



College of
Policing

CPS
New DPP

POLFED
New National
Chair

PACE Codes
Updates in
force

Digest | August 2018

A digest of police law, operational policing practice and criminal justice, produced by the **Legal Services Department** at the College of Policing



Firearms Latest statistics published

UNISON Report on sexual harassment

Modern slavery Increase in prosecutions

Rough sleeping New government strategy published

BetterEvidence™
for **BetterPolicing**

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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Introduction

Thank you for accessing the August edition of the Digest produced by the Legal Services team at the College of Policing.

This month's edition includes articles on the UNISON review of sexual harassment in force, a consultation on whether we ought to consider updating road safety laws to make dangerous or careless cyclists more accountable, and legal action against police non-disclosure of information relating to IMSI catchers.

With the summer Parliamentary recess, this month's edition is shorter than previous editions, and we have no news to share in respect of new and progress updates for bills. Parliament sits again on 4 September 2018, so we anticipate a return to our usual edition volume then.

An enormous thank you to those of you who have helped us by completing our [reader survey](#). If you haven't already, it'd be great if you could spare 2 minutes of your time to tell us if the Digest is on the right track, and how we can make things better to support you in the valuable work that you do.

Thanks for reading,

The Legal Services team

For subscription requests, further information or to send us ideas on what you'd like to see in upcoming editions, please contact us:

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College Membership



The advertisement features the College of Policing logo on the left and a photograph of a male police officer and a woman looking at a computer monitor. A blue box in the top right corner contains the text 'BetterProfessionals for Better Policing™'. A dark blue banner across the middle of the image contains the text 'Become a member today! Visit college.police.uk/membership to sign up for free'. Below this banner, a list of five membership benefits is provided, each preceded by a square bullet point. The bottom right corner of the advertisement has the code 'C91110418'.

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College news

We need your help: The future of the Digest

Help us shape the Digest into something that works for you

The Legal Services team takes real pride in drafting the Digest. We hope that it is of use to you in your professional practice. To make sure we're on the right track, we need your help. Please take part in our very quick [survey](#) and let us know what you think. The survey should take less than 2 minutes to complete and will help shape future editions of the Digest.

If you have any other ideas on what we can do to improve the Digest, please email us at digest@college.pnn.police.uk.

Thank you

The Legal Services team

Can you think of a new name for the Digest?

As part of the Digest redesign, we would like to give the Digest a new name and want to reach out to our readers for their ideas. As a prize to the reader with the best idea, we will be offering a set of the Blackstone's manual (Volume 1-4) 2019 and/or a feature article in the Digest.

Email digest@college.pnn.police.uk to be in with a chance to win!

BAWP to hold development day at the College

The British Association for Women in Policing (BAWP) is to hold their 2018 Development Day on [10 October 2018](#) at the College of Policing site at Ryton.

Founded in 1987, BAWP's members, male and female, come from all ranks and grades of the UK's police services and associated organisations.

Further information about BAWP and the Development Day can be accessed [here](#).

Legislation

Statutory Instruments

SI 2018/940 The Investigatory Powers Act 2016 (Commencement No. 8 and Transitional and Saving Provisions) Regulations 2018

The regulations bring into force measures relating to targeted interception of communications. The measures for the Ministry of Defence and intelligence services are already in place. These regulations apply to other intercepting authorities: the National Crime Agency, the Metropolitan Police, the Police Service of Northern Ireland, Police Scotland, HMRC and a competent authority for the purposes of an EU mutual assistance instrument.

The regulations will have varying enforcement dates but all will be in force by [27 December 2018](#).

Find further information [here](#).

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Case law

R v GS [2018] EWCA Crim 1824

This case considered the culpability of victims of trafficking where crimes have been committed by victims arising from their trafficking. The case reiterated that there is no blanket immunity and decisions must take into account the public interest both in prosecuting alleged offenders and in protecting victims.

This case concerned an appeal following the 2007 conviction of the applicant being knowingly concerned in the fraudulent evasion of the ban on the importation of cocaine. The principal issues were identified as being:

i) Was this a change in 'law case', so that the grant of leave requires substantial injustice to be shown?

ii) Was the fresh evidence, or any part of it, admissible?

iii) Was the applicant's conviction unsafe?

On the first issue, the Court was satisfied that this was a change in law case and that the risk to the applicant's immigration status meant a refusal would constitute a substantial injustice. There had been a material change in the legal recognition of the rights of victims of trafficking between 2007 and the present. In addition, the detailed provisions of the Convention on Action against Trafficking in Human Beings (ECAT) and the directive on preventing and combating trafficking in human beings and protecting its victims (the Directive), were not in force in 2007. There was also a stark contrast in the current CPS guidance and that which was relevant in 2007.

In relation to the fresh evidence, the Court found the first part, the essence of which was the recognition that the defendant had been a victim of trafficking, was admissible. However, the new medical evidence was not.

Finally, the Court considered whether the defendant's conviction was unsafe. Neither the ECAT nor the Directive conferred a blanket immunity from prosecution on victims of trafficking. Instead, the UK's international obligations require the careful and fact-sensitive exercise by prosecutors, at their discretion, as to whether it is in the public interest to prosecute a victim of trafficking. There is no closed list of factors bearing on the prosecutor's decision to proceed against a victim of trafficking, and generalisation is best avoided. However, the Court highlighted that factors obviously impacting on the decision to prosecute lies in the nexus between the crime committed by the defendant and the trafficking.

With regard to the change in law and the fresh evidence admitted, the Court concluded that the conviction was not, even arguably, unsafe. The applicant's criminality or culpability was not reduced to or below a point where it was not in the public interest for the applicant to be prosecuted. The leave to appeal was refused.

Find the full judgement [here](#).

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Policing practice

Crime

Economic and social costs of crime published

The second edition of the Economic and Social Costs of Crime report has now been published. The report estimates the total costs in England and Wales so that there is an understanding of the wider costs and benefits associated with changes in crime numbers. Findings focus on the more serious victim-based offences, as these are seen to have the biggest effect on economic and social costs. Three main cost areas considered include:

- anticipation of crime, eg alarms
- consequence of crime, eg the cost of property stolen
- response to crime, eg costs to the police.

The total cost of crime in 2015/16 was approximately £50 billion. The report's other key findings include:

- The offence with the highest estimated unit cost is homicide at £3.2 million. Second is rape at £39,360 and third is theft of commercial vehicles at £35,180
- The highest 'anticipation unit cost' was for commercial burglary at £8,030
- The highest estimated total cost was for offences involving 'violence with injury' at £15.5 billion. Second and third were 'sexual offences other than rape' at £7.4 billion and 'violence without injury' at £5.1 billion.
- Lowest estimated total costs were for 'theft from commercial vehicle' and 'commercial criminal damage – arson', both at £0.1 billion.

Find further information [here](#).

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Operational

Revised RIPA codes published

Two of the codes of practice under part 2 of the Regulation of Investigatory Powers Act 2000 (RIPA) have been updated. These codes provide guidance on covert surveillance and property interference and on the use of covert human intelligence sources. The codes came into force on 15 August 2018.

Find further information [here](#).

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Technical guidance for body worn videos published

The Home Office has published technical guidance for police forces when procuring and deploying Body Worn Video (BWV) devices. The document updates earlier guidance issued in 2016 and reflects improvements in BWV technology along with additional information on wireless connectivity, as well as the use of BWV for interviewing suspects under PACE.

Find further information [here](#).

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Updated PACE codes now in effect

The revised PACE Codes C, E, F and H were effective as of 31 July 2018. Amendments were made following a statutory consultation.

Find Code C [here](#).

Find Codes E and F [here](#).

Find Code H [here](#).

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Further consultation on Codes of Practice C and H

A further consultation means potential amendment to Codes of Practice C and H. Proposed changes relate to provisions for female detainees following concerns raised via an ICVA blog titled 'Sanitary Custody', which highlighted issues such as the lack of sanitary provision available, facilities for washing and changing, and pixilation of CCTV so female detainees can change sanitary protection.

Find further information [here](#).

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Statistics

Safety in custody figures published

The Ministry of Justice has published the latest Safety in Custody statistics for England and Wales, which provide information on deaths in prison custody to June 2018 and assaults and self-harm to March 2018.

Key points include:

- there was a decrease of 2% in the number of deaths over the 12 month period
- self-harm incidents rose by 16% to 46,589

- assaults and serious assaults continued to rise. Assaults rose by 16% and serious assaults rose by 9%
- Prisoner-on-prisoner assaults and assaults on staff continued to rise. Prisoner-on-prisoner assaults rose by 16% and assaults on staff rose to 9,003, an increase of 26%.

Find further information [here](#).

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Unduly lenient sentence statistics announced

Anyone is able to ask for certain Crown Court sentences to be reviewed under the Unduly Lenient Sentence (ULS) scheme, if they believe the sentence is far too low. The Court of Appeal is then asked by the Law Officers to review the sentence and have it increased if they believe the judge made a gross error.

The Crown Court heard 80,000 cases in 2017, and 943 referrals were received by the Attorney General's Office. Of these referrals, 173 sentences were referred to the Court of Appeal, all including a number of different crimes. Of the 173 sentences, 137 offenders had their sentences increased under the ULS scheme in 2017:

- rape and serious sexual offences (58)
- acquisitive offences, such as burglary, theft and fraud (19)
- serious assault offences (19)
- homicide and related (15)
- firearm-related (8)
- drug-related (4)
- kidnap and false imprisonment (2)
- other offences (12).

Find further information [here](#)

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Firearms statistics released

Data published on the number of police firearms operations include operations involving armed response vehicles (ARVs), information relating to firearms discharge and the number of armed officers. The report collates figures from April 2017 to March 2018.

Key findings include:

- a total of 18,746 firearms operations, an increase of 19% from the previous year and the highest number since 2011

- 84% of all firearms operations involved ARVs
- 15,794 firearms operations involved ARVs
- 12 incidents of firearms discharge
- a total of 6,459 armed officers
- London accounted for the largest proportion of firearms operations (27%) followed by the West Midlands (18%)
- the North East accounted for the smallest proportion of firearms operations (2%).

Find further information [here](#).

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Police

Over £100 million to transformation projects

More than £100 million of the Police Transformation Fund (PTF) will be invested into projects designed to help shape the future of policing. The projects will focus on police use of technology and using online tools to facilitate public engagement with the police. It is hoped that the investment will improve efficiency and deliver economic savings, allowing more officers to assume frontline policing roles.

Four programmes have already commenced:

- The National Enabling Programme: an initiative to develop a unified IT system to allow greater 'joined-up' working between forces. An example includes cloud-based note taking technology, which allows officers to view real time information from victim interviews being conducted elsewhere.
- The Specialist Capabilities Programme: an effort to improve cross-force sharing of resources in key crime areas.
- The Digital Policing Portfolio: advancing police technology via a single online hub. The public will be able to use the hub to report-low level incidents online.
- Transforming Forensics: an initiative to improve biometric service and digital forensics provision, including the development of a 24/7 fingerprint identification service.

Find further information [here](#).

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Police Transformation Fund investments published

A total of 98 projects benefited from £223 million of funding from the PTF in phase 1 (2016/2017 to 2017/2018). Phase 2 (2018/2019 to 2019/2020) will focus on the national programmes and initiatives to combat serious and organised crime. A full break down of all investments can now be accessed. The largest share of funding from the 2018/19 award was put towards the programmes listed in the previous article and the APCC Portfolio Management

project. Other successful bids include £3.3 million to MPS for the development of a National Technical Capability and Infrastructure and over £4 million to Derbyshire police for a Cybercrime project. Two awards have already been granted for the 2019/20 funding including over £11.5 million to MPS for the aforementioned infrastructure project and over £1.7 million to the City of London police for the 'National to Local Fraud and Cyber Data Sharing' project.

Find further information [here](#).

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New guidance on police misconduct released

The Home Office has published amended guidance on police officer misconduct procedures. Changes include:

- regulations covering former officers including whether it applies to a case of misconduct under Conduct Regulations issued before 2012
- confirmation that police staff under local probationary rules (as per Regulation 13 of Police Regulations 2003) will not be included in the barred list
- further guidance regarding the advisory list and the process of removal from the advisory list for designated volunteers.

The guidance should be read alongside the Frequently Asked Questions, also available via the Home Office web page.

Find further information [here](#).

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New POLFED National Chair announced

John Apter has been elected as the Police Federation's national chair and will play a key part in the Federation, representing the organisation nationally and ensuring that members' welfare and interests are heard. Mr. Apter has been in force since 1992 and has worked in various teams before acting as Chair of Hampshire Police Federation in 2010.

Find further information [here](#).

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MPs invited to spend a day in force

The 'Give a Day to Policing' initiative invites members of Parliament to spend a day with their local force to allow them to improve their understanding of police practice. MPs will be encouraged to spend time with neighbourhood policing teams, attend meetings, attend response calls and discuss issues and challenges with frontline officers.

Find further information [here](#).

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Welfare

POLFED release statistics regarding officer voluntary exit

Over the past 12 months nearly 2,000 police officers have voluntarily quit policing. This is an increase of more than 30% over the past four years.

A new leavers' survey conducted by the Police Federation of England and Wales (PFEW) found that:

- 52.5% of police officers cited morale as their reason for leaving
- 43.8% cited the impact of the job on their family/personal life as their reason for leaving
- 43.3% declared the impact of the job on their psychological health as their reason for leaving
- 69.4% felt that the service had failed to provide pay increases to allow officers to maintain their standard of living.

Find further information [here](#).

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UNISON and NPCC to tackle sexual harassment among police staff

A report published by UNISON, the London School of Economics and Political Science and the University of Surrey has exposed high levels of sexual harassment among police staff in England and Wales. Findings are collected from a survey of 1,776 police staff. The report highlights some serious concerns with the NPCC recognising the behaviours identified as 'outdated and unacceptable'. For example, 4% of the police staff surveyed, reported being pressurised into having sexual relations with colleagues and 8% were told that they would receive preferential treatment for sexual favours. 19% had received a sexually explicit text or email from a colleague and 18% had seen colleagues make sexual gestures at work. 39% of respondents said that it was easier to keep an incident to themselves than to report it. Of those who considered raising the matter, 37% said that nothing would be done in response and 32% felt that any complaint would not be taken seriously.

The NPCC have reflected on the clear deviation from the Code of Ethics and the high standards of behaviour all members of the policing community must adhere to. It has committed to developing a plan to tackle the problem by October 2018, which will include challenging misguided and damaging behaviours, with assurance that malicious and predatory behaviour would lead to individuals being dismissed.

Find further information [here](#).

Criminal justice system

New Director of Public Prosecutions

Max Hill QC has been appointed as the new director of the Crown Prosecution Service (CPS). He is the head of Red Lion Chambers and already acts as the Independent Reviewer of Terrorism Legislation. He has had extensive experience in criminal law and has had involvement in many high profile trials including the Damilola Taylor case and the 2005 London bombings. Mr. Hill's directorship will start on 1 November 2018.

Find further information [here](#).

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Challenge made against police use of IMSI catchers

Privacy International (PI), represented by Liberty, have filed an appeal challenging police use of the 'neither confirm nor deny' (NCND) response to freedom of information requests made in relation to the use of IMSI catchers. The appeal forms part of a two year campaign undertaken by PI for disclosure of information. Freedom of information requests were submitted to a number of forces in November 2016, all of which replied with the NCND response. PI won an appeal in July 2018 whereby the Information Commissioner's Office held that the response could not be given to requests for certain information, specifically legislation, codes of practice, brochures or promotional materials relating to surveillance tools. However, it was deemed appropriate to use the NCND response for policies, guidance, contracts and other records relating to IMSI catchers. The appeal will seek to argue for disclosure of this information.

Find further information [here](#).

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MPs call for a review of legal aid

A committee of MPs have called on the Government to carry out a review of criminal legal aid.

Chair of the Justice Committee, Bob Neill MP, said:

"Under-funding of the criminal justice system in England and Wales threatens its effectiveness, tarnishing the reputation of our justice system as a whole, and undermining the rule of law."

MPs fear that the recent changes to legal aid, including the Litigators' Graduated Fee Scheme (LGFS) and Advocates' Graduated Fee Scheme (AGFS), are hampering the defence's ability to fulfil its role. Neither LGFS nor AGFS offer remuneration for time spent reviewing unused prosecution material.

The Committee has called for the review to commence no later than March 2019 and to be completed within 12 months. It also recommended that the government conduct a cross-departmental review of funding within all elements of the criminal justice system. The aim is to enable the justice system to operate effectively by restoring resources to an adequate level.

Find further information [here](#).

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Guidance on obligations of expert witnesses published

The Forensic Science Regulator has published guidance on the obligations placed on expert witnesses in the criminal justice system in England and Wales. It provides information on the requirements imposed by statute, case law and criminal procedure rules and directions.

Find further information [here](#).

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Increase in modern slavery prosecutions

The CPS has published a report showing that charges for modern slavery offences have risen by more than a quarter in the last year. In 2017/18, 239 suspects were charged with modern slavery offences; an increase of 27%. Referrals to the CPS from police and other agencies has also risen by a third to 355.

The figures were published in the first CPS Modern Slavery report, which highlights efforts to disrupt, prosecute and improve the CPS response to both modern slavery and human trafficking.

Find further information [here](#).

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Reports on costs of modern slavery published

The Home Office has published a research report into the economic and social costs of modern slavery. The report aims to estimate the cost of modern slavery in the UK to better understand the impact of this crime in order to inform the policy and operational response and promote the value of preventative work. The report estimates the total cost of modern slavery in the UK to be between £3.3 billion and £4.3 billion in the year ending March 2017. The physical and emotional harms to victims represent the biggest component of the cost.

Find further information [here](#).

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Early intervention youth funding doubled

The Early Intervention Youth Fund opened to bids on 30 July 2015 and forms part of the Serious Violence Strategy. Funding has now been doubled to a total of £22 million. Police and Crime Commissioners, working in partnership with Community Safety Partnerships, can bid for funding to invest into projects which steer young, vulnerable people away from crime.

Find further information [here](#).

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Drone consultation opens

The government is revising drone use and enforcement policies. The consultation hopes to address the following issues:

- minimum age for small unmanned aircraft
- whether the 1km flight restriction (which currently applies for protected aerodromes) needs to be increased
- whether there is a need to mandate and regulate the Flight Information and Notification System
- the powers required by agencies to effectively enforce the law, including discussion of fixed penalty notices
- counter drone technology.

Find further information [here](#).

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Consultation opens on new road safety laws

A public consultation on whether a new offence ought to be created for dangerous cyclists which is equivalent to causing death by dangerous or careless driving. The consultation forms part of a push to promote road safety for road users following fatalities caused by careless cycling.

Find further information [here](#).

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Manchester Arena attack inquest to commence

Sir John Saunders has been nominated to act as Coroner in the coroner investigations into the Manchester Arena terrorist attack. A pre-inquest review hearing will be held in October 2018.

Find further information [here](#).

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Rough sleeping strategy published

The government has laid out its commitment to ending rough sleeping by 2027. Their strategy has now been published and confirms funding support of £100 million toward initiatives to end the problem. Data collected in autumn 2017 indicated that rough sleeping affects approximately 4,751 people but this is uncertain due to difficulties collating accurate statistics. The strategy focuses on preventative measures, intervention and recovery. Its commitments include:

- review of the Vagrancy Act and other legislation to ensure that the law supports delivery of services and engagement with vulnerable people
- securing the cooperation of local authorities so that progress on rough sleeping strategies is regularly reported
- supporting Health and Wellbeing Boards in their work in responding to the health needs of rough sleepers
- running pilot programmes to support offenders who have been identified as likely to be at risk of rough sleeping
- extending 'move on' support for modern slavery victims from 14 to 45 days. This would provide more time to ensure victims have access to safe and secure accommodation before exiting the National Referral Mechanism support.

Find further information [here](#).

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