

Digest

SEPTEMBER 2009



CASELAW Police News Diversity
LEGISLATION POLICE NEWS
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DIVERSITY Criminal Justice

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 fourth part of the series on the Equality Bill; the Joint Committee Report on the Bribery Bill; the IPCC Annual Report, including the report on deaths during or following police contact; the Police Authority Inspection framework; reports on the policing of the G20 protests in April 2009; 'A People's Police Force', addressing local and police authority-wide accountability; and the latest figures on police service strength.

There are also a number of articles outlining recently published Government and Parliamentary reports and initiatives including: the launch of a consultation on Serious Case Review guidance; a Home Office Research Report on outcomes of the Tackling Knives Action Programme; a report on Local Strategic Partnerships, evaluating their roles, strategy and effectiveness; and the 'Getting it Right and Righting the Wrongs' report, which highlights the Policing Pledge in its consideration of how to ensure local services can deliver first time and better deal with complaints.

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

The Case law is produced in association with



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Report on Government Response to Disability Provisions in the Equality Bill

The House of Commons Work and Pensions Committee published its report, 'The Equality Bill: how disability equality fits within a single Equality Act: Government Response to the Third Report from the Committee, Session 2008/09'.

The report considers the Government's response to the Third Report of the Committee, published in April 2009, and welcomes the Government's intentions to simplify and streamline legislation across the different equality strands into one single Equality Bill.

The report also found that the Government's response to the Malcolm judgment of introducing indirect discrimination in disability legislation will not provide the same level of protection that was provided before the Malcolm judgment. It recommends that the Equality Bill be used to re-establish this greater level of protection, by removing the requirement for a comparator.

The Committee welcomes the Government's intention to harmonise the various provisions allowing people to justify disability discrimination for all people. It recommends that the justification should be where the treatment is 'objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary'.

The report welcomed the Government's announcement to include carers in the forthcoming single Equality Bill. However, this will not address the matter of flexible working - and in particular, it does not provide carers with a right to request reasonable adjustment, which may be necessary in order to ensure their effective participation in the workplace. The Committee believes that the Bill should make this provision.

The Committee also noted that the current legal framework is inadequate to address cases of discrimination where people are treated less favourably on more than one ground simultaneously. It recommends that the Equality Bill be used to address this.

The Committee also recommends that the Government Equality Office should lead on equality matters, as the division of responsibility for equality issues within government departments could undermine the effectiveness of the Equality Bill.

Conclusions and recommendations regarding equality in employment, the 'Access to Work' scheme, the public sector equality duty and equality in goods, facilities and services are also included in the Committee's consideration of the Government's response.

The Government's response, in the form of a memorandum from the Minister for Disabled People, Jonathan Shaw, is in an Appendix to the Report.

This report is available at
<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmworpen/836/836.pdf>

Stonewall Launches 'What's It Got To Do With You?' Leaflet

Stonewall, the lesbian, gay and bisexual charity has launched a leaflet entitled 'What's It Got To Do With You?', to explain why bodies such as local authorities and police and private organisations sometimes ask for personal information such as age, gender, sexuality, race, religion or disability. The leaflet explains that the information is used to improve services for people in all groups, that you do not have to give personal information if you do not wish to, and that there are strict laws to make sure that the information is protected and dealt with responsibly.

The leaflet can be found at

http://www.stonewall.org.uk/documents/whats_it_got_to_do_with_you.pdf

ACAS Publish Research Paper on 'Management Handling of Sexual Orientation, Religion or Belief in the Workplace'

In March 2008 the Advisory, Conciliation and Arbitration Service (ACAS) and the Chartered Institute of Personnel and Development (CIPD) jointly commissioned the Qualitative Research Unit at the National Centre for Social Research (NatCen) to conduct a study on management handling of sexual orientation and religion or belief in the workplace. The aim of the study is to provide 'good practice' guidance to managers in their handling of sexual orientation and religion or belief issues by:

- ◆ Learning more about the challenges, experiences and knowledge facing employers handling sexual orientation and religion or belief in the workplace;
- ◆ Seeking to find advice and information;
- ◆ Facilitating positive handling of these aspects when employing people, with a view to creating a harmonious workplace;
- ◆ Identifying positive and negative issues associated within these areas; and
- ◆ Looking towards the successes and failures of Strategies and Policies.

Legislation, which came into force in December 2003, includes; the Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Religion or Belief) Regulations 2003; both of which make it illegal for employers to discriminate against workers on the grounds of sexual orientation and religion or belief. But employers still feel that there is a shortage of evidence-based guidance and case law surrounding sexual orientation and religion or belief issues. With this in mind and the practical nature of the research, ACAS has produced a new advisory booklet, 'Delivering Equality and Diversity'.

The 'Delivering Equality and Diversity' booklet can be found at

<http://www.acas.org.uk/index.aspx?articleid=818>

The Equality Bill

This article is the fourth part in a series providing detail of the provisions in the Equality Bill. Previous articles in the June, July and August editions of the *NPIA Digest* have covered Parts 1 to 4, and Chapters 1 and 2 of Part 5.

The Bill makes a number of actions such as discrimination unlawful in relation to 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 Chapters 3 and 4 of Part 5 (Work), Part 6 (Education), Part 7 (Associations) and Part 8 (Prohibited Conduct: Ancillary).

Part 5: Work

Chapter 3: Equality of Terms

This Chapter aims to achieve equality between men and women in pay and other terms of employment, where the work of a comparator of the opposite sex is equal. Clause 60 provides a definition of when work is 'equal'. Clause 61 operates to read a sex equality clause into the terms of employment where one is not included. The sex equality clause modifies the terms of employment to mirror the comparator's terms, where this will remove unfavourable terms in the person's terms and confer benefits which the comparator's terms include. Clause 62 requires a sex equality rule to be read into occupational pension schemes, to provide equality in the terms. A sex equality clause will have no effect where any difference in terms between the individual and the comparator is due to a material factor other than sex which is a proportionate means of achieving a legitimate aim.

Clauses 67 to 71 provide for maternity equality clauses and rules where a woman is employed or holds a personal office. The maternity equality clause is designed to replicate those in the Equal Pay Act 1970, and ensures that pay increases, bonuses and pay on return to work operate in the same way for women on maternity leave as if they had not been on maternity leave. The maternity equality rule is to be read into occupational pension schemes where it is not already present to ensure that the time in which a woman is on maternity leave is treated as if she were not, to ensure this does not lead to any detriment in the way the scheme operates, such as in relation to the determination of benefits.

Clause 72 makes any term of employment restricting an employee's ability to discuss their terms of employment with colleagues is unenforceable in relation to discussions about pay. This allows employees to discuss their pay with a view to establishing if there is a difference in pay related to a protected characteristic.

Clause 73 allows a Minister of the Crown to make regulations requiring employers to publish information about the pay of their employees for the purpose of showing whether there are differences in the pay of male and female employees. These regulations may not apply to employers who have fewer than 250 employees, or those bodies listed in Schedule 19 (these include government bodies and police authorities). The regulations may provide for a breach of the requirements to be a summary offence.

Chapter 4: Supplementary

This Chapter makes supplementary provision about work, including the application of Part 5 to ships, hovercraft and offshore work.

Part 6: Education

Part 6 makes provision to prevent schools, further and higher education bodies and general qualifications bodies from discriminating against, harassing or victimising a person because of a protected characteristic. Chapter 1 covers schools, and does not apply to the protected characteristics of age, marriage and civil partnership, or pregnancy or maternity. Chapter 2 covers further and higher education and does not apply to the protected characteristic of marriage and civil partnership. Chapter 3 covers general qualifications bodies and does not apply to the protected characteristic of marriage and civil partnership. Chapter 4 gives effect to Schedule 13, covering reasonable adjustments and makes provision in Schedule 14 for educational charities and endowments.

Part 7: Associations

Part 7 does not apply to the protected characteristic of marriage and civil partnership, but in relation to all other protected characteristics it provides that associations may not discriminate against, harass or victimise members or potential members. Associations may however restrict their membership to those with a shared protected characteristic. An association may not discriminate against, harass or victimise a guest or potential guest, so will be unable to refuse to invite a guest on the basis of a protected characteristic, or apply conditions to a guest that it would not apply to guests without that characteristic.

Part 8: Prohibited Conduct: Ancillary

Clause 102 makes it unlawful to discriminate against or harass another where the discrimination or harassment arises out of a relationship which used to exist between the parties and the conduct would contravene a provision of the Equality Bill. This is unlawful regardless of whether the relationship ended before clause 102 is enacted.

This will apply to relationships such as employment or the provision of goods, facilities or services, and will ensure that prohibited conduct arising because of

a relationship remains unlawful even once the relationship has ended. Similarly, any reasonable adjustment related to a disability will still apply once the relationship has ended, if the person continues to be placed at a substantial disadvantage compared to those without the disability.

Clause 103 makes employers and principals liable for things done by employees or agents, respectively, as if the employer or principal had also done the act. This applies regardless of the lack of any knowledge or approval by the employer or principal, although there is a defence to show that all reasonable steps were taken to prevent the employee or agent from doing the act or any act of that description. Where clause 103 applies, or would apply but for a defence, the employee or agent is also personally liable by clause 104, and commits an offence. The employee or agent will have a defence if they relied on a statement by the employee or agent that in doing the thing they would not contravene the Equality Bill and it was reasonable for them to rely on that statement.

Clause 105 makes it unlawful to instruct, cause or induce a person to discriminate against, harass or victimise another person, or to attempt to do so. This only applies where the instructor is in a relationship with the recipient of the instruction in which discrimination, harassment or victimisation is prohibited. It applies to all protected characteristics and provides that the Equality and Human Rights Commission can enforce this provision.

Clause 106 makes it unlawful for a person to help another contravene the Equality Bill unless they are told by the other that this would not be unlawful and it was reasonable to rely on that statement.

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

Bills Before Parliament - Progress Report

In the 2008/09 session of Parliament the Coroners and Justice Bill, introduced by the Ministry of Justice, has completed the committee stage in the House of Lords. The Report stage in the House of Lords will commence on 21 October 2009.

Parliament is now in recess until 12 October 2009.

Borders, Citizenship and Immigration Act 2009 Receives Royal Assent

On July 21 2009 the Borders, Citizenship and Immigration Act 2009 received Royal Assent. The Act:

- ◆ Provides for customs functions to be exercisable by the Secretary of State, the Director of Border Revenue and officials designated by them;
- ◆ Makes provision about the use and disclosure of customs information;
- ◆ Makes provision for and in connection with the exercise of customs functions and functions relating to immigration, asylum or nationality;

- ◆ Makes provision about citizenship and other nationality matters; and
- ◆ Makes further provision about immigration and asylum.

A copy of the Act and the Explanatory Notes to it can be found at <http://www.opsi.gov.uk/acts/acts2009a>

Joint Committee Report on the Draft Bribery Bill

After publication of the draft Bribery Bill on 25 March 2009 for pre-legislative scrutiny the Joint Committee on the Bill published its first report on 28 July 2009 welcoming the Bill as “an important, indeed overdue, step in reforming the United Kingdom’s bribery laws, which have been a source of criticism at home and abroad for more than thirty years.”

The Committee welcomes the two proposed offences of bribing (clause 1) and being bribed (clause 2) which apply to individuals who offer or accept, directly or indirectly, an “advantage” of any kind in connection with the “improper” performance of the recipient’s functions. The functions can include acts of a public nature and, among other things, any act connected to a business, trade, profession, or in the course of employment in both the public and private sectors (clause 3(1)). The Committee endorses the Law Commission’s test of “improper” performance stating that it “represents a careful balance between simplicity, certainty and effectiveness.”

The Bill introduces a specific offence of bribing foreign public officials, currently absent from the law. The Committee consider this proposed offence to be an important step with regard to the UK’s compliance with international obligations.

The Committee support the proposals for a new offence that targets companies and partnerships which fail to prevent bribery by persons acting on their behalf on the basis that the current law has been ineffective and is in need of reform. The Committee recommend the removal of the need to prove negligence under clause 5 and consider that whilst this would have the effect of creating an offence of strict liability, a commercial organisation is able to demonstrate that adequate anti-bribery procedures were in place by way of defence. The Committee did not accept the merits of increasing the threshold of the offence to that of “gross negligence”.

The Report agrees with the continued criminalisation of facilitation payments, namely the practice of paying a small sum of money to a public official (or other person) as a way of ensuring that they perform their duty, either more promptly or at all, and rejects the suggestion of a specific defence for small facilitation payments.

Under the current law where none of the relevant acts or omissions took place inside the UK, an individual can only be convicted of a bribery offence if they are a citizen of the UK. The draft Bill would extend the jurisdictions of the new offences to include anybody who is “ordinarily resident” anywhere in the UK and this was welcomed by the Committee as ensuring that individuals cannot live within the UK without being subject to the same criminal law as its citizens.

The Committee welcomes the penalties introduced under clause 11 of the draft Bill, namely a maximum ten year sentence of imprisonment for individuals who commit an offence of bribing, being bribed and bribing a foreign public official and an unlimited fine for any company or partnership that is convicted of the offence of negligently failing to prevent bribery, on the basis that “the Bill must have teeth.” In addition, a bribery conviction under the draft Bill triggers the court’s power to impose a confiscation or civil recovery order under the Proceeds of Crime Act 2002.

The Committee were not convinced that the draft Bill was the appropriate vehicle to extend the powers of the Security Services so as to provide an authorisation to bribe, nor to address the issue of parliamentary privilege and the potential evidential problems in relation to bribery offences.

The Committee recommend that the Government prepare a complete Impact Assessment for any legislation that is subsequently introduced, including an assessment of the additional resources required for effective enforcement by way of publicity, monitoring of compliance and investigations.

The First Report of the Joint Committee on the draft Bribery Bill can be found at <http://www.publications.parliament.uk/pa/jt200809/jtselect/jtbribe/115/11502.htm>

Consultation on Serious Case Review Guidance Launched

The Department for Children, Schools and Families has launched a consultation on the revised Chapter 8 of the statutory guidance 'Working Together to Safeguard Children'. The revised Chapter 8 is aimed at Local Safeguarding Children Boards (LSCBs), who by law undertake a Serious Case Review (SCR) whenever a child dies or is seriously injured and abuse or neglect is known or suspected to be a factor. Membership of LSCBs is set out in the Children Act 2004, and includes the chief officer of police for any police area falling within the relevant local authority area. Changes to the guidance include clearly setting out that the purpose of an SCR is to learn lessons at individual and inter-agency level, emphasising the importance of undertaking SCRs to promote learning, and extending the timescale for completing SCRs from four to six months.

The deadline for responses to the consultation is 23 October 2009. A consultation on the rest of 'Working Together to Safeguard Children' will take place in October 2009.

Details of the consultation, along with the revised guidance, can be found at <http://www.dcsf.gov.uk/consultations/index.cfm?action=consultationDetails&consultationId=1661&external=no&menu=1>

Home Office Research Report On Tackling Knives Action Programme Published

Home Office Research Report 18, 'Tackling Knives Action Programme (TKAP) Phase 1: Overview of key trends from a monitoring programme' has been published. It sets out a number of key trends relating to the TKAP period of July 2008 to March 2009, compared to the same period in the previous year.

TKAP aimed to reduce the carrying of knives, related homicides and serious stabbings among teenagers (aged 13 to 19) in ten police force areas, by implementing a range of local police enforcement, education and prevention interventions.

The key findings are:

- ◆ The provisional number of TKAP stop and searches increased across all ten areas, with a 13% reduction in the number of recorded offensive weapon offences among people aged 19 and under, compared with an 8% increase among those aged 20 and over;
- ◆ There was no change in the number of provisionally recorded sharp-instrument related homicides among victims aged 19 and under, with a slight increase among victims aged 20 and over;
- ◆ TKAP sharp-instrument 'all violence' offences decreased by 17% for victims aged 19 and under, and decreased by 8% for victims aged 20 and over;
- ◆ Sharp-instrument robbery offences decreased by 13% for victims aged 19 and under, compared with an increase of 11% for victims aged 20 or over;

- ◆ There was a provisional 32% decrease in admissions to hospitals for assault with a sharp object for victims aged 19 and under in English TKAP areas, compared to a decrease of 18% in non-TKAP areas;
- ◆ Provisional figures indicate that tougher penalties were being administered for possession of knives or other offensive weapons across England and Wales, with the average custodial sentence increasing.

The report can be found at

<http://www.homeoffice.gov.uk/rds/pdfs09/horr18c.pdf>

Report on English Local Strategic Partnerships Published

The report 'Long term evaluation of local area agreements and local strategic partnerships: Report on the 2008 survey of all English local strategic partnerships' has been published by the Department for Communities and Local Government. The report presents the findings from a survey sent to all English local strategic partnerships (LSPs) in Autumn 2008, with a response rate of 59%.

Most LSPs were established in 2002 or earlier and include either a single local authority or, in two tier areas, a county with the participation of districts. Membership of LSPs varies, with the majority of responding LSPs being made up of persons and bodies such as local authority executive councillors and officers, police, government office, Jobcentre Plus, the fire service and health groups. A minority of responding LSPs included the community network, residents' groups and black and minority ethnic groups.

The survey identifies that in a number of LSPs local authorities may be taking a stronger role, with a culture of partnership becoming more embedded. Most LSPs thought many of their organisational structures and arrangements were either effective or very effective. The links between the LSP board and area or neighbourhood bodies were less effective. Accountability within the LSP is perceived to be increasing and most respondents thought that the partnership working enhanced the accountability of local agencies. Just over half of the respondents thought that the LSP was accountable to the public.

In relation to Local Area Agreements (LAAs), most respondents thought that the LAAs, having substantially changed the context in which LSPs are working had made the role of the LSP more important, had given it greater focus and had improved partnership working. A 2009 survey will focus on LAAs. LSPs future priorities identified in the survey included a shift towards delivering the LAA, with less focus on process issues.

Progress reported through the survey included developing a collective vision and co-ordinated strategy, widening the range of interests involved in local decision making, and services better meeting needs in priority areas. 90% of respondents stated that there were initiatives benefiting local people that would not have happened without the LSP.

The report can be found at

<http://www.communities.gov.uk/publications/localgovernment/lspssurvey2008report>

Effective Partnership Data Management Report

The Department for Communities and Local Government has published 'Effective Partnership Data Management (EPDM)', a report on a study of four key local strategic partnership (LSP) business areas: strategic management; performance management; operational delivery; and citizen engagement. The project involved over 35 presentations and interviews to LSP boards, primary care trusts, social care, police and performance management teams.

The study notes that the core aim of the October 2006 local government white paper was to transform the relationship between the public sector and the citizen and that this can be hindered by a range of data sharing barriers. To improve data sharing between agencies, the study develops a technology model and data sharing architecture that could be deployed by LSPs, a financial benefits case linked to pre-selected national indicators, and a programme delivery structure and associated business case.

Four 'demonstrator projects' are proposed, each implemented across five LSPs as part of a coordinated EPDM programme. The benefits case for these projects includes a summary of the proposed, recurring annual benefits for each project, which should be realised by year five. The total benefit of the four projects is £3,310,000.

The report can be found at
<http://www.communities.gov.uk/publications/localgovernment/epdmetailedreport>

'Getting It Right And Righting The Wrongs' Highlights Policing Pledge

The 'Getting it right and righting the wrongs' report, following research undertaken on behalf of the Department for Communities and Local Government, has been published. The report outlines ways in which the customer can be put at the heart of the design and delivery of local services to ensure that services deliver first time and are enabled to better deal with complaints.

Three areas were identified in the review as making the biggest difference to the customer experience:

- ◆ The service and remedy pledge, setting out how the service will get it right and how it will right any wrongs;
- ◆ The importance of the frontline, understanding that good people are more important than process; and
- ◆ Customer-focussed partnerships.

The Policing Pledge is highlighted as an example of a clear promise from the public sector, which sets out minimum standards the public can expect, allows the public a greater say in police priorities and includes detail of commitments, complaints procedures and follow up for victims of crime.

A practitioners' toolkit, along with a pilot programme whereby nine pilot areas will receive funding to support implementation of the recommendations in the review has also been launched.

The report, toolkit and details of the pilot programme can be found at <http://www.communities.gov.uk/publications/communities/gettingitrightpractitioners>

Public Sector Efficiency Programme Report

The House of Commons Treasury Committee has published the report 'Evaluating the Efficiency Programme', which makes a number of findings and recommendations on the Operational Efficiency Programme (OEP) which aims to achieve greater efficiency within Government departments. The Committee is concerned that the proposals in the OEP require considerable co-operation between departments to yield the full savings, and questions whether the necessary structures are in place to facilitate this. It recommends that the Government considers a more business-led approach to cost cutting in the public sector.

Serious problems in measuring efficiency are highlighted in the report, which notes that it is vital to check that efficiencies have actually been achieved and are properly recognised and quantified. Robust data collection processes should be established at the start of future efficiency programmes.

The report considers the effect of efficiency programmes at Her Majesty's Revenue and Customs, noting that low staff morale has been caused, in part, by uncertainty about the future, a lack of understanding about the chosen efficiency targets and the increased pressure of having to do the same job with fewer resources. Communication is recommended to tackle this to ensure that staff hear about actions from their managers, not from the media.

The Committee recommends that all opportunities to deliver greater value for money within the public sector be explored, and recommends that the Government provides guidance to Ministers, to encourage a culture of efficiency in their departments and empower staff to identify where savings can be made.

The report can be found at <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmtreasy/520/520.pdf>

Independent Police Complaints Commission Annual Report

The Independent Police Complaints Commission (IPCC) has published 'Annual Report and Statement of Accounts 2008/09: Incorporating our report on deaths during or following police contact'.

The report on deaths during or following police contact presents the figures for deaths which occurred between 1 April 2008 and 31 March 2009 in the categories of fatal road traffic incidents; fatal shootings; deaths in or following police custody; and other deaths following police contact. In that period there were 92 deaths: 40 as a result of road traffic fatalities; 3 as a result of fatal police shootings; 15 were deaths in or following police custody; and 34 were other deaths following police contact. Comparisons are made between the numbers of deaths in 2008/09 and previous years, and the types of investigations undertaken following the deaths is set out.

The remainder of the report sets out ways in which the IPCC aims to improve the complaints system. Key themes in investigations into cases involving the police are detailed, including:

- ◆ There were a significant number of cases where there is a concern about the way police officers have handled incidents involving domestic violence;
- ◆ Concerns about call handling were raised in a range of cases, including recurring issues of recognising when people are at risk; recording information adequately; grading incidents correctly; and ensuring officers attending incidents are given enough information.

Information on the IPCCs responsibilities to deal with complaints and referrals from other organisations such as the Serious Organised Crime Agency is also included.

The full report can be found at

http://www.policeness.com/uploads/news/090716%20ipcc_annual_report_2008-09_-_full.pdf

Police Authority Inspection Framework Established

Following consultation, the Audit Commission and Her Majesty's Inspectorate of Constabulary (HMIC) have published the framework for Police Authority Inspections, which sets out how the inspections will be carried out and reported.

Phased, on site inspection activity will begin in September 2009, with a full baseline inspection of all 43 police authorities being completed by the middle of 2011. A national thematic inspection on the findings of the first phase of inspections will be published by the Audit Commission, Wales Audit Office and HMIC by the end of February 2010.

The framework document can be found at

<http://www.audit-commission.gov.uk/SiteCollectionDocuments/MethodologyAndTools/Guidance/policeinspectionframeworkjul09.pdf>

Review of Police Response to Major Crime Makes Recommendations for Improvement

A report by Her Majesty's Inspectorate of Constabulary, 'Major Challenge: A Thematic Inspection of Major Crime', has reviewed the police response to the most serious incidents of violence and death across England and Wales. The report finds that some police forces lack the specialist skills and resources needed to manage major crime incidents.

Forces were inspected between July and September 2008 and it was found that although there was progress, particularly in relation to homicide, some forces are unable to deliver a consistent and effective service to victims and families affected by major crime. The majority of forces met the Association of Chief Police Officers (ACPO) standard for delivering this service, with four forces demonstrating that they could exceed this standard. Four forces did not attain the standard.

The report states that the public are entitled to expect that all forces should be capable of responding to incidents of major crime, and that the challenge for forces is to move beyond a 'response' role towards proactively understanding the threat from serious violence and taking early, decisive action needed to prevent public harm. To this end, the following recommendations are made:

- ◆ The National Protective Services Board should identify whether collaboration and joint working may offer opportunities to improve the service to the public, and facilitate guidance and support to forces where appropriate;
- ◆ Forces and authorities not attaining the ACPO standard, or with significant identified needs, should seek opportunities to improve services through collaboration with policing partners;
- ◆ ACPO/ the National Policing Improvement Agency (NPIA) should develop and publish guidance on preventative action that forces can take to reduce homicide and other major crimes;
- ◆ ACPO/ NPIA should develop consistent performance measures for managing homicide performance, including issues of cost, quality and public confidence;
- ◆ ACPO/ NPIA should provide clear guidance on governance and standards of rape and serious assault investigations.

The report can be found at

<http://inspectors.homeoffice.gov.uk/hmic/inspections/thematic/major-challenge/major-challenge-report?view=Binary>

Funding to Train Dog Legislation Officers Announced

The Department for Environment, Food and Rural Affairs has announced that the Association of Chief Police Officers will receive £20,000 to help deliver specialist training for police officers to become designated Dog Legislation Officers. The 'Dangerous Dogs Law - Guidance for Enforcers' document, published in April 2009, recommended that it was good practice for every force to have, or have access to, a Dog Legislation Officer who can provide expert advice on dangerous dogs cases and legislation, and how it can be best used to protect public safety.

The 'Dangerous Dogs Law - Guidance for Enforcers' publication can be found at <http://www.defra.gov.uk/animalh/welfare/domestic/dogs-guide-enforcers.pdf>

Joint Committee on Human Rights Follow-Up Report on Policing of G20 Protests Published

The Joint Committee on Human Rights report 'Demonstrating Respect for Rights? Follow-up' has been published, and reports on the findings of a short inquiry following the protests during the G20 summit in London in April. The report makes the following recommendations:

- ◆ Every police force should have a widely advertised nominated point of contact, to make it easy for the police and protesters to discuss the protest before it takes place;
- ◆ The Government, the Independent Police Complaints Commission and HM Inspectorate of Constabulary should explore using independent negotiators to facilitate dialogue and to resolve disputes between police and protesters;
- ◆ Containment can be lawful, but only where it is proportionate and necessary to do so. Police need to take more account of the circumstances of individuals and should make efforts to allow people to leave as soon as possible. Toilets, water and medical facilities must be easily accessible to people contained;
- ◆ There should be a legal requirement for police officers to wear identification numbers when on duty or to identify themselves when asked;
- ◆ The Metropolitan Police should ensure that any exaggerated and distorted reporting in the media can be countered quickly and authoritatively.

The Committee remains concerned that there is a long way to go before promoting and protecting human rights is central to police policy, training and operations, but noted that there are positive developments in this area.

Considerations on the issue of protest around Parliament are detailed, including the committee's concern that the delay since the Government announced that provisions in the Serious Organised Crime and Police Act 2005 has caused an ambiguous legal position. An additional concern is expressed

that the police are unclear about the minimum level of access to Parliament which they are required to maintain.

The report also comments on counter-terrorism powers, the use of civil injunctions against protesters, the privatisation of public spaces such as shopping centres and the taking and retention of photographs. It expresses concern that the criminalising of insulting words or behaviour by section 5 of the Public Order Act 1986 disproportionately stifles freedom of expression.

The report also recommends that, in order to improve the public's view of police accountability for policing public order events and to initiate a debate about how the policing of protest has improved and can improve further, the Metropolitan Police publish the Cass report into the death of Blair Peach in full.

The report can be found at

<http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/141/141.pdf>

Independent Police Complaints Commission Calls for Immediate Change to the Policing of Protests

The Independent Police Complaints Commission (IPCC) has concluded its investigation into a complaint from a woman who alleged that officers used excessive force during the Climate Camp at Bishopsgate on 1 April 2009, part of the G20 protests. The IPCC independently investigated the case due to the seriousness of the woman's alleged potential injuries. The woman alleged that she had been kicked and pushed with shields and batons, and stated that this had left her with bruising and heavy vaginal bleeding which could have been a miscarriage.

The investigation concluded that:

- ◆ The complainant was forcibly pushed by an officer using their short shield in an attempt to move the crowd backwards. This tactic had been developed locally, had not been medically assessed and did not form any part of national training, nor was it contained in the ACPO Public Order manual;
- ◆ The complainant had not been allowed to leave the Bishopsgate area for four to five hours to make herself more comfortable with regard to her bleeding.

The IPCC has made recommendations that it believes would bear directly on this complainant's experience. These include a reiteration of the recommendation that consideration be given to the use by police of portable matrix information boards with large displays to aid communication. The IPCC has also recommended that the Metropolitan Police Service responds as quickly as possible to the following recommendations made by Her Majesty's Inspectorate of Constabulary:

- ◆ Protesters and the public should be made aware of likely police action in order that they may make informed decisions;

- ◆ Release plans should allow vulnerable or distressed persons or those inadvertently caught up in police containment to exit;
- ◆ A review of current public order training should be undertaken, including an evaluation of tactics to ensure they are subjected to medical assessment.

The Commissioner's report following the investigation can be found at http://www.ipcc.gov.uk/Bishopsgate_Report.pdf

NPIA Capability Support Unit

Further to the 2008 policing Green Paper's proposals to reform and reshape police performance management, the NPIA has set up the Capability Support Unit to help forces and police authorities drive up performance and improve their service to the public. As temporary Assistant Chief Constable Dave Hudson, Capability Support Team Manager, explains: "The unit wants to be the first port of call for any force or police authority that needs help to improve performance."

The unit offers tailored advice and assistance to those forces who wish to improve performance following adverse comment by HMIC, as a result of findings obtained through internal review, or indeed any other reason, by providing access to the best performance management skills, models, guidance and advice.

Approximately 65 peers in the inspecting and superintending ranks, and police staff equivalents, are available to help forces, along with NPIA employees.

Drawn from forces across England and Wales, this new peer network provides access to those with experience in areas such as managing basic command units, firearms, major crime, public order and finance, as well as proven track records in maintaining high levels of performance or driving up and maintaining good performance in areas that have been underperforming.

The Capability Support Unit will agree the most appropriate support based on value for money and available resources. The services offered by the Unit include:

- ◆ Drawing on and deploying specialists and resources from across the NPIA;
- ◆ Advising on good practice in the specific area of interest, and providing contact details for successful practitioners in that field;
- ◆ Establishing a mentoring arrangement with a peer group member;
- ◆ Facilitating workshops using case studies to allow discussion of issues with peer team members and other specialists;
- ◆ Arranging for practitioners from forces to work with peers from other forces to develop their knowledge and skills;
- ◆ Arranging and deploying a peer support team into forces to provide direct support to help address a specific performance issue or a broader intensive programme of support.

Full details of the Capability Support Unit can be found at <http://www.npia.police.uk/en/13538.htm>

Contact the Unit at capability.support@npia.pnn.police.uk or on 0345 000 0190.

'A People's Police Force' Report Published

'A People's Police Force: Police Accountability in the Modern Era' covering England and Wales has been published by the Rt Hon David Blunkett MP. The report addresses the question of local and police authority-wide accountability, mechanisms for improvement and whether direct election or a single police commissioner is appropriate in enhancing accountability and answerability.

The report looked at how to make police authorities more accountable to the localities they serve and how to improve accountability at all levels of the criminal justice system. It considers the work of the police within the neighbourhood, at the Basic Command Unit (BCU) and at force level, and looks at the role of the Home Office and the interface with other services, such as with partners in crime prevention.

The need to urgently sort out who is accountable and responsible for what and how they are to be held accountable is highlighted, as is the need to answer the question 'On what basis should those with general oversight be held to account for aspects which have been decentralised to others?' Two key problems in holding people to account have been identified. The lack of clarity regarding the purpose of the criminal justice system can lead to conflicts where there is confusion about the purpose of police work. The requirement of a partnership approach to crime prevention and reduction can also cause problems where task-oriented performance targets are set which militate against effective teamwork and create a feeling that crime reduction is one task among many.

Elements of accountability at present are set out, including:

- ◆ The legislative duty on police authorities to have regard to the public's views of policing;
- ◆ The meaningful engagement which takes place within the community where people have regular contact with police;
- ◆ The duty placed on the police service to reduce fear of crime and thereby increase security and confidence.

It is noted that it is necessary for police authorities to receive proper information about consultation and accountability, and that it is critical for meaningful monitoring of the public's sense of well-being and feeling of safety to take place.

The report makes a number of suggestions of how to approach accountability in the future. The need to base policing on good quality data to adequately respond to crime and to identify new trends in crime is identified. It also suggests that the greatest challenge will be to clarify the accountability of the Home Secretary with regards to recent changes and the delivery of the police

service across the country. Criticism of the current system is given that there is muddled accountability, partnership working without clarity about who is responsible for each aspect, conflicting demands placed upon the Home Secretary and a vague notion of what is 'operational' and should be the responsibility of the police themselves.

The report proposes an incremental and tiered system of accountability recognising the different forms of policing, the nature of the responsibilities held and the importance of engagement by the public. Twenty-eight recommendations are made, which include:

- ◆ That the idea of directly elected members to a police authority and of elected police commissioners be dropped;
- ◆ That police authorities be retained, to include local council members (in a bare majority), lay members and a magistrate;
- ◆ That appointment to a police authority be undertaken by a panel comprising local councillors, existing police authority members, an outside expert and a Home Office representative;
- ◆ That training and skills competencies be a standard and enforceable requirement on anyone wishing to be a police authority member;
- ◆ That police authorities should have a prime role in monitoring the police service accounting to the public, and that the authorities' role in scrutiny, monitoring and assessment of police forces be clarified;
- ◆ That reliable and accurate data for statistical analysis is available and meets a national standard;
- ◆ That Chief Constables be required to consult with the public and demonstrate to the police authority that this is meaningful;
- ◆ That Chief Constables present an annual, three-year rolling police plan on crime and social order policy, approved by the police authority;
- ◆ That police authority meetings be held in public unless this is inappropriate;
- ◆ That central government give up the power to cap police precept levels and/or increases and end the process of nominating forces for reduction in the next financial year;
- ◆ That work be undertaken to facilitate police authorities directly commissioning specialist services from other police services;
- ◆ That regional collaboration be encouraged, with the possibility of committee inquiries on effectiveness;
- ◆ That Crime and Disorder Reduction Partnership responsibility be shared between the police and the local council;
- ◆ That the police authority have a seat on the selection board for local police commanders;

- ◆ That each member of a police authority be formally linked with a local police command area;
- ◆ That the commissioning of police services by local authorities be developed and facilitated further;
- ◆ That BCU commanders should report back to the a wide forum representing the community;
- ◆ That the National Policing Improvement Agency support and extend it's Citizen Focus and Neighbourhood Policing programme, and review best practice on partnership working at the neighbourhood level to provide a manual;
- ◆ That the Community Call for Action be revitalised, including the facility for a petition to be triggered where people feel the police are providing an inadequate service;
- ◆ That the Independent Police Complaints Commission's remit be increased to allow it to investigate inadequate service provided by a police force;
- ◆ That processes be established to support and train community leaders to give communities a nominated voice.

The Association of Chief Police Officers (ACPO) has responded to the report, stating that it is a timely and positive contribution to the debate on crime and policing issues. ACPO vice-President Tim Hollis states that "building on accountability in ways which strengthen local confidence in policing without constraining effective public protection at every level is crucial. ACPO will now consider the recommendations made to government in this report in detail."

The report can be found at

http://davidblunkett.typepad.com/rt_hon_david_blunkett_mp/2009/07/a-peoples-police-force.html

Home Office Circular 009/2009 The Management of Police Pursuits

In 2008 ACPO issued guidance on the management of police pursuits, after research by the Independent Police Complaints Commission (IPCC) recommended updating, developing and codifying the existing ACPO guidance on pursuit management. Home Office Circular 9/2009 advises Chief Officers that Ministers have agreed with the ACPO recommendation that the document should form the basis for a new statutory code on pursuit management.

Responsibility for the practical aspects of developing the code will lie with the National Policing Improvement Agency (NPIA) and a project board to oversee the work will be established. To help prepare for the implementation of the new code, the Home Office and ACPO have stated that all police forces should work towards full compliance with the latest policy, as set out in the ACPO guidance.

Full details of Home Office Circular 009/2009 'The management of police pursuits' can be accessed at

<http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2009/009-2009/>

Home Office Circular 10/2009 Part 7 of the Criminal Justice and Immigration Act 2008

On 27 July 2009 the Home Office issued Circular 10/2009 which provides information on the implementation of Part 7 of the Criminal Justice and Immigration Act 2008 as of 3 August 2009, which brings into force provisions relating to the Violent Offender Order (VOO).

The VOO is a civil order designed to help the police protect the public from the most dangerous violent offenders in the community by placing restrictions on the offenders who continue to pose a risk of serious violent harm by prohibiting their access to certain places, premises, events or people to whom they pose the highest risk.

Under Section 98(1), a VOO contains such restrictions, prohibitions or conditions (relating to the offenders conduct anywhere in the United Kingdom) authorised by Section 102, as the court considers necessary to protect the public from the risk of serious violent harm caused by the offender, as set out, for the purposes of Part 7, in Section 98(2). A VOO has effect for a period specified by the court of not less than 2 and not more than 5 years (Section 98(1)(b)).

Under Section 100 a VOO is only available on application by a chief officer of police to a magistrates' court. This section sets out who such an application may be made in respect of as well as certain qualifying conditions.

Under Section 101 a magistrates' court may make a VOO if satisfied that:

- ◆ the offender is aged 18 or over (Section 100(2)); and
- ◆ has previously been convicted of a specified offence and made subject to a custodial sentence of at least 12 months or a hospital order (Section 99(2)(a)); or
- ◆ has previously been found not guilty by reason of insanity of a specified offence and made subject to a hospital order or a supervision order (Section 99(2)(b)); or
- ◆ has previously been found to be under a disability and to have done the act charged in respect of a specified offence and made subject to a hospital order or a supervision order (Section 99(2)(c)); or
- ◆ has previously been dealt with in an equivalent way under the law in force in a country outside England and Wales (Section 99(4)); and
- ◆ since the date on which the person became a person within any of paragraphs (a) to (c) of section 99(2) or (4) has acted in such a way as make it necessary for a VOO to be made in his respect for the purpose of protecting the public from the risk of serious violent harm caused by them.

Section 98(3) defines the term 'specified offence'.

Section 101(5) sets out restrictions on the use of VOOs.

A VOO may be varied, renewed or discharged under Section 103 and an interim VOO may be made under Section 104. Section 105 sets out the notice requirements for any application under Section 100, 103 and 104. A right of appeal to the Crown Court is provided under Section 106.

Sections 107 to 112 set out notification requirements to which an offender against whom a VOO is made is subject. Sections 114 and 115 apply respectively to the supply of such information to and from the Secretary of State. Section 116 enables regulations to be made concerning the provision of information about the release or transfer of a serving or otherwise detained offender.

Section 113 creates various offences in relation to VOOs. These offences are triable either way with the penalties on conviction set out at Section 113(6) and (7).

Section 117 is the interpretation section for Part 7.

VOOs will be subject to *The Magistrates' Courts (Violent Offender Orders) Rules 2009*, which, when made, will come into effect in early September 2009.

Access to Legal Aid is available for defendants in any proceedings relating to VOOs, with such proceedings treated as criminal in nature by the Legal Services Commission for the purposes of funding.

The full details of Home Office Circular 010/2009 on Part 7 of the Criminal Justice and Immigration Act 2008 can be found at <http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2009/010-2009/>

Ministry of Justice Circular 2009/05 Gives New Guidance On Cannabis Possession

On 28 January 2009 the offence for cannabis possession was added to the Penalty Notice Disorder (PND) Scheme. Ministry of Justice Circular 2009/05 'The Criminal Justice and Police Act 2001 (s1-11) Penalty Notice for Disorder Police Operational Guidance: Cannabis Possession Offences', in conjunction with the other guidance listed in the Circular offers guidance to police officers on when to issue PNDs.

The aim of the scheme is to offer police officers a quick and effective way of dealing with low level, anti social and nuisance offending. PNDs cannot be issued for any other drug related offences other than possession of cannabis or cannabis derivatives. The new guidance suggests that police officers should use their judgement and experience when deciding to issue a PND. PNDs may be issued to any adult found in possession of cannabis for personal use. However PNDs for this offence are not appropriate for offenders under the age of 18. Under 18s should be dealt with under Section 65 of the Crime and Disorder Act 1998.

The circular can be found at <http://www.justice.gov.uk/publications/docs/circular-05-2009-pnds-cannabis-possession.pdf>

Police Service Strength Figures Published

Figures detailing police service strength in the 43 police forces of England and Wales as at 31 March 2009 have been published in a Home Office Statistical Bulletin.

There were 243,126 full-time equivalent staff as at 31 March 2009, of which:

- ◆ 59.1% were police officers;
- ◆ 32.6% were police staff;
- ◆ 6.8% were Community Support Officers ('CSOs');
- ◆ 3.1% were designated officers (roles requiring a designation under the Police Reform Act 2002 as an Investigation Officer, Detention Officer or Escort Officer);
- ◆ 0.2% were traffic wardens.

The number of full-time equivalent police officers was 147,085, an increase of 2,146 officers from 31 March 2008. This comprises 143,770 officers in the 43 police forces of England and Wales, 2,811 officers employed by the British Transport police and 504 officers seconded to Central Services. Twenty-seven police forces increased their total officer strength between 31 March 2008 and 31 March 2009. Sixteen forces reported a decrease in total officer strength in the same period.

Of the police officers in the 43 police forces of England and Wales, and the officers seconded to Central Services:

- ◆ 25.1% (36,187 officers) were female, compared with 24.2% in 2008;
- ◆ 4.4% (6,310 officers) were minority ethnic, compared with 4.1% in 2008.

In addition to the full-time equivalent police officers, there were 14,251 special constables. This is 2.0% (or 296 special constables) less than in 2008. Of these 14,251, 33.0% were female, and 9.6% were minority ethnic.

The number of full-time equivalent staff in all supporting roles was 99,356, an increase of 4.3% from 2008. CSOs made up 16.6% of this total, designated officers 3.1% and traffic wardens 0.5%. Of these staff:

- ◆ 61.5% were female;
- ◆ 43.6% of the CSOs were female;
- ◆ 7.4% were minority ethnic;
- ◆ 11.5% of the CSOs were minority ethnic.

The Statistical Bulletin can be found at <http://www.homeoffice.gov.uk/rds/pdfs09/hosb1309.pdf>

Joint Committee on Human Rights Recommends Legislating To Close The Impunity Gap For International Criminals

The Joint Committee on Human Rights has published 'Closing the Impunity Gap: UK law on genocide (and related crimes) and redress for torture victims'. This report explains that UK law does not implement international conventions to give courts full criminal jurisdiction over crimes such as genocide, crimes against humanity, torture and hostage taking. This has created an 'impunity gap' whereby international criminals can visit the UK without fear of prosecution.

The report calls for the Government to legislate to close these gaps, to ensure that genocide, crimes against humanity and war crimes in international conflicts are criminal offences which are backdated to the dates when they were recognised as offences in international law. This would enable international criminals to be liable to arrest if found in the UK, regardless of whether they are resident in the UK.

The report can be found at

<http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/153/153.pdf>

UK Drug Policy Commission Recommends Focussing on Drug Harms Not Just Drug Arrests

The UK Drug Policy Commission (UKDPC) has conducted a project that considers how refocusing drug law enforcement on the reduction of drug-related harms could reduce the impact of these harms on individuals and communities. It has published a full review report 'Refocusing Drug-Related Law Enforcement to Address Harms' and a policy briefing 'Moving towards Real Impact Drug Enforcement: Strategy and policy implications'.

The full review report seeks to identify and promote the contribution that drug-related enforcement can make to reducing drug harms, and to develop a framework for considering different enforcement activities from a harm reduction perspective. It provides a number of tools to assist with defining the problem; prioritising areas for action; considering possible responses and their likely impact; identifying measures of success and impact; implementing an operation; and evaluating to understand the impact of operations on 'real world' harms.

The review suggests that the framework the UKDPC proposes could provide a number of benefits, including improved partnership-working; the impetus to consider new ways of responding to the problem; the development of better measures of impact; enhanced communication with communities; and a real impact on the harms associated with drug use and drug markets.

The policy briefing notes how reducing the impact of drugs on communities has tended to rely on the following strategies:

- ◆ Reducing the use of drugs;
- ◆ Reducing the harms associated with drug use; and
- ◆ Reducing the amount of drugs supplied.

It proposes an alternative strategy of reducing the harms associated with the supply of drugs which reflects that not all drug markets are equally harmful. Enforcement agencies would be expected to have a leading role in delivering this.

The briefing identifies the principles to be applied in this approach. Reducing the harms that drug markets have on communities should be an explicit overall aim within relevant strategies and organisations, with prioritising and planning being based on the full range of harms. Problem identification and priority setting at community level should be in collaboration with the community. Operations should explicitly identify the harms being targeted and the mechanism by which the activity is expected to have an impact. Partnership working is vital to maximise the effectiveness of action.

Three broad approaches are identified:

- ◆ Targeting specific individuals or groups identified as being particularly harmful;
- ◆ Targeting areas where drug problems are particularly damaging; and
- ◆ Targeting particularly harmful behaviours.

In addition to these approaches, the policy briefing concludes that harm-focused measures should be used to measure the impact of enforcement activities and the impact of drug enforcement operations should be assessed to demonstrate proven positive impact on communities. The understanding of the scale and nature of the full range of drug harms should be improved. Research on the impact of approaches to drug-related enforcement should be undertaken, and a series of pilots should test the approach suggested in the review.

The full review report and the policy briefing can be found at <http://www.ukdpc.org.uk/publications.shtml>

Homicide by People with Mental Illness on the Rise

On 29 July 2009 the 'National Confidential Inquiry into Suicide and Homicide by People with Mental Illness' published their annual report. The report showed an increase in the number of people killed by individuals suffering from mental illness in England and Wales between 1997 and 2005. This research project, which is based at the University of Manchester, discovered an increase of homicides committed by people with mental illness from 54 in 1997 to 74 in 2004, with projected numbers of 77 in 2005. There was also a rise in homicides committed by people with schizophrenia from 25 in 1997 to 46 in 2004 and an estimated 40 in 2005.

Professor Louis Appleby, Director of the National Confidential Inquiry into Suicide and Homicide by People with Mental Illness, said "There has been an unexplained rise in the number of homicides by people with mental illness and we now have to try to understand why this has happened."

The report suggests that people with mental illness who are not under patient care are contributing to the rise as opposed to those with mental illness who are in patient care.

Their research is based on people convicted of homicide and people who are unfit to plead or are found guilty by reason of insanity.

The National Confidential Inquiry into Suicide and Homicide by People with Mental Illness Annual Report can be found at

<http://www.medicine.manchester.ac.uk/psychiatry/research/suicide/prevention/nci/inquiryannualreports/AnnualReportJuly2009.pdf>

Fawcett Society Identifies Continued Variation in Rape Conviction Rates

A Freedom of Information Act 2000 request by the Fawcett Society, which campaigns for equality between men and women, of the conviction rates for rape in 2006 and 2007 has shown that the level of convictions can vary widely between police force areas. In some areas victims are almost eleven per cent more likely to secure a conviction than in others. Some police force areas have seen increases in the conviction rate from 2006 to 2007; however there were decreases in the conviction rate in 16 areas, with 12 police force areas having a conviction rate of less than five per cent in 2007.

The Fawcett Society has identified six areas in which it believes improvements should be made to improve conviction rates:

- ◆ A cultural change within the Criminal Justice System should be driven by the Government to ensure rape is given a high priority by the Crown Prosecution Service (CPS) and police forces;
- ◆ Specific training for frontline staff in the police and CPS should be rolled out in every area to change attitudes towards rape and to improve initial early response and evidence collection;
- ◆ A national strategy should be developed towards rape and serious sexual violence offences, and joint CPS and police targets should be set;
- ◆ The Government should fund a national awareness campaign on rape and sexual violence to target and change public attitudes towards rape;
- ◆ Long term funding for violence against women services, including a national network of rape crisis services and a 24 hour helpline, should be committed to by the Government;
- ◆ The opportunity presented by the forthcoming Violence Against Women and Girls strategy being driven by the Home Office should not be missed.

Further information can be found at

<http://www.fawcettsociety.org.uk/index.asp?PageID=964>

Drug Misuse Statistics Published

The Home Office Statistical Bulletin 'Drug Misuse Declared: Findings from the 2008/9 British Crime Survey, England and Wales' has been published, and examines the prevalence and trends of illicit drug use based on results from the 2008/09 British Crime Survey (BCS). The estimates are produced from responses to a self-completion module of the survey by a nationally representative sample of 16 to 59 year olds resident in England and Wales. There is a particular focus on young people aged 16 to 24.

The 2008/09 BCS estimates that of 16 to 59 year olds:

- ◆ 38.6% had ever used illicit drugs, 10.1% had used them in the last year and 5.9% had used them in the last month;
- ◆ 15.6% had ever used Class A drugs, 3.7% had used them in the last year and 1.8% had used them in the last month;
- ◆ Cannabis had been used by 7.9% in the last year, and was the type of drug most likely to be used.

Long term trends of illicit drug use since 1996 among 16 to 59 year olds showed that:

- ◆ Use of any illicit drug in the last year declined from 11.1% in 1996 to 10.1% in 2008/09;
- ◆ Use of Class A drugs in the last year increased from 2.7% in 1996 to 3.7% in 2008/09, and showed an increase in the use of cocaine powder, slightly offset by a decrease in the use of LSD. Methamphetamine was included in the survey for the first time in 2008/09 but has had no visible impact on the prevalence of Class A drug use;
- ◆ Use in the last year of cannabis, amphetamines and anabolic steroids decreased.

Changes between the figures in 2007/08 and those in 2008/09 showed:

- ◆ Overall use of any illicit drug in the last year remained stable (9.6% in 2007/08 and 10.1% in 2008/09);
- ◆ Use of a Class A drug in the last year increased from 3.0% in 2007/08 to 3.7% in 2008/09;
- ◆ Increases were seen in the use in the last year of cocaine powder, ecstasy, tranquilisers, anabolic steroids and ketamine.

Of young people aged 16 to 24:

- ◆ 42.9% have ever used illicit drugs, 22.6% had used them in the last year and 13.1% had used them in the last month;
- ◆ 16.9% have ever used a Class A drug, with 8.1% having used them in the last year and 4.4% having done so in the last month;
- ◆ 18.7% had used cannabis in the last year;

- ◆ Illicit drug use in the last year fell from 29.7% in 1996 to 22.6% in 2008/09, with a slight decline in Class A drug use in the last year;
- ◆ Between 2007/08 and 2008/09, last year usage of Class A drugs increased from 6.9% to 8.1%, though there was no change in the figures for use of any illicit drug;
- ◆ Frequent use of any illicit drug (use of any illicit drug more than once a month in the last year) decreased from 11.6% in 2002/03 to 7.6% in 2008/09.

The demographic and socio-economic variations in drug use show that:

- ◆ The youngest age groups (16 to 19 and 20 to 24 year olds) reported the highest levels of drug use in the last year;
- ◆ Men report higher levels of use in the last year of any illicit drug and of Class A drugs than women;
- ◆ Class A drug use in the last year among men and women has increased, both since 1996 and between 2007/08 and 2008/09;
- ◆ Adults aged 16 to 59 from White ethnic groups showed higher levels in general of any drug use than those from a non-White background, with the exception of adults from the Mixed group;
- ◆ Single adults aged 16 to 59 were most likely to have reported taking any drug, a Class A drug or a stimulant drug in the last year;
- ◆ Those who were unemployed showed higher reported levels of use of any drug, a Class A drug or a stimulant drug than those in employment or those who were economically inactive;
- ◆ For adults and young people, the use of any drug in the last year was significantly higher for those who had visited a pub or nightclub than for those that hadn't;
- ◆ For young people levels of drug use in the last year were significantly higher for those that had drunk alcohol than for those that hadn't, and prevalence rates of drug use increased as frequency of alcohol increased;
- ◆ Victims of BCS crime in the previous year were around twice as likely to have taken any drug, any Class A drug or any stimulant drug as those who had not been victimised.

Figures for polydrug use, that is use of more than one illicit drug, showed that 4% of adults aged 16 to 59 were polydrug users in the last year. Of those who had used a drug in the last year, 40% had used more than one type of drug. Of the polydrug users:

- ◆ 88% had used cannabis (although 56% of cannabis users did not report having used any other drug);
- ◆ 66% had used cocaine;
- ◆ 44% had used ecstasy; and
- ◆ 28% had used amphetamines.

The statistical bulletin can be found at
<http://www.homeoffice.gov.uk/rds/pdfs09/hosb1209.pdf>

Home Office Circular 008/2009 New Government Guidance to Protect Children from Sexual Exploitation

The Home Office has issued circular 008/2009 as a reminder to Chief Constables of new statutory guidance designed to protect children and young people from sexual exploitation.

On 10 June 2009, the Home Office and the Department for Children, Schools and Families (DCSF) launched new statutory guidance entitled 'Safeguarding Children from Sexual Exploitation'. The guidance is aimed at the members of local safeguarding children boards, which include police officers, as well as other professionals with responsibility for the safeguarding of children and young persons. The guidance is to be used within the framework of 'Working Together to Safeguard Children (2006)' and should help agencies to:

- ◆ Develop local prevention strategies;
- ◆ Identify those at risk of being sexually exploited;
- ◆ Take action to safeguard and promote the welfare of particular children and young people who are being, or may be, sexually exploited; and
- ◆ Take action against those intent on abusing and explicating children and young people in this way.

The circular also addresses police engagement and the need for awareness of the early indicators of risk of sexual exploitation to ensure appropriate early intervention. Where a child or young person is identified as being involved in sexual exploitation, or at risk of being drawn into it, this should trigger the agreed local safeguarding children procedures to ensure the child's safety and welfare, and to enable the police to gather criminal evidence.

Full details of Home Office Circular 008/2009 'New government guidance to protect children from sexual exploitation' can be accessed at
<http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2009/008-2009/>

Inquiry into Justice in Communities Report Published

The All Party Parliamentary Local Government Group has published 'Primary Justice: An Inquiry into Justice in Communities'. The Inquiry consulted local authorities, government agencies, charities, think tanks and independent professional organisations, to identify proposals to reinvigorate the justice system.

Recommendations made in the report include:

- ◆ That a new approach should be taken to criminal justice which focuses on primary justice which is local, community-based and focused on prevention;
- ◆ Primary justice should involve communities taking responsibility for meeting the needs of vulnerable people, with support recognising that there can be an overlap between victims and offenders;
- ◆ Provision of safety and justice should be flexible and tailored to what exists locally;
- ◆ Restorative justice should be a mainstream part of primary justice, with local areas having the discretion to choose the practice that suits their community;
- ◆ Building primary justice on the understanding that success and the confidence of the public depends on timely, accessible and relevant information about the consequences for those who commit crime;
- ◆ Discussions of police accountability should be widened to a debate about accountability for safety and justice locally;
- ◆ Voluntary agreements based on the Multi Area Agreement model, backed up by national oversight, should be arranged to ensure collaboration between local areas, with the safety and justice budget ring-fenced unless this is an impediment to investment in prevention.

The report can be found at

<https://member.lgiu.org.uk/whatwedo/Publications/Pages/primaryjustice.aspx>

Youth Crime Action Plan: One Year On

The HM Government report 'Youth Crime Action Plan: One Year On' has been published, and reports on the progress made and the actions for the future following the 2008 Government Youth Crime Action Plan (YCAP).

The YCAP had four main aims: preventing youth offending; reducing re-offending; building public confidence in the efforts to tackle youth crime; and ensuring that young people in the youth justice system are given the opportunity to achieve the five 'Every Child Matters' outcomes.

The report notes that the vast majority of young people are law-abiding and make a positive contribution to their communities, but highlights a number of

ways in which the causes and consequences have been tackled. The YCAP presented a triple-track approach to this, of:

- ◆ Better prevention to tackle problems before they become serious or entrenched;
- ◆ More support to address the underlying causes of poor behaviour; and
- ◆ Tough enforcement where behaviour is unacceptable or illegal.

In the year since the YCAP was developed, progress has been made in a number of areas. In preventing youth offending, achievements include the Family Intervention Projects, the Parenting Early Intervention Programme, and the launch of 'Open Drive', which makes activities available to young people. Street teams of youth workers have been introduced to 65 areas, working with the police to engage with young people. Operation Staysafe has been introduced, removing vulnerable people from the streets late at night, schools and police forces have been encouraged to set up Safer Schools Partnerships, and investments have been made in after-school police patrols in 65 areas. The Tackling Knives Action Programme has been used to deter young people from carrying knives.

To reduce re-offending a number of actions have been taken in the last year. Youth Offending Team workers have been based in police custody suites in 30 areas to ensure young people are referred to the appropriate services. Tougher action has been taken against those committing serious youth violence, and £500,000 has been used towards a 'No To Knives' coalition. Sentences have been made more of a deterrent by expanding reparation during young offenders' leisure time, and Challenge and Support Projects have been used to tackle anti-social behaviour in 52 areas of the country.

In building public confidence in the efforts to tackle youth crime, support and advice has been given to almost 13,000 young people. A public pledge has been made, setting out what people can expect from their local area. The public have been given a chance to engage in consultations on what type of reparation work they would like young people on community sentences to carry out. The Youth Restorative Disposal has been piloted in seven police forces to expand restorative justice.

The vision for the future set out in the report is of a continuing framework of prevention, support and enforcement, with a commitment to ensuring the public is aware of, involved in, and confident about the work being undertaken. Action specific to the next year includes:

- ◆ More consistent support for families who need it, with action to ensure this support is taken up by families who don't seek help voluntarily;
- ◆ Powers to ensure parents take responsibility for their children;
- ◆ Earlier identification and intervention, plans of which will be published in the autumn and will involve consultation;
- ◆ Building better relationships with young people and the police through encouraging the formation of Safer School Partnerships;

- ◆ Ensuring that positive activities are available in areas where crime and anti-social behaviour are prevalent;
- ◆ A renewed drive on serious youth violence, including added investment in the Tackling Knives Action Programme;
- ◆ Targeted enforcement and further action to tackle youth alcohol-fuelled violence;
- ◆ Stepping up action to tackle anti-social behaviour, including support for frontline professionals from the Anti-social Behaviour Action Squad, and the exploration of ways to speed up bringing anti-social behaviour cases to court;
- ◆ Action to tackle girls' offending, particularly alcohol related offending, with further examination of how girls become involved with gang activities.

'Youth Crime Action Plan: One Year On' can be found at
<http://www.homeoffice.gov.uk/documents/youth-crime-action-plan/>

Justice Committee Report on the Crown Prosecution Service

The House of Commons Justice Committee has published 'The Crown Prosecution Service: Gatekeeper of the Criminal Justice System'. The report highlights the importance of the Crown Prosecution Service (CPS) to the criminal justice system, but notes that the CPS role has developed incrementally, for example by taking control of most charging decisions, formerly a police responsibility, rather than with clear expectations or direction. The report states that this has led to some misunderstanding about the CPS role, and aims to set out clearly what the role is and to recommend alternatives to the present structures. Included in the report is a detailed examination of where the police role ends and where the role of the CPS begins.

The report can be found at
<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmjust/186/186.pdf>

Road Casualties in Great Britain: Main Results: 2008

The Department for Transport has published statistics on road casualties in accidents reported to the police within 30 days of occurring in Great Britain in 2008.

- ◆ There were just under 231,000 road casualties in Great Britain in 2008, 7% less than in 2007. The number of people killed in road accidents fell by 14% from 2,946 in 2007 to 2,538 in 2008;
- ◆ The number of deaths among car users in 2008 was 1,257, 12% less than in the previous year. The reported number of seriously injured fell by 7% to 10,711. Total reported casualties among car users were 149,188, 8% lower than 2007;
- ◆ Reported Child casualties fell by 8%. The number of children killed or seriously injured in 2008 was 2,807 (9% less than 2007). 124 children died on the roads, 2% higher than in the previous year;
- ◆ There were 572 pedestrian deaths, 11% less than in 2007. Reported killed or seriously injured casualties fell by 4% to 6,642. The all pedestrian casualty figure fell to 28,482 in 2008;
- ◆ The number of pedal cyclists killed fell by 15% from 136 in 2007 to 115 in 2008. The number of seriously injured rose by 1% to 2,450. The total casualties among pedal cyclists rose by 1% to 16,297;
- ◆ There were 493 motorcycle user fatalities in accidents reported to the police in 2008, 16% lower than during 2007. The reported number of killed or seriously injured fell by 10% compared to 2007. The all motorcycle user casualties figure for 2008 of 21,550 is 8% lower than in 2007;
- ◆ There were 170,591 road accidents reported to the police involving personal injury in 2008, 6% fewer than in 2007. Of these, 25,462 accidents involved death or serious injury, 6% fewer than in 2007.

In 2000, the Government announced a new road safety strategy and set new targets for reducing casualties by 2010. The aim is to achieve, compared with the average for 1994-98:

- ◆ A 40% reduction in the number of people killed or seriously injured in road accidents compared with the average for 1994-98;
- ◆ A 50% reduction in the number of children killed or seriously injured;
- ◆ A 10% reduction in the slight casualty rate, expressed as the number of people slightly injured per 100 million vehicle kilometres.

In 2008, compared to the 1994-1998 average, the number of people killed or seriously injured was 40 per cent less; the number of children killed or seriously injured was 59 per cent less; and provisional estimates show the slight casualty rate was 36 per cent less.

In April 2009, the government published proposals for a new post-2010 road safety strategy 'A Safer Way: consultation on making Britain's roads the safest in the world.' This included proposed targets for achievement by 2020, compared to a baseline of the average for 2004 to 2008.

These targets as well as further details on Road Casualties in Great Britain 2008 can be found at

<http://www.dft.gov.uk/adobepdf/162469/221412/221549/227864/479748/rcgbmainresults08.pdf>

Home Office Research Report 17: Examining Attrition in Confiscating the Proceeds of Crime

The Research, Development and Statistics Directorate of the Home Office has published a research report on a study which sought to identify the extent of attrition (financial loss) in the confiscation order process and establish why it occurs. The study found that while the majority of cases experience little or no attrition, there is significant monetary attrition in the confiscation order system. Much of the overall loss however is artificial and arises from the operation of the Proceeds of Crime Act (POCA) 2002.

Under POCA, a convicted offender can be ordered by a court to repay a sum of money equal to the amount he has benefited from through his criminal conduct. This can either be from a specific offence or, if the offender is deemed to have a 'criminal lifestyle' from all criminal conduct in the preceding six years.

While the amount of criminal proceeds that have been recovered has risen - from around £25 million in 2001/02 to around £136 million in 2007/08, there are concerns about the performance of the asset recovery system and in particular in relation to the level of attrition observed during the different stages of the confiscation process.

While the study found positive evidence showing the value of POCA in recovering criminal assets, the report suggests a number of steps that could be taken to improve the effectiveness of the confiscation process. These include:

- ◆ Greater clarity about the scope of the use of POCA and further consideration of how asset recovery resources can be best used;
- ◆ A promotion of a more systematic and strategic approach to the use of confiscation to ensure that potential confiscation opportunities are not lost and the adoption of strategies for revisiting cases where the sums recovered have fallen short of expectations;
- ◆ Improving co-ordination to ensure that the asset recovery system is joined up and that all co-operation and communication opportunities between the agencies are being taken;
- ◆ Developing best practice guidance for the effective application of restraint orders; and

- ◆ Focusing attention on enforcing the orders imposed on serious organised criminals, to help recoup larger sums and symbolise that crime does not pay.

Research Report 17 'Examining attrition in confiscating the proceeds of crime' can be accessed in full at

<http://www.homeoffice.gov.uk/rds/pdfs09/horr17c.pdf>

ACMD Publish Advice on 'Legal Highs'

The government has been advised by the Advisory Council on the Misuse of Drugs (ACMD) that synthetic cannabinoids such as 'Spice' are as harmful as cannabis and should be made illegal. The products are sold as herbal material and do not contain tobacco or cannabis, however scientists have found that the plant-based mix is coated with synthetic cannabinoids that imitate the effect of tetrahydrocannabinol (THC); the active 'ingredient' in cannabis. While these 'legal highs' may currently be seen as a harmless alternative to cannabis, the report highlights concerns that synthetic cannabinoids have the potential to be more harmful, due to their method of manufacture and the fact that the compounds present and their quantity (and therefore potency) is unknown to the user.

In the report, entitled 'Consideration of the major cannabinoid agonists' the AMCD has made a number of recommendations:

- ◆ Synthetic cannabinoids have potential harms commensurate with those of cannabis and should be classified and controlled under the Misuse of Drugs Act 1971 accordingly;
- ◆ Synthetic cannabinoids, with named exemptions, have no recognised medical use and should be placed in Schedule 1 of the Misuse of Drugs Regulations 2001; and
- ◆ The majority of synthetic cannabinoids should be brought under control by means of generic legislation, with 5 substances recommended as being named for specific control.

The report was published in response to a request by the former Home Secretary, in March this year, for advice on legal highs and 'Spice' in particular. It draws on much of the evidence cited in the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) recent assessment of the synthetic cannabinoids, based on an expert meeting held in March. The AMCD report on the major cannabinoid agonists can be accessed in full at

<http://drugs.homeoffice.gov.uk/publication-search/acmd/acmd-report-agonists>

The increasing availability and potential harm of synthetic cannabinoids is one of the key priorities set out in the ACMD's annual report. The report also looks at the work undertaken by the council between April 2008 and March 2009 and can be accessed in full at

<http://drugs.homeoffice.gov.uk/publication-search/acmd/annual-report-2008-09>

National Retail Crime Action Plan

The National Retail Crime Steering Group (NRCSG) and the Home Office have published the 'National Retail Crime Steering Group: Action Plan', focussing on business and retail crime defined as 'all crime and disorder committed by or against business'. An increase in shop theft is the background to a package of four issues which the action plan sets out measures to tackle:

- ◆ Understanding retail and crimes against business - reflecting that it can be difficult to accurately assess the level of crime against retailers and encouraging police, Crime and Disorder Reduction Partnerships (CRDPS) and other bodies to share data and best practice;
- ◆ Preventing retail crime - launching an on-line risk assessment tool to help businesses consider their crime prevention/security arrangements;
- ◆ Tackling offenders - through clearer sentencing, positive interventions, focussing on Prolific and other Priority Offenders to reduce re-offending, and strengthened guidance on Penalty Notices for Disorder;
- ◆ Working in partnership - moving towards local areas setting their own priorities and requiring CRDPs and Community Safety Partnerships to make tackling retail crime a priority.

A live action plan will be updated as necessary, which shows what efforts the NRCSG is taking to tackle the problems. The action plan can be found at <http://www.homeoffice.gov.uk/documents/retail-crime-action-plan?view=Binary>

Anti-social Behaviour Action Website Launched

The Home Office has launched an Anti-social Behaviour Action website, which allows users to find contact details for their local anti-social behaviour team, and to find out how their local council, police and other partners have been tackling anti-social behaviour between 2003 and 2008. Information on the ways anti-social behaviour has been tackled includes the number of Acceptable Behaviour Contracts, Anti-social Behaviour injunctions, Eviction Orders and Anti-social Behaviour Orders have been issued.

The website can be found here
<http://www.respect.gov.uk/sasurvey.aspx?id=12864>

£3 Million Awarded to Support Victims of Rape and Sexual Violence

The Government has awarded more than £3 million to support victims of rape and sexual violence. £1.6 million will go to Rape Crisis Centres, and £1.67 million will go to establish eight new Sexual Assault Referral Centres, support 15 existing SARCs and fund 43 Independent Sexual Violence Advisers. These support measures are aimed to provide the specialist support that victims of rape and sexual violence often need to come forward to report the crime to the police.

Further information on the awards can be found at http://www.equalities.gov.uk/media/press_releases/£3m_for_rape_victims.aspx

Principles To Reduce Young People's Involvement In Gun and Knife Crime Launched

Children's Commissioner Sir Al Aynsley-Green has published 'Standing Together: Principles to Reduce Young People's Involvement In Gun and Knife Crime', which explores how gun and knife crime is affecting children and young people in England. The document identifies ten principles to adopt that should improve children and young people's safety and reduce their risk of offending.

The ten principles are:

- ◆ Understanding the causes of offending in order to improve assessment of and response to risk factors;
- ◆ Families are supported by timely interventions that promote good parenting;
- ◆ Children and young people are educated to deal with aggression, conflict and the risks of gun and knife crime;
- ◆ Relations between young people and the police are constructive;
- ◆ Youth work services and leisure provision are accessible to all children and young people, in terms of cost, opening hours and attractiveness;
- ◆ Children and young people's fear of gun and knife crime is reduced;
- ◆ Interventions are multi-agency and locally based, combining prevention and suppression;
- ◆ Support for victims of gun and knife crime, and for relatives and friends of victims;
- ◆ Penalties and sentences for children involved in gun and knife offending are designed to reduce offending and reoffending;
- ◆ High-quality research and assessment underpins policy development and practice implementation.

'Standing Together' can be found at http://www.11million.org.uk/content/publications/content_371

Campaign to Tackle Drug Driving Launched

A £2.3 million advertising campaign has been launched to clamp down on drug driving. The campaign highlights that the police can spot the signs that someone is driving while under the influence of drugs, and once they have been stopped the involuntary effects that drugs have on the body, particularly the eyes, will give them away.

The campaign reiterates that it is illegal to drive whilst unfit through drugs, that taking drugs will impair driving skills, that the police can test for drugs and that the penalties for conviction are the same as for drink driving.

Information on the campaign can be found at <http://www.dft.gov.uk/think/drugdrive/>

Case Law



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Inability to Communicate Refusal of Consent To Sexual Activity Can Amount to A Lack of Capacity Under The Sexual Offences Act 2003

R v C (2009)

HL (Lord Hope of Craighead, Lord Rodger of Earlsferry, Baroness Hale of Richmond, Lord Brown of Eaton-under-Heywood, Lord Mance)
30/7/2009

Criminal Law - Mental Health

Capacity: Consent: Mental Disorder: Sexual Offences Against Mentally Disordered Persons: Ability To Refuse Consent: Interpretation Of S.30(2) Sexual Offences Act 2003: S.30(2) Sexual Offences Act 2003: S.30(2)(A) Sexual Offences Act 2003: S.2(1) Mental Capacity Act 2005

The inability of a person suffering from a mental disorder to refuse to consent to a sexual activity, because of an irrational fear arising from that disorder that prevented the exercise of choice, could amount to a lack of capacity for "any other reason" under the Sexual Offences Act 2003 s.30(2)(a). An inability to refuse included, under s.30(2)(b), an inability to communicate that choice as a result of or for a reason related to a mental disorder.

The appellant, the Crown, appealed against the Court of Appeal's decision (R v C (2008) EWCA Crim 1155, (2009) 1 Cr App R 15) to set aside the conviction of the respondent (C) for sexual activity with a person with a mental disorder impeding choice contrary to the Sexual Offences Act 2003 s.30(1). The complainant (X) was a 28-year-old woman diagnosed with schizo-affective disorder and an emotionally unstable personality disorder. The effects and manifestations of the disorders were intermittent. X had met C while she was suffering from a relapse. She was in a distressed, agitated state, and told C that she wanted to leave the area in which she was living for her own safety. X alleged that C offered to help her and took her to his friend's house, where she was given crack cocaine and asked by C to engage in a sexual activity. X stated that she had been "really panicky and afraid" and had wanted to leave the premises, but that, through fear of death, she had stayed and complied with C's request. In his summing up on the issue of capacity for the purposes of s.30(2) of the Act, the trial judge had stated that X would have been unable to refuse consent if she lacked the capacity to choose whether to agree to the sexual touching "for any reason", which included an irrational fear or such

confusion of mind arising from her mental disorder that she felt unable to refuse any request by C for sex. Alternatively, she would have been unable to refuse if, through her mental disorder, she was unable to communicate that choice to C, even if she was physically able to communicate with him. In setting aside C's conviction, the Court of Appeal found the trial judge's summing up to be inadequate and the conviction unsafe. It decided that an irrational fear resulting from a mental disorder could not be equated with a lack of capacity to choose, and that there was no evidence that X was physically unable to communicate any choice that she had made. It further ruled that a lack of capacity to choose to agree to sexual activity could not be person-specific or situation-specific. The certified questions were whether the Court of Appeal's decision had unduly limited the scope of s.30(1) beyond that which Parliament intended, specifically in holding that (i) an irrational fear that prevented the exercise of choice could not be equated with a lack of capacity to choose; (ii) a lack of capacity to choose could not be person- or situation-specific; (iii) to fall within s.30(2)(b) of the Act, a complainant had to be physically unable to communicate by reason of their mental disorder.

HELD

- (1) The Court of Appeal had been unduly influenced by the views of Munby J. in the decisions of *X City Council v MB* (2006) EWHC 168 (Fam), (2006) 2 FLR 968 and *Local Authority X v M* (2007) EWHC 2003 (Fam), (2009) 1 FLR 443, which related to another context, MB and M considered. The words "for any other reason" in s.30(2)(a) of the Act were clearly capable of encompassing a wide range of circumstances in which a person's mental disorder might rob them of the ability to make an autonomous choice, even though they might have sufficient understanding of the information relevant to making it.
- (2) The Act made it clear that the question was whether the complainant had the capacity to choose whether to agree to the specific act of sexual touching. However, that capacity could fluctuate because of a fluctuation in the person's mental disorder rather than a fluctuation in circumstances. Once it was accepted that choice was an exercise of free will, and that mental disorder might rob a person of free will in a number of different ways and situations, then a mentally disordered person might be capable of exercising choice in one situation but not in another. The question was whether, in the state she was in that day, X was capable of choosing whether to agree to the touching demanded by C. It was difficult to think of an activity that was more person- and situation-specific than sexual relations. The Court of Appeal was led astray by its reliance on the view that capacity could not be situation-specific. On the basis that the trial judge's direction on lack of capacity should be upheld, it was difficult to suggest that the jury was not entitled to reach the verdict it did on the evidence.
- (3) Unlike the approach in the Mental Capacity Act 2005 s.2(1), which encompassed people with physical disorders of the brain that prevented them from communicating, s.30 of the 2003 Act was only concerned with those unable to refuse because of or for a reason related to mental disorder. That inability might involve either the inability to choose or the

inability to communicate the choice made. Although there were some physical disorders of the brain that led to disorders of the mind, it was clear that in the 2003 Act Parliament had in mind an inability to communicate that was the result of or associated with a disorder of the mind. There was no warrant for limiting s.30(2)(b) to a physical inability to communicate.

- (4) For those reasons, each of the certified questions was answered in the affirmative, and C's conviction had to stand.

APPEAL ALLOWED



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Special Skills Of Drivers Irrelevant In Consideration of Whether Driving Was Dangerous

R v CRAIG BANNISTER (2009)

CA (Crim Div) (Thomas LJ, Collins J, Owen J) 28/7/2009

Road Traffic - Criminal Law - Police

Dangerous Driving: Drivers: Police Officers: Road Traffic Offences: Summing Up: Training: Assessment Of Circumstances Of Driver: Special Skills Of Drivers: Road Traffic Act 1991

[A special skill or lack of skill of a driver was an irrelevant circumstance when considering whether he had been driving dangerously.](#)

The appellant road traffic police officer (B) appealed against a conviction for dangerous driving. B had been driving in the dark, with no lighting and in heavy rain on a motorway at 113mph when his car had slid, spun out of control and crashed. B was charged under the Road Traffic Act 1991 s.2A. At trial evidence was given about whether, at the time of the accident, B had been responding to an emergency call. However, it was common ground that that was irrelevant to dangerous driving. B had stated, on the basis of *Milton v Crown Prosecution Service* (2007) EWHC 532 (Admin), (2008) 1 WLR 2481 that it was relevant that he had completed an advanced training course which had enabled him to drive safely at high speed in the conditions concerned, even if it would not be safe for the ordinary competent and careful driver. The judge summed up the case to the jury with *Milton* in mind. However, B was convicted of dangerous driving and sentenced. His sentence was later reduced to a fine, disqualification from driving for 12 months and a requirement that he pass an extended driving test. B submitted that the summing up had not made clear to the jury the correct position based on *Milton*. B further argued that the summing up had been unsatisfactory and that the conviction was unsafe.

HELD

- (1) Taking into account the driving skills of a particular driver was inconsistent with the objective test of the competent and careful driver set out in the Act. Knowledge of circumstances such as drunkenness or susceptibility to hypoglycaemic attacks did not go to the standard of the competent and careful driver but were facts relating to the condition of the driver which were as relevant as the driver's knowledge of the unroadworthiness of a car or the conditions of the weather or the road, *R v Woodward* (Terence) (1995) 1 WLR 375 CA (Crim Div), *R v Marison* (Lee John) (1997) RTR 457 CA (Crim Div) and *R v Pleydell* (Michael Aaron) (2005) EWCA Crim 1447, (2006) 1 Cr App R 12 considered. Those facts could be taken into account without in any way departing from the test of the competent and careful driver; an objective test to be applied by the jury or other decision-maker, Attorney General's Reference (No4 of 2000), *Re* (2001) EWCA Crim 780, (2001) 2 Cr App R 22 applied. In contradistinction to that, taking into account the special skill of a driver would be to substitute the test of the ordinary competent and careful driver set out in the Act and in effect to

re-write the test Parliament had clearly laid down. The special skill, or lack of skill, of a driver was an irrelevant circumstance when considering whether the driving was dangerous, Milton overruled.

- (2) The summing up had not provided a proper basis for a safe conviction for dangerous driving. It was irrelevant to the issue of dangerous driving as to whether B had or had not been on police duty at the relevant time. Policemen were not entitled to drive dangerously when on duty or responding to an emergency. However, evidence on that matter had featured extensively in the evidence and in the summing up. There was a real and substantial risk that the jury had been confused by the summing up as to the proper way in which the clear test set out in the Act should have been applied. The Crown had accepted that a conviction for dangerous driving would not be safe in the circumstances and that no useful purpose would be served by a retrial on the question as to whether driving which was accepted to be careless would also be dangerous. The conviction for dangerous driving was therefore quashed and a conviction for careless driving was instead imposed.
- (3) There was no proper reason for B to have driven at the considerable speeds in the driving conditions concerned. A period of disqualification should only have been for a short period and so the disqualification period was reduced to three months. Furthermore, no useful purpose would be served by requiring B to take an extended driving test so that part of the sentence was quashed.

APPEAL ALLOWED



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Where Misconduct Is Not Admitted Most Cases Should Be Dealt With Under Police (Conduct) Regulations 2004 Not Police Regulations 2003

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

QBD (Leeds) (Silber J) 23/7/2009

Police - Employment

Disciplinary Procedures: Misconduct: Police Officers: Probationary Employees: Probationary Police Officers: Correct Procedure For Allegations Of Misconduct: Discharge Of Probationer: Police (Conduct) Regulations 2004: Reg.13 Police Regulations 2003

The test for determining if a case of misconduct against a probationary police officer should be determined under the Police Regulations 2003 reg.13 or under the Police (Conduct) Regulations 2004 was whether there was such conflict over the facts relating to the misconduct relied on that it would be unfair for the chief constable to make the judgment he did on the basis of the undisputed primary facts rather than give the officer the protection to which she was entitled under the Conduct Regulations.

The claimant probationary police officer (K) sought judicial review of the decision of the defendant chief constable to deal with allegations of misconduct against her through the Police Regulations 2003 reg.13. K had been arrested as a result of an allegation, by her estranged husband, that she had made a fraudulent insurance claim in relation to her engagement ring. K was charged with the offence of obtaining property by deception. She denied the charge and the prosecution offered no evidence against her so that a verdict of not guilty was entered. No misconduct proceedings were brought against K by her police force but proceedings were brought against her pursuant to reg.13. Following a hearing under reg.13, K's resignation was required. The chief constable's decision was influenced by his conclusion that K had been untruthful about matters relating to the insurance claim and the fact that she had denied the police access to her young daughter to corroborate her account. K submitted that the matter should have been considered under the disciplinary procedure of the Police (Conduct) Regulations 2004, which provided officers accused of disciplinary offences with a substantial degree of protection such as legal representation and proof of the conduct on the balance of probabilities; and the chief constable's decision to proceed by reg.13 was unlawful or Wednesbury unreasonable.

HELD

The test for determining if a case against a probationary police officer should be determined under reg.13 or under the Conduct Regulations was whether there was such conflict over the facts relating to the misconduct relied on that it would be unfair for the chief constable to make the judgment he did on the basis of the undisputed primary facts rather than give the officer the protection to which she was entitled under the Conduct Regulations,

R v Chief Constable of the West Midlands Ex p Carroll (1995) 7 Admin LR 45 CA (Civ Div), R v Chief Constable of the British Transport Police Ex p Farmer (1999) COD 518 CA (Civ Div) and R (on the application of Khan) v Chief Constable of Lancashire (2009) EWHC 472 (Admin) applied. The position in most, if not all, cases where the facts on which the complaint was based were not admitted was that such cases should be dealt with under the disciplinary procedures and not under reg.13. There was a dispute on the evidence in the instant case and those contentious matters should have been the subject of scrutiny under the Conduct Regulations. It was a classic case of a disputed claim where a full disciplinary hearing was required. The chief constable's decision was quashed as the decision not to hold disciplinary proceedings was both Wednesbury unreasonable and in breach of the duty of fairness.

APPLICATION GRANTED



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The Grounds For Invoking Regulation 13 of the Police Regulations 2003 Are Not Limited to the Performance of the Probationer

R (on the application of MARK VERITY) v CHIEF CONSTABLE OF NORTH YORKSHIRE (2009)

QBD (Leeds) (Silber J) 24/7/2009

Employment - Police

Children's Welfare: Decisions: Police Officers: Probationary Employees: Ability To Perform Duties Required To Complete Probation: Dismissal Of Employees Despite No Criticism Of Performance: Reg.13 Police Regulations 2003

A chief constable was entitled to dispense with the services of a probationary constable under the Police Regulations 2003 reg.13 where the probationer had previously been acquitted of sexually touching children under the age of 13; in the circumstances, the chief constable had decided that he did not feel the probationer could be trusted to deal with incidents involving young people and so did not feel it likely that the probationer could become an efficient constable, having regard to the measures inevitably imposed on him for the protection of children.

The claimant (V) applied for judicial review of a decision of the defendant chief constable to dispense with his services as a probationary constable under the Police Regulations 2003 reg.13. The decision to dispense with V's services was taken in respect of matters that occurred before his employment with the police, where he had been found not guilty of sexually touching children under the age of 13. V attended a hearing under reg.13. He had been supplied with the relevant information and given an opportunity to make representations beforehand. The chief constable stated that he did not feel confident that V could be entrusted to deal with incidents involving young people, and that the

only option would be to put restrictions on his deployment. However, the chief constable maintained that due to the nature of police work, the only realistic way of preventing V from dealing with children would be to restrict his duties to the extent that he would not be able to complete his probation and be properly assessed in the core competencies required for the office of constable. Therefore, the chief constable stated that pursuant to reg.13 V would not be likely to become an efficient constable, having regard to the measures inevitably imposed on him to protect children. In reaching his decision, the chief constable had considered representations from the chair (L) of the meeting to discuss the multi-agency response of the local children's services to V's acquittal of the charges. L stated that, although she could not decide if the alleged abuse occurred or whether V posed an ongoing risk, on the balance of probabilities there existed a prima facie case against him in respect to his suitability as a police officer, and that concern remained about his resuming his role with the police. V submitted that (1) reg.13 did not enable the chief constable to dispense with his services where no criticism had been made of his performance as a probationary constable. V argued that the language of the Regulation contemplated that there had to be something about the probationer himself that led to the conclusion that he was not likely to become an efficient constable; (2) the chief constable's decision had been based, in part, on irrelevant considerations, namely the representations made by L; (3) he had not been given the opportunity to make representations at the reg.13 hearing.

HELD

- (1) The grounds for invoking reg.13 were not limited to the performance of the probationer, and could include other factors, R (on the application of Khan) v Chief Constable of Lancashire (2009) EWHC 472 (Admin) applied. Therefore, a chief constable could dispose of the services of a probationary constable if he considered that, for any of a variety of reasons, it would be unlikely that the probationer would become an efficient constable. There was nothing in the wording that showed that the word "efficient" should not be given its ordinary meaning of "working productively with minimum wasted effort or expense". Accordingly, a chief constable was entitled to dispense with a probationer's services if he considered that they were unlikely to be productive with minimum wasted effort or expense, and there would be numerous instances where that could possibly apply because of some aspects of the probationary constable's past. Therefore, the limitations on a probationary officer's work could mean that he would not become an "efficient" police constable. In the instant case, the chief constable would have been able to come to his own conclusion on the relevant risk factors and he also had the representations from L. Accordingly, the chief constable had been entitled to reach the conclusion that he did. In any event, the ability to discharge a probationer under reg.13 did not operate on an objective basis but on whether the chief constable personally considered that the probationer would not become an efficient constable, and the chief constable was to be allowed a substantial degree of deference as it was he who knew what constables were expected to do and the risks that V could constitute to children.

- (2) L's representations were relevant to the chief constable's decision on V's ability to become an "efficient" constable. The danger that V could pose to children was obviously a factor of importance that required serious consideration, and it could not be doubted that the chief constable was under a duty to obtain as much information as possible. It was not irrelevant for him to take account of agencies with which his force was required to work closely and that were established to consider the protection of children; their conclusion that they had lost confidence in V's ability to be an efficient and acceptable officer was relevant. In addition, it was notable that L had not actually claimed that V was guilty of the abuse. It was clear that none of the material complained about was irrelevant, and it had been the chief constable's task to get a complete picture of the situation.
- (3) V had been served in advance with all the relevant documentation and had made representations accordingly before the reg.13 hearing. There was no specific procedure under reg.13 that the chief constable had to follow, and it was clear that V had received a fair hearing.

APPLICATION REFUSED



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Disclosure of Prosecution Witnesses' Convictions Required Only Those Which Weakened the Crown's Case Or Strengthened the Defence Case

HM ADVOCATE v JOHN MURTAGH (2009)

PC (Sc) (Lord Hope of Craighead, Lord Scott of Foscote, Lord Rodger of Earlsferry, Lord Brown of Eaton-under-Heywood, Lord Collins of Mapesbury) 3/8/2009

Criminal Evidence - Human Rights

Disclosure: Previous Convictions: Prosecution Witnesses: Right To Fair Trial: Right To Respect For Private And Family Life: Need For Disclosure Of All Prosecution Witnesses' Convictions: Scotland: Art.6 European Convention On Human Rights: Art.8 European Convention On Human Rights

[An accused's right to a fair trial required the disclosure only of such previous convictions of Crown witnesses as materially weakened the Crown's case or strengthened that of the defence.](#)

The High Court of Justiciary referred a devolution issue that had arisen in proceedings before it to the committee. The accused (M) had been prosecuted for assault. The Crown indicated that it intended to call evidence from five witnesses. M asked the Crown for a schedule of the witnesses' previous convictions and outstanding charges against them. The schedules provided were heavily redacted. The non-redacted entries revealed matters which were relevant to questions of the witnesses' character and credibility, but it was impossible to tell what the redacted entries referred to. M successfully sought an order for the disclosure of all previous convictions, and the Crown appealed. The Advocate General intervened and required the court to make the reference. The High Court asked (i) whether the European Convention on Human Rights 1950 art.6 required the Crown to disclose to M all previous convictions of Crown witnesses or whether it required only the disclosure of such convictions as materially weakened the Crown's case or strengthened that of the defence; (ii) whether it was consistent with art.6 for the Crown to take the initial decision as to whether such convictions weakened its case or strengthened the defence. M argued that (1) the witnesses' entire criminal histories had to be disclosed, since they constituted information of a kind that did not permit selection; (2) the entire histories should be disclosed to the accused's solicitor so that he could make the decision as to materiality.

HELD

- (1) The accused's right to a fair trial required the disclosure only of such previous convictions or outstanding charges as materially weakened the Crown's case or strengthened that of the defence. The right of disclosure was not an absolute right, and in some cases it was necessary to withhold certain information from the defence so as to preserve the fundamental rights of another individual or to safeguard an important public interest, *Jasper v United Kingdom* (27052/95) (2000) 30 EHRR 441 ECHR applied. Among the rights of others was the right to respect for private life, which was guaranteed by art.8(1). Although the fact that someone had been

convicted of a crime was not itself private information, information held in the criminal history system about a person's previous convictions was not open to the public. Release of that information to the accused by the Crown would engage the witness's art.8(1) right, *R v Chief Constable of North Wales Ex p AB* (1999) QB 396 CA (Civ Div) and *Rotaru v Romania* (28341/95) 8 BHRC 449 ECHR considered. Its release would be incompatible with that right unless the interference could be justified under art.8(2). A balance had to be struck between the accused's art.6 right and the witness's art.8 right. It would be wrong for the Crown to exclude all aspects of a witness's criminal history to which objection could possibly be taken for not being relevant. A generous approach was therefore to be taken to what might be relevant, but there were limits to that approach, bearing in mind the witness's art.8 right. A rule that the entire criminal history of a witness must be disclosed went too far. The release of such information without regard to its materiality would be arbitrary, as no legitimate purpose would be served by the release of information that was not material. It would go beyond what was necessary for the protection of the accused's art.6 right, so it would not be justified under art.8(2).

- (2) It was consistent with art.6 for the Crown to take the initial decision. There was a potential for embarrassing or damaging information to leak out if the selection was not made before the information was released. An accused who was not represented was entitled to the same information as one who was represented, and an accused who was represented was entitled to see the information provided to his solicitor. If the Crown made the selection, that would ensure that such parts of the history that were not disclosable were not disclosed. There had to be a reliable system for making the selection. The advice given to prosecutors should be reviewed, with greater emphasis placed on the need for a generous approach to be taken. There should be a general working rule that only those parts of the criminal history that were likely to be embarrassing or damaging to the witness should be withheld if they did not satisfy the materiality test.

JUDGMENT ACCORDINGLY



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Code for Crown Prosecutors Did Not Meet ECHR Requirements of Accessibility and Foreseeability in Cases of Assisted Suicide

R (on the application of DEBBIE PURDY) (Claimant) v DIRECTOR OF PUBLIC PROSECUTIONS (Defendant) & SOCIETY FOR THE PROTECTION OF UNBORN CHILDREN (Intervener) (2009)

HL (Lord Phillips of Worth Matravers, Lord Hope of Craighead, Baroness Hale of Richmond, Lord Brown of Eaton-under-Heywood, Lord Neuberger of Abbotsbury) 30/7/2009

Human Rights - Criminal Law

Assisted Suicide: Codes Of Practice: Consent To Prosecute: Director Of Public Prosecutions: Prosecutions: Right To Respect For Private And Family Life: Dpp's Consent To Prosecute: Absence Of Crime-Specific Policy Identifying Factors To Be Considered: S.2(4) Suicide Act 1961: Art.8 European Convention On Human Rights: S.2(1) Suicide Act 1961

The Code for Crown Prosecutors was insufficient to satisfy the requirements of the European Convention on Human Rights 1950 art.8 of accessibility and foreseeability in assessing how prosecutorial discretion was likely to be exercised in cases of assisted suicide under the Suicide Act 1961 s.2(1). The Director of Public Prosecutions was required to promulgate an offence-specific policy identifying the facts and circumstances that he would take into account in deciding whether to consent to a prosecution under s.2(1).

The appellant (P) appealed against a decision (R (on the application of Purdy) v DPP (2009) EWCA Civ 92, (2009) 1 Cr App R 32) that the absence of a crime-specific policy identifying the facts and circumstances that the Director of Public Prosecutions would take into account when deciding whether to prosecute an individual for assisting another person to commit suicide did not make the operation and effect of the Suicide Act 1961 s.2(1) unlawful and did not mean that it was not in accordance with law for the purposes of the European Convention on Human Rights 1950 art.8. P, who suffered a debilitating illness, had declared her wish to travel to a country where assisted suicide was lawful to end her life when it became utterly unbearable. She sought information in order to make an informed decision about whether to ask for her husband's assistance in doing so. The DPP had declined to say what factors, other than the general factors contained in the Code for Crown Prosecutors, he would take into consideration in deciding whether, under s.2(4) of the Act, it was in the public interest to prosecute those who assisted people to end their lives in countries where assisted suicide was lawful. P unsuccessfully sought judicial review and her appeal was also rejected. P argued that (1) the prohibition in s.2(1) constituted an interference with her right to respect for her private life under art.8(1); (2) such interference was not "in accordance with the law" as required by art.8(2) in the absence of an offence-specific policy by the DPP which set out the factors that would be taken into account by him and the Crown Prosecutors acting on his behalf in deciding under s.2(4) whether it was in the public interest to bring a prosecution under that section.

HELD

- (1) The right to decide when or how to die was not excluded from art.8(1), *Pretty v United Kingdom* (2346/02) (2002) 2 FLR 45 ECHR applied, R (on the application of *Pretty*) v DPP (2001) UKHL 61, (2002) 1 AC 800 not applied. Article 8(1) was engaged in the instant case.
- (2) The Code would normally provide sufficient guidance to Crown Prosecutors and to the public as to how decisions should or were likely to be taken as to whether, in a given case, it would be in the public interest to prosecute. That could not be said of cases where the offence was aiding or abetting the suicide of a person who was terminally ill or severely and incurably disabled, who wished to be helped to travel to a country where assisted suicide was lawful and who, having the capacity to take such a decision, did so freely and with full understanding of the consequences. The Code was insufficient to satisfy the art.8(2) requirements of accessibility and foreseeability in assessing how prosecutorial discretion was likely to be exercised in s.2(1) cases, *Hasan v Bulgaria* (30985/96) (2002) 34 EHRR 55 ECHR considered. That was underlined by the decision letter in the case of *Daniel James*, in which the DPP, when considering the discretion under s.2(4), had found that many of the factors listed in the Code were irrelevant and that other unlisted factors had to be considered in such difficult cases. The DPP was required to promulgate an offence-specific policy identifying the facts and circumstances that he would take into account in deciding whether to consent to a prosecution under s.2(1).

APPEAL ALLOWED



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SI 2019/2009 The Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009

In force **3 August**. These Regulations set out the notification requirements that a person subject to a Violent Offender Order or an Interim Violent Offender Order (imposed under Part 7 of the Criminal Justice and Immigration Act 2008) must comply with. These include a requirement to notify police where the offender intends to leave the United Kingdom for a period of three days or more, and a notification requirement on return. If the person has no sole or main residence in the United Kingdom they must give a notification once a week.

SI 2060/2009 The Police Pensions (Amendment) Regulations 2009

In force **1 September**. These Regulations make amendments to existing regulations on police officer pensions and retirement benefits. It extends the existing regulations to apply to employed constables in the National Policing Improvement Agency (NPIA). Upon joining the NPIA constables will remain within their police pension scheme with the same benefits and retirement benefits.

Where an officer has been a member of the Police Pension Scheme 1987, the Regulations limit the amount of pensionable service officers can build up under the New Police Pension Scheme 2006. These provisions are not retrospective.

SI 2087/2009 The Criminal Procedure (Amendment) Rules 2009

In force **5 October**. These Rules make a significant number of amendments to the Criminal Procedure Rules 2005. A change to the rules on Overseas Freezing Orders will require a court not to consider making an order unless it considers that the chief of police for the area in which the evidence is situated has had notice of the order and has had chance to make representations.

A new Part 6 (Investigation Orders) makes substantial provision regarding the courts powers and the content to be included when making an application for investigation orders under the Terrorism Act 2000 (the 'TA 2000') and the Proceeds of Crime Act 2002 ('POCA 2002').

For orders under the Terrorism Act 2000, as well as complying with the general rules in Part 6, an applicant must:

- ◆ Apply in writing;
- ◆ Serve the application on the court officer in all cases and the respondent unless the court directs otherwise;
- ◆ Identify the respondent;
- ◆ Give the information required by whichever of Rules 6.7 to 6.10 applies; and
- ◆ Serve any order on the respondent.

Rule 6.7 applies to a production order under paragraphs 5 and 10 of Schedule 5 to the TA 2000. Rule 6.8 applies to an explanation order under paragraphs 10 and 13 of Schedule 5 to the TA 2000. Rule 6.9 applies to a customer information order under paragraphs 1 and 4 of Schedule 6 to the TA 2000. Rule 6.10 applies to an account monitoring order under paragraphs 2 and 4 of Schedule 6A to the TA 2000.

For orders under POCA 2002, as well as complying with the general rules in Part 6, an applicant must:

- ◆ Apply in writing;
- ◆ Serve the application on the court officer in all cases and the respondent unless the court otherwise directs;
- ◆ Identify the respondent and the person who is the subject of the confiscation or money laundering investigation;
- ◆ Explain why the applicant thinks the person under investigation has either benefited from criminal conduct, in the case of a confiscation investigation or has committed a money laundering offence, in the case of a money laundering investigation;
- ◆ Give the additional information required by whichever of Rules 6.15 to 6.19 applies; and
- ◆ Serve any order made on each respondent.

Rule 6.15 applies to a production order under sections 345 and 351 of POCA 2002. Rule 6.16 applies to an order to grant entry under sections 347 and 351 of POCA 2002. Rule 6.17 applies to a disclosure order under sections 357 and 362 of POCA 2002. Rule 6.18 applies to a customer information order under sections 363 and 369 of POCA 2002. Rule 6.19 applies to an account monitoring order under sections 370 and 375 of POCA 2002.

The Rules also include amendments to the procedures regarding disclosure, including prosecution disclosure and public interest rulings, to the procedures for introducing a witness statement in evidence under section 9 of the Criminal Justice Act 1967, and to the rules on expert evidence. Amendments consequential to the Supreme Court becoming operational are also made.

SI 2133/2009 The UK Border Agency (Complaints and Misconduct) Regulations 2009

In force **5 August**. These Regulations make provision for the Independent Police Complaints Commission to have oversight of serious complaints and conduct matters that arise out of actions by UK Border Agency officers and officials exercising certain functions relating to immigration, asylums and customs.