NPIA
National Policing Improvement Agency

Digest

May 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.

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Legal Services

Chief Executive Officer Directorate

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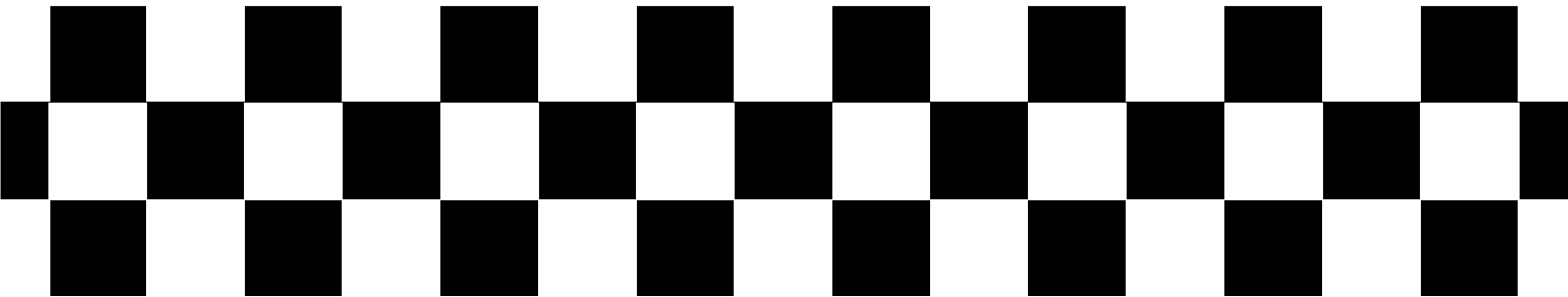

NPIA Digest May 2011

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 the rejection of a submission of no case to answer and an application for a stay of proceedings in a historic sexual abuse case, as well as the judicial review of the lawfulness of police action at the G20 protests.

We look in detail at the recently published Joint Committee on Human Rights report on facilitating peaceful protest, the HMIC report on the front line and police visibility and Baroness Newlove's report on tackling neighbourhood crime.

We consider the publication of two Home Office circulars on the Firearms (Electronic Communications) Order 2011 and changes to the Misuse of Drugs Act 1971: control of Tapentadol and Amineptine. In addition a Ministry of Justice Circular concerning the publication of the third edition of "Achieving Best Evidence: Guidance on Interviewing Victims and Witnesses, and Guidance on Using Special Measures" is examined.

A Home Office research report on interventions to address anti-social behaviour is covered, as is a consultation on new guidelines for judges sentencing drugs offenders, and a statistical bulletin on firearms certificates in England and Wales in 2009/10.

There are also articles on the consultation on police leadership reform, the newly in force public sector equality duty, the publication of prosecution guidance on the Bribery Act 2010, domestic homicide reviews, the final rollout of the sex offender disclosure scheme, the use of drug testing by the police and the transfer of the National Fraud Authority to the Home Office. In addition, a mid-term report by the Independent Advisory Panel on deaths in custody, and a Nacro report on new responses to vulnerable children in trouble are also considered.

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

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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.

First reading of the Bill took place on 1 April 2011. This stage is a formality that signals the start of the Bill's journey through the Lords.

Second reading - the general debate on all aspects of the Bill - is scheduled for 27 April 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.

The Bill had its Second Reading debate on 1 March 2011 and was committed to a Public Bill Committee. The Committee last considered the Bill on 5 April 2011 and will consider it again on 26 April 2011 and 28 April 2011. The Protection of Freedoms Bill Committee is now accepting written evidence.

The Committee will now consider the Bill clause by clause every Tuesday and Thursday (except for days when the House of Commons is on Recess) until it reports on 17 May.

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

Application for Stay of Proceedings in Historic Sexual Abuse Case

R v TBF [2011] EWCA Crim 726

This appeal concerned the question of when justice requires proceedings to be stayed in cases of historic sexual abuse, seeking to balance the need to protect victims of sexual abuse who often do not make a complaint for many years, with the fact that the criminal justice system must protect defendants from facing a trial and possible conviction in circumstances in which a fair trial is not longer possible.

The appellant was charged of various sexual offences against his daughter, A, and his step-daughter, K, on an indictment containing 13 counts.

At the end of the evidence, counsel for the appellant applied to the judge to stay the proceedings on the grounds that, after such a long period of delay, a fair trial was not possible. The difficulties caused for the appellant by the long period of delay were acknowledged by the judge, such as members of the family no longer being alive to give evidence and a lack of medical evidence to support or contradict the evidence of the complainants. However, the judge felt that he could compensate for these matters by giving appropriate directions to the jury in his summing up and so rejected the application for a stay.

The jury returned unanimous verdicts finding the appellant guilty on all 13 counts. He was sentenced to 14 years imprisonment.

The appellants appealed against his conviction on two grounds, namely:

- The proceedings ought to have been stayed because of the long delay between the alleged offences and the date of the trial; and
- There were defects in the summing up.

In considering the first ground, the Court of Appeal considered a large number of authorities concerning historic sexual abuse and the question of staying proceedings on the grounds of abuse of process.

From this review of authority, the Court of Appeal derived the following propositions with regard to criminal prosecutions brought after a long delay:

- The court should stay proceedings on some or all counts of the indictment for abuse of process if, and only if, it is satisfied on balance of probabilities that by reason of delay a fair trial is not possible on those counts.

- It is now recognised that usually the proper time for the defence to make such an application and for the judge to rule upon it is at trial, after all the evidence has been called.
- In assessing what prejudice has been caused to the defendant on any particular count by reason of delay, the court should consider what evidence directly relevant to the defence case has been lost through the passage of time. Vague speculation that lost documents or deceased witnesses might have assisted the defendant is not helpful. The court should also consider what evidence has survived the passage of time. The court should then examine critically how important the missing evidence is in the context of the case as a whole.
- Having identified the prejudice caused to the defence by reason of the delay, it is then necessary to consider to what extent the judge can compensate for that prejudice by emphasising guidance given in standard directions or formulating special directions to the jury. Where important independent evidence has been lost over time, it may not be known which party that evidence would have supported. There may be cases in which no direction to the jury can dispel the resultant prejudice which one or other of the parties must suffer, but this depends on the facts of the case.
- If the complainant's delay in coming forward is unjustified, that is relevant to the question whether it is fair to try the defendant so long after the events in issue. In determining whether the complainant's delay is unjustified, it must be firmly borne in mind that victims of sexual abuse are often unwilling to reveal or talk about their experiences for some time and for good reason.

With regard to the first ground of the appeal the court considered the massive length of time that had passed between the events in issue and the trial; the alleged offences against K occurred between 30 and 40 years before and the alleged offences against A occurred between 30 and 37 years before. It was submitted by counsel for the appellant that this delay was unjustifiable and seriously prejudiced the defence.

It was the case that all witnesses, for the prosecution and the defence had considerable difficulty in recalling events between 1971 and 1981, which inevitably affected the reliability of their evidence.

Due to the passage of time, much of the evidence the appellant would have relied upon was no longer available, such as family members who had since passed away, in particular the complainants' grandmother, who could not be called to give evidence that she had seen nothing untoward. Nor was it

possible to adduce evidence of the grandmother's house. In addition, the appellant's work records would also have been important evidence, as he contended that he was away from home working for much of the relevant period. Evidence of the dates on which the grandmother was in hospital during the relevant period was important due to the allegation that the appellant had raped K when her grandmother was in hospital during this period. However, hospital records relating to the grandmother no longer existed.

The court considered the fact that often in cases of historic sexual abuse there is justification for the delay in bringing criminal proceedings. However this was not deemed to be so in this case due to the fact that it is common ground between the prosecution and the defence that in 1984, K and her mother visited the appellant for a "doorstep confrontation" in which they accused the appellant of having molested K. No reason was submitted as to why K's complaints were not reported to the police in or soon after 1984.

The Court of Appeal took the view that this was a case in which No direction given by the judge to the jury could compensate the appellant for the prejudice suffered by reason of the length of time that had passed. Also, it was a case in which the long delay left counsel for the appellant with no material to use in cross-examination, essentially leaving the jury with the complainant's evidence that the offences occurred and the appellant's denial of the allegations.

Having carefully considered the case in light of the guidance given by the Court of Appeal in earlier cases, the court concluded that the decision of the trial judge not to stay the proceedings was wrong. The long delay in this case before commencement of criminal proceedings had the effect that a fair trial was no longer possible and for these reasons the court allowed the appeal and quashed his conviction on all counts on the indictment.

The full judgment is available at
http://www.bailii.org/ew/cases/EWCA/Crim/2011/726.html

Appeal Against Rejection of Submission of No Case to Answer

R v Mohammed Rakib [2011] EWCA Crim 870

At trial, the appellant had been convicted of two counts of exposure contrary to section 66 of the Sexual Offences Act 2003, namely that he intentionally exposed his genitals with the intention that someone would see them and would be caused alarm or distress. He was sentenced in respect of each conviction to a community order with a three year supervision requirement to attend sex offending assessment psychological testing and treatment, with the appropriate notification requirements.

The facts of the case were that in late September/early October 2008 at about 0800, the complainant, B, aged 17 years was walking to college when she heard music coming from an area of bushes by the footpath she was using which drew her attention. She turned and saw a man with his trousers and boxer shorts around his ankles. She had an unobstructed view of him masturbating with his left hand. She told her mother what had happened when she returned home, but did not report the matter to the police.

However on 3 November 2008, at about the same time of day, she was again walking to college along the same route. She again heard music and saw the same man standing in the same location as the previous occasion. She looked him in the face before walking off. On this second occasion she did not look towards his genitals, but from the motion of his arm, which she did see, she said he was "doing the same thing". She could see his left arm making motions as if he was masturbating.

Following the second incident, B made a complaint to the police describing the man and his clothing, as well as where he had been on both occasions and Mr Rakib was arrested. B identified the appellant in a police identification procedure.

Following various procedural issues, an indictment was preferred against B, with the counts covering the September/October exposure and the November exposure respectively. The appellant was convicted of both counts.

The grounds of appeal against conviction were as follows:

- That the judge erred in ruling against the defence counsel's submission at the close of the prosecution case that the count relating to the second incident should be withdrawn from the jury because there was no safe basis on which the jury could conclude that there was an exposure of the appellant's penis on that occasion. The offence requires such exposure and the complainant did not suggest that

she actually saw his penis on the second occasion. In these circumstances, it was submitted that the jury could not safely conclude that his penis was exposed, merely because the complainant had said that his left hand was moving in the same way as on the first occasion, as if he were masturbating. It was submitted that the appellant could have been masturbating under his clothes without exposing his genitals or could have been engaged in some preparatory acts without exposing himself. Given that the hand movements the complainant saw could be consistent with those possibilities, the jury could not safely conclude that the appellant had exposed himself on the second occasion and as such the second count should have been withdrawn from the jury.

- That the judge was wrong to direct the jury to the effect that they were entitled to take into account that there had been exposure of the penis during the first incident when deciding whether they were sure that there had been exposure during the second incident.

The Court of Appeal confirmed the correct approach with regard to a submission of no case to answer; the test is whether a reasonable jury, properly directed and after considering all the evidence with appropriate care and scrutiny, could properly convict. A case should not be withdrawn from the jury simply because another view of the evidence, consistent with innocence, might be taken. It is up to the jury to consider possible legitimate interpretations of the evidence and decide whether, on the evidence, they are satisfied so that they are sure that all the elements of the relevant offence have been made out.

In this case there was no serious suggestion that the man the complainant had seen on both occasions was the same man; the appellant simply denied that he was that man. However, the jury were satisfied as to the accuracy of the identification of the appellant as the man in the bushes on both occasions.

The other primary issue for the jury to consider was whether they were sure that on that second occasion the appellant exposed himself, as required by the offence. Given that the appellant's case was that he was not present on either occasion, the issue relied exclusively on the evidence of B. The jury found the appellant guilty of the first count and as such were satisfied that the appellant was masturbating his exposed penis with music playing with the intent that somebody should see him and be caused alarm and/or distress. This was clearly relevant to whether he was exposing himself on the second occasion.

The prosecution case was that if the jury were satisfied on count 1, the circumstances and modus operandi of count 2 were so similar, namely location, music playing and hand movement,

that they would be sure that he was doing the same on the second occasion, namely exposing himself. The Court of Appeal confirmed that if the jury were satisfied that the appellant exposed himself and committed the offence in count 1, then this was clearly a matter they could take into account when considering whether they were satisfied that he exposed himself on the occasion on which count 2 was based. Simply because there was circumstantial evidence that there may possibly have been another, innocent interpretation does not mean that the matter had to be withdrawn from the jury and the Court of Appeal determined that for it to have been withdrawn would have been plainly inappropriate. Whether the appellant was exposing himself was especially a matter for the jury to consider and decide, on all the evidence.

With regard to the second ground, which counsel for the appellant accepted was really a recasting of the first ground, the Court of Appeal determined that the jury were properly directed by the judge. The burden and standard of proof were set out for the jury and it was made clear that they could not convict of count 2 unless they were sure that the appellant was exposing his penis at the relevant time.

For these reasons the Court of Appeal did not consider either ground of appeal made out, nor were the verdicts considered in any way unsafe.

The full judgment is available at
http://www.bailii.org/ew/cases/EWCA/Crim/2011/870.html

Judicial Review of Lawfulness of Police Action at G20 Protests

R (on the application of Moos) v Commissioner of Police of the Metropolis [2011] EWHC 957 (Admin)

On 1 April 2009, two large demonstrations took place in the City of London in protest at the G20 Summit which was to take place in London the following day. The first of the two demonstrations was outside the Royal Exchange towards the Bank of England. The second, known as the Climate Camp, was a quarter of a mile away in Bishopsgate, outside the Carbon Exchange. The demonstration outside the Royal Exchange was disorderly to the point of serious violence. The Climate Camp demonstration was less disorderly and was violent only intermittently and to a much lesser extent. Some of those participating in the Climate Camp demonstration brought tents and cooking equipment and set up camp in the road intending to stay overnight, with the demonstration blocking Bishopsgate, a major thoroughfare in and out of the City.

The police decided to deal with the Royal Exchange demonstration by containing it within a police cordon blocking all five ways out. Later that evening a dispersal procedure was used by which the Royal Exchange protestors were allowed to leave in small groups. This containment was not criticised in these judicial review proceedings. At the same time as this dispersal began, the police decided to contain the Climate Camp demonstration within Bishopsgate. This was done because they believed that without containment, more violently disposed protestors from the Royal Exchange protest would join the Climate Camp demonstration and that breaches of the peace would occur, not because they believed that if it remained uncontained the Climate Camp demonstration alone would result in an imminent breach of the peace.

The main claim in these judicial review proceedings is that the containment of the Climate Camp was unnecessary and unlawful. Other more specific complaints of unlawfulness were also made which criticise police action at and in relation to the Climate Camp.

The High Court considered two House of Lords authorities, namely Laporte v Chief Constable of Gloucestershire Constabulary [2007] 2 AC 105 and Austin v Commissioner of Police of the Metropolis [2009] 1 AC 564.

The court derived the following propositions from Laporte:

- For a police officer to take steps lawful at common law to prevent an apprehended breach of the peace, the apprehended breach must be imminent;

- Imminence is not an inflexible concept but depends on the circumstances;
- If steps are to be justified, they must be necessary, reasonable and proportionate;
- Depending on the circumstances, steps which include keeping two or more different groups apart may be necessary, reasonable and proportionate, if a combination of groups is reasonably apprehended to be likely to lead to an imminent breach of the peace; and
- Depending on the circumstances, where it is necessary in order to prevent an imminent breach of the peace, action may lawfully be taken which affects people who are not themselves going to be actively involved in the breach.

In addition, the court stated that a process of police containment of a demonstration may be lawful at common law and not a violation of Article 5 of the European Convention on Human Rights, if the stringent requirements set out by the Court of Appeal and the House of Lords in Austin are fulfilled such as:

- Where a breach of peace was taking place or reasonably thought to be imminent, the police could not interfere with or curtail the lawful exercise of rights of innocent parties unless they had taken all other possible steps to prevent the breach or imminent breach of the peace and to protect the rights of third parties;
- Only where the police reasonably believed that there was no other means whatever to prevent a breach or imminent breach of the peace could they as a matter of necessity curtail the lawful exercise of their rights by third parties;
- The test of necessity would be met only in truly extreme and exceptional circumstances;
- The action taken had to be both reasonably necessary and proportionate.

The Claimants' Claim

The Claimants' claimed declarations to the effect that:

- The decision to contain the Climate Camp between 7.00pm and 11.15pm on 1 April 2009 was unlawful;
- There was an unlawful failure to make appropriate and timely release arrangements while the containment was in place;
- There was an unlawful use of force against some of those who were contained resulting from a failure to give adequate guidance and instruction to the officers involved; and

- The decision to impose conditions purportedly under section 14 of the Public Order Act 1986 to disperse those taking part in the Climate Camp protest was unlawful.

Of these four issues for decision, the court stated that the first and the third were the most important and were linked. The court did not find the fourth issue persuasive.

On behalf of the claimants, counsel referred to a number of authorities for the proposition that coercive use of force (by arrest or containment) must depend on a sufficiently real and present threat of breach of the peace coming from the person to be arrested or contained. On this basis, it was submitted that, if the police reasonably apprehended breaches of the peace by dispersing Royal Exchange protestors, the police preventive action should have been directed against them and did not justify containment of the Climate Camp protestors who were in the main peaceful. The High Court saw the force of this submission.

Counsel for the claimants' submitted that at 6.17pm, when the decision to contain the Climate Camp was taken, there was no sufficient apprehended imminent breach of the peace by any of those participating in the Climate Camp demonstration to justify containment. The High Court found this to be correct.

The crowd at the Climate Camp demonstration were largely not hostile and any violence or disorder was sporadic and the police were able to cope with it. The point was made that the very fact that the Climate Camp containment was not put in place until 50 minutes after it had been decided to do so demonstrates that there was no apprehended imminent breach of the peace at the Climate Camp until 6.17pm. When it was put in place, it was at most precautionary. The High Court also agreed with counsel for the claimants' submission that, apart from the possibility of dispersing Royal Exchange protestors mixing with those at the Climate Camp, there was never a reasonable apprehension of imminent breaches of the peace at the Climate Camp. The submission that the contention that there were groups within the Climate Camp who were intent on disorder and criminal damage was largely unsupported by the evidence was deemed to be correct by the High Court.

It was submitted that even if dispersed Royal Exchange protestors were intent on joining the Climate Camp and intent on violence there, there was no reasonable apprehension by those putting the containment in place that it was likely to occur. If Royal Exchange protestors did approach the Climate Camp, an appropriate cordon could have been formed at short notice. There was no evidence that the police had to take expansive measures to deal with the Royal Exchange protestors. Counsel for the claimants' submitted that there were parallels with Laporte in which the police prematurely contained a large

number of people who were not likely to cause violence for a number of hours, if at all.

It was further submitted that the Climate Camp containment was not reasonably targeted at those who it was thought might cause violence; disorderly Royal Exchange protestors could have been the target, and any who were not a threat to the peace could and should have been allowed to join the camp. The Climate Camp was not a violent crowd and to advance on the camp in riot gear and using shields and batons offensively was a totally disproportionate response to any need to keep Royal Exchange protestors away. Moreover, an absolute cordon keeping Climate Camp protestors in was not necessary, regardless whether it was necessary to have a cordon keeping others out and there was no evidence as to whether any alternative to containment was considered, save for an answer in cross-examination about police resources.

It was submitted on behalf of the claimants that there was an unnecessary and disproportionate interference with the Climate Camp demonstrator's rights under Articles 10 and 11 of the European Convention on Human Rights by a forcible containment which did not allow the assembly to take place freely. The interference was not prescribed by law because the domestic law preconditions for lawful action were not satisfied. In addition, containment was disproportionate and in force for longer than was reasonably necessary.

As to the pushing operation, this was submitted to be unjustified in principle as well as unnecessary and disproportionately violent in execution with officers striking or tapping some protestors with their shields.

Counsel for the claimants' submitted that putting in place absolute cordons did not require the police to move protestors forcibly backwards; rather cordons could simply have been put across the two adjoining streets. As to the use of force at 12.50am, it was submitted that even if section 14 of the Public Order Act 1986 was lawfully invoked, force should not have been used before the protestors had a reasonable opportunity to comply.

With regard to the use of section 14 of the 1986 Act to remove the protestors from blocking a main thoroughfare in the City, it was submitted that the remaining protestors could have been moved to one side and permitted to remain overnight; there was no basis for concluding that they might be violent, and specific hardcore protestors could have been specifically targeted.

The Defendants' Case

Counsel for the defendants' submitted that the relevant decisions were made in good faith, with the legitimate object of maintaining public order and cannot be said to have been arbitrary, disproportionate or otherwise unlawful. The submission that the Climate Camp demonstration was not entirely separate from the Royal Exchange protest was acknowledged by the court as correct. It was submitted that it was illogical for the claimants to complain both that demonstrators were not allowed to leave and also that they were made to do so. The court did not see this and stated that a loose cordon permits two-way traffic.

Counsel acknowledged that arrest or containment in this context requires a reasonable apprehension of an imminent breach of the peace, but submitted that this must be applied realistically and in context; the police are not required to wait until violence actually breaks out or until those from whom violence is apprehended come into sight. It was submitted that lawful containment may require the inclusion of those unintentionally caught up in a demonstration who are themselves not intent on violence. It was accepted that Articles 10 and 11 of the Convention were engaged but that restrictions of these rights are permissible if, for example, they are aimed at preventing disorder.

Counsel submitted that the Bronze Commander operationally in charge of the police operation for both demonstrations, CS Johnson, reasonably anticipated serious breaches of the peace if Royal Exchange protestors were allowed to mix with those at the Climate Camp; those at the Royal Exchange had already proved disorderly and there was an imminent danger that those released from the Royal Exchange would cause disorder and this would become uncontrollable if those at the Climate Camp were also involved. It was deemed likely that this would happen imminently if the Climate Camp was not contained. Counsel submitted that the court was not concerned simply with whether those at the Climate Camp alone were imminently likely to cause a breach of the peace; the apprehension was that there would be breaches of the peace if the Royal Exchange protestors were allowed to join them. Mr Johnson's reasonable view was said to be that the only viable way of preventing the Royal Exchange protestors from joining the Climate Camp was to contain the Climate Camp and it was submitted that this in the first instance was a matter for the judgment of the police officer in charge.

Counsel for the defendants' submitted that Mr Johnson has specifically briefed his officers about the need to exercise discretion as to the release arrangements so that non-protestors and protestors with a genuine and pressing need who were not

intent on disorder could be released. A very similar instruction in Austin was held to be rational and sensible. As to rights under Articles 10 and 11, the Climate Camp protestors were enabled to exercise these rights for many hours and the eventual dispersal of the assembly was neither arbitrary nor disproportionate.

With regard to the use of force, it was submitted that no instruction was given to use force other than that, if it were necessary, it should be reasonable; there was no high level decision to use any particular type or degree of force.

As to the use of section 14 of the Public Order Act 1986, counsel submitted on behalf of the defendants' that they were entitled to use it to make lawful removal of the remaining demonstrators who were intent on remaining in Bishopsgate blocking the highway overnight. The protestors were unlawfully blocking a major highway and had done so for more than 12 hours, without lawful excuse and they were committing an offence under section 137 of the Highways Act 1980. As such it was said to be reasonable and proportionate for the police to take the view that the demonstration should end.

Discussion

The principle issue in these proceedings was whether the containment at the Climate Camp was necessary, proportionate and justified in law.

With regard to the requirement that an imminent breach of the peace is reasonably apprehended, the High Court noted that immediacy or imminence is an essential condition which should not be diluted, although it may be applied with a degree of flexibility. The police must take no more intrusive action than appears necessary to prevent the breach of the peace, and it must be reasonable and proportionate; such action may only be taken as a last resort catering for situations about to descend into violence. What is imminent is to be judged in the context under consideration. There must be proper advanced preparations and it is only when the police reasonably believe that there is no other means to prevent an imminent breach of the peace that they can as a matter of necessity curtail the lawful exercise of their rights by third parties. The court made clear that the test of necessity is only met in truly extreme and exceptional circumstances and the action taken has to be both reasonably necessary, proportionate and taken in good faith. The court noted that the case of Austin, in which the containment was held to be lawful was a very exceptional case.

It was stated that there were two clear starting points for the court's consideration. Firstly, that there had been serious and sustained violence by the Royal Exchange protestors sufficient to justify containment of the demonstration. Secondly, there had

been no equivalent disorder or violence at the Climate Camp demonstration and as such containment of the camp was not justified by the behaviour and conduct of those protestors at the Carbon Exchange alone.

The court determined that there was a risk that following dispersal the Royal Exchange protestors might head for the Climate Camp and stated that the police were right to have anticipated that risk and take appropriate steps to deal with it, if it materialised. However, the court formed the view that it was no more than a risk.

The court determined that at 7.07pm there was no apprehended breach of the peace, imminent or otherwise, within the Climate Camp itself sufficient to justify containment. There was a risk of breaches of the peace, but it was at that stage only a risk, and not in the opinion of the court, a risk of imminent breaches of the peace sufficient to justify containment.

The court stated that the police were right to be aware of the risk of infiltration from Great St Helens Street and the alleyway opposite, but it was not persuaded that the pushing operation of a 15 person deep crowd to move them approximately 20 to 30m to the North, beyond these side roads was reasonably necessary. The police's finite and limited resources were noted but the officers could have cordoned off the side roads as an extension of the filter cordon at the southern end of Bishopsgate. As such the court felt that the pushing operation was not necessary or proportionate.

Had it not been for the containment there would have been no need for release arrangements or the use of force. Given that there was containment, it was said to be evident that there were instances of unduly inflexible release and instances of unnecessary and unjustified force in the pushing operation. The evidence as to instructions in these respects was unsatisfactory and the instructions given were very general and imprecise and may not have been fully conveyed to individual officers, some of whom appear not to have been trained for crowd control operations of this kind. It is not for the court to be prescriptive in details as to how such matters should be dealt with, but no doubt it is necessary to have a combination of training and on the spot instruction. It was stated that the proposition that no more force should be used than is necessary must apply to every police operation, but it needs to be fleshed out for individual possible situations. In addition, it was stated that the policy and training about the use of shields as presented in evidence, appeared to be insufficient for individual circumstances. There need to be clear cut instructions as to whether shield strikes were ever justified, and, if so, when.

With regard to the decision to terminate the Climate Camp demonstration and clear the camp, by force if necessary with

the aid of section 14 of the Public Order Act 1986, the court found this decision to be fully justified. The demonstration had lasted the best part of 12 hours which was deemed quite long enough to take full advantage of rights under Articles 10 and 11 of the Convention, and those wishing to remain were intent on continuing to block a main thoroughfare in and out of the City. There was no justification for prolonging the demonstration and blocking the highway until morning. The police had a duty to clear the highway, which could not be done without removing the protestors by force if necessary.

In the result, the claimants succeeded in establishing that:

- The containment of the Climate Camp; and
- The pushing operation to move the crowd approximately 20 to 30m to the North at the southern end of the Climate Camp

were not lawful police operations, except that temporary containment at the northern end became justified at around 9.30pm.

It was stated that although the court had been critical of the police instructions as to release arrangements and as to the use of reasonable force, it was not at present persuaded that these readily or necessarily required the court to make declarations on those subjects.

The full judgment is available at http://www.bailii.org/ew/cases/EWHC/Admin/2011/957.html

SI 3026/2010 The Criminal Procedure (Amendment No. 2) Rules 2010

These Rules make the following amendments to The Criminal Procedure Rules 2010, (SI 2010/60):

Part 4

- Rule 4.7 is amended to bring up to date the cross-references to other rules that it contains;
- Rule 4.9 is amended to clarify the extent of the court's power to allow service of documents by methods other than those prescribed by Part 4.

Part 8

- The rules are replaced with revised and simplified rules that apply in magistrates' courts and in the Crown Court.

Part 22

- Rules 22.4, 22.9 and the notes to the rules are amended to provide for, and refer to, defence witness notices under section 6C of the Criminal Procedure and Investigations Act 1996;
- Rule 22.8 is amended in consequence of the new rules in Part 62.

Part 42

- Rule 42.3 is amended to provide for informing a defendant about inclusion in a barred list under the Safeguarding Vulnerable Groups Act 2006;
- The note to rule 42.8 is amended to refer to requests for medical reports under section 157 of the Criminal Justice Act 2003.

Part 62

- The rules are replaced with revised and expanded rules about contempt of court, dealing with contempt by obstructive, disruptive, insulting or intimidating conduct, in the courtroom or in its vicinity or otherwise immediately affecting the proceedings, and contempt by failure to comply with a court order.

Amendments to other rules, and notes to rules

- Corrections are made to rules 35.2(1) and 68.7(1);
- The notes to rules 15.1 and 76.7 are amended to bring up to date and to correct the legislative and cross-references that they contain.

Amendments to the preamble

- The preamble that lists the powers exercised by the Criminal Procedure Rule Committee is amended to include a reference to the power now exercised by the Committee to make rule 62.16 of the Criminal Procedure Rules.

Amendments to the Arrangement of Rules

- The Arrangement of Rules is amended in consequence of the substitution of Part 8 of the Criminal Procedure Rules.

These Rules come into force on **4 April 2011**.

SI 96/2011 The Equality Act 2010 (Commencement No. 5) Order 2011

Article 3 ensures that section 159, which provides for positive action in recruitment and promotion, is brought fully into force on **6 April 2011**.

SI 719/2011 The Police Act 1997 (Criminal Records) (Amendment) Regulations 2011

These Regulations, which extend to England and Wales, came into force on **6 April 2011**.

These Regulations amend the Police Act 1997 (Criminal Records) Regulations 2002 by increasing the fee for an application made under section 113B of the Police Act 1997 for an enhanced criminal records certificate from £36 to £44 with effect from 6 April 2011. No fee is payable in relation to an application made by a volunteer under this section.

SI 718/2011 The Police Act 1997 (Criminal Records and Registration) (Guernsey) (Amendment) Regulations 2011

These Regulations, which extend to Guernsey, came into force on **6 April 2011**.

These Regulations amend the Police Act 1997 (Criminal Records and Registration) (Guernsey) Regulations 2009 by increasing the fee for an application made under section 113B of the Police Act 1997 for an enhanced criminal records certificate from £36 to £44 with effect from 6 April 2011. No fee is payable in relation to an application made by a volunteer under this section.

SI 717/2011 The Police Act 1997 (Criminal Records and Registration) (Jersey) (Amendment) Regulations 2011

These Regulations, which extend to Jersey, came into force on **6 April 2011**.

These Regulations amend the Police Act 1997 (Criminal Records and Registration) (Jersey) Regulations 2010 by increasing the fee for an application made under section 113B of the Police Act

1997 for an enhanced criminal records certificate from £36 to £44 with effect from 6 April 2011. No fee is payable in relation to an application made by a volunteer under this section.

SI 713/2011 The Firearms (Electronic Communications) Order 2011

This Order, which came into force on **1 April 2011**, amends the Firearms Act 1968, the Firearms (Amendment) Act 1988 and the Firearms (Amendment) Act 1997 (the Firearms Acts).

The Order enables certain notices which are required to be sent to the chief officer of police under those Acts to be sent by an electronic communication where certain conditions are met.

The Order also enables a chief officer of police, the Secretary of State or Scottish Ministers to send a notice required or authorised by the Firearms Act 1968 using an electronic communication where certain conditions are met. The subject matter of the Firearms Acts is a reserved matter under the Scotland Act 1998, but certain functions under the Firearms Acts, some of which involve the giving of notices, were transferred to Scottish Ministers under the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (SI 1999/1750).

SI 750/2011 The Terrorist Asset-Freezing etc. Act 2010 (Overseas Territories) Order 2011

This Order, which came into force on **31 March 2011**, extends Part 1 (including Part 1 of Schedule 2) of the Terrorist Asset-Freezing etc. Act 2010 to the British overseas territories ("the Territories") specified in Schedule 1, subject to the modifications specified in Schedule 2 of this Order and additionally in Schedule 3 for the Sovereign Base Areas of Akrotiri and Dhekelia.

The Order replaces the existing power that the Territories have to freeze the assets of those suspected of being involved in terrorism under the Terrorism (United Nations Measures) (Overseas Territories) Order 2001 (SI 2001/3366) which is vulnerable to being quashed following the Supreme Court decision in Ahmed & Ors v HM Treasury [2010] UKSC 2. Applying Part 1 of the 2010 Act to the Territories will give them a similar power to the Treasury's powers under the Terrorist Asset Freezing etc. Act 2010, allowing them to make asset freezes, licence exemptions, and to require and share information within their own territories.

The United Kingdom has an obligation to provide penalties for offences enforcing Regulation (EC) No. 2580/2001. This is provided for in section 1(b) Part 1 of the Asset Freezing etc. Act 2010. The Territories have no such obligation to provide penalties so section 1(b) is not one of the provisions in Part 1 extended to the Territories.

SI 857/2011 The Equality Act 2010 Codes of Practice (Services, Public Functions and Associations, Employment, and Equal Pay) Order 2011

This Order brought into force on **6 April 2011** the Equality Act 2010 Code of Practice on Services, Public Functions and Associations, the Equality Act 2010 Code of Practice on Employment and the Equality Act 2010 Code of Practice on Equal Pay. The codes were issued by the Commission for Equality and Human Rights on 26 January 2011 under section 14(1) of the Equality Act 2006 as amended.

The codes are designed to ensure or facilitate compliance with provisions in the Equality Act 2010 that came into force on 1 October 2010 pursuant to the Equality Act 2010 (Commencement No. 4, Savings, Consequential, Transitional, Transitory and Incidental Provisions and Revocation) Order 2010 (SI 2010/2317).

The Services Code covers Part 3 (including Schedules 2 and 3) of the Act, which makes it unlawful to discriminate against, harass or victimise a person when providing a service (which includes the provision of goods or facilities) or when exercising a public function. The Services Code also covers provisions in Part 7 (including Schedules 15 and 16) of the Act, which makes it unlawful for associations (including private clubs) to discriminate against, harass or victimise members, associates or guests.

The Employment Code covers provisions in Chapters 1 and 4 of Part 5 (including Schedules 6, 8 and 9) of the Act, which make it unlawful to discriminate against, harass or victimise a person at work or in employment services, and restrict the circumstances in which potential employees can be asked questions about disability or health. The Employment Code also covers provisions in Part 10 of the Act relating to unenforceable terms in contracts, etc.

The Equal Pay Code covers provisions in Chapter 3 of Part 5 (including Schedule 7) of the Act relating to equal pay between men and women; pregnancy and maternity pay; and provisions making it unlawful for an employment contract to prevent an employee disclosing his or her pay.

The Services Code and the Employment Code also cover the key concepts on which the Act is based, including the characteristics which are protected under the Act and the definitions of discrimination and other conduct which are prohibited by Parts 2 and 8 of the Act. They also cover section 158 relating to positive action in Part 11, and general exceptions in Part 14 (including Schedules 22 and 23), of the Act. The Services Code, the Employment Code and the Equal Pay Code also cover relevant provisions in Part 9 of the Act dealing with enforcement of its provisions.

The codes supersede various codes of practice, issued under previous discrimination legislation by former commissions dissolved by virtue of section 36 of the Equality Act 2006, which are revoked by the Former Equality Commissions' Codes of Practice (Employment, Equal Pay, and Rights of Access for Disabled Persons) (Revocation) Order 2011 (SI 2011/776) with effect from **6 April 2011** subject to a transitional provision.

SI 996/2011 The Road Vehicles (Powers to Stop) Regulations 2011

These Regulations, which came into force on **30 March 2011**, amend the Road Traffic Act 1988 to provide the Secretary of State with a power to appoint "stopping officers" in Great Britain.

They also make amendments to provide stopping officers with powers to stop certain commercial vehicles on roads for the purposes of specific checks by vehicle examiners and other authorised persons. Regulations 9 and 12 also add to the existing powers of vehicle examiners appointed in Northern Ireland aligning their powers to stop commercial vehicles on roads with those of stopping officers in Great Britain.

These Regulations create offences of impersonating and wilfully obstructing stopping officers and, in Northern Ireland, create an offence of impersonating a vehicle examiner.

These Regulations provide stopping officers with powers to stop for the following purposes:

- Vehicle roadworthiness inspections by authorised examiners under section 67 of the Road Traffic Act 1988 (regulation 2(3));
- Vehicle weight checking by authorised persons under section 78 of the Road Traffic Act 1988 (regulation 2(4));
- Inspection of documents, records and recording equipment by officers under Part 6 (Drivers' Hours) of the Transport Act 1968 (regulation 4);
- Checks by vehicle examiners and other authorised persons in relation to section 12(1) (the obligation to hold a public service vehicle operator's licence) or section 18(1) (the duty to exhibit an operator's disc) of the Public Passenger Vehicles Act 1981 (regulation 5);
- Checks by vehicle examiners and other authorised persons in relation to section 2(1) (the obligation to hold a goods vehicle operator's licence) of the Goods Vehicles (Licensing of Operators) Act 1995 (regulation 6);
- Checks by authorised inspecting officers in relation to regulation 3 (use of a public service vehicle without

Community licence) and regulation 7 (failure to comply with conditions governing the use of Community licence) of the Public Service Vehicles (Community Licences) Regulations 1999 (regulation 10);

- Inspection of the documents referred to in regulation 7 (production of Community licence and control document) of the Road Transport (Passenger Vehicles Cabotage) Regulations 1999 by authorised inspecting officers (regulation 11);

In addition, they provide stopping officers, and vehicle examiners appointed in Northern Ireland, with powers to stop for the following purposes:

- Checks by authorised inspecting officers in relation to regulation 3 (use of a goods vehicle without Community authorisation) and regulation 7 (failure to comply with conditions governing the use of Community authorisation) of the Goods Vehicles (Community Authorisations) Regulations 1992 (regulation 9);
- Checks by vehicle examiners in relation to the requirement to carry evidence of CPC or of training exemption in the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007 (regulation 12).

SI 1008/2011 The Domestic Violence, Crime and Victims Act 2004 (Commencement No. 14) Order 2011

This Order brought into force, on **13 April 2011**, section 9 of the Domestic Violence, Crime and Victims Act 2004.

This provision gives the Secretary of State the discretion to direct a person or body specified in that section to establish or participate in a domestic homicide review, held with a view to identifying the lessons to be learnt from the death. The person or body establishing or participating in the review has a duty to have regard to any guidance issued by the Secretary of State as to the establishment and conduct of such reviews.

SI 1060/2011 The Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011

This Order amends the Equality Act by adding to the list in Schedule 19 of public authorities which are subject to the public sector equality duty under section 149 of the Act.

The Order also makes amendments to the Act which are consequential on or supplementary to the commencement of the amended provisions, which were brought into force by the Equality Act 2010 (Commencement Order No. 4, Savings,

Consequential, Transitional, Transitory and Incidental Provisions and Revocation) Order 2010 (SI 2010/2317).

In addition, the Order makes amendments which are consequential to the commencement of section 149 of the Act on **5 April 2011**.

Article 2 amends Schedule 19 to the Act, which lists specific public authorities which are subject to the public sector equality duty.

Articles 3 and 4 make consequential amendments which come into force on 4 April 2011 and which provide for amendments and repeals in relation to the Act and the Nationality, Immigration and Asylum Act 2002. Article 5 makes a consequential amendment to the School Standards and Framework Act 1998 which comes into force on the same day as the commencement of the public sector equality duty on **5 April 2011**.

Articles 6 and 7 make supplementary amendments to correct inadvertent omissions or drafting errors to ensure that provisions introduced by the Act work effectively.

Schedule 1 adds bodies and offices to the list of public authorities in Part 1 of Schedule 19 to the Act which are subject to the public sector equality duty.

Schedule 2 adds a new Part 4 to Schedule 19 to the Act relating to cross-border Welsh authorities that have some functions that are devolved and some that are not devolved.

Schedule 3 adds a new Part 1A to Schedule 27 to the Act with a table setting out repeals relating to the commencement of the public sector equality duty on **5 April 2011**.

Schedule 4 adds a new Part 3 to Schedule 27 to the Act with a table setting out revocations relating to the commencement of the public sector equality duty. These revocations revoke certain instruments which inserted a number of bodies into Schedule 1A of the Race Relations Act 1976, making them subject to the general statutory duty imposed by section 71 of that Act; section 71 will be repealed once the public sector equality duty comes into force.

This Order comes into force on **4 April 2011** except for article 5 which comes into force on **5 April 2011**.

SI 1066/2011 The Equality Act 2010 (Commencement No. 6) Order 2011

This Order brings into force various provisions of the Act that were not brought into force by the earlier Commencement Orders and a provision (paragraph 106A of Schedule 26) inserted into the Act by the Equalities Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011. These provisions relate to the public sector equality duty and repeals and amendments consequential on the commencement of that duty.

Article 2 sets out the various provisions of the Act which came into force on **5 April 2011**. These include section 149 (public sector equality duty), Schedule 18 (exceptions to the public sector equality duty) and provisions repealing the previous statutory duties relating to sex, race and disability in the Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995 respectively.

SI 1082/2011 The Terrorist Asset-Freezing etc. Act 2010 (Guernsey) Order 2011

This Order, which came into force on **8 April 2011**, extends Part 1 of the Terrorist Asset-Freezing etc. Act 2010 to the Bailiwick of Guernsey (Guernsey), in order to give effect there to resolution 1373 (2001) adopted by the Security Council of the United Nations on 28 September 2001 relating to terrorism and resolution 1452 (2002) adopted on 20 December 2002 relating to humanitarian exemptions. The extension of the Act also provides for implementation within Guernsey of Regulation (EC) 2580/2001 of specific measures directed at certain persons and entities with a view to combating terrorism.

The Order will enable the financial restrictions contained in Part 1 in respect of persons designated by HM Treasury or listed under the EC Regulation to be directly effective in Guernsey. It also imposes reporting obligations on financial services businesses in Guernsey. Under the Order the Guernsey authorities will exercise the powers in Part 1 that concern requests for information including the production of documents, and the licensing of access to frozen funds for humanitarian purposes. Although not required under the Order, the Guernsey authorities will also be responsible for publicising within Guernsey designations made by HM Treasury under Part 1.

The Order will cease to have effect once Guernsey has enacted its own legislation to implement resolution 1373, resolution 1452 and the EC Regulation.

Consultation on Police Leadership Reform

A public consultation on the future of police leadership and training was launched on 5 April 2011 by the Policing Minister, Nick Herbert, following publication of a report entitled "Review of Police Leadership and Training" by Peter Neyroud, former chief Executive Officer of the National Policing Improvement Agency.

The consultation will run for 12 weeks, until 28 June 2011.

"Review of Police Leadership and Training" Consultation Document is available at http://www.homeoffice.gov.uk/publications/consultations/rev-police-leadership-training/consultation-document?view=Binary

The Report "Review of Police Leadership and Training" is available at http://www.homeoffice.gov.uk/publications/consultations/rev-police-leadership-training/report?view=Binary

Greater Flexibility for Drug Testing by Police

As of 31 March 2011, all 43 police forces in England and Wales have the power to drug test people who have been arrested if there are reasonable grounds to suspect that they have used specified Class A drugs.

In contrast to the previous situation where it was necessary for police forces to apply for authorisation from the Home Office to carry out such tests on arrest at specific police stations, chief constables now need only notify the Home Office.

Use of this power to identify drug-using offenders can help to cut drug related crime by way of the fact that if somebody tests positive for a Class A drug they are legally required to attend an assessment which identifies treatment to support their recovery. Recommendations by trained drug workers can be taken into account by the courts when setting bail conditions or sentencing.

HMIC Report on the Front Line and Police Visibility Published

Following a request by the Policing Minister, Nick Herbert, in December 2010 to facilitate agreement on a definition of "front-line services", HMIC have published "Demanding Times. The Front Line and Police Visibility."

In addressing this request, HMIC carried out a survey to establish public opinion on what constitutes the front line, consulted police representatives, including ACPO and the

Association of Police Authorities, as well as analysed police roles against two criteria, namely:

- Everyday contact with the public; and
- Direct delivery of policing service.

In so doing, HMIC found that most of those consulted agreed that police personnel in visible roles, namely those who respond to 999 calls, or work in neighbourhood policing teams, and those in specialist roles such as those in criminal investigation departments were front line. Visible and specialist roles account for 61% of the total police work force across England and Wales.

Most consulted agreed that those in back office roles, such as training and finance, were not front line.

The issue of middle office roles, in which operational and support functions overlap such as processing intelligence, holding prisoners in custody, or answering calls from the public caused more uncertainty. HMIC's survey indicated that:

- A clear majority of the public saw call handlers as front line;
- A small majority thought custody officers were front line; and
- A minority saw intelligence-processing roles as front line.

Applying the views obtained from the survey and the two criteria of everyday contact with the public and direct delivery of policing service, across the middle office adds a further 7% of the work force to the front line.

HMIC's analysis of the findings suggests a measure of agreement around the following definition of front line:

"The police front line comprises those who are in everyday contact with the public and who directly intervene to keep people safe and enforce the law."

In addition to the above, the report also surveyed the percentage of officers and PCSOs who were visible, meaning staff who wear uniform and mainly work in public, and available, meaning those who are actually ready for duty, meaning deployable in their substantive role as opposed to being on a training course or attending court, in the 43 police forces at three points in time, namely 0900 on a Monday morning, 1900 on a Wednesday evening and 0030 on Friday evening/Saturday morning.

The report found that on average 12% of the total number of officers and PCSOs are visible and available across England and Wales, with a significant variation of 9% to 17% across forces.

Case studies were also carried out across three local police areas over a 24 hour period which illustrated the diverse range of interventions the police are called upon to deal with, from preventing disorder in town and city centres to protecting vulnerable people, responding to crises and stopping crime and ASB to bringing offenders to justice. As such it is necessary for the police to tailor their response according to the circumstances of the individual, the need to prevent crime and the variation in the volume at different times of the day.

With regard to the case studies the report asserts that it can be argued that the police front line can be found in many different places from the high street to peoples' homes to the internet.

"Demanding Times. The Front Line and Police Visibility" is available at
http://www.hmic.gov.uk/SiteCollectionDocuments/Thematics/THM_20110330.pdf

Home Office Circular 006/2011: Firearms (Electronic Communications) Order 2011

This circular advises of the Firearms (Electronic Communications) Order 2011 which came into force on 1 April 2011.

This Order amends firearms legislation so as to enable certain notices to be sent by approved electronic means.

The Order amends the following provisions:

Firearms Act 1968

- Section 42A - information as to transactions under visitors' permits;
- Section 56 - service of notices.

Firearms (Amendment) Act 1988

- Section 18 - firearms acquired for export;
- Section 18A - purchase or acquisition of firearms in other member states.

Firearms (Amendment) Act 1997

- Section 33 - notification of transfers involving firearms;
- Section 34 - notification of deactivation, destruction or loss of firearms etc;
- Section 35 - notification of events taking place outside Great Britain involving firearms etc.

Save for section 56 of the Firearms Act 1968, this Order changes the notification requirements in each of the above provisions by replacing the existing references to notices by registered post or recorded delivery with the phrase "by permitted means". These are defined as being by registered post, recorded delivery or by "permitted electronic means".

The Order inserts new section42B into the Firearms Act 1968, new section 18B into the Firearms (Amendment) Act 1988 and new section 35A into the Firearms (Amendment) Act 1997 which set out a scheme for permitting forms for electronic communication. Under this scheme the Secretary of State is required to direct which forms of electronic communication may be used for the purpose of sending notices. Before giving such a direction the Secretary of State must consult Scottish Ministers, ACPO, ACPOS and "such other persons" as the Secretary of State feels should be consulted, such as the main shooting organisations. Details of any direction given must be published and chief officers of police must publish at least one electronic address for each form of electronic communication specified in that direction.

Notices will be valid provided they are sent to an electronic address published by a chief officer. An electronic address may be withdrawn by a chief officer provided at least one other address remains for the form of electronic communication concerned. A decision to withdraw an electronic address must be published in the same manner as publication of a new address. Any notice sent to a withdrawn address will be treated as valid if it was sent no later than 28 days from the date after the withdrawal.

Section 56 of the Firearms Act 1968 deals with notices sent to dealers and certificate holders, etc. by chief officers, the Secretary of State or Scottish Ministers. It preserves the use of registered post and recorded delivery but also allows the use of electronic communications. Under the amended section 56, a notice can be sent by electronic means only where:

- the recipient has given a written statement to the body concerned consenting to receive electronic notices, which may be limited to particular types of notice, and specifying the form(s) of electronic communication that may be used and an electronic address for each form; and
- the notice is sent to the address specified for that form of electronic communication.

A person may withdraw a statement by making a further written statement. Any notice sent in accordance with the original statement is to be treated as valid if it was sent no later than 28 days from the day after the date of withdrawal.

Procedural guidance on sending and receiving notices by electronic means will be prepared by ACPO and the main shooting organisations.

It should be noted that existing methods of sending notices by registered post and recorded delivery will still be permitted; the Order simply allows for electronic alternatives. In addition, electronic communications are not automatically allowed from 1 April 2011 onwards. First there will be a formal consultation process leading to a direction by the Secretary of State that specified forms of electronic communications may be used.

Home Office Circular 006/2011: Firearms (Electronic Communications) Order 2011 is available at http://homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2011/006-2011

Home Office Circular 005/2011: Change to the Misuse of Drugs Act 1971: Control of Tapentadol and Amineptine

This circular advises of the contents of three Statutory Instruments, namely SI 2011/744, SI 2011/447 and SI 2011/448, which came into force on March 28 2011.

The Misuse of Drugs Act 1971 (Amendment) Order 2011 (SI 2011/744) classifies tapentadol and amineptine as controlled drugs under Schedule 2 to the Misuse of Drugs Act 1971. These are subject to control as Class A and C drugs respectively under Parts I and III of that Schedule. This Order also clarifies the legislation on mephedrone by bringing mephedrone within the generic definition in paragraph 1(aa) Part 2 of Schedule 2 to the 1971 Act.

The Misuse of Drugs (Designation) (Amendment) (England, Wales and Scotland) Order 2011 (SI 2011/447) clarifies the legislation on mephedrone by bringing it within the generic definition in paragraph 1(q) of Part 1 of the Schedule to the Misuse of Drugs (Designation) Order 2001.

The Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2011 (SI 2011/448) place tapentadol and amineptine in Schedule 2 to the Misuse of Drugs Regulations 2001. The 2011 Regulations similarly clarify the legislation on mephedrone by bringing mephedrone within the generic definition in paragraph 1(m) of Schedule 1 to the Misuse of Drugs Regulations 2011. The 2011 Regulations insert a new paragraph 4B in the 2011 Regulations relating to the legislation on gamma-butyrolactone and 1,4-butanediol.

Specific Drugs

Tapentadol

Tapentadol is a centrally-acting painkiller with effects similar to opioids like morphine which is likely to be marketed in the UK in the near future. In accordance with the UK's legislative approach to other drugs with effects similar to that of tapentadol, the Misuse of Drugs Act 1971 (Amendment) Order 2011 controls tapentadol as a Class A drug.

Tapentadol is inserted into Schedule 2 to the Misuse of Drugs Regulations 2011 due to its legitimate uses and as such the requirements of Regulations 14, 15, 16, 18, 19, 20, 21, 23, 26 and 27 would apply to the drug. As a Schedule 2 drug, tapentadol will be available for possession, supply and manufacture for legitimate use, and for import and export under the provisions set out in the 1971 Act.

Amineptine

Amineptine is a powerful and fast-acting antidepressant. In accordance with the UK's legislative approach to other drugs with similar effects to amineptine, it is controlled as a Class C drug under the Misuse of Drugs Act 1971 (Amendment) Order 2011.

Amineptine is inserted into Schedule 2 of the Misuse of Drugs Regulations 2001 due to its legitimate uses with the effect that the requirements of Regulations 14, 15, 16, 18, 19, 20, 21, 23, 26 and 27 would apply to the drug.

Mephedrone

Mephedrone and other related cathinone derivatives were controlled under the Misuse of Drugs Act 1971 (Amendment) Order 2010 as of 16 April 2010.

These Statutory Instruments clarify the legislation on mephedrone, bringing it under the generic definition used to control other cathinones under the Misuse of Drugs Act 1971, the Misuse of Drugs Regulations 2001 and the Misuse of Drugs (Designation) Order 2001. The classification of mephedrone is not affected by this clarification and mephedrone remains a Class B drug under the 1971 Act and a Schedule 1 drug under the 2001 Regulations.

Gamma-butyrolactone (GBL) and 1,4-butanediol (1,4-BD)

Both GBL and 1,4-BD were placed under the 1971 Act in 2009. Neither were placed in any schedule to the 2001 Regulations as a result of their wide use in industry with offences relating to both drugs limited to supply with the knowledge or belief that the drugs will be ingested. The meaning given to both in Regulation 4B included "stereoisomeric" forms of both drugs. Neither of them have "stereoisomeric" forms and so new paragraph 4B substituted by SI 2011/448 removes "stereoisomeric" forms in the meaning of both drugs and includes ethers or esters, or both an ether and ester of 1,4 BD. This amendment does not affect the classification of offences relating to both drugs under the 1971 Act.

The Misuse of Drugs Act 1971 (Amendment) Order 2011 (SI 2011/744) is available at http://www.legislation.gov.uk/uksi/2011/744/contents/made

The Misuse of Drugs (Designation) (Amendment) (England, Wales and Scotland) Order 2011 (SI 2011/447) is available at http://www.legislation.gov.uk/uksi/2011/447/contents/made

The Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2011 (SI 2011/448) is available at http://www.legislation.gov.uk/uksi/2011/448/contents/made

Home Office Circular 005/2011: Change to the Misuse of Drugs Act 1971: Control of Tapentadol and Amineptine is available at http://homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2011/005-2011

Home Office Research Report 51: Describing and Assessing Interventions to Address Anti-Social Behaviour

Home Office Research Report 51 explores how interventions for anti-social behaviour (ASB) are used in some areas and the nature of ASB by adults.

This report combines a quantitative strand of work using data from local areas to consider the use of ASB interventions by Crime and Disorder Reduction Partnerships (CDRPs) (CDRPs were renamed Community Safety Partnerships after the research was carried out), with a qualitative investigation of the context in which ASB interventions are made, with emphasis on persistent adult perpetrators. The findings of the former provide a useful supplement to previous research and the work undertaken to access the data in the local areas provided an opportunity to look at issues with ASB data-collection practice and identified a number of weaknesses in the system. The latter strand focused on the context of ASB committed by adults, considering some of the most persistent perpetrators, and exploring the nature of the ASB and how practitioners use a range of interventions to address ASB.

Key Findings

ASB Interventions, Perpetrators and Incidents

In the quantitative study, data for the previous two to five years was collected from ten CDRPs that were broadly representative of CDRP areas nationally, with the sample consisting of 4,307 ASB interventions for 3,382 individuals.

- The most common interventions were warning letters (44%) and Acceptable Behaviour Contracts (ABCs) (22%);
- The more punitive interventions were less common: 9% of interventions were Anti-Social Behaviour Orders (ASBO) or ASBOs on convictions;
- Generally, those under 18 years of age were more likely to receive warning letters and ABCs whilst adult perpetrators were more likely to receive ASBOs and ASBOs on conviction;
- 83% of ASB Perpetrators received only one intervention within the timeframe covered by the study with only 1% having four or more;

- How ASB was categorised varied considerably across areas; the most common behaviour was a generic disorder category which included incidents such as noise, disorder, trespass and loitering.
- 55% of perpetrators in the sample were under 18 and nearly 75% were 25 of younger. 63% were male;
- The gender split varied by type of intervention; 49% of men and 51% of women received housing-related interventions and 53% of men and 47% of women received housing-related warnings. 85% of those who received ASBOS/ASBOs on conviction were male.

Data Issues

The study identified issues with the collection and storage of data in local areas, with a wide divergence in both by CDRPs across the areas. Most areas had some form of computerisation of records and some had customised systems which allowed data sharing between the agencies which help to deal with ASB, namely the police, housing and local authorities; in other areas partners maintained separate databases; whilst some areas did not have computerised records, but kept hard copies of documents or practitioners relied on personal knowledge.

The study found that there was often no consistency within CDRPs in what data were collected, which sometimes resulted in key information on the incident, such as the type of behaviour, being omitted.

Some areas expressed concerns over the impact that the data collection systems in place may have on their ability to manage ASB perpetrators. This was exacerbated in several areas by reluctance on the part of some partners to share information which practitioners felt narrowed the scope for effective ASB practice.

In light of this the study makes a number of recommendations for data collection in local areas, including improvement of access and data sharing across agencies and standardisation of record keeping.

Nature, Type and Context of Adult ASB

This strand of the study explored the perceptions of the type, nature and context of ASB by adults in 24 areas. In addition, 33 case studies of adults displaying persistent ASB were considered. The findings highlight the complex needs of many of the perpetrators and the challenges that local ASB teams face when using ASB tools and powers.

Types of ASB

The study identified two categories of adult ASB:

- 'Transitional ASB'; and
- 'Entrenched behaviour'.

Practitioners felt that the former could arise when an individual encountered difficulties in adapting to life changes, such as life course, geographical changes, or the transition from institution to community. Practitioners tended to concentrate on the experiences and circumstances of the individual when discussing transitional ASB, acknowledging that ASB often needed to be understood in a wider socio-economic context.

The latter category refers to the situation of a particular group, often members of the same family, in a specific locality, displaying long-term, well-established behaviours that serve to inspire a degree of fear in the local community. Those who demonstrated entrenched ASB often had complex needs including mental health issues, living in an area of social and economic deprivation, unemployment and limited life skills.

It was also found that different behaviours and perpetrators were connected with different settings in that residential areas were more likely to have disputes between neighbours, abusive behaviour towards local retailers and problems caused by adults displaced from central areas as a result of an ASBO, whereas commercial areas saw the main perpetrators of ASB as people sleeping rough, local day migrants, day trippers and people socialising at night.

Use and Delivery of Interventions

Many cases of adult ASB were connected to neighbour disputes which occurred across all types of housing occupation. Overall the findings of the study suggest that housing landlords are generally in a good position to respond to ASB. However, there are limitations to the options which exist to address ASB in owner-occupied properties which often leads to more protracted disputes.

Practitioners claimed that higher-end interventions such as ASBOs were particularly effective at dealing with problematic street behaviour although this could lead to displacement of those concerned and the problem to other areas. Emphasis was also placed on a prevention-led approach, for example by making the environment less conducive to those sleeping rough.

The effectiveness of interventions with perpetrators was influenced by a range of factors including:

- The successful identification of the causes of ASB through intensive front-line work and appropriate information-sharing;

- The nature and type of personality of the perpetrator, their motivation to change and the quality of the rapport between the perpetrator and the practitioner;
- The effectiveness of inter-agency working and multi-agency policy and practice; and
- The availability of appropriate local support services to address the issues underlying the behaviour and a commitment by those services to feed into the process.

Overall a balanced approach of both prevention and enforcement is essential to deal with ASB, especially for those perpetrators with complex needs. However, it was noted that the limited availability of support services meant that many adult perpetrators experience 'enforcement without support'. Development and maintenance of a strong front-line emphasis in ASB work is essential. In addition it was noted that more needs to be done to address the needs of victims and witnesses, particularly where vulnerable adults are concerned, and the views and concerns of vulnerable individuals and groups in the community should be explored.

"Describing and Assessing Interventions to Address Anti-Social Behaviour Report" is available at http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/horr51/horr51-report?view=Binary

New Approach to Community Activism

The government's champion for active safer communities, Baroness Newlove, has published her report on tackling neighbourhood crime.

"Our Vision for Safe and Active Communities" sets out a new approach to community activism with a view to local people reclaiming their streets, tackling local issues and improving their environment and calls for a change of culture so that crime, disorder and anti-social behaviour are no longer seen as "someone else's problem".

The report details what residents, businesses, local agencies and central government can do to begin a generational shift in the UK's approach to tackling neighbourhood crime and states that communities should be equal partners in resolving problems and issues.

The report recommends:

- A reward for communities who come together to reduce crime by giving them back money to re-invest in crime prevention;

- Giving the community money from assets seized from drug dealers and other criminals;
- Creation of a national information source supported with an award for the best examples of activism;
- Providing the public with a single point of contact for reporting non-emergency crime and anti-social behaviour;
- Allowing communities to set their own speed limits;
- Support of a community 'Power of Competence' with a helpline to give the public advice on ways to overcome cautious agencies;
- Following the Neighbourhood Policing example to get the justice system out of the court room and into communities, and putting victims' needs and their protection at the heart of any action;
- Pooling agencies' budgets locally and giving the community a choice about how money is spent;
- Asking Police and Crime Commissioners to commit at least 1% of their budget to grass roots community groups to use or have a say on;
- Taking crime maps to the next stage - showing not only where crime happens, but what action has been taken;
- Ending the 9-5 culture; agencies need to be there for their community when they need them;
- Getting public servants out and into communities, and volunteering their time and expertise to support local groups.

"Our Vision for Safe and Active Communities. A Report by Baroness Newlove" is available at http://www.homeoffice.gov.uk/publications/crime/baroness-newlove-report?view=Binary

Public Sector Equality Duty Now in Force

The Public Sector Equality Duty, the purpose of which is to integrate consideration of equality and good relations into the day-to-day business of public authorities, came into force on 6 April 2011.

The general duty, which can be found in section 149 of the Equality Act 2010, applies to the public authorities listed in schedule 19 to the Act and includes local authorities, education bodies, health bodies, the police and government departments. In addition, the general equality duty applies to other organisations which carry out public functions, which includes private bodies or voluntary organisations which are carrying out public functions on behalf of a public authority.

In summary, those subject to the general equality duty must, in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- Advance equality of opportunity between people who share a protected characteristic and those who do not; and
- Foster good relations between people who share a protected characteristic and those who do not.

Having due regard for advancing equality involves:

- Removing or minimising disadvantages suffered by people due to their protected characteristics;
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people;
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

The duty applies to England, Wales and Scotland and covers age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation.

In addition to the general duty, specific duties, set out in secondary legislation to the 2010 Act, are designed to help public bodies with better performance of the general duty by improving the focus and transparency of activity to meet the duty.

In summary, those public bodies which are covered by the specific duties are required to:

- Publish sufficient information to demonstrate compliance with the general equality duty across its functions. This must be done by 31 July 2011(and by 31 December 2011 for schools), and at least annually after that, from the first date of publication.

  This information must include, in particular:

  - Information on the effect that its policies and practices have had on people who share a relevant protected characteristic, to demonstrate the extent to which it furthered the aims of the general equality duty for its employees and for others with an interest in the way it performs its functions.

- Prepare and publish (by 6 April 2012):

  - Objectives that it reasonably thinks it should achieve to meet one or more aims of the general equality duty;

  - Details of the engagement that it undertook, in developing its objectives, with people whom it considers to have an interest in furthering the aims of the general equality duty.

It must also:

- Consider the information that it published before preparing its objectives;

- Ensure the objectives are specific and measurable;

- Set out how progress will be measured.

The Equality and Human Rights Commission will be responsible for enforcing the duty and it may take steps to encourage compliance by public body, before moving to enforcement, where appropriate. The Commission has a number of special statutory powers that it is able to use to enforce the specific duties and the general duty.

Further information and guidance on the duty is available at http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/essential_guide_guidance.pdf

Consultation on New Guideline for Judges for the Sentencing of Drugs Offenders

On March 28 2011, the Sentencing Council launched a three-month public consultation on its proposals to introduce a new Sentencing guideline for magistrates and judges with regard to drugs offenders.

Currently there is no statutory guideline regarding drugs offences in the Crown Court. Following work from the Sentencing Advisory Panel, the new guideline will cover offences in both the Crown and magistrates' courts with a view to encouraging consistency in approach to sentencing for drugs offences. For the first time in the Crown Court it will mean that sentences are based on the court's assessment of the offender's role in the offence and the quantity of drugs involved or scale of the operation.

The draft guideline covers the following offences:

- Supplying or offering to supply a controlled drug - Section 4(3) Misuse of Drugs Act 1971;
- Possession of a controlled drug with intent to supply it to another - Section 5(3) Misuse of Drugs Act 1971;
- Production of a controlled drug - Section 4(2) Misuse of Drugs Act 1971;
- Cultivation of cannabis plant - Section 6(2) Misuse of Drugs Act 1971;
- Possession of a controlled drug - Section 5(2) Misuse of Drugs Act 1971;
- Permitting premises to be used - Section 8 Misuse of Drugs Act 1971;
- Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug - Section 3 Misuse of Drugs Act 1971 and Customs and Excise Management Act 1979.

Submissions to the consultation can be made up until 20 June 2011.

All consultation documents can be found at http://sentencingcouncil.judiciary.gov.uk/sentencing/consultations-current.htm

Firearms Certificates in England and Wales 2009/10

This Home Office report presents information on the issue of firearm and shotgun certificates under the Firearms Acts 1968 to 1997, covering certificates issued in the period 1 April 2009 to 31 March 2010. Data for this bulletin is taken from the National Firearms Licensing Management System.

Firearm Certificates

- There were 141,775 firearm certificates on issue at the end of March 2010, an increase of 2% compared with the 138,728 on issue at the end of March 2009;
- The 141,775 certificates on issue at the end of March 2010 covered 451,131 firearms, the highest since these figures were first collected in 1995;
- The average number of firearms per certificate on 31 March 2010 was 3.2, again the highest since these figures were first collected in 1995;
- There were 9,462 new firearm certificates granted in 2009/10, a 6% reduction from the 10,046 certificates granted during 2008/9;
- 13,500 renewal applications were granted in 2009/10;
- Around 1% of new applications were refused in 2009/10;
- A total of 3.2 firearm certificates were revoked in 2009/10, compared with 260 in 2008/09.

Shotgun Certificates

- There were 580,653 shotgun certificates on issue at the end of March 2010, a rise of 1% compared with 574,946 on issue at the end of March 2009;
- The 580,653 certificates in force at the end of March 2010 covered 1,358,522 shotguns, a decrease of 1% from the 1,366,082 recorded at the end of March 2009;
- The average number of shotguns per certificate in 2009/10 was 2.3, compared with the 2.4 shotguns per certificate on average in 2008/09;
- There were 23,950 new shotgun certificates granted during 2009/10, a 6% reduction compared with the 25,411 granted in 2008/09;
- 47,137 shotgun certificates were renewed in 2009/10;

- Around 2% of new applications for shotgun certificates and less than 1% of renewal applications for shotgun certificates were refused in 2009/10;
- 1,076 shotgun certificates were revoked in 2009/10, an increase of 7% from 1,009 revoked in 2008/09.

Firearm Dealers

- On 31 March 2010, there were 3,182 registered firearm dealers in England and Wales, an increase of 12% from the 2,840 dealers registered in 2008/09.

Visitors' Permits

- In 2009/10, a total of 2,209 people were covered by individual and group firearm visitors' permits, a 12% increase from the 1,974 people covered 2008/09;
- 7,186 people were covered by a shotgun visitors' permit in 2009/10, an increase of 2% compared with 2008/09.

European Firearms Passes (EFPs) and Article 7 Authorities

- At the end of March 2010, 15,570 EFPs were on issue in England and Wales, a rise of 2% compared with the 15,285 on issue at the end of March 2009;
- During 2009/10, two applications were granted to certificate holders for authority under Article 7 of the Weapons Directive, whereby any EU resident wanting to purchase certain types of firearms, or ammunition for such firearms, outside his or her state of residence is required to have the prior authority of their own State. In contrast 27 Article 7 Authorities were granted in 2008/09.

"Firearm Certificates in England and Wales 2009/10" is available at
http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/police-research/hosb0511/hosb0511?view=Binary

Bribery Act 2010: Crown Prosecution Service and Serious Fraud Office Prosecution Guidance Published

The Director of Public Prosecutions, Keir Starmer, and the Director of the Serious Fraud Office, Richard Alderman, have issued joint guidance for prosecutors in England and Wales on the Bribery Act 2010, setting out the Directors' approach to prosecutorial decision-making in respect of offences under the Act.

The Guidance is subject to the Code for Crown Prosecutors and with regard to corporate prosecutions, it should be read in combination with the Guidance on Corporate Prosecutions.

It is expected that the Bribery Act 2010 will come into force on 1 July 2011.

"Bribery Act 2010: Joint Prosecution Guidance of the Director of the Serious Fraud Office and the Director of Public Prosecutions" is available at http://www.cps.gov.uk/legal/a_to_c/bribery_act_2010/#a01

Domestic Homicide Reviews Take Effect

As of 13 April 2011, under section 9 of the Domestic Violence, Crime and Victims Act 2004, domestic homicide reviews are to be carried out in cases where a person has been killed as a result of domestic violence. Such reviews should be carried out in order to ensure that lessons are learned and to improve local and national approaches to tackling domestic violence.

The police, local authority, probation service, health service and voluntary partners should look into the circumstances of the case. Under section 9, where a review isn't undertaken, the Secretary of State has the power to direct that a specified person or body establishes or participates in a review.

Guidance has been produced by the Home Office in order to support frontline practitioners who will be taking part in domestic homicide reviews.

"Multi-Agency Statutory Guidance for the Conduct of Domestic Homicide Reviews" is available at http://www.homeoffice.gov.uk/publications/crime/DHR-guidance?view=Binary

Final Rollout of Sex Offender Disclosure Scheme

As of 4 April 2011, the child sex offender disclosure scheme is in operation in all 43 police forces in England and Wales. A phased introduction began in August 2010 following a successful 12 month pilot in four police areas, namely Cambridgeshire, Warwickshire, Hampshire and Cleveland.

Under the scheme anybody can contact the police to check whether those in contact with children pose a risk. If the individual concerned has convictions for sexual offences against children or poses a risk of causing harm, the police can choose to disclose this information to the parent, carer or guardian.

As part of the drive to protect children campaign groups Stop it Now! UK and Ireland and the Lucy Faithfull Foundation have set up a new website http://www.parentsprotect.co.uk to raise

awareness of the issue of child sexual abuse, answer questions and give parents and carers the information they need to help safeguard their children.

More information about the disclosure scheme is available at http://www.directgov.uk/keepingchildrensafe

Independent Advisory Panel on Deaths in Custody Mid Term Progress Report

The Independent Advisory Panel on Deaths in Custody (IAP) has published a report detailing the progress made since its creation in April 2009 as well as setting out proposed next steps for the next 18 months. In addition, the report contains a statistical overview of all deaths in state custody as well as information on the creation of the Ministerial Council on Deaths in Custody.

"Mid Term Progress Report on the Work of the IAP and Future Priorities for the Work of the Panel" is available at http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2011/03/IAP-Mid-Term-Report-February-2011.pdf

New Responses to Vulnerable Children in Trouble: Improving Youth Justice

Nacro has published a briefing paper which considers emerging opportunities to develop better approaches and services for children and young people in contact with the youth justice system who have complex health needs and vulnerabilities.

The report examines the parameters used to assess the health and well-being needs of children and young people in trouble with the law, the scale of the challenge and how such needs impact on the risk of offending and on individual capacity to participate in criminal justice system processes.

"New Responses to Vulnerable Children in Trouble: Improving Youth Justice" is available at http://www.nacro.org.uk/data/files/nacro-new-responses-to-vulnerable-children-jan11-878.pdf

National Fraud Authority Transfers to the Home Office

The National Fraud Authority (NFA) transferred to the Home Office from the Attorney General's Office on 1 April 2011, as an executive agency.

It is hoped that the move will help to strengthen the UK's ability to tackle fraudsters by building closer links with the wider fight against organised and cyber crime.

Ministry of Justice Circular 2011/03: Publication of Achieving Best Evidence: Guidance on Interviewing Victims and Witnesses, and Guidance on Using Special Measures (3rd edition)

The purpose of this circular is to convey the online publication of the third edition of "Achieving Best Evidence: Guidance on Interviewing Victims and Witnesses and Guidance on Using Special Measures (2011)" ahead of the commencement of sections 98-103 and 105 of the Coroners and Justice Act 2009 which amend the special measures provisions contained in the Youth Justice and Criminal Evidence Act 1999.

This guidance replaces all previous editions and also replaces the "Memorandum of Good Practice". It is available online at http://www.justice.gov.uk/guidance/docs/achieving-best-evidence-criminal-proceedings.pdf

Separate complementary guidance has also been published online aimed at assisting police officers identify vulnerable and intimidated witnesses. "Vulnerable and Intimidated Witnesses: A Police Service Guide" is available at http://www.justice.gov.uk/guidance/docs/vulnerable-intimidated-witnesses.pdf

Further to the initial publication of "Achieving Best Evidence" in 2002, this third edition, which is primarily aimed at police officers conducting visually-recorded interviews with vulnerable, intimidated and significant witnesses, those tasked with preparing and supporting such witnesses during the criminal justice process and those involved at trial, takes into account legislative changes to the Youth Justice and Criminal Evidence Act 1999. In addition, it addresses special measures provisions contained in the Coroners and Justice Act 2009, recent court judgments, publication of the ACPO guidance "Advice on the Structure of Visually Recorded Witness Interviews (2010)" and reinforces good practice.

This third edition of the guidance takes account of amendments to the special measures provisions in the Youth Justice and Criminal Evidence Act 1999, contained in the Coroners and Justice Act 2009 which it is aimed will commence by the summer 2011. In short these amendments will:

- Raise the upper age limit of child witnesses automatically eligible for special measures from those under 17 to include those under 18;
- Provide child witnesses with more choice and flexibility about how they give their evidence;
- Make specific provision for the presence of a supporter to the witness in the live link room;

- Extend the automatic eligibility for special measures to witnesses in certain gun and knife crimes;
- Relax the restrictions on a witness giving additional evidence in chief after the witness' video-recorded statement has been admitted as evidence in chief;
- Make special provision for the admissibility of video-recorded evidence in chief of adult complainants in sexual offences cases in the Crown Court.

Ministry of Justice Circular 2011/03: Publication of Achieving Best Evidence: Guidance on Interviewing Victims and Witnesses, and Guidance on Using Special Measures (3rd edition) is available at http://www.justice.gov.uk/publications/docs/achieving-best-evidence-circular-2011-03.pdf

Report on Facilitating Peaceful Protest Published

The Joint Committee on Human Rights has published a report on the policing of recent protests in central London, with particular regard to the extent to which the policing of protest in practice respects human rights.

The Committee welcomed the Metropolitan Police's development of its capacity to communicate directly with protestors by way of social media such as Twitter, and through the distribution of leaflets tailored for the demonstration in question.

The Committee recommended that the organisers of future demonstrations ensure that arrangements exist to communicate with protestors during the demonstration about such things as changes to the route of the march, and that the best use is made of social media to do so.

With regard to the use of containment, or "kettling", the Committee noted that it is the responsibility of organisers and demonstrators to acknowledge that failure to protest peacefully will require the police to take action. However, it considered there to be a lack of clarity about the level or seriousness of the violence that must have occurred before containment can be resorted to. Concerns exist about the apparent lack of opportunity for non-violent protestors to leave the contained crowd, the adequacy of arrangements to identify and assist the vulnerable to leave the containment, and the general lack of information available to the protestors about how and where to leave. The report states that there is considerable room for improvement with regard to the understanding of the ACPO Guidance on containment on the part of frontline officers and as such practical proposals on how to ensure that the guidance is translated into action on the ground are sought.

Further to HMIC's 2009 report "Nurturing the British Model of Policing" in which only West Yorkshire Police were found to be using the correct definition of the term "proportionate", the Committee noted with satisfaction the fact that the Metropolitan Police have changed their training on the use of force and look forward to viewing the training materials which are currently being finalised.

With regard to the lack of specific guidance on the circumstances in which use of the baton against the head might be justifiable, the Committee recommends that detailed guidance be drawn up, and that until such time training reflects this concern.

With regard to the use of undercover officers in peaceful protest movements, a specific request was made to the Metropolitan Police to confirm that undercover officers are not being used in the trade union movement. The response to this question was

that the Metropolitan Police are "not in a position to confirm or deny what level of undercover officers will be deployed in the event."

The Committee agreed with an argument put forward by HMIC in its evidence to the Committee, that the lessons learned from events must be extracted very quickly and assimilated by those on the ground, using a "more nimble" system than that which currently exists by way of the process of policy reviews and the formulation of new guidance.

"Facilitating Peaceful Protest" is available at http://www.publications.parliament.uk/pa/jt201011/jtselect/jtrights/123/12302.htm

NPIA
National Policing
Improvement Agency

Legal Services
Chief Executive Officer Directorate
www.npia.police.uk