College of Policing

Digest

February 2014

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.

The College of Policing aims to provide fair access to learning and development for all. To support this commitment, the Digest is available in alternative formats on request. Please email **digest@college.pnn.police.uk** or telephone +44 (0)1480 334568.

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Overview

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 extent to which liability is 'strict' for the offence under section 3(1) of the Dangerous Dogs Act 1991
- whether the particular nature of past or future unlawful conduct must be demonstrated in forfeiture proceedings under the Proceeds of Crime Act 2002.

We look in detail at:

- the latest Learning the Lessons bulletin
- the Joint Committee on Human Rights report on the Terrorism Prevention and Investigation Measures Act 2011
- new guidance for chief officers on the destruction of DNA samples
- the launch of a revised recorded crime outcomes framework.

We also look at:

- a new project set up to research violence, exploitation and radicalisation
- the collaboration of the College of Policing with Essex Police on a trial of body-worn video cameras
- the current consultation on Her Majesty's Inspectorate of Constabulary's inspection programme
- the latest statistical bulletin on crime in England and Wales
- the new Police Innovation Fund.

The progress of proposed new legislation through parliament is examined and relevant Statutory Instruments are summarised.

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Legislation

Bills before parliament 2013/14 – progress report

On **8 May 2013**, the Queen's Speech unveiled the legislative programme for the 2013-2014 parliamentary session. The progress of Bills can be found at: http://services.parliament.uk/bills/

Anti-Social Behaviour, Crime and Policing Bill

This Bill is divided into 13 separate parts. Final amendments were made to the Bill during the third reading on **27 January 2014**. The Bill will now go to the Commons for consideration of Lords amendments.

Part 1 – Injunctions to prevent nuisance and annoyance

This is a purely civil injunction, available in the county court for adults and the youth court for 10 to 17-year-olds. It will allow a wide range of agencies, including the police, local councils and social landlords to deal quickly with anti-social individuals, nipping behaviour in the bud before it escalates.

Part 2 – Criminal Behaviour Orders

This will be available following a conviction for any criminal offence and can address the underlying causes of the behaviour through new, positive requirements. Breach will be a criminal offence with a maximum penalty of up to five years in prison for adults. It will demonstrate to the offender and the community the seriousness of the breach.

Part 3 – Dispersal Powers

This will enable officers to require a person who has committed, or is likely to commit, anti-social behaviour to leave a specified area and not return for up to 48 hours.

Part 4 – Community Protection Notices

This part is split into three chapters covering:

- Community Protection Notices
- Public Spaces Protection Orders
- Closure orders.

These new powers will be faster, more effective and available to more agencies to use to tackle a whole range of place-specific anti-social and criminal behaviour.

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Part 5 – Recovery of possession of dwelling-houses: anti-social behaviour grounds

Anti-social behaviour can have a negative impact on neighbourhoods and communities. Social landlords have a key role in tackling anti-social behaviour. Provisions in the Bill introduce a new ground for possession to speed up the process in the most serious cases of anti-social behaviour, bringing faster relief to victims and communities.

Part 6 – Local involvement and accountability

The new Community Remedy will give victims of low-level crime and anti-social behaviour a say in the punishment of the offender out of court, while the Community Trigger will give victims of persistent anti-social behaviour the right to demand action where they feel their problems have not been dealt with.

Part 7 – Dangerous dogs

The proposals in the Bill are part of a wider package of measures to reduce dog attacks and make owners more responsible for their dogs. These powers sit alongside anti-social behaviour powers in the Bill that can be used to tackle dangerous dogs and irresponsible owners.

Part 8 – Firearms

The Bill targets those who sell or transfer prohibited weapons or ammunition by introducing a new offence and increased sentencing powers for the courts.

Part 9 – Forced marriages

The Bill makes two changes to tackle forced marriage more effectively:

- criminalising forcing someone to marry
- criminalising the breach of Forced Marriage Protection Orders.

Part 10 – Policing

The Bill builds on government reform of the policing landscape towards greater freedom for the police to take local decisions that fit the needs of the areas they serve. It will enhance the integrity and professionalism of the police by extending the powers and remit of the Independent Police Complaints Commission and the College of Policing.

The Bill will also make changes to the body that reviews police pay by abolishing the Police Negotiating Board and replacing it with an independent Police Remuneration Review Body. The new body will make evidence-based recommendations on police remuneration.

In addition, Clause 124 introduces Schedule 6, which makes amendments to the port and border security powers in Schedule 7 to the Terrorism Act 2000 and the associated Schedule 8 to that Act which governs the detention of persons detained under Schedule 7.

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Part 11– Extradition

The measures on extradition proposed in the Bill are designed to improve the efficiency of the operation of the Extradition Act 2003 and follow from a review of the UK's extradition arrangements by Rt. Hon Sir Scott Baker.

Part 12 – Criminal justice and court fees

The Bill will improve the speed and efficiency of the criminal justice system's response to low level offending by enabling the police to prosecute uncontested minor offences of shoplifting. It will extend the scope of the statutory witness protection scheme to cover other vulnerable individuals. It will also ensure that offenders sentenced to custody will contribute to the costs of supporting victims by removing the power of magistrates' courts to add additional days to a sentence of imprisonment instead of the victim surcharge.

Part 13 – General

This part contains minor and consequential amendments to other enactments and general provisions including provisions in respect of the parliamentary procedure to be applied to orders and regulations made under the Bill.

Offender Rehabilitation Bill

This Bill makes a number of changes to the release arrangements set out in the Criminal Justice Act 2003 for offenders serving custodial sentences of less than 12 months and those serving sentences of between 12 months and two years. The Bill is designed to ensure that all adult offenders serving custodial sentences can be supervised on release for at least 12 months.

This Bill has now completed all its stages in the House of Commons. It will now return to the House of Lords for consideration of amendments.

In particular, the Bill:

- applies arrangements for release under licence to offenders serving fixed-term custodial sentences of more than one day but less than 12 months
- introduces new supervision arrangements for offenders released from fixed-term custodial sentences of less than two years so that all offenders are supervised in the community for at least 12 months
- creates a new court process and sanctions for breach of supervision requirements for offenders serving fixed-term custodial sentences of less than two years
- introduces a requirement that offenders sentenced to an extended determinate sentence must have an extension period of supervision of at least one year

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- introduces for offenders released from custody a new drug appointments condition for the licence or supervision period, and expands the existing drug testing requirement for licences to include Class B drugs and makes it available during the supervision period
- introduces a requirement that any juvenile who reaches his or her 18th birthday before being released from the custodial element of a Detention and Training Order (DTO) should spend at least 12 months under supervision in the community.

The Bill also makes some changes to the arrangements for community orders and suspended sentence orders. In particular, it:

- creates a new 'rehabilitation activity requirement' for community orders and suspended sentence orders and in doing so abolishes the 'supervision' and 'activity' requirements
- introduces new arrangements for the designation of 'responsible officers' in relation to the supervision of offenders and makes clear that the responsibility for bringing breach action lies with the public sector
- introduces new arrangements for offenders serving community orders or suspended sentence orders to obtain permission from the responsible officer or the court before changing their place of residence.

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Statutory Instruments

SI 2013/2981 The Crime and Courts Act 2013 (Commencement No. 6) Order 2013

Section 57 of the Crime and Courts Act 2013 (public order offences) came into force on **1 February 2014**.

Section 57 amends section 5 of the Public Order Act 1986, to decriminalise the use of insulting words or behaviour within the hearing or sight of someone likely to be caused harassment, alarm or distress.

SI 2013/3183 The Criminal Procedure (Amendment No. 2) Rules 2013

Rule 7 of these Rules shall come into force on **24 February 2014** and rules 4, 5, 6, 8 and 9 on **7 April 2014**.

These Rules make the following amendments to the Criminal Procedure Rules 2013, SI 2013/1554:

Part 2 Rule 2.2 is amended to substitute the new title of the Lord Chief Justice's Practice Directions.

Part 5 Rule 5.8 is amended to require the publication of specified details of cases due to be heard.

Part 9 Rule 9.2 is amended to supply the procedure the court must follow where either section 51(7) or section 51A(6) of the Crime and Disorder Act 1998 applies (defendants jointly charged with an offence that can be tried either in the Crown Court or in a magistrates' court and who are dealt with on the same occasion). Rule 9.7 is amended in consequence.

Part 12 New rules are inserted to supply the procedure in proceedings under Schedule 17 to the Crime and Courts Act 2013, which provides for deferred prosecution agreements.

Part 76 Rule 76.7 and the note to that rule are amended to provide for costs orders to be made in connection with deferred prosecution agreements, and rule 76.1 and the note to that rule are amended in consequence.

The notes to rules 62.5 and 62.9 are amended to include references to the names by which the types of contempt of court with which each rule deals are sometimes described elsewhere.

The note to rule 76.4 is amended to take account of the Costs in Criminal Cases (General) (Amendment) (No 2) Regulations 2013, S.I. 2013/2830.

The new Part 12 comes into force on **24 February 2014** and the other changes made by these Rules come into force on **7 April 2014**.

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2013/3236 The Youth Justice and Criminal Evidence Act 1999 (Commencement No. 13) Order 2013

This Order is made under sections 64(4) and 68(3) of the Youth Justice and Criminal Evidence Act 1999 (the Act).

Section 28 provides that where a witness's video-recorded evidence in chief has been admitted under section 27 of the Act the court may also direct that the video-recorded cross-examination of that witness may also be admitted as evidence.

Article 2 makes provision about the coming into force of section 28 of the Act on **30 December 2013**, but only for the purposes of proceedings before the Crown Court sitting at Kingston-upon-Thames, Leeds, or Liverpool, and to cases in which a vulnerable witness is eligible for assistance either where he or she is under the age of 16 at the time of the hearing, or by virtue of section 16(1)(b) of the Act, owing to an incapacity.

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New legislation

Defamation Act 2013 comes into force

The Defamation Act 2013 came into effect on **1 January 2014**. The new law seeks to ensure effective protection for freedom of expression and encourages open and honest public debate, whilst still protecting those whose reputation has been unjustly attacked. For the first time, a new serious harm threshold has been set to help people understand when claims should be brought and discourage trivial claims which harm freedom of speech and take up the court's time unnecessarily.

The Act contains a series of measures that include the following:

- Protection for those who are publishing material on a matter of public interest where they reasonably believe that publication is in the public interest
- Introduction of a new process which should help a person who feels an online statement is defamatory to resolve the dispute directly with the person who has posted the statement. This offers better protection for the operators of websites hosting user-generated content, provided they follow the new process. New regulations have been introduced to ensure that this process operates effectively
- A single publication rule to prevent repeated claims against a publisher about the same material
- Action to address libel tourism by tightening the test for claims involving those with little connection to England and Wales being brought before our courts.

Section 5 of the Act introduces a new defence to an action for defamation

brought against the operator of a website hosting user-generated content where the action is brought in respect of a statement posted on the website. To benefit from the defence the operator must comply with a process prescribed in Regulations on receipt of a notice of complaint about allegedly defamatory material that has been posted on the website. The Ministry of Justice has published guidance on section 5 of the Act and the relevant regulations, which is available at **https://www.gov.uk/government/publications/defamation-act-2013-guidance-and-faqs-on-section-5-regulations**

The Act can be found in full at **http://www.legislation.gov.uk/ukpga/2013/26/contents/enacted**

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Case law

Crime

Symieon Robinson-Pierre v R [2013] EWCA Crim 2396

A hearing in the Court of Appeal (Criminal Division) on appeal from Inner London Crown Court before Lord Justice Pitchford, Mrs Justice Nicola Davies DBE and The Recorder of Leeds His Honour Judge Collier QC. The full case report can be found at **http://www.bailii.org/ew/cases/EWCA/Crim/2013/2396.html**

On **30 July 2012** the appellant faced trial on an indictment containing four counts in each of which he was charged with an offence of being the owner of a dog which caused injury while dangerously out of control in a public place, contrary to section 3 (1) and (4) of the Dangerous Dogs Act 1991. The original indictment contained one count naming five victims. The indictment was amended to create four counts with a different victim named in each count; but all arose out of a single incident which occurred on **22 March 2012**. The judge directed the jury to return a verdict of not guilty in respect of count 1, following a submission of no case to answer. The trial continued upon the remaining counts.

The jury returned guilty verdicts upon counts 2 – 4 and the appellant was subsequently sentenced to concurrent terms of 22 months imprisonment and disqualified from owning a dog for a period of 5 years. In addition, the appellant pleaded guilty to a summary charge that he was in possession of a prohibited dog, contrary to section 1(3) and (7) of the 1991 Act. No additional penalty was imposed in relation to this.

The appellant sought to appeal against his conviction on the ground that section 3 of the Dangerous Dogs Act 1991 does not permit the conviction of an owner or person in charge of a dog who did not by his act or omission cause the dog to be in a public place or cause the dog to become dangerously out of control. It was common ground at trial that the dog escaped from a private dwelling due to the deliberate act of a third party. The issue on appeal was to what extent liability for the offence under section 3(1) is 'strict'?

Evidence at trial

Police officers attended at the appellant's home address, 36 Albert Square, London E15, on **22 March 2012** for the purpose of executing a search warrant. The officers entered the house following use of an enforcer to break down the front door. The house was silent. By inference the appellant and another person were inside the house, probably on the first floor. Almost

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immediately after the officers entered, the appellant's pit bull terrier ran down the stairs from the first floor and attacked PC Corderoy as he was withdrawing towards the door. Other officers inserted an asp in to the dog's mouth and twisted it thereby succeeding in freeing PC Corderoy from the dog's grip.

As PC Corderoy was escaping, within the confines of the house and front garden, the dog bit and latched onto the arm of PC Merritt. Other officers continued to strike the dog with their batons in an attempt to free him. Two males, one of whom was the appellant, then appeared from the house. PC Bush shouted at them to call off the dog and DC Clarke shouted something similar. One of the men said, 'We can't mate, there is nothing we can do'. The other said, 'You should have knocked. Why didn't you knock?' PC Bush wrenched the dog's mouth from PC Merritt's arm, and then backed away towards the insecure gate between the front garden and the pavement. Before he could get away, the dog attacked him by gripping his arm. PC Bush continued onto the pavement with the dog still attached while officers attempted to assist him with their batons. The dog did not back away until he reached the police van. Then the dog bit the back of PC Garrard's leg when he attempted to run away. PC Garrard jumped over a wall into a neighbouring front garden, but the dog stayed with him and maintained its grip. The dog did not free him until PC Garrard managed to scramble onto the top of a car. PC Bones arrived at the scene and attempted to give assistance to PC Garrard. As he was doing so the dog bit his hand. Each of the officers attacked by the dog suffered injuries.

A local resident recorded the later parts of the incident on his mobile phone video camera. The witness described the scene as the most horrific he had ever witnessed. The camera footage was made available to the jury. The dog was eventually brought under control and destroyed by armed officers who were called to the scene. The appellant was arrested shortly afterwards and stated, 'It's not the dog's fault. You should have knocked. I would have let you in', in response to the caution.

Following a submission of no case to answer made on behalf of the appellant, the Judge directed that a verdict of not guilty be returned in relation to the attack on PC Merritt contained in count 1, firstly on the basis that the dog was dangerously out of control in a private rather than a public place. Secondly, it was submitted that the unforeseen actions of the police officers breaking into the house was the sole cause of the dog's escape. On the evidence, the appellant had not permitted the dog's escape to a public place or caused it to be dangerously out of control. The Judge concluded that the offence was one of strict liability which did not require proof of any action or inaction on the part of the owner to bring about the consequences either of the dog being in a public place or of the dog being dangerously out of control. Counts 2 – 4 were left to the jury.

The appellant did not give evidence in his own defence and no evidence was called on his behalf.

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Directions of law

In his directions of law, the trial judge emphasised the strict nature of the offence:

> Parliament has said that the dog owner commits a criminal offence if his dog is dangerously out of control in a public place and if it injures someone the aggravated offence is committed. That is what is alleged here. There is no requirement…for the prosecution to prove that the dog owner was at fault in any way, either in opening the door to let the dog out or letting go of his lead or not tethering him properly or the muzzle being inadequate in some way. Parliament has decided that the danger from dangerous dogs is such that it is necessary to impose criminal liability on a dog owner simply if his dog is in a public place and is dangerously out of control.
>
> …Parliament, no doubt, thought that if you are the owner of such a dog you must ensure that the dog does not get out into a public place and be dangerously out of control in any circumstances. If it does get out and does go into a public place and behave like that, whether through the owner's fault or failure **or through no fault of the owner but through the inaction or action of somebody else**, it simply does not matter, if it is your dog and if it is dangerously out of control in a public place then you are criminally responsible for that. [Emphasis added by the Court of Appeal]

The Dangerous Dogs Act 1991

Section 3 Keeping dogs under proper control

(1) If a dog is dangerously out of control in a public place –

(a) the owner; and

(b) if different, the person for the time being in charge of the dog

is guilty of an offence, or if the dog while so out of control injures any person, an aggravated offence, under this sub-section.

(2) In proceedings for an offence under sub-section (1) above against a person who is the owner of a dog but was not at the material time in charge of it, it shall be a defence for the accused to prove that the dog was at the material time in the charge of a person who he reasonably believed to be a fit and proper person to be in charge of it.

(3) If the owner or, if different, the person for the time being in charge of a dog allows it to enter a place which is not a public place but where it is not permitted to be and while it is there –

(a) it injures any person; or

(b) there are grounds for reasonable apprehension that it would do so

he is guilty of a offence, or if the dog injures any person, an aggravated offence, under this sub-section.

> (4) …A person guilty of an aggravated offence…is liable –
>
> (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.… '

Section 10(2) defines the term 'public place':

> …'public place' means any street, road or other place (whether or not enclosed) to which the public have or are permitted to have access whether for payment or otherwise and includes the common part of a building containing two or more separate dwellings.

Section 10(3) defines the term 'dangerously out of control':

> For the purposes of this Act a dog shall be regarded as dangerously out of control on any occasion on which there are grounds for reasonable apprehension that it will injure any person, whether or not it actually does so, but references to a dog injuring a person, or there being grounds for reasonable apprehension that it will do so, do not include references to any case in which the dog is being used for a lawful purpose by a constable or a person in the service of the Crown.'

The appellant's argument

Counsel for the appellant accepted that section 3(1) creates a strict liability offence requiring no mens rea. However, he asserted that the minimum requirement for a conviction under section 3(1) is that the defendant caused or contributed to the prohibited event by his voluntary act or omission. It was submitted that the appellant did nothing to bring about the presence of a dangerous dog in a public place and should not have been in a worse position than if he had not been at home when the police broke in, thereby releasing the dog.

Counsel for the appellant quoted the following passage from the case of Bezzina, Codling and Elvin [1994] 99 Cr App R 356, submitting that there may be a principled solution revealed by the court's response in Bezzina to the hypothetical example of a passing child who provokes a dog by poking it with a stick:

'But it seems to us that Parliament was entitled to do what in this piece of legislation we find that it has done, namely to put the onus on the owner to ensure, if that is likely to happen, he takes steps which are effective to ensure that it does not, either by keeping the dog on a lead or keep the child away from the dog or whatever may be appropriate in the circumstances.'

With reference to this, counsel for the appellant submitted that the court in Bezzina recognised that there may be circumstances in which the intervention of a third party should be anticipated and control nonetheless maintained in order to ensure that the dog does not become

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dangerous. The circumstances envisaged by the court in Bezzina included the fact that the owner (or person in charge) was as a matter of fact in charge and, therefore, in a position to take the steps required to keep the dog under control. Counsel submitted that the court was acknowledging, obiter, that the least requirement of the section was an act or omission by the owner that helped to bring about the prohibited event.

The Court of Appeal in the instant case stated that there was no dispute that section 3(1) of the Dangerous Dogs Act 1991 creates an offence that does not require mens rea. Counsel for the appellant's argument was that the intervention of a third party may go to causation of the state of affairs prohibited by Parliament. The act of a third party without the defendant's knowledge or consent which is the sole cause of that state of affairs should excuse the defendant because he neither did nor omitted to do something that brought about the prohibited state of affairs.

In short, the appellant argued that the offence under section 3(1), in the absence of clear words to the contrary, should be read as requiring proof of some act or omission of the defendant that brought about the presence in a public place of a dog dangerously out of control.

The respondent's argument

Counsel for the respondent submitted that, by application of well known authority, Parliament plainly intended to create a strict liability offence in section 3(1) of the 1991 Act. The offence is committed by the owner of a dog which is dangerously out of control in a public place, and an aggravated form of the offence is committed if while out of control in a public place the dog injures another person. It was asserted that there is no requirement for mens rea and no other construction of the section is reasonably available. It was stated that 'how a dog ends up in the factual scenario [by] which the actus reus engages liability is entirely irrelevant'.

Discussion

The Court of Appeal stated that while there is no doubt that section 3(1) creates a strict liability offence, the question remains whether Parliament intended liability to be absolute in the sense that criminal liability may follow notwithstanding the absence of any act or omission of the defendant contributing to the prohibited state of affairs. It went on to state that it did not accept that it is the law of England and Wales that Parliament cannot provide for criminal liability when there is no causative link between the act or omission of the defendant and the prohibited event. To the extent that counsel for the appellant sought to derive a principle of law that even in the case of 'absolute' liability the defendant must be shown to have caused the prohibited state of affairs, the court disagreed with him, stating that such a conclusion would ignore the justification for the acceptability of some offences of strict liability.

The court discussed Professor David Ormerod's book 'Smith & Hogan's Criminal Law' (13th edition) in which in chapter 4.3 he recognises a category of offences in which the actus reus is represented by a state of affairs, namely that there is no act or omission by, or state of mind of, the defendant that must be established, merely the existence of the prohibited state of affairs.

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The court quoted Professor Ormerod's conclusion that:

> As a matter of principle, even 'state of affairs' offences ought to require proof that D either caused the state of affairs or failed to terminate it or to act in order to do so when it was within his control and possible to do so.

However, the court stated that it had no doubt that the supremacy of Parliament embraces the power to create 'state of affairs' offences in which no causative link between the prohibited state of affairs and the defendant need be established. It stated the legal issue as being, not whether in principle such offences can be created but whether in any particular enactment Parliament intended to create one.

The Court of Appeal accepted and confirmed that section 3(1) of the Dangerous Dogs Act 1991 creates an offence of strict liability. It then considered to what extent is liability for the offence strict?

The court first noted that responsibility to prevent the state of affairs prohibited is placed on the owner and, if different, the person 'for the time being in charge of the dog'. In the event that the prohibited state of affairs arises, both commit an offence under section 3(1). However, section 3(2) provides a defence available to an owner of the dog who was not also at the time in charge of the dog, that the person who was in charge of the dog was 'a person whom he reasonably believed to be a fit and proper person to be in charge of it'. As such it was stated that it was not Parliament's intention to render the owner of the dog absolutely liable in all circumstances for the existence of the prohibited state of affairs should it arise and however it arose. An owner who was not in charge of the dog would not commit an offence unless he had failed to place the dog in the charge of a fit and proper person. The underlying assumption was that in the normal course of things someone would be in charge of (and therefore in a position to control) the dog so as to prevent the prohibited state of affairs arising and, in the absence of such a person, the owner would be responsible.

Section 3(3) provides an offence which arises from the presence of the dog in 'private' space where it does not have permission to be. The offence may be committed either by the owner if he is in charge of the dog, or by the person who is in charge of the dog, where the defendant allows the dog into the prohibited space and, once there, the dog injures any person or there are grounds for reasonable apprehension that it will injure someone.

The court acknowledged the use of the verb 'allows' in subsection (3) in contrast to its absence in subsection (1), but stated that the underlying assumption is that the owner or some other person is in charge of the dog and therefore in a position to exercise control over it. It went on to state that the Divisional Court has previously held that the use of the word 'allows' does not imply the need for proof of mens rea, only that the act or omission of the defendant contributed to the prohibited state of affairs.

The Court of Appeal stated that on analysis of section 3, it did not consider that Parliament intended to create an offence without regard to the ability of the owner (or the person in charge of the dog) to take and keep control of the dog. The court stated that there must be some causal

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connection between having charge of the dog and the prohibited state of affairs that arises. It went on to state that section 3(1) requires proof by the prosecution of an act or omission of the defendant (with or without fault) that to some (more than minimal) degree caused or permitted the prohibited state of affairs to occur.

The Court of Appeal allowed the appeal against conviction on the basis that with regard to the attack on PC Bush (count 3), the trial judge concluded that it was enough that the latter part of the attack occurred in a public place and that the dog was dangerously out of control and caused injury. As a result of this, counsel for the appellant was bound by this ruling and as such could not submit to the jury that the appellant had neither done nor omitted to do something that contributed to the dog's presence in a public place. It was the view of the Court of Appeal that the following facts raised for decision by the jury the issue whether the appellant had done or omitted to do anything that contributed to the dog being dangerously out of control in a public place:

- the dog was not on a leash
- it was securely enclosed in a locked house
- under the authority of a warrant the police lawfully broke open the door to gain admission
- the dog attacked the police inside the house; and
- it continued to attack as they retreated into the road.

The Court of Appeal stated that by his directions to the jury, the trial judge effectively withdrew this issue from the jury. The Court of Appeal was of the view that had the jury been directed to consider whether any act or omission of the appellant had made a more than minimal contribution to the presence of the dog in a public place, dangerously out of control, it was likely they would have concluded that he did – by his failure to make any attempt after its escape to take the dog under his control before it entered a public place. However, in reaching the conclusion he did as to the nature of the offence, the trial judge did not direct the jury to consider the issue; rather, he told them that if they were sure the dog was dangerously out of control in a public place any act or omission of the appellant was irrelevant to the question whether he was guilty of the offence. In these circumstances the appellant chose not to give evidence and as such was not given the opportunity to meet an assertion that by his act or omission after the escape from the house he caused or contributed to the prohibited state of affairs. As a result of this the Court of Appeal could not, in these circumstances, be sure that the verdicts of the jury were safe.

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Financial investigations

The Queen on the Application of: Abdolmalek Bavi and Snaresbrook Crown Court and Thames Valley Police (Interested Party) [2013] EWHC 4015 (Admin)

A hearing in the High Court of Justice Queen's Bench Division Administrative Court before The Honourable Mr Justice Coulson. The full case report can be found at **http://www.bailii.org/ew/cases/EWHC/Admin/2013/4015.html**

Introduction

The Claimant, Mr Abdolmalek Bavi, sought judicial review of the decision of Snaresbrook Crown Court dated **18 January 2007**, forfeiting the sum of £18,500 in cash which was seized from Mr Bavi at the Reading Festival in August 2005. Mr Bavi sought not only the quashing of the original decision but also its substitution with a fresh decision that the money should be returned.

Procedural History

Mr Bavi was apprehended on **27 August 2005** on his way into the Reading Festival. Thames Valley Police searched his rucksack and seized £18,500 in cash. Reading Magistrates' Court ordered the forfeiture of that sum under section 298(2)(a) and/or section 298(2)(b) of the Proceeds of Crime Act 2002 (POCA) on **7 March 2006**. Mr Bavi's appeal was heard at Snaresbrook Crown Court and was dismissed on **18 January 2007**. Mr Bavi's application for permission to bring a judicial review claim regarding that decision was refused on **1 December 2008**. His application for permission to appeal was dismissed as being wholly without merit on **30 April 2009**.

In March 2010, Mr Bavi was first diagnosed as suffering from Asperger's Syndrome and Social Phobia and OCD. As a consequence of this diagnosis, the Court of Appeal granted Mr Bavi permission to rely on fresh evidence. This took the form of an expert's report from a psychiatrist, Dr Lachlan Campbell. This resulted in the decision of **28 November 2012**, in which the Court of Appeal allowed Mr Bavi's appeal. He was permitted to amend his applicant's notice, his judicial review claim form, his statement of facts and grounds of review. Mr Bavi was given permission to appeal against the decision refusing permission to apply for judicial review on **1 December 2008**, and was given permission to apply for judicial review of the decision of Snaresbrook Crown Court.

The legal framework

The relevant sections of POCA are:

242. Property obtained through unlawful conduct

(1) A person obtains property through unlawful conduct (whether his own conduct or another's) if he obtains property by or in return for the conduct.

(2) In deciding whether any property was obtained through unlawful conduct—

(a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct,

(b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.

…

298. Forfeiture

(1) While cash is detained under section 295, an application for the forfeiture of the whole or any part of it may be made –

(a) to a magistrates' court by the Commissioners of Customs and Excise or a constable

…

(2) The court…may order the forfeiture of the cash or any part of it if satisfied that the cash or part –

(a) is recoverable property, or

(b) is intended by any person for use in unlawful conduct.

The court discussed the issue of the extent, if at all, to which the police or the relevant authority had to show that the money which was the subject of the forfeiture proceedings arose from any particular unlawful conduct. In Muneka v Commissioner of Customs and Excise [2005] EWHC 495 (Admin) it was held that the Crown did not have to show any particular criminal conduct. Subsequent decisions have indicated that, for money laundering allegations for example, it was not enough for the prosecution merely to rely a single possession of a large quantity of cash, and the Crown had to identify at least the class of crime in question.

All the previous authorities on this point were considered by the Divisional Court in Carol Angus v UKBA [2011] EWHC 461 (Admin). In that case, Nicola Davies J held that 'by reference to Section 242(2)(b) of PoCA, in a case of cash forfeiture, a customs officer does have to show that the property seized was obtained through conduct of one of a number of kinds each of which would have been unlawful conduct.' The High Court stated this to be the authoritative approach to be adopted under section 298(2)(a), namely that unlawful conduct which is said to have generated the money in question needs to be identified. It was noted that there is no direct authority on the operation of section 298(2)(b) ('intended' unlawful conduct).

An issue which arose in several of the cases discussed on this point concerned the credibility of the person who is the subject of the forfeiture claim. The general approach was stated as being if the person in question was found to have lied about the origins of the money or its intended

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use, then the court was entitled to draw an inference from that lie that the money had been obtained through, or was intended for use in, unlawful conduct. Subject to the requirement that any unlawful conduct said to have generated the money in the first place has to be identified, it was stated by the High Court that such as approach is reasonable, and in accordance with the purposes of POCA.

The decision of the Crown Court

Setting out the court's conclusions, the recorder stated:

> We have considered carefully the evidence and the submissions of counsel and asking ourselves questions (1) is the £18,500 recoverable property, that is property obtained through unlawful conduct or, (2) is the £18,500 intended by Mr Bavi for use in unlawful conduct?
>
> We have concluded on the balance of probabilities that it is, for the following reasons: firstly, the circumstances in which the cash was found does not suggest that it was legitimate money. Such a large sum of legitimate cash is not carried to a large music festival which is attended by large crowds where the risk of theft and loss is far greater than merely carrying cash in the street. The cash was insecure in a backpack in a camera bag and wrapped in plain paper. On the balance of probability this does not suggest this money was for use for a legitimate purpose. The fact that Mr Bavi looked out of place and tried to minimise the amount of money he had on him when first detained by saying he had just a few thousand pounds suggests that he had something to hide. We do not need to speculate why he was there at the festival with that money, but we do not believe he was there to buy a van, furniture or get his teeth fixed.
>
> Mr Bavi has changed his story repeatedly. He initially told PC Clements that the money had come from a building job. He signed the officers' notebook to that effect. This suggests a singular job. He then changed his story to suggest the cash was from a number of building jobs. He then suggested that it was from the loan and savings. We do not know exactly what happened to the loan, but we are not persuaded that it was represented in the money that he had with him on that day. Nor do we think that the money he had with him on that day represented his savings, even if he had any.
>
> As for the intended use for the money, he said it was for a vehicle and the surplus for redecorating his home, getting furniture and for the dentistry work. We do not accept this explanation. It is highly unlikely that a Reading Festival goer would carry that amount of money with him or indeed have the time or inclination to purchase a motor vehicle, still less items of furniture, materials for redecoration and certainly not dentistry. We conclude on the balance of probability that the intended use of this money was for an unlawful purpose.

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The issues on the application

The three separate reasons why the decision of the Crown Court should be quashed as raised by the Claimant were as follows:

- **Ground 1:** that the decision was made in ignorance of established and relevant fact, namely the claimant's medical condition, giving rise to an error of law
- **Ground 2:** that the court erred in law in deciding that, pursuant to section 298(2)(a), the police did not have to show that the cash had been obtained through unlawful conduct of a particular kind or kinds; and
- **Ground 3:** that the court erred in law in deciding that, pursuant to section 298(2)(b), the police did not have to show that the cash was intended for use in unlawful conduct of a particular kind or kinds.

In addition, the claimant submitted that the court should exercise its discretion under section 31 of the Senior Courts Act 1981, and substitute its own decision for the decision in question. The issue of substitution was stated to be the real point between the parties.

Ground 1: The medical evidence

Counsel on behalf of Thames Valley Police, as the interested party, did not challenge the application to quash the decision of the Crown Court on the first ground. It was accepted that the fact that, at the time of the hearing, neither side were aware of Mr Bavi's medical condition, gave rise to an error of law and as such the decision should be quashed. However Ground 1 was considered in detail because there remained a dispute as to whether this ground or either of the others, justified the substitution of the original decision with one of the court's own.

The High Court considered the judgment of the Court of Appeal regarding the medical evidence concerning Mr Bavi and agreed with that analysis. The critical point was identified as being that Mr Bavi's account of how he had the £18,500 and what he intended to do with it had to be considered against the medical evidence and, in particular, the symptoms of his condition which include:

- Submerging himself in a fantasy as to his capability, present occupation and plans for the future
- A compromised capacity to form reason judgments about his abilities and prospects
- A deep-seated tendency to preserve his self esteem when answering questions by a third party and maintaining and account consistent with his fantasies
- Great difficulty in forming rational judgments to risk and lacking any real appreciation of how to quantify and address risks
- An absence of inter-personal bonds between himself and other people

The High Court stated that it was in no doubt that Ground 1 justified the quashing of the decision of the Crown Court and that counsel for Thames Valley Police was right to have made that concession.

Ground 2: Section 298(2)(a)

The court noted the clear shift in emphasis as to how the authorities should approach unlawful conduct as the alleged source of the cash in forfeiture cases. Counsel for Thames Valley Police agreed that if there was a re-hearing in the Crown Court, the court would be bound to apply the case of Angus, rather than Muneka, however he argued that it would be wrong for the original decision of the Crown Court to be opened up in this way, particularly because the Court of Appeal did not address that issue. He stated that the principle of finality meant that this issue was not open to the Claimant.

The High Court disagreed with this. The court stated that the case of Bestel and Others [2013] EWCA Crim 1305 is authority for the proposition that, in POCA cases, decisions made under the law as it was then understood should not be disturbed unless substantial injustice would follow. However, the instant case was one which had already been 'disturbed' as a result of the decision of the Court of Appeal. Therefore the doctrine of finality was stated not to apply – there would either be a re-hearing or a substitution. It went on to state that at that re-hearing or as part of the deliberations when considering substitution, the High Court was bound to consider the law as set out in Angus. Anything else would be absurd. For all these reasons, the High Court stated that, in the unusual circumstances of this case, Ground 2 was a further reason to quash the decision of the Crown Court.

Ground 3: Section 298(2)(b)

The High Court stated at the outset that if there was to be a further hearing de novo in the Crown Court, counsel for Mr Bavi could argue that specific unlawful conduct must be shown for the purposes of section 298(2)(b) as well. However, the court declined to quash the decision on Ground 3 alone for a number of reasons. Firstly, it was an academic point since the decision was already being quashed as a result of Grounds 1 and 2. Secondly, it was agreed that there is no new authority, such as Angus, which suggests that the Crown Court may have been in error in approaching the law in a particular way. Thirdly, it seemed to the court that there may be a difference between what must be shown in relation to past unlawful conduct which has therefore given rise to the money which was forfeited and intended unlawful conduct, which by its nature, cannot yet have happened. With regard to intended unlawful conduct, the court stated that it may be that the requirement on the part of the authorities to show particular intended conduct is less stringent. It was said that it might make a nonsense of subsection (b) if the authorities had to show with precision what the unlawful conduct was that the defendant intended to carry out in the future.

The court derived some support from the recent judgment in Fletcher v Chief Constable of Leicester Constabulary [2013] EWHC 3357 in which distinctions were made between the requirements of subsections (2)(a) and (2)(b).

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Substitution

Two issues arose on this application. The first was whether, without the error(s), there would have only been one decision which the court or tribunal could have reached. The second was whether, if that was the case, the court should exercise its discretion in favour of substitution.

The High Court stated that in its view, on any rehearing, if the medical evidence was accepted by the court, and if there was no evidence concerning the unlawful conduct beyond that which was adduced last time, then this forfeiture application would be very likely to fail and the money returned to Mr Bavi. However, the court could not dismiss those caveats as fanciful, and as such could not say that, without Grounds 1 and 2, there would have been only one decision which the Crown Court could have reached in 2007.

The court accepted that, on its face, the medical evidence appeared to provide a complete answer to the lies and inconsistencies contained in Mr Bavi's account. However, it was stated that unless and until it was formally agreed in full, that evidence needed to be tested in the ordinary way. It was said that that issue could only be determined in the Crown Court, having heard and evaluated that evidence.

It was said to be a remarkable feature of the police's case against Mr Bavi that that they appeared to go out of their way not to identify any particular unlawful conduct on his part and instead were said to be content to rely on his lies and his inconsistencies as proving the case against him (although it was accepted that there were also some documents before the court). It was stated that in the light of Angus, such an approach is no longer appropriate, certainly in respect of unlawful conduct said to have generated the money.

The court could not eliminate the possibility that, because of Muneka, this was a deliberate omission on the part of the police. It was said that if there is to be a de novo hearing, to consider the medical evidence, and the issue of unlawful conduct under the law as it currently stands, then it would be appropriate for both sides to have the opportunity to present further evidence on the question of unlawful conduct. This would allow the Crown Court to weigh up the medical condition and the evidence of unlawful conduct, and reach a conclusion, applying the new approach to section 298, as to whether the police had made out the case.

Likely disposition

The High Court considered that the most likely disposition of this case at the Crown Court hearing would be as follows:

- Dr Campbell's evidence would be accepted, which would almost certainly provide a complete explanation for the lies and other inconsistencies in Mr Bavi's evidence.
- Since there was never any real evidence of particular unlawful conduct said to have generated the cash (as opposed to unanswered questions about what happened to the loan), and because the police would now have to be much more specific

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about this, it was considered to be likely that the first aspect of the forfeiture proceedings would simply fall away. As things stood, the court considered the police case under section 298(2)(a) would be unlikely to succeed.

- With regard to the intended unlawful conduct and the fact that the police seemed anxious not to identify what the intended unlawful conduct might have been, the court was of the view that inevitably, the police would have to say that the intended unlawful conduct related to the buying and selling of drugs. The court stated that if the medical evidence was accepted, particularly in relation to his predilection for saving and for hoarding, then there would appear to be an innocent explanation for his odd conduct, rather than any intended involvement in drugs. If that was the case, that would be the end of the police case under section 298(2)(b) as well.

The High Court stated in short, that if the detail of the medical evidence was to be accepted or agreed, then in the absence of something entirely new demonstrating unlawful conduct (which would lead to plenty of questions as to why it had not arisen before), it considered that these forfeiture proceedings would be likely to fail. Whilst, the court could not substitute its own decision for that of the Crown Court, and as such a re-hearing would be necessary, the court urged Thames Valley Police, as the interested party to reconsider its position and, in the absence of anything new, to give careful consideration to releasing the money back to Mr Bavi without further delay. The court ordered an expedited rehearing.

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Policing practice

Crime

Statistical bulletin: Crime in England and Wales, year ending September 2013

The Office for National Statistics has published a quarterly bulletin presenting the most recent crime statistics from the Crime Survey for England and Wales (CSEW – previously known as the British Crime Survey) and police recorded crime. In addition, it draws on data from other sources to provide a more comprehensive picture of crime and disorder, including incidents of anti-social behaviour recorded by the police and other transgressions of the law that are dealt with by the courts but are not covered in the recorded crime collection.

Key points

In accordance with the Statistics and Registration Act 2007, statistics based on police recorded crime data have been assessed against the Code of Practice for Official Statistics and found not to meet the required standard for designation as National Statistics. Assessment Report 268 on this can be found on the UK Statistics Authority website.

The Office of National Statistics will continue to publish and provide commentary on police recorded crime data pending consultation about user needs for such data in the light of the forthcoming inspection of data integrity being carried out by Her Majesty's Inspectorate of Constabulary.

Latest figures from the CSEW estimate that there were 8 million crimes against households and resident adults in the previous twelve months, ending September 2013. This was based on interviews with a nationally representative sample. This was a 10% decrease compared with the previous year's survey.

The reduction of crime measured by the CSEW was led by statistically significant decreases in both household (vehicle and property related) crime, which decreased by 10% and personal crime (theft from the person and violent), which was down 9%.

The CSEW also estimated there were 859,000 crimes experienced by children aged 10 to 15 resident in the household population.

3.7 million offences were recorded by the police in the year ending September 2013, a decrease of 3% compared with the previous year.

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There were decreases across most of the main categories of police recorded crime. However, there are signs of increasing upward pressures in some offence types in the police recorded crime data, such as a 4% increase in shoplifting and a 7% increase in theft from the person. Continuing falls in high volume crimes such as other types of theft offences and criminal damage mean that overall levels of crime have continued to fall.

The police recorded a 17% increase in the number of sexual offences, likely to be due in part to a continuation of a 'Yewtree effect', whereby a greater number of victims have come forward to report historical sexual offences to the police.

201,035 fraud offences were recorded by the police and Action Fraud based on reports from members of the public, in the year ending September 2013, representing a volume increase of 34%. This increase should be seen in the context of a move towards improved recording of fraud following a move to centralised recording by the police. In addition, there were 292,814 reports of fraud to the National Fraud Intelligence Bureau from industry bodies.

The full report can be found at **http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/period-ending-september-2013/index.html**

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Diversity

Mental health staff to support police

A pilot scheme aimed at reducing reoffending will place mental health nurse and other mental health professionals at police stations and courts in ten areas of England. The nurses will identify people with problems, support police on patrol, assist officers responding to emergency calls and give advice to staff in police control rooms.

Under the scheme people with mental ill health, substance misuse problems and learning disabilities who are suspected of committing an offence and come into contact with the police will have an assessment of their health needs, including mental health, which will be shared with police and the courts. Such information will help to ensure decisions made about charging and sentencing take into consideration an individual's health needs and will also mean treatment is given sooner which will help stop re-offending.

The pilot scheme will join the police and court systems up with mental health services in the following areas:

- Merseyside
- London
- Avon and Wiltshire
- Leicester
- Sussex
- Dorset
- Sunderland and Middlesbrough
- Coventry
- South Essex; and
- Wakefield.

If successful, the pilot will be extended across the rest of the country by 2017.

Further information can be found at **https://www.gov.uk/government/news/extra-funding-for-mental-health-nurses-to-be-based-at-police-stations-and-courts-across-the-country**

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Police

New crime statistics framework to be launched

The revised recorded crime outcomes framework came into force in Humberside on **1 January 2014** with the aim of addressing the fact that under the current system, 70% of crimes are recorded as 'undetected', giving the wrong impression that nothing was done by the police, even though full investigations were carried out. This followed a trial of the new framework by four police forces in 2013. It will be introduced across the rest of England and Wales from April.

The new framework will replace the 'undetected' category with a set of more detailed explanations of how the crime was dealt with. These more detailed explanations might be particularly useful, for example, with regard to historic sex abuse allegations where the alleged perpetrator has died, or a key witness does not want to give evidence. Previously such cases would have been recorded as 'undetected', whereas under this new framework there will be a more detailed category for them.

This broader set of information can be used by the public to hold the police to account and as a basis for improved engagement between communities, the police and police and crime commissioners.

The revised recorded crime outcomes framework reads as follows:

- Charged/summonsed
- Cautioned
- Taken into consideration
- The offender has died (all offences)
- Penalty notices for disorder
- Cannabis warning
- Community resolution
- Prosecution not in the public interest (CPS) (all offences)
- Formal action against the offender is not in the public interest (police)
- Prosecution prevented – named suspect identified but is below the age of criminal responsibility
- Prosecution prevented – named suspect identified but is too ill (physical or mental health) to prosecute
- Prosecution prevented – named suspect identified but victim or key witness is dead or too ill to give evidence

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- Evidential difficulties victim based – named suspect not identified: the crime is confirmed but the victim either declines or is unable to support further police investigation to identify the offender
- Named suspect identified: victim supports police action but evidential difficulties prevent further action
- Named suspect identified: evidential difficulties prevent further action; victim does not support (or has withdrawn support from) police action
- Prosecution time limit expired: suspect identified by prosecution time limit has expired
- Investigation complete: no suspect identified. Crime investigated as far as reasonably possible – case closed pending further investigative opportunities becoming available.

Implementation will be phased to give forces enough time to make the necessary changes to their IT systems. All forces will be required to provide data by April 2015.

Further information can be found at **https://www.gov.uk/government/news/public-to-get-a-more-detailed-picture-of-how-crimes-are-investigated**

Home Office fund for police innovation announced

Every police force in England and Wales will receive a share of the Police Innovation Fund for projects aimed at transforming policing. The fund, worth up to £50 million a year, will be established from 2014/15, however ahead of its first full year of operation, the Home Office has made a precursor fund of £20 million available to police and crime commissioners in 2013/14.

Each of the 43 police forces in England and Wales was successful with at least one of the bids they submitted. Among the most innovative proposals were:

- Joint plans by Bedfordshire, Hertfordshire and Cambridge Police to bring coordinate their operational and organisational support such as IT. It is anticipated that this will save the three forces £23 million in four years. They will receive almost £2 million of funding.
- Northamptonshire Police's plan to share buildings and services with the county's fire service. This will receive £620,000.
- Kent and Essex Police's bid for funding towards their Visual Media Evidence and Intelligence Programme which will use video evidence obtained at domestic violence or public order incidents to be analysed using modern software techniques. This will receive £440,000.

A full list of police forces and the projects which will receive this funding can be found at **https://www.gov.uk/government/news/home-offices-20-million-reward-for-police-innovation**

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Consultation on Her Majesty's Inspectorate of Constabulary's Inspection Programme 2014/15

2014/15 will see some major changes both to the scope and pattern of HMIC inspections, and to how the results of such work are communicated to the public. The most prominent of these changes is the introduction of a new, annual programme of all-force inspections, which will first report in its entirety in autumn 2015. Fieldwork will begin in late summer 2014 and an interim assessment will be provided in November 2014.

This programme will be developed and implemented by HMIC alongside the conducting of its national thematic inspections, joint inspections, commissions from the Home Secretary and local policing bodies, and inspections of other national law enforcement agencies.

To reflect this change, the consultation document published by HMIC is different to those issued in previous years. In contains an overview of all the inspections either continuing or already committed to over the period, but focuses consultation questions on two areas:

- a list of proposed thematic inspections; and
- some specific areas of the all-force inspection programme.

This consultation opened on **27 January 2014** and closes on **17 February 2014**.

Responses should be emailed to: contact@hmic.gsi.gov.uk or can be sent in writing to:

Ann-Marie Field
Chief Operating Officer
HMIC
6th Floor Globe House
89 Eccleston Square
London
SW1V 1PN

The consultation document can be found at http://www.hmic.gov.uk/publication/hmic-inspection-programme-2014-15-for-consultation/

College of Policing supports evidence based trial of body-worn video cameras

As of **17 January 2014**, staff from the Research and Analysis Unit of the College of Policing will be collaborating with officers from Essex police who will be wearing body-worn video cameras to tackle domestic abuse.

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As part of the trial, 80 police officers will wear video cameras when responding to domestic abuse incidents, with the aim of testing whether body-worn cameras improve the evidence officers capture when attending such incidents. This will be carried out by researchers from the College of Policing by comparing the results of cases with video evidence with the results of cases with no such evidence.

The initial three month trial, which will be the largest to date, will serve as a flagship design for other forces to replicate and as such will benefit the wider police service as a whole.

Further information can be found at **http://college.pressofficeadmin.com/component/content/article/45-press-releases/678** and **http://www.essex.police.uk/news_features/other_stories/body-worn_video_camera_trial_t.aspx**

Early Deletion Process: Guidance to chief officers on the destruction of DNA samples, DNA profiles and fingerprints published

The Home Office has published 'Early Deletion Process: Guidance to Chief Officers on the Destruction of DNA Samples, DNA Profiles and Fingerprints under Section 63AB(2) of the Police and Criminal Evidence Act 1984' as a result of amendment to the Police and Criminal Evidence Act (PACE) by the Protection of Freedoms Act 2012 (PFA).

The amendments brought about by the PFA 2012 created a number of situations whereby the police are no longer able to retain fingerprints and DNA. In these circumstances the material will be deleted automatically. The fingerprints and DNA of convicted individuals can still be retained indefinitely but the amendments have introduced 'retention periods' for other circumstances in which DNA and fingerprints can be retained by the police only for specified periods prior to being automatically deleted.

In those circumstances in which the law allows Chief Officers to retain fingerprints and DNA until the expiry of a retention period, the 'Early Deletion Process', as set out in this guidance, will allow individuals to apply to have their biometric data deleted prior to the expiry of this period if certain criteria are met. Material may also be destroyed because there is no power under PACE to retain it. However this does form part of this guidance due to the fact that it is an automated process. There is a separate Exceptional Case Procedure for the removal of Police National Computer (PNC) records for which application should be made to the police force. Removal of a PNC record would result in deletion of any DNA profiles or fingerprints held from the person concerned.

Who can apply for 'Early Deletion'?

There are two specific circumstances in which individuals may apply for early deletion of such lawfully held material, providing they also satisfy the grounds for early deletion:

- Individuals with no prior convictions whose material is held after they have been given a Penalty Notice for Disorder (PND). A PND is not a conviction under PACE

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and does not involve any admission of guilt. It is expected to be very rare that the grounds for deletion are also met in these circumstances.

- Individuals with no prior convictions whose material is held as a result of being arrested and charged with a qualifying (serious) offence, but where they were not subsequently convicted. PACE allows for the lawful retention of DNA and fingerprints for three years in these circumstances. However, if the grounds for deletion also apply, an individual may apply to have their material deleted prior to the expiry of the retention period.

Core principles of Early Deletion

Chief Officers exercising professional judgment in respect of the early deletion of DNA and fingerprints should apply the following principles:

- The 'Early Deletion Process' will encompass the deletion of the DNA profile, DNA sample and fingerprints but not accompanying PNC records. Individuals seeking deletion of a PNC record should therefore write to their force separately and ask for it to be removed under the Exceptional Case Procedure. Policy on deletion of accompanying footwear impressions, custody photographs and any other material held is for forces to decide and is not covered by this guidance.
- No application for early destruction of lawfully held DNA and fingerprints should be considered until the investigation into that individual, and any subsequent proceedings, have concluded.
- It is for Chief Officers to exercise professional judgment in deciding whether early deletion is reasonable, based on all the information available.
- However the basis for early deletion under the Early Deletion Process will include the fact that there is substantial evidence that an individual is no longer a suspect for the offence for which they were arrested and charged, i.e. they have been eliminated from enquiries.
- If an individual has been the subject of more than one arrest then the principle will apply that retention is determined by considering all arrests. For example, if there are grounds for a Chief Officer to consider early deletion of DNA and fingerprints in respect of one event, but there has been another arrest of the individual where no such grounds exist, then the material should be retained.
- Requests for destruction will be only considered if they are made by the individual concerned, their legal representative, or a Member of Parliament acting on their behalf. In the case of vulnerable individuals or those under 18 years of age, requests may also be made by a parent or guardian.
- Chief Officers will consider applications on an individual basis and will not make decisions for groups of individuals, however defined.

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Grounds for Early Deletion

- **Unlawful arrest, arrest based on mistaken identity or material taken unlawfully.** If DNA or fingerprints have been taken in one of these circumstances Chief Officers must, with very limited exceptions, destroy that material whether the individual makes such a request or not.

In all other cases, the key considerations will be the nature of the incident that led to arrest and the nature of the evidence that has led to elimination of the individual as a suspect. The following are examples of circumstances or situations in which early deletion should be considered by a Chief Officer following an application:

- **No crime.** Where it is established that a recordable crime has not been committed in the incident that led to the arrest and charging of the applicant, the DNA and fingerprints should be deleted early.
- **Malicious/False allegation.** Where an individual has been arrested and charged, but subsequently the case has been withdrawn at any stage, and there is corroborative evidence that the case was based on a malicious or false allegation.
- **Proven alibi.** Where there is corroborative evidence that the individual has a proven alibi and as a result he/she is eliminated from the enquiry after being arrested and charged.
- **Incorrect disposal.** Where disposal options are found to have been administered incorrectly, and under the correct disposal there would be no power to retain material, the DNA and fingerprints should be deleted. Early deletion in these circumstances could also be the product of review within the criminal justice process, for example, the withdrawal of a caution.
- **Suspect status not clear at the time of arrest.** Where an individual is arrested at the outset of an enquiry where the circumstances and distinction between the offender, victim and witness is not clear, and after being charged the individual is subsequently eliminated as a suspect (but may be a witness or victim).
- **Judicial recommendation.** If in the course of court proceedings a Magistrate or Judge makes a recommendation that the DNA and fingerprints from an individual should be deleted.
- **Another person convicted of the offence.** Acquittal at court, or a conviction being overturned on appeal or by other judicial process, is not in itself grounds for early deletion as PACE allows material to be lawfully retained for three years if an individual is charged with, but not convicted of, a serious offence. Insufficient evidence to convict does not necessarily mean there is sufficient evidence for an individual to be eliminated as a suspect. However, if there is the conviction of another person for the offence then the Chief Officer may wish to consider early deletion of the DNA and fingerprints, providing there is no possibility of there being more than one offender.
- **Public interest.** Where a Chief Officer determines that there is a wider public interest to doso, the DNA and fingerprints may be deleted early.

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The Early Deletion process

An individual seeking early deletion, will be provided with a copy of this guidance and asked to provide proof of identity, and to confirm they are eligible to apply under paragraph 7 of this guidance. They will also be asked to provide details of the grounds on which they seek early deletion. The individual should return their completed application form to the ACPO Criminal Records Office (ACRO) at the address on the application form.

On receipt of the application, ACRO will check the PNC to confirm the individual is eligible to apply and their records have not already been deleted. Applications suitable to proceed will be sent to the force. On receipt of the required information from the applicant, the Chief Officer will need to establish the grounds for deletion and obtain relevant documentation.

The national unit responsible for early deletion (part of the ACRO) will maintain a record of all decisions and keep a library of precedents and any legal advice that has been commissioned in the course of consideration for early deletion of DNA profiles, and will be available to provide advice to Chief Officers on request.

The Chief Officer may make use of the police National Decision Model in reaching their determination. The Chief Officer will electronically submit an Early Deletion Decision Report to the Early Deletion Unit, whether or not they have agreed to the application.

ACRO may advise Chief Officers whether or not their proposed decision is consistent with determinations made in similar cases, but the final decision will rest with the Chief Officer who will act in accordance with this guidance in making their decision. ACRO will monitor the functioning of the Early Deletion Process, and seek to ensure that a consistent approach is applied.

On receipt of a decision to delete, ACRO will take the necessary action to ensure deletion of the DNA profile, DNA sample and fingerprints to the standards for data deletion set out by the Information Commissioner. Records held in case files may need to be retained under the Criminal Procedure and Investigations Act 1996.

Chief Officers should aim to reply to the applicant in writing with their decision within 28 days of receipt of the application containing the required information. Chief Officers must provide reasons for their decision when writing to applicants.

The guidance can be found at **https://www.gov.uk/government/publications/dna-early-deletion-guidance-and-application-form**

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Training and development

Learning the Lessons Bulletin 20: General

Learning the Lessons Bulletin 20, summarising investigations conducted by the Independent Police Complaints Commission (IPCC) or police forces where learning opportunities have been identified, has been published. This edition is of general content covering cases in the following areas:

- arrest and detention
- call handling
- child abuse; and
- custody.

The cases covered include the following:

Arrest and Detention – Control of a detained person

Officers uncovered information that a man waiting to stand trial for supplying class A drugs, had committed a further offence of conspiracy to import class A drugs. Officers began planning for his arrest.

The arrest was due to take place in another force area, and so a control room operator was asked to notify the other force. The other force had no record of receiving this information.

Taking into consideration the intelligence they had about the man, the officers assessed the risk the man posed to himself and the officers as low. They also did not consider that the risk had changed significantly since their last contact with him.

The officers did not check with the other force's intelligence bureau whether they had any useful intelligence to inform the risk assessment. Had they done so, they would have identified that the man had recently reported that he had been burgled and that keys to the cars they hoped to seize had been stolen.

Officers did not conduct a formal documented risk assessment on any of the people due to be arrested or their addresses. In addition, they did not consider there to be an added risk connected to the change in offence for which the man was due to be arrested. As the man was on bail, for supplying class A drugs, and being monitored by an electronic tag, it was unlikely that he would be bailed following this arrest.

Early one morning, four officers attended the man's home to arrest the man and search his property. Two of the officers had dealt with him when he was previously arrested and had some knowledge of his demeanour.

Officers took the man, who was alone in the house, into the kitchen area and arrested him.

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They conducted a dynamic risk assessment of the situation, taking into consideration the man's physical build, the fact that he was barefoot, naked under his dressing gown, sitting at a table, compliant with all requests and had never acted in a violent or confrontational way. As a result, it was concluded that handcuffing him would be an unjustified use of force.

While officers searched the property, the man was allowed to move around the kitchen and make himself cups of tea as he had on previous occasions when the police dealt with him.

Nearly two hours into the search, the man stood up, unnoticed by the officer. When the officer looked up, he noticed that the man was holding a large kitchen knife in his hand. The man then swung the blade round towards his own body, using two hands to plunge the knife into his own chest. Despite receiving first aid at the scene, the man died of his injuries.

Key questions for policy makers/managers:

- What steps has your force taken to ensure that all relevant information is shared with other forces during cross-border activity?
- Does your force's risk assessment process prompt officers to consider the psychological risk associated with an arrest?
- Does your force always advise officers attending search operations to deploy with the appropriate personal protective equipment?

Key questions for police officers/staff:

- If you are carrying out an arrest in another force area would you always ensure that you have access to any relevant information from the force working in that area to inform the risk assessment process?
- Do you always treat a suspect as an unknown risk no matter how many times they have been dealt with previously by the police?
- Do you always ensure that suspects are detained in the safest room of the house, to reduce the risk of harm to the officers and suspect?
- Do you always ensure that a suspect is not allowed to freely move around their home once detained to prevent them from being able to pick up concealed items such as weapons?

Action taken by this police force:

- The risk assessment in the record of search booklet has been amended to require the incident log, or equivalent incident reference numbers, from both forces, to be included for any cross-border enquiry. This is to prove that both parties have communicated.
- Learning from this case has been incorporated into a review of standard operating procedures, a new risk assessment toolkit and officer safety training.
- All officers involved in this case, and based in the same unit, have also been debriefed on the key learning.

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Custody – Detaining a young man

A 15-year-old man was arrested for robbery late one evening and was held in custody overnight, pending interview the next day.

Around lunchtime the next day, he was interviewed in the presence of his mother and his solicitor. After the interview, he was returned to his cell and the case was referred to the Crown Prosecution Service (CPS) for a charging decision.

Officers were aware that the young man suffered from attention deficit hyperactivity disorder (ADHD) and Asperger's syndrome, and that when he was arrested previously, he had been found carrying a penknife.

When officers observed the young man scratching at the cell floor and doors with an object they decided to enter the cell to remove it. As the man had learning difficulties, the officers felt it would be hard to communicate with him so decided to restrain him before carrying out a strip search.

Officers entered the cell, held his arms in a 'one-armed bar' (holding the wrist with one hand and lifting the arm up and away from the body, while placing the other hand on the shoulder), and also removed his trousers, assisted by a female detention officer. During restraint, the young man sustained an injury, and yelled out to officers in pain, before telling them where the item was.

The young man remained on the floor and continued to complain about the pain in his arm. One of the officers examined his arm but could not see any sign of an injury. The officers then left the cell, and twenty minutes later, one returned to check on the young man. The injury to the young man's arm was now more apparent and so an ambulance was called. The young man was later diagnosed with a fracture to his elbow.

Key questions for policy makers/managers:

- Are all your cells equipped with CCTV, which can be observed by officers and recorded?
- In a similar case, would you encourage your officers to bail the suspect, pending receipt of advice from the CPS, particularly where the detainee is young or vulnerable?
- Do you encourage officers to automatically bail detainees (where appropriate) if the CPS fails to meet the time limits agreed for providing advice?
- Have you provided your custody staff with training or guidance to help them understand the effects of ADHD, or Asperger's syndrome or other autism spectrum disorders on detainees, to help them communicate or act in an appropriate manner and minimise the stress to the detainee?
- Do you provide guidance to officers about strip searching, which includes who should be involved, how it should be carried out, and considerations to apply when strip searching young or vulnerable people?

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Outcomes for the officers involved:

- The custody officer received management action for allowing the strip search to be conducted in front of a female detention officer, for his failure to complete the custody record correctly following the search, and for leaving the detainee in the cell after he had sustained an injury.
- The detention officer left the force.

Call handling – Conducting a welfare check on a vulnerable man

Around 1300, police received a request from social services to conduct a welfare check on an 83-year-old man who had not been seen by his carers for two days.

A Computer Aided Dispatch (CAD) message was generated and the call was graded as 'significant'. In breach of standard operating procedures, a supervisor downgraded this to 'extended' (requiring a response within 48 hours), in order to enable her to make enquiries to identify additional information, such as details of any illnesses the man had, or information about any follow-up investigation already undertaken by social services. She planned to reassess the grading but was distracted and further enquiries were never made.

Shortly after the call was downgraded a police community support officer (PCSO) from the neighbourhood policing team was assigned to the call. After receiving no response from the intercom system, the PCSO used a fob key to enter the building through the communal doorway. When the officer received no response from within the property or from neighbours, an appointment was scheduled for someone else to attend the address at 1800. It was felt that if the man had been at a hospital appointment, for example, he would be back by this time.

When the CAD reappeared there was a delay in resourcing it as the officer initially assigned to it was assigned to deal with four other calls that were graded 'immediate'. The fourth call resulted in an arrest and as such the officers were then de-assigned from the CAD relating to the welfare check.

Around 0140 the next day, the supervisor scheduled an appointment for someone to attend the man's property later that morning. He felt that, at that time of the morning, it might be a couple of hours before officers could attend, and it would be inappropriate to force entry given the time of day.

An officer arrived around 0840 and tried to enter the building using the intercom. The officer was unaware that other officers had access to a fob key. He was unable to enter the building using the intercom.

An appointment was scheduled for that afternoon, however following a call from social services expressing concern that police had still not gained entry to the property, the officer who attended that morning was reassigned. He gained entry to the block and after speaking to neighbours, he forced entry and found the man had collapsed. The man was taken to hospital but died the next day.

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Key questions for policy makers/managers:

- How does your force ensure that these types of call do not get lost in the CAD system and are resourced in a timely manner?
- If a call gets lost in the CAD system or is left unresourced for a considerable period, does your CAD system send out automatic notifications to alert control room supervisors?
- Where specific teams have access to key fobs that allow entry through communal doorways in blocks of flats, are all officers aware of how to access them?
- What is in place in your force to make sure that once incidents like this are reported, they are searchable on computer systems, and supervisors can ensure they are properly resourced and handled effectively?
- Does your force have a memorandum of understanding with social services that sets out how welfare checks should be dealt with?
- In your area, when the expectation is that entry will be forced, do social services staff routinely attend immediately as part of a welfare check?
- Does your force provide officers with clear guidance on when entry should be forced where there is genuine fear for welfare?

Key questions for police officers/staff:

- If you need to gain access to blocks of flats, or housing for the elderly or vulnerable, do you check first to see if the care provider or relatives have a key to gain access?
- If you are unable to complete an assigned task due to other calls do you advise the control room and/or your supervisor so that the call can be reassigned?

Action taken by this force:

- The force has reminded all staff about the criteria for amending the grading of CADs.

Outcomes for the officers/staff involved:

- The supervisor who downgraded the call, resulting in the delay in conducting the welfare check, received a written warning.
- The officer who attended but did not gain entry through the communal door, received management action for his failure to make sufficient enquiries when carrying out the welfare check.

Child Abuse – Acting on a report of child abuse

A man called police to report that he had been sexually abused and raped between the ages of 10 and 15. He stated that he was reporting the matter now because he was concerned that the man involved was now abusing another young person.

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Officers raised a crime report in respect of the historic offences committed against the man, and a separate incident log was created to record the man's concerns about the young person. Officers decided early on that the matter should be referred to social services but no referral was ever made.

Despite the concerns raised, no immediate action was taken to safeguard the wellbeing of the young person at risk and to prevent them from being subjected to further abuse. The man responsible for the abuse was not arrested until some 59 days after the matter was first brought to the attention of the police.

Despite regular communications with the investigating officer, the supervisor responsible for that officer was unaware that there was an ongoing risk to a young person, because he had not read the incident log or properly performed his management and supervisory duties.

Force policy requires the duty detective inspector to be notified of all rape allegations within 48 hours and to review all undetected and/or no further action rape offences before finalisation (and in any case no later than 28 days after the initial reporting). The first review by a detective inspector in this case did not take place until nearly 12 weeks after the matter was initially reported to police.

Following his arrest, the man was granted street bail by the arresting officers and went on to have contact with the young person he had been abusing.

The man was subsequently charged with 19 charges of rape and sexual activity and the taking of indecent images of children. He pleaded guilty to all charges and received a 12-year prison sentence.

Key questions for policy makers/managers:

- How does your force ensure that officers do not overlook current risks when dealing with historic reports of sexual abuse?
- How does your force ensure that supervisory officers are kept informed of all similar allegations and are able to discharge their supervisory responsibilities and ensure that appropriate action is taken to respond to them?

Action taken by this force:

- The force has recognised that there is a need for enhanced safeguarding training across the force and work has been carried out to define the minimum training requirements for the different roles that exist within the force.

Outcomes for the officers/staff involved:

- The investigating officer received a final written warning for her failure to make a referral regarding the young man to social services and for the overall breakdown in communication between her and her supervisor regarding the safeguarding concerns relating to the young man.

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- The supervisor received management advice for his failure to read the crime report update that detailed the safeguarding concerns for the young man; for his failure to properly supervise the investigating officer; and for the overall breakdown in communication between him and the investigating officer in respect of the safeguarding concerns relating to the young man.

The bulletin can be found at **http://www.ipcc.gov.uk/reports/learning-the-lessons/bulletin-20-general-january-2014**

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Criminal justice system

Government response to 'Transforming youth custody: putting education at the heart of detention' consultation

The government has published its response to the consultation on transforming youth custody which ran from **14 February 2013** to **30 April 2013**.

The document addresses plans to introduce a new secure educational establishment which will put education at the heart of youth custody, known as a pathfinder Secure College. This will open in the East Midlands in 2017 and, if successful, will provide a blueprint for a network of such establishments across England and Wales, which will replace current youth custodial provision.

In addition, education provision in Young Offenders Institutions (YOIs) will be improved. A competition has been launched for new contracts which will seek to more than double the number of hours young people in YOIs spend in education each week. Currently, 15-17 year olds receive an average of only 12 hours contracted education per week.

Further, it sets out a commitment to improving the resettlement of young people, by way of suitable accommodation and an increase in those going into education, training or employment so that the progress made in custody is built upon on release, and fewer young people go on to reoffend.

The full response can be found at **https://www.gov.uk/government/consultations/transforming-youth-custody-putting-education-at-the-heart-of-detention**

Violence, exploitation and radicalisation to be examined in research project

A new partnership has been created to examine what works in tackling family violence, exploitation of vulnerable people and radicalisation.

The partnership, led by Nottingham University, consists of researchers from Skills for Justice and academics from the Universities of Birmingham, Liverpool and Aston who will work with five police forces, namely Derbyshire, Merseyside, Nottinghamshire, South Yorkshire and the West Midlands, to study practice methods from across England.

The partnership will carry out research and training to enhance the skills of the police to enable them to take an increasingly active role in research concerning crime and public safety.

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The College of Policing has awarded £50,000 to the partnership to undertake the work. It is hoped that this funding will be a catalyst for future collaborative research and learning between the police and academics.

Further information can be found at **http://www.sfjuk.com/violence-exploitation-and-radicalisation-to-be-examined-in-research-project/**

New campaign urges people to be 'Cyber Streetwise'

A new campaign has been launched by the Home Office, the Cabinet Office and the Department for Business as part of the government's National Cyber Security Programme to change the way people protect themselves from falling victim to cyber criminals.

The aim of the 'Cyber Streetwise' campaign is to change the way people view online safety and to provide the public and businesses with the skills and knowledge needed to assume control of their cyber security.

The key behaviours the campaign is focussing on changing are:

- using strong, memorable passwords
- installing anti-virus software on new devices
- checking privacy settings on social media
- shopping safely online
- downloading software and application patches when prompted.

The Cyber Streetwise campaign has been joined by a number of private sector partners who are providing support and investment, including Sophos, Facebook, RBS Group and Financial Fraud Action UK.

Further information can be found at **https://www.gov.uk/government/news/new-campaign-urges-people-to-be-cyber-streetwise**

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Parliamentary issues

Joint Committee on Human Rights report on the Terrorism Prevention and Investigation Measures Act 2011

The Terrorism Prevention and Investigation Measures Act 2011 (TPIM Act) abolished control orders and replaced them with Terrorism Prevention and Investigation Measures (TPIMs) which were said to have two aims:

- to protect the public from the risk posed by persons believed to have engaged in terrorism-related activity, but who can neither be prosecuted nor deported; and
- 'to ensure that people were better able to find evidence that would lead to prosecutions'.

Restrictions made as part of TPIMs include overnight residence at a specified address, GPS tagging, reporting requirements and restrictions on travel, movement, association, communication, finances, work and study. TPIMs are imposed by the Home Secretary but are subject to quasi-automatic review in the High Court.

As a result of the fact that the TPIMs regime is not subject to a requirement of annual renewal and provides for annual review only by the Independent Reviewer of Terrorism Legislation, the Joint Committee on Human Rights (JCHR) decided to undertake post-legislative scrutiny of the Act. This allows the committee to see how the regime is operating in practice, in terms of its human rights implications and with regard to the continued necessity for it.

The conclusions reached and recommendations made are as follows:

The operation of the TPIM Act

- The JCHR failed to find any evidence that TPIMs have led in practice to any more criminal prosecutions of terrorism suspects. The committee consider that 'TPIMs' is a misnomer because they are not investigative in nature, and so should be referred to as Terrorism Prevention Orders or something similar to reflect the reality that their sole purpose is preventive not investigative.
- The JCHR agreed with the Independent Reviewer that the very nature of TPIMs carries an inherent risk of the subject absconding, and that the reaction to such incidents must not be allowed to undermine the general principle that restrictions on each subject must be individually tailored to the risk they are assessed to present, in order to be proportionate.
- The JCHR recommend that the Government provide an 'open' version of the outcome of its internal investigation and review, to enable public and parliamentary debate about, and scrutiny of, the circumstances of the absconding of two TPIMs subjects.

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- With regard to the Home Secretary's statements that the two absconders do not pose a direct threat to the public of the UK, the committee question whether, if the sole purpose of a TPIM is to prevent travel to support terrorism overseas, the full range of restrictions available in a TPIM are justified, rather than specific measures to prevent travel, such as notification requirements or surrendering a passport.
- The JCHR recommend that the breadth of the vaguely worded power to impose TPIMs 'for purposes connected with protecting the public from a risk of terrorism' be kept under careful review by the Independent Reviewer.
- In view of the clear obligations in international law not to render a person stateless, the committee intends to subject any such policy proposal to the most rigorous scrutiny if it were to be brought forward.
- The committee remains of the view that a power to relocate an individual away from their community and their family (as existed under the previous control order regime) by way of a civil order, entirely outside the criminal justice system, is too intrusive and potentially damaging to family life to be justifiable.
- The JCHR recommended that the Government give further consideration to specific ways in which the impact on TPIMs subjects and their families can be mitigated, in the light of all relevant existing and any future recommendations of the Independent Reviewer.
- The committee agree with the Independent Reviewer's recommendation that the special advocates' longstanding concerns about closed material procedures in control order and TPIM proceedings be considered in a judicially-chaired forum. It recommends that such a process be initiated in relation to TPIM proceedings in the High Court, drawing on the positive experience of the process already conducted by Mr Justice Irwin in relation to the Special Immigration Appeals Commission.

The future

- The JCHR agree with the Independent Reviewer that serious restrictions on liberty, imposed outside of the criminal justice system, cannot be indefinite. The introduction of a statutory time limit on the duration of TPIMs fulfils a requirement of human rights law.
- The committee agree that the Home Secretary should provide Parliament and its committees with as much information as possible about the current threat from terrorism to enable them to make an informed assessment of both the necessity for and the adequacy of the current legal framework. It supports the Independent Reviewer's call for the Joint Terrorism Analysis Centre to provide a regular, publicly accessible report about the threat from terrorism to assist Parliament in scrutinising the necessity and proportionality of such counter-terrorism measures. It calls upon the Government to reconsider its rejection of the Independent Reviewer's recommendation in light of the concerns expressed about Parliament's practical ability to scrutinise the adequacy of the legal framework in the wake of the Edward Snowden disclosures.

- The JCHR clearly states that whether particular individuals should be subject to restrictions on their liberty is an operational matter for the police and the security services, subject to independent judicial oversight.
- It recommends that the Government put more information into the public domain about the types of work it has carried out with TPIMs subjects with a view to minimising the risk that they may be tempted to engage in terrorism-related activity when their TPIM expires, as well as on how TPIM exit strategies relate to other initiatives such as the Troubled Families programme and the taskforce established to look at the Government's strategy on extremism and radicalisation.
- The JCHR is left, at the conclusion of its review, with the 'distinct impression that, in practice, TPIMs may be withering on the vine as a counter-terrorism tool of practical utility.' No new TPIM has been imposed since October 2012.
- The committee does not feel sufficiently informed about the threat picture to be able to conclude with confidence that the power to impose some form of civil restriction orders such as TPIMs is no longer required.
- The JCHR recommends that a review of counter-terrorism powers be an urgent priority of the new Government in the next Parliament and that it is conducted sufficiently in advance of the five year renewal date of the TPIM Act 2011 so that Parliament is able to make a fully informed decision about the continued necessity of the powers at that time.

The full report can be found at **http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/113/11302.htm**

Justice Committee published interim report on the Transforming Rehabilitation Programme

As part of the Ministry of Justice's programme to change the scope and structure of community and prison-based probation and rehabilitative services, the Justice Committee has published its twelfth report 'Crime reduction policies: a co-ordinated approach? Interim report on the Government's Transforming Rehabilitation programme'.

The Transforming Rehabilitation reforms involve a substantial recasting of the way probation services are provided, including opening up the provision of such services to a greater diversity of providers and the introduction of an element of payment for results achieved in reducing reoffending.

In summary, the Justice Committee reported encountering broad support for the programme's aim to use efficiencies in the delivery of existing probation services to provide post-release supervision to short-sentenced prisoners which would rectify a long-standing anomaly whereby those who tend to be the most prolific offenders currently receive no statutory support. The Justice Committee welcomes the introduction of services for this group but notes that care will need to be taken to ensure that any gains made in reducing reoffending by them do not come

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at the expense of the supervision of offenders on other sentences and do not diminish the value of community sentences which are proven to be a cost-effective way of dispensing justice for non-violent offenders.

Witnesses in the Justice Committee's inquiry had significant apprehensions about the scale, architecture, detail and consequences of the reforms as well as the pace at which they are being implemented. One issue raised concerned the potential risks to the effective management of offenders arising from the decision to split the delivery of probation services between a public National Probation Service for the highest-risk offenders and the new providers who will be dealing with low and medium risk offenders.

With regard to the steps taken to test the model with shadow state-run companies before contracting the new arrangements out to new providers, the committee noted a lack of systematic information about the risks that might be encountered during implementation and full operational conditions and the steps that will be taken to mitigate those risks.

In addition it was noted that there appears to be a lack of clear contingency plans in the event that the competition fails to yield a viable new provider for a particular area, or that a new provider subsequently fails. It was said that in such circumstances, it is unclear whether the Government will be able to implement or retain the supervision of short-sentenced prisoners, or whether this element of the programme is contingent on having a complete system in place.

The committee stated that it wished to examine the affordability of the reforms but it was unable to determine whether sufficient funding was in place on the basis of the information provided.

In addition it questioned how the focus on reducing reoffending will be maintained while the restructuring of the market that is necessary to create the desired efficiencies takes place.

The full report can be found at **http://www.publications.parliament.uk/pa/cm201314/cmselect/cmjust/1004/100402.htm**

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