A reassurance con? UK Public protection for modern times.

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Introduction

Despite very bold claims from successive governments, dangerous behaviour has not necessarily lessened as a result of two decades of public protection developments. People continue to commit horrendous crimes, some unforeseen and some that might have been prevented. Over the past two decades a system to respond to these fortunately rare offenders has shaped and in many ways transformed criminal justice policy beyond the narrow remit of dealing with seriously harmful behaviour. It is a subject which has been decidedly political (Nash, 2010) and one upon which all political parties have agreed – it has broached virtually no opposition. Offender rights have been diminished to the bare minimum or homo sacer, (see Agamben, 1998, Spencer, 2009) and increasing numbers of people are punished for what ‘we’ think they might do rather than what they have done – bringing the future into the present (Rose, 2000). In all of this the only response to serious further offending (Nash and Williams, 2008) is to set the bar ever higher; more punitive, controlling and exclusionary. My focus in this process has been one of critical commentator; of questioning bureaucratic entry into the public protection system, of emphasising the need to include private dangers alongside stereotyped stranger typologies, of querying the multi agency
default best practice position, of commenting on the changing role of agency organisational culture, the role of probation officers and their relationships with offenders. None of the above is to suggest that we do not need to have a public protection process, but rather to challenge its form, nature and direction.

*Context*

Some may recall Harold Macmillan’s remark that ‘you have never had it so good’. The same is now said of public protection from seriously harmful offenders; the UK ‘leads the world’ and is ‘a shining beacon’ of best practice according to successive government ministers of any political persuasion. Interestingly the coalition government has not laid blame at Labour’s door for any failings of the system it created, having blamed them for everything else except perhaps how long it took Miss Elizabeth Bennet and Mr Darcy to get together. There have been failures along the way of course, but in essence the ‘system’ has avoided blame. Instead, those who operate that system within various agencies have been found wanting; unable to operate the system effectively. As a result, stronger requirements on agencies to cooperate and share are regularly introduced; a top down control based process with limited professional discretion. In other words, the government would claim to have provided the tools and required professionals to use them effectively. What exists therefore, and I will describe it later, is a complex, highly bureaucratic multi agency system which consumes huge amounts of resources (though rarely ‘new’ resources) but still on occasion witnesses serious further offences of striking awfulness. The bold claims of excellence are, in essence, predicated on two main developments; the improvement in risk
assessment artefacts and the joining together of various agencies with the common purpose of protecting the public.

‘Better than ever’ assumes that what we do now is better than what we did ‘then’. However, comparisons over time are notoriously difficult and they are perhaps hampered by stereotyped assumptions about how people worked in the past, especially the probation service. It is difficult to claim that public protection was ‘worse’ in the past, as even the terminology itself is a relatively recent development. Or indeed that the problems arising from, or the numbers of, potentially dangerous offenders have significantly increased. It may be that the huge growth in the public protection industry has served a clear political purpose for successive governments and that our present system is, at least in part, a result of what Lord Chief Justice Ackner once described as ‘playing politics with the administration of justice’ and of former Home Secretary Michael Howard having an ‘unerring populist streak which sadly the Opposition seem now to wish to emulate’ (Hansard, HL 27 January, 1997, cols. 1009, 1013).

Claims to contemporary excellence assume a baseline of effectiveness and by default, improvements on that baseline over time. Would that baseline be a reduction in the numbers of very serious crimes committed by known offenders, or an overall reduction in those crimes committed by any person? For the government there are considerable ‘impact’ differences between the two. The former (and this is the heart of public protection) implies that any future crime is technically preventable because the offender is known; a failure to prevent therefore becomes blameworthy. The latter, those serious crimes committed by people not
currently known to criminal justice agencies, occur as if ‘out of the blue’ for which blame is less easily attached. Spree murders and family annihilations might come into this category, although, as argued below, a less narrowly focussed public protection process might at least have anticipated some of these cases. By definition, it is next to impossible to prevent the unknown from occurring but the system needs to ensure it does all it can to ‘anticipate’ by not restricting its risk assessments to narrowly defined and stereotypical behaviour.

This brings us to a major facet of public protection systems and that is their concern with the prevention of future serious harm and where these preventive efforts (risk based) are transformed into additional punishment, or it could be argued, ‘pre-emptive strikes’. The flaw in this process is clear. It is that we cannot be certain that a given individual will or will not commit that seriously harmful behaviour in the future. However, there is now a widespread belief that we can at least make a reasonable fist of our predictions. This, it is argued, is enough for us to legally and morally deploy measures against these individuals which essentially represent a massive erosion of any of the rights we normally assume offenders to have. If we are unsure that anticipated harmful behaviour will actually occur then surely these interventions blur into punishment? In earlier times there were much louder objections to these preventive measures (Floud and Young, 1981), but in the much less forgiving 21st century, these objections have dissipated. We are encouraged by the media to believe that there is widespread public support for these actions.
Let us then be clear about the first claim for effectiveness. It is that our systems of public protection are better than they were at reducing the incidences of seriously harmful crime from known offenders; rather than a reduction overall (although this has occurred across nearly all offence categories). However, it is in my view extraordinarily difficult to claim a reduction of an unknown number of crimes which may or may not have occurred in the future. The government’s claims may not entirely be built upon sand but they certainly appear to have shaky foundations.

*The scale and nature of the problem.*

Let us return to the idea that ‘we’ are at greater risk from larger numbers of harmful individuals and hence justified in our contemporary, draconian public protection measures. Once again we run up against a number of problems which make it difficult to compare now and then. For example, there are newly criminalised behaviours, older behaviours renamed and reclassified and governments changing and re-engineering data to suit their own political purpose. Even a basic numerical count is difficult and the considerable increase in the overall population and its changing demographics would have to be factored in. Figures such as those produced for the annual multi agency public protection arrangements (Mappa) report for example, have shifted from a total annual number of cases to a snapshot on one day per year - 31st March. The outcome, at least initially, is a marked downward shift in the data, in other words, the system appears to be working.

Getting to the bottom of whether or not we live in more dangerous times is equally difficult. This is because historic data is unreliable, police counting and recording methods have changed, offences have been re-
defined and new offences (hundreds of them) have been created, notably by recent Labour governments. At the same time, rates for crimes such as murder can be lessened as our ability to save lives in hospital increases. A noted commentator such as Herschel Prins (2000:1) has said that ‘homicide is impossible to predict’; if this is the case then it must also be impossible to claim that we have reduced the instances of it (not least because occasional spree and serial killings can distort the figures so much). It is difficult therefore to argue that we are better protected; but it is evident that in terms of recorded crime statistics, very serious crimes such as murder have actually decreased, for example from 1047 in 2002/3 to 642 in 2010/11 (an operational period of Mappa). Total violence against the person figures stood at 845,000 at the beginning of that period, dropping to 821,000 at its end, with spikes in between. The 2010-11 British Crime Survey (Chaplin, Flatley and Smith, 2011) shows sexual offending accounting for 1% of all police recorded crime, but will undoubtedly be under-reported. Rape of a female, however, has increased from 12378 in 2003/4 to 14624 in 2010/11 (now categorised by age band and also reflective of an improving response by the police to recording and acting upon such crimes). Sexual crime involving children paints a varied picture; sexual assault on a female aged 13 or over is up just over a thousand from 15087 in 2002/3 to 16358 in 2010/11. The same crime committed against under 13 year olds is static at about 4300. Sexual activity involving a young person over 16 has increased from 2546 to 4033 over the period whilst those under 13 years have seen a smaller increase from 1510 to 1773. Sexual assaults against males show considerable increases (albeit from a much lower baseline), with rape up by 12% and sexual assault up by 7% (1310 and 2412 respectively). Again,
changes in reporting and recording behaviours will have influenced these figures. To add to this we must also consider the changing behaviour of young people. For example, a report in the *Guardian* newspaper on 20th February 2012 noted that girls as young as 13 years were uploading sexually explicit photographs of themselves onto social networking sites in order to gain favour with local gangs.

The picture is then a murky one. The government could well point to its constantly re-worked crime statistics and say that serious crime is down and our public protection processes work. However rather than allow this apparent success to introduce a degree of rationality into criminal justice, the government continue to over-react to rare and spectacular crimes, devote key resources to the ‘critical few’ very high risk offenders whilst allowing other volatile and potentially dangerous individuals to be dealt with as lower risk cases requiring less specialist or even non-qualified intervention and oversight. We may be quite good at preventing serious further offending committed by high risk individuals (not that they were guaranteed to reoffend) but we seem less able to prevent so called ‘ordinary’ crime escalating into something much more serious. A seemingly narrow understanding of risk and danger may in fact open the door to more in the way of seriously harmful behaviour.

Our system of public protection prioritises resources towards those deemed to be the most dangerous; in essence those whom we assess as likely to commit another serious crime. Yet, in crude terms, a murder is a murder and surely we should as a society aim to protect as many people as possible from an early death, not just those that tend to fit a stereotype of danger, a ‘deserving victim’ or because they are known
already within the system. For example, the homicide rate in the UK has been fairly consistent for many years now, usually hovering around 620-650 per year. Approximately 75% of all homicide victims knew their killer, with 36% male victims and 13% female victims respectively killed by a stranger (Povey et al, 2009), somewhat belying the fear of stranger danger. In nearly half of all murders quarrels, revenge or loss of temper was identified as the main motivational circumstance; strong human emotions in which frankly any system of public protection will struggle to intervene successfully. Figures released by the NSPCC (2012) for England & Wales suggest that at least one child is killed each week, with 80% of those aged under 1 being killed by their parents (every 10 days a parent murders their child according to the same NSPPC source). Under one year olds have the highest murder risk rates at 36:1,000,000. Ofsted, which includes death by abuse and neglect in its counting, has the figure at nearer 200 per year for the same age band, with 3 out of 4 dying from these causes (2008). In addition one half of all adult female homicides (approximately 2 per week) in England & Wales appear to be at the hands of a spouse or partner. Therefore it appears as if at least one half of our annual murders are committed by people very close to the victim and in what we understand to be a safe space – their home. It is likely that a number of these victims and perpetrators will be known to various agencies, notably health, mental health and social services and will also have a strong likelihood of previous and perhaps current police involvement. However, because perpetrators are not flagged as potentially dangerous offenders by our process of risk assessment, they do not often enter the public protection system and do not as such enter the list of cases that would bring the media down on the backs of
government. This is one shameful outcome of a process that is predicated upon reassurance but has done so by pandering to (and perhaps endorsing) media exploited constructions of dangerousness.

Aside from these close relationship murders, there are other known factors which significantly increase the risks of violent assault for men in particular. These include age and lifestyle; alcohol, visiting clubs, being a student and living in poor areas in social housing (Gottfredson, 1984:7-12). In other words, even the great fear of stranger danger is largely known; we know the most likely victims in the most likely locations yet those same potential victims continue to frequent these places in ever larger numbers even though the risks are known (police crime maps warn us about these locations). A system of public protection which is, in my view, predicated in large part on the notion of the stranger predator, plays down the known familial, acquaintance, class and gender based risks, and is only slowly beginning to react to them. In essence we mostly know where and when but not who; we need to get much better at this.

We may then be focussing our resources on a very narrow band of dangerous behaviours but, partially as a result of this, we may decide that other serious behaviour is not dangerous because it is outside of the stereotype. As an example, a man in Calgary, Canada who held a woman captive after drugging, throttling and repeatedly sexually assaulting her and with a previous record of similar behaviour was deemed by the Judge not to be a dangerous offender, although he had a pattern of behaviour that was said to pose a danger to the public. In this case there was an acquaintance between offender and victim, albeit as work colleagues, and the stereotypical ‘public’ waters were muddied (Calgary Herald
12/11/2008). In the Baby Peter case, the lodger in the home was originally given a public protection sentence for being dangerous but this was replaced by a fixed-term sentence on appeal. The appeal judge indicated that the prisoner was not a danger to the public (even with other unlawful sexual offences involving minors). The normal criterion for an assessment of danger is potential serious harm to the public; was not Baby Peter a member of that same public? More recently a teacher who had on a number of occasions lured his female pupils into sexual behaviour was not considered worthy of a public protection sentence because the Judge believed ‘...he had learned a very hard lesson...had a spectacular fall from grace, was not a serious risk of repeating this behaviour and, I do not think you are a dangerous offender’ (Wainwright, 2011). On the other hand a man who was found, in his own hostel room, simulating sex with a bicycle frame was placed on the sex offenders’ register and a three year probation order (BBC News, 14/11/2007). Even though he may not be considered dangerous, his inclusion serves to inflate a register which has become symbolic of the dangerousness problem. Therefore we appear to routinely grow the perceived problem of dangerousness by bureaucratic measures such as sex offender registration, whilst serious behaviour can fall below the public protection radar because it does not fit certain stranger stereotypes or a specific definition of ‘the public’.

As noted earlier, it is the spectacular which shapes and defines the media presentation of seriously harmful behaviour and this tends to be explosive crimes such as spree killings, or serial violent or sexual offenders about which often a series of narratives develops in the public’s mind. Such offenders as these (for example Derrick Bird killing 12 in Cumberland and Anders Behring Breivik killing 77 in Norway, explode into the public
consciousness, frequently fanning the fires of fear and pushing
governments to ‘do more’. Yet, in the majority of these cases, the
offenders are unknown to criminal justice agencies (although perhaps
known to others) and, importantly, blame cannot therefore be attached
to officials who could and should have prevented them from committing
mayhem. In simple terms, an offender who is ‘known’ causes massively
worse publicity than one who is not – almost regardless of the acts
committed. Those out of the blue offenders who are not really on
anyone’s radar can almost be explained away as a freak occurrence,
although investigative journalists will work tirelessly to produce a
titillating narrative which should have pointed to the person being seen as
potentially dangerous. Often though this information is nothing out of the
ordinary and reflects the everyday lives led by many people. Interests that
develop into dangerous obsessions however do have a habit of becoming
known – the trick is to recognise and deal with them. Alongside this action
is the need to realise from the start that it is not only offenders
designated as high risk who might display these potential warning
behaviours. In our desire to protect the public we therefore appear to
start from two premises; one is that rare and unusual crimes drive the
agenda and the other is that crimes which can perhaps be foreseen better
(especially domestic/acquaintance attacks) tend to be ‘down-graded’ in
terms of their dangerousness. Our systems are therefore predicated upon
prediction and prevention, yet we seek to predict the unpredictable, know
the unknowable yet often fail to prevent the preventable.
Responding to fear

Our present system of public protection is built around a set of collaborative agreements known as Mappa (multi agency public protection arrangements). There is no single public protection agency (yet) but rather a range of organisations are required by statute to share information and collaborate to better protect the public. Individual agency scruples, for example over confidentiality, are meant to take second place to the public protection imperative of preventing serious harm or death (see the following for a review of the development of public protection processes: Nash, 1999a, Maguire et al, 2001, Kemshall and Maguire, 2001, Nash, 2006, Harrison, 2011). Protecting the public has become a significant government concern and has a strong top down emphasis, with powerful players such as the police and probation services maintaining their need to be ‘in control’. As a result, communities may feel less able to protect themselves, especially when their perceptions are shaped by the rare and spectacular, with governments seemingly doing little to debunk dangerousness myths. With 24 hour news coverage and social media, communities are increasingly engaged in ‘distant suffering’ (Karstedt, 2002), bringing the suffering of others into their lives. With the work of Mappa described as ‘joined-up worrying’ (Lieb, 2003), it is not difficult to see why there is a clamour for governments to do more; a demand that all political parties have been more than ready to comply with. The public undoubtedly feel fearful of certain offenders and offences and it has been argued that we live in a ‘climate of fear’ (Furedi, 2002) and believe that risks have increased (Beck, 1992). The following points illustrate this scenario and in many respects encapsulate the spirit of UK public protection policies over the past two decades.
‘...the most affluent and technologically advanced generation in human history is also the generation most disturbed by feelings of insecurity and helplessness’ (Bauman 2006:101)

...the intensity and the frequency of fear are not causally connected to the probability of harm (Furedi, 2007 in Walklate and Mythen, 2008:210)

...the state plays its part in dramatizing risk – almost everything we do is related to risk assessment and classified through risk scales (Walklate and Mythen, 2008:217)

As argued earlier, it is difficult to compare crime rates over time but other historic factors can perhaps be established more easily. For example communities have become more fragmented in large parts of the country and with that, local knowledge of potential dangers has dissipated. Parents and grandparents are less able to ‘know’ the strange man down the road and warn their children accordingly (although in a recent lecture at Portsmouth, Bob Golding told the students that during the infamous Paulsgrove disturbances a number of misidentifications occurred). Whilst communities have arguably become less close knit, a number of key agencies, notably the probation service, have withdrawn from these communities to become more office based, spending more time with computers than people and based in ‘semi-industrial units’ on the outskirts of urban areas (HoC, 2011). Working as a probation officer more than 25 years ago on that same Paulsgrove estate, I was expected to undertake regular home visits to my ‘clients’, consequently becoming known by whole families. It was useful to harness family support in tackling offending behaviour, to discover local norms of acceptable and unacceptable behaviour and who might help to keep people more or less
on the right track (mothers and grannies were powerful figures).
Communities looked to protect themselves within their own norms of ‘decent’ behaviour. Police and probation services were able to tap into this local knowledge network and to a greater or lesser degree, were trusted with that information. Now of course community working has significantly diminished; home visits by probation officers have decreased enormously and are beset with health and safety regulations, whilst community policing is often undertaken by community support officers. With the demise of the local, despite Mr Cameron’s pseudo attempt to re-create it, communities now look to central government for protection. This sense of relying more on remote ‘others’ may heighten the sense of risk and insecurity, especially if that risk is framed by ‘stranger danger’ perceptions which reflect only a small band of offending. This focus on certain offender stereotypes impacts upon resource allocation and prioritises work but, as the one thing that all crime reports and statistics agree on, the greatest danger lies within the home and with people we know.

One of the paradoxes of public protection is that evidence tells us where most risk lies, but we appear determined to react to rare and ‘abnormal’ crimes committed by those presented as monsters. It is as if society needs to believe in these monsters as a means of reaffirming social norms and morality (Douard, 2008/9). Perceptions of dangerousness occur in a distinct context which appears to defy logic. For example, if people are afraid of the dark, putting on the light generally makes things better. In similar ways, there is the light of evidence in our understanding of dangerousness, but this knowledge does not appear to lower our fears, rather a pervasive belief in monsters and demons continues. These fears
may feel very real to many people but are surely not the bedrock on which a modern public protection system should rest. There is a willingness to accept very illiberal measures and, in particular, to apply these to one particular form of offender (the sex offender) with only perhaps the terrorist suffering similar opprobrium. Brown (2010) developing Foucault’s work on the Abnormal (2003) suggests that rather than the sex offender being a monster and not one of us (O’Malley, 2000) he is instead the representation of ‘unencumbered human nature’; a product of the population itself rather than being apart from it. It is this Brown argues that both drives our fears and fuels our demands for viewing these offenders through the lens of dangerousness. In essence, we are afraid of ourselves.

Working together to protect the public

Whatever the scale or degree of the problem, it is clear that the default official response has now settled on bringing together a range of diverse agencies to share in the common task of public protection. Offenders with multi dimensional problems require a multi agency response. Mappa are, as indicated earlier, a complex set of bureaucratic arrangements. They bring together a wide range of agencies and either require them in law to cooperate (police, probation and prisons) or impose a duty to cooperate on them (social services, health, job centres, education etc.). These arrangements have, I would argue, been ethos and role changing to a greater or lesser degree for all concerned. Public protection has assumed a supremacy over other agency mandates (for example patient confidentiality) and accompanies significant other changes such as the police role in the assessment and community supervision of sex offenders
and a probation service becoming more interventionist, punitive and restrictive. Public protection has therefore enabled major organisational changes within various agencies of criminal justice to be achieved. There is little evidence to suggest that this has been a deliberate plan, but it has certainly been a most convenient development.

The popularity of public protection measures, with the public and the media, has required organisations to change their working practice and their aims and purpose, or mission statements. For the probation service, its original guiding ethos, ‘advise, assist and befriend’, has to a large extent been replaced by ‘protecting the public’. A number of academics have commented on this process of organisational change. An early contribution concerned what I termed the ‘polibation officer’ (Nash, 1999b), whilst others have described the ‘policification’ of probation work (Kemshall and Maguire, 2001), ‘prisi-polibation’ (Mawby, Crawley and Wright, 2007) and Mawby and Worrall, (2004) referring to changes in the work of prison staff. Each of these publications considered the changing nature of criminal justice agency cultures arising from the public protection agenda. Research carried out with Laura Walker (Nash and Walker, 2009) suggested that public protection had not only shaped the way organisations operated, but was also having a significant impact upon the way they think. From our small study it appeared as if the concept of multi agency cooperation was already being called into question. In essence a multi agency approach calls for a variety of views, a range of expertise and experience being brought to bear on the problem (person) under consideration. What we found was that a dominant view had emerged; the police and probation services had moved very closely together in formulating their view of risk. It was difficult to differentiate
between them. However perhaps of greater significance was their opinion on the views of their cooperating partners – almost an assumption that they had little to contribute.

Our research study was too small to generalise but in anecdotal conversation with various practitioners, a number believed that their contribution was not valued sufficiently and therefore began to question their involvement. According to our research, the health service continues to have major concerns over patient confidentiality and the prison service, despite being one of the three responsible authorities in law, appears to have a poor relationship with the police (communication difficulties on both sides it seems). The police and probation services, it could be argued, increasingly reflect Crawford’s (1999) description of inter agency rather than multi agency working. Their roles and practices have become blurred, producing more of a mono than a multi agency perspective. Furthermore, in a number of cases it appears that neither the public nor the victim has been listened to by these lead agencies, with tragic consequences.

This degree of agency ‘coming together’ is in many ways a remarkable development. The popular myth concerning police and probation services has been for years been that the police caught criminals and probation officers got them off! They were generally seen to be in opposing camps but, in reality, it was more complicated. A widespread assumption about probation officers was that they were always on the offender’s side, did not have a victim perspective and did not think about public protection. However a probation officer was trained to work with offenders on a range of personal and social problems that, it was believed, contributed
to their offending. The purpose of this was to prevent offending in the future OR reduce its seriousness, not to gain a new friend. As a probation officer I worked with several young men who had been and continued to be very violent (including let me add whilst in custody). Their attitudes, behaviour and feelings about themselves suggested they were on a road leading to seriously harmful behaviour. My role, despite those contemporary myths mentioned earlier, was not to become their mate but to lessen the chances of serious offending occurring. This involved working closely with families, perhaps playing football with young offenders (with plenty of kicks for good measure), of embarking on letter writing with those in custody and enabling them to express their feelings (perhaps for the first time). This was about building relationships sufficiently well to both recognise and work with the offender on deteriorating behaviour, or worries, concerns, anger and resentment. It also meant staying with the offender over a period of time which might involve setbacks and further crimes being committed. It meant arguing in a court report that, despite the evidence of another crime, progress was being made. Unfortunately our present public protection culture tolerates little in the way of setbacks and risk taking, resorting too readily to restrictive measures and prison recalls. Another paradox of contemporary criminal justice is that the re-emergence of desistance theory, (moving away from crime is NOT a smooth and unhindered process), is rarely applied to behaviours falling within the potentially dangerous field - but could and should be. In other words, our criminal justice systems need to be ready to recognise and respond to improvements shown by offenders even in the face of another crime. The lesson to be learned here perhaps is that the management of offenders is not a substitute for knowing them.
My perception of public protection in these modern times is that it has a primary focus on information management. Information, or intelligence for the police service, is shared between agencies and used to assess risk of harm and formulate risk management plans. At times it is almost as if the act of sharing is enough, but of course much more important is the action taken upon its receipt. The case of Raoul Moat is one of the best recent examples of this. It remains unclear what action was taken by Northumberland police following information received from Durham prison the day before Moat was released. The results of an Independent Police Complaints Commission inquiry are awaited. Offenders need to be known; clues are identified from human behaviour rather than emails. In joining together a number of agencies we have fragmented the offender’s life and with it, knowledge of him. Financial restrictions on travel to prisons and health and safety guidelines over home visits have severely limited the opportunity for probation officers for example, to really know the offender in his environment, whether in prison or the community.

It is difficult to understand how paper based assessments of the potential to commit harm can be effective. A great deal can be gained by observing body language and the social reality of offenders’ lives. It is also vital that a relationship based on trust enables offenders to tell supervisors about the dark thoughts they have. Rather than just speaking about what they think the supervisor wants to hear, they need to be able to express the horror of what they want to do to another human being. They might just be doing so in order to help them to stop. Listening to some of the dreadful things people have done or plan to do is stressful. However, if perpetrators are prepared to talk, someone needs to listen and act; this is much more about relationships than process management.
Modern technology also has a case to answer in this respect. The rather monotonous calls to improve inter agency communication often centres around the need to improve and join-up IT systems. Yet in other regards technological development has its drawbacks. It is easy and quick to send an email and even to see if it has been read. However, there is no equally quick way of knowing if it has or will be acted on. Passing on information is but one part of the process, acting upon it is the other. IT developments and the purposes for which they are used may equally have a professional de-skilling aspect, in direct contrast to claims of improved professional performance. Think for example about the role played by probation officers in risk assessment. Certainly some aspects of their contemporary claims to professional expertise stem from their ability to complete the offender assessment system (OASys) - a risk assessment tool. Technology has now advanced for this process to be computerised (EOASys) but in inputting data onto a computer screen, it is possible that the probation officer looks less at the offender when asking questions. This is not a given but a distinct possibility. If it does happen, the chances of missing a range of non-verbal clues increase considerably. In essence, this is a data gathering exercise rather than an interview and is one which has a very serious purpose (Nash, 2011). In similar vein, it could be argued that using video interviewing for young offenders facing very long sentences is not an effective use of that technology, but is not uncommon as financial constraints bite (Nash, 2012). From a human rights perspective, an offender facing an extensive period in custody because he is assessed as dangerous via a video link deserves a chance to put his perspective in person. Society may not at the moment be overly concerned with
offender rights but financial stringency should not override all other priorities.

Our response to potential danger is therefore to join up services and require them to operate under a single mandate. There is also much greater use of indefinite and extended sentences and fewer releases from prison. If release does occur, it is more controlled and liable to stricter enforcement and recall procedures. There is a growing recourse to civil measures, underpinned by criminal law sanctions for breach, which aim to regulate anticipated behaviours. These generally punitive and coercive measures have had a considerable impact on the working cultures of a range of organisations. In the United States, held up as an exemplar of how to deal with dangerous people, swathes of sex offenders find themselves in supermaximum security prisons, built following massive security and construction industry lobbying, unable to be released into the community because no-one wants them (Human Rights Watch, 2007). America also marks these individuals out (Garland, 2001) by notifying communities of their description, photographs, location and history, by painting their front doors a particular colour, by erecting signs in their garden and colour coding their car bumpers. The UK has not moved this far yet, but does have ‘most wanted’ websites which include most of these details. It will be interesting to see how our currently modest public disclosure scheme (Kemshall et al, 2010) is modified when the next ‘bad case’ hits the press. The United States has effectively created sex offender ghettos and it is difficult not to draw analogies with the old leper colonies. Sex offenders in the US have become the new untouchables, for whom almost any measure is justified (Janus, 2006, 2010, Douard, 2008/9).
Assessing and labelling

As noted above, our entire public protection edifice is built upon a belief that we can both risk assess and manage the risks posed by certain offenders who we believe might be seriously harmful to the public. Despite continuing research (see Vess, 2010 for a recent summary of the issues) which questions risk predictions in general and risk of harm assessments in particular, we continue to base classification, sentencing and release decisions on increasingly computer generated scores. Rather than subscribe to what David Carson describes as the ‘riskiness of risk’, we instead ascribe expert status to those able to use the risk artefacts (see for example Stone, 2007 on probation officers and court reports). Yet those assessments continue to be based upon certain ‘riskiness’ stereotypes which underplay offending of greater volume and more everyday in nature. For example in New Jersey, home of Megan’s law, Rose Corrigan’s (2006:296) research revealed that up to 56% eligible offenders were not subject to community notification because their potential dangerousness was not deemed to be aimed at ‘the public’ (they were familial or acquaintance offenders), or they were legally contesting their risk assessment. This is likely to be something we will see much more of in the UK. Only 6% of eligible sex offenders (or 2% of all registered sex offenders) were subject to the highest level of community notification. These figures reflect the UK sex offender register where 96% of all cases are at level 1 and only 0.25% are at level 3, the highest level of risk. These figures tend to support my earlier contention that public protection problems are over inflated and disproportionately hyped.
Risks of harm assessments determine resource allocation as well as sentencing and release arrangements. Because we classify risk from low to very high we naturally apportion resources on that basis, highest risk equals the greatest resource (expertise, staff numbers, controls and interventions). Another obvious flaw emerges here. If risk levels are ‘incorrect’ a number of things could follow. Clearly if an offender is over assessed (a false positive) then he or she may be detained longer than necessary and be subject to greater loss of rights. If under assessed of course then a further serious offence might follow, leading to those calls that the crime could and should have been prevented. The recent and truly awful case involving the brutal murder of two French students in London by Dano Sonnex and his friend can, in part, be attributed to a wrong risk assessment. Here was a man who had an extensive violence and drug related criminal record. His performance in custody was very poor indeed although right at the end he showed some progress in a therapeutic group programme. During his sentence he was constantly fighting and disobeying orders, resulting in over 40 adjudications in prison. His release plans entailed returning to his heavily criminalised family. Due to incomplete information he was wrongly assessed as presenting a medium risk. Had he been assessed at the more accurate high risk level he clearly met, he would have been supervised in a different way by a more experienced probation staff member under Mappa. None of this would have necessarily prevented the crime if he was determined to do it, but there might have been a more forceful response to his deteriorating but superficially compliant behaviour.

The problem is that the recent policy of concentrating expertise around high risk offenders has meant, in essence, that other staff have less
experience of working with manipulative offenders who are well skilled in painting a positive picture of themselves. Consequently these less experienced staff are not so effective at seeing through this and spotting signs of deteriorating behaviour. Sympathy is of course with the victims’ families but the supervising probation officer, ill prepared for the task, will suffer a life sentence for a failure to predict.

Research conducted by the former chief inspector of probation, Andrew Bridges (2006), found that 80% of all serious further offences were committed by low and medium risk offenders. It is the case that these offenders would likely have been supervised by less qualified probation staff, due to the risk determining resource policy noted above. The brave new world of contestability in public services will see ‘not for profit’ and private sector organisations increasingly involved in the supervision and interventions provided for lower risk offenders. It is of concern that those offenders who show signs of moving towards seriously harming someone may find those signals unrecognised. This situation does not represent a ‘beacon of best practice’ in public protection. We know that previous harmful behaviour is probably the best indicator of future harm. However all repeat offenders had a first occasion and what we should ask is how many of those serious offenders might have been handled more effectively with the right level of staff expertise. People who ‘wipe out’ their entire families are not always known to authorities, but in a number of instances are. However in not anticipating that these cases may turn out very badly, we are pigeonholing our perceptions of danger. Consequently even the most obvious potential danger may go unnoticed. We need a public protection system that thinks outside of the box.
Where do we go from here?

The UK has developed a public protection system predicated upon formulaic risk assessments and bureaucratic classification of offenders which leads to increased numbers within the ‘potentially dangerous’ category than arguably need be there. The sex offenders’ register is a classic example. It now has over 37000 people registered but over 35000 of these are classified as Level 1, which means single agency oversight (therefore by definition tending to be lower risk, although not necessarily). The point is that the overall number creates an impression of a massive amount of sex offender risk, when the reality is inclusion on the Register can result from a caution – in other words no criminal conviction. The Register consumes resources; current numbers require at least 37000 annual visits from the police, even at the lowest end of risk. Indeed, there were no additional resources provided when this requirement was introduced by the Labour government in 1997. The Register can provide a degree of monitoring but in terms of prevention is next to useless, although may well assist in detection. Even when backed by live GPS tracking, as I observed in South Korea, the system could track an offender to the scene of a sexual assault but not prevent it. Innovations such as the Register therefore offer pretence of protection but which, in many respects, might be construed as ‘false reassurance’. At the same time the Register’s very inclusiveness and size portrays an impression of a huge problem which in itself justifies more intrusive, restrictive and exclusionary measures. Thus it is hard to avoid the conclusion that many of our so called preventive measures (based on risk of harm assessments) are punishment by another name.
The response of the prime minister to a recent Supreme Court ruling over sex offender registration periods illustrates this very well. On appeal by an offender subject to lifelong registration (which is triggered by a custodial sentence of 30 months or more), the court decided that continued registration should be determined by the risk posed by the offender (judgement by Lord Phillips, 2010). The Prime Minister, as a result, launched into a tirade against Europe and the ECHR (human rights issues not applying to sex offenders of course), but reluctantly conceded that the UK government would have to comply. However, he said that these offenders would have to remain on the register for 15 years before they could be risk assessed (but where is the evidence suggesting 15 years as the baseline for future risk?). He also indicated that the police would undertake the assessments and that he doubted that many would be de-registered; thus setting the (punitive) agenda well in advance. In a recent article (Nash, 2012), I advocated that our present system of automatic registration which is determined by the sentence imposed, should be reviewed and replaced by individual risk assessments. Here is another of those paradoxes where the government is now to do what I and others have suggested (but with lifelong registrants only), only to set a minimum registration period which is arguably more about punishment than ongoing risk.

Much of what I have questioned in this field over the years has concerned bureaucratically driven responses to potential danger which have, I would suggest, grossly inflated the perceived problem. In its place, I would argue for greater use of individualised assessments and a return to a more generically skilled probation service, where expertise is spread across the offending and risk spectrum. This may involve more work or
indeed may mean that certain types of work are spread among a greater number of staff. It has to be short-sighted, in my opinion, to maintain the notion that only those assessed as presenting the highest risk will commit the most serious crimes. There is no evidence to support this but resources continue to be deployed on that basis. ‘Private harms’ need to be seen as potentially dangerous incidents, rather than consigned to a ‘domestic’ siding. Agencies may be getting a little better at this but there remain examples where relatively clear signals have been missed.

We need a criminal justice system which responds to offenders as individuals rather than a combination of criminogenic risk factors (which used to be known as ‘problems’). The government has to stop believing the tabloids when they brand the probation service as do-gooders and soft on crime – it is a very long time since this position existed and I would in any case dispute it as a generalisation. Expert commentators such as Tony Maden (2007) for example, argue that understanding dangerousness means understanding people and therefore knowing the offender. Preventing home visits by probation officers, and their spending the majority of their time in computer based activities, will not achieve this.

Arguably, two decades of UK public protection policy has lowered the bar for dangerousness. By producing categories of risk, it may be that the government would argue against this point. However it not that difficult to be included in the public protection caseload (remember the caution for inclusion on the sex offenders’ register), resulting in large numbers which fuel a perception of a much greater problem. The indeterminate sentence for public protection (IPP) is another excellent example of net widening (Jacobson and Hough, 2010, PRT, 2007). In its early days a
number of offenders received the IPP sentence with very short tariffs (the minimum period to be served) - 9 months for example. A number of years later the majority of these offenders are still in custody because of the risk they are believed to pose (with many unable to gain entry onto prison-based accredited programmes to prove they are no longer a risk).

Before these IPP sentences were introduced, the crimes committed by many of these offenders, would have received a much shorter fixed sentence and certainly not upwards of the six years many have already served and still counting. The government has acknowledged mistakes with this sentence, twice increasing the minimum eligible tariff, and also removing its ‘automatic’ imposition if criteria are met. It is now proposed that it should be abolished altogether and replaced with automatic life and extended sentences, measures that has been tried and found wanting in the past.

Now, it might be that many will think that this situation is a small price to pay for safety and the protection of the most vulnerable. The loss of offender rights, such as the entitlement to proportionate punishment (as with all other offenders), is uncontentious because this group of offenders are ‘special’. They are special because they have committed seriously harmful behaviour and ‘we’ have decided that they will do so again. Our laws and policies therefore select a group for exceptional attention, attaching a label of ‘different’ to them and at a stroke justifying whatever punishment in the name of the ‘greater good’ (the film Hot Fuzz brilliantly shows how far this logic can progress). These special measures entail being able to detain offenders indefinitely on the basis of future risk (in other words continuing to incarcerate them long after the ‘punishment’ element of their sentence has been served), denying their release or, if
released (in the USA it is often to places within prison grounds), keeping them under supervision for life or very long extended periods, because we think they might do something very nasty in the future. The United States has, for example, developed the so-called ‘predator laws’ which enable individual states to make use of civil confinement measures (therefore not requiring a new crime) to detain, potentially indefinitely, those considered still to be a risk at the end of their lawful period of detention.

The problem is that the baseline for entry into this ‘potentially dangerous’ club is not one of exclusivity but instead has increasingly become an open door. There are over 48000 offenders on the Mappa caseload. It is true that many of these offenders are assessed as low or medium risk of harm and as a result are supervised by a single agency and perhaps by a less experienced staff member. Yet the sheer size of that population, set against what Professor Herschel Prins described not so long ago as a pool or 300 or 400 truly dangerous individuals (Prins, 1998), suggests that either the world really is a much more dangerous place or that our baseline for exceptionality has lowered considerably. I tend to agree with the latter.

The fact that we have included so many people within public protection processes may indeed give the message that our governments are doing all they can to protect us; that nearly 50000 are being monitored. Yet for many of them that monitoring may be one visit from the police per year, for others it may mean closer supervision but it is not and can never be 24 hours a day or seven days per week – only prison achieves that. Contact with these offenders will be periodic and has, certainly up until recently,
been as much about meeting national performance indicators on contact as it has been concerned with getting to know the offender well. In essence, we are monitoring most closely those who we assess as posing the greatest risk. In contrast we will monitor much less closely those whose risk is deemed to be low. By perpetuating certain predator stereotypes, (in part by responding to them), it could be argued that government action sustains rather than reduces public fear. The ‘discovery’ of sex offenders in the community, with more information concerning their whereabouts available, has led to large numbers of parents saying they will not allow their children play outside again. When the risk was ‘unknown’ they were happy for their children to do so, but once the risk became known they were not – that is an odd logic when you think about it. In a sense this is about managing expectations. The public expect to be protected, but whatever measures are taken those expectations continue to rise in the face of any perceived failure.

In public protection terms it may be the case that a little knowledge can be a dangerous thing, especially when misrepresented by the media and politicians. Take for example the reporting of tariffs in indefinite sentence cases. The tariff was once the secret number of years (not publicly known nor known by the prisoner) to be served to fulfil the punishment element of, for example, a life sentence. This figure is now reported in open court at point of sentence. That may be well and good and a step towards greater rights for the offender, but when reported by the media is invariably presented as the term to be served rather than the minimum term before release consideration can even begin. Unfortunately misreporting such as this only serves to increase public anxiety. As that anxiety increases so the media - politics - action spiral accelerates.
The bureaucracy of public protection itself can serve to increase alarm. For example under the annual Mappa reporting arrangements it may be announced that several hundred sex offenders are living in the area. This will be an accurate reflection of the number of offenders on the sex offender register. Yet many of these will be for very low risk offences and some will also be a result of a caution rather than a criminal conviction. In other words a picture is painted which may be a long way removed from real risks to the public, but the impression is given of a widespread, pervasive threat. Of course, the media also perpetuate these myths. For example, during the investigation into the murder of Jo Yeates, killed on Christmas day 2010 in Bristol, the *Daily Mail* ran a headline that over 500 registered sex offenders lived near to the victim. They went on to report that over 900 were resident in Avon and Somerset and that half of these were estimated to be paedophiles – *Jo Yeates was 25 years old when killed* and there had also been no suggestion that there was a sexual motive to her murder. A Latin proverb suggests that our fears always outnumber our dangers and unfortunately I would suggest government public protection policies, in responding to media constructed notions of dangerousness, do little to assuage those fears. A significant problem is that as bureaucracy increases so does the public protection caseload, leading to greater pressures on public protection staff.

The scale of that bureaucracy also lends itself to data manipulation, for example by the government changing definitions of what constitutes a ‘serious further offence’ which has led to a ‘paper’ reduction in their numbers (Nash and Williams, 2008). The creation of bureaucratic categories of offenders and levels and tiers of offender management, also divides expertise and experience. Consequently resources flow to risk,
which is arguably logical, but when was human risk logical? It is now the case that some probation services are embarking on a ‘de-tiering’ exercise. In effect this means that assessed levels of risk, and their management, are to be lowered in many cases. Bureaucratically this opens the door to different possibilities. For example, if offenders are at a lower tier it may mean that they can be supervised by less qualified staff - probation service officers (PSOs) rather than probation officers. PSOs represent a less expensive choice and de-tiering could cynically be interpreted as another way to save money. At the same time it may offer an opportunity for progress. If experienced and higher qualified staff were to be spread throughout the organisation rather than being consigned to the highest assessed risk of harm, then some of the 80% of SFOs committed by low and medium risk offenders might be avoided. The probation service has increasingly put its staff and its way of working into boxes (see the offender management model for evidence) but offenders and their behaviour rarely fit so neatly. It is no surprise when offenders behave and act differently from how we predict they should!

Summary

Public protection processes in the UK are designed it seems, to allay public feelings of risk, insecurity and fear. It is a highly political and politicised agenda and is so not only because governments have responded to media campaigns but also because, in my view, it has been a powerful weapon they have been able to use to drive forward criminal justice reform. It is a system which claims success and to be world leading. In part this is no doubt true but surely the evidence is too equivocal for such bold claims of protection; it is difficult to claim success at preventing
something that may not have happened. It is an agenda that has brought about wide-ranging reform in agencies which, for some such as the probation service, has been ethos changing. Probation and to a lesser extent police officers, have been given the status of risk experts. Their influence in the labelling of offenders as potentially dangerous is significant and impacts on perpetrators and potential victims (Nash, 2011). It has also been role changing for the police service which finds itself working much more closely with other agencies and also taking on community supervisory roles for sex offenders in particular – something for which there was no additional funding. It is a system that is also peppered with a series of paradoxes.

The public protection ‘family’, for example, has grown enormously (both agencies involved and numbers of offenders included). It has become the responsibility of the many whilst at the same time it all too easily becomes no-one’s responsibility, despite involving more and more agencies (the tragic case of Baby Peter is a classic example of this). It is a system that is bureaucratically driven, resulting in significant inclusions of offenders onto the Mappa caseload whilst at the same time remaining selectively exclusive (the debate around private and public dangers best reflecting this). Claims of highly skilled probation staff, often predicated upon their ability to risk assess and use OASys, are accompanied by nagging doubts about their ability to use professional judgement, take risks and work with a wide offender base, any of whom could escalate to serious offending (this point may well be hotly contested by probation staff of course). There may yet be a return of some aspects of social work training to the probation training curriculum!
The public protection process has seen resources devoted to a narrowly defined and arguably stereotypical offender population. Risk defined in these terms means that expertise and experience for those offenders assessed as lower risk will be less. Non-specialist probation staff, newer in post (see the Sonnex case), larger caseloads and voluntary or private sector providers may all become involved in protecting the public. Yet the evidence suggests that 80% of serious offending originates from this lower risk but still complex and difficult group of offenders. It is pigeon-holing of the worst kind.

Public protection is based on claimed expertise in risk assessment and predicting future behaviour. These predictions serve as entry into the public protection system and determine the nature and length of interventions used against the offender’s perceived risk. However, we remain limited in our capacity to predict the future. Despite these doubts ‘we’ are committed to our public protection system and apparently signed up to a belief that we can predict and to some extent manage the future. Our system of multi agency working is not without its flaws and it remains a struggle to bring together effectively a number of different agencies. Even when we are successful at this, we might find their ‘difference’ being eradicated.

For me however, the evidence for claimed effectiveness is equivocal. The subject is too politicised and potential problems are constantly re-worked as further evidence to strengthen the system. We look at negatives rather than successes. We perpetuate myths and react to them whilst knowable harms slip from the agenda. In many ways our modern times have created new monsters to strike fear into our hearts.
responding to this we have perhaps created another monster to deal with them. As the public protection system grows our effectiveness will, I would argue, diminish. Public protection in the UK may be a beacon of best practice but is, in my view, much more of a ‘reassurance con’.
References


Judgement: (on the application of F (by his litigation friend F) and Thompson (FC) (Respondents) v. Secretary of State for the Home Department (Appellant)) ([2010] UKSC 17), on appeal from 2009 EWCA Civ 792, judgement given on 21 April, 2010.


