

Digest

JULY 2009



CASELAW Police News Diversity
LEGISLATION POLICE NEWS
POLICE NEWS LEGISLATION
DIVERSITY Criminal Justice

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

This edition contains a summary of new legislation and proposals and reviews of issues relating to policing practice including: the EHRC Human Rights Inquiry Report, a report offering insight into the most significant Muslim ethnic communities, reports outlining experiences of access to justice for adults with mental health issues and for minority groups, the launch of the ACPO/ACPOS updated Police Driver Training Manual, the introduction of the new 'Fit note', HMIC report on early findings in delivery of Policing Pledge, the latest IPCC 'Learning the Lessons' bulletin features issues relating to command and control and a new HMIC report advises Forces to rethink arrangements for working together in ways which benefit the public.

There are also a number of articles outlining recently published Government and Parliamentary reports and initiatives including: the second part of the series on the new Equality Bill, the latest progress report on other Bills, the Audit Commission report on Management of Local Strategic Partnerships, the House of Commons Home Affairs Committee report on 'Knife Crime' and the latest research report from the Home Office on the progress of delivering neighbourhood policing.

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



Disclaimer and Copyright details

This document is intended as a guide to inform organisations and individuals of current and forthcoming issues in the policing environment and NPIA cannot guarantee its suitability for any other purpose. Whilst every effort has been made to ensure that the information is accurate, NPIA cannot accept responsibility for the complete accuracy of the material. As such, organisations and individuals should not base strategic and operational decisions solely on the basis of the information supplied.

© - National Policing Improvement Agency 2009

All rights reserved. No part of this publication may be reproduced, modified, amended, stored in any retrieval system or transmitted, in any form or by any means, without the prior written permission of the National Policing Improvement Agency or its representative. **The above restrictions do not apply to police forces or authorities, which are authorised to use this material for official, non-profit-making purposes only.**

Copyright Enquiries: Telephone +44 (0)1256 602650

Digest Editorial Team: Telephone +44 (0)1423 876663

Contents

DIVERSITY	5
EHRC Publish Human Rights Inquiry Report	5
Understanding Muslim Ethnic Communities	6
Access to Justice: Research Published Relating to Adults with Mental Health Issues	7
Access to Justice: Research Published Relating to Experiences of Minority Groups	8
TRAINING AND DEVELOPMENT	10
Three More Forces Needed to Join Police Promotion (NPPF) Trial	10
ACPO Launch Updated Police Driver Training Manual	10
Training Opportunities in the Criminal Justice System to Offset Gender Imbalance	11
EMPLOYMENT	12
Guidance for Nurses Working in the Criminal Justice Service Launched ...	12
New 'Fit Note' Will Replace 'Sick Note'	12
Resource Pack to Help Run Alcohol Awareness Campaigns for Employees	13
LEGISLATION	14
The Equality Bill	14
Bills Before Parliament - Progress Report	18
GOVERNMENT AND PARLIAMENTARY NEWS	19
Audit Commission Reports on Management of Local Strategic Partnerships	19
Home Affairs Committee Publish Knife Crime Report	21
Think Tank Report Advises Government to Look Overseas to Improve Ways of Funding and Monitoring Crime Prevention and Enforcement	22
POLICE	24
HMIC Report Early Findings in Delivery of Policing Pledge	24
IPCC Publish Latest Learning the Lessons Bulletin	25
HMIC Advises Forces to Rethink Working Together for Benefit of the Public	27
IPCC to Undertake Research into Deaths Following Police Contact	28
Closer Integration of Neighbourhood Policing and Neighbourhood Management	28
Home Office Publish Research Findings on Neighbourhood Policing	29
IPCC Public Confidence Survey Published	30
CRIMINAL JUSTICE SYSTEM	32
Justice Report on Secret Evidence Coincides with Control Orders Ruling .	32
Law Commission Consultation on Admissibility of Expert Evidence	32
Report Assesses Professionals' Response to Trafficked Children	33
'Short Study of Women Offenders' Published	34
CRIME	36
Report Suggests Little Evidence of Success for Tough Action on Knife Crime	36
Suffolk Launch Evidential Drugs Testing Process	37

NEWS IN BRIEF	38
Tackling Alcohol Harm: Report Identifies Potential Use of Initiatives from Other Fields	38
Report Highlights Impact of Alcohol Misuse on London's Young People .	39
Modernisation of Licensing of Dangerous Wild Animals Introduced	40
IPPR Report Calls for Action to Make Roads Safer	41
Highways Agency Launch Website to Help Hauliers to Move 'Abnormal Loads'	41
CASE LAW	42
CASE LAW - CRIME	42
Conviction for Converting Criminal Property Upheld Where Defendant Allowed Another to Pass Money Through His Account	42
CASE LAW - EVIDENCE AND PROCEDURE	44
Confiscation Orders Cannot be Made Against Offenders Who Receive an Absolute or Conditional Discharge	44
A Conviction Based Solely on Hearsay Evidence Did Not Breach ECHR Right to a Fair Trial as Criminal Justice Act 2003 Provisions were Observed	45
Statement Made by Convicted Co-Accused to Reduce Sentence Implicating Acquitted Co-Defendants was Not 'Compelling' New Material	47
Trial by Judge Alone Without a Jury Ordered Where Danger of Jury Tampering and Subversion of Trial was Very Significant	49
CASE LAW - HUMAN RIGHTS	51
Broadcaster's Right to Freedom of Expression Outweighed Defendant Acquitted of Rape's Right to Privacy: Anonymity Order Granted Following Acquittal Discharged	51
STATUTORY INSTRUMENTS	54

EHRC Publish Human Rights Inquiry Report

On 15 June 2009 the Equality and Human Rights Commission (EHRC) published its Inquiry report. The report sets out the findings of a Human Rights Inquiry undertaken by the Equality and Human Rights Commission (EHRC) under its statutory powers. The Inquiry was announced on 6 March 2008 and had two main terms of reference:

- ◆ To assess progress towards the effectiveness and enjoyment of a culture of respect for human rights in Great Britain; and
- ◆ To consider how the current human rights framework might best be developed and used to realise the vision of a society built on fairness and respect, confident in all aspects of its diversity.

The Inquiry is the most comprehensive research to date into the Human Rights Act's first ten years. It brings together evidence from almost 3,000 individuals and organisations including service providers, service users and advocacy groups, inspectorates, academics and legal experts, politicians, the media and Government Ministers.

The report contains six chapters:

Chapter 1 - Human Rights and the Human Rights Act;

Chapter 2 - Public Perceptions of human rights;

Chapter 3 - The impact of human rights on public services;

Chapter 4 - Barriers to assertion, provision and enjoyment of human rights;

Chapter 5 - Making human rights effective; and

Chapter 6 - Key findings and recommendations.

The report concludes that:

- ◆ The findings of the Inquiry demonstrate that 11 years after the passing of the Human Rights Act 1998, the overwhelming majority of people want and value human rights. Despite all that has been achieved, much remains to be done to give effect to the internationally agreed minimum standards and values to which everyone is entitled 'as a consequence of their common humanity'. It is possible, in many cases within existing structures, or using the opportunity of ongoing change processes, to incorporate a human rights approach to service delivery;
- ◆ The recommendations and the various Commission actions identified during this Inquiry, if implemented, should facilitate rapid improvements in public services. The potential benefits have been demonstrated to be invaluable in terms of enhanced service delivery, organisational success, heightened staff morale and increased participation and enjoyment of human rights by those in receipt of public services; and
- ◆ It is time for a new understanding of what human rights are really about and to acknowledge that in a society where human rights are respected,

all have responsibilities to each other, and that the Human Rights Act 1998 provides a framework for balancing the rights of individuals with the needs and interests of the wider community. Leadership is required.

The full report 'Human Rights Inquiry: Report of the Equality and Human Rights Commission' is available at <http://www.equalityhumanrights.com/fairer-britain/human-rights/human-rights-inquiry/inquiry-report/>

Understanding Muslim Ethnic Communities

The Department for Government and Local Communities has produced a series of reports to provide insight into the characteristics of 13 of the most significant Muslim ethnic diaspora communities in England. The Understanding Muslim Ethnic Communities research project considers the complexities of ethnic and religious identities and intergenerational issues.

In the past, popular understanding and knowledge of the Muslim population in England has often failed to capture the diversity within the Muslim population, leaving critical gaps in knowledge and understanding of smaller Muslim ethnic communities and of the range of experience within communities. These reports seek to highlight characteristics of these communities to enable more effective engagement.

For each of the 13 communities the report sets out the context for migration and what is known about demographics. The respondent insights into the socioeconomic status of their communities are set out together with their views on integration and cohesion. The reports cover the following issues:

- ◆ Complexity of ethnic and religious identities and emerging dynamics;
- ◆ Intergenerational issues and challenges for young people;
- ◆ The wide range of continuing links with countries of origin;
- ◆ Broad overview of the nature and type of civil society development that has taken place;
- ◆ Issues relating to public authority engagement and encouragement of participation by communities; and
- ◆ Overall conclusions are drawn followed by recommendations for the wide range of stakeholders with an interest in the issues.

The reports on each of the 13 Muslim ethnic diaspora communities in England can be found at <http://www.communities.gov.uk/communities/racecohesionfaith/research/understandingmuslimcommunities/>

Access to Justice: Research Published Relating to Adults with Mental Health Issues

The Ministry of Justice published a report on 6 May 2009 which summarises the international research evidence on the experiences of adults with mental health problems in the justice system. The review 'Access to Justice: Evidence of the experiences of adults with mental health problems' was based on systematic review methods and involved screening 7,890 research abstracts, and fully reviewing 41 studies.

The key objectives of the research included:

- ◆ To critically evaluate research relating to the experience of people with mental health problems in attempting to access civil, family or criminal justice or their experience as an offender;
- ◆ To critically evaluate research assessing the effectiveness of interventions designed to improve access to justice for people with mental health problems; and
- ◆ To critically evaluate research from observational studies investigating the associations between mental health problems and the experience of justice and justice processes.

The key findings of the report include:

Associations and characteristics of adults with mental health problems

- ◆ Adults with mental health problems are over-represented in populations of offenders;
- ◆ One study found adults with mental health problems are less likely to be involved with violent crimes than offenders in general;
- ◆ Adults with mental health problems are more at risk of crime victimisation than the general population, even after controlling for demographic variables;
- ◆ Adults with mental health problems are likely to experience higher rates of some civil justiciable problems, such as debt and relationship breakdown, compared to adults without mental health problems;
- ◆ Risk factors associated with mental health problems and victimisation include being 'symptomatic' and a lack of meaningful daily activity for adults with mental health problems; and
- ◆ Risk factors associated with mental health problems and offending include homelessness, substance misuse and history of offending although these risk factors are also present for the general population.

Services and agencies accessed by adults with mental health problems and their effectiveness

- ◆ There is inconsistent but mainly supportive evidence about the effectiveness of criminal justice 'diversion' schemes in terms of preventing

offending or improving mental health for offenders, however, this may be due to differences in research designs;

- ◆ Promising practice in criminal justice interventions for offenders with mental health problems includes holistic integrated models that link criminal justice, housing, mental health services and social services; and
- ◆ Some promising practice is emerging from civil justice advice projects aimed at adults with mental health problems which targets civil advice at adults with mental health problems, although this area is under-researched.

Experiences, barriers and potential barriers to accessing justice for adults with mental health problems

- ◆ There is evidence prejudicial attitudes within the criminal justice system may result in negative justice outcomes for adults with mental health problems and decisions being made based on an incorrect understanding of mental health problems; and
- ◆ Discrimination and prejudice against adults with mental health problems may deter people from disclosing their mental health problems, seeking advice or support for fear of disclosure.

The full report 'Access to Justice: Evidence of the experiences of adults with mental health problems' can be found at <http://www.justice.gov.uk/publications/docs/access-justice-mental-health.pdf>

Access to Justice: Research Published Relating to Experiences of Minority Groups

The Ministry of Justice published a report reviewing research evidence on the experiences of minority groups in the justice system on 6 May 2009. The research report 'Access to Justice: A review of existing evidence of the experiences of minority groups based on ethnicity, identity and sexuality' covers evidence on access to justice for black and minority groups, gypsies and travellers, refugees and asylum seekers, and minority groups identified by their sexuality.

The research considered the following key questions in respect of the experiences of minority groups:

- ◆ What are their experiences of seeking advice and support with justiciable problems?
- ◆ What are their experiences of civil and criminal justice systems, and legal processes?
- ◆ What evidence is there of barriers to access to justice for these groups?
- ◆ What policy and practice has been demonstrated to help overcome any barriers?

The key findings of the report include:

- ◆ Evidence of prejudice and discrimination within the systems, organisations and agencies of legal and civil justice;
- ◆ Evidence of legislation having a negative impact for these groups;
- ◆ Evidence that perceptions and experiences lead to mistrust amongst minority groups, who believed their treatment will be prejudiced should they seek solutions to justiciable problems;
- ◆ Available evidence suggested discrimination or perceptions of discrimination lead to a lack of advice seeking amongst these minority groups;
- ◆ Research in relation to BME communities suggested they were less likely to seek advice. Where they did receive advice it was likely to be of a lower quality than that received by other (majority) groups;
- ◆ Evidence that indicated the negative experiences of minority groups within civil, criminal and associated systems and processes. Discriminatory outcomes for minority groups were demonstrated by research in the criminal justice system;
- ◆ Evidence suggested a lack of awareness of 'justiciable problems' and of the sources and availability of advice; and
- ◆ Agencies within legal systems and structures may fail to recognise the needs of minority groups, leading to negative experiences that were likely to impact upon future advice-seeking behaviour in the pursuit of justice.

The full report 'Access to Justice: A review of existing evidence of the experiences of minority groups based on ethnicity, identity and sexuality' can be found at

<http://www.justice.gov.uk/about/docs/access-justice-minority-groups.pdf>

Three More Forces Needed to Join Police Promotion (NPPF) Trial

The National Policing Improvement Agency announced on 3 June 2009 that three further forces were required to engage in the trial for the National Police Promotion Framework (NPPF). NPPF is the new promotion assessment process for the police service that NPIA are currently running as part of a two year trial.

The Promotion Framework will provide an assessment tool designed to offer officers a promotion route to the ranks of Sergeant and Inspector. The NPPF will provide an alternative to the current OSPRE® examination system. It is hoped that the Promotion Framework will allow greater control and choice with regard to the supply of officer numbers into force promotion pools.

The closing date for applications to join this trial is 10 July 2009. For further information regarding your force joining the trial please email the NPPF Licensing Team for the application pack at NPPF.LicensingEnquiries@npia.pnn.police.uk

There is more information about the National Police Promotion Framework available at <http://www.npia.police.uk/en/11621.htm>

ACPO Launch Updated Police Driver Training Manual

On 18 June 2009 an updated police driver training manual was launched by the Association of Chief Police Officers (ACPO) and the Association of Chief Police Officers Scotland (ACPOS). There are major changes to the new police driving manual which includes advice on 'eco-driving' and new modules for pursuit training in line with ACPO/ACPOS pursuit guidance.

The manual provides police force driving schools with a framework allowing them to develop a course based on the National Police Driving Standards. The competencies covered in the modules are directly linked to the national occupational standards recently published by Skills for Justice. The standards were developed to ensure that police drivers are trained to a common minimum level and possess the skills required to drive police vehicles safely and competently in a range of road, traffic and weather conditions.

The training modules include pre-driving checks, judging speed and vehicle control, stress and attitude, responding to emergencies, anticipating driving situations, recognition of real and potential hazards, and the pursuit and stopping of vehicles. There are also a range of optional training units which allow forces to tailor training as required.

The levels of police driver training are:

◆ Basic Level

A basic standard to authorise those members of staff and officers who are not required to use legal exemptions to drive police vehicles;

◆ **Standard Driving**

Training at this level to include emergency response driving and most importantly, attitudinal training. A pragmatic introduction to pursuit incidents and pursuit management in line with standard level car control skills; and

◆ **Advanced Driving**

Achieving a high level of all round driving skills, enabling pursuits and high speed response driving, including a full understanding of the effects of attitude and associated stress.

The new updated ACPO/ACPOS Police Driver Training Manual is available on CD via Force Training Managers.

Training Opportunities in the Criminal Justice System to Offset Gender Imbalance

The Women and Work Sector Pathways Initiative being run by Skills for Justice is offering training specifically for women. The training provides female employees the support they need to progress in their careers. Women make up around 46% of the Criminal Justice sector workforce, but are under-represented at management and more senior levels.

The Women and Work project offers over 500 places on courses which include coaching and mentoring training for middle managers, Action Learning Set facilitator training and a tailored programme for women who return to work after a career break. The courses on offer have been carefully chosen to support career progression, self confidence and increase earning capacity.

The aim of the initiative is to help organisations remove the glass ceiling that can prevent women from getting to the top. It also includes help for organisations to explore the role of their culture and structure on women's progression, supporting organisations to consider how their policies could be a barrier to women's success.

Women and police forces in England can contact womenandwork@skillsforjustice.com or telephone 0114 231 7392 for more details about the available courses. Further information is available at <http://www.skillsforjustice.com/women>

Guidance for Nurses Working in the Criminal Justice Service Launched

On 3 June 2009 the Royal College of Nursing (RCN) launched new guidance for nurses and health care assistants working in the criminal justice service. The guidance entitled 'Health and nursing care in the criminal justice service: Guidance for nursing staff' provides up to date information on a wide range of health care issues that can arise in the criminal justice system, including long-term conditions, mental health, learning disabilities, paediatrics and maternal and infant health.

The guide replaces the 2002 RCN publication 'Nursing in Prisons' and highlights the specific health and nursing care needs of offenders. The guide is designed primarily for nurses, health care assistants and other health care practitioners who are working in, or want to work in, health care in the criminal justice service. It is a resource to support the delivery of high quality services to people in a broad range of environments, from police custody to high security prisons.

There is also a new RCN forum, the Nursing in Criminal Justice Services Forum, for those working in all areas of the criminal justice service, including custody suites, prisons and immigration centres.

The RCN Guide 'Health and nursing care in the criminal justice service' is available at

http://www.rcn.org.uk/__data/assets/pdf_file/0010/248725/003307.pdf

The Nursing in Criminal Justice Services Forum can be found at

http://www.rcn.org.uk/development/communities/rcn_forum_communities/prison_nurses

New 'Fit Note' Will Replace 'Sick Note'

The Department for Work and Pensions announced on 28 May 2009 that a new medical 'fit note' will replace the current 'sick note'. The emphasis of the new practice will be to help more people stay in work rather than drift into long term sickness. There is to be a 12 week consultation period to formulate its design.

The new 'fit note' will enable people to get the best possible advice about staying in work, and if they can't work what their employer can do to help them return to work sooner. For example, if the employee has a problem with mobility, suggesting a job where they can work sitting down rather than standing up.

The new process has been developed with the support of healthcare professionals, employer representatives and trade unions. The new 'fit notes' will roll-out across Great Britain in the Spring of 2010 and will be computer-generated in GPs surgeries, replacing the current hand written version. The introduction of the 'fit note' forms part of the Government's response to Dame Carol Black's report into the health of Britain's working age population, which was published in March 2008.

The 'fit note' consultation document is available at
<http://www.dwp.gov.uk/consultations/2009/Reforming-the-Medical-Statement-consultation-28May2009.pdf>

The full Governmental response to Dame Carol Black's report can be found at
<http://www.workingforhealth.gov.uk/Government-Response>

Resource Pack to Help Run Alcohol Awareness Campaigns for Employees

The Chartered Institute of Personnel and Development (CIPD) has reminded employers to have clear policies on managing alcohol misuse as a survey reveals many workers drink well above the recommended healthy limit. In collaboration with the Department of Health a CIPD resource pack is available for use in workplace alcohol awareness campaigns.

The policies on managing alcohol misuse should make it clear to employees that drinking to a level that negatively affects their performance, attendance or behaviour at work is unacceptable. The policies should also spell out the health risks of excessive drinking and make it clear that support is available for people that have a dependency problem.

The resource pack 'Running alcohol campaigns in the workplace: A guide for HR professionals' can be found at
<http://www.cipd.co.uk/NR/rdonlyres/57A09952-72C8-44EE-A979-5A30DFF7E689/0/Evaluationform.pdf>

The Equality Bill

This article is the second part in a series providing a more detailed analysis of the provisions in the new Equality Bill. The last article, in the June 2009 edition of the *NPIA Digest*, covered Part 1 (Socio-economic equalities) which places a duty on certain public authorities to consider the desirability of reducing socio-economic disadvantages in exercising their functions. It also covered Chapter 1 of Part 2 (Equality - Key concepts), which set out the protected characteristics under the Bill.

The protected characteristics are:

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

These protected characteristics are relevant in determining whether conduct which is prohibited under the Bill has taken place. This article will consider Part 2 of Chapter 2, which defines the different types of prohibited conduct.

Part 2: Equality - Key Concepts

Chapter 1: Prohibited Conduct

Clause 13 sets out the prohibited conduct of direct discrimination. Direct discrimination occurs if, because of a protected characteristic, a person (A) treats another person (B) less favourably than A treats or would treat others. This definition will remove the current requirement for the victim of the discrimination to have one of the protected characteristics of age, disability, gender reassignment and sex, as it is wide enough to cover less favourable treatment because of the victim's association with a person who has a protected characteristic. The clause will cover less favourable treatment where a person is thought to have a protected characteristic.

The clause gives further guidance on what will be classed as direct discrimination in relation to some of the protected characteristics:

- ◆ In relation to disability, treating a third person with a disability more favourably than a person without that disability, if done in a way permitted by the Bill, does not amount to direct discrimination;

- ◆ Less favourable treatment because of age will not amount to direct discrimination if A can show this is a proportionate means of achieving a legitimate aim;
- ◆ In relation to marriage and civil partnership, direct discrimination only applies in relation to a contravention of Part 5 if the less favourable treatment is because B is married or a civil partner;
- ◆ Segregating B from others because of race will amount to less favourable treatment;
- ◆ If the less favourable treatment is because of religion or belief, it does not matter whether the religion or belief is also A's; and
- ◆ If the protected characteristic is sex, less favourable treatment of a woman includes (apart from for the purposes of Part 5 (work)) less favourable treatment because she is breast-feeding, and if B is a man no account is to be taken of special treatment of a woman in connection with pregnancy or childbirth.

Clause 14 details what constitutes discrimination arising from disability. It will be discrimination if A treats B in a particular way, and because of B's disability the treatment amounts to a detriment, where A cannot show that the treatment is a proportionate means of achieving a legitimate aim. This does not apply where A shows that A did not know, and could not have reasonably been expected to know, that B had the disability. It can apply even where A has complied with a duty to make reasonable adjustments in relation to B. This clause aims to re-establish the intended protection for disabled people which is no longer provided by the current law following the judgement in *London Borough of Lewisham v Malcolm* [2008] UKHL 43.

Clause 15 has effect in relation to gender reassignment in case of absence from work for the application of Part 5 (work). It will be discrimination for a person to treat B less favourably because they are absent from work because of gender reassignment than if their absence was because of:

- ◆ Sickness or injury, or
- ◆ If B's absence had been for some other reason and it is not reasonable for B to be treated less favourably.

B's absence will be because of gender reassignment only if it is because the person is proposing to undergo, is undergoing or has undergone the process (or part of the process) mentioned in clause 7 of the Bill.

Pregnancy and maternity discrimination in non-work cases is covered in clause 16, and has effect in relation to Part 3 (services and public functions), Part 4 (premises), Chapter 2 of Part 6 (further or higher education) and Part 7 (associations). Discrimination will occur where A treats B less favourably because of A's pregnancy. It will occur also where, in the period of 26 weeks beginning on the day B gives birth (either to a live child or, where 24 weeks of the pregnancy have passed, to a dead child) A treats B less favourably because she has given birth, including in particular to less favourable treatment because A is breast feeding. Less favourable treatment in this

manner, in the applicable period, will not amount to sex discrimination. For the purposes of clauses 16 and 17 'less favourable treatment' is a reference to treating B less favourably than is reasonable.

Clause 17 sets out pregnancy and maternity discrimination in work cases, and has effect in relation to Part 5 (work). A will discriminate against B if A treats B less favourably because of the pregnancy, or because of illness suffered by B because of the pregnancy. This applies where B is in the protected period of pregnancy, which begins when the pregnancy begins and ends, if B is entitled to ordinary and additional maternity leave, on the date she returns to work, or in other cases, at the end of 2 weeks from the end of the pregnancy. Less favourable treatment for these purposes includes a decision taken during the protected period which is not implemented until after the protected period has ended.

A will also discriminate against B because of pregnancy or maternity if A treats her less favourably because she is on compulsory maternity leave, or if she is exercising, seeking to exercise, has exercised or sought to exercise, the right of ordinary or additional maternity leave.

Clause 18 sets out the prohibited conduct of indirect discrimination. A will discriminate against B if A applies a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's. Such a provision, criterion or practice will be discriminatory if:

- ◆ A applies, or would apply it, to persons who do not share B's characteristic;
- ◆ It puts, or would put, people who do share B's characteristic at a disadvantage, when compared with persons not sharing it;
- ◆ It puts, or would put, B at a disadvantage; and
- ◆ A cannot show that it is a proportionate means of achieving a legitimate aim.

In relation to clause 18, the relevant protected characteristics are age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, and sexual orientation. Indirect discrimination does not apply to the protected characteristic of pregnancy and maternity. The clause replaces similar current legislation, applying the EU definition of indirect discrimination to ensure uniformity across the protected characteristics.

Clauses 19 to 21 cover the situation where a person (A) is under a duty to make reasonable adjustments. Clause 19 sets out that the duty to make reasonable adjustments comprises three requirements, which apply where a disabled person is placed at a substantial disadvantage in comparison to non-disabled person. The first requirement is one requiring A to take steps to avoid any substantial disadvantage caused by a provision, criterion or practice. The second requirement is a requirement that A take steps to avoid substantial disadvantage caused by a physical feature (such as a feature of an exit to a building). The third requirement is a requirement that A take reasonable steps to provide an auxiliary aid (including an auxiliary service), where not doing so would cause a substantial disadvantage.

Clause 20 provides that a failure to comply with the first, second or third requirement in clause 19 is a failure to comply with the duty to make reasonable adjustments. Clause 21 provides that Regulations may be made about the duty, such as descriptions of persons to whom the first, second or third requirement does not apply.

Clause 22 makes supplementary provision, stating that when making a comparison for the purposes of clauses 13, 18 or 19 there must be no material difference between the circumstances relating to each case. In relation to disability, the circumstances include a person's abilities. In relation to sexual orientation, the fact that one person is married while another is a civil partner is not a material difference.

Clause 23 defines the references to be used throughout the Bill in relation to each strand of discrimination. So, for example, age discrimination is discrimination within clause 13 because of age, and discrimination within clause 18 where the relevant protected characteristic is age.

Harassment is defined in clause 24. A harasses B if:

- ◆ A engages in unwanted conduct related to a relevant protected characteristic which has the specified purpose or effect;
- ◆ A engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which has the specified purpose or effect; or
- ◆ Because of B's rejection or submission to conduct (of A or another), A treats B less favourably than A would have had B not rejected or submitted to the conduct. The conduct rejected or submitted to must be, if the protected characteristic is gender reassignment, the conduct in the first bullet point above. For all other relevant protected characteristics, the conduct rejected or submitted to must be the conduct in the second bullet point above.

The specified purpose or effect is either, violating B's dignity, or creating an intimidating, hostile, degrading humiliating or offensive environment for B. In considering whether conduct has had the specified effect, B's perception, the other circumstances of the case and whether it is reasonable for the conduct to have the effect must be taken into account.

The relevant protected characteristics for the purposes of clause 24 are age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation.

Victimisation is defined in clause 25. A will victimise B (who in this case must be an individual) if A subjects B to a detriment because B does a protected act, or A believes that B has done, or may do, a protected act. The protected acts are:

- ◆ Bringing proceedings under the Bill;
- ◆ Giving evidence or information in connection with proceedings under the Bill;
- ◆ Doing any other thing in connection with proceedings under the Bill; and

- ◆ Making an allegation (including express and implied allegations) that A or another person has contravened the Bill (including a breach of an equality clause or rule).

Giving false evidence or information or making a false allegation is not a protected act if this was done in bad faith.

The Equality Bill is currently at Committee stage in the House of Commons and is due to complete committee consideration by 7 July 2009. More information about the Bill and its progress through Parliament can be found at <http://services.parliament.uk/bills/2008-09/equality.html>

Bills Before Parliament - Progress Report

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

Public Bills

- ◆ **Borders, Citizenship and Immigration Bill** - this Bill was introduced by the Home Office and has completed its progress through the House of Lords and is now at the report stage in the House of Commons. The committee stage in the House of Commons took place between 9 and 18 June 2009. No date is yet fixed for the Report stage;
- ◆ **Coroners and Justice Bill** - this Bill was introduced by the Ministry of Justice. It has completed its progress through the House of Commons and had its second reading in the House of Lords on 18 May 2009. The committee stage of this Bill commenced on 9-10 June 2009 and further dates are planned for this stage in the early part of July 2009;
- ◆ **Equality Bill** - this Bill has been published in a trial format by the Government Equalities Office. The bill has reached the committee stage in the House of Commons and is due to complete committee consideration by 7 July 2009; and
- ◆ **Policing and Crime Bill** - this Bill was introduced by the Home Office and has completed its progress through the House of Commons and had its third reading on 19 May 2009. The Bill received its second reading in the House of Lords on 3 June 2009. The committee stage of the bill began on 22 June 2009.

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

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

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

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

Audit Commission Reports on Management of Local Strategic Partnerships

On 21 April 2009 the Audit Commission's national study 'Working better together? Managing local strategic partnerships' was released. The study outlined the Commission's review of arrangements for performance, resource management and governance of local strategic partnerships (LSPs).

The report identifies that whilst local strategic partnerships are evolving and maturing, local and national partners still need to recognise the key dynamics that support partnership working. There are too few LSPs taking an area-wide approach to performance and resource management. However some LSPs have well developed performance arrangements, but less developed resource management. And most LSPs have progress to make if they are to deliver sustainable community strategy and Local Area Agreement outcomes.

LSPs that have good, shared systems for performance management (with performance reporting, resource allocation and risk management) will find it easier to show that they are on track to achieve agreed outcomes than those that do not.

A summary of the key points of the report include:

◆ Local agencies work together

- There is nothing new in local agencies working voluntarily together to deal with complex challenges;
- Government policy has moved from encouraging partnerships towards mandating them, even though voluntarism is the key to effective joint working; and
- Many local strategic partnerships have enabled partners to deliver local outcomes, but partners must ensure they get the benefits of joint working with the minimum of costs and administration.

◆ LSPs must bring a complex network of local agencies together to achieve common goals

- LSPs are part of a complex local governance network that includes local councils, other statutory agencies (including health, police, fire and rescue), and the private and third sectors. LSPs in many areas bring different agencies together to tackle local problems;
- LSPs work through three main layers:
 - Strategic: oversight, vision, and direction-setting;
 - Executive: resource allocation and performance management; and
 - Operational: service management and delivery.
- Local partners, and central government, do not always understand how these layers work; and

- A 'whole systems' approach can help LSPs develop both formal and informal aspects of collaboration.

◆ **LSPs work through leadership, culture, and relationship management**

- Effective joint working needs active leadership and purposeful relationship management;
- The leadership styles of the chair, and of the council, affect how others see an LSP. Councils must ensure that partners see local leadership: not domination or control;
- Social network analysis can strengthen working relationships;
- Delivery chain analysis can strengthen the links between LSP objectives and partners' action;
- Partnership working is more complicated in multi-tier areas where there is often less experience of collaboration; and
- LSPs need systems to support a culture in which performance is tested and challenged.

◆ **Standards and systems must support LSPs' layered roles**

- Partners need performance measurement and reporting for shared objectives; common data quality standards and mechanisms take time to develop;
- Performance management and influence has developed unevenly across LSP activities, weakening joint working and crowding out some objectives;
- Most LSPs lack mechanisms for assigning mainstream resources towards achieving the goals of the sustainable community strategy (SCS) and the local area agreement;
- Few LSPs have assessed the costs and benefits of joint working;
- National failure to align planning and reporting cycles makes it difficult for local agencies to align performance and resource management systems;
- Governance arrangements should support LSPs' accountabilities to member organisations and through them to local people; and
- There is little evidence that councils are using overview and scrutiny arrangements to hold LSPs and partners to account.

◆ **Comprehensive Area Assessment (CAA) will assess whether local public bodies and their partnerships are contributing to outcomes**

- CAA will focus on how local service providers improve local outcomes, acting as a catalyst for better partnership working; and
- CAA should help LSPs understand their own performance and learn lessons from others.

The full report 'Working better together? Managing local strategic partnerships' can be found at

<http://www.audit-commission.gov.uk/SiteCollectionDocuments/AuditCommissionReports/NationalStudies/20042009workingbettertogetherREP.pdf>

More information about the Comprehensive Area Assessment framework document which was published in February 2009 can be found at <http://www.audit-commission.gov.uk/localgov/audit/caa/Pages/default.aspx>

Home Affairs Committee Publish Knife Crime Report

On 2 June 2009 the House of Commons Home Affairs Committee (HAC) published their report 'Knife Crime' and related oral and written evidence. The HAC stated that the root causes of knife-carrying must be addressed.

The report expressed concerns that a knife 'arms race' was developing and that carrying the weapons has become 'normal' amongst some young people. The HAC found that the prevalence of youths carrying knives was motivated by fear and a lack of faith in the 'natural protectors' who were expected to keep them safe.

The report outlines that an increase in knife crime appears to be related to an increase in group street violence in the poorer areas of large cities.

The key findings of the report are:

- ◆ The number of knife homicides rose by 26.9% between 2005/06 and 2006/07. There were 270 knife homicides in 2007/08 which was the highest total since the Homicide Index was introduced in 1977;
- ◆ Knives were used in 6% of British Crime Survey (BCS) violent incidents in 2007/08. This is estimated to correspond to use in approximately 138,000 robberies, woundings or assaults taking place throughout England and Wales in that year;
- ◆ 5,239 people were admitted to NHS hospitals in England with a stab wound in 2007/08. The number of patients admitted rose by 48% between 1997/98 and 2006/07;
- ◆ The median age of BCS knife victims has declined since 2004/05. Between 2003 and 2007 stab-related hospital admissions for under-16s increased by 62.7%;
- ◆ Penknives and flick knives are most routinely carried but kitchen knives are more frequently used in injuries presenting to hospital;
- ◆ 85% of young people who carry knives claim they do so 'for protection';
- ◆ 21% of people convicted of possessing an offensive weapon were jailed in the last quarter of 2008;
- ◆ More than half of prisoners convicted of knife crime re-offend within a year of release;

- ◆ 5% of young people commit half of all youth crime. The Government estimates that they come from 110,000 high risk families, 20,000 of whom require intensive interventions; and
- ◆ The organisation Kids Count estimates that knife crime costs the state in the region of £1.25 billion per year.

The report recommended that the government adopt a 'public health' approach to prevent long-term violence and early intervention was suggested to address those most at risk due to 'deprivation, lack of family support and exposure to violence in the home'. The use of prison sentences for knife possession was supported by the committee, though it noted 'the failure of custodial sentences to prevent re-offending'.

The House of Commons Home Affairs Committee report 'Knife Crime' Volume 1 can be found at

<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/112/112i.pdf>

and the oral and written evidence (Volume 2) is available at

<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/112/112ii.pdf>

Think Tank Report Advises Government to Look Overseas to Improve Ways of Funding and Monitoring Crime Prevention and Enforcement

A new report published on 11 May 2009 by the think tank Policy Exchange suggests that the Government is inadequately funding and monitoring its crime prevention and enforcement measurements. The report entitled 'Less Crime Lower Costs: Implementing effective early crime reduction programmes in England and Wales' advises policymakers in England and Wales to learn from effective crime prevention programmes used in other countries. The study found that these programmes have also proved to be cost effective.

The report highlights ten crime prevention programmes already proving successful elsewhere as examples of good practice. One of the key areas criticised in the report relates to the funding of crime prevention projects which are described as 'piecemeal and unsustainable'. The criticism of Government indicates that its provision of resources is made on an ad hoc basis and often without funds planned for national expansion.

The Policy Exchange identifies the lack of incentive at local authority level for reducing the use of youth custody due to central government, through the Youth Justice Board, taking financial responsibility of young people entering the criminal justice system.

The report suggests that there are three persisting areas of concern which are:

- ◆ How to extend successful pilot trials;
- ◆ How to deliver the right interventions to the right people; and
- ◆ How to encourage and train local practitioners to use evidence-based interventions to prevent crime.

Gavin Lockhart, head of Policy Exchange's Crime and Justice Unit and one of the report's authors said "After a decade of unprecedented spending on policing, courts and prisons, England and Wales have a recorded crime rate twice that of the European average. Prevention will not replace enforcement. But since the 1970s, in Western Europe and elsewhere, methods have been implemented that have reduced both crime and the costs of crime. We urgently need to do the same in this country."

The full report 'Less Crime Lower Costs: Implementing effective early crime reduction programmes in England and Wales' can be found at http://www.policyexchange.org.uk/images/publications/pdfs/Less_Crime_Lower_Costs.pdf

HMIC Report Early Findings in Delivery of Policing Pledge

On 9 June 2009 Her Majesty's Inspectorate of Constabulary (HMIC) published their report on the introduction of the policing pledge. The report 'Delivering the Policing Pledge: Early Findings' provides insight into the progress made following the implementation of the policing pledge.

The Policing Pledge aims to ensure that the public have responsive policing, placing the 'citizen' at the heart of those services. It amounts to a 'deal' between the police and the public they serve which sets out what the public can expect in terms of fairness, access, local policing, response to calls, support and information for victims, and dealing with dissatisfaction. The overall aim is to drive up satisfaction and ultimately confidence in policing services.

The report presents the findings of HMIC's early testing of the Policing pledge implementation and provides some initial guidance for the public, and police practitioners on how well the service is responding and to clearly signpost areas for development and improvement. The report captures major issues arising from testing of websites, of response to calls, and visits to seven forces.

It is clear from the report that the findings at this stage are mixed. There was considerable enthusiasm and commitment towards delivery of the pledge clearly in evidence. Overall policing in neighbourhoods was also encouraging, with good visibility of and access to neighbourhood teams.

In the following areas of policing the report identifies that there were some 'gaps' including:

- ◆ Meetings held with local people were of a very varied standard;
- ◆ Feedback to victims also emerged as patchy; and
- ◆ Work so far has emphasised the need for partners in local authorities and others to be even more fully engaged to support and secure even higher levels of confidence.

HMIC has now started an inspection of all forty three police forces in England and Wales and a substantial element of their work will be on reality testing the service as experienced by the public. The results of this next phase will be available later this year.

The full report

<http://inspectors.homeoffice.gov.uk/hmic/inspections/thematic/policing-pledge/policing-pledge-early-finds.pdf?view=Binary>

IPCC Publish Latest Learning the Lessons Bulletin

The Independent Police Complaints Commission (IPCC) published their latest 'Learning the Lessons' Bulletin 7 (June 2009) on 19 June 2009. The theme of this bulletin is 'Command and Control' and it provides information on key issues, case summaries, recurring issues and areas of useful policing practice noted during investigations undertaken by the IPCC.

In Bulletin 7 the seven key policing issues identified are:

◆ **Filling the gaps**

During busy periods forces may need to call on all available units to respond, including Police Community Support Officers, specialist units and supervisors where appropriate;

◆ **Getting it right on risk**

All staff need to be equipped to recognise and act on risk;

◆ **Allocating resources**

Officers need to know when an incident has been assigned to them and control rooms need to know when they are available;

◆ **Understanding command roles**

Understanding the responsibilities involved in command roles is vital in planned and spontaneous incidents. The Senior Investigating Officer is responsible for gathering evidence and the Silver Commander is responsible for protecting the public; these roles need to be separate officers to avoid conflict of interest;

◆ **Managing information in missing persons investigations**

The computer systems used can impact on missing person cases;

◆ **Getting help from other forces**

The right procedures for working with other forces can help Investigations; and

◆ **Importance of proper handovers**

Two investigations into the whereabouts of missing persons were affected when the incoming shift was not alerted to relevant information.

Supervisors should check actions are completed and that logs are updated before handing over to the next shift. Handovers should include updates on each missing persons case with information about related risks clearly communicated and documented.

The IPCC identify recurring issues that feature in their investigations. In the latest bulletin these issues include:

◆ **Call handling/control room**

The second phase of HMIC inspection focused on the contribution of police contact centres to delivering effective incident management and resolution. The 'Beyond the Call' report, (published on 29 March 2007), highlights the importance of incident grading, proportionate response, and clear resolution.

◆ **Training for call handling staff**

Lack of training or, in some cases inadequacy of training, for call handling staff was a significant issue;

◆ **Clear understanding of responsibilities**

In cases relating to planned and spontaneous operations, clear separation and understanding of roles and responsibilities is needed;

◆ **Handovers**

The consistency of handovers was a significant issue in two missing persons cases, with no information about the missing person passed on or important information relevant to risk not mentioned; and

◆ **Risk and recording**

Risk and recording are both issues which have featured in previous bulletins and recurred in recent cases.

The latest bulletin also contains areas of useful policing practice found during the course of their investigations which IPCC deem to be worth further consideration and include:

◆ **Maximising use of police resources at critical times**

When no patrols were available to respond to incidents graded 'immediate' or 'high' the controller or call handler marked the log 'no patrols available' and kept the control room supervisor and relevant divisional unit aware of the incident. Unallocated calls were monitored and passed to the Enquiry Bureau who called back the original caller to determine whether the incident had calmed or was no longer ongoing before updating the grading. Dispatchers reassessed resources and developed contingency plans by considering splitting double crewed resources, using cross border patrols, deploying dedicated specialist units or by using Police Community Support Officers;

◆ **Visual recording of operations**

A visual recording of an operation provides the best evidence for any criminal prosecution that may arise and can be used to help family members and the community understand what happened; and

◆ **Recording briefings**

Audio recordings of briefings provide a permanent record of information disseminated, help the disclosure process and provide a useful resource for any investigation if the incident is subject to scrutiny. They can also help to counter accusations of hidden agendas or ulterior motives.

More information about these issues and case summaries can be found in 'Learning the Lessons' Bulletin 7 (June 2009) which is available at http://www.learningthelessons.org.uk/learningthelessonsbulletin_june09_web.pdf

The full HMIC Thematic report 'Beyond the Call' can be found at <http://inspectorates.justice.gov.uk/hmic/inspections/thematic/btc/>

HMIC Advises Forces to Rethink Working Together for Benefit of the Public

A new HMIC report 'Getting Together: A better deal for the public through joint working' published on 11 June 2009 shows that members of the public are not getting a good deal, in terms of crime fighting and financial efficiency, for the substantial amounts of taxpayers' money spent on policing. In the report HMIC challenges police forces in England and Wales to radically rethink the way they operate in order to guarantee that the public receives a high standard of service wherever they live.

The report discloses that police forces with the most effective joint working arrangements across traditional force boundaries are getting the best results on organised crime. HMIC found they mount full-scale operations against four times as many crime gangs, including drug traffickers, compared with forces that do not collaborate. Some forces and authorities spend more than twice as much on human resources as others. Average police spending in this area is above that of the rest of the public sector, where collaboration is more advanced.

There are similar variations in costs for finance services. Some of the 43 police forces in England and Wales also fail to get the best deal from the money they spend each year on procuring goods and services, though the potential for better value is clear and the Association of Chief Police Officers (ACPO) has been working on this. For example, one force saved £144,000 a year alone on DNA sample submissions by taking part in a multi-force forensic collaboration.

The HMIC report argues that these wide variations in operational effectiveness and costs must be reduced. It calls for greater collaboration to make the public safer and get better value for money.

Many forces complained to HMIC of a 'dearth' of information about successful collaboration. This report proposes a robust, transparent, market-style system to help police forces overcome barriers to collaboration. A new 'Informed Choice Model' (ICM) will give senior officers and authorities information on the range of costs and risks and where the best option can be found for the public by collaboration or other means. HMIC believe collaboration works best on a voluntary basis but warns that forces must account for continued variations in crime risks or costs. The ICM provides a five point sliding scale of support for police forces, ranging from the most current information on the benefits of collaborating i.e. 'a nudge', to being mandated to work together when the Home Secretary feels it is the best option for the public. Forces will be required to explain their collaborative work in annual reports and enable the public to judge the cost and quality of policing in their areas.

The full HMIC report 'Getting Together: A better deal for the public through joint working' is available at

<http://inspectors.homeoffice.gov.uk/hmic/inspections/thematic/getting-together-report.pdf/getting-together-report.pdf?view=Binary>

IPCC to Undertake Research into Deaths Following Police Contact

The Independent Police Complaints Commission is seeking information from stakeholders and experts ahead of an in-depth study into deaths in police custody. Over the next 3 weeks, IPCC researchers will be seeking feedback on their research proposal from police organisations, family and complainant groups, statutory bodies and other relevant professionals with an interest in the topic.

The study, due to commence in July 2009, proposes to use completed investigation reports to look at a range of issues, including trends in the data, the use of restraint, the ethnicity of the deceased and the circumstances in which they died, the role of alcohol and drugs in deaths, mental health, and how the detainees were risk assessed. The study will examine cases spanning a ten year period from 1998 up to March 2009.

In particular, the research team is keen for respondents to address three key questions:

- ◆ What is missing from the proposal?
- ◆ What are the most important issues for this study to examine?
- ◆ Are there other sources of information that this study should consider?

Those wishing to see the research proposal and provide feedback are asked to contact the IPCC Research Team on enquiries@ipcc.gsi.gov.uk

More information about deaths in police custody is available at http://www.ipcc.gov.uk/index/resources/research/reports_polcustody.htm

Closer Integration of Neighbourhood Policing and Neighbourhood Management

The recent Flanagan Review of Policing (see *NPIA Digest* March 2008, pp40-47) identified the need for neighbourhood policing to be more closely integrated with neighbourhood management. In order to progress this outcome the National Policing Improvement Agency working alongside the Improvement and Development Agency for Local Government (IDeA) has identified twelve 'Exemplar Sites', each offering joint service delivery solutions in a range of formats, and covering a cross-section of the neighbourhood areas in England and Wales.

The twelve 'Exemplars' will provide a practical and supporting role to other areas. Over the next 12 months each site has agreed to share their experiences and knowledge of neighbourhood management with neighbourhood policing teams and crime and disorder reduction partnerships from across the country. As well as being available via email and phone to assist with queries, site visits can be arranged to the 'Exemplar Sites' so that other areas can learn directly from those sites. Throughout the year the initiative will be promoted to community safety partnerships, neighbourhood managers and neighbourhood policing teams.

Further information is available at <http://www.npia.police.uk/en/13314.htm>

The final report of the Flanagan Review of Policing is available at http://police.homeoffice.gov.uk/publications/police-reform/Review_of_policing_final_report/

Home Office Publish Research Findings on Neighbourhood Policing

On 11 June 2009 the Home Office published Research Report 14 entitled 'Findings from the second year of the national Neighbourhood Policing Programme evaluation'.

Neighbourhood policing (NP) was initially piloted in sixteen wards as part of the National Reassurance Policing Programme (NRPP). Following the success of this pilot the three-year Neighbourhood Policing Programme (NPP) was officially launched in April 2005. This report summarises findings from the second year of national implementation. The analysis measures the impact of the NPP on key outcome measures at Police Force Area (PFA) and Basic Command Unit (BCU) level.

The results showed some positive changes at BCU level but not at PFA level. None of these changes were statistically significant. The report discusses reasons for the lack of change, including: implementation issues (as identified by Her Majesty's Inspectorate of Constabulary); and potential shortcomings in the 'whole programme' evaluation design.

The Key implications of the report are:

- ◆ Neighbourhood policing was initially piloted at a ward level as part of the National Reassurance Policing Programme between October 2003 and March 2005. Following the success of this pilot, the three-year Neighbourhood Policing Programme (NPP) was officially launched in April 2005, with every neighbourhood in England and Wales having a dedicated neighbourhood policing team by April 2008;
- ◆ The primary aims of the NPP were to increase confidence and satisfaction, reduce the fear of crime and resolve local problems of crime and anti-social behaviour;
- ◆ Results from the first year ('Year 1') of the NPP were inconclusive in terms of impact: although there were some positive changes in selected outcome measures, these were not statistically significant;
- ◆ Analysis of the Year 2 data focused on the impact of neighbourhood policing on key outcome measures at Basic Command Unit (BCU) and Police Force Area (PFA) level. Overall, there was some evidence that neighbourhood policing was beginning to have a positive impact on outcome measures at BCU level, but none of the changes were statistically significant. No positive changes were found at PFA level;
- ◆ The lack of significant change may be a result of the early stage of implementation covered by the analysis (the second year of a three-year

programme) when implementation of neighbourhood policing was neither comprehensive or consistent;

- ◆ This is reflected in the HMIC thematic report 'Serving Neighbourhoods and Individuals' which found that forces have not yet fully implemented the 'problem-solving' aspect of neighbourhood policing. It is likely that all three neighbourhood policing 'delivery mechanisms' (visibility, community engagement and problem solving) need to be delivered together in the right 'dose' before improvements are realised; and
- ◆ Neighbourhood policing is deliberately designed to be responsive to the individual needs of local communities. As a result, it might not be possible to identify the impact of a diverse locally delivered programme such as this, using a national-evaluation approach. Another type of evaluation with a more qualitative, local focus may be better suited to measuring the impact of the NPP.

A summary of Home Office Research Report 14 'Findings from the second year of the national Neighbourhood Policing Programme evaluation' can be found at <http://www.homeoffice.gov.uk/rds/pdfs09/horr14b.pdf>

IPCC Public Confidence Survey Published

The Independent Police Complaints Commission (IPCC) published its 2008 Public Confidence Survey on 23 June 2009. The measurement of the levels of public confidence in the policing complaints system goes to the heart of the IPCC's existence. Achieving the confidence of the public in the work of the IPCC and in the wider policing complaints system are an integral factor in how the IPCC measures its success, accountability, use of resources and how it looks at areas for improvement.

In order to measure trends in public confidence concerning the complaints system the survey asked a representative sample of the general population about the following:

- ◆ Contact with the police;
- ◆ Willingness to complain;
- ◆ Barriers against complaining;
- ◆ Ways in which members of the public may wish to complain; and
- ◆ Awareness of the IPCC.

The study found that perceptions of the police heavily influenced perceptions of the complaints procedure in general and the likelihood of making a complaint in particular. The groups that tended to have more frequent and adversarial contact with the police tended to have the lowest levels of trust, and as such were the least willing to complain about inappropriate behaviour. Conversely those that had the least amount of contact had much higher expectations of police behaviour and were therefore more willing to complain about a range of potential misconduct.

In the 2008 public confidence survey 88% of respondents said that they thought the IPCC would treat a complaint against police fairly. In BME communities this assertion has seen a marked improvement, rising from 71% in 2007 to 77% in 2008.

The key findings of the survey include:

- ◆ 66% (64% in 2007 and 62% in 2004) of people had heard of the IPCC;
- ◆ 68% (64% in 2004) thought the IPCC was independent of the police; and
- ◆ 65% (67% in 2007 and 65% in 2004) were very or fairly confident that the IPCC deals with complaints in an impartial way.

The results of the survey indicated that there are pockets of the population that the IPCC must focus on engaging with. IPCC recognise that this is a key factor when it comes to building trust and confidence, not just in the IPCC, but in the complaints system as a whole. As part of IPCC's 'guardianship' role, this is not just about how the IPCC responds to specific investigations or cases, but about its interaction with communities, stakeholders, policing authorities and families who feel most affected by the policing complaints system and the wider criminal justice system as a whole.

The IPCC Public Confidence Survey 2008 results can be found at http://www.ipcc.gov.uk/index/resources/research/public_confidence.htm

Justice Report on Secret Evidence Coincides with Control Orders Ruling

The House of Lords has ruled unanimously in the case of *AF & Others v Secretary of State for the Home Department* that the use of secret evidence against control order suspects in situations where they did not know the case against them was unfair. A panel of nine law lords ruled that unless a suspect was given “sufficient information about the allegations against him to enable him to give effective instructions to the special advocate” there would be a breach of Article 6 of the ECHR. Lord Phillips, the senior law lord said: “a trial procedure can never be considered fair if a party to it is kept in ignorance of the case against him”.

The judgement coincides with the release of a report by the independent legal human rights group, Justice, which shows the growth of secret evidence in British courts over the past decade. The report entitled ‘Secret Evidence’ sets out recommendations for the reform of the current law and procedure in order to guarantee that all defendants are able to know the evidence against them.

The full report can be found at
<http://www.justice.org.uk/inthenews/index.html>

The full judgment for this case is available at
<http://www.publications.parliament.uk/pa/ld200809/ldjudgmt/jd090610/af-1.htm>

Law Commission Consultation on Admissibility of Expert Evidence

The Law Commission has launched a consultation exercise on the admissibility of expert evidence in criminal cases. The publication of the consultation paper ‘Admissibility of Expert Evidence in Criminal Proceedings in England and Wales (A New Approach to the Determination of Evidentiary Reliability)’ seeks views on proposals to reform the law which governs the admissibility of expert evidence in criminal cases.

The consultation aims to address issues relating to admissibility and understanding of expert evidence and the approach which should be adopted for scientific, or purportedly scientific, evidence tendered for admission in Crown Court jury trials.

The Law Commission has set out provisional proposals for a new approach to determining the evidentiary reliability of expert evidence which includes:

- ◆ That there should be a new statutory test which would apply whether the evidence is tendered by the prosecution or by the accused;
- ◆ This test would provide that expert evidence is admissible only if the court is satisfied that the evidence is sufficiently reliable to be admitted; and
- ◆ In determining whether or not the test is satisfied, the magistrates or Crown court would in all cases have to refer to a statutory list of guidelines for assistance.

With a view to resolving other issues associated with expert evidence, the Law Commission recommends the following measures including:

- ◆ A more robust approach to the accreditation and regulation of expert witnesses, whether called by the prosecution or defence; and
- ◆ A disclosure process allowing all parties to screen their opponents' expert witnesses in advance of the trial.

The consultation period ends on 7 July 2009. The consultation paper 'Admissibility of Expert Evidence in Criminal Proceedings in England and Wales: A New Approach to the Determination of Evidentiary Reliability' can be found at <http://www.lawcom.gov.uk/docs/cp190.pdf>

Report Assesses Professionals' Response to Trafficked Children

On 17 June 2009 a new report 'Breaking the wall of silence: Practitioners' responses to trafficked children and young people' was published by the NSPCC and the University of Bedfordshire. The report finds that trafficked children are suffering from abuse as professionals struggle to identify them.

The research looked at 37 cases of trafficked children and spoke to 72 different children's professionals in three areas of England to assess how they respond to the challenge of helping young victims of trafficking. The authors state that the research describes a "tangible level of confusion" among children's services staff about a definition of trafficking and how to apply it to the young people in their care.

Professor Jenny Pearce, University of Bedfordshire, said "Trafficking is not just about children from abroad being brought into this country. It can include British children and young people being trafficked within the UK. Some victims are sexually exploited but other forms of abuse may be involved. Children can be victim to an overlapping combination of abuse including criminal activity, domestic servitude, benefit fraud and forced labour, stealing or begging. There is no typical profile for a trafficked girl or boy, or young man or woman. Even how old they seem can be misleading - many trafficked children have grown old beyond their years after experiencing abuse and maltreatment. Keeping these variables in mind is so important for practitioners to help them identify victims."

The study highlights the need for skilled, trained interpreters and specialist trained and supported foster carers who are aware of the potential health needs of trafficked children and of the manipulation and violence they may have suffered.

The report recommends that:

- ◆ Separated children, who arrive into the UK without their parents, are given a key worker to support them upon arrival;
- ◆ Border officials should supply leaflets which children can understand about what trafficking is and detailed information about where they can seek help;

- ◆ All professionals are trained to identify and record indicators of trafficking so to help bring traffickers to justice;
- ◆ Local Safeguarding Children Boards (LSCBs) should develop more effective recording and monitoring of cases to build a national picture of where children are being trafficked from, to and for what purpose; and
- ◆ LSCBs should train their staff about trafficking and to establish sub-committees which focus on the safeguarding of trafficked children in their area.

The full report 'Breaking the wall of silence: Practitioners' responses to trafficked children and young people' is available at http://www.nspcc.org.uk/Inform/research/Findings/breaking_the_wall_of_silence_wda65628.html

'Short Study of Women Offenders' Published

A joint project between the Ministry of Justice and the Social Exclusion Task Force of Cabinet Office resulted in the publication on 20 May 2009 of their report 'Short Study of Women Offenders'. The report brings together existing data and new analysis on women offenders, highlighting the complexity of women offenders' needs, and draws out opportunities for further improvement in systems and support.

The report's key findings include:

- ◆ Women in prison represent a small proportion of the number of female offenders who pass through the criminal justice system each year. The majority of women offenders are young, are imprisoned for non-violent offences and serve very short sentences;
- ◆ Women offenders have a broad range of complex problems. They report high rates of mental health disorders, victimisation, abuse, and substance misuse. Most are low skilled and have little experience of employment. Though broadly similar, these needs diverge from those of male offenders in important ways;
- ◆ The majority of women offenders are estimated to be mothers, though there is no definitive information relating to the children of offenders. New analysis shows that children with mothers who have been in trouble with the law are at greater risk of poor outcomes such as poor parental interactions, anti-social behaviour and emotional problems;
- ◆ By the time they reach prison, the complexity of women offenders' needs is likely to have been compounded; their offending behaviour may escalate, problems can be entrenched, and outcomes of the whole family can be affected;
- ◆ Progress has been made since the publication of the Government's response to Baroness Corston's Report. There are a range of existing disposals, pilot initiatives and systems reforms underway;

- ◆ It is crucial that support is designed to fully identify and meet the complex and interrelated needs associated with social exclusion and address the underlying causes of offending behaviour; and
- ◆ There may be great value in complementing existing provision with earlier, intensive and tailored support.

The full report 'Short Study of Women Offenders' can be found at http://www.cabinetoffice.gov.uk/media/209663/setf_shortstudy_women_offenders.pdf

Report Suggests Little Evidence of Success for Tough Action on Knife Crime

On 10 June 2009 a report published by the Centre for Crime and Justice Studies suggests that there is little evidence to support police-led interventions to tackle knife violence.

Following a wide-ranging review of gun and knife crime strategies by the authors, the report 'Young people, knives and guns: A comprehensive review, analysis and critique of gun and knife crime strategies' concludes that a 'zero tolerance' approach to weapon possession 'is ineffective in reducing crime or changing attitudes' among young people. The report is a revised version of research funded by 11 Million, the organisation led by the Children's Commissioner for England which was published by on 15 March 2009 (see *NPIA Digest* April 2009 pp31-33).

The report also casts doubt on the effectiveness of stop and search tactics and suggests 'that police actions alone are unlikely to have a major impact on the carrying of knives'. The authors comment that during the research they were struck by how weak they considered the evidence base was for current, police-led interventions for tackling gun and knife violence involving young people. Whilst the research does not prove that such police-led interventions do not work they contend that there is no sound basis for believing that they have any long term impact.

The key findings of the research are:

- ◆ Focusing on the weapons themselves, rather than the underlying causes of violence, can become something of a distraction. Gun and knife crime need to be viewed in context, as expressions of wider phenomena of youth disaffection and violence. Violence is a complex product of inter-related individual, family, social, biological and environmental factors;
- ◆ Effective interventions appear to be holistic, engaging with the big questions of disadvantage and social exclusion, as well as addressing individual, familial and neighbourhood problems; and
- ◆ Multi-agency, integrated strategies that are locally based and combine various approaches to prevention and suppression have proved more successful (at least as regards juvenile gun violence in the US) than enforcement-led interventions by agencies operating in isolation.

The full report 'Young people, knives and guns: A comprehensive review, analysis and critique of gun and knife crime strategies' can be found at http://www.crimeandjustice.org.uk/opus1638/Young_people_knives_and_guns.pdf

Suffolk Launch Evidential Drugs Testing Process

A major programme within the National Policing Improvement Agency's Police Science and Forensics Unit, Forensics21, is seeing the results of its work on the Evidential Drug Identification Testing (EDIT) process, as Suffolk Police launch EDIT.

Allowing more officers to use EDIT drugs testing kits is set to save Suffolk thousands of pounds in forensic submission costs as they become one of the first forces in England and Wales to adopt the new programme. Until now, drugs found on someone arrested who did not admit the offence would have to be sent off for testing; meaning delays and costs while officers waited for the official result. Under the new EDIT process, officers who have been trained can get an immediate result that can be used as evidence in a possession case at a magistrates' court. More than 30 police officers and staff from the Suffolk Police's Offender Management Units and District Support Teams have been trained to carry out the tests.

For information on EDIT contact forensics21@npia.pnn.police.uk

Tackling Alcohol Harm: Report Identifies Potential Use of Initiatives from Other Fields

The Joseph Rowntree Foundation published its report 'Tackling alcohol harm: lessons from other fields' on 31 May 2009. This report examines how initiatives successfully used in other fields can help inform new strategies for tackling alcohol related harm.

The authors found that there was a need to change attitudes, knowledge and behaviour relating to alcohol in the UK. The report presents seven case studies, each telling the story of an initiative designed to bring about attitudinal, behavioural or policy change, for example promoting environmental sustainability or youth smoking prevention. This approach provides a unique insight into how the application of new thinking may help to reduce harmful drinking patterns.

The report includes:

- ◆ Details of approaches or initiatives that have attempted to change attitudes and behaviours in non-alcohol areas;
- ◆ Examination of the aims, theoretical rationale, methods, targeting, processes and effectiveness of each approach or initiative; and
- ◆ An account of how policy and practice can have an impact on attitudes and behaviours and examination of lessons that can be used to tackle alcohol harms in the UK.

The key findings of the report are:

- ◆ Changing attitudes, behaviour and policy requires long-term commitment, sometimes lasting a generation or more. Issues such as HIV/AIDS and smoking prevention cannot be tackled once and then forgotten about. Organisational and financial support also needs to be long-lasting;
- ◆ Problems such as unsustainable transport use, HIV/AIDS and overconsumption of alcohol are not just an issue for minority groups but a challenge for society as a whole. Adopting a society-wide perspective encourages broad ownership of a problem and collective responsibility for tackling it;
- ◆ Successful initiatives often involve multiple approaches, such as awareness-raising, education, legislation and continued support for behaviour change;
- ◆ Changing behaviour often means changing social norms - as well as providing support for not engaging in risky behaviour. Changing the way the public sees a problem can increase buy-in and also encourage greater self-reflection;
- ◆ Good initiatives are built on an understanding, through research, of the target group's attitudes, values and needs;
- ◆ Good initiatives analyse and address 'competition' to the desired behaviour or policy change;

- ◆ Messages and appeals based on humour, empathy and realism may be as or more effective than messages based on fear and shock; and
- ◆ Overall, the cases give cause for optimism regarding ways forward in relation to alcohol, confirming much of public health learning but also generating new ideas such as competitive analysis, strategic planning and avoiding short-termism. The case studies covered: HIV/AIDS, smoking in public, sustainable transport use, youth smoking, gambling, speeding, and mental health of gay and lesbian youth.

The full report 'Tackling alcohol harm: lessons from other fields' can be found at <http://www.jrf.org.uk/sites/files/jrf/alcohol-attitudes-behaviour-full.pdf>

Report Highlights Impact of Alcohol Misuse on London's Young People

In the first comprehensive assessment of the drinking habits of the capital's young people undertaken by the London Assembly, their report 'Too much too young? Alcohol misuse among young Londoners' reveals that although they drink less than their peers elsewhere in the country, more than a third of young Londoners are regular drinkers. The report published by the Assembly Health and Public Services Committee on 16 June 2009 states that the consequences are of serious concern.

The report found that almost 2,000 young people in the capital are receiving specialist treatment for alcohol dependence. Alcohol-related hospital admissions have almost doubled in recent years and calls to the London Ambulance Service relating to young people drinking have increased by 27% in four years.

The research identified some worrying statistics about young Londoners' drinking habits including:

- ◆ Young women aged 11-15 are drinking more heavily and now have drinking habits similar to those of their male peers. Hospital admissions for these young women are almost double those for men of the same age because of their lower tolerance of alcohol;
- ◆ There has been a substantial increase in the proportion of young people from Pakistani and Bangladeshi communities who drink. Monitoring by the Greater London Alcohol and Drugs Alliance has been proposed on the drinking patterns of young Londoners between 2009 and 2012 to establish whether this is an ongoing trend; and
- ◆ There is a wide variation in drinking habits across the capital with young people living in outer London more likely to drink and get drunk than those in inner boroughs.

The investigation found a lack of senior leadership both locally and regionally meaning that efforts to tackle the problem are not always effectively prioritised or co-ordinated. To address this, the Committee believes the Mayor and local leaders need to focus more effort on tackling alcohol. The report recommends that local alcohol-harm reduction champions should be appointed

in boroughs where alcohol-specific hospital admissions for young people, currently Kingston and Sutton, are higher than the national average.

The Committee makes recommendations in key areas to help reduce the harm alcohol can cause, including:

- ◆ Reducing the supply of alcohol to under 18s;
- ◆ Improving education and information; and
- ◆ Helping young people who are misusing alcohol.

The full report 'Too much too young? Alcohol misuse among young Londoners' can be found at

<http://www.london.gov.uk/assembly/reports/health/alcohol-misuse.pdf>

The London borough breakdowns and key facts about the report are available at

<http://www.london.gov.uk/assembly/reports/health.jsp#alcohol-misuse>

Modernisation of Licensing of Dangerous Wild Animals Introduced

On 17 June 2009 the Department for Environment, Food and Rural Affairs (Defra) announced the introduction of new measures to modernise the licensing and inspection of the private keeping of dangerous wild animals. The changes aim to reduce red tape for local authorities and animal keepers and to increase support for and compliance with the legislation, and maintain public safety and animal welfare.

The new measures will maintain the restrictions on owning dangerous animals and will also allow local authorities, who administer and enforce the Dangerous Wild Animals Act 1976, to better target inspections of premises where wild animals are kept. New guidance for local authorities and wildlife keepers is to be published by Defra.

The key amendments to the Dangerous Wild Animals Act 1976 include:

- ◆ No mandatory requirement for inspection for certain replacement licences, to allow targeting of inspections where there may be concerns. Local authorities will still be able to make inspections whenever required;
- ◆ Validity of a licence extended from a maximum of one year to two years; and
- ◆ Licences will come into force immediately upon being granted.

The amendments are expected to come into force from October 2009. A public consultation on the proposed amendments to the Dangerous Wild Animals Act 1976 was held and a Summary of Responses is available at <http://www.defra.gov.uk/corporate/consult/wildanimalsact/>

The full press release can be found at

<http://www.defra.gov.uk/news/2009/090617b.htm>

For further details about the Dangerous Wild Animals Act 1976 visit

<http://www.defra.gov.uk/wildlife-countryside/protection/dwaa/>

IPPR Report Calls for Action to Make Roads Safer

The publication of a new report entitled 'Make Roads Safe: A decade of action for road safety' on 16 June 2009 endorsed by the world's leading road safety experts, urges UN governments to support a global 'Decade of Action for Road Safety' with the aim of reducing the predicted global level of road fatalities by 50% by 2020. The campaign launch was organised jointly by the Make Roads Safe campaign, the Institute for Public Policy Research (IPPR) and the Parliamentary Advisory Council for Transport Safety.

The full report 'Make Roads Safe: A decade of action for road safety' can be found at

http://www.makeroadssafe.org/publications/Documents/decade_of_action_report_lr.pdf

There is more information about the global campaign to Make Roads Safe at <http://www.makeroadssafe.org/Pages/home.aspx>

Highways Agency Launch Website to Help Hauliers to Move 'Abnormal Loads'

On 22 June 2009 the Highways Agency launched phase 3 of the Electronic Service Delivery for Abnormal Loads (ESDAL) service. ESDAL is a free website that will enable hauliers to save time and administration costs by notifying 'abnormal load' movements to the relevant structure owners and the Police.

Phase 3 of ESDAL will store each notification and proposed route and enable the appropriate agencies to assess the route through the ESDAL website.

More information on ESDAL is available at

https://www.esdal.com/public-4-001/index.html;jsessionid=mbztYv_ugmcqZiUZvKZhHg**.EPFO1

Case Law



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

Conviction for Converting Criminal Property Upheld Where Defendant Allowed Another to Pass Money Through His Account

R v MOHAMMED YASSEN FAZAL (2009)

**CA (Crim Div) (Rix LJ, Griffith Williams J, Recorder of Cardiff)
9/6/2009**

Criminal Law - Fraud

Bank Accounts: Conversion: Deposits: Fraud: Mens Rea: Property: Criminal Property Converted Through Bank Account By Agent: Criminality Of Owner Under S.327 Proceeds Of Crime Act 2002: S.327(1)(C) Proceeds Of Crime Act 2002

A conviction for seven counts of converting criminal property contrary to the Proceeds of Crime Act 2002 s.327(1)(c) was upheld as, even though someone else had made the deposits, the offender had given his full co-operation throughout the period of the conversions.

The appellant (F) appealed against his conviction on seven counts of converting criminal property contrary to the Proceeds of Crime Act 2002 s.327(1)(c). Seven deposits had been made into F's bank account, which were the proceeds of fraud. F stated that he had given his bank details, debit card and pin to a friend who had needed to use it to have his wages paid into it. He stated that he survived on a small amount of cash from his parents and did not use the account. F submitted that the case should have been withdrawn from the jury as there was no evidence that he had converted the money. He argued that the Crown's case against him was that he had facilitated the conversion by allowing his account to be used to receive stolen money, not that he had lodged or withdrawn the money himself, nor that he had any knowledge of the origin of the money. In the alternative F contended that, since the lodging and/or withdrawal was done by others it amounted to joint enterprise but no reference was made in the indictment and it was therefore unfair.

HELD

(1) A person might lodge, receive, retain and withdraw money from his account and each would amount to a conversion. By asking or allowing

some other agent, who may or may not have had the required mens rea, the owner was not prevented from converting money through that account. When the money was withdrawn from F's account it was transferred into cash. Therefore, at each stage the property concerned was passed through F's account, thereby being converted. The reference to converting criminal property was not far removed from the nature of the civil tort of conversion. That was a strict liability offence, which required no mens rea, but it did involve dealing with someone else's property so as to question, deny or interfere with the owner's title to it. When the money was lodged and credited to F's account, and retained and withdrawn, it was all with F's full co-operation.

- (2) F knew the case against him. Subject to lack of mens rea his case on the facts was clear from his own evidence. His defence was that he lacked the necessary knowledge or suspicion, but the jury was against him.

APPEAL DISMISSED



This Case Report was published with kind permission of Lawtel <http://www.lawtel.com>

Confiscation Orders Cannot be Made Against Offenders Who Receive an Absolute or Conditional Discharge

R v JOSEPH CLARKE (2009)

CA (Crim Div) (Hooper LJ, Cox J) 12/6/2009

Criminal Procedure - Sentencing

Absolute Discharge: Conditional Discharge: Confiscation Orders: Crown Court: Proceeds Of Crime: Power Of Crown Court To Make Confiscation Order Following Absolute Or Conditional Discharge: S.327 Proceeds Of Crime Act 2002: S.12 Powers Of Criminal Courts (Sentencing) Act 2000: S.12(1) Powers Of Criminal Courts (Sentencing) Act 2000: S.6 Proceeds Of Crime Act 2002: S.12(7) Powers Of Criminal Courts (Sentencing) Act 2000: S.14 Powers Of Criminal Courts (Sentencing) Act 2000

The Crown Court had no power to make a confiscation order against an offender that had been convicted of an offence and had received a conditional or absolute discharge under the Powers of Criminal Courts (Sentencing) Act 2000 s.12.

The appellant (C) appealed against a confiscation order made against him in the Crown Court. C had pleaded guilty to concealing criminal property contrary to the Proceeds of Crime Act 2002 s.327. He was conditionally discharged for a period of two years, pursuant to the Powers of Criminal Courts (Sentencing) Act 2000 s.12. By virtue of s.12(1) it was appropriate to order a conditional discharge where having regard to the nature of the offence or the character of the offender it was inexpedient to inflict punishment. C was made subject to a confiscation order, pursuant to s.6 of the 2002 Act, and was ordered to pay within three months or to serve three months' imprisonment in default. The issue in the case was whether the Crown Court had the power to make a confiscation order against an offender following conviction for an offence if the offender had received an absolute or conditional discharge for that offence. C submitted that a confiscation order amounted to punishment and therefore it was not possible to make a confiscation order having found that it was inexpedient to inflict punishment. He argued that although s.12(7) explicitly stated that nothing in s.12 prevented a court, on conditionally discharging an offender, from making various punishment orders, s.12(7) did not include confiscation orders.

HELD

- (1) The Crown Court had no power to make a confiscation order in the circumstances. An amendment to the predecessor of s.12(7) of the 2000 Act gave the courts power to make specific punitive orders following the conditional or absolute discharge of an offender. The amendments were made in light of the decisions in *R v Savage (Julie)* (1983) 5 Cr App R (S) 216 CA (Crim Div) and *R v Young (Vincent John)* (1990-91) 12 Cr App R (S) 279 CA (Crim Div), which held that the making of punitive orders was inconsistent with the decision that it was inexpedient to inflict punishment, *Savage* and *Young* applied. Although the power to make confiscation orders was in force at the time, no reference was made to such orders in

the amendment. The relevant sections of the 2000 Act were relatively unchanged from its predecessor. There was no doubt that confiscation orders under s.6 of the 2002 Act constituted punishment. Therefore, the making of a confiscation order was inconsistent with a finding that it was inexpedient to inflict punishment, *Savage and Young* applied. Section 12(7) of the 2000 Act made no reference to confiscation proceedings and there was no reference to absolute or conditional discharges in the 2002 Act, but the 2000 Act had amended a number of other statutory provisions to refer to s.12 and s.14 of the 2000 Act. The legislature had well in mind the need to make provision for the consequences of making absolute and conditional discharge orders, and the absence of any reference to confiscation proceedings in s.12(7) was telling, *R v Longworth (Gary Dean)* (2006) UKHL 1, (2006) 1 WLR 313 applied. If Parliament had wanted to include confiscation orders within the 2000 Act or its predecessor, it could easily have done so.

APPEAL ALLOWED



This Case Report was published with kind permission of Lawtel <http://www.lawtel.com>

A Conviction Based Solely on Hearsay Evidence Did Not Breach ECHR Right to a Fair Trial as Criminal Justice Act 2003 Provisions were Observed

R v (1) MICHAEL CHRISTOPHER HORNCastle (2) DAVID LEE BLACKMORE: R v (1) ABIJAH MARQUIS (2) JOSEPH DAVID GRAHAM: R v DAVID MICHAEL CARTER (2009)

CA (Crim Div) (Thomas LJ, Hughes LJ (V-P), Penry-Davey J, Irwin J, Wynn Williams J) 22/5/2009

Criminal Evidence - 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: Criminal Justice Act 2003: Art.6 European Convention On Human Rights: Art.6(3)(D) European Convention On Human Rights: S.124 Criminal Justice Act 2003: S.125 Criminal Justice Act 2003

Provided the provisions of the Criminal Justice Act 2003 were observed, so that hearsay evidence was demonstrably reliable or its reliability could properly be tested and assessed, there was no breach of the European Convention on Human Rights 1950 art.6, and in particular art.6(3)(d), if a conviction was based solely or to a decisive degree on hearsay evidence admitted under the Act.

In conjoined appeals, the court was required to examine the proper approach to hearsay evidence and its compatibility with a defendant's rights under the European Convention on Human Rights 1950 art.6. In the first appeal, a witness was dead, but had made a full written statement before he died. In

the second, a witness, who again had made detailed statements, had refused to attend because she was frightened for her safety, indeed for her life, if she did. In the third appeal, what was sought to be introduced as evidence was the product of business records in a large public company. In each case, the admission and use of the hearsay evidence was governed by the provisions of the Criminal Justice Act 2003. Each of the appellants were convicted. The European Court of Human Rights (ECHR), sitting as a chamber, subsequently held, by its decision in *Al-Khawaja v United Kingdom* (26766/05) Unreported January 20, 2009 ECHR (which concerned admissions of a statement of evidence of a deceased witness and the statement of evidence of a witness too fearful to attend trial), that there had been a breach of the European Convention on Human Rights 1950 art.6 where convictions had been based to a sole or decisive degree on statements which defendants had had no opportunity of challenging. The United Kingdom government requested that that decision be referred to the Grand Chamber. The principal argument raised by the appellants was that, in consequence of the decision in *Al-Khawaja*, the admission of hearsay evidence meant that their convictions involved an infringement of the right to a fair trial under art.6, and in particular a breach of art.6(3)(d), as they were based solely or to a decisive degree on the hearsay admitted as evidence, and that their convictions were, accordingly, unsafe. The critical questions to be determined concerned to what extent the specific rights set out in art.6(3)(d) were absolute, or could be qualified, provided the overriding principle that a criminal trial had to be fair to the accused and his rights respected was observed, and whether art.6 required the line as to the admissibility of hearsay (against a defendant) to be drawn at the point at which such evidence was to be classified as the "sole or decisive" evidence or whether the ECHR permitted it to be drawn in the manner enacted by Parliament in the 2003 Act.

HELD

- (1) The admissibility of evidence was a matter for the national court. The primary role of the ECHR was to determine whether, overall, a trial was fair. It was necessary to distinguish between cases of anonymous witnesses and identified but absent witnesses. The Act was concerned with identified but absent witnesses: it did permit the admission of the evidence of anonymous witnesses, to whom different considerations applied. Where the evidence before the court was that of an identified but absent witness, there was no reason for a further absolute rule that no counterbalancing measures could be sufficient where the statement of the absent witness was the sole or decisive evidence against the defendant. That would include cases where the hearsay evidence was demonstrably reliable, or its reliability was capable of proper testing and assessment, thus protecting the rights of the defence and providing sufficient counterbalancing measures. There were a number of considerations leading to the conclusion that there neither was nor should be a rule that counterbalancing measures could never be sufficient where the evidence was sole or decisive: (i) such a requirement was rejected by the Law Commission and by Parliament in framing the Act; (ii) the code set out in the Act provided rigorous conditions for admissibility; (iii) explicit provisions were made which enabled the defence to test the credibility and reliability of the evidence by s.124 of the Act; (iv) such a rule had

principled and practical objections: the essential considerations were whether there was a justifiable reason for absence and whether the evidence could be assessed and tested so that it was safe to rely upon it, a consideration which the ECHR had not fully considered; (v) s.125 of the Act provided an overriding safeguard which went to the essence of the evidence so admitted: its reliability; (vi) the difficulties facing a defendant when an application was made to admit hearsay evidence were well understood by the courts of England and Wales and the statutory conditions in the Act were rigorously applied; (vii) the decision of the ECHR in *Al-Khawaja* did not justify the court from departing from its prior decisions as to the admission of hearsay evidence, *Al-Khawaja* considered.

- (2) In the first and second appeals, the appellants had received a fair trial, their rights were respected and there was ample evidence to support their convictions. In the third appeal, however, the judge had made a material misdirection in failing to direct the jury sufficiently so as to explain the use that might be made of the document which was admitted as hearsay evidence: without such direction, the conviction could not be regarded as safe and was quashed.

FIRST AND SECOND APPEALS DISMISSED, THIRD APPEAL ALLOWED



This Case Report was published with kind permission of Lawtel <http://www.lawtel.com>

Statement Made by Convicted Co-Accused to Reduce Sentence Implicating Acquitted Co-Defendants was Not 'Compelling' New Material

R v JB (2009)

CA (Crim Div) (Hughes LJ (V-P), Openshaw J, Holroyde J) 14/5/2009

Criminal Evidence

False Statements: Fresh Evidence: Informers: Reduction Of Sentence: Reliability: Self-Interest: Reliability Of Fresh Evidence From Informant Former Co-Accused: Effect Of Self-Interest And Past False Statements: S.74 Serious Organised Crime And Police Act 2005

An application by the Crown to quash the acquittal of an offender for dangerous and violent offences and to order a retrial was refused, as the evidence relied on by the Crown was from a former co-accused who had a self-interest in making a statement against the offender as he had agreed a reduction in his sentence. The co-accused had told fluent lies in the past and still did not accept his part in the crime; therefore his evidence was not reliable.

The Crown applied under the Criminal Justice Act 2003 s.76 to quash the acquittal of an offender (B) for dangerous and violent offences and to order a retrial. B had been tried with two co-accused who were both convicted. One of the co-accused (E) made an agreement with the prosecution under the

Serious Organised Crime and Police Act 2005 s.74, to make statements implicating B in the planning of the offence and confirming his presence at the scene, in return for a reduction in his sentence. The Crown submitted that the evidence was perfectly capable of being true notwithstanding the fact that E was a co-accused and had made an agreement for a reduction in his sentence in return for making a statement.

HELD

The evidence advanced was from a former co-accused. It was new evidence that was not available at trial and substantial evidence as it placed B at the scene and described his participation. It also went to the issue in the trial. However, the issue was whether it was reliable and highly probative. If it was reliable and true, it was highly probative. There was no doubt that such evidence could be capable of being reliable, especially before the start of a trial, where it would form a strong case. However, that was not so in the instant case. Parliament's intention with regard to s.76 of the 2003 Act was clear from the word "compelling". The Director of Public Prosecutions stated that he would only proceed with an application where a conviction was highly probable and an acquittal perverse. The court was not bound by that approach but it was directly consonant with the statute, *R v A* (2008) EWCA Crim 2908, (2009) 2 All ER 898 applied. The question was not whether the evidence might be reliable; it was whether it was reliable. Although the instant evidence was capable of being true, it fell far short of being true. E had a powerful self-interest in making the statement as he hoped to achieve a reduction in his sentence, and in the statement E sought to minimise his role and stated that it had been B who had taken the active role. It did not amount to an admission of his guilt, regardless of the fact that he had been convicted. On other facts such evidence might be reliable but in the circumstances, where E's past evidence had been characterised by fluent lies, it was not.

APPLICATION REFUSED



This Case Report was published with kind permission of Lawtel <http://www.lawtel.com>

Trial by Judge Alone Without a Jury Ordered Where Danger of Jury Tampering and Subversion of Trial was Very Significant

R v T: R v B: R v C: R v H (2009)

CA (Crim Div) (Lord Judge LCJ, Goldring LJ, McCombe J) 18/6/2009

Criminal Procedure

Jury Tampering: Prosecution Evidence: Public Interest Immunity: Trial Without Jury: Orders For Judge Only Trials Under S.44 Criminal Justice Act 2003: S.44 Criminal Justice Act 2003: S.44(4) Criminal Justice Act 2003: S.44(5) Criminal Justice Act 2003: S.46 Criminal Justice Act 2003

The trial of several defendants for serious offences arising out of an armed robbery was ordered, under the Criminal Justice Act 2003 s.44, to be conducted by a judge alone without a jury. The danger of jury tampering and the subversion of the process of trial was very significant and the suggested protective measures were inadequate.

The Crown appealed against the refusal of its application at a preparatory hearing for the trial of the respondents to be conducted without a jury. The respondents had been charged with serious offences in relation to an armed robbery at an airport. At the trial of three of the respondents, the jury, who had diminished to ten, had indicated to the judge that they had reached a very strong majority verdict adverse to the respondents. This information was passed to the respondents' representatives. Following a weekend break only 9 jurors returned to court, with the tenth saying that he was under stress and refusing to return. As a result a majority verdict was no longer available. A retrial was ordered and the respondents were granted conditional bail. By the time of the retrial the third respondent had been arrested. During the trial of all four respondents evidence was obtained of approaches to two of the jurors. The judge discharged the jury. He decided that he could not conduct the trial himself because he had seen inadmissible but highly prejudicial material. A further retrial was ordered. At the preparatory hearing the judge considered the Crown's application under the Criminal Justice Act 2003 s.44 for the new trial to be conducted without a jury. He considered information that was withheld from the respondents. He was satisfied that there was a real and present danger that jury tampering would take place at the new trial and that the risk would remain throughout the trial. However, he concluded that a package of measures, costing £1.5million and using the time of 32 police officers for six months, would be sufficient to reduce the risk to an acceptable level and he refused the application. The respondents submitted that the absence of an opportunity to see at least some of the evidence in support of the application deprived them of the opportunity to make meaningful representations, and that that would contravene the Act and undermine their rights to a fair trial.

HELD

The right to trial by jury was so deeply entrenched in our constitution that, unless statutory language indicated otherwise, the highest standard of proof

was required, namely beyond reasonable doubt. Section 44 did not give a discretion; the judge was required to make an order if the two conditions in s.44(4) and s.44(5) were fulfilled. That there had to be evidence of a real and present danger of jury tampering under s.44(4) related to the whole trial process and was not confined to evidence that would be admissible at a defendant's trial. The condition under s.44(5) that, after making due allowance for any reasonable steps that might address and minimise the danger, the judge should be sure that there would be a sufficient likelihood of jury tampering to make trial by judge alone necessary, required consideration of the feasibility of the proposed steps and their cost, and also whether such steps might lead to an incurable compromise of the jury's objectivity, *R v Mackle (Benedict)* (2007) NICA 37, (2008) NI 183 applied. Also of relevance was the likely impact on the juror's lives, performing their public responsibilities, and whether even the most extensive measures would be sufficient to prevent the improper exercise of pressure through family members. A judge who, under s.46, ordered the discharge of the jury mid trial should in most cases also order that he continue with the trial himself. The fact that he had been invited to consider material covered by public interest immunity principles during the trial, or the application, should not normally lead to his disqualification. The evidence relied on by the Crown should be disclosed to the fullest extent possible, but it would be contrary to the legislative purpose to make an order for disclosure which would, in effect, make the Crown discontinue the prosecution in order to prevent disclosure of sensitive material. In an appropriate case the court might seek assistance from special counsel. It was not necessary for the judge hearing the s.44 application to be the trial judge if he ordered a juryless trial, *R v Southwark Crown Court Ex p Customs and Excise Commissioners* (1993) 1 WLR 764 DC considered. The issue of whether to have a trial by jury or by judge alone would be self-contained and would very rarely have any impact upon the ultimate verdict. Normally, a s.44 application should be heard by the presiding judge of the circuit. If the application was granted then subject to any appeal, the presiding judge should identify a senior and experienced judge to conduct the trial. In the instant case, the danger of jury tampering and the subversion of the process of trial was very significant and the suggested protective measures inadequate. It would be unreasonable to impose more extensive measures due to the costs and use of police manpower, and it would be totally unfair to impose the additional burden on the ordinary lives of the jurors.

APPEAL ALLOWED



This Case Report was published with kind permission of Lawtel <http://www.lawtel.com>

Broadcaster's Right to Freedom of Expression Outweighed Defendant Acquitted of Rape's Right to Privacy: Anonymity Order Granted Following Acquittal Discharged

RE ATTORNEY GENERAL'S REFERENCE (NO.3 OF 1999) sub nom BBC'S APPLICATION TO SET ASIDE OR VARY A REPORTING RESTRICTION ORDER (2009)

HL (Lord Phillips of Worth Matravers, Lord Hope of Craighead, Lord Walker of Gestingthorpe, Lord Brown of Eaton-under-Heywood, Lord Neuberger of Abbotsbury) 17/6/2009

Criminal Procedure - Human Rights - Media And Entertainment

Anonymity: Broadcasters: Freedom Of Expression: Legitimate Aim: Proportionality: Public Interest: Reporting Restrictions: Right To Respect For Private And Family Life: Identity Of Defendant Acquitted Of Rape: Balance Between Broadcaster's Freedom Of Expression And Defendant's Right To Privacy: Proportionality Of Order: S.35 Criminal Appeal Act 1968: Criminal Appeal (Reference Of Points Of Law) Rules 1973: Art.8 European Convention On Human Rights: Art.10 European Convention On Human Rights: S.6(1) Human Rights Act 1998: European Convention On Human Rights

[An anonymity order imposed in relation to an Attorney General's reference concerning a defendant acquitted of rape was discharged, as the defendant's right to privacy under the European Convention on Human Rights 1950 art.8 was outweighed by a broadcaster's right to freedom of expression under art.10.](#)

The applicant broadcaster (B) applied to set aside a reporting restriction order imposed in relation to the identity of a defendant (D) acquitted of rape. The House of Lords had imposed the order in Attorney General's Reference (No3 of 1999), Re (2001) 2 AC 91 HL under the Criminal Appeal Act 1968 s.35 and the Criminal Appeal (Reference of Points of Law) Rules 1973. D had been charged with rape on the basis of a DNA match following his arrest for an unrelated offence of burglary. However, the DNA evidence was ruled inadmissible in the rape case as the match had been made after his acquittal for burglary, when his DNA record should have been destroyed. The Attorney General referred the issue to the Court of Appeal, which held that the trial judge did not have discretion to admit the evidence but, on a further referral, the House of Lords reversed that decision. Despite the anonymity order, D was named in newspaper and magazine articles. B was commissioning a series of programmes considering controversial acquittals, and the order prevented it from broadcasting the circumstances of D's acquittal and discussing the possibility of a retrial other than on an entirely anonymous basis. B submitted that it was in the public interest that a programme which identified D in the context of the removal of the double jeopardy rule should be broadcast. The court was assisted by an amicus curiae who argued that it was open to B to raise the issue of general interest without disclosing D's identity.

HELD

- (1) Although it was hard to see how the House of Lords had reached the view that it had the power to make the anonymity order under the 1968 Act and the Rules, the issue had to be approached on the assumption that it was at least arguable that the court had such power. The court was bound by the Human Rights Act 1998 s.6(1) to act compatibly with any rights arising under the European Convention on Human Rights 1950, *S (A Child) (Identification: Restrictions on Publication)*, Re (2004) UKHL 47, (2005) 1 AC 593 followed. The issues were therefore whether the disclosure of D's identity engaged his rights under art.8, and if so whether that right outweighed B's right of freedom of expression under art.10.
- (2) The publication of D's name would engage art. 8 if it was done in circumstances where D had a reasonable expectation of privacy. The fact of D's acquittal for rape was not private information. However, the link that his DNA sample provided to the commission of the rape was personal information. Publicising that link would inevitably suggest that D was guilty of that offence. D remained entitled to the presumption of innocence, which had a direct bearing on the approach to be taken to his art.8 right. Broadcasting that information therefore engaged his right to respect for private life.
- (3) The question was therefore whether B's publication of the facts in the exercise of its right to freedom of expression under art.10 could be justified under art.8(2). The tests to be applied were whether publication of the material pursued a legitimate aim and whether the benefits achieved by publication were proportionate to the harm that might be done by interference with D's right to privacy. Revealing D's identity would pursue a legitimate aim, as it was recognised that there was a duty to impart information and ideas of public interest which the public had a right to receive. B's programme had been inspired by the removal of the double jeopardy rule, which was a matter of legitimate public interest in relation to the practice of the criminal justice system. B believed that disclosure of D's name would give added credibility and that was a view which B was entitled to adopt and could properly be regarded as legitimate, *Jersild v Denmark (A/298) (1995) 19 EHRR 1 ECHR* and *Fressoz v France (29183/95) (2001) 31 EHRR 2 ECHR* applied, *Campbell v Mirror Group Newspapers Ltd (2004) UKHL 22, (2004) 2 AC 457* and *Von Hannover v Germany (59320/00) (2004) EMLR 21 ECHR* considered. The facts of D's acquittal were already legitimately in the public domain and he could not complain of a violation of his art.8 rights if, as a result of B's programme, an application was made to retry him for that offence. There was a risk of trial by media but that was not a reason for holding that D's art.8 rights outweighed the right of freedom of expression on a matter of legitimate public interest. Other considerations also favoured B's case, as the rape victim had herself waived anonymity, D had failed to respond to the instant application, and his name had already been published on more than one occasion. In addition, there could be no justification for an Attorney General's reference placing D in a more advantageous position as to publicity than he would have been in had the critical point of law been settled in someone else's case. The interference with D's art.8 right would

be significant but was proportionate when account was taken of the weight that had to be given to B's competing right under art.10.

APPLICATION GRANTED



This Case Report was published with kind permission of Lawtel <http://www.lawtel.com>

SI 2009/1487 The Fixed Penalty (Amendment) (No. 3) Order 2009

In force **30 June**. This Order amends the Fixed Penalty Order 2000, which prescribes the fixed penalty payable for those offences which, by virtue of section 51 of the Road Traffic Offenders Act 1988, are fixed penalty offenders.

It increases from £30 to £60 the fixed penalty for offences committed under:

- ◆ Section 14 of the Road Traffic Act 1988 (seat belts: adults);
- ◆ Section 15(2) and 15(4) of the Road Traffic Act 1988 (restrictions on carrying children not wearing seat belts in motor vehicles);
- ◆ Section 59 of the Vehicle Excise and Registration Act 1994 (failure to fix prescribed registration mark to a vehicle in accordance with regulations made under section 23(4)(a) of that Act).

SI 2009/1493 The Counter-Terrorism Act 2008 (Commencement No. 4) Order 2009

In force **1 October**. This Order brings into force the following provisions of the Counter-Terrorism Act 2008 ('the Act'):

- ◆ Sections 40 to 61 (notification requirements);
- ◆ Schedule 4 (notification orders);
- ◆ Schedule 5 (foreign travel restriction orders);
- ◆ Schedule 6 (notification requirements: application to service offences).

Sections 40 to 61 form Part 4 of the Act, which makes provision for notification requirements to be imposed on a person who receives a triggering sentence or order for an offence to which Part 4 applies (a number of terrorist offences and offences with a terrorist connection). The sections detail the information which the person subject to the notification requirements must notify to the police, and makes provision for initial notification, notification of any changes to the information, and periodic notification, notification where the person leaves the UK, and the period for which the notification requirements apply.

A number of offences relating to notification are created by section 54 of the Act, including failure without reasonable excuse to comply with the requirements and purporting to comply with the requirements by providing information which the person knows to be false.

Schedule 4 makes provision for notification requirements to apply where a person has been dealt with outside the UK in respect of a corresponding foreign offence. Schedule 5 provides that foreign travel restriction orders may be made in respect of a person to whom the notification requirements apply. Such an order may prohibit a person from travelling, outside the UK, to a country named in the order, to a country other than those named in the order, or to any country.