

Digest

FEBRUARY 2009



CASELAW Police News Diversity
LEGISLATION POLICE NEWS NEWS
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DIVERSITY Criminal Justice

The NPIA Digest is a journal produced each month by the Legal Services Department. The NPIA Digest is an 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 NPIA Digest, information is included from Governmental and quasi-governmental bodies, criminal justice organisations and research bodies. As such, the NPIA Digest should prove an invaluable guide to those responsible for strategic decision making, operational planning and police training.

This edition contains a summary of the Policing and Crime Bill and the Coroners and Justice Bill. It also includes a number of Home Office Circulars published recently in respect of the changes to PACE Code A; Re-classification of cannabis; Authorisations of Stop and Search powers under Section 44 of the Terrorism Act 2000; and Obligations to report Money Laundering and The Consent Regime.

There are also a number of articles outlining recently published Government and Parliamentary reports including the Police and the Media; and the launch of a Money Laundering Inquiry. This edition has articles relating to the impact of the Macpherson Inquiry into the death of Stephen Lawrence ten years on and on usefulness of the phrase 'institutional racism'. Also included is an article on the report outlining the Sources of resentment and Perceptions of Ethnic Minorities among Poor White People in England and the latest statistical bulletins for quarterly crime figures and the 2007/08 statistics on Homicides, Firearm Offences and Intimate Violence. Coverage of an important judgment of a domestic burglary case (*R v Saw*) is included where guidance is given for sentencing and investigative interviewers.

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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EHRC Report Published on Police and Racism 10 Years on from the Macpherson Inquiry

On 12 January 2009 a decade after the Macpherson Inquiry into the death of Stephen Lawrence, the Equality and Human Rights Commission published its report 'Police and Racism: What has been achieved 10 years after the Stephen Lawrence inquiry report?'

The report considered four main themes:

- ◆ Employment, training, retention and promotion of all staff, both civilian and sworn officers;
- ◆ Stop and search;
- ◆ National DNA Database; and
- ◆ Race hate crimes.

The report states that the police service across England and Wales has made significant progress in dealing with race equality issues. However, the report also finds that the police must do more to tackle the following issues:

- ◆ Problems with stop and search, with a disproportionate number of black and Asian people being stopped and searched in most force areas;
- ◆ Information held on the DNA database with a high proportion of black men recorded;
- ◆ Address the issue of retention of new ethnic minority officers where twice as many ethnic minority recruits drop out in their first six months of service compared to their white counterparts; and
- ◆ Evidence of a 'canteen culture' existing among some specialist units which are still seen as a 'closed shop' to some ethnic minority recruits.

The full report can be found at

<http://www.equalityhumanrights.com/en/publicationsandresources/Pages/Policeandracism.aspx>

EHRC Urges Institutions to Catch up with Public on Race Issues

Trevor Phillips, Chair of the Equality and Human Rights Commission made a speech on 19 January 2009 to mark the tenth anniversary of the Stephen Lawrence Inquiry. Mr Phillips argued that British people no longer tolerate racism in the way they did ten years ago. However, he thought that public institutions still have some way to go in ensuring that they treat everybody fairly and root out discrimination.

The Commission also released new research showing a new and growing diversity among the young. Almost 20% of children under the age of 16 are from an ethnic minority and nearly 10% of children live in a family with a multiple white, black or Asian heritage. This growing diversity is one of the most fundamental changes seen for over a decade, argued Mr Phillips.

Mr Phillips said that 'institutional racism' as it was described in the Stephen Lawrence Inquiry has been not obliterated from public bodies. The unwitting prejudice, ignorance, thoughtlessness and racist stereotyping that Macpherson found has not disappeared. However, he argued that while there is still an institutional bias against certain sections of the population, including ethnic minorities, the use of the term 'institutional racism' is no longer effective or appropriate.

He said "The phrase 'institutional racism' has become cloaked in misunderstanding when it should be a way of helping to understand the blockages in the system that turn organisations of decent, fair-minded people into opportunity deserts for women or ethnic minorities". He argued that people had come to think it meant that an organisation is permanently infected by racism from top to bottom; that somehow police officers become racists as soon as they don their uniforms and that they can never change.

He warned that the recession could have implications both for tolerance and the way people are treated by employers. He said that in the wake of the lean times can come resentment and division, all too often along the lines of race and faith. If this recession lasts more than months there is a greater danger that it starts to turn the clock back on advances that have been made in the years since Stephen Lawrence died.

The proposed Equality Bill will provide an opportunity to address inequality, Mr Phillips stated, in a way that he thought chimed with the new mood amongst British people who are "Open, tolerant and fair-minded; but impatient of bureaucracy and hostile to unnecessary, authoritarian interference in everyday lives". He said that the Equality Bill should simplify the thousands of pages of complex legislation and help local authorities and other public services improve.

Steve Otter, Chief Constable of Devon and Cornwall Police and ACPO lead on Race & Diversity said "ACPO welcomes today's speech by Trevor Phillips which acknowledges the significant progress made by the police service in the 10 years since the publication of the Stephen Lawrence inquiry report. Although controversial at the time, the report's focus on the concept of institutional racism created the opportunity for real progress and led to major changes in the way the service engages with communities, delivers its services and recruits and trains staff. We accept that there is more to be done and are working with our partners on a new equality, diversity and human rights strategy which will set out our priorities for real change."

The full transcript of Trevor Phillips' speech can be found at
<http://www.equalityhumanrights.com/en/newsandcomment/speeches/Pages/Macphersonspeech190109.aspx>

The ACPO response to Trevor Phillips' speech can be found at
http://www.acpo.police.uk/pressrelease.asp?PR_GUID={9853A47D-98E3-4FAA-B5DB-2AE7D7C361AB}

Gender Agenda 2 - Good Practice Guide Published

The British Association for Women in Policing (BAWP) working in partnership with the National Policing Improvement Agency published a good practice guidance document on 8 January 2009 which provides examples used in forces to enable women to fully achieve their potential in contributing to policing.

This document contains examples of best practice in line with the five long term aims of Gender Agenda which are:

- ◆ For the Police Service to demonstrate consistently that it values all women working in policing;
- ◆ To achieve a gender, ethnicity and sexual orientation balance across the rank and grade structure and specialisms consistent with the proportion of women in the economically active population;
- ◆ To have a woman's voice in influential policy forums focusing on both internal and external service delivery;
- ◆ To develop an understanding of the competing demands in achieving a work/life balance and a successful career in policing; and
- ◆ To have a working environment and equipment of the right quality and standards to enable women to do their job professionally.

It is a vision of BAWP that this document will keep evolving so that everyone will be able to access the good practice that is taking place all over Britain in relation to women working within policing. Many of the good practice examples set out within the document will need updating and many more will need to be added.

The full document 'Gender Agenda 2 - Good Practice' can be found at
<http://www.bawp.org/assets/file/GA2%20GP%20document%20070109.pdf>

Sources of Resentment, and Perceptions of Ethnic Minorities among Poor White People in England

On 7 January 2009 the Department for Communities and Local Government published a report 'Sources of resentment, and perceptions of ethnic minorities among poor white people in England' based on research undertaken by the National Community Forum.

The aims of this report, following from the literature review on perceptions of ethnic minorities among 'poor white' people in England, were:

- ◆ To gather data on two not necessarily connected things: the sources of resentment and perceptions of ethnic minorities among people resident on estates in four places in England;
- ◆ To attempt to unpick these perceptions;
- ◆ To identify suggestions to facilitate integration; and

- ◆ To put forward some recommendations for moving community cohesion and integration forward on this basis.

The four selected sites were relatively monocultural ‘white’ urban spaces with different migration experiences; Castle Vale (Birmingham), Netherfield, Beanhill and Coffee Hall Estates (Milton Keynes); Halton Housing Trust in Runcorn and Widnes; and the Abbey Estate in Thetford.

The report states that popular understandings of racism contain two misleading messages. Either the focus is solely on discourses of superiority (abusive and/or intimidating language) and violence, which is part of the story but not all of it, or secondly, it is seen as purely a matter of individual prejudices. However the concept of ‘institutional racism’ (a set of practices and processes at a level above that of the individual) has been recognised in British law since the 1970s. Moreover, racism is not only about physical, but also about cultural difference. White people can become the objects of racist discourse because of cultural reasons. In British history, Jews, Irish Roman Catholics and Eastern Europeans have been through this experience.

The report included a list of suggestions for activities that would encourage integration, but these were set against a context of criticism of government intervention in such a field, with people arguing that integration cannot be imposed.

The report made the following conclusions:

- ◆ Contexts - the contexts from which interviewees were speaking differed in terms of:
- Local black and minority ethnic populations and histories of migration;
 - Levels of economic and environmental development; and
 - The type of frequency and quality of contacts with black and minority ethnic people.
- These contexts strongly inform, if not determine, people’s attitude toward a number of issues, including perceptions of black and minority ethnic people;
- ◆ The importance of local issues - to be considered important depended on the quality of the physical and social environment;
- ◆ Social class as part of identity - people experience their social position through a number of lenses, and an important one (necessarily in a project that focuses on the ‘white poor’) is social class. People in this research seemed happy to refer, unprompted, to themselves and communities as ‘working class’, and the concerns they focused on are seen through a set of experiences that are clearly marked by class;
- ◆ ‘Assimilation’ or ‘integration’? - all interviewees asked what integration meant to them. It emerged strongly that a majority understand ‘integration’ as meaning minorities giving up identity and merging with the local one, i.e. ‘assimilation’;

- ◆ Political correctness - there are different ways in which this idea is used to describe obstacles to communication. At present, the function of stories about political correctness appears to be to recast the power relations pertaining to the situations described so that the white majority assume the role of victims. There is a need to sort what is genuinely unhelpful to dialogue, on the one hand, from what is actually protecting groups of people from abuse, on the other; and
- ◆ Competition for resources - where immigration and integration are discussed in depth as problematic, there is a focus on real or perceived competition for resources; housing, benefits, jobs, territory and national culture. The implications of this for the political capital that can be accrued by the Far-right are very grave.

There are four principal recommendations which are:

- ◆ The adoption of shared and consistent approaches at all levels of government, which for example, involves appointing a lead officer at local authority level;
- ◆ To aim to reduce information deficits around immigration and resource-allocation. The poor quality information available on which to base opinions is exacerbating people's sense of loss and frustration, therefore improving communication and making processes transparent can help address this issue;
- ◆ Concerted dialogue involving community groups, black and minority ethnic people and non-government organisations, as well as local authorities and central government, to establish a working definition of integration; and
- ◆ In response to the widespread reference to 'political correctness' as a negative force, to use a similar dialogue-based approach to evaluating exactly what people mean when they say this, and then attempting to sift what is helpful from what is less so. The process of dialogue itself is both a mechanism and part of the process of integration. Again, the objective is to lessen the scope for misunderstandings and to shrink the basis for the narratives of unfairness, while forming some bonds between people and communities that are not currently communicating.

The full report can be found at
[http://www.communities.gov.uk/publications/communities/
sourcesresentment](http://www.communities.gov.uk/publications/communities/sourcesresentment)

National Workforce Modernisation Conference

The National Policing Improvement Agency will be holding its second National Workforce Modernisation Conference from Tuesday 24 March to Wednesday 25 March 2009 at The Queens Hotel, Leeds. This is a free event.

The Government's policing Green Paper firmly focused the spotlight on workforce modernisation and highlighted the importance of sharing learning with the wider service. The Conference 2009 will focus on three themes which are fundamental to methodology for sustainable business improvement:

- ◆ Informing a 10 year workforce plan;
- ◆ Maintaining resilience; and
- ◆ Embedding professionalisation.

Workforce modernisation is important to policing as it can assist the service to be:

- ◆ More customer-focused to build public confidence;
- ◆ More able to protect the public from risk and harm; and
- ◆ More efficient in the use of resources to deliver services that match public demand.

More information about the conference and workforce modernisation can be found at

<http://www.workforce-modernisation.org/conference2009/>

Update Workshops on Qualifications and Credit Framework

With the formal launch of the Qualifications and Credit Framework (QCF) towards the end of last year, a series of workshops are being held to consider the impact that the reforms to vocational qualifications will have on organisation and services.

The national workshops are designed to break down knowledge barriers and provide updates on the progress of the reforms. At each event there will be a choice of activities, covering a range of topics including the Foundation Learning Tier, to help plan and deliver QCF provision. The events entitled 'Working with the reforms to vocational qualifications - using the QCF to improve delivery' will run on the following dates:

- ◆ Birmingham - 24 February 2009;
- ◆ Durham - 2 March 2009;
- ◆ Liverpool - 5 March 2009; and
- ◆ London - 10 and 23 March 2009.

More information about these workshops can be found at
<http://www.lsneducation.org.uk/events/results.aspx?title=%25&Prog=Qualification%20Reform%20Supt%20Prog&Region=%25>

ICO Launches DVD to Open up Access to Public Documents

The Information Commissioner's Office (ICO) launched 'Tick Tock' on 7 January 2008 which is a new training DVD designed to help public authorities understand their responsibilities when dealing with requests under the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations (EIR).

Under FOIA, individuals can ask a public authority for any official information, for example minutes of Senior Officer team meetings or details of public spending. The authority must then provide the information or explain why the information may not be disclosed with reference to the exemptions under the FOIA or EIR.

The DVD provides clear and practical advice on the way in which all public authorities are legally required to handle requests for information under both the FOIA and EIR. It also gives practical guidance on the new ICO model publication scheme which public authorities have been required to adopt from 1 January 2009.

The 'Tick Tock' DVD is available on request free of charge at
https://www.ico.gov.uk/tools_and_resources/request_publications.aspx

The Policing and Crime Bill

The Policing and Crime Bill had its second reading on 19 January 2009. This Bill covers a wide range of policy issues and its proposed benefits were outlined in the last edition of the *NPIA Digest* (January 2009 page 5).

Overview

Reform of the criminal justice system has been a central theme of this Government and in the current parliamentary session it will continue to be so.

The Bill contains substantive amendments to more than 20 Acts covering a range of subjects which are set out below. The Policing and Crime Bill contains eight parts:

- ◆ Part 1 - Police reform;
- ◆ Part 2 - Sexual offences and sex establishments;
- ◆ Part 3 - Alcohol misuse;
- ◆ Part 4 - Proceeds of crime;
- ◆ Part 5 - Extradition;
- ◆ Part 6 - Aviation security;
- ◆ Part 7 - Miscellaneous; and
- ◆ Part 8 - General.

A summary of each part of this Bill follows:

Part 1 - Police reform

This part of the Bill includes a number of measures on police reform including collaboration, accountability and effectiveness. For example, it would introduce a new duty for police authorities to have regard to the public's views on policing in their area. It also sets out a new statutory framework for collaboration between forces and amends the appointments and removals process for senior officers. However, the Government's plans for directly elected police authorities, which provoked some controversy, have been dropped from the Bill.

Part 2 - Sexual offences and sex establishments

The second part of the Bill contains a number of provisions affecting the sex industry. These include a new, strict liability, offence of paying for the sexual services of a controlled prostitute, which is intended to reduce the demand for prostitution, and a new power for the civil courts to make orders closing brothels for up to three months where there is evidence that they have been used for activities connected with particular prostitution or pornography offences. There would be a new sentencing option under which those convicted of loitering or soliciting for the purpose of prostitution could be required to attend a series of meetings with a supervisor. Part 2 would also replace the existing offences of kerb-crawling and persistent soliciting with a

single offence which could be prosecuted on the first occasion, and would extend the conditions which can be imposed on sex offenders to restrict their travel abroad.

Lap dancing clubs are currently regulated in the same way as other places of 'entertainment'. Local authorities, residents and others have argued that this regime is too lax for controlling such venues and have called for them to be reclassified as 'sex establishments' in the same way as sex shops and sex cinemas. Clause 25 effects this change.

Part 3 - Alcohol misuse

Research points to clear evidence of links between alcohol consumption, crime and ill health. Excessive drinking by young people has aroused particular public concern. Part 3 of the Bill amends police powers to deal with young people drinking in public and introduces a new offence of persistently possessing alcohol in a public place. It tightens penalties for selling alcohol to young people and for refusing a police instruction to stop drinking in a 'designated public place'. The Bill also creates the legislative mechanism for introducing a mandatory code of practice for alcohol sales, covering such areas as supermarket price promotions. Although standard conditions on premises licences had hitherto been discouraged, an amendment to licensing law would enable licensing authorities to impose block conditions on a number of premises within one area.

Part 4 - Proceeds of crime

This part of the Bill amends the asset recovery regime that was established under the Proceeds of Crime Act 2002. The proposals would enable enforcement officials to remove property from suspected offenders prior to conviction; allow for additional search and seizure powers designed to prevent the dissipation of property; and would introduce an administrative forfeiture procedure for cash which had been 'detained' where the owner did not challenge the seizure. Part 5 would also extend the time limit within which civil recovery actions could be launched from 12 years to 20 years.

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Part 5 - Extradition

This part of the Bill makes some modifications to the Extradition Act 2003. The Bill ensures compliance with international mechanisms and conventions such as the Schengen Information System II. It also introduces more efficient systems and processes such as the provision of live links in certain extradition hearings.

Part 6 - Aviation security

Part 6 relates to airport security and policing. It amends the arrangements for airports policing by de-designating the nine airports currently designated for policing purposes. Instead, those airports which come under the National Aviation Security Programme will go through a new procedure, also set out in the Bill, to develop an Aerodrome Security Plan (ASP). If that ASP specifies that policing measures are required at the aerodrome then the aerodrome must prepare a Police Service Agreement (PSA), as set out in the Aviation Security Act 1982. This part of the Bill introduces a more joined-up approach

between airport security and policing through defining the role and funding of airport police where airport operators will pay for any dedicated police presence that they have agreed is required.

Part 7 - Miscellaneous

The Bill would also make a number of amendments to current criminal records legislation, in particular relating to checks for school governors and fees for volunteers. It would also enable employers to request that details of an individual's 'right to work' status be included on their criminal records check. This proposal was prompted by concerns regarding the employment of illegal workers in sectors such as care homes.

The Bill's border control provisions would amend the existing powers of Revenue and Customs officers. The Bill provides wider powers to UKBA officers to question travellers and there is a requirement to produce passports and travel documents for customs purposes. They would also clarify the respective powers of the Scottish Executive and the UK Government to ban the import of offensive weapons.

The remaining clauses of the Bill would make minor amendments to the status of Crime and Disorder Reduction Partnerships (in England) and Community Safety Partnerships (in Wales), the Scottish Drugs Enforcement Agency and the Serious Organised Crime Agency.

Clauses 78 to 82 of the Bill extend those subject to football banning orders in England and Wales to also ban them from attending regulated football matches in Scotland and Northern Ireland.

This part of the Bill adds a strategy for the reduction of re-offending in the area to the statutory responsibilities of Crime and Disorder Reduction Partnerships and ensuring that the Probation Service is a key partner.

Part 8 - General

Contains minor and consequential amendments and repeals and revocations.

The Policing and Crime Bill can be found at
<http://www.publications.parliament.uk/pa/cm200809/cmbills/007/2009007.pdf>

Coroners and Justice Bill

The Coroners and Justice Bill had its second reading on 26 January 2009. The Bill covers a wide range of policing issues and its proposed benefits were outlined in the last edition of the *NPIA Digest* (January 2009 page 7).

Overview

The purpose of the Bill is to establish more effective, transparent and responsive justice and coroner services for victims, witnesses, bereaved families and the wider public. It seeks to achieve this by:

- ◆ Updating parts of the criminal law to improve its clarity, fairness and effectiveness;

- ◆ Giving vulnerable and intimidated witnesses, including in respect of gun and gang related violence, improved protection, from the early stages of the criminal justice process;
- ◆ Introducing a more consistent and transparent sentencing framework;
- ◆ Improving the service bereaved families receive from a reformed coroner system;
- ◆ Giving those who are suddenly or unexpectedly bereaved opportunities to participate in coroners' investigations, including rights to information and access to a straightforward appeals system; and
- ◆ Putting in place a unified system of death certification that includes independent scrutiny and confirmation of the causes of death given on death certificates.

Additionally, the Bill will confer stronger inspection powers on the Information Commissioner to improve the way that their data is held and used and the removal of barriers to data-sharing to support public services.

The Coroners and Justice Bill contains nine parts:

- ◆ Part 1 - Coroners;
- ◆ Part 2 - Criminal offences;
- ◆ Part 3 - Criminal evidence, investigations and procedure;
- ◆ Part 4 - Sentencing;
- ◆ Part 5 - Miscellaneous criminal justice provisions;
- ◆ Part 6 - Legal aid;
- ◆ Part 7 - Criminal memoirs;
- ◆ Part 8 - Data Protection Act 1998 (Chapter 29); and
- ◆ Part 9 - General.

A summary of each part of this Bill follows:

Part 1 - Coroners

This part of the Bill sets out the duties of a coroner to investigate deaths; discontinuance of investigation; the purpose of an investigation; inquests and other powers in relation to deaths.

Part 2 - Criminal offences

This part of the Bill includes provisions relating to a range of criminal offences. Chapter 1 includes partial defences to murder in respect of diminished responsibility and loss of control, amendments to the offence of infanticide and encouraging or assisting suicide.

Chapter 2 creates a new offence of possession of prohibited images of children. Chapter 3 makes provision about conspiracies to commit offences in other parts of the UK. It also repeals section 29A of the Public Order Act 1986

which contains a saving for discussion or criticism of sexual conduct in respect of the offence of inciting hatred on grounds of sexual orientation.

Part 3 - Criminal evidence, investigations and procedure

This part of the Bill contains amendments relating to criminal evidence, investigations and procedure. Chapter 1 contains provisions for investigation anonymity orders. Chapter 2 re-enacts the Criminal Evidence (Witness Anonymity) Act 2008 with some modifications. Chapter 3 contains provision about measures taken in court proceedings for vulnerable and intimidated witnesses.

Chapter 4 contains provision about the use of live links in criminal proceedings. Chapter 5 contains other miscellaneous provisions including provision extending the Queen's evidence provisions in the Serious Organised Crime and Police Act 2005 to the Financial Services Authority and the Department for Business, Enterprise and Regulatory Reform, and provisions about the grant of bail in cases where a defendant is charged with murder.

Part 4 - Sentencing

Part 4 relates to sentencing. Chapter 1 establishes the Sentencing Council for England and Wales (replacing the Sentencing Guidelines Council and the Sentencing Advisory Panel) and makes provision about the Council's functions and the duties of courts to follow its guidelines. Chapter 2 contains other provisions relating to sentencing. These provide for extended driving bans for persons also given custodial sentences and amend the law relating to extended sentences for dangerous offenders.

Part 5 - Miscellaneous criminal justice provisions

This part of the Bill contains some further criminal justice provisions. It makes amendments relating to the Commissioner for Victims and Witnesses established under the Domestic Violence, Crime and Victims Act 2004; amends a range of criminal procedure legislation regarding the treatment in the UK of criminal offences committed elsewhere; and makes provision about the retention of knives confiscated from persons entering court and tribunal buildings.

Part 6 - Legal aid

This part of the Bill contains provisions about civil and criminal legal aid, including provision for pilot schemes in relation to civil legal aid, and provisions about the enforcement of contribution orders made in cases where criminal legal aid is granted.

Part 7 - Criminal memoirs

Part 7 introduces a new civil recovery scheme through which courts can order offenders to pay amounts in respect of assets or other benefits derived by them from the exploitation of accounts about their crimes, for example, by selling their memoirs, or receiving payments for public speaking or media interviews.

Part 8 - Data Protection Act 1998 (Chapter 29)

This part of the Bill makes a number of amendments to the Data Protection Act 1998, including extending the inspection and audit powers of the Information Commissioner, as well as introducing new provisions relating to data-sharing.

Part 9 - General

This part of the Bill sets out supplementary provisions about orders and regulations, commencement, extent, repeals and the Act may be cited as the Coroners and Justice Act 2009.

The Coroners and Justice Bill can be found at

<http://www.publications.parliament.uk/pa/cm200809/cmbills/009/2009009.pdf>

New Power and Guidance to Tackle Alcohol Related Crime

A new power that targets offenders who commit crime under the influence of alcohol was announced by the Home Office on 23 December 2008.

From this summer, Drinking Banning Orders will allow police and local authorities to stop a person entering certain premises if they have been involved in criminal or disorderly conduct under the influence of alcohol. A Breach of a Drinking Banning Order, which can last up to two years, could lead to a fine of up to £2,500. The orders are focused on people whose drinking has been identified as a factor in their irresponsible and disorderly behaviour.

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To add to the range of tools and powers to tackle alcohol related crime and disorder, the Government also published new guidance on obtaining Designated Public Place Orders and establishing Alcohol Disorder Zones.

The guidance on Alcohol Disorder Zones is available at

<http://police.homeoffice.gov.uk/publications/operational-policing/alcohol-disorder-zone-guidance1?view=Standard&pubID=605221>

The full guidance document 'Guidance on Designated Public Place Orders (DPPO): For Local Authorities in England and Wales' is available at
<http://www.crimereduction.homeoffice.gov.uk/alcoholorders/alcoholorders01.htm>

Standards Set for Crime Fighting Powers and Retention of DNA Profiles

New standards for the use of investigatory powers and retention of DNA profiles were outlined by the Home Secretary on 16 December 2008. She explained the ways to strengthen how the Regulation of Investigatory Powers Act (RIPA) is to be used by public authorities and how and when DNA profiles are to be retained on the national database.

The use of RIPA is to be the subject of a consultation that will seek to examine the following:

- ◆ A revision of the Codes of Practice that come under RIPA;
- ◆ Which public authorities can use RIPA powers; and
- ◆ How those powers are authorised, and who authorises their use.

There is also a planned consultation on proposed changes to RIPA powers to bring them in line with tests of safeguards, openness, proportionality and common sense.

The Government intends to bring forward proposals for a consultation on the retention arrangements for DNA profiles in a Forensics White Paper to be published later this year which will include:

- ◆ Varying the timescale of retaining DNA evidence dependent upon the seriousness of the offence, the age of the individual and the degree of risk posed by the individual;
- ◆ Re-examination of the current retention arrangements for DNA profiles; and
- ◆ Ensuring that the police can retrospectively take samples for a longer period after conviction and from those individuals who are convicted overseas.

The Home Secretary also announced that the Government will take immediate steps to take the DNA profiles of children under the age of 10 years, the age of criminal responsibility, off the database.

The full press release and speech can be found at
<http://www.homeoffice.gov.uk/about-us/news/common-sense-standards>

Commons Select Committee Report: Police and the Media

On 18 January 2009 the House of Commons Home Affairs Committee published their report 'Police and the Media'. In May 2008 the Home Affairs Committee announced its intention to investigate the relationship between the police and the media, in particular:

- ◆ The practice of holding off-the-record briefings during on-going police operations;

- ◆ Instances where police forces have failed to release information to the media; and
- ◆ Attempts by police to control media reporting.

In their report the Committee outlined their findings and made the following conclusions and recommendations:

- ◆ It was difficult to establish the precise extent of the practice of off-the-record briefings; however the examples witnesses cited indicated that it occurs too frequently. There is a limited set of circumstances where it is in the public interest for police officers to provide information to journalists about continuing investigations on an off-the-record basis. However, the Committee do not think it is ever acceptable for officers to identify individual suspects to the media before charge, as this has the potential to damage the investigation, any subsequent trial and the reputation of suspects released without charge. Police officers, as well as members of the Security Service, Civil Service and the military should also exercise extreme caution in speaking to the media during counter-terrorism operations, so as not to compromise the investigation or damage community relations;
- ◆ The leaking of information from police officers to journalists is not in itself a criminal offence, unless it breaches the Official Secrets Act or impairs the investigation of a serious crime. It is, however, a breach of police discipline regulations. Police forces appear to take such breaches seriously but often find it difficult to identify the source of the leak. It is therefore important to effect a cultural change by frequently reminding officers of the harm that may arise from leaking information;
- ◆ Forces should be more forthcoming in providing on-the-record information to journalists about individual crimes. The Committee welcomed assurances from the Association of Chief Police Officers and the Home Secretary that the Policing Pledge and crime mapping will lead to provision of a standardised level of information across forces. The Committee indicated that it was in the public interest for this information to be made available as greater openness can contribute towards greater public trust in police data, about which recommendations were made in their recent Report on Policing in the 21st Century; and
- ◆ The decision by the West Midlands Police and the Crown Prosecution Service to refer the Channel 4 Dispatches programme, 'Undercover Mosque', to Ofcom was regrettable. The Committee hope that the experiences of the West Midlands Police will lead to lessons being learnt throughout the service. Regardless of the rights or wrongs of individual cases, it is not the role of the police to seek to enforce responsible journalism and attempts to do so could be seen as an attack on freedom of expression and all the more so in this case, since the programme dealt responsibly and accurately with extremism and racist comments being made by clerics in places of worship.

The full House of Commons Home Affairs Committee report 'Police and the Media' can be found at

<http://www.publications.parliament.uk/pa/cm/cmhaff.htm>

Ratification of EU Convention against Human Trafficking

A major milestone to prevent human trafficking was reached on 17 December 2008 when the Government ratified the Council of Europe Convention against Human Trafficking. The ratification of the convention means the UK will formally become part of a Europe-wide agreement in setting minimum standards for protecting and supporting trafficking victims.

The convention will help to strengthen the UK's ability to catch the criminals that exploit victims of trafficking. The key benefits of ratifying the convention include:

- ◆ A new National Referral Mechanism, providing a nationally agreed process to help frontline staff identify victims of trafficking and offer them support;
- ◆ Strengthened arrangements for looking after victims, including a 45 day reflection and recovery period and the possibility of a one-year residence permit for victims; and
- ◆ Better support for victims in giving information to police, which will help authorities bring those who exploit them to justice.

The Council of Europe Convention on Action against Human Trafficking can be viewed online at
http://www.coe.int/t/DG2/TRAFFICKING/campaign/default_en.asp

'Delivering Prevent: Responding to Learning'

On 15 December 2008 the Department for Communities and Local Government published its report 'Delivering Prevent - Responding to Learning' which sought to draw out learning and emerging practice on the delivery of activity to prevent violent extremism following a series of reviews (see *NPIA Digest* December 2008, page 12).

This document provides an overview of how Prevent is responding to recent learning and research exercises into the local delivery of Prevent. It draws together a number of common themes which run through the Learning and Development Exercise carried out by Her Majesty's Inspectorate of Constabulary and the Audit Commission, a mapping exercise carried out by BMG on behalf of Communities and Local Government, which gathered data on the projects and evaluation activity as part of the Preventing Violent Extremism Pathfinder Fund and Lord Patel's review which looked at the delivery of 'whole community approaches' to preventing violent extremism.

The key issues and themes identified in this report can be grouped into eight areas for further action:

- ◆ Communications: improving two-way communications, including development of a clearer core narrative and support for local partners to develop a local vision and narratives that reflect local context and the needs and agendas of different partners;

- ◆ Information and intelligence sharing: supporting the development and implementation of effective information and intelligence sharing protocols and arrangements at a local level;
- ◆ Practical support: developing a greater level of practical advice and products for local partners, including reviewing and developing training programmes and products;
- ◆ Prioritisation and resources: strengthening of criteria for prioritisation and allocation of all funding and resources across Prevent;
- ◆ Assessing Prevent: review/improve/develop evaluation and outcome and output measures locally;
- ◆ Partnership working and engagement: encourage and support strong partnership working and provide advice on reviewing community engagement and/or assessing the effectiveness of it;
- ◆ Embedding Prevent: provide clarification and support on mainstreaming the delivery of Prevent locally; and
- ◆ Central capability and governance: review and improve governance, including clarifying roles and responsibilities of central partners to support local delivery.

The full report 'Delivering Prevent - Responding to Learning' can be found at <http://www.communities.gov.uk/documents/communities/pdf/1098129.pdf>

Home Office Circular 27/2008: Authorisations of Stop and Search Powers under Section 44 of The Terrorism Act 2000

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The Home Office Circular 27/2008 was published on 2 December 2008 setting out the authorisation process for section 44 of the Terrorism Act 2000 and replaces Home Office Circular 22/2006. All future authorisations should be made in accordance with this circular. There is a revised Annex A which must be completed for all authorisations.

Authorisations under section 44 of the Terrorism Act 2000 confer extraordinary powers of stop and search. They can be made where expedient for preventing acts of terrorism. Although initially made by police officers of ACPO rank, they must be confirmed by the Secretary of State. In view of their importance, authorisations are subject to considerable scrutiny before being confirmed by the Secretary of State. Forces making them should ensure they are able to provide sufficient supporting evidence and justification for the Secretary of State to base his decision on, and to stand up to legal scrutiny.

A number of areas should be given particular attention when considering authorisations and include:

- ◆ Detailed description of reasons for authorising use of the powers, including an assessment of the threat and events or circumstances which are specific to the force seeking the authorisation;
- ◆ Descriptions and justification of the geographical extent of powers;

- ◆ Detailed description of the use of section 44 powers over other stop and search powers;
- ◆ Provision of information on the operational use of the powers and statistical returns;
- ◆ Details of the briefing and training provided to the officers; and
- ◆ Details of community impact measures taken.

The purpose of this circular is to provide guidance on issues to be considered for section 44 authorisations ensuring that forces consider as wide a range of factors as possible when making an application. The decision to issue an authorisation and the reasons for doing so remain at the discretion of the authorising officer.

Further guidance is available in the 2008 NPIA Practice Advice on Stop and Search in Relation to Terrorism published in November 2008 (see *NPIA Digest December 2008* edition, page 7).

The Home Office Circular 27/2008 can be found at
<http://www.knowledgenetwork.gov.uk/ho/circular.nsf/79755433dd36a66980256d4f004d1514/bb4ed0b7608d0da780257512002ece58?OpenDocument>

Home Office Circular 29/2008: Obligations to Report Money Laundering - The Consent Regime

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The Home Office Circular 27/2008 was published on 5 December 2008 setting out guidance on the operation of the 'consent' regime in the Proceeds of Crime Act 2002 (POCA). The guidance has been drafted in consultation with the Serious Organised Crime Agency, Association of Chief Police Officers, Association of Chief Police Officers (Scotland), the Crown Prosecution Service, HM Revenue and Customs, Revenue and Customs Prosecutions Office and others.

This guidance has been issued to ensure consistency of practice on the part of law enforcement in considering requests for consent under Part 7 of POCA. This is in response to concerns from the financial services industry and other sectors and professions that decisions should always be taken in an effective and proportionate way, with due engagement with all participants.

Under POCA individual persons and businesses in the regulated sector are required not only to report, before the event, suspicious transactions or activity that they become aware of, but to desist from completing these transactions until a specific consent is received. This is the 'consent regime' in section 335 of POCA.

Decisions on requests for consent to proceed with a transaction or activity ('a prohibited act') are taken by SOCA in consultation with the relevant law enforcement agency. The policy sets out the high-level principles by which the law enforcement agencies should make decisions on consent, and how these principles should be applied. It is important that law enforcement agencies recognise the potential significant impact that each report and decision can have, for example on whether or not:

- ◆ The proceeds of crime are recovered;
- ◆ Crime is prevented;
- ◆ Honest individuals and businesses are exposed to financial loss or litigation; and
- ◆ The smooth running of commercial business is disrupted.

The Home Office Circular 29/2008 can be found at

<http://www.knowledgenetwork.gov.uk/HO/circular.nsf/79755433dd36a66980256d4f004d1514/190d3b48599fead9802575060036775e?OpenDocument>

Home Office Circular 32/2008: National Roll Out of Plans to Cut Police Red Tape

All 43 Police forces in England and Wales are now able to axe the lengthy Stop and Account form and cut the level of form-filling for most crimes following the Home Secretary's announcement on 22 December 2008. The Government announced that it has changed the law (see details of statutory instrument in *NPIA Digest* January 2009 edition, page 65) to deliver the challenging recommendations in relation to Stop and Account in Sir Ronnie Flanagan's Review of Policing.

The changes to PACE Code A took effect on 1 January 2009. Home Office Circular 32/2008 outlines the changes to the recording and reporting processes under Code of Practice A issued under Section 60(1)(a) of the Police and Criminal Evidence Act 1984. From 1 January 2009, a police officer or member of police staff conducting an encounter under paragraphs 4.11 - 4.20 of Code A will be required to record only the ethnicity of the person. Whilst the change removes the form filling process, it maintains the important requirement to record the ethnic classification of the person and to provide the person with a receipt of the encounter.

The recording of ethnicity for stop and account is key information. This enables the police and the local community to monitor and supervise the exercise of the stop and to measure and take appropriate action to tackle disproportionality.

Last year police forces in England and Wales completed 1.8 million Stop and Account forms and spent on average up to 10 minutes completing each one on the street and a similar period in back office time inputting the information onto police systems.

Jan Berry, the Independent Reducing Bureaucracy in Policing Advocate, said "The requirement to record full details every time a member of the public is asked to account for their presence has had the potential to waste everyone's time; it frequently aggravates the member of the public, who can see no reason for being further detained and acts as a deterrent to police officers, who are faced with time consuming reams of paper for a straight forward action. Police Officers remain fully accountable for their actions, but are being given back the ability to use their professional judgement on what details need to be recorded when stopping people. Where officers need to search someone

it is right that full details are taken and provided. The increasing availability of technology to record basic details can provide the necessary checks and balances necessary for public confidence."

The amended PACE Code A can be found at
<http://police.homeoffice.gov.uk/publications/operational-policing/pace-code-a-amended-jan-2009>

Further information on the changes to PACE Code A can be found in Home Office Circular 32/2008 which can be found at
<http://www.knowledgenetwork.gov.uk/HO/circular.nsf/79755433dd36a66980256d4f004d1514/f0862ee8e047fe9080257524003619fc?OpenDocument>

Home Office Circular 1/2009 Controlled Drugs: Reclassification

The Home Office Circular (HOC) 1/2009 issued on 15 January 2009 replaces HOC 5/2004 and is to be implemented on 26 January 2009. This Circular draws attention to the Misuse of Drugs Act 1971 (Amendment) Order 2008 that reclassifies cannabis, cannabis resin, cannabinol and its derivatives from Class C to Class B drugs under Schedule 2 to the Misuse of Drugs Act 1971, including any preparation or other product containing these substances. In addition, any substance which is an ester or ether either of cannabinol or of a cannabinol derivative is reclassified as a Class B drug. (As a result of these changes, it should be noted that cannabis oil is also subject to control as a Class B drug.)

The Order, like the Act it amends, applies to the whole of the United Kingdom. The new maximum penalties and recording requirements for cannabis offences are also set out in this circular.

The Home Office Circular 1/2009 can be found at
<http://www.knowledgenetwork.gov.uk/HO/circular.nsf/79755433dd36a66980256d4f004d1514/30df848f8771b6a78025753d00475ff9?OpenDocument>

Home Office Circular 2/2009: Uniform to be Worn by Traffic Wardens who are also Police Community Support Officers (PCSOs)

The Home Office Circular 2/2009 was issued on 14 January 2009. The Road Traffic Regulation Act 1984 prescribes that traffic wardens appointed under section 95 of the Act shall wear such uniform as may be determined by the Secretary of State. It also provides that they shall not act as traffic wardens when not in uniform. The purpose of this Circular is to notify the police of a new determination of the uniform to be worn by traffic wardens who are also designated as PCSOs under section 38 of the Police Reform Act 2002.

From 1 February 2009 traffic wardens who are also PCSOs should, from that time wear the local PCSO uniform without differentiation.

It remains however important to distinguish those PCSOs who are also traffic wardens and have traffic warden powers from those who are not and do not.

Their status should therefore be explained on the designation card they carry and produce on demand as PCSOs.

This determination relates only to those traffic wardens designated as PCSOs. The uniform for traffic wardens not so designated remains as set out in HO Circular 7/1994, as amended by HO Circular 57/1997.

The Home Office Circular 2/2009 can be found at
<http://www.knowledgenetwork.gov.uk/HO/circular.nsf/79755433dd36a66980256d4f004d1514/b961bf2cfb7a86358025753800349fbe?OpenDocument>

Money Laundering Inquiry Launched

The House of Lords EU Committee launched on 5 January 2009 an inquiry into EU and international cooperation to prevent money laundering and the financing of terrorism.

The inquiry, which will be undertaken by the Lords EU Sub-Committee on Home Affairs, will look at the role of the EU and its member states in global efforts to prevent money laundering and terrorist financing. They will consider the level of international cooperation in detecting and preventing money laundering operations.

The Committee will consider what impact the ruling of the European Court of Justice (ECJ) in the Kadi case will have on EU efforts to tackle the problem. (This refers to the Joined Cases C-402/05 and C-415/05 Yassin Abdullah Kadi and Al Barakaat International Foundation v Council, Judgment of 3 September 2008).

In the Kadi case the ECJ ruled that the EU could not implement a UN Security Council resolution to impose economic sanctions on Yassin Abdullah Kadi, an associate of Osama bin Laden, as Kadi had not had the opportunity to put forward his comments on the proposed sanction order. The case reflects an assumption by the ECJ that it has jurisdiction to review sanctions already imposed by the UN Security Council.

The following questions will also be explored by the Committee:

- ◆ How effectively have EU Member States and others cooperated in seeking to reduce international money laundering? Is there an effective formal legal framework for criminal justice cooperation in this area?
- ◆ How effectively have the EU and UN cooperated in this area?
- ◆ What are the respective future roles of Europol and Eurojust in countering money laundering and terrorist financing?
- ◆ How effective is the cooperation among and between Financial Intelligence Units?

More information on the Committee and this inquiry including the full Call for Evidence can be found at

<http://www.parliament.uk/documents/upload/MLCallforEvidenc191208dw.doc>

Sentencing Advisory Panel Launches Consultation into Sentencing of Young Offenders

The Sentencing Advisory Panel launched a consultation on 18 December 2008 to explore the principles of sentencing for 10 to 17-year-olds convicted of criminal offences and to seek views on when a young person should receive a custodial sentence.

The consultation is based around the provisions of the Criminal Justice and Immigration Act 2008. When implemented, the Act will create a single community sentence, the youth rehabilitation order, for young offenders and will increase the emphasis on using non-custodial sentences wherever possible.

A key question in the consultation paper seeks views on a proposal that the proper approach for a court is to confront young offenders with the consequences of their offending, tackle those factors that put the young person at risk of further offending, encourage reparation and reinforce the responsibilities of parents.

Views are also sought on the criteria to be used when deciding what to include in a youth rehabilitation order and when deciding whether a young person is a persistent or dangerous offender or should be tried or sentenced in the Crown Court.

The full consultation document is available at <http://www.sentencing-guidelines.gov.uk/> and the closing date for responses is 23 March 2009.

Tougher Sentences to Combat Knife Crime

The Ministry of Justice announced on 29 December 2008 that tougher punishments will be imposed on people who carry illegal knives. From 5 January 2009 courts will be able to hand out tougher and more intensive penalties for everyone convicted of possession of a knife who are ordered by the courts to carry out community payback work such as picking up litter, renovating community centres, clearing undergrowth and cleaning up graffiti for local communities.

Offenders sentenced to pay for their crimes within the community already have to work, wearing high visibility orange jackets with the distinctive 'Community Payback' logo, give something back to their neighbourhoods and lose much of their free time.

A community sentence can be made up of one or more of the following 12 options: compulsory community payback, specified activity - such as a course to improve prospects of employment, supervision - daily or weekly meetings with a probation officer, an accredited programme to tackle issues such as anger management, prohibited activity, curfew, exclusion from a place, activity at an attendance centre, residence with an automatic curfew, mental health treatment, drug rehabilitation and alcohol treatment.

Sentences are constructed to ensure the public's safety is paramount, the offender is duly punished, but they are also given the opportunity to

rehabilitate and get help for some of the root causes behind their offending.

The full press release can be found at
<http://www.justice.gov.uk/news/newsrelease291208.htm>

Rehabilitation of Offenders Act Now Includes Cautions, Reprimands and Warnings

The Rehabilitation of Offenders Act 1974 (as amended by the Criminal Justice and Immigration Act 2008) now covers reprimands, warnings, cautions and conditional cautions (adult and youth) as well as convictions. This change came into effect on Thursday 18 December 2008.

These out of court disposals were not previously within the scope of the Rehabilitation of Offenders Act 1974 and therefore, never became spent. This meant that if a person was asked specifically if he had received any cautions, for example by prospective employers, he or she had to declare it, even if it was given several years ago for a relatively minor offence.

Under the new provisions simple cautions, reprimands and final warnings become immediately spent and the conditional caution and youth conditional caution become spent after three months. This applies to any of these disposals administered before the commencement date in the same way as it applies to cautions etc given on or after that date.

Fixed Penalty Notices and Penalty Notices for Disorder do not form part of a person's criminal record as there is no admission of guilt and therefore do not need to be covered by the Rehabilitation of Offenders Act. However, a Penalty Notice for Disorder or a Fixed Penalty Notice may be disclosed on a Criminal Records Bureau enhanced check if considered relevant to the post or position applied for.

The fact that an out of court disposal becomes 'spent' does not affect its recording on the Police National Computer where it will continue to be available to the police, CPS and courts for information if the offender commits further offences. In addition, these changes do not affect the protection of children and vulnerable people. Cautions for most sex offences trigger sex offender registration requirements.

The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 has been updated in tandem to extend the scope of the Exceptions Order to cover cautions, reprimands and final warnings. Therefore cautions, reprimands and final warnings that are recorded on the Police National Computer, either spent or otherwise, continue to be disclosed under the Criminal Records Bureau enhanced and standard checks if someone seeks new employment working with children or vulnerable people.

Unspent conditional cautions, together with unspent convictions, will be disclosed on a Criminal Records Bureau Basic Disclosure once this level of check is available.

More information is available at
<http://frontline.cjsonline.gov.uk/latest-news/articles/?id=26>

Judgment Leads to New Guidance for Interviewers in Domestic Burglary Cases

An important Court of Appeal judgment, R. v. Saw and others [2009] EWCA Crim 1, was published on 16 January 2009 causing new sentencing guidelines to be made for burglary cases.

The guidance provided by this case will assist interviewing officers to determine what aspects of the case need to be investigated and also what important information needed to be recorded on the file to ensure that the court can give the most appropriate sentence in a domestic burglary case.

In a recent case a Recorder wished to impose a custodial sentence on an offender for an offence of domestic burglary but was constrained from doing so by sentencing guidelines and the decision in R v McInerney: R v Keating [2003] 2CAR (S) 240 and instead imposed a community order.

This case re-examines the guidance given in R v McInerney: R v Keating [2003] 2CAR (S) 240 and gives fresh guidance. This case provides that the court must address the overall criminality of the offender in the light of previous convictions and the impact of the offence on the victim(s).

The key elements in approaching sentencing are:

- ◆ Burglary in a dwelling is an offence against the person as well as an offence against property and particular focus is required on the impact of the offence on those living in the burgled house so that sentences can reflect the level of harmful consequences even when not intended by the offender; and
- ◆ Previous convictions and the record of an offender are of more significance for burglary of a dwelling than in the case of some other crimes. Where an offender has previous convictions for relevant dishonesty there will be a heavier sentence than for an identical offence committed by a first offender.

The new guidelines set out three categories of seriousness. There is also a non-exhaustive list of aggravating and mitigating features commonly encountered in burglary provided in the judgment which is more extensive than the features listed in the Magistrates' Court Guidelines that came from the McInerney and Keating cases:

The aggravating features include:

- ◆ The use or threat of force on or against the victim (NB: this would make the offence triable on indictment only);
- ◆ Trauma to the victim beyond that normally associated with this type of offence;
- ◆ Pre-meditation and professional planning or organisation by offenders;
- ◆ Working in groups or when housebreaking implements are carried;
- ◆ Vandalism of the premises burgled;

- ◆ Deliberate targeting of any vulnerable victim;
- ◆ Deliberate targeting of any victim;
- ◆ The presence of the occupier whether at night or during the day;
- ◆ High economic or sentimental value of the property stolen or damaged;
- ◆ Offence committed on bail or shortly after imposition of a non-custodial sentence;
- ◆ Two or more burglaries of homes rather than a single offence; and
- ◆ The offender's previous convictions.

The mitigating features include:

- ◆ Nothing, or only property of very low value is taken;
- ◆ Offender played a minor part in the burglary, and treated by others in group as if he were on the fringes;
- ◆ Exploited by others;
- ◆ Offence committed on impulse;
- ◆ Age and state of health (mental and physical);
- ◆ Good character;
- ◆ Evidence of genuine regret and remorse;
- ◆ Ready co-operation with the police; and
- ◆ Positive response to previous sentences.

The full approved judgement can be found at

http://www.judiciary.gov.uk/docs/judgments_guidance/r-v-saw.pdf

The response from the Sentencing Guidelines Council to the case can be found at

<http://www.sentencing-guidelines.gov.uk/docs/Burglary%20in%20a%20dwelling.pdf>

Crime in England and Wales: Quarterly Update to September 2008

The Home Office released the latest Quarterly update of the Crime Statistics for England and Wales on 22 January 2009. The main points in the Quarterly Update are as follows:

- ◆ Based on British Crime Survey (BCS) interviews in the year to September 2008, the overall level of crime is stable compared with September 2007. The apparent decreases in household and personal crime were not statistically significant. The number of crimes recorded by the police fell by 3% for the period July to September 2008 compared with the same quarter a year earlier;

- ◆ BCS interviews also showed the risk of being a victim of crime (23%) is stable compared with the previous year. The risk of being a victim remains at a historically low level;
- ◆ Based on BCS interviews in the year to September 2008, the level of violent crime is stable compared with the year to September 2007. Recorded violence against the person for July to September 2008 fell by 6% compared with the same period in 2007;
- ◆ Police recorded robberies fell by three per cent overall, but robberies involving knives or sharp instruments increased by 18% over the same period;
- ◆ BCS interviews to September 2008 indicated domestic burglary and vandalism remained stable and vehicle-related thefts fell by ten per cent compared with the year to September 2007;
- ◆ For the period July to September 2008, police recorded domestic burglaries rose by four per cent, whilst there were falls in recorded offences against vehicles (6%) and criminal damage (8%);
- ◆ Police recorded drug offences for July to September 2008 increased by 9% compared with the same period in 2007;
- ◆ There was a 29% fall in firearm offences in July to September 2008, compared to the same period in 2007; and
- ◆ BCS interviews showed that 46 per cent of people agreed that the police and local agencies were dealing with the anti-social behaviour and crime issues that matter in their area. There was no change in the overall level of perceived anti-social behaviour (17%).

The statistical bulletin 'Crime in England and Wales: Quarterly Update to September 2008' is available at

<http://www.homeoffice.gov.uk/rds/pdfs09/hosb0109.pdf>

Homicides, Firearm Offences and Intimate Violence 2007/08

The publication of the police recorded crime statistics 'Homicides, Firearm Offences and Intimate Violence 2007/08' (Supplementary Volume 2 to Crime in England and Wales 2007/08) on 22 January 2009, show that the number of homicides recorded by the police in England and Wales rose by 2% in the year to March 2008, but the picture for firearms offences is mixed. The 2007/08 British Crime Survey (BCS) shows falls in the last year of non sexual partner abuse among women, and in any family abuse for both men and women compared with 2006/07 BCS interviews. The trend in last year sexual assault is stable.

The bulletin provides further analyses of the headline homicide and gun crime published in July 2008 in Crime in England and Wales 2007/08, as well as BCS findings on the extent of intimate violence. The further detail on homicide and gun crime includes breakdowns for homicides on method, circumstance, relationship between victim and suspect, and court outcome; and for gun crime on type of weapon, degree of injury and location of armed robberies.

The BCS intimate violence findings are from the 2007/08 BCS self-completion module on partner abuse, family abuse and sexual assault.

Homicide

Total homicides rose by 2% from 758 in 2006/07 to 773 in 2007/08. This compares with the 3% increase reported last July in the main Crime in England and Wales volume. However, the figures in the supplementary volume are on a slightly different basis, as they take into account the results of the subsequent court cases. The most common method of killing, at 35% of the total, involved a knife or other sharp instrument. The number of such homicides increased from 269 to 270, the highest number since this collection started in 1977, but at a similar level to that seen in four of the last six years. On the other hand, homicides by shooting fell from 59 in 2006/07 to 53 in 2007/08.

Firearms Offences

The overall trend in firearms offences varies according to whether offences involving air weapons are included. Overall firearms offences, including those involving air weapons, fell by 6% to 17,343 offences in 2007/08, the fourth consecutive annual fall. However after excluding air weapons, the total rose by 2% to 9,865. Only the total excluding air weapons is published in the Quarterly Update, and it shows a 29% fall in July-September 2008 (compared with July-September 2007).

Firearms (including air weapons) were used in 0.4% (or one in 250) of recorded crimes. Serious or fatal injury occurred in just three per cent of these firearm offences. More than half (56%) of firearms offences (excluding air weapons) occurred in just three police force areas: Metropolitan, Greater Manchester and West Midlands.

Intimate Violence

The BCS intimate violence figures showed that 30% of women and 20% of men had been the victim of any domestic abuse since the age of 16. Overall prevalence of sexual assault experienced in the last year has remained stable between the 2006/07 and 2007/08 BCS.

Following several years of little change, there were significant falls in the prevalence of women experiencing (non-sexual) partner abuse in the last year and the prevalence of both men and women experiencing (non-sexual) family abuse in the last year, between 2006/07 and 2007/08 BCS interviews.

The statistical bulletin 'Homicides, Firearm Offences and Intimate Violence 2007/08' is available at

<http://www.homeoffice.gov.uk/rds/pdfs09/hosb0209.pdf>

Law Commission Reports on Criminal Liability when Intoxicated

The Law Commission published its report 'Intoxication and Criminal Liability' on 15 January 2009 together with a draft Criminal Law (Intoxication) Bill. Empirical evidence indicates that many crimes are committed when the offender is under the influence of alcohol or other drugs. The law relating to criminal liability when an alleged offender is intoxicated is unclear and often difficult to apply. The report sets out recommendations for change to make the law more comprehensible, logical and consistent.

Currently, offences which require proof of a culpable state of mind are categorised as either 'offences of specific intent' or 'offences of basic intent'. The alleged offender's state of self-induced intoxication is relevant to the determination of his or her liability if the offence charged is one of specific intent; but if alleged offender is charged with an offence of basic intent it is not. However, it is not always clear which culpable states of mind must always be proved, which means there may be uncertainty over the relevance of alleged offender's self-induced intoxication. The labels themselves are confusing, moreover, as there is often no 'intent' as such which needs to be proved.

In addition, although the current law is clear on the relevance of involuntary intoxication to criminal liability, what actually counts as involuntary intoxication is not so clear.

Professor Jeremy Horder, the Commissioner leading the project, said "The present rules governing the extent to which the offender's intoxicated state may be relied on to avoid liability are inadequate. Our recommendations would remove the unsatisfactory distinction between basic intent and specific intent and provide a definitive list of states of mind to which self-induced intoxication is relevant. We also clearly identify situations in which the offender's intoxication would be regarded as involuntary rather than self-induced and establish a rule setting out the relevance of the offender's intoxicated state under these circumstances. Our recommendations would make the law much more efficient and easier to apply".

The full report 'Intoxication and Criminal Liability' and the draft bill can be found at
<http://www.lawcom.gov.uk/intoxication.htm>

Pilot Scheme Set to Crackdown on Metal Theft

A new initiative to tackle the growing problem of metal theft, estimated to cost the UK £360 million each year, was announced on 9 January 2009 by the Home Office. The new National Metal Theft Crime Unit is being piloted for six weeks to target rogue scrap metal dealers who are illegally handling metal stolen from church roofs, man-hole covers, railway tracks and even telephone lines.

The Unit, which will be run by the Association of Chief Police Officers and British Transport Police, is to be jointly funded by the Home Office and the

Energy Networks Association who will share best practice ideas with police forces throughout England and Wales to highlight the tools and powers available to tackle this problem. The pilot will be evaluated at the end of March 2009 and then may be rolled out across the country.

The press release can be found at

<http://press.homeoffice.gov.uk/press-releases/crackdown-on-metal-theft>

More Young People Using Ketamine

An investigation published by substance abuse charity DrugScope on 15 January 2009 reports that an increasing number of young people are using the Class C drug Ketamine.

Ketamine, a hallucinogen originally used as a horse tranquiliser, was ranked more harmful than both ecstasy and cannabis by an independent study published in the Lancet in 2007. Despite government attempts to raise awareness by making Ketamine a Class C drug in 2006 its use had risen in nine major cities in the past 12 months according to a 2008 survey carried out by DrugScope.

The Drug Trends survey revealed concerning levels of recreational use in 2005 and since then the average price of a gram has fallen from £30 to £20 making it more accessible to young people.

Recent research carried out by the Home Office showed that young people between 16 and 24 are responsible for the highest levels of drug use.

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More information about drug misuse is available in the Home Office Statistical Bulletin (2008) 'Drug misuse declared: Findings from the British Crime Survey 07/08' which can be found at

<http://www.homeoffice.gov.uk/rds/pdfs08/hosb1308.pdf>

Restraint of Young People to be Overhauled

On 15 December 2008 the Government announced that the approach to the restraint of young people in young offender institutions, secure training centres and secure children's homes (under-18 secure estates) was to be overhauled. The announcement followed the publication of the report 'Independent Review of Restraint in Juvenile Secure Settings'.

The review found widespread acceptance that it is sometimes necessary to use force to restrain young people in the secure estate, particularly when failing to do so would place a young person or others in danger. However, the review's key findings and recommendations included:

- ◆ Certain restraint techniques, including the double basket hold, should be removed permanently;
- ◆ In exceptional circumstances, it may be appropriate to use pain compliance techniques of restraint to ensure the safety of young people or staff; and
- ◆ All staff should have consistent and comprehensive training in the awareness of risk factors in restraint; the monitoring of warning signs in young people; and the need to take action quickly.

In its response to the review, the Government has undertaken to accept and implement nearly all of its recommendations and to implement a major programme of work to address concerns, remedy problems, and introduce greater consistency. This change of approach may have implications for the police service when dealing with the restraint of young people.

The full report 'Independent Review of Restraint in Juvenile Secure Settings' is available at

<http://www.justice.gov.uk/publications/restraint-review.htm>

The Government's response to this review is available at

<http://www.justice.gov.uk/publications/govt-response-restraint-review.htm>

Case Law



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The Thoroughness of an Investigation is Relevant to the Test of Reasonable Grounds for Suspicion

CHIEF CONSTABLE OF WEST YORKSHIRE v ARMSTRONG (2008)

CA (Civ Div) (Arden LJ, Hallett LJ, Blackburne J) 5/12/2008

Police - Torts

Arrest: Police Inquiries: Suspicion: Wrongful Arrest: Arrest On Suspicion Of Rape: Reasonable Grounds For Suspicion

In a claim for damages for false imprisonment, false arrest, and trespass to land and goods involving a claimant who was arrested on suspicion of rape and was subsequently exonerated, the judge had erred in law in holding that the police officer who made the decision to arrest had no reasonable grounds for suspecting him.

The appellant chief constable appealed against a decision awarding damages to the respondent (X) for false imprisonment, false arrest, and trespass to land and goods. An allegation of rape had been made to the police and a description of the attacker given. The victim stated that he was a white man aged 19 years or under, of slim build, with brown hair and clean shaven. She gave a description of his clothing and said that he told her that he liked to be called Daniel, not Danny, and that following the attack he had stolen the contents of her handbag, telling her he was normally a thief and not a rapist. An investigating officer who knew X's family realised that the description sounded like X and informed a senior officer. The senior officer noted that X went to nightclubs, might have been a doorman, had two previous convictions for theft, lived near the site of the attack, fitted the general description, had worn similar clothing and liked to be known as Daniel not Danny. On that basis the senior officer concluded that there were reasonable grounds for suspecting him and X was arrested the following day at his home. X was later exonerated and issued proceedings. The judge held that the police officers had failed to carry out a proper investigation before arresting X and did not have reasonable grounds for arresting him. He held that X was in his mid-twenties, unshaven and of large build. He rejected as irrelevant most of the other reasons for arrest and ruled that the fact that X preferred to be called Daniel and lived within walking distance of the attack was not enough to justify arrest.

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CASE LAW - EVIDENCE AND PROCEDURE

HELD

The judge was wrong and had erred in law in holding that the police had no reasonable grounds for suspecting that X was the rapist. The thoroughness of an investigation was relevant in all of the circumstances, and there would sometimes be circumstances where the matter was not urgent and where it was incumbent on the police to make further inquiries. However, it was important to remember that an arrest might be effected early on in an investigation and that it might not always be possible to carry out further investigations, O'Hara v Chief Constable of the Royal Ulster Constabulary (1997) AC 286 HL applied and Raissi v Commissioner of Police of the Metropolis (2008) EWCA Civ 1237, (2008) 105(45) LSG 19 considered. The judge had erred by pitching the level of suspicion too high. Whilst the judge had stated the correct test in law, he had not applied it correctly, as he had applied it too strictly. He had erred by failing to put the decision to arrest of the senior officer in the proper context. There was a rapist on the loose, there had been a vicious attack and the senior officer had the protection of the public at the front of his mind. He had to act swiftly to prevent another attack and to preserve any evidence. The information received by the senior officer was important, from a reliable source and appeared to match significantly the description of the rapist. The judge had also erred by considering the reasons for arrest individually; when making his decision, the senior officer had based it on the cumulative effect of the reasons.

APPEAL ALLOWED

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Prosecution Non-Disclosure of Significant Evidence Relevant to Defence Led to Conviction Being Quashed

DAVID RICHARD TUCKER v CROWN PROSECUTION SERVICE (2008)

CA (Crim Div) (Moses LJ, Burnett J, Judge Morris QC) 19/12/2008

Criminal Evidence

Failure To Disclose: Fresh Evidence: Police Officers: Prosecution Disclosure: Non-Disclosure Significant Irregularity: Alleged Motive For Accomplice To Lie: Alibi

A conviction for robbery was quashed where there had been non-disclosure that was likely to have had a significant impact on the jury's view of the appellant's defence that he was not involved and that an accomplice had a motive for giving false evidence.

The appellant (T) appealed against a conviction for robbery. It was alleged that T and his co-accused (M) robbed a man (V) in his home. T was alleged to have punched V in the face so hard that his cheekbone was broken. The sum of £10 was taken, said to be owed to M for cannabis. T and M were arrested the next day at M's address. The main evidence against T came from M who pleaded guilty to the lesser offence of theft. V failed to identify T in an identity

parade. T denied being present and gave details of an alibi. T informed both his barrister and solicitor that he had provided a police officer (F) with information about M's drug-dealing activities, and suspected that M had found out the source of that information and implicated T as a means of seeking revenge. No reference was made to those matters in T's defence statement. F denied that T had been an informant. T did not pursue that line of defence at trial. On appeal, T relied on fresh evidence tending to support his case as to the motive M had for falsely accusing him. The police then disclosed that, although T had not been an informant, F did have conversations with him about M's drug-dealing. They also disclosed intelligence reports which recorded that T's partner had informed F that T was being set up by M because he thought that T was going to try to take over M's drug-dealing business and information about T's alibi, and that a shirt said to have belonged to M's accomplice had blood on it which DNA examination showed could not have come from T.

HELD

- (1) The fresh evidence was admitted. The prosecution had a number of trenchant criticisms of it. Whatever the credibility of T's witnesses, two facts could not be denied: firstly, contrary to what the defence were told at the time of trial, T had given information to F; secondly, the prosecution never revealed to the defence the record containing important information as to a possible motive for M to lie about T. It was accepted that that information should have been disclosed.
- (2) The material disclosed on appeal provided powerful evidence of a motive for M to lie. Whether it was true or not, it was material which the defence were entitled to see and which they could have deployed to suggest that M was giving false evidence because he feared that his drug-dealing business was going to be taken over. Such a line of defence was risky but at least the defence were entitled to know what the police had been told. Although material on which the defence could have relied to suggest a motive for M to lie had been in their hands, the failure of disclosure was a significant irregularity. It was not possible to say precisely what impact it would have had on the jury but it was likely that the information would have provided powerful support for the suggestion that M had reasons of his own for giving false evidence against T.
- (3) The matter of the shirt was another significant incident of non-disclosure. The DNA evidence ought to have been disclosed. That was likely to have had a significant impact on the jury's view of T's defence that he was not involved.

APPEAL ALLOWED



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Analysis of the Criminal Evidence (Witness Anonymity) Act 2008

**R v (1) MAYERS (2) GLASGOW (3) COSTELLOE (4) BAHMANZADEH:
R v (1) P (2) V (3) R (2008)**

**CA (Crim Div) (Lord Judge LCJ, Leveson LJ, Forbes J, Openshaw J,
Burnett J) 12/12/2008**

Criminal Evidence - Criminal Procedure

Conditions: Credibility: Hearsay Evidence: Police Officers: Public Interest: Right To Fair Trial: Special Measures For Witnesses: Witness Anonymity Orders: Analysis Of Statutory Rules Relating To Anonymity Of Witnesses: Interests Of Justice: Criminal Evidence (Witness Anonymity) Act 2008: European Convention On Human Rights: S.2 Criminal Evidence (Witness Anonymity) Act 2008: S.3 Criminal Evidence (Witness Anonymity) Act 2008: S.7 Criminal Evidence (Witness Anonymity) Act 2008: S.4 Criminal Evidence (Witness Anonymity) Act 2008: S.4(6) Criminal Evidence (Witness Anonymity) Act 2008: S.5 Criminal Evidence (Witness Anonymity) Act 2008: S.5(2)(A) Criminal Evidence (Witness Anonymity) Act 2008: S.5(2)(B) Criminal Evidence (Witness Anonymity) Act 2008: S.5(2)(D) Criminal Evidence (Witness Anonymity) Act 2008: S.5(2)(E) Criminal Evidence (Witness Anonymity) Act 2008: S.5(2)(F) Criminal Evidence (Witness Anonymity) Act 2008: S.5(2)(C) Criminal Evidence (Witness Anonymity) Act 2008: Criminal Justice Act 2003

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The court analysed a number of different features of the Criminal Evidence (Witness Anonymity) Act 2008, particularly the conditions in s.4 that had to be met before an anonymity order could be made in respect of eye witnesses, including undercover police officers, and discussed the considerations in s.5 that the court had to have regard to which focused on the protection of the interests of the defendant.

The appellants, in three joined cases, appealed against their convictions, and the Crown, in a fourth interlocutory appeal, appealed against a decision that the Criminal Evidence (Witness Anonymity) Act 2008 did not permit a witness anonymity order to be made unless it was proposed that the witness or witnesses would be called to give evidence. The first two appeals involved anonymous eye witness evidence in murder cases. In the third appeal, the appellants were convicted of offences in connection with the use of premises for the supply of Class A drugs after anonymity orders had been made in respect of undercover police officers. The fourth case involved a murder in which the victim had been shot in full view of a number of witnesses. The Crown in that case had sought to rely on hearsay statements of anonymous witnesses. Although the first three appeals involved convictions returned before the Act came into force, express provision was made for such appeals to be examined on the basis of the Act. All four cases required analysis of the Act.

HELD

- (1) The Act, in response to *R v Davis (Iain)* (2008) UKHL 36, (2008) 1 AC 1128, provided a comprehensive structure to deal witness anonymity and

sought to address the provisions of the European Convention on Human Rights 1950, Davis applied.

- (2) An anonymity order was a special measure of last practicable resort, and witness relocation could only be a practicable alternative in the rarest of circumstances.
- (3) The authority and guidance of *R v H* (2004) UKHL 3, (2004) 2 AC 134 in relation to public interest immunity were undiminished, H and C considered. The principles which governed the use of special counsel to protect the overall fairness of the trial when the question whether information should be withheld from the defence was being addressed should be adapted when its possible use arose in the context of witness anonymity.
- (4) The procedure in s.2 and s.3 of the Act were self explanatory. Section 2 illustrated the kinds of measures that may be taken in relation to a witness, which included the use of a screen, pseudonym and voice modulation. When giving his evidence, the witness, whose credibility had to be assessed, had to be seen by the judge and jury and any relevant interpreter, and they had to hear his undistorted natural voice.
- (5) The Crown had to comply with its existing duties in relation to full and frank disclosure, save as expressly permitted by the Act in relation to withholding of information on the basis of public interest immunity.
- (6) Nothing in the Act diminished the overriding responsibility of the trial judge to ensure that the proceedings were conducted fairly. A judicial warning to the jury to ensure that the defendant was not prejudiced by the anonymity order was sufficiently dealt with by s.7 of the Act.
- (7) Conditions A, B and C in s.4 of the Act had to be met before an anonymity order could be made. Condition A, which was linked to s.4(6) of the Act, was not fulfilled unless the anonymity order was necessary, among other things, for the protection of the safety of the witness and prevention of real harm to the public interest. In respect of police witnesses, particularly those working undercover, there may be sound, operational reasons for maintaining anonymity and the court would normally be entitled to follow the unequivocal assertion by an undercover police officer that without an anonymity order he would not be prepared to testify. Condition B concerned the fairness of the trial and condition C was concerned with making the anonymity order in the interests of justice and was expressly directed to oral testimony. When considering conditions A, B and C the court had to have regard to considerations in s.5 of the Act, the focus of which was the protection of the interests of the defendant. The consideration in s.5(2)(a) of the Act maintained the principle that a defendant was normally entitled to know the identity of the witness who incriminated him; the considerations in s.5(2)(b), s.5(2)(d) and s.5(2)(e) related to the weight to be attached to the evidence of the anonymous witness; the consideration in s.5(2)(f) reinforced the view that a witness anonymity order should be a measure of last resort; and pursuant to s.5(2)(c) the court was required to consider whether the evidence of the anonymous witness was the sole or

decisive evidence; if both, condition B may be harder to satisfy. The court should also examine whether the anonymous evidence was supported extraneously or whether there were a number of anonymous witnesses who incriminated the defendant and address the questions of possible improper collusion between the witnesses and cross-contamination of one another.

- (8) It could not be said with sufficient confidence that everything relating to the credibility, motivation and integrity of the anonymous witness in the first case was revealed. Accordingly, the trial process was unfair and the conviction of the first appellant was quashed.
- (9) When making the anonymity orders in respect of witnesses in the second case, the judge was fully justified in regarding the fear expressed by each witness as entirely reasonable and had rightly rejected the possibility of relocation as ineffective. The judge had noted the duty to keep the anonymity issue under review. The second appellant was convicted after a fair trial.
- (10) Anonymity of undercover police officers in the third case was necessary to prevent real harm to public interest. The two appellants were able to properly and fully test the officers' evidence. Accordingly, they were convicted after a fair trial.
- (11) The common law, the Criminal Justice Act 2003 and the 2008 Act did not allow the court to extend the witness orders to permit anonymous hearsay evidence to be read to the jury. The Crown's appeal was, therefore, dismissed.

JUDGMENT ACCORDINGLY



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Double Jeopardy - 'New and Compelling Evidence' Does Not Mean the Evidence Must Relate Directly to the Allegation Which Led to Acquittal

R v A (2008)

CA (Crim Div) (Lord Judge LCJ, Swift J, Cranston J) 1/12/2008

Criminal Evidence - Criminal Procedure

Acquittals: Credibility: Double Jeopardy: New And Compelling Evidence: Rape: Retrials: Statutory Interpretation: Fresh Evidence: Meaning Of "New And Compelling Evidence In Relation To The Qualifying Offence" In S.78(1) Criminal Justice Act 2003: Meaning Of "Highly Probative" In S.78(3)(C) Criminal Justice Act 2003: S.78(1) Criminal Justice Act 2003: S.79 Criminal Justice Act 2003: S.76(1) Criminal Justice Act 2003: S.78(3)(C) Criminal Justice Act 2003: Pt 11 Criminal Justice Act 2003: S.79(2) Criminal Justice Act 2003

On an application for a retrial under the Criminal Justice Act 2003 s.76(1), the reference in s.78(1) to "new and compelling evidence..... in relation to the qualifying offence" did not mean that the new and compelling evidence had to relate directly to the allegation for which the defendant had been acquitted. In the instant case, where the relevant offence was rape, what mattered was that the new evidence should be admissible to prove that, contrary to his evidence at trial, the defendant had raped the complainant.

The applicant Crown Prosecution Service applied to quash the acquittal of the respondent (X) for offences of indecent assault and rape and for a retrial on the count of rape. X's trial had taken place in 2004. The offences had allegedly taken place 13 years previously when X was an outdoor pursuits trainer and the complainant (S), then 15 years old, had been helping him at residential camps for youth groups. S's evidence against X at trial had been largely unsupported. She had also given evidence of having suffered sexual abuse in unrelated incidents involving different abusers. X had denied all the allegations against him and had put himself forward as a man of good character who had worked with thousands of young people, the implication being that he had never before been the subject of any complaint of impropriety. After X's acquittal, his former wife had read about the case and informed police that X had, long before, been arrested for indecent assaults on three children whilst working at a school. Following an extensive police investigation, a 17-count indictment was preferred against X in 2007. All of the offences involved sexual misconduct with multiple complainants in different parts of the country while in a position of authority and trust. X's trial on those counts was due to begin shortly after the hearing of S's case. The prosecution sought to rely on the new evidence to support a retrial of S's rape allegations. X submitted that (1) the new evidence was not directly related to the allegation of rape of which X had been acquitted and was not therefore sufficiently direct as to be "in relation to the qualifying offence" within the meaning of the Criminal Justice Act 2003 s.78(1); (2) it was not in the interests of justice within the meaning of s.79 of the Act for the court to make the order applied for, first because the acquittals on the indecent assault charges would create difficulties in the retrial, and second because S's evidence at trial was so damaged and unreliable that a second prosecution had no prospects of success.

HELD

- (1) The new evidence was admissible to support S's complaint. It not only significantly undermined X's disingenuous suggestion at the 2004 trial that he had spent his adult life blamelessly working with children, but also bore significant factual similarities to S's complaint. For the purposes of s.78, the evidence was clearly "new" and was also "compelling" in that it was reliable, substantial and highly probative of the case against X in the 2004 trial. The reference in s.78(3)(c) to "highly probative" did not require that the new evidence must relate directly to the specific allegation of rape. What mattered was that the evidence should be admissible to prove that, contrary to his evidence at trial, X had raped S. The evidence under consideration demonstrated that S's complaint was not an isolated one as previously thought, but was part of a pattern of abuse, with S taking her chronological place in the middle of a series of independent groups of

complainants from different locations spanning a period of 14 years of X's working life. If that evidence had been available at the first trial, there was a high probability that X would have been convicted. If the section had been intended to limit the new evidence to "direct" evidence, the statutory language would be expected to be similar to that in Part 11 of the Act. The examples in the Law Commission Consultation Paper No.156 entitled "Double Jeopardy" were therefore to be viewed as mere examples and not as a definitive consideration of the new and compelling evidence that could trigger a re-trial; each scenario required a fact-specific judgment.

- (2) Section 79(2) did not provide an exhaustive list of the considerations to be taken into account when addressing the interests of justice. The principle of finality in litigation was not a relevant consideration and therefore the double jeopardy principle could not be resuscitated under the guise of the interests of justice. In the instant case, the acquittals of indecent assault would not make a retrial of the rape allegation unfair, *R v Z* (Prior Acquittal) (2000) 2 AC 483 HL applied. Although there were aspects of S's evidence that might remain open to criticism, her credibility was far from destroyed. It was not unusual for victims of sexual abuse to exhibit fragility, especially where the trial took place long after the abuse had ceased.

APPLICATION GRANTED



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An Agreement to Aid and Abet an Offence Does Not Constitute Conspiracy

R v (1) DAVID MATTHEW KENNING (2) PAUL TERRANCE CHARLES FENWICK (3) PAUL JAMES BLACKSHAW (2008)

CA (Crim Div) (Lord Phillips of Worth Matravers LCJ, Dobbs J, Underhill J) 24/6/2008

Criminal Law

Aiding And Abetting: Conspiracy: Production Of Drugs: Agreement To Aid And Abet: Capability Of Agreement To Amount To Criminal Conspiracy: S.1(4)(B) Criminal Attempts Act 1981: S.1(1) Criminal Law Act 1977

An agreement to aid and abet an offence was not in law capable of constituting a criminal conspiracy under the Criminal Law Act 1977 s.1(1). Therefore, convictions for conspiracy to aid and abet the production of cannabis and for conspiracy to counsel its production were quashed as the actus reus of the substantive offence had not been committed.

The appellants (K, F and B) appealed against convictions for conspiracy to aid and abet the production of cannabis, and F and B appealed against convictions for conspiracy to counsel the production of cannabis. K and F owned a shop selling hydroponic equipment, cannabis seeds and cannabis-related literature, and B occasionally worked there. Prosecutions had been brought against producers of cannabis on whose premises equipment from the shop had been found. The police made two undercover visits to the shop. On the first the undercover officer discussed with K and F the equipment needed to grow plants in his loft, and F stated that he could provide anti-detection foil. On the second the officer told B that he wanted to grow plants to make money. Both B and F referred to anti-detection measures and advised on yield for the first crop. The difficulty for the prosecution was that the items purchased from the shop could have been used lawfully to grow other plants. A submission of no case to answer was rejected. In his summing up, the judge directed the jury that the offence of aiding, abetting, counselling or procuring the commission of an offence could be made out even if the latter offence was never in fact committed. The appellants submitted that a statutory conspiracy could not be committed unless the acts the conspirators agreed to do would, if carried out, result in the commission of a criminal offence by one of them, and no conspiracy had been made out as none of the conspirators had agreed to cultivate cannabis. They submitted that the offence of conspiring to aid and abet was unknown to law. The prosecution contended that the House of Lords in R v Hollinshead (Peter Gordon) (1985) AC 975 HL had expressly left open the question of whether the Court of Appeal (R v Hollinshead (Peter Gordon) (1985) 2 WLR 761 CA (Crim Div)) in the same case had been correct to rule that an offence of conspiracy to aid, abet, counsel or procure contrary to the Criminal Law Act 1977 s.1(1) was a legal impossibility.

HELD

- (1) There could be no conviction for aiding and abetting, counselling or procuring an offence unless the actus reus of the substantive offence was

shown to have occurred. The actus reus of an accessory involved two concepts: (a) aiding, abetting, counselling and procuring; (b) an offence. Furthermore, under the Criminal Attempts Act 1981 s.1(4)(b), it was not an offence to attempt to aid, abet, counsel or procure the commission of an offence. It was possible for persons to agree to aid and abet an offence that they intended or expected would be committed by a person who was not a party to that agreement, but it was hard to conceive that such an agreement would constitute statutory conspiracy contrary to s.1(1) of the 1977 Act. Whether the reasoning of the Court of Appeal in Hollinshead remained binding might be a matter for debate. However, the instant court would endorse the Court of Appeal's decision that an agreement to aid and abet an offence was not in law capable of constituting a criminal conspiracy under s.1(1) of the 1977 Act, Hollinshead applied. The judge should have acceded to the submission of no case to answer and the directions that he subsequently gave to the jury were defective.

APPEALS ALLOWED



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Chief Constable Not Entitled to Recover Costs of Special Police Services Where No Free Acceptance of the Higher Level of Policing

CHIEF CONSTABLE OF GREATER MANCHESTER v WIGAN ATHLETIC AFC LTD (2008)

CA (Civ Div) (Sir Andrew Morritt (Chancellor), Smith LJ, Maurice Kay LJ) 19/12/2008

Police - Sport

Football Matches: Payment: Restitution: Special Police Services: Payment For Special Police Services: Basis On Which Services Provided: Implied Requests: Safety Of Sports Grounds Act 1975: S.25 Police Act 1996

In the circumstances a football club had not made an implied request for special police services under the Police Act 1996 s.25 and was not required, either under contract or by way of restitution, to pay for policing services provided over and above those which it had expressly requested.

The appellant football club (W) appealed against a decision ((2007) EWHC 3095) that it was obliged to pay the respondent Chief Constable for special police services provided pursuant to an implied request by it for such services. For some years W had paid for policing at its football matches. Pursuant to a certificate under the Safety of Sports Grounds Act 1975, it was required to secure at its own expense such policing as was in the opinion of the Chief Constable sufficient to ensure the orderly behaviour of spectators. As from the start of the 2003/2004 season, W was promoted to a higher division and although that meant that additional policing was required, W refused to pay any increased charges for police services. No agreement was reached and although policing was provided at a higher level and at increased cost, W continued to pay only for policing at the levels provided in previous seasons. After two seasons the Chief Constable sought recovery of the unpaid balance of the cost of the policing actually provided, claiming that such policing constituted special policing services within the meaning of the Police Act 1996 s.25. The judge found that there had been an implied request for special police services for the purposes of s.25, and that although that did not create a statutory head of claim, the Chief Constable had a basis for recovery either in contract or in restitution. W submitted that the judge's conclusion was not one that was properly open to him in the light of his own findings of fact and the conclusion of the Court of Appeal in *Reading Festival Ltd v West Yorkshire Police Authority* (2006) EWCA Civ 524, (2006) 1 WLR 2005.

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HELD

(Maurice Kay LJ dissenting)

- (1) The judge had been wrong to find that there had been an implied request for special police services. It was clear both from the terms of s.25 and from the decision in *Reading Festival* that to fall within s.25 a request had to match the special police services supplied. However, the match did not need to be exact. It was for the Chief Constable to determine the level of

policing required, so if a person asked for special police services at a private event and those services were provided at the level deemed necessary by the police authority, it was no answer to the police's claim for reimbursement of the cost that the request had not specified the level of policing actually provided. Conversely, if a promoter asked for on-site policing and the police authority concluded that off-site policing was required, it could not, without more, charge the promoter for the off-site policing he did not request. The instant case lay between those two extremes. The judge's findings of fact made it clear that W had objected to the increase in the number of officers deployed at its matches, considering that the increased manpower was not necessary. If W's objection was to the level of policing, it was impossible to infer a request for the provision of the special police services to which it objected. That was the only possible conclusion consistent with Reading Festival, Reading Festival applied.

- (2) The Chief Constable was not entitled to recover the costs of providing policing by way of restitution. While it was not clear whether there had been any benefit to W in having the extra policing, it was clear that there had been no free acceptance of that higher level of policing: W was unable to reject those services unless it also rejected the services that it did want and had requested, Bookmakers Afternoon Greyhound Services Ltd v Wilf Gilbert (Staffordshire) Ltd (1994) FSR 723 Ch D applied. There was no factor rendering it unjust for W to retain the benefit of the extra policing. There had been an impasse, neither party would back down, and while the police could have reduced the level of policing, for W it was all or nothing, either it accepted all the policing provided or stopped playing home matches. Given that choice, even if the extra policing was to be regarded as a benefit to W, it should not be made to pay for it.
- (3) (Per Maurice Kay LJ) The Chief Constable was entitled to recover by way of restitution. W had benefitted from the extra policing provided at the Chief Constable's expense, and it would be unjust if it did not make appropriate payment for it.



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Police Decision to Release a Police Dog Was Reasonable Given the Circumstances Despite the Claimant Sustaining Serious Injuries Thereby

NICHOLAS ROBERTS v CHIEF CONSTABLE OF KENT (2008)

CA (Civ Div) (Ward LJ, Jackson LJ, Aikens LJ) 17/12/2008

Police - Animals - Personal Injury

Arrest: Dogs: Personal Injury: Police Officers: Reasonable Force: Deployment Of Police Dog To Effect Or Assist Lawful Arrest: Claimant Sustaining Personal Injury From Dog Bites: Reasonableness Of Decision To Release Police Dog: Police Dogs: S.3(1) Criminal Law Act 1967

A judge had been entitled to find that a police officer's decision to release a police dog to pursue the claimant and effect or assist a lawful arrest had been reasonable, given the claimant's conduct, and therefore lawful pursuant to the Criminal Law Act 1967 s.3(1) despite the claimant thereby sustaining serious bite injuries.

The appellant (R) appealed against a decision of the judge dismissing his claim for damages for personal injury against the respondent chief constable. R, who had drunk a substantial amount, had been approached whilst in his parked vehicle by a police officer (H), a trained dog handler. As R had smelt strongly of alcohol, H asked him get out of the car to take a breath test. R then ran away. H twice warned him that unless he stopped, he would release a police dog. As R continued to run, H took the dog out of its cage and issued a third warning. R continued and attempted to climb a fence to escape and H gave the dog the order to stop him, as he intended to pursue R for an offence of driving under the influence of excess alcohol or refusing to give a specimen. The dog barked at R, who dropped to the ground, and the dog then bit his arm. H arrived and R then hit him and kicked the dog. H called the dog off and R ran towards the car. H twice warned him to stop or the dog would be released again. As R had not stopped, H released the dog and ran with him towards R. A struggle ensued between R and H during which R was bitten, as a police dog was trained to bite someone who was attacking it or an officer. As H considered that R had no fear of the dog, he returned it to the cage before attempting to stop R himself. H eventually had to use CS spray to restrain R, and other police officers arrived. R had a number of severe bites for which he required three operations, and he was left permanently scarred. R claimed against the chief constable, as vicariously liable for the actions of H and the dog, alleging assault. By his defence, the chief constable contended that H's actions had been lawful pursuant to the Criminal Law Act 1967 s.3(1). The judge heard evidence from two expert dog handlers, who in their joint report recorded that the initial deployment of the dog had been the correct course of action, that both H and the dog had been fully trained, and that the dog had reacted in accordance with its training at all times. The judge concluded that the use of force had been reasonable in the circumstances and dismissed R's claim. R contended that whilst, in principle, force could be used pursuant to s.3(1), that force had to be both reasonable and proportionate, and that there must have been a risk that once a police dog was released, the person

pursued would be bitten, and that where such a person had had a considerable amount to drink, he was not guaranteed to react sensibly or predictably if a police dog was released and that the consequences of such action could be severe and the resulting injuries life-threatening. He further submitted that it had been for the judge, and not the experts, to decide whether the initial release of the dog had been reasonable.

HELD

The judge had taken into account all of the relevant factors and no irrelevant ones and had been entitled to accept the experts' views. There was no flaw in his reasoning. H had been right to release the dog in the way he had when R attempted to escape and it was not arguable, given R's previous actions, that that decision had been unreasonable.

APPEAL DISMISSED



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SI 3130/2008 The Misuse of Drugs Act 1971 (Amendment) Order 2008

In force **26 January 2009**. This Order amends Schedule 2 to the Misuse of Drugs Act 1971, reclassifying cannabis, cannabis resin, cannabinol, cannabinol derivatives (including any ester or ether of cannabinol or of a cannabinol derivative) as Class B drugs for the purposes of control under the Act.

SI 3136/2008 The UK Borders Act 2007 (Commencement No. 5) Order 2008

In force **6 January 2009**. This Order brings into force section 21 (Children) and, for all remaining purposes, sections 51 (Border and Immigration Inspectorate: plans), 52 and 53 (Border and Immigration Inspectorate: relationship with other bodies) of the UK Borders Act 2007 ('the Act').

Section 21 of the Act concerns the issuing of a code of practice which is designed to ensure that in exercising functions in the United Kingdom the UK Border Agency ('the Agency') takes appropriate steps to ensure that while children are in the UK they are safe from harm. The Agency must have regard to this code in the exercise of its functions, and must take appropriate steps to ensure that persons with whom it makes arrangements for the provision of services have regard to the code. Sections 51, 52 and 53 make provision regarding the Chief Inspector of the Agency.

SI 3146/2008 The Police and Criminal Evidence Act 1984 (Codes of Practice) (Revisions to Code A) (No. 2) Order 2008

In force **1 January 2009**. This Order makes revisions to Code A of the Codes of Practice to the Police and Criminal Evidence Act 1984. The Order means that constables will no longer be required to record all encounters which are not governed by statutory powers and will only be required to record information on the ethnicity of the subject of the encounter, and to make a receipt available to the person.

SI 3158/2008 The UK Borders Act 2007 (Code of Practice on Children) Order 2008

In force **6 January 2009**. This Order brings into force the Code of Practice for Keeping Children Safe from Harm, designed to ensure that in exercising functions in the United Kingdom, the UK Border Agency takes appropriate steps to ensure that while children are in the UK they are safe from harm.

SI 3164/2008 The Road Safety Act 2006 (Commencement No. 5) Order 2008

This Order brings into force a number of provisions of the Road Safety Act 2006, on various dates.

In force **5 January 2009**:

- ◆ Section 3;
- ◆ Section 11, and Schedule 4;
- ◆ Section 12, and

- ◆ Section 59 (Repeals and revocations), in so far as it relates to paragraph 1 of Schedule 7, and accordingly paragraph 1 of Schedule 7.

Section 3 amends section 53 of the Road Traffic Offenders Act 1988 ('the Act'), enabling the Secretary of State to prescribe by order different levels of fixed penalty for fixed penalty offences, depending on the circumstances, particularly how serious the offence is, the area or sort of place in which it was committed, and whether the offender appears to have committed any offences of certain descriptions in a specified period. Section 11 inserts a new Part 3A into the Act, allowing police and vehicle examiners to require the payment of a deposit by a person who has committed an offence involving a motor vehicle and is unable to provide a satisfactory address. Sections 11 and 12 allow vehicles which have been prohibited from driving to be immobilised in accordance with Regulations made under Schedule 4.

In force **31 March 2009**:

- ◆ Section 4;
- ◆ Section 5, and Schedule 1;
- ◆ Section 6;
- ◆ Section 7;
- ◆ Section 59 (Repeals and revocations), in so far as it relates to paragraph 2 of Schedule 7, and accordingly paragraph 2 of Schedule 7.

Section 4 amends section 28 of the Act which provides for the penalty points attributable to particular offences. The amendments enable the Secretary of State to prescribe the penalty points for offences, which may vary depending on the circumstances of the offence, including the nature of the offence, the severity of the offence, where the offence took place and whether the offender appears to have committed certain other offences in a specified period. Section 4 also provides that until such an order is made in relation to an offence, the current penalty points provisions remain in force.

In force **1 April 2009**:

- ◆ Section 8;
- ◆ Section 9, and Schedule 2;
- ◆ Section 59 (Repeals and revocations), in so far as it relates to paragraph 3 of Schedule 7, and accordingly paragraph 3 of Schedule 7.

Section 8 adds a new section 97A to the Act, which provides a definition of 'driving record' as a record in relation to a person which is maintained by the Secretary of State and designed to be endorsed with particulars relating to offences committed by that person under the Traffic Acts. The section allows the Secretary of State to make arrangements for the following persons to have access to information held on a person's driving record:

- ◆ Courts;
- ◆ Constables;

- ◆ Fixed penalty clerks;
- ◆ The person in respect of whom the record is maintained, and persons authorised by him;
- ◆ Other persons prescribed in regulations made by the Secretary of State.

Section 9, together with Schedule 2, amends the Road Traffic Offenders Act 1988, and provides for unlicensed and foreign drivers to be issued with endorseable fixed penalties, by enabling their driving record to be checked and endorsed.

SI 3269/2008 The Criminal Procedure (Amendment No. 2) Rules 2008

In force **6 April 2009**. These Rules add and make amendments to the Criminal Procedure Rules 2005. In particular, a new Part 21 is created, to revise and simplify the rules relating to the early provision of details of the prosecution case. Part 19 is amended to introduce into magistrates' courts a requirement for advance notice to be given of an application to vary the conditions of subsisting bail. This requirement already exists in the Crown Court. A new requirement is made for a defendant to give notice of the address at which he or she would reside if the court granted bail with a condition of residence, to allow the court to better assess the suitability of that address.

SI 3296/2008 Counter-Terrorism Act 2008 (Commencement No. 1) Order 2008

In force **24 December 2008**. This Order brings into force sections 19 to 21, and Schedule 1, of the Counter-Terrorism Act 2008. The sections provide that a person may disclose information to any of the intelligence services for the purpose of the exercise of its functions, and provide for the use and disclosure of information by the intelligence services. The provisions do not authorise a disclosure that contravenes the Data Protection Act 1998 or that is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.

SI 3297/2008 The Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment) Order 2008

In force **26 January 2009**. This Order specifies the amounts payable in respect of penalty notices for disorderly behaviour, issued under Chapter 1 of Part 1 of the Criminal Justice and Police Act 2001, by substituting the Schedule to the Penalties for Disorderly Behaviour (Amount of Penalty) Order 2002, for the Schedule of this Order. The Order specifies two levels of penalty, £50 and £80, together with different amounts for persons under the age of 16. The Order also specifies the amounts payable for penalty notices issued for the newly added penalty offences, which are:

- ◆ Certain offences (Contravening a prohibition on littering, dog fouling or illegal cycling etc, contrary to section 2(1) of the Parks Regulation (Amendment) Act 1926 insofar as relating to a failure to comply with or a contravention of the Royal Parks and Other Open Spaces Regulations 1997;)

- ◆ Offences relating to the sale of tobacco to persons under 18 years contrary to section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991;
- ◆ Threats to destroy or damage property contrary to section 2 of the Criminal Damage Act 1971;
- ◆ Possession of cannabis etc, contrary to section 5(2) of the Misuse of Drugs Act 1971;
- ◆ Making off without payment, contrary to section 3 of the Theft Act 1978;
- ◆ Touting for hire car services, contrary to section 167 of the Criminal Justice and Public Order Act 1994;
- ◆ Certain railway byelaw offences under the London Regional Transport Railways Byelaws 2000 and Framework Railway Byelaws 2005 (including entering or remaining on the railway while intoxicated and engaging in unacceptable behaviour on the railway);
- ◆ Certain licence related offences relating to the private security industry, contrary to sections 3 and 9 of the Private Security Industry Act 2001;
- ◆ Certain alcohol related offences contrary to sections 142, 143 and 145 of the Licensing Act 2003.

**SI 32/2009 The Offender Management Act 2007
(Commencement No. 3) Order 2009**

In force **19 January 2009**. This Order brings into force section 30 of the Offender Management Act 2007 ('the Act'). Section 30 provides that statements made by a released person (an offender serving a relevant custodial sentence for specified sexual offences who is released on licence) while participating in a polygraph session and physiological reactions of such a person while being questioned in the course of a polygraph session may not be used in any proceedings against a released person for an offence.

The Order also brings into force sections 28 and 29 of the Act from 19 January 2009 to 31 March 2009, as a pilot scheme in specified areas. Sections 28 and 29 allow the Secretary of State to include a polygraph condition in the licence of the released person. The polygraph condition requires the released person to participate in polygraph sessions conducted with a view to monitor their compliance with the other conditions in the licence and improve the way in which they are managed during the release on licence. The police areas in which the pilot scheme is to run are:

- ◆ Derbyshire;
- ◆ Leicestershire;
- ◆ Lincolnshire;
- ◆ Northamptonshire;
- ◆ Nottinghamshire;
- ◆ Staffordshire;

- ◆ Warwickshire;
- ◆ West Mercia; and
- ◆ West Midlands.

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