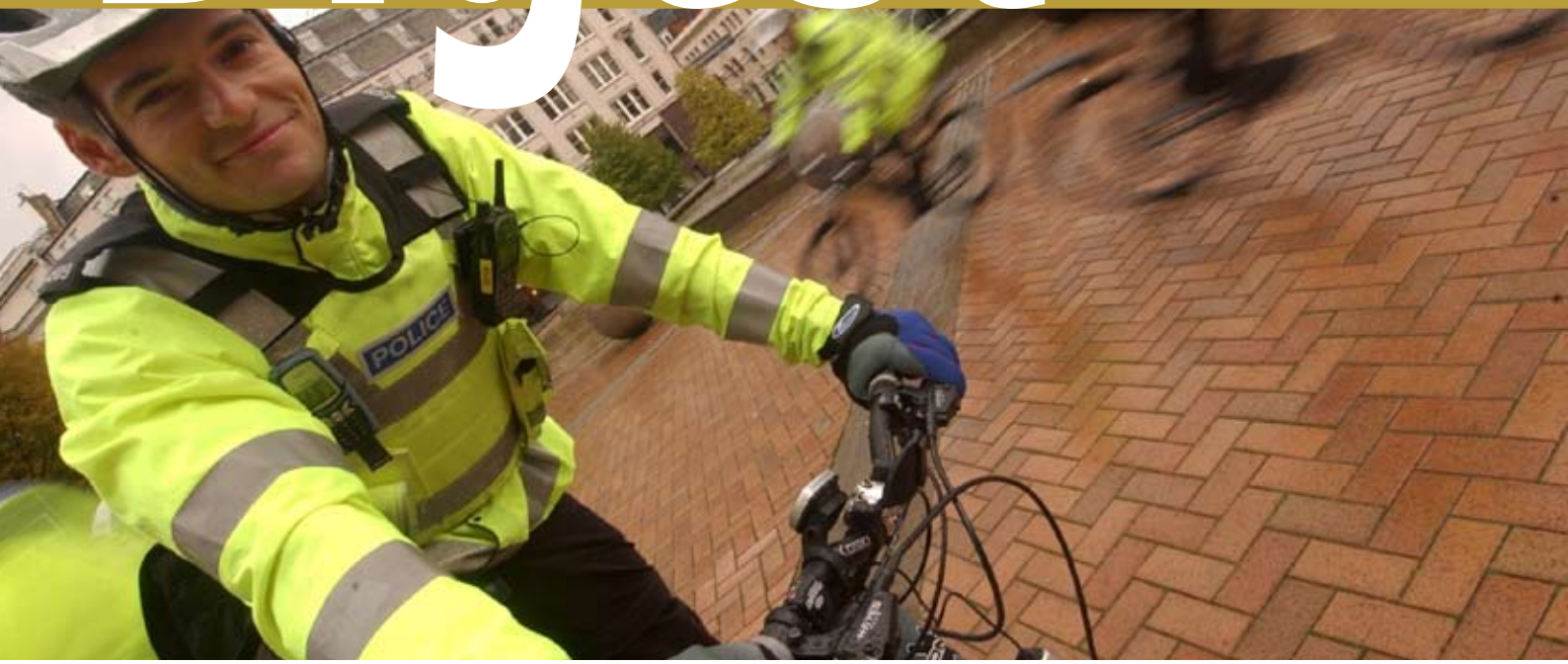
NPIA
National Policing Improvement Agency

Digest

JANUARY 2010



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

This edition contains a summary of new legislation and proposals and reviews of issues relating to policing practice including: the Home Office Policing White Paper; Part II of the HMIC report on policing protest following the G20 Summit in London; a summary of the Crime and Security Bill; the latest statistical bulletin on the perceptions of crime and anti-social behaviour; the latest statistics on the operation of Police Powers under the Terrorism Act 2000; and the Practice Advice on the Management of Priority and Volume Crime.

There are also a number of articles outlining recently published Government and Parliamentary reports and initiatives including: the Government's proposals for the allocation of 2010/11 Police Grant for England and Wales; a strategy to link health to safer communities; a Government action plan to put the frontline first; a Government consultation for protecting the public in a changing communications environment; a new strategy to end violence against women and girls; and the Ministry of Justice Circular 2009/03: Youth Rehabilitation Orders and Youth Justice Provisions in the Criminal Justice and Immigration Act 2008.

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 lawtel From Sweet & Maxwell

Contents

Consultation on Bill of Rights for Northern Ireland

On 30 November 2009 the Secretary of State for Northern Ireland Shaun Woodward announced the publication of a consultation paper 'A Bill of Rights for Northern Ireland: Next steps'.

The Secretary of State indicated that the future of Northern Ireland must be based on partnership, equality and mutual respect and has urged everyone to read the consultation paper and give their views on the next steps towards a Bill of Rights for Northern Ireland.

The public consultation on a Bill of Rights for Northern Ireland will run until 1 March 2010.

The Secretary of State has expressed his gratitude to the Northern Ireland Human Rights Commission for their commitment and energy in leading the debate on a Bill of Rights over the past 10 years. The publication of the consultation document follows commitments made at various stages of the political process, including in the Belfast Agreement and the St Andrews Agreement. In the 1998 Belfast Agreement, the Northern Ireland Human Rights Commission was tasked with producing advice to Government on a Bill of Rights containing rights supplementary to the ECHR to reflect the particular circumstance of Northern Ireland.

The Bill of Rights Forum reported on 31 March 2008 and its report can be found at http://www.billofrightsforum.org/

The Northern Ireland Human Rights Commission published advice to Government on 10 December 2008, which can be found at http://www.nihrc.org/bor

The consultation paper 'A Bill of Rights for Northern Ireland: Next steps' is available at http://www.nio.gov.uk/consultation_paper_-_a_bill_of_rights_for_northern_ireland__next_steps.pdf

Diploma in Policing for IPLDP Student Officers

In partnership with the National Policing Improvement Agency (NPIA), Skills for Justice have developed a Level 3 Diploma in Policing. The Diploma will be the national minimum qualification for student police officers, replacing the Level 3 NVQs in Policing for new candidate registration, from 1 January 2010.

Student officers currently registered for the NVQs in Policing have their normal 2 years to complete the assessments for their qualifications.

The Diploma focuses on those core elements within the IPLDP curriculum which require accreditation and with the exception of units related to carrying out investigations, assessment for the qualification can potentially be completed within the tutored phase.

A new assessment strategy for the Qualifications and Credit Framework (QCF) based qualification in Policing will be available in the new year. This is intended to be common to all future QCF-based qualifications for Policing.

The NPIA has developed a formal programme handbook for the Diploma in Policing which is intended to provide detailed information for the implementation of the new qualification in the context of the IPLDP curriculum.

Further information about the Level 3 Diploma in Policing can be found at http://www.skillsforjustice.com/template01.asp?pageid=205

Securing Homes Action against Burglary - Free Training Courses

Due to the success of the home security courses that Foundations (the national body for Home Improvement Agencies) have been running on behalf of the Home Office free extra sessions will run between January and March 2010 specifically for statutory partners.

The courses will provide a better insight into carrying out home security surveys and the provision of appropriate, realistic and cost effective advice to vulnerable occupants.

The extra course dates and locations are as follows:

Home Security Surveys and Security Advice (one day)

7 January 2010 - London
27 January 2010 - Birmingham
4 February 2010 - Manchester
3 March 2010 - London
10 March 2010 - Bristol

Train the Trainer Course to deliver home security training (two days)

13-14 January 2010 - Manchester
10-11 February 2010 - London
3-4 March 2010 - Birmingham

Further information about course content and booking forms can be found at http://www.foundations.uk.com/training/handyperson_home_security_training

New Guidance on Prevention of Workplace Harassment and Violence Launched

On 17 November 2009 employers, unions and the government jointly launched new guidance on the prevention of harassment and violence in the workplace. The guidance entitled 'Preventing Workplace Harassment and Violence - joint guidance implementing a European social partner agreement' follows a Europe-wide agreement between employers' organisations and unions. It aims to give practical help and support to both employers and their employees.

The stated aims of the agreement are to:

- Raise awareness and increase understanding of employers, workers and their representatives of workplace harassment and both internal and third party violence; and
- Provide employers, workers and their representatives with a framework of response to identify, prevent and manage problems of harassment and all forms of violence at work.

The guidance is a joint venture between the Confederation of British Industry, the Partnership of Public Employers (PPE) and the Trades Union Congress. The guidance has the support of the Government, including the Health and Safety Executive, the Advisory, Conciliation and Arbitration Service and the Department for Business, Innovation and Skills.

PPE Director Tina Weber said "Public service employers strongly support the launch of this guidance. We were particularly keen to include the issue of harassment and violence perpetrated by service users as this is regrettably becoming increasingly common. Public service workers deserve to be able to carry out their important functions free from the threat of, or indeed actual physical and verbal abuse. We hope that the launch of this publication will raise awareness of this issue and will provide employers and employees with a useful tool to help address it."

The guidance 'Preventing Workplace Harassment and Violence - joint guidance implementing a European social partner agreement' can be found at http://www.workplaceharassment.org.uk/

Skills for Justice Consultation on New Role Profiles for Forensic Science

Skills for Justice have recently developed five draft role profiles with working group representatives from the Forensic Science sector. These draft role profiles are now available for UK wide consultation and feedback. The consultation deadline is Friday 8 January 2010.

Following the consultation Skills for Justice will then analyse the feedback, and make appropriate amendments with the working group members. Once finalised these role profiles will then be added to the Integrated Competency Framework by the end of March 2010.

The role profiles developed by Skills for Justice are:

- Forensic Laboratory Officer;
- Forensic Footwear Specialist;
- Forensic Footwear Officer;
- Level 2 Crime Scene Investigator; and
- Crime Scene Coordinator.

Skills for Justice are encouraging the collation of feedback from police forensic teams. They are keen to ensure that these role profiles fit across other Forensic Science providers outside police forces, who have staff that perform the same functions, so Skills for Justice are also interested in the views of commercial providers.

The five draft role profiles can be found at http://www.skillsforjustice.com/template01.asp?PageID=725

For more information and to send your feedback/comments please email Fay Nicholls at fay.nicholls@skillsforjustice.com.

The Crime and Security Bill

The Bill was presented to Parliament on 19 November 2009. It contains a range of provisions about police powers of stop and search; the taking, retention, destruction and use of evidential material; the protection of victims of domestic violence; injunctions in respect of gang-related violence; anti-social behaviour orders; the private security industry; possession of mobile telephones in prison; and air weapons.

Police powers of stop and search

Clause 1 amends section 3 of the Police and Criminal Evidence Act 1984 which specifies the information which constables must record when they stop and search a person. Where a person is arrested as a result of a stop and search and taken to a police station, the constable who carried out the search must ensure that the search record forms part of the person's custody record (rather than completing a separate form). In all other cases the constable must make the record of the search at the time it takes place or as soon as practicable after completion of the search.

The recording requirements for a stop and search are reduced. Currently, Section 3 of PACE and Code of Practice A require ten items of information to be recorded, including whether anything was found and whether any injury or damage was caused. These are reduced by the Bill to seven items, namely, date, time, place, ethnicity, object of search, grounds for search, and identity of the officer carrying out the stop and search.

The time within which a person can request a copy of the search record is reduced from 12 months to 3 months after the date of the search.

Taking of fingerprints and samples

The Bill contains provisions to give additional powers to the police to take fingerprints and DNA samples from people who have been arrested, charged or convicted in the UK, and from UK nationals and residents convicted overseas of serious violent, sexual or terrorist offences. Non-intimate samples may also be taken from those convicted of sexual or violent offences prior to 10 April 1995 (clauses 2 and 3). A person must be informed of the reason for taking the biometric data, the power being used, and the fact that authorisation has been given, where necessary (clause 4). There is a power to require attendance at a police station in respect of both the existing and new powers to take biometric data (clause 6).

Clauses 8 to 13 make provision for Northern Ireland equivalent to that made for England and Wales by clauses 2 to 7.

Clause 14 substitutes a new section 64 into PACE 1984 and inserts 14 new sections immediately after it. The effect of this clause is to set out a statutory framework for the retention and destruction of biometric material, in response to the judgment in the case of S and Marper v United Kingdom [2008] ECHR 1581.

The new provisions require the destruction of samples (for example, biological DNA material, dental and footwear impressions) and fingerprints once they

have been loaded satisfactorily onto the national database (in the case of DNA samples) and have served the investigative purpose for which they were taken (for other samples). In any event, all DNA samples are required to be destroyed within six months of their being taken.

The retention periods for the various categories of data (i.e. fingerprints, impressions of footwear and DNA profiles) depend on a number of factors including the age of the individual concerned, the seriousness of the offence or alleged offence, whether the individual has been convicted, and if so whether it is a first conviction.

The data of convicted adults will be retained indefinitely but data of all adults arrested but not charged or convicted will be removed after 6 years. The data of 16 and 17 year old juveniles arrested but not charged or convicted of serious offences will be retained for six years. Data of all other juveniles arrested but not charged or convicted of a recordable offence will be removed after three years. Data of all juveniles convicted of all but the most serious recordable offences will be retained for five years, and indefinitely for any further convictions. Fingerprints and DNA profiles of persons subject to a control order will be retained for two years after the control order ceases to have effect.

In addition, where fingerprints or DNA profiles would otherwise need to be destroyed because of the expiry of a time limit for retention, a Chief Officer of Police may determine that for reasons of national security those fingerprints or DNA profiles may be retained for up to two further years (clause 14).

Clause 15 makes provision for the Northern Ireland equivalent to that made for England and Wales by clause 14.

Domestic violence

The provisions provide the police with a new power to issue the perpetrator of an offence relating to domestic violence with a Domestic Violence Protection Notice (DVPN). The purpose of a DVPN is to secure the immediate protection of a victim of domestic violence from future violence or the threat of violence. A DVPN prohibits the perpetrator from molesting the victim and, where they cohabit, may require the perpetrator to leave the premises of the victim (clause 21). A constable may arrest without warrant for breach of the conditions of the DVPN (clause 23). A police constable must apply to the magistrates' court within 48 hours for a Domestic Violence Protection Order (DVPO) to be made. A DVPO, with a power of arrest attached to it, can be made lasting for up to 28 days (clauses 24 and 25).

Gang-related violence

The Bill contains provisions to amend the powers in Part 4 of the Policing and Crime Act 2009 under which the police or a local authority may apply to a court for an injunction against an individual for the purposes of preventing gang-related violence. In particular, the Bill provides that when a person aged 14 to 17 breaches such an injunction, the court may make a supervision order or a detention order (clauses 31 to 36).

Anti-social behaviour orders

The Bill contains provision requiring a family circumstances assessment to be carried out when an application for an anti-social behaviour order (ASBO) is made (clause 37); and provision about the circumstances in which the court must make a parenting order on breach of an ASBO (clause 38). The provisions amend the Crime and Disorder Act 1998 under which ASBOs are made.

Private security

The Bill amends the Private Security Industry Act 2001 to enable the Security Industry Authority to introduce a licensing regime for private security businesses, in particular vehicle immobilisation businesses. Such businesses will be prevented from operating without a relevant licence, with penalties of up to five years' imprisonment or a fine, or both (clause 39).

Prison security

The Bill amends the Prison Act 1952 to create a new criminal offence of possessing a mobile phone, or component part, within a prison without authorisation (clause 41).

Air weapons

The Bill amends the Firearms Act 1968 to create a new offence of failing to take reasonable precautions to prevent a person under the age of 18 from having unauthorised access to an air weapon. The offence does not apply where the person under 18 is permitted by the Act to have the weapon with him, and these circumstances are set out in section 23 of the 1968 Act. For this new offence, it is a defence to show that the person charged believed that the other person was 18 or over and had reasonable grounds for that belief. The offence is punishable on summary conviction only with a maximum penalty of a fine (clause 42).

The progress of the Crime and Security Bill through parliament can be monitored at
http://services.parliament.uk/bills/2009-10/crimeandsecurity.html

Bills before Parliament 2009/10 - Progress Report

The following Bills from the 2008/09 session have progressed as follows through the parliamentary process:

Public Bills

- **Bribery Bill** - this Bill was introduced with its first reading in the House of Lords on 19 November 2009. The second reading of the Bill took place on 9 December 2009. During which a wide-ranging discussion took place on issues including the global fight against corruption and the need for reform of the current law in this area. The committee stage involving a line by line examination of the Bill begins on 7 January 2010;
- **Crime and Security Bill** - this Bill was introduced with its first reading in the House of Commons on 19 November 2009. A date for its second reading has yet to be announced. See more detailed article above.

- **Equality Bill** - This Bill was originally laid before Parliament in the 2008/09 session and progressed as far as the committee stage. A carry-over motion to the 2009/10 session was agreed by the House of Commons on 13 May 2009. This means that the first reading, second reading and committee stages in the current session will be formal and without debate.

  The Bill was re-presented to Parliament on 19 November 2009 and the first and second reading stages were taken without debate. The report and third reading stages for this Bill took place in the House of Commons on 2 December 2009. The first reading took place in the House of Lords on 4 December. This stage is a formality that signals the start of the Bill's journey through the Lords.

  The second reading, the general debate on all aspects of the Bill, took place on 15 December 2009. During second reading of the Bill a wide-ranging discussion took place on issues including the appropriate measures for protecting against discrimination. The committee stage, a line by line examination of the Bill, begins on 11 January 2010.

The progress of Bills in the 2009/10 parliamentary session can be found at http://services.parliament.uk/bills/

Home Office Publish Policing White Paper

On 2 December 2009, the Home Office published a white paper entitled 'Protecting the public: supporting the police to succeed'. This white paper introduces a new programme of measures to help the police work more efficiently to fight crime, tackle anti-social behaviour and boost public confidence.

The white paper is set out in two parts:

Putting the public at the centre of policing

- Chapter 1 - Clear entitlements for the public;
- Chapter 2 - Influencing priorities and strengthening accountability; and
- Chapter 3 - Meeting the public's expectations and putting things right.

Creating a framework for effective delivery

- Chapter 4 - Protecting the public at all levels;
- Chapter 5 - Improving efficiency and capability and cutting bureaucracy; and
- Chapter 6 - Delivering through partnership.

The policing white paper is intended to make the police more accountable to the public and deliver significant cost savings by working better in partnership, improving efficiency and standardising procurement. The paper builds on the reforms introduced by the 2008 policing green paper that place the public at the heart of policing through a commitment to neighbourhood policing, the single confidence target, the Policing Pledge and the 'Justice seen, justice done' campaign.

Government's vision for police reform

The Government acknowledges that the fundamental objective of the Police, to protect the public from crime, remains unchanged, however new challenges have emerged, such as:

- The growing sophistication of international crime networks; and
- The rise of global terrorism.

The Police remain the frontline public service for protecting the public in emergency and the Government are increasingly expecting the police to focus on prevention, to work with partners in tackling the problems which undermine communities, and to provide visible reassurance to the public. Over the next five years, these challenges will need to be met within the context of a much tighter fiscal environment.

The Government's police reform agenda has four principles:

- Citizen focused - responding to the issues that matter to local people;
- National standards - with clear levers to improve performance;

- Empowering professionals - giving the police more freedom, in return for national standards and stronger accountability; and
- Value for money - doing whatever it takes to deliver maximum efficiency and productivity.

The challenges of the future

The further development of neighbourhood policing and a commitment to the Policing Pledge provides every area with an awareness of, and empowered to take advantage of, the new entitlements to minimum standards of service, and to entrench stronger rights for victims of crime and antisocial behaviour. The Government will:

- Continue to raise awareness and understanding of the Pledge and the standards the public can expect through the Justice Seen, Justice Done campaign;
- Introduce champions for victims of antisocial behaviour, ensure CDRPs/ CSPs and forces deliver agreed standards for tackling anti-social behaviour, and strengthen protection for victims of anti-social behaviour, especially repeat victims; and
- Support forces to develop patrolling strategies which maximise visibility and public engagement.

It will be a Government priority to support the police to deliver the highest quality service to the public first time around. However, they want people to know how to complain or seek redress where their local force, neighbourhood team, local authority, prosecutor or court is not listening to their concerns on crime or anti-social behaviour. To facilitate this priority the Government will:

- Ensure that the public have ready access to clear information from every force and Police Authority on how to raise concerns and make complaints, both with front line officers and escalated to senior level if necessary;
- Promote HMIC's new Police Report Card on each force's performance, supported by more detailed information for the public at a more local level, including the level of the Basic Command Unit, which will allow the public to compare how the service they receive compares to other local areas;
- Ensure local forces hold regular public meetings several times a year and give the public the power to request extra meetings if concerns and complaints are not resolved locally;
- Enable the Independent Police Complaints Commission to uphold complaints even where there has been no individual misconduct, and make recommendations to forces and police authorities.

While protecting the entitlements of the public that are set out in the Policing Pledge, the Government will aim to step up its efforts to drive value for money and improve efficiency and productivity by:

- Legislating to reduce the paperwork involved in completing stop and search encounters, whilst challenging forces and Police Authorities to remove locally created bureaucracy;
- Ensuring each force rigorously assesses local policing need, and matches its workforce to meet it, revising shift patterns to deliver at the right times for the public;
- Saving at least £70m per annum by 2013/14 through more effective deployment and more robust internal management of police overtime, and at least £75m per annum by 2013/14 by rationalising back-office support services;
- Requiring all forces and Police Authorities to procure prescribed goods and services from national procurement frameworks, including a standard 'beat car' for all forces to use and a single national uniform for police officers;
- Rolling out a national framework for process improvement, based on Operation Quest, which has harnessed the knowledge and experience of police officers to reduce waste; and
- Providing benchmarking information on IT approaches, working towards a single national police IT infrastructure, and ensuring mobile data devices are being used effectively and that there is more consistency in usage and functionality.

The full white paper 'Protecting the public: supporting the police to succeed' can be found at http://police.homeoffice.gov.uk/publications/police-reform/protecting-the-public?view=Binary

Government's Proposals for Allocation of 2010/11 Police Grant for England and Wales Announced

The Minister for Policing, Crime and Counter-Terrorism, David Hanson, set out in a written ministerial statement on 26 November 2009 the Government's proposals for the allocation of the police grant for England and Wales for 2010/11.

The Government stated that it intends to make available £9741 million in funding to the police service for 2010/11 which is £259 million more than in 2009/10. The Government previously announced provisional funding totals for the three-year period 2008/09 to 2010/11 in December 2007 and November 2008.

The police grant settlement 2010/11

The total provision for policing revenue grants in 2010/11 will be £9,741 million, an overall increase of 2.7%. The Government propose to distribute the settlement as set out in the table below.

Police Revenue Funding Three-Year Settlement 2008/09 to 2010/11			
	2008/09 £m	2009/10 £m	2010/11 £m
Home Office general grant	4,543	4,666	4,792
DCLG/WAG general grant	3,488	3,583	3,680
Welsh Top-Up	15	16	16
Total general Formula Grant	8,062	8,281	8,504
% increase in general grant	2.7%	2.7%	2.7%
Total Specific Grants	1,165	1,201	1,237
Total Government funding for police authorities	9,227	9,482	9,741
% increase in total Government revenue funding	2.9%	2.8%	2.7%

The written ministerial statement sets out in a table the police grant allocation for each English and Welsh Police Authority for 2009/10 to 2010/11.

The full written ministerial statement can be found at http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm091126/wmstext/91126m0002.htm#09112624000008

Government Action Plan to Put the Frontline First

On 7 December 2009 the Government announced a public reform plan with the publication of a paper 'Putting the Frontline First: Smarter Government'. The report was launched by the Prime Minister. The report itself focuses on three areas of public sector reform: the interaction between citizen and state; the relationship between central and local government; and the streamlining of Whitehall.

The action plan sets out an agenda to deliver better public services for lower cost. It outlines how the Government will aim to improve public service outcomes while achieving the fiscal consolidation that is vital to helping the economy grow. The action plan has three central actions:

- To drive up standards by strengthening the role of citizens and civic society;
- To free up public services by recasting the relationship between the centre and the frontline; and
- To streamline the centre of government, saving money through sharper delivery.

Action 1 - Strengthen the role of citizens and civic society

- Giving people guarantees to high-quality public services that are at the centre of their lives with clear rights of redress where these guarantees are not met;
- Accelerate the move to digitalised public services that are personalised, flexible, cost-efficient and save people time;
- Radically open up data and public information to promote transparent and effective government and social innovation;
- Encourage greater personal responsibility and control over services through new use of technology and service interaction. A taskforce will be set up to reduce fraud in the public sector; and
- Build a stronger civic society and give communities more say in shaping public services.

Action 2 - Recast the relationship between the centre and the frontline

- Let local areas set priorities and guide resources by streamlining the national performance framework. This will include reducing the number of national indicators for local areas by April 2010 and making further reductions from 2011;
- Reduce the number of revenue streams to local government. By Budget 2010, set out specific proposals to reduce the level of ring-fencing for local authorities and publish guidance on aligning and pooling local-level budgets to frontline services. To align the timing and coordination of grant payments from departments to local authorities for 20011/12;
- Support for local authorities that wish to use their trading powers to create further commercial opportunities, set out guidance on effective use of joint ventures by local authorities and their partners in February 2010 and consider single area-based capital funding by Budget 2010;
- Reduce centrally imposed burdens on the frontline from reporting, inspection and assessment. The Government will coordinate timings of all assessments, inspections and reporting arrangements by 2010/11 where they focus on similar outcomes and consider a new cross government data gateway. The Government will also review the work and number of inspectorates, reporting at Budget 2010, and ask Total Place pilots to quantify total burdens across local agencies and priorities for streamlining burdens; and
- Harness the power of comparative data to improve performance. The Government will publish public services performance data online by 2011, starting with more detailed data on crime patterns.

Action 3 - Streamline Central Government for sharper delivery

- Equip the Civil Service to meet future challenges by reshaping the organisation of the Senior Civil Service, reducing its annual cost by £100 million within three years and put in place radical reforms to senior pay across the wider public sector;

- Rationalise and reform arm's-length bodies (ALBs). The Government will merge or abolish over 120 ALBs and publish stronger governance proposals in the new year on ALBs, as well as the results of a review by Budget 2010;
- Improve back office and procurement processes to the standard of the best, to deliver the £9 billion of savings identified in the Operational Efficiency Programme. The Government will release further resources for frontline services by reducing spend on consultancy by 50%; and
- Manage assets more effectively. The Government is publishing a portfolio of assets to discuss ownership options with the private sector, including full or partial sale or mutualisation.

The full report 'Putting the Frontline First: Smarter Government' is available at http://www.hmg.gov.uk/frontlinefirst/forwardplan.aspx

New Government Health Strategy: Latest Weapon to Prevent Youth Crime

On 8 December 2009 the Care Services Minister, Phil Hope, announced the first cross-government strategy specifically designed to break the link between poor health and youth crime. The new strategy 'Healthy Children, Safer Communities' aims to build on existing work to prevent young people from getting involved in crime.

The new strategy focuses on early intervention to address health problems to ensure the underlying causes of poor behaviour are tackled before problems become serious or entrenched. It will also ensure that young people already in the system have their health problems dealt with more effectively.

Research evidence suggests that health is a key risk factor in youth crime. Of children and young people in contact with the youth justice system evidence shows that half have difficulties with speech and communication; a third have diagnosed mental health issues and are treated for substance abuse; and a quarter have a long-term physical complaint and/or learning difficulties.

The strategy will:

- Highlight the importance that everyone who works with children has access to training to help them spot mental health issues early;
- Promote specialist interventions such as Youth Justice Liaison projects to divert more children from the justice system to appropriate services, and therefore reduce offending and re-offending;
- Ensure all children receiving a community or custodial sentence have a healthcare plan, developed alongside their sentence plan, to address their specific needs; and
- Improve access to health services on resettlement, and ensure young people register with a GP.

The full strategy document 'Health Children, Safer Communities' can be found at
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_109771

CAA Results are Now in Oneplace

The Audit Commission announced on 9 December 2009 the launch of Oneplace, the reporting website for Comprehensive Area Assessments (CAA). The new site includes independent information about how councils, police, health services and others are tackling the major issues in every area in England.

This site is presented jointly by the Audit Commission, the Care Quality Commission, Ofsted and Her Majesty's Inspectorates of Constabulary, Prisons and Probation. Oneplace provides assessments of performance covering all 152 major areas in England.

It is the first time that auditors and inspectors from these six organisations have come together to publish their findings, making them directly available to the public in everyday language. It is hoped that a more streamlined approach to assessments of performance will reduce the cost of inspection. In Oneplace it will be possible to find out how well local services work together to meet both their priorities and the government indicators on, for example, anti-social behaviour.

More information about Oneplace can be found at
http://oneplace.direct.gov.uk/Pages/default.aspx

Strategy to End Violence against Women and Girls

The Home Office announced on 25 November 2009 its strategy which is aiming to bring an end to violence against women and girls. The strategy entitled 'Together We Can End Violence against Women and Girls: A Strategy' provides measures to protect victims and tackle perpetrators. It is also intended to signal a new focus on preventing violence from happening.

From 2011, preventing violence in relationships will be included in personal, social, health and economic (PSHE) education, so attitudes which condone and perpetuate violence against women are addressed before they become entrenched in young people.

The strategy sets out a range of actions for the police, local authorities, the National Health Service and government departments across three key areas:

- **Protection** - delivering an effective criminal justice system through investigation; prosecution; victim support and protection; and perpetrator programmes. The priorities in this area of the strategy are to:
  - Provide end-to-end support for all victims through the criminal and civil justice systems, from report to court;
  - Bring more offenders to justice by improving reporting and conviction rates; and

- Rehabilitate offenders and manage the continuing risk they may present to women and girls;

- **Provision** - helping women and girls to continue with their lives by:
  - Effective provision of services, advice and support; emergency and acute services; refuges and safe accommodation; and

- **Prevention** - changing attitudes and preventing violence with plans to campaign actively to challenge attitudes around violence; to promote healthy relationships by working with young people in schools and with adults; and to support training in the early identification of abuse via:
  - Awareness-raising campaigns; safeguarding and educating children and young people; early identification/intervention and training.

The full strategy document 'Together We Can End Violence against Women and Girls: A Strategy' is available at http://www.homeoffice.gov.uk/documents/vawg-strategy-2009/end-violence-against-women?view=Binary

Government Responds to Consultation: Protecting Public in Changing Communications Environment

On 10 November 2009 the Home Office published the responses to the consultation paper 'Protecting the Public in a Changing Communications Environment'. The consultation paper set out the importance of communications data in helping to protect and safeguard the public; how the rapidly changing communications environment means the existing capability of the police, the security and intelligence agencies and other public authorities is declining and why change is necessary.

The consultation paper sought views on options for maintaining vital communications data capabilities. Communications data is information about a communication but does not include the content of a communication.

The consultation received 221 responses. The Government's rejection of a central database for all communications data was welcomed. There was also recognition of the importance of communications data and agreement that the capability of communications data to protect the public should be maintained.

As the proposals in the consultation paper are developed in the light of the responses received, the Government will seek to continue to work closely with communications service providers in order to minimise as far as possible any impact on them. Any new proposals will also include safeguards to minimise the potential for abuse and to ensure the security and integrity of the data.

The Government's Summary of Responses to the consultation can be found at http://www.homeoffice.gov.uk/documents/cons-2009-communication-data/

Burglary and Theft Account for a Third of Data Security Breaches

On 11 November 2009 the Information Commissioner's Office (ICO) released new figures which reveal that burglaries and theft are the single biggest security risks for organisations processing people's personal details. 711 organisations across the public, private and third sectors have reported security breaches to the ICO since 25 million child benefit records went missing two years ago this month; 231 of these involved theft.

Several organisations have signed formal undertakings to step up security at premises to ensure that people's personal details are adequately protected. Over 200 private sector firms have reported breaches to the ICO and 209 NHS bodies, which tend to hold some of the most sensitive personal data such as health records, have identified breaches.

The ICO has used the strongest powers currently available, serving organisations with Enforcement Notices and getting chief executives to sign formal undertakings pledging future security improvements. New powers scheduled to come into force in 2010 will enable the ICO to impose substantial monetary penalties on organisations where there is evidence of a reckless or deliberate data protection breach. The Ministry of Justice is currently deciding the amounts that can be levied. The ICO is also increasing its auditing role to ensure greater compliance with the Data Protection Act 1998 and new powers contained in the Coroners and Justice Act 2009 would give the ICO formal inspection powers across government.

The full press release is available at
http://www.ico.gov.uk/upload/documents/pressreleases/2009/nadpo_111109.pdf

More information on data security can be found at
http://www.ico.gov.uk/for_organisations/topic_specific_guides/Data%20security%20tips.aspx

Missing Persons Review by Multi-Agency Taskforce

The Prime Minister, Gordon Brown, announced on 10 December 2009 that a new taskforce is to be launched to look at ways to improve the response of agencies such as the police and local authorities to missing people and their families.

The charity, Missing People, estimates there are more than 200,000 incidents of people reported missing each year in the United Kingdom and around two thirds of them are children and young people. Most return safely after a short time but a significant number do not, causing great anxiety to friends and family. The taskforce will take a fresh look at how councils, police and other bodies work together to handle cases of missing children and consider how this can be improved.

The taskforce will consider measures to improve the service offered to missing persons and their families such as:

- Whether new legislative powers or statutory duties on local organisations are necessary;
- How to ensure information is collected consistently to gain a better understanding of the issue;
- What barriers stop effective responses by local agencies and how these may be overcome; and
- What successful measures are already in place and how these can be extended nationally?

The taskforce is made up of representatives from across government, the police, Missing People and the Child Exploitation and Online Protection (CEOP) Centre, and will make their recommendations to the Prime Minister and Home Secretary in 2010.

The full press release can be found at http://press.homeoffice.gov.uk/press-releases/new-missing-persons-taskforce

Proposals to Withdraw National Statistics Series

Sir David Normington's review 'Reducing the Data Burden on Police Forces in England and Wales' aimed to reduce forces' data collection burden by 50%. As a result, it contains proposals for cutting out altogether or reducing significantly 36 data streams. Statistics from two of these data streams are published as National Statistics in the Home Office statistical bulletin Police Powers and Procedures England and Wales.

They are:

- Motoring offences: vehicle defect rectification scheme notices; and
- Motoring offences: returns of written and cautions data.

The Normington Review looked at the use being made of data collected from the police and recommended that both series should cease as a compulsory collection from 2010/11 onwards. This decision was reached following findings that these data were little used centrally, with little apparent external use, and therefore constituted an unnecessary data collation burden on the police. It is now appropriate to follow the process for withdrawing the series under the National Statistics code of practice.

The two collections are currently published as part of statistical overview of non-court police sanctions for motoring offenders. Other sanctions including breath tests and fixed penalty notices, including those detected by traffic camera, will continue to be collected and published.

Under the National Statistics code of practice, there is now a period of consultation which ends on 31 January 2010. An announcement of the outcome of the consultation will be made in March/April 2010 in the pre-announced statistical bulletin 'Police Powers and Procedures England and Wales 2008/09'.

Any comments should be sent by email to AnnualDataRequirement@homeoffice.gsi.gov.uk

Sir David Normington's report 'Reducing the Data Burden on Police Forces in England and Wales' can be found at http://police.homeoffice.gov.uk/publications/police-reform/data-burdens-review.pdf?view=Binary

Committee Report on Work of UK Border Agency

The House of Commons Home Affairs Committee (HAC) published its second report of the 2009/10 session on 8 December 2009. The report entitled 'The Work of the UK Border Agency' expresses HAC's regret that case registrations at the UK Border Agency ever became 'so chaotic' and hopes that the new model for case handling will enable UKBA to resolve historic problems and cases.

The HAC acknowledges the increased resources that have been made available to clear the substantial backlog of asylum applications but states that UKBA's self-imposed deadline of 2011 is not soon enough. HAC states that all cases going back three years should be finally decided by September 2010.

The Committee is particularly concerned about the proportion and number of applications, over 54%, that have been concluded either by error or for some 'other reason' which the UKBA cannot define (rather than by a grant or refusal of leave).

The report covers:

- Historic backlog of asylum cases;
- Duplicates and errors;
- Immigration cases; and
- Role of the Independent Chief Inspector.

The full House of Commons Home Affairs Committee report 'The Work of the UK Border Agency' can be found at http://www.publications.parliament.uk/pa/cm200910/cmselect/cmhaff/105/105i.pdf

HMIC Report on Policing Protest Published

Her Majesty's Inspectorate of Constabulary (HMIC) published its report 'Adapting to Protest - Nurturing the British Model of Policing' on 25 November 2009. This report is the second part of its review of policing following the G20 summit in London on 1 and 2 April 2009. HMIC published Part I of its review 'Adapting to Protest' on 7 July 2009 (see *NPIA Digest* August 2009 edition, pp31-32).

The second part of the of HMIC's review looks at the national picture of public order policing and explores the question 'How best should the police as a service adapt to the modern day demands of public order policing whilst retaining the core values of the British model of policing?

HMIC state that it is time to reassert the principles of the traditional British model of approachable, impartial and accountable policing based on minimum force for major public order events. There is also a warning from HMIC that winning public order through tactics that appear to be unfair, aggressive or inconsistent risks losing public consent by damaging the reputation of the police service and individual officers alike.

Her Majesty's Chief Inspector of Constabulary, Dennis O'Connor, stressed that "The principles of the traditional model are well suited to handling the highly-charged, high-profile events that have challenged conventional public order policing tactics, training and leadership in recent years, compared with others on offer internationally. These events are small in number and differ in character from everyday policing because they include protesters who are highly mobile and are well versed in exercising their rights and testing legal boundaries."

HMIC identified that recent public order events have exposed inconsistencies in the training, standards and leadership of public order policing. The key findings of the report include:

- **An absence of clear standards on the use of force for individual officers operating in the public order policing environment** - for example, the use of shield tactics have evolved informally with the result that some forces train officers in defensive and offensive shield tactics (including the use of the edge of a shield against individuals) which are not nationally recognised and clearly involve the use of high levels of force by officers;
- **A disconnection between individual officer safety training and public order training** - little attention is paid to the use of force by individual officers in crowd situations, for example the use of batons and distraction techniques;
- **A variation across forces in levels of understanding of the law and proper use of public order police powers** - this weakness was demonstrated in a range of command documents and operational planning and was reflected in the actions of officers on the ground in operations such as the Drax Climate Camp in 2006; the Kingsnorth Climate Camp in 2008 and the G20 protests in 2009;

- **Inconsistent approaches and tactics across police forces** - for example, data collected from 22 forces of training in shield tactics indicates that 19 forces train with intermediate and round shields; 2 forces train with long shields and round shields and one force trains with all three shield types;
- **Inconsistent equipment** - there is no common standard for public order personal protection uniform across forces. There are currently two separate procurement processes for the purchase of body armour, with 21 forces supporting one process and 13 forces supporting the other. Ten forces have not opted to join either process;
- **Lack of public order command capability** - depending on reliance on individual force data or national data, between 16% and 22% of forces across England, Wales and Northern Ireland cannot provide a minimal accredited public order command structure;
- **Out of date training and guidance** - the current tactics training manual was written in 2004 and has not been revised since. ACPO has recognised the need for revision of the manual. Knowledge transfer in today's world needs to be rapid and accessible. More practical mechanisms of disseminating accurate up-to-date knowledge need to be developed. By way of illustration, HMIC has devised a series of human rights compliant decision-making flow diagrams for protests in public and private space which can be used by commanders when planning public order operations and when reacting to events on the ground;
- **Inadequate training in the law, including human rights and police public order powers** - for example, there is a lack of clarity around the role and function of Forward Intelligence Teams (FITs). The role of FIT officer has shifted significantly over the past few years, with FITs now often deployed in personal protective equipment and accompanied by photographers to identify and obtain information about protesters. The public order manual does not explain the purpose for which this information is required. This lack of clarity creates the potential for FIT officers to act outside their lawful powers;
- **Inappropriate use of public order powers:** for example, the inappropriate use of police powers to stop and search protesters and/or to obtain the names and addresses of protesters. This was recorded as a significant issue in the Kingsnorth Climate Camp in 2008 and in other smaller scale protest events around England in the last twelve months; and
- **Uncertainty about the governance and accountability mechanisms best suited to support public order policing at both the national and local levels** - ACPO must have transparent governance and accountability structures, particularly when it is engaged in quasi-operational roles, such as the collation and retention of personal data. There is a need to clarify the monitoring role for police authorities in relation to large scale public order operations, currently there is no guidance for them.

The HMIC review builds on the recommendations of 'Adapting to Protest' and develops a practical framework for police decision-making to facilitate peaceful protest. It includes the response from ACPO to the recommendations made by HMIC in July 2009 and provides further details of the ACPO review of national public order training.

HMIC have produced three flow diagrams which were developed as a way to provide, clear practical guidance for public order practitioners. The diagrams are designed to help to devise appropriate command and control frameworks for large-scale public order operations:

- Facilitating Peaceful Protest;
- Use of Public Highway; and
- Protests on Private Land.

In light of the failures identified in its national review of public order policing HMIC makes a number of recommendations to strengthen and reinforce the core values of the British policing model including:

- The adoption of a set of fundamental principles on the use of force which run as a golden thread though all aspects of police business. These principles should be based on the minimum use of force and the requirement for a measured and calculated route to escalation where the use of force is a possibility;
- Codification of public order policing to ensure consistency in public order training and use of equipment, tactics and police powers;
- Public order training that is more directed, more focused and more relevant to the public order challenges facing the police. It is hard to overestimate the importance of officers' understanding of the law when each individual police officer is legally accountable for the exercise of his or her police powers, especially the use of force;
- A no surprises communication philosophy with protesters, the wider public and the media. Protesters and the public should be made aware of likely police action in order to make informed choices and decisions;
- Clarification of the legal framework for the use of overt photography by police during public order operations and the collation and retention of photographic images by police forces and other policing bodies;
- Review of the status of ACPO to ensure transparent governance and accountability structures, especially in relation to its quasi-operational role in the commissioning of intelligence and the collation and retention of data;
- Common guidelines for police authorities on monitoring public order policing to protect the public interest without compromising police operational independence; and
- Finally, a body must have responsibility at the national level for sustaining and supporting the British model of policing and ensuring the evolution of public order policing within a workable legislative framework. HMIC suggests that this responsibility rests with the Home Office.

The full HMIC report 'Adapting to Protest - Nurturing the British Model of Policing' can be found at http://hmic.homeoffice.gov.uk/SiteCollectionDocuments/PPR/G20-final-report.pdf

The three flow diagrams are available at http://hmic.homeoffice.gov.uk/Inspections/SpecialistInspections/PPR/Pages/home.aspx

Reducing Bureaucracy in Policing Advocate Publishes First Annual Report

On 2 December 2009 the reducing bureaucracy in policing advocate Jan Berry released her first year report. The document 'Reducing bureaucracy in policing' presents the findings of the advocate's examination of how the police service can build on the progress of the last year and remove even more unnecessary red-tape, freeing up police time and strengthening front line discretion to serve the public better.

The reducing bureaucracy report identifies and assesses key areas in policing that should be reviewed to enhance performance, streamline processes and minimise waste across the 43 police forces of England and Wales. The report goes beyond material inefficiencies and duplicated processes to less obvious problems with current systems and approaches, which together have progressively diluted individual police powers.

The report is divided into seven chapters which highlight the structural, procedural and cultural causes of unnecessary bureaucracy and recommend and promote possible steps to resolve them.

Summary of each chapter:

Chapter 1 - History and context

The chapter summarises some of the previous work to reduce bureaucracy in policing. It demonstrates how those initiatives have informed the work in the report and also where progress to date has stalled.

Chapter 2 - Targeting sustainable business improvement

Focuses on the need for actions to reduce bureaucracy to be placed within the context of a broader approach to sustainable business improvement and cultural change. It argues for the adoption of a common business improvement model across policing: a systems approach that understands and reflects customer and stakeholder demand, encourages proactive leadership, incorporates front-line experience and removes over-working and duplication.

Chapter 3 - Building effective systems

This chapter takes the systems thinking outlined in Chapter 2 and begins to apply it to some of the key challenges that affect all police forces and the police service as a whole. It looks at:

- The need to make the criminal justice system (CJS) operate more as a system;
- The organisational structure of the police service today, and particularly its lines of governance and accountability; and
- The ongoing issue of IT and interoperability.

In each case, it highlights how the existing systems and structures create unnecessary bureaucracy.

Chapter 4 - Managing performance and reducing the data burden

This chapter examines the current police performance landscape. It looks at the different performance targets police forces have set themselves and been set, and how these have too often led to unnecessary bureaucracy and data collection. It also argues for a new performance culture focused on outcomes rather than outputs.

Chapter 5 - Reducing bureaucracy in key processes

While other chapters focus on long-term cultural change, this chapter looks at shorter term process change to reduce bureaucracy. It considers ten processes that front-line officers and staff have identified as being over-bureaucratic and recommends specific steps to reduce bureaucracy.

Chapter 6 - Developing professional skills

Throughout this report, a number of areas have been highlighted where skills gaps, particularly around the use of professional judgement, create additional and unnecessary bureaucracy, and act as a barrier to development. In line with the systems approach advocated throughout, this chapter focuses on those skills gaps, recommending ways to overcome them and so help build a culture of sustainable improvement which can itself help reduce the need for bureaucracy.

Chapter 7 - Moving forward

This chapter sets out the type of change required involving a long-term cultural shift. The improvements achieved in recent years need to be sustained and to enable this to happen a system of continuous professional development needs to be adopted.

Key recommendations accepted by the government include:

- Roll-out of a successful pilot scheme which gives officers discretion to deal with crimes in the most effective way;
- Making sure officers understand how they can deal with offenders through different options within the criminal justice system, for example through restorative justice or the courts;
- Making sure officers understand acceptable ways of dealing with each crime and the consequences for public confidence and satisfaction; and
- Making sure decisions are made at the right level and that each officer's role is clearly defined within that process.

The government has accepted 13 of the report's recommendations, and will work closely with the police to implement these and consider a further 22.

The full report 'Reducing bureaucracy in policing' is available at http://police.homeoffice.gov.uk/publications/police-reform/reducing-bureaucracy-policing?view=Binary

IPPR Report Calls for Police Reforms

A new report 'Arrested Development: Unlocking change in the police service' published by the Institute for Public Policy Research on 26 November 2009 argues that after years of investment with little reform, and with public funding set to be cut, politicians should stop avoiding fundamental reforms to the way the police service is governed, organised and held to account.

The report sets out two main arguments for police reform which are that:

- The world and society has changed in a number of important ways, increasing the range of demands on the police and requiring them to change the way they work. These changes include a transformation in the kinds of roles the police are expected to perform, the emergence of new kinds of criminal activity that require a different response and higher expectations of public services generally; and
- The Labour Government's policing strategy, based on increased spending on the police alongside performance targets set from Whitehall, is no longer sustainable.

The author acknowledges that whilst the Labour Government can claim credit for a significant fall in crime over the last decade, its approach to managing the police service over the last 10 years now needs to change. The Government's policing strategy has been to spend more money on the police (increasing the number of police officers to record levels) and to drive up performance through the use of centrally imposed targets. The report argues that this approach cannot continue because of financial constraints and the target focused regime has reduced the ability of police forces to respond to changing local demands.

It is also noted that while crime has fallen, police performance on a number of key measures has not improved. Importantly, the number of detections per officer has fallen and public satisfaction with the police is lower than it was before Labour came to power. The report states that if the police are to deal with new challenges and prevent crime from rising again, they will need to change the way they work.

Areas for reform

The report identifies four priority areas for reform:

- To better equip the police workforce to deal with new challenges, involving changes to how the police are paid, how they are recruited, the roles they perform and the way they are managed;
- To integrate information systems and processes across forces;

- To improve the quality of the relationship between the police service and the citizen. To achieve this there is a requirement to change the way officers are trained, further embedding of neighbourhood policing, greater public access to police data and more use of social media to open up new lines of communication and collaboration between the police and the citizen;
- To tackle an excessively bureaucratic and process-driven organisational culture. This means greater professional autonomy for officers, a problem-solving approach taken to crime and more space for innovation at the frontline.

The report states that none of the reforms outlined above can be progressed unless a wider set of problems are tackled. These problems are caused by the way the police service is governed, organised and held to account.

The author's argument is that unless the governance system itself is transformed, any substantive programme of reform will suffer the same fate as those that preceded it: opposition within different parts of the service followed by a government 'U-turn' for fear of a politically costly conflict with the police. The first reform priority therefore has to be to design a system of governance that is more coherent and less fragmented and that empowers local and national leaders to deliver change in the public interest.

Conclusions

A new system of governance is needed for the police service in England and Wales that will do four things:

- Enhance police flexibility locally while improving capacity regionally and at the centre;
- Reduce waste and inefficiency;
- Strengthen accountability; and
- Facilitate change and reform throughout the service.

Recommendations

The key proposed changes to the governance of policing are:

- All local crime priorities should be set at the local level, most importantly by strengthening the role of elected local government. Priorities would be set at three different levels:
  - Reformed police authorities made up of senior councillors would set the budgets and priorities for each police force and hold chief constables to account for performance;
  - Local authorities would directly commission key police services from their respective Basic Command Units;
  - Local neighbourhood policing meetings would set the priorities for each neighbourhood policing team.

- A National Policing Agency (NPA) should be established by merging the National Policing Improvement Agency (NPIA) with those parts of the Association of Chief Police Officers (ACPO) that currently coordinate or deliver national policing services. The NPA would have powers to ensure that complex and serious criminal activity that crosses force borders was being effectively tackled through collaboration and to improve the efficiency of service delivery by forces.

On 26 November 2009 Norman Bettison, Chief Constable of West Yorkshire Police and Vice President of the Association of Chief Police Officers said in response to the report "There appears to be a think tank report every few weeks about the future of policing. This is hardly surprising given a looming general election and public debate about policing is to be encouraged. This IPPR report is more superficial than most and has a few good ideas, none of them novel. The call for information systems to be converged across different forces is actively being pursued already as is the call for local neighbourhood meetings to set priorities for neighbourhood policing teams. Police and Communities Together (PACT) meetings take place in every neighbourhood each month. Where crime has fallen it is through police and communities working together."

He continued "The report has a huge contradiction at its heart. It states that 'putting bobbies on the beat' is no longer a sustainable strategy. In meeting local priorities however, I and my Chief Constable colleagues find this is precisely the strategy the public want to see. What is required is an understanding of the need for balance between neighbourhood policing at one end, and the huge variety of other tasks which fall to the police, from supporting victims of crime to dealing with anti-social behaviour, while ensuring terrorists, sex offenders and organised criminals are tackled. Far from being resistant to change it is the service itself that continually adapts to new challenges and is now engaging in debate about reform of how policing is structured, both at national and force level."

The full IPPR report 'Arrested Development: Unlocking change in the police service' is available at
http://www.ippr.org/publicationsandreports/publication.asp?id=716

The ACPO press release can be found at
http://www.acpo.police.uk/pressrelease.asp?PR GUID=%7b9EB2EA95-31AB-4BC7-8C77-02549442DE72

Judgment on Retention of Previous Convictions on PNC Favours Police

On 19 October 2009 the England and Wales Court of Appeal (Civil Division) delivered a judgment in the case of Chief Constable of Humberside Police and Others v Information Commissioner (Secretary of State for the Home Department intervening) [2009] EWCA Civ 1079.

In delivering its judgment it was found that the retention of old conviction data on the Police National Computer (PNC) relating to the past convictions of individuals was not contrary to the principles of data protection and may be retained for the purposes of prevention and detection of crime.

The issue was whether by virtue of the principles under the Data Protection Act 1998, the police were bound to delete certain old convictions from the PNC.

Case History

Five individuals complained to the Information Commissioner after old minor conviction data was disclosed to the Criminal Records Bureau when four of the individuals applied for jobs. One of the individuals had made her own Subject Data Access Request for her personal information in relation to a passport application to enable her to emigrate to St Lucia. The Information Tribunal (IT) subsequently upheld orders that details of their past convictions be removed from police records. The police appealed against this decision which was contested by the individuals.

The Principles

The Data Protection Act, states *'personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.'* The Act also states that *'personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.'*

In the present case, the IT was concerned with two important principles under the Data Protection Act 1998: whether 'excessive data' was being retained and whether data was being 'kept for longer than necessary'.

The IT initially held that retention of conviction records should be confined to the 'core' police purposes only and that the retention of this information was excessive in relation to policing purposes, had been kept for longer than necessary and should be deleted.

On appeal, the court held that the IT was wrong in saying that retention of records should be confined to the 'core' police purposes of prevention and detection of crime and maintenance of law and order.

It was submitted that to confine 'purposes' to 'core' police purposes found no support from the provisions of the Data Protection Act and was to take too narrow a view. Accordingly, there could be no question of retention being either excessive or held for longer than necessary. It was wrong for the tribunal to take upon itself the role of deciding what was the value to the police, even for core police purposes, unless the view of the police could be shown to be perverse.

The Information Commissioner's reliance on 'core purposes' meant that the tribunal had got 'off on the wrong foot' and that its treatment of the main issues had been materially flawed. Waller LJ submitted that *"the ramifications of the Commissioners decision was far wider than these five cases since, if these convictions must be deleted and if the police are to treat people consistently, the application of any viable system of weeding would probably lead to the deletion of around a million convictions."*

One of the purposes for which the police had retained the data on the PNC was to be able to supply accurate records of convictions to the Crown Prosecution Service, the courts and the Criminal Records Bureau. This was supported under the Police Act 1997 which provides:

"Any person who holds records of convictions, cautions or other information for the use of police forces generally shall make those records available to the Secretary of State for the purpose of enabling him to carry out his functions under this Part."

The court confirmed that the police are the first judge of their operational needs and the primary decision makers; the Information Commissioner's role is a reviewing or supervisory one and this office cannot and should not substitute [their] judgement for that of experienced practitioners.

The court endorsed the decision of Lord Woolf in *R v Chief Constable of the North Wales Police ex parte Thorpe* [1999] QB 396, who held *"Both under the Convention and as a matter of English administrative law, the police are entitled to use information when they reasonably conclude this is what is required. In data protection terms this requires holding criminal intelligence on the PNC for so long as it is necessary for the police's core purposes."*

It was wrong for the IT to take upon itself the role of deciding what was of value to the Police. The court held *"It is simply the honest and rationally held belief that convictions, however old and however minor, can be of value in the fight against crime and thus the retention of that information should not be denied to the police."*

The PNC has evolved over the years and it is now regarded as the main source of criminal intelligence for a variety of organisations. The underlying purpose of the PNC is the maintenance of a complete record of convictions, subject to certain defined limitations, for the assistance both of the police itself and of other agencies which legitimately require that information.

A complete record of convictions spent and otherwise was required and therefore data retained was not excessive or held for longer than necessary. The purpose of maintaining a complete record of convictions was not negated by showing in an individual case that one or more particular pieces of information were of no identifiable utility.

It was for Parliament, and not for the Commissioner alone, to consider any limitation on the indirect access of others to the contents of the PNC. And it was not for the Commissioner to try to modify the effect of statute by construction of the data protection principles.

In summary the court stated that:

- It is for the data controller to determine the purpose(s) for which the data is processed;
- It is not open to the Commissioner to impose his own determination of those purposes; the imposition of a concept of 'core police purposes' was misconceived;
- In any event the proper purposes of the police in managing the PNC plainly include the retention of information for provision to others who have a legitimate need for it, including (but not limited to) provision under statutory duty created by the Police Act 1997;

- Those purposes sufficiently appear from the notification of purposes lodged, but even if they do not the notification could be amended tomorrow;
- Accordingly retention of the records in these cases for those purposes was not a breach of DPP 3 or 5; and
- None of the foregoing is in any sense inconsistent with the Directive, which plainly contemplates (though does not *require*) the maintenance by the police of a comprehensive record of convictions.

The holding of information for the purpose of assisting other public bodies who share 'common public policy objectives' to perform their functions was lawful under the Data Protection Act 1998.

The full judgment of the Chief Constable of Humberside Police and Others v Information Commissioner (Secretary of State for the Home Department intervening) [2009] EWCA Civ 1079 can be found at http://www.bailii.org/ew/cases/EWCA/Civ/2009/1079.html

Human Genetics Commission Report Calls for Regulation of Police DNA Database

The Human Genetics Commission (HGC) published its report 'Nothing to hide, nothing to fear? Balancing individual rights and the public interest in the governance and use of the National DNA Database' on 24 November 2009. The main conclusion of the report by the HGC, the Government's independent advisers on developments in human genetics, is that the UK has the largest police DNA database in the world, five million strong and still growing, yet it has developed piecemeal without a specific Act of Parliament. The authors conclude that it needs to be regulated on a clear statutory basis and supervised by an independent authority.

The HGC recommends a series of improvements for the management and supervision of the database and calls for new guidance for police officers taking DNA samples, as well as closer monitoring to make sure they are following it. It comes out against any proposal for the whole population to be on the database.

The key findings of the report include:

- There is insufficient evidence at present to be able to say what use holding DNA profiles from different people is. This evidence is urgently needed to support decisions about the scope of the database;
- There needs to be very careful consideration of the equality impact of the database and any proposed changes to it. There are real concerns about the potential for discrimination against certain groups in society, since groups such as young black men are very highly overrepresented;
- There needs to be a clear and independent appeals procedure for unconvicted people who want their DNA removed;

- All police officers should have their own DNA collected as a condition of employment;
- The UK needs to make progress in working with the rest of Europe on exchanging DNA information and standardising procedures.

On 24 November 2009 Chris Sims, Chief Constable of West Midlands Police and ACPO lead on forensics said "DNA evidence has helped to solve numerous crimes as well as bringing offenders to justice. But the police service recognises its use must be reasonable and retain the support of the public. The Government's Crime and Security Bill will address these issues and the police service welcomes the opportunity to establish some new clarity within which the police service can work. We welcome the decision of the Select Committee to look at the DNA database and this report in more detail. Open debate is a vital part of setting clearly understood legal parameters around use of DNA within which the police service can operate."

The full report 'Nothing to hide, nothing to fear? Balancing individual rights and the public interest in the governance and use of the National DNA Database' is available at http://www.hgc.gov.uk/UploadDocs/DocPub/Document/Nothing%20to%20hide,%20nothing%20to%20fear%20-%20online%20version.pdf

The full ACPO press release can be found at http://www.acpo.police.uk/pressrelease.asp?PR_GUID={C24A0DF6-B7AA-4B5A-979B-27FD52310EA3}

Neighbourhood Policing Strategy Developing

The Home Office's Public Confidence Unit (PCU) is currently developing a strategy setting out the next steps for neighbourhood policing (NP). The strategy will consider a number of key issues such as sustaining NP in the long term, ensuring that NP teams deliver not just on visibility but also around community engagement and problem solving. It will also ensure that NP teams are fully supported by the wider police service and other community safety providers such as local authorities.

The PCU will be engaging with stakeholders, such as police practitioner groups, in order to get their views and input on the future of neighbourhood policing. A steering group made up of key stakeholders will also be setup to agree the scope for the strategy and met for the first time in early November 2009.

It is aimed to publish the new neighbourhood policing strategy in January 2010.

Further information about the new neighbourhood policing strategy is available by email from Cat.Drew@homeoffice.gsi.gov.uk

Home Office Release Statistics on Operation of Police Powers under Terrorism Act 2000 (TACT)

On 26 November 2009 the Home Office published its latest statistical bulletin 'Operation of police powers under the Terrorism Act 2000 and subsequent legislation - arrest, outcomes and stops and searches, Great Britain, 2008/09'. This statistical bulletin is the first in a new series which brings together information on terrorism arrests, outcomes and stop and searches previously published in separate statistical bulletins.

The key points in the bulletin include:

Terrorism Arrests & Outcomes

- The number of terrorism arrests fell in 2008/09 to 190 compared with an annual average of 222;
- 38% of terrorism arrests in 2008/09 resulted in a charge (higher than the 29% rate for all indictable offences), 55% of arrestees were released, and a further 9% had alternative action taken, e.g. transfer to immigration authorities;
- 51% of charges resulting from terrorism arrests in 2008/09 were terrorism related. The average since 11 September 2001 was 66%;
- 45% of those arrested under s41 TACT in 2008/09 were held in pre-charge detention for under one day and 78% for under 7 days. No individuals were held for longer than 14 days. Since the extension of the pre-charge detention period in 2006 11 suspects have been held for over 14 days and 6 for the full period of 28 days;
- 217 suspects (57% of those charged) have been convicted of a terrorism related offence since 11 September 2001. However 29 trials for recent terrorism related offences were yet to be completed;
- 82% of defendants tried in 2008/09 for terrorism related offences were convicted, of which 43% pleaded guilty. There were 3 life sentences in 2008/09. 30% of all custodial sentences in 2008/09 were 10 years or over;
- There were 121 prisoners at 31 March 2009 classified as terrorists, 3 of whom were held by the Scottish Prison Service; 8 were convicted before the introduction of TACT. Around 70% of terrorist prisoners were UK nationals.

Stops and Searches under s43 and s44 TACT:

- Section 44 TACT gives police forces powers to stop and search individuals to prevent acts of terrorism without the need for reasonable grounds of suspicion. In 2008/09 256,026 stops and searches were made under this power which represents a 36% increase since 2007/08;
- Provisional data for the first quarter of 2009/10 shows a 37% reduction over the first quarter of 2008/9 and a 42% reduction over the last quarter of 2008/9;

- During 2008/09 95% of s44 searches were carried out by the Metropolitan Police and the British Transport Police; and
- Some 1,643 stops and searches were carried out by the Metropolitan Police Service in 2008/09 under s43 TACT; a power enabling a police officer to stop and search someone reasonably suspected of being a terrorist. The use of these stops and searches rose sharply in 2008/09 from 131 in the first quarter to 733 in the 3rd quarter but then falling to 357 in the 1st quarter of 2009/10.

The full Home Office Statistical Bulletin 'Operation of police powers under the Terrorism Act 2000 and subsequent legislation - arrest, outcomes and stops and searches, Great Britain, 2008/09' is available at http://www.homeoffice.gov.uk/rds/pdfs09/hosb1809.pdf

TACT Reviewer Makes Recommendations after Operation Pathway

The independent reviewer of the Terrorism Act 2000 (TACT) Lord Carlile reported on his review of Operation Pathway in October 2009. Lord Carlile has statutory responsibility to review the operation of the TACT annually. The Home Secretary responded to the review of Operation Pathway on 23 November 2009.

Lord Carlile's role as TACT reviewer includes observation of the activities of the authorities working to counter terrorism. In this capacity he reviewed the actions of Wednesday 8 April 2009 when the North-West Counter-Terrorism Unit [NWCTU], working with Merseyside Police, Greater Manchester Police, Lancashire Constabulary and the Metropolitan Police arrested twelve men under section 41 of TACT. Five of the arrests were in Manchester, five in Liverpool, and two in Clitheroe in Lancashire. The police operation involved is known as Operation Pathway.

Lord Carlile decided that the circumstances of Operation Pathway provided a useful opportunity for a case study, or 'snapshot review' of the working of TACT.

The review of Operation Pathway made seven specific recommendations which were:

- In future, all persons attending meetings concerned with national security, wherever they occur, should seek to avoid places where it can be assumed cameras will be present, in the absence of a clear decision that publicity would in no way harm national security;
- The police and the CPS should take immediate steps to ensure that their procedures reflect the need for legal advice to the police at an early stage. CPS expert, vetted lawyers should be informed, well before arrests take place, of ongoing inquiries likely to result in arrests. They should be asked to advise on the state of the intelligence, information and evidence as the inquiry in question progresses, with an eye on the implications and challenges post-arrest. It was noted that this is regarded as normal practice, and as such has been strengthened following Operation Pathway;

- All police officers involved in counter-terrorism policing should be trained in the law of arrest and its potential effect on detentions under TACT Schedule 8;
- There should be better recording of custody officers' reviews and their decisions;
- Consideration should be given to amending TACT to allow the granting of bail by a judge for a period up to the 28th day following arrest, subject to the full range of conditions available in general crime and in relation to control orders;
- The level of co-operation and sharing of basic information with local authorities should be improved by adding to the responsibilities of the police a requirement that basic advance information be given, insofar as this is possible without affecting the integrity and necessary secrecy of the operation being conducted; and
- The issue of bogus colleges, courses and poor attendance records should receive fresh strategic attention in order that abuses can be identified. Those providing offending courses should always be prosecuted, and severe penalties imposed in serious cases.

The full report on the review of Operation Pathway and the Home Secretary's response to Lord Carlile's review were not available at the time of publication however they will be posted at http://security.homeoffice.gov.uk/

Home Office Publish Research on Local Variations in Use of Anti-Social Behaviour Tools and Powers

The Home Office published on 2 December 2009 a research report entitled 'Exploration of local variations in the use of anti-social behaviour tools and powers'. The study examined the differences and similarities between Crime and Disorder Partnerships (CDRPs) in their use of anti-social behaviour (ASB) interventions, focusing on their experiences of the process of: implementing interventions; local and national influences; and the perceived effectiveness of interventions.

The key implications of the study include:

Perceptions and the local agenda

The research highlighted the key part played by the local community in setting the agenda for ASB interventions, illustrating the need for local agencies to inform communities about what is being done locally in tackling ASB and for the Home Office to address perceptions of levels of ASB. The Home Office is working with some local areas to draw out promising approaches in informing communities about action to tackle ASB.

The use of tools and powers

Most practitioners felt content with, and well-informed about, the range of powers available to them, although some saw a need for an intervention that 'bridged the gap' between the non-compulsion of Acceptable Behaviour Contracts (ABCs) and the strictures of ASBOs. Although practitioners mostly

wanted a consolidation of the Government's approach which included an indication of the future policy direction.

Practitioners commonly reported a tiered approach to implementing interventions to tackle ASB with an initial focus on preventative, supportive interventions, working up to a multi-agency enforcement approach.

The areas involved in the research used an array of supportive interventions but there were concerns about the accessibility of support services for adults.

Partnership working and information sharing

While practitioners valued local flexibility they saw national sharing of good practice as key to ensuring that good and innovative work that is being carried out across the country is used to inform policy and practice developments. Some practitioners thought that an effective practice guide illustrating a range of case study examples would be a useful tool to front-line staff, while others pressed for guidelines to assist them in making informed decisions about how to most effectively use the interventions.

Multi-agency working was seen as vital for dealing effectively with ASB, but barriers to the sharing of information were reported, in particular between statutory and non-statutory bodies. Some practitioners wanted guidelines on information-sharing protocols and establishing effective partnerships, especially with those agencies currently outside of many ASB partnerships.

The full Home Office Research Report Number 21 'Exploration of local variations in the use of anti-social behaviour tools and powers' can be found at http://www.homeoffice.gov.uk/rds/pdfs09/horr21c.pdf

Public Consultation Launched into Specialist Training for Door Supervisors

On 15 December 2009 the Home Office launched a public consultation into specialist training for door supervisors. It plans to raise standards by introducing additional training for UK door supervisors which will form part of a Home Office consultation which has now been launched.

The aim of the new proposals is to protect the public by raising standards of training across the industry. Additional training will include physical intervention, first aid, special considerations when dealing with young people and awareness of the threat of terrorism. The Security Industry Authority (SIA) has already included the additional training elements as part of the new qualifications being introduced from June 2010.

The public consultation proposes making the additional skills a requirement for existing door supervisors in the form of top-up training that must be taken before renewing their licence. This would also apply to those who have an existing qualification and want to apply for a licence for the first time. The public consultation ends on 23 March 2010.

The full Home Office document 'Top-Up Training for Door Supervisors: A Consultation Paper' is available at http://www.homeoffice.gov.uk/documents/cons-2009-door-supervisors/top-up-training-door-supervisors?view=Binary

New Report on Rape: Review of Victim Experience

On 25 November 2009 the Home Office published a report entitled 'Rape: The Victim Experience Review' by the Victim's Champion Sara Payne. The review was asked to consider the following:

- What factors influence a rape victim to report to the police and what could be done to improve victims' confidence in reporting;
- What factors influence a rape victim to withdraw from the criminal justice system post report and what could be done to reduce the likelihood of victim withdrawal; and
- What could be done to improve the overall satisfaction of victims with the service they receive from the criminal justice system, whether or not a conviction is achieved.

The reviewers contacted victims, the police and the CPS and found that the same issues arose repeatedly. The majority of the issues that arose are discreet issues, such as the need for more information or the need for more support services. However, two issues arose that are worthy of considerable attention, these are:

- Societal and professional attitudes to rape victims. These attitudes influence everything from whether a victim reports, to the service they receive, to whether or not they get a conviction; and
- The inconsistency of treatment of victims which varies from good to poor and from one area to another.

The publication 'From Report to Court - A handbook for adult survivors of sexual violence' produced by an organisation called Rights of Women was singled out for praise.

The full report 'Rape: The Victim Experience Review' can be found at http://www.homeoffice.gov.uk/documents/vawg-rape-review/rape-victim-experience.pdf?view=Binary

The handbook 'From Report to Court - A handbook for adult survivors of sexual violence' is available at http://www.rightsofwomen.org.uk/pdfs/report%20to%20court%204%20web.pdf

Home Office Evaluation of Independent Sexual Violence Advisors Published

On 24 November 2009 the Home Office published a research report entitled 'Independent Sexual Violence Advisors: a process evaluation'.

The aim of the evaluation was to:

- Assess how Independent Sexual Violence Advisor (ISVA) services have been implemented in two distinct settings:

- Sexual Assault Referral Centres (SARCs); and
- Voluntary sector organisations; and

- The perceived impact they had with regard to providing specialist support to victims of sexual violence.

The main responsibilities of ISVAs can be broadly grouped into the following areas:

- To provide advice and support: providing non-therapeutic support to victims at the point of crisis and beyond, along with other types of practical help and advice;
- Where required, support victims through the criminal justice system: giving information and assistance through the criminal justice process; and
- Multi-agency partnership working on behalf of the victim: liaising with partner agencies in a multi-agency context providing 'institutional advocacy'.

The research concluded that several issues required to be considered in any future commissioning or development of ISVA services including:

- The inclusion of the work of ISVAs in local crime and victim strategies to help ensure a co-ordinated response to supporting victims of sexual violence, and also to help avoid potential duplication of work with other victim services especially at the court stage (e.g. Victim Support and the Witness Service);
- Improve referral routes and practices between ISVAs and key partners (e.g. police), particularly in a voluntary setting, to ensure all relevant cases are referred and handled in a consistent and efficient way;
- Develop an accredited training programme for ISVAs that covers all the different facets of the role and which focuses on dealing specifically with victims of rape and other forms of sexual violence; and
- Develop standardised data collection tools to provide regular monitoring information to facilitate effective project management and to help further their understanding of the needs of victims of sexual violence.

The full Home Office Research Report Number 20 'Independent Sexual Violence Advisors: a process evaluation' is available at http://www.homeoffice.gov.uk/rds/pdfs09/horr20.pdf

Scottish Crime and Justice Survey (SCJS) 2008/09: Sexual Victimisation Released

The publication of the 'Scottish Crime and Justice Survey 2008/09: Sexual Victimisation' by Scotland's Chief Statistician on 15 December 2009 presented statistics on adults' experiences of Sexual Victimisation in Scotland.

The report presents information on the risk of experiencing stalking and sexual victimisation ever and in the last 12 months; how risk varies among different groups of adults, for example by age and gender; and any relationship between victim and offender. The SCJS includes the following forms of stalking and sexual victimisation in the report:

- **Stalking and harassment** - receiving obscene or threatening correspondence; receiving obscene, threatening, nuisance or silent telephone calls; someone waiting outside the home or workplace; being followed around or watched;
- **Less serious sexual assault** - indecent exposure; sexually threatening behaviour; touching sexually when it was not wanted; and
- **Serious sexual assault** - forcing or attempting to force someone to have sexual intercourse and forcing or attempting to force someone to take part in other sexual activity when they did not want to.

The main findings of the report are:

Stalking and harassment

- 6% of adults had experienced at least one form of stalking and harassment in the last 12 months;
- Males were equally as likely to experience stalking and harassment in the last 12 months as females. Younger age groups were more likely than older age groups to experience stalking and harassment (10% of 16-24 year olds had experienced at least one form of stalking and harassment in the last 12 months compared with 2% of those aged 60 or over);
- 65% of those experiencing at least one form of stalking and harassment in the last 12 months knew the offender, 6% had seen the offender before but did not know them and 25% had never seen the offender before; and
- 20% of those experiencing stalking and harassment said the police came to know about the most recent incident they experienced in the last 12 months.

Less serious sexual assault

- 9% of adults had experienced at least one form of less serious sexual assault since the age of 16 and 15% of women experienced at least one form of less serious sexual assault compared with 3% of men;
- The relationship with the offender varied depending on the type of less serious sexual assault. For indecent exposure, 73% said the offender was someone they had never seen before while for sexual threats 45% said

the offender was their partner and 23% said it was someone they had never seen before. For unwanted sexual touching 18% said it was their partner, 26% said it was someone else they knew and 36% said the offender was someone they had never seen before;

- 96% of women who had experienced any form of less serious sexual assault since the age of 16 said the offender was male. In contrast, 48% of men who had experienced any form of less serious sexual assault since the age of 16 said the offender was male, 40% said the offender was female and 10% said there were some male and some female offenders; and
- 1% of adults had experienced at least one form of less serious sexual assault in the last 12 months.

Serious sexual assault

- 3% of adults had experienced at least one form of serious sexual assault since the age of 16 and 5% of women experienced at least one form of serious sexual assault compared with one per cent of men;
- 56% of adults who had experienced serious sexual assault were assaulted by their partner;
- 90% of adults who had experienced serious sexual assault said the offender was male and 8% said the offender was female; and
- Less than 0.5% of adults had experienced at least one form of serious sexual assault in the last 12 months.

The full report 'Scottish Crime and Justice Survey (SCJS) 2008-09: Sexual Victimisation' is available at http://www.scotland.gov.uk/Publications/2009/12/14103338/0

Practice Advice on Management of Priority and Volume Crime Released

In November 2009 the NPIA on behalf of the Association of Chief Police Officers (ACPO) published the 'Practice Advice on The Management of Priority and Volume Crime, Second Edition, 2009'.

This practice advice is produced to assist Basic Command Unit (BCU) commanders and crime managers to assess the effectiveness of their current practices and to implement any changes, where necessary, to volume crime management regimes. The practice advice draws on the original research, the interim practice advice and the lessons learned throughout the pilot phase of this project.

The practice advice contains seven sections which are:

- Introducing the volume crime management model;
- Call handling;
- Crime recording and primary investigation;

- Management and administration;
- Secondary investigation;
- Suspect management; and
- Strategic management and implementation of the volume crime management model.

The ACPO 'Practice Advice on The Management of Priority and Volume Crime, Second Edition, 2009' is available on the Genesis Extranet.

Latest Statistical Bulletin Outlines Perceptions of Crime and Anti-Social Behaviour

The Home Office published its latest statistical bulletin 'Perceptions of crime and anti-social behaviour: Findings from the 2008/09 British Crime Survey' on 19 November 2009. This bulletin is Supplementary Volume 1 to Crime in England and Wales 2008/09 and is the first in the series of supplementary volumes that accompany the main annual crime bulletin 'Crime in England and Wales 2008/09'. It presents more detailed information on public perceptions of crime and anti-social behaviour.

Perceptions of crime

Previous British Crime Survey (BCS) results have been used to describe two types of 'perception gap' which are:

- Firstly, the difference between perceptions of crime and actual crime levels, and
- Secondly, that which is related to differences between perceptions of what is happening nationally and in the local area.

The results released in July 2009 showed that around 75% of the public think that crime has risen nationally in the last two years but that much lower proportions believe it has risen in their local area (36%).

The gap between perceptions of national and local crime is greater for the more serious violent (and therefore rarer) crimes and smaller for acquisitive crimes. The analysis suggests that personal experience is more likely to play a part in the perceptions of the more common crimes while perceptions of rarer crime types are likely to be due to the influence of the media, which tends to focus on the more violent crimes.

Analysis of new questions on specific types of crime and on perceptions of the comparative levels of crime also suggests the gap between perceptions of crime and actual crime levels might not be as great as previously thought. There was a clear relationship between perceptions of the comparative level of crime in the local area and actual levels of crime based on analysis of small area police recorded crime data. For example, 28% of those living in areas with the highest crime rates perceived they lived in a higher than average crime area compared with just 1% of those living in areas with the lowest crime rates.

The proportion of people perceiving increased crime levels locally tended to be higher in the areas with highest police recorded crime levels. This difference was more marked for violent (and therefore generally rarer) crimes (gun crime, knife crime, muggings/street robberies, and people being assaulted).

Perceptions of Anti-Social Behaviour (ASB)

The BCS includes questions about how much of a problem a range of different types (or strands) of anti-social behaviour (ASB) are in the local area. Seven of these questions are used to create an overall index to provide a measure of those with a high level of perceived ASB.

When considering their local area, two-thirds of people either did not perceive a problem with any of the seven types of ASB included in the overall index or perceived a problem with only one of them (43% and 18% respectively). Very few people perceived a problem with more than five strands of ASB (4%).

People who perceived problems with teenagers hanging around in the local area were asked a series of more detailed follow-up questions about the specific behaviours they experienced. Their experiences included:

- 30% of people perceived teenagers hanging around to be a problem with 81% of these people also perceiving the teenagers' behaviour to be anti-social (representing 22% of people overall). Within this group, some of the more serious problem behaviours perceived included drinking alcohol, taking drugs and carrying knives (mentioned by 77%, 37% and 12% of those perceiving teenagers' behaviour to be antisocial);
- 65% of people who perceived a problem with people using or dealing drugs in the local area perceived a problem with both behaviours. 16% of people said they did not know whether drug use or dealing separately, or both, were a problem. This reflects the finding that only 61% of those who perceived a problem with drug use and 54% of those who perceived a problem with drug dealing formed their impression through personal experience while the comparable figure for perceiving a problem with drunk or rowdy behaviour was 86%;
- 80% of people who perceived a problem with people being drunk or rowdy in the local area perceived a problem with both behaviours. The majority (70%) of people who perceived a problem with people being drunk thought that the people who were drunk were behaving in an anti-social manner.

The Home Office Statistical Bulletin 'Perceptions of crime and anti-social behaviour: Findings from the 2008/09 British Crime Survey' can be found at http://www.homeoffice.gov.uk/rds/pdfs09/hosb1709.pdf

The Home Office Statistical Bulletin 'Crime in England and Wales 2008/09' is available at http://www.homeoffice.gov.uk/rds/pdfs09/hosb1109vol1.pdf

Recorded Domestic Abuse Statistics for 2008/09 in Scotland Released

On 24 November 2009 Scotland's Chief Statistician published the domestic abuse recorded by the police in Scotland for 2008/09 which is part of the Statistical Bulletin Crime and Justice Series. The statistical publication includes key statistics on the number of incidents of domestic abuse recorded by police in Scotland.

The main findings of the statistics are:

- There were 53,681 incidents of domestic abuse recorded by the police in Scotland in 2008/09, compared to the 49,655 incidents recorded in 2007/08. This equates to an 8% increase from 2007/08 to 2008/09 and continues the steady increase in incidents reported since 1999/2000;
- 55% of the incidents recorded by the police in 2008/09 (29,283) led to a recording of a crime or offence; this was up from 50% (24,834) of incidents in 2007/08;
- The most common crime or offence recorded in 2008/09 remained the offence of minor assault, accounting for 23% (12,518) of all incidents. The second most common crime or offence remains breach of the peace at 18% (9,650) of all incidents. Both were slightly up from last year;
- The overall incidence of domestic abuse recorded by the police in Scotland in 2008/09 was 1,039 per 100,000 population: this compared to 965 per 100,000 in 2007/08;
- For incidents where information was available, 61% of victims had previously been recorded as a victim of domestic abuse compared to 54% in 2007/08;
- When looking at the incidence per 100,000 population, females are at most risk of being victims of domestic abuse when aged between 22 and 25 years old and males when aged between 26 and 30 years old;
- Incidents of domestic abuse recorded by the police involving co-habitees or partners accounted for 44% of all cases, with more cases recorded relating to co-habitees (23%) than to partners (21%). Incidents involving spouses accounted for a further 16%;
- In 40% of cases, the victim and perpetrator were ex-partners or ex-spouses. This has been steadily increasing from 30% in 2000/01; and
- The overwhelming majority of incidents of domestic abuse took place in the home/house (89% of all incidents where the location was recorded). This was more likely if the victim and perpetrator cohabited i.e. were a 'spouse' or 'co-habitee' (94% of all incidents where location was recorded).

The full Statistical Bulletin 'Domestic Abuse Recorded by the Police in Scotland 2008/09' can be found at
http://www.scotland.gov.uk/Publications/2009/11/23112407/0

Barnardo's Report Demands More Support for Sexually Exploited Children

On 17 November 2009 the children's charity Barnardo's published its report 'Whose Child Now?' The report is calling for more support for sexually exploited children. It highlights a worrying trend in organised child trafficking for sexual exploitation within the UK and identifies dangers to children who regularly go missing.

Barnardo's highlights that there are currently 209 Local Authorities and Trusts across the UK with responsibility for producing 'Children and Young People Plans' (CYPPS), yet only 40 are known to provide any type of specialist service. This is despite new Government Guidance to local authorities urging them to consider the needs of these children in their planning.

The report is based on a survey of Barnardo's 21 specialist sexual exploitation services and shows:

- Around 80% of local authorities do not have any specialist work for sexually exploited children and young people;
- Barnardo's worked intensively with 1060 children and young people who had been sexually exploited over the course of 2007/08, in 20 of the 209 Local Authority and Trust areas; and
- Research conducted in London alone for Barnardo's in 2005 estimated that 1000 children were at risk of sexual exploitation.

Barnardo's Chief Executive Martin Narey said "We alone have worked with over 1,000 children who've been sexually exploited in just 20 of the 209 local authorities. We don't know the true extent of this problem. But we know, however hidden from the public eye it might be, it affects many thousands of children."

The report also reveals disturbing trends both in child trafficking within the UK for sexual exploitation and the risks to children and young people who go missing:

- Of the 609 sexually exploited children and young people Barnardo's is currently working with, 90 appeared to have been trafficked within the UK;
- In England, in 2007 (the most recent figures) there were only 25 proceedings on the grounds of trafficking for sexual exploitation (which includes adults) with only 15 guilty verdicts; and
- From the sexually exploited children and young people Barnardo's is currently working with, around 55% go missing on a regular basis.

Wendy Shepherd, a service and programme manager from the North East said "I believe that sexual exploitation is becoming more organised; the criminals who abuse are more sophisticated. There are networks of older men grooming and trafficking children within the UK. It's a growing phenomenon and it's extremely difficult to police. Another area of concern for the practitioners is

the frightening number of children who go missing repeatedly and are found to have been sexually exploited. It's a huge risk factor for youngsters and we are worried that it's still largely being ignored."

The full Barnardo's report 'Whose child now?' is available at http://www.barnardos.org.uk/whose_child_now.pdf

Experience of Crime in Northern Ireland Report Published

On 27 November 2009 the Northern Ireland Office (NIO) published a research and statistical bulletin 7/2009 'Experience of Crime: Findings from the 2008/09 Northern Ireland Crime Survey' (NICS). This National Statistics publication focuses on crime victimisation rates in Northern Ireland for the following broad crime types:

- Crimes affecting the whole household (mainly property offences), including vandalism, domestic burglary, vehicle-related theft, bicycle theft and other household theft; and
- Personal crimes against respondents only (mainly violent offences), including common assault, wounding, mugging (robbery and snatch theft from the person), stealth theft from the person and other theft of personal property.

The key findings of the bulletin include:

- Results from NICS 2008/09 indicate that 13.4% of all households and their adult occupants were victims of crime during the 12 months prior to interview, which is the lowest figure for victimisation since the survey began. While not statistically different from the figure for NICS 2007/08 (13.8%) or 2006/07 (14.2%), it is lower than the rates recorded through NICS 1998 (23.0%), 2001 (19.7%), 2003/04 (21.4%) and 2005 (17.3%);
- Although 2008/09 prevalence (victimisation) rates for most NICS offences remained on a par with those measured in 2007/08, a statistically significant decrease was observed in the victimisation rate for 'other thefts of personal property' (1.8% to 1.2%). This reduction is consistent with recorded offences of theft from the person which have fallen by over a quarter (26%) since 2006/07;
- The risk of becoming a victim of any NICS crime in 2008/09 (13.4%) was significantly lower than in 1998 when the overall prevalence rate peaked at 23.0%. Much of this reduction was brought about by a decrease in the risk of vehicle-related theft, which fell by 6.3 percentage points (vehicle-owners only), from 8.7% in 1998 to 2.4% in 2008/09;
- Findings from both NICS 2008/09 and the British Crime Survey (BCS) 2008/09 show that the risk of becoming a victim of crime remains lower in Northern Ireland (13.4%) than in England and Wales (23.4%). These figures compare with 13.8% and 22.2% (respectively) as measured through the 2007/08 surveys, and represent a widening of the victimisation gap between both jurisdictions;

- The 2008/09 surveys also show that, with the exception of assault with minor injury, incidence rates per 10,000 households/adults were higher in England and Wales than in Northern Ireland for all crime types examined. The largest numerical differences related to: all household crime (2,831 v 1,512); all vandalism (1,161 v 687); all vehicle-related thefts (635 v 205); vehicle vandalism (773 v 345); all personal crime (889 v 508); theft from a vehicle (444 v 104); other household theft (497 v 335); and burglary (312 v 153);
- An estimated 176,000 incidents of crime occurred during the 12-month recall periods for NICS 2008/09, down almost 12% on NICS 2007/08 (199,000) and two-fifths (40%) lower than the peak in NICS 2003/04 (295,000), equating to 119,000 fewer crimes;
- 46% of all NICS 2008/09 crimes that are comparable with recorded crime were reported to the police, compared with 48% in 2007/08. Burglary (68%) displayed the highest reporting rate, reflecting the seriousness of the incidents and the associated likelihood of insurance claims. The most common reason for not reporting a crime, cited by 51% of victims, was 'police could not have done anything';
- Based on NICS 2008/09, the most likely households to be victims of burglary were those: with a household reference person aged 16-24 (8.3%); in areas perceived by respondents to have a high level of anti-social behaviour (3.3%); containing single adults with child(ren) (3.1%); and living in socially-rented accommodation (2.3%);
- The NICS 2008/09 vehicle-owning households at greatest risk of vehicle-related theft included those: in areas perceived to have a high level of anti-social behaviour (5.2%); with a household reference person aged 25-34 (4.3%); living in Belfast (4.3%); living in socially-rented accommodation (4.1%); and owning three or more vehicles (3.9%);
- Among the more likely NICS 2008/09 households to be victims of vandalism were those: in areas perceived to have a high level of anti-social behaviour (11.4%); with a household reference person aged 16-24 (8.3%); living in Belfast (8.1%); and residing in the 20% most deprived areas (1st quintile) (7.3%); and
- Findings from NICS 2008/09 indicate that young men aged 16-24 (10.8%) were more at risk of violent crime than any other demographic group examined, and almost twice as likely to be victimised as their female counterparts (5.5%). Other groups with high rates were: single people (6.3%); single adults with child(ren) (6.2%); those living in privately rented accommodation (6.0%); respondents living in areas perceived to have a high level of anti-social behaviour (5.2%) and those who visit the pub at least once a week (4.7).

This is the first publication to be drawn from NICS 2008/09, a representative, continuous, personal interview survey of the experiences and perceptions of crime of adults living in private households throughout Northern Ireland.

The Research and Statistical Bulletin 7/2009 'Experience of Crime: Findings from the 2008/09 Northern Ireland Crime Survey' is available at http://www.nio.gov.uk/09_northern_ireland_crime_survey-2.pdf

Money Laundering Report Indicates Improvements

The third Annual Report to the Home Office and Her Majesty's Treasury Ministers on the 'Suspicious Activity Reports' (SARs) regime to combat money laundering and terrorist financing was published on 26 November 2009. The Proceeds of Crime Act 2002 (POCA) requires banks and other businesses in the financial services sector to report knowledge or suspicion of money laundering to the Serious Organised Crime Agency (SOCA). These reports are known as 'Suspicious Activity Reports'.

The reporting system is a key element in the United Kingdom's defences against money laundering and terrorist financing. The report was prepared by a multi-agency Committee, under the chairmanship of SOCA which includes the financial services sector, police, other law enforcement agencies, and the Financial Services Authority.

The key conclusions in the third annual report include:

- The SARs regime is functioning more effectively than before;
- There has been improvement in the quality of reports submitted to SOCA and in their performance; and
- The use of SARs by police forces and other law enforcement agencies also continues to improve and increase. Further efforts will be made next year to build on this aspect.

The third Annual Report to the Home Office and Her Majesty's Treasury Ministers on the 'Suspicious Activity Reports' regime to combat money laundering and terrorist financing is available at http://www.soca.gov.uk/assessPublications/downloads/SARs_Annual_Report_2009.pdf

Proposed Core Standards for Prosecutors Set Out by DPP

On 30 November 2009 the Director of Public Prosecutions (DPP) published for consultation the standards of work expected of public prosecutors at every stage of the prosecution process. The public are being asked for their views on these proposed minimum standards by the DPP over the next 12 weeks. The consultation document entitled 'Core Quality Standards' covers 12 key areas, from providing advice to the police before a charge to the sentencing and appeal processes.

The DPP explained that the standards were to define a new relationship between the prosecution service and the public they serve and what to expect from the Crown Prosecution Service at every stage of a prosecution.

The standards represent a new approach to delivering a core public service and the DPP said that it is important that the public is made aware of the standards and have the opportunity to comment before they are adopted them across the organisation from April 2010.

The standards are listed and explained in detail in the consultation document and include:

- Providing the police and other investigators with advice to assist in tackling crime effectively and bringing offenders to justice;
- Engaging with communities so that we are aware of their concerns when we make decisions;
- Presenting cases fairly and firmly; and
- Assisting the court in the sentencing process and seeking to confiscate the proceeds of crime.

The consultation on the Core Quality Standards will finish on 18 January 2010.

The consultation document 'Core Quality Standards' is available at http://www.cps.gov.uk/consultations/cqs_index.html

EU Green Paper Aims to Make it Easier to Obtain Evidence in Criminal Matters Between Member States

The European Commission announced on 11 November 2009 that it has adopted a Green Paper with a view to taking further action to improve cooperation between member states on obtaining evidence in criminal matters.

The existing rules on obtaining evidence in criminal matters in the EU consist of a number of co-existing instruments based on different underlying principles, namely that of mutual assistance and that of mutual recognition. This makes the application of the rules burdensome and may cause confusion among practitioners. This can also result in situations where practitioners do not use the most appropriate instrument for the evidence sought. Ultimately, these factors may therefore hinder effective cross-border cooperation.

As set out in the Commission's Communication 'An area of freedom, security and justice serving the citizen', the most effective solution to the above mentioned difficulties would seem to lie in the replacement of the existing legal regime on obtaining evidence in criminal matters by a single instrument based on the principle of mutual recognition and covering all types of evidence.

The Green Paper consults Member States and relevant stakeholders on the validity of this approach and on a number of issues that are relevant in this respect, including whether specific rules for particular types of evidence should be adopted and whether it would be appropriate to apply the characteristics of mutual recognition instruments to all types of evidence.

As set out in the Commission's Communication "An area of freedom, security and justice serving the citizen", the best solution to this problem would seem to lie in the adoption of common standards for gathering evidence in criminal matters. The Green Paper consults Member States and relevant stakeholders on the validity of this approach and on a number of issues that are relevant in this respect, including whether it would be best to adopt general standards applying to all types of evidence or to adopt more specific standards accommodated to the different types of evidence.

The full press release is available at
http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/497&format=HTML&aged=0&language=en&guiLanguage=en

The full communication 'An area of freedom, security and justice serving the citizen' can be found at
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0262:FIN:EN:PDF

Extra Funding to Divert Vulnerable Women from Custody

On 5 November 2009 the Justice Minister, Maria Eagle, announced the allocation of £6.8m of funding for voluntary organisations to provide extra and enhanced community support for women at risk of offending.

The grants, which will run until March 2011, are part of the Government's strategy following the publication of a major independent report on vulnerable women in the criminal justice system by Baroness Corston. The funding will be used to divert women from custody and provide services in the community that tackle the causes of offending behaviour for women who are not a danger to public, both pre- and post-conviction.

Maria Eagle MP, Ministerial Champion for Women and Criminal Justice Matters said "This marks a further step forward in the government's efforts to tackle women's offending. Many female offenders have an acute combination of complex issues that lie behind their offending: drug and alcohol dependencies, homelessness, domestic violence, unemployment and poor education. Prison does not provide an effective way for women to address these problems - it often only exacerbates problems for them and, more often than not, their children."

The full press release can be found at
http://www.justice.gov.uk/news/newsrelease051109c.htm

'The Corston report: a review of women with particular vulnerabilities in the criminal justice system' which was published in 2007 can be found at
http://www.homeoffice.gov.uk/documents/corston-report/

Report Published on Experiences of Young People in Custody

Her Majesty's Inspectorate of Prisons and the Youth Justice Board published the fifth report of the experiences of children and young people in prison custody on 9 December 2009. The report entitled 'Children and Young People in Custody 2008/09: An analysis of the experiences of 15 to 18-year-olds in prison' draws together findings from surveys of every prison establishment in England and Wales during 2008/09.

The main findings of the report are:

- A quarter of young men and nearly half of young women had been in care;
- Almost nine out of ten young men and women had been excluded from school;
- 70% of young men said that they wanted to stop offending, but only about half that number thought that they had done anything in prison to make that more likely;
- Black and minority ethnic young people were over-represented (36%) though fewer had been in care, or been excluded, than white young people and more planned to continue education on release. They were more likely to report having been restrained in custody and their expectations of prison were lower;
- Perceptions of safety had improved for young men, though one in four still said they had felt unsafe at some time;
- Young men in dedicated juvenile sites were more positive about their experience in most areas;
- There were marked differences between establishments, for example in use of force and access to education; and
- Progress reported in the previous year's survey seems to have slowed or reversed in some important areas, such as relationships with staff and the handling of complaints.

The full report 'Children and Young People in Custody 2008/09: An analysis of the experiences of 15 to 18-year-olds in prison' is available at
http://www.yjb.gov.uk/NR/rdonlyres/6B8FF5AB-36FC-4EEE-952C-326DE5EBD5E9/0/ChildrenandYoungPeopleinCustody20082009.pdf

Youth Justice Board Publish Updated Practice Framework

In November 2009 the Youth Justice Board published the second edition of 'Making it Count in Court'. This was first published in 2003. Making it Count in Court provides a framework to support effective and efficient practice in the youth court within the context of the wider youth justice system, focusing on the work of the Youth Offending Teams (YOTs) in court.

This practice framework is produced as a resource for all criminal justice professionals, including members of the judiciary, prosecutors, defence lawyers, legal advisers, police officers, YOT practitioners, court management staff and court administrators. Although the principles discussed relate to the youth court, they can be adapted and applied to the Crown Court.

The second edition of 'Making it Count in Court' can be found at http://www.yjb.gov.uk/publications/Scripts/prodView.asp?idproduct=457&eP

Ministry of Justice Circular 2009/03: The Youth Rehabilitation Order and Youth Justice Provisions in the Criminal Justice and Immigration Act 2008

On 30 November 2009 the Ministry of Justice published 'Circular 2009/03: The Youth Rehabilitation Order and Youth Justice Provisions in the Criminal Justice and Immigration Act 2008'.

This Act (s1-8, schedules 1- 4 & 27- 28) provides:

- Information on the Youth Rehabilitation Order;
- Information on sentencing for under-18s; and
- Information on other youth justice provisions.

Youth Rehabilitation Order

The Youth Rehabilitation Order (YRO) will commence on 30 November 2009 and will be the new community sentence for under-18s (see The Criminal Justice & Immigration Act 2008 (Commencement No.13 and Transitory Provision Order 2009 SI 2009/3074)). The YRO applies only in respect of offences committed on or after 30 November 2009. Where an offence is committed prior to 30 November 2009 but the individual is brought to court after this date, previous legislation relating to pre YRO community sentences, will apply.

Paragraph 30(1) of Schedule 1 to the Criminal Justice and Immigration Act 2008 has been amended by paragraph 98(4) of Schedule 21, to the Coroners and Justice Act 2009, so that a YRO will come into effect on the day on which it is made or at a later date specified by the courts. (See December 2009 edition of the *NPIA Digest*, pp56-57 for more information on YROs).

Sentencing for under-18s

The Sentencing Guidelines Council (SGC) published on 20 November 2009 a definitive guideline entitled 'Overarching Principles - Sentencing Youths' which

provides principles that should be considered when sentencing an individual under the age of 18. The guideline advises that when sentencing an individual under the age of 18 courts must have regard to:

- The principal aim of the youth justice system - to prevent offending by a person aged under 18 - section 37(1) of the Crime and Disorder Act 1998; and
- The welfare of the offender - section 44 of the Children and Young Persons Act 1933.

Section 9 of the 2008 Act on the purposes of sentencing for offenders under 18 has not been commenced.

Other youth justice provisions

The Youth Justice Board for England and Wales (YJB) has updated national standards for youth justice services as a result of the legislative changes.

The YJB has also introduced the 'Scaled Approach' which is a new way to match the intensity of youth offending services work with children and young people who offend, to their assessed likelihood of reoffending and their risk of serious harm to others.

The full Ministry of Justice 'Circular 2009/03: The Youth Rehabilitation Order and Youth Justice Provisions in the Criminal Justice and Immigration Act 2008' can be found at
http://www.justice.gov.uk/publications/docs/moj-circular2009-03.pdf

The SGC definitive guideline 'Overarching Principles - Sentencing Youths' is available at
http://www.sentencing-guidelines.gov.uk/docs/overarching_principles_sentencing_youths.pdf

More information about the 'Scaled Approach' can be found at
http://www.yjb.gov.uk/en-gb/practitioners/youthjusticethescaledapproach/

Continued Fall in Number of Young Offenders in England Reported

The Department for Children, Schools and Families published their statistical report 'Youth Crime: Young people aged 10-17 receiving their first reprimand, warning or conviction, England, 2008/09' on 26 November 2009.

The statistics for 2008/09 show a 21.6% drop in the number of young people receiving a reprimand, warning or conviction for the first time in England in the last year. These statistics follow a 10% reduction last year.

The report's key statistics include:

- 20,448 fewer young people entering the criminal justice system;
- The number of offenders aged 10-17 entering the criminal justice system for the first time fell from 94,481 in 2007/08 to 74,033 in 2008/09;

- The rate per 100,000 10-17 year olds across the country fell from 1,857 in 2007/08 to 1,472 in 2008/09, a 20.7% decrease;
- All regions in England have seen a reduction in the number and rate of young people entering the CJS.

The full report 'Youth Crime: Young people aged 10-17 receiving their first reprimand, warning or conviction, England, 2008/09' can be found at http://www.dcsf.gov.uk/rsgateway/DB/STR/d000895/index.shtml

Criminals Cannot Hide from Consequences of their Crimes

On 3 December 2009 the Justice Secretary, Jack Straw, announced that people are to be given more and better information about the punishments given to criminals in their area. The publication of new Government guidelines 'Publicising Individual Sentencing Outcomes to the Community' will lead to offenders' crimes and their punishments being shared more frequently with local communities. The police and other criminal justice agencies are to be encouraged to make this information more widely available.

The move is part of a wider Government drive to make justice more visible and provide better information in a way that is easy to find and understand. It is part of the process of fulfilling the Justice Secretary's pledge to make court outcomes available online. The Government is working on plans to develop a website to make court results available to the public in a way that is simple, clear and informative.

This decision follows a Government poll that showed more than two thirds of people think it is important for the public to be told about the sentences handed out to offenders, but only a quarter currently feel well informed. The Home Secretary urged all agencies involved in delivering justice to follow the successful examples set by those police forces and local councils who are already regularly providing this information on websites and in leaflets.

The Government's Crime and Justice Advisor, Louise Casey, also published a report 'Publicising Criminal Convictions: The Importance of Telling the Public' on 3 December 2009 outlining why this information should be shared with communities. She said "People want to know what happens to criminals in their area once they are convicted because it shows that there are consequences to breaking the law. If those consequences are visible to the public, it builds their confidence in the criminal justice system by reassuring those who have had to live alongside these criminals or those who have been their victims that taking a stand against them and supporting the police and local agencies to bring them to justice has been worthwhile."

The legal guidance document 'Publicising Individual Sentencing Outcomes to the Community' is available at http://frontline.cjsonline.gov.uk/_includes/downloads/guidance/general/Publicising_Sentencing_Outcomes.pdf

The full report 'Publicising Criminal Convictions: The Importance of Telling the Public' can be found at http://frontline.cjsonline.gov.uk/_includes/downloads/guidance/general/Publicising_Criminal_Convictions.pdf

London Launches New Programme to Cut Youth Crime

The Justice Secretary Jack Straw and the Mayor of London Boris Johnson launched on 5 November 2009 a new project which aims to make London safer by helping young offenders turn their backs on crime. The Heron Unit is the UK's first dedicated resettlement unit for 15 to 17 year olds who have demonstrated a commitment to changing their criminal pasts.

The project is a key part of London's youth plan 'Time for Action' and helps to deliver the government's Youth Crime Action Plan. The establishment of Heron has been delivered through the London Criminal Justice Board, a partnership which brings together criminal justice agencies in London and the Mayor's office.

Offenders referred to the Heron Unit, located inside Feltham Young Offenders Institution, will be placed on a programme designed to tackle their offending behaviour. This includes one-to-one help in finding somewhere to live; getting important life skills and finding a job.

The full press release can be found at
http://www.justice.gov.uk/news/newsrelease051109a.htm

Global Retail Theft Barometer 2009 Published

A new survey undertaken by the Centre for Retail Research (CRR) was released on 10 November 2009 indicates that shoplifting has surged to record levels in the UK, fuelled by the recession. The Global Retail Theft Barometer 2009 (GRTB) states that the value of retail goods stolen rose 20% to £4.88bn in the year to June 2009. The GRTB 2009 is based on data from a confidential survey of 1,069 large retailers with combined sales of £514bn and shows that the UK had the highest amount in value of shoplifted goods in Europe and was third behind the US and Japan globally.

A spokesperson for Checkpoint Systems, which commissioned the report, said "There had been a rise in 'middle-class' shoplifters. This is epitomised in the recent uprising of the middle-class shoplifter, someone who has turned to theft to sustain their standard of living. This is driving theft of items such as cosmetics, perfumes and face creams, alcohol, fresh meat, mobile phones, computer games and DVDs, as well as small electrical goods like cameras, iPods and personal care gadgets."

The report outlines key findings on retail shrinkage and crime in 41 countries on five continents based on that data. The survey also suggests that while theft by organised gangs and opportunistic shoplifters is increasing, employee theft is also rising. According to the report, employee shoplifters are the most prolific, accounting for an average loss of £1,595.66 per incident in the UK, compared with £80.31 for 'external' thefts.

More information is available at
http://www.retailresearch.org/home/index.php

Case Law

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

Resisting Arrest Not Proven Where Officers Were Assisting an Unlawful Arrest

CUMBERBATCH v CROWN PROSECUTION SERVICE: ALI v DIRECTOR OF PUBLIC PROSECUTIONS (2009)

DC (Laws LJ, Lloyd Jones J) 24/11/2009

Criminal Law - Police

Assault On Constables: Resisting Arrest: Unlawful Arrest: Police Officers Assisting Colleague To Effect Arrest: Assistance Amounting To Officers Acting In Course Of Their Duty: S.89(2) Police Act 1996

Where the arrest of an individual by a police officer was unlawful, other police officers who saw what was happening and went to assist their colleague in the arrest were not acting in the execution of their duty, so that an individual who reasonably resisted those police officers was not guilty of an offence contrary to the Police Act 1996 s.89(2).

The appellants in conjoined cases appealed by way of case stated against decisions of Crown Courts upholding their convictions for resisting a police officer in the execution of his duty. The Crown Court in the second appeal had found that the appellant (X) had been unlawfully arrested for assault and that the police officer who arrested him for that offence had not been acting in the course of his duty. However, the Crown Court further found that two police officers who had not been involved in the original incident but who had assisted the first officer in arresting X had being acting in the course of their duty as they had a duty to assist a police officer who was effecting an arrest. The Crown Court held that contrary to the Police Act 1996 s.89(2) X had unlawfully resisted those police officers as they attempted to assist the arresting police officer. The Crown Court in the first appeal found that after the appellant's father had been arrested under the Mental Health Act the appellant (C) had protested at the manner in which the arrest had been effected and was restrained by a police officer and then arrested. The Crown Court did not find that the arrest of C's father was lawful but it found that the police officer who arrested C was acting in the course of her duty as C presented a clear risk of violence or a breach of the peace. The questions posed for the opinion of the High Court in the second appeal were (i) where the arrest of a person by a uniformed police officer was unlawful, were other police officers who saw what was happening and went to assist their colleague

in the arrest acting in the execution of their duty; (ii) whether X could still be guilty of resisting those assisting police officers in the execution of their duty when they were assisting the arresting police officer in effecting an unlawful arrest; (iii) if the answer to the foregoing questions was no should the Crown Court have allowed X's appeal against conviction once it determined that his arrest was unlawful. The question posed for the High Court in the first appeal was (iv) if the arrest of C's father was unlawful was the police officer who arrested C acting in the course of her duty.

HELD

(1) In the second appeal the Crown Court clearly erred in law. The police officers who assisted in the arrest of X were not involved in the original incident and could not form any opinion as to whether he was guilty of an offence. At common law a person had a right to resist an unlawful arrest, Christie v Leachinsky (1947) AC 573 HL applied. It could not be said that X was in a position to resist the original arresting officer who was effecting an unlawful arrest but not the other police officers who came to assist the first officer and it was not to be expected that X had to distinguish between the officers. The instant case was distinguishable from Joyce v Hertfordshire Constabulary (1985) 80 Cr App R 298 DC as in that case the arresting officer was acting lawfully, Joyce distinguished. Accordingly, it was appropriate to answer the questions posed in the second appeal: (i) no; (ii) no; (iii) yes.

(2) In the first appeal it was clear that C's arrest was indivisibly linked to the unlawful arrest of her father. C's conduct was not directed at anyone else nor was there anyone else present. The position of an accompanying officer who attempted to prevent protest about an unlawful arrest was no different from that of a police officer assisting an unlawful arrest and it could not be said that the accompanying police officer was acting in the course of her duty. Further, the fact that C was not attempting to prevent her father's arrest but was protesting at the manner in which it was effected was irrelevant to the analysis of the issue of whether the accompanying police officer was acting in the course of her duty. Accordingly, assuming that the arrest of C's father was unlawful it was appropriate to answer no to the question posed for the opinion of the High Court in the first appeal.

APPEALS ALLOWED

Individual Images of Computer Games Are Artistic Works Protected by Copyright for the Purposes of Copyright Offences

R v CHRISTOPHER PAUL GILHAM (2009)

CA (Crim Div) (Stanley Burnton LJ, Penry-Davey J, Sharpe J) 9/11/2009

Criminal Law - Intellectual Property

Computer Games: Copyright Offences: Counterfeiting: Money Laundering: Unauthorised Modification: Modification Of Computer Chips: Substantial Copies Of Games: S.296zb Copyright, Designs And Patents Act 1988: Directive 2001/29 On The Harmonisation Of Copyright And Related Rights In The Information Society 2001

An offender had been rightly convicted for offences under the Copyright, Designs and Patents Act 1988 s.296ZB and for money laundering where he had dealt commercially with modification computer chips that when installed in games consoles enabled counterfeit games to be played.

The appellant (G) appealed against his convictions for offences under the Copyright, Designs and Patents Act 1988 s.296ZB and for money laundering. The offences arose from G's commercial dealing in modification computer chips (modchips) for use in conjunction with various games consoles. G had operated a business for just over two years selling components and devices for such games consoles. Once installed the modchips enabled counterfeit games to be played on the consoles. The DVDs and CD ROMs on which the games were sold for use with the consoles contained substantial amounts of data in digital form. During the playing of a game, data was taken from the disc into the RAM of the console. As the game was played the data in RAM was over-written by different data from the disc. The data taken from the disc varied and could not be predicted; however, at any one time only a very small percentage of the data on the disc was present in the RAM. At trial it was G's case that whilst there was copying it did not represent at any one time the whole or a substantial part of the games data and it followed that playing a counterfeit game did not involve copying that infringed the rights of the copyright owner. The judge directed the jury that "substantial" had a plain English meaning of more than minimal. G contended that the judge had wrongly directed the jury as to the meaning of substantial.

HELD

(1) The game as a whole was not the sole subject of copyright. The various drawings that resulted in the images shown on the television screens or monitors were themselves artistic works protected by copyright, R v Higgs (Neil Stanley) (2008) EWCA Crim 1324, (2009) 1 WLR 73, Kabushiki Kaisha Sony Computer Entertainment Inc v Ball (Application for Summary Judgment) (2004) EWHC 1738 (Ch), (2005) ECC 24 and Football Association Premier League Ltd v QC Leisure (2008) EWHC 1411 (Ch), (2008) UKCLR 329 considered. The images shown on the screen were

substantial copies of those works. It followed that even if the contents of the RAM of a game console, at any one time, was not a substantial copy, the image displayed on the screen was.

(2) G was rightly convicted of the offences charged under the Act and of the money laundering offences that related to the proceeds of his sales. The recitals to Directive 2001/29/EC emphasised the importance of protecting copyright and related rights in multimedia products, such as computer games, and if devices such as modchips could be sold with impunity the United Kingdom would not be conferring the protection of those rights required by the Directive. Further, it accorded with common sense that a person who played a counterfeit DVD on his games console, and saw and heard the visions and sounds that were the subject of copyright, made a copy of at least a substantial part of the game even though at any one time there was in the RAM, and on the screen, and audible only a very small part of that work.

(3) (Obiter) Had it been necessary to decide the appeal on the "little and often" point, whereby a defendant regularly took a small amount of material from a claimant's work, the court would have followed the judgment in Higgs.

APPEAL DISMISSED

Evidence Obtained Through Incorrect Caution and an Unnecessary Interview in Clear Breach of PACE Code C Was Inadmissible

CHARLES v CROWN PROSECUTION SERVICE (2009)

DC (Moses LJ, Hickinbottom J) 26/11/2009

Criminal Evidence - Road Traffic

Admissibility: Cautions: Confessions: Driving While Over The Limit: Pace Codes Of Practice: Police Interviews: Unnecessary Police Interview Made Without Appropriate Caution: Confession Made In Interview: Admissibility Of Confession: Police And Criminal Evidence Act 1984: S.76 Police And Criminal Evidence Act 1984: S.78 Police And Criminal Evidence Act 1984

An admission made in the course of a police interview that was conducted without a proper caution in clear breach of the Police and Criminal Evidence Act 1984 codes of practice Code C, was inadmissible evidence so that a conviction for driving with excess alcohol based upon it fell to be quashed.

The appellant (C) appealed by way of case stated against his conviction for driving with excess alcohol. C had been found slumped at the wheel of a car with keys in the ignition and the parking lights on. A breath test was performed on C in connection with an investigation of whether C had been in charge of a vehicle while unfit to do so through alcohol. C failed the test and a police station custody record showed that C was informed that he would be charged. Despite that and contrary to the Police and Criminal Evidence Act 1984, C was interviewed. C was not informed of the offence for which he was being investigated at the outset of the interview. C was asked to say in his own words what had happened. In the course of the interview C stated that he had driven the car. C was then charged not with being in charge of a vehicle while unfit, but driving under the influence. The magistrates' court concluded that whilst the interview had been in breach of the PACE codes of practice Code C para.16.5, the statement by C was a confession under s.76 of the Act and that having regard to s.78 of the Act, it was appropriate to admit C's statement, as the breach did not have any effect on the fairness of the proceedings and had not occurred through bad faith on the part of the police. The questions posed for the opinion of the High Court were whether the magistrates' court (1) was right in law to admit the answers given by C in the course of the interview; (2) applied the correct test to the admission of the interview statements.

HELD

The oral admission made by C in the course of the interview occurred through clear breaches of the PACE codes of practice Code C. In particular, the police administered the "new" caution, namely "it may harm your defence if you do not mention when questioned something that you later rely on in court", rather than the old caution "you don't have to say anything but anything you do say may be given in evidence". The interview was unnecessary to prove the offence of being in charge of a vehicle while unfit to do so and it was unnecessary for C to say any more so that silence on his part could not harm

his defence. In fact, C had made an admission without being informed of the consequences of such an admission. It was apparent that the magistrates' court concluded that it was C's own fault that he had made that voluntary admission. The Act and the codes of practice to it were designed to protect detained individuals and imposed significant disciplines on the police as to how they had to behave. If the police could secure convictions in breach of the Act and the codes of practice, it would undermine the protection of detainees in police stations. Accordingly, it was appropriate to answer the questions posed no, and yes, but the magistrates' court had failed to properly consider the ingredients of the test.

APPEAL ALLOWED

The Statutory Regime Governing Admission into Evidence of Hearsay Evidence Which is Sole or Decisive Does Not Breach the Right to a Fair Trial

R v HORNCASTLE & ORS (2009)

SC (Lord Phillips (President), Lady Hale, Lord Brown, Lord Mance, Lord Neuberger, Lord Kerr, Lord Judge) 9/12/2009

Criminal Evidence - Human Rights

European Court Of Human Rights: Hearsay Evidence: Right To Fair Trial: Convictions Where Hearsay Evidence Sole Or Decisive Evidence Against Defendants: Compatibility Of Admission Of Hearsay Evidence With Defendants' Rights Under European Convention On Human Rights 1950: S.116 Criminal Justice Act 2003: Art.6(1) European Convention On Human Rights: Art.6(3)(D) European Convention On Human Rights: Art.6 European Convention On Human Rights: S.2(1) Human Rights Act 1998: Criminal Evidence Act 1965: Police And Criminal Evidence Act 1984: S.124 Criminal Justice Act 2003: S.125 Criminal Justice Act 2003: S.126 Criminal Justice Act 2003

The statutory regime relating to the admission of the evidence of an absent witness at a criminal trial did not breach the European Convention on Human Rights 1950 art.6. Convention jurisprudence did not require the regime to be disapplied in favour of a rule that convictions based solely or decisively on such evidence were incompatible with art.6.

The appellants (H) appealed against a decision (R v Horncastle (Michael Christopher) (2009) EWCA Crim 964, (2009) 4 All ER 183) that they had received fair trials and their convictions were safe. H had been convicted after trials in which statements of witnesses who were not called to give evidence had been placed before the jury. In the first appeal, the witness had died but had made a statement before he died. In the second appeal, a witness had made a statement but had refused to attend trial because she was too frightened to give evidence. In each case, the statement was admitted pursuant to the Criminal Justice Act 2003 s.116. H, relying on the decision of

the European Court of Human Rights in Al-Khawaja v United Kingdom (26766/05) (2009) 49 EHRR 1 ECHR, argued that their convictions were based solely, or to a decisive extent, on statements of witnesses whom they had had no chance of cross-examining, and therefore infringed the European Convention on Human Rights 1950 art.6(1) and art.6(3)(d).

HELD

The judgment of the ECtHR in Al-Khawaja was not to be treated as determinative of the success of the appeals. Although the requirement in the Human Rights Act 1998 s.2(1) to take into account the ECtHR jurisprudence normally resulted in the national courts applying principles clearly established by the ECtHR, there would be rare occasions, such as the instant case, when the Supreme Court would have concerns as to whether a decision of the ECtHR sufficiently appreciated particular aspects of domestic process. In such circumstances the SC could decline to follow the ECtHR decision, giving reasons for adopting that course. The common law had, by the hearsay rule, addressed the aspect of a fair trial that art.6(3)(d) was designed to ensure, long before the Convention came into force. The continental procedure had not addressed that aspect. Parliament had enacted exceptions to the hearsay rule that were required in the interests of justice, including the Criminal Evidence Act 1965, the Police and Criminal Evidence Act 1984, and the 2003 Act. The exceptions were not subject to the "sole or decisive" rule, since the regime enacted by Parliament contained safeguards that rendered that rule unnecessary. In particular, the 2003 Act contained a code intended to ensure that hearsay evidence was only admitted when it was fair that it should be. Hearsay was not made generally admissible by the code, but it made provision for a limited number of categories of admissible hearsay, and in s.124, s.125, and s.126, established special stipulations to which hearsay evidence was subject. Article 6(3)(d) did not deal with the appropriate procedure where it was impossible to comply with art.6(3)(d). The ECtHR had recognised, prior to Al-Khawaja, that exceptions to art.6(3)(d) were required in the interests of justice, Grant v Queen, The (2006) UKPC 2, (2007) 1 AC 1 and Doorson v Netherlands (1996) 22 EHRR 330 ECHR considered. It had also recognised that the admissibility of evidence was primarily a matter for national law, and that the fairness of a trial had to be assessed on a case by case basis, Kostovski v Netherlands (A/166) (1990) 12 EHRR 434 ECHR considered. The manner in which it had approved the exceptions had resulted in a jurisprudence that lacked clarity. The sole or decisive rule had been introduced into the ECtHR jurisprudence in Doorson without discussion of the principle underlying it or full consideration of whether there was justification for imposing the rule as an overriding principle applicable equally to the continental and common law systems. The sole or decisive rule would create severe practical difficulties if applied to English criminal procedure. It raised the question of what was meant by decisive: any item of probative evidence might make all the difference between conviction and acquittal. It would often be impossible for an appeal court or the ECtHR to decide whether a particular statement was the sole or decisive basis of conviction. Not treating a particular piece of evidence as decisive would be a hard enough duty for a professional judge to discharge; a direction to a jury that they could regard a witness statement as supporting but not decisive evidence would involve them

in mental gymnastics that few could perform. In any event, although English law did not include the sole or decisive rule it would, in almost all cases, have reached the same result in those cases where the ECtHR had invoked it. Al-Khawaja did not establish that it was necessary to apply the sole or decisive rule in England and Wales, Al-Khawaja considered. It had applied the rule in reliance on the ECtHR case law, but that case law had developed without full consideration of the safeguards against an unfair trial that existed under the common law procedure. If the rule was applied rigorously it would in some cases result in the acquittal, or failure to prosecute, defendants where there was cogent evidence of their guilt. That would be to the detriment of victims. Accordingly, it would not be right to hold that the sole or decisive rule should have been applied rather than the 2003 Act interpreted in accordance with its natural meaning.

APPEALS DISMISSED

Importance of Defence Statement and Prosecution Response

R v B (2009)

CA (Crim Div) (Moses LJ, Openshaw J, Sir Geoffrey Grigson) 10/11/2009

Criminal Evidence - Criminal Procedure

Criminal Appeals: Criminal Cases Review Commission: Fresh Evidence: Rape: Unsafe Convictions: Fresh Evidence Undermining Prosecution Case That Rape Committed By A Stranger: Criminal Procedure And Investigations Act 1996: R.68.6 Criminal Procedure Rules 2005: S.5 Criminal Procedure And Investigations Act 1996: S.8 Criminal Procedure And Investigations Act 1996: S.6a Criminal Procedure And Investigations Act 1996: R.68.6(1)(A) Criminal Procedure Rules 2005: R.68.6(1)(B) Criminal Procedure Rules 2005

Fresh evidence in a rape case led to the conclusion that the verdict was unsafe and should be quashed; fundamentally, the new evidence established that the victim and the offender were not strangers and the basis of the prosecution case that the victim was raped by a stranger was fatally undermined. The court commented about the importance of defence statements under the Criminal Procedure and Investigations Act 1996 and the importance for the prosecution to respond promptly and fully to a respondent's notice under the Criminal Procedure Rules 2005 r.68.6.

The appellant (B) appealed against his conviction for rape via a reference under the Criminal Appeal Act 1995 s.9. The victim (V) was a 15-year-old school girl. She alleged that she had been raped by one boy assisted by another after she had left school early and that she did not know them. The central issue was whether V was telling the truth when she said that she had been raped by a stranger or whether B was telling the truth when he said that

they had met and he had given V the mobile telephone number of his friend (J) as a contact number; that she had called B that afternoon, and they had met and had consensual sexual intercourse. The police had not obtained the itemised billing of V's telephone for the relevant period. It was B's case that following the alleged rape, V's father had telephoned J's number asking to speak to someone bearing B's first name about his daughter. The essential basis for the appeal was that evidence had been obtained which not only confirmed that V's father had telephoned a number stored in V's address book under the same first name as B, but also that he telephoned J's number. When re-interviewed for the purposes of the appeal V said that on the day in question, she was only in school for a short while before leaving, and only returned to attend the last lesson.

HELD

(1) The undisputed evidence that J had received a telephone call from V's father which could only have arisen as a result of that number being stored on V's telephone was sufficient to dispose of the appeal. Fundamentally, the new evidence established that V and B were not strangers and the basis of the prosecution case that V was raped by a stranger was fatally undermined. However, in addition, V now accepted that she was away from school during a substantial part of the school day and that she did not reveal that at trial. That provided further support to B's own account that he had met V earlier and that it was on that occasion that he supplied her with J's telephone number. The new evidence considered either in combination or separately lead to the conclusion that the verdict was unsafe. There was no rational way in which the evidence of J's telephone number being stored on V's mobile telephone under B's name could be explained other than that she and B had indeed met. There was no rational basis for putting forward the allegation of rape committed by a stranger whom V had never met.

(2) (Per curiam) The case demonstrated the importance of a defence statement as required by the Criminal Procedure and Investigations Act 1996 s.5. Had such a statement been served, it would have alerted the police to the importance of investigating V's mobile telephone and to the need to obtain her itemised billing to see if B's name and the number had been saved and whether the calls had been made. If the police failed, as they did, to make such enquiries the defence could then have applied under s.8 for specific disclosure and would then have been in an even better position to criticise the police and to focus the attention of the judge and jury on the significance of the evidence. Since B's trial, there was now a statutory obligation to serve such a statement, but the foregoing remarks were being made to reiterate the importance of detailed defence statements and the need to update them pursuant to s.6(A), in order to demonstrate the assistance that such a statement could provide not only for the court and the prosecution, but also for the defence. (3) (Per curiam) Where the registrar exercised his discretion to seek a respondent's notice under the Criminal Procedure Rules 2005 r.68.6(1)(a), or did so as a matter of course under r.68.6(1)(b), because the court was concerned with a reference from the Criminal Cases Review Commission, it was essential for the prosecution to give the matter high

priority and to respond fully and within the 14 days provided for by the Rule, or within such further time as the Registrar or the Court allowed.

APPEAL ALLOWED

Investigation of Police Ill-Treatment by Police Force Complained of Did Not Breach Article 3 Prohibition of Ill-Treatment

DANIEL MORRISON (Claimant) v INDEPENDENT POLICE COMPLAINTS COMMISSION (Defendant) & COMMISSIONER OF POLICE FOR THE METROPOLIS (Interested Party) & SECRETARY OF STATE FOR THE HOME DEPARTMENT (Intervener) (2009)

QBD (Admin) (Nicol J) 26/10/2009

Human Rights - Police

Appeals: Civil Proceedings: Complaints: Criminal Proceedings: Duty To Undertake Effective Investigation: Ill Treatment: Independent Police Complaints Commission: Investigations: Police: Police Authorities: Complaint Of Police Ill Treatment: Independence Of Investigations Under Art.3 European Convention On Human Rights 1950: Investigation Of Complaint By Same Police Force Complained Of: Art.3 European Convention On Human Rights: Sch.3 Para.25 Police Reform Act 2002

The investigation of a complaint of police ill treatment by the same police force complained of did not breach the European Convention on Human Rights 1950 art.3 as the availability of an appeal of the investigation to the Independent Police Complaints Commission and the possibility of criminal proceedings against the relevant officers ensured that such an investigation was sufficiently independent.

The claimant (M) applied for judicial review of the decision of the defendant police complaints commission that his complaint of ill treatment by the police should be investigated by the same police force complained of. M had been driving in the early hours of the morning. He alleged that the police pulled him from his car using excessive force. M was arrested on suspicion of possession of a firearm and an offensive weapon and was taken to the police station, but he was not charged with any offence. M received several cuts and bruises, including a wound that required stitches. Following a complaint, the police referred the matter to the commission which decided that it should be investigated locally by the professional standards department of the police force in question. It was accepted that it was arguable that M had suffered ill treatment contrary to the European Convention on Human Rights 1950 art.3. The local investigation had yet to be completed. M submitted that the obligation that was inherent in art.3 to investigate such complaints of police ill treatment could only be discharged if the investigation was independent. It argued that an inquiry by the commission itself would be sufficient but that an investigation by the same police force would not. The commission submitted that the availability of a number of measures taken together (being the local investigation, a subsequent appeal to the commission, the possibility of criminal proceedings and the possibility of civil proceedings) fulfilled the requirement under art.3.

HELD

(1) Pursuant to the Police Reform Act 2002 Sch.3 para.25, M had a right to appeal to the commission about the findings of the local investigation. The commission had full power to consider the merits of the appeal, which included a direction that the complaint be re-investigated and in what form the investigation should take. Although the initial stages of the investigation would have been carried out by the same police force against which the complaint was made, an inquiry into ill treatment by the police was not necessarily deficient under art.3 because it relied in part on investigative work by the same police force, Stojensek v Slovenia 1926/03 applied. It was true that that there had been some delay in the investigation so far and that an art.3 investigation had to be carried out promptly, but if it was to be completed in the contemplated time scale it could not be said that the appeal process would inevitably be too late to be of any value. Further, the spectre of the police officers involved being able to claim for an abuse of process if the commission was to appeal after a lengthy local investigation did not lead to prosecution would not render the appeal process nugatory. The officers would have been advised that the matter could be re-opened in the event of a successful appeal or the discovery of new information.

(2) It was clear that criminal proceedings could fulfil the duty under art.3, McKerr v United Kingdom (28883/95) (2002) 34 EHRR 20 ECHR, Agdas v Turkey 34592/97 and Banks v United Kingdom (Admissibility) (21387/05) (2007) 45 EHRR SE2 ECHR applied. The court was reluctant to assume that there would be no criminal trial given the appellate role of the commission and the fact that the local investigation was being conducted by the police force's professional standards department, which meant that there was a degree of distance from the subjects of the investigation. There would be times when it would be necessary to include wider matters in an art.3 investigation, but it was important to consider the cost of holding such an inquiry, R (on the application of P) v Secretary of State for Justice (2009) EWCA Civ 701, Times, July 23, 2009 applied, R (on the application of JL) v Secretary of State for the Home Department (2008) UKHL 68, (2009) 1 AC 588 considered. There were a very large number of complaints about the use of excessive force by the police when effecting an arrest, very few of which were investigated by the commission itself. If the instant claim was upheld then a very significant proportion of those complaints would have to be investigated by the commission, which would put an impossible strain on its resources. In addition, the complaint did not raise any wider issue that demanded an independent investigation by the commission, and as there had yet to be a report of the local investigation M could not complain at the instant time that there had been such flaws in the investigation to cause a permanent taint that could not be cured at a later stage.

(3) Civil proceedings were not relevant in deciding whether the obligation under art.3 had been discharged, Krastanov v Bulgaria 50222/99, Mrozowski v Poland 9258/04 and Stojnsek applied. The investigative obligation could not be satisfied by a judgment that lead only to the payment of compensation since the purpose or part of the purpose of the obligation was to identify and punish those responsible for breaches of such a particularly important Convention right.

(4) It followed that with the completion of the local investigation still pending it could not be said that the commission's direction that M's complaint be examined locally would inevitably breach art.3.

APPLICATION REFUSED

Officer Entitled to Use Force When Assisting in Removal of Individual from Licensed Premises

SEMPLE v LUTON & SOUTH BEDFORDSHIRE MAGISTRATES' COURT (2009)

DC (Moses LJ, Hickinbottom J) 26/11/2009

Police - Licensing

Drunk And Disorderly: Police Powers And Duties: Pubs And Bars: Removal: Use Of Force: Failure By Individual To Leave Licensed Premises: Power Of Police To Use Force To Effect Removal From Licensed Premises: S.143(4) Licensing Act 2003

In assisting in the removal of an individual who was drunk and disorderly from a licensed premises pursuant to the Licensing Act 2003 s.143(4), a police officer was entitled to use force.

The appellant (S) appealed by way of case stated against a decision of the respondent magistrates' court to convict him for resisting a police officer in the course of his duty. S had visited a public house to speak to its landlord after his father, who had been involved in an incident at the public house the previous day, was "barred" from the public house. Following a verbal exchange S was asked to leave but refused. The police were called and the landlord told a police officer that he wanted S to leave. The police officer put his hand on S's back and led S through a set of exit doors. At that point S began to struggle with the police officer. Outside the public house S said that he was going to go back in and hit someone. The police officer attempted to hold S back, a scuffle ensued, S punched the police officer and he was arrested. The police officer stated that when he started to remove S from the public house he had not intended to arrest him. The magistrates' court found that the police officer had acted lawfully in the course of his duty and that S was arrested to prevent him from re-entering the public house after he had made threats to cause physical injury to others. The question posed for the opinion of the High Court was whether on the facts found by the magistrates' court it was wrong in law to find that the police officer had acted lawfully in the execution of his duty. The interested party CPS contended that the police officer was obliged pursuant to the Licensing Act 2003 s.143(4), to assist in the ejection of a person from a licensed premises when asked to do so and was further obliged to prevent such a person from entering the relevant premises so that at all times the police officer was acting in the course of his duty. S submitted that whilst the police officer was under the obligation

contended by the Crown, such a police officer was not allowed to use force outside of an arrest, as there was no reference to the use of force in s.143(4), whereas other sections of the Act specifically provided that a police officer carrying out certain duties under the Act could use "reasonable force"; the statutory predecessor to s.143(4) had referred to the use of force so that the omission of force in s.143(4) meant that Parliament must have intended that force could not be used. S submitted that the police officer had not been acting in the course of his duty as he had used force to remove S from the public house.

HELD

The purpose behind s.143 was to make it a criminal offence not to leave a licensed premises when requested to do so, whether by a landlord, premises staff or the police. Implicit in a landlord's request to assist in the ejection of an individual from a licensed premises was a request for help to prevent that person from being readmitted. Accordingly, in the instant case the police officer had been acting in accordance with his duty at all times and was clearly entitled to restrain S, in particular after he had made a threat to commit an assault. Moreover, it was apparent that given the way that events had unfolded, the police officer had not had the chance to say that he intended to arrest S before he actually was. Accordingly, it was appropriate to answer no to the question posed.

APPEAL DISMISSED

Amendment to Injunction Refused Where Restrictions Would be Practically Unenforceable by Police

(1) NOVARTIS PHARMACEUTICALS UK LTD (FOR MEMBERS OF THE NOVARTIS GROUP WHO RETAIN EMPLOYEES PURSUANT TO CPR 19.6) (2) ANDREW ROY GRANTHAM (FOR EMPLOYEES OF THE NOVARTIS GROUP & PROTECTED PERSONS, AS DEFINED, PURSUANT TO CPR 19.6) v (1) STOP HUNTINGDON ANIMAL CRUELTY (SHAC) (BY ITS REPRESENTATIVE MAX GASTONE, FOR MEMBERS OF SHAC & PROTESTORS AGAINST NOVARTIS PURSUANT TO CPR 19.6) (2) GREG AVERY (3) NATASHA AVERY (4) HEATHER JAMES (2009)

QBD (Sweeney J) 30/10/2009

Civil Procedure - Human Rights

Amendments: Freedom Of Assembly And Association: Freedom Of Expression: Harassment: Interim Injunctions: Right To Respect For Private And Family Life: Appropriateness Of Proposed Amendments To Interim Injunction: Annual Assembly And Demonstration: Proportionality: Balancing Competing Human Rights: Animal Rights Protestors: Protection From Harassment Act 1997: Art.11 European Convention On Human Rights: Art.10 European Convention On Human Rights: Art.8 European Convention On Human Rights: Human Rights Act 1998

A pharmaceutical company's application to amend an interim injunction, the terms of which included restrictions on demonstrations by animals rights protestors, so as to prohibit protestors at an upcoming assembly from wearing balaclavas or masks, wearing blood spattered clothing or costumes, or exhibiting banners or placards alleging that the company's employees murdered or abused animals, had to be refused where the balancing of rights of both sides under the European Convention on Human Rights 1950 art.8, art.10 and art.11 came down in favour of refusing the amendments, not least because they would be practically unenforceable by the police and would, in fact, be likely to raise tensions.

The applicants (N) applied to amend the terms of an interim injunction. The respondents (S) were animal rights activists whose stated aim was to close down an establishment which conducted clinical testing on live animals. N, who were a pharmaceutical company and its head of security, were secondary targets of S's campaign. N had been granted an interim injunction which restrained S and other protestors from pursuing a course of conduct which amounted to harassment of protected persons contrary to the Protection from Harassment Act 1997. The injunction went on to identify premises around which it created exclusion zones in which, subject to strictly limited exceptions, demonstrations were prohibited. The exceptions permitted one annual assembly at N's principal site provided that the appropriate notice was given to the police and that there was strict compliance with any conditions laid down by the police. The annual assembly at N's principal site was due to take place on October 31, 2009. N, who were on notice of the assembly, sought amendments to the injunction so as to provide, inter alia, that (i) for the avoidance of doubt, no assemblies or processions whatsoever should take

place other than those permitted under the injunction provided that the requisite notice had been given to the police and there was strict compliance with police conditions; (ii) at the assembly or procession on October 31, in order to prevent N's employees from being harassed or caused anxiety, alarm or distress, the protestors had not to wear or carry balaclavas, face coverings, masks or blood spattered clothing or costumes; not to carry or exhibit banners, posters or placards alleging that N's employees murder, torture, abuse or otherwise unlawfully kill animals. N contended that those amendments were necessary since S, who they alleged had close links with animal rights terrorist groups, were persons without respect for the law who acted not in pursuit of any political or public interest cause, with the particular sensitivities that involved under the European Convention on Human Rights 1950 art.10, but in a concerted quasi-terrorist manner to seek to bring down N and harass their employees further. S did not object to the first minor amendment sought by N confirming the giving of notice to the police and compliance with police conditions. In respect of the further amendments, S submitted that, given that only about 40 of N's employees would be working at the site during the time of the assembly, that the police would be at the assembly in large numbers in order to ensure compliance with the law, including the present terms of the injunction, and that their rights of freedom of expression and freedom of assembly were enshrined in art.10 and art.11 of the Convention, N's proposed amended terms were not proportional, and the balancing of rights on both sides came down clearly in favour of rejecting the application.

HELD

Generally speaking, members of the public had the right to be protected from material intended to cause them distress or anxiety, whether in the privacy of their own homes or in the workplace, Connolly v DPP (2007) EWHC 237 (Admin), (2008) 1 WLR 276 applied. However, both at common law and under the Human Rights Act 1998 and the Convention, freedom of speech or expression, and freedom of assembly and association, also constituted rights jealously safeguarded by English law, Redmond-Bate v DPP (1999) 163 JP 789 QBD considered. Any restrictions on the rights of freedom of expression or freedom of assembly or both had to be (i) convincingly established; (ii) justified by compelling reasons; (iii) subject to careful scrutiny; (iv) proportionate and no more than necessary. There were, however, cases where it was proper to impose restrictions on those fundamental rights: respect for the freedom of the aggressor should never lead the court to deny necessary protection to the victim, Burris v Azadani (1995) 1 WLR 1372 CA (Civ Div) applied. Whilst N's employees had significant art.8 rights, it was necessary for the rights of all to be balanced appropriately. In the circumstances, as there was no objection to the minor amendment sought concerning the giving of notice to the police and compliance with police conditions, that amendment would be allowed. However, the balance of convenience was resoundingly against the suggested requirement that protestors had not to wear blood spattered clothing or costumes as it was likely to be practically unenforceable and was, in any event, not proportionate. In respect of the requested prohibition on balaclavas, face coverings and masks, the decision was not so clear cut. Ghoulish masks had the potential to cause anxiety, alarm and distress and could be used to seek to disguise the identity of anyone intent on

harassing conduct. The implementation of such a blanket prohibition at such a late stage was, however, likely to cause considerable practical problems for the police, risk the raising of tensions, and interfere with the rights of those who wished to wear inoffensive masks. The balance therefore came down against allowing the amendment in relation to masks also. Further, as no objection had been taken to S's use of a megaphone or to the shouting of the words sought to be prohibited on banners, and there was no difference of substance between vocal delivery and banners, the proposed amendment in relation to banners had also to be rejected.

APPLICATION GRANTED IN PART

SI 3050/2009 The Crime and Disorder Strategies (Prescribed Descriptions) (Wales) Order 2009

In force **28 December 2009**. This Order, which extends to Wales only, prescribes the responsible authorities which are required to co-operate in the exercise of their functions under section 6 of the Crime and Disorder Act 1998, which requires strategies to be formulated and implemented to reduce crime and disorder and tackle the misuse of alcohol, drugs and other substances. The order also prescribes the persons and bodies which must be invited to participate in the exercise of those functions.

SI 3074/2009 The Criminal Justice and Immigration Act 2008 (Commencement No.13 and Transitory Provision) Order 2009

In force **30 November 2009**. This Order brings into force a number of provisions of the Criminal Justice and Immigration Act 2008. These provisions are:

- Section 1 (youth rehabilitation orders) to the extent not already in force;
- Section 2 (breach, revocation or amendment of youth rehabilitation orders);
- Section 3 (transfer of youth rehabilitation order to Northern Ireland);
- Section 4 (meaning of "responsible officer");
- Section 5 (responsible officer and offender: duties in relation to the other);
- Section 6(1) (abolition of certain youth orders and related amendments) save to the extent it abolishes attendance centre orders and (2) and (3) to the extent they relate to specified provisions in Schedule 4 (youth rehabilitation orders: consequential and related amendments);
- Section 7 (youth rehabilitation orders: interpretation);
- Section 8 (Isles of Scilly);
- Section 75 (offences relating to the physical protection of nuclear material and nuclear facilities);
- Section 126(2) (police misconduct and performance procedures) in so far as it relates to the specified provisions of Schedule 22 (police misconduct and performance procedures);
- Section 148(1) and (2) (consequential etc. amendments and transitional and saving provisions), in so far as it relates to the specified provisions in Schedule 26 (minor and consequential amendments) and Schedule 27 (transitory, transitional and saving provisions) respectively;
- Section 149 (repeals and revocations) in so far as it relates to the specified provisions in Part 1 of Schedule 28 (repeals and revocations);
- Schedule 1 (further provision about youth rehabilitation orders) to the extent not already in force;

- Schedule 2 (breach, revocation or amendment of youth rehabilitation orders);
- Schedule 3 (transfer of youth rehabilitation orders to Northern Ireland);
- A number of provisions in Schedule 4 (youth rehabilitation orders: consequential and related amendments);
- Schedule 17 (offences relating to nuclear material and nuclear facilities);
- Schedule 22 (police misconduct and performance procedures), Part 2 (amendments of Ministry of Defence Police Act 1987(5));
- Paragraph 79 of Schedule 26 (minor and consequential amendments), relating to the Terrorism Act 2006;
- A number of provisions in Schedule 27 (transitory, transitional and saving provisions); and
- The entries in Part 5 of Schedule 28 (repeals and revocations) relating to the Nuclear Material (Offences) Act 1983.

In addition to these provisions, the following sections of the Criminal Justice and Immigration Act 2008 are brought into force insofar as they relate to English NHS premises and are not already in force:

- Section 119 (offence of causing nuisance or disturbance on NHS premises);
- Section 120 (power to remove person causing nuisance or disturbance); and
- Section 121 (guidance about the power to remove etc.).

Youth Rehabilitation Orders (YHOs) are brought into force by the above provisions. YHOs can be made against certain offenders under the age of 18 and allow a number of requirements to be imposed upon them, such as activity and supervision requirements. If the order is breached a court has a number of powers, including the power to fine the offender, to vary the terms of the YHO and to deal with the offender for the offence in respect of which the YHO was made in any way in which the court could have dealt with the offender originally.

Section 75 and Schedule 17 make amendments to the Nuclear Material (Offences) Act 1983, creating further offences relating to the protection of nuclear material and offences relating to the physical protection of nuclear facilities. This includes offences relating to damage to the environment.

Section 119 is brought fully into force by the above provisions. This creates an offence of causing nuisance or disturbance on NHS premises, where a person:

- Causes, without reasonable excuse and while on NHS premises, a nuisance or disturbance to an NHS staff member who is working there or is otherwise there in connection with work,
- Refuses, without reasonable excuse, to leave the NHS premises when asked to do so by a constable or an NHS staff member, and

- Is not on the NHS premises for the purpose of obtaining medical advice, treatment or care for himself or herself.

SI 3096/2009 The Policing and Crime Act 2009 (Commencement No. 1 and Transitional and Saving Provisions) Order 2009

In force **various dates**. This Order brings into force a number of provisions of the Policing and Crime Act 2009.

In force **30 November 2009**:

- Section 88 (provision of safeguarding information to the police); and
- Section 91 (provision of safeguarding information to the police: Northern Ireland).

These provisions allow the Independent Safeguarding Authority to provide any information it has to the relevant chief officer of police, or in Northern Ireland, to the chief constable of the Police Service of Northern Ireland, for the purposes of the prevention and detection of crime and the apprehension and prosecution of offenders.

In force **25 January 2010**:

- Section 6 (authorisations to interfere with property etc.);
- Section 7 (authorisations for obtaining and disclosing communications data);
- Section 8 (authorisations of covert human intelligence sources: conditions);
- Section 9 (authorisations for surveillance etc.);
- Section 26 (penalty for contravening notice related to encrypted information);
- Section 51 (recovery of expenses etc.);
- Section 61 (payment of compensation);
- Section 62 (limitation);
- Section 64 (detention of seized cash);
- Section 67 (article 26 alerts);
- Section 68 (article 95 alerts);
- Section 69 (extradition to category 1 territory);
- Section 70 (extradition to category 2 territory);
- Section 71 (person charged with offence or serving sentence of imprisonment);
- Section 72 (return from category 1 territory);
- Section 73 (return from category 2 territory);

- Section 74 (return to extraditing territory etc.);
- Section 75 (cases in which sentences treated as served);
- Section 76 (dealing with person for other offences);
- Section 77 (provisional arrest);
- Section 78 (use of live link in extradition proceedings);
- Section 112(1) (minor and consequential amendments and repeals and revocations) insofar as it relates to Part 2, paragraph 25 and Part 9 of Schedule 7;
- Section 112(2) (minor and consequential amendments and repeals and revocations) insofar as it relates to Part 6 of Schedule 8;
- Part 2, paragraph 25 and Part 9 of Schedule 7 (minor and consequential amendments); and
- Part 6 of Schedule 8 (repeals and revocations).

Transitional and saving provisions are also made in respect of some of the above provisions.

SI 3135/2009 The Misuse of Drugs (Designation) (Amendment) (England, Wales and Scotland) Order 2009

In force **23 December 2009**. This Order inserts a number of drugs, including GBL, into the Misuse of Drugs (Designation) Order 2001, prohibiting the making of regulations to allow these drugs to be used for medicinal purposes.

SI 3135/2009 The Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2009

In force **23 December 2009**. These Regulations amend the Misuse of Drugs Regulations 2001, defining the extent to which certain drugs, including GBL, can be lawfully imported, exported, produced, supplied or possessed.

SI 3159/2009 The Licensing Act 2003 (Premises licences and club premises certificates) (Amendment) (Electronic Applications etc.) Regulations 2009

In force **immediately after the Provision of Services Regulations 2009 which come into force 28 December 2009**. These Regulations amend the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 to allow premises licence applications and club premises certificate applications to be applied for electronically.

SI 3253/2009 The Coroners and Justice Act 2009 (Commencement No. 1 and Transitional Provisions) Order 2009

In force **14 December 2009**. This Order brings into force a number of provisions of the Coroners and Justice Act 2009, some of which are brought into force only in specified areas.

The provisions brought into force in all areas are:

- In section 106 (directions to attend through live link):
  - Subsections (2) and (5);
  - Subsection (4); and
  - Subsection (1) so far as it relates to those subsections;
- Section 109 (use of live link in certain enforcement hearings); and
- Section 110 (direction of registrar for appeal hearing by live link).

These sections amend the Crime and Disorder Act 1998 in relation to live links between courts and either police stations or other places where a person is held in custody for the purposes of certain preliminary or sentencing hearings. Live links may be used by a single justice rather than just a full bench. The requirement for the accused to consent to a direction to use a live link is removed, although a court may not make a live link direction unless satisfied that to do so would not be contrary to the interests of justice.

The following provisions are brought into force only in specified areas:

- In section 106, subsection (3), and subsection (1) so far as it relates to that subsection;
- Section 107 (answering to live link bail); and
- Section 108 (searches of persons answering to live link bail).

The specified areas are the following local justice areas:

- In London: Barking and Dagenham; Barnet; Bexley; Brent; Bromley; Camden and Islington; City of London; City of Westminster; Croydon; Ealing; Enfield; Greenwich and Lewisham; Hackney and Tower Hamlets; Hammersmith and Fulham and Kensington and Chelsea; Haringey; Harrow Gore; Havering; Hillingdon; Hounslow; Kingston-upon-Thames; Lambeth and Southwark; Merton; Newham; Redbridge; Richmond-upon-Thames; Sutton; Waltham Forest; and Wandsworth; and
- In Kent: Central Kent; East Kent; and North Kent.

These sections amend the Crime and Disorder Act 1998 and make consequential amendments to the Police and Criminal Evidence Act 1984 in relation to live links from police stations. The changes remove the need for an accused to consent to a live link in this situation, and allow for the accused to be searched if they are answering to live link bail at a police station.

Notes

NOTES