



College of
Policing

Digest

October 2013

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

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

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

Disclaimer and Copyright details

This document is intended as a guide to inform organisations and individuals of current and forthcoming issues in the policing environment and the College of Policing cannot guarantee its suitability for any other purpose. Whilst every effort has been made to ensure that the information is accurate, the College of Policing cannot accept responsibility for the complete accuracy of the material. As such, organisations and individuals should not base strategic and operational decisions solely on the basis of the information supplied.

© - College of Policing Limited (the College) 2013

All rights reserved. No part of this publication may be reproduced, modified, amended, stored in any retrieval system or transmitted, in any form or by any means, without the prior written permission of the College or its representative. **The above restrictions do not apply to police forces, which are authorised to use this material for official, non-profit-making purposes only.**

Copyright Enquiries: Telephone +44 (0)1256 602650

Digest Editor: Telephone +44 (0)1480 334568

NOT PROTECTIVELY MARKED

October 2013

Digest

Legal Services
www.college.police.uk/digest

College of Policing Digest October 2013

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 lawful ambit of reports by the Independent Police Complaints Commission, the compatibility with the European Convention on Human Rights of requirements for those on the Sex Offenders Register to provide details of their bank accounts and debit and credit cards as well as the liability of burglars to be convicted of manslaughter where the death of a property owner occurs during a burglary.

We look in detail at the recently published review of the Public Sector Equality Duty, the new guidance on charging standards for benefit and tax credit fraud and the Home Office consultation on enabling targeted, local alternatives to personal licences to sell alcohol.

In addition we look at the annual assessment of the UK Human Trafficking Centre, the joint prosecution policy for football-related offences as well as the major review of the police response to domestic violence.

Statistical bulletins are covered which detail firearms and shotgun certificates in England and Wales in 2012/13, the operation of the Terrorism Act 2000 and subsequent legislation in Great Britain in 2012/13 as well as the police use of Taser in England and Wales 2009-2011.

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

Contents

LEGAL	7
LEGISLATION	7
Bills Before Parliament 2013/2014 - Progress Report	7
CASE LAW	11
CASE LAW - CRIME	11
R v Terrence Bristow, Marcus Bristow, Paul Dunn and Lee Delay [2013] EWCA Crime 1540	11
CASE LAW - EVIDENCE AND PROCEDURE	17
R (on the application of the Chief Constable of the West Yorkshire Police) and Independent Police Complaints Commission and Police Constable Lee Armstrong (Interested Party) [2013] EWHC 2698 (Admin)	17
CASE LAW - GENERAL POLICE DUTIES	25
R (on the application of R) and A Chief Constable [2013] EWHC 2864 (Admin)	25
CASE LAW - HUMAN RIGHTS	26
R (on the application of Christopher Prothero) and Secretary of State for the Home Department [2013] EWHC 2830 (Admin)	26
STATUTORY INSTRUMENTS	31
SI 2013/2104 The Protection of Freedoms Act 2012 (Commencement No. 9) Order 2013.....	31
SI 2013/2200 The Crime and Courts Act 2013 (Commencement No. 4) Order 2013.....	31
SI 2013/2213 The Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2013	32
SI 2013/2258 The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013	33
SI 2013/2243 The Recovery of Costs (Remand to Youth Detention Accommodation) (Amendment) Regulations 2013 ..	33
SI 2013/2276 The Scrap Metal Dealers Act 2013 (Prescribed Documents and Information for Verification of Name and Address) Regulations 2013.....	33
SI 2013/2299 The Local Safeguarding Children Boards (Review) Regulations 2013	34
SI 2013/2318 The Crime and Courts Act 2013 (Consequential Amendments and Saving Provision) Order 2013	34
SI 2013/2343 The Protection of Freedoms Act 2012 (Consequential Amendments) No. 3 Order 2013.....	36

SI 2013/2326 The National Crime Agency (Limitation of extension to Northern Ireland) Order 2013.....	36
SI 2013/2325 The National Crime Agency (Complaints and Misconduct) Regulations 2013	37
SI 2013/2349 The Crime and Courts Act 2013 (Commencement No. 5) Order 2013.....	39
SI 2013/2388 The Extradition Act 2003 (Designation of Prosecutors) (England and Wales and Northern Ireland) Order 2013	39
SI 2013/2384 The Extradition Appeals (England and Wales and Northern Ireland) Order 2013.....	40
SI 2013/2408 The Traffic Management Act 2004 (Commencement No. 7) (England) Order 2013	40
POLICING PRACTICE	41
POLICE.....	41
Operation of Police Powers under the Terrorism Act and Subsequent Legislation: Arrests, Outcomes and Stop and Searches in Great Britain 2012-2013	41
Major Review of Police Response to Domestic Violence	42
Police Use of Taser Statistics in England and Wales, 2009 to 2011.....	42
Home Office Statistical Bulletin on Firearm and Shotgun Certificates in England and Wales 2012/13	43
CRIME	45
Human Trafficking Assessment Published	45
DIVERSITY	46
Review of the Public Sector Equality Duty: Report of the Independent Steering Group Published	46
TRAINING AND DEVELOPMENT	48
College of Policing Inaugural Conference - 'Setting the Standard'	48
CRIMINAL JUSTICE SYSTEM	49
Director of Public Prosecutions Publishes Guidance on Charging Standards for Benefit and Tax Credit Fraud	49
Home Office Consultation on Enabling Targeted, Local Alternatives to Personal Licences to Sell Alcohol.....	50
Joint Prosecution Policy for Football-Related Offences Published.....	51
Law Commission: 12th Programme of Law Reform	51
Quarterly Update to Review on Resettlement of Young Offenders Published	52

Bills Before Parliament 2013/2014 - Progress Report

On 8 May 2013, the Queen's Speech unveiled the legislative programme for the 2013-2014 Parliamentary session.

◆ **Anti-Social Behaviour, Crime and Policing Bill**

The Bill is divided into 13 separate parts:

- 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 and 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, whilst the Community Trigger will give victims of persistent anti-social behaviour the right to demand action where they feel that 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 through the introduction of 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 and 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 review 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 and 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.

The Public Bill Committee reported on 16 July 2013.

This Bill is scheduled to have its report stage on 14 and 15 October 2013. Its third reading is also scheduled to take place on 15 October 2013.

◆ **Offender Rehabilitation Bill**

The Bill makes a number of changes to the release arrangements set out in the Criminal Justice Act 2003 Act for offenders serving custodial sentences of less than 12 months and those serving sentences of between 12 months and 2 years. The Bill is designed to ensure that all adult offenders serving custodial sentences can be supervised on release for a period of at least 12 months.

In particular the Bill:

- Applies arrangements for release under licence to offenders serving fixed-term custodial sentences of more than 1 day but less than 12 months;
- Introduces new supervision arrangements for offenders released from fixed-term custodial sentences of less than 2 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 2 years;

- Introduces a requirement that offenders sentenced to an extended determinate sentence must have an extension period of supervision of at least 1 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.

This Bill is expected to have its second reading debate on a date yet to be announced.

The progress of Bills in the 2013/2014 parliamentary session can be found at: <http://services.parliament.uk/bills/>

R v Terrence Bristow, Marcus Bristow, Paul Dunn and Lee Delay [2013] EWCA Crime 1540

A hearing in the Court of Appeal (Criminal Division) on appeal from Lewes Crown Court before Lord Justice Treacy, Mr Justice Hamblen and Mr Justice Nicol.

This appeal is concerned with the question of the liability of burglars to be convicted of manslaughter where the death of a property owner occurs during the course of a burglary.

On 10 April 2012 these four appellants were convicted of Count 1 - conspiracy to commit burglary, Count 2 - manslaughter and Count 3 - conspiracy to pervert the course of justice. Two other defendants, Leek and Payne, were convicted on Counts 1 and 3. Payne was acquitted on Count 2. The jury could not agree on Count 2 in the case of Leek and so it was then ordered to lie on the file.

The Offences

The deceased, Mr Julian Gardener, ran an off-road vehicle repair business from premises at Bush Barn Farm, Silverhill, East Sussex. Mr Gardener lived on the farm, about a hundred yards from the workshops in a building known as Lower Barn. The workshops lay between the main farmhouse and Lower Barn, which was screened by trees.

The Crown relied on certain features of the geography in seeking to make its case on manslaughter. The only access point to the scene for vehicles was via a secluded track, which passed a residential property near to the junction with the main A21 road, which was occupied by a witness, Jean Maddox. The main farmhouse was further down the track and was occupied by Mr Gardener's mother and two lodgers. Still further down the track, towards the workshops, was a locked metal gate. In making their way to the workshops where the burglary took place, the burglars bypassed the metal gate by driving through a ditch to the side of it in a four wheel drive Cherokee Jeep, which the Crown alleged had been purchased with a view to committing the offence.

The only escape route from the scene would be via this track. The burglary would involve the use of heavy vehicles, either brought to and/or removed from the scene, at night in poorly lit conditions, driving from the workshops at the far end of the track. At the workshops, the vehicles would have to manoeuvre in a confined space. These matters are not in dispute.

On leaving the workshops, by way of escape, the burglars simply drove into and through the metal gate in contrast, the Crown alleged, to the bypassing of the gate on entry which must have been done to avoid arousing suspicion.

The primary defence of the defendants was that they were not involved in any burglary on the night in question and so were not guilty of any count. Those denials and alibis were rejected by the jury, but the question arose as to whether there was sufficient evidence of manslaughter in the case of these appellants to be left to the jury, and whether directions given by the judge in summing-up were appropriate.

Leave to appeal was confined by the single judge to Count 2, manslaughter. As such the Court of Appeal proceeded on the basis that the appellants were guilty of the offences under Count 1 and Count 3. In relation to conspiracy to burgle under Count 1, the judge specifically directed the jury only to convict a defendant if he was present and participating in the burglary.

The burglary took place on the night of 10 to 11 October 2010. It is clear that a team of at least six burglars was involved. They arrived in at least two vehicles and left in a minimum of three vehicles, the third vehicle being a Land Rover taken from the workshops.

The overwhelming likelihood is that Mr Gardner intervened while the burglary was taking place. His body was found by a friend the following morning on the forecourt outside the workshops. The pathologist's conclusion was that his death had been caused by the deceased being struck and/or run over by one or more of the vehicles at the scene. DNA in a blood stain found on a wing mirror from the Cherokee Jeep matched that of Mr Gardner and glass recovered from his head was consistent with having come from that same vehicle.

A forensic examiner also found evidence at the scene consistent with a collision between the Jeep and Mr Gardener's Land Rover and signs of dragging on the body more likely to have been caused by the Land Rover than the Jeep. He was not able to identify a definitive scenario leading to Mr Gardener's death, but his evidence taken together with that of the pathologist attributed death to a collision as the most likely scenario. The pathologist suggested that there had been two impacts: one when Mr Gardner was standing and knocked to the ground and the second when a vehicle passed over him when he was on the ground. All the injuries could possibly have been caused by one vehicle but it could not be ruled out that they had been caused by two. The evidence showed that the Land Rover and the Cherokee Jeep were the only two vehicles to leave the workshop area. There was no evidence as to who was the driver or who was a passenger of either vehicle at the time of the fatal incident. There was no eye witness evidence, and the defence involved a complete denial of presence at the scene.

There was sufficient evidence against each appellant to implicate him in the burglary by being present at it, and also in the cover up

which took place immediately after the escape from the farm by burning out vehicles and stealing a lorry.

The Crown's Case

The prosecution case on Count 2 was one of unlawful act manslaughter. The unlawful act was alleged to be the burglary of the farm which was committed as a joint enterprise. Although it could not be said who was driving the vehicle or vehicles that struck Mr Gardner, they asserted that each appellant took part in the burglary and in doing so, in the particular circumstances, foresaw a real possibility that somebody intervening at the scene might suffer harm as a result of the carrying out of the burglary, including harm caused during their escape from the scene. The fact that there were residential farm buildings on the premises would have alerted the appellants to the risk of being caught in the act of burglary, which would result in the need to escape quickly from the scene in vehicles along the track.

The Crown submitted that in those circumstances, a reasonable bystander would recognise the risk of some harm being caused to a person intervening at night, in a relatively confined space, where powerful vehicles were involved and there was only one route of escape from the workshops.

The Judge's Ruling and Directions

At the close of the Crown's case the Judge rejected the submissions of no case to answer holding that there was sufficient evidence to go before the jury. In reaching this conclusion he held that there was sufficient evidence for the jury to find that the burglary was carefully planned and that there must have been a reconnaissance before hand. The burglary could be regarded as an ongoing offence at the time that Mr Gardner intervened and a jury could safely conclude that the burglars, on being confronted, shared an immediate intention to escape as planned. A jury could conclude that if necessary the escape should be achieved at high speed and with determination irrespective of any obstacle. In the circumstances there was a risk of harm being caused to a person trying to intervene or prevent escape.

The Defence Argument

Marcus Bristow, Lee Delay and Paul Dunn were represented by Mr Nelson QC. Terrence Bristow had previously dispensed with Mr Nelson's services and represented himself on appeal. The court treated the arguments made by Mr Nelson as applying in the case of Terrence Bristow as well on the basis that all four appellants' cases stood or fell together.

Mr Nelson argued that it was crucial that there was no evidence as to who had been the driver of the either vehicle or who had been present in or by those vehicles at the time of the fatal incident and

as such the court should approach the matter on the basis of considering each defendant as a secondary party who might not even have been present in, or with, the vehicles at the relevant time. The court observed that, in summing up, the Judge had treated all defendants as secondary parties in relation to the allegation of manslaughter in the absence of evidence as to who was the driver.

Counsel for the defence also submitted that Mr Gardner's arrival did not render the burglary dangerous in the sense contemplated in *R v Church* [1965] 49 Cr App R 206. It was asserted that no reasonable jury could conclude that the burglary was dangerous in the *R v Church* sense until Mr Gardner had arrived and a defendant began driving a vehicle and as such the Judge had been wrong to focus on the risk of harm prior to the burglary. It was asserted that at that point it was at least as likely that the defendants thought they would be able to drive off from the burglary undisturbed.

In support of this Mr Nelson referred to well-known decisions considering liability for manslaughter when an occupier of premises apparently dies of shock induced by the robbery or burglary. He submitted that they demonstrate that a burglary or robbery did not become dangerous until the offender acquires knowledge representing evidence of a risk of physical harm. By analogy this burglary did not become dangerous until a car began to be driven dangerously and given that there was no evidence that any appellant was inside any offending vehicle, or was encouraging the driving, there was no case to go to a jury.

Further more, Mr Nelson asserted that in seeking to escape, if the driver of the vehicle drove with an intention to kill or go grievous bodily harm that went outside the scope of the joint enterprise so that the other appellants could not in any event be found guilty.

The Crown's Response

The Crown maintained that the Judge's ruling and directions were appropriate. The Crown did not seek to suggest that what applied in this case would apply in every burglary but that in this case the risk was obvious from the outset because of the nature of the premises and their geography and because of the means by which the burglary was to be carried out. It made no difference if Mr Gardner was hit by a vehicle or vehicles part way through the burglary or as the burglars made their escape.

There was a clear possibility of intervention by someone living in the residential part of the farm. It did not matter who was the driver on the night in question, the use of vehicles in connection with the burglary was an integral part of the burglary. The Crown asserted that the Judge was correct to hold that a jury could be sure that the appellants foresaw the possibility of intervention and that a reasonable bystander would have recognised that the

situation was potentially dangerous, at least to the extent of some physical harm being caused to a person intervening.

It was the risk of intervention, the use of vehicles and the nature and geography of the site which made the burglary dangerous. The jury needed to focus on whether the burglary in those circumstances was dangerous from the outset. It could not be said that this burglary only became dangerous at a point after Mr Gardner appeared.

Discussion

The crime of unlawful act manslaughter comprises (a) an unlawful act intentionally performed (b) in circumstances rendering it a dangerous act (c) comprising death.

The test as to what is a dangerous act was propounded in *R v Church* [1966] 1 QB 59 and approved by the House of Lords in *DPP v Newbury* [1976] 62 Cr App R 291:

“An unlawful act causing the death of another cannot, simply because it is an unlawful act, render a manslaughter verdict inevitable. For such a verdict inexorably to follow, the unlawful act must be such as all sober and reasonable people would inevitably recognise must subject the other person to, at least, the risk of some harm resulting there from albeit not serious harm.”

Whilst burglary is not of itself a dangerous crime, a particular burglary may be dangerous because of the circumstances surrounding its commission. The Court of Appeal considered that the features identified by the Crown were capable of making this burglary dangerous when coupled with foresight of the risk of intervention to prevent escape. In those circumstances, the court considered that the features of this crime were sufficient for the burglary to be capable of being an unlawful act which a reasonable bystander would inevitably realise must subject any person intervening to the risk of some harm resulting.

The factual questions for the jury, given that the appellants were involved in the unlawful act of burglary, were whether each appellant foresaw the risk of intervention by a third party, and whether the reasonable bystander would consider the venture dangerous in the *R v Church* sense.

The Court of Appeal rejected Mr Nelson's submissions as to the point at which foresight and danger were to be assessed and considered that on the facts, the Judge was right to focus the jury's attention on the period up to the commencement of the burglary. What needed to be considered was the foresight of the participants as they embarked upon the crime, and what, if anything a reasonable bystander would inevitably have recognised as a risk of physical harm to any person intervening.

The Court of Appeal was satisfied with the Judge's ruling that "the jury could safely conclude that the team, on being confronted by JG, shared an immediate intention to get away, as planned, and carried that intention forward. It is open for the jury therefore, to conclude that each burglar intended the vehicular escape, should it arise in those circumstances, that that escape should be achieved at speed and with determination, and if necessary with no respect for property or person that might get in the way" and as such, that there was a case to answer.

The Court of Appeal was satisfied that the Judge's directions, that the jury should focus on a point prior to the commencement of the burglary, were correct.

The court rejected Mr Nelson's submission relating to an asserted misdirection concerning a driver who in the course of escape drove the vehicle with murderous intent. The court cited two previous cases, one of manslaughter and one of murder, demonstrating that the test of an accessory's liability is one of foresight, namely foresight of what the principal might do, rather than foresight of the intention with which the principal might perform such acts.

The appeals against conviction for manslaughter were dismissed.

The full case report can be found at
<http://www.bailii.org/ew/cases/EWCA/Crim/2013/1540.html>

R (on the application of the Chief Constable of the West Yorkshire Police) and Independent Police Complaints Commission and Police Constable Lee Armstrong (Interested Party) [2013] EWHC 2698 (Admin)

A hearing in the High Court of Justice Queens Bench Division Administrative Court before His Honour Judge Jeremy Richardson QC.

This case concerns a report by the Independent Police Complaints Commission (IPCC) regarding a complaint by a member of the public against a police officer. It was asserted that some parts of the report exceeded the lawful ambit of such a report, providing the opportunity for the court to consider what is, and what is not, permissible to embrace within a report by the IPCC when such a complaint is made.

In this claim for judicial review, the Chief Constable of the West Yorkshire Police (Chief Constable) seeks to have quashed a report by the IPCC entitled "Independent Investigation Final Report: Mr Leeford Sutcliffe: Allegation of Assault and Unlawful Arrest" dated 19 March 2012 (the report). The interested party (PC Lee Armstrong) has taken no part in the proceedings. The case concerns PC Armstrong's conduct as a police officer on 11 March 2011 in relation to Mr Sutcliffe.

The Factual Background

This case arises from an incident that occurred on 11 March 2011 at about 2.30pm on the outskirts of Leeds. Mr Sutcliffe was allegedly driving his Audi at 50mph in a 30mph zone. PC Armstrong stopped the Audi and an altercation occurred which resulted in Mr Sutcliffe's arrest for a public order offence. During the arrest PC Armstrong used incapacitant spray (CS spray), struck Mr Sutcliffe with his police baton and handcuffed him. Mr Sutcliffe suffered permanent injury to his theft thumb as a result of this. The court noted that the inevitable difference of accounts by Mr Sutcliffe and PC Armstrong must be within the common experience of the IPCC.

On 16 June 2011 Mr Sutcliffe's mother made a complaint to West Yorkshire Police in the following terms:

"...complaint is one of abuse of authority, in the way the officer spoke to her son, and assault as she alleges the officer sprayed her son with CS three times, once whilst he was handcuffed."

The complaint was held over until the criminal charge against Mr Sutcliffe was determined. On 17 June 2011 the Crown Prosecution Service (CPS) discontinued the charges against Mr Sutcliffe. On 29 September 2011 the complaint was referred to

the IPCC whereupon an investigation was commenced by a lead investigator and a deputy senior investigator of the IPCC. The conclusion of the report dated 19 March 2012 was that Mrs Sutcliffe's complaint was upheld and there was a case to answer in respect of an alleged "breach of the standards of professional behaviour." The report clearly set out that the view of the IPCC was that the arrest of Mr Sutcliffe was unlawful and the case was referred to the CPS for consideration of the prosecution of PC Armstrong with assault. On 26 July 2012 the CPS decided that there was insufficient evidence for a realistic prospect of conviction and its view was that the arrest of Mr Sutcliffe was lawful.

Following disclosure of the report of 19 March 2012 to PC Armstrong and Mrs Sutcliffe, these judicial review proceedings were commenced and permission to proceed was granted on 8 January 2013. It is asserted the contents of the report far exceed the lawful ambit of such reports and as such is unlawful.

The IPCC

The IPCC is governed by the Police Reform Act 2002 and regulations made under that Act.

Section 12 of the 2002 Act covers complaints about conduct by a police officer that may amount to a criminal offence, or would justify the commencement of disciplinary proceedings, or relate to a situation where death or serious injury has resulted. Section 12 governs the subject matter of the complaint and it may only be investigated if it falls within the terms of the section. All of this is subject to the general functions of the IPCC that are fully set out at section 10.

The court observed that this section makes it plain that the function is to record matters and not to make findings or rulings upon such matters. This section makes it clear the ambit of the IPCC is restricted to factual investigations and nothing more.

Paragraph 14E of the Police (Complaints and Misconduct) Regulations 2004, which is applicable to the IPCC, makes it clear that an investigator's report shall:

- "(a) provide an accurate summary of the evidence;
- (b) attach or refer to any relevant documents; and
- (c) indicate the investigator's opinion as to whether there is a case to answer in respect of any misconduct or whether there is no case to answer."

Investigations by the IPCC are executed pursuant to section 13 and schedule 3. At the conclusion of the investigation the investigator is required to submit a report to the IPCC. It is usually sent to the police constabulary and the complainant.

The Report in this Case

The terms of reference stated at paragraph 5 of the report were:

“To investigate police interaction with Mr Sutcliffe before and during his arrest for a public order offence, in particular:

- (a) To consider whether the arrest was lawful.
- (b) To consider the level of force during the arrest, including the deployment of CS spray.”

The report also asserted that it must:

“...identify whether any subject of the investigation may have committed a criminal offence and if appropriate make early contact with the prosecuting body”

Thereafter it asserted the report would consider whether there was a breach of professional standards and any misconduct coupled with the issue as to whether anything could be “organisational learning” arising from the findings.

It is acknowledged that there were two versions of events and the report analyses whether there was a lawful arrest by reference to the statutes. The court noted an almost “judgmental flavour to the report rather than the usual language of a report of this kind.”

The IPCC reached the following conclusions:

1. PC Armstrong's arrest of the complainant was not lawful when he simply stated it was for “public order” under section 24 of PACE. Furthermore, he was not informed of the grounds for arrest.
2. The report asserts: “On the balance of probabilities the arrest of (the complainant) for a public order offence does not satisfy the requirements of either section 24 or 28 of PACE 1984 and, as such, the arrest was unlawful”
3. PC Armstrong did not use reasonable force when he unlawfully arrested the complainant.
4. It concludes by asserting: “Based on the fact the arrest was unlawful, the use of CS spray was not necessary or reasonable in these circumstances. Therefore, on the balance of probabilities the use of force used by PC Armstrong amounts to an assault”
5. Subsequent baton strikes and deployment of CS spray were also excessive. This conclusion received this observation by the IPCC: “On the balance of probabilities all uses of force used by PC Armstrong were unlawful and excessive and thereby constituted an assault”

The complaint was upheld and a notice was served under Regulation 14A of the 2004 Regulations on PC Armstrong that there was a case of misconduct to answer.

The report was not modified to take account of the view of the CPS or the fact that PC Armstrong was not prosecuted.

The Chief Constable's Case

The Chief Constable argued that the function of the IPCC is not to determine either criminal or civil liability. Its role is investigative and to report alleged breaches of the criminal law or police discipline to the CPS or the chief constable as appropriate. As such it was argued that the IPCC reached unlawful and impermissible conclusions and far exceeded the only permissible finding which is that there is a case to answer in respect of misconduct (gross or otherwise) and/or a criminal offence. It was strongly argued that it is for the misconduct panel of the chief constable to find and determine whether there was misconduct; for a criminal court to determine guilt or otherwise of a criminal offence; and for a civil court to adjudge civil liability or not. It is asserted that the IPCC over reached itself in this report.

The Chief Constable argued that it is of crucial importance that the language of any report does not overstep the clear boundary of "recording" matters which "may" amount to criminal conduct or disciplinary misconduct. It was argued that the language of determination must not be used when the 2002 Act restricts that which the IPCC can do.

The IPCC Case

The IPCC argued that the report does not overstep the mark as only one of its responsibilities is the element of discipline. Its prime role is to respond to a complaint and as part of this it possesses procedural independence. Specific emphasis was placed upon section 10(2)(d) of the Police Reform Act 2002 whereby it regards the dependence of public confidence in its role as demanding that complaints are handled with appropriate vigour.

It was advanced that a complaint cannot properly or adequately be determined unless the legal issue is covered and answered by the report of the IPCC. It was accepted that the IPCC cannot decide whether a police officer has committed a criminal offences or indulged in conduct amounting to a tort as a matter of law but it had merely opined upon issues intrinsic to the complaint and had not overstepped any mark so far delineated by the courts.

Discussion

The court drew on the "highly relevant" observations of Mr Justice Langstaff in the case of R (on the application of Allatt) v Chief Constable of Nottinghamshire Police and IPCC [2011] EWHC 3908 (Admin):

- ◆ Care needs to be taken in the interpretation of IPCC reports. They are not judgments nor crafted by parliamentary draftsmen. The reports have a meaning which must be understood by those to whom the reports are addressed.
- ◆ The purpose of a report is to inform (the police disciplinary body or CPS) whether a charge should be brought. It is for the police disciplinary body or CPS to exercise that judgment. It is not for the IPCC to do so.
- ◆ An expression of opinion is necessarily called for by the investigator.
- ◆ Of importance:
 “Although there may be some cases in which what an investigator says may be so extreme or illogical or irrelevant that it should properly be excised ---”
- ◆ In that case there were expressions such as “the evidence indicates” which falls short of conclusive determination and is consistent with deciding whether there is sufficient evidence to place a police officer before a disciplinary panel for its decision.

The court accepted that the IPCC is entitled to evaluate competing evidence before making a recommendation. It was noted that the evaluation of evidence is of importance, but that evaluation is very different to determination. It cannot be suggested that the IPCC is not permitted to express an opinion about whether, upon its evaluation of the evidence, something is arguably unlawful or potentially criminal, but it must be in an appropriate form and expressed in language devoid of purported actual determination.

The court fully accepted the proposition that the IPCC must fully investigate all complaints and do so with rigour. It cannot be suggested (and was not in this case) that the IPCC may not investigate whether a police officer, or indeed the complainant, has transgressed the criminal law or committed a tort, but the extent of its role in expressing a conclusion is truly limited to that which Parliament has reposed in it. The role of the IPCC in this context is purely investigative and must not trespass upon the territory of the decision maker or even hint at doing so. The language used in reports is of crucial importance because of the potential for damaging consequences caused by an ill chosen phrase or imprecision of expression.

The language of section 10(2) of the Police Reform Act 2002 is deliberately restrictive and demands the IPCC “handles” complaints, rather than “determines” them. It also requires the IPCC to “record” matters that “may” amount to a crime or a disciplinary matter. The regime demands investigation and reporting with, if appropriate, an opinion (and only an opinion) as to whether there is

a case to answer. It is outside the permitted boundary to express any concluded view as to criminal or civil liability.

His Honour Judge Richardson distilled his understanding of the law in to the following propositions:

1. The primary function of the IPCC in this context is to investigate a complaint against the police under the 2002 Act.
2. Such a complaint must be investigated with rigour and determination in order to maintain public confidence in such enquiries and to comply with Convention jurisprudence.
3. The function of the investigation is to record matters which may constitute a crime or breach of discipline. The investigative ambit must be confined to that important but limited role.
4. It is no part of the function of the IPCC to make definitive finding or rulings upon any issue but to gather evidence and establish facts to enable those who have the lawful authority to decide whether to commence disciplinary charges or institute criminal proceedings (the decision maker).
5. As a critical by-product (if appropriate) the report may go so far as to assist the decision maker to establish whether there is a case to answer in respect of misconduct or a criminal charge.
6. In this regard the high water mark is the report may give an opinion as to whether there is a case to answer.
7. The report is not permitted to be determinative or purport to be determinative of such matters.
8. It is for the criminal courts to determine the guilt or otherwise of any individual; it is for the civil courts to determine civil liability of any person or body; and it is for the police disciplinary body (in any given constabulary) to institute and resolve disciplinary issues of a police officer.
9. The IPCC must remain within the four corners of the 2002 Act which demands investigation and gathering of evidence to enable the decision maker to make a decision.
10. If there is a critical need to offer a view as to the lawfulness of conduct it must be couched in the language of an indication of opinion on the matter.
11. It is permissible to evaluate evidence and competing accounts. A report is not an arid distillation or summary of all that has been gleaned.
12. In viewing reports of the IPCC it is vital to remember to whom they are addressed and approach each one with a sense of realism. They are not judgments, nor lawyer-crafted contracts.

The court then asked whether the author of the report had paid any heed to these propositions.

Analysis

The court's analysis of the report in this case was that the language used amounted to a suggestion of determination rather than opinion. References to various passages of the report reveal that the author of the report intended to embark upon consideration of the lawfulness of the arrest of Mr Sutcliffe. Moreover the report went on to state that PC Armstrong acted unlawfully and that the arrest was unlawful. The court stated that at no stage did the report suggest that there was a case to answer - rather it leapt to the conclusion. To make that leap was unlawful when it was in excess of the powers and function granted by Parliament.

It was perfectly permissible to record the facts and express an opinion to assist those who had to make decisions but no more was allowed. The court stated that the report so demonstrably overstepped the boundary that it could not be allowed to stand. Although the evaluation of what Mr Sutcliffe said as opposed to PC Armstrong was entirely permissible, the final decision on whether the conduct amounted to an assault or was unlawful was ultimately a matter for the decision maker. All the report should have suggested was that, at most, there was a case to be answered in respect of police disciplinary charges or criminal charges. Any purported observation about potential civil liability was outside the remit of the IPCC; and if any evaluation of evidence needed to touch upon such an issue, considerable care in the language used was needed.

It is clear that the report had no influence on the CPS decision in this case as it was decided not to commence criminal proceedings against PC Armstrong. Once that decision was known, the report should have been revised. In any event, the report should not have been drafted as it was and as the document reveals the approach and import of the IPCC in respect of the complaint made, it was unlawful in its approach and contents. It purports to find (not suggest) both civil and criminal unlawful conduct and as such far exceeds the lawful ambit of such reports.

Conclusion

The claim for judicial review by the Chief Constable succeeded and the report of 19 March 2012 was quashed. It was held that the IPCC would have to re-craft the report in lawful terms in accordance with the limits of the 2002 Act, the 2004 Regulations and relevant statutory guidance.

Permission to Appeal

The court granted permission to appeal on the basis that there was a compelling reason why the appeal should be heard, as a case of

considerable importance to the IPCC and the police as well as it being of great public importance for there to be an authoritative statement on the ambit of IPCC reports by the Court of Appeal.

The full judgment can be found at
<http://www.bailii.org/ew/cases/EWHC/Admin/2013/2698.html>

R (on the application of R) and A Chief Constable [2013] EWHC 2864 (Admin)

By reason of his previous convictions the claimant was, from 7 March 2011, liable to have a non-intimate sample taken from him without his consent, pursuant to section 63(3B)(a) and (3BA)(a) of the Police and Criminal Evidence Act 1984.

In March 2013 R was visited at his home by PC Woodcock who handed him a letter requesting his consent to the taking of a non-intimate sample. The letter informed him that if he did not consent to the taking of the sample he would be required to attend a police station within 7 days, whereby the sample may be taken with the authority of a police officer of the appropriate rank. If R failed to attend, he was liable to arrest.

R brought a claim for judicial review, seeking an order to quash the decisions to make the requirement, and a declaration that the decision to require him to attend the police station and/or to take a sample was unlawful, as well as damages. The hearing took place on 16 July 2013 and the judgment, dismissing the claim, was published on 24 September 2013.

A full case summary will be provided in next month's edition of the *Digest*. In the meantime, the full judgment can be found at <http://www.bailii.org/ew/cases/EWHC/Admin/2013/2864.html>

25

R (on the application of Christopher Prothero) and Secretary of State for the Home Department [2013] EWHC 2830 (Admin)

A hearing in the High Court of Justice Queens Bench Division Divisional Court before the President of the Queen's Bench Division and Mr Justice Hickinbottom.

The Issue

A person on the Sex Offenders Register is required under Regulation 12 of the Sexual Offences Act 2003 (Notification Requirements) (England and Wales) Regulations 2012 (the Regulations) to provide details of bank, debit or credit card accounts held by him. The claimant in these proceedings seeks a declaration that this Regulation is incompatible with Article 8 of the European Convention on Human Rights.

Factual Background

The claimant was convicted of nine counts of indecent assault and indecency with a child in February 2007. He was sentenced to four and a half years imprisonment and was released from custody in February 2010. Having had difficulties finding employment he became self employed. He had two bank accounts - a current account and a saver account.

His evidence is that he complied with all of the licence conditions imposed as well as the notification requirements as they were on his release. In addition, he notified all the necessary parties of his address and dates when he would be working away from home. His case is that the requirement of the Regulations under which he had to provide details of his bank accounts were an invasion of his privacy. He was concerned that the information might get into the wrong hands or be used by the authorities for some purpose other than that for which it was intended for.

The Background to the making of the Regulations

The obligation for those convicted of sexual offences to notify certain matters is set out in sections 80-88 of Part 2 of the Sexual Offences Act 2003. Until the changes made by the Regulations 2012 an offender, such as the claimant who has been placed indefinitely upon the Sex Offenders Register is to notify the details set out under section 83(5), including his date of birth, his National Insurance number, his home address and the address of any other premises in the UK at which he regularly stays. He is obliged under section 84 to notify changes of name and of address.

In addition to these provisions, power was given to the Secretary of State to make regulations.

On 21 April 2010 in the case of *R (F) (a Child) v The Secretary of State for the Home Department* [2010] UKSC 17, [2011] 1 AC 331 the Supreme Court held that the notification requirements under the 2003 Act were capable of causing significant interference with the Article 8 rights of an offender on the register. It was held that for those subject to lifetime notification who were able to demonstrate that they no longer pose a risk, there was no justification for continued interference with their Article 8 rights by insisting on future compliance with reporting requirements. As such the court affirmed a declaration of incompatibility to the effect that the absence of any mechanism for review of the requirement under the 2003 Act was a disproportionate interference with Article 8 rights.

Following that decision the Secretary of State introduced two changes to the legal regime, namely:

- ◆ She made the Sexual Offences Act 2003 (Remedial) Order 2012 amending the 2003 Act to provide for a review of the indefinite notification requirements under the Act. The Order inserted section 91B in to the 2003 Act under which an offender became entitled to seek a review of the notification requirements 15 years after the date on which he was first required to notify. That amendment is not currently relevant for the claimant in this matter.
- ◆ She also consulted on modifications to the notification requirements seeking the views of the public on notification in relation to foreign travel, place of residence, residence with a minor as well as the notification of details of any bank account or debit or credit card.

After the consultation the Secretary of State laid the Regulations before Parliament. Regulations 12(1) set out the details of the relevant bank accounts and debit and credit cards for which information had to be provided.

With regard to bank accounts, the information required under Regulations 12(2)-(3) was specified as the name of the institution, its address as well as the sort code and account number. With regard to debit and credit cards the information required under Regulation 12(4)-(7) was the card number, the validation date, the expiry date and if the card was jointly held with another person or in the name of a business, the name of that person or business. Information where circumstances changed was required under Regulation 13.

The Applicable Legal Regime

◆ The Duties under Article 8

The State owes two duties under Article 8 in respect of sexual offenders. First, it owes a duty to victims. Second, it owes a

duty to ensure that, if a scheme for protecting potential victims interferes with the private or family life of another individual, the scheme must be capable of justification in the sense that it can be shown that such interference will achieve the policy aim it seeks to achieve and will not simply act as a penalty on the offender.

The questions which a court must consider are as follows:

1. What is the extent of the interference with article 8 rights?
2. How valuable are the notification requirements in achieving the legitimate aims?
3. To what extent would that value be eroded if the notification requirements were made subject to review?

The court considered the first two questions in turn, deeming the third to be of no relevance in this case.

◆ **What is the extent of the interference with article 8 rights?**

The Secretary of State accepted that the summary by Lord Phillips at paragraph 42 of his judgment in R(F) was pertinent:

“Giving information to the local police in relation to one’s address and one’s movements coupled with the explanation that this is necessary because one is on the sexual offences register will necessarily carry the risk that the information may be conveyed to third parties in circumstances where this is not appropriate.”

The question that arose therefore is how great is that interference?

There is no doubt that the principal risk faced by the claimant is that of dissemination of the knowledge that he is on the Sex Offenders Register which would bring about the greatest interference with his private life.

There is a further risk to the security of his financial assets from the provision of bank and debit and credit card details as they might be misused should somebody obtain access to them. However from the evidence before the court, the information is securely recorded. Furthermore, it is accepted that the possession by the police and other authorities of this information does not entitle them to examine the details of the accounts or card transactions; these are generally confidential between the bank and the customer. Moreover the details provided do not include details which would enable a person to use a credit card because the security code on the back of the card is not included.

As such the court determined that interference with Article 8 was material but not nearly as significant as the interference already brought about by the other notification requirements. However, although the interference was material, it was noted that access to bank accounts and card transactions is not ordinarily permitted without a court order.

◆ **How valuable are the notification requirements in achieving the legitimate aims?**

This issue was the essence of the dispute between the claimant and the Secretary of State. Counsel for the claimant accepted that the provision of bank and card details would enable the police to trace a sexual offender who had moved and failed to notify his new address and that this would protect potential victims. However, it was asserted that it was not necessary for an offender to provide bank account and card details because the police would be able to trace that information in sufficient time through the use of the statutory powers to obtain information from banks and debit and credit card institutions. It was submitted that the Secretary of State had not set out sufficient evidence to show that the provision of these details would enable the whereabouts to be traced more quickly. As such the interference was not proportionate as it was not necessary for the purpose claimed.

The court noted that it is for the court to determine the issue under Article 8, according a due margin of appreciation to the Secretary of State. The court must therefore consider for itself the evidence and other circumstances evident to it following the approach set out in the case of *Wilson v First County Trust Limited No. 2* [2003] UKHL 40, [2004] 1 AC 816:

“The legislation must not only have a legitimate policy objective. It must also satisfy a “proportionality” test. The court must decide whether the means employed by the statute to achieve the policy objective is appropriate and not disproportionate in its adverse effect. This involves a “value judgment” by the court, made by reference to the circumstances prevailing when the issue has to be decided.”

In considering this, the court determined that there is no doubt about the legitimate policy objective of the Regulations - the ability to trace an offender quickly, to guard against the risk of an offender using another identity or to enable quick access to transactions to investigate offences in relation to indecent images. Evidence of the use of similar powers in Scotland showed that the aim can be achieved.

The court did not consider that the means employed are in any way inappropriate or disproportionate. They were found to be a practical and proportionate means of providing further

protection to protect other potential victims, having taken account of the fact that no power is given to access the accounts and that the information provided will be securely held.

The court found it self-evident that if such bank and card details are not provided by an offender, the only course open to the police would be to use their statutory powers to make applications to see which bank or institution held an account in the name of the offender as it appeared on the Sex Offenders Register or was otherwise known. Such a process would be time consuming and expensive and would present considerable difficulties for the police if the offender had changed the name under which he operated the account.

As such the court found little doubt that the requirements are very valuable in achieving the legitimate aims and are both necessary and proportionate for the achievement of those aims.

Conclusion

The court held that the Regulations are not incompatible with the European Convention on Human Rights and declined to make a declaration of incompatibility.

The full judgment can be found at
<http://www.bailii.org/ew/cases/EWHC/Admin/2013/2830.html>

SI 2013/2104 The Protection of Freedoms Act 2012 (Commencement No. 9) Order 2013

Article 2 brought into force sections 26 to 28 of the Act on **1 September 2013**.

Section 26 of the Act imposes a requirement on schools, 16 to 19 Academies and further education institutions to notify parents and obtain parental consent before processing a child's biometric information.

Section 27 specifies exceptions to the consent requirement and makes further provision about consent and notification.

Section 28 contains definitions relevant to the operation of sections 26 to 28.

Article 3 brings into force consequential amendments and repeals related to Chapter 1 of Part 1 of the Act (destruction, retention and use of fingerprints etc.).

SI 2013/2200 The Crime and Courts Act 2013 (Commencement No. 4) Order 2013

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

This Order commences a number of provisions of the Act on **4 September 2013**, on **1 October 2013** and on **1 November 2013**.

The provisions which commenced on **4 September 2013** are:

- ◆ Section 17(4) (which provides for the repeal of Part 2 of the Children Schools and Families Act 2010 and related provisions);
- ◆ Section 20 (which provides for Schedule 13, concerning judicial appointments, to have effect), for the purpose of bringing Part 3 of Schedule 13 into force;
- ◆ Part 3 of Schedule 13 (Judicial Appointments Commission).

The provisions which are commenced on **1 October 2013** are:

- ◆ Section 20 for the purpose of bringing Parts 1 and 4 of Schedule 13 into force;
- ◆ Section 21 which makes provision about deployment of the judiciary;
- ◆ Section 30 which amends Part 3 of the Constitutional Reform Act 2005 to insert sections 51A to 51E. These provisions provide for Supreme Court security officers with specified powers;

- ◆ Part 1 (judges of the Supreme Court: number and selection) of Schedule 13;
- ◆ Part 4 (judicial appointments: selection, and transfer of powers of Lord Chancellor) of Schedule 13;
- ◆ Schedule 14 (deployment of the judiciary).

The entry relating to Justices of the Peace (who are not District Judges (Magistrates' Courts)) in paragraph 41 of Schedule 13 to the Act in so far as it relates to sections 85 to 97 and 99 of the Act (which relate to appointment) does not come into force on **1 October 2013** but it does come into force for all other purposes on **1 October 2013**.

Paragraph 49(6) of Schedule 13 to the Act amends paragraph 51 of Schedule 21 to the Coroners and Justice Act 2009 (the 2009 Act). As paragraph 51 of Schedule 21 to the 2009 Act has already been partially commenced, the amendment made by paragraph 49(6)(a) is commenced on **1 October 2013** only in so far as it applies to the Coroner for Treasure as paragraph 51 of Schedule 21 to the 2009 Act has yet to be commenced in so far as it applies to the Coroner for Treasure.

The provision which is commenced on **1 November 2013** is:

- ◆ Section 22, which makes provision about the transfer of immigration, asylum and nationality judicial review applications to the Upper Tribunal.

Article 6 amends the Crime and Courts Act 2013 (Commencement No. 3) Order 2013 (SI 2013/1725) to remove the reference to section 22 which, in accordance with article 5, will now commence on **1 November 2013**.

SI 2013/2213 The Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2013

Articles 1, 2, 3, and 5 to 8 come into force on **1 October 2013** and article 4 comes into force on **6 April 2014**.

This Order amends the Schedule to the Public Interest Disclosure (Prescribed Persons) Order 1999 (the 1999 Schedule).

The Employment Rights Act 1996 (1996 Act) provides protection for workers who suffer a detriment or are dismissed as a result of blowing the whistle by making a qualifying disclosure in accordance with any of sections 43C to 43H of the 1996 Act. ('Qualifying disclosure' has the meaning given in section 43B of the 1996 Act.) Section 43F of the 1996 Act provides that a qualifying disclosure will be protected if it is made to a prescribed person and relates to matters in respect of which that person is prescribed. The 1999 Schedule lists the prescribed persons and the matters in respect of which they are prescribed for the purposes of section 43F.

This Order amends the 1999 Schedule in three ways: to reflect changes made to policing governance arrangements in England and Wales by the Police Reform and Social Responsibility Act 2011; to add health and social care professional regulatory bodies to the list of prescribed persons and amend existing entries for certain health and social care regulators; and to expand the description of matters in respect of which the Civil Aviation Authority is prescribed.

**SI 2013/2258 The Scrap Metal Dealers Act 2013
(Prescribed Relevant Offences and Relevant
Enforcement Action) Regulations 2013**

These Regulations come into force on **1 October 2013**.

These Regulations prescribe relevant offences and relevant enforcement action for the purposes of section 3(3)(b) and (c) of the Scrap Metal Dealers Act 2013. Pursuant to section 3(2) of that Act, where a local authority is processing an application for a scrap metal licence and is evaluating whether the applicant is a suitable person to carry on business as a scrap metal dealer, the local authority may have regard to whether the applicant or any site manager has been convicted of a relevant offence, or has been the subject of any relevant enforcement action.

**SI 2013/2243 The Recovery of Costs (Remand to Youth
Detention Accommodation) (Amendment)
Regulations 2013**

These Regulations may be cited as the Recovery of Costs (Remand to Youth Detention Accommodation) (Amendment) Regulations 2013 and come into force on **1 October 2013**.

These Regulations amend the Recovery of Costs (Remand to Youth Detention Accommodation) Regulations 2013 (SI 2013/507) by inserting new amounts which local authorities are liable to pay the Youth Justice Board for England and Wales in respect of each night on which a child is detained on remand in a secure training centre on or after 1 October 2013 and 1 December 2013.

**SI 2013/2276 The Scrap Metal Dealers Act 2013
(Prescribed Documents and Information for
Verification of Name and Address)
Regulations 2013**

These Regulations come into force on **2 October 2013**.

These Regulations prescribe the documents and information which are sufficient to verify the name and address of the person supplying scrap metal, for the purposes of section 11(3)(a) of the Scrap Metal Dealers Act 2013. Section 11 of the Act places an obligation on a scrap metal dealer to verify the full name and address of the person who supplies the scrap metal before receiving it. Failure to fulfil this obligation will constitute a criminal offence.

This offence can be committed by the scrap metal dealer, the site manager, and any person who has responsibility for verifying the name and address of the supplier under arrangements that have been made by the dealer or the site manager.

SI 2013/2299 The Local Safeguarding Children Boards (Review) Regulations 2013

These Regulations come into force on **9 October 2013**.

These Regulations make provision for the review of Local Safeguarding Children Boards (LSCBs) by Her Majesty's Chief Inspector of Education, Children's Services and Skills (the Chief Inspector). They set out when a review must or may be undertaken and prescribe the Chief Inspector's powers in relation to such reviews.

Regulation 2 specifies the functions of an LSCB for the purposes of section 15A of the Children Act 2004.

Regulation 3 provides that the Chief Inspector may conduct a review of any or all of the specified functions and must conduct a review at the request of the Secretary of State.

Regulation 4 requires the Chief Inspector to make a report of the review and to send it to the local authority with responsibility for establishing the LSCB, the LSCB Chair, the Board partners, the relevant inspectorates for each of the Board partners, any other body represented on the LSCB and the Secretary of State. The Regulations also make provision about publication of the report by the LSCB and the Chief Inspector.

Regulation 5 enables the Chief Inspector to request documents, interview specified individuals and attend meetings of the LSCB, for the purposes of a review.

SI 2013/2318 The Crime and Courts Act 2013 (Consequential Amendments and Saving Provision) Order 2013

This Order comes into force on **7 October 2013**.

This Order makes amendments to subordinate legislation in consequence of Part 1 of the Crime and Courts Act 2013 (the Act), which abolishes the Serious Organised Crime Agency and the National Policing Improvement Agency and establishes the National Crime Agency.

Paragraph 190 of Schedule 8 (hereinafter referred to as the "the glossing provision") to the Act provides that in subordinate legislation references to SOCA, the Director General of SOCA, the staff of SOCA and a member of staff of SOCA ("SOCA related references") are to be read as (or including) the corresponding NCA related reference. This means that, for example, a Regulation that

imposes an obligation on SOCA will be read as imposing the same obligation on the NCA. Consequently there are references to SOCA in subordinate legislation where textual amendments are not required.

Where it has been necessary to achieve a different result to that produced by the glossing provision, Schedule 1 of this Order amends the subordinate legislation. Where one SOCA related reference requires amendment all are amended without reliance on the glossing provision.

This Order makes a number of amendments to the various Regulations that govern the pension schemes applicable to police officers in England and Wales, Scotland and Northern Ireland. The amendments remove references to the NPIA, to reflect its abolition. They replace references to SOCA and specified employees of SOCA with references to the NCA and specified NCA officers, to reflect the fact that certain NCA officers will be entitled to membership of the police pension schemes in accordance with section 11 of the Police Pensions Act 1976 as amended by paragraph 26 of Schedule 8 to the Act.

Article 3 ensures that rights accrued in relation to the police pension schemes while serving in SOCA and the NPIA are preserved when the references to such service are removed from the relevant instruments.

Paragraph 31 provides that, in accordance with amendments made to the Police (Property) Act 1987 by paragraph 15 of Schedule 8 to the Act, for the purposes of the Police (Property) Regulations 1997 the "relevant authority" will be the agency itself.

Paragraphs 53-57, 70-74 and 81-85 of the Schedule to this Order amend the Regulations that make provision for the payment of compensation to police officers injured in the course of duty. The amendments remove references to SOCA and the NPIA. The Regulations will not apply to NCA officers.

Paragraph 98 provides that being an NCA officer will not entitle a person to active membership of the Local Government Pension Scheme. This will not affect the ability of retired SOCA staff to continue to receive their pension, nor will it affect any accrued rights which staff choose to leave in the pension scheme until they retire.

Paragraph 125 omits SOCA from the list of public authorities required to publish information demonstrating compliance with the duty imposed by section 149(1) of the Equality Act 2010. The NCA will be subject to the duty as a government department.

**SI 2013/2343 The Protection of Freedoms Act 2012
(Consequential Amendments) No. 3 Order
2013**

This Order comes into force on **31 October 2013**.

The amendments made by article 2 of this Order have the same extent as the Police and Criminal Evidence Act 1984 (Application to immigration officers and designated customs officials in England and Wales) Order 2013.

This Order makes consequential amendments to the Police and Criminal Evidence Act 1984 (Application to immigration officers and designated customs officials in England and Wales) Order 2013 (SI 2013/1542) (the principal Order), which applies specified provisions of the Police and Criminal Evidence Act 1984 (PACE) to criminal investigations conducted by immigration officers and designated customs officials and to persons detained by designated customs officials. In particular it removes the reference to section 64 of PACE from Schedule 2 of Part 1 in the principal Order and replaces it with references to sections 63R, 63T and 63U of PACE. This is to give effect to the fact that the Protection of Freedoms Act 2012 repealed section 64 of PACE, which was concerned with the destruction of fingerprints and samples taken for the purpose of a criminal investigation, and replaced it with a number of statutory provisions governing the destruction, retention and use of fingerprints and samples. Only the provisions which apply to the destruction, retention and use of samples (not fingerprints) are to be applied under the principal Order and they are only to apply to criminal investigations conducted by designated customs officials (not immigration officers) and to persons detained by designated customs officials.

**SI 2013/2326 The National Crime Agency (Limitation of
extension to Northern Ireland) Order 2013**

This Order comes into force on **7 October 2013**.

This Order allows the National Crime Agency to carry out civil recovery functions under Part 8 of the Proceeds of Crime Act 2002 in Northern Ireland but only in relation to excepted and reserved offences. This means that the National Crime Agency may exercise civil recovery powers in relation to immigration and customs offences in Northern Ireland from 7 October 2013.

Under Schedule 24 to the Crime and Courts Act 2013 (CCA 2013) these provisions were limited in their extent to Northern Ireland but that position is reversed by this Order. Article 3 of the Order extends provisions in Schedule 8 (Abolition of SOCA and NPIA) of CCA 2013 to Northern Ireland but Article 4 limits the exercise of the relevant functions to non-transferred offences. Article 5 provides

certain exceptions, including where there is a transferred offence that is closely connected to a non-transferred offence.

SI 2013/2325 The National Crime Agency (Complaints and Misconduct) Regulations 2013

These Regulations come into force on **7 October 2013** and extend to England and Wales.

These Regulations provide for the basis on which the Independent Police Complaints Commission has oversight of complaints and other matters relating to the conduct of a National Crime Agency officer (NCA officer), including the Director General of the National Crime Agency.

The statutory framework in accordance with which the Commission has oversight of police conduct is set out in Part 2 of, and Schedule 3 to, the Police Reform Act 2002 (the 2002 Act). The Commission was established by the 2002 Act to provide an effective and independent means of overseeing the investigation of complaints and alleged misconduct relating to the actions of the police. These Regulations are made under section 26C of the 2002 Act and make provision which broadly reflects existing arrangements in accordance with which the Commission has oversight of the police, but with modifications in parts where it is necessary to reflect differences between the NCA and the police.

Part 1 contains introductory provision and an interpretation provision (regulation 2); this includes a definition of the appropriate authority, which performs a number of investigative functions under the framework established by these Regulations. The appropriate authority is ordinarily the Permanent Secretary to the Home Office or the Director General of the National Crime Agency; their respective role is determined by the nature of the complaint or other matter which is being investigated.

Part 2 contains provision which sets out the broad basis on which the Commission has oversight of complaints and misconduct relating to the NCA. It makes provision to apply specific sections of Part 2 of the 2002 Act with modifications (regulation 5), and sets out the general functions of the Commission and the reporting requirements which apply to it (regulations 6 and 7). Regulation 8 defines the matters which may be the subject of an investigation under these Regulations (a complaint, conduct matter or death or serious injury (or DSI) matter). Regulations 9 to 12 set out the general duties of the appropriate authority, payment for assistance (e.g. in a case where the police assists with an investigation), the provision of information by the NCA to the Commission and requirements in relation to onward disclosure of such information and the inspection of NCA premises by the Commission.

Regulations 13 to 16 make provision for keeping complainants and other interested persons informed about investigations, and includes provision about the manner in which these requirements are fulfilled and exceptions to them.

Part 3 contains provision about the handling of complaints. It imposes duties to preserve evidence (regulation 17), handling and recording of complaints (regulations 18 to 21), the cases in which complaints are referred to the Commission (regulations 22 and 23) and the handling of complaints by the appropriate authority (regulations 24 to 26). There are prescribed appeal rights in certain cases (Regulation 27).

Part 4 contains provision about the handling of conduct matters. It imposes duties in relation to the identification and recording of conduct matters (regulations 28 to 30), preservation of evidence (regulation 31) and the cases in which conduct matters are referred to the Commission (regulations 32 and 33).

Part 5 contains provision about the handling of DSI matters. It imposes duties to record DSI matters and preserve evidence (regulations 34 and 35) and the reference of DSI matters to the Commission and its corresponding duties on a referral to it (regulations 36 and 37).

Part 6 contains provision governing the basis on which the Commission determines the form of an investigation in a matter referred to it (regulation 38), ranging from investigations carried out by the appropriate authority on its own behalf (regulation 41) or supervised or managed by the Commission (regulations 42 or 43) to investigations carried out by the Commission itself (regulation 44). There is also provision governing the appointment of investigators (regulation 39) the processes which apply in specific cases (e.g. withdrawn complaints or the resumption of an investigation following the conclusion of relevant criminal proceedings (regulations 40 and 45 to 48)).

Part 6 also contains provision governing a special procedure which applies in a case in which a conduct matter is revealed during the course of the investigation of a complaint (regulations 49 to 53), the Commission's powers to interview witnesses (regulation 54), restrictions on certain proceedings during an investigation (regulation 55) and an accelerated procedure in cases where gross misconduct is identified during an investigation into a complaint or conduct matter (regulations 56 to 63). This Part also contains provision governing the discontinuance of an investigation (regulation 64) and the procedure in cases where a conduct matter is revealed during an investigation into a DSI matter (regulation 65).

Part 7 sets out the basis governing the submission of investigation reports, the actions which the Commission or the appropriate

authority are required to take, the prescribed appeal rights in relation to an investigation and the availability of a review or reinvestigation following an appeal (regulations 66 to 72). Regulation 73 sets out the duties on the appropriate authority with respect to disciplinary proceedings (e.g. following a recommendations made by the Commission) and the information which is required to be provided to complainants about such proceedings (regulation 74).

Part 8 contains provision about a number of general matters including appeal processes and which person may hear an appeal (regulations 82 and 83).

SI 2013/2349 The Crime and Courts Act 2013 (Commencement No. 5) Order 2013

This Order is the fifth commencement order made under the Crime and Courts Act 2013 (the Act). It commences a number of provisions of the Act relating to extradition on **18 September** and **14 October 2013**.

The provisions coming into force on **18 September 2013** amend the Extradition Act 2003 to give the Secretary of State the power to make an order designating prosecutors or descriptions of prosecutors for the purposes of conducting forum proceedings. This power is commenced for the United Kingdom.

It brings the remaining forum provisions of Schedule 20 in to force on **14 October 2013** for the purposes of England, Wales and Northern Ireland. It also brings into force for Northern Ireland Part 2 of that Schedule, which relates to human rights issues.

SI 2013/2388 The Extradition Act 2003 (Designation of Prosecutors) (England and Wales and Northern Ireland) Order 2013

This Order comes into force on **14 October 2013** and extends to England and Wales and Northern Ireland.

This Order designates prosecutors and descriptions of prosecutors as "designated prosecutors" for the purposes of sections 19F and 83E of the Extradition Act 2003 (the 2003 Act).

Sections 19B to 19F and 83A to 83E of the 2003 Act, as inserted by the Crime and Courts Act 2013, provide that the extradition of a person to category 1 or category 2 territories is barred by reason of forum if the extradition would not be in the interests of justice. If a designated prosecutor gives a prosecutor's certificate, the judge hearing the proceedings must decide that extradition is not barred by reason of forum. The 2003 Act provides that any member of the Crown Prosecution Service is a designated prosecutor. This Order designates additional prosecutors and descriptions of prosecutors who are able to give a prosecutor's certificate.

SI 2013/2384 The Extradition Appeals (England and Wales and Northern Ireland) Order 2013

This Order comes into force on **14 October 2013** and extends to England and Wales and Northern Ireland.

This Order makes consequential provision to modify the application of subsections (2) to (4) of section 109 of the Extradition Act 2003 (the 2003 Act). Those subsections provide that on an appeal under section 108 of the 2003 Act against a decision of the Secretary of State to order a person's extradition, the High Court is to consider the questions which were, or should have been, before the Secretary of State.

Section 70(11) of the 2003 Act (as inserted by Part 2 of Schedule 20 to the Crime and Courts Act 2013) provides that the Secretary of State is not to consider whether the extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998.

This Order clarifies that the High Court is able to allow or dismiss an appeal brought on human rights grounds where human rights questions were not considered by the Secretary of State because of the effect of section 70(11).

SI 2013/2408 The Traffic Management Act 2004 (Commencement No. 7) (England) Order 2013

Section 71 (Guidance to local highway authorities as to safety precautions) of the Traffic Management Act 2004 comes into force as respects England on **1 October 2013**.

This Order brings into force, as respects England, a provision of Part 5 (Highways and Roads) of the Traffic Management Act 2004 (the 2004 Act).

Article 2 brings section 71 of the 2004 Act into force on **1 October 2013**. Section 71 inserts new subsections (1A), (1B) and (1C) into section 174 (precautions to be taken by persons executing works in streets) of the Highways Act 1980. This provides for the Secretary of State to issue guidance to local highway authorities as to the discharge by them of their obligation to carry out safely the signing, lighting and guarding of works when they are executing works for road purposes. A local highway authority must have regard to the guidance in executing those works.

Operation of Police Powers under the Terrorism Act and Subsequent Legislation: Arrests, Outcomes and Stop and Searches in Great Britain 2012-2013

The Home Office has published statistical material for the period up to 31 March 2013, relating to the Terrorism Act 2000, including arrests and their outcomes, as well as breakdowns of stops and searches made under the Act.

There were 249 persons arrested for terrorism-related offences in 2012/13, an increase from the 206 so arrested in 2011/12. 42% of terrorism arrests in 2012/13 resulted in a charge, up 2% on 2011/12. 35% of the charges brought were terrorism-related.

As of the date of publication (12 September 2013), 23 of the 37 persons charged with terrorism-related offences had been convicted of an offence, with 13 defendants awaiting trial and 1 not proceeded against.

The Crown Prosecution Service has provided data showing that 13 of the 18 trials completed during the 2012/13 for offences under terrorism legislation resulted in convictions. In addition, all 4 terrorism-related trials for offences under other legislation resulted in convictions. 16 of the 17 defendants convicted were sentenced to immediate custody, none of whom received a life sentence. The remaining defendant received a hospital order.

As of 31 March 2013, 121 persons were in prison custody in Great Britain for terrorism-related offences; just less than 75% of these were UK nationals. 18 prisoners were classified as domestic extremists/separatists. 39 persons were released during 2012/13.

No searches were made by the police under section 47A of the Terrorism Act 2000 in Great Britain in 2012/13. 56,257 persons were stopped at ports in Great Britain under Schedule 7 of the Act, a decrease of 12% from the previous year.

The Metropolitan Police Service stopped and searched 582 persons under section 43 of the 2000 Act, representing a 29% fall on the total of 818 in 2011/12. The arrest rate for section 43 searches was 5.5%, an increase of 2% on the previous year.

The full statistical bulletin can be found at <https://www.gov.uk/government/publications/operation-of-police-powers-under-the-terrorism-act-2000-2012-to-2013>

Major Review of Police Response to Domestic Violence

In response to a number of high profile cases where protection of victims has fallen below the standards expected, the Home Secretary has commissioned Her Majesty's Inspectorate of Constabulary (HMIC) to carry out a thematic review of the police response to domestic violence and abuse across England and Wales.

The inspection will look at the performance of forces across England and Wales and identify where improvements need to be made, reporting back to the Home Office in April 2014. The findings will help to contribute to the work of the College of Policing with regard to driving up standards, professionalism and consistency across police forces as well as accountability to the public and also assist with informing priorities set by police and crime commissioners.

HMIC will examine four areas:

- ◆ The effectiveness of the police approach to domestic violence and abuse;
- ◆ Whether victims deemed to be at risk in the future are appropriately managed;
- ◆ Whether police are learning from past experiences and adapting their response;
- ◆ Whether any changes need to be made to the overall police approach.

The written ministerial statement can be found at <https://www.gov.uk/government/speeches/domestic-violence-and-abuse-thematic-review-of-the-police-response-across-england-and-wales>

Further information can be found at <https://www.gov.uk/government/news/major-review-of-police-response-to-domestic-violence>

Police Use of Taser Statistics in England and Wales, 2009 to 2011

The Home Office has published the latest statistics on police use of Taser in England and Wales for the period January 2009 to December 2011.

Every incident in which Taser is deployed, whether it is fired or not, is recorded by the local police force, and a report is sent to the Home Office for collation. The data provides information as to

Taser's operational effectiveness, its medical implications and makes the types and levels of usage by the police transparent.

Taser use is now recorded against seven categories: Drawn, Aimed, Arced, Red Dotted, Drive Stun, Angled Drive Stun and Fired. Only the highest level of use for each Taser is recorded.

The key points from this statistical release are:

- ◆ Total police use of Taser has increased year on year from 2009 to 2011;
- ◆ The proportion of Taser where the 'highest use' is 'fired' remained constant through 2010 and 2011 at about a fifth, after declining from 2009;
- ◆ The most common 'highest use' of a Taser was 'red dot' in each of the two years.

The statistical release can be found at

<https://www.gov.uk/government/publications/police-use-of-taser-statistics-england-and-wales-2009-to-2011>

Home Office Statistical Bulletin on Firearm and Shotgun Certificates in England and Wales 2012/13

The Home Office has published a report on firearm and shotgun certificates under the Firearms Acts 1968 to 1997. It covers certificates issued by police forces in the period 1 April 2012 to 31 March 2013, as well as historical trend data and police force comparisons. It also provides information on the number of registered firearm dealers, visitor's permits and European Firearms Passes issued.

In summary:

- ◆ 146,426 firearms certificates were in issue on 31 March 2013, compared with 141,820 on issue at the end of March 2012, an increase of 3.2%. The longer-term trend shows that there has been a rise in the number of such certificates on issue since 2002/03 (despite a slight fall in 2010/11).
- ◆ 498,048 firearms were covered by these certificates, the highest number since collection of these figures began in 1995.
- ◆ 570,726 shotgun certificates were in issue on 31 March 2013, an increase of 1.4% from the 562,696 on issue at the end of March 2012. The longer-term trend since 2002 in shotgun certificates is relatively flat, despite this small rise.
- ◆ There were 10,077 new firearm certificates granted during 2012/13, a fall of 12.4% from the 11,502 new certificates granted in 2011/12. This follows an increase of 1.9% between

2010/11 and 2011/12 and an increase of 19.3% between 2009/10 and 2010/11.

- ◆ 26,429 new shotgun certificates were granted during 2012/13, a decrease of 15.4% compared with 2011/12 when 31,254 new shotgun certificates were granted.
- ◆ Around 1.4% of new applications for firearm certificates and 2.2% of new applications for shotgun certificates were refused in 2012/13.
- ◆ 339 firearm certificates were revoked in 2012/13, a decrease of 2.9% since 2011/12. The number of shotgun certificates revoked fell by 5.8%, from 1,301 in 2011/12 to 1,226 in 2012/13.
- ◆ There were 3,496 firearm dealers registered as of 31 March 2013, an increase of 2.3% compared with 3,417 a year earlier. This is the highest number since these figures were first collected in 1995.
- ◆ 2,150 people were covered by firearm visitors' permits and 7,262 people were covered by shotgun visitors' permits in 2012/13.

The full statistical bulletin can be found at
<https://www.gov.uk/government/publications/firearm-and-shotgun-certificates-in-england-and-wales-2012-to-2013>

Human Trafficking Assessment Published

The UK Human Trafficking Centre has published its annual assessment to provide an indication of the nature and extent of human trafficking during 2012, exploring the number of potential victims, their country of origin, exploitation types, recruitment techniques and transport methods. The findings were compared to those from the UK's Human Trafficking Centre's Baseline Assessment on the Nature and Scale of Human Trafficking in 2011.

The assessment found the following:

- ◆ 2,255 potential victims of human trafficking were encountered in 2012, representing an increase of 178 (9%) compared to those reported in 2011.
- ◆ Of these 2,255 potential victims, 778 had either received a positive conclusive decision, meaning that they had been found to be a victim of human trafficking for the purpose of the Council of Europe Convention Against Trafficking in Human Beings, or were awaiting a conclusive decision through the National Referral Mechanism. 402 (52%) of these potential victims from the NRM had received a positive conclusive decision.
- ◆ 1,607 (71%) potential victims were adults, 549 (24%) were children and the age of 99 potential victims was unknown.
- ◆ Romania, Poland, Nigeria, Vietnam and Hungary were the five most prevalent countries of origin of potential victims of trafficking. The five most prevalent countries of origin for those reporting exploitation as a minor were Vietnam, Nigeria, Slovakia, Romania and the UK.
- ◆ Sexual exploitation (35%) and labour exploitation (23%) were the two most prevalent exploitation types reported. Sexual exploitation (28%) and criminal exploitation (24%) were the two most prevalent exploitation types for those reporting exploitation as a minor.

The full report can be found at
<http://www.soca.gov.uk/news/608-human-trafficking-assessment-published>

Review of the Public Sector Equality Duty: Report of the Independent Steering Group Published

The Equality Act 2010 introduced a single Public Sector Equality Duty (PSED) encompassing all of the characteristics protected under the Act. This general duty requires public bodies to have due regard to:

- ◆ Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
- ◆ Advance equality of opportunity between people from different groups; and
- ◆ Foster good relations between people from different groups.

The general duty is underpinned by a number of specific duties, set out in secondary legislation to accompany the Equality Act 2010, which provide a framework to help public bodies meet the general duty. These require public bodies to:

- ◆ Set and publish equality objectives, at least every four years; and
- ◆ Publish information to show their compliance with the Equality Duty, at least annually.

The PSED review was announced in May 2012 by way of ministerial statement with the aim to assess the effectiveness of the specific duties. This was later extended to include both the general and specific duties to establish whether the Duty is operating as intended.

By way of conclusion the Steering Group believes that it is too early to make a final judgement about the impact of the PSED as it was only introduced in April 2011 and evidence, particularly in relation to associated costs and benefits, is inconclusive. Whilst the Steering Group found broad support for the principles behind the Duty, the review found the main challenges to lie in its implementation, which varies considerably across the public sector.

Based on the conclusions drawn by the Steering Group and suggestions for improvements raised by participants in the review, the Steering Group developed the following recommendations. The recommendations for public bodies apply to those in England or those carrying out non-devolved functions:

For the Equality and Human Rights Commission (EHRC)

- ◆ The EHRC should produce shorter, more bespoke, guidance clearly setting out what is necessary for compliance;

- ◆ Regulators, inspectorates and relevant ombudsmen services should integrate the PSED in their core functions and collaborate closely with the EHRC regarding compliance action;
- ◆ The EHRC and Information Commissioner should work together to provide greater clarity on the role of data and its collection, the use to which data is put and what is necessary for compliance with the PSED.

For public bodies

- ◆ Public bodies should seek to benchmark their processes for compliance with the PSED with their peers, with a view to reducing unnecessary paperwork;
- ◆ Public bodies must reduce the burdens placed on small employers.

For contractors

- ◆ Public bodies should be challenged where their procurement processes creates barriers for small businesses and charities.

For Government

- ◆ Public bodies must be proportionate in publishing information. Consensus was not reached in the Steering Group on the effectiveness of the specific duties, but the Chair's view is that these do not serve their intended purpose and that the Government should consider their removal or modification;
- ◆ Enforcement of the PSED needs to be proportionate and appropriate;
- ◆ It is too early to make a final judgement about the impact of the PSED. Government should consider conducting a formal evaluation of the Duty in three years' time.

The full report can be found at
<https://www.gov.uk/government/publications/the-independent-steering-groups-report-of-the-public-sector-equality-duty-psed-review-and-government-response>

College of Policing Inaugural Conference - 'Setting the Standard'

The College of Policing is hosting two one-day events in October aimed at showing people what the new professional body for policing can and will do to help develop and support officers and staff.

The conference is an opportunity for everybody in policing to network, provide feedback and to help shape the College.

The conference is free of charge for police officers and police staff and takes place in Ryton on 16 October and at Bramshill on 24 October 2013.

To register your interest please email events@college.pnn.police.uk

Director of Public Prosecutions Publishes Guidance on Charging Standards for Benefit and Tax Credit Fraud

The Director of Public Prosecutions, Keir Starmer, has published new guidelines to assist prosecutors dealing with cases of fraud involving state benefits and tax credits, with a view to ensuring a robust and consistent prosecutorial position is taken against those defrauding the Department of Work and Pensions.

The CPS charging standard sets out the approach prosecutors should take in deciding the appropriate offences to use. It also states that where the alleged offending merits such an approach, and prosecutors anticipate a very substantial prison sentence, they should charge under the Fraud Act 2006, which carries a maximum sentence of ten years imprisonment, rather than the maximum sentence of seven years imprisonment under specific social security legislation.

The guidance sets out the factors that should be taken into account by the prosecutor when advising the court on whether to send cases to the Crown Court and also act as aggravating factors with regard to sentencing. These include:

- ◆ Whether the fraud was professionally planned;
- ◆ Whether the fraud was carried out over a significant period of time;
- ◆ Whether multiple frauds occurred (which includes where one false declaration or a failure to disclose a change of circumstances results in multiple payments);
- ◆ Use of a false or stolen identity;
- ◆ Relevant previous convictions/cautions/previous out of court disposals for benefit fraud;
- ◆ An attempt to conceal or dispose of evidence;
- ◆ Abuse of a position of trust;
- ◆ Substantial consequential loss to public funds.

Legal Guidance on Prosecuting Welfare, Rural and Health Division Cases can be found at http://www.cps.gov.uk/legal/v_to_z/welfare_rural_and_health_cases/

Home Office Consultation on Enabling Targeted, Local Alternatives to Personal Licences to Sell Alcohol

The Home Office has launched a consultation on enabling targeted, local alternatives to personal licences to sell alcohol.

The current system requires that all alcohol sales be made or authorised by a personal licence holder. At the same time, the Designated Premises Supervisor (DPS) in relation to licensed premises must hold a personal licence. However, despite the safeguards in place, discussions with partners in the police, local government and the licensed trade as part of the recent Alcohol Strategy consultation highlighted weaknesses in the current system, namely that this may not be effective in ensuring responsible sales and tackling crime and disorder. In addition, this system is not targeted and is instead a national, blanket requirement incurring significant costs in training, applications fees and criminal records checks for all premises.

The imposition of conditions on premises licences, such as the requirement for CCTV to be installed or for door staff to be present, has been proposed as a local alternative to the current system. It is suggested that such conditions could provide a better and more targeted way of applying the necessary safeguards, providing licensing authorities and the police with a more flexible tool over which they would have local control.

In order to ensure that licensing authorities could use such conditions in a flexible and effective way, it is proposed that the Government could keep the national benchmarks for training and criminal records checks, rather than requiring compliance with different standards for different licensing authorities, so as to ensure a level playing field for businesses across the country.

In addition, existing legislation in several areas could be strengthened, namely:

- ◆ Requiring that all alcohol sales are made or authorised by the DPS rather than a personal licence holder;
- ◆ Allowing the police to object to a new DPS based on the crime prevention objective in general, rather than only in 'exceptional circumstances';
- ◆ Allowing licensing authorities to require a criminal records declaration to be provided with any new application to vary a DPS;
- ◆ Allowing those who either are named as the DPS in relation to a premises licence or have accredited training to give up to 50 Temporary Event Notices a year. Those without would be limited to giving five.

Finally, in order to make any conditions requiring training easy to enforce for the police and licensing authorities, the Government would work with training providers to ensure that training certificates are provided in a readily available and easily recognisable form.

This consultation, which runs for eight weeks until 7 November 2013, seeks the views of licensing authorities, the police, the licensed trade and the general public on whether personal licences should be abolished, enabling licensing authorities to apply relevant conditions to premises licences where appropriate.

A copy of this consultation can be accessed at <https://www.gov.uk/government/consultations/personal-alcohol-licences-enabling-targeted-local-alternatives>

Joint Prosecution Policy for Football-Related Offences Published

The Crown Prosecution Service (CPS) and the Association of Chief Police Officers (ACPO) have published a joint policy for dealing with violence, disorder, criminal damage and abuse in and around football matches this season.

Under the policy, the CPS and ACPO will continue to operate a robust policy on prosecution for football-related offences during 2013/14 and beyond. As such there will be a presumption of prosecution whenever there is sufficient evidence to bring offenders before a court on appropriate criminal charges and where a Football Banning Order is considered necessary.

Racist, homophobic and discriminatory chanting and abuse, as well as other types of hate crime, will be dealt with robustly in addition to tackling violence, disorder and criminal damage. Furthermore, firm action will be taken against those guilty of ticket touting alongside addressing emerging challenges such as the use of pyrotechnics and pitch invasions involving assaults on players.

The joint policy as well as further information can be found at http://www.cps.gov.uk/news/latest_news/football_hooligans_face_ban_from_world_cup_and_euros_under_cps_guidelines/

Law Commission: 12th Programme of Law Reform

The Law Commission which carries out law reform projects with the aim of making the law fair, simple, clear and cost-effective is currently consulting on what new areas of law should be addressed in its next programme of law reform. As such, the Law Commission is seeking input in response to the question: where is the law failing to work properly?

The Law Commission seeks responses which identify matters relating to the law and which are:

- ◆ Causing substantial unfairness;
- ◆ Widely discriminatory or disproportionately costly;
- ◆ Caused by laws or policies that are complex and hard to understand; or
- ◆ Caused by laws or policies being out of step with modern standards.

This consultation ends on 31 October 2013. Responses should be submitted on the Law Commission's survey questionnaire which can be found at

<http://lawcommission.justice.gov.uk/consultations/your-ideas.htm>

Further information can be found at

<http://lawcommission.justice.gov.uk/consultations/2441.htm>

Quarterly Update to Review on Resettlement of Young Offenders Published

Nacro's Beyond Youth Custody programme has published its first quarterly update to the extensive literature review about the resettlement of young people leaving custody that was published in April 2013.

The update is the first in a series of quarterly updates intended to outline the latest available lessons from the literature about the resettlement of young offenders.

The report:

- ◆ Highlights that the number of children in custody has continued to fall, presenting challenges for the secure estate especially in terms of resettlement provision;
- ◆ Outlines some of the proposed changes to the secure estate such as decommissioning of places in establishments, new healthcare standards and the government's consultation around the intention to redesign the secure estate to put education at the heart of provision;
- ◆ Summarises the findings of a recent small-scale qualitative study with girls in a young offenders' institution, highlighting key factors that encourage girls and young women to engage with resettlement services.

The full report can be found at

<http://www.beyondyouthcustody.net/resources/publications/byc-literature-review-july-13/>

Notes



**College of
Policing**

Legal Services
www.college.police.uk