

Police Response to Youth Offending Around the Generation and Distribution of Indecent Images of Children and its Implications

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This report presents the findings of research exploring arrest and crime recording of minors for the generation or distribution of indecent images of children, under the 1978 Protection of Children Act¹.

The research was conducted using Freedom of Information requests to police forces to collect data that would give an indication of the volume of arrests of minors made between December 2016 and March 2019. This date relates to the introduction of Outcome 21 practices which allows the recording of a crime that is not considered worth pursuing because it is not in the public interest to do so. The new recording method was introduced specifically to address the increasing number of minors who were being charged under s1 of the PCA as a result of engaging in “youth sexting” – the self-generation and distribution of indecent personal images by minors, to peers. While clearly by the letter of the law

(see below) such a practice is illegal under s1 PCA, given the year that the law reached assent, it could not have been in the minds of the legislators that the subject of the image, the taker of the image, and the distributor of the image, could all be the same person.

Concern has grown around the criminalisation of minors, with a criminal record that would follow them into adulthood, as a result of a practice that was being broadly adopted with the advent of mobile technologies and camera phones, and the application of a law being applied for a purpose for which it was not intended. There is little surprise, therefore, that data from the Ministry of Justice² on juveniles entering the criminal justice system as a result of charges under the Protection of Children Act (related to Home Office crime code 86/2)³ have doubled between 2007 and 2016.

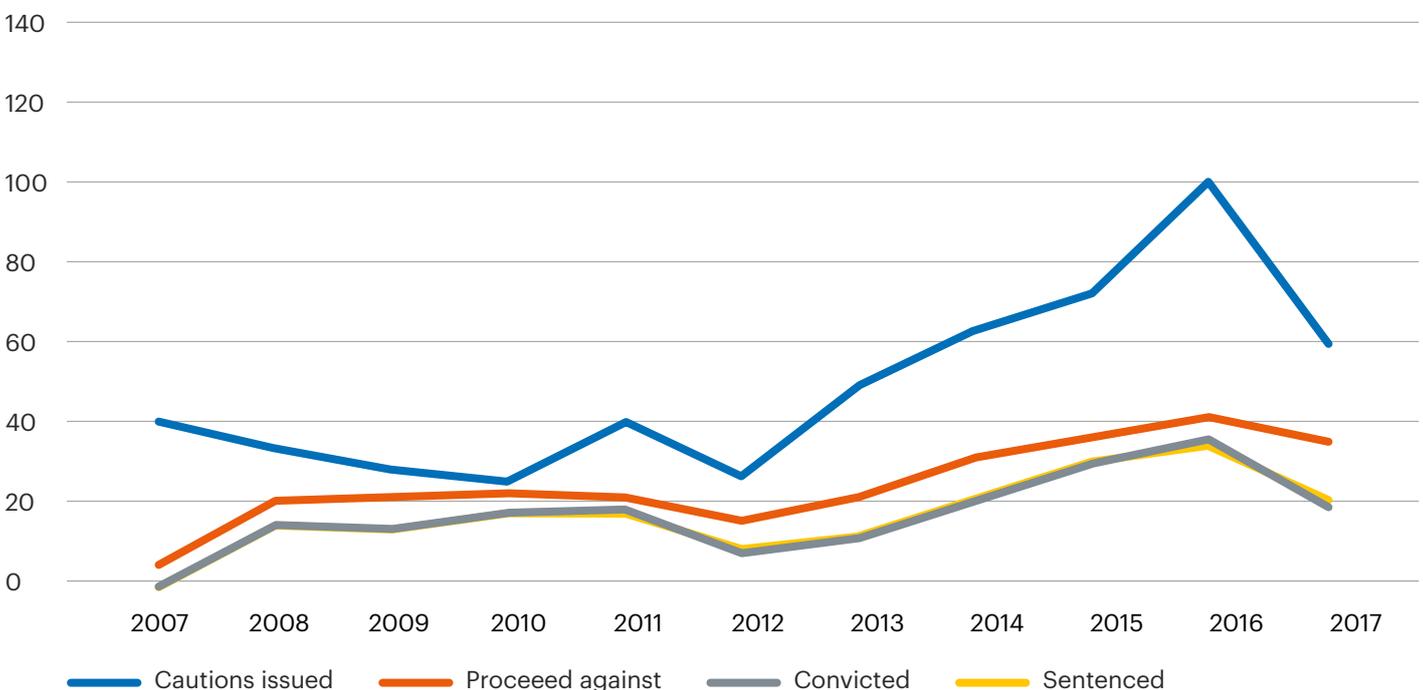


Figure 1: Ministry of Justice statistics on charges against Home Office crime code 86/2 for juveniles

1 UK Government (1978). “Protection of Children Act 1978”. <https://www.legislation.gov.uk/ukpga/1978/37>

2 UK Government (2018). “Criminal Justice System statistics quarterly: December 2017”. <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2017>

3 UK Government (2019). “Offence Classification Index”. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/796318/count-offence-classification-index-apr-2019.pdf

It is also interesting to note, from figure 1, that since the introduction of outcome 21 recording, charge statistics have reduced. The College of Policing (2016, p. 5)⁴ produced a briefing document as guidance for Police action in response to youth produced sexual imagery ('Sexting').

Concern around youth sexting is well established and rightly so. Since the advent of mobile technology with built in camera capabilities, the means to be able to take an image of oneself and send to others has become available. Unsurprisingly, minors adopted such practices, as well as adults. In 2009, research⁵ showed that 40% of young people between the ages of 14 and 16 said they knew peers who engaged in sexting. More recent figures⁶ show no decline in those statistics.

While there is no definition in law for "sexting" this definition from the National Society for the Prevention of Cruelty to Children (NSPCC) is useful:

Sexting is when someone shares sexual, naked or semi-naked images or videos of themselves or others, or sends sexually explicit messages."⁷

For teen (and pre-teen) sexting, the UK legislation that is applied centres on section 1 of the Protection of Children Act 1978⁸:

it is an offence for a person—

- (a) to take, or permit to be taken [or to make], any indecent photograph [or pseudo-photograph] of a child. . .; or
- (b) to distribute or show such indecent photographs [or pseudo-photographs]; or

- (c) to have in his possession such indecent photographs [or pseudo-photographs], with a view to their being distributed or shown by himself or others; or
- (d) to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs [or pseudo-photographs], or intends to do so

While the legislation was updated in:

- s45 2003 Sexual Offences Act⁹ (extending PCA offence from under 16 under 18)
- s67 2015 Serious Crime Act¹⁰ (extending legislation to include sexual communication with a child)

the act of production and distribution of an indecent image of a minor remained fundamentally connected with the 1978 legislation.

This legislation makes it illegal for someone to generate and distribute an indecent image of a child. Clearly in the event of self-generation and sharing, the victim will also be the perpetrator under this legislation. The legislation was introduced and debated in a time before the day when someone might self-generate an indecent image of themselves from their bedroom and have it passed around many recipients with the touch of a button could have ever been envisioned. However, in the modern digital world, we have a legislation tension between on the one hand protecting the victim and on the other hand addressing the illegality of the generation and sharing.

4 College of Policing (2016). "Police action in response to youth produced sexual imagery ('Sexting')". [https://www.college.police.uk/News/College-news/Documents/Police_action_in_response_to_sexting_-_briefing_\(003\).pdf](https://www.college.police.uk/News/College-news/Documents/Police_action_in_response_to_sexting_-_briefing_(003).pdf)

5 Phippen, A. (2009). "Sharing Personal Images and Videos Among Young People". South West Grid for Learning, November 2009.

6 UK Safer Internet Centre, Netsafe New Zealand, Office of the Australian eSafety Commissioner (2017). "Young People and Sexting – Attitudes and Behaviours". https://www.esafety.gov.au/-/media/cesc/documents/corporate-office/young_people_and_sexting_attitudes_and_behaviours.pdf.pdf

7 NSPCC (2019). "Sexting – Advice for Professionals". <https://learning.nspcc.org.uk/research-resources/briefings/sexting-advice-professionals/>

8 UK Government (1978). "The Protection of Children Act 1978". <http://www.legislation.gov.uk/ukpga/1978/37>

9 UK Government (2003). "Section 45, Sexual Offences Act 2003".

10 UK Government (2015). "Section 67, Serious Crime Act 2015". <https://www.legislation.gov.uk/ukpga/2015/9/section/67>

Those who produce images of themselves and send to others, sometimes voluntarily, sometimes as a result of pressure or coercion¹¹ risk criminalisation should knowledge of this self-generation be made public and reported to the police. While many instances of youth self-generation were private and went no further than the intended recipient, there were also many that did. And as a result of further distribution victims were often abused or pressured into other harmful behaviours¹². Therefore, victims would disclose the abuse to adults with responsibility for their safeguarding (parents, school teachers, etc.), which would often result in police involvement and if police were made aware of the production and distribution of an indecent image of a minor, it would have to be recorded as a crime. Even if no further action was taken, the recording of a crime could be recalled in the event of a future criminal records check (for example a Disclosure and Barring Service check) which could have severely impacted on the “offender’s” future.

As a result of high-profile cases¹³ and resultant media pressure that the criminalisation of a minor for the self-generation of an indecent image seemed disproportionate, in winter 2016 the College of Policing¹⁴ issued its own guidance, which allows a sexting incident to be reported and recorded, without the child ending up with a criminal record. In order to provide a middle ground between the incident going unreported, and the image producer/victim ending up with a criminal record, guidance was issued on something referred to as an “Outcome 21” response:

Further investigation, resulting from the crime report, which could provide evidence sufficient to support formal action being taken against the suspect is not in the public interest – police decision.

Nevertheless, there is still complexity within this given that all sexting incidents are not the same. While a peer to peer exchange might be consensual, other factors, such as exploitation, coercion, or deception, can prompt young people’s sexting behaviours.

A minor may be coerced into self-generating an image as a result of inter-personal pressure or more malicious activity such as blackmail, which often features threats to redistribute other sexual images of the young person. In cases such as these, there is a public interest in sanctioning the behaviour of the offending party. In these instances, there would be no recording of crime against the producer’s name, and no move to prosecute would take place. However, the guidance did make it clear that this recording could only be used in the event that there was no evidence of harmful or abusive intent and/or acts associated with the act of sharing the image:

Outcome 21 may be considered the most appropriate resolution in youth produced sexual imagery cases where the making and sharing is considered non-abusive and there is no evidence of exploitation, grooming, profit motive, malicious intent (e.g. extensive or inappropriate sharing (e.g. uploading onto a pornographic website) or it being persistent behaviour. Where these factors are present, outcome 21 would not apply.

This development was viewed as a progressive step forward in policing, while still being constrained by the limitations of the legislation. However, there are still anecdotal concerns that while this recording option was available to police officers, its application was disproportionate and inconsistent across the country. As a result, there was a risk that children and young people engaging in sexting practices were falling victim to a postcode lottery where in some instances they would be arrested for doing something that in another location would be recorded as an Outcome 21 incident.

Due to these concerns we conducted a Freedom of Information request to all police forces in the UK, to determine firstly the volume of arrests of minors under Home Office crime code 86/2, and also the number of outcome 21 recordings made against minors related to image offences, since December 2016.

11 UK Safer Internet Centre, Netsafe New Zealand, Office of the Australian eSafety Commissioner (2017). “Young People and Sexting – Attitudes and Behaviours”. https://www.esafety.gov.au/-/media/cesc/documents/corporate-office/young_people_and_sexting_attitudes_and_behaviours_pdf.pdf

12 Phippen, A. (2016). “Children’s Online Behaviour and Safety: Policy and Rights Challenges” Phippen, A. Palgrave.

13 Ward, V. (2015). “Teenage Boy Added to Police Database for Sexting”. <https://www.telegraph.co.uk/news/uknews/crime/11840985/Teenage-boy-added-to-police-database-for-sexting.html>

14 College of Policing (2016). “Police action in response to youth produced sexual imagery (“Sexting”)”. [https://www.college.police.uk/News/College-news/Documents/Police_action_in_response_to_sexting_-_briefing_\(003\).pdf](https://www.college.police.uk/News/College-news/Documents/Police_action_in_response_to_sexting_-_briefing_(003).pdf)

The specific wording of the request was:

- a. Please could you provide details of the number of arrests related to the taking, making or distribution of an indecent (or pseudo sexual) image of a child (home office code 86/2) where suspect was under the age of 18 since December 2016.
- b. If you hold the information, please could you also provide details of the number of arrests related to the taking, making or distribution of an indecent (or pseudo sexual) image of a child (home office code 86/2) where suspect was under the age of 14 since December 2016.
- c. Please could you provide the total number of crimes related to the taking, making or distribution of an indecent (or pseudo sexual) image of a child (home office code 86/2) where suspect was under 18 that have been recorded as Outcome 21, since December 2016.
- d. If you hold the information, please could you also provide the total number of crimes related to the taking, making or distribution of an indecent (or pseudo sexual) image of a child (home office code 86/2) where suspect was under the age of 14 that have been recorded as Outcome 21 since December 2016

We specifically asked for data for those under 14, as well as under 18, to determine whether those who were pre-teen, or barely teenagers, were being arrested under this legislation and whether outcome 21 was being applied in these cases.

We acknowledge that, as with any Freedom of Information request related to crime data held, that response will not allow us to explore context of activity, for example differentiating between those who might have self-generated, those who might have shared self-generated images, and those who might have accessed indecent images of minors online. We also acknowledge that, as with any crime data, the context of the crime is not known and therefore specific inference to behaviours cannot be made.

However, Freedom of Information data is useful to look broadly at practice across different forces to determine consistency of approach and, specifically in this case, whether outcome 21 is being applied consistently. Given the rationale for the application of outcome 21 recording was that it would reduce the criminalisation of children, or the recording of crimes against them, for actions with little public interest or criminal intent, this data is important to determine whether intention has transferred into practice.

After a period of 3 months (far in excess of the 20 day period public bodies are, by law, expected to respond to a Freedom of Information request) we had received useful responses from 30 forces. In addition to these responses we also had two response with no data, and 3 forces claiming exemption under section 12(1) of the Freedom of Information Act¹⁵. Which, given that we had received responses from 32 forces that we could process, does highlight differences in both crime recording and processing across different organisations. We should also note that for two responses we were informed that the force does not store outcome 21 recording information.

Due to differences in recording and retrieval, we are mindful that we should not directly compare responses from different forces. Therefore, while we present response data in tabular and graphics forms to illustrate types of response, we would caution readers from making inferences between forces.

¹⁵ The processing of the request would be too time consuming or costly to the organisation to fall under the expectations of the act.

| | Arrests 14-17 | Arrests <14 | OC21 14-17 | OC21 <14 |
|--------------------------------|---------------|-------------|------------|----------|
| Avon and Somerset Constabulary | 8 | 0 | 85 | 70 |
| Bedfordshire Police | 2 | 0 | 67 | 29 |
| Cambridgeshire Constabulary | 10 | 0 | 17 | 34 |
| Cheshire Constabulary | 4 | 0 | 0 | 10 |
| Cleveland Police | 3 | 0 | 2 | 0 |
| Derbyshire Constabulary | 3 | 7 | 300 | 204 |
| Devon & Cornwall Police | 2 | 0 | 103 | 43 |
| Dorset Police | 2 | 0 | 103 | 43 |
| Durham Constabulary | 3 | 0 | 9 | 1 |
| Gloucestershire Constabulary | 6 | 1 | 78 | 31 |
| Greater Manchester Police | 6 | 3 | 414 | 495 |
| Gwent Police | 4 | 0 | 0 | 0 |
| Hampshire Constabulary | 15 | 1 | 2 | 0 |
| Hertfordshire Constabulary | 5 | 0 | 117 | 67 |
| Kent Police | 15 | 3 | 103 | 31 |
| Leicestershire Police | 8 | 0 | 38 | 90 |
| Lincolnshire Police | 7 | 0 | 171 | 117 |
| Merseyside Police | 6 | 0 | 80 | 42 |
| Metropolitan Police Service | 102 | 10 | 54 | 166 |
| Norfolk Constabulary | 14 | 0 | 75 | 60 |
| North Yorkshire Police | 18 | 2 | 0 | 2 |
| South Yorkshire Police | 0 | 0 | 0 | 2 |
| Staffordshire Police | 5 | 0 | 365 | 294 |
| Suffolk Constabulary | 17 | 1 | 99 | 67 |
| Sussex Police | 8 | 3 | 70 | 49 |
| Thames Valley Police | 16 | 1 | 257 | 227 |
| Warwickshire Police | 1 | 0 | 77 | 30 |
| West Mercia Police | 8 | 0 | 112 | 58 |
| West Midlands Police | 10 | 5 | 153 | 367 |
| Wiltshire Police | 7 | 1 | 0 | 0 |

Table 1: Arrest and outcome 21 recording from Home Office crime code 86/2 from 30 police forces

What is clear from these results is:

- Children and young people are still being arrested under crime code 86/2
- In some forces (10 in total), while small in number, arrests are being made to those under the age of 14.
- Outcome 21 recording is being applied by most forces, to varying levels
- The number of outcome 21 recordings, in more cases, far exceeds the number of arrests, which is a positive thing.

So the data reports broadly that outcome 21 has impacted across forces and is being used to record crimes without risk of criminalisation for young people. However, the data does suggest that there is not consistent practice across forces. In the table

below, we compare number of arrests per force with number of outcome 21 recordings, to measure proportionality. While again being careful not to make direct comparisons between forces, we can see major differences in practice:

| | % arrest/oc21 14-17 | % arrest/oc21 <14 |
|--------------------------------|----------------------------|-----------------------------|
| Avon and Somerset Constabulary | 9.41 | 0.00 |
| Bedfordshire Police | 2.99 | 0.00 |
| Cambridgeshire Constabulary | 58.82 | 0.00 |
| Cheshire Constabulary | N/A | 0.00 |
| Cleveland Police | 150.00 | N/A |
| Derbyshire Constabulary | 1.00 | 3.43 |
| Devon and Cornwall Police | 1.94 | 0.00 |
| Dorset Police | 1.94 | 0.00 |
| Durham Constabulary | 33.33 | 0.00 |
| Gloucestershire Constabulary | 7.69 | 3.23 |
| Greater Manchester Police | 1.45 | 0.61 |
| Gwent Police | N/A | N/A |
| Hampshire Constabulary | 750.00 | N/A |
| Hertfordshire Constabulary | 4.27 | 0.00 |
| Kent Police | 14.56 | 9.68 |
| Leicestershire Police | 21.05 | 0.00 |
| Lincolnshire Police | 4.09 | 0.00 |
| Merseyside Police | 7.50 | 0.00 |
| Metropolitan Police Service | 188.89 | 6.02 |
| Norfolk Constabulary | 18.67 | 0.00 |
| North Yorkshire Police | N/A | 100.00 |
| South Yorkshire Police | N/A | 0.00 |
| Staffordshire Police | 1.37 | 0.00 |
| Suffolk Constabulary | 17.17 | 1.49 |
| Sussex Police | 11.43 | 6.12 |
| Thames Valley Police | 6.23 | 0.44 |
| Warwickshire Police | 1.30 | 0.00 |
| West Mercia Police | 7.14 | 0.00 |
| West Midlands Police | 6.54 | 1.36 |
| Wiltshire Police | N/A | N/A |

Table 2: Proportion of arrest to outcome 21 recording

In the event of a proportion of 0% this means that there are no arrests made for that force. An entry of N/A means no outcome 21 recording has been made. Again, while it is difficult to comment on specific cases because we cannot determine the nature of specific crimes and therefore the rationale for arrestor use of f outcome 21 recording, we would, if we were to view outcome 21 recording as a positive alternative to the criminalisation of minors, expect the proportion of arrests to outcome 21 recording to be low. However, we can see with this data that while in most forces this is the case, there are some with extremely high percentages, which suggest a minor is far more likely to be arrested for this sort of crime than receive an outcome 21 recording. The data also strongly highlights the inconsistencies of the application of outcome 21 recording across forces.

Therefore, we can report a mixed picture regarding the challenges of policing youth involved in the possession and distribution of indecent images of minors, and the clear relationship between this and teen sexting. We can see that since the advent of outcome 21 recording, some forces are applying this a great deal, which is preferable to arrest (albeit with the caveat that there are cases where the arrest of a minor for possession and distribution of indecent images of a minor is entirely valid, particularly if done with malicious intent or coercion).

However, there is a flip side to these statistics. The Ministry of Justice crime data would suggest that only small numbers of cases involving minors ever enter the criminal justice system. In our data we have evidence of, in total, 358 arrests of minors under Home Office code 86/2 over the response period. While Ministry of Justice data on 2018 figures

is not yet available, we know from their reporting of 2017 that 54 minors were proceeded against for these crimes and 38 were convicted that year. This would suggest that the Crime Prosecution Service is reluctant to proceed against minors for these crimes even after arrest. If we look at the Ministry of Justice data in figure 1 we can see that prior to 2017, the charge and proceeding numbers are also small. However, in some forces there are extremely high outcome 21 figures. Which implies, although we have no means of demonstrating causation, that since the advent of outcome 21, it is far more likely that a recording will be made. There is insufficient evidence to suggest why this is the case but it does suggest a lot more police involvement with teen sexting issues that data prior to 2016 would suggest. Which is a worrying trend because an OC21 could still be recalled in an advanced DBS check, at the discretion of the then chief constable of a given region. Therefore, we still have a subjective interpretation of the use of OC21 which could impact upon a young person's future.

In conclusion, this data presents a mixed picture. It is positive that outcome 21 recording is, in a lot of cases, being applied far more than arrest. However, we still see that arrest of minors does occur. Perhaps more concerning, however, is that the practices seem highly inconsistent across forces and young people may still be subject to a postcode lottery should they be discovered engaging in the exchange of images. Further research is needed to unpick the reasons behind the data, particularly with police, youth offending and probation services.

