from particular activities which either police or probation deemed to constitute risky behaviour (i.e. it was viewed as a precursor to re-offending). One probation officer explained how the 'threat' of an Order was used to discourage a known paedophile from continuing coaching young children in sport.

In such situations, offenders were warned that if they did not amend their behaviour voluntarily, the police would have no hesitation in making an application for a SOO. Emphasis was placed upon the possibility that this may lead ultimately to a

custodial sentence. While the threat of an Order is clearly serious, it was suggested that it was more the possibility of an Order being heard in open court that raised concerns for sex offenders. This raised the likelihood of an offender's identity being publicised in the local press and provided them with an additional incentive to manage their own behaviour. Occasionally this was coupled with Sex Offender Liaison Officers taking a more intrusive role in monitoring regimes. As one officer stated: 'if you return to your old ways then we will seek a SOO and that means [the risk of media publicity]'.

The effect of this was thought to be that offenders believed they were under constant surveillance. One officer described this as:

Having an offender in the palm of your hand being able to control them without having to go for the legislation... the fact that it is there is enough to be a preventative measure.

Under both circumstances, if offenders did not modify their behaviour, i.e. they broke their agreement, officers could use this as evidence in court if a SOO is subsequently pursued. It was felt that the fact that the offender was warned about his conduct, and yet did nothing to control it, would give further weight to the application.

Community disclosure

Community disclosure entails information about a sex offender, and the risk that he is thought to pose, being disseminated selectively into the community⁸, allowing the community to maintain surveillance or adopt specific preventative strategies (Hebenton and Thomas, 1997). Similar to a SOO, the purpose of community disclosure is to prevent an offence from being committed as well as providing additional strategies to manage that offender. The recommendation for community disclosure is likely to come from a MAPP prior to a final decision made by the ACC (Assistant Chief Constable) as to its suitability.

One force reported using community disclosure as an effective management tool and argued that this was one of the reasons why they had not applied for more SOOs. Since the Sex Offenders Act (1997), they had issued approximately 20 community disclosures to help protect predominately children in the community. Only key individuals (e.g. teachers) within the community are identified to disclose to, dependent on who is at risk. This is seen to minimise the risk that an offender poses to the community and in particular circumstances, it was argued, circumvents, the need for an Order. As explained by one officer:

⁸ *Passing on information to individuals, organisations, or the local community, about the background and whereabouts of an offender (Maguire et al., 2001)*

If you have told a head teacher about the risk an offender poses then there is no need to then prohibit that person from going near a school... the head teacher can inform us if an offender is seen hanging around the school.

However, some forces expressed concern about using community disclosure to manage sex offenders. It was argued there was the risk that this could result in offenders' identities being released more widely than anticipated, and might lead to incidents of public disorder. This may result in offenders going underground and thus making them, and the risk they pose, more difficult to manage. It was felt to be imperative that the potential consequences for the community are accounted for prior to any decision to disclose.

This section has highlighted the complexity of factors which have encouraged some forces to apply for few (or no) SOOs. While there are some factors which have actively discouraged take-up by forces, the picture is more complicated. Resorting to SOOs is widely seen as a last resort, but there are other forms of sex offender management mechanisms which forces believe simply represent different ways to achieving the same goal. Even where forces have not actively applied for Orders, it would appear that the threat of an Order has been used to encourage offenders to desist from 'risky' behaviour.

Factors encouraging the use of SOOs

As has been previously noted, a handful of forces have pursued applications for SOOs enthusiastically. Interviewees in these force areas offered a number of reasons for levels of take-up. The general background against which Sex Offender Orders have been pursued was identified as an important factor. Several forces that have been especially proactive felt that a key contributory factor was the emphasis on sex offenders within overall force policy. An impetus to improve their management of sex offenders, exemplified by the frequent use of SOOs, was in part the result of historic cases where the police response to a sex offender in the community had been found wanting. If history played a part, so critically did the attitudes of individuals. It is hard to over emphasise the attitude of individual officers and force solicitors in driving through SOOs.

Several individual officers (and force solicitors) have become especially convinced that SOOs are an effective tool for managing sex offenders; this was illustrated by the enthusiasm and commitment of several of the officers interviewed.

Structurally, several high SOO forces were characterised by having a clear central point of contact, where officers could go for advice about the application process, the legal details and possible pitfalls. Lancashire, which in the reference period had 12 Orders, had a team based in their Force Intelligence Bureau (FIB) that dealt with the general management of sex offenders, who had actively nurtured additional expertise in the application of SOOs. It was felt that this 'expertise' helped officers understand the process of applying for an Order and made the whole experience easier. In contrast, many forces have devolved responsibility for managing sex offenders to divisions. Although this alone was not always an inhibitor to a large number of applications for SOOs being sought, some officers felt that in these areas a central point of contact was necessary to ensure consistency across their force. In some forces where there is no central team, the force solicitor has taken on this role. In addition, officers have looked to neighbouring forces for help and guidance, and to learn from their experiences of applying for SOOs.

The next Section goes on to consider the first stages of the Sex Offender Order process.

3. Application for a Sex Offender Order

This Section examines the processes involved in preparing an application for a SOO for court. It will look at who is eligible for a SOO; where the initial impetus for an Order comes from; the type and source of evidence required to support a successful application; and the drafting of effective prohibitions.

SOO criteria

Initially, it is important to identify who is suitable for a SOO. As specified in the Crime and Disorder Act (1998) 2(1) to be eligible for a SOO, a person has to fulfil the following criteria:

- (a) that the person is a sex offender.
- (b) that the person has acted, since the relevant date⁹ in such a way as to give reasonable cause for concern to believe that an Order under this section is necessary to protect the public from serious harm¹⁰ from him.

A sex offender is a person who has been convicted of a sexual offence to which Part 1 of the Sex Offenders Act (1997) applies, but it is not a prerequisite for the offender to be subject to the requirements of the SOA. As the Sex Offenders Act (SOA) is used to define who is eligible for a SOO, registration is not a prerequisite. However, being subject to a SOO does automatically require an offender to register¹¹.

Generally, there was little concern over the scope of the Act in terms of whom it could be applied to. However, several officers felt that the definition of a sex offender under schedule 1 of the SOA was not sufficiently flexible. It does not account for offenders previously convicted of non-sexual offences, which may have had a sexual element. One force felt frustrated about being unable to pursue an Order on an offender convicted of burglary, despite the suggestion that there was a sexual motive behind this offence, and that his recent behaviour was considered to be 'risky'. The Consultation Paper on the Review of Part 1 of the SOA 1997 (issued in July 2001) makes recommendations that specific offences with a sexual element that are not classed as a sexual offence under the Sex Offenders Act should be included. The other key requirement that determines eligibility for a SOO is that an offender must be demonstrating signs of risky behaviour which indicate that he is likely to re-offend. This behaviour needs to be related to his modus operandi used in previous offending, but it does not have to amount to a criminal act. Indeed, if the behaviour constitutes a criminal act, this should be prosecuted in its own right.

9 Behaviour which has occurred since December 1998 and since the date of conviction or caution.

10 Serious harm is defined by section 31 Criminal Justice Act (1991) as 'death or serious personal injury, whether physical or psychological'.

11 Some of the interviewees were unaware of this. In fact, one prohibition in an order requires the offender to 'Register under the provisions of the Sex Offender Act'.

The initial identification of offenders requiring a SOO

When looking at the SOO process, it is helpful to determine where the initial impetus for an Order comes from. Information on this was obtained for a total of 58 (63% of the total) SOOs.

Table 5: A breakdown of where the initial concern for a SOO comes from

Source	Number of SOOs (n=58)
Police	38
Probation	1
Prison	2
Public	11
Other agency ¹²	6

¹² This relates mainly to social services and housing.

Table 5 highlights the leading role that the police themselves play in identifying possible offenders who may be suitable for a SOO. They alone accounted for the majority of Orders (66% of those where information was obtained).

This might not be surprising considering that in the majority of forces there were divisional officers in specific units who have the responsibility for the monitoring of, and liaison with, sex offenders. Despite this, there are a number of methods by which offenders have been identified as warranting a SOO.

Routine police work

- Beat officers on routine patrols noticing signs of risky behaviour. For example, in one force, a known sex offender was seen sitting on a park bench outside a school, during school hours. This prompted an application for a SOO.
- In one force, the FIB had responsibility for collating information on known sex offenders from divisions. In a couple of cases this has enabled them to identify, from the intelligence logs, risky behaviour.

Routine sex offender management/monitoring

- In many instances it was the routine monitoring of a sex offender that first highlighted risky behaviour. For example, covert and overt surveillance, home visits, random spot checks, requests that an offender keeps a diary and

disclosure/community notification. These management strategies highlight whether an offender is starting to behave in a manner that is felt to be 'risky'.

Other sources of information

- Other agencies, such as probation and the prison service, have brought to the attention of the police, offenders who they perceive as posing a risk. These are discussed below.

The role of probation

Although probation rarely took the lead in initiating an Order, they often played an important contributory role in preparing for a SOO. For example, they provided evidence to support an application for an Order.

Contact between police and probation over offenders in the community who might be suitable for an Order was either through formalised information sharing, or through more ad hoc contact due to the sudden emergence of a perceived risk. The exchange of routine information was often facilitated through the role that a probation officer plays in the MAPPP (Maguire *et al.*, 2001). This might include providing information on current high-risk sex offenders residing in bail hostels in the force area or concern over an individual who was about to finish their licence, or extended supervision, and was felt to require further monitoring. This was illustrated in an interview with a probation officer:

Now I have more confidence in the SOO process and I knew that someone was coming to the end of their licence I would bring him to the attention of the Dangerous Offending Conference.

In addition, as probation officers have regular contact with sex offenders, they are well placed to note any changes in their behaviour which may give rise for concern. One probation officer explained how he informed the police that an offender, who had a history of sexual offences against children, had youngsters in his flat when he visited him. This resulted in further investigation by the police, and an application for a SOO being made.

While not necessarily the primary initiators, probation officers were in a position to encourage the police to make applications and use of SOOs; in general they viewed them positively. Some viewed the SOO as a welcome preventative tool which

greatly enhanced their ability to do 'something' when faced with a risky offender. Several noted that prior to the introduction of SOOs, when an offender came to the end of his supervision they often felt powerless and frustrated with the mechanisms available to manage an offender's future behaviour. With the introduction of Orders, the probation officers saw an opportunity to continue managing an offender when necessary. Although the police and the probation services had very different responsibilities, an Order provided a proactive tool for joint working. SOOs were therefore seen as a practical tool for joint action, as illustrated by comments made by two probation officers:

[You] have to remember that Sex Offenders are secretive...[and] manipulative in the way that they operate and you can get prohibitions [and] surveillance in the police which you can't get with the probation service.

We have the ability to operationally make things work in my experience. We have a good blend with the powers that probation has to influence things like parole, licence conditions and police willingness to push the boundaries of tactics to influence managing an offender.

Apart from being valued as a tool in themselves, a common observation was that it stimulated closer joint working between police and probation.

The role of the prison service

In their work on the provision of information from prisons to the police for the Sex Offender Register, Plotnikoff and Woolfson (2000) found that the majority of forces (80%) described prisons as reliable providers of 'routine' information on sex offenders leaving custody. In the forces visited, however, officers raised concerns over the flow of more specific information from the prison service about the behaviour of offenders and the potential risks they posed once back in the community. The legal need to establish evidence of risky behaviour meant that the actions of prison authorities were generally more limited, but there were instances where a prison was able to provide evidence to support a SOO application. For one force this was simply an extension of strong links with their local prisons with more wide ranging intelligence being shared on a regular basis. If appropriate this may provide the evidence for a SOO application.

The study highlighted a couple of instances where information provided by the prison service played a central role in the initiation of the Order. In one case, this

centred around the content of letters written to young girls whom the offender had befriended prior to his imprisonment; in another it focused on anxieties raised through comments made by an offender during counselling prior to release about his intention to re-offend.

The role of the public

It is widely acknowledged that the members of the public can play an important role both in the detection and the prevention of crime (see for instance Morgan, 1980 and Ainsworth, 1995). It is worth noting that in just under a fifth (19%) of cases, where information was available, the initial impetus for an Order came from a member of the public who informed the police of an individual displaying behaviour which they considered as suspicious, or in some way 'inappropriate'. Hence in one case, the origin of the Order was a mother who reported to the police that she had seen a man behaving suspiciously in the children's play area in the city park. This instigated the application for a SOO to curtail such behaviour. In another example, local residents who regularly saw young children going in and out of one of the resident's flat (an old man who lived on his own) raised their concern to the police. As in the previous example, this led to subsequent investigation by the police, and an application for an Order being initiated.

Evidence offered in support of prohibitions

Once a decision has been made to pursue a SOO application, evidence has to be gathered to support this. Essentially, evidence will consist, at least in part, of an account of the 'risky behaviour' that first brought the individual to the attention of the police. This will often be supplemented by details of the offender's previous convictions and his modus operandi; professional reports on his behaviour; and the risk that these combined might indicate to future offending. This evidence will have two functions. First, to show risky behaviour and the need for an Order, and second, to inform the development of suitable prohibitions. The evidence is required to be of the civil standard of proof, and the application for an Order should be judged on the 'balance of probabilities'.

Many officers reported this is achieved by 'painting a picture' of an offender's current behaviours and lifestyle and showing, in conjunction with his previous convictions, and the behaviours related to them, that he is currently a risk. This had the function of contextualising what might otherwise appear to be 'normal' behaviour. One officer emphasised the importance of this:

If you tell the court that you saw him in the swimming pool teaching a girl to swim, they will say what is wrong with that. What you have to say is that last time he did that it led to an indecent assault.

Details on the evidence used to support SOO applications were provided by 19 forces for a total of 31 SOOs. This provides an overview of the range of evidence used by the police to support an application and has been categorised into three groups: details of previous offending behaviour and MO; evidence of current risky behaviour; and information to assist the interpretation of this behaviour. As one would expect, the majority of evidence relates to demonstrating current risky behaviour. This could take a number of forms: self-disclosure by the offender; establishing links with other sex offenders; communication with victims. This was derived from a variety of sources such as police intelligence, probation, prisons, housing and social services (Table 6, overleaf).

Once the evidence has been gathered, this would generally be used to form the basis of a 'bundle' which was submitted to the force solicitor or barrister. This would generally comprise of intelligence logs, the offender's criminal history, details of any surveillance, and a draft witness statement written by the officer in charge of the case. The solicitor will then decide whether the amount and quality was adequate to support a successful application:

Once the evidence is gathered, the intelligence officer will come and see me with their package of evidence and we sit down and have a look at it. If I consider there to be enough evidence to instigate an application then we will go ahead and do it.

As the evidence to support an Order usually falls out of the general management of sex offenders, officers found it relatively straightforward to gather. The interviews also highlighted two further concerns regarding evidence:

- whether the balance of probabilities was the appropriate legal threshold for evidence
- the six month time limit surrounding evidence.

Table 6: Types of evidence used to support SOO applications

Type of evidence	Examples
Details of previous offending behaviour and MO	
Accounts of previous offending behaviour	<ul style="list-style-type: none"> • Details of previous offences, behaviours leading up to offences, convictions and preferred MO
Evidence of current risky behaviour	
Offenders' disclosure of intent to re-offend	<ul style="list-style-type: none"> • An offender indicating his intention to re-offend to prison officers, police, probation or social services
Links with other sex offenders	<ul style="list-style-type: none"> • Contact with other paedophiles
Creation of/possession of visual material	<ul style="list-style-type: none"> • Creation of home videos involving potential victims • Possession of child pornography or indecent photographs¹³
Observing possible victims	<ul style="list-style-type: none"> • Passive watching • Watching plus sexual act (self-administered)
Use of items to access potential victims	<ul style="list-style-type: none"> • Possession of dogs, toys, balloons etc. to initiate the grooming process
Communication with possible victims	<ul style="list-style-type: none"> • Talking to potential victims • Letters written/phone calls with potential victims
Arrest for relevant offending but no further action	<ul style="list-style-type: none"> • Offender was arrested for pulling young children into public toilets whilst he masturbated¹⁴
Interpretation of risky behaviour	
Professional assessment/MAPPP meeting minutes	<ul style="list-style-type: none"> • Risk assessment (Matrix 2000/SACJ) • Psychiatric reports drawing on both past and current offending behaviour to demonstrate that an offender is showing signs of previous offending cycle • Record of MAPPP's decision that offender should be considered for a SOO

13 Under such circumstances it is up to the discretion of the police whether to prosecute for the offence or pursue a SOO.

14 See footnote 13.

The appropriate legal threshold for evidence

The legislation lays down that the evidence of risky behaviour required to support a SOO meets the civil standard of proof, i.e. the balance of probabilities. Interviews with participants suggested that in reality evidence submitted by the police tended towards the criminal standard. A similar picture was found in relation to ASBOs

(Campbell, 2002). A number of explanations were offered as to why police officers and force solicitors tended to go for a higher standard of proof.

First, officers were more accustomed to collecting evidence for criminal prosecutions. Hence there was a tendency to go for the criminal standard of proof almost out of habit. Second there was a strong desire to ensure that Orders were successful at court. Many of the force solicitors interviewed felt that using the criminal standard would add both strength and credibility to the application, and satisfy magistrates who they perceived to prefer the criminal rather than civil standard. Some officers therefore were instructed by either the force solicitor or an independent barrister to provide evidence which met the criminal standard. For example, one officer described how the barrister, on one case, requested birth certificates of the children involved in an allegation of risky behaviour by an offender to prove that they were under 18. While the tendency to adopt in practice a criminal standard of proof had resource implications, it may also have contributed to the high success rate of SOO applications. Elsewhere it was simply the officers themselves being cautious.

If habit, caution and perceptions played a part in encouraging officers to steer towards the criminal standard of proof, the situation was felt to be compounded by the uncertainty over the standard of proof as stated in the guidance, and specific concerns over criminal sanctions following a breach. The guidance states:

Application for an Order is by way of complaint to the magistrates' court. This means the court will act in its civil capacity and the civil standard of proof, i.e. the balance of probabilities applies. This is a flexible standard and how it will be applied may vary on a case by case basis. In this context those applying for Orders may wish to be aware that in some civil proceedings, for example a complaint for a binding-over Order, the High Court has indicated that where criminal sanctions follow a breach a higher standard will be required.

(Crime and Disorder Act 1998, Sex Offender Orders Guidance, 1998, p. 8)

Despite obvious confusion about the burden of proof to be used, it is worth noting that the issue of the standard of proof required for a SOO was addressed by the then Lord Chief Justice, Lord Bingham, in his judgement in *B. v. Chief Constable of Avon and Somerset 2000*. It was a unanimous decision of the court that the proceedings were civil, although Lord Bingham did go on to say:

It should, however, be clearly recognised...that the civil standard of proof does not invariably mean a bare balance of probability...The civil standard is a flexible standard to be applied with greater or lesser strictness according to the seriousness of what has to be proved and the implications of proving those matters...In a serious case as the present the difference between the two standards is, in truth, illusory.

This was re-iterated in a case approved by the current Lord Chief Justice in the case of *R. v. Manchester Crown Court ex parte McCann 2001*, which concerns the standard of proof required in an application for an Anti-Social Behaviour Order. In addition, Campbell (2002) found that whilst some magistrates still remained 'confused', others had developed their own criteria as to what evidence they will and will not accept. Given this, it is perhaps little wonder that most force solicitors have opted for the higher criminal standard of proof.

The use of historic evidence: The Magistrates' Courts' Act (1980)

Another issue highlighted by interviewees is that evidence submitted to a Magistrates' Court must comply with the Magistrates' Court Act (1980) section 127. This stipulates that in Order to substantiate a complaint for civil orders (such as SOOs) there must be evidence of behaviour within the six months prior to making the complaint. In relation to SOOs, this would suggest that there is reasonable grounds for believing that an Order is necessary to protect the public from serious harm. The rationale behind the six-month ruling is that if an offender has not demonstrated risky behaviour in the last six months, then there is no clear evidence to suggest that he is posing a current risk. In relation to this, several force solicitors have quite rightly refused to pursue an application on the grounds that the 'evidence submitted was historic'. One force solicitor said:

How can you win a necessary argument if the only bit of evidence is from seven months ago? The first question at court will be what has happened since and if you say nothing you are not going to get one. How does this show that he is a serious risk?

While this aspect of the legislation is implicit, it is not explicitly stated in the Home Office Guidance on SOOs. Therefore, despite its implications, some officers were unaware of the relevance of the six-month ruling to SOOs and the need to process Orders through to the initial hearing as fast as possible. This has led to situations where the force solicitor has rejected a case as the evidence submitted was outside six months. Other officers and force solicitors correctly understood this to mean that, in terms of SOOs, the last piece of evidence of *risky behaviour* had to have

taken place no later than six months before the information was sworn in at court, for it to be accepted. One officer referred to this as an ‘*incident to hang your hat on*’. Evidence prior to this can be used but is essentially to back-up an application.

Prohibitions

The drafting of prohibitions

The process by which prohibitions were drafted was broadly similar across forces. In the majority of cases, the police officer familiar with the offender’s behaviour and the evidence, took the lead and drafted a list of the prohibitions he/she would like to see in an Order. This was then submitted, along with the bundle of evidence, to the force solicitor who decides if there is sufficient evidence to support the requested prohibitions, and whether they are likely to be acceptable at court. As explained by one force solicitor:

We have a look at what we think [the offender] is up to and how we can stop him from doing it and how we can police it. We think what we would like in an ideal world, tie this in with his offending behaviour and then see if we have the evidence to back it up. Great if we have, but if we haven’t I instruct officers to gather more evidence or cross it out.

Officers were asked to specify what they perceived the main criteria to be for drafting effective prohibitions. Some of these simply relate to the legislation. Legally, of course, they need to prohibit certain forms of activity clearly related to an offender’s past and current offending behaviour, so they need to be drafted in the negative, and relate to his previous MO and current risky behaviour. The vast majority of prohibitions were constructed in the spirit of the legislation, although several successful Orders were based on more generous interpretations of the Act. As one officer said ‘you have to be imaginative in the drafting of prohibitions’.

Three key criteria suggested as helpful guides in drafting prohibitions were that they may be:

- practical (i.e. the police or others can monitor the prohibitions effectively, within reasonable resource constraints);
- understandable and clearly defined (i.e. the offender has a clear understanding of what he is not permitted to do under the details of the Orders – see Section 5 for an example where it has had implications for the sentencing of a breach of an Order); and

- reasonable and proportionate (i.e. compatible with article 5 (i) and 11 of the European Convention on Human Rights).

Drafting an effective Order relies on balancing a number of competing objectives. The police and the offender have to be clear when (and where) an Order is breached or not breached. This is a function of both the practical constraints of police monitoring and defining correctly the boundaries of an Order:

You need to ensure that you can monitor your prohibitions, if an offence is committed then the police will be heavily criticised...they are a waste of time if you don't actively do something.

Prohibitions that are specific, either relating to defined geographical areas or named individuals, are somewhat easier to monitor. However, if they are too specific, there is the risk that an offender may change his behaviour so as to circumvent the Order. One officer cautioned:

If they are geographically specific then he will go somewhere else, if they are specific to individuals then he will go for someone else.

There was some evidence of offenders simply changing their behaviour to get round a prohibition. The prohibitions in one offender's Order were so specific, in that they related to contact with two named individuals and their families, and restricted him from frequenting a particular area in the force, that when he moved to another force area, the Order was no longer relevant. Details of the offender were sent to the receiving force which undertook monitoring. As a result he was seen demonstrating signs of similar risky behaviour, and an additional Order had to be sought by the new host force.

Some 'specificity' can be unintentional. The use of prohibitions emphasises the need for officers and force solicitors to carefully think through their prohibitions prior to the court hearing. Critically the specific choice of words can play an important part in constraining, or otherwise, what an offender is permitted to do. In one case, a prohibition was drafted to ensure that the offender was not to allow a person under 16 to enter his dwelling. In this case, the offender found himself a girlfriend who had young children in her house and started spending time there. The police could not arrest him, as technically he was not breaching the Order, as it was not his dwelling.

However, forces have also experienced problems when prohibitions have been too wide-ranging. This can result in them being virtually impossible to police, or in other circumstances they can be seen to be unreasonable to the offender and may be amended or even rejected at court. For example, in one case an offender was prohibited from going within a certain range of swimming pools. However, his bus route to work took him past one. The court felt this was too restrictive and rejected this prohibition. This illustrates the importance of taking into account an offender's human rights when drafting prohibitions, this was supported by a court clerk.

Partly in response to ensuring a balance between the general and the specific, some prohibitions have been framed around specific time and distance restrictions. For example 'going within 50 metres of any school entrances between 8am and 7pm Monday to Friday'. This enables the Order to be policed more effectively and minimises the opportunity for the offender to circumvent the Order and continue behaviour previously linked to offending.

Types of prohibitions

Details of specific prohibitions for successful Orders were obtained in a total of 76 Orders. In total, these Orders had within them 274 prohibitions. The highest number of prohibitions for a single Order was seven (of which there were three), the least one (of which there were five), and on average an Order had four.

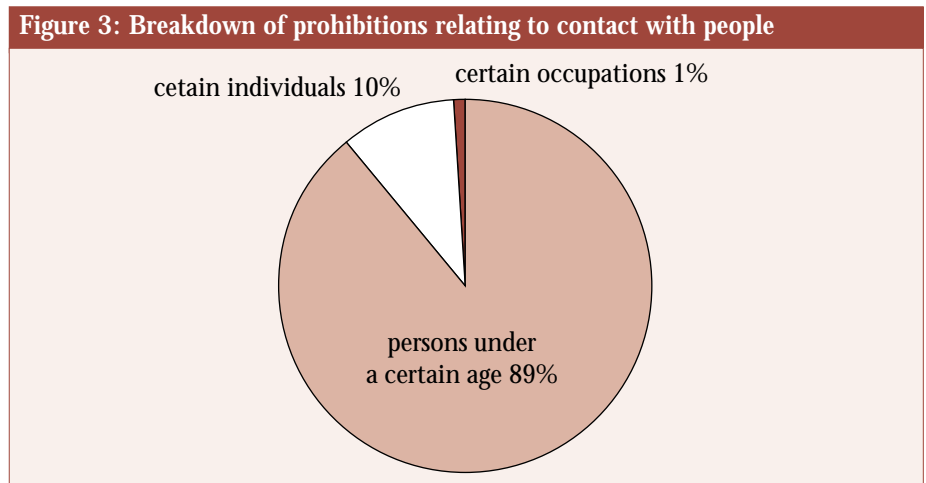
A list of all prohibitions was compiled to determine common themes (Table 7). It must be noted that these have been taken from the final Order agreed at court and that any amendments to the original 'wish list' provided by the police have not been accounted for.

The data revealed that most prohibitions specify prohibiting contact with either particular categories of people or specific individuals (35%). Indeed, 71 of the 76 Orders included reference to prohibiting contact with categories of people. In most cases, prohibitions were directed against contact with potential victims under a certain age range (89% of all people-focused prohibitions) reflecting the fact that the majority of Orders were on offenders who offended against children and adolescents. Other forms of 'people' orientated prohibitions focused on contact with named individuals (10% of all people focused prohibitions) and contact with people employed in certain occupations (1%, mainly prostitutes) (figure 3).

Table 7: The types of prohibitions in SOOs*

Prohibition	Percentage of total prohibitions (n=274)
Contact with people	35
Going to certain locations	29
Notification to the police (e.g. intention to leave the UK)	10
Undertaking certain types of employment	10
Anti-social behaviour (e.g. drinking)	1
Possession of objects for grooming	5
Other	10
Total	100

*Based on 76 Orders taken out between 1 December 1998 and 31 March 2001



Restricting or prohibiting access to certain locations accounted for 29 per cent of all prohibitions. These fell into two categories. General locations which refer to schools, children’s play areas, and leisure centres (59 prohibitions), and specific locations which relate to a specified place such as a named school or park, or a red light area (22 prohibitions). In addition, some prohibitions were framed around specific times or distance restrictions (43% of location prohibitions) such as ‘between the hours of’ and ‘within XX metres of’. Details of the 81 location prohibitions are given in Table 8.

Table 8: Percentage breakdown of prohibitions related to certain locations

	Time	Distance	Both	None	Total
General (n=59)	2	31	8	59	100
Specific (n=22)	14	36	0	50	100

A total of ten per cent of all prohibitions related to movement away from a home address without first notifying the police. A similar proportion related to undertaking employment which may bring them into contact with certain individuals (again, mainly children), whilst five per cent related to the possession of particular objects which previous MOs indicated might be used for victim grooming.

The majority of prohibitions which have related to specifying specific types of location nationally have been made to cover anywhere in England and Wales. There are currently separate provisions for England and Wales on the one hand, and Scotland on the other, in the Crime and Disorder Act (1998). Anything tried under this legislation in England and Wales is not applicable in Scotland or Northern Ireland (and vice versa). Therefore an Order taken out in England and Wales does not apply to, and cannot be enforced in, Scotland. This has implications if an offender demonstrates signs of prohibited behaviour outside the jurisdiction of the legislation as the prohibitions are not enforceable. At least one offender in a Welsh force moved to Scotland after becoming subject to an Order. The relevant Scottish force was informed of the Order and his behaviour was monitored. Risky behaviour was observed and an additional SOO had to be sought as the prohibitions of his first Order were not legally binding in Scotland. Some SOOs state that erroneously the prohibitions will apply to Great Britain or the UK (rather than England and Wales).

A discussion on the court process follows.

4. The court process

This Section describes the process by which an application for a SOO is heard and subsequently granted (or not) at court, highlighting a range of key issues. It examines where an application for an Order is made and who takes responsibility for it. The response of the court, tactics for minimising court delays, and contested Orders will also be considered.

It is important to note that this research focused upon the police experiences of SOOs. The findings presented in this section are a reflection of the *police perceptions* of the court process and therefore may give a partial view of taking Orders to court. Other parts of the criminal justice system may have different views and it is important that this is remembered when considering the findings.

In general, participants felt that obtaining a SOO at court was a relatively straightforward process, particularly if most eventualities had been accounted for prior to the hearing. As seen in Section 2, the vast majority of Orders were successful at court and only a small proportion were refused. Inevitably, however, perceptions of the court process varied across forces, and in a handful of cases, the experience of officers and force solicitors had resulted in them being dissuaded from making a further application. Often these views tended to be influenced by the outcome of a breach hearing, rather than the initial application process.

Where an application for a SOO is made

The legislation stipulates that an application for a SOO should be heard in the court which covers the area where the risky behaviour has occurred (Crime and Disorder Act, 1998):

Such an application shall be made by complaint to the magistrates court whose commission area includes any place where it is alleged that the defendant has acted in such a way as is mentioned (1)(b).

Generally this was not an issue for officers. However, one force solicitor felt that on occasions where an offender had demonstrated risky behaviour *outside* the force area where he resides, it was still more appropriate to hear the Order in the area where he lived.

In a handful of cases, forces have chosen to loosely interpret the legislation regarding the selection of the court at which the hearing would be held. For example, if the offender lives in the same area where he demonstrated risky

behaviour, some forces opted for courts in other parts of the county, so as to try and minimise media publicity and local interest. As one officer explained:

The majority of Orders have been taken out in the South of the county, although they have been heard in courts in the North to try and minimise publicity.

This will be explored further in Section 6. In circumstances where the risky behaviour has occurred in more than one area, it is up to the discretion of the officer in charge to decide which magistrates' court it is heard in.

Who takes a SOO to court

The majority of forces used an in-house force solicitor to take SOOs to court. Officers felt this made the process easier as force solicitors had a wider understanding of policing issues. For example, a force solicitor felt that he should be used as SOOs are 'too important to outsource' and he was 'familiar with the procedures'.

Of the 16 forces visited, only four chose to instruct counsel. The decision to engage a barrister was argued for on two fronts. First that a barrister would help to alleviate work pressures on the force solicitor. Force solicitors' involvement with civil orders has increased with the introduction of ASBOs (Campbell, 2002). However, there is somewhat more flexibility with the taking forward of an ASBO since local authorities can also take them to court. As one force solicitor stated:

Unlike ASBOs only force solicitors are equipped to do SOOs, so to alleviate some of the work pressures we have brought in expertise.

Secondly, some forces explained that they had opted for instructing council since this was, for the force solicitor, an uncharted legal territory. Barristers were thus seen as having more time to focus on the detail of the Order and the associated legislation. It was also felt that a barrister would improve the likelihood of a successful result at court. Many of the forces which had used a barrister resorted to using the force solicitor as they had become familiar with the process.

Response of the court

In general officers were content with the courts' handling of applications for SOOs. However, criticisms were made by those police officers who had experienced problems in obtaining their Order. A handful of officers and force solicitors felt

certain courts, which were locally well known for having a more liberal attitude to sentencing, viewed SOOs as the product of a 'draconian' piece of legislation. As a result, the process of trying to secure a SOO was in some instances perceived to be 'more trouble than it is worth'. Despite this, some officers believed that the magistrates perceived ASBOs to be even more 'draconian' given the type of offending behaviour associated with them. One force solicitor felt this was because offences associated with ASBOs were seen as 'petty crime as opposed to sexual crime', and the implications therefore of not enforcing an Order were not so severe.

SOO applications are either heard by a district judge or a lay bench, and it was suggested that the type of court played a part in influencing police perceptions. Cases such as SOOs are not a common part of the general run of court business. Neither district judges nor lay benches are likely to have had experience of previous cases. This was felt to be more of an issue for lay benches; district judges were felt to be better placed to handle cases arising from new pieces of legislation. Indeed, most interviewees found the process of obtaining a SOO somewhat easier when dealing with a district judge. Some officers offered suggestions as to why this may be the case:

Magistrates [District Judges] are pretty switched on [to SOOs]; the JPs [Justices of the Peace] on the other hand have to be instructed by the court clerk which can delay the process.

The problem with lay benches is that they have no real concept of the legislation or understanding of terms such as grooming, it's lost on them.

Ensuring a smooth process through the court

Delays in the court process were not widely felt to be a problem when applying for SOOs. However, because of the risk that sex offenders identified for an Order are likely to pose to the public, officers stressed the importance of speed when hearing SOOs. Many felt that adjournments should only be made in exceptional circumstances, a point supported by the Home Office guidance (5.7).

Although very rare, several cases were identified where the proceedings had been delayed. One force encountered a series of adjournments due to a lack of preparation by the defence, the result of which was that the application process lasted 13 months and cost the force an estimated £13,000. Officers have used a variety of 'tactics' to minimise court delays both before and during the court hearing.

Prior to the court hearing

Concerns about the low levels of understanding amongst both some magistrates and defence solicitors has encouraged some forces to make particular efforts in briefing the court and defence solicitors prior to the hearing. In addition to the case details, forces have provided relevant extracts from the Crime and Disorder Act (1998). Others took a more proactive approach. Several held pre-hearing meetings to brief all relevant parties, whilst others established a protocol with their courts which states that an application must be heard within ten days from the first hearing.

The court hearing

The majority of court hearings will involve only a handful of witnesses. In general, the police prefer to have an officer in the witness box reading out witness statements to the court and, in some forces, a risk assessor, often independent, is used to supplement this. Generally, there is a reluctance to call witnesses to give evidence in person as they felt this could be traumatic for the individual who is likely to be either a victim or a potential victim. However, some police and force solicitors found that magistrates preferred witness accounts to hearsay evidence, perhaps due to the greater weight that might be attached to evidence given in person. It is worth noting that those seeking to adduce hearsay evidence must comply with the Magistrates' Courts (Hearsay evidence in Civil Proceedings) Rules 1999, which requires notice to be served prior to the hearing. This may reduce the risk of any possible disputes by the defence or the court on the day of the hearing, and in turn prevent possible subsequent delays in court.

In some forces there is a perception that delays will arise during a hearing due to a lack of understanding about SOOs by the court, and the potential risk that an offender posed. To improve the court's understanding around 'risk', and to demonstrate that a further offence could be committed if a SOO is not granted, forces had increasingly incorporated 'expert evidence', often from an independent risk assessor. This would generally come from a forensic consultant psychiatrist or psychologist, who as explained by one expert:

can deal with defence lawyers questions as to why a SOO should be granted, ...separates out [the] officer's investigating role with the opinion-giving, factual evidence presented and someone to make sense of this.

However, consideration needs to be given to who is selected to give expert evidence. One Order had been rejected on the grounds that the 'expert' was not seen as qualified to give such evidence. Another case was appealed on the grounds that the expert has previously assisted the police for a number of SOOs and thus was not seen as impartial. Whilst an independent risk assessor can bring benefits to a SOO hearing, over-reliance on the same assessor may create difficulties.

Another strategy used by force solicitors to combat misinterpretation of the legislation and to deal with any common disputes resolved in earlier cases was to take all the relevant case law to court. Three specific cases were mentioned:

- The most cited case was the appeal by Graham Brown vs. Chief Constable of Avon and Somerset Constabulary (*B. v. Chief Constable of Avon and Somerset April 2000*). This questioned the standard of proof provided for a SOO; comparability with the European Convention on Human Rights; and changes that were made after the Order had been granted. The appeal was dismissed and the case has subsequently been cited to overcome similar complaints.
- Some forces had their Order rejected on the grounds that the Chief Constable, or equivalent, had not personally signed the application, but an officer to whom he had delegated authority. The case of Donald Ross vs. Cheshire Constabulary (April, 2000) addressed this particular issue. The appeal was overturned having been satisfied that the Chief Constable had the power to delegate.
- In relation to disclosure of information about offenders, it was suggested that reference should be made to R vs. North Wales Police Ex Parte AB and CD (July, 1997). This ruling allowed the police to disclose information about offenders to a third party, if needed to prevent crime or to alert members of the public to an apprehended danger. As SOOs are heard in open court forces, reference to this case was often invaluable.

The case for Interim Orders

As SOOs are intended for high-risk individuals, concerns were raised that re-offending may take place in the period between the summons and the final hearing. As previously noted, the Act and the related guidance stress the importance of speed given the nature of risky behaviour and the likelihood of re-offending. In Scotland, this problem is tackled through the use of Interim Orders; the Sheriff grants an Interim Order to fill the gap between an application and a final judgement. Under such

circumstances the offender must comply with the prohibitions sought, even though a full Order has not been granted by court. Currently there is no power for the courts to issue Interim Orders in England and Wales. Officers felt this would be a beneficial tool to reduce the likelihood of offending where there was a high and immediate risk. ACPO supported Interim Orders during the drafting of the original legislation.

Contested Orders and variations to prohibitions

It is the responsibility of the court, having reviewed the evidence presented, to decide whether a SOO is necessary to manage an offender's behaviour. If agreed, an Order will be granted as it stands or once amendments to the prohibitions have been agreed. Otherwise the Order will be rejected.

There were few occasions where an Order had been rejected at court. What tended to happen, however, was that successful Orders involved a degree of negotiation around the specifics of the prohibitions. The negotiation process tended to occur between the force solicitor, the defence and the district judge. In circumstances where an Order was heard by a lay bench, the court clerk generally played a more proactive role in this process. Officers felt that more challenges came from the clerks than the defence; it was the clerks who were perceived to be more alert to human rights issues.

It is the magistrate who makes the ultimate decision about the content of SOOs, and therefore makes amendments to the prohibitions as he/she sees fit. Officers' perceptions were that changes were generally made so that prohibitions were compatible with the ECHR (European Convention on Human Rights). Prohibitions would be altered to ensure they were proportionate to the offenders' behaviour, reasonable and enforceable. For example, one force requested no contact with children under the age of 16. However, the court reduced the age to 14 on the grounds that the evidence used to support the application demonstrated an interest in pre-pubescent children only.

However, in some instances, courts have been known to widen prohibitions or extend potential sanctions. For example, courts were known to make changes to the length of the Order. Whilst the majority of those amended had led to reduced periods of duration, there was one case where the magistrate increased the length of the Order from ten years to life.

Examples of rejected Orders

A total of six SOOs had been rejected at court on various grounds. One application was rejected by the court on the grounds that it contravened the European Convention of Human Rights. In this particular case, following a conviction for indecent assault, the same incident was used as primary evidence for a SOO. This was seen as being inconsistent with the legislation and guidance on SOOs and the court dismissed the application. Three forces had SOOs dismissed on the grounds that the person who conducted the risk assessment was not qualified to do so. It was argued in all cases that there were no firm grounds to suggest that the offender was currently a risk to the community and that a SOO was necessary to manage that risk. In addition, two cases were highlighted where the Order was rejected on the grounds that it had not been signed by the Chief Constable (or Commissioner), but rather by someone of a lower rank to whom authority had been delegated.

Appeals

Offenders have 21 days in which to make an appeal against a SOO. This can be against the whole Order, or specific prohibitions. It was not possible to get an accurate figure for the number of Orders which had been appealed. However, the interviews and the telephone survey highlighted at least six forces where an Order had been appealed.

Appeals tended to centre around the *process* of applying for an Order, rather than specific nature of the prohibitions. As with rejected Orders, the application was appealed on several occasions as it had not been made specifically by the Chief Officer, but by an officer to whom authority had been delegated. In another case, the specific wording of the Order was appealed against. The defence argued that the prohibitions were not written in a manner which was understandable to the appellant, nor were they compatible with article 5(1) and 11 of the ECHR. Finally in one force, the appeal centred around the impartiality of the expert used for the risk assessment. The view of the defence was that as the expert had previously been used to provide a large number of risk assessments for the force, he was no longer 'independent' and therefore not able to provide an objective assessment.

To summarise, the process of obtaining a SOO in court has not been too problematic even though the courts were perceived by some officers to have a lack of understanding about the procedure of implementing a SOO and the potential risk that an offender posed. The research indicated that the police have overcome any

problems by using tactics to minimise any delays/adjournments and to ensure that the Order will be granted. The main role of the court was seen to be to negotiate the terms of the Order with the force solicitor and the defence, rather than arguing the principal of the case.

What happens after an Order has been successfully granted at court is considered in the next chapter.

5. After the Order: monitoring and breaches

This section examines what happens to an Order once it has been granted. Drawing upon information collected during the force visits and secondary analysis of Home Office data, it will also include a current picture of the initial area of breaches of Orders.

Monitoring

There is no specified duty on the police to monitor an offender's compliance with prohibitions within a SOO. Nevertheless, officers interviewed on more than one occasion referred to 'an unspoken rule' regarding the seriousness with which they undertook monitoring after an Order had been granted. If the Orders were not monitored properly, it was argued that the very essence of a SOO as a tool to manage sex offenders would be undermined. Officers emphasised the importance of monitoring to reflect a duty of care to protect the public. This was reinforced, however, by concern over public rebuke or the possibility that a civil action might be brought by a subsequent victim, if re-offending took place whilst under the provisions of an Order. One force's guidance made the first of these points clear to officers considering taking out an Order:

Having obtained the Orders the responsibility will rest with the police to initiate and sustain this monitoring and failure to do so may leave the Service open to considerable public criticism.

Another force highlighted the possibility of civil action in the Order and some operational officers felt the way it was highlighted acted as a disincentive to taking out Orders.

In the majority of forces, the responsibility for monitoring of a SOO was with the divisional inspector in the area where the offender lives. If an offender moved to a different force area, this responsibility was handed over to the receiving force. Strategies used to monitor Orders were found to be broadly similar to those used to manage sex offenders generally and usually comprised of a public, offender and media element. This should not be surprising since SOOs are essentially an extension of the wider management of sex offenders within the community.

Resourcing issues meant that it was rarely possible for SOOs to be accompanied by intensive surveillance. Nevertheless, a variety of monitoring techniques were used, with the intensity and nature of the monitoring dependent on a number of factors. Firstly, how a SOO is monitored depends very much upon the specific prohibitions within that Order. For example, it is a lot easier, and arguably less resource

intensive, to monitor a prohibition which specifies no contact with named individuals, rather than a restriction on contact with any person under the age of 16. Likewise, monitoring of access to a specific location (a named school or swimming baths) will be easier to undertake than prohibitions which are more broadly drawn up (the tension between practical monitoring of the prohibitions and concerns about adjustments to an offender's MO to get round the prohibitions are difficult to balance as noted in Section 3). A second factor that will influence the intensity of monitoring is the perceived likelihood that an offender will attempt to breach. Officers appeared to pose themselves a number of questions when considering the degree and extent of monitoring:

- Is the Order likely to help the offender desist? (i.e. is he compliant?)
- Is the Order likely to be ignored completely?
- Is lip service likely to be paid to the Order, but worked round?

In part, therefore, monitoring will be determined by the perceived characteristics of the offender, and the original intention of getting an Order. For one offender, intensive surveillance began straight after the Order became effective because there was a consensus that the offender was very likely to pay no attention to the prohibitions. In a second case, concern centred around the perceived devious nature of the offender and the likelihood that the specific wording of the prohibitions would be exploited. The officer with responsibility for his monitoring was an experienced detective and applied a variety of investigative techniques to monitor his compliance. For example, since access to vehicle transport was a relevant prohibition, detailed checks on his access to car hire companies were carried out. In addition, he was complying with a prohibition that restricted his access to certain red light districts, prostitutes were shown photographs and asked to alert the police if they saw him. Officers were convinced he would 'try and beat the system' and wanted to make sure that mechanisms were in place to 'catch him out'.

By no means all offenders were expected to have disregard for their prohibitions; in some cases it was argued that they existed to help the offender improve self-control. Some offenders were, it was felt, being encouraged to desist from 'risky' behaviours primarily because they were fearful of a custodial sentence if they breached their Order.

This takes us back to the critical point of what the purpose of the Order is. In line with the legislation, officers use SOOs as a means to intervene in a known offender's pattern of risky behaviour before this amounts to a criminal offence, or to provide an incentive to the offender to stop engaging in risky behaviour. Nevertheless, a

number of officers explained how in some cases, SOOs had been used with the hope principally of achieving a criminal conviction for breach when the offender's ability to desist from offending behaviour is thought to be particularly weak.

Officers applied a mix of overt and covert activities to monitor their SOOs. General practice in most forces appeared to be providing patrol officers with details of the offender and the conditions of his Order so this could be incorporated into their routine police work. In a handful of cases an offender was additionally asked to keep a diary of his daily activities, which were subsequently checked against surveillance. An important part of the process of monitoring was to give the *impression* to the offender that behaviour was being closely monitored. Officers reported that some offenders believed surveillance to be more intensive than it was: 'we are never doing as much surveillance on them as they think' was the view of one detective.

Direct contact often played an important part in the monitoring process. This either took place through the police acting alone, or in some cases, instigating a joint agency approach. For example random or planned home visits were conducted by the police alongside probation. In one exceptional case, in co-operation with the local housing authority, a camera was installed in the entrance of a block of flats where the offender was residing. This enabled the police to keep check of who was entering and leaving the flat, and that none of these were children.

Selective controlled disclosure of information was also used to aid the monitoring of Orders. For example, in one instance, a photograph of an offender was given to the local leisure centre where he was prohibited from going. Another offender who groomed children at bus stops had his photograph distributed to the local bus company.

In one or two cases, it could be argued that the media played a small part in facilitating the monitoring of an Order. The research identified a couple of incidents where a member of the public, having seen a photograph and/or details of a SOO in the local press, informed the police of someone bearing a resemblance of showing signs of risky behaviour.

Breaches of SOOs

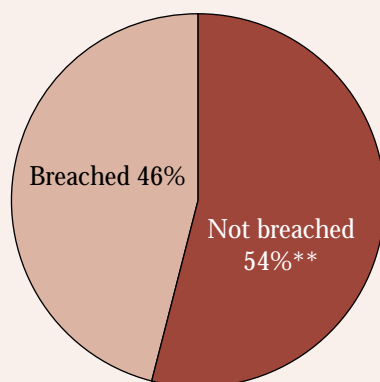
An offender breaches his Order if, without reasonable excuse, he does anything which he is prohibited from doing by the Order. As this is a criminal offence, an offender is liable to:

- (1) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory minimum, or to both; or
- (2) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.

The breach of an Order is therefore an arrestable offence, which allows the police to curtail an offender's risky behaviour at an early stage. Prosecutions are conducted by the Crown Prosecution Service (CPS) and the criminal standard of proof applies.

A best estimate for the number of Orders granted between 1 December 1998 and 31 March 2001 which have been breached is 42 (46%). There is no single and comprehensive source of data on breaches. Although the Home Office routinely receives information on breaches, additional occurrences were identified in the process of undertaking the telephone survey and the interviews. It is therefore best to view these figures as a minimum estimate for the total number of breaches.

Figure 4: The proportion of Orders which have been breached*



* Based on data on SOOs granted during the period 1 December 1998 and 31 March 2001.

**Some offenders will not have breached their Order because they have been in prison for the duration of the Order; the offender has offended and received a criminal conviction (but not a breach); or they have died.

Details of when a SOO was originally granted at court and the corresponding date of the initial hearing for a breach were obtained for 19 SOOs (just under half the total of breaches). This enabled the length of time taken for an offender to breach

his Order to be calculated. As illustrated in Table 9, the majority breached their Order within six months (58%) of it being granted. By comparison, it is also worth noting that approximately a fifth (21%) took over 15 months with the longest known being 24.5 months.

Table 9: The length of time taken for an offender to breach his SOO

Length of time taken to breach a SOO	Number of individuals (n=19)
Less than 3 months	5
3–6 months	6
6–9 months	0
9–12 months	2
12–15 months	2
More than 15 months	4

The number of breaches per SOO

An offender can breach his Order in a number of ways: one breach of one prohibition; several breaches of a single prohibition; or several breaches of several prohibitions. Table 10 shows the variable number of breaches per Order which have been tried at either a Magistrates’ or Crown Court. Although the majority of offenders were tried for one breach at a time, 36 per cent were tried for multiple breaches on the same occasion. In an extreme case an offender was put on trial for 19 breaches of a SOO.

Table 10: The range of alleged breaches per offender at a single court hearing*

Number of alleged breaches	Number of individuals (n=33)
1	21
2	4
3	2
4	2
5	0
6	1
7+	3

*Data relates to the period between 1 December 1998 and 31 March 2001.

One approach used in several forces was to accumulate known breaches before applying to the court. Having reviewed the seriousness of a breach and the evidence to support it, it was sometimes felt to be advantageous to 'store up' breaches. The rationale was that a collection of breaches would result in a more serious conviction, since, with the breaches tried at the same time, they would demonstrate a higher level of non-compliance to the court. One officer explained how such an approach helped to prove beyond reasonable doubt that the offender had no regard for the Order, and the breaches had not occurred by accident. In this particular instance, the offender was seen speaking to and approaching children, and going within 50 metres of a school playground (both prohibited actions). He emphasised that although the offender had not been arrested for the first breach, he was being closely monitored to ensure that if his behaviour continued to deteriorate so that it appeared an offence might be imminent, action could be taken to prevent this.

The issue of storing up breaches posed forces with an obvious dilemma, and not all were content to take this approach. Other forces, for example, preferred to deal with one breach at a time and highlighted their concern about accumulating breaches. It was felt that this was dangerous as it not only seemingly condones an offender's prohibited behaviour, but undermined the legal process. Under such circumstances, the police could be seen not to be taking breaches seriously, and the offender might think that he is not being monitored (and this might encourage an escalation to actual offending). A mid-way position adopted by one force was to always arrest for a breach but not always to press charges.

The relationship between breaches and sentencing is a complex one. The data on breaches suggest that accumulating breaches does not necessarily result in more severe sentencing. A custodial sentence was given on eight Orders which had been breached either once or twice, in comparison to four Orders with multiple breaches. However, the perceived severity of the breach in question will obviously have an impact on the sentence, as will the general disposition of the court to this type of injunction.

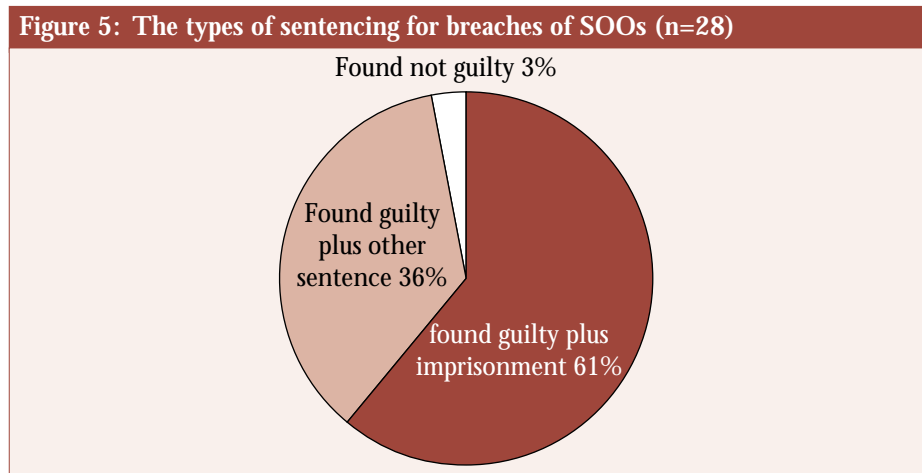
Indeed, looking in detail at these cases suggests that it is the severity of the breach which is more important than the number of breaches brought before the court on a single occasion. In several cases where one or two breaches of an Order resulted in a custodial sentence of over 18 months, there was a clear indication that the offender was repeating his MO and was considered to be on the verge of re-offending. For example, one offender was seen on police video talking to a young child who was fishing. His previous conviction had been the abduction of a child, and one of the prohibitions on the Order was 'not to entice, approach or communicate with any child under the age of 18'. The

offender received a 36-month sentence. In contrast stored up breaches appeared to be more minor in nature. For instance, one series of breaches centred around an offender seen walking through a particular park at different times on a number of occasions. On each occasion, no direct contact with potential victims was made.

Sentencing for breaches of prohibitions

Information on the outcome of breaches was obtained for 44 Orders from a mixture of regularly collected Home Office data and the telephone survey¹⁵. The data revealed that 36 per cent (16) of breaches are currently awaiting sentencing at the Crown Court and thus their outcome was unknown. Of the 28 known outcomes, 61 per cent were found guilty and received imprisonment, whilst 36 per cent were found guilty and were given non-custodial sentences. Of these, two received a conditional discharge and in one case the offender was bound over for five years. The research highlighted only one outcome where the offender was found 'not guilty' of breaching an Order. In this particular instance, the not guilty verdict reflected the fact there was simply not enough evidence to support the case. The vast majority of cases have, however, resulted in a guilty verdict (97%).

15 A number of breaches were identified through the telephone survey and interviews which did not appear in the routine HO data collection and vice versa.



The data have shown that there are a number of disposals that courts use when sentencing breaches of a SOO. The majority of those who were found guilty of breaching Orders received a term of imprisonment (61%), whilst 17 per cent were given a fine, seven per cent a rehabilitation Order, seven per cent a conditional discharge and four per cent where the offender was bound over for five years.

Table 11: Combined outcomes of breaches

Outcome	Percentage (n=28)
Imprisonment	61
Fine	17
Community rehabilitation Order	7
Conditional discharge	7
Sentence bound over for five years	4
Not guilty	4

One of the perceived advantages of SOOs was that a breach of an Order was a criminal offence which resulted in a criminal conviction. Providing the courts appropriately dealt with them, breaches could be successful in being a preventative measure. As demonstrated in Table 12, some breaches have resulted in lengthy custodial sentences, and in two cases a sentence of over four years was given. However, five breaches received sentences of less than six months, one of which consisted solely of a single day in a prison cell.

Table 12: A breakdown of breach outcomes

Outcome	Number (n=24)
Imprisonment	(n=17)
• 0–6 months	5
• 6 months–1 year	4
• 1 year–2 years	5
• 2 years–4 years	1
• 4 years or over	2
Fine	(n=5)
• Under £50	1
• Under £100	2
• £100 or more	2
Community Rehabilitation Order:	(n=2)
• Residential	1
• Non-residential	1

Force perceptions of the sentencing of breaches

Some interviewees were unhappy that the judiciary was passing what were perceived as inadequate sentences for a breach. They felt that breaches were not being dealt with appropriately, i.e. a lengthy custodial sentence, and that this undermined the whole system. This led a number of officers to view the whole SOO process as a waste of time; and some felt there was little point pursuing SOOs further, if breaches were not taken seriously.

To take one example, a defendant was caught by covert surveillance breaching his Order, to which he pleaded guilty at Crown Court. To the disappointment of the force solicitor and the officer in charge of the case, the judge passed a sentence whereby the offender was bound over for five years. The force solicitor felt he had worked too hard on the case for it to have resulted in a bind over and felt if such sentences became common across the force, the use of Orders would eventually 'fizzle out':

If this is what you get, I don't have the energy to deal with them and I doubt anyone else will.

Such a negative attitude from the force solicitor, it was argued, could influence whether officers and the force solicitor would apply for SOOs in the future (see Section 2).

In only one case was the charge dismissed. In the judgement, the legal wording of the Order was criticised – the offender claimed that he did not understand the terms of the Order, and therefore did not realise that he was breaching it. Despite the Order stipulating that he was to have no contact with any child under the age of 16, the offender found employment that put him in regular contact with this group. However, his defence argued that nothing indecent had occurred as a result. He was found not guilty. To some officers, it was felt that this further emphasised the difficulty that some courts had in passing a sentence on an act which did not constitute a criminal offence, but nonetheless was a breach of a prohibition. A third contributory factor was that the witness statements did not come up to proof (their verbal statements differed from their written statements upon finding out that the offender was a convicted paedophile).

In the above examples, the officers and the force solicitors were, predictably, unhappy with the court ruling. They felt a breach of an Order was a clear indication that an offender, who posed a current risk to the public, should be dealt with accordingly. Apart from the impact on taking out future Orders, they were concerned that this might reduce the significance of the breach of an Order to an offender, giving them no incentive to comply.

The role of the Crown Court

There is a hybrid element to the prosecution of breaches of SOOs. The Order itself is a civil proceeding, whilst a breach constitutes a criminal offence. An offender who has breached his Order will usually go to Crown Court for sentencing. Crown Courts are used to dealing with criminal proceedings, and one officer felt this might explain what was perceived by some as inadequate sentencing. He believed that judges find it difficult to pass sentence on a civil laid action, as they viewed the legislation as criminalising otherwise normal behaviour:

We do have an expert witness who shows that the behaviour is similar to his previous offending but they still think 'the offence was committed five years ago and he has already been convicted [of that offence]'.

This was reiterated by one force solicitor who felt that:

The Crown Court is a lottery. The problem was that there was no evidence to suggest that the child had been abused.

Officers perceived that courts sometimes failed to grasp the routine of sex offending, the significance of offending behaviour and pre-offending patterns. Consequently, they sometimes did not recognise the importance of prohibitions as a tool to constrain risky behaviours.

The Crown Prosecution Service (CPS) were also perceived by officers to be inadequate in this area, and was felt to contribute to the variability of sentences for breaches. Although it was the responsibility of the CPS to represent the police at court over breaches of Orders, many officers felt that the CPS were not properly equipped to take this role on. It was believed that they often had a lack of understanding of the SOO process. Several respondents suggested that the force solicitor should pursue a breach, as they were familiar with the SOO process and the specific case in question. As one force solicitor explained:

I am sure that if you were to ask the police if they would prefer me to go on and try the breach as I have dealt with it [before], they would rather have the bloke who knew the case do it. The problem is that I don't prosecute so therefore if I was doing it then I would get counsel involved.

Alternatively, officers believed that educating and training CPS staff was the best way to ensure they have a better understanding of the process in general and sex offender issues in particular. One police force solicitor felt this could be assisted by consulting the CPS when the original Order was being drawn up:

[The] problem [is] because police do all the work to get the Order in place, it is then breached, goes to Crown Court and the CPS just aren't able to manage them. Need to educate them about how to deal with a breach...the force Solicitor should discuss what to do with the CPS, have substantial knowledge – key role in getting the SOO through.

The next Section will focus upon the press coverage of SOOs.

6. Press coverage of Sex Offender Orders

The police have become increasingly aware of the importance of the role of the media: in the projection of their image, the help they can provide in making the public actively involved in crime detection and prevention, and the impact of media coverage on their day to day actions. This is particularly true in the media coverage of sex offenders. The introduction of the Sex Offenders Act (1997) and the requirement for offenders to register with local police, has contributed to an increase in media interest in the activities of sex offenders in the community (ACPO Media Advisory Group, Guidance Notes; Kemshall, 2001).

When the legislation was being considered, concern was raised in some quarters about SOOs being heard in open court. It was argued that this might discourage forces from making applications due to concerns that offender's details would be released to the public (principally via the media). This could put the offender at risk and/or drive him underground. This in turn would compromise the implementation of appropriate risk management strategies and make the process of monitoring difficult (correspondence, ACPO lead on Child Protection and the Home Office, 10 December 1997). Maguire *et al.* (2001) highlighted a general lack of trust of the media and highlighted the lack of trust that police and other agencies had of the media over its handling of sex offender issues.

To explore these concerns further Stirling Media Research Institute at the University of Stirling was commissioned to look at the press coverage of SOOs. The key findings from this analysis are summarised below.

Analysis of the reporting of Sex Offender Orders

The key objective of this component of the research was to examine the role of the local and national press (the 'written' press, namely national, regional and local newspapers)¹⁶ in relation to the reporting and dissemination of information about SOOs that have been awarded since their inception until 31 March 2001. Although the study specifically focused on the newspaper reporting of SOOs, anecdotal evidence suggests that it is highly unlikely that television and radio would cover extensively news items not covered in the written press.

¹⁶ Hereafter the term 'press' is used to refer only to the written press.

Due to their very nature, newspapers are able to cover a broader range of issues, and often more detail than other types of media. Broadcast news tends to be less detailed by contrast. It is also worth noting that television and radio are generally more factual in their coverage due to their legal obligation of impartiality. The written press could be seen therefore as a good proxy for other types of media (such as television and radio).

Newspapers, on the other hand, tend to be more partisan, and thus the same story could be covered very differently depending upon the agenda of each newspaper (personal correspondence with Brian McNair, University of Stirling Media Research Institute).

17 This was the number of known orders for which precise details were available at the time at the research was initiated.

The study was primarily concerned with written press coverage of 72 specific SOOs, details of which were provided by the Home Office¹⁷. The study was conducted by systematically searching for local and national newspaper coverage using information on particular offender names, dates and locations where Orders had been taken out. This involved using media directories identifying the local and national publications to be explored. An electronically based database was then searched to locate material for analysis, and an extensive Internet search of newspaper and community web-sites was conducted to complement this. A total of 242 newspaper articles were identified.

It is important to highlight a number of methodological constraints. First, it is possible that the search of media directories did not identify all the different newspapers that might have carried a particular story. Second, while the written text of articles could be retrieved, it was often not possible to establish if photographs of offenders were included (an important issue given the disclosure of information which could identify the offender). Third, if one of the 72 sex offenders had been referred to under a different name, or if aliases had been used, the article would not have been picked up in the name search.

General press coverage of Sex Offender Orders

The initial media search, which covered the period between the inception of the Act and March 2001, identified 358 articles in total (Table 13). Around two-thirds of these articles related to named offenders, with the remaining one-third detailing general information on Orders.

Focus of article	Number of articles	Percentage
HO listed offender	200	56
Unlisted offender in England and Wales	20	5
Unlisted offender in Scotland and Ireland	21	6
Unidentified offender	3	1
General information about SOOs	114	32
Total	358	100

In total 200 articles related to any of the Home Office named offenders; these formed the basis of all further analysis and the remaining 158 articles were discarded. Of these 200 articles the majority derived from local reporting (69%), that is, local newspapers and community websites. Only 31 per cent of the articles were from national newspapers.

Further analysis of these 200 articles revealed that of the 72 named sex offenders, only 29 were subject to any written press coverage surrounding their Orders. As far as can be ascertained, 60 per cent of sex offenders with Orders received no press coverage at all. A first finding is, therefore, that media reporting of SOOs has in reality been fairly low. Furthermore, press coverage did not appear to be evenly distributed across those Orders that are reported. Rather, there appears to be a concentration of articles surrounding a handful of high profile cases. In fact six SOOs taken out across three forces account for a half of all the articles in the sample. One SOO accounted for 18 per cent of all articles identified. In this case, press interest may have been heightened by the involvement of Cherie Booth QC in the appeal process. In terms of timing, one of the most intense periods of coverage in 1999 was in September when 12 articles were published. Ten of these articles related to one offender who had gone missing whilst under the supervision of the probation service.

External events also appear to have been a factor in determining press interest. In 2000, the five months between July and November accounted for the publishing of 35 per cent of all the articles in the sample. This coincided with the *News of the World's* 'naming and shaming' campaign and subsequent vigilante activities.

Details surrounding the reporting of SOOs

The articles were coded to highlight what specific aspects of SOOs the articles were concerned with. This revealed that just over a half of all articles focused on breaches of SOOs (Table 14). This was particularly the case for news articles, where 58 per cent focused on breaches of Orders. The initial granting of the Order was reported in under two-fifths of articles, and was more likely to generate interest in the local press.

Table 14: Focus of article

	Local		National		Total	
	Number	Percentage	Number	Percentage	Number	Percentage
Award of the Order	56	41	21	34	77	38.5
Breach of the Order	67	49	36	58	103	51.5
Appeal	4	3	4	6	8	4
Other	11	8	1	2	12	6
Total	138	100	62	100	200	100

Since the sample of articles was selected based on the inclusion of a reference to one of 72 SOOs, it is perhaps not surprising that some offender details were disclosed in the majority of the 200 articles identified in the search. However, the amount of detail disclosed varied. Ninety-seven per cent reported the full name of the offender. Eighty-eight per cent of articles included the offender's age. Photographs were found to have been included in only 13 per cent of the articles, however limited significance should be attached to this finding since it was not always clear whether a photograph had been included in the original article.

Details of a specified area, village or town were revealed in 37 per cent of articles and an additional 21 per cent supplied details of official accommodation in which the offenders were staying e.g. remanded in custody; in secure units; in council accommodation etc. The offender's specific address was disclosed in relatively few articles; 14 per cent of the sample disclosed this information and these were all articles in local publications.

Details of the sexual offence that the offender had originally committed were also frequently cited in the articles (70%). Descriptions varied from short statements relating to the court charge, such as 'indecent', 'gross indecent' and 'sexual offences', to more explicit descriptions of the offending behaviour. Seventy-five per cent of the sample also detailed the offender's previous convictions.

Managing press coverage

Interviewees were asked whether there were any proactive measures in place to manage media handling and whether any of their SOOs had featured in the press. Although concerns were raised about SOOs being heard in open court, the majority

of respondents had not experienced any problems with the media. However a couple of instances were identified when the press proved to be problematic. A force solicitor described one such incident:

[The] problem with the press was they chased [the offender receiving the Order] round the [court] building. . . photo got into the local rag, windows were smashed and we were lucky that he didn't go underground.

Anxieties over the possibility of 'bad press' did result in some officers deliberately attempting to keep a SOO hearing from the press. As one media liaison officer described:

We came unstuck when one particular division didn't like the thought of telling the media so secretly went to court, but there was a reporter there. It was a paper copy of a SOO – happened at xxx court, information given to the bench in writing, magistrates saw it but the public and therefore press didn't. The reporter challenged it and raised objections as to how this was outside normal working practices. He then criticised the court and the police for sneaky activity in a news story. It just goes to show what goes wrong when people go off and do different things.

Improving media management

Two main strategies were identified to improve the management of the press in relation to Sex Offender Orders:

- internal communication; and,
- meetings with press editors.

Internal communication

A number of interviews were undertaken with media liaison officers (MLO) in the sample of forces. Rather too frequently, they felt that their involvement in the media aspects of Sex Offender Orders was initiated too late in the process to be helpful. Late involvement meant that some of the perceived problems over the media consequences of Sex Offender Orders could be minimised with closer engagement between the force MLO and officer in charge at an earlier stage. It was argued that by bringing the MLO and officer together at an early stage in proceedings could help anticipate any possible problems in media coverage.

The example cited above further highlights the importance of communication between officers and MLOs. In this particular instance, it was felt that if the Press Office had been informed earlier, they could have discussed the case with the local press prior to it being printed, drawn up a media strategy, and reduced the likelihood of critical news stories.

The lack of engagement with MLOs, while not universal, tended to reflect a concern that the media aspects of cases were not high in many officers' consciousness (nor reflected in their training). As an MLO explained:

[The] Media element seems to be at the bottom, not an integral part of police training. Police officers are not aware what they can do and how they can play a proactive role before a SOO goes to court.

Some innovative forces have tried to overcome this by incorporating SOOs in the media skills training course offered to officers.

Action plan in place prior to a court hearing

One of the skills in devising an effective media strategy is an ability to anticipate the consequences of any press coverage and their likely interpretation of a case (Feist, 1999). This would include for example, the level of press interest and the questions that the police are likely to be asked. Although the extent of their use cannot be gauged precisely, some forces have developed action plans prior to an Order going to court to deal with such issues to try and prevent any potential public anxiety resulting from the media coverage of a SOO hearing. A decision is made on which information is to be disclosed and which is to be held back. Interviewees in one force described how, in liaison with the officer in charge of the case and the force solicitor, the MLO prepared answers for any potential questions. These placed emphasis upon protecting the public and the possible risk if an offender absconded. Some forces had found it helpful to involve other agencies to contribute to the wording of a press release. This might include probation and any other agency which had a direct interest in the case. As expected, strategies varied depending upon the case and the extent of possible media interest.

Meetings with local press editors

Some forces have found it beneficial to inform the press of a SOO prior to it being heard in court. Although not a formal arrangement, these forces have a general

protocol established with the local media to manage this. In general, an MLO and the officer in charge of the case would arrange a meeting with the relevant editors to explain the possible consequences of press coverage. One participant highlighted:

[The] need to educate the press, explain the risk process, safety to the community, how bad press can have severe consequences and possibly lead to offenders going underground.

As a result, it was felt this also gave the Press Office the opportunity to request that certain details, such as an offender's previous convictions, address and photograph, were not cited in articles. MLOs were not concerned about details of age and name being disclosed, as these on their own were felt not to be sufficient to identify the offender. MLOs felt that by discussing a case with the media it also helped to keep them on side and improve future relations:

Everyone wins. The press are still able to run a public interest story, it is from a police perspective, and can also aid the monitoring of that offender.

However, this collaborative approach has not always been universally successful. It is worth noting that Maguire *et al.* (2001) found that some forces experienced difficulties in initiating constructive dialogues with local newspaper editors over more general aspects of management of sex offenders in the community.

Other strategies/solutions

Some officers explained how they adopt certain 'tactics' to try and minimise the likelihood of press coverage. In one instance an officer described how hearings were scheduled for late afternoon; it was felt unlikely that a reporter would be there at that time or would at least minimise the likelihood of a story being filed. In some cases, an application has been made to the court, prior to the hearing, that the SOO be heard in camera¹⁸. As noted in Section 4, several forces made a conscious decision to apply for Orders in courts away from the offender's place of residence, as this was perceived to reduce the likelihood of press interest local to the offender or to the offence.

¹⁸ Only the officials and the defendant are present.

7. Conclusions

This study provides an overview of the use of SOOs by the police since 1 December 1998 to 31 March 2001. It has examined the take-up of SOOs across England and Wales and explored the reasons behind their variable use. It has taken stock of police views about the legislation and examined good practice for the preparation and management of SOOs. In addition it has identified breaches of SOOs and their outcomes, and it has also looked at the role of the written press, both locally and nationally, in relation to the reporting of SOOs and the consequences of such coverage. This concluding section brings together these findings and makes some general observations on the utility of SOOs.

Overall perceptions

The overall police and related agencies' response to the introduction of SOOs was found to be positive. Orders represent one of the most practical illustrations of a policy shift towards measures that protect the community through the prevention of sexual offences (Kemshall, 2001). The majority of interviewees placed importance upon the enhanced powers that Orders gave them; in effect it enabled them to do 'something' to prevent serious harm, where previously they had often felt impotent. Orders have been particularly valued as an 'active' response to higher risk sex offenders in the community particularly those who, for whatever reason, are not subject or no longer subject to statutory supervision. Furthermore, a clear advantage of the legislation is the freedom with which it can be applied to sex offenders regardless of when a precursor offence took place. Finally, Orders were perceived to be a practical mechanism for multi-agency management of high-risk sex offenders, particularly strengthening the relationship between the police and the probation service. Statements to the effect that a SOO was 'a useful tool in the toolkit' were common.

Although the objectives of the legislation are unambiguous, the way in which Orders protect the public vary. In most cases, the aim of an Order was to get offenders to desist from risky behaviours, and ultimately offending, by highlighting the potential consequences of a breach to encourage self control. However, for some high-risk offenders, who continued to engage in risky behaviour, breach of an Order could enable an offender to be taken into custody without a serious offence occurring. A third application was where an Order represented a preferred option to bringing criminal proceedings for a substantive offence where the chance of a 'failure' for a criminal proceeding at court might be high, for example because of the nature of the evidence available. Finally, some officers saw the advantages of SOOs as a means of ensuring that offenders who would not otherwise be subject to the provisions of the SOA were placed on the register.

The generally positive reception to Orders by the police and other agencies has, in part, been reflected by a high proportion of all forces applying for Orders. A total of 38 forces out of 43 have applied for an Order. Furthermore, this research started from the premise that far fewer Orders had been granted. In fact, the study quickly revealed that the take-up of Orders had been much greater than initial estimates. At the start of 2001, the number of SOOs was estimated to be in the region of 45; the actual figure was more than double this at 92. Moreover, the vast majority of Orders have been successful at court, with only six per cent being refused. Some forces have been particularly active in pursuing Orders with one force alone accounting for 13 per cent of all Orders granted. Various reasons were suggested as to why some forces were particularly enthusiastic about Orders and were successful at court:

- a central point of contact co-ordinating Orders across the force;
- the emphasis on sex offenders within overall force policy;
- the enthusiasm of individual officers and the force solicitor; and
- the accumulated experience of getting a series of successful Orders through court.

Care must be taken when interpreting the low take-up of Orders by some forces (just over two-fifths of forces had only one Order). A point that 'low' and 'no' order forces were keen to emphasise was that the limited use of Orders should not, however, be viewed as a reflection of weak management of sex offenders in their force area. Instead, it was important to recognise that other strategies for managing sex offenders were often sufficient without having to apply for an order. The suggestion that somehow, police use of SOOs could be proxy for performance in this area was strongly challenged. This point has particular significance given that one of the requirements of Home Office guidance for the Criminal Justice and Court Services Act (2001) is that forces have to report on the number of SOOs applied for. Caution should also be taken against simply measuring the effectiveness of SOOs solely in terms of their take-up across forces.

Finally, it is worth noting that some forces have been inspired to apply the principles behind a SOO in a more informal way. For instance several forces had started to use voluntary agreements with sex offenders before resorting to an Order. Another tactic used by some police and probation officers is to draw offenders' attention to the possible implications of receiving an Order, and in particular the possibility of press coverage when the application for an Order is heard in open court. Obviously the use of such approaches do not register in the official statistics but have undoubtedly been assisted by the presence of the legislation, and seemingly encouraged some sex offenders to give thought to the wider consequences of this action.

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The issue of media coverage of SOOs has attracted much critical attention. It was originally argued that Orders being heard in open court might discourage forces from making applications for fear of offender's details being released to the public which could put the offender at risk. While some interviews highlighted this, it was not found to be an overwhelming hindrance to the SOO process. However, the analysis of press coverage of SOOs suggests that this has not been the case. Less than half of a sample of SOOs have received any kind of written press interest (40% of 72). Furthermore, the majority of articles focused on the breach aspect of a SOO, rather than the initial application, while only a handful of press reports (14%) gave precise details of where the offender lived.

Good practice issues

This study has highlighted a range of good practice on particular elements of the application for, and management of, SOOs. Several of these are worth re-emphasising:

- *Drafting prohibitions.* Drafting effective prohibitions is critical in arriving at a 'successful' Order. Success is arguably best measured in terms of the Order being granted in court, curtailing risky behaviour, and permitting effective monitoring and management. Prohibitions need to be practical, understandable, reasonable and proportionate. They also need to balance a number of competing objectives. For example, they need to be specific enough to be policed but not so specific that they can be easily circumvented by the offender altering his behaviour. It is important therefore that the right balance is struck and thought is given to the precise wording of the prohibitions.
- *Media handling.* The involvement of force media specialists in the SOO process was highlighted as a potential area of good practice in a handful of forces. In particular, officers should ensure that force media liaison officers are involved at the earliest possible stage in the SOO process so a press strategy can be developed to manage any potential coverage at the court hearing. Several forces had successfully established protocols with the local press editors on the handling of SOO cases. One force had introduced a component on media management of SOOs as part of their general force training on media handling.
- *Court processes.* In relation to the court hearing, actions, such as those described in the report, should be taken beforehand to ensure a smooth process through the court, and officers should contemplate using expert evidence from an independent risk assessor to support a SOO application. In addition, involving the CPS early on in the process would ensure they are better equipped to deal with breaches if required.

- *Management plan after a SOO has been granted.* Although the police invest a lot of time and effort into getting an Order, it is equally important that attention is given to its management once it has been granted. This goes beyond simply monitoring the Order and requires careful pre-planning. One force had devised a template which it routinely applied to the management of an Order once it had been successfully obtained (Table 15).

Table 15: Action plan for the management of SOOs

1. Liaise with CPS
2. Write a risk management plan
3. Decide who takes ownership
4. Devise an operational response to monitor the Order
5. Undertake regular reviews
6. Document all incidents related to the offender's behaviour and relevant decision-making
7. Plan what to do in the event of a breach.

Clarifications and challenges

While the general response to SOOs was positive, inevitably some areas were identified where confusions arose, either in the interpretation of the Crime and Disorder Act (1998) or the related guidance. These principally fell into five areas: the ambiguity over the standard of proof; the six month evidence rule within Section 127 of the Magistrates' Courts Act (1980); the geographical constraints of the legal powers; and who can legally apply for an Order. While some of the confusion over these issues reflects particular differences of interpretation, there seems little doubt that the current guidance could be amended to achieve greater clarity and consistency.

Areas where it was perceived that improvements could be made fell into several distinct categories:

- The perception that Sex Offender Orders bring with them the need for substantial additional resources for their application and subsequent monitoring. Although decisions over the allocation of resources lies ultimately with the Chief Constable, several interviewees spoke of the impact that national volume crime performance indicators had on resources for sex offender management as being a

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particular problem. It was suggested that the absence of Performance Indicators in the area of sex offender management in general meant that sufficient resources were not forthcoming.

- In several forces, the low take-up of SOOs was thought to be the result of internal barriers. This was perceived to be partially explained by the reluctance of particular force solicitors to pursue Orders; requests for evidence which were believed to be too stringent given the legal requirement; or force guidance being drafted in a way which was felt discouraged applications.
- Some forces were frustrated at the limited flow of information coming from prisons on high risk sex offenders. While there were cases where prisons actively communicated information which went to form the basis of an Order on a prisoner's release, the scope for more active dialogue in this area was felt to be considerable.
- The scope of the current legislation was felt by some to be too limited. One view was that the police should be permitted to apply for a SOO on those offenders who were perceived to be at risk of re-offending on their release from prison, regardless of whether any risky behaviours had been exhibited in custody. Extending Orders in such a way would however raise issues under ECHR legislation. The geographical limitations of Orders to cover England and Wales only was also frequently mentioned.
- While in general, the time between initial application and an Order being granted was not excessive, it still meant offenders identified as 'risky', were not covered by legal constraints until an Order was successfully granted. In Scotland, it was noted that the legislation allows for the provision of Interim Orders, at the discretion of the Sheriff.

Arguably one of the biggest threats to the continuation of SOOs is centred around the outcome of breaches. While some 46 per cent of Orders were breached, and the vast majority resulted in a guilty verdict, the study has indicated that court sentencing for breaches was variable. Sentences ranged from fairly lengthy custodial sentences, to small fines; in one case, the offender was bound over for five years. It might be expected that some of the variation in breach sentences would simply reflect the nature of the breach and the original prohibition(s). However, some officers also felt that a lack of understanding by the CPS and the judiciary, contributed to what they saw occasionally as 'erratic' sentencing for breaches. Sentences for breaches which the police and force solicitors believed were 'lenient'

were felt to seriously undermine the entire SOO process from their perspective. One explanation offered by some officers was that parts of the judiciary were uncomfortable with passing custodial sentences on civil laid actions, where the breach resulted in a criminal charge, which appeared to criminalise 'normal' behaviour (regardless of this being identified as precursor behaviour in the context of an offender's MO).

While this study did not set out to formally evaluate SOOs in terms of their impact on offender behaviour, there is little doubt that the overall impression of those interviewed was that SOOs were a useful new tool in sex offender management in the community. Inevitably there are areas for improvement and clarification, and the breach issue remains a serious one. There is certainly scope for more Orders to be sought. More than 90 per cent of SOOs were made against offenders who targeted children and adolescents. There are further opportunities to use Orders effectively against offenders who victimise adults and are found to be under Schedule 1 of the SOA; other police units (e.g. vice) might usefully take-up SOOs against relevant offenders. Indeed, there may be some benefits in exploring the greater use of Orders to help protect prostitutes from sexually abusive clients. This has been one of the few areas where an Order against adult victims has been introduced. Given some of the anecdotal problems associated with getting prostitutes to testify in court, the civil burden of proof necessary to get an Order may be particularly advantageous.

Recommendations

The Home Office should consider:

- Taking steps to clarify specific aspects of the relevant legislation and related guidance. This would include the standard of proof required for a SOO; who is responsible for applying for a SOO and the jurisdiction of the legislation;
- Examining how Orders made in England and Wales could be legally binding in other parts of the United Kingdom (and vice versa);
- Introducing Interim Orders to manage an offender's risky behaviour between the summons and the final hearing, when the Order is granted. These may be introduced earlier on in the process to allow preparation of the case and to notify the individual that the case for an Order has been initiated; and
- Establishing a central point for advice to disseminate information on good practice.

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ACPO should consider:

- Developing the most appropriate package for the training of multi-agency staff on the application for and monitoring of SOOs. A number of options might be explored, including ad hoc special interest seminars arranged by the National Crime Faculty (NCF), or the inclusion of SOO training as part of more general national training on managing sex offenders.

Forces should consider:

- Spreading knowledge of the potential application of SOOs to other force units and departments (e.g. Vice, obscene publications, child protection);
- Routinely using expert evidence from an independent risk assessor to support SOO applications including the nature and extent of prohibitions and length of Order being sought;
- Keeping CPS informed of applications for Orders as they progress through court given that, if breached, they will be responsible for prosecuting this;
- Whilst experience will inevitably play an important role, practical training for officers with responsibilities for sex offenders in designing effective media strategies should be considered; and
- That officers ensure that force media liaison officers are involved at the earliest possible stage in the SOO process so a press strategy can be developed.

Post Order management strategies:

- As the MAPPP holds responsibility for a risk management plan, of which SOOs may be a part, the MAPPP should work jointly with the police to devise a media strategy. It is at such a forum that consideration should be given to establish a protocol/agreement with local editors to manage potential press coverage of SOOs; and
- Consideration should also be given to establish a protocol/agreement between the police and the Magistrates' Court to establish standard procedure and practice across Police Force Areas as to the issue of summons, listing and management of SOO applications.

Other bodies:

- Relevant Prison Service staff (officers, seconded probation officers, psychiatrists and psychologists) should be (a) better informed about the potential that SOOs provide for management of sex offenders on release; (b) encouraged to take a more active role in identifying high risk offenders who have demonstrated 'risky' behaviours in prison; and (c) encouraged to share this information to appropriate police/probation staff on release;
- The Dangerous Offenders Group could raise the profile of SOOs by integrating them formerly into the MAPPP annual reporting system;
- The judiciary should consider devising a training strategy to train a cohort of legal advisers to magistrates so that necessary expertise is brought to the bench through specially trained court staff. In addition, LCD could also organise the training of a limited number of lay magistrates in various areas to whom SOO applications would be referred; and
- The Crown Prosecution Service should consider training staff so they are better equipped to deal with SOOs at the breach stage.

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