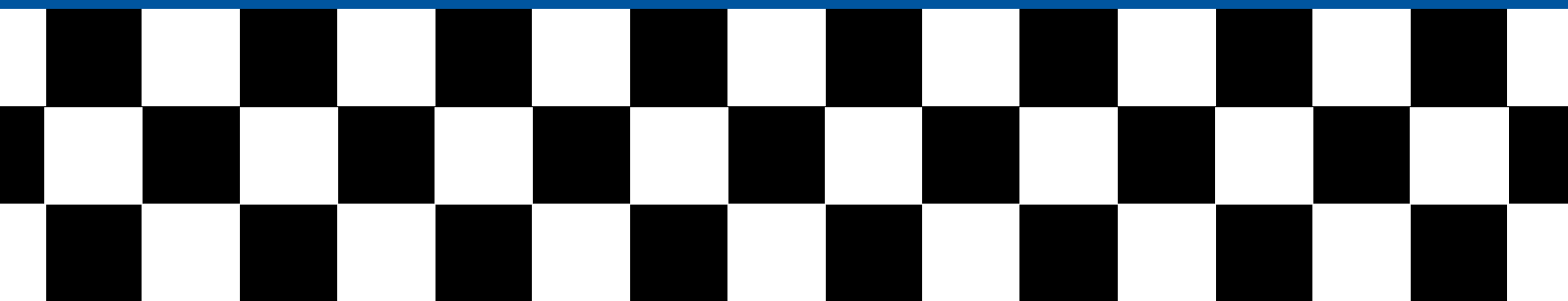


# Digest

November 2010

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](mailto:digest@npia.pnn.police.uk) or telephone +44 (0)1480334733.

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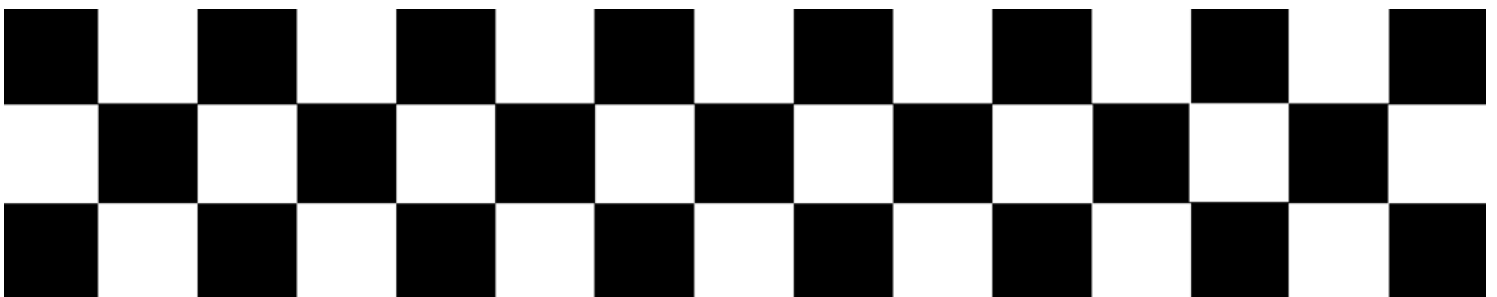
**November 2010**

# **Digest**

Legal Services

Chief Executive Officer Directorate

[www.npia.police.uk/digest](http://www.npia.police.uk/digest)



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## In this month's edition of the NPIA Digest.....

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This edition contains a summary of issues relating to police law, operational policing practice and criminal justice. New legislation, statutory instruments and case law are covered. The *NPIA Digest* includes articles outlining recently published Government and Parliamentary reports and initiatives. As usual, the *NPIA Digest* also covers the latest Home Office Circulars, research papers, Codes of Practice and guidance.

A number of Court of Appeal cases dealing with section 5 of the Firearms Act 1968; section 17 of the Theft Act 1968; the Council of Europe Convention on Action Against Trafficking in Human Beings; and the issue of misleading a trial judge as to the availability of a witness are covered.

The final report on police bureaucracy, produced by the government's Reducing Bureaucracy in Policing Advocate, Jan Berry, is detailed. This report makes a number of recommendations.

A study assessing the 'Fairness' of Britain by the Equality and Human Rights Commission is covered. This study looks at how different sections of society, including different racial groups, are treated by the criminal justice system.

The recommendations made by a coroner in their rule 43 report following a death in custody are detailed. The responses to these recommendations by the police force in question are also covered.

A number of statistical reports are detailed, including, the Youth Crime Statistical Bulletin and the Criminal Statistics Annual Report 2009.

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## Bills Before Parliament 2010/11 - Progress Report

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

- ◆ Terrorist Asset-Freezing etc. Bill - this Bill makes provision for imposing financial restrictions on, and in relation to, certain persons suspected of involvement in terrorist activities. The committee stage, a line by line examination of the Bill, took place on 6 October 2010. Amendments discussed covered clauses 2-47 of the Bill. The report stage, a further line by line examination of the Bill, is scheduled to take place on 25 October 2010.
- ◆ Identity Documents Bill - the main purpose of this Bill is to abolish identity cards and the National Identity Register. To do this, it repeals the Identity Cards Act 2006. A small number of provisions in the 2006 Act, which are unrelated to ID cards, reappear in the Bill. These provisions include offences relating to the possession and manufacture of false identity documents such as passports and driving licences. The second reading of the Bill took place on 18 October 2010. This involved a wide-ranging discussion on issues including ending the identity card scheme and the National Identity Register. The question of how best to combat identity fraud was also debated. The committee stage, a line by line examination of the Bill, is scheduled to begin on 1 November 2010.

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

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## Section 5(1A)(f) of the Firearms Act 1968 - A Strict Liability Offence?

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### R v Zahid [2010] EWCA Crim 2158 (Court of Appeal)

The appellant brought an appeal against his conviction and sentence for possession of expanding ammunition contrary to section 5(1A)(f) of the Firearms Act 1968.

At the Crown Court trial, HH Judge Pillay ruled that the offences were ones of strict liability. All the prosecution had to prove was possession of the ammunition. It was no defence that the appellant believed that the ammunition was some other innocent material. Accordingly, the judge held that there was no defence available to the appellant as a matter of law. Following this ruling the appellant pleaded guilty.

On appeal, the appellant sought to distinguish the facts of his case from a number of previous decisions of the Court of Appeal which determined that offences under sections 1 and 5 of the Firearms Act are strict liability offences.

The argument was advanced that a distinction should be drawn between firstly, cases where the defendant's claim is that he was unaware of the contents of the relevant container, and secondly, cases where the defendant's argument is that he believed that the contents of the container were something innocent, i.e. not a firearm or ammunition. In this case the appellant said that he believed that the package containing bullets actually contained bolts or screws left by workmen who were working at his house. He argues that there should be a defence for cases falling into the second category on the basis of the speech of Lord Pearce in *Warner v Commissioner of Police of the Metropolis* [1969] 2 AC 256.

In that case Lord Pearce set out a possible specimen direction that the judge could give to a jury in a drugs case. He started off by saying that, 'A man who accepts possession of a parcel normally accepts possession of the contents.' He then went on, however, to suggest that an accused may be entitled to an acquittal if, on the whole of the evidence, it appears that he may have genuinely believed that the parcel contained something innocent 'and that he may not have had any suspicions that there was anything illicit in the parcel, and that he had no opportunity of verifying its contents. For in that case it is not proved that he was in possession of the contents of the parcel.'

The appellant submits that this principle should be applicable to firearms cases and a similar direction to that proposed by Lord Pearce would be equally appropriate in a case in which the defendant is in possession of a container or package which in fact contains a firearm (or, as here, ammunition) but which the

defendant genuinely and mistakenly believes contains something different and entirely innocent. He submits that this was the position here, as the appellant genuinely but mistakenly believed the package contained bolts or screws, so this case falls into the second category. He submits that none of the earlier decisions of the Court of Appeal have considered this factual situation. Rather they are all cases where the defendant was unaware of the fact that the object in his possession was a firearm.

The Court of Appeal rejected this argument. In the words of Mr Justice Flaux, giving the judgment of the Court, 'we can see no reason in principle for the alleged distinction. In both the categories of case which the appellant identifies, the essence of the defendant's argument is: "I did not know that the object in my possession was a firearm". The reasons which this court has given for concluding that such an argument should not afford a defence are equally applicable whether the defendant's case is that he did not know what was in the bag or that he thought what was in the bag was an innocent object.'

The Court also ruled that the facts of this case were not so different from the other cases so as to be distinguishable. In *R v Waller* [1991] Crim LR 381 the appellant was handed a green holdall by a friend, which he took home, removing from it a black plastic bag which he then stored in his attic. The bag contained a sawn-off shotgun and cartridges. The defendant said that he had no idea what the bag contained but he thought that it was a crowbar or something like that to do with a burglary. In rejecting any defence based on that assertion, the Court of Appeal placed particular emphasis on the public policy considerations of strict and rigorous control of the possession of firearms.

Comparing the *Waller* case to this one, Mr Justice Flaux states: 'We can see no real distinction between the position of the defendant in *Waller* who said he did not know what was in the bag but thought it was a crowbar and the position of the appellant here who says that he thought the bag in question contained bolts or screws. If there is a distinction, it is a very fine one and certainly does not justify a completely different approach in this case from the strict approach taken in *Waller* and all other cases.'

The Court of Appeal therefore ruled that the trial judge was right to conclude that the appellant had no defence in law to the offences with which he was charged and the appeal against conviction was dismissed.

The full judgment is available at <http://www.bailii.org/ew/cases/EWCA/Crim/2010/2158.html>

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## The meaning of 'accounting purpose' in section 17 of the Theft Act 1968

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### R v O and H [2010] EWCA Crim 2233 (Court of Appeal)

The prosecution appealed against a terminating ruling made in May 2010 that there was no case to answer on counts 1 to 11 of the indictment. Counts 1-7 concerned allegedly false but successful mortgage application forms. Counts 1,2,4,5, and 6 charged O with furnishing false information contrary to section 17(1)(b) of the Theft Act 1968. Counts 3 and 7 charged O's wife, H, with two similar offences. Counts 8-11 charged offences in relation to criminal property pursuant to section 327(1) of the Proceeds of Crime Act 2002.

The terminating ruling was based on the fact that Section 17 of the Theft Act 1968 refers to 'a document made or required for any accounting purpose'. At trial none of the mortgage lenders explained, or were asked to explain, how if at all the applications were required for an accounting purpose. The judge HHJ Carr therefore ruled that there was no evidence that the mortgage lenders required the application forms for an accounting purpose.

Lord Justice Hooper, giving the judgment of the Court of Appeal, and having surveyed arguably inconsistent earlier case law, states that 'without any further direct evidence of the accounting practices of the lender, a jury is entitled to come to the conclusion that an application for a mortgage or a loan made to a commercial institution is a document required for an accounting purpose.' The rationale being that: 'Applications for a mortgage or loan to commercial institutions will, if successful, lead to the opening of an account which will show as credits in favour of the borrower funds received from the borrower and as debits funds paid out by the lender to, or on behalf, of the borrower.'

The appeal was therefore allowed and the terminating ruling made by HHJ Carr, that there was no case to answer in the absence of direct evidence of the accounting practices of the mortgage company, was set aside.

The full judgment is available at <http://www.bailii.org/ew/cases/EWCA/Crim/2010/2233.html>

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## The effect of misleading the trial judge as to the availability of a witness

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### R v Shah [2010] EWCA Crim 2326 (Court of Appeal)

The applicant appealed against his conviction of conspiracy to evade the prohibition on the importation of a controlled drug of Class A (Diamorphine) in 1994. He was sentenced to 10 years imprisonment. His renewed application for leave to appeal against conviction was dismissed in 1996. The case was, however, subsequently referred back to the Court of Appeal by the Criminal Cases Review Commission following the discovery of new documents.

At the initial trial the defence wished to cross-examine three key witnesses, including the participating informant in the case. It was said, however, that they could not be traced and the trial was allowed to continue. The principal ground of appeal relates to the failure on the part of the prosecution to have the three witnesses available for cross-examination.

Having examined the newly available documents the Court of Appeal concluded that the trial judge had been given a false impression. In the words of Lord Justice Hooper, giving the judgment of the court, 'To tell a judge that a witness cannot be traced carried with it the implication that efforts have been made to trace him. If no such efforts have been made, the judge is being misled.'

The Court declined to say whether the misleading was deliberately engineered so as to avoid having to bring the three witnesses to court for the trial or was the result of gross incompetence: 'Either way the appellant did not have a fair trial.'

The conviction was quashed.

The full judgment is available at  
<http://www.bailii.org/ew/cases/EWCA/Crim/2010/2326.html>

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## The obligations imposed on the police and prosecuting authorities by Articles 10 and 26 of the Council of Europe Convention on Action against Trafficking in Human Beings 2005

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**R v LM, MB, DG, Betti Tabot and Yutunde Tijani [2010]  
EWCA Crim 2327 (Court of Appeal)**

In this case a number of appellants argued that their convictions should be overturned or their sentences reduced on the basis that they had been victims of people trafficking. It was submitted that provisions of the Council of Europe Convention on Action against Trafficking in Human Beings 2005, which is designed to protect the rights of trafficking victims and assist them, had not been adequately followed.

The two main provisions of this treaty which are relevant to these cases are Articles 10 and 26. Article 10 requires states to provide means by which trained personnel are made available to identify and assist victims of trafficking. To satisfy Article 10 a number of bodies have been established in the United Kingdom. These include the United Kingdom Human Trafficking Centre (UKHTC), a National Referral Mechanism, and a number of third sector organisations including the Poppy Project. Article 26 provides that: 'Each party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities to the extent that they have been compelled to do so'.

The three female appellants LM, DG and MB, had been convicted of offences of controlling prostitution for the gain of themselves or another, contrary to section 53 of the Sexual Offences Act 2003. They were arrested while apparently in a position of control of a brothel. During interview whilst under caution none suggested that they had been trafficked, although the CPS believed that they had been. There was some evidence that they had not merely acted as more experienced prostitutes than the other two women found in the brothels at the same time, who were treated throughout as exploited trafficked victims, but had actually taken a leading part in introducing the others to what was required. This had allegedly included using threats, violence and sexual abuse in order to achieve compliance.

In the run up to the trial the defendants argued that they were in no different a position from that of the two other women who had been treated as trafficked victims. They denied any active threats, violence or sexual abuse and asserted that they had done whatever they had done by way of encouraging the prostitution of others, or helping to collect their earnings only under the coercion of the male principals who the prosecution believed were responsible for running the brothels and for bringing the women to England.

Before the trial started the prosecution decided to accept pleas of guilty. They did so on the basis that there had been no violence, threats or sexual abuse by the three women; that the women had been trafficked, beaten and coerced into prostitution themselves; and that anything which they had done which amounted to controlling prostitution had been done under pressure, albeit pressure which fell short of the defence of duress.

The Court of Appeal, examining this change in plea and the basis on which it was made, found that at this stage 'no-one on behalf of the Crown applied their mind to the question whether in the changed circumstances there was a public interest in continuing prosecution.' The Crown has now considered this question and submitted that if the Article 26 question and related CPS guidance had been considered, as it should have been, when the new factual basis was accepted, there could only have been one conclusion, which was that the prosecution should be abandoned by the offering of no evidence.

The Court of Appeal agreed with this conclusion stating, in the words of Lord Justice Hughes giving the judgment of the Court: 'Either the Crown should have offered no evidence or, if it had not, an application for a stay of proceedings ought to have succeeded on the grounds that any Crown decision to proceed was one which no reasonable prosecutor could make.' The appeals of the three appellants were therefore allowed on this basis and their convictions quashed.

In these cases it was also submitted that there was a breach of Article 10 because neither the police nor the prosecuting authorities referred any of the women to the UKHTC or the Poppy Project so that they could be assessed with a view to identification as credible victims of trafficking.

The court, however, rejected this submission stating: 'Where a defendant has solicitors acting for her, it seems to us ... that unless there is something unusual about the case the obligation of the police is met by reminding the solicitors of the availability of the identification agencies. It does not appear to us desirable that the police should be required to refer such persons against their own opposition, informed by legal advice.' The Court did though also state that if a suspect or defendant is not represented by a solicitor then the situation 'may well be different.'

The full judgment is available at <http://www.bailii.org/ew/cases/EWCA/Crim/2010/2327.html>

**SI 816/2010 The Coroners and Justice Act 2009  
(Commencement No. 4, Transitional and  
Saving Provisions) Order 2010**

This order brings into force a number of the provisions of the Coroners and Justice Act 2009 on **4 October 2010**. These provisions amend the Homicide Act 1957 in respect of the partial defence to murder of diminished responsibility in England and Wales (section 52); replaces the common law partial defence to murder of provocation in England and Wales with the new partial defence of loss of control (sections 54 to 56) and amends the Infanticide Act 1938 so that the offence and defence of infanticide in England and Wales can only apply in circumstances where the relevant conduct would otherwise amount to the offence of murder or manslaughter (section 57).

**SI 1921/2010 The Criminal Procedure (Amendment)  
Rules 2010**

The Criminal Procedure (Amendment) Rules 2010 is an Order which makes a number of amendments to the Criminal Procedure Rules 2010. It came into force on **4 October 2010**. The effect of the amendments is to introduce new procedure rules about trial timetables and applications for witnesses to give evidence by 'live' link. Simplified rules are introduced for: warrants for arrest, detention or imprisonment; sentencing procedures in special cases; breach, revocation and amendment of community and other orders; enforcement of fines and other orders for payment; and road traffic penalties.

**SI 2426/2010 The Violent Crime Reduction Act 2006  
(Commencement No. 1) (Wales)  
Order 2010**

This Order brings into force on **31 October 2010** sections 45 and 46 of the Violent Crime Reduction Act 2006 in relation to Wales. Section 45 of the Act inserts a new section 550AA into the Education Act 1996 which gives members of staff the power to search pupils for weapons. Section 46 of that Act inserts a new section 85B into the Further and Higher Education Act 1992 which gives members of staff the power to search further education students for weapons.

**SI 2541/2010 The Violent Crime Reduction Act 2006  
(Commencement No. 9) Order 2010**

This Order brings into force on **1 November 2010** sections 6-14 of the Violent Crime Reduction Act 2006 in relation to certain specified local justice areas. These sections provide for the imposition of drinking banning orders on conviction. This Order follows SI 469/2010 Violent Crime Reduction Act 2006 (Commencement No 8) Order 2010 which brought the same provisions into force in relation to a number of other specified local justice areas on 1 April 2010.

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## Reducing Bureaucracy in Policing Report Published

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The final report on police bureaucracy produced by Jan Berry, the government's Reducing Bureaucracy in Policing Advocate has been published.

This report is based on research conducted over the last two years. Jan Berry visited the majority of police forces throughout England and Wales to meet with chief officers, senior managers and front line officers. The aim being to identify progress made following her previous reports on reducing bureaucracy in the police service. She also sought to ascertain what might be preventing change where it appeared that necessary change had not occurred and how such change could be brought about.

The report identifies a number of 'Barriers' which may be preventing the anticipated benefits of reducing bureaucracy from occurring:

- ◆ Complex accountability and confused governance arrangements which create diluted responsibility;
- ◆ Over-reliance on quantifiable performance and productivity measures;
- ◆ Disproportionate and overlapping inspection and audit regimes;
- ◆ Inconsistent leadership, lack of trust, poor risk management and an 'institutionalised' blame culture;
- ◆ Basic skills shortages and a lack of experience in decision making;
- ◆ Insularity, parochialism and the pursuance of personal interest rather than the common good;
- ◆ No formal recognition of appropriate and proportionate 'out of court' or alternative disposals;
- ◆ Fragmented and dysfunctional systems and processes, where greater attention is given to recording than investigation, numbers managed more than people and analysts used as statisticians;
- ◆ Poor commissioning, co-ordination and sharing of learning from projects resulting in duplication of effort and waste; and
- ◆ Poor benchmarking, hasty implementation, disparate monitoring and evaluation arrangements with a tendency to implement solutions before fully understanding the problem.

The report states that there are two significant questions which need to be addressed if significant progress is to be made in the long term:

- ◆ Who at the national level is responsible for what with regards to the police and the criminal justice system?; and
- ◆ What does success in policing look like?

The report also suggests more specific solutions to particular issues which can be progressed and delivered in the more immediate future:

- ◆ Develop clearer lines of accountability;
- ◆ Measure and value what matters, not what is easy to count;
- ◆ Improve commissioning and co-ordination of projects, share learning and good practice to eliminate duplication of effort and waste;
- ◆ Formally recognise the use of professional judgement, discretion and alternatives to arrest;
- ◆ Remove the requirement to complete disclosure schedules prior to first hearing in magistrates' court and consider shifting trigger point for more serious offences at Crown Court to the point when a not guilty plea is entered;
- ◆ Apply a more risk based and proportionate approach to domestic violence enquiries and record keeping; and
- ◆ Review local interpretation of RIPA and enable a more proportionate risk-based response to recording authority.

The full report is available at

<http://www.homeoffice.gov.uk/publications/police/reducing-bureaucracy/reduce-bureaucracy-police?view=Binary>

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## Sex Offender Disclosure Scheme Extended

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The child sex offender disclosure scheme which allows parents to check whether persons with access to their children have a criminal record for child sex offences has been extended to a further 11 police force areas.

Under the scheme the police will pass on information if they believe that it will help keep a child safe. Initially the scheme was only piloted in a limited number of areas.

With the addition of these 11 force areas the total number of areas covered is now 24. The new areas are:

- ◆ Staffordshire;
- ◆ Sussex;

- ◆ Leicestershire;
- ◆ Wiltshire;
- ◆ Cheshire;
- ◆ Durham;
- ◆ Northumbria;
- ◆ Dorset;
- ◆ Lincolnshire;
- ◆ Surrey; and
- ◆ Gloucestershire.

It is intended that the remaining forces will implement the scheme by spring 2011.

See further

<http://www.homeoffice.gov.uk/media-centre/news/scheme-rolled-out-more-forces>

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### **NPIA Circular on the Disclosure of Confidential Health or Welfare Information to Police Management**

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This circular, which has been approved by the ACPO Health, Safety and Welfare Strategic Group, applies to occupational health (OH) records and to records held by welfare advisers within the police service.

It provides a clear statement that information obtained by force OH physicians, OH nurse advisers or welfare advisers is confidential. This is provided both by law and by professional ethics.

Management must take great care in making requests for access to this information to ensure that such requests are lawful.

Furthermore, consideration must be given by management to the damage that may be caused to the relationship that the OH practitioner or welfare adviser has with the officer and staff who require their services if access to confidential information is sought.

The circular is available at

<http://www.npia.police.uk/cps/rde/xchg/npia/root.xsl/404.htm?rdeStandardPropertyPage=yes>

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## Drug Seizures Information Collected and Published by SOCA

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Information collected as part of a nation wide forensic project to analyse drug seizures has been published by the Serious Organised Crime Agency (SOCA). Project Endorse focuses on Class A and amphetamine seizures in the United Kingdom. The data is collected from police and law enforcement agencies.

The analysis of the material collected by SOCA provides a detailed picture of the physical and chemical properties of the drugs seized across the United Kingdom including their purity levels.

This information is helping investigators and intelligence experts to cross-reference details, map activity across the country and identify links between different seizures. It provides a better understanding of the substances with which drugs are adulterated, in what proportions, and at what stage of the process. It is also providing an accurate picture of drugs markets and informing law enforcement activity against the trade.

Since January 2010 SOCA has issued 10 Project Endorse reports to a wide range of national and international partners and around 100 tactical intelligence reports to police forces and law enforcement agencies. Extracts from three of these reports have now been made available to the public.

The extracts from the reports are available at <http://www.soca.gov.uk/threats/drugs/forensic-intelligence>

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## Summary of Coroners Rule 43 Recommendations Published

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The Ministry of Justice has published its third summary of recommendations made by coroners between 1 October 2009 and 31 March 2010. These recommendations, made following a change in the law in 2008 to Rule 43 of the Coroners Rules 1984, are addressed to organisations following a death. They are made in order to try and prevent a similar death from occurring in the future.

In the period covered by this report coroners in England and Wales issued a rule 43 report in a total of 195 inquests. Of these reports, 22 related to deaths in custody, a higher number than in previous summaries. The summary states that the majority of these reports are very specific to a local situation or organisation. It highlights, however, one of the reports in the context of deaths in custody as potentially having wider implications.

The case covered in detail concerns a man who died in a police station cell as a result of cocaine intoxication and the development of a variant of excited delirium/acute behavioural disorder (ED/ABD). He had been sweating profusely and repeatedly asked for water before splashing water from the toilet over himself. A doctor and ambulance were called but they were not permitted to examine the man in the cell due to a concern that he might be violent. The man lay on the cell floor without moving for about twenty minutes before police and medical staff entered the cell at which time he was found to be dead.

The inquest jury found that the doctor had not carried out a timely or adequate assessment of the man or given adequate instructions to the police. They found that the failure to recognize the signs of ED/ABD was due, in part to a lack of police training and the failures of communication between police officers and the doctor. They also found that the shift change had adversely affected the man's care.

The coroner wrote to a number of organisations including the Faculty of Forensic and Legal Medicine (FFLM) and the Metropolitan Police Service (MPS) suggesting that training and guidance on ED/ABD be updated and refined. The rule 43 report also suggested revising the procedures for transfer in police vehicles; risk assessment at police stations; observation of unfit detained persons and the role of the Forensic Medical Examiners (FME) at the police station.

In their response to these recommendations the FFLM stated:

- ◆ A training course had been developed with the National Policing Improvement Agency which covers deaths in custody and includes a DVD detailing the symptoms and dangers of ED/ABD; and
- ◆ A revised version of 'Acute behavioural disturbance: guidelines on management in police custody' was published in June 2008 and is available on the FFLM website.

The MPS stated:

- ◆ The Independent Medical Science Advisory Panel of the Association of Chief Police Officers (ACPO) will be requested to appoint a leading ABD medical specialist to review the MSP programme;
- ◆ The list of symptoms of ED/ABD will be amended to make it clear that just one of the symptoms listed might indicate ABD;
- ◆ A short written test on ABD and related issues has been drafted and will be implemented in the next round of Officer Safety Training;
- ◆ Current guidance on transport contains more information about the use of police vehicles to transport prisoners needing medical attention;
- ◆ The MPS Custody Directorate is working with Newcastle University to evaluate the health screening of people in police custody. The results will improve the initial risk assessment process;
- ◆ The Custody Directorate is developing a mandatory training package focusing on Code C Annex H and issues regarding rousing a detainee will be highlighted in the Organisational Learning publication (June 2010). This will be supported by changes to the 'Illness While in Custody' poster; and
- ◆ Current guidance is that where a detainee is unfit for detention and is awaiting the arrival of an ambulance the person should be subject to constant supervision, and CCTV should not be used for this 'constant supervision'.

The report is available at  
<http://www.justice.gov.uk/publications/docs/third-summary-coroners-reports-rule43.pdf>

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## Report Assessing the 'Fairness' of Britain Published

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The Equality and Human Rights Commission has published a review looking at how fair Britain is in terms of diversity, opportunity, dignity and respect. The Commission is required to report to Parliament on the progress that society is making towards a vision of fairness every three years. The review brings together evidence from a range of sources including census data and surveys.

A number of different areas of activity are covered in the review including legal and physical security, health, education, employment, standard of living, and care and support. The findings of the review in relation to legal and physical security are covered here.

The review notes that national trends measured in crime surveys in recent years suggest that levels of violent crime are falling in England and Wales. The review found, however, that this fall is not reflected in the number of incidents targeting particular groups such as hate crime and crimes which fall under the heading of 'intimate violence' including rape, and domestic and partner abuse.

The review found that ethnic minorities are substantially over-represented in the prison system. On average, five times more black people than white people are imprisoned in England and Wales and 25 per cent of the people in prison are from an ethnic minority background. Muslim people make up 12 per cent of the prison population. There is now greater disproportionality in the number of black people in prisons in Great Britain than in the United States of America. Of those who receive a custodial sentence, many have mental health conditions, learning disabilities, have been in care or have experienced abuse.

Women experience over 75 per cent of sexual assaults and domestic violence and 25 per cent of women have experienced some form of domestic abuse since reaching the age of 16. Domestic violence is under-reported in general and particularly by women from ethnic and religious minority communities and by disabled women. Despite some improvements in the levels of reporting of rape, the rate of conviction remains stubbornly low.

The number of cases of racially and religiously motivated crime being reported to the police has fallen since 2006/07. Where cases are prosecuted the conviction rate is rising. This is with the exception of disability hate crime where the conviction rate fell by 1% between 2007/08 and 2008/09.

Experience of and confidence in the criminal justice system differs greatly depending on social group. Rates of stop and search for black and Asian people continues to suggest that

there may be disproportionality and black people are much less likely than white people to believe that their complaints about the police will be taken seriously. Survey data suggests that lesbian, gay and bisexual people are more likely to worry about and to experience discrimination by the police, whether they were reporting a crime or suspected of committing one.

The full report is available at

<http://www.equalityhumanrights.com/key-projects/triennial-review/full-report-and-evidence-downloads/>

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## **Report on the use of Anabolic Steroids Published**

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The Advisory Council on the Misuse of Drugs (ACMD) has published a report on the use of anabolic steroids. Anabolic steroids are substances related to the male sex hormones, particularly testosterone. The British Crime Survey for 2009-10 found that 50,000 people aged between 16 and 59 years had used anabolic steroids in the past year and 19,000 in the past month.

It is lawful to possess or import steroids as long as they are intended for personal use and in a medicinal form. The possession or importing of steroids with intent to supply is, however, illegal and can be punished by up to 14 years in prison and an unlimited fine.

The ACMD study reports a range of potential harms associated with the use of anabolic steroids. These include: acne, cardiovascular symptoms, psychological (e.g. aggression, violence and hypomania) and hepatic dysfunction.

The study recommends that anabolic steroids should continue to be controlled and regulated as Class C drugs under the Misuse of Drugs Act 1971. The evidence base regarding harm does not support a change in classification status.

The ACMD also recommends, however, that further restrictions should be placed on the importation exemption. In particular, it recommends that a 'personal custody on importation' requirement be introduced. This would mean that the ordering of anabolic steroids on-line from abroad via a courier service would be prohibited. The ACMD also believes that the term 'medicinal product' should be considered for removal from the legislation as it causes confusion and does not assist in the enforcement or legal framework for anabolic steroids under the Misuse of Drugs Act 1971.

The report recommends that greater efforts need to be made to inform the public about steroids. In particular, there is a need for widespread, credible, information and advice for users to counteract mis-information provided by various web sites that

actively promote anabolic steroid use. There is also a need for a better focus on advising users about the risk of blood-borne viruses such as hepatitis B and C which can result from sharing injecting equipment.

Report available at

<http://www.homeoffice.gov.uk/publications/drugs/acmd1/anabolic-steroids-report/>

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## Youth Crime Statistics Published

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The Ministry of Justice has published statistics detailing the number of young people aged 10-17 receiving their first reprimand, warning or conviction between 2000-01 and 2009-10. The statistics also cover the number of young people receiving their first penalty notice for disorder (PND), reprimand, warning or conviction by area of residence between 2004-05 and 2009-10. These statistics are based on data recorded on the Police National Computer.

The number of young people aged 10-17 receiving their first reprimand, warning or conviction, living in England, stands at 57,291 for 2009-10, a decrease of 23% from 74,588 young people in 2008-09.

The trends are similar when PNDs are included. The number of young people aged 10-17 receiving their first penalty notice for disorder, reprimand, warning or conviction in England stands at 60,436 for 2009-10. This is a decrease of 24% from 79,789 young people in 2008-09.

The full bulletin is available at

<http://www.justice.gov.uk/latest-updates/10-17-first-reprimand-warning-conviction.htm>

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## CPS Publishes Stalking and Harassment Guidance

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The Crown Prosecution Service has introduced legal guidance on stalking and harassment. It is designed to give prosecutors a better understanding of what stalking and harassment is and to help ensure that those guilty of such conduct are prosecuted and brought to justice.

The term harassment is not specifically defined by the guidance. It is, though, stated that harassment 'can include repeated attempts to impose unwanted communications and contacts upon a victim in a manner that could be expected to cause distress or fear in any reasonable person.' The guidance states that the term stalking 'is used to describe a long-term pattern of persistent and repeated contact with, or attempts to contact, a particular victim.' Conduct which amounts to stalking and

harassment is covered by offences under the Protection from Harassment Act 1997; the Offences Against the Person Act 1861, the Sexual Offences Act 2003 and the Malicious Communications Act 1988.

The guidance provides prosecutors with a framework which is designed to help ensure that stronger cases are built. Prosecutors are encouraged to look at the wider picture rather than just treating incidents of stalking or harassment in isolation. The importance of early risk identification in helping to enable strong cases to be built is also emphasised. The guidance details the importance of close working with other agencies to ensure that best evidence is gathered and presented to the court.

A change in the law which is covered in the guidance concerns the extension of the availability of restraining orders under Section 12 of the Domestic Violence, Crime and Victims Act 2004. This section, which came into force in September 2009, amends the Protection from Harassment Act 1997 to provide the courts with the power to make a restraining order even when a person has been acquitted. This the court may do if it considers it necessary to do so to protect a person from ongoing harassment from the defendant.

The guidance also highlights the victim's role in the process. It emphasises that the victim should be provided with accurate and up-to-date information throughout the life of the case, together with appropriate support. The CPS should also consider whether the victim may require special measures during the course of the court proceedings.

The full guidance is available at [http://www.cps.gov.uk/legal/s\\_to\\_u/stalking\\_and\\_harassment/](http://www.cps.gov.uk/legal/s_to_u/stalking_and_harassment/)

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### **Consultation Launched on Assault Sentences**

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The Sentencing Council has launched a 12 week consultation exercise on possible changes to the guidelines that judges and magistrates use to sentence people for assault. The offences covered by the term 'assault' include: offences contrary to sections 18, 20, 47 and 38 of the Offences Against the Person Act 1861, assault on a police constable in the execution of his duty contrary to section 89 of the Police Act 1996; and common assault contrary to section 39 of the Criminal Justice Act 1988.

The Council has decided to develop this new guideline as there are a number of concerns with the current guideline. It is suggested that on some occasions those responsible for determining sentences have not followed the guideline as they find the prescribed scenarios, which define levels within each offence, difficult to relate to individual cases. It is also said that

the existing guidelines place undue emphasis on the presence of premeditation which can make it difficult to apply as often cases do not involve any degree of premeditation.

The draft guideline framework contained within the consultation paper aims to increase proportionality and consistency in sentencing across the range of assault offences. It is intended to maintain the availability of the existing sentences for the most serious offences while ensuring that sentencing for less serious offences is more proportionate.

The consultation period closes on 5 January 2011.

The full consultation papers are available at <http://www.sentencingcouncil.org.uk/sentencing/consultations-current.htm>

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## **Mental Health Toolkit for Prosecutors Published**

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The charity Mind has published a mental health toolkit for prosecutors and advocates.

This toolkit has been produced by Mind following research it conducted in 2007 which found that people with mental ill health issues are often denied access to justice. The barriers to justice for such people include:

- ◆ Cases not being pursued because of misconceptions about how mental health impacts on credibility and reliability;
- ◆ Insufficient support being put in place to help witnesses withstand trial and give their best evidence; and
- ◆ Inappropriate or aggressive questioning by the defence going unchallenged by prosecution advocates.

This guidance provides practical information and advice about mental distress and its implications. It details ways to mitigate these barriers so as to ensure that victims and witnesses with mental ill health issues enjoy equal access to justice.

The toolkit is available at [http://www.mind.org.uk/assets/0000/9950/Prosecutors\\_\\_toolkit.pdf](http://www.mind.org.uk/assets/0000/9950/Prosecutors__toolkit.pdf)

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## Criminal Statistics Annual Report Published

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The Ministry of Justice has published the 2009 England and Wales statistical bulletin detailing various aspects of the criminal justice system. The data is taken from police and court systems.

The key points include:

- ◆ Crime recorded by the police fell by 8 per cent between 2008/09 and 2009/10 to 4.34 million crimes;
- ◆ In 2008/09 1.46 million people were arrested for recorded crime, a fall of one per cent from 2007/08. Recorded crime decreased by 5 per cent over the same period;
- ◆ The police detected 1.20 million crimes in 2009/10. A detection rate of 27.9 per cent. In 2008/09 the detection rate was 28.5 per cent;
- ◆ The total number of out of court disposals (PNDs, cautions, and formal warnings for cannabis possession) fell by 9 per cent between 2008 and 2009;
- ◆ In 2009 there were 170,400 PNDs issued, down 3 per cent from 176,200 in 2008;
- ◆ The most common offence for which PNDs were issued was thefts under £200. There were 48,200 PNDs issued for this;
- ◆ In 2009, there were 290,600 cautions administered to offenders, a decrease of 11 per cent (327,900) from 2008;
- ◆ The most commonly administered caution was for theft and handling stolen goods, accounting for 38 per cent of indictable cautions;
- ◆ In 2009, 1.69 million defendants were proceeded against in magistrates' courts, a rise of 3 per cent from 2009;
- ◆ In 2009, 1.41 million offenders were found guilty at all courts, a rise of 3 per cent from 2008 and the first annual rise since 2004;
- ◆ The conviction ratio remained at 83 per cent between 2008 and 2009; and
- ◆ 1.33 million defendants were found guilty in the magistrates' courts and 77,200 defendants were found guilty at the Crown Court.

The full bulletin is available at  
<http://www.justice.gov.uk/criminalannual.htm>

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## Crime in England and Wales Statistical Bulletin Published Comparing British Crime Survey Figures with Figures Recorded by the Police

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The Home Office has published their quarterly statistical bulletin which presents together the crime statistics from the British Crime Survey (BCS) and the crime statistics recorded by the police. The BCS results are based on interviews conducted over a rolling 12 month period up to the year ending June 2010. The recorded crime figures relate to crimes recorded by the police in the year ending June 2010.

The BCS figures suggest that there was a decrease of 4 per cent in the number of incidents of BCS crime compared with the year ending June 2009. BCS interviews show that the risk of being a victim of crime was 21.5 per cent. This was a decrease from the year ending June 2009 when the figure was 22.4 per cent. These trends are supported by the police recorded crime figures. The number of crimes recorded by the police fell by 8 per cent in the year ending June 2010 compared with the previous year. The largest percentage falls were for criminal damage (down 17 per cent) and offences against vehicles (down 16 per cent).

In other areas, however, there was divergence between the BCS figures and the police recorded statistics. Levels of BCS violent crime showed no statistically significant change compared with the previous year. By contrast, violence against the person offences recorded by the police fell by 4 per cent and robberies by 7 per cent. Likewise, BCS burglaries showed no statistically significant change compared with the previous year. Police recorded domestic burglaries fell by 8 per cent and other burglaries by 11 per cent.

The full bulletin is available at  
<http://rds.homeoffice.gov.uk/rds/pdfs10/hosb1610.pdf>

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## Reform of Criminal Justice Bodies Announced

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The Ministry of Justice has announced that a number of criminal justice public bodies will be substantially reformed as part of the government's commitment to increasing transparency, accountability and efficiency.

Six public bodies will no longer operate as non departmental public bodies:

- ◆ The Youth Justice Board for England and Wales will be abolished and its functions brought within the Ministry of Justice;
- ◆ The Legal Services Commission will become an executive agency of the Ministry of Justice;
- ◆ The Victim's Advisory Panel will be abolished;
- ◆ The Administrative Justice and Tribunals Council will be abolished;
- ◆ Courts boards (19 in total) will be abolished; and
- ◆ The Crown Court Rule Committee's functions will be transferred to the Lord Chief Justice in consultation with other rule committees.

Four public bodies will no longer operate as statutory bodies:

- ◆ HM Inspectorate of Court Administration will be abolished;
- ◆ The Legal Services Ombudsman will be abolished;
- ◆ The Magistrates' Courts Rule Committee's function will be transferred to other rule committees; and
- ◆ The Public Guardian Board will be abolished.

A further statutory office, the Chief Coroner for England and Wales, will be abolished with the functions transferred to other yet to be specified bodies.

The government will bring forward a Public Bodies Bill to implement these changes.

See further

<http://www.justice.gov.uk/latest-updates/announcement141010a.htm>