MULTI-DISCIPLINARY DEFINITIONS AND UNDERSTANDINGS OF ‘PAEDOPHILIA’

Child sexual abuse (CSA), and by default paedophilia (whose distinction will be discussed below), has been described as one of the most misunderstood crimes in modern society. Given the apparent acceptance of the punishments meted out to those who violate the taboo of childhood sexuality (Kleinhans, 2002); the meanings and assumptions that underlie our contemporary understandings of it can remain unacknowledged. Moreover, the public safety and criminal justice problems that can surround paedophilia in the contemporary social context (as illustrated, on the Paulsgrove estate, Portsmouth in 2000) can present obstacles to a measured discussion of the ‘problem’ at hand. The tendency for the subject of paedophilia to generate strong opinions rather than facts (Musk et al., 1997) can be problematic for offenders, practitioners, and, by implication, society more generally. Thus, despite the current high-profile nature of paedophilia, there is no easily accessible or coherent cross disciplinary definition of it (Feelgood and Hoyer, 2008).

Analyses of sexualities, paedophilia and CSA (Scott, 1995; Weeks, 1985) have pointed to the particularised nature of our current understandings, and the various assumptions that underlie them. In both academic and practitioner contexts there understandably remain concerns regarding the ability to accurately categorise paedophilia and CSA. However, the historical and cultural contingency of both clinical diagnosis and legislation ensures that the framework for understanding concepts such as paedophilia is necessarily shifting. Moreover, the situation of paedophilia and CSA at the intersection of a variety of multi-stranded discourses about, for example, sexuality, gender, class, race, and not least childhood (Kitzinger, 1990) presents further challenges to the development of shared
definitions. Therefore timely reflexive self-examination can assist in challenging the assumptions that underlie particular current understandings.

The benefits of multi- or trans-disciplinary approaches towards paedophilia and CSA have been noted previously (Schofield, 2004). This article therefore attempts to begin to explore some of these issues by looking specifically at conceptions of paedophilia from clinical and legal sources. While scholars such as Kleinhans (2002) have provided valuable insight into the punishment of (convicted) paedophilic sex offenders, our focus is on issues that fall prior to, but which also have implications following, conviction. We firstly contextualise our analysis by reviewing issues of history and culture in relation to adult/child sexual relations. We then set out some contemporary understandings of paedophilia from clinical and legal perspectives so as to highlight the tensions between these two central arenas. For example, given that paedophilia is currently considered a mental disorder (Cohen and Galynker, 2002), what is the nature of this understanding? Moreover, given that what might be termed paedophilic activity is regulated by the law, how does the law construct paedophilia? Clearly there are additional issues in the relationship between the two that are beyond the scope of this article. However, we argue that, for the purpose of contemporary practice, there are similar problems that affect both legal and clinical perspectives that revolve around the issue of definition. Kleinhans (2002) has set out the core assumptions that underlie the notions of ‘child’ and ‘childhood’, and has used this to examine their role in legitimating particular sanctions towards those determined as paedophiles. Here, we aim to complement this work by examining some of the constructions that inform these sanctions in the realms of law and clinical psychology. This we believe is important as these clinical and legal terms have significance for practitioners making important risk management and risk reduction decisions. We therefore focus specifically on the law in England and Wales, and highlight clinical understandings that have primary currency in the UK context. Finally, we
consider the utility of this mapping and set out key issues for further consideration that have been raised in the process.

THE CONTEXT OF PAEDOPHILIA

The problematic binary distinction between adult and child, and the underlying issue of the construction of childhood (e.g. Kitzinger, 1990), looms large in our interrogations of paedophilia. Crises of representation in academic writing alert us to the problematic nature of terms such as child (Griffin, 1993). The concept of childhood varies in meaning across different times and places. As such, historical and cultural variation in understandings of adult/child sexual relations might therefore be anticipated. However, such variation can be obscured by the normalisation and assumed universality of contemporary (Westernised) definitions of transgressive phenomena such as paedophilia.

Howitt (1998) has pointed to the ‘substantial differences’ in legal, sociological, and biological definitions of paedophilia, with Western societal definitions of childhood being based on ‘arbitrary dates, milestones marking progress into adulthood’ (17) which may not correspond to biological change. Similarly, Green (2002) points to the problematic use of puberty as the marker for clinical definitions, such as those discussed below, as it fails to take into account the mental development of the child, and does not reflect the intra- and inter-generational variation of puberty itself. This is also noted by Weeks (1985), who argues that whilst puberty is the obvious line, ‘physiological change does not necessarily coincide with social or subjective changes’ (230).

Problems of assuming universality and standardisation of variable markers such as puberty are further challenged by the array of exotic examples that are regularly mobilised to illustrate the particularity of our current understandings of paedophilia. These include, for
example, ‘various rites of passage’ involving childhood sexuality, including 10 year old boys of the Tharo swallowing the semen of older men to aid their development into manhood (Bauserman, 1997), along with various other cross-cultural reports of sexual activity between or involving pre-pubescent children. Green (2002) uses such examples to problematise the positioning of paedophilia as a mental disorder. Similarly, Ames and Houston (1990), refer to the challenge posed to researchers of ‘adult/child sex’ (339) in terms of the boundary between sexual interaction with a child as pathological rather than just criminal. Clearly, there are additional issues here regarding the nature of mental illness itself. Such a concept is not unproblematic, and illustrations of cultural and historical variation in this case are as, if not more, easy to find. However, these examples indicate that the sexual and developmental practices encouraged in some societies are alien to those understood and practiced in the contemporary West.

Historical examples can similarly be used to illustrate the difficulties of essentialist definitions of paedophilia. Again, various commentators point to the acceptance of adult/child sexual relations as normative in other times (e.g. McConaghy, 1998). Anticipating our analysis of legal involvement in the definition of paedophilia, it has also been pointed out that the age of consent for heterosexual activities in England and Wales in 1285 was 10 (Thomas, 2005). This was raised in 1875 under the Offences Against the Person Act to 13, and to 16 in 1885; although this was due to concerns over child prostitution, and not provoked by fears of paedophilia (Green, 2002). Prior to the Age of Marriage Act 1929, the age at which a person could give consent to marry was 14 in the case of men and 12 in the case of women. Thus while there was clearly a concern around child involvement in terms of sex as product, this did not extend to sexual intercourse in and of itself.

While this variation across time and culture highlights the historical and cultural particularity of phenomena such as paedophilia, there are also notable points of similarity.
For example, Jackson (2000) points to how, in the ‘linear order of gravity’ (54) of 19\textsuperscript{th} century NSPCC rhetoric, sexual abuse was the most serious crime against children. Further foreshadowing contemporary concerns regarding ‘stranger danger’, CSA was ‘often treated, rhetorically, as more serious than . . . cases of chronic neglect and brutal beatings’ (55). Historical and cross cultural examples are therefore often used to problematise the concept of paedophilia, illustrating its fluidity and particularity across times and places, which can be built on in analyses that challenge contemporary states of affairs (for example to challenge the status of paedophilia as a mental illness). However, the focus on differences between societies or groups can hide the contradictions and differences that exist within them at particular points in time, both between and within the various sites where sometimes competing versions of paedophilia are constructed.

Thus, our focus here on current law in England and Wales, and clinical approaches that have currency in a UK context aims to reveal contradictions and differences in these contemporary understandings of paedophilia. In doing so, we aim to enrich the examination of these inconsistencies and evaluate their implications for contemporary practice.

**PAEDOPHILIA AS A MENTAL DISORDER**

Ultimately, the decision to regard any set of behaviours or experiences as a psychological disorder – rather than . . . a criminal act . . . - is not and cannot be a scientific one. It is a political and moral choice and a judgement grounded in a social consensus as to which behaviours are acceptable (Marecek and Hare-Mustin, 2009: 80-81).
Current clinical definitions of paedophilia play an important role in the diagnosis, treatment and reintegration of paedophiles (Cohen and Galynker, 2002). So far we have pointed to work which has questioned the positioning of paedophilia as a mental disorder (e.g. Green, 2002) and moreover, there are various existing critiques of mental health systems, as highlighted by Marecek and Hare-Mustin (2009) above. However, given the increasing ‘reach’ of mental health diagnoses, and their role in areas such as judicial deliberations and beyond (Rogler, 1997), we begin to examine the interrelationship between legal and clinical spheres.

The distinction within the clinical literature between paedophilia and CSA is rarely attended to in other discourses. Outside of clinical circles, CSA is often used as a blanket term to cover all forms of sexual activity against children and all child sexual offenders (Rind et al., 1998). However, from a clinical perspective, not all forms of CSA are similar, with different offender typologies, offending patterns and victimology being present (Bartol and Bartol, 2008); a consequence of the necessary categorisation involved in producing a formal system that enables clinical professionals to communicate using shared assumptions. From a clinical perspective, a child sexual molester/abuser is someone who sexually abuses a pre-pubescent child (i.e. children under the age of eleven) (La Fontaine, 1990) for his own personal gratification, using the child as a sexual aid to bring himself pleasure (Goldstein, 1999). However, it is acknowledged that many child sexual offenders have additional mental illnesses, psychological conditions or learning difficulties, all of which can potentially affect their decision making processes as well as their offending behaviour (Bickley and Beech, 2001; Howitt, 1998). Therefore, ‘overlap’ can exist in terms of mental disorders, which can influence treatment and risk management decisions. Despite this ostensible complexity, CSA can be differentiated from paedophilia, which from a Western clinical perspective is seen as a paraphilia (Rosen, 2003; American Psychiatric Association (APA), 2000). However, the
shifting nature of our understandings of paedophilia means that there is no consistent clinical
definition of it (Feelgood and Hoyer, 2008), with the Diagnostic and Statistical Manual of
Mental Disorders (DSM), the main diagnostic clinical tool used within the UK, continually
changing its definition (McCartan, 2008). Despite this uncertainty, clinical definitions of
paedophilia are nevertheless important as they attempt to further clarify and balance the
complex intersection between the homogenous and heterogeneous aspects of paedophilia, in
an attempt to create ever more refined classifications that facilitate the business of
categorising and treating mental illness.

The most recent DSM definition is, to date, the most specific and states that
paedophilia is a sexual paraphilia, where the offender has to be at least 16 years of age as
well as being at least five years older than the victim; that the victim is not older than 12 or
13 years; and, that the offender has serious sexual urges/fantasies that are either causing him
distress or that he has acted on (APA, 2000: 571-2). The DSM does not, however, define
what is meant by ‘acted on’ (which could include a wide range of non-contact actions such as
downloading child sexual abuse imagery or communicating online with other paedophiles
about fantasies) and the particular ages used are not necessarily reflective of general societal
consensus (particularly in comparison to arenas such as law, as will be discussed below).

These constantly adapting and conflicting definitions of paedophilia have resulted in
some expert opposition towards the DSM classifications. O’Donohue et al. (2000), for
example, refer to them as vague, poorly defined, and lacking reliability and validity as a tool.
Such criticisms have led to calls for the DSM classification of paedophilia to be abandoned
(Marshall, 1997), and although there have been other attempts to define paedophilia (World
Health Organisation, 2005) these are also problematic, given that they too lack specificity.
With the next version of the DSM (DSM-V) due out in May 2013, preliminary discussions
and consultations, at the time of writing, indicate that the classification of paedophilia will
change once more to Paedophebophilic disorder (Blanchard, 2009); which includes both paedophilic (sexually attracted to prepubescent children) and hebophilic (sexually attracted to pubescent children) subtypes. What impact this change in classification will have upon the positioning of paedophilia within the context of mental disorders and how, if at all, practitioners will use the published criteria in their clinical decisions remains as yet unknown. It is thus difficult to achieve a clear clinical definition and diagnosis of paedophilia. However, what is evident, as is demonstrated by the current DSM definition as well as other evidence based typologies and aetiologies of paedophilia (McCartan, 2008) is that clinical understanding and categorisation of paedophilia relies on the identification of ‘symptoms’, and is formulated as a sexual disorder. In so doing, psychological explanations, such as mental illness, cognitive deficiency, and developmental or personality disorders indicate a potential divergence between clinical and legal constructions. Thus we see at this stage that whilst clinical definitions appear to concentrate on the experience of those positioned as having the mental illness of paedophilia, and their clinical symptoms, legal interpretations always require a physical act; rather than just the existence of a sexual preference for children. This divergence is discussed further below.

**PAEDOPHILIA AND CRIMINALITY**

As we move on to focus on some of the ways in which legal discourse is implicated in the construction of paedophilia, we are reminded of the way in which a concept such as paedophilia is inherently intertwined with a variety of additional and no less problematic concepts. It is therefore perhaps to be expected that there is no current legal definition of paedophilia, either within the UK (Hansard, 14 Oct 1997: Column WA113), or internationally. Any feasible definition in a legal context tends to therefore focus on the
criminal acts and behaviour involved. This consequently suggests that a paedophile is an adult who commits a sexual offence against a child, which seems to a certain degree to mirror the DSM definition. However, as we have pointed out, the concepts upon which this working definition rests are problematic.

**LEGALLY CONSTRUCTING CHILDHOOD**

While, for reasons of equity and fair labelling, it is important that the law is clearly defined and expressed, from a legal perspective there does not appear to be a clear consensus on what the term child actually means; i.e. whether it is somebody under the age of 14 (The Children Act 1989), someone who has not yet attained the age of 16 (The Child Benefit Act 2005, section 1(2)), a person aged between 10 and 16 (Police and Criminal Evidence Act 1984) or a person under 18 (The United Nations Convention on the Rights of the Child). Such variation within the law thus highlights a number of differing concerns around children in England and Wales, and is matched by similar variation between cultures. The age of majority, for example, differs around the globe and in many countries (e.g. Australia, Bulgaria, China, Armenia, Portugal and Kenya), as in England and Wales, is 18. However, in Argentina, Cameroon, Monaco, Singapore and Namibia it is 21 and, in contrast, in Uzbekistan it is 14, in Pakistan is 16 for girls (although 18 for boys), and in Korea is 17. As Beattie (2009) points out, ‘a malleable and highly regulatable legal object is created in place of a child’s subjectivity’ (166).

From a legal viewpoint, an adult is commonly deemed to be someone who is not a child (and vice versa). If this is the case, when a person becomes an adult will obviously depend on when he/she ceases to be a child. Therefore, in England and Wales, based on the age of majority, an adult is someone who is 18 or over. Whatever age is accepted as an
appropriate marker of adulthood, for the majority of sexual offences against children there is no legal reason why a person has to attain adulthood in order to commit them. If a younger person performs a sexual act against a child, especially without that child’s consent, this would nevertheless be considered criminal (although perhaps not considered to be paedophilic from a clinical perspective).

A key question is therefore whether an understanding of paedophilia should only include those offenders who are adults or whether it is the nature of the sexual act and the age of the victim which should be the guiding principle, regardless of the offender’s age (this will be discussed in more detail below). The purpose of the law is to define and criminalise behaviour which society and through society the government deems to be immoral or inappropriate. Thus if this reasoning is followed it is the act and the specific nature of that act which, legally, is more important than the age of the perpetrator; unlike the current DSM definition. This might suggest that the greater concern of the law is the control of childhood sexuality.

AGE OF CRIMINAL RESPONSIBILITY

As we have noted above, there is tension between paedophilia as a mental disorder, as opposed to paedophilia as a criminal act. This leads us to a further factor to consider in examining the nature of paedophilia from a legal perspective: the age at which one can be held criminally responsible. To be held legally responsible for a criminal offence in England and Wales, a person must be 10 years old. This contrasts with Belgium, Switzerland and Luxembourg where the age of criminal responsibility is 18 and Spain, Argentina and Portugal where it is 16. Countries where the relevant age is lower include Ethiopia (9), Scotland (8), the US (7) and South Africa (7) (Urbas, 2000). The issue of appropriate age of criminal
responsibility highlights another disjuncture between legal and clinical understandings: a person under 10 could engage in CSA which whilst not subject to criminal sanctions might still be of concern in terms of social welfare. Conversely, CSA by someone 10 or over would be criminal, but not necessarily paedophilia under current DSM definitions. Our working definition of paedophilia as the perpetrator being an adult, thus arguably aged 18 (based on the age of majority) or over, does not tie in with either the age of criminal responsibility in England and Wales nor, and more importantly, the ability to carry out behaviours that would be considered to constitute CSA.

AGE OF CONSENT FOR SEXUAL ACTIVITY

The contrasting concerns over the nature of childhood are further illustrated when we examine consent for sexual activity specifically. Clearly, it is the sexual nature of the acts which are directed towards children that is at issue in paedophilia, with Weeks (1985) for example suggesting that the real debate is what the appropriate minimum age for this activity is. When assessing this we are really asking when we feel a child has the mental maturity, intellectual capacity and competence to make a free and reasoned decision (Waites, 2005). Waites also acknowledges that this is not a straightforward question and can depend on what is held to be important. This also ties in with children’s rights and at what age children should be allowed or even entitled to participate in decisions regarding their life and behaviour. Much has been written about this, (Alderson, 1992; Kleinhans, 2002; Schofield and Thoburn, 1996) and we do not intend to rehearse the arguments here, but as stated by Alderson, ‘Competence is more than a skill, it is a way of relating, and can be understood more clearly when each child’s inner qualities are seen within a network of relationships and cultural influences’ (Alderson, 1992: 123).
Such arguments would suggest that a child’s competence might be assessed on an individual basis rather than using an arbitrary approach, such as age. Whilst this viewpoint has gained support in other legal areas such as medical law and the availability of assessing a child as ‘Gillick competent’, this has not been followed with regard to consent to sexual activity. Moreover the age of criminal responsibility, as discussed above, is much lower than age of sexual consent laws. This leads Waites (2005) to question whether in fact age of consent regarding sexual behaviour is a special case and thus an area which should be dealt with differently. Ultimately, this distinction illustrates a further feature of the double-bind in the articulation of childhood sexuality (Kleinhans, 2002). So, even if the child is competent to consent it may still be undesirable, or society deems it undesirable, for that child to partake in sexual behaviour. The issue is not when the child is capable of understanding the nature of the acts and can therefore consent to participation in them but when the state will allow him/her to engage – a time when the state no longer feels responsible for protecting the innocence and vulnerability of that child (Waites, 2005). In this sense the state is creating a ‘new moral authoritarianism’ (Phoenix and Oerton, 2005: 75).

The age at which a person can give valid consent to sexual activity, in England and Wales, is currently 16, (which ties in with the ability to marry with parental permission). Any sexual activity below this age is a criminal offence, even where both parties are under age (as long as they are old enough to be held criminally responsible). Children under 13 are always deemed as legally incapable of giving consent; whereas those between the ages of 13 and 15 may ‘voluntarily agree’ to sexual activity (in this situation the law will acknowledge that whilst the consent is not valid in law, it did exist in fact, which may be relevant where the offender is under 18 from a sentencing perspective, although any sexual activity undertaken is still a criminal offence.) Age of consent laws differ across the globe and again we are not concerned with what this particular age should be, but rather whether it helps in our
understandings of legal constructions of paedophilia. Is age of consent the dividing line between acceptable and unacceptable sexual practice or is it something else? Kleinhans (2002) draws our attention to the limitations of a focus on consent, and highlights the issue of coercion and the violence of paedophilic sex offences. In doing so, Kleinhans suggests that ‘the entire context of the relationship in question’ (242) should be evaluated.

For the purposes of this article we might consider whether it is possible to relate ‘Gillick competency’ to the issue of sexual offences and paedophilia. If a girl of, for example, 14 is assessed as being Gillick competent and is able to gain contraception without parental permission, does this mean that she should also be assessed as having the maturity and sufficient judgement to give valid consent to sexual activity? Should we acknowledge that she is competent and capable of making a sexual choice i.e. as defined by section 74 Sexual Offences Act (SOA) 2003, consent is where she ‘agrees by choice and has the freedom and capacity to make that choice’? If this is the case, can this be extended to suggest that sexual activity with ‘Gillick competent’ children is not paedophilia; especially when common fears about such activity are based upon coercive behaviour? In asking such questions we are reminded of issues regarding whether the term paedophilia is about lack of consent at all or whether it is purely about sexual gratification with minors. If it is the latter, which appears more likely, it raises the question of whether consent is at issue here at all, or rather that it is simply the existence of child/adult sexuality that is the key determining factor. However, this viewpoint disregards the capability and competence of children, of a certain maturity, to make this choice and arguably contradicts the definition of legal consent in the SOA 2003. As Freeman (2000) has pointed out, the implications of the Gillick ruling, while potentially a victory in terms of bodily integrity and autonomy, were not tested as they might have been, and therefore might be usefully revisited and further explored.
The age of consent law in England and Wales, would thus suggest that paedophilia, from a legal perspective, is sexual activity with a child under 16, again illustrating divergence from clinical approaches. In clinical understandings paedophilia is engaging in or having the desire to engage in sexual activity with a pre-pubertal child, not older than 12 or 13. Despite this clinical interpretation, the law in this area is designed to protect vulnerable children from harm, and to a lesser extent serves to protect the child from him/herself. Many everyday interpretations of paedophilia would however, we suggest, include a 40 year old man participating in acts of a sexual nature with a 15 year old boy or girl – even though it is accepted that in clinical terms this might be viewed as Ephebophilia (a sexual preference for mid to late adolescents usually aged 15-19 years old). Such fine distinctions are not apparent outside of clinical/mental health circles and thus we see common understandings perhaps originating from socio-legal rather than clinical perspectives.

CRIMINAL LAW

Having foregrounded our consideration of paedophilia from a legal perspective by illustrating the inconsistencies and conceptual difficulties around the nature of childhood and adulthood, and the associated issues of age in relation to criminal responsibility and the ability to legally consent to sexual activity; we now turn to the way in which paedophilia has been more directly addressed by legislation, in terms of sexual offences against and involving children. When trying to understand the term paedophilia from a legal standpoint, it would seem appropriate to begin with the Criminal Law and the SOA 2003. The Act does not use such language as paedophilia, rather setting out a number of sexual offences, including that of rape, sexual assault and sexual activity with a child. For an offence to take place the relevant actus reus and mens rea need to be proven and for some offences it is also necessary to prove
that the act was ‘sexual’. This is defined in section 78 of the Act as either sexual because of its nature, regardless of the circumstances; or although in nature it may not be regarded as sexual, because of the circumstances or characteristics of the individual offender it is regarded as such. This could mean that an act which many would deem innocent could be seen as an offence, if the person committing that act received sexual gratification from it (e.g. a shop worker with a foot fetish touching feet whilst fitting shoes). Defining a person as a paedophile just because he has a sexual preference towards children does not, therefore, fit in with legal constructions, owing to the fact that the law generally requires a positive act rather than just a mental state and again highlights the difference between clinical and legal perspectives.

For the purposes of the Act a child is usually regarded as an individual who is under the age of 16, aligning with age of consent, although this is still clearly at odds with the additional range of legal understandings of the meaning of child in other various contexts, highlighting the particular nature of concerns around childhood sexuality. In covering sexual activities with children, the SOA 2003 includes a number of offences where the child is under 13 and some where the child is under 16. The main reason why the Act makes this distinction is because the offence is deemed more serious where the child is under 13 and thus such crimes attract higher sentencing powers. This might suggest that paedophilia as constructed in law involves committing offences against those younger than 16, although clearly sexual acts directed towards children aged between 13 and 15 are considered to constitute a lesser degree of harm than those directed towards children under the age of 13 – an age closer to that suggested in the DSM definition and the definition found in the Children Act 1989. This in itself points us toward the particular understanding of child that is being considered in this provision, suggesting that children under 13 need greater protection than those between 13 and 15, while also pointing to the problematic nature of singular age boundaries.
However, perhaps unsurprisingly, while this particular definition of child seems relatively straightforward, the Act has anomalies. The SOA 2003 updates and extends many offences previously dealt with by the SOA 1956. For example, the Act extends the list of persons who can be guilty of a sexual offence committed against a child in a family (incest) and for these offences considers a child to be someone under 18, rather than 16 (section 25-26). It is worth noting that, while children may be in more danger of sexual abuse from known, familial others, the current perceived danger in relation to paedophilia generally relates to stranger danger. Yet within a familial context (where the focus is on intra-familial sexual relations) the legal limits on childhood are higher, and can therefore include children who are married. As noted by Phoenix and Oerton (2005) in a new governance of children, ‘there is an upwards slippage of the age of consent . . . [providing] an extra layer of protection’ (57). This widening of the category of child to 18 is an acknowledgement from the state that we cannot readily identify who/what is dangerous and thus we cannot assume that children will be protected by their families and organisations set at a local level. Instead, ‘the only capable site of moral authority and regulation’ (Phoenix and Oerton 2005: 65) is the state.

Another example of the varying status of age in relation to different offences is section 45 of SOA 2003, the offence of child pornography/indecent photographs, where the Act, by amending section 1 Protection of Children Act 1978 and section 160 Criminal Justice Act 1988, likewise raises the age of a child to someone under 18. It means that a person can consent to sexual activity, including intercourse, at 16, but cannot consent to imagery of such acts until 18. Stevenson et al., (2004) comment that this makes it more harmful for a 16 year old to have a sexual photograph taken than it does to have sexual intercourse. Such distinctions point to a range of contemporary moral concerns around the hierarchical arrangements of harm in relation to children and sexuality and indicate how twenty-first
century reforms focus on separating sex and sexuality from the world of children (Phoenix and Oerton, 2005).

The age of the offender is also important under the Act. To commit an offence under sections 9-12 and 14-15\(^5\) the offender must be aged 18 or over. However, section 13 of the SOA 2003 makes the offences covered in sections 9 – 12 additionally criminal where the offender is aged under 16. The aim of this was two-fold: to protect children from children, but also to provide lower sentencing powers in recognition that those involved were children (interestingly, for the purpose of this section, a child is once more regarded as someone under 18 rather than 16). Again, we see that there is an incongruence with clinical understandings; where the victim must be under 13 and the perpetrator older than 16. From a criminality viewpoint, the Home Office has argued that the decision as to whether or not to prosecute children involved in sexual acts will be based on whether factual consent and understanding is present; not whether the person is able to give valid legal consent (Stevenson et al., 2004). Thus, under this provision, sexual activity carried out by a person under 16 may not be held to be criminal as long as both parties involved give their consent; although this is in direct opposition to the idea that those under 16 do not have the mental maturity to understand the nature and consequences of sexual activities and thus are not able to give legal consent to such. It can be argued that in consensual child/child sexual activity there is less need to exert social control, less need to criminalise such experimental behaviour and subsequently less need to stigmatise those involved as offenders. Notwithstanding this, even if the sexual activity was consensual and therefore was not prosecuted against; does this mean that such behaviour is not to be regarded as paedophilic in nature, even if the victim is under 13? Is there something inherent in particular acts between people of particular ages that are necessarily paedophilic; or is it more generally a matter of the age and the difference in age of those involved per se? Such questions illustrate the complexity of legal constructions and
the prioritisation of particular forms of harm. Thus, for practical purposes, and in the absence of clarity or consistency with respect to the articulation of legal and clinical approaches, until such questions are answered it is difficult to unravel a shared meaning of what is and isn’t classed as paedophilic activity. Thus the term can mean many different things, which can have stark implications for practitioners working in a multi-agency environment, where consistency in language is, for practical purposes, imperative.

Whilst it may be argued that the law does not need to define terms such as ‘paedophile’ and ‘paedophilia’, because of the tenet that it acts upon behaviour and criminal offences rather than social or clinical terms, it is important that the law enables the use of such terms in social and clinical arenas where, arguably, their use is more important. We thus finally turn to a point where clinical and legal approaches come explicitly into contact with each other: the field of mental health law. In doing so, we can begin to highlight the conjunction of legal and clinical arenas. While this may not be in terms of shared understandings, it instead points to the potential for circularity and regulation.

MENTAL HEALTH LAW

Mental health law in England and Wales is largely governed by the Mental Health Act 2007 which updates and amends both the Mental Health Act 1983 and the Mental Capacity Act 2005. The major change of the new Act with regards to the meaning of paedophilia is the amendment to the meaning of the term ‘mental disorder’. In the 1983 Act the term was broken down into four classifications; mental illness, psychopathic disorder, mental impairment and severe mental impairment, (section 1(2)). Interestingly a person did not suffer from a mental disorder under the 1983 Act by reason of immoral conduct, promiscuity, dependence on alcohol or drugs and for the purpose of this article ‘sexual deviancy’ (Bowen
2007). (Perhaps this explains why in the past only 1 per cent of convicted sex offenders have been sent to mental hospitals (Baker and White, 2002); although it has been argued that the level of psychiatric morbidity in sex offenders may actually be higher than this (Nacro, 2005)). The 2007 Act largely reverses the exception of sexual deviancy. The term ‘mental disorder’ now has a much wider meaning, with the four classifications being abolished. Whilst dependence on alcohol or drugs (section 1(3)), promiscuity or sexual orientation are still not within the realms of a mental disorder, sexual deviancy is (Bowen, 2007). Indeed it was argued in the House of Commons that ‘the amendment makes it clear that paedophilia is not within the scope of the exclusion’ (Hansard, 19 Jun 2007: Column 1326).

Commentators including Bowen (2007) have argued that in practice the amendment will make little difference as it was always possible under the 1983 Act to justify an individual’s detention and treatment by arguing that the deviant’s behaviour either caused or was caused by a mental disorder, but it may play a considerable role in how the ‘condition’, ‘preference’ or ‘sexuality’ is socially understood and constructed. Whilst it remains the case that a person cannot be held in a mental institution solely due to his/her sexually deviant behaviour, as other tests involving ‘appropriateness’ and ‘necessity’ also need to be met, it does offer a means by which sexual deviants including paedophiles can be forcibly detained and treated under the Act. Consequently the change in the definition of mental disorder means that definitions published by the APA could now permissibly work in England and Wales. Given the issues in the DSM definition as set out above, there is clearly a need for further clarification in the application of this legislation. Moreover, as some point to the far from straightforward relationship between sexual offending and mental illness (Gordon and Grubin, 2004), given this potential integration the debate over the criminality versus pathology of paedophiles is clearly as pertinent now as it has been in the past.
CONCLUSION

Paedophilia as a phenomenon is complex and difficult to define. This is not only problematic when we consider how disciplines such as clinical psychology rely on definitions in their gradual refinement of mental illness categories, but further exacerbated when consensus is sought from a multi-disciplinary perspective for multi-agency practitioner purposes. This current article has illustrated that the construction of paedophilia/CSA is not simply demonstrated through examining clinical and legal perspectives but is entwined with a number of other far ranging issues such as the governance of children, current perceptions of risk and risk management, the ‘new penology’, and ultimately punitiveness. Evidence of considerable disagreement and contradiction both between and within different disciplines illustrates how the phenomenon of, and the definition of, paedophilia/CSA is particularly problematic in contemporary society, especially considering the range of agencies and authorities which use the word in their common parlance. The variance in definition which we have identified thus results in questions of how expert knowledge is presented and disseminated across a variety of disciplines and how such knowledge becomes synthesised or interrelated. This is further highlighted when we consider how paedophilia is defined by the media (Thomas, 2005; Silverman and Wilson, 2002) and the public at large, suggesting that the public appear to be more familiar with socio-legal rather than clinical understandings.

As such we are left with an additional range of questions: do we need a consistent definition and if we do what do we need it to do? Would a comprehensive definition have practical utility, or would a series of one-use contextual definitions be more effective? Do we need to look at paedophilia in terms of its definitional effectiveness for any given discipline, so that the practitioner can use it effectively in his/her daily practice? If this is the case, are the definitions that we have begun to examine here sufficient or are they merely skimming
the surface? If the ultimate intention is to prevent harm, we might need also to look more closely at the nature of this harm, as whilst this is implicit in a number of legal measures, inconsistencies also exist (e.g. in the case of child pornography/indecent photographs and age).

Aside from this professional complexity it is clear that paedophilia has become a key concern in modern society and that a generalised, accepted understanding – or at least a critical examination of current understandings – is needed. Although the idea of the paedophile as the deviant other is central to popular understandings of this phenomenon, it has no practical utility, and yet is inevitably bound up with expert knowledge that informs practical engagement with the issue of paedophilia. The extent to which clinical and legal definitions become interdependent, as we have seen above, problematises the current state of affairs still further. As such we have to start the process of picking apart the cultural values and processes that go into our understandings of, discussions around, and research into paedophilia; separate these from the actual practices undertaken by, and experiences of, those who are given the label of paedophiles, and unravel how we should culturally, clinically and legally deal with them. To this end we do not yet have any definitive answers, but hope that this article will encourage and ignite much needed ongoing debate.

NOTES

We would like to thank our anonymous reviewers for their helpful comments on an earlier draft of this manuscript. Any errors are of course our own.

1 In August 2000, a council petition by local residents calling for the removal of Victor Burnett, a known local paedophile, and the involvement of the News of the World’s ‘Name and Shame’ Campaign resulted in the eruption of a violent anti-paedophile protest on the Paulsgrove estate in Portsmouth. Whilst there have been several accounts of this incident, this
event has led some to argue that the British public are not responsible enough for the disclosure of information about the details of registered sex offenders to occur (Thomas, 2005).

2 We are not making the assumption here that all paedophiles or child sex abusers are male. The use of male pronouns here is for conciseness and is chosen on the basis of suggestions that the majority of child sex abuse and paedophilia is carried out by men (Howitt, 1995).

3 Although it is accepted that in purely legal terms the term paedophilia is not actually used in England and Wales.

4 The phrase ‘Gillick competent’ derives from the case of Gillick v West Norfolk and Wisbech Area Health Authority [1986] AC 112, which involved the provision of contraceptive advice to girls under the age of 16. The case progressed to the House of Lords, where Lord Fraser laid down a number of criteria, which have since become known as the Fraser Guidelines. The guidelines centre on the child’s ‘maturity and intelligence to understand the nature and implications of the proposed treatment’ (113) with the premise being that once this stage has been reached, the parent’s right to determine matters relating to medical treatment ends.

5 Offences under these sections include sexual activity with a child (s. 9); causing or inciting a child to engage in sexual activity (s. 10); engaging in sexual activity in the presence of a child (s. 11); causing a child to watch a sexual act (s. 12); arranging or facilitating commission of a child sex offence (s. 14) and meeting a child following sexual grooming etc. (s. 15).

STATUTES AND INTERNATIONAL CONVENTIONS

Age of Marriage Act 1929
Criminal Justice Act 1988
Mental Capacity Act 2005
Mental Health Act 1983
Mental Health Act 2007
Offences Against the Person Act 1875
Police and Criminal Evidence Act 1984
Protection of Children Act 1978
Sexual Offences Act 1956
Sexual Offences Act 2003
The Children Act 1989
The Child Benefit Act 2005
The United Nations Convention on the Rights of the Child

CASES CITED

*Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112

REFERENCES


