NPIA
National Policing Improvement Agency

Digest

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LEGISLATION POLICE NEWS
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DIVERSITY Criminal Justice

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

This edition contains a summary of the recommendations of the Normington review of the data burden upon police forces and the interim report released by the Independent Reducing Bureaucracy in Policing Advocate. The publication of the ACPO Practice Advice on tackling commercial cultivation of cannabis and the HMIC report on their review of forces' readiness in their planning for improvement across important areas of policing e.g. serious and organised crime, major crimes and critical incidents are also included.

There are also a number of articles outlining recently published Government and Parliamentary reports and initiatives including; the increasing use of CCTV and its perceived threat to freedom and liberty, help for those people escaping from gang crime, details of a new burglary prevention campaign, police workforce statistics, alcohol enforcement campaign, the introduction of an anti-knife website with advice and resources, and more support for victims of domestic violence.

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

The Case law is produced in association with lawtel From Sweet & Maxwell

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Young Muslims Advisory Group Holds First meeting with Ministers

The Young Muslims Advisory Group (YMAG) held their first formal meeting with Communities Secretary Hazel Blears and Children, Schools and Families Secretary Ed Balls on 12 February 2009. The group launched late last year and was set up to help Government deepen its engagement with young Muslims.

The agenda for the first meeting included:

- An evidence based piece of work which looks at how Government could better its communications with regard to young Muslims;
- Looking at what more can be done to empower young people to get involved in activities in their local communities, government, media etc. in their area; and
- Looking at how the group can use the Internet for exploring issues relating to the causes of violent extremism among young Muslims.

The meeting also discussed plans for the upcoming Youth Conference which they will host in Leeds on 21 March 2009. Further detail on the projects the YMAG will undertake will be available at the Conference.

The press release can be found at
http://www.communities.gov.uk/news/corporate/1145037

Guidance Issued for Possession of Extreme Pornographic Images

The Ministry of Justice issued new guidance for dealing with offences of Possession of Extreme Pornographic Images on 19 January 2009. (See *NPIA Digest* January 2009 edition pp35-36).

The guidance set out in Ministry of Justice Circular 2009/01 outlines the change in legislation and provides advice on how to achieve the successful implementation of the new system. The guidance is set out under the following headings:

- Background;
- Change in legislation; and
- Frequently Asked Questions.

These changes came into effect on the date of implementation (26 January 2009) and will not be retrospective.

The Ministry of Justice Circular 2009/01 can be found at http://www.justice.gov.uk/docs/circular-criminal-justice-01-2009.pdf

Home Office Circular 30/2008: Simplifying the Exchange of Information and Intelligence

The Home Office Circular 30/2008 issued on 8 December 2008 provides guidance on the implementation of the EU Council Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities. The implementation date for this decision in all Member States was 18 December 2008. It is commonly known as the 'Swedish Initiative', having arisen from a proposal from Sweden in 2004. It sets out the process by which competent law enforcement authorities (LEAs) in each EU Member State, plus Iceland, Norway, and Switzerland, will exchange existing information and intelligence quickly and effectively for the purpose of conducting a criminal investigation or intelligence operation, through the use of standard forms and strict deadlines. It will allow LEAs across the EU to exchange information internationally in the same way they would do nationally. An LEA may not apply stricter conditions to requests from other Member States than are applied at a national level.

This Framework Decision is based on the 'principle of availability', as described in Section 2.2.1 of the 2005 Hague Programme on Strengthening Freedom, Security and Justice in the European Union. This principle has governed the cross-border exchange of law-enforcement information since 1 January 2008, and means that a Member State must make available to a law enforcement officer from another Member State information that it holds and which is needed by the requesting law enforcement officer to perform their duties, subject to the requirements of any ongoing investigations.

The full decision can be found at
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:386:0089:0100:EN:PDF

The Home Office Circular 30/2008 can be found at
http://www.knowledgenetwork.gov.uk/HO/circular.nsf/79755433dd36a66980256d4f004d1514/6c78a9c8d13836a280257501006038ca?OpenDocument

Help for Those Escaping Gang Crime

The Department for Communities and Local Government introduced on 2 February 2009 a new scheme to provide safe accommodation for people at serious risk of violence associated with gang or weapon crime which will begin this month in Southwark.

The scheme is to be jointly funded by the Department for Communities and Local Government and the Metropolitan Police Service and will provide properties across London and the South East through an innovative agreement between the Council and a number of registered social landlords. If successful, the model will be rolled out to other gang hot spots around England.

People using the scheme could be in danger for a variety of reasons; they may be at risk of violence or retribution from a gang because they are, or know, a victim or suspect of gang crime. A young person might be resisting the efforts of gang members to recruit them as a new member, resulting in threats to them and their family. Crucially, witnesses, and often some of their friends and family members, will be able to move to a safe place to enable them to testify in court.

The press release can be found at
http://www.communities.gov.uk/news/corporate/1136847

Plans to Introduce Powers to Prevent Gang-Related Violence

The Home Secretary announced on 5 February 2009 that the Policing and Crime Bill will include a new power to prevent gang-related violence. The proposed new injunction would enable a court to impose a range of restrictions or requirements on an individual such as:

- Not to enter a specified place, for example, the neighbourhood that the gang regards as 'its' territory, or the area where the gang has offended because the gangs' 'power bases' are partly the result of everyone in their territory knowing them and being frightened of them;
- Not being with named members of a gang thereby denying gangs the opportunity to intimidate people because of their gathering in significant numbers;
- Not using or threatening to use violence;

- Not using the internet to encourage or facilitate violence; and
- Not wearing particular items of clothing such as gang colours or balaclavas which prevent identification.

There is also a proposal that the court should have the power to require those subject to an injunction to take part in positive activities such as community outreach programmes or mediation sessions between rival gangs to ensure that they are provided with alternatives to their gang lifestyle.

The press release can be found at
http://press.homeoffice.gov.uk/press-releases/stronger-power-tackle-gangs

Report Warns of Increase in Use of Surveillance and Data Collection Activities

The House of Lords Constitution Committee published its report entitled 'Surveillance: Citizens and the State' on 6 February 2009 with a warning that pervasive and routine surveillance and the collection of information may infringe the public's right to privacy.

The full report can be found at
http://www.publications.parliament.uk/pa/ld200809/ldselect/ldconst/18/1802.htm

New Support for Victims of Domestic Violence

A new guide was launched on 10 February 2009 by the Home Office to help people recognise signs of domestic violence and set out the practical support available for victims. This guide is part of a series of new measures to support victims of domestic violence including additional funding to tackle interpersonal violence and to maintain a range of domestic violence helplines.

The practical tips offered in the guide include:

- Finding out about the services available so that the person affected can make informed choices;
- Agreeing a code word or action so they can let you know if they are in danger; and
- Making sure you also have the support you need in order to support them.

It is estimated that domestic abuse affects an estimated 4.8 million women and 3.2 million men. These measures are announced in advance of a consultation on a cross-Government strategy to tackle violence against women which will focus on:

- Actions to prevent violence;
- Challenging attitudes; and
- Reducing the fear of serious violence that some women may feel.

Sara Payne, the recently appointed Victim's Champion, said "Domestic violence is often a hidden crime which is why it's really important that we do all we can to raise awareness that help is out there. This new leaflet will give people some pointers to help friends and relatives look out for the signs and provide information about how they can help. Domestic violence can make you feel trapped and by making information available we can support people who want to help someone at risk as well as individuals who want to take the brave step of leaving a violent relationship themselves."

More information and the guide are available on a new Home Office webpage which can be found at
http://www.homeoffice.gov.uk/domesticviolence

National Anti-Knife Campaign Website

A new website is now available to support the national anti-knife campaign. 'It Doesn't Have to Happen' is a national campaign which aims to support and deliver anti-knife crime initiatives throughout England and Wales.

Conceived by the Home Office and developed by young people, the campaign's main objective is to reduce the possession and use of knives among young people by facilitating peer-to-peer messaging. The campaign aims to help young people to understand the consequences of knife crime for themselves, their families and their communities. The Home Office wants young people to say 'No to knives' and have a positive influence on each other to promote this slogan.

The website provides tools, materials and support to young people, parents and carers, professionals and local campaigners, to empower people to work effectively at community level to put an end to knife crime. The approach is to unite local and national action, and to use local efforts to amplify the national campaign voice.

More information is available at the website which can be found at http://www.crimereduction.homeoffice.gov.uk/stopknifecrime/index.htm

Increasing Time for Police to Spend on the Beat

The Home Secretary announced on 16 February 2009 that the annual police activity analysis form accounting for their activity for each 15 minute working period of their shifts over a two week period will no longer be required. It is anticipated that this step will free up approximately 150 extra officers and staff.

This decision is the latest in a series of cuts to red tape and builds on actions already underway including:

- Axing the stop and account form;
- Reducing by 80% the amount of form-filling police must do when recording 80% of crimes; and
- 10,000 extra hand-held devices are now available with further investment made to deliver 30,000 devices by March 2010. This £80m investment in mobile data devices will save officers up to 30 minutes per shift as they send and receive information while on the beat.

The Home Secretary also announced that she had accepted all of the recommendations made by Sir David Normington, Permanent Secretary of the Home Office, in his report entitled 'Reducing the Data Burden on Police Forces in England and Wales', which could halve the number of data requests the Home Office issues to police forces.

In his review Sir David Normington made the following recommendations:

- Now in a position to achieve the same investigative forensic success with less form filling by front-line forensic staff thereby reducing forensic data collection by 33%; and
- Reducing the Serious Crime Analysis System and replacing the current survey with a more effective process will reduce this data requirement by 80% and will give investigating teams more time to investigate crimes which will save between 2,500 and 5,000 hours of investigative time each year.

To prevent any new bureaucratic measures creeping back in, the Home Office will set up a bureaucracy 'star chamber' to form a wall against the creation of any unnecessary police red tape. This group will scrutinise all proposals to stop any unnecessary red tape being created that could impact on frontline policing.

The report 'Reducing the Data Burden on Police Forces in England and Wales' can be found at http://police.homeoffice.gov.uk/publications/police-reform/data-burdens-review.pdf

Interim Report on Reducing Bureaucracy Published

The Home Secretary welcomed the publication on 16 February 2009 of the interim report by the Independent Reducing Bureaucracy Advocate Jan Berry. The interim report recognises the amount of work being undertaken across Government and the police service to reduce unnecessary bureaucracy and the benefits that are already being delivered.

The full report is expected to be published later in the year but her initial findings and recommendations are now being considered by the government and include:

- Support for scrapping time-sheets for police officers;
- Reviewing working practices within forces to simplify processes;
- Making more use of technology to free up officer time and maximising the use of existing Airwave equipment; and
- Reviewing police charging practices to reduce unnecessary burdens on officers and help them to use their discretion more.

The Independent Reducing Bureaucracy Advocate's interim report 'Reducing Bureaucracy in Policing' can be found at http://police.homeoffice.gov.uk/publications/police-reform/reducing-bureaucracy-report

HMIC Review on Protective Services Published

A review by HM Inspectorate of Constabulary (HMIC) entitled 'Get Smart: Planning to Protect' was published on 4 February 2009. The findings indicated that half of the 43 forces in England and Wales had insufficiently detailed plans for improvement in major areas of policing, including organised crime and the investigation of complex murders. However, HMIC also stated that this deficiency in planning did not necessarily reflect the quality of delivery of these key policing services on the ground.

The report detailed findings of the review across seven broad categories of protective service:

- Serious and organised crime;
- Major crime, such as serial murders;
- Critical incidents - single events which significantly impact on public safety;
- Civil contingencies - natural threats or disasters, such as rail crashes;
- Public order;
- Roads policing - in this context, covering the use of the roads by criminals; and
- Protecting vulnerable persons. There were four sub-categories under this heading - domestic abuse, missing people, child abuse and the management of violent and sexual offenders.

An earlier report by the HMIC 'Closing the Gap' published in 2005 commented on worrying shortfalls in the policing of protective services. The current review has shown that four years later some forces in England and Wales still have serious weaknesses in their planning to close those shortfalls.

There is a recommendation in the report for a targeted intervention in some forces to bring up their planning and the public account of plans up to standard, with greater collaboration and consistency across the police service as a whole.

The full report can be found at
http://inspectorates.homeoffice.gov.uk/hmic

Police Workforce Statistics Published

The Home Office Statistical Bulletin: Police Service Strength England and Wales - 30 September 2008 was published on 29 January 2009. The bulletin records that police officer numbers remain historically high and across the police service, it remains stable.

The main points identified by the statistics are:

- There were 142,684 police officers (full-time equivalents) in England and Wales on 30 September 2008;

- This total includes 142,197 police officers in the 43 police forces of England and Wales and 487 officers seconded to central services;
- An additional 2,616 officers represent the British Transport Police across England and Wales;
- Police officer numbers for the 43 English and Welsh forces plus secondments to central services have increased by 953 or 0.7% compared with September 2007 and have increased by 324 or 0.2% compared with March 2008;
- Police staff numbers for the 43 English and Welsh forces stand at 77,979 (full-time equivalents), an increase of 2.6% compared with September 2007, and an increase of 1.3% compared with March 2008;
- There were 15,740 full-time equivalent police community support officers, or PCSOs, in the 43 English and Welsh police forces on 30 September 2008, a rise of 2.3% since September 2007, and a fall of 0.4% since March 2008;
- The total number of Designated Officers (Section 38 Police Reform Act 2002, excluding PCSOs) in England and Wales was 2,192 (full-time equivalents), an increase of 35.6% since September 2007, reflecting the continued increasing trend to employ specialist officers in investigation, detention and escort roles. This allows police officers to spend more time on frontline policing activities;
- The number of Traffic Wardens in England and Wales on 30 September 2008 has decreased by 22.8% to 499 (full-time equivalents) compared with September 2007, reflecting the continued expansion in the role played by local authorities in parking control; and
- Additionally, there were 14,459 special constables in the 43 forces of England and Wales, an increase of 3.2% since September 2007, and a decrease of 0.6% since March 2008.

Further information is available from the Home Office Statistical Bulletin which can be found at
http://www.homeoffice.gov.uk/rds/pdfs09/hosb0309.pdf

Literature Review of Evidence-Based Citizen Focus and Community Engagement

The Police Foundation published their report 'Citizen Focus and Community Engagement: A Review of the Literature' on 12 February 2009 which identifies the key issues and elements concerning citizen-focused policing. The review assisted Norfolk Constabulary to change their approach to community engagement and to focus their policing model upon the needs of the citizen.

The four key areas covered by the review were:

- The importance of police attitude and conduct;
- A lack of understanding about citizen focus and community engagement;

- The prevalence of citizen focus, community policing and community engagement activities and approaches being 'bolted on' to existing policing structures, rather than transforming the ways policing is delivered across the board; and
- How aspects of policing culture can shape officers' behaviour and approaches to their work, and potentially block or undermine the possibilities for change.

The literature review indicates a number of key internal and external factors to enable the implementation of citizen-focused policing and community engagement to achieve its full potential.

The table below lists these factors.

Internal factors	**External factors**
Citizen-focused policing involves everyone. It is not the job of a single department, but the work of a whole organisation. All staff, whatever their role, need to understand what a citizen-focused approach and community engagement involves, and how they impact on their daily practice. Police officer resistance is a key inhibitor to the successful implementation of community policing, as the culture does not value this style of policing. Citizen-focused policing requires organisational change and the full support of middle and senior management, as well as commitment from frontline officers. Change must include the development of empowered management structures and a strong communications framework. Leaders at all levels need to lead by example and be vigilant, to ensure that those whose behaviour does not correspond with expectations of citizen-focused policing are tackled. It is vital that the way performance is measured and rewarded reinforces the philosophy and principles of citizen focus and community engagement. Current performance	Citizen-focused policing requires a bespoke service that is responsive, mindful of need, conducted in a way that makes people feel valued and is perceived to be appropriate, helpful, proportionate and fair. Communities need local, timely and accessible information about crime and disorder problems, and how local policing and community safety initiatives are responding to them. Community engagement needs to be flexible and tailored toward meeting different needs. It does not respond well to a 'one size fits all' approach. Neighbourhood teams need to engage widely and proactively. They must seek to engage hard to hear groups whose needs might otherwise not get addressed. Partnership offers the most effective way to tackle neighbourhood crime and disorder problems, but issues relating to the different cultures, lines of accountability, and finding the most effective means to work together, need to be tackled.

measures are inadequate and in some cases undermine the principles of neighbourhood policing. Staff at all levels must be willing to learn from mistakes and be realistic and honest about performance.	

The full report can be downloaded at http://www.police-foundation.org.uk/site/police-foundation/latest/the-knowledge-hub/citizen-focus

Alcohol Enforcement Campaign

The Home Secretary announced the availability of £1.5m funding for an alcohol enforcement campaign in the Home Office's 50 priority areas. These priority areas were identified by collecting data on local perceptions of drunk or rowdy behaviour and recorded crime statistics for assault with less serious injury.

This is a police led campaign and £30,000 will be made available to the Police Force Areas (PFAs) for each priority area in that PFA. The majority (90%) of the funding must be spent on the additional enforcement activities and the remaining £3,000 allocated to communications work to increase community engagement with regard to tackling alcohol related harm and disorder, and to convey the outcomes of the enforcement campaign.

The key deliverables of the alcohol enforcement campaign are:

- Targeted underage sales of alcohol by both on and off licensed premises;
- Confiscation of alcohol from underage drinkers;
- Wider enforcement work to support key deliverables 1 and 2; and
- Local communications campaign to promote work undertaken and community engagement.

More information about the alcohol enforcement campaign can be obtained from Emma Healey by email at Emma.Healey@homeoffice.gsi.gov.uk

IPCC Publish Latest Learning the Lessons Bulletin

The Independent Police Complaints Commission (IPCC) published their latest 'Learning the Lessons' bulletin on 19 February 2009. This bulletin provides information on key issues, case summaries, recurring issues and areas of useful policing practice noted during investigations undertaken by the IPCC.

In Bulletin 6 the seven key policing issues identified are:

- **Help from the air**
  Air support can be a key factor in road pursuits. The IPCC advise that it is vital when a motorbike is concerned and, where two forces are involved, that there are effective arrangements in place for mutual air support;
- **Security comes first**
  Help for vulnerable detainees should not be at the expense of Security. A series of security lapses involving an obvious combination code that was overheard, observing from the CCTV monitoring room rather than right outside an open cell and a lack of passes to identify visitors, all of which enabled a detainee to escape;
- **Dealing with unmarked skips**
  Where skips do not comply with marking requirements, police warning equipment should be used pending enforcement even in daylight;
- **Using dogs against youngsters**
  A girl of 15 and a boy of 12 suffered minor injuries when brought to the ground by a police dog; there was no force policy on use of dogs against juveniles. The IPCC believe that this is an issue on which forces need to give guidance;
- **How and when to search**
  A metal detector search could have prevented a detainee smuggling an MP3 player and cigarette lighter into his cell; in another case, a man fractured his arm after officers used a 'double ground pin' technique not approved by the Force;
- **Medical care can save lives**
  Getting medical help when needed could have prevented two deaths in custody: a suicidal man on anti-depressants was not assessed for risk and no medical help was requested. In another case a drunk who appeared to be choking on his vomit during transport was not taken to hospital on the assumption he would not be accepted; and
- **Equipping staff to deal with potential suicides**
  All staff need to know force policy on crisis intervention and suicide avoidance. An officer, dealing with a woman threatening to jump from a balcony who had a history of drink, drugs and self harm, failed to carry out intelligence checks so missed a chance to prevent her later suicide.

The latest bulletin also contains areas of useful policing practice found during the course of their investigations and includes:

- **Police dogs** - Copying all third-party dog bite reports to the Professional Standards Department for review and potential referral to the IPCC could enhance quality and improve scrutiny. Also a prepared after-care card to be carried by dog-handlers and given to anyone who had received a dog-bite to provide suitable advice and contact information;
- **Life Signs Monitoring System cell** - If properly used, this type of cell can provide valuable support in monitoring detainees who are heavily intoxicated or otherwise at risk; and
- **Direct inputting** - The ability to type directly onto the Control Room incident log from computer terminals can aid control of an incident.

More information about these issues can be found in 'Learning the Lessons' Bulletin 6 which can be found at http://www.learningthelessons.org.uk/learningthelessons_bulletin_feb09.pdf

ACPO Practice Advice on Tackling Commercial Cannabis Cultivation and Head Shops Published

NPIA has developed and published new practice advice on Tackling Commercial Cannabis Cultivation and Head Shops in partnership with ACPO, the Home Office and other key stakeholders on behalf of the police service. Its publication coincided with the reclassification of cannabis to Class B on 26 January 2009 and supports enforcement initiatives to reduce the availability of cannabis on our streets.

The commercial cultivation of cannabis increasingly involves organised criminal networks and tackling this has become a significant challenge for the police, their law enforcement partners and other agencies. This is evidenced through the *UK National Baseline Assessment on the Commercial Cultivation of Cannabis (2008)*, which identified that, during the period 1 April 2007 to 31 March 2008, almost all UK Police Forces had discovered large-scale cannabis cultivations. A total of 5525 cannabis production offences were recorded, which included the identification of 3032 cannabis farms, and 20 metric tons of cannabis plants seized, with a wholesale value of £60.2 million.

This guide gives advice and outlines examples of good practice in relation to tackling cannabis cultivation, in particular by organised criminal networks. It also addresses how to tackle head shops and the associated sale and promotion of cannabis cultivation equipment and paraphernalia. It focuses on a multi-agency approach to these issues and provides examples of partnership working. It will be of particular interest to police practitioners involved in investigating and dismantling cannabis farms, BCU Commanders, Heads of CID and partner agencies.

From 27 February 2009 the Practice Advice is available as a pdf document, and soon afterwards in hard copy. It will also be accessible on the Genesis website (select NPIA Professional Practice Unit, then select Doctrine Development) at http://www.genesis.pnn.police.uk/genesis/

Latest Figures on Average Time from Arrest to Sentence for Persistent Young Offenders

The latest National Statistics on persistent young offenders (PYOs) for November 2008 were released by the Ministry of Justice on 11 February 2009. The monthly release presents figures derived from the Police National Computer on the time taken to bring persistent young offenders to justice. This release monitors the 1997 pledge to halve the arrest to sentence time for this offender group (from 142 to 71 days) in England and Wales.

The main points of the November 2008 figures include:

- The average time from arrest to sentence for PYOs in England and Wales was 58 days in November 2008, 2 days higher than in October 2008;
- The overall average time from arrest to sentence for cases sentenced in magistrates' courts was 45 days in November 2008, 2 days lower than the figure for the previous month; and
- Cases sentenced in the Crown Court took an average of 222 days from arrest to sentence during November 2008, up 38 days from October 2008.

The Secretary of State for Justice announced on 10 December 2008 to Parliament that the Persistent Young Offenders pledge would be discontinued with effect from the end of the 2008 calendar year.

The full report can be found at
http://www.justice.gov.uk/docs/pyo-november08.pdf

New Initiative to Crackdown on Burglary

On 4 February 2009 the Home Secretary attended a special crime prevention summit to discuss practical measures to help keep crime down especially burglaries. The summit is part of a series of initiatives to help increase people's personal security, particularly those who feel the most vulnerable in society, and help the public to avoid becoming victims of opportunistic criminals.

The crime prevention initiatives introduced include:

- A new £20 million fund for local crime prevention initiatives and targeted support to homes and businesses, including measures to strengthen home security, focused on the 14% of homes that still do not have window locks and the 18% that do not have adequate front doors;
- New home security pages on the Home Office website which will offer a single source of information and advice on home security;
- The web pages will include a new online personalised home security self assessment entitled 'How secure is your home?' It also provides simple advice about how improvements can be made; and
- A new nationwide £1.6 million crime prevention marketing campaign.

The interactive home security assessment tool is available on the Home Office's website at
http://www.homeoffice.gov.uk/secureyourhome/questionnaire/

Research on Business Views of Organised Crime Published

The Home Office Research, Development and Statistics Directorate published their Research Report No 10 in December 2008 entitled 'Business Views of Organised Crime'. This report presents the findings of a study commissioned to look at the harm caused by organised crime to businesses located in high crime residential neighbourhoods, and methods of measuring them. The research was conducted in three areas.

The areas were chosen in consultation with the local police and there had to be a high crime rate in the neighbourhood and the police had to be of the opinion that organised crime was occurring locally. The businesses in the London area were predominantly Turkish/Kurdish/Cypriot owned and staffed. In the West Midlands they were mainly Asian and in the East Midlands they were almost exclusively White.

The key points of the research suggest the following:

- Prevalence rates of crime against business in the three areas were very high when compared to the 2002 Commercial Victimisation Survey. This suggests that there are geographical concentrations of businesses that experience a disproportionately high rate of crime that is not uncovered in national surveys;

- A small proportion of the offences that businesses were victims of were attributed to organised crime, though the vast majority were not. To have a significant impact on overall levels of victimisation, prevention would, therefore, need to focus on routine, relatively disorganised criminal activities as well as organised crime;
- Receiving offers of stolen and counterfeit goods is a normal feature of business life in the high crime neighbourhoods under review. Nearly half of those in the samples said they had been offered counterfeit goods over the recall period, though it is not clear how many businesses had accepted such offers. Almost none reported offers of illicit goods to the authorities. The widespread and low risk use of businesses in these areas as outlets for attempting to dispose of illicit goods may indicate a potential starting point for the collection of intelligence and the disruption of the crime, some of which is undoubtedly organised; and
- The responses to the survey are likely to provide a more representative view than impressions gleaned from press or police sources, which naturally tend to be mostly concerned with more serious and organised crime.

The full report can be found at
http://www.homeoffice.gov.uk/rds/pdfs08/horr10c.pdf

Policing of HIV Transmission Report Published

The Terrence Higgins Trust (THT) published its report entitled 'Policing Transmission: A review of police handling of criminal investigations relating to transmission of HIV in England and Wales, 2005-2008', on 28 January 2009.

The report, with a series of recommendations for future good practice, has been welcomed by the Association of Chief Police Officers (ACPO). Policing Transmission is based on police records of actual cases which were investigated between 2004 and 2007. Staff from ACPO and the Metropolitan Police Service compiled reports from notes of cases identified by THT and other HIV support organisations and then worked with THT and a Community Advisory Panel to draw lessons and make recommendations.

The report is aimed primarily at police forces but also includes useful observations for community groups and clinicians who encounter allegations and investigations. It makes a strong case for better understanding of HIV by the police, and better understanding of police procedures and training by others. The report also provides a vivid picture of how some cases have been investigated, singling out good police practice and highlighting areas for improvement.

Lisa Power, Head of Policy at Terrence Higgins Trust said "Currently, many allegations, probably hundreds, are investigated but the vast majority rightly never end up in court. Increasingly, inappropriate cases are pursued for months or even years, only to be dropped because police are unfamiliar with guidelines for prosecution or the complexities of HIV transmission. We believe that investigations need to be fair and consistent, based on fact rather than

fears and conducted in a manner that minimises distress to all parties involved and reduces the current high levels of wasted police resources."

The full report 'Policing Transmission: A review of police handling of criminal investigations relating to transmission of HIV in England and Wales, 2005-2008' is available at http://www.tht.org.uk/informationresources/publications/policyreports/policingtransmission950.pdf

Mental Health Warning for Cannabis Users

On 16 February 2009 the Department of Health issued the latest episode of the FRANK advertising campaign that shows how cannabis can 'mess with your mind'. The campaign shows how cannabis users can quickly change from enjoying a talkative and relaxed experience to turning nasty and users becoming paranoid, having panic attacks and being sick.

The Department of Health highlights that there is a false perception that still exists amongst some young people that cannabis is a safe drug despite the fact that it can produce both immediate and longer-term harm to both mental and physical health.

Cannabis is:

- The most frequently used illegal drug by 11-15 year olds;
- Used by almost 18% of 16-24 year olds; and
- More than 7% of 16-59 year olds also use cannabis.

The cannabis market is now dominated by a stronger version of cannabis, known as 'skunk' which accounts for up to 80% of the cannabis available on UK streets. The percentage share of the market for 'skunk' was 30% in 2002.

The short term effects of cannabis use can lead to panic attacks and paranoia. In some, its regular use may lead to later development of psychotic disorder such as schizophrenia. For people with schizophrenia it can worsen the symptoms and lead to relapse. Cannabis use can also damage people's lungs and affect their reproductive system. There is concern that the recent shift to use of stronger forms such as skunk will increase these problems.

More information is available at http://www.talktofrank.com/

Financial Crimes Likely to Increase in Recession

The Financial Services Authority (FSA) published its Financial Risk Outlook (FRO) on 10 February 2009 outlining the main risks facing firms, consumers and the regulatory system in the economic downturn, in particular the challenges created by banking sector and real economy deleveraging.

The report warns of a potential increase in financial crimes which are likely to affect both customers and firms. The report states that "The recession may increase the motivation for employees and customers to commit fraud against

banks in an attempt to maintain their existing lifestyles, replace lost funds, or meet increasingly challenging revenue and sales targets... Criminals appear to be changing the way in which they commit financial crime, indicating an increasing sophistication as they require more complete data to commit such crimes. Criminals may now target employees disgruntled by the threat of redundancy, poor pay rises and increasing financial pressures."

The full Financial Risk Outlook 2009 can be found at http://www.fsa.gov.uk/Pages/Library/corporate/Outlook/fro_2009.shtml

Retailers Support Police to Tackle Knife Crime

The drive to tackle knife crime received significant support from major retailers when it was announced on 5 February 2009 that they were to play their part with the government and the police in the initiative to tackle knife crime. The Home Office has been working with 21 retailers and the British Retail Consortium to encourage them to adopt best practice which will limit the availability of knives to those aged under 18 years.

The new initiative will be promoted in supermarkets and other retailers with signs displayed in product aisles where knives are sold and at point of sale to explain that proof of age will be required if the buyer appears to be under 18. The materials will clearly display the message 'We are working in partnership with the Home Office to prevent the sale of knives to under 18s'.

This initiative includes a 'six point commitment' to which the retailers have agreed to deliver:

- Provide training and support to staff on the sale of knives, and keep a register of completion of training;
- Clearly display to the public signs stating that knives are not for sale to under-18s;
- Ensure that display and storage of knives minimises the risk of theft;
- Ensure till prompts are in place to remind staff at the point of sale;
- Enhance safeguards on internet sales to address attempted underage sale of knives; and
- Monitor attempted underage sales and share information with local police and other partners.

A list of the members of the British Retail Consortium can be found at http://www.brc.org.uk/downloads/List_of_BRC_Members.pdf

The press release can be found at http://press.homeoffice.gov.uk/press-releases/Retailers-say-no-to-knife-crime

Think Tank Suggests that 50,000 Young People in Violent Gangs

Up to 50,000 young people in the UK are members of violent gangs, according to a report published by the Centre for Social Justice on 10 February 2009. This is one of the headline findings of its report entitled 'Dying to Belong: An In-depth Review of Street Gangs in Britain' along with the recognition that gang members are children and young people and are increasingly younger.

The report advises that a coordinated new campaign combining targeted enforcement with intervention and prevention is needed to stem the surge in gang culture in Britain. There is also a recommendation that gang leaders who refuse support to stop violence should be monitored by police on a daily basis, with even minor offences, such as driving offences, leading to prosecution. In

areas where gang crime is prevalent they should be identified as 'Gang Prevention Zones' and made the focus of intensive intervention. To assist those young people wishing to leave gangs there is a recommendation that agencies along with youth workers should offer skills training, drug rehabilitation and help into employment to facilitate this outcome.

The report 'Dying to Belong: An In-depth Review of Street Gangs in Britain' can be accessed at http://www.centreforsocialjustice.org.uk/client/downloads/DyingtoBelongFullReport.pdf

New Research Indicates Attitudes of Young Drivers

Research undertaken on behalf of Transport for London Young Driver campaign was released on 11 February 2009 indicating attitudes among young drivers.

The findings were made public in support of the campaign and the main points are:

- 9% of young drivers feel that it is acceptable to drive under the influence of drugs such as cannabis;
- In 2007, young drivers (17 to 25 year olds) were involved in 555 collisions in London that resulted in a death or serious injury; and
- Drug driving has yet to become as socially unacceptable as drink driving.

The latest research follows an earlier, separate study which found that 63% of those that admitted to driving after taking drugs also said that they had carried passengers. Over half of this sample admitted that their driving had been impaired, while one in 10 believed that taking drugs, usually cannabis, had actually improved their driving.

The press release can be found at http://www.tfl.gov.uk/corporate/media/newscentre/11184.aspx

Sport and Leisure as Alternatives to Anti-Social Behaviour

The Audit Commission report 'Tired of Hanging Around: Using sport and leisure activities to prevent anti-social behaviour by young people' was published on 28 January 2009. This study focuses on the role of sport and leisure activities in preventing anti-social behaviour in young people aged 8 to 19 years.

The report highlights that it costs four times as much to put a young person through the criminal justice system as it does to keep them out of it, but sport and leisure projects designed to help keep teens on the straight and narrow struggle with a funding system that is wasteful, inefficient and bureaucratic.

There is strong evidence that activities like music, film-making or football are able to attract those most likely to behave anti-socially and prevent them from seeking excitement by joining a gang, drinking in the street or fighting. Young people who are drawn to preventative schemes are then encouraged to take part in structured sessions on topics like healthy eating, drugs misuse, sexual health and careers advice.

A copy of the Audit Commission report 'Tired of Hanging Around: Using sport and leisure activities to prevent anti-social behaviour by young people' can be found at
http://www.audit-commission.gov.uk/reports/NATIONAL-REPORT.asp?CategoryID=ENGLISH^576^SUBJECT^115^REPORTS-AND-DATA^AC-REPORTS&ProdID=9F4E760A-70C4-47e6-80D0-E7B37AF237E4

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.

Confiscation Orders Should Not Be Based on Property In Respect of Which the Offender's Only Role Was As Courier or Custodian of Property

R v SYLVIA ALLPRESS: R v DEBORAH SYMEOU: R v MIGUEL CASAL: R v PAUL WINTER MORRIS: R v STEPHEN MARTIN (2009)

CA (Crim Div) (Latham LJ (VP CA Crim), Hughes LJ, Toulson LJ, Rafferty J, Maddison J) 20/1/2009

Criminal Law - Criminal Procedure

Benefit From Criminal Conduct: Confiscation Orders: Money: Money Laundering: Proceeds Of Crime: Property: Assessment Of Benefit Obtained By Criminal Conduct: S.71(4) Criminal Justice Act 1988: S.84(2) Criminal Justice Act 1988: S.80(1) Proceeds Of Crime Act 2002: S.2(3) Drug Trafficking Act 1994

If an offender's only role in relation to property connected with his criminal conduct was to act as a courier on behalf of another, that property did not amount to property obtained by him within the meaning of the Proceeds of Crime Act 2002 s.80(1) or the Criminal Justice Act 1988 s.71(4) or to "payment or other reward" within the meaning of the Drug Trafficking Act 1994 s.2(3).

The appellant offenders (X,S,C,M and Y) in conjoined cases, appealed against confiscation orders made against them following convictions for various offences under the Criminal Justice Act 1988, the Drug Trafficking Act 1994 and the Proceeds of Crime Act 2002. X and S had couriered cash in drug trafficking operations. They accepted that they had benefited by receiving payments and costs but confiscation orders were made against them on the basis that they had benefited additionally by the value of the money they had carried as couriers. C had acted as a cash courier in activities related to drug smuggling. He had been paid wages and disbursements but the judge found that the money which had passed through his hands, and which C had known to be the proceeds of drug trafficking, constituted payments received by him in connection with drug trafficking. A confiscation order was made against him for the agreed value of his realisable assets. M, a partner in a law firm, had used the firm's account to transfer funds obtained by another person's criminal conduct. The judge found that M had received the funds within the meaning of s.71(4) of the 1988 Act. A confiscation order was made against him for the

value of his realisable assets. Y had allowed another to store cash at his shop, knowing that it was the proceeds of criminal activity. The judge found that it was irrelevant that the property belonged to someone else and he made a confiscation order for the amount of Y's realisable assets. The Crown submitted that the decisions in R v May (Raymond George) (2008) UKHL 28, (2008) 1 AC 1028 and Jennings v Crown Prosecution Service (2008) UKHL 29, (2008) 1 AC 1046 should not be applied as (1) money laundering offences involving any form of money received in connection with certain offences constituted a special category which required a different approach to be adopted; (2) the relevant Acts required a different approach to be taken in relation to money and the above decisions could not be applied to the 2002 Act as s.84(2) of that Act provided a wider statutory definition of property.

HELD

(1) The offences to which the Crown believed a different approach should be applied might involve dealing with money or other forms of property. The suggested approach might involve treating them as constituting a special category of offences for the purposes of confiscation only if the offending took the form of dealing with money. The approach would also involve treating money received in connection with or as a result of one of those offences differently from money received in connection with or as a result of a different offence. No statutory foundation had been identified which would support that approach and it would produce anomalies.

(2) The language of s.2(3) of the 1994 Act and s.71(4)of the 1988 Act did not compel a different approach to sums of cash than to other forms of property, May applied. Section 84(2)(h) of the 2002 Act spoke not of de facto possession but of a "right to possession". Whether a person was intended to be regarded as holding an interest in property by mere manual possession or whether something more was required, was put beyond doubt by those words. Moreover, even if a mere custodian of property were held to have a limited interest in the property, the relevant value would be the value of that interest, which if the property was being held purely for another would be nil. The judicial committee's observations in May and Jennings had been correct and applicable in relation to the 2002 Act in cases involving other forms of property and in cases involving money.

(3) If an offender's only role in relation to property connected with his criminal conduct, whether in the form of cash or otherwise, was to act as a courier on behalf of another, such property did not amount to property obtained by him within the meaning of s.80(1) of the 2002 Act or s.71(4) of the 1988 Act or to "payment or other reward" within the meaning of s.2(3) of the 1994 Act, May and Jennings applied. Therefore, X's, S's and C's appeals were allowed and the amounts of the confiscation orders were reduced. The same conclusion applied in relation to a mere custodian of cash for another. Therefore, Y's appeal was allowed and the confiscation order against him was quashed. In relation to M, the account concerned was an account of M and his partners with their bank. Payment of money into that account gave rise to a thing in action in M's favour, jointly with his partners. The starting point was therefore that that was his property,

R v Sharma (Ajay Kumar) (2006) EWCA Crim 16, (2006) 2 Cr App R (S) 63 applied. M had assisted another to retain control of the proceeds of that person's criminal conduct but with that ultimate objective had received funds in respect of which he had legal ownership and practical control. His appeal was therefore dismissed.

APPEALS ALLOWED IN PART

Evidence of Knife Found Under Offender's Pillow Was Admissible as Bad Character Evidence as Offender Denied Having Anything to do with Knives

R v PAUL CHABLE (2009)

CA (Crim Div) (Rix LJ, Hedley J, Judge Paget QC) 13/2/2009

Criminal Evidence

Bad Character: Misleading Statements: Propensity: Lawfulness Of Adducing Evidence To Show Disposition: Rebutting False Impression: S.101(1)(F) Criminal Justice Act 2003: S.101(1)(D) Criminal Justice Act 2003: S.101(3) Criminal Justice Act 2003

A conviction for blackmail was upheld as evidence of a knife found under the offender's pillow was admissible bad character evidence as he had vehemently denied having anything to do with knives, and therefore the evidence went to rebut a false impression and towards showing that he had a disposition to use knives. The direction that the judge had given the jury had been careful and effective and was not inconsistent.

The appellant (C) appealed against a conviction for blackmail. C had gone to a house and spoken to a woman (V) about a tree felling job that his friend had done for her husband's ex business partner. The discussion became heated and C brandished a knife and threatened to slash her husband's face if they did not send him a cheque for the tree felling job. V followed C and tried to take down his number plate details. C then pushed V and spat at her. That part of the incident was caught on CCTV and C pleaded guilty to common assault. In interview C vehemently denied having anything to do with knives and claimed to be an honest plumber. When C was arrested, his house was searched and a knife was found under his pillow. C stated that he had hidden the knife there from his nephew who had developed a fondness for knives. V was shown the knife and stated that it was not the same knife that he had used to threaten her. The prosecution sought to admit the evidence of the knife under the pillow as bad character evidence. The judge stated that the evidence was admissible under the Criminal Justice Act 2003 s.101(1)(f) and s.101(1)(d), and that it was not necessary to exclude the evidence under s.101(3). C submitted that (1) the evidence of the knife under his pillow was not admissible under s.101(1)(f) nor under s.101(1)(d) and in any event should

have been excluded under s.101(3); (2) the judge misdirected herself in her direction to the jury regarding the evidence of the knife under the pillow.

HELD

(1) The judge was right to have assessed C's interview as going far beyond a simple denial. C put himself forward as an honest plumber and wholly distanced himself from knives. The Crown was entitled to put to the jury the oddity of the knife under the pillow and C's explanation for it as material intended to rebut a false impression given by C. As the evidence was admissible as going to correct a misleading impression, it was only a small step from there to say that the knife was evidence that the jury could use to conclude that C had a disposition to misuse knives. Therefore, the judge was correct to rule that the evidence was admissible under s.101(1)(d). It was not necessary to consider s.101(3); however, it would not have had such an adverse effect on proceedings that it should have been excluded.

(2) The direction was helpful, well crafted and effective. It was not inconsistent to say that the knife under the pillow was not an offence but could be evidence of a disposition to use knives illegitimately.

APPEAL DISMISSED

Forgetfulness May Be Relevant to Reasonable Excuse for Possession of Weapons

R v VASIL TSAP (2008)

CA (Crim Div) (Lord Justice Richards, Swift J DBE, Sir Charles Gray) 21/10/2008

Criminal Procedure - Criminal Law

Jury Directions: Knives: Possession Of Offensive Weapons: Reasonable Excuse: Summing Up: Forgetfulness As Part Of Wider Circumstances Relied On: Decision For Jury To Determine: Flick Knife

It would normally be for a jury to determine whether a defendant had a reasonable excuse for possession of an offensive weapon where forgetfulness was only part of a wider set of circumstances relied on.

The appellant (T) appealed against his conviction for possession of an offensive weapon contrary to the Prevention of Crime Act 1953 s.1(1). T was searched when entering a nightclub and a flick knife, which had the appearance of a cigarette lighter, was found in his jacket pocket. T said that he had borrowed it from a friend six months previously to light a cigarette and intended to give it back but had not done so. He said that he had not realised at the time that it was a knife and had left it in the jacket. When later that day he discovered that it was a knife, he put it back in his pocket and forgot

about it and had not worn the jacket again until the night of his arrest. An issue arose regarding the judge's direction to the jury on T's defence of reasonable excuse. The judge ruled that, while he could not withdraw the defence from the jury, he would direct them that in the circumstances of the case there was no evidence upon which they could properly find a reasonable excuse to be made out. T changed his plea to guilty as a result of that ruling. T submitted that the judge was wrong to rule that there was no evidence on which the jury could find a reasonable excuse, as it was not a case where the excuse was solely one of forgetfulness. T further submitted that it was for the jury to evaluate whether on his evidence the defence of reasonable excuse had been made out and that it could not be said, as a matter of law, that the evidence did not sustain a finding of reasonable excuse.

HELD

Mere forgetfulness that someone had an article in their possession could not of itself provide a reasonable excuse for possession of an offensive weapon, but forgetfulness might be relevant as part of a wider set of circumstances relied on. It depended on the circumstances of the particular case, R v McCalla (Clevous Errol) (1988) 87 Cr App R 372 CA (Crim Div), R v Glidewell (Raymond) (1999) 163 JP 557 CA (Crim Div) and DPP v Patterson (2004) EWHC 2744 (Admin) considered. Where the matters relied on went beyond mere forgetfulness, it would almost invariably be left to the jury to decide whether there was a reasonable excuse, R v Ivey (Nicholas Roy) Unreported August 15, 2000 CA (Crim Div) applied. However, it would depend on the particular circumstances and the possibility was not dismissed that a defence might be based on more than mere forgetfulness and a judge could nevertheless properly direct the jury that the evidence did not support a finding of reasonable excuse. In the instant case, the circumstances went well beyond mere forgetfulness as on T's account he came into possession of the knife entirely innocently, not knowing that it was a knife, and put it in his pocket intending to return it to the person from whom he had borrowed it. It was only later that he discovered its true nature, put it back in his pocket and forgot about it until his arrest. It was a matter for the jury to assess T's account and decide whether he had a reasonable excuse and, although improbable, it would not have been an improper finding on the evidence. It therefore followed that the judge had made an error in ruling as he had. It was unfortunate that he was not made aware of Ivey as his ruling might well have been different if he had been.

APPEAL ALLOWED

Clarification of Elements of Allowing the Death of a Vulnerable Adult, Contrary to Section 5(1) Domestic Violence, Crime and Victims Act 2004

R v (1) UZMA KHAN (2) NAZIA NAUREEN (3) MAJID HUSSAIN (2009)

CA (Crim Div) (Lord Judge LCJ, Forbes J, Slade J) 16/1/2009

Criminal Procedure

Causing Death Of Children Or Vulnerable Adults: Jury Directions: Medical Evidence: Approach To Medical Evidence: Appropriate And Adequate Jury Directions In Relation To Offence: S.5(1) Domestic Violence, Crime And Victims Act 2004: S.5(1)(D)(I) Domestic Violence, Crime And Victims Act 2004: S.5(1)(D)(Iii) Domestic Violence, Crime And Victims Act 2004: S.5(1)(D) Domestic Violence, Crime And Victims Act 2004

Convictions for allowing the death of a vulnerable adult, contrary to the Domestic Violence, Crime and Victims Act 2004 s.5(1), were upheld as the judge had summed up the medical evidence in detail and with great care and had given appropriate and adequate directions in relation to the offence.

The appellants (X) appealed against their convictions for allowing the death of a vulnerable adult (R), contrary to the Domestic Violence, Crime and Victims Act 2004 s.5(1). The first and second appellants also appealed against their sentences of two years' imprisonment. R had arrived in the United Kingdom and married her cousin (B). They lived in the same household as X. During one night B, who had previously used violence towards R, inflicted fatal injuries on her. Medical examination revealed, in particular, numerous rib fractures which were said to have been sustained over a period of time in the course of three attacks. The prosecution alleged that R's condition during the three weeks before the final attack was such that it must have been apparent to each of the appellants that she had been and was being subjected to serious physical violence, but accepted that the injuries caused during the final attack were not relevant to the allegations against X. A pathologist conceded that the external bruising and degloving process could have occurred in the last 12 hours of R's life, but stressed that the external bruising overlay older bruising and underlying soft tissue damage. He indicated that the soft tissue damage was at least three days old and was not the most substantial cause of death. A consultant anaesthetist, who was unaware of the pathologist's concessions, stated that R would have been very unwell and unable to function normally from some four days before her death. X submitted that (1) the judge had failed to sum up the medical evidence with the clarity and accuracy regarding the true state of R's condition prior to the last attack, had erred in stating that the process of R's death had begun about three days before she was found dead, and had failed to give appropriate directions to the jury necessary to modify the impact of the anaesthetist's evidence in order to take account of the pathologist's concessions; (2) the judge had failed to direct the jury that, for the purposes of s.5 of the Act, it was necessary for membership of the household and frequency of contact to coincide with the facts or circumstances which would give rise to criminal liability, including the defendants' awareness of a significant risk of serious physical harm and foresight of the circumstances in which the fatal beating occurred; (3) the

judge's direction, namely whether the unlawful act of beating R and causing her death occurred in circumstances of the kind that the defendants should have foreseen, should have been more informative.

HELD

(1) The judge had summed up the medical evidence in detail and with great care. Given that some soft tissue damage was at least three days old and that was one of the factors that contributed to R's death, and considering the way in which the evidence of those issues had been given, it could be understood how the judge had come to describe the process of death as beginning about three days before death. The judge had provided the jury with a clear, detailed and accurate account of the pathological evidence, and the jury had been enabled to come to appropriate conclusions about R's state in the period prior to the last 12 hours of her life and the extent to which her injuries or her injured condition would have been manifest to the other members of the household. Also, the direction as to the proper approach they should take to the evidence of the anaesthetist following the pathologist's concessions was adequate and appropriate. Although the judge had not specifically referred to the degloving process in that direction the jury had known, and the judge had already reminded them of the concession, that the process could have occurred in the course of the final 12 hours of R's life.

(2) The s.5 offence was based on a positive duty on members of the same household to protect children or vulnerable adults whose ability to protect themselves from violence, abuse or neglect was significantly impaired. The state of vulnerability could be short or temporary. Even when membership of the same household was established, frequent contact between the defendant and the eventual victim was required. If contact was frequent, the defendant would nevertheless be entitled to be acquitted unless the criteria in s.5(1)(d)(i) and s.5(1)(d)(iii) were also established. X's submission sought to import into the words "frequent contact" the criteria found in s.5(1)(d) but they were irrelevant to the question whether the individual appellant's contact with S was frequent for the purposes of identifying him as a potential defendant. Section 5(1)(d)(i) and s.5(1)(d)(iii) applied when the defendant was aware of the risk of serious physical harm, or ought to have been aware of it, and foresaw, or ought to have foreseen, the occurrence of the unlawful act or course of conduct which resulted in death. Even if the necessary level of awareness and foresight were established, the defendant could not be convicted unless he failed to take the steps which could reasonably have been expected.

(3) The judge's direction that followed the terms of s.5(2)(d)(iii) was impeccable.

(4) The sentences imposed on the first and second appellants could not be criticised, particularly in the absence of remorse.

APPEAL DISMISSED

Scope of Saving Life and Limb in Section 17 PACE

BAKER v CROWN PROSECUTION SERVICE (2009)

DC (Sir Anthony May (President QB), Silber J) 27/1/2009

Police

Assault On Constables: Police Officers: Powers Of Entry: Powers Of Search: Lawfulness Of Entry And Search: Assault On Police Constable In Execution Of Duty: S.17(1)(E) Police And Criminal Evidence Act 1984: S.17(1) Police And Criminal Evidence Act 1984: S.17(4) Police And Criminal Evidence Act 1984

A police officer's course of conduct in gaining entry to a house without permission and approaching the occupant in order to search her was entirely lawful under the Police and Criminal Evidence Act 1984 s.17(1), and accordingly the occupant's assault on the officer was an assault on a police constable in the execution of his duty.

The appellant (B) appealed by way of case stated against a decision of a magistrates' court to convict her of the offence of assaulting a police constable in the execution of his duty. A police officer (H) had been directed to an address following a report that B had "gone berserk" with a knife. H entered the house without asking for permission. He said in evidence that he did so for the purpose of saving life or limb pursuant to the Police and Criminal Evidence Act 1984 s.17(1)(e). He went upstairs where he saw B sitting on her bed with blood on her clothes. H asked B where the knife was but she gave no response. At that point, other police officers had arrived on the scene, including a female officer (T). H said in evidence that he then wished to search B to see if she had the knife on her person. H told B to stand up and began to approach her, but B lunged forward and starting shouting. T took hold of her arm to stop her from falling but B struck her. H moved forward and B then struck him. H said that he ceased to be concerned about life or limb when B stood up and it was revealed that she did not have the knife. Another officer (X) also gave evidence. He said that no search had taken place, and that there had been no chance to confirm whether B had a knife before the assault occurred. The magistrates found B guilty of the relevant offence, holding that the actions of the police from the entry into B's property up until her arrest had been carried out in pursuance of its powers under the Act. B submitted that H had not been executing his duty when she struck him as he did not have authority to search her, and he had not informed her of the reason he had entered the premises.

HELD

(1) It was clear that no search of B had taken place before the assault occurred. X said so in his evidence, and B did not give any evidence, so the only possible finding was that no search had taken place. The point that there was an obligation on H to inform B of the reason for exercising his power under s.17(1) to enter the premises did not appear to have been relied on by B in front of the magistrates. Further, it was not subject to any finding made by the magistrates, and was not one of the matters

covered by the case stated. Accordingly, each of the grounds advanced by B had to be rejected.

(2) The following points were made in respect of the scope of s.17(1)(e) and s.17(4) of the Act: (a) A police constable entering and searching premises for the purposes of saving life or limb pursuant to the powers under the Act could enter without the permission of the occupant. The purpose of the provision was that entry would be allowed without permission: there would be no point if consent were required; (b) The words "saving life or limb" were wide enough to cover saving someone from themselves as well as saving someone from a third party; (c) Although it was desirable for an officer to give reasons for exercising his powers of entry, there was no hard and fast rule to that effect. There was no need for an officer to give an occupant any such explanation where it was impossible, impracticable or undesirable, Collins v Wilcock (1984) 1 WLR 1172 DC and Hobson v Chief Constable of Cheshire (2003) EWHC 3011 (Admin), (2004) 168 JP 111 considered. In the instant case, it was clear that the fear that B would use the knife justified the decision not to explain to her why entry had been obtained; (d) Once a police constable had located an occupant, he was entitled, under s.17(4), to carry out a search to the extent that was reasonably required for the purpose for which the power of entry was exercised. In the instant case, as the reason for entry was the danger to life or limb posed by the knife, the powers granted to the police included a search for that knife.

(3) The conduct of the police was entirely lawful under s.17(1), and B's assault was accordingly an assault on a police constable in the execution of his duty.

APPEAL DISMISSED

Private Roadways Used by Members of the Public Were "Roads" for the Purposes of the Road Traffic Act 1988

BARRETT v DIRECTOR OF PUBLIC PROSECUTIONS (2009)

DC (Scott Baker LJ, Clarke J) 10/2/2009

Road Traffic - Criminal Law

Driving While Disqualified: Footpaths: Roads: Roadways On Private Property Accessible By Public: Meaning Of Road S.103 Road Traffic Act 1988: S.103 Road Traffic Act 1988

Roadways through a private caravan park that were used by the public to gain access to a public beach were "roads" for the purposes of the Road Traffic Act 1988 s.103 so that a motorist could be convicted of an offence of driving whilst disqualified in respect of his driving on those roadways.

The appellant motorist (B) appealed by way of case stated against a decision of a magistrates' court to convict him of an offence of driving whilst disqualified. A charge had been laid by the DPP against B stating that he had driven a motor vehicle on a road, namely various roadways inside a caravan park, and certain other areas whilst disqualified from holding a driving licence. A second charge was laid against B that he had driven a motor vehicle without an insurance policy. B pleaded guilty to the second charge on the basis that the roadways and various sites were public places. In relation to the first charge the magistrates' court determined as a preliminary matter whether the roadways were "roads" for the purpose of the Road Traffic Act 1988 s.103. The magistrates' court found that (i) the application of the statutory term "road" came to be a matter of fact and circumstances to be determined by a tribunal of fact properly directing itself in law; (ii) the public had access to the site all year round, and that at the relevant time access was unrestricted to the public who used the roadways to access a public beach; (iii) the roadways had road markings, speed ramps and speed signs and hence were easily definable as routes leading from one point to another; (iv) that there existed a public footpath to which members of the public had unrestricted access along part of the roadways and that the public footpath fell within the definition of "highway"; (v) the word "road" meant "any highway and any other road to which that public has access". As a consequence of the magistrates' court finding B pleaded guilty to an offence of driving whilst disqualified. The question for the opinion of the High Court was whether the magistrates' court having heard the evidence was entitled to conclude that, as "road" meant "any highway and any other road to which the public has access", that the roadways constituted "roads" for the purpose of s.103. B contended that the magistrates' court erred as there was no vehicular through route on the caravan site, which was in any event private property, and that whilst there was a public footpath on part of the roadway which was a "highway", that of itself did not mean that the roadways amounted to a "road" within the ordinary meaning of the word.

HELD

The magistrates' court was entitled to find that the roadway were "roads" for the purpose of s.103. As acknowledged by B the roadways were a public place but more than that they followed points between defined edges used by the public as a route to the beach. In that respect the instant case was distinguishable from Dunmill v DPP (2004) EWHC 1700 (Admin) as in that case the purported "road" was on grass and there was no evidence of defined edges, Dunmill distinguished, DPP v Vivier (1991) 4 All ER 18 DC and Clarke v Kato (1998) 1 WLR 1647 HL considered. Moreover, it was clear from authority that a footpath fell within the definition of a "road" even if it did not have other characteristics such as length or width, Suffolk CC v Mason (1979) AC 705 HL applied. Further, it made no difference that the roadway ended up at a point that was no longer coterminous with the public footpath; the public footpath was a road within the normal sense of the word and the statutory definition.

APPEAL DISMISSED

Reliance on Evidence Constituting Sole or Decisive Evidence of Guilt Breached Right to Fair and Public Hearing

(1) IMAD AL-KHAWAJA (2) ALI TAHERY v THE UNITED KINGDOM (2009)

European Court of Human Rights (J Casadevall P) 20/1/2009

Human Rights - Criminal Procedure - Criminal Evidence

European Convention For The Protection Of Human Rights And Fundamental Freedoms 1950: Echr: Art.6(1): Fair And Public Hearing: Art.6(3)(D): Right To Obtain Attendance And Examination Of Witnesses: Indecent Assault Of Patients By Doctors: Wounding With Intent To Do Grievous Bodily Harm: Attempting To Pervert The Course Of Justice: Prosecution Witness Statements: Unavailability Of Prosecution Witnesses For Cross-Examination: Reading Of Statements To Juries: Statements As Sole Or Decisive Evidence Of Guilt

In two cases, the Court held that reliance on statements that constituted the sole or decisive evidence of the guilt of the accused, and which had been read out to juries, was in breach of the European Convention on Human Rights art.6(1) and art.6(3)(d).

In two separate applications, the complainants (K and T) complained under the European Convention on Human Rights art.6(1) and art.6(3)(d) that they had not had a fair hearing and that their right to obtain and examine witnesses had been infringed. K, a consultant physician, had been found guilty on two counts of indecent assault of two patients, one of whom had committed suicide for an apparently unrelated reason. The latter made a statement to police before her death and that was read to the jury, the judge stating that without it the count was unsustainable. K was content at the time to allow that on the basis that he could rebut it in cross-examination of other witnesses. The judge drew the jury's attention to the fact that the alleged victim had not been cross-examined and that K denied her allegations. K was convicted and sentenced to 15 months' imprisonment on the first count and 12 months' imprisonment on the second. On appeal, it was held that the judge's directions were "adequate", and that there was no breach of art.6. T had been convicted of wounding with intent to do grievous bodily harm and perverting the course of justice, after stabbing a man three times in the back. He first told police that he saw two black men stabbing the victim. A witness came forward and said that T had done it, but he claimed to be too afraid to testify, and the prosecution obtained leave to read out his statement to the jury. T gave evidence, and the judge warned the jury about relying on that. T was convicted and sentenced to imprisonment for ten years and three months. At the appeal, which T brought on the basis that he had not been able to cross-examine the witness, the court found that, without the statement the chances of conviction would have been less and those of acquittal increased, but that evidence from T and other witnesses could prevent unfairness and that the judge had given clear directions about the statement. K and T submitted that the statements were decisive in their convictions, despite their being unable to cross-examine the makers. The respondent state submitted that alternative measures, less restrictive on the rights of the defence had been dismissed as

inappropriate, and that the provisions of art.6(3)(d) were illustrations of matters to be taken into account for a fair trial.

HELD

The provisions of art.6(3) were minimum rights and could not be read as they had been by the appeal court, as illustrations of matters to be taken into account. Further, despite the occasions on which the reading out of a statement could be seen as not inconsistent with art.6(1), the use made of it in evidence had to comply with the object of art.6(1), Unterpertinger v Austria 24 (1986) applied. That object meant that the accused had to be given a proper and adequate opportunity to challenge and question a witness, either when the statement was made or later. The dismissal by the state of alternative measures did not relieve the domestic courts of the responsibility of safeguarding the rights of the defence, but rather, increased it. The factors relied on by the state, either singly or together, could not counterbalance the prejudice caused to K and T. The statements had been decisive in convicting both K and T. Without the statement, K would probably have been tried on the second count only, and no jury direction could have outweighed the effect of the statement, which constituted the sole evidence against him, untested in cross-examination. T's statement could not have been rebutted effectively, as there were no other witnesses willing to give evidence, and T's evidence could not be enough to offset the fact that there was no chance to cross-examine the only prosecution witness. Although the appeal court had made clear that the statement was to be treated with caution and circumspection, the warning was not enough to counterbalance the lack of direct evidence apart from the statement. Luca v Italy (2001) applied. Accordingly, there was a breach of art.6(1) taken with art.6(3)(d) in both cases.

K and T were awarded EUR 6,000 each for non-pecuniary damage, and EUR 14,198 jointly for costs and expenses, less EUR 2,300.

COMPLAINT UPHELD

Appeal Against Decision Regarding Absence of Crime-Specific Policy Regarding Assisted Suicide Dismissed

R (on the application of DEBBIE PURDY) (Appellant) v DIRECTOR OF PUBLIC PROSECUTIONS (Respondent) & OMAR PUENTE (Interested Party) & SOCIETY FOR THE PROTECTION OF UNBORN CHILDREN (Intervener) (2009)

CA (Civ Div) (Lord Judge LCJ, Ward LJ, Lloyd LJ) 19/2/2009

Human Rights - Criminal Law

Assisted Suicide: Codes Of Practice: Consent To Prosecute: Director Of Public Prosecutions: Precedent: Prescribed By Law: Prosecutions: Right To Respect For Private And Family Life: Statutory Duties: Alleged Infringement Of

Convention Rights: Absence Of Crime-Specific Policy Relating To Assisted Suicide: In Accordance With Law: S.2(1) Suicide Act 1961: S.2(4) Suicide Act 1961: Art.8 European Convention On Human Rights: S.6(1) Human Rights Act 1998: S.10 Prosecution Of Offences Act 1985

The absence of a crime-specific policy relating to assisted suicide, identifying the facts and circumstances that the Director of Public Prosecutions would take into account when deciding whether to prosecute an individual for assisting another person to commit suicide, did not make the operation and effect of the Suicide Act 1961 s.2(1) unlawful and did not mean that it was not in accordance with law for the purposes of the European Convention on Human Rights 1950 art.8(2).

The appellant (P) appealed against a decision ((2008) EWHC 2565 (Admin)) that the DPP was not required to promulgate an offence-specific policy identifying the facts and circumstances he would take into account when deciding whether to prosecute an individual for assisting another person to commit suicide. P, who suffered a debilitating illness, had declared her wish to travel to a country where "assisted suicide" was lawful to end her life when it became utterly unbearable. She wished to know whether her husband would be prosecuted under the Suicide Act 1961 s.2(1) if, in those circumstances, he aided and abetted her suicide. No prosecution could be brought without the consent of the DPP under s.2(4) of the Act. P had asked the DPP to promulgate the offence-specific policy but the DPP informed P that the only policy he applied was that set out in the Code for Crown Prosecutors, that none of his public policy statements set out circumstances in which a prosecution should never be brought for a given offence and that he had no plans to issue further guidance in relation to policy for the offence in question. P unsuccessfully sought judicial review. The issues in the instant appeal were whether (i) the European Convention on Human Rights 1950 art.8 was engaged on the facts of the case and whether the Court of Appeal was bound to follow a decision of the House Lords or the decision of the European Court of Human Rights in the same case as to the applicability of art.8(1) in an assisted suicide case; (ii) s.2 of the Act was in accordance with law, in the absence of a published policy by the DPP as to the criteria by reference to which he would decide whether to consent to a prosecution against an individual who assisted in suicide, in particular where the assistance was in making arrangements to travel abroad for the purposes of an assisted suicide which was lawful in the country where it occurred. P submitted that the departure from the general rule relating to judicial precedent was justified because of the fact that the same individual, the same facts, issues and arguments were involved both in the Lords and in Strasbourg. The DPP had a duty to publish the offence-specific policy setting out in far greater detail than the Code itself how cases of assisted suicide would be approached once the evidential test, namely that there was enough evidence for a realistic prospect of conviction, had been satisfied.

HELD

(1) The decisions of the two courts relating to the ambit of art.8(1) in an assisted suicide case were clearly inconsistent. The House of Lord's found that art.8(1) was not engaged whereas the European Court of Human

Rights found that it was, R (on the application of Pretty) v DPP (2001) UKHL 61, (2002) 1 AC 800 followed and Pretty v United Kingdom (2346/02) (2002) 2 FLR 45 ECHR considered. However, the Court of Appeal had very limited freedom and only in the very exceptional circumstances it could override what would otherwise be the binding precedent of the decision of the House of Lords, Kay v Lambeth LBC (2006) UKHL 10, (2006) 2 AC 465 and R (on the application of M) v Secretary of State for Work and Pensions (2008) UKHL 63, (2008) 3 WLR 1023 applied, and R (on the application of Razgar) v Secretary of State for the Home Department (No2) (2004) UKHL 27, (2004) 2 AC 368 and R (on the application of Countryside Alliance) v Attorney General (2007) UKHL 52, (2008) 1 AC 719 considered. The House of Lords required more than the bare fact of the same parties being involved in order to bring the case within the very narrow confines of the very exceptional case.

(2) The DPP had not acted in breach of the Human Rights Act 1998 s.6(1) by failing to "promulgate a policy as to the circumstances in which a prosecution would be brought for aiding and abetting a suicide". The offence created by s.2(1) of the 1961 Act was sufficiently clear to satisfy the requirements of the Convention, Sunday Times v United Kingdom (A/30) (1979-80) 2 EHRR 245 ECHR applied. The legislative responsibilities of the DPP were defined by the Prosecution of Offences Act 1985 s.10. He was required to provide general guidance and had done so. What he had refused to do was to provide specific guidance in relation to assisted suicide. However, the DPP was not in dereliction of his statutory duty. The absence of a crime-specific policy relating to assisted suicide did not make the operation and effect of s.2(1) of the 1961 Act unlawful and did not mean that it was not in accordance with law for the purposes of art.8(2). Like the instant court the DPP could not dispense with or suspend the operation of s.2(1), and he could not promulgate a case-specific policy in the terms sought by P which would, in effect, recognise exceptional defences to the offence under s.2(1) which Parliament had not chosen to enact.

APPEAL DISMISSED

SI 58/2009 The Counter-Terrorism Act 2008 (Commencement No. 2) Order 2009

In force **16 February**. This Order brings into force the following sections of the Counter-Terrorism Act 2008:

- Section 29 (consent to prosecution of offence committed outside UK);
- Section 74 (inquiries: intercept evidence);
- Section 75 (amendment of definition of "terrorism" etc.);
- Section 76 (offences relating to information about members of armed forces etc.), together with Schedule 8 (offences relating to information about members of armed forces etc: supplementary provisions);
- Section 77 (terrorist property: disclosure of information about possible offences);
- Sections 78 to 81 (control orders);
- Section 82 (pre-charge detention: minor amendments);
- Sections 83 to 84 (forfeiture of terrorist cash);
- Section 99 in so far as it relates to the entries in Schedule 9 mentioned in the bullet point below; and
- In Schedule 9, the entries in Part 2 (disclosure of information and the intelligence services), Part 4 (financial restrictions proceedings), Part 5 (control orders) and Part 6 (pre-charge detention) of Schedule 9 (repeals and revocations).

SI 83/2009 The Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment) Order 2009

In force **24 January**. This Order revokes the Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment) Orders 2005 (SI 581/2005) and 2008 (SI 3297/2008) ('the 2008 Order'), the latter being revoked before it comes into force. This Order replaces the Schedule to the Penalties for Disorderly Behaviour (Amount of Penalty) Order 2002. The substituted Schedule sets out the penalties for existing penalty offences. It also sets out the amount for the new penalty offence of possession of cannabis etc. contrary to section 5(2) of the Misuse of Drugs Act 1971.

The new penalty offences originally contained in the 2008 Order (covered in the February 2009 issue of the *NPIA Digest* at page 51) are not contained in this Order, as they are to be consulted on before a determination is made on whether they will become penalty offences.

SI 110/2009 The Criminal Justice and Police Act 2001 (Amendment) Order 2009

In force **28 January**. This Order amends the Table in section 1(1) of the Criminal Justice and Police Act 2001, to add possession of cannabis etc. contrary to section 5(2) of the Misuse of Drugs Act 1971 ('the Act'), as an offence in respect of which a penalty notice can be given. The penalty offence applies in respect of:

- Cannabinol;
- Cannabinol derivatives (within the meaning of Part 4 of Schedule 2 to the Act);
- Cannabis or cannabis resin (within the meaning of the Act);
- Any stereoisomeric form of the substances specified above;
- Any ester or ether of cannabinol or cannabinol derivatives;
- Any salt of a substance specified above;
- Any preparation or other product containing a substance or product specified above, not being a preparation falling within paragraph 6 of Part 1 of Schedule 2 to the Act.

SI 140/2009 The Criminal Justice and Immigration Act 2008 (Commencement No. 6 and Transitional Provisions) Order 2009

In force **1 February**. This Order brings into force the following provisions of the Criminal Justice and Immigration Act 2008:

- Section 48(1)(a) (the giving of youth conditional cautions);
- Section 123 (Review of anti-social behaviour orders etc.);
- Section 124 (Individual support orders);
- Section 148(2) (Consequential etc. amendments and transitional and saving provisions) in so far as it relates to the provisions in Schedule 27 specified below;
- In Schedule 9 (Alternatives to prosecution for offenders under 18):
  - paragraph 1;
  - paragraph 3 but only to the extent that it inserts sections 66G and 66H of the Crime and Disorder Act 1998(2);
  - paragraph 4; and
- Paragraphs 33 and 34 of Schedule 27 (Transitory, transitional and saving provisions).

SI 142/2009 The Road Vehicles (Construction and Use) (Amendment) Regulations 2009

In force **3 and 31 March**. These Regulations make amendments to the Road Vehicles (Construction and Use) Regulations 1986 ('the 1986 Regulations'), towards implementing EC Directives. Included in the amendments are provisions requiring the retro-fitting of mirrors for existing vehicles registered within the European Community, and requirements to fit speed limiters on buses and goods vehicles. Sections 41A-D and 42 of the Road Traffic Act 1988 create offences where a breach of a requirement of the 1986 Regulations has occurred.

SI 203/2009 The Police Act 1997 (Criminal Records) (Electronic Communications) Order 2009

In force **2 March**. This Order amends Part V of the Police Act 1997 and the Safeguarding Vulnerable Groups Act 2006 regarding applications for criminal records certificates and enhanced criminal records certificates, made to the Secretary of State. The amendments include inserting new sections into the Police Act 1997, allowing for applications to be submitted electronically as prescribed by the Secretary of State without requiring the applications to be countersigned. Such an application will be deemed to have been made in the prescribed form.

SI 268/2009 The Children and Young Persons Act 2008 (Commencement No. 1 and Saving Provision) Order 2009

In force **various dates**. This order commences a number of provisions of the Children and Young Persons Act 2008. Of particular note is the coming into force in England and Wales of section 31 (supply of information concerning the death of children to Local Safeguarding Children Boards), which requires registrars of births and deaths to notify the appropriate Local Safeguarding Children Board of the death of an individual who was, or may have been, under the age of 18 at the time of death. Under section 13 of the Children Act 2004 the chief officer of police is to be a partner of the Board, required to cooperate in the establishment and operation of the Board.

Notes

NOTES