NPIA
National Policing Improvement Agency

Digest

June 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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Legal Services

Chief Executive Officer Directorate

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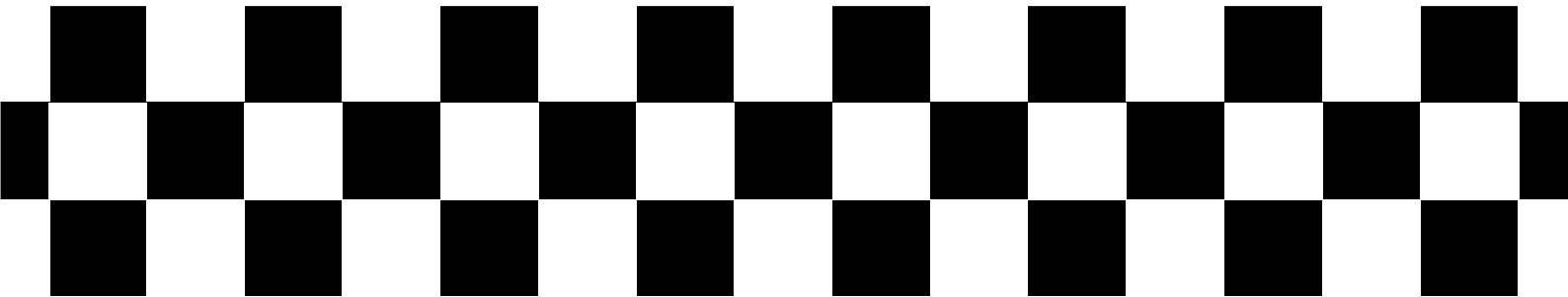

NPIA Digest June 2011

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 an application to the Court of Appeal to quash an acquittal and order a re-trial, the judicial review of retention of biometric data as well as proceedings concerning a late claim for damages in a sexual assault case.

We look in detail at the recently published Joint Committee on Human Rights report the Police Reform and Social Responsibility Bill currently being considered by the House of Lords, the Home Office Report on Police Powers and Procedures in England and Wales in 2009/10, and the Ministry of Justice report on the effect of Home Detention Curfew on recidivism.

Statistical bulletins are covered which consider local adult re-offending in England and Wales between 1 January 2010 and 31 December 2010 and the most recent crime statistics to December 2010 as well as the Ministry of Justice Compendium of Re-offending Statistics and Analysis.

A dossier on the use of force on children in custody and a study on self-inflicted deaths in prison are both covered.

There are also articles on the publication of a draft protocol for elected Police and Crime Commissioners, a report by the Judicial Diversity Taskforce, a public consultation on policing priorities as well as the recently published Terrorism Prevention and Investigation Measures Bill.

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

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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.

Line by line examination of the Bill took place during the third day of committee stage on 24 May. Amendments discussed covered schedules 1-4 and clauses 2-9 of the Bill.

Committee stage continues on 6 June when further amendments will be discussed.

- 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 to provide 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 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. This is known as the first reading and there was no debate on the Bill as this stage.

This Bill is expected to have its Second reading debate on 7 June 2011.

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

Application to Quash Acquittal and Order Re-trial

R v Dobson [2011] EWCA Crim 1256

This case addresses an application by the prosecution for the acquittal of Gary Dobson in a private prosecution for the murder of Stephen Lawrence in 1996, to be quashed and for a re-trial to be ordered under section 76 of the Criminal Justice Act 2003. This application concerns only the acquittal of Dobson and does not address the acquittals of either of his co-defendants, Neil Acourt and Luke Knight. Another suspect, who was not a defendant in the earlier trial, David Norris, was arrested in September 2010 and charged with murder. If the acquittal of Gary Dobson is quashed and a re-trial ordered, the prosecution propose that both will be tried together in the Central Criminal Court in November 2011.

The Statutory Criteria

Under section 78 of the 2003 Act, the requirements of this section are met if there is new and compelling evidence against the acquitted person. Subsection (2) provides that evidence is new if it was not adduced in the proceedings in which the person was acquitted. Under subsection (3), evidence is compelling if:

- It is reliable;
- It is substantial; and
- In the context of the outstanding issues (namely the issues in dispute in the proceedings in which the person was acquitted), it appears highly probative of the case against the acquitted person.

It was stated that the phrase "compelling evidence" does not mean that the evidence must be irresistible or that absolute proof of guilt is required. It is not for the court to usurp the function of the jury, or if a new trial is ordered, to indicate to the jury what the verdict should be.

For the purposes of section 78 the evidence must be reliable, substantial and appear to be highly probative to be compelling: otherwise it is not.

Once the court is satisfied that new and compelling evidence is available, it must consider whether it is in the interests of justice to make the order.

Section 79 of the Criminal Justice Act 2003 provides:

"(1) The requirements of this section are met if in all the circumstances it is in the interests of justice for the court to make the order…

(2) That question is to be determined having regard in particular to -

(a) whether existing circumstances make a fair trial unlikely;

(b) for the purposes of that question and otherwise, the length of time since the qualifying offence was allegedly committed;

(c) whether it is likely that the new evidence would have been adduced in the earlier proceedings against the acquitted person but for a failure by an officer or by a prosecutor to act with due diligence or expedition.

(d) whether, since those proceedings or, if after, since the commencement of this Part, any officer or prosecutor has failed to act with due diligence or expedition.

(4) Where the earlier prosecution was conducted by a person other than a prosecutor, sub-section (2)(c) applies in relation to that person as well as in relation to a prosecutor."

With regard to the above, however compelling the new evidence may be, it is obvious that any second trial should be a fair one. For this purpose the court will examine all the known facts, and consider any material submitted on behalf of the defendant, including any potentially prejudicial publicity attracted by the case, which may make it "unlikely" that a fair trial can take place.

Under section 77 of the 2003 Act, if the court is satisfied that the requirements of both sections 78 and 79 are met, the order must be made: otherwise the application must be dismissed. In light of the background to the case and the fact that the previous acquittal occurred following a trial brought by way of private prosecution, the provisions of Part 10 make no distinction between an acquittal following a prosecution by the Crown or an acquittal following a private prosecution.

The evidence at the centre of this application is new scientific evidence which by reference to the grey bomber jacket and multi-coloured cardigan closely links Dobson with the fatal attack on Stephen Lawrence. It was noted that the new evidence does not can could not demonstrate that Dobson wielded the knife which caused the fatal wound, but given the circumstances of the attack on Stephen Lawrence, that is a group of youths in a violence enterprise attacking a young man as a group, it would be open to a jury to conclude that any one of those who participated in the attack was party to the killing and guilty or murder or alternatively manslaughter. It was stated that if reliable, the new scientific evidence would place Dobson in very close proximity to Stephen Lawrence at

the moment of and in the aftermath of the attack, proximity for which no innocent explanation can be discerned.

Counsel for Dobson submitted that the new evidence is unreliable and of no sufficient probative value, on the basis that the new scientific results are likely to be the product of contamination over the years by contact with Stephen Lawrence's blood and clothing. In addition, it was submitted that even if there was sufficient evidence to link Dobson to the scene of the killing, it would not be possible for the jury to be able to approach their responsibilities with the necessary level of open mindedness and fairness due to the huge amount of constant publicity over the years.

The court conducted a detailed examination of a large body of evidence and concluded that there is sufficient reliable and substantial new evidence to justify quashing the acquittal and to order a new trial. This means simply that whether Dobson had any criminal involvement in Stephen Lawrence's death must be considered afresh by a new jury which will examine the evidence and decide whether the allegation against him is proved. It was emphasised that the presumption of innocence continues to apply.

With regard to the issue of publicity, the court based its decision on the material it had considered. It was stated that the way in which publicity should be given to this judgment and to the subsequent trial must now be governed by the fact that there is to be a new trial of a defendant who is presumed in law to be innocent. The proceedings are now accurate for the purposes of section 2 of the Contempt of Court Act 1981 and care should be taken to ensure that any reporting of this case must avoid any risk to the administration of public justice and the forthcoming trial.

Subject to any further order, the full judgment of the Court of Appeal may be publicised in the usual way when the new trial is concluded.

This judgment is available at
http://www.bailii.org/ew/cases/EWCA/Crim/2011/1256.html

Judicial Review of Retention of Biometric Data

R (on the application of GC) (FC) v Commissioner of Police of the Metropolis [2011] UKSC 21

R (on the application of C) (FC) v Commissioner of Police of the Metropolis

In the light of the European Court of Human Rights' judgment in S and Marper v United Kingdom (2008) 48 EHRR 1169 ("Marper ECtHR"), the appellants, GC and C, issued proceedings for judicial review of the retention of their biometric data on the grounds that its retention was incompatible with their article 8 rights.

The Law

Section 64 of the Police and Criminal Evidence Act 1984 (PACE) as originally enacted provided:

"(1) If -

(a) fingerprints or samples are taken from a person in connection with the investigation of an offence; and

(b) he is cleared of that offence, they must be destroyed as soon as is practicable after the conclusion of the proceedings."

"(3) If -

(a) fingerprints or samples are taken from a person in connection with the investigation of an offence; and

(b) that person is not suspected of having committed the offence, they must be destroyed as soon as they have fulfilled the purposes for which they were taken."

Section 64 (1A) of PACE was enacted by section 82 of the Criminal Justice and Police Act 2001. It provides:

"(1A) Where - (a) fingerprints, impressions of footwear or samples are taken from a person in connection with the investigation of an offence, and (b) subsection (3) below does not require them to be destroyed, the fingerprints, impressions of footwear or samples may be retained after they have fulfilled the purposes for which they were taken but shall not be used by any person except for purposes related to the prevention or detection of crime, the investigation of an offence, the conduct of a prosecution or the identification of a deceased person or of the person from whom a body part came."

Section 64(1A) does not specify any time limit for the retention of the data or any procedure regarding the destruction of such data. These matters are addressed in guidelines issued by the

Association of Chief Police Officers (ACPO) entitled "Exceptional Case Procedure for Removal of DNA, Fingerprints and PNC Records" which were published on 16 March 2006. These provide:

"it is important that national consistency is achieved when considering the removal of such records.

Chief Officers have the discretion to authorise the deletion of any specific data entry on the [Police National Database] 'owned' by them. They are also responsible for the authorisation of the destruction of DNA and fingerprints associated with that specific entry. It is suggested that this discretion should only be exercised in exceptional cases.

Exceptional cases will be definition be rare. They might include cases where the original arrest or sampling was found to be unlawful. Additionally, where it is established beyond doubt that no offence existed, that might, having regard to all the circumstances, be viewed as an exceptional circumstance."

The Facts

GC was arrested on 20 December 2007 on suspicion of common assault on his girlfriend. He denied the offence. A DNA sample, fingerprints and his photograph were taken after his arrest. He was released on police bail without charge. On 21 February 2008 he was informed that no further action would be taken. On 23 March 2009, GC's solicitors requested the destruction of the DNA sample, DNA profile and fingerprints. The Commissioner refused to do so on the grounds that there were no exceptional circumstances within the meaning of the ACPO guidelines.

On March 17 2009, C was arrested on suspicion of rape, harassment and fraud. His fingerprints and a DNA sample were taken. No further action was taken in respect of the harassment and fraud allegations. On 18 March 2009 he was charged with rape. On 5 May 2009 the prosecution offered no evidence and C was acquitted. C requested the destruction of the data and its deletion from the police database. On 12 November 2009 and 2 February 2010, the Commissioner informed C that his case was not being treated as "exceptional" within the meaning of the ACPO guidelines and his request was refused.

The Issue

In the light of Marper EctHR, the indefinite retention of the appellants' data is an interference with their rights to respect for private life protected by article 8 ECHR, which is not justified under article 8(2). It was agreed that the majority decision of the House of Lords in R (s) v Chief Constable of the South Yorkshire Police and R (Marper) v Chief Constable of the South Yorkshire Police [2004] 1 WLR 2196 ("Marper UK"), in which it

was held that the retention did not constitute an interference with the claimants' article 8 rights, and the unanimous decision that any interference was justified under article 8(2) was justified, cannot stand. The issue that arose on these appeals concerned what remedy the court should grant in the circumstances.

On behalf of C, it was submitted that the court should grant a declaration under section 8(1) of the Human Rights Act 1998 (HRA) that the retention of C's biometric data is unlawful. Section 8(1) provides that "In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate." He sought no other relief.

On behalf of GC an order quashing the ACPO guidelines was sought and a reconsideration of the retention of GC's data within 28 days.

On behalf of the Commissioner of the Metropolis it was submitted that the correct remedy would be to grant a declaration of incompatibility under section 4 of the HRA. The primary submission on behalf of the Secretary of State was that although there was no fundamental objection to a declaration of incompatibility, it is not necessary to grant one.

The Arguments in Support of a Declaration of Incompatibility

Section 6 of the HRA provides:

"(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

(2) Subsection (1) does not apply to an act if -

(a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or

(b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions."

On behalf of the Commissioner of the Metropolis and the Secretary of State it was submitted that it is not possible to read section 64(1A) of PACE in a way which is consistent with Marper EctHR. It was accepted that section 64(1A) confers a discretionary power on the police to retain the data obtained from a suspect in connection with the investigation of an offence, but they said that it is a power which, save in

exceptional, cases must be exercised so as to retain the data indefinitely in all cases. Section 64(1A) cannot, therefore, be read or given effect so as to permit the power to be exercised proportionately in the way described in Marper EctHR.

Two arguments were advanced in support of this. The principal argument made was that to interpret section 64(1A) as requiring police authorities to comply with article 8 would defeat the statutory purpose of establishing a scheme for the protection of the public interest free from the limits and protections required by article 8. It would rewrite the statutory provision in a manner inconsistent with a fundamental feature of the legislative scheme which is that, instead of being destroyed, data taken from all suspects shall be retained indefinitely. Parliament intended that the discretion conferred by section 64(1A) should be exercised to promote the statutory policy and object that data taken from **all** suspects in connection with the investigation of an offence should be retained **indefinitely**. Accordingly, any exercise of the discretion conferred by section 64(1A) which does not meet this statutory policy and object would frustrate the intention of Parliament.

The second argument is that the nature of the changes to the ACPO guidelines that would be required in order to make them compatible with the ECHR is such that, for reasons of institutional competence and democratic accountability, these should be left to Parliament to make. The choice of compatible scheme involves a difficult and sensitive balancing of the interests of the general community against the rights of the individual. Neither the police nor the court is equipped to make the necessary policy choices. As such, only Parliament is constitutionally and institutionally competent to decide whether to adopt the Scottish model in preference to that set out in the Crime and Security Act 2010.

Discussion

The principal argument is based on the premise that it was the intention of Parliament that the data taken from all suspects in connection with the investigation of an offence should be retained indefinitely, save in exceptional circumstances. However, Lord Dyson, in his leading judgment, did not accept this premise stating that whilst it is clear that Parliament must have intended that an extended database should be created in order to promote the statutory purposes set out in section 64(1A), it does not follow that Parliament intended that the data taken should be retained indefinitely in **all** cases save in exceptional circumstances.

Parliament did not set out the essential elements of the scheme by which the statutory purposes were to be promoted. This task was entrusted to the police. If Parliament had intended to

require a scheme under which all data lawfully obtained from **all** suspects should be retained **indefinitely** that could have been set out in the statute. It was noted that as stated, section 64(1A) grants an unfettered discretion for retention of such data and indicated by the use of the word "may".

Whilst it is clear that in enacting section 64(1A), Parliament intended to remove the requirement to destroy data after it had served its immediate purpose, there is no reason to suppose that Parliament must have intended that this should be achieved in a way disproportionate with the ECHR. Lord Dyson stated that section 64 (1A) clearly delimits the exercise of the discretion of the police in that the discretion must be exercised to enable data to be used for the statutory purposes set out. In addition, he stated that the discretion must be exercised in a way which is proportionate and rationally connected to the achievement of those purposes. It was stated that the fundamental feature of section 64(1A) is that it gives the police the power to retain and use data from suspects for the stated statutory purposes of preventing crime, investigation of offences and the conduct of prosecutions. However that does not justify a blanket or disproportionate practice. Neither indefinite nor indiscriminate retention can properly be said to be fundamental features of section 64(1A).

Lord Dyson made reference to the fact that following the judgment in Marper EctHR, the Secretary of State took steps to remove the DNA of children under 10 years old from the database. If the meaning of section 64(1A) is that, save in exceptional circumstances, there is a duty to retain samples taken from all suspects indefinitely then surely the amendment to the ACPO guidelines, by taking steps to remove the DNA of children under 10 from the database, was ultra vires section 64(1A). Once it is accepted that section 64(1A) permits a scheme which does not insist on the indefinite retention of data in all cases, the extreme position advocated by the Commissioner and the Secretary of State, namely that a fundamental feature of section 64(1A) is that data should be retained for use from all suspects indefinitely, cannot be maintained. As such, it was stated that Parliament intended a proportionate scheme which gives effect to the statutory purposes and is compatible with the ECHR.

The Commissioner and the Secretary of State sought support from the Explanatory Notes to the Criminal Justice and Police Act 2001, however these were considered to be an insufficient foundation on which to base a conclusion that the true meaning of section 64(1A) is that, save in exceptional circumstances, biometric data must be retained indefinitely in all cases.

Despite some judicial sympathy in the House of Lords in Marper UK for the benefits of an expanded database, certain passages

of which were relied on by the Commissioner and the Secretary of State, the question in Marper UK was not whether, leaving ECHR issues aside, section 64(1A) required the retention of data taken from all suspects indefinitely. The focus of the argument in Marper UK was on whether section 64(1A) and the ACPO guidelines were compatible with the ECHR. In particular, it was on whether article 8(1) was engaged and whether the ACPO scheme was justified under article 8(2). Lord Dyson rejected the submission that Marper UK provides support for the submission that it was the intention of Parliament that, save in exceptional cases, the data of **all** suspects should be retained **indefinitely**.

In the view of Lord Dyson, section 64(1A) permits a policy which is:

- Less far-reaching that the ACPO guidelines;
- Is compatible with article 8 of the ECHR; and
- Nevertheless, promotes the statutory purposes.

It was stated that the statutory purposes can be achieved by a proportionate scheme. It is possible to read and give effect to section 64(1A) in a way which is compatible with the ECHR and section 6(2)(b) of the HRA cannot be invoked to defeat the claim that the ACPO guidelines are unlawful by reason of section 6(1) of the HRA. For the reasons given, Lord Dyson stated, to interpret section 64(1A) compatibly with article 8 does not impermissibly cross the line where, to use the words of Lord Bingham in Sheldrake v Director of Public Prosecutions [2005] 1 AC 264, para 28 it "would not be incompatible with the underlying thrust of the legislation, or would not go with the grain of it, or would call for legislative deliberation, or would change the substance of a provision completely, or would remove its pith and substance, or would violate a cardinal principle of the legislation."

For these reasons he rejected the first argument submitted on behalf of the Commissioner and the Secretary of State.

The second argument is that Parliament could not have intended to entrust the creation of a detailed scheme pursuant to section 64(1A) to the police (with or without the assistance of the Secretary of State) subject only to the judicial review jurisdiction of the court. It was submitted that the creation of guidelines for the exercise of the power under section 64(1A) is a matter for Parliament alone and that it could not have been intended that section 64(1A) should grant a broad discretion to the police such as is contended for on behalf of C. This is due to the fact that it involves high policy, balancing the public interest in the effective detention, prosecution and prevention of crime against individual freedoms. There are choices to be

made between a variety of compatible legislative schemes and these choices are for Parliament alone. The police are in no position, constitutionally or institutionally, to choose between them. Lord Dyson clarified the scope of this argument; it is not that Parliament could not have granted the police a discretionary power to retain data on a basis other than that of blanket indefinite retention. If Parliament had wished to grant such a power to the police, it could have done so. Rather, the argument is that the constitutional and institutional limits on the competence of the police are such that Parliament could not have intended to grant such a power to them.

Lord Dyson did not accept this argument on the basis that the democratic principle is preserved due to the fact that Parliament would have envisaged that a national scheme would be produced such as the ACPO guidelines and the Secretary of State is accountable to Parliament for the scheme.

This concerned a matter of statutory interpretation. There is no reason in principle why the police (with the Secretary of State) should be less well equipped than Parliament to create guidelines for the exercise of the section 64(1A) power. In creating a proportionate scheme, they have to strike a balance. That is inherent in any exercise of this kind, whether it is performed by the executive or Parliament. Provided policy and guidance documents of this kind fulfil the purposes of the enabling statute, they are valid and enforceable. In the view of Lord Dyson, the fact that difficult decisions would have to be made in producing guidelines for the exercise of the power under section 64(1A) is not a sufficient reason for concluding that Parliament could not have intended to give the power to produce them to the police and the Secretary of State.

Relief

In considering what relief, if any, to grant, the current state of play was noted, namely that the Protection of Freedoms Bill, currently being considered by Parliament, contains proposals along similar lines to the Scottish model. Whilst there is no guarantee that it will be enacted, it is the present intention of the Government to bring this legislation into force later this year. As such Lord Dyson proceeded on the basis that this is likely to happen, although not certain, when considering the question of relief.

In these circumstances, he concluded that it was appropriate to grant a declaration that the present ACPO guidelines (amended as they have been to exclude children under 10 years of age), are unlawful because, as clearly demonstrated by Marper EctHR, they are incompatible with the ECHR. It was stated to be important that, in such an important and sensitive area as this, the court reflects its decision by making a formal order to

declare what it considers to be the true legal position. But it was deemed unnecessary to go further than this. Under section 8(1) of the HRA, the court is granted a wide discretion to grant such relief or remedy within its powers as it considers just and appropriate. On the basis that Parliament is already aware of the matter, it was deemed neither just nor appropriate to make an order requiring a change in the legislative scheme within a specific period.

Reference was made to the European Court of Human Rights case of Greens and MT v United Kingdom (Application Nos 30041/08 and 6005408) (EctHR, 23 November 2010) in which the court decided that where one of its judgments raises issues of general public importance and sensitivity, in respect of which the national authorities enjoy a discretionary area of judgment, it may be appropriate to leave the national legislature a reasonable period of time to address those issues. To allow the legislature a reasonable time in which to produce a lawful solution to a difficult problem was considered to be a sensible approach.

In light of the fact that retention of data may be lawful under the scheme which Parliament produces, it was not considered to be just or appropriate to make an order for the destruction of data.

In these circumstances, the only order which was deemed to be appropriate was to grant a declaration that the present ACPO guidelines (as amended) are unlawful because they are incompatible with article 8 of the ECHR. It was stated that if Parliament does not produce revised guidelines within a reasonable time, then the appellants will be able to seek judicial review of the continuing retention of their data under the unlawful ACPO guidelines and their claims will be likely to succeed.

The full judgment is available at
http://www.bailii.org/uk/cases/UKSC/2011/21.html

Proceedings concerning a Late Claim for Damages in Sexual Assault Case

Hoare v United Kingdom 16261/08 [2011] ECHR 722

Background

In 1989 the applicant, Mr Iorworth Hoare, a British national, was convicted of attempted rape which had taken place on 22 February 1988. He was sentenced to life imprisonment, due to his history as a serial sexual offender. His seven-year tariff expired in March 1995 and he was released on life licence on 31 March 2005.

While on day release in 2004, the applicant bought a National Lottery ticket and won a sum in the region of £7 million.

At the time of the offence, the victim of the attack, Mrs A, had been unable to sue the applicant for damages because he was impecunious. However, she had received a sum in the region of £5,000 from the Criminal Injuries Compensation Board.

On learning of the applicant's win, she proceeded to seek damages for trespass to the person.

High Court Proceedings

On 22 December 2004 Mrs A issued her claim form seeking damages. On receiving legal advice the applicant wished to pursue his defence that Mrs A's claim was time-barred. As such, he rejected an offer made by Mrs A to settle the action for a sum in the region of £25,000.

On 14 June 2005, Mrs A's action was struck out on the ground that it was time-barred pursuant to section 2 of the Limitation Act 1980, under which the general rule is that the period of limitation for an action in tort is six years from the date on which the cause of action accrued. In this case, the cause of action had arisen 16 years before issue of the claim form and so was time-barred.

Mrs A was granted leave to appeal.

Before the High Court, the argument focused on whether Mrs A's action was one subject to section 2 or section 11 of the 1980 Act. Section 11, which Mrs A sought to rely on, covered actions for damages resulting from negligence, nuisance or breach of duty where the damages were in respect of personal injuries. The limitation period for such actions was three years, either from the date the cause of action accrued or the date of knowledge of the person injured. In addition, section 33 of the 1980 Act provides the court with a discretion to extend that three year period when it appears equitable to do so.

The applicant submitted that section 2 applied and was a bar to Mrs A's claim.

The High Court dismissed Mrs A's appeal on 14 October 2005. It was concluded, following the House of Lords decision in Stubbings v Webb [1993] AC 498, that Mrs A's claim was covered by section 2, rather than section 11 of the Limitation Act 1980.

In the judgment the High Court recalled that the House of Lords in Stubbings had held that claims arising from complaints of deliberate assault or trespass to the person, such a Mrs A's, were subject to the non-extendable six year limitation period under section 2. Under section 11, the words "breach of duty"

were held not to be construed as including actions based on intentionally inflicted injuries, such as rape or indecent assault.

With regard to Mrs A's claim that the right of access to court contained in Article 6(1) of the Convention had been breached, the High Court relied on the Court's judgment in Stubbings and Others v The United Kingdom 22 October 1996, in which a majority found no violation of Article 6 on the basis that the limitation period contained in section 2 of the 1980 Act, as interpreted by the House of Lords, constituted a proportionate restriction on the right of access to court.

The High Court ordered that Mrs A should pay the applicant's costs in defending her appeal. Mrs A appealed.

Court of Appeal Proceedings

The Court of Appeal heard Mrs A's appeal in February 2006 along with two other appeals. In its judgment, the Court of Appeal dismissed all the appeals.

With regard to the argument that Stubbings v Webb had been wrongly decided by the House of Lords, the Court of Appeal held that it was bound by the decision of the House. The Court of Appeal did note however that both cases decided since Stubbings v Webb and the detailed analysis of the Law Commission in its review "Limitation of Actions" (Law Com No 270) pointed to some very unsatisfactory features of the law as it applied to sexual abuse cases.

It was also held that because the six year limitation period had expired before the Human Rights Act came into force, the appellants could not rely on that Act for assistance.

The court ordered Mrs A to pay the applicant's costs of the appeal and allowed Mrs A to appeal to the House of Lords.

The House of Lords Judgment

Mrs A's appeal was heard by the House of Lords along with five other appeals, all of which raised the question whether claims for sexual assaults and abuse which took place many years before proceedings were commenced were barred by the 1980 Act.

In a unanimous judgment the House of Lords held that section 11 of the 1980 Act, which traditionally applied to negligence and breach of duty actions, also applied to actions arising out of intentional torts where personal injuries were sustained. As such all the appeals were allowed.

In the leading judgment, Lord Hoffman explained why the House should depart from its earlier decision in Stubbings v Webb. It was noted that although at first the decision in Stubbings v Webb had not given rise to too much difficulty initially, the

position has radically been changed with the House of Lords decision in Lister v Hesley Hall Ltd [2002] 1 AC 215, a case which, along with subsequent cases, "threw into relief the anomalies created by Stubbings."

It was stated that by no means everybody who brought a late claim for damages for sexual abuse, however genuine, could reasonably expect the court to exercise the section 33 discretion in his favour. With regard to the particular circumstances of Mrs A's case, it was stated that it would be most unfortunate it people felt obliged (often at public expense) to bring proceedings for sexual abuse against a defendant who was indigent simply with a view to their possible future enforcement, in the event of a lottery win or some such event, on the basis that whilst judgments are interest bearing for only six years, there is no time limit in which they must be enforced.

The effect of the House of Lords judgment was that the section 11 limitation period of three years became applicable in this case with the possibility of an extension of that period at the discretion of the court under section 33 of the 1980 Act. The case was remitted back to the High Court to consider whether it should exercise its discretion under section 33.

In a later judgment, the House of Lords awarded Mrs A her costs both before the House of Lords and the Court of Appeal, with the High Court costs to be determined by the judge hearing her application regarding section 33 of the Limitation Act 1980.

Remittal to the High Court

The High Court exercised its discretion in favour of Mrs A and allowed her to sue the applicant in damages.

The factors taken into account include:

- The nature and seriousness of the underlying tortious wrong;
- The fact that one of the consequences of that wrong was the applicant's impecuniosity (because he was unable to earn money by which he could have paid damages);
- The fact that, prior to his lottery win, the applicant was simply not worth pursuing in an action for damages - this being the principal reason for Mrs A's delay; and
- The fact that Mrs A acted promptly following the defendant's release from prison and his lottery win.

In response to the submission on behalf of the applicant, that to exercise the discretion in favour of Mrs A, created the risk that parties in all aspects of civil litigation would seek to circumvent the applicable limitation periods by relying on the defendant's impecuniosity, Coulson J highlighted the wholly exceptional nature of the circumstances of Mrs A's case.

In the event the court ordered the applicant to pay the costs of all the proceedings before the lower courts in addition to the costs before the House of Lords and the Court of Appeal. In addition to his own costs of £239,583, the applicant was ordered to pay £537,885.20 in legal costs and £50,000 in compensation to Mrs A.

Application to the European Court of Human Rights

The applicant made the following complaints:

- Under Article 1 of Protocol 1 to the Convention that the costs order imposed on him by the House of Lords constituted an unlawful interference with his right to the peaceful enjoyment of his possessions;
- Under Article 6(1) of the Convention that the process whereby he had to pay for a change in the law was unfair;
- That the order for costs against him effectively amounted to a further penalty.

Alleged Violation of Article 1 of Protocol 1 to the Convention

Article 1 of Protocol No. 1 states:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provision shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The applicant alleged that the costs order made against him had deprived him of his money without any justification in the public interest in breach of Article 1 or Protocol 1 to the Convention. In particular, he was of the opinion that he had had to pay, as a private person, for a change in the law, which in any event should have been done by Parliament. In addition, he contended that the costs order was unlawful on the basis that the House of Lords had acted ultra vires in interpreting the 1980 Act as it did. This he submitted, had "tainted" the proceedings and had the effect of rendering the order unlawful.

Existence of an Interference with Property Rights

The court noted that the applicant's complaint was directed at the costs orders made against him as a result of the outcome of the case in the House of Lords, rather than at the relevant legislation on limitations. In this regard, the court recalled

previous findings by the European Commission on Human Rights in which it was held that costs imposed were "contributions" within the meaning of the second paragraph of Article 1 of Protocol No. 1.

The court considered that the applicant's case raised the question of whether and to what extent the order to pay Mrs A's costs at all levels of jurisdiction can be considered to have amounted to an interference with the applicant's right to the peaceful enjoyment of his possessions.

Compliance with the Requirement of Lawfulness

Any interference by a public authority with the peaceful enjoyment of possessions should be lawful. The applicant did not deny that the costs order had a basis in domestic law, nor did he argue that the way in which the rules on costs were applied was unpredictable. Rather, the applicant complained that he had lost his case and therefore been ordered to pay Mrs A's costs as a result of an unforeseeable change in the law of limitation.

The court noted that even if it could be considered that an issue arose as to the lawfulness of the interference in question as a result of the allegedly unforeseeable change in the law of limitation, courts may depart from their established case-law provided they give good and cogent reasons for doing so. It was further noted that by the time the case had reached the House of Lords, the problematic and unsatisfactory nature of the law of limitation with regard to sexual abuse cases had already been raised by the Law Commission in its 2001 review, wherein the effect of the decision in Stubbings v Webb was described as "anomalous" and a complete overhaul of the law in this area had been recommended.

In light of the full and reasoned arguments of the House of Lords in support of their interpretations of section 2, 11 and 33 of the 1980 Act, as well as the detailed account given of the history of the 1980 Act and of the legal development since the decision in Stubbings v Webb, the court stated that it considered the House of Lords decision to have constituted no more than a reasonably foreseeable development of the law of limitation in sexual abuse cases. In these circumstances, the court did not discern any impropriety, let alone arbitrariness in the way in which the House of Lords decided the case.

In addition, the court found no violation of the right of access to court under Article 6 on the ground that the rules of limitation, as interpreted by the House of Lords in Stubbings v Webb, constituted a proportionate restriction on the rights of access to court. In keeping with the margin of appreciation of States in this area, it was open to the domestic courts to interpret the rules of limitation in a way that was more favourable to victims of sexual abuse.

In view of the above, the court as satisfied that any interference with the applicant's possession was lawful within the meaning of Article 1 of Protocol 1 to the Convention.

Public Interest and Fair Balance

For an interference with the right to property to comply with Article 1 of Protocol No. 1, it must have a legitimate aim. Costs are a well established feature of the justice system and the court has previously held that the general rule on costs, namely that the unsuccessful party will be ordered to pay the costs of the successful party ("costs follow the event"), was reasonable, particularly because it may act as a disincentive to unnecessary litigation. As such, the court considered that the costs order made pursued a legitimate aim.

For an order to be compatible with the general rule contained in the first sentence of the first paragraph of Article 1, an interference with the right to the peaceful enjoyment of possessions must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The court noted the substantial sum of the costs order made, namely in the region of £770,000 and observed that the court could have used its discretion to make a different order given that the applicant had previously succeeded on part of his case. However, it was open to the domestic courts to apply the "costs follow the event" rule provided that due regard was given to the circumstances of the case, including whether any offer to settle had been made and the conduct of the parties in the proceedings. It was noted that the applicant had refused an offer to settle made by Mrs A. In addition it was stated that Mrs A's costs did not appear unreasonable given that they covered three levels of jurisdiction.

As such the court did not consider there to be anything arbitrary about the way the applicable rules on costs were applied such as to upset the fair balance between the conflicting interests at stake. Accordingly, this part of the application was dismissed as manifestly ill-founded under Article 35(3) of the Convention.

Alleged Violation of Article 6(1) of the Convention

Article 6(1) of the Convention, in its relevant parts, states:

"In the determination of his civil rights and obligation…everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The applicant further complained about the lack of fairness of the process whereby in his view he had to pay for a change in the law.

The court considered this complaint to essentially relate to the House of Lords' interpretation and application of the law to the

facts of the case. The court observed that the applicant was clearly unhappy with the outcome of the proceedings before the domestic courts, but noted that he was warned by his legal representatives that there was a risk that the House of Lords may find against him, notably by overturning Stubbings v Webb. In addition the court noted the applicant's refusal of the offer made by Mrs A to settle, in the belief that the courts would find in his favour.

Furthermore, the applicant was said to have clearly pursued the legal action because he was in a financial position to do so, as opposed to indigent litigants who are required to pay substantial sums in the initial stages of the proceedings, thereby raising issues of access to court under Article 6(1) of the Convention. Given the applicant's lottery win, it cannot be said that his right of access to court has been impaired.

On the contrary, it is clear that the applicant had ample opportunity to put his case throughout the proceedings. The House of Lords gave detailed reasons for departing from their earlier decision. Finally, it was observed that the applicant was able to make further submissions on the question of whether the High Court should exercise its discretion under section 33 of the 1980 Act when the case was remitted by the House of Lords. This point was fully argued before Coulson J who gave full reasons as to why he felt it was appropriate to exercise his discretion in the circumstances of the case.

It was stated that there was nothing in the file to suggest that the applicant did not receive a fair trial. In these circumstances, the court found that the application does not disclose any appearance of unfairness in breach of Article 6 of the Convention. As such this part of the application was dismissed as manifestly ill-founded and therefore inadmissible under Article 35(3) and (4) of the Convention.

Alleged Violation of Article 4 of Protocol No. 7 to the Convention

With regard to the applicant's complaint that the order for costs made against him effectively amounted to a further penalty, the court noted that the United Kingdom is not a signatory to Protocol No. 7 to the Convention and as such this ground was dismissed.

The full judgment is available at
http://www.bailii.org/eu/cases/ECHR/2011/722.html

SI 1119/2011 The Road Safety Act 2006 (Commencement No. 7) Order 2011

This Order brings into force on **16 May 2011** section 22 (4) of the Road Safety Act 2006 (the 2006 Act) (article 2) which amends the Road Traffic Offenders Act 1988 (the 1988 Act).

Section 22(6) of the 2006 Act is brought into force only to the extent to which it relates to section 22(8).

Section 22(8) is brought into force only to the extent to which it relates to offences made by virtue of paragraph 2(1) to (3) of Schedule 2A to the Road Traffic Act 1988 (RTA).

Section 22 of the 2006 Act relates to the offence of keeping a vehicle which does not meet the insurance requirements.

Section 22(4) provides the level of penalty for offences made by regulation under section 160 of the RTA by virtue of Schedule 2A to that Act.

Section 22(8) provides for the mode of prosecution and specifies the penalties in respect of those provisions of regulations under Schedule 2A to the RTA, contravention of or failure to comply with which is an offence, namely: removing or interfering with an immobilisation notice; removing or attempting to remove an immobilisation device and wrongfully displaying a disabled person's badge.

SI 1120/2011 The Motor Vehicles (Insurance Requirements) (Immobilisation, Removal and Disposal) Regulations 2011

The Regulations, which came into force on **16 May 2011**, provide for the immobilisation and removal of uninsured vehicles found stationary on roads and other public places.

Regulation 3 provides for the authorisation of persons for the purposes of the Regulations.

Regulation 4 sets out circumstances in which the Regulations do not apply.

Regulation 5 enables a person authorised by the Secretary of State to fix an immobilisation device to an uninsured vehicle.

Regulation 6 states the conditions to be fulfilled (including the payment of prescribed charges specified in Schedule 1) for the release of a vehicle from an immobilisation device.

Offences in connection with immobilisation (including unlawful interference with an immobilisation device and falsely claiming exemption to secure the release of a vehicle) are created by regulations 7 and 8.

Regulations 9 to 13 provide for the removal and disposal of vehicles under the Regulations, for the retention of a removed vehicle until prescribed charges are paid and for the conditions under which a removed vehicle can be recovered. When a vehicle has been disposed of, the owner can claim a sum equal to the proceeds of sale after deduction of prescribed charges.

Provision is made by regulation 14 for disputes about charges paid to secure the release of a vehicle from an immobilisation device, or to secure possession of it after its removal, to be referred to a person authorised by the Secretary of State. An appeal against the determination of the authorised person can be made to a magistrates' court in England and Wales or a Sheriff Court in Scotland.

SI 1122/2011 The Coroners and Justice Act 2009 (Commencement No. 6) Order 2011

This Order brings into force sections 75(2)(c), 77(1)(c) and 81(3) of the Coroners and Justice Act 2009 in Northern Ireland on **2 May 2011**.

These provisions relate to anonymity of persons in certain investigations conducted by the Serious Organised Crime Agency.

SI 1159/2011 The Equality Act 2010 (Guidance on the Definition of Disability) Appointed Day Order 2011

This Order appoints **1 May 2011** as the day for the coming into force of the Guidance on matters to be taken into account in determining questions relating to the definition of disability issued by the Secretary of State on 7 April 2011 under paragraph 14(3) of Schedule 1 to the Equality Act 2010 (the 2010 Act).

The Guidance provides practical guidance on matters to be taken into account when considering whether a person is a disabled person for the purposes of the 2010 Act and replaces guidance on the same matters which was issued by the Secretary of State under the now repealed Disability Discrimination Act 1995 on 29 March 2006.

Paragraph 12(1) of Schedule 1 to the 2010 Act requires an adjudicating body to take account of such guidance as it thinks is relevant.

Following the repeal of the Disability Discrimination Act 1995 by the Equality Act 2010, the Guidance reflects that paragraph 4 of Schedule 1 (classification of normal day to day activities by reference to a list of capacities) to the Disability Discrimination Act 1995 was not re-enacted in the 2010 Act. The Guidance also reflects developments in relevant case law since the guidance was issued on 29 March 2006.

Article 3 of this Order makes transitional provision in relation to proceedings arising from a complaint to an adjudicating body, whenever presented, under Part 9 of the 2010 Act concerning an alleged act of discrimination or harassment committed before 1 May 2011 or an alleged course of conduct amounting to discrimination or harassment that was commenced before 1 May 2011. The Guidance is not to have effect for the purposes of paragraph 12(1) of Schedule 1 to the 2010 Act in relation to such proceedings. The Guidance issued by the Secretary of State under section 3 of the Disability Discrimination Act 1995 on 29 March 2006 is to continue to have effect in relation to such proceedings. Section 3(3) of the Disability Discrimination Act 1995 requires an adjudicating body to take into account any guidance which appears to it to be relevant.

SI 1187/2011 The Football (Offences) (Designation of Football Matches) (Amendment) Order 2011

This Order, which came into force on **26 May 2011**, amends the Football (Offences) (Designation of Football Matches) Order 2004 (the 2004 Order) which designates football matches for the purposes of the Football (Offences) Act 1991 (the 1991 Act). The 1991 Act introduced penalties for certain types of misconduct at designated football matches.

This Order means that matches played in the Scottish Premier League and matches involving one or both teams whose home grounds are not in England and Wales will be within the scope of the 1991 Act.

The Order also updates the reference in the 2004 Order to the Welsh Premier League.

Finally this Order also brings matches for the Football Association Cup (unless those matches are in a preliminary or qualifying round) within the scope of the 1991 Act.

This Order extends to England and Wales.

SI 1186/2011 The Sports Grounds and Sporting Events (Designation) (Amendment) Order 2011

This Order, which came into force on **26 May 2011**, amends the Sports Grounds and Sporting Events (Designation) Order 2005 for the purposes of designated sporting events to which the Sporting Events (Control of Alcohol etc.) Act 1985 applies.

This Order includes in the list of designated sporting events, any football match in which one or both clubs have their home ground for the time being outside England and Wales.

This Order extends to England and Wales.

SI 1197/2011 The Trade in Animals and Related Products Regulations 2011

These Regulations, which came into force on **25 May 2011**, revoke and replace the eight sets of Regulations specified in regulation 44.

Under Part 2 these Regulations establish a system for trade between member States in live animals and genetic material and under Part 3, for the importation of live animals, genetic material and products of animal origin from outside the European Union.

The European Union legislation required to be complied with before animals or goods can be released from control at the port of importation (the "border inspection post") is listed in Schedule 1.

As before, the Secretary of State is empowered (in Part 4) to prohibit importation into England of any animal or product in the event of a disease outbreak outside the United Kingdom.

The Regulations are enforced by the Secretary of State, port health authorities, local authorities and the United Kingdom Border Agency in the circumstances set out in regulation 32.

The Regulations establish various offences, punishable on summary conviction to a fine up to the statutory maximum or on conviction on indictment to an unlimited fine (or in the case of disclosure relating to customs information imprisonment for up to three months).

These Regulations apply in England.

Police Powers and Procedures in England and Wales 2009/10

The Home Office has published a statistics bulletin, drawing together statistics on the following topics:

- Arrests for notifiable offences;
- Stops and Searches under the Police and Criminal Evidence Act 1984 (PACE);
- Breath tests; and
- Police action in relation to motoring offences.

Arrests and Detentions

- There was a 5% reduction in the number of persons arrested for recorded crime (notifiable offences) as compared to 2008/09. Recorded crime fell by 8% over the same period;
- The number of arrests for offences of violence against the person fell by 2%. There was a fall of 4% in the number of recorded violence against the person offences;
- Arrests for offences of violence against the person fell for the fourth consecutive year from a ten year peak of 488,100 in 2006/07 to 456,900 in 2009/10;
- There was a 12% reduction in the number of arrests of 10 to 17 year olds in 2009/10, which fell to 241,737;
- In 2009/10, 4,224 persons were detained by the police for more than 24 hours and then released without charge (this figure excludes Cheshire, West Midlands and Hampshire as these forces were unable to submit data for 2009/10.)

Arrests by Offence Group

The number of arrests has fallen for the third successive year.

- A total of 1,386,030 persons were arrested in 2009/10 for recorded crime offences, a fall of 5% (76,109 arrests) as compared to 2008/09. Total recorded crime fell over the same period by 8% to 4,338,604 offences;
- 33% of all arrests were for violence against the person offences in 2009/10, 1% higher than in 2008/09;
- There was a 4% reduction in arrests for fraud and forgery in 2009/10;
- Arrests for robbery fell by 6% in 2009/10 to 32,698.

There were increases in arrests for two offence groups in 2009/10.

- Arrests for sexual offences increased and showed the largest percentage increase in 2009/10 at 9% (an increase of 3,147 arrests);
- Arrests for drug offences have increased for a number of years with 84,800 arrests in 2004/05 compared to 121,010 arrests in 2009/10.

Arrests for property offences (burglary, theft, fraud and forgery and criminal damage) accounted for 39% of all arrests for recorded crime offences in 2009/10, a 2% reduction compared to 2008/09.

Arrests by Sex and Age

- In 2009/10 83% of those arrested for recorded crime offences were males, the same proportion as the previous four years;
- Male arrests have declined by 61,058 (5%) to 1,153,954;
- Female arrests have declined by 15,051 (6%) to 232,076;
- As in the previous three years, more females were arrested for offences of violence against the person in 2009/10 (81,490 arrests) than for theft and handling stolen goods (71,438 arrests);
- With regard to males, it is the fifth consecutive year that arrests for offences of violence against the person (375,426 arrests) exceeded those in the theft category (224,187 arrests);
- Arrests for under 18 year olds accounted for 17% of total arrests in 2009/10, a 2% reduction compared to 2008/09;
- Arrests of 10 to 17 year olds fell by 12% to 241,737;
- Arrests of those aged 18 to 20 fell by 5% to 208,262;
- Arrests of those aged 21 and over fell by 3% to 934,443 in 2009/10;
- For the first time since the arrests collection began, violence against the person offences have overtaken theft and handling as the most prevalent offence group for persons arrested aged 10 to 17 years of age (26% of all arrests for that age group);
- Violence against the person remains the most prevalent offence group for arrests of those aged 18 to 20 and those aged 21 and over (30% and 35% respectively). Arrests in both categories, however, fell by 5% and 10% respectively.

Arrests Resulting from Stop and Search

- 8% of arrests in England and Wales in 2009/10 resulted from a stop and search under PACE 1984, the same rate as in 2008/09. For the Metropolitan Police, this figure was 16%, a fall of 2% compared to 2008/09.

Arrests: Geographic Patterns

Nice police forces recorded increases in the number of arrests for recorded crime offences in 2009/10, while 34 recorded decreases;

- The largest percentage increases were reported in Wiltshire (an increase of 12%) followed by the Metropolitan Police (an increase of 6%) and Humberside (an increase of 5%);
- The largest percentage falls were in the West Midlands (a reduction of 18%), followed by Gloucestershire and West Mercia (a decrease of 17% in both);
- The Metropolitan police recorded 12,933 more arrests for recorded crime offences in 2009/10 than in 2008/09, a 6% increase.

Arrests by Ethnicity

- 80% of those arrested in 2009/10 defined themselves as White. A further 8% as Black of Black British, and 9% as Asian or Asian British.

Police Detention

- The overall number of persons detained for more than 24 hours (up to a maximum of 96 hours) under PACE 1984 and released without charge was 4,224 in 2009/10;
- 94% of those detained for more than 24 hours were released within 36 hours, a 6% increase on 2008/09.

Persons Detained under Warrant of Further Detention

- Warrants of further detention under PACE 1984 were applied for on 582 occasions in 2009/10;
- In 2009/10, 66% of those detained under warrant were charged, a decrease of 5% on the previous year.

Stops and Searches

- 1,360,167 persons and/or vehicles were stopped and searched in 2009/10, a 10% reduction on 2008/09;
- The figure above comprises:
  - 1,150,153 searches under section 1 of PACE 1984, a decrease of 0.3% on 2008/09;

- 118,446 stops and searches in anticipation of violence under section 60 of the Criminal Justice and Public Order Act 1994, a decrease of 21% on the previous year;
- 91,568 stops and searches in order to prevent acts of terrorism under section 44 of the Terrorism Act 2000, a decrease of 56% on 2008/09.

- Additionally, the police carried out 21 road checks, one less than 2008/09;
- 85 intimate searches were carried out in 2009/10, mostly for drugs, a 13% decrease on the previous year;
- The British Transport Police (BTP) made an additional 45,745 searches in 2009/10.

Stops and Searches under Section 1 of PACE 1984

- Overall stops and searches under section 1 PACE 1984 decreased in number for the first time in six years;
- The articles most commonly searched for in 2009/10 were drugs (48%) and stolen property (18%);
- In 2009/10 stops and searches increased in three of the seven categories of reason for search. The largest percentage increases were recorded for searches for going equipped (an increase of 11%) and drugs (an increase of 3%);
- In contrast, stops and searches for criminal damage fell by 23% and for firearms fell by 17%;
- Of the 1,150,153 searches under section 1 of PACE 1984, 1,141,839 were of persons and 8,314 of vehicles;
- The BTP carried out a further 27,100 stops and searches under section 1 of PACE 1984. The most common reason was for drugs which accounted for about 66% of all searches;
- In 2009/10, the number of arrests following a stop and search fell by 5% to 107,444;
- Of the 217,100 section 1 searches made by BTP, 1,646 (6%) resulted in arrest.

Stops and Searches under Section 60 of the Criminal Justice and Public Order Act 1994

- There were 118,446 such searches in 2009/10, a fall of 21%;
- Overall, 2% of stops and searches under section 60 led to an arrest;

- Of the total number of stops and searches under section 60, 118,112 were of persons and 334 were of vehicles;
- 39 forces are recorded as having used stops and searches in anticipation of violence;
- The BTP made a further 1,527 searches in anticipation of violence, 93 of which resulted in arrests.

Stops and Searches under Section 44 of the Terrorism Act 2000

- 91,658 such searches were carried out in 2009/10, a decrease of 56% compared to 2008/09;
- Two of these searches resulted in arrests connected with terrorism. A further 436 resulted in arrests for other reasons;
- Of all searches, 96% were conducted by the Metropolitan Police;
- Of the total number of searches under section 44, 85,311 were of persons and 6,257 of vehicles;
- The BTP made a further 17,118 stops and searches under section 44, none of which resulted in arrests connected with terrorism. 79 resultant arrests were made for other reasons.

Geographical Patterns in Stop and Search

- Approximately 66% of all stops and searches in England and Wales were conducted by 6 police forces, namely Metropolitan, Merseyside, Thames Valley, Greater Manchester, Northumbria and West Yorkshire;
- The Metropolitan Police accounted for 49% of the national total of stops and searches.

Ethnic Patterns in Stop and Search

- 64% of all stops and searches were conducted by the police on persons defining themselves as White, 16% on Black, 11% on Asian, 3% Mixed and 1% Chinese or other ethnicity. 5% did not state their ethnicity;
- 50% of all stops and searches conducted by the Metropolitan Police were on ethnic minority suspects, compared with 13% across all other forces;
- The Metropolitan Police conducted 77% of all section 60 stops and searches and 41% of these searches were conducted on Black suspects;
- Having been searched, 9% of White suspects were arrested, while 6% of Asian suspects and 7% of Black suspects were arrested;

- 62% of stops and searches made by BTP were conducted on White suspects, 10% on Black suspects, 9% on Asian suspects, 5% on other or Mixed ethnicity suspects. 14% of suspects searched by BTP did not state their ethnicity.

Road Checks under Section 4 PACE 1984

- In 2009/10, 21 road checks were carried out;
- An average of 283 vehicles were stopped in each road check in 2009/10, compared with 205 in 2008/09;
- The total number of vehicles recorded as having been stopped was 5, 940 in 2009/10 compared to 6,700 in 2008/09;
- In 2009/10, three arrests resulted from a road check, two less than in 2008/09.

Intimate Searches under Section 55 of PACE 1984

- 85 intimate searches were carried out in 2009/10, compared to 98 in 2008/09;
- Drugs accounted for 88% of known reasons for intimate searches in 2009/10;
- Class A drugs (mainly heroin, other opiate drugs, LSD and cocaine) were found in 13% of the intimate searches carried out, compared to 8% in 2008/09.

Fixed Penalty Notices

- 2.1 million fixed penalty notices (FPNs) were issued for motoring offences in 2009, a reduction of 9% compared to 2008;
- Speed limit offences comprised over 1.1 million of these FPNs, 54% of all FPNs issued in 2009;
- In 2009, 126,000 FPNs were issued for the offence of using a handheld mobile phone while driving, an increase of 8% on 2008;
- Cameras provided evidence for 85% of the 1.1 million FPNs issued for speeding offences in 2009;
- As well as FPNs, the police issued 27,000 written warnings for motoring offences and 78,000 Vehicle Defect Rectification Scheme notices in 2009.

Traffic Cameras

- There were 1 million FPNs issued for traffic light and speeding offences detected by cameras in 2009, a decrease of 120,000 compared to 2008;
- Speeding offences account for 91% of this figure.

Written Warnings

- The number of offences for which written warnings were issued in 2009 was 27,000;
- In 2009, 34 of the 43 police forces used written warnings for motoring offences;
- In 2009, the largest number of written warnings were issued for 'speed limit offences' (21% of written warnings), 'dangerous, careless or drunken driving, etc.' (16%), 'unauthorised taking or theft of a motor vehicle' (13%) and 'licence, insurance and record-keeping offences' (11%).

Vehicle Defect Rectification Scheme (VDRS)

- 78,000 VDRS notices were issued in 2009;
- 77% of such notices were complied with in 2009.

Breath Tests

- During 2009, there were 813,288 screening breath tests carried out, a 14% increase on 2008;
- The number of positive or refused tests in 2009 increased by 3% from 91,666 in 2008 to 93,973 in 2009;
- The proportion of tests that were positive or refused in 2009 was 12%.

Other Police Powers and Procedures

Cautions

- In 2009, 290,600 offenders were cautioned for all offences, 11% less than in 2008;
- Of the cautions given, 78,700 (27%) were given to juveniles as a reprimand or final warning, a 3% decrease on 2008.

Police Use of Firearms

The latest figures are for 2008/09.

- There were 19,951 police operation in 2008/09 in which a firearm was authorised, an increase of 0.3% on 2007/08;
- There were 6,868 authorised firearms officers in 2008/09, a 1% increase on 2007/08;
- Armed response vehicle were used in 16,564 operations in 2008/09;
- The police discharged conventional firearms in four incidents in 2008/09, down from 7 in 2007/08.

Police Use of TASER

The latest figures provide statistics on TASER use up to and including 31 March 2010.

- There were 8,599 uses of TASER, including 2,185 discharges, by authorised firearms officers in England and Wales between April 2004 and 31 March 2010;
- There were 2,957 uses of TASER, including 511 discharges, in England and Wales by specially trained police units who are not firearms officers between 1 September 2007 and 31 March 2010.

Football-Related Arrests

- Of the 37 million people attending games in 2009/10, the police arrested 3,391 persons for disorder connected to matches, a decrease of 10% on 2008/09.

Firearm Certificates

- The latest figures show that there were 141,775 firearms certificates on issue on 31 March 2010, an increase of 2% on the previous year;
- The corresponding figure for shotgun certificates was 580,653 on issue, an increase of 1%.

"Police Powers and Procedures England and Wales 2009/10" is available at http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/police-research/hosb0711

Public Consultation on Policing Priorities

The Home Affairs Committee has launched a national online survey on policing, as part of a major new Committee inquiry into the New Landscape of Policing launched in April 2011.

The Committee want to hear from the public on which areas of police work are most important to them, as well as which areas of work the public think should be a lower priority for the police.

The survey will run until 14 June 2011 and can be accessed at http://forums.parliament.uk/policing-priorities-poll/index.php?index,1

Draft Protocol for Elected Police and Crime Commissioners Published

The draft protocol, drawn up in association with representatives from the Association of Chief Police Officers, the Association of Police Authorities and the Association of Police Authority chief executives, was laid in the House of Lords on 10 May 2011 in time for consideration at the Committee Stage of the Bill.

The protocol sets out the legal duty of Police and Crime Commissioners (PCC) to maintain an efficient and effective police force. It also sets out how they should provide a link between the police and the public. The draft protocol builds on the government's commitment to ensure that the operational independence on chief constables will remain by making clear that chief constables will retain the direction and control over the force's officers and staff.

The protocol also sets out the powers and functions of the police and crime panel which will scrutinise the decisions of the PCC. In addition, it underlines the commitment to limiting the role of the Home Office in day-to-day policing matters, while restating the powers retained by the Home Secretary, namely to direct the PCC and chief constable to take action if they are failing to carry out their functions, for use as a last resort in defined circumstances.

The draft protocol is available at http://www.homeoffice.gov.uk/publications/police/police-commissioners-protocol?view=Binary

2011 Compendium of Re-offending Statistics and Analysis Published

The main focus of this Ministry of Justice publication is on the relative effectiveness of different types of sentences and builds on the work of the 2010 Compendium of re-offending statistics and analysis released in November 2010 which compared the relative effectiveness of community sentences with short prison sentences.

The 2011 Compendium consists of three papers:

- Paper 1 presents the results from a comparison of re-offending by adults between 2005 and 2008 who had received different types of sentences where at least one of the sentences is an immediate custodial sentence;
- Paper 2 presents the results from a comparison of re-offending by adults between 2005-2008 who had received different types of sentences other than immediate custodial sentences; and
- Paper 3 identifies the different re-offending hazards by offence type between January 2002 and March 2007.

A comparison of re-offending by adults between 2005 and 2008 who had received different types of sentences where at least one of the sentences is an immediate custodial sentence

Summary

- Offenders receiving Community Orders had lower re-offending rates than those given immediate custodial sentences of less than 12 months for all four years. In 2008 the difference was 8.3%;
- Offenders on Suspended Sentence Orders had lower re-offending rates than those given immediate custodial sentences of less than 12 months for all four years. In 2008 the difference was 8.8%;
- Offenders given immediate custodial sentences of one year or more but less than two years had lower re-offending rates than those who received immediate custodial sentences of less than 12 months for all four years;
- Offenders given immediate custodial sentences of two years or more but less than four years had lower re-offending rates than those who receive immediate custodial sentences of one year or more but less than two years for all four years compared.

A comparison of re-offending by adults between 2005 and 2008 who had received different types of sentences other than immediate custodial sentences

Summary

- Offenders receiving conditional discharges had a lower rate of re-offending than those receiving fines for all four years. In 2008 the difference was 3.9%;
- Offenders receiving conditional discharges had a lower re-offending rate than those receiving Community Orders for all four years;
- Offenders receiving a fine re-offend at a lower rate than those receiving Community Orders for all four years;
- Offenders receiving Suspended Sentence Orders had a lower rate of re-offending than those who received Community Orders for all four years.

Hazards of different types of re-offending

Summary

A sample of 180,746 offenders commencing a court order or discharge from an immediate custodial sentence of over 12 months were analysed with regard to their hazards of re-offending. For this purpose 'hazard' means the chance of re-offending in a given time period if re-offending had not occurred in an earlier time period.

The aim of this paper is to compare the hazards of re-offending by different categories of re-offending and by different offender groups. In general, the re-offending hazards for violent and non-violent re-offending were much higher than for sexual re-offending. In particular this paper shows that:

- Hazards for all types of re-offending were highest in the first few months following the index date;
- Some types of re-offending had a more persistent hazard than others. The hazards of violent and sexual re-offending were more persistent than the hazards for non-violent re-offending.

"2011 Compendium of Re-offending Statistics and Analysis" is available at http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/2011-compendium-reoffending-stats-analysis.pdf

Crime in England and Wales: Quarterly Update to December 2010

This quarterly bulletin, published by the Home Office, presents the most recent crime statistics from two different sources, namely 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, given the fact that neither sources provides a total count of crime and each has its strengths and weaknesses.

Key Points

- In the year ending December 2010 the number of crimes recorded by the police fell by 6% compared with the year ending December 2009. Based on BCS interviews in the year ending December 2010, there was a reduction of 3% in the number of incidents of BCS crime recorded compared with a year earlier.
- In the year ending December 2010, there were decreases in all police recorded crime offence groups except sexual offences (increased by 3%) and other theft offences (increased by 1%). The largest percentage decreases were for criminal damage (17% reduction) and offences against vehicles (12% reduction).
- There was no statistically significant change in levels of BCS violent crime compared with the year ending December 2009. Violence against the person offences and robberies recorded by the police fell by 6% and 1% respectively.
- Numbers of BCS personal crimes showed no statistically significant change compared with the previous year, However, within the personal crime category there were falls in levels of acquisitive crime (a decrease of 14%) and other theft of personal property (a decrease of 12%).
- Levels of BCS household crime showed no statistically significant change compared with the year ending December 2009. Within this category there were some changes, namely a reduction of 9% in vehicle-related theft and an increase of 14% in domestic burglary. Police recorded domestic burglaries and other burglaries both fell by 7% and there was a reduction of 12% in offences against vehicles.
- There was a 7% fall in firearm offences recorded by the police compared with the previous 12 months.
- BCS interviews in the 12 months to December 2010 showed that the risk of being a victim of the crime this survey covers was 21.4%.

- The BCS showed a decrease in the proportion of people with a high level of perceived anti-social behaviour in their local area compared with the previous year from 15% to 14%.
- BCS interviews showed that 52% of people agreed that the police and local agencies were dealing with the anti-social behaviour and crime issues that mattered in their area, an increase of 1% over the previous year.

"Crime in England and Wales: Quarterly Update to December 2010" is available at http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/hosb0611/hosb0611?view=Binary

Ministry of Justice Research Report on the Effect of Home Detention Curfew on Recidivism

The Ministry of Justice has published a research report highlighting evidence that suggests that offenders who receive Home Detention Curfew (HDC) under the current provision, are no more likely to engage in criminal behaviour when released from prison, when compared to offenders with similar characteristics, who are not eligible for HDC.

This research considered the effectiveness of HDC on reoffending through using a quasi-experimental evaluation technique, Regression Discontinuity Design (described in Annex B to the report).

The study used criminal history and sentence data held on 499,279 offenders released from custody in England and Wales between January 2000 and March 2006, with 63,584 discharged receiving HDC.

Recidivism was measured by matching released prisoners to the Police National Computer and establishing whether they offended at least once in the follow-up period (in this case 12 or 24 months) with an additional six month period to allow for offences to be proved by a court conviction. In addition, 8% of those released on HDC were recalled to prison for breach of their curfew conditions (compared to 2% recalled for committing an additional crime). These curfew breaches were statistically counted as re-offending for the purposes of the study since they represented failures to complete HDC, but they are not re-offences.

HDC and Recalls

10% of the HDC sample (6,643) were recalled to prison while being electronically monitored. 85 of those recalled were recalled for breaching the terms of their curfew while the remaining 2% were recalled for committing a further offence whilst on HDC.

Specific offence types, the number of previous convictions and previous breaches appeared to be important predictors of recalls to prison:

- Offenders whose current conviction was either burglary or robbery were twice as likely to be recalled in comparison to those who had committed other types of offences;
- 13% of prisoners released on HDC had previously breached licence conditions. 23% of the offenders who were recalled from HDC had previous breaches compared to 12% of those who were not recalled;
- HDC released prisoners who were recalled had committed almost twice as many crimes in the past that those who were not returned to prison.

HDC and Impact on Reoffending

The Regression Discontinuity Design analysis set out in the report found a lower level of reoffending in the HDC group in comparison with the non-HDC group: an estimated 4% over the 12 month follow-up period and 2.6% over 24 months.

There was no increase in offending for those on HDC even after considering that they were in the community for a longer period of time that those who were not released on HDC.

Conclusion

The report produced evidence that offenders who receive HDC under the current provision were at least no more likely to engage in criminal behaviour after release when compared to offenders with similar characteristics who were not eligible for early release on HDC.

It suggests that the overall outcomes under HDC are preferable to keeping those offenders eligible for the scheme in custody at the end of the custodial element of their sentence.

According to the 2006 National Audit Office report "The Electronic Monitoring of Adult Offenders", HDC costs £1,300 to monitor an offender who has been released from prison for 90 days compared to £6,500 for the same period in custody. As such the report states that HDC appears to provide better value for money given that the analysis shows that HDC does not increase the number of offences committed per offender.

Ministry of Justice Research Summary 1/11 entitled "The Effect of Early Release of Prisoners on Home Detention Curfew (HDC) on Recidivism" is available at http://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/effect-early-release-hdc-recidivism.pdf

Local Adult Reoffending in England and Wales 1 January 2010 - 31 December 2010

The Ministry of Justice has published a statistics bulletin on local adult reoffending, comparing the period of 1 January 2010 to 31 December 2010 with the period of 1 April 2007 to 31 March 2008.

The key uses of this data are to help local practitioners understand progress in reducing re-offending and to provide key outcome data to assist in assessing probation trust performance.

This bulletin contains re-offending data on England and Wales as a whole, regions within England and Wales, Probation Trusts and Local Authorities.

Key Points

- The three month re-offending rate of all offenders on the probation caseload in England and Wales who were at risk of re-offending between 1 January 2010 and 31 December 2010 was 9.75%. A decrease of 1.34% compared to the 2007/2008 baseline;
- The North West and South West Regions had a statistically significant in crease in re-offending compared to the 2007/2008 baseline. Three Regions (London, West Midlands and Yorkshire and Humberside) had a statistically significant reduction in re-offending;
- Five Probation Trusts had a statistically significant increase in re-offending, whilst seven Probation Trusts showed a statistically significant reduction in re-offending;
- Ten local authorities had a statistically significant increase in re-offending, whilst 23 local authorities showed a statistically significant reduction in re-offending;
- Re-offending by offenders serving a court order showed a statistically significant reduction of 2.27% compared to the baseline;
- Re-offending by offenders on licence following a custodial sentence showed a statistically significant increase of 3.82% compared to the baseline. The actual rate of re-offending by offenders on licence remained lower than for offenders on court orders under probation supervision - 7.81% compared to 10.24%;
- The unadjusted rate of re-offending for offenders on the probation caseload in the period 1 January 2010 to 31 December 2010 was 0.07% lower than re-offending in the baseline period 1 April 2007 to 31 March 2008, and 0.01% lower than re-offending in the previous quarter.

Trends in Re-offending by Area

The re-offending rates of individual areas over time has been tracked to assess whether any areas have seen clear trends in re-offending rates since the start of the series in the 2007/2008 baseline. Consideration of this focuses on areas where re-offending has been significantly higher or lower than predicted over four or more consecutive periods.

Reductions in Re-offending

- At the regional level, re-offending rates in the West Midlands and Yorkshire and Humberside have been consistently lower than predicted over the four most recent periods;
- Within the West Midlands region, re-offending rates in Staffordshire and West Midlands Probation Trust and Birmingham, Sandwell, Solihull and Staffordshire local authorities have been consistently lower than predicted;
- For the Yorkshire and Humberside region, re-offending rates in South Yorkshire and West Yorkshire Probation Trusts and the Barnsley, Bradford, Rotherham and Sheffield local authorities have been consistently lower than predicted;
- Nottinghamshire Probation Trust has had four consecutive quarters of consistently lower than predicted re-offending rates, and, within Nottinghamshire Probation Trust, Nottingham local authority has had consistently lower than predicted rates;
- Re-offending rates in the Isles of Scilly, Rochdale and Northumberland local authorities have seen consistently lower than predicted.

Increases in Re-offending

- Re-offending rates in Hertfordshire, Merseyside and Kent Probation Trusts have been consistently higher than predicted;
- Within Hertfordshire Probation Trust, re-offending rates in Hertfordshire local authority were consistently higher than predicted;
- Within Merseyside Probation Trust, re-offending rates in Wirral local authority were consistently higher than predicted;
- Within Kent Probation Trust, re-offending rates in Kent and Medway local authorities were consistently higher than predicted;
- Re-offending rates in Wrexham local authority were consistently higher than predicted.

Trends since 2007/08

- For the most recent quarter, 14% of Trusts (five Trusts) show an increase in re-offending rates and 20% (seven Trusts) show a decrease;
- For the most recent quarter, 6% of local authorities (ten) show an increase in re-offending rates and 13% (23) show a decrease.

"Local Adult Reoffending 1 January 2010 - 31 December 2010 England and Wales" is available at http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/local-adult-reoffending-jan10-dec10.pdf

Judicial Diversity Taskforce Progress Report Published

Further to publication of the report of the Advisory Panel on Judicial Diversity in February 2010, which amongst other things, recommended the constitution of a Judicial Diversity Taskforce to oversee implementation of the recommendations of the Advisory Panel, that Taskforce has now published a report which shows that progress has and is being made in respect of all 53 of the recommendations made.

The Taskforce, which is made up of the Ministry of Justice, the Judiciary, the Judicial Appointments Commission as well as the Law Society, the Bar Council and ILEX, pledged to maintain the pressure on the agenda to work towards a much more diverse judiciary at all levels by 2020.

"Improving Judicial Diversity. Progress Towards Delivery of the 'Report of the Advisory Panel on Judicial Diversity 2010'" is available at http://www.justice.gov.uk/downloads/publications/policy/moj/judicial-diversity-report-2010.pdf

Dossier on Use of Force on Children in Custody Published

The Howard League for Penal Reform (HLPR) has published a report concerning the infliction of violence on children in custody as a means of ensuring compliance.

"Twisted: The Use of Force on Children in Custody" examines the sanctioned use of force on children in custody and includes evidence from legal statements made by young people.

"Twisted: The Use of Force on Children in Custody" is available at
http://www.howardleague.org/fileadmin/howard_league/user/pdf/Publications/Restraint.pdf

Public Hearings on the Use of Force on Children in Custody

Lord Carlile of Berriew QC is conducting public hearings on the use of force on children in custody, where he will investigate policy and practices regarding the use of force on children in custody and its impact on children's health and mental well-being. The hearings mark the five year anniversary of Lord Carlile's independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in penal custody.

The first hearing took place on 11 May 2011 and the second is due to take place on 6 June 2011.

"An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes" is available at
http://www.howardleague.org/fileadmin/howard_league/user/pdf/Publications/Carlile_Report_pdf.pdf

Study into Self-inflicted Deaths in Prison Custody Published

The National Confidential Inquiry into Suicide and Homicide by People with Mental Illness (NCI) have published a national study of self-inflicted deaths in prison custody over a period of nine years between 1999 and 2007. This is a collaborative project between the NCI (University of Manchester), Offender Health (Department of Health) and the Safer Custody and Offender Policy Group (Ministry of Justice).

The aims of the study were:

- To Conduct a detailed examination of all self-inflicted deaths by prisoners;
- To monitor longitudinal trends in the characteristics of prison self-inflicted deaths over time;
- To examine sub-groups within the sample, comparing their characteristics to the total self-inflicted death sample;
- To make recommendations on the recognition, assessment and management of risk, and related issues of mental health care.

Key Findings

Some of the key findings of the study were:

- 766 self-inflicted deaths occurred among prisoner in 110 prisons, averaging 85 deaths per year;
- Nine (1%) self-inflicted deaths occurred under the care of the Prison Escort Custody Service and the majority of these were in court cells;
- 705 (92%) self-inflicted deaths were by hanging or self-strangulation;
- 109 (14%) deaths occurred within 2 days of reception into prison; 198 (26%) were within one week;
- 288 (38%) prisoners were on remand;
- 696 (91%) self-inflicted deaths were male and there was a male to female ration of nearly 10:1. The male to female ration in the prison population as a whole was approximately 17:1 and as such there were proportionally more females in the self-inflicted death sample compared to the general prison population as a whole;
- 102 (13%) prisoners were from a Blank and Minority Ethnic (BME) group;
- 252 (33%) prisoners were charged with or convicted of a violent offence;
- 88 (12%) were charged with or convicted of murder/ manslaughter. Of those convicted (58%), 48 (96%) had received a life sentence;
- 91 (12%) prisoners were reported to have been victims of bullying during the current prison term;
- 361 (51%) prisoners had one or more psychiatric diagnosis/ es recorded;
- The most common primary psychiatric diagnosis was drug dependence (14%);

- 90 (12%) prisoners were prison healthcare in-patients at the time of death;
- There were 83 (11%) young adult (aged 18 to 20 years) prisoner self-inflicted deaths;
- There were 13 (2%) self-inflicted deaths by prisoners aged under 18 years; all were male, white and aged between 15 and 17 years old.

Longitudinal Trends

The following are significant changes in the characteristics of prison self-inflicted deaths between 1999 and 2007:

- There was a significant downward trend in the number of self-inflicted deaths in prison establishments in England and Wales;
- There was a significant upward trend in the number of male prisoner self-inflicted deaths from a BME group;
- There was a significant downward trend in the number of young adult (aged 18 to 20 years) prisoner deaths;
- There was a significant upward trend in the number of prisoner self-inflicted deaths who were unemployed or receiving long-term sickness benefit prior to prison;
- There was a significant downward trend in the number of prisoner self-inflicted deaths by hanging or self-strangulation;
- There was a significant downward trend in the number of self-inflicted deaths who died within 7 days of reception into prison and the number within 28 days of reception into prison;
- There was a significant downward trend in the number of self-inflicted deaths by prisoners who were on remand;
- There was a significant upward trend in the number of self-inflicted deaths by prisoners who were charged with or convicted of a violent offence;
- There was a significant downward trend in the number of prisoner healthcare in-patient self-inflicted deaths;
- There was a significant upward trend in the number of prisoner self-inflicted deaths with a history of NHS mental health service contact;
- There was a significant downward trend in the number of prisoner self-inflicted deaths with a previous history of drug misuse;

- There was a significant upward trend in the number of male prisoner self-inflicted deaths with a previous history of alcohol misuse;
- There was a significant downward trend in the number of prisoner self-inflicted deaths with a primary psychiatric diagnosis of drug dependence;
- There was a significant upward trend in the number of prisoner self-inflicted deaths with a primary psychiatric diagnosis of personality disorder;
- There was a significant upward trend in the number of prisoner self-inflicted deaths who were referred to a psychiatrist during the current prison term;
- There was a significant upward trend in the number of prisoner self-inflicted deaths who had been referred to a mental health in-reach team during the current prison term.

"A National Study of Self-Inflicted Deaths in Prison Custody in England and Wales from 1999 to 2007" is available at http://www.medicine.manchester.ac.uk/mentalhealth/research/suicide/prevention/offenders/reports/prisoncustodyselfinflicteddeaths.pdf

Terrorism Prevention and Investigation Measures Bill Published

The Terrorism Prevention and Investigation Measures Bill has been published. Under the Bill, restrictions that impact on an individual's ability to follow a normal pattern of daily life will be kept to the minimum necessary to protect the public. The restrictions will be proportionate and clearly justified.

The Bill sets out the key features of the new terrorism prevention and investigation regime.

Under the new regime:

- There will be a two year maximum time limit beyond which it will only be possible to impose new measures if there is evidence of further engagement in terrorism;
- The Home Secretary must have reasonable grounds to believe that an individual is or has been involved in terrorism-related activity and be satisfied that it is necessary to impose the measures to protect the public from a risk of terrorism;
- Curfews will be replaced with a more flexible overnight residence requirement;
- Relocation to another part of the country without consent will no longer take place;
- Geographical boundaries will be replaced with the more limited power to impose tightly-defined exclusions from particular areas.

Whilst the Bill passes through Parliament, the existing control order regime will remain in place.

Detailed consideration of the Bill will appear in next month's *Digest*.

The Terrorism Prevention and Investigation Measures Bill is available at http://www.publications.parliament.uk/pa/bills/cbill/2010-2012/0193/cbill_2010-20120193_en_1.htm

Joint Committee on Human Rights Report on Police Reform and Social Responsibility Bill

The Joint Committee on Human Rights (JCHR) has published its report on the Police Reform and Social Responsibility Bill, currently at Committee Stage in the House of Lords.

Specifically, the report considers the proposal to repeal Sections 132-138 of the Serious Organised Crime and Police Act 2005 which place a prohibition on protests within a designated area surrounding Parliament without prior notification and authorisation on application to the police. These sections would be replaced with provisions which create new prohibitions in this are: on operating amplified noise equipment, on erecting, keeping erect or using 'sleeping structures', on placing, keeping or using 'sleeping equipment' and on performing other prohibited activities after being directed to cease by authorised officers. In addition, it would be possible for compulsory powers to be utilised by "authorised officers" to, for example, seize and retain offending items or direct an individual to stop engaging in a prohibited activity. Reasonable force can be used by police officers if "necessary" for the seizure of any items.

Under these provisions, the level of fine to be imposed is to be set at level 5 (£5,000), rather than level 3 (£1,000) which are set for other similar public order offences under the Public Order Act 1986.

The report also addresses the Bill's proposal to extend the power of local authorities to introduce powers of seizure or forfeiture in connection with byelaws relating to the good rule and government of an area or the suppression of nuisances, which would enable local authorities to introduce new compulsory powers at a local level for a broad range of purposes and in connection with some relatively minor local transgressions.

In addition, it considers the provisions in the Bill which remove the powers of "private prosecutors" to seek an arrest warrant from a Magistrates' Court without first getting the consent of the DPP, in relation to selected international crimes allegedly committed overseas, which include conspiracy, hostage-taking, torture and offences in connection with nuclear material.

The JCHR considers that the Bill raises three significant human rights issues which warrant further scrutiny:

- Whether proposed new restrictions on certain activities in Parliament Square are proportionate and justifiable limitations on the right to protest, as protected by Articles 10 and 11 ECHR and the common law;
- Whether the proposal to expand the power of local authorities to authorise seizure and forfeiture of property

is accompanied by adequate safeguards for the right to peaceful enjoyment of possessions (Article 1, Protocol 1 ECHR) and the right to respect for the home and private life (Article 8 ECHR); and

- Whether the proposal to require the consent of the DPP for arrest warrants in connection with the private prosecution of international crimes is a retrograde step in the ability of the UK to implement its obligations in international criminal law to prosecute international crimes.

Key points

Protest in Parliament Square

The JCHR welcomes the proposal to repeal Sections 132-138 of the Serious Organised Crime and Police Act 2005 despite some concerns about the proposals in the Bill to introduce new restrictions and criminal offences in connection with activities in the vicinity of Parliament.

The JCHR report stated that when compulsory powers are exercised, and statutory authorisation for the connected use of force is given, authorisation for use by people other than police officers should be extremely rare and should always be accompanied by adequate safeguards to ensure that their exercise is subject to the same minimum standards of conduct as if they were exercised by police personnel. The committee welcomed the government amendment to restrict the use of force for seizure to police personnel. The reassurance given that these powers would be accompanied by guidance dealing with the appropriate exercise of discretion, identification and, in particular, with the reasonable use of force was welcomed. However no provision is made for these safeguards on the face of the Bill and in the absence of statutory safeguards, the JCHR do not consider that the Government has provided adequate justification for the extension of this broad discretion to use such powers to local authority employees or contractors.

The committee considers that the power to seize property should, in the absence of further justification for seizure powers to extend to the local authority, be limited to police personnel.

Any punishment should be proportionate to the offence and the JCHR do not consider that the Minister has explained why the offences introduced under the Bill differ significantly in impact and scale from other public order offences so as to justify a greater degree of sanction. Without further justification it was recommended that the Bill should be amended to reduce the sanction from level 5 to level 3 in keeping with other similar public order offences.

The JCHR consider that the Government must provide more specific justification on the need for these broad provisions, or

define them more precisely on the face of the Bill or in statutory guidance designed to indicate when a direction will be given. Without justification or tighter definition, the committee consider that there is a significant risk of arbitrary application, further costly litigation and the violation of the right to respect for freedom of expression and assembly (Articles 10 and 11 ECHR) and the right to respect for private life and the enjoyment of possessions (Article 8 ECHR and Article 1, Protocol 1 ECHR).

The committee expressed concern at the Government's failure to provide adequate justification to support the need for the provision controlling loudhailers and other noise equipment in the vicinity of Parliament. Without such justification or tighter definition of the proposed controls in the Bill or in statutory guidance designed to indicate when a direction will be given, the JCHR considered that there is a significant risk of arbitrary application, further costly litigation and the violation of Articles 8, 10, 11 and Article 1, Protocol 1 ECHR.

The proposal to extend the power of local authorities to introduce powers of seizure or forfeiture in connection with byelaws was said to be a significant delegation of power by Parliament and the committee expressed concern that this extension has been included in a miscellaneous provision in a bill on policing rather than in a provision for the reform of local authority powers. It was recommended that the Minister should be required to explain whether any guidance will be provided to local authorities on the appropriate exercise of seizure and forfeiture powers and to confirm that the use of force will not be sanctioned by individual byelaws.

International Crimes and Private Prosecutions

It was stated by the committee that taking measures which create a more limited opportunity for prosecution appears to be a retrograde step in connection with the international obligations which require these offences to be prosecuted. Before this change is approved, the JCHR recommended that the Minister be at least required to show how the Government intends to illustrate its ongoing commitment to the public investigation and prosecution of these offences.

It was recommended that if no further justification for the existing proposal is provided, the Bill be amended to substitute the requirement for the DPP to consent with a requirement for the applicants to notify the DPP of any application for an arrest warrant.

In light of the seriousness of the offences concerned, the committee considered that any changes to the mechanics of prosecution of international crimes in the UK should be carefully considered with a view to improving the effectiveness of any prosecution.

The full JCHR report on the Police Reform and Social Responsibility Bill is available at http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/138/13802.htm

NPIA
National Policing
Improvement Agency

Legal Services
Chief Executive Officer Directorate
www.npia.police.uk