NPIA
National Policing Improvement Agency

Digest

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

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

This edition contains a number of articles relating to the recently published Comprehensive Spending Review (CSR). These include; an article on the 30 new Public Service Agreements (PSAs) which sets out the key priority outcomes that the Government wants to achieve in the next spending period (2008-2011); and a 'Service Transformation Agreement' which is an action plan that follows on from the recommendations contained in the Varney Report (commissioned as part of the CSR).

Other articles this month include: Guidance on the Corporate Manslaughter and Corporate Homicide Act 2007; amendments tabled on the Criminal Justice and Immigration Bill; revised guidance on conditional cautioning; standardised powers for Community Support Officers; National CCTV strategy; Police Performance Assessments 2006/07; and guidance on managing sexual offenders and violent offenders.

Also included are a number of new consultations, including: new draft guidelines for the investigation of allegations of discriminatory behaviour; on demonstrations near Parliament; as part of the Byron Review (the independent review of the risks to children from exposure to potentially harmful or inappropriate material on the internet and in video games).

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

Case law in association with lawtel From Sweet & Maxwell

Equality and Human Rights Reports

In the weeks before they merged to form the new Equality and Human Rights Commission, the three legacy commissions (the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission) published several important reports.

Those that may be of particular interest include:

The Commission for Racial Equality report, 'A lot done, a lot to do: Our vision for an integrated Britain'.

This report outlines the current state of race in the UK today, with facts and statistics relating to all aspects of British life, from young people, health and education through to employment, communities, sport, local government and the criminal justice system. While it acknowledges the important progress in certain areas towards tackling discrimination within the criminal justice system, it highlights a number of areas of concerns it still has, including:

- Black people are six times more likely, and Asian people twice as likely, to be stopped and searched by the police.
- Black people are over three times more likely to be arrested than white people.
- After arrest, black people are significantly more likely than other groups to charged rather than cautioned.
- In June 2005, ethnic minority groups accounted for about 25% of the male prison population, and 61% of adult black offenders were serving a custodial sentence of four years or more, compared with 47% of white prisoners.
- Annual recorded racist incidents have increased dramatically since the mid-1990s, although the British Crime Survey has estimated a halving of overall crime over that period.

It contains specific recommendations for both government and the new Commission for Equality and Human Rights.

The recommendations that impact on policing include:

- The CEHR should continue to monitor, advise and seek progress on the Home Office's programme of action in response to the CRE's formal investigation into the police service.
- The CEHR should continue current initiatives on stop and search, and if necessary or appropriate, develop further measures to take. If, as expected, the Home Office does not accept the recommendation to amend the Police and Criminal Evidence Act Code, the CEHR could seek parliamentary action and consider whether there is scope for legal action.

- The CEHR should continue to encourage those police forces with high levels of ethnic disproportionality to work with those with more representative workforces. It should also encourage the Metropolitan Police's current initiative on comparing different boroughs.
- The CEHR should continue to check applications for legal assistance for suitable individual test cases relating to the police service.
- The CEHR should build on the work already done by the CRE on the reported massive overrepresentation of black people within the National DNA Database. The CEHR should continue to monitor the way the database is used and consider calling for legal changes to allow DNA samples to be retained only when individuals are convicted, not arrested, and never retained for children.

The Disability Rights Commission's report, 'Disability agenda - Creating an alternative future'.

This document provides an overview of the Disability Agenda. The Agenda's central proposition is that a sustainable future for Britain demands levels of prosperity and productivity that can only be achieved if everyone is empowered to play an active part. As well as this overview document, there are 10 additional reports explaining the Agenda's priorities and recommendations in more detail.

Disability Rights Commission's report, 'DRC legal achievements 2000 – 2007'

This document is a special edition of the Disability Rights Commission's Legal Bulletin. It reflects on the significant contribution of the DRC's legal work towards achieving the Commission's overall aim of a society where all disabled people can participate fully as equal citizens, including a number of DRC key cases.

All the recently published documents can be found in full via http://www.equalityhumanrights.com/en/publicationsandresources/pages/recentpublications.aspx

Interactive Training Tool on Forensic Examinations

The US National Institute of Justice (NIJ) and the Office on Violence Against Women have funded a project to create a state-of-the-art training tool on forensic examinations.

The programme 'Sexual Assault: Forensic and Clinical Management', which is intended to be of help to US health professionals, law enforcement officers, prosecutors, victim advocates, and lab personnel, offers training in a 'virtual sexual assault forensic facility'.

In the virtual facility, students can participate in interactive training sessions on all aspects of the sexual assault forensic examination, from interviewing the survivor through court-room testimony. Further information on the training tool can be found at http://www.safeta.org

The Serious Crime Act 2007

On the 30 October the Serious Crime Bill received Royal Assent. A full update on the Act will be published in next month's *Digest*. The Act will be available at http://www.opsi.gov.uk/acts/acts2007a.htm

The UK Borders Act 2007

On the 30 October the UK Borders Bill received Royal Assent. A full update on the Act will be published in next month's *Digest*. The Act will be available at http://www.opsi.gov.uk/acts/acts2007a.htm

Guidance on the Corporate Manslaughter and Corporate Homicide Act 2007

As mentioned in the September edition of the *Digest*, the Ministry of Justice has now published two documents which provide information and guidance about the Corporate Manslaughter and Corporate Homicide Act 2007, the majority of the provisions of which will be introduced on 6 April. It is understood that the Ministry also intends to publish a Circular for the attention of police forces in relation to the Act and that this is expected to be circulated at the end of November.

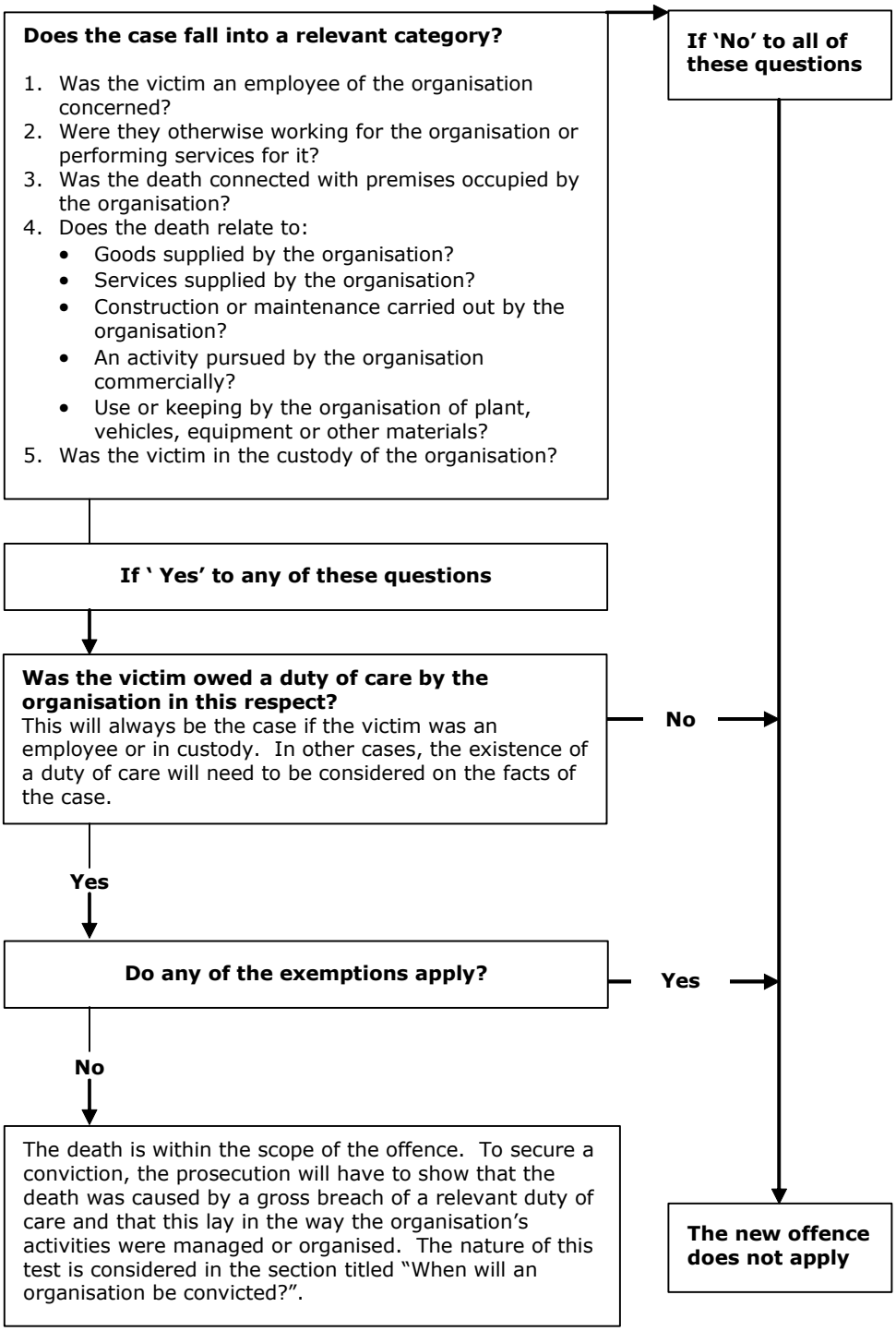
The first document is a brief introduction to the Act, explaining how the new offence of corporate manslaughter/homicide works and where it will apply. It is intended to provide fundamental information to employers, senior managers and others seeking an overview of the new legislation.

The second document gives a more detailed guidance on implementation of the Act, including which organisations are covered, the sort of incident to which it applies and those that are exempt and the test that will be applied by the courts. It is intended for those who need to know how the new Act will work in some detail, including health and safety managers and professionals.

This guidance applies throughout the UK. However, it is non-statutory and is for guidance. It should not be regarded as providing legal advice, which should be sought if there is any doubt as to the application or interpretation of the legislation.

The guidance document contains a flow chart (reproduced below), which is intended to assist in working out whether the offence applies to a particular case.

Working out if the new offence applies to a particular case



In some circumstances, it may be easier to consider first whether the activity which the death relates is exempt, for example, deaths involving the armed forces, policing and law enforcement, the response of the emergency services or rescue operations, child protection and probation work. This might also be a useful early consideration in cases involving significant public policy questions and types of activity requiring statutory powers.

An organisation convicted of the new offence can receive:

- A fine. There is no upper limit to what this can be.
- A publicity order.
- A remedial order.

A publicity order requires an organisation to publicise the fact of its conviction and certain details of the offence, in a way specified by the court. Publicity orders are not being brought into force on 6 April 2008. The Sentencing Advisory Panel is expected to publish a consultation paper on publicity orders (and the assessment of financial penalties) in November 2007. A final guideline is expected to be ready by the autumn of 2008 at which point it is likely that the publicity order provision will be brought into force.

A remedial order requires the organisation to address the cause of the fatal injury. These orders are not currently available for organisations convicted of manslaughter/culpable homicide, although they can be imposed under health and safety legislation.

A remedial order may only be made by an application from the prosecution, which must be accompanied with the proposed terms of the order. Before making the application, the prosecution must consult the appropriate regulatory authority (or authorities), such as the Health and Safety Executive, Office of Rail Regulation, Food Standards Agency or local authority.

It is expected that a remedial order will only be imposed by a court in relatively rare circumstances, since the relevant regulator will have been involved in the case from the outset and will have been able to use its existing enforcement powers to address any dangerous practices long before a case comes to court. Nevertheless, this power enables the judge to impose an order if it still appears necessary.

An organisation that fails to take the action set out in the order can be prosecuted for such failure. This would be the responsibility of the general prosecuting authorities (the Crown Prosecution Service in England and Wales, the Public Prosecution Service in Northern Ireland and the Procurator Fiscal in Scotland). An unlimited fine can be imposed on conviction.

Other points worthy of particular note in the guidance, which have not been covered in previous articles in respect of this offence include:

- The new offence does not apply to British companies responsible for deaths abroad, except if the harm resulting in death occurs on a British ship, aircraft or hovercraft or on an oil rig or other offshore installation already covered by UK criminal law.
- Companies within a group structure are all separate legal entities and therefore subject to the offence separately, so a parent company cannot be convicted because of failures within a subsidiary. In practice, the relevant duties of care that underpin the offence are more likely to be owed by a subsidiary than a parent.

- The new offence applies to all companies and other corporate bodies operating in the UK, whether incorporated in the UK or abroad. However, as stated above, where a company incorporated abroad is operating through a locally registered subsidiary, the subsidiary is likely to be the relevant organisation to be investigated and prosecuted if appropriate.
- The new offence applies to all companies and employing partnerships, including those in a contracting chain. However, whether a particular contractor might be liable for the new offence will depend in the first instance on whether they owed a relevant duty of care to the victim.

As also mentioned in the September edition of the *Digest*, the application of the offence to the management of custody will not come into force on 6 April 2008. The Government initially indicated that that aspect of the legislation would probably be introduced within 3 years of the offence itself, but has now indicated that a period of up to 5 years might be necessary.

Both documents are available on the Ministry of Justice website at http://www.justice.gov.uk/guidance/manslaughteractguidance.htm

New Commons Amendments to Criminal Justice and Immigration Bill

New amendments to the Criminal Justice and Immigration Bill have been tabled in the House of Commons for consideration in Public Bill Committee.

One of the amendments is to Section 3 of the Criminal Law Act 1967 (use of force in making arrest, etc), inserting, after subsection (1), the following new subsections:

(1A) Where a person uses force in the prevention of crime or in the defence of persons or property on another who is in any building or part of a building having entered as a trespasser or is attempting so to enter, that person shall not be guilty of any offence in respect of the use of that force unless -
(a) the degree of force used was grossly disproportionate, and
(b) this was or ought to have been apparent to the person using such force.

(1B) No prosecution shall be brought against a person subject to subsection (1A) without the leave of the Attorney General.

(1C) In this section "building or part of a building" shall have the same meaning as in Section 9 of the Theft Act 1968 (burglary).

A further amendment also amends the Criminal Law Act (Northern Ireland) 1967 in a similar way.

Other amendments tabled include:

- Creating an offence in relation to paying for sexual services

Under this clause a person would commit an offence if he intentionally obtained for himself the sexual services of another person and before obtaining those services, he makes or promises payment for those services to

B or a third person, or knows that another person has made or promised such a payment.

The term "payment" would mean any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

A person guilty of an offence under this section would be liable on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both.

- Creating power to seize passport.

Under this clause if a constable has reasonable grounds to believe that a person ("P") is about to breach the terms of a football banning order, he may require P to present his passport.

During the second reading of the Bill in the House of Commons on Monday 8 October, the Secretary of State for Justice, Jack Straw announced that the Government were proposing to table an amendment to extend the offence of incitement to racial hatred to cover hatred against persons on the basis of their sexuality.

He also announced the Governments intention to insert an amendment in the Bill which will put a legal duty on the MAPPA (Multi-Agency Public Protection Arrangements) agencies, which include police, probation and prison services, to consider disclosing information about convicted child sex offenders to members of the public in all cases. The presumption being that the authorities will disclose information if they consider that an offender presents a risk of serious harm to a child.

The Bill's progress can be followed at http://www.publications.parliament.uk/pa/pabills/200607/criminal_justice_and_immigration.htm

Revised Highway Code Introduced

The revised Highway Code has now received Parliamentary approval and has been introduced. The new Code includes new legislation that has been introduced on vehicle emissions and smoking in vehicles that are work places, as well as the provision of new stopping/directing powers to the Vehicle and Operator Services Agency and Highways Agency traffic officers. Alongside this, it references new initiatives like Quiet Lanes, High-occupancy Vehicle Lanes, Home Zones and Active Traffic Management schemes that people should be aware of, as well as increasing, re-writing or enhancing existing advice to promote greater co-operation between road users and further promote safety.

An electronic version of the code can be found at http://www.direct.gov.uk/en/TravelAndTransport/Highwaycode/index.htm

Elected Representatives (Prohibition of Deception) Bill

A Private Member's Bill, entitled the Elected Representatives (Prohibition of Deception) Bill, was introduced into the House of Commons on 17 October by Adam Price. The aim of the Bill is to create offences in relation to the publication of false or misleading statements by elected representatives.

The Bill provides that the Act shall come into force 6 months after the day it is passed and it shall extend to England, Scotland, Wales and Northern Ireland.

The Bill creates two offences.

Offence of Deception

Clause 1 of the Bill makes it an offence for an elected representative, or an agent acting on his behalf, to make or publish a statement which he knows to be misleading, false or deceptive in a material particular.

The following people are covered by the term 'elected representative':

- A Member of Parliament;
- A Member of the Scottish Parliament;
- A Nember of the National Assembly for Wales;
- A Member of the Northern Ireland Assembly;
- A Member of the European Parliament; and
- An elected mayor.

The punishment for the offence is outlined in Clause 1(3). This states that, on summary conviction, a person is liable to a fine not exceeding level 5 on the standard scale and disqualification from standing for election to the organisations and positions listed above for a period of up to 10 years.

Clause 1(4) states that it is a defence for a person to show that at the time of the offence he:

- Did not know, or could not reasonably have been expected to know, that the statement was misleading, false or deceptive in a material particular;
- Had no part in causing or permitting the statement to be published;
- Took all reasonable care to ensure that the statement was accurate; or
- Acted in the interests of national security.

Offence of making a false allegation

Clause 2 of the Bill makes it an offence for a person knowingly to make a false, trivial or frivolous complaint or allegation that an offence under Clause 1 has been committed. The punishment for this offence is, on summary conviction, a fine not exceeding level 3 on the standard scale.

The full text of the Bill can be found at http://www.publications.parliament.uk/pa/pabills/200607/elected_representatives_prohibition.htm

Parliamentary Recess Dates

Subject to the progress and requirements of business and when Royal Assent to all Acts has been signified both Houses of Parliament will be prorogued (the discontinuation of Parliament without it being dissolved).

The Queens Speech and the State Opening of Parliament is scheduled for Tuesday 6 November.

The following are the proposed recess dates for the next year.

CHRISTMAS

Rise Tuesday 18 December 2007

Return Monday 7 January 2008

SPRING HALF TERM

Rise Thursday 7 February 2008

Return Monday 18 February 2008

EASTER

Rise Thursday 3 April 2008

Return Monday 21 April 2008

WHITSUN

Rise Thursday 22 May 2008

Return Monday 2 June 2008

SUMMER

Rise Tuesday 22 July 2008

Return Monday 6 October 2008

2007 Pre-Budget Report and Comprehensive Spending Review Public Service Agreements

The Government has published 30 new Public Service Agreements (PSAs) which set out the key priority outcomes that the Government wants to achieve in the next spending period (2008-2011).

Each PSA is underpinned by a single Delivery Agreement shared across all contributing departments and developed in consultation with delivery partners and frontline workers. The Delivery Agreements set out plans for delivery and the role of key delivery partners, including a number of national outcome-focussed performance indicators that will be used to measure progress towards each PSA.

The new PSAs are encompassed under the following headings:

- Sustainable growth and prosperity (PSAs 1-7).
- Fairness and opportunity for all (PSAs 8-17).
- Stronger communities and a better quality of life (PSAs 18-26).
- A more secure, fair and environmentally sustainable world (PSAs 27-30).

Those that will be of particular interest to police forces and other law enforcement agencies include:

- PSA3 - Ensure controlled, fair migration that protects the public and contributes to economic growth.
- PSA13 - Improve children and young people's safety.
- PSA15 - Address the disadvantage that individuals experience because of their gender, race, disability, age, sexual orientation, religion or belief.
- PSA21 - Build more cohesive, empowered and active communities.
- PSA23 - Make communities safer.
- PSA24 - Deliver a more effective, transparent and responsive criminal justice system for victims and the public.
- PSA25 - Reduce the harm caused by Alcohol and Drugs.
- PSA26 - Reduce the risk to the UK and its interests overseas from international terrorism.

PSA3 – Many of the principal actions that will be taken to achieve this PSA will be undertaken by the Border and Immigration Agency (BIA) working in partnership with law enforcement, wider government, international partners, industry and the public.

The new relationship with the law enforcement agencies will be set out in a formal partnership document to be signed with the Association of Chief Police Officers (ACPO),, with parallel discussions with ACPOS (Scotland) on partnering arrangements already underway. A programme of secondment of police officers into BIA will also be implemented to increase the benefits of collaboration by facilitating removals.

PSA13 – At the heart of this delivery strategy is the role of Local Safeguarding Children Boards (LSCBs) in each local area, of which police forces are statutory members with a duty to contribute to their effective working. As a partner in LSCBs, the police will have a role in establishing a Child Deaths Review Panel by April 2008.

The role of the police as set out in PSA13 is to identify and act on child protection concerns, carry out criminal investigations, enforce road traffic laws and help to prevent harm. The document states that police forces will be increasingly involved in Safer Schools Partnerships to help schools provide a safer and secure school community, including ensuring children are not victimised. Community support officers increasingly have a role in ensuring

the safety and cohesion of local communities and have a role in tackling bullying which occurs in the community.

PSA15 – The priorities of this PSA are to:

- Reduce the gender pay gap from 12.6%.
- Tackle barriers which are due to gender, disability or age that limit people's choice and control in their lives.
- Increase participation in public life by women, ethnic minorities, disabled people and young people.
- Reduce discrimination in employment due to gender, race, disability, age, sexual orientation, religion or belief.
- Reduce unfair treatment at work, college or school, and when using health services and public transport, due to gender, race, disability, age, sexual orientation, religion or belief.

PSA21 - This PSA is about three associated and reinforcing agendas, building cohesive, empowered and active communities. This PSA will be supported by six indicators:

- Indicator 1: The percentage of people who believe people from different backgrounds get on well together in their local area.
- Indicator 2: The percentage of people who have meaningful interactions with people from different backgrounds.
- Indicator 3: The percentage of people who feel that they belong to their neighbourhood.
- Indicator 4: The percentage of people who feel they can influence decisions in their locality
- Indicator 5: A thriving third sector
- Indicator 6: The percentage of people who participate in culture or sport.

PSA23 – This PSA states that rather than following mandates from central government, the police and their partners will be under an onus to understand the full breadth of crime and community safety issues in their area and be able to demonstrate effective action to address them. The Government priorities set in this PSA are to:

- Reduce the most serious violence, including tackling serious sexual offences and domestic violence.
- Continue to make progress on serious acquisitive crime, through a focus on the issues of greatest priority in each locality and the most harmful offenders – particularly drug-misusing offenders.
- Tackle the crime, disorder and antisocial behaviour issues of greatest importance in each locality, increasing public confidence in the local agencies involved in dealing with these issues.

- Reduce re-offending through the improved management of offenders.

By the end of 2007, the Government is expected to publish its violence action plan, which will outline the approach, key roles and responsibilities in reducing serious violence, including homicide and serious wounding, offences involving weapons, serious sexual offences, hate crime and domestic violence, and the harm it causes.

Guidance is available in the '2007-08 Cross-Government Action Plan on Sexual Violence and Abuse' at http://www.crimereduction.gov.uk/sexualoffences/sexual03.htm.

Further specific guidance to help local areas to deliver a co-ordinated community response to serious sexual violence will also be published, underpinning the new violence action plan.

Success in this PSA will be measured by a reduction in the number of homicides, incidents of grievous bodily harm and deaths through dangerous driving, nationally. This method has been decided upon as it is felt that it includes these crimes that can be measured with relative accuracy, but excludes those crimes that might create perverse effects.

In respect of tackling prolific and drug misusing offenders, the document states that all local areas should be making appropriate use of the opportunities afforded by the Drug Interventions Programme (DIP) and Prolific and other Priority Offenders (PPO) programme. The Government is also looking to include assessments of progress in tackling other serious acquisitive crime, such as fraud and commercial burglary, and is encouraging local agencies to consider action against these offences when establishing local priorities.

PSA24 - This PSA will be supported by five indicators:

- Indicator 1: Effectiveness and efficiency of the criminal justice system (CJS) in bringing offences to Justice.
- Indictor 2: Public confidence in the fairness and effectiveness of the CJS.
- Indicator 3: Experience of the CJS for victims and witnesses.
- Indicator 4: Understanding and addressing race disproportionality at key stages in the CJS.
- Indicator 5: Recovery of criminal assets.

The cross-CJS Efficiency and Effectiveness Delivery Board will be responsible for delivery of actions to achieve Indicator 1, including the development of a cross-CJS measure of efficiency and effectiveness. This will incorporate work to implement recommendation 11 of Sir Ronnie Flanagan's interim report on his review of policing to reduce the burden of case file preparation.

PSA25 - This PSA sets out cross-government action to reduce the harms caused by alcohol and drugs. Actions towards achieving this PSA will be underpinned by relevant strategies on drugs and alcohol. The current ten-year drug strategy is due to come to an end in April 2008 and it will be replaced by

a new strategy which will be developed towards the end of this year. A new alcohol strategy, 'Safe, Sensible, Social: the next steps in the National Alcohol Strategy' was published by the Home Office on 5 June 2007.

PSA26 - This aim of this PSA is to reduce the risk to the UK and its interests overseas from international terrorism. The Government's specific objectives to achieve this aim are to:

- Stop terrorist attacks.
- Mitigate its impact where an attack cannot be stopped.
- Strengthen the overall protection against terrorist attack.
- Stop people becoming terrorists or supporting violent extremism.

The actual text of the PSA Delivery Agreement on counter-terrorism is not being published as it contains information about the UK counter-terrorism effort that could potentially be useful to those who threaten the UK and its interests.

These documents can be found in full via http://www.hm-treasury.gov.uk/pbr_csr/psa/pbr_csr07_psaindex.cfm

Tackling Fraud

The Attorney General, Baroness Scotland, has announced that, as a result of £28 million of new funding being committed by Government in its Comprehensive Spending Review towards tackling fraud, many of the recommendations made in the recent Fraud Review will be rolled out in the year ahead. These include:

- A new National Strategic Fraud Authority (NFSA), which will drive forward a comprehensive strategy for tackling fraud that brings together the Government, criminal justice practitioners, business and the public. The NFSA will have a key role in increasing the UK's resilience against fraud and ensuring the effectiveness of the UK's response.
- A new Lead Force, centred on the City of London Police, which will act as a centre of excellence to increase the UK's capability to investigate fraudsters and bring them to justice.
- A National Fraud Reporting Centre, hosted by the Lead Force, which will radically streamline the way that cases of fraud are reported and which will analyse reports to maximise their intelligence value – informing the National Strategy and helping to target investigations and anti-fraud work in the future.
- Reforms to the criminal justice system to make sure that fraudsters are brought to justice efficiently and victims are better able to get redress.

The final report of the Fraud Review was covered in the August 2006 *Digest*. The report can be found in full at http://www.attorneygeneral.gov.uk/Fraud%20Review/Fraud%20Review%20Final%20Report%20July%202006.pdf

Service Transformation Agreement

The Government has published a 'Service Transformation Agreement' (STA). Essentially, this is the action plan that follows on from the recommendations contained in the Varney Report, 'Service Transformation: better services for citizens and businesses, a better deal for the taxpayer' (2006), commissioned as part of the Comprehensive Spending Review (CSR).

The aim of the STA is to change public services so they more often meet the needs of people and businesses, rather than the needs of government and by doing so reduce the frustration and stress of accessing them. Three particular areas are identified:

- Reducing avoidable contact.
- Building better online services.
- Efficiency savings.

These changes will require action right across the public sector, specifically in the context of delivering the 30 PSA priority outcomes. Each Secretary of State will be responsible for the delivery of service transformation within his or her department.

The parts of the report that may be of particular interest to police forces are set out below.

In response to Sir David Varney's recommendation that all public sector contact centres be accredited by the end of 2008, work has been taken forward by the Contact Council. It has:

- Agreed a set of specific operating standards (a blueprint), applicable to all publicly-funded contact centres but using, where possible, recognised and accepted industry-wide models, aimed at delivering a better service for callers and improved efficiency for operators. Adoption of these standards will allow the process of external accreditation to be carried out by any recognised body; and
- Set out a performance framework which will allow consistent measurement across the public sector.

Over the CSR07 period and beyond, the Contact Council will take the lead in using these tools to benchmark and improve performance across public sector contact centres.

The document contains individual service transformation plans for the CSR07 from all relevant departments, which summarise the service transformation activities each department plans to implement over the period.

Contained within the Home Office plan are the following activities that directly impact on policing:

A.239 - Police authorities are now fully obliged to consult with the public on policing matters.

A.240 - The new PSA and performance frameworks for police and local authorities emphasise the need to improve public satisfaction with services and also perceived confidence in local community safety agencies to deal with local priorities. The Assessments of Policing and Community Safety will start in April 2008.

A.241 - Police reform is focused on making policing more citizen-focused. This requires community engagement to agree on priorities in dealing with crime and antisocial behaviour. Neighbourhood policing is one of the tools used. The aim here is to provide more visible, accessible and responsive policing which demonstrably links in with community safety partners to resolve local issues. By 2008 a neighbourhood policing team will be present in every area.

A.246 - To ensure a single point of contact by a dedicated Witness Care Officer for victims and witnesses in cases going before the courts, police forces and the Crown Prosecution Service will support 165 Witness Care Units across England and Wales.

A.247 - The National Policing Improvement Agency (NPIA) National Contact Management Programme is taking forward work on improving National Call Handling Standards and National Standards for Incident Reporting.

A.251 - At present some forces are making use of personal digital assistant devices and a number of trials are being conducted through the NPIA. The aim is to use the Airwave (the police radio system) capability as the bearer of preference.

The document can be viewed in full http://www.hm-treasury.gov.uk/media/B/9/pbr_csr07_service.pdf Report on Assets

Report on Assets Recovery Agency

The House of Commons Committee of Public Accounts has published a report on the Assets Recovery Agency (ARA), following its examination of how the Agency was set up and has used its powers, its management of cases and its monitoring of financial investigators and also how procedures and performance could be improved and enhanced in the future.

As has been reported in a previous edition of the *Digest*, after five years in existence ARA is to be disbanded, from April 2008 at the earliest, with its powers and ongoing cases transferring to the Serious Organised Crime Agency (SOCA) and its training functions to the National Policing Improvement Agency (NPIA).

The report concludes that the Agency was set up with insufficient preparatory work and that there was no business case setting out the expectations for the Agency, which resulted in unachievable delivery aims.

It finds that the Agency was successful in establishing case law in support of the new powers, which in some cases subsequently led to changes being made to the legislation, which then enabled the Agency to recover assets more effectively and efficiently.

The report is particularly critical of the lack of effective work practices, including failing to keep a comprehensive database of cases referred to it, not investing in a time-recording system to manage and monitor staff time and the cost of cases, and failing to put in place formal and consistent case management processes to enable management to monitor the progression of cases effectively.

In addition, the location of the Agency's office in central London has made it heavily reliant on temporary staff, and it has high levels of staff turnover.

To deal with the problems identified in the report, the Committee makes a number of recommendations to both ARA, SOCA and the NPIA, including:

That ARA and SOCA should:

- Implement management information systems to provide reliable and easily accessible information on total caseload activity, prioritisation of work, cost of handling cases, productivity of staff and monitoring of case progression.
- Promote the powers provided by the Proceeds of Crime Act 2002 with referral parties, and put in place relationship management arrangements to facilitate referrals and monitoring of performance.

That, as powers are transferred to it, SOCA should:

- Maintain separate records for expenditure on, and receipts arising from, civil recovery, taxation and criminal confiscation cases within the records of SOCA, to enable future assessment of the effectiveness of the use of the Proceeds of Crime Act 2002.
- Actively consider the cost-benefit ratios of pursuing recovery through the courts compared with arriving at a negotiated settlement, having regard to the net cash benefit to the Exchequer and the public interest.

That ARA and NPIA should:

- Set up a complete database of the names of financial investigators trained by it and who need to complete continuing professional development activities to retain their accreditation.
- Consider charging for all financial investigator training to incentivise bodies putting forward staff to identify only those whom they intend to deploy appropriately in such activities.

The report can be found in full at http://www.publications.parliament.uk/pa/cm200607/cmselect/cmpubacc/391/391.pdf

The Byron Review

The Byron Review is an independent review of the risks to children from exposure to potentially harmful or inappropriate material on the internet and in video games. It is supported by officials from the Department for Children, Schools and Families (DCSF) and the Department for Culture, Media and Sport.

As part of the review process, the Review team has published a consultation document which calls for evidence from all groups and individuals, the object of which is to:

- Gather a range of opinions from children, young people, parents, people who work with children and young people to ensure their welfare, safety and education, and all those with knowledge of the video gaming and internet industries.
- Highlight issues on which the Review should focus its attention, shaping the direction that the Review takes over the forthcoming months.
- Gather evidence that the Review team can use to develop its analysis, helping the team to make the most of existing research and minimise duplication.

There are three sections in the document, covering: video gaming, the internet and general comments. These sections are organised under four key themes:

- Benefits and opportunities.
- Understanding the potential risks.
- Helping children, young people and parents manage the risks.
- Need and potential for improvement and change.

This consultation, which closes on 30 November, will be used as evidence for the Review, and will be published at the end of March 2008, on the DCSF website. It can be found at http://www.dfes.gov.uk/consultations/conDetails.cfm?consultationId=1510

National CCTV Strategy

Following a review of the use of closed circuit television (CCTV) nationally, by a joint team from the Home Office and ACPO, a national CCTV strategy report has been agreed and published.

The report recognises that CCTV plays a significant role in protecting the public and assisting the police in the investigation of crime. However, it also identifies a large number of problems with the UK's CCTV systems, including: the effectiveness of CCTV systems; variance in terms of coverage, monitoring, quality of images; differences in the way police forces use CCTV and ways in which the output of surveillance cameras is integrated into the policing functions.

The review team based its report around 10 broad themes, which it examined in detail. The themes are:

- The need for standards in all aspects of CCTV.
- The need for clear guidelines on registration, inspection and enforcement.
- Training of all personnel.
- The police use of CCTV footage and evidence.
- Storage/volume/archiving/retention issues.
- The need for CCTV networks – live and stored.
- Equipping, resourcing and standardisation within the criminal justice system (CJS).
- Emerging technologies/changing threats/new and changing priorities.
- Partnership working.
- Financial and resource management.

Drawing from its conclusions on the above areas, the report makes 44 recommendations, which include:

- Establishing digital CCTV standards which would be agreed by police, CJS and public space CCTV operators and developing a mechanism to allow CCTV standards to be enforced.
- Reviewing the location and purpose of all CCTV cameras, to establish if they are fit for that purpose.
- The publication of clear recommendations by the police, in conjunction with the Crown Prosecution Service (CPS) on what is required from CCTV systems if they are to be used by the police for investigation, detection and prosecution of criminal cases.
- Creating a database listing all CCTV schemes, including information such as location of cameras, their coverage, their intended purpose, equipment details, details of the registration with the Data Protection Act, owners' details.
- Standardising image retention periods and relating them to the operational purpose of the CCTV system.
- That the police service develop an organisational model for managing the recovery, analysis and investigation of CCTV evidence and that the model should be resourced appropriately.
- That the specialist nature of CCTV evidence recovery, analysis and investigation should be recognised and appropriate training developed.
- The police service needs to review its internal operational processes and management structure. In effect, it needs to determine 'ownership' within each force for CCTV and consider its links to existing forensic disciplines and its future training and development requirements.

- Performance standards, similar to those that support other forms of crime scene evidence, should be developed in relation to CCTV recovery and analysis.
- Research should be undertaken to determine the relative benefits of fingerprint and DNA in comparison with CCTV.
- Protocols should be developed allowing the use of Airwave radio in town centre CCTV control rooms and the sharing of intelligence between the police and town centre CCTV monitoring staff.
- Protocols should be developed that require the police to provide feedback to town centre CCTV managers as to the operational usefulness of CCTV images.
- The police service needs to consider the development of a CCTV capability to support serious and organised crime, counter-terrorism and the protection of key economic sites across the UK.
- The effectiveness of the CCTV image retrieval cadre should be further enhanced by the provision of regular training, the development of standardised procedures and the identification of suitably qualified individuals who can provide the Senior Investigating Officer with expert advice relating to the management of large scale CCTV recovery operations.
- A cadre of personnel, available on a mutual aid basis and trained in the analysis and viewing of CCTV images, should be developed to assist forces with the examination of large volumes of CCTV material recovered during major crime and terrorist operations.

The 56 page report can be found at http://www.crimereduction.gov.uk/cctv/cctv048.pdf

Home Affairs Select Committee Inquiry into the Government's Counter-Terrorism Proposals

On 22 October the Home Affairs Select Committee inquiry into the Government's Counter-Terrorism Proposals heard from the Home Secretary Jacqui Smith.

During the session she stated that she was convinced that the terrorist threat that the UK was facing required that the period of detention without charge be extended beyond 28 days, but that it was important to build consensus around that case. She asserted that the nature of the threat was "serious and sustained" which required legislative provisions to counter it.

She told the Chairman that she accepted that there had not yet been a situation that had demanded keeping someone more than 28 days but argued however that the increasing complexity and international links suggested that this situation might arise in the future.

Ms Smith stated that the extension from 14 to 28 days had been necessary and had been used in eleven cases in which eight people had been charged. Furthermore, the Government had also learnt that the safeguards were working, for example there had been rigorous scrutiny by the judiciary of the applications for the use of the 28 days of detention without charge.

Ms Smith stated that applications for an extension would be undertaken by the Crown Prosecution Service and court hearings would test whether there were reasonable grounds for extension in terms of time for investigation and whether the investigation was being carried out diligently and speedily.

She told the Committee that she believed that it constituted a full adversarial hearing and that she was confident the defence had a chance to put their case.

She stated that the Home Secretary would be required to report to parliament on all applications, there would be an opportunity for the independent reviewer of terrorism to look at the individual cases and should also report to parliament, perhaps quarterly.

Mr Vaz wondered what the timetable for the publication of the Bill was to which Ms Smith replied that in the next few weeks some draft clauses would be ready that could be presented to the Committee and that she hoped the Bill would be ready by Christmas.

On whether the security services could give evidence she said that she was not sure that it was her place to decide.

Report on Government's Actions against Human Trafficking

The Parliamentary Joint Committee on Human Rights has published an update report in relation to its ongoing scrutiny of the Government's actions against human trafficking.

During its inquiry, the Committee found that there is no reliable estimate of the total number of adults and children trafficked into the UK. It comments that Home Office research suggests that, in 2003, there were up to 4,000 women in the UK who had been trafficked for sexual exploitation.

The report's main conclusion is that a more victim-centred approach to dealing with human trafficking is necessary in order to meet the UK's human rights obligations. The Committee has made a number of recommendations in the report, including:

- That the Government announce a target date for ratification of the Council of Europe Convention on Human Rights and that this should be as early as possible. Also that the Government should publish a ratification plan, to concentrate minds across Whitehall on the necessary action and to guard against slippage.
- That the protection of victims should be incorporated into the legislative framework, particularly in relation to immigration law.

- That the Government drop its reservation to the UN Convention on the Rights of the Child, in order to ensure that the protection of child victims of trafficking is not compromised in any way.
- That the Government act positively to initiate and assist projects to support the victims of human trafficking and keep the Committee informed of what is being done, including funding arrangements and access criteria.
- That the Government publish an annual report to Parliament on its work in combating human trafficking and helping victims, based on the Action Plan published earlier this year, and including an account of the activities of the UK Human Trafficking Centre.

The report can be found n full at http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/179/179.pdf

Consultation on Tax Appeals against Decisions Made by HMRC

HM Revenue and Customs (HMRC) has published a consultation paper which is seeking views on modernising and streamlining the way in which HMRC handles appeals against its decisions and how resolving disputes with HMRC can be made easier for taxpayers.

The consultation paper builds on the HMRC Review of Powers consultation 'Modernising powers, deterrents and safeguards: safeguards for taxpayers', by exploring options for a more consistent framework for internal reviews.

The consultation paper can be found via http://www.hmrc.gov.uk/consultations/index.htm

Report on the Future for Road Safety

The Parliamentary Advisory Council for Transport Safety (PACTS) has released a report outlining the future for road safety beyond the Government's current 2010 targets. The report, entitled "Beyond 2010: a holistic approach to road safety in Great Britain", highlights the key areas where action is needed to continue the work in reducing death and injury on UK roads.

The report looks at some of the trends in society and examines their impact on road use and potential casualties. It states that in the UK there are around 3,200 road deaths annually, compared with more than 7,000 a year in the 1960s. The factors which have contributed to this improvement include:

- Seatbelts.
- Improved car design.
- The breathalyser.
- Traffic calming measures.

The report highlights the Governement's target of reducing deaths and serious injuries on the roads by 40% by 2010 (compared with the average figure for the mid-1990s).

One of the main proposals contained in the report is the introduction of new speed cameras to detect people breaking 20 mph limits. This proposal is based on a survey by the Transport Research Laboratory, of 20mph zones across the UK and in other European countries, which found that child road accidents fell by 67% and cyclist accidents by 29%.

The report argues in favour or more 20 mph zones in built-up areas, stating that this will help to halve the number of deaths on Britain's roads within the next few years.

The report can be found in full at http://www.pacts.org.uk/research/Beyond2010Final.pdf

Framework Code of Practice for Sharing Personal Information

The Information Commissioner's Office has published a Framework Code of Practice for sharing personal information.

There are two main sorts of information sharing. The first involves two or more organisations sharing information between them. This could be done by giving access to each other's information systems or by setting up a separate shared database. This may lead to the specific disclosure of a limited amount of information on a one-off basis or the regular sharing of large amounts of information, for example bulk-matching name and address information in two databases. The second involves the sharing of information between the various parts of a single organisation.

The content of the framework code is intended to be relevant to both types of information sharing.

It is intended to be of use to all organisations involved in information sharing throughout the UK, including voluntary bodies, but is particularly relevant to public sector organisations.

It sets out what content a code of practice should have if it is to support good practice in the sharing of personal information, breaking down compliance with a fairly complex piece of legislation into a series of logical steps.

Using the framework code, organisations fill in their own detailed content, reflecting their own business needs. It is advised that, where a number of organisations are working collaboratively on an information sharing project, it is important that any codes of practice do not contradict each other or overlap confusingly. It is suggested that in many cases it would be best to have a single code of practice that all the organisations involved in the information sharing work to.

The framework code should also be of use even where there is a statutory requirement to share information. Using the framework code will help

organisations to make sure that they address all the main data protection compliance issues that are likely to arise when sharing information. This, in turn, should help organisations and their staff to make well-informed decisions about sharing personal information.

The Framework Code of Practice for Sharing Personal Information is available at http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/pinfo-framework.pdf

The Independent Safeguarding Authority

The Independent Safeguarding Authority (ISA) is the new Non-Departmental Public Body created by the Safeguarding Vulnerable Groups Act 2006 to enact recommendation 19 of the Bichard Inquiry Report, .i.e. the reform of vetting practices in England, Wales and Northern Ireland. It has announced that Adrian McAllister will be its first Chief Executive.

As the Chief Executive, Mr McAllister, previously the Acting Deputy Chief Constable of Lancashire Police, will oversee the day-to-day running of the body, which will make decisions on whether or not individuals pose a risk to children and vulnerable adults. Its new scheme is scheduled to begin operation in autumn 2008.

Crime in England and Wales: Quarterly Update to June 2007

The Home Office has published a report showing the latest crime figures up to June 2007. This update presents the most recent crime statistics from two different sources: the British Crime Survey (BCS) and police recorded crime.

Main points from the statistics show:

- British Crime Survey (BCS) interviews in the year to June 2007 show the risk of being a victim of crime has remained stable at 24%, compared with the previous year. This is around the lowest level since the survey began in 1981.
- The number of crimes recorded by the police fell by 7% for the period April to June 2007, compared with the same quarter a year earlier.
- Recorded violence against the person for April to June 2007 fell by 8%, compared with the same period in 2006.
- The BCS showed no statistically significant changes for burglary or vehicle-related theft.
- Recorded domestic burglary fell by 3% for April to June 2007 and offences against vehicles fell by 12%.
- BCS vandalism remained stable compared with the previous year.
- Recorded crime showed a 10% fall in criminal damage.

- BCS interviews to June 2007 showed a statistically significant decrease of 10% in all personal acquisitive crime.
- In the 12 months to June 2007, there were a provisional 9,712 firearm offences. This was a decrease of 6%, or 639 offences, compared with the 12 months ending June 2006.
- The BCS showed no change in the overall levels of perceived anti-social behaviour. Levels of worry about crime also remained stable.
- Compared with the year ending June 2006, public confidence in the criminal justice system (CJS) as measured by the BCS fell in five of the seven different aspects of the CJS, while confidence in the local police remained stable.

The report can be found in full at http://www.homeoffice.gov.uk/rds/pdfs07/hosb1607.pdf

Crimes Detected in England and Wales 2006/07

The Home Office has published its first annual bulletin on the latest levels and trends in detections in England and Wales, based on police recorded detections returned to the Home Office. Previously, detections have been published as a chapter within the annual 'Crime in England and Wales' bulletin.

Main findings from the report include:

- There were just under 1.4 million crimes detected using sanction detections in 2006/07.
- There were just over 80,000 crimes detected through other methods (non-sanction detections).
- While the number of sanction detections increased by 5% from the year 2005/06, the number of non-sanction detections fell by 58%. This decline can be partly explained by the greater use of sanction detections.
- The overall detection rate in 2006/07 (i.e. both sanction and non-sanction detections) was 27%, the same as for 2005/06.
- The number of sanction detections increased in each of the main offence groups, with the exception of sexual offences and fraud and forgery.
- Overall 35 forces recorded an increase in sanction detection rates over the last year, with seven showing decreases and three forces' rates remaining stable.

The report can be found in full at http://www.homeoffice.gov.uk/rds/pdfs07/hosb1507.pdf

Statistics on Football related Arrests & Banning Orders

The Home Office has published the statistics on football-related arrests and banning orders for the 2006/2007 football season.

The statistics show:

- 6% decrease in arrests for violent disorder – the worst types of football related violent criminality.
- 46% decrease in arrests for football violence over the last three seasons. Arrests for football violence are now the lowest on record.
- Overall increase of 8% in arrests for all types of football-related offences.
- Total attendance at football matches involving English and Welsh clubs and international teams increased by 5% to more than 38.6 million. There were 3,788 arrests, representing just 0.01% of spectators.
- An average of 1.21 arrests were made per match (inside and outside of stadia) – overall 57% of arrests were outside and away from stadia.
- One arrest or less was made at 77% of matches. No arrests at 68% of all matches.
- Arrests for racist chanting down 25% to the lowest level on record.
- Arrests for missile throwing up to 97 as police clamp down on early
- season spate of high-profile missile incidents.
- 43% of all matches were police-free – continuing to allow police resources to deal with local police and community priorities.
- The number of football banning orders decreased by 5%, down to 3,203 on 9 August 2007 from 3,387 on 10 October 2006. This represents 644 new banning orders imposed during the period. Orders are time-limited and expiring all the time.

The report concludes that banning orders work: since 2000, 94% of individuals whose orders have expired are assessed by police as no longer posing a risk of football disorder.

The full report can be found at http://www.homeoffice.gov.uk/documents/football-arreststatistics-2007?view=Binary

Action Plan for Community Empowerment

The Department for Communities and Local Government has published a document entitled, "An Action Plan for Community Empowerment: Building on Success".

The Action Plan sets out how the Government intends to deliver on its commitment to bring about greater devolution and to empower communities.

It contains over 20 actions towards giving residents and communities a greater say in the facilities and services in their local areas.

Community empowerment is the process of enabling people to shape and choose the services they use on a personal basis, so that they can influence the way those services are delivered. It is often used in the same context as community engagement, which refers to the practical techniques of involving local people in local decisions and especially reaching out to those who feel distanced from public decisions.

The document can be found in full at http://www.communities.gov.uk/documents/communities/pdf/actionplan

Consultation on Demonstrations near Parliament

The Government has published a consultation paper, 'Managing Protest around Parliament ' which stems from a Governance of Britain green paper in which it committed to consulting on the Sections 132 -138 of the Serious Organised Crime and Police Act 2005, which relate to demonstrations near Parliament.

This consultation will close on 17 January 2008. It can be found at http://www.homeoffice.gov.uk/documents/cons-2007-managing-protest?view=Binary

Consultation on Extending the Application of the Freedom of Information Act to More Organisations

The Government has launched a consultation paper, 'Freedom of Information Act 2000: Designation of additional public authorities' which is seeking views on extending the application of the Freedom of Information Act 2000 to further organisations that perform public functions and if so, which organisations it should consider.

The consultation will end on 1 February 2008. It can be found at http://www.justice.gov.uk/docs/cp2707.pdf

Revised DPP Guidance on Conditional Cautioning

The Director of Public Prosecutions (DPP) has issued revised "Guidance on Conditional Cautioning", which is applicable immediately.

The operation of the conditional caution scheme is governed by a Code of Practice, which is formally approved by Parliament. Use of conditional cautions is controlled by the Director of Public Prosecution's guidance.

As covered in the August edition of the *Digest*, a new Code of Practice on Conditional Cautioning is in the process of being revised. It was expected to be published, subject to Parliamentary approval in summer 2007; however, due to the changes brought about by the creation of the Ministry of Justice and ministerial personnel changes, the opportunity to put the revised code before Parliament was lost. It is now expected that the revised code will not be brought into effect until autumn 2008.

The revised DPP's guidance was originally intended to also reflect the changes made to the revised code. As the code has not yet been approved, those issues that are in the new code have been removed from the new guidance. However due to the fact that there were a number of other changes that the DPP wanted to introduce to the guidance, a revised version of the guidance has still been issued.

These changes to the guidance include ones in relation to:

- Reducing paperwork for police.
- Out of hours decisions by CPS Direct.
- Telephone referral arrangements.
- Guidance for custody sergeants.

The guidance can be found in full at http://www.cps.gov.uk/publications/directors_guidance/conditional_cautioning.html

2006/07 Homophobic Crime Prosecution Figures

The Crown Prosecution Service has published data about prosecution cases it handled in 2006/07 which were identified as having a homophobic element.

- Between April 2006 and March 2007, the CPS prosecuted 822 cases identified as having a homophobic element. (This compares to 600 cases prosecuted in 2005-6).
- 478 resulted in a guilty plea.
- A further 124 resulted in conviction after trial.
- The conviction rate has risen from 71% in 2005/6 to 73.5% in 2006/07.

There is no statutory definition of a homophobic or transphobic incident, but the CPS adopts the following definition:

"Any incident which is perceived to be homophobic or transphobic by the victim or by any other person."

Alcohol Arrest Referral Projects

The Home Office has provided £330,000 of funding to Drug and Alcohol Action Teams in Manchester, Liverpool, Cheshire and Ealing to pilot Alcohol Arrest Referral Projects (AARP) until March 2008.

The four pilots are intended to build on the work of similar schemes which have been operating in Gloucestershire and Dudley, from which significant reductions in re-offending were reported, and to provide an opportunity to collect detailed evidence about how these interventions combat alcohol-related crime and disorder. It is hoped that they will also help to establish a blueprint of best practice for others to follow.

A typical alcohol referral process might involve the following:

- An adult has been binge drinking and commits criminal damage. This person is arrested and taken into custody.
- Police in the custody suite judge that alcohol played a part in the fact that the person committed the offence, and that the person might benefit from advice about safer drinking.
- A resident alcohol specialist gives the person advice about unit strengths, the effects of alcohol on the body, and strategies for reducing the risk of offending. The person could also be made to pay towards taking responsibility for their actions.
- Those with more complex alcohol misuse problems, and who are given a conditional caution, can be referred to more in-depth advice sessions. If they do not attend these advice sessions, they can be prosecuted for the original offence.

Arrest referral will make no difference to whether someone is charged or not charged with committing an offence. However, getting advice about their drinking might stop someone offending in the future.

Report on the Use and Impact of Dispersal Orders

A report entitled "The Use and Impact of Dispersal Orders: Sticking Plasters and Wake-Up Calls" has been produced by the Centre for Criminal Justice Studies at Leeds University. The report, which was funded by the Joseph Rowntree Foundation, is based on a study which was conducted over 12 months from April 2006 and examines the impact of dispersal orders.

Dispersal orders were introduced under the Anti-Social Behaviour Act 2003. This Act:

- Allowed a police superintendent (with local authority agreement) to designate a defined area as a 'dispersal zone' for up to a period of six months (renewable) in England and Wales.
- Within a dispersal zone, a police officer or PCSO has the power to disperse groups of two or more people where their presence or behaviour has resulted, or is likely to result, in a member of the public being harassed, intimidated, alarmed or distressed.
- Allowed police to send home any young person under 16 who is out in the dispersal zone after 9pm.

Since 2004, the Home Office estimates that over 1,000 areas have been designated dispersal zones in England and Wales.

The report highlights a number of benefits of the current system. It states that the authorisation process, which must take place before a dispersal zone is designated, affords opportunity to enhance police-community relations. Case studies conducted as part of the research also indicated a decline in young people congregating in dispersal zones during the authorisation period and a rise in people claiming to be more confident about going out. In one area, crime decreased by 39% and criminal damage by 42%.

However, it also highlights many difficulties associated with dispersal orders, including:

- In many localities, displacement was a consequence of the dispersal order, merely shifting problems to other places.
- They created an increase in crime in neighbouring areas, notably criminal damage, by up to 83%.
- Dispersal orders on their own failed to address the wider causes of perceived anti-social behaviour.
- The orders appeared to target groups of youths, resulting in antagonising and alienating young people.
- Implementing dispersal orders has significant implications for police resources and can raise false expectations about police priorities.

The author of the report, Professor Adam Crawford, argues that dispersal orders must form part of a wider, multi-agency strategy to provide alternative venues and activities for young people, if the wider causes of perceived anti-social behaviour are to be addressed.

Further information on the report is available at http://www.jrf.org.uk

Multi-Agency Public Protection Arrangement Annual Reports 2006 - 2007

The Ministry of Justice has published the annual reports into the management of offenders under Multi-Agency Public Protection Arrangements (Mappa) by the 42 responsible areas.

The national figures show that:

- There were 48,668 offenders under the Mappa arrangements during 2006/07, a 2% rise on the previous year.
- Of the total under Mappa arrangements, 30,416 were on the sex offenders register.
- 1,249 of those under Mappa arrangements under the highest level of management, Level 3.
- 83 were charged with a further serious offence while under the supervision of the probation service and other agencies, compared with 61 in 2005/06.
- 12 of the 83 charged with a further serious offence were under Level 3 management.
- A total of 1,731 offenders managed at Level 2 and Level 3 were returned to prison for breach of licence.
- A total of 90 offenders managed at Level 2 and Level 3 were returned to prison for breach of sexual offences prevention orders.

Due to the figures of further offending by those subject to Mappa only relating to those offenders managed at Level 2 and Level 3, it is expected that the actual level could be higher.

Each of the 42 responsible area reports can be found at
http://www.probation.homeoffice.gov.uk/output/Page30.asp

A national statistics report can be found at
http://www.justice.gov.uk/docs/mappa-ann-rep-stats.pdf

Prisoner Cohort Study: Predicting and Understanding Risk of Re-offending

The Ministry of Justice has published the results of a study which looked at the predictive accuracy of established risk assessment instruments for violent offenders; the prevalence of offenders potentially classifiable as dangerous and severely personality disordered (DSPD); their reconvictions after release; the element of risk attributable to DSPD; the likely relationship between DSPD and indeterminate sentences.

The prisoner cohort study's findings are based on a sample of 1396 adult male offenders (the prisoner cohort) serving determinate sentences of a minimum

of two years for sexual or violent offences. 15% of the prisoner cohort (212 of the 1396) fulfilled criteria for DSPD.

The study found that significantly more DSPD offenders were reconvicted after release into the community. They accounted for statistically significantly more major violent and acquisitive convictions. It concludes that successful treatment or management of the link between recidivism and DSPD could therefore lead to a significant reduction in the number of reconvictions in the DSPD group.

The report can be found in full at http://www.justice.gov.uk/docs/prison-cohert-study.pdfPolice News

Police Performance Assessments 2006/07

The Police Performance Assessments 2006/07 were published on 9 October 2007. The assessments form part of the Policing Performance Assessment Framework (PPAF) developed by the Home Office and Her Majesty's Inspectorate of Constabulary (HMIC), with support from the Association of Police Authorities (APA) and the Association of Chief Police Officers (ACPO). They cover the full range of policing activity and are based on a combination of performance data and professional judgement.

Assessments are awarded for the performance delivered by a police force (by comparing a force to its peers), and also for direction (by comparing the performance achieved by a force in one year to that achieved by the same force in the previous year).

Each police force in England and Wales is assessed against seven headline areas. An overview of performance in these seven areas shows that:

- Tackling crime - ten forces were graded as Excellent and none as Poor.
- Serious crime and public protection - This is a new assessment area and nationally the force assessments showed an encouraging picture, with six forces graded Excellent. Due to it being a new area, it was not possible to assign a direction grade to the assessment.
- Protecting vulnerable people - Although the 2006 assessment showed that many forces were meeting acceptable performance standards across the framework as a whole, a number of areas for improvement, some of which were significant, were identified within the individual component parts. As a result, no force achieved an overall Excellent grading; only three achieved a grading of Good, and eight were graded as Poor.
- Satisfaction and fairness - Over the last year, there have been improvements in this area at a national level, with many individual police forces and authorities making great strides and showing their commitment to how services are delivered.
- Implementation of neighbourhood policing - Overall performance in this area improved, with more Excellent and fewer Poor grades being awarded than in 2006. Given the challenges set by the inspection criteria, this is seen as a significant achievement.
- Local priorities - Public perceptions of the performance of their local police have remained stable over the last year, although the assessments do highlight the challenges that a number of forces face in terms of addressing locally identified issues.
- Resources and efficiency - Once again, resource use remained an area of strong performance, with no forces assessed as Poor at the headline level. Also, police forces continued to demonstrate good progress against targets for efficiency improvements and, as last year, all forces achieved their individual targets to deliver efficiency gains of 3% of net revenue expenditure, including 1.5% which must be cashable. The majority of

forces are rated either Good or Excellent when assessed on the measure of time spent carrying out front-line duties.

The document can be found in full via http://police.homeoffice.gov.uk/performance-and-measurement/performance-assessment/assessments-2006-2007/

Draft Statutory Instrument on Standard Powers for Community Support Officers

It has been announced that the draft statutory instrument, the Police Reform Act 2002 (Standard Powers and Duties of Community Support Officers) Order 2007, previously covered in the August 2007 edition of the *Digest*, will come into force on 1 December 2007, subject to the Order being approved.

The Order extends to England and Wales. It contains a Schedule which lists the provisions of Part 1 of Schedule 4 of the Police Reform Act 2002, which shall apply to every person who is designated under Section 38 of the Police Reform Act 2002 as a community support officer. These powers are to be known as the standard powers and duties of community support officers.

The following powers listed in Part 1 of Schedule 4 are to be standardised:

- Power to give fixed penalty notices in respect of: an offence of riding on a footway committed by cycling; depositing litter; offences under dog control orders.
- Power to require name and address from a person who has committed a relevant offence or a relevant licensing offence. (Relevant offences are defined under paragraph 2(6) of Schedule 4 of the Police Reform Act 2002.
- Power to require name and address of a person acting in an anti-social manner.
- Power to require name and address: road traffic offences.
- Alcohol consumption in designated public places.
- Confiscation of alcohol.
- Confiscation of tobacco etc.
- Power to seize controlled drugs.
- Entry to save life or limb or prevent serious damage to property.
- Seizure of vehicles used to cause alarm etc.
- Abandoned vehicles.
- Power to stop cycles.
- Power to control traffic for purposes other than escorting a load of exceptional dimensions.

- Carrying out of road checks.
- Power to place traffic signs.
- Power to enforce cordoned areas.
- Power to stop and search vehicles in authorised areas.
- Photographing of persons arrested, detained or given fixed penalty notices.

For full details of these powers please refer to Part 1 of Schedule 4 of the Police Reform Act 2002.

Article 3 of the Order also lists the offences which a community support officer is designated to enforce under paragraph 1 of Part 1 of Schedule 4 of the Police Reform Act 2002 by virtue of them being 'relevant fixed penalty offences' under paragraph 1(3)(b) of Schedule 4. They are:

- An offence under Section 72 of the Highway Act 1835 (riding on a footway) committed by cycling.
- An offence under Section 87 of the Environmental Protection Act 1990 (offence of leaving litter).
- An offence under a dog control order within the meaning of section 5 of the Clean Neighbourhoods and Environment Act 2005.

This draft statutory instrument can be found in full at http://www.opsi.gov.uk/si/si2007/draft/20078822.htm

Guidance on Protecting the Public: Managing Sexual Offenders and Violent Offenders

On behalf of the Association of Chief Police Officers, the National Policing

Improvement Agency has produced and published a guidance document entitled, 'Guidance on Protecting the Public: Managing Sexual Offenders and Violent Offenders'.

The guidance defines the threshold standards for the police role in public protection which are to promote good practice and provide a framework for a consistent quality of service between police forces. It is intended to provide the police service with clear information about the police role in public protection and the management of this role. It also includes information on related multi-agency structures and details of risk identification, risk assessment and risk management processes, the police role in offender management and public protection information management processes.

The document can be found in full on the police Genesis extranet site.

Draft IPCC Guidelines on Investigating Allegations of Discriminatory Behaviour

The Independent Police Complaints Commission (IPCC) has published for consultation new draft guidelines for the investigation of allegations of discriminatory behaviour. These guidelines will eventually replace the Police Complaints Authority (PCA) guidelines, 'Investigating allegations of racially discriminatory behaviour'.

The draft guidelines have been extended to cover all forms of discrimination. They are intended to assist investigating officers within police Professional Standards Departments and investigators at the IPCC when dealing with complaints and investigations where there are allegations of discriminatory behaviour.

The draft guidelines provide guidance and clarification on the legislative framework on discriminatory behaviour, the police complaints framework and the principles and standards to be considered and applied when investigating allegations of discriminatory behaviour.

The IPCC is seeking views not only on the general content of the guidelines but also on specific questions relating to:

- The use of local resolution for resolving complaints of discriminatory behaviour.
- Outcomes on proven complaints of discriminatory behaviour.
- Gravity factors to consider when determining how to proceed with a complaint of discriminatory behaviour.
- Views on incorporating the guidelines into and giving them the status of statutory guidance.

The consultation period will end on 10 November 2007. Following the consultation, external and internal feedback will be considered in the production of the final document.

The draft guidelines can be found at http://www.ipcc.gov.uk/discrimination_guidelines_consultation.pdf

The consultation document at http://www.ipcc.gov.uk/consultation_document.pdf

Crime and Disorder Reduction Partnerships – Strategic Assessments

The Home Office has published a suggested outline for a partnership strategic assessment in relation to Crime and Disorder Reduction Partnerships. This follows requests from practitioners for such an outline after it was stated in 'Delivering Safer Communities: a guide to effective partnership working' that each partnership must develop a strategic assessment according to their local requirements. It was thought that the information on strategic assessments contained in that guide did not explain the content of such assessments in sufficient detail.

Practitioners are also reminded that all strategic assessments are to contain the following information:

- Analysis of the levels and patterns of crime and disorder and substance misuse in the area
- An analysis of the changes in those levels and patterns since the previous report
- An analysis of why the patterns have changed
- The matters that the responsible authorities should prioritise in their work
- The matters which people living or working in the area consider should be prioritised to combat crime and disorder and substance misuse
- An assessment of the extent to which the previous partnership plan had been implemented
- The matters which should be brought to the attention of a county strategic group where one exists

The suggested outline can be found at http://www.crimereduction.gov.uk/regions/Example%20A%20-%20SC%20Edits.pdf

In addition to the suggested outline, a toolkit has also been produced to assist local Crime and Disorder Reduction Partnerships and Community Safety Partnerships in developing the strategic assessments. This can be found at http://www.crimereduction.gov.uk/regions/Developing%20a%20Strategic%20Assessment.pdf

Police Funding

The Home Affairs Committee has published a report entitled, 'Second Special Report - Police Funding: Government Response to the Committee's Fourth Report of Session 2006-07'. The report is available at http://www.parliament.uk/parliamentary_committees/home_affairs_committee.cfm

Monitoring Complaints Regarding Non-Firearms Officers' Taser Use

The Independent Police Complaints Commission has reported that the ten police forces involved in a trial to extend the use of Taser electric 'stun guns' to non-firearms trained officers have been asked to refer all complaints arising from that use. This follows the Home Office decision to widen the use of Tasers (see June *Digest*). Complaints arising from police use of force are not usually required to be referred to the IPCC unless they result in death or serious injury.

Oral Questions to the Secretary of State for the Home Department

The following are a selection of Parliamentary questions, relating to policing matters, that were asked of the Secretary of State for the Home Department and that have been answered by ministers from that department.

In response to a question from Lynda Waltho on police officers returning to their beat after making arrests, Home Secretary Jacqui Smith stated that a wide range of measures had been introduced, including a £50 million fund for technology including mobile computers, which would reduce unnecessary trips back to police stations. Ms Waltho sought reassurances that information would not have to be duplicated, an issue raised by police officers. Responding, the Home Secretary stated that a benefit of the mobile computers would be the ability to transfer information onto forms.

Following a question from Rosie Cooper on steps taken to reduce time taken for police officers to return to the beat, Ms Smith stated that there had been excellent progress made across the board, and the increased number of officers can focus attention on the front line. She explained that there had been investment in technology and particular attention to reducing bureaucracy.

In a supplementary question from Douglas Hogg on police records, Ms Smith acknowledged police officers had identified that case file preparation was taking too much time. She assured him that the Government had made a commitment to making progress in this area, emphasising the guidance which had been issued in London in this respect.

In response to a question from Douglas Carswell on assessments made on progress in reducing police bureaucracy, Home Office Minister Tony McNulty reiterated comments made by the Home Secretary on the impact that IT was making in cutting bureaucracy. Mr Carswell questioned how police forces could be more locally accountable. Responding, the Minister stated that a key strand of Sir Ronnie Flanagan's review would look into this.

Following a question from David Chaytor on police pay, Mr McNulty stated that the arbitration panel would report on 2 December, and he stated that it would have been irresponsible for a minister to comment in advance.

In response to a question from Mike Hancock about Government plans to hold a Royal Commission on Policing, Tony McNulty stated that the Government have no plans to set up a Royal Commission on Policing.

Following a question from Graham Stuart on a DNA database for all citizens, Meg Hillier, Under-Secretary of State, said that there were no Government plans for a universal database, but she added that she would welcome a debate on extending the database. She added that it would be worth examining the design of forms for this service.

In response to a question from Dr Brian Iddon on the impact that legislation on drug trafficking would have, including an increase in the domestic farming of cannabis, Vernon Coaker, Under-Secretary of State, said that there had been an increase in 'home-grown' cannabis and this was being tackled. He added that child trafficking could also be linked to this activity.

Results of the National Tackling Underage Sales of Alcohol Campaign

The results of the national Tackling Underage Sales of Alcohol Campaign (TUSAC), which ran between 4 May and 13 July 2007, have been announced by the Home Office. During the campaign, 2,683 premises were targeted by police and trading standards officers in 166 (out of 227) Basic Command Units. The results show that:

- 7,408 test purchase operations were conducted at 2,199 off-licence premises. On 1025 occasions this resulted in a sale being made
- 1,558 test purchase operations were conducted at on-licence premises. On 287 occasions this resulted in a sale being made.
- 17 off-licence premises sold alcohol to children on three separate occasions.
- 6 on-licence premises sold alcohol to children on three separate occasions.

Of the premises that sold alcohol to children on at least three occasions, three have had their licences revoked and two face 48-hour suspension of their licence. The rest are being considered for prosecution by the police and the Crown Prosecution Service.

NSPCC Report on Protecting Children from Sexual Abuse

The UK National Society for the Prevention of Cruelty to Children (NSPCC) has published an executive summary of a report entitled, 'Protecting children from sexual abuse in Europe: safer recruitment of workers in a border-free Europe' which presents the case for improving co-operation across the European Union (EU) to protect children from abuse, and makes recommendations on how to achieve this.

The full report, which will be available in late 2007, is intended to be used to inform politicians and policy makers, child protection practitioners and members of the public about the challenges of pre-employment vetting in a Europe where there is significant cross-border movement of people.

The executive summary highlights a number of particular existing problems that could lead to convicted sex offenders getting a job that potentially brings them into contact with children simply by moving to another EU country. The scale of the potential likelihood of this occurring being compounded due to the number of people from EU states coming to the UK looking to work with children or vulnerable adults as care assistants or home helps. The report gives the example that in just one month in 2004, over 17,000 people from EU states came to the UK seeking such work.

Some of the highlighted problems include:

- There are no systems in place between EU countries to exchange criminal records information for use in pre-employment checking.
- Employers have to find out how to access criminal records information from other countries, which can be very difficult to obtain, and they often lack dedicated time and energy to carry out these time-consuming checks.
- Some countries are reluctant to release information to other states for this purpose.
- Where information is obtained, it can be difficult to put it to use, for example, if the information sent is written in another language, or with reference to legal terms that are difficult to interpret.
- Different rules about data storage and applicability also means that there may be limitations to the data. For example, criminal records in Sweden, even for serious crimes, are deleted after ten years if the individual has not had any further convictions.

The executive summary of the report can be found at http://www.nspcc.org.uk/Inform/publications/Downloads/protectingchildrenfromsexualabuseineuropesummary_wdf51230.pdf

Online Safety Programme for 8-11 Year Olds

The Child Exploitation and Online Protection Centre (CEOP) has started the second stage of its education programme, 'ThinkUKnow', which was launched in 2006 with the specific intention of empowering children so that they can use the internet in a safe and secure way, free from the fear of child sex predators.

The first stage of the programme, launched in September 2006, was focused on young people between the ages of 11-15 years.

The second stage http://www.thinkuknow.co.uk/cybercafe is aimed at children aged between 8-11. It focuses on a state of the art Cybercafe where children will meet Gryff and his friends, while learning about different aspects of online safety at their own pace. Through a series of games, the children can help the characters to use the internet to complete their homework, send emails and text messages, post online forums and a host of other activities safely. There is also a glossary for children to use should they need help in understanding online 'language'.

It is intended that the programme can be delivered either as a stand-alone online service for children and parents at home, or through teachers, who can download lesson plans and other resources.

Reports on Children and Crime

Two pieces of research have been published in relation to young people and crime.

Children as victims: child-sized crimes in a child-sized world

A report into the experiences of schoolchildren as victims of crime has been published by the Howard League for Penal Reform. The report contains the findings of a survey of more that 3,000 children across the country, which took place over a seven year period as part of the Citizenship and Crime project. It found that:

- 95% of children surveyed had been a victim of crime on at least one occasion.
- Many children had been victims of theft: 49% had had property stolen from their school.
- 57% had property deliberately damaged.
- Bullying and assaults were common, with 46% stating they had been called racist names, and 56% threatened on at least one occasion.
- Only one third reported victimization to the police or teachers.

In response to the findings, the report makes the following recommendations:

- Tackling issues of children and crime requires a re-boot of government thinking and a willingness to put real commitment behind new ideas.

- Using techniques of conflict resolution and trained mediation in educational programmes, working with children.
- Use restorative approaches to provide schools with methods and scope to respond more appropriately to incidents in schools.
- Expand and develop conflict resolution and mediation-based techniques into educational programmes.
- Include children in all future proposals and policies affecting their lives.

For further details please see http://www.howardleague.org/fileadmin/howard_league/user/pdf/press_2007/Children_as_victims_survey_10_October_2007.pdf

Hoodie or Goodie?

Victim Support has published a report, entitled "Hoodie or Goodie". The aim of the research, which involved interviews and workshops with young people and the adults who work with them, was to explore the following questions:

- Is there a link between violent victimisation and offending in young people?
- What are the underlying risk factors and protective factors for violent offending and victimisation?
- What are the pathways and processes between violent victimisation and offending?
- What interventions are needed to prevent future violent offending and victimisation?

The key findings of the research were that:

- Victims can become offenders because of their experience. Causes could include carrying out retaliation on the offender, or against others in a displaced show of strength or emotion. Victims might also make friends with offenders to seek protection, particularly if they were socially isolated, but this could then lead to them committing offences themselves.
- Offenders can often become victims of violence. This is because they are at risk of retaliation and are also unlikely to be protected by adults in authority.
- Many of the risk factors that increase the chances that victims will become offenders are the same as those that make it more likely that offenders will become victims. They include: thinking that the only way to deal with anger is through violence or that retaliatory violence is acceptable behaviour; believing that the police would not help or that their involvement might make things worse.
- Other lifestyle factors can reduce the risk that victims of violence will turn to offending. These include: having good family relationships; having a positive attitude towards school; taking part in structured activities with adult supervision; and having positive attitudes towards the police.

The research concludes that a link between violent victimisation and offending does indeed exist and puts forward evidence that young people who are both victims and offenders share certain characteristics or 'risk factors'.

Some of the recommendations put forward by the report include:

- National provision of services that offer young people: someone impartial and non-authoritarian to talk to; practical strategies for dealing with their emotions; opportunities to increase their self-esteem.
- Making sure that young victims and offenders have equal access to effective support services.
- More initiatives to build young people's confidence in adult authority figures, particularly in relation to reporting crime and getting support.
- More opportunities for young people to engage in structured and supervised social activities.

The full report can be found at http://www.victimsupport.org.uk/vs_england_wales/about_us/publications/hoodie_or_goodie/hoodie_or_goodie_report.pdf

Research Report on the Impact of Heavy Cannabis Use

The Joseph Rowntree Foundation has published a research report based on 100 interviews with 16 to 25 year olds, selected because they had been using cannabis on a daily basis for the past six months. When asked about the positive and negative consequences of taking the drug, respondents initially only listed what they felt to be positive. It was only when various aspects of their lives were probed in more detail that associations between their use and problems such as unemployment, educational underachievement and homelessness became apparent and pointed to the fact that heavy cannabis use among vulnerable young people can exacerbate existing social problems.

Other key points from the research show:

- There was no consensus among the young people interviewed about what constituted 'heavy' use, and wide variation in the amounts that heavy users consumed.
- Most young people smoked 'skunk' through choice and preference. Skunk was widely and easily available in both research sites.
- Most young people attributed a range of positive effects to their cannabis use, but some thought it had impaired their school performance and/or led to difficulties in relationships with parents.
- How young people thought about heavy use and its impacts depended on their situation and comparisons they made with other users.
- Lack of opportunity to make the transition to higher-status roles appeared to lead to high levels of cannabis consumption, which in turn impeded the ability to make these transitions.

- Some young people were ambivalent about using cannabis, but continued to do so.
- Many considered the legal status of cannabis to be an irrelevance, and would continue to smoke regardless of its classification.
- Young people could modify, reduce and/or stop their cannabis use without too much difficulty when their circumstances improved and/or their priorities changed.
- Professionals across a range of services may be underestimating the potentially negative impacts of cannabis use. Police responses also varied across the two geographical areas studied, which was confusing for both young people and professionals.

The report concludes that there is a need for opportunity and problem-oriented interventions to tackle young people's cannabis use and suggests that professionals may also need to improve their understanding of the difficulties created by cannabis use, such as impairment of school performance.

The report can be found in full at http://www.jrf.org.uk/bookshop/eBooks/2109-impact-cannabis-youth.pdf

Consultation on Revision to the Code of Practice on Financial Requirements for Casino Operators

The Gambling Commission has published a consultation paper which is seeking views on its proposal to change the code provisions for the casino operating licence. This new provision requires casino operators to act in accordance with guidance that the Commission is issuing on the Money Laundering Regulations (2007), which come into effect on 15 December 2007.

These regulations impose specific requirements on remote and non-remote casino operators. The new code provision will affect only casino operators, although the Commission is considering whether other operators will require guidance on their obligations under the Proceeds of Crime Act 2002 and will consult on any such guidance separately.

The consultation period will close on 30 November 2007. The consultation paper can be found via http://www.gamblingcommission.gov.uk/Client/mediadetail.asp?mediaid=263

Motorway Car Share Lane

Work on a section of the M606 motorway near Bradford has been commenced to create a dedicated High Occupancy Vehicle (HOV) lane. The 1.7mile (2.75 km) lane will link the southbound M606 near Bradford to the eastbound M62 towards Leeds, allowing vehicles heading towards Leeds with more than one occupant to bypass traffic at the busy Chain Bar junction.

The new lane is expected to open in spring 2008. Under the pilot scheme, vehicles with two or more people in them (including those towing a trailer or

caravan) as well as coaches, buses, motorcycles and both minibuses and taxis (when carrying passengers) will be allowed to use the HOV lane. HGVs will not be allowed to use the HOV lane.

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.

Police Officers Serving as Jurors

R v (1) NURLON ABDROIKOV (2) RICHARD JOHN GREEN (3) KENNETH JOSEPH WILLIAMSON (2007)

HL (Lord Bingham of Cornhill, Lord Rodger of Earlsferry, Baroness Hale of Richmond, Lord Carswell, Lord Mance) 17/10/2007

Criminal Procedure

Bias: Crown Prosecution Service: Juries: Jurors: Police Officers: Right To Fair Trial: Juries Comprising Serving Police Officers And Cps Solicitors: Appearance Of Bias: S.321 Criminal Justice Act 2003

A fair-minded and informed observer would conclude that there was a real possibility that a jury trial was biased where a juror was a serving police officer who shared the same local service background as the police officer who was the victim of the alleged offence, or where a juror was a full-time, salaried, long-serving employee of the prosecuting authority.

The appellants (N, G and W) appealed against a decision ((2005) EWCA Crim 1986, (2005) 1 WLR 3538) that the fact that serving police officers and a CPS solicitor were members of the juries which had convicted them did not mean they had been deprived of a fair trial. One of the jurors in N's trial was a police officer. There was no evidence that he knew any of the police witnesses, although they served in the same force. A juror in G's case was also a police officer. The victim of the alleged offence was a police officer who shared the same local service background as the juror. Furthermore, the juror was posted to a police station which committed its cases to the Crown Court where G's case was tried. In W's case one of the jurors was a solicitor employed by the CPS. N, G and W relied on the principle that justice should not only be done, but should manifestly and undoubtedly be seen to be done. They argued that that condition was not met where one of the jurors was employed full-time by a body dedicated to promoting the success of one side in the adversarial trial process.

HELD (Lords Rodger and Carswell dissenting)

(1) In 1965 a committee chaired by Lord Morris of Borth-y-Gest made proposals to modernise the rules on eligibility for jury service. The committee considered that the police and those professionally concerned

in the administration of the law should continue to be ineligible. The committee was concerned that the trial jury should remain a lay tribunal, and it recognised problems of partiality and perceived partiality if those professionally committed to the prosecution side of the trial process were to sit as jurors. In 2001, Auld L.J. reviewed the issue and recommended that everyone should be eligible for jury service save for the mentally ill. He recognised that the risk of bias could not be totally eradicated and envisaged that any question about the risk of bias on the part of any juror could be resolved by the trial judge on the facts of the case. His recommendation was given effect by the Criminal Justice Act 2003 s.321.

(2) Most people harboured certain prejudices and predilections, consciously or unconsciously. The institutional safeguards established to protect the impartiality of the jury, when properly operated, did all that could reasonably be done to neutralise those ordinary prejudices. However, the instant cases did not involve the ordinary prejudices and predilections to which people were prone, but the possibility of bias, possibly unconscious, which flowed from the presence on the jury of persons professionally committed to one side of the adversarial trial process. Auld L.J.'s expectation that each doubtful case would be resolved by the trial judge was not met if neither the judge nor counsel knew that the juror was a police officer or CPS solicitor, as appeared to be the practice.

(3) N's case was not one which turned on a contest between the evidence of the police and of N, and it would have been difficult to suggest that unconscious prejudice, if present, would have been likely to operate to N's disadvantage. The Court of Appeal had reached the right conclusion in N's case. However, in G's case, there was a crucial dispute on the evidence between G and the police officer who was the alleged victim. The victim and the police officer on the jury shared the same local service background. In those circumstances the instinct of a police officer juror to prefer the evidence of a brother officer to that of a drug-addicted defendant would be judged by the fair-minded and informed observer to be a real and possible source of unfairness, beyond the reach of standard judicial warnings and directions. G was not tried by a tribunal which was and appeared to be impartial, and his appeal was allowed. In W's case, it was clear that justice was not seen to be done where one of the jurors was a full-time, salaried, long-serving employee of the prosecutor, Pullar v United Kingdom 1996 SCCR 755 considered. W's convictions were quashed, R v Sussex Justices Ex p McCarthy (1924) 1 KB 256, Porter v Magill (2001) UKHL 67, (2002) 2 AC 357 and Lawal v Northern Spirit Ltd (2003) UKHL 35, (2004) 1 All ER 187 applied. (4) There were situations where police officers and CPS solicitors would meet the tests of impartiality in Porter and Lawal. However, that did not mean they would always do so. The indications were that Parliament appreciated that there were some cases in which such people should not serve.

(4) (Per Lords Rodger and Carswell) Parliament had endorsed the view that universal eligibility for jury service was to be regarded as appropriate. In reaching that conclusion it must be taken to have been aware of the test for apparent bias. Parliament must have considered that the risk of bias

in the case of serving police officers or CPS solicitors was manageable within the system of jury trial. Many jurors would harbour prejudices of various kinds when they entered the jury box. There was no reason why the fair-minded and informed observer should single out juries with police officers and CPS solicitors as being constitutionally incapable of following the judge's directions and reaching an impartial verdict. All three appeals should be dismissed.

APPEALS ALLOWED IN PART

This case was originally covered in the October 2005 *Digest*.

Application of Bad Character Provisions to Circumstantial Evidence

R v JAMES ANDREW WALLACE (2007)

CA (Crim Div) (Scott Baker LJ, Mitting J, Recorder of Swansea) 16/7/2007

Criminal Evidence - Criminal Law

Bad Character: Circumstantial Evidence: Propensity: Robbery: Sufficiency Of Evidence: Admissibility Of Circumstantial Evidence: Part 11 Criminal Justice Act 2003: S.98 Criminal Justice Act 2003: Criminal Justice Act 2003: S.101 Criminal Justice Act 2003

Where the case against the appellant was dependent on circumstantial evidence and that evidence was technically caught within the widely defined bad character provisions of the Criminal Justice Act 2003, there was no injustice in admitting that evidence even though no application had been made by the prosecution to admit it, as it was inevitable that the evidence would have been admitted if such an application had been made.

The appellant (W) appealed against convictions for three offences of robbery and one offence of attempted burglary. W and his three co-defendants had been charged with the offences in question. The Crown alleged that there were common features to the robberies, that W was a party to all of them and that, although not necessarily present when each robbery was committed, he was involved in the organisation and execution of the offences. The case against W depended on circumstantial evidence. He did not give evidence and asserted that the evidence in relation to each specific offence was insufficient to convict him. Before the provisions of the Criminal Justice Act 2003 Part 11 came into force, the issue in the instant case would simply have been whether the circumstantial evidence was strong enough to justify W's conviction for each of the offences; however, the provisions introduced new rules governing the admissibility of bad character evidence. Section 98 of the Act defined bad character as including evidence of or disposition towards misconduct. W submitted that when considering whether he participated in one of the

robberies any evidence tending to show that he participated in any of the other robberies was evidence of or a disposition towards the commission of an offence and was therefore caught by the definition of bad character in s.98. The evidence therefore had to be treated as bad character evidence and the Crown should have applied to have the circumstantial evidence admitted under the bad character provisions of the s.101. He argued that an application would have resulted in a ruling that the evidence was inadmissible as prejudicial to his case.

HELD

(1) The important matter in issue was not whether W had a propensity to commit offences or to be untruthful but whether the circumstantial evidence linking him to the robberies, when viewed as a whole, pointed to his participation in and guilt of each offence. Nevertheless, the definition of bad character in s.98 was sufficiently wide to have triggered the operation of s.101, and in particular s.101(1)(d). Although technically within the definition of bad character, the purpose of the admission of the evidence was not to prove that W was of bad character in the sense that that expression was commonly understood. Once before the jury the evidence was relevant for what it tended to prove, namely that when viewed as a whole the appellant was guilty of each of the offences. In the instant case no application was made to adduce the evidence under s.101(1) for the reason that it did not occur to anyone that it was bad character evidence as defined by the Act. Had such an application been made, it was inevitable that it would have been admitted under s.101(1)(d) and accordingly no injustice was done by the admission of the evidence. This was not a case where the judge was required to give any bad character direction to the jury. He properly directed the jury about the relevance of the evidence as circumstantial evidence and the fact that it may have been bad character evidence that should technically have required admittance through s.101 was irrelevant. The conviction was therefore safe.

APPEAL DISMISSED

Late Arrival at Court - Failure to Surrender to Bail

R v CASIM SCOTT (2007)

CA (Crim Div) (Toulson LJ, Gibbs J, Judge Wide QC) 15/10/2007

Criminal Procedure

Breaking Conditions Of Bail: Discretion: Failure To Surrender: Statutory Interpretation: Wednesbury Unreasonableness: Defendant's Late Arrival At Court Hearing: Margin Of Flexibility: Criminal Procedure Rules 2005

A judge had been correct to put a charge of failing to surrender to bail to a defendant who arrived at court half an hour late for a hearing as the failure of defendants to arrive on time had consequences and if a culture of delay were tolerated, the effects would be cumulative and affect the administration of justice overall.

The appellant (S) appealed as of right against a conviction for failing to surrender to bail contrary to the Bail Act 1976 s.6. S had been bailed to appear at a plea and case management hearing following his arrest and charge for drugs and firearms offences. He arrived approximately 30 minutes late and the judge ruled that a charge of failing to surrender to bail should be put to him. S pleaded guilty as, having overslept, he had no reasonable cause for his lateness. He also pleaded guilty to all other charges and a community punishment order was imposed. No separate penalty was imposed for the Bail Act offence. S submitted that a defence of de minimis applied and that the conviction was a draconian measure that would result in any future bail applications being questioned. He argued that the judge had a reviewable discretion and his decision to put the charge was Wednesbury unreasonable.

HELD

(1) The questions of law raised by S's appeal were whether or not S was guilty of an offence under s.6 of the Act and whether the judge had wrongly required the matter to be put to him. The first issue was one of construction and whether the phrase "surrender to custody at the appointed place as soon after the appointed time" was to be interpreted literally or whether there was some flexibility that meant a defendant had to surrender at or about the time and, if so, what was the permitted margin. There was authority to suggest that de minimis could be applied where a defendant was marginally late to a hearing and would therefore not constitute an offence. However, it was influenced by a combination of other factors, was not a satisfactory authority and could not be said to establish any principle, R v Gateshead Justices Ex p Usher (1981) Crim LR 491 distinguished. The proper construction of the phrase was that surrender had to be at the appointed time and place without admitting any extra gloss to allow for unidentified margins. It followed that the fact that a defendant was slightly late could not form a defence.

(2) Where there had been a s.6 breach, it did not necessarily follow that the judge had to put the offence to the defendant as it was a matter of discretion. However, in the instant case, the judge had clearly set out his

reasons for requiring the matter to be put to S and to distinguish Usher. The judge had recognised that a failure to turn up on time was a serious matter and that times had changed with the advent of the Criminal Procedure Rules 2005. There might be circumstances where a late arrival would be so marginal that to charge a s.6 offence would be Wednesbury unreasonable but those instances would be rare. The judge in the instant case could not be considered to have acted unreasonably, let alone in the Wednesbury sense. The failure of defendants to arrive on time had consequences not only for themselves, but for other court users as it disrupted proceedings and impacted victims, witnesses and others. Even where a delay was small, it could cause a great inconvenience. If a culture of delay were tolerated, the effects would be cumulative and affect the administration of justice overall. S's submissions were essentially mitigation points and did not form any good reason to demonstrate why the judge had acted unreasonably.

APPEAL DISMISSED

Admissibility of Fresh Evidence which Casts Doubt on Identification Evidence

R V CRAIG ALEX ROBERTSON (2007)

CA (Crim Div) (Dyson LJ, Forbes J, Judge Rogers QC) 9/7/2007

Criminal Evidence

Fresh Evidence: Identification: Doubt Cast Over Identification Of Defendant: S.23 Criminal Appeal Act 1968

A conviction for unlawful wounding was quashed where there was fresh evidence that cast doubt on the reliability of identification evidence and the safety of the conviction.

The appellant (R) appealed against a conviction of unlawful wounding. The prosecution's case was that R had punched the complainant (V), a serving prison officer, in his mouth in an unprovoked attack. V identified R as the assailant at a video identification procedure. V denied knowing R, who had served time in the prison that V worked in. R's defence was that he had been working at the time of the offence. A statement from a witness (G) was read to the jury. G described the man responsible for the attack but stated that she would not recognise him again. After R's conviction, G made a further statement that she recognised a photograph of R in a newspaper report of his conviction and that R could not have been responsible for the assault, otherwise she would have recognised him at the time. R contended that fresh evidence from G cast doubt on the conviction.

HELD

The fresh evidence was admissible under the Criminal Appeal Act 1968 s.23 because it was capable of belief, afforded a ground for allowing the appeal, would clearly have been admissible at the trial and there was reasonable explanation for the failure to adduce the evidence in those proceedings. There was no doubt that if the jury had heard the fresh evidence about G's knowledge of R, based on her recognition of his photograph in the newspaper, it would have reasonably affected their decision to convict. If the jury had had the evidence they could properly have concluded that they were not sure that R had been correctly identified as the man who committed the assault. Accordingly the conviction could not be regarded as safe and was quashed.

APPEAL ALLOWED

Firearms Act 1968 - All prohibited Weapons are Firearms but not all Firearms are Prohibited Weapons

R v NOEL DENNIS WEAVER (2007)

CA (Crim Div) (Hallett LJ, Grigson J, Judge Goddard QC) 10/10/2007

Criminal Law

Firearms: Possession Of Firearms: Prohibited Firearms: Weapons: Firearms Offences: Electronic Stun Guns: Definition Of A Prohibited Weapon Under Firearms Act 1968: S.5(1a)(A) Firearms Act 1968: S.51a Firearms Act 1968: Firearms Act 1968: S.57(1) Firearms Act 1968

A judge had erred in ruling that an electronic stun gun did not fall within the definition of a prohibited weapon under the Firearms Act 1968. The correct position was that all prohibited weapons were firearms but not all firearms were prohibited weapons.

The Crown appealed under the Criminal Justice Act 2003 s.58 against a ruling that an electronic stun gun was not a firearm within the meaning of the Firearms Act 1968. The defendant (W) had been charged with, and pleaded guilty to, possession of a prohibited weapon and assault occasioning actual bodily harm. He was also charged with possession of a disguised firearm contrary to s.5(1A)(a) of the 1968 Act but pleaded not guilty. W had used a stun gun disguised as a torch during an assault at a public house. The judge made a preliminary ruling that the stun gun was a prohibited weapon but was not a firearm within the meaning of the Act, effectively terminating the remaining proceedings against W, as the Crown would not be able to offer any evidence against him. The ruling also had the effect that W would not be caught by the minimum sentencing provisions in s.51A of the Act as the offence under s.5(1A)(a) was expressly included, whereas the offence to which he pleaded guilty under s.5(1)(b) was expressly excluded. The Crown submitted that the judge had erred in his conclusions and that his decision should be reversed.

HELD

Section 5(1)(a) referred to fully automatic firearms which would inevitably be "lethal barrelled weapons from which any shot, bullet or other missile could be discharged". Section 5(1)(b) referred to "any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing" and the sub-section had remained unchanged by subsequent amendments to the Act. It was accepted by both parties that the stun gun was a prohibited weapon for the purposes of s.5(1)(b) of the Act, Flack v Baldry (1988) 1 WLR 393 considered. Those weapons might be neither barrelled nor lethal. Section 5(2) provided that the weapons specified in s.5(1) were referred to in the Act as "prohibited weapons". The words in s.57(1) of the Act, preceding s.57(1)(a) made it clear that a prohibited weapon within the meaning of s.5(1)(b) of the act was a firearm for all purposes within the Act, including the criminal use sections, whether barrelled or not, or lethal or not. Had Parliament intended another definition other than

that set out s.57, it would have been simple to qualify the type and nature of firearms that were to be excluded from the definition of prohibited weapons. Section 57 supplied the definition of "firearm" for all purposes within the Act and although it might not be within the everyday use of the term, that was Parliamentary privilege. The correct position was that all prohibited weapons were firearms but not all firearms were prohibited weapons. It appeared that the judge in reaching his ruling had placed emphasis on the fact that s.57(1)(a) referred to "lethal" but did not include the word "barrelled". However, s.57(1)(a) read as a whole stated "any prohibited weapon, whether it was such a lethal weapon as aforesaid or not" which clearly related to the preceding words of the section that defined a firearm as "meaning a lethal barrelled weapon of any description from which any shot, bullet or other missile could be discharged". Of further note was the fact that as the law developed, component parts of firearms had become prohibited firearms within the meaning of the Act, despite not being capable of discharging a shot, bullet or missile with lethal effect in their singular capacity.

APPEAL ALLOWED

Supplier of Class A drugs Not Guilty of Manslaughter where the Drug was Freely and Voluntarily Self-Administered by the Deceased

R v SIMON KENNEDY (2007)

HL (Lord Bingham of Cornhill, Lord Rodger of Earlsferry, Baroness Hale of Richmond, Lord Carswell, Lord Mance) 17/10/2007

Criminal Law

Causation: Supply Of Drugs: Unlawful Act Manslaughter: Death Resulting From Supply Of Drugs: Need To Establish Causation: Manslaughter: Maliciously Administering Poison: Class A Drugs: Autonomy: Free Will: S.23 Offences Against The Person Act 1861

The supplier of a Class A controlled drug would not be guilty of manslaughter if the person to whom the drug was supplied freely and voluntarily self-administered it.

The appellant (K) appealed against a decision ((2005) EWCA Crim 685, (2005) 1 WLR 2159) upholding his conviction for manslaughter. K and the deceased (B) both lived in a hostel. K visited the room in which B was staying, was told by B that he wanted "a bit to make him sleep", prepared a dose of heroin and gave B a syringe ready for injection. B injected himself and returned the empty syringe to K, who left the room. B later died, the cause of death being the inhalation of gastric contents while acutely intoxicated by opiates and alcohol. The Court of Appeal certified the following question for the opinion of the House: "When is it appropriate to find someone guilty of manslaughter where that person has been involved in the supply of a class A controlled drug, which is then freely and voluntarily self-administered by the person to whom it was supplied, and the administration of the drug then causes his death?".

HELD

(1) To establish the crime of unlawful act manslaughter, it had to be shown, among other things, that the defendant had committed an unlawful act, that such unlawful act was a crime, and that the act had been a significant cause of the death of the deceased. The parties to the appeal were agreed that an unlawful act on the present facts had to be found, if at all, in a breach of the Offences against the Person Act 1861 s.23. The substance of the section created three distinct offences, namely administering a noxious thing to any other person, causing a noxious thing to be administered to any other person, and causing a noxious thing to be taken by any other person. The Crown had accepted that, if it could not show that K had committed the first of those offences, it could not hope to show the commission of the second or third offences. That concession had been rightly made, and it was appropriate to explain why. The criminal law generally assumed the existence of free will and, subject to certain exceptions, informed adults of sound mind were treated as autonomous beings able to make their own decisions on how to act. Thus a defendant was not to be treated as causing the victim to act in a certain

way if the victim made a voluntary and informed decision to act in that way rather than another. The finding in the instant case that B had freely and voluntarily administered the injection to himself, knowing what it was, was fatal to any contention that K had caused the heroin to be administered to B or taken by him, R v Finlay (Paul Anthony) (2003) EWCA Crim 3868 overruled. Further, K had not administered the injection to B. The essential ratio of the decision of the Court of Appeal was that the administration of the injection had been a joint activity of K and B acting together. Although it was possible to imagine factual scenarios in which two people could properly be regarded as acting together to administer an injection, nothing of the kind had occurred here. K supplied the drug to B, who then had a choice, knowing the facts, whether to inject himself or not. The heroin had been self-administered, not jointly administered, R v Rogers (Stephen) (2003) EWCA Crim 945, (2003) 1 WLR 1374 overruled. In the circumstances, the answer to the certified question was: "In the case of a fully informed and responsible adult, never".

(2) (Obiter) Much of the difficulty and doubt which had dogged the present question had flowed from a failure, at the outset, to identify the unlawful act on which the manslaughter count was founded. It mattered little whether the act was identified by a separate count or counts under s.23, or by particularisation of the manslaughter count itself. But it would focus attention on the correct question, and promote accurate analysis of the real issues, if those who formulated, defended and ruled on serious charges of this kind were obliged to consider how exactly, in law, the accusation was put.

APPEAL ALLOWED

Demonstrations – Curtailing of Article 5 ECHR Rights by the Police

(1) LOUIS AUSTIN (2) GEOFFREY SAXBY v COMMISSIONER OF POLICE OF THE METROPOLIS (2007)

CA (Civ Div) (Sir Anthony Clarke MR, Sir Igor Judge (President), Lloyd LJ) 15/10/2007

Police - Human Rights – Torts

Breach Of The Peace: Demonstrations: False Imprisonment: Police Powers And Duties: Right To Liberty And Security: Lawful Containment Of Persons When Breach Of Peace By Others Imminent: Cordons: Public Order: Detention: Deprivation Of Liberty: Necessity: Interference With Liberty Of Movement

Where and only where there was a reasonable belief that there were no other means whatsoever whereby a breach or imminent breach of the peace could be obviated, the lawful exercise by third parties of their rights might be curtailed by the police.

The appellants (L and G) appealed against a decision ((2005) EWHC 480 (QB), (2005) HRLR 20) dismissing their claims for damages for false imprisonment and under the Human Rights Act 1998 s.7 for breach of their rights to liberty guaranteed by the European Convention on Human Rights 1950 Art.5. At about 2pm on May Day 2001 a crowd of demonstrators had marched into Oxford Circus. The police had information that a demonstration was planned but the organisers had deliberately given no notice of what would happen. The crowd who entered Oxford Circus at 2pm were, for the most part, prevented from leaving. Others entered Oxford Circus during the afternoon. At the end of the day there were about 3,000 people there. From about 2.20pm no one was allowed to leave except with the permission of the police. Many were prevented from leaving for a period of over seven hours. As time passed the physical conditions became increasingly unacceptable. L was a demonstrator who had made political speeches at the demonstration. G was not a demonstrator but had been detained behind the police cordon. Neither of them was violent or threatened violence or breached the police or threatened to do so. L was exercising her right to demonstrate peacefully and G was innocently caught up in the events. Each wanted to leave the cordon but was not permitted to do so for a long period of time. After their requests to leave had been refused by police officers neither made any attempt to break through the police cordon. L and G submitted that they had been unlawfully deprived of their liberty, detained and unlawfully imprisoned by not being released much earlier than they had been and that they should have been allowed to leave when they had asked to do so. The respondent commissioner submitted that there had not been a deprivation of liberty within the meaning of Art.5 but only an interference with the appellants' liberty of movement.

HELD

(1) There had been an interference with the liberty of the appellants which amounted to the tort of false imprisonment unless it was lawful. Where

and only where there was a reasonable belief that there were no other means whatsoever whereby a breach or imminent breach of the peace could be obviated, the lawful exercise by third parties of their rights might be curtailed by the police, O'Kelly v Harvey (1883) LR 14 Ir 105 and R (on the application of Laporte) v Chief Constable of Gloucestershire (2006) UKHL 55, (2007) 2 AC 105 applied. The judge had erred in concluding that all those within the cordon were about to commit a breach of the peace. The police knew that not everyone in the crowd was a demonstrator. However, the containment was lawful because on the findings of fact made by the judge the situation was wholly exceptional and the police had no alternative but to do what they did in order to avoid the imminent risk of serious violence by others. The judge properly held that the police could not reasonably have foreseen what happened or that it would have been necessary to contain people for so long. Because what the police did in containing the crowd was necessary to avoid an imminent breach of the peace, it was lawful at common law. That was the case when the cordon was imposed and throughout the time that it was maintained. The conditions of necessity remained throughout because no one had suggested an alternative release policy. Individuals had been released from the cordon and there was no basis for concluding that the police behaved unreasonably or irrationally in deciding not to release the appellants on an individual basis.

(2) In the circumstances the original imposition of the cordon could not properly be regarded as the kind of arbitrary detention that would amount to deprivation of liberty within Art.5, as opposed to an interference with the appellants' liberty of movement, Guzzardi v Italy (A/39) (1981) 3 EHRR 333, Guenat v Switzerland (24722/94), X v Germany (1981) 24 DR 1578 and HM v Switzerland (39187/98) (2004) 38 EHRR 17 considered. Nor were the appellants unlawfully detained thereafter. As the judge concluded, there was not simply a static crowd of protesters in Oxford Circus surrounded by police and held in place for seven hours; it was a dynamic, chaotic and confusing situation in which there were also a large number of other protesters in the immediate vicinity outside the cordon who were threatening serious disorder and posing a threat to the officers both on the cordon and within it. In the circumstances it could not sensibly be held that there came a time when what was originally something less than a deprivation of liberty subsequently became a deprivation of liberty within the meaning of Art.5(1).

APPEAL DISMISSED

Death or Serious Injury in Custody – States Duty to Conduct Enhanced Investigation into Attempted Suicide

R (on the application of JL) v SECRETARY OF STATE FOR THE HOME DEPARTMENT (2007)

CA (Civ Div) (Waller LJ (V-P), Maurice Kay LJ, Wilson LJ) 24/7/2007

Penology and Criminology - Human Rights

Custody: Investigations: Positive Obligations: Prisoners: Right To Life: Suicide: Accountability Of State For Person In Custody: State's Obligation To Investigate: Enhanced Investigation: Positive Protective Obligation: Public Enquiry: Art.2 European Convention On Human Rights

Where a state was accountable by virtue of its obligation to protect an individual in its custody, and the individual attempted suicide whilst in custody, it was for the state to investigate the facts and explain how the near-death had occurred, and it was not for the victim or the family to establish some arguable case before that investigation could take place.

The appellant secretary of state appealed against a decision ((2006) EWHC 2558 (Admin), (2007) ACD 31) that he was obliged to conduct a public enquiry into the attempted suicide of the respondent prisoner (L). L had been remanded in custody. He was noted to be very anxious and stressed and a self-harm risk form was opened. Thereafter, concerns were expressed that he might try to self-harm. He was found very distressed and a noose made out of sheets was found in his cell. A note from a chaplain indicated that L was overwhelmed by anxiety, worried about his children and extremely upset after an argument with his girlfriend. The note also indicated that L was at risk of causing himself serious harm. Following a review, the self-harm risk form was closed. Over a week later, L was found suspended from the bars of his cell window by a sheet that formed a noose round his neck. L was resuscitated but was left with serious permanent brain injury. The Prison Service asked a retired governor to investigate what had happened. The governor submitted a report that stated that J had not at any time expressed any thoughts of committing self-harm. The judge held that the secretary of state had not satisfied the obligation to conduct an investigation in compliance with the European Convention on Human Rights 1950 Art.2. The secretary of state submitted that the obligation to carry out an enhanced investigation arose out of the possibility that the state might be in breach of its positive obligation to protect life, and that there had to be an arguable breach before the duty to hold the investigation could arise. L submitted that what gave rise to the obligation was the accountability of the state for a person injured or killed in its custody and it simply was not possible or logical for someone to take a proper decision on arguability without a proper investigation.

HELD

(1) A death or serious injury in custody gave rise to the obligation to carry out an enhanced investigation, R (on the application of Middleton) v HM Coroner for Western Somerset (2004) UKHL 10, (2004) 2 AC 182

considered. The extent of that investigation would depend on the circumstances of the case. The accountability of the state meant more than simply being accountable for a substantive breach; it meant accountable in the sense of explaining how the death in custody occurred, Jordan v United Kingdom (24746/94) (2003) 37 EHRR 2 and Edwards v United Kingdom (46477/99) (2002) 35 EHRR 19 considered. The fact that the test as to whether the state was in breach of its positive protective obligation had been applied in cases relating to suicide in custody did not prevent the state having the burden of explanation, Osman v United Kingdom (23452/94) (1999) 1 FLR 193 considered. Where a state was accountable by virtue of a person being in custody, it was for the state to investigate the facts and explain how the death or near-death occurred, and it was not for the victim or the family to establish some arguable case before that investigation could take place, R (on the application of Amin (Imtiaz)) v Secretary of State for the Home Department (2003) UKHL 51, (2004) 1 AC 653, R (on the application of Takoushis) v HM Coroner for Inner North London (2005) EWCA Civ 1440, (2006) 1 WLR 461, R (on the application of Gentle) v Prime Minister (2006) EWCA Civ 1689, (2007) QB 689 and Salman v Turkey (21986/93) (2002) 34 EHRR 17 considered. It could only be in a plain case where there was no potential for liability that a further investigation might not be necessary. As regards the nature of the investigation, the mere fact of a death or near-death in custody meant that the state had to commence an investigation by a person independent of those implicated in the facts. The extent to which there had to be some further enquiry in the nature of a public hearing in which the next of kin or the injured person could play a part would depend on the circumstances. In the case of a death there would be an inquest, and the coroner might have to decide whether the circumstances were such as to require something containing all the ingredients specified in Amin. In cases of serious injury the nature of the further enquiry necessary would depend on the facts as discovered by the independent investigator. It was at that stage that something more than the mere fact that the death or serious injury occurred in custody would dictate the extent of the necessity to hold a full enquiry, R (on the application of D) v Secretary of State for the Home Department (2006) EWCA Civ 143, (2006) 3 All ER 946 applied.

(2) On the facts of the instant case, there was a clear obligation to initiate an enhanced investigation. The retired governor could not have had the degree of independence required. Further, the instant case was one in which a further enquiry conforming to that required in the case of D was necessary. An investigation by an independent investigator would have had to form the view that potentially the state might have failed in its obligations to protect life giving rise to an obligation to hold the full D-type enquiry.

APPEAL DISMISSED

SI 2754/2007 The Police and Justice Act 2006 (Commencement No. 4) Order 2007

In force **10 October**. This Order brings into force Section 41 of the Police and Justice Act 2006 (Immigration and asylum enforcement functions: complaints and misconduct) in Scotland and Northern Ireland.

SI 2874/2007 The Criminal Justice Act 2003 (Commencement No. 17) Order 2007

In force **1 October**. This Order brings into force in England and Wales Sections 28 and 331 of the Criminal Justice Act 2003, in so far as those sections relate to the provisions of the 2003 Act in article 2(3) and (4) of this Order.

Article 2(3) relates to Schedule 2 of the 2003 Act in so far as it inserts new Section 37B(8) of the Police and Criminal Evidence Act 1984. Section 37B of the 1984 Act provides for consultation with the Director of Public Prosecutions as to whether there is sufficient evidence to charge a person with an offence, following the release of that person on bail. Sub-section (8) provides for the person to be charged for an offence either in police detention at a police station, or by written charge, in accordance with Section 29 of the 2003 Act.

Article 2(4) relates to paragraphs 6, 10 and 15 of Part 2 of Schedule 36 of the 2003 Act.

- Paragraph 6 amends Section 39 of the Criminal Law Act 1977 to provide that a written charge (charging a person with an offence) and requisition (requiring a person charged with an offence to appear before a court in England or Wales), within the meaning of Section 29 of 2003 Act, can be served throughout the United Kingdom.
- Paragraph 10 amends the Prosecution of Offences Act 1985 to provide that the provisions of Part 1, concerning the constitution and functions of the Crown Prosecution Service, apply to proceedings instituted when a public prosecutor issues a written charge and requisition in accordance with Section 29 of the 2003 Act.
- Paragraph 15 amends Section 85 of the Proceeds of Crime Act 2002 to provide that proceedings for an offence, for the purposes of that Act, are started when a public prosecutor issues a written charge and requisition in respect of the offence in accordance with Section 29 of the 2003 Act.

Section 29 of the 2003 Act was brought into force in England and Wales on 25 July 2007 by the Criminal Justice Act 2003 (Commencement No.16) Order 2007, for the purposes of criminal proceedings instituted by specified persons in a magistrates' court sitting in specified locations.

SI 2952/2007 The Control of Trade in Endangered Species (Enforcement) (Amendment) Regulations 2007

In force **10 November**. These Regulations amend the Control of Trade in Endangered Species (Enforcement) Regulations 1997 by replacing the reference to Commission Regulation (EC) No. 939/97 with a reference to the current Commission Regulation (Commission Regulation (EC) No. 865/2006, OJ No. L166, 19.6.2006, p. 1), and making consequential changes to references to article numbers of that Regulation.

SI 3001/2007 The Offender Management Act 2007 (Commencement No.1 and Transitional Provisions) Order 2007

This Order brings into force certain provisions of the Offender Management Act 2007.

Those that come into force on **1 November** are:

- Section 16 (power of search in contracted out prisons and secure training centres).
- Section 17 (power of detention in contracted out prisons and secure training centres).
- Section 18 (powers of authorised persons to perform custodial duties and search prisoners).
- Section 19 (powers of director of a contracted out prison).
- Section 20 (amendment of section 87 of the Criminal Justice Act 1991).
- Section 25 (removal of requirement to appoint a medical officer etc).
- Section 26 (independent monitoring boards).
- Section 27 (amendment of section 8A of the Prison Act 1952).
- Section 32 (functions of Youth Justice Board).
- Section 33 (detention and training orders: early release).
- Section 34 (accommodation in which period of detention and training to be served).
- Section 35 (escort arrangements).
- Section 36 (orders and regulations).
- Section 37 (financial provisions).
- Section 38 (power to make consequential and transitional provision etc).
- Section 39 (minor and consequential amendments, transitionals, and repeals) insofar as it relates to the provisions in force in Schedules 3, 4 and 5.
- Section 40 (extent).

- Schedule 3, Part 2 (prisons), Part 3 (DTOs: accommodation) and Part 4 (escort arrangements).
- Schedule 4, Part 3 (provision relating to Part 3).
- Schedule 5, Part 2 (prisons), the entries relating to: Sections 6(2), 7, 17 and 28(5) of the Prison Act 1952; the Race Relations Act 1976; the Criminal Justice Act 1991; the Criminal Justice and Public Order Act 1994; and the Freedom of Information Act 2000
- Schedule 5, Part 3 (miscellaneous), the entries relating to: the Criminal Justice and Public Order Act 1994; and the Powers of Criminal Courts (Sentencing) Act 2000.

Provisions that will come into force on **1 May 2008** are:

- Section 31 (accreditation of programmes for purposes of programme requirements).
- Section 39 (minor and consequential amendments, transitionals, and repeals) insofar as it relates to the entry in Schedule 5 specified below.
- Schedule 5, part 3 (miscellaneous), the entry relating to Section 202(3)(b) of the Criminal Justice Act 2003.

NOTES