

# Digest



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CASELAW Police News Diversity  
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DIVERSITY Criminal Justice

The NPIA Digest is a journal produced each month by the Legal Services Team of the Corporate and Public Affairs 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.

This edition contains a summary of new legislation, proposals and reviews of issues relating to policing practice including: the third instalment of the new Equality Bill, details of the proposed Policing, Crime and Private Security Bill and the latest progress report on other Bills, the HMIC 'Adapting to Protest' Report on the policing of the London G20 protests, the Custody Provisions of the Corporate Manslaughter and Corporate Homicide Act 2007, HMIC's Progress Report on Forces' delivery of the Prevent strategy, details on the Consultation on Policy Proposals for Specific Duties of public bodies in the Equality Bill and Guidance for dealing with any conflicts arising from tensions between Religion and Sexual Orientation in the workplace.

There are also a number of articles outlining recently published Government and Parliamentary reports and initiatives including; the Government's Safety and Security Strategy for the 2012 London Olympics, the Home Office Paper setting out the new performance landscape for crime and policing, the Government paper outlining policy proposals on Building Britain's Future, details of the UK's second National Security Strategy and its first Cyber Security Strategy and the Home Affairs Committee Report on the cost of policing football matches.

As usual, the NPIA Digest also covers the latest Home Office Circulars, research papers, as well as sections on recent case law and Statutory Instruments.

The Case law is produced in association with



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## Contents

<b>DIVERSITY .....</b>	<b>5</b>
Age Discrimination Proposals for the Equality Bill .....	5
Consultation on Policy Proposals for Specific Duties in Equality Bill .....	5
Institute of Equality and Diversity Practitioners Sets Agenda for Improving Standards .....	6
Most Homophobic Crimes in Northern Ireland Unreported .....	7
Stonewall Launches Guidance for Employers on Managing Perceived Tensions Between Sexual Orientation and Religion .....	8
<b>TRAINING AND DEVELOPMENT .....</b>	<b>9</b>
ACPO 2009 Guidance on the Management, Command and Deployment of Armed Officers Published .....	9
ACPO 2009 Guidance on Command and Control .....	9
NPIA Offer New Training Course for Critical Incident Awareness .....	10
<b>EMPLOYMENT .....</b>	<b>11</b>
Integrated Competency Framework V10 Launched .....	11
New Policing National Occupational Standards Approved .....	11
<b>LEGISLATION .....</b>	<b>12</b>
The Equality Bill .....	12
Draft Legislative Programme 2009/10 Includes Policing, Crime and Private Security Bill .....	15
New Penalties for Failure to Wear Seatbelts and Using Illegal Number Plates .....	16
Bills before Parliament - Progress Report .....	16
<b>GOVERNMENT AND PARLIAMENTARY NEWS .....</b>	<b>18</b>
Government's Blueprint for Building Britain's Future .....	18
Updated National Security Strategy 2009 Launched .....	23
First UK Cyber Security Strategy Published .....	25
Government's Safety and Security Strategy for 2012 London Olympics Published .....	26
Home Affairs Committee Reports on Policing 10 Years after Macpherson .....	27
Freedom of Information Act 2000: Codes of Practice Updated to Preserve Information for Future .....	27
Home Affairs Committee Reports on Cost of Policing Football Matches ..	28
Commons Select Committee Report on Policing and Crime Bill .....	29
Lords Select Committee Report on CONTEST Strategy .....	29
<b>POLICE .....</b>	<b>31</b>
HMIC Publishes Review of Police Response to Public Protest .....	31
Home Office Paper Surveys New Performance Landscape for Crime and Policing .....	32
Delivery of 'Prevent' Strategy is Reliant on Police and Partners Working Together .....	35
Custody Provisions of Corporate Manslaughter and Corporate Homicide Act 2007 .....	36
Inspectorate Report States PSNI Custody Facilities Performing to an 'Acceptable Standard' .....	37
Criminal Justice and Police Act 2001: Replacement Guidance Issued .....	38
NPIA Annual Report 2008/09 Published .....	38
APA Warn Against Proposals for Directly Elected Police Commissioners ..	39

Home Office to Consider Inspector’s Authority to Drug Test to Tackle Violent Crime .....	40
--	----

**CRIME ..... 41**

Home Office Publish Findings from the British Crime Survey and Police Recorded Crime 2008/09 .....	41
New Strategy to Tackle Serious Organised Crime .....	42
Forced Marriage Unit Issue New Guidance for Professionals .....	43
DPP Issues Guidance on Confiscation .....	44
Home Office Publish Research Report on Organised Immigration Crime .	45
Communities to Benefit from Seized Assets .....	46

**CRIMINAL JUSTICE SYSTEM ..... 47**

Research Finds Excessive Delays Await Child Witnesses .....	47
First Mental Health Courts Begin Pilot .....	48
HMCS Publishes Annual Report .....	48
Sentencing Guidelines Council and Sentencing Advisory Panel Launch Joint Annual Report .....	49
Sentencing Guidelines Council Consults on Sentencing of Youths .....	50

**NEWS IN BRIEF ..... 51**

Mobile Information Symposium to be Held .....	51
---	----

**CASE LAW ..... 52**

**CASE LAW - EVIDENCE AND PROCEDURE ..... 52**

Conviction for Violent Offence Following Issue of Fixed Penalty Notice Arising from Same Incident Was Not an Abuse of Process .....	52
Final Warning Was Unlawful Due to Lack of Clear and Unambiguous Admission of Guilt .....	53
Warrant Which Failed to Properly Identify Articles Sought and Related to Special Procedure Material Was Unlawful .....	55

**CASE LAW - GENERAL POLICE DUTIES ..... 57**

Applications for Disclosure to Police of Documents in Care Proceedings Should Include Clear Statements of Who Will Receive the Information and the Purpose to Which it Will be Put .....	57
--	----

**CASE LAW - TRAFFIC ..... 59**

Unlawful Arrest for Driving While Over the Limit Did Not Render Subsequent Blood Test Unlawful .....	59
--	----

**CASE LAW - HUMAN RIGHTS ..... 60**

Indefinite Notification Requirement Under Sexual Offences Act 2003 is Incompatible with Right to Respect for Private and Family Life .....	60
--	----

**STATUTORY INSTRUMENTS ..... 63**

## Age Discrimination Proposals for the Equality Bill

The Government Equalities Office published a consultation document 'Equality Bill: Making it work - ending age discrimination in services and public functions' on 29 June 2009. There has been legal protection from unjustifiable age discrimination in employment and vocational training in Great Britain since 2006, however people are still not legally protected from age discrimination outside work. The Government announced in June 2008 that it would use the Equality Bill to outlaw unjustifiable age discrimination against adults aged 18 and over by those providing goods, facilities and services and exercising public functions.

The consultation which intends to ban age discrimination sets out how the legislation will enable things that are beneficial to continue whilst banning age discrimination.

The Solicitor General announced on 1 July 2009 that the Government are to bring forward an amendment to the Equality Bill to protect people who experience discrimination because of a combination of two characteristics. At the moment it is only possible to bring separate discrimination claims relating to one protected characteristic (age, disability, gender, race, religion or belief, sexual orientation). The new 'dual discrimination' clause which the Government wants to insert in to the Equality Bill would allow people to make a claim if they were directly discriminated against because of a combination of two relevant protected characteristics.

The closing date for comments is 30 September 2009. The consultation documents can be found at [http://www.equalities.gov.uk/news/age\\_consultation.aspx](http://www.equalities.gov.uk/news/age_consultation.aspx)

## Consultation on Policy Proposals for Specific Duties in Equality Bill

On 11 June 2009, the Government Equalities Office published a consultation document 'Equality Bill: Making it work' setting out policy proposals for the specific public sector equality duties for ending age discrimination in services and public functions.

A set of principles set out originally in the 'Discrimination Law Review consultation: A Framework for Fairness' in 2007 was used. These principles are: use of evidence, consultation and involvement, transparency and capability. Based on these principles a number of proposals have been developed to identify the specific public sector duties which are now the subject of consultation.

The proposals include:

- ◆ Public authorities should develop and publish equality objectives, with reference to the relevant evidence and the requirements of the general duty, and set out the steps they intend to take to achieve them;
- ◆ In developing their objectives public authorities should take into account certain priority areas as directed by the relevant Secretary of State;



- ◆ Public authorities should report annually on progress against their objectives, and review their objectives at least every three years;
- ◆ Public authorities with 150 or more employees should publish their gender pay gap figures, their black and minority ethnic employment rates and their disabled people employment rates;
- ◆ Public authorities should demonstrate how they have taken into account evidence of the impact on equality in the design of key policy and service delivery initiatives and what difference this has made;
- ◆ Public authorities should take reasonable and proportionate steps to consult and involve representatives of employees, service users and other relevant groups they have identified as having an interest in how they design their policies and deliver their services (in particular those from protected groups whom the duty is designed to help) when they are setting their equality objectives, developing their action plans and reviewing progress; and
- ◆ Relevant Secretaries of State should report on key equality achievements and challenges across their policy sectors at least every three years.

The consultation document also proposes a set of specific duties which will help public bodies to use public procurement to contribute to delivery of their equality objectives under the Equality Duty. These consist of requirements on contracting authorities:

- ◆ When setting out their equality objectives and the steps they intend to take to achieve them, to include how they will ensure that equality factors are considered as part of their public procurement activities to help contribute to the delivery of those objectives;
- ◆ To consider the use of equality-related award criteria where they relate to the subject matter of the contract and are proportionate; and
- ◆ To consider incorporating equality-related contract conditions where they relate to the performance of the contract and are proportionate.

The consultation period ends on 30 September 2009.

The full consultation document for ending age discrimination in services and public functions 'Equality Bill: Making it work. Policy Proposals for specific duties - A Consultation' can be found at <http://www.equalities.gov.uk/pdf/Specific%20Duties%20Consultation%20DocumentWEB.pdf>

## Institute of Equality and Diversity Practitioners Sets Agenda for Improving Standards

The first annual general meeting of the Institute of Equality and Diversity Practitioners (IEDP) took place on 12 June 2009. Linda Bellos, is the Institute's newly elected chair.

The key objectives of IEDP are:

- ◆ To help and support those working in the Equality and Diversity sector;
- ◆ To raise standards with a priority to establish a competency framework that will set minimum standards of practice; and
- ◆ To have a high profile in shaping the future of equality and diversity; in particular through debates on the Equality Bill as it passes through Parliament.

The key challenges facing the IEDP include:

- ◆ The development and growth of its membership;
- ◆ To set standards for those working in the sector; and
- ◆ To influence the debates on equality and human rights;

The AGM discussed concerns about the level of practice in what is an unregulated equality, diversity and human rights sector. There was agreement that the IEDP's role should be to set levels of good practice.

There was support for the IEDP's wish to be involved at all aspects of equality law and to support practitioners to transcend the traditional 'silo' of human resources. The meeting recognised that many employers still regarded equality and diversity as an employment issue, ignoring fair access to goods, facilities and services.

More information about the Institute of Equality and Diversity Practitioners is available at <http://www.iedp.org.uk/>

## Most Homophobic Crimes in Northern Ireland Unreported

On 2 June 2009 a new report 'Through our eyes: Perceptions and Experiences of Lesbian, Gay and Bisexual People towards Homophobic Hate Crime and Policing in Northern Ireland' was published claiming that the majority of homophobic hate crimes in Northern Ireland are not reported to police despite appeals for victims to come forward. The study was commissioned by the Police Service of Northern Ireland (PSNI) and while gay rights campaigners acknowledge the efforts of officers to reach out to the Lesbian, Gay and Bisexual (LGB) community, they said more work needed to be done.

The survey of more than 1,000 people compiled by the Rainbow Project found that 64% of homophobic incidents in the last three years were not reported. The Rainbow Project Equality Officer John O'Doherty, who carried out the research, said "Hate crime has a devastating effect on victims, those who fear being a victim and on society in general."

The author noted that the PSNI have made substantial progress in gaining the co-operation of the LGB community and improving perceptions of the PSNI. However, there are still high levels of homophobic hate crime throughout Northern Ireland and relatively low levels of reporting.

The key findings of the report include:

- ◆ 39% of LGB people are worried about being a victim of crime;

- ◆ 39% alter their behaviour to avoid others knowing they are not heterosexual;
- ◆ 21% of gay and bisexual males, and 18% of females have suffered homophobic attacks in the last three years;
- ◆ 64% of homophobic incidents go unreported; and
- ◆ Over half of LGB people believe the police are professional and helpful, but 21% have experienced problems with police.

The report recommended that greater efforts be made by police and other agencies to ensure homophobic crime is reported, with the promotion of online or third party reporting. There was also a recommendation for police training and protocols to be shaped to enhance the service to communities in all police districts across Northern Ireland.

The full report 'Through our eyes: Perceptions and Experiences of Lesbian, Gay and Bisexual People towards Homophobic Hate Crime and Policing in Northern Ireland' can be found at <http://www.rainbow-project.org/dev/files/report.pdf>

## Stonewall Launches Guidance for Employers on Managing Perceived Tensions Between Sexual Orientation and Religion

On 3 July 2009 Stonewall published new guidance for employers on practical ways of managing perceived tensions between gay people and people of faith in the 21<sup>st</sup> century workplace. The guidance is based on practical solutions already developed among the 470 major employers now working with the charity. The employer's guide provides essential advice on how to avoid conflicts which can arise at work.

Ben Summerskill, Stonewall Chief Executive said "We recognise that there are still some tensions between people of faith and the 1.7 million gay people in the British workplace. By preparing for difficult situations, employers can manage potential conflicts with confidence."

Stonewall's new guidance, funded by the Equality and Human Rights Commission, examines the legal position and the need for organisational clarity. There are detailed case studies from a range of sectors which demonstrate how employers can accommodate the needs of both sides in any disagreement, alongside lessons learned from each case.

The Stonewall guidance 'Religion and Sexual Orientation - How to manage relations in the workplace' can be found at <http://www.stonewall.org.uk/workplace/3442.asp>



## ACPO 2009 Guidance on the Management, Command and Deployment of Armed Officers Published

The ACPO Manual of Guidance on the Management, Command and Deployment of Armed Officers has now been published and on 1 November 2009 will formally replace the current ACPO Manual of Guidance on the Police Use of Firearms (2006). The manual sets out the guidance issued by the Association of Chief Police Officers of England, Wales and Northern Ireland (ACPO) on the management, command and deployment of armed officers. The provisions in the manual have also been endorsed by the Association of Chief Police Officers in Scotland.

The guidance has been developed over the last 18 months by the Operational Policing Practice team within the Practice Improvement unit of the National Policing Improvement Agency. It has been developed in consultation with subject matter experts, the ACPO Working Group on Armed Policing and external stakeholders.

This revised manual places the management, command and deployment of armed officers into the context of general policing and provides:

- ◆ Guidance on the appropriate issue and use of firearms and related less lethal options within the Police Service;
- ◆ A basis for the training of all relevant police staff in matters relating to the operational use of firearms. This includes command issues at strategic, tactical and operational levels; and
- ◆ Guidance on command structures, tactical options and operational issues associated with the deployment of Authorised Firearms Officers (AFOs).

The guidance is available as an interactive PDF which can be downloaded from Genesis, the NPIA website and the ACPO Armed Policing website. For further information, please contact Mark Ewan on 01480 33 4575 or Anna Dawson on 01480 33 4737.

## ACPO 2009 Guidance on Command and Control

The guidance, developed in consultation with the Police Service and partner agencies, is the first step in establishing a consistent service-wide approach to command and control that will include, nationally accredited competency-based training programmes and a review of existing ACPO doctrine. It also aims to provide partner agencies with a better understanding of the principles of command and control that the Police Service employ.

The guidance is aimed at all officers who perform a command function, providing them with a framework of key principles for managing both spontaneous incidents and planned operations at a local, regional and national level. It follows the Gold, Silver and Bronze model of command which is widely used by the Police Service and partner agencies. The guidance also describes the importance of effective decision-making in the context of the Conflict Management Model.

Supporting the guidance is a series of documents that will help police forces implement it more consistently and efficiently. These include a PowerPoint presentation that provides a brief overview of the guidance for frontline officers and an Excel spreadsheet containing a list of the key principles.

The guidance is available as a hard copy and an interactive PDF which can be downloaded from Genesis. For further information, please contact Simon Newman of the NPIA's Practice Improvement Unit on 01480 334595.

## NPIA Offer New Training Course for Critical Incident Awareness

On 30 June 2009 the NPIA, through the National College of Police Leadership, have added a new training package on Critical Incident Awareness which is aimed at sergeants and provides a consistent national approach.

The new Critical Incident Awareness training package has been designed jointly by the NPIA and a steering group led by ACC Steve Devine, ACPO lead for Critical Incidents. It was produced to provide a consistent national approach to specifically address Recommendations 18-21 of the HMIC Thematic Inspection of Frontline Supervision.

The aim of the package is to supply forces with a training toolkit that comes with guidelines around the suggested minimum standards and includes material that forces can customise to better meet the needs of its specific policing context.

Further information about the Critical Incident Awareness training package is available at <http://www.npia.police.uk/en/13519.htm>

The full thematic review of frontline supervision and leadership in the Police Service of England and Wales by HMIC 'Leading from the Frontline' can be found at <http://inspectors.homeoffice.gov.uk/hmic/inspections/thematic/Frontline/>

## Integrated Competency Framework V10 Launched

On 26 June 2009 Skills for Justice made Version 10 of the Integrated Competency Framework (ICF) available in the subscriber area of their website. Version 10 of the ICF features a number of changes and improvements, including the development of new activities, new role profiles, and amendments to existing role profiles as well as amendments and new links to National Occupational Standards (NOS) some of which relate to policing functions.

To access the ICF on the Skills for Justice website you will require a login and password. New subscribers should contact Brendon Kenny in the Marketing and Communications department on 0114 2317375 or email [info@skillsforjustice.com](mailto:info@skillsforjustice.com). You will need to provide basic details such as your name, role, organisation, and contact information such as email address and a phone number.

More information about the ICF is available via email at [icf@skillsforjustice.com](mailto:icf@skillsforjustice.com) or contact Clare Naseby on 0114 2317391.

## New Policing National Occupational Standards Approved

Following various consultations, Skills for Justice announced that a range of National Occupational Standards (NOS) in the following areas have been approved and are ready for use.

The new Policing NOS are:

- ◆ Covert Human Intelligence Sources;
- ◆ Surveillance and Covert Search;
- ◆ Covert Operations;
- ◆ Covert Investigations;
- ◆ Custody;
- ◆ Financial Investigations;
- ◆ Intelligence; and
- ◆ Interview and debrief offenders assisting investigations.

The new NOS can be viewed along with all approved standards Skills for Justice at <http://www.skillsforjustice-nosfinder.com/>

## The Equality Bill

This article is the third part in a series providing detail of the provisions in the Equality Bill. The Bill has now completed the committee stage; no date has yet been set for the report stage in the House of Commons. The previous articles, in the June and July 2009 editions of the *NPIA Digest* covered Parts 1 and 2 of the Bill. Part 1 of the Bill places a duty on certain public authorities to consider the desirability of reducing socio-economic disadvantages in exercising their functions. Part 2 of the Bill covers key concepts of equality, and set out the protected characteristics and prohibited conduct.

The protected characteristics are:

- ◆ Age;
- ◆ Disability;
- ◆ Gender reassignment;
- ◆ Marriage and civil partnership;
- ◆ Pregnancy and maternity;
- ◆ Race;
- ◆ Religion and belief;
- ◆ Sex; and
- ◆ Sexual orientation.

The prohibited conduct is:

- ◆ Direct discrimination;
- ◆ Discrimination specific to certain protected characteristics;
- ◆ Indirect discrimination;
- ◆ Harassment; and
- ◆ Victimisation.

This article will cover Parts 3 and 4 of the Bill, and Chapters 1 and 2 of Part 5.

### Part 3: Services and Public Functions

This Part prohibits discrimination, victimisation and harassment by providers of services or people who perform public functions. The prohibition does not apply to the protected characteristic of age in relation to people under the age of 18, or to the protected characteristic of marriage or civil partnership. The prohibitions in relation to harassment only do not apply to the protected characteristics of religion or belief or sexual orientation. If the act complained of is made unlawful by Parts 4 (Premises), 5 (Work) or 6 (Education) then those provisions apply. This Part also does not apply to breaches of equality clauses or rules or non-discrimination rules.

Clause 27 states that a person (a 'service-provider') concerned with the provision of a service to the public or a section of the public, whether for payment or not, must not:

- ◆ Discriminate against a person or victimise a person requiring the service by not providing the service;
- ◆ In relation to providing the service:
  - Discriminate against or victimise someone either as to the terms on which they provide the service to them, by terminating the provision of the service to them, or by subjecting them to any other detriment; or
  - Harass a person requiring the service or a person to whom they provide the service.

These provisions will also apply to service-providers who perform functions of a public nature. Clause 27 also provides that persons performing a public function which is not the provision of a service must not, in the exercise of that function, do anything constituting discrimination, harassment or victimisation. This would include functions such as law enforcement. In relation to actions taken in connection with the grant of entry clearance into the United Kingdom, the prohibitions in clause 27 will apply, in relation to race, religion or belief, to those actions even if taken outside the United Kingdom.

Part 3 places a duty to make reasonable adjustments on service-providers and those exercising public functions, and gives effect to Schedule 2 for this purpose. Schedule 2 details how the duty in clause 19 of the Bill (covered in the July edition of the *NPIA Digest*) applies in relation to the provision of services and the exercise of public functions. Schedule 3 is also given effect by Part 3, and contains exceptions to the prohibition in clause 27, including in relation to certain specified aspects of constitutional matters (including preparing, making and considering legislation) and immigration.

Clause 29 contains interpretation provisions. For the purposes of Part 3, the provision of a service includes the provision of goods and facilities. Not providing a service is to include not providing the service to the same quality the service-provider would usually provide, and includes not providing the service on the same terms on which it would usually provide it.

#### Part 4: Premises

This Part prohibits discrimination, harassment and victimisation by a person disposing of and managing premises. The prohibition does not apply to the protected characteristics of age, or marriage and civil partnership. If the act in question is also unlawful under Part 5 (Work) or Part 6 (Education) then Part 4 does not apply. Part 4 also does not apply in relation to the provision of accommodation generally where it's provided for short stays by people living elsewhere, nor does it apply where the provision of accommodation is only for the purpose of exercising a public function or providing a service to the public or a section of the public. A duty to make reasonable adjustments is included.

## Part 5: Work

### Chapter 1: Employment etc.

Chapter 1 makes provision in relation to employees and applicants. By clauses 36 and 37, an employer must not:

- ◆ Discriminate against or victimise a person:
  - In the arrangements they make in deciding whom to offer employment;
  - As to the terms on which they offer the person employment; or
  - By not offering the person employment;
- ◆ Discriminate against or victimise an employee of theirs:
  - As to the employee's terms of employment;
  - In the way they afford the employee access, or by not affording that access, to opportunities for promotion, transfer or training, or for receiving any other benefit, facility or service;
  - By dismissing the employee; or
  - By subjecting the employee to any other detriment;
- ◆ In relation to employment by them, harass a person who is an employee of theirs, or a person who has applied to them for employment.

In relation to discrimination relating to the protected characteristics of sex or pregnancy and maternity, a term of employment relating to pay is treated as being discriminatory if, were it accepted, it would give rise to an equality clause, or if the term is directly discriminatory.

For the purposes of the harassment prohibition, an employer is to be treated as harassing the person if a third party (a person other than the employer or an employee of theirs) harasses the employee in the course of their employment, where the employer has failed to take reasonably practicable steps to prevent this. This only applies where the employer is aware that the employee has been harassed by a third party in the course of their employment on at least two occasions previously.

A duty to make reasonable adjustments applies to an employer.

Clauses 38 to 56 cover specific prohibitions in relation to specified types of work, which are not covered by the clauses on employment. These include provisions relating to contract workers, partnerships, barristers, appointment to personal or public offices, qualifications bodies when conferring relevant qualifications, trade organisations, local authority members and police officers. In terms of clause 39, holding the office of constable, or holding an appointment as a police cadet, is to be treated as employment:

- ◆ By the chief officer, in respect of any act done by the chief officer in relation to the constable or police cadet, or appointment to the office of constable or as a police cadet;



- ◆ By the responsible authority, in respect of any act done by the authority in relation to the constable or police cadet, or in relation to the appointment to the office of constable or as a police cadet.

This provision does not apply to service within the Civil Nuclear Constabulary. Constables at the Serious Organised Crime Agency or the Scottish Police Services Authority are to be treated as employed by those bodies. Constables at the Scottish Crime and Drugs Enforcement Agency are to be treated as employees of the Director General of the agency. Clause 40 gives interpretation of key terms in clause 39, such as 'chief officer' and 'responsible authority'.

## Chapter 2: Occupational Pension Schemes

Chapter 2 provides that occupational pension schemes must be taken to include a non-discrimination rule. This is a rule that a responsible person (such as a trustee of a scheme) must not discriminate against another in carrying out functions under the scheme. The responsible person must not, in relation to the scheme, harass or victimise another person. A breach of the rule is a contravention of Part 5 for the purposes of Part 9 (enforcement), and a duty to make reasonable adjustments is placed on a responsible person.

More information about the Bill and its progress through Parliament can be found at <http://services.parliament.uk/bills/2008-09/equality.html>

## Draft Legislative Programme 2009/10 Includes Policing, Crime and Private Security Bill

The Prime Minister announced in the Draft Legislative Programme for 2009/10 on 29 June 2009 a Policing, Crime and Private Security Bill. The proposed Bill provides backing for communities in setting fair rules to tackle crime and anti social behaviour through increasing protection against a range of threats, including violence, anti social behaviour and financial exploitation by:

- ◆ Further cutting police officer red tape by reducing the reporting requirements on stop and search forms (whilst retaining ethnicity monitoring oversight) so that police officers can spend more time tackling the crime and less time completing forms;
- ◆ Retrospectively adding to the DNA database those convicted of serious violent or sexual offences before the 2004 change in the law which made it routine procedure to collect the DNA of offenders. Many of those offenders who were arrested before 2004 will now be back in the community. This new power, which is currently being consulted upon, would enable the police to take their DNA and continue to be able to tackle so-called 'cold' cases;
- ◆ Providing the police with powers to compel sexual and violent offenders who have been convicted and imprisoned abroad to provide a DNA sample on their return to the UK;
- ◆ Protecting women from violence through considering any recommendations for legislation from the response to the Violence Against Women and Girls consultation to be published in the Autumn 2009;

- ◆ Providing greater support to struggling parents who cannot cope with a child's anti social behaviour through ensuring that a parenting assessment is carried out on every child aged 10 to 15 years who is considered for an Anti Social Behaviour Order (ASBO) and, for the same age group, will make a Parenting Order automatic upon breach of a child's ASBO; and
- ◆ Introducing a compulsory licensing requirement for private wheel clamping businesses. The ongoing consultation proposes bringing clamping businesses under the regulation of the Security Industry Authority, which already vets and licences individuals, to ensure that known criminals are prevented from abusing positions of trust.

This Bill extends to England and Wales, with some provisions also applying to Scotland and Northern Ireland. The progress of this Bill will be monitored in the regular feature 'Bills before Parliament - Progress Report'. Further information about the Bill can be found at <http://www.commonleader.gov.uk/output/Page2832.asp>

## New Penalties for Failure to Wear Seatbelts and Using Illegal Number Plates

On 29 June 2009 the Home Office announced that fixed penalty notices for failing to wear a seatbelt or putting illegal plates on a vehicle will increase from £30 to £60. The increase follows a public consultation seeking views on how to tackle the fact that many motorists persist in failing to comply with seatbelt laws, despite repeated warnings that they are risking serious injury or death to themselves and others.

It is clear that whilst educational campaigns and publicity have made considerable differences in behaviour, there are some drivers and passengers who are still ignoring the fact that seat belts reduce the risk of dying in a 30mph crash by 60%.

The increase in the fixed penalty also covers misrepresentation of vehicle registration marks. This includes failure to conform to rules on font, size and colour of number plates. The use of illegal number plates can have a significant impact on criminal investigations and crime detection.

The full press release can be found at <http://press.homeoffice.gov.uk/press-releases/new-penalties-seatbelts-plates>

## Bills before Parliament - Progress Report

In 2008/09 session of Parliament the following Bills are progressing as follows through the parliamentary process:

### Public Bills

- ◆ **Borders, Citizenship and Immigration Bill** - following agreement by both Houses on the text of the Bill it received Royal Assent on 21 July 2009. It is now an Act of Parliament - Borders, Citizenship and Immigration Act 2009 and the full text can be found at [http://www.opsi.gov.uk/acts/acts2009/pdf/ukpga\\_20090011\\_en.pdf](http://www.opsi.gov.uk/acts/acts2009/pdf/ukpga_20090011_en.pdf);

- ◆ **Coroners and Justice Bill** - this Bill was introduced by the Ministry of Justice. It has completed its progress through the House of Commons and had its second reading in the House of Lords on 18 May 2009. The committee stage of this Bill commenced on 9-10 June 2009 with further dates in July 2009. The report stage in the House of Lords is planned for October 2009;
- ◆ **Equality Bill** - this Bill has been published in a trial format by the Government Equalities Office. The bill has completed the committee stage in the House of Commons and will be reprinted to incorporate the changes made. No date has yet been set for the report stage in the House of Commons;
- ◆ **Policing and Crime Bill** - this Bill was introduced by the Home Office and has completed its progress through the House of Commons and had its third reading on 19 May 2009. The Bill received its second reading in the House of Lords on 3 June 2009. The committee stage of the bill began on 22 June 2009 and will re-commence on 13 October 2009; and
- ◆ **Policing, Crime and Private Security Bill** - see article above.

The government also publishes a number of Bills each parliamentary session in draft form, before they are introduced in Parliament as formal Bills. This enables consultation and pre-legislative scrutiny before a Bill is issued formally.

The Government has introduced the following Draft Bills in this session of Parliament:

- ◆ Draft Bribery Bill;
- ◆ Draft Communications Data Bill; and
- ◆ Draft Community Empowerment Bill.

The progress of these Bills can be found at <http://services.parliament.uk/bills/>

## Government's Blueprint for Building Britain's Future

On 29 June, the Government published 'Building Britain's Future', a major policy document outlining how it intends to tackle the most important issues facing the country over the coming years.

The summary below sets out the key points that are relevant to policing and work with partners:

- ◆ One of the key themes is further public service reform through an intention to move away from an approach based around central Government direction and national targets towards one which emphasises high quality, personalised public services, including responding to and delivering against enforceable minimum levels of entitlements, or rights, available to all citizens. This will involve a dispersal of power so that services are designed and driven for and by communities, and rights of redress made available where entitlements are not delivered. By doing so, it is intended that the standards and quality of public services will be driven up;
- ◆ In terms of policing, this will mean further developing the recently launched Policing Pledge; increasing accountability; and increasing the public's say in prosecution measures and Community Payback, as outlined in the recent Green Paper, 'Engaging Communities in Criminal Justice';
- ◆ Public spending will be rigorously prioritised with targeted investment and a closer focus on efficiency and productivity at every level. Difficult choices will be made where it becomes necessary to switch and prioritise spending; and
- ◆ Incorporated into Building Britain's Future is the Draft Legislative Programme (see Legislation section of this edition) for the final session of Parliament in 2009/10 before the next general election, due by June 2010. Consultation on this programme closes on 21 September 2009 and will inform the content of the Queen's speech towards the end of this year.

The key points from both the main policy document and the Draft Legislative Programme (DLP) relevant to policing and which also impact on police work with partners, particularly Local Authorities, are described below:

### Chapter 1 - Rebuilding trust in a modern, democratic Britain

- ◆ Proposals will shortly be brought forward in a Local Democratic Renewal consultation on offering stronger, more clearly defined powers to local and city-regional Government; improved governance arrangements at all levels of local Government; and to strengthen accountability to local people. This could include additional powers for communities and councils to scrutinise public services in their area. Results of this consultation will be received in time to shape the Government's forward legislative programme for the 2009/10 Parliamentary session and to feed into the Queen's speech at the end of the year;
- ◆ A commitment to promoting wider adoption of the Participatory Budgeting pilots currently underway in various areas, so that as many

neighbourhoods as possible have the chance to discuss and prioritise spending on issues they see as the most important. (35% of LAAs currently offer people direct say in funding priorities);

- ◆ Improved access to public information is seen as crucial in giving the public the ability to hold service providers to account. Proposed measures include reducing the 30 year rule for the release of documents to 20 years and possibly broadening the application of the Freedom of Information Act 2000 (FoI) to include additional bodies; and improving the ease with which people can access public information;
- ◆ A review will take place on protection for liberty and privacy in relation to how personal data is stored and used, with a clearer commitment to “only holding data that is necessary for significant public interest objectives and giving people opt-outs on data held on them wherever possible”; and
- ◆ Reviews will also be held on the application and implementation of recently published guidance on the use of police counter-terrorism powers including section 44 of the Terrorism Act 2000; and the protection of liberty and privacy in the operation of policing and border powers.

#### Chapter 2 - Real help now that builds a stronger Britain

- ◆ Public spending - plans for 2010/11 show that an extra £5 billion in efficiency savings can be made whilst protecting promised increased budgets including those for the police and local government; and
- ◆ Current budget projections are for continued real terms growth of 0.7% in current ('day-to day' as opposed to capital budget) spending from 2011/12 onwards.

#### Chapter 3 - Investing for the future: Building tomorrow's economy today

- ◆ A new advisory body, Infrastructure UK, will be set up to assist in providing a sharper focus to the Government's strategic work in enabling development of major infrastructure for energy, waste, water, communications and transport;
- ◆ Infrastructure UK will:
  - Identify the country's long-term infrastructure needs over a 5 to 50 year horizon;
  - Take stock of what existing plans are likely to deliver in the long term; and
  - Assess the scope for efficiencies and synergies between different types of infrastructure.
- ◆ A new Flood and Water Management Bill will be introduced to help address the immediate effects of climate change in the UK. It will aim to improve the management of flooding and water emergencies, including implementation of recommendations from the Pitt Review into the summer 2007 floods.

## Chapter 4 - Fair chances for all: Building the next generation of public services

This chapter explains in more detail the next stage of public service reform to be characterised by the development of a system of clear entitlements for individuals over the services they receive including:

- ◆ The intention to devolve to greater responsibility and power to the frontline. The Government will take a more streamlined and strategic approach so that “services look outwards more than they look upwards”. However, Government will retain a strategic role in tackling failure, ensuring high standards, supporting innovation and creating the right incentives to underpin improvement (to include specifying what individual entitlements for different public services will be);
- ◆ The Government remains committed to delivering the improvements set out in the Public Service Agreements (PSAs) in 2007;
- ◆ Importance in ensuring that new entitlements are available to all. To be driven by provision in the Equality Bill for a new duty requiring public bodies to consider the needs of different groups in the community when designing and delivering public services;
- ◆ Extension of clear public service entitlements already provided in schools and the NHS into policing to include strengthening the local community’s entitlements to a high quality, responsive service (see Chapter 5 below for more details). This refers mainly to the Policing Pledge and communities having a say in prosecutions and Community Payback;
- ◆ Responsive, non-legal redress mechanisms to enable people to challenge non-delivery of entitlements will be tailored to particular public services. This could include giving users the power to seek alternative services, or greater powers to complain and have their complaint heard by an independent ombudsman;
- ◆ Effective redress not intended to be a threat, but to sustain improvements and ensure services are genuinely universal. Linked to the importance of provision of improved information on how well services are performing so that people have sufficient information to hold public services to account effectively;
- ◆ Proposals on new entitlements and redress mechanisms will be further developed and consulted on over the next 12 months;
- ◆ Prioritising investment and efficiency savings in public services:
  - Operational Efficiency Programme (OEP) - identified £9 billion in savings from 2011/12, over and above £35 billion already identified. These savings will go towards funding the Government’s key priorities. Savings to be delivered through ‘value for money measures’ in support services such as IT and procurement; and
  - Public Value Programme - expanded in 2009, includes improving police workforce productivity to generate savings of around £1 billion (equivalent to 20,000 officers).



- ◆ Longer term need to devise new way of delivering services to further improve outcomes and reduce costs and may include:
  - Empowering citizens through provision of information so they can exercise greater control over services, for example building on current development of crime maps; and
  - Taking a 'whole area' approach to public services to encourage collaboration and innovation in local areas. This will help to deliver better services by focusing on the needs of users and reducing bureaucracy; to be explored through the 'Total Place' pilots announced in Budget 2009.

## Chapter 5 - Fair rules: Building a strong society

This chapter is the most significant in terms of policing and includes reference to issues already being taken forward from the Policing Green Paper; the Policing and Crime Bill; implementation of the Policing Pledge and proposals in the recent Green Paper, 'Engaging Communities in Criminal Justice' for giving communities more say over local crime priorities and justice.

- ◆ Community Payback and Community Cashback (the new initiative where funds recovered through proceeds of crime legislation will be given to local areas for communities to decide how it will be spent to pay back the community) will be extended to every area;
- ◆ Current pilots of problem-solving approaches in which courts make tackling the causes of crime part of sentencing, with local agencies working together on sentencing options for magistrates, including drug or alcohol treatment or housing support to be extended;
- ◆ The Policing Pledge and proposals in the 'Engaging Communities in Criminal Justice' Green Paper and 'Justice Seen, Justice Done' campaign will be built on in order to set out clearly what people can expect from their local police and justice system. This will include:
  - A right to minimum response times - 999 calls answered in 10 seconds; responses to emergencies in 15-20 minutes, non emergency 'priority' issues in 60 minutes, non-urgent enquiries in 48 hours, and complaints in 24 hours;
  - A right to police on the beat - with neighbourhood teams spending over 80 per cent of their time on the beat;
  - A right to a monthly beat meeting, where local policing priorities are agreed;
  - A right to support for community action - with CCTV where communities demand it, Community Crime Fighters and Neighbourhood Watch;
  - A right to more accessible, regular, and user friendly online and other information about crime and justice in your area, the action the police are taking, and what happens to criminals who are caught;

- A right to vote on how criminals pay back to the community - with online voting on Community Payback, and Community Cashback - where criminal assets are reinvested in the community;
- A right for victims to support and information about the progress of their case from the police and courts; and
- A right to have the victim's views taken into account in prosecutions and sentencing decisions at local level.

All but the last of these entitlements will be in place, and enforceable, across the country over the next 12 months.

- ◆ Further proposals on strengthening accountability and redress mechanisms covering the police service, including a stronger role for HMIC and rights to public hearings, will follow in a new Policing White Paper this autumn, which will:
  - Set out further options for police reform to ensure communities are safer and being responded to;
  - Respond to concerns over the policing of protests, emphasising the need for transparency and accountability in cases of alleged misconduct and a clear commitment to proportionate public order policing; and
  - How the Government will strengthen support for innovations driven by professionals that increase police effectiveness and bring them closer to communities, including initiatives by local Neighbourhood Policing Teams (NPT).
- ◆ Further Government action to encourage, support, or where required mandate local service providers to work together with NPTs and justice agencies in tackling crime and anti-social behaviour (ASB) will be provided;
- ◆ A new national 'Action Squad' of trouble-shooters has been launched to intervene in areas where there are high perceptions of ASB or where authorities are not doing enough to tackle it;
- ◆ Local people to be given more say on where additional CCTV coverage should be located or in some cases, the ability to complain if coverage is considered to be excessive;
- ◆ An Organised Crime Strategy (see below) will integrate both domestic and international responses to serious organised crime and include better coordination between agencies;
- ◆ A clear list of early warning signs will be developed to set out which signs would automatically lead to an assessment of a child for a range of services, e.g. parenting order or involvement on a Family Intervention Project. Such warning signs will include involvement in drugs or alcohol, domestic violence, persistent absence or exclusion from school, or a child's involvement in crime or ASB;

- ◆ Training will be provided over the next 12 months to Licensing Authorities, councils and the police to ensure the full range of powers available to deal with alcohol related crime and disorder are being used and to raise awareness of the new Mandatory Code of Practice for alcohol retailers (currently out for consultation); and
- ◆ Extension of new immigration points based system to include 'probationary citizenship'. Those who break the law for anything other than low level offences will stop progressing through the immigration system. Any applicant receiving a prison sentence of over a year or a number of shorter sentences will be subject to automatic deportation.

#### Chapter 6 - Strengthening family and community life

- ◆ Long term goal for every young person to undertake up to 50 hours of community service during their teenage years. Intention is to increase volunteering for all, but focusing on young people as priority - pilots to begin in early 2010 of ways to significantly increase proportion of 14 to 16 year olds undertaking community service;
- ◆ Provision of new or refurbished youth centres or other facilities in every constituency by 2018; and
- ◆ Legislation to implement recommendations from Lord Laming's recent progress report on the protection of children in England will be introduced in the next Parliamentary session.

#### Chapter 7 - Britain in a fairer and safer world

This chapter mainly covers foreign policy and national security and refers to the first annual update to the National Security Strategy and the first Cyber Security Strategy both recently published (see below). The update to the National Security Strategy presents an analysis of the changing threats to national security and the response to them as well as the longer term drivers of insecurity. An approach to build a safe, secure and resilient cyber space for the UK is set out in the Cyber Security Strategy.

The full document 'Building Britain's Future' is available at [http://www.hmg.gov.uk/media/27749/full\\_document.pdf](http://www.hmg.gov.uk/media/27749/full_document.pdf)

### Updated National Security Strategy 2009 Launched

The second 'National Security Strategy of the United Kingdom Update 2009 Security for the Next Generation' was published on 25 June 2009. In the first National Security Strategy there was an attempt to address national security for the modern age and the focus was on protecting citizens from the full range of risks that can cause harm. The updated strategy indicates the Government's understanding of the national security challenges, and their responses to them, and the need to now move beyond concepts of the security of the state and focus as well on the security of people, addressing the many challenges of the global world.

The updated National Security Strategy 2009:

- ◆ Outlines what progress the Government has achieved against the commitments made in the last year;
- ◆ Sets out how Government have continued their approach through an updated national security framework; and
- ◆ Assesses the challenges ahead, and outlines the Government's response to them including:
  - Tackling terrorism and instability in Afghanistan and Pakistan;
  - Nuclear security;
  - Energy security and climate change;
  - Pandemics;
  - Failing states; and
  - The challenges of strengthening global security through development.

As the first National Security Strategy demonstrated, instability anywhere in the world can affect UK interests and ultimately UK security more quickly and more fundamentally than ever before.

There has been progress against the commitments made last year in the original National Security Strategy including:

- ◆ The UK continues to play a leading role in tackling conflict, conflict prevention and stabilisation. Afghanistan and Pakistan remain critical to UK security and the Government's strategy for the region published in April 2009 sets out how they are improving security, and helping to improve governance and development;
- ◆ An increased preparedness and resilience for managing a flu pandemic which has been put into action in response to the current swine flu outbreak. This is part of other work to prepare for civil emergencies which included the publication last year of the UK's first ever National Risk Register;
- ◆ The Government has continued to work to tackle terrorism and in March 2009 published the UK's updated strategy for countering international terrorism (CONTEST) which continues to provide an effective and comprehensive response to terrorism; and
- ◆ Further action at home, within the EU and with international partners to tackle climate change which was agreed in Copenhagen in December 2009.

The report contains the Government's assessment of the implications of the global economic downturn on national security challenges. A Government evaluation of the economic slowdown is that it has not fundamentally altered the strategic security landscape. However it clearly has the potential to exacerbate global poverty, one of the main drivers of global insecurity. Above all, what it has illustrated is the need for co-ordinated global action to address global problems. The Strategy sets out UK plans for a multilateral approach to tackling conflict, climate change, and energy security.

The 'National Security Strategy of the United Kingdom: Update 2009 Security for the Next Generation' can be found at [http://www.cabinetoffice.gov.uk/reports/national\\_security.aspx](http://www.cabinetoffice.gov.uk/reports/national_security.aspx)

## First UK Cyber Security Strategy Published

On 25 June 2009 the Prime Minister announced the publication of the UK's first Cyber Security Strategy alongside the 2009 update of the National Security Strategy. The new measures are designed to combat threats in cyber space in order to provide protection for the UK and British citizens from the growing threats to our security in cyber space and to maximise potential opportunities in Digital Britain.

With over £50 billion spent online in the UK every year and 90% of high street purchases made using electronic transactions, new technology is an important component of national prosperity. However, with modern life increasingly dependent on computers and communications technology, cyber space is a new area where hostile states, terrorists, and criminals can all threaten UK security interests.

The cyber strategy will be supported by a dedicated Office of Cyber Security which will aim to drive forward a cross-Government programme of work and a new multi-agency Cyber Security Operations Centre in Cheltenham will provide the co-ordinated protection of the UK's critical IT systems. It will also aim to enhance the UK's ability to detect attacks, ensure Government and business have a shared picture of the risks, and provide better systems for sharing vital intelligence about threats and attacks securely.

The key priorities for implementing the strategy are:

- ◆ Developing a cyber industrial strategy, with opportunities for high tech businesses in the UK;
- ◆ A cyber security skills strategy to plug skills gaps in Government and industry;
- ◆ Making critical systems in the public and private sectors more resilient;
- ◆ Providing better advice to business and citizens about the nature of the risks and the protection they should take;
- ◆ Working with other countries to develop international law in this area;
- ◆ Tackling the use of cyber space by criminals and terrorists in line with the Association of Chief Police Officers' forthcoming strategy for law enforcement on cyber crime;
- ◆ Establishing a new ethics advisory group to make sure Government activity on cyber security is consistent with personal freedoms to use cyber space; and
- ◆ Stepping up emergency exercise planning for attacks and analysing cyber related threats in the Cyber Security Operations Centre.

The UK National Cyber Security Strategy 2009 is available at [http://www.cabinetoffice.gov.uk/reports/cyber\\_security.aspx](http://www.cabinetoffice.gov.uk/reports/cyber_security.aspx)

## Government's Safety and Security Strategy for 2012 London Olympics Published

The Home Secretary published on 21 July 2009 a shared Safety and Security Strategy aimed at hosting a safe and secure Olympic Games in 2012. The London 2012 Olympic and Paralympic Safety and Security Strategy sets out how the Government proposes to achieve its aim of a safe and secure Games, in keeping with the Olympic culture and spirit, and confirms that Olympic security will be delivered within the available £600 million funding.

Under the leadership of the Home Office, the strategy is the result of close cooperation between the Government Olympic Executive, the Olympic Delivery Authority, the London Organising Committee of the Olympic and Paralympic Games (LOCOG), the office of the London Mayor, the security and emergency services and a wide range of other Government departments and agencies.

The strategy sets out the principles that underpin the Government's planning for Olympic security, the threats the UK faces, and how the Government will achieve its aim of ensuring a safe and secure Games through a strategy to:

- ◆ Protect Olympic and Paralympic venues, events and supporting transport infrastructure, and those attending and using them;
- ◆ Prepare for events that may significantly disrupt the safety and security of the Games and ensure capabilities are in place to mitigate their impact;
- ◆ Identify and disrupt threats to the safety and security of the Games;
- ◆ Command, control, plan and resource for the safety and security operation; and
- ◆ Engage with international and domestic partners and communities, to enhance our security and ensure the success of our Strategy.

The Strategy will apply to competition venues and other areas directly and significantly affected by the Games as well as the transport routes that will carry a significant proportion of people to the competition venues.

Work is already being done to mitigate risk to the Olympic sites and where appropriate, the design and construction of Olympic venues and infrastructure will seek to 'design out' security vulnerabilities.

The London 2012 Olympic and Paralympic Safety and Security Strategy can be found at

<http://security.homeoffice.gov.uk/news-publications/publication-search/general/olympics-2012/Olympic-summary-A4.pdf?view=Binary>



## Home Affairs Committee Reports on Policing 10 Years after Macpherson

The Twelfth Report of Session 2008/09 of the House of Commons Home Affairs Committee (HAC) report 'The Macpherson Report - Ten Years On' was published on 22 July 2009.

On 22 April 1993, Stephen Lawrence was stabbed to death at a bus stop in South London in an unprovoked racist attack. The police were heavily criticised for their conduct of the investigation. A Judicial Inquiry led by Sir William Macpherson was announced in July 1997. Its report, published on 24 February 1999, found that the police investigation into Stephen's murder was 'marred by a combination of professional incompetence, institutional racism and a failure of leadership by senior officers.'

The HAC state that since then police have made 'tremendous strides' in the service they provide to ethnic minority communities and in countering racism amongst its own workforce. Sixty-seven of Macpherson's 70 recommendations have been implemented fully or in part in the ten years since his report was published.

However, the HAC expressed concerns that black communities in particular are disproportionately represented in stop and search statistics and on the National DNA Database. Indeed the gap has further increased since 1999. The HAC repeated their warning that any gains made by the use of stop and search may be offset by its potentially negative impact on community relations. The HAC indicate that the complex factors behind the over-representation of black people in the criminal justice system do not justify the level of disproportionality.

The HAC also made clear its disappointment that the police service will not meet its target to employ 7% of officers from ethnic minority communities nationally by 2009 and that black and minority ethnic officers continue to experience difficulties in achieving promotion, as well as being more likely to be subject to disciplinary procedures.

The House of Commons Home Affairs Committee report 'The Macpherson Report - Ten Years On' is available at <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/427/427.pdf>

## Freedom of Information Act 2000: Codes of Practice Updated to Preserve Information for Future

The Justice Minister announced on 16 July 2009 the publication of a new Code of Practice on managing digital and other records and the government's plans to extend the Freedom of Information Act 2000. The announcement outlined plans to make sure that more public information is made available and is preserved for future generations.

Freedom of Information depends on good record keeping and the preservation of information is important if it is to further increase transparency in public life.

The updated Code of Practice is a step towards ensuring that key records remain accessible to public bodies for day to day business. The Code recommends that public bodies introduce a strategy for the preservation of digital records to ensure that they can continue to be accessed and used and are resilient to future changes in technology.

The government has also published its response to the consultation on extending the Freedom of Information Act 2000. The government's response reflects the considerable support for extending the Act. A further consultation will now be undertaken with those proposed for inclusion within the scope of the Act including the Association of Chief Police Officers.

The consultation paper and the Government's response can be found at <http://www.justice.gov.uk/consultations/cp2707.htm>

The updated Freedom of Information Act 2000 Codes of Practice are available at <http://www.justice.gov.uk/guidance/foi-guidance-codes-practice.htm>

## Home Affairs Committee Reports on Cost of Policing Football Matches

The House of Commons (HAC) published its Tenth Report of Session 2008/09 entitled, 'The Cost of Policing Football Matches' on 17 July 2009.

The report concluded that there is a disparity between what football clubs are legally obliged to pay in policing costs and what the police estimate these costs to be as a result of grey areas in the current legislation and Home Office guidance. The HAC stated that it is unclear to what extent football clubs and other holders of commercial events are liable for policing away from their venue. This lack of clarity has led to a difference between what the police consider the full cost of policing the football match to be and what the clubs feel themselves liable to pay.

The recommendations made by the HAC included:

- ◆ Any increase in police costs which is attributable to the policing of a football match should be met by the clubs rather than the taxpayer;
- ◆ A standardised, approved method to decide upon the policing and chargeable element of a football match; and
- ◆ Definitive national guidance being drawn up by ACPO should bring a degree of uniformity into the provision of policing and form the basis for negotiations between the clubs and the police over the clubs' liability for payment.

The full report 'The Cost of Policing Football Matches' can be found at <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/676/676.pdf>

## Commons Select Committee Report on Policing and Crime Bill

The House of Lords Select Committee on the Constitution (HCSCC) published their sixteenth report of the parliamentary session 2008/09 entitled 'Policing and Crime Bill' on 2 July 2009.

The HCSCC examines the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution. In doing this they endeavour to identify questions of principle that arise from proposed legislation and which affect a principal part or parts of the constitution. This report draws attention to the following clauses in the Policing and Crime Bill.

The HCSCC reiterated their general concern about the trend of addressing problems associated with criminal activity and other anti-social behaviour through preventative injunctions. Part 4 of the bill introduces a new regime under which local authorities and the police may seek civil injunctions against individuals in the magistrates' courts in an attempt to control gang-related violence. Clauses in Part 2 of the bill modify the civil injunctions regime that already exist that enable magistrates' courts to make foreign travel orders to prevent sex offenders from leaving the United Kingdom. Part 8 of the bill contains measures that will extend the ambit of banning orders under the Football Spectators Act 1989.

Clause 96 proposes to insert new sections into the Police and Criminal Evidence Act 1984 which would enable the Secretary of State to make regulations about the retention, use and destruction of material including photographs, fingerprints, footwear impressions, DNA samples and information derived from DNA samples. The HCSCC recommends "It is in our view wholly unacceptable that the important matter of retention of samples is to be dealt with by delegated legislation. The Government's proposals as to how they intend to implement the Marper judgment raise important and controversial questions, which the House will want to debate fully. Clause 96, if agreed to, will not allow that debate to happen."

The House of Lords Select Committee on the Constitution report on the 'Policing and Crime Bill' can be found at <http://www.publications.parliament.uk/pa/ld200809/ldselect/ldconst/128/128.pdf>

## Lords Select Committee Report on CONTEST Strategy

The House of Commons Home Affairs Committee (HAC) published their ninth report of the parliamentary session 2008/09 entitled 'Project CONTEST: The Government's Counter-Terrorism Strategy' on 7 July 2009.

The report concludes that the events of 11 September 2001 changed the landscape of security and counterterrorism for many countries, not least for the United Kingdom. The UK has witnessed a fundamental reordering of the world and the threats it poses. The UK now faces a sustained and

considerable terrorist threat which has informed security and counter-terrorism policies for the best part of a decade, and will continue to do so for the immediate future.

The HAC believe the UK is properly cognisant of and prepared for the threats it faces and while many lessons have been learned from each incident, the UK have not been found wanting. Moreover, the HAC are satisfied that the departments and agencies with direct involvement in matters of security, intelligence and resilience are developing very satisfactorily.

The Government's counter-terrorism strategy is an important component of efforts to make the UK safer, and the HAC welcome its latest iteration as a vital part of an overall security strategy. The HAC recognised that co-ordination across government in these issues is very difficult to achieve, and different countries have approached it in different ways. After a slow start, much has been done to improve the UK's counter-terrorism structure, most notably the workings of the Office of Security and Counter-Terrorism and the Counter-Terrorism Units. The report notes that there is still much work to be done in these areas to make the UK's arrangements more efficient and effective. Finally, the threats facing the UK have not lessened significantly, nor will they lessen in the immediate future.

The House of Commons Home Affairs Committee report 'Project CONTEST: The Government's Counter-Terrorism Strategy' is available at <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/212/212.pdf>

## HMIC Publishes Review of Police Response to Public Protest

The report on the policing of the London G20 Summit in April 2009 'Adapting to Protest' was published on 7 July 2009 by Her Majesty's Inspectorate of Constabulary (HMIC). The report highlights the need for the police to plan and deliver policing operations that safeguard the rights of individuals during protests.

The report, part of the ongoing HMIC review of the policing of public protest, set out to consider:

- ◆ The policing of public protests held during the G20 summit on 1<sup>st</sup> and 2<sup>nd</sup> of April 2009;
- ◆ Public perceptions, the legal framework and police professional practice;
- ◆ The sequence of events on 1 April 2009; and
- ◆ The tactics employed during the police operation relating to the G20 protests.

Acknowledging the achievement of the Metropolitan Police Service on what, even by international standards, was a very demanding day, HM Chief Inspector of Constabulary, Denis O'Connor, said "In significant respects, the police planned and responded effectively to three eventualities: security, notified protest and disorder.

However, in relation to the protests in the City of London on 1 April 2009 a combination of public video footage and events on the day, including the death of Ian Tomlinson, has brought both individual and collective police action under enormous public scrutiny. Many officers worked very hard. What the review identifies is that the world is changing and the police need to think about changing their approach to policing protest."

The exercise of police discretion in public order policing has become more complex and testing. This requires regard to the law, to the expectations of protesters and those affected by protest, and to improved communication between the police, protesters and the public. Discharging the obligation to facilitate peaceful protest requires more than an acknowledgement of these challenges.

The key issue is the starting point for policing protest. The starting point should not be defining protest as lawful or unlawful. Instead, the presumption should be in favour of facilitating peaceful protest, unless levels of disruption require the police to place legitimate restrictions upon them. This impacts directly on planning, communications, and the implementation of police operations, as well as the use of tactics, and police training and guidance.

The report makes a number of immediate recommendations, including that the police:

- ◆ Facilitate peaceful protest;
- ◆ Improve their dialogue with protest groups, where possible;

- ◆ Improve their communication with the public;
- ◆ Moderate the impact of containment when it is used;
- ◆ Improve training to equip officers to deal with the full spectrum of protest activity;
- ◆ Wear clear identification at all times; and
- ◆ National guidance on the policing of protest needs overhauling by ACPO.

The Chief Inspector of Constabulary concluded that "We live in an age where public consent of policing cannot be assumed, and policing, including public order policing, should be designed to win the consent of the public. Future events like the Olympics 2012 make change all the more critical. This report is intended to assist the police service to achieve this change."

The report 'Adapting to Protest' is available at <http://inspectorates.homeoffice.gov.uk/hmic/docs/ap/G20-final-report.pdf?view=Binary>

## Home Office Paper Surveys New Performance Landscape for Crime and Policing

The Home Secretary published on 7 July 2009 a document entitled 'The New Performance Landscape for Crime and Policing' which provides the police service with a graphic description of the crime and policing performance management landscape following the publication of the 2008 Policing Green Paper.

The Policing Green Paper seeks to achieve more freedom and flexibility for police forces in return for more transparency and greater focus on public confidence. There will be one top down numerical target for the police service, measurement of public confidence, which will quantify the extent to which the police are tackling the crime and anti-social behaviour issues that matter to people locally.

Chapter 7 of the Green Paper described the elements of a new 'performance landscape', how and by whom service delivery is measured, assessed, monitored and managed from the local to the national level. This new landscape is described in terms of the steps which forces and authorities follow in their ongoing performance management of local policing, and the parallels that will exist elsewhere in the landscape. This breaks down into:

- ◆ **Planning** - establishing priorities; agreeing a strategy; agreeing what is to be achieved; identifying the resources available and how to make best use of them;
- ◆ **Measurement** - how progress against objectives will be measured and analysed;
- ◆ **Monitoring** - how progress is assessed, reported, and what action is consequently required;

- ◆ **Success** - understanding what success is and when action might be necessary to improve performance; and
- ◆ **Action** - how improvements to performance can be made.

The Green Paper locates primary responsibility for police performance management with the service itself. Chief constables and their command teams will manage the performance of their forces in line with their annual policing plans. Police authorities will agree these plans and hold their senior command teams to account on behalf of the public, ensuring improved outcomes that address local priorities and the efficient and effective use of resources. Police authorities must develop the capability to fulfil this role and new inspection arrangements being jointly developed by HMIC and the Audit Commission will test their effectiveness in meeting this challenge.

At all levels, the steps are fundamentally linked to the frameworks that apply to local government and the other criminal justice system agencies working in partnership. They are also linked and aligned to the Comprehensive Area Assessment (CAA) framework that applies to local government working in partnership. Public bodies including police forces and authorities, councils, health organisations, and fire and rescue services, will be held collectively to account for their performance. This reflects the way local services are increasingly provided by a range of agencies working together.

What has changed?

	<b>What changes?</b>	<b>Before Policing Green Paper</b>	<b>After Policing Green Paper</b>
<b>Planning</b>	Introduction of Policing Pledge and confidence target.	Police Plans considered wide range of issues but did not always fully reflect priorities of local partners.	Rounded assessment of local risks, in line with NIM model, plus priorities of local partners and pledge commitments all integrated with new confidence target.
<b>Measurement</b>	No change	iQuanta used by 6000 practitioners to support performance management.	iQuanta used by 6000 practitioners to support performance management.
<b>Monitoring</b>	Greater emphasis on importance of self monitoring.	Force and police authority monitoring did not always drive necessary improvements.	More rigorous approach to police authority scrutiny of performance against agreed objectives.
	External monitoring of police performance.	Led by Home Office.	To be led by HMIC, although Home Secretary will maintain the



			ability to intervene in exceptional circumstances and close scrutiny of performance on confidence.
<b>Reporting to the public</b>	Local crime information.	Crime maps available from few police forces	Crime maps and other neighbourhood level information now available from all 43 forces from December 2008.
			Local surveys to be made public.
	HMIC reporting	Annual baseline reports, thematic reports	New Rounded Assessments
			Public website with quarterly performance information
			Public reports following joint police authority inspections with Audit Commission.
Audit Commission reporting	Comprehensive Performance Assessment (England)	Comprehensive Area Assessment - reports on outcomes delivered by local partnerships in local authority areas (with other inspectorates)	
	HMIC public letter		Public Letter to be sent to Chief Constable and Chair of police authority setting out performance issues and requiring action plan.
<b>Improvement Action</b>	Greater emphasis on self improvement	Mixed	Chief Constable and/or Police Authority to drive action to address weaknesses and areas for improvement

	Peer support	Support delivered through Police and Crime Standards Directorate (PCSD)	Responsibility taken up by NPIA for police service and RIEPs for CDRPs. PCSD phased out.
<b>Intervention</b>	No change	Formal intervention by Home Secretary – a last resort when all else fails	Formal intervention by Home Secretary – a last resort when all else fails

The full report 'The New Performance Landscape for Crime and Policing' is available at [http://police.homeoffice.gov.uk/publications/performance-and-measurement/Performance\\_Landscape\\_narra1.pdf?view=Binary](http://police.homeoffice.gov.uk/publications/performance-and-measurement/Performance_Landscape_narra1.pdf?view=Binary)

More information about the CAA framework can be found at <http://www.audit-commission.gov.uk/localgov/audit/caa/pages/caaframework.aspx>

## Delivery of 'Prevent' Strategy is Reliant on Police and Partners Working Together

The publication of Her Majesty's Inspector of Constabulary (HMIC) report 'Prevent - Progress and Prospects' on 24 June 2009 highlights the critical role played by the police in delivering 'Prevent', which is part of the government's counter terrorism strategy.

The report recognises that the Police Service has identified the importance of Prevent to the long term security of the UK. However, HMIC states that forces' delivery of Prevent are at different stages of maturity and more needs to be done to understand the vulnerability of local communities from the violent extremist message. There is a need for all forces to fully integrate 'Prevent' into their day to day business, working closely with communities and key organisations to prevent vulnerable people becoming terrorists.

HMIC found that police forces have made good progress in recruiting specialist staff to engage with local communities and work with vulnerable people in order to protect the public. All forces are on track to deliver 'Prevent', with some further along than others.

The report emphasises the importance of police working effectively with communities, local authorities and other agencies to stop terrorist activity taking hold, and to raise public confidence. In particular HMIC says the police and other agencies must do more to understand the risk of violent extremism, and that future funding should be targeted at areas of greatest vulnerability.

HMIC found that forces enjoying well developed relationships with their communities and processes to support 'Prevent' have had greater success against those with extremist views, i.e. the 'radicalisers', who groom and exploit vulnerable people.

The report's key recommendations include:

- ◆ Prioritise additional funding, resources and support to highest risk force areas to ensure maximum safety for the public;
- ◆ Improve understanding about what can be done to prevent vulnerable people becoming terrorists;
- ◆ Police Service to define what forces should be doing according to their level of risks from violent extremists, by September 2009;
- ◆ All forces to ensure appropriate minimum levels of capability in place by March 2010;
- ◆ Guidelines on the use of vetting to ensure greater sharing of security information in the interests of public safety; and
- ◆ Establish mechanisms to measure the success of 'Prevent' activity in order to reassure the public that change has been made.

The full HMIC report 'Prevent - Progress and Prospects' is available at <http://inspectorates.homeoffice.gov.uk/hmic/inspections/thematic/prevent-report/prevent-report?view=Binary>

## Custody Provisions of Corporate Manslaughter and Corporate Homicide Act 2007

A second annual report entitled 'Corporate Manslaughter and Corporate Homicide Act 2007: Progress towards implementation of custody provisions' was published on 13 July 2009. The report discusses the progress made in the implementation of the provisions of the Act along with what remains to be done.

The majority of the Corporate Manslaughter and Corporate Homicide Act 2007 was enacted in April 2008 with the exception of section 2(1)(d) which makes the duty of care a custody provider owes to a person who is detained 'a relevant duty of care'. When the legislation was passed a period of 3 to 5 years was given for custody providers to prepare for this provision.

The report states that progress so far is on course to commence the implementation of section 2(1)(d) by April 2011.

The 'Corporate Manslaughter and Corporate Homicide Act 2007: Progress towards implementation of custody provisions' second annual report can be found at

<http://www.justice.gov.uk/publications/docs/corporate-manslaughter-custody-provisions-2009.pdf>

## Inspectorate Report States PSNI Custody Facilities Performing to an 'Acceptable Standard'

On 17 June 2009 the Criminal Justice Inspection Northern Ireland published their inspection report 'Police Custody: The detention of persons in police custody in Northern Ireland' on the standards and conditions of police custody arrangements in Northern Ireland.

The inspection reviewed current practice within the Police Service of Northern Ireland (PSNI) against its legal requirements under the Police and Criminal Evidence (Northern Ireland) Order 1989 and the OPCAT principles. The inspection found that a high level of awareness existed among staff in custody suites around risk management and the treatment of vulnerable persons, especially in relation to young people or those who potentially were under the influence of drink or drugs. The custody staff were also aware of the need to apply appropriate risk management procedures where a detainee may be at risk of self-harming, have mental health issues or a known medical condition.

The Inspectors found evidence that staff had adopted innovative and imaginative approaches to overcoming language barriers when dealing with foreign nationals or immigration detainees rather than relying solely on a telephone interpretation service. The cells examined during the inspection were also found to be clean and of an acceptable standard to hold detainees for short periods of time.

However, the Inspectors believe that traditional police cells are unsuitable for holding immigration detainees for longer periods of time while they await transfer to an immigration centre in Scotland. Despite custody staff making efforts to ensure immigration detainees were made comfortable; the existing police estate was neither designed nor built for lengthy periods of detention. The Inspectorate recommends that the PSNI should, in conjunction with the UK Border Agency, explore alternatives to police cells for immigration detainees detained for more than 36 hours.

The inspection identified that there were weaknesses in relation to the PSNI's clinical governance arrangements and its management and oversight of the work of its Forensic Medical Officers (FMOs). The report expressed concerns in that medications were not sufficiently secured, recorded or disposed of appropriately, and have recommended that policies and procedures surrounding the safe storage and custody of medications be reviewed. The responsibility for this issue must also be clarified with Custody Sergeants and FMOs. In addition, improved arrangements need to be put in place to ensure the safe and effective handling of clinical waste and sharps. Cleaning and infection control procedures, especially in medical rooms, require strengthening.

The Inspectorate welcomed the action plan which the PSNI has compiled to take the inspection recommendations forward and a review of progress is to be made during 2010/11.

Further information about the Criminal Justice Inspection Northern Ireland inspection report 'Police Custody: The detention of persons in police custody in

Northern Ireland' is available at  
<http://www.cjini.org/CJNI/files/3d/3d4f79c9-b015-4919-a9a2-416247266efa.pdf>

## Criminal Justice and Police Act 2001: Replacement Guidance Issued

The Ministry of Justice published Circular 2009/04 on 16 July 2009. The Circular is entitled 'Criminal Justice and Police Act 2001 (S1 - 11) Penalty Notice for Disorder Police Operational Guidance: Retail Theft and Criminal Damage' and replaces paragraphs 6.17 to 6.24 of the Penalty Notice for Disorder (PND) Police Operational Guidance issued in March 2005 covering retail theft and criminal damage.

The revised guidance has been issued in view of concerns over instances of inappropriate issue of PNDs. The main changes cover both retail theft and criminal damage, in particular, to repeat offenders and those with substance misuse problems.

The main changes from the previous guidance are:

- ◆ PNDs for theft should only be considered for offences of 'theft from a shop' as defined under the National Crime Recording Standards. This change has been made to clarify the offences for which a PND can be issued;
- ◆ Only one PND should ever be issued to an individual for retail theft;
- ◆ The value of goods stolen should not exceed £100;
- ◆ The value of criminal damage should not exceed £300; and
- ◆ PNDs should not be issued for either retail theft or criminal damage where it is known that an offender is a substance abuser.

The Ministry of Justice Circular 2009/04 is available at  
<http://www.justice.gov.uk/publications/docs/circular-04-2009-pnds-retail-theft.pdf>

## NPIA Annual Report 2008/09 Published

The NPIA has now completed its second year of operation and its Annual Report and Accounts for 2008/09 were laid before Parliament on 13 July 2009. This makes the NPIA the first member of the Home Office family to lay accounts in 2008/09.

The Annual Report reflects on the Agency's advances and successes of the past year, which include:

- ◆ Completing the roll-out of Airwave to all 125 sub-stations of the London Underground ahead of schedule and to budget;
- ◆ Surpassing the Prime Minister's target of delivering more than 10,000 mobile devices to front line police officers;

- ◆ Establishing the National Forensic Framework Agreement, which has saved £1m to date and a further £14m planned over the next five years;
- ◆ Creating the revised High Potential Development Scheme for the most talented constables and sergeants who want to become police leaders of the future; and
- ◆ Launching a new state-of-the-art forensic training facility at the Harperley Hall site.

The Annual Report is aligned against the National Improvement Strategy for Policing (NISP), which sets out priorities for policing improvement programmes over the next ten years. These priorities are:

- ◆ Strengthening leadership in the service at all levels;
- ◆ Developing the skills and professionalism of the workforce;
- ◆ Implementing effective operational processes, practice and doctrine;
- ◆ Increasing the efficiency of service delivery by forces;
- ◆ Transforming the way information, evidence, knowledge and science is used;
- ◆ Continuously improving the delivery of national services; and
- ◆ Enhancing the UK's role in global security.

The full NPJA Annual Report and Accounts for 2008/09 are available at <http://www.official-documents.gov.uk/document/hc0809/hc07/0738/0738.pdf>

## APA Warn Against Proposals for Directly Elected Police Commissioners

On 8 July 2009 the Association of Police Authorities (APA) warned that proposals to introduce directly elected commissioners to oversee policing across England and Wales would not reflect the needs of communities, nor make the police service more accountable to local people. This was the conclusion of research carried out by the Northern Ireland Policing Board (NIPB) when comparing policing governance and accountability in Northern Ireland, the Republic of Ireland, France, and the United States, with current arrangements in England and Wales.

Sir Desmond Rea, Independent Member of NIPB, who helped carry out the research, said "There is no evidence to suggest that the boards or commissions appointed by elected mayors in the United States truly reflect the communities they serve. Neither is there clear evidence to suggest that police are more accountable under this system. However, even when directly elected models are in place in the US, there has been consistent movement towards making police oversight more independent through the introduction of models similar to those already established in England, Wales and Northern Ireland."

The concern of the APA is that whatever changes are made to improve the systems that have been established in various jurisdictions, it is clear that the

role of a police authority, board or commission must be to ensure that the service or force is effective, efficient, representative and accountable to the community, and is given the support and resources to do this.

APA Chairman, Bob Jones said: "Americans have gone out of their way to ensure there is so much buffering between an elected politician and a police professional that the role of the police authority in most of America is carried out by unelected Quangos usually consisting entirely of lawyers."

The key aim of the APA for the future is to improve public confidence in policing but proposals from the politicians to introduce direct elections to police authorities were not the answer. The APA Chair believed that people wanted more accountability from neighbourhood policing and that local people wanted a system which delivers accountability to the whole of the community, not just one element of it.

The full report 'International comparison research: models of police governance and accountability' is available at <http://www.nipolicingboard.org.uk/3858ap4.pdf>

## Home Office to Consider Inspector's Authority to Drug Test to Tackle Violent Crime

The Home Office is studying the use of an Inspector's Authority to drug test people arrested for violent crime. The measure follows a letter to police forces last month, co-signed by the Drug Intervention programme (DIP) and ACPO leads, to urge DIP intensive areas to use the Inspector's Authority as a tool to identify more drug misusing offenders.

A police officer, of at least Inspector rank, can authorise the taking of a sample from an individual arrested for a non-trigger offence. This would be on the basis of having reasonable grounds to suspect that misuse of any specified Class A drug contributed to the offence. Inspector's Authority is used for around 14,000 of the drug tests conducted each year.

The drive for greater use of the Inspector's Authority is particularly targeted on violent offences and six police forces agreed to take part in a three month pilot project, which began on 1 June 2009. They will record the specific violent offence where drug tests are conducted using an Inspector's Authority. The areas chosen are those with both higher numbers of drug tests conducted and higher levels of violent crime and it is hoped the work will provide a clearer picture of the link, if any, between specific violent offences and Class A drug use.

Further information about this study is available from Tracy Beswick at [Tracy.Beswick@homeoffice.gsi.gov.uk](mailto:Tracy.Beswick@homeoffice.gsi.gov.uk)



## Home Office Publish Findings from the British Crime Survey and Police Recorded Crime 2008/09

On 16 July 2009, the Home Office published the two volume annual statistical bulletin 'Crime in England and Wales 2008/09' which includes results from the British Crime Survey (BCS) and crimes recorded by the police for the 12 month period up to 31 March 2009.

The BCS and police recorded crime differ in their coverage of crime. Overall, crime as measured by the BCS shows no change compared with the 2007/08 BCS in most crime types. Crimes recorded by the police show a 5% decrease compared with 2007/08, with decreases in most crime types.

A summary of the main findings include:

BCS CRIME	POLICE RECORDED CRIME
<ul style="list-style-type: none"> <li>◆ All BCS crime stable (10.7 million crimes in 2008/09);</li> <li>◆ Violent crime - stable;</li> <li>◆ Violent crime with injury - stable;</li> <li>◆ Domestic burglary - stable;</li> <li>◆ Vehicle-related theft - stable;</li> <li>◆ Theft from the person up 25%;</li> <li>◆ Vandalism - stable; and</li> <li>◆ Risk of being a victim of crime up from 22% to 23%.</li> </ul>	<ul style="list-style-type: none"> <li>◆ All police recorded crime down 5% to 4.7 million crimes;</li> <li>◆ Violence against the person down 6%;</li> <li>◆ Violence against the person with injury down 7%;</li> <li>◆ Domestic burglary up 1%;</li> <li>◆ Offences against vehicles down 10%;</li> <li>◆ Theft from the person down 12%;</li> <li>◆ Criminal damage down 10%;</li> <li>◆ Robbery down 5%; and</li> <li>◆ Drugs offences up 6%.</li> </ul>

### Use of weapons

Weapons were used in about one in five (21%) of BCS violent crimes (this figure has been stable over the past decade); knives were used in 7%, glasses or bottles in 5%, hitting implements in 4% and firearms in 1% of incidents. Between 2007/08 and 2008/09 BCS interviews, the use of knives and glasses or bottles has remained stable while the use of hitting implements has decreased.

### Detecting crime

The overall sanction detection rate was 28% in 2008/09. This was a slight increase from 2007/08 which was mainly due to changes in the proportions of crime types with different detection rates.

### Confidence and perceptions

Around half of adults (49%) agreed that the police and local councils were dealing with anti-social behaviour and crime issues that matter in the local area, increasing from 45% in 2007/08.

There are high levels of confidence in the police treating people with respect (84%) and fairly (65%), but less confidence that they are effective in dealing with crime and related issues, for example, 46% of people thought their local police could be relied on to deal with minor crimes.

Six out of ten adults thought the Criminal Justice System (CJS), as a whole, is fair (an increase from 56% in 2007/09 to 59% in 2008/09). Almost four out of ten adults (38%) thought that the CJS is effective (similar to 2007/08).

New questions included in the 2008/09 BCS show that 51% of people think they live in a lower than average crime area, a further 39% think crime in their area is about average and 11% think crime in their local area is higher than average. This confirms previous findings that public perceptions of what is happening to crime at local and at national level differs considerably. This year shows a wider gap between the proportions who think crime is rising nationally (75%) compared with those who think it is rising locally (36%). New questions on specific crime types mirror this difference and are most marked for high profile crimes, like guns and knives, for example 86% thought gun crime had increased nationally compared with 16% locally whereas police figures in the bulletin indicates gun crime had fallen in 2008/09.

The Home Office Statistical Bulletin 'Crime in England and Wales 2008/09 Volume 1: Findings from the British Crime Survey and police recorded crime' can be found at

<http://www.homeoffice.gov.uk/rds/pdfs09/hosb1109vol1.pdf>

The 'Crime in England and Wales 2008/09 Volume 2: Explanatory notes and classifications' is available at

<http://www.homeoffice.gov.uk/rds/pdfs09/hosb1109vol2.pdf>

## New Strategy to Tackle Serious Organised Crime

The Home Secretary announced on 13 July 2009 a new strategy to target the work and activities of organised criminals. The new strategy, 'Extending Our Reach: A Comprehensive Approach to Serious Organised Crime', follows an assessment of how criminals are exploiting new global trends and outlines new approaches for the Government and law enforcement agencies.

Whilst the UK's approach to serious and organised crime is one of the most sophisticated in the world, the threat is constantly evolving and global trends are creating opportunities for organised criminals that didn't exist five years ago. In particular, there is an increasing link between organised crime and weak or failing states, where it is easier for criminals to:

- ◆ Operate without detection or disruption; and
- ◆ Use newer technology to commit traditional crimes like fraud or theft by attacking IT networks.

To enable the UK to keep pace with the evolving threat, the strategy includes plans to:

- ◆ Create a more hostile environment for organised criminals by using tax powers to pin down elusive criminals, shutting down 'front' businesses like

saunas and massage parlours used for criminal ends and seeking to block the use of mobile phones in prisons;

- ◆ Target the proceeds of crime by going after the assets of every organised criminal under investigation and rolling out police-led Regional Asset Recovery Teams to every part of the country;
- ◆ Investigate the UK-based assets of overseas criminals; and
- ◆ Step up the approach to international organised crime through better co-ordination overseas to target the emergence of networks in weak and failing states.

The strategy will include new regional asset recovery teams created to cover the South East, South West, East Midlands and Eastern regions, taking the total to nine teams across the country. The strategy sets out plans to create a new strategic body within the Home Office to drive the proposals forward, scrutinise performance and take the lead across the Government.

The new strategy 'Extending Our Reach: A Comprehensive Approach to Serious Organised Crime' can be found at

<http://www.homeoffice.gov.uk/documents/extending-our-reach/>

More information about the Regional Asset Recovery Teams is available at

<http://www.rart.gov.uk/>

## Forced Marriage Unit Issue New Guidance for Professionals

The publication of new Government research, 'Forced Marriage - Prevalence and Service Response', was published on 2 July 2009. The research, which looked at the prevalence of and responses to forced marriage, shows that although there are examples of good practice, local agencies need to get better at working together to identify and prevent forced marriage. The findings of the report were used to inform new guidelines issued by the Government's Forced Marriage Unit (FMU).

Figures released by the FMU on 2 July 2009 show an increase in the number of people willing to come forward to seek protection from forced marriage. The specialist unit, a joint body of the Foreign and Commonwealth Office (FCO) and Home Office, has already received 770 calls or emails to its helpline this year about suspected forced marriages, an increase of 16% in the same period last year.

Cases of forced marriage dealt with by the Forced Marriage Unit have almost trebled since 2005, from 152 cases to 420 last year as more people come forward to seek help. However the true scale of the problem remains unclear. The very nature of forced marriage means that it is likely that a number of cases go unreported.

The FMU is preparing for its busiest time of year as young people raise concerns with teachers before the school summer holidays.

These new figures coincide with the publication of new guidelines to front line professionals to help them work more closely together to better identify and protect children and adults at risk of forced marriage. The new guidelines for police, teachers, social and health professionals and housing officers, which were developed by the FMU in collaboration with other Government departments and the Welsh Assembly Government, aim to ensure that victims are identified and protected against the people intent on abusing them.

Latest 2009 figures show that the majority of reports to the FMU involve families of Pakistani (70%), and Bangladeshi (11%) origin, with smaller percentages of those of Indian, Middle Eastern, European and African origin. Victims in 14% of cases are male, 33% of all assistance cases are under 18 and 14% are under 16 years of age.

The Forced Marriage Unit runs a public helpline that provides advice and support to both practitioners handling cases of forced marriage and to victims themselves. The helpline is available by telephone on 020 7008 0151 between 9am-5pm Monday to Friday or by email at [fmufco.gov.uk](mailto:fmufco.gov.uk). For out of hours emergency advice, call 020 7008 1500 and ask for the FCO Global Response Centre.

The full report 'Forced Marriage - Prevalence and Service Response' can be found at <http://www.dcsf.gov.uk/research/data/uploadfiles/DCSF-RR128.pdf>

More information about the Forced Marriage Unit is available at <http://www.fco.gov.uk/en/fco-in-action/nationals/forced-marriage-unit/>

## DPP Issues Guidance on Confiscation

In the case of *R v Paulet* [2009] EWCA Crim 288 the Court of Appeal invited the Director of Public Prosecutions to consider issuing guidance to prosecutors on the issues that may arise when considering whether to instigate confiscation proceedings. The court suggested that the guidance should identify the circumstances in which such proceedings would be appropriate or inappropriate.

The DPP Guidance for Prosecutors on the Discretion to Instigate Confiscation Proceedings has now been published and supplements the current legal guidance on confiscation. The guidance is divided into four sections:

- ◆ The principles to be applied when determining whether a defendant's case properly falls within the relevant statutory regime for confiscation;
- ◆ Two examples of how the principles apply to particular sets of facts;
- ◆ The exercise of the prosecutor's discretion; and
- ◆ Some examples of when it may be inappropriate for prosecutors to decide to instigate confiscation proceedings.

The DPP Guidance for Prosecutors on the Discretion to Instigate Confiscation Proceedings can be found at

[http://www.cps.gov.uk/news/assets/uploads/files/prosecutors\\_discretion\\_280509.pdf](http://www.cps.gov.uk/news/assets/uploads/files/prosecutors_discretion_280509.pdf)

The full judgment of R v Paulet [2009] EWCA Crim 288 the Court of Appeal is available at

<http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Crim/2009/288.html&query=Paulet&method=boolean>

## Home Office Publish Research Report on Organised Immigration Crime

The Home Office Research Report Number 15 'Organised immigration crime: a post-conviction study' was published on 20 July 2009. The report outlines the findings of interviews conducted in 2006 with 45 prisoners convicted of people smuggling/trafficking offences in 2005. The research was commissioned to provide a fuller understanding of the market dynamics of facilitated illegal entry into the UK.

The key findings of the report include:

### Demand

- ◆ Demand for entry to the UK from a wide range of world regions is significant and potential migrants will go to considerable lengths and expense to get to the UK;
- ◆ This demand is predicated on a set of features that make the UK particularly attractive to migrants including: the health of the illegal economy, the existence of established Minority Ethnic communities, the universality of the English language and the UK's comprehensive healthcare and benefit systems;
- ◆ The clients of smuggling operations reflected a variety of backgrounds and ages and included men, women and children - though young men seeking improved economic prospects formed a significant group; and
- ◆ The victims of trafficking operations were largely young women made vulnerable by poverty and family breakdown.

### Organisation

- ◆ The way facilitation businesses are organised varies greatly; with highly organised and sophisticated set-ups operating in the same market as less formal, smaller-scale structures. What facilitation organisations do have in common is a flexibility that enables them to tap into market opportunities and adapt effectively to potential risk;
- ◆ Family (and other social) contacts are often pivotal to the business links and arrangements; and
- ◆ Many organisations operate within discrete ethnic or immigrant communities, though cross-ethnic arrangements do exist and casual employees are sometimes recruited from outside the principal ethnic group.

## Profits

- ◆ The profits can be considerable and, in the eyes of those interviewed, this outweighs the perceived risks; and
- ◆ Business dealings are often conducted using cash, and much of this will be exported to other countries or never enter the UK in the first place.

## Risks

- ◆ The perceived benefits of entering the UK are based on an assumption that UK immigration policy and immigration controls are relatively lenient, although some interviewees perceived that the UK had become less attractive recently;
- ◆ Similarly, the smugglers and traffickers themselves perceive that the risks of detection are low and that, if caught, sentences will be less harsh than for other offences, particularly drug smuggling. However, many interviewees expressed genuine surprise at the severity of the sentences that they had received; and
- ◆ The cultural and language barriers that contain many immigrant communities are believed to offer considerable protection from investigation and enforcement.

The Home Office Research Report Number 15 'Organised immigration crime: a post-conviction study' is available at

<http://www.homeoffice.gov.uk/rds/pdfs09/horr15c.pdf>

## Communities to Benefit from Seized Assets

A new pilot fund was launched by the Home Secretary on 26 June 2009 which will give local people a direct say on how a portion of the ill gotten gains of criminals can be used to benefit their communities. The funding will be utilised in the fight against crime and antisocial behaviour in their communities.

The £4 million Community Cashback scheme will be funded by money and assets seized from criminals. The public will be able to choose which community projects are funded by presenting their views to a new dedicated website, neighbourhood policing meetings or through Citizens Panels. The successful bids will have to show how the local community has been involved in selecting the project, demonstrate good value for money and be related in some way to tackling antisocial or criminal behaviour locally.

Until now money recovered from criminals has been shared between frontline services, such as the police and Government departments involved with the criminal justice system. The new scheme will for the first time direct a portion of that money back into communities.

The announcement of this pilot scheme coincided with the publication of Home Office statistics that show the value of assets recovered from criminals in 2008/09 has risen to a record £148 million, an increase of £12 million from the previous year. More information about the Community Cashback scheme can be found at <http://cashback.cjsonline.gov.uk/>

## Research Finds Excessive Delays Await Child Witnesses

On 3 July 2009 the NSPCC published new research findings in which child witnesses in sex abuse or violence cases are facing excessive delays and a lack of support in giving evidence. The report entitled 'Measuring Up? Evaluating implementation of Government commitments to young witnesses in criminal proceedings' is a follow up study on an earlier report undertaken by the NSPCC in 2004.

The 2004 report 'In their own words' concluded that "Despite a network of policies and procedures intended to facilitate children's evidence, only a handful of young witnesses... gave evidence in anything approaching the optimum circumstances. Their experiences revealed a chasm - an implementation gap - between policy objectives and actual delivery around the country."

Since 2004, a wide range of government commitments have been issued or updated, with the aim of improving support for young witnesses and enabling them to give their best evidence. The improved legislative framework should lessen the ordeal that giving evidence inevitably is for any person, particularly children.

The latest research considers whether the 'implementation gap' between policy and practice has narrowed. The study compares recent government policies and guidance with children's experiences before, during and after trial to evaluate in the following areas:

- ◆ How well criminal justice organisations identify young witness needs;
- ◆ Whether support for young witnesses is made available consistently and appropriately;
- ◆ The treatment of young witnesses by the criminal justice system; and
- ◆ The experiences of young witnesses in the context of the desired Every Child Matters outcomes of 'being healthy' and 'staying safe' (in terms of the risk of secondary abuse from the court process) and 'making a positive contribution' (in terms of the requirement to perform a public service).

The report found that children giving evidence in Crown Court cases in England and Wales had to wait an average of 13 months from reporting an offence to the start of the trial. Researchers spoke to 182 child witnesses and found almost half had seen the defendants involved when entering or leaving court. The NSPCC is calling on the government to enforce the policy of fast tracking child witness cases and for more use of video cross examination.

The full report 'Measuring Up? Evaluating implementation of Government commitments to young witnesses in criminal proceedings' can be found at [http://www.nspcc.org.uk/Inform/research/Findings/measuring\\_up\\_report\\_wdf66579.pdf](http://www.nspcc.org.uk/Inform/research/Findings/measuring_up_report_wdf66579.pdf)



## First Mental Health Courts Begin Pilot

The Ministry of Justice formally launched new courts for offenders with mental health problems or learning disabilities on 2 July 2009. The specialist courts were developed using the model already in place for domestic violence and drug courts. The introduction of mental health courts should help the judiciary and magistrates better respond to offenders with mental health problems.

Pilots operating in Brighton and Stratford Magistrates' Courts are currently screening offenders for mental health problems. Offenders are then subject to an order which includes supervision by the Mental Health Team and has an element of mental health support within the supervision plan or a specific activity requirement.

Mental health courts form part of a Ministry of Justice programme designed to break the cycle of reoffending by putting in place a range of problem-solving courts and, in this instance, attend to the specific needs of those with mental health problems. The courts, which have been in operation since January 2009, also provide an early response to Lord Bradley's review of mental health services across the criminal justice system (see *NPIA Digest* June 2009 edition, pp37-38).

Problem-solving courts take a specialist approach in dealing with offenders with specific needs, from mental health, to drug abuse or domestic violence. They address the causes and consequences of offending, dealing with the underlying problems associated with criminal behaviour.

There are several key benefits to problem-solving courts which include:

- ◆ Helping to reduce reoffending;
- ◆ Increasing public confidence by addressing the needs of local communities; and
- ◆ Creating a more effective and efficient criminal justice system.

More information on mental health courts is available at <http://www.justice.gov.uk/news/newsrelease020709a.htm>

## HMCS Publishes Annual Report

On 20 July 2009 Her Majesty's Courts Service (HMCS) published their Annual Report and Accounts for 2008/09. The report marks the first full year of the new partnership arrangements between the Lord Chancellor and the Lord Chief Justice.

The report included the following performance highlights:

- ◆ Improved timeliness in the Crown Court with 80% of all cases having their first main hearing within their respective target period;
- ◆ Continued improvement in timeliness in the Magistrates' Courts (up over 20% since March 2007); and

- ◆ Improved enforcement with 62% of breached community penalties resolved within 25 working days, exceeding the target by two percentage points and a 12% improvement on 2006/07 levels.

The report outlines successes of Criminal Justice - Simple, Speedy, Summary (CJSSS) in the magistrates' courts and its extension into all youth courts. It details the continued growth in community justice with the development of more community justice centres and problem-solving courts such as drug courts, mental health courts and specialist domestic violence court systems.

This report also shows the ongoing programme of improving court buildings and facilities. New courts, integration projects and upgrades seek to provide state-of-the-art facilities, secure waiting areas and video links for vulnerable witnesses.

The HMCS Annual Report and Accounts 2008/09 is available at [http://www.hmcourts-service.gov.uk/cms/annual\\_reports.htm](http://www.hmcourts-service.gov.uk/cms/annual_reports.htm)

## Sentencing Guidelines Council and Sentencing Advisory Panel Launch Joint Annual Report

On 24 June 2009 the Sentencing Guidelines Council (SGC) and the Sentencing Advisory Panel (SAP), the two independent bodies responsible for promoting clear, effective and consistent sentencing, published their fifth joint annual report.

Full consultation has been carried out by the SAP for three topics, one of which was supplemented by an independent research study of public attitudes to principles of sentencing, and three advices were tendered to the SGC.

Four definitive guidelines were published by the SGC including the Magistrates' Court Sentencing Guidelines, the most comprehensive and widely distributed publication to date, which were implemented in August 2008 and have been twice updated to incorporate new Council guidelines. Other definitive guidelines issued in the reporting period were on offences of causing death by driving (including the two offences introduced in August 2008), theft and burglary of a building other than a dwelling, and breach of an Anti-Social Behaviour Order. Consultation guidelines have been produced for the statutory offences of fraud.

Two current projects have involved detailed consideration of diversity issues that impact on sentencing decisions, relating to gender, age and mental disorder. The SAP has consulted on issues regarding the sentencing of women offenders and offenders who are mentally disordered in its extensive project considering overarching principles of sentencing. Sentencing of young people under eighteen years of age was the subject of a separate consultation and involved examination of the new sentencing framework established by Parliament and consideration of how to balance the factors and principles to which courts must have regard.

The fifth joint annual report of the Sentencing Guidelines Council and the Sentencing Advisory Panel 2008/09 is available at [http://www.sentencing-guidelines.gov.uk/docs/sgc\\_sap\\_annual\\_report\\_2008\\_09.pdf](http://www.sentencing-guidelines.gov.uk/docs/sgc_sap_annual_report_2008_09.pdf)

## Sentencing Guidelines Council Consults on Sentencing of Youths

The Sentencing Guidelines Council (SCG) published on 30 June 2009 a draft guideline on the principles which apply when courts sentence young offenders. The guideline is set in the context of new laws for sentencing young people which are expected to come into force later this year. It deals with the approach to the new youth rehabilitation order, including the order with intense supervision and surveillance which is an alternative to an immediate custodial sentence.

Far more than with adults, the approach to sentencing young offenders will be individualistic, the SGC states in the draft guideline. This recognises that young people under 18 can be significantly different in maturity and that the individual circumstances of each offender will need to be considered carefully.

The guideline also covers the length of custodial sentences, where it is particularly important to consider maturity as well as age, in addition to the circumstances of the offence. The closer an offender was to age 18 when the offence was committed and the greater the maturity of the offender or the sophistication of the offence, the closer the sentence is likely to be to that which would be imposed on an adult. The consultation closes on 28 August 2009.

The consultation guideline is available at [http://www.sentencing-guidelines.gov.uk/docs/consultation\\_guidelines\\_overarching\\_principless\\_sentencing\\_youths.pdf](http://www.sentencing-guidelines.gov.uk/docs/consultation_guidelines_overarching_principless_sentencing_youths.pdf)

## Mobile Information Symposium to be Held

The NPIA Mobile Information Programme (MIP) is hosting a two day symposium for business change representatives from UK forces at Ryton on 19 and 20 November 2009. The event will focus on delivering business change, expression of forces' experiences, successes and challenges.

The MIP team want to know what forces would like addressed at the symposium to ensure the event meets the specific requirements of police forces. Responses from forces are requested to the following:

- ◆ What would you want to get out of such an event?
- ◆ What should be included in the two day programme?
- ◆ Would you be prepared to participate e.g. speaking, demonstrating?

E-mail any ideas, suggestions and comments to the MIP team by 28 August 2009 at [MIP@npia.pnn.police.uk](mailto:MIP@npia.pnn.police.uk)

## Case Law



NPIA Digest will be featuring a monthly selection of Lawtel Case Reports to keep readers abreast of relevant developments in the law. Lawtel, part of Sweet & Maxwell, offers instant access to UK and EU case law, legislation and articles coverage, as well as a unique update service. For more information, or a free trial, please visit Lawtel's website at <http://www.lawtel.com> or call 0800 018 9797.

### Conviction for Violent Offence Following Issue of Fixed Penalty Notice Arising from Same Incident Was Not an Abuse of Process

R v GORE: R v MAHER (2009)

CA (Crim Div) (Lord Judge LCJ, Simon J, Blair J) 14/7/2009

Criminal Procedure

Fixed Penalty Notices: Grievous Bodily Harm: Seriousness Of Offence: Conviction For Violent Offences And Issue Of Fixed Penalty Notices Arising From Same Incident: Issue Of Fixed Penalty Notices Where No Evidence Of Violent Offences: Criminal Justice And Police Act 2001: S.18 Offences Against The Person Act 1861: S.20 Offences Against The Person Act 1861

The conviction of offenders for serious violent offences that arose out of the same incident that they had already received fixed penalty notices for under the Criminal Justice and Police Act 2001 did not constitute an abuse of process where the subject of the caution and the actual prosecution were not the same offence.

The appellant offenders (G and M) appealed against their subsequent conviction for inflicting grievous bodily harm after they had already received fixed penalty notices arising from the same incident. G and M had been involved in a group assault on the victim (V), which was captured on closed-circuit television. Police officers were alerted to the disturbance. They did not examine the closed-circuit television material itself, but relied on the reports of an unpleasant incident. At the scene, V was found to have some minor injuries. He complained that he had a sore arm, but there was no reason to believe that he had sustained serious injury. G and M were detained nearby. They were issued with fixed penalty notices under the Criminal Justice and Police Act 2001, for respectively being involved in an altercation in a public place while drunk and behaviour likely to cause harassment, alarm or distress. It was common knowledge that fixed penalty notices could not be issued for offences involving grievous bodily harm or wounding contrary to the Offences against the Person Act 1861 s.18 or s.20. The police later reviewed the closed-circuit television evidence and it was decided that fixed penalty notices were inappropriate. It also transpired that V had fractured his elbow, and that two operations would be required later. G and M were charged with inflicting grievous bodily harm on V. Applications to stay the indictment as an abuse of

process were refused. G subsequently pleaded guilty and M was tried and convicted. Sentencing was adjourned pending the outcome of the instant proceedings. G and M submitted that the refusal to stay the indictment as an abuse of process was wrong in law. They argued that they had been issued fixed penalty notices for disorder for the identical conduct for which they were convicted, and that in light of the relevant provisions of the 2001 Act, the linked statutory guidelines and analogous case law, the criminal proceedings were unfair and constituted an abuse of process.

#### HELD

The police officers who had issued the fixed penalty notices were acting on the basis of reports to them of an incident, rather than the evidence actually provided by the closed-circuit television. No complaint of assault had been made to them and the extent of V's injury was not apparent. It was clear that at that time the police officers were not aware of all the facts, and evidence to sustain an arrest and possible charge for grievous bodily harm was very thin. Had such evidence been available, then a fixed penalty notice would have been wholly inappropriate. In addition, although the fixed penalty notices arose out of the same incident that was ultimately prosecuted as a serious violent offence, the notices did not suggest that G or M had committed any violent offence. In the circumstances, it was clear that the subject of the caution and the actual prosecution were not for the same offence, *Jones v Whalley* (2006) UKHL 41, (2007) 1 AC 63 distinguished. It was also clear that the notices did not suggest that by paying the penalty liability to be convicted of a violent offence would be discharged, *R (on the application of Guest) v DPP* (2009) EWHC 594 (Admin) applied. There was nothing in the 2001 Act that suggested that the payment of a penalty notice for one offence relieved the recipient of any possible further proceedings if and when it became apparent that a more serious, and in particular a non-penalty offence, had in fact been committed, and the refusal to stay the indictment was appropriate.

#### APPEALS DISMISSED



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### Final Warning Was Unlawful Due to Lack of Clear and Unambiguous Admission of Guilt

**R (on the application of M) v (1) LEICESTERSHIRE CONSTABULARY (2) CROWN PROSECUTION SERVICE (2009)**

**QBD (Admin) (Sir Anthony May (President QB), Saunders J) 8/7/2009**

Criminal Procedure - Criminal Evidence

Codes Of Practice: Criminal Evidence: Guidelines: Police Interviews:  
Reprimands And Warnings: Young Offenders: Clear And Unambiguous  
Admissions: S.65 Crime And Disorder Act 1998: S.66 Crime And Disorder Act  
1998

The decision to administer a final warning to a juvenile for an alleged attempted rape had been unlawful, since there had not been a clear and unambiguous admission of guilt.

The claimant (M) applied for judicial review of a decision of the defendant Constabulary and Crown Prosecution Service to administer a juvenile final warning for an alleged attempted rape. The Crown alleged that M, at the age of 13 years old, had engaged in sexual activity with a female friend (F) which culminated in an attempted rape. F had invited M to her house and invited him upstairs to her bedroom. They engaged in consensual sexual activity, which included M touching F's vagina. At some point, F fell asleep but awoke to find M lying on top of her with his penis out of his trousers. F reported the incident to her mother and the police were informed. M was interviewed on three occasions, during which he provided an account of the events. The police passed the matter to the CPS, but indicated that it considered that the incident was "teenage folly" and recommended that M receive sexual counselling rather than a reprimand or warning as both would require M to be on the Sex Offenders Register. The CPS considered the matter and determined, on the basis of what it believed to be an admission in his prepared statement in his third interview, that M should receive a final warning under supervision of the Youth Offending Team. M's family were surprised by the decision and had serious misgivings about the reliability of M's purported admission in interview, particularly in the light of his lack of maturity, his lack of sexual experience and understanding of consent issues. M submitted that the final warning was imposed unlawfully as he had not made an unambiguous and clear admission as required by the Crime and Disorder Act 1998 s.65 and s.66 and in accordance with the relevant Home Office guidance.

#### HELD

Sections 65 and 66 of the Act laid down the framework for final warnings and reprimands and the Home Office guidance set down in detail the steps which had to be taken in order for either to be administered. For a warning to be imposed, the evidence had to meet the required standard, namely that it was reliable and that the alleged offence was more likely than not to have happened. Further, there had to be a clear and unambiguous admission by the individual that he or she had committed the offence. It was therefore important to consider the content of M's interviews and prepared statement to determine if a clear admission had been made. On any interpretation of the statement, although it demonstrated proximity to an act, it was clear that it contained no clear admission. This was further evidenced by the continued questioning of M afterwards by a police officer. M was repeatedly asked about his intentions towards F and asked many leading questions. The police code of practice relating to the interview of juveniles indicated that short, clear questions should be asked in order to prevent ambiguous statements or admissions. Therefore, in the light of the questioning technique and M's prepared statement, there had been no clear admission and the final warning had been unlawful.

#### APPLICATION GRANTED



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## Warrant Which Failed to Properly Identify Articles Sought and Related to Special Procedure Material Was Unlawful

(1) PETER JOSEPH POWER-HYNES (2) YURI SUZUKI-LAHYE v  
(1) NORWICH MAGISTRATES' COURT (2) NORFOLK CHIEF CONSTABLE  
(2009)

QBD (Admin) (Stanley Burnton LJ, Wilkie J) 26/6/2009

Criminal Procedure - Police

Powers Of Search: Search Warrants: Special Procedure Material: Validity:  
Lawfulness Of Issue: Sufficiency Of Identification On Warrant Of Material  
Sought: S.8 Police And Criminal Evidence Act 1984: S.15(6)(B) Police And  
Criminal Evidence Act 1984: S.8(1)(D) Police And Criminal Evidence Act 1984:  
S.9 Police And Criminal Evidence Act 1984

[A warrant to search the business premises of an accountant was unlawfully issued by a magistrates' court, as the warrant failed properly to identify the articles sought pursuant to it, and affected special procedure material in respect of which the magistrates' court had no power to issue a warrant.](#)

The claimant professional accountant (P) applied for judicial review of a decision of the first defendant magistrates' court to issue a search warrant in respect of premises that he owned. P had acted as the company secretary of a company (C) which the police believed was used by a third party (H) as a vehicle for prime bank guarantee frauds. P had played no part in the management of the company, but that was not known to the police. C's registered and trading address was that of the property owned by P. Prior to the warrant being issued, the police obtained a business information report through a third-party company. The report identified that P was the company secretary of C and was an accountant. It identified 15 other companies with which P was identified, and stated that P had other associations. Of those 15 other companies, only two were on a police list of companies associated with H. The police obtained a search warrant from the magistrates' court pursuant to the Police and Criminal Evidence Act 1984 s.8. The warrant stated that the police were entitled to enter P's property to search for "... Documents and records (Electronic or otherwise) relating to high value financial transactions. Authority is hereby given for any constable... to enter the said premises... to search for the material in respect of which the application is made." When the search was carried out by the police they removed all the client files relating to P's accountancy practice. It was common ground that the material removed included special procedure material within the definition under s.14 of the Act that was unconnected with C or H. P contended that the warrant (1) was too broad and uncertain; (2) related to special procedure material for which the magistrates' court could not issue a warrant.

### HELD

The description in the warrant of the articles to be sought was too vague and did not identify, so far as practicable, the articles to be sought, as required by s.15(6)(b) of the Act. What was one person's high-value financial transaction was another person's low-value transaction. Moreover, there was a simple

means of identifying the articles to be sought, namely documents or records relating to H or C. That description would have been sufficient. The vice of the description used in the warrant was that it was apt to include documents and records that had nothing to do with either H or C. Further, s.15(6)(b) of the Act required that, so far as was practicable, the articles to be sought had to be specified in the warrant itself, *R v Chief Constable of Warwickshire Ex p F* (1999) 1 WLR 564 DC distinguished. That was because it was necessary that the persons who were in the premises to be searched could ascertain from the warrant itself, when it was presented to them, the material to which it related, *R (on the application of Energy Financing Team Ltd) v Bow Street Magistrates Court* (2005) EWHC 1626 (Admin), (2006) 1 WLR 1316 and *R v Central Criminal Court Ex p AJD Holdings Times*, February 24, 1992 DC applied. Both the Act and the principle required the warrant to be a self-contained statement of the articles for which the search was authorised. (2) Once the police were aware that P was an accountant and the company secretary of C, the possibility arose that the documents in his possession included special procedure material. Once the warrant was issued without limiting the search to documents relating to H and C, that possibility became a likelihood. It followed that the requirement of s.8(1)(d) of the Act was not satisfied, the magistrates' court had no authority to issue the warrant and an application for it should have been made under s.9 of the Act.

#### APPLICATION GRANTED



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## Applications for Disclosure to Police of Documents in Care Proceedings Should Include Clear Statements of Who Will Receive the Information and the Purpose to Which it Will be Put

RE H (CHILDREN) (2009)

CA (Civ Div) (Thorpe LJ, Bodey J) 23/6/2009

Family Law

Care Proceedings: Criminal Investigations: Disclosure: Police Officers:  
Disclosure Of Material In Care Proceedings To Police Officer: Duty Of Judge To  
Perform Balancing Act: R.4.23 Family Proceedings Rules 1991: Family  
Proceedings Rules 1991: Pt Xi Family Proceedings Rules 1991

When refusing to order disclosure of various documents in care proceedings to the chief constable of police, for the purpose of criminal investigations, the judge had erred by failing to take account of the changes made in 2005 to the Family Proceedings Rules 1991 in relation to disclosure, and the revocation of r.4.23 by the insertion of r.10.20A.

The appellant chief constable appealed against a decision refusing his application for disclosure of various documents in care proceedings. The care proceedings had been instigated in relation to four children, one of whom had been found to have sustained serious head injuries when aged 5 months' old. The mother's partner, who was the father to one of the other children, admitted causing some of the child's injuries. The chief constable sought disclosure of the medical evidence, the father and mother's statements, the judgment and the agreed statement of facts in order to further criminal investigations. The application was refused. The chief constable submitted that the Family Proceedings Rules 1991 r.4.23 had been revoked in 2005 and replaced with r.10.20A and the judge had failed to take account of the changes made to disclosure in light of the rule change.

HELD

- (1) The change to the Rules in 2005 introduced a wider regime of disclosure than that contained in r.4.23. As the judge had not taken account of the changes made to the Rules his decision could not stand. A careful balancing act had to be performed by the judge. The fact that disclosure could now be made to police officers in prescribed circumstances, without the leave of the court, might have affected the judge's balancing exercise. Accordingly, the matter would be remitted for further consideration taking into account the changes made to the Rules.
- (2) (Per Thorpe LJ) (a) It should be emphasised that the leading case in matters concerning disclosure remained the case of *C (A Minor) (Care Proceedings: Disclosure), Re* (1997) Fam 76 CA (Civ Div), *Re C* applied.  
(b) The application had not clearly identified precisely who was to be in receipt of any disclosed information. In future, applications made under r.11 should contain a clear statement of the identity of the named officer in the child protection unit who the chief constable sought the release of

information to, and a clear statement of the purpose to which the information would be put. Further, an application that the named officer be permitted to exercise his discretion to share the documents with the CPS, in the event that in his conclusion it merited referral, should be made at the same time; it would be absurd for the family justice system to be burdened with two applications where essentially only one was required.

#### APPEAL ALLOWED



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## Unlawful Arrest for Driving While Over the Limit Did Not Render Subsequent Blood Test Unlawful

DIRECTOR OF PUBLIC PROSECUTIONS v WILSON (2009)

DC (Thomas LJ, Silber J) 21/7/2009

Road Traffic - Criminal Evidence - Criminal Procedure

Blood Tests: Breath Tests: Driving While Over The Limit: Unlawful Arrest:  
Unlawful Arrest In Hospital: Lawfulness Of Subsequent Blood Test: S.6d(3)  
Road Traffic Act 1988

The fact that the arrest in hospital of a person suspected of driving while over the legal alcohol limit was unlawful by virtue of the Road Traffic Act 1988 s.6D(3) did not mean that a subsequent blood test was unlawful.

The appellant DPP appealed by way of case stated against a decision of the magistrates' court that the respondent (W) was not guilty of an offence under the Road Traffic Act 1988 s.5(1). W had been taken to hospital after being involved in a road traffic accident. Whilst at hospital he consented to being breathalysed. The test revealed that he had been driving while over the legal alcohol limit. A police officer then cautioned and arrested him in the hospital. The doctors treating him consented to his blood being taken in order to test its alcohol content. The blood confirmed that he had been over the legal alcohol limit whilst driving. At the hearing, the magistrates concluded that W's arrest at hospital was unlawful and prohibited by operation of s.6D(3).

Consequently, the blood sample, which had been taken after the unlawful arrest, could not be admitted in evidence, having been taken outside the remit of the Act. Accordingly, W was found not guilty of the charge. The questions for determination were (i) whether the magistrates were correct that the blood sample could not be regarded as having been lawfully taken; (ii) if the magistrates were correct about that, whether the blood sample could be taken into account in any event in the absence of any mala fides on the part of the police officer. The DPP submitted that the fact that there was a prohibition against arresting a person in hospital under the Act did not operate to invalidate subsequent tests and procedures. W contended that where there had been a prohibited arrest all subsequent procedures were rendered unlawful.

### HELD

There was nothing in the statutory provisions that required there to be a valid or lawful arrest before subsequent procedures could be considered valid. The fact that an arrest was prohibited did not have the effect of invalidating subsequent procedures, *R v Fox (Leslie Raymond)* (1986) AC 281 HL and *Clowser v Chaplin* (1981) 1 WLR 837 HL applied. On that basis, the magistrates had been wrong to conclude that W's blood had been unlawfully taken and the case fell to be remitted to the magistrates with a direction to convict.

### APPEAL ALLOWED



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## Indefinite Notification Requirement Under Sexual Offences Act 2003 is Incompatible with Right to Respect for Private and Family Life

R (on the application of JF (BY HIS LITIGATION FRIEND OF)) v SECRETARY OF STATE FOR THE HOME DEPARTMENT: R (on the application of ANGUS AUBREY THOMPSON) v SECRETARY OF STATE FOR THE HOME DEPARTMENT (2009)

CA (Civ Div) (Dyson LJ, Maurice Kay LJ, Hooper LJ) 23/7/2009

Sentencing - European Union - Human Rights - Penology And Criminology

Declarations Of Incompatibility: EC Law: Foreign Travel: Notification Requirements: Proportionality: Restrictions: Reviews: Right To Respect For Private And Family Life: Risk Of Reoffending: Sex Offenders: Young Offenders: Compatibility Of S.82 Sexual Offences Act 2003 With Art.8 European Convention On Human Rights 1950: Absence Of Right Of Review: Pt 2 Sexual Offences Act 2003: Art.27 Directive 2004/38 On Free Movement For EU Citizens And Their Families 2004: S.82 Sexual Offences Act 2003: Art.8 European Convention On Human Rights: Art.1 Directive 73/148 On The Abolition Of Restrictions Of Movement And Residence Within The Community 1973: Art.2 Directive 73/148 On The Abolition Of Restrictions Of Movement And Residence Within The Community 1973

The Sexual Offences Act 2003 s.82 was incompatible with the European Convention on Human Rights 1950 art.8 in subjecting certain sex offenders to notification requirements indefinitely without the opportunity for review. As a matter of principle, an offender was entitled to have the question of whether the notification requirements continued to serve a legitimate purpose determined on a review.

The appellant secretary of state appealed against a decision ((2008) EWHC 3170 (Admin), (2009) 2 Cr App R (S) 47) that the Sexual Offences Act 2003 s.82 was incompatible with the European Convention on Human Rights 1950 art.8 to the extent that indefinite notification periods were not subject to any review mechanism whereby the proportionality of the notification requirements could be evaluated. The first respondent sex offenders (F) cross-appealed against the decision that the restriction on travel included in the notification requirements did not interfere with the rights protected by Directive 2004/38 art.4. F, who was aged 11 when he committed the relevant offences, had been sentenced to 30 months' detention; the second respondent (T) had been sentenced to five years' imprisonment. They were both subject to the notification requirements of Pt II of the Act for an indefinite period. The issue before the court was whether, in order to achieve the legitimate objective of assisting the police in the prevention and detection of crime, it was necessary that all sex offenders who were sentenced to imprisonment or detention for 30 months or longer should be subject to the notification requirements for the rest of their lives without the possibility of a review. The secretary of state argued that the interference with F and T's art.8 rights was very slight and amounted only to an inconvenience; the utility of the notification requirements as a tool for the prevention and detection of sexual offences would be

compromised if there were a right of review, as the police database would be incomplete; and the vast majority of those subject to the notification requirements would seek a review, which would have significant resource implications. F submitted that art.4(1) and art.4(2) of the 2004 Directive were engaged. He argued that the restrictions on travel inherent in the notification requirements were based on the offender's previous convictions alone, and an interference with the right to travel on those grounds was not permitted by art.27(2) of the 2004 Directive.

#### HELD

- (1) There was no binding authority on the question whether the imposition of indefinite notification requirements without the possibility of review was of itself a disproportionate interference with an offender's art.8 rights, *Adamson v United Kingdom (Admissibility)* (42293/98) (1999) 28 EHRR CD209 ECHR, *Massey v United Kingdom* (14399/02) Times, November 24, 2004 ECHR, *Gallagher's Application for Judicial Review, Re* (2003) NIQB 26, *Forbes v Secretary of State for the Home Department* (2006) EWCA Civ 962, (2006) 1 WLR 3075 and *A v Scottish Ministers* (2007) CSOH 189, 2008 SLT 412 considered. As a matter of principle, an offender was entitled to have the question of whether the notification requirements continued to serve a legitimate purpose determined on a review. The secretary of state had underestimated the significance of the impact of the notification requirements on offenders; for those who travelled frequently, sometimes at short notice, the notification requirements were more than merely an inconvenience. The aim of the notification requirements regime was to assist in the prevention and detection of sexual offences: no purpose was served by keeping on the Sex Offenders Register a person of whom it could confidently be said that there was no risk that he would commit a sexual offence. The police database should not include offenders who no longer presented a risk of sexual offending. The inclusion of a right of review of indefinite notification requirements would not render the scheme as a whole unviable; on the contrary, the lack of a system to review those who were no longer a risk might adversely affect the efficacy of the system, as police forces became burdened with notifications from an ever-increasing number of offenders. The risk of the floodgates opening could be avoided if Parliament set the threshold for review at a suitably high level, both as regards the time when an application could first be made, the frequency with which applications could be made, and the matters to be proved if the notification requirements were to be varied or discharged.
- (2) The case for holding that the absence of a right of review of indefinite notification requirements rendered s.82 incompatible with art.8 was even stronger in the case of young offenders, *R (on the application of Smith) v Secretary of State for the Home Department* (2005) UKHL 51, (2006) 1 AC 159 applied.
- (3) The notification requirements were not a formality equivalent to an exit visa; art.4(2) of the 2004 Directive was therefore not engaged. Nor did they amount to a prohibition on travel in breach of art.4(1) interpreted in the light of Directive 73/148 art.1 and art.2. They did not prohibit a

person from leaving the country; at most, they might inhibit departure in the relatively few cases where it was not possible to give 24 hours' notice. The notification requirements did not infringe the 2004 Directive.

APPEAL DISMISSED, CROSS-APPEAL DISMISSED



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### **SI 2009/1593 The Terrorism Act 2000 (Code of Practice for Examining Officers) (Revision) Order 2009**

In force **2 July**. This Order brings into force the revised Code of Practice for Examining Officers under the Terrorism Act 2000 ('the TA 2000'). This Code applies to constables, immigration officers and customs officers who are designated under Schedule 7 to the TA 2000 when exercising any functions under Schedules 7 and 8 to the TA 2000. The Code will apply to functions exercised from the beginning of the day on which it comes into force, including to functions that were begun before this point.

Schedule 7 of the TA 2000 provides a power to stop, question, detain and search persons at a port or border area, where it is believed that their presence there is connected with entering, leaving, or travelling by air within Great Britain or Northern Ireland, to establish whether they are a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism. Schedule 8 provides the power to take steps to identify a detained person and to take them to places of detention for examination under Schedule 7.

The revised Code of Practice can be found at <http://security.homeoffice.gov.uk/news-publications/publication-search/terrorism-act-2000/Code-of-Practice-for-Examin1.pdf>

### **SI 2009/1603 The Supreme Court Rules 2009**

In force **1 October**. These Rules will govern the practice and procedure to be followed in the Supreme Court. The Supreme Court will replace the Appellate Committee of the House of Lords when it becomes operational in October 2009.

### **SI 2009/1604 The Constitutional Reform Act 2005 (Commencement No. 11) Order 2009**

In force **1 October**. This Order brings into force a number of provisions of the Constitutional Reform Act 2005 which will bring into operation the Supreme Court.

### **SI 2009/1678 The Criminal Justice and Immigration Act 2008 (Commencement No. 9) Order 2009**

In force **8 July**. This Order brings into force a number of provisions in the Criminal Justice and Immigration Act 2008 which relate to conditional cautions. Conditional cautions are provided for in Part 3 of the Criminal Justice Act 2003. The provisions make amendments to the Criminal Justice Act 2003 which:

- ◆ Provide for the variation of the terms of the conditional caution, including by modifying or omitting conditions, or adding a condition;
- ◆ Require a relevant prosecutor to specify, when attaching a financial penalty condition to a conditional caution, how and to whom the penalty must be paid;
- ◆ Allow for the inclusion of terms in the code of practice regarding the relevant prosecutor's requirement to specify how and to whom any financial penalty must be paid.

The provisions relating to financial penalties are only brought into force so far as they relate to the power introduced in section 17 of the Police and Justice Act 2006, which has effect only in relation to certain police areas.

**SI 2009/1679 The Police and Justice Act 2006  
(Commencement No. 11) Order 2009**

In force **immediately before 8 July**. This Order brings into force Section 17 of the Police and Justice Act 2006, in so far as it relates to the power to impose financial penalties to conditional cautions. The Order is brought into force in relation to the following police areas:

- ◆ Cambridgeshire;
- ◆ Merseyside;
- ◆ Norfolk.

**SI 2009/1764 The Crime (International Co-operation) Act 2003  
(Designation of Participating Countries)  
(England, Wales and Northern Ireland) (No. 2)  
Order 2009**

In force **10 July**. This Order, which extends to England, Wales and Northern Ireland, designates Iceland, Norway and Switzerland as participating countries for the purposes of specified powers under the Crime (International Co-operation) Act 2003. This Act enables the United Kingdom to seek and provide mutual legal assistance concerning criminal matters, where a country is designated as a participating country.

**SI 2009/1839 The Violent Crime Reduction Act 2006  
(Drinking Banning Orders) (Approved Courses)  
Regulations 2009**

In force **31 August**. These Regulations make provision regarding the approved courses to which a person subject to a Drinking Banning Order can be referred. A Drinking Banning Order is a civil order which can be made either on application to the courts by the police or local authority, or when an individual is convicted for an alcohol-related offence, and is designed to protect others from criminal or disorderly conduct from the person while under the influence of alcohol.

**SI 2009/1840 The Violent Crime Reduction Act 2006  
(Commencement No. 7) Order 2009**

In force **31 August**. This Order brings into force the following provisions of the Violent Crime Reduction Act 2006 ('the Act'):

- ◆ Section 1 (drinking banning orders);
- ◆ Section 2 (duration of drinking banning orders);
- ◆ Section 3 (orders on an application to magistrates' court);
- ◆ Section 4 (orders in county court proceedings); and
- ◆ Section 5 (variation or discharge of orders under s. 3 or 4).

It also brings into force the following provisions, in so far as they relate to a drinking banning order under section 3 or 4 of the Act:

- ◆ Section 9 (interim orders);
- ◆ Section 10 (appeals);
- ◆ Section 11 (breach of drinking banning orders);
- ◆ Section 12 (approved courses);
- ◆ Section 13 (certificates of completion of approved courses); and
- ◆ Section 14 (interpretation of Chapter 1).

### **SI 2009/1842 The Criminal Justice and Immigration Act 2008 (Commencement No. 10) Order 2009**

In force **3 August**. This Order brings into force, to the extent not already in force, the following provisions of the Criminal Justice and Immigration Act 2008:

- ◆ Section 98 (violent offender orders);
- ◆ Section 99 (qualifying offenders);
- ◆ Section 100 (applications for violent offender orders);
- ◆ Section 101 (making of violent offender orders);
- ◆ Section 102 (provisions that orders may contain);
- ◆ Section 103 (variation, renewal or discharge of violent offender orders);
- ◆ Section 104 (interim violent offender orders);
- ◆ Section 105 (notice of applications);
- ◆ Section 106 (appeals);
- ◆ Section 107 (offenders subject to notification requirements);
- ◆ Section 108 (notification requirements: initial notification);
- ◆ Section 109 (notification requirements: changes);
- ◆ Section 110 (notification requirements: periodic notification);
- ◆ Section 111 (notification requirements: travel outside United Kingdom);
- ◆ Section 112 (method of notification and related matters);
- ◆ Section 113 (offences);
- ◆ Section 114 (supply of information to Secretary of State etc.);
- ◆ Section 115 (supply of information by Secretary of State etc.);
- ◆ Section 116 (information about release or transfer);
- ◆ Section 117 (interpretation of Part 7);

- ◆ Section 148(2) (consequential etc. amendments and transitional and saving provision) so far as it relates to the provisions specified in paragraphs 31 and 32 of Schedule 27; and
- ◆ In Schedule 27, paragraphs 31 and 32.

These provisions concern violent offender orders, which are orders made in respect of qualifying offenders which contain prohibitions, restrictions or conditions as the court considers necessary for protecting the public from the risk of serious violent harm caused by the offender. The order can last for between two and five years, unless renewed or discharged. A chief officer of police can apply to a magistrates' court for a violent offender order to be made in respect of a person who either resides in the chief officer's police area, or who the chief officer believes is in, or is intending to come to, that area.

#### **SI 2009/1883 The Terrorism Act 2006 (Disapplication of Section 25) Order 2009**

In force 25 July. This Order disapplies Section 25 of the Terrorism Act 2006 ('the Act') for a period of one year beginning with 25 July 2009. Section 25 of the Act operates to reduce the maximum period of detention under Schedule 8 of the Act from 28 days to 14 days, unless disapplied by Order.