PART I

THE THEORETICAL AND POLICY CONTEXT

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CONCEPTUALISING CHILDREN AS 'RISK': AN INTRODUCTION

> This bill is part of a continuing fight against the *relentless predators* who
> target our children, the *most vulnerable members of our society*. I think that
> what people have to understand is . . . that *sexual offenders are different . . .*
> No matter what we do, the minute they get back on the street, many of
> them resume *their hunt for victims*, beginning *a restless and unrelenting
> prowl for children, innocent children to molest, abuse, and in the worst cases,
> to kill*.[1]

A key emergent issue for contemporary discourses on child protec-
tion and sex offender risk management is the commission of harmful
sexual or exploitative behaviours by children and young people.
While figures vary among studies, between one-quarter and one-
half of all cases of child sexual abuse are committed by those under
age 18 (Masson and Morrison, 1999; Taylor, 2003; Erooga and
Masson, 2006; Vizard et al., 2007; Finkelhor et al., 2009; Barnardo's,
2011).[2] More recent studies demonstrate that the onset, prevalence
and range of exploitative and abusive behaviours by children and
young people among peers, particularly non-contact offences in the
digital world, are areas of growing concern (Shariff, 2015).[3] In this
respect, some of the most recent and contentious debates have

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[1] Mr Schumer, US Congressional Record, Vol. 142, No. 6, Tuesday 7 May 1996, page H4453,
cited in Lynch (2002: 554) [emphasis added].
[2] Other studies report higher percentages: see e.g. Radford et al. (2011), who found that
65.9 per cent of contact sexual abuse reported by children and young people is committed by
those under age 18.
[3] See e.g. Finkelhor et al. (2000) who found that 48 per cent of online offenders in their study
were under age 18.

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centred on behaviours such as 'sexting'[4] and 'cyber bullying'.[5] These phenomena are also illustrative of what has been termed 'peer-to-peer grooming' (McAlinden, 2012a: 133–36, 182–84) and exploitative and abusive behaviours *by* and *among* as well as *of* young people. Despite the growing statistical prominence and significance of these behaviours, academic, official and public discourses have lagged someway behind.

Indeed, while peer-based sexual exploitation within age-appropriate relationships is among the fastest-growing forms of harm experienced by children (McAlinden, 2012a, 2014b), the complexity and nuances of such behaviour are insufficiently developed or understood in the relevant legal, sociological and criminological literature. Academic as well as professional understandings of sexually harmful or exploitative behaviours committed by children and young people are largely split between whether they represent innocent exploration and an experimental transitory phase and whether they are early indicators of the onset of something more prolonged and sinister (Craisatti et al., 2002; Taylor, 2003; Lussier and Davies, 2011; Van den Berg, Biljeveld and Hendriks, 2017).[6] The resulting social ambiguities surrounding what amounts to sexualised forms of risk to children also have implications for the formulation of policy and legal responses and the criminalisation of such behaviour.

Notwithstanding the recent prominence of terms such as 'sexting' or 'cyberbullying' in public consciousness, relatively little attention has been afforded to these issues at the public policy level. This is in large part due to the fact that they directly challenge traditional 'risk' paradigms and the culturally and institutionally entrenched notion that children and young people as sexual 'innocents' may be the victims but not the perpetrators of such offences (McAlinden, 2014b). Such puritanical conceptualisations of children and childhood are part of the broader process of social and cultural 'denial' (Cohen, 2001) concerning sexualised behaviour by children and young people and the deep-seated desire to avoid the rather uncomfortable reality that children may represent a source of harm to other children.

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[4] Findings from a range of studies have revealed rates of between 15 and 40 per cent among young people depending on age parameters and how sexting is defined and measured: see Ringrose et al. (2012) for an overview.

[5] NSPCC figures, for example, show that 38 per cent of young people have been affected by cyberbullying (NSPCC, 2013).

[6] There are few follow-up recidivism studies among children and young people displaying HSB, with most showing low reconviction rates for sexual crime of around 5–15 per cent: see e.g. Nisbet et al. (2004), Worling and Långström (2008).

The overall purpose of this book is to critically examine contemporary popular and state-led constructions of risk concerning children and young people who display harmful sexual or exploitative behaviour contextualised by an interdisciplinary perspective, drawing on the legal, sociolegal, criminological, sociological and psychological literature. Its four principal objectives are (i) to chart the emergence of the issue of sexual abuse or exploitation by children and young people as a distinct societal problem and critically examine why the notion of children as posing a 'risk' to others, as opposed to being 'at risk', has failed to capture the attention of legislators and policymakers; (ii) to highlight the nuances and complexities of harmful sexual or exploitative behaviours committed by children and young people, including new and emerging forms; (iii) to critically analyse social, legal and organisational responses to these behaviours and the related societal, policy and professional challenges they present; and (iv) to consider how we might reframe the current policy agenda to better capture the complexity of such risks and the evolving nature of contemporary childhood and adolescence.

As illustrated by the opening quotation, there is a range of socially constructed and entrenched assumptions concerning child sexual abuse or exploitation. These cultural constructs, which have also permeated policy, legal and organisational discourses, relate in particular to the respective identities of 'ideal' victims (Christie, 1986: 18) as pure and vulnerable and 'imagined offenders' (McAlinden, 2014b: 181) as 'predatory' and 'other' than us (Becker, 1963; Garland, 2001). This books unpacks and critically examines discourses on 'risk' related to harmful sexual or exploitative behaviour concerning children; challenges and confronts common misconceptions surrounding this behaviour within academic, official and public discourses; and highlights the highly complex processes of sexual exploitation and abuse by children and young people which occur in a range of contexts. The book also argues that because of the pragmatic difficulties of drawing clear boundaries between normative and harmful sexual behaviour between peers, current legal and policy frameworks are often limited in their response to peer-based sexual abuse and exploitation.

DEFINING TERMS

Given the ambiguities in popular discourse, it is important to define terms. A necessary starting point is what is meant by 'children and

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young people'. Although the age of majority by which children are legally regarded as adults is 18 throughout most of the United Kingdom, as it is within the European Union,[7] there are anomalies within the law in terms of how a child and the state of childhood are defined across a range of social activities and contexts. For example, age differentials vary widely from the age at which children are permitted to vote (16) or register to vote (16), drink (16)[8] or buy alcohol (18), drive a car (17), get married without parental consent (18), engage in consensual sexual activity (16),[9] be held criminally responsible (10)[10] or give unsworn evidence in court (14).[11] In particular, there is a fundamental disjuncture between the age of consent and the age of criminal responsibility and between legal and policy thresholds of victimhood (in itself based on the age of consent) across child sexual abuse (age 16) and indecent images of children (age 18). Viewed collectively, myriad ambiguities surround the precise legal demarcation of childhood/adulthood and the status of children as competent social actors. It will be argued that the relationship between sociocultural and legal constructions of children and childhood are circuitous and mutually reinforcing. That is, on the one hand, social constructions of childhood, and in particular a romanticised view of children, are reified by legal frameworks that, for the most part, are premised on the notions of children as victims rather than perpetrators. At the same time, such age-based legal definitions of victimhood, which may obfuscate contemporary social and cultural norms around sexual behaviour among children and young people, also have knock-on effects and potential deleterious consequences for identifying risk and protecting children.

Moreover, prescriptive age-based distinctions in assessment and intervention, which commonly distinguish between those under age 12 from those ages 12–18, can be determining factors in whether a child

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[7] In Scotland, however, the age of majority is 16: see the Age of Legal Capacity (Scotland) Act 1991. See also the United Nations Convention on the Rights of the Child (1989), art 1, which defines a child in broad terms as 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'.

[8] Including wine, beer or cider, but excluding spirits.

[9] Note that children under age 16 may be given contraceptive advice or treatment by a healthcare professional if they are deemed *Gillick* 'competent': see *Gillick* v. *West Norfolk and Wisbech AHA* [1986] AC 112. See further Chapter 6.

[10] The age of criminal responsibility across the UK is one of the lowest in the world (where the median lies at 14): 10 in England and Wales and Northern Ireland, and 12 in Scotland where it was raised from the previous age of 8.

[11] See the Youth Justice and Criminal Evidence Act 1999, s 55(2) in the context of England and Wales, and its equivalent in Northern Ireland – the Criminal Evidence (NI) Order 1999, art 33(2).

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displaying harmful sexual behaviour (HSB) enters the child protection or criminal justice system (Hackett, 2014; Ashurst, 2016). Indeed, much of the existing literature has tended to focus on adolescents rather than children with existing policy frameworks often lacking specific provision for preadolescent children in the age 10–12 bracket. For the purposes of this book, however, and while drawing out important age-based differences in behaviours, in tandem with the literature on HSB, the collective term 'children and young people' is adopted throughout reflecting the legal definition of 'child' – that is, those under age 18.

While a comprehensive discussion of the nature and extent of harmful sexual or exploitative behaviours by children and young people among peers is undertaken in Part II of the book, at this juncture it is also useful to broadly outline the nomenclature and scope of such behaviours. In relation to HSB, one much cited definition is that espoused by Palmer (1997: 11): 'Young people (under 18) who engage in any form of sexual activity with another individual, that they have powers over by virtue of age, emotional maturity, gender, physical strength, intellect and where the victim in this relationship has suffered a betrayal of trust.' This definition highlights the abuse and imbalance of power between the 'perpetrator' and the 'victim' which lies at the heart of peer forms of abuse. The broad term 'HSB', which focuses on the behaviour rather than the person, is widely accepted and adopted by contemporary policymakers and practitioners in preference to terms such as 'abuse' or 'abusive'; or 'offender' predicated terms such as 'abuser', 'perpetrator' or 'offending'.[12] This more neutral expression is assumed to help avoid the negative labelling and stigma associated with such terms, while also acknowledging the developmental context, stemming from biological or social influences, and the potential for change (see Calder, 2002; Hackett et al., 2006, 2014).[13] Indeed, this diverse term may include a range of behaviours encompassing both contact (such as touching, masturbation and penetration) and non-

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[12] Earlier labels, for example, include 'children who molest' (Johnston, 1989), 'peer abusers' (Ambert, 1994), 'sexually aggressive children' (Burton et al., 1997), 'sexually abusive behaviour' (Skuse et al., 1998), 'young sexual abusers' (Masson and Morrison, 1999), 'children and young people who sexually abuse' (Erooga and Masson, 2006), 'juvenile sexual offenders' (Barbaree and Marshall, 2008; van den Berg et al., 2017), which are variously used to describe children and young people displaying HSB.

[13] A minority of scholars and practitioners use the alternative 'sexually harmful behaviour' (SHB) (see e.g. Griffin and Beech, 2004; McCrory et al., 2008; Potter and Reeves, 2015). This term, however, is generally set aside as being much narrower in focus, as it confines 'harm' to being of a sexual nature and the range of those affected by the behaviour to the immediate victim (see further Chapter 6).

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contact behaviours (such as grooming, exhibitionism, voyeurism, and sexting or recording images of sexual acts via smart phones) (Ashurst, 2016).

'Peer-on-peer' abuse is an umbrella term that potentially captures a broad range of abusive behaviours. Research by Firmin and others (Firmin, 2013; Firmin and Curtis, 2015) has classified these into four main categories: (i) *abuse*, including sexual abuse, and control within intimate relationships; (ii) sexual abuse or exploitation within the context of exploitative *relationships or contexts*; (iii) sexual behaviour outside of the normative *parameters of development* (see e.g. Hackett, 2010); and (iv) within the context of serious violent *offences* (such as rape or assault). The majority of cases are not processed through the criminal justice system. However, since it is not possible to predict which children and young people displaying inappropriate or problematic sexual behaviours will develop into those who cause harm, it is important to identify and respond to inappropriate sexual behaviour at an early stage. In this vein, distilling this list further, the analysis in Part II of the book will situate peer-to-peer sexualised behaviours along a continuum of normal, problematic and harmful sexual behaviours by developing a typology of *harmful* sexual behaviour broadly premised on *peer-based relationships*, *peer-based recruitment* and *peer-based risk*.

The term 'sexting' is a portmanteau of 'sex' and 'texting' and is generally used to describe the act of sending or posting sexually suggestive or explicit messages and/or photographs via mobile phones or social networking sites (Ringrose et al., 2012: 9; Lee and Crofts, 2015: 454). As Lee and Crofts (2015: 454) note, citing the Law Reform Committee of Victoria (2013: 15), the term 'encompasses a wide range of practices, motivations and behaviours', from the sharing of images between a girlfriend and boyfriend, to the sharing of that image with someone else, to the recording of a sexual assault and even to the sending of an explicit image or text by an adult to a child for the purposes of sexual grooming. The police and courts distinguish between different levels of 'child pornography'[14] (Tate, 1990; Lanning, 1992; Taylor et al., 2001; O'Donnell and Milner, 2007) or 'indecent images of

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[14] In the late 1990s, the COPINE scale was developed as an acronym from the project of the same name ('Combating Paedophile Information Networks in Europe') distinguishing 10 levels ranging from nudist or erotic images to those depicting sexually explicit activity and assault (Quayle, 2008). Subsequently, the Court of Appeal in *R v. Oliver, Hartrey and Baldwin* (2002) EWCA Crim 2766 further refined this classification of indecent images of children into five categories and produced sentencing guidelines based on these categories, ranging from images of erotic posing to penetrative sexual activity and sadism.

children' as the now often preferred term (Taylor and Quayle, 2003; Gillespie, 2005). The focus of this book is primarily on children sharing naked, often 'posed' erotic or suggestive images of themselves among peers, rather than sexually explicit activity, on both a consensual and non-consensual basis. Since not all indecent images of children are necessarily illegal (Taylor et al., 2001; Gillespie, 2010), it is argued that indecent images shared among children and young people may prove difficult for law enforcement to classify in terms of where victimisation is thought to crystallise. Cyberbullying, broadly defined, is the use of the Internet and other mobile technologies to harass, threaten or harm other people, usually in a deliberate and sustained manner (Kofoed and Ringrose, 2011). Although cyberbullying always has a harmful but not necessarily a sexual element, this book is concerned with sexualised forms of cyberbullying such as sexting.[15]

'Peer-to-peer grooming' – a term rarely featured in the existing literature – is an extension of the broader concept of 'grooming'. The latter has been used to describe the preparatory actions whereby the offender sets up opportunities to abuse by gaining the trust of the child or others to both facilitate abuse and subsequently prevent disclosure (Salter, 1995, 2003; McAlinden, 2006, 2012a). This study takes as its starting point, the definition employed previously in my earlier broader study on adult-child grooming:

> (1) the use of a variety of manipulative and controlling techniques (2) with a vulnerable subject (3) in a range of inter-personal and social settings (4) in order to establish trust or normalise sexually harmful behaviour (5) with the overall aim of facilitating exploitation and/or prohibiting exposure. (McAlinden, 2012a: 11)

In this vein, the analysis also sets out to explore whether the dynamics of victim selection and vulnerability and the processes of normalisation of HSB may be intrinsically different among peers; whether grooming can also be used to describe the actions of children in establishing trust with another child or young person to facilitate harmful sexual or

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[15] Cyberbullying also includes a number of other behaviours such as 'flaming' (verbal exchanges between individuals such as in chat rooms), 'denigration' (spreading information that is untrue or derogatory), 'masquerading' (creating fake profiles or pretending to be someone else), 'outing and trickery' (sharing personal or embarrassing information about another individual with others), 'happy slapping' (the video recording and uploading of assaults) as well as online 'harassment' or stalking ('cyberstalking') or 'exclusion' from online groups or exchanges (see Kowalski et al., 2012: Ch. 3; Pyżalski, 2012).

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exploitative behaviour either by themselves or others; or whether altogether different motivations and processes might apply.

Although there is some overlap in the scope of these behaviours, for example, sexting may be a form of cyber or online bullying between peers, important distinctions also emerge. Sexting and sexualised cyberbullying are focused on children's behaviour in the digital or virtual world, whereas peer-to-peer grooming can take place in both online as well as offline settings. Whereas the online context more often involves peers, the offline setting might also involve an older child grooming a younger sibling as a precursor to intra-familial abuse as well as extrafamilial abuse (e.g. Kaufman et al., 1996; Leclerc et al., 2008). Moreover, as noted earlier, while sexting may involve sending sexually explicit text as well as indecent images or videos, it is confined more typically to posed images rather than those relating to explicit sexual activity. Consequently, the book adopts a broad definition of 'child sexual abuse and exploitation' or 'harmful sexual or exploitative behaviour' in tandem with growing professional and academic recognition of emerging wider forms of sexualised harms to children beyond child sexual abuse (Chase and Statham, 2005; Pearce, 2009, 2013a; Melrose and Pearce, 2013; Firmin and Beckett, 2014).[16] That is, while HSB is more commonly associated with perpetrators and child sexual exploitation (CSE) with victims, the behaviours of children and young people may be part of a continuum which encompasses both categories (see Chapter 6).

As discussed further, there are complex challenges, both methodological and cultural, in accurately defining contemporary forms of child sexual exploitation and abuse (see generally Wyatt and Peters, 1986; Haugaard, 2000; Corby et al., 2012: Ch. 4). Such terms also vary across different research studies and policy and organisational contexts. As Melrose (2013: 166) contends, 'the vagueness of the term "sexual exploitation" and the different practices that might be deemed to constitute it add to this complexity.' Although the broader term of 'child sexual abuse' is often understood to involve forcing or enticing a child to take part in sexual activities (Sgori et al., 1982: 9; Finkelhor, 1991: 80; Alao and Molojwane, 2008: 10),[17] children may also be

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[16] See also K Starmer QC (then director of public prosecutions), 'The Criminal Justice Response to Child Sexual Abuse: Time for a National Consensus', 6 March 2013, www.cps.gov.uk/news/articles/the_criminal_justice_response_to_child_sexual_abuse_-_time_for_a_national_consensus/.

[17] See also NSPCC: www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/child-sexual-abuse/.

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