NPIA
National Policing Improvement Agency

Digest

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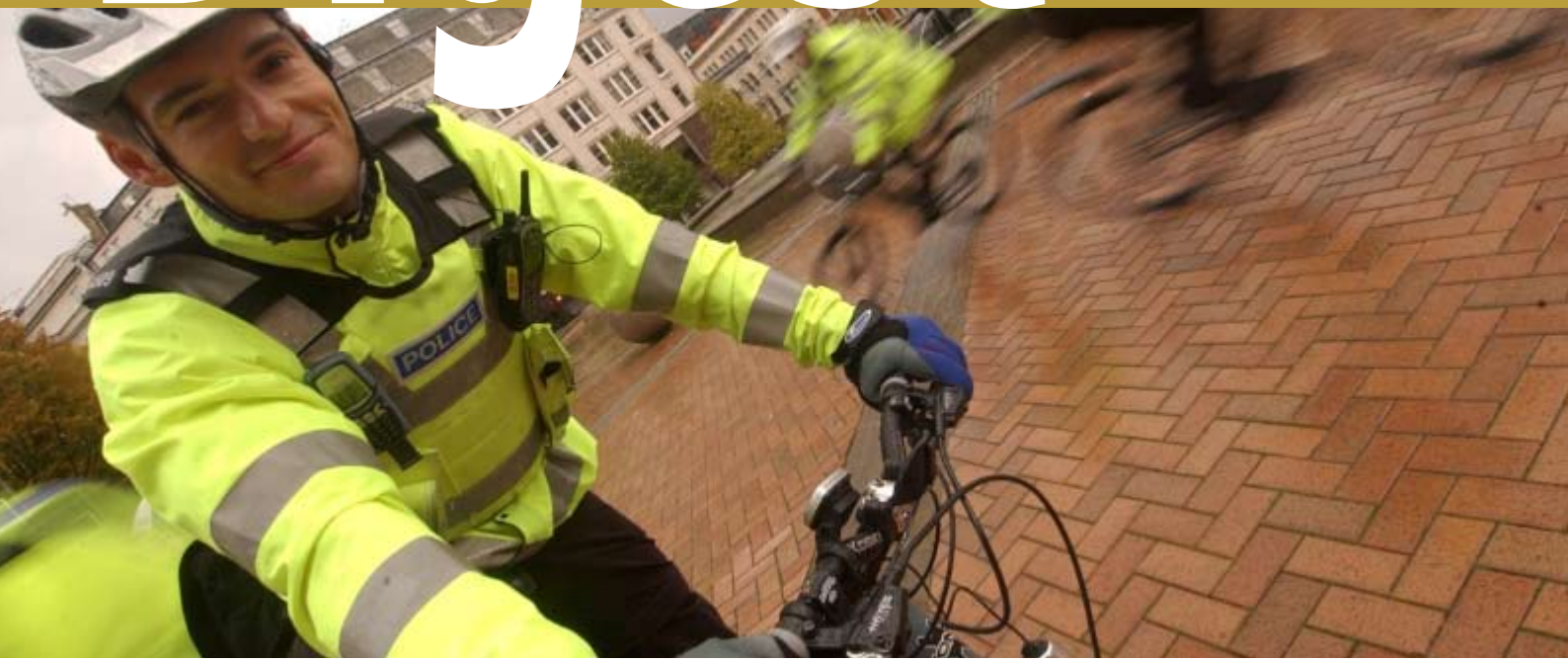

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The NPIA Digest is a journal produced each month by the Legal Services Team of the Corporate and Public Affairs Directorate. The Digest is a primarily legal environmental scanning publication intended to capture and consolidate topical and key issues,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

This edition contains a summary of new legislation and proposals and reviews of issues relating to policing practice including: the fifth part of the series on the Equality Bill; new powers to impose restraining orders to protect victims of domestic violence and harassment; Home Office Circulars to provide guidance on Photography and Counter-Terrorism Legislation and powers to impose Drinking Banning Orders; the publication of an interim policy on prosecuting assisted suicide; Practice Advice on the Management and Use of ANPR and on the investigation of Stalking and Harassment; the latest statistics on Police Use of Taser; and the Consultation on NPIA firearms and less lethal weapons guidance.

There are also a number of articles outlining recently published Government and Parliamentary reports and initiatives including: the terms of reference for the Stern Review of Handling of Rape Allegations; the publication of Cross-Government Plans to Tackle Hate Crime and Improve Support for Victims; the Counter-terrorism science and technology strategy; Barnardo's report calling for stricter rules on sentencing for children; HMIC Thematic Inspection Report on Police Response to Major Crime and the IPCC report on Shooting which highlights the issue of stray bullets.

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

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

Contents

EHRC Launches 2009/10 Business Plan

The Equality and Human Rights Commission (EHRC) published its 2009/10 Business Plan on 14 August 2009 setting out its priorities for the next year of operation.

The EHRC's five strategic priorities for 2009/10 are to:

- Secure and implement an effective legislative and regulatory framework for equality and human rights;
- Create a fairer Britain, with equal life chances and access to services for all;
- Build a society without prejudice, promote good relations and foster a vibrant equality and human rights culture;
- Promote understanding and awareness of rights and duties by the delivery of timely and accurate advice and guidance to individuals and employers; and
- Build an authoritative and responsive organisation.

After consultation with stakeholders across Britain the EHRC has developed key deliverables for the 2009/10 year. They include:

- Supporting the passage of the Equality Bill, ensuring there is no regression of rights across the Commission's mandate;
- Developing well targeted, easy to use Equality Bill guidance, informed by consultation with specific groups;
- Pursuing a minimum of 100 strategic legal cases across the Commission's mandate;
- Producing a shadow report of the UN Convention for Elimination of Racial Discrimination and supporting the implementation of the UN Convention on the Rights of Disabled People;
- Carrying out compliance and enforcement actions under the public sector duties in respect of race, gender and disability, building on over 330 actions initiated by the Commission in 2008/09;
- Developing a set of metrics for gender pay reporting;
- Developing the EHRC's work on homophobic and disability-related hate crime;
- Reporting on hostility to particular race and faith groups and how they vary between different populations;
- Conducting an inquiry into the role of faith and belief in our society; and
- Launching a new strategic funding programme focusing on projects that directly serve individuals and communities across the EHRC's mandate.

The Equality and Human Rights Commission's 2009/10 Business Plan can be found at
http://www.equalityhumanrights.com/uploaded_files/OurJob/businessplan0910.pdf

NPIA Publish Practice Advice on the Management and Use of Automatic Number Plate Recognition

The National Policing Improvement Agency published Practice Advice for the management and use of automatic number plate recognition (ANPR). ANPR is tactical option that is capable of generating new lines of enquiry and evidence in the investigation of crime. For this reason there is a need to support forces in order to incorporate its use into everyday policing.

The Practice Advice is produced to act as a reference guide, offering assistance both to those who conduct investigations and also others involved in response policing who are not ANPR specialists, but require an understanding of the technology and its potential use. It introduces ANPR and explains how it can best be used to:

- Develop intelligence;
- Support reactive and proactive investigations;
- Improve performance; and
- Prevent crime.

The Practice Advice on the Management and Use of Automatic Number Plate Recognition 2009 is available for download at http://www.npia.police.uk/en/docs/ANPR_genesis.pdf

Practice Advice on Investigating Stalking and Harassment Published

An updated practice advice document on investigating incidents of stalking and harassment was published in August 2009 by the National Policing Improvement Agency (NPIA) and the Association of Chief Police Officers (ACPO). The new practice advice replaces the ACPO (2005) Practice Advice on Investigating Harassment. The document provides both strategic and operational advice and is structured to follow the pattern of reporting, responding to and investigating harassment.

The NPIA and ACPO identify the priorities of the police service in responding to harassment which are underpinned by the legal obligations under the Human Rights Act 1998 and the European Convention on Human Rights (ECHR). These are to:

- Protect the lives and preserve the safety of all victims and others who may be at risk as a result of harassment;
- Investigate all reports of harassment;
- Facilitate effective action against offenders so that they can be held accountable through the criminal justice system; and
- Adopt a proactive and, where appropriate, a multi agency approach to preventing harassment.

There are a number of strategic issues emerging from the practice advice that are particularly relevant for chief officers. They are to:

- Review processes, systems and policies in police forces to ensure compliance;
- Develop information systems which support implementation of the practice advice and the ACPO Guidance on the Management of Police Information (2006);
- Focus on the police responsibility for the investigation of harassment and for fulfilling the police role in the criminal justice system to ensure that offenders are held to account; and
- Ensure that training needs of all police staff are met.

The Practice Advice on Investigating Stalking and Harassment 2009 is available at
http://www.npia.police.uk/en/docs/Stalking_and_Harassment.pdf

Guidance Published on Handling a Death and Funeral Arrangements of a Serving Member of the Police Service

Following the establishment of the National Policing Improvement Agency (NPIA), policy responsibility for occupational health, safety and welfare for the police service has been transferred from the Home Office. In line with this responsibility the NPIA has produced two guidance documents designed to ensure that, in the event of a death of a serving officer or member of staff, an effective process is in place to manage the impact with minimum distress to relatives and colleagues, and minimise disruption to the force.

On 14 August 2009 the NPIA published a new circular No. 01/2009 entitled 'Guidance on Handling a Death of a Serving Member of the Police Service'. The aim of the guidance is to provide a source of information to those called upon to manage the arrangements following the death of a serving police officer or police staff member.

The guidance contains four sections which are:

- Introduction;
- Guidance notes on primary tasks;
- Care of the bereaved family & colleagues; and
- Post-incident communication.

The second NPIA circular No. 02/2009 entitled 'Guidance on Funeral Arrangements for Serving Police Officers and Police Staff' was also published to be used in conjunction with the above. This guidance has been developed to assist police force welfare departments involved in the organisation of funerals for serving police officers or police staff members.

Each funeral will be a unique event. The circumstances surrounding the death, the wishes of the family of the deceased and the local provisions of each police force will vary. As such the guidance does not attempt to outline the detailed processes forces should follow but rather provide advice on the aspects of the funeral in which the police force may be engaged.

The guidance contains three sections which are:

- Introduction and key points;
- Funeral arrangements; and
- Following the funeral and associated welfare matters.

These circulars also provide information on the available support groups and advise forces as to how they can support surviving family members.

The NPIA circular No. 01/2009 entitled 'Guidance on Handling a Death of a Serving Member of the Police Service' can be found at http://www.npia.police.uk/en/docs/Guidance_on_handling_a_death_of_a_serving_member__police13_August.pdf

The NPIA circular No. 02/2009 entitled 'Guidance on Funeral Arrangements for Serving Police Officers and Police Staff' is available at http://www.npia.police.uk/en/docs/Funeral_Guidance_20_Aug.pdf

Home Office Circular 014/2009: Police Pension Scheme - Amendment Regulations 2009

The Home Office published Home Office Circular 014/2009: Police Pension Scheme - Amendment Regulations 2009 on 1 September 2009. The implementation date was the same date.

The Circular draws attention to the provisions of the Police Pensions (Amendment) Regulations 2009 which came into force on 1 September 2009 (SI 2009/2060 - see September 2009 edition of the *NPIA Digest*, p55).

These amendments have three purposes:

- They apply the Police Pensions Regulations 1987, The Police Pensions Regulations 2006, The Police (Injury Benefit) Regulations 2006 and the Police Pension Fund Regulations 2007 to employed constables in the National Policing Improvement Agency (NPIA);
- They make a further three amendments to the Police Pensions Regulations 1987, the Police Pensions Regulations 2006, and the Police Pension Fund Regulations 2007 as they apply to the Serious Organised Crime Agency (SOCA); and
- They amend the Police Pensions Regulations 2006 to provide that those who have opted out of the Police Pension Scheme 1987 (PPS) and reduce their holding of pensionable service in that scheme by transferring it out before joining the New Police Pension Scheme 2006 (NPPS) are not able to build up more service in the new scheme than if they had not transferred such service out.

In addition to the SI's provisions for commencement the SI ensures that two groups of officer are protected from retrospective changes:

- In Schedule 1 the provisions which extend the ability to abate a police pension to constable employees of NPIA apply only to those periods of employment in the NPIA which commenced on or after 1 September 2009. (More explanation is given in paragraphs 17, 23, and 34 of the Circular); and
- In Schedule 2 (relating to the counting of pensionable service) the changes made affect only officers to whom the Police Pensions Regulations 2006 first applied on or after 1 September 2009. (More explanation is given in paragraph 43 onwards.)

The statutory instrument (SI 2009/2060) can be found at http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092060_en.pdf and Home Office Circular 014/2009: Police Pension Scheme - Amendment Regulations 2009 can be found at http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2009/014-2009/

Home Office Circular 015/2009: Police Officer Pay

The Home Office confirmed the Secretary of State's decision to increase the pay of police officers for 2009 following the multi year settlement reached by the Police Negotiating Board (PNB). The effective date is 1 September 2009. The Home Secretary's decision applies in respect of Police Officers in England and Wales.

The pay of all officers, that is, the federated ranks, superintendents, chief officers and police cadets is increased by 2.6% with effect from 1 September 2009.

The Home Office Circular 015/2009: 2009 Police Officer Pay and new pay scales which are set out in PNB Circulars 4/2009, 6/2009 7/2009 and 8/2009 and 09/2009 can be found at http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2009/015-2009/

The Equality Bill

This article is the fifth and final part in a series providing detail of the provisions in the Equality Bill. Previous articles in the June to September editions of the *NPIA Digest* have covered Parts 1 to 8.

The Bill makes a number of actions such as discrimination, harassment and victimisation unlawful in relation to the specified protected characteristics. The protected characteristics are:

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

This article covers Part 9 (Enforcement), Part 10 (Contracts etc.), Part 11 (Advancement of Equality), Part 12 (Disabled Persons: Transport), Part 13 (Disability: Miscellaneous), Part 14 (General Exceptions) and Part 15 (General and Miscellaneous).

Part 9: Enforcement

Part 9 sets out the means for enforcing claims under the Bill. All claims must be brought either in a county court (a sheriff court in Scotland) or in an employment tribunal. The enforcement powers of the Equality and Human Rights Commission are not affected by this.

Clause 108 provides that the county court has jurisdiction to hear claims related to the provision of services, the exercise of public functions, the disposal and management of premises, education (apart from in relation to disability) and associations. Certain claims in relation to matters which are being dealt with in immigration proceedings are outside the jurisdiction of the county court (Clause 109).

Clause 111 caters for national security cases by providing that rules of court may allow a county court to exclude a claimant, representative or assessor from all or part of the proceedings if it is expedient to do so in the interests of national security. All or part of the courts decision may be kept secret.

Clause 112 sets time limits on bringing a claim. A claim cannot be brought after the end of 6 months from the date of the act to which the claim relates, or such other period as the court considers to be just and equitable. For certain claims such as those taken to the Equality and Human Rights Commission for conciliation the time limit is increased to 9 months.

The remedies available to the court are those which a High Court could grant for proceedings in tort or on a claim for judicial review (Clause 113).

The claims which employment tribunals have jurisdiction to hear are set out in clause 114, and include those involving discrimination in a work context, those involving the terms of collective agreements and complaints relating to a breach of an equality clause or rule. A complaint cannot be brought before an employment tribunal after 3 months from the date of the act complained of (6 months for armed forces cases), or such other time as the tribunal considers just and equitable (Clause 117).

The remedies open to an employment tribunal are to make a declaration about the rights of the complainant and respondent, to order compensation to be paid or to make an appropriate recommendation. Such a recommendation may include steps that could reduce the adverse impact on both the claimant and any other person (Clause 119). In relation to national security appropriate recommendations may not be made if they would affect anything done by bodies such as the Security Service.

Complaints relating to a breach of an equality clause or rule are dealt with separately, with different time limits set depending on the clause or rule in question.

Clause 130 of the Bill sets out the burden of proof in relation to claims brought under the Bill. The burden of proof is placed upon the claimant until they have established sufficient facts from which a court could decide, in the absence of other evidence, that a provision of the Bill has been contravened. At this point the burden of proof shifts to the respondent, who must then show they did not contravene the provision.

The Bill makes provision at Clause 132 to allow a person who thinks that the Bill has been contravened in relation to them, by a specified person, to ask questions of that person using the prescribed forms. The questions and answers are admissible as evidence in a complaint brought before the court or employment tribunal under the Bill. Inferences can be drawn from a failure to answer questions, or from evasive or equivocal answers.

Where conduct has given rise to two or more separate proceedings under the Bill, at least one of which is a contravention of Clause 105 (instructing and causing discrimination), the county court and employment tribunal are given the power under Clause 134 to transfer the proceedings between them. They are also given the jurisdiction to deal with proceedings transferred in this way. The court or tribunal may not reach a decision which is inconsistent with an earlier decision arising out of that conduct.

Part 10: Contracts etc.

Part 10 gives remedies where terms in contracts and other agreements would, or could, lead to treatment prohibited under the Bill. Clause 136 renders unenforceable against a person any terms in a contract which constitutes, promotes or provides for treatment of that or another person which is prohibited by the Bill. In relation to disability only, a non-contractual term (a term in an agreement which is not a contract, or a term relating to the

provision of an employment service) which has the same effect will also be unenforceable. A term modified by an equality clause or rule does not come within this provision, as the effect of the clause or rule will be to remove the prohibited conduct.

Any effect of such a term which would be of benefit to the person in question will still operate. A county court may, on application by a person with an interest in the contract, remove or modify the term. Terms which attempt to 'contract out' of the Bill, by excluding or limiting the application of any term of the Bill are also unenforceable against the person in whose favour the term would operate (Clause 138).

By Clause 139, terms in collective agreements which constitute, promote or provide for treatment prohibited by the Bill are void. A qualifying person may apply to an employment tribunal for a declaration that a term in a collective agreement is void, or a rule is unenforceable (Clause 140). 'Qualifying person' is defined in Clause 140, and differs depending on who made the term in the collective agreement or the rule of undertaking (such as an employer or a trade organisation). For example, where a void term is made in a collective agreement by an employer, the qualifying persons are those who are, or are seeking to be, an employee of that employer.

Clause 141 provides for qualifying compromise contracts, which are contracts settling a case (for example a contract settling an employment tribunal case) where the claimant has received independent advice and there is insurance or an indemnity in place to cover any loss to the claimant arising from this advice. These contracts will still be enforceable even if they limit the application of the Bill.

Part 11: Advancement of Equality

Chapter 1: Public Sector Equality Duty

Clause 143 creates a public sector equality duty. The duty requires public authorities, in the exercise of their functions, to have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Bill;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

A person who is not a public authority but exercises public functions must have due regard to these needs in exercising those functions. A public function is a function which is of a public nature for the purposes of the Human Rights Act 1998.

A 'public authority' is a person who is specified in Schedule 19 to the Bill and includes police authorities. Ministers are able to specify public authorities, but must in certain circumstances consult specified persons before doing so.

Certain authorities are specified in Schedule 19 only in respect of certain functions and the duty only applies in relation to those functions. Authorities can have specific duties imposed upon them by regulations.

The 'relevant protected characteristics' for the public sector equality duty are all of the protected characteristics (listed above) with the exception to marriage and civil partnership.

Having due regard to the need to advance equality of opportunity includes, in particular, having regard to the need to:

- Remove or minimise disadvantages faced by the persons sharing a protected characteristic;
- Meet the needs of those persons where they differ from the needs of people without that characteristic; and
- Encourage those sharing a protected characteristic to participate in public life or in any activity where their participation is disproportionately low.

Having due regard to the need to foster good relations includes the need to tackle prejudice and promote understanding.

The clause allows compliance with the duty to include treating some persons more favourably than others, provided that this does not involve conduct that is prohibited by the Bill.

Failing to perform the public sector equality bill does not confer a cause of action at private law (Clause 150).

Chapter 2: Positive Action

Clause 152 of the Bill apples where a person reasonably thinks that persons who share a protected characteristic suffer a disadvantage connected with it, have needs different to people who don't share the characteristic, or have disproportionately low participation in an activity. That person may take any action which is a proportionate means of achieving the aim of overcoming or minimising that disadvantage, meeting those needs or increasing participation in activities. This does not allow the person to do anything prohibited by or under an Act other than the Bill.

In relation to recruitment and promotion Clause 153 allows a person to treat a person with a protected characteristic more favourably than a person who does not have that protected characteristic. This applies where having that characteristic means the person suffers a disadvantage, or where participation in an activity by people with that characteristic is disproportionately low. The action of treating the person more favourably must be done in order to overcome or minimise that disadvantage or to increase participation by people with that characteristic. The power only allows a person to be treated more favourably than another person where they are equally qualified to be recruited or promoted and there is not a policy of treating persons with the protected characteristic more favourably already in place.

Part 12: Disabled Persons: Transport

Part 12 makes a number of provisions to secure that disabled persons are able to travel in taxis, private hire vehicles, public service vehicles and rail vehicles. This is to be achieved by the imposition of duties upon people connected with these modes of travel and by regulations made by the Secretary of State. A number of offences are created where there is a failure to comply with these duties or regulations.

Part 13: Disability: Miscellaneous

This Part gives effect to Schedule 13 which makes supplementary provisions regarding reasonable adjustments. It also makes provision for a disabled tenant or occupier of rented residential premises to apply for the consent of the landlord to make disability-related improvements to the premises.

Part 14: General Exceptions

Part 14 gives effect to Schedule 22 which provides exceptions for acts which are done, for example, in pursuance of a requirement under another Act. It also provides that a person who does something for the purpose of safeguarding national security that is proportionate to do does not contravene the Bill. Exceptions to the provisions of the Bill are also included for certain acts done by charities, and for sports competitions.

Clause 190 creates the ability to stop parts of the Bill applying in relation to age. It provides that a Minister of the Crown may by order amend the Bill so that specified conduct, anything done for a specified purpose and anything done in pursuance of arrangements of a specified description does not contravene the Bill in so far as relating to age. This power does not apply Part 5 (work) and Chapter 2 of Part 6 (further and higher education), which cannot be so amended.

Part 15: General and Miscellaneous

This Part enables a Minister of the Crown to amend the Bill and the Equality Act 2006 to harmonise it with European law. It also details the extent to which the Bill binds the Crown and makes provision for subordinate legislation to be made. It also includes a number of interpretative clauses.

More information about the Bill and its progress through Parliament can be found at
http://services.parliament.uk/bills/2008-09/equality.html

Home Office Circular 012/2009: Photography and Counter-Terrorism Legislation Published

On 18 August 2009 the Office for Security and Counter-Terrorism (OSCT) published Home Office Circular (HOC) 012/2009: Photography and Counter-Terrorism Legislation. This circular was implemented on that date.

This HOC has been produced to clarify counter-terrorism legislation in relation to photography in a public place. Concerns have been raised that sections of the Terrorism Act 2000 are being used to stop people taking photographs,

whether this is photographs of buildings or people, and that cameras are being confiscated during such searches.

Photography and Section 43 of the Terrorism Act 2000

Under section 43 of the Terrorism Act 2000 a police officer may stop and search a person **they reasonably suspect to be a terrorist**, to discover whether that person has in their possession anything which may constitute evidence that they are a terrorist. This power can be exercised at any time and in any location. The definition of 'terrorist' is found in section 40 of the Terrorism Act 2000.

The HOC warns that Section 43 of the Act does not prohibit the taking of photographs, film or digital images in a public place and members of the public and the press should not be prevented from doing so in exercise of the powers conferred by section 43. A police officer can only stop and search a person they reasonably suspect to be a terrorist under this power.

Viewing Images and Seizure

- Digital images can be viewed as part of a search under section 43 of the Terrorism Act 2000 to discover whether the person has in their possession anything which may constitute evidence that they are a terrorist;
- When conducting a search under section 43, cameras, film and memory cards can be seized if the officer reasonably suspects that these may constitute evidence that the person is a terrorist;
- Officers do not have the power to delete images or destroy film;
- Once cameras or other devices are seized, to preserve evidence, officers should not normally attempt to examine them further; and
- Seized cameras and other devices should be left in the state they were found in and forwarded to appropriately trained forensic staff for forensic examination.

Photography and Section 44 of the Terrorism Act 2000

The powers under section 44 of the Terrorism Act 2000 enable uniformed police officers to stop and search anyone within an **authorised area** for the purposes of searching for articles of a kind which could be used in connection with terrorism. The powers do not require a reasonable suspicion that such articles will be found. Police officers can stop and search someone taking photographs within an authorised area just as they can stop and search any other member of the public in the proper exercise of their discretion, but the powers should be used proportionately and not specifically target photographers.

The HOC warns that Section 44 does not prohibit the taking of photographs, film or digital images in an authorised area and members of the public and the press should not be prevented from doing so in exercise of the powers conferred by section 44.

Viewing Images and Seizure

If a police officer already reasonably suspects the person to be a terrorist they should use section 43:

- Digital images may be viewed as part of a search under section 44 of the Terrorism Act 2000, provided that the viewing is to determine whether the images are of a kind which could be used in connection with terrorism;
- The camera, film or memory cards may be seized where a camera is found and the officer reasonably suspects it is intended to be used in connection with terrorism. For example - He or she reasonably suspects photographs are being taken for the purpose of reconnaissance or targeting for terrorist activity;
- Officers do not have the power to delete images or destroy film;
- Once cameras or other devices are seized, to preserve evidence, officers should not normally attempt to examine them further; and
- Seized cameras and other devices should be left in the state they were found in and forwarded to appropriately trained forensic staff for forensic examination.

Photography and Section 58A of the Terrorism Act 2000

The offence concerns information about persons who are or have been at the front line of counter-terrorism operations, namely the police, the armed forces and members of the security and intelligence agencies.

Section 58A of the Act makes it an offence to publish, communicate, elicit or attempt to elicit information about any of such persons which is of a kind likely to be useful to a person committing or preparing an act of terrorism.

An officer making an arrest under section 58A **must reasonably suspect** that the information is of a kind likely **to be useful to a person committing or preparing an act of terrorism**. An example might be gathering information about the person's house, car, routes to work and other movements.

Reasonable excuse under section 58A

It is a statutory defence for a person to prove that they had a reasonable excuse for eliciting, publishing or communicating the relevant information.

The HOC points out that legitimate journalistic activity (such as covering a demonstration for a newspaper) is likely to constitute such an excuse. Similarly an innocent tourist or other sight-seer taking a photograph of a police officer is likely to have a reasonable excuse.

Home Office Circular 012/2009: Photography and Counter-Terrorism legislation can be found at
http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2009/012-2009/

Power to Impose Drinking Banning Orders Introduced

From 31 August 2009 new powers have been introduced to deal with people responsible for alcohol-fuelled crime and antisocial behaviour. The police and local authorities will now be able to apply for a Drinking Banning Order (DBO) on individuals aged 16 and upwards who regularly commit crime or anti-social behaviour while under the influence of alcohol (see August edition of *NPIA Digest*, pp64-65).

Magistrates are now able to impose any condition they think is necessary under the DBO to protect the public from that individual committing further offences. This could include banning the person from consuming alcohol in public places, including certain pubs, bars and off licences and restricting them from entering certain areas.

The orders can last from between two months and two years and anyone who breaches a DBO is liable for a fine of up to £2,500. Offenders who are subject to an order can be referred to attend a Positive Behaviour Intervention Course to address their alcohol misuse. Successful completion of the course may lead to a reduction in the length of the order.

Further information about Drinking Banning Orders can be found at http://www.cps.gov.uk/legal/d_to_g/drinking_banning_orders/

Home Office Circular 013/2009: Drinking Banning Orders

The Home Office Crime and Policing Group published Home Office Circular 013/2009: Drinking Banning Orders (DBOs) on 28 August 2009. This was also the date of implementation.

On 31 August 2009 certain sections of Part 1 of the Violent Crime Reduction Act 2006 came into force which will implement provisions relating to DBOs in England and Wales as follows:

- DBOs are civil orders that are to be available on application by a Chief Officer of a police force, the Chief Constable of the British Transport Police or a local authority (each being a "relevant authority") (sections 3 and 4);
- A DBO can be made against an individual aged at least 16 if he or she has engaged in criminal or disorderly conduct while under the influence of alcohol and the court considers that such an order is necessary to protect other persons from further conduct by him of that kind;
- The application may be made by a relevant authority to a magistrates' court, or in certain cases where there are ongoing proceedings in the county court (see reference to section 4 below);
- Under section 2(1), the prohibitions have effect for a period specified by the court of not less than two months and not more than two years. The DBO must include such prohibitions as the court considers necessary on the subject's entering licensed premises and premises holding a club premises certificate (section 1(3)). Additionally, a DBO may impose other prohibitions on the subject that are necessary for the purpose of

protecting other persons from criminal or disorderly conduct by the subject while he is under the influence of alcohol (section 1(2));

- Section 4 makes provision for a relevant authority to make an application for a DBO in the County Court, but this applies only where:

  (a) The relevant authority and the individual are both parties to other proceedings in the County Court and it is reasonable for the authority to apply for a DBO in those proceedings;

  (b) The individual is a party to proceedings in the County Court, the relevant authority considers it reasonable to apply for a DBO in those proceedings, and the authority applies to be joined (and is joined) as a party to those proceedings;

  (c) The relevant authority is a party to proceedings in the County Court and considers that an individual who is not a party to the proceedings has engaged in criminal or disorderly conduct while under the influence of alcohol that is material to those proceedings. In such case the relevant authority may make an application for the individual to be joined as a party to the proceedings and (if the individual is joined) it may apply for a DBO against him or her.

- A DBO can include a provision that it will cease to have effect before the end of the specified period if an individual attends the approved course specified in the DBO (section 2(3)). Where a court makes a decision not to specify an approved course, the reasons for the decision must be given in open court (section 2(8)).

  The court may only specify an approved course if:

  - The court making the order is satisfied that a place on an approved course will be available for the subject;
  - The subject of a DBO has agreed to the inclusion of the provision in the order. (section 2(6)).

  Successful completion of the approved course by the subject of a DBO can result in the length of the DBO being reduced in length by up to half (section 2(5));

- Section 5 makes provision for either the subject of a DBO or the relevant authority to apply to the court which made the order for it to be varied or discharged;

- Sections 6, 7 and 8 relate to DBOs that are made on conviction in criminal proceedings, but these sections have not been commenced. DBOs on conviction are therefore not available;

- Section 9 makes provision in relation to the making of interim DBOs, where an application for a DBO (the main order) has not yet been determined;

- Section 10 gives the right of appeal to a subject against the making of a DBO to the Crown Court. On such appeal, the Crown Court may make such orders as may be necessary to give effect to its determination of the

appeal, and may also make such incidental or consequential orders as appear to it to be just. For the purposes or any subsequent application for variation or discharge, an order made on appeal is to be treated as if made by the magistrates' court;

- Section 11 provides that it is an offence to do, without reasonable excuse, anything that the subject is prohibited from doing by a DBO or an interim DBO. The penalty on summary conviction is a fine not exceeding level 4 on the standard scale;
- Section 12 sets out the process by which the Secretary of State will approve providers of the approved courses for DBOs. Regulations have been made under this section which sets out the process for approving the course providers. These regulations are 'The Violent Crime Reduction Act 2006 (Drinking Banning Orders) (Approved Courses) Regulations 2009';
- Section 13 sets out the requirements for a provider of approved courses. Providers must provide a certificate of completion to each subject who has successfully completed an approved course.

  A certificate must be given unless the subject has:

  - Failed to make due payment of fees for the course;
  - Failed to attend the course;
  - Failed to comply with any other reasonable requirement of the course provider.

  The providers of the approved courses are also required to provide a written notice of a decision not to give the subject of a DBO a certificate.

  Section 13 also provides for a subject who receives a notice of non-completion or who has not received a certificate from the approved course provider to apply to the court for a declaration that there has been a contravention of the duty to provide a certificate. If the court grants the application, the subject of a DBO will be treated as having satisfactorily completed the course at the time the declaration was made.
- Section 14 is the interpretation section for Chapter 1 of Part 1 of the Act.

The Home Office is producing guidance in relation to DBOs and this will be published on the Crime Reduction website in advance of DBOs coming into force.

The Home Office Circular 013/2009: Drinking Banning Orders can be found at http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2009/013-2009/

Home Office Circular 017/2009: Sections 12 and 13 of the Domestic Violence, Crime and Victims Act 2004

On 24 September 2009 the Home Office published Circular 017/2009: Sections 12 and 13 of the Domestic Violence, Crime and Victims Act 2004. This circular provides guidance on the provisions in sections 12 and 13 of the Domestic Violence, Crime and Victims Act 2004 which come into force on 30 September 2009.

Section 12, by its amendment of section 5 of the Protection from Harassment Act 1997 (the 1997 Act) and its insertion of section 5A into that Act, extends the courts' powers in England and Wales under the 1997 Act, to enable them to impose a restraining order in a much wider range of circumstances. A restraining order is currently only available following conviction for an offence under sections 2 or 4 of the 1997 Act.

From 30 September 2009 when sentencing for any offence the court will be able to make a restraining order for the purpose of protecting a person from conduct which amounts to harassment or will cause a fear of violence. On acquittal for any offence, the court will be able to make a restraining order if the court considers it necessary to protect a person from harassment.

Section 12 also gives any person mentioned in a restraining order the right to make representations in court if an application is made to vary or discharge the order. Section 13 makes equivalent amendments in respect of Northern Ireland.

In England and Wales an individual subject to a restraining order will be entitled to criminal legal aid provided they meet the 'Interests of Justice' test and pass the relevant financial eligibility criteria.

In England and Wales civil legal aid can be made available to the victim if they need advice and representation in respect of proceedings covered by the new provisions. In order to protect victims of domestic violence, the Legal Services Commission can waive the usual financial eligibility criteria which would otherwise apply to applications for civil legal aid.

The restraining order may be used to prohibit the defendant from a wide range of conduct with the aim of protecting a person from conduct that amounts to harassment or that will cause fear of violence, as the case may be.

The criminal court will have heard the circumstances of the case, and much of the evidence pertaining to why a restraining order may be necessary. So, rather than the victim having to make a separate application in a civil court for an injunction, the provisions will allow the criminal court to make the order at the end of the trial. This will avoid the need for the evidence to be produced and heard again, and the additional trauma this may involve for the victim.

The provisions come into force on 30 September 2009 and apply in England, Wales and Northern Ireland. The circular is to be used for guidance only and should not be regarded as providing legal advice.

Home Office Circular 017/2009: Sections 12 and 13 of the Domestic Violence, Crime and Victims Act 2004 can be found at http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2009/017-2009/

The relevant sections of the Domestic Violence, Crime and Victims Act 2004 are available at http://www.opsi.gov.uk/acts/acts2004/ukpga_20040028_en_3#pt2-pb1-l1g12

There are also explanatory notes available at http://www.opsi.gov.uk/acts/acts2004/en/ukpgaen_20040028_en.pdf

DPP Publishes Interim Policy on Prosecuting Assisted Suicide

The Director of Public Prosecutions (DPP) published his interim policy on prosecuting cases of assisted suicide on 23 September 2009. His announcement included a call for public participation in a 12-week consultation on the factors he has identified which will be taken into account when considering whether prosecutions will be brought for this offence.

The DPP's interim policy follows the instructions of the Law Lords in the case of Debbie Purdy in which he attempts to clarify the factors of public interest which would weigh for or against prosecuting someone for assisting another to take their own life. He said that assisting suicide has been a criminal offence for nearly fifty years and his interim policy does nothing to change that.

Section 2(1) Suicide Act 1961 provides that:

'A person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide, shall be liable on conviction on indictment to imprisonment for a term not exceeding fourteen years.'

The Suicide Act 1961 is applicable when a substantial part of the aiding, abetting, procuring or counselling of the suicide occurs in England or Wales. The suicide itself can be committed in any country.

The public interest factors in favour of prosecution identified in the interim policy include that:

- The victim was under 18 years of age;
- The victim's capacity to reach an informed decision was adversely affected by a recognised mental illness or learning difficulty;
- The victim did not have a clear, settled and informed wish to commit suicide; for example, the victim's history suggests that his or her wish to commit suicide was temporary or subject to change;
- The victim did not indicate unequivocally to the suspect that he or she wished to commit suicide;
- The victim did not ask personally on his or her own initiative for the assistance of the suspect;

- The victim did not have a terminal illness; or a severe and incurable physical disability; or a severe degenerative physical condition from which there was no possibility of recovery;
- The suspect was not wholly motivated by compassion; for example, the suspect was motivated by the prospect that they or a person closely connected to them stood to gain in some way from the death of the victim;
- The suspect persuaded, pressured or maliciously encouraged the victim to commit suicide, or exercised improper influence in the victim's decision to do so; and did not take reasonable steps to ensure that any other person did not do so.

The public interest factors against a prosecution include that:

- The victim had a clear, settled and informed wish to commit suicide;
- The victim indicated unequivocally to the suspect that he or she wished to commit suicide;
- The victim asked personally on his or her own initiative for the assistance of the suspect;
- The victim had a terminal illness or a severe and incurable physical disability or a severe degenerative physical condition from which there was no possibility of recovery;
- The suspect was wholly motivated by compassion;
- The suspect was the spouse, partner or a close relative or a close personal friend of the victim, within the context of a long-term and supportive relationship;
- The actions of the suspect, although sufficient to come within the definition of the offence, were of only minor assistance or influence, or the assistance which the suspect provided was as a consequence of their usual lawful employment.

As with every other case, the test set out in the Code for Crown Prosecutors (the Code) will be applied:

- There must be enough evidence to provide a realistic prospect of conviction. If the case does not pass that evidential stage, it must not go ahead no matter how important or serious it may be; and
- If the case does pass the evidential stage, consideration must be given to whether a prosecution is needed in the public interest.

The Code sets out a substantial number of factors both for and against prosecution in all types of cases. The interim policy sets out further factors which are more directly related to cases of assisted suicide which also need to be considered.

The DPP's Interim Policy for Prosecutors in respect of Cases of Assisted Suicide can be found at
http://www.cps.gov.uk/consultations/as_consultation.pdf

The consultation documents on the interim policy on prosecuting cases of assisted suicide is available at
http://www.cps.gov.uk/consultations/as_index.html

Bills before Parliament - Progress Report

Parliament is now in recess until 12 October 2009.

Science and Technology Strategy for Countering International Terrorism Launched

The Home Office published the United Kingdom's Science and Technology Strategy for Countering International Terrorism on 14 August 2009. The Science and Technology strategy sets the objectives for science (both social and technical) and technology in the CONTEST counter terrorism strategy (see *NPIA Digest* April 2009 edition, pp15-16) for the next three years and explains how they will be achieved. The strategy builds on and replaces the 2007 UK Security and Counter-Terrorism Science & Innovation Strategy.

The strategy has three principle objectives:

- To use horizon scanning to understand future scientific and technical threats and opportunities and inform decision making on counter-terrorism;
- To ensure the development and delivery of effective counter-terrorism solutions by identifying and sharing priority science and technology requirements; and
- To enhance international collaboration on counter-terrorism related science and technology.

The Government has set out its strategy to:

- Reflect its recognition that modern technologies are an important long-term strategic driver of the terrorist threat;
- Place greater emphasis on identifying science and technology requirements from across Government and law enforcement to ensure that the right solutions are developed to counter the challenges to be faced; and
- Seek greater partnership and engagement with industry and academia and a commitment to more openness and transparency on science, technology and counter-terrorism.

The Government's strategy sets out that both industry and academia have a significant role to play in countering terrorism in the UK. The strategy acknowledges that UK is a leading innovator in the design and provision of defence and security solutions and wants this expertise applied to science and technology in the counter-terrorism domain.

To accompany the strategy, the Government has also published a brochure entitled 'Countering the terrorist threat: ideas and innovation - how industry and academia can play their part'.

The brochure sets out some of the challenges faced by Government:

- Reducing the vulnerability of crowded places;
- Protecting the national infrastructure;
- protecting against cyber terrorism;

- Improving analytical tools; and
- The London 2012 Olympic and Paralympic Games.

It describes some of the key technologies critical to counter-terrorism:

- Knowledge management;
- Biometrics;
- Screening;
- Physical protection; and
- Countering improvised explosive devices.

The UK's Science and Technology Strategy for Countering International Terrorism is available at http://security.homeoffice.gov.uk/news-publications/publication-search/general/Science-Technology-strategy?view=Binary

The brochure entitled 'Countering the terrorist threat: ideas and innovation - how industry and academia can play their part' can be found at http://security.homeoffice.gov.uk/news-publications/publication-search/general/Science-Tech-Booklet?view=Binary

Cross-Government Plans to Tackle Hate Crime and Improve Support for Victims Published

On 14 September 2009 the Home Office announced new measures to support victims of hate crime, bring more perpetrators to justice and increase reporting of these crimes. The publication of the Hate Crime - The Cross-Government Action Plan sets out an agenda to address all forms of hate crime with an emphasis on preventing these crimes from occurring or escalating in seriousness.

The plan sets out how local organisations like the police and councils will get new advice on the best ways to deal with hate crime. This includes new guidance on preventing hate crime and a training toolkit for crime reduction bodies to improve the identification of and support for vulnerable witnesses.

It also sets out work to better tackle hate crime by boosting victims' confidence in the justice system to help to increase reporting of these crimes. The work includes:

- New standards for police in the investigation and recording of hate crime;
- Encouraging the take up of special measures to help support vulnerable and intimidated witnesses give effective evidence in court; and
- Additional help for probation staff to improve the management of hate crime offenders.

The Assistant Chief Constable of PSNI and ACPO lead on Hate Crime Drew Harris said "Hate crime is unacceptable in any civilised society and the police are committed to reduce the harm it causes, to victims, their families

and to the broader community. We know that many hate crimes still go unreported and it is essential that victims have both the confidence and the opportunity to report such crimes, either directly to the police or through a third party. A full understanding of the nature and extent of the problem will allow us and our partners to help protect people from the harm caused by hate crime."

The Hate Crime - The Cross-Government Action Plan can be found at http://www.homeoffice.gov.uk/documents/hate-crime-action-plan/

Consultation on Code of Practice on Police Use of Firearms and Less Lethal Weapons Launched

A consultation draft Code of Practice on Police Use of Firearms and Less Lethal Weapons has been produced by NPIA in consultation with the Home Office and the ACPO Working Group on Armed Policing. The Code of Practice on Police Use of Firearms and Less Lethal Weapons came into effect on 3 December 2003 and sets out the basic principles in relation to the selection, testing, acquisition and use of firearms and less lethal weapons by the police service. It also sets standards for the way in which these principles should be implemented. Chief officers have a duty to have regard to the Code.

In February 2009 the Policing Minister wrote to NPIA, under section 39A of the Police Act 1996, requesting a revision to the Code of Practice to refresh the content and to update various references which are now out of date.

The purpose of this consultation draft of the code is:

- To set out the responsibilities of the Chief Officer in relation to the police use of firearms and less lethal weapons;
- To set out the procedures for the development and approval of new weapons, ammunition and operating procedures;
- To set out the procedures for selection, training and accreditation of officers, and the licensing of training delivery;
- To encourage the identification and promulgation of good practice; and
- To specify the procedures to support post incident investigations and post incident welfare of staff.

The draft consultation has been sent to police forces, law enforcement agencies and key stakeholders and is open to anyone interested in providing feedback. The consultation period will close on 1 November 2009.

The consultation draft of the Code of Practice on Police Use of Firearms and Less Lethal can be found at http://www.npia.police.uk/en/docs/Code_of_Practice_consultation_draft_07_08_09.pdf

Local Authorities to Receive Further Funding to Tackle Extremism

On 28 August 2009 the Communities Secretary announced that local authorities are to receive a further £7.5m in funding to help tackle Al-Qaeda influenced extremism. The funding is to help local authorities to provide greater flexibility to support a broader range of activities to improve the effectiveness of the Prevent programme.

The funding also supports new cross-Government guidance 'Delivering the Prevent Strategy: An Updated Guide for Local Partners' which was also published. The guidance reflects feedback and issues raised from local authorities and Muslim communities. The Prevent programme, which aims to challenge any potential support for, or involvement in, Al-Qaeda type violence, has grown in strength and support over the past year.

The funding should allow local authorities to do more work to bring communities together to condemn violent extremism and will be allocated through an area based grant, which will be distributed to 94 councils. Each recipient authority will receive an additional £18,292 in 2009/10 (82 authorities) and £63,830 in 2010/11 (94 authorities).

The initial Guidance on the Prevent agenda for local partners was issued in June 2008; setting out the kinds of activity local partners should be delivering and including examples of existing local activity. The updated guidance issued by the Home Office and the Department for Communities and Local Government reflects feedback that has been provided by local organisations and partners over the last year and highlights a number of issues which need to be addressed to maintain the success of the programme.

The guidance 'Delivering the Prevent Strategy: An Updated Guide for Local Partners' is available at
http://security.homeoffice.gov.uk/news-publications/publication-search/general/updated-guide-for-local-partners?view=Binary

The full press release can be found at
http://www.communities.gov.uk/news/corporate/1321898

Stern Review of Handling of Rape Allegations

A joint ministerial statement on 22 September 2009 announced a review into how rape complaints are handled from when a rape is first disclosed until the court reaches a verdict. The review, to be led by Baroness Stern, will look in particular at how public authorities (including the police, local authorities, health providers, the Crown Prosecution Service etc.) not only respond individually to rape complaints, but how they interact with each other, as well as professionals' attitudes to rape and evidence from the victims.

The terms of reference for the Stern Review are:

- To examine the response of the public authorities to rape complaints and examine how more victims can be encouraged to report;

- To explore ways in which the attrition rate in criminal cases can be reduced and, how to fairly increase the conviction rate;
- To identify how to increase victim and witness satisfaction and confidence in the CJS in addressing rape;
- To explore public and professional attitudes to rape and how they impact on outcomes;
- To utilise findings and information available from other relevant work, particularly the work on victims' experience being led by Sara Payne and the Department of Health Taskforce led by Professor Sir George Alberti, avoiding unnecessary duplication; and
- To make recommendations, with particular reference to improving the implementation of current policies and procedures.

The Stern Review will take account of the emerging findings of the Department of Health Taskforce on the Health Aspects of Violence against Women and Girls, which is due to report early next year, and the work being done by Sara Payne, the Victims Champion. Sara Payne will be speaking to rape victims about their experience of the Criminal Justice System, as well as to the police and CPS, and is due to report by the end of October. Her work will inform the Violence against Women and Girls Strategy due to be published by the end of this year.

In 2006/07, there were more than 13,000 rapes reported to the police in England and Wales. Despite the number of rape convictions being 50% higher in 2007 than in 1997 there were still only 6.5% of reported rapes which led to a successful prosecution.

The Stern Review will start immediately and will report back early in the new year to the Minister for Women and Equality, the Home Secretary, the Solicitor General and the Minister with responsibility for victims at the Ministry of Justice.

The full press release can be found at
http://www.wired-gov.net/wg/wg-news-1.nsf/0/AC50C036177F141C8025763900316EAF?OpenDocument

HMIC Thematic Inspection Report on Police Response to Major Crime

A report published on 31 July 2009 by H.M. Inspectorate of Constabulary (HMIC) finds that some police forces lack the specialist skills and resources needed to manage major crime incidents. The report entitled 'Major Challenge: A Thematic Inspection of Major Crime' reviewed the police response across England and Wales to the most serious incidents of violence and death, including homicide, attempted homicide and manslaughter, sexual assaults, and other serious offences.

The inspection was carried out in police forces between July and September 2008 and a separate report specifically covering the position in West Yorkshire was received by the force last year. The report found that whilst there had been much progress, some forces remain unable to deliver a consistent and effective service to victims and families affected by major crime. HMIC states that such deficiencies need to be urgently addressed if the confidence of the public is to be retained.

The report states that 35 of the 43 police forces in England and Wales were reported to be meeting the ACPO standard for delivering these services; with four exceeding the standard (Greater Manchester, Merseyside, the Metropolitan Police and West Midlands); and four failing to meet it.

The report outlines five recommendations for further improvements which are:

Collaboration

- The National Protective Services Board, in line with the national strategy for collaboration (the Informed Choice Model), should identify whether collaboration and joint working may offer opportunities to improve the service to the public in terms of reduced cost or risk; and facilitate guidance and support to forces and authorities where appropriate; and
- Forces and authorities not attaining the (ACPO) standard, or with significant identified needs, should seek opportunities to improve services through collaboration with policing partners.

Developing consistent practice on major crime reduction

- The public will be best served by forces that understand, and seek to prevent, the drivers of major crime within communities. ACPO/NPIA should develop and publish guidance on preventative action that forces can take to reduce homicide and other major crimes.

Performance management of major crime

- There is a need for ACPO/NPIA to develop consistent performance measures for managing homicide performance, including issues of cost, quality and public confidence. Comparable information will enable policing leaders and the community to assess whether they are getting a good deal from local services; and

- Clear guidance on governance and standards of rape and serious assault investigations needs to be provided to forces by ACPO/NPIA to ensure quality and consistency of service. The standard of rape investigations will be assessed by HMIC through thematic inspection in Spring 2010.

The full report 'Major Challenge: A Thematic Inspection of Major Crime' can be found at
http://inspectorates.homeoffice.gov.uk/hmic/inspections/thematic/major-challenge/major-challenge-report?view=Binary

Latest Statistics on Use of Taser Released

The Home Office released on 17 August 2009 the latest statistics on the use and discharge of Taser against violent criminals in England and Wales revealing that they have increased as more specially trained units take to the streets.

The figures for the first quarter of 2009 are the first published since all police forces were authorised to give Taser to non-firearms officers specially-trained to use the devices. This followed a successful 12-month trial in ten forces across the country last year.

Reports on the use of Taser are broken down into three tables:

- Table 1 - All uses of Taser in England and Wales since introduction in April 2004 up to 31 March 2009;
- Table 2 - Taser use by authorised firearms officers outside of a firearms authority from 20 July 2007 to 31 March 2009; and
- Table 3 - Taser use by specially trained units from 1 September 2007 to 31 March 2009.

The latest statistics reveal that the devices were used as follows:

- 250 times by specially trained units in the last quarter, up from 187 in the previous quarter;
- The units discharged them 62 times in the three months to April 2009, compared to 35 in the last three months of 2008;
- Specially trained units have now used Taser 1,098 times since the trial began in September 2007; and
- They were discharged 190 times.

The latest statistics on the police use of Taser were welcomed by Derek Talbot, Temporary Deputy Chief Constable of Northamptonshire Police and ACPO lead on Taser who said "Taser provides officers with an additional option to resolve high risk situations involving extreme violence or the threat of such violence, protecting the public and officers from serious harm. In certain circumstances, its use is more appropriate than conventional firearms in resolving dangerous situations safely and without the risk of serious injury. In approximately half of all cases involving Taser, the mere threat of its use has been enough to deter assailants and ensure a peaceful resolution of the incident."

The latest Home Office statists on the reported and recorded uses of Taser by police forces in England and Wales are available at http://scienceandresearch.homeoffice.gov.uk/images/106966/PT_figures_19_mth_no_sig_171.pdf

IPCC Publish Report on Shooting Highlights Issue of Stray Bullets

The Independent Police Complaints Commission (IPCC) published its report on 21 August 2009 into the circumstances of the death of David Sycamore, who was fatally shot by police on the steps of Guildford Cathedral.

The independent investigation found no evidence of criminal or misconduct offences being committed by Surrey Police officers or staff. It concluded that Surrey Police acted promptly and professionally and that the response of the four firearms officers involved was correct and in accordance with their training.

The report identified several issues, during the course of the investigation, which the IPCC has fed back to Surrey Police and ACPO as appropriate so that they can be considered in future operations. These issues are:

- CCTV in the Armed Response Vehicles should have been recording. In one car it was broken and in the other it had not been turned on;
- Footage taken from the police helicopter proved very useful but focused solely on David Sycamore. It may have been helpful if it had filmed the officers too;
- Officers on cordons must be very careful about the level of information they give out. They must be sure it is accurate. In this case the deceased's parents were given incorrect information that their son had been shot in the arm but was alive; and
- The issue of the type of ammunition used by police should be examined at a national level. In this case one bullet hit the deceased, then a window, then a wall and then another window before coming to a rest inside the cathedral.

The IPCC report into the death of David Sycamore can be found at http://www.ipcc.gov.uk/sycamore_report.pdf

Progress Report on PCSO Review Recommendations Published

On 28 August 2009 the NPIA's Citizen Focus and Neighbourhood Policing Programme published their 'Twelve-month Progress Report on the PCSO Review recommendations'. The publication follows a survey of all 43 police forces in England and Wales where progress on each recommendation was assessed and outlined within the report. The report also incorporates the findings from the ACPO survey of forces on PCSO powers.

The Progress Report looks at the activities that have been undertaken nationally and locally to progress the 22 recommendations outlined in the Police Community Support Officers (PCSOs) Review published in July 2008 (see *NPIA Digest* August 2008 edition, p6).

The contribution that PCSOs have made has been noted by many. Introduced under the Police Reform Act 2002 to increase the police presence on the streets, provide reassurance to the public and free up the time of regular police officers for the tasks which require a higher level of training and skills, they are now fundamentally embedded within neighbourhood teams working alongside other police colleagues on issues of principal concern to the communities they serve. Often these relate to issues of low-level crime and anti-social behaviour which the police found it difficult to commit adequate attention to prior to the introduction of neighbourhood policing teams and PCSOs.

Over 16,500 PCSOs now work closely with the public across England and Wales and are firmly embedded as a central tenet of neighbourhood policing. Following a swift introduction over a short period, however, a variance in the role, function, purpose and powers of PCSOs across forces threatened to undermine the full impact of PCSOs.

The initial PCSO Review was commissioned with a view to addressing these concerns. It took place between January and March 2008 with the report being published in July 2008 including 22 recommendations. The NPIA agreed to review progress across all 43 forces in England and Wales in relation to these recommendations.

In November 2008 the NPIA's Citizen Focus and Neighbourhood Policing Programme requested forces to provide an update by means of a template questionnaire. All 43 forces in England and Wales completed and returned the template by mid-December.

The Progress Report looks at the activities that have been undertaken nationally and locally to progress the 22 recommendations outlined in the PCSO Review published in July 2008. It incorporates the findings from the short ACPO survey of forces on powers. The report notes the following points:

- Eighteen of the 22 recommendations have been discharged;
- Progress has been made on the remaining four recommendations and further action is needed in respect of the following:
  - By forces in relation to recommendations 7 and 17;
  - By the NPIA in relation to recommendation 2; and
  - By the Tripartite in relation to recommendation 22.

Details of specific progress are outlined under each recommendation in the report. In addition to specific monitoring of recommendations needing further work, the NPIA will continue to monitor all recommendations to ensure that the good progress made is sustained. The NPIA will contact police forces in late 2009 in relation to those recommendations needing further work.

The full report 'Twelve-month Progress Report on the PCSO Review recommendations' can be found at http://www.neighbourhoodpolicing.co.uk/PCSO%20Progress%20Report.pdf

NPIA Includes New Vulnerable Witness Support Service

On 10 August 2009 a specialist unit that helps vulnerable witnesses to assist police investigations and criminal prosecutions officially joined the National Policing Improvement Agency (NPIA). The Witness Intermediaries Scheme, which matches communication specialists to the special needs of witnesses, will now be part of the NPIA's Specialist Operations Centre.

It offers support to witnesses who need help to communicate their evidence, including children under 17, and people with a mental disorder or learning disability, or with a physical disability or physical disorder.

Tom McArthur, NPIA Director of Operations, said: "It is vitally important that people feel confident in coming forward to give evidence and that they receive the necessary support in doing so".

The witness intermediaries play an important role in improving access to justice for some of the most vulnerable people in society, giving them a voice within the criminal justice process. They help children and adults who have communication difficulties to understand the questions that are put to them and to have their answers understood, enabling them to achieve their best evidence for police and the courts.

The transfer of the Witness Intermediaries Scheme into the NPIA's Specialist Operations Centre will allow the NPIA to enhance the operational support provided to policing. The National Vulnerable Witness and Intermediary Adviser will oversee the scheme and provide support to police officers dealing with vulnerable witnesses, especially with their interview strategies.

The Witness Intermediaries Scheme receives an average of 120 requests per month for support, with around 75% coming from the police service. It has supported more than 3,000 vulnerable people to date.

More information is available at http://www.npia.police.uk/en/13864.htm

Independent Advisory Panel Begins Work

The Independent Advisory Panel (IAP), a key part of the newly formed Ministerial Council on Deaths in Custody, has started its initial work programme. The role of the IAP is to provide independent advice and expertise to ministers on deaths in all forms of state custody, which covers prisons, police, approved premises, immigration and those detained under the Mental Health Act 1983 in hospitals. The establishment of the IAP followed a recommendation of the Fulton Report which was published in February 2008 to create a new structure to replace the Ministerial Roundtable on Suicide and the Forum for Preventing Deaths in Custody.

The panel has identified a number of initial work priorities to be taken forward, while a longer-term work programme is developed. Their work will primarily be taken forward via working groups led by a member of the panel. An overview of the particular areas that the working groups will start to scope out over the next six to nine months is provided below:

- **Use of restraint**

  This working group will undertake a review of the number of deaths in custody where the use of restraint may have been a contributory factor and examine the guidance currently being used within the different custodial settings in relation to its use. They will also consider whether cross-sector guidance on the principles of the use of restraint would be useful. Professor Richard Shepherd will lead this work.

- **Information flow through the criminal justice system**

  This group will examine how information about an individual's health needs and their risk of suicide or self-harm could be more effectively shared during their journey through the criminal justice system. Professor Stephen Shute will lead this work.

- **Risks relating to the transfer and escorting of detainees**

  This group led by Dr Peter Dean will explore the particular risks relating to the transfer and escorting of detainees and the training provided to escort staff. A key focus will be the revised Person Escort Record in order to learn as much as possible about the process and how any benefits from it can be maximised. Rather than looking at the form itself in isolation, this group will look at it in the context of a safe transfer process.

- **Article 2 compliant investigations**

  This working group will build upon the work undertaken by the Forum for Preventing Deaths in Custody, which examined whether the current arrangements for investigating deaths in custody complied with Article 2 of the European Convention on Human Rights. Professor Philip Leach will lead this work.

- **Cross-sector learning**

  This group will identify how the different sectors capture and share learning in relation to deaths and near deaths in custody, as well as how this learning is used to inform policy and training, fed back to operational staff and communicated to bereaved families. They will also liaise with relevant investigative and regulatory bodies to explore opportunities for disseminating the early lessons that they identify as part of their work. Deborah Coles will take this work forward.

- **Deaths of patients detained under the Mental Health Act 1983**

  This group led by Simon Armson will undertake some scoping work to identify the key work priorities for the IAP in relation to the deaths of those detained under the Mental Health Act 1983, which will be taken forward as part of the longer-term work programme.

The IAP is in the process of establishing its own website to keep practitioners and other interested parties updated on the work of the Panel and to share learning about deaths in custody.

For further information on the Ministerial Council, the initial work priorities of the IAP or the Practitioner and Stakeholder Group, please contact Jane Forsyth, the Head of Secretariat to the Ministerial Council on Deaths in Custody via email or on 020 7035 4283.

CEOP Statistics Reveals Latest Trends in Sexual Offending

On 7 September 2009 the Child Exploitation and Online Protection Centre (CEOP) published its Strategic Overview for 2008/09 which is designed to inform the wider policing and child protection communities of the emerging trends and patterns of offender behaviour. CEOP also urged parents to take note of the information and have published a public version of the report via podcasts and downloads so that they too can understand how the threat manifests itself.

A spokesperson for CEOP said "Child sex offenders are switching between the internet and the offline world with increasing frequency and severity in order to target and in some cases abduct young victims and parents could and should do more."

From almost 5500 reports received by CEOP during the past 12 months, 2500 came from members of the public using the organisation's unique online 'CEOP Report' button and 1373 of those reports were from young children themselves of which 89% related specifically to instances of grooming. It is analysis of those reports that provide the basis for much of CEOP's increasing understanding of the current situation. Cases in the past 12 months range from instances where offenders have infiltrated social networking and other online environments to collect pictures of young children to examples of sustained grooming and blackmail with offenders seeking to meet a child offline for abduction and sexual abuse.

CEOP also report a growing trend where offenders are using online networks to communicate with each other, show live-time abuse and share images often with the severity of the sexual contact captured, or the newness of the offence committed, gaining the offender extra kudos with like minded individuals.

Jim Gamble, Chief Executive of the CEOP Centre and ACPO lead on child protection said "Parents and carers need to accept greater responsibility and go beyond stating that they don't understand this new environment. We simply do not see evidence of parents using the resources we offer."

CEOP has seen a particular increase in the use of webcams linked to instant messaging technology to incite a child to perform or to witness a sexual act:

- 34% of grooming reports made by children under 18 incited a child to perform a sexual act; and
- 20% incited a child to watch a sexual act.

In addition, analysis of the reports demonstrates that the online and offline worlds are truly converged; the 'virtual' environment is simply an extension of the real, physical world and that is as true for young people as it is for offenders. Where there used to be separate online services such as email, photo sharing, gaming and chat, all these services are now rolled into one environment. Furthermore the internet can be accessed from a range of devices. This means that children and young people are increasingly accessible to offenders as they can access the internet 24/7 from any location.

The Child Exploitation and Online Protection Centre Strategic Overview 2008/09 is available at http://www.ceop.gov.uk/downloads/documents/strategic_overview_2008-09.pdf

Computerised Penalty Notice System will Reduce Bureaucracy

The National Policing Improvement Agency announced on 2 September 2009 that a new national system to help frontline police officers deal with offenders more quickly is being developed. PentiP (Penalty Notice Processing) will improve the recording and processing of two types of one-off financial penalties, reducing red-tape and enabling police officers to spend more time patrolling the streets.

The two types of penalty are:

- Fixed Penalty Notices, issued for driving offences such as speeding and failure to wear a seatbelt; and
- Penalty Notices for Disorder, issued for offences such as petty shoplifting and damage to property.

Both notices are currently issued on paper and processed by two separate computer systems. PentiP will computerise the issuing of the ticket and bring the two computer systems together into one. Currently officers carry books of tickets, recording offences on paper and then taking them back to the station for processing whereas PentiP will enable the police to record information on their hand-held computers.

The service is planned to go live from July 2010. This will initially be in Lancashire, Leicestershire and Kent, with nationwide rollout anticipated by the end of 2011. It is thought that the move to a central electronic processing system will deliver over £120 million in cashable benefits over 10 years to the police and courts services and improve the accuracy of information on driving offences held by the Driver and Vehicle Licensing Agency (DVLA). The new system will enable the police and magistrates courts in England and Wales to access information on a single administration system and allow the police to make cross boundary checks and share information on a national basis. It is currently stored only at a local level.

Frontline officers will also benefit by being able to quickly check whether a penalty notice is the most appropriate method of dealing with an offender or if there is a previously issued unpaid penalty.

Chief Constable Peter Neyroud, Chief Executive of the NPIA said: “The NPIA looks forward to working with Northgate to deliver a more efficient national system for processing offenders. Quick access to information is essential to help frontline officers deal with offenders appropriately. PentiP will speed up the administration of penalty notices, cut bureaucracy and give officers more time to spend on the frontline and contribute to a more joined-up criminal justice system.”

PentiP is part of the Information Systems Improvement Strategy (ISIS) programme. The aim of ISIS is to transform the way police information services (including IT) are developed, procured, implemented and managed by the police service. ISIS addresses the need to bring about real change in police information systems by joining them up.

The full press release can be found at
http://www.npia.police.uk/en/14025.htm

ACPO E-Crime Strategy Published

On 27 August 2009 ACPO published its first three year e-Crime Strategy covering 2009/11. The document, which replaces the ACPO Strategy for the Investigation of Computer-Enabled Criminality and Digital Evidence (published January 2005) describes:

- ACPO's strategic aims in relation to e-crime;
- The National e-Crime Programme that will put these aims into practice;
- The challenges to be faced in implementation; and
- The action the police service will take in partnership with the Government, industry and academia to achieve the strategy.

The strategy sets out the police service approach to e-crime over the next 18 months, after which it will be reviewed to take account of the rapid pace of development of e-crime and the police response. It is the first stage towards the development of a more consistent approach to e-crime across all police forces by the development of greater expertise and capacity to enable this type of crime to be tackled by everyday policing activity.

The document sets the strategic objectives which are to:

- Reduce the harm caused by e-crime at a national level;
- Increase national mainstream capability to deal with e-crime across forces;
- Co-ordinate the national approach to e-crime;
- Increase opportunities to prevent e-crime and make it more difficult to commit;
- Improve national investigative capability for the most serious e-crime incidents; and
- Develop and capitalise upon partnership engagement with industry, academia, law enforcement and Government (both domestically and internationally).

The ACPO e-Crime Strategy can be found at http://www.acpo.police.uk/asp/policies/Data/Ecrime%20Strategy%20Website%20Version.pdf

International Partners Agree to Tackle Identity Fraud

A new fingerprint sharing deal with Canada and Australia was announced on 21 August 2009 by the Home Office aimed at improving the fight against identity fraud. Under the new data sharing agreement, the UK will be able to swap fingerprint information of foreign criminals and asylum seekers with these two countries. This agreement should make it easier to identify those migrants who try to hide their past from authorities, while ensuring personal information continues to be protected.

The agreement has been developed by the members of the Five Country Conference, which is a forum for cooperation on measures to improve immigration controls and border security. The United States will be joining shortly and New Zealand is considering legislation to join in the near future. Each country will have the same ability to check fingerprints and for the first year of the agreement each country will be able to share 3,000 sets of fingerprints with partner countries. This figure will rise as the deal rolls out.

The checks are a complementary measure to the ones already undertaken with European partners and trials of the data-sharing agreement have already provided good results, with individuals' identities being revealed through the exchange and checking of fingerprints.

The protection of personal information is an important principle to all the countries involved in the project and the specific measures that are being employed to protect privacy include:

- Ensuring that all fingerprints remain anonymous and cannot be linked to an individual unless a match is detected between countries;
- Destroying fingerprints once a match has been completed with no fingerprint database being compiled; and
- Using encryption and other security tools to protect files that are shared.

A Privacy Impact Assessment report in relation to the High Value Data Sharing Protocol which sets out how the arrangement will operate has been published and is available at
http://www.bia.homeoffice.gov.uk/sitecontent/documents/managingourborders/strengthening/pia-data-sharing-fcc.pdf

Research Report on Gender and Domestic Violence Published

A new report into gender and domestic violence conducted by Professor Marianne Hester of the University of Bristol's School for Policy Studies was published in June 2009. The research entitled 'Who Does What to Whom? Gender and Domestic Violence Perpetrators' was commissioned by the Northern Rock Foundation to explore how male victims and perpetrators of domestic violence may differ from female victims and perpetrators with regard to the nature and number of domestic violence incidents recorded by the police. The report explores who does what to whom, taking into account both context and consequences.

The report builds on previous research using data from Northumbria Police and explains issues relating to gender and domestic violence perpetrators. This research is the first study in the UK to examine the issue of gender and domestic violence in any detail and over time.

For the study, 96 cases were developed from 692 perpetrator profiles and tracked from 2001 to 2007. Of the 692 profiles, only 32 were female perpetrators in heterosexual relationships so, from the 692 profiles, a random sample of 32 sole male perpetrators were selected to allow direct comparison

with the sole female perpetrator sample and a further 32 cases randomly selected from cases where both men and women had at some time been recorded as a perpetrator and as victim ('dual-perpetrator cases'). Almost half (48%) of cases related to couples still together in a relationship, 27% involved violence after separation and the remaining cases involved couples in the process of separation with incidents recorded both during and after the relationship.

Individuals were recorded as having been perpetrators in 1 of 52 incidents, with men significantly more likely to be repeat perpetrators. In 83% of the cases the men had at least two incidents recorded and one man had 52 incidents recorded. In contrast, 62% of women recorded as perpetrators had only one incident recorded and the highest number of repeat incidents for any woman was eight.

The research found that:

- While cases were very varied, there were distinct patterns by gender, with significant differences between male and female perpetrators of domestic violence in many respects;
- A vastly greater number of incidents were attributed to men, as either sole or dual perpetrators;
- Violence used by men against female partners was much more severe than that used by women against men, and a greater proportion of male perpetrators were also arrested;
- The number of women recorded or arrested as domestic violence perpetrators had increased slightly over time;
- Men and women appeared to experience and use violent/abusive behaviour in different ways, with violence by men more likely to involve fear by and control of victims;
- Cases where men and women were both recorded as perpetrators were more varied than those involving sole perpetrators, and included the largest number of repeat incidents;
- The majority of the perpetrators appeared to abuse alcohol to some degree, especially men, and more often in cases involving dual perpetrators. Abuse of alcohol was also more likely to lead to arrest;
- The police generally identified just one perpetrator and one victim in relation to each incident;
- Children were present in the majority of incidents, and some incidents were related to child contact;
- The police generally identified just one perpetrator and one victim in relation to each incident;
- Women were more likely to use weapons, and often in order to protect themselves; and
- Men and women who were victims appeared to refuse to give statements, or to withdraw statements, for different reasons.

The full report 'Who Does What to Whom? Gender and Domestic Violence Perpetrators' can be found at http://www.nr-foundation.org.uk/downloads/Who%20Does%20What%20to%20Whom.pdf

Crimestoppers 2008/09 Annual Review Published

The 2008/09 Annual Review of Crimestoppers was published on 24 August 2009.

Key highlights

From an average of 220 actionable calls a day in 2008/2009, Crimestoppers provided information that led to:

- Almost 9,000 cases being solved;
- Nearly 7,000 arrests and charges, which was an 11% increase on the previous year;
- 85 people arrested and charged for murder, almost one every four days;
- More than £5.5 million worth of stolen property being recovered; and
- The seizure of over £19 million worth of drugs.

During the year the services provided by Crimestoppers were extended to include:

- Trialling of anonymous text messaging service to help combat knife crime; and
- The launch of a poster campaign encouraging third parties to give information about domestic violence.

The Crimestoppers 2008/09 Annual Review can be found at http://www.crimestoppers-uk.org/webfiles/Media%20Centre/Annual%20Review/Crimestoppers%20annual%20review%202008-09.pdf

Insider Fraud on the Increase

An analysis of staff frauds filed during the 12 months from July 2008 to June 2009 published by CIFAS, the UK's Fraud Prevention Service, on 28 August 2009 reveal some interesting shifts in the frauds identified by members of the CIFAS Staff Fraud Database. Of particular note are:

- Dishonest actions by staff to obtain benefits by theft and deception increased by 69% in the first half of 2009 compared with the last half of 2008;
- Dramatic increases in the numbers of women being identified as staff fraudsters; and
- Customer vigilance and alertness is increasingly valuable to businesses in the fight against fraud.

The effects of the recession are clearly demonstrated by the number of frauds filed during the 12 month period to June 2009. This demonstrates that, as the effects of the recession cut deeper, more people are turning to fraudulent activity that they would not have considered before. In contrast, this is counterbalanced by a dramatic reduction of 74% in the number filed for including serious falsehoods in application information or supporting documents. The scale of the reduction reflects the drop in vacancies and recruitment activity throughout the economy however, rather than a change in morality.

The ways in which staff frauds are being identified also reveal some interesting trends:

- In the last half of 2008, customer warnings accounted for just over 1 in 5 cases filed to the database. The first half of 2009 has seen this increase to just under one third of all cases filed showing the vital role played by customers; and
- In the first half of 2009, 2 in 5 frauds were identified through internal processes and audit procedures, demonstrating the continued importance of businesses having robust checks in place.

The full press release can be found at
http://www.cifas.org.uk/default.asp?edit_id=926-57

Latest Statistics Show that Knife Crimes Result in Longer Sentences

On 10 September 2009 the Ministry of Justice published its latest statistics on knife crimes. The publication of the Ministry of Justice Statistical Bulletin: Knife Crime Sentencing Quarterly Brief - April to June 2009, England and Wales shows that the number of offences dealt with involving knives has fallen and the proportion of those receiving imprisonment has increased, while the number of cautions given out has fallen.

For the period of April to June 2009 the average length of the prison sentence imposed for possessing a knife went up by 42%, from 137 days in the second quarter of 2008 to 194 days in the same period this year. On average, there was a 32% increase in the number of prisoners serving a sentence for possession of an offensive weapon between the second quarter of 2008 and the second quarter of 2009.

The statistics also show:

- A fall of 13% in the total number of offences involving possession of a knife or other offensive weapon dealt with, from 7,143 to 6,231, compared to the same period in 2008. This fall increases to 23% for youths aged between 10 and 17;
- The proportion of immediate custodial sentences given for possessing a knife or offensive weapon increased from 17% of all sentences to 19% between the second quarter of 2008 and the same period in 2009; and
- The proportion of cautions for carrying a knife fell from 35% to 25% between the second quarter of 2008 and the same period this year.

The full Ministry of Justice Statistical Bulletin: Knife crime sentencing quarterly brief - April to June 2009, England and Wales is available at http://www.justice.gov.uk/publications/docs/knife-crime-sentencing-q2-2009.pdf

£8.4m to Break Cycle of Youth Crime and Create Safer Communities

On 3 August 2009 the Ministry of Justice announced that additional funding of £8.4m is to be allocated to reduce youth reoffending and thereby promote the creation of safer communities through improved resettlement and rehabilitation arrangements for young offenders leaving prison.

Over the next two years new programmes will be established across England and Wales to break the cycle of offending for young people leaving custody each year. The programmes are to be designed to ensure that young offenders make a positive contribution to society by developing essential skills and providing encouragement for them to turn their backs on a life of crime. This youth rehabilitation project will offer funding to help local areas establish and maintain the services necessary to provide practical alternatives to crime.

The full press release can be found at
http://www.justice.gov.uk/news/newsrelease010809a.htm

National Domestic Violence Delivery Plan Annual Progress Report 2008/09 Published

The Home Office Minister announced the publication of the National Domestic Violence Delivery Plan Annual Progress Report 2008/09. The report shows that progress had been made in ensuring perpetrators of violence against women are effectively dealt with and victims supported.

The key achievements in 2008/9 include:

- The National Domestic Violence Helpline run in partnership between Women's Aid and Refuge which received over 137,000 calls last year;
- The Crown Prosecution Service reaching 72% for successful prosecutions with the number of unsuccessful outcomes in domestic violence cases falling significantly;
- The training of 75 Independent Domestic Violence Advisers;
- An increase in the number of multi-agency risk assessment conferences which meet to protect high risk victims of domestic violence to more than 200. Last year more than 24,000 cases had been brought to MARAC involving 34,000 children;
- Implementation of the Forced Marriage Act. The Forced Marriage Unit saw a 27% increase in the number of cases as more people sought help than ever before; and
- Expansion of the Specialist Domestic Violence Court programme to 122 in order to bring more perpetrators to justice.

The National Domestic Violence Delivery Plan Annual Progress Report 2008/09 is available at
http://www.homeoffice.gov.uk/documents/dom-violence-delivery-plan-08-09?view=Binary

Online Research into Public Perceptions of Dishonesty Underway

Dr Stefan Fafinski and Dr Emily Finch, criminal lawyers from Brunel Law School, are conducting research into public perceptions of dishonesty in conjunction with the British Science Association. The research is funded by the Economic and Social Research Council, the British Science Association and the Brunel University Research Development Fund. The data gathered will be used to evaluate the operation of the test of dishonesty used in criminal trials to determine liability for a range of property offences such as theft, burglary, robbery and fraud.

Dishonesty is one of the five components that make up the offence of theft. As a result of judicial interpretation, the other four components are usually

established without great difficulty. Therefore, the boundary between guilt and innocence tends, in a great many cases, to rest on whether or not the defendant has been dishonest. Despite the prominent role of dishonesty in establishing liability in such cases, the law offers no definition of dishonesty (other than outlining three situations in which a defendant should not be found to be dishonest). It was left to the Court of Appeal to develop a two-stage test of dishonesty in R V. Ghosh [1982] QB 1053:

- Was what was done dishonest according to the ordinary standards of reasonable and honest people? If no, the defendant is not dishonest and cannot be convicted of the offence for which he has been charged. If yes, a further question must be asked;
- Did the defendant realise that reasonable and honest people regard what he did as dishonest? If no, he is not dishonest and cannot be convicted. If yes, he is dishonest and will be convicted if the other elements of the relevant offence have been established. In simple terms, under the Ghosh test, a defendant is dishonest if he is aware that his conduct is dishonest in the eyes of ordinary people. The test is based on a questionable assumption that there is a single universal standard of honesty held by all right-thinking members of society. This has been widely criticised as unrealistic and prone to inconsistent verdicts contingent upon the views of the jury in any particular case. The test is also predicated on the simplistic polarisation of conduct into honest and dishonest with insufficient account taken of the complexities of the immense grey area in which even 'reasonable and honest' people may hold divergent views.

Dr Fafinski and Dr Finch have created the Honesty Lab which is an online resource which presents participants with a series of video clips of ordinary people talking about things that they have done that may or may not be regarded as dishonest. Participants are invited to give their impression of what has been done and to answer a short series of questions that explore their views on dishonesty and its relationship with other concepts such as immorality. The data gathered by the Honesty Lab will provide some insight into the reasoning processes behind attitudes about dishonesty in order to address the following questions:

- Is there a common standard of honesty in society?
- If there is not a common standard are there any points of consensus?
- If there is a grey area are there any factors that explain the divergence of views?
- Are individuals able to distinguish conduct that is dishonest from that which is dishonourable or immoral?
- Is the categorisation of conduct as honest or dishonest contingent upon personal characteristics of the person whose conduct is under scrutiny?

The Honesty Lab presents a total of 50 scenarios divided into 10 categories covering such conduct as lying on a CV, downloading music from the Internet, taking stationery from work and increasing the value of an insurance claim. The research website can be found at http://www.honestylab.com/

Barnardo's Report Calls for Government to Tighten Controls on Child Sentencing

A new report commissioned by the children's charity Barnardo's entitled 'Locking up or giving up? Why custody thresholds for teenagers aged 12, 13 and 14 need to be raised' was published on 13 August 2009. The authors express their concerns that children as young as 12 years old are being placed into custody too quickly and too easily. This is despite the Government's clear intention that custody for children should be used as a last resort.

The Barnardo's study of children aged 12, 13 and 14 years old who have served a custodial sentence has found that more than a third of them should not have been placed in custody when judged against the Government's own criteria. The policy states that children aged 14 and under should not be sent to custody unless they have committed a grave offence or have committed a serious offence and are deemed to be a persistent offender.

However, in Barnardo's examination of the cases of 214 children the following findings were made:

- 46% of those in this age group were placed into custody in 2007/08;
- More than a third did not meet this criterion but were still incarcerated. That suggests that as many as 170 children in England and Wales should not have been dealt with in this manner; and
- More than 20% had been sent to custody for breaching a community order such as a supervision or anti social behaviour order.

The study also reveals that:

- Just under half the children in custody had been abused;
- More than a third were living with a known offender;
- 38% had witnessed violence in their family;
- 8% had attempted suicide; and
- The likelihood of being sent to custody varied significantly by postcode.

The charity suggests that dealing with children in this way is a waste of public money and in terms of reducing their offending and doing anything to protect victims it is almost invariably ineffective.

The report makes the following recommendations:

- Strict sentencing rules which reflect the intention of Parliament and Government so that children aged 14 and under cannot be considered for custody unless they have committed a grave crime or unless they have committed a serious offence and are a persistent offender; combined with
- A clear definition of persistency so that custody is reserved for those whose offending really merits it;

- A breach of a community based sentence never to result in a custody sentence for a child aged 14 or under unless there has been a serious or violent offence;
- A requirement in national standards for YOTs to support children to comply with conditions of community orders;
- Guidance instructing courts to seek further information about children who have experienced abuse, neglect or disadvantage; and
- Steps to allow children serving a detention and training order to be placed other than in the secure estate.

The full report 'Locking up or giving up? Why custody thresholds for teenagers aged 12, 13 and 14 need to be raised' can be found at http://www.barnardos.org.uk/locking_up_or_giving_up_august_2009.pdf

Prison Reform Trust Finds Radical Approaches Overseas to Reducing Teenage Custody Population

A new report published on 3 September 2009 by the Prison Reform Trust identifies a number of successful international approaches to reducing child and youth imprisonment and cutting crime. England and Wales has one of the highest child custody populations in the western world and the number of children sentenced to custody more than tripled between 1991 and 2006. The report 'Out of Trouble: Reducing child imprisonment in England and Wales - lessons from abroad' examines policies and programmes in countries with effective youth justice systems. The report also looks at how policymakers in Canada and New York responded to costly and damaging levels of youth custody by completely rethinking their approach to dealing with youth crime.

In New York State USA, the total number of children in custody declined 27% between 2000 and 2006 and the state has closed four juvenile jails. With political support, public servants have sought to increase the number of children diverted from prosecution and introduce new alternatives to prison including functional family therapy for children sentenced for serious offences and after-school centres for those on remand.

In Canada the government made a decision to push through new legislation in order to reduce the number of children and young people in prison. New laws passed in 2002 enshrined the principle of custody as a last resort and the aim of sentencing as promoting 'rehabilitation and reintegration'. The rate of admission to secure custody fell by a third from 2003/4 to 2007/8 and youth crime has declined since 2003.

The key facts relating to youth custody in England and Wales include:

- The age of criminal responsibility in England and Wales is 10 years old, one of the lowest in the world and lower than the Netherlands (12), Canada (12), France (13), Germany (14), Japan (15), Italy (15), Spain (16) and Belgium (18);
- At any one time last year, there were on average 2,932 children imprisoned in England and Wales;

- 5,165 children aged 15-17 entered prison establishments last year;
- Imprisoning children is very expensive and accounts for two thirds of the Youth Justice Board's annual budget;
- Three quarters of children given a custodial sentence will reoffend within a year of release, the highest reoffending rate of all the sentences available to the court;
- Three quarters of under-18 year olds locked up on remand by magistrates or district judges are either acquitted or given a community sentence;
- 30% of boys and 37% of girls in custody have previously been 'looked after' by their local authority;
- 85% of children in prison show signs of a personality disorder. One in ten shows signs of a psychotic illness; and
- 86% of 15-18 year old boys in prison have been excluded from school.

The full report 'Out of Trouble: Reducing child imprisonment in England and Wales - lessons from abroad' can be found at http://www.prisonreformtrust.org.uk/uploads/documents/lessonsfromabroad.pdf

New Research Finds that Diversion Scheme for Young Criminals Not Working

The publication of research undertaken by the University of Portsmouth reports that public safety is being threatened by a failing scheme that aims to keep serious young offenders out of custody. The report 'Public protection in youth justice? The Intensive Supervision and Surveillance Programme from the inside' was published on 12 August 2009.

The Intensive Supervision and Surveillance Programme (ISSP) is a multi-million pound initiative to keep the worst young offenders out of custody. Under the programme, offenders aged 10-17 are allowed to remain at home after committing a series of crimes that, if they were adults, would lead to a custodial sentence.

ISSP is for offenders who have been charged, warned or convicted on four separate occasions and who have already received one community service order or term in a young offenders' institution; serious offenders (those at risk of custodial sentences of 14 years or more if they were adults); and those at risk of imprisonment or secure remand because they are repeat offenders.

The programme was designed to:

- Bring structure to young offenders' lives;
- Tackle the things that make them turn to crime; and
- Focus on areas worst affected by street crime.

The findings of the report state that the scheme is failing to either protect the public or rehabilitate the youngsters. During the study, more than 90% of the participants committed further crimes after their period of supervision and surveillance had ended. Many said they would have preferred a custodial sentence because that would remove them from their immediate circle of criminal friends and give them a chance to learn a trade. The offenders' crimes include grievous bodily harm, robbery and burglary.

The report concluded that ISSP has:

- Not ensured adequate surveillance to ensure public protection;
- Not been rigorously enforced; not had a positive effect on offenders' attitudes;
- Not provided supervision appropriate to offenders' ages;
- Not improved offenders' life chances;
- Not provided strong boundaries;
- Not brought structure into young offenders' lives; and
- Not separated offenders from damaging environments or peers.

The researchers found that young offenders seem to benefit from high quality supervision rather than the quantity of supervision. In summary the report argues that there was no convincing evidence that ISSP was ever likely to be a success.

The study is published in the International Journal of Police Science and Management.

New Scientific Research Demonstrates Ability to Replicate DNA

The methods undertaken at crime scene investigations in the UK and the existence of the DNA database have both come under scrutiny following the news that scientists in Israel have successfully replicated DNA samples. The paper entitled 'Authentication of forensic DNA samples' was published online on 17 July 2009 by Forensic Science International.

The testing conducted by Dan Frumkin, lead author of the paper, was published online by the Forensic Science International Journal. The research indicated that blood and saliva samples containing DNA could be fabricated to contain the DNA of a separate individual to the one who donated the samples. The findings also mean that biologists with access to a DNA database profile could create a sample of DNA matching that of the person in the database.

However, the Home Office claimed to be unconcerned by the findings and a spokesperson said "Access to the DNA database is restricted to a limited number of designated personnel and regular checks are carried out on the security of the system. DNA evidence is only one piece of the information the courts require for a successful prosecution. No one is ever prosecuted solely on the basis of a DNA match."

The paper describes how standard molecular biology techniques, like polymerase chain reaction, molecular cloning, and whole genome amplification, allows people with fairly rudimentary biological knowledge to synthesise DNA and apply it to surfaces.

The full paper 'Authentication of forensic DNA samples' can be found at http://www.fsigenetics.com/article/S1872-4973(09)00099-4/abstract

Local Partnerships and NPIA to Deliver Gateway Reviews

On 4 September 2009 the National Policing Improvement Agency announced that police forces across the UK now have the opportunity to have their large projects officially reviewed by experts, after a contract signing between the NPIA and Local Partnerships.

A process known as Gateway Review sets out to provide assurance that projects are progressing in the public interest. This process is widely used across government departments, the health sector and defence. It is now available to all police forces if they wish to commission a Gateway Review through the NPIA. Each review measures the effectiveness of a programme or project to ensure it is delivering best value for the taxpayer.

There are twelve Gateway reviews to be conducted by the new partnership for high risk, high value acquisition projects in police forces and authorities each year until 2012. Over the next three years, Local Partnerships will help the NPIA to train staff to become peer reviewers, creating a pool of experts to support the gateway process within their local force and nationally.

Chief Constable Peter Neyroud, chief executive of the NPIA, said "Local and central Government widely accept the contribution made by peer reviews over the years. They provide independent scrutiny and assurance that projects are delivering in the public interest. In the current economic climate it is even more vital the police service delivers efficient projects and programmes and therefore adopts such a review capability. I therefore welcome our association with Local Partnerships and the Gateway Review process."

Local Partnerships is one of only four authorised bodies to deliver gateway reviews worldwide and has successfully delivered reviews on local government infrastructure projects since 2003, with 536 reviews completed to date. Local Partnerships will work with the NIPA to increase efficiency in high and medium risk projects in the police service.

The full press release is available at http://www.npia.police.uk/en/14064.htm

Criminal Records Bureau's Customer Satisfaction Rating Reaches New Peak

Research results published on 12 August 2009 show that the Criminal Records Bureau (CRB) have undertaken checks that have prevented around 98,000 unsuitable people from working with children and vulnerable adults in the past five years.

The latest research, carried out by Ipsos MORI, with organisations and individuals who use the service and of attitudes towards the CRB by members of the general public, show that:

- Satisfaction of organisational customers is at a record high, with 94% now satisfied overall including 37% very satisfied with the service provided by the CRB;
- Satisfaction of Disclosure Applicants is at a high level with almost nine out of ten (87%) applicants satisfied with the application process;
- Overwhelming public support (91%) for CRB checks on those working with children and/or vulnerable adults in a paid or voluntary capacity;
- In 2008, around 18,000 unsuitable people were prevented from working with children and/or vulnerable adults as a direct result of a CRB check, bringing the total to around 98,000 people in the past five years;
- The CRB is making a positive difference in protecting children and vulnerable adults; and
- CRB checks are a useful part of the recruitment process and can help improve confidence in organisations' recruitment decisions.

Further information about the Criminal Records Bureau can be found at http://www.crb.gov.uk/media/press_releases/crb_customer_satisfaction_at_a.aspx

Independent Advisor on Sharing Criminality Information Appointed

On 4 September 2009 the Home Secretary announced the appointment of Sunita Mason as the Government's Independent Advisor for Criminality Information Management. Her task will be to scrutinise and advise the Government on how to improve the sharing of information about criminals between key Government departments and frontline agencies. The appointment was a commitment made by the Government following Sir Ian Magee's Review of Criminality Information.

Sunita Mason is the former Director of Legal Services for the National Youth Advocacy Service. She is a leading family law solicitor and a member of the Law Society Children Panel. She is the current Chair of the Law Society's Family Law Committee and also holds a judicial position, sitting as a Deputy District Judge on the North-Eastern circuit.

The full press release can be found at
http://nds.coi.gov.uk/content/detail.aspx?NewsAreaId=2&ReleaseID=406382&SubjectId=2

New Mobile Phone Technology Trial to Protect Shoppers

The Home Office announced on 28 August 2009 that it was working with mobile phone companies to ensure criminals do not take advantage of new technology that allows people to use their mobile phone like a debit or credit card. Several phone companies and banks are trialling the new technology, which allows customers to buy things by swiping their phone over a sensor in a similar way to Oyster cards.

The new mobile phones have built in security measures designed to prevent phone thieves or cloners from being able to take advantage of the new technology. The industry has committed to making sure consumers are not put at an increased risk, particularly young people, who are traditionally the earliest users of such technology.

Some of the guidelines to keep customers safe include:

- Making sure bank details, phones and SIMs are disabled as soon as possible once phones are reported lost or stolen;
- Any transactions above the maximum contactless payment value (currently £10) will require verification, such as a pin code;
- Additional security such as a pin codes will also be required if more than a certain number of smaller transactions are carried out in a row; and
- Encouraging those who sign up for a 'Pay as you go' phone to add their details on the National Mobile Phone Register (NMPR), making it easier for stolen phones to be identified and recovered.

The full press release can be found at
http://press.homeoffice.gov.uk/press-releases/fight-against-phone-crime

Police Officer Could Withhold Information When Applying to Vary Bail Conditions

R (on the application of AJAIB) v BIRMINGHAM MAGISTRATES' COURT (2009)

QBD (Admin) (Dobbs J) 31/7/2009

Criminal Procedure - Human Rights

Bail: Bail Conditions: Confidential Information: Informers: Police Bail: Right To Fair And Public Hearing: Right To Liberty And Security: Right To Respect For Private And Family Life: Variation Of Bail Conditions: Reliance On Unsworn Police Opinion: Effect Of Non-Disclosure Of Information Forming Basis Of Police Opinion: Art.8 European Convention On Human Rights: Art.6 European Convention On Human Rights: Art.5 European Convention On Human Rights: S.3a(5) Bail Act 1976

In deciding to vary bail conditions, a magistrates' court had been entitled to rely on a police officer's evidence whilst allowing him to withhold specific information.

The claimant (C) applied for permission to seek judicial review of a decision of the defendant magistrates' court refusing to vary bail conditions imposed by the police. C was being investigated by the police regarding allegations of a fraud that was purportedly perpetrated through commercial properties being overvalued and mortgages being obtained in excess of the properties' true value with a resultant deficit to banks of some £2.4 million. He was originally on unconditional bail and left the jurisdiction on two occasions but returned. He was later made the subject of bail conditions. At an application to remove the bail conditions, C asserted that the requirements of the Bail Act 1976 s.3A(5) had not been satisfied so that bail conditions could not be maintained. The magistrates' court held that, in the absence of a prosecution file, it was entitled to have regard to the opinion of a police officer, who was involved in the investigation, that C posed a flight risk as an informant had indicated that he was liquidising his assets to flee abroad. The police officer did not provide any specific details on the grounds that to do so would risk identifying the informant and jeopardise the investigation. The magistrates' court held that it was appropriate to accept the police officer's opinion and that as that experienced police officer had previously been content to allow C to have bail without conditions, his change of opinion was reasonably indicative that something of some import had occurred that necessitated the imposition of bail conditions. C contended (1) that allowing the police officer to withhold information deprived him of equality of arms and the opportunity to make submissions and was contrary to the European Convention on Human Rights 1950 art.5, art.6 and art.8 and also the common law principle of fairness; (2) that the magistrates' court's decision was Wednesbury unreasonable in light of the reliance on the opinion of the police officer.

HELD

(1) The submissions that there had been breaches of C's human rights or breaches of procedural fairness were rejected. Art.6 did not apply since it

could not be said that the imposition of bail conditions amounted to a charge and whilst art.8 might have been relevant to such a case, there was little material to suggest that it was engaged here, R (on the application of DPP) v Havering Magistrates Court (2001) 1 WLR 805 DC and R (on the application of Thomas) v Greenwich Magistrates' Court (2009) EWHC 1180 (Admin), (2009) 173 JP 345 applied. In relation to art.5, the instant case was distinct from Havering because in his application for variation of bail conditions, C was not at risk of being deprived of his liberty whereas Havering concerned breach of bail conditions where there was a danger of the claimant being remanded in custody. Without arguing that distinction, it was not possible to decide the issue but in any event, neither art.5 nor common law procedural fairness had been breached. The non-disclosure of the information that formed the basis of the police officer's opinion did not deprive C of knowing the essence of the case against him as he had been provided with sufficient information, namely that it was alleged that he was liquidising his assets to flee abroad. It was apparent that it was not possible for further details to be given as to do so would risk compromising the informant. Furthermore, C was not in a worse position than the magistrates' court as he knew as much as it did. It also could not be said that because confidential information was being relied upon the court should have required the assistance of a special advocate as the circumstances in which special advocates assisted the courts were very different from those disclosed by the instant case.

(2) In light of the fact that the officer had information that C was liquidating his assets with a view to fleeing the country, the judge was entitled to take account of his concerns. The decision of the magistrates' court was clearly one that was open to it and it could not be said to be Wednesbury unreasonable.

APPLICATION REFUSED

When Considering Whether Disciplinary Proceedings Should be on the Fast or Standard Track the Fairness to the Officer Must be Considered

R (on the application of PETER GANNON) v (1) CHIEF CONSTABLE OF MERSEYSIDE (2) DEPUTY CHIEF CONSTABLE OF MERSEYSIDE (2009)

QBD (Admin) (Judge Pelling QC) 14/8/2009

Police

Disciplinary Procedures: Fast Track: Police Officers: Sufficiency Of Evidence: Appropriateness Of Fast Track Procedure: Meaning Of "Sufficient" In Reg.3(2)(C)(I) Police (Conduct) Regulations 2008: Reg.43 Police (Conduct) Regulations 2008: Reg.42(1) Police (Conduct) Regulations 2008: Reg.3(2)(C)(I) Police (Conduct) Regulations 2008: Reg.3 Police (Conduct) Regulations 2008

In deciding whether disciplinary proceedings against a police officer should continue on the fast track or be remitted to the standard track, the decision-maker had to consider whether there was sufficient evidence, within the meaning of the Police (Conduct) Regulations 2008 reg.3(2)(c)(i), for it to be fair to the officer to permit the case against him to proceed on the fast track.

The claimant (G) applied for judicial review of a decision of the first defendant chief constable to conduct his disciplinary hearing under the fast track procedure contained in the Police (Conduct) Regulations 2008 Pt 5 rather than under the standard procedure contained in Pt.4. G had been employed as a police constable. He was alleged to have disposed of certain property which had been reported as stolen. The allegation was supported by the evidence of three other officers. G denied the allegation and provided a statement setting out a positive case as to what had occurred, which differed substantially from what was alleged by the three officers. Fast track disciplinary proceedings were begun under reg.43 of the Regulations. G objected to the use of the fast track procedure, arguing that the evidence against him was disputed, suffered from inconsistencies, was not incontrovertible and could not be tested under that procedure. The first defendant rejected G's reg.42(1) request that the standard procedure be used. He found that there was a conflict between the wording of reg.3(2)(c)(i) of the Regulations, which required that there be "sufficient evidence" to establish gross misconduct on the balance of probabilities, and guidance contained in Home Office Guidance: Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures Annex A para.2, which referred to the fast track being used where the evidence was incontrovertible. He concluded that there was sufficient evidence within the meaning of reg.3(2)(c)(i) of the Regulations to justify the use of the fast track procedure. The allegations were found proved and G was dismissed. G submitted that reg.3(2)(c)(i) of the Regulations required that the fast track procedure was only to be adopted in cases where there was incontrovertible evidence that was sufficient on the balance of probabilities to establish gross misconduct and that the tribunal had therefore applied the wrong test.

HELD

Where an application was made under reg.42(1), reg.3(2)(c)(i) required that the decision-maker consider whether there was sufficient evidence to establish, on the balance of probabilities, that the conduct of the officer concerned constituted gross misconduct. The word "sufficient" meant sufficient for it to be fair to the officer to permit the case against him to proceed on the fast track. The decision-maker had to decide whether, on the totality of the material before him, either (a) the factual allegations, and the fact that they constituted gross misconduct, were admitted by the officer or (b) there was enough evidence to prove, on the balance of probabilities, the factual allegations and/or that they amounted to gross misconduct that was either admitted or was challenged only on grounds that were unrealistic. If either of those questions was answered in the negative, then the case could not fairly be determined using the fast track procedure. That was the point that the Home Office Guidance sought to emphasise and there was no conflict between what was said in Annex A para.2 thereof and in reg.3(2)(c)(i) of the Regulations. Aside from cases where the factual allegations or the relevant evidence was admitted or not denied, the only circumstance in which it would be appropriate to proceed under the fast track procedure was where the officer's challenge could properly be characterised as unrealistic. A challenge was not likely to be unrealistic where there was a conflict between witnesses concerning the critical factual allegations made against the officer. The decision-maker could not, without hearing the evidence, rationally decide to prefer the word one witness over that of another, and thus there would by definition be insufficient evidence to establish on the balance of probabilities the factual allegation concerned. The only exceptions likely to arise in practice were either where the officer's challenge was inherently incredible or where there was compelling evidence that was inconsistent with the officer's challenge and which itself was incapable of credible challenge. Cases falling within the first of those categories were likely to be rare. Cases falling within the second were likely to arise more frequently and examples included cases involving closed-circuit television evidence or contemporary documentation. The first defendant had failed to apply the correct test. He clearly considered that there was a conflict between what was said in the Home Office guidance and the wording of reg.3(2)(c)(i) and wrongly thought that the words "sufficient" and "incontrovertible" referred to a standard of proof. Overall, he confused the question he had to decide with the appropriate standard of proof that applied when answering it. There was a clear possibility that had he applied the correct test he would have reached a different conclusion and his decision was therefore quashed.

APPLICATION GRANTED

Reduction of Pension was Inappropriate Where a Final Decision was Impermissibly Revisited

R (on the application of TURNER) v POLICE MEDICAL APPEAL BOARD (2009)

QBD (Admin) (Burton LJ) 8/7/2009

Police - Pensions

Causation: Disablement Pension: Pension Benefits: Pension Schemes: Personal Injury: Police Officers: Retirement: Cause Of Disability: Improvement In Condition: Reduction In Pension Benefits: Reg.30 Police (Injury Benefit) Regulations 2006: Reg.37 Police (Injury Benefit) Regulations 2006: Reg.7(5) Police (Injury Benefit) Regulations 2006

Where the Police Medical Appeal Board had not addressed the task imposed on it by the Police (Injury Benefit) Regulations 2006 reg.37 in relation to a retired police officer's pension and had impermissibly revisited the decision of a doctor, which was final, on the cause of the disability leading to the officer's retirement, its reduction of the officer's pension was inappropriate.

The claimant retired police officer (T) applied for judicial review of a decision of the defendant Police Medical Appeal Board (the board) to reduce T's pension. T retired as a result of loss of hearing in one ear which could have been attributable to his work. Following his retirement T claimed injury benefit under the police pension scheme and obtained a medical report from a doctor (B) under the Police (Injury Benefit) Regulations 2006 reg.30 for that purpose. B's decision was that T was entitled to a 100 per cent pension, since the issue of causation was resolved in favour of T: that decision was final as there was no further appeal. A review of the pension under reg.37 was held before the selected medical practitioner (P). P's decision was that T's degree of disablement had substantially altered such that he could carry out a number of jobs, reducing his potential loss of earnings. On appeal from her decision the board decided that T was only able to carry out the job which he performed before his retirement and thus that was the appropriate comparator. However the board reconsidered B's report and reduced T's pension by 50 per cent on the basis that the contribution of any hearing loss directly related to T's work could only account for half of his overall disability at most. T submitted that the board had no business interfering with, reviewing or reconsidering the decision of B; that it was only entitled to consider change in the question of comparable job or earning capacity by reference to an alteration in such condition or earning capacity after a suitable interval, in this case since 2001; and that it was not entitled to allow the appeal from P in favour of T but then substitute an entirely different basis of consideration.

HELD

It was fundamental that reg.30 and reg.37 had entirely different roles. Regulation 30 raised difficult questions in relation, for example, to causation. It was important in pension disputes for a decision, once made, to be final if possible, and the Regulations provided for that. However, it was fair both for the police force and for the community that someone who started out on a

pension on the basis of a certain medical condition ought not to continue to draw a pension which was no longer justified by reason of some improvement in his condition. By virtue of reg.7(5), when considering questions of disablement earning capacity was important. If a job had become available which T would be able to take by virtue of either an improvement in his condition or in the sudden onset of availability of such a job then P's approach would have been relevant. However that would all hang on the issue of alteration or change after "such intervals as may be suitable". There was no question of relitigation and suitable intervals suggested that the matter ought not to be revisited every year. The board actions in jettisoning P's thinking, not addressing the task that was imposed on them by reg.37 and impermissibly revisiting B's original decision, could not be justified, R (on the application of South Wales Police Authority) v Medical Referee (2003) EWHC 3115 (Admin), (2004) Po LR 37 considered. The board impermissibly failed to follow the appropriate test and had they done so they would have found that the degree of T's disablement had not altered. P's decision on the issues referred under reg.30 was final and reg.37 did not enable an authority to reach a different decision on those issues, R (on the application of Pollard) v Police Medical Appeal Board (2009) EWHC 403 (Admin) applied.

APPLICATION GRANTED

Dismissal Motivated by Wish to Avoid Cost of Early Pension Entitlement Constituted Age Discrimination

TOWER HAMLETS LONDON BOROUGH COUNCIL v J WOOSTER (2009)

EAT (Underhill J (President), K Edmondson, JM Matthias) 10/9/2009

Employment - Discrimination

Age Discrimination: Comparators: Pension Benefits: Pensionable Age: Redeployment: Dismissal Of Employee To Prevent Him Becoming Eligible For Pension Benefit: Reg.3(1)(A) Employment Equality (Age) Regulations 2006

An employee who was dismissed six-and-half months before he would have been eligible for early retirement had been discriminated against on the grounds of his age, as the local authority had been motivated to dismiss him to avoid the cost of his early pension entitlement.

The appellant local authority appealed against an employment tribunal's decision that it had discriminated against the respondent former employee (W) on the grounds of his age. W had worked for the local authority for over 30 years and had been seconded to a registered social landlord. The secondment was due to end, and the social landlord offered to retain W, using its own funds, until he reached the age of 50 but the local authority refused. W was dismissed on the grounds of redundancy six-and-a-half months before he reached the age of 50. He brought a claim of unfair dismissal and age discrimination on the grounds that the local authority had failed to redeploy him, or allow the secondment to continue, because it wished to terminate his employment before he became entitled to an early pension at age 50 from the local government pension scheme. The employment tribunal found that the trigger for the decision to end W's employment was his age and the cost to the local authority of an early pension, which amounted to age discrimination contrary to the Employment Equality (Age) Regulations 2006 reg.3(1)(a). The local authority submitted that (1) it would have been impermissible in law for it to have accepted the social landlord's offer to fund W's continued employment, as the purpose of the offer was simply to enable W to remain in employment until age 50; (2) the tribunal had not dealt properly with the question of the hypothetical comparator; (3) the tribunal's decision was inadequately reasoned; (4) even if the decision to dismiss W had been motivated by a desire to avoid him becoming entitled to an immediate pension, that was not on the ground of his age, but related to the substantial costs that the local authority would have to bear in funding such a pension.

HELD

(1) The nature of the social landlord's proposal was that W should be retained in employment in order to enable him to reach 50 and then take early retirement. A decision to extend employment for such a purpose would be ultra vires, and a refusal to accept such a proposal would plainly be justified, Hinckley and Bosworth BC v Shaw (1999) 1 LGLR 385 QBD considered. It followed that if the tribunal had decided the age discrimination case solely on the rejection of the social landlord's offer, it would have erred in law. However, it had not decided the claim on that

basis. The local authority could have extended W's employment for the distinct purpose of facilitating his redeployment, even if that had the effect of taking him over age 50. Such a course was expressly contemplated in the local authority's redundancy and redeployment policy was plainly lawful.

(2) The comparison W sought to rely upon was with a person in the same circumstances as him in every respect except that he was not aged 49 and therefore not liable to imminently take early retirement at the conclusion of the secondment. If, as the tribunal had found, the local authority was motivated in its desire to dismiss W by a wish to prevent him qualifying to take early retirement at age 50, it necessarily followed that it would have treated someone to whom that risk did not apply differently, Shamoon v Chief Constable of the Royal Ulster Constabulary (2003) UKHL 11, (2003) 2 All ER 26 considered.

(3) The tribunal's reasoning was not very clearly expressed. In discrimination cases it was particularly important that tribunals presented their conclusions analytically, addressing step by step the issues to which the legislative provisions gave rise, all the more so in cases involving less familiar forms of discrimination. However, the tribunal's reasons were nevertheless sufficient to allow the local authority to know why it had lost.

(4) Pension entitlements were inherently dependent on age. In those circumstances the distinction propounded by the local authority was invalid. It did not mean that less favourable treatment of an employee on account of his attaining pensionable age necessarily constituted discrimination, because it might be capable of justification, but that was a different question.

APPEAL DISMISSED

SI 2197/2009 The Magistrates' Courts (Violent Offender Orders) Rules 2009

In force **7 September**. These Rules require that an application for a Violent Offender Order ('a VOO') under section 100 of the Criminal Justice and Immigration Act 2008 ('the Act') or for an interim Violent Offender Order ('an IVOO') under section 104 of the Act must be set out in the form set out in Schedule 1 of the Rules. These orders are civil orders which can be applied for by a chief officer of police to a Magistrates' Court. The orders can apply to violent offenders and allow conditions to be placed on these offenders restricting their access to certain places, premises, events or people.

The Rules also require that for the variation, discharge or renewal of a VOO or for the variation or discharge of an IVOO an application must be made in writing and must specify the reason why the applicant believes the court should vary, renew or discharge, as appropriate, the order.

The Act allows certain people in respect of whom a VOO has been applied for to serve on the applicant a notice denying that an act done outside England and Wales would have committed a specified offence if done in England and Wales, so they are not therefore a qualifying offender and cannot be subject to a VOO. The Rules require that this notice be served not later than 3 days before the hearing date for the VOO application.

SI 2493/2009 The Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009

In force **1 October**. These regulations apply to a person who is subject to the notification requirements in Part 4 of the Counter-Terrorism Act 2008 ('the Act') and who intends to leave the United Kingdom for a period of three or more days. These people must comply with the notification requirements by notifying the specified information by attending at a police station in their local police area and giving an oral notification to a police officer or to a person authorised for that person by the officer in charge of the police station. When doing so, they must inform the person of their name, home address and date of birth.

Not less than seven days before departure (or if the person has a reasonable excuse, as soon as practicable but in any event not less than 24 hours before departure) the person must notify police of:

- The information required by section 52(2)(a)-(c) of the Act;
- Where the person will visit more than one country, the point of arrival in each country;
- The name of any carrier the person intends to use to leave and return to the United Kingdom and to travel between countries;
- The address or other place at which the person intends to stay for their first night outside the United Kingdom;
- When the person intends to return on a particular date, that date; and
- When the person intends to return at a particular point of arrival, the point.

The person must make a notification of any changes to that information or any information which they did not know of at the time of the original notification. Within three days of returning to the United Kingdom the person must notify police of their date and point of arrival (unless they had notified that they intended to return at a particular point and date before departure and they do in fact arrive at that point and date).

SI 2501/2009 The Domestic Violence, Crime and Victims Act 2004 (Commencement No. 11) Order 2009

In force **30 September**. This Order brings into force, to the extent not already in force, the following provisions of the Domestic Violence, Crime and Victims Act 2004:

- Section 12 (restraining orders: England and Wales);
- Section 13 (restraining orders: Northern Ireland);
- Section 58 (amendments and repeals) so far as it relates to the provisions of paragraphs (d) and (e) of that section;
- Paragraphs 43, 44 and 47 of Schedule 10 (minor and consequential amendments); and
- The entries in Schedule 11 (repeals) relating to the Protection from Harassment Act 2005 and the Protection from Harassment (Northern Ireland) Order 1997.

These provisions allow restraining orders to be imposed on a person who has been acquitted of an offence where it is necessary to do so to protect a person from harassment.

NOTES