



'We work in the grey around decision making'; how 'thematic discretion' can help understand police decision-making in cases of youth image-based sexual abuse

Alishya Dhir

To cite this article: Alishya Dhir (16 Jul 2024): 'We work in the grey around decision making'; how 'thematic discretion' can help understand police decision-making in cases of youth image-based sexual abuse, Policing and Society, DOI: [10.1080/10439463.2024.2378302](https://doi.org/10.1080/10439463.2024.2378302)

To link to this article: <https://doi.org/10.1080/10439463.2024.2378302>



© 2024 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group



Published online: 16 Jul 2024.



Submit your article to this journal [↗](#)



Article views: 602



View related articles [↗](#)



View Crossmark data [↗](#)

'We work in the grey around decision making'; how 'thematic discretion' can help understand police decision-making in cases of youth image-based sexual abuse

Alishya Dhir 

Department of Sociology, Durham University, Durham, England

ABSTRACT

In this paper, I argue that a new term, 'thematic discretion', can help us understand police decision-making in cases of youth image-based sexual abuse (YIBSA). YIBSA can be defined as harmful image-sharing practices amongst young people, inclusive of the non-consensual sharing of private sexual images, upskirting and cyberflashing, alongside other actions. I will be drawing on findings from a doctoral research project investigating YIBSA, which utilised a mixed methods approach, comprising of quantitative analysis of freedom of information requests from 40 police forces in England and Wales, as well as 26 qualitative interviews with police and non-police practitioners, also based within England and Wales. Research findings established that YIBSA is highly complicated, and as a result, police officers utilised discretion at a considerable rate, alongside crafting their own guidelines to direct their decision-making, which is argued to be steeped in sexist and victim-blaming narratives.

ARTICLE HISTORY

Received 5 January 2024

Accepted 3 July 2024



KEYWORDS

Policing; image-based sexual abuse; police discretion; young people

Introduction

Police discretion is a topic of considerable interest in academia, it 'denotes the freedom of the individual officer to act according to his or her own judgement in particular situations' (Newburn and Neyroud 2008, p. 82). Research in this area has been used to shed light on the tendency to over-police minority groups (Lister 2009), as well as how police navigate domestic abuse cases (Myhill and Johnson 2016). This paper concerns the use of police discretion, by forces in England and Wales, in cases of YIBSA, which is distinctive in the degree to which it is utilised yet reflects previous work whereby many decisions are steeped in harmful stereotypes. Here it is argued that a new term 'thematic discretion' can aid our understanding of how the police direct their decision-making through their own guidelines. The research findings also significantly contribute to an under-researched area regarding the use of police discretion in cases of gender-based abuse.

YIBSA is defined for the purposes of this study as: harmful image-sharing practices amongst and against young people, inclusive of, but not limited to, the non-consensual sharing of private sexual images, upskirting and cyberflashing. The purpose of utilising the term YIBSA in this research is to recognise – through terminology – that certain image-sharing practices amongst young people can be abusive. Using the right language to highlight this is imperative. Colloquial terminology,

CONTACT Alishya Dhir  alishya.dhir@durham.ac.uk  32 Old Elvet, Durham, DH1 3HN

This article has been corrected with minor changes. These changes do not impact the academic content of the article.

© 2024 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group

This is an Open Access article distributed under the terms of the Creative Commons Attribution-NonCommercial-NoDerivatives License (<http://creativecommons.org/licenses/by-nc-nd/4.0/>), which permits non-commercial re-use, distribution, and reproduction in any medium, provided the original work is properly cited, and is not altered, transformed, or built upon in any way. The terms on which this article has been published allow the posting of the Accepted Manuscript in a repository by the author(s) or with their consent.

such as 'sexting' rarely recognises the lived experiences of victims. Whilst others have used phrasing such as 'youth-produced' or 'self-generated', Brennan and Phippen have rightly pointed out that this language is underpinned by victim-blaming narratives (2018). Comparable arguments have been made in image-based sexual abuse (IBSA) literature, with McGlynn and Rackley criticising the use of 'porn' in informal definitions, as it alludes to perceived consent whilst also trivialising image-sharing (2017). Furthermore, McGlynn and Rackley have specifically included 'sexual abuse' in their definition of IBSA, as a way to more readily convey the harm that is experienced by victim-survivors (2017). With the latter in mind, YIBSA accounts for the abusive practices amongst young people, without trivialising the experiences, or focusing on the victim's behaviours or suspects actions, rather highlighting the harm caused.

In utilising findings from a mixed methods doctoral research project, I intend to unpack the use of police discretion in cases of YIBSA. Initially, YIBSA and police discretion will be defined whilst over-viewing relevant literature. Findings will be presented together with the new term 'thematic discretion'. Following this, specific attention will be given to the sexist underpinnings of the use of police discretion in the explored cases, before considering the legacy and impact of institutional sexism in policing.

What do we know about youth image-based sexual abuse?

Quantitative findings collated from police freedom of information requests as part of this doctoral research, pointed to YIBSA being a gendered offence, this relates to both the demographics of the abuse and its nature (Dhir 2023). Of the different offences analysed – indecent images, disclosing private sexual images and upskirting – victims were predominantly female and suspects male, additionally, they were likely to be the same age (Dhir 2023). This aligns closely with wider research into IBSA whereby similar conclusions have been drawn (McGlynn *et al.* 2019). I argue that YIBSA is also gendered in its nature, by this I am referring to the motivations for perpetrating the abuse. Sexism, power and misogyny were repeatedly present in the circumstances in which the abuse took place. Such instances include where images are being shared by an ex-partner, to shame humiliate or control the victim, as well as cases where young women are being harassed for sexual images (Dhir 2023). These are a select number of examples, however they mirror wider research into IBSA (McGlynn *et al.* 2017, 2021) as well as violence against women and girls in general (Westmarland 2015). It is worth pointing out that whilst YIBSA is overwhelmingly a gendered offence, future research needs to assess in detail the disproportionate rate at that trans and non-binary individuals experience YIBSA.

Alongside YIBSA being a gendered offence, it can also be seen to sit within the continuum of sexual violence (Kelly 1987), tied closely to IBSA and child sexual abuse images. Clarifying that YIBSA is part of the continuum of sexual violence serves the purpose of both acknowledging its relationship to wider forms of abuse – such as being a facet of abuse within relationships – as well as ensuring that it isn't subsumed under otherwise defined abuse, that it has its own characteristics and therefore needs to be specifically identified. Further to this, echoing the work of IBSA researchers (McGlynn *et al.* 2017), YIBSA is also a continuum itself, encapsulating numerous experiences, inclusive of disclosing private sexual images, threats to share images, cyberflashing, voyeurism, amongst others. Identifying YIBSA as a continuum ensures that victim's experiences as a whole are recognised, rather than tying definitions to singular forms of abuse, which inevitably disregard certain experiences.

Considering the gendered nature of YIBSA both regarding its demographics and nature, it is to be expected that the harms are also gendered. Recent research has identified that the harms of having images non-consensually shared were more substantial for girls than boys, 'with girls facing increased stigma and shame' and sexual double standards (Ringrose *et al.* 2021, p. 47). Wider research into IBSA, also speaks to the all-encompassing nature of these harms. 'Social rupture' describes the impact as 'pervasive, radically altering their [victims] everyday life experiences,

relationships and activities, and causing harms which permeated their personal professional and digital social worlds' (McGlynn *et al.* 2019, p. 6). Additionally, with the abuse having an online element, victims describe experiencing 'constancy' reflecting the 'continuing nature of the abuse itself' (McGlynn *et al.* 2021, p. 552). Holistically, YIBSA can cause disastrous harms which appear to be compounded by gender. Arguments have been made to recognise the intersectional harms of IBSA (Rackley *et al.* 2021, Ringrose *et al.* 2021, Dhir 2023), for which there is a dearth of research, additionally, there has been little detailed consideration about young perpetrators and the ramifications of their actions. Both latter areas would benefit from further research.

YIBSA can be accounted for in different pieces of legislation. The imagery of those under the age of 18 is most notably associated with the *Protection of Children Act 1978* which prohibits the taking, permitting to take, distribution and publication of sexually abusive images, including pseudo-photographs. More recently IBSA was specifically addressed in an amendment to the *Criminal Justice and Courts Act 2015* criminalising disclosing private sexual images without consent with the intent to cause distress. Whilst there are currently constraints on the latter offence there are hopes that the Online Safety Bill will remedy some of this by making sharing images without consent a base offence, and criminalising the sharing of deepfakes (Thornton 2023). The criminalisation of IBSA is an ongoing struggle with many rightly pointing out the limitations, such as the lack of accountability for the images being removed from the internet, however, there are further issues regarding YIBSA cases. Currently, young people who experience IBSA can fall within different legal classifications, consequently, there is no one specific response or approach to the abuse. As a result, young people seem to find themselves on the fringe of any streamlined response to abuse, which – evidenced in this paper – has a considerable impact on police use of discretion.

Police discretion

Discretion is a fundamental theme in policing, it is key to understanding the decisions that the police make as well as the possible consequences incurred (Cockcroft 2013). Discretion in practice also 'represents the measure by which we differentiate between the law as it stands in theory and the law as it is applied by police officers' (Cockcroft 2013, p. 18). Discretion holds significance for researchers as it helps us understand police actions, as well as what the wider influences of these actions may be. However, discretion is also highly regarded by police officers 'who have traditionally valued discretion as an emblem of their professionalism' (Cockcroft 2013, p. 46).

Early assessments of police discretion point to the tension between 'full enforcement' (Goldstein 1963, p. 140) – regarding the belief that 'the police are required to enforce all criminal statutes and city ordinances at all times against all offenders' (Goldstein 1963, p. 140) – and the necessity for officers to 'decide overtly how much of an effort is to be made to enforce specific laws' (Goldstein 1963, p. 140). These initial descriptions unpack the complexity of policing in practice, in comparison to policing as it is written. More recently and reflecting Goldstein's (1963) comments, Reiner (2000) noted two reasons for police discretion being unavoidable; the inability of police to respond to all crimes at all times, alongside the need to interpret legislation, no matter the specificity.

The application of police discretion can be seen as amounting to 'a degree of freedom in the face of complex and fluid situations and environments that constitute the social world of policing' (Cockcroft 2013, p. 48). The degree of freedom however does not result in discretion being utilised fairly or in a consistent manner. A core characteristic of discretion is that it 'is shaped by variables of class, race, gender, and age, which results in some segments of society receiving a different response from the police than others' (Lister 2009, p. 49). This is arguably reflective of and informed by policing more widely, whereby marginalised communities are more likely to experience higher rates of police presence in their lives (Cockcroft 2013), which is evidenced by stop and search statistics. For 2021, Black people were more than seven times more likely to be stopped by the police than white people (Agnew-Pauley *et al.* 2021), something which is likely to have been influenced by police

discretion. In addition to marginalised communities, previous research into police discretion and young people noted that ‘police officers do differ in their behaviour towards young offenders in ways that are not particularly consistent’ (Parker and Sarre 2008, p. 482).

Whilst the above gives us a general introduction to police discretion and the criticisms, it is important to frame how discretion is utilised in cases of sexual and gender-based violence. Encompassing what has been discussed so far, the ‘police use their wide discretionary powers to establish whether an incident is “criminal” or warrants investigation’ (Artz and Smythe 2007, p. 176). This degree of power could be particularly problematic for gendered offences. Myhill and Johnson touched upon the latter noting that there were ‘problems posed by the interaction of police discretion and the uniformed, sexist attitudes of officers’ (2016, p. 4), further stating that policing culture may negatively impact police responses to domestic violence (2016). If the police’s internalised sexism can shape how their discretion is used by, for instance, deciding which cases are worth pursuing, this can have a further impact on victims of sexual violence. Those victims who choose to report their experiences are left vulnerable to police perception of what is real abuse or real violence, this may result in individuals questioning themselves, rather than the police reaffirming their trauma and having an understanding that sexual violence occurs on a continuum which can manifest in many different forms (Kelly 1987). Previous research has documented these negative experiences during cases of sexual violence; police officers were described as both ‘questioning’ the victim’s account of events and ‘lectured’ them in response to their behaviour (Greeson *et al.* 2016), additionally, victims ‘described being treated with scepticism and disbelief about their stories and blame and judgement for their behaviour’ (Greeson *et al.* 2016, p. 96). These accounts speak to the harm that the police can cause, which is a particular concern when considering the welfare of young people who have experienced IBSA.

Concerns about the application of discretion have been acknowledged but this does not rule out its use. Mirroring the inevitability that Reiner (2000) speaks of, Myhill and Johnson have argued that discretion is necessary in cases of domestic abuse due to interpretations of the legal definition and especially with the inclusion of coercive control (2016). Indeed, whilst concerns can be voiced about the potential misuse of police power and resulting harm in officers deciding what is and is not an offence, as well as subsequent responses, malleable legal definitions and multitudes of cases ensure that discretion is fundamental, which is especially relevant in cases of YIBSA.

The relationship between youth image-based sexual abuse and police discretion

The sharing of sexual images and messages described as ‘sexting’ is a relatively common occurrence. Researchers have noted that 38% of young people in England have sent sexual images (Wood *et al.* 2015) with this taking place both within intimate relationships and casually (Setty 2020). These experiences, which can be conflated with YIBSA, have been described as requiring police discretion to navigate cases (Crofts *et al.* 2015). This holds many similarities to policing domestic abuse as both ‘sexting’ and YIBSA can account for many different actions, therefore, police will rely on their discretion to decipher which cases need pursuing. With the police using discretion to identify which actions are harmful or criminal, they take on an interesting position one which allows them to make moral decisions about consensual and non-consensual behaviour. Johnson and Dalton have likened this to the police being moral enforcers, stating that ‘the law actively requires criminal justice practitioners to engage in moral arbitration around certain activities and this, inevitably, involves police officers making moral judgements’ (2012, p. 32). Specifically taking into account ‘sexting’ and YIBSA, it is the police’s decision that defines what behaviours are criminal, this may however get caught up in wider social narratives on young people’s sexual autonomy; ‘the law demands a form of enforcement that reflects the moral principles of “ordinary” people and police officers, as proxy “ordinary people”, are the barometers through which moral standards of the community are measured’ (Johnson and Dalton 2012, p. 35). In response to this, it is possible that young people’s sexual autonomy will be overpoliced in line with the public and specifically adult’s

perspectives on what behaviour is appropriate. Similar to what has been referenced on sexual violence as a whole, the police are defining abuse, yet this provides them with the ability to both deny people's experiences as well as conflate numerous different experiences as criminal.

Police discretion as a whole holds a significant amount of influence over how communities encounter the police, which cases are taken forward and what behaviours are considered criminal. When we look at police discretion and gender-based or sexual violence, there is a particularly harmful manner which discretion can be employed and mirror wider sexist narratives. It is possible when encountering image-sharing behaviours amongst young people, that police officer's decisions on what is or isn't criminal, may too be informed by gendered stereotypes.

Research methods

In this paper, I will be drawing on findings from doctoral research investigating YIBSA with the aim of understanding in more detail young people's experiences and the responses employed. To accomplish this a mixed methods approach was adopted, utilising both police freedom of information (FOI) responses, and semi-structured interviews with police officers of different ranks as well as non-police practitioners. Ethical approval was provided by the Department of Sociology Ethics Committee, Durham University.

FOI responses were received from 40 police forces in England and Wales. Information was requested on three separate offences: indecent images, disclosing private sexual images, and upskirting, for the period of 1st January 2019 to 31st December 2019. The data gathered provided insight into the demographics of YIBSA cases, as well as brief contextual details. This method has been described as a useful tool in feminist research (Bows 2017), particularly as it allows researchers to gather the fine details of sexual violence and abuse cases, without having victim-survivors divulge the experiences themselves. Analysis of FOI responses produced quantitative data evidencing the gendered nature of YIBSA, as well as the commonality of it being a peer-on-peer offence, with victims and suspects being the same age. Additionally, 100 cases were collated from different forces where a brief description of the case was provided (see Table 1 for an example of how the data is presented). The 100 cases, which ended up forming descriptive statistics, were selected from a total of 783 cases from five forces, those sampled were included based on the amount of contextual information provided. These findings alluded to the relationship between the victim and suspect, the setting in which the offence took place, and also evidence of differing forms of YIBSA. Utilising descriptive statistics alongside figures specifying the age and gender of victims and suspects, ensured that the FOI responses could be applied in a broader fashion, whilst informing the qualitative data collection.

A total of 26 individuals participated in the qualitative aspect of this research. Interviews were self-selected, they took place over the phone, were conducted in a semi-structured manner, and lasted between 30 and 90 minutes. Three police forces in England and Wales were included, with a total of 18 police officers – six female and twelve male. Participants included police constables, detective constables, detective sergeants, investigators, and police staff. A further eight non-police practitioners from different organisations in England also took part in the research – six female and two male – their professions ranged from sexual health workers, youth workers, teachers and specialist SRE educators. Alongside the initial interviews, several participants – four non-police practitioners and three police officers – participated in follow-up interviews. The initial interviews were designed to gather more contextual information, as well as the participant's perspective on YIBSA. They were asked about cases that they had encountered, whether they believed legislation was effective, and the responses they themselves employed. Follow-up interviews concerned emerging themes, such as, the gendered nature of YIBSA, and whether they thought race and ethnicity had an impact on YIBSA. Whilst this a modest sample of participants, it does not detract from the impact of the findings. Comments from police participants were consistent across the three separate forces, particularly when discussing their approach to YIBSA cases. With this in mind, larger-scale research would provide a more detailed account of different police cultures.

As a whole, this research can be defined as feminist driven, with the intention being to provide information that can in turn be used to better understand and inform support for young people who experience IBSA. Further to addressing the lived experience of young people, the research also sought to examine and critique police responses to YIBSA – the crux of this paper. Speaking to and recognising the inherently gendered decision-making that is adopted by the police, serves to evidence the long reach and compounded impacts of institutional sexism.

Findings

Police use of discretion

The process of police discretion and the methods in which it is employed can be ascertained by analysing the outcome of YIBSA cases. The table below details the outcome of indecent image cases where the victim and suspect were between the ages of 10 and 18. It presents (from right to left) police-recorded outcomes, each defined under their type, an example case, and the total recorded for each outcome from 100 sampled cases. As of April 2019, there were 22 police outcomes, with the most recent being Outcome 22 – deferring the prosecution to allow the suspect to participate in educational or other forms of interventions – following recommendations of the Lammy report (Youth Justice Legal Centre 2021).

Outcome 21, which was launched in 2016, has been described as ‘the most appropriate resolution in youth produced sexual imagery cases’ (College of Policing 2016, p. 5) which is why it is

Table 1. Police outcomes in cases of youth image-based sexual abuse.

Outcome**	Example Case**	Total
Type 21 – Further investigation resulting from crime report which could provide evidence sufficient to support formal action against the suspect is not in the public interest – police decision	Suspect named has admitted to sending an indecent image of the victim exposing her breasts to other people	24
Type 18 – Investigation Complete; No Suspect Identified. Crime Investigated As Far As Reasonably Possible-Case Closed Pending Further Investigative Opportunities Becoming Available	Between time and date stated the suspects sends a video of the victim and her partner having sex to multiple people as well as sending the victim abusive message. The victim is aged 16 and her partner is 17	10
Type 20 – Further action resulting from the crime report will be undertaken by another body or agency subject to the victim (or person acting on their behalf) being made aware of the act to be taken	Suspect identified has taken a screenshot of the victim naked on Facetime and uploaded it onto Snapchat	14
Type 16 – Named Suspect Identified: Evidential Difficulties Prevent Further Action: Victim Does Not Support (Or has Withdrawn Support From Police Action	Suspect named has sent a sex video of herself to her then boyfriend who has shared the video on three other social network sites	16
Type 15 – Named Suspect Identified: Victim Supports Police Action But Evidential Difficulties Prevent Further Action	Suspect has been sending messages to the victim who is a 13-year-old student asking her to send naked pictures of her to him	19
Type 14 – Evidential Difficulties Victim Based – Suspect Not Identified: Crime Confirmed But The Victim Either Declines Or Unable To Support Further Police Investigation To Identify The Offender	Suspect unidentified has asked the victim to perform sexual acts on video chat. Suspect has then recorded the victims video and distributed over the Snapchat group. Suspect also distributed video in college	10
Type 10 – Formal Action Against Offender is not in the Public Interest (Police)	Suspect named has forwarded an explicit photograph that has been sent to him from his girlfriend	2
Type 8 – Community Resolution (Crime)	Suspect named has filmed the victim whilst they had consensual penetrative sex. The filming was against her knowledge. The suspect later shared the video in order to cause the victim distress	2
Type 2 – Caution Youth	Suspect named has sent a picture of his penis to victim	2
Total*	99	

*Total 99 rather than 100 due to 1 case outcome being left blank.

**Exact quotes from police FOI responses.

unsurprising that it was the most common outcome recorded in the 100 cases analysed. However, the use of this outcome is dependent on cases 'where the making and sharing is considered non-abusive and there is no evidence of exploitation, grooming, profit motive, malicious intent' (College of Policing 2016, p. 5). This is arguably in opposition to the examples included in Table 1 which would have likely caused the victim a significant amount of distress. Further to this, it seems that the decisions made by police – in terms of suitable actions – centre the suspect's motivation rather than the victim's experience.

Whilst punitive actions towards young people are unlikely to deter these instances from occurring, there should be some consistency in how these cases are dealt with. Some of the outcomes listed echo difficulties seen with other forms of IBSA – such as cyberflashing whereby police have struggled to identify perpetrators (End Violence Against Women 2020). In addition, whilst the College of Policing may have intended to streamline the response to YIBSA with their briefing note, there is a considerable range of actions that can fall under the category of 'youth produced sexual imagery' (College of Policing 2016, p. 5). Therefore, police officers are inevitably having to use their discretion regularly, which leads to a variety of outcomes being pursued.

With this in mind, it is worth questioning why some cases result in a youth caution, others in a community resolution and what leads to other agencies being brought in? All examples included in the table above are likely to have caused severe harm to the victims and yet they are not being dealt with in a consistent manner. On the other side, these examples also demonstrate the array of harmful sexual behaviour that is prevalent amongst young people. Without a consistent police response, there is a lack of certainty that these cases are being fully and appropriately addressed.

The findings presented in Table 1 undoubtedly evidence that police discretion is regularly used in cases of YIBSA. Data collected through FOI's points to police discretion influencing the perception of offences, what is considered an offence and the outcome. This echoes points made previously by researchers investigating 'sexting', whereby if terminology accounts for a considerable range of behaviours, it is inevitable that there is 'a widespread reliance on discretion in deciding whether to report, investigate and prosecute young people' (Crofts *et al.* 2015, p. 40). Whilst the considerable use of discretion in this context is a significant conclusion to draw, there is a need to understand the thought and intention behind decision-making. The following section seeks to shed light on this.

Thematic discretion

It emerged from interviews with police officers that certain discretionary measurements were utilised in cases of YIBSA; whether the incident was considered 'age appropriate', and if pursuing the case or possible outcomes were in 'public interest'. I argue that the police, as a result of the wide reach of the *Protection of Children Act 1978*, have formulated themes which inform their discretionary decisions. These themes have possibly been crafted from moral presumptions about what actions can be considered 'age appropriate', and which cases are pursued in 'public interest'. Whilst the latter theme is central to policing (Newburn and Neyroud 2008), their applications in cases of YIBSA are largely informed by police perceptions of young people and their behaviour. Whilst there are numerous considerations made by the police when utilising their decision-making, it is particularly important in this context to acknowledge the dimensions specific to gender-based offences – such as the criticism of the victim's behaviour – bolstered by the fact that these themes were prominent in interviews with officers.

I am proposing the original concept 'thematic discretion', building on previous research about police discretion. Utilising the framing of police as 'moral enforcers' (Johnson and Dalton 2012), as well as discussions of the police's reliance on discretion in cases of 'sexting' (Crofts *et al.* 2015), the data presented here will expand on how the police's positionality, understanding of sexual violence, and their perspective of young people, can inform discretionary decisions. Additionally, I wish

to demonstrate the significance of police discretion in cases of YIBSA, but equally how the themes they utilise to inform their discretion have the potential to be misguided and problematic.

Several participants used the phrase ‘age appropriate’, or wording referring to ‘appropriate’ behaviour when discussing young people sharing sexual images. Whilst describing conversations officers had with young people to address their behaviour, one participant stated that:

A lot of the time ... what they're looking at is age appropriate ... which I would like to think is [the majority] of young people we come across (Police INV 1)

This participant later suggested that they would perceive ‘age appropriate’ behaviour as a 14-year-old looking at images of another 14-year-old. Police DC 3 also stated that if the images being shared were between two 13-year-olds, these would be considered ‘age appropriate’, and that this particularly comes into consideration when the suspect and victim are under the age of 18.

Here we can see that police officers are defining image sharing or viewing images between young people of a similar age as ‘appropriate’. These examples are pointed to as ‘appropriate’ in comparison to – as one participant stated – a 16-year-old looking at images of an 8-year-old (Police INV 1).

Furthermore, one participant believed that the public would disagree with prosecuting a young person who has engaged in ‘age appropriate’ sexual activity (Police DS 5). This officer goes further than positioning image-sharing between young people as ‘appropriate’, by also defining a criminal justice response as unsuitable. There is certainly room for this argument with regard to consensual image-sharing, particularly with the potential damage caused to young people who encounter the criminal justice system (Goldson 2005) however a more complex analysis is required when we consider the context of some of the cases, including both the abusive nature and harm caused.

In addition to the above, a participant drew comparisons with age-specific legal framings:

What is age appropriate ... you can do a lot of things at 16 (Police DC 2)

This statement was made in response to a question I posed to the officer about the limitations of UK law. This comment allows us to reflect on the current disparities between the age of sexual consent – which is 16 in the UK – and the legal definition of a child – someone under the age of 18 (see section 7(6) *Protection of Children Act 1978*). It is possible that police officers are mindful of this disparity and therefore factor it into their decision-making. However, giving police officers the authority to decide what behaviour is ‘appropriate’ and what is not, can be concerning. If we think back to research identifying how ‘stereotypical beliefs about rape victims typically revolve around expectations of “appropriate” behaviour’ (Dhami *et al.* 2020, p. 158), there is the possibility for police officers to misread cases of young people sharing images. Presuming that similarity in age suggests appropriateness, this may leave harm unaddressed and justice unachieved, echoing points made about sexual assault and rape cases by Temkin and Krahe (2008).

Additionally, it appears the police are presuming proximity in age between the victim and suspect means the behaviour is ‘age appropriate’. This assumption overlooks evidence produced by this research project – and previous literature (Wood *et al.* 2015, Henry *et al.* 2021) – suggesting that coercive and abusive practices may play a part in image-sharing. Furthermore, there is a need to consider the wider context of abuse, for instance, whether image-sharing is a facet of abusive relationships. These considerations are almost disregarded through the police’s measurement of ‘age appropriateness’, as a close age range does not rule out an imbalanced and harmful power dynamic.

Public interest was another theme raised by the police, which is likely to mirror the public interest test implemented by the Crown Prosecution Service and equally applied to the police. The test itself concerns deciding whether it is in the public interest to seek a prosecution or not (Newburn and Neyroud 2013). With regards to the police perception of public interest, it seemed that the viewpoint of the general public, and their opinions on suitable action, held weight in cases of YIBSA. The below evidence explicitly mirrors Johnson and Dalton’s description of police decision-making as reflective of and reinforced by, the wider public (2012).

I try to make my decisions based on what I believe ... what the public want and expect from their police ... if I polled 100 people and gave them a set of circumstances ... and I asked them how we should proceed ... do we think this child poses a significant risk of harm to the public ... I can't imagine the public want to see their police service prosecuting under 18's (Police DS 4)

Whilst there is certainly merit to the argument on unnecessary punitive action towards young people, consideration needs to be made as to the risks and harms of YIBSA. In these circumstances depicting a 'child' as not being able to 'pose significant risk' almost minimises the severity of these cases.

Following on from the above, certain participants were clear that seeking criminal actions against a young person would be damaging and impact their life significantly, which in turn was *not* in public interest.

Do we have two well rounded healthy kids ... criminalising them would be hugely detrimental ... that's what that [public interest] means to me (Police DS 21)

Whilst the officer is correct to point out the possible detrimental effect of criminalisation, focusing on the language – similar to age appropriateness – the determination of what is 'rounded' and 'healthy' is based here on the police's personal perception. There are again concerns that this language could minimise the harms of YIBSA or indeed the intention behind the young person sharing images and/or videos non-consensually.

Two teenagers, unless the offending is very significant, it's not ever going to be in the public interest to [prosecute] (Police DS 18)

It is worth contemplating what exactly accounts for significant offending? Would this be viewed as the extent – for instance, the number of abusive images held by someone – or the individual offence? Unfortunately, with either option, the police are creating a hierarchy of abuse, and the choice to pursue a punitive response relies on the police's decision as to what can be considered 'significant'.

Is it really in the public interest to destroy ... someone's life before it's got going (Police DS 17)

This statement by Police DS 17 raises concerns about the purpose of the criminal justice system. If the police are likening pursuing a criminal justice response to destroying someone's life, this should not be an option for any criminal case. With regards to YIBSA, there is little consideration in this statement for the victim's life. Reflecting on previous research on IBSA, the harms of victimisation are comparative to someone's life being destroyed (McGlynn *et al.* 2019). Indeed, there should be equal consideration for victims as there is for suspects.

With this in mind, I want to emphasise that the manner in which police appear to use 'public interest' in this context is to legitimise not criminally pursuing cases for the sake of the suspects, that their lives will be impacted, or that there are better routes to respond. These concerns are not untrue, however, what we are not seeing is 'public interest' being utilised with the victim's welfare in mind. Here it would be useful for the police to contemplate whether it is in the public interest for a young person to experience 'social rupture' (McGlynn *et al.* 2019) and endure navigating a shared environment with the person who distributed their private images – if they went to the same school for instance, or if they were a former partner. This is a damning observation, particularly considering wider criticisms of the police and their behaviour towards victims of gender-based violence.

It is clear from the evidence above that the police have formed and utilised a thematic process to assist their application of discretion in cases of YIBSA. Largely, a catalyst encouraging the employment of thematic discretion is the lack of clarification in legislation regarding YIBSA. The themes developed, however, are born from the police's personal perceptions – similar to police discretion in general – which leads to particular issues when dealing with YIBSA. As mentioned previously, concerns can be raised about the lack of consideration of victim's experiences and the harms of YIBSA, rather, a considerable driving factor behind their decisions is the impact that criminalisation will have on the

suspect. Reflecting on Myhill and Johnson's (2016) observations, this level of freedom is inevitably problematic for gendered offences, with findings echoing previous research that the police's decisions are steeped in harmful gendered stereotypes. Although these concerns could be somewhat addressed by more appropriate legislation, which in itself is a complex task, the internalisation of harmful gendered stereotypes and how they are employed is an enduring issue for the police to confront.

The sexist underpinnings of thematic discretion

It is a prominent flaw in the criminal justice system, arguably mostly associated with the policing and prosecution of sexual violence, that victims must have to prove their legitimacy through past behaviour and their conduct (Jordan 2004). Indications of these views have bled into the treatment of victims of YBSA and are arguably influencing police discretion.

If the public were really interested in targeting this ... they wouldn't allow their children dress the way they do', 'the first line of defence is at home (Police Staff 6)

This comment is consistent with wider research into victim blaming; male police officers have the tendency to blame a rape victim 'if the assault included factors relating to rape myths; such as intoxication or provocative clothing' (Parratt and Pina 2017, p. 80). In addition to the above, Police Staff 6 also blamed the families of victims for the abuse, suggesting that young people's clothing should be scrutinised by those in the household. Overall, this comment not only furthers rape myths but also encourages family members to internalise victim-blaming narratives.

I think people forget these images they send ... are potentially there forever (Police DS 19)

Further to the previous comment, Police DS 19 is regurgitating age old victim-blaming narratives, which question why – in this instance – the images were sent in the first place. In their ground-breaking report on IBSA, McGlynn *et al.* (2019) described how victim's encountered negative comments from police officers, with some suggesting that it is the victim's fault for sending the images out, and that they should have been careful. Again, these comments lie blame at the victim's feet, whereas the perpetrator's actions are ignored. The description of images being around 'forever' is particularly harmful when we consider that 'constancy' impacts victim's lives significantly (McGlynn *et al.* 2021), with many harbouring a sense of dread at the thought of the images resurfacing.

Do these people understand the consequences of what they're doing ... while it's consensual ... it's the fact that they are children at the time (Police PC 23)

There are numerous layers to Police PC 23's comment. Initially framing sending images consensually – as described – as having consequences instantly labels the behaviour as negative and/or harmful. This leaves no space for young people's sexual autonomy or 'sexual rights' (Albury 2017) and feeds into wider shaming narratives that are present within the school environment (Ringrose *et al.* 2013, Dobson and Ringrose 2016). This is further reinforced by the participant using the word 'children' and whilst young people under 18 are legally considered children, this phrasing again removes any sexual autonomy that young people have (Albury 2017).

In these cases, lots of the time it's not in the public interest ... not in the child's interest ... putting them on the sex offender's register ... for a prank (Police PC 20)

In the above quote, the participant has generalised the action of non-consensually sharing images as a 'prank'. Whilst we know that there are a variety of motivations behind the perpetration of IBSA (McGlynn *et al.* 2019), this should not be used as means to minimise victim's experiences. Indeed, framing this abuse as a prank and focusing on that, rather than the detrimental impact this abuse has on victims, minimises the act itself and the intent of the suspect to cause harm to the victim.

Further to the evidence above, a participant working in sexual health described a previous case where a 14-year-old girl was recorded '*engaging in sexual activity*' with four boys on stairwell. This girl

later reported the incident to the police, who responded *'well it looks like you were enjoying it'* (Practitioner 14). This example depicts the hypocrisy in victim-blaming narratives perpetrated by the police. Participants have described that young people's clothing is the reason for victimisation, then young people's behaviours are criticised, yet, when a young person seeks help, they are gaslighted and their harm denied.

Typical of victim blaming, we can be certain that the latter comments have all been made with young women or young girls in mind. As with many forms of sexual violence, it appears that YIBSA must also be subject to gendered perceptions of authenticity. Researchers have previously identified the commonality of gendered victim-blaming towards victims of IBSA, with a participant describing policing institutions as 'a boys' club' (Henry *et al.* 2018, p. 574). Focusing specifically on the language that is used by the police, it appears that there is a combination of the dismissal of IBSA victims through the judgement of actions, in addition to the minimisation of offender's actions. Again, this has been addressed in previous research, where responses from the police were linked to low levels of reporting (Henry *et al.* 2018).

Although participants have largely argued that discretion allows for cases to be dealt with in a suitable manner, it is necessary to explore police subjectivity in defining the following thematic areas; 'age appropriateness' and 'public interest'. These measurements are relative to what police officers consider 'obscene' (Johnson and Dalton 2012, p. 100), but are also reflective of wider public opinions on sexual normalities (Johnson and Dalton 2012). If we take into account how police perception has impacted victim's experiences when reporting rape (see Hohl and Stanko 2015) it is possible that similar concerns could be raised about the police's personal opinions on youth image-based sexual abuse, particularly with regards to the victim's behaviour and wider circumstances of the abuse. Indeed, by police utilising their discretion which is informed by subjective and individual opinion, victim's may experience feeling questioned or under pressure – similar to how young people reporting sexual assault felt (Greeson *et al.* 2016) – rather than supported, particularly when there have been participants describing such instances in a jovial way, for instance, as a *'prank'* (Police PC 20). Holistically, the police may believe that they are acting with good intentions, but with subjectivity, intentions are embedded in rape culture and harmful stereotypes, and discretion can also lead to victims of sexual violence feeling that they have been second guessed or not believed.

Policing youth image-based sexual abuse as a product of institutional sexism

Findings presented in this article mirror wider concerns about the police's ability to respond to gender-based violence, suggesting that, the employment of police discretion in cases of YIBSA is a product and legacy of institutional sexism. Following on from a period of time in England where a serving Metropolitan police officer kidnapped, raped and murdered Sarah Everard, the disappearance of Bibaa Henry and Nicole Smallman was dealt with disrespectfully by police officers, including officers taking pictures of their bodies, with the additional murders of Sabina Nessa and Zara Aleena, and Baroness Casey describing the Metropolitan police to be institutionally sexist, racist and homophobic (2023), the reality is that the police's ability to effectively prevent and respond to violence against all women is being questioned, and YIBSA is part of that.

It would be negligent to disregard this wider context and not contemplate the extent to which the same influences are present within the discretion utilised in YIBSA cases. If we refer back to the police's consideration of suspects in these cases and the implications of prosecutions, the experiences of victims are completely absent from the thought process. Indeed, the victim's presence only seems to be apparent when police officers are questioning their behaviour, which is reminiscent of the police's fixation with 'real rape' scenarios (Hohl and Stanko 2015). It is the case that these queries about behaviour and the minimisations of the harms of YIBSA are a product of institutional sexism.

Indeed, whilst I am unpacking the impact of sexism, this does not occur in isolation. Race, class, gender identity and disability will certainly compound the experiences that I am discussing and

should be considered in more detail than is available here. Whilst this is a limitation of the critical assessments made in this paper, I wanted to acknowledge that the conclusions drawn in this paper are only the beginning of understanding the impact of police discretion.

The wide-reaching concerns that I have identified here can naturally lead to arguments about whether there are more appropriate organisations to be responding to YIBSA. Taking inspiration from the defunding of the police movement and contemplating ‘social welfare as an effective means of preventing crime’ (Fleetwood and Lea 2022, p. 167), youth-facing organisations – such as youth centres, specialist youth sex and relationships and third sector organisations – will, through their own means, be responding to YIBSA, and arguably are in a better position to do so than the police. Within these organisations, typically the focus is on emotionally and physically supporting victims in numerous ways, it may be that these processes are more suitable for young people. Indeed, it is also worth recognising that these organisations are not free from criticism, with concerns raised about the perpetuation of symbolic violence in youth work practice (Cooper 2012), as well as issues of confidentiality and trust (Morgan and Banks 2010). Alongside discussions on alternative responses, wider research on violence and abuse has noted that victims have a broad range of justice needs, described as ‘kaleidoscopic justice’ (McGlynn and Westmarland 2019), which extend beyond the formality of criminal justice responses. It is worth exploring similar ideas regarding YIBSA, however extensive research is needed to identify how this would work. Whilst these observations require more consideration in the future, the extensive criticisms of the police ensure that it is a necessary conversation to have for the sake of sexual violence prevention and the safety of young people.

Evaluation

It is worth clarifying that whilst the findings presented in this paper are breaking new ground in understanding police decision-making in YIBSA cases, additional larger-scale research is needed to fully comprehend police perceptions, and the different cultures across forces more broadly than has been encapsulated by this project. Further work in this area should consider multiple perspectives, inclusive of the potential harm caused by police decision-making, the complexity of responding to these cases, and the space for abolition in the prevention of gender-based abuse.

Summary

In this paper, I sought to explore the use of police discretion in cases of YIBSA. Findings evidence that discretion is utilised at a considerable rate, largely necessary as a result of wide-reaching legislation and contextual complexities, with officers creating their own self-made guidelines to direct their decisions. The concept ‘thematic discretion’ can be adopted to describe these guidelines. With the subjective nature of the themes encompassing thematic discretion, it was unsurprising that harmful gendered stereotypes and sexist narratives were present in the use of police discretion in these cases, with the treatment of suspects taking priority over the experiences of victims. Many of these concerns mirror wider criticisms of the police in their responses to gender-based violence, laying the foundations for reflections as to whether there are organisations better suited to responding to YIBSA, rather than the police.

Disclosure statement

No potential conflict of interest was reported by the author.

ORCID

Alishya Dhir  <http://orcid.org/0000-0003-1268-7316>

References

- Agnew-Pauley, W., Ali, A., and Akintoye, B. 2021. *Stop and search: new data shows continued ethnic disproportionality*. The Conversation. Available from: <https://theconversation.com/stop-and-search-new-data-shows-continued-ethnic-disproportionality-172260>
- Albury, K., 2017. Just because it's public doesn't mean it's any of your business: adults' and children's sexual rights in digitally mediated spaces. *New media & society*, 19 (5), 713–725. doi:10.1177/1461444816686322.
- Artz, L. and Smythe, D., 2007. Case attrition in rape cases: a comparative analysis. *South African journal of criminal justice*, 20 (2), 158–181. <http://hdl.handle.net/11427/27655>
- Bows, H., 2017. Researching sexual violence against older people: reflecting on the use of freedom of information requests in a feminist study. *Feminist review*, 115 (1), 30–45. doi:10.1057/s41305-017-0029-z.
- Brennan, M. and Phippen, A., 2018. "Youth-involved sexual imagery" – a better term to challenge blame culture in youth sexting cases? *Entertainment Law review*, 29 (3), 1–6. <http://hdl.handle.net/10026.1/12703>.
- Casey, B., 2023. *Baroness casey review: an independent review into the standards of behaviour and internal culture of the metropolitan police service*. London: Metropolitan Police Service. Available at: <https://www.met.police.uk/police-forces/metropolitan-police/areas/about-us/about-the-met/bcr/baroness-casey-review/>
- Cockcroft, T., 2013. *Police culture: themes and concepts*. Oxon: Routledge.
- College of Policing. 2016. *Briefing note: police action in response to youth produced sexual imagery ('Sexting')*. College of Policing. Available from: <https://library.college.police.uk/docs/college-of-policing/briefing-note-sexting-2016.pdf>
- Cooper, C., 2012. Imagining 'radical' youth work possibilities – challenging the 'symbolic violence' within the mainstream tradition in contemporary state-led youth work practice in England. *Journal of youth studies*, 15 (1), 53–71. doi:10.1080/13676261.2011.618489.
- Criminal Justice and Courts Act. 2015. c. 2. Available from: <https://www.legislation.gov.uk/ukpga/2015/2/section/33/enacted>
- Crofts, T., et al., 2015. *Sexting and young people*. Basingstoke: Palgrave Macmillan.
- Dhami, M.K., Lundrigan, S., and Thomas, S., 2020. Police discretion in rape cases. *Journal of police and criminal psychology*, 35 (2), 157–169. doi:10.1007/s11896-018-9299-4.
- Dhir, A., 2023. *Understanding youth image-based sexual abuse: the role of context and police discretion*. Durham: Durham University. Available at: <http://etheses.dur.ac.uk/14976/>
- Dobson, A.S. and Ringrose, J., 2016. Sext education: pedagogies of sex, gender and shame in the schoolyards of *Tagged* and *Exposed*. *Sex education*, 16 (1), 8–21. doi:10.1080/14681811.2015.1050486.
- End Violence Against Women. 2020. *Cyber-flashing on trains 'largely unreported' despite rise in incidents*. End violence against women. Available from: <https://www.endviolenceagainstwomen.org.uk/cyber-flashing-on-trains-largely-unreported-despite-rise-in-incidents/>
- Fleetwood, J. and Lea, J., 2022. Defunding the police in the UK: critical questions and practical suggestions. *The howard journal of crime and justice*, 61 (2), 167–184. doi:10.1111/hojo.12468.
- Goldson, B., 2005. Child imprisonment: a case for abolition. *Youth justice*, 5 (2), 77–90. doi:10.1177/147322540500500202.
- Goldstein, H., 1963. Police discretion: the ideal versus the real. *Public administration review*, 23 (3), 140–148. doi:10.2307/973838.
- Greeson, M., Campbell, R., and Fehler-Cabral, G., 2016. "Nobody deserves this": adolescent sexual assault victims' perceptions of disbelief and victim blame from police. *Journal of community psychology*, 44 (1), 90–110. doi:10.1002/jcop.21744.
- Henry, N., et al., 2021. *Image-Based sexual abuse: a study on the causes and consequences of non-consensual nude or sexual imagery*. Oxon: Routledge.
- Henry, N., Flynn, A., and Powell, A., 2018. Policing image-based sexual abuse: stakeholder perspectives. *Police practice and research*, 19 (6), 565–581. doi:10.1080/15614263.2018.1507892.
- Hohl, K. and Stanko, E.A., 2015. Complaints of rape and the criminal justice system: fresh evidence on the attrition problem in England and Wales. *European journal of criminology*, 12 (3), 324–341. doi:10.1177/1477370815571949.
- Johnson, P. and Dalton, D., 2012. *Policing sex*. Oxon: Routledge.
- Jordan, J., 2004. *The word of a woman?* New York: Palgrave Macmillan.
- Kelly, L., 1987. The continuum of sexual violence. In: J. Hanmer and M. Maynard, eds. *Women, violence and social control*. Basingstoke: Palgrave Macmillan, 46–60.
- Lister, S., 2009. Police and policing. In: A. Hucklesby and A. Wahidin, eds. *Criminal justice*. Oxford: Oxford University Press, 37–60.
- McGlynn, C., et al., 2019. *Shattering lives and myths*. Durham: Durham University. Available from: https://www.claremcglynn.com/_files/ugd/e87dab_c6100ce67079407394dabb6100ebb937f.pdf
- McGlynn, C., et al., 2021. 'It's torture for the soul': the harms of image-based sexual abuse. *Social & legal studies*, 30 (4), 541–562. doi:10.1177/0964663920947791.
- McGlynn, C. and Rackley, E., 2017. Image-based sexual abuse. *Oxford journal of legal studies*, 37 (3), 534–561. doi:10.1093/ojls/gqw033.

- McGlynn, C., Rackley, E., and Houghton, R., 2017. Beyond 'revenge porn': the continuum of image-based sexual abuse. *Feminist legal studies*, 25 (1), 25–46. doi:10.1007/s10691-017-9343-2.
- McGlynn, C. and Westmarland, N., 2019. Kaleidoscopic justice: sexual violence and victim-survivors' perceptions of justice. *Social & legal studies*, 28 (2), 179–201. doi:10.1177/0964663918761200.
- Morgan, S. and Banks, S., 2010. Youth workers as confidants: issues of welfare and trust. In: S. Banks, ed. *Ethical issues in youth work*. London: Routledge, 157–178.
- Myhill, A. and Johnson, K., 2016. Police use of discretion in response to domestic violence. *Criminology & criminal justice*, 16 (1), 3–20. doi:10.1177/1748895815590202.
- Newburn, T. and Neyroud, P., (eds.) 2008. *Dictionary of policing*. 1st ed. Cullompton: Willan Publishing.
- Newburn, T. and Neyroud, P., (eds.) 2013. *Dictionary of policing*. 2nd ed. Oxon: Routledge.
- Parker, A.L. and Sarre, R., 2008. Policing young offenders: what role discretion? *International journal of police science & management*, 10 (4), 474–485. doi:10.1350/ijps.2008.10.4.100.
- Parratt, K.A. and Pina, A., 2017. From "real rape" to real justice: a systematic review of police officers' rape myth beliefs. *Aggression and violent behavior*, 34, 68–83. doi:10.1016/j.avb.2017.03.005.
- Protection of Children Act. 1978. c. 37. Available from: <https://www.legislation.gov.uk/ukpga/1978/37/contents>
- Rackley, E., et al., 2021. Seeking justice and redress for victim-survivors of image-based sexual abuse. *Feminist legal studies*, 29 (3), 293–322. doi:10.1007/s10691-021-09460-8.
- Reiner, R., 2000. *The politics of the police*. 3rd edn. Oxford: Oxford University Press.
- Ringrose, J., et al., 2013. Teen girls, sexual double standards and 'sexting': gendered value in digital image exchange. *Feminist theory*, 14 (3), 305–323. doi:10.1177/1464700113499853.
- Ringrose, J., Regehr, K., and Milne, B., 2021. *Understanding and combatting youth experiences of image-based sexual harassment and abuse*. Leicester: Association of School and College Leaders. Available from: <https://www.ascl.org.uk/ASCL/media/ASCL/Our%20view/Campaigns/Understanding-and-combatting-youth-experiences-of-image-based-sexual-harassment-and-abuse-full-report.pdf>
- Setty, E., 2020. *Risk and harm in youth sexting culture*. Oxon: Routledge.
- Temkin, J. and Krahé, B., 2008. *Sexual assault and the justice gap: a question of attitude*. Oregon: Hart Publishing.
- Thornton, B. 2023. Amendments to intimate image abuse laws announced. *SWGfL*. Available from: <https://swgfl.org.uk/magazine/amendments-to-intimate-image-abuse-laws-announced/>
- Westmarland, N., 2015. *Violence against women: criminological perspectives on men's violence*. Oxon: Routledge.
- Wood, M., et al., 2015. Images across Europe: the sending and receiving of sexual images and associations with interpersonal violence in young people's relationships. *Children and youth services review*, 59, 149–160. doi:10.1016/j.childyouth.2015.11.005.
- Youth Justice Legal Centre. 2021. *Deferred prosecution – Outcome 22*. Youth Justice Legal Centre. Available from: <https://yjlc.uk/resources/legal-updates/deferred-prosecution-outcome-22>