NPIA
National Policing Improvement Agency

Digest

December 2010

A digest of police law, operational policing practice and criminal justice

The NPIA Digest is a journal produced each month by the Legal Services Team of the Chief Executive Officer Directorate. The Digest is a primarily legal environmental scanning publication intended to capture and consolidate topical and key issues, both current and future, impacting on all areas of policing. During the production of the Digest, information is included from Governmental bodies, criminal justice organisations and research bodies. As such, the Digest should prove an invaluable guide to those responsible for strategic decision making, operational planning and police training.

The NPIA aims to provide fair access to learning and development for all. To support this commitment, the Digest is available in alternative formats upon request. Please email digest@npia.pnn.police.uk or telephone +44 (0)1480 334733.

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Legal Services

Chief Executive Officer Directorate

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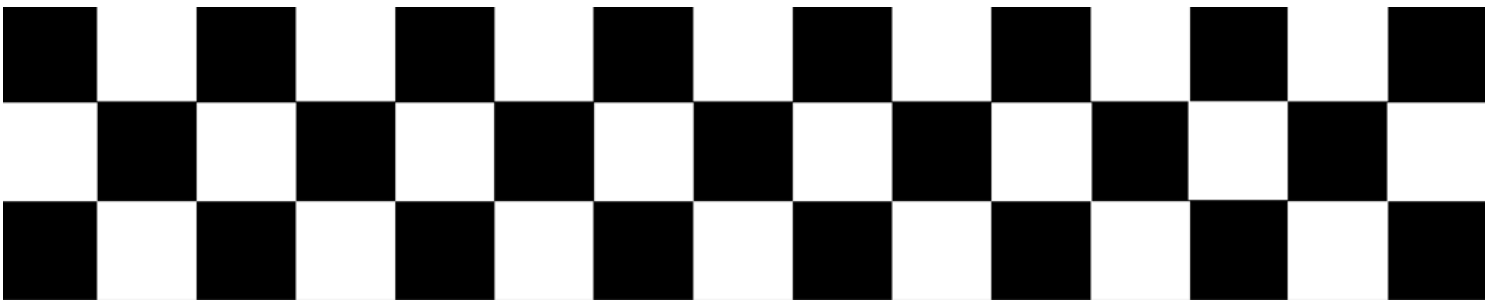

In this month's edition of the NPIA Digest.....

This edition contains a summary of issues relating to police law, operational policing practice and criminal justice. New legislation, statutory instruments and case law are covered. The NPIA Digest includes articles outlining recently published Government and Parliamentary reports and initiatives. As usual, the NPIA Digest also covers the latest Home Office Circulars, research papers, Codes of Practice and guidance.

Four Court of Appeal judgments delivered during November are summarised. These relate to: the admissibility of voice recognition evidence under section 78 of the Police and Criminal Evidence Act 1984 (PACE); the admissibility of certain DNA evidence under section 78 of PACE; the actions necessary to satisfy the provisions of section 24 of PACE; and the construction of section 3ZB of the Road Traffic Act 1988.

Two thematic reports by Her Majesty's Inspectorate of Constabulary looking at the effectiveness of police governance, as exercised by police authorities and an overall review of the criminal justice system are detailed.

A report on possible improvements to the firearms licensing system in the light of the shootings by Derrick Bird, published by the Association of Chief Police Officers, is detailed. The eleventh bulletin of the Learning the Lesson Committee which summarises reports on recommendations for improving policing practice is also covered.

Research reports on improving support for victims, on public knowledge and views of the life sentence for murder and on the issue of providing anonymity to defendants in rape cases are all included in this month's edition of the Digest.

A number of statistical bulletins were published during November. Subjects covered include: public perceptions of policing, engagement with the police and victimisation; the exercise of terrorism powers; and drug seizures.

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Bills Before Parliament 2010/11 - Progress Report

The following Bills from the 2010/11 session have progressed as follows through the Parliamentary process:

Terrorist Asset-Freezing etc. Bill - The United Kingdom is required by the UN to freeze the assets of persons who commit terrorist acts. The legislation that allowed the Treasury to freeze the assets of those suspected of involvement in terrorism was quashed by the Supreme Court in January 2010 but reinstated by temporary legislation immediately afterwards. The Terrorist Asset-Freezing (Temporary Provisions) Act 2010 expires on 31 December 2010. This Bill seeks to replace that Act with a permanent legislative framework.

The Bill, which was initially presented to Parliament in the House of Lords on 15 July 2010, completed its stages in the Lords on 1 November 2010. It was introduced into the House of Commons on 2 November 2010 and the main principles of the Bill were then debated on 15 November 2010. The Commons decided that the Bill should be given its Second Reading and sent it to a Public Bill Committee for scrutiny. The Terrorist Asset-Freezing etc. Bill Committee took written evidence and considered the Bill clause by clause. The Committee's consideration of the Bill finished on Tuesday 23 November.

Identity Documents Bill - the main purpose of this Bill is to abolish identity cards and the National Identity Register. To do this, it repeals the Identity Cards Act 2006. A small number of provisions in the 2006 Act, which are unrelated to ID cards, reappear in the Bill. These provisions cover offences relating to the possession and manufacture of false identity documents such as passports and driving licences.

The third reading of the Bill, a final chance to amend it, took place on 24 November. The Bill has been passed and returned to the Commons with an amendment.

The progress of Bills in the 2010/11 parliamentary session can be found at
http://services.parliament.uk/bills/

R v Tamiz, Dohfi, Miah, Hussain and Younas [2010] EWCA Crim 2638 (Court of Appeal)

This case involved appeals by five persons who had been tried and convicted on charges relating to the illegal importation of controlled drugs. In dealing with two of the appeals the Court of Appeal has provided guidance on voice recognition evidence.

The convictions of Miah and Hussain were based largely on conversations which had been secretly recorded. Some of the conversations were in English but most were in Arabic, Bengali or a Bangladeshi dialect known as Syhleti. The non English material was listened to and translated by two translators, Zakir Hussain and Yousef Hussain. As well as translating the material the two translators also provided voice recognition opinion by comparing recordings of different conversations.

Relying on section 78 of the Police and Criminal Evidence Act 1984, Miah and Hussain argued that the voice recognition evidence of the two translators should not be admitted as it would be unfair for it to go before the jury. They submitted that because it was not expert evidence it was inherently unreliable. They also objected to the fact that there was no reliable contemporaneous record of the interpreters' consideration of the recordings or of their decision-making process. They argued that the testimony of the translators could not in practice be tested or contradicted. The trial judge rejected these objections and allowed the prosecution to adduce the evidence of the translators.

In determining whether this decision was correct the Court of Appeal examined the case of Flynn and St John [2008] EWCA Criminal 970. In that case voice recognition evidence had been given by four police officers on recorded conversations. The Court of Appeal ruled that the voice identification evidence provided by the four police officers should have been excluded under section 78 of PACE. This was partly because there was no evidence that any of the officers had any training in auditory analysis. It was also because no notes were made by any of the officers of the dates and times when they attempted to recognise the voices on the covert recordings.

The Court of Appeal in Flynn and St John went on to give general guidance: 'The increasing use sought to be made of lay listener evidence from police officers must, in our opinion, be treated with great caution and great care. In our view where the prosecution seek to rely on such evidence it is desirable that an expert should be instructed to give an independent opinion on the validity of such evidence. In addition … great care should be taken by police officers to record the procedures taken by them which form the basis for their evidence.'

Turning back to the appeals of Miah and Hussain, the Court of Appeal found that the facts differed sufficiently from the case of Flynn and St John so that it would not be unfair to admit the disputed evidence. In particular, in the Miah and Hussain case, the interpreters did not purport to identify the disputed dialogue as that of either of the appellants. Their evidence was merely that the conversations attributed to Y on a transcript were of the same person and those attributed to X were of the same person. The prosecution sought to prove who X and Y were by other strong evidence. There was also, in contrast to the Flynn and St John case, a large amount of recorded material for the interpreters to consider and the recordings were of good quality. It had also been common ground that there was no expert in phonetics who spoke or understood the languages in question.

Whilst ruling that the admission of the evidence was not unfair, in accordance with section 78 of PACE, the importance of observing the safeguards set down in Flynn and St John was emphasised by the Court. Lord Justice Stanley Burnton, giving judgment, stated that, 'it would have been better if contemporaneous records had been kept of the interpreters' consideration of the recordings, and of when and in what circumstances they had reached their conclusions, on the lines set out by this Court in Flynn.'

The appeals of Miah and Hussain were rejected.

The full judgment is available at
http://www.bailii.org/ew/cases/EWCA/Crim/2010/2638.html

R v C [2010] EWCA Crim 2578 (Court of Appeal)

This appeal focuses, in part, on the decision to admit DNA evidence. It was argued by the appellant that the evidence in question should not have been admitted as per the provisions of section 78 of the Police and Criminal Evidence Act 1984. Section 78 provides for the exclusion of unfair evidence.

The facts of this case concern a rape which took place in the 1980s. The rapist ejaculated inside the victim and evidence swabs were taken. DNA testing of the samples obtained was conducted at the time but no DNA profiles were obtained. Some years later a further analysis was carried out by an expert employed by the Forensic Science Service. This produced a major DNA profile and a minor DNA profile. The major profile matched the victim and the minor profile was matched to the appellant via the DNA database. After different stages of analysis a match probability of the minor profile to that of the appellant of 1 in over 50 million was produced.

It was argued during the original hearing that the evidence should be excluded under section 78 of PACE because the

quantity of DNA on the minor profile of the appellant was only 50 picograms. It was submitted that this quantity was below the stochastic threshold of 100-200 picograms established in the case of Reed & Reed [2009] EWCA Crim 2698, [2010] 1 Cr. App. R 23. The Crown's expert did not accept that the quantity of the profile was 50 picograms and made clear that the quantity itself was not the material consideration; what was important was to take fully into account any stochastic effects and examine the reliability.

The trial judge ruled that the evidence should not be excluded under section 78 of PACE. He agreed that it was not the quantity of the DNA that necessarily mattered but quality and reliability. He concluded by saying that he considered the stochastic levels valid and it was sufficient to make the analysis reliable.

On appeal it was argued that the trial judge wrongly ruled that the DNA evidence was sufficiently reliable to be admitted in evidence. Giving the judgment of the Court, Lord Justice Thomas stated that the trial judge, 'correctly took the view that what mattered was the quality of the minor profiles and not the quantity.'

This ruling was, in the words of the Court, in line 'with the evidence that had been before [the trial judge]'. It was also in line with the judgment in the case of Reed & Reed 'that reliable results might be obtained from amounts below the stochastic threshold.' Further support was provided by the case of R v Broughton [2010] EWCA Crim 549 in which, in the words of Lord Justice Thomas again, the Court of Appeal 'made clear that the submissions advanced by the Crown in this case [R v C] were entirely correct.' In the Broughton case the profiles were derived from unquantified samples of DNA of less than 100 picograms.

The full judgment is available at
http://www.bailii.org/ew/cases/EWCA/Crim/2010/2578.html

Shields v Chief Constable of Merseyside Police [2010] EWCA Civ 1281 (Court of Appeal)

In this case the appellant, Joshua Shields, appealed against the dismissal of his claims against the Chief Constable of Merseyside Police for damages for assault and false imprisonment in relation to an incident during which he was arrested.

PC Holland attended a house following an allegation that a 16 year old girl had been hurt. After being permitted to enter the property PC Holland became involved in an altercation with the appellant, and the appellants father. In the course of the incident the appellant attacked PC Holland and punched him to the side of the head. PC Holland pressed the emergency button on his radio requesting assistance. One of those to arrive, PC Maxwell, put himself between the appellant and PC Holland. The police asked the appellant to calm down but he continued to shout obscenities at them. PC Holland said to PC Maxwell, 'he's under arrest for assault police'. PC Maxwell then arrested the appellant and placed him into a police vehicle.

PC Maxwell's evidence was that he suspected that the appellant had assaulted PC Holland from what the officer had said in the appellant's presence. He also considered it necessary to arrest the appellant to prevent any further physical harm to police officers and to ensure prompt and effective investigation into the suspected offence. The appellant and his father were subsequently charged with offences of assaulting a police officer in the execution of his duty but were acquitted at trial.

The appellant then brought a civil action alleging assault and false imprisonment in relation to his arrest. During this case the recorder found that at the time when PC Maxwell arrested the appellant there was sufficient information available to the police officer to form a reasonable suspicion that the appellant had committed an offence affording lawful grounds for his arrest. His claim was therefore dismissed.

The appellant appealed against this ruling on the basis that the recorder had failed properly to apply the provisions of section 24 of the Police and Criminal Evidence Act 1984. It was submitted that the policeman who arrested him, PC Maxwell, did not have sufficient information available to him at the time when he detained the appellant, to form a reasonable suspicion that the appellant had committed the offence for which he was detained. It was also claimed that the police officer did not go through the mental process necessary for carrying out a lawful arrest.

Section 24 of PACE provides a constable with the power to arrest a person without a warrant. A summary arrest by a police officer will be lawful, in accordance with the terms of

section 24, if the person arrested is about to commit, is committing or has committed an offence or the police officer has reasonable grounds for suspecting this to be so. This is provided that the arresting officer has reasonable grounds for believing that the arrest is necessary for any of the reasons identified in section 24(5).

The first narrow argument of appeal was that PC Maxwell did not have sufficient information to be able reasonably to suspect that the appellant had assaulted PC Holland in the execution of his duty. This ground centred on the phrase 'execution of duty'. On the facts of the case, the Court ruled, in the words of Lord Justice Toulson, that PC Maxwell 'had reasonable ground to suspect that PC Holland was present because of what was going on in the house: a scene of disturbance with an injured teenage girl receiving treatment and two males behaving in a violent and threatening manner, despite attempts to calm them down. In those circumstances, there was sufficient material for PC Maxwell reasonably to suspect that PC Holland was there in the execution of his duty.'

The wider ground of appeal was that the power of arrest under section 24 involves the exercise of a discretion, but that no discretion can be validly exercised if the person exercising it is not conscious that he is in fact exercising a discretion. PC Maxwell, it was submitted, believed himself to be assisting in detaining someone who had already been told that he was under arrest. He could not therefore be exercising the discretion to arrest given to him by section 24.

The Court of Appeal dismissed this argument stating: 'PC Maxwell reasonably suspected that the appellant was guilty of assaulting PC Holland and reasonably believed that it was necessary to arrest the appellant to prevent him from causing further physical harm to officers and to ensure the prompt and effective investigation of the offence. Having the power of arrest and reasonably believing it to be necessary, he was not required to go through any further mental process before detaining the appellant'.

The appeal was therefore dismissed.

The full judgment is available at http://www.bailii.org/ew/cases/EWCA/Civ/2010/1281.html

R v Williams [2010] EWCA Crim 2552 (Court of Appeal)

This appeal raises two issues of construction on section 3ZB of the Road Traffic Act 1988. Section 3ZB specifies that a person is guilty of an offence if he causes the death of another person by driving a motor vehicle on a road and, at the time when he is driving, he is driving otherwise than in accordance with a licence, driving while disqualified, or is using the motor vehicle while uninsured or unsecured against third party risks.

The appellant, Mr Williams, whilst driving with no licence or insurance, was involved in a collision with a pedestrian, Mr Loosemore, which resulted in the death of Mr Loosemore. The evidence of two other drivers was that the appellant was not exceeding the speed limit of 30mph and that Mr Loosemore stepped straight out into the path of the appellant's car.

The appellant was charged on a single count of causing death by driving without insurance and without a licence under section 3ZB. At trial, Judge Diehl QC, rejected a submission of no case to answer, ruling that the offence could be committed without any fault in the manner of the appellant's driving. The offence was made out if Mr Loosemore's death had been caused by the appellant driving without insurance and without a licence. On the meaning of 'cause' Judge Diehl QC said the appellant's driving did 'not have to have been the sole, the only, cause of the death.' It did 'not even have to be shown that it was the principal or the main cause, or major cause … but it has to be a contributing cause, other than a merely minute or negligible contributing cause that you would discount, put to one side.' The appellant was convicted and sentenced to a period of nine months' imprisonment and disqualified from driving for two years.

The appeal was based on two grounds. Firstly, it was argued that the word 'cause' in the section must be construed as meaning that the offence could not be committed without some fault or other blameworthy conduct on the part of the appellant. It was submitted that there was no blameworthy conduct as the sole fault was a failure to have a licence and insurance which was unrelated to the cause of the accident and the ensuing death. The Crown accepted before the Court of Appeal that no fault, carelessness or lack of consideration in driving could be attributed to the appellant.

In determining whether fault or another blameworthy act was required the Court of Appeal ruled in line with the case of R v Marsh [1997] 1 Cr App R 67. This case considered a similar question in relation to section 12(A)(1) of the Theft Act 1968 and the issue of aggravated vehicle taking. The Court of Appeal stated in that case that the court had to ask: 'was the driving of

the vehicle a cause of an accident? Any other approach would require the court to read in words which are not there.'

Having considered the case of R v Marsh the Court stated, in the words of Lord Justice Thomas, giving the judgment of the court: 'We consider that the approach of this court in Marsh applies even more clearly to the offence under s.3ZB; fault is not required. The simple question for the court is whether the death was caused by driving without insurance or without a driving licence.' The court concluded by stating that 'To hold that blameworthy conduct was required would be to re-write s.3ZB.'

The second ground of appeal argues that the word 'cause' should be construed so that the Crown did not merely have to prove the appellant's driving was 'a cause' which was not minimal but was a substantial or major cause of the death of the deceased. It was submitted that the facts clearly established that the substantial or major cause of death were the actions of Mr Loosemore and not those of the appellant.

The trial judge, Judge Diehl QC, in his directions to the jury, stated that providing the appellant's driving was a cause which was not minimal then the appellant was guilty of the offence. It did not have to be a major cause of the death.

The Court of Appeal, in the words of Lord Justice Thomas stated: 'In our view the correctness of the judge's direction is clear from R v Hennigan (1971) 55 Crim App R 262.' In that case the Court of Appeal had to consider the question of causation in the context of the offence of causing death by dangerous driving. Giving judgment it was stated: 'The Court would like to emphasise that there is nothing in the statute which requires the manner of the driving to be a substantial cause, or a major cause, or any other description of cause, of the accident. So long as the dangerous driving is a cause and something more than de minimis, the statute operates.'

Summarising the effect of the Hennigan case Lord Justice Thomas stated: 'the meaning of cause in death by dangerous driving was decided by Hennigan. That decision makes clear it is a cause if it is more than negligible or de minimis. We do not think that Parliament can have intended any different definition for s 3ZB.' This view was reinforced by the fact that, as noted by the Court, 'in the context of the other offences where death results from driving ... it is difficult to conceive of any other intention of Parliament that if a person drove unlicensed or uninsured, he would be liable for death that was caused by his driving, however much the victim might be at fault; it was therefore sufficient that the cause was not negligible.'

The Court Concluded by saying: 'The judge was right therefore to explain to the jury that what was necessary was a cause that was more than minute or negligible, as that is what Parliament

clearly intended.' The appeal against conviction was therefore dismissed. Although the appeal against sentence was allowed, with a sentence of 24 weeks being substituted for the previously imposed sentence. The Court stating: 'A custodial sentence was plainly appropriate, but in the light of all the circumstances, too long.'

The full judgment is available at
http://www.bailii.org/ew/cases/EWCA/Crim/2010/2552.html

SI 2702/2010 The Police Act 1997 (Criminal Records) (Amendment No. 2) Regulations 2010

These Regulations, which come into force on **6 December 2010**, amend the Police Act 1997 (Criminal Records) Regulations 2002. Regulation 2 amends the definition of 'relevant police force' for the purposes of enhanced criminal records certificates issued under the Police Act 1997.

This means that when an application for an enhanced criminal record certificate is made, the Secretary of State must send the details of the application to the police force for the area in which the applicant currently resides in two situations. The first is when there is conviction or caution information held on the applicant and the second is when the position for which the certificate was applied will be primarily carried out in the applicant's home. In cases in which any police force holds other (non conviction or caution) information, the Secretary of State must send the details of the application to the police force holding that information.

This replaces the previous address based system of sending the details of the application to every force in whose area the applicant had resided for the previous five years irrespective of whether any information was held in relation to the applicant by any police force.

SI 2720/2010 The Fixed Penalty (Amendment) Order 2010

This order, made on 10 November 2010 and laid before Parliament on 15 November 2010, comes into force on **1 February 2011**. It amends the Fixed Penalty Order 2000 ('2000 Order') by altering the amount of the fixed penalty prescribed for certain offences.

The fixed penalty for offences of driving or keeping a vehicle without a registration mark, or with a registration mark obscured, is raised from £30 to £60. The fixed penalty for insufficient tyre tread under Regulation 27(1)(g) of the Road Vehicles Construction and Use Regulations 1986 is reduced, in the case of a motor cycle, from £120 to £60, which is the amount prescribed under the 2000 Order for any fixed penalty offence involving obligatory endorsement for which no other amount is specified.

Thematic Report into the Effectiveness of Police Governance

Her Majesty's Inspectorate of Constabulary has published a report, Police Governance in Austerity, which examines the issue of police governance as exercised by police authorities. The findings are based on inspections of 22 of the 43 police authorities in England and Wales. The inspections were conducted by HMIC, the Audit Commission and the Wales Audit Office.

The inspections found that the performance of the police authorities was adequate in 15 of the 22 authorities inspected. The authorities were most effective when addressing local, short-term priorities, and in helping to drive improvement in areas such as police response times. Performance was weaker in the areas of planning beyond the short term and securing value for money. Fewer than one in four of the authorities performed well in this area. Authorities were also less effective in the scrutiny of the more serious and less visible aspects of policing, such as tackling terrorism and serious crime.

Only four of the police authorities inspected were judged to have performed well in both setting strategic direction and ensuring value for money. Improved performance is required as HMIC views both of these functions as being critical, especially given the financial challenges going forward.

The report identifies certain characteristics of the police authorities which it associates with good governance. These are:

- Involvement in setting the direction for the force and challenging on progress made;
- Monitoring costs carefully and challenging police expenditure; and
- Balancing local policing issues and national issues such as tackling terrorism, drugs, gun crime, and people trafficking.

Characteristics identified as being associated with poorer performance include:

- Acting in a light-touch role and primarily focused on observing rather than being proactive;
- Confusion over the Chief Constable's remit and exaggerated fears about encroaching on the Chief Constable's independence; and
- A lack of focus on key priorities.

The report concludes that few police authorities are well prepared or positioned to do what is needed to ensure smart direction and value for money over the next eighteen months leading up to the replacement of police authorities by Police and Crime Commissioners. The characteristics identified in this report of good governance and poorer performance are likely to remain relevant for thinking about the implementation of the new police governance arrangements.

The full report is available at http://www.hmic.gov.uk/SiteCollectionDocuments/Thematics/THM_20101026.pdf

Inspection reports for individual forces are available at http://www.hmic.gov.uk/Inspections/Pages/PoliceAuthorityInspections.aspx

Statistical Bulletin on Public Perceptions of Policing, Engagement with the Police and Victimisation

The Home Office has published a statistical bulletin which gives details of the public perceptions of policing, engagement with the police and victimisation. The figures are taken from the British Crime Survey, a large nationally representative survey of approximately 46,000 adults in England and Wales.

The key statistics on the public's perceptions of the police are:

- The proportion of people who thought their local police force did a good or excellent job increased by 9 percentage points between 2003/04 and 2009/10;
- The proportion of people agreeing that overall they had confidence in the police in their area, rose from 55 per cent to 69 per cent between 2004/05 and 2009/10;
- There were high levels of agreement that the police treat people with respect (84 per cent), fairly (65 per cent), and understand the local issues that affect the community (67 per cent); and
- The proportion of people agreeing that the police and local council are dealing with the anti-social behaviour and crime issues that matter in the local area increased from 45 per cent in 2007/08 to 51 per cent in 2009/10.

On policing and community engagement the bulletin reveals that:

- About two fifths (39 per cent) of the people surveyed were aware that there was a neighbourhood policing team operating in their area;

- Less than a third (31 per cent) of people said that they had seen, read or heard details about their local police (for example, the names of the officers on the team);
- 54 per cent of people said that they knew how to contact their local police if they wanted to talk to them about policing, crime or anti-social behaviour; and
- Both awareness and use of online crime maps were low; 10 per cent of people were aware of crime maps and 3 per cent of people had used them.

The key statistics relating to the perceived risk of victimisation are:

- In the 2009/10 British crime survey 15 per cent of people perceived themselves as having a high risk of victimisation of burglary in the next 12 months, 21 per cent at high risk of car crime and 15 per cent of violent crime; and
- In all three cases - burglary, car crime and violent crime - the perceived proportions were much higher than the proportions who actually were victims in the previous 12 months: 2 per cent of households were victims of burglary; 6 per cent of vehicle-owning households were victims of vehicle-related theft; and 3 per cent of adults were victims of violent crime.

The full report, Public perceptions of policing, engagement with the police and victimisation: Findings from the 2009/10 British Crime Survey, is available at http://rds.homeoffice.gov.uk/rds/pdfs10/hosb1910.pdf

Statistical Bulletin on Terrorism Powers

The Home Office has published their latest statistical bulletin detailing the operation of police powers under the Terrorism Act 2000 and subsequent legislation. This report brings together statistical information for the period up to 31 March 2010.

The figures include:

- In 2009/10 there were 173 terrorism arrests. This compares with 190 in 2008/09 and an annual average of 216 since 1 April 2002;
- There have been 1,834 terrorism arrests since 11 September 2001;
- Of the 173 terrorism arrests made in 2009/10 in 52 cases (30 per cent) the person was charged, in 41 cases (24 per cent) alternative action was taken and 80 suspects (46 per cent) were released without charge;
- Since 11 September 2001 of those arrested under suspicion of terrorism, 35 per cent were charged, 55 per cent released and 10 per cent had alternative action taken;
- The main offences for which suspects have been charged under terrorism legislation since 2001 are possession of an article for terrorist purposes and fundraising;
- In 2009/10, 32 per cent of those arrested under section 41 of the Terrorism Act 2000 were held in pre-charge detention for under one day and 83 per cent for fewer than 7 days. During this period no individuals were held for longer than 14 days;
- For trials completed during 2009/10, 57 per cent of defendants tried under terrorism legislation were convicted and 72 per cent of those charged with terrorism related offences under non-terrorism legislation were convicted;
- In 2009/10, there were 101,248 stops and searches made under Section 44 of the Terrorism Act 2000. This represents a 60 per cent decrease since 2008/09; and
- In 2009/10 there were 1,224 stops and searches carried out by the Metropolitan Police Service under section 43 of the Terrorism Act 2000. A 24 per cent decrease since 2008/09.

The full Bulletin, Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes and stops & searches, is available at http://rds.homeoffice.gov.uk/rds/pdfs10/hosb1810.pdf

Report on Firearms Licensing published by ACPO

A report produced by the Association of Chief Police Officers (ACPO) lead on firearms licensing, Assistant Chief Constable Adrian Whiting, following the multiple shootings by Derrick Bird on 2 June 2010 in West Cumbria, has been published.

The report is split into two parts. Part 1 looks at the granting of a firearm certificate and a shotgun certificate to Derrick Bird by Cumbria Constabulary. Part 2 considers potential changes to the system of granting such certificates and related provisions in law.

The recommendations in part 2 of the report for changes to the firearms certificate system are designed to improve public safety. The report does however acknowledge that none of these suggested changes would have prevented the shootings from taking place. The changes recommended are:

- The establishment of formal data links between the General Practitioner, mental health and police services so as to enable medical professionals to be able to alert police to concerns regarding firearms certificate holders;
- Making any appropriate enquiry of the applicant's GP, at application for grant or renewal of a firearms certificate, at the expense of the applicant rather than under the current arrangements, which fall to be funded by the police service;
- Requiring formal enquiry to be made of members of an applicant's family at grant and renewal as to the applicant's suitability; and
- The introduction of a single type of certificate for both firearms and shotguns.

The full reports are available at http://www.acpo.police.uk/pressrelease.asp?PR_GUID={80BBA79C-E478-4C9C-BB50-F0C4C1AD2E99}

Drug Seizure Statistics Published

The Home Office has published a statistical bulletin detailing the drug seizures made in 2009/10 by police forces and the UK Border Agency.

These figures reveal that:

- There were 224,080 drug seizures in England and Wales in 2009/10. This is a decrease of seven per cent on the 2008/09 figures;

- Class A seizures decreased by 14 per cent between 2008/09 and 2009/10 to 41,204; class B seizures fell by five per cent to 182,522 and class C seizures also fell by 14 per cent to 6,488;
- Cocaine was again the most commonly seized class A drug in 2009/10, with 21,337 seizures. The second highest seized class A drug was heroin at 12,812. There were 176,578 seizures of cannabis; and
- There were 2.6 tonnes of cocaine seized in England and Wales in 2009/10; 1.5 tonnes of heroin; 30.5 tonnes of herbal cannabis and cannabis resin and 758,700 cannabis plants.

The full Bulletin, Seizures of Drugs in England and Wales, 2009/10, is available at
http://rds.homeoffice.gov.uk/rds/pdfs10/hosb1710.pdf

Learning the Lessons Bulletin Published

The eleventh bulletin of the Learning the Lesson Committee has been published. This Committee is a multi-agency grouping that has been established to disseminate and promote learning across the police service. The bulletins summarise reports on recommendations for improving policing practice which have arisen out of investigations conducted by the Independent Police Complaints Commissions (IPCC), police forces, the Serious Organised Crime Agency or Her Majesty's Revenue and Customs.

This edition of the bulletin explores learning from IPCC and police investigations into the police response to reports of gender and domestic abuse. A number of recurring issues are identified.

In relation to Call handling the bulletin notes that a number of cases highlighted the importance of asking the caller the right questions in order to get the grading of the call correct. The bulletin also emphasises that where there are gaps in information, call handlers or dispatchers need to follow up to ensure that important information is not overlooked.

The bulletin details the importance of the dispatcher reconsidering the grading of an emergency call where the incident develops and new information comes to light. In one case covered in the bulletin, for instance, a dispatcher was unaware that call information was added to the log describing a man's threat to harm anybody that crossed his path. This is important information that should really have been considered.

A number of failures to adequately recognise or deal with risk in gender and domestic abuse cases are also highlighted in the bulletin. These failures are partly linked to poor quality supervision. In one case, for example, a supervisor endorsed a decision not to conduct a section 18 PACE 1984 search meaning that an important opportunity to collect forensic evidence was missed after a woman was sexually assaulted. In another case, a supervisor signed off a case for no further action despite a line of enquiry being incomplete.

Bulletin 11 - Gender and domestic abuse - October 2010, is available at
http://www.learningthelessons.org.uk/bulletins/bulletin_eleven.htm

Thematic Review of the Criminal Justice System

Her Majesty's Inspectorate of Constabulary (HMIC) has published a thematic review of the criminal justice system. The review notes that the British Crime Survey of 2009/10 found that only 41 per cent of the public are confident that the criminal justice system is effective. It aims to highlight issues which, if tackled vigorously, could increase public confidence, improve accountability and save money.

The review states that nearly 50 per cent of the 1.3 million cases solved by the police in 2008/09 were dealt with by way of a caution, penalty notice for disorder or warning. This is a substantial increase from previous years. The report suggests that there is a need for the public to be better informed about the effectiveness of these methods. This could help to eliminate any sense of injustice about different outcomes in different areas of the country.

The report suggests that the criminal justice system has grown without the benefit of any systematic control. In the last 15 years, for example, there has been at least 14 pieces of major legislation. The report notes that there can be up to around 1000 different steps in the process of dealing with a simple domestic burglary. All this activity has the effect of slowing down the process. HMIC suggests that there should be a determined approach to regulating and then reducing growth in the system. This should include an audit of the end-to-end process with the aim of reducing bureaucracy.

The majority of defendants (67 per cent) plead guilty but 41 per cent do so late in the process when much preparatory work has already been done. A conservative estimate of the cost of this work is in the region of £150 million. HMIC suggests that ways to encourage defendants to plead guilty at an earlier stage in the process include: bringing defendants to court as quickly as possible after charge or arrest and firm case management. Reducing late guilty pleas could save resources and improve victim satisfaction.

The full report, Stop The Drift, A focus on 21st-century criminal justice is available at
http://www.hmic.gov.uk/SiteCollectionDocuments/Thematics/THM_20101103.pdf

Report Published on Improving Support for Victims

The Independent Commissioner for Victims and Witnesses, Louise Casey, has published a report on improving support for victims in the criminal justice system. The report, entitled, 'Ending the Justice Waiting Game: A Plea for Common Sense,' proposes two possible reforms which, it is suggested, may both save money and improve the service provided to victims.

The first proposal focuses on discouraging defendants from pleading not guilty only to change their plea to guilty late in the process. The report highlights statistics from 2009 which indicate that 50,000 people changed their plea from not guilty to guilty at the start of their trial. It is estimated that this wastes around £15 million per year of Crown Prosecution Service resources. The report also argues that such a late change of plea can have a negative impact on victims and witnesses who will have been preparing to give evidence. The report argues that efforts should be made to stop this 'abuse of the process'. The report suggests that defence solicitors may find it is in their interests to delay a plea of guilty as they are being funded by legal aid for case preparation. Efforts to tackle the problem could therefore include, for example, introducing fixed legal aid fees for guilty pleas whereby a solicitor will only be paid a set amount if the defendant pleads guilty at any stage of the case.

The second proposal concerns the possibility of restricting the right to trial by jury in some cases. The report notes that there are approximately 70,000 cases a year which are triable either way but which end up being sent for trial at the Crown Court. The average daily cost of running a trial in the magistrates is £800. This is compared to £1700 in the Crown Court. The report estimates that up to £30 million per year could be saved if 50 per cent of the triable either way cases which currently go to the Crown Court for trial were to remain in the magistrates' court. The report recommends that defendants should not have the right to choose jury trial at the Crown Court in petty criminal cases such as the theft of a bicycle or stealing from a parking meter.

The full report, Ending the Justice Waiting Game: A plea for common sense, is available at http://www.justice.gov.uk/about/docs/ending-the-justice-waiting-game_report.pdf

Consultation on the Law on Unfitness to Plead

The Law Commission has launched a consultation process on the law on unfitness to plead.

The present legal test for unfitness is based on the common law and dates back to 1836. The basis of the test is whether the accused can plead to the indictment, understand the course of the proceedings, instruct a lawyer, challenge a juror and understand the evidence. The problem with this test, the consultation paper suggests, is that it is not consistent with modern psychiatry. It places a disproportionate emphasis on the cognitive ability of the accused and does not attribute any weight to the question of the accused's decision-making capacity. It therefore does not pay heed to the concept of 'effective participation' developed as part of the jurisprudence on Article 6 of the European Convention of Human Rights.

The Law Commission is provisionally proposing that this test should be replaced with a new decision-making capacity test. This test will be based on the capacity test in civil law which was placed into statutory form by the Mental Capacity Act 2005. The accused will be found to lack capacity if he or she is unable to understand the information relevant to the decisions that will have to be made in the course of his or her trial, to retain that information, to use or weigh that information as part of the decision making process or to communicate his or her decisions. The law will distinguish between those who do and those who do not have decision-making capacity.

The paper also provisionally proposes that the use of special measures should be considered and that their use should be factored into the new decision-making capacity test. A greater commitment to the use of special measures will help ensure that the trial process is more inclusive and that a number of people who at the moment may be found to be unfit to plead will be able to participate in the trial process. The proposed law will be more flexible than the current law. A defendant who does not have sufficient decision-making capacity to participate meaningfully in his or her trial, may, for example, be able to plead guilty with the assistance of special measures.

In addition to the new test for decision making capacity, the Law Commission proposes that there should be a defined psychiatric test to assess whether or not an accused has decision-making capacity. At the moment there is no such test either in criminal law or civil law.

The Law Commission is also proposing changes in the conduct of the special hearings as to the facts of the case which are held to deal with an accused who has been found to be unfit to plead.

The consultation paper provisionally proposes a procedure whereby all the elements of the offence (fault as well as conduct) are considered by the jury. This new test will lead to a finding of: there are no grounds for acquitting him or her; an outright acquittal; or an acquittal which is qualified by reason of mental disorder.

This procedure would have more of the qualities of a trial than at present because it may lead to a special verdict namely, a qualified acquittal on the grounds of mental disorder existing at the time of the offence. It will also allow for consideration of the fault element of the offence charged.

The commission is seeking responses by 27 January 2011.

Unfitness to Plead, A Consultation Paper, is available at http://www.lawcom.gov.uk/docs/cp197_web.pdf

Report on Public Knowledge and Views of the Life Sentence for Murder

The Nuffield Foundation has published a report detailing an empirical investigation into public knowledge and attitudes in England and Wales to the sentence of life imprisonment for murder. The report was produced by Professor Barry Mitchell of Coventry University and Professor Julian Roberts of Oxford University. The research included 1,027 face to face interviews in 102 sampling points across England and Wales and qualitative research in the form of six focus groups.

One of the principal goals of this study was to explore the consequences on public opinion of abolishing the mandatory life sentence for murder and to test whether the public is firmly opposed to any alternative to the current sentence. A secondary aim of the research was to gauge the public's knowledge and understanding of the mandatory life sentence and the way in which it operates in practice.

The main findings of the study include:

- Public perceptions are systematically biased towards seeing the sentencing system as being more lenient than is in fact the case. Approximately four respondents in ten believed that offenders convicted of murder spent ten years or fewer in prison. The actual average for a person sentenced to a mandatory life sentence was 16 years;
- The study found no overwhelming or widespread public support for automatically sentencing all convicted murderers to life imprisonment;

- There was considerable evidence that the public perceive significant variations in the seriousness of different murder scenarios;
- The public seem to have only a vague understanding of the current arrangements under which convicted murderers are sentenced to life imprisonment; and
- There was evidence of a general antipathy towards the inclusion of the adjective 'life' in the sentence label.

Recommendations made in the light of these findings include:

- More research should be undertaken to determine whether there is a sufficient degree of public consensus that the mandatory sentence should be retained for a narrower and particularly serious group of murders; and
- The extent of the public's misunderstanding and the inaccuracy of their beliefs about murder and the mandatory life sentence is significant. To address this the Sentencing Council of England and Wales and other agencies which have responsibilities for promoting public awareness of sentencing should include these issues in public legal education initiatives.

The full report, Public Opinion and Sentencing for Murder, An Empirical Investigation of Public Knowledge and Attitudes in England and Wales, is available at http://www.nuffieldfoundation.org/sites/default/files/files/Public%20Opinion%20and%20Sentencing%20for%20Murder_Mitchell&Robertsv_FINAL.pdf

Report into the issue of Providing Anonymity to Defendants in Rape Cases

The Sexual Offences (Amendment) Act 1976 introduced anonymity for both complainants and defendants in rape cases in England and Wales. The aim in providing anonymity for defendants was to protect them from the damaging consequences of false allegations. In 1988 this anonymity protection was repealed as it was decided that being accused of rape was not sufficiently different from being accused of other serious crimes so as to warrant special treatment. No systematic evaluation of the impact of such legislative change was, though, conducted.

In May 2010 the government announced that they would re-introduce anonymity for defendants in rape cases if the evidence justifying it was clear and sound. This Ministry of Justice research report brings together and considers the evidence

relevant to the issue of providing anonymity to defendants in rape cases.

This research found that overall little or no direct empirical evidence of the impact of providing anonymity to those accused of rape could be identified. The report discusses possible issues which might arise as a result of such anonymity and suggests areas where further research is needed.

It is suggested that providing anonymity for those accused of rape might encourage victims and witnesses to come forward to report the crime. The reasoning behind this possibility is that it would ensure that both sides of the case remained free from publicity. The report goes on, however, to say that it is currently not known whether anonymity would actually have such an effect, to what extent or under what circumstances. It is also possible that anonymity could have the opposite effect and lead to a decrease in reporting rapes.

One possible reason against introducing anonymity for defendants in rape cases is the suggestion that such anonymity could make it more difficult for the police to gather information about multiple offending. The report suggests, however, that further research may be needed to confirm this reasoning either way. There is no systematic evidence of the extent to which rape suspects identities are released by police, and how often further evidence has resulted in these cases.

A further important issue which would need to be considered if the law were to be changed as proposed by the government in May, concerns the issue and impact of media coverage. The report notes the finding that 26 per cent of jurors in high profile criminal cases looked at information about their case on the internet during the trial. Some internet sites may be beyond the reach of domestic media reporting restrictions, which raises important issues about the ability to actually ensure anonymity for defendants.

The review concludes by saying that it found insufficient reliable empirical evidence on which to base an informed decision on the value of strengthening anonymity for rape defendants. Perhaps reflecting this, the government has now announced that they will not be going ahead with the proposal to provide anonymity to defendants in rape cases. It was judged that there is insufficient evidence to justify the proposal as a clear and sound change.

The full report, Providing anonymity to those accused of rape: An assessment of evidence, is available at http://www.justice.gov.uk/anonymity-rape-assessment-evidence.htm

Criminal Justice Statistical Bulletin Published

The Ministry of Justice has released the quarterly statistical bulletin of criminal justice system indicators for the period ending June 2010.

The number of offences brought to justice in England and Wales in the year ending June 2010 was 1.26 million. This is a fall of 9 per cent compared with the year ending June 2009 when 1.38 million offences were brought to justice. Over the same period the number of recorded crimes fell by 8 per cent from 4.59 million to 4.21 million.

The proportion of adults who think that the criminal justice system as a whole is fair was 60 per cent for the twelve months to June 2010. This compares with a figure of 59 per cent for the twelve months to June 2009. The proportion of adults who think that the criminal justice system as a whole is effective was 41 per cent for the twelve months to June 2010. For the twelve months to June 2009 this figure was 39 per cent.

The proportion of victims and witnesses who were satisfied with their overall contact with the criminal justice system in the twelve months up to June 2009 was 83 per cent. In the twelve months to June 2010 this increased to 84 per cent.

The value of assets recovered for the 12 months ending June 2010 was £157.5 million, an increase from £145.6 million for the 12 months ending June 2009. The amount collected, including compensation from the enforcement of confiscation orders across England and Wales between April and June 2010, was £17 million.

The payment rate for court imposed fines across England and Wales was 88 per cent for April to June 2010. This compares with a payment rate of 82 per cent for April to June 2009.

The full Bulletin, Provisional Quarterly Criminal Justice System Information - June 2010, is available at http://www.justice.gov.uk/criminal-justice-system-performance.htm

Review of 'Prevent' Strategy

The Home Secretary, Theresa May, has announced a review of 'Prevent', the government's strategy for preventing violent extremism.

The review of 'Prevent' aims to assess how it can work more effectively. It is intended that a revised strategy will be published in 2011.

Lord Carlile of Berriew QC, the government's current independent reviewer of counter-terrorism, will provide independent oversight of the review.

The review will, among other things:

- Consider the purpose and scope of the 'Prevent' strategy, its overlap and links with other areas of government policy and its delivery at local level;
- Examine the role of institutions such as prisons, higher and further education bodies, schools and mosques, in the delivery of 'Prevent';
- Consider the role of other 'Prevent' delivery partners, including the police;
- Consider how activity on 'Prevent' in the United Kingdom can be joined up with work overseas;
- Examine monitoring and evaluation structures to ensure effectiveness; and
- Make recommendations for a revised Prevent strategy.

The Home Secretary will report back on the findings of the review early in 2011.

See further
http://www.homeoffice.gov.uk/publications/parliamentary-business/written-ministerial-statement/prevent-and-reviewer-wms?view=Html

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