College of Policing

Digest

January 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.

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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 admission of conversations recorded in a police van into evidence
- judicial review of the granting and execution of search warrants
- confiscation orders under the Proceeds of Crime Act 2002.

We look in detail at:

- Her Majesty's Inspectorate of Constabulary's (HMIC) inspection to assess the effectiveness of certain aspects of policing activity
- the Joint Committee on Human Rights report on the Offender Rehabilitation Bill
- an overview of hate crime in England and Wales
- the draft Modern Slavery Bill.

We also look at:

- a report by the Extremism Taskforce on tackling extremism in the UK
- new guidance issued for youth offending teams
- an experimental analysis of examinations and detentions under Schedule 7 of the Terrorism Act 2000
- the concordat between the College of Policing and HMIC
- revised guidance on disclosure issued to the legal profession.

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

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. Line-by-line examination of the Bill took place during the seventh day of committee stage on 11 December 2013. Amendments discussed covered clauses 135, 137-138, 140-141, 147, 155, 157, 159 and 160 of the Bill. Report Stage is scheduled for 8 January 2014.

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.

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. 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.

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.

The Public Bill Committee reported on the 3 December 2013. The Bill had its second reading debate on 11 November 2013.

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

- 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.

Statutory Instruments

2013 No. 2788 The Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013

This Order came into force on **1 January 2014**.

This Order introduces a notification and prior approval regime in relation to certain categories of Covert Human Intelligence Sources (CHIS), namely relevant sources, as well as an enhanced authorisation regime.

Part 1 of the Order contains general provisions.

Article 2 defines a 'relevant source'.

Article 3 modifies section 43(3) of the Act in relation to a 'long term authorisation' and defines what it is and how it is calculated.

Articles 3(1), (2) and (4) provide that only once a relevant source has been authorised for a period of 12 months in total in relation to the same investigation or operation does any subsequent authorisation become a long term authorisation.

Articles 3(3) and (5) ensure that certain periods are disregarded from the calculation, namely periods in respect of which authorisations were granted orally or by a person whose authority to act is confined to urgent cases and periods more than 3 years prior to the intended date of authorisation.

Article 3(6) modifies the definition of a long term authorisation by reducing the period of 12 months down to 3 in respect of authorisations involving access to legally privileged material. This is to provide consistency with the authorisation periods in the Regulation of Investigatory Powers (Covert Human Intelligence Sources: Matters Subject to Legal Privilege) Order 2010.

Part 2 of the Order contains provisions requiring notification of authorisations to and prior approval of certain authorisations from an ordinary Surveillance Commissioner.

Article 4 requires notice to be given (although not necessarily in advance) of the grant of an authorisation for a relevant source, save where the authorisation is for the grant or renewal of a long term authorisation. Article 4(3) sets out the particulars to be provided.

Article 5 provides that prior approval must be sought from an ordinary Surveillance Commissioner in respect of the grant or renewal of a long term authorisation and sets out the criteria to be applied, both in respect of any request for approval and the Commissioner's decision.

Article 6 creates an appeal mechanism where a request for prior approval is refused.

Part 3 of the Order creates an enhanced authorisation regime both in relation to the conduct or use of relevant sources and the long term authorisation of the same.

Articles 7 to 16 make a number of amendments to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010.

Article 16(1) amends the entry in Part 1 of the Schedule to the 2010 Order in relation to the Home Office. This is to prescribe the offices, positions and ranks of those within the Home Office who can authorise activity for the purposes of sections 28 and 29 of the Act following the abolition of the UK Border Agency.

Article 16(2) inserts a new Part 1A into the Schedule.

Part 1 will continue to prescribe the offices, positions and ranks of those within the public authorities specified who can authorise activity for the purposes of sections 28 and 29 of the Act, subject to Part 1A (this is provided for by Article 10).

Part 1A prescribes the offices, positions and ranks of those within the public authorities specified who can authorise the conduct or use of relevant sources or who can grant long term authorisation of the same. In respect of the Home Office, authorisations for different purposes will be linked to related statutory functions. Thus, authorisations in respect of detention services can only be authorised on the grounds set out in paragraphs (3)(b) and (3)(d) of section 29 of the Act. Authorisations in respect of border security can only be authorised on the grounds set out in paragraphs (3)(b) and (3)(c) of section 29 of the Act. Articles 10 to 15 contain consequential amendments to the 2010 Order following the insertion of part 1A into the Schedule.

Part 4 of the Order contains transitional provisions. With respect to the calculation of the 12 month period in article 3, only authorisations that are extant at the time the Order comes into force can be taken into account.

SI 2013/2987 The Road Traffic, Public Passenger Transport and Vehicles (Revocations) Regulations 2013

These Regulations revoke 16 sets of Regulations relating to transport and came into force on **31 December 2013**.

The Motorcycles (Sound Level Measurement Certificates) Regulations 1980 (SI 1980/765) and three amending instruments (SI 1988/1640, 1989/713 and 1989/1591) implemented certain requirements of Council Directive 78/1015/EEC on the permissible sound level and exhaust system of motorcycles. This Directive was repealed and replaced in 1998 by Directive 97/24/EC, which was implemented by the Motor Cycles Etc. (EC Type Approval) Regulations 1999 (SI 1999/2920). The provisions in these implementing instruments have therefore been superseded.

The Public Service Vehicles (London Local Service Licences) Regulations 1986 (SI 1986/1691) and one amending instrument (SI 1988/408) regulated the London Local Service Licence regime, which applied to certain local bus services in Greater London. The Greater London Authority Act 1999 replaced this regime with the London Service Permit system and these Regulations are redundant.

The Cycle Racing on Highways (Tour de France 1994) Regulations 1994 (SI 1994/1226) authorised two stages of the Tour de France in England in 1994. The regulations relate to a one-off event which took place in 1994 and are now spent.

The Vehicles (Conditions of Use on Footpaths) Regulations 1963 (SI 1963/2126) and one amending instrument (SI 1966/864) place restrictions, including maximum weight and loading gauge, and a maximum speed limit, on the driving of vehicles on footpaths by representatives of local authorities for the purposes of cleaning, maintaining and improving such footpaths. The Government has decided to remove the restrictions and allow individual authorities in England to determine local requirements.

The Public Service Vehicles (Lost Property) Regulations 1978 (SI 1978/1684) and two amending instruments (SI 1981/1623 and 1995/185) regulate the way bus companies deal with lost property. The Government has decided, following consultation with the industry and other interested parties, to remove the statutory requirements in England and Wales and allow companies to make their own arrangements.

The Road Traffic (Carriage of Dangerous Goods and Substances) (Amendment) Regulations 1992 (SI 1992/1213) and the Road Traffic (Training of Drivers of Vehicles Carrying Dangerous Goods) (Amendment) Regulations 1993 (SI 1993/1122) amended three instruments which have been revoked. These instruments are therefore redundant.

The Parking Attendants (Wearing of Uniforms) (London) Regulations 1993 (SI 1993/1450) prescribe functions which can only be carried out by a parking attendant who is wearing the uniform which has been specified by the enforcement authority. These provisions which, following an amendment to the enabling power, apply to any civil enforcement area in England and Wales, have been superseded by regulations made under the Traffic Management Act 2004.

The Drivers' Hours (Passenger and Goods Vehicles) (Exemption) Regulations 1996 (SI 1996/240) granted an emergency relaxation from the drivers' hours rules (as prescribed by virtue of section 96 of the Transport Act 1968) for drivers affected by severe weather conditions in February 1996. The regulations are now spent.

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

The following provisions of the Act came into force on **11 December 2013—**

- section 27 (disclosure of information to facilitate collection of fines and other sums)

- section 44 (dealing non-custodially with offenders), so far as relating to Parts 1 to 3 and 5 to 7 of Schedule 16 to the Act
- so far as extending to the United Kingdom, section 44 so far as relating to Part 8 of Schedule 16 to the Act except paragraph 37
- parts 1 to 3 and 5 to 7 of Schedule 16 (dealing non-custodially with offenders); and
- so far as extending to the United Kingdom, Part 8 of Schedule 16 except paragraph 37.

Section 57 of the Act (public order offences) comes into force on **1 February 2014**.

This Order is the sixth commencement order made under the Crime and Courts Act 2013 (the Act).

Article 2(a) commences section 27 of the Act on 11th December 2013. Section 27 amends Schedule 5 to the Courts Act 2003 to enable the Secretary of State and a Northern Ireland Department and Her Majesty's Revenue and Customs to share social security and financial information with Her Majesty's Courts and Tribunals Service for the purpose of enforcing unpaid financial penalties.

Article 2(b) commences section 44 of the Act in so far as it relates to Parts 1 to 3 and 5 to 7 of Schedule 16 to the Act on 11th December 2013. Section 44 introduces Schedule 16, which makes changes to the non-custodial sentencing framework in England and Wales. Article 2(d) commences Parts 1 to 3 and 5 to 7 of Schedule 16 on 11th December 2013. Part 1 of Schedule 16 amends the Criminal Justice Act 2003 so as to require a court imposing a community order either to include a requirement that fulfils the purpose of punishment, or impose a fine (or do both) unless there are exceptional circumstances that would make that unjust. Part 2 of Schedule 16 amends the Powers of Criminal Courts (Sentencing) Act 2000 to make it explicit that courts can use their existing powers to defer sentence to allow for a restorative justice activity to take place. Part 3 of Schedule 16 amends the Powers of Criminal Courts (Sentencing) Act 2000 to remove the limit of £5,000 on a compensation order made by a magistrates' court. Part 5 of Schedule 16 removes uncommenced provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 relating to breach of a community order and corrects a technical error in that Act that prevented the imposition of a youth rehabilitation order for offences of threatening with an article with a blade or point or offensive weapon created by section 142 of that Act. Part 6 of Schedule 16 makes changes to the courts' powers to order offenders to provide statements of their financial circumstances in various contexts. Part 7 of Schedule 16 creates a new data sharing gateway to enable the Secretary of State and a Northern Ireland Department and Her Majesty's Revenue and Customs to share social security information and financial information on defendants with Her Majesty's Courts and Tribunals Service.

Article 2(c) commences section 44, so far as it relates to Part 8 of Schedule 16 to the Act, except paragraph 37, but only so far as it extends to the United Kingdom, on 11th December 2013. Article 2(e) commences Part 8 of Schedule 16, except paragraph 37, but only so far as it extends to the United Kingdom, on 11th December 2013. Part 8 makes provision equivalent to or consequential on, the amendments to Parts 1, 3 and 6 in respect of the sentencing powers of

service courts under the Armed Forces Act 2006. The effect of the commencement provisions is that the relevant service courts will be able to rely on the new provisions wherever they sit in the world, without amending the law of the Isle of Man or the British overseas territories.

Article 3 commences section 57 of the Act 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 2013/3172 The Terrorism Act 2000 (Proscribed Organisations) (Amendment) (No. 2) Order 2013

This Order came into force on **13 December 2013**.

Part 2 of the Terrorism Act 2000 makes provision about proscribed organisations (including setting out offences in relation to such organisations in sections 11 to 13). An organisation is proscribed if it is listed in Schedule 2 to that Act or, in most cases, if it operates under the same name as an organisation so listed (section 3(1)). Article 2 of this Order adds 'Imarat Kavkaz (Caucasus Emirate)' to the list in that Schedule.

Case law

Crime

Michael Fields, Mitesh Sanghani, Karamjit Sagoo and Wasim Rajput v The Crown [2013] EWCA Crim 2042

A hearing in the Court of Appeal (Criminal Division) on appeal from the Crown Court at Birmingham before Lord Justice Davis, Mr Justice Spencer and HHJ Rook QC (sitting as a Judge of the Court of Appeal Criminal Division). The full case report can be found at http://www.bailii.org/ew/cases/EWCA/Crim/2013/2042.html

Introduction

These appeals raised a number of points. Two of them, common to the appeals of Mr Fields, Mr Saghani and Mr Sagoo, would, if their arguments were right, effect a profound change in the general understanding thus far of confiscation orders under the Proceeds of Crime Act 2000 (POCA). The argument submitted was that such a change was required in light of the recent decision of the Supreme Court in the case of Waya [2013] 1 AC 294, [2013] UKSC 51.

These two points can be summarised as follows:

- Where two or more conspirators have been judged to have been co-principal conspirators who have jointly obtained the benefit of the proceeds of the conspiracy, is the benefit obtained by each of them, for the purposes of the POCA 2002, to be valued in a sum equalling the full amount of the proceeds of the conspiracy? Or – as the appellants argued – is the value of the benefit to be attributed to them in rateable shares?
- Alternatively, if the benefit is properly assessed in the whole amount with regard to each of them, and assuming that each has realisable assets matching or exceeding the benefit, is – as the appellants argued – the amount of the confiscation order to be apportioned between them in each case rateably in order to avoid a disproportionate outcome?

Background facts

The facts were summarised in the judgment in the following way:

The conspiracy to defraud ran between 1 January 2005 and 30 June 2005. It was said to involve the four appellants and three other men. Fields, Sanghani and Sagoo were convicted on 4 November 2008 after a lengthy trial in the Crown Court at Birmingham. In his sentencing

remarks the Judge said that the three of them were 'at the heart of the fraud'. Of the three co-accused, two were acquitted and the jury were unable to agree a verdict on the other.

The fraudulent conspiracy involved the use of a company called Mercury Distributions Limited, originally acquired by the appellant Sagoo in 1995. It involved what is sometimes known as a 'long firm' fraud. In early 2005 false accounts for the preceding two years were lodged at Companies House. These, among other things, purported to show – falsely – that by 2004 the company had over £1m in fixed assets. It was appreciated that potential customers of the company would be likely to check the accounts before committing themselves to doing business with it and granting credit. Premises were also obtained in Birmingham in February 2005 by Sagoo, with false trade references provided.

From then on, the company engaged in fraudulent trading. It made applications to buy goods or obtain services on credit. Credit checks conducted by various agencies on behalf of the prospective customers indicated that the company was financially healthy: credit agreements were in consequence approved and goods and services variously supplied by some 35 businesses. But no payments were ever made and for the most part the goods disappeared.

Each of Sagoo and Sanghani (not always using their correct names) attended a number of meetings where goods or services were obtained on credit. Sagoo wrote out various company cheques in order to maintain its activities. There was evidence that Fields attended on a regular basis, sometimes posing as a retail consultant called Blake. His fingerprints were later found on a number of company documents. The conspiracy ended when the police intervened at the end of June 2005. At trial, evidence was also permitted to be adduced to the effect that there were other outstanding criminal proceedings against Fields for conspiracy to defraud and obtain services by deception and to the effect that a judgment had been entered against Sagoo for £19 million for unpaid VAT due on alcohol importations.

So far as the appellant Rajput was concerned, it was common ground that he was much less involved in the overall conspiracy. He – aside from sometimes providing a trade reference – lent himself to the acquisition of two very valuable cars (a Mercedes and a Porsche) and a quantity of alcohol. After they had been obtained, the goods were sold on. He himself, as was found, received £12,000 for his involvement.

The total benefit, in the form of goods and services supplied, arising from the conspiracy was calculated at £1,410,762. In due course there were protracted confiscation proceedings.

The confiscation proceedings

In the case of Fields, it had been conceded by counsel then appearing for him that his was a criminal lifestyle case by reason of section 75(2)(c) of the POCA 2002. Taking the 'base' figure as £1,410,762 and adjusting it to allow for changes in the value of money, it was held that the total benefit from his particular criminal conduct was £1,565,945. Further, the criminal lifestyle provisions being applied and the Judge having rejected Fields' evidence entirely, it was found that the benefit figure representing his general criminal conduct was £391,960.

It was found as a fact by the court that Fields, along with Sagoo and Sanghani, was 'a principal conspirator' and that it was a 'joint operation between them'. The judge considered that the applicable principle, established by authority, was that where two or more defendants obtain property jointly each was to be regarded as obtaining the whole of it.

With regard to the question of the available amount, citing R v Barwick [2001] 1 Cr App Rep (S) 129, the judge indicated that it was his approach that the benefit remained available until the defendant proved otherwise, and found that Fields had not done so. Consequently he made a confiscation order in the amount of £1,957,905, with a default period of seven and a half years.

Sagoo and Rajput had also initially made concessions that the criminal lifestyle provisions applied to them. However, in light of the intervening decision in Bajwa [2012] 1 Cr App R (S) 23, the concessions of Sagoo and Rajput were permitted to be withdrawn and it was later found on the facts that the criminal lifestyle provisions did not apply to them or to Sanghani. It had not been established that they had been involved in the conspiracy for a sufficient period of time.

The judge rejected Sanghani's evidence that he had not received any money from the fraud. With a like base figure of £1,410,762, adjusted for changes in value of money, the judge assessed the benefit as £1,650,591. With regard to the available amount, he rejected the submission that it should be nil and found that Sanghani was hoping to conceal his financial position. A confiscation order in the sum of £1,650,591 was made, with a default period of seven years.

In the case of Sagoo, the Judge found that he had not discharged the burden of proof as to the available amount and accordingly made a confiscation order in the sum of the benefit of £1,650,591, with a default period of seven years.

At the end of his judgment, the Judge re-affirmed his finding that each of Fields, Sagoo and Sanghani was a principal conspirator and that it was a joint operation. He re-affirmed and applied the approach he had adopted with regard to Fields and referring to the Court of Appeal's restatement of the principle in R v Sivaraman [2009] 1 Cr App R(S) 80: 'Where two or more defendants obtain property jointly, each is to be regarded as obtaining the whole of it', he refused to apportion the confiscation amount.

It was accepted that Rajput had not been a principal conspirator. It had previously been agreed by counsel on his behalf that the benefit figure should be taken as £149,477. However, it was subsequently argued on his behalf that he had actually received £12,000 and that that should be taken as the benefit. This was rejected by the Judge, who stated 'Benefit does not equate to profit'. The benefit was therefore assessed benefit at £167,414 (adjusting the figure of £149,477 to allow for changes in money values). With regard to the available amount in Rajput's case, the Judge concluded that he had discharged the burden placed on him and that the available amount was in fact nil. Accordingly a confiscation order was made in a nominal sum of £1.

The confiscation order was made against Fields applying his concession that the criminal lifestyle provisions were applicable. However, in light of the subsequent decision in Bajwa, Sagoo and

Rajput had successfully withdrawn a corresponding concession. The Court of Appeal therefore considered whether, in fairness, Fields should have to face a confiscation order reflecting what could then be seen to have been a wrong concession, causing the order as against him to be made (in part) on a false basis. However, time was not spent on this due to the fact that counsel for the Crown accepted, in the particular circumstances of this case, that it would not be right to hold Fields to his concession or to apply in his case the criminal lifestyle provisions. As such it was stated that the confiscation order in the case of Fields, needed to be reduced to the sum of £1,565,945.

The statutory framework

Having addressed the relevant provisions of the POCA 2002, the Court of Appeal quoted from the case of May [2008] 1 AC 1028, [2008] UKHL 28 setting out the three stage approach required in making a confiscation order:

> The first question is: has the defendant (D) benefited from the relevant criminal conduct? If the answer to that question is negative, the inquiry ends. If the answer is positive, the second question is: what is the value of the benefit D has so obtained? The third question is: what sum is recoverable from D? In some cases… there may be no dispute how one or more of these questions should be answered, but the questions are distinct and the answer given to one does not determine the answer to be given to another. The questions and answers should not be elided.

The Court of Appeal stated that it was important that that approach be adopted in addressing the issues advanced in the instant case.

Ground One – Benefit

The first issue of principle common to Fields, Sanghani and Sagoo on these appeals was what was the benefit, and the value of the benefit, in their cases?

In the confiscation proceedings the Judge had found, with regard to Fields, Sanghani and Sagoo, that they were co-principals in a joint operation and that this was a case of joint benefit as regards the three of them. On appeal there was no challenge to those findings of fact.

The Court of Appeal stated that having obtained that joint benefit, the benefit, for the purposes of a confiscation order, was to be determined accordingly, by reference to sections 76(4) and 76(7), section 80 and section 84. This was stated to be in the amount of £1,410,762, in each case, adjusted as appropriate to represent changes in money values at the time of the respective confiscation orders.

The appellants disagreed, submitting that the total benefit should be so attributed that the benefit figure was, in each case, one-third of the total joint benefit. It was asserted that this was what was required by the scheme of the legislation, as now explained in the case of Waya.

The Court of Appeal disagreed, stating that that argument is contrary to the scheme of the statute as explained in numerous authorities which had not in this respect been displaced by Waya. Furthermore, the court deemed such an argument to be contrary to the factual findings of the Judge.

The overall argument submitted on behalf of these three appellants was that whilst the Judge had found that each of these appellants had jointly obtained the whole of the property, each had a 'beneficial interest' in the whole to be assessed in each case as one-third equal shares. In consequence, it was asserted that the true value to each appellant of the property obtained by him was, having regard in particular to the provisions of section 79(3) POCA 2002, the value of that 'beneficial interest'.

The Court of Appeal noted the strong policy objections to such an argument, which was deemed to connote, in effect, that the joint benefit of the property obtained was held – presumably by the three appellants – on trust for the three appellants in equal beneficial shares. However, the court stated that there was no reason why a court should be astute to construct, let alone recognise, a trust in these criminal circumstances. Such an approach, it was said, would tend to run entirely counter to the statutory aim. The court stated that section 79(3) of the 2002 Act was to be taken as, generally speaking, extending to make allowance for lawfully subsisting prior interests of other persons, not to the asserted 'beneficial interests' of co-conspirators whose very criminality has caused the relevant property to be obtained jointly in the first place. It was noted that settled authority was, in any event, wholly against this proposition as contended for with regard to the determination of the benefit and its value.

Overall the Court of Appeal accepted the submission of counsel for the Crown that there was no room for, and indeed no need for, the possibility of apportionment of benefit under the POCA 2002 in cases of joint benefit such as that before the court. It was stated that at that stage, the Court's task, consistent with the legislation, was simply to identify the benefit obtained and then to value that benefit. It was said that there was no authoritative statement in any of the cases affirming the legality of apportioning the benefit where it has been jointly obtained, and indeed there were authoritative statements, including those in May and in Lambert & Walding, pronouncing against it.

The Court of Appeal stated that this argument advanced on behalf of the appellants sought to go behind the finding of the court that this was a case of joint benefit obtained as co-principals. This was contrary to other cases, such as Gibbons [2003] 1 CAR(s) 169, [2002] EWCA Crim 1621, where the proceeds of the conspiracy had been apportioned between the four conspirators equally but in which there was insufficient evidence for the trial judge to decide that the proceeds had been obtained jointly.

It was stated that, on this aspect of the appeal, there was nothing to be found in the decision in Waya to displace what was previously settled law as to the ascertainment and valuation of benefit in cases where there has been a finding of joint benefit. Waya was not a case concerned with property jointly obtained. It was said that Waya was, by its general observations, potentially relevant with regard to the third ground advanced with regard to the final amount which should

be ordered to be paid, but did not have any bearing at all on the question of attribution, or apportionment, of benefit as such.

Consequently, the Court of Appeal concluded that authority binding the court established that, where there was a finding of jointly obtained benefit, that benefit was to be valued in the whole amount of the property so obtained in respect of each defendant. In such a case of joint benefit, it was said that there was no room for the ascription of 'beneficial [several] shares' to each of the defendants for the purpose of valuing their benefit: nor did any question of apportionment of benefit arise in such a case at that stage of the assessment. Further, if apportionment was appropriate at all in such a case, then that could only be (on grounds of proportionality) at the stage of determining the recoverable amount in which the confiscation order was to be made in each case.

Ground Two – Available amount

The next ground advanced was by reference to the Judge's findings as to the available assets of these three appellants and as such was, in essence, a challenge to his factual enquiry and conclusions.

The submission made was that, having rejected each appellant's evidence that he had no assets or at least that he had assets less than the amount of the benefit, the Judge had inadvertently fallen into the error of concluding that he therefore must have sufficient realisable assets. It was said that it was crucial to be mindful of the fact that the purpose of the 2002 Act was, in cases of this kind, only to permit a confiscation order up to the amount of the available assets, and the court must be alert to avoid 'the risk of serious injustice' of ordering a defendant to pay more than he is able to pay, particularly where a default period of imprisonment would then apply. The further point was made that, at this stage of the inquiry, regard may properly be had not just to what a defendant had obtained (benefit) but also to what he had actually himself received and retained, because that could be relevant to assessing the available amount.

However, in the circumstances of these cases the Court of Appeal saw no basis for interfering with the Judge's conclusions on the evidence.

Ground Three – Apportionment of recoverable amount

The final ground common to Fields, Sagoo and Sanghani was the argument that it was disproportionate to order each of these appellants to pay by way of recoverable amount, the total amount of the benefit (on the basis that each had failed to disprove that he had available assets sufficient to discharge payment in that amount). It was asserted that to do so could in effect give rise to treble recovery and would amount to an unjustified 'fine' on these appellants.

This argument was advanced, and rejected, in Lambert & Walding [2012] 2 CAR(S) 90, [2012] EWCA Crim 421. The Court reverted to that judgment:

> In our judgment the statements of principle in May and Green are, and are intended to be, of general application and defeat the claim to apportionment. In May, the Committee stated, at paragraph 46, that

> apportionment between parties jointly liable would be 'contrary to principle and unauthorised by statute'. It was held that the statutory questions must be answered by 'applying the statutory language, shorn of judicial glosses and paraphrases'. That approach applies to the calculation of a defendant's 'benefit' under section 4 of the 2002 Act, the calculation of 'recoverable amount' under section 7, and to the duty on the court under section 6(5) to make a confiscation order.
>
> On an application of the statutory language, it is not disproportionate to make an order 'depriving a defendant of a benefit which he has in fact and in law obtained, within the limits of his realisable assets' (Green, paragraph 16). The statutory language, as construed in the authorities, does require a defendant to be liable for the benefit he has obtained jointly with others. Statements in May and Green require this court to decline to order or permit apportionment in present circumstances.

Counsel for Fields sought to argue that Lambert & Walding was no longer binding on this court in that respect, on the basis that it was held there that the statutory provisions, including section 6(5) as to the making of a confiscation order, were to be read 'shorn of judicial glosses and paraphrases'. However, the Court of Appeal stated that that no longer, as a general proposition, represented the law on the basis that in Waya it was held that, in order to achieve compliance with Article 1 of the First Protocol (A1P1), section 6(5) should be qualified so as to include the words 'except in so far as such an order would be disproportionate and thus a breach of A1P1'.

However, having accepted that Waya authoritatively established that proportionality may be taken into account in making an order under section 6(5), the Court of Appeal sought to answer what Waya actually did decide, or at least indicate, with regard to the point which arose in the case before it and to what extent Waya impacted on the past authorities on that particular point.

Following consideration of previous cases, the Court of Appeal stated that the obvious point was that, in a case of joint benefit such as this, each defendant had obtained the joint benefit in the whole, and therefore by the making of a confiscation order against each of them in the whole amount, each was being deprived of what he had gained and was not being deprived of what he had never obtained (and so was not being subjected to a fine).

It was stated that Waya made it now legally possible, in principle, for a confiscation order proposed to be made under section 6(5) to be qualified by the application of principles of proportionality.

Whilst noting that the opening parts of paragraph 26 of the judgment in Waya lent strong support to the Crown's argument in the present case, the Court of Appeal found that that passage fell short of being conclusive on the point now argued because it spoke only in terms of 'the defendant' paying the whole of the sum jointly obtained and did not specifically address the situation where there are several defendants and each was being required to pay the whole of the sum jointly obtained as in the instant case. The court quoted the commentary in Dr David

Thomas QC's report of the decision in Waya at [2013] Crim LR 256 at p.261:

> The judgment recognises that an order requiring the defendant to pay the whole of a sum which he has obtained jointly with others is not disproportionate, presumably even if the others are also ordered to pay the same sum.

The Court of Appeal stated that this was the right conclusion to be drawn in a joint benefit case giving the following reasons:

- First, since each defendant was found to have obtained the joint benefit, he would not be required by such a confiscation order to discharge any benefit which he had not obtained. On the contrary, he was being required to disgorge the benefit representing his proceeds of crime which was not the imposition of an additional financial penalty or fine.
- Second, such a conclusion was stated to be entirely consistent with the tenor of the various observations made in previous cases such as May, Green, Jennings and Lambert & Walding as well as Waya itself. Those cases, overall, indicate that a confiscation order made in an amount matching the correctly assessed benefit is not to be classified as disproportionate.
- Third, the court noted that if a confiscation order was apportioned at that stage, as the appellants argued, there was a real risk that ultimately the order would not be satisfied in full. The court stated that it would be an effective negation of the finding of joint benefit for one defendant (who was able to pay the whole in full) to have avoided paying up to the full amount of the proceeds obtained simply by reason of the other defendants thereafter failing to make any payment and that apportionment of the confiscation order at that stage would carry that risk.
- Fourth, to embrace concepts of apportionment at any stage in such cases would, as the Supreme Court pointed out in Waya, potentially involve impracticable inquiries into financial dealings between criminals and could lead to 'evasion, manoeuvring and chicanery' on the part of defendants.

At the heart of the appellants' objections, nevertheless, remained the submission that such an order against each such defendant could or would amount to multiple recovery and so would be disproportionate. In the view of the Court of Appeal, however, the object of the 2002 Act as to the making of confiscation orders was not solely geared to recouping the loss of the 'loser' (if a 'loser' could be identified). Rather the legislative aim was geared to removing from criminals the proceeds of their crimes.

The court went on to state that Fields, for example, could have no complaint at being held liable (having sufficient available assets) in the full amount of the benefit in circumstances where, say, confiscation orders were not made against Sanghani and Sagoo because they were found to have established that they had no available assets. The court stated that it was very difficult to see how Fields could somehow acquire such a complaint, on grounds of proportionality, simply

because Sanghani and Sagoo were also held liable themselves in the full amount of the benefit. In either situation, Fields was being required to pay what he had obtained and no more.

Counsel for Fields asked the court to suppose that had Fields, prior to the confiscation proceedings, paid compensation in full to every person who had been the victims of the conspiracy, it would be unthinkable, in the light of Waya, that a confiscation order would thereafter be made. However, the court responded that in such a scenario no confiscation order would subsequently be made against Fields for the reason that he would have restored the full amount of his benefit and so should not be required to pay twice over. But it would not follow at all that no such order should thereafter be made against Sagoo or Sanghani.

In the judgment of the Court of Appeal, lack of proportionality for these purposes was not to be assessed simply by focusing on orders also made against others or of payments made by others, or by focusing on the potential 'profit' accruing to the Crown by reason of prospective multiple recovery. On the contrary, the court found that such an approach as argued for by the appellants detracted from the scheme and objective of the 2002 Act which required the focus of attention to be on depriving each defendant of the proceeds of his crime.

Conclusion

The court's conclusion in summary was as follows:

- In a case of co-principal conspirators judged to have obtained the benefit jointly, there could be no apportionment as between them of that benefit, and the value of the benefit was to be assessed as the whole amount with regard to each.
- On the facts of the present cases, the Judge was entitled to conclude that the benefit in the case of Rajput was as found; and the Judge was entitled to conclude that Fields, Sanghani and Sagoo respectively had not discharged the burden of proof with regard to the recoverable amounts.
- Each of Fields, Sanghani and Sagoo was properly judged as liable to a confiscation order in the full amount of the joint benefit, without any apportionment or deduction being allowed on grounds of proportionality.

By reason of the withdrawal of the concession on the part of Fields, which the Crown and the Court of Appeal accepted, the appeal of Fields was allowed to the extent that a confiscation order in the sum of £1,565,945 was substituted; and the default period was as a result adjusted to one of seven years' imprisonment. Subject to that, in all other respects the grounds of appeal failed and the appeals were dismissed.

Evidence and procedure

Imran Khan, Amjed Khan Mahmood and Jaspal Kajla v Regina [2013] EWCA Crim 2230

A hearing in the Court of Appeal (Criminal Division) on appeal from Reading Crown Court before Lord Justice McCombe, Mr Justice Wyn Williams and Mrs Justice Patterson. The full case report can be found at **http://www.bailii.org/ew/cases/EWCA/Crim/2013/2230.html**

The appellants were convicted in April 2012 of the attempted murder of Mr Quadir Hussain in September 2010, and sentenced to life imprisonment at a second trial, following a first trial at which the jury were unable to agree verdicts. On appeal against conviction, the principal issue before the court was whether the learned Judge was correct to admit into evidence recordings of conversations between the appellants Kajla and Mahmood which occurred on 5 March 2011 when they were in a police van being transported from custody in Reading to Slough Magistrates' Court having been charged with the attempted murder of Mr Hussain. The appellants asserted that this evidence should not have been admitted and that as such their convictions were unsafe.

The appellants were arrested on 3 March 2011 and declined to answer questions in interview. Mr Khan provided a prepared statement in which he agreed that he knew Mr Mahmood but contacted him only occasionally. Further connections were made between the appellants following examination of their mobile phones, through six separate telephone numbers.

By the time of the trial a significant circumstantial case against the appellants had been established in respect of the attempted murder of Mr Hussain, however direct evidence at the time of the arrests was limited. As such on 21 February 2011 authorisation was sought under the Regulation of Investigatory Powers Act 2000 (RIPA) to conduct directed surveillance on those arrested, including the appellants. The request for authorisation was for recording equipment to be installed in two marked police vans to be used to convey the suspects to court on the occasions of what it was thought would be an application for a warrant for further detention following 'no comment' interviews.

The supervising officer, an Acting Detective Inspector, added his comments to the authorisation request, which included the following:

> A vast amount of enquiries have been conducted regarding this investigation. However at this time the majority of the evidence is circumstantial and it is unknown as to whether CPS will provide an authority to charge. Therefore, this tactic, if successful, could identify critical evidence to assist in reaching a charging decision. This method is the least intrusive means of obtaining such evidence and is a necessary justified and proportionate tactic. Should the authority be granted, it will be kept under continual review until the day of deployment in

> case the intelligence or evidential picture changes. Should significant evidence come to light before then, the authority will be reviewed with the SIO to identify whether it is still a justified tactic.

The authorisation was given on 22 February by a Superintendent who wrote:

> I believe [this application] is necessary for preventing and/or detecting crime or of preventing disorder under section 28(3) of [RIPA] and para. 5.1 of the 'Covert Surveillance and Property Interference' Codes of Practice.
>
> I believe that it is proportionate, having regard to para. 3.6 of the … Codes of Practice, as the application is material to progress an investigation into attempted murder…
>
> …I concur with the applicant that, if required, this activity could be considered to be the only reasonable means of achieving the objectives of the operation. It is anticipated that if all other investigative methods have been utilised, and conclusive evidence sufficient to charge [sic: is] still required then the use of this tactic may secure the necessary evidence of the criminal offences being investigated…
>
> The purpose of the directed surveillance is to gather intelligence and evidence of the … subjects with a view to proving or disproving their involvement in this offence…

The authorisation was stated on its face to be effective for a period of three months, to 21 May 2011. However, the court noted that it seemed reasonably clear from the contents that the tactic was designed to assist a charging decision.

The surveillance tactic was employed on 5 March 2011 as the appellants Mahmood and Kajla were being taken to court in Slough. However, by then, contrary to what the police had expected, the Crown Prosecution Service (CPS) had on the evening of 4 March authorised the charging of the appellants with attempted murder, and they were so charged between 1800 and 1830 that evening. As such their appearance at court was not for an application for further detention but for the first post-charge hearing in the court.

During the recorded conversations, these two appellants made certain remarks implicating themselves further in the incidents at the premises where the number plate of the car involved in the attempted murder of Mr Hussain was obtained. They also made reference to someone with a nickname 'Bana', which other evidence established as being a nickname for the appellant Khan.

At the first trial, the Crown did not seek to rely upon the evidence of the recorded conversations for tactical reasons. However, they did wish to use that evidence at the second trial, which was opposed by the defence.

It was accepted throughout that the recording made on 5 March 2011 in the police van exceeded the RIPA authority granted on 22 February in that the request for authority was stated to be for the purpose of assisting the charging decision by providing direct, as opposed to circumstantial evidence, of involvement in the offence. This was conceded by the Crown, notwithstanding the wider purposes of the application and authorisation stated elsewhere in the documents.

The Crown accepted at trial that if the recording tactic was also employed in bad faith, in the sense that it was done by the officers concerned knowing that it went outside the terms of the authorisation given, they would not seek to rely on the recording. A 'Voir Dire' was held in which the Judge held that the officers had not acted in bad faith, knowing that they were exceeding their authority, a decision which was not challenged in the Court of Appeal by any of the appellants, however they all maintained their objection to the admission of the evidence and submitted that it ought to have been excluded by the Judge in exercise of her discretion under section 78 of the Police and Criminal Evidence Act 1984 (PACE). The Judge rejected their submissions:

> The defendants here were charged with one of the most serious of offences. Nothing evidentially had changed from the time the authorisation was given and, therefore, the same degree of necessity and proportionality remained. And in these circumstances, the use of the covert device in the opinion of the court did not amount to an abuse.
>
> By section 78, the court may refuse to admit evidence if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of proceedings that the court ought not to admit it.
>
> No coercion was practised on the defendants to make them talk. The decision to pair the second and third defendants was obvious; they were friends and it was necessary to pair at least two defendants in order that there would be a conversation. And I conclude that the recording is relevant and admissible and from which a jury would be entitled to infer that both men were present at innovate on 25 September when the false plates in the MG were required. And that they had hypothesised as to what they might say as to a reason for having visited Reading.

A separate point was submitted on behalf of Mr Khan, namely that, even if the evidence of the conversations in the van was admitted, the references in the transcript to the name 'Bana' and anything said in connection with that name, should be excluded on the basis that the words were hearsay or were spoken in Khan's absence. On either basis, counsel for Khan were unable to explore how Kajla came to know him by that name or the context in which he came to speak of him. The Judge rejected the argument that the references to 'Bana' were hearsay, because they were not evidence of a matter stated and were 'not being said to make another believe that they [were] true'.

The case proceeded and the evidence of the recorded conversations was placed before the jury. At the close of the Crown's case, submissions of no case to answer were made on behalf of Mr Khan and Mr Kajla, both of which were rejected.

None of the accused gave evidence. A unanimous verdict of 'guilty' was returned for Mr Khan and majority verdicts of 'guilty' were returned in respect of Mr Mahmood and Mr Kajla.

On appeal the appellants submitted that the convictions were unsafe because the Judge wrongly allowed the Crown to adduce the evidence of the conversations recorded in the van.

Counsel for Mr Mahmood and Mr Kajla submitted that this was factually an important case of its kind. It was a case where the Crown has accepted that the police had acted unlawfully in carrying out the recording. He asserted that the surveillance could no longer be seen, post-charge, to be either 'necessary or proportionate' within the meaning of RIPA and/or the Code of Practice issue under it. He argued that the breach of authority was 'serious and significant' and undermined the integrity of the appellants rights under the PACE codes. By the time the recording was made, the appellants had been charged following authorisation from the CPS and it could be seen that the evidence was quite sufficient to mount a case against the appellants without evidence of the recorded conversations because the Crown had not sought to use it at the first trial.

The Court of Appeal stated that on the present facts it was not necessary for the trial Judge to have engaged at any length with the provisions of RIPA because it was accepted by the Crown that the police had exceeded the authority granted under that Act and the only question for the Judge was whether the evidence should be excluded under Section 78. The court reflected on Lord Hobhouse's summary of the European Court's view in the case of Khan [1997] AC 358, namely that 'Section 78 was concerned with the fairness of the trial not with providing a remedy for a breach of [A]rticle 8'. It is the Article 8 rights of the suspect that are potentially infringed by surveillance activities of investigating authorities. Interference with Article 8 rights is only permissible so far as it is 'in accordance with law' and so far as it is necessary for the stated purposes identified, including 'prevention of disorder or crime'. The interference must also be 'proportionate'. It was noted that RIPA and the Code of Practice issued under it are designed to ensure compliance with Article 8 of the Convention. They have nothing to do with the 'fair trial' provisions in Article 6.

It was stated that in the instant case, while the surveillance was carried out in good faith, it was conducted in circumstances in which the investigating officers negligently failed to have proper regard to the limits of their authorisation. Accordingly there was a breach of the appellants' rights under Article 8 of the European Convention on Human Rights. The Crown submitted that a negligent, but brief, invasion of rights to privacy could not conceivably amount to such unfairness as to have required exclusion of potentially relevant and cogent evidence.

Alongside this, the Court of Appeal also considered the wider submission made by counsel for Mr Mahmood and Mr Kajla, and adopted by counsel for Mr Khan, that quite apart for Article 8 considerations, what occurred in this case was an undermining of the integrity of the PACE codes

and the 'right to silence' that had been exercised by Mr Mahmood and Mr Kajla in their police interviews. The court was not directed to any specific provisions of the PACE codes, but did have regard to the prohibition in PACE Code C paragraph 16.5 generally prohibiting interviews post-charge.

Following discussion of the cases of Bailey & Smith (1993) 97 Cr. App. R 365 and Shaukat Ali (1991) The Times, 19 February, the court had no hesitation in stating that the trial Judge's decision to admit this evidence, obtained outside the authorisation granted, did not render the trial unfair. It was accepted that there was a failure to observe the limits of the authorisation obtained, however the result was a breach of two of the appellants' rights to privacy contrary to Article 8 of the Convention. In the Court of Appeal's judgment, on the facts of the case, this said nothing about the fairness of the appellants' trial. There was no misrepresentation no entrapment and no trickery. The police had simply made use of the opportunity afforded to the two appellants to talk to each other. It was noted that the recordings themselves demonstrated that the two men were well aware of the possibility that their conversation might be bugged. There was no oppression or coercion and nothing limited the appellants' right to challenge the evidence or to explain it. As such, the court concluded that the Judge rightly admitted the recording in the cases of Mr Mahmood and Mr Kajla and dismissed their appeals.

With regard to the point submitted on behalf of Mr Khan regarding admission of reference to Bana in the recorded conversations, counsel for Mr Khan, who did not appear for him at the trial, agreed that the statements in which references to Bana were made were not hearsay. The Court of Appeal stated that on initial consideration, it might be thought that each of the statements in which a reference to Bana was made were either made to cause the listener to believe what was being said or to cause the listener to act as if the matter was as stated. Upon reflection however, the court stated that they did not consider this to be the proper analysis. It was stated that the statement relied upon by the prosecution was not the whole of the phrase or sentence in which the word 'Bana' was spoken, but, rather, the word 'Bana'. The Crown relied upon the use of that single word to demonstrate that the speaker knew the person whose nickname was Bana. The use of that word was not for the purpose of causing the listener to believe that the speaker knew Bana or to cause him to act as if the speaker knew Bana. It was obvious from the conversation that both men knew Bana. As such, the Court of Appeal concluded that the trial Judge was correct in her ruling that the statement replied upon by the Crown was not hearsay.

On consideration of whether the trial judge should have excluded the references to Bana on the alternative ground that it was a conversation between Mr Mahmood and Mr Kajla in the absence of Mr Khan which was prejudicial to Mr Khan's defence, the Court of Appeal was satisfied that that there was no proper basis for excluding the evidence. Since the evidence was not hearsay, it was admissible in evidence generally, like any other piece of relevant evidence. The court considered whether the admission of the evidence had such an adverse effect on the fairness of the proceedings that it ought to have been excluded, and concluded that there was no warrant for that course.

For these reasons, the appeals against conviction were dismissed.

Lee & Ors v Solihull Magistrates Court & Anor [2013] EWHC 3779 (Admin) (5 December 2013)

A hearing in the High Court of Justice Queen's Bench Division Divisional Court before Lord Justice Treaty and Mr Justice King. The full case report can be found at http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2013/3779.html&query=EWHC+and+3779&method=boolean

The Claimants were seeking judicial review of the granting of search warrants by the First Defendant, Solihull Magistrates' Court on 21 January 2013 and the execution of the warrants by officers of the Second Defendant (HMRC) on 6 February 2013. The First and Third Claimants were arrested on 6 February 2013, as suspects in a criminal investigation into the storage and sale of non-duty paid excise goods, contrary to section 170 of the Customs and Excise Management Act 1979, and associated money laundering activity, contrary to sections 327 to 329 of the Proceeds of Crime Act 2002 (POCA).

The criminal investigation concerned a haulage company, Cross Transport Limited, and an alcohol distribution company, AQ Wholesale Limited. It also concerned Castle Trade Services Limited, of which the First and Third Claimants are the director and manager respectively. The investigation is still on going, and the First and Third Claimants are on police bail until January 2014.

On 20 July 2012, search warrants were executed at the premises of Cross Transport Limited. Around 260,000 litres of alcohol were seized, with an alleged evasion of duty amounting to more than £556,000. On 25 July 2012, the director of AQ Wholesale Ltd informed HMRC that the alcohol seized belonged to him and that it had been obtained from Castle Trade. As a result, HMRC extended their investigation to include Castle Trade.

On 21 January 2013, HMRC obtained warrants under section 8 of the Police and Criminal Evidence Act 1984 (PACE) to search the Claimants' home addresses. The warrants were identical and were executed on 6 February 2012. Various items were seized in the course of the searches and the First and Third Claimants were arrested for the above offences and interviewed under caution at police stations.

The Claimants filed their claim on 10 April 2013, just over two months after the searches and arrests. Issues were raised by the Second Defendant regarding the promptness of the claim and as to the existence of an alternative remedy, either pursuant to section 59 of the Criminal Justice and Police Act 2001 or, in the event of a prosecution, under section 78 PACE 1984.

Ground One

It was asserted that the warrants should be quashed as defective because the warrants did not identify, with sufficient precision, the property which might be seized under them. Each warrant authorised officers to enter the premises and search for:

- 'Business and individual records including transportation and shipping documents, invoices, faxes, correspondence and other documentation relating to the supply of excise goods.
- Banking financial and accounting documents, telephone and electronic communication records, diaries and written records.
- Mobile phones, fax machines, computers, electronic storage media, satellite navigation devices and other communication equipment which are believed to contain material relating to the facilitation of the offences under investigation.
- Documents relating to the movement and control of monies and assets and any other material, which appears relevant to the facilitation and methodology of the offences under investigation.'

Ground Two

This ground asserted that the description of property sought in the warrant was so wide that the Magistrates could not have been satisfied that there were reasonable grounds for believing that such material was likely to be relevant evidence for the purposes of section 8(1)(c) of PACE. The information before the Magistrates set out the offences being investigated and identified material that was likely to be relevant evidence. The offences identified were being knowingly concerned in, or taking steps with others, with a view to the fraudulent evasion of excise duty, contrary to section 170 of the Customs and Excise Management Act 1979, and 'associated money laundering offences' contrary to sections 327-329 of POCA. The information described the background to the investigation, as set out above. Other material information provided to the Magistrates showed that Hussain had provided documentation, which he said he had received from Castle Trade in relation to the alcohol, and also that Hussain had claimed in interview that Castle Trade had assured him that duty had been paid. As a result, there was evidence of a chain of supply of a large quantity of alcohol in relation to which duty had not been paid. This flowed from Castle Trade, through AQ Wholesale to Cross Transport, in whose warehouse the goods were found.

Ground Three

The First and Third Claimants alleged that HMRC were in serious breach of their duty to give full and frank disclosure of all relevant facts to the Magistrates when the warrants were applied for. In the interviews that took place after the execution of the warrants, both the First and Third Claimants alleged that Castle Trade invoices had been effectively forged by Mr Hussain for his own purposes. As a result they were the victims of forgery and HMRC enquiries should have revealed this and been placed before the Justices. In light of the disclosure of the information provided to the Magistrates after the claim commenced, and in light of evidence served on behalf of HMRC, this ground was not pursued.

The Parties' Submissions

Ground One

This ground related to section 15 of PACE, in that there was a failure of the warrant to identify, so far as was practicable, the articles that were to be seized. The warrant lacked sufficient specificity of detail as to the articles sought so as to comply with section 15(6)(b). It was argued that not only was there no reference in the warrants to identify what offence or offences were reasonably believed to have been committed, there was a failure to sufficiently identify, under any of the four categories, that the items sought related to the companies Cross Transport Limited, AQ Wholesale Limited and Castle Trade Services Limited. The companies had been referred to in the information provided to the Magistrates when the warrants were applied for and provided a clear and practicable means of identifying the material to be sought. The focus of the investigation and of the information provided to the Magistrates related to documents and materials which associated the companies with alleged fraud. While the officer had been able to define the materials sought at the time of the application, he had failed to carry through that precision in definition to the terms of the warrant itself.

It was also argued that the words 'which are believed to contain' in the third bullet point had the effect of enabling a wider seizure by the officers. This went beyond that which the Magistrates had identified as necessary for the terms of the warrant. It conferred a degree of discretion on the officer, when the purpose of the warrant was to enable him to search for and seize only that which had been authorised. It would have been practicable for the officer to draft the warrant in a way which identified the articles sought. Accordingly, by reason of section 15(1), the entry into and search of the premises, and the resultant seizures, were unlawful.

Counsel for the Second Defendant (HMRC) accepted the criticisms and conceded that the entry, search and seizure were unlawful. It was submitted that the failures were mitigated by the fact that relevant information not incorporated into the warrant had, on the evidence of the defendants' witnesses, been imparted orally to the occupiers of the premises. As a result, little or no mischief had been done.

It was further submitted that the descriptions of articles sought in the warrants were narrower than those which the court had found offensive in other cases. In this case, for example, there had at the first bullet point been reference to 'the supply of excise goods'. In Burgin v Commissioners of Police of the Metropolis [2011] EWHC 1835 at paragraph 86, Stadlen J had observed that the warrant as a whole should be considered.

Finally, it was argued that there was no evidence of bad faith in the execution of the warrants by HMRC. The points were made on behalf of HMRC, not with a view to affect any conclusion that entry, search and seizure had been unlawful under section 15(1), but with an eye on the remedies available to the court arising from the unlawfulness. In particular, it was submitted that the matters were relevant to the question of whether the court should quash the warrant or merely declare that the entry, search and seizure were unlawful.

Ground Two

The second ground was based on section 8(1)(c) PACE 1984 and the requirement that a Justice of the Peace be satisfied that there are reasonable grounds for believing that the material to be sought was likely to be relevant evidence. It was submitted that the description of the property at the bullet points in the warrants was such that the Justice of the Peace could not have been so satisfied and that the information provided to the Magistrates failed to show grounds for a belief that the Claimants had committed offences in relation to the alcohol recovered from Cross Transport Limited.

Counsel for HMRC argued that there were reasonable grounds for believing that the identified offences had been committed. It was not necessary to demonstrate that the offences had been committed, although the information was capable of leading to that conclusion. The purpose of the warrant was to enable a search of premises relating to the claimants on the basis that at those premises there was material which was likely to be relevant evidence that was of substance and value to the investigation as a whole. This conclusion was justified as the information pointed towards excise and money laundering offences involving the individuals and the three named companies. The situation pointed towards the use of false documentation and that alone would have given rise to a potentially large category of relevant material. Castle Trade had not complied in VAT matters, and in the circumstances both residential and business addresses were likely to contain relevant material. This combination could properly provide a basis for the Magistrates to be satisfied that the material sought was likely to be relevant evidence.

Conclusions on Ground One

In light of the concessions made by the Second Defendant, the court had little difficulty in concluding that the entry, search and seizure at both sets of premises was unlawful. The purpose of the mandatory requirement imposed by section 15(6)(b) was to enable anyone interested in the execution of a warrant to know the limits of the power of search and seizure being granted. This is necessary to enable that person to challenge the lawfulness of the seizure of any particular item. Accordingly, it is well established that the terms of the warrant must be precise and intelligible by reference exclusively to its own terms and not by reference to any other material.

The obligation under section 15(6)(b) for the warrant to identify, as far as practicable, the articles to be sought is a reference to articles which the Magistrates decided fell within section 8(1) and in relation to the search for which they issued the warrant. Accordingly, in considering whether the obligation under section 15(6)(b) has been satisfied, it was necessary to look back to the information before the Magistrates in order to identify what those articles must have been.

The court stated that it was clear that the parameter of the material identified was by reference to specific offences under investigation and connection to the three named companies. Given the vague and general terms contained in the four bullet points, and the absence of precision in contrast to the information provided to the Magistrates, the court was satisfied that there was a failure to identify, as far as was practicable, the articles sought. While the officers executing

the warrant may well have understood the basis which underlay their search, that was nothing to the point. The occupiers of the affected premises were not in a position to know from the warrant itself the extent of the powers of search and seizure available to the officers. It is, the court stated, an essential part of the citizens safeguard that he or she can learn of the scope of the authorised search from the warrant, rather than from the warrant as interpreted by the executing officers.

The execution of a search warrant at private or business premises is a significant invasion upon individual liberty. Parliament, the court stated, has rightly required that certain safeguards be put in place. These safeguards are contained in sections 15 and 16 of PACE 1984. Section 15(1) specifically provides that a failure to observe the requirements of those sections will render the entry and search unlawful and there was no doubt this was the case here. The Court stated that it was to be observed that a failure or failures of compliance with the provisions of section 15 or 16 do not render the warrant itself unlawful, but rather the entry on, or search of, the premises.

Conclusions of Ground Two

The court considered that the information placed before the Magistrates was such that a Justice of the Peace could properly be satisfied that there were reasonable grounds for believing that an indictable offence had been committed, and that the material on the relevant premises was likely to be relevant evidence. The overall picture, in the judgement of the court, was quite sufficient to warrant such a conclusion. In the circumstances, the court did not consider that ground two was made out.

Remedies

It was submitted on behalf of HMRC that there had been a failure to issue the claim 'promptly', and the question of delay arose. It was conceded, however, that no prejudice had been caused to HMRC. While the court was persuaded that the claim was not made promptly in the absence of any satisfactory explanation by the claimants, it did not exercise it's discretion against the claimants. The claim was concerned with important rights for the claimants, and the merits of the substantive claim, at least in relation to one ground, were in their favour. As a result, relief was not denied on this ground.

Further consideration was made in relation to the availability of an alternative remedy. HMRC's written submissions pointed to the availability of an application to the Crown Court for the return of the seized property under section 59 of the Criminal Justice and Police Act 2001. In addition, it was submitted that were criminal proceedings to be initiated, an application could be made to exclude any material relied on from the seizures under section 78 PACE 1984. With regards to the latter, as no criminal proceedings had yet commenced, the remedy was not realistically available at that stage. The Court also stated that under a section 78 application, the Crown Court retains the power to admit in evidence material which was the result of unlawful seizure. As a result, section 78 was not regarded as an alternative remedy.

As to section 59 of the 2001 Act, the court stated that it was clear that the only forum for a challenge to the validity of a warrant was in judicial review proceedings. The legality of the warrant cannot be challenged in the Crown Court, and that court's powers do not extend to the quashing of a warrant or to the granting of a declaration as to the unlawfulness of entry, search and seizure. Section 59 was therefore not regarded as an alternative remedy.

Counsel for the claimants invited the court to quash the warrant and to order the return of the items seized. In the alternative, he sought a declaration of unlawfulness, together with the return of the items. The court did not consider the warrant should be quashed. It was not a case where there was no basis for issuing a warrant or where that part of the process was very significantly flawed, or where there had been, in the judgement of the court, any evidence of bad faith or failure to make full and frank disclosure. The court did, however, consider that the claimants were entitled to a declaration of unlawfulness relating to the entry, search and seizure of 6 February 2013, which arose from the failure of the warrants to satisfy section 15(6) in terms of their content.

As to the return of the items seized, the court was satisfied that they were seized in the course of a criminal investigation and that if the warrants had been properly drafted, there would have been reasonable grounds to seize and retain those items. As no submission had been made for any pressing need for the claimants to have access to the material, the court was not minded to order an immediate return.

The fact remained that the items were unlawfully held by HMRC subject to the order of the court; however the court stated that there was a potential public interest in retaining documents for the purposes of criminal investigation. Accordingly, the court concluded that the proper order was to order HMRC to return all property and any copies which had been taken. This was to be done within 14 days of the making of the order, unless HMRC made an application to the Crown Court under section 59(1) of the 2001 Act.

Policing practice

Crime

Tackling extremism in the UK: report by the Extremism Taskforce

Following the killing of Drummer Lee Rigby the Extremism Task Force was set up to look at whether the government was doing all it could to confront extremism and radicalisation and to agree practical steps to fight against all forms of extremism.

The report sets out practical proposals to tackle extremism in the following areas:

- disrupting extremists
- countering extremist narratives and ideology
- preventing radicalisation
- integration
- stopping extremism in institutions, including schools, universities and further education and prisons.

Although the work of the task force has now come to an end, departments will provide regular updates to the Prime Minister on how the steps identified are being implemented, their impact and any further steps needed for an effective and comprehensive approach to dealing with extremism.

The full report can be found at **https://www.gov.uk/government/publications/tackling-extremism-in-the-uk-report-by-the-extremism-taskforce**

Taskforce to tackle child abuse launched

The first meeting of the 'US-UK taskforce to Counter Online Child Exploitation' was launched at the US Department of Justice in Washington by Policing Minister Damian Green on 9 December 2013.

The taskforce members include the National Crime Agency's Child Exploitation and Online Protection Centre Command, the FBI and the Homeland Security Investigations.

Over the next year, the taskforce will bring together experts in government, industry, law enforcement and academia from both the United Kingdom and United States to combat child sexual exploitation crimes on the internet and to reduce the volume of child sexual exploitation images online.

Further information can be found at **https://www.gov.uk/government/news/uk-and-us-launch-taskforce-to-tackle-child-abuse**

Diversity

Overview of hate crime published

An overview of hate crime in England and Wales has been published by the Home Office, the Office for National Statistics and the Ministry of Justice. There are two main official sources for the number of hate crime offences in England and Wales, namely the Crime Survey for England and Wales (CSEW) and police recorded crime. Based on combined data from the 2011/12 and 2012/13 CSEW, there were an estimated 278,000 hate crimes on average per year for the five monitored strands. These strands are race, religion, sexual orientation, disability and gender-identity. The most commonly reported motivating factor in these hate crime incidents was race, with an average of 154,000 incidents a year. The second most common motivating factor was religion, with 70,000 incidents per year. The majority of hate crime incidents were accounted for by incidents of assault and incidents of vandalism, which together amounted to around two-thirds of the CSEW hate crime estimate.

The combined 2011/12 and 2012/13 CSEW estimated that 40% of hate crimes came to the attention of the police; a similar level to overall CSEW crime. However, this level of reporting for hate crimes has fallen from 51% in the combined 2007/08 and 2008/09 surveys. This is likely to be due, at least in part, to a change in the profiles of the hate crime offences experienced, away from more serious offences (such as robbery) to less serious offences (such as assault without injury). These less serious offences tend to have a lower reporting rate. The most common reason for not reporting an incident to the police was because the victim believed that the police would not, or could not, do much about it.

In the process of recording a crime, the police can 'flag' an offence as being motivated by one or more of the five monitored strands. In 2012/13, the police recorded 42,236 hate crime offences, around 1% of all recorded crime. As was noted in the CSEW, the most common motivating factor in hate crimes recorded by the police was race, with 35,885 offences recorded in 2012/13. The second most common factor was sexual orientation, with 4,267 offences recorded.

In 2012/13 the police recorded 30,234 racially or religiously aggravated offences, with public fear, alarm or distress offences accounting for around two-thirds of these offences. The number of racially or religiously aggravated offences recorded by the police has fallen by 24% over the last five years. In comparison, there was a 38% fall in the corresponding offences that were not recorded as racially or religiously aggravated.

The police detected 46 per cent of the racially or religiously aggravated offences that were recorded in 2012/13. The detection rate is regarded as the number of crimes that police detect in a given year, as a proportion of the total number of crimes recorded in the same period. The detection rates for racially or religiously aggravated offences of assault, with or without injury, and criminal damage were higher than for the corresponding non-aggravated offences. In contrast, the detection rate for racially or religiously aggravated public fear, alarm or distress was lower than for the non-aggravated equivalent.

In 2012, around 1000 offenders were cautioned after admitting committing a racially or religiously aggravated offence. The most common offence for which a caution was given was causing public fear, alarm or distress, which accounted for around three-quarters of the cautions issued. In 2012, 8,900 defendants were proceeded against at the magistrates' courts for racially or religiously aggravated offences. The most common offences for which defendants were proceeded against were causing public fear, alarm or distress and assault without injury, accounting for around 72% and 18 % respectively.

The number of offenders convicted at all courts for racially or religiously aggravated offences has almost tripled, from 2,300 in 2002 to 6,500 in 2012. This increase is a result of both increases in prosecutions and in the conviction ratio (the number of prosecutions which end in a conviction) for every group of racially or religiously aggravated offences. The volume of offenders sentenced to immediate custody for racially or religiously aggravated offences has increased by almost 80% over the last decade, from 460 in 2002 to 810 in 2012. For each offence group, the average custodial lengths were longer for offenders that were convicted of racially or religiously motivated offences compared with the corresponding non-aggravated offences.

Additional information from the CSEW showed that victims of hate crimes were more likely to be affected emotionally 'very much' or 'quite a lot' by the incident, compared with victims of overall crime. In addition, victims were less likely to be satisfied by the police handling of the incident, with 52% being very or fairly satisfied compared with 72% for overall crime.

An Overview of Hate Crime in England and Wales can be accessed in full at: **https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266358/hate-crime-2013.pdf**

Experimental Analysis of Examinations and Detentions under Schedule 7 of the Terrorism Act 2000 published

The Equality and Human Rights Commission (EHRC) has published a new report on the use of stop and search powers at ports and airports under the Terrorism Act 2000. The experimental analysis looks at patterns in ethnicity of the examinations under Schedule 7 of the Act and suggests that relatively high numbers of those examined are from certain ethnic backgrounds, though the Commission has stressed that the statistical analysis is still experimental.

The relatively high numbers of those examined from certain ethnic backgrounds raise concerns that there may not be sufficient limitations in place to prevent reliance on an individual's ethnicity or country of origin as a reason for conducting the examination, particularly given that there is no requirement for reasonable suspicion. Based on this analysis, the Commission will be working with those responsible for these examinations to ensure that they are following their own guidelines which prohibit discrimination on ethnic grounds in the exercise of this power.

The data in this briefing provide information on the number of examinations carried out in Great Britain under Schedule 7 in each of the years 2010/11 to 2012/13 broken down by ethnic group,

plus additional data on the use of Schedule 7 in airports in 2010/11. An experimental analysis of race disproportionality is then based on data on Schedule 7 examinations combined with ethnic group data from two sources:

- international air passengers from the Civil Aviation Authority's (CAA) Passenger Survey; and
- residents of England and Wales from the 2011 census.

This is experimental due to uncertainty over the ethnic profile of passengers passing through ports.

Key results

- The total number of examinations declined from 65,684 in 2010/11 to 56,257 in 2012/13. In 2010/11, 28,099 (42.8%) examinations took place at airports.
- Examinations may include: basic questioning, a search of property and/or a period of detention of up to nine hours. The great majority of examinations lasted less than an hour. One in twenty-five took longer than an hour and around one in one hundred resulted in detention. At airports one in forty examinations resulted in detention.
- Although in 2012/13 the percentages of examinations of white people (37.2%) and of Asian/Asian British people (23.5%) were lower than in previous years, the main increase was in the percentage of people who did not define their ethnicity at the time of search. The percentage of people with ethnicity 'not stated' was four times larger in 2012/13 than in 2011/12 (8.5% compared with 1.9%). The lower percentages may be due to under-reporting rather than genuine decreases.
- In 2010/11, 46.6% of total examinations were of people of Asian or other ethnicity, as were 65.2% of over the hour examinations and detentions. At airports, 63.9% of total examinations were of people of Asian or other ethnicity.
- In 2010 and excluding missing responses, 90.5% of international air passengers gave white as their ethnic group, as did 86% of the resident population of England and Wales. An estimated 6.8% of international air passengers and 8.5% of residents are from the Asian or other ethnic group.
- The experimental analysis of race disproportionality suggests that both black and Asian or other ethnic groups experienced high race disproportionality in 2010/11, which was higher for examinations at airports than for those at all ports. Overall, race disproportionality was high for total examinations, higher for over the hour examinations and highest for detentions.
- The following estimates were calculated using 2011 Census data.
- Race disproportionality ratios for total examinations at all ports in 2012/13 were estimated as: 11.3 for the Asian or other group, 6.3 for the black group and 3.6 for the mixed race group.
- For airports in 2010/11, race disproportionality ratios for total examinations were:

35.2 for the Asian or other group, 18.0 for the black group and 6.8 for the mixed race group. For all ports in the same year the equivalent race disproportionality ratios were: 11.7 for the Asian or other group, 5.8 for the black group and 2.9 for the mixed race group.

- Further analysis of airport data for 2010/11 considers race disproportionality for nine minority ethnic groups compared with the white group. In this analysis Pakistani, African and 'any other' ethnic groups had the highest numbers of over the hour examinations and detentions and high race disproportionality as a result. The lowest of these was still very high, with race disproportionality for African people of 88.7 for over the hour examinations and 127.8 for detentions.
- Pakistani people stand out as having experienced high levels of race disproportionality in Schedule 7 examinations at airports in 2010/11. This applies to total examinations, as well as to over the hour examinations and detentions. The estimated race disproportionality ratios were: 52.6 for total examinations, 135.9 for over the hour examinations and 154.5 for detentions.
- The highest excesses for total examinations at airports in 2010/11 were seen for the 'any other' group with 9,426, the Pakistani ethnic group with 6,198 and the African ethnic group with 2,693.
- The same three ethnic groups also had the highest excess examinations at airports in 2010/11 for over the hour examinations and detentions. For example, there were 244 excess detentions of people of 'any other' ethnicity, 190 of Pakistani people and 138 of African people.

It is noted that further analysis of data for more recent use of Schedule 7 at airports would provide a check of these apparently high levels of race disproportionality at airports, since only 2010/11 airport data were available for this analysis.

The full briefing can be found at **http://www.equalityhumanrights.com/news/2013/december/commission-publishes-experimental-analysis-of-examinations-and-detentions-under-schedule-7-of-the-te/**

Police

Circular 016/2013: Firearms (Amendment) Rules 2013 and Firearms (Amendment) (No. 2) Rules 2013

Home Office Circular 016/2013 advises that the provisions as indicated in the Firearms (Amendment) Rules 2013 and the Firearms (Amendment) (No. 2) Rules 2013 can now be used. Both sets of rules came into force on 1 December 2013.

The Firearms (Amendment) Rules 2013 include a new single application for a firearm and/or shotgun certificate, replacing the two forms which were previously used. In addition, the rules introduce a new form to vary a firearm certificate. These rules make provision to enable chief officers of police to process applications for a firearm certificate or a shotgun certificate which are made using the old forms that are to be replaced, provided that the application is submitted on or before 1 January 2014.

The Firearms (Amendment) (No. 2) Rules 2013 introduce new firearm and shotgun certificates, replacing those in the Firearms Rules 1998.

Further information can be found at **https://www.gov.uk/government/publications/circular-0162013-firearms-rules-amendment-rules-2013**

College of Policing and Her Majesty's Inspectorate of Constabulary publish concordat on working together

The College of Policing and Her Majesty's Inspectorate of Constabulary (HMIC) have published a concordat setting out how they will work together to achieve the highest possible standards in policing. It sets out the respective roles of the College and HMIC in relation to standards in policing and how the two organisations will work together.

One of the core areas of responsibility for the College is to set standards of professional practice for police officers and police staff based on the evidence of what works. HMIC will use these standards as well as effective practice as part of its work when inspecting police forces.

In line with the College's responsibilities to identify, develop and promote good practice based on evidence, the 'what works' pages of the HMIC website have been transferred to the College of Policing website at **http://www.college.police.uk/en/21011.htm**

The concordat can be found at **http://www.hmic.gov.uk/publication/concordat-between-the-college-of-policing-and-hmic/**

HMIC inspection to assess the effectiveness of certain aspects of policing activity

It was agreed, as part of the HMIC 2013/14 Business Plan, that HMIC would undertake work to assess the effectiveness of certain aspects of policing activity, including inspection focused upon preventive policing, police attendance and freeing up police time.

The key questions posed in this inspection programme are:

- How effective are police forces at preventing crimes and incidents from happening?
- When crimes and incidents are reported, how do forces respond and how does their activity affect crime investigation and prevention, public reassurance, satisfaction and confidence?
- What constitutes a working day for officers and staff, and how are forces freeing up time and exploiting technology to ensure their focus is on those activities that will reduce crime, anti-social behaviour and improve confidence and satisfaction?

This inspection will examine the extent to which preventative policing forms part of each force's policing model; how research on what is known to work in reducing crime informs those approaches to preventative policing; how they are translated into operational activity; and how effective approaches are identified, captured and shared.

It will also examine how the police service is responding to calls from the public regarding incidents of crime and anti-social behaviour. It will include examining and comparing the standards of service delivery in relation to the attendance at, and investigation of, crimes and incidents across police forces and at any corresponding variations in the levels of crime reduction, detection and public reassurance and satisfaction.

With regard to freeing up police time, the inspection will examine the extent to which the police service understands how 'policing' time is currently spent and what forces are doing to create capacity to sustain or improve service delivery. It will consider how forces are examining systems, processes and procedures to make them more efficient and effective and how technology is being used to improve efficiency.

The timescales below provide an indication of when it is anticipated that key stages of the work will be completed. It assumes that there will be three separate national reports, published at monthly intervals before the end of July 2014:

- agree terms of reference – by 1 November 2013
- develop and agree templates and data requirements – by 1 December 2013
- pilot testing of methodology in force, confirm inspection schedule, resource requirements and deliver staff training – by 1 January 2014

- in-force reality testing – 1 January to 1 April 2014
- data quality assurance and analysis – beginning 1 April 2014
- three separate, complementary reports to be published during the months of May, June and July 2014.

A single national report will be created, summarising the findings from all three inspections. In order to make findings as useful and accessible to the public as possible, a single, high-level public-facing report will also be produced for each force. Forces will also receive a more detailed post-inspection feedback report.

Further information can be found at **http://www.hmic.gov.uk/publication/making-best-use-of-police-time-terms-of-reference/**

Criminal justice system

Attorney General to warn Facebook and Twitter users about contempt of court

A change in policy has been announced whereby the Attorney General will publish advisory notes to help prevent social media users from committing a contempt of court. This is designed to help inform the public about the legal pitfalls of commenting on Facebook and Twitter in a way which could be seen as prejudicial to a court case or those involved.

The advisories are intended to ensure that a fair trial takes place and to warn people that comment on a particular case must comply with the Contempt of Court Act 1981.

The advisories will be published through the Attorney General's Office Twitter feed @AGO_UK as well as at **https://www.gov.uk/government/organisations/attorney-generals-office**

New guidance issued to ensure youth offending teams remain effective

The Ministry of Justice has published 'Modern Youth Offending Partnerships – Guidance on effective youth offending team governance in England' which recognises the many significant reforms both nationally and locally which have affected Youth Offending Teams (YOTs) and statutory partners.

This new statutory guidance replaces 'Sustaining the Success' which was published in 2004 and reaffirms the responsibilities YOTs, local authorities and statutory partners, including health, police and probation services, have within the youth justice system, while also recognising that local arrangements will vary to meet local circumstances.

The guidance document sets out how YOTs should operate, with a particular focus on:

- the responsibilities of local partners
- specific requirements for the delivery of local youth justice services
- governance arrangements

The guidance is also relevant to non-statutory partners who contribute to the delivery and oversight of local youth justice services, such as senior housing officers, magistrates or voluntary sector representatives.

The guidance document can he found at **https://www.justice.gov.uk/youth-justice/monitoring-performance/yot-management-board-guidance-consultation**

Revised guidance on disclosure issued to the legal profession

The Attorney General and the Lord Chief Justice of England and Wales have published a revised judicial protocol and revised guidance on the disclosure of unused material in criminal cases. This follows the recommendations of Lord Justice Gross in his September 2011 'Review of Disclosure in Criminal Proceedings' and takes account of Lord Justice Gross and Lord Justice Treacy's 'Further review of disclosure in criminal proceedings: sanctions for disclosure failure' published in November 2012.

The 'Attorney General's Guidelines on Disclosure' have been issued for investigators, prosecutors and defence practitioners on the application of the disclosure regime contained in the Criminal Procedure and Investigations Act 1996 (CPIA). The guidelines emphasise the importance of prosecution-led disclosure and the importance of applying the CPIA regime in a 'thinking manner', tailored, where appropriate, to the type of investigation or prosecution in question.

The guidelines outline the high-level principles which should be followed when the disclosure regime is applied and replace the existing Attorney General's Guidelines on Disclosure issued in 2005 and the Supplementary Guidelines on Digital Material issued in 2011.

The Judicial Protocol on the Disclosure of Unused Material in Criminal Cases sets out the principles to be applied to, and the importance of, disclosure; the expectations of the court and its role in disclosure, in particular in relation to case management; and the consequences if there is a failure by the prosecution or defence to comply with their obligations.

A review of disclosure in the magistrates' courts is currently being undertaken and amendments may therefore be made to these documents following the recommendations of that review, and in accordance with other forthcoming changes to the criminal justice system.

The Attorney General's Guidelines on Disclosure 2013 and the Judicial Protocol on the Disclosure of Unused Material in Criminal Cases can be found at **http://www.judiciary.gov.uk/publications-and-reports/protocols/criminal-protocols/protocol-unused-material-criminal-cases**

Parliamentary issues

Joint Committee on Human Rights published report on the Offender Rehabilitation Bill

The Joint Committee on Human Rights (JCHR) has published its Report on the Offender Rehabilitation Bill.

It welcomes the Bill's potentially human rights enhancing objectives of taking measures to protect the public from crime, at the same time as focusing on rehabilitation and extending positive support to those vulnerable people who receive short-term prison sentences. However, it remains concerned that the Government provided insufficient information:

- to demonstrate the Bill's compatibility with relevant international standards other than the European Convention on Human Rights; and
- to support its assertion that that proposals have been considered fully in line with the requirements of the Equality Act 2010.

The JCHR welcomes the Government's assurance that private providers of probation services are obliged to act compatibly with human rights law but recommends that the Bill should set out the providers' duties. In addition, the Committee calls on the Government to develop clear guidance on the human rights obligations of these providers, and to set out how it will monitor their performance in this regard.

The Committee also:

- expresses concern that the supervision regime proposed by the Bill restricts the discretion of the court by imposing a mandatory 12 month period in all cases where the offender is sentenced to a term of imprisonment of more than one day
- expresses concern that custody as a sanction for breach might not be used only as a last resort
- welcomes, in principle, the benefit that may result for the majority of women offenders from the Bill's extension of supervision and rehabilitation support in the community to all offenders sentenced to under 12 months imprisonment; and
- welcomes the Government's assurance that guidance will be issued to the new providers of probation services on working with women offenders, and asks that a report be made to Parliament after two years have elapsed on the impact on women offenders of the Transforming Rehabilitation reforms.

The report can be found in full at **http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/80/8002.htm**

White paper on modern slavery published

A draft bill has been published which forms part of a government White Paper setting out the action that is required to eradicate slavery from the UK. The draft legislation, entitled the Draft Modern Slavery Bill, will be subject to pre-legislative scrutiny, with the aim of publishing a Bill in the spring. The draft Bill sets out provisions to:

- consolidate and simplify existing slavery and trafficking offences to provide clarity and focus when investigating and prosecuting traffickers
- increase the maximum sentence available from 14 years to life imprisonment so that offenders receive the punishments they deserve
- introduce Slavery and Trafficking Prevention Orders (STPOs) and Slavery and Trafficking Risk Orders (STROs) to restrict the activity of those who pose a risk and those convicted of slavery and trafficking offences so they cannot cause further harm
- create a new Anti-Slavery Commissioner role to galvanise law enforcement efforts to tackle modern slavery; and
- establish a legal duty to report potential victims of trafficking to the National Crime Agency (NCA) to build a clearer picture of the nature of this hidden crime.

Training and guidance for front line staff such as the police, border officers, asylum case workers and health workers is already taking place, to improve the way potential victims are identified and supported. Tackling slavery is a key component of the Serious and Organised Crime Strategy, which was published by the Home Office in October, and is a priority for the National Crime Agency.

Earlier this month, the Home Secretary announced that a new Modern Slavery Unit had been established in the Home Office to ensure a co-ordinated response. In addition, the National Referral Mechanism, the framework for identifying victims of human trafficking and ensuring they receive the appropriate protection and support, will be reviewed to ensure it is operating as effectively and supportively as possible.

The Draft Modern Slavery Bill can be accessed in full at: **https://www.gov.uk/government/publications/draft-modern-slavery-bill**

Protecting the public
Supporting the fight against crime

As the professional body for policing, the College of Policing sets high professional standards to help forces cut crime and protect the public. We are here to give everyone in policing the tools, skills and knowledge they need to succeed. We will provide practical and common-sense approaches based on evidence of what works.

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