Digest

August 2017

A digest of police law, operational policing practice and criminal justice
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 College of Policing is also responsible for Authorised Professional Practice (APP). APP is the official and most up-to-date source of policing practice and covers a range of policing activities such as: police use of firearms, treatment of people in custody, investigation of child abuse and management of intelligence. APP is available online at www.app.college.police.uk

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In spite of Parliament’s summer recess, there remains a great deal of development in the criminal justice field. This month’s edition includes some of the key news from August.

This month’s articles cover:

- the launch of the new Investigatory Powers Commissioner’s Office
- the Independent Police Complaints Commission (IPCC) announcement of impending changes to the police complaints system
- The Lord Ferrers Awards
- The addition of terror offences to the Unduly Lenient Sentence scheme
- Crown Prosecution Service (CPS) and National Police Chiefs’ Council (NPCC) statements on hate crime
- Travel restrictions under the Proceeds of Crime Act 2002
- The definition of ‘vulnerable adult’ in domestic violence law
- Law Society reflections on LASPO.

We would like to make sure that the digest is current, informative and valuable to its readership and welcome readers’ ideas. If you have any thoughts or suggestion about how you would like to see the digest develop, please email DigestRegistration@college.pnn.police.uk
Legislation

Statutory instruments


The instrument amends secondary legislation in relation to the oversight functions of the Investigatory powers commissioner, replacing references to former commissioners now abolished by the Act. This enables the Investigatory Powers Commissioner and other judicial commissioners named by the Act to carry out all appropriate functions. The provision came into force on 11 September 2017.

For more information, please go to legislation.gov.uk


For more information, please go to legislation.gov.uk

SI 799/2017 The Immigration Act 2016 (Commencement No. 4) Regulations 2017

The instrument brings into force section 43 of the Immigration Act 2016. The regulation empowers immigration officers, constables and persons authorised by the Secretary of State to search for, seize and retain driving licences from persons whom they have reasonable grounds to believe are not lawfully resident in the UK. This came into force on 31 July 2017 and only applies to the police areas of Kent and West Yorkshire.

For more information, please go to legislation.gov.uk
SI 755/2017 The Criminal Procedure (Amendment No. 3) Rules 2017

The instrument amends the Criminal Procedure Rules 2015 in a number of ways. Amendments include:

- ensuring that the Crown Court provides explanations to the defendant when making directions for trial e.g. credit for an early guilty plea
- highlighting the potential consequences of hearing offences together which could be tried separately
- providing additional time for electronically serving documents in extradition appeal cases
- supplements to the Criminal Justice (European Investigation Order) Regulations 2017 and the Criminal Finances Act 2017
- other minor amendments to ensure that the Criminal Procedure Rules remain up to date.

Measures will be adopted incrementally but all will be in force by 2 October 2017.

For more information, please go to legislation.gov.uk
Case law

Evidence and procedure

R v Uddin [2017] EWCA 1072 (Crim)

This appeal focuses on interpretation of the phrase ‘or otherwise’ in the definition of ‘vulnerable adult’ under section 5(6) of the Domestic Violence, Crimes and Victims Act 2004 (the Act):

‘…“vulnerable adult” means a person aged 16 or over whose ability to protect himself from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, through old age or otherwise.’

The appellant was convicted of causing or allowing the death of a vulnerable adult and conspiracy to pervert the course of justice. The victim, Shahena Uddin, was his sister. The deceased was one of eight children and one of three whose custody was awarded to the eldest brother of the family, Suhail.

On the night of 10/11 October 2014, Shahena was beaten to death. The cause of death was choking on inhaled vomit when unconscious, having been rendered thus from repeated blows to the head. There were 55 separate areas of injury on her body, caused by months of abuse. Police enquiries revealed a long history of isolation and sustained physical and emotional abuse. The regime of abuse, led principally by Suhail’s wife, included beating Shahena with objects, forcing her to eat her own faeces and vomit and sleep deprivation, among other ordeals. Witnesses who suspected abuse offered Shahena contact details for various helplines but she was too afraid of repercussion to use them.

The defence argued that Shahena had challenged her sister-in-law’s regime, which had brought about conflict in the family. She was not feeble minded, was a young adult and had no physical or mental disability. Her ‘feisty and argumentative’ nature, claimed the defence, could not mean that she was what the law intended in its definition of a vulnerable adult. They argued that the judge’s direction to the jury that they ‘must be sure that Shahena was reduced to that state of vulnerability as a result of emotional and/or psychological damage she had suffered’ was not enough to constitute a vulnerable adult under the law. Referring to recent Parliamentary debates on the issue, the defence asked for consideration of the minister’s assertion that ‘or otherwise’ linked to the preceding words in the act, ie, disability, illness and old age.

The Court of Appeal (CA) agreed that the only way the victim could be identified as a vulnerable adult was through interpretation of the words ‘or otherwise’ in the statute. Section 5 is a penal section and can attract a maximum penalty of 14 years imprisonment. The court recognised that the offence should not be extended further ‘than obviously intended by Parliament’.
The CA referred to the Oxford English Dictionary for its judgement. In its view, the word ‘or’ was written to create an alternative scenario. The word ‘otherwise’, as per its dictionary definition, is seen as ‘in circumstances different from those present or considered’. The Court therefore established that ‘or otherwise’ distinguishes the circumstances from the Act’s preceding categories. The central operative requirement is ‘the individual’s ability to protect him or herself from violence, abuse or neglect [having been] significantly impaired’. In consideration of this, another category of potentially vulnerable adults who are not suffering from illness, disability or old age is provided for. A jury must decide if a victim falls into this category and this assessment must be fact and context-sensitive.

The CA determined that there was ample evidence for the jury in this instance to consider whether Shahena fell into this category. From this rationale and from recognising that the appellant was a member of the same household, must have known of the degrading treatment the victim was subjected to and at worst was complicit in it, the appeal was rejected.

Read the full judgement here

General police duties

Durrant v Chief Constable of Avon and Somerset Constabulary [2017]
EWCA Civ 1275

This is an appeal heard at the CA (civil division) that addresses detrimental treatment of a suspect by the police on the basis of unconscious racial bias. Circumstances relate to an incident on 13 June 2009 involving an altercation at a taxi rank in the early hours of the morning. The appellant, a woman of mixed race, and her friend, Ms. Putterill who is white, were involved in an argument over payment exacerbated when Ms. Putterill claimed a taxi marshal had made an offensive racist remark towards the appellant. Matters escalated, with the appellant entering a physical struggle with two taxi marshals, which led to her falling to the ground with one of the marshals on top of her. Mr. Allen, a bystander, intervened to pull the marshal off.

CCTV footage showed the appellant strike this marshal from behind with her mobile phone. She maintained she did this to assist Allen. A CCTV surveillance team reported the incident to the police, describing it as an assault on taxi marshals by females, one of whom was black. On arrival, the officers’ attention was focused on the appellant who was arrested. Allen and Putterill were waved away and only pursued a while later on persuasion by one of the taxi marshals.
Both women were arrested. The appellant was rear handcuffed. The arresting officer suggested at trial that this was because she had been resisting arrest. The appellant was placed in the cage of the police van and Putterill was put in the front and not handcuffed. During the journey the appellant was thrown about by the motion of the vehicle. Being in rear handcuffs, she could not keep her position on the bench. Putterill reported that the police officers responded by laughing and saying, ‘what’s that banging noise in the back?’

At the police station, the appellant asked the arresting officer repeatedly if she could use the toilet. She was placed in a cell and three male officers remained with her. Two more requests were made to go to the toilet. At this point, efforts had been made to have a female officer accompany the appellant to the toilet but this was not conveyed to her. Without any prospect of relief, the appellant could not contain herself any further and moved to a corner of the cell to urinate in front of the officers.

At a later date, both women were asked to return to the station for interview which they both did on a voluntary basis. The appellant was described as being polite and reasonable. As she had arrived before her legal representative, she was searched and placed in a cell as per normal practice. On arrival, Putterill appeared upset and tearful and was consequently allowed to wait in a consulting room with a police officer. She was permitted to call a babysitter and was provided with magazines.

Both women were charged but the CPS dropped the prosecution as the taxi driver did not maintain that he had been assaulted, in spite of reports by the marshals.

The appellant brought an action before the county court under section 57ZA of the Race Relations Act 1976. The county court judge identified two acts of race discrimination:

- targeting the appellant for arrest
- rear handcuffing the appellant.

The judgement declared that, while the arrest was not an act of racial discrimination, the arresting officers had acted by reason of unconscious racial stereotyping. Lack of access to a toilet was dismissed as having been racially motivated and ‘by some relish or intention that she should be reduced to public urination or humiliation’. Any claim under Article 3 of the European Convention on Human Rights was dismissed. A claim submitted under differentiation of treatment of both women at interview was dismissed, as police treatment of Putterill was seen as proportionate, given her level of distress.

At appeal, the appellant made three allegations of racial discrimination:

- That the officers were laughing at her being thrown around in the back of the van as a result of rear handcuffing. This claim was dismissed. The claimant had not submitted the incident in her claim form or referred to it in her witness statement as a matter of complaint. She therefore had no means of inviting the CA to constitute it as a separate act of race discrimination.
Case Law

Financial investigations

Financial investigations

R v Pritchard [2017] EWCA Crim 1267

This case heard in July is purportedly the first hearing by the CA regarding making a compliance order which includes a foreign travel restriction, under section 13A of the Proceeds of Crime Act 2002.

The defendant was found guilty of conspiracy to fraudulently evade duty, prohibition or restriction on importing controlled drugs. The court established that the defendant had imported some 108 kilograms of cannabis with a street value of over £300,000.

At the trial, it was confirmed that the defendant had a number of international connections, experience in international shipping and had travelled extensively. The court deemed that the offence had an international flavour. He was given a custodial sentence and the court imposed a confiscation order of £92,920 (benefit figure £246,240). On making the compliance order under section 13A, the judge
deliberated on the proper balance between the defendant’s Treaty rights and his right to visit family abroad, against the need to ensure that the confiscation order was effective. An indefinite travel restriction was imposed as part of this compliance order. The defence argued that a travel restriction could not be made unless there was a need for one and that such a restriction was disproportionate.

The CA confirmed that a restriction on travel may be placed on an order if the court deems it appropriate for ensuring that the confiscation order is effective. Defence counsel’s argument that her client was not a travel risk by virtue of his having made no previous attempt to abscond, was a model prisoner and, due to international social and family relations, would most probably have a need to seek employment abroad, was insufficient cause to deviate from the judgement. The CA deemed that the judge had justified imposing the travel restriction by engaging in the required balancing exercise. They also asserted that he had no dependents abroad, his adult children being contactable and free to visit him in the UK. With regard to employment, the defendant had been able to secure work in the UK and should an international employment opportunity arise, could make an application for varying said order under section 13A(5).

While the imposition of a travel restriction was agreed on, it was deemed inappropriate that it had been made an indefinite term. The court did not preclude that a case may arise where this might be necessary but appealed to a correct assessment method for each circumstance. In the present case, the travel restriction on the compliance order was maintained but was to last three years or on satisfaction in full of the amount due under the confiscation order (the full benefit figure).

For further information, find the full judgement here
Policing practice

Crime

NCA takes further action against modern slavery

The National Crime Agency (NCA) recently released figures confirming that there are currently more than 300 live policing operations targeting modern slavery. The operations have produced evidence that the number of potential victims has been underestimated and that the threat of modern slavery is continuing to grow. The NCA is leading on more than a dozen of these operations, with Operation Aidant having led to 111 arrests in the UK. As a result of intelligence gained, 40 further arrests were made on mainland Europe and 25 further investigations launched.

The NCA will be launching an awareness campaign over the next six months, teaching the public how to recognise the signs of modern slavery and how to report it.

Find further information here

Police

Lord Ferrers Awards 2017

The Lord Ferrers Awards (previously the Special Constable and Police Support Volunteer Awards) recognise the outstanding contributions volunteers play in support of policing by giving up their free time to make communities safer and enhancing the effectiveness of policing across England and Wales. The 2017 awards launched on 18 August, with deadlines for nominations on 17 September.

The awards will recognise achievement across nine individual and team categories. This year, the Home Office is including a new award for technical innovation to recognise those volunteers who have used technology creatively.

For more information or to make a nomination, visit gov.uk
IPCC announces planned changes to the police complaints system

Planned amendments to the Policing and Crime Act 2017 will alter the existing police complaints system. While these changes will take place at different times, the IPCC reports that full implementation should be expected by the summer of 2018. The amendments will further define professional boundaries and expectations. The changes are documented via operational advice notes which the IPCC anticipates will be incorporated into full statutory guidance by next summer.

The existing provisions for the referral criteria for cases of serious corruption have already been broadened as of May 2017 to include abuse of position for a sexual purpose or for the purpose of pursuing an improper emotional relationship. Examples include using police information or systems to identify individuals with a view to pursuing relationships and inappropriate communications for the purpose of pursuing relationships. Other forms of abuse of position will still be recognised under alternative parts of the referral criteria. Referrals may still be made under section 26 of the Criminal Justice and Courts Act 2015.

Further guidance from the IPCC is available here

Lord Justice Fulford starts new role as Investigatory Powers Commissioner

The new Investigatory Powers Commissioner, Lord Justice Fulford, started his new role on 1 September 2017. The role is established under the Investigatory Powers Act and replaces the oversight roles previously undertaken by the chief surveillance, interception of communications and intelligence services commissioners. The act brings the inspection and oversight of law enforcement, intelligence agency and other public authority use of investigatory powers into a single independent body. The new commissioner will also take over the pre-approval of certain police activities authorised by the Police Act 1997. Other powers such as the judicial double lock, a mechanism by which warrants issued by the Secretary of State require approval by a judicial commissioner, will be put in force incrementally over the course of the next year.

The Investigatory Powers Commissioner’s Office will be able to access systems and all supporting documentation, interview staff and bring issues before the commissioners. They anticipate inspecting hundreds of public authorities each year. The new team will comprise of 15 judicial commissioners, 50 official staff, including inspectors and legal advisors, and a technology advisory panel which will serve as expert advisors on complex issues. Home Secretary Amber Rudd considers the Act as offering a world-leading oversight regime which would ensure security, intelligence and law enforcement powers are used responsibly and proportionately.

Find further information here and at the IPCO website.
Chair of the Police Federation of England and Wales resigns

Steve White, the Chair of the Police Federation of England and Wales has recently announced his intention to resign. Mr. White said in a statement that he was proud of what he had achieved in post but that the Federation’s ongoing stages of reform would progress under new leadership. Parliament will examine the Federation’s reform agenda on 31 December 2017. The Federation’s Interim National Board will consider election of a new chair at their November meeting.

Access the press release here

Training and development

NPCC Lead for Organisational Development and Wellbeing releases statement

A recent survey has shown the extent of stress, mental health issues and reduced morale in the police force. Chief Constable Andy Rhodes, NPCC lead for Organisational Development and Wellbeing, has highlighted the need to address these concerns and focus on officers’ mental health and wellbeing. The nature of police work raises numerous challenges, from bureaucracy to the trauma of being involved in dangerous situations. Consequently, without due support, officers can experience a range of problems that will impact on their health.

Most forces now subscribe to Oscar Kilo, an online resource supported by Public Health England, which provides information to help improve officer welfare. Collaboration with external agents and staff consultation will help identify further strategies to improve officer wellbeing.

The statement included reference to investment in professional development to ensure that opportunities for improvement and skills building are provided. Despite the difficulties officers routinely face, the survey showed the amount of pride officers take in their work and how an emphasis on improved and innovative wellbeing strategies can support the police service.

Access the full article here
Criminal justice system

Home Office pledge £20m to tackle online grooming

The Home Secretary, Amber Rudd, has pledged over £20 million over a period of three years to assist in combating online grooming of children and increase protection of vulnerable people in society.

A regional pilot was run by Norfolk police, which will now be rolled out nationally in a renewed effort to tackle child sexual exploitation. The pilot, which led to 43 arrests, 19 people charged, and an estimated 25 children safeguarded, ran for a year. It involved stationing dedicated officers online in forums and chatrooms, where they were tasked with identifying and disrupting offenders.

The funding comes from the Police Transformation Fund and is part of £52 million awarded by the Home Secretary to continue reforming and shaping policing for the future via police-led processes. The funding will also be used to focus on increasing digitisation in policing, alongside dealing with child sexual exploitation in a bid to increase police efficiency in the area.

Find further details on some of the police-led projects the fund will finance at [gov.uk](http://gov.uk)

Further terror related offences added to Unduly Lenient Sentence scheme

The Unduly Lenient Sentence scheme, a mechanism that allows victims to challenge Crown Court sentences if they consider them too light, has been extended to include 19 terror-related offices. Provision will be made for offences such as encouraging terrorism, sharing terrorist propaganda or failing to disclose information relating to a terrorist attack. The changes serve to recognise the severe, detrimental impact terrorism has on its victims. An application via the scheme to the Attorney General may lead to review at the Court of Appeal, who will choose to maintain or increase the sentence. In 2015, the scheme was used to increase the sentences of 102 offenders. The extension to the scheme took effect from 8 August 2017.

Find further general information [here](http://here), with a full list of the relevant terror offences [here](http://here)

New CPS statements on hate crime

On 21 August, the CPS published new public statements on how it is going to prosecute hate crime and support victims in England and Wales.
The public statements have been presented in three specific areas, prosecuting:

- racist and religious hate crime
- homophobic, biphobic and transphobic hate crime
- disability hate crime.

Each area has its own specific prosecution guidance.

Following a rising volume in reports of hate crime to police, the CPS consulted with community groups and criminal justice partners to produce the revised statements. The policies recognise the impact that hate crime can have on a victim resulting from being targeted based on a personal characteristic. The policies also recognise the impact that hate crime can have on the wider community.

The following definition has been agreed between the police and CPS for identifying and flagging hate crimes:

Any criminal offence which is perceived by the victim or any other person, to be motivated by hostility or prejudice, based on a person’s disability or perceived disability, race or perceived race, religion or perceived religion, sexual orientation or perceived sexual orientation or a person who is transgender or perceived to be transgender.

The policies include guidance on how to identify hate crimes, how to support victims to give their best evidence, how to improve awareness of the various hate crimes and remind the court of its power to increase sentences under the Criminal Justice Act 2003.

Find more information here, and access the full statements here

Hate crime figures following 2017 terrorist attacks published

Since the attack on Westminster in March, police forces have been providing weekly totals for recorded hate crimes to the NPCC. Figures from Westminster (234), London Bridge (319) and Manchester (273) indicated a rise immediately after attacks but stabilisation to average levels within days. Finsbury Park was an exception to this with an increase on day seven after the incident (262).

The NPCC was keen to stress that, while any immediate increase in figures were in part due to the terrorist attacks, all statistics must be read in a broader social and political context, including such issues as Brexit and international military action. Some recognition also has to be given to the time of the incident, with increases often observed during the summer or at weekends. This may account for the high figures recorded after London Bridge. Rises may also be attributed to increased police visibility following the attacks and its facilitation of reporting.

Find more information and the complete set of figures here
The Law Society Publishes its review of LASPO

In 2013 the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) was implemented. The law set new parameters on who was eligible for legal aid, meaning that many people who were previously entitled could no longer receive support. This has led to some dramatic changes to the criminal justice landscape, for example, the increase in the number of litigants in person (self-representation). Four years into the Act’s implementation, the Law Society, a critic of LASPO from its inception, has produced a review of these changes.

The report finds that:

- legal aid is no longer accessible for many who need it
- legal aid is difficult to access, even for those who are eligible to receive it
- there are wide gaps in the Act’s provision
- the Act has a detrimental impact on the state, forcing a burden onto other areas, eg, the courts.

Find the full report here, with background information about LASPO here

Investment to new court waiting rooms to improve court experience for victims and witnesses

HM Courts and Tribunals Service (HMCTS) has invested £80,000 towards new waiting rooms for victims and witnesses in an effort to improve court experience. From collaboration with other agencies such as the Victim’s Commissioner and the Witness Service, best practice for supporting victims and witnesses through the court process was identified. Model waiting rooms have already been included at Nottingham Justice Centre, Manchester Magistrates’ Court, Newcastle Crown Court, Aldershot Justice Centre and Liverpool Crown Court. These will serve as templates for additional refurbishments in other court venues across the country. HMCTS will continue to monitor individuals’ experience through the court process. The work is part is of a £1 billion investment into the courts, including £855 million for modernisation and digitalisation and £240 million towards a fully connected courtroom to facilitate mechanisms such as live links.

Find more information here
About the College

We’re the professional body for everyone who works for the police service in England and Wales. Our purpose is to provide those working in policing with the skills and knowledge necessary to prevent crime, protect the public and secure public trust.

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