

Digest

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

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

This edition contains a summary of new legislation and proposals and reviews of issues relating to policing practice including: the Equality, Diversity and Human Rights Strategy for the Police Service; an update on the Equality Standard for the Police Service; the EHRC report 'Integration in the Workplace: emerging employment practice on age, sexual orientation and religion or belief'; update on the progress of Bills through Parliament; the latest IPCC 'Learning the Lessons' bulletin; the IPCC Annual Report on Police Complaints; HSE and ACPO joint policy statement on health and safety; HMIC report on delivery of the Policing Pledge; HMIC Review on accuracy of counting most serious violence offences and the public consultation of proposed changes to 'Code for Crown prosecutors'.

There are also a number of articles outlining recently published Government and Parliamentary reports and initiatives including: the DWP research on continuing racially discriminatory practices in recruitment; the investigation of the Home Office's counter-terrorism policy; the consultation on misuse of personal data; and the Vetting and Barring Scheme is introduced.

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

The Case law is produced in association with



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Equality, Diversity and Human Rights Strategy for the Police Service Launched

On 1 October 2009 the Association of Chief Police Officers (ACPO), the Association of Police Authorities (APA) and the Home Office published its Equality, Diversity and Human Rights Strategy for the police service. The new strategy sets out its vision for the police service which is 'a police service that has the trust and confidence of all communities and reflects the communities it serves'. The strategy and action plan outlines how ACPO, APA and the Home Office will deliver this vision.

The strategy sets out an approach which recognises that the differences within communities can be as wide as the differences between communities. It acknowledges the need for strategies and solutions that tackle inequality in an increasingly complicated and diverse society. The strategy has six characteristics which indicate:

- ◆ It is focused on results, setting out priorities that provide a direction for how the service can improve which includes everyone, is fair and has respect for everyone, whatever their differences;
- ◆ It recognises that inequality and discrimination will have a different effect according to the particular experiences of individuals and communities;
- ◆ It acknowledges that strategies and solutions must take account of the effects of deprivation (the lack of basic human needs) and be flexible in responding to individual circumstances;
- ◆ It sets out to build equality and human rights into everything the police service does, considering the role of police staff alongside police officers and recognising the crucial role of police authorities in making sure they answer to local communities;
- ◆ It focuses on the leadership role of the ACPO, APA and the Home Office in providing the structure and systems to support and maintain improvement at a local level; and
- ◆ It provides a framework for improvement which individual police forces and police authorities can use to identify and set their own equality targets.

The strategy is supported by a detailed action plan which sets out the action that each of the partners will take to make sure the strategy's priorities are delivered.

There are three themes within the strategy which provide the framework for improving performance and delivering specific equality results at every level of the police service. The themes are as follows:

- ◆ Theme 1: Operational Delivery - delivering services that are easy to access and that respond to and meet the needs of all communities;
- ◆ Theme 2: People and Culture - building a working environment that includes everyone and that encourages all staff to develop and make progress; and

- ◆ Theme 3: Organisational Processes - building equality into the organisation's processes and how the service manages its performance.

The 'Equality, Diversity and Human Rights Strategy for the Police Service' can be found at

http://www.npia.police.uk/en/docs/edhr_strategy_for_the_police_service_english.pdf

Update on Equality Standard for the Police Service

Following the launch of the Equality Standard for the Police Service 2009/10, the National Policing Improvement Agency (NPIA) announced that it had reviewed feedback from the three-month field test involving eleven police forces. This feedback, in addition to consultations with staff representative organisations, equality organisations and Government departments (including community safety partners), strategic community stakeholders and a range of local community representatives has now been incorporated into planning and the Standard itself.

The Standard has been through an involved sign-off period and has now been agreed by the various boards and committees including the NPIA Board and ACPO Cabinet. The final product is on track for use by forces and Police Authorities in November 2009.

NPIA aims to support implementation of the Standard through a series of workshops in November 2009 which are aimed at practitioners. The lessons learned from the field tests indicated that each force has its own way of implementing the Standard, therefore the NPIA intend to focus the workshops on giving forces opportunities to see examples of what some of the trial forces did, to speak to the project team about any issues or concerns on implementation and to use the workshop to share ideas and learning.

The 'Equality Standard for the Police Service 2009/10' can be found at

http://www.npia.police.uk/en/docs/Equality_standard_final_doc.pdf

and a shorter brochure is available at

http://www.npia.police.uk/en/docs/Equality_Standard_Brochure_260809.pdf

Disability Definitions

There are a number of different definitions of disability used in surveys to identify disabled people. The Office for Disability Issues (ODI) is encouraging the use of a single harmonised definition of disability. This definition reflects that contained in section 1 of the Disability Discrimination Act 1995 (DDA) and the guidance within section 3. This is therefore the minimum standard for public bodies to use as part of their duties under the Disability Equality Duty.

The ODI have published a guide which is intended to explain the set of questions used by ODI to identify the DDA population and the benefits for other public bodies of doing so. It is hoped that this will enable data on outcomes for disabled people to be more easily compared and provide a more consistent evidence base across government.

The 'User Guide to Disability Definitions' can be found at <http://www.odi.gov.uk/docs/res/dd/Disability%20Definitions.pdf>

EHRC Launch New Report on Integration in the Workplace

On 8 October 2009 the Equality and Human Rights Commission (EHRC) launched a new report 'Integration in the Workplace: emerging employment practice on age, sexual orientation and religion or belief' focussing on how a range of UK organisations have established equality policies encouraging employees from diverse backgrounds to participate fully in the workplace.

The report looks at eight employers, including BT, Asda, the British Library, the University of Glasgow and North Wales Police, to see what policies and practices they have adopted to encourage lesbian, gay, bisexual and older employees and those with differing religions or beliefs to take up recruitment, promotion or advancement opportunities in the workplace.

The report is to be used by the EHRC to develop guidance for employers on implementing effective equality policies. All eight participating organisations adopted a variety of equality programmes aimed at making employees feel accepted and preventing discrimination based on age, sexual orientation and religion or belief.

The research revealed that no one policy or approach was appropriate for all organisations, however support from senior managers, in particular from the chief executive, was vital for equality policies to be properly implanted.

Examples of good practices were found in all the eight organisations and included:

- ◆ Asda and BT - produced advice booklets that gave employees and managers an insight into the diverse religions or beliefs practiced by their colleagues and customers;
- ◆ BT - provided advice for line managers about allowing staff to take time to pray, accommodating religious festivals and balancing policies on uniform with religious requirements;
- ◆ BT - abolished the set retirement age; and
- ◆ University of Glasgow - had diversity specialists within the organisation and diversity champions at senior levels to raise awareness of particular equality strands.

Other good employer practices included:

- ◆ Equality policies that were actively implemented;
- ◆ Establishing in-house equality training programmes;
- ◆ Encouraging the establishment of staff networks for particular groups (staff networks for lesbian, gay and bisexual employees were the most common);

- ◆ Providing information for staff on age discrimination law;
- ◆ Adopting flexible working practices;
- ◆ Reviewing workplace policies and their implementation; and
- ◆ Challenging discrimination and harassment.

The full report (Research Report 36) 'Integration in the workplace: emerging employment practice on age, sexual orientation and religion or belief' can be found at

http://www.equalityhumanrights.com/uploaded_files/research/integration_in_the_workplace.pdf

New Research Indicates Racial Discrimination in Recruitment

The Department for Work and Pensions (DWP) published on 20 October 2009 new research carried out by the National Centre for Social Research which shows that racial discrimination in recruitment still exists towards ethnic minority people. The need for the research was based on the persistent and unexplained gap in the employment rate between the ethnic minority population and the population of Great Britain as a whole, where there is currently a 13.8 percentage point difference.

The study found that discrimination occurred for those applying for jobs with a name suggesting they were from an ethnic minority, rather than white British. For every nine applications sent by a white applicant, an equally good applicant with an ethnic minority name had to send sixteen to obtain a positive response. Applications were made to private, public and voluntary sector employers of varying sizes.

The public sector vacancies included in this study, which usually required standard application forms, did not discriminate at this initial stage of recruitment. This suggests that discrimination might be reduced by the use of standard application forms.

The full press release can be found at
<http://www.wired-gov.net/wg/wg-news-1.nsf/vAllPrint/697CE9C611802F4C802576550035243E?OpenDocument>

Skills for Justice Introduce Horizon Scan Website in Search for Future Skills for Policing

In Issue 40 of Skills for Justice's e-bulletin 'Policing and Law Enforcement' published on 14 October 2009 the development of the Police Horizon Scan Website was announced. The website will monitor Skills for Justice's search to identify the future skills needs for the Police service. The site provides an overview of the knowledge of policy and the operational environment within which skills needs emerge. The skills drivers and skills needs presented in the website are based solely on desk research and evidence gathered during the horizon scanning process.

The site will be regularly updated after they conduct bi-monthly scanning to identify any new drivers, updated drivers or new skills needs, which will be added to the website as necessary. At the end of the yearly cycle, a review of all drivers included in the change areas will be assessed and updated. The aim is to keep the website as dynamic as possible, reflecting the changing landscape within which the police service operates.

Using this contextual information as a starting point Skills for Justice hope that stakeholder and practitioner contributions will provide the police service with greater understanding and insight into the skills drivers and skills needs.

More information about the Police Horizon Scan website can be found at <http://www.skillsforjustice-4sight.com/>

Report on Quality and Relevance of Forensic Science Degrees Published

On 15 October 2009 Skills for Justice published its report 'Fit for Purpose? Research into the provision of Forensic Science degree programmes in UK HEIs'. This report inquired into the standard of Forensic Science and Crime Scene degree provision across the UK.

The report is the result of investigative research carried out this year into the types of degree programmes available. Skills for Justice conducted this research specifically because feedback from employers, such as Police Forces from across the UK and commercial Forensic Science providers, indicated that many of the courses are not producing job-ready graduates.

The numbers of students studying Forensic Science or Crime Scene degrees has increased from 2,191 in 2002/03 to 5,664 in 2007/08 yet this has not prepared more people for employment in Forensic Science. One employer said that "There are some really good graduates but they often only have a surface appreciation of Forensic Science", while another commented that "Forensic Science degrees do not have enough science, it is the application of science that is the job."

Despite a widely held belief that TV shows such as CSI and Silent Witness have had a massive impact on the number of students opting for Forensic Science and Crime Scene degrees, Skills for Justice found that it was an interest in studying degree level science that was the biggest factor in influencing choice.

The report found that the quality of degrees is very good and the Quality Assurance Agency for higher education has confidence in quality systems in place for universities offering these degrees. It is, therefore, the relevance of these degrees to actual work carried out in Forensic Science roles that is the key to ensuring the courses meet employers' needs. The report has concluded that Universities need to work much more closely with employers to ensure degrees are relevant to employers' needs.

The Chief Executive of Skills for Justice said "This research, which we undertook because our employers told us they were concerned about the lack of job-ready graduates, really highlights that there is a need for a quality standard, or subject benchmark for Forensic Science. This will mean that those students who want to pursue a career in this fascinating area of science will be able to identify those courses which have been developed in partnership with employers, thereby providing them with the necessary skills and experience to take to the job market."

The full report 'Fit for Purpose? Research into the provision of Forensic Science degree programmes in UK HEIs' is available at <http://www.skillsforjustice.com/websitefiles/Forensic%20Science%20HE%20Report%20-%20October%2009.pdf>

There is also a briefing paper 'Forensic Science and Crime Scene Degrees in the UK' which can be found at <http://www.skillsforjustice.com/websitefiles/Forensic%20Science%20HE%20report%20-%20briefing%20summary%20-%20October%2009.pdf>

Police Dogs Strategy, Training and Care Manual 2009 Published

The publication of the Police Dogs Training and Care Manual 2009 which incorporates the Police Dogs Strategy 2008-11 was announced by the Association of Chief Police Officers (ACPO) and the Association of Chief Police Officers Scotland (ACPOS) on 21 October 2009.

The Manual is provided by the ACPO Police Dog Working Group through the ACPO Uniformed Operations Business, Operational Issues Portfolio. It provides up to date guidance on selection of Handlers, the training, kennelling and welfare of dogs and the equipment that is approved for use both in training and operational deployment. It is based on Good Practice guidance currently available from professionals within, and those working alongside, the Police Service.

The Police Dogs Training and Care Manual 2009 is available on the Genesis Extranet.

GMC Produces a 'Licensing Resource Pack' for Organisations Employing Doctors

On 8 October 2009 the General Medical Council (GMC) published an essential information pack for organisations that employ doctors. From 16 November 2009 all doctors who wish to practise medicine in the UK will not only have to be registered with the GMC, they will also have to hold a licence to practise.

The 'licensing resource pack' aims to help employers prepare for the introduction of the licence to practise, which is the first step towards the introduction of revalidation; the biggest change to medical regulation in 150 years. The pack explains how organisations can go online to check the GMC status of their doctors and provides information about important changes the GMC is making to the certificates it issues to doctors.

To help organisations prepare for the change, the pack contains a checklist for:

- ◆ Reviewing and updating policies, procedures and guidance for making pre-employment checks on doctors; and
- ◆ Providing training and information for staff.

Neil Roberts, Director of Registration and Resources at the GMC said: "Licensing has important implications for employers and we hope the information in the 'licensing resource pack' will help them to prepare ahead of 16 November".

The 'licensing resource pack' can be found at <http://www.gmc-uk.org/doctors/licensing/practice.asp>

Bills before Parliament - Progress Report

The 2009/10 session of Parliament will commence on 18 November 2009 with Bills drawn from the Government's Draft Legislative Programme. The following Bills from the 2008/09 session have progressed as follows through the parliamentary process:

Public Bills

- ◆ **Coroners and Justice Bill** - this Bill was introduced by the Ministry of Justice. It has completed its progress through the House of Commons and completed the Report Stage in the House of Lords on 28 October 2009. The Bill is due for its third reading in the House of Lords on 4 November 2009;
- ◆ **Equality Bill** - this Bill has been published in a trial format by the Government Equalities Office. The Bill has completed the committee stage in the House of Commons and will be reprinted to incorporate the changes made. No date has yet been set for the report stage in the House of Commons; and
- ◆ **Policing and Crime Bill** - this Bill was introduced by the Home Office and has completed its progress through the House of Commons. The Bill completed the Committee Stage on 20 October 2009. The Report Stage is planned for the 3 and 5 November 2009. The Bill is due for its third reading in the House of Lords on 11 November 2009.

The Government's Draft Legislative Programme 2009/10

The Consultation for the Draft Legislative Programme has now closed. The Leader of the House will publish a summary of consultation comments and the Government's response alongside the Queen's Speech which will set out the final programme. The Queen's Speech which opens the new session of Parliament is due on 18 November 2009.

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

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

- ◆ Draft Bribery Bill - which will proceed as the Bribery Bill under the theme of 'Rebuilding Trust in Modern, Democratic Britain';
- ◆ The Draft Communications Data Bill and the Draft Community Empowerment Bill do not appear in the Draft Legislative Programme.

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

Investigation of Home Office's Counter-Terrorism Policy Announced

The Home Affairs Committee announced on 9 October 2009 the scope of its investigation into elements of the Home Office's Counter-Terrorism Policy.

The inquiry will focus on the following issues:

- ◆ The immediate response of the Home Office to a terrorist attack, including the effectiveness of the Civil Contingencies Committee (COBRA) in coordinating an immediate Government response;
- ◆ The potential use of intercept evidence and the value of control orders;
- ◆ The misuse and misapplication of anti-terrorism powers; and
- ◆ Anti-terrorism measures at the European level.

The Chairman of the Committee said "Following our inquiry into Project CONTEST, published in July 2009, this is an important inquiry looking at other components of the Home Office's counter-terrorism strategy. We will also look closely at how the Government responds in the immediate aftermath of a terrorist attack. This summer has seen many legal developments in this area with the role of control orders and intercept evidence coming under scrutiny; this inquiry aims to contribute to that debate by looking also at the legal tools available to prosecutors."

The remit of the Home Affairs Committee is to examine the expenditure, administration and policy of the Home Office and its associated public bodies.

Further information about this investigation can be found at http://www.parliament.uk/parliamentary_committees/home_affairs_committee/091001.cfm

Better Support for Victims of Anti-social Behaviour

On 13 October 2009 the Home Secretary announced that he expected tougher local action against anti-social behaviour (ASB) by announcing a range of new initiatives. He stated that extra help will be available for victims of anti-social behaviour to enable the police to target those who breach ASBOs. He also stated that there would be new local minimum service standards which will be agreed with the public by March 2010. These will include:

- ◆ Regular updates for every community on what is being done to tackle antisocial behaviour;
- ◆ Support and help for victims of ASB; and
- ◆ Taking reports of ASB seriously by recording and investigating all cases and keeping victims informed of any action taken.

Areas that have been identified as being more challenging will be given additional support to improve.

In the case of victims who take their case to a Magistrates Court they will be offered help from Victim Support's witness service, such as:

- ◆ Support in court proceedings;
- ◆ Offering someone to accompany the witness when they give evidence; and
- ◆ Providing follow-up assistance when the court case is over.

In order to increase successful prosecutions there will be a clear expectation that local areas ensure court action is taken against those who breach ASBOs. A new assessment of how breaches are currently dealt with and new cross CJS guidance on dealing effectively with breaches is also expected.

The full press release can be found at

<http://www.homeoffice.gov.uk/about-us/news/more-local-action-on-asb>

Vetting and Barring Scheme Introduced

The introduction of the vetting and barring scheme (VBS) on 9 October 2009 is one of the government's key responses to the Bichard inquiry. The inquiry recommended a new scheme that would make sure everyone who works with children and vulnerable adults is checked and registered. The scheme will be implemented by the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority, organisations which are sponsored by the Home Office.

Some of the key changes under the VBS scheme include:

- ◆ It is now a criminal offence for individuals barred by the Independent Safeguarding Authority to work or apply to work with children or vulnerable adults in a wide range of posts;
- ◆ Employers face criminal sanctions for knowingly employing someone who has been barred;
- ◆ New jobs and voluntary positions will be covered by the scheme, including moderators of children's internet chat rooms and a large number of NHS and prison service staff; and
- ◆ Employers, local authorities, professional regulators and other bodies have a duty to give the Independent Safeguarding Authority any information about why they stopped people working with children or vulnerable adults where they consider them to have caused harm or pose a risk of harm.

The scheme has also reduced the number of barred lists from three to two. The ISA will manage one list for children and one for vulnerable adults. From now on, checks of these two lists can be made as part of an enhanced CRB check.

More information about the vetting and barring scheme can be found at

<http://police.homeoffice.gov.uk/about-us/police-policy-operations/vetting-barring-scheme-programme/>

HM Treasury Call for Evidence to Inform Review of Money Laundering Regulations 2007

On 9 October 2009 HM Treasury published a call for evidence on the Money Laundering Regulations 2007 and of the UK's anti-money laundering policies and procedures under them. The Call is designed to help inform a review of the Regulations and look at how effective and proportionate the UK's anti-money laundering rules are.

The Call for Evidence is in two parts. Part A of the Call for evidence is aimed at money-laundering experts and practitioners, such as businesses supervised under the Regulations and money laundering supervisors. Part B is focused on private individuals and business customers. The Call for Evidence will end on 11 December 2009.

The Money Laundering Regulations 2007, together with the Proceeds of Crime Act 2002 (POCA) and the Terrorism Act 2000 form the backbone of the UK's anti-money laundering regime. The Government's strategy in this area can be found in "The Financial Challenge to Crime and Terrorism" (2007). Although distinct in their specific aims and scope, these acts are designed to complement each other and enhance the effectiveness and proportionality of the UK anti-money laundering regime.

The Call for Evidence documents are available at
http://www.hm-treasury.gov.uk/fin_crime_review.htm

The Government's anti-money laundering strategy 'The Financial Challenge to Crime and Terrorism' can be found at
http://www.hm-treasury.gov.uk/d/financialchallenge_crime_280207.pdf

Consultation on Misuse of Personal Data

On 15 October 2009 the Ministry of Justice launched a public consultation on whether to introduce prison sentences for those found guilty of offences related to obtaining, disclosing or selling personal data without the consent of the data controller. These are all offences under section 55 of the Data Protection Act 1998. In addition, there is a proposal to commence simultaneously a new defence under section 55 relating to the purposes of journalism, art and literature.

The consultation paper 'The knowing or reckless misuse of personal data: Introducing custodial sentences' proposes increasing the current maximum penalty from a fine to up to two years imprisonment. The proposed new measure could see those convicted imprisoned for up to two years if the case is heard in the Crown Court and up to 12 months if heard in the magistrates court. The consultation period ends on 7 January 2010.

The consultation paper 'The knowing or reckless misuse of personal data: Introducing custodial sentences' can be found at
<http://www.justice.gov.uk/consultations/misuse-personal-data.htm>

Latest IPCC Learning the Lessons Bulletin Published

The Independent Police Complaints Commission (IPCC) published their latest 'Learning the Lessons' Bulletin 8 (October 2009) on 13 October 2009.

The latest bulletin provides information on key issues, case summaries, recurring issues and areas of useful policing practice noted during investigations undertaken by the IPCC. These reports have been chosen because they provide learning opportunities for other police forces facing similar situations and may help them improve their policies and practices.

Several cases in this bulletin reinforce the importance of working effectively with other agencies, especially the National Health Service. Related to this is the need to share intelligence across agencies and forces and within the force, a particular issue in cases concerning sex offenders and shotgun licences. As well as familiar themes such as risk assessment and recording, this bulletin highlights again the issues around motorbike pursuits.

In Bulletin 8 the five key policing issues identified are:

- ◆ **Working well with the Ambulance Service**
Getting the interface between the police and the Ambulance Service right is vital. A man died from hypothermia when failures in communication meant an ambulance was not called in time; in another matter where a man was threatening to kill himself the ambulance crew waited some time for the police before forcing an entry, whereupon they discovered the man dead;
- ◆ **The need to keep tabs on sex offenders**
The importance of sharing information on sex offenders was highlighted by two registered sex offenders who committed further offences. One was released from prison while under investigation without the investigating officers knowing and information obtained by the police Multi-Agency Public Protection Arrangements (MAPPA) administrators was not passed on. The other moved to a farm; though other officers in the Force knew a child lived there, the MAPPA officers did not because they were using a stand-alone system;
- ◆ **Matching intelligence to shotgun licences**
The need to share intelligence across a Force was reinforced by the suicide of a man with a licensed shotgun. The man had been reported for domestic violence, cautioned for criminal damage and tried to kill himself. All this happened within the previous ten months but this information did not reach the Firearms Licensing Department;
- ◆ **How to get medical help for violent patients**
Clarity is needed at a national level on how to deal with violent patients and get the medical help needed for those restrained by the police; a man died after police had to take him into custody to get medical help when hospital staff refused to treat him, even while restrained, because he was violent; and

◆ **Motorbike pursuit**

Forces need to follow ACPO guidelines on managing pursuits; a pursuit of a motorbike (discouraged in most cases) involving seven cars, armed response vehicles and a helicopter, lasted 20 minutes without any management, control or decision as to whether it was proportionate.

The IPCC bulletin identifies recurring issues that feature in their investigations. A major theme running through several of the cases, however, is the importance of effective liaison, not only with other agencies but between forces and within forces. With external agencies, such as the Ambulance Service and hospitals, this extends to clarifying what the force and the agency can expect of the other. A written understanding, such as a protocol, can help here. For example, the IPCC has recently negotiated a standard protocol for each Ambulance Service clarifying roles in an IPCC investigation.

Among issues featured before is the need for proper recording, a factor in both the context of call handling and liaison with other Agencies. The omission of information on risk from the Person Escort Record (PER) form mirrors similar failings in two cases included in Bulletin 3 and reinforces the importance of complying with Section 2.3.3 of the Guidance on the Safer Detention and Handling of Persons in Police Custody. The cases prompted a call for the PER format to be reviewed and a revised PER form was introduced nationally in September 2009. A training package for Forces has been developed to accompany the new PER, to ensure consistent standards of completion; this was rolled out in May 2009 and is available to forces online at NPIA's National Centre for Applied Learning Technologies Managed Learning Environment (NCALT).

Recording is not the only theme to recur and the issues touched on below have all featured in previous bulletins:

Working with other agencies

Once again the need for effective coordination between the police and a variety of other agencies including the National Health Service, the Ambulance Service and prisons among them. Each of which featured in several cases:

- ◆ A seriously ill man had to be taken into custody to secure medical attention when a hospital refused to treat him because he was violent;
- ◆ A man died from hypothermia after the police failed to get an ambulance there on time;
- ◆ An ambulance crew called out to a threatened suicide waited some time for police officers to arrive before breaking down the door. They found him dead;
- ◆ Police investigating an alleged sexual offence by a prisoner were not told when he was released and nor was this allegation mentioned at MAPPA meetings. He went on to commit a sexual offence against a child; and
- ◆ The suicide risk noted on the custody record in respect of a man who had recently taken an overdose was not transferred onto the Prisoner Escort Record. He later committed suicide in prison.

Sharing intelligence

A number of the cases investigated highlighted the importance of sharing information between and within police forces:

- ◆ One Force did not warn another that a wanted man tended to try to escape from the window of his third floor flat; nor did the officers planning to arrest him tell the local Force they were going to the flat that night, thus missing a chance to find this out;
- ◆ A man still had a licensed shot gun, which he used to kill himself, despite reports of domestic violence, a caution for criminal damage and a suicide attempt in the previous year. These incidents were not brought to the attention of the Force's Firearms Licensing Department;
- ◆ MAPPAs officers using a stand-alone computer system were unaware that a child was living at a farm where a Registered Sex Offender was living in a caravan. This was because this information was stored on a separate database; and
- ◆ Information discussed at MAPPAs meetings relating to a man at risk of self harm was not passed to front line officers likely to come into contact with him.

Call handling

The importance of handling calls correctly featured in two cases:

- ◆ A call involving a threat of suicide was wrongly downgraded from Grade 1 to Grade 4 without Team Leader approval because the operative took the view that people rarely act on such threats and that the ambulance should attend in the first instance;
- ◆ An opportunity to correctly re-grade the call later was missed because the operative did not read the whole message;
- ◆ When the ambulance requested back up, electronic 'unsolicited messages' were used to contact the Force Control Room despite the fact that these were often not read; and
- ◆ A call from a father worried about his son because of his son's psychiatric disorder was not recorded. His son was found dead the next day.

Training and staffing levels

Three cases emphasised the need for robust training and adequate staffing levels:

- ◆ A large turnover in staff meant that MAPPAs officers were inexperienced in their roles and had little knowledge of relevant Force policy or national guidelines. They were also diverted by a high level of administrative tasks;
- ◆ The importance of suicide intervention training for front line officers;
- ◆ Staffing levels in a Firearms Licensing Department were not adequate to deal with the checks needed to administer the firearms licensing system;

- ◆ Officers involved in a prison production had no training in this area of work and breached the agreement with the prison service. They also put the safety of the operation at risk by driving him around and taking him to a custody unit not accredited for this purpose; and
- ◆ A case involving pursuit of a motorbike again highlighted the need to train communication room supervisors and force incident managers in pursuit management and provide refresher training for police drivers.

Equipment

The importance of functioning and up-to-date equipment was highlighted in one case:

- ◆ A detainee died from cardiac arrest after the Force's defibrillator, which had not been upgraded for seven years, did not detect a heart rhythm that required a check; and
- ◆ An unrectified fault in the central heating made the cell where he was held too hot.

More information about these issues and case summaries can be found in 'Learning the Lessons' Bulletin 8 (October 2009) which is available at http://www.learningthelessons.org.uk/learningthelessons_oct09.pdf

The e-learning package for the PER Forms is part of the Safer Detention Learning Programme which is available online at NPIA's National Centre for Applied Learning Technologies (NCALT) <http://www.ncalt.com>

IPCC Publishes Annual Police Complaints Statistics 2008/09

On 24 September 2009 the Independent Police Complaints Commission (IPCC) published its statistics detailing complaints made by members of the public against police.

The total number of complaints has risen by approximately 8,000 since 2004/05 when the IPCC first became responsible for collecting the data. As in previous years most complaints are about 'neglect of duty' (24%) and 'incivility' (21%), essentially being rude and late. The proportion of all allegations that are substantiated is 10%.

Also published is data from research conducted as part of the British Crime Survey (BCS) 2006/07. More than a quarter of BCS respondents said they had been 'really annoyed' by their contact with police.

The report includes the follow statistics:

- ◆ The number of complaints has increased from 28,963 to 31,259 - up 8%;
- ◆ One complaint can involve a number of allegations; Allegations increased from 48,280 to 53,534 - up 11%;
- ◆ Complaints about stop and search numbered 680, up 124 (27%) from the previous year;

- ◆ More than one million stop and searches were conducted last year, but a complaint regarding stop and search would only be recorded as such if it breached Police and Criminal Evidence Act 1984 or other relevant legislation, otherwise it would be recorded in alternative category such as incivility;
- ◆ Neglect or failure of duty and incivility accounted for the largest rise in allegations, up approximately 2,000 collectively;
- ◆ The next largest field, 'other assault', has fallen from making up 25% of allegations in 2004/05 to 13% in 2008/09;
- ◆ The 1,519 allegations of discrimination represent 3% of all allegations - 76% of the allegations concerned race;
- ◆ 62% of all complaint cases were completed - a figure that has remained largely the same over the last decade; and
- ◆ 55% of all officers complained about have less than ten years service.

The BCS survey also found that of the 27% of people who had been 'really annoyed' by their contact with the police, only 10% made a complaint. Findings from the BCS and previous IPCC research show that those who don't complain are likely to be young people and those from Black and Minority Ethnic communities, although their confidence appears to be growing.

Reviewing the year's statistics IPCC Chair Nick Hardwick, said "At a time when politicians and the police are debating public confidence in the police and how to make them more accountable, the complaint figures published today give a strong indication of what the public want sorted out. Complaints about rude and late officers consistently top complaint categories and work to address this can have a positive impact. The public recognise the police have a difficult job to do. However, this does not alter the fact that they expect officers to do their job politely and efficiently. These statistics show that when it is not done in this manner they are likely to complain."

The IPCC is currently consulting on changes to its 'Statutory Guidance'; the rules regarding how the complaint system should operate. The aim of which will be to create a simpler and less bureaucratic system.

The Complaints Statistics document includes the volume, type and outcome of complaints, as well providing data concerning the complainant. Every police force in England and Wales is included and the document provides comparative data from previous years.

The report 'Police Complaints: Statistics for England and Wales 2008/09' and supplementary tables can be found at

<http://www.ipcc.gov.uk/index/resources/research/stats.htm>

HSE and Police Issue Joint Statement on Health and Safety

On 7 October 2009 the Health and Safety Executive (HSE) launched a policy statement entitled 'Striking the balance between operational and health and safety duties in the Police Service'. The statement, a result of collaborative work with the Police Service, sets out how that balance can be achieved. HSE Chair Judith Hackitt CBE, Peter Fahy, Chief Constable, Greater Manchester Police (Head of the ACPO Workforce Development Group) and Sir Hugh Orde, President, Association of Chief Police Officers (ACPO) launched the statement with the support of the Association of Chief Police Officers in Scotland (ACPOS). In addition to ACPO and ACPOS, the Police Superintendents' Association, the Association of Police Authorities and the Police Federation have agreed to endorse the statement.

HSE, ACPO and ACPOS have undertaken to work closely together, with other stakeholders including the National Policing Improvement Agency, to ensure that police operational guidance reflects the agreement outlined in the policy statement. For some time, HSE has been working with ACPO and other stakeholders to develop a better understanding of how police services can balance operational needs with health and safety duties effectively.

The ACPO lead for workforce development, Peter Fahy, Chief Constable of Greater Manchester Police said "Policing is a very specialised profession and good health and safety practices are vital to the welfare of our staff and the public. Our officers find themselves in situations every day that require them to make tough decisions in often volatile and fast moving situations. They often perform many acts of bravery and heroism. And that will not change. We cannot foresee every situation or ensure every officer is trained for everything. We are pleased therefore that HSE has recognised this unique aspect of the job and the complex nature of the challenges our officers face. Our officers need the best information, equipment, and training to ensure they make the best possible decisions to protect not just the public, but themselves."

The full press release can be found at
<http://www.hse.gov.uk/press/2009/e09089.htm>

HMIC Report Urges Forces to Work Harder to Meet their Policing Pledge Commitments

An inspection report 'Policing Pledge - Responsive Policing' published by Her Majesty's Inspectorate of Constabulary (HMIC) on 7 October 2009 has found that the majority of police forces in England and Wales have further to go if they are to keep their promise to the public on the service they provide.

Of the 43 police forces inspected, 33 were graded fair. To varying degrees, these forces fell short of their Policing Pledge commitments and needed to improve. There were eight forces (Kent, Surrey, Leicestershire, West Mercia, Humberside, Lancashire, Merseyside and Northumbria) which received good grades. The review states that these forces have generally kept their Pledge

with the public and listened to their concerns, acted on their concerns and kept them informed on the progress they have made.

The review identifies that there are two forces (Suffolk and Cumbria) that have performed poorly and consistently fell short on their commitment to the public. No force was graded excellent and exceeded the Policing Pledge standards.

The review conducted by HMIC investigated all ten Policing Pledge promises with inspectors acting as customers or 'mystery shoppers', to get a realistic, first-hand view of the public's experiences. Inspectors attended meetings, visited police stations and sent emails to police teams to test how they were treated. The time taken to answer the phones and reply to messages was logged, police posters in public places were checked for accuracy and force websites were read to test whether the contact details and police station opening hours were up to date. The review visited and interviewed frontline staff in all 43 police forces. The Inspectors also spoke to members of the public who have recently used their local police service to get a balanced picture of how the police delivered on their promises.

The Inspectors found mixed results and HMIC's report reveals that:

- ◆ Some police stations were not open when advertised while others used volunteers to ensure rural stations were staffed;
- ◆ In July 2009, 17% of all non emergency calls received by one force were abandoned in a week after being passed to other departments while free phone numbers have been introduced by some forces for non-emergency calls;
- ◆ Some calls to Neighbourhood Policing Teams were never answered while some forces were praised by the public for their high profile neighbourhood policing;
- ◆ The public in some areas were given the opportunity to meet their local police at meetings or informal 'surgeries' in supermarkets or libraries while in other areas officers from the neighbourhood team didn't even attend meetings;
- ◆ Not all force websites had the correct opening times for police stations with out of date contact details and public meeting times while some forces used social networking sites such as Twitter, Facebook and Podcasts to advertise their local policing teams;
- ◆ Some forces log all complaints and trawl press articles to pinpoint dissatisfaction and contact the complainant while most forces rarely gave the public the opportunity to discuss their concerns with someone in person; and
- ◆ Two forces translated the Pledge into several languages while there was little evidence of other forces communicating with minority groups about the Pledge.

Jane Stichbury, Her Majesty's Inspector, said that "Although the performance of most forces did not consistently match the level promised to the public, the majority of forces have made efforts to build a stronger relationship and

dialogue with local people. The Policing Pledge is about providing responsive policing to the public's needs and this inspection has shown many forces need to step up a gear."

Police forces signed up to the Policing Pledge in December 2008 and forces were graded after the HMIC inspection between April and August. HMIC will return to forces to check whether improvements have been implemented and their primary focus by January 2010 will be on those graded poor.

The full report 'Policing Pledge - Responsive Policing' and individual reports on each police force are available at

<http://inspectorates.homeoffice.gov.uk/hmic/Inspections/Policing-Pledge-2009/>

National DNA Database Annual Report 2007/09 Published

The National DNA Database (NDNAD) annual report, covering two years from April 2007 through to March 2009 was published on 21 October 2009. The report is an important part of the aim to increase transparency and maintain public confidence in the database.

A summary of the key facts and figures as at 31 March 2009 are:

- ◆ There were an estimated 4,859,934 individuals whose DNA profile was held on the database, an 11% increase on a year earlier, with slightly fewer profiles added in 2008/09 than in 2007/08;
- ◆ 36,093 of the subject profiles related to volunteer samples;
- ◆ 4 out of 5 profiles held on the database were from males;
- ◆ The breakdown of subject profile records by ethnic appearance based on the judgement of the sampling police officer was:
 - Asian (5.2%);
 - Black (7.3%);
 - Chinese, Japanese, or any other South East Asian (0.6%);
 - Middle Eastern (0.7%);
 - Unknown (9.4%);
 - White North European (74.8%); and
 - White South European (1.9%).
- ◆ The majority (58%) of subject profiles at the time they were added to the database related to those aged 16-34 (9% aged 16-17, 13.2% aged 18-20, 12.9% aged 21-24, 23.1% aged 25-34); and
- ◆ 350,033 crime scene profiles were retained on the database.

Below are some key successes from the use of DNA as a crime fighting tool as listed in the report:

- ◆ During 2008/09, almost 6 in 10 crime scene profiles loaded to the NDNAD were matched to a subject profile;
- ◆ During 2008/09, one or more subject profiles were matched with 40,687 crime scene profiles;
- ◆ There were 36,727 crimes with DNA matches in 2008/09 including:
 - 252 homicides (includes murder and manslaughter);
 - 580 rapes;
 - 175 other sex offences;
 - 1,819 other violent crimes; and
 - Over 8,100 domestic burglary offences.
- ◆ Since 1998, there have been over 182,000 detections in which a DNA match was available, and a further 122,000 additional detections arising through forensic linkage or admission by a suspect, providing more than 300,000 detections associated with DNA.

The full report 'National DNA Database (NDNAD) Annual Report 2007/09' can be found at <http://www.npia.police.uk/en/docs/NDNAD07-09-LR.pdf>

HMIC Review of Arrest of Damian Green MP Published

On 12 October 2009 Her Majesty's Inspectorate of Constabulary (HMIC) published its report 'Review of the Lessons Learned from the Metropolitan Police Service's Investigation of Home Office Leaks' and the subsequent arrest of Damian Green MP. The HMIC review recommends that the police should only investigate the most serious leaks and leave the remainder for Government departments to pursue.

The report advocates that while the police must continue to show their impartiality and act without fear or favour, they should limit their involvement to national security cases. These cases would include breaches of the Official Secrets Act 1989 affecting the wellbeing of the UK or other very exceptional cases of serious criminality. The report calls for the police to base their decisions to act on 'an assessment of the likelihood of success and realisation of outcomes'. There is also a proposal for a protocol agreed with the Crown Prosecution Service and others to thoroughly test such cases in the future.

Mr O'Connor added that "Such an assessment will be based on issues such as proportionality, seriousness, public interest and costs." He also acknowledged that the decision to launch a criminal investigation in October, 2008, into a series of leaks from the Home Office was 'a complex matter'.

The lessons learned from this and other more recent cases involving Parliament, Members of Parliament, officials and the police should inform a process for an appropriate police response which preserves the dignity of

Parliament. However, there is nothing that will prevent the police from commencing an investigation into any individual should they believe it warranted.

There is also a call for tougher tests to be applied by the Cabinet Office when involving the police in leak inquiries. Denis O'Connor said "The frequency of the leaks and the failure to identify the sources or prevent the leaks raises a question about the effectiveness of the Department security regime that was in place over the period of the leaks. As we now know, the Home Office leaks were not a threat to national security and yet the police became involved in an investigation. They did this as a result of a convergence of events; concern over the potential threat; and Cabinet Office guidelines which, on some readings, could be seen to have encouraged a police investigation. These guidelines allow not just for police investigation but also matters relating to serious interference with the functions of Government. Departments and the Cabinet Office should have the capability to deal with the matter and should not have to rely on the police."

The HMIC review makes four recommendations to prevent an unnecessary use of police resources in the future:

- ◆ The Metropolitan Police Service with the Association of Chief Police Officers review and formalise guidance on police investigation relating to high impact cases to fully incorporate the principles of 'without fear or favour';
- ◆ The Cabinet Office reviews the Civil Service capability to respond to leaks and facilitate the development of appropriate standards of preventative security and investigation in accordance with departmental risks;
- ◆ The Cabinet Office reviews its guidance to departments on leak investigations to clarify that police will have the lead in Official Secret Act 1989 inquiries or other very exceptionally serious criminality, but that the Cabinet Office or departments will deal with other leaks and agree the guidance with police; and
- ◆ The Police, Cabinet Office and Crown Prosecution Service jointly agree a protocol that provides checks and balances for future investigations recognising that decisions on the conduct of investigations must ultimately rest with the police.

The full report 'Review of the Lessons Learned from the Metropolitan Police Service's Investigation of Home Office Leaks' is available at <http://inspectrates.homeoffice.gov.uk/hmic/docs/Lessons-learned-Home-Office-Leak/lessons-learned-report-2007?view=Binary>

HMIC Review Encourages Forces to Ensure Accurate Recording of Violence

On 21 October 2009 Her Majesty's Inspectorate of Constabulary (HMIC) published their report 'Crime Counts. A Review of Data Quality for Offences of the Most Serious Violence - Technical Report'. HMIC were commissioned in January 2009 to carry out a review across all 43 police forces of the way in which they recorded the most serious violence. The purpose of the data quality review was to ensure that the Most Serious Violence (MSV) crime data used to report performance is fit for purpose.

The HMIC review found that most violence is being recorded correctly by police but some victims may have been denied the service they deserve because their allegations were not recorded as crimes. Overall, a review of 43 police forces in England and Wales found that in more than 9 out of 10 cases, officers generally classified and recorded crimes correctly. Human error is inevitable but in some forces the error rates were much higher than in others and this needs to be followed up.

The key findings of the Review are:

- ◆ Most forces correctly decided which calls from the public should not be treated as violent crime (incidents). Overall more than 9 out of 10 of these decisions were correct. The error rates varied between forces and in some fewer than 9 out of 10 were correct;
- ◆ For the calls that were treated as a violent crime, most forces classified and recorded the crime correctly (most serious violence and assault with less serious injury). Overall more than 9 out of 10 were correct. The error rates varied between forces; in some fewer than 9 out of 10 were correct; and
- ◆ Of the 5% of violent crimes that were removed from the record after police decided that there had been no crime, just over 6 in 10 of these decisions were correct. Due to the low volume of these cases, HMIC indicated that it was not able to comment reliably on the differences between error rates in particular forces.

HMIC accepts recording violence can be a difficult area, involving more subjective judgements by police than other crime categories. Errors will never be eradicated, at least not without a huge increase in bureaucracy. Where errors were made, some of the victims would not have received the care and service they deserved. Some forces made more errors than others because they either over-recorded or under-recorded violence.

The review indicated that if the Audit Commission's grades for the quality of police recording of crimes were applied to HMIC's findings, 7 forces would have graded fair or poor in at least two of the three tests. Inspectors looked for errors in the most likely places, enabling them to target resources on a small sample. For these reasons, it would be statistically irresponsible to extrapolate some of the findings to the national figures.

A statement from David Hanson the Policing and Crime Minister said "The public and the Government expect crime to be tackled and for that performance to be measurable. Today's report shows the majority of forces are performing well when classifying violent crime, but there are some issues that give cause for concern, especially around the way the police handle incidents which are reported as crimes, but later downgraded to 'no crime'. Some cases where a decision was made not to record a crime are clearly unacceptable. We must better understand what is behind these errors to ensure victims get the right support. We will be consulting with police colleagues to see how we can ensure the good practice followed by most forces is applied universally."

The full review 'Crime Counts. A Review of Data Quality for Offences of the Most Serious Violence - Technical Report' is available at <http://inspectors.homeoffice.gov.uk/hmic/inspections/thematic/Crime-Counts/crime-counts-technical.pdf?view=Binary>

National Online Crime Map Now Live

The Crime Map which aims to provide regular and meaningful help to increase public confidence in policing has been developed following close collaboration between the NPIA and police forces across England and Wales over the last nine months. This is a key innovation that supports the Government's Building Britain's Future strategy, which has been supported by the Home Office and the Association of Chief Police Officers.

National crime statistics and neighbourhood policing information, including the number of offences brought to justice will be available to the public for the first time via Directgov and through force websites.

Crime Map users will be able to view figures for burglary, robbery, violence, vehicle crime, all crime and anti-social behaviour in their area. They can compare the number of crimes and crime rate for the same three-month period in the previous year and see annual crime rates with other similar events across the country.

Users will also see details of their neighbourhood police team, local crime priorities, Policing Pledge and details of forthcoming crime meetings. The site will also provide links to local force websites.

The Crime Map of England and Wales is available at <http://maps.police.uk/>

Confidentiality of Knife Victims to be Broken

On 28 September 2009 the General Medical Council (GMC) issued new guidance entitled 'Confidentiality' which now requires doctors to inform the police or social services whenever they treat a patient who is a victim of gun or knife crime, particularly those under 18. The guidance took effect on 12 October 2009.

For the first time, the new guidance makes it explicit that doctors should report all gunshot wounds and knife crime for both children and adults.

Knife injuries to children, even accidental ones, may raise wider questions about a child's safety. Therefore, doctors need to consider whether there are any concerns that should be dealt with through child protection procedures.

The new guidance, which is supported by seven pieces of supplementary guidance including reporting gunshot and knife wounds, requires doctors to:

- ◆ Firstly, inform the police quickly of any incidents of wounds resulting from a gunshot or a suspected attack with a knife, blade or other sharp instrument; and
- ◆ Secondly, make a professional judgement about whether disclosure of personal information about a patient is justified. For instance, when there is a risk to patients, staff or the public.

The guidance requires doctors to ask patients whether they are prepared to talk to the police, and to explain the potential consequences of not doing so. However, while doctors must respect a patient's decision, if it is probable a serious crime has been committed, or staff, or the public are at risk, doctors may now disclose the patient's identity and other confidential information to the police.

The guidance also requires doctors to report concerns about patients to the DVLA when, due to ill health, a patient might be unfit to drive.

The full guidance 'Confidentiality' can be accessed at http://www.gmc-uk.org/Confidentiality_core_2009.pdf_snapshot.pdf

Quarterly Crime Statistics for England and Wales Published

The Home Office released its statistical bulletin 'Crime in England and Wales: Quarterly Update to June 2009' on 22 October 2009. The latest figures published in the Quarterly Update today show that based on British Crime Survey (BCS) interviews in the year to June 2009, crime remains stable compared with the year to June 2008; BCS household crime showed a decrease of 4% but there was no change in the level of personal crime. The number of crimes recorded by the police fell by 4% in April to June 2009 compared with the same quarter in 2008. BCS interviews also showed that the risk of being a victim of crime (22%) remained stable compared with the year to June 2008. This level of risk of being a victim of crime is historically low.

The fall in BCS household crime was mainly due to a statistically significant fall of 6% in vandalism. All other BCS household crime types remained stable. Estimates of all BCS personal crime categories (violence, theft from the person and other personal theft) remained stable. The fall in police recorded crime for April to June 2009 compared with the same period in 2008 reflected falls in violence against the person (by 1%), recorded offences against vehicles (by 12%), criminal damage (by 5%) and 'other theft' offences (by 3%). However, within 'other theft' there were increases of five and 22 per cent respectively for theft from the person and theft of pedal cycles. BCS burglaries for the year ending June 2009 remained stable compared with the previous year.

The Police recorded crime figures showed a rise of 3% in domestic burglaries in April to June 2009 compared with the same quarter in 2008. There have been small increases in three of the last four quarters, following a period of decline. Police recorded robberies rose by one per cent overall and those involving knives or sharp instruments also increased by one per cent over the same period. Provisional statistics recorded by the police showed a 5% fall in firearms offences.

The overall proportion of people with high levels of perceived anti-social behaviour in the local area remained stable (16%) compared with the year to June 2008. Four of the seven individual ASB strands making up the overall measure showed reductions while the remaining three were stable. BCS interviews in the 12 months to June 2009 also showed that 50% of people agreed that police and local councils were dealing with the crime and anti-social behaviour issues that matter in the area, an increase from 45% in the nine months to June 2008.

The statistical bulletin 'Crime in England and Wales: Quarterly Update to June 2009' is available at <http://www.homeoffice.gov.uk/rds/pdfs09/hosb1509.pdf>

Supplementary tables on the nature of BCS crime can be found at http://www.homeoffice.gov.uk/rds/crimeew0809_tables_bvv.html

Research Finds that Sketches Reveal when People are Lying

The University of Portsmouth in conjunction with the University of Gothenburg and the Florida International University, have undertaken research, published on 13 October 2009 which reveals that it may be possible to detect when criminals are lying by asking them to sketch what they saw.

In the first ever deception experiment to investigate drawings, forensic psychologists at the University of Portsmouth found that lying is more obvious in a drawing than in a spoken description. They sent 31 volunteers on a cloak-and-dagger mission in which they had to collect a laptop from a 'secret agent' and deliver it to a second agent. They were then asked to visualise how and where they had received the laptop, describe the scenario and to make a detailed drawing of the location. Half of the volunteers were instructed to lie about where the exchange took place and half were told to tell the truth.

Results showed that only 13% of the liars included the agent from whom they received the package in their drawing compared with 80% of the truth-tellers allowing researchers to identify the liars through this feature alone. Another indicator was the perspective the liars chose for their sketches. 80% of the liars drew the laptop exchange scene from an overhead position compared with the majority of truth-tellers who chose a 'shoulder height' position.

The lead researcher Professor Aldert Vrij said "A drawing creates a several unique problems for liars, not least because a request to sketch a drawing comes as a surprise. This means the liar is unprepared and must do it without planning and research indicates that people lie better when they have had time to plan their deception. Staying close to the truth is often considered to

be a good strategy for liars and almost all the liars in our experiment chose to describe and sketch a location they knew. However, because it was not the location where they met the agent, when they pictured the location in their mind the agent would be absent from this visualisation. The truth-tellers, however, were more likely to picture the agent in their mind when they visualise the location and include him in the picture."

Professor Vrij stated that the overhead position selected by the deceivers is similar to the way people frequently use indirect forms of speech when fabricating a lie. The making a drawing also forces the interviewee to take a perspective and again this is something the liar may not have rehearsed. Verbally it is possible to describe an object in a room without saying exactly where it is within the room but it is impossible to place an object or person in a drawing without being specific about its location. If a liar has not seen something or someone in a particular location they are less likely to describe the location out of fear they will choose the wrong place, but this 'masking strategy' will not work when asked to provide a sketch.

Surprisingly the amount of detail in the drawings was no indication that the person was lying, whereas detail is often lacking in a verbal lie. But the liars were more likely to include stable aspects of the location such as shops and the layout of the street rather than the variable objects such as people.

Whilst there is a need to undertake further research the experiment demonstrates that there is definite potential for taking drawing seriously as a useful lie detection tool. The research found that one of the problems in lie detection is 'contamination' between interviewers' expectations and interviewees' responses, but the request to make a drawing requires little input from the interviewer which would avoid this.

Another advantage of this method is that drawings can be sketched in a relatively short period of time; they are not expensive to produce and would avoid the need to transcribe audiotapes. However, the authors are clear that drawings are unlikely to replace verbal statements but for use as an additional aid and suggest that the technique could be used to good effect in interviews with subjects who are not fluent in the language of the interviewer.

An early view of the full report can be found in the Applied Cognitive Psychology Journal at

<http://www3.interscience.wiley.com/cgi-bin/fulltext/122597362/PDFSTART>

Financial Fraud Action UK Announces Latest Fraud Statistics

On 7 October 2009 Financial Fraud Action UK released the latest payment industry fraud losses for the first half of 2009, in conjunction with the UK Cards Association and the Cheque and Credit Clearing Company.

The latest statistics on fraud include:

- ◆ Card fraud losses down 23% to £232.8m in first half of 2009 (compared with same period last year);

- ◆ First ever fall in card-not-present fraud losses which now stand at £134 million;
- ◆ Online banking fraud losses up 55% to £39m; and
- ◆ Cheque fraud losses down 26% to £15.6m.

The reduction in losses incurred via phone, internet and mail order shopping fraud are as a result of the increasing use of sophisticated fraud screening detection tools by retailers and banks, as well as the continuing growth in the use of MasterCard SecureCode and Verified by Visa (online payment systems that make cards more secure when shopping on the internet), by both online retailers and cardholders. There has also been a significant decrease in fraud abroad. One of the factors causing this is the fraud detection systems used by the banks and card companies, which monitor for unusual spending. This proactive monitoring has led to potential fraud before stopped before it occurs.

Experts believe that fraudsters are increasingly targeting foreign issued cards and those without chip-and-pin protection. The rising fraud in online banking is attributed to criminals using more sophisticated methods such as 'malware' scams to target individual customers personal computers rather than the banks' own systems, which have become much more difficult for fraudsters to attack.

There was also a 26% increase in 'phishing' incidents, where fraudsters send out e-mails which appear to be from a bank but are actually a way of diverting users to other websites to obtain bank account numbers and passwords.

The full press release can be found at

http://www.ukpayments.org.uk/media_centre/press_releases/-/page/732/

Serious Fraud Office Outline Approach to Dealing with Overseas Corruption

The Serious Fraud Office (SFO) is the lead agency in England, Wales and Northern Ireland for investigating and prosecuting cases of overseas corruption. The SFO are responsible for enforcing the current law and will be responsible for enforcing the provisions of the Bribery Bill in respect of overseas corruption if the Bill is enacted (see *NPIA Digest* May 2009 edition, p6).

The SFO have issued a guidance document entitled 'Approach of the Serious Fraud Office to dealing with overseas corruption' which provides practitioners with information about their role in such investigations.

Discussions with business and professional advisers have revealed a lot of interest in a system of self reporting cases of overseas corruption to the SFO. This interest has prompted the SFO to produce additional guidance with respect to their policies on this and in particular on the benefits to be obtained from self reporting.

As will be seen from the Guide, the benefit to the corporate will be the prospect (in appropriate cases) of a civil rather than a criminal outcome as

well as the opportunity to manage, with the SFO, the issues and any publicity proactively. The corporate will be seen to have acted responsibly by the wider community in taking action to remedy what has happened in the past and to have moved on to a new and better corporate culture. Furthermore, a negotiated settlement rather than a criminal prosecution means that the mandatory debarment provisions under Article 45 of the EU Public Sector Procurement Directive in 2004 will not apply.

The guidance document 'Approach of the Serious Fraud Office to dealing with overseas corruption' can be found at <http://www.sfo.gov.uk/media/28313/approach%20of%20the%20sfo%20to%20dealing%20with%20overseas%20corruption.pdf>

LGA Survey: Crime Rises as Recession Bites

The Local Government Association (LGA) published on 3 October 2009 new research that suggests that crime is rising in many parts of England and Wales because of the recession.

A survey of town halls in England and Wales found that burglary is on the rise in half of all areas that responded and one in three authorities has seen an increase in vehicle crime and domestic violence. The LGA study also found that antisocial behaviour and alcohol misuse were also going up. More than three quarters of respondents blamed the recession for the increases. Anti-social behaviour, fear of crime, alcohol and drug misuse, were each identified by respondents as one of their top three priorities, followed by domestic violence.

The new figures suggest that years of falling crime figures may be coming to an end. However the survey also revealed that local authorities are maintaining their community safety programmes despite ongoing financial constraints. Two-thirds of councils said that these initiatives, which include street wardens or youth projects, were still in place. The LGA said that the survey's findings reinforced the need for councils and the police to be given space to combat crime and for top-down, time consuming initiatives from central government to be halted.

The full press release can be found at <http://www.lga.gov.uk/lga/core/page.do?pageId=4372298>

New Criminal Procedure Rules

On 5 October 2009 the eighth amendment of the Criminal Procedure Rules 2005 came into force affecting procedures used in magistrates' courts, the Crown Court and the Court of Appeal Criminal Division. New procedure rules about investigation orders, disclosure, witness statements and contempt of court have been introduced. The existing rules about costs have been revised and simplified.

These Rules add the following new provisions to The Criminal Procedure Rules 2005:

- ◆ A new Part 6 (Investigation orders) that deals with applications for production and other orders under the Terrorism Act 2000 and the Proceeds of Crime Act 2002. These new rules supersede the existing rules in Part 62, which apply only to some applications under the 2002 Act;
- ◆ A new Part 22 (Disclosure) that consolidates, revises and simplifies the content of existing Parts 22, 23, 25 and 26;
- ◆ A new Part 27 (Witness statements), in substitution for the existing Part 27, that revises and simplifies the rules about the content and service of written witness statements;
- ◆ A new Part 62 (Contempt of court) that deals with applications for the punishment for contempt of court of those who disobey court orders, or who disclose prosecution material without authority;
- ◆ A new Part 76 (Costs) that revises and simplifies the rules about applications for costs orders. These new rules supersede the existing rules in Part 78, and deal with applications for all the costs orders that the criminal courts can make; and
- ◆ New rules in Part 2 (Understanding and applying the Rules) make transitional provision and explain when the new rules in Parts 6, 22, 62 and 76 will apply.

A guide to the new rules has also been produced and can be found at <http://www.justice.gov.uk/news/announcement051009a.htm>

CPS Consults on Changes to Prosecution Principles

The Crown Prosecution Service (CPS) has announced on 19 October 2009 that it has launched a 12 week public consultation on proposed changes to the Code for Crown Prosecutors. 'The Code for Crown Prosecutors: Consultation Document' sets out the principles which prosecutors must follow when they decide whether or not to prosecute an individual.

The test set out in the Code is applied in every case and it requires prosecutors to consider whether there is sufficient evidence to charge an individual with a criminal offence and whether a prosecution is needed in the public interest.

Keir Starmer QC, Director of Public Prosecutions, said "Following the announcement of the merger between the CPS and the Revenue and Customs Prosecutions Office earlier this year, I have considered further what changes to the Code for Crown Prosecutors should be made in order to ensure that all prosecutors in the new public prosecution service, along with police officers, are making fair and consistent decisions. The Code for Crown Prosecutors is fundamental to our role in deciding whether or not someone will be prosecuted. The decision to prosecute an individual is a serious step with serious implications for victims, witnesses, defendants, and those close to them. The public prosecution service exercises extensive powers on behalf of the public, so it is vital that people know about the principles we apply and that we know what they think of any changes we make to those principles."

The main proposals for change are:

- ◆ Prosecutors will have a discretion to determine whether, where there is sufficient evidence and it is in the public interest to prosecute, a prosecution is a proportionate response to the specific offending (paragraph 4.10);
- ◆ Prosecutors will have a discretion to stop a prosecution in the public interest, in exceptional circumstances, before all of the evidence is available (paragraphs 4.16 and 4.17);
- ◆ A fuller section explaining the Threshold Test (section 5);
- ◆ A fuller section explaining the use of out-of-court disposals for both adults and youths (section 7);
- ◆ A fuller explanation of how the public interest is assessed (paragraphs 4.8 and 4.9); and
- ◆ Further public interest factors are identified both tending in favour and against prosecution (paragraphs 4.12 and 4.13).

The consultation period ends on 11 January 2010 and a summary of the responses received will be published on the CPS website after that date.

The draft Code for Crown Prosecutors and consultation document are available at http://www.cps.gov.uk/consultations/rccp2_index.html

CPS Moves Closer to Electronic Case File

The Crown Prosecution Service (CPS) announced on 9 October 2009 that it had taken a major step towards electronic case files by signing two contract extensions that will bring new technology to staff, allowing them to access case information wherever and whenever they need it.

David Jones, CPS Chief Information Officer, said "These extended contracts give us the opportunity to radically change how we work at the CPS, particularly in the area of electronic case management. Currently, we have to track down information that might be in a bundle of papers or on a computer. Soon, the information will be available electronically wherever the individual is."

New secure laptops will be able to access and update electronic case files from court by using an encrypted 3G mobile connection, while a Voice over Internet Protocol (VoIP) telephone system will allow staff who move between main offices to use the same phone number at all times. Both improvements will greatly increase efficiency by allowing staff to access information quickly and contact colleagues who move between offices and courts. The new laptops and phone system will be delivered by the end of 2011.

The full press release can be found at
http://www.cps.gov.uk/news/press_releases/146_09/

National Victims Service to be Introduced

On 29 September 2009 the Ministry of Justice announced that it is to introduce the National Victims Service during this financial year. The new service will begin its work by offering one-to-one tailored support to all those bereaved by murder or manslaughter to help them cope with the trauma of losing a loved one to crime.

The Government is to provide funding to the national organisation, Victim Support, to provide the service, ensuring that bereaved families are offered the services of an individual support worker who will:

- ◆ Conduct a personalised needs assessment for family members;
- ◆ Provide specialist emotional, practical and financial support, responding to the individual needs of bereaved relatives;
- ◆ Liaise with criminal justice agencies on behalf of the family;
- ◆ Help families to access additional services such as legal services, financial advice and post-traumatic stress disorder counselling;
- ◆ Deliver updates from the criminal justice agencies involved in the investigation in order to ensure that the family are aware of and fully involved in the progress of the case; and
- ◆ Continue to provide support post sentence.

The full press release can be found at
<http://www.justice.gov.uk/news/newsrelease290909a.htm>

UK Supreme Court Opens

The UK Supreme Court opened on 1 October 2009. Jack Straw, the Lord Chancellor and Secretary of State for Justice stated "The delivery of the new UK Supreme Court to the people of Britain is a major milestone and one that will ensure greater access to and transparency of the highest court of appeal in the UK".

The UK Supreme Court is housed in the former Middlesex Guildhall which has been modernised and renovated. Its location on Parliament Square also offers great symbolic significance, bringing together the legislature, the executive,

the judiciary and the Church. It was set up under the Constitutional Reform Act 2005 and will provide greater clarity in the UK constitution by further separating the judiciary from the legislature underlining the independence of the judicial system. The existing Law Lords will become the first Justices of the Supreme Court of the United Kingdom, and the Senior Law Lord will become the President.

The UK Supreme Court will be the final court of appeal for all civil cases in the United Kingdom, all criminal cases in England, Wales and Northern Ireland and will also assume the devolution jurisdiction of the Judicial Committee of the Privy Council.

More information about the UK Supreme Court is available at <http://www.supremecourt.gov.uk/>

Ofsted Publish Lessons Learned from Serious Case Reviews

On 14 October 2009 Ofsted published its report 'Learning lessons from serious case reviews: Year 2' which evaluated the depth of the learning a serious case review had provided and the quality of the recommendations it has made to protect children. The report brings together findings in relation to the conduct of serious case reviews, the practice issues arising and the lessons learned. It considers how the process of conducting serious case reviews affects the quality of the outcomes and the depth of learning given. It identifies emerging lessons and issues which require further consideration.

This report focuses explicitly on the depth of learning. Each section of the report includes the emerging lessons from the serious case reviews which were evaluated in 2008/09.

The key findings of the report include:

- ◆ There is evidence to suggest that Local Safeguarding Children Boards are taking a more robust approach in relation to serious case reviews and that some of the previous barriers to learning are being removed;
- ◆ However, many of the weaknesses in practice identified in a previous report remain and there is still much to do to ensure that lessons are truly learned and that all agencies who support the most vulnerable children and young people work together to safeguard them more effectively;
- ◆ A greater number of Local Safeguarding Children Boards are carrying out more serious case reviews, with a consequent increase in volume. This is despite the numbers of children killed or seriously injured where abuse or neglect is suspected remaining stable;
- ◆ Local Safeguarding Children Boards are increasingly aware that lessons must be learned from these tragic incidents quickly and are more willing to explore the issues involved. However, Local Safeguarding Children Boards' exploration of the social, cultural and ethnic issues within serious case reviews remains a weakness;
- ◆ In instances where the history of a case spans more than one area, Local Safeguarding Children Boards are cooperating more readily across boundaries in undertaking a serious case review jointly to see if there are lessons to be learned; and
- ◆ Serious case reviews are generally being carried out more speedily, although concerns remain about the length of time required for reviews of complex cases where the understandable requirements of judicial procedures can impede the speed of learning.

The full report 'Learning lessons from serious case reviews: Year 2' is available at

<http://www.ofsted.gov.uk/Ofsted-home/Publications-and-research/Browse-all-by/Documents-by-type/Thematic-reports/Learning-lessons-from-serious-case-reviews-year-2>

Research Suggests that Allowing Children to Drink Alcohol at Home Leads to Fewer Negative Outcomes

On 9 October 2009 the journal BMC Public Health published a new research report entitled 'Teenage drinking, alcohol availability and pricing: a cross-sectional study of risk and protective factors for alcohol-related harms in school children'. This report examined how alcohol consumption patterns in children related to harms. The research was undertaken to inform parents, children and policy relating to the provision and use of alcohol during childhood. The research examined the drinking habits and associated harms in 15-16 year olds and explored how this could be used to inform public health advice on child drinking.

The findings of the research included:

- ◆ 28.8% of drinkers experienced violence when drunk;
- ◆ 12.5% regretted having sex whilst under the influence of alcohol;
- ◆ 45.3% of drinkers were forgetting things;
- ◆ 35.8% reported drinking in public places;
- ◆ At similar levels of consumption, experiencing any negative alcohol-related outcome was lower in those whose parents provided alcohol;
- ◆ Drunken violence was disproportionately associated with being male and greater deprivation while regretted sex and forgetting things after drinking were associated with being female; and
- ◆ Independent of drinking behaviours, consuming cheaper alcohol was related to experiencing violence when drunk, forgetting things after drinking and drinking in public places.

The research concluded that:

- ◆ There is no safe level of alcohol consumption for 15-16 year olds;
- ◆ However, while abstinence removes risk of harms from personal alcohol consumption, its promotion may also push children into accessing drink outside family environments and contribute to higher risks of harm; and
- ◆ Strategies to reduce alcohol-related harms in children should ensure bingeing is avoided entirely, address the excessively low cost of many alcohol products and tackle the ease with which it can be accessed, especially outside of supervised environments.

The full report 'Teenage drinking, alcohol availability and pricing: a cross-sectional study of risk and protective factors for alcohol-related harms in school children' can be found at

<http://www.biomedcentral.com/content/pdf/1471-2458-9-380.pdf>

Case Law



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Retention of Old Convictions on the Police National Computer Did Not Breach the Data Protection Act 1998

(1) CHIEF CONSTABLE OF HUMBERSIDE (2) CHIEF CONSTABLE OF STAFFORDSHIRE (3) CHIEF CONSTABLE OF NORTHUMBRIA (4) CHIEF CONSTABLE OF WEST MIDLANDS (5) CHIEF CONSTABLE OF GREATER MANCHESTER (Appellants) v INFORMATION COMMISSIONER (Respondent) & SECRETARY OF STATE FOR THE HOME DEPARTMENT (Intervener) (2009)

CA (Civ Div) (Waller LJ, Carnwath LJ, Hughes LJ) 19/10/2009

Information Technology - Employment - Human Rights - Penology And Criminology

Criminal Record: Criminal Records Bureau: Data Protection Principles: Duration: Employers: Relevance: Right To Respect For Private And Family Life: Retention Of Old Minor Convictions On Police National Computer: Registrable Particulars In Relation To Data Controller: Registered Purposes: Data Protection Act 1998: Directive 95/46 On The Protection Of Individuals With Regard To The Processing Of Personal Data And On The Free Movement Of Such Data 1995: Art.8(5) Directive 95/46 On The Protection Of Individuals With Regard To The Processing Of Personal Data And On The Free Movement Of Such Data 1995: Art.8 European Convention On Human Rights: S.29(1) Data Protection Act 1998

[In the circumstances the data protection principles under the Data Protection Act 1998 did not compel the police to delete certain old convictions from the Police National Computer.](#)

The appellant chief constables appealed against decisions of the Information Tribunal that certain old convictions should be deleted from the Police National Computer. In five cases individuals had complained to the Information Commissioner following the disclosure of old minor convictions pursuant to a request by the Criminal Records Bureau or, in one case, a request by one of the individuals herself. In respect of each of those convictions the Information Tribunal upheld the view of the Information Commissioner that they should be deleted from the Police National Computer. The police took the view that no convictions should be deleted except in exceptional circumstances, which should be narrowly construed as limited to such matters as convictions being established as wrongly obtained. The tribunal found that the purposes for

which the convictions were held were “core” police purposes, such as the detection of crime, and rejected the evidence of the police that the convictions had some value for those core purposes. The tribunal went on to hold that excessive data was being retained contrary to the third data protection principle and that data was being kept for longer than necessary contrary to the fifth data protection principle. A separate point arose in the case of one individual (S) who alleged that the retention of a reprimand on the computer after her 18th birthday was unfair under the first data protection principle because she had been given an assurance that the reprimand would be removed from her record when she was 18 if she did not get into anymore trouble. The chief constables submitted that to confine “purposes” to “core” police purposes found no support from the provisions of the Data Protection Act 1998 and Directive 95/46 was to take too narrow a view, and in so far as it was a registered purpose to hold the information so that it could be supplied to others, for example a complete history of convictions to the courts and the Crown Prosecution Service, there could be no question of the data retained being excessive or being held for longer than necessary.

HELD

- (1) It was a misinterpretation of the 1998 Act to suggest that if the police registered particulars then the only purposes for which data could be retained were “core” or operational police purposes. The data controller had to specify the purpose for which data was retained. There was no statutory constraint on any individual or company as to the purposes for which he or it was entitled to retain data. The purposes had to be lawful in order to comply with the first data protection principle but, that apart, a data controller could process data for any purpose. What the data controller had to do, however, was identify the purpose or purposes in the public register so that people knew what the data was being retained for and so that the Information Commissioner and data subjects could test the principles under the Act by reference to the purposes identified. The chief constables had registered purposes such as “vetting and licensing” which, together with the list of recipients, indicated that one of the purposes for which the police retained the data on the Police National Computer was to be able to supply accurate records of convictions to the Crown Prosecution Service, the courts and the Criminal Records Bureau. Since those recipients required a complete record of convictions spent and otherwise, it could not be said that the data being retained was excessive or being retained for longer than necessary for those purposes. The tribunal had been wrong to find that the correct approach was that the police processed data for their core purposes.
- (2) Even if the narrower approach to purposes was correct, the tribunal was wrong to hold that retention of the information was a breach of the third and fifth principles by reference to statistical evidence relating to the risk of future offending. If the police said rationally and reasonably that convictions, however old or minor, had a value in the work they did, that should, in effect, be the end of the matter.
- (3) Article 8(5) of the directive permitted a complete register of criminal convictions to be kept and if a complete record could be kept then it was

permissible to maintain a record which was designed to be complete in relation to all offences of a defined degree of seriousness. The specific endorsement by the directive of the concept of a complete register made it impossible to argue that the retention of information in such a register was in itself objectionable under the European Convention on Human Rights 1950 art.8.

- (4) S had been informed that the reprimand would be removed from her record under the policy of "weeding" then in force. The policy had changed. If it was fair to retain convictions under the new policy it did not become unfair to do so simply because the data subject was told of what the policy then was when being convicted or reprimanded. Furthermore, the deletion of the reprimand, leading as it would to deletion of many others, would be likely to prejudice the prevention and detection of crime and the apprehension or prosecution of offenders within the exemption in s.29(1) from the first data protection principle.

APPEALS ALLOWED



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Where Failures Of Police Adequately Explained in Judicial Direction Identification Evidence Could Be Left to the Jury

R v CONRAD KINGDOM (2009)

CA (Crim Div) (Laws J, Keith J, Recorder Of Dover) 20/10/2009

Criminal Evidence

Admissibility: Bad Character: Identification: Identification Parades: Pace Codes Of Practice: Photographs: Possession Of Firearms With Intent: Photograph Of Offender Seen By Complainant Before Video Identification Parade: Police And Criminal Evidence Act 1984

Convictions for possession of a firearm with intent to cause fear or violence and possession of ammunition without a certificate were safe, as the judge had sufficiently directed the jury regarding a photograph that the complainant had seen of the offender and his subsequent video identification of the offender.

The appellant (K) appealed against convictions for possession of a firearm with intent to cause fear or violence and possession of ammunition without a certificate. The complainant (S) had been shot on a garage forecourt. Whilst in hospital, a police officer handed S some photographs and S recognised K in one of the photographs as the gunman. S attended a video identification parade and picked K out but was not certain of his choice. The jury was informed of the incidents regarding the photograph and the video parade and shown the photograph. The judge directed the jury that S's reaction to the photograph had no evidential value to support the identification. When K was

arrested he was found in possession of two self-loading handguns. K submitted that the judge (1) erred in admitting S's identity evidence following a number of breaches of Code D of the Police and Criminal Evidence Act 1984; (2) erred in admitting the photograph in evidence; (3) erred in admitting bad character evidence regarding his arrest, as it had the effect of bolstering a weak case; (4) failed to direct the jury as to the consequences of a number of breaches of the Codes regarding identification.

HELD

- (1) There was no basis to interfere with the judge's decision to admit the identification evidence. The judge was entitled to leave the matter to the jury in the way that he did.
- (2) If the photograph had been deployed as a positive piece of identification evidence and was admitted for that purpose there would have been many breaches of the Codes. However, the photograph was seen accidentally and was only admitted to assist K. The judge indicated in the clearest terms that S's reaction had no evidential value to support the Crown's case of identity. The direction was very strong and there was no reason why a jury could not have followed it.
- (3) The judge gave careful reasons for admitting the bad character evidence and he could not be faulted. It was not true that there was a weak case against K and that the evidence was used to bolster it.
- (4) The judge dealt with the identification evidence and the procedures in detail. He identified the particular failures of the police and gave correct directions. In the summing up the judge identified the material fairly and evidentially. He was not required to direct any precise ramifications about the Codes and he was not asked to. The absence of such directions could not hamper the safety of the verdict.

APPEALED DISMISSED



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IPCC Must Consider Each Strand of a Complaint Even Where Vague and There Was No Specific Allegation Against Any Officer

R (on the application of HERD) v INDEPENDENT POLICE COMPLAINTS COMMISSION (2009)

QBD (Admin) (Blair J) 13/10/2009

Police

Complaints: Criminal Record: Disclosure: Independent Police Complaints Commission: Police Records: Previous Convictions: Complaint Concerning Recording Of Conviction On Police Database And Access To Information By Third Parties: Refusal To Record Complaint By Constabulary: Failure Of Commission To Address All Complaints

[A decision of the Independent Police Complaints Commission to dismiss an appeal against a decision of a constabulary not to uphold and record a purported complaint was quashed where the commission failed to deal with all of the separate strands of the complaint.](#)

The claimant (H) applied for judicial review of a ruling of the defendant commission dismissing his appeal against a decision of a constabulary (C) not to uphold and record a purported complaint made by him. H had been convicted of criminal damage which was recorded on a national police database. Many years later H sought to have his conviction “stepped down” so that only the police, and not third parties, could have access to his record. C informed H that his criminal damage conviction, and a conviction for possession of a controlled drug, did not qualify to be stepped down as the requisite time period had not elapsed. However, H had never been convicted for possession of a controlled drug and C apologised for the mistake. H was not satisfied and wrote a letter complaining about (i) the matter in relation to his criminal damage conviction; (ii) the alleged illegal accessing of his criminal record and suspected disclosure of information to third parties; (iii) the possibility of the erroneous information regarding the drug-related conviction being made available to others. C found that the content of the complaint letter did not amount to a complaint against the police and the third matter in the letter would be passed to the information compliant officer. The commission held that the matters raised by H could not be recorded as a complaint as there was no specific allegation of misconduct against any officer. H argued that his complaint was not accurately summarised in the commission’s decision and that the decision was unlawful in that it dealt with only one strand of the complaint. H argued that each strand was a separate matter and should have been dealt with as such.

HELD

- (1) As thousands of complaints were made against the police, many of which related to the failure to record a complaint, the appeal findings in a brief form was acceptable due to shortage of resources.

- (2) The mere fact that an officer was unascertained did not prevent a complaint being recorded if the facts otherwise so warranted. H's complaint was not clearly articulated and the commission's case worker had to deal with the complaint as presented. In particular, the complaint concerning disclosure was vague and based on numerous assumptions. Clearly a complaint had to have a degree of specificity before it could be recorded. But no concluded view was reached on whether H's complaint satisfied that requirement. The commission's decision was quashed on the narrow point that the commission had not dealt with all the separate strands of the complaint.

APPLICATION GRANTED



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Police May be Liable for Negligence Where Actionable Damage Arises Otherwise Than an Act in Furtherance of the Investigation or Suppression of Crime

VINCENT DESMOND v CHIEF CONSTABLE OF NOTTINGHAMSHIRE POLICE (2009)

QBD (Birmingham) (Wyn Williams J) 1/10/2009

Negligence - Civil Procedure - Police

Criminal Record Certificates: Duty Of Care: Police: Police Powers And Duties: Summary Judgments: Duty Of Care In Relation To Collation Of Information And Disclosure Via Criminal Record Certificate

Whilst the police were immune from an action in negligence at the suit of an individual if the damage complained of was caused by an act or omission in furtherance of the investigation or suppression of crime, it was at least arguable that the police owed a duty of care to an individual who had applied for an enhanced criminal record certificate in relation to the collation of information and its subsequent disclosure.

The appellant (D) appealed against a decision of the judge to strike out his claims alleging negligence by the respondent police chief constable (P). D had been investigated by the police following a young woman's complaint that she was the victim of an attack and attempted rape. The police later recorded that it was apparent that D was not responsible for the crime and the file against him was closed. In the course of applying for a teaching post, D subsequently applied for an enhanced criminal record certificate. The police indicated to the Criminal Records Bureau that it had information about D and in December 2005 the assistant chief constable approved disclosure of the fact that D had been arrested on suspicion of indecent assault on a female and attempted rape on the basis that a prospective employer should have an opportunity to question D and satisfy itself that he posed no threat given the key position of trust he was applying for. In the course of making that decision, the police disclosure unit had failed to contact the officer who had investigated the

offence and no attempt had been made to locate his pocketbook. When D received his enhanced certificate he was surprised to find that it included information about the alleged attack, and he spent 11 months seeking to persuade the police that the information should not have been included upon the certificate. D made a fresh application for an enhanced certificate, and the assistant chief constable then declined to authorise disclosure of D's arrest. Consequently, in March 2007, D was provided with an enhanced certificate containing no information relating to the alleged assault. D complained that he had suffered psychiatric illness and financial loss because from December 2005 to March 2007 he was unemployable as a teacher given the contents of the enhanced certificate. D claimed damages for personal injury and loss of wages allegedly arising out of tortious acts or omissions which he maintained were committed by various police officers or civilian employees for whom P was responsible, as well as misfeasance in public office and the tort of conspiracy to cause him injury. The judge, having found that there was no positive duty assumed by or on behalf of P towards D to make particular enquiries, struck out those parts of D's claim which alleged negligence, and he gave summary judgment for P in respect of the allegations of misfeasance in public office and conspiracy to injure.

HELD

The police were immune from an action in negligence at the suit of an individual if the damage complained of was caused by an act or omission in furtherance of the investigation or suppression of crime, *Hill v Chief Constable of West Yorkshire* (1989) AC 53 HL applied. If that core principle was not engaged, a duty of care might be imposed upon the police upon "ordinary principles" if the police were directly involved in causing actionable damage to an individual, and the police could be held liable in negligence for damage (including pure economic loss) if they had assumed a responsibility to the individual in question to act with reasonable care, *Hill, Brooks v Commissioner of Police of the Metropolis* (2005) UKHL 24, (2005) 1 WLR 1495 and *Van Colle v Chief Constable of Hertfordshire* (2008) UKHL 50, (2009) 1 AC 225 applied. It was at least open to argument that the collation of information in order that a decision could be made about whether information should be disclosed to a potential employer was not an activity which necessarily fell within the core principle in *Hill*. It was open to argument that P had assumed responsibility to D to take reasonable steps to collate all the information which was available to the police relating to him in order that a decision upon disclosure could be taken in light of all relevant information where (i) P knew or should have known that D was required to pay a fee to obtain an enhanced certificate; (ii) P knew that any information disclosed would, in turn, be disclosed to prospective employers and information which was adverse was likely to have a very detrimental effect upon D's prospects of obtaining employment; (iii) the police had a designated unit consisting, at the very least in part of civilian employees, which was responsible for collating the information; (iv) the relevant information could only be retained in a finite number of databases or documents and locations; (v) D was entitled to rely, at least arguably, upon P to ensure that reasonable steps were taken to ensure that the information placed before a decision maker was both accurate and complete. D's allegations of negligence relating to the collation of information could not, therefore, be said to have no prospect of success because the identified duty

did not exist, and D's claim, in that respect alone, would be permitted to go to trial.

APPEAL ALLOWED IN PART



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Failure to Calibrate a Speed Detection Device Did Not Mean Device Was Not of an Approved Type

R (on the application of BRAY) v BRISTOL CROWN COURT (2009)

DC (Pill LJ, Rafferty J) 6/10/2009

Road Traffic - Criminal Law

Primary Evidence: Speed Measuring Equipment: Speeding: Type Approval: Improperly Calibrated Laser Speed Detection Device: Effect Of Miscalibration On Device Type Approval: Primacy Of Device Evidence

The fact that a laser speed detection device had not been calibrated in accordance with its manufacturer's instructions did not mean that the device was no longer of an approved type. Evidence from the device as to the speed at which a motorist was travelling was in any event only secondary corroborative evidence, as the opinion of the operator of the device regarding the speed was the primary evidence.

The claimant (B) applied for judicial review of a decision of the defendant Crown Court to refuse to state a case for the opinion of the High Court. B had been observed exceeding the speed limit by a trained operator of a speed detection device, who had also used a laser speed detection device that indicated that B had driven at an excessive speed. Before the Crown Court it became apparent that the operator had not calibrated the device in accordance with the manufacturer's instructions. In particular, he had failed to perform one of two pre-operation tests, namely the alignment of a red dot used by the device with crosshairs on the device. The consequence was that whilst the red dot might be pointed at a motor vehicle, that action did not indicate with certainty that the laser was pointing at the same spot. Expert evidence before the Crown Court indicated that the failure to perform the alignment did not necessarily mean that the indication given by the device that B had travelled at excessive speed was inaccurate. In particular, one expert stated that the failure would in the circumstances have been unlikely to have had any material effect as there had been a large target area for the laser to have been pointed at; and that he would have expected the device to have displayed numerous error messages if any material error had occurred in the operation of the device. The Crown Court held that it was satisfied that B had driven at an excessive speed, as a trained operator had observed B driving at an excessive speed and the recording by the device of the speed at which B was travelling was only secondary corroborative evidence as to whether B had travelled at an excessive speed. B contended that the Crown Court should have (1) allowed his appeal as the device used by the operator was not of an approved type; (2) stated a case for the opinion of the High Court.

HELD

- (1) The fact that the device was not properly used, in particular if either of the two pre-operative tests had not been performed, did not mean the device was not an approved type. The expert evidence before the Crown Court indicated that the failure to properly calibrate the device did not in the

circumstances give rise to any material error. Moreover the Crown Court was fully entitled to conclude that the speed indicated by the device was only secondary primary evidence as to whether C had been travelling at excessive speed with the primary evidence being the operator's opinion as to the speed at which B was travelling.

- (2) The decision reached by the Crown Court as to whether B had been guilty of speeding was properly made and it was entitled to determine that was the end of the matter such that it was inappropriate to state a case.

APPLICATION REFUSED



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Grass Verge Behind a Safety Barrier Was a Public Road for Offences Under the Vehicle Excise and Registration Act 1994

GRIFFITHS (CONTRACTORS) LTD v DRIVER & VEHICLE LICENSING AGENCY (2009)

DC (Goldring LJ, Rafferty J) 20/10/2009

Road Traffic

Parking: Roads: Unlicensed Vehicles: Verges: Parking Unlicensed Vehicle On Verge Near Road: Maintainable At Public Expense: Area Forming Part Of Public Road: S.29 Vehicle Excise And Registration Act 1994

An area of green verge on which an unlicensed vehicle was parked was correctly regarded as public road for the purposes of the offence of keeping an unlicensed vehicle under the Vehicle Excise and Registration Act 1994 s.29.

The appellant (G) appealed by way of case stated against his conviction in the magistrates' court for keeping on a public road an unlicensed vehicle. G had parked a dumper truck on a green verge, behind a safety barrier near a road. G had no excise licence for the vehicle. G claimed that the area where the vehicle was parked was unused and had no characteristics of a road or a highway. The issue was whether the magistrates' court was entitled to find on the facts that the green verge was a public road for the purposes of an offence under the Vehicle Excise and Registration Act 1994 s.29. The respondent agency submitted that the green verge formed part of a public road because the verge was maintainable at public expense.

HELD

Whether a particular area was a road was a matter of fact, *Clarke v Kato* (1998) 1 WLR 1647 HL followed. The term "road" was defined in the 1994 Act as a road that was repairable at the public expense. There was no doubt that in the instant case the public had access to the verge and the verge was part of the road that was maintainable at the public expense. The safety barrier did not limit the extent of the road in question. Also, as G accepted, the verge

on the opposite side of the road did form part of the road. The magistrates' court was entitled on the particular facts to find that the road included the verge on which the dumper truck was parked.

APPEAL DISMISSED



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SI 2540/2009 The Police and Justice Act 2006 (Commencement No. 2) (Wales) Order 2009

In force **1 October**. This Order brings into force, in relation to Wales only, the following provisions of the Police and Justice Act 2006:

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

These provisions relate to the establishment of local authority crime and disorder committees which may review and scrutinise decisions made by the responsible authorities in relation to their crime and disorder functions. Responsible authorities include every chief police officer and police authority any part of whose police area includes that local government area.

SI 2605/2009 The Crime (International Co-operation) Act 2003 (Commencement No. 5) Order 2009

In force **19 October**. This Order brings into force the following provisions of the Crime (International Co-operation) Act 2003:

- ◆ Sections 10 to 12 (domestic freezing orders); and
- ◆ Sections 20 to 25 (overseas freezing orders).

These sections provide the powers and procedures for making a domestic freezing order to protect evidence which is in a participating country, and for executing an overseas freezing order requiring the freezing of evidence situated in the United Kingdom for the purposes of an investigation or proceedings in a participating country.

SI 2707/2009 The Proceeds of Crime Act 2002 (References to Financial Investigators) (Amendment) Order 2009

In force **8 November**. This Order replaces Schedule 1 to the Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2009 (SI 975/2009) with a new Schedule 1. The replacement Schedule lists the persons who are 'accredited financial investigators' for the purposes of the listed provisions in the Proceeds of Crime Act 2002, including those relating to restraint orders, confiscation investigations and detained cash investigations.

SI 2773/2009 The Criminal Justice Act 2003 (Conditional Cautions: Financial Penalties) Order 2009

In force **16 November**. This Order sets out the offences for which a financial penalty can be attached to a conditional caution. The maximum level of the penalty for each offence or description of offence is also given and is either £50, £100 or £150. At present the power to impose a financial penalty as part of a conditional caution is only in force in relation to certain police forces.

SI 2774/2009 The Police and Justice Act 2006 (Commencement No. 12) Order 2009

In force **16 November**. This Order brings into force, in relation to the police areas of Hampshire and Humberside, section 17 of the Police and Justice Act 2006. This section amends Part 3 of the Criminal Justice Act 2003 to allow for financial penalties to be imposed as a part of a conditional caution. Section 17 also includes the power to require the offender to attend a specified place at a specified time, however this is not brought into force as part of this Order.

SI 2780/2009 The Criminal Justice and Immigration Act 2008 (Commencement No. 12) Order 2009

In force **16 November**. This Order brings into force the following provisions of the Criminal Justice and Immigration Act 2008, in relation to the police areas of Cambridgeshire, Hampshire, Humberside, Merseyside and Norfolk:

- ◆ Section 48(1)(b) (amendments relating to reprimands and warnings);
- ◆ Section 148(1) and (2) (consequential etc. amendments and transitional and saving provision) in so far as it relates to the provisions of Schedules 26 and 27 listed below;
- ◆ Paragraph 2 and paragraph 3 so far as it is not already in force, of Schedule 9 (Alternatives to prosecution for offenders under 18);
- ◆ Paragraphs 20 and 34(3) of Schedule 26 (minor and consequential amendments); and
- ◆ Paragraph 18 of Schedule 27 (transitory, transitional and saving provisions).

These provisions allow for a Youth Conditional Caution to be given as an alternative to prosecution. Further guidance on these measures can be found in the 'Code of Practice for Youth Conditional Cautions for 16 & 17 year olds' which can be found at <http://www.official-documents.gov.uk/document/other/9789999098137/9789999098137.pdf>

SI 2781/2009 The Crime and Disorder Act 1998 (Youth Conditional Cautions: Financial Penalties) Order 2009

In force **16 November**. This Order specifies the offences for which a financial penalty may be imposed as a condition to a Youth Conditional Caution, and sets out the maximum financial penalty that can be imposed for each offence or description of offence.

Notes