NPIA
National Policing Improvement Agency

Digest

May 2012

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

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

The NPIA aims to provide fair access to learning and development for all. To support this commitment, the Digest is available in alternative formats upon request. Please email digest@npia.pnn.police.uk or telephone +44 (0)1480 334566.

Digest Editor: Telephone +44 (0)1480 334566

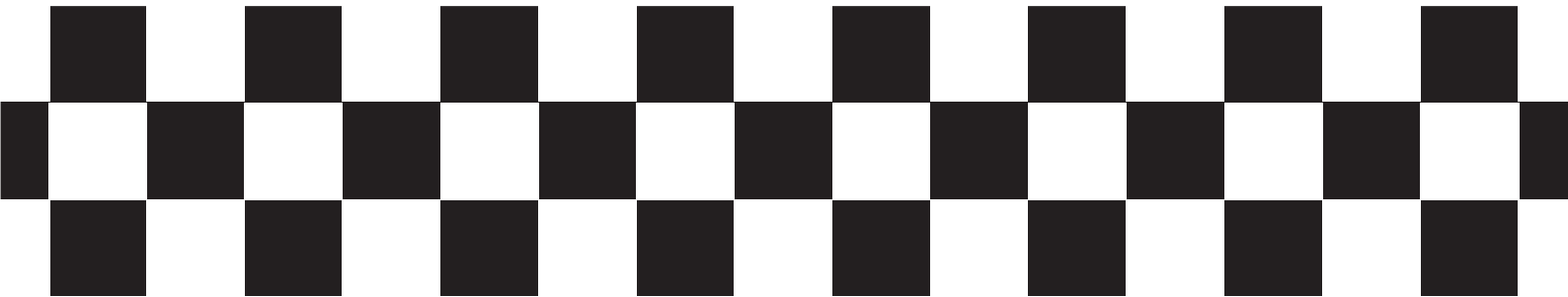
May 2012

Digest

Legal Services

Chief Executive Officer Directorate

www.npia.police.uk/digest



NPIA Digest May 2012

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

There are reports of cases looking at the offence of permitting premises to be used for the supply of controlled drugs, and the police use of restraint in light of the Mental Capacity Act 2005.

We look at the Joint Human Rights Committee's report on the Justice and Security Green Paper, the final report of the Independent Riots Panel, and the Equality and Human Rights Commission's research on judgments of the European Court of Human Rights relating to the UK Government.

Statistical bulletins are covered which include the report of the UK National Fraud Authority, the latest figures from the Crime Survey for England and Wales and the UK Missing Persons Bureau Report.

There are also articles on the Ministry of Justice's consultation on probation services, the Government's proposals to extend the system of notification requirements placed on registered sex offenders, and the Government's alcohol strategy.

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

Contents

Bills Before Parliament 2010/11 - Progress Report

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

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

The Bill was presented to Parliament on 11 February 2011. Third reading was completed on 12 March 2012. The Commons considered Lords amendments on 19 March 2012. The Bill returned to the Lords on 24 April for consideration of Commons amendments. Both Houses agreed on the text of the Bill which now waits for the final stage of Royal Assent when the Bill will become an Act of Parliament. A date for Royal Assent has yet to be set.

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

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

The Bill was presented to Parliament on 21 June 2011. Third reading in the Lords was completed on 27 March 2012. The Bill returned to the Commons on 17 April 2012 for consideration of any amendments made by the Lords and then back to the Lords on 23 April 2012 for consideration of Commons amendments in the 'ping pong' stage. The Bill may 'ping pong' between both Houses until they both agree to the exact wording of the Bill.

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

Permitting Premises to be used for Supply of Class A Drugs: Elements of the Offence

Regina v McGee [2012] EWCA Crim 613

On 29 November 2011, Ms McGee was convicted in the Crown Court of permitting her premises to be used for the supply of Class A drugs, contrary to section 8(b) of the Misuse of Drugs Act 1971. She was sentenced to 18 months' imprisonment. She was acquitted of conspiracy to supply Class A drugs and of knowingly being in possession of criminal property, namely £7,000. Ms McGee appealed to the Court of Appeal against her conviction under Section 8(b) of the Misuse of Drugs Act 1971 on the basis that she did not know about any drug processing or supply on her premises.

The Facts

Ms McGee was the owner of 12 Russell Road. Her son, John Plumb, who was a heroin addict, lived with her. As a result of a police operation, police entered the house to conduct a search. The police found under Ms McGee's bed an open wrap containing a block of over 100 grams of powder containing cocaine. There were other quantities of cut cocaine in the room that John Plumb occupied, as well as a quantity of heroin. The police also discovered in the utility room cutting agent powders and other items which would have been used in mixing and packaging quantities of drugs. There were two sheds in the garden. In one of them they found a hydraulic press used for compacting mixed or cut cocaine into blocks, as well as large quantities of cutting agent.

Ms McGee's defence was that she knew nothing about any drug processing or supply. She had taken her son into her home in August 2009 to try to help him break his heroin habit. The £7,000 cash could be explained because it had been largely money withdrawn from her mother's account after her recent death. She had no idea about the drugs under the bed. She said she never went into the shed where the drugs paraphernalia was found and that she would not necessarily know if people visited her son on the premises because his room was the old conservatory and it led directly into the garden.

The Law

Section 8 of the Misuse of Drugs Act 1971 provides:

A person commits an offence if, being the occupier or concerned in the management of any premises, he knowingly permits or suffers any of the following activities to take place on those premises, that is to say:

(a) producing or attempting to produce a controlled drug in contravention of section 4(1) of this Act;

(b) supplying or attempting to supply a controlled drug to another in contravention of section 4(1) of this Act, or offering to supply a controlled drug to another in contravention of section 4(1);

(c) preparing opium for smoking;

(d) smoking cannabis, cannabis resin or prepared opium ....

In his summing-up the Crown Court judge defined the necessary elements of the offence in the following way:

'Now count 3 alleges that between the same dates, being the owner and occupier of 12 Russell Road, the defendant knowingly permitted on those premises the supply of a controlled drug of Class A (namely cocaine). Here the prosecution again must prove two things: first of all, that the defendant was the owner and occupier of those premises, and secondly that she knowingly permitted -- allowed, if you like -- the supply of cocaine to take place on those premises. That is a simpler legal test than that of conspiracy.

In this case the first ingredient is admitted, because she is the owner and we know that she is the owner of the premises and has been for I think she said 34 years. So the question you have to ask yourselves -- the only question here -- is: did she knowingly permit the supply of cocaine to take place on those premises?'

The Appeal

Counsel for Ms McGee argued that the judge was wrong in identifying the issue of knowledge, i.e. whether she knowingly permitted supply to take place on the premises as the only relevant question for the jury. In addition to the question of knowledge, the jury had to be satisfied that the supply of cocaine actually took place on the premises. She could not know of something that had not occurred. Both counsel and the judge in his summing-up in the Crown Court appeared to have assumed that there was no issue about that. In fact, it had never been admitted by Ms McGee that such supply had occurred and the prosecution conceded there was no evidence before the jury of any such supply.

Counsel for Ms McGee argued that there would have been a cast-iron case for having the charge dismissed on the basis that the prosecution had failed to adduce sufficient evidence to establish the offence. Counsel relied in particular upon the decision of the Court of Appeal in R v Auguste [2003] EWCA Crim 3329. That was a case under section 8(1) (d) of the 1971 Act which makes it an offence for a person who manages

premises knowingly to permit the smoking of cannabis, cannabis resin or prepared opium. The appellant in that case admitted that he would have permitted cannabis to be smoked on the premises and there was, in fact, cannabis found there. However, there was no evidence that any smoking had actually taken place. The court in that case accepted that the conviction should be quashed on the ground that it was necessary for the prosecution to establish that the requisite activity had actually taken place before a conviction could be sustained. The fact that the appellant would have allowed smoking to take place was not enough. Since it was common ground that it was not open to the jury to conclude that smoking cannabis had taken place, there was no basis upon which the appellant could be convicted.

The Court of Appeal accepted the analysis in R v Auguste and agreed that it applied equally to section 8(b) of the 1971 Act. The court said that the only question to consider was whether there was evidence before the jury of any supply on the appellant's premises.

Counsel for the prosecution argued that the concept of supply could be given an extremely broad meaning and is not confined to the actual handover of drugs. He said that there was abundant, uncontested evidence of the wholesale preparation of cocaine for profit. Cocaine, a cutting agent and general paraphernalia associated with the supply of drugs were found in the appellant's bedroom, and her son's room. In addition, bundles of cash were located in the son's bedside cabinet.

The Court of Appeal accepted that there could be no doubt that with drugs of this quantity there was an obvious intention to supply them to third parties. However, that did not establish the element of this offence. It was necessary for the supply actually to take place on the premises not 'from the premises'. The court accepted that it may well be that the son did indeed pass drugs to third parties on the premises, but there was no evidence of that before the jury.

The court rejected the prosecution's argument that Ms McGee could have produced evidence from her son as to how the arrangements were operated. The court said that 'it was for the prosecution to prove the case, not for her to disprove it. In our view a crucial element of the offence was not established on the evidence. It is unfortunate that the error was not picked up at the time. We understand why the judge summed up as he did, because nobody took the point that this crucial feature of the evidence had to be established. Everybody appears to have assumed that the only issue for the jury was knowledge. The fact that the appellant's Counsel did not pick up on the point is no reason for upholding the conviction.'

Accordingly, the Court of Appeal quashed the conviction of Ms McGee on the basis that a crucial element of the offence had not been established on the evidence.

The full report of the case can be found at:
http://www.bailii.org/ew/cases/EWCA/Crim/2012/613.html

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

ZH (by his litigation friend) v Metropolitan Police Commissioner [2012] EWHC 604 (QB)

This was a claim made by ZH, a severely autistic, epileptic nineteen year old young man who suffers from learning disabilities and is unable to communicate by speech. The claim, made by his father as his litigation friend, was for damages for assault and battery, false imprisonment, unlawful disability discrimination under the Disability Discrimination Act 1995 (DDA), and under the Human Rights Act 1998 (HRA) alleging breaches of Articles 3, 5 and 8 of the European Convention on Human Rights (ECHR).

The Facts

In 2008, when the events leading to this litigation occurred, ZH was sixteen years of age, living at home and attending a specialist day school run by the National Autistic Society.

On 23 September 2008, ZH was taken with four other pupils from his school to Acton swimming baths on a familiarisation visit. It was not intended that any of the children would swim or be in close proximity to the water on that day. The pupils were accompanied by three of the school staff, Ms Namballa, ZH's class teacher, and two classroom assistants. One of those assistants, Mr Badugu, was responsible for providing one to one support to ZH. When the pupils left the viewing gallery above the pool, ZH broke away from the group and made his way to the poolside. He became fixated by the water and despite his carer's attempts to distract him by offering him crisps; he could not be encouraged to move away from the poolside. The school staff were aware that ZH had an aversion to being touched and would be likely to react adversely if this was done, so they did not attempt to do so. Becoming fixated or 'stuck' and aversion to being touched are both common features of autism.

Ms Namballa returned to the school, which was nearby, with the other pupils intending to return to the pool with assistance. She asked Mr Badugu to stay at the pool in charge of ZH. Whilst Ms Namballa was away, Mr Badugu tried to entice ZH away from the pool with a packet of crisps. He had moved closer to ZH to show him the crisps but this had caused ZH to move to the edge of the pool ready to jump in, so he stayed slightly away from him in the corridor. He was in that position when the pool manager, Mr Hartland, in response to a call from the lifeguard, came to the poolside. Mr Hartland told Mr Badugu that they had a swim safety policy under which everyone who could not swim had to be accompanied by an adult. He was aware that ZH had

been by the poolside for a significant period of time by then, and said to Mr Badugu that he needed to do something to remove ZH from the pool or he would call the police. Mr Badugu told Mr Hartland that ZH needed time. He also told him that ZH's teacher would be back with other staff members to help to deal with the situation and asked him not to call the police because ZH was not hurting himself or being dangerous to anyone around.

Mr Hartland then tried to persuade ZH to move away from the pool by seeking to tempt him away with a can of coca cola. This did not succeed and, having lost patience with what he regarded as the carer's ineffectiveness, he decided to call the police. His intention was to call the Police Community Support Officers but when he made the call he was told it should have been a 999 call and was put through to the operator.

The information which the pool manager gave to the operator was recorded as follows:

"We have a disabled male trying to get in the pool… the carer is trying to stop him and he is getting aggressive"
"He is quite a big lad".

There was no evidence from any other source which suggests that at any time ZH was in fact aggressive by the time Mr Hartland made his call to the Police. In the evidence he gave to court, Mr Hartland said that he had initially sought to call the PCSO, rather than the Police, because he did not think it was a real emergency. He agreed that ZH had not been aggressive up to that point and no-one had suggested that he had been. He accepted that ZH was not aggressive but that he had given that impression when speaking to the police on the telephone probably because he was panicking, having never faced such a situation before.

Throughout the time that ZH was at or near the edge of the pool he was demonstrating his liking for the water. He could not swim but had no fear of the water or any knowledge of its danger. His position at the poolside was about midway the length of the pool at about the point where the bottom of the pool starts to slope down towards the deep end. The shallow end is .96 metres and the deep end is 1.97 metres. ZH's behaviour whilst he was at or near the edge of the pool was described as including one or more of the following: 'making high pitched squeals, jumping up and down, rocking, and moving, backwards and forwards, and moving or waving his arms about.' It was clear to those who observed him that he was disabled.

In response to the call, two police officers arrived at 3.30pm in full uniform. One of the officers spoke to Mr Hartland and went to the area where ZH was standing near the pool. The other

officer spoke to Mr Badugu, who told her that ZH was autistic. At this point, Ms Namballa had still not returned.

In evidence, the officers said that they felt that they had to go and help ZH as there was an immediate risk to him and nobody was taking control of the situation. One of the officers went up to ZH and touched him gently on the back to see if he would respond and said 'Hello Z I'm Hayley.' ZH moved closer to the pool and the officer thought he was going to jump in so she took hold of his jacket. The other officer also took hold of his jacket at the same time. Both officers each took hold of an arm to stop ZH from falling in to the pool. However, ZH was too big and strong and the momentum of his own weight took him forward and he ended up in the water. In cross examination, one officer said that having heard the evidence she accepted that ZH may have jumped in reaction to the police presence.

When ZH had gone into the pool the evidence of most of the witnesses is to the effect that he was clearly enjoying himself, splashing the water and making excited noises. By this time Ms Namballa had returned and the carers tried to persuade ZH to come out. ZH resisted attempts by the lifeguards to move him towards the shallow end. The lifeguards then decided to grab him and remove him from the pool. They moved him to the shallow end, two lifeguards holding ZH by his arms and Mr Hartland holding him by his legs.

The police did not seek to take any advice from the carers during this time, nor to attempt to formulate a plan with them for the safe removal of ZH from the pool. Nor did the carers seek to offer the police any advice or put forward any plan or proposal.

Whilst the lifeguards had been taking ZH towards the shallow end, he was struggling or wriggling to free himself from their grasp. During the time that ZH was in the water and moved towards the shallow end, three further police officers arrived at the pool. They were alarmed at the scene before them and fearful for ZH's safety. None of the officers spoke to the carers or the carers to them but decided that they had to get him out because he was in danger, and that the lifeguards were to move him to the shallow end and lift him out with the assistance of the police if needed. There was only a very brief discussion amongst the police about this, but they had to decide what they needed to do.

ZH was lifted out of the pool by the lifeguards and his arms taken hold of by two of the police officers. ZH was struggling or wriggling as he was being lifted up because, on the Defence case, he was reluctant to leave the pool though one officer conceded that the struggling may have been because of the force being applied to him. The intention was to safely get him out of the water and hand him over to his carers.

It was a very difficult task lifting him out of the water as he was heavy and he slipped twice whilst they were seeking to lift him up and ZH ended on the floor on his back. Five officers, all applied force to ZH's body. At one stage it is said that his struggling was such that he partially lifted two officers off the ground.

Whilst ZH was being restrained both carers were trying to calm him down by showing him a banana and a lollipop but the police told them to move away. The carers had asked the police not to restrain ZH in the way that they were doing and emphasised that he was autistic and epileptic. One officer conceded in cross-examination that there was probably an opportunity for ZH to have got out of the pool voluntarily, and that there may have been other options, but they did not think of them at the time. They might have done, he said, if they had consulted the carers.

Another officer said that whilst ZH was in the pool he was still in a dangerous situation as he was in the water with his clothes on. He was not in danger but the situation was a dangerous situation. As ZH was struggling/trying to get back into the pool there was no other option but to restrain him. All the police officers were emphatic, that they felt they were placed in a situation in which they were given no alternative but to do as they did, at all times being concerned about ZH's safety and acting to protect him. To a lesser extent they were also protecting the safety of others who might possibly be injured by him, were he, for example to run off around the pool and seek to barge through people in his way. One officer said it would have been more helpful for the carers to come up to offer advice rather than the police looking around the pool for help.

When asked whether ZH could have been left in the pool and allowed to come out of it in his own time with encouragement, one officer said that they were advised by the lifeguards, that ZH was to be taken out of the pool. The officer accepted that the suggestion that the carers could have been barriers, and the use of the linking technique could have been considered at the time if it had been suggested to them but it never was, either at the time or earlier.

It was only when two pairs of handcuffs and the leg restraints were applied that the application of force ceased. The swimming instructor, who was watching nearby said that during the course of the restraint, ZH lost control of his bowels. He said in evidence that ZH was very distressed by the process of the restraint and he was of the view that it would have been better to have let ZH go even if that meant him injuring himself.

After the handcuffs and restraints were applied, ZH was taken out of the building via the emergency exit to the car park. He

was then placed alone in a cage in the rear of a police van still in handcuffs, leg restraints, and soaking wet. He was very agitated and distressed. Whilst he was in the police van his carer, Ms Harley, arrived at the scene with further staff from the school. She was not allowed to get into the caged area of the van but was able to calm ZH by speaking to him so that the police officers removed his handcuffs and leg restraints at about 4.20pm. After he had been examined by the Ambulance Service, who had already been called to the scene, he was permitted to leave with his carers, remaining highly distressed and too upset to change his clothes.

ZH suffered consequential psychological trauma as a result of this experience and an exacerbation of his epileptic seizures. The agreed psychiatric evidence was that ZH was likely to have suffered from an acute level of psychological suffering during the events, would not have understood what was happening, and was likely to have perceived his restraint as an unwarranted attack on his person. The use of considerable restraint would have been particularly distressing for him.

This action was brought solely against the police but the police made allegations against the school staff in its defence. No allegation was made against the lifeguards. The role played by the school, the carers and the lifeguards was considered during the course of the judgment as these parties influenced or contributed to the events which occurred.

The Claims

Assault and Battery

The High Court judge considered each application of force and restraint.

a) Force applied to ZH before he jumped into the pool

The judge said that such applications of force without consent, as they were, constitute assault and battery. However, Section 5(1) of the Mental Capacity Act 2005 sets out a number of pre-conditions which if satisfied permit certain acts to be undertaken in respect of those lacking mental capacity, without legal liability being incurred.

The judge said there was no doubt that the officers reasonably believed that ZH lacked capacity and that he was suffering from that lack of capacity at the material time. The evidence was clear that this would have been apparent to anyone who was observing and hearing him at the poolside. For section 5(1) to apply, the officers, when they touched ZH, must reasonably have believed that it was in his best interests for them to do so.

Section 6 imposes limitations to section 5, in that where an act is intended to restrain a person who lacks capacity, the person

carrying out the act must reasonably believe it is necessary to do so in order to prevent harm and the act must be a proportionate response to the likelihood of the suffering of harm and the seriousness of that harm.

The judge said 'I am clear in my conclusion that the Defence has failed to satisfy the preconditions under the Mental Capacity Act 2005. Their task was without doubt a difficult one; they arrived at the pool in the expectation from the message that they had received that they were to be faced with an aggressive disabled male; they were in fact faced with a disabled young man looking as if he might enter the pool fully clothed at any moment with no carer apparently taking control of the situation. But these first impressions were not in fact true. ZH was not and had not at any stage been aggressive before he went into the pool; he had been present beside the pool for some 40 minutes without jumping in and had become 'stuck' there as can occur in the case of autistic children; the carer was several feet away for a reason, namely to ensure that ZH was not crowded into jumping into the pool. What was needed from the police on their arrival was a calm assessment of the situation so as to ensure that they were as fully informed as the circumstances permitted before taking action. Had they been so informed, as they could have been by speaking to Mr Badugu, they would have learned that they must not touch ZH or go right up to him as these actions would be the most likely to bring about that which they sought to avoid, namely ZH jumping into the pool.'

The judge concluded that in the circumstances, however genuine their action, neither of the two officers could reasonably have believed that they were acting in ZH's best interests. He was also satisfied that their actions were not a proportionate response to the likelihood of ZH suffering harm and the seriousness of that harm at the time that they acted.

b) Removal of ZH from the pool

In the circumstances, the judge was not satisfied that the Defence had established that the officers reasonably believed that it was in ZH's best interests to remove him from the pool when they did, or in the manner that they did. Such action, without full information and consultation with the carers was neither necessary nor proportionate. The judge also said that the defence of necessity, even if it had been available, was not satisfied. Firstly the police were responsible for ZH entering the water when he did and secondly it was not necessary for him to be removed physically from the pool rather than first being given the opportunity to leave the shallow end by himself surrounded by lifeguards with carers waiting to assist him on the poolside.

c) Restraint of ZH on the poolside

The judge was not satisfied on the evidence that the police believed at this stage that the restraint was for the benefit of ZH. He said 'it cannot have been a reasonable belief that that level of force was in ZH's best interests. The dangers he faced of escape and re-entering the pool were not, given the number of lifeguards and carers present, severe, compared with the risk of injury by such forcible restraint to an autistic and epileptic young man.' Nor were the actions of the police proportionate in the circumstances, given that as an alternative to such restraint ZH could have been permitted to leave the pool by himself from the shallow end or when on the poolside have been immediately released for his carers to deal with.

The judge decided that the common law defence of necessity, had it been available would have been inapplicable in the circumstances; it was not necessary to prevent death or serious injury for ZH to have been forcibly restrained as he was.

False Imprisonment

The Defence conceded that ZH was falsely imprisoned from the time he was restrained by the officers at the poolside. The same arguments in relation to the application of the Mental Capacity Act 2005 and the common law defence of necessity were considered. The judge ruled that for the same reasons as expressed above they failed and as a consequence ZH was imprisoned from first restraint on the poolside to the time when he was released from the police van to the custody of the carers. The judge accepted that Ms Harley was allowed to speak to ZH as soon as she arrived and this helped him to calm down so that the restraints were later removed. No consideration was given however to the placing of ZH in one of the rooms that might have been available at the pool where he would have been warmer and more comfortable. The judge found that there would have been no greater risk of him running free from a room in the pool premises than from the police van.

The Disability Discrimination Act 1995

The Defence conceded that the use of physical restraint on a severely disabled non-verbal young man is a practice that would give rise to a duty under section 21E(2) of the Disability Discrimination Act 1995, to take such steps as are reasonable in all the circumstances to change that practice so that it no longer has that effect. If the public authority did not do so it would be guilty of discrimination.

The issue under the DDA was therefore whether reasonable adjustments i.e. appropriate changes to the practice are adjustments which should have been made. The Defence contended that such changes were unrealistic and unreasonable.

The claim set out the following changes to the practice which the Claimant stated amounted to reasonable adjustments for the police to have made:

i) identifying, or at least taking reasonable steps to try and identify, with ZH's carers, the best means of communicating with ZH before attempting to do so and as the situation developed, then adjusting their usual means of communication accordingly;

ii) identifying, or at least taking reasonable steps to try and identify, with ZH's carers before approaching him, a plan to best address the situation and then taking reasonable steps to implement that plan;

iii) allowing ZH opportunities to communicate with his carers and receive reassurance from them, in particular when he had just come out of the pool and when he was shut alone in the police van;

iv) at the outset, allowing ZH an opportunity to move away from the poolside at his own pace. He had not entered the water despite standing unrestrained near the edge for at least around 30 minutes prior to the officers' attendance. Following their arrival and excessive intervention he jumped into the water within minutes;

v) recognising that in the circumstances use of any force on ZH was an option of very last resort only to be deployed if all other options had been tried and failed and only then at the minimum level possible and in circumstances that were not duly oppressive for ZH;

vi) seeking, listening to and responding to advice from ZH's carers as the situation developed and keeping their approach to it under careful review, for example after it became readily apparent that using force on ZH only served to frighten and distress him and escalate the situation further;

vii) adopting alternative strategies to afford protection for ZH's safety for example by the officers present forming a cordon to prevent him from re-entering the pool;

viii) prioritising the adoption of a calm, controlled and patient approach at all times in their dealings with ZH.

The Defence also relied on the defence of justification set out in section 21D (iii) (iv) of the DDA. To establish this defence it had to be shown that the treatment or non-compliance with the duty was necessary in order not to endanger the health or safety of any person, which may have included that of the disabled person.

The judge ruled that 'it was practicable and appropriate, indeed essential, that the police informed themselves properly before taking any action which led to the application of force on the Claimant.' He found that Mr Badugu could and should have been consulted by the officers before they moved towards and touched ZH. Whilst ZH was in the pool for some 5-10 minutes there was ample opportunity for one of the five police officers to have consulted Mr Badugu or Ms Namballa as to what procedure should be followed given that ZH was in the pool. Even during restraint at the poolside the advice given by the carers as to the inappropriateness of restraint could have been listened to and followed.

The judge said 'It was both realistic and reasonable for such steps to have been taken and I am satisfied that the defence of justification is not made out by the Defence. It was not necessary in order to avoid endangering the health or safety of any person, including that of ZH, to have carried on without seeking information and advice from the carers. On the contrary it was the failure to take such information or advice which led to the unfortunate sequence of events which followed.'

The judge accepted that whilst Mr Badugu could have been more proactive in his dealings with the police, the duty was on the police to carry out the reasonable adjustment of seeking information and advice from him and later Ms Namballa, before acting as they did. The failure to do so resulted in a step by step escalation of the problem, increasing, the safety risks for ZH and indeed the potential risk for others.

The judge found that during restraint and when in the van there was no communication until Ms Harley arrived although she was allowed to speak to ZH and calm him down on her arrival. Communication with his carers should have been allowed throughout. That also was a reasonable adjustment to make given Z's distress and his autism (adjustment iii).

The judge also accepted that ZH should have been given the opportunity to move away from the poolside at his own pace, (adjustment (iv)), that the police should have recognised that force should have been the option of last resort (adjustment (v)) and that a calm, controlled and patient approach should have been taken at all times in their dealings with ZH (adjustment (viii)). The need for a calm assessment of the situation and the acquisition of knowledge of how to deal with the autistic young man before taking any precipitate action was essential.

The judge was satisfied that the police should have considered the alternative strategies to deal with the situation and that there was no evidence that they did so. Any strategy might have posed some problem but the least appropriate solution was the one which was adopted. Permitting ZH to leave the

pool by himself from the shallow end having been released by the lifeguards so that he could be met by his carers standing at the edge of the pool, was an option neither discussed nor considered nor attempted. That was also a failure to make a reasonable adjustment.

The judge accepted that it was not possible to say what would have happened had these reasonable adjustments been made. However, he was satisfied that each of the adjustments suggested may well have led to a better outcome than the course of action which the police in fact took.

The judge ruled that there was a breach of the Disability Discrimination Act 1995 and the police had failed to establish the defence of justification.

Human Rights Acts Claims

In view of the factual findings made the judge was satisfied that there had been a breach of Articles 3, 5 and 8.

Article 3 (Prohibition of Torture)

The judge ruled that when the duration of the force and restraint, injury sustained, and age, health and vulnerability of ZH were taken into account he was satisfied that there had been a breach of Article 3. The minimum level of severity had been attained when the whole period of restraint was taken into account. He said that it was not just the application of handcuffs and leg restraints which had to be considered but the whole time when restraint on the poolside and in the van occurred. The judge concluded that the treatment of ZH amounted to inhuman or degrading treatment.

Article 5 (Right to Liberty and Security)

The judge concluded that on the facts of this case the nature and duration of the restraint amounted to a deprivation of liberty, not merely a restriction on movement. The judge went on to say 'even though he was of the view that the purpose and intention of the police (namely at least in part to protect ZH's safety) was relevant to the consideration of the application of Article 5, I am nevertheless satisfied that even when that is taken into account, a deprivation of liberty has occurred. The actions of the police were in general well intentioned but they involved the application of forcible restraint for a significant period of time of an autistic epileptic young man when such restraint was in the circumstances hasty, ill-informed and damaging to ZH.' He found that the restraint was neither lawful nor justified and in the circumstances amounted to a deprivation of liberty under Article 5.

Article 8 (Right to Respect for Private and Family Life)

The judge ruled that on the facts, the Article 8 interference with ZH's private life could not have been 'in accordance with the law' under Article 8(2). He found that justification could not be established by the Defence and that the interference with his private life was not proportionate in all the circumstances.

Damages Awarded

The judge awarded damages for post traumatic stress disorder in the sum of £10,000; for temporary exacerbation of epilepsy in the sum of £12,500; and for injury to feelings under the Disability Discrimination Act of £5,000. Damages for trespass to the person were awarded for loss of liberty in the sum of £500 and for pain and distress from the assault in the sum of £250. Total damages awarded were £28,250.

Conclusion

The judge made the following concluding remarks:

'This case is another example of the difficult role the police are often called upon to play. None of them were fully aware of the features of autism, what problems it presented and how it should best be dealt with in a situation such as occurred at the Acton swimming baths. They were called to the scene by a misleading message about ZH's behaviour, and on arrival perceived the need to take control and be seen to be taking steps to deal with the situation. What was called for was for one officer to take charge and inform herself of the situation, as fully as the circumstances permitted so as to be able to decide on the best course of action to take. That did not happen: their responses were over-hasty and ill-informed, and after ZH had gone into the pool matters escalated to the point where a wholly inappropriate restraint of an epileptic autistic boy took place. They did not consult properly with the carer who was present when they arrived, even if he was not as proactive as he might have been in informing them of what was happening, what needed to be done and what needed to be avoided.

The opportunities to take stock, before ZH went into the pool and whilst he was in it, were not taken. All of those involved in this incident were acting as they genuinely thought best, whether pool staff, carers or police, and it is clear to me, having listened to their evidence, that all have been to some extent emotionally affected by the events of that day. Whilst I am clear in my conclusion that the case against the police is established, I am equally clear in concluding that no one involved was at any time acting in an ill intentioned way towards a disabled person.

The case highlights the need for there to be an awareness of the disability of autism within the public services. It is to be hoped that this sad case will help bring that about.'

The full report of the case can be found at:
http://www.bailii.org/ew/cases/EWHC/QB/2012/604.htm

SI 2012/980 The Misuse of Drugs Act 1971 (Temporary Class Drug) Order 2012

This order came into force on **5 April 2012**. The Order specifies 2-(ethylamino)-2-(3-methoxyphenyl) cyclohexanone and related substances specified in article 2, commonly known as methoxetamine, as drugs subject to temporary control under section 2A(1) of the Misuse of Drugs Act 1971.

In accordance with subsection (6) of section 2A of the Misuse of Drugs Act 1971, the specified drugs will cease to be subject to temporary control after the expiry of one year or, if earlier, upon the coming into force of an Order in Council under section 2(2) of that Act listing 2-(ethylamino)-2-(3-methoxyphenyl) cyclohexanone and related substances in Part 1, 2 or 3 of Schedule 2 to that Act.

SI 2012/963 The Licensing Act 2003 (Persistent Selling of Alcohol to Children) (Prescribed Form of Closure Notice) Regulations 2012

These Regulations came into force on **25 April 2012**. The Regulations revoke the Licensing Act 2003 (Persistent Selling of Alcohol to Children) (Prescribed Form of Closure Notice) Regulations 2007 and prescribe the form of a closure notice given under section 169A of the Licensing Act 2003 ("the 2003 Act") to give effect to certain amendments made to that Act by the Police Reform and Social Responsibility Act 2011.

Previously, the effect of a closure notice was that alcohol sales at the licensed premises to which it relates could be prohibited for a period of up to 48 hours. Following the amendment to the 2003 Act, a closure notice may prohibit alcohol sales from the premises to which it relates for a period of between 48 and 336 hours.

SI 2012/960 The Licensing Act 2003 (Permitted Temporary Activities) (Notices) (Amendment) Regulations 2012

These Regulations come into force on **25 April 2012**. These Regulations amend the Licensing Act 2003 (Permitted Temporary Activities) (Notices) Regulations 2005 (the 2005 Regulations) to give effect to certain amendments made to the Licensing Act 2003 (the 2003 Act) by the Police Reform and Social Responsibility Act 2011.

Part 5 of the 2003 Act sets out a framework under which a person ('the premises user') can carry on licensable activities without having to obtain a premises licence or club premises certificate. The premises user may instead give a temporary event notice ('a TEN') to the licensing authority which must include certain information (including the proposed licensable activities, details of the premises and duration of the proposed event).

The amendments to Part 5 of the 2003 Act enable the police and the local authority exercising environmental health functions to object to a TEN on the basis of any licensing objectives, the premises user to give a limited number of TENs no later than 5 working days before the event, the licensing authority to impose conditions on a TEN if the requirements set out in section 106A of the 2003 Act are met, and a TEN to authorise an activity to be carried on for a maximum period of 168 hours (7 days).

Regulation 6 prescribes the form of the counter notice which the licensing authority may give to the premises user if the police or local authority exercising environmental health functions have objected to the TEN, the notice and statement of conditions which the licensing authority may give to the premises user if it decides that it is appropriate to impose conditions on the TEN, and the counter notice which the licensing authority may give to the premises user if the TEN exceeds one of the permitted limits.

SI 2012/957 The Royal Parks and Other Open Spaces (Amendment) (No. 2) Regulations 2012

These Regulations came into force on **28 March 2012**. The Regulations amend the Royal Parks and Other Open Spaces Regulations 1997 to introduce a prohibition against certain acts in parks in the vicinity of Parliament Square. No person may fail to comply with a police direction to cease, or not to start, a prohibited activity in these parks. The prohibited activities are camping or using amplified noise equipment without permission. Anyone who fails, without reasonable excuse, to comply with such a direction will be in breach of the 1997 Regulations. Breach of the 1997 Regulations is an offence under the Parks Regulation (Amendment) Act 1926.

The prohibited activities introduced by these regulations apply in Canning Green, Victoria Tower Gardens, the garden around the Jewel Tower, and the lawn around the statue of George V.

These regulations also amend the 1997 Regulations to introduce powers of seizure, retention, disposal and forfeiture under the Royal Parks (Trading) Act 2000 over objects used in offences that relate to the prohibited activities.

SI 2012/1121 Counter-Terrorism Act 2008 (Commencement No. 5) Order 2012

This Order brings into force on **30 April 2012**, section 26 of the Counter-Terrorism Act 2008 (issue and revision of Code of Practice).

Anti-Social Behaviour Call Handling Trials Report Published

The Home Office has published a report which highlights the results from trials of a new approach to tackling anti-social behaviour. In 2011, the Home Office worked with eight police force areas to trial new ways to identify vulnerable and repeat victims of antisocial behaviour and to manage their cases to ensure they receive a better service.

The report concludes that the results of the trials have been very encouraging although the forces have more to do to embed the victim focused approach to anti-social behaviour as 'normal business'. The participants in the trial reported more consistent identification of repeat and vulnerable victims of anti-social behaviour; increased caller satisfaction; some cultural shift amongst front line staff towards a focus on harm to the victim; and improved multi-agency handling of high risk cases.

The report summarises the results and lessons learned from the trials, includes annexes with sample call-handler question-sets, information sharing agreements between the police and local agencies, case studies and a call-handling training video.

The eight trial forces will continue to develop the call handling and case management approach, and to work with their partners to address the learning points and challenges outlined in the report. The Home Office will also be working with ACPO to evaluate feedback from the trial forces. The report encourages all 43 forces in England and Wales to use the summary report and the eight trial reports as a platform to either build on existing work or to develop their response to vulnerable and repeat victims of anti-social behaviour.

The full report 'Focus on the victim: Summary report on the ASB call handling trials' can be found at:
http://www.homeoffice.gov.uk/publications/crime/asb-focus-on-the-victim

Police Powers and Procedures England and Wales 2010/11 Statistics Published

The Office for National Statistics has published figures on arrests and detentions, stops and searches, fixed penalty notices and breath tests. These statistics show that:

- 1,360,451 people were arrested by the police for recorded crimes in 2010/11, down two per cent on 2009/10. The number of recorded crimes decreased by four per cent over the same period.

- 1,222,378 people and/or vehicles were stopped and searched under section 1 of the Police and Criminal Evidence Act (PACE) in 2010/11, four per cent more than in 2009/10. Resultant arrests rose by six per cent. Stops and searches on suspicion of drugs accounted for 50 per cent of the overall total.
- Police made 60,963 stops and searches in anticipation of violence (under section 60 of the Criminal Justice and Public Order Act 1994), down 49 per cent on 2009/10. The police also made 11,792 stops and searches in order to prevent acts of terrorism (under section 44 of the Terrorism Act 2000), down 89 per cent on 2009/10. This decrease coincides with the repeal of section 44 and the introduction of its replacement, section 47A.
- The police and traffic wardens issued 1.8 million fixed penalty notices for motoring offences in 2010, down ten per cent on 2009. Speed limit offences accounted for over half of them.
- The police carried out 733,088 screening breath tests during 2010, ten per cent fewer than in 2009. The number of positive or refused tests also fell by ten per cent, accounting for 11 per cent of the total.

The bulletin also contains statistics at police force area level, with analyses by age and gender and a limited analysis of arrests and stops and searches by ethnicity of those arrested or stopped.

The statistical release, 'Police Powers and Procedures England and Wales 2010/11' can be found at: http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/police-research/police-powers-procedures-201011/

Home Office Circular 007/2012: Guidance on Police Injury Award Reviews

This Circular advises that parts of the guidance on police injury award reviews have been cancelled. The relevant parts are:

- Home Office Circular 46/2004: in Annex C the section entitled 'Review of injury pensions once officers reach age 65';
- Guidance on medical appeals: paragraph 20 of section 5, entitled 'Degree of disablement after age 65'.

The changes in the guidance follow the decision of the High Court on 21 February 2012 in the judicial review case of Simpson [2012] EWHC 808 (Admin). This case related to

the guidance on police injury award reviews, in particular the guidance in Home Office Circular 46/2004 concerning reviews of the injury awards of former officers who have reached the age of 65. The court concluded that the relevant guidance on this particular issue was inconsistent with the Police (Injury Benefit) Regulations 2006 and was unlawful.

The advice in the Circular is that in the event that such reviews are being conducted or considered, that police authorities should satisfy themselves that they are acting in accordance with the regulations and the relevant case law in the light of the decision in Simpson.

Home Office Circular 007/2012: Guidance on Police Injury Award Reviews can be accessed in full at:
http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2012/

Home Office Circular 010/2012: Amendments to the Determinations under the Police Regulations 2003 to Implement Recommendations from Part 1 of the Winsor Review

The Home Secretary's decision on the findings of the Police Arbitration Tribunal and the recommendations of the Police Negotiation Board in relation to the Part 1 Report of the Independent Review of Police Officer and Staff Remuneration and Conditions were published in Home Office Circular 006/12.

This Circular publicises the amendments to the Secretary of State's determinations under the Police Regulations 2003 to implement that decision. The amendments are attached to the circular and the effective date of these changes is 1 April 2012 unless otherwise stated.

Home Office Circular 010/2012 can be accessed in full at:
http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2012/010-2012/

UK Fraud Report Published

A report published by the National Fraud Authority (NFA) shows that fraudsters are costing the UK an estimated £73 billion a year. The NFA produces the Annual Fraud Indicator (AFI) which provides the best estimate of the cost of fraud to the UK economy. The 2012 report is the third AFI report produced by the NFA.

During 2011, the NFA sought to fill gaps in its knowledge by conducting primary research as to the scale and nature of:

- Fraud against the private sector;
- Fraud against the charity sector;
- Insider-enabled fraud;
- Identity fraud;
- Payroll fraud;
- Procurement fraud;
- Mass marketing fraud;
- And the nature of the organised crime threat.

The key findings of the NFA's new research were as follows:

Fraud by Victim

The scale of fraud losses against all victims in the UK is in the region of £73 billion per annum. This estimate is significantly greater than the previous figure, £38.4 billion, because it includes new and improved estimates in a number of areas which reveal previously unknown losses, in particular against the private sector. The new estimate does not reflect an increase in fraud, but rather improved measurement by the NFA and the counter fraud community.

Private Sector Fraud

The results of a survey to identify the prevalence of fraud against UK based businesses revealed that fraud loss is approximately equivalent to £45.5 billion per annum. Of this, £26.7 billion is estimated to have been suffered by large businesses and £18.9 billion by small to medium enterprises. The new estimate of fraud against the private sector does not represent an increase in fraud, but a change in research methodology.

Public Sector Fraud

Fraud against the public sector has been revised down to £20.3 billion per annum, influenced to a large extent by a reduction

in fraud against the tax system. Fraud loss due to the abuse of council tax discounts and exemptions now stands at £131 million per annum.

Not-for-Profit Sector

Fraud against the not-for-profit sector in England, Scotland and Wales is estimated to cost registered charities 1.7 per cent of their income, equivalent to £1.1 billion.

Just fewer than four per cent of charities who responded to the survey indicated that they had detected fraud in the last financial year (2010/11), with the most common types cited as payment fraud; fraud committed by employees/volunteers; and cyber enabled fraud.

Individuals

Fraud against UK individuals is estimated to cost £6.1 billion per annum, based upon estimates on the scale of mass marketing fraud, identity fraud, online ticket fraud, private rental property fraud and electricity scams.

In January 2012, the NFA surveyed a nationally representative sample of more than 4,000 UK adults online to better understand how mass marketing fraud is currently being committed. The study found that 1 million (2 per cent) of UK adults sent money in reply to unsolicited communications in the last 12 months. Just under half (almost 500,000 people) are believed to have been defrauded as a result.

Fraud by Enabler

Insider-enabled fraud

NFA research into fraud against the private and not-for-profit sectors included an analysis of fraud enabled by insiders.

Of those who said their charity had been a victim of fraud in the past year, 27 per cent said they had suffered at least one insider-enabled fraud (and a further 8.7 per cent did not know). Of those who said their private sector organisation had been a victim of fraud in the past year, 22.6 per cent said they had suffered at least one insider-enabled fraud (and a further 34.4 per cent did not know).

Identity fraud

In January 2012, the NFA surveyed a nationally representative sample of more than 4,000 UK adults online. The results revealed that 9.4 per cent had been an identity fraud victim in the previous 12 months. Under half (44.7 per cent) of victims defrauded in the past year were able to recover their losses; however most (55.3 per cent) did not. On average these victims lost £481 each. Across the UK adult population this is equivalent to £1.2 billion lost each year.

Organised Crime

Organised crime groups (OCGs) pose a significant threat to the UK. Fraud is a significant element of this threat either as the primary activity of an OCG, or as an enabler/funding stream for other serious crimes. The NFA's refreshed estimate of fraud perpetrated by organised criminals now stands at £9.9 billion. The proportion of fraud losses attributable to OCG activity in various fraud types ranges from 10 per cent to 100 per cent.

Fraud by Type

Procurement fraud

The Chartered Institute for Purchasing and Supply (CIPS) disseminated an online survey on procurement fraud to its professional members on the NFA's behalf, in which almost one in ten respondents (9.3 per cent) confirmed that their organisation had suffered at least one procurement fraud in the last year. More than two-fifths of respondents (40.8 per cent) stated that 'procurement fraud poses a significant risk to my organisation'. A similar number (40.7 per cent) said that spend on construction is at greatest risk from procurement fraud.

Payroll fraud

In partnership with the Chartered Institute of Payroll Professionals, the NFA conducted an online survey of its membership. 11 per cent of payroll departments responded that they had been a victim of fraud during the last financial year 2010/11, with the most common type of fraud experienced being false expense reimbursement.

The full report 'The Annual Fraud Indicator 2012' can be accessed at:
http://www.homeoffice.gov.uk/publications/agencies-public-bodies/nfa/annual-fraud-indicator/

New Provisions in the Sexual Offences Act 2003

The Home Office is to introduce new measures which will extend and strengthen the system of notification requirements placed on registered sex offenders (commonly referred to as the sex offenders' register). The new measures will make it compulsory for all offenders subject to the notification requirements under the Sexual Offences Act 2003 to:

- Notify the police of all foreign travel (including travel outside of the UK of less than three days);
- Notify weekly where they are not registered as regularly residing or staying at one place (i.e. where a registered sex offender has no sole or main residence and instead must notify the police of the place where he can regularly be found);

- Notify where they are living in a household with a child under the age of 18;
- Notify bank account and credit card details and notify information about their passports or other identity documents at each notification, so that sex offenders can no longer seek to avoid being on the register when they change their name.

The notification requirements contained in Part 2 of the Sexual Offences Act 2003 Act provide a robust framework for managing relevant offenders in the community. Each of these additional requirements was identified by practitioners and experts as a priority area where action is required to prevent relevant offenders from seeking to exploit gaps in the system.

The Sexual Offences Act 2003 (Notification Requirements) (England and Wales) Regulations 2012 which will implement these changes are expected to come in to force from summer 2012, subject to Parliamentary business.

The Home Office is also introducing measures to ensure that strict rules are put in place and a robust review is carried out on a case-by-case basis before any sex offender placed on the register for life can be removed. This follows the ruling of the Supreme Court in the case of R (on the application of F and Angus Aubrey Thompson) v Secretary of State for the Home Department [2010] UKSC 17. The Supreme Court ruled that indefinite notification requirements for sex offenders, with no opportunity for review were incompatible with Article 8 of the European Convention on Human Rights (ECHR).

The Sexual Offences Act 2003 (Remedial) Order 2012 will introduce a mechanism for reviewing the indefinite notification requirements under section 82(1) of the 2003 Act. It is proposed that:

- The review process would be triggered by an offender who is subject to indefinite notification requirements making an application to the police. In a typical case, the offender would be entitled to make an application 15 years following that offender's release from custody;
- The review would be carried out by the police on the basis of a range of factors, including information provided from the Responsible Authority and Duty to Co-operate agencies which operate within the Multi-Agency Public Protection Arrangements (MAPPA) framework (under section 325 of the Criminal Justice Act 2003);
- The process will be robust, workable and put public protection first, while at the same time preventing sex offenders being able to waste taxpayers' money by repeatedly challenging the law;

- Sex offenders who continue to pose a risk will remain on the register and will do so for life, if necessary.

The Sexual Offences Act 2003 (Remedial) Order 2012 is expected to be in force from summer 2012, subject to Parliamentary business. No adult offenders will become eligible to apply for a review of their notification requirements before September 2012, 15 years from the notification requirements being introduced in the Sex Offenders Act 1997.

Further information about the proposed changes can be found at:
http://www.homeoffice.gov.uk/publications/about-us/legislation/sexual-offences-notifications/

Independent Riots Panel Final Report Published

The Riots Communities and Victims Panel have published its final report. The riots panel was set up, following the August 2011 riots, by the Prime Minister, Deputy Prime Minister and Leader of the Official Opposition. The panel was asked to investigate the causes of the riots and to consider what more could be done to build greater social and economic resilience in communities.

The panel's findings are based on research in communities, and consultation with third sector organisations and social enterprises, local authorities, and private sector employers. The report concludes that the key to avoiding future riots is:

- Communities where everyone feels they have a stake in society and where individuals respect each other and the place they live;
- Public services working together and with the voluntary sector to spot those who are struggling at an early stage and help them;
- Where opportunities are available to all, especially young people;
- Where parents and schools ensure children develop the values, skills and character to make the right choices at crucial moments;
- Where the police and the public work together to support the maintenance of law and order; and
- Where the criminal justice system punishes those who commit crimes but also commits itself to making sure that they don't do it again.

The panel report also highlights a number of specific areas in which the police service could improve. These include:

Improving trust

The panel concludes that improving trust in the police is vitally important as it leads to communities getting more involved in policing. It also ensures the police can understand local communities' needs and helps to break down cultural barriers. The panel recommends that police forces proactively engage with communities about issues that impact on the perceptions of their integrity.

Contact with the Police

According to the panel's research, those from Black and Minority Ethnic (BME) groups were significantly less happy with their contact with the police than white people. The survey showed that 64 per cent of people from BME groups were happy, compared to 77 per cent of white people. The panel also found that one in four people who had recent contact with the police were unhappy at the way they were treated. In some areas it was as high as one in three. The panel report described these as unacceptably high figures. The Metropolitan Police were cited in particular as having issues around positive or 'quality' contact. The view of the panel was that by improving the quality of minor encounters, the Metropolitan Police could dramatically improve their relationships with communities.

Communication

The report stresses the importance of communicating about police action, which should be seen as equally important as the action itself. The panel recognised that the police have acknowledged the need to improve their capability around social media communication and the way they choose to engage with communities. The panel believes that better use of social media presents huge opportunities and recommends that every neighbourhood team have its own social media capability.

Accountability

The report states that a key aspect of accountability is public confidence in a robust complaints procedure.

An IPCC survey of confidence in the police complaints system revealed that 43 per cent of black people felt a complaint against the police would not be dealt with impartially (compared to 31 per cent of people generally). The results of the panel's Neighbourhood Survey showed that over 50 per cent of respondents felt it unlikely that something would be done as a result of a making a complaint against the police.

Figures also show that the IPCC upheld a third of appeals in 2010/2011. The panel recommended that the worst performing police services should review their complaints system in order to lower the number of rejected complaints overturned on appeal.

It also recommended that the IPCC should phase out its use of ex-police officers as investigators. The panel recommended that 'managed' investigations, where the IPCC oversee police complaints handling, should be phased out and the resources shifted so that the IPCC directly undertake these investigations.

The full report 'After the Riots - The Final Report' can be accessed at:
http://riotspanel.independent.gov.uk/

Legal High 'mexxy' Banned under Temporary Control Power

The Home Office has made the first Temporary Class Drug Order (TCDO) banning the legal high methoxetamine (also known as mexxy and MXE). The decision to ban 'mexxy' follows a recommendation from independent drugs experts on the Advisory Council on the Misuse of Drugs (ACMD). The ACMD raised concerns that as well as 'mexxy' having similar effects to ketamine, users also suffered from agitation, a faster heart rate and higher blood pressure.

The drug, which is sold and advertised as a safe alternative to the Class C drug ketamine, will be made illegal for up to 12 months while the ACMD decide whether it should be permanently controlled. Anyone caught making, supplying or importing the drug will face up to 14 years in prison and an unlimited fine under the Misuse of Drugs Act 1971. Police and border officials will also be allowed to search or detain anyone they suspect of having the drug and seize, keep or dispose of a substance they think is a temporary class drug.

The Order was formally implemented on 5 April 2012 after law enforcement agencies had been made aware of the changes and suppliers and manufacturers had been given the chance to dispose of the drug.

Further details can be found at:
http://www.homeoffice.gov.uk/media-centre/news/mexxy-banned

Government Alcohol Strategy Published

The Government has published its alcohol strategy setting out proposals to deal with 'binge drinking' and alcohol fuelled violence and disorder. The strategy includes commitments to:

- Introduce a minimum unit price for alcohol;
- Consult on a ban on the sale of multi-buy alcohol discounting;

- Introduce stronger powers for local areas to control the density of licensed premises;
- Pilot innovative sobriety schemes to challenge alcohol-related offending.

Proposals in the strategy include:

- Give powers to local agencies to reduce alcohol harm through the changes to public health, new Police and Crime Commissioners, and by rebalancing the Licensing Act 2003;
- Give local communities the tools to restrict alcohol sales late at night, if they are causing problems, through extended powers to introduce Early Morning Restriction Orders;
- Give local communities the power to introduce a new late night levy to ensure that those businesses that sell alcohol into the late night contribute towards the cost of policing;
- Work with 5 areas to pilot sobriety schemes, removing the right to drink for those who have shown they cannot drink responsibly;
- Strengthen local powers to control the density of premises licensed to sell alcohol, including a new health-related objective for alcohol licensing for this purpose;
- Investing £1m to help local agencies, businesses and local people come together and tackle problem drinking;
- Pilot how to provide further information on crime occurring on or near local alcohol hotspots as well as trialling publication of further licensing data online;
- Develop new injunctions as part of reforms to anti-social behaviour tools and powers and explore giving NHS Protect the power to apply for these injunctions;
- Encourage all hospitals to share non-confidential information on alcohol-related injuries with the police and other local agencies.

The Government will be consulting on the proposed measures and further details can be found at:
http://www.homeoffice.gov.uk/publications/alcohol-drugs/alcohol/alcohol-strategy

Crime Survey for England and Wales Published

The latest figures from the Crime Survey for England and Wales (CSEW) and police recorded crime have been published. The figures show no significant change in overall crime while the number of crimes recorded by the police fell by 3 per cent in the year ending December 2011 compared with the same period in 2010.

The findings confirm recent trends with crime remaining fairly flat since 2004/05 and recorded crime showing small year on year reductions.

The figures also show:

- A 5 per cent increase in the other theft group driven by theft of unattended property, theft from the person and bicycle theft and a 3 per cent increase in robbery. The rise in other theft reflected increases across many forces in England and Wales whereas the rise in robbery was driven by a rise in the Metropolitan police force area.
- Other categories of acquisitive crime have not shown increases. Police recorded crime figures showed that there was a fall of 3 per cent in domestic burglaries compared with the previous year and no change in other burglaries.
- The number of offences against vehicles recorded by the police continued to fall while estimates of vehicle-related theft from the CSEW showed no significant change.
- Levels of violent crime estimated by the CSEW showed no significant change compared with the previous year. Police recorded violence against the person fell by 7 per cent, with similar falls in both violence with and without injury.
- Both the CSEW and police recorded figures showed continued year on year falls in vandalism offences: the CSEW showed a 14 per cent fall in vandalism while the police recorded 9 per cent fewer criminal damage offences.

The full statistical bulletin: 'Crime in England and Wales Quarterly first Release to December 2011' can be found at: http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/year-ending-december-2011/index.html

Missing Persons Report Published

The UK Missing Persons Bureau has published a new report on missing persons and unidentified bodies. The report includes figures provided by forces across the country on the number of missing person incidents reported to the police in the financial year 2010/11. The figures show that police in Britain recorded almost 900 missing reports every day, or that someone was recorded missing by the police around every 2 minutes.

The recorded data from police forces shows that:

- 327,000 missing persons incidents were recorded by police in Britain in 2010/11, 288,000 of these were in England and Wales and around 39,000 in Scotland;
- Some people go missing more than once and the data, when adjusted for instances of individuals going missing repeatedly, indicates that approximately 216,000 individuals went missing in 2010/11;
- Children and young people under 18 made up 66 per cent of missing incidents;
- 15-17 year olds were reported missing most frequently;
- 28 police forces in England and Wales recorded at least one unidentified person, body or body part found during 2010/11, with a total of 424 found in England and Wales. The vast majority of these (around 80%) were found in the Metropolitan Police area.

The data provided by forces is used by the Missing Persons Bureau to measure the extent of missing and unidentified incidents in England and Wales. This is vital to missing person investigations as it helps police, local authorities and non-governmental agencies make informed decisions to find missing people and support their families.

This report was produced by the UK Missing Persons Bureau while it was part of the NPIA. On 1 April 2012, the Bureau transferred to the Serious Organised Crime Agency (SOCA).

The full report 'Missing Persons: Data and analysis 2010/2011 can be found at:
http://www.npia.police.uk/en/docs/Missing_Persons_Data_and_Analysis_2010-11.pdf

EHRC Research on European Court of Human Rights Judgments Relating to UK Government

The Equality and Human Rights Commission has published research showing that only a small proportion of the judgments by the European Court of Human Rights result in a ruling against the UK Government.

The research shows that of the nearly 12,000 applications brought against the UK between 1999 and 2010, only three per cent (390 applications) were declared admissible. An even smaller proportion of applications - 1.8 per cent (215) - eventually resulted in a judgment finding a violation. The latest figures for 2011 show a rate of defeat of just 0.5 per cent, or one in 200.

While judgments against the UK have been relatively few in number, a significant proportion involved basic civil liberties such as the right to a fair trial. The figures show that around eight per cent of judgments related to the right to life and the prohibition of torture and inhuman or degrading treatment.

The research also identifies that important rulings have led to better protection against unnecessary intrusion into privacy through the use of secret surveillance; legislation outlawing forced labour and servitude; equal rights for lesbian, gay, bisexual or transgender people and protecting the freedom of the UK media, including the protection of journalists' sources and the importance of investigative journalism.

The full research 'Report 83: The UK and the European Court of Human Rights' can be found at:
http://www.equalityhumanrights.com/uploaded_files/research/83._european_court_of_human_rights.pdf

EHRC Strategic Plan Published

The Equality and Human Rights Commission has published its strategic plan for 2012 to 2015. The plan identifies how the Commission can add most value to the protection and promotion of equality and human rights through the effective use of its powers and duties as the National Human Rights Institution.

The Commission faces a period of tremendous change and development with its budget due to be reduced significantly by 2015. The Government has already decided to bring some of the frontline services the Commission provides in to the Government Equalities Office in the Home Office. The Commission will refocus its activities from direct services to a more enabling role: using its expertise and influence to support the development of policies and services that promote equality of opportunity and safeguard fundamental human rights.

The Commission's 2012/15 strategic plan identifies three priorities which were identified from the research carried out for its 'How fair is Britain?' reviews. These are:

- **To promote fairness and equality of opportunity in Britain's future economy**
  The Commission will be proportionate in dealing with the business sector, ensuring that equality and human rights are understood as key enablers of the economic recovery, rather than being seen as unnecessary 'red tape'. The Commission will work to ensure that in a period of economic constraint, progress on issues like the pay gap, occupational segregation, board diversity and workplace discrimination does not stall. The Commission will encourage small and medium sized enterprises to increase opportunities for employment for those who are protected by the equality acts;

- **To promote fair access to public services, and autonomy and dignity in service delivery**
  The Commission will aim to ensure that fairness, dignity and respect are at the heart of designing and delivering effective public services, particularly as the private and voluntary sectors play a bigger role. The Commission will identify the best ways of delivering more personal, better value services to those that need them most; promote good practice; and help local people across Britain hold service providers to account;

- **To promote dignity and respect, and safeguard people's safety**
  The Commission's role will be to ensure that human rights provide a framework to shape how the state relates to its citizens, and when it justifiably constrains fundamental rights and freedoms. The Commission will press for greater recognition of the positive duties on public bodies to prevent harm, as well as avoid inflicting it themselves.

The full strategic plan can be found at:
http://www.equalityhumanrights.com/about-us/vision-and-mission/strategic-plan-2012-2015/

IPCC Learning the Lessons Bulletin

The latest learning the lessons bulletin has been published by the Independent Police Complaints Commission (IPCC). The quarterly bulletin summarises investigations by the IPCC or police forces to help the police service learn lessons from individual cases and develop best practice.

This issue of the bulletin is devoted to custody issues and best practice. The recommendations made by the IPCC on best practice as a result of learning from its investigations into deaths and serious injuries, complaints appeals and its Study of Deaths in or following police custody are also included. The IPCC's recommendations have been reflected in the new version of the ACPO Guidance on the Safer Detention and Handling of Persons in Police Custody which was released on 1 March 2012.

Key changes to the ACPO guidance following the recommendations of the IPCC include:

- The handling of detainees who are intoxicated. A new definition of 'drunk and incapable' has been included, meaning someone being unable to walk or stand unaided, or who is unaware of their actions or unable to fully understand what is said to them. A person found to be drunk and incapable should be treated as being in need of medical assistance at hospital and an ambulance should be called;
- The importance of risk assessments for individuals under the influence of alcohol and drugs;
- Risk assessments should reflect whether restraint techniques were used during arrest;
- The recording of handover procedures within custody;
- Dealing with detainees with diabetes; and
- Adequate rousing procedures to ensure that they involve a comprehensive verbal response from the detainee.

The full bulletin is available at:
http://www.learningthelessons.org.uk/Pages/Bulletin16.aspx

Ministry of Justice Consultation on Probation Services Published

The Ministry of Justice has published a consultation paper setting out the conclusions of an internal review by the Secretary of State of how probation services in England and Wales can be improved. The intention is to ensure probation services are better able to achieve the outcomes in justice that matter to victims and communities: protecting the public, reducing reoffending and ensuring that offenders are properly punished.

The consultation paper sets out proposals to meet these aims whilst also achieving better value for money to the taxpayer. The proposals directly support plans to make sentences in the community more credible and effective. They also help to take forward the vision for transforming justice set out by the Government in its Green Paper: Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders.

Under the proposals, public sector probation will retain control of the management of those criminals who pose the highest risk, including the most serious and violent offenders. The public sector will also retain responsibility for all advice to court, and for public interest decisions over all offenders including initially assessing levels of risk, resolving action where sentences are breached, and decisions on the recalls of offenders to prison.

It is also proposed to extend the principles of competition in probation services so that probation services are delivered by those best placed to do so, whether they are in the public, voluntary, or private sectors. Under the proposals, public sector Probation Trusts will have a stronger role as commissioners of competed services, responsible for buying competed services and holding those who deliver them to account for the outcomes they achieve. In particular, it is proposed that Probation Trusts are given control of local budgets including, for example, for electronic monitoring of curfews, so they can deliver programmes targeted at local needs and reducing reoffending.

The Ministry of Justice is also consulting on the potential over time for other public bodies, such as local authorities or Police and Crime Commissioners, to take responsibility for probation services. The closing date for responses to the consultation is 22 June 2012.

The full consultation paper can be accessed at:
https://consult.justice.gov.uk/digital-communications/effective-probation-services/consultation

Ministry of Justice Consultation on Community Sentencing Published

The Ministry of Justice has launched a consultation setting out radical reforms to the way in which sentences served in the community operate. The consultation paper sets out plans to make sentences in the community more credible and more effective in reducing crime. The aim is to provide sentencers with a robust community sentencing framework that is effective at punishing and reforming offenders, and in which they and the public can have confidence.

The planned reforms include Intensive Community Punishment to be delivered through a package of requirements that would involve Community Payback, a significant restriction of liberty backed by electronic monitoring and effective financial penalties. It is also proposed that every community order includes a punitive element, and the use of asset seizure as a stand alone punishment is being considered.

The closing date for responses to the consultation is 22 June 2012. The full consultation paper can be accessed at: https://consult.justice.gov.uk/digital-communications/effective-community-services-1

Human Rights Committee Report on Justice and Security Green Paper

The Joint Committee on Human Rights has published a report in response to the Government's Green Paper on Justice and Security.

The Justice and Security Green Paper, which was published in October 2011, set out the Government's proposals to change the way in which 'sensitive information' is treated in civil proceedings. The Government proposed legislative change in order to address two principal concerns, one concerning fairness and accountability and the other concerning national security.

In response to the Government's proposal to extend 'closed material procedures', the Committee concluded that the Government had failed to make the case for extending 'closed material procedures' to all civil proceedings and to inquests. It said that the Government had not demonstrated by reference to evidence that the fairness concern on which it relied to justify the proposal was in fact a real and practical problem. The Committee accepted that closed material procedures are inherently unfair.

The Committee did not accept that replacing the current law governing disclosure of sensitive material (the law of Public Interest Immunity, or 'PII') with closed material procedures was justified. The Committee said that decisions about the disclosure of material in legal proceedings should be taken by judges not ministers and the current legal framework of PII had not been shown to be inadequate. The Committee did accept, however, that the legal framework should be made clearer in the way in which it applies to national security-sensitive material. The Committee suggested that could be done by legislation and changes to the Coroners Rules and guidance.

The Committee considered that proposals for reform which are intended to provide the US with a cast-iron guarantee that any intelligence they share can never be disclosed in a UK court could not be justified. The Committee also considered that the Government should proactively address the apparent misperception of US officials that UK courts cannot be trusted to ensure that national security-sensitive material is not disclosed.

However, the Committee accepted that it is a legitimate objective for the Government to seek to reassure intelligence partners by legislating to remove any legal uncertainty about the power of the courts to order disclosure of national security-sensitive material. The Committee suggests that this can be achieved through statutory clarification of the legal framework concerning disclosure of material in legal proceedings as it applies to national security-sensitive material.

The Committee therefore recommended clarification of the law on public interest immunity (PII) as it applies to national security-sensitive material, including:

- Introducing statutory presumptions against disclosure of, for example, intelligence material or foreign intelligence material, rebuttable only by compelling reasons;
- Listing express factors to which the court must have regard when balancing the competing public interests to determine the disclosure question;
- Requiring the court to give consideration to a non-exhaustive list of the sorts of devices (such as redactions, confidentiality rings, and "in private" hearings) to which the courts may have resort in order to enable the determination of a claim without damaging national security.

The Committee also recommended that the obligation to disclose sufficient material to enable effective instructions to be given to an individual's special advocate should always apply in any proceedings in which closed material procedures are used.

The Committee also expressed concern that the Green Paper overlooked the very considerable impact of its proposals on the freedom and ability of the media to report on matters of public interest. It was also concerned about the possible impact of the proposals on public confidence and trust in both the Government and the courts.

The full report can be accessed at:
http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/286/28602.htm

NPIA

National Policing
Improvement Agency

Legal Services
Chief Executive Officer Directorate

www.npia.police.uk