

The NSPCC's response to Consultation on the rules for Mandatory Polygraph testing for Sex Offenders

Introduction

The National Society for the Prevention of Cruelty to Children (NSPCC) is the UK's leading charity specialising in child protection and the prevention of cruelty to children. The NSPCC's purpose is to end cruelty to children. We seek to achieve cultural, social and political change - influencing legislation, policy, practice, attitudes and behaviours for the benefit of children and young people. This is achieved through a combination of service provision, lobbying, campaigning and public education.

The NSPCC exists to end cruelty to children through a range of activities which aim to:

- help children who have suffered abuse overcome the effects of such harm;
- prevent children from suffering abuse;
- prevent children from suffering significant harm as a result of ill-treatment;
- help children who are at risk of such harm; and
- protect children from further harm.

We have more than 180 teams and projects throughout England, Wales and Northern Ireland. Their work includes:

- Providing telephone support for C&YP via ChildLine.
- Providing telephone support for adults concerned about the welfare of a child
- Providing support for vulnerable children, young people and their families to help keep these C&YP safe and well cared for
- Providing services for children, young people who need help to overcome the impact of abuse.

General comments

It is clear that polygraph testing can be helpful in facilitating disclosure on the part of sex offenders and potentially in obtaining a more accurate perspective on risk. We agree that there is evidence from the voluntary pilot that in some cases the polygraph can help to improve the treatment process and prevent offenders re-offending.¹ However, it is important to be clear that because the test is far from being 100% accurate it will not always be the case that polygraph testing can help prevent reoffending.^{2 3} We consider that if

¹ Grubin,D. (2006), Polygraph Pilot Study: Final Report, National Probation Directorate

² British Psychology Society (2004) 'A review of the current scientific status and fields of application of Polygraphic Deception Detection' – available at

polygraph testing is to be used more widely then there needs to be a guarantee of a shared and accurate understanding on the part of agencies using the polygraph of the limitations of seemingly 'scientific' test results. This needs to be achieved by a process of rigorous training and checks.

We think it is important to be clear about the use and value of polygraph testing and the limitations of its use in all of the guidance and training that are used to inform the development of mandatory polygraphy. In our view this should be clearer than it is currently in the consultation document where it states 'evidence from the polygraph would be used as part of an overall assessment as to the risk an offender presents to the public.' This explains that evidence from the polygraph will not be taken at face value but will form part of the background evidence and further investigation. We agree with this approach but we think it is essential that the regulations and guidance are even more explicit about the ways in which the polygraph should be used. The test should be used to facilitate disclosure and not as a concrete indicator of offending behaviour.

We have major concerns about the fact that the validity or accuracy of polygraph testing is highly variable⁴. Although its use in treatment is less about accuracy and more about facilitating disclosure, there is still an issue about how the polygraph is interpreted, both where offenders lie to 'beat' the test, and also where they may make false admissions.⁵ It is essential that test results from the polygraph are interpreted with the same caution as the results of other treatment tools. We are aware that the initial pilot was voluntary in nature and that this pilot will be substantially different in piloting a mandatory scheme which will potentially inform a process of wider implementation. This mandatory pilot will inevitably set the context and standards for any wider roll-out. We have concerns that there is a risk that if it is rolled out more widely without sufficiently explicit information and guidance about appropriate use it may be inappropriately relied on as an indicator of offending behaviour. As with all such tools, it should only be used in the context of sound professional judgement of trained and experienced practitioners.

Are the proposals adequate for regulating mandatory polygraphy for sex offenders in the UK?

http://www.bps.org.uk/downloadfile.cfm?file_uuid=9081F97A-306E-1C7F-B65E-570A3444FF4D&ext=pdf

³ The accuracy of polygraph testing remains a matter of conjecture. See www.barristermagazine.com/articles/issue24/profbull.htm and British Psychological Society.

⁴ Vrij, A., Mann, S., Robbins, E. & Robinson, M. (2006) '[Police officers' ability to detect deception in high stakes situations and in repeated lie detection tests](#)', *Applied Cognitive Psychology* 20(6): 741 - 755

⁵ Grubin, D. et al (2004) 'A prospective study of the impact of polygraphy on high risk behaviour in adult sex offenders', *Sexual Abuse: A journal of research and treatment*, Vol 16, Issue 3.

The current proposals do not offer enough consistency or stringency in regulating the use of the polygraph and we would like to see further regulations outlined in these proposals. In particular we would like to see:

- A clear assessment and qualification process for those undertaking the polygraph to ensure they are competent to do so
- The use of the polygraph to be subject to independent inspection to ensure appropriate standards of use
- Greater detail about what training should comprise
- Clear rules about how the information can be used and shared with others
- An explicit assurance detailed in the regulations/guidance that children under 18 will not be subject to polygraphy.

These are explained in more detail below.

Are there aspects of regulation for mandatory polygraph testing that have been missed?

Give the concerns described above we think that the regulations should be very clear in setting minimum standards to qualify someone to undertake an examination. This should require more than the examiners simply completing a training course and it would be useful to be clear about what ‘demonstrating knowledge of or competence’ should actually consist of. We consider that those using these tools should be able to demonstrate through an assessment process their full understanding of the polygraph and these regulations should make very clear what such an assessment process should comprise.

Although the guidance outlines that there will be an overall supervisor who reviews the work of the examiners it will be important that they review not just the examination process itself but also the interpretation of the examination and subsequent activities relating to the results. We welcome the fact that the supervision and treatment of offenders will not be delivered by the same person undertaking the examination, but it would be useful to set out clear rules about how this should work in practice. For example, if those involved in the supervision and treatment have access to the examination results it will be important to check that they too have an understanding of the testing and its limitations. The way in which information from the test is shared and used is a critical issue that needs to be kept under review. The polygraph is perceived to be a powerful tool to use with offenders because it is construed as a ‘scientific’ examination capable of ‘revealing’ their true behaviour. This will potentially have a similar power for those involved in the management and supervision arrangements and it is important to ensure widespread training on the polygraph by all of those who may be called upon to interpret test results in the course of their work as they need to be fully aware of its limitations.

It also needs to be made clear how the overall supervisor is reviewed, and the regularity and nature of the reviewing process both for the examiners and for the supervisor. The consultation document states that examiners’ work

should be reviewed 'regularly' but gives no indication of what regularly should mean in this context. We consider that the current arrangements are very loose and the wording could be widely and variedly interpreted. We would recommend that there is an independent inspection of arrangements given the sensitivity and complexity of this issue and process. This inspection could form part of inspections delivered by HMI of probation, or part of the joint inspections of public protection.

It would be useful to be more explicit about the content of the training modules and the issues covered. It will be important that a significant component of the training covers issues relating to reliability as well as some of the ethical and legal issues relating to the testing process as opposed to the purely technical or scientific aspects underpinning the test. In our view a starting point for training would be clear principles about the purposes for which the test can be used, in particular to encourage disclosures rather than to be relied on as measuring risk.

Are there unnecessary conditions in the proposed legislation?

We do not consider there to be any unnecessary conditions proposed in the legislation. We think that the safeguards outlined are important and necessary and should be expanded further as described above.

Does the proposed legislation contain sufficient safeguards for offenders?

It is important that children and young people under 18 who exhibit sexually harmful behaviour should under no circumstances be made subject to these adult-focused arrangements to enhance the assessment and management of adult sex offenders. We consider that using the polygraph on children would contravene the following Articles of the United Nations Convention on the Rights of the Child:

- Article 16 - No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
- Article 40 - States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

The NSPCC considers that there needs to be a differential approach to children's supervision and management which recognises that children are usually highly vulnerable and will commonly have experienced abuse themselves. It is also important to note that a significant proportion of children

displaying sexually harmful behaviour have a learning disability⁶. We take the view that polygraph methods are potentially stigmatising and distressing for children and young people who may not understand the process or the outcomes. As a result they are more likely to be made anxious and intimidated. If the decision is made to use polygraph testing with under 18s there would need to be separate guidance and additional safeguards would need to be put in place including having a caring adult present specifically to support them and explain the process.

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⁶ Hackett S., Masson H., Phillips S. (2003) *Mapping and Exploring Services for Young People who have Sexually Abused Others*, University of Durham/University of Huddersfield