NPIA
National Policing Improvement Agency

Digest

April 2012

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 334566.

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Legal Services

Chief Executive Officer Directorate

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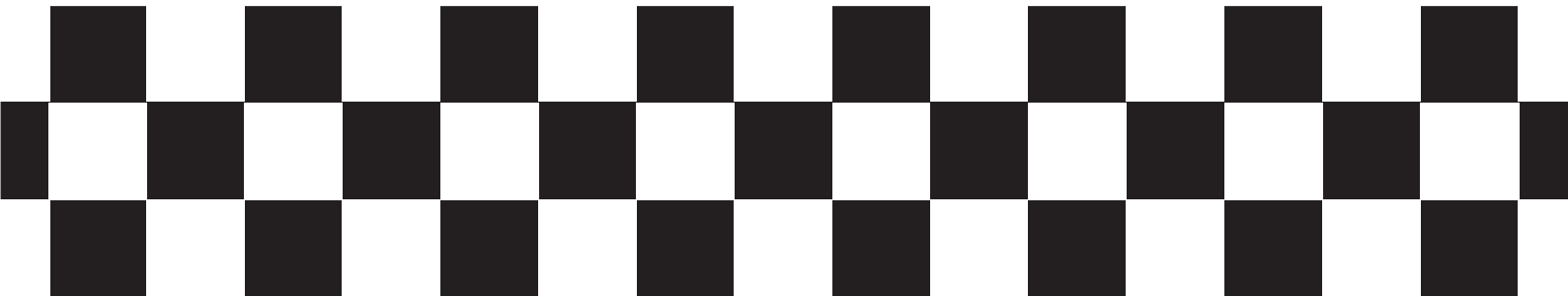

NPIA Digest April 2012

This month's edition of the Digest contains a summary of issues relating to police law, operational policing practice and criminal justice.

There are reports of cases on the duty of care owed to police informers, the reasonableness of cash seizures under the Proceeds of Crime Act 2002, and the judgment of the European Court of Human Rights on whether containment in a police cordon amounts to a deprivation of liberty.

We look at the recommendations for the future of the police service following the publication of Part 2 of Tom Winsor's independent review of pay and conditions for police officers and staff. The report of the review of human rights protection by the Equality and Human Rights Commission, and the joint HMIC and HMCPSI report on investigating and prosecuting rape offences are also covered.

There are also articles on the Government's new action plan to tackle hate crime, the Government response to the Home Affairs Committee report on the August riots, and the police pilot of the Domestic Violence Disclosure Scheme. There are Home Office statistics on the use of police powers under the Terrorism Act 2000, and the Director of Public Prosecution's new guidance for prosecuting public protest cases.

The progress of proposed new legislation through Parliament is examined and statutory instruments published this month summarised.

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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:

- Protection of Freedoms Bill - The Bill:
  - Provides for the destruction, retention, use and other regulation of certain evidential material;
  - Imposes consent and other requirements in relation to certain processing of biometric information relating to children;
  - Provides for a code of practice on surveillance camera systems and for the appointment and role of the Surveillance Camera Commissioner;
  - Provides for judicial approval in relation to certain authorisations and notices under the Regulation of Investigatory Powers Act 2000;
  - Provides for the repeal or rewriting of powers of entry and associated powers and for codes of practice and other safeguards in relation to such powers;
  - Makes provision about vehicles left on land;
  - Provides for a maximum detention period of 14 days for terrorist suspects;
  - Replaces certain stop and search powers and provides for a related code of practice;
  - Amends the Safeguarding Vulnerable Groups Act 2006;
  - Makes provision about criminal records;
  - Disregards convictions and cautions for certain abolished offences;
  - Makes provision about the release and publication of datasets held by public authorities and to make other provision about freedom of information and the Information Commissioner; and
  - Repeals certain enactments.

The Bill was presented to Parliament on 11 February 2011. Third reading took place on 12 March. The Lords considered and agreed a new clause to provide for a new offence of stalking and the types of convictions for this type of offence. Amendments to Schedule 1, looking at fingerprints and DNA samples being retained subject to the Terrorism Act 2000; and amendments to Schedule 9 relating to protection for 'fear of violence' cases

and racially or religiously aggravated harassment cases were debated and agreed. The Commons considered the Lords amendments to the Bill on 19 March. The Bill will now go back to the Lords on 24 April to consider any Commons amendments.

- Legal Aid, Sentencing and Punishment of Offenders Bill - The Bill:
  - Reverses the position under the Access to Justice Act 1999, whereby civil legal aid is available for any matter not specifically excluded;
  - Abolishes the Legal Services Commission;
  - Makes various provisions in respect of civil litigation funding and costs, taking forward the recommendations of the Jackson Review and the Government's response to that review;
  - Makes changes to sentencing provisions, including giving courts an express duty to consider making compensation orders where victims have suffered harm or loss; reducing the detailed requirements on courts when they give reasons for a sentence; allowing courts to suspend sentences of up to two years rather than 12 months; and amending the court's power to suspend a prison sentence;
  - Introduces new powers to allow curfews to be imposed for more hours in the day and for up to 12 months rather than the current six;
  - Repeals provisions in the Criminal Justice Act 2003 which would have increased the maximum sentence a magistrates' court could impose from six to 12 months;
  - Makes changes to the law on bail and remand, aimed at reducing the number of those who are unnecessarily remanded into custody. Under the new "no real prospect" test, people would be released on bail if they would be unlikely to receive a custodial sentence;
  - Makes provision to ensure that, where a person aged under 18 has to be remanded into custody, in most cases they would be remanded into local authority accommodation;
  - Amends provisions relating to the release and recall of prisoners;
  - Gives the Secretary of State new powers to make prison rules about prisoners' employment, pay and deductions from their pay. The intention of these provisions is that prisoners should make payments which would support victims of crime;

- Introduces a penalty notice with an education option and provision for conditional cautions to be given without the need to refer the case to the relevant prosecutor;
- Creates a new offence of threatening with an offensive weapon or an article with a blade or point thereby creating an immediate risk of serious physical harm. A minimum sentence of 6 months' imprisonment would normally be given to persons over 18 found guilty of this offence.

The Bill was presented to Parliament on 21 June 2011. Line by line examination of the Bill took place during report stage on 20 March. Third reading, the final chance for the Lords to debate and amend the Bill, is scheduled to take place on 27 March.

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

Cash Seizure under Proceeds of Crime Act 2002

Secretary of State for the Home Department v Tuncel and another [2012] EWHC 402 (Admin)

This was an appeal by the Secretary of State, by way of case stated from the Crown Court, on a point of interpretation of section 294 of the Proceeds of Act 2002 ('the Act').

Section 294(1) of the Act provides that police officers, customs officers and accredited financial investigators may seize and detain cash if they have reasonable grounds for suspecting that the cash has been obtained through, or is intended for use in, unlawful conduct. They can then apply to a magistrates' court under section 298 of the Act for an order for the cash to be forfeited. The court may order the cash to be forfeited if it is satisfied that the cash was obtained through, or was intended for use in, unlawful conduct.

The issue for the appeal was whether a court was obliged to refuse an application for forfeiture of cash in circumstances where the court concludes that, when the cash was originally seized, there were no reasonable grounds for suspecting that it had been obtained through, or was intended for use in, unlawful conduct.

The Facts

On 6 November 2008, the respondents in this case, Mr T and Mr B, were due to travel from Heathrow to Istanbul on a Turkish Airlines flight. The luggage they checked in was searched by customs officers. In Mr T's luggage the customs officers found £20,000 in £20 notes wrapped in tin foil. They also found £30,000 in £10 and £20 notes similarly wrapped up in Mr B's luggage. Mr T and Mr B were questioned by customs officers about the cash. They were not satisfied with the explanation they were given so they seized the cash under section 294(1) of the Act. Following its seizure the cash was detained under section 295(1) of the Act which provides that 'while the customs officer, constable or accredited financial investigator continues to have reasonable grounds for his suspicion, cash seized under section 294 may be detained initially for a period of 48 hours.'

On the following day, and before the expiry of the 48 hour period, an application was made to a magistrates' court under section 295(2) of the Act for an extension of the period during which the cash could be detained by a further three months. In order to make such an order, the magistrates' had to be satisfied that there were reasonable grounds for suspecting that the cash was obtained through, or was intended, to be used in unlawful conduct. The application for detention was not opposed and the magistrates' court extended the period of detention for three months. Subsequent applications for extension were similarly

not opposed and the magistrates' court on each occasion extended the period of detention.

On 13 July 2009, an application was made by Her Majesty's Revenue and Customs (HMRC) to a magistrates' court under section 298 of the Act for an order for the cash to be forfeited. The application was heard on 2 and 3 June 2010. By this time the functions of HMRC in relation to seizure and forfeiture of the cash had become exercisable by the Secretary of State for the Home Department and the application was in effect made by the UK Border Agency (UKBA).

The question for the court was whether it was satisfied that the cash was 'recoverable property', i.e., obtained through unlawful conduct, or was intended for use in, unlawful conduct. The magistrates' court made an order for the cash to be forfeited. In the written reasons for the decision, the court said that it was satisfied that the money found in Mr T's luggage was both recoverable property and 'intended for criminal activity.' The court was also satisfied that the money found in Mr B's luggage was 'intended to be used in criminal activity.'

The Crown Court Hearing

Mr T and Mr B appealed against the order for forfeiture to the Crown Court. The appeal was heard on 28 and 29 October 2010 and took the form of a re-hearing.

In the course of the hearing, the judge raised the question whether, before an order for forfeiture could be made under section 298(2), the court had to be satisfied that, at the time when the cash had been seized, there had to have been reasonable grounds for suspecting that the cash had been obtained through, or was intended for use in, unlawful conduct. This was not a point which had been taken by counsel for Mr T and Mr B but was taken by the Crown Court of its own motion.

The judge then asked the customs officers, who gave evidence on behalf of the UKBA, whether the searches which they had made of the luggage of Mr T and Mr B had been random searches or the result of information received. The officers gave what the judge in his ruling described as the 'standard answer', namely that they would neither confirm nor deny whether or not they had been acting on information received.

At the conclusion of the evidence called on behalf of the UKBA, and before counsel for Mr T and Mr B had been asked whether it was proposed to call evidence on their behalf, the court ruled that they had no case to answer. The court's view was that, before it could make an order for forfeiture of cash under section 298(2) of the Act, the court had to be satisfied that the customs officers who had seized the cash had had reasonable grounds for suspecting that it had been obtained through, or

was intended for use in, unlawful conduct. Since the court could not be satisfied of that, Mr T and Mr B had no case to answer.

The Appeal

The two questions referred by the Secretary of State to the High Court for determination were:

1. Whether, when hearing an application for a forfeiture of cash under section 298(2) of the Act (or an appeal in relation to such an application), the court needs to be satisfied that there was a reasonable ground to suspect on the part of the authorities prior to search, questioning or seizure as to whether the money was recoverable property or intended for use in unlawful conduct;

2. Whether, as a matter of proper construction of section 298(2) of the Act, before the court can exercise the power to order forfeiture, the court must be satisfied that there were reasonable grounds for stopping, questioning and/or seizure.

The Judgment

The judge ruled that the answers to the two questions for the opinion of the High Court were 'No'.

In his judgment, the judge said that the Crown Courts' decision amounted, in effect, to incorporating into section 298(2) the pre-conditions in section 294(1) and 295(1). This involved reading words in to section 298(2) which were not there, therefore imposing an additional element to be proved.

The judge said that the seizure and detention of cash will take place before the court has had any opportunity to consider whether it should have been seized and detained. However, cash could not be forfeited until a court has sanctioned its forfeiture. Since a court would not sanction its forfeiture unless it had been persuaded that the cash was obtained through, or was intended for use in, unlawful conduct, there was no need for any requirement about the reasonableness of the suspicions of the customs officers in the first place.

Accordingly, the judge allowed the appeal and reversed the determination of the Crown Court that Mr T and Mr B did not have a case to answer by setting aside that determination. The case was remitted to the Crown Court with a direction that it continued the hearing of the appeal in the light of the judgment of the High Court.

The judgment can be accessed in full at:
http://www.bailii.org/ew/cases/EWHC/Admin/2012/402.html

Duty of Care to Police Informers

An Informer v A Chief Constable [2012] EWCA Civ 197

In this case the Court of Appeal considered whether the police owed a duty, in contract or tort, to an informer where the supply of information to the police led to a criminal investigation. The question was whether the police owed a duty to exercise reasonable care in the conduct of the investigation so as to safeguard the informer from economic loss. The relationship between the police and the informer was complicated by the fact that he also became a suspect.

The informer made a claim for damages against the police for breach of contract, negligence and misfeasance in public office and his claim was dismissed after a trial.

The appeal was against the dismissal of the informer's claims for breach of contract and negligence. Both the trial and the appeal case were conducted in private. However, the court of appeal decided that because the court was deciding on a novel point of law, the relevant parts of the judgment should be published with sensitive details and references to true identities omitted.

The Facts

The informer, known as C, contacted the police and was introduced to two 'contact handlers', known as H1 and H2. H1 and H2 made written records of all their meetings and conversations with C.

At the first meeting with H1 and H2, C told them that he had been having financial dealings with a man called X but had recently learned that X was involved in criminal activities. At this point, the police gave C a brief explanation of the steps they would take to protect his identity and warned him that he had no authority to engage in any form of criminal activity.

Authorisation was granted under the Regulation of Investigatory Powers Act 2000 (RIPA) for the use of C as a covert human intelligence source (CHIS). C provided a great deal of information to his handlers about the activities of X and others over a substantial period of time.

As a result of the information provided by C, the police began an investigation into the activities of X and others. The investigation led to the arrest of X and his associates and they were charged with serious offences. A restraint order was obtained against X under section 41 of the Proceeds of Crime Act 2002 (POCA). The investigation also looked into X's dealings with C and the police obtained production orders under section 345 of POCA against C's bankers, solicitors and accountants. The production orders revealed that C had misled

bank staff and his solicitors about his sources of income. The police also learned that C was in the process of selling assets and had information to suggest that he was intending to leave the country. C was arrested on suspicion of money laundering, interviewed and released on bail.

A few weeks after the arrest of C, there was a meeting between the senior officer in charge of the investigation and the senior officer in charge of the handlers to discuss the problems of information sharing now that C was both a CHIS and a suspect. The result of the meeting was a written Memorandum of Understanding under which it was agreed that:

- The handlers would disclose the identity of the CHIS to a named officer in the investigating team, who would not disclose it to others;
- The handlers would continue to maintain contact with C as a CHIS and would retain responsibility for 'duty of care' issues in relation to C (a reference to the responsibilities of the police under RIPA);
- The handlers would not seek to influence the work of the investigating team and would not speak to C regarding his own suspected criminality;
- The investigating team would not charge C without first submitting an advice file to the CPS and would notify the handlers when an advice file had been submitted;
- The investigation team would provide the handlers with a transcript of C's interview.

A few weeks later, the officer who had been responsible for the arrest of C obtained a restraint order against C. At the same time the police obtained a matching amendment to the restraint order against X. The judge who made the order was not told about C's role as a CHIS. Neither the police officer making the application or the CPS had been informed about C's role as a CHIS. C complained to his handlers about the restraint order and told them that the effect of the order was to put him in dire financial straits. C's status as a CHIS was terminated but he continued to contact his handlers about his financial concerns.

The Claim

C claimed that H1 and H2 had assured him at their first meeting and repeatedly on subsequent occasions that his and his family's personal safety, welfare and livelihood were their first priorities. He said he was also assured that his business would not suffer any adverse consequences as a result of his helping the police.

C alleged that there was a contract under which the police undertook a duty to ensure 'that the Claimant's welfare,

livelihood and reputation remained free from any adverse consequences…..' In the alternative, C claimed that 'the defendant assumed a responsibility' towards him and so owed him an equivalent duty of care in tort.

The principal complaints related to C's arrest on suspicion of money laundering and the making of a restraint order against him. C claimed that as a result he suffered economic loss through loss of the ability to deal with his assets as he pleased and that he suffered psychiatric injury in the form of depression and post traumatic stress disorder.

The Trial Judgment

The trial judge accepted that from the outset C was given assurances by H1 and H2 that the police would treat his safety and that of his family as a priority. He was prepared to find that those assurances had given rise to a contract. The judge also found that there was no factual basis to conclude that the police had ever made a promise to C that his livelihood or financial wellbeing would be treated as a matter of priority or safeguarded by the police.

As to the negligence claim, the judge said he could not make a finding that the police had assumed responsibility for an avoidance of economic loss. He rejected all allegations of breach of duty of care except in relation to the obtaining of the restraint order and its duration. However, the judge applied the doctrine in the case of Hill v Chief Constable of West Yorkshire [1989] AC 53 (the Hill principle). He concluded that 'an officer who is engaged in activity relating to the investigation and suppression of crime is immune from a complaint of negligence as a matter of public policy under the doctrine unless there was a factual basis for holding otherwise, for example because there had been an assumption of responsibility for the claimant's livelihood or financial wellbeing.'

The judge also dismissed the claim for damages for personal injury. He decided on the facts that there was no foreseeable risk of physical or psychiatric injury. C appealed against that judgment.

The Appeal

The issue for the Court of Appeal was whether C, as an informer, was owed a duty in contract or tort by the police to exercise reasonable care in the conduct of the investigation so as to safeguard him from economic loss.

Counsel for C argued that the trial judge should have found that the police owed a contractual duty to safeguard C's safety and welfare. He argued that 'welfare' had a broad meaning which included C's livelihood and economic wellbeing. In support of

this argument, Counsel referred to the provisions of Section 29(5) of RIPA and the CHIS Code of Practice as well as the general conduct of the parties in discussing welfare matters. He argued that the judge was wrong to hold that the existence of a duty of care required an assumption of responsibility. He argued that the question was whether it was fair, just and reasonable to impose such a duty. He also argued that the judge was wrong to apply the Hill principle to the situation in which there was a special relationship between C and the police by reason of C having agreed to act, and having being accepted to act, as a CHIS.

The Decision

In his judgment, Lord Justice Toulson, said that the prospective harm against which the police may be held to owe a duty of care towards a CHIS has to be limited to risks which are due to his conduct in assisting the police by giving them information about others. If, however, information leads to a train of investigation which raises suspicion of criminality on his own part, the police cannot owe him a duty which would conflict with their duty to the public to investigate it.

The judge also said that the imposition of a duty of care for the safety and welfare of the CHIS would be consistent with the purpose of the relationship being one of confidentiality. It would be just and reasonable that the police should owe a duty of that kind. However, it would not be just or reasonable to place a duty of care on the police that extended to general financial wellbeing.

The judge concluded that the police owed a duty of care to protect C from risks to his physical safety and wellbeing to which he was potentially exposed as a result of his activities as a CHIS in providing information about others. However, the duty did not extend to protecting C from investigation of suspected criminal conduct on his own part. He also concluded that the duty did not extend to purely economic loss.

In the course of his judgment, the judge accepted that C's role as a CHIS should have been disclosed to the judge in the application for a restraint order. However, he decided that this did not amount to a breach of duty of care to C.

In her judgment, Lady Justice Arden accepted that in relation to each of the matters of which C complained, namely his arrest and interview, the obtaining of production and restraint orders against him and the failure to apply for the restraint order to be lifted, the Hill principle applied. She said that in the circumstances of this case, the public policy underpinning the investigations immunity prevailed over that of protecting the CHIS from purely financial harm.

In his judgment, Lord Justice Pill, said that the trial judge had been right to dismiss the claim for psychiatric injury as psychiatric injury was not a reasonably foreseeable consequence of the matters about which C had complained.

The appeal was dismissed by all three members of the Court of Appeal.

The judgment can be accessed in full at:
http://www.bailii.org/ew/cases/EWCA/Civ/2012/197.html

Police Use of Containment: Deprivation of Liberty

Austin and Others v The United Kingdom
[2012] ECHR 459

This was an application to the European Court of Human Rights made by Ms Austin, a British national, Mr Black, a Greek and Australian national, Ms Lowenthal, a British and Australian national and, Mr O'Shea, a British national. The applicants complained that they were deprived of their liberty without justification, in breach of Article 5 of the European Convention on Human Rights (right to liberty and security) by being contained in a police cordon.

This was the first time the European Court had been asked to consider the application of the Convention to the containment of a group of people by the police on public order grounds.

The Facts

The police became aware that on 1 May 2001 protest groups intended to stage various protests against globalisation. The organisers of the 'May Day Monopoly' protest did not make any contact with the police or attempt to seek authorisation for the demonstrations. By 2pm on that day there were over 1,500 people in Oxford Circus and more were steadily joining them. The police, fearing public disorder, took the decision at approximately 2pm to contain the crowd and cordon off Oxford Circus. Controlled dispersal of the crowd was attempted throughout the afternoon but proved impossible as some members of the crowds, both within and outside the cordon, were very violent, breaking up paving slabs and throwing debris at the police. The dispersal was completed at around 9.30pm.

Ms Lois Austin and her partner had attended a protest against globalisation outside the World Bank before walking with other protesters to Oxford Circus, arriving at about 2pm. Around 3.45pm, Ms Austin needed to leave the demonstration to collect her daughter from the crèche. She explained her situation to two police officers maintaining the cordon but was told that she could not leave and that it was not known how long it would be before she would be able to leave the area. She was finally allowed to leave at about 9.30pm.

Between 2 and 2.30pm, Mr Black attempted to cross Oxford Circus to go to a bookshop on Oxford Street. He was forced into Oxford Circus at about 2.30pm and immediately asked to be allowed out of the cordon. He was diverted to an exit for non-protesters at the Bond Street side of Oxford Circus, but when he went there he was told that there was no exit. Mr Black was not able to exit the cordon until 9.20pm.

Ms Lowenthal had no connection with the demonstration. She worked in the Oxford Circus area and was on her lunch break at 2.10pm when she was prevented from returning to her workplace by a line of police officers blocking the road. She was held within the cordon at Oxford Circus until 9.35pm. She repeatedly requested to be allowed to leave the cordoned area but was told by the policemen she approached that they were under orders to allow no-one to pass.

Mr O'Shea also worked in the Oxford Circus area and was caught up in the cordon while walking through Oxford Circus on his lunch break. He was able to leave at approximately 8pm.

The Claim

In April 2002, Ms Austin had brought proceedings against the Commissioner of Police of the Metropolis, claiming damages for false imprisonment and for a breach of her rights under Article 5 of the European Convention on Human Rights. In March 2005 her claims were dismissed. Her subsequent appeals were then also dismissed both by the Court of Appeal and in January 2009 by the House of Lords. The House of Lords concluded that Ms Austin had not been deprived of her liberty and that Article 5 of the Convention did not therefore apply.

The Decision of the European Court

In deciding whether there had been a 'deprivation of liberty' within the meaning of Article 5, the Court said that Article 5 did not have to be interpreted in such a way as to make it impracticable for the police to fulfil their duties of maintaining order and protecting the public.

Secondly, it had to be taken into account that various Articles of the Convention placed a duty on the police to protect individuals from violence and physical injury.

Thirdly, the context in which the measure in question had taken place was relevant. The Court said that 'members of the public were often required to endure temporary restrictions on freedom of movement in certain contexts, such as travel by public transport or on the motorway, or attendance at a football match.' The Court did not consider that such commonly occurring restrictions could be described as 'deprivations of liberty' within the meaning of Article 5, so long as they were unavoidable because of circumstances beyond the control of the authorities, were necessary to avert a real risk of serious injury or damage, and were kept to the minimum required for that purpose.

The Court also emphasised that it was for the domestic courts to establish the facts and the Court would generally follow the findings of facts reached by the domestic courts. In this case,

the Court accepted the facts found by Mr Justice Tugendhat from the High Court, following a three week trial and the consideration of substantial evidence.

Accordingly, the Court accepted that the police had expected between 500 and 1000 violent demonstrators to gather at Oxford Circus at around 4pm. The police had also anticipated a real risk of serious injury, even death, and damage to property if the crowds were not effectively controlled. Given that, about two hours earlier, over 1,500 people had already gathered there, the police had decided to impose an absolute cordon as the only way to prevent violence and the risk of injured people and damaged property. There had been space within the cordon for people to walk about and there had been no crushing. However, the conditions had been uncomfortable with no shelter, food, water or toilet facilities.

The Court accepted that although the police had tried, continuously throughout the afternoon, to start releasing people, their attempts were repeatedly suspended because of the violent and uncooperative behaviour of a significant minority. As a result, the police had only managed, at about 9.30pm, to complete the full dispersal. However, 400 individuals who could clearly be identified as not involved in the demonstration or who had been seriously affected by being confined, had been allowed to leave before that time.

The Court found that the cordon was imposed to isolate and contain a large crowd in dangerous and volatile conditions. Given the circumstances that had existed at Oxford Circus on 1 May 2001, an absolute cordon had been the least intrusive and most effective means available to the police to protect the public, both within and outside the cordon, from violence. In this context, the Court did not consider that the putting in place of the cordon had amounted to a 'deprivation of liberty'.

However, the Court emphasised the fundamental importance of freedom of expression and assembly in all democratic societies. The Court said that national authorities should not use measures of crowd control to stifle or discourage protest, but rather only when necessary to prevent serious injury or damage.

The European Court of Human Rights decided, by a majority, that there had been no violation of Article 5 of the European Convention on Human Rights.

The judgment can be accessed in full at:
http://www.bailii.org/eu/cases/ECHR/2012/459.html

SI 2012/584 The Crime and Security Act 2010 (Commencement Number 5) Order 2012

This Order, which came into force on **26 March 2012**, brings into force Section 45 of the Crime and Security Act 2010. Section 45 amends Section 40D of the Prison Act 1952 to create a new offence of possession in a prison, without authorisation, of a device capable of transmitting or receiving images, sounds or information by electronic communications. This includes mobile telephones as well as other devices which are capable of accessing the internet or are otherwise capable of sending or receiving data. The new offence extends to the possession, without authorisation, of any component part or article designed or adapted for use with such a device, such as a SIM card or a charger for a mobile telephone.

SI 2012/536 The Police Authority (Amendment) Regulations 2012

These Regulations, in force on **1 April 2012**, amend the Police Authority Regulations 2008 - SI 2008/630 ('the 2008 Regulations') in order further to extend the terms of office of independent members of police authorities, pending the abolition of those authorities by the Police Reform and Social Responsibility Act 2011.

The 2008 Regulations were previously amended by the Police Authority (Amendment No. 3) Regulations 2010 (SI 2010/3030) so as to provide for any such term of office due to expire before 10 May 2012 to be extended until that date. These Regulations have the effect that a term of office due to expire before 22 November 2012 is extended until that date.

These Regulations further amend the 2008 Regulations by replacing the requirement to publish notices in at least two newspapers conveying specified information about any vacancy among the independent members of a police authority with a requirement to advertise the vacancy in such manner as the authority's selection panel thinks fit.

SI 2012/680 The Police (Amendment No.2) Regulations 2012

These Regulations, in force on **1 April 2012**, amend the Police Regulations 2003 in a number of respects with regard to testing for the consumption of controlled drugs or alcohol. The amendments allow for the testing of any member of a police force as part of a routine random testing regime, rather than the testing of members in particular categories or particular circumstances. They allow a sample of hair, rather than oral fluid or urine, to be taken for the purposes of testing a candidate for appointment to a police force. They also replace references to saliva in the Police Regulations 2003 with references to oral

fluid, while defining oral fluid so as to include saliva. This last is a technical amendment to reflect the fact that the substance recovered by oral testing is a fluid containing, but not consisting entirely of, saliva.

Part 2 of Winsor Review Published

The second and final part of Tom Winsor's independent review of pay and conditions for police officers and staff was published on 15 March. Tom Winsor's first report, 'the Independent Review of Police Officer and Staff Remuneration and Conditions', covered short-term improvements to remuneration and terms and conditions and was published on 8 March 2011.

The Part 2 report makes recommendations to give the police service the modern management tools it needs for the long term. The aim is to encourage the brightest and best to join the police service; create a new pay structure that rewards officers and staff who do the hardest jobs and use specialist skills; and replace the Police Negotiating Board (PNB) with an independent pay review body to ensure fair and evidence-based pay recommendations in the future.

According to the report, the recommendations, if implemented in full, would make savings of £1.9 billion over six years. Almost two-thirds of these savings should be reinvested into the police service to reduce the need for reductions in workforce numbers. To help forces implement them effectively, the recommendations should be phased in over 2013-2018.

Key Impacts on Federated Ranks

The key recommendations from Winsor Part 2 that could affect the federated ranks are:

- Entry qualifications for constables should be raised to at least a Level 3 qualification (A-level or equivalent); or a policing qualification recognised by Skills for Justice; or service as a special constable or PCSO. Chief constables should have discretion to select one or more of these criteria;
- A new, shorter pay scale for constables, resulting in accelerated pay progression. New starters could reach the pay maximum in just six years (rather than the ten years it takes on the current pay scale) but would start on a lower rate than under current arrangements;
- Introduction of the Expertise and Professional Accreditation Allowance worth £600 a year, awarded to those officers with the right skills and work in investigation, public order, firearms, or neighbourhood policing;
- Shorter pay scale for sergeants, ensuring that those newly promoted to sergeant receive higher basic pay than even the best paid constables, to recognise their management responsibilities;
- Skills-based pay - new skills thresholds to pay more to officers able to pass tests that demonstrate they have

the skills, knowledge and experience needed to perform effectively in the role;

- Introduction of contribution-related pay, a system of pay progression on the basis of contribution, as assessed in the annual appraisal;
- Abolition of Competence Related Threshold Payments as they have no place in a new pay structure focussed on rewarding skills and shorter pay scales;
- Annual fitness tests to ensure that officers are fit and healthy. An officer who fails three consecutive tests would lose their X-factor pay, which is 8% of their basic pay (up to a maximum of £2,922) and would be put through the unsatisfactory performance procedures;
- A more robust and equitable process for managing officers on restricted duties. Those officers in roles that do not utilise the skills or powers of a police officer, or who cannot be redeployed into public facing roles, should lose 8% of their basic pay (up to a maximum of £2,922) after one year on restricted duties. After a second year, they should be removed from the force, and offered the opportunity to apply for a police staff job if one is available;
- Chief constables should be given new powers akin to compulsory severance for police officers to enable them to manage their workforce effectively in times of financial pressure, and ensure the right mix of officers and staff in the workforce;
- Police officers' pension age should be 60, consistent with Lord Hutton's recommendation for the police and the other uniformed services;
- Introduction of the Direct Entry (Inspector) scheme, a new fast-track scheme, open to serving officers, to allow those taking part in the scheme to be eligible for promotion after just two years of intensive development and training.

Key Impacts on Superintending Ranks & Chief Officers

The key recommendations from the report that could affect the senior ranks are:

- Individual performance bonuses should be abolished throughout the police service. Pay progression in all ranks should be on the basis of contribution, assessed through the annual appraisal. Time-served pay progression should be abolished;
- Contribution-related pay progression would be on a single increment basis in all ranks. Double increment pay progression would end for the superintending ranks and assistant chief constables';

- The superintendents' pay scale should be shortened from five to three pay points. Superintendents would move more quickly to the pay maximum, increasing their earnings by nearly £7,000 over four years;
- The post-related allowance should be abolished. The pay points for chief superintendents should be revised so that the money currently spent on double increments, bonuses, and the post-related allowance is included in pensionable basic pay. Chief superintendents pensionable pay would increase by approximately £3,000;
- Skills-based pay - the pay scales of all ranks should include a skills threshold. For superintendents, the skills threshold test would focus on leadership and management skills in particular;
- There should be direct entry at chief constable and superintendent rank;
- Chief constables should have discretion to opt in to the superintendent direct entry scheme. Recruits will undergo 16 months of intensive training to provide them with the necessary policing skills prior to starting;
- Chief constable vacancies should be open to officers with experience in chief officer-equivalent roles in countries with common law jurisdictions that practice policing by consent;
- Improved training for in-service applicants, with a compulsory six week Foundation for Senior Leaders course for all those aspiring to join the superintending ranks.

Key Impacts on Police Staff

The recommendations that could affect police staff are:

- Officer and staff pay and conditions should be harmonised over time, with officer pay and conditions changing to become more like staff pay and conditions;
- Direct Entry (Inspector) Scheme - a fast track scheme open to staff as in-service candidates. Staff selected would be able to reach the rank of inspector after just three years of intensive development and frontline experience;
- New approach to restricted duties to remove unfairness to civilian staff working alongside police officers, doing the same job, but for significantly less pay. A more robust and equitable process for managing officers on restricted duties so that officers in roles that do not utilise the skills or powers of a police officer, or who cannot be redeployed into public facing roles, should lose 8% of their basic pay (up to a maximum of £2,922) after one year on restricted duties. After a second year, they should be removed from the force,

and offered the opportunity to apply for a police staff job if one is available;

- Unsocial hour's payments for staff should be harmonised with those of officers so that staff earn double time for any hours worked between 8pm and 6am;
- Staff overtime arrangements should be harmonised with those of officers, with Sundays paid at plain time whilst Christmas and seven other nominated days are paid at double time;
- Staff undertaking personal safety training as part of the job should be required to take an annual fitness test. Staff who fail the test three times in a row should be subject to unsatisfactory performance measures;
- Both officers and staff should move to a system of pay progression on the basis of contribution, as assessed in the annual appraisal;
- No national pay grading for staff, to give forces the flexibility they need to react to local labour market conditions;
- The Police Staff Council should receive funding to obtain better data on police staff issues to ensure that future decisions about staff pay and conditions are made on the best evidence available.

The Part 2 Report, containing a total of 121 recommendations, has been presented to the Home Secretary. If the Home Secretary wants to implement the recommendations, they will be considered by the Police Negotiating Board prior to the Home Secretary's final decision.

The full report and fact sheets can be accessed at:
http://review.police.uk/publications/part-2-report/

Online calculators to help officers to understand how their pay could be affected by the Part 2 recommendations are available at:
http://review.police.uk/publications/online-calculator/

Police Pilot of Domestic Violence Disclosure Scheme

Police forces in Greater Manchester, Gwent, Nottinghamshire and Wiltshire will run a 12 month trial of the Domestic Violence Disclosure Scheme. The scheme, which will run from summer 2012, will give victims or potential victims of domestic violence the right to ask police about a partner's domestic violence history.

The scheme is part of the Government's 'call to end violence against women and girls action plan' and follows a Home Office consultation on the scheme. The Home office will decide whether to extend the scheme further after the pilot has been evaluated.

Further information on the pilot scheme can be found at: http://www.homeoffice.gov.uk/media-centre/news/clares-law

Report Published on Rape Investigation and Prosecution

Her Majesty's Inspectorate of Constabulary (HMIC) and HM Crown Prosecution Service Inspectorate (HMCPSI) have published a joint inspection report into the investigation and prosecution of rape offences.

There were three phases to the inspection:

- Site visits to some forces and Crown Prosecution Service Areas by HMIC and HMCPSI;
- An examination by HMIC of the specific challenges associated with 'stranger' rape and 'serial offenders';
- A general assessment by HMIC of record keeping and the tools used to gather and analyse information about rape (at a local and national level).

The inspectors examined the systems and processes used at each stage of the intelligence gathering process from the first report of rape through to the investigation and prosecution process. The joint inspection found that:

- The number of rapes recorded by the police had risen by 3,261 (26%) over the last three years. This is attributed not to an increase in actual offending but to improved confidence by victims that offences will be dealt with sensitively and professionally by police and prosecutors as well as improved recording of offences;
- Whilst the police response to dealing with victims of rape has improved, intelligence gathering is not meeting the demands of the rise in recorded rape;

- More could be done at force level to analyse information and draw connections between linked offences. Rape problem profiles are used by forces to draw together information on rape offences from all available sources for analysis. However, only three forces (7%) had a rape problem profile which was current and met National Intelligence Model standards;
- Forces did not fully understand the potential use of partial DNA samples in eliminating suspects or directing investigations;
- Records about foreign nationals were not regularly checked through Interpol;
- The Serious Crime Analysis Section (SCAS), which was created to provide intelligence material on serious sexual offences at a national level, by identifying and linking serial crime within and across force areas, is not well used or organised. A change of approach at SCAS could increase the numbers of serious sexual offences that are analysed in 'real-time' investigations.

HMIC and HMCPSI made the following recommendations in the report:

- Forces should initially consider every 'stranger' rape to be part of a pattern of serial offending, so that investigating officers consider the wider links to other crimes;
- Forces should ensure that their rape problem profiles are relevant and up to date;
- Clear definitions of 'repeat and serial' offenders should be developed by forces (supported by ACPO) to ensure consistent approaches across forces in relation to intelligence gathering and crime recording;
- The Code of Practice for SCAS setting out how the current monitoring arrangements should work may need to be amended if SCAS is to fulfil the responsibilities suggested. The Home Office should consider revising the Code of Practice so that it is more focused on securing outcomes;
- SCAS, in consultation with users, should conduct a review of its services and functions, including backlogs and prioritisation processes, to ensure that cases meeting the criteria are analysed in a timely manner and that robust qualitative feedback on all submissions is provided;
- ACPO should support an urgent and all force review of the awareness and use of existing processes for identifying foreign intelligence. This is to ensure that the risks to the public are mitigated and that available intelligence

information that may assist in the identification of suspects is captured and used in current investigations;

- ACPO should consider national guidelines, in consultation with the National DNA Database Strategy Board, and forensic service providers, to ensure that information from partial profiles is managed consistently by forces and is available across force borders and between jurisdictions.

The joint HMIC and HMCPSI report 'Forging the links: Rape Investigation and prosecution' can be accessed in full at: http://www.hmic.gov.uk/publication/forging-the-links-rape-investigation-and-prosecution/

Operation of Police Powers under the Terrorism Act 2000

The Home Office has published statistics on the use of police powers under the Terrorism Act 2000 (TACT), and subsequent legislation, for the period up to 30 September 2011.

The published figures bring together statistical material relating to the Terrorism Act 2000, including arrests and their outcomes, as well as breakdowns of stops and searches made under the powers of the Act.

Terrorism Arrests and Outcomes

The statistics refer to 'terrorism-related' offences. These include TACT offences; failure to comply at border controls under Schedule 7 of TACT; and non-TACT legislation offences that are considered to be terrorism-related (e.g. a charge for a Firearms Act offence that was directly related to terrorist activity). The statistics show that:

- There were 153 arrests for terrorism-related offences in the year ending 30 September 2011, compared with 133 in the previous 12 months and a total of 2,050 since 11 September 2001;
- Forty-six per cent of those arrested for terrorism-related offences in the year ending 30 September 2011 were arrested under section 41 of TACT, compared with 40 per cent in the previous year and 77 per cent since 11 September 2001;
- Of the 153 arrests in the year ending 30 September 2011, 39 per cent were charged, compared with a charging rate of 41 per cent in the previous 12 months and 36 per cent since 11 September 2001. A comparison with persons aged 18 and over arrested for recorded crime offences in 2010/11 indicates that 45 per cent are proceeded against at court;

- Of the 59 charges in the year ending 30 September 2011, 59 per cent (35 people) were for terrorism-related offences as compared with 48 per cent in the previous 12 months and 62 per cent since 11 September 2001;
- Forty-four per cent (68 people) of those arrested were released without charge in the year ending 30 September 2011 compared with 48 per cent (64 people) in the previous year and 54 per cent (1,105 people) since 11 September 2001;
- There were forty-five arrests for terrorism-related offences in the latest quarter (July to September 2011). Seventeen of these had been charged, 15 with TACT offences;
- Since 11 September 2001, there have been 251 convictions for terrorism-related offences out of 440 charged, a conviction rate of 57 per cent;
- Data provided by the Crown Prosecution Service show that, during the year ending 30 September 2011, 13 people stood trial for terrorism-related offences, seven of whom were convicted. Thirty-one people stood trial during the previous year, 23 of whom were convicted.

Stops and searches under TACT

Section 44 of TACT provided police officers with the power to stop and search persons and vehicles for articles which could be used in connection with terrorism. The majority of police forces ceased using the power in June 2010 following the decision of the European Court in the case of Gillan and Quinton v UK. On 18 March 2011, all section 44 powers were formally replaced with section 47A stop and search powers which have a significantly higher threshold for authorisation than section 44 searches.

The statistics show that:

- A total of 41 stops and searches were made in Great Britain under section 44 between October 2010 and March 2011, a 99.8 per cent fall compared to the period October 2009 to March 2010;
- Between April and September 2011 there were no searches under section 47A, compared with 9,703 conducted under section 44 during the same period in 2010. There have been no uses of section 47A since the commencement of the power on 18 March 2011;
- The section 44 stops and searches made since October 2010 were conducted by two police forces, with each accounting for approximately a half: City of London (51%) and Metropolitan Police Service (49%);

- More than half (23 out of 41) of those stopped and searched under these powers in the year ending 30 September 2011 classified themselves as White. Around ten per cent (4 out of 41) classified themselves as Asian or Asian British.

Also available to the police are powers of stop and search under section 43 of TACT, where an officer does not need an authorisation, but should have reasonable suspicion that the suspect is involved in terrorist-related activity.

- A total of 1,212 people were stopped and searched by the Metropolitan Police Service in the year ending 30 September 2011 under section 43, up from 905 in the previous 12 months, an increase of 34 per cent;
- The proportion of those stopped and searched who self-classified as Asian or Asian British increased from 30 per cent in the year ending 30 September 2010, to 34 per cent in the year ending 30 September 2011. During the same period, the proportion of individuals searched describing themselves as White fell from 46 per cent to 36 per cent. The proportion of those searched who self-classified as Black or Black British fell one percentage point, from ten to nine per cent;
- In the year ending 30 September 2011 there was one arrest resulting from section 44 stops and searches in Great Britain. The arrest was not identified as being terrorism related;
- A further 33 arrests were made by the Metropolitan Police Service following stops and searches under section 43, which accounted for 2.7 per cent of total searches.

The full Home Office Statistical bulletin 04/12 can be accessed at:
http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/counter-terrorism-statistics/hosb0412/

New Offences of Stalking

The Home Office has announced that two new specific criminal offences of stalking are to be introduced in England and Wales.

The new offences of stalking and stalking where there is a fear of violence will be created to sit alongside existing offences of harassment in the Protection of Harassment Act 1997.

The Government is to introduce the changes through amendments to the Protection of Freedoms Bill so that these new offences can be enacted as soon as possible. The law is currently designed to capture the variety of tactics employed by

stalkers which, when taken separately, may not constitute an offence in themselves. The aim of introducing specific offences of stalking is to provide greater clarity around this offence for the police and others looking to improve the safety of victims and bring perpetrators to justice.

The police will also be given new powers of entry to investigate stalking offences. Until now, the police have only had a right of entry in respect of conduct that puts people in fear of violence. In addition to the introduction of these new offences, the government is looking at better training and guidance for the police and Crown Prosecution Service so that victims of stalking get better support.

The Home Office announcement follows a consultation by the Home Office which received a strong positive response from the public in favour of the creation of new offences.

Further information on the proposals can be found at:
http://www.homeoffice.gov.uk/media-centre/news/Stalking

Metropolitan Police Review of August Riots Published

The Metropolitan Police Service (MPS) has published a report following a comprehensive internal review into the August 2011 disorders.

The report details the key issues that the MPS experienced during the disorders, and outlines what worked well and what did not, what developments have occurred and the further changes that need to be made.

In the report, the MPS accepts that despite many thousands of officers putting themselves in the line of fire and working almost around the clock to try to protect London; it was not able to contain the disorder until the fourth day. The MPS engagement, intelligence and operational response plans were not sufficient to prevent or respond to the unprecedented scale and speed of the unfolding disorder.

The report concludes that improvements need to be made to MPS engagement with communities, public order intelligence systems, the scale and speed of mobilisation, and the tactics deployed in such circumstances. Whilst this is the final report of the review, extensive work continues within the MPS in order to take the recommendations forward.

The full report '4 Days in August' can be accessed at:
http://content.met.police.uk/News/MPS-report-into-summer-disorder/1400007360193/1257246745756?target=home

Hate Crime Action Plan

The Government has published a report setting out its action plan to tackle hate crime. The plan outlines how the Government will support local areas in tackling the problem, and highlights the need to provide more support to victims and give them the confidence to come forward and report incidents.

The plan focuses on three key themes:

- Preventing hate crime happening by challenging the attitudes and behaviours that foster hatred, and encouraging early intervention to reduce the risk of incidents escalating;
- Increasing the reporting of hate crime that occurs by building victims' confidence to come forward and seek justice, and working with partners at national and local level to ensure the right support is available when they do;
- Working with the agencies that make up the Criminal Justice System to improve the operational response to hate crime, with agencies identifying hate crimes early, managing cases jointly and dealing with offenders robustly.

Hate crime is defined as any criminal offence which is perceived, by the victim or any other person, to be motivated by a hostility or prejudice based on a personal characteristic. Legislation to protect victims and tackle those who intend to stir up racial hatred and those who commit racially and religiously aggravated offences or engage in racist chants at designated football matches has been in place for a number of years. In recent years a number of new criminal offences have been introduced, to reflect the seriousness of hate crime, including enhanced sentencing and stirring up hatred towards other groups on the grounds of religion and sexual orientation.

The report also states that, according to research, hate crime is under-reported, particularly among Asylum and Refugee communities, Gypsy, Irish Traveller and Roma Communities. In 2010, a total of 48,127 hate crimes were recorded by police forces in England, Wales and Northern Ireland and were identified to be in the following categories:

- 39,311 were racist crimes;
- 4,883 were based on sexual orientation;
- 2,007 were religious hate crimes;
- 1,569 targeted disabled people;
- 357 targeted transgender people.

The action plan will address the reluctance of many victims to come forward, for example, for fear of attracting further

abuse, for cultural reasons, or because they don't believe the authorities will take them seriously.

The action plan identifies a number of specific actions to be taken to prevent hate crime and these include:

- The publication of data on hate crime victimisation from the British Crime Survey;
- Developing the Government's new strategy to tackle alcohol as a contributing factor of violence;
- Developing a cross- government Disability strategy with disabled people;
- A cross-government programme of work to tackle hate crime in sport;
- A programme of work to tackle hate crime on the internet, including working with industry, the police, courts, EU institutions and other international organisations.

The report 'Challenge it, Report it, Stop it-The Government's Plan to Tackle Hate Crime' can be found at: http://www.homeoffice.gov.uk/publications/crime/hate-crime-action-plan/

EHRC Publishes Human Rights Review

The Equality and Human Rights Commission (EHRC) has published the report of its landmark review in to how well public authorities protect and promote human rights in Britain.

In this review the EHRC assessed how well Britain is meeting its human rights obligations under the European Convention of Human Rights and the Human Rights Act 1998, which gives effect to the Convention. In particular, the review:

- Sets out the rights and freedoms protected in the Convention and considers to what extent each is enjoyed by people living in Britain today;
- Looks at how laws, institutions and institutional processes support and protect each right;
- Highlights the many ways in which the protection of human rights in Britain has been strengthened in recent years by law, policy and practice;
- Exposes some key areas where the EHRC believe serious human rights problems could be better tackled and protections ensured.

The review concluded that many public authorities have a good track record on human rights protection. As a result, people

are by and large able to live the lives that they choose and may take their human rights for granted. The review also found that some public authorities are not using human rights principles as much as they could to protect people. Some of the problems highlighted include the abuse of vulnerable people in care; misuse of personal data by the state; treating victims of human trafficking as criminals; threats to the right to peaceful protest; and lack of support for some victims of crime.

The review identified 10 areas where legislation, institutions, policy or services were not fully protecting human rights including:

- Health and social care commissioners and service providers do not always understand their human rights obligations;
- The justice system does not always prioritise the best interests of the child. The effect of this is that children will not receive a fair trial if they do not understand the gravity of charges against them or are unable to participate in court procedures. Furthermore, the review found that young offenders institutions resorted too easily to control and restraint procedures for discipline;
- Police custody and prisons do not always have sufficient safeguards and support when dealing with vulnerable adults. Some police forces lack safe facilities to look after people who are drunk, intoxicated by drugs or have mental health problems. Unsafe use of restraint remains a problem across all forms of detention;
- Investigations into deaths of people under protection of the state are not always independent, prompt or public, potentially breaching right to life investigative requirements;
- Providing a system of legal aid is a significant part of how Britain meets its obligations to protect the right to a fair trial and the right to liberty and security. The proposed changes to legal aid provision run the risk of weakening this by limiting access to legal advice and services;
- The legislative and regulatory framework does not offer sufficient protection of the right to respect for private and family life and for balancing this right with other rights. The two key statutes, the Data Protection Act 1998 (DPA) and the Regulation of Investigatory Powers Act 2000 (RIPA) provide insufficient protection. In particular, definitions of 'personal data' which are central to DPA are not clear; and RIPA has not responded effectively to technological changes which enable more extensive surveillance of individuals. The Information Commissioner's Office does not have adequate resources to carry out its functions effectively and there is insufficient judicial oversight of RIPA and surveillance regulations;

- The human rights of some groups are not always protected. The review looked at how local authorities, police or social services had sometimes failed to intervene in cases of serious ill-treatment of children, disabled people and women at risk of domestic violence. The review also looked at how ethnic minority groups were more likely to be subject to stop and search and counter-terrorism legislation or to have their details recorded on the National DNA database;
- Counter-terrorism and public order legislation designed to protect everyone can risk undermining several human rights. The review was critical of the impact of counter-terrorism legislation on legitimate expression of political views and gatherings. It found that the definition of terrorism is still too broad and criminalises lawful protests and political expression, as well as the terrorist acts which parliament intended. The review also found problems with counter-terror measures against individuals suspected of terrorist offences. The review found that the police sometimes do not understand their powers and duties under broad and complex public order legislation. As a result, the police do not always strike the appropriate balance between the rights of different groups involved in peaceful protest;
- Allegations of torture and complicity in torture in overseas territories risk breaching Article 3;
- Immigration procedures can favour administrative convenience over safeguarding individuals' rights to liberty and security. Periods in detention can be unlawful if release or removal is not imminent.

The report concludes that the review has demonstrated that Britain has strong legislative and institutional structures which protect human rights, but that in certain areas changes to the law, institutional processes or the way services are delivered is required.

The full report 'Human Rights Review 2012' can be accessed at: http://www.hmic.gov.uk/publication/forging-the-links-rape-investigation-and-prosecution/

New Sentencing Guidelines for Allocation, Offences Taken into Consideration and Totality

The Sentencing Council has published its new definitive guidelines on three overarching aspects of sentencing: allocation, offences taken into consideration and totality. The guidelines have been issued in accordance with section 120(4) of the Coroners and Justice Act 2009 and apply to all offenders aged 18 and over.

The guidelines aim to ensure that the principles in each of these areas of sentencing practice are applied consistently in courts in England and Wales and will apply to all cases that are dealt with on or after 11 June 2012, regardless of when the offence was committed.

The first guideline aims to encourage a consistent approach to allocation decisions so that defendants are tried at the appropriate level. Allocation concerns the decision of a magistrates' court as to whether it is appropriate that an offence which could be tried either way should remain in the magistrates' court or be sent to the Crown Court. The guideline brings a change in emphasis to the way in which magistrates approach assessing the strength of a case, moving away from taking the prosecution case at its highest and instead directing courts to take all aspects of the case into account.

The guideline for offences taken into consideration, (TICs) sets out the general principles, procedure and approach and so ensure clarity and consistency. TICs are those offences that the offender has not been prosecuted for but which are admitted and the court is asked to consider when sentencing for an offence for which the offender has been prosecuted.

The third guideline, on totality, has been produced to fulfil one of the Sentencing Council's statutory duties under the Coroners and Justice Act 2009. Totality is the principle that the total sentence for a number of offences sentenced at the same time should be just and proportionate, reflecting the overall seriousness of the criminality.

The guideline aims to bring greater clarity and transparency to existing sentencing practice for multiple offences and increase consistency of the application of the totality principle. It is not intended to bring about any changes in practice. Average custodial sentence lengths, and the proportion of offenders receiving the various types of sentence, are not expected to change as a result of the introduction of the guideline.

The definitive guidelines can be accessed in full at: http://sentencingcouncil.judiciary.gov.uk/guidelines/forthcoming-guidelines.htm

DPP Publishes Guidance to Prosecutors in Public Protest Cases

The Director of Public Prosecutions (DPP) has published guidance for Crown Prosecution Service prosecutors on dealing with cases where offences may have been committed during demonstrations or protests. The guidance aims to ensure that such cases are dealt with proportionately and consistently. The guidance will give prosecutors a clearer indication of the evidential and public interest factors they should consider before deciding whether or not to charge a suspect or to continue a police-charged prosecution.

The guidance follows several recent large public protests and the High Court judgment in the case of Munim Abdul v DPP [2011] EWHC 247 (Admin). In that case it was ruled that, in relation to a public order offence, the starting point for law enforcers should be an individual's right to freedom of expression. Violent disorder, such as the riots in August 2011, is outside the scope of this guidance as it is dealt with by existing public disorder guidance.

The guidance states that the evidence in public protest related cases should be carefully scrutinised to establish if the person came in anticipation of disorder at the protest or if there was an element of planning before the commission of the offence. In particular, prosecutors should consider whether there is evidence of telephone or computer records or social network activity that show that the suspect was closely involved in the commission of the offence. There may also be CCTV coverage or video footage from the police or videos made by protestors uploaded onto the Internet.

The guidance indicates that prosecution for offences committed during a public protest is more likely to be required in the public interest where:

- Violent acts were committed that caused injury or it is reasonable to believe they could have caused injury;
- The suspect took a leading role in and/or encouraged others to commit violent acts;
- The suspect was in possession of a weapon at the time of the offence;
- The suspect took steps to conceal their identity;
- Significant disruption was caused to the public and businesses;
- Significant damage was caused to property;

- The suspect has a previous history of causing violence, damage, disruption or making threats at public protests;
- Threats were made against an individual or business that caused, or it is reasonable to believe, could have caused alarm, fear or distress.

The guidance can be accessed in full at:
http://www.cps.gov.uk/legal/p_to_r/public_protests/

Government Response to Home Affairs Committee Report on August Riots Published

The Government has published its response to the Home Affairs Select Committee report 'Policing Large Scale Disorder: Lessons from the disturbances of August 2011.' The Committee report had focused on the police response, the costs of policing the disorder and the role of social media (see January 2012 *Digest*).

The Government response welcomed the inquiry by the Home Affairs Committee into the policing of the riots and responded to the recommendations made by the committee.

The Government commended the work of the Independent Police Complaints Commission (IPCC), Association of Chief Police Officers (ACPO) and the National Policing Improvement Agency (NPIA), to improve communication with the family of victim's following a fatal shooting. This work includes both the ongoing review of the NPIA family liaison guidance and the work of the IPCC and ACPO on the media handling protocol.

The select committee had said that it could not recommend any increase in police powers and that it would have been inappropriate to use water cannon and baton rounds. The Government in its response said that it would ensure that the police have the tools and powers they need to maintain order on the streets. However, the Home Secretary would consider very carefully the views of Chief Officers and Police Authorities on the use of water cannon, bearing in mind that water cannon situated in Northern Ireland can be made available at 24 hours' notice if needed.

The Government accepted that it was important that the police response to public order situations was swift and targeted from the start so that the public are protected. It also accepted that mutual aid was key to enabling forces in the areas worst affected by the riots to respond effectively. The Government will also consider carefully the future of the Police National Information and Co-ordination Centre in light of ACPO reforms and the intention to establish a Police Professional Body.

The response also confirms that policing authorities will be able to recover 85% of the final operational costs incurred for policing the riots and that the Government will work with police authorities to consider support for costs beyond 85%. The Government also agreed to reimburse police authorities for the costs related to claims made under the Riot (Damages) Act 1886.

The response clarified that the Government was committed to a free and open internet and that the use of social media by forces to engage with communities during the riots was valuable. It

also said that ACPO is to lead on and ensure that expertise on using social media as a positive tool for communication is mainstreamed across police forces. Further action will be considered by the Home Secretary to prevent the use of social media for criminal purposes.

The 'Government Response to the Sixteenth Report of the Home Affairs Committee' can be accessed in full at: http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/

NPIA

National Policing
Improvement Agency

Legal Services
Chief Executive Officer Directorate

www.npia.police.uk