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Weighing Ethical Considerations in Proposed Non-Recent Child Sexual Abuse Investigations: A Response to Maslen and Paine's Oxford CSA Framework

Jonathan A. Hughes and Monique Jonas

Abstract

Questions about when it is right for police forces to investigate alleged offences committed in the more or less distant past have become increasingly pressing. Recent widely publicized cases of child sexual abuse (CSA) and exploitation, sometimes involving high profile individuals, have illustrated the ethical, psychological, and forensic complexities of investigating non-recent child sexual abuse. Hannah Maslen and Colin Paine have developed the Oxford CSA Framework to assist police to weigh the various ethical considerations that militate for and against initiating a CSA investigation. While such a tool is to be welcomed, and while there is much that is helpful in Maslen and Paine's approach, we suggest that the Oxford CSA framework could be strengthened. Our first suggestion is to abandon a proposed distinction between a set of considerations that is said to generate a "presumption" in favor of investigation and other considerations that may supplement or oppose this presumption. Our second suggestion is to review the weightings applied to the considerations within the model, which lack clear justification and create problematic effects. Finally, we suggest that referring the Oxford CSA Framework to a panel with lived and professional experience of CSA could serve important procedural justice goals and enhance the Framework's recommendations.

Keywords: child sexual abuse, child sexual exploitation, non-recent offences, police ethics, Oxford CSA Framework, police

1. Introduction

Questions about when it is right for police forces to investigate alleged offences committed in the more or less distant past have become increasingly pressing for several reasons. These

include the development of forensic techniques allowing cases that had previously stalled due lack of evidence to be revived, along with growing public awareness that some serious crimes may not be reported until years have elapsed. In recent years, widely publicized cases of child sexual abuse and exploitation, sometimes involving high profile individuals, have vividly illustrated the ethical, psychological, and forensic complexities of investigating non-recent child sexual abuse (CSA). These complexities are associated with high costs, which, combined with the effects of public spending cuts on the police, force difficult choices about how to prioritize limited resources. Such investigations can also impose significant adverse impacts on survivors and may not lead to successful prosecutions. Hannah Maslen and Colin Paine, writing recently in this journal,[1] present and explicate a framework to assist police to weigh the various ethical considerations that militate for and against initiating a CSA investigation. They have named it the Oxford CSA Framework.

In a previous article in this journal we undertook a broad examination of ways in which the passage of time might erode the ability of a criminal investigation to achieve the various legitimate goals of the criminal justice system (CJS).[2] Our aim was to illuminate the impact of time's passing on the ethics of police investigation generally, and as such our conclusions were not oriented toward a specific category of offence. Maslen and Paine's framework is much more tailored, not only to CSA (a particularly sensitive form of offending that has not always been dealt with well within criminal justice systems), but to cases in which police receive information from third parties about possible CSA and must decide whether to contact the suspected victim[3] in order to initiate an investigation. Their approach encompasses some considerations that we did not address: they discuss the risk that unsolicited investigations may retraumatize victims and incorporate victims' rights to self-governance and privacy, as well as "rights-like interests" in mental and social stability in their model. Acknowledging that police investigations do not always serve, and may be

counter to, the interests of victims is important, as is a recognition of the poor record of many criminal justice systems in responding to sexual offending against children in ways that protect them and acknowledge the serious harms that such offending imposes. We welcome Maslen and Paine's development of a template for practical decision-making.

We suggest, however, that the Oxford CSA Framework could be strengthened. Our first suggestion is to abandon a proposed distinction between a set of considerations that is said to generate a "presumption" in favor of investigation and other considerations that may supplement or oppose this presumption. Our second suggestion is to review the weightings applied to the considerations within the model, which lack clear justification and create problematic effects. Finally, we suggest that referring the Oxford CSA Framework to a panel with lived and professional experience of CSA for their input could serve important procedural justice goals.

In section 2 we describe key elements of our analysis of how the passage of time affects the case for police investigations, which informs the subsequent critique of the Oxford CSA Framework. In section 3 we explicate and critically assess Maslen and Paine's treatment of two motivating goals of criminal justice systems and criminal investigations – justice and general deterrence – and explain why it is misleading to characterize these as generating a presumption in a way that sets them apart from other relevant considerations. Sections 4, 5, 6 and 7 assess the way that Maslen and Paine conceptualize and weigh offender threat, harm to victims, resources, and public legitimacy, respectively. We conclude with some reflections on the role that victims and their advocates might play in determining how victims' interests are weighed and assessed within a revised framework.

2. The Passage of Time and the Value of Criminal Investigations

Our analysis in our previous article centered around the fact that investigation of non-recent

crime may be valuable in different ways for different parties involved in the investigation and for society as a whole, and that these sources of value are liable to be differently affected by events and processes associated with the passage of time. Police investigations involve costs, including the opportunity costs of diverting scarce resources from other (potentially more valuable) activities, and costs borne by individuals involved in the investigation, including the victims of crime and their loved ones, and (potentially innocent) suspects. The decision to investigate a case must balance the value of the investigation (understood in terms of the goals of the CJS) against its costs, and in the case of non-recent crimes it is therefore important to know how each of these can be affected by the passage of time.

Passage of time may affect the costs of an investigation in various ways. For example (as Maslen and Paine emphasize) investigation of a non-recent crime may cost many times as much as the investigation of a more recent, but equally serious crime. Additionally, a criminal investigation is likely to have reputational and psychological effects on investigated suspects, some of whom may be innocent, and these effects may be harder to dispel in the case of old crimes where the chances of definitively proving innocence or of subsequently convicting the actual perpetrator are lower.

However, while acknowledging that the costs of an investigation may change with the passage of time, our analysis primarily emphasized how time-related factors may affect an investigation's value, which depends on its ability to achieve the goals of the CJS. We found that different goals are affected by different time-related factors and to different degrees. Some goals are relatively resilient to the passage of time and so may provide a prima facie justification for investigation even of very old crimes. In particular, goals connected to expressing attitudes of respect and care for victims and condemnation of serious offences can remain viable even after significant periods of time have elapsed. Other goals, such as

retribution, are affected either gradually (e.g. by the erosion of evidence) or more abruptly (e.g. by the death of a perpetrator).

An important element of this analysis is the distinction between those goals of the CJS (such as retributive justice and protection of public safety by containment of offenders) for which an investigation is merely instrumental and which will not be served unless further stages in the criminal justice process (in this case prosecution and punishment) are successfully completed, and other goals (including the expressive functions just described, and provision of information about past offences that may in different ways contribute to the welfare of victims, innocent suspects and wider society) to which an investigation can contribute even if completion of the further stages is impossible. This distinction informs our analysis of several elements of Maslen and Paine's account below.

3. Justice and General Deterrence: a "Presumption" in Favor of Investigation?

Like us, Maslen and Paine identify considerations in favor of investigating non-recent crimes that they believe to be relatively unaffected by the passage of time. They argue that two considerations – "the value of justice" and "general deterrent effects"[4] – "will apply to all cases and will be mostly consistent in normative weight," and therefore generate a rebuttable presumption in favor of investigating non-recent CSA.[5] This presumption may be augmented, moderated, or defeated by other (presumably less consistent and uniform) considerations, including the continuing threat posed by the suspected offender, the potential for the investigation to cause harm to the suspected victim, resource considerations, and effects on the perceived legitimacy of the police.[6] However, for Maslen and Paine, the presumption always counts in favor of investigation; within their decision framework it contributes between +2 and +4 points to a score which, if positive, indicates that the investigation should proceed.

This account gives rise to difficulties related to the claimed uniformity of the value these two considerations contribute to an investigation, and to the status of the presumption they supposedly ground. Elaborating on the role of general deterrence, Maslen and Paine write that:

> [s]ince the prospect of punishment serves a general deterrent purpose, it provides a pro tanto reason to investigate in all cases. *Investigators do not, therefore have to further consider the general deterrent effects expected for a particular case, since these already ground the presumption*, which must be outweighed if investigation is not to go ahead.[7]

Similarly, in relation to justice, they write:

> it is always of value that serious wrongdoing is acknowledged and condemned, and the police play an important role in bringing this about through investigation. If, as we have suggested, this consideration is broadly uniform across offences of a similar type, it would follow that *investigators would not need to further consider it in their decision-making, since it is already accounted for in the weight of the presumption*.[8]

The claim that these considerations have uniform moral weight and that investigators need give them no consideration beyond acknowledging a presumption in favor of investigation appears to be contradicted by the variable score (+2 to +4) that investigators are expected to assign to them within Maslen and Paine's decision framework on the basis of an estimate of the crime's "solvability." Moreover, analysis of these considerations suggests that their moral weight may vary in the context of non-recent crimes to a greater extent than Maslen and Paine acknowledge, and that their weight may relate to the passage of time in a way that puts pressure on their claim that non-recent and current investigations are "equally worthy of investigation."[9]

First, consider general deterrence. Maslen and Paine refer to research suggesting that the extent to which the CJS deters would-be offenders "is dependent upon the certainty and speed of apprehension, and the severity of any subsequent sanction. However, the certainty of

apprehension has a greater deterrent effect than the severity of any subsequent punishment."[10] If it is true that speed of apprehension matters, then we can expect the deterrent value of a delayed investigation, even one that leads to a successful prosecution, to be less than that of an investigation of a similar but more recent offence. This may even be so independently of estimates of solvability: given the human propensity to discount the future, awareness of offenders being prosecuted decades after offending may have less effect on would-be offenders than similar prosecutions of more recent offences.

Moreover, investigation of older crimes is in general less likely to lead to successful prosecution than investigation of recent crimes, because of factors such as degradation of memory and physical evidence, and ultimately the offender's death. As we argued in our previous paper,[11] while investigations may deter independently of any consequent conviction, that effect is likely to depend on potential offenders' beliefs about the ability of the CJS to follow through on the threat implied by an investigation, so that over time the pursuit of unsuccessful investigations may undermine deterrence.

Turning to the other component of Maslen and Paine's "presumption," the extent to which investigations promote what they refer to as "the value of justice" may also be affected, albeit unevenly, by the passage of time. Maslen and Paine are equivocal about what they include within this consideration. Without rejecting retributive justice altogether, they write:

> The view that retribution and expression of censure provide a sufficient justification for punishment (independently of any consequences of crime prevention) is contested. The question of how much weight to place on any reasons generated by retributive justice will be similarly contested. However, it is not controversial to claim that punishment serves an important expressive purpose, even if this is understood in less strictly retributive terms, along the lines of reinforcing the norms of society and communicating appropriate disapprobation. Independently from any deterrent effects, the state uses

> conviction and punishment to express justified condemnation of the proscribed conduct to both the offender and citizens.[12]

Their focus, when they refer to "the value of justice," is thus on the expressive value of criminal investigation. This serves their aim of portraying the considerations grounding the presumption as relatively consistent over time, as, unlike retribution, the expressive function of an investigation is not wholly contingent upon successful prosecution. Even so, the expressive function is liable to be affected by the passage of time, due to the reduced likelihood of successful prosecution: the message communicated by an investigation is likely to be strongest when there is a real prospect of identifying and convicting the offender. Conversely, a decision not to investigate need not express lack of concern for victims or failure to condemn the offence if it reflects doubt about the victim's wishes to be approached, concern that the investigation may adversely affect the victim's interests, or a small (or zero) prospect of successful prosecution in the context of scarce resources.[13] Maslen and Paine's claim that "reasons to investigate generated by considerations of justice are equally as strong for non-recent cases as they are for present cases with the same features"[14] therefore seems unwarranted with regard to both retribution and the expressive value of investigations.

Maslen and Paine do not state whether they take the expressive element of justice to include the expressive value that investigations may have specifically for the victims of CSA, by providing, for example, a sense of closure, of being supported, and of the wrongs done to them having been recognized by the state. Such considerations may assume a greater importance in the case of delayed investigations, given that many CSA victims have suffered the double injustice of the original offence being followed by a failure of institutions, including the police, to protect and uphold their rights. The proper assessment of these considerations needs to take account of the full range of impacts, negative as well as positive, that an investigation may have upon victims, and to do so in the light of victims' own

preferences (the significance of which is highlighted by Maslen and Paine's data on the reluctance of many victims to support investigations). For this reason, we suggest that elements of justice that focus on the interests of victims should be considered together with potential harms to victims rather than being grouped with general deterrence and the more collective, societal elements of justice. Accordingly, we will return to these considerations in section 5 below.

As noted above, Maslen and Paine's decision form asks investigators to assign a variable value to the "presumption" according to the "solvability" of the alleged offence. This appears to acknowledge the variable weight of general deterrence and the "value of justice." Given the inverse correlation between age and solvability, this seems also to entail that these factors (at least insofar as we are considering the value of justice as a social good rather than an individual good to victims) provide less reason to investigate older offences. It is hard to reconcile this conclusion with Maslen and Paine's claims about the uniformity and consistency of these considerations. They suggest, without further explanation, that solvability "moderates" the presumption in favor of investigation more strongly in CSA than other offences,[15] but also that its impact is mainly on the cost of investigation, which they characterize as a practical difficulty not to be "conflated with the justice value of conducting an investigation into a non-recent offence."[16]

A related issue, which we raise here for consideration but cannot fully develop, is the unspecified way in which Maslen and Paine use the concept of "solvability." Solving a case could refer, for example, to securing a conviction, assembling sufficient evidence of guilt to mount a prosecution, or establishing with some degree of confidence the identity of an offender who for other reasons is not able to stand trial. These outcomes could be expected to have different effects on the force of general deterrence and the expressed condemnation of an offence, as well as the other considerations bearing on the decision to prosecute. In

addition, the significance of each outcome may be different for the different considerations. Convictions may be the key factor affecting the efficacy of general deterrence, while bringing a prosecution or establishing the identity of a perpetrator who cannot be brought to trial may be relatively more significant in relation to the expression of condemnation or commitment to the rights and interests of victims. A finer-grained conception of solvability would make for more accurate estimates of the value of an investigation, but would also emphasize differences between the values encompassed in the "presumption" and further undermine their categorical separation from the other values incorporated into the Oxford CSA Framework.

Further, Maslen and Paine do not give reasons for setting any particular minimum value on the combination of general deterrence and the value of justice. Given their acknowledgement that the strength of these considerations is related to the likelihood of conviction, and given that this likelihood may be extremely low in some cases (or zero, where the suspect is deceased or unfit to stand trial), there is no reason to set the available weightings so that only the highest levels of anticipated harm to a victim resulting from an investigation could defeat the pro-investigation force of these considerations. It is hard, therefore, to see why general deterrence and expressive justice should ground a *presumption* in a way that other considerations do not. Any consideration could constitute a pro tanto reason for deciding one way of the other, but to pick out one set of considerations as uniquely creating a presumption appears to imply a stronger claim. We will consider later whether there is another sense in which it is useful to talk about a presumption in favor of investigating non-recent CSA.

4. Offender Threat: Specific Deterrence and Incapacitation

Within the Oxford CSA Framework, the "presumption" in favor of investigating is typically

supplemented by the need to address the threat that the suspect will reoffend. Theoretically this may take two forms: specific deterrence[17] and incapacitation (otherwise known as containment). Maslen and Paine argue that the former is "in practice eclipsed by the far more certain and substantial harm-prevention effects of incapacitation through incarceration" to the extent that it "will, in practice, not bear on the decision" whether to investigate.[18]

Their argument for this position is problematic. Maslen and Paine assume a prosecution resulting in conviction and imposition of a prison sentence when they write that "any prospects of specific deterrence relate to a time far in the future, given the duration of the custodial sentences imposed on CSA offences."[19] However, we have noted above that some (albeit limited) deterrent effect is possible in the absence of a conviction, and this may be more significant in the case of specific than in that of general deterrence. As we argue in our previous article: "[t]he knowledge that their criminal activity has come to police attention and is under investigation may persuade some offenders to desist from crime, at least temporarily."[20] This means that investigation may contribute to the goal of preventing (or reducing) offender threat even where the prospect of obtaining sufficient evidence for a conviction is slim. It is also a mistake to claim that "incapacitation is a *certain* way to prevent harm,"[21] since many assaults take place within prisons,[22] although containment will prevent the specific harms of CSA committed by adults insofar as adults are segregated from children within penal institutions. Nevertheless, we agree that where conviction is possible, containment will more significantly reduce the threat posed by the offender.

The place of offender threat within the structure of Maslen and Paine's decision framework is also problematic. The framework requires investigators to assign a value of +2 in case of a low threat posed by the offender (understood as a function of severity and likelihood of predicted harm), and +3 for a medium threat. A high threat provides a "decisive reason to investigate" such that "no further considerations need to be taken into account."[23]

This might seem to imply that the model assigns an incommensurable or infinite value to prevention of high offender risk, but in fact, given the scores available for other considerations for and against investigation, it only implies a value greater than +4. The range of assignable values is thus far similar to that of the twin considerations that ground Maslen and Paine's presumption. Only in cases where the offender is deceased or already serving a lengthy custodial sentence is offender risk assigned a value of zero.

It is presumably this possibility of a zero value that explains why, while justice and general deterrence are considered to ground a presumption, offender threat is treated as a separate consideration potentially amplifying the presumptive case in favor of investigation. However, we have seen that general deterrence and "the value of justice" may in some cases have a lower significance than Maslen and Paine recognize, in particular where identification and conviction of the offender are unlikely or impossible. The separation of considerations supporting investigation of CSA into some that ground a presumption and others that may amplify it therefore seems, at least thus far, to be unwarranted.

A further problem with Maslen and Paine's treatment of offender threat is that its assigned value is based only on the severity and likelihood of the harm that the offender is predicted to cause if not subjected to criminal justice proceedings.[24] However, the threat posed by a suspected offender is only a reason to launch an investigation if there is some prospect that the investigation will reduce that threat. To reduce the threat by means of containment requires a successful prosecution, so it would seem that it is not just the "presumption" but also the reason for investigation given by offender threat that should be adjusted according to the solvability of the case.[25] While we have argued against Maslen and Paine that specific deterrence may cause some reduction in offender threat in the absence of a conviction, this is less effective than containment and, as argued above, will itself be less

effective the less reason the offender has to fear that the investigation will lead to successful prosecution and the longer the delay between offence and investigation.

5. Harms (and Benefits) to Victims

We have so far examined the main considerations that, according to Maslen and Paine's framework, count in favor of investigating an alleged non-recent CSA offence. The main considerations counting against such an investigation are harm to victims and resource implications.

In relation to the former, Maslen and Paine cite evidence that victims who have not themselves come forward to report an offence are likely not to want an investigation, and that contact with the CJS can bring about revictimization, causing psychological distress, social stigma, and threatening mental and social stability.[26] Maslen and Paine assign a value of -1 to -3 to the potential harm to the victim of an unsolicited investigation. This is lower in magnitude than either the considerations of justice and general deterrence underpinning their "presumption" or the prevention of offender threat. Maslen and Paine explain this by saying that harms caused to the victim by the investigation can be mitigated, whereas the harms to new victims caused by an undetected offender cannot.

We share Maslen and Paine's hope that a sensitively conducted investigation can mitigate, at least to some extent, potential harms to victims. We also recognize that investigation, or even expressed police willingness to investigate, may have some positive impacts upon victims. As we argue in our earlier paper, efforts to prevent reoffending may, apart from any direct reduction in harms, be important for the victims' sense of security. Institutional acknowledgement that one has been criminally wronged may serve to validate one's own perceptions and experiences and mitigate self-blame. An investigation leading to

conviction may support positive processes for victims and provide opportunities for their voices to be heard within the context of sentencing, restorative justice, or parole decisions.[27]

As noted in Section 3, it is possible that Maslen and Paine intended such victim-centered considerations to factor into the "value of justice" within the "presumption," but we argue that these are better considered within an overall assessment of the likely positive and negative impacts of an investigation upon the victims' interests. This is so firstly because benefits to particular individuals are more straightforwardly commensurable with harms to those same individuals than with the interests of society as a whole, and secondly because in considering either positive or negative effects of an investigation on individuals, and in weighing them up, those individuals' own assessments of their significance should be central. A desire on the victims' part for investigation to proceed despite potential harms will carry a strong positive weight, while a wish to forego the potential benefits in order to avoid reopening old wounds will strongly tell against investigation.

As Maslen and Paine acknowledge, being approached about historical offences, and participating in a subsequent investigation and trial, can impose significant harms upon victims. Participants in investigations of historical sexual abuse report experiencing turmoil and grief at being approached by investigators; their employment, living, and familial arrangements may be severely disrupted, substance abuse issues may be amplified and some are left feeling used and unsupported.[28] Given that victims of CSA have already experienced significant harmful wrongs and may have been failed by institutions that should have helped them, the interests of victims should be accorded significant weight in the decision-making process. But Maslen and Paine weight these interests such that they will generally be defeated by the pro-investigation factors the Framework incorporates: the highest magnitude weighting of -3 for victim harm could not outweigh even the lowest assessment of an investigation's potential for general deterrence and "the value of justice" (at +2) combined

with the lowest possible assessment of the threat of an offender who is not deceased or imprisoned for a long time (at +2). We suggest that these weightings require reconsideration.

Maslen and Paine do allow that where a victim is likely to be suicidal *and* offender threat is high, these possibilities must be directly compared and a discretionary judgement made.[29] This renders dangerously mistaken the advice not to assess any further considerations but to proceed directly to an investigation when high offender threat is identified. Moreover, this recommendation would seem to entail that the likelihood of a victim being suicidal counts with a value of magnitude greater than -4 against investigation. This value would presumably also hold where the same risk to victims was present but offender threat was not high. In these circumstances risk to victims should, contrary to Maslen and Paine's claim, outweigh the "presumption," even when the presumption is assigned its maximum value, not just where it is reduced by low solvability.

Perhaps the biggest problem here is that there may be little basis for making an assessment of the impact without making an initial approach to the victim. It may be that an investigation of non-recent CSA is more likely to benefit victims in cases reported by the victims and to harm them in those cases (which are the focus of Maslen and Paine's article) that have come to the police's attention by other means. This is a factor that a decision procedure should take into account, but it is unlikely to be a hard and fast rule, since there can be many different reasons why a victim might not report an offence.[30] Our recommendation in such cases would be to proceed cautiously if the other considerations support an investigation while being ready to discontinue it if the initial approach suggests that the risk of harm to the victim is too high. We contend, however, that the views of victims and their advocates will be key to designing a defensible framework for deciding when and how to make that initial approach.

6. Resources

Maslen and Paine cite data suggesting that investigation of non-recent CSA offences may require as much as 268 times the amount of police officer time compared to investigation of more recent offences of the same kind, so that even if these activities are not in direct competition, the investigation of older offences will have correspondingly higher opportunity costs.[31] As they put it, this is not just a matter of financial costs, but rather, "opportunity cost…is a function of the good (in terms of crime prevention and justice) that would be foregone if the costs of the CSA investigation were borne and so requires consideration of competing priorities and the resources required to achieve fair outcomes."[32]

Given the numbers that Maslen and Paine provide, the extent to which they allow opportunity costs to count against an investigation appears inadequate. Their framework assigns resource considerations a value ranging from zero to -2. This is a smaller magnitude than the values assigned to either of the main considerations supporting an investigation ("presumption" and "offender threat"), which implies that resource considerations are not considered significant enough on their own to justify a decision not to investigate, despite the fact that a resource-intensive investigation of a non-recent offence could displace hundreds of times as much police work as a more straightforward investigation of a more recent CSA offence. In these circumstances the negative value of the resource considerations should be equal to the overall value of the investigations that would be displaced.[33]

An alternative way to take account of opportunity costs would be to assess the value of an investigation irrespective of its resource implications and then divide by cost (broadly interpreted), to arrive at a measure that will achieve most value from the finite resources available.

7. Public legitimacy

The final element in Maslen and Paine's model, which in their view can marginally affect the calculation in either direction, is *police legitimacy*, which they interpret in terms of public confidence and perceptions of fairness.[34]

They argue that since public confidence in the police is an important determinant of public cooperation and law-abiding attitudes, the perceived fairness of decisions whether or not to investigate CSA cases needs to be carefully considered. These perceptions may depend on local context: for example, Maslen and Paine suggest that a recent failed CSA investigation that attracted public concern may provide additional reason to investigate a subsequent case, while public concern about police resourcing might count against investigation of what might be considered unnecessary trawling for non-recent offences.[35]

This raises one general and two specific concerns. The general concern is whether public attitudes should be considered independently of whether they are well-grounded. Perhaps a section of the public was outraged at the dropping of a previous case although in fact there was good reason to drop it. Or perhaps the public considers a particular investigation to be a waste of money although in fact there is good reason to think that it might achieve important crime-prevention or justice goals. In such cases it is not clear that the public concerns should enter into the decision-making process at face value, or at least not without first considering what steps the police could take to explain and justify the decisions indicated by more objective considerations. While police do need to maintain public support and respond to public concerns, allowing operational decisions to be governed by public attitudes to specific cases rather than by socially and legally mandated criminal justice objectives could be a dangerous path.

One specific concern is raised by Maslen and Paine's suggestion that public statements of commitment made by the police "may weigh in favor of conducting an

investigation; particularly when an explicit promise has been made to the community that all [CSA] offences will be investigated."[36] However, it follows from Maslen and Paine's account that such a promise ought not to be made, since not all alleged CSA offences will satisfy the criteria for a justified investigation, and is not clear that a promise by a public official to do a thing that ought not to be done constitutes a reason for doing that thing.

The other specific concern arises from Maslen and Paine's suggestion that considerations of public confidence may weigh especially heavily in favor of an investigation when considering cases involving suspects who are public figures or institutions.[37] While they acknowledge that everyone should be equal before the law and that accused persons who have a high public profile may be subject to greater reputational losses than others, as well as at greater risk of false complaints, they seem to suggest that taking account of these potential harms would threaten public confidence. More generally, their model provides no mechanism for reputational or other harms to *any* suspects to be taken into account even though the potential harms may be considerable and the opportunity for innocent suspects to dispel unwarranted suspicions may be reduced in the case of accusations that are made long after the offence is alleged to have been committed.[38]

8. Conclusions

Maslen and Paine's contribution to supporting practical ethical decision-making in these complex cases is much to be welcomed. It is not surprising that the difficult task of assigning weights to sometimes abstract, often uncertain, highly variable ethical considerations is one that invites further consideration. Although we have argued for the need to rethink a number of key aspects of the Oxford CSA Framework as it stands, its potential to support ethical decision-making about CSA investigations is substantial.

The notion that there should be a presumption in favor of investigating CSAs has considerable appeal. Arguably, had such a presumption been applied historically, much suffering could have been avoided.[39] Applying a presumption in favor of investigating CSAs regardless of when they occurred can be seen as (one aspect of) demonstrating acknowledgement of past wrongs and a commitment to change. As Maslen and Paine and others note, CSA is often subject to delayed reporting if it is reported at all.[40] Victims report feelings of shame and fear of not being believed (a fear that is realized for some) amongst their reasons for non-disclosure. These reasons for delayed reporting manifest further elements of the wrongs committed against them: in this case, the unjust imposition of a sense of "spoiled identity"[41] and associated epistemic injustice.[42] A presumption in favor of at least investigating CSAs may be one institutional means by which society can attempt to remediate the wrongs done to victims' social selves through the offending and subsequent treatment by others.

However, we have argued that the Framework's presumption in favor of investigation, as currently configured, is misleading. It does not pick out values that bear uniform and consistent weight in favor of investigation across cases over any timespan. Moreover, we have suggested that the values grounding that presumption in Maslen and Paine's account may be outweighed by contrary interests of the victims of a particular offence under a wider range of circumstances than the Framework envisages. While some combination of general deterrence and considerations of justice (including the concern to prevent further breaches of justice via deterrence or containment) will typically provide strong pro tanto grounds for investigating a reported offence, it is important that the decision-making framework does not prioritize these considerations in a way that is detrimental to the consideration of the victims' interests when these point in the opposite direction.

The problems that the Oxford CSA Framework addresses share some similarities with problems of distributive justice: it is possible for reasonable people to reach different conclusions about how to conceptualize and weight competing moral considerations, and there is no settled account of how the weighing should be done (that is, there is no overarching, widely agreed-upon theory of justice). Given this fact, there is a case for attending with special care to procedural justice: the requirement that the processes by which contentious decisions that distribute harms and benefits between individuals are made must be fair. One element of procedural fairness is ensuring that the voices of people who are affected by decisions such as these are heard by decision-makers and, where possible, that decisions are made with and by the affected communities. Although there are justice- and process-based grounds for police to make case-by-case judgements about whether to approach a given person and investigate a given allegation, there could be a role for victims of CSA and victim support agencies and professionals to assist in establishing how such decisions should be made and the weightings assigned to the considerations in the Oxford CSA Framework. This would provide a further way in which police could seek to affirm the claims of victims and would defuse the sense of arbitrariness that afflicts the current weightings.

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Notes

1 See Maslen and Paine, "When Should the Police Investigate Cases of Non-recent Child Sexual Abuse."

2 See Hughes and Jonas, "Time and Crime: Which Cold-Case Investigations Should Be Reheated?"

3 We note that in some contexts the term "survivor" is preferred to "victim," but for clarity we will follow Maslen and Paine's usage in this article.

4 General deterrence occurs when the general public is deterred from possible criminal activity, typically through observing punishment being meted out to identified and convicted offenders. This contrasts with specific deterrence, which occurs when convicted offenders are deterred from further offending by their experience of punishment and the wider workings of the CJS.

5 Maslen and Paine, "When Should the Police Investigate," 71. See also 74 and 81. The term "rebuttable presumption" appears in the form that Maslen and Paine provide as a practical template for police decision-making, see 96.

6 The language used by Maslen and Paine to explain the relation between different moral considerations is imprecise. They write about the presumption in favor of investigation being tempered or moderated by the victim's interest in privacy and the solvability of the crime. However, while deterrence and justice might reasonably be said to be tempered or moderated – i.e. rendered less weighty – by considerations of solvability (on which more below), the victim's interest in privacy is better understood as a separate and opposing consideration.

7 Maslen and Paine, "When Should the Police Investigate," 75 (italics in original).

8 Ibid., 76 (italics added).

9 Ibid., 65.

10 Ibid., 75.

11 See Hughes and Jonas, “Time and Crime,” 26.

12 Maslen and Paine, “When Should the Police Investigate,” 11.

13 See Hughes and Jonas, “Time and Crime,” 28.

14 See Maslen and Paine, “When Should the Police Investigate,” 77.

15 Ibid., 81

16 Ibid., 76.

17 See definition in note 4 above.

18 Maslen and Paine, 75.

19 Ibid.

20 Hughes and Jonas, “Time and Crime,” 26. See also Sherman, “Police Crackdowns” as cited there.

21 Maslen and Paine, “When Should the Police Investigate,” 75 (italics added).

22 For example, see United Kingdom Ministry of Justice, *Management Information Bulletin on Sexual Assaults in Prison Custody*; Morash, Jeong and Zang, “An Exploratory Study of the Characteristics of Men Known to Commit Prisoner-on-Prisoner Sexual Violence.”

23 Maslen and Paine, “When Should the Police Investigate,” 97. There is, however, an exception to this rule: “where a victim is likely to be suicidal” (98). In this case, the investigator is instructed to compare the two risks and make a discretionary judgement. The instruction that no further considerations need to be taken into account once a high offender risk is identified is therefore erroneous, as discussed below.

24 See Maslen and Paine, “When Should the Police Investigate,” 97.

25 Maslen and Paine mention “likelihood of achieving this harm prevention” (82), but they don’t follow through on this point in either the main article or the decision form.

26 See Maslen and Paine, “When Should the Police Investigate,” 72-73.

27 See Colton, Vanstone, and Walby, "Victimization, Care and Justice," 545 (but note the mixed picture of impacts that victims report in that study); Hughes and Jonas, "Time and Crime," 22-23.

28 See Colton, Vanstone and Walby, "Victimization, Care and Justice."

29 See Maslen and Paine, "When Should the Police Investigate," 98.

30 For example, if the reason a victim has not come forward is fear that they will not be believed or taken seriously by the police, then a sensitive approach by the police might be both welcome and beneficial for the reasons discussed above.

31 See Maslen and Paine, "When Should the Police Investigate," 77-78. It is not clear that their numerical comparison is a valid inference from the data they cite. The data for non-recent cases refers to cases of "complex" child sexual exploitation cases, which by definition are cases requiring more than one investigator. Furthermore, "exploitation" cases may be more complex than other "abuse" cases irrespective of recentness. However, the general principles of our argument apply as long as there are substantial differences in costs between different investigations.

32 Maslen and Paine, "When Should the Police Investigate," 83-84.

33 A possible rejoinder is that the opportunity costs are uncertain and don't accrue to identifiable individuals, but uncertainty applies to all the costs and benefits under consideration, and many of these (especially the benefits) also do not accrue to identifiable individuals.

34 See Maslen and Paine, "When Should the Police Investigate," 78-79.

35 Ibid., 78.

36 Ibid.

37 Ibid., 78-79.

38 See Hughes and Jonas, "Time and Crime," 27.

39 See Jackson, "Child Sexual Abuse in England and Wales"; Delap, "Disgusting Details."

40 See London et al., "Disclosure of Child Sexual Abuse"; McElvaney, Green, and Hogan, "To Tell or Not To Tell."

41 See Goffman, *Stigma*; Aakvaag et al., "Broken and Guilty."

42 See Fricker, *Epistemic Injustice*.