

Digest



MAY 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 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 new proposals and reviews of legislation and policing practice including: the new Equality Bill; a Home Affairs Committee review of the methods used to police the London G20 Summit; the consultation on the draft National Improvement Strategy for Policing; the draft Bribery Bill; new proposals to reduce the number of road deaths; a review of the Regulation of Investigatory Powers Act; proposals to tighten the regulations relating to wheel clamping firms; HMIC thematic report on police response to serious and organised crime and the Police Reform Working Group report on the future of policing.

There are also a number of articles outlining recently published Government and Parliamentary reports and initiatives including: the concerns of the Joint Committee on Human Rights about some of the provisions of the Policing and Crime Bill; the Deaths in Custody Annual report; new Guidance on the enforcement of law in relation to dangerous dogs; the publication of the Science and Innovation Strategy 2009-12 and the latest Quarterly Update on Crime Statistics for England and Wales.

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
New Equality Bill Published to Strengthen Anti-Discrimination Legislation	5
LEGISLATION	6
New Legislation will Fight Against Bribery	6
New Roads Policing Powers Come into Force	6
New Proposals Set Out to Reduce Number of Road Deaths	7
GOVERNMENT AND PARLIAMENTARY NEWS	9
Home Affairs Committee to Review Policing of London G20 Protests	9
Joint Committee on Human Rights Report Outlines Concerns in Policing and Crime Bill Provisions	9
Review of Regulation of Investigatory Powers Act 2000 Announced	11
Extra Funding to Protect Crowded Places from Terrorist Attacks	11
New Guidance Issued to Help Law Enforcers Control Dangerous Dogs	12
Science and Innovation Strategy 2009-12 Published	13
Proposals to Tighten Regulations for Wheel Clamping Firms	14
POLICE	15
Draft National Improvement Strategy for Policing Opens for Consultation	15
Deaths in Custody Annual Report Published	16
HMIC Thematic Report on Police Response to Serious and Organised Crime Published	17
Policing Reform Working Group Publish Report	18
Massive Increase in Seizure of Uninsured Vehicles	20
National Tackling Drugs Week Announced	20
TRAINING AND DEVELOPMENT	21
Police Promotion Examinations Board Agrees to Trial New Police Promotions Framework	21
CRIMINAL JUSTICE SYSTEM	23
Consultation on Sentencing for Drug Offences Begins	23
Report on Girls and Offending: Patterns, Perceptions and Interventions Published	23
Criminal Justice System Needs a Revolution to put Victims at its Heart	24
CRIME	25
New Measures to Support Victims of Sexual Assault	25
Crime Statistics in England and Wales: Quarterly Update Released	25
National Footwear Reference Collection (NFRC)	26
Initiative to Offer More Help to Public to Crack Down Further on Burglary	27
New Measures to Tackle Human Trafficking	28
NEWS IN BRIEF	30
Firearm Certificates in England and Wales 2007/08	30
Mobile Technology Creates New Opportunities for Police	30

CASE LAW	32
CASE LAW - EVIDENCE AND PROCEDURE	32
Compiled Evidence in Support of Football Banning Order Was Properly Admitted In Evidence	32
Witness Anonymity Order Met Statutory Test Under Criminal Evidence (Witness Anonymity) Act 2008	34
Disclosure of Spent Conviction to Third Party Employer Was Lawful	35
CASE LAW - CRIME	38
Duty of Care To Take Reasonable Steps to Save Life Arose Where Defendant Contributed to State of Affairs and Knew or Ought to Have Known They Were Life Threatening	38
Money Laundering Conviction Safe Despite Argument of Honest Arrangement Pre-dating Proceeds of Crime Act 2002	40
CASE LAW - ROAD TRAFFIC	42
Prosecution for Failing to Produce Motor Vehicle Documents Not an Abuse of Process	42
STATUTORY INSTRUMENTS	44

New Equality Bill Published to Strengthen Anti-Discrimination Legislation

The Minister for Women and Equality announced on 27 April 2009 the publication of the Equality Bill which aims to make Britain stronger, fairer and more equal. The Equality Bill sets out new laws which will aim to narrow the gap between rich and poor; require business to report on gender pay; outlaw age discrimination; and strengthen anti-discrimination legislation. The Equality Bill is expected to come in to force from autumn 2010.

The Bill will aim to simplify the law which, over the last four decades, has become complex and difficult to navigate. Nine major pieces of legislation and around 100 other measures will be replaced by a single Act written in plain English to make it easier for individuals and employers to understand their legal rights and obligations.

The provisions of the Equality Bill will strengthen equality law by:

- ◆ Introducing a new public sector duty to consider reducing socio-economic inequalities;
- ◆ Putting a new Equality Duty on public bodies;
- ◆ Using public procurement to improve equality;
- ◆ Banning age discrimination outside the workplace;
- ◆ Introducing gender pay reports;
- ◆ Extending the scope to use positive action;
- ◆ Strengthening the powers of employment tribunals;
- ◆ Protecting carers from discrimination;
- ◆ Offering new mothers stronger protection when breastfeeding;
- ◆ Banning discrimination in private clubs; and
- ◆ Strengthening protection from discrimination for disabled people.

A more detailed article on the Equality Bill will be published in the next edition of the *NPIA Digest*.

The Government Equalities Office report 'A Fairer Future: The Equality Bill and Other Action to Make Equality a Reality' is available at <http://www.equalities.gov.uk/PDF/A%20Fairer%20Future-%20The%20Equality%20Bill%20and%20other%20action%20to%20make%20equality%20a%20reality.pdf>

The Equality Bill and Explanatory Notes are available at <http://services.parliament.uk/bills/2008-09/equality.html>

New Legislation will Fight Against Bribery

The Justice Secretary announced the publication of the draft Bribery Bill on 25 March 2009. The new Draft Bill intends to change the criminal law on bribery, modernising and simplifying existing legislation to enable prosecutors and the courts to deal with bribery more effectively.

The Bill replaces the offences at common law and under the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916 which would be repealed. It also aims to promote and support ethical practice by encouraging businesses to put in place anti-bribery safeguards that ensure all employees are aware of the risks surrounding bribery and that adequate systems exist to manage these.

The proposed Bill will:

- ◆ Make it a criminal offence to give, promise or offer a bribe and to request, agree to receive or accept a bribe either at home or abroad. The measures include bribery of a foreign public official;
- ◆ Increase the maximum penalty for bribery from seven to ten years' imprisonment, with an unlimited fine;
- ◆ Introduce a corporate offence of negligent failure to prevent bribery by persons working on behalf of a business. A business can avoid conviction if it can show that it generally has good systems in place to prevent bribery; and
- ◆ Ensure evidence from proceedings in Parliament can be considered by the Courts in bribery cases by removing Parliamentary Privilege in the prosecution of an MP or Peer.

The Draft Bill distinguishes between bribery and legitimate business exchanges by setting out the circumstances in which a criminal offence has been committed.

The Draft Bribery Bill is available at

<http://www.justice.gov.uk/publications/docs/draft-bribery-bill-tagged.pdf>

New Roads Policing Powers Come into Force

On 1 April 2009 the Department for Transport announced new powers to ensure that all drivers who commit road traffic offences will now face tougher penalties. Under the new laws drivers, including hauliers, living outside the UK will no longer be able to escape the penalties faced by UK offenders.

The Police and examiners from the Vehicle Operator and Services Agency (VOSA) can now collect on-the-spot payments from alleged offenders who cannot provide a satisfactory UK address. Those caught committing an endorsable offence will also have penalty points put on their UK driving record, which could lead to them being banned from driving in the UK.

VOSA examiners will also, for the first time, be able to issue fixed penalty notices to drivers of heavy goods vehicles from both the UK and abroad, in addition to immobilising vehicles where driving hours, weight or vehicle safety rules have been broken.

Chief Constable Mick Giannasi, ACPO Lead for Roads Policing, said "The new schemes introduced will help law enforcement agencies deal more effectively with non-UK residents who commit driving offences and drivers committing commercial vehicle offences. Enforcing road safety legislation fairly and consistently against all offenders no matter where they live, have come from or are going to, will ensure our roads are safer and help us reduce death and injury."

From 1 April 2009, those drivers without a satisfactory UK address who commit traffic offences will have to pay a financial penalty deposit equal to the amount of the fixed penalty or £300 as a deposit in respect of a potential court fine. The new measures will also enable the Police and VOSA to immobilise any vehicle that has been prohibited from continuing a journey where a driver is breaking the rules on drivers' hours; is driving an overloaded or unroadworthy vehicle; or in cases where a driver refuses to pay a requested financial deposit.

The press release can be found at

<http://nds.coi.gov.uk/environment/fullDetail.asp?ReleaseID=397413&NewsAreaID=2&NavigatedFromDepartment=False>

New Proposals Set Out to Reduce Number of Road Deaths

The Road Safety Minister announced on 21 April 2009 wide-ranging proposals to cut the number of deaths on the roads and also confirmed a major overhaul of the driver training and testing process.

New measures to ensure all roads have the right speed limit and the formation of a new expert panel to investigate road safety are part of plans to cut road deaths by a third by 2020 to make Britain's roads safer. The way people learn to drive and how they are tested is also set for major reform.

The Department for Transport's draft road safety strategy for 2010-2020 'A Safer Way: Consultation on Making Britain's Roads the Safest in the World' was published on 21 April 2009 for public consultation. This consultation document seeks views on the vision, targets and measures for improving road safety in Great Britain beyond 2010. The new proposals include:

- ◆ New guidance to ensure all roads have the right speed limit. This will recommend that local authorities:
 - Introduce, over time, 20 mph zones or limits into streets around schools and which are primarily residential in nature to protect pedestrians and cyclists; and
 - Review speed limits on single carriageway rural roads, reducing the limit on the more dangerous roads where this will have a significant impact on casualties.

- ◆ The formation of a new independent expert panel to identify issues and trends from fatal accidents and provide an annual report on road safety to Ministers and Parliament; and
- ◆ New targets to cut road deaths by one-third by 2020, to halve the number of child deaths and serious injuries on the roads and to halve the rate of road death and serious injury to pedestrians and cyclists per kilometre travelled.

Alongside the draft strategy, a programme of measures to reform the driver training and testing process are also published in response to the Learning to Drive consultation conducted last year. Almost 7,000 people responded to the radical plans and the Driving Standards Agency will now:

- ◆ Roll out a new voluntary pre-driver qualification in safe road use for 14-17-year-olds. Successful completion will provide a partial credit for the theory test, allowing learner car drivers to take an abridged test from October 2009;
- ◆ Introduce case studies into the theory test to better assess whether learners have understood driving or riding theory, also from October 2009;
- ◆ Develop a new vocational qualification for van drivers, helping them to enhance the skills they need to drive for work;
- ◆ Improve the practical test by introducing an assessment of a candidate's ability to drive independently without detailed instructions from the examiner, as well as requiring the supervising driver to accompany the candidate during the test to help unsuccessful candidates understand feedback from examiners and help tailor further learning;
- ◆ Improve the content of the Pass Plus scheme to maximise both take up and the incentives offered by insurers to drivers who complete the scheme;
- ◆ Launch a trial of the new Learning to Drive syllabus, which sets out all the aspects of driving that are needed to be a safe driver; and
- ◆ Bring forward proposals to modernise driver training including providing learners with more information to help them to choose an instructor.

The consultation on A Safer Way: Consultation on Making Britain's Roads the Safest in the World started on 21 April 2009 and will close on 14 July 2009. The consultation papers can be found at <http://www.dft.gov.uk/roadsafetyconsultation>

Home Affairs Committee to Review Policing of London G20 Protests

The House of Commons Home Affairs Committee (HAC) announced on 21 April 2009 the scope of its investigation into the policing of the G20 protests in London at the beginning of April 2009.

The HAC inquiry will focus in particular on the following issues:

- ◆ Training given to police officers in respect of policing public protests;
- ◆ Priorities of police in relation to protests (protection of people, defence of property, balancing interests of the right to protest against the right to go about one's lawful business without hindrance);
- ◆ Factors taken into consideration by senior officers when deciding how to police demonstrations (for example, how many police should be deployed, whether or not to contain protesters, whether to deploy riot gear and riot tactics, use of mounted police);
- ◆ Definitions of 'reasonable force' and 'peaceful protest';
- ◆ At what level of command decisions are taken in relation to evolving protests;
- ◆ Use of specialist squads;
- ◆ Relations between the police and the media, including restrictions on photography;
- ◆ Political pressures on police (for example, to avoid disorder in high profile events); and
- ◆ Dissemination of best practice.

The Chair of the Committee said "This Inquiry will be critical to look at how the demonstrations were policed, how officers were trained to deal with protestors and what tactics were used to control crowds. The protests have highlighted the need for a review of police behaviour."

The press release can be found at

http://www.parliament.uk/parliamentary_committees/home_affairs_committee/090421.cfm

Joint Committee on Human Rights Report Outlines Concerns in Policing and Crime Bill Provisions

On 31 March 2009 the House of Lords and the House of Commons Joint Committee on Human Rights published their Tenth Report entitled 'Legislative Scrutiny: Policing and Crime Bill'. The report expressed a number of human rights concerns about the Government's Policing and Crime Bill.

The Joint Committee's key concerns include:

Sexual offences and sex establishments

◆ Strict liability

The Joint Committee broadly welcome the Government's attempts to protect the rights of people trafficked for sexual services. However, they indicate that the introduction of a strict liability offence for buying sexual services from prostitutes who are being controlled for gain by a third person risks inappropriately interfering with the right to respect for a private life. The committee conclude that:

- The Government should publish evidence to support the need to make the offence one of strict liability, to show why the existing criminal law is inadequate to deal with the targeted conduct and how the proposed new offence is proportionate;
- Making the offence one of strict liability makes it difficult for people to be certain about the law, and therefore difficult for people to know how to regulate their behaviour, which contravenes the European Convention on Human Rights and the common law; and
- The Policing and Crime Bill should be amended to ensure, as an element of the offence, that the individual was aware or ought to have been aware that the prostitute was controlled for gain.

◆ Criminalisation of children

The United Nations Committee on the Rights of the Child has recently recommended that the UK should view child prostitutes as victims and not as criminals. The committee indicate that the Bill continues to criminalise children, which they believe is unacceptable. The committee recommend that the Bill be amended to decriminalise children involved in prostitution.

◆ Other issues

The committee also express concerns about rehabilitation orders for prostitutes, premises closure orders and extensions to preventative orders under the Sexual Offences Act 2003.

Protest and the Serious Organised Crime and Police Act 2005 (SOCPA)

The committee propose amendments to the Policing and Crime Bill to promote the right to protest. SOCPA should be amended so that the Secretary of State can only designate sites, as protected, if convinced that it is 'necessary' to do so.

SOCPA provisions relating to protest around Parliament should be repealed. The Public Order Act 1986 should govern protest in this area, although with amendments to reflect the particular circumstances of Parliament.

Other issues

The report also raises human rights issues related to alcohol misuse, proceeds of crime, extradition, listing of care workers under the Safeguarding Vulnerable Groups Act 2006, and retaining, using and destroying biometric data and other information.

Other reservations of the committee concerned the proposals on injunctions relating to gangs which will be published in a future report.

The Tenth Report of the House of Lords and the House of Commons Joint Committee on Human Rights 'Legislative Scrutiny: Policing and Crime Bill' can be found at

<http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/68/6802.htm>

Review of Regulation of Investigatory Powers Act 2000 Announced

The Home Office announced on 17 April 2009 that it had plans to stop investigatory powers being used under the Regulation of Investigatory Powers Act 2000 (RIPA) for trivial purposes. The plans include a review of which public authorities can use them, proposals to raise the level of authorisation to sign them off in local authorities and a public consultation.

The review of RIPA will invite views on:

- ◆ Which public authorities should be able to authorise key investigatory techniques, such as the use of communications data or covert surveillance in public places, under RIPA;
- ◆ The purposes for which these investigatory techniques should be used;
- ◆ The option of raising the rank of the local authority employee authorising the use of investigatory techniques to senior executive; and
- ◆ Whether elected councillors should also play a role in the authorisation.

Many of the investigations that rely on the techniques regulated by RIPA are vital to protecting public safety including those related to serious crime and terrorism. However, there have been some cases where RIPA has been used in circumstances which are regarded by many as trivial.

The consultation includes draft Codes of Practice which will replace the existing Codes of Practice on Covert Surveillance and Covert Human Intelligence Sources. They will provide greater clarity on when the use of RIPA techniques would be proportionate and they provide examples so everyone can understand how and when these techniques should be used.

The press release can be found at

<http://www.whitehallpages.net/modules.php?op=modload&name=News&file=article&sid=188216&mode=thread&order=0&thold=0>

Extra Funding to Protect Crowded Places from Terrorist Attacks

On 20 April 2009 the Security Minister announced that an extra £5 million was to be made available to protect the public from the threat of terrorist attacks in crowded places.

The funding allocation comes as a public consultation is published on how local authorities, businesses, the police and communities can work together to better secure the places where groups of people congregate. New guidance

will help local partners to understand their roles and the practical difference they can make to reduce the vulnerability of public areas like pubs, clubs, shopping centres, sports stadia and schools. They will be able to prioritise their work based on advice from police Counter Terrorism Security Advisers who for the first time are carrying out a standardised risk assessment of crowded places across the country.

A recent increase in the number of police Counter Terrorism Security Advisers who are responsible for assessing risk and providing specialist advice at local level is part of this initiative. Building on their existing work, the National Counter Terrorism Security Office and Counter Terrorism Security Advisers have already produced and distributed detailed protective security advice to more than 500 sports stadia, 600 shopping centres and 10,000 city and town centre bars, pubs and nightclubs. The range of 'Crowded places' include:

- ◆ Bars, pubs and night clubs;
- ◆ Shopping centres;
- ◆ Sports and entertainment stadia;
- ◆ Cinemas and theatres;
- ◆ Visitor attractions;
- ◆ Restaurants and hotels;
- ◆ Major events;
- ◆ Commercial centres;
- ◆ Health sector;
- ◆ Education sector; and
- ◆ Religious sites/places of worship.

The consultation can be accessed at

<http://www.homeoffice.gov.uk/documents/cons-2009-crowded-places/> and sector-specific guidance is available from the National Counter Terrorism Security Office at <http://www.nactso.gov.uk/crowdedplaces.php>

New Guidance Issued to Help Law Enforcers Control Dangerous Dogs

On 16 April 2009 the Environment Minister announced that new guidance, 'Dangerous Dogs Law: Guidance for Enforcers' is now available to help police and local authorities enforce the law in relation to dangerous dogs more effectively and to crack down on irresponsible dog ownership.

The guidance, written in association with the police, the RSPCA and local authorities, sets out the current law and provides advice on how the legislation can be used effectively to improve enforcement.

The document:

- ◆ Provides an outline of the law on dangerous dogs, including an explanation of the Dangerous Dogs Act 1991 and the Dogs Act 1871;
- ◆ Sets out best practice for the main enforcement authorities: the police and local authorities;
- ◆ Provides guidance on identifying pit bull terrier-type dogs;
- ◆ Contains a useful flowchart on page 4 of the Guidance; and
- ◆ Provides examples of existing local initiatives.

The Environment Minister stated that a review of the legislation had been undertaken in 2007 with the police and found that, while the legislation was sound, more needed to be done to raise awareness of the law and improve enforcement.

The full guidance document 'Dangerous Dogs Law: Guidance for Enforcers' is available at <http://www.defra.gov.uk/animalh/welfare/domestic/dogs-guide-enforcers.pdf>

Science and Innovation Strategy 2009-12 Published

The Science and Innovation Strategy for 2009-12 was published by the Home Office on 22 April 2009. The Home Office is the lead government department responsible for crime, policing, immigration, passports, drugs and counter-terrorism with science and innovation essential for informing, developing and implementing policies to deliver their objectives of protecting the public.

The strategy sets out the priorities for science and innovation for the next three years and the processes by which they will manage it. The strategy document outlines the policy context in which it was prepared, and how it was developed to help support policy requirements and prepare for future challenges.

The strategy contains six sections:

- ◆ **Cross-cutting priorities** - science that will support the work of all business areas in the Home Office, including responding to developments in new technologies;
- ◆ **Crime** - science that will increase knowledge of trends in crimes and how to reduce crime, including that associated with drug and alcohol use, and organised crime;
- ◆ **Policing** - science that is needed to help support the police, including research to support developing a police workforce for the future, improving police effectiveness and capability through using social science and applying new and existing technologies to support the police in their work;
- ◆ **Identity management** - the science needed to manage future identity-related services and how biometrics can be used to support identity management systems to assure identity;

- ◆ **Border control and migration** - social research to help understand the drivers, costs and benefits of migration, and physical sciences to improve border security and to use technology to ensure that passenger throughput is maintained; and
- ◆ **Security and counter-terrorism** - the science needed to protect the public from terrorism, including reducing the UK's vulnerability to terrorism and reducing the impact of a terrorist attack.

The Science and Innovation Strategy for 2009-12 is available at <http://www.homeoffice.gov.uk/documents/science-strategy?view=Binary>

Proposals to Tighten Regulations for Wheel Clamping Firms

On 3 April 2009 the Home Secretary stated that new regulations to control the work of clamping firms could soon be introduced. The proposals for the introduction of compulsory licensing are intended to stop improper practices including:

- ◆ Excessive penalties for releasing clamped cars;
- ◆ Towing cars unreasonably quickly after being clamped;
- ◆ Hidden, missing or confusing signs warning drivers that clamping takes place; and
- ◆ A lack of any appeals process for drivers.

Currently, any individual undertaking wheel clamping must hold a frontline licence from the Security Industry Authority (SIA), with supervisors or directors holding a non-frontline licence. The new proposals would make it mandatory for the company itself to be licensed to help ensure it upholds standards of conduct with any company failing to meet the standards subject to enforcement.

The Home Office will launch a formal consultation shortly considering how best to regulate the industry and develop further proposals for a compulsory licensing scheme, likely to include industry-wide standards for:

- ◆ Signage, including size and visibility;
- ◆ Maximum penalties charged and payment methods;
- ◆ Minimum time between immobilisation and removal;
- ◆ Providing evidence that a parking infringement has taken place;
- ◆ Security and location of pound where vehicles are impounded; and
- ◆ Complaints and appeals policy.

The full press release can be read at <http://press.homeoffice.gov.uk/press-releases/Tight-regs-for-wheel-clamp-firms>

Draft National Improvement Strategy for Policing Opens for Consultation

The draft National Improvement Strategy for Policing (NISP) was published on 7 April 2009 and is set for a month-long consultation. With the agreement of the National Policing Board, the NPIA has undertaken the task of producing on behalf of the police service the NISP which takes a 10-year view of improvement across policing. The NISP aims to set out and deliver a professionally driven programme for improving the capability of police forces to deliver against the local and national priorities which are set by police authorities and central government.

The NISP identifies seven areas of capability improvement:

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

It also identifies a number of common approaches across the improvement portfolio:

- ◆ Putting delivery to citizens at the heart of the strategy;
- ◆ Aligning strategy to requirements by bringing together horizon scanning, evidence and lessons learned, and building the service's capability in research and analysis;
- ◆ Establishing clear mandates and governance for all policing improvement programmes;
- ◆ Developing effective methodologies for improvement at four levels: the individual, teams, forces and the service as a whole (together with its partners); and
- ◆ Aligning finance and achieving effective and efficient delivery through excellence in programme and project management.

As well as the consultation throughout April, the NPIA will be running three seminars in collaboration with the Jill Dando Institute of Crime Science at University College London. The capabilities under debate at these seminars will be:

- ◆ Global security (5 May);
- ◆ Operational processes, practice and doctrine (13 May); and
- ◆ Information, evidence, knowledge and science (27 May).

Representatives from the wider police service, other stakeholders and partners have been invited to attend and to comment on the consultation questions.

The draft National Improvement Strategy for Policing can be found at http://www.npia.police.uk/en/docs/NISP_Consultationl.pdf

The National Improvement Strategy for Policing consultation questions are available at http://www.npia.police.uk/en/docs/Consultation_questions.doc

Deaths in Custody Annual Report Published

On 27 March 2009 the Forum for Preventing Deaths in Custody published its second annual report. The Forum, an independently chaired body comprised of key government and non-government stakeholders, exists to learn lessons from deaths in custody across the various custodial settings and to prevent the recurrence of such deaths.

The Forum's report summarises its work over the past year and suggests a number of issues it considers warrant further work by the Independent Advisory Panel, which forms part of the Ministerial Council on Deaths in Custody and replaced the Forum in April 2009.

There were 21 deaths in police custody in the year 2007/08, twenty males and one female. The causes of death were as follows:

- ◆ One self inflicted - however the act of self harm did not occur in police custody. The man had consumed a lethal substance prior to being arrested and concern was raised in custody. The man was taken to hospital where he subsequently died;
- ◆ Seven due to natural causes;
- ◆ Seven due to substance misuse;
- ◆ Two due to other circumstances - including one death from a head injury received prior to arrest and one death following asphyxiation on plastic wraps of drugs swallowed during arrest;
- ◆ Two where the cause of death is still awaited; and
- ◆ Two where no cause of death was stated.

John Wadham, Forum Chair and Group Legal Director for the Equality & Human Rights Commission, said "This report, the Forum's final publication, is a timely record of the steady progress made in many important areas in which the Forum has played a key role. The report also acknowledges that there is still much work to be done and offers suggestions of the key areas still in need of development."

The establishment of the new Ministerial Council on Deaths in Custody was announced by the Ministry of Justice in July 2008. It will replace the existing Forum for Preventing Deaths in Custody and Ministerial Council on Deaths in Custody. It became operational in April 2009.

Further information on the work of the Forum for Preventing Deaths in Custody, and its 2007/08 Annual Report, can be found at http://www.preventingcustodydeaths.org.uk/fpdic_annual_report.pdf

HMIC Thematic Report on Police Response to Serious and Organised Crime Published

The publication by Her Majesty's Inspectorate of Constabulary of their thematic report on the police service's response to serious and organised crime was announced on 6 April 2009.

The report assesses how law enforcement agencies counter the challenges posed by extensive networks of criminality that reach into every community. HMIC evaluate whether the proposed solutions are as well organised as the criminal networks. The report states that the reach of organised criminality is more extensive than previously acknowledged in the United Kingdom Threat Assessment. There are about 2,800 organised criminal groups (OCGs) believed to be operating across England and Wales, covering the full range of criminality, from local teams of criminals engaged in drug dealing and acquisitive crime through to international gangs committing acts of large-scale importation, kidnap, fraud and corruption.

In assessing whether forces and other law enforcement agencies are having a significant impact on this broad base of organised criminality, HMIC has drawn together three strands of work in their report:

- ◆ It combines key data from ACPO, the National Policing Improvement Agency, SOCA and the Home Office on the scale and distribution of the threat;
- ◆ It assesses the national capability to prioritise and co-ordinate activity, so that those OCGs posing the greatest threat are targeted while opportunities are exploited to disrupt 'lower order' OCGs; and
- ◆ An evaluation of the capability of English and Welsh forces, working individually and collaboratively, to combat the severe threat that organised crime presents.

The report concludes that, despite evidence of impressive results achieved by a few individual forces and some collaborative efforts, the national response overall is blighted by the lack of a unifying strategic direction, inadequate covert capacity and under-investment in intelligence gathering, analysis and proactive capability. Given the scale of the threat that emerges from the mapping of OCG activity, the report seeks to provide an up-to-date picture of where the service is positioned and what actions need to be taken.

The key points of the report include:

- ◆ Two areas, London and the North West England, appear to host a concentration of OCGs that have the furthest reach in terms of their impact on other areas;
- ◆ The greatest predicted requirement for a strong response to OCGs is in London, the North West and the West Midlands; and

- ◆ Two-thirds of all identified OCGs are involved in multiple criminal enterprises; the majority are involved in drug trafficking, with London, Liverpool and Birmingham acting as major distribution centres for drugs.

The full HMIC report 'Her Majesty's Inspectorate of Constabulary - Getting Organised: A thematic report on the police service's response to serious and organised crime' can be found at

<http://inspectorates.homeoffice.gov.uk/hmic/inspections/thematic/get-organised-report/get-organised-hmic?view=Binary>

Policing Reform Working Group Publish Report

On 29 March 2009 The Centre for Social Justice published its report 'Breakthrough Britain: A Force to be reckoned with' which advises that the Police should be instructed to reclaim the streets for the law-abiding majority by waging a concerted campaign against anti-social behaviour.

The report advocates that a major shift in police culture is required to allay fears about yobbish behaviour. The report produced by a working group chaired by Ray Mallon cites new polling which indicates that the public regard confronting rowdy and abusive behaviour as the top priority for law enforcement officers.

The key recommendations of the report are as follows:

- ◆ **Interventionist Neighbourhood Teams with a commitment to intervene**

This will require:

- A commitment by the police to intervene in any observed act of crime or antisocial behaviour;
- The rebuilding of discretion for police officers;
- Closer affinity between Neighbourhood and Response officers;
- Better management of resources to ensure that the maximum quantity and range of interventions can be delivered; and
- An increased skilling of officers to ensure that they have the capability to deliver the widest possible range of interventions.

- ◆ **Harm's Way Pledge**

The Working Group recommends Surrey Police's 'Harm's Way' Policy for adoption by the rest of the Police Service. Police should be expected to put themselves in harm's way in order to protect the public. The balance between protecting a member of the public and protecting a police officer is a fine one, but the presumption must always be towards protecting the public.

- ◆ **Police training for discretion and Restorative Justice**

In order to facilitate appropriate and resource-efficient interventions, all officers should be trained to employ discretion to choose amongst a range

of possible disposals. The aim is to empower police responding to a minor incident or act of antisocial behaviour, as well as certain serious offences, to use professional discretion to determine which disposals are appropriate and to train them in the implementation of those disposals.

For example, police should be trained to conduct community accountability meetings, based on restorative justice techniques. These techniques have proven to be highly effective in trials - involving an assessment, interviews and, if appropriate, achieving a resolution between the involved parties - typically in less than half an hour and without recourse to the time and resources required for arrest, charge, court and prison.

◆ **Restore police charging on volume crime**

The police should be restored the responsibility for charging over volume crimes. For more serious crimes, the CPS will retain charging responsibilities.

◆ **Re-balance the Tripartite system:**

- Scrap APACS as the national performance assessment system; and
- Replace APACS with a small number of national indicators for Protective Services (Not more than 5).

Police activity should be freed from restrictive and priority-distorting quantitative targets. The goal is to give police the freedom to intervene more often and make use of a wide range of disposals which are more effective and efficient.

◆ **A Crime and Justice Commissioner should be elected for every Police Force area in the country**

- Act as a figurehead for community safety;
- Chair the Police Authority and hold to account the Local Criminal Justice Board and Crime and Disorder Reduction Partnerships;
- Set local priorities for all of these agencies and influence the spending of budgets across partnerships; and
- Have a duty to consult the public and coordinate consultation by all of the partner agencies, including by convening 'Citizens Juries' in every Basic Command Unit.

◆ **Strengthening operational independence for Chief Constables**

Chief Constables should:

- No longer be subject to Fixed Term Appointments;
- No longer receive performance-related bonuses; and
- Have the power to appoint top team members, from the lower ranks, on a fixed term basis.

The full report 'Breakthrough Britain: A Force to be reckoned with' can be found at <http://www.centreforsocialjustice.org.uk/client/downloads/CSJPoliceFullReportWeb.pdf>

Massive Increase in Seizure of Uninsured Vehicles

The Association of Chief Police Officers (ACPO) and the Motor Insurers' Bureau announced on 30 March 2009 that the Police are seizing more than 460 uninsured vehicles a day. In 2008, police seized more than 170,000 uninsured vehicles, more than a two-fold increase on the 78,000 uninsured vehicles seized in 2006, the first full year of the scheme.

New legislation introduced in mid 2005 giving police the powers to seize vehicles being driven uninsured, improved access to the Motor Insurance Database and the national roll-out of Automatic Number Plate Recognition (ANPR) equipment are key factors thought to have contributed to the significant increase.

ACPO lead on ANPR and Chief Constable of Hertfordshire Constabulary, Frank Whiteley, said "The growing number of vehicle seizures reflects a tremendous achievement by both the police service and the Motor Insurers' Bureau. It demonstrates our joint commitment to eradicating the danger caused by uninsured drivers. Such offenders risk lives, injury to other road users and themselves, and damage to livelihoods and property."

The full press release can be found at http://www.acpo.police.uk/pressrelease.asp?PR_GUID=%7B9B4D95BD-1186-4980-8511-2ABCF0987447%7D

National Tackling Drugs Week Announced

The National Tackling Drugs Week is to take place from 8-12 June 2009. The week will provide local agencies with a platform to publicise the work they do to tackle drugs and reduce drug-related crime.

The Home Office would like police forces around the country to take part. Their level of involvement could range from a high profile and visible police enforcement activity, to community events where the public can engage with the partner agencies to highlight local issues and concerns, through to open days and exhibitions in treatment centres.

The police activities are to be coordinated by Superintendent Stuart Lander, operational ACPO lead for National Tackling Drugs Week. He will be in contact with forces and is available to respond to specific questions forces might have about proposed police activities during the week.

A handbook of useful information is to be produced to help those forces who would like to get involved with the week and further information will also be available at <http://drugs.homeoffice.gov.uk/>

Superintendent Stuart Lander can be contacted by email at stuart.lander@devonandcornwall.pnn.police.uk

Police Promotion Examinations Board Agrees to Trial New Police Promotions Framework

The Police Promotion Examinations Board (PPEB) announced on 7 April 2009 that it has agreed to trial a promotion framework in the current seven trial police forces and an additional three police forces over the next two years. The new trial, which incorporates the best of OSPRE® and National Police Promotion Framework, will be set within the context of a holistic approach to promotion backed by the College of Police Leadership.

The trial is supported by Board members from the Association of Chief Police Officers, Association of Police Authorities, the Police Federation, the Superintendents' Association and Her Majesty's Inspectorate of Constabulary. The Chair of the PPEB said "I am delighted that all members of the PPEB were able to agree a way forward to take advantage of what we have learnt from the Police Promotion Trial and many years' experience of OSPRE®. Trialling the new Framework with an increased number of participating forces will provide us with the evidence to enable us to make sound judgments about the future."

The National Police Promotion Framework is a four step process designed to develop a police officer's ability to work at sergeant or inspector level. The National Police Promotion Framework will:

- ◆ Allow Forces to manage the number of qualified officers to match the number of vacancies available in each force;
- ◆ Allow individual Forces to design and implement a promotion selection process that best suits their needs while conforming to the national framework instead of dealing with the constraints of a national assessment centre; and
- ◆ Will ensure officers are properly supported through Performance and Development Reviews.

The final step will include a one year work-based assessment placement. This will provide greater opportunity to assess whether the officer has the required knowledge, skills, technical competence and leadership qualities to perform effectively in the role.

The National Policing Improvement Agency (NPIA) has developed a rigorous licensing system that Forces will have to adopt before they can start to implement the promotions framework. The NPIA College of Police Leadership will review key areas of leadership, qualifications, accreditation and promotion in line with the recommendations of the HMIC report 'Leading from the Frontline' and the Green Paper on Policing, and will aim to allow officers to build stage by stage throughout their career.

The four steps of the National Police Promotion Framework are:

◆ Step 1 - Suitability

Candidates must have completed probation and be competent in their current rank, as assessed through the Performance Development Review;

◆ **Step 2 - Legal examination (OSPRES® Part I Exam)**

Candidates must demonstrate the appropriate legal knowledge relevant to the rank which has been applied for;

◆ **Step 3 - Assessment against role specific competencies and matching to vacancies**

Candidates must demonstrate potential against the full range of required National Occupational Competencies. Additional competencies may also be required for specific roles; and

◆ **Step 4 - Temporary promotion and work-based assessment**

Candidates are provided with an opportunity to demonstrate competence in the relevant rank aspired to over, a period of at least 12 months.

The seven police forces involved in the Police Promotion Trial since 2004 are Bedfordshire, Hertfordshire, Leicestershire (inspectors only), Merseyside, Metropolitan Police Service, Sussex and Thames Valley. All seven forces involved in the trial continue to provide feedback on developments through consultation events and three forces (the Metropolitan Police Service, Sussex and Thames Valley) have places on the Project Implementation Board. The NPIA will administer a selection process in order to select the three new forces, from those that register an interest in undertaking the trial.

More information about the National Police Promotion Framework is available at <http://www.npia.police.uk/promotions>

Consultation on Sentencing for Drug Offences Begins

The Sentencing Advisory Panel published a consultation paper relating to the sentencing of the most commonly committed drug offences on 22 April 2009. The closing date for responses to the consultation is 15 July 2009.

One of the most fundamental issues the Panel asks the public to consider is the relative seriousness of drug offences compared with other forms of offending behaviour, in particular with violent offences, sexual offences and offences of dishonesty. Currently, Crown Courts impose higher sentences in the most serious cases of supplying drugs than they do for cases of rape of an adult, for the most serious cases of assault and for causing death by dangerous driving.

The paper makes proposals for a tougher approach on dealers who target locations frequented by vulnerable people, extending the current sentencing guidelines for those convicted of dealing in the vicinity of school premises to include any premises where people are susceptible to persuasion or coercion such as any educational establishment, psychiatric hospitals, drug treatment centres or bail hostels. Similarly, the paper suggests that those convicted of smuggling drugs into prison should receive higher sentences because of the impact on prisoners fighting drug addiction and the threat to good order in prisons.

The consultation paper can be found at
http://www.sentencing-guidelines.gov.uk/docs/drug_offences.pdf

Report on Girls and Offending: Patterns, Perceptions and Interventions Published

The Youth Justice Board published in March 2009 a report entitled 'Girls and Offending: Patterns, Perceptions and Interventions' undertaken by London South Bank University.

The research report's key findings include:

- ◆ A young female offender in England and Wales is most commonly White, most likely to receive their first reprimand aged 13-15 years old and their first conviction aged 15-16 years old. In general, convicted girls have no previous convictions, and show a range of risk factors;
- ◆ The offence most frequently committed by girls in England and Wales is theft or handling stolen goods, and is the traditional pattern for female offenders;
- ◆ However, the offence committed by most girls in the youth justice system in England and Wales is an offence of violence against the person; this appears to be a new pattern that should be monitored; and
- ◆ There is still little evidence about 'what works' with girls in the youth justice system. Nonetheless, qualitative data indicates that girls prefer the building of one-to-one relationships and a female-only environment, whereas boys prefer more structure and rules.

The full report 'Girls and Offending: Patterns, Perceptions and Interventions' is available for download at <http://www.yjb.gov.uk/publications/Scripts/prodView.asp?idProduct=440&eP=>

Criminal Justice System Needs a Revolution to put Victims at its Heart

The Chief Executive of Victim Support said on 27 March 2009 that the criminal justice system (CJS) is lagging far behind the private sector and the NHS in the service it provides to the public. She called on the CJS to transform itself to create a truly excellent public service, geared more towards society's expectations and underpinned by quality, choice and influence for the citizen. The achievement of these outcomes, she added, will require a radical new vision, backed by large-scale reform rather than a steady drip of incremental change.

Ms Guy said "We must ask ourselves; are victims and witnesses at the heart of the CJS? We need a culture shift so that the justice system lives by its quality standards, so that the people delivering the service aspire to achieve them and are proud to meet and exceed them. We need a culture where failure to meet those standards is not acceptable. We no longer expect the private sector to have standards and fail on them, and the justice system should be no different."

The full press release can be found at http://www.victimsupport.org.uk/vs_england_wales/about_us/press_releases/press_releases_current.php#ss22

New Measures to Support Victims of Sexual Assault

On 15 April 2009 the Home Office Minister announced new measures to improve the investigation and prosecution of rape and to provide support to victims.

The new measures follow discussions with the Association of Chief Police Officers to ensure the best possible support for victims of rape. The new measures include:

- ◆ Funding of up to £1.8 million for Sexual Assault Referral Centres and Independent Sexual Violence Advisers;
- ◆ Helping every police force to ensure that all victims are seen by a specially trained officer within an hour of reporting;
- ◆ Training for police officers on what do when a rape is first reported;
- ◆ New National Police Improvement Agency 'best practice' guidance for the police and Crown Prosecution Service (CPS) on investigating and prosecuting rape to be published this summer and the provision of an expert support team to ensure consistent implementation;
- ◆ A Rape Performance Group, led by Her Majesty's Inspectorate of Constabulary (HMIC) and the CPS to monitor police and CPS performance on rape and undertake continuous assessments of performance;
- ◆ An investigation into how the best practice guidance has been implemented by the HMIC in 2010;
- ◆ Ensuring that the police involve specialist sexual violence voluntary sector services in delivering training programmes on rape for the police; and
- ◆ Specific rape sessions as part of the Violence Against Women and Girls consultation programme.

The full press release can be found at <http://press.homeoffice.gov.uk/press-releases/New-measures-victims-sex-assault>

Crime Statistics in England and Wales: Quarterly Update Released

The Home Office Minister published the latest Quarterly Update to the end of December 2008 on 23 April 2009. The Home Office statistics are compiled using two methods to measure crime, actual incidents recorded by the police and figures from the British Crime Survey, a large-scale rolling programme which asks the public about their experiences of crime.

The key points of the Quarterly Update include:

- ◆ Based on the British Crime Survey (BCS) interviews in the year to December 2008, the overall level of crime is stable compared with the year ending December 2007. The apparent increases in household and

personal crime were not statistically significant. The number of crimes recorded by the police fell by 4% for the period October to December 2008 compared with the same quarter a year earlier;

- ◆ BCS interviews also showed the risk of being a victim of crime (23%) is stable compared with the previous year. The risk of being a victim remains at a historically low level;
- ◆ Compared with the BCS year ending December 2007, most estimates of BCS crime categories (including violence, domestic burglary, vandalism and vehicle-related thefts) remained stable. The one exception was theft from the person which rose by 25%. This rise is not reflected in other categories of BCS personal acquisitive crime or in the comparable category of police recorded crime;
- ◆ Police recorded violence against the person for October to December 2008 fell by 6% compared with the same period in 2007. Police recorded robberies fell by 2% overall, but robberies involving knives or sharp instruments increased by 5% over the same period;
- ◆ For the period October to December 2008, both police recorded domestic burglaries and other burglaries rose by 4%, whilst there were falls in recorded offences against vehicles (7%) and criminal damage (9%);
- ◆ There was a 16% fall in firearm offences recorded by the police in October to December 2008, compared to the same period in 2007; and
- ◆ BCS interviews in the year to December 2008 showed that 47% of people agreed that the police and local agencies were dealing with the antisocial behaviour and crime issues that mattered in their area. There was no change in the proportion of people who perceived a high level of anti-social behaviour in their local area compared with the previous year (17%).

The Home Office Statistical Bulletin 'Crime in England & Wales: quarterly update to December 2008' is available at <http://www.homeoffice.gov.uk/rds/pdfs09/hosb0609.pdf>

National Footwear Reference Collection (NFRC)

The National Policing Improvement Agency (NPIA) announced on 17 April 2009 that the National Footwear Reference Collection (NFRC) is to become the recognised standard for coding footwear in policing. The newly launched NFRC represents a successful collaborative project between the NPIA and Bluestar Software.

Providing a new 'nationally agreed language' for coding footwear patterns, the NFRC is a national footwear reference library that uses a single common coding system for identifying different types and models of footwear and their associated footprint templates.

The Forensics21 Programme 'Footwear Project' commenced in November 2007 with key objectives:

- ◆ To provide a national footwear reference library that would use a single common coding system for identifying different types and models of footwear and their associated footprint templates, including future models;
- ◆ To facilitate pro-active management of a national footwear reference library using manufacturer, supplier and police force data (i.e. custody prints, crime scene footwear marks, fakes) as source input;
- ◆ Provision of local 'easy to use' access to a national footwear reference library, phasing implementation to police forces across England and Wales by December 2009; and
- ◆ Training for up to 120 identification specialists (at least two per police force) to use a national footwear reference library for identification purposes.

The NFRC has been fully funded by the NPIA and will be available free to all police forces across England and Wales. Design, prototype and development of the NFRC web-based application and collection was delivered for installation in early 2009 with pilots commencing in March in Lancashire, West Yorkshire, Derbyshire and Norfolk constabularies. The Pilots proved successful and practitioners confirmed the coding language worked effectively. The NFRC went live at the beginning of April 2009 in Avon and Somerset as well as the four pilot forces and already has over 8000 footwear pattern types.

NPIA is offering training places at its Harperley Hall forensic training centre and from July 2009 will be measuring the successes and intelligence value of the NFRC in order to encourage all police forces to use footwear as a key tool in the detection of crime.

More information on Forensics21 and the National Footwear Reference Collection is available from forensics21@npia.pnn.police.uk

Initiative to Offer More Help to Public to Crack Down Further on Burglary

The Home Office announced on 7 April 2009 that it was introducing a new package of measures to support the public to protect themselves from burglary and help keep crime down. The initiative included free burglary prevention advice and a crack down on repeat burglars.

The package is aimed at increasing people's personal security, particularly those who are the most vulnerable to burglary, and ensure that criminals face the consequences of their crimes. All Police Forces and Crime and Disorder Reduction Partnerships across the country are focussing their efforts on action to tackle burglary.

This crime reduction initiative follows a burglary summit hosted by the Home Secretary in February 2009 which brought together representatives from charities, public and private sector organisations to discuss practical measures to tackle burglary, backed up by a £20 million fund. The funding is provided to deliver the following:

- ◆ Intensified police operations around the country to target repeat burglars, with burglary a top priority for the police nationally. This will be backed by £3 million funding in targeted areas, to step up the monitoring and management of burglars on release from prison;
- ◆ A free advice pack for people concerned about becoming victims of burglary that provides simple and practical advice on what they can do to prevent it;
- ◆ A new £6 million Safer Homes fund to pay for local tradespeople to visit up to 45,000 homes of those who are less likely to have good home security, such as older people and people on low incomes, and install security devices such as window locks making those houses more secure; and
- ◆ New advice from insurers on what home security measures householders can install to get the best deal from the insurance market.

The burglary prevention advice pack will include:

- ◆ Advice leaflets on preventing burglary and distraction burglary;
- ◆ A printed version of the online personalised home security self-assessment from the Home Office website;
- ◆ A 'before you leave the house' security checklist to put by the front door;
- ◆ A guide to Neighbourhood Watch and the benefits of setting up a scheme;
- ◆ Advice for tenants on home security, their responsibilities and the landlord's responsibilities;
- ◆ A copy of the Policing Pledge; and
- ◆ Discount vouchers for home security devices.

More information on crime prevention advice to combat burglary is available at <http://www.homeoffice.gov.uk/crime-victims/how-you-can-prevent-crime/secure-your-home/>

New Measures to Tackle Human Trafficking

The Home Office announced on 1 April 2009 that victims of human trafficking will receive better protection and support under new measures which came into force in the UK. The Council of Europe Convention Against Trafficking in Human Beings, which now takes effect, creates minimum legal rights for victims and strengthens the UK's ability to catch the criminals that exploit victims of trafficking.

Adoption of the Convention provides new measures including:

- ◆ A National Referral Mechanism, providing a nationally agreed framework to help frontline staff identify victims of trafficking and offer them support;
- ◆ Extra funding to enhance the services for victims including an expansion of accommodation and support through the criminal justice system which will result in more traffickers being brought to justice; and

- ◆ Granting a 45 day minimum reflection and recovery period to victims and the possibility of a one-year renewable residence permit.

The Council of Europe Convention on Action Against Human Trafficking can be viewed at http://www.coe.int/t/dghl/monitoring/trafficking/default_en.asp

Further details of the UK's implementation of the Convention are available at <http://www.crimereduction.homeoffice.gov.uk/humantrafficking005.htm>

Firearm Certificates in England and Wales 2007/08

The Home Office published the Statistical Bulletin on the issue of Firearm Certificates in England and Wales 2007/08 on 26 March 2009. This report presents information on the issue of firearm and shotgun certificates under the Firearms Acts 1968 and 1982 and subsequent Firearms (Amendment) Acts 1988 to 1997 and registered firearm dealers for the period 1 April 2007 to 31 March 2008.

The key findings of this report are:

- ◆ There were 128,646 firearm certificates on issue on 31 March 2008, an increase of 0.6% compared to 127,920 at the end of March 2006;
- ◆ 549,451 shotgun certificates were on issue on 31 March 2008, 2.5% fewer than on 31 March 2006;
- ◆ 1.3% of new applications for firearm certificates and 2.3% of those for shotgun certificates were refused in 2007/08. Corresponding proportions for 2005/06 were 1.0% and 1.5% respectively; and
- ◆ There were 2,793 registered firearm dealers as at 31 March 2008, 38% more than on 31 March 2006. The increase is thought to be due to new legislation on air weapons dealers.

The Home Office Statistical Bulletin on the Issue of Firearm Certificates in England and Wales 2007/08 is available at <http://www.homeoffice.gov.uk/rds/pdfs09/hosb0509.pdf>

Mobile Technology Creates New Opportunities for Police

The NPIA's Chief Information Officer Richard Earland disclosed on 2 April 2009 profiles of the work being done to make the most of police handheld computers. During 2008 the Home Office allocated £80 million of funding over the next three years to support the delivery of handheld computers to frontline police officers. The devices give officers on-the-spot access to vital information and help to reduce the amount of time spent on bureaucracy back at the station. The funding was provided to increase the number of devices used by officers to 30,000 by March 2010.

Mobile devices allow officers to improve their situational awareness by receiving textual and visual information, identify people that are of interest including vulnerable people and those wanted, complete forms, e-mail and capture photos such as graffiti which they can share with 'partners' to improve the quality of life within communities. Mobile devices are a platform for many other applications, including:

- ◆ Collision Recording And Sharing (CRASH) which will replace existing paper forms used to record road traffic collisions;
- ◆ IDENT - is making it easier to identify people using fingerprinting. This enhanced identification system will be delivered under a project called Midas;

- ◆ Penalty Notice Processing Project (PentiP) - The PentiP project will replace the existing penalty notice process systems; and
- ◆ Police National Computer (PNC) - Access to PNC by officers is critical and mobile devices provide a valuable new avenue to access this information.

The full press release can be read at <http://www.npia.police.uk/en/13058.htm>

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.

Compiled Evidence in Support of Football Banning Order Was Properly Admitted In Evidence

NEWMAN v COMMISSIONER OF POLICE OF THE METROPOLIS (2009)

DC (Richards LJ, Teare J) 25/3/2009

Civil Evidence - Civil Procedure - Police

Admissibility: Compilations: Disclosure: Evidentiary Facts: Football Banning Orders: Police Sources: Reliance On Compiled Evidence To Support Making Of Football Banning Order: Requirement To Disclose Full Evidence: S.14b Football Spectators Act 1989

In the circumstances, a magistrates' court was entitled to allow the police to rely on a compilation statement and a compilation disc containing video evidence in support of an application for a football banning order, without requiring them to make disclosure of the background evidence from which the compilation evidence was drawn.

The appellant (N) appealed by way of case stated against a decision of a magistrates' court to allow the respondent police commissioner to adduce a compilation witness statement and compilation disc containing video evidence, in support of his application for a football banning order in respect of N. The compilation witness statement comprised a statement from a police officer that related to N's "profile", which had been gathered by police officers and police "spotters" through 13 occasions when N was allegedly seen to be close to or involved in football related disorder or in the presence of those who were known to be "risk" football supporters and associated with football violence. The compilation disc contained video evidence garnered from various video sources and which had been edited to show purported incidents of N being involved in or contributing to football violence or disorder. N opposed the admissibility of the compilation statement and the compilation disc on the grounds that the underlying evidence that formed the basis of both had not been disclosed so that it would be unfair to admit the material as N would not be able to materially challenge their material contents. In relation to the compilation disc N further asserted that the video evidence had been "cherry-picked" and that he ought to be able to see the full video footage. The magistrates' court found that there was no directly applicable statutory regime so that it was appropriate to consider the admissibility of the evidence having regard to the principle of fairness. Having regard to that principle the

magistrates' court held that it was not unfair to N to allow the commissioner to rely on the compilation statement and compilation disc and held that it could decide what weight should be given to the evidence contained in both statements. The questions posed for the opinion of the High Court were whether the magistrates' court was correct (i) in admitting the compilation statement in the absence of intelligence reports from which the statement was compiled being made available to N; (ii) in admitting the compilation disc in the absence of the available full video footage being disclosed to N; (iii) in concluding that there were no directly applicable disclosure requirements of the commissioner to N under the Football Spectators Act 1989 s.14B, deciding the matter as the magistrates' court did, on general principles of fairness in all the circumstances. N contended that the decision of the magistrates' court to admit the compilation statement and compilation disc was unfair as the commissioner was under a duty to make proper disclosure and that in the absence of such disclosure he would not have an appropriate opportunity to effectively cross-examine witnesses. N further contended that the admission of the compilation statement and compilation disc amounted to improper admission of hearsay evidence.

HELD

The magistrates' court was correct to find that there was no statutory regime directly applicable to the issue of disclosure that was before it. Given that finding it was appropriate for the magistrates' court to determine the issue of disclosure on the basis of whether, in all the circumstances, it would be fair to admit the material that the commissioner sought to rely on. In relation to both the compilation statement and a compilation disc N had not raised any specific issues as to what was accepted or denied, namely he had not contended that he was not present at a particular location on a certain date or matters of that nature. Further, the commissioner had stated that there was nothing in the background evidence to the compilation disc that supported N's case or detracted from the commissioner's case. The magistrates' court had therefore in all the circumstances properly admitted both the compilation statement and the compilation disc. Accordingly, it was appropriate to answer all the questions posed for the opinion of the High Court in the positive, R (on the application of Cleary) v Highbury Corner Magistrates' Court (2006) EWHC 1869 (Admin), (2007) 1 WLR 1272 considered.

APPEAL DISMISSED



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

Witness Anonymity Order Met Statutory Test Under Criminal Evidence (Witness Anonymity) Act 2008

R v (1) HARBINDER SINGH POWAR (2) KULWINDER SINGH POWAR (2009)

CA (Crim Div) (Hallett LJ, Openshaw J, Judge Gilbert QC) 3/4/2009

Criminal Law - Criminal Evidence

Intimidation Of Witnesses: Murder: Witness Anonymity Orders: Special Measure For Witnesses: Fear Of Retaliation And Reprisals: S.4 Criminal Evidence (Witness Anonymity) Act 2008: S.11 Criminal Evidence (Witness Anonymity) Act 2008: S.4(2) Criminal Evidence (Witness Anonymity) Act 2008

A trial judge had been entitled to make witness anonymity orders in respect of witnesses who had viewed a violent murder in the street outside their homes. Applying the statutory test under the Criminal Evidence (Witness Anonymity) Act 2008 s.11 it was plain that an anonymity order would have been made had the Act been in force at the time.

The appellants (H and K) appealed against their convictions of murder. Three men, including the victim (V), had gone to an address where H and K lived with their parents, for the purpose of seeking revenge for an alleged robbery committed by H. It was the prosecution's case that on arrival H and K came out of their house armed with weapons, H with a machete and K with a hockey stick. K attacked V with the hockey stick and knocked him to the ground. H was fighting with another member of the group. Once the rest of the group left H and K attacked V, who was still lying on the ground. H kicked him and K repeatedly struck him with the hockey stick. V suffered severe head injuries and shortly after died from the injuries. At the trial the judge granted the prosecution's application for witness anonymity orders in respect of six witnesses who had all viewed the incident from their own homes in the same street. The judge further directed that they gave evidence from behind screens and through a device which modulated their voices. H and K contended that the judge was wrong to grant anonymity to the witnesses and that the criteria for making such orders as laid down in the Criminal Evidence (Witness Anonymity) Act 2008 s.4 would not have been met.

HELD

- (1) The conditions specified in s.4(2) were satisfied. It was obvious that it was important that the witnesses should testify as they were eye-witnesses and it was strongly in the public interest that such evidence was put before the jury. Whilst the calling of anonymous witnesses must not become a routine event, witness anonymity orders should not be confined to cases of terrorism or gangland killings. The intimidation of witnesses had become a feature of contemporary life. Taking into account the cumulative effect of the brutality of the murder, in light of the numerous incidents of previous violence that had occurred in the street, both before and after the murders there was no doubt that the witnesses genuinely feared retaliation and reprisal if they gave evidence under their own names. Further, there was no doubt that their fears were reasonable.

Accordingly, it was necessary to protect the witnesses by granting anonymity, *R v Mayers (Jordan)* (2008) EWCA Crim 2989, (2009) 2 All ER 145 applied.

- (2) Taking into account the considerations set out in s.5 there was no reason to doubt the credibility of any of the witnesses. The evidence of the anonymous witnesses was far from being the only evidence against H and K. None of the witnesses had previous convictions or had otherwise come to the adverse notice of the police and there was no reason to think that there was anything in their backgrounds to suggest that they had any reason to be dishonest. There were no other measures which could have achieved the same protection of the witnesses.
- (3) The anonymous witnesses were ordinary law abiding neighbours who were terrified of giving evidence against H and K, whom they feared on reasonable grounds having witnessed the violent death in the street in front of their houses. It was plainly in the interests of justice that the orders were made. Accordingly, applying the statutory test under s.11, the order for anonymity was one that the trial court would have made if the Act had been in force at the time.

APPEALS DISMISSED



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

Disclosure of Spent Conviction to Third Party Employer Was Lawful

R (on the application of W) v CHIEF CONSTABLE OF NORTHUMBRIA (2009)

QBD (Admin) (Nicol J) 7/4/2009

Criminal Procedure - Local Government - Police

Child Sexual Abuse: Police Powers And Duties: Proportionality: Public Interest: Spent Convictions: Third Party Disclosure: Lawfulness Of Disclosure To Employer Of Spent Conviction And Arrest: S.4(3)(B) Rehabilitation Of Offenders Act 1974: Rehabilitation Of Offenders Act 1974 (Exceptions) Order 1975

A chief constable should not have disclosed a spent conviction for sexual assault to the claimant's employers but he had been entitled to find that it was proportionate and in the public interest to disclose the claimant's arrest for alleged sexual abuse of his daughter because of the risk of his contact with children during the course of his employment.

The claimant (W) applied for judicial review of the disclosure to his employer, of a conviction and arrest for sex offences, made by the defendant chief constable. W had been convicted of sexual assault of a young boy in 1987. He had been arrested in 2001 following allegations by his stepson that he had sexual abused him when he was aged 14 and had abused his daughter when

she was aged 4. W had not been prosecuted. In 2007 W's daughter alleged that he had sexually abused her since she was 4 years old. The local authority began care proceedings. W was arrested and in response to questions about his employment told the police that he delivered household goods to stores. The local authority then reported their concerns that W also delivered to private homes and might come into contact with children. The police contacted W about possible disclosure to his employers and W stated that he did go to private homes but was never left alone. W attended the police station and refused to consent to disclosure or to answer any questions. The chief constable, supported by the local authority, approved disclosure to W's employers of the 1987 conviction and the 2007 allegations, following which W was dismissed from his employment. Several weeks later the Crown Prosecution Service decided not to prosecute W in respect of the 2007 allegations. In the care proceedings findings were made that W had abused his daughter over several years. W submitted that the disclosure was unlawful because (1) the conviction was spent; (2) the police had failed to ascertain the extent to which he came into contact with children during his employment and treated him unfairly by not given him a proper opportunity to comment; (3) they failed to enquire into the likelihood of him being charged as a result of the 2007 allegations; (4) the test of pressing need was not met.

HELD

- (1) Because of the age of the conviction it had become spent and under the Rehabilitation of Offenders Act 1974 s.4(3)(b) was not required to be disclosed to an employer. Further, a Home Office circular provided that spent convictions should not be disclosed unless covered by the terms of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Although it was not necessarily unlawful to depart from a circular, it had to be taken into account and if departed from clear reasons for doing so had to be given, *R (on the application of Khatun) v Newham LBC (2004) EWCA Civ 55, (2005) QB 37* applied. In the instant case the Order did not apply, and there was no evidence that the chief constable had taken the circular into account. The conviction should not have been disclosed.
- (2) The police had taken steps to ascertain the scope of W's potential contact with children in the course of his employment. W had been given an opportunity to provide further information but he had chosen to make no comment. He had not been treated unfairly.
- (3) The police were not obliged to try to speak to the CPS to find out their views about whether to prosecute W. The factors that led the CPS to decide not to prosecute had been known at the time of the chief constable's decision to make disclose and had not been considered as fatally undermining the prospect of a prosecution. The findings of fact made in the care proceedings confirmed that the allegations were not weak.
- (4) The chief constable had been entitled to conclude that the test of pressing need had been met. He had been aware of W's statement that he was not left alone in private homes but had taken the view that disclosure was required so that a meaningful discussion could take place with W's employer to confirm existing work arrangements and to effectively

manage current and future risk. He had been entitled to consider the spent conviction and the 2001 allegations when considering whether there was a pressing need to disclose the 2007 allegations. The courts would recognise the expertise that the police had in assessing risk and their professional judgment was entitled to be given due weight, *R v Chief Constable of North Wales Ex p AB* (1999) QB 396 CA (Civ Div). It was also relevant that the local authority endorsed disclosure. The chief constable had been entitled to consider that disclosure was proportionate and that public interest outweighed W's rights.

JUDGMENT ACCORDINGLY



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

Duty of Care To Take Reasonable Steps to Save Life Arose Where Defendant Contributed to State of Affairs and Knew or Ought to Have Known They Were Life Threatening

R v GEMMA EVANS (2009)

CA (Crim Div) (Lord Judge LCJ, Moore-Bick LJ, Calvert Smith J,
Christopher Clarke J, Holroyde J) 2/4/2009

Criminal Law - Criminal Procedure

Drug Users: Duty Of Care: Jury Directions: Manslaughter By Gross Negligence:
Persons Creating Or Contributing To Life-Threatening Situations: Questions For
Judge Not Jury: Art.6 European Convention On Human Rights: Art.7 European
Convention On Human Rights: S.2(5) Corporate Manslaughter And Corporate
Homicide Act 2007

For the purposes of the offence of gross negligence manslaughter, when a person had created or contributed to the creation of a state of affairs which he knew, or ought reasonably to have known, had become life-threatening, a consequent duty on him to act by taking reasonable steps to save the other's life would normally arise. The question of whether a duty of care existed was a question for the judge, not the jury.

The appellant (E) appealed against a conviction for manslaughter by gross negligence. E had bought heroin and handed some to her half-sister (V), who later self-administered the drug. E noticed that V looked as if she had taken an overdose, and decided to spend the night with her. E did not call for medical assistance as she feared she would get into trouble. When E woke, V was dead. The only issue of fact that the jury had to decide concerned supply. Unless the jury was sure of that fact, the remaining undisputed areas of E's involvement would, on the judge's directions, have been insufficient for the purposes of founding the offence of manslaughter by gross negligence. The jury was directed that, without E's involvement in the supply of heroin, there was no duty on the appellant to act, even after she became aware of the serious adverse effect of the drug-taking on V. On the other hand, if she was involved in supply, that fact, taken with the other undisputed facts, would and did give rise to a duty on E to act. E submitted that the judge was wrong to find that she was capable of owing a duty of care to V in such circumstances and that such a proposition was consistent with authority, and argued that the jury could consider whether E did in fact owe a duty of care to V on the basis that she had supplied the heroin to her. E contended that the judge was wrong to leave the jury to decide whether to extend the category of persons by whom and to whom a duty was owed for the purposes of manslaughter by neglect. E further contended that the practice by which juries were invited to decide whether a duty of care was proved, or to enlarge the class of persons from whom and to whom a duty of care may be owed in cases of alleged gross negligence manslaughter was incompatible with the European Convention on Human Rights 1950 art.6 and art.7.

HELD

- (1) None of the relevant authorities dealt with what could sensibly be described as manslaughter by mere omission and in each it was an essential requirement of any potential basis for conviction that the defendant should have failed to act when he was under a duty to do so. The duty necessary to found gross negligence manslaughter was plainly not confined to cases of a familial or professional relationship between the defendant and the deceased. For the purposes of the offence of manslaughter by gross negligence, when a person had created or contributed to the creation of a state of affairs which they knew, or ought reasonably to have known, had become life-threatening, a consequent duty on him to act by taking reasonable steps to save the other's life would normally arise. That conclusion was consistent with civil and criminal liability for negligence, *R v Adomako (John Asare)* (1995) 1 AC 171 HL, *R v Miller (James)* (1983) 2 AC 161 HL and *R v Kennedy (Simon)* (2007) UKHL 38, (2008) 1 AC 269 applied and *Mitchell v Glasgow City Council* (2009) UKHL 11, (2009) 2 WLR 481, *R v Khan and Khan* Unreported March 18, 1998, *R v Sinclair (James)* (1998) 148 NLJ 1353 CA (Crim Div), *R v Willoughby (Keith Calverley)* (2004) EWCA Crim 3365, (2005) 1 WLR 1880, and *R v Wacker (Perry)* (2002) EWCA Crim 1944, (2003) QB 1207 considered.
- (2) The judge's directions about the ingredients of gross negligence manslaughter, as applied to the case were correct in law.
- (3) As Professor Ormerod stated in "The Duty of Care in Gross Negligence Manslaughter" [2007] Crim L.R 24, the question of whether a duty of care existed was a question for the judge, not the jury, and Willoughby did not relegate the duty question to one of fact; it remained a question of law, and the jury was to be directed on what the law was, for example whether a duty existed if they found certain facts to be established, Willoughby considered and Adomako applied. That conclusion prevented any problems from arising under art.6 or art.7 of the Convention. Statutory provisions would have been made if it had been in the faintest degree possible that Parliament believed that the jury might decide a question of law after findings of fact made by the judge. The silence of the Corporate Manslaughter and Corporate Homicide Act 2007 s.2(5) on that point must have been deliberate. Its effect was that the judge must make the necessary findings of fact and also decide the relevant question of law. That provision and its enactment further supported the conclusion. The jury should not have been left to decide the question of whether E owed a duty of care to V. However, the judge was not to be criticised for doing so. He was following Willoughby as it was commonly understood and his direction did not render the conviction unsafe.

APPEAL DISMISSED



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

Money Laundering Conviction Safe Despite Argument of Honest Arrangement Pre-dating Proceeds of Crime Act 2002

R v ABBAS HUSSAIN KHANANI (2009)

CA (Crim Div) (Toulson LJ, Bean J, Judge Paget QC) 28/1/2009

Criminal Law

Commencement Date: Criminal Evidence: Date Of Offence: Legislation: Money Laundering: No Case To Answer: Evidence Of Unlawful Activity Post-Dating Commencement Of S.328 Proceeds Of Crime Act 2002: Impact Of Argument Of Pre-Dating Legitimate Arrangement: S.328 Proceeds Of Crime Act 2002

On an allegation that a money laundering arrangement had been entered into contrary to the Proceeds of Crime Act 2002 s.328 and where the evidence of unlawful activity post-dated the commencement of the legislation, there had been a case for the defendant to answer despite the defendant's evidence that the arrangement was an honest one and had begun before commencement of the Act.

The appellant (K) appealed against a conviction for entering into a money laundering arrangement contrary to the Proceeds of Crime Act 2002 s.328. K and his son (S) had been responsible for a United Kingdom operation of a Hawala banking network, an informal fund transfer system based upon trust and a successful performance history. The prosecution claimed that K and S had utilised the arrangement to facilitate the acquisition of criminal funds on behalf of K's principal in Pakistan. K and S had been put under surveillance. S was seen to collect transfers of cash in the street and outside underground stations. The transfers were swift, the money was not counted and a receipt was not given. Customs officers searched their home address where the business was conducted. Cash books and ledgers were found, mainly in K's handwriting. They did not date back before the indictment date. Real names were not recorded and in many cases, the amounts stated were only one per cent of the actual amount. The prosecution stated that there was ample reason to infer that K and S were providing a service to criminals who wanted to process cash undetected. The sole issue turned on the dates between which the offence charged under s.328 was alleged to have been committed. For K to have been guilty of the offence, it could not have been committed before the indictment period, as the prosecution would have contravened the principle against retrospective criminal liability. K gave evidence that, years before the indictment date, he had entered into an arrangement with a respected businessman who carried out money exchanges in Pakistan, and that thereafter the money transactions he made in the UK were pursuant to that arrangement, although by the indictment date the sums he received had reduced greatly. K submitted that on that evidence there was no case to answer against him because the arrangement had begun before the indictment period and thus was not a criminal offence. The judge rejected that submission and directed the jury that the offence had been committed if there was money the jury was sure represented the proceeds of crime, and K had entered into an arrangement in relation to that money, namely one which he

at least suspected would facilitate its acquisition or control, and the jury was satisfied that K knew or suspected that the money represented the proceeds of crime. K submitted that (1) the judge was wrong to reject his submission of no case to answer; (2) it was incumbent on the prosecution to prove that K had not been receiving criminal property before the indictment period; (3) the judge had erred in the summing up.

HELD

- (1) K's explanation of the arrangement contained a fallacy. The prosecution case for showing that criminal property was being processed was based on the evidence of the ledgers and the surveillance. There was no such evidence relating to the period before the indictment. The arrangement might have predated the indictment, but it did not follow that criminal property was being processed under it. There was no evidence, other than the broad assertion by K that the nature of the arrangement was the same throughout. K did not suggest that the receipt of criminal property was from an earlier date, but that he had always been in honest receipt of the substantial sums. The receipt before the indictment date of substantial sums that later diminished did not mean that there was evidence that criminal sums were received prior to the indictment date.
- (2) There was no authority for K's argument, it was wrong in principle and it would have placed a burden on the prosecution that would have been impossible to discharge.
- (3) There was no substance in K's criticism of the judge's summing up.

APPEAL DISMISSED



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

Prosecution for Failing to Produce Motor Vehicle Documents Not an Abuse of Process

NEMBARD v DIRECTOR OF PUBLIC PROSECUTIONS (2009)

DC (Maurice Kay LJ, Simon J) 21/1/2009

Road Traffic - Criminal Law - Criminal Procedure - Police

Abuse Of Process: Defences: Failure To Produce Motor Vehicle Documents: Police Powers And Duties: Appropriateness Of Police Officer's Reasons To Require Documents: Purpose Specified By S.164 And S.165 Road Traffic Act 1988: Failure To Produce Driving Licence: Failure To Produce Evidence Of Insurance: S.164 Road Traffic Act 1988: S.165 Road Traffic Act 1988

Where the facts did not disclose that a police officer had required a motorist to produce a driving licence and evidence of insurance for any reason other than the statutory purposes contained in the Road Traffic Act 1988 s.164 and s.165, a magistrates' court was entitled to convict the motorist for failing to produce the required documentation.

The appellant motorist (N) appealed by way of case stated against a decision of a magistrates' court to convict him of failing to produce his driving licence and evidence of insurance when required to do so. While driving, N had been stopped by a police officer who asked him to provide his details, which he did. N had been stopped by the police on 55 occasions throughout the preceding year. On each of those occasions N had had a valid driver's licence and insurance and no charges had been brought against him. The police officer was unable to access the police national computer to verify N's details and he required N to produce his driving licence pursuant to the Road Traffic Act 1988 s.164 and evidence of his insurance under s.165 of the Act. N refused. He was subsequently charged with failing to produce his driving licence and evidence of insurance when required to do so. At trial N alleged that the police had conducted a campaign of harassment against him so that he had a defence to the charges as the police officer had required the production of the documents in question for an improper purpose, namely to continue the campaign of harassment, so he did not have to comply. He further alleged that the prosecution was an abuse of process. The magistrates' court held that N had failed to comply with the statutory requirement to produce the documents and that there was no evidence of the alleged harassment over and above the fact that he had been stopped 55 times by the police, so there was no basis to stay the prosecution as an abuse. The questions posed for the opinion of the High Court were (i) whether s.164 imposed an absolute duty to produce a driving licence; (ii) whether s.165 imposed an absolute duty to produce evidence of insurance; (iii) whether, if those duties were absolute, a magistrates' court could stay proceedings as an abuse of process if it was satisfied that a police officer had sought the documents for improper purposes.

HELD

- (1) Section 164 clearly stated the circumstances in which a police officer could require the production of a driving licence, in particular "a person driving a motor vehicle on a road ... must, on being so required by a constable,

produce his licence for examination, so as to enable the constable to ascertain the name and address of the holder of the licence, the date of issue, and the authority by which it was issued". If a police officer required the production of a driving licence for a purpose other than that specified by the Act then a motorist would have a defence to a charge if failing to comply with the requirement as the requirement would be unlawful.

- (2) Whilst s.165 did not explicitly state why the production of evidence of insurance was necessary the purpose could be none other than to ascertain whether a motorist had insurance. Accordingly, if a requirement to produce evidence of insurance was for some other purpose, a motorist would have a defence to a charge of failing to produce evidence of insurance when required to do so.
- (3) The magistrates' court did not have the jurisdiction to stay proceedings as an abuse of process where it was alleged that a police officer required the production of documents under either s.164 or s.165 for an improper purpose, *R v Horseferry Road Magistrates Court Ex p Bennett (No1)* (1994) 1 AC 42 HL applied. Such a stay of proceedings would fall within the second limb of the type of abuse of process identified in *Bennett* and as such fall for determination by the High Court. Where a defendant sought to establish a second limb abuse of process such as harassment, it was essential that his legal advisers identify that point at an early point in proceedings. Either prosecution proceedings could be adjourned pending a decision of the High Court, or judicial review sought of the decision to prosecute. A pragmatic step would be for a magistrates' court to make findings of fact that might be determinative of a prosecution before the question of abuse of process was addressed. In the instant case, there had been insufficient findings of fact on which to determine whether the police officer had requested N's documents for an improper purpose or whether there had been a campaign of harassment. Accordingly, it could not be said that the proceedings had been an abuse of process and the magistrates' court had been entitled to convict N.

APPEAL DISMISSED



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

SI 860/2009 The Criminal Justice and Immigration Act 2008 (Commencement No. 7) Order 2009

In force **1 April 2009**. This Order brings into force the following provisions of the Criminal Justice and Immigration Act 2008:

- ◆ Section 1(5) (Youth rehabilitation orders) in so far as it relates to paragraphs 26(5) and 35 of Schedule 1;
- ◆ Section 125 (Parenting contracts and parenting orders: local authorities);
- ◆ Section 143 (Persistent sales of tobacco to persons under 18);
- ◆ Section 146 (Convention against human trafficking);
- ◆ Section 148(2) (Consequential etc. amendments and transitional and saving provision) in so far as it relates to Part 7 of Schedule 28 (Repeals and revocations);
- ◆ Section 149 (Repeals and revocations) in so far as it relates to Part 7 of Schedule 28 (Repeals and revocations);
- ◆ Paragraphs 26(5) and 35 of Schedule 1 (Further provision about youth rehabilitation orders);
- ◆ Paragraph 3 of Schedule 9 (Alternatives to prosecution for offenders under 18) but only to the extent that it inserts section 66C (Financial penalties) of the Crime and Disorder Act 1998(2);
- ◆ Paragraph 37 of Schedule 27 (Transitory, transitional and saving provisions); and
- ◆ Part 7 of Schedule 28 (Repeals and revocations).

Of particular note is section 143, which inserts sections 12A to 12D into the Children and Young Persons Act 1933. The sections allow for either a restricted premises order or a restricted sales order to be brought by complaint to a magistrates' court where a person has been convicted of a 'tobacco offence'. A tobacco offence is an offence under section 7(1) or (2) of the 1933 Act. The orders restrict the sale and other functions in relation to tobacco or cigarette papers either on the premises specified or by the offender. Failure to comply with a restricted sale order, or, where a restricted premises order is in force, the sale of tobacco or cigarette papers by a person on those premises who knew, or ought to have known, that this would contravene the order, is an offence.

In addition paragraph 3 of Schedule 9 inserts section 66C into the Crime and Disorder Act 1998. This provides that a financial penalty condition may be attached to a youth conditional caution, provided that the offence is one prescribed in an order made by the Secretary of State. The order must specify the amount of the financial penalty for each prescribed offence, which may not exceed £100.

In force **27 April 2009**:

- ◆ Section 35 (Referral conditions);

- ◆ Section 36 (Power to revoke a referral order);
- ◆ Section 37 (Extension of period for which young offender contract has effect);
- ◆ Section 148(1) (Consequential etc. amendments and transitional and saving provision) in so far as it relates to paragraphs 40, 42, 43 and 49 of Schedule 26 (Minor and consequential amendments); section 149 (Repeals and revocations) in so far as it relates to the entry relating to section 17 of the Powers of Criminal Courts (Sentencing) Act 2000(3) in Part 2 (Sentencing) of Schedule 28 (Repeals and revocations);
- ◆ Paragraphs 40, 42, 43 and 49 of Schedule 26 (Minor and consequential amendments); and
- ◆ In Part 2 (Sentencing) of Schedule 28 (Repeals and revocations), the entry relating to section 17 of the Powers of Criminal Courts (Sentencing) Act 2000(3).

SI 936/2009 **The Police and Justice Act 2006 (Commencement No. 1) (England) Order 2009**

In force **30 April 2009**. This Order brings into force the following provisions of the Police and Justice Act 2006:

- ◆ Section 19 (local authority scrutiny of crime and disorder matters);
- ◆ Section 20 (guidance and regulations regarding crime and disorder matters);
- ◆ Section 21 (joint crime and disorder committees); and
- ◆ Schedule 8 (further provision about crime and disorder committees of certain local authorities).

Section 19 requires local authorities to ensure they have a committee to review or scrutinise decisions made or actions taken by the responsible authorities (within the meaning of section 5 of the Crime and Disorder Act 1998) in respect of their crime and disorder functions. The committee may make reports or recommendations to the local authority with respect of the discharge of those functions. Section 20 allows guidance to be issued to responsible authorities, the local authorities in England and the committees with regard to the exercise of their functions under section 19. Section 21 allows for orders that specified councils are to establish joint crime and disorder committees who may by arrangement exercise the crime and disorder scrutiny functions of those councils.

This Order is supplemented by SI 942/2009 made under section 20(3) and (4) of the Police and Justice Act, which makes Regulations supplementing section 19 of that Act. This SI provides for the exercise of powers by crime and disorder committees, and is in force **30 April** in England and **1 October** in Wales.

SI 975/2009 The Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2009

In force **12 May 2009**. This Order specifies the persons who are accredited financial investigators in relation to various sections of the Proceeds of Crime Act 2002.