NPIA
National Policing Improvement Agency

Digest

February 2012

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

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

The NPIA aims to provide fair access to learning and development for all. To support this commitment, the Digest is available in alternative formats upon request. Please email digest@npia.pnn.police.uk or telephone +44 (0)1480 334542.

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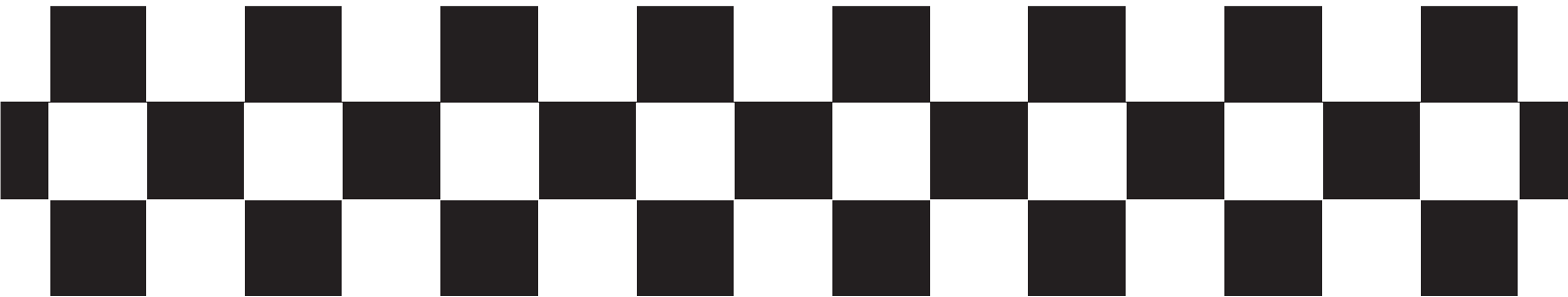
Legal Services

Chief Executive Officer Directorate

www.npia.police.uk/digest



NPIA Digest February 2012

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

There are reports of cases on the partial defence to murder; loss of control, the police use of containment and on failing to respond to a notice of intended prosecution.

We look at the Justice Select Committee report on joint enterprise, new sentencing guidelines for burglary and drug offences, the updated National Standards for Enforcement Agents and the Home Office consultation on measures to tackle late night drinking.

Statistical bulletins are covered which detail the number of football arrests during 2010/11, the findings of the British Retail Consortium's Retail Crime Survey 2011 and the quarterly update to the British Crime Survey.

There are also articles on Home Office guidance relating to crowded places, the transfer of police and crime commissioner powers to the Mayor of London, the decision of the European Court of Human Rights on whole life orders and the HMIC review of police crime and incident reports.

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

Contents

Bills Before Parliament 2010/11 - Progress Report

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

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

The Bill was presented to Parliament on 11 February 2011.

Line by line examination of the Bill took place during the third day of committee stage in Grand Committee on 12 January 2012. Report stage - further line by line examination of the Bill - is yet to be scheduled.

- Legal Aid, Sentencing and Punishment of Offenders Bill - The Bill:
  - Reverses the position under the Access to Justice Act 1999, whereby civil legal aid is available for any matter not specifically excluded;
  - Abolishes the Legal Services Commission;
  - Makes various provisions in respect of civil litigation funding and costs, taking forward the recommendations of the Jackson Review and the Government's response to that review;
  - Makes changes to sentencing provisions, including giving courts an express duty to consider making compensation orders where victims have suffered harm or loss; reducing the detailed requirements on courts when they give reasons for a sentence; allowing courts to suspend sentences of up to two years rather than 12 months; and amending the court's power to suspend a prison sentence;
  - Introduces new powers to allow curfews to be imposed for more hours in the day and for up to 12 months rather than the current six;
  - Repeals provisions in the Criminal Justice Act 2003 which would have increased the maximum sentence a magistrates' court could impose from six to 12 months;
  - Makes changes to the law on bail and remand, aimed at reducing the number of those who are unnecessarily remanded into custody. Under the new "no real prospect" test, people would be released on bail if they would be unlikely to receive a custodial sentence;
  - Makes provision to ensure that, where a person aged under 18 has to be remanded into custody, in most cases they would be remanded into local authority accommodation;
  - Amends provisions relating to the release and recall of prisoners;
  - Gives the Secretary of State new powers to make prison rules about prisoners' employment, pay and deductions from their pay. The intention of these provisions is that prisoners should make payments which would support victims of crime;
  - Introduces a penalty notice with an education option and provision for conditional cautions to be given without the need to refer the case to the relevant prosecutor;

- Creates a new offence of threatening with an offensive weapon or an article with a blade or point thereby creating an immediate risk of serious physical harm. A minimum sentence of 6 months' imprisonment would normally be given to persons over 18 found guilty of this offence.

The Bill was presented to Parliament on 21 June 2011. Line by line examination of the Bill took place on 24 January 2012. Committee stage continues on 30 January when further amendments will be discussed.

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

Partial Defence to Murder: Loss of Control

R v Clinton [2012] EWCA Crim 2

The common law defence of provocation was set out in statutory form under section 3 of the Homicide Act 1957. This has since been replaced by sections 54 and 55 of the Coroners and Justice Act 2009 (the 2009 Act) which created a new partial defence to murder; 'loss of control'. This case concerned three appeals against conviction for murder, all of which focused on the impact of 'sexual infidelity' on the 'loss of control' defence.

The legislation

Section 54 of the 2009 Act provides:

"Partial Defence to Murder: loss of control

(1) Where a person (D) kills or is party to the killing of another (V), D is not to be convicted of murder if:

(a) D's acts and omissions in doing or being a party to the killing resulted from D's loss of self-control,

(b) the loss of self-control had a qualifying trigger, and

(c) a person of D's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D might have reached in the same or in a similar way to D."

Section 54(5) provides that, on a charge of murder, if sufficient evidence is adduced to raise an issue with respect to the defence under 54(1), the jury must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not. A person who would otherwise be convicted of murder is instead to be convicted of manslaughter.

Section 55 of the 2009 Act sets out what is to be regarded as a 'qualifying trigger' for the purposes of section 54(2):

.....

(2) A loss of self-control had a qualifying trigger if subsection (3), (4) or (5) applies.

(3) This subsection applies if D's loss of self-control was attributable to D's fear of serious violence from V against D or another identified person.

(4) This subsection applies if D's loss of self-control was attributable to a thing or things done or said (or both) which:

(a) constituted circumstances of an extremely grave character, and

(b) caused D to have a justifiable sense of being seriously wronged.

(5) This subsection applies if D's loss of self-control was attributable to a combination of the matters mentioned in subsections (3) and (4).

(6) In determining whether a loss of self-control had a qualifying trigger:

(a) D's fear of serious violence is to be disregarded to the extent that it was caused by a thing which D incited to be done or said for the purpose of providing an excuse to use violence;

(b) a sense of being seriously wronged by a thing done or said is not justifiable if D incited the thing to be done or said for the purpose of providing an excuse to use violence;

(c) the fact that a thing done or said constituted sexual infidelity is to be disregarded.

The Court of Appeal emphasised that each of the three statutory components to the defence, set out in section 54, are integral to it. If one is absent, the defence fails.

The first component

Subsection 1(a) addresses the first ingredient; the killing must have resulted from the loss of self control. This loss of control need not be sudden, but it is essential that it was lost. Before reaching the second ingredient, the qualifying trigger, there is a further hurdle; that the defendant must not have been acting in a considered desire for revenge.

The second component

The qualifying trigger provisions are self contained within section 55 of the Act. In section 55(3) it is not enough that the defendant is fearful of violence, he must fear serious violence. In subsection (4)(a) the circumstances must not merely be grave, but extremely so. In subsection 4(b) it is not enough that the defendant has been caused to feel a sense of grievance by the circumstances. It must arise from a justifiable sense not merely that he has been wronged, but that he has been seriously wronged. The Court, while agreeing that the defendant himself must have a sense of having been seriously wronged, stated that he could not invite the jury to acquit him of murder on the ground of loss of control because he personally sensed that he had been seriously wronged in circumstances which he personally regarded as extremely grave. The questions whether the circumstances were extremely grave and whether the defendant's sense of grievance was justifiable,

and all the requirements of section 55(4) (a) and (b), require objective evaluation.

In relation to 55(6)(c) the court observed that the statutory provision was unequivocal; loss of control triggered by sexual infidelity cannot, on its own, qualify as a trigger for the purposes of the second component of the defence. The question was, however, whether it is a consequence of the legislation that sexual infidelity is similarly excluded when it arises in the context of another or a number of other features of the case which are said to constitute an appropriate permissible qualifying trigger. The Court found no prohibition on the defendant telling the whole story about the relevant events, including the fact and impact of sexual infidelity. To the contrary, the Court stated, this evidence will have to be considered and evaluated by the jury. Notwithstanding that sexual infidelity must be disregarded for the purposes of the second component if it stands alone as a qualifying trigger, it is plainly relevant to questions which arise in the context of the third component and to the alternative defence to murder of diminished responsibility.

The third component

The third ingredient is related to the requirement that even faced with situations which may amount to a qualifying trigger; the defendant is nevertheless expected to exercise a degree of self control. The impact on the defendant of sexual infidelity is not excluded in relation to the third component and the circumstances are not constrained or limited. The Court found that when the third component of the defence is examined it emerges that, notwithstanding section 55(6)(c), account may, and in an appropriate case, should be taken of sexual infidelity.

Diminished responsibility

The Court highlighted that the situation for the jury and the judge is further complicated if the defence invites the jury to consider possible verdicts of manslaughter both on the grounds of loss of control and diminished responsibility. If the defendant is suffering from a recognised medical condition, the discovery that a partner has been sexually unfaithful may impair the defendant's ability to form a rational judgement and exercise self control. Sexual infidelity may therefore require consideration when the jury is examining the diminished responsibility defence even when it has been excluded from consideration as a qualifying trigger for the purposes of the loss of control defence.

The conclusion

The Court addressed the full extent of the prohibition against 'sexual infidelity' as a qualifying trigger for the purposes of the

loss of control defence. The question, it stated, was whether or not sexual infidelity is wholly excluded from consideration in the context of features of the individual case which constitute a permissible qualifying trigger or triggers within section 55(3) and (4). The legislation was designed to prohibit the misuse of sexual infidelity as a possible trigger for loss of control in circumstances in which it was thought to have been misused in the former defence of provocation. Where there is no other potential trigger, the prohibition must be applied.

In section 54(1)(c) and (3) the legislation further acknowledges the impact of sexual infidelity as a potential ingredient of the third component of the defence, when all the defendant's circumstances fall for consideration, and when, although express provision is made for the exclusion of some features of the defendant's situation, the fact that he/she has been sexually betrayed is not. In short, sexual infidelity is not subject to blanket exclusion when the loss of control defence is under consideration.

The Court stated that to seek to compartmentalise sexual infidelity and exclude it when it was integral to the facts as a whole was not only much more difficult, but was unrealistic and carries with it the potential for injustice. In the judgement of the Court, where sexual infidelity is integral to and forms an essential part of the context in which to make a just evaluation of whether a qualifying trigger properly falls within the ambit of subsections 55(3) and (4), the prohibition in section 55(6)(c) does not operate to exclude it.

The judgement can be accessed in full at:
http://www.bailii.org/ew/cases/EWCA/Crim/2012/2.html

Police Use of Containment

R (on the application of) McClure and Anor v The Commissioner of Police of the Metropolis [2012] EWCA Civ 12

This case concerned an appeal by the Commissioner of Police of the Metropolis, following a decision by the Divisional Court that the crowd control carried out by the Metropolitan Police in connection with two demonstrations did not constitute 'lawful police operations'. The principal issue was whether, on the facts of the case, a decision to deploy the tactic of containment (or 'kettling' as it is sometimes known) was or was not lawful when applied to one part of the day's demonstrations.

The facts

The two demonstrations took place on 1 April 2009 against the background of the G20 summit that was held in London on 2 April. The Royal Exchange demonstration was targeted on an area outside the Royal Exchange and the Bank of England, and the Climate Camp was established outside the Climate Exchange Building in Bishopsgate; about a quarter of a mile away. The two demonstrations had been advertised in various places including a website styled 'G20 Meltdown'. Neither demonstration had an identifiable leader with whom police could have had discussions. The police had asked in advance where in Bishopsgate the Climate Camp would be set up but had been given no answer. By the afternoon of 1 April, the officer in charge of the policing operation, Mr Johnson, estimated that there were between 4000 and 5000 people attending each of the two demonstrations. The numbers were significantly higher than police intelligence had anticipated and reserves had to be called up. The Royal Exchange demonstration was disorderly to the point of serious violence. The Climate Camp was less disorderly, with only intermittent violence which was significantly less serious than at the Royal Exchange.

Shortly after midday, Mr Johnson decided that it had become necessary for the crowd at the Royal Exchange to be managed by containing; namely stationing a police cordon at each of the several possible points of egress. There was no suggestion that this decision was unlawful and there was no challenge to the police perception that it was necessary and proportionate in order to prevent the spread of breaches of the peace. Mr Johnson believed that the dispersal would give rise to the real likelihood of an imminent breach of the peace if, as he judged as likely, the two crowds then mingled, particularly if some of the violent elements from the Royal Exchange demonstration made their way to the Climate Camp or were joined by people from it. He decided that the crowd at the Climate Camp should be contained at the time of the dispersal of the Royal Exchange

demonstration. As part of the execution of the Climate Camp's containment, a line of officers were deployed to physically move the crowd's southern edge and barricade some 25 metres up Bishopsgate so as to remove the possibility of ingress to or egress from the Climate Camp. This was labelled 'the push north'. It is these two linked actions, the Climate Camp containment and the push north, which the Divisional Court held were unlawful, and which were the subject of the appeal.

The applicable law

In R (Laporte) v Chief Constable of Gloucestershire Constabulary [2006] UKHL 55, the police intercepted the claimants who were on their way to a protest, and escorted them due to a belief that some of them were intent on causing a breach of the peace. The House of Lords held that the common law entitled, indeed bound, police officers and citizens alike to seek to prevent, by arrest or action short of arrest, any breach of the peace occurring in their presence or which they reasonably believed was about to occur. If no breach of the peace had actually occurred, a reasonable apprehension of an imminent breach of the peace was required before any form of preventative action was permissible. The House of Lords held that not only had there been no indication of any imminent breach of the peace in the case of Laporte, but that the police did not consider that a breach of the peace was imminent. Accordingly, the police action was held to have constituted an unlawful interference with the claimants' right to demonstrate at a lawful assembly.

The Divisional Court said in the present case that it derived the following propositions from Laporte, which the Court of Appeal considered an accurate summary of the law, and which was not challenged on appeal:

(1) For a police officer to take steps lawful at common law to prevent an apprehended breach of the peace, the apprehended breach must be imminent;

(2) Imminence is not an inflexible concept but depends on the circumstances;

(3) If steps are to be justified, they must be necessary, reasonable and proportionate;

(4) Depending on the circumstances, steps which include keeping two or more different groups apart may be necessary, reasonable and proportionate, if a combination of groups is reasonably apprehended to be likely to lead to an imminent breach of the peace; and

(5) Again depending on the circumstances, where it is necessary in order to prevent an imminent breach of the peace, action may lawfully be taken which affects people who are not themselves going to be actively involved in the breach.

Containment was specifically considered in the case of Austin v Commissioner of Police of the Metropolis (2009) UKHL 5, in which the claimant, together with thousands of other demonstrators, had been required to remain inside a cordon for seven hours. The claimant, who had not been violent in any way, claimed damages for false imprisonment and breach of her right to liberty under Article 5 of the European Convention on Human Rights. The claim failed. The House of Lords concluded that;

"The police had been engaged in an unusually difficult exercise of crowd control which had as its aim the avoidance of personal injuries and damage to property and the dispersal as quickly as possible of a crowd bent on violence and impeding the police. The police had acted reasonably and properly to prevent serious disorder and violence. The restriction of the claimants' liberty had not been an arbitrary deprivation of liberty and Article 5 was not applicable".

The Divisional Court in the present case added that it is common ground "that the circumstances in which police containment action would be lawful at common law are for practical purposes the same as the circumstances in which there would be no violation of Article 5".

It followed that the containment of the Climate Camp and the push north could only have been justified if each action was reasonably believed by the police to have been the only way of preventing an imminent breach of the peace.

The decision of the Divisional Court

The Divisional Court identified the principal issue as being 'whether the containment at the Climate Camp…was necessary, proportionate and justified in law'. The Court explained that

"to be justified in law as being the lawful exercise of the common law power to take reasonable steps to prevent a breach of the peace…the police had reasonably to apprehend an imminent breach of the peace at the Climate Camp or, if not at the Climate Camp, so associated with the Climate Camp that containing the Climate Camp itself was reasonably necessary."

The Court went on to state that a breach of the peace 'is imminent if it is likely to happen' and that the 'test of necessity is met only in extreme circumstances.' While the Court accepted that 'there had been serious and sustained violence at the Royal Exchange demonstration sufficient to justify its containment throughout the period that it was in place' 'there had been no equivalent disorder or violence at the Climate Camp during the afternoon'. Containment of the Climate Camp was not justified by the behaviour and conduct of those at the Climate Camp alone. At the time when containment began, the Court

found that there was no reasonably apprehended breach of the peace, imminent or otherwise, within the Climate Camp itself sufficient to justify containment. The Commissioner's main case depended entirely on the risk that there would be breaches of the peace at or associated with the Climate Camp resulting from the arrival of protestors from the Royal Exchange. The Court accepted there was such a risk, but it was at that stage only a risk and not, in their judgement, a risk of imminent breaches of the peace sufficient to justify full containment. The Divisional Court also found the 'push north' was not necessary or proportionate.

The appeal

The Court of Appeal allowed the Commissioner's appeal on the basis that his apprehension that a breach of the peace was imminent was a reasonable view for him to have formed in light of the information available to him at the time. The Divisional Court, the Court of Appeal stated, appeared to have formed its own view on the imminence of a breach of the peace rather than assessing the reasonableness of Mr Johnson's view, and even if they decided that his view was unreasonable, there was no valid basis for reaching such a decision.

The Court concluded that a decision to contain a substantial crowd of demonstrators whose behaviour, though at times unruly and somewhat violent, did not of itself justify containment. It was however justifiable on the ground that containment was the least drastic way of preventing what the police officer responsible for the decision reasonably apprehended would be imminent and serious breaches of the peace. The Court went on to state that containment of a crowd involves a serious intrusion into the freedom of movement of the crowd members, so it should only be adopted where it is reasonably believed that a breach of the peace is imminent and that no less intrusive crowd control operation will prevent the breach, and where containment is otherwise reasonable and proportionate. Any member of the police considering whether to contain a crowd, and any court considering whether a decision to contain a crowed was justified, should bear in mind these important factors.

The judgement can be accessed in full at:
http://www.bailii.org/ew/cases/EWCA/Civ/2012/12.html

Failure to Respond to Notice of Intended Prosecution

Whiteside v the Director of Public Prosecutions [2011] EWCA 3471(Admin)

The appellant appealed against conviction for an offence of failing to respond to notification requiring driver details, contrary to section 172(3) of the Road Traffic Act 1988.

The law

Section 172 of the Road Traffic Act 1988 states

"(2) Where the driver of a vehicle is alleged to be guilty of an offence to which this section applies:

(a) the person keeping the vehicle shall give such information as to the identity of the driver as he may be required to give by or on behalf of a chief officer of police ……

……

(3) Subject to the following provisions, a person who fails to comply with a requirement under subsection (2) above shall be guilty of an offence.

……

(7) A requirement under subsection (2) may be made by written notice served by post; and where it is so made:

(a) it shall have effect as a requirement to give the information within the period of 28 days beginning with the day on which the notice is served, and

(b) the person on whom the notice is served shall not be guilty of an offence under this section if he shows either that he gave the information as soon as reasonably practicable after the end of that period or that it has not been reasonably practicable for him to give it."

Service of documents in criminal cases is further regulated by Part 4 of the Criminal Procedure Rules. Rule 4.4(2)(a) provides that the address for service on an individual "is an address where it is reasonably believed that he or she will be". Actual receipt by the addressee is not a requisite for valid service. Service is effected by posting the letter to the appropriate address for service and it is deemed to have been received in the ordinary course of the post "unless the contrary is proved".

The facts

A car, which the appellant accepts was his, was driving at a speed in excess of 70 mph. Notices of intended prosecution were sent on two occasions by first class post to the address of the appellant, who was the registered keeper of the car. These notices required, in accordance with sections 172(2) and (7) of the Road Traffic Act, that the appellant provide details of the person driving the car at the time of the alleged offence within 28 days. The appellant did not seek to dispute that the Notices were received at the relevant address within the relevant period. He claimed however that he did not personally receive the relevant Notices, nor was he informed of them and the justices accepted this. He was therefore personally unaware of the requirement to give information and as a consequence the information was not provided. The appellant stated that he is regularly out of the country, and was only resident at his home for around 7 days a month. The justices concluded that although the appellant had not seen the Notices, on the balance of probabilities the defence under section 172 (7) (b) of the 1988 Act was not made out. The appellant was convicted of the offence.

The magistrates posed the following questions for the opinion of the court:

"1. Do the elements of the offence created by section 172(3) of the Road Traffic Act 1988 include mens rea, namely knowledge on the defendant's part that he or she is under a requirement to provide specified information pursuant to section 172(2) of the Act?

2. If it is accepted that a written notice posted to a defendant's address was not in fact received by the defendant, can the notice be said to have been served on him or her so as to give rise, pursuant to section 172(2)(a) of the Road Traffic Act 1988, to the requirement to provide the specified information within 28 days?

3. If the answer to question 2 is yes, in such circumstances does the defendant nonetheless have a defence pursuant to section 172(7)(b) of the Road Traffic Act 1988, that it has not been reasonably practicable to supply the required information?"

On appeal

It was contended that the conclusion of the magistrates was flawed on three grounds. Firstly, it was submitted that since the recipient of a document is an individual, service means service on the individual. Rule 4.4(2) was referred to, in support of the contention that if the defendant did not receive it, it was not served. This was rejected, with the Court stating that it is plain

that service may be effected by post whether the notice is in fact received by the defendant or not. A defendant may adduce evidence to rebut the presumption that the notice was delivered in the ordinary course of the post; but in this case the defendant accepted that the post may well have been delivered to his home address. Accordingly, there had been effective service which obliged the defendant to give the relevant information pursuant to section 172(2)(a) of the Act.

The second ground was that the offence created by section 172(2)(a) requires a mens rea of knowledge and that since the appellant knew nothing of the notices, he was blameless and should not be stigmatised by a criminal conviction. This argument was rejected by the court. Reliance was placed upon the House of Lords decision in Sweet v Parsley (1971) AC 132, in which it was stated "There has for centuries been a presumption that Parliament did not intend to make criminals of persons who were no way blameworthy for that they did. That means that whenever a section is silent as to mens rea there is a presumption, in order to give effect to the will of parliament, we must read words in appropriate to require mens rea."

This argument was rejected by the Court. The defendant in Sweet v Parsley was facing a far more serious charge than the appellant faced. Lord Reid, in that case, commented that the presumption would not apply to cases where the offence was not "criminal in any real sense but are acts which in the public interest are prohibited under penalty". In the judgement of the Court, the offence in the present case fell into the latter category. Furthermore, the Court stated that it was not a strict liability offence imposing criminal penalties absent any culpability. Defences are provided under section 172 to exonerate a defendant who for one reason or another was unable to comply and as a result should not be held culpable.

The decision in Harding v Price [1948] 1 KB 695 was also relied upon, in which it was stated "…if a statute contains an absolute prohibition against the doing of some act, as a general rule mens rea is not a constituent of the offence; but there is all the difference between prohibiting an act and imposing a duty to do something on the happening of a certain event. Unless a man knows that the event has happened, how can he carry out the duty imposed?" The Court in the present case distinguished between the two cases. In the instant case the owner of the car had given an address when registering the details and he assumes some responsibility to respond to correspondence about the vehicle. Moreover, the defence under section 172(7) was available if the appellant could show that he ought not to be held liable because it was not reasonably practicable for him to comply with the obligation, either at all or within the time limits imposed.

The final argument was that even if knowledge is not an implicit element of the offence itself, it is crucial to the defence under subsection (7). If the defendant did not know of the Notices it could not be reasonably practicable for him to respond to them, whatever the reason or justification for his ignorance. The justices were wrong to conclude that it was reasonably practicable for him to have responded on the basis that he could have arranged his affairs to ensure that he received the Notices; that was immaterial.

The respondent conceded in principle that the defence under section 172(7)(b) can apply where the defendant never, in fact, sees the relevant Notice even though it is properly serviced by post. However, it is ultimately a question of fact for the justices to decide whether it was reasonably practicable for the defendant to have responded or not. The burden is on him to satisfy the court that it was not reasonably practicable. The Court agreed with this analysis. The justices properly considered whether the defendant had satisfied them that it was not reasonably practicable to respond to the Notices on the ground that he was never aware of them, and they concluded that he had discharged that burden, They held that it was reasonably practicable for him to have become aware of it, and in the view of the Court, it was a conclusion that was open to them on the evidence. The answers to the questions posed by the justices were as follows:

(1) The offence created by section 172(3) does not require knowledge on the defendant's part that he is under an obligation to provide the specified information;

(2) The notice was properly served on the defendant notwithstanding that it was not actually received by him;

(3) The defendant does not have a defence under section 172(7)(b) merely by virtue of the fact that he has no knowledge that the Notices were sent. However, in an appropriate case a defendant may be able to show in such circumstances that it was not reasonably practicable for him to have been aware of the Notice, in which case the defence will apply.

The appeal failed.

The judgement can be accessed in full at:
http://www.bailii.org/ew/cases/EWHC/Admin/2011/3471.html

SI 3050/2011 The Elected Local Policing Bodies (Specified Information) Order 2011

This Order, which came into force on **16 January 2012**, specifies information that must be published by elected local policing bodies and the time of publication of that information. An elected local policing body is, in relation to a police area in England and Wales outside London, the police and crime commissioner established under section 1 of the Police Reform and Social Responsibility Act 2011 and, in relation to the metropolitan police district, the Mayor's Office for Policing and Crime. Article 2(2) of the Order has the effect that information that would otherwise be specified information but the publication of which would be harmful on various grounds, or would be contrary to any enactment, does not have to be published.

SI 3058/2011 The Local Policing Bodies (Consequential Amendments) Regulations 2011

These Regulations make amendments to various instruments in consequence of the changes to policing governance in England and Wales made by Part 1 of the Police Reform and Social Responsibility Act 2011 (the 2011 Act). The Act abolishes police authorities in England and Wales, outside London, and replaces them with police and crime commissioners. It also replaces the Metropolitan Police Authority with the Mayor's Office for Policing and Crime. The Act makes no change to the role of the Common Council of the City of London as the police authority for the City of London police area. The Act amends the Interpretation Act 1978 with the effect that the words "local policing body" are defined as a police and crime commissioner, the Mayor's Office for Policing and Crime and the Common Council in its capacity as a police authority.

The Regulations amend the various instruments in order to reflect the replacement of police authorities with local policing bodies, and the new powers of the chief officers of police to employ police staff and procure goods and services in their official capacity. Where a reference to a police authority in an amended instrument applies in Scotland, a reference to a local policing body is inserted in addition to it rather than by way of substitution, as police authorities in Scotland are unaffected by the Act.

These Regulations came into force on **16 January 2012**, with the exception of regulation 21(2)(a) which comes into force on **22 November 2012**.

SI 3063/2011 The Police Pensions (Amendment) Regulations 2011

These Regulations, which came into force on **16 January 2012**, make amendments to the Regulations listed in the Schedule

(the listed Regulations) in consequence of changes made by the Police Reform and Social Responsibility Act 2011 (the 2011 Act) to policing governance in England and Wales. The listed Regulations make provision for the funding and administration of schemes for the payment of pensions and injury benefits to police officers. They confer powers and impose duties on police authorities in that regard. In practice, those powers and duties are exercised or carried out in large measure by police staff employed by the police authority but under the direction and control of the Chief Officer of Police.

The intention of the 2011 Act is that, in relation to police forces in England and Wales other than the City of London Police, the chief constable or the CPM and his staff will be responsible for the funding and administration of police pension schemes and will exercise functions previously exercised by the police authority. The amendments made to the listed Regulations by these Regulations reflect this intention.

SI 61/2012 The Local Policing Bodies (Consequential Amendments) Regulations 2012

These Regulations, which came into force on **16 January 2012**, make amendments to various instruments in consequence of the changes to policing governance made by Part 1 of the Police Reform and Social Responsibility Act 2011. The Regulations amend the Police and Criminal Evidence Act 1984 (Drug Testing of Persons in Police Detention) (Prescribed Persons) Regulations 2001, the Docking of Working Dogs' Tails (England) Regulations 2007 and the Local Authorities (Alcohol Disorder Zones) Regulations 2008 in order to reflect the replacement of police authorities with local policing bodies, and the new arrangements for the employment of police staff.

SI 62/2012 The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012

These Regulations, which came into force on **16 January 2012**, set out the functions of police and crime panels and the Independent Police Complaints Commission in relation to the handling of complaints and other matters concerning the conduct of police and crime commissioners, deputy police and crime commissioners, the holder of Mayor's Office for Policing and Crime and the Deputy Mayor for Policing and Crime (referred to collectively as relevant office holders). The Regulations set out the process to be followed in dealing with these complaints and matters.

In accordance with Schedule 7 to the Police Reform and Social Responsibility Act 2011, the Regulations provide for complaints alleging criminal conduct, and all conduct matters (those matters which indicate that criminal conduct may have

occurred), to be referred to the Commission and investigated either by the Commission itself or by a police force under the management of the Commission. The Regulations provide for any other complaint to be resolved informally by the police and crime panel, except in the case of complaints against the holder of the Mayor's Office for Policing and Crime, or the Deputy Mayor for Policing and Crime if he is a member of the London Assembly. The Regulations provide for these latter categories of complaints to be passed to the monitoring officer of the Greater London Authority, who is responsible for dealing with other complaints about the conduct of the Mayor and Assembly members.

SI 75/2012 The Police Reform and Social Responsibility Act 2011 (Commencement No. 3 and Transitional Provisions) (Amendment) Order 2012

This Order amends the Police Reform and Social Responsibility Act 2011 (Commencement No. 3 and Transitional Provisions) Order 2011. The Order corrects drafting errors in Schedule 1 to the Order. Article 2(2)(a) to (c) of this Order corrects errors in references to the numbers of certain paragraphs in Schedule 1. Article 2(2)(d) corrects the omission from paragraph (iii) of Schedule 1 of a reference to paragraph 2(2) of Schedule 11 to the Police Reform and Social Responsibility Act 2011. The effect of this correction is that paragraph 2(2) of Schedule 11 (which repeals section 5(1)(c) of the Crime and Disorder Act 1998(1)) was not brought into force on 16 January 2012.

SI 138/2012 The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (England and Wales) (Appeals under Part 2) Order 2012

This Order, which comes into force on **29 February 2012**, makes provision corresponding to provisions in the Criminal Appeal Act 1968 with modifications for the purposes of an appeal to the Court of Appeal (and from there to the Supreme Court) introduced by articles 47(3) and 48(2) of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005.

SI 146/2012 The Crime (International Co-operation) Act 2003 (Designation of Prosecuting Authorities) (Amendment) Order 2012

Article 2 of the Crime (International Co-operation) Act 2003 (Designation of Prosecuting Authorities) Order 2004 (the 2004 Order) designates certain prosecuting authorities for the purposes of section 7(5) of the Crime (International Co-operation) Act 2003 (the 2003 Act). Prosecuting authorities designated for the purposes of section 7(5) of the 2003 Act can issue requests for assistance in obtaining evidence from

outside the United Kingdom for use in connection with criminal investigations or proceedings in the United Kingdom, without needing to make an application to a judicial authority under section 7(1) of the 2003 Act. This Order, which comes into force on **20 February 2012**, amends the list of designated prosecuting authorities in Article 2(2) of the 2004 Order by inserting references to the Environment Agency, the Secretary of State for Health, the Secretary of State for Transport and the Secretary of State for Work and Pensions.

Football Related Arrests and Banning Orders 2010-11

The Home Office has published statistics which reveal the lowest number of football related arrests since records began in the 1984/5 season. In total, over 37 million people attended regulated football matches in 2010/11. During this time 3,089 people were arrested in connection with international and domestic football matches; a decrease of 9 percent on the previous year. This total includes football specific offences, such as throwing a missile in a stadium, and a wider range of general criminal offences committed in connection with a football match.

On average, less than 1 arrest was made per match and in 71 percent of matches, no arrests were made. Two arrests or less were made at 86 percent of matches and 51 percent of all matches were police free. More than 60,000 England and Welsh club fans travelled to matches abroad, with these 40 matches resulting in 14 arrests. The number of football banning orders remained steady, with 962 new orders imposed.

Statistics on football related arrests and banning orders season 2010-11 can be accessed in full at:
http://www.homeoffice.gov.uk/publications/crime/football-arrests-banning-orders/fbo-2010-11

Mayor Receives Police and Crime Commissioner Powers

Police and crime commissioner (PCC) powers have been transferred to the Mayor of London, ahead of elections for 41 PCCs on 15 November 2012. The powers were transferred to the Mayor's office for policing and crime, which was created on 16 January 2012; on the same date the Metropolitan Police Authority was formally abolished. As a result, the Metropolitan Police are now directly accountable to the mayor who will determine local policing priorities in consultation with the public.

Further details on London police and crime commissioner powers can be found at:
http://www.homeoffice.gov.uk/police/police-crime-commissioners/questions/london/

HMIC Review of Police and Crime Incident Reports

Her Majesty's Inspectorate of Constabulary (HMIC) has published the findings of its review into the systems and processes used to record crime. 'The crime scene: A review of police and crime incident reports' looked at the quality of crime

and incident data and the arrangements in place to ensure standards are maintained and improved across the 43 police forces in England and Wales and the British Transport Police. The overall objective of the review programme was to give the public a clearer idea of how confident they could be in their force's crime and incident statistics.

With regard to making correct crime recording decisions from incidents, the review found that three-quarters of forces made correct crime decisions at least 90 percent of the time. Eighteen forces made correct decisions in 95 percent and above of incidents checked, with 15 forces making correct decisions in 90-94 percent of incidents and 11 forces in 86-89 percent. There was no single factor which contributed to forces consistently making good crime and incident recording decisions. The aspects the report states as being considered the most influential are leadership, supervision and skilled people.

The review found limited evidence of forces directly assessing whether their own crime quality audits provided confidence that their crime figures gave an accurate account of their performance. In relation to anti-social behaviour management, two aspects were found to be widely variable; the recording of crimes from ASB incidents, and attempts to identify repeat and vulnerable victims at the point of first contact. In cases where it comes to light that no offence has been committed, the police amend the record to show 'no crime' occurred. HMIC found that 84 percent of 'no-crime' decisions for violent crimes were correct in 2011. This compares with 64 percent in 2009. Across all categories examined, the average 'no-crime' compliance rate was 87 percent.

HMIC 'The crime scene: A review of police crime and incident reports' can be accessed in full at:
http://www.hmic.gov.uk/media/review-police-crime-incident-reports-20120125.pdf

National Crime Statistics Published

The latest national statistics on crime in England and Wales have been published by the Home Office. The figures are based on interviews from the British Crime Survey (BCS) and crimes recorded by the police in the 12 months preceding September 2011.

- There was no statistically significant change in BCS crime when compared with the previous year, with the number of crimes recorded by the police falling four percent.
- The estimated number of BCS personal crimes rose by 11 percent. There was no statistically different change in BCS household crimes.
- There were falls in all the main police recorded crime offence groups except robbery and other theft offences, which both increased by 4 percent. 'Theft from the person' offences rose 8 percent.
- There was no statistically significant change in the level of BCS burglaries when compared with the previous year. Police recorded crime figures showed a continued fall with a four percent reduction in domestic burglary.
- There was no change in BCS vehicle-related theft, with the apparent 7 percent rise not statistically significant. Police recorded offences against vehicles fell by eight percent.
- Levels of BCS violent crime showed an apparent rise of 9 percent, which was not considered a statistically significant change. Police recorded violence against the person fell by eight percent with falls in both violence with injury and violence without injury of nine percent and seven percent respectively.
- Police recorded robbery rose by four percent following an increase in personal robbery of five percent. Business robbery fell by six percent.
- The number of robberies involving knives rose by ten percent, with a fall of eight percent in the number of assaults involving knives.
- Provisional statistics recorded by the police show a 19 percent decrease in firearms offences.
- The most serious sexual offences recorded by the police rose by two percent when compared with the previous year.
- Both sources revealed a fall in vandalism offences, with BCS showing a seven percent fall and police recorded damage a decrease of 11 percent.

- BCS interviews showed that 57 percent of people agreed that the police and local council were dealing with the crime and anti-social behaviour issues that matter in their area, compared with 52 percent in the previous year. The number of people who thought the police in their local area did a good or excellent job rose from 57 percent to 61 percent.

Homicide

- There were 636 homicides in England and Wales in 2010/11, with an increase of 5 percent on the previous year.
- Overall there were 11.5 homicides per million population in 2010/11. As with previous years, children under the age of one were the most at-risk group with 25 homicides per million population.
- As in previous years, the majority of homicide victims were male (68 percent).
- The most commonly used method of homicide was by sharp instrument, with 232 victims killed in this way. There were 60 victims of homicide by shooting, an increase of 19 from 2009/10.
- Female victims were more likely to be killed by someone they knew, with over three-quarters (78 percent) of female victims knowing the main suspect compared with 57 percent of male victims.

Firearm Offences

- In 2010/11, firearms were involved in 11,227 recorded offences in England and Wales; the seventh consecutive annual fall and a decrease of 13 percent on the previous year.
- Firearm offences involving any type of injury fell by seven percent, from 2, 568 in 2009/10 to 2,399 in 2010/11.
- There was an increase in the number of fatal injuries resulting from the use of a firearm in recorded offences; however there was a decrease in serious injuries of 18 percent.
- There was an 18 percent decrease in the number of robberies involving a firearm, from 3,637 to 2,965.
- Firearm offences, excluding air weapons, decreased by 13 percent. Handguns were used in 3,105 offences during 2010/11, a fall of 17 percent. The number of offences involving the use of a shotgun increased by four percent, with an increase also in the use of imitation weapons of six per cent.

Intimate Violence

- According to the 2010/11 BCS, seven percent of women and five percent of men experienced domestic abuse in the last year; equivalent to an estimated 1.2 million female and 800,000 male victims.
- Around six percent of women and four percent of men experienced partner abuse in the last year, equivalent to around 900,000 female and 600,000 male victims.
- Non-physical abuse was the most common type of abuse experienced by both female and male partner abuse victims.
- Around a quarter, 27 percent, of partner abuse victims suffered a physical injury as a result of the abuse. Among those who had experienced any physical injury, or other effects, around 28 percent received some sort of medical attention.

Crime in England and Wales: Quarterly Update to September 2011 can be accessed in full at:
http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/hosb0112/

Homicides, Firearm Offences and Intimate Violence 2010/11: Supplementary Volume 2 to Crime in England and Wales 2010/11 can be accessed in full at:
http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/hosb0212/

Retail Crime Statistics 2011

The British Retail Consortium (BRC) has published the findings of its Retail Crime Survey. The survey, which was completed by 52 retailers accounting for 53 per cent of total UK retail turnover, revealed that retail crime cost UK retailers £1.4 billion in 2010/11. This is an increase of 31 percent on last year. Customer theft and fraud made up 87.8 per cent of the costs, and 97.1 per cent of incidents.

The number of incidents of customer theft per 100 stores fell by 19 per cent when compared with last years survey, however despite the decline in incidents, the cost associated with customer theft continued to rise. Over the past 12 months, the average cost per incident amounted to £85.50; an increase of 21 percent from £70.44 in 2009/10. Respondents reported 444,990 incidents of customer theft in 2010/11. It is estimated that a similar number of thefts were undetected or unknown. Employee theft accounted for 3.7 per cent of all retail crime by value. The average value stolen per incident increased by 18 percent to £342.17. While the average cost per incident has risen, it remains significantly lower than the seven year average of £537.

Robberies increased by 20 percent per 100 stores and accounted for 1.3 per cent of all retail crime by value. The average cost per incident increased by 17 per cent from £847 to £989. Burglaries accounted for 5.8 per cent of retail crime by value. The number of incidents per 100 stores fell by 42 per cent; however the cost per incident rose significantly by 83 per cent to an average of £2,093. Overall, burglaries were at their lowest level since 2004.

Incidents of criminal damage per 100 stores rose by 63 per cent when compared with last year. There was a significant increase in offences linked to anti-social behaviour, with retailers also reporting an increase in metal theft leading to criminal damage.

In 2010/11, the total number of incidents of violence against staff rose by 83 per cent to 25.7 offences per 1,000 employees. This was driven by a significant increase in the number of verbal abuse incidents and threats of violence, which increased to 13.3 and 8.8 incidents per 1,000 employees respectively. At least 35,313 retail staff suffered from threats, verbal or physical abuse in the last year. There was, however, a reduction in the number of physical incidents of violence, which more than halved.

78 per cent of retailers recording a rise in fraud over the past year, with just over 50 per cent of offences reported to the police. The August riots cost retailers in the sample an estimated £18.3 million and affected approximately 6.9 per cent of retail outlets. The average cost per incident was £8,157, but varied considerably by store, location and type of offence. Offences included theft, arson, robbery, burglary and criminal damage, with the highest concentration of offences in burglary and criminal damage.

The survey highlights the key challenges over the next year as being to:

- Ensure that the impact of retail crime as witnessed in the August 2011 riots is clearly understood and that retail crime remains high on the agenda, with more effective sentencing for those who continue to offend against retail.
- Secure effective engagement between retailers and Police and Crime Commissioners ensuring that the valuable role which retail plays in delivering safe and vibrant communities is understood and that retailers are genuinely involved in setting local crime priorities.
- Continue to tackle the under-reporting of offences, especially those involving violence against staff and to challenge the perception that abuse is 'part of the job'. This, the survey states, will become increasingly important as police begin to place greater importance on crime maps to determine local crime priorities.

- Provide evidence that highlights the impact that increasing e-crime and fraud has on the retail sector and on economic growth to ensure that retailers are provided with an effective means to report these offences.

The BRC Retail Crime Survey 2011 can be accessed in full at: http://www.brc.org.uk/brc_show_document.asp?id=4324&moid=7614

Consultation on Late Night Drinking Launched

The Home Office has launched a consultation on two measures in the Police Reform and Social Responsibility Act 2011 (PRSR Act), which aim to deal with the problems associated with late night drinking. Early Morning Restriction Orders (EMROs) and the late night levy, will be implemented through regulations and the consultation seeks views on certain aspects of the measures; including the process of adopting an EMRO and/or the levy, categories of businesses which may be exempt and the kinds of services a licensing authority may fund with the percentage of the levy it may retain.

Early Morning Restriction Orders (EMRO)

The PRSR Act allows an EMRO to be applied by licensing authorities, between midnight and 6am, to reduce the sale of alcohol. These orders can be applied to areas where the licensing authority considers that restricting the late night supply of alcohol is appropriate to promote the licensing objectives. Regulations will be made to prescribe details of the process for making an EMRO and the kinds of premises that will be exempt from the orders.

It has been proposed by the government that EMROs will not apply on New Years Eve, and consultation respondents are asked for their opinions on this. Respondents are also asked whether they agree with the proposed categories of premises that will be exempt from the orders. These include premises with overnight accommodation, theatres, cinemas and casinos.

Late Night Levy

This measure will allow licensing authorities to levy a charge from late opening alcohol retailers to help contribute towards the policing costs that are generated by the late night economy. The levy will apply to all premises throughout the licensing authority's area which are authorised to sell or supply alcohol in the time period as set by the authority. This period can be anytime between midnight and 6am. Regulations will be issued to prescribe the process for adopting the late night levy and some types of premises will be exempt.

The Consultation also contains process maps for both measures, which are contained in the annexes to the document, on which respondents are asked to comment.

The Consultation closes on 10 April 2012 and can be accessed in full at:
http://www.homeoffice.gov.uk/publications/about-us/consultations/late-night-drinking/consultation-document?view=Binary

European Court of Human Rights Decision on Whole Life Orders

The European Court of Human Rights has found that whole life orders do not breach the rights guaranteed under the European Convention on Human Rights. The judgement came in a case concerning three prisoners currently serving whole life sentences following their convictions for murder in separate criminal proceedings in England and Wales. The applicants alleged that the whole life orders that had been imposed upon them violated Articles 3, 5, 6 and 7 of the European Convention on Human Rights.

Since the abolition of the death penalty in England and Wales, the sentence for murder has been a mandatory sentence of life imprisonment. When such a sentence is imposed, it is the current practice in the majority of cases for the trial judge to set a minimum term of imprisonment which must be served before the prisoner is eligible for release on licence. Exceptionally a 'whole life order' may be imposed instead of a minimum term. This has the effect that the prisoner cannot be released other than at the discretion of the Secretary of State. The Secretary of State will only exercise his discretion on compassionate grounds when the prisoner is terminally ill or seriously incapacitated.

The applicants complained that their whole life orders violated Article 3 of the Convention, which states "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." The Court stated that it was prepared to accept that while, in principle, matters of appropriate sentencing largely fell outside the scope of the Convention; a grossly disproportionate sentence could amount to ill-treatment contrary to Article 3. However, the Court also considered that 'gross disproportionality' is a strict test that will only be met on 'rare and unique occasions'. The Court found that these were sentences that the High Court was entitled to impose and in each case, had given relevant, sufficient and convincing reasons for its decision. As a result the Court did not find a violation of Article 3 in the case of any of the applicants. The Court also rejected the applicant's complaints that the imposition of whole life orders without the possibility of regular review by the courts violated Article 5(4) or, alternatively, Article 6 and Article 7 of the Convention.

The judgement of the case of Vinter and Others v United Kingdom [2012] ECHR 61 can be accessed in full at: http://www.bailii.org/eu/cases/ECHR/2012/61.html

Standards for Bailiffs Tightened

Updated National Standards, which define acceptable behaviour for bailiffs, have been published by the Ministry of Justice. These revised standards are intended for use by all enforcement agents, public and private, the enforcement agencies that employ them and the major creditors who use their services. The voluntary code has been tightened to ensure people are protected from rogue bailiffs who use unsound, unsafe or unfair methods, while at the same time making sure debts can still be collected fairly. While not legally binding, the standards are intended to be a helpful tool for the industry and creditors to inform their own arrangements.

The updated standards outline the minimum standards of behaviour expected, including:

- Bailiffs must not behave in a threatening manner or use unlawful force to gain access to a home or business;
- Bailiffs should avoid discussing the debt with anyone except the person owing money, and bailiffs must never behave in a way that would publicly embarrass a debtor;
- Bailiffs must withdraw when only a child is present; and
- Bailiffs have a duty of care towards vulnerable people, such as the elderly, people with disabilities, single parents and unemployed people and must use discretion when collecting debts from these groups.

Proposals to create a new legally-binding regulatory regime for bailiffs have also been outlined. The proposals, which will be consulted on in the spring, include:

- New rules around the modes and times of entry to make it clear when and how an enforcement agent may enter a home or a business;
- Which goods are exempt to make it clear which items an enforcement agent may not take from someone's home or business premises; and
- What fees bailiffs can charge for the range of debts that they collect for local government, courts and businesses.

The National Standards for Enforcement Agents can be accessed in full at:
http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/courts/enforcement-officers/national-standards-enforcement-agents.pdf

New Sentencing Guidelines for Burglary and Drug Offences

New sentencing guidelines have been published by the Sentencing Council, in relation to burglary and drug offences. The guidelines have been issued in accordance with section 120 of the Coroners and Justice Act 2009 and apply to all offenders aged 18 or over regardless of when the actual offence took place. The guidelines will be used in both the Crown Courts and magistrates' courts.

The burglary guideline came into force on 16 January 2012 and covers aggravated, domestic and non-domestic burglary. When sentencing those convicted of burglary offences, the guideline asks judges to focus on the harm to the victim, as well as the culpability of the offender. The judge will be directed to a more severe sentence, for example, if a victim is at home at the time of the burglary, or if he or she experiences significant trauma. The guideline reinforces the serious nature of aggravated burglary, stating that sentences for this offence must always be custodial with a range of up to 13 years. A sentencing range of up to six years for domestic burglary is given; a two year increase on the four years that was proposed by the Sentencing Advisory Panel, the predecessor to the Sentencing Council. There is also a new approach to non-domestic burglary, with greater focus on the harm caused to the victim beyond the economic implications of a burglary.

The introduction of the guideline in October last year followed a three-month consultation period which sought opinions from victims, the wider public and criminal justice professionals. Although the consultation closed before the disturbances in England during August, the Council recognised the damage caused and the consequences of such events, and as a result has included the context of general public disorder as a factor indicating greater harm caused in any burglary offence.

The guideline for drug offences will come into effect on 27 February 2012 and covers the most commonly sentenced offences - importation, production, supply, permitting premises to be used for drug offences and possession. All drugs from class A to C are covered by the guideline, which has been produced in two different versions to fit within existing formats for judges and magistrates. The publication of the guideline follows a 12 week public consultation on the Council's draft proposals, which heard from nearly 700 members of the public, criminal justice professionals and other interested parties. The responses to the consultation have also been published.

The guideline sets out the steps to be followed by the court when sentencing for drug offences. The offender's culpability and the quantity of drugs concerned are established by

the Court, to determine the offence category. From this, the guideline specifies the minimum starting point and the sentencing range. Aggravating factors and factors which reduce the seriousness or reflect personal mitigation are also addressed, as are any factors which could indicate a reduction in sentence, such as assistance to the prosecution. Under the new guideline there are likely to be increased sentences for those guilty of large scale production offences, with no change in sentencing for possession or drug supply offences. Sentences for drug mules will have a starting point of six years imprisonment; however a longer sentence will be passed for those with a more significant role in importing drugs. Street dealers who have a significant role in selling class A drugs, particularly those who sell drugs for profit, can expect a custodial sentence with a starting point of four and a half years. The guideline also introduces a new aggravating factor to supply offences to ensure that where offenders are dealing to those under the age of 18 they are treated more severely.

Burglary Offences: Definitive Guideline can be accessed in full at:
http://sentencingcouncil.judiciary.gov.uk/docs/Burglary_Definitive_Guideline_web_final.pdf

Theft and Burglary in a building other than a dwelling: Definitive Guideline can be accessed in full at:
http://sentencingcouncil.judiciary.gov.uk/docs/web_Theft_and_Burglary_of_a_building_other_than_a_dwelling.pdf

Drug Offences: Definitive Guideline - Crown Court can be accessed in full at:
http://sentencingcouncil.judiciary.gov.uk/docs/Drug_Offences_Definitive_Guideline_(web).pdf

Drug Offences: Definitive Guideline Crown Court - Magistrates' Court can be accessed in full at:
http://sentencingcouncil.judiciary.gov.uk/docs/MCSG_Update_6_-_January_2012_(web).pdf

Updated Guidance on Protecting Crowded Places

The Home Office has published an update to guidance, previously issued in March 2010, on protecting crowded places. The main changes relate to the contributions protective security can make to mitigate the impact of firearms attacks.

Protecting Crowded Places: Design and Technical Issues

The purpose of the guide is to give advice about counter-terrorism protective security design to anyone involved in the planning, design and development of the built environment. It gives practical advice on how best to incorporate counter-

terrorism protective security measures into proposed new development schemes, whilst ensuing that they are of high design quality. The guide also aims to equip the reader with a better understanding of the links between the counter-terrorism dimension of crime prevention and the built environment, so that reducing the vulnerability of crowded places to terrorist attack can be tackled in an imaginative and considered way.

Crowded places: the planning system and counter-terrorism

An important element of CONTEST, the Government's strategy for countering terrorism, is to create safer places and buildings, which are less vulnerable to terrorist attack and, should an attack take place, provide people with a better protection from its impact.

The guide does not set out new policy or specific legal requirements. It provides advice on how counter-terrorism protective security measures can be incorporated into new developments whilst ensuring that they are of high design quality.

Protecting Crowded Places: Design and Technical Issues can be accessed in full at:
http://www.homeoffice.gov.uk/publications/counter-terrorism/crowded-places/design-tech-issues?view=Binary

Crowded places: the planning system and counter-terrorism can be accessed in full at:
http://www.homeoffice.gov.uk/publications/counter-terrorism/crowded-places/planning-and-ct?view=Binary

Justice Committee Publishes Report on Joint Enterprise

The Justice Select Committee has published a report on joint enterprise; a common law doctrine that has been developed over the years by the courts. It is a form of secondary liability, whereby a person who agrees to commit a crime with another becomes liable for all criminal acts committed by that person in the course of their joint criminal venture. The Committee examined the law in the area and heard from witnesses with recent experience of the doctrine, as well as the victims of crime and the defendants' representatives. It found that applying the law of joint enterprise presents the courts with such difficulties that cases regularly reach the Court of Appeal and the Supreme Court. The Committee was also surprised to learn that no record is made of the number of people charged under joint enterprise every year, or of the outcomes of those cases, and recommended that this data be collated in the future.

The primary recommendation of the Committee was that the doctrine of joint enterprise be enshrined in statute to ensure clarity for all those involved in the criminal justice system. It also recommended that the Director of Public Prosecutions issue urgent guidance on the use of the doctrine when charging and the relationship between association and complicity, which is of vital importance in gang-related violence and homicides. The Committee welcomed evidence to suggest that the deterrent effect, intended by the courts when developing the law of joint enterprise, could discourage young people from becoming involved in criminality. It stated however that over-charging under joint enterprise will not assist in deterring young people from becoming involved in gangs and may deter potential witnesses who fear they will be charged if they come forward. It recommended the DPP issue guidance on the proper threshold at which association potentially becomes evidence of involvement in crime.

While not looking at the wider issue of reform of the law on homicide, the Committee stated that expecting that a reform of joint enterprise could become part of a wider review of homicide was unrealistic. Reforming the law on murder will always be a high risk strategy for any Government, and as such, the Committee stated, was very unlikely to happen in the near future. Legislative clarification of the law on joint enterprise should not have to wait for wider and potentially controversial changes to the law on homicide.

The House of Commons Justice Select Committee 11th report on Joint Enterprise can be accessed in full at:
http://www.publications.parliament.uk/pa/cm201012/cmselect/cmjust/1597/159702.htm

NPIA

National Policing
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Legal Services
Chief Executive Officer Directorate

www.npia.police.uk