

Children and Sex

by Adrian Turner, Editor, *Criminal Law and Justice Weekly*.

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For full version of abbreviations click 'Abbreviations' on FB's website.

I have had advance sight of Francis Bennion's article 'Criminal Law and the Sexual Child', (p. 645 post) which criticizes the provisions of the Sexual Offences Act (SOA) 2003 that deal with consensual sexual activity between 'children'. I respectfully agree with every point the author makes. As such, I would not normally want to add my own comments. But it seems to me that this is not just a case of a law that is repressive in relation to child sexuality; it is also highly hypocritical.

To explain this, it is necessary to say something about my own age group. We are probably the most fortunate and privileged generation to have lived in Great Britain for centuries, if not ever. We were spared conscription and the horror of a world war. We had access to higher education before tuition fees and students loans arrived to saddle today's ablest young with a mountain of debt which they will struggle to repay even if they find jobs. Many of us were able to buy our own homes before we were 30 and then profit from spiralling house prices. Most significantly of all in the present context, we enjoyed an unprecedented degree of personal and sexual freedom. If there was a minus side — apart from having to put up with lots of pretentiousness dressed as 'culture' — I cannot recall it. We were, and remain, very lucky.

The most senior figures in Parliament today are from my generation. Many of their political careers began in the student union, where hours were spent attacking the establishment and demanding greater rights and freedoms? What has happened to these 'revolutionaries'?

If you had asked any of them when they were young, or even before they were 40, whether or not it should be criminal for two 15-year-old young people (quite rightly they do not like to be called 'children' at that age) to kiss and cuddle, they would surely have laughed in your face. Why on earth, therefore, did the Government criminalize such natural and common sexual behaviour in the SOA? Where, when, how and why have they undergone this puritanical conversion?

It is certainly the case that this Government is 'hung up' about sex. They have even made it an offence to possess pornographic cartoons (which suggests we have gone full circle since the notorious 'Oz' trial). The reason behind these new laws appears, however, to owe more to laziness than morality. During debates on the Bill, the then Home Secretary famously offered a magnum of champagne to anyone who could resolve the issue of accommodating consensual sexual activity between young people by providing satisfactory offence definitions that would catch only conduct generally thought worthy of criminal punishment. There were several interesting attempts to win this prize (would the Home Secretary have claimed it on expenses?), but nobody succeeded. But surely the onus should have been the other way round. In the context of youth and intimate personal relations, in particular, it is entirely inappropriate to enact deliberately broad offences and then rely on prosecutorial discretion to ensure that they are pursued only in appropriate cases. The law needs to be transparently clear and fair, and not left to the enforcement agencies to determine its scope.

The last decision of the Appellate Committee of the House of Lords was, of course, in the *Purdy* case. The appellant persuaded their Lordships that the DPP should be required to set out in detail his policy in relation to the offence of aiding and abetting suicide. Such clarity was deemed to be necessary to comply with art.8. Now you might think that if planning a suicide engages art.8, so does managing a teenage relationship in a way that will keep it out of the criminal jurisdiction. Perhaps we now need a young person, petitioning through his/her 'best friend', or even a concerned parent, to bring proceedings to require the DPP to spell out how much and what kind of petting, etc, it takes to bring a case over the threshold for prosecution. Of course, this is not going to happen. Even if did it would not solve the problem. Many young 'offenders' end up receiving warnings or cautions, in which there may be no CPS involvement at all. It is left, therefore, to ordinary police officers to set

the relevant standards in these cases. This is a most unsatisfactory state of affairs. Young people deserve better.

Anyone with any experience of child care knows the importance of setting clear boundaries and being consistent. Nothing, however, could be more opaque or erratic than our handling of child sex. On the one hand, we give out free condoms for attending sex education classes, but on the other, we give out charge sheets to those who attempt to put what they have learned into practice. The Pleasure leaflet which Francis Bennion refers to is an even more striking example of two-facedness; a case, one might say, of *NHS v CPS*. Who would be a kid today?

I return to the point I made at the start. Young people know what things were like for my generation when we were their age. It remains a very accessible era. Many of its icons are still around. Therefore, they know this is a case of 'Do as we say and not as we did'. There is nothing more certain to breed resentment in a youngster than this kind of hypocrisy.

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Note: For FB's article to which the above editorial refers see

www.francisbennion.com/2009/032.htm