NPIA
National Policing Improvement Agency

Digest

February 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 334733.

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Legal Services

Chief Executive Officer Directorate

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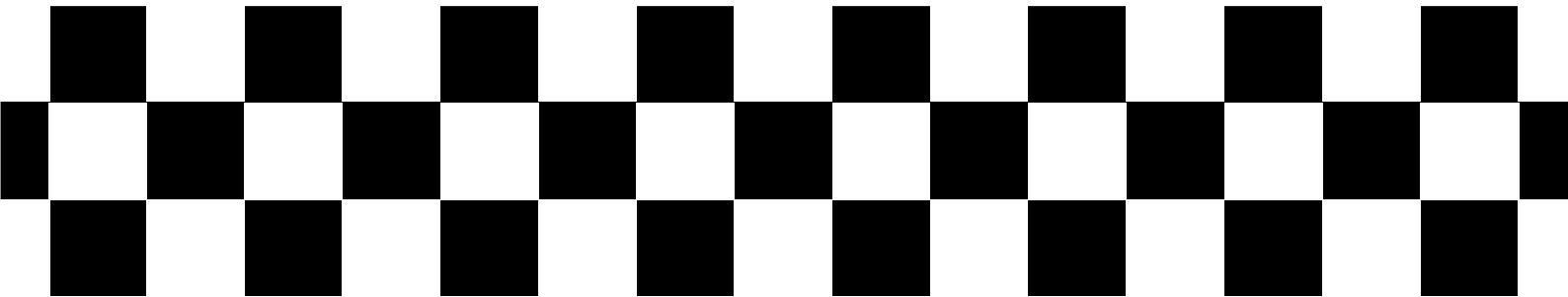

NPIA Digest February 2011

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 confiscation orders, the disclosure process and trial by a judge sitting alone.

We look in detail at the IPCC study of the 333 deaths in or following police custody between 1998/99 and 2008/09, the Home Affairs Committee report into firearms control and the virtual court pilot evaluation.

The findings of a briefing paper prepared by Civitas which looks at the possible impact of the cuts to police funding planned for the next four years are detailed. The trials of a new approach to tackling antisocial behaviour, to be conducted in eight police force areas, are also covered.

We detail crime statistics for England and Wales for the period up to September 2010 and the results of the ACPO Christmas anti-drink and drug driving campaign. The announcement of an independent review launched into the collection and publication of crime statistics is also covered.

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

Contents

Bills Before Parliament 2010/11 - Progress Report

The following Bill from the 2010/11 session has 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 is now accepting written evidence. It heard oral evidence on Tuesday 18 January on the first sitting and second sitting and on Thursday 20 January on the third sitting and fourth sitting.

Confiscation Orders and Obtaining a Pecuniary Advantage

R v Bell, Leigh, Bevan, Middlecote and Peratikou [2011] EWCA Crim 6 (Court of Appeal)

In this case the appellants had been involved in different ways in the handling post importation of smuggled cigarettes. In all of the five cases confiscation orders had been made in respect of what was alleged to be evaded duty on tobacco products smuggled into this country for resale. In four of the cases the confiscation orders were made by consent. In the case of Middlecote, the trial judge rejected an argument that he had not benefited from the evasion of duty.

Under the Proceeds of Crime Act 2002, if a person obtains a pecuniary advantage as a result of or in connection with conduct, he is treated, for confiscation purposes, as having received a sum of money equal to the pecuniary advantage (section 76(5) of the 2002 Act). Thus his benefit will be deemed to include a sum of money equal to the pecuniary advantage.

In this case, however, in making the confiscation orders, no one applied their mind to the question of whether the defendant had obtained a pecuniary advantage either directly because he was liable for the duty himself or indirectly because he had the necessary causal link with the non payment of the duty by another. The failure to ask the right questions was apparently due to conflating the ingredients of the offence charged with the issue of whether the defendants had obtained a benefit, namely a pecuniary advantage. All the appellants, except Middlecote, pleaded guilty to offences alleging that they had been knowingly concerned in the fraudulent evasion of the duty chargeable on cigarettes contrary to section 170(2)(a) of the Customs and Excise Management Act 1979. Middlecote pleaded guilty to a conspiracy to commit that offence. It was wrongly assumed by all concerned in these cases that the defendants having been knowingly concerned in the evasion of the duty must have been liable for the duty.

Before the Court of Appeal it was not disputed that, in the cases of Bell, Leigh, Bevan and Peratikou, the appellants were not liable to pay the duty, nor did they have the necessary causal link with the non payment of the duty by another. In the case of Middlecote the Crown submitted that the appellant was liable for the duty.

The Crown submitted, however, that the four appellants who had accepted the benefit put forward by the prosecution should not now be able to resile from that acceptance, albeit that all concerned had erred in law in believing that the defendants were liable for the duty (either directly or indirectly). The Crown

pointed to section 17(3) of the Proceeds of Crime Act 2002 (and its predecessor), which provides that a judge is entitled to treat as conclusive any acceptance by a defendant that he had benefited from criminal conduct. It was also argued that it was for the appellants to have spotted the error and that, having not done so, leave should be refused.

The Court of Appeal, in the words of Lord Justice Hooper, giving the judgment of the Court, rejected this submission. They stated that they found the arguments advanced by the Crown 'neither convincing nor attractive.' In the view of the Court 'it would be a grave injustice not to grant leave in cases such as the present cases.'

Having granted leave, the Crown, 'rightly' in the view of the Court, 'conceded that the appeals in the cases of Bell, Leigh, Bevan and Peratikou had to succeed given that not one of them was liable for the duty and thus not one of them had obtained a pecuniary advantage in relation to it.' In the case of these four appellants the Court, with the consent of the appellants, substituted new significantly reduced confiscation orders.

In the case of Middlecote the Court, having granted leave, stated that it would, at a future hearing, set aside the confiscation order made and determine the appropriate new confiscation order.

The full judgment is available at
http://www.bailii.org/ew/cases/EWCA/Crim/2011/6.html

Fair Trial and the Disclosure Process

R v Olu, Wilson and Brooks [2010] EWCA Crim 2975 (Court of Appeal)

In this case the appellant Olu, and the applicants Brooks and Wilson, were convicted of charges of murder and attempted murder.

One of the grounds of appeal covered in this case which may have relevance for the police, concerns the way in which the disclosure process had been conducted. It was contended on behalf of Olu, Wilson and Brooks that this had been conducted in such a deficient manner that the trial had not been fair and the convictions were unsafe.

There were a number of problems with the way in which the disclosure process was conducted. The Court of Appeal noted, for instance, that a 107 page schedule of non-sensitive and unused material had been served which indicated that all entries were not disclosable. This schedule listed items such as police officers' pocket books in which initial accounts of witnesses were recorded which were plainly disclosable. Likewise, the jacket Wilson was wearing was included in the schedule despite the fact that 'it plainly assisted the defence.' At the pre-trial hearing on 12 January 2009 the defence served on the prosecution a request for material. This was not answered until 28 January 2009. At the start of the trial on 16 February 2009, issues between the defence and the Crown over disclosure had still not been resolved. Specific criticism was directed at the disclosure officer who was said to not understand his duties and to be obstructive.

It was submitted before the Court of Appeal that the way in which the schedule of non-sensitive and unused material had been prepared was in breach of the Criminal Procedure and Investigations Act 1996 and the Attorney-General's guidelines on disclosure. It was argued that the officer who had prepared the schedule plainly had no understanding of his duties; he had not undertaken a proper review and plainly did not know what should be disclosed. Furthermore, he had failed to keep disclosure under review. It was submitted that it was very difficult for the defence to prepare for the case if disclosure was not carried out properly, and what was disclosable made available to the defence before the trial started.

The Court of Appeal stated, in the words of Lord Justice Thomas, giving the judgment of the Court, that they had 'no doubt that the way in which those in the Thames Valley Area dealt with disclosure in this case was not in accordance with the statutory regime'. The Court stated that the difficulties which occurred 'should not have arisen if the relevant issues had been

identified and disclosure carried out in accordance with the CPIA and the Guidelines in a "thinking manner" and not a box ticking exercise.' Those who were responsible for managing the disclosure process, 'dealt with it without taking fully into account the proper approach to disclosure in relation to investigative material.'

The Court of Appeal provided guidance as to the proper approach which should have been followed: 'The current disclosure regime will not work in practice in such a case unless the disclosure officer is directed by the Crown prosecutor as to what is likely to be most relevant and important so that the officer approaches the matter through the exercise of judgment and not simply as a schedule completing exercise. It is the task of a CPS lawyer to identify the issues in the case and for the police officer who is not trained in that skill to act under the guidance of the CPS.'

Despite these failings, the Court of Appeal found, 'that the [trial] judge took a firm grip on the issues of disclosure, exercised a proper control over the issue and took all the requisite action to deal with what had gone wrong.' The Court was satisfied that the trial judge 'dealt with the issue in a way that was fair' and that 'the failings in disclosure did not result in an unfair trial, any breach of Article 6 or affect the safety of the conviction.'

The full judgment is available at
http://www.bailii.org/ew/cases/EWCA/Crim/2010/2975.html

Trial on Indictment without a Jury

R v John Twomey, Peter Blake, Barry Hibberd and Glen Cameron [2011] EWCA Crim 8 (Court of Appeal)

This case involved appeals by four persons convicted in March 2010 of offences connected to an armed robbery at warehouse premises belonging to Menzies Limited at Heathrow Airport in February 2004, before Treacy J sitting without a jury, in accordance with Section 44 of the Criminal Justice Act 2003, in order to nullify "a real and present danger" of jury tampering.

The appeal focused in part on Treacy J's refusal to discharge the order for trial by judge alone, which was based on an order of the Court of Appeal following consideration of information provided by the prosecution at the first trial under public interest immunity (PII) conditions which provided evidence of attempts to tamper with the jury. This ground of appeal was advanced with regard to the Supreme Court decision in Secretary of State for the Home Department v AF and other (No 3) [2009] 3 WLR 74 (Hereafter referred to as AF (No 3)). In AF (No 3) the court considered non-derogating control orders and the resultant restrictions on the liberty of the individual subject

to such an order, which was made following consideration of and reliance on "closed" material which was not seen by AF or his legal advisors and which they were unable to confront or address. This process was deemed to be procedurally unfair and the consequent order was quashed.

On this basis, it was argued that an order for trial by judge alone, determined as it was on the basis of material drawn to the attention of the court in accordance with PII conditions, contravened elementary principles of fairness on the basis that the defendants were not provided with information to enable them to challenge the material. It was argued that the decision of the Court of Appeal in ordering a trial without jury should be set aside on the basis that that decision was not, or was not sufficiently, compliant with the principle identified in AF (No 3).

The Court of Appeal rejected this submission on the basis that the reality of the question whether the trial should proceed by jury or by judge alone was concerned exclusively with the mode of trial. It was not in itself a criminal proceeding in the sense that to order a trial on indictment by judge alone might have the potential to create adverse consequences of the kind involved with regard to control orders; no restriction on the liberty of the individual, nor any other kind of punishment or sanction could follow from an order for trial without jury.

The court determined that the judgment in AF (No 3) was not intended to impact on pre-trial criminal processes concerned with the mode of trial, nor did it have any impact on the principles relating to public interest immunity and disclosure in criminal cases.

The court rejected the submission that unless the court orders disclosure of the core minimum of material on which an order for trial on indictment by judge alone due to the risk of jury tampering is based, such an order should be prohibited on the basis that the consequences of such a submission would be that without such disclosure the defendants must continue to be entitled to trial by jury even when the court is satisfied to the requisite standard that there is a real and present danger of jury tampering. This, the court concluded, would indeed be an unfair trial.

The court determined that the question to be answered was whether the appellants' convictions were safely reached by a properly constituted tribunal, vested with the jurisdiction to try the allegations against them. They concluded that the statutory provisions on which the trial by judge alone was securely based were designed to protect the jury system from the danger of subversion and no diminution in the fairness of the trial or the safety of the convictions was caused by the disapplication of trial by jury in accordance with statute. As such Treacy J was

right to have rejected the submission that he should order trial by jury.

A further ground of appeal concerned the reliance on accomplice evidence. It was submitted that when assessing the evidence of a person 'integral to and a party to the robbery' the judge should have adopted an approach similar to that required under Section 76 of the Police and Criminal Evidence Act 1984 in deciding on the admissibility of a confession which is "represented to have been obtained in consequence of anything said or done which was likely in the circumstances existing at the time to render the confession unreliable (notwithstanding that it may be true)."

The Court of Appeal agreed with the approach adopted by Treacy J in determining that in a situation where a co-accused makes a confession and pleads guilty and then makes a witness statement and gives evidence against other defendants, section 76 has no direct application. The task for the judge is to examine the reliability of the witness and the evidence notwithstanding the attacks made on the credibility of the witness.

The full judgment is available at
http://www.bailii.org/ew/cases/EWCA/Crim/2011/8.html

SI 2721/2010 The Road Safety (Financial Penalty Deposit) (Amendment) Order 2010

This Order which comes into force on **1 February 2011**, amends the Road Safety (Financial Penalty Deposit) Order 2009. The 2009 Order, among other things, specified certain offences as ones in respect of which a financial penalty deposit may be imposed by a constable or vehicle examiner if certain conditions are met. This Order amends the 2009 Order by specifying, for those purposes, the offence, under section 59(1) of the Vehicle Excise and Registration Act 1994, of failing to fix a prescribed registration mark to a vehicle in accordance with regulations made under section 23(4) of that Act.

SI 3016/2010 The Road Safety (Financial Penalty Deposit) (Appropriate Amount) (Amendment) Order 2010

This Order which comes into force on **1 February 2011**, amends the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009 (the "Principal Order"). The Principal Order specifies the amounts of financial penalty deposits that may be imposed, where certain conditions are met, by constables and vehicle examiners, in relation to offences specified in an order made under section 90A of the Road Traffic Offenders Act 1988 (as inserted by section 11 of the Road Safety Act 2006).

The amendments made by this Order increase, from £30 to £60, the appropriate amounts for financial penalty deposits in respect of offences, under the Road Traffic Act 1988, relating to the wearing of seat belts and use of child seats and airbags, and under the Vehicle Excise and Registration Act 1994 of driving or keeping a vehicle without a registration mark or with it obscured. An appropriate amount of £60 is also prescribed for failing to affix a registration mark to a vehicle in accordance with regulations made under the 1994 Act. The financial penalty deposit for the offence, under section 41A of the Road Traffic Act 1988, in contravention of Regulation 27(1)(g) of the Road Vehicles (Construction and Use) Regulations 1986 (SI 1986/1078), of using a vehicle with insufficient tyre tread is reduced, where a motor cycle is concerned, from £120 to £60.

SI 3030/2010 The Police Authority (Amendment No. 3) Regulations 2010

These Regulations which came into force on **19 January 2011**, amend the Police Authority Regulations 2008 (SI 2008/630) to provide for the automatic extension of the terms of office of independent members of police authorities pending the expected abolition of police authorities by the Police Reform and Social Responsibility Bill in May 2012. The term of office of any independent member whose term of office is due to

expire before 10 May 2012 is extended until that date subject to provisions on disqualification, resignation and removal. However there is no such extension of a term of office if on the date these Regulations come into force, the police authority has already completed arrangements to appoint another person to that office.

SI 19/2011 The Road Safety Act 2006 (Commencement No. 6) Order 2011

This Order brings into force on **4 February 2011** section 22(1) to (3), (5) and (7) of the Road Safety Act 2006 ("the 2006 Act") (article 2). Subsection (6) of section 22 is also commenced to the extent to which it relates to subsection (7).

Section 22 relates to the new offence of keeping a vehicle which does not meet the insurance requirements and inserts new provisions in the Road Traffic Act 1988 (RTA) and amends the Road Traffic Offenders Act 1988 (RTOA).

Section 22(1) inserts sections 144A, 144B, 144C and 144D into the RTA to provide for the offence and exceptions to it, the giving of fixed penalty notices and its enforcement by the immobilisation, removal and disposal of vehicles.

Section 22(2) inserts section 159A into the RTA which makes provision for the Secretary of State to require the Motor Insurers' Information Centre to disclose information for the purpose of enforcing offences under Part VI of the RTA and regulations under section 160 of that Act, including that of keeping a vehicle which does not meet the insurance requirements.

Section 22(3) inserts Schedule 2A into the RTA which provides for the making of regulations regarding enforcement of the offence by means of the immobilisation, removal and disposal of vehicles.

Section 22(5) to (7) amends the RTOA to provide the penalty for the offence of keeping a vehicle which does not meet the insurance requirements and to apply provisions of that Act regarding time limits for commencing proceedings for the offence and the admissibility of certificates and statements as evidence in those proceedings.

SI 108/2011 The Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2011

This Order, which came into force on **21 January 2011**, amends the Terrorism Act 2000 by adding Tehrik-e Taliban Pakistan to the list of proscribed organisations in Schedule 2 to the Act.

HMIC Report on ACPO Criminal Record Office

Her Majesty's Inspectorate of Constabulary has published a report detailing their Police National Computer (PNC) Compliance Inspection of the Associated Chief Police Officers (ACPO) Criminal Records Office in October 2010.

A full inspection against the 2005 PNC Protocols was carried out, covering: Leadership; Policy and Strategy; People; Partnerships and Resources; Processes; and Results. The first stage of the inspection involved the organisation providing HMIC Inspectors with documentation to support its adherence to the protocols. This was followed up by a visit to the organisation with HMIC Inspectors conducting interviews with key staff. The visit to the organisation also incorporated 'reality checks' which involved reviewing PNC data against source documents.

HMIC assessed PNC compliance within the organisation as Excellent. By this they meant that there was 'Comprehensive evidence of effective activity against all protocol areas.'

Some of the main findings include:

- There is a clearly defined and well understood quality ethic within the organisation;
- Timeliness objectives are constantly achieved; and
- The organisation is striving to improve quality and timeliness standards nationally and internationally.

The full report, 'ACPO Criminal Record Office (ACRO), Police National Computer Compliance Report 05-07 October 2010' is available at http://www.hmic.gov.uk/SiteCollectionDocuments/Individually%20Referenced/PNC_ACRO_01102001.pdf

IPCC Publishes Report on Deaths in or Following Police Custody

The Independent Police Complaints Commission has published a study of the 333 deaths in or following police custody between 1998/99 and 2008/09. This study was carried out in order to identify trends in the data, examine the nature of the deaths and to identify lessons that can be learnt to prevent future deaths from occurring.

The number of deaths occurring each year has fallen in the period covered. In 1998/99 there were 49 deaths. This had fallen to 15 in 2008/09. Rates for police forces varied from 3.8 deaths per 100,000 arrests to 0 per 100,000. Of the deceased 90 per cent were male, 76 per cent were White, 7 per cent were Black, 5 per cent were Asian, 2 per cent were Mixed race,

and 1 per cent were Chinese/other ethnicity (the ethnicity of 9 per cent of the sample was not stated). The ages of the deceased ranged from 14 to 77 years old with the average age being 39 years old. The most common causes of death were natural causes, overdoses, suicide, and injuries received prior to detention.

Police restraint was a factor in a number of the deaths. Twenty-six per cent of the sample of 333 deaths (87 people) were physically restrained by officers on arrest, during transportation or while in custody or hospital. People aged between 25 and 34 years old were significantly more likely to be restrained than other age groups, and people from BME groups were significantly more likely to be restrained than White people. The most common restraint technique was being held down by police officers. For 16 people (5 per cent), the cause of death was classed as restraint-related (either primary or secondary cause of death). For four of the 16 people, cause of death was also classed as positional asphyxia.

The report highlights concern about risk assessment, care of detainees and medical provision. Of the 247 detainees (out of the 333 cases) who were booked into custody and liable for a risk assessment at the police station, just under half were actually risk assessed. Of the 205 detainees who required checking while in police cells, a small number received constant supervision, but several people did not receive checks as regularly as they should have. In less than one in five cases, at least one of the officers or members of staff dealing with the case was trained in first aid. This highlights a need for first aid training for custody officers and staff.

A number of deaths involved mental health issues and suicide. Seventeen people died after being detained under section 136 of the Mental Health Act 1983 and taken to a place of safety. Of these 17 individuals, nine were taken to police custody as a place of safety instead of a hospital, despite guidance to the contrary. There were 26 individuals who were not identified as having any mental health needs or as being a possible suicide or self-harm risk, but who went on to commit suicide. There were examples of people who had been identified as having mental health needs, or as being a potential suicide or self-harm risk, who were not checked on as frequently as they should have been following the risk assessment.

Alcohol and drugs were a factor in a number of deaths. Of the 87 arrests for being drunk and incapable or drunk and disorderly, 60 did not involve arrest for any other offences but led to the person being taken into custody. The report states that this raises questions about whether people who are very inebriated and who are suspected of having committed such offences, or who are arrested due to their level of intoxication,

should be taken into custody. The Association of Chief Police Officers (ACPO) Safer Detention Guidelines (2006) state that people detained for being drunk and incapable should be taken to alternative facilities, but the report found that this does not seem to be occurring. There were several cases where the deceased had used alcohol and died from injuries received prior to or during detention - for example, falling and sustaining a head injury while intoxicated. Symptoms of head injuries were sometimes overlooked due to the intoxication of the deceased.

The investigations conducted following the deaths found that police force policy and procedure on custody matters was breached in 91 of the 333 cases (27 per cent). The most common recommendations for improving force policy centred on officer training in first aid and liaison with forensic physicians (69 recommendations), and risk assessment of custody cells and detainees' property and clothing (58 recommendations). The investigation found that police force policy and procedure on custody matters was breached in 91 of the cases (27 per cent). In 17 cases (5 per cent of the sample) the investigator identified similar incidents which had previously occurred in the same force.

On 38 separate occasions, the investigation into the deaths identified training needs for individual police officers. Misconduct and disciplinary charges were recommended on 78 separate occasions for police officers and on nine separate occasions for staff members. Prosecutions were recommended against 13 police officers, who faced a total of 36 charges. None resulted in a guilty verdict.

The report makes a number of recommendations for police forces and health service provides to help prevent further tragedies:

- Police forces and local health service providers and commissioners should adopt the ACPO Safer Detention Guidelines (2006) and develop protocols on the care of intoxicated detainees;
- ACPO should ensure that training manuals clearly state which restraint techniques are unauthorised, and which should only be used for a maximum length of time;
- Police forces should emphasise to custody personnel the risks around head injuries being masked by intoxication;
- Police forces should ensure that CCTV is available in at least one cell in the custody suite, to be used when a detainee is identified as being at risk;
- Healthcare professionals should ensure that their directions for custody staff on the frequency of checks required for a

detainee are written in the custody record, in addition to being verbally passed on; and

- Police forces should adopt procedures to ensure that custody officers and staff adhere to PACE Code C with respect to risk assessing, checking and rousing.

The full report, 'Deaths in or following police custody: An examination of the cases 1998/99 - 2008/09' is available at http://www.ipcc.gov.uk/Documents/Deaths_In_Custody_Report.pdf

Police Resources and the Crime Rate

In a briefing paper prepared by Civitas, the Institute for the Study of Civil Society, the possible impact of the cuts to police funding planned for the next four years is examined.

The briefing paper suggests that the proposed 20 per cent cut in real terms in police funding over the next four years, is likely to involve 'dramatic staff reductions, including of frontline police officers.'

In this briefing paper it is argued that there is a strong relationship between the size of police forces and national crime rates. Data from the European Sourcebook of Crime and Criminal Justice Statistics is cited to evidence this relationship.

The briefing paper compares the number of police officers per 100,000 population and recorded offences per 100,000 population across all full members of the European Union for the year 2006. The data suggests, in the words of the briefing paper, 'an association between police officers per head of population and crimes per head. A nation with a larger proportion of police officers is somewhat more likely to have a lower crime rate. A nation with fewer police is more likely to have a higher crime rate.' Looking specifically at England and Wales, the briefing paper notes that it 'currently has a smaller number of police officers per 100,000 than the European average and has a higher crime rate than average.'

In the light of this data the briefing paper suggests that 'it is plausible to suggest … that reducing the number of police officers in any given country could lead to an increase in the crime rate.'

In support of this claim, the paper cites a research study conducted by Robert Witt, Alan Clarke and Nigel Fielding in 1999. This study, which examined changes in crime rates in 42 police force areas in England and Wales from 1986 to 1996, found '[a] strong negative effect of police on crime… more police are associated with lower crime rates.' They found that police presence appeared to have a particularly strong impact on vehicle crime.

The Briefing paper concludes by stating that 'it is plausible to suggest that police resources play an essential role in tackling crime … it seems highly unlikely that the swingeing cuts now being enacted will be made without significantly decreasing detection rates.' The consequence of this may well be 'that offenders will be able to engage in criminal acts with a reduced risk of being caught and sanctioned, making criminal acts less risky and more attractive for potential offenders. As a result, it is possible that recent falls in crime will be halted or even reversed.'

The full briefing note, entitled, 'Police reductions could see crime rate surge' is available at
http://www.civitas.org.uk/crime/europolice.htm

Trials of a New Approach for Tackling Antisocial Behaviour

The Home Office has announced that trials of a new approach for handling complaints relating to antisocial behaviour will be held.

The trials, which will take place across eight police force areas, will involve a change in the way calls from members of the public are responded to. This new approach will be based on a new system to log complaints and improvements in the use of IT to enable greater information sharing. The trials in the police force areas of Avon and Somerset, Cambridgeshire, Leicestershire, Lincolnshire, London, South Wales, Sussex and West Mercia will run from January to July 2011.

It is suggested that the current differing approaches to recording complaints of antisocial behaviour and identifying repeat victims have resulted in too many complaints not being dealt with adequately. These trials aim to develop an approach which deals adequately with local concerns about antisocial behaviour and which quickly identifies and protects vulnerable victims.

The new approaches are to be tailored to each area and will be based on five key principles. These are:

- Creating an effective call handling system where each individual has a log of complaints created from the very first call;
- Introducing risk assessment tools to quickly identify the most vulnerable victims;
- Installing off-the-shelf IT systems to share information on cases between agencies, removing the need for meetings;
- Agreeing a protocol across all local agencies setting out how cases will be managed; and
- Engaging with the community to clearly set out the issues which are causing the most harm to individuals and neighbourhoods, and setting out how the police, other local agencies and the public can work together to address them.

At the end of the trial the Home Office will assess each area's approach and will publish details about which aspects worked well and detail changes for other force areas to implement.

See further
http://www.homeoffice.gov.uk/media-centre/press-releases/new-help-asb

England and Wales Crime Statistics: Quarterly Update to September 2010

The latest statistics on crime in England and Wales have been published by the Home Office. They are based on interviews from the British Crime Survey (BCS), and crimes recorded by the police, in the 12 months to September 2010.

Both measures indicate that crime has fallen. Based on British Crime Survey (BCS) interviews in the year to September 2010, there was a decrease of five per cent in the number of incidents of BCS crime compared with the year ending September 2009. The number of crimes recorded by the police fell by seven per cent in the year ending September 2010 compared with the previous year.

To give specific examples of this fall:

- In the year ending September 2010 there were decreases in all but one of the police recorded crime offence groups;
- The largest percentage falls were for criminal damage (down 18 per cent) and offences against vehicles (down 14 per cent);
- Violence against the person offences recorded by the police fell by four per cent and robberies by five per cent;
- Police recorded domestic burglaries fell by seven per cent and other burglaries by ten per cent;
- The number of BCS personal crimes showed a decrease of nine per cent compared with the previous year;
- This was mainly due to falls in theft from the person (down 18 per cent) and other theft of personal property (down 12 per cent); and
- Within BCS household crime, there were falls in vehicle-related theft (down 15 per cent) and vandalism (down 7 per cent).

In other areas there had been no change. Levels of BCS violent crime, for example, showed no statistically significant change compared with the previous year. Likewise, levels of BCS household crime and burglaries showed no significant change.

In relation to some crime areas, the statistics indicate that crime has risen. For instance, the police recorded crime group of sexual offences had increased by 7 per cent. Within BCS household crime there was an increase in 'other household theft' of 16 per cent.

The full statistical bulletin, 'Crime in England and Wales: Quarterly Update to September 2010' is available at http://rds.homeoffice.gov.uk/rds/pdfs11/hosb0211.pdf

Crime Statistics Review Launched

The Home Secretary, Theresa May, has announced that the National Statistician, Jil Matheson, will lead an independent review into the collection and publication of crime statistics.

The aim of the review is to look to improve public confidence in government published crime statistics. In a further step designed to improve public confidence and trust in the statistics it has also been announced that the responsibility for the publication of such statistics will move from the Home Office to an independent body in the future.

The review will look for cost effective ways to improve the coverage and coherence of crime statistics (police recorded crime and the British crime survey) to give the public a clearer picture of crime levels. These will include:

- Ensuring definitions of crimes and anti-social behaviour are aligned with the priorities and concerns of local communities;
- Improving transparency and trust in the crime data which is collated and published;
- Recommending how gaps in the statistics could be addressed; and
- Advising which independent body should publish crime statistics in the future.

Jil Matheson will work with key partners on the review including the Association of Chief Police Officers (ACPO) and Her Majesty's Inspectorate of Constabulary (HMIC).

The review will report back by the end of April 2011 and it is intended that any changes flowing from the review will be implemented from April 2012.

See further
http://www.homeoffice.gov.uk/media-centre/press-releases/crime-stats

ACPO Releases Figures for Christmas Drink Driving Campaign

ACPO has published figures detailing its month-long Christmas and New Year campaign targeting drink and drug drivers.

The figures reveal that 6,613 people were arrested for driving under the influence of drink and drugs. A total of 169,838 people were stopped and tested during the campaign.

The campaign which ran from 1 December 2010 to 1 January 2011 involved officers from the 43 forces throughout England and Wales testing drivers at all times of the day and night. A range of tactics were used from high profile roadside operations to intelligence led targeting of suspected drink and drug drivers identified by members of the public through confidential help lines.

The number of people tested dropped by 24 per cent on last year and the number of people found to be under the influence of drink or drugs dropped in comparison to last year by 13 per cent.

The full statistics are available at http://www.acpo.presscentre.com/Press-Releases/More-than-6-600-arrested-during-Christmas-drink-and-drug-driving-campaign-b2.aspx

Home Affairs Committee Publishes Report on Firearms Control

The Home Affairs Select Committee has published a report on Firearms Control. The Committee was motivated to look at this issue following the shooting incidents involving Derrick Bird and Raoul Moat.

The report notes that the police recorded 14,250 offences in 2008/09 in which a firearm was fired, used as a blunt instrument or to threaten in England and Wales. In the same year firearm use was responsible for 39 homicides, and around 2,000 injuries.

Mass shootings with licensed weapons, such as those perpetrated by Derrick Bird remain rare. In total, legal firearms were used in at least 10 per cent of firearms homicides in 2008/09. Offences with low-powered air weapons, the possession of which is not illegal, comprises a substantial proportion of all gun crime.

There was particular concern expressed about the use of legal weapons in domestic firearms incidents. The Committee recommends that the Government should hold a consultation on their proposal based on the Canadian system, that police licensing officers consult the current and recent domestic partners of applicants in assessing a firearms licence application.

The report found that 'an onerous burden is placed on the police and on the public because of the difficulty of understanding and applying the 34 relevant laws which govern the control of firearms.' The complexity and confusion in the law makes it unreasonable to expect members of the public to know their responsibilities and unreasonable to expect the police to apply the law accurately in all cases. The report recommends that the Government should provide proposals for early consultation on how to codify and simplify the law.

The Committee was of the view that there should be both tighter restrictions and clearer guidance on the granting of firearms and shotgun licences to individuals who have engaged in criminal activity. In particular, it suggests that the law should be amended so that persons in receipt of wholly suspended sentences are subject to the same prohibitions on obtaining a licence to hold section 1 firearms or shotguns as they would be if their sentence had not been suspended.

The Committee also recommends a change in the law to create a single system for the licensing of section 1 firearms and shotguns. Such a system could be based upon the current process for granting licences for section 1 firearms. This would mean individuals would only be allowed to hold guns with 'good

reason'. It will also make the process more straightforward and cheaper for the police to administer.

Current police guidance on firearms legislation was found to be out-of-date. The report recommends that the guidance be urgently updated to take into account recent changes to legislation to ensure that officers are properly equipped to take the best decisions that they can. Furthermore, the Government should facilitate a change in the status of the guidance to make it an Approved Code of Practice.

The Committee noted concern about the potential impact of police spending cuts on the firearms licensing function. It recommended that one means of ensuring sufficient funds are available to support the system is to increase applicant fees. The committee felt that the Home Office should consider raising the current £50 fee to a level that covers the reasonable costs of licensing.

Section 39 of the Violent Crime Reduction Act 2006 was introduced to enable a more pro-active approach to outlawing 'readily-convertible' imitation firearms. The necessary action to bring this into effect was not, however, taken. The report notes restricted intelligence from the National Ballistics Intelligence Service that reveals the significant role that converted firearms play in facilitating serious criminality. The report recommends that the Home Secretary makes the necessary regulations under Section 39 of the Violent Crime Reduction Act 2006 to require imitation firearms to conform to a specification that makes it more difficult for them to be converted into firing weapons.

The Committee also recommends that the Government should introduce legislation to amend section 1(6) of the Firearms Act 1982 to ensure that the definition of a 'readily-convertible' imitation firearm accurately reflects the abilities of contemporary criminals to carry out such conversions. In addition, it recommends that new offences for supply and importation of firearms be introduced to ensure that those guilty of such offences face appropriate penalties.

The full report, 'Firearms Control' published by the Home Affairs Committee is available at http://www.publications.parliament.uk/pa/cm201011/cmselect/cmhaff/447/447i.pdf

Virtual Court Pilot Evaluation

The Ministry of Justice has published a research report which presents findings from the virtual court pilot evaluation. The virtual court pilot was an initiative that was designed to deliver speed and efficiency improvements to the criminal justice system. In the pilot a defendant would appear in a magistrates' court for the first hearing by means of a secure video link while remaining physically located in the police station where they were charged. The pilot ran from May 2009 for 12 months in two magistrates' courts in London and north Kent, and covering 15 police stations in London and one in north Kent.

This evaluation of the pilot scheme states that some cost savings were released by virtual courts, including, reduced prisoner transportation costs. There were also savings for the police as the rate of defendants failing to appear at court for their first hearing was 1 per cent in virtual courts, compared to 5 per cent in the comparator areas. This resulted in savings for the police as it meant that there were fewer defendants to locate when a warrant was issued for their attendance at court.

Overall, however, the evidence indicates that the virtual court pilot increased costs to the delivery of criminal justice in the London pilot area, compared to the traditional court process. There was, for instance, the high set-up and running costs for the virtual court technology. Virtual court activity also placed an additional resource burden on police custody officers and designated detention officers.

Economic modelling suggests that a roll-out of virtual courts across London based on the structure and performance of the pilot would cost more than it would save over a ten-year period. Further analysis suggests that achieving a break-even point with roll-out might be possible, but that it would require substantial changes to be made to improve the performance of the process.

The pilot was successful when measured against the saving time criteria. The virtual court process significantly reduced the average time from charge to first hearing, in particular through the use of electronic file sharing and the removal of the need for defendants to travel to court. The biggest time benefits occurred when charge and hearing took place on the same day. In the pilot scheme 57 per cent of cases took place on the same day, compared to 12 per cent in the comparator area.

The report notes some concerns relating to the impact of virtual courts on the fairness of the judicial process and outcomes. These factors include:

- The physical, separation of defendants (and sometimes their solicitors) and the courtroom which could make it harder, for example, for defendants and advocates to communicate;

- The rate of guilty pleas and custodial sentences were higher in the pilot than in traditional courts; and
- The rate of defence representation was lower in virtual courts compared to the comparator areas.

The report suggests that if the virtual court concept is to be rolled out nationally in the future, these issues will need to be further explored.

The evaluation concludes by saying that overall the virtual court pilot has demonstrated that a video link between a police station and a court could be successfully used to conduct a first hearing. It does though note that it is not suitable for all cases including those involving people with additional language needs.

Evidence for this report was gathered through semi-structured interviews with criminal justice practitioners, observations in police stations and magistrates' courts, a survey of victims, and detailed analysis of criminal justice data. The pilots' performance is measured against a comparator area, namely the whole of London.

The full report, entitled, 'Virtual Court pilot Outcome evaluation' is available at
http://www.justice.gov.uk/publications/docs/virtual-courts.pdf

CPS Publishes Guidance on Non-Accidental Head Injury Cases Involving Children

The Crown Prosecution Service has published guidance for prosecutors on dealing with Non-Accidental Head Injury (NAHI) cases involving children, formerly known as "Shaken Baby Syndrome".

This guidance updates that published in 2006 and was informed by a range of senior pathologists, paediatric medical experts, investigators, representatives from academia and professional bodies. It advises prosecutors on the stance taken by the Court of Appeal and the High Court in NAHI cases and sets out what evidence is needed to prove such a case, as well as how to respond to possible challenges from the defence. It provides information on the approach to be taken towards decisions to charge and prosecute and also emphasises the importance of complying with the Criminal Procedure Rules 2010 with regard to expert evidence.

The triad of injuries

The guidance explains that the three injuries central to the diagnosis of an NAHI are:

- Retinal haemorrhages (bleeding into the lings of the eyes);

- Subdural haemorrhages (bleeding beneath the dural membrane of the brain); and
- Encephalopathy (damage to the brain affecting function).

Challenges

There are three predominant challenges to the mainstream interpretation of the triad of injuries, namely the "unified hypothesis" which challenges the triad on the basis that they may be explained by lack of oxygen, infection or raised intracranial pressure. Other challenges have suggested that accidental short distance falls can be associated with similar pathological findings or that in the very young, a degree of subdural and retinal haemorrhage may be the result of a birthing injury.

However the guidance notes that the Court of Appeal rejected the "unified hypothesis" in the case of R v Henderson, Butler and Oyediran [2010] EWCA Crim 1269.

Charging decisions and advice from the Royal College of Pathologists

The guidance makes clear that with regard to charging decisions, each case will turn on its own facts. Where the only evidence available in cases of death or severe injury is the triad of injuries, it is unlikely that a charge for a homicide (or attempted murder or assault) offence could be justified, without additional supporting evidence, such as a history of violence towards children, appearance of atypical bruises or fractures, inconsistent accounts, mental health issues or a history of domestic, alcohol or drug abuse.

In this vein, the Royal College of Pathologists concluded in December 2009 that in the absence of other evidence when considering a paediatric post mortem which presents the triad of injuries, there should be a prima facie suspicion that the injuries are due to mechanical trauma, potentially including vigorous shaking. However, based on current knowledge, the presence of the triad should not be regarded as absolute proof of traumatic head injury in the absence of corroborative evidence.

In certain cases where death has occurred, a charge of causing or allowing the death of a child under Section 5 of the Domestic Violence, Crimes and Victims Act 2004, in addition to murder or manslaughter, may be appropriate.

Expert evidence and the Criminal Procedure Rules 2010

The guidance also provides assistance with regard to the role of expert witnesses in such cases, advising on the importance for Judges to establish the expertise of witnesses appearing before them as well as their recent clinical experience. The courtroom

should not be used to push theories from the far end of the medical spectrum which lack sufficient scientific basis.

Given the complex and contentious nature of NAHI cases, strict adherence to the regime established by the Criminal Procedure Rules 2010 will assist in distilling the matters on which the jury must focus and assist their understanding of the medical issues in the case, for example by seeking to achieve an agreed document setting out where there is and is not agreement in the evidence of expert witnesses.

The NPIA National Injuries Database is being used to compile details of all child homicide and suspicious child death investigations from police forces within England, Wales and Northern Ireland. This will act as a central reference point for others dealing with these types of cases and provide a source of data for research and analysis. For further information on this please contact the National Injuries Database on 0845 000 5463 or see http://www.npia.police.uk/en/6868.htm

The guidance can be found at http://www.cps.gov.uk/legal/l_to_o/non_accidental_head_injury_cases/

Identity Documents Act 2010

The Identity Documents Bill received Royal Assent on 21 December 2010. As of 21 January 2011 all the provisions of the Act will be in force.

Under this Act the Identity Cards Act 2006 is repealed and all identity cards previously issued ceased to be valid on 21 January 2011. Further to this, the National Identity Register, containing the biographic and biometric data of cardholders, will be physically destroyed within 2 months of 21 December 2010. The Act obliges the Secretary of State to write to all cardholders to notify them of the cancellation and to provide information as to the consequences of this change in the law. The Act does not contain provision for refunding existing cardholders. Identification cards for non-EEA nationals are not affected by the provisions.

The Act re-enacts the provisions of the 2006 Act concerning offences relating to the possession or creation of false identity documents in so far as they relate to such documents other than identity cards, such as passports and driving licences. It also re-enacts data-sharing provisions in the 2006 Act designed to verify information provided in connection with passport applications.

The text of the Act can be found at
http://www.legislation.gov.uk/ukpga/2010/40/contents/enacted

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