The investigation and prosecution of indecent images of children:

A review of sentencing outcomes since the introduction of the eCrime policy on proportionality

(Pilot Study)

July 2013

Dr Ruth McAlister, Lecturer in Criminology, University of Ulster
Dr Kieran McCartan, Associate Professor in Criminology, UWE Bristol*
Ms Josie Sollé, Research Associate, UWE Bristol

* This study was funded by the UWE Bristol through their bi-annual round of QR funding.
Executive Summary

This study examined the integrity of a new policy on proportionality concerning forensic examination in IIOC cases. The new tiered examination intends to reduce the need for complete forensic examination and categorisation of all images on a suspect's storage devices. Therefore for low or unknown risk cases eCrime will complete sufficient forensic activity to support a case and assist sentencing decisions. Findings show a marked reduction in the time taken investigate IIOC cases with positive support for the new policy in terms of reducing backlog and thereby monitoring risk more effectively. Among the recommendations contained within this report is greater communication between CIPT and eCrime in order that everyone feels valued and that decision making processes are understood effectively.
(1) Introduction

Sexual offending and in particular the sexual abuse of children has become increasingly prominent in society and in the public's awareness over the last 30 years instigating a range of social and policy responses as well as media campaigns (Yar, 2010), which have resulted in varying degrees of success (McCartan, Kemshall & Hudson, 2012; Kemshall, McCartan & Hudson, 2013). Child sexual abusers are a heterogeneous and complex population which makes them a challenging group to define, as well as manage both socially and individually (McCartan, 2012). This is somewhat exacerbated by the limitations in academic research and practical knowledge about their aetiology, online activities and the correlation between viewing IIOC and then progressing to contact offending, with this latter issue being particularly prominent in the public and policy arena at the present time. Following on from this, there are also issues relating to the definitions and criteria of child sexual abuse imagery, what the viewer uses it for and the relationship between volume/type and risk (O’Donnell & Milner, 2007), which can directly impact upon prosecution and sentencing.

The online sexual abuse of children is an international and transnational crime, as such it is an increasingly complex area to police and prosecute (McCartan & McAlister, 2012). This is exacerbated by the volume and specification of new technology (i.e., Smart phones, Smart TVs and Tablet), when connected with rapidly developing data storage techniques (i.e., the Cloud) presents a major challenge to how the possession, production and distribution of child sexual abuse imagery is policed and prosecuted (McCartan & McAlister, 2012).

The COPINE systematic framework was developed for dealing with typologies of abuse imagery rating images from least serious, indicative (level 1) through to sadism and bestiality (level 10) (Taylor & Quayle, 2003). The scale was developed with a view to focusing on the victim in relation to determining harm (Taylor & Quayle, 2003). Following a number of inconsistencies in sentencing and cases appearing at the Court of Appeal, the Sentencing Advisory Panel (SAP) published guidelines in 2002 for IIOC offences. The typology from COPINE was adapted by amalgamating the criteria into 5 categories which are used to inform judicial decisions focusing attention on those bracketed as higher levels of seriousness (O’Donnell & Milner, 2007).

Currently there is no uniform assessment process for identifying risk levels specifically for IIOC pre-sentence. In large scale investigations such as Operation Ore the volume of cases resulted in cautions being given in place of any risk assessment (Jewkes & Andrews, 2006). Similarly, the number of cases increasingly facing police forces are presented with a large quantity of exhibits that
have ever increasing storage capabilities which result in large amounts of material to analyse, which alongside competing priorities and resources create challenges for investigation (Jewkes & Andrews, 2006; O’Donnell & Milner, 2007). The question of risk, is according to Quayle (2010) difficult to quantify in itself, as in relation to Internet sexual offending it is not clear what the risk measures need to consider and the research studies that are available remain limited in providing pragmatic answers against a rapidly changing and adapting cyber world.

Currently, fast, effective justice may be compromised in respect to IIOC cases due to this growing imbalance between available police resources, particularly in this current age of austerity and cuts, as well as the need to catalogue all imagery on a suspect's data storage devices. The Public Prosecution Service (PPS) endorsed a new policy on proportionality introduced by eCrime in May 2012 whereby it was agreed that the police should determine to what extent the images in an IIOC case are counted and categorised when thresholds to obtain a maximum sentence have been achieved. The new procedure is intended to reduce the need for a gold standard forensic examination and categorisation, which uses greater resources, and therefore can cause delays in investigation and prosecution, but at the same time be robust, efficient and effective. The Police Service of Northern Ireland (PSNI) eCrime unit needs to be able to make operational decisions that should be proportional and effective in enabling forensic resources to be concentrated on the overriding objectives of reducing harm to children and bringing offenders to account. The need to use resources efficiently in this period of cuts and austerity is vital to increase efficiency, and maintain public confidence in policing IIOC cases. In doing so the PSNI will be more likely to achieve a judicial disposal, identify victims and importantly become more pro-active in identifying offenders.

(2) Methodological approach

This research is an evaluation of the current eCrime policy on proportionality. The aims of the research were to investigate:

- The integrity of the newly developed process and policy;
- Whether there has been an impact on the sentencing of IIOC;
- Who benefits from the policy and in what ways.

The research adopted a mixed methods approach to acquire the best range of data available and to analyse it in the most effective fashion (Robson, 2011). The study has collected and analysed:
(1) **Quantitative data:** Statistics obtained from eCrime on the quantity and quality of the cases that they have received both pre and post implementation of the new policy, (this data covers the last 5 years). This data was analysed via basic descriptive statistics using SPSS$^1$;

(2) **Case file readings:** A case file reader was developed by the team to examine three cases of IIOC prosecution before and after ($N=6$) the implementation of the new policy. The case file reader was developed to extrapolate the salient details out of the range of documents provided to the team, by the PSNI to identify if the case reviews were as effective as possible, but also to measure the differences pre and post implementation of the new IIOC procedures. The team developed and utilised the case file readers together and cross examined each other’s readings and results;

(3) **Qualitative research:** A series of semi-structured face-to-face interviews, 9 in total, each lasting approximately 45 minutes were undertaken. In addition a telephone interview was undertaken with two prosecutors in the PPS who have operational responsibility for prosecuting IIOC. The participants were obtained through purposive and snowball sampling techniques (Robson, 2011). They were representative of personnel across eCrime, the Child Internet Protection Team (CIPT) and the Public Prosecution Service. The interviews addressed key issues surrounding the development of the policy and how it was operating in practice. Each person interviewed was given the opportunity to speak across the procedural process and, although they might not have a particular specialism in this area it helped to understand what departments knew of each other’s work and communication between them. Due to the restrictions on police time and resources the majority of the interviews were carried out in one day with the interviewers having brief time between participants to review material to ensure adequate caption. However, some follow up questions were asked outside of the interview schedule to seek clarity on some points raised. This data, post transcription, was analysed using thematic content analysis with the team checking and cross referencing each other’s analysis to assure parity as well accuracy (Robson, 2011).

This approach meant that the team could build a systematic picture of how IIOC cases are investigated and how the new policy on proportionality may have affected them.

---

$^1$ SPSS is a statistical package used to analyse statistics in social science research.
This research was ethically sensitive throughout with great care taken by the team to adhere to the British Society of Criminology’s (BSC, 2006) ethical guidelines, and the research was given ethical approval by the UWE ethics committee and the PSNI. All data has been anonymised and kept confidential.

(3) Results and discussion

(I) Quantitative data

The team examined eCrime total submissions including that of IIOC data from 2006-2012, this revealed that the number of jobs had been steadily increasing from 2006 with a peak in 2009/10 and a levelling off in recent years [see figure 1]. In relation to IIOC jobs this too showed that although the number of IIOC cases presented to eCrime had increased since 2006, the current amount of cases seemed to be slowly declining after a peak in 2008/9 and have remained reasonably static over the past three years [see figure 3]. The number of exhibits associated with jobs also revealed a substantial increase from 764 in 2006, to a peak in 2011, with this too slowly levelling off. However, crucially, what this data doesn’t reveal is the increased storage capabilities on computers which increases the workload with the investigation of IIOC for eCrime. So whilst these figures give the impression that the workload is decreasing the hidden data of storage capabilities would present a very different picture.

Fig 1: Total number of jobs submitted per year

Fig 2: Total number of exhibits per year
All data including that of mobile phones has been captured in Figures four and five above. This too illustrates there was a peak in mobile phone exhibits and jobs around 2009/10 and these are now also levelling off in recent years, perhaps this is due to the work undertaken in some other districts that have the technology to scan mobile phones for data. With increasing usage of smart phone technology it will be interesting to see how these figures fluctuate in the future.
(II) Case file readings

The reading of case files \(n=6\) produced evidence that the time taken to investigate and bring to sentence crimes relating to IIIOC have reduced considerably since the introduction of the new tiered examination (Table 1). Cases examined before the new policy \(n=3\) examined all the seized exhibits and all of the images were categorised. The longer process of investigation and numerous re-bailing did not appear to translate into a harsher sentence. However, with the Officer in Charge (OIC) armed with the appropriate evidence, analysis of the interview transcripts revealed that the suspect had no alternative than to admit to the charges in these cases examined. The cases dealt with after the introduction of the new policy \(n=3\) had a restriction to four exhibits being examined by investigating officers in eCrime and although in some cases there was more material involved, these cases were processed faster to sentence. There was one exception to this as highlighted in the table below; this was due to the substantial and varied amount of images in this collection. Without doubt the restriction to four exhibits has had an impact in terms of reducing the length of the investigation which benefits eCrime in terms of reducing the backlog and subsequently what risk may exist in this backlog. In addition, it benefits the suspect and their family in terms of how more swiftly cases are investigated.

The information captured on the technical report completed by investigating officers in eCrime before the policy was introduced contained greater detail than those completed post-policy. The team acknowledge however that this could be down to individual human practice of recording information and of course the variance in cases examined. The more detailed reports did help to build a greater picture of offending behaviour which will ultimately strengthen the prosecution of such cases. In all it was difficult to make direct comparisons between the 'before' and 'after' cases, this is simply due to the nature of offending behaviour and the small sample that was available during this period of research.

Table 1: Time taken to investigate and bring to sentence IIIOC crimes in respect to the new tiered examination

<table>
<thead>
<tr>
<th>Case</th>
<th>Pre-Policy</th>
<th>Case</th>
<th>Post-Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>One</td>
<td>20 months</td>
<td>One</td>
<td>21 months</td>
</tr>
<tr>
<td>Two</td>
<td>23 months</td>
<td>Two</td>
<td>7 months</td>
</tr>
<tr>
<td>Three</td>
<td>12 months</td>
<td>Three</td>
<td>8 months</td>
</tr>
</tbody>
</table>
(III) Qualitative interviews

All of the interviews were recorded and transcribed verbatim by the team. This was to assist with the analysis of the data. A series of patterned themes were drawn from the transcriptions (Miles & Huberman, 1994) and then counted for frequency to build a multi-dimensional picture of how particular concepts are considered within a small statistical number. The themes are subjective in that each person discusses the point from their own specific role within the process and is reflexive to their experience. During the analysis certain key themes emerged and these are discussed in no particular order in this section.

(a) Quality of the examination process

The quality of the examination process was an important issue raised by some of the respondents. It was highlighted that before the introduction of the new policy all seized exhibits had the possibility of being examined through a thorough EnCase examination. Due to this there was much less scope for 'missing something' during the examination process. All sections of the exhibits were examined and all exhibits were subjected to the gold standard approach. The subsequent technical report was detailed which was of benefit during interview, particularly if the suspect was refusing to acknowledge any of the charges. It was also very useful if an investigating officer in eCrime was required to give evidence in court.

It was acknowledged that the new ADF software lacked the detail provided by an EnCase examination and there had been concerns highlighted by some respondents that initially it appeared that images weren’t being detected, yet this was rare in the past. The respondents also acknowledged that there was nothing wrong with ADF in that the software does what it is designed to do, however as the tier 2 process has evolved and been adapted with additional tools being applied to the examination process this had helped to alleviate some of these earlier concerns. It was also noted that the speed of investigation had become much quicker using the tiered examination and this was noted as a benefit by all respondents.

(b) Selection of four exhibits

The new policy stipulated that a maximum of four exhibits (excluding mobile phones) could be submitted for examination to eCrime. The responsibility for the selection of these four exhibits rests with the OIC.

In general the interview data revealed that respondents accepted the rationale for why there was a reduction in everything being examined to only four under the terms of the new policy. That said, concerns were highlighted that this was the sole responsibility of the OIC, and even though guidance was
provided as to help determine ‘what four’ and even with effective interviewing the suspect may still lie as to which exhibits contained IIOC. It was therefore suggested in some interviews that if IIOC was negative on the four exhibits submitted, could the remaining items be scanned? It concerns CIPT that they could potentially be distributing IIOC material when exhibits are returned to suspects.

(c) Risk

The interview data revealed that the risk is two dimensional; dealing with the risk of not investigating a case (“the backlog”), and the risk of not adequately assessing risk within an investigation that is assessed as being tier two. In relation to the latter it was acknowledged that the process of assessing risk is an ongoing process.

In terms of assessing risk the OIC should be extremely specific as to what is required and what the intelligence suggests the suspect may be guilty of on the ecop form, as this assists eCrime in determining the level of examination required and also the investigators as to what tools should be applied to examine the exhibits. It was suggested that if a case is selected as tier two, then a few bullet points detailing the rationale for this be forwarded to the OIC from the DS in eCrime. A few lines specific to that particular case are all that would be required and would improve communication and help the OIC understand the decision making in these cases.

The other issue concerning risk that came out strongly from respondents was the risk of “are we missing something” when exhibits are subject to the tier two examination, this of course is related to the earlier theme regarding quality of the examination. The risk that some of the exhibits not examined, or some of the images not categorised could contain evidence of contact abuse were foremost in the mind of all respondents. This is why the process of ongoing risk assessment is vital and that any high risk factors identified on the ecop from should result in more detailed EnCase examination. Related to the theme of risk it was highlighted by some respondents that ideally more could be done (resource permitting) to safeguard children by the PSNI as an organisation being more proactive. Identify those uploading content, create intelligence packs and investigate how new technologies can help investigations.

(d) Impact on sentencing

The PPS were satisfied that the new policy had no impact on sentencing. Rather there appeared to be a reluctance on the part of judges to imprison offenders guilty of IIOC in recent times. What the new policy has achieved is getting more offenders into the criminal justice system; this was recognised and supported across many of the interviews.
However, in the rare case where a suspect does not plead guilty and exhibits weren’t subject to a thorough EnCase examination this may impact on the strength of the prosecution case due to the lack of detail that would be captured on the technical report and the quality of evidence that an investigating officer from eCrime could present at court.

(e) Would like to do more, or create the 'perfect case'

It was accepted (generally) that practical decisions had to be made with regard to how IIOC cases were investigated. The situation of an ever increasing backlog was totally unsustainable and the potential risk contained within it meant that something had to be done. As mentioned previously the improvement of what tools/software are applied to a tier two examination is favourable and the rationale for four exhibits accepted. However, in some instances a greater flexibility on the part of eCrime would be helpful, whether this is applying more detailed investigation to a particular exhibit, or accepting an additional exhibit if new evidence is identified.

(f) Resources (staff/time)

This policy was introduced as it was recognised by eCrime that the ever increasing workload cannot be dealt with by simply employing more and more people. Given cuts to policing budgets and the fact that the PSNI is a shrinking organisation with a number of competing high profile priorities this policy was an innovative and intelligent method employed to reduce the backlog that eCrime face.

Whilst this policy has been effective in substantially reducing the backlog it was acknowledged by respondents that more staff would still be beneficial. This would not only allow CIPT/eCrime to be more proactive in dealing with IIOC cases, but it would also allow more time for staff to educate themselves on new technologies to aid the investigation of these cases.

In addition, the PPS had highlighted that they face a slight increase in their work since the implementation of the new policy; this may be because more evidence is required, or simply because they have technical questions that cannot be answered by reading an ADF generated report. This was however not a criticism of the policy, rather something they wished to be noted. Once again the value of communication and detailed files was raised as extremely important in prosecuting these cases.

(g) Delegation of categorisation of IIOC

The full policy has not yet been implemented due to various operational reasons. It is believed that the delegation of categorisation of images to the OIC will happen over the next 12 months. The policy identifies that it is not the best use of a trained forensic investigator’s time to categorise IIOC.
The interview data revealed however that this delegation is not favourable for varying reasons. In relation to staff and resources, it would appear that a small CIPT team would be unable to subsume this responsibility due to existing work pressures. Therefore, it would be necessary to perhaps employ someone to undertake this categorisation which in itself will be problematic given the material that the individual would be viewing. In addition, if CIPT were to undertake this role there would be welfare issues to take into account here also, contrary to some views expressed the categorisation would greatly impact on this team. Furthermore, the PPS expressed a desire that the categorisation stay with eCrime unless there are specific safeguards put in place that would not impact on the quality of the technical report. It was noted that currently forensic investigators may note what directory or file extension specific images were found, would this level of detail still be possible with delegation?

(4) Summary of research findings

This short initial evaluation of the new tiered process for examining IIOC was recognised as a much needed response to 'something needed to be done'. The combination of increasing technological capability and storage available against an ever shrinking human resource in the PSNI was mentioned by all those interviewed. Every single participant had the same overarching objective, and that was to do their very best to protect children and prosecute offenders. The good relationship and communication was also highlighted as positive by all respondents. The evidence from the interview data reveals this could be improved further by eCrime consulting/discussing new ideas with CIPT and also communicating decisions with them.

The findings also highlighted that risk was foremost in the minds of respondents but there was never any failsafe way to guarantee risk, that is why communication and ongoing risk assessment throughout the investigation is fundamental to maintaining confidence in this policy.

(5) Conclusions

This pilot study aimed to investigate the new tiered process for examining IIOC by the PSNI eCrime unit. The evidence suggests that the new procedure is seen as effective from a resource management point of view and the best approach given the ever increasing backlog and jobs that eCrime receive. Generally the research revealed that there are benefits to the policy, including timely investigation, this mitigates the impact on families, and of course as mentioned earlier the
backlog has now been substantially reduced. No evidence was identified that indicated that sentencing had been impacted by the policy, and when more information/evidence to prosecute was required this had been obtained. There were however some minor issues with the new procedures identified through the case file examination and interviews which could be easily remedied by making minor adjustments to current practice. These recommendations for consideration are outlined below.

(6) Recommendations

(1) Greater communication/consultation between eCrime and CIPT, this shows everyone is valued and will lead to greater understanding of how certain decisions have been reached. In terms of ecop a few lines by way of explanation to be completed by a DS in eCrime as to why a certain level of examination will be undertaken. Related to this:

(2) Regular meetings, at least every 6 weeks between the DS in CIPT and a DS in eCrime to discuss cases.

(3) Issues about returning unscanned exhibits, welfare impact for CIPT, are they distributing - can these be scanned? What are the alternatives that could be considered?

(4) Detailed and uniform technical reports to aid with interview and also prosecution.

(5) Careful thinking/planning around delegation of categorisation will be required to maintain the robustness of the policy.

(6) Ensure all relevant detail is passed to PPS to aid prosecution.
References


