

## **RESPONDING TO SEXUAL OFFENDING IN A RISK SOCIETY: A REVIEW OF POLICY AND CHANGES IN APPROACH TO WORK WITH PERPETRATORS OF SEXUAL OFFENDING BY THE PROBATION SERVICE IN ENGLAND AND WALES**

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### **Abstract**

According to Beck (1992), key aspects of a risk society are the surveillance and management of risk, and the use of actuarial tools to achieve these aims. These have also been central tasks for the probation service and police when working with individuals convicted of sexual offending behaviour. Through an initial examination of the risk society thesis, this paper examines how risk came to be a dominant concept in the management of sexual offending behaviour in England and Wales. It will discuss the impact on criminal justice legislation and the work of probation officers who were tasked with working with these offenders. The dominance of risk in working with sexual offending behaviour has been strengthened by Acts of Parliament such as the Sex Offender Act 1997, which introduced sex offender registration, and the Sex Offender Act 2003. The actuarial tools OASys and Risk Matrix 2000 were designed to be explicitly focused on risk. Yet there is a growing body of literature which argues that a holistic approach is effective in enabling desistance; and with the development of more recent risk assessment tools such as the Active Risk Management System (ARMS), there are indications that approaches to assessing and managing risk reflect this ethos.

**Keywords:** sexual offending; probation; risk assessment; risk management; desistance

### **Introduction**

In the contemporary criminal justice system, the concept of risk has impacted upon legislation for the punishment of individuals convicted of sexual offending, and their subsequent assessment and management by the probation service and police. Starting with a discussion of the main features of the risk society thesis (Beck, 1992) this paper will outline how risk came to dominate the discourse on sexual offending, and examine how recent debates on desistance have led to a growing holistic approach by the probation service in England and Wales in the assessment and management of sexual offending behaviour. The risk assessment tools Offender Assessment System (OASys), Risk Matrix 2000 (RM2000),

Static and Acute and ARMS will be evaluated for their contribution to the creation of an effective, responsive assessment of individuals convicted of sexual offending. Finally, considerations for the development of future policy relating to the assessment and management of sexual offending behaviour will be explored. The focus of the article is the probation service; however, it is important to note that work with perpetrators of sexual offending has a strong multidisciplinary focus (Nash, 2016; Hoggett et al, 2019). The role of the police is also central to the risk assessment and management of these offenders, through measures such as MAPPA (Nash and Walker, 2009) and in using most of the actuarial tools which will be discussed here.

From the late twentieth century, the work of the probation service in England and Wales became increasingly informed by the concept of risk, which has significantly increased the service's reliance on bureaucratic and restrictive methods of managing individuals (Fitzgibbon, 2011, 2012; Fitzgibbon and Lea, 2010; Nash, 1999; 2006; Nash and Williams, 2008). The style of supervision expected from the probation service has altered because of this concentration on risk. The focus on managing any risk of serious harm which may result from reoffending underpins the approach to supervising a case. This approach will inform the requirements that individuals under supervision are asked to undertake and the style of case management which the supervising probation officer will adopt. It has been argued that the probation service has been required to adopt a more punitive approach with offenders, with Nash (1999) arguing that the term probation could be renamed "polibation"; in recognition of the adoption of approaches to work more commonly attributed to the police.

It is suggested that those who have committed an offence of a sexual nature are one group who are dealt with using a focus on containment, both through lengthy custodial sentence and restrictive procedures whilst they are on licence in the community; through monitoring and surveillance strategies, such as the Sex Offenders Register and Sex Offender Prevention Orders and exclusion zones (Hebenton, 2011; Hebenton and Seddon, 2009; McAlinden, 2008). There may also be restrictions on employment, future relationships and the ownership and use of computers and access to the internet (Hebenton, 2011). The preoccupation with the control and regulation of risk is not exclusive to the probation service; it has become an aspect of many private sector industries (notably insurance, a service entirely concerned with assessing risky situations in the public domain). However, for the probation service, it has had an overwhelming effect on the way the organisation operates. Sophisticated technology has been created to calculate and assess the effects of the current risk based upon an individual's existing offence history and to create projections for potential future risks. This is a change which, it has been argued, has undermined probation officers' confidence in using professional judgement to work creatively with offenders generally (Burke and Collett, 2010; Eadie et al, 2012; McNeill, 2006) and sex offenders specifically (Kemshall, 2009). There is a statutory obligation for probation and the police to liaise under Multi Agency Public Protection Arrangements (Harrison, 2011; Kemshall and Wood, 2010; McAlinden, 2008; Nash and Walker, 2009; Nash and Williams, 2010; Wood and Kemshall, 2010). As a result of the *What Works* debate, at the end of the twentieth century, the criminal justice system in England and Wales, like many others, became predominantly risk-focused (Andrews and Bonta, 1994; Chapman and Hough, 1998;

McNeill, 2006; Burke and Collett, 2011; Mair and Burke, 2012). This has mirrored a trend in society, and the growing concern regarding national and global security (Beck, 1992, 2007; Giddens, 1990, 1991; O'Malley, 2004, 2010). The preoccupation with risk has significantly impacted on criminal justice agencies including the probation service (McNeill, 2006; Mair and Burke, 2014; Nash, 2006; Nash and Williams, 2010).

### **The risk society thesis**

The risk society thesis was developed by Beck (1992) in his analysis of post-industrial German society and was subsequently used by Beck (2007) and others (Feeley and Simon, 1999; Giddens, 1990, 1991; Hudson, 2003) in considering attitudes and responses to risk in other industrialised nations, including Britain.

Historically, in what Beck (1992) termed 'traditional' societies, society was more tightly knit than was the case post-industrialisation. Traditional society was characterised by a pattern of extended family relationships, in which members supported each other and remained geographically close. Trust was an important element of social relations at both the personal level (Giddens, 1991) and in the wider society (Beck 1992); for example, the legal system had unquestioned authority to punish those who offended without the need to consider the motivation of the perpetrator (Foucault, 2014).

The process of industrialisation in the nineteenth century weakened these moral and familial ties, by requiring geographical mobility. This occurred first by introducing competition to the workplace, and second, by introducing a more formalised knowledge base in society, which resulted in greater inequality, as individuals became qualified, and incomes and status varied as a result (Beck, 1992; Giddens, 1991). Beck argues that risks were localised, with specific risks concentrated around manual employment and the lower social classes (Beck, 1992: 35).

Pre-industrial society focused on maintaining the social order through the dominance of religion, the institution of family and belief in the power of the natural environment (Beck, 2007; Foucault, 2004). As Giddens (1991) notes, this required a strong sense of trust in the existing social order and those who controlled it, which was eroded in the process of industrialisation (Beck 1992, 2007; Giddens, 1990; Ericson, 2006). And as post-industrial, modernist society lost confidence in the traditional structures, it needed to develop new ways to regulate society. Creating and maintaining security has become an issue for the state and the individual (Beck, 1992, 2007; Ericson, 2006; Ewald, 1991, 2002; Foucault, 1977, 2004; Giddens, 1990, 1991). There is a heightened sense that the future must be managed as much as the present (Beck, 1991; Ericson, 2006; Ewald, 1991, 2002). Garland (2001) has argued that the preoccupation with risk has created a "culture of control" in Britain since the late twentieth century. A key manifestation is the way in which convicted sex offenders are strictly controlled in the community (Harrison, 2011; Heberton, 2011; Heberton and Seddon, 2009; Heberton and Thomas, 1996, 1997; Kemshall and Wood, 2008; Spencer, 2009).

Giddens (1991) has argued that a key feature of a risk society is surveillance, meaning the containment of those who are perceived as the most threatening to society. Currently, this

includes those convicted of sexual offences. Surveillance is evident in practices which are seen to promote community protection, such as the use of sex offender registration, electronic information databases and licence conditions which impose residence restrictions and prohibit certain activities (Hebenton, 2008, 2011; Hebenton and Seddon, 2009; Kemshall and Wood, 2008; Nellis, 2012).

Beck's work provides a convincing analysis to explain the way in which modernist societies have developed, yet the risk society thesis has been critiqued for its pessimistic view that risk (real or perceived) is a constant feature of social life (O'Malley, 2010:11). This view creates the effect of "a vicious circle of fear and securitisation" (O'Malley, 2010:12) and furthermore, could maintain the prominence of crime as a problematic issue which far outweighs the reality of its scale and requires increasingly complex technology and bureaucratic styles of management to control the perceived threats. Therefore, risk theory suggests that reflexivity is essential, but in terms of enabling new scientific knowledge and technologies rather than creating the possibility of wider debate; it has been suggested that risk theory does not allow the prospect of any alternative other than policies and procedures for crime management based on scientific methodology (Ericson and Haggerty, 1998; O'Malley, 2010:12).

### **The *What Works* agenda and the rise of the risk paradigm**

A focus on risk became of central importance to the probation service following the "dangerousness debate" which was followed by the What Works agenda (Hudson, 2005; Nash, 1999). Following the abolition of the death penalty, the government needed to address growing media and public interest in the methods of punishment for serious offending. This concern was simultaneously echoed within public sector agencies such as Social Services, who were required to work with the victims of crimes such as child abuse (Fitzgibbon, 2011, 2012; Kemshall, 2008, 2009, 2010). The term *risk* became widely used in the debate, as it was viewed as a more concrete concept than dangerousness, and therefore more effective in discussing serious offending behaviour (Nash, 2006). Risk increasingly became the focus in the sentencing process (Ashworth, 2015: 534).

The issue of how to effectively manage the risk of serious offending resulted in legislation which focused on the sentencing and monitoring of offenders convicted of the most serious offences. The Criminal Justice Act 1991 defined sexual and violent offenders as the groups that constituted the greatest risk (Crow, 2001), the subsequent legislation addressed *how* to effectively contain the risks (Kemshall, 2008). Key pieces of legislation developed the sentencing, supervision and surveillance of individuals who had committed sexual offences:

The Criminal Justice Act 1991. This Act introduced bifurcation<sup>1</sup> and proportionality in sentencing; defining who would be classified as dangerous offenders. Accordingly, those convicted of committing a classified serious sexual or violent offence were to be made subject to longer prison sentences, licences with specified conditions to be followed on

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<sup>1</sup> Bifurcation in sentencing would mean that those convicted of less serious offences would be targeted for community penalties; for which the most serious (sexual and violent) offenders would be given harsher penalties in the form of imprisonment and more stringent supervision on licence in the community.

release, and extended licences, requiring longer periods of supervision by the probation service up until the sentence expiry date (Cavadino, Crow and Dignan, 2001:67).

The Sex Offender Act 1997 introduced the Sex Offender Register<sup>2</sup> (SOA 1997 c1, part 1, section 1) under the management of the police but which would also have implications for joint working between police and probation officers supervising offenders subject to its provision (Hudson, 2005:15).

The Criminal Justice and Court Services Act 2000 made multi-agency working a legislative requirement and created Multi Agency Public Protection Panels (MAPPA). The probation service and police were designated *Responsible Authorities* and were required to work in partnership to manage the risks posed by violent and sexual offenders (Kemshall, 2008; Hudson, 2005:15).

The Criminal Justice Act 2003 introduced the concepts of the automatic life sentence for repeat serious offenders and indeterminate sentences for public protection (known as IPP)<sup>3</sup> for offenders committing a second sexual or violent offence. Release from an IPP would be assessed by Probation and decided by the Parole Board. The Act also made statute the power to predict future dangerousness based on analysis of an individual's previous convictions (thereby establishing these as the defining measure of risk of harm).

The Sexual Offenders Act 2003 revised offence categories and sentencing criteria, updating the scope and provision of the Sex Offender Act of 1956 and created several new offences. This included internet offending behaviour, trafficking and involving children in the production of internet pornography (Hudson, 2005:16).

The influence of the risk thesis can be seen in these measures, advocating stricter penalties and placing more stringent supervision and management on those convicted of sexual offences. There is also an impact upon risk assessment, which will be explored within the remainder of the article.

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<sup>2</sup> The requirement for those convicted of sexual offending to be placed on a register was introduced in the 1997 Sex Offender Act; and later amended in the SOA of 2003. It specified registration periods which increased dependent on length of sentence which range from 2, 5, 7, 10 years to indefinite registration (SOA 2003, c 42, part 2, section 82). Under the Sex Offender Register, offenders must report to the police to register within 3 days of release from custody (SOA 2003 c 42, part 2, section 83). They must supply all names they are known by, their date of birth, National Insurance number, and all addresses they may reside at (SOA 2003 c 42, part 2, section 84). They must also report any change of address (SOA 2003, c 42, part 2, section 84) and offenders can be home visited by the police at any time. The police can fingerprint and photograph at initial registration. The minimum level of contact will be annual registration at police station. Offenders can be prosecuted for failing to comply with the SOR, with a maximum penalty of five years imprisonment (SOA 2003, c42, part 2, section 91).

<sup>3</sup> The two strikes mandatory life sentence and IPP were significant political interventions to control offending. Both have since been abolished, for the reality of these measures were vastly increased costs for prisons and probation, as judges imposed the sentences with much greater frequency than anticipated at huge expense to both agencies.

## **The role of the probation service in managing sexual offenders**

In addition to the concerns regarding effective sentencing for serious offenders was a debate regarding how these offenders could be best managed in the community. Extending licences created longer periods in which the probation service was required to supervise and contain the risk; although the language now suggested was *management* rather than *supervision*, and probation officers were renamed *Offender Managers*. As Kemshall stated, the “transition from ‘need’ to ‘risk’ has been arduous and troubled [with] contentious debates about the value and purpose of probation...and the legitimacy of ‘doing risk’ “(Kemshall, 2008:53).

The CJA 1991 introduced licence conditions for all offenders sentenced to 12 months of custody and above, regardless of their offence type. Alongside standard conditions, there were more specific conditions which related to the management of sexual offenders. These included requirements to avoid certain public areas, prohibition from computer ownership or employment providing access to children and young people and reporting any new relationship. Coupled with the requirements of the Sex Offender Register, the result could be a stringent period of risk management by both the police and the probation service. MAPPA provided a further strand of multi-agency monitoring, with police and probation as the lead agencies (Home Office, 2001; Kemshall, 2008; Nash, 2009; Nash and Williams, 2008; Wood and Kemshall, 2010). The probation service and police were designated as *Responsible Authorities* working in partnership to manage the risks posed by violent and sexual offending behaviour (Kemshall, 2008; Hudson, 2005, p.15).

The intentions for MAPPA were in the Criminal Justice Act 2003; first, to provide an opportunity for agencies directly involved in the case to share information (Kemshall, 2008; Kemshall and Maguire, 2001; Kemshall and Wood, 2008; Nash, 2009; Nash and Williams, 2008); and second, to enable other agencies who were seen to have a key role to be formally requested to participate in the management of the case. This can be for a specific task, such as obtaining accommodation, or for an indefinite period, such as if child protection concerns arose (Kemshall, 2008; Nash, 2009; Nash and Walker, 2009; Wood and Kemshall, 2010). Thus, the multidisciplinary risk management web could be widened as a case required.

The creation of a National Probation Service for England and Wales (NPS) in 2001 was a major structural change which represented a major step towards both managerialism and modernisation (Burke and Collett, 2011). The implementation of the NPS in 2001 required a more uniform approach, geared towards the growing *What Works* agenda (Chapman and Hough, 1998; Kemshall, 2008). The *What Works* agenda sought to challenge the assertion that prison was the most effective means of punishment and sought to establish a definitive place for community rehabilitation as an effective means to tackle rising crime (Andrews and Bonta, 1994). This required a significant investment in research into the main causes of offending, and established six key principles for reducing recidivism, which became known as the *Risk, Needs, Responsivity* model (Andrews and Bonta, 1994; Andrews et al, 2011; Bonta and Andrews, 2017; Fortune and Heffernan, 2019). First, the intensity of supervision should be matched with an offender’s risk level, which is assessed using factors including the nature of the current offending and previous offence history. It was argued

that first, the higher the *risk*, the greater the intensity of supervision would be required. Second, a consideration of criminogenic *needs* (dynamic risks factors which were capable of being changed with the correct support) was as vital as the assessment of static risks. Eight factors were identified: four strong predictors - *History of Antisocial Behaviour, Pro-criminal Associates, Pro-criminal Attitudes* and *Antisocial Personality Pattern* - and four moderate predictors - *Family/Marital, Substance Abuse, School/Work, and Leisure/Recreation* (Fortune and Heffernan, 2019). Third came the importance of *responsivity*, which required a match of offenders' learning styles to the method and approach of supervision (Andrews et al, 2011).

The RNR model significantly impacted upon the methods that probation officers would be required to use with offenders. The actuarial tool, *Offender Assessment System (OASys)* was designed to meet the criteria of assessing an individual's potential risk of reoffending and risk of causing serious harm. Following this assessment, the supervising officer was required to design supervision sessions which responded effectively to an individual offender's needs by using the *Risk-Needs-Responsivity* model (Chapman and Hough, 1998).

The use of a more structured style of working was equally encouraged for those (including individuals who had been convicted of, but continued to deny, sexual offences) who failed to meet the criteria for participation in a programme. The central tenet of the model is that the assessment of risk of harm remains fundamental (and will be the main determinant of the type and intensity of any interventions); but an assessment of criminogenic needs is further required to make the process responsive to the individual. Therefore, all interventions with a convicted individual – including one-to-one work by a probation officer - should directly address criminogenic need, thereby focussing on what can be changed, rather than on what cannot (such as a previous offence history). As Andrews et al (2011) have argued, the factors in RNR have been chosen to enrich an individual's life rather than solely punish them:

RNR does not seek ways of making someone's life more miserable. Rather, RNR is about building on strengths and rewarding noncriminal alternatives to the risk factors that are favouring criminal activity. Use the results of RNR-based assessments to review strengths, problem areas, and responsivity issues. Offer the client important information regarding the findings of the assessment. If the offer is accepted, describe the individual's standing relative to normative samples and where the individual stands with reference to the recidivistic performance of others (Andrews et al, 2011, p. 742).

The RNR model was critiqued for an overly narrow focus (Fortune and Heffernan, 2017; Ward, 2002; Ward and Maruna, 2007; Purvis et al, 2011). There is concern that a total focus on risk can lead to disregarding the importance of protective factors; as improving the social prospects of an individual can positively affect their behaviour, if only in providing aspects of life which they might lose if they reoffended (Laws and Ward, 2011).

There is debate as to whether the risk of further offending is as easily predicted as the RNR model suggests; and that the types of actuarial tools developed to measure RNR (such as

OASys and RM2000) may be ineffective. More recent tools, such as *Static 2007* and *Acute 2007* were formulated to address this issue, by widening the scope of enquiry.

### **Actuarial tools for risk assessment**

As Beck (1992) observed, a risk society favours an actuarial approach to controlling risks to society; and as a key agency in the criminal justice system, the probation service has adopted this approach to its work. Thus, actuarial tools to record factors pertaining to risk have been developed; these will be discussed next in this paper. The Offender Assessment System (OASys) is a tool which was designed for use with *all* individuals, and therefore it can be used in the assessment of every type of offending, including sexual offending. Others (*Risk Matrix 2000 (RM2000)*, *Static 2007* and *Acute 2007*, and the *Active Risk Management System (ARMS)*) were designed to be used specifically in working with sexual offending behaviour.

### **OASys**

OASys has had a significant impact on the process of risk assessment in prisons and the probation service. the aim of OASys is to use evidence from research to shape interventions most likely to achieve reductions in re-offending.

OASys creates a risk assessment using the categories of the RNR approach. This involves recording a range of static (past and therefore unchangeable) factors and dynamic risk factors/criminogenic needs (Williams, 2010). The static factors include *age at the time of the offence; age at first recorded offence; number of previous offences under 18 years of age; number of previous offences over the age of 18*. The dynamic factors are *accommodation; education and training; relationships; lifestyle and associates; drug misuse; alcohol misuse; thinking and behaviour; attitudes and emotional well-being* (Smith-Yau and Moore, 2015).

The objective is to measure risk of reoffending and (for those who have committed violent or sexual offences) to further consider the risk of causing harm (HM Prison Service, 2003). OASys was initially criticised within the probation service, as staff believed that their professional judgement and abilities in making accurate clinical assessments were being questioned; that their role was being deskilled and that OASys assessments were of limited usefulness for risk assessment purposes (Mair et al, 2006).

In OASys, risk probability is calculated based on any past offending behaviour and the current offence (HM Prison Service, 2003). It is the responsibility of the member of staff to add further information which can justify anything which contradicts the actuarial assessment, as well as to provide specific facts about an individual case, and these are often the areas where errors occur. There is also a need for the OASys assessment to be regularly updated and this has been identified as a significant problem (MOJ, 2010) as the many demands on probation officer time can account for deficits in information as much as lack of training or lack of insight (Mair et al, 2006; Williams, 2010). Guidance on OASys use is clear that an assessment (using a combination of actuarial and clinical information) should set up the process of risk management, by setting ongoing objectives which clearly integrate and focus upon the risk factors identified in the risk assessment and provide clarity on how



outcomes will be measured (HM Prison Service, 2003; MOJ, 2007). OASys incorporates the Offender General Reconviction Scale (OGRS3) assessment, based on age, sex and criminal history. It is a predictor of general offending, with limited effectiveness in measuring the likelihood of sexual offending (Wakeling et al, 2011) but its approach can be seen in RM2000, which was developed specifically for sexual offending.

### **Risk Matrix 2000**

Given the serious risk of harm which can be posed by sexual offending, risk assessors within the police, probation and prison services supplement OASys assessments of sexual offending with further actuarial assessment (Ministry of Justice, 2010). The tool most commonly used in England and Wales is Risk Matrix 2000 (Thornton, 2002) which calculates a risk of low, medium, high or very high based on static risk factors relating to historic and current sexual and violent offending. RM2000 consists of three scales, Sexual, Violence and Combined, which were designed to predict offending of a sexual or violent nature, and the likelihood of recidivism (Helmus et al, 2014). RM2000 is based on the consideration a range of static factors, requires the assessor to score factors such as age at commencement of risk, the number of court appearances for sexual offences and the total number of criminal appearances. This is followed by scoring four factors which have been found to be “aggravating”: having male victims, stranger victims, non-contact sexual offences and lack of a long-term intimate relationship, which is defined as two years or more (Thornton, 2002)

Although it is still widely used (Helmus et al, 2013) and is viewed as a cost-effective means of predicting risk (Beech et al, 2003) RM2000 has been criticised for its brevity and focus on a small range of static factors (Craig et al, 2009). There is also a risk of over- or under-predicting an individual’s risk of harm by over-reliance on RM2000. Furthermore, it has been noted that there are other dynamic risk factors which have been shown to be relevant to sexual offending, and which research has shown to be as significant as those included on RM2000. Having experience of the care system; a history of behavioural difficulty in school; chronic substance misuse issues and employment instability are seen to be pertinent risk factors for sexual *and* general offenders (Craig et al, 2009; Hanson and Harris, 1998). Additionally, if the tool is being used as part of an assessment of suitability for treatment, issues such as mental health and learning disability need to be considered and may impact upon static risk scores. A more recent criticism is that the tool does not record information on non-contact sexual offences, which even advocates of RM2000 acknowledge to be a weakness given the likelihood of internet and other non-contact sexual behaviours made possible by the internet (Helmus et al, 2014). Interestingly, key advocates of RM2000, whilst continuing to argue its relevance in assessing risk in sexual offending, have suggested it is most effective when used in combination with other assessment tools, such as the Static 2007 (Helmus et al, 2014).

### **Changing approaches to the assessment and management of sexual offending behaviour: the influence of desistance literature**

A critique of the risk society thesis, which can also be directed at the risk-based approach to assessing and managing offending behaviour, is that it is essentially negative in its focus, and ignores the potential of uncertainty (O’Malley, 2004, 2010). In many spheres of social life, future actions cannot be predicted based on a scientific or statistical analysis of previous

or current behaviours (O'Malley, 2010). For example, the medical profession might be able to predict a propensity for future ill-health based on past illness or habits such as smoking. However, predicting recidivism is more complex, and involves a consideration of the unknowable, as the likelihood of an individual choosing to reoffend could be influenced by a range of factors. These will include the availability of opportunities to commit an offence and the individual's will to act on them or resist them (Finklehor, 1984; O'Malley, 2010; Farmer et al, 2015); but will additionally be determined by a range of circumstances in their life. These include being in satisfying employment and access to strong, positive relationship and family ties (Farmer et al, 2015) and whether these can be sufficient to act as protective factors strong enough to enable desistance (Farmer et al, 2015; Laws and Ward, 2010; McNeill, 2006; O'Malley, 2010). As Smith-Yau and Moore (2015: 129) note, improvement in one category can lead to positive change in another; for example, a healthy relationship can result in reduced substance misuse, which in turn can lower the likelihood of offending behaviour. However, successful desistance is a complex process, which can take a lengthy period. Nugent and Schinkel (2016: 570) argue that offenders must engage with two processes identified by Maruna and Farrall (2004), which are a period of non-offending (primary desistance) and a change in their self-identity (secondary desistance); but they will also have to overcome a tertiary level identified by McNeil (2016) which concerns recognition *by others* that an individual has changed. This will then lead to the development of a sense of self-belonging (Nugent and Schinkel, 2016). This tertiary level can be problematic to overcome, as an individual's ability to move towards desistance is often affected by their ability to overcome obstacles linked to social structures (Farrell et al, 2010). For example, a person's ability to succeed in employment first necessitates them gaining work; a task which can be affected by the availability of suitable employment to meet their needs. As Farrall et al observe, a young male offender without qualifications may be likely to seek unskilled work such as labouring. This is problematic within a society with a decline in the demand for construction, and instead requiring qualified individuals for employment in banking, insurance and information technology, a sector known as the 'knowledge economy' (Farrall et al, 2010, 554) which Beck saw as inevitable in a risk society. The reliance on risk categories for types and level of offending behaviour can also have a prejudicial effect on individuals wishing to desist from offending. A label of high risk will encourage an increase in monitoring and surveillance, which will limit the individual when attempting to avoid offending, as the society (s)he wishes to be part of rejects and reviles them (Farrall et al, 2010). As Farrell et al observe: 'one might argue that the central message of the risk-based approach is not "do good" but "prevent harm' (2010, 560).

This approach can be limiting to an individual as it is likely to limit opportunities rather than work with the individual to actively seek them out. It follows, therefore, that to work effectively and enable the person to make positive changes, the probation service must move beyond the risk paradigm and towards a focus on enabling desistance (McNeil, 2007; Laws and Ward 2011). This approach is characterised by the creation of professional relationships characterised by trust, warmth and empathy, and enable the development of effective cognitive skills and set positive, non-offending related goals for the future (Harris, 2014) in order to create positive ties to the community (McNeill, 2007; Burke and Collett, 2011; Mair and Burke, 2012). Laws and Ward (2011) have argued that this is particularly important in working with sex offenders whose behaviour may be entrenched and is highly

complex. It may require a lengthy period of intense work to overcome the psychological barriers and cognitive distortions which an individual may manifest.

### **Working holistically: the example of the Good Lives Model**

One approach to working with offenders which was designed with an understanding of that complexity was *The Good Lives Model* (GLM) (Laws and Ward, 2011; Ward, 2002; Whitehead et al, 2007). The philosophy of the GLM has provided the theoretical underpinning of the Sex Offender Treatment Programme in England and Wales and remains so in the current group work approaches to sex offender treatment, *Horizon* and *Kaizen*. It advocates a holistic approach and aims to move beyond the *risk-needs-responsivity* model by focusing on developing an offender's *strengths* and enabling them to improve their social skills and abilities, whilst also addressing offending behaviour and working on cognitive development to reduce the risk of further offending and harm (Laws and Ward, 2011).

The GLM is the underpinning theory for a treatment programme of broader scope and holistic vision, which provides consideration of a wider range of psychological, social and economic factors, and individual need in addition to addressing sexual offending behaviour. The programme initially developed as a response to risk-based programmes, taking the approach that rehabilitating offenders is a "value-laden process" (Laws and Ward, 2011, p.188). Given this belief, it seeks to work collaboratively and holistically with individuals to go beyond a focus on the deficits in their lives and strive to set and achieve goals to achieve *primary human goods* (Laws and Ward, 2011; Purvis et al, 2011); of which eleven groups have been identified<sup>4</sup>. The GLM is a strengths-based approach which seeks to work with individuals to identify areas in which they can prosper and grow. In GLM parlance, the primary human goods must be accompanied by *secondary human goods*. For example, an individual might identify the primary human good of *relatedness* as an area which they would like to enhance. To do this, they will also need to consider the means to achieve this (Purvis et al, 2011), which could be developing non-offending links in the community by engaging with a social group in the community (such as a social club) and forming relationships which move them away from offending behaviour.

The GLM was developed to go beyond the confines of the RNR model, in considering how the nurturing of human good could be more beneficial to a reduction in recidivism than an approach which focuses on managing risk. Advocates of RNR have asserted that this has weakened the GLM, as it is too broadly focused; and that concentration on a tighter range of needs enables a clearer approach to risk management (Andrews et al, 2011). There is also a concern that the GLM places emphasis on life fulfilment to the detriment of reducing

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4 The primary human goods groups are: Life; Knowledge; Excellence in play; Excellence in work; Autonomy; Inner peace; Relatedness; Community; Spirituality; Happiness and Creativity (Laws and Ward; Ward and Maruna 2007). Everyone will rank the primary human goods in a different order of importance, but it is noted that at least some positive change in all areas is necessary for total balance. The primary human goods are secured by acquiring instrumental "secondary human goods" which enable skills development to achieve an identified goal. (Laws and Ward 2011; Ward and Maruna 2007).

criminogenic need. Yet it can be argued that the GLM was created in such a way as to tackle both risk and need through its holistic framework (Purvis et al, 2007). Although the GLM is a rehabilitative framework which aims for a deeper analysis and the development of skills through the categories rather than using them for the assessment of risk factors alone. More pertinently, it can be argued that the desistance movement, and the development of the holistic philosophy of the GLM can be seen in the critique of over-simplicity which is levelled at RM2000; and it can also be identified in the development of more sophisticated risk assessment tools such as *Static and Acute* (2007) and the Active Risk Management System (ARMS).

### **Static 2007 and Acute 2007**

The development of *Static and Acute* was a means to address the limitations in *RM2000* and provide further depth to risk assessments of sexual offending behaviour. *Static 2007* aims to identify possible treatment targets and *Acute* aids decision-making for the community management of offenders (Craig et al, 2009). *Static 2007* and *Acute 2007* were designed to extend the scope of *RM2000* by combining static and dynamic risk factors which are commonly found in general offending behaviour with additional factors which are specific to sexual offending (Hanson and Bussiere, 1998; Hanson and Harris, 1998). Therefore, the *Static* tool includes sections on *Cognitive Problem Solving*, *Significant Social Influences*, *Impulsive Acts*, *Lack of Concern for Others* and *Negative Emotionality/Hostility*, which can be problematic for all offenders. It also features a broader range of issues relating specifically to sexual offending behaviour: *Capacity for Relationship Stability* looks at relationship history (retaining the two-year standard as a baseline) and whether the offender is currently in a stable relationship; *Emotional Identification with children* is rated for offenders with a victim under the age of 14 and considers whether the offender finds relationships with children more satisfying than adult bonds. *General social rejection/loneliness*, *Sex Drive/Preoccupation*, *Sex as Coping* and *Deviant Sexual Interests* are potentially issues for all sexual offenders. Finally, *Co-operation with Supervision* assesses the likelihood of effective engagement; assessors are asked to consider the risks of disengagement, manipulation and non-attendance (Hanson and Harris, 1998).

*Acute 2007* focuses on current and *recent* behaviour, to distinguish between one-off behaviours and chronic issues. There are two sets of questions; the first including sections entitled *Victim Access*, *Sexual Preoccupations*, *Hostility* and *Rejection of Supervision*; these are items which may predict sexual recidivism (Hanson and Harris, 1998). The second set examines the first four plus *Emotional Collapse*, *Collapse of Social Supports* and *Substance Abuse*. High scores in these three categories may indicate potential issues with non-compliance as opposed to sexual offending.

*Static and Acute* were applauded for their significantly broader scope than *RM2000* and the acknowledgement that historic *and* current issues, and static *and* dynamic factors, all have relevance for the purposes of risk assessment for sexual offending (Craig et al, 2009). In addition, there is scope to use the tools to enrich the supervision process and promote the benefits of developing protective factors. However, following feedback questioning the length of the assessments, and relevance of each of the targeted areas as a predictor of risk, NOMS did not adopt *Static 2007* and *Acute 2007*. Instead, *The Active Risk Management*

System (ARMS) was developed as a customised tool for use by probation and the police in England and Wales (McNaughton et al, 2014).

### **Active Risk Management System (ARMS)**

ARMS incorporated some of the components of *Static and Acute*, but within a shorter format. A total of thirteen risk and protective factors are included in ARMS. The risk factors are the *opportunity to offend; offence-related sexual interests; sexual pre-occupation; emotional congruence* (this factor is only used in assessments for those who offend against children); *hostile orientation to others; poor self-management; negative orientation to rules, and anti-social influences*. The protective factors are: *having a pro-social network; a commitment to desist; being in an intimate (adult) relationship; employment/being busy; having a commitment to citizenship / giving something back*. Initial piloting of ARMS has indicated that the citizenship factor can be problematic to measure. But, in general, professionals using the tool have applauded its format and relative brevity. Interestingly, the NOMS report suggests that ARMS assessments are best completed as part of a home visit, as this may make the offender feel more comfortable and willing to disclose. Yet risk also remains a paramount concern, as shown in the assertion that a further benefit of assessment in the home environment can be that risks could be more effectively assessed, as:

the offender's home environment provides additional information on which to base the assessment, such as observations about personal hygiene, the presence of pornography, and content of photographs on display. (NOMS, 2014, p.16).

### **Implications for policy and practice**

A change in attitude regarding sexual offending and risk has recently been seen in the removal of the link between denial and risk. This was intended to enable more individuals to access treatment they had been deemed unsuitable to attend when denial was seen to raise risk levels (Harkins et al, 2015). Yet there is potential for further change to reduce the focus on risk and promote a desistance agenda. The *Transforming Rehabilitation* (TR) agenda was made statute as the Offender Rehabilitation Act (ORA) 2014. It required extensive changes to the probation service, moving 70% of the service transferring to private and voluntary sector providers. This split was guided by risk principles; and sex offender treatment programmes and supervision remained under the remit of the NPS, signalling that the management of sexual offending behaviour still had not lost the link to risk.

The failure to manage services effectively under the ORA 2014, and the reversal of the legislation indicates welcome possibilities for probation and police to view sexual offending behaviour in a new light. The language used to describe service delivery under a new 'Dynamic Framework' (HMPPS, 2020:39) suggests the possibility to promote a desistance agenda which moves beyond the focus on risk:

Interventions and services available on the Dynamic Framework will often give tailored support to help individuals overcome barriers and sustain engagement with local services (2020:39).

For individuals in prison, there is a stated commitment to an enhanced period prior to release, to enable services to be co-ordinated and provide time to 'build professional relationships' (2020:43) with individuals under supervision. This should include engagement with individuals before their release from custody and maintaining this contact within the community. There is also a stated commitment to 'consider an individuals' risk, need, strengths and wider lifestyle circumstances for resettlement' (2020:43). Although risk remains a feature, the use of terms such as *strengths and needs* suggest that the reformed probation service must endeavour to incorporate a desistance agenda.

## **Conclusion**

This paper has reviewed developments in work with individuals convicted of sexual offending behaviour. Starting from Beck's assertion that risk has become a key issue in contemporary society (1992), it has reviewed changes in approaches in legislation, actuarial risk assessment tools and risk management techniques. Since the *What Works* debate there has been considerable legislation which has focused on surveillance and stringent management to deal with sexual offending. Following the adoption of the risk- needs-responsivity principle, there has been significant development of actuarial tools focusing on risk for all offender groups (*OASys* and *OGRS*) and specifically in relation to sexual offending behaviour (*RM2000*, *Static* and *Acute* and *ARMS*).

Yet recently, following research advocating a strengths-based approach, there has been a move to encourage desistance by enabling offenders to achieve goals such as gaining and maintaining employment, abstinence from substance misuse and the development of an enriching social life. These can be instrumental in promoting desistance from sexual offending. Recent risk assessment tools have incorporated these themes by including a wider range of social and psychological factors and, in common with the theory of the GLM, moved towards a more holistic approach to work with sexual offending behaviour. Furthermore, recent proposals for change for the probation service in a post-TR era suggests that a strengths-based approach will be supported and encouraged. It will be instructive to monitor the level to which these aims are realised in the delivery of service for those convicted of sexual offending.

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