



College of
Policing

Digest

February 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 is a report of a case on the Investigatory Powers Tribunal and its jurisdiction for human rights claims based on the use of undercover police officers.

We look in detail at recently published Government and Parliamentary reports and initiatives including the provisional police grant report, a joint committee report on the Draft Communications Data Bill and a committee report on proposals for a Bill of Rights.

A statistical bulletin is summarised on sexual offences in England and Wales.

Reports covered in this edition include the HMIC progress report 'Revisiting Police Relationships' and the Operation Yewtree report. Consultations covered in this edition include a Ministry of Justice consultation 'Transforming Rehabilitation', a consultation on prosecution guidelines for cases involving communication by social media, and a call for evidence on the functions of the Law Commission.

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

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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.

An amendment has been made to the Crime and Courts Bill and accepted by the House of Lords, which will, when in force, abolish the offence of scandalising the court. The Crime and Courts Bill has completed its progress through the House of Lords, and has received first and second reading in the House of Commons. It is presently before the House of Commons at Committee stage, the Committee is expected to report to the House of Commons by 14 February 2013.

- ◆ **Police (Complaints and Conduct) Act** - An Act to make provision about interviews held during certain investigations under Schedule 3 to the Police Reform Act 2002; and about the application of Part 2 of that Act to matters occurring before 1 April 2004.

This Act received Royal Assent on 19 December 2012. The Act in its entirety came into force on 19 December 2012.

- ◆ **Prisons (Interference with Wireless Telegraphy) Act** - An Act to make provision about interference with wireless telegraphy in prisons and similar institutions.

This Act received Royal Assent on 19 December 2012. Section 5 of the Act (Final Provisions) came into force on 19 December 2012; the other provisions of the Act have yet to be brought into force.

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

Committee stage before the House of Lords took place on 18 January 2013. Report stage is yet to be scheduled.

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

Decision on Jurisdiction of Investigatory Powers Tribunal and Whether Sexual Relationships Induced by Undercover Police Officers Constituted Degrading Treatment

AKJ & Ors v Commissioner of Police for the Metropolis & Ors [2013] EWHC 32

A case in the High Court of Justice, Queen's Bench Division, before the Honourable Mr Justice Tugendhat.

Summary

The Investigatory Powers Tribunal held the sole jurisdiction for hearing complaints based on the Human Rights Act 1998, where it was alleged that undercover police officers had induced the claimants into entering relationships, including intimate sexual relationships, to gain information. It could not hear claims based on the common law which arose from the same facts. The claims based on the common law had not, at the time of judgment, been shown to be an abuse of process because of the defendant's 'Neither Confirm Nor Deny' policy, which was argued to prevent them defending the claim. However the common law cases should be heard after the Investigatory Powers Tribunal had considered the Human Rights Act 1998.

The judgment noted that authorisations under Part II of the Regulation of Investigatory Powers Act 2000 could not authorise infringement of the unqualified rights of the European Convention on Human Rights. These include the prohibition in Article 3 of torture and inhuman or degrading treatment. The allegation that sexual relationships in this context constituted degrading treatment was rejected:

"what is or is not a sexual relationship, or an intimate sexual relationship, is too broad and uncertain a concept for the whole range of such possible relationships to be characterised as degrading, and so outside the scope of any possible authorisation."

The facts

There are two actions in this case. The first action was brought by three women claimants (the Birnberg Claimants) who alleged abuse by Mark Kennedy (MK) who they alleged was at the relevant time an undercover police officer. The second was brought by two women claimants and one male claimant, Mr Fowler, (the Tuckers Claimants) who alleged abuse by Mark Jacobs (MJ) who they alleged was at the relevant time an undercover police officer.

All of the claimants describe themselves as political activists and sought damages from the defendants, claiming they were liable for the acts of MK and MJ. The deception alleged was that MK and MJ

were undercover police officers, who represented themselves as fellow activists and induced the female claimants to enter into long term intimate sexual relationships, knowing that the claimants wouldn't have entered the relationships if they'd known they were undercover police officers. Mr Fowler alleged that MJ deceived and abused him by seducing his girlfriend, one of the Tuckers Claimants, while pretending to be his friend. All of the claimants alleged that the deceptions were grave interferences to their privacy and as a result they suffered personal injury including psychiatric illness, distress and other damage.

From the alleged deception the claimants brought two different types of claims: claims under the Human Rights Act 1998 (the HRA claims), and common law claims in tort (the common law claims).

The HRA claims were that MK and MJ were police officers acting as such in their capacity as a Covert Human Intelligence Source (CHIS). Their actions violated the European Convention on Human Rights (ECHR) rights of the claimants. Their actions violated the Article 3 (prohibition of degrading treatment) rights of all of the female claimants. Their actions violated the Article 8 (respect for private and family life) rights of all the claimants. The Article 6 right of access to a court was also relied upon.

The common law claims were allegations that the claimants have common law causes of action, including for the torts of misfeasance in public office, deceit, assault (trespass to the person) and negligence. The Tuckers Claimants also allege breaches of statutory duty under the Data Protection Act 1998.

The defendants applied for the claims to be struck out, or in the alternative stayed, on the grounds that the High Court:

- ◆ Has no jurisdiction to hear the HRA claims as the Investigatory Powers Tribunal (IPT) has exclusive jurisdiction; and/or
- ◆ Should decline jurisdiction or strike out the common law claims as:
 - They can be heard in the IPT and it would be abusive or inappropriate to hear them in the High Court when the HRA claims must be brought before the IPT; or
 - It would be unfair to hear the claims in the High Court as the defendants' 'Neither Confirm Nor Deny' (NCND) policy prevents them defending the claims.

The judgment

Before considering the questions raised by the defendants, the judge considered the principle of legality, at common law and under the HRA. At common law this requires laws to be interpreted subject to the fundamental rights of the individual, subject to

express language or implication to the contrary. Under the HRA section 3 requires legislation to be interpreted and given effect so it is compatible with the ECHR, so far as this is possible.

The common law recognises the right not to be submitted to degrading treatment, the right of access to a court and the right to privacy, although does not always offer damages as a remedy. Claims made under the HRA involve different remedies with a wide discretion to award damages.

Part II of RIPA was considered, in particular section 29 which relates to the authorisation of a CHIS. It was noted that this was drafted to reflect ECHR Article 8(2), rendering interference with private life lawful.

The judge made clear that authorisation under RIPA can only be granted for conduct which will interfere with one of the qualified ECHR rights, such as Article 8. The unqualified rights cannot be interfered with; precluding any authorisation to interfere with the Article 2 right to life, or the Article 3 right not to be subject to torture, inhuman or degrading treatment.

The IPT was established by RIPA, and section 65 governs its jurisdiction and procedure. The IPT must hear proceedings and complaints brought before it and must apply the same principles as would be applied on an application for judicial review. Complaints are time-limited to one year after the conduct complained of. Remedies available to the IPT include the quashing of an authorisation and the destruction of records of information. IPT decisions cannot be appealed against and may not be questioned in any court. Its determinations are subject to an NCND policy where the claimant is only told whether or not the IPT has made a determination in their favour. This rule is not absolute and the IPT is not precluded from publishing rulings on matters of law.

The case for the High Court to decide was based on three questions:

- ◆ Does section 65 of the Regulation of Investigatory Powers Act 2000 (RIPA) give the IPT jurisdiction over the HRA claims, it being accepted that if so, this jurisdiction is exclusive;
- ◆ Can the IPT hear the common law claims at all; and
- ◆ If the IPT can hear the common law claims, should the High Court strike the claims before it out on grounds of abuse of process, either because they should be heard in the IPT or because the defendants cannot receive a fair trial in the High Court.

Does s.65 of RIPA give the IPT jurisdiction over the HRA claims?

The claimant's submission was that sexual relationships of the kind alleged were not conduct to which RIPA applied; Parliament had not contemplated it. The Birnberg Claimants said MK was not authorised to engage in sexual relationships, but he did so and violated their ECHR Article 3 or 8 rights. The Tuckers Claimants said they did not know what MJ was authorised to do, but the conduct could not have fallen within the scope of any lawful RIPA authorisation.

The dispute between the parties focussed on what sort of personal relationships are covered in section 28(8)(c) relating to a CHIS; the jurisdiction of the IPT covers proceedings or complaints occurring in challengeable circumstances, which are those under the authority or purported authority, or where authority should have been sought or considered, of an authorisation under section 28. If a sexual relationship could not be authorised, the conduct did not occur in challengeable circumstances and the IPT has no jurisdiction.

To answer this dispute the judge looked at three issues.

Firstly, whether the conduct the female claimants alleged was, under the principle of legality, incapable of authorisation under RIPA. The ECHR Article 3 right not to be subject to degrading treatment cannot be authorised under RIPA. The claimants alleged that a covert undercover police officer establishing a sexual relationship to gain information is degrading treatment and cannot be authorised. The judge rejected this allegation:

"what is or is not a sexual relationship, or an intimate sexual relationship, is too broad and uncertain a concept for the whole range of such possible relationships to be characterised as degrading, and so outside the scope of any possible authorisation."

The conduct alleged fell within the definition of challengeable circumstances; the IPT had exclusive jurisdiction for these claims.

Secondly, the question of whether Parliament could have contemplated that sexual relationships should be authorised under RIPA. The judge examined RIPA and subordinate legislation, considering the level of authorisation needed to authorise a CHIS. The judge found nothing to suggest that Parliament did not contemplate authorisation of such relationships.

Thirdly, whether it appears from the statutory provisions for IPT procedure that Parliament did not contemplate that the IPT should have jurisdiction. The argument for the claimants is that the IPT procedures depart from the ordinary procedures for adversarial justice, and the principle of legality should be applied to limit the cases over which it has jurisdiction. The defendants argued that the restrictions in IPT procedure have before been held not to violate the ECHR Article 6 right to a fair trial. The remedy for a concern over Article 6 lay within the IPT which has before shown

willingness to adapt its procedure. The judge agreed with the defendant's submission; it was not for the court to construe the jurisdiction restrictively, nor to assume the IPT will not hear a case consistently with the Article 6 right.

It followed from the decision on these three issues that the IPT had exclusive jurisdiction to hear the HRA claims.

Can the IPT hear the common law claims?

The defendants submitted that the IPT has the power to hear 'complaints' and can therefore consider the common law claims. The claimants disagreed, arguing that a previous judgment had noted the difference between a cause of action and a complaint. The common law claims are not complaints. The Secretary of State had power to allocate other disputes to the exclusive jurisdiction of the IPT and had not done so.

The judge agreed with the claimants. The common law claims were not 'complaints' and the IPT had no jurisdiction over them. Parliament did not overlook the possibility of factual situations where a claimant may have an HRA claim and a claim not made under the HRA.

Should the High Court strike out or stay the common law claims?

The defendants had argued that the IPT had jurisdiction over the common law claims, and that it would be an abuse of process to hear claims based on the same facts in two different venues. The judge noted that the IPT had no jurisdiction over the common law claims, but stated that if this were wrong, he doubted that it would be an abuse of process to pursue both claims at the same time. The IPT is required to apply judicial review principles and it was not clear that this or its power to offer compensation would offer an effective remedy to the claimants.

The defendants argued they could not receive a fair trial in the High Court. Their NCND policy precluded them from defending themselves as they could not confirm or deny:

- ◆ Whether a person was a police officer;
- ◆ Whether they were vicariously liable for the actions of an individual;
- ◆ Whether the individual denied a sexual relationship or explain, if admitted, why that relationship had happened; or
- ◆ Whether there were authorisations and if so, explain what they said and advance a defence that they were reasonably made, proportionate and necessary.

Public interest immunity would have to apply to the material and this would not assist the defendants. The defendants considered

the case of *Carnduff v the United Kingdom* - 18905/02 [2004] ECHR 731 (*Carnduff*), where preserving the confidentiality of police operations was a legitimate basis for restricting a claimant's right to proceed with civil claims.

The claimants argued that this was a more serious case than *Carnduff*, a claim for contractual payment. The claimants are arguing degrading treatment, a breach of their fundamental rights. Cases since have commented that it would be rare to strike out a claim based on *Carnduff*.

The judge held that the claims of the claimants were for a grave interference with their fundamental rights. While the NCND policy had obvious importance in preserving the confidentiality of police operations, it does not provide immunity from claims in tort. At the time of the judgment, no material was before the court to explain why the rights of the claimants to bring their claim were outweighed by the public interest or the need to protect the fundamental rights of others.

The claims had not been shown to be an abuse of process at this stage; they would not be struck out.

The judge held that the interests of justice required that the IPT claims be held first. They may establish a defence under section 27 of RIPA, which would be determinative of the common law claims. They may also provide a determination offering a basis for the common law claims, or they may provide suitable compensation removing the need or justification for pursuing the common law claims. The common law claims before the High Court were stayed pending the determination of the HRA claims before the IPT.

The judgment can be found at <http://www.bailii.org/ew/cases/EWHC/QB/2013/32.html>

SI 2012/3173 The Public Services (Social Value) Act 2012 (Commencement) Order 2012

In force **31 January 2013**. This Order brings into force sections 1 and 2 of the Public Services (Social Value) Act 2012 (the Act). The Act applies to England and Wales.

Section 1 of the Act applies to contracting authorities as defined in the Public Contracts Regulations 2006 (SI 2006/5) (the Regulations); this includes the following policing bodies in England and Wales:

- ◆ A police and crime commissioner established under section 1 of the Police Reform and Social Responsibility Act 2011;
- ◆ A chief constable established under section 2 of the Police Reform and Social Responsibility Act 2011;
- ◆ The Mayor's Office for Policing and Crime established under section 3 of the Police Reform and Social Responsibility Act 2011; and
- ◆ The Commissioner of Police of the Metropolis established under section 4 of the Police Reform and Social Responsibility Act 2011.

It applies where a contracting authority:

- ◆ Proposes to either procure or arrange to procure the provision of
- ◆ Services, or services together with the purchase or hire of goods or the carrying out of works;
- ◆ By entering into a public services contract, or a framework agreement in which public services contracts make up the greater part by value of the contracts within it.

'Public services contract' is defined in the Regulations, broadly it is a written contract for value where a contracting authority engages someone to provide a service, which can also include certain contracts to provide goods and services.

Where the contracting authority proposes to act as above, it has to comply with the following requirements before beginning the procurement process:

- ◆ It must consider:
 - a) How what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area; and
 - b) How, in conducting the process of procurement, it might act with a view to securing that improvement;

- ◆ When considering b) above, it must only consider matters that are relevant to what is proposed to be procured and, in doing so, must consider the extent to which it is proportionate in all the circumstances to take those matters into account;
- ◆ It must consider whether to undertake any consultation as to the matters that fall to be considered under a) and b) above.

SI 2012/3134 The Children (Secure Accommodation) (Amendment) (England) Regulations 2012

In force **11 January 2013**. These Regulations amend the Children (Secure Accommodation) Regulations 1991. Included in the amendments is a requirement that local authorities, when deciding whether to place a child aged 10 or 11 who has been detained under section 38(6) of the Police and Criminal Evidence Act 1984 in secure accommodation, must apply the criteria in section 25(1) of the Children Act 1989. This means they may not be placed, and if placed must not be kept, in secure accommodation unless:

- ◆ They have a history of absconding and are likely to abscond from another type of accommodation, and if they abscond are likely to suffer significant harm; or
- ◆ If kept in any other type of accommodation, they are likely to injure themselves or another person.

SI 2012/3128 The Local Justice Areas (No. 3) Order 2012

In force for transitional purposes on 28 January 2013 and for all other purposes on **1 July 2013**. This Order creates a new local justice area named County of Wiltshire, which replaces the former areas of North West Wiltshire, South East Wiltshire and Swindon.

HMIC Revisiting Police Relationships: Progress Report

Her Majesty's Inspectorate of Constabulary (HMIC) has published 'Revisiting Police Relationships: Progress Report'. This report outlines HMIC's findings when it reviewed police forces' progress against the recommendations made in the 2011 report 'Without Fear or Favour'.

The review involved examining data submitted by police forces and the findings of inspection work carried out during July and August 2012. A public survey was undertaken and police use of social media reviewed.

The public survey showed that 89% of respondents expected police officers to be more honest than 'the average person on the street'. 36% of respondents believed corruption was fairly or very common in the police service.

Progress against the recommendations made in the 2011 'Without Fear or Favour' report is examined, and in some cases HMIC makes further recommendations.

Progress by police forces has been noted by HMIC, including:

- ◆ Many police forces have transferred oversight of integrity issues to a single department such as an Anti Corruption Unit or the Professional Standards Department;
- ◆ More police forces are proactively gathering information to help them identify potential integrity issues;
- ◆ All police forces but one have put procedures in place to ensure appropriate recording of meetings and discussions with the media;
- ◆ All police forces showed evidence of checking and signing off information held on gifts and hospitality registers, with some challenging entries which appeared to contravene the rules;
- ◆ Some police forces cross-check entries on gift and hospitality registered with other force documents, such as procurement records;
- ◆ Some have improved their monitoring of use of procurement and credit cards, although the focus tends to be on the accuracy of the spend rather than how the purchase has been justified;
- ◆ Frontline staff and supervisors show a clear sense of what is and is not acceptable behaviour, although this is guided by a 'moral compass' more than an understanding of force policy and procedure;

- ◆ All police forces have made some progress in developing policy and guidance, although many were waiting for Association of Chief Police Officers (ACPO) guidance;
- ◆ Some police forces have educated some officers and staff in some integrity issues, although HMIC noted that senior leaders have not received training on how to manage integrity issues in their force, nor on the standards expected of them individually;
- ◆ Police forces are monitoring their progress against the 'Without Fear or Favour' standards, through tabling integrity issues into meeting agendas or creating holding meetings specifically on integrity issues. Including representatives from staff associations at these meetings is identified as good practice; and
- ◆ Police authority governance arrangements had in some cases improved, but presented a risk that police and crime commissioners (PCCs) may not have in place the robust systems needed to identify potential corruption and properly challenge their police forces.

The report makes further recommendations to increase the pace of embedding an awareness of integrity issues into everything police forces do:

- ◆ Independent external scrutiny by HMIC into integrity matters is still necessary in addition to PCC scrutiny, as progress requires a greater sense of urgency and has been inconsistent;
- ◆ A more transparent and challenging environment is required to check and challenge chief officers on integrity issues; PCCs should assure themselves their police forces are nurturing such an environment;
- ◆ More robust and auditable corporate governance arrangements are required, which should differentiate the roles and responsibilities held by chief officers and PCCs;
- ◆ The College of Policing should quickly develop professional standards for training and development on integrity issues;
- ◆ The police service should agree the role police forces should undertake in investigation and enforcement related to unacceptable behaviour by staff in outsourced services. This should be done with a view to producing national guidance on the subject;
- ◆ Police forces and PCCs should ensure they have appropriate mechanisms for monitoring and managing the reputational risks which the inappropriate use of social media present;

- ◆ Police forces should introduce peer review as an option for examining and assessing the propriety and perception of gifts and hospitality by ACPO ranks;
- ◆ Cross checking of registers and triangulation of events should be employed by all police forces to help uncover improper behaviour or corrupt activity;
- ◆ PDR processes should include a review of staff and officer secondary employment and business interests, to include scrutiny of refused applications and any conditions attached to successful applications;
- ◆ PCCs may wish to consider how far their police force has implemented ACPO guidance on integrity issues, and whether the way this guidance is applied supports local anti-corruption strategy;
- ◆ Police forces should make an assessment of their workforces' knowledge and understanding of policies on integrity issues; and
- ◆ Investing in integrity training for current and future senior leaders would be worthwhile.

The report, along with progress reports by police force, can be found at
<http://www.hmic.gov.uk/inspections/review-police-service-integrity/>

Provisional Police Grant Report

The Home Office has published 'Provisional Police Grant report (England and Wales) 2013/14'.

The report sets out the aggregate amount of grants, and the amount of grants for each local policing body, that the Home Secretary proposes to pay under section 46(2) of the Police Act 1996 for 2013/14. The amounts include the Home Office Police Core Settlement and the Department for Communities and Local Government (DCLG) Formula Funding, but not all central Government funding. The report notes that the Home Secretary will pay to local policing bodies the grant funding which previously was paid by the Secretary of State for Communities and Local Government; this reflects the decision to fund local policing bodies outside of the business rates retention scheme.

The considerations which the Home Secretary took into consideration in making these determinations are stated, and the formula applied in allocating the amounts for the Police Main Grant of the Police Core Settlement explained. The report references

other documents which explain the formula proposed for the DCLG part of the funding.

The aggregate amount of grants for police purposes is £7,792,585,520. This is made up of £4,725,433,501 in Home Office Police Core Settlement and £3,067,152,019 in DCLG Formula Funding. This amount, and the allocated amounts per local policing body, has been approved by the Treasury.

The report can be found at
<http://www.homeoffice.gov.uk/publications/police/police-finance/grant-report-2013-14>

Written Ministerial Statement on Review of Remuneration and Conditions of Service for Police Officers and Staff

On 15 January 2013 the Home Secretary, Theresa May, laid a written ministerial statement on police pay and conditions in the House of Commons. The statement was laid in the House of Lords by Lord Taylor of Holbeach. The statement provides the Government's response to the findings of the Police Arbitration Tribunal (the Tribunal). The Tribunal considered recommendations made in the final report of the 'Independent Review of Police Officer and Staff Remuneration and Conditions' (the Winsor Report). The Home Secretary has laid a copy of the Tribunal's report in the House of Commons Library.

The Home Secretary states that she has considered the Tribunal's report, has decided to accept its recommendation, and is minded to implement the package of reforms it has put forward. The statement outlines some of the considerations the Home Secretary took regard of when coming to this decision.

The statement notes that the Tribunal deferred proposals on compulsory severance. The Home Secretary has asked the Police Negotiating Board to consider these proposals and other longer-term proposals by July 2013.

The written ministerial statement can be found at
<http://www.homeoffice.gov.uk/publications/about-us/parliamentary-business/written-ministerial-statement/pat-report-wms/>

A copy of the Tribunal's report can be found at
<http://www.homeoffice.gov.uk/publications/police/pat-decision>

Home Office Circular 25/2012: Chief Constables' Pay

The Home Office has issued Home Office Circular 25/2012 'Amendment to the determinations made under Police Regulations 2003, to implement a change to chief constables' pay (recommendation 64 from the Winsor Review's Final Report)'. The Circular took effect on 20 December 2012 and publicises amendments to the Home Secretary's determinations under the Police Regulations 2003 (the determinations).

The amendments allow a police and crime commissioner (PCCs) to set the chief constable's salary at a rate up to ten percent above or below the rate for the post set out in the determinations. The Circular clarifies that this power is only available on appointing a chief constable, and states that the PCC is responsible for stipulating the maximum or minimum salary the chief constable might be paid when advertising the vacancy. The power to vary the salary does not apply to deputy chief constable posts, which will continue to be determined nationally.

The Circular can be found at
<http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2012/025-2012/>

Home Office Circular 1/2013: Decision on Findings of the Police Arbitration Tribunal and Police Advisory Board for England and Wales

The Home Office has issued Home Office Circular 1/2013 'Home Secretary's decision on the findings of the Police Arbitration Tribunal and the Police Advisory Board for England and Wales of 24 July 2012 in relation to the Part 2 Report of the Winsor Review'. This Circular took effect on 15 January 2013.

The Circular publishes the Home Secretary's decision on the recommendations made by the Police Arbitration Tribunal (PAT) on 6 December 2012 and the advice given by the Police Advisory Board for England and Wales (PABEW) on 24 July 2012. These relate to recommendations made in the Final Report of the Independent Review of Police Officer and Staff Remuneration and Conditions (the Winsor Final Report).

The recommendations of the PAT have been accepted by the Home Secretary, and the Circular outlines the changes she is minded to make, which relate to: the payscale for new entrant constables; regional allowances; competency related threshold payments; and the on-call allowance. The process to make these changes is to begin immediately and will involve consultation with the Police Negotiating Board. Negotiation is to continue on the Winsor Final

Report recommendations on compulsory severance. The Winsor Final Report recommended introducing an expertise and professional accreditation allowance; this was rejected by the PAT and the Circular confirms that this allowance will not be implemented.

The advice given by the PABEW on non-pay related proposals in the Winsor Final Report has been accepted by the Home Secretary. The proposals include recommendations on the appropriate qualification for new entrants, accelerated promotion, probation period for direct entry at higher ranks, and fitness tests.

The Circular can be found at <http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2013/001-2013/>

Home Office Circular 2/2013: Amendments to Police Pension Scheme

The Home Office has issued Home Office Circular 2/2013 'Amendments to police pension scheme'. The Circular took effect on 16 January 2013 and advises readers of two Statutory Instruments which amend the police pension scheme.

The Police Pensions (Amendment No. 3) Regulations 2012 implement amendments to the police pension scheme relating to voluntary exit schemes and automatic enrolment into the police pension scheme.

Guidance is given on voluntary exit schemes; chief officers and Police and Crime Commissioners (PCCs) may decide to run voluntary exit schemes and are responsible for determining, within the terms of this Circular, who is eligible for voluntary exit. The Circular gives worked examples of the compensation payments applicable in different situations, and explains:

- ◆ The level of compensation and the rate of accrual;
- ◆ The high pay threshold applicable to the compensation payment calculation;
- ◆ The options available when an officer can draw their pension early;
- ◆ How compensation payments for part-time workers will be calculated;
- ◆ Repayments applicable on re-employment in the Police Service;
- ◆ Eligibility to apply;
- ◆ Tapering;
- ◆ Notice periods; and
- ◆ Definitions.

The Circular explains the changes being made to the Police Pensions Regulations 2006 which will ensure compliance with the requirements relating to automatic enrolment and re-enrolment into a qualifying pension scheme. These include provision to allow officers to re-join the new pension scheme after opting out, and consequential changes relating to eligibility for awards payable on permanent disablement. Information is given on the dates by which PCCs and chief constables must have automatic enrolment in place.

The Police Pensions (Amendment No. 2) Regulations 2012 make changes implementing recommendations in the Independent Review of Police Officer and Staff Remuneration and Conditions: Part 1 Report. The changes:

- ◆ Require police pension authorities to take account of the performance of the individual officer and the need to retain skills and knowledge in the police force, when determining whether to require a police officer to retire in the general interests of efficiency (Regulation A19 of the Police Pension Scheme 1987 and Regulation 20 of the New Police Pension Scheme 2006); and
- ◆ Allow senior police officers to defer payment of a pension until they reach normal pension age (Regulation B1 of the Police Pension Scheme 1987; no change is necessary for the 2006 scheme).

The Circular also clarifies the officers who are subject to the pension earning cap.

The Circular can be found at <http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2013/002-2013/>

Overview of Sexual Offending in England and Wales

The Ministry of Justice, the Home Office and the Office for National Statistics have published a statistical bulletin, 'An Overview of Sexual Offending in England and Wales'. This bulletin brings together data from a range of sources, to provide an overview of sexual offending in England and Wales.

The information used to provide the overview comes from a range of sources, over a range of times, and the report explains the limitations this places on direct comparisons. Sources of information include the last three years' findings of the Crime Survey for England and Wales (CSEW), police recorded crime between 2005/06 and 2011/12 and information on criminal justice outcomes. The report considers most sexual offences, excluding certain summary offences such as kerb crawling. While acknowledging the trauma any sexual offence causes to the victim, for ease of reference the report has placed the offences considered into two categories:

- ◆ 'Most serious sexual offences' which covers rape, attempted rape and sexual assault offences; and
- ◆ 'Other sexual offences' which includes sexual activity with minors (excepting rape and sexual assaults), exposure and voyeurism.

Chapter 2 of the bulletin shows findings from the CSEW on sexual offence victimisation. The findings from the previous three years' surveys showed the 2.5% of females and 0.4% of males had reported experiencing some form of sexual offence in the previous 12 months, the majority of which were 'other sexual offences'. 0.5% of women and 0.1% of men reported having been the victim of one of the 'most serious sexual offences'. The prevalence rates lead to an estimate that over the three years surveyed, between 430,000 and 517,000 adults had been a victim of a sexual offence in the previous 12 months. Of these, it is estimated that there were:

- ◆ Between 366,000 and 442,000 female victims;
- ◆ Between 54,000 and 90,000 male victims;
- ◆ Between 68,000 and 103,000 female victims of the most serious sexual offences and;
- ◆ Between 5,000 and 19,000 male victims of the most serious sexual offences.

The bulletin identifies that being female carries a higher risk of being a victim, and identifies that risk for women varies by other characteristics, including age, marital status, low income,

unemployment, household location and housing tenure, and use of nightclubs and pubs. The CSEW asked victims of a 'most serious sexual offence' about whether they had reported the incident to anyone. For female victims of a 'most serious sexual offence':

- ◆ 28% had not told anyone;
- ◆ 15% had told police and somebody else; and
- ◆ 57% had told someone, but not the police.

The most frequently given reasons for not reporting the incident to the police were that it would be 'embarrassing', they 'didn't think the police could do much to help', the incident was 'too trivial' or 'not worth reporting', or that they saw the matter as a 'private/family matter and not police business'.

In the 2011/12 CSEW respondents were asked about their experience of sexual offences since the age of 16. The findings show that:

- ◆ 19.6% of females and 2.7% of males had been a victim of a sexual offence since age 16; and
- ◆ 5.3% of females and 0.5% of males had been a victim of a 'most serious sexual offence' including attempts.

Chapter 3 of the report covers police activity relating to sexual offences. The data examined shows that in 2011/12 53,665 sexual offences were reported. This was 1% of all police recorded crime and equates to one crime per 1,000 people. Sexual assault accounted for 41% of recorded offences, and rape 30%, when including attempts. The majority of the remaining reports were for voyeurism, exposure and sexual activity with minors. The rates of offences initially reported in which police later determined that no crime took place were 7.2% of all sexual offences and 10.8% of rapes, higher rates than for overall crime (3.4%) and violence against the person with injury (3.8%).

The period 2008/09 to 2011/12 shows stability in the number of offences of sexual assault and a yearly average increase of 10% for offences of sexual activity with minors. Between 2005/06 and 2011/12 there has been a downward trend in the number of reported 'other sexual offences', with a total decrease of 39% over that period. Caution is advised in interpreting trends apparent from these figures, as changes may be influenced by changes in reporting rates, changes in recording practices, and steps taken by police to improve reporting and recording rates.

In 2011/12 27% of all recorded crime ended in sanction detection; where offences detected by police result in the offender receiving a formal sanction such as a charge or caution. For sexual offences the sanction detection rate was 30%, higher than robbery or

burglary but lower than other contact crimes such as violence against the person. The bulletin suggests this may reflect challenges presented by the nature of the offence including investigation and reluctance of victims to proceed with a prosecution. Of the offences leading to a sanction detection, in 86% of cases the sanction was charge or summons, with 14% being dealt with by caution. Where the sanction was a caution, 39.9% of the offences were sexual assault, 29.3% were for sexual activity with minors, and 1.2% were for rape. The cautions for rape consisted of 19 cases:

- ◆ 11 cases of male offenders under 15 where the victim was under 13;
- ◆ Five cases of male offenders aged 15-17; and
- ◆ Three cases of male offenders aged 21 and over.

Statistics for court proceedings and sentencing relate to the number of people against whom proceedings were brought in the court, rather than the number of offences. In 2011 9,919 defendants were proceeded against at a magistrates' court for sexual offences, 29% of whom were proceeded against for rape and 42% of whom were proceeded against for sexual assault. Males aged 18 and over accounted for 89.7% of those proceeded against for a sexual offence. 92% of those proceeded against for a sexual offence in 2011 were of a known ethnicity, of these persons:

- ◆ 78% were White;
- ◆ 9.9% were Black;
- ◆ 9.7% were Asian; and
- ◆ 2.4% were of 'other' ethnicity.

Outcomes for the 9,919 defendants proceeded against at magistrates' courts in 2011 are shown in the bulletin:

- ◆ 820 (8.3%) saw the proceedings terminated early, were discharged at committal proceedings or saw their case dismissed;
- ◆ 1,625 (16.4%) were found guilty at the magistrates' court; and
- ◆ 7,474 (75.4%) were committed for trial at the Crown Court.

For cases that completed (by an acquittal or guilt) at magistrates' court or Crown Court in 2011, just under two thirds were convicted. Only 40 of 1,200 offenders convicted of rape received a non-custodial sentence. The average custodial sentence length for the remaining offenders was eight and a half years.

The bulletin can be found at
<http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/mojoverview/>

Operation Yewtree Report into Allegations of Sexual Abuse

The National Society for the Prevention of Cruelty to Children (NSPCC) and the Metropolitan Police Service (MPS) have published 'Giving Victims a Voice', a joint report into sexual allegations made against Jimmy Savile.

Operation Yewtree is led by the MPS Child Abuse Investigation Command, investigating under three strands: 'Savile', 'Savile plus others' and 'others'. The report deals only with the 'Savile' strand. It notes that the volume of allegations coupled with many victims not being known to each other paints a compelling picture of widespread sexual abuse by a predatory sex offender; victims are therefore referred to as 'victims' not 'complainants'.

The reported incidents of offending by Savile were between 1955 and 2009. The report notes that during the reported peak period of offending (1966 to 1976) police investigation of such crimes was more basic and lacked specialist skills. The report draws on the experiences of victims, to allow exploration of how police and other bodies can learn to be more effective in resolving and preventing serious crime relating to predatory abuse behaviour. The report makes it clear that Savile was 'hiding in plain sight', and for a variety of reasons his victims did not feel they could come forward. Some of those who did had their accounts dismissed by people in authority.

The role of the NSPCC in Operation Yewtree is examined. The NSPCC Helpline service was available, the report states that the online and telephone access available, along with the opportunity for those using it to remain anonymous, was 'critical to enabling public contact and to empowering people to overcome their reluctance to speak out' and led to an efficient and effective flow of information to police. The public perception of the NSPCC as an independent child protection agency enhanced the effectiveness of the NSPCC Helpline.

Outcomes of Operation Yewtree highlighted in the report include:

- ◆ A significant rise in reports of past sexual abuse of children, believed to be the result of media coverage about Savile and increased confidence of victims that they will be listened to;
- ◆ Better understanding of reluctance to confront abusive behaviour;

- ◆ Reinforcement of the need to operate rigorous safeguarding and vetting procedures;
- ◆ Corroboration of the benefits of an integrated approach between police, the NSPCC and others;
- ◆ The opportunity to use the integrated approach to develop best joint working practices; and
- ◆ Increasing awareness of the importance of support for victims and the role charities play in this.

Conclusions drawn in the report include that institutions and agencies which may have missed past opportunities to stop Savile's activities must do all they can to make their safeguarding procedures as robust and rigorous as they can be. Those who come forward must be given a voice, with swift action taken to verify accounts of abuse.

The report can be found at
http://www.nspcc.org.uk/news-and-views/our-news/child-protection-news/13-01-11-yewtree-report/yewtree-report_wda93650.html

Ministry of Justice Consultation on Transforming Rehabilitation

The Ministry of Justice has launched a consultation 'Transforming Rehabilitation - a revolution in the way we manage offenders'. The consultation is open until 22 February 2013 and is aimed at groups including police.

The consultation document explains the Government's intended approach to reducing reoffending and delivering better value for money. The proposals for reform include:

- ◆ Introducing a 'rehabilitation revolution' which pays independent providers to reduce offending;
- ◆ The extension of 'payment by results' across rehabilitative services in the community; and
- ◆ Changes to the way probation services are commissioned and delivered.

The core proposals are:

- ◆ That the majority of community-based offender services will be open to competition, to create a diverse range of providers. The role of protecting the public and other core functions will be retained by the public sector probation service;

- ◆ The commissioning of providers to deliver community orders and licence requirements who will be paid by results according to achieving reductions in reconviction rates;
- ◆ To extend rehabilitative provision to offenders released from short sentences of less than 12 months. Statutory supervision will be extended to ensure offenders engage with intervention programmes;
- ◆ The public sector probation service will retain responsibility for public protection, including the management with police forces of Multi-Agency Public Protection Arrangement cases;
- ◆ Providers and the public sector will work closely in partnership. Arrangements to be put in place to ensure providers notify the public sector probation service where a risk of serious harm escalates;
- ◆ A national commissioning function will commission delivery across geographic areas so the system is efficient, with contract packages aligned to Police and Crime Commissioner and local authority boundaries. The public sector probation service will be organised to allow efficiency in delivery of its services;
- ◆ Integration with local partnerships will be designed into the system, with providers required to evidence how they will sustain local partnerships as part of their bid;
- ◆ Using competition between services and driving down of unit costs to achieve efficiencies which will fund transition services and ensure the new system is affordable.

Questions are asked of respondents about how the reform programme can be extended. Views are sought about whether improving the alignment and co-ordination of cross-Government expenditure on offenders, along with strengthening incentives for joint working, could lead to improved rehabilitation outcomes. The consultation document asks whether, and where, more flexibility could be built into the community sentencing framework, to give providers discretion to tailor interventions to the offender as their risks and needs change over time.

The detailed issues which will be discussed with current practitioners, sentencers and potential providers are set out in the consultation document. These include contract specification, supply chain management, legislative changes, system design and equality implications. Engagement events will be held to gather views on these issues. Respondents to the consultation are also invited to send their views on these issues.

The consultation is open for responses until 22 February 2013. Responses can be sent by post, email or using the online survey. Consultation events are being held to provide opportunity to discuss the proposals. Details of the consultation and how to respond or attend a consultation event can be found at <https://consult.justice.gov.uk/digital-communications/transforming-rehabilitation>

Consultation on Prosecuting Cases Involving Communication by Social Media

The Crown Prosecution Service has published a consultation paper 'Interim Guidelines on Prosecuting Cases Involving Communications Sent by Social Media'. The interim guidelines came into effect on 19 December 2012.

The interim guidelines cover offences which may be committed by reason of the nature or content of a communication, where that communication is sent by social media. This includes communications constituting credible threats, communications specifically targeting individuals, communications amounting to a breach of a court order, and grossly offensive, indecent, obscene or false communications. Where social media merely facilitates the commission of a different substantive offence, the guidelines advise prosecutors to proceed under that substantive offence.

The consultation seeks views on the interim guidelines and also asks questions on:

- ◆ The guideline advising prosecutors to assess the content of the communication and the course of conduct to distinguish what type of offence has been committed;
- ◆ The high threshold identified in the guideline for bringing a prosecution for an offence under section 127 of the Communications Act 2003 or section 1 of the Malicious Communications Act 1988; and
- ◆ The public interest factors the guidelines identify as suggesting a prosecution is unlikely to be necessary and proportionate.

The consultation is open until 13 March 2013. The consultation paper and information on how to respond can be found at http://www.cps.gov.uk/consultations/social_media_consultation_index.html

Ministry of Justice Call for Evidence on Law Commission Functions

The Ministry of Justice has issued a call for evidence as part of its triennial review of the Law Commission. The review's aims are to provide robust challenge of the necessity of the Law Commission in form and function and to review whether the Law Commission's control and governance arrangements comply with good practice principles. Organisational performance and effectiveness are not considered in the review.

The intended audience of the call for evidence includes police, and responses are encouraged from bodies with knowledge or experience of the work of the Law Commission.

Submissions to the review can be made by post, email or using the review's online questionnaire. Submissions must be received by 5pm on 6 February 2013.

The call for evidence along with information on how to respond can be found at <https://consult.justice.gov.uk/digital-communications/law-comm-triennial-review>

Ministry of Justice Circular: Victim Surcharge for Offenders Under 18

The Ministry of Justice (MoJ) has issued a circular 'Victim Surcharge - Approach to Ordering Payment from Offenders under 18'. The Circular was published on 18 January 2013 for immediate implementation, and is addressed to criminal justice bodies including police.

The Circular reminds judges and magistrates of their powers under section 137 of the Powers of Criminal Courts (Sentencing) Act 2000 when an offender under the age of 18 is ordered to pay a Victim Surcharge. This section can apply to make a parent or guardian liable for the Victim Surcharge; in some cases this has occurred where the parent or guardian was the victim of the offence.

The Circular reiterates that a court has the discretion not to order the parent or guardian to pay the Victim Surcharge where, having regard to the circumstances, it would be unreasonable to do so. It states that the court might consider this to be the case where the parent or guardian was the victim. While the Victim Surcharge would still have to be ordered, courts could consider alternatives such as deferring the payment time until such time as the offender may be able to pay it themselves, such as once they have turned 18.

The Circular can be found at
<http://www.justice.gov.uk/downloads/legislation/bills-acts/circulars/victim-surcharge-circular.pdf>

Report on Standards in Public Life

The Committee on Standards in Public Life (the Committee) has published its fourteenth report, 'Standards matter; a review of best practice in promoting good behaviour in public life'.

The report sets the context of why ethical standards are important, and reminds readers of the context of the Committee's first report which set out the seven standards of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The report draws a parallel between the high levels of public concern about poor behaviour in public life then, and today. It highlights changes in service delivery structures such as police and crime commissioners, noting that some of those now responsible for public service delivery may face ethical dilemmas of a kind they have never previously encountered.

The seven principles of public life are revised by the committee. The principles apply to anyone who works as a public-office holder including police, and all those in other sectors delivering public services. The report states that public-office holders are responsible for specifying particular and proportionate ethical standards in the contracts they let on behalf of the public sector. This will ensure private contractors know that the principles apply to them and can understand how they are supposed to behave.

The report describes best practice for maintaining adherence to the principles and high standards of behaviour. It outlines methods which organisations can use to embed ethical practice, including the importance of cultivating an open culture to identify problems and of monitoring standards of behaviour. Leadership, in terms of senior management exemplifying high standards of behaviour, is assessed as particularly important; the Leveson Report is highlighted as recognising the filtering effect behaviour can have from the top down.

The requirement for regulation is examined. The report notes that individuals and organisations are responsible for maintaining high standards, however there is a need for ethical, independent external scrutiny. Public confidence in standards is considered; public office holders 'can and should' influence levels of public confidence by:

- ◆ Seeking to improve their own trustworthiness;
- ◆ Establishing and promulgating, or signing up for robust mechanisms for detecting and dealing with wrongdoing, and acknowledge and deal with problems fairly, effectively, rapidly and openly; and
- ◆ Working to increase public understanding of their role and work.

The Committee identifies current risks to ethical standards in public life. New ways of delivering public services, including following the introduction of police and crime commissioners (PCCs), are identified as a risk. The report states there is a less coherent picture of how accountability and ethical standards will be maintained in relation to outsourcing certain policing functions. Commissioners of public services should give thought to how to maintain high standards and promote the seven principles of public life. Contracts should be used to promote high standards; without specifying ethical requirements in contracts the committee finds it unlikely that private companies will drive up ethical standards. The impact of austerity is considered and the report says care should be taken to ensure there is no undermining of standards nor damage to confidence and trust. A risk of budget cuts undermining individual's commitment to public service values is identified.

The behaviour and conduct of police is identified as a specific risk, with the committee recognising public concern arising from recent cases including evidence emerging from the Leveson Inquiry, the Independent Hillsborough Panel Report, police collusion in the murder of the Belfast lawyer Patrick Finucane in 1989 and the dismissal of the Chief Constable of Cleveland Police for gross misconduct. The report explains that police and politicians were the two groups subject to the greatest degree of negative comments during the committee's focus groups. The committee states its intention to monitor the extent to which PCCs are open and accountable, and how successfully ethical risks arising from their role are addressed.

The committee concludes that standards have improved significantly in many areas, but in some areas doubts remain. Significant public scandals continue to regularly occur. Organisational and personal responsibility remains for maintaining high standards. Active management and vigilance is required rather than new principles, codes or regulators.

The committee's report can be found at
http://www.public-standards.org.uk/OurWork/Latest_News.html

Commission on a Bill of Rights Final Report

The Commission on a Bill of Rights (the Commission) has published its final report 'A UK Bill of Rights? The Choice Before Us'. The Commission was established by Government to investigate the creation of a UK Bill of Rights that incorporates and builds on the obligations under the European Convention on Human Rights (ECHR) and protects and extends liberties.

The final report explains the background of human rights in the UK and the creation and development of the ECHR and the European Court of Human Rights (ECtHR). The Commission ran two

consultations and the responses to these are summarised in the report.

The Commission explains that in drawing its conclusions preliminary points need to be made:

- ◆ The Commission's terms of reference presupposed the UK continuing to adhere to the ECHR and the ECtHR;
- ◆ Members of the Commission had sharply differing views on whether the ECtHR has departed from the principles of international law by offering interpretations of the law which signatories rejected or would not have accepted;
- ◆ The Commission considered all responses to its consultations but has applied its judgement to the key issues rather than being bound by a numerical majority in responses, as this may not be representative of public opinion generally; and
- ◆ The Commission notes that its conclusions are not a final judgement on the issues as a final decision should be made as part of a wider constitutional debate and public consultation.

Before drawing conclusions the Commission noted that consideration of a UK Bill of Rights risks upsetting the constitutional balance of the UK. Opposition to a Bill was heard particularly in Scotland, but also in Wales and Northern Ireland, on the basis that not only was there no demand, but that Westminster could not impose this on other countries in the UK. The Commission agreed that it would be essential to wait for the outcome of the Scottish Referendum on independence before making final decisions on a Bill of Rights. If a UK Bill of Rights were to be promoted then careful consultation, respect for different political and legal traditions throughout the UK, and reconsideration of the devolution Acts by a Constitutional Convention would all be necessary. This wider constitutional review would be the most desirable forum for consideration of a UK Bill of Rights.

The report sets out the conclusions of the majority of the Committee members, the conclusions of the minority of members and the conclusions in respect of additional rights, other key provisions, responsibilities, and reform of the ECtHR.

The majority of members of the Committee concluded that:

- ◆ There is a strong argument in favour of a UK Bill of Rights;
- ◆ The UK is in a minority in not having a written constitution or bill of rights, and this matters in the context of a lack of public understanding or 'ownership' of the Human Rights Act 1998 (the HRA);
- ◆ There is a role for better public education in the present human rights structures, but members believe this is unlikely to change

public perceptions in any significant way and there is a strong argument for a 'fresh beginning';

- ◆ A UK Bill of Rights would provide greater opportunity to protect against the possible abuse of rights by the state and its agents; and
- ◆ A UK Bill of Rights could promote greater ownership of rights if written in language which reflects the history and heritage of the UK countries.

Two of the Committee members reached different conclusions, representing the minority. These conclusions are:

- ◆ Agreement that future developments should wait until after the Scottish Referendum on independence and should then be considered as part of wider consultation on a Constitutional Convention;
- ◆ It is not yet the time to conclude that future process should take the form of a UK Bill of Rights; options should be left open for consideration by a Constitutional Convention including maintaining the status quo, developing a Bill of Rights and building new constitutional arrangements to incorporate the rights in the HRA;
- ◆ A premature move to a UK Bill of Rights would be contentious and may have unintended implications for devolution arrangements, all proposals must reflect the changing allocation of powers between the countries in the UK;
- ◆ Their views align with the majority of consultation respondents in overwhelming support for keeping the HRA, recognising that in Scotland, Wales, Northern Ireland and large parts of England there is no 'ownership' issue;
- ◆ There is concern that some people support the Bill of Rights as a method to withdraw from the ECHR, which is a risk due to the UK's historical and continuing role in the ECHR; and
- ◆ Openness to the idea of a Bill of Rights provided the members could be satisfied that it carried no risk of promoting other aims such as the diminution of existing rights and the withdrawal from the ECHR.

The Committee does not make firm conclusions on the addition of other rights into any Bill of Rights, though it notes no objection to the addition of rights and suggested a right to equality and non-discrimination would be a natural extension worthy of consideration. It considered that the legislature, not the judiciary, should decide on the inclusion of socio-economic and environmental rights, and expressed belief that it should be open for the devolved powers to legislate for specific additional rights. The Committee would like to

see consideration of a right to administrative justice, to ensure that rights relating to the civil and criminal justice system are not threatened by political pressures.

In considering the mechanisms for operation of a UK Bill of Rights, the committee suggested that these should be broadly similar to those in the HRA. It noted that the ability of senior courts to issue declarations of incompatibility strikes a sensible balance between courts' duty to uphold the law and Parliamentary sovereignty; a UK Bill of Rights should retain a similar mechanism. The definition of 'public authority' should be considered, due to the growing prevalence of outsourcing public services to private and third sector providers.

The Committee considered the inclusion of responsibilities in a UK Bill of Rights. It believes that human rights exist for all whether or not they are 'deserving'; rights should not be made conditional on the exercise of responsibilities. A UK Bill of Rights should emphasise the formulation of existing ECHR Articles which make rights subject to exceptions necessary for, among other things, protecting the rights and freedoms of others. The award of damages as a remedy should be discretionary and should take into account the conduct of the applicant. Consideration should be given to including a statement setting out the importance of mutual responsibilities to one another.

Prior to the issue of this report the Committee had given interim advice to Government on reform of the ECtHR. The report notes the 'Brighton Declaration' of April 2012 which called for the ECtHR to concentrate on the most serious violations, for the tightening of admissibility criteria and for refinement of the selection process for judges. The Committee welcomes this but states further reform but presses for further reform as initially advised.

The report can be found at
<http://www.justice.gov.uk/about/cbr>

Joint Committee Report on Draft Communications Data Bill

The Joint Committee on the Draft Communications Data Bill (the Joint Committee) has published its report on the Draft Communications Data Bill (the Draft Bill). The Draft Bill intends to bring the law up to date by ensuring communications data is available to the police and security and intelligence agencies in the future, in response to concerns that communications data from new technology is less available and harder to access.

The Joint Committee accepts in its report that there is a case for legislation to provide law enforcement agencies with further access to communications data. However it asserts that the Draft Bill

'pays insufficient attention' to the duty to respect the right of privacy and goes further than necessary in providing access to communications data. It notes that Clause 1 of the Draft Bill gives the Home Secretary wide powers to issue secret notices to Communications Service Providers (CSPs) which would require them to retain and disclose possibly limitless categories of information; these powers should be limited to the categories needed now.

Parliamentary scrutiny is necessary should the power require extension in the future, or should the power to request data be given to more authorities. The report recommends a procedure for achieving this. Primary legislation is necessary if data is needed for wider purposes than legislated for at present.

The report makes recommendations for improving the current regime, including:

- ◆ Improving the safeguards on authorising access to data, for example by enshrining the Single Point of Contact process in law;
- ◆ Strengthening the roles of Information Commissioner and Interception of Communications Commissioner;
- ◆ Amending the definition of 'communications data' to fit current needs including a hierarchy of data based on the degree of privacy intrusion associated with its access; and
- ◆ Tackling jurisdictional problems faced by overseas network providers, such as by expediting the use of Mutual Legal Assistance Treaties.

It notes there is a gap between the data which might be available, but currently is not. Part of this gap is attributed to a capability issue, with law enforcement agencies lacking the ability to make effective use of available data. The report recommends addressing this issue as a priority while noting additional expenditure will be necessary to achieve this.

Further consultation is recommended before re-drafting legislation, which gives CSPs and others including law enforcement agencies a narrower set of proposals on definitions and gives clarity on the aims and expected use of any new powers.

Where public authorities misuse communications data, the report recommends that:

- ◆ The power under section 77 of the Criminal Justice and Immigration Act 2008 should be exercised, to allow the imposition of custodial sentences for an offence contrary to section 55 of the Data Protection Act 1998 (knowingly or

recklessly obtaining, disclosing or procuring the disclosure of personal data without the consent of the data controller); and

- ◆ Including within the draft Bill a specific offence of wilful or reckless misuse of communications data, punishable in appropriate cases by imprisonment.

The report can be found at

<http://www.parliament.uk/business/committees/committees-a-z/joint-select/draft-communications-bill/news/full-publication-of-report/>

Notes



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