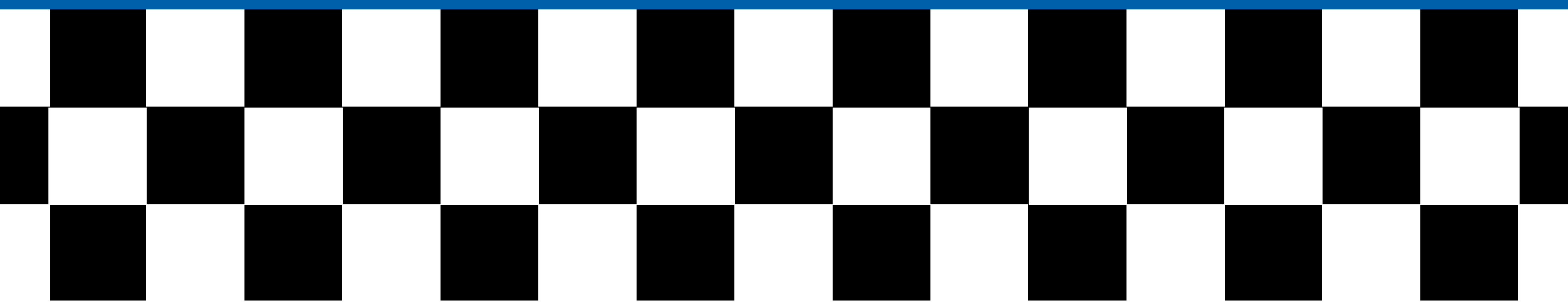
NPIA
National Policing Improvement Agency

Digest

April 2011

A digest of police law, operational policing practice and criminal justice



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

The NPIA aims to provide fair access to learning and development for all. To support this commitment, the Digest is available in alternative formats upon request. Please email digest@npia.pnn.police.uk or telephone +44 (0)1480 334568.

Disclaimer and Copyright details

This document is intended as a guide to inform organisations and individuals of current and forthcoming issues in the policing environment and NPIA cannot guarantee its suitability for any other purpose. Whilst every effort has been made to ensure that the information is accurate, NPIA cannot accept responsibility for the complete accuracy of the material. As such, organisations and individuals should not base strategic and operational decisions solely on the basis of the information supplied.

© - National Policing Improvement Agency 2011

All rights reserved. No part of this publication may be reproduced, modified, amended, stored in any retrieval system or transmitted, in any form or by any means, without the prior written permission of the National Policing Improvement Agency or its representative. **The above restrictions do not apply to police forces or authorities, which are authorised to use this material for official, non-profit-making purposes only.**

Copyright Enquiries: Telephone +44 (0)1256 602650

Digest Editor: Telephone +44 (0)1480 334568

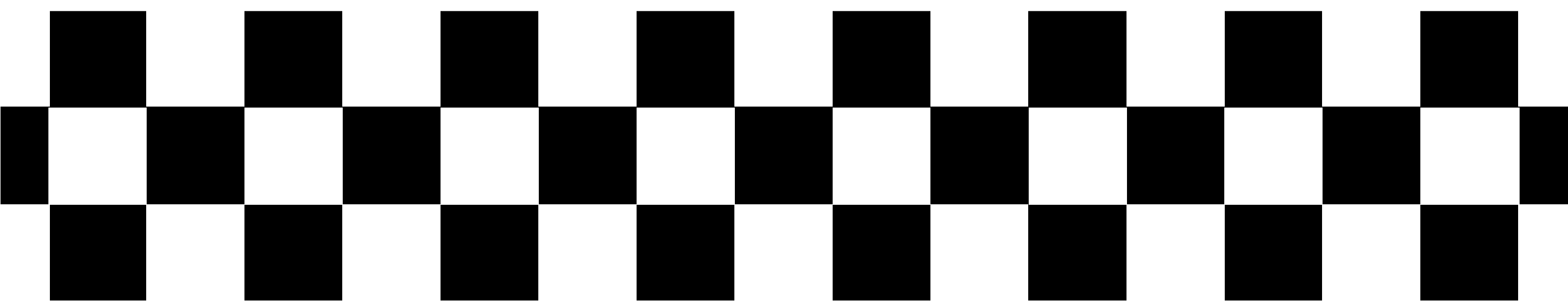
April 2011

Digest

Legal Services

Chief Executive Officer Directorate

www.npia.police.uk/digest



NPIA Digest April 2011

This month's edition of the Digest contains a summary of issues relating to police law, operational policing practice and criminal justice.

There are reports of Court of Appeal cases on entrapment by undercover officers, the use of hearsay evidence in the course of confiscation proceedings and the overlap between a direction under section 34 of the Criminal Justice and Public Order Act 1994 and a Lucas direction as to lies.

We look in detail at the recently published HMIC review of progress made in public order policing since July 2009, police complaint statistics published by the IPCC as well as the Home Affairs Committee report on police finances.

Statistical bulletins are covered which address the operation of police powers under the Terrorism Act 2000 and subsequent legislation, local adult reoffending in England and Wales from 1 October 2009 to 30 September 2010, sentencing for knife possession from October to December 2010 and provisional quarterly sentencing statistics from July to September 2010.

We consider the publication of guidance for victims of hate crime and guidance to assist pubs, clubs and shops spot fake identification.

There are also articles on the consultation on a code of practice for CCTV and ANPR, an upcoming project on police effectiveness in a changing world, the action plan to end violence against women and girls, new support for victims of domestic violence who are visa holders, a new initiative to support victims and witnesses in their communities and new support centres for rape victims.

The progress of proposed new legislation through Parliament is examined and statutory instruments published this month summarised.

 © - National Policing Improvement Agency 2011

Contents

LEGAL ... 7

LEGISLATION ... 7

Bills Before Parliament 2010/11 - Progress Report ... 7

CASE LAW ... 9

CASE LAW - CRIME ... 9

Application by the Prosecution for Leave to Appeal under Section 58 Criminal Justice Act 2003 ... 9

CASE LAW - EVIDENCE AND PROCEDURE ... 13

Use of Hearsay Evidence in the Course of Confiscation Proceedings under Part 2 of the Proceeds of Crime Act 2002 ... 13

Overlap Between a Direction under Section 34 of the Criminal Justice and Public Order Act 1994 and a Lucas Direction as to Lies ... 16

STATUTORY INSTRUMENTS ... 21

POLICING PRACTICE ... 27

POLICE ... 27

HMIC Review of Progress Made in Public Order Policing Since July 2009 ... 27

New Consultation on Code of Practice for CCTV and ANPR ... 30

Operation of Police Powers under the Terrorism Act 2000 and Subsequent Legislation: Arrests, Outcomes and Stop and Searches. Quarterly Update to September 2010 ... 30

IPCC Publishes Police Complaint Statistics for 2009/10 ... 32

Project on Police Effectiveness in a Changing World ... 33

CRIME ... 34

Local Adult Reoffending in England and Wales 1 October 2009 - 30 September 2010 ... 34

New Guidance for Hate Crime Victims ... 34

New Guidance to Help Pubs, Clubs and Shops Spot Fake Identification ... 35

CRIMINAL JUSTICE SYSTEM ... 36

Knife Possession Sentencing Quarterly Brief October to December 2010 ... 36

Action Plan to End Violence Against Women and Girls ... 38

New Domestic Violence Support for Visa Holders ... 39

New Support Centres for Rape Victims ... 39

Network of Advocates to Speak Up for Crime Victims ... 39

Provisional Quarterly Sentencing Statistics July to September 2010 ... 40

© - National Policing Improvement Agency 2011

PARLIAMENTARY ISSUES 44

Home Affairs Committee Publishes Report on Police Finances 44

 © - National Policing Improvement Agency 2011

Bills Before Parliament 2010/11 - Progress Report

The following Bills from the 2010/11 session have progressed as follows through the parliamentary process:

- Police Reform and Social Responsibility Bill - The Bill covers five distinct policy areas: police accountability and governance; alcohol licensing; the regulation of protests around Parliament Square; misuse of drugs; and the issue of arrest warrants in respect of private prosecutions for universal jurisdiction offences. Key areas:
  - Replaces police authorities with directly elected Police and Crime Commissioners, with the aim of improving police accountability;
  - Amends and supplements the Licensing Act 2003 with the intention of 'rebalancing' it in favour of local authorities, the police and local communities;
  - Sets out a new framework for regulating protests around Parliament Square. Relevant sections of the Serious Organised Crime and Police Act 2005 would be repealed and the police would be given new powers to prevent encampments and the use of amplified noise equipment;
  - Enables the Home Secretary to temporarily ban drugs for up to a year, and removes the statutory requirement for the Advisory Council on the Misuse of Drugs to include members with experience in specified activities; and
  - Introduces a new requirement for private prosecutors to obtain the consent of the Director of Public Prosecutions prior to the issue of an arrest warrant for 'universal jurisdiction' offences such as war crimes or torture. The Government's aim in introducing this change is to prevent the courts being used for political purposes.

The Bill was presented to Parliament on 30 November 2010. On 13 December 2010 the House of Commons debated the main principles of the Bill. The Commons decided that the Bill should be given its Second Reading and sent it to a Public Bill Committee for scrutiny.

The Police Reform and Social Responsibility Bill Committee took written evidence and heard oral evidence before considering the Bill clause by clause. The Committee's consideration of the Bill finished on 17 February. The Bill has been reprinted to incorporate the changes made during committee consideration of the Bill and will have its remaining stages on the floor of the House on 30 and 31 March 2011.

- Protection of Freedoms Bill - The Bill:
  - Provides for the destruction, retention, use and other regulation of certain evidential material;
  - Imposes consent and other requirements in relation to certain processing of biometric information relating to children;
  - Provides for a code of practice about surveillance camera systems and for the appointment and role of the Surveillance Camera Commissioner;
  - Provides for judicial approval in relation to certain authorisations and notices under the Regulation of Investigatory Powers Act 2000;
  - Provides for the repeal or rewriting of powers of entry and associated powers and for codes of practice and other safeguards in relation to such powers;
  - Makes provision about vehicles left on land;
  - Provides for a maximum detention period of 14 days for terrorist suspects;
  - Replaces certain stop and search powers and to provide for a related code of practice;
  - Amends the Safeguarding Vulnerable Groups Act 2006;
  - Makes provision about criminal records;
  - Disregards convictions and cautions for certain abolished offences;
  - Makes provision about the release and publication of datasets held by public authorities and to make other provision about freedom of information and the Information Commissioner; and
  - Repeals certain enactments.

The Bill was presented to Parliament on 11 February 2011. On 1 March 2011 the House of Commons debated the main principles of the Bill. The Commons decided that the Bill should be given its Second Reading and sent it to a Public Bill Committee for scrutiny. The Protection of Freedoms Bill Committee is now accepting written evidence.

The progress of Bills in the 2010/11 parliamentary session can be found at
http://services.parliament.uk/bills/

 © - National Policing Improvement Agency 2011

Application by the Prosecution for Leave to Appeal under Section 58 Criminal Justice Act 2003

R v M [2011] EWCA Crim 648

The respondent, M, was to be tried at Burnley Crown Court in late November 2010 on an indictment containing one count of being concerned in supplying a Class A controlled drug, namely a quantity of diamorphine. M applied for the prosecution to be stayed as an abuse of the process of the court on the ground that he had been entrapped by an undercover police officer into committing the offence, as part of Operation Nimrod. Both counsel considered that the application should be determined after the police officer in question, referred to as JC, had given his evidence before the jury and been cross-examined. However, the Judge considered that he could and should determine the application on the basis of the written material before him, which set out the circumstances in which it was contended by the prosecution that M had been approached and supplied the drug to JC. Having heard submissions from counsel for the prosecution and without calling counsel for M, he stayed the prosecution.

The CPS appealed this decision and having considered the submissions of both counsel for the prosecution and M, the Court of Appeal allowed the appeal and ordered the proceedings to be resumed in the Crown Court.

Operation Nimrod was a covert operation targeted at drug dealing in the North West of England. One of the people targeted as part of the operation was M. Between 4 September 2009 and 29 December 2009 there were various contacts between M and an undercover officer, JC.

On 29 October 2009 JC asked M "Where can I get some white from in the town centre?" M replied "You can get it off MC, but I haven't got the number. You can ring X though, but we'll have to meet him at the phone box near my house."

M and JC then decided to call the dealer and JC gave M 40p to make the call from a phone box. During the call M ordered "twenty white and brown" and they were told to go to an alleyway near to a public house and wait for the dealer. JC gave M £25 and confirmed "one of each". Shortly after a Mercedes pulled up and M leant inside the driver's side window. After the car drove away, M approached JC and handed him a cellophane wrap containing a brown substance and said "That's your brown. It's a bit small but it's good gear." He also gave JC a blue coloured cellophane wrapper and said "That's your white; it's good white that."

© - National Policing Improvement Agency 2011

The drugs were diamorphine and although the parties met on other occasions, this was the only occasion on which drugs were supplied to JC by M.

In his ruling, the Judge commented that the facts were not in dispute and that he had not thought it necessary to hear any evidence before making his ruling.

The issue was whether M would have involved himself in the activity in question but for the request made by JC. It was apparent that M was a drug user, however in none of the periods of contact did he, of his own volition, make any attempt to encourage the undercover officer in the use of drugs, nor did he offer to supply any or persuade him to take drugs until the occasion on 29 October 2009.

Having regard to the authority of R v Loosely [2001] UKHL 53, the Judge was satisfied that M would not have made any supply to JC had he not been incited by the undercover officer to do so and that at the time of the request the officer had ingratiated himself with M and they had become acquaintances, if not friends. M had agreed to JC's request, not for profit but because he thought he was helping a fellow addict. In these circumstances, the prosecution was an abuse of process.

Counsel for the prosecution submitted that:

- The officer had done no more than pose an open ended question. He had not asked M to commit a crime and had only given M the opportunity to commit a crime if he so chose;
- This was an example of the police doing no more that presenting the respondent with an opportunity to commit a crime. The police had not instigated or incited the crime.

Counsel for M submitted that:

- The police had breached the principle laid down by Lord Hoffmann in Loosely namely that "the only proper purpose of police participation is to obtain evidence of criminal acts which they suspect someone is about to commit or in which they are already engaged. It is not to tempt people to commit crimes in order to expose their bad characters and punish them." The Judge was entitled to take the view that even if this was an authorised operation the police had caused M to commit an offence which he would not otherwise have committed;
- M was induced to buy heroin for JC by the prospect of assistance in buying bottles of sherry. M, who is addicted to alcohol, is barred from entering the majority of shops in his area which sell cheap liquor. JC provided a vital service to M by taking money from him and buying bottles of sherry on his behalf;

© - National Policing Improvement Agency 2011

- M was particularly vulnerable to unfair pressure of this kind. He was an intermediary who was tempted to move outside his usual way of life and do a favour for a favour.

Having regard to the ruling in Loosely and the emphasis placed in that case on the fact that whether a prosecution is an abuse of process by reason of entrapment depends on the facts of each case, the Court of Appeal set out the principally relevant facts in the present case, namely:

- M was an addict who had never previously been convicted of supplying drugs. However, he was committing criminal offences by obtaining and possessing diamorphine for his own use;
- JC ingratiated himself into M's confidence in order to obtain evidence against those supplying hard drugs at, it was inferred, a higher level than that of a street dealer;
- Operation Nimrod was a legitimate police operation and it is accepted that JC's conduct was legitimate as an attempt to obtain evidence against M's supplier;
- M would not have supplied drugs had it not been for JC's request;
- In order to obtain that evidence, JC asked M where he could obtain hard drugs. He knew that M's supplier would not deal with JC directly, so that the supply would be indirect, through M;
- M was not asked himself to supply the drugs. He was asked where drugs could be obtained;
- No pressure or persuasion was used by JC, who offered no inducement to M to commit the offence.

The Court of Appeal stated that the final fact was particularly significant in the present case.

The court stated that the line between legitimate police conduct and improper entrapment may be difficult to draw, however in general, conduct that is open to a finding of entrapment such as to render a prosecution improper involves some pressure or persuasion on the defendant to commit the crime. Providing the opportunity for the commission of the crime will not of itself lead to a finding of entrapment.

Having regard to the judgment in Loosely, the Court took note of the point that "in some instances a degree of active involvement by the police in the commission of a crime is generally regarded as acceptable", for example test purchases in which a plain-clothes officer acts in the same way as an ordinary customer might have done.

© - National Policing Improvement Agency 2011

In addition the court noted the statement in Loosely that "there are occasions when it is necessary for the police to resort to investigatory techniques in which the police themselves are the reporters and the witnesses of the commission of a crime. Sometimes the particular technique is acceptable. Sometimes it is not. For even when the use of these investigatory techniques is justified there are limits to what is acceptable."

The Court of Appeal also noted that the overall consideration is always whether the conduct of the police was so seriously improper as to bring the administration of justice into disrepute. Furthermore, the court had regard to the point made in Loosely that the greater the inducement held out by the police, and the more forceful or persistent the police overtures, the more readily a court may conclude that the police overstepped the boundary. In addition, in assessing the weight to be given to the police inducement, regard is to be had to the defendant's circumstances including his vulnerability, in recognition that what may be a significant inducement to one person may not be so to another.

The Court of Appeal determined that there is no significant distinction between the assumed facts of the present case and Loosely. The court noted that it is an inherent aspect of any undercover police operation that the undercover officer ingratiates himself into the confidence of individuals involved in criminal conduct. Where an officer in this position offers an opportunity to a defendant to commit a crime without persuasion or pressure of the offer of significant inducement, this will not generally result in it being an abuse of process to prosecute the person who took that opportunity to commit an offence.

As such the court found that it was not open to the Judge to make a finding of entrapment on the assumed facts before him such as to render the prosecution of M an abuse of process. The Court of Appeal noted that during the course of evidence, facts may be established that go significantly beyond those on which the Judge made his decision and in such a case it may be necessary for the court to review this decision. On this basis, the Court of Appeal considered that it would have been prudent for the Judge to have addressed the issue of entrapment after JC had given evidence before the jury, with M giving evidence in the absence of the jury at that stage if necessary.

The court noted that the matters relied on by M in support of his application for a stay of proceedings will be relevant to sentence, if he changes his plea or if he is convicted.

The full judgment is available at
http://www.bailii.org/ew/cases/EWCA/Crim/2011/648.html

 © - National Policing Improvement Agency 2011

Use of Hearsay Evidence in the Course of Confiscation Proceedings under Part 2 of the Proceeds of Crime Act 2002

Vincent Clipston v R [2011] EWCA Crim 446

In the Crown Court, the appellant changed his plea to guilty and was convicted of conspiracy to supply a controlled Class A drug. He was sentenced to 12 years imprisonment. Before the magistrates' court, a co-accused, Luigi Menga, admitted two counts of possessing Class A drugs with intent to supply and two counts of being concerned in the supply of Class A drugs. He was sentenced to eight years imprisonment.

Confiscation proceedings were brought by the Crown under the Proceeds of Crime Act (POCA) 2002 and a confiscation order in the sum of £500,000 was made against the appellant, with an order to serve four years imprisonment in default. The benefit figure was deemed to be £1,641,160 and the available amount £500,000 made up of £21,383.83 known assets and the remainder hidden assets.

An appeal was brought against the confiscation order on the grounds that:

- The hearsay provisions contained in the Criminal Justice Act 2003 (CJA) were inapplicable in the confiscation proceedings and as such out of court statements made by Mr Menga and remarks made in mitigation by counsel for and on behalf of Mr Menga (hereinafter "the Menga evidence") were wrongly allowed in to evidence. The defence argued that the Crown's application to adduce this evidence should have been considered with regard to the Civil Evidence Act 1995 (CEA);
- On the basis that the Menga evidence should not have been adduced, there was no other evidence of hidden assets and as such the benefit figure should have been computed more in accordance with the appellant's evidence, namely the realisable figure should have been the agreed figure for the known realisable assets.

By way of background, the Crown's case was that the appellant was at the top of a conspiracy to supply Class A drugs and he employed the co-defendants as runners and drivers for the delivery of the drugs. A number of addresses were used as part of the supply including one at which Mr Menga was employed by the appellant to bag the drugs, prepare deals and distribute accordingly. Following a forced entry into this address by the police, Mr Menga was arrested.

In interview Mr Menga admitted that he was a dedicated "bagger" and that he had dealt with 22.5 kilos of heroin and 4.5

© - National Policing Improvement Agency 2011

kilos of cocaine in the nine months preceding his arrest. This comprised most of the "Menga evidence".

Following Menga's arrest the appellant continued his activities, and if anything the throughput of drugs increased. He was arrested the following year.

In the confiscation proceedings, the Crown sought to reply upon what Menga had said during the investigation, particularly with regard to the quantity of drugs involved. Following initial reluctance to attend court, Menga did attend the hearing where he then made clear that he did not wish to give evidence in the confiscation proceedings.

The Crown then sought to adduce the Menga evidence by way of section 114(1)(d) of the CJA 2003, underlining the fact that as Menga had provided details of his own criminality what he said was likely to be reliable and in any event it accorded with other evidence in the case. Counsel for appellant objected to this on the basis that the reliability of Menga was very much in question and as such it would be wrong to rely on his interview without the benefit of testing it by cross-examination.

The Judge ruled that the Menga evidence would be admitted, having regard to the provisions of section 114(2), on the basis that it was in the interests of justice to do so.

On appeal, Counsel for the Appellant submitted that guidance as to the admissibility of the Menga evidence should have been obtained from the CEA 1995, rather than the CJA 2003.

For the Crown it was argued that confiscation proceedings are essentially criminal or criminal style proceedings and the best safeguards governing the admissibility of hearsay evidence were those contained in the CJA 2003.

Following consideration of the nature of confiscation proceedings under POCA 2002, the Court of Appeal stated that there is nothing in the relevant sections of the 2002 Act which, on a natural reading, suggests that confiscation proceedings are other than criminal in nature. In the court's judgment it was stated that the appropriate analysis of confiscation proceedings are an extension of the sentencing hearing and therefore criminal in nature.

With regard to the relevant regime governing the admissibility of hearsay evidence in confiscation proceedings, the Court of Appeal immediately ruled out the CEA 1995 for the following reasons:

- Practically, confiscation proceedings are routinely conducted in Crown Courts by practitioners and Judges with greater experience of the criminal law provisions governing hearsay evidence, rather than the CEA 1995. Moreover the CEA

 © - National Policing Improvement Agency 2011

regime is not tailored to the needs of proceedings which are criminal in nature;

- No authority required the adoption of the CEA 1995 provisions as to hearsay evidence in confiscation proceedings;
- POCA 2002 itself contains no express provision calling for the application of the CEA 1995 to confiscation proceedings under Part 2.

With regard to the application of the CJA 2003, the Court of Appeal identified "formidable difficulties" in treating the CJA 2003 regime as directly applicable to confiscation proceedings.

The court considered the definition of "criminal proceedings" under section 134(1) of the CJA 2003, namely "…proceedings in relation to which the strict rules of evidence apply." The court found that two lines of reasoning suggest that confiscation proceedings, even though criminal in nature, are not proceedings to which "the strict rules of evidence apply". Firstly, section 16-18 of POCA 202 provides that confiscation proceedings proceed on statements of "information" not "evidence". Secondly, with regard to the sentencing process generally, the demanding evidential requirements for the proof of guilt are not generally transposed to such post-conviction proceedings.

The Court of Appeal considered the pre-CJA 2003 case of R v Silcock and Levin [2004] EWCA Crim 408 and determined that nothing in that case suggested or compelled the adoption of the CEA 1995 hearsay regime in confiscation proceedings. However it was said that the reasoning in Silcock points against treating confiscation proceedings as proceedings in which "the strict rules of evidence apply."

In light of this the Court of Appeal concluded that the CEA 1995 regime has no application to confiscation proceedings and the CJA 2003 hearsay regime, whilst potentially more suitable can likewise not apply - "at least strictly and directly."

The Court of Appeal stressed that the result of the conclusion reached was not that hearsay evidence is inadmissible in confiscation proceedings. Rather such evidence is admissible in confiscation proceedings but in accordance with the approach outlined by the court on appeal rather than by way of the CEA 1995 or the CJA 2003.

The Court of Appeal set out what approach should be followed by a Judge faced with the proposed introduction of hearsay evidence in the course of confiscation proceedings under Part 2 of POCA 2002:

- In many instances, there will be or should be no realistic issue as the admissibility of the evidence, not least given the POCA 2002 focus on "information";
- There will however, be occasions where a hearsay statement is of importance and seriously in dispute so that admissibility is a live issue. If so, the CJA 2003 regime, applied by analogy, will furnish the most appropriate framework for adjudicating on such issues. The vital need is for the Judge in such a situation to understand the potential for unfairness and to "borrow" as appropriate from the available guidance in section 114(2), and section 116 of the CJA 2003. The court noted that when applying this regime, and particularly the "interests of justice" test in section 114(1)(d) "it will be of the first importance to keep the post-conviction context in mind. There may well be room for more flexibility than in the trial context";
- In many more cases the issue will be the weight rather than the admissibility of the evidence or information in question. If so, the "checklist" contained in section 114(2) and the matters set out in section 166 of the CJA 2003, suitably adapted to address weight rather than admissibility, will provide a valuable if not exhaustive framework of reference. In any event and in every case a Judge must have regard to the limitations of the evidence or information under consideration, the reliability of the maker, the circumstances in which it came to be made, the reason oral evidence cannot be given and the absence of cross-examination. In addition, care must be taken to ensure that the defendant has a proper opportunity to be heard;
- Here, as elsewhere in the sentencing process, the Judge will need to exercise judgment consistently with both the legislative intent underpinning the POCA 2002 and the need for fairness to all concerned.

The full judgment is available at
http://www.bailii.org/ew/cases/EWCA/Crim/2011/446.html

Overlap Between a Direction under Section 34 of the Criminal Justice and Public Order Act 1994 and a Lucas Direction as to Lies

David James Hackett v The Crown [2011] EWCA Crim 380

This appeal addresses the problems of the overlap between a direction under section 34 of the Criminal Justice and Public Order Act 1994 and a direction as to lies.

The appellant, and a co-accused, Mr Bonser, were convicted of attempted arson with intent to endanger life. It was alleged

 © - National Policing Improvement Agency 2011

that the appellant and Mr Bonser attempted to throw a petrol bomb with intent to endanger the life of their intended target, Mr Urbacz. Following various verbal threats to petrol bomb Mr Urbacz's house, which the appellant denied having heard, the appellant drove Mr Bonser to a petrol station where the appellant filled a jerry can with petrol. Mr Bonser then returned to Mr Urbacz's home, with a person the prosecution alleged was the appellant, where Mr Bonser threw a petrol bomb towards the premises.

In his first interview, the appellant denied having heard any threat made towards Mr Urbacz and said that he was not involved in the arson and knew nothing about it. When Mr Bonser's visit to the petrol station was put to him he denied knowledge of the visit.

In his second interview the appellant produced a prepared statement in which he stated that he had gone to the petrol station to get petrol for a strimmer, following a complaint by the council that the grass lawn outside Mrs Bonser's flat had not been trimmed. In support of this, he called a witness who gave evidence that Mr Bonser's girlfriend had asked Mr Bonser to get some petrol for the strimmer. The appellant explained that he had not mentioned buying petrol for the strimmer in his first interview because he had been drinking and driving and had only recently got his licence back. To have admitted driving to the petrol station would have involved an admission that he had been drinking and driving.

The prosecution, in support of its case that the appellant was the person who had accompanied Mr Bonser when he threw the petrol bomb, relied on the fact that the appellant had not at first mentioned that he had gone to the petrol station to fetch petrol shortly after Mr Bonser threatened Mr Urbacz, and upon the fact that when he did advance an explanation for going to the petrol station he lied in asserting that the purpose was to fetch petrol for a strimmer.

The appeal focussed upon the directions given by the Judge with regard to section 34 of the Criminal Justice and Public Order Act 1994 and with regard to the alleged lie given by way of explanation for the visit to the petrol station.

Before the event, the Judge indicated that he was proposing to give a section 34 direction and also a Lucas direction with regard to the alleged lie. Unfortunately neither counsel drew the Judge's attention to three important principles relevant to his directions, namely:

- It is not appropriate to give a section 34 direction in relation to facts accepted to be true; In R v Wisdom and Sinclair (unreported) December 10 1999, CA it was said "rarely if ever could a section 34 direction be appropriate on failure

to have mentioned an admittedly true fact at interview. Since the adverse inference in question is that a matter not mentioned at the interview is likely to be untrue, there is no room for the inference if that matter is agreed to be true";

- It is usually unhelpful to give a jury both a section 34 direction and a Lucas lies direction; the Judge should select and adapt the direction more appropriate to the facts and issues in the case;
- Where directions are given, both as to a failure to mention a relevant fact and as to lies, it is important that the directions are consistent.

The court set out the distinction between a section 34 direction and a Lucas direction: "A section 34 direction invites the jury to draw an adverse inference as to the truth of a fact relied on by the defence from the defendant's failure to mention it earlier without reasonable explanation. The adverse inference is that the fact is the product of more recent invention and false. By way of contrast, the purpose of a Lucas direction is to protect a defendant by reminding the jury that lies may be told for a number of innocent reasons, such as in order to bolster a true defence; they should not jump to the conclusion that because the defendant lied he is guilty."

The Court of Appeal determined that the Judge was correct to have given a section 34 direction, however giving such a direction in relation to the appellant's failure to mention going to the petrol station and filling up the can was inappropriate because both were facts accepted to be true and relied upon by the prosecution.

Rather the Judge ought to have targeted his section 34 direction at the appellant's failure to mention the purpose of the trip to the petrol station, not the fact of the trip itself. His asserted purpose, namely to get petrol for a strimmer, was a fact relied on by the defence. The prosecution case was that the appellant had not invented that explanation at the time of his first interview and subsequently made it up.

By virtue of section 34 the jury was entitled to conclude that the delay in putting forward the explanation about the strimmer gave strength to the suggestion that that explanation was a lie. The Court of Appeal stated that the Judge failed to direct the jury, with clarity, that the delay in advancing that explanation was a significant factor the jury were entitled to consider when assessing the truth of that explanation.

The Court of Appeal determined that it was wrong of the Judge to have given both a section 34 direction and Lucas direction, and he should have confined himself to a section 34 direction.

 © - National Policing Improvement Agency 2011

The essential question in determining the guilt or innocence of the defendant was the reason he had driven to the petrol station, namely to buy petrol for a strimmer or for Mr Bonser's firebomb. If the jury thought that the defendant's explanation might be true then his failure to mention the visit to the petrol station or the reason for it when first interviewed lost any significance.

Once the jury had rejected the defendant's explanation, the prosecution had gone a long way in proving its case. The only sensible reason to lie about the reason for going to the petrol station was that he had gone there to buy fuel for the petrol bomb. With this in mind as well as the short proximity in time between the trip to the petrol station and the threat made against Mr Urbacz, in these circumstances it was inappropriate and unduly favourable to the defence to suggest that there might have been some innocent reason for giving a false explanation for the trip to the petrol station and the purchase of the petrol.

The Court of Appeal determined that the direction to the jury should have started with the explanation given by the defendant for the trip to the petrol station and then his reason for not having mentioned the trip when first interviewed. Once the jury had rejected his explanation they were left with no sensible reason for him going there with Mr Bonser at that time other that to buy petrol for the firebomb. The Court of Appeal considered that the prosecution were entitled to such a direction without the protection that a Lucas direction affords to a defendant.

A section 34 direction would have clarified issues for the jury and guided them by directing that they were entitled to draw the inference that the defendant's explanation was untrue because he had made no reference to it in his first interview. However, no adverse inference could be drawn unless and until the jury rejected the defendant's reason for concealing any reference to the petrol station, namely that he feared the consequences of admission that he had been driving.

Having regard to the case of R v Rana [2007] EWCA Crim 2261 the Court of Appeal stated that the factual context of the case is such that the defendant is entitled to the protection of a Lucas direction then that protection can be incorporated into the section 34 direction; to give both directions is likely to complicate matters and confuse the jury.

The court determined that the judge should have confined his directions to a direction under section 34 whilst reminding the jury that they could not draw an adverse inference unless they rejected the defendant's explanation for not revealing his trip to the petrol station and the reason for it at his first interview.

The court stated that the guiding principle should be to avoid confusion, to avoid deflecting the jury from the real issues and to provide the jury with guidance as to how to approach those issues.

Despite the errors identified by the Court of Appeal in the directions given by the judge, the court determined that the errors cast no doubt upon the safety of the verdict.

The full judgment is available at
http://www.bailii.org/ew/cases/EWCA/Crim/2011/380.html

 © - National Policing Improvement Agency 2011

SI 230/2011 The Police Federation (Amendment) Regulations 2011

These Regulations, which came into force on **1 March 2011**, amend the Police Federation Regulations 1969 (the 1969 Regulations) so as to extend the scope of regulation 6A(4), which provides that a person chosen to be secretary of a joint branch board (or, in the metropolitan police, the Joint Executive Committee) becomes an additional member of one of the branch boards constituting the joint branch board (or the Joint Executive Committee).

Regulation 2(2) of these Regulations replaces regulation 6A(4) of the 1969 Regulations with three new paragraphs having the effect that the secretary, the chairman and any other officer of a joint branch board, the Joint Executive Committee or a branch board of the metropolitan police specified in rules made by the board or Committee with the approval of the chief officer of the police force (or, in the metropolitan police, the Commissioner) becomes an additional member.

Regulation 2(3) of these Regulations amends Schedule 2 to the 1969 Regulations in order to regularise the position of a person elected to one of the offices listed above before these Regulations come into force, or in the period from the date of coming into force until the end of 2011, by removing any question as to his eligibility on the basis that he was not a member of the board or committee in question. By the end of 2011 elections will have been held in respect of all of the offices in question, and the new paragraphs in regulation 6A of the 1969 Regulations will ensure that the persons elected are additional members.

In replacing regulation 6A(4) of the 1969 Regulations, these Regulations also correct an error in the Police Federation (Amendment) Regulations 2004 (SI 2660/2004). Regulation 6A(4) of the 2004 Regulations refers to elections held under "this regulation", when it is regulation 6 rather than regulation 6A which governs elections to branch boards.

SI 300/2011 The Police Act (Equipment) Regulations 2011

These Regulations, which came into force on **4 March 2011**, impose certain requirements when specified equipment (body armour, vehicles and computer commoditised hardware and commercial off-the-shelf software) is acquired for police use.

Firstly, the equipment must satisfy requirements as to design and performance specified in the applicable national framework arrangement referred to in the Schedule to the Regulations, and secondly, police forces can only use such equipment where it is acquired in accordance with the procedures set out in the applicable framework arrangement.

Where binding contractual arrangements are already in existence for the supply of the particular equipment when the Regulations come into force, the requirements set out in the Regulations will only apply once those arrangements have expired or are terminated in accordance with the terms of that contract.

SI 410/2011 The Serious Organised Crime and Police Act 2005 (Commencement No. 14) Order 2011

This Order brought section 117 of the Serious Organised Crime and Police Act 2005 into force on **7 March 2011**.

Section 117 amends section 61 of the Police and Criminal Evidence Act 1984. The amendment gives a police constable the power to take a person's fingerprints without their consent where the person is unknown to the officer and their name cannot reasonably be ascertained, or where an officer has reasonable grounds for doubting the validity of the name given.

This Order also brings into force section 121(5)(a) of the Act on the same date. This provision amends section 36 of the Police and Criminal Evidence Act 1984. The effect is that references to a custody officer in section 34 of PACE 1984 (limitations on police detention) include references to an officer other than a custody officer who is performing the functions of a custody officer. This means that officers who do not hold the rank of sergeant can perform the function of a custody officer in the context of limitations on police detention; namely they can order the release from custody of persons in detention in respect of whom the grounds for detention have ceased to apply.

SI 412/2011 The Police and Criminal Evidence Act (Codes of Practice) (Revision of Codes A, B and D) Order 2011

This Order, which came in to force on **7 March 2011**, brings into force revised codes of practice under section 66(1) of the Police and Criminal Evidence Act 1984, which will supersede the existing codes of practice issued under that section.

The changes primarily:

- Implement a reduced level of recording of stop and search encounters;
- Provide guidance on the roll-out and use of mobile fingerprinting technology; and
- Provide guidance on new enhanced powers to take DNA and fingerprints.

The revised codes also reflect other minor changes in legislation and practice.

© - National Policing Improvement Agency 2011

SI 414/2011 The Crime and Security Act 2010 (Commencement No. 3) Order 2011

This Order brought section 1 of the Crime and Security Act 2010 into force on **7 March 2011**.

Section 1 amends section 3 of the Police and Criminal Evidence Act 1984, reducing the amount of information that must be recorded following a stop and search encounter.

In addition, the Order brought into force sections 2 to 7 of the Act on the same date. These provisions amend Part 5 of the Police and Criminal Evidence Act 1984 (questioning and treatment of persons by police).

Section 2 confers enhanced powers to take fingerprints and DNA samples.

Section 3 creates similar powers in relation to qualifying offences committed outside England and Wales.

Section 4 specifies the information that must be given on the taking of the material.

Section 5 enables the police to use these fingerprints or samples to conduct speculative searches.

Section 6 (which is commenced in part only) confers a power to require attendance at a police station for the purpose of taking fingerprints or samples.

Section 7 sets out which offences fall within the definition of "qualifying offence."

SI 427/2011 The Road Vehicles (Construction and Use) (Amendment) Regulations 2011

These Regulations, which came into force on **15 March 2011**, further amend the Road Vehicles (Construction and Use) Regulations 1986 (the 1986 Regulations) by inserting regulation 61C which provides an exemption from the emissions requirements in EC Regulations 715/2007 and 595/2009 for certain end-of-series vehicles.

Regulation 3 inserts regulation 61C into the 1986 Regulations. Paragraph (1) of regulation 61C delays for 12 months the effect of the emissions requirements in EC Regulation 715/2007 for category N1 class I end-of-series vehicles.

Paragraph (2) delays for 12 months the effect of the emissions requirements in EC Regulation 595/2009 for category N2 and N3 end-of-series vehicles.

Paragraph (3) sets out the criteria that a vehicle must meet for it to be considered an end-of-series vehicle.

SI 447/2011 The Misuse of Drugs (Designation) (Amendment) (England, Wales and Scotland) Order 2011

Section 7(3) of the Misuse of Drugs Act 1971 requires regulations to be made to allow the use for medical purposes of the drugs which are subject to control under that Act. Section 7(3) does not apply to any drug designated by order under section 7(4) as a drug to which section 7(4) is to apply.

This Order, which came into force on **28 March 2011**, amends the Misuse of Drugs (Designation) Order 2001 by removing 4-methylmethcathinone from paragraph 1(a) of Part 1 of the Schedule to that Order - 4-methylmethcathinone will though fall within paragraph 1(q) - and revokes paragraph (a) of article 2 of the Misuse of Drugs (Designation) (Amendment) (England, Wales and Scotland) Order 2010.

SI 448/2011 The Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2011

These Regulations, which came into force on **28 March 2011**, amend regulation 4B of the Misuse of Drugs Regulations 2001 (the 2001 Regulations) by including within the reference to 1,4-butanediol in regulation 4B any substance which is an ester or ether or both an ester and an ether of 1,4-butanediol, and by removing from the references to gamma-butyrolactone and 1,4-butanediol any stereoisomeric form of gamma-butyrolactone and 1,4-butanediol respectively.

Regulation 4B was inserted into the 2001 Regulations by regulation 3 of the Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2009, and makes it lawful to import, export, produce, supply, offer to supply or possess gamma-butyrolactone and 1,4-butanediol except where a person does so, knowing or believing that it will be used for the purpose of human ingestion other than as a flavouring in food.

These Regulations remove 4-methylmethcathinone from paragraph 1(a) of Schedule 1 to the 2001 Regulations - 4-methylmethcathinone will though fall within paragraph 1(m) - and revoke paragraph (a) of regulation 3 of the Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2010.

These Regulations insert Amineptine and Tapentadol in Schedule 2 to the 2001 Regulations. The schedule in which a controlled drug is placed primarily affects the extent to which the drug can be lawfully imported, exported, produced, supplied or possessed and dictates the record keeping, labelling and destruction requirements in relation to that drug.

© - National Policing Improvement Agency 2011

SI 631/2011 Terrorism Act 2000 (Remedial) Order 2011

Following the case of Gillan and Quinton v United Kingdom (Application No. 4158/05), this Order, which came into force on **18 March 2011**, modifies the effect of the Terrorism Act 2000 Act by making a number of non-textual amendments. In particular, to remove the incompatibility of sections 44 to 47 of the 2000 Act with the Convention right, article 2 of the Order provides that the 2000 Act is to have effect as if the stop and search powers in sections 44 to 47 of that Act were repealed.

Article 3 of and Schedule 1 to the Order modify the 2000 Act so that it has effect as if new sections 47A to 47C and Schedule 6B were inserted into that Act. Those provisions provide the police with replacement powers of stop and search for the purposes of counter-terrorism. If a senior officer reasonably suspects that an act of terrorism will take place and considers that the stop and search powers are necessary to prevent such an act of terrorism, the senior officer may authorise the use of those powers in an area within the officer's police force area no larger than necessary and for a period no longer than necessary for that purpose (and for a maximum of 14 days). Authorisations must be confirmed by the Secretary of State within 48 hours if they are to last beyond that period and the Secretary of State has the power to restrict the scope of authorisations. Where an authorisation is in place, an officer in uniform may stop and search a person or a vehicle to search for evidence that the person is a terrorist or that the vehicle is being used for purposes of terrorism, whether or not the officer reasonably suspects that such evidence will be present.

Article 4 of the Order requires the Secretary of State to issue a code of practice in connection with the exercise of the new powers.

Article 5 of and Schedule 2 to the Order make various non-textual consequential amendments to other enactments, including the Police Reform Act 2002 and the Police (Northern Ireland) Act 2003, which make provision for community support officers to have limited powers under the new stop and search powers.

Article 6 of the Order provides for articles 2 to 5 of and Schedules 1 and 2 to the Order to cease to have effect if an Act that is passed in the same Session as that in which this Order is passed makes provision to repeal sections 44 to 47 of the 2000 Act. In that case, those provisions of the Order will cease to have effect on the coming into force of such provision. The Protection of Freedoms Bill contains similar provisions to those in the Order relating to powers of stop and search under the 2000 Act. In particular, the Bill includes provision to repeal sections 44 to 47 of the 2000 Act.

SI 719/2011 The Prevention of Terrorism Act 2005 (Continuance in Force of Sections 1 to 9) Order 2011

This Order, which came into force on **11 March 2011**, continues in force until the end of 31 December 2011 sections 1 to 9 of the Prevention of Terrorism Act 2005, which would otherwise have expired at the end of 10 March 2011 pursuant to article 2 of the Prevention of Terrorism Act 2005 (Continuance in Force of Sections 1 to 9) Order 2010.

Sections 1 to 9 of that Act enable a control order to be made against an individual where the Secretary of State has reasonable grounds for suspecting that individual is or has been involved in terrorism-related activity and it is necessary to impose obligations on that individual for purposes connected with protecting members of the public from a risk of terrorism.

SI 722/2011 The Coroners and Justice Act 2009 (Commencement No. 4, Transitional and Saving Provisions) (Amendment) Order 2011

This Order, which came into force on **11 March 2011**, amends Article 7(2) of the Coroners and Justice Act 2009 (Commencement No. 4, Transitional and Savings Provisions) Order 2010 so as to require a Court, when sentencing an offender for an offence committed before 6 April 2010, to have regard to and explain decisions by reference to sentencing guidelines issued by the Sentencing Council for England and Wales under section 120 of the Coroners and Justice Act 2009 as well as to guidelines under section 170 of the 2003 Act.

SI 749/2011 The Terrorist Asset-Freezing etc. Act 2010 (Isle of Man) Order 2011

This Order, which came into force on **17 March 2011**, extends Part 1 (including Part 1 of Schedule 2) of the Terrorist Asset-Freezing etc. Act 2010 to the Isle of Man, subject to the modifications specified in the Schedule.

© - National Policing Improvement Agency 2011

HMIC Review of Progress Made in Public Order Policing Since July 2009

Further to publication of HMIC's 2009 reports "Adapting to Protest" and "Adapting to Protest - Nurturing the British Model of Policing", HMIC has published an overview and review of progress made against the 24 recommendations made in these earlier reports.

In carrying out this evaluation, HMIC states that nationally ACPO and the NPIA have made significant progress in six key policy and training areas, namely:

- A new national formula for the provision of public order support between forces has been agreed;
- Refresher courses for existing tactical and operational commanders are underway;
- An agreed national public order position on the use of force has been reached;
- A revised version of the ACPO manual "Keeping the Peace" has been signed off;
- A new public order training curriculum is being developed; and
- New command courses for strategic (Gold), tactical (Silver), and operational (Bronze) commanders are scheduled for April, February and March 2011 respectively.

HMIC is calling for the police to remain adaptable to the changing nature of protest, and is urging the police to consider how tactics used to safeguard peaceful protest can be developed to deter those with criminal intent.

In the spirit of adaptability, HMIC has identified a number of questions which require urgent consideration. These are:

- How can police participate effectively in and utilise social media to assist in maintaining the peace?
- How can police best prevent crime and disorder through:
  - Early interventions to disrupt those demonstrating clear criminal intent?
  - Target hardening the protest environment to reduce opportunities to attack or damage identified or treasured sites: for example can the reliance on the 'human shield' provided by police officers be supplemented by better physical barriers to access?

- How can the tactic of containment be refined, progressively isolating problematic groups and individuals from peaceful protestors?
- How can more problematic groups and individuals be progressively isolated from peaceful protestors during containment?
- How can the peaceful or vulnerable be filtered away effectively from possible disorder?
- How can police communicate more effectively with different groups within the crowd using modern communication mechanisms?
- How can overt criminality in crowds be intercepted in an agile manner to protect the public as well as our precious buildings and iconic structures?
- Is the present command communication model sufficiently responsive in fast-moving and complex situations, and could a more devolved command allow officers to act with greater speed?
- How can the availability of accurate information be improved before, during and after events to enable protestors and the public to make informed decisions? Is there value in making the experiences of officers in the front line at these events available to the public?

HMIC intends to follow-up on these questions and relevant recommendations in 2011 in order to help officers in a practical way.

The report concludes that a good deal of progress has been made in public order policing since the 2009 reports, and that forces and commend teams have been building on their experience and adapting to the new challenges and realities presented by the G20 protests and by the Defence League protests and counter protests.

Assessments of the progress made against all 24 recommendations are presented in appendices to the report. These show that the majority of recommendations in the 2009 reports have been progressed. The exception to this is Recommendation 4 in "Adapting to Protest", namely to "agree principles regarding the police use of potentially sensitive information which may later become evidence in legal proceedings."

Tactical Adaptability

The character of protest is evolving and issues such as the numbers of those involved, the spread across the country, associated sporadic violence, disruption caused, short or no-notice events and swift changes in protest tactics make this a

 © - National Policing Improvement Agency 2011

new period of public order policing. HMIC's recommendations of 2009 retain their relevance and currency and the police service must not rely on the progress that has been made so far.

Leadership

Leadership efforts on the issues raised by HMIC in 2009, such as a consistent and measured approach to the use of force by police, and fit for purpose mobilisation plans, must continue and must be successful.

A Fresh Approach to Change - For Public Order

This review of public order points to the needs of the service as being twofold:

- To embed common national guidance and practice as quickly as possible; and
- To communicate evolving tactics and practice swiftly for the benefit of command teams and officers faced with events taking place across the country on a weekly (if not daily) basis.

A Fresh Approach to Change - For Other Areas of Specialist Policing

Ensuring "interoperability" of personnel and equipment from different forces is a strategic imperative. The proposed changes in ACPO and the NPIA, and the "Strategic Policing Requirement" outlined in the Police Reform and Social Responsibility Bill, are opportunities to inform and refine processes that govern the delivery of crucially important policing services.

Public order capability is one of those services and is a fundamental part of our national infrastructure. A fresh and determined approach to this and other areas of cross-border policing services is needed in this period of austerity.

Such an approach should address the challenges raised by this review and consider key features of the services identified including:

- Capability - the police specialisms required for significant operational challenges. These must be informed by credible analysis and the dynamic nature of the threats faced;
- Capacity and contribution - the investment made by forces in the services identified;
- Connectivity and consistency - the ability to bring resources together, to cooperate with others and to coordinate them.

"Policing Public Order. An overview and review of progress against the recommendations of 'Adapting to Protest' and 'Nurturing the British Model of Policing'" is available at http://www.hmic.gov.uk/SiteCollectionDocuments/PPR/PPR_20110209.pdf

© - National Policing Improvement Agency 2011

New Consultation on Code of Practice for CCTV and ANPR

The Protection of Freedoms Bill provides for the development of a Code of Practice relating to CCTV, Automatic Number Plate Recognition (ANPR) and other surveillance camera systems.

Further to this, a new consultation has been launched seeking views on the content of a new code of practice on the use of closed circuit television systems and other similar surveillance camera systems. The aim is for this code of practice to assist those using such surveillance systems in deciding if their use is necessary, how to get the best out of the systems and also to inform members of the public about how these systems should be used and how to find out more about them.

In addition the consultation asks for views on a possible checklist of actions before cameras are installed, the standards of footage, better information for the public about cameras in their area and also how long footage should be retained.

The consultation began on 1 March 2011 and will run for 12 weeks until 25 May 2011.

The consultation can be accessed at
http://www.homeoffice.gov.uk/publications/consultations/cons-2011-cctv/code-surveillance-cameras?view=Binary

Operation of Police Powers under the Terrorism Act 2000 and Subsequent Legislation: Arrests, Outcomes and Stop and Searches. Quarterly Update to September 2010

The Home Office has published a statistical bulletin on the operation of police powers, namely arrests, outcomes and stops and searches, under the Terrorism Act 2000 and subsequent legislation for the period up to 30 September 2010.

Statistics on Terrorism Arrests and Outcomes

There were 130 terrorism arrests in the year ending 30 September 2010 compared with 201 in the previous year, a fall of 35%.

45% of terrorism arrests in the year ending 30 September 2010 resulted in a charge, compared with a charging rate of 33% in the previous year.

Of those charged in the year ending 30 September 2010, 62% were terrorism related compared with 33% in the previous twelve months.

© - National Policing Improvement Agency 2011

None of the suspects arrested in the year ending 30 September 2010 were held in pre-charge detention for more than 14 days, with 62% dealt with within 48 hours.

Of the 36 persons charged with terrorist related offences in this period, 10 (28%) have currently been convicted of terrorist related offences. On 30 September 2010, 32 persons were awaiting prosecution for a terrorist related offence.

In the year ending 30 September 2010, 33 defendant trials for terrorism related offences took place, resulting in a 70% conviction rate. In the year prior to this 45 defendant trials were completed with 73% resulting in a conviction.

Of the 23 offenders convicted in the year up to 30 September 2010, 18 persons (72%) received determinate prison sentences and the remaining 5 persons received life sentences. 48% of defendants pleaded guilty in this period, compared with 52% in the previous year.

There were 111 persons in prison for terrorist/extremist or related offences on 30 September 2010 in Great Britain, of whom 22 were classified as domestic extremists/separatists.

Statistics on Stops and Searches under the Terrorism Act 2000

A total of 45,932 stops and searches were made in Great Britain under Section 44 of the Terrorism Act 2000 in the year ending 30 September 2010, a 77% fall compared to the previous twelve months. The number of stops and searches in the second quarter of 2010/11 (666) was 98% below the same quarter in 2009/10.

The Metropolitan Police Service and the British Transport Police accounted for 94% of all Section 44 uses in Great Britain in the year ending 30 September 2010. The proportion of those stopped and searched under Section 44 during this period who classified themselves as Asian or Asian British averaged 19% over the year, an increase of 4% on the previous year and those who defined themselves as Black or Black British was an average of 10%, the same proportion as the previous twelve months.

A total of 898 persons were stopped and searched by the Metropolitan Police Service in the year ending 30 September 2010 under Section 43 of the Terrorism Act 2000, a decrease of 53% on the previous twelve months. The proportion of persons stopped and searched who classified themselves as Asian increased from 20% in the year ending 30 September 2009 to 30% in the year ending 30 September 2010. The proportion of persons searched who described themselves as Black or Black British fell from 12% to 10% over the same period.

© - National Policing Improvement Agency 2011

Section 44 stops and searches in Great Britain resulted in 249 arrests in the year ending 30 September 2010, an arrest rate of 0.5%. Two of these arrests were identified as terrorism related. Of these 2 arrests one suspect was released without charge and the second was cautioned for a non-terrorism related offence. A further 30 arrests were made by the Metropolitan Police following stops and searches under Section 43.

"Operation of Police Powers under the Terrorism Act 2000 and Subsequent Legislation: Arrests, Outcomes and Stop and Searches Quarterly Update to September 2010" is available at http://rds.homeoffice.gov.uk/rds/pdfs11/hosb0411.pdf

IPCC Publishes Police Complaint Statistics for 2009/10

The Independent Police Complaints Commission (IPPC) has published information on complaints about the police in England and Wales for the financial year 2009/10.

33,854 complaints, involving 58,399 separate allegations, were recorded about the police in 2009/10, an 8% increase on the previous year in both instances.

The 5 largest categories of allegations recorded accounted for the majority of all those recorded in 2009/10, namely:

- Other neglect of failure in duty (26%);
- Incivility, impoliteness and intolerance (20%);
- Other assault (13%);
- Oppressive conduct or harassment (7%); and
- Unlawful/unnecessary detention (5%).

Compared to the previous year, the biggest rises in allegations were for:

- Other neglect or failure in duty (15%);
- Breach of Code B PACE 1984 (15%);
- Oppressive conduct or harassment (14%); and
- Improper disclosure of information (13%).

A total of 31,758 complaint cases were finalised in 2009/10, a 6% increase on the previous year. 56,774 allegations were finalised during this period and 11,613 were dispensed, discontinued or withdrawn.

Of the allegations dealt with by way of investigation (43%), 10% were substantiated, a proportion similar to previous years.

© - National Policing Improvement Agency 2011

In 2009/10, a total of 5,584 appeals were received by the IPCC, a 21% increase compared to the 4,634 received during 2009/09.

During 2009/10 the IPCC completed:

- 2,928 valid appeals against a police investigation and upheld 21%;
- 449 valid appeals about how the police had dealt with a complaint via local resolution and upheld 33%; and
- 932 valid appeals about the police refusing to record a complaint and upheld 54%.

A total of 39,030 people serving with the police were subject to a complaint during 2009/10, an 11% increase on the previous year. The majority were police officers rather than police staff and the majority of those facing complaints were White men.

The majority of complainants were White men aged between 18 and 49 years of age.

This year the IPCC has introduced a new set of 'key indicators' to help identify how well complaints are being handled, including information on the length of time it takes for complaints to be recorded and allegations completed by different types of investigation.

"Police Complaints: Statistics for England and Wales 2009/10" is available at
http://www.ipcc.gov.uk/Pages/stats.aspx

Project on Police Effectiveness in a Changing World

The Police Foundation has secured a grant to undertake a four year project on police effectiveness in a changing world, aimed at assisting the police in identifying how they, along with other agencies and the public, can best tackle crime and deliver security in a time of socio-economic, technological and political change.

The project, conducted in two policing areas, will:

- Analyse and raise awareness of local crime and disorder problems;
- Appraise policing strategies and existing practice; and
- Feed back the lessons learnt.

The impact of these changes on crime, security and other related outcomes will be assessed and will be fed into national policy debates about how the police can most effectively work with others to reduce crime and promote safer communities.

Local Adult Reoffending in England and Wales 1 October 2009 - 30 September 2010

The Ministry of Justice has published a quarterly statistics bulletin on local adult reoffending, comparing the period of 1 October 2009 to 30 September 2010 with the period of 1 April 2007 to 31 March 2008.

This data has been developed to provide more timely performance data on trends in re-offending, and to provide insight into re-offending at the regional and local levels.

This bulletin contains re-offending data on England and Wales as a whole, regions within England and Wales, Probation Trusts and Local Authorities.

Key Points

The three month re-offending rate of all offenders on the probation caseload in England and Wales who were at risk of re-offending during this period was 9.77%, a decrease of 1.47% in comparison to the 2007/08 baseline.

There was an increase in re-offending in both the East and South East regions of England compared to the baseline. In contrast both the West Midlands and Yorkshire and Humberside saw a reduction in re-offending.

Five Probation Trusts (out of a total of 35 Trusts created since April 2010) had an increase in re-offending whilst six Probation Trusts showed a reduction in re-offending.

Re-offending by offenders serving a court order showed a reduction of 2.47% compared to the baseline.

Re-offending by offenders on licence following a custodial sentence showed an increase of 4.19% compared to the baseline.

The full Ministry of Justice statistical bulletin is available at http://www.justice.gov.uk/publications/docs/local-adult-reoffending-oct09-sept10.pdf

New Guidance for Hate Crime Victims

“A Guide to Fighting Hate Crime” has been published by the Community Security Trust (CST) with the support of a grant from the Home Office.

The CST is a charity which has recorded anti-Semitic hate crimes on behalf of the Jewish Community since 1984, and became an official Third Party Reporter of hate crimes to the police in 2001.

 © - National Policing Improvement Agency 2011

The Guide, which is aimed at helping other minority communities monitor hate crime, provides assistance on:

- Defining and recognising hate crimes;
- How to respond to different types of hate crimes;
- Forming partnerships with the police and other agencies supporting victims.

"A Guide to Fighting Hate Crime" is available at http://www.thecst.org.uk/docs/Hate%20Crime%20booklet%20-%20Web%20version.pdf

New Guidance to Help Pubs, Clubs and Shops Spot Fake Identification

Despite schemes such as "Challenge 25" and "Think 21" which have made it more difficult for people to use fake identification to get into pubs and clubs and to buy alcohol, the use of counterfeit ID bought over the internet or borrowed from older friends or siblings by underage people can still cause problems.

To address this, the Home Office has issued new guidance aimed at door staff, licensed premises and police officers to provide a better understanding of false identification and to equip these groups with the tools needed to deal with this issue.

This guidance aims to make it easier to understand the law, to know what identification is acceptable, to assist in spotting fake identification documents, to provide direction on what to do when documents are confiscated and to provide practical examples of best practice from around the country.

For premises, guidance is provided on how ID can be stored in the premises once confiscated, when the police should be informed and how long confiscated documents should be held before being passed to the police.

For the police, best practice examples from the four police force areas that contributed to the guidance are included so that consideration can be given to employing a process that suits their local area.

In addition to this guidance, new posters aimed at raising awareness of the consequences involved in using fake ID are available to download from http://www.homeoffice.gov.uk/drugs/alcohol/

"False ID Guidance" is available at http://www.homeoffice.gov.uk/publications/alcohol/false-id/false-identity-guidance?view=Binary

© - National Policing Improvement Agency 2011

Knife Possession Sentencing Quarterly Brief October to December 2010

The Ministry of Justice has published a quarterly provisional statistics bulletin on the trends in cautioning and sentencing, probation supervision and the prison population for possession of a knife or offensive weapon in England and Wales. The bulletin presents comparisons between the latest quarter, namely October to December 2010 and the same period of time in 2009 to provide an indication of changes over the last year. Long term comparisons between the last quarter of 2010 and the same period in 2008 are also shown.

Cautioning and Sentencing

- Between the last quarter of 2009 and the same period in 2010 the total number of disposals given for knife or offensive weapon possession has decreased from 5,675 to 5,151, a reduction of 9%;
- The proportion of offences receiving immediate custodial sentences and suspended sentences for knife or offensive weapon possession decreased, while the proportion of community sentences rose and the proportion of cautions remained stable between the last quarter of 2009 and the same period of 2010:
    - 21% (1,064) of all possession offences between October and December 2010 resulted in a caution. The figure for the same period in 2009 was also 21% (1,211);
    - 31% (1,622) of all possession offences in this period resulted in community sentences, compared to 29% (1,630) in the same period of 2009;
    - 13% (656) of all possession offences in the period of October to December 2010 resulted in suspended sentence orders, compared to 14% (807) in the same period of 2009;
    - 20% (1,012) of all possession offences in the last quarter of 2010 resulted in immediate custody compared to 24% (1,366) in the same period of 2009;
- Where immediate custodial sentences are given for these offences the proportion receiving longer sentences has remained stable:
    - 32% (324) of sentences were recorded as being over six months in the period of October to December 2010 compared to 31% (427) in the same period of 2009;

 © - National Policing Improvement Agency 2011

- The average length of a custodial sentence was 199 days in the last quarter of 2010; this figure is the same as in the same period of 2009;

- The proportion of juvenile offenders receiving community sentences rose from 53% (537) to 58% (530). This contrasts to a decrease in the proportion receiving reprimands and warnings and immediate custody;
- The proportion of adult offenders receiving immediate custody and a suspended sentence decreased. This was accompanied by an increase in the proportion of offences receiving community sentences from 23% (1,093) to 26% (1,092).

Probation Supervision

- In the last quarter of 2010 there were 1,278 court order starts under probation supervision for possession of an offensive weapon, a 15% (1,500) decrease from 2009. The decrease in suspended sentence orders over the past year was 22%, compared to 8% for community orders;
- 35% were given unpaid work for community orders compared to 26% in 2009. The percentage of suspended sentence orders given unpaid work was 27% in the last quarter of 2010 compared to 26% in the same period of 2009;
- For community orders 14% of unpaid work requirements were recorded as being 200 hours or longer in the period of October to December 2010 compared to 18% in the same period of 2009;
- For suspended sentence orders 26% of unpaid work requirements were recorded as being 200 hours or longer in the last quarter of 210 compared to 23% in the same period of 2009.

Prison Population

- The population in prison serving a sentence for possession of an offensive weapon was 591 as of 31 December 2010. It is not possible to make a comparison with the previous year as technical problems mean it has not been possible to provide data relating to the prison population for specific offence types from July 2009 to March 2010.

"Knife Possession Sentencing Quarterly Brief October to December 2010 England and Wales" is available at http://www.justice.gov.uk/publications/docs/knife-possession-sentencing-q4-2010.pdf

© - National Policing Improvement Agency 2011

Action Plan to End Violence Against Women and Girls

Further to publication of the government's strategic vision to end violence against women and girls on 25 November 2010, the Home Office published a detailed action plan to mark International Women's Day on 8 March in order to realise this vision. This was published alongside the government's response to Baroness Stern's review into the handling of rape complaints by local authorities.

Prevention is at the heart of the approach taken with a focus on raising awareness, early identification and early intervention.

Commitments in the action plan include:

- Data on regional levels of violence against women - including domestic abuse, sexual assault and stalking - will be made more accessible;
- A new national stalking group to improve the police response;
- A campaign to raise awareness of the law around sexual offences and challenging attitudes of abuse in teenage relationships;
- More training for key professionals on identifying and dealing with violence against women;
- There will be an independent consultation on the measurement of rape convictions;
- Research will be commissioned with the aim of countering the myth that false allegations of rape are common;
- Four years of funding for the National Domestic Violence Helpline;
- Sustainable central funding for frontline services including Independent Domestic Violence Advisors and rape crisis centres.

"Call to End Violence Against Women and Girls - Action Plan" is available at http://www.homeoffice.gov.uk/publications/crime/call-end-violence-women-girls/vawg-action-plan?view=Binary

The government response to Baroness Stern's review is available at http://www.homeoffice.gov.uk/publications/crime/call-end-violence-women-girls/government-stern-review?view=Binary

 © - National Policing Improvement Agency 2011

New Domestic Violence Support for Visa Holders

As part of the Action Plan to tackle all forms of violence against women and girls, the Home Secretary has announced that spouses and partners of UK residents who are forced to flee their relationships as a result of domestic violence will be able to access vital services.

The current situation means that some spouses and partners are forced to stay in abusive relationships because their immigration status is such that they have no recourse to public funds. This has the effect that they are unable to access support during the two year spousal visa probationary period.

Following a successful pilot project, entitled the Sojourner Project, which has been underway since November 2009, from next year these victims will be able to access services to ensure that they are not forced to remain in violent relationships. Access to these services will be for a limited period while the victim gathers evidence and makes a claim for residence based on the domestic violence and the UK Border Agency considers the application.

New Support Centres for Rape Victims

The Ministry of Justice has announced that four new centres will be opened offering support to victims of rape and sexual violence. The Ministry of Justice is providing up to £600,000 to fund these centres in Hereford, Trafford, Dorset and Devon.

Network of Advocates to Speak Up for Crime Victims

The Home Secretary has announced a £1m initiative to provide additional support to victims and witnesses in their communities.

This funding will be spent across the country to ensure that victims of crime and antisocial behaviour, and witnesses to such incidents are given a powerful local voice.

Louise Casey, the Commissioner for Victims and Witnesses will work with the charity Victim Support to set up a network of advocates who will:

- Hear directly from victims and witnesses about their experiences through public meetings, links to victims' groups, surveys and discussions with residents in high-crime areas;
- Consider what is in place locally to help victims, whether victims can access these services and address whether all victims what need help are getting it;

- Set out what needs to be done locally to better support and protect victims;
- Make sure local crime and policing strategies reflect victims' needs and priorities.

Provisional Quarterly Sentencing Statistics July to September 2010

The Ministry of Justice has published a quarterly statistics bulletin on the latest trends in sentencing in England and Wales, based on provisional sentencing data. Key statistics for July to September 2010 are compared with the same period in 2009 and are set in the context of sentencing patterns over the previous two years. This publication presented data on those sentenced for indictable offences, namely indictable only offences and those offences which are triable either-way.

Where the term "ten offence groups" is used, this refers to:

- Violence against the person;
- Sexual offences;
- Burglary;
- Robbery;
- Theft and handling stolen goods;
- Fraud and forgery;
- Criminal damage;
- Drug offences;
- Other (excluding motoring offences); and
- Indictable motoring offences.

Key Points - July to September 2010

Persons sentenced following a criminal conviction rose by 7.7% to 89,800, the highest in the last two years. Of these:

- 65,500 persons were sentenced at magistrates' courts (an increase of 7.3%) and 24,300 at the Crown Court (an increase of 8.5%);
- The number of sentences rose for nine of the ten offence groups. Of these, sentences for theft and handling stolen goods rose 12.4% to 31,400. The second largest absolute increase was drug offences which increased by 1,200 to 15,900. The only fall was in sentences for indictable motoring offences which fell by 1.9% to 900;

 © - National Policing Improvement Agency 2011

- 20,900 people were sentenced to immediate custody, an increase of 3.6%. This increase was largely attributed to a rise in those sentenced for theft and handling stolen goods;
- The average custodial sentence length (excluding life and indeterminate sentences) rose by 0.2 months to 16.4 months. There was an increase of 0.4 months at the Crown Court and a decrease of 0.2 months at the magistrates' court to 25.1 months and 2.5 months respectively;
- The number of community sentences given rose by 4.0% to 28,200;
- The use of fines fell by 0.6% to 16.4%;
- Juveniles (aged 10 to 17 at the time of sentence) sentenced fell by 3% to 11,100, attributed to a drop at magistrates' courts to 10,400 (3.5%). Juveniles sentences at the Crown Court increased by 7.1% to 700. Young adults (aged 18 to 20) sentenced rose by 7.1% to 12,100 and adults sentenced rose by 9.8% to 66,600;
- The number of males sentenced increased by 7.9% to 76,400 and the number of females sentenced increased by 6% to 13,000.

Sentences by Offence Group

- Sentences increased for nine out of the ten offence groups. Sentences for sexual offences showed the largest proportionate increase, rising by 15% to 1,500. Sentences for theft and handling stolen goods rose by 12.4% to 31,400. The only fall in sentences was for indictable motoring offences which fell by 1.9% to 900;
- Custody rates for the ten offence groups ranged from 56.3% for robbery and 55.6% for sexual offences, to 14.9% for drug offences and 14.3% for criminal damage. Compared with the third quarter of 2009 the immediate custody rate fell for seven of the ten offences groups, the largest fall was for robbery which fell 3% to 56.3%;
- The average custodial sentence length rose for all offence groups apart from criminal damage and drug offences, which fell 0.9 months to 16 months and 0.5 months to 30.9 months respectively. The largest increases were for sexual offences which rose by 1.2 months to 46.8 months and fraud and forgery offences which rose by 0.8 months to 11.3 months;
- Suspended sentence rates were highest for indictable motoring offences at 25.6% of 900 sentences, and lowest for criminal damage at 4.9% of 2,100 sentences. Suspended sentence rates for indictable motoring offences showed the

largest increase of 1.9% to 25.6%. The biggest decreases were for violence against the person which fell 0.7% to 19.7% and fraud and forgery offences which fell 0.7% to 15.2%;

- Community sentence rates fell for six of the ten offence groups, with Community sentence rates ranging from 42.2% for criminal damage to 21.2% for drug offences. The biggest decrease was for criminal damage which fell 3.6% to 42.2%. The largest increases were for fraud and forgery offences which rose 4.2% to 34.6% and violence against the person which increased 0.5% to 37.6%;
- Fines rates for drug offences increased by 1.4% resulting in the highest fine rate of 37.8%. The lowest fine rate was for robbery which remained at 0.1%;
- Discharge rates remained highest for criminal damage at 20.8% and theft offences at 20.7% and lowest for robbery at 0.2%.

Magistrates' Court

65,500 persons were sentenced for indictable offences at the magistrates' court in the third quarter of 2010, an increase of 7.3% from the same period of 2009. Of these:

- 8,100 persons were sentenced to immediate custody, an increase of 5.7%;
- The average custodial sentence length fell from 2.7 months to 2.5 months;
- 3,400 persons received a suspended sentence, an increase of 7.4%;
- Community sentences given rose by 0.9% to 23,700;
- 14,400 fines were issued, the highest number in two years. The median fine given was £75 and the mean fine was £125;
- Absolute or conditional discharges rose by 0.9% to 16.7% of sentences imposed by magistrates' courts.

Crown Court

23,400 persons were sentenced in the Crown Court during the third quarter of 2010, an increase of 8.5% on the same period of 2009. Of these:

- The immediate custody rate fell by 3.2% to 52.9%;
- The average custodial sentence length increased by 1.7% to 25.1 months;
- The community sentence rate for this period of 18.7% is 2.3% higher than the third quarter of 2008. An increase in

 © - National Policing Improvement Agency 2011

the number of community orders, from 3,200 to 4,300 over this period, contributed to the rise;

- The suspended sentence rate rose by 0.1% to 21.9%;
- The fine rate at the Crown Court increased by 0.1% to 1.7%. The median fine given was £250 and the mean fine given was £805;
- Absolute or conditional discharges rose to 2.8% of all Crown Court sentences (676 sentences) compared to 2.5% in the same period of 2009 (549 sentences).

The full Ministry of Justice statistical bulletin is available at http://www.justice.gov.uk/publications/docs/sentencing-statistics-brief-july-sept-2010.pdf

© - National Policing Improvement Agency 2011

Home Affairs Committee Publishes Report on Police Finances

Further to the government proposals for the aggregate amount of grant to Police Authorities in England and Wales for 2011-12, as well as the intended allocation of funding for the years 2012-13 and 2014 -15 announced in December 2010, the Home Affairs Committee decided to hear oral evidence on the proposed settlement and its impact. Due to the fact that it is still too early to easily predict what the impact will be, these evidence sessions will be followed later by a full inquiry into the new landscape of policing.

In summary the Committee concluded that:

- It is expected that there will be significantly fewer police officers, police community support officers and police staff as a result of the savings required of police forces over the next four years. However, data collection is not complete and there is as such uncertainty about the precise figures involved;
- The loss of posts will have an impact on the range of services that the police provide and the way in which they are provided, making it crucial that the time of police officers and police staff is managed in the most efficient and effective way possible;
- The Home Office should work with the police service to produce an agreed definition of front line, middle office and back office police roles as soon as possible;
- The Government should continue taking urgent steps to reduce unnecessary bureaucracy;
- The Home Office should clarify who will be responsible for driving better procurement when the National Policing Improvement Agency is phased out in the spring of 2012;
- The greatest savings are being required of police forces in 2012-13 when the transition from Police Authorities to Police and Crime Commissioners is due to take place and the Home Office should acknowledge that there are risks involved in this transition and should set out how it will be managed;
- Police forces need a funding system which offers long-term predictability in order to be able to plan more effectively, especially at a time of reduced income.

The Sixth Report of the Home Affairs Committee on Police Finances is available at
http://www.publications.parliament.uk/pa/cm201011/cmselect/cmhaff/695/69502.htm

 © - National Policing Improvement Agency 2011

Notes

Legal Services
Chief Executive Officer Directorate

www.npia.police.uk