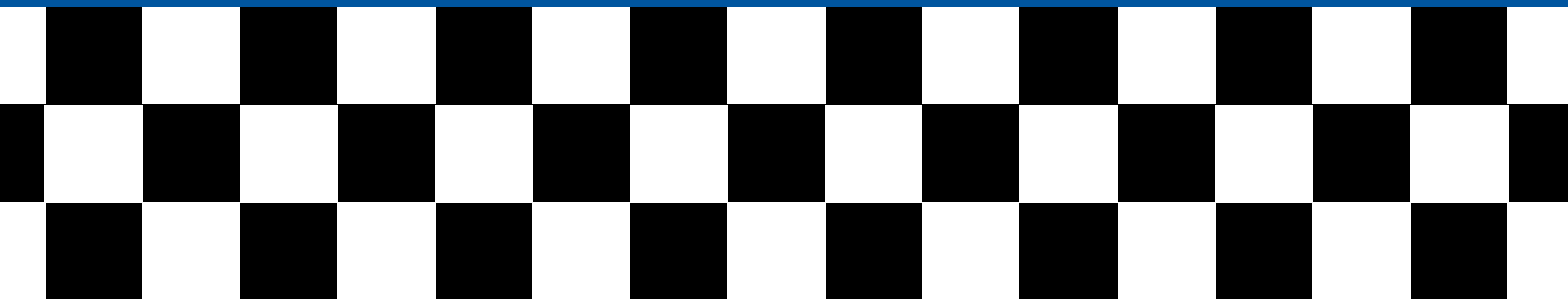


Digest

October 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 Case law is produced in association with



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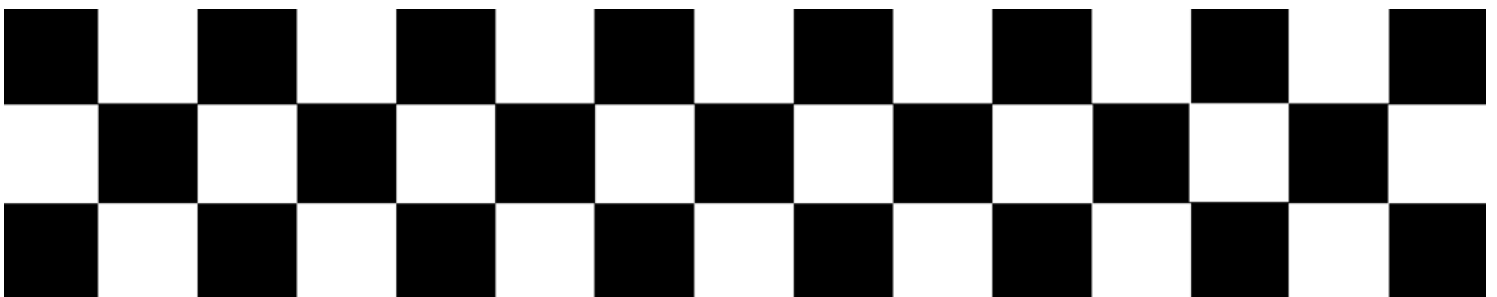
October 2010

Digest

Legal Services

Chief Executive Officer Directorate

www.npia.police.uk/digest



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

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 review by Her Majesty's Inspectorate of Constabulary of the efforts undertaken to tackle Anti-Social Behaviour is examined. Reports looking at the youth justice system and youth crime prevention efforts have also been published and are covered.

The Association of Chief Police Officers has released reports into the trafficking of migrant women for prostitution and the commercial cultivation of cannabis. These are both detailed.

A study commissioned by the Association of Chief Police Authorities looking at public perceptions of police governance structures is also covered.

Consultation exercises launched this month which are reported in this edition of the *NPIA Digest* concern: the implementation of the public sector equality duty; the content of the guidance required to be produced under the Bribery Act 2011; and the possibility of reducing the number of regulatory criminal offences.

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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:

- ◆ 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 cover offences relating to the possession and manufacture of false identity documents such as passports and driving licences. The Bill had its Report Stage and Third reading in the Commons on 15 September 2010. It will next move to the House of Lords for its first reading. The date for this is yet to be announced;
- ◆ Terrorist Asset-Freezing etc. Bill - this Bill, which makes provision for imposing financial restrictions on, and in relation to, certain persons suspected of involvement in terrorist activities is to begin the Committee stage, a line by line examination of the Bill, on 6 October 2010.

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

The Equality Act 2010

As covered in the Statutory Instrument section of this month's *NPIA Digest*, a large number of the provisions of the Equality Act 2010 are being brought into force on 1 October 2010.

Case Law



NPIA Digest will be featuring a monthly selection of Lawtel Case Reports to keep readers abreast of relevant developments in the law. Lawtel, part of Sweet & Maxwell, offers instant access to UK and EU case law, legislation and articles coverage, as well as a unique update service. For more information, or a free trial, please visit Lawtel's website at <http://www.lawtel.com> or call 0800 018 9797.

Calculating Credit for Time Served on Remand - Taking a Period of Curfew into Account

R v (1) MARK BOUTELL (2) DARREN WILLIAMS RICKETTS (2010)

CA (Crim Div) (Thomas LJ, Treacy J, Saunders J) 19/8/2010

Sentencing

Credit For Time Served: Home Detention Curfew: Effect Of Judge's Lack Of Awareness Of Time Spent On Qualifying Curfew Under S.240a Criminal Justice Act 2003: S.240a Criminal Justice Act 2003: S.240 Criminal Justice Act 2003

When, in calculating credit for time served on remand, a judge used words that referred only to remand in custody but it subsequently transpired that there was a period of curfew that had to be taken into account under the Criminal Justice Act 2003 s.240A, his words could be understood to encompass the period on curfew.

In conjoined appeals the appellants (B and R) appealed against sentences of imprisonment and, in particular, complained about the calculation of the credit to which they were entitled for time served on remand. Each appeal arose out of the sentencing judge's lack of awareness that the offender had served time on remand subject to a curfew that entitled him to a reduction in his sentence pursuant to the Criminal Justice Act 2003 s.240A. B had spent no time in custody on remand, and the judge was unaware that he had spent some of his time on bail subject to a qualifying curfew. In sentencing him to a custodial sentence she therefore made no mention of any entitlement to a reduction pursuant either to s.240 or s.240A. In sentencing R to a custodial sentence, the judge took into account the time he had served in custody on remand, saying "You will serve one half of that sentence, less any time that you have already spent in custody". It was not until after the time allowed to correct sentences under the slip rule that it became apparent that R had spent time on bail subject to a qualifying curfew. The issue was what the appellate court should do in respect of each of B and R.

HELD

There were two categories of case to be considered, those in which the judge had used words expressly encompassing custody but had not expressly mentioned curfew or tagging, and those in which he had said nothing at all

about time on remand in custody. R's case was an example of the former, and the question there was what the judge had intended when he said what he did. What had to be asked was whether he was confining himself to the period that R had spent in custody, or whether he intended to include the periods that might have been spent under electronic curfew. The court was sure that had he been told that there was a period of qualifying curfew he would have said that it should count towards sentence. In future, where a judge used words that referred only to remand in custody, but it subsequently transpired that there was a period of curfew that had to be taken into account, his words could be understood to encompass the period on curfew. That was plainly what any judge would ordinarily intend. In future, where a judge had merely referred to a "period in custody", that could ordinarily be understood to include any period for which an offender had been on a qualifying curfew. The power to deal with the matter at the Crown Court, where a reference to time spent in custody on remand had been made, would therefore include a power to deal with time spent on curfew, even if there had been no express statement to that effect. B's case was an example of a case falling into the second category. Nothing at all had been said about time spent on remand in custody. If there was no urgent amendment to the legislation, consideration would have to be given to dealing with the possibility that periods spent on remand either in custody or on curfew could be wholly overlooked. Some judges were dealing with the problem by using a formula such as "I direct that any days which you have been remanded in custody or which otherwise are capable of counting for the purposes of s.240 should count towards the service of your sentence. Thereafter you will be released". That practice seemed to have arisen because the inaccurate nature of the information before sentencing judges was such that it was thought that they had to make a statement despite there being no indication that there were any relevant periods. It could, however, be seen as negating the intended transparency of the exercise under s.240 and s.240A. While it was a useful illustration of judicial pragmatism, it was doubtful that Parliament had intended that judges should have to act in that way. Before deciding whether the use of such a formula should become a recommended method of universal practice, the court urgently implored those responsible to review the situation. The appeals would be allowed and in each case a period of 28 days would be added to the time that was to count against each offender's sentence.

APPEALS ALLOWED



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Early Release Provisions and Return to Custody

R (on the application of WEBB) v SECRETARY OF STATE FOR JUSTICE (2010)

CA (Civ Div) (Pill LJ, Wilson LJ, Sullivan LJ) 8/9/2010

Penology And Criminology - Sentencing

Long-Term Prisoners: Rape: Release On Licence: Return To Custody: Imprisonment For Burglary And Recall To Prison For Committing Offence On Licence: Application Of S.26 Criminal Justice And Immigration Act 2008: S.116 Powers Of Criminal Courts (Sentencing) Act 2000: S.33(1a) Criminal Justice Act 1991: S.33(1b) Criminal Justice Act 1991: S.26 Criminal Justice And Immigration Act 2008

The early release provisions introduced by the Criminal Justice and Immigration Act 2008 s.26 applied to an offender who, having served part of his sentence for attempted rape, was returned to prison under the Powers of Criminal Courts (Sentencing) Act 2000 s.116 at the same time as being sentenced to imprisonment for an offence of burglary committed while released on licence.

The appellant long-term prisoner (W) appealed against the refusal (R (on the application of Webb) v Secretary of State for Justice (2010) EWHC 1714 (Admin)) of his application for judicial review of the respondent secretary of state's decision that the early release provisions introduced by the Criminal Justice and Immigration Act 2008 s.26 applied to him. In 1997 W was convicted of attempted rape and sentenced to 10 years' imprisonment. In November 2004, while released on licence under that sentence, he committed a burglary for which he was sentenced to six years' imprisonment. At the same time the sentencing judge ordered his return to prison under the Powers of Criminal Courts (Sentencing) Act 2000 s.116 for 533 days, being the period of time between the date of the burglary and the expiry of the sentence for attempted rape. W was released on licence in April 2009, at the half-way point of the total aggregated period of imprisonment ordered to be served for the burglary and the return to prison, for which the Prison Service applied the automatic release provisions introduced by s.26 of the 2008 Act, which formed the Criminal Justice Act 1991 s.33(1A). However, W refused the licence conditions and he was returned to prison. The secretary of state's view was that W could be lawfully detained until June 2012, whereas W believed that he should have been released on June 30, 2010. His application for judicial review of the secretary of state's decision that the s.26 early release provisions applied to him was rejected, the judge holding that the return to prison was not "in respect of" the attempted rape for the purposes of s.33(1B) of the 1991 Act but was sui generis. W submitted that the return to prison for 533 days was in respect of the attempted rape; sentences were served in respect of offences and were not freestanding.

HELD

W's submission was not correct. It was true that the duration of his return to prison under s.116 was defined by the date on which the sentence for

attempted rape would have expired. In that limited sense was there a relationship between the return to prison and the earlier offence. However, the date when the new offence was committed was also a factor. The sentence was deemed to be a fresh one, and involved a fresh sentencing exercise which was not "in respect of" the original offence, *R v Secretary of State for the Home Department Ex p Probyn* (1998) 1 WLR 809 DC applied. It was important to bear in mind that Parliament had not enacted s.26 of the 2008 Act in ignorance of s.116 of the 2000 Act; and it was plain that Parliament did not consider that s.116 was in respect of the original offence. It was within the court's discretion whether to return a prisoner and if so for how long. His return was determined not by the original offence but by his conduct: the nature and seriousness of the new offence, the time elapsed since his release, and the extent to which he was trying to manage his life and not reoffend. W was returned to prison under s.116 not because he committed the original offence of attempted rape, but because of his conduct overall.

APPEAL DISMISSED



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Extradition Proceedings and the Common Law Offence of Cheating the Revenue

WOLFGANG FRANK HERTEL v (1) CANADA (2) SECRETARY OF STATE FOR THE HOME DEPARTMENT (2010)

DC (Laws LJ, Coulson J) 17/9/2010

Extradition - Tax

Canada: Charge To Tax: Cheating The Revenue: Delay: Extradition Offences: Transaction Allegedly Giving Rise To Charge To Tax Under Canadian Tax Code: Double Criminality Rule: Transposing Conduct Alleged To United Kingdom: S.82 Extradition Act 2003: S.137(2)(B) Extradition Act 2003

In extradition proceedings the Government of Canada failed to show to the required standard that the conduct on which it relied would, if it was perpetrated in England, constitute the common law offence of cheating the Revenue.

The appellant (H) appealed against a decision to send his case to the secretary of state for her to decide whether he should be extradited to Canada. H had dual German/Canadian nationality. His extradition was sought by the Government of Canada. Canada's case concerned a payment of about \$3.9m from a company (C) controlled by H to a company (E) owned by his brother. That payment was described in company documents as "R & D" and recorded as a business expense of C. Canada asserted that the agreements relating to the payment were fraudulent and that the payment of \$3.9m was in fact made to provide a benefit to H or his brother or perhaps some other party and gave rise to a charge to tax against H under the Canadian tax code and that liability was dishonestly concealed from the Canadian revenue authorities.

H's extradition was sought pursuant to an information laid by a taxation officer in 1986. After the information had been laid a summons had been issued requiring his attendance at court. He had then left Canada. Canada said that the conduct on which it relied would, if it was perpetrated in England, constitute the common law offence of cheating the revenue, on the basis that C was preparing to seek a tax deduction in respect of the payment to E to which it was not entitled, alternatively an employment income charge arose on the footing that H was acting as a director of C and was extracting a profit from the company for his own purposes; alternatively a distribution charge arose on the footing that H was acting as a shareholder in directing the payment. H submitted that (1) his extradition was barred by the passage of time under the Extradition Act 2003 s.82; (2) the conduct for which his extradition was sought did not constitute an extradition offence or offences within the meaning of s.137(2)(b) of the 2003 Act.

HELD

- (1) There was a strict rule that delay brought about by the fugitive's fleeing the country, concealing his whereabouts or evading arrest could not, save wholly exceptionally, enure to his benefit for the purposes of s.82 of the 2003 Act, *Kakis v Cyprus* (1978) 1 WLR 779 HL and *Gomes v Trinidad and Tobago* (2009) UKHL 21, (2009) 1 WLR 1038 followed and *R v Secretary of State for the Home Department Ex p Patel* (1995) 7 Admin LR 56 QBD considered. That rule applied in the instant case; the effects of delay were of H's own choice and making. There was nothing wholly exceptional about the case. H's extradition would not be unjust or oppressive having regard to the passage of time. The Canadian jurisdiction to which H would be returned was plainly fully equipped with all necessary procedural resources to deal with any risk of unfair trial resulting from the long passage of time since the material events.
- (2) Canada failed to establish to the standard required that the conduct alleged, if transposed to the United Kingdom, would involve or generate a charge to tax whose concealment by H would then amount to the offence of cheating the Revenue. In order to tie the payment into any putative UK tax liability, Canada was driven to offer up what was no more than speculation as to its circumstances and purpose. That was an impermissible exercise. In relation to the allegation that C wrongfully intended to seek a deduction in its trading profits for corporation tax purposes in respect of the \$3.9 million, nothing in the facts alleged suggested that C would have been liable to pay tax but for the payment. There was no allegation that the company intended to deploy the payment as a deduction from its corporation tax bill, or that H cheated or sought to cheat the Canadian Revenue by causing the tax due from the company to be misdeclared. Nor could the court infer that the payment would give rise to an employment income charge to tax; there was no suggestion that it was made under a contract of employment or by reference to services rendered by H by virtue of his office. Nor had it been shown that it was a benefit in kind provided to H by reason of his employment. The evidence that H was a shareholder in C was unclear and unequivocal. Nor had it been shown that C had distinctly placed the relevant funds at the disposal of H as shareholder. All the scenarios put forward required

factual assumptions to be made which could not be justified as proper inferences from the conduct stated to be relied on.

APPEAL ALLOWED



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Legal Professional Privilege and Commenting on a Defendant's Failure to call Solicitor as a Witness

R v ORAL SEATON (2010)

CA (Crim Div) (Hughes LJ, Maddison J, Rafferty J) 13/8/2010

Criminal Evidence - Criminal Procedure

Legal Professional Privilege: Solicitors: Statements: Trials: Waiver: Difference Between Defendant's First Statement Prepared By Solicitor And Evidence At Trial: Permissibility Of Crown Commenting On Defendant's Failure To Call Solicitor As Witness: Extent Of Legal Professional Privilege: Waiver Of Privilege

Properly analysed, the decision in *R v Wilmot (Alan)* (1989) 89 Cr App R 341 had not decided that there was no question of privilege or waiver when a defendant gave evidence that he told his solicitor the account which he later produced at trial which was contrary to an earlier statement. Whatever the correct analysis of *R v Wilmot*, where a defendant had clearly waived any such privilege, the Crown's comment to the jury during the course of his trial on his failure to call his solicitor as a witness, despite her availability, was not impermissible and his conviction for murder remained safe.

The appellant (S) appealed against his conviction for murder. S had been charged with the murder of his friend (X). At trial, the Crown's case was that S had returned from Germany and visited X at his home in Luton, and there murdered him by multiple stabbing as a result of some altercation or dispute. S's case at trial was that he was not there when S was killed, and that although he had visited X, he had left him alive and well before returning home. That was not, however, S's initial account. At the police station, he had stated that he had been met by friends at the airport and driven by them to collect his car, then driven himself home on a route which took him nowhere near Luton. By the time of the trial, it was indisputable that S had been to Luton, and S's freshly spilled blood was found in X's flat. The Crown asserted that the change of account was forced on S by the finding of evidence which put him at X's flat. S denied that, and stated that he had lied because he had been delivering a package of drugs and did not want to admit that. In S's first prepared statement, he had stated that the blood found at X's flat, and in his car, had come from a cut to his hand sustained at the airport on arrival in the United Kingdom. S's blood was absent from the car in which his friend had collected him, however, and at trial, S contended that the first account was wrong, and that his hand was injured at the airport in Germany. The Crown asserted that that change in S's story was one for which there was no plausible explanation, and was therefore a good touchstone for his truthfulness. S contended that his first statement had been prepared by his solicitor and that he had signed it without reading it, thereby laying responsibility for the error with his solicitor. He stated that he had later discussed the error with his solicitor, but not changed his statement as he had not thought it relevant. Later during the trial, the judge ruled that the Crown was entitled to comment to the jury on the absence of S's solicitor from the witness box, and the Crown made that comment with some force. S was convicted. He contended that his conviction was unsafe because all communications between him and his

solicitor were privileged, there had been no waiver, and, accordingly, the Crown's comment on the absence of his solicitor was impermissible. He submitted that if and insofar as the decision in *R v Wilmot (Alan)* (1989) 89 Cr App R 341 CA (Crim Div) decided that there was no question of privilege in that situation so that the comment could not amount to a breach of it, *R v Wilmot* was wrongly decided.

HELD

Properly analysed, *R v Wilmot* did not decide that there was no question of privilege or waiver when a defendant gave evidence that he told his solicitor the account which he later produced at trial, *R v Wilmot* explained. However, whatever the correct analysis of *R v Wilmot*, the instant case was clearly one of waiver by S's evidence in chief. His evidence was that the first prepared statement contained an error, and that he had signed it without reading it, could mean nothing other than that he had told his solicitor something different and the responsibility for the error was his solicitor's. That was putting in evidence his suggestion that he had told her, from the outset, that the injury to his hand occurred in Germany, not the UK. S had deliberately put before the jury the plainest suggestion that he had not changed his account but had given his solicitor the same one as he was giving the jury. That inevitably had to be characterised as a waiver. The Crown had probed no further in cross-examination into the content of the communications between S and his solicitor. The question before the court related solely to the comment on the fact that if S's evidence were true, it could and would be confirmed by the solicitor, who was available. Once there had been that waiver, the Crown's comment was, on the facts of the case, wholly justified. The comment was not, therefore, impermissible. If it had been, it would have been sufficiently significant to make S's conviction unsafe. Since it was not, S's conviction remained perfectly safe.

APPEAL DISMISSED



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Impact of Fixed Penalty Notice for Disorder on a Good Character Direction

R v GARETH HAMER (2010)

CA (Crim Div) (Thomas LJ, Treacy J, Saunders J) 17/8/2010

Criminal Evidence

Admissibility: Good Character: Jury Directions: Penalty Notices For Disorder: Effect Of Fixed Penalty Notice For Disorder On Entitlement To Good Character Direction

Payment of a fixed penalty notice for disorder was not an admission of any offence, did not impugn good character and in any subsequent trial for other matters had no effect on entitlement to a good-character direction.

The appellant (H) appealed against his conviction for an offence of assault occasioning actual bodily harm. H had had a fight with a taxi driver. The Crown's case was that he had hit the taxi driver in the mouth, causing significant injury. His defence was that he had acted in self defence. H had no previous convictions or cautions but he had been issued with a fixed penalty notice for disorder (PND). Despite his objections, an admission was read to the jury to the effect that although he had no previous conditions or cautions, he had been issued with a PND in respect of a minor public order offence. The judge directed the jury that a PND was the lowest possible rung of the criminal justice system and that they might think that the fairest thing to do would be to forget about it and to treat H as being of good character. H submitted that the judge had been wrong to admit the evidence of the PND and that his direction about it to the jury was wrong.

HELD

- (1) H was entitled to a full good-character direction. The PND scheme was intended to deal with suspected low-level offending, to provide the police with a means of punishing those whom they suspected, and to give the suspected offender the option of going to court if he did not wish to pay the penalty. It went no further than that. If the notice was accepted by the person to whom it was issued and he paid the penalty, then no further action would be taken. The scheme made it clear that by paying the penalty he was not admitting a crime. Indeed, on an analysis of the scheme, no crime had been committed. It was therefore clear, both as a matter of the statutory scheme and as a matter of what a person accepting such a notice would reasonably be led to believe, that he was not admitting any criminality and would not have any stain on his character. It followed that a PND was not admissible as an admission of an offence that would affect H's good character. It did not impugn his good character and had no effect on his entitlement to a good-character direction. In short, it was irrelevant and should not have been admitted. It might well be that in some circumstances the Crown might wish to adduce evidence relating to the matters to which the PND had been issued, but that was not so in H's case. In circumstances such as those in the instant case it would be very unfair for a PND to be mentioned to the jury without any attempt being made to call evidence in relation to what had happened. The judge had compounded the error by his direction to the jury. By his having told them that a PND was the lowest possible rung of the criminal justice system, they may have been led to believe that H had committed some sort of minor criminal offence. If, contrary to the court's view, the PND was to have been mentioned at all, the judge should have explained that it was not an admission of guilt, but that it merely evidenced a suspicion by a police officer that an offence had been committed in respect of which, by acceptance of the notice, no further proceedings would be taken.
- (2) Nevertheless, taking into account the overall fairness of the trial, the conviction was safe and it would be fair to uphold it.

APPEAL DISMISSED



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Anti-Social Behaviour Order Conditions

R v JULIO DYER (2010)

CA (Crim Div) (Thomas LJ, Treacy J, Saunders J) 20/8/2010

Criminal Procedure - Civil Procedure - Sentencing

Antisocial Behaviour Orders: Conditions: Mobile Telephones: Need For Judges
To Consult Book By Judicial Studies Board

Where an antisocial behaviour order was sought after conviction, it was always desirable for a judge to consider the book on the subject produced by the Judicial Studies Board.

The appellant (D) appealed against the terms of an antisocial behaviour order which had been imposed on him following his conviction for drug offences. D had been involved in extremely serious street dealing. Three conditions were imposed in the antisocial behaviour order. First, D was prohibited for a period of five years from entering a ward comprising four areas of Bristol. Second, he was prohibited from associating with various named persons. Third, he was prohibited from carrying a mobile phone which was not registered in his own name; further, his mobile phone had to be registered with intelligence officers at a particular police station. D argued that (1) there was no evidence of any drug dealing by him or by anyone else in three of the relevant areas and the dealing within the fourth area was confined to a narrow part of that area; (2) he did not know any of the people concerned; (3) there was little evidence that he had used a mobile phone; further, the requirement that his mobile phone should be registered with intelligence officers was an intrusion into his liberty.

HELD

- (1) The Crown Prosecution Service had not attended with a view to upholding the conditions in the order. D's contention that the first condition was too wide in area would be accepted.
- (2) The second condition was necessary. The overwhelming likelihood was that drug dealers of this kind were known to each other.
- (3) It was absurd to suggest that drug dealers did not use mobile phones. It was clear that if D was to be prevented from drug dealing in the future and this evil trade stopped as far as he was concerned, it was necessary that any mobile phone be registered in his name if he was to have one. However, the requirement that his mobile phone had to be registered with intelligence officers did amount to an intrusion into his liberty.
- (4) (Obiter) It was always desirable when an antisocial behaviour order was sought after conviction for a judge to consider the extraordinarily helpful book produced by the Judicial Studies Board and available on its website. As the book made clear, the court would have to consider whether an order was necessary, taking into account the nature and length of the sentence imposed on the offender; the likely effect of that sentence; the nature, length and effect of previous sentences; and the duration,

conditions and likely effect of any period of licence. It might have been helpful in this case if the judge had been referred to the book and had then specifically addressed those questions at greater length. No doubt no one had drawn the helpful guidance to his attention.

APPEAL ALLOWED IN PART



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SI 1955/2010 The Serious Organised Crime and Police Act 2005 (Disclosure of Information by SOCA) Order 2010

In force **3 August 2010**. This order makes provision in relation to the disclosure of information by the Serious Organised Crime Agency. It provides that the powers of the Serious Organised Crime Agency to disclose information include the power to disclose information to the UK's national anti-doping organisation, United Kingdom Anti-Doping Limited. This is providing it is for the purposes of the exercise by United Kingdom Anti-Doping Limited of its public functions when acting as a national anti-doping organisation.

SI 1986/2010 The Policing and Crime Act 2009 (Commencement No. 6 and Commencement No. 5 (Amendment)) Order 2010

This order brings section 109 of the Policing and Crime Act 2009 into force on **6 November 2010**. This section provides that aspects of UK law apply to SOCA employees working abroad. It also amends a previous SI, The Policing and Crime Act 2009 (commencement No. 5) Order 2010 SI 999/2010. The effect of this amendment to Article 4 of the previous order is that only section 2(2) of the Policing and Crime Act 2009 came into force on **1 September 2010** and not the remainder of section 2. Section 2(2) of the Act amends the Police Act 1996 by omitting section 54(3A) of that Act, which allowed the Secretary of State to delegate to the chief inspector of constabulary certain functions in relation to the approval of appointments of senior police officers and the giving of consent for a deputy chief constable to exercise or perform the powers or duties of a chief constable.

SI 2317/2010 The Equality Act 2010 (Commencement No. 4, Savings, Consequential, Transitional, Transitory and Incidental Provisions and Revocation) Order 2010

In force **1 October 2010**. This order brings a large number of the Equality Act 2010 sections into force. Article 2 of the order sets out the various provisions of the Act which are being brought into force on this day. Sections which are coming into force are found in parts 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, and 16 of the Equality Act.

The Equality Act 2010 consolidates anti-discrimination legislation into one Act, covering discrimination on the grounds of the protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

Review of Anti-Social Behaviour by Her Majesty's Inspectorate of Constabulary

Her Majesty's Inspectorate of Constabulary (HMIC) has completed a review of anti-social behaviour (ASB) in England and Wales. HMIC inspected all 43 police forces to look at the quality of the processes employed to tackle anti-social behaviour. The Universities' Police Science Institute at Cardiff University helped analyse these findings. As part of the review, the market research company Ipsos MORI conducted a survey of 5,699 people who had previously contacted the police about an ASB incident.

The review reports that there were approximately 3.5 million calls to the police in 2009-10 concerning ASB. Of these calls, 2.1 million related to rowdy or disorderly behaviour. It is possible that these call figures do not give a full picture of ASB. The British Crime Survey estimates that the public only report 28 per cent of ASB incidents to the police.

The Ipsos MORI survey found that ASB can have a significant impact on people's lives. Survey respondents reported, for example, avoiding public spaces, not staying out late at night and steering clear of groups of youths. Participants also stated that they were worried about reporting ASB. Of those surveyed 32 per cent claimed that they had experienced intimidation after reporting an incident of ASB.

The review identified factors in the current approaches and processes of some police forces which helped to deliver an effective service for victims of ASB. These factors included:

- ◆ All police officers likely to deal with ASB being briefed regularly and thoroughly about local ASB issues. 21 forces were doing this; and
- ◆ Data and intelligence on ASB being gathered regularly and analysed so that the local ASB situation could be tracked and tackled effectively. 17 forces were doing this.

The review also highlighted a number of practices which undermined the effective tackling of ASB. Graded response systems employed in police force control rooms could, for example, result in police officers not attending a reported instance of ASB if the ASB did not fall within the category of crime. The review also found that control room operators tasked with making the grading decisions were often left unaware of the history or the full circumstances of the behaviour being reported. Only 13 forces had computer systems which enabled the identification of those callers who were most at risk and who were repeat callers at the time the call was made.

Community Safety Partnerships (CSP) present an additional way in which ASB can be tackled. An examination of a number of CSP partnerships found, however, problems with their ASB responses. In particular, they were often slow to act in the face of ASB and when they did act their focus could be more on the strategy and process rather than the victim's experience. A slow response or perceived inaction may greatly undermine the confidence of those who have been harmed by ASB.

Alongside highlighting what works in current practice and what doesn't the review also suggests a number of more novel actions and approaches that could be taken to improve the response to ASB. These include:

- ◆ Publishing accessible and comparable data on ASB. The public arguably have a right to such data and it will help highlight ASB problems where they occur.
- ◆ Action should be taken to intervene early where an ASB issue arises. This will require a refocusing on what causes harm in communities rather than what is or is not a crime. The public do not distinguish between crime and ASB. They expect the police to tackle both.

The review reports are available at

<http://www.hmic.gov.uk/Programmes/antisocialbehaviour/Pages/home.aspx>

Study into the Trafficking of Migrant Women for Prostitution

A study commissioned by the Association of Chief Police Officers (ACPO) to investigate the trafficking of migrant women in the England and Wales off-street prostitution sector has been published. The aim of this research is to enhance understanding of the nature and scale of the trafficking of migrant women for sexual exploitation so that it can be tackled more effectively.

The study estimates that the off-street prostitution sector in England and Wales consists of 6,000 businesses and 30,000 women. Of these women it is believed that 17,000 are migrants. These figures are based on an examination of the off-street prostitution sector in seven regions. The findings from the seven regions were then generalised to represent England and Wales as a whole. Interviews with a sample of migrant women involved in prostitution were also conducted.

Analysis of the 17,000 women estimated to be involved in prostitution in the off-street sector suggests that 2,600 were trafficked. This classification is based on the United Nations definition of human trafficking. The study suggests that of these 2,600 most were not subject to violence but that many were debt-bonded and strictly controlled through threats of violence to family members. The women came predominantly from China (1,300) as well as from South East Asia (mainly Thailand) and Eastern Europe.

A further 9,200 women were considered to be vulnerable. Although these women may have elements of vulnerability to trafficking most fell short of meeting the definition of trafficking and they tended to have day to day control of their activities. 5,500 women did not meet the 'trafficked' or 'vulnerable' thresholds. The women in this latter category were aware before leaving their home country that they would likely become involved in prostitution, they lived and worked largely independently, kept a significant proportion of the money they earned and were not subject to debt-bondage or threats of violence.

The report also finds significant regional differences. For instance, in London 96.4 per cent of the women involved in prostitution were estimated to be migrants while in Yorkshire and the Humber it was estimated that the figure was only 31.5 per cent.

The research which led to these findings was co-ordinated over a 12 month period by the Regional Intelligence Unit for the South West with the assistance of the Metropolitan Police's Human Exploitation and Organised Crime Unit. The research also involved collaboration with non-governmental organisations who work in this area and academics.

The full report, ACPO, 'Setting the Record - The Trafficking of Migrant Women in the England and Wales Off-Street Prostitution Sector', is available at [http://www.acpo.police.uk/asp/policies/Data/Setting%20the%20Record%20\(Project%20ACUMEN\)%20Aug%202010.pdf](http://www.acpo.police.uk/asp/policies/Data/Setting%20the%20Record%20(Project%20ACUMEN)%20Aug%202010.pdf)

A Study of Public Attitudes and Perceptions to Different Police Accountability and Governance Structures

In a study commissioned by the Association of Police Authorities and conducted by the market research company, Ipsos MORI, public perceptions of police governance structures and the issue of who the public feel should hold the police to account has been examined.

Focus group workshops were held in four different police regions. These workshops were designed to allow participants to explore different governance options, including those proposed in the Home Office consultation paper, 'Policing in the 21st Century - Reconnecting Police and the People'. The research found that:

- ◆ There is a general desire for greater visibility in police accountability;
- ◆ The need for those overseeing the police to be independent, including from political allegiance, was a particular focus;
- ◆ There was strong support for a visible and named figurehead for police accountability in each area;
- ◆ There was a strong preference expressed for a structure similar to that currently in place; and
- ◆ There was some desire for a degree of lay involvement.

The report states that based on the findings, the consensus view on police accountability and governance can be summarised as being in favour of a structure which looks very much like that currently in place.

The main possible change for which the research suggests there might be public support, is the introduction of a figurehead who is visible to the public, transparent and independent. The report suggests that this figurehead could exert powers such as determining budgets or setting local priorities through a process of negotiation with the police authority and chief constable of a force area.

The full report, Ipsos Mori, 'Police Accountability and Governance Structures, Public Attitudes and Perceptions', is available at

http://www.apa.police.uk/admin/uploads/attachment/docs/Members/Police_Reform/APA_Ipsos_MORI_Police_accountability_report_FINAL_INTERNAL_USE_ONLY_150910_APPROVED_FOR_PUBLICATION.doc

NPIA Circular on Qualification Requirements for Force Medical Advisors

The NPIA has issued Circular 2/2010, giving guidance on the qualification requirements for Force Medical Advisors. The circular replaces 'Strategy for a Healthy Police Service - ACPO Joint Working Group paper SHP 2' in relation to medical advisors.

The circular advises that it is not considered acceptable for forces to employ generalist practitioners with little or no direct experience of occupational medicine. Employing such persons may fail to satisfy the legal requirement on forces to employ 'competent persons'.

Advice is given on the normal minimum acceptable qualifications for a person to be employed as a medical advisor. The possibility of appointing experienced advisors who do not hold such qualifications is also considered.

The circular can be found at

http://www.npia.police.uk/en/docs/Microsoft_Word_-_2010_08_18_NPIA_Circular_2_2010_-_FMA_qualification__2_.pdf

Report on the Commercial Cultivation of Cannabis

The Association of Chief Police Officers (ACPO) has published a report giving a detailed picture of the commercial cultivation of cannabis in the United Kingdom. The report summarises the current situation and assesses how the picture has changed since the National Baseline Assessment was published in November 2008. During this period cannabis was reclassified from Class C to a Class B drug in January 2009.

The National Baseline Assessment 2008 reported that during the year 2007/08 a total of 3,032 cannabis factories were identified. The figure has risen to 6,866 for the year 2009/10. The report attributes this continued rise, in part, to the enhanced investigative focus by UK law enforcement agencies.

Over 1.3 million plants (1,326,717) were recovered by UK law enforcement agencies during the two year period 2008-2010, an estimated yield of £150 million. This equates to 576,790 plants in 2008/09 (£65 million) and 749,927 in 2009/10 (£85 million). In July 2010, the largest recorded cannabis factory was discovered in Haddenham, Cambridgeshire. Over 7,600 plants were seized with an estimated value of £2.5 million.

The full report, ACPO, 'Findings from the UK National Problem Profile, Commercial Cultivation of Cannabis, Three Years On', is available at <http://www.acpo.police.uk/asp/policies/Data/064a%20UK%20National%20Problem%20Profile%20Cultivation%20of%20Cannabis.pdf>

Consultation on the Implementation of the Public Sector Equality Duty

The Government Equalities Office has launched a consultation exercise on the content of the secondary legislation needed to fully implement the new equality duty contained in section 149 of the Equality Act 2010. The section 149 duty will replace the current separate duties on public bodies relating to race, disability and sex equality.

The consultation document contains the government's proposals for the draft regulations for public bodies. These proposals are based on the idea that enhanced transparency will help public bodies fulfil the aims of the new equality duty. The government is proposing that public authorities be required to publish particular specified information relating to their equality duty performance at regular intervals. Public authorities may also be required to publish objectives which they reasonably think will enhance the aims of the equality duty.

A number of public bodies are already due to be covered by the section 149 duty. The act specifies, for example, that the duty applies to police authorities. The government is proposing to use secondary legislation to list further bodies or positions which will also be subject to the equality duty. The consultation paper proposes that these will include:

- ◆ A chief constable of a police force maintained under section 2 of the Police Act 1996;
- ◆ The Commissioner of Police for the City of London;
- ◆ The Commissioner of Police of the Metropolis; and
- ◆ The Serious Organised Crime Agency.

The consultation closes on 10 November 2010.

The consultation document, 'Equality Act 2010: The Public Sector Equality Duty, Promoting Equality Through Transparency, A Consultation', is available at http://www.equalities.gov.uk/pdf/402461_GEO_EqualityAct2010ThePublicSectorEqualityDuty_acc.pdf

Study Indicates Youth Justice System Treats Ethnic Groups Differently

A research study by the Institute for Criminal Policy Research at King's College, 'Differential Treatment in the Youth Justice System' has been published. This study examines whether the police and the youth justice system treat young people from different ethnic backgrounds in different ways.

The research, conducted over a two-year period between 2007 and 2009, examined stop and search records in three police forces. Interviews were conducted with 49 police officers, observational work was undertaken with operational police officers and 32 young people from the same areas were interviewed.

The study found that ethnic minority groups are over-represented in entering the youth justice system. This does not, however, mean that they are necessarily disproportionately involved in crime. Young people can enter the youth justice system either because victims and witnesses report cases to the police (reactive work) or because the police uncover offences in the course of their work (proactive work). The majority of arrests are reactive but proactive arrests account for a significant number leaving ample scope for differential policing to shape inflows into the system.

The study revealed that different policing areas adopted markedly different styles of policing and these styles affected the profile of young people entering the youth justice system. In some areas, encounters with the public could be characterised as following a professionalised 'rule of law' style of policing. Others were characterised by a more adversarial policing style, which placed less priority on respectful and fair treatment. The report indicates a very strong preference for the former style of policing.

To consider whether the disproportionality between ethnic groups entering the system was amplified or reduced as young offenders passed through it the researchers looked at information on 18,083 case decisions made in 12 Youth Offending Services. They found some evidence that at some stages of the youth justice system there may be discrimination against ethnic minorities. Differences in treatment between ethnic groups could not be accounted for by features of the offence or criminal history of the suspects or defendants. Taking offence and criminal history into account:

- ◆ Mixed race offenders and suspects were more likely than white offenders and suspects to be prosecuted than to be reprimanded or warned;
- ◆ Black and mixed race defendants were also more likely to be remanded in custody than white defendants;
- ◆ At court, black defendants had a higher chance of being acquitted than white defendants; and
- ◆ At the sentencing stage, mixed race teenagers were more likely than others to be given a community sentence rather than a (less serious) first-tier penalty such as a referral order or a fine.

The report makes a range of recommendations for practitioners and policy makers. These include:

- ◆ Senior police officers should provide clear and visible leadership about the quality and style of policing required. This could help produce a shift from adversarial policing to a more 'professional' policing style.
- ◆ Effective monitoring needs to be conducted by sergeants and inspectors to ensure that stop and search powers are only used when appropriate;
- ◆ Diversity training should include sessions where young people can explain to the police how they feel about their local police and their experiences of being policed;
- ◆ Local police managers need to foster good relations with local residents, including young people. Where relationships are tense, neighbourhood policing teams should review their ways of communicating with young people as a priority, especially those from ethnic minorities; and
- ◆ The youth justice board should publish guidelines to enable a more consistent approach to ethnic monitoring.

The full report is available at

http://equalityhumanrights.com/uploaded_files/research/differential_treatment_in_the_youth_justice_system_final.pdf

Inspection of Youth Crime Prevention Efforts

A thematic inspection looking at the issue of youth crime prevention in the age group 8-13 years has been published. This review was conducted jointly by HMI Constabulary, HMI Probation, the Care Quality Commission and the Healthcare Inspectorate Wales.

In conducting the study the inspection team visited seven local authority areas and examined 75 individual cases where children had been referred for interventions to prevent offending. They spoke to those working in children's services, police officers and health officials.

The inspectors found impressive partnership work between the various agencies with responsibility for youth crime prevention. There was, though, scope for improvement including greater involvement by the Health Services and the Probation Services.

Once a child had been identified and suitably assessed, entry onto a youth crime prevention programme was generally found to be swift. The inspection team was impressed by the quality of key workers, including their knowledge of and commitment to the children they were working with.

The range of interventions varied widely and there were some very simple and inexpensive but successful interventions. In some cases, however, the report states that it was difficult to understand why the choice of intervention was made as it did not appear to address the issues. The quality of intervention plans ranged from those which were clear, time bound and reviewed to having no plan at all. A significant minority of the plans lacked detail, outcome milestones and an exit strategy.

The inspection team found little coordinated evaluation either of individual interventions or of the longer term outcomes for children. For example, once a case was closed, the individual was not tracked to determine whether they later entered the criminal justice system. Greater sophistication in measuring progress is required at both the local and national levels.

The report makes a number of recommendations designed to help create greater consistency and effective practice across areas in the prevention of youth crime. These include:

- ◆ Probation Trusts should ensure that their compliance with the Children Act 2004 can be demonstrated through referrals and support to youth crime prevention services;
- ◆ Each Local Authority and its partners should ensure that the impact of local youth crime prevention work is appropriately evaluated and practice adjusted accordingly; and
- ◆ The Ministry of Justice and the Home Office should ensure that they work jointly to re-profile the funding for youth crime prevention work to enable a long-term planning approach to be taken.

The full report, 'A Joint Inspection of Youth Crime Prevention' is available at http://www.hmic.gov.uk/SiteCollectionDocuments/Joint%20Inspections/CJI_NFS_20100909.pdf

Law Commission Consultation on Reducing the Number of Criminal Offences

The Law Commission has commenced a consultation looking at whether the number of criminal offences that can be prosecuted by government departments and agencies could be reduced.

There has been a steep increase in the number of criminal offences created since the late 1980s designed to tackle risk taking in regulated fields such as farming, food safety, banking and retail sales.

The Law Commission consultation paper, titled, 'Criminal Liability in Regulatory Contexts', sets out the arguments for reducing the scope for the criminal law to be used in these areas.

The Commission argues that it is disproportionate for regulators to rely wholly on the criminal law to punish and deter activities if the risk is merely 'risky' rather than 'serious'.

It estimates that if civil penalties were used instead of criminal sanctions up to £11 million a year could be saved. In some cases the criminal prosecution can cost almost twice what the courts obtain in fines at the end of a successful prosecution.

The consultation closes on 25 November 2010.

The full consultation paper is available at http://www.lawcom.gov.uk/docs/cp195_web.pdf

Treatment of Convictions in other EU Member States

The Ministry of Justice has published a circular (2010/12) to provide guidance on the implementation of section 144 and schedule 17 of the Coroners and Justice Act 2009.

These provisions of the Coroners and Justice Act, which came into force in England and Wales on 15 August 2010, ensure that convictions in other European Union member states are taken into account in criminal proceedings in England and Wales to the same extent as domestic convictions.

The circular is available at

<http://www.justice.gov.uk/publications/docs/fdpc-circular-0710.pdf>

Criminal Justice System and Key Indicator Statistics Published

The Ministry of Justice statistical bulletin containing a number of key criminal justice system performance indicators for the period up to March 2010 has been published.

This bulletin reveals that the number of offences brought to justice in England and Wales in the year ending March 2010 was 1.24 million. This is a fall of 10 per cent compared with the year ending March 2009. An offence is said to have been 'brought to justice' when a recorded crime results in an offender being convicted, cautioned, issued with a penalty notice for disorder or a cannabis warning, or having an offence taken into consideration at court. Over the same period, the number of recorded crimes fell by 8 per cent from 4.64 million to 4.28 million.

The proportion of adults who think that the Criminal Justice System (CJS) as a whole is fair was 59 per cent for the twelve months to March 2010. For the twelve months to March 2009 this figure was also 59 per cent. The proportion of adults who think that the CJS as a whole is effective was 41 per cent for the twelve months to March 2010. By comparison, only 38 per cent viewed the CJS as effective in the twelve months to March 2009.

The proportion of victims and witnesses who were satisfied with their overall contact with the Criminal Justice System in the twelve months to March 2009 was 83 per cent. In the twelve months to March 2010 this figure increased to 84 per cent.

The value of criminal assets recovered across England, Wales and Northern Ireland for the twelve month period up to March 2010 was £154 million. This was a slight increase from £148 million for the twelve months ending March 2009. Asset recovery comprises confiscation, cash forfeiture, civil recovery, tax recovery and international asset sharing.

The full bulletin is available at

<http://www.justice.gov.uk/cjs-stats-bulletin-march2010.pdf>

Bribery Act Consultation Launched

The Ministry of Justice has launched a consultation exercise on the Bribery Act 2010, which is due to be brought into force in April 2011.

Section 7 of the Bribery Act creates a new offence which is committed where commercial organisations fail to prevent persons associated with them from committing bribery on their behalf. Section 9 of the Act requires the Secretary of State to publish guidance about procedures commercial organisations can put in place to try and prevent persons associated with them from engaging in bribery.

The consultation exercise focuses on the content of this section 9 guidance.

The government proposes guidance formulated around six general principles set down in the consultation document. The principles are designed to be of general applicability across all sectors and for all types and size of business. They are not intended to be prescriptive or standard setting, or to impose any direct obligation on organisations.

Consultation responses must be received by 8 November 2010.

The consultation paper is available at
<http://www.justice.gov.uk/consultations/briberyactconsultation.htm>

Prohibition on Wheel Clamping Proposed

The Government has announced that it intends to ban wheel clamping on private land. It is intended that the ban will be introduced in the Government's Freedom Bill due to be published in November 2010.

As well as applying to wheel clamping, the ban will also apply to towing away and all other forms of vehicle immobilisation. Once implemented, anyone who clamps or immobilises a vehicle or tows it away on private land, without specific legal authority to do so, may face criminal proceedings or civil sanctions.

<http://www.homeoffice.gov.uk/media-centre/press-releases/ban-on-wheel-clamping>

Extradition Law Review

The Home Secretary, Theresa May, has announced a review of the United Kingdom's extradition arrangements in a written ministerial statement to Parliament.

The review will focus on issues designed to ensure that the extradition arrangements work both efficiently and in the interests of justice. These include:

- ◆ The breadth of the Secretary of State's discretion in an extradition case;
- ◆ The operation of the European Arrest Warrant;

- ◆ Whether the Extradition Treaty between the United States and the United Kingdom is unbalanced; and
- ◆ Whether requesting states should be required to provide prima facie evidence.

The review is expected to report by the end of the summer 2011.

Whilst this review is being conducted the current extradition arrangements continue in force and the review will not impact on any cases currently under consideration.

See further

<http://www.homeoffice.gov.uk/publications/parliamentary-business/written-ministerial-statement/extradition-wms/>

Plans Announced for Unified Judiciary

In a written ministerial statement the Lord Chancellor and Secretary of State for Justice, Kenneth Clarke, has announced plans to create a unified judiciary, encompassing both courts and tribunals. It is intended that this unified system will operate under the overall leadership of the Lord Chief Justice.

This proposal follows on from the announcement in March 2010 that the administration systems of the courts and tribunals, Her Majesty's Court Service and the Tribunals Service, would be brought together in a single unified organisation. This new organisation is to be established by 1 April 2011.

The establishment of a single unified judiciary will require primary legislation. It is intended that the changes will be included in a Bill as soon as parliamentary time allows.

The full ministerial statement is available at

<http://services.parliament.uk/hansard/Commons/bydate/20100916/writtenministerialstatements/part009.html>



NPIA

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Improvement Agency

Legal Services
Chief Executive Officer Directorate

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