NPIA
National Policing Improvement Agency

Digest

August 2011

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

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

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

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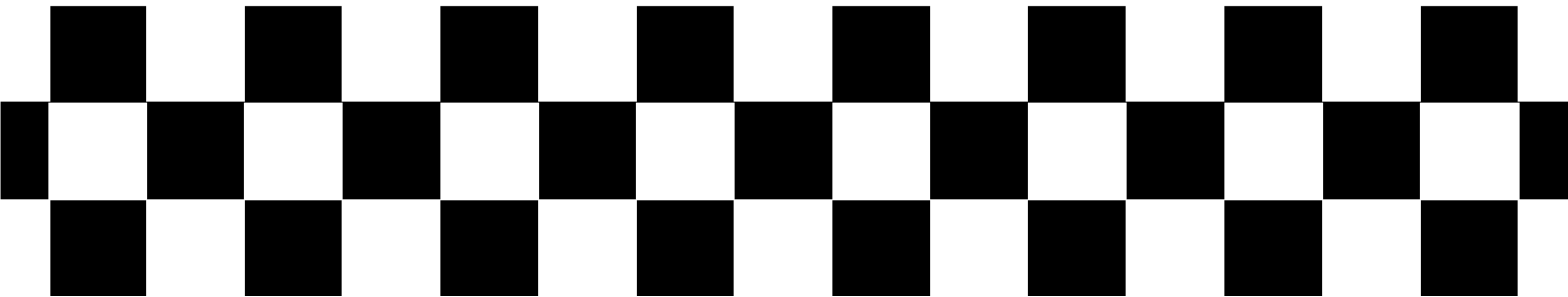

NPIA Digest August 2011

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 retention of biometric data, sexual offences prevention orders and police bail and the detention clock.

We look at the recently enacted Police (Detention and Bail) Act 2011, new domestic violence powers and the Human Rights Joint Committee report on the Terrorism Act 2000 (Remedial) Order 2011 regarding stop and search without reasonable suspicion.

The thirteenth bulletin of the Learning the Lessons Committee which explains the key findings of research carried out by the Independent Police Complaints Commission (IPCC) into appeals about the handling of complaints by police forces, is also discussed.

Statistical bulletins are covered which detail the operation of police powers under the Terrorism Act 2000 and subsequent legislation, crime in England and Wales 2010/11 and crime detected in England and Wales 2010/11.

There are also articles on new CPS guidance to protect individuals who retract a rape allegation from fear of prosecution, additional funding for homicide victims, the HMIC and CPS report on out of court disposals, the Bribery Act 2010, the Child Exploitation and Online Protection (CEOP) Centre's assessment into child sexual exploitation, and new industry support for the Virtual Global Taskforce.

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

Contents

Bills Before Parliament 2010/11 - Progress Report

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

- Police Reform and Social Responsibility Bill - The Bill covers five distinct policy areas: police accountability and governance; alcohol licensing; the regulation of protests around Parliament Square; misuse of drugs; and the issue of arrest warrants in respect of private prosecutions for universal jurisdiction offences. Key areas:
  - Replaces police authorities with directly elected Police and Crime Commissioners, with the aim of improving police accountability;
  - Amends and supplements the Licensing Act 2003 with the intention of 'rebalancing' it in favour of local authorities, the police and local communities;
  - Sets out a new framework for regulating protests around Parliament Square. Relevant sections of the Serious Organised Crime and Police Act 2005 would be repealed and the police would be given new powers to prevent encampments and the use of amplified noise equipment;
  - Enables the Home Secretary to temporarily ban drugs for up to a year, and removes the statutory requirement for the Advisory Council on the Misuse of Drugs to include members with experience in specified activities; and
  - Introduces a new requirement for private prosecutors to obtain the consent of the Director of Public Prosecutions prior to the issue of an arrest warrant for 'universal jurisdiction' offences such as war crimes or torture. The Government's aim in introducing this change is to prevent the courts being used for political purposes.

The Bill was presented to Parliament on 30 November 2010.

Final amendments were made to the Bill during the third reading on 20 July 2011.

The date of the next stage - Ping Pong - is yet to be announced.

- Protection of Freedoms Bill - The Bill:
  - Provides for the destruction, retention, use and other regulation of certain evidential material;
  - Imposes consent and other requirements in relation to certain processing of biometric information relating to children;

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

The Bill was presented to Parliament on 11 February 2011.

The Public Bill Committee last met on 17 May 2011. This Bill is awaiting its report stage on the floor of the House on a date to be announced.

- Terrorism Prevention and Investigation Measures Bill - The Bill proposes to abolish control orders and make provision for the imposition of terrorism prevention and investigation measures.

The Bill was presented to Parliament on 23 May 2011.

The Bill completed its committee stage on 5 July 2011.

The Bill is due to have its report stage and third reading on 5 September 2011.

- Legal Aid, Sentencing and Punishment of Offenders Bill - The Bill:
  - Reverses the position under the Access to Justice Act 1999, whereby civil legal aid is available for any matter not specifically excluded;

- Abolishes the Legal Services Commission;
- Makes various provisions in respect of civil litigation funding and costs, taking forward the recommendations of the Jackson Review and the Government's response to that review;
- Makes changes to sentencing provisions, including giving courts an express duty to consider making compensation orders where victims have suffered harm or loss; reducing the detailed requirements on courts when they give reasons for a sentence; allowing courts to suspend sentences of up to two years rather than 12 months; and amending the court's power to suspend a prison sentence;
- Introduces new powers to allow curfews to be imposed for more hours in the day and for up to 12 months rather than the current six;
- Repeals provisions in the Criminal Justice Act 2003 which would have increased the maximum sentence a magistrates' court could impose from six to 12 months;
- Makes changes to the law on bail and remand, aimed at reducing the number of those who are unnecessarily remanded into custody. Under the new "no real prospect" test, people would be released on bail if they would be unlikely to receive a custodial sentence;
- Makes provision to ensure that, where a person aged under 18 has to be remanded into custody, in most cases they would be remanded into local authority accommodation;
- Amends provisions relating to the release and recall of prisoners;
- Gives the Secretary of State new powers to make prison rules about prisoners' employment, pay and deductions from their pay. The intention of these provisions is that prisoners should make payments which would support victims of crime;
- Introduces a penalty notice with an education option and provision for conditional cautions to be given without the need to refer the case to the relevant prosecutor;
- Creates a new offence of threatening with an offensive weapon or an article with a blade or point thereby creating an immediate risk of serious physical harm. A minimum sentence of 6 months' imprisonment would normally be given to persons over 18 found guilty of this offence.

The Bill was presented to Parliament on 21 June 2011 and had its second reading debate on 29 June 2011.

The Public Bill Committee met on 14 and 19 July 2011, scrutinising the Bill line by line. The Committee is expected to report to the House by 13 October 2011.

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

Sexual Offences Prevention Orders

R v Steven Smith, Wayne Clarke, Bryan Hall and Jonathon Dodd [2011] EWCA Crim 1772

This appeal concerns four cases, all raising questions relating to Sexual Offences Prevention Orders (SOPOs). The cases do not provide sufficient material for any comprehensive guideline for the use and framing of SOPOs, due in part to the fact that there are many areas potentially covered by SOPOs which do not arise at all in these cases. The cases all concern offences which were or included offences of child pornography but did not include offences involving physical sexual contact. As such the Court of Appeal did not consider in detail the SOPO terms which may be needed in such cases. The court did however address some general questions with regard to SOPOs which may be relevant to those cases as well.

The court acknowledged the potential of a SOPO to be a valuable tool in the control of sexual offending and stated it to be part of the total protective sentencing package. However, it was noted that it is often the case that such orders are often hastily and inadequately drafted at a late stage in the sentencing process and whilst it may be the case that a SOPO appears to be of comparatively less importance than other ancillary orders, each of its prohibitions creates for the individual concerned a new and personal criminal offence, breach of which carries up to five years' imprisonment.

The court noted that the flexibility in drafting offered by a SOPO is to be welcomed on the basis that it enables the order to be specifically tailored to the exact circumstances and requirements of the case in question. However, that flexibility must not lead to inventive provisions which are unworkable due to the fact that they are too vague, potentially conflict with other rules which apply to the individual concerned or simply because they impose an impermissible level of restriction on the ordinary activities of life. A SOPO must meet the tests of necessity, with the subtest of proportionality, and clarity, thereby avoiding the risk of unintentional breach.

The Statutory Test of Necessity

Section 104(1) of the Sexual Offences Act 2003 contains the test of necessity. The order may only be made where the court is:

"…satisfied that it is necessary to make such an order for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant."

The questions which must be addressed when the making of a SOPO is under consideration were identified by the Court of

Appeal in R v Mortimer [2010] EWCA Crim 1303 and are as follows:

- Is the making of an order necessary to protect from serious sexual harm through the commission of scheduled offences?
- If some order is necessary, are the terms proposed nevertheless oppressive?
- Overall are the terms proportionate?

Other Applicable Regimes

The court noted that a defendant convicted of sexual offences is likely to be subject to at least three other relevant regimes and no SOPO is needed if it merely duplicates another regime, nor must a SOPO interfere with another regime.

The following regimes must be considered:

- The Sex Offender Notification Rules;
- Disqualification from working with children;
- Licence.

IPP/SOPO

The Court of Appeal has previously expressed the view that generally a SOPO would not be appropriate, because it is unnecessary, if an indefinite sentence is being imposed. Rather the court should leave the prevention of further offences to the fixing of licence conditions.

Counsel for the Crown in this case submitted that the difference between the sanction of recall for breach of licence and the sanction of conviction for breach of a requirement of a SOPO was such that a conviction carries with it greater transparency and condemnation and would be more readily apparent on the individual's record than recall for breach of licence conditions. As such he put forward that a SOPO is appropriate even if an indeterminate sentence is passed.

The Court of Appeal, whilst acknowledging that those distinctions exist, stated that they do not outweigh the case against making a SOPO if an indeterminate sentence is passed. Moreover, release under an indeterminate term is not automatic and should only occur on very carefully considered licence terms which would be best considered when release is being contemplated and not many years beforehand when the original sentence is passed.

The court stated that it is not the case that it can be said that no SOPOS will ever be appropriate in the case of an indefinite sentence, but the usual rule ought to be that an indeterminate sentence needs no SOPO, at least unless there is some very

unusual feature which means that such an order could add something useful and did not run the risk of undesirably tying the hands of the offender managers at a later date.

Determinate, extended and suspended terms/SOPO

In contrast, a SOPO may plainly be necessary if the sentence is a determinate term or an extended term, where conditions may be attached to the licence but the licence will have a defined and limited life. In such a case the SOPO can extend beyond it and this may be necessary to protect the public from further offences and serious sexual harm as a result. The same is true with a suspended sentence.

Notification/SOPO

A SOPO must operate in tandem with the statutory notification requirements and as such must not conflict with any of those requirements. It is not a proper use of the power to impose a SOPO to extend the notification requirements beyond the period prescribed by law and therefore it would be wrong to add terms to a SOPO which although couched as prohibitions amounted in effect to no more than notification requirements, but for a longer period than the law provides for.

Notification requirements and the conditions of a SOPO are generally two different things and as such it does not follow, from the above, that the duration of a SOPO ought to be the same as the duration of notification requirements.

Computer use and internet access

Where the defendant has committed offences by use of the internet, the question is likely to arise whether it is necessary through a SOPO to place some restriction on his computer use or internet access.

Varying approaches to this have been adopted by the courts over the years resulting in part from the explosion of everyday use of the internet by a very large proportion of the public. In the early days, terms completely banning possession of a computer of access to the internet were not uncommon but more recently such terms have been quashed as unnecessary and disproportionate.

In recent years different formulations have been used in order to restrict, but not totally remove, the defendant's access to a computer or the internet. The Court of Appeal deemed it inappropriate to attempt to lay down a rule that one particular provision should be adopted in all cases on the bases that circumstances differ greatly and as such SOPOs should be tailored accordingly. That said however, the court did set out some conclusions, namely:

- A blanket prohibition on computer use or internet access is impermissible. It is disproportionate because it restricts the defendant in the use of what is nowadays an essential part of everyday living for a large proportion of the public, as well as a requirement of much employment.
- Although the formulation restricting internet use to job search, study, work, lawful recreation and purchases (as set out in the case of Hemsley [2010] EWCA Crim 225) has its attractions, on analysis it suffers from the same flaw in that it would prohibit other legitimate use of the internet, such as looking up the weather forecast or banking online. The formulation of the term "lawful recreation" presents difficulties in defining the limitations of the expression which the Court of Appeal deemed to be another reason for avoiding that formulation. Furthermore, given the speed of expansion of applications of the internet, it is impossible to predict what developments there will be within the foreseeable lifespan of many SOPOs which would unexpectedly and unnecessarily, and therefore wrongly, be found to be prohibited.
- A prohibition on the possession of any computer or other device providing internet access without notification to the local police, would, given the vast increase in the number and type of such devices, make it onerous both for defendants and the police. The Court of Appeal are of the opinion that in most cases the police will need to work on the basis that most defendants, like most people generally, will have some devices with internet access, and that a requirement that they be notified of it adds little value.
- There are fewer difficulties about a prohibition on internet access without filtering software, but there is a clear risk that there may be uncertainty about exactly what is required and the policing of such a provisions seems likely to be attended by some difficulty.
- Of the formulations devised and reported so far, the Court of Appeal stated the one they felt to be most likely to be effective is the one requiring the preservation of readable internet history coupled with submission to inspection on request. There is no need for the SOPO to provide the police with powers of forcible entry into private premises beyond the statutory ones they already have. It is sufficient to prohibit use of the internet without submitting to inspection on request. If the defendant were to deny the officers sight of his computer he would be in breach.
- Where the risk is not simply of downloading pornography but consists of or includes the use of chatlines or similar networks to groom young people for sexual purposes,

it may well be appropriate to include a prohibition on communicating via the internet with any young person known or believed to be under the age of 16, coupled no doubt with a provision such as that mentioned in the preceding bullet point. In some cases, it may be necessary to prohibit altogether the use of social networking sites or other forms of chatline or chatroom.

Personal contact with children: age

The majority of offences relating to children are committed only when the child is under the age of 16. The exceptions are offences committed under sections 16-19 of the Sexual Offences Act 2003 against those in respect of whom the defendant stands in a position of trust, together with family members. If the risk is genuinely of these latter offences, prohibitions on contact with children under 18 may be justified, otherwise a restriction on contact with children should relate to those under 16, and not 18.

Personal contact with children: generally

Care must be taken in considering whether prohibitions on contact with children are really necessary. It is not legitimate to impose multiple prohibitions on a defendant just in case he commits a different kind of offence. There must be an identifiable risk of contact offences before this kind of prohibition can be justified.

It may be necessary to prohibit contact with children in some cases of predatory paedophiles who seek out children for sexual purposes. However, even then care must be taken with their terms. If there is a risk that the defendant may commit offences within his family then children within the family may need protection, but if there is no such risk that he may abuse his own family then it is unnecessary and an infringement on the children's entitlement to family life to impose restrictions which extend to them.

Where it is necessary to impose a prohibition on contact with children, it is essential to include a saving for incidental contact such as is inherent in everyday life, such as being served in a shop by a 15 year old for example. Considerable caution must be exercise before imposing a prohibition of this kind due to the inevitably imprecise nature of this essential saving.

Occupations or activities and children

With regard to the imposition of terms within a SOPO which prohibit the defendant from activities which are likely to bring him into contact with children, the Court of Appeal concluded that:

- Such a term must be justified as required beyond the restrictions placed upon the defendant by the Independent Safeguarding Authority (ISA) under the Safeguarding Vulnerable Groups Act (SVGA) 2006. If there is a real risk that the defendant will undertake some activity outside the ISA prohibitions, then such a term may be justified. Otherwise it is not;
- The age ought ordinarily to be under 16; free association with those aged 16 and 17 is not an offence. It is otherwise if the defendant would be in a position of trust, as defined in section 21 of the Sexual Offences Act 2003, but in the ordinary way, no such position will be permitted by the SVGA restrictions.

Providing a draft

It is essential that a written draft is provided and properly considered in advance of the sentencing hearing. The normal requirement should be that the draft is served on the court and the defendant before the sentencing hearing. The Court of Appeal suggests that this is done not less than two clear days before the hearing, but in any event not at the hearing.

The full judgment is available at
http://www.bailii.org/ew/cases/EWCA/Crim/2011/1772.html

Police Bail and the Detention Clock

R (on the application of the Chief Constable of Greater Manchester Police) v Salford Magistrates' Court and Paul Hookway [2011] EWHC 1578 (Admin)

Following the refusal of an application for an extension to a warrant for further detention, pursuant to section 44 of the Police and Criminal Evidence Act 1984, an application was made for judicial review. The original case concerned the detention of Mr Hookway, who was arrested on suspicion of murder in November 2010. A warrant for further detention was granted, enabling Mr Hookway to be kept in police detention for 36 hours from the time the warrant was issued. Mr Hookway however, was released on police bail before the expiry of this time. Mr Hookway answered police bail on a number of subsequent dates, and in April 2011 an extension to the warrant of further detention was sought.

It was decided by the District Judge that the warrant had expired in November 2010 and therefore could not be extended. The application for an extension was refused and Mr Hookway was released. This decision was upheld by the High Court, following an application for judicial review by Greater Manchester Police.

Section 44(3) of the Act states that the period for which a warrant of further detention may be extended shall be such a period as the court sees fit. This period however should not be longer than 36 hours or end later than 96 hours after the relevant time; in this case Mr Hookway's arrival at the first police station to which he was taken after arrest.

The Judge held that as the period of 96 hours from the relevant time had expired before an extension was sought in April, the court was powerless to grant the request.

The Judge considered section 44(6) of the Act which states "Where a person has been granted bail and either has attended at the police station in accordance with the grant of bail, or has been arrested under section 46A above is detained at a police station, any time during which he was in police detention prior to being granted bail shall be included as part of any period which falls to be calculated under this Part of this Act". He held that it simply provides that if a suspect has been released on bail, the time in detention must be counted in any period which falls to be calculated under this part of this Act; however if a period has expired it no longer falls to be calculated at all.

The Police (Detention and Bail) Act 2011 was passed on 12 July 2011 to reverse the effect of the judgement (see pages 27-28).

The full judgment is available at
http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2011/1578.html&query=title+(+Hookway+)&method=boolean

Retention of Biometric Data

Goggins and Others v United Kingdom 30089/04 [2011] ECHR 1121

The case originated in eight applications against the United Kingdom regarding the collection and retention of the applicants' DNA samples, fingerprints and associated data.

Background

The applicants are as follows:

- 30089/04 Mr Ciaran Goggins who was arrested after an allegation of rape was made against him. Two months later the charges against him were dropped. His DNA, photographs and fingerprints have not been destroyed;
- 14449/06 Mr John Day was arrested in 2005. His fingerprints and photographs were taken on arrest and he provided a DNA sample. No further inquiries were made and he was not convicted of any offence. Subsequently, the DNA sample taken was found to have insufficient material and so there are no data relating to him in the DNA database;
- 24968/07 Mr Michael Jackson was charged in 2004 with a harassment offence. He was required to provide samples of his DNA and fingerprints and it appears that his photographs were also taken. He was acquitted the following year in the Magistrates' Court. To date his DNA, fingerprints and photographs have not been destroyed;
- 13870/08 Mr Christopher Scott was arrested in 2006 in relation to allegations of harassment. His fingerprints and photographs were taken and he provided a DNA sample. He was not charged with any offence. To date his DNA, fingerprints and photographs have not been destroyed;
- 36363/08 Mr Guled Michael was arrested in 2005 in relation to failing to provide his bus ticket to an inspector and giving a false name and address. A DNA sample and fingerprints were taken from the applicant. He was not charged in connection with the incident. To date his PNC record, DNA data and fingerprints have not been destroyed;
- 23499/09 Ms Carol Castley-Turner had her fingerprints and photographs were taken in November 2008 in connections with a suspected theft offence. To date her DNA, fingerprints and photographs have not been destroyed;
- 43852/09 Mr Darren Coates was arrested under caution following a parking incident in November 2007. His fingerprints and a DNA sample were taken. He was advised the following month that he would not be charged with any

offence. To date, his DNA and fingerprints have not been destroyed;

- 64027/09 Mr Jonathon Bennetts had a DNA sample taken in February 2006 following his arrest in connection with alleged public order and other miscellaneous offences. No further action was taken. To date, his DNA data have not been destroyed.

Relevant Domestic Law and Practice

The relevant domestic law and practice regarding the collection and retention of fingerprints and samples are set out in the judgment of the European Court of Human Rights in the case of S and Marper v United Kingdom [2008] ECHR 30562/04 and 30566/04.

The Police and Criminal Evidence Act (PACE) 1984 contains powers for the taking and retention of fingerprints and samples. The Association of Chief Police Officers (ACPO) has produced the Retention Guidelines for Nominal Records on the Police National Computer (2006) with regard to the retention of fingerprint and DNA data. The relevant Chief Police Officer has the discretion in exceptional circumstances to authorise the deletion of data.

The Protection of Freedoms Bill is currently before Parliament. This contains provisions to amend the DNA and fingerprints retention scheme in England and Wales.

On 18 May 2011 the Supreme Court issued its judgment in the cases of R (on the application of GC) v The Commissioner of Police of the Metropolis and R (on the application of C) v The Commissioner of Police of the Metropolis [2011] UKSC 21 (see the June 2011 edition of the *Digest*), in which it was determined that the provisions of PACE 1984 were not incompatible with Article 8 of the European Convention on Human Rights (ECHR) because they permitted a policy that was less far-reaching than the ACPO guidelines and could therefore be read to comply with the requirements of Article 8.

It was noted that the Protection of Freedoms Bill includes proposals to amend the scheme of retention of DNA data along the lines of the Scottish model and that it is the intention of the Government to bring this legislation into force later in 2011. Acting on the basis that this is likely to occur the majority granted a declaration that the present ACPO guidelines were unlawful because, as demonstrated in S and Marper, they were incompatible with the Convention. However, since Parliament had the matter under examination the court did not consider it appropriate to make an order requiring a change in the legislation, nor was it appropriate to make an order for the destruction of data which it was possible it would be lawful to retain under the new scheme contained in the Protection of Freedoms Bill.

With regard to photographs that were taken of GC, the court stated that in the absence of any evidence or any consideration of the matter by the Divisional Court, the Supreme Court should express no opinion on that part of the appeal but leave the matter to be determined if and when the point was properly raised in another case.

Alleged Violation of the Convention in Respect of Collection and Retention of Data

The applicants complained that the collection and retention of their DNA and fingerprint data, as well as photographs and PNC data, amounted to a violation of their right to respect for private life under Article 8 of the ECHR.

Admissibility

The court deemed the applicants' complaints under Article 8 not to be manifestly ill-founded, nor inadmissible. On the contrary, the court deemed that the question of retention or photographs has not been properly argued before the domestic courts and would be a matter to be resolved by them in some future case. As such the applicants who complained in this regard had failed to exhaust domestic remedies in respect of their complaints and so their complaints were rejected pursuant to Article 35(1) and (4) of the Convention.

Merits

By letter dated 25 October 2010 the Government informed the court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the applications, and as such requested that the applications be struck out.

On 6 January 2011 the Government submitted a revised declaration, confirming acceptance of the judgment in S and Marper and acknowledging that the continued retention of the applicants' data must also constitute a violation of Article 8. In addition, the declaration set out the steps taken by the Government to implement the decision in S and Marper by way of new legislation and stating that any continued retention of the applicants' data will be subject to the requirements of the new legislation.

In expressing regret at the violation of Article 8 in respect of the applicants, the Government offered to pay the following sums ex gratia in respect of legal expenses and VAT:

- The sum of £2,000 in connection with Mr Jackson's case;
- The sum of £800 in connection with Mr Scott's case; and
- The sum of £75 in connection with each of the cases of Mr Goggins, Mr Michael, Mr Coates, Mr Bennetts, Ms Castley-Turner and Mr Day.

None of the applicants accepted the unilateral declaration and the compensation. Mr Day submitted no comments in response.

The Court's Assessment

The court recalled that it may at any stage in proceedings decide to strike out an application if "for any reason established by the Court, it is no longer justified to continue the examination of the application."

In addition, it recalled that in certain circumstances, it may strike out an application or part of an application on the basis of a unilateral declaration by a respondent Government, even if the applicant wishes the examination of the case to be continued.

The court stated that it had already examined in detail the current legislation which governs the collection and retention of DNA and fingerprint data as well as the application of data retention powers in practice in England and Wales in the case of S and Marper. In that case, the court found that the blanket and indiscriminate nature of the powers of biometric data retention failed to strike a fair balance between the competing public and private interests and that the state had stepped over any acceptable margin of appreciation. As such the retention constituted a disproportionate interference with the applicants' right to respect for private life and could not be regarded as necessary in a democratic society, resulting in a violation of Article 8.

The court noted the action taken by the Government with regard to amendment of the existing provisions concerning the collection and retention of DNA and fingerprint data through the introduction of the Protection of Freedoms Bill. Whilst the Grand Chamber in S and Marper did not set out the exact legislative changes needed to secure effective respect for private life in this regard, it did comment upon the Scottish approach to this issue in referring to the need for an approach which discriminates between different kinds of cases and for the application of strictly defined storage periods for data. As such, whilst it will be for the court to decide upon the compatibility of the Protection of Freedoms Bill, when enacted, with Article 8 in any future case brought before it concerning the retention of data, the court stated that it was of the view that the recent steps taken by the Government in this regard are clearly intended to achieve compliance with the Convention.

The court referred to Lord Dyson's judgment in the case of R (on the application of GC) v The Commissioner of Police of the Metropolis and R (on the application of C) v The Commissioner of Police of the Metropolis in which it was stated that the failure by Parliament to introduce a revised scheme regarding the collection and retention of biometric data within a reasonable period of time would enable claimants to seek judicial review

of the continued retention of their data under the unlawful ACPO guidelines. As such the European Court of Human Rights acknowledged the further opportunity of the applicants to seek redress at domestic level to secure the deletion of their data, should the Protection of Freedoms Bill not be enacted within a reasonable time.

In addition, the court stated its satisfaction that the total amounts offered by the Government in respect of costs and expenses was adequate in each case to cover costs and expenses actually incurred and reasonable as to quantum.

Having regard to its judgment in S and Marper, to the nature of the Government's admissions in the unilateral declaration and to the judgment of the Supreme Court, as well as the introduction of pending legislation to Parliament aimed at securing compliance with Article 8 of the ECHR, the court considered that it was no longer justified to continue examination of the applications.

As such the court deemed it appropriate to strike out the cases in so far as they concerned complaints related to the collection and retention of DNA samples, fingerprints and associated data and the retention of PNC records, without prejudice to the courts' power to restore the applications to the list should Parliament fail to enact the Protection of Freedoms Bill.

Alleged Violations of Other Articles of the Convention

The court found no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols in the additional complaints made by Mr Scott, Mr Michael and Mr Bennetts.

The full judgment is available at
http://www.bailii.org/eu/cases/ECHR/2011/1121.html

SI 1636/2011 The Equality Act 2010 (Commencement No. 7) Order 2011

This Order brought section 37 of the Act into force on **11 July 2011**. This confers a power on Scottish Ministers to make regulations entitling disabled people to make disability-related alterations or additions to some common parts of residential property in Scotland; it also sets out what matters the regulations may provide for and that the Scottish Ministers must consult a Minister of the Crown before exercising the power.

This Order also brought section 202(3) of the Act into force on **11 July 2011**, as well as section 202(1) and (4) in part. This amends the power conferred on the Secretary of State by section 6A of the Civil Partnership Act 2004 to make regulations for approving premises for the registration of civil partnerships. The amended power sets out that regulations may provide for premises approved for civil partnerships to differ from those approved for civil marriage, for applications for approval of religious premises to be made with the consent of a specified person and for religious premises provisions to differ from those for other premises and for different religious premises.

SI 1969/2011 The International Criminal Court (Libya) Order 2011

This Order, which came into force on **13 July 2011**, makes provision so that proceedings under Part 2 of the International Criminal Court Act may be taken against a person who would otherwise enjoy state or diplomatic immunity. It only applies where the person is charged or convicted by the ICC as a result of the referral of the situation in Libya by the United Nations Security Council.

SI 1720/2011 The Justice and Security (Northern Ireland) Act 2007 (Extension of duration of non-jury trial provisions) Order 2011

Section 9(1) of the Justice and Security (Northern Ireland) Act 2007 provides that sections 1 to 8 of and Schedule 1 to that Act, which provide for trial on indictment without a jury (the non-jury trial provisions), shall expire at the end of the period of two years beginning with the day on which section 1 comes into force (the effective period). Section 1 came into force on 1 August 2007. Section 2(2) provides for the Secretary of State by Order to extend or (on one or more occasions) further extend the effective period. The effective period was so extended by SI 2090/2009 so as to end on 31 July 2011.

Article 2 of this Order further extends the effective period. Section 9(3)(b) of the Justice and Security (Northern Ireland) Act 2007 provides that the effect of an order extending the effective period will be to extend it for the period of two years beginning with the time when the effective period would end but

for the order. Accordingly the effect of this Order is to extend the effective period so that it ends on 31 July 2013.

This Order came into force on **9 July 2011**.

SI 1739/2011 The Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (Consequential Provisions) Order 2011

This Order makes provision consequential on the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (2010 ASP). That Act makes provision concerning the right to have access to a solicitor of persons being questioned by a constable on suspicion of having committed an offence.

It also extends the period for which persons may be detained by a constable from 6 to 12 hours, with a possible further extension up to a maximum of 24 hours. The Act also amends the Legal Aid (Scotland) Act 1986 (1986 Act) to enable the Scottish Ministers to make regulations providing for criminal advice and assistance to be made available to such suspects in certain circumstances without reference to financial limits.

Article 2 introduces Schedule 1 to the Order, which makes provision corresponding to the 2010 ASP in relation to persons being questioned by officers of Revenue and Customs and designated customs officials on suspicion of having committed a Revenue and Customs offence (relevant suspects). Schedule 1 amends Part 3 of the Criminal Law (Consolidation) (Scotland) Act 1995 (1995 Act) by inserting a new section 25A which makes provision in respect of the right of relevant suspects to have access to a solicitor prior to and during questioning. Further, it extends the period of detention under section 24 of the 1995 Act from 6 to 12 hours and it provides for that period to be further extended up to a maximum period of 24 hours in certain circumstances.

Article 3 allows criminal advice and assistance under the 1986 Act to be made available to relevant suspects.

Article 4 extends regulation 8 of the Advice and Assistance Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011 to provide for advice and assistance to be available to relevant suspects without reference to financial limits subject to transitional arrangements.

Article 5 extends regulation 3 of the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011, which provides for the availability of duty solicitors for suspects, to relevant suspects subject to transitional arrangements.

Article 6 introduces Schedule 2 to the Order, which amends Part 10 of the Criminal Justice and Public Order Act 1994 (the

1994 Act). It applies the right of persons arrested or detained to have intimation sent to another person and the right of suspects to have access to a solicitor under the Criminal Procedure (Scotland) Act 1995 (as amended by the 2010 ASP), with modifications, to persons who are arrested or detained by the Scottish police using the cross-border enforcement powers in Part 10 of the 1994 Act. Schedule 2 also extends the period for which persons may be detained to 12 hours after the person's arrival at the police station to which the person is taken following detention under the 1994 Act and it provides for the possibility of further extension up to a maximum period of 24 hours.

Article 7 makes amendments to section 87 of the Finance Act 2007 to extend the amendments to Part 10 of the 1994 Act to cross-border detentions and arrests by officers of Revenue and Customs and designated customs officials.

Articles 2 to 5 (and Schedule 1) extend to Scotland only.

Article 1(4) and articles 6 and 7 (and Schedule 2) extend to England and Wales, Scotland and Northern Ireland.

This Order came into force on **15 July 2011**.

SI 1800/2011 The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2011

This Order, which came into force on **21 July 2011**, amends the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (the 1975 Order) so as:

- To permit the Financial Services Authority to take spent convictions and cautions into account when exercising certain functions under the Payment Services Regulations 2009; and
- To permit spent convictions and cautions to be taken into account for the purpose of considering the suitability of a person for appointment as a Head of Legal Practice or Head of Finance and Administration of a body licensed under Part 5 (alternative business structures) of the Legal Services Act 2007.

It also amends the definition of "actuary" in Schedule 1 to the 1975 Order to reflect the merger of the Institute of Actuaries and the Faculty of Actuaries.

Police (Detention and Bail) Act 2011

Following the judgment in the case of R (on the application of the Chief Constable of Greater Manchester Police) v Salford Magistrates' Court and Paul Hookway [2011] EWHC 1578 (Admin) (see pages 17-18), the Police (Detention and Bail) Bill was pushed through the House of Commons in order to reverse the effect of the High Court ruling. The Bill received Royal Assent on 12 July 2011.

Since the provisions of the Police and Criminal Evidence Act 1984 (PACE) came into force on 1 January 1986, the police have operated the detention provisions on the basis that only the time spent in police detention counts towards the application of the 96-hour limit and that the 'detention clock' is paused when an individual is released on police bail.

In the Hookway case, the District Judge held that time spent on police bail counted towards the 96 hour limit on detention under PACE. This decision was upheld by the High Court.

The Police (Detention and Bail) Act 2011 amends section 47(6) of PACE to make it explicit that, in calculating any period (whether a time limit or a period of pre-charge detention) under Part 4 of PACE, any period(s) spent on bail shall be disregarded. Section 47(6) as amended reads:

"Where a person who has been granted bail under this Part and either has attended at the police station in accordance with the grant of bail or has been arrested under section 46A above is detained at a police station, any time during which he was in police detention prior to being granted bail shall be included as part of any period which falls to be calculated under this Part of this Act and any time during which he was on bail shall not be so included."

The Act also amends section 34(7) of PACE to make it clear that that provision is not to be read as displacing the rule that the Act reinforces in section 47(6), that periods of police detention before and after a period of bail are to be treated as if they formed a single continuous period. Section 34(7) as amended reads:

"For the purposes of this Part a person who-

(a) attends a police station to answer to bail granted under section 30A,

(b) returns to a police station to answer to bail granted under this Part, or

(c) is arrested under section 30D or 46A,

is to be treated as arrested for an offence and that offence is the offence in connection with which he was granted bail.

But this subsection is subject to section 47(6) (which provides for the calculation of certain periods, where a person has been granted bail under this Part, by reference to time when the person is in police detention only)."

In addition, the Act provides that the amendments to PACE have retrospective effect, that is, they are deemed always to have had effect notwithstanding the High Court's judgment in the Hookway case.

The Police (Detention and Bail) Act 2011 is available at http://www.legislation.gov.uk/ukpga/2011/9/contents/enacted

Domestic Violence Protection Notices and Orders

As of 30 June 2011 three police forces, namely Greater Manchester, West Mercia and Wiltshire, will run a 12 month pilot of new domestic violence powers, under which officers will be able to stop perpetrators from contacting victims or returning to their home.

The current situation is one in which victims of domestic violence only receive immediate protection if the police arrest and charge a perpetrator and appropriate bail conditions are set or alternatively, if a civil injunction is sought, which can take several days or weeks. However, the introduction of Domestic Violence Protection Notices and Orders is designed to provide protection to victims in the immediate aftermath so as to allow victims time and support to consider the long term options available.

Under these powers, the police will be able to issue an on the spot notice which can prevent the perpetrator from returning to the home, allowing the police the time to apply to the Magistrates' court for a Domestic Violence Protection Order, which, if granted, may require the perpetrator not to contact the victim or return to the victim's address for a minimum of 14 days and up to a maximum of 28 days.

Interim guidance has been produced to support the police and others involved in the pilot scheme which is available at http://www.homeoffice.gov.uk/publications/crime/DV-protection-orders

Operation of Police Powers under the Terrorism Act 2000 and Subsequent Legislation: Arrests, Outcomes and Stops and Searches

The Home Office has published the latest in a series of quarterly statistical bulletins bringing together information on terrorism arrests, outcomes and stops and searches in Great Britain up to 31 December 2010.

Terrorism Arrests and Outcomes

Main Points

- There was a 40% fall in the number of terrorism arrests in the year ending 31 December 2010, compared with the previous year, from 209 to 125. Since 11 September 2001, there have been a total of 1,945 terrorism arrests;
- 34% of terrorism arrests in the year ending 31 December 2010 resulted in a charge, compared with a charging rate of 33% in the previous year;
- Of those charged in the year ending 31 December 2010, 50% were terrorism related as compared with 41% in the preceding year and 62% since 11 September 2001. For the period October-December 2010, 11 of the 17 charges were for terrorism related offences;
- In the year ending 31 December 2010, none of the suspects arrested was held in pre-charge detention for more than 14 days. 62% of those arrested were dealt with within 48 hours;
- Of the 21 people charged with terrorism related offences in the year ending 31 December 2010, two have currently been convicted of terrorism-related offences. Since 11 September 2001, a total of 241 persons have been convicted of terrorism related offences out of 418 people who were charged, a 58% conviction rate. On 31 December 2010, 20 persons were awaiting prosecution for a terrorism related offence;
- In the year ending 31 December 2010, 28 trials for terrorism related offences were completed, of which 18 resulted in a conviction. In the previous 12 months, there were 39 trials with 31 resulting in a conviction;
- Of the 18 people convicted in the year ending 31 December 2010:
  - 13 persons received determinate prison sentences;
  - 4 received life sentences; and
  - 1 received a non-custodial sentence.
- 12 of the 18 defendants pleaded guilty in the year ending 31 December 2010, compared to 15 out of 31 people convicted in the previous 12 months;
- On 31 December 2010 there were 123 people in prison in Great Britain for terrorist/extremist or related offences. Of these 123, 22 were classified as domestic extremists/ separatists;

- In the first three quarters of 2010/11, 29 prisoners held under terrorism-related offences were discharged from prison.

Stops and Searches under the Terrorism Act 2000

Main Points

- A total of 23,882 stops and searches were made in Great Britain under section 44 of the Terrorism Act 2000 in the year ending 31 December 2010. This constituted a fall of 84% compared to the previous 12 months;
- The Metropolitan Police Service and the British Transport Police accounted for 92% of all section 44 uses in Great Britain in the year ending 31 December 2010. Of those stopped and searched, 19% classified themselves as Asian or Asian British, an increase of 3% from the previous year, and 10% classified themselves as Black or Black British, the same proportion as the previous year;
- The Metropolitan Police Service stopped and searched 995 people under section 43 of the Terrorism Act 2000 in the year ending 31 December 2010 which amounted to a reduction of 32% on the previous year (1,458). Of those stopped and searched, 30% classified themselves as Asian, an increase from 22% in the year ending 30 September 2009. 11% of those stopped and searched classified themselves as Black or Black British, an increase from 10% over the same period;
- 163 arrests were made from section 44 stops and searches in the year ending 31 December 2010, an arrest rate of 0.7%, of which one was identified as terrorism related. The Metropolitan Police made a further 29 arrests following stops and searches under section 43 of the Terrorism Act 2000.

"Operation of Police Powers under the Terrorism Act 2000 and Subsequent Legislation: Arrests, Outcomes and Stops and Searches Quarterly Update to December 2010" is available at http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/counter-terrorism-statistics/hosb1411

Bribery Act 2010 Comes into Force

The Bribery Act 2010, which received Royal Assent on 8 April 2010, came into force on 1 July 2011.

The Act:

- Introduces a corporate offence of failure to prevent bribery by persons working on behalf of a business. A business can avoid conviction if it can show that it has adequate procedures in place to prevent bribery;
- Makes it a criminal offence to give, promise or offer a bribe and to request, agree to receive or accept a bribe either at home or abroad; and
- Increases the maximum penalty for bribery from 7 to 10 years imprisonment, with an unlimited fine.

Guidance has been published on the Ministry of Justice website along with a 'quick start' guide for small businesses since March to allow a three month familiarisation period prior to commencement of the Act. The guidance advises on anti-bribery procedures and includes practical case studies on topics such as hospitality, facilitation payments and joint ventures.

The guidance and quick start guide are available at http://www.justice.gov.uk/guidance/making-and-reviewing-the-law/bribery.htm

Crime in England and Wales 2010/11

The latest national statistics on crime in England and Wales have been released, based on interviews from the British Crime Survey (BCS) and police recorded crime. The aim of providing the findings from two sources is to present a fuller picture of crime in England and Wales, than could be obtained from either source alone given that each source has its own strengths and weaknesses.

Levels and Trends in Crime

Key Points

- Overall, there were an estimated 9.6 million crimes measured by the BCS in 2010/11 compared to the 9.5 million crimes recorded in the survey of the previous year;
- 4.2 million crimes were recorded by the police in 2010/11, a fall of 4% from the 4.3 million crimes recorded the previous year;
- The BCS records a 14% increase in domestic burglary in 2010/11 compared to the previous year. Police recorded domestic burglary fell by 4% in 2010/11;

- The BCS shows no statistically significant changes for acquisitive crimes between the surveys of 2010/11 and 2009/10. Police recorded crime continues to show reductions for vehicle crime (a reduction of 9%) between 2009/10 and 2010/11 and non-domestic burglary (a reduction of 3%);
- The police recorded crime category of "other theft" saw an increase of 4%, particularly driven by increases in "other theft or unauthorised taking" which captures thefts of unattended property which rose 10%;
- The apparent 6% increase in the level of violent crime between the 2009/10 and 2010/11 BCS was not statistically significant. Police recorded violence against the person fell by 6% between 2009/10 and 2010/11 with a reduction in both violence with injury (down 8%) and violence without injury (down 4%);
- Both the BCS and police recorded crime are consistent in showing falls in vandalism with BCS vandalism down by 9% and police recorded criminal damage down by 13% compared with the previous year.

Household and Individual Victimisation Rates

The BCS is able to provide estimates of the number of crimes experienced across England and Wales, as well as estimates of the proportion of the population who had been victims of crime in the previous year. The 2010/11 survey showed:

- An estimated 6.1% of households had experienced vandalism of a vehicle or other household property, a reduction from 3.7% the year before;
- Approximately 5.4% of vehicle-owning households had been victims of vehicle crime (including theft of and from a vehicle belonging to the household and attempted thefts), a reduction from 5.6% in 2009/10;
- 3.1% of adults had been a victim of a violent crime (including wounding, assault with minor injury, assault without injury and robbery), a similar level to the year before;
- Approximately 2.6% of households had been victims of burglary (including attempts), an increase from 2.2% the previous year; and
- 1.1% of adults had been victims of theft from the person and 1.9% of other theft of personal property. There was no statistically significant change in either category.

Violent and Sexual Crime

- Provisional data show the police recorded 642 homicides in 2010/11 (including the 12 homicide victims of the Cumbria shootings in June 2010), an increase of 4% from the previous year;
- The police recorded 525 attempted murders in 2010/11, compared with 591 in 2009/10, a reduction of 11%;
- Police recorded sexual offences rose by 1% between 2009/10 and 2010/11;
- Provisional figures on firearms offences recorded by the police show a 13% reduction between 2009/10 and 2010/11;
- Provisional figures show 55 fatal injuries from firearm offences in 2010/11 (including the 12 homicide victims of the Cumbria shootings in June 2010), in comparison to 40 in the year before. The amount of serious injuries decreased from 337 to 298 and the number of slight injuries rose from 1,537 to 1.593;
- There was a 3% reduction in comparable police recorded offences involving a knife or sharp instrument in 2010/11. There was a 4% increase in robbery offences involving a knife or sharp instrument;
- In total the police recorded 32,714 offences involving a knife or sharp instrument in 2010/11. The police provisionally recorded 214 homicides involving a knife or sharp instrument in 2010/11, compared with 201 recorded in 2009/10;
- There were 76,179 robberies recorded by the police in 2010/11, an increase of 1% on the 2009/10.

Fraud Offences

Fraud is not well measured by either the main BCS crime count or recorded crime. This statistical bulletin presents information from the BCS module on plastic card fraud as well as from the UK Cards Association, both of which show reductions in plastic card fraud for the most recent year available.

- The UK Cards Association figures show a 32% fall in fraudulent transactions between 2009 and 2010;
- The BCS shows that the proportion of plastic card users who had been the victim of card fraud fell from 6.4% in 2009/10 to 5.2% in the 2010/11 survey.

Experimental Statistics on the Victimisation of Children aged 10 to 15

Two alternative approaches to measuring crime are used in presenting these experimental statistics, namely the 'Preferred Measure' which takes into account factors identified in measuring the severity of an incident and the 'Broad Measure' which also includes minor offences between children and family members which would not normally be treated as criminal matters.

- The most recent figures from the BCS show that there were an estimated 878,000 crimes experienced by children aged 10 to 15, using the Preferred Measure. Of this number, approximately 66% were violent crimes (576,000) whilst most of the remaining crimes were thefts of personal property (275,000).

Public Perceptions

- The 2010/11 BCS showed that 60% of adults believed crime had risen nationally in the last two years, compared to 28% of adults who thought that crime had risen in their local area. Both of these figures showed a decrease from the previous year, namely 66% and 31% respectively;
- The 2010/11 BCS shows that the perceived likelihood of being a victim of burglary and violent crime was down compared to the previous year, from 15% to 13% and the perceived likelihood of being a victim of car crime was down from 21% to 17%;
- The 2010/11 BCS showed that 14% of adults had a high level of perceived anti-social behaviour;
- According to the 2010/11 BCS, 15% of people said that they were aware of crime maps and 4% said that they had looked at them or used them. This showed an increase from 2009/10 of 10% and 3% respectively;
- Following the launch of http://police.uk crime maps in January 2011, the BCS results for January to March 2011 show the proportion that were aware of or had looked at or used online crime maps had more than doubled from the previous quarter. 7% of people in this quarter reported having used online crime maps, which equates to 3.3 million individuals across England and Wales.

"Crime in England and Wales 2010/11" is available at http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/hosb1011

Crimes Detected in England and Wales 2010/11

The Home Office has published the latest National Statistics on crimes detected by the police in England and Wales, based on data collected from the 43 Home Office police forces, as well as the British Transport Police.

Levels and Trends in Crimes Detected

Key Points

- The police recorded 4.15 million offences in 2010/11 and 1.15 million crimes detected by means of a sanction detection. The sanction detection rate (the number of sanctions divided by the number of crimes) was 28% in 2010/11;
- The sanction detection rate in 2010/11 was the same as for the year before. The number of sanction detections fell by 4% between 2009/10 and 2010/11. The number of recorded crimes also fell by 4% during this period;
- There was a 94% detection rate for drug offences but a rate of just 11% for offences against vehicles;
- Sanction detection rates by offences group remained largely the same between 2009/10 and 2010/11. However there was a 1% rise for burglary, a 2% fall in other theft offences and a 1% fall in fraud and forgery;
- The number of offences detected by means of a charge or summons between 2009/10 and 2010/11 rose by 1%. There was a reduction in the number of offences detected by other methods, namely cautions (12%), Penalty Notices for Disorder (16%) and Cannabis Warnings (8%).

"Crimes Detected in England and Wales 2010/11" is available at http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/hosb1111

Learning The Lessons Bulletin Published

The thirteenth bulletin of the Learning the Lessons Committee has been published. The bulletin explains the key findings of research carried out by the Independent Police Complaints Commission (IPCC) into appeals about the handling of complaints by police forces, specifically learning from upheld appeals about the non-recording of complaints as well as the handling of complaints dealt with through investigation or local resolution. The themes identified are reflected in the case studies presented.

Key Findings

Investigation Appeals

Why were appeals about investigations upheld?

The IPCC upheld 21% of appeals about an investigation into a complaint. The three main reasons why the IPCC upheld appeals were as follows:

- The findings of the investigation into the complaint (41%). This included cases of insufficient evidence gathering during the investigations or where the conclusions reached were not based on the evidence gathered;
- The adequacy of the information for the complainant (27%). This included cases where the complainant was not sufficiently informed about the steps taken to investigate the complaint, or where the complainant was not informed of the investigation;
- The proposal of the Professional Standards Department (PSD) to take or not take action (18%). This included cases where the PSD's proposal for action was inappropriate or where no actions were evident in the investigation report;
- There was a case to answer (15%), where it appeared that the person subject to the complaint had a case to answer for misconduct or gross misconduct.

What recommendations or directions did the IPCC make?

Following a decision to uphold an appeal, the IPCC can issue guidance to the force which can take the form of recommendations or directions. The former concerns good practice what should have been followed in order to avoid the issue that led to the appeal. The latter is guidance issued to the force which is set out in legislation.

When an appeal was upheld, the IPCC made two main recommendations or directions:

- The PSD was directed to reinvestigate the whole complaint, or an aspect of it; and
- The PSD was directed to release further information.

Local Resolution Appeals

Why did complainants submit a local resolution appeal to the IPCC?

Three main reasons were given by complainants for making local resolution appeals to the IPCC:

- The local resolution process was not explained to them (24%);
- The actions agreed with the police were not carried or completed (22%); and
- They did not give informed consent to use of the local resolution process (21%).

Why were appeals about local resolution upheld?

33% of appeals about local resolution were upheld by the IPCC in 2009/10. The main reasons for upholding those appeals were:

- A lack of documentation of the actions agreed, or the actions agreed did not address all aspects of the complaint (28%);
- The complainant was not informed of the steps taken to resolve the matter (20%);
- The steps to be taken to resolve the complaint were agreed with the complainant, but were not carried out or completed (15%);
- The local resolution process was not explained sufficiently to the complainant (13%);
- The complainant did not give informed consent to the use of local resolution (12%); and
- The complaint was too serious to be dealt with by local resolution (10%).

What kinds of recommendations or directions did the IPCC make?

When a local resolution appeal was upheld, the IPCC directed the PSD to:

- Attempt local resolution again or conduct a local investigation (26%);
- Attempt local resolution again (25%). These were cases where the complainant had originally provided informed consent to local resolution;

- Contact the complainant and provide a copy of the action plan and explain the outcome of the local resolution process (21%); or
- Conduct a local investigation into the complaint (19%).

Non-Recording Appeals

The IPCC upheld 53% of appeals against the force refusing to record a complaint. Often, information about why a complaint was not recorded was not available but two themes emerged from these cases:

- In a significant number of cases the complaint had been recorded as a 'direction and control' matter, however when the IPCC considered the appeal it found that the issue was about the conduct of police officers or members of police staff. 'Direction and control' complaints are those that concern police operational management decisions. Complaints about the actions and decisions of individual officers in individual cases are complaints about their conduct, not matters of direction and control;
- In a smaller number of cases, the appeal was the result of appropriate authorities failing to make a decision about whether to record the complaint.

Bulletin 13: Learning from Appeals - June 2011 and "Learning from Appeals: A Statistical and Thematic Analysis of Appeals Upheld in 2009/10" are available at http://www.learningthelessons.org.uk/Pages/Bulletin13.aspx

New CPS Guidance to Protect Individuals who Retract a Rape Allegation from Fear of Prosecution

The Director of Public Prosecutions, Keir Starmer, has announced new CPS guidance which applies to cases where a complainant of rape or domestic violence makes a false allegation, retracts an original complaint, or takes back a retraction of the original complaint. This follows a public consultation on interim guidance which was published in February 2011.

Following the consultation, a number of changes were made to the guidance, including adding:

- A clear distinction between the circumstances in which a complainant has made a false allegation, where a complainant might retract an original complaint and where someone might retract an original retraction;
- That complainants who do not understand the seriousness of making a false allegation because they have a learning disability or mental health issues will be less likely to be prosecuted;
- Emphasis on the case which is required in cases involving those below the age of 18. Prosecutors are asked to consider the interests of the youth when weighing up the public interest factors along with the fact that the principal aim of the youth justice system is to prevent offending by children and young people;
- More examples or reasons why someone might retract a true allegation and emphasising the need to explore these issues; and
- The recognition that voluntary specialist support organisations as well as Independent Domestic Violence Advisors and Independent Sexual Violence Advisors may be sources of information which could help prosecutors assess whether there is a background of domestic violence which might suggest an original allegation is true.

Under the evidential stage of the Code for Crown Prosecutors, CPS lawyers should ask themselves whether there is evidence that the original allegation may have been true having regard to medical evidence, the recording of the 999 call or CCTV footage. In addition, the prosecutor should always consider whether there is a background of domestic violence which may have influenced the complainant's decision to retract.

Each case must be decided on its own facts and its own merits. However, in applying the public interest test in the Code for Crown Prosecutors, prosecutors are asked to find that a

prosecution for perverting the course of justice is more likely to be required where:

- A false complaint was motivated by malice;
- A false complaint was sustained over a period of time (particularly when there were opportunities to retract);
- The suspect in the original allegation was charged and remanded in custody;
- The suspect in the original allegation was tried, convicted and/or sentenced;
- The complainant who made the original allegation has previous convictions or out of court disposals relevant to this offence, or a history of making demonstrably false complaints;
- The suspect in the original allegation was in a vulnerable position or had been taken advantage of; and
- The suspect in the original allegation has sustained significant damage to his or her reputation.

In applying the factors under the public interest test in the Code for Crown Prosecutors, prosecutors should find that a prosecution is less likely to be required where:

- The original allegation appears not to have been motivated by malice;
- The person retracting the allegation has been threatened or pressurised into doing so by the suspect of the original allegation, his or her family, friends or other persons;
- There is a history or abuse or domestic violence or intimidation which might offer mitigation such as to make it likely that a nominal penalty will be imposed;
- The suspect of the original allegation was not charged, detained or convicted;
- The suspect of the original allegation has not suffered damage to his or her reputation; and
- The person who made the original allegation appears not fully to have understood the seriousness of making a false allegation having regard to his or her age and maturity, learning disability or mental health issues.

The director of Public Prosecutions has said that all cases where a CPS lawyer is considering the prosecution of someone who has made a rape or domestic violence allegation should be referred to CPS headquarters before a decision is reached.

"Guidance Perverting the Course of Justice - Charging in Cases Involving Rape and/or Domestic Violence Allegations" is available at http://www.cps.gov.uk/legal/p_to_r/perverting_the_course_of_justice_-_rape_and_dv_allegations/index.html

CEOP Publishes Assessment into Child Sexual Exploitation

The Child Exploitation and Online Protection (CEOP) Centre has published the findings of a six month investigation, announced in January 2011, into "on street grooming" and child sexual exploitation.

The assessment involved reviewing relevant research, conducting debriefings with practitioners, frontline staff and the wider safeguarding community, as well as face to face consultation with victims. CEOP also requested relevant data on cases of child sexual exploitation since 1 January 2008 from all police forces, Local Safeguarding Children Boards (LSCBs), children's services and voluntary service sector providers. In addition the review covered 65 pieces of research from 1998 and 24 policy guidance documents from 2001.

The report, "Out of Mind, Out of Sight", demonstrates that while some areas of the UK have victim focused services with agencies effectively working together to identify victims of child sexual exploitation, this is not the case in all areas. It highlights multi-agency work as essential to ensuring that the victim's needs come first and are key to tackling this crime, with a need to be aware of the early signs and effects of abuse and vulnerability.

The report acknowledges the major challenges faced by agencies in identifying victims of child sexual exploitation and in gaining the trust of victims in order to build successful cases against offenders.

The assessment provides full details of best practice around the UK and advocates that similar approaches be more widely adopted, based on the needs and specific risks to children in local areas.

Key recommendations to improve the UK's response to child sexual exploitation contained in the report include:

- Victims and their families should receive support from specialist services throughout the process of disclosure, police investigations and court proceedings, until the risk of sexual exploitation is mitigated;
- All LSCBs need to meet their responsibility under current guidance, namely "Safeguarding Children and Young People

from Sexual Exploitation" (DCSF 2009), and ensure that there is a coordinated multi-agency response to this issue, as well as clear and up to date procedures. Each LSCB must assume that sexual exploitation occurs in its area unless there is evidence to the contrary;

- LSCBs must ensure that children who are at risk can be identified at an early stage across a range of agencies and that there are clear protocols for sharing information. They should ensure that children at risk have a full assessment of their needs and referral to relevant services for intervention and support;
- Given the links between sexual exploitation and other vulnerabilities, LSCBs must ensure that those working or in contact with children who are particularly vulnerable, understand the signs of exploitation and can refer children for tailored support. There should be particular emphasis on foster carers and residential care staff, as well as all front line workers that come into contact with missing children;
- LSCBs should ensure that there is sufficient specialist training for frontline service provides so that they are equipped to identify children at risk;
- Each policing team that may come into contact with victims or offenders needs to have an understanding of child sexual exploitation. Training should be provided to appropriate police units and teams and police forces should develop a strategy to ensure that cases of child sexual exploitation are identified and progressed appropriately;
- Children's services must ensure that cases of child sexual exploitation are assessed and responded to appropriately;
- The Crown Prosecution Service should review all prosecutions in child sexual exploitation to identify barriers to taking cases forward, and outline best practice in relation to the support available for victims. The CPS should also review recent cases to identify key aspects of the investigation and criminal justice process that can lead to successful prosecution outcomes;
- All front line agencies should develop ways of capturing and recording data relating to known or suspected cases of sexual exploitation. LSCBs should coordinate the development of a template for capturing information which is of use to both police and services for sexually exploited children;
- Police forces should actively gather intelligence and develop regular problem profiles of child sexual exploitation.

"Out of Mind, Out of Sight" is available at http://www.ceop.police.uk/Documents/ceopdocs/ceop_thematic_assessment_executive_summary.pdf

HMIC and CPS Report on Out of Court Disposals Published

Her Majesty's Inspectorate of Constabulary and the Crown Prosecution Service have published "Exercising Discretion: The Gateway to Justice" which identifies a need for a new approach towards out of court disposals, advocating greater transparency and consistency in their use.

The report states that in a five year period the number of crimes which are dealt with outside of the formal criminal justice system has risen by 135%. The most commonly used out of court disposals, namely warnings, cautions and penalty notices for disorder, now account for around one third of the 1.29 million offences brought to justice. Currently the figures for restorative justice outcomes are not included in national data but when added to this figure, the importance of out of court disposals as a tool in dealing with crime for both the police and prosecutors is clear.

The report found high levels of victim satisfaction when out of court disposals are used effectively, as well as promising signs of a reduction in re-offending and minimal bureaucracy when the offender was dealt with quickly.

However the report identified significant variations in the use of out of court disposals around the country ranging from 26% of offences brought to justice in one criminal justice area to 49% in another. It was noted that choosing an out of court disposal or prosecution in court can have very different consequences for individuals. Local variations in practice are inevitable but the inconsistencies identified mean that some offenders receive differential treatment depending on where they were found or where they live.

The report found that in a sample of 190 out of court disposals, randomly selected from a sample of cases, a third were administered inappropriately, in most cases being an inappropriate method of disposal on the basis that the offending was too frequent or too serious.

Whilst acknowledging out of court disposals to be a legitimate way of dealing with some criminality, the report found that more work needs to be done to improve consistency and prevent inappropriate use. In this vein, it was stated that a national strategy that brings greater transparency and consistency in the use of out of court disposals is now urgently required based on a proportionate response to the level of offending and the nature

of the offender, what works to improve victim satisfaction, reduce reoffending and gives value for money for communities who ultimately foot the bill.

"Exercising Discretion: The Gateway to Justice" is available at http://www.hmic.gov.uk/Pages/SearchResults.aspx?query=exercising%20discretion

New Industry Support for the Virtual Global Taskforce

Three new industry partners have joined the Virtual Global Taskforce (VGT) alliance, as part of the ongoing fight against online child sexual exploitation.

The End Child Prostitution Child Pornography and Trafficking of Children for Sexual Purposes network (ECPAT International), International Association of Internet Hotlines (INHOPE) and the International Centre for Missing and Exploited Children (ICMEC) have become private industry partners of the VGT, thereby demonstrating their commitment to helping reduce the threat to children online.

ECPAT is a global network of organisations committed to protecting children from sexual exploitation. ECPAT has an in depth understanding of the online experiences of children and is able to share valuable research and intelligence with other VGT partners and law enforcement agencies.

ICMEC is leading a global movement to protect children from sexual exploitation and abduction. ICMEC works with partners on six continents to provide governments, law enforcement agencies, private sector companies and non-governmental organisations with the training, expertise and support required to enforce and protect the rights of children.

INHOPE supports and coordinates worldwide internet hotlines dealing with illegal content online, primarily child sexual abuse material.

The VGT website is available at http://www.virtualglobaltaskforce.com

Additional Funding to Help Victims of Homicide Announced Following Publication of Report by Victims' Commissioner

Following the publication of Victims' Commissioner, Louise Casey's, review into the needs of families bereaved by homicide, Justice Secretary, Kenneth Clarke, has announced an additional £500,000 to help victims of homicide.

The additional money will be used to increase the number of professional caseworkers in the Homicide Service, to strengthen the role of befriending and peer support services and to provide better training for those working with people bereaved by homicide.

The review was commissioned by the Justice Secretary and was undertaken over a six month period drawing on the experiences of over 400 bereaved families.

The report's findings will play a critical role in informing the Government's approach to supporting victims, to ensure that time, money and best efforts are targeted at those in greatest need.

"Review into the Needs of Families Bereaved by Homicide" is available at
http://www.justice.gov.uk/news/press-releases/victims-com/vc-pressrelease060711a.htm

Human Rights Joint Committee Report on Terrorism Act 2000 (Remedial) Order 2011: Stop and Search without Reasonable Suspicion

The Human Rights Joint Committee has published its report into the Terrorism Act 2000 (Remedial) Order 2011 which was made in order to remove the incompatibility of the statutory powers to stop and search without reasonable suspicion, contained in sections 44 to 46 of the Terrorism Act 2000, with the right to respect for private life as set out in Article 8 of the European Convention on Human Rights (ECHR), following the judgment of the European Court of Human Rights in the case of Gillan and Quinton v UK (Application No. 4158/05).

The effect of the order is to bring into force with immediate effect the Government's response to the judgment of the European Court of Human Rights in Gillan, which is contained in the Protection of Freedoms Bill, currently before Parliament. The Government's initial response to that judgment was an announcement by the Home Secretary concerning administrative guidance as to how the powers should be operated by the police in the future so as to avoid incompatibility with the ECHR. That guidance effectively suspended the use of the power to stop and search without reasonable suspicion. The Government's justification for now proceeding by way of urgent remedial order is that there is an urgent need for a more tightly circumscribed replacement power and that without such a power being made immediately available there will be a significant gap in the powers available to counter terrorism.

An urgent procedure remedial order comes into force immediately but lapses after 120 days if it has not been approved by affirmative resolution of each House. During that 120 day period, the Human Rights Joint Committee is required by its terms of reference to report to each House its recommendation as to whether the order:

- Should be approved in the form in which it was originally laid before Parliament;
- Should be replaced by a new Order modifying its provisions; or
- Should not be approved.

Is the Order necessary?

The Committee welcomed the Government's "swift and constructive response" to the judgment in Gillan and Quinton v UK and stated the provision of interim administrative guidance about the use of a power found to be in breach of the ECHR to have been a commendable approach to implementation of the judgments of the European Court of Human Rights.

The Committee accepted the necessity of introducing a replacement stop and search power which is exercisable without reasonable suspicion but only in certain, tightly circumscribed circumstances, and stated that the case for having such a narrow and exceptional power has, in the view of the Committee, been made out in the review of counter-terrorism and security powers.

The Committee agreed with the Government that there are compelling reasons for using the remedial order procedure to introduce the replacement power to stop and search without reasonable suspicion. It was accepted that an operational gap would continue for another year if the enactment of this power had to wait until the Protection of Freedoms Bill received Royal Assent.

With regard to use of urgent remedial order, the Committee found that its use, rather than altering the administrative guidance, provided much greater opportunity for parliamentary scrutiny of the replacement power. The Committee recommended that the Government provide to Parliament more detailed evidence of the sorts of circumstances in which the police have experienced the existence of an operational gap in the absence of a power to stop and search without reasonable suspicion since suspension of that power. In the absence of the opportunity to scrutinise such evidence, it was said to be hard for the Committee and Parliament to reach a view as to the appropriateness of proceedings by way of urgent remedial order.

The Committee drew "this unusual exercise of the power to use the urgent procedure" to the attention of both Houses, but found that if Parliament is satisfied the urgent operational need for a power to stop and search without reasonable suspicion is made out on the evidence, the Government's reasons for proceeding this way, rather than by way of normal procedure, constitute a satisfactory justification for such an unusual exercise of the power. In addition, it was stated that if the Government is able to demonstrate the urgent necessity of the power, the Committee would conclude that the Government is justified and acting intra vires in proceedings by way of the urgent procedure.

Does the Order remove the incompatibility?

The Committee expressed that a very tightly circumscribed power with robust safeguards against abuse is not inherently incompatible with the rights under the ECHR, provided its definition and safeguards ensure that it is confined to the exceptional circumstances in which such a power is shown to be needed to prevent a real and immediate risk of terrorist attack.

The Committee recommended that the Order should be modified so as to include express requirements on the face of the Order that the authorising officer:

- Have a "reasonable belief" as to the necessity of the three matters specified in new Section 47A (1)(b)(i)-(iii) of the Terrorism Act 2000; and
- Provide an explanation to the Secretary of State (or to the Court if the Order is amended to provide for prior judicial authorisation) as to why the powers are necessary and appropriate and why other measures are regarded as inadequate.

The Committee gave careful consideration to the issue of whether the geographical area or place to which an authorisation applies should be more specifically defined on the face of the Order and, if so, what that limit should be. It was concluded that the combination of the tighter definitions and stronger safeguards recommended, along with the clear guidance in the Code of Practice, make sit unnecessary to define a geographical limit on the face of the Order.

The Committee welcomed the stricter limit on the duration of an authorisation under the Order, stating that the use of this power should be wholly exceptional and only available when there is an imminent threat of a terrorist attack and as such, this requires the duration of an authorisation to be as short as possible. The Committee did not consider that the duration of an authorisation should be even more strictly defined in the Order if their recommendation on the renewal of authorisations is accepted.

The Committee recommended that the Order should be modified so as to provide for prior judicial (rather than executive) authorisation of the availability of the power to stop and search without reasonable suspicion, with an urgent procedure for police authorisation subject to judicial authorisation within 48 hours.

The Committee recommended that the Code of Practice should contain stronger recording requirements so as to facilitate monitoring and supervision of the use of the replacement power. It was also recommended that the authorising officer should be obliged to comply with the Code of Practice, as well as the individual officers exercising the power.

The Committee recommended that the Order should be amended to include a requirement that there be public notification of the authorisations when they have expired, having obvious regard to the protection of intelligence sources.

The Committee recommended that the Independent Reviewer of Terrorism legislation have the power to report to Parliament on the exercise of this power on an ad hoc basis, and not be confined to reporting annually as part of his general report on counter-terrorism powers.

In addition, the Committee recommended that the Order be replaced with a new Order modifying the provisions contained in the original Order in the ways specified in their report on the basis that in its current form, the Order does not go far enough to remove the incompatibility identified in the judgment in Gillan and Quinton v UK by the European Court of Human Rights. In particular, the Committee recommended that the Order should be modified so as to:

- Require the authorising officer to have a reasonable basis for his belief as to the necessity of the authorisation and to provide an explanation of those reasons;
- Prevent the renewal of authorisations other than on the basis of new or additional information or a fresh assessment of the original intelligence that the threat remains immediate and credible;
- Require prior judicial authorisation of the availability of the power to stop and search without reasonable suspicion; and
- Require authorisations to be publicly notified once they have expired.

"Human Rights Joint Committee - Fourteenth Report. Terrorism Act 2000 (Remedial) Order 2011: Stop and Search without Reasonable Suspicion" is available at http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/155/15502.htm

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