College of Policing

Digest

April 2013

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

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.

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Legal Services
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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 surveillance recordings, use of restraint and special measures.

We look in detail at recently published Government and Parliamentary reports and initiatives such as the Home Affairs Committee interim report on Undercover Policing. Other reports covered include Her Majesty's Inspectorate of Constabulary's (HMIC) review into allegations and intelligence material concerning Jimmy Savile and the Torbay Safeguarding Children Board case review on Operation Mansfield.

Statistical bulletins are summarised on children entering detention held solely on Immigration Act powers and knife possession quarterly figures. Consultations covered in this edition include the Ministry of Justice consultation on transforming education within youth custody and the Home Office consultation on the prevention of the supply of specialist printing equipment which assists criminals to make false documents.

The progress of proposed new legislation through Parliament is examined and Statutory Instruments and Circulars summarised.

Contents

Bills Before Parliament 2012/13 - Progress Report

On 9 May 2012, the Queen's Speech unveiled the legislative programme for the 2012-2013 Parliamentary session.

- **Arbitration and Mediation Services (Equality) Bill** - A Bill to make further provision about arbitration and mediation services and the application of equality legislation to such services; to make provision about the protection of victims of domestic abuse; and for connected purposes.

  The Bill includes provision for a new offence of falsely claiming legal jurisdiction. This offence, if enacted, would become section 118A of the Courts and Legal Services Act 1990 and would be committed where a person purports to determine in arbitration proceedings a matter excluded by section 80A of the Arbitration Act 1996, or falsely purports to exercise any of the powers or duties of a court to make legally binding rulings.

  Second reading of the Bill took place in the House of Lords on 19 October 2012. Committee stage is yet to be scheduled.

- **Coroners and Justice (Amendment) Bill** - A Bill to amend section 62 of the Coroners and Justice Act 2009 (possession of prohibited images of children) to apply additionally to the possession of prohibited written material about children; to make consequential amendments to the Act; and for connected purposes.

  The second reading of the Coroners and Justice (Amendment) Bill took place in the House of Commons on 19 October 2012. The date of committee stage is yet to be announced.

- **Crime and Courts Bill** - The Bill:

  - Provides for the establishment of the National Crime Agency (NCA) to prevent and investigate serious, organised and complex crime, enhance border security, and tackle the sexual abuse and exploitation of children, and cyber crime;
  - Makes provision for the appointment of a Director General as the operationally independent head of the NCA; makes provision for the governance of the NCA; and provides a framework for the NCA and other law enforcement agencies to collaborate in order to assist each other in the discharge of their functions;
  - Sets out the powers of the Director General and other NCA officers, including by making provision to enable the Director General to give designated NCA officers some or all of the powers of a constable, a customs officer or an immigration officer; and provides for a duty on the Director

General to publish certain information and for the disclosure of information by and to the NCA and for the use of information by the Agency;

- Provides for the NCA to be inspected by Her Majesty's Inspectors of Constabulary, and for regulations to make provision for oversight by the Independent Police Complaints Commission. The Bill places restrictions on certain NCA officers taking industrial action and makes provision for the determination of such NCA officers' pay and allowances;

- Provides for the abolition of the Serious Organised Crime Agency (SOCA) and the National Policing Improvement Agency (NPIA). The Bill includes provision for the Secretary of State to make, and lay before Parliament, staff and/or property transfer schemes. A staff transfer scheme may provide for a designated member of staff of SOCA or the NPIA, a designated constable or member of civilian staff in an England and Wales police force and a designated member of personnel or staff in any other body to become NCA officers, and employed in the civil service of the state. A property transfer scheme may provide for the transfer to the NCA of designated property, rights or liabilities from SOCA, NPIA, the chief officer of, or the policing body for an England & Wales police force or any other person;

- Contains provisions to modernise the courts and tribunals including establishment of a Single County Court system and Single Family Court to allow greater flexibility for the handling of cases to increase efficiency of the civil and family court systems in England and Wales;

- Increases the efficiency of fines collection by providing incentives for early payment and compliance, so that, in the event of a default, the offender will be charged the cost incurred for collecting their fine not the taxpayer;

- Makes provisions to reform the judicial appointments process to introduce greater transparency in the judicial appointments process and improve judicial diversity; and provides for the filming and broadcasting of judicial proceedings in specified circumstances;

- Makes provisions about border control and the powers of immigration officers;

- Creates a new offence of driving or being in charge of a motor vehicle with a specified controlled drug in the blood or urine in excess of the specified limit for that drug. Makes further provision for the taking of preliminary tests to determine the level of drugs in a person's blood or urine so

as to allow up to three preliminary tests of saliva or sweat to be taken when testing for drugs.

On 11 March 2013 changes to the Bill were announced to allow for defendant's legal aid costs to be recovered from any 'frozen' assets that they may have. The Bill's report stage and third reading in the House of Commons took place on 18 March 2013 and returned to the House of Lords for consideration of amendments on 25 March 2013. The Bill has now been returned to the Commons for consideration of Lords amendments.

- **Justice and Security Bill** - A bill to provide for oversight of the Security Service, the Secret Intelligence Service, the Government Communications Headquarters and other activities relating to intelligence or security matters; to provide for closed material procedure in relation to certain civil proceedings; to prevent the making of certain court orders for the disclosure of sensitive information; and for connected purposes.

  The report stage and third reading took place on 7 March 2013 and Consideration of Commons amendments took place on 26 March 2013.

- **Scrap Metal Dealers Bill** - A Bill to amend the law relating to scrap metal dealers; and for connected purposes.

  The Bill received Royal Assent on 28 February 2013. Please refer to page 35 of this months *Digest* where this piece of legislation is discussed in full.

The progress of Bills in the 2012/13 parliamentary session can be found at http://services.parliament.uk/bills/

RIPA Surveillance Recordings Case Upheld at the Court of Appeal

Regina v Daniel Michael Plunkett and James George Plunkett [2013] EWCA Crim 261

A hearing in the Court of Appeal before the Honourable Mrs Justice Swift and Mr Justice Macduff

Summary

The applicants, Daniel Plunkett and James Plunkett, were convicted of aggravated burglary, false imprisonment and possession of a firearm at Southampton Crown Court on 13 March 2012. They were sentenced to a minimum of 10 years imprisonment. They appealed on the grounds that recordings made in a police vehicle were made unlawfully as they were not made in accordance with the Regulation of Investigatory Powers Act 2000 (RIPA) and breached Article 6(3)(b) of the European Convention on Human Rights (ECHR), therefore the evidence should have been excluded under Section 78 of the Police and Criminal Evidence Act 1984 (PACE).

Facts

On 5 November 2010 three men dressed as police officers knocked on the house of Mr and Mrs Butt where their two teenage sons also lived. The men forced themselves into the premises, and tied the family members up with handcuffs and cable ties and subjected them to a terrifying ordeal. Mrs Butt and her sons were taken upstairs and were watched by one of the men, while Mr Butt was threatened and ordered to open the safes. A barrel of a gun was pushed to his head and he was threatened with a needle which the attackers said contained blood which was infected with HIV.
Mr Butt opened the safes, but despite this one of the men inserted the needle into his bottom, although he didn't inject the fluid.
Before the men left the property, they threatened to torture the children and then kill them in front of Mr Butt, before killing him if he or his family reported the crime. The men then made off with watches, a ring and approximately £37,000 cash. The Butt family did not make a complaint until March 2011.

Following intelligence being received, the applicants' home address was searched in January 2011 by police, and cable ties, handcuffs, police shirts, body armour, a tracker device, syringes and other paraphernalia were found. James Plunkett, who was present at the time of the search was arrested on suspicion of conspiracy to rob, but not in relation to Mr Butt. He gave explanations of the possession of the objects and was released without charge.

On 21 February 2011 a garage in Fareham which had been rented by Daniel Plunkett was subject to a police search. Police found

three metal chests, which when unlocked contained a shotgun cartridge, police stab vests and other police equipment. In addition a sawn off shotgun, cable ties, a metal door enforcer and a syringe containing red liquid were also found.

Daniel Plunkett's DNA was found on items seized from the garage. The tracker device history was consistent with a visit to the area the Butt family lived in and two mobile phones also recovered were found subsequently to have been used in the area of the Butt family home on the night of the attack.

On 11 March 2011 the applicants were sentenced to six years imprisonment for production of cannabis. James Plunkett also received a consecutive sentence of 12 months for possession of a shotgun without a certificate. They were both imprisoned at HMP Camp Hill on the Isle of White. On 16 May 2011 they were arrested at HMP Camp Hill on suspicion of aggravated burglary at the Butt family home. Disclosure was made to both applicants about certain elements of the offence but nothing was said about the search of the garage, the items found at the garage, or about the needle being put into Mr Butt's bottom.

Neither applicant was told that they would have access to legal advice at the police station but it is inferred that they would have known this through their knowledge of the criminal justice system. Both applicants were transported in a police van for approximately ten minutes before reaching the police station. Two police officers sat in the front of the van, and the two applicants sat in the back, with a partition between them. When they arrived at the police station the applicants were left on their own in the van for fifteen minutes, which was a built in delay. Their conversation was recorded during their time in the police van.

At the police station the applicants were afforded access to legal advice and both applicants were interviewed in the presence of a solicitor, one after the other. During the interviews, further disclosures were made including the seizure of the computer and mobile phones. Both applicants answered 'no comment' to the questions put to them. After the interview, both applicants were given forms setting out the descriptions that the victims had given. They were then placed in the police van and their conversation was recorded again. During the return journey to the police station and when left on their own they referred to the syringe stuck into Mr Butt's bottom, the stab proof vests, the shotgun and other relevant things to the case.

On 6 June 2011 a further search was conducted of the applicants' parents' home and more items including police vests handcuffs and police badges were found. The next day, the applicants were taken from prison to the police station for a further interview. They were given further disclosure relating to the items seized in the garage. The pre-planned delay of fifteen minutes was again incorporated

into the journey and their conversation was recorded. On the way to the police station the applicants discussed what they were going to say about the garage and they also discussed their parents' home being searched and the uniforms. They were given time with their solicitor prior to interview, and both answered 'no comment' to questions put to them. On the way back to prison, they referred to one of them having injected Mr Butt precisely and also following Mr Butt back to his home prior to the burglary.

On 8 June 2011 they were interviewed again at the police station. On the way they mentioned the trackers as well as other relevant things. At interview they again had a solicitor with them and answered 'no comment'. They were told at these interviews of the fact that covert recordings had been made. No covert recordings were made on the return journey to prison.

The prosecution case not only relied upon the covert recordings but also on circumstantial evidence relating to what had been seized from the applicants' house, garage and mobile phone evidence. The laptop seized from the applicants' home showed that internet searches had been conducted prior to the date of the attack on the Butt family on police equipment and the address of the Butt family home.

James Plunkett gave evidence that they had rented the garage from another person to store power tools and when they no longer needed it rented it to another man. This man then introduced the applicants to some other men who wished to rent the garage who subsequently told the applicants that they had committed the burglary.

The applicants were convicted of aggravated burglary, false imprisonment and possession of a firearm.

The applicants' basis of appeal was:

- The surveillance that was carried out was 'intrusive surveillance' and not 'directed surveillance' as it took place in a private vehicle;
- No proper authority had been obtained as the authority had been sought from a Detective Superintendant and not a Chief Constable. 'Intrusive surveillance' requires the authorisation of a Chief Constable;
- Authorisation could not be given unless it was necessary and proportionate and the surveillance was neither;
- The first covert recording was made before they saw their solicitor; the disclosure made had provoked discussion and the applicants were not given time and the facilities to prepare their defence and this was therefore a breach of Article 6(3) of the ECHR;

- The evidence should therefore have been excluded under the provisions of section 78 of PACE.

Judgment

The Court of Appeal firstly considered the issue of whether the surveillance was 'directed surveillance' or 'intrusive surveillance'. In R v Mason [2002] EWCA 385 [2002] 2 Crim App R 38 in relation to covert recordings that had been made in a police cell, Lord Woolf CJ stated that "it is certainly desirable that what happens in police cells be treated as intrusive surveillance."

The Court of Appeal stated that it could see no reason to treat a police van in the same way as a police cell, and concluded that the police vehicle was not a private vehicle but was owned by the state and was being used for state purposes.

The Court of Appeal then considered whether the surveillance was necessary and proportionate. In relation to necessity it was determined by the Court of Appeal that the surveillance was necessary. Although some circumstantial evidence had been collected at the time of the RIPA authorisation, some evidence such as the analysis of the computer had not come to light. The Court of Appeal stated that the Butt family were still at risk and the threat to their lives was real, and establishing who their attackers were was plainly necessary.

In relation to proportionality the Court of Appeal then considered whether it was proportionate to conduct the surveillance, and found that the Crown Court Judge was entitled to conclude that the Detective Superintendant who made the RIPA application not only believed it was proportionate, but that it was in fact proportionate. The Court of Appeal stated that the threat to the Butt family was real and it was not proportionate to wait until the computer and mobile phones/cell site were analysed.

The applicants also stated that there had been a breach of Article 6(3) of the ECHR. They argued that the Article extended to prevent the use of disclosure before interview for the purposes of provoking incriminating conversations. The applicants argued that the surveillance was the equivalent of taping conversations between them and their solicitors. The Court of Appeal rejected this argument as well, stating that there had been no breach of confidentiality between them and their solicitors, and they would have known that they would have access to a solicitor before interview. They were given adequate time and facilities to prepare their defence.

The Court of Appeal also considered a possible breach of Section 30(1A) of the Police and Criminal Evidence Act 1984 which states that when a person is arrested they must be taken by a constable to a police station as soon as practicable after the arrest.

However Section 30(10) states that this doesn't prevent a constable delaying taking a person to a police station or releasing him on bail if the condition set out in subsection 10A is satisfied. The condition is that the presence of the person at a place (other than a police station) is necessary in order to carry out such investigations as it is reasonable to carry out immediately.

The Court of Appeal stated that even if there was a breach of Section 30(1A) of PACE the breaches would have been minor given the immense seriousness of the crime and the need to protect the Butt family. The evidence was properly admitted and there were no grounds so exclude it under Section 78 of PACE.

The Court of Appeal concluded that even without the recordings the conviction was safe with the evidence from the computer, cell site analysis and the other items seized on the searches. The Court of Appeal dismissed the appeal and refused leave to appeal against the sentencing.

The full judgment can be found at
http://www.bailii.org/ew/cases/EWCA/Crim/2013/261.html

Use of Restraint: Mental Capacity, Assault and Battery, False Imprisonment, Disability Discrimination and Human Rights (Appeal)

The Commissioner of Police for the Metropolis v ZH (A protected party, by GH, his litigation friend) and Liberty Equality and Human Rights Commission [2013] EWCA Civ 69

A hearing in the Court of Appeal before the Master of the Rolls, Lord Justice Richards and Lady Justice Black

Summary

The appellant's (the police) appeal was based on the submission that the judge failed to have regard to the fact that the reasonableness of the officers conduct and beliefs failed to be assessed by reference to a fast moving situation in which quick decisions needed to be made. The judge failed to take account of the need to accord to the police a reasonable degree of operational discretion. The appellant stated that the judge's decision makes it impossible to conduct practical policing in emergency situations which involve persons who suffer from incapacity.

The appellant also argued that the gentle touching of ZH was not battery and the finding that it was practicable and appropriate to consult Mr Badugu, the carer, was wrong. The judge's decision that the police should have consulted the carers once ZH had been brought to the shallow end of the swimming pool was also contested, as this was neither practicable nor appropriate. It was also contended that the findings of the judge in relation to the

restraint, both by the poolside and in the police van, were wrong because they were based on the finding that it was practicable and appropriate for the police to consult the carers before removing ZH from the pool.

Facts

The facts of this case are detailed in the May 2012 edition of the *Digest*, following the original judgment that was made in March 2012.

Judgment

The Court of Appeal found that it was too late for the appellant to dispute that the touching of ZH had amounted to battery as this point had not been explored in the original court hearing.

In relation to the defence's submission that the judge was incorrect in concluding that it was practicable and appropriate for the two officers to consult Mr Badugu before the police officer approached ZH and touched him, the Court of Appeal said there was no basis for challenging these findings and stated:

"the Mental Capacity Act 2005 does not impose impossible demands on those who do acts in connection with the care or treatment of others. It requires no more than what is reasonable, practicable and appropriate. What that entails depends on all the circumstances of the case. As the judge recognised, what is reasonable, practicable and appropriate where there is time to reflect and take measured action may be quite different in an emergency or what is reasonably believed to be an emergency."

ZH's entry into the pool

The Court of Appeal found that there was no basis to challenge the judge's conclusion that there was no imminent risk of ZH jumping in the swimming pool and the two officers did not consider the risk to be such that they had to act before consulting the carer. The Court of Appeal also rejected the submission by the appellant that the judge's decision had removed from the officers their operational discretion or imposed an obligation on officers to speak to any carer present whatever the circumstances, as this would depend on the case in question.

The conclusion that the judge made, namely that the officers did not reasonably believe that their actions were in the best interests of ZH when they proceeded to lift him out of the pool, was also upheld.

The events following ZH being lifted out of the pool

When considering the events after ZH was lifted out of the pool, the Court of Appeal stated that the information relating to ZH's dislike of being touched and possible strategies to deal with this should

have been obtained from Mr Badugu at the outset. If the carers had been consulted, it would have been confirmed that ZH was highly likely to struggle if he was lifted out of the water. As a result, the need to restrain ZH would probably have been avoided, and therefore the judge was entitled to conclude that the officers did not reasonably believe that it was in the best interests of ZH to restrain him.

The Court of Appeal found the decision made by the judge that he was not satisfied that the officers believed it was necessary to restrain ZH in order to prevent harm to him, let alone that any force was reasonable, was correct. The Court of Appeal also agreed that such restraint wasn't proportionate considering ZH could have been permitted to leave the pool by himself and could have been released to his carers for them to deal with him. The court concluded that these points are fatal to the 'best interests' defence in relation to the restraint.

The Disability Discrimination Act 1995

In relation to a breach of the Disability Discrimination Act 1995 (which was in force at the time of the incident prior to the introduction of the Equality Act 2010) the appellant submitted that the judge's conclusion that the duty to consult the carers arose from the outset and that the duty to make reasonable adjustments was a continuing duty was incorrect. It was argued that the duty to make reasonable adjustments only arises at the point when the practice or procedure to be adjusted 'is going to be or may be utilised.' The Court of Appeal saw no basis for ruling that the duty to make reasonable adjustments is not a continuing duty, and rejected the submission that the judge's decision makes practical policing unduly difficult or impossible.

Human Rights Act 1998 claims

Article 3- Prohibition of torture

In relation to the breach of Article 3 of the ECHR that was established by the judge, the Court of Appeal acknowledged that such a breach should not be found lightly, however stated that the judge was better equipped to evaluate the seriousness of the treatment of ZH than the Court of Appeal when taking into account all the circumstances of the case. It was stated that the judgment should only be reconsidered if it was clear that the judge was wrong, and the Court of Appeal confirmed the judge was entitled to conclude that Article 3 of the ECHR had been breached on the particular facts of the case.

Article 5- Right to liberty and security

When the judge considered a breach of Article 5 he found:

"The nature and duration of the restraint lead me to the conclusion that there was a deprivation of liberty, not merely a restriction on movement on the facts of this case. Furthermore, even though I am of the view that the purpose and intention of the police (namely at least in part to protect ZH's safety) is relevant to the consideration of the application of Article 5, I am nevertheless satisfied that even when that is taken into account, a deprivation of liberty has occurred. The actions of the police were in general well intentioned but they involved the application of forcible restraint for a significant period of time of an autistic epileptic young man when such restraint was in the circumstances hasty, ill-informed and damaging to ZH. I have found that the restraint was neither lawful nor justified. Even though the period may have been shorter than that of Gillan v United Kingdom 2010 APP No 4158/05, it was in my judgment sufficient in the circumstances to amount to a deprivation of liberty under Article 5."

The appellant disputed this finding, stating that when officers restrained ZH they restricted his movement for a short time but did not deprive him of his liberty and the purpose of the restraint was, in part at least, to protect and safeguard ZH. The appellant asserted that if this type of restraint was held to breach Article 5, then any restraint by police would breach Article 5.

The Court of Appeal rejected this, and stated that the deprivation of liberty can take many forms, and the judge was correct to consider the particular facts of the case and to make an assessment of the "type, duration, effects and manner of implementation of the measure in question", and was entitled to conclude that there was a breach of Article 5 for the reasons that he gave.

Article 8- Right to respect for private and family life

In relation to the finding that there was an interference of Article 8, the appellant accepted that if the challenges relating to the judge's findings in relation to articles 3 and 5 of the ECHR were rejected then so too must the challenge to his conclusion relating to article 8.

Conclusion

The Court of Appeal upheld the judge's findings and dismissed the appeal, agreeing that the officers' responses were "over-hasty and ill-informed." The Court of Appeal also agreed with the judge's conclusion that although against the police was established, he was satisfied that no-one was at any time acting in an ill intentioned way towards a disabled person.

In relation to the original judgment the Court of Appeal rejected the submission that the decision unreasonably interferes with the operational discretion of the police or that it makes practical policing impossible. It accepted that operational discretion is

important to the police. It stated that operational discretion is not sacrosanct. It cannot be invoked by the police in order to give them immunity from liability for everything that they do. The court stated that it did not believe that anything said, either by the judge or in this judgment, made it impossible to carry out policing responsibly.

The Court of Appeal concluded that nothing could justify the manner in which the police restrained ZH and the appeal was dismissed.

The full judgment can be found at
http://www.bailii.org/ew/cases/EWCA/Civ/2013/69.html

Objective Test Correct to Apply when Considering Special Measures

Key v Crown Prosecution Service [2013] EWHC 245

A hearing in the High Court of Justice (Queen's Bench Division) before the Honourable Mr Justice Collins.

Summary

The case is an appeal by way of case stated against the sentence imposed on the appellant by the Magistrates' Court. The appellant was guilty of drink driving having been found with more than double the prescribed limit of alcohol in his breath. The appellant argued that there were special reasons to avoid his disqualification, and those were that there was an emergency and that emergency required him, notwithstanding his condition, to drive his vehicle.

Facts

The appellant had driven to a party, and he said that he intended on walking home afterwards. He had been drinking at the party, and a fight broke out which the appellant did not start but had got involved in. The fight involved an attack on the appellant by six young men. The six men were ejected from the party and five minutes later the appellant was asked to leave. When he left, he said he saw two of the men who had attacked him, and he said he wanted to get home but was scared of being caught by them if he ran. He did not hide or seek help from anyone and he didn't return to the house where the party was being held. He got into his vehicle and he said that he drove off because the two men came up to him screaming and shouting. He stated that he feared that they would attack him.

The Deputy District Judge who had the heard the case said that the evidence from the police had not entirely supported this account, and concluded that the defendant had exaggerated the threat he felt from the two men, and was more concerned with the damage that the men may cause to his vehicle. She rejected the defendant's application of special measures in an emergency situation, stating that this is only applicable where there are clear and compelling circumstances and where there are no alternative methods of dealing with the crisis. She stated that even if the threat of assault on the defendant was likely, the defendant had other options available to him, such as returning to the house where the party was held to get assistance, but he did not consider these options because his thought process was impaired by alcohol.

The case went to appeal by way of case stated, as the Deputy District Judge sought clarity as to whether an objective test was the correct test to apply, or whether it should have been considered whether his actions were reasonable as he was intoxicated.

The judgment

The judge agreed that the test to apply was objective. He referred to the cases of Taylor v Rajan [1974] RTR 304 where Lord Widgery said that there was:

"..requirement to consider with particular care whether there were alternative means of transport or methods of dealing with the crisis of another than, and alternative to, the use by the defendant of his own car [or, in the circumstances, the decision to drive]… In making this assessment, as the courts said in Jacobs v Reid [1974] RLT 71, the test is not a subjective one. The justices do not try to put themselves in the position of the driver with drink in his body and ask if it was a reasonable decision for him to take. The matter must be considered objectively and the quality and gravity of the crisis must be assessed in that way. Last, but by no means least, if the alcohol content in the defendant's body is very high, that is a very powerful reason to say that the discretion must not be exercised in his favour. Indeed if the alcohol content exceeds 100 milligrams per 100 millilitres of blood, the justices should rarely if ever exercise this discretion in favour of the defendant driver."

The judge stated that it was correct for the deputy district judge not to find special reasons. He also stated that although the alternative actions which the appellant could have taken were not considered because he was intoxicated, those alternatives clearly existed and looking on them objectively, based on the evidence, the emergency was not a particularly serious one as it was not because the appellant feared attack upon himself. He dismissed the appeal.

Judgment available on request.

SI 2013/625 The Misuse of Drugs (Amendment No. 2) (England, Wales and Scotland) Regulations 2013

In force **10 April 2013**. These Regulations provide for the cannabis-based medicine 'Sativex' to be placed in Part 1 of Schedule 4 to the Misuse of Drugs Regulations 2001.

SI 2013/624 Misuse of Drugs (Designation) (Amendment No. 2) (England, Wales and Scotland) Order 2013

In force **10 April 2013**. Section 7(3) of the Misuse of Drugs Act 1971 requires regulations to be made to allow the use for medical purposes of the drugs which are subject to control under that Act. Section 7(3) does not apply to any drug designated by order under section 7(4) as a drug to which section 7(4) is to apply. Cannabis is designated in paragraph 1(a) of Part 1 of the Schedule to the Misuse of Drugs (Designation) Order 2001 as a drug to which section 7(4) applies, and this Order specifically excludes the cannabis-based medicine 'Sativex' from such designation.

SI 2013/616 Criminal Justice and Immigration Act 2008 (Commencement No. 15) Order 2013

In force **8 April 2013**. This Order brings paragraph 3 of Schedule 9 to the Criminal Justice and Immigration Act 2008 ('the 2008 Act') fully into force. Paragraph 3 inserts sections 66A to 66H into the Crime and Disorder Act 1998, which enable the giving of youth conditional cautions to a person aged 10 or over but under 18. Previously paragraph 3 was only partially in force, with the effect that a youth conditional caution could only be given in the police areas of Cambridgeshire, Hampshire, Humberside, Merseyside and Norfolk.

Paragraph 3 of Schedule 9 to the 2008 Act was brought into force on 1 February 2009 to the extent that it inserted sections 66G and 66H (code of practice on youth conditional cautions and interpretation respectively) into the Crime and Disorder Act 1998. It was brought into force on 1 April 2009 to the extent that it inserted section 66C (financial penalties) into that Act. It was brought into force on 16 November 2009 to the extent that it was not already in force, but only in relation to specified areas.

This Order brings paragraph 60 of Schedule 26 of the 2008 Act and the repeals in Part 4 of Schedule 28 relating to section 23A(7) to (9) of the Criminal Justice Act 2003 fully into force. The Order also brings into force section 148(1) of the 2008 Act, to the extent that it relates to paragraphs 59, 60 and 62 of Schedule 26 to the 2008 Act, and brings into force paragraph 59 of Schedule 26 to the 2008 Act so far as it relates to paragraphs 60 and 62 of the 2008 Act. Previously these provisions were only in force in relation to the

police areas of Cambridgeshire, Merseyside and Norfolk. Together these provisions amend section 23A and section 25(2) of the Criminal Justice Act 2003 so as to alter the way in which a person can pay their financial penalty.

SI 2013/615 Criminal Justice Act 2003 (Conditional Cautions: Financial Penalties) Order 2013

In force **8 April 2013**. Section 23A of the Criminal Justice Act 2003 provides that a conditional caution may be given to an offender aged 18 or over. An authorised person or a relevant prosecutor may decide that a conditional caution should be given if the five requirements set out in section 23 of that Act are met. Article 2 of this Order prescribes the descriptions of offences in respect of which (where a conditional caution is given), a condition may be attached which requires the offender to pay a financial penalty. The Order also sets different maximum amounts of penalty that the offender may be required to pay, depending on the description of offence.

Article 3 of this Order revokes the Criminal Justice Act 2003 (Conditional Cautions: Financial Penalties) Order 2009 (SI 2009/2773).

SI 2013/614 Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013

In force **1 April 2013**. These regulations make provision for determinations by a court under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('the Act') in relation to whether an individual qualifies for criminal legal aid, and in relation to the right under section 27(4) of the Act of an individual who qualifies for legal aid to select a representative of their own choice.

Part 2 of the Regulations makes provision in relation to the power of the Crown Court, High Court and Court of Appeal to make a determination under section 16 of the Act as to whether an individual qualifies for representation for criminal proceedings.

Part 3 of the Regulations makes provision about the right of an individual under section 27(4) of the Act to select a representative of their own choice.

SI 2013/613 Crime and Disorder Act 1998 (Youth Conditional Cautions: Code of Practice) Order 2013

In force **8 April 2013**. This Order brings into force a revised Code of Practice in relation to youth conditional cautions. The Code is revised under section 66G(6) of the Crime and Disorder Act 1998 ('the 1998 Act'), and sets out certain matters as to when youth conditional cautions may be given and the conditions that may be

attached. The Code of Practice has been revised to reflect changes made by sections 136 to 138 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('the 2012 Act'), which come into force at the same time as the Code. Additionally, following public consultation, elements of the Code have been revised to provide greater clarification on certain points.

SI 2013/608 Crime and Disorder Act 1998 (Youth Conditional Cautions: Financial Penalties) Order 2013

In force **8 April 2013**. Section 66A of the Crime and Disorder Act 1998 provides that a youth conditional caution may be given to a person aged 10 or over but under the age of 18. An authorised person or a relevant prosecutor may decide that a youth conditional caution should be given to an offender if the five requirements set out in section 66B of that Act are met. Article 2 of this Order prescribes the descriptions of offences in respect of which (where a youth conditional caution is given) a condition may be attached which requires the offender to pay a financial penalty. The Order sets different maximum amounts of penalty that the offender may be required to pay, depending on the description of offence. It also sets different maximum penalty amounts depending on the age of the offender at the time the youth conditional caution is given. Article 3 of this Order revokes the Crime and Disorder Act 1998 (Youth Conditional Cautions: Financial Penalties) Order 2009 (SI 2009/2781).

SI 2013/602 Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013

In force **1 April 2013**. This Order makes provision in consequence of the Police and Fire Reform (Scotland) Act 2012 ('the 2012 Act').

Part 1 contains the extent and interpretation provisions.

Part 2 of the Order makes provision in relation to the Police. Provision is made so that the Police Investigations and Review Commissioner may enter into agreements with various law enforcement bodies for the Commissioner to investigate serious incidents which take place in Scotland involving officers of those bodies. Mutual assistance between the Police Service of Scotland and the British Transport Police Force ('BTP') in response to special demands placed on them is also included, along with power to enter into collaboration agreements between the Police Service of Scotland and the BTP, Civil Nuclear Constabulary ('CNC') or Ministry of Defence Police ('MDP') so that functions or resources may be exercised or deployed jointly where that may be efficient or advantageous. The criminal offence of causing disaffection amongst members of the Police Service of Scotland, the BTP or CNC is created. The offences of assaulting or impeding a member of a

police force and escape from custody contained in the 2012 Act are applied to the CNC and MDP.

Part 3 of the Order makes provision in relation to fire and rescue. Part 4 and Schedules 1 and 2 to the Order make provision for consequential amendments to primary and secondary legislation in consequence of the establishment of the new Police Service of Scotland and SFRS.

SI 2013/592 Police and Justice Act 2006 (Commencement No. 16) Order 2013

In force **8 April 2013**. This Order brings into force the provisions of section 17 of the Police and Justice Act 2006 set out in article 2. The effect of the Order is that a financial penalty condition may be attached to a conditional caution in relation to every police area in England and Wales. Previously the provisions of section 17 set out in article 2 were only in force in relation to the police areas of Cambridgeshire, Hampshire, Humberside, Merseyside and Norfolk.

Conditional cautions are cautions to which specified conditions are attached, and are provided for in Part 3 of the Criminal Justice Act 2003. A conditional caution may be given to a person aged 18 or over if the five requirements set out in section 23 of that Act are met.

SI 2013/534 Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential, Transitional and Saving Provisions) Regulations 2013

In force **1 April 2013**. These regulations make transitional and saving provisions, and consequential amendments to secondary legislation, in connection with the replacement of the legal aid scheme under Part 1 of the Access to Justice Act 1999 ('the 1999 Act') by the provisions of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('the Act'). Part 1 of the Act (with the exception of section 19(4)) is commenced on 1 April 2013.

SI 2013/511 Criminal Legal Aid (Recovery of Defence Costs Orders) Regulations 2013

In force **1 April 2013**. These regulations provide that where an individual receives legal aid for representation under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 in relation to criminal proceedings before any court other than the magistrates' court or the Crown Court, the court hearing the proceedings must, unless an exception applies, make a determination at the conclusion of the proceedings requiring the individual to pay some or all of the cost of their representation. Such determinations are to be recorded in a document known as a Recovery of Defence Costs Order (an 'RDCO').

Regulation 5 makes provision for a court to make a determination that an individual must pay some or all of the cost of their representation, and provides that the court must record such a determination in an RDCO. Regulations 7 to 11 set out the circumstance in which a court may not make such a determination. Regulations 12 to 14 make provision for the assessment of financial resources and regulations 16 and 17 make provision in relation to the provision of information. Regulation 20 makes provision for the enforcement of an RDCO by the Lord Chancellor.

SI 2013/487 Police Pensions (Amendment) Regulations 2013

In force **1 April 2013** but regulations 4 and 5 have effect from 1 January 2013. These Regulations amend the Police Pensions Regulations 1987 and the Police Pensions Regulations 2006 and include amendments to the rates of contribution payable by members and voluntary redundancy.

SI 2013/483 Criminal Legal Aid (Contribution Orders) Regulations 2013

In force **1 April 2013**. Section 23(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('the Act') provides that an individual to whom services are made available under Part 1 of the Act is not to be required to make a payment in connection with the provision of the services, except where regulations provide otherwise.

These Regulations make provision in relation to the liability of individuals who are in receipt of representation under section 16 of the Act (representation for criminal proceedings) to make a payment in connection with the provision of such representation, based on an assessment of the financial resources of the individual.

SI 2013/471 Criminal Legal Aid (Financial Resources) Regulations 2013

In force **1 April 2013**. These regulations make provision in relation to the circumstances in which an individual's financial resources are such that they are eligible for criminal legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

SI 2013/470 Protection of Freedoms Act 2012 (Commencement No. 5 and Saving and Transitional Provision) Order 2013

In force **6 April 2013**. This Order commences on 6 April 2013 the provisions of the Protection of Freedoms Act 2012 mentioned in article 2 of the Order. These provisions amend human trafficking offences in England and Wales as part of the implementation of Directive 2011/36/EU of the European Parliament and of the Council

of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

SI 2013/457 Legal Aid (Disclosure of Information) Regulations 2013

In force **1 April 2013**. These Regulations make provision for providers of services under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to disclose information notwithstanding the usual rules of privilege regarding the disclosure of client information. Provision is also made to prevent the disclosure of certain information for the purposes of the investigation and prosecution of offences.

SI 2013/453 Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 6) Order 2013

In force **4 March 2013**. This Order is the sixth commencement order made under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('the Act'). This Order commences sections 38(2), 58 and 60 of, and Schedule 4 to, the Act on **4 March 2013**. It commences, with the exception of section 19(4), Part 1 and sections 56, 57 and 59 of, and Schedules 1, 2, 3, 5 and 6 to, the Act on **1 April 2013**. Part 1 of the Act contains the new framework for civil and criminal legal aid in England and Wales and will replace Part 1 of the Access to Justice Act 1999. Separate Regulations will be made under section 149 of the Act containing transitional, saving and consequential provisions in relation to the provisions of Part 1 commenced by this Order. This Order commences section 88 and sections 132 to 138 of, and Schedules 23 and 24 to, the Act on **8 April 2013**.

Sections 133 to 138 of and Schedule 24 to the Act make provision about conditional cautions, youth cautions and youth conditional cautions.

SI 2013/435 Criminal Legal Aid (Remuneration) Regulations 2013

In force **1 April 2013**. These Regulations make provisions for the funding and remuneration of advice, assistance and representation made available under sections 13, 15 and 16 of the Legal Aid Sentencing and Punishment of Offenders Act 2012.

Family Liaison Common Standards and Principles Released by the Independent Advisory Panel on Deaths in Custody

The Independent Advisory Panel on Deaths in Custody, following consultation with the Department of Health, investigatory bodies and custodial organisations, has published a set of family liaison common standards and principles. This follows endorsement by the Ministerial Board on Death in Custody on 12 February 2013. The standards will be incorporated in existing policies and information leaflets forthwith.

The standards apply to any organisations responsible for the care and treatment of a person who has died in custody. This includes people who are in prison, young offenders' institutions, secure training centres, secure children's homes, immigration removal centres or short term holding facilities, in or following police custody and those detained under the Mental Health Act 1983.

Standard 'A' addresses informing family members about a death in custody. Organisations should have a clear process in the identification of family members of a person who has died in custody. Families should be contacted immediately and in most cases face to face, and ongoing contact should be offered to the family. This is in addition to an explanation of the process of investigation and conducting a clear handover process to any other organisations' family liaison staff if this is applicable. The family should also be informed of any other organisations that may contact them.

Standard 'B' states that the organisation will provide accurate timely information about the circumstances surrounding the death of the person based on the facts as understood at that time.

Standard 'C' addresses the consideration of the families' needs. It states that families should be dealt with in a respectful and responsive way, that the fact that they are grieving should be taken into account, and the degree and frequency of any contact made with the family should be agreed. When providing the family with information, it should be ensured that it is accessible and meets their needs, for example it may be appropriate to provide interpreters.

Standard 'D' sets out that the organisation should make it clear to the family what the purpose of their relationship is, and to whom the family liaison worker is accountable to. It should also be explained when contact will end.

Standard 'E' states that the organisation should also inform the family of other services that could provide support and advice to them, immediately after the death and at other key stages through

the investigation and inquest. It should be explained clearly to the family what kind of support is available, for example bereavement counselling.

Standards 'F' and 'G' are specifically applicable to individuals responsible for investigating deaths and state that they should ensure that they should provide regular updates to the family throughout that the investigation, using methods which have been agreed with the family. The family should also be informed about how the information they provide will be used in the investigation.

Standard 'H' states that the organisation should make arrangements to ensure that their family liaison staff are trained appropriately and are provided with support, including relevant professional development to carry out this role. This will not require them to complete accredited training, but will include how to communicate professionally with empathy which meets the needs of the family in question.

Finally, Standard 'I' addresses the need for the family to know what will be done to prevent another death from happening again. A senior representative from the organisation should inform families about what actions have been taken in practice and in policy, following the findings of the investigation and inquest into the death in custody.

Organisations responsible for the care and treatment of those in custody have been asked to outline how they intend on implementing these standards and principles, and the Independent Advisory Panel on Deaths in Custody will be selecting examples of best practice for publication in due course.

For further information please refer to http://iapdeathsincustody.independent.gov.uk/news/family-liaison-common-standards-and-principles/

HMIC Release Review into Allegations and Intelligence Material Concerning Jimmy Savile Titled 'Mistakes Were Made'

On 12 March 2013 HM Inspectorate of Constabulary published a review into the allegations that were made and the intelligence material that was obtained relating to Jimmy Savile between 1964 and 2012. This review was commissioned by the Home Secretary by letter on 7 November 2012, and it was specifically requested that the review concentrate on:

- Which forces received reports and/or allegations in respect of Savile and related individuals prior to the launch of Operation Yewtree (5 October 2012);

- With regard to those forces, the extent to which these allegations were robustly investigated and if there were any police failings in so doing;
- Identifying the wider lessons to be learned both from the specific historical investigations by forces into allegations against Savile and related individuals and from what has emerged following Operation Yewtree;
- Making necessary recommendations in relation to its findings when considered alongside current practice.

Following Operation Yewtree, around 600 people came forward to provide information, of which around 450 people made specific allegations against Savile. Of those, 214 allegations were considered to have been capable of being recorded at the time the offence took place. The review examines in great detail all the known intelligence and allegations that were received by police forces in England, Wales, Scotland and Jersey prior to Operation Yewtree.

HMIC determined that only five allegations of sexual assault were received by police forces in England and Wales between 1955 and 2009. In addition, enquiries were made with Her Majesty's Inspectorate of Constabulary for Scotland confirmed that no further records have been found in Scottish forces other than the seven victims identified as a result of Operation Yewtree.

Operation Yewtree also identified five victims in Jersey. HMIC made enquiries with the States of Jersey Police who confirmed that in 2009 a victim was interviewed in relation to a broader historical child abuse enquiry and he stated that he was sexually assaulted by Savile. Following legal advice, Savile was not charged in relation to this. Jersey Police did not have access to IMPACT Nominal Index (INI) at this time, and therefore were unable to check intelligence databases which were available to police forces in England and Wales.

The HMIC review states that in order to produce their report, they have considered seven incidents, two of which were intelligence records and five were complaints made by Savile's victims prior to Operation Yewtree:

- An entry on an intelligence ledger held by the MPS Paedophile Unit from approximately 1964;
- A computerised record of an anonymous letter received by the MPS in 1998;
- A 2003 MPS crime report based on the complaint of a victim who stated that Savile had indecently assaulted her in the 1970s;

- A 2007 Surrey crime report based on the complaints of three victims who stated that Savile had indecently assaulted them in the 1970s and 1980s;
- A 2008 Sussex crime report based on the complaint of a victim who stated that Savile had indecently assaulted her in 1970.

HMIC were unable to find any evidence to suggest that any investigation had commenced following the intelligence that was received in approximately 1964. The report states that the letter received in 1998 was never properly investigated although it was processed and handled. It was also recorded in a way that prevented it from being available to other forces until 2011.

In relation to the 2003 crime report, the victim was willing to make a statement, however did not want to support a prosecution. She did state however that she would reconsider, if other victims were subsequently identified. The information surrounding this allegation was recorded on the MPS General Registry however the associated record was marked 'Restricted'. This is likely to be due to Savile's celebrity status and this prevented the officers investigating Savile from later identifying this record.

The 2007 Surrey crime report and the 2008 Sussex report were both entered on to the INI and were available to other law enforcement bodies following the conduct of an investigation. This enabled Sussex police to become aware of the investigation conducted by Surrey Police. HMIC concluded that because the letter received in 1998 and the 2003 crime report were not uploaded to the INI, Surrey Police were not aware of the potential depth of Savile's criminality. They were therefore unable to consider the potential for further investigation and a possible prosecution of Savile was missed.

In addition, HMIC asserted that the CPS, as well as the investigation teams, were affected by the lack of being able to link the separate investigations and strands of intelligence together. Had the links been known, the CPS may have seen the case in a different light and it could have presented additional opportunities to strengthen the overall case against Savile.

A fundamental point that is frequently raised in the review, is the fact that the victims felt isolated and were not aware of each others existence. At the heart of these cases, is the decision by the investigating police officers not to inform the victim that they weren't the only one that had made an allegation. The review states that the decision that Surrey Police made not to inform each of the three victims they had received complaints from that there were other victims was initially correct, however this decision should have been reviewed. When it was clear that the risk of harm to any eventual prosecution was minimal if the victims were made aware of this, this decision should have been reversed.

Savile lived in the police force area of West Yorkshire Police for the majority of his life and HMIC state that although West Yorkshire Police should have received information relating to the intelligence received in 1964, the 1998 letter and the 2003 crime report they were unable to initially retrieve any of these records. Further issues have been raised by HMIC in relation to West Yorkshire Police and Savile. HMIC state that West Yorkshire Police have established a Gold Group and an SIO-led enquiry into issues relating to Savile, and are due to produce a public-facing report at the end of March 2013. In addition the Chief Constable of West Yorkshire has now referred this matter to the Independent Police Complaints Commission.

The review by HMIC also highlights its concern in relation to the Management of Police Information (MoPI) and asserts that the problem lies with the discretion individual Chief Officers are afforded in following MoPI, as well as the lack of confidence that guidance is being given full effect in all forces.

In its review, HMIC also expresses its concern about information management and its wider effect on the PND. It will examine this area along with other key issues in its Child Sexual Abuse and Sexual Exploitation Review which the HMIC is undertaking later in 2013.

When addressing the question of whether similar failings could happen again because of the way intelligence is handled in practice today, the inconsistent approaches that the forces have taken coupled with the fact that any intelligence system is inevitably fallible to some extent lead the HMIC to conclude that there is a distinct possibility that it could.

In conclusion, HMIC made five recommendations in light of this review:

- The College of Policing should issue guidelines to all forces about how to deal with investigations of child abuse following the death of the allege perpetrator;
- In view of the current low reporting rate, the police service and the College of Policing should establish ways to encourage the reporting of sexual crime, creating a culture and operating practices that do not contain perverse incentives to the detriment of victims and the public;
- A system of mandatory reporting should be examined whereby those who, in the course of their professional duties, become aware of information or evidence that a child is or has been the victim of abuse should be under a legal obligation to notify their concerns to others;
- Each agency which had a role to play in the safeguarding arrangements for children and vulnerable adults should ensure

they comply with relevant policies; there must be regular and systematic checks to ensure that those policies are being properly and fully put into practice;

- All relevant inspectorates should ensure that their inspection regimes and programmes are designed to report on how well these policies are being applied at a local level.

The full HMIC report entitled 'Mistakes were made' can be found at http://www.hmic.gov.uk/media/review-into-allegations-and-intelligence-material-concerning-jimmy-savile.pdf

Torbay Safeguarding Children Board Publishes Serious Case Review on Operation Mansfield

On 11 February 2013 Torbay Safeguarding Children Board published the findings of a serious case review relating to Operation Mansfield, an investigation conducted by Devon and Cornwall Police concerning the sexual abuse and exploitation of young girls in the Torbay area.

The investigation lead to one man being convicted and another man being cautioned. The case did not illustrate that the abuse and exploitation was highly organised or involved prostitution, but rather involved a small group of relatively young men who were abusing mainly for their own purposes. The abuse was facilitated by the victims being provided with drugs and alcohol.

The serious case review details the demographics of Torbay, in addition to detailing the victims' relationship with the offenders and their connections (or lack of) with the other victims.

It also highlights the reasoning behind the commencement of Operation Mansfield, namely that a presentation to the Missing Persons Forum by the National Working Group for Sexually Exploited Children identified that some issues that had been raised were occurring locally.

One issue that has been identified by the review is the lack of knowledge and understanding of sexual exploitation. In this case, issues such as sexual activity, drugs and alcohol abuse had been identified and were being addressed. Deeper issues such as sexual abuse and exploitation however were not considered. The Board was also concerned that when it was known that a young girl was sexually active, health professionals or other professionals did not consider the vulnerability of the child. Instead, they focused on the prevention of pregnancy and their sexual health. The review states that as national targets relate to pregnancies and sexual health this is likely to be a national issue.

The Board identified that perception of child exploitation and abuse can incorrectly alter if the abuser is not much older than the

abused. When the sexual activity concerns partners of a similar age, it is often perceived that it has taken place through mutual consent. In this case, the abusers were not much older than the young girls and the girls, who often did not think that they were being abused and were rather in a relationship with the abuser, lied about the abusers age as they were aware of the possible response from the authorities.

The male offenders identified within Operation Mansfield had difficult backgrounds and had already committed crimes. They were therefore subject to supervision by the Youth Offending and Probation Services. Although this supervision focused on offending behaviour, it did not focus on more personal issues such as sexual relationships or violence and problematic family relationships. Both offenders were identified by the Youth Offending and Probation Services as having contact with young girls. In relation to one of the men a possible risk to the girls was identified in relation to underage sex and travelling in a stolen car, however the risk of sexual exploitation was not identified.

The Serious Case Review identifies one significant occasion where a thirteen year old girl said she was being sexually exploited. The lack of action by the police and Children's Social care was influenced by the fact that she was not willing to make a statement to support this. The Board concluded that there should have been an intervention to provide support to her as well as protecting her from further harm, regardless of whether she would make a statement. The disclosure made by this young girl, along with supporting information, was the basis for the beginning of Operation Mansfield a year later.

Since Operation Mansfield various changes have taken place in the approach of sexual exploitation and new services have, or are going to, be implemented. The review details some of those changes that have taken place. They include:

- Devon and Torbay now have a multi-agency forum SERF (Sexual exploitation and runaways);
- The multi-agency Peninsula-wide missing persons and child sexual exploitation working group has been reformed and will feed into all the Local Safeguarding Children Boards in Devon and Cornwall;
- A Specially Trained Officers Development programme (STODPV) now exists within Devon and Cornwall police which equips officers with the skills to deal effectively with child and adult victims of serious sexual offences maximise the potential of evidence gathered for investigation;
- New sexual exploitation service that is run by Checkpoint in Torbay;

- Introduction of a Multi-Agency Safeguarding Hub (MASH) in Torbay.

The Board states that these changes will help address some of the concerns identified within the Serious Case Review. In addition the Torbay Safeguarding Children Board has made recommendations to ensure lessons are learnt from Operation Mansfield. These include:

- Professionals from all agencies need to be made fully aware of sexual exploitation, including how to identify signs of vulnerability;
- There is a need to identify locally whether Fraser Guidelines are being implemented correctly alongside the Gillick competencies;
- There is a need to consider the review of the National guidelines in light of the growing knowledge about sexual exploitation;
- There is a need to undertake full assessments of the geographic location and an update assessment of the young person when considering placement changes;
- Agencies assessing and supervising young people within the criminal justice system need to be fully aware of their potential vulnerability as well as their risk to young people as abusers;
- Disclosures of sexual exploitation/abuse must be dealt with as a serious crime in line with procedures. The victim must be fully supported in order to reduce their future exposure to risk.

The Serious Case Review by the Torbay Safeguarding Children Board can be found in full at
http://www.torbay.gov.uk/c26executivesummary.pdf

Get Involved in Designing the College of Policing: Please Complete our Survey

The College of Policing is the first national body to focus solely on strengthening professionalism in the police service. College CEO Alex Marshall has appointed a team to design the College 'blueprint' by 30 June 2013.

It is critical to the design of the College that everyone involved in or with policing has a chance to get involved in its detailed design. To get your views on the design of the College a survey has been launched, which is open for completion until 5pm on Friday 12 April 2013.

The survey can be found at
https://www.surveymonkey.com/s/CollegeBlueprint

Scrap Metal Dealers Act 2013 Receives Royal Assent

On 28 February 2013 the Scrap Metal Dealers Act 2013 received Royal Assent. It is expected that a period of at least six months between Royal Assent and commencement will be required to allow time for licensing authorities to put in place the new infrastructure to meet the requirements of the Act. It will provide local authorities and police in England and Wales the power to revoke scrap dealers' licences where they suspect illegal activity. This will assist in reducing metal thefts which currently amount to around 1,000 per week, costing the UK approximately £220 million per annum.

Section 1 of the Act requires that all scrap metal dealers obtain a licence to carry on their business, and a person who carries on the business as a scrap metal dealer, but does not hold a licence, will be committing an offence and is liable on summary conviction to a fine.

Section 2 of the Act states that the licence held by the scrap metal dealer must be one of the following:

- A site licence (which must: name the licensee, the authority, the site manager of each site, identify all the sites in the authority's area at which the licensee is authorised to carry on business and state the date of expiry of the licence);
- A collector's licence, which applies to a mobile collector (which must: name the licensee, name the authority and state the date of expiry of the licence.)

It also states that a person may hold more than one licence issued by different local authorities, however cannot hold more than one licence issued by the same local authority.

Section 3 of the Act covers issue of licence. It states a local authority must not issue a licence unless it is satisfied that the person applicant is suitable to carry on business as a scrap metal dealer. It also provides what should be considered when a local authority is determining whether a person is suitable to continue business.

Under Section 4 of the Act, the local authority that has issued the licence has the discretion to revoke a licence if:

- The authority is satisfied that the licensee does not carry on business at any of the sites identified in the licence; or
- The authority is satisfied that a site manager named in the licence does not act as a site manager at any of the sites identified in the licence; or

- It is no longer satisfied that the licensee is a suitable person to carry on business as a scrap metal dealer.

In addition if a licensee or site manager named in a licence is found guilty of a relevant offence, the authority may vary the licence by adding one or both of the conditions outlined in Section 3(8).

The terms of the licence, and what information will be required to issue a licence is detailed in Schedule 1 of the Act. A licence will be valid for three years from the date of issue.

Section 5 deals with further provisions regarding licences. Section 6 deals with authorities supplying information to a third party which they have obtained under this Act. It states that the local authority must supply this information if it is requested by any of the following for purposes relating to this Act:

- Any other local authority;
- The Environment Agency;
- The Natural Resources Body for Wales;
- An officer of a police force.

It should be stated that this does not limit any other power the authority may have to supply the information.

A register of licences for scrap metal dealers will be maintained by the Environment Agency for England and the Natural Resources Body for Wales in Wales (Section 7).

Sections 8 and 9 of the Act address notification requirements and closure of unlicensed sites.

A scrap metal dealer with a site licence will be required to display a copy of their licence in a prominent place at each site identified in the licence. A dealer with a collector's licence must display their licence on any vehicle that is being used in the course of the dealer's business, in a manner that allows any person outside the vehicle to read it. A dealer that fails to comply with these requirements is guilty of an offence and is liable on summary conviction to a fine. (See section 10).

The verification of a supplier's identity is addressed by Section 11. Section 12 sets out the offence of buying scrap metal for cash. This offence has only recently existed by way of Section 146 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 but will transfer to the Scrap Metal Dealers Act 2013 when it comes into force.

Sections 13-15 of the Act details what a dealer must record in relation to his business, in particular when receiving metals and the disposal of metal.

In relation to the police or local authority entering and inspecting a licensed site, notice has to be provided to the site manager. If reasonable attempts to give such notice have been made and have failed, or entering the site without notice is reasonably required to ascertain whether the provisions of this Act are being complied with or an investigation is being conducted where providing notice would defeat the purpose, then it is not required. (See section 16).

This does not include residential premises and use of force may not be used when exercising the powers under Section 16(1) and (2). Section 16(5) provides a right of entry exercisable by warrant, and includes residential premises if there are reasonable grounds to believe that the premises are being used by a scrap metal dealer in the course of business. Reasonable force may be used in the exercise of a right of entry under warrant.

Under Section 16(9) a constable or an officer of a local authority may require production of any scrap metal on the premises, any records kept in accordance of sections 13 and 14, and can take copies of or extracts from any such records.

If the owner, occupier or other person in charge of the premises requests evidence of the officers identity or evidence of the officers authority to exercise those powers the officer must produce that evidence (Section 16(11)).

A person who obstructs the exercise of a right of entry or inspection or fails to produce a record required to be produced under section 16 commits an offence and is liable on summary conviction to a fine.

Where a body corporate is found to have committed an offence under this legislation, Section 17 provides that if the offence is committed with the consent or connivance of a director, manager, secretary or other similar officer, they will be liable in addition to the company for that offence.

The Secretary of State is required to review this Act within five years of the licensing requirement coming into force and must publish a report of the conclusions of this review (Section 18).

Section 19 deals with necessary amendments to existing legislation, and repeals include the Scrap Metal Dealers Act 1964 and linked legislation, Part 1 of the Vehicles (Crime) Act 2001 and Sections 145-147 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

In addition there are Schedules 1 and 2, which amongst other things address the offence of making a false statement, appeals, right to make representation, interpretation and closure orders.

The Scrap Metal Dealers Act 2013 can be found at http://www.legislation.gov.uk/ukpga/2013/10/contents/enacted

Ministry of Justice Release Knife Possession Sentencing Quarterly Figures

The Ministry of Justice has recently released statistics relating to cautioning, sentencing, probation supervision and prison population for offences involving possession of a knife or offensive weapon in England and Wales.

The main findings between Quarter 4 of 2011 and Quarter 4 of 2012 have been as follows:

- The number of disposals given for knife or offensive weapon possession has decreased by 17%;
- The proportion of offences resulting in immediate custody decreased slightly;
- Both suspended sentences and cautions increased slightly;
- The proportion of adults receiving a caution remain the same while the proportion of juvenile offenders receiving reprimands and warning decreased.

In addition the following changes have been noted:

- In Quarter 4 2012, 20% of all possession offences resulted in a caution in England and Wales compared to 19% in Quarter 4 of 2011;
- In Quarter 4 of 2012 1,144 of all possession offences resulted in community sentences compared to 1,397 in Quarter 4 of 2011;
- In Quarter 4 of 2012 13% of all possession offences resulted in suspended sentence orders compared to 12% in Quarter 4 of 2011;
- In Quarter 4 2012 1,092 of all possession offences resulted in immediate custody compared to 1,363 in Quarter 4 of 2011.

From 3 December 2012 a new offence of aggravated knife possession came into force by way of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and as this came into effect through the last quarter of data, it has not been included in this quarterly briefing.

The Ministry of Justice's summary relating to this quarterly brief can be found at http://www.justice.gov.uk/statistics/criminal-justice/knife-possession

The full Ministry of Justice's Knife Possession Sentencing Quarterly Brief for October to December 2012 for England and Wales can be found at http://www.justice.gov.uk/downloads/statistics/criminal-justice-stats/knife-possession-stats/knife-possession-bulletin-q4-2012.pdf

The House of Commons Home Affairs Committee Releases Interim Report on Undercover Policing

On 1 March 2013, the House of Commons Home Affairs Committee published an interim report on Undercover Policing. The report addressees the committees concerns relating to undercover policing and the legal framework and public policy that applies to it, and the areas that require urgent action by the Government. The committee intends to examine this subject again in due course.

The report is based on cases such as that involving undercover officer Mark Kennedy (see the February edition of the *Digest*) and other allegations relating to undercover police officers long-term intimate relationships with members of the groups they had infiltrated.

The report discusses the impact on the individuals that had relationships with undercover officers that was palpable when the committee invited them to give evidence. It also discusses the impact on the undercover officers themselves.

The report expresses three essential problems which the committee considers surrounds undercover operations:

- The risk to officers of physical injury and violence as well as to their psychological well-being when spending long periods living as a different person;
- Undercover operations involve a high degree of intrusion into the lives of not only criminals but of innocent members of the public;
- There is doubt whether infiltrating groups who are only involved in peaceful protest in order to see whether other groups might have different intentions is a satisfactory way for the police to proceed.

The report reiterates what Her Majesty's Inspectorate of Constabulary observed, which was that when undercover operations were an evidence gathering exercise and were likely to be used in a prosecution, being held accountable to the court was a strong incentive for officers to ensure that procedures were followed correctly, and the undercover tactic was necessary and proportionate. On the other hand, where undercover tactics are used primarily for intelligence gathering, perhaps this incentive is not present.

The report states that there is an alarming degree of inconsistency in the views of ministers and senior police officers about the limits of what undercover police officers may or may not be lawfully authorised to do. The report states that Ministers and senior officers have said that officers would not be authorised to engage in

sexual relationships whilst undercover, however they could not rule out the possibility of such relationships taking place anyway.

The committee asserts that intimate, physical sexual relationships should not take place by officers whilst undercover, unless they have clear prior authorisation. This authorisation should only be given in the most exceptional circumstances. It is particularly stressed that it is unacceptable for a child to be born as a result of such a relationship, and future guidance on undercover operations should make this very clear.

The committee believes that the current legal framework is ambiguous to such an extent that it fails adequately to safeguard the fundamental rights of the individuals affected. The committee suggests that there is a compelling case for a fundamental review of the legislative framework surrounding undercover policing, including the Regulation of Investigatory Powers Act 2000, recommends that the Government commit to a Green Paper on the regulation of investigatory powers before the end of this Parliament, with a view to publishing draft legislation after the next general election.

The report discusses the need for the College of Policing to create a coherent set of operational instructions that will apply to all units conducting undercover operations too, which the officers and forces will be held to account.

It is known that undercover officers in the past have used the identities of dead children to facilitate their false identity. The committee discusses the issues surrounding this, including not only how disrespectful this was but also the real danger that has been placed on the bereaved families. The Independent Police Complaints Commission (IPCC) has set up a 'supervised investigation' called Operation Herne, however the committee asserts that this kind of serious standards case should warrant an independent investigation conducted by the IPCC. The report also suggests that a statement should be made by the Home Secretary that this practice will never be adopted again.

The full report written by the House of Commons Home Affairs Committee can be found at http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/837/837.pdf

CPS and ACPO Propose New Measures to Tackle Child Sexual Abuse

Measures have been announced by the Director of Public Prosecutions, Keir Starmer QC, and ACPO lead on violence and public prosecution Chief Constable David Whatton in relation to child sexual abuse investigations. The CPS and ACPO have agreed to the following:

- A radical clearing of the decks in relation to policy and guidance. All existing policy will be decommissioned, with one overarching and agreed approach to investigation and prosecution of sexual offences to be applicable in all police forces and agreed by the CPS. This will be supported by the College of Policing. The CPS will also draft new guidance to ensure consistent best practice, which will be open to public consultation.
- Training will ensure that there is no gap between policy and practice. The training will be hands on and provide practical advice to police and prosecutors about when a complainant can and should be told about other complaints, among other things.
- To propose the formation of a national scoping panel, which will review complaints made in the past which were not pursued by police and prosecutors, if requested. The precise working of the panel is subject to approval by Chief Constables.

ACPO and the CPS will host roundtables with judges; front line investigators; health and social services representatives; statutory bodies; support and campaigning bodies; Refuge and CAADA; expert lawyers and expert academics.

For further information please see the ACPO press release and the speech by Keir Starmer QC
http://www.acpo.presscentre.com/Press-Releases/-The-criminal-justice-response-to-child-sexual-abuse-time-for-a-national-consensus-1fc.aspx

http://www.cps.gov.uk/news/articles/the_criminal_justice_response_to_child_sexual_abuse_-_time_for_a_national_consensus/

Consultation on Preventing the Supply of Highly Specialist Printing Equipment to Fraudsters Takes Place

On 4 March 2013 a consultation commenced on the prevention of the supply of specialist printing equipment which assists criminals to make false documents such as passports, driving licences and credit cards. Currently, although the possession and use of fraudulent documents is illegal, there is no law against supplying

equipment to produce such documents knowingly, or through not taking sufficient care, to criminals. The government is seeking views on proposals to change the law and close this gap. The equipment referred to above, includes plastic card printers, bespoke rubber stamps, ultra violet inks and hot foiling equipment.

The Metropolitan Police operate a joint project with the highly specialist printing industry called Project Genesius, and a voluntary Code of Conduct has already been created for suppliers of such equipment. This obliges them to demonstrate good business practice by:

- Maintaining records for transactions;
- Profiling customers for their integrity; and
- Not supplying equipment if they doubt the legitimacy of a customer and reporting this to the police.

However it is not obligatory to sign up to this Code of Practice and there are no sanctions for companies that have signed up to the code, but are not following it. Feedback obtained from the companies that have signed up to the Code of Conduct estimates that increasing awareness of suspicious behaviour within the industry, could save companies 10-15% of their time in the reduction of receiving and processing suspicious requests and orders which are more likely to result in fraud.

The government is proposing to create two new offences: one of deliberately and one of negligently supplying highly specialist printing equipment to fraudsters. To avoid prosecution under these new offences companies would be required to follow requirements like those in the voluntary code.

The consultation was aimed at those in the highly specialist printing industry and concluded on 31 March 2013. Responses are yet to be published.

Details of the consultation can be found at http://www.homeoffice.gov.uk/publications/about-us/consultations/printing-consultation/

Ministry of Justice Publishes Consultation Document on Transforming Education Within Youth Custody

The Ministry of Justice has published a Consultation document called 'Transforming Youth Custody: Putting education at the heart of detention.' The document discusses the vision of putting education at the forefront of youth detention by way of the creation of secure colleges.

Numerous contracts for current Secure Training Centres and Secure Children's Homes in addition to education providers within Young Offender Institutions are due to expire in 2013 and 2014, and therefore this is an opportunity to re-examine the whole system.

The proposal is for a youth estate of secure colleges, which have education as a priority for young offenders, equipping them with skills and qualifications in addition to self-respect and self-discipline to prevent them re-offending.

The document details specific questions which the reader is invited to comment on which forms the consultation. Examples of these are:

- How should we best engage young people in custody in education and training? What evidence is there of different approaches that work well?
- How might the educational balance in Secure Colleges best be struck between basic skills (literacy, numeracy etc.), traditional academic subjects, vocational learning and wider life skills such as self-respect and self-control, communication and teamwork?
- How would young people best be kept safe and secure in your model of a Secure College?

The document also discusses how important it is to close the gap between custody and the community, and asks how support can be provided to young people who are leaving a Secure College to continue with their education, or find placements in training or employment. In addition, reducing costs within youth custody is also addressed.

The consultation seeks views from service providers in justice, education, detention and security, health, children services and wider social services, the judiciary, voluntary and community organisations, those with an interest in young people and staff in youth custodial establishments. Members of the public are also invited to respond. The consultation closes on 30 April 2013.

Responses to the consultation questions should be submitted online at
https://consult.justice.gov.uk/digital-communications/transforming-youth-custody

Responses and outline proposals can also be submitted to TransformingYouthCustody@justice.gsi.gov.uk or sent to

Transforming Youth Custody Consultation
Ministry of Justice
8.19, 102 Petty France
London
SW1H 9AJ

A response to this consultation will be published at
http://www.justice.gov.uk

Children Entering Detention Held Solely Under Immigration Act Powers

Due to a recent demand and increased interest in the number of children who are entering detention held solely under Immigration Act powers, the Home Office has released monthly management information on this, in addition to the quarterly statistics that are released relating to detention and migration.

The figures should be taken as provisional, as they are not subject to the detailed checks that national statistics are subject to, and are to be superseded by quarterly figures of the Immigration Statistics.

The monthly management information of January 2013 show:

- Six children were held in Cedars Family Detention Centre, a pre-departure facility in Sussex in January 2013;
- Two children were held in Tinsley House, an Immigration Removal Centre based at Gatwick Airport in January 2013;
- One child were held in Campsfield House, a long term centre in Oxfordshire, where detainees are accommodated pending the outcome of their case;
- In total 9 children were held solely under Immigration Act powers in January 2013. Two children were under 5 years old, three children were between 5 and 11 years old, three children were between 12 and 16 years old, and one child was 17 years old.

These figures do not include children that have been recorded as entering police cells, prison service establishments and short term holding rooms at ports and airports for less than 24 hours. They also do not include children who have been detained under criminal powers as well as their dependants.

The monthly management information can be found at http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/child-detention-jan2013

Changes to the Crime and Courts Bill Announced

On 11 March 2013 amendments to the Crime and Courts Bill were announced in relation to legal aid for wealthy defendants.

These proposed changes will allow for the defendant's legal aid costs to be recovered from any 'frozen' assets that they may have, which is not the case currently.

The Bill's report stage and third reading in the House of Commons took place on 18 March 2013 and returned to the House of Lords for consideration of amendments on 25 March 2013. The Bill has now been returned to the Commons for consideration of Lords amendments.

Ministry of Justice Publishes Consultation Document on Implementing the Coroner Reforms in Part 1 of the Coroners and Justice Act 2009

The Ministry of Justice has published a consultation paper discussing their proposals for implementing the coroner reforms in Part 1 of the Coroners and Justice Act 2009. It seeks views on proposed coroner investigation regulations, inquest rules, fee and allowance regulations, coroner areas, and statutory guidance for bereaved people.

This consultation is aimed at coroners, coroners' officers and other staff, bereaved people, voluntary organisations who help bereaved people, local authorities, and all those who have an interest in coroner services. The consultation closes on 12 April 2013. Responses to the consultation should be sent to:

Reshma Bhudia
Coroner Reform Team Ministry of Justice
Area 4.38
102 Petty France
London
SW1H 9AJ

Tel: 020 3334 5259
Fax: 020 3334 2233
Email: coroners@justice.gsi.gov.uk

You can also respond to the consultation by filling in a questionnaire that can be found at
https://consult.justice.gov.uk/digital-communications/coroner-reforms

and email it to coroners@justice.gsi.gov.uk

or fax it to 020 3334 2233.

Notes

College of Policing

Legal Services
www.college.police.uk