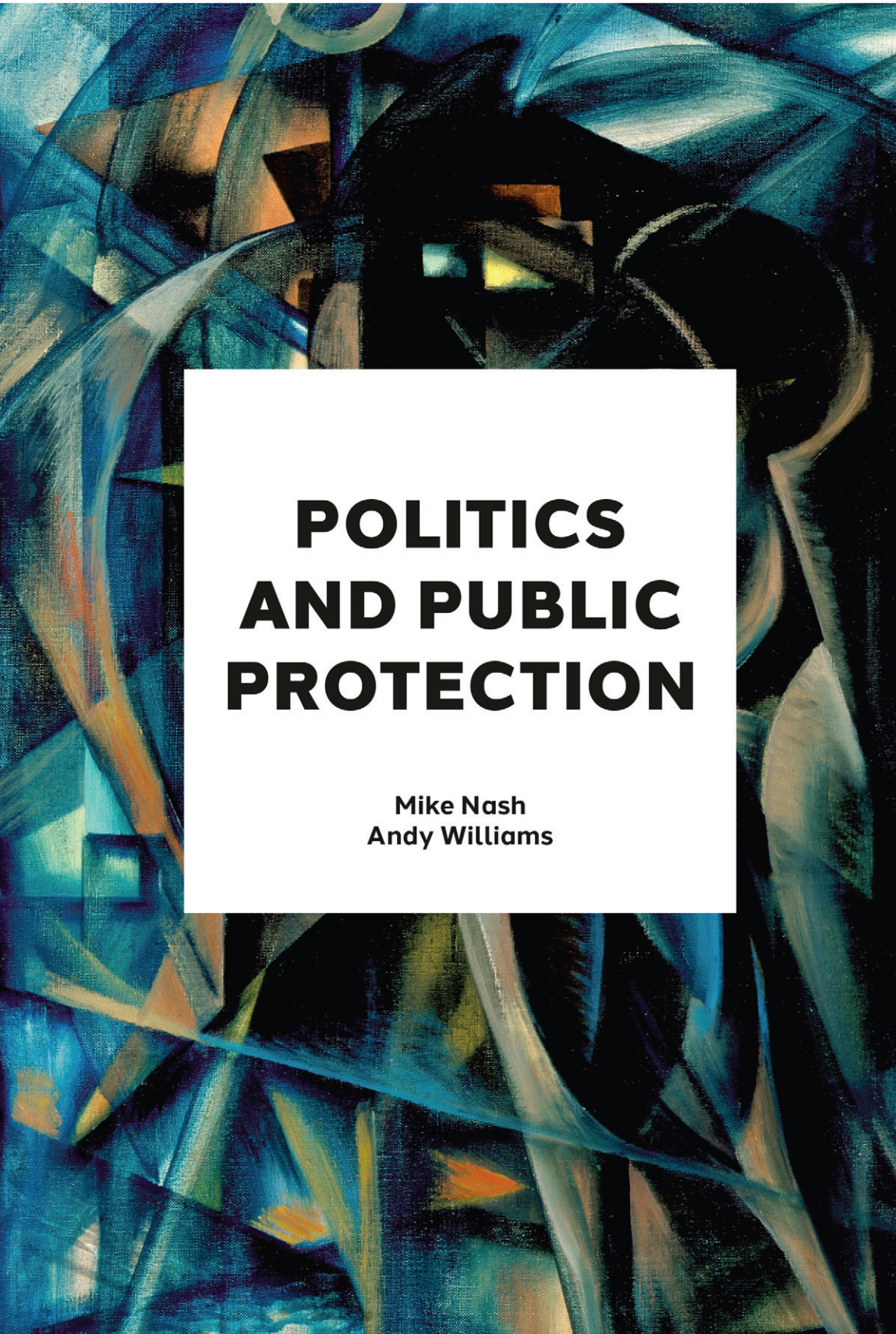
EMERALD ADVANCES IN HISTORICAL CRIMINOLOGY



POLITICS AND PUBLIC PROTECTION

Mike Nash
Andy Williams

Politics and Public Protection

EMERALD ADVANCES IN HISTORICAL CRIMINOLOGY

Series Editors: David Churchill and Christopher W. Mullins

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Politics and Public Protection

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Mike: For Joe and Margot
Andy: For Eve, Ella, Grace, Poppie, Issy, Maisy and Bella

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Epigraph

Our boys did not stand a chance. There were clear warnings of Saadallah's extremist risk and becoming a 'lone wolf' attacker. We have been sat in court demoralised, bewildered and disillusioned by the agencies' failure to effectively communicate, assess the risk and protect the public. It is clear to us that the boys were failed by the agencies that were entrusted to protect them. The failings of the state exposed by this inquest sicken and disgust me. Those who failed in their duties are responsible for David's, James's and Joe's deaths.

Relatives of three men murdered in a Reading terror attack speaking after the Coroner's Inquest. *The Guardian*, 27 April 2024.

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About the Authors

Mike Nash has been the Head of Department and a Professor of Criminology at the SSCJ, University of Portsmouth. With colleagues, he worked on a range of higher education courses for serving police and probation officers. As a former Senior Probation Officer, he worked in a lifers' prison and a maximum-security category A prison. He worked on the early development of what were to become the multi-agency public protection arrangements (MAPPA). He has written and published on public protection matters for over 30 years.

Andy Williams is a Principal Lecturer in Criminology and Criminal Justice at SCCJ, University of Portsmouth. Having completed his doctorate in 2003, which consisted of an ethnography of the Paulsgrove demonstrations in 2000, he has developed academic courses and practitioner training in understanding risk and dangerousness for violent and sexual offenders. He is the co-author (with Mike Nash) of *The Anatomy of Serious Further Offending* (2008, with Oxford University Press) and *The Handbook of Public Protection* (2010, with Routledge). His recent books are *The Myth of Moral Panics* (2014, Routledge with Bill Thompson) and *Forensic Criminology* (2015, with Routledge). He has undertaken numerous evaluations of public protection systems including an evaluation of the Integrated Management IRIS model for Avon & Somerset Police and Probation services (2014), Hampshire's Violent Offender Intervention Programme (2016 for Hampshire's Police and Crime Commissioner) and Aurora New Dawn's DVA Cars™ initiative (2018 and 2023). His current research is an online ethnography of grooming and online child abuse activist groups ('Paedophile' Hunter).

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Part One

What Is Dangerousness?

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Introduction: Dangerousness, Politics and Public Protection

This book does not offer a definitive guide to public protection in England and Wales in the first quarter of the 21st century. We do not believe such a book could ever be written. We do not write in great detail about every aspect of the public protection process. Instead, we write about the gaps in between key elements of that process. We discuss a soft, malleable, pliable and loose entity often described as a 'system' but which we would argue is anything but. It is rather like a ball of plasticine, thrown between the public, the media, politicians, survivors and the agencies charged with the onerous task of protecting the public. Each leaves their imprint, and each time the ball is re-shaped, only to be changed again when the next serious event arises. Thus, we believe that public protection does not stand still long enough to be described in detail as a complete entity. We think it better to consider not only the ways in which it changes, but what caused those changes and why. We hope that those who work in the field are given ideas about their working lives, and we also hope that general readers are given new food for thought about what is a very important social and political issue today.

The title of this book has been chosen quite deliberately. We originally considered calling it The *Politics of Public Protection* but rejected this on the basis that there is not a specific 'politics' that relates to protecting the public. Instead, we felt that *Politics and Public Protection* would better illustrate our view that politics, and party politics in particular, has a very considerable impact on the legislation and professional policies of numerous criminal justice agencies. By this we mean that, rather than a carefully thought through agenda, politicians too often find themselves responding to rare, isolated but serious incidents which cause public alarm and media demands for action; whilst attempting to avoid being blamed for very harmful incidents. Inevitably, this response has seen nothing but a ratcheting up of protective measures for nearly three decades. Rather than one political party driving this agenda, it could instead be argued that a consensus has emerged which has left many measures unchallenged, even when considerable issues of human rights are at stake. From the 1990s onwards, the Labour Party has been seen as rarely opposing a 'red meat' conservative public protection measure. Indeed, by not opposing, but supporting and then

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pushing the agenda forward, the perception is common that Labour has contributed to a repressive and controlling system as much as their political opponents. Yes, undoubtedly, debates in the Parliament and comments to the media have seen a tinkering around the edges of proposed legislative measures, but these roll on, becoming more inclusive and more restrictive with each new headline crime. The impact of this protection roller-coaster on the agencies, which have to deliver it, is rarely debated in public; it is our intention to do so here.

We should be clear at this stage that the public protection measures we will discuss are not led by or delivered by a public protection 'service'. No such organisation exists. In the UK, we do not have a public protection agency. Instead we have a number of agencies, working together with varying degrees of effectiveness, to operate what might be termed a public protection *system*. We, however, believe that this word implies too much in the way of organisation and coherence and instead prefer the word *process*. For many years now, governments have believed that the way to solve complex problems has been to establish complex systems to deal with them. Words such collaboration, sharing, multi-agency and inter-agency working have become commonplace. Serious failures, usually in the form of a repetition of serious crimes, mean that these systems have not worked. The response, inevitably, has been to look for ways to tighten the system to *ensure* that exchange and cooperation takes place. Within these organisational responses is, we would argue, a lack of attention to the training and skills of those who have to work with unpredictable and potentially dangerous offenders. The huge, politically-driven changes to probation training in the 1990s is one such instance which, we would argue, has led to a significant skills deficit in working with people who have the capacity to cause great harm. Indeed, we are currently in the bemusing situation where the internal training run by the MoJ's Learning and Development team restricts both the method and content allowed. Training is delivered by staff who simply follow pre-designed slides, some of which are out of date in terms of accuracy in policy and practice. The lack of innovation in terms of teaching delivery is astounding at times; however, with Sonia Crozier taking over as lead, we have high hopes that things will improve in the future. Protecting the public from seriously harmful offenders is a difficult task. Offering protection though is something of a chimera. It is very much about preventing something terrible from happening; an act committed by someone who may be unknown or, if known, may or may not do that act. Public protection 'success' may be the absence of the act, but we cannot know if it may or may not have happened. Unfortunately, the drive to include the unknown, to make the future more certain, has the effect of making the process ever-larger and more inclusive. Tragedies will inevitably occur. If so, it is the offender who is culpable, not a supervisor. That said however, there are mistakes, there are errors of judgement, there may be an over or indeed under-reliance on formulaic risk assessments. Drill down far enough and there will be individual errors, so it is important to understand why, rather than simply ratchet-up the system further through ill-conceived policies.

Public Protection – Who Is Involved?

Rather like a sponge, public protection has sucked in agencies and organisations over many years, way beyond what might be seen as core criminal justice departments. For example, the multi-agency public protection arrangements (MAPPA) which we discuss throughout the book, have placed a 'duty to cooperate' obligation on a range of what might be regarded as 'social' services. These include health, mental health, social services, education, the voluntary sector and additionally, private sector companies. All are required to share their information in order to protect the public, so confidentiality comes second to protection. Apart from sharing their information, many of these agencies are required to work alongside those with whom they may share an entirely different ethos. Differing cultural and professional perspectives are meant to bend to the public protection mandate. We would agree that there is great benefit in sharing different perceptions of risks and harm, but think the important word here is 'different'. Singing from the same hymn sheet may sound like an attractive idea, but not if it stops a range of views being heard, with those regarded as being less central to the process, feeling unable to state their opinions. We also think that sometimes the default position of worshipping at the altar of multi-agency working (MAW) might do more harm than good.

Police and Sex Offenders

Even for those core criminal justice agencies, the public protection process has triggered considerable professional and cultural change and challenge, with some of the outcomes being very surprising. The police service, for example, is probably regarded as the epitome of a public protection organisation. It is tasked with fighting crime, apprehending criminals and keeping people safe, in itself a huge task. Added to these however are well established roles in road safety, accident investigation, dispute resolution, keeping the peace, policing crowds and protests to name but a few. It is rare for the police service to lose a role, but in 1997, it gained a massive new responsibility and one which was almost the complete opposite of its normal functioning. The Sex Offenders Act of that year established a register for convicted offenders to be held by the police. Although the term 'register' was something of a misnomer, it being little more than the recording of basic details of personal information, it was a new task and a not inconsiderable one, although a slow start saw only 8,600 by 2000 (Thomas, 2008). The number of registered sex offenders now stands at over 67,000 with everyone requiring at least one home visit each year – more if their risk deems it necessary. As with much in public protection, individual, high-profile incidents can have an immediate and usually strengthening impact on measures deployed by governments. In 2000, the abduction and murder of eight-year-old Sarah Payne, by convicted and registered sex offender Roy Whiting, brought forth the first major revisions to the register. No doubt pushed forward by an emotional victim led campaign (Savage and Charman, 2010) and powerful support from Sunday national Newspaper the

News of the World (NoW), the Criminal Justice and Court Services Act 2000 (CJCSA 2000), made the following amendments:

- Initial reporting to be within three days, with that reporting in person and to a prescribed police station.
- Police were given new powers to photograph and fingerprint offenders at their first registration.
- Offenders to be required to notify police if they were planning to be abroad for a period of eight days or more.

Whilst the tragic murder of Sarah Payne and the contentious NoW campaign had the effect of galvanising efforts to implement MAPPA (through s67 of the CJCSA 2000), the main thrust of the NoW campaign did not come to fruition. This was a demand that public notification of the whereabouts of sex offenders, as enshrined in Megan's Law in the liberal US, be included in a UK Sarah's Law. Widespread professional (but not public) opposition to this proposal would mean that it would be another eight years before four pilot schemes, following the Review of the Protection of Children from Sex Offenders (Home Office, 2007), allowed parents, guardians and carers to seek information from the police about a person's previous criminal record (see Kemshall and Wood, 2010, for an evaluation). This limited form of disclosure, avoiding the worst excesses of the schemes in America (see Leon, 2011; US Justice Department, 2023, for a legal and theoretical summary), reflects something of a British compromise, and, despite some heated debates, this restraint has been evident in at least some aspects of UK policy. That said, the public protection agenda has spread its tentacles wide, with few left untouched by its progress in what Cohen (1985) identified as being the net-widening control culture.

In a resource starved world, the police service has concluded that some of the mandatory aspects of work with sex offenders needed to be modified (NPCC, 2017). In particular, the time taken for statutory home visits has been on an upward trajectory for two decades. The NPCC estimated that very high-risk offenders would receive a visit monthly, high risk, three monthly, medium risk six monthly and low risk annually. In terms of the sex offender caseload, 2% were said to be very high risk, 18% high risk, 30% medium risk and 50% low risk. Based on our 67,000 SOR caseload, this would equate to over 138,000 home visits, including 16,080 monthly visits to very high-risk offenders and 33,500 annual visits to low risk. These numbers prompted police chiefs to propose ending the statutory fixed visit scheme and replace it with a holistic system based on active risk management. The purpose of the plan would be the development and review of risk management plans rather than a visit and a chat. If low risk offenders were offence-free for three years, they could be moved to *reactive management*, which would not require home visits. Populist measures such as the SOR are rarely costed and little thought is given to the skill set required for the work. It is also highly likely, as specialist police officer time is squeezed, that newly qualified and civilian staff will be used to undertake sex offender risk

assessment. Making this is a task that 'anyone can do' will undoubtedly detract from the headline promises about protection made by politicians.

Victims and Public Protection Policy

One important feature of public protection policy development since the 1990s has been the growing importance of victims to the process, although not every case ends with survivors having an influence on policy and legislation. It is undoubtedly the case that if survivors are well educated and can handle public speaking, if the victim was photogenic or could be described as 'wholly innocent' and the media decided that the case was newsworthy, then a vigorous campaign may well bring about change, and sometimes, the sort of change not wanted by politicians or professionals. The idea for a widespread community notification of sex offenders was vigorously opposed by senior police officers, a cause that they won in the face of a powerful media lobby. However, as we say further on in this volume, for the last decade or so, we have seen increasing attacks on the very professionals who deliver public protection. Again, these scenarios usually develop following a further serious offence and an inquiry into organisational failures. Governments are increasingly keen to 'pass the buck', the rationale being that they have made the laws and provided the powers for agencies to act, so any failure must lay at their door, not the government's. This position is fundamentally wrong, and, at various points in this text, we hope to highlight where government policy should be directly linked to the public protection process and how well (or not so well) it operates.

An example of this process occurred following the deaths of three people murdered by Valdo Calocane. We discuss this case in detail below, but for now suffice it to say that the perpetrator was found, following an almost unprecedented five psychiatric reports, to be suffering from schizophrenia and, as a result, was allowed to plead guilty to manslaughter. A concerted campaign by the very eloquent, extremely upset and angry survivors has pushed two agendas. The first of these is for there to be a consideration of a charge of murder in the second degree, something which Calocane could have been charged with. The issue here for the survivors was that they did not feel that a manslaughter verdict actually reflected the awful crimes suffered by their family members. This point was picked up by the review into CPS decision-making in the case (HMCPSI, 2024 and *The Guardian*, 25 March 2024), with recommendations that the government undertake (another) homicide review and create the new second degree murder category. The second feature of the families' complaints had been the degree to which they were consulted by the CPS although the review found that it had acted entirely appropriately. The Government has, however, taken the opportunity to exercise further control over its agencies, with new measures proposed for the Victims and Prisoners Bill – at the time of writing, going through parliament (MoJ, 9 April 2024). As always, the new measures were wrapped in typical public protection language with a press release saying, 'Tough new measures to bolster landmark victims' law.' One of these tough measures would enable victims to address a

mental health tribunal before the release of serious offenders and make in effect a victim impact statement. The assumption of this being tough appears to be premised on a view that such statements might actually prevent or slow down a patient's discharge – and perhaps that the professionals cannot be trusted to make the right decision. The measures also proposed that the police and other criminal justice professionals would be placed under greater scrutiny through a new statutory duty to not only inform victims of services but also deliver services in accordance with it. Failure to meet the expectations could result in the issue of a 'certificate of non-compliance'.

The Outcomes of Working With the 'Worry Group'

We mentioned MAPPA earlier as an example of how public protection forces agencies to work together in one common cause. Established by the 2000 Criminal Justice and Court Services Act and strengthened three years later in the Criminal Justice Act, it manages a caseload of nearly 90,000 offenders. Not all of these would be considered high risk (see comments on sex offenders earlier), but the totality of the numbers does create a 'worry group' giving a feeling that the dangerousness problem is very much bigger than it really is. When added to nearly a quarter of a million offenders under probation supervision and approaching 90,000 in custody (very close to capacity), it is unsurprising that the public have a sense of fear and demand protection. Attempts to reduce some of these numbers almost inevitably meet with a negative media reaction, fuelling as it does more punitive calls from the public. Recent attempts by the government to reduce the size of the prison population by the early release of some short-sentence prisoners, known as the *End of Custody Supervised Licence Scheme*, was not met with universal approval. Notable among the objections were from organisations representing domestic abuse victims, as domestic abusers had been included in the possible release list, along with thieves, burglars, violent offenders and shoplifters – with the proviso that their sentence was under four years. Those serving more than four years, including sexual offenders, terrorist, Category A prisoners were to be excluded. Although the government sought to reassure the public with the addition of post-release conditions such as tagging and curfews, this measure echoes other blanket measures where simplistic assumptions about risk are made. In this case, the suggestion is that certain offenders and/or certain sentence lengths makes an automatic suggestion of lower risk. This is of course nonsense, with many short-sentence prisoners being not only unstable, but many also having committed quite serious crimes. A three-and-a-half-year sentence would not be given for a very minor matter.

It is interesting to note that shoplifting is included in the list for early release meaning, so it has to be assumed that it is considered a lower-risk crime. Yet, by 10 April 2024, a Prime Minister's announcement (Home Office, 2024) indicated a retail crime crackdown, with assaulting a retail worker becoming a standalone offence punishable with up to six months in prison, unlimited fines and banning orders. Alongside these measures will be a roll-out of mobile facial recognition