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# Yes, has no meaning if you can't say no: consent and crime in the chemsex context

Stephen Morris

## Abstract

**Purpose** – *The title of this paper is a statement made by a man at the end of his treatment following conviction for several sexual offences. It is powerful in conveying a simple and accurate meaning of consent. Legally, consent is not complicated and can be simply defined as: permission for something to happen or agreement to do something. The context of consent, however, is complicated and complex none more so than when it becomes an issue within chemsex. If we are to gain a full appreciation of consent-related complexity, we must also gain an understanding of the wider picture concerning chemsex and crime. The purpose of this paper is to provide that wider picture. With the exception of breaching of drug-related law, not all men who engage in chemsex are committing offences but, as we are discovering, a not insignificant percentage are and this needs to be cause for concern.*

**Design/methodology/approach** – *This study is a review and a personal perspective of the development of a criminal justice response to crime within the chemsex context.*

**Findings** – *This was a personal viewpoint, not a research project; therefore, there were no definitive findings.*

**Originality/value** – *This paper addresses lack of awareness within the criminal justice system in relation to chemsex, and the associated vulnerabilities. This work is original because there is a shortage of published work on the rise in chemsex-related crimes.*

**Keywords** *Substance misuse, Offending behaviour, Crime, Sexual crime, Criminal justice system, Chemsex*

**Paper type** *Viewpoint*

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The title of this paper is a statement made by a man at the end of his treatment following conviction for several sexual offences. It is powerful in conveying a simple and accurate meaning of consent. Legally, consent is not complicated and can be simply defined as: permission for something to happen; or agreement to do something. The context of consent, however, is complicated and complex, none more so than when it becomes an issue within chemsex. If we are to gain a full appreciation of consent-related complexity, we must also gain an understanding of the wider picture concerning chemsex and crime. This paper provides that wider picture. With the exception of breaching of drug-related law, not all men who engage in chemsex are committing offences but, as we are discovering, a not insignificant percentage are, and this needs to be cause for concern.

## Cause for concern

Complex and high-profile crimes are usually in the public domain for a very short time. A disturbing headline at the centre of media attention on one day will usually be replaced by an equally dramatic story the following day. The public domain is of course only part of the story; for those more closely involved – the victims, the perpetrators of crime, their families, friends, partners and those professionals who work with them – things do not pass so quickly. Crime, from whatever perspective, outside of media interest is much more complex and multi-faceted than any attention-grabbing headline. For those involved, crime is demanding and absorbing, certainly over months and maybe even years. Throughout the long dark Winter of 2017 two unconnected gay men convicted for the crime of murder filled my thoughts. In particular, it was the context of their crimes that I was not able to distract myself from. The context was new, unheard of and deeply concerning.

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Both men had committed their crimes in the context of chemsex. The defining features of chemsex were present including: pre-existing and present vulnerability; the substances used; the means of administration; the vehicle of connection; the motivation and environmental factors. But seldom, it appeared from existing research, had the consequences of chemsex ever been murder or any other crime, with the exception of course of drug offences. The chill of this emerging recognition motivated me to look further and look backwards. I trawled through records of previous clients I had known to be gay men. I looked closely at the assessments and court reports I had written to direct sentencing, to recommend treatment and to ensure a rehabilitative justice was afforded to them as they rebuilt their lives. I remembered their often terror filled faces as they prepared to stand before the judges, their trembling voices as they quizzed me about prison and probation officers and what should they expect. I re-read line by line the detail of their offences and there it was, in the light of my new-found awareness, crimes committed in the full definition of the chemsex context. It was a powerful reminder of the dynamics surrounding early recognition of organised child abuse which I had experienced earlier in my career: when we do not know, we do not see. It is what clinicians hear in the consulting room that so often leads the way and invites us to think the unthinkable.

### An emerging picture

Throughout the remainder of that Winter, I continued to piece together other evidence and conducted a scoping exercise across relevant professional groups. The emerging picture, that until then had not been recognised or reported, revealed criminogenic features relating to:

- complex levels of vulnerability
- combined victim and perpetrator experiences
- lack of knowledge in relation to consent
- confusion as to what constituted a sexual crime
- little understanding of what happens if you commit a crime
- a variety of sexual crimes
- a variety of non-sexual crimes
- a blurring of fantasy with reality

In relation to the crimes leading to arrest, trial and conviction, the range of non-sexual crimes included:

- domestic violence
- violence (GBH, ABH, assault, stealthing)
- harassment
- possession of an offensive weapon
- stalking
- robbery
- theft
- blackmail
- murder
- drug related (supply, possession)

The sexual crimes included:

- rape
- sexual assault
- internet crime (downloading, making, distributing, live streaming) extreme pornography

- child abuse
- exhibitionism
- outraging public decency
- bestiality

## Demographics

This challenging combination of factors was made even more explicit by listening to the men involved. Their accounts were, of course, not shaped by a professional agenda and often did not reflect professional or public held assumptions. Collectively, the overall profile of those involved revealed the following demographics. All ages were represented in a range from 21 to 60+. The larger percentage reflected a middle-class life-style with related careers and earnings. The majority had no previous experience of the criminal justice system. Many had experienced multiple loss, including loss of: job, income, housing, partner and friends. A smaller percentage of the men had apparent vulnerabilities at the time of offending including mental health diagnosis, homelessness, unemployment and conflicted interpersonal relationships. In common, all men had negative early life experiences linked to their identification as a gay male and included varying degrees of bullying, discrimination, rejection, shaming, humiliation and violence.

## The wider dynamics of consent

If we are to consider the issue of consent, then our thinking and understanding needs to be informed, not just by what we know and refer to as the “chemsex context” (Bourne *et al.*, 2015) but by the lived experience of the men involved and by an awareness of the forensic dynamics that inform crime. Equally important is awareness of what leads men into chemsex and how, for some, the motivating factors can lead to the commissioning of offences. Central to a forensic psychoanalytic understanding of crime is the important recognition that a criminal act is a communication, and usually a communication of something that cannot be said (Cordess, 1996). Applying this thinking to chemsex-related crime, the theme of vulnerability and denied vulnerability, with all its psychological consequences, can be understood as a significant causal factor which when not spoken about, when denied and when pushed away can increase the risk of offending.

## Criminal intent and absence of intent

In relation to the perpetration of chemsex-related sexual crime it is possible to recognise that there are those who commission an offence with a seeming lack of criminal intent. They have not planned, targeted or groomed but nonetheless they have created a victim and therefore remain subject to the whole criminal justice process. The crime in this situation has usually taken place in a highly sexualised environment where disinhibition and increased libido are powerful influencing factors on thinking and behaviour. Confusion and a distortion of reality are often present in the offence accounts, as is minimisation of the offence and avoidance of taking responsibility. An example of associated confused thinking (this is a not uncommon statement) would be “someone did that to me last week and I didn’t mind”. Also indicated in this statement is the prevalence of men who have offended and also been offended against. To commission a sexual offence, research tells us that internal inhibitors need to be overcome (Finkelhor, 1984). The overcoming of a natural locus of self-control is usually enabled by an internal process of “self-talk” which provides a series of reasons to justify committing an offence including: motivation to do it, overcoming external inhibitors and overcoming the victim’s resistance. Although someone may not have intended to commit a chemsex-related offence the prosecution will recognise that even with reduced inhibitions, cognitive ability and permission-giving thinking would have all needed to be functioning for an offence to have taken place. A defence may well make a plea for mitigation but it would be rare indeed for any evidence, for or against, to not recognise these contributing factors.

It is also important to acknowledge the presence of those who have intentionally and knowingly committed offences. Although initially not recognised, over time this group of men has become identified as a significant and concerning proportion represented in both investigations and convictions. These are men who have purposely sought out or created the chemsex context in order to commission offences. They are identified as having an obvious awareness of what they have done and intended to do. There will be evidence involving pre-meditation, grooming and targeting of victims. There will be little remorse, a lacking of apparent guilt and there is often a previous history of offending. These men will often possess an understanding of the criminal justice system and will seek to justify their crimes. They will be aware of the vulnerability of their victims and those caught up in the chemsex scene. They will know that many victims will not report the crime to the police, due to a fear that the police will pursue investigation and prosecution in relation to the victim's purchase and use of substances. When the latter is reality, the usual tactics and threats perpetrators use to silence their victims are not required. The silencing on these occasions has been done by the state. This is clearly a very unsatisfactory situation. Especially that the main LGBT agency working with victims of crime report that 95 per cent of victims from a chemsex situation will not disclose their victim experience to the police (Bewley, 2017). Professionals working with men who commit sexual crime know that they often talk with each other, network and organise their criminal behaviour together. There are indicators, apparent in recent cases of chemsex crime, of networking and behaviour suggesting an organised approach to the commission of serious offences.

### **An informed criminal justice response**

Both intentional and apparently unintentional sexual crime need to be met with an informed criminal justice response and an increase of awareness from within the LGBT community, sexual health services and the judiciary. The response that I have been responsible for developing within the London Division of Her Majesty's Prison & Probation Service recognises the need for victims to know that those who have offended against them by inflicting often long-lasting physical and psychological harm will be subject to a relevant sentencing, and that those who have offended, regardless of intent or not, will receive appropriate assessment of risk, and opportunity for reparation and intervention to address their needs to prevent the creation of more victims. Following conviction, care is required for all involved to not repeat the factors that have informed the development of offending behaviour. This means respect for the fact that it is the sentence that is the punishment and not how the sentence is carried out. Prison or a community probation sentence is required to be rehabilitative and not punitive in application. In recognition of this, for a full restorative justice to be applied to chemsex-related crime, the following features are required:

- Criminal justice agencies to assist the LGBT community in increasing awareness of chemsex crime, its causes and its consequences.
- Opportunities for agencies from both sectors to work together to increase awareness and skills that enable greater recognition of victim experiences, offending indicators, provision of preventative measures (e.g. media campaigns addressing vulnerabilities and consent) and opportunities for community inclusion for those who have been convicted on release from prison or whilst serving community sentences.
- Information-giving briefings to criminal justice professional groups to enable a full understanding of chemsex, its causes and its context in contemporary sexual health and gay male culture.
- A chemsex court assessment tool to enable early recognition of cases, especially where the chemsex element has not been recognised at arrest. The tool has been designed to utilise user friendly language, to encourage sensitive responses to the presence of shame and prevent repeated experiences of misunderstanding, exploitation or oppression. It also enables the provision of specific information given to sentencers with the aim of encouraging appropriate sentencing options and avoiding setting an offender up to fail due to lack of awareness of related life-style and impact of chems.

- A treatment tool kit for use by probation officers enabling appropriate intervention. Existing standard programmes within many criminal justice agencies (Ministry of Justice, 2013) are characterised by heteronormative assumptions and language. On the whole they are alien to gay males, and particularly those who have committed a chemsex-related crime. They also require a group treatment modality, which for many gay men risks repeating dynamics of shaming and discrimination. The chemsex tool kit (Morris *et al.*, 2018) has been designed to meet the requirements of a Rehabilitation Activity Requirement (RAR) (HMPPS, 2014) that can be attached to a sentence. It comprises x36 sessions and is delivered on a one-to-one basis. The intervention covers chem use awareness; offence-focussed work; self-development; resilience; self-esteem; post-traumatic stress disorder (PTSD); and management of the criminal justice experience. Again, the provision of the tool kit will enable sentencers to consider non-custodial options and greater use of meaningful intervention within the community.
- The provision of in-depth training to prepare identified probation officers throughout the local area to deliver the RAR intervention tool kit. As well as familiarisation with the various sections of the tool kit, those training were also provided with the opportunity to explore the construct of gay male sexuality, its discrimination, effects and an overview of trauma informed self-development.
- A professional support structure for probation officers holding cases. The complexity and extreme nature of behaviours associated with the crimes and related issues can and do cause distress to staff. Overwhelm, not understanding and lack of experience of gay sexuality can leave staff feeling inadequate and vulnerable. A regular multi-agency professional peer support group has been operating in the London Division (Morris and Stuart, 2018) for several months and has provided a rich learning experience across the professional groups involved. It has increased networking, sharing of resources and the provision of wider resources to the men involved.
- In relation to the above needs, the provision of individual case consultancy to officers holding cases has been an essential and useful provision. Officers without any awareness of chemsex, gay male sexuality, gay culture and the gay scene can feel out of their depth. Chemsex and its dynamics extend far beyond the principles of diversity, and unless the risk of professional limitation is recognised and remains unaddressed the impact on the case work relationship can impair the establishment of trust, the presence of a therapeutic alliance and ongoing management of risk.
- Many of the crimes reflect the secrecy and isolation associated with chemsex behaviour. It is widely recognised that effective intervention in criminal justice needs to be based on connection and an appreciation of the unique dynamics involved in any offending behaviour and offence. Other opportunities for professionals outside of gay culture and sexual health were needed and a variety of scoping meetings, workshops, conference events were held and are ongoing to facilitate connection and to ensure replication of offence dynamics remains conscious in the professional context.
- Connection with LGBT community events and encouragement for the men and their probation officers to attend is a practical means of addressing the causal factors of isolation and lack of awareness. Creative client supervision remains a seldom recognised but important means of intervention within probation practice.
- What we hear in the consulting room must also lead into and inform research. As indicated, there is a paucity of research covering chemsex-related crime. I have identified a three-phase approach in our research that will evidence and inform the areas of: offender profiles and demographics, intervention and sentencing. Each of these domains will need evidence to shape and resource continued responses.

## From pain to violence

At the core of forensic psychotherapy practice is an often uncomfortable landscape that reveals itself as a journey from pain to violence (DeZuluetta, 2006). We know only too well in criminal justice that unaddressed hurt continues to hurt. Those hurting will, if ignored, marginalised and rejected, eventually communicate their experiences and hurt others. In recognising chemsex-related crime, it is impossible to dismiss the degrees of vulnerability and the inherent pain that inform the associated

offending behaviour. Whilst inviting those men who have been convicted to take responsibility for their behaviour, related professional groups also need to take responsibility to develop a thinking, a way of being and a response that recognises the need and pain of those involved. We need to be mindful that despite the achieved milestones of gay liberation, the gay community holds a collective experience of trauma from all that was symbolised at Stonewall, to the AIDS crisis and, in recent years, the rise of hate crime; like it or not, experiences like these leave their mark. Such legacy remains in our collective experiences and is activated into painful consciousness millions of times in a gay life time. Compared to the heterosexual population our demographics are not an easy read. Self-harm, depression, anxiety, PTSD, psychosis, suicide and addictions are all significant percentages higher for gay men. Such experiences repeat over and over again the vicious cycles of shame and guilt. It is hardly surprising, then, that the self-medicating balm of chemsex holds a powerful attraction. Not all will get into difficulties but for those that do, the cost can be very high indeed.

We are now approaching another Winter (at the time of writing – October 2018) and I am aware that there are currently 52 men in London serving sentences for chemsex-related crime. Another truth known all too plainly to the Metropolitan Police Service is that many crimes do not get to the court room. It is to be expected that these findings are being replicated across the UK. A national criminal justice response is at project planning stage and is further indication of a need we are only just seeing as the tip of the iceberg.

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