Digest

May 2015

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

Any enquiries regarding this publication or to request copies in accessible formats please contact us at digest@college.pnn.police.uk

© – College of Policing Limited 2015

This publication is licensed under the terms of the Non-Commercial College Licence v1.1 except where otherwise stated. To view this licence visit http://www.college.police.uk/Legal/Documents/Non_Commercial_College_Licence.pdf

Where we have identified any third-party copyright information, you will need to obtain permission from the copyright holders concerned.
Contents

Overview ................................................................................................................................. 5

Legislation ............................................................................................................................... 6

Statutory Instruments ............................................................................................................. 6

The Police (Conduct) (Amendment) Regulations 2015 ............................................................. 6
The Police Appeals Tribunals (Amendment) Rules 2015 .......................................................... 6
The Misuse of Drugs (Designation) (England, Wales and Scotland) Order 2015 ..................... 7
The Serious Crime Act 2015 (Consequential Amendments) Regulations 2015 ....................... 8
The Serious Crime Act 2015 (Commencement No. 1) Regulations 2015 ......................... 8
The Coroner's and Justice Act 2009 (Commencement No. 17) Order 2015 ...................... 9
The Criminal Justice and Courts Act 2015 (Simple Cautions), ........................................... 9
(Specification of Police Ranks) Order 2015
The Firearms Regulations 2015 ............................................................................................ 10
The Drug Driving (Specified Limits) (England and Wales) (Amendment) Regulations 2015 ... 11
The Terrorism Act 2000 (Code of Practice for Examining Officers and Review Officers) Order 2015 .................. 11
The Data Retention and Investigatory Powers Act 2014 (Commencement) Order 2015 ........ 11
The Counter-Terrorism and Security Act 2015 (Risk of Being Drawn into Terrorism) (Amendment and Guidance) Regulations 2015 .............................................................. 12
The Retention of Communications Data (Code of Practice) Order 2015 ............................... 13
The Terrorism Act 2000 (Proscribed Organisations) (Amendment) (No. 2) Order 2015 ....... 14
The Misuse of Drugs Act 1971 (Temporary Class Drug) Order 2015 ....................................... 15

New legislation ....................................................................................................................... 16

Modern Slavery Act receives Royal Assent ......................................................................... 16
Case law ........................................................................................................................................... 17

Crime .................................................................................................................................................. 17

R v ABC, EFG, UK; R v Ryan Sabey [2015] EWCA Crim 539 ......................................................... 17

Evidence and procedure .................................................................................................................. 27

Billal Lariba, Tershan Edwards Dos Santos, Brendan Brian Hamilton v R [2015] EWCA Crim 478 .. 27

Financial investigations .................................................................................................................... 40

R v Guraj [2015] EWCA Crim 305 ..................................................................................................... 40

Policing practice ............................................................................................................................... 46

Crime .................................................................................................................................................. 46

‘Legal highs’ to be banned under temporary power ......................................................................... 46

Office for National Statistics publish statistics on public perceptions of crime and the police .. 46

Revised Code A published ................................................................................................................ 48

Police .................................................................................................................................................. 50

College of Policing launches secure website for police guidance ................................................. 50

HMIC publish second report on police use of stop and search powers ...................................... 50

Home Office Circular 006/2015: linking police officer pay progression to performance .......... 57

Home Office rewards police innovation ....................................................................................... 58

National undercover scrutiny panel set up .................................................................................... 59

National Police Chiefs Council comes into effect ....................................................................... 60

Operation of police powers in Great Britain under the Terrorism Act 2000 and subsequent legislation: arrests, outcomes and stops and searches, quarterly update to 30 September 2014

Criminal justice system ..................................................................................................................... 63

Home Office Circular 008/2015: Serious Crime Act 2015 ............................................................. 63

Pre-charge bail: summary of consultation responses and proposals for legislation .................. 74

Changes to Mental Health Act 1983 Code of Practice .................................................................. 80

Consultation on dangerous dog offences guidelines .................................................................... 82

Home office Circular 2015/02: reporting restrictions applying to under 18s ............................. 83

Ministry of Justice publish guidance on Criminal Justice and Courts Act 2015 ...................... 86

Ofsted publish findings of thematic inspection on child sexual exploitation ......................... 88
This month’s edition of the Digest contains a summary of issues relating to police law, operational policing practice and criminal justice.

There are reports of cases concerning:

- the admissibility of evidence that police officers recognised the defendant from a CCTV recording proximate to the scene of the crime
- the threshold required for the offence of misconduct in public office
- postponement of confiscation proceedings.

We look in detail at:

- Home Office circular 008/2015 on the Serious Crime Act 2015
- the government response to the consultation on pre-charge bail
- Ofsted’s thematic inspection on child sexual exploitation
- HMIC’s report on the police use of stop and search powers.

We also look at the:

- Ministry of Justice guidance on the Criminal Justice and Courts Act 2015
- revisions to Code A to the Police and Criminal Evidence Act 1984
- Home Office circular 006/2015: linking police officer pay progression to performance
- latest statistical release from Office for National Statistics on public perceptions of crime and the police
- revised code of practice to the Mental Health Act 1983.

The progress of proposed new legislation through parliament is examined and relevant Statutory Instruments are summarised.
Statutory Instruments

SI 2015/626 The Police (Conduct) (Amendment) Regulations 2015

These Regulations came into force 1 May 2015. Regulation 4 came into force on 13 March 2015 and Regulation 5 comes into force on 1 January 2016.

These Regulations amend the Police (Conduct) Regulations 2012 (the 2012 Regulations) to make provision in relation to protected disclosures by police officers, the persons who may conduct a misconduct hearing, the information which may be published in respect of misconduct and special case hearings (including further hearings) and the holding of those hearings in public, and the removal or limitation of compensation payable to a senior officer in respect of the cessation of the officer’s fixed term appointment.

Regulation 3 amends regulation 3 of the 2012 Regulations to the effect that the making of a protected disclosure by a police officer is not a breach of the Standards of Professional Behaviour (prescribed in Schedule 2 to the 2012 Regulations). A ‘protected disclosure has the same meaning as in section 43A of the Employment Rights Act 1996. Regulation 3 also removes some superfluous words from the current definition of ‘document’ in regulation 3 of the 2012 Regulations.

Regulation 5 amends regulation 25 of the 2012 Regulations to the effect that a misconduct hearing concerning a non-senior officer is conducted by a legally qualified chair, a member of a police force of at least the rank of superintendent and an independent member selected by the appropriate authority.

Regulation 6 amends regulation 26 of the 2012 regulations to correct an error in nomenclature.

Regulations 7 to 10 make provision in relation to the information which may be published in respect of misconduct hearings and the holding of those hearings in public. Regulation 7 inserts new regulation 27A into the 2012 Regulations to enable the person chairing a misconduct hearing to require publication by the appropriate authority of certain information about a misconduct hearing at least 5 working days before the hearing starts. It also enables written representation to be made to the chair in relation to attendance at the misconduct hearing and the publication of information about the hearing. Regulation 8 makes consequential amendment to regulation 30 of the 2012 Regulations. Regulation 9 substitutes new regulation 31 for the previous regulation 31 of the 2012 Regulations to provide, subject to exceptions, that a misconduct hearing takes place in public. Regulation 10 makes consequential amendment to regulation 34 of the 2012 Regulations.
Regulation 11 enables the appropriate authority to make certain provision (eg, to prohibit the payment of compensation or impose a cap on it) in respect of the compensation payable to a senior officer who is given a final written warning (or such a warning is extended) in the event that the officer’s fixed term appointment is not extended or the officer is required to resign. Regulation 12 amends regulation 36 of the 2012 Regulations to enable publication of certain information about a misconduct hearing between 7 and 12 working days after its conclusion and for representations to be considered in relation to that power. It also requires the appropriate authority to notify the College of Policing where an officer is dismissed.

Regulations 14 to 17 make provision, equivalent to that made by regulations 7 to 12 for misconduct hearings, in relation to special case hearings. Regulation 13 makes consequential amendment to regulation 44 of the 2012 Regulations. Regulation 14 inserts new regulation 44A into, and regulations 16, 18 and 19 substitute or amend regulations 52, 55 and 56 of, the 2012 Regulations respectively.

Regulation 4 corrects an oversight in regulation 10A of the 2012 Regulations, which was inserted by the Police (Conduct) (Amendment) Regulations 2014 (SI 2014/3347) (the 2014 Regulation). Regulation 10A enables the appropriate authority to prevent a police officer who has become subject to the 2012 Regulations as a result of an allegation of misconduct from resigning or retiring until it decided not to refer to the officer to a misconduct hearing or such proceedings have concluded. Regulation 4 inserts into regulation 10A a new paragraph (2A) which has the effect that regulation 10A does not apply to a matter in respect of which the allegation against the police officer came to the attention of the appropriate authority before the coming into force of the 2014 Regulations (12 January 2015).

Regulation 20 makes transitional provision in relation to the coming into force of certain provisions in these Regulations.

SI 2015/625 The Police Appeals Tribunals (Amendment) Rules 2015

These Rules came into force on 1 May 2015.

These Rules amend the Police Appeals Tribunals Rules 2012 (the 2012 Rules) to make provision in relation to appeals brought under rule 4 of the 2012 Rules in respect of decisions made under the Police (Conduct) Regulations 2012 (the 2012 Regulations). The provisions govern the information which may be published in respect of appeal hearings and the holding of those hearings in public.

Rule 3 amends rule 4 of the 2012 Rules so as to enable a senior officer against whom an order is made under regulation 35(12) or 55(11) of the 2012 Regulations (an order in relation to the compensation payable to the officer in the event that the officer’s fixed term of appointment is not extended or the officer is required to resign before the expiry of the fixed term) to appeal against the order.
Rule 4 amends rule 14 of the 2012 Rules to enable the chair (defined in rule 3 of the 2012 Rules) to arrange for the publication of certain information about an appeal hearing at least 5 working days before the hearing starts and to receive written representations in relation to attendance at the hearing and publication of information about the hearing. Rule 5 substitutes a new rule 18 to provide, subject to exceptions, that an appeal hearing under rule 4 of the 2012 Rules takes place in public. Rules 6 to 8 make consequential amendments to rules 19 to 21 of the 2012 Rules. Rule 9 amends rule 22 of the 2012 Rules to enable the chair to arrange for the publication of certain information about an appeal hearing between 5 and 10 working days after its conclusion and to consider representations in relation to that power. Rule 9 also ensures that the relevant local policing body notifies the College of Policing where a dismissed officer is reinstated on appeal and that an order made under regulation 35(12) or 55(11) of the 2012 Regulations is cancelled where the final written warning to which that order related is cancelled as a result of an appeal. Rule 10 makes transitional provision in relation to the coming into force of provisions in these Rules.


This Order, which extends to England, Wales and Scotland comes into force on 31 May 2015.

Section 7(3) of the Misuse of Drugs Act 1971 requires regulations under section 7(1) of that Act to allow drugs which are subject to control under the Act to be used for medical purposes. Section 7(3) does not however apply to any drug which is designated by order under section 7(4) as a drug to which that subsection applies.

This Order replaces the Misuse of Drugs (Designation) Order 2001 (SI 2001/3997) (the 2001 Order) and designates for this purpose the drugs specified in Part 1 of Schedule 1 to this Order.

Part 2 of Schedule 1 specifies certain compounds which are excepted from paragraphs 1(e) – (g) of Part 1 and are therefore not designated by Part 1 of Schedule 1.

Schedule 2 revokes both the 2001 Order and the Orders amending the 2001 Order.

SI 2015/800 The Serious Crime Act 2015 (Consequential Amendments) Regulations 2015

These Regulations come into force on 3 May 2015.

These Regulations make amendments to references to the offences in sections 48 to 50 of the Sexual Offences Act 2003 in secondary legislation consequential on the commencement of section 68 of the Serious Crime Act 2015, which substituted references to child prostitution and pornography in those provisions with the term ‘child sexual exploitation’.
SI 2015/820 The Serious Crime Act 2015 (Commencement No. 1) Regulations 2015

Regulation 2 brings into force on 3 May 2015 provisions of the 2015 Act relating to computer misuse, serious crime prevention orders, the seizure and forfeiture of drug-cutting agents, child cruelty, child sexual exploitation, termination of pregnancy on grounds of sex of foetus and the new offences of participating in the activities of an organised crime group and the possession of a paedophile manual. Regulation 2 also brings into force on the same date consequential amendments in Schedule 4 to the 2015 Act that relate to these provisions, and to sections 72 and 80 of the 2015 Act, which are commenced by section 88(4) and (5) of the Act.


The following provisions of the Coroners and Justice Act 2009 came into force on 13 April 2015—

(a) section 137 (extension of driving disqualification)
(b) paragraphs 2(1) and (2) and 5 of Schedule 16 (extension of driving disqualification)
(c) paragraphs 29 to 34 of Schedule 22 (transitional, transitory and saving provision).

This Order commences section 137 of, and various provisions of Schedule 16 and Schedule 22 to, the Coroners and Justice Act 2009. These provisions apply where a court in England and Wales sentences an individual to an immediate custodial sentence as well as ordering the individual to be disqualified for holding or obtaining a licence. In that case the court must add an extension period to the disqualification period to take into account the time spent in custody.


This Order came into force on 13 April 2015.

Section 17(5) of the Criminal Justice and Courts Act 2015 (the 2015 Act) provides that it is for a police officer not below a rank specified by order made by the Secretary of State to determine whether there are exceptional circumstances for the purposes of subsection (2), (3) or (4), and whether a previous offence is similar to the offence admitted for the purposes of subsection (4)(b). Section 18(1) of the 2015 Act gives the Secretary of State power to specify different ranks for each of these determinations.
This Order specifies in article 3 and the Schedule: that the police officer who determines whether there are exceptional circumstances for the purposes of section 17(2) of the 2015 Act must not be below the rank of Superintendent; that the police officer who determines whether there are exceptional circumstances for the purposes of section 17(3) of the 2015 Act must not be below the rank of Inspector; that the police officer who determines whether there are exceptional circumstances for the purposes of section 17(4) of the 2015 Act must not be below the rank of Inspector; and that the police officer who determines whether a previous offence is similar to the offence admitted for the purposes of section 17(4)(b) of the 2015 Act must not be below the rank of Inspector.

SI 2015/860 The Firearms Regulations 2015

These Regulations came into force on 16 April 2015. Regulation 2 extends to England and Wales and Scotland. Regulation 3 extends to Northern Ireland.


Regulation 2 of these Regulations amends section 39 of the Act (register of holders of shot gun and firearm certificates) to ensure that information about each firearm to which a firearm certificate or a shot gun certificate relates is recorded on a computerised register, along with details of persons who purchase, possess, acquire, sell or transfer such firearms. Section 39 is also amended to ensure that such records are maintained for at least twenty years from the date that this information is entered onto the register and the heading is amended to reflect the new provisions.

Regulation 3 of these Regulations amends Articles 30 and 38 of and Schedules 3 and 5 to the 2004 Order as follows: (a) Article 30(1) (consequences of expiration or revocation of firearms dealer’s certificate) is amended to ensure that once a firearms dealer’s certificate has expired or is revoked, he must deliver his record of transactions (register) to the national authority responsible for the electronic filing system, which, in Northern Ireland, is the Chief Constable; (b) Article 38 (record of transactions in firearms) is extended to ensure that firearms dealers provide a copy of each transaction involving a firearm to the Chief Constable in a timely manner; (c) Article 38A (record of transactions in firearms by Chief Constable) is inserted to ensure that the Chief Constable is responsible for keeping a centralised electronic data-filing system for at least 20 years; (d) Schedule 3 is amended to ensure that firearms dealers record adequate information about each transaction involving a firearm to provide to the Chief Constable; and (e) Article 38(6A) is inserted and Schedule 5 is amended to make it an offence for a firearms dealer to fail to send a copy of their record of each transaction involving a firearm to the Chief Constable within 72 hours of the transaction.
SI 2015/911 The Drug Driving (Specified Limits) (England and Wales) (Amendment) Regulations 2015

These Regulations, which extend to England and Wales, came into force on 14 April 2015.

Section 5A(1) and (2) of the Road Traffic Act 1988 makes it an offence for a person to drive, attempt to drive, or be in charge of a motor vehicle on a road or other public place with a specified controlled drug in the body, if the proportion of the drug in that person’s blood or urine exceeds the specified limit for that drug. These Regulations specify amphetamine as a controlled drug for this purpose as well as the specified limit for amphetamine expressed as a concentration in blood.


This Order came into force on 25 March 2015.

This Order brings into operation the revised code of practice (the Code) issued under paragraph 6(1) and (4) of Schedule 14 to the Terrorism Act 2000 (the Act) in connection with the exercise by examining officers of functions conferred on them by the Act. The Code revises the preceding code of practice to take account of amendments made to paragraph 9 of Schedule 7 to the Act, and to other relevant enactments, by the Counter-Terrorism and Security Act 2015. These amendments make express provision for the locations in which the power to examine goods under paragraph 9 of Schedule 7 may be exercised, as well as putting beyond doubt that the power may be exercised in respect of postal items.

Article 3 of the Order provides that where a person begins exercising any function under paragraph 9 of Schedule 7 to the Act before the Code comes into operation and continues to exercise the function after the Code has come into operation, then the Code is applicable to the exercise of that function from the time it comes into force.


This Order brought into force section 1(6) of the Data Retention and Investigatory Powers Act 2014 (the 2014 Act) on 13 April 2015.

That section provides that data retained in accordance with a notice under section 1 of the 2014 Act may only be disclosed in accordance with Chapter 2 of Part 1 of the Regulation of Investigatory Powers Act 2000, a court order or warrant, or as provided for in regulations. All other sections of the 2014 Act came into force upon Royal Assent. Regulations 8(1) and 15(2) and (3) of the Data Retention Regulations 2014 (SI 2014/2042), made under the 2014 Act, come into force on the same day as section 1(6).
SI 2015/928 The Counter-Terrorism and Security Act 2015 (Risk of Being Drawn into Terrorism) (Amendment and Guidance) Regulations 2015

These Regulations came into force on 25 March 2015, other than regulation 8 which came into force on 12 April 2015.

These Regulations make provision under Part 5 of the Counter-Terrorism and Security Act 2015 (the Act) in relation to the risk of being drawn into terrorism.

Regulation 3 brings into effect statutory guidance about the performance by specified authorities listed in Schedule 6 to the Act of their duty under section 26(1) of the Act. The section 26(1) duty requires each specified authority, in the exercise of its functions, to have due regard to the need to prevent people from being drawn into terrorism. Regulation 3 provides that guidance issued by the Secretary of State under section 29(1) of the Act in relation to the exercise of the duty in England and Wales, and separate guidance issued by the Secretary of State in relation to the exercise of the duty in Scotland, takes effect on the day on which regulation 3 comes into force.

Regulations 4 and 5 make amendments to Chapter 1 of Part 5 of the Act which are consequential on certain Scottish authorities being added to the list of specified authorities in Schedule 6 to the Act.

Regulation 4 provides for the enforcement in Scotland of directions issued by the Secretary of State to Scottish authorities under section 30 of the Act, to secure those authorities’ compliance with their duty under section 26(1).

Regulation 5 has the effect of ensuring that certain Scottish further and higher educational institutions which are subject to the duty in section 26(1) of the Act are required, when carrying out that duty, to have particular regard to the need to ensure freedom of speech and the importance of academic freedom. Regulation 5 also ensures that where the Secretary of State is issuing guidance under section 29(1) of the Act, or is considering whether to give directions under section 30, to such Scottish further and higher educational institutions, the Secretary of State must have particular regard to the need to ensure freedom of speech and the importance of academic freedom.

Regulation 6 amends Chapter 2 of Part 5 of the Act so that it applies in Scotland. This is achieved by amending the ‘local authority’ definition so it includes local authorities in Scotland. This ensures that Scottish local authorities are subject to the duty in section 36(1) to ensure that panels are in place in those authorities’ areas with the functions of assessing the extent to which identified individuals are vulnerable to being drawn into terrorism and, where appropriate, providing support to such individuals if they consent to receive it. Regulation 6 also ensures that references to a chief officer of police in Chapter 2 of Part 5 are to be read as including references to the chief constable of the Police Service of Scotland.
Regulation 7 and Schedule 1 have the effect of including various Scottish authorities as specified authorities in Schedule 6 to the Act, so as to impose on them the duty in section 26(1).

Regulation 8 and Schedule 2 have the effect of including in Schedule 7 to the Act various Scottish authorities as partners of local authority panels which are in place as a consequence of being subject to the section 36(1) duty.


This Order came into force on 25 March 2015.

This Order brings into force the revised code of practice on Acquisition and Disclosure of Communications Data prepared under section 71 of the Regulation of Investigatory Powers Act 2000. The purpose of the code is to set out guidance relating to the acquisition and disclosure of communications data by public authorities under Chapter 2 of Part 1 of that Act.

Under section 72(1) of that Act, a person exercising any power or duty in relation to which provision may be made by a code of practice under section 71 must, in doing so, have regard to the code’s provisions (as far as applicable).

SI 2015/926 The Retention of Communications Data (Code of Practice) Order 2015

This Order came into force on 25 March 2015.

This Order brings into force the code of practice on Retention of Communications Data prepared under section 71 of the Regulation of Investigatory Powers Act 2000 as modified by the Data Retention Regulations 2014 (SI 2014 / 2042). The purpose of the code is to set out guidance relating to the retention by communications service providers of communications data under section 1 of the Data Retention and Investigatory Powers Act 2014.

Under section 72(1) of the Regulation of Investigatory Powers Act 2000, a person exercising any power or duty in relation to which provision may be made by a code of practice under section 71 must, in doing so, have regard to the code’s provisions (as far as applicable).

The following provisions of the Anti-social Behaviour, Crime and Policing Act 2014 came into force on 15 April 2015—

(a) section 160 (appeals)

(b) section 181(1) (minor and consequential amendments), insofar as it relates to the provisions of Schedule 11 specified in paragraph (c) and

(c) in Schedule 11 (minor and consequential amendments)—

(i) paragraphs 106 to 107
(ii) paragraphs 111 to 112
(iii) paragraph 113(1) to (2) and
(iv) paragraph 114.

The following provisions of the Anti-social Behaviour, Crime and Policing Act 2014 came into force on 15 April 2015 in relation to England and Wales and Northern Ireland only—

(a) section 181(1) (minor and consequential amendments), insofar as it relates to the provisions of Schedule 11 specified in paragraph (b) and

(b) in Schedule 11 (minor and consequential amendments), paragraph 113(3) to (6).

This Order brings into force section 160 (appeals in relation to extradition proceedings) of the Anti-social Behaviour, Crime and Policing Act 2014 and, under articles 2 and 3, the related paragraphs of Schedule 11 (minor and consequential amendments) to that Act to the extent that the relevant amended provisions are in force already. These provisions amend the Extradition Act 2003 and come into force simultaneously with consequential amendments made to that Act by Article 3 of the Extradition Act 2003 (Amendment to Designations and Appeals) Order 2015 (that Order being made immediately before this Order was made).

SI 2015/959 The Terrorism Act 2000 (Proscribed Organisations) (Amendment) (No. 2) Order 2015

This Order came into force on 27 March 2015.

Part 2 of the Terrorism Act 2000 makes provision about proscribed organisations (including setting out offences in relation to such organisations in sections 11 to 13). An organisation is proscribed if it is listed in Schedule 2 to that Act or, in most cases, if it operates under the same name as an organisation so listed (section 3(1)). Article 2 of this Order adds ‘Jamaat ul-Ahrar’ and ‘The Haqqani Network’ to the list in that Schedule.

This Order came into force on 10 April 2015.

Article 2 of this Order specifies the substances and products listed in the Schedule as drugs subject to temporary control under section 2A(1) of the Misuse of Drugs Act 1971. The substances specified in paragraph 1 of the Schedule are Methylphenidate related materials which are being misused as new psychoactive substances. Paragraphs 2 and 3 of the Schedule specify derivatives of the substances and products specified in paragraph 1.

Article 3 of this Order provides that the Misuse of Drugs (Safe Custody) Regulations 1973 and the Misuse of Drugs (Safe Custody) (Northern Ireland) Regulations 1973 apply to those substances and products, and the Misuse of Drugs Regulations 2001 and the Misuse of Drugs Regulations (Northern Ireland) 2002 apply to those substances and products as if they were specified in Schedule 1 to each of the relevant Regulations.

In accordance with subsection (6) of section 2A of the Misuse of Drugs Act 1971, the specified substances and products will cease to be subject to temporary control after the expiry of one year or, if earlier, upon the coming into force of an Order in Council under section 2(2) of that Act listing the specified substances in Part 1, 2 or 3 of Schedule 2 to that Act.
New legislation

Modern Slavery Act receives Royal Assent

The Modern Slavery Act received Royal Assent on 26 March 2015.

The Act is in seven parts:

- part 1 consolidates and clarifies the existing offences of slavery and human trafficking whilst increasing the maximum penalty for such offences
- part 2 provides for two new civil preventative orders, the Slavery and Trafficking Prevention Order and the Slavery and Trafficking Risk Order
- part 3 provides for new maritime enforcement powers in relation to ships
- part 4 establishes the office of Independent Anti-slavery Commissioner and sets out the functions of the Commissioner
- part 5 introduces a number of measures focussed on supporting and protecting victims, including a statutory defence for slavery or trafficking victims and special measures for witnesses in criminal proceedings
- part 6 requires certain businesses to disclose what activity they are undertaking to eliminate slavery and trafficking from their supply chains and their own business
- part 7 requires the Secretary of State to publish a paper on the role of the Gangmasters Licensing Authority and otherwise relates to general matters such as consequential provision and commencement.

The Act can be viewed at legislation.gov
Case law

Crime

R v ABC, EFG, IJK; R v Ryan Sabey [2015] EWCA Crim 539

A hearing in the Court of Appeal (Criminal Division) before the Lord Chief Justice of England and Wales, Mr Justice Cranston and Mr Justice William Davis. The full judgment can be found at http://www.bailii.org/ew/cases/EWCA/Crim/2015/539.html

Facts

The Court of Appeal in this case had to consider appeals following two trials, which were held at the Central Criminal Court. The details of the two cases were as follows:

R v ABC, EFG, IJK

This case concerned the trial of a prison officer (ABC), his friend (EFG) and a former journalist at the News of the World (IJK). The case centred on ABC providing information to IJK in exchange for money, it was also alleged that EFG had allowed her account to be used in the knowledge that a) ABC was being paid for information and b) that ABC’s activity amounted to wilful misconduct.

On the 5 November 2014 ABC, EFG and IJK were convicted and sentenced to terms of imprisonment. They appealed against their convictions.

R v Sabey and Brunt

Paul Brunt was a Lance Corporal in the same Regiment as HRH Prince Harry. Between April 2006 and November 2007 he provided information about Prince Harry to the News of the World in return for payments. There was evidence that all members of the armed forces were instructed not to talk to the media without permission and this was reinforced when the Royal Princes joined the regiment. In his interview Paul Brunt stated that he had provided the information for money. The prosecution case in respect of Paul Brunt was that he had abused his position as a soldier and received a total of £16,000 from the News of the World and the Sun in exchange for information he had provided.
Ryan Sabey was a journalist on the News of the World, he became a Royal reporter in 2005. The news desk had put him in touch with Paul Brunt, telling him that there was someone with a potential story. He rang Paul Brunt back and they then kept in touch for some weeks before Paul Brunt provided him with information about the Prince horse riding. In the course of his dealings, Paul Brunt also passed Ryan Sabey a story with pictures of a soldier in his regiment with KKK dress and swastika symbols. Ryan Sabey accepted that he knew Paul Brunt was a serving soldier and that he had been paid.

The jury in this case were also provided with an email, which showed that Ryan Sabey had asked if he could pay £1,500 in cash rather than paying it into Paul Brunt’s bank account as Paul Brunt had stated that his position could be jeopardised if the army ever asked to see his bank accounts. That payment was made in cash.

The prosecution case in respect of Ryan Sabey was that he encouraged Paul Brunt to provide the information, knowing that Paul Brunt was not allowed to provide it. Ryan Sabey argued that overall the stories were in the public interest.

Both Paul Brunt and Ryan Sabey were charged with misconduct in public office, with Ryan Sabey charged with aiding and abetting Brunt. On the 19 February 2015 both were convicted.

The issues

Four issues arose on the appeal made by ABC, EFG and IJK, the appeal made in the case of R v Sabey and Brunt involved only the first two issues below.

1. Was the judge’s direction in respect of the threshold required for misconduct in public office correct?

2. Was the judge’s direction in respect of the mens rea of EFG/Ryan Sabey as aiders and abettors correct?

3. What was the mens rea required to convict IJK in relation to the count of conspiracy?

4. Did the judge’s response to a jury note in the case of R v ABC, EFG, IJK amount to a material irregularity affecting the safety of the conviction?

The court looked at each of these issues in turn.

1. Was the judge’s direction in respect of the threshold required for misconduct in public office correct?

Each of the applicants contended that the omission of a reference to the threshold being a high one, requiring conduct so far below acceptable standards as to amount to an abuse of public trust in the office holder should have been used. They contended that the judge should have made it clear that the conduct was so serious that it required punishment through the criminal courts.
The judge’s direction to the jury in the present case was as follows:

Are you sure that ABC’s misconduct was so serious as to amount to an abuse of the public’s trust in him as the holder of public office and that ABC has no reasonable excuse or justification for selling the stories.

There must have been a serious, blameworthy departure from proper standards amounting to an affront to the standing of the public office held. Have regard to all the circumstances as you find them to have been including (what follows is not exhaustive) the responsibilities entrusted to ABC as an office holder, the importance to the public of his responsibilities, the nature and extent of his departure from those responsibilities and his motivation for doing so (for example, to try to right a perceived wrong/making money), the nature of the information sold by him, his perception of the potential and actual consequences of his misconduct and how that misconduct was viewed by him and others. Consider whether the information he provided was information which the public really ought to have known but was being kept from them and what, if any alternative means of addressing any wrong reasonably perceived by him was available to him. Bear in mind that for the members of the public to be interested in certain facts is not necessarily the same as it being in the public interest for those facts to be published.

When looking at this issue the court firstly considered the elements of the offence of misconduct in public office, which were set out in the judgment in Attorney General’s Reference (No. 3 of 2003) [2004] 2 Cr App R 23. In this case four police officers were acquitted in a trial involving a death in custody, following the acquittals the court then set out the four elements that make up the offence of misconduct in public office. They were:

i) a public officer acting as such

ii) wilfully neglects to perform his duty and/or wilfully misconducts himself

iii) to such a degree as to amount to an abuse of the public’s trust in the office holder

iv) without reasonable excuse or justification.

The key element the court had to consider in relation to the issue above was point iii) – the threshold test for the misconduct to be sufficiently serious to amount to an abuse of the public’s trust in the office holder. The court referred to two cases R v Dytham (1979) 69 Crim App R 722 and Shun Kwok Sher [2002] 5 HKFAR 381. The conclusion of the court in the Shum Kwok Sher case in respect of the threshold test was:
…There must be a serious departure from proper standards before the criminal offence is committed; and a departure not merely negligent but amounting to an affront to the standing of the public office held. The threshold is a high one requiring conduct so far below acceptable standards as to amount to an abuse of the public's trust in the office holder. A mistake, even a serious one, will not suffice. The motive with which a public officer acts may be relevant to the decision whether the public's trust is abused by the conduct

...the element of culpability must be of such a degree that the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment

...The conduct cannot be considered in a vacuum: the consequences likely to flow from it, viewed subjectively as in R v G will often influence the decision as to whether the conduct amounted to an abuse of the public's trust in the officer ... There will be some conduct which possess the criminal quality even if serious consequences are unlikely, but it is always necessary to assess the conduct in the circumstances in which it occurs.

Following this the court in the present case then turned to the issue of whether the direction given by the judge (stated above) accurately reflected element iii) of the offence.

The court referred to the direction given by Fulford J in a similar case involving a police officer’s provision of information to a newspaper, which was heard in 2013. In that case the Judge stated that in relation to element iii) of the offence the prosecution must establish:

What the defendant did was ‘wrong’, in the sense that her actions were an abuse of the public’s trust in her position as a police officer and what she said during the telephone call to the News of the World … substantially fell below the standards that the public are entitled to expect of police officers, particularly at a senior level. It must involve wrongdoing, therefore, that harms the public interest and is sufficiently serious to merit a criminal conviction in the context of this trial.

You represent the public in this trial and it is for you to say whether the defendant’s actions were wrong and constituted an abuse of the public's trust in the sense I have just described. However, the defendant’s actions clearly must have been graver than a simple and straightforward mistake or an understandable error of judgment even a serious one. Instead it must constitute an abuse of the public’s trust in this senior police officer.
After looking at this case the court in the present case stated that two points arose in the context of information being supplied by office holders to the media. The first was that the judge had to make clear the necessary misconduct was not simply a breach of duty or breach of trust. The court stated that the jury had to be sure that there was wilful misconduct, that is to say a deliberate breach of duty. In the present case they stated that it was necessary when referring to element iii) of the offence to make it clear in the direction to the jury that the misconduct must be more than a breach of neglect of duty or breach of trust as observed in R v Borron 106 ER 72. (1820) 3 B & Ald.

Secondly the court in the present case stated that it was necessary to explain to the jury how they should approach determining whether the necessary threshold of conduct was so serious that it amounted to an abuse of the public’s trust in the office holder. The court stated that it was insufficient to simply tell the jury that the conduct must be so serious as to amount to an abuse of the public’s trust in the office holder as this gives them no assistance on how to determine that level of seriousness.

They considered two ways in which the jury may be assisted in this: 1. refer the jury to the need for them to reach a judgment that the misconduct is worthy of condemnation and punishment and 2. refer them to the requirement that the misconduct must be judged by them as having the effect of harming the public interest.

Following this the court then examined the second way that the standard of seriousness can be judged – by reference to the harm to the public interest. They stated that the jury must judge the misconduct by considering objectively whether the provision of the information by the office holder in deliberate breach of his duty had the effect of harming the public interest.

The court held that in the present cases being looked at the judge did not expressly direct the jury in these terms. They stated that the simple use of the terms ‘an abuse of the public’s trust in him as the holder of a public office’ is simply conclusory. It does not explain to the jury how to determine whether the conduct was of a sufficient level of seriousness.

In addition the words the judge used when directing the jury did not directly ask the jury to determine whether the conduct had the effect of harming the public interest as a step in deciding whether the conduct was so serious as to amount to an abuse of the public’s trust in the office holder. They stated that this was essential in the context of both appeals.

Based on this the court held that as element iii) of the offence of misconduct in public office was a central element of the case against ABC, EFG and IJK and as it was not properly explained to the jury, there was a material misdirection.
2. Was the judge’s direction in respect of the mens rea of EFG/Ryan Sabey as aiders and abettors correct?

The contentions of the applicants (Ryan Sabey and EFG) regarding this issue were as follows:

a) Both EFG and Ryan Sabey argued that the directions given were deficient in that they did not require the jury to find that each knew or intended that the misconduct of the holder of the public office should be so serious as to amount to an abuse of the public’s trust in the office holder. They submit that this omission is contrary to the test of mens rea for an aider and abettor as expressed in Lord Goddard CJ in Johnson v Youden [1950] KB 544:

Before a person can be convicted of aiding and abetting the commission of an offence, he must at least know the essential matters which constitute that offence.

b) The first submission made on behalf of EFG was that anyone charged with the offence of misconduct in public office whether as a principal or as an accessory must intend the misconduct to be so serious as to cross the threshold and amount to a breach of the public’s trust in the holder of the public office.

c) The second submission made by EFG was that, whatever the relevant mental element for the principal, an aider and abettor must have actual knowledge that the misconduct was or would be so serious that it amounted to criminal misconduct as we have discussed under the first issue. This submission was supported by Ryan Sabey. It was argued on his behalf that ‘the essential matters which constitute (the) offence’ as per Johnson v Youden included the fact that the misconduct as assisted and encouraged by the aider and abettor would cross that threshold. To reflect that proposition Mr Pownall QC in oral argument offered this formulation of the proper direction on the mental element:

Are we sure that, by the ordinary standards of reasonable people, what was done amounted to misconduct in a public office so serious as to amount to a breach of public trust in the office holder?

If yes, are we sure that Ryan Sabey must have realised that what he assisted and encouraged was by the ordinary standards of reasonable people misconduct in a public office so serious as to amount to a breach of public trust in the office holder?

As shown previously the nature of the participation of these two appellants was different, however the directions given to the jury prior to verdicts in the different trials were very similar.
Addressing a) above, in terms of the directions given to the jury, the question the jury had to consider in the Sabey case was:

Are we sure that, in the circumstances of which Ryan Sabey was aware, Paul Brunt’s misconduct was, in our judgment so serious as to amount to an abuse of the public’s trust in Paul Brunt as the holder of a public office and for which he, Paul Brunt, had no reasonable excuse or justification?

The jury were also referred back to the judge’s direction stated earlier in this document regarding the threshold required for misconduct and they were also told that they may take into account only those circumstances of which they were sure Ryan Sabey (EPG) was aware.

Addressing b) above, the first submission made on behalf of EPG the court agreed with the prosecutions submission in relation to this, which was that for the holder of a public office to be convicted of misconduct in a public office, he must know of the facts and circumstances which would lead the right-thinking member of the public to conclude that the misconduct was such as is required by the third element set out in Attorney General’s Reference No 3 of 2003. However, it was not necessary for the prosecution to prove that the holder of the public office himself reached that conclusion. It was sufficient to prove that he had the means of knowledge available to him to make the necessary assessment of the seriousness of his misconduct; the assessment was for the jury.

The court then addressed c) above, the second submission by EFG. In response to this the prosecution contended that the offence of misconduct in a public office was not an offence of strict liability. The misconduct had to be wilful in the sense explained in the routes to verdict i.e. the office holder must act deliberately and he must be aware of his duty not to conduct himself in the way that he did. Moreover, he must act without justification. Whilst he did not have to intend or foresee that the level of misconduct must be so serious as to amount to the criminal offence, there remained a significant mental element in the offence for the principal.

The court agreed that misconduct in a public office is plainly not an offence of strict liability and therefore this did not provide a basis for an enhanced mental element on the part of the aider and abettor. The court also stated that due to the requirement of knowledge on the part of the aider and abettor of the essential matters, the routes to verdict in relation to EFG and Ryan Sabey required the jury to be sure as to the circumstances of which they were aware. In assessing whether the misconduct aided and abetted by them was so serious as to amount to the third element, the jury were prohibited from taking into account matters not known to EFG and/or Ryan Sabey. That was sufficient to ensure that they were not convicted other than on the basis of ‘the essential matters’ known to them. As Mr Christopher QC put it in relation to Ryan Sabey, it had to be shown he knew all of the facts and he encouraged Paul Brunt to do what he did in the light of that knowledge.
3. What was the mens rea required to convict IJK in relation to the count of conspiracy?

When addressing this issue the court first set out the offence of conspiracy under section 1(1) and 1(2) of the 1977 Act.

They then stated that in relation to IJK the jury had to be sure about the following four matters:

1) whether IJK agreed with ABC and that ABC provided information for payment for inclusion in a newspaper, intending that he would do so?

2) whether IJK knew, when she did so, that ABC was a public official?

3) whether, when she did so, IJK knew that ABC’s selling the information to newspapers amounted to wilful misconduct by him?

4) whether, in the circumstances of which IJK was aware, ABC’s misconduct was so serious as to amount to an abuse of the public’s trust in him as the holder of public office and for which he had no reasonable excuse or justification?

Counsel for IJK contended that in relation to issue 4, the seriousness threshold, the jury should have been directed that IJK had to intend or know that ABC’s conduct would meet the required threshold. The defence counsel therefore contended that IJK’s mens rea had to extend to the four elements of the offence of misconduct in a public office identified in the case of Attorney General’s Reference No 3 of 2003 including the seriousness threshold. The defence counsel contended that the judge was wrong in his direction that the seriousness threshold was simply an objective test for the jury.

Counsel also contended that both sections 1(1) and 1(2) of the Criminal Law Act 1977 Act lead to this result. Section 1(1) required an agreement and a true agreement could not cover something which was unknown at the time i.e. that the jury would decide whether the threshold test of seriousness is met. To avoid that, what was required was that the conspirator intended or knew that the misconduct was so serious as to meet the threshold. The defence Counsel invoked R v Saik [2007] 1 AC 18 in support of his argument.

After considering the above the court concluded that the judge was correct, stating:

In our judgement the judge was correct: to convict IJK the jury had to be sure first, that ABC was guilty of the substantive offence and secondly, that there was an agreement between ABC and IJK which, if it were carried out in accordance with their intentions, would necessarily involve ABC, acting as a public official, wilfully breaching his duties. The mental element on IJK’s part was in the making of the agreement and intending ABC’s wilful breach. Moreover, that misconduct on his part had to be in circumstances known to IJK which, on an assessment by the jury, met the threshold of seriousness.
In our view nothing in section 1(1) of the 1977 Act requires that the prosecution make the jury sure that, at the time of the agreement, IJK knew or intended that ABC's misconduct would meet the requisite threshold of seriousness. Nor does anything in R v Saik [2007] 1 AC 18.

As to s.1(2), ‘fact or circumstance’ is not directed to the mens rea of an offence but to the elements of the actus reus: R v Saik [2007] 1 AC 18, [9], per Lord Nicholls. We accept Mr Rees QC’s submission that the elements of the actus reus for the commission of the offence in this context are that the individual in question is a public officer, acting as such; that the behaviour in question constitutes a wilful breach of his or her duties as such; and that circumstances surrounding the misconduct are such that, on assessment by the jury, it reaches the requisite degree of seriousness required as the third element of the offence. Whether the misconduct meets the threshold of seriousness is not a fact or circumstance but an evaluative exercise by the jury. As the judge noted, it involved the jury taking into account matters IJK envisaged such as the importance to the public of ABC's responsibilities, his motivation and the nature of the information he was selling. In our view, balancing such matters is far removed from a ‘fact on circumstance’ and s.1(2) has no role.

4. Did the judge's response to a jury note in the case of R v ABC, EFG, IJK amount to a material irregularity affecting the safety of the conviction?

This issue came about as follows:

The jury retired on the 3 November 2014, they were then sent home on the evening of the 4 November again after deliberating that day. At 5pm that evening the judge received a note from a juror which stated:

The discussions within the jury room have become aggressive and the atmosphere is horrible.

I went to speak and 2 other jurors rolled their eyes and stated ‘again’. Another juror told them to stop being rude and voices were raised.

Additionally a particular juror keeps insisting we go with a majority vote, despite being told otherwise repeatedly by several jurors and our foreman.

One juror even got out a magazine and proceeded to read this whilst others were stating their points.

Please be aware all of above is only the activity of 2 jurors however I strongly feel it is affecting the ability of us all to voice our opinions without fear of reprisal from them.
Following this note the judge told counsel that he had received the note but didn’t show the note to them. He then directed the jury as follows:

Thank you ladies and gentlemen I am going to ask you in a moment when the jury bailiff has been sworn to retire and continue to deliberate. There is something I should add. When I asked you to retire to consider your verdicts I directed that you should elect a foreman to chair your discussions and act as your spokesman or spokeswoman when you come back to court. Perhaps I should have added this in relation to the word discussions. Discussion is not of course the same as argument. It is important to keep in mind that you are a jury of 12 and the collective collaborative nature of your decision-making is important. This involves paying collective attention to the consideration of the views of each individual member. It is also important for your discussion to be focused and for them to keep them moving forward in relation to the issues you have to decide. Finally this I also said to you just before you retired that your verdicts must each be unanimous and that remains the case unless I give your further direction.

Another small note was then received from another juror, this again was not shown to counsel. This note stated: ‘I am being that. I am wasting oxygen!’

The defence claimed that the notes should have been disclosed as they showed that one juror was very concerned as to the way in which the deliberations were being conducted, they claimed therefore that the non-disclosure amounted to an irregularity.

The court considered this issue and concluded that although the notes should have been disclosed, they were satisfied that the non-disclosure had no bearing on the safety of the conviction, they also stated that the direction given above to the jury following the note was more than sufficient.

**The decision**

Based on the above the court held that the arguments of the appellants failed on issues 2, 3 and 4 of the appeal.

However in the case of R v ABC, EFG and IJK, each appellant contended that on the first issue in the appeal the judge had misdirected the jury on the third element of the offence of misconduct in public office, namely the requisite level of seriousness. The court concluded that there was a misdirection and considered very carefully whether it affected the safety of the conviction. They concluded that in all the circumstances they could not say that the jury would necessarily have convicted the appellants had they been directed in accordance with what has been set out in this judgment.

As a result the convictions against ABC, EFG and IJK were quashed.

In the case of R v Sabey, no point was taken in the context of that case as to the direction on the third element and therefore the court did not take a similar course in relation to Ryan Sabey and the court gave him liberty to apply to the court, if so advised.
Evidence and procedure

Billal Lariba, Tershan Edwards Dos Santos, Brendan Brian Hamilton v R [2015] EWCA Crim 478

A hearing in the Court of Appeal (Criminal Division) before Lord Justice Pitchford, Mr Justice Cooke and Mrs Justice Lang DBE. The full case report can be found at [http://www.bailii.org/ew/cases/EWCA/Crim/2015/478.html](http://www.bailii.org/ew/cases/EWCA/Crim/2015/478.html)

The appeal and applications

On 8 April 2013 the trial of Lariba (aged 20 by the time of appeal), Edwards Dos Santos (aged 21 years by the time of appeal) and Hamilton (aged 20 by the time of appeal) began at the Central Criminal Court where they were charged jointly (together with a fourth defendant, Travis Bowman) in count 1 with the murder on 10 April 2011 of Negus McLean. In count 2 Hamilton was charged alone that on 8 April 2011 he wounded Okan Dum Lupinor with intent to do him grievous bodily harm. A fifth defendant Yasmin Latif was charged in count 3 with perverting the course of justice. On 24 April 2013 Hamilton changed his plea to guilty to count 2. The trial proceeded on counts 1 and 3. On 28 May 2013 unanimous verdicts of guilty of murder and, in Yasmin Latif’s case, a unanimous verdict of guilty of perverting the course of justice were returned.

Lariba was granted leave to appeal against his conviction by the single judge. His grounds concerned the trial judge’s admission of evidence that police officers recognised Lariba from a CCTV recording proximate to the scene of the attack on the deceased. Lariba was refused leave to appeal against sentence in respect of which he made a renewed application before the Court of Appeal.

Edwards Dos Santos renewed his application for an extension of time of 4 months within which to seek leave to appeal against conviction. He sought to advance that he was not adequately represented at trial and for that reason was not fairly tried.

Hamilton renewed his application for leave to appeal against sentence.

The Court of Appeal first considered Lariba’s grounds of appeal against conviction.

The evidence

It was contended that those charged with murder were members of the Get Money Gang (‘the GMG gang’) based in Enfield, north London. Their enemies were members of the Dem Africans (‘DA’) gang in neighbouring Edmonton. Negus Mclean, aged 15, was a member of DA. At about 19:22 on 10 April 2011 in broad daylight Negus McLean was pursued by a group of seven members of the GMG gang who had ‘ridden out’ on their mountain bikes in search of a DA victim.
Having cornered Negus McLean they attacked him fatally with a bar and knives and kicked and punched him. During the year preceding the attack there had been at least eight retaliatory stabbings between the two gangs. On 3 April 2011 a GMG member, Jamal Mohamoud, was stabbed and thrown in a canal by a member or members of the DA gang. On 8 April 2013 the applicant Hamilton was part of a GMG gang that found, chased and stabbed Okan Dumlupinar, a member of the DA gang. The killing of Negus McLean was the culmination of these events.

The police received little assistance from the victims of these attacks. However, the police were aware of the history and they knew that Negus had been pursued by a group of youths on mountain bikes. Officers carried out a detailed search of CCTV footage in an attempt to trace the journey of the attackers to and from the scene of the killing.

From many hours of footage officers were able to create a combined recording showing the journey of seven cyclists to the vicinity of the attack and their return. Their group's journey and search lasted until 19:22 when they spotted Negus McLean and his 13 year old younger brother. The chase by the cyclists, was said by the court to be ‘determined and terrifying’. The recording showed that the attackers were a group who searched, found and arrived at the scene of the killing and returned afterwards. It was possible to establish the conformity of the group only by reference to their general appearance and coordinated movements.

Every member of the group had to some extent used clothing and face coverings to disguise his appearance. In an attempt to generate evidence to assist the investigation, on or after 10 April 2012, the investigating team sought a response from members of the public by placing their composite recording on Crimewatch and YouTube.

Some members of the Enfield Safer Neighbourhood Team and the GMG gang knew each other. PC Charlie Leather had been a member of the team since 25 October 2011 and had got to know the GMG gang well by seeing and talking to them on a daily basis. Having learned of the availability of the recording on the internet, he viewed it on his home computer on 23 April 2012 while off duty. He gave evidence that he watched it four times and used the pause facility. One of the views of the cyclists was recorded by a CCTV camera mounted on the wall outside a shop, which showed the seven cyclists in colour and at close range. Unlike the others, the fourth cyclist was not wearing a hood or a hat. He had a shoulder bag with him with the strap worn diagonally across his chest from his left shoulder. He appeared to be wearing a hoody underneath his sleeveless puffa jacket. He was said to be riding his mountain bike with ‘an attitude of some insouciance with his left hand on the handlebars and his right hand resting against his right thigh’. The suspect’s hair and hairline on his forehead were clear as were his forehead, eyebrows, eyelashes and orbits and the bridge of his nose. His chin, mouth and his face below the level of the bridge of the nose were hidden by a bandana he used as a mask.
PC Leather gave evidence that he was in no doubt that it was the appellant Lariba from his ‘hairline, skin tone, build and clothing’. PC Leather had spoken to him many times and had seen him in the area when he was on his bike including on occasions when he had worn a bandana to cover the lower part of his face and was wearing his hoody and puffa jacket.

PC Leather reported his identification from the recording on the telephone to WPC Gilbert and asked her to inform his senior officer PS Goodley. PS Goodley passed this information on to DCI Clayman, who had been in charge of the murder investigation. DCI Clayman referred PS Goodley to DI Tree who was by then in charge of the case.

PS Goodley also knew members of the GMG gang, having been in the Safer Neighbourhood Team since June 2010. PS Goodley gave evidence that there were two gangs in Enfield affiliated with one another. GMG was based in Turkey Street, London EN3. They wore a brown bandana. There were about 30 of them, of whom 10 to 15 were ‘hardcore’ members. When PS Goodley viewed the YouTube footage on a computer in the police station, he also recognised Lariba.

In his evidence PS Goodley described the racial mix in GMG, stating that most were young and black. Two were Turkish, two were white British. He stated that of the light skinned young men in the gang Lariba was one of the darker ones. In PS Goodley’s assessment, Lariba was one of the 15 hardcore members, in the middle rank of the gang. Goodley stated that his own recognition of Lariba was unaffected by his knowledge of PC Leather’s recognition of the appellant.

PC Julian Pell-Coggin was the Safer Schools officer assigned to the Oasis Academy in Enfield, where Lariba went to school. He gave evidence that GMG had started in the school before he was assigned. On his arrival he instituted voluntary weekly two hour group sessions in an attempt to counteract the growing influence of the gangs. PC Pell-Coggin viewed the YouTube recording, in which he recognised Lariba, who had been one of his pupils, on 3 May 2012.

In his evidence he stated that he had arrived at the school in September 2009. Lariba attended some of his weekly sessions. He would also see him in the corridors several times a day, three days a week. Lariba left the Academy in May 2011 but he continued to hang around with the sixth formers. He saw Lariba several times on his bike and wearing a bandana to cover the lower part of his face. PC Pell-Coggin stated that when he freeze-framed the image he had no doubt that he was looking at Lariba, recognising Lariba's stance and gait on the bicycle, his distinctive hairline, the depth of his forehead between the hairline and eyebrows, the clothing style and the characteristic shoulder bag. PC Pell-Coggin had not mentioned the shoulder bag in any of his statements.
On 3 May 2012 at 1215 PC Pell-Coggin phoned in an incident report for entry on the Holmes computer. The message recorded was as follows:

I have just seen the footage released from the murder of Negus McLean. I am certain that one of the boys with a bandana but no head covering is Billal Lariba. I have knowledge of Lariba as I am the Safer Schools officer for Oasis Hadley College, Lariba used to be a student there. Although his face was partially covered I recognised him from his general demeanour, his hair, his hairstyle, his hairline and a line he has across his forehead, also his eyebrows. One of the other boys looks like it could be Hussain but I am not sure about that one.

On receiving PS Goodley’s message, DI Tree, the officer in charge of the investigation, decided that a formal viewing procedure should take place. DI Tree instructed PS Goodley not to repeat to other officers that he had identified the appellant. PC Leather and PS Goodley attended the police station separately on 3 May 2012 to view the recording again.

At the end of the viewing, each officer was asked to make a witness statement. PC Leather identified the features from which he made his recognition as the suspect’s ‘cropped hair, skin tone and build’, stating that he had seen the appellant ‘numerous times’ and when he had arrested him. He had seen him cycling, wearing similar clothes and wearing a scarf across his face. He said that he had seen the footage before and described the circumstances in which he had reported in to WPC Gilbert.

PS Goodley also said he had viewed the material before and reported his recognition to the investigation team. He stated that he recognised the suspect from his ‘distinctive lower hairline and light skin tone’. He knew the appellant to be a member of the GMG gang. PS Goodley had carried out a number of stop checks of the appellant over the years and they had spoken on at least 50 occasions.

On the same day, PC Maddix and PC Oliver were asked to view the material at the police station. They were also community police officers based in Enfield. Neither of them had seen the recording informally on YouTube or elsewhere. They both identified Lariba and also made witness statements.

PC Maddix had been a member of the neighbourhood support team since October 2008. He had known the appellant for three years and had spoken to him for 5-10 minutes on a few occasions. He recognised Lariba, relying on Lariba’s skin tone, hairline and haircut. PC Maddix said he could not be 100% sure although he was ‘pretty confident’. In the witness statement he made on 3 May 2012 PC Maddix explained how he knew the appellant and that he recognised him from his ‘skin tone, hair type and his build’.
PC Oliver said that the appellant lived in his ward and stated that he had seen him at least three times a week over a period of three years and had spoken to him for periods of 2-5 minutes at least once a week for the same period. He stated in evidence that he relied on Lariba’s posture, hairstyle and hair colour and that he was 100% confident. He also made a witness statement on 3 May 2012. In that statement he said he recognised the suspect as the appellant who lived on his ward. He did not expressly point to the features to be seen in the recording that enabled him to make the identification but he did specify the features of the suspect that he could see.

PC Pell-Coggin made his formal identification at a separate viewing on 22 May 2012, following which he also made a witness statement. He stated that even when the appellant was wearing a bandana, he could recognise him.

Consequently, three police officers made an informal identification of Lariba before attending a formal viewing procedure. Two further police officers identified the appellant at a formal procedure only. All five witnesses made witness statements immediately after the formal procedure. Only PC Pell-Coggin made a detailed report to the incident room at the time of the informal viewing. Eight further police officers were invited to attend a formal procedure on either 3 or 22 May 2012. One of them, PC Pascall, had served with PC Pell-Coggin at the Academy for approximately six months. None of these eight officers was able to make an identification of Lariba. Each of them made a short statement to that effect after the viewing.

Recognition of suspect in photographic images

The appellant did not contend that evidence of recognition of a suspect on CCTV film recorded at or near the scene of a crime is inadmissible. In Attorney General’s Reference No. 2 of 2002 [2002] EWCA Crim. 2373, [2003] 1 Cr App R 321 the court examined whether and to what extent photographic images of the suspect could be used for identification purposes. The court concluded that there were at least four circumstances in which, subject to the judicial discretion to exclude on the ground of fairness and appropriate directions to the jury in summing up, a jury could be invited to conclude that the defendant committed the offence on the basis of a photographic image from the scene of a crime, namely:

- when the image is sufficiently clear that the jury can compare it with the defendant in court
- when a witness knows the defendant sufficiently well to recognise him as the person in the photographic image he can give identification evidence
- when a witness has acquired through hours of examination of photographic images familiarity with the material he may be permitted to make a comparison with a known and reasonably contemporary photograph of the defendant provided the evidence can be tested by the jury’s own examination of the images
- a facial mapping expert may make a comparison between scene of crime images and a photograph of the defendant subject to the usual safeguards concerning the evidence of an expert and the availability of the images for testing of that evidence by the jury.
The Court of Appeal considered the case of Smith (Dean) & Others [2008] EWCA Crim 1342 in which the court considered the application of Code D to the Police and Criminal Evidence Act 1984 (PACE) to the viewing of a scene of crime CCTV recording by police officers in the hope of achieving the recognition of a suspect. The version of the Code applicable then contained no specific reference to the conditions under which such images should be shown to persons who were not witnesses to the crime, although Code D 3.28 provided that when such material was shown to potential witnesses that process should be conducted individually to avoid the possibility of collusion, following the principles that applied to video identification. The court concluded that whether or not the process in which the witness was engaged was strictly covered by the Code, the safeguards that the Code was designed to bring to the exercise were just as important.

**Amendments to Code D**

With effect from 6 March 2011 Code D was amended to introduce further safeguards. Paragraph 1.2A stated:

1.2(A) In this Code, separate provisions in part B of section 3 below apply when any person, including a police officer, is asked if they recognise anyone they see in an image as being someone they know and to test their claim that they recognise that person as someone who is known to them. Except where stated, these separate provisions are not subject to the eye-witnesses identification procedures described in paragraph 1.2.

Part B introduced paragraphs 3.34-3.36 to Code D as follows:

(B) Evidence of recognition by showing films, photographs and other images

3.34 This Part of this section applies when, for the purposes of obtaining evidence of recognition, any person, including a police officer:

(a) views the image of an individual in a film, photograph or any other visual medium; and

(b) is asked whether they recognise that individual as someone who is known to them.

3.35 The film, photographs and other images shall be shown on an individual basis to avoid any possibility of collusion and provide safeguards against mistaken recognition ..., the showing shall as far as possible follow the principles for video identification if the suspect is known, see annex A, or identification by photographs if the suspect is not known, see annex E.
3.36 A record of the circumstances and conditions under which a person is given an opportunity to recognise the individual must be made and the record must include:

(a) whether the person knew or was given information concerning the name or identity of the suspect.

(b) what the [person] has been told before the viewing about the offence, the person(s) depicted in the images or the offender and by whom.

(c) how and by whom the witness was asked to view the image or look at the individual.

(d) whether the viewing was alone or with others and if with others, the reason for it.

(e) the arrangements under which the person viewed the film or saw the individual and by whom those arrangements were made.

(f) whether the viewing of any images was arranged as part of a mass circulation to police and the public or for selected persons.

(g) the date time and place the images were viewed or further viewed or the individual was seen.

(h) the times between which the images were viewed or the individual was seen.

(i) how the viewing of images or sighting of the individual was controlled and by whom.

(j) whether the person was familiar with the location shown in any images or the place where they saw the individual and if so, why.

(k) whether or not on this occasion, the person claims to recognise any image shown, or any individual seen, as being someone known to them, and if they do;

   (i) the reason
   (ii) the words of recognition
   (iii) any expression of doubt
   (iv) what features of the image or the individual triggered the recognition.

3.37 The record under paragraph 3.36 may be made by:

- the person who views the image or sees the individual and makes the recognition.
- the officer or police staff in charge of showing the images to the person or in charge of the conditions under which the person sees the individual.

The new Part B provisions had not been posted on the police network database for the attention of officers when DI Tree received PS Goodley’s message. As such, DI Tree was unaware of them and his formal viewing procedure did not include contemporaneous note taking in accordance with paragraph 3.36.
Lariba’s grounds of appeal against conviction

There was no suggestion at trial of improper conduct by the police officers. Counsel for Lariba submitted that the evidence of recognition was unreliable, firstly because the CCTV material was inadequate and, secondly, because no contemporaneous record was available of the witnesses’ reaction to the CCTV material. Counsel for Lariba conceded that when police officers view material made available nationally in an attempt to promote a public response, out of curiosity it is not possible to impose formal viewing procedures such as those set out in Code D Part B. However, he submitted that the underlying test for admissibility remains whether the evidence is sufficiently reliable to be admitted, and in the absence of material available to the jury to test the reliability of the evidence the judge should have excluded it under section 78 of PACE 1984.

The Court of Appeal granted leave to add a further limb to the first ground of appeal namely:

The informal CCTV purported recognition evidence of three police officers, Leather, Goodley and Pell-Coggin, and their subsequent formal purported recognitions should have been ruled inadmissible, the former because no note of the circumstance were made at the time, the latter because of breaches of Code D 3.36(k).

PC Pell-Coggin was excluded from counsel’s criticism that no note was made at the time of the informal recognition procedure but the point was made that the note made did not amount to full compliance with Code D 3 Part B. Although the witnesses to the formal viewing procedure did make witness statements immediately after the viewing, it was asserted that compliance with the spirit of Code D 3 Part B was only partial.

The appellant’s second ground of appeal concerned the reasoning that led the judge to admit the recognition evidence of PC Maddix and PC Oliver. On 15 April 2013 the judge ruled that since Code D did not apply to the formal recognition made by PC Leather, PS Goodley and PC Pell-Coggin, their evidence would be admitted. He had not at that point reached a conclusion in the cases of PC Maddix and PC Oliver and postponed his ruling in that regard. On 23 April 2013 counsel for Lariba renewed his application. The judge ruled that Code D 3.36(k) applied to the evidence of PC Maddix and PC Oliver, stating that there had been a material although honest failure to record their contemporaneous reaction to the CCTV evidence. Unlike the first three officers they had not already made an identification in controlled circumstances and for that reason their position was distinguishable. The judge ruled it unfair to adduce their evidence. He added as a proviso that if counsel for Lariba chose to rely on non-identification by other officers who were in a similar position, in that they too had come to the CCTV images for the first time in controlled circumstances, he would review his ruling.
Having considered the implications of the ruling, counsel for Lariba invited the judge to reconsider the logic of it the following day, on the basis that if PC Maddix’s and PC Oliver’s evidence was to be excluded for lack of a contemporaneous record, then the same underlying reasoning applied to the reliability of the evidence of the other officers; in their cases there was no contemporaneous record of either process of recognition by which its reliability could be shown or tested. The judge declined to change his ruling and counsel for Lariba made a forensic judgment that he should place before the jury, as a counter-balance to the prosecution case, the inability of the eight further officers to identify the appellant from the CCTV film. As a result the judge admitted the evidence of PC Maddix and PC Oliver.

Counsel for Lariba submitted that the reasoning underlying the judge’s rulings was flawed, asserting that if the judge was correct to rule that the evidence of PC Maddix and PC Oliver should be excluded, it should have followed that the evidence of PC Leather, PS Goodley and PC Pell-Coggin should also have been excluded.

**Discussion**

The Court of Appeal stated that the recognition evidence was clearly relevant and, subject to its quality, admissible. The issue for decision was whether by reason of any weakness in the evidence or the absence of adequate safeguards it should have been excluded either as failing to reach a minimum standard of reliability or because fairness demanded that it be excluded under section 78 PACE 1984.

The Court of Appeal viewed the CCTV recordings in order to determine whether the images themselves were of sufficient quality to form the source material for recognition by witnesses who were very familiar with the appellant’s appearance. In the view of the court, there was one particular frame at which the CCTV recording could be paused to reveal a frontal image of the suspect from above in sufficient clarity to form the basis for facial recognition. Furthermore, the still and moving images were said to be sufficient to form the basis for recognition of the suspect’s style of clothing and the manner in which he carried himself on the bicycle.

The Court of Appeal then considered whether the information available in the recording was sufficient to support an identification. The suspect’s nose, mouth and chin were not visible. The court was informed that Mr Lariba had a broken nose with a deviation to one side and, at the time, he wore a pencil moustache. Those features on his face were not available for comparison in the suspect’s image. It was stated by the court that the lack of a full view of the suspect’s face was clearly a weakness in the recognition evidence.
The judge took the view that since the witnesses were making a comparison with a limited number of known suspects, namely members of the GMG gang, the reliability of their recognition was enhanced. However, the Court of Appeal considered there to be a danger of inadmissible reasoning in that regard, stating that only if the prosecution had excluded all other possible suspects, whether members of the GMG gang or not, could the witnesses be proved to have been making their recognition from a small pool of people. While the prosecution invited the jury to infer that the seven attackers were indeed members of the thirty strong GMG gang, the Court of Appeal stated that it did not seem that other possibilities had been excluded at the time the application was made to exclude the evidence.

The Court of Appeal went on to state that it was not of the view that that approach was properly open to the judge. However, it concluded that while the scope for reliable recognition was reduced by the limited facial view of the suspect, it was not diminished so far as to be inadequate for consideration by a properly directed jury. Furthermore, it was stated that the environmental circumstances of the recognition were relevant if not in precisely the way the judge indicated. The Court of Appeal considered that the strength of the connection between the witnesses and the appellant was relevant to the issue whether a partial facial view of the suspect would be sufficient to permit recognition, noting that the witnesses were police officers who saw and spoke to the Lariba on many occasions. The court noted that the witnesses saw him both inside and outside the Academy, before and after he left school, they saw him in his street environment, wearing his preferred style of clothing, wearing his bandana and riding his bicycle. They saw him close up to talk to and they saw him at a distance. The Court of Appeal stated that the more familiar in face, head, build and manner the person is to the witness the more likely it is that the witness can make a reliable identification of that person from a CCTV recording providing a similarly incomplete view of his face.

The Court of Appeal recognised that such an identification was not rendered reliable simply because the defendant was well known to the witness, noting the risk that the witness could jump to a conclusion based on his belief that he was looking at a member of the GMG gang. It was stated that honest and convincing mistakes can be made by witnesses who entertain no doubt that they are right when identifying persons who are known to them. However, as the basis of an identification for assessment by the jury, it was the view of the Court of Appeal that the judge was right to conclude that the recording was of sufficient quality both as an image and as a view of the suspect. The court stated that the danger that witnesses had jumped to unwarranted conclusions receded as the trial progressed because, by the close of the evidence, no-one disputed that the jury were and the officers had indeed been looking at members of the GMG gang who set out to attack a member of a rival gang.
The Court of Appeal emphasised that the jury were not being invited to form their own judgment as to identity by comparison between the images of the suspect and the defendant in court. The images were said to be of insufficient quality to permit such a comparison and a good deal of time had elapsed since the CCTV images had been captured. The court noted the importance of directions to the jury given the danger in such a case that the jury will simply take on trust a convincing assurance from the witnesses when they are unable to make the judgment themselves. Once the judge concluded that the images were of sufficient quality to permit the evidence to be given, it remained the task of the jury to assess whether they could be sure that the recognition based upon it was reliable. The Court of Appeal stated that advantage that a jury has in a case of recognition from a scene of crime image is that they can see exactly what the witness saw and the image is permanent, which is not the position when there is no photographic record and the jury is considering only the quality of identification evidence given by an eye-witness to a transient scene. In the judgment of the Court of Appeal, the images were of sufficient quality to enable the jury to assess whether a recognition made from them was one on which they could rely even though they were not of sufficient quality to permit an identification of their own.

With regard to the application of Code D, the purpose of the eye-witness identification procedures in Code D 3A was said to be to test the witness’s ability to identify the suspect as the person seen on a previous occasion and to provide safeguards against mistaken identification. The safeguards include:

- making an immediate record of the witness’s description of the suspect and
- carrying out an identification in controlled conditions that include the recording of the witness’s reaction at the identification procedure.

Where, however, the suspect is not known, Code D 3.28 permits viewing of images with a view to recognition by a witness or police officer and tracing a suspect. Code D 3 Part B applies to any occasion when, for the purpose of obtaining evidence of recognition, any person including a police officer views a photographic or other recording (D 3.34). The context of Code D 3.35 and 3.36 was said to demonstrate that the procedure can in practice only apply to arrangements made by the police for specific viewing. They cannot practicably apply to invitations to the public in general to view scenes of crime or other images of suspects via television or internet outlets with a request that recognition is reported to the investigation team. The safeguards to be implemented in the case of a ‘formal’ viewing include:

- ensuring that individuals view the material separately
- that a record is made, and that the record includes the reasons given by the witness for the recognition made
- the words used by the witness in making the recognition, including any expression of doubt and
- the features of the image or the individual that triggered the recognition.
The Court of Appeal considered the case of Forbes [2000] UKHL 66, [2001] 1 AC 473 stating it to be instructive for at least three reasons:

- **first**, recognition may take place in informal circumstances over which the investigator has little or no control. If so, there remains under Code D 3.12 an obligation to hold a formal procedure unless it would be impracticable or serve no useful purpose.

- **second**, where the formal procedure is held it serves a useful purpose because it provides the witness with the opportunity in controlled conditions to entertain second thoughts.

- **third**, when an identification is made on both occasions, the jury should receive assistance as to the value of the evidence.

The Court of Appeal determined that this reasoning applied with equal force to the recognition of a suspect from images in a CCTV recording. Informal recognition had been made by three of these police officers. No contemporaneous record was made, with the exception of PC Pell-Coggin. The court determined that DI Tree was right to require that a formal viewing procedure should take place, however unfortunately, the officer did not ensure that a contemporaneous record was made at the formal viewing procedure, only that a post-viewing witness statement was completed by the witness. Had such a record been made the jury would have been provided with some, albeit limited, further assistance as to the reliability of the recognition. On the other hand, it was acknowledged that DI Tree did require all five officers to make witness statements immediately after the viewing from which defence counsel was able to formulate cross-examination upon issues of reliability.

The issue for the judge was whether the breaches of Code D 3.36 rendered the evidence plainly unreliable or unfairly prejudicial to the appellant. The Court of Appeal agreed with the judge at trial that it did not, stating that it could not be in doubt that the police officers were, as they claimed, familiar with the appearance of the appellant as a result of their regular contact with him. This did not seem to be disputed on Lariba’s behalf, but what was not agreed was the ability of the officers to recognise the appellant from the images available. Counsel for Lariba submitted that the absence of contemporaneous recording of the reason for recognition, the words used, any expressions of doubt and the features of the appellant or the suspect on which the witness relied, was a material disadvantage to the appellant and to the jury in testing the reliability of the officers’ evidence.

The Court of Appeal accepted the submissions made by counsel for Lariba, that the appellant and the jury were put at a disadvantage for the reasons identified. However, the court did not consider that the breaches of Code D required the evidence to be excluded:

- **firstly**, in each of the cases of PC Leather, PC Goodley and PC Pell-Coggin, the formal procedure took place soon after the informal viewing and was followed immediately by the making of witness statements. The witness statements were not a complete record in accordance with the Code D 3.36 requirements, however they did record the factual basis for the recognitions made. In the case of PC Pell-Coggin a virtually contemporaneous record was made of the circumstances of his informal viewing.
secondly, the witnesses and the images were available to the jury, and the witnesses were expertly cross-examined as to the matters relevant to the reliability of their evidence.

thirdly, the appellant was able to demonstrate that not all those police officers who knew him had recognised him from the same images. The defence was provided with statements from all those officers who attended a formal viewing and were unable to recognise anyone in the recording.

fourthly, the judge was able to explain to the jury the respects in which the appellant had been disadvantaged by the breach of the Code and to call for extreme caution.

fifthly, there was some supporting evidence for the recognition, in the form of an eye-witness who identified Lariba at a formal identification procedure as being one of the chasing group close to the scene of the killing, having first given a description of him to the police.

The Court of Appeal stated that, with respect to the judge at trial, the reasoning that led to the admission of the evidence of PC Maddix and PC Oliver could be sustained. It was stated that in terms of reliability, there was nothing in general to distinguish their evidence from the evidence of the other three officers. In no case was a contemporaneous record made of the formal procedure and the Court of Appeal stated that it did not seem that the fact three of the officers had made an earlier informal recognition was capable of rendering their evidence any more reliable or the absence of Code D 3.36 safeguards any less disadvantageous to the appellant. In the view of the Court of Appeal, all the recognition evidence was admissible or none of it was. Further, the court concluded that the inability of other officers to recognise the appellant was a fact relevant to the jury’s assessment of the reliability.

While the Court of Appeal accepted counsel for Lariba’s submissions as to the breaches of Code D 3 Part B, it concluded that the evidence was, nonetheless, properly admitted for reasons that differed from those explained by the judge in his rulings. The court had no reason to doubt the safety of the verdict in Lariba’s case and the appeal against conviction was dismissed.

**Edwards Dos Santos’s grounds of appeal against conviction**

Edwards Dos Santos contended that he had not received a fair trial because leading counsel instructed had been absent for much of the trial, estimated at 60% or more. The Court of Appeal refused his applications for an extension of time and leave to appeal against conviction.

**Lariba’s and Hamilton’s grounds of appeal against sentence**

The renewed applications for leave to appeal against sentence were refused.
Financial investigations

R v Guraj [2015] EWCA Crim 305

A hearing in the Court of Appeal (Criminal Division) before Lord Justice Jackson, Mr Justice Mitting and Mr Justice Jay. The full judgment can be found at http://www.bailii.org/ew/cases/EWCA/Crim/2015/305.html

The facts

On 12 July 2012 at Southwark Crown Court the appellant pleaded guilty to three counts of a six-count indictment. The offences to which the appellant pleaded guilty were possession of class A drugs with intent to supply, possession of class B drugs with intent to supply and possession of criminal property contrary to section 329 of the Proceeds of Crime Act (POCA) 2002.

The appellant was sentenced on the 16 July at Southwark Crown Court, there was also an application before the court by the prosecution for forfeiture under section 27(1) of the Misuse of Drugs Act 1971. In addition there was an application for confiscation under section 6 of POCA.

An order for forfeiture under section 27(1) of the 1971 Act was made in respect to a number of items following the prosecution's application. In terms of the application for confiscation under section 6 of POCA the judge did not proceed with this immediately and instead made a postponement order under section 14 of POCA and set out a specific timetable providing dates in which the appellant and the prosecution had to serve statements on the matter. The appellant served his statement detailing his assets and means under section 18 of POCA on the 18 September 2012, however the CPS let matters lapse due to various staff changes and the temporary loss of the file and did not serve there statement by the dates initially agreed.

On the 7 January 2014 the case was listed before Judge Robbins, the prosecution applied for an adjournment on the grounds that counsel was not adequately instructed. The judge directed the prosecution to serve its statement by the 17 February 2014 and made a wasted costs order against the CPS after the officer in the case failed to attend a hearing set for July 2012.

The prosecution finally served their statement on the 15 January 2014, 14 months late, and the parties then discussed the revised timetable for the confiscation proceedings.

On the 30 April 2014 the defence served a skeleton argument, contending that because of the delays and non-compliance by the prosecution the confiscation proceedings had lapsed and the court therefore no longer had the power to make an order. Two hearings followed. At the first on the 7 May 2014 the judge ruled that the prosecution were still entitled to pursue the confiscation proceedings and set a confiscation hearing for the 9 June 2014. During the second hearing the judge made a confiscation order, incorporating figures for benefit and recoverable amount which had been agreed between the parties. The appellant appealed.
Grounds for appeal

The main grounds for the appeal put forward by the defence were as follows:

1. The judge made an effective order postponing the confiscation proceedings on the 16 July 2012, however the period of postponement ended in December 2012 and the court failed to make any further postponement order between then and 2014. The appellant argued that based on this the court no longer had the power to make any order for postponement by reason of section 14(8) of POCA.

2. The appellant argued that the prosecution could not rely on section 14(11) in this case. Section 14(11) states that: ‘A confiscation order must not be quashed only on the ground that there was a defect or omission in the procedure connected with the application for or the granting of a postponement’. The argument asserted was that in this case the court wrongly made a forfeiture order on the 16 July 2012 and therefore section 14(12) of POCA applied meaning that section 14(11) was dis-applied.

Prosecution counter argument

The prosecution argued against the submissions stated above on the grounds that the:

1. confiscation order was made within the two-year period stated in section 14(5) of POCA

2. well-established approach of the courts is to uphold confiscation proceedings, rather than strike them down for technical errors.

Key case law

R v Knights [2005] UKHL 50

The decision in this case was by the House of Lords arising under section 72 of the Criminal Justice Act 1988, this section has now been repealed and replaced by section 14 of POCA. Two defendants were charged with being concerned in dealing with goods on which customs duty had not been paid, with intent to defraud. The judge sentenced both defendants to terms of imprisonment, but postponed the confiscation proceedings pursuant to section 72A of the 1988 Act. On the 4 January 2001 the judge adjourned the confiscation proceedings to 23 January, he held that his own unavailability constituted exceptional circumstances within section 72A (3) and this therefore allowed further postponement beyond the 6 month limit.

The two defendants appealed against the orders on the grounds that the judge had acted outside his statutory powers.
The House of Lords held that the judge had not complied with section 72A, however they held that this did not invalidate the orders made, the court stated:

> Provided only that in postponing the proceedings the judge had acted in good faith and in the purported exercise of his section 72A power, I cannot think that Parliament would have intended such an error to disable the court from discharging its statutory duty to complete the confiscation proceedings against the offender.

**R v Soneji [2005] UKHL 49**

Similar to the case of Knights, the issue in this case centred on the validity of confiscation orders issued following the sentencing of both defendants to terms of imprisonment. Initially the Court of Appeal held in this case that because the period of postponement had exceeded six months and the judge had not made a finding of exceptional circumstances the confiscation orders should be quashed. The prosecution successfully appealed this decision in the House of Lords and the orders were restored.

The House of Lords stated that recent authority had moved away from the simple question of whether the statutory requirements in issue were mandatory or directory. The court should instead focus on the question whether Parliament intended the consequences of non-compliance to be total invalidity of what followed. Adopting that approach, the non-compliance with section 72A in the present case did not render the subsequent confiscation proceedings invalid.

The court also added that:

> I would suggest that one should ask if there has been substantial observance of the time limit. What will constitute substantial performance will depend on the facts of each case, and it will always be necessary to consider whether any prejudice has been caused or injustice done by regarding the act done out of time as valid.

**R v Donohue [2006] EWCA Crim 2200**

In this case the defendant pleaded guilty on 10 December 2004 to three charges of possessing a controlled drug with the intent to supply. On the same occasion the prosecution applied for a confiscation order pursuant to section 6 of POCA. Pursuant to section 14 of POCA the court postponed the confiscation proceedings pending the trial of a co-accused.
On the 27 January 2005 the defendant was sentenced to five years imprisonment, however in addition the Recorder made an order under section 27 of the Misuse of Drugs Act 1971 for the forfeiture and disposal of the drugs seized. The recorder ought not to have made that or any order under section 27 of the 1971 Act during the period when confiscation proceedings were on foot but had been postponed under sections 13 (3) (b) and 15 (2) (b) of POCA. The confiscation proceedings were further delayed twice, despite this the judge went ahead with the order.

This decision was appealed and the Court of Appeal upheld the order. The court held that although there was a clear contravention of section 15 (2) of POCA and the obvious relevance of section 14 (11) and (12), it would be frustrating the object of POCA to treat these matters as depriving the court of the power to make a confiscation order. The court also left open the question of whether the impermissible order for forfeiture made on 27 January 2005 was a nullity. He held that it would defy common sense if the existence of that order prevented the court from hearing the postponed confiscation proceedings. This was appealed and the Court of Appeal upheld the decision.

**R v Iqbal [2010] EWCA Crim 376**

On 10 January 2006 at Bradford Crown Court the defendant pleaded guilty to the offence of conspiring to supply heroin. On 5 June 2006 the court sentenced the defendant to twelve years imprisonment (later varied to nine years). The prosecution then asked the court to proceed in relation to a confiscation order under section 6 of POCA. The court made orders postponing the confiscation proceedings until 21 May 2007.

Nothing then happened until three and a half years later when the matter came back to court on the 1 July 2009. The judge held that the court had no jurisdiction to make a confiscation order. It doubted that the court had power to make a confiscation order after expiry of the two-year period specified in section 14(5) of POCA and that even if there was such a power it held that the failure by the prosecution to apply to the court for an extension before the end of the two-year period was fatal under section 14(8) POCA.

**R v Neish [2010] EWCA Crim 1011**

In this case the defendant pleaded guilty to offences relating to the supply of drugs. On 12 June 2009 the defendant was sentenced to a term of imprisonment. The Judge then made an order postponing confiscation proceedings under section 14 of POCA and set a timetable for those proceedings, leading up to a hearing on 11 December 2009. On 2 December the judge discovered that he would be unavailable on 11 December and instructed the listing officer to re-list the hearing on a date convenient to himself and the advocates. The listing officer duly re-listed the hearing for 4 January 2010. At the hearing on 4 January the judge accepted a defence submission that the court had no power to make a confiscation order, because there had been no judicial decision to postpone the proceedings beyond 11 December.
The Court of Appeal reversed this decision and held that in this case the judge had given instructions to the listing officer and that officer had fixed a new hearing date. That process constituted a judicial decision to extend the period of postponement. More importantly the Court stated two important principles:

1. Unless the continuation of confiscation proceedings would contravene an unequivocal statutory provision, there is no reason why technical errors which cause no prejudice to the defendant should prevent their continuation.

2. That section 14(12) was an express statutory prohibition, which it was not open to the court to ignore.

The decision

The Court considered a number of factors before reaching its decision.

Firstly the court looked at the delays by the prosecution in this case. They held that there had been lamentable delays, they failed to serve any section 16 statement on two occasions when they should have done and instead let the matter sleep for a year. In addition they held that the prosecution dragged their feet and delayed the process even further and pointed out that their section 16 statement was 14 months late.

The second issue was whether the prosecution should have applied for a further postponement under section 14 in December 2012, when it was apparent that the original timetable could not be met. The issue was whether although this was a serious procedural error could it be remedied within the two-year period specified in section 14(5). The court held that section 14(8) provides that a period of postponement can only be extended if an application for extension is made before the period of postponement has ended. In this case the application for extension was made long after the period of postponement had ended.

The third issue was around section 14(11) and 14(12) of POCA. The court held that section 14(11) was not available to the prosecution in this case because there had been a wrongful forfeiture order made in breach of section 15(2). This breach triggered section 14(12), which dis-applied 14(11).

They also noted the decision in R v Donohue above but stated that the decision in this case did not avail the prosecution because unlike in Donohue the prosecution in the present case needs the balm of section 14(11) in order to retrieve its position.

The court then went on to discuss the House of Lords decisions in R v Knights and R v Soneji stated above. They stated that the decisions in these cases means that the court must strive to give effect to the provisions of POCA and to the intention of parliament. However the court stated that parliament’s intention is now clearly expressed in section 14(12) of POCA, and as stated in the decision in R v Neish above this is a mandatory provision that cannot be ignored. They stated that forfeiture orders should therefore not be made when confiscation proceedings are under way and if this is the case then the prosecution will be held more strictly to the time limits contained in section 14.
The court then moved on to the test regarding time observance outlined in the case of R v Soneji. They held that in the present case there had clearly not been a substantial observance of the time limits by the prosecution. They stated that this test therefore leads to the same decision as above.

Finally the court considered the decision in R v Iqbal stated above, they acknowledged that in the present case the two-year period had not expired when the court made the confiscation order, however they stated that despite this the combination of delays and breaches by the prosecution was enough to deprive the court of the power to make a confiscation order.

The appeal was therefore allowed and the confiscation order quashed.
Policing practice

Crime

‘Legal highs’ to be banned under temporary power

Five ‘legal highs’ have been banned by the government from 00:01 on Friday, April 10 2015 for up to 12 months while the independent Advisory Council on the Misuse of Drugs (ACMD) decides whether they should be permanently controlled.

The government accepted the ACMD’s advice to make a Temporary Class Drug Order (TCDO) on five compounds related to methylphenidate, a Class B drug, due to concerns about their misuse as new psychoactive substances (NPS).

To prevent users from switching to related drugs with similar harms, the ACMD recommended that the following four drugs are also banned:

- 3,4-Dichloromethylphenidate (‘3,4-DCMP’)
- Methyl-naphthidate
- Isopropylphenidate
- Propylphenidate.

Anyone caught making, supplying or importing the drugs will face up to 14 years in prison and an unlimited fine under the Misuse of Drugs Act 1971.

Further information can be found at https://www.gov.uk/government/news/legal-highs-to-be-banned-under-temporary-power

Office for National Statistics publish statistics on public perceptions of crime and the police

The Office for National Statistics have published the latest crime statistics for 2013 to 2014 which focus on public perceptions of crime and the police, and the personal well-being of victims.

The latest statistical release is arranged into 3 chapters, which explore the public’s overall ratings and confidence in police measures and visibility, the public’s view of changing crime levels locally and country wide and people’s personal well-being.
Chapter 1: Perceptions of the police

This chapter examined people’s perceptions of the police. Key findings include:

- the proportion of adults who gave local police a positive rating was 63%. This is a small increase from 2012/13 of 61%. This figure was as low as 47% in 2003/04
- the proportion of adults who agreed with having overall confidence in local policing was 76%, which is a 2% increase from the previous year. This figure was 63% in 2005/06
- the proportion of adults who reported seeing police officers or PCSOs on foot patrol on a weekly basis was 32%, which continues a downward trend. This figure peaked at 39% in 2010/11
- high visibility was associated with positive ratings for the police. Those who reported high visibility of police, 71% gave a positive rating
- victims in 74% of incidents were satisfied with how the police handled matters, which was the same as the previous year. This figure was down at 58% in 2005/06.

Chapter 2: Public perceptions of crime

This chapter examined people’s perceived likelihood of victimisation and their worry about crimes. Key findings include:

- approximately 6 in 10 adults perceived that nationally crime has risen. Whilst the remainder believed the figures had fallen
- only a small proportion of people asked thought local crime was above national level, whilst 55% felt it was below average
- news sources such as TV/radio were cited as a source of information that had influenced perceptions of crime levels, with the figure at 67%. Word of mouth was most often cited as a source influencing impressions of local crime, which was at 54%
- there were 12% of adults who had a high level of worry about violent crime, 11% about burglary and 7% about car crime. This has been a general trend for a number of years
- there were 19% of adults who thought it was either ‘very’ or ‘fairly likely’ that they would be a victim of crime within the next 12 months
- perception of local crime had a stronger relationship with perceived likelihood of victimisation, than perception of national crime levels. People who thought crime was rising locally, 33% thought they could be victims in the next 12 months.
Chapter 3: Personal well-being and crime

This chapter examined at how victims of crime rate their personal well-being and compares this with non-victims, including different types of crimes. Key findings include:

- people who were victims of crime in the previous 12 months reported significantly lower personal well-being than non-victims
- a strong association between young and single victims with low personal well-being was found. This may be because young people are more likely to be a victim of violent crime
- victims of violence with injury gave lower personal lower well-being than those without
- domestic burglary and theft from person had the strongest association with a victim’s personal well-being
- those that believe they are likely to be a victim over the next 12 months had lower personal well-being.


Revised Code A published

The revised Code of Practice A of the Codes of Practice to the Police and Criminal Evidence Act 1984 (PACE) came into force on 19 March 2015. The Code applies to powers of stop and search which require reasonable grounds for suspicion before they may be exercised, such as searches under section 1 of the Police and Criminal Evidence Act 1984 and section 23 of the Misuse of Drugs Act 1971. The Code also applies to searches authorised under section 60 of the Criminal Justice and Public Order Act 1994, and to the powers of search exercised under Schedule 5 to the Terrorism Prevention and Investigation Measures (TPIM) Act 2011.

The main changes to the Code have been made in order to implement the Government’s commitment as set out on the Consultation on Stop and Search. In particular the revised Code makes it clear what constitutes ‘reasonable grounds for suspicion’ which is the legal basis upon which police officers carry out the vast majority of stops.
This test must be applied to the particular circumstances in each case and is in two parts:

(i) the officer must have formed a genuine suspicion in their own mind that they will find the object for which the search power being exercised allows them to search, and

(ii) the suspicion that the object will be found must be reasonable. This means that there must be an objective basis for that suspicion based on facts, information and/or intelligence which are relevant to the likelihood that the object in question will be found, so that a reasonable person would be entitled to reach the same conclusion based on the same facts and information and/or intelligence.

The Code confirms that reasonable suspicion can never be supported on the basis of personal factors, such as a person's physical appearance, nor can it be formed on the basis of generalisations or stereotypical images that certain groups or categories of people are more likely to be involved in criminal activity. Officers must therefore be able to explain the basis for their suspicion by reference to intelligence or information about, or some specific behaviour by, the person concerned.

The revised Code emphasises that where officers are not using their powers properly they will be subject to formal performance or disciplinary proceedings. Where a supervisor identifies issues with the way that an officer has used a stop and search power, the facts of the case will determine whether the standards of professional behaviour as set out in the Code of Ethics have been breached and which formal action is pursued.

Many of the existing provisions in the Code have been retained, however, some have been substantially extended with a number of new provisions being added. To improve the presentation and help understanding, new subheadings have been introduced to break up the provisions and the order in which certain aspects appear has been changed. Other changes for have been made in the interests of clarity, legal accuracy and to reflect current practice.

The revised Code of Practice A can be found at https://www.gov.uk/government/publications/pace-code-a-2015

Details of the consultation and the consultation documents can be found at https://www.gov.uk/government/consultations/stop-and-search
Police

College of Policing launches secure website for police guidance

The website will host Authorised Professional Practice (APP) which was created by the College as the official source of professional practice and which aims to provide a consistent national approach to high-risk areas of policing.

The publically available APP website was launched in October 2013 and gave police officers and staff instant access to policing knowledge. The APP secure site is available to users on the Police National Network (PNN) and will provide users with access to specialist policing standards such as counter terrorism, in addition to the content available on the publically-accessible APP website. Content will be updated on both the public and secure site as it is reviewed.

The publically available APP website is available at [http://www.app.college.police.uk/](http://www.app.college.police.uk/)

The secure site can be accessed at [https://app.college.gsi.gov.uk](https://app.college.gsi.gov.uk)

HMIC publish second report on police use of stop and search powers

The report, entitled ‘stop and search powers 2: are the police using them effectively and fairly’ follows the initial report of HMIC from 2013 (available at [http://www.justiceinspectorates.gov.uk/hmic/media/stop-and-search-powers-20130709.pdf](http://www.justiceinspectorates.gov.uk/hmic/media/stop-and-search-powers-20130709.pdf), hereinafter, ‘the 2013 report’), which concluded that stop and search powers were rarely targeted at priority crimes in particular areas and there was very little understanding in police forces about how the powers should be used most effectively and fairly to cut crime.

The 2013 report found that fewer than half of all police forces complied with the requirement in Code A of the Code of Practice for stop and search powers to be monitored by the public. The 2013 report made 10 recommendations and made a commitment to revisit the subject 18 months later to assess progress against those recommendations.

The purpose of the ‘stop and search powers 2’ (‘the 2015 report’) is to set out the findings from the resulting 2014/15 inspection.

**Part 1 findings: Progress against the 2013 report’s recommendations**

The 2013 report made the recommendation that chief constables and the College of Policing should establish in the stop and search Authorised Professional Practice (APP), a clear specification of what constitutes effective and fair exercise of stop and search powers, and guidance in this respect and that this should be compliant with the Code of Practice.
HMIC found that there had been insufficient progress made in this regard and there was no national definition of what makes the use of stop and search powers effective and fair within the APP which was the purpose of the recommendation.

HMIC understood the need to establish sufficient evidence of what works best in relation to stop and search, but found that the prospect of not having any national definition until 2016 meant that there would be a different approach used across police forces leading to inconsistency.

HMIC suggested that there is sufficient detail written in Code A and the 2013 report for the College of Policing to publish a ‘working’ definition of what constitutes an effective and fair stop and search encounter and that a national definition is urgently needed to help officers understand that compliance with Code A, in particular having and recording the reasonable grounds to justify the lawful use of the power, is positively related to the likelihood of them finding the item they are searching for.

HMIC also found that there was a small number of forces which did not collect information about stop and search encounters in a way that allows them to manage and understand the manner in which their officers use the powers. These forces were unable to monitor whether stop and search encounters are carried out lawfully, fairly and effectively.

HMIC suggested that the training of officers was therefore, paramount in assisting them to use stop and search powers effectively and fairly and highlighted the fact that the progress on developing national training requirements had been far too slow.

In relation to other areas examined, HMIC found that insufficient progress had been made in relation to:

- designing national training requirements to improve officers’ skills, knowledge and understanding of the legal basis for their use of stop and search powers (Recommendation 4)
- improving officers’ understanding of the impact that stop and search encounters can have on community confidence and trust in the police (Recommendation 5)
- providing a route for people who are dissatisfied with the way they are treated during stop and search encounters to report this to the force and make a formal complaint quickly and easily (Recommendation 8)
- introducing a nationally agreed form (paper or electronic) for the consistent recording of stop and search encounters (Recommendation 9).
HMIC found that some progress has been made in relation to:

- monitoring the way officers stop and search people so supervisors can be satisfied their officers are acting in accordance with the law (Recommendations 2 and 3)
- ensuring that relevant intelligence gleaned from stop and search encounters is gathered and analysed to assist the broader crime-fighting effort (Recommendation 6)
- explaining to the public the way stop and search powers are used in their areas and making arrangements for stop and search records to be scrutinised by community representatives (Recommendation 7).

HMIC found that good progress has been made in relation to:

- making better use of technology to record relevant information about stop and search encounters which complies with the law and reveals how effectively and fairly the power is being used (Recommendation 10).

**Part 2 findings: How effectively and fairly do the police use section 163 of the Road Traffic Act 1988 and Police Reform Act 2002?**

Part 2 of the 2015 report deals with other areas in which HMIC were commissioned by the Home Secretary to review. This included:

- reviewing other powers that the police can use to stop people, such as section 163 of the Road Traffic Act 1988, in order to establish that they are being used effectively and fairly
- providing an analysis of how forces in England and Wales compare with overseas jurisdictions, both in terms of the powers available and the way they are used.

**How effectively and fairly do the police use section 163 of the Road Traffic Act 1988?**

HMIC stated that they encountered severe difficulties in obtaining sufficient information from forces to assess how effectively and fairly officers use the Road Traffic Act power to stop motor vehicles. They also found that many police forces did not have in place any guidance or policies to assist officers on how to use the Road Traffic Act power effectively and fairly and too few police forces showed any commitment to collecting information and using this to oversee the use of this power.

HMIC found that the discretionary aspect of the recording of stop and account encounters, combined with the absence of any direction to indicate whether or not the encounter resulted from the use of the Road Traffic Act power, made this a very unreliable way to understand how the power is being used by officers.
Key findings include:

- In a survey conducted by HMIC, 47 percent of the 10,094 respondents reported being in a vehicle stopped by the police at some point in their lives, with 5 percent saying they had been stopped within the previous 12 months as a driver or passenger.

- Black and minority ethnic respondents were more likely than white respondents to believe that the power is unfairly targeted at people from ethnic minorities.

- As a proportion, more black and minority ethnic drivers recalled being stopped in the last two years than white drivers.

- Of those drivers who responded, the survey indicated that 7 to 8 percent of white drivers were stopped in their vehicles in the last two years, compared with 10 to 14 percent of black and minority ethnic drivers.

- Black and minority ethnic drivers are more likely to not be provided with a reason for the stop, more likely to have their vehicle searched, and may be more likely to be subject of a person search.

- White drivers are disproportionately more likely than black and minority ethnic drivers to be arrested, given a fixed penalty notice, issued with a summons or be informed of an intended prosecution.

- White drivers are disproportionately more likely than black and minority ethnic drivers to be arrested, given a fixed penalty notice, issued with a summons or be informed of an intended prosecution, suggesting that black and minority ethnic drivers are more likely than white drivers to be stopped in situations where the stop does not result in any prosecution, and this suggests that they are more likely to be stopped for no reason.

How effectively and fairly do police community support officers use their powers to search for and seize alcohol and tobacco?

HMIC examined how fairly and effectively PCSOs used the powers they have to search for and seize alcohol and tobacco from young people under the Police Reform Act 2002 and asked all forces to provide a self-assessment of their use to establish if they were making effective and fair use of these.

HMIC found from the self-assessments that very little work had been done by forces to understand how effectively and fairly PCSOs used the Police Reform Act powers to search for and seize alcohol and tobacco, with only six forces reporting that they collected, recorded and used information to assess how well their PCSOs used these powers. Furthermore, only three forces had conducted audits to determine whether or not their use of these powers were effective.
Key findings include:

- only 14 forces reported that they had a requirement for supervisory oversight of the use of Police Reform Act powers
- there was far less supervision by sergeants of the way the powers were being used, compared to the supervision in place for the use of stop and search powers
- the Police Reform Act power had a disproportionate impact because it can only be used on young people
- there should be a national requirement to record each occasion when the powers are used as is the case for stop and search encounters
- the absence of reliable data about the use of the Police Reform Act powers means that forces cannot demonstrate to us that they are using these powers effectively and fairly.

Part 3 findings: Searches involving removal of more than an outer coat, jacket or gloves

HMIC were asked examine the use of search powers involving the removal of more than a person's outer clothing, including strip searches, to identify whether these searches are lawful, necessary and appropriate.

HMIC concluded it was not able to judge if searches that required the removal of more than an outer coat, jacket or gloves are lawful, necessary and appropriate as it was not possible to separate them from stop and search encounters that did not involve the removal of such clothing. As such, it was not possible accurately to establish the volume of such searches, or whether or not they are used proportionately across all protected characteristics.

HMIC also found that in most forces, there was no guidance or training provided to officers about how they should conduct stop and search encounters that involve the removal of more than an outer coat, jacket or gloves and this has led to confusion about how and where these searches should be conducted.

HMIC highlighted that this suggests that forces may not be complying fully with the requirements of the public sector equality duty under the Equality Act 2010, which requires them to have due regard to the need to eliminate unlawful discrimination and promote equality of opportunity, foster good relations and to that end, ensure that they are adequately collecting, analysing and publishing data to demonstrate that they have sufficient information to understand the effect of their work.
Key findings include:

- in England and Wales, almost all police forces had a policy on the use of stop and search powers, however, fewer than half of police forces reported that they provided guidance about stop and search where there is a need to remove more than a person’s outer coat, jacket or gloves, including strip searches

- most police forces did not record which stop and search encounters involve removal of outer clothing and were not able to provide information about how often, and on whom, these highly intrusive searches were carried out

- a survey of police officers found that 355 of the 980 constables (36 percent of respondents) and 174 of the 775 sergeants (22 percent) stated that they had conducted a search that involved more than the removal of an outer coat, jacket or gloves in the past month

- the absence of official records meant that there is no way of knowing how many children undergo these more intrusive searches, and whether or not they are being conducted lawfully and in a fair and proportionate manner.

Recommendations

HMIC made a total of 11 recommendations following the review. These are outlined below:

1. With immediate effect, while changes to the Authorised Professional Practice are being considered, the College of Policing should publish a working definition of what constitutes an effective and fair stop and search encounter

2. Chief constables should, with immediate effect, develop plans that set out how each force will complete the action required to make good progress in relation to the recommendations in HMIC’s 2013 report, and publish these plans so that the public can easily see them on their websites. These plans should include the action forces are taking to comply fully with the Best Use of Stop and Search Scheme, initiated in April 2014 by the Home Secretary

3. Within twelve months, chief constables and the College of Policing should agree and implement a set of minimum recording standards for the police use of the Road Traffic Act 1988 power to stop motor vehicles and the Police Reform Act 2002 powers to search for and seize alcohol and tobacco from young people for the purpose of assessing their effective and fair use

4. Within twelve months, the Home Office should establish a requirement for sufficient data to be recorded and published in the Annual Data Requirement to allow the public to assess how effective and fair the police are when they use these powers

5. Within twelve months, the Home Office should incorporate the Road Traffic Act power to stop motor vehicles and the Police Reform Act Powers to search for and seize alcohol and tobacco into Code A, so that officers are provided guidance about how they should use these powers in the same way that Code A provides guidance about stop and search powers
6. Within twelve months, the College of Policing should make sure that the relevant Authorised Professional Practice and the stop and search national training curriculum include instruction and guidance about how officers should use the Road Traffic Act 1988 power to stop motor vehicles and the Police Reform Act 2002 powers to search for and seize alcohol and tobacco from young people in a way that is effective and fair.

7. Within three months, chief constables should require their officers to record all searches which involve the removal of more than an outer coat, jacket or gloves. This record must specify: the clothing that was removed; the age of the person searched; whether the removal of clothing revealed intimate parts of the person’s body; the location of the search including whether or not it was conducted in public view; and the sex of the officers present.

8. Within twelve months, the Home Office should incorporate into Code A, a requirement for the recording of all searches which involve the removal of more than an outer coat, jacket or gloves and a requirement for officers to seek the authority of a supervising officer before strip searching children.

9. Within twelve months, the Home Office should work with police forces to establish a requirement for sufficient data to be published in the Annual Data Requirement to allow the public to see whether or not the way that police conduct searches that involve the removal of more than an outer coat, jacket or gloves is lawful, necessary and appropriate.

10. Within three months, chief constables should put in place a process to report, at least once a year, the information they get from recording searches that involve the removal of more than an outer coat, jacket or gloves to their respective police and crime commissioners and to any community representatives who are engaged in the scrutiny of the use of stop and search powers to help them assess whether these searches are lawful, necessary and appropriate.

11. Within twelve months, the College of Policing should make sure that the relevant Authorised Professional Practice and the stop and search national training curriculum include instruction and guidance about how to make sure that searches that involve the removal of more than an outer coat, jacket or gloves are conducted in a way that are lawful, necessary and appropriate.

Home Office Circular 006/2015: linking police officer pay progression to performance

This circular publishes amendments to the Secretary of State’s determinations made under the Police Regulations 2003 in respect of regulation 24 of the Police Regulations 2003 (Annex F - Pay) to implement the 2014 Police Negotiating Board (PNB) agreement published in PNB Circular 2013/14 (Revised) in relation to linking link police officer pay progression to Performance Development Review (PDR) grading.

With effect from 1 April 2015, except where otherwise stated, regulation 24 of the Police Regulations 2003 will include a new Part 1B that deals with incremental progression through the pay scale and that this is to be dependent on performance for sergeants, inspectors and chief inspectors. The same provisions will apply to constables from 1 April 2016.

The relevant amendments should be read in conjunction with College of Policing guidance on the new PDR standards, which can be found at http://www.college.police.uk/What-we-do/Support/Reviewing-performance/Pages/PDR.aspx

Key changes

- incremental progression through the pay scale will be dependent upon a member receiving a grade of ‘achieved performance’ (or the equivalent grade in a police force’s own grading system, as determined by the Chief Constable) or above in their performance development review (‘PDR’) or alternative performance assessment process relating to the preceding period of 12 months’ of their service from the anniversary of a member’s end of year assessment

- in the absence of a PDR or alternative process which meets minimum national performance standards and national standards of assessment set by the College of Policing, a member will be assumed to have received a grade of ‘achieved performance’ (or the equivalent grade in a police force’s own grading system, as determined by the Chief Constable)

- members will be reassessed for pay progression annually and will progress through the pay scale at the anniversary of their appointment or promotion, if they are awarded (or assumed to be awarded) a grade of ‘achieved performance’ or above

- increments will not be paid until formal completion, or assumed formal completion of the PDR or alternative process. Assumed formal completion will be considered to have occurred on the anniversary of their appointment or promotion. Following such completion of the PDR or alternative process, the member’s pay will progress to the next pay point backdated to the date of the due increment.
The circular provides that incremental progression will only be denied if the officer:

- is graded as 'not achieved' (or the equivalent grade in a police force's own grading system, as determined by the Chief Constable) in their PDR or alternative process
- is also subject to formal action within Stages 1, 2 or 3 of Unsatisfactory Performance Procedures under the Police (Performance) Regulations 2012 at the end of the 12 month period being assessed.

During transition to the new system, incremental progression will continue to apply in relation to any PDR rating awarded in respect of a reporting year ending on or before 31 March 2015 which has not yet resulted in any increment or payment being awarded by that date.


Home Office rewards police innovation

The Home Office has awarded millions of pounds to innovative, collaborative and cost-saving projects aimed at transforming policing. All 43 forces in England and Wales will benefit from a share of the £70 million Police Innovation Fund. This year the fund received 166 bids, of which 71 were successful.

Forces estimate projects supported to date by the Police Innovation Fund will have saved taxpayers almost £250m once they have been up and running for five years.

Successful 2015/16 bids include:

- £250,000 to Surrey and Sussex Police to pilot the use of unmanned aerial vehicles in a range of policing situations. This will build on the work of a trial project at Gatwick airport, which found the technology offered significant benefits to the police.
- £300,000 to the Metropolitan Police to produce the world's first system to instantly compare a suspect's footwear with shoe marks left at crime scenes.
- £360,000 to Merseyside Police to use new digital biometric technology and a tried and tested digital record management system to create a paperless bail system in police stations.
- £2.6 million to the Metropolitan Police to deliver their Police Now recruitment scheme.
This year saw an increase in successful collaborative bids by police forces. These include:

- £300,000 to the Minerva collaboration between 18 forces, led by Sussex Police, aimed at improving flexibility and choice around police IT
- £896,000 to the 24-force eCommerce for Policing Programme, led by Hampshire Police
- £140,000 to develop a new apprenticeship scheme shared by nine police forces and five other organisations, led by the Met.

Three bids have estimated over £45m of efficiency savings within three years of implementation. They are:

- a bid by Lancashire Police to transform the way they deliver early interventions to children, families and adults has been awarded £2.2m
- a bid to enhance the strategic partnership between Hampshire Constabulary and Thames Valley Police, as well as strengthen technology links across the south-east of England, has been awarded £1.9m
- a bid for technology to build on the existing seven-force Athena collaboration system, which will help the police and criminal justice system to work collectively, prioritise resources and improve problem-solving capabilities, has been awarded £1.5m.


**National undercover scrutiny panel set up**

A national undercover scrutiny panel made up of representatives from inside and outside of policing has been set up to provide additional scrutiny to undercover policing arrangements.

The College of Policing has set up the national panel to provide external review and feedback on the evidence base for policing practice and standards on undercover policing, to improve public confidence in the use of undercover tactics and to make recommendations of further research into undercover policing.

The group includes academics, policing leaders, solicitors and representatives from Her Majesty’s Inspectorate of Constabulary, Crown Prosecution Service, Institute for Government, Society of Editors, and Police Action Centre.

The first steps for the group are to ensure that undercover policing is supported by the right training, standards and accreditation.

The panel is expected to complete its review of undercover work by January 2016.

Further details and the Panel terms of reference can be found at [http://www.college.police.uk/News/College-news/Pages/National-undercover-scrutiny-.aspx](http://www.college.police.uk/News/College-news/Pages/National-undercover-scrutiny-.aspx)
National Police Chiefs Council comes into effect

On 1 April 2015, the National Police Chiefs Council (NPCC) came into effect, and took over the responsibility currently held by ACPO, of co-ordination and leadership of operational policing at national level.

The NPCC will look to build a new structure and a way of working and this will be done by NPPC Chair Sara Thornton and the College Chief Executive Alex Marshall. It is planned to ensure that both organisations are effectively working concurrently, whilst continuing their own separate roles. During its first year, the NPCC will be hosted by the Metropolitan Police Service, but it will work independently. Going forward hosting arrangements will continue to be looked at.

The NPCC will help police to cut crime and keep the public safe. This will be achieved by joining up operational response and the most serious and strategic threats. The NPCC will also look to work closely with the College of Policing, who are responsible for developing professional standards.

The NPCC has the following functions:

- the co-ordination of national operations including defining, monitoring and testing force contributions to the Strategic Policing Requirement working with the National Crime Agency where appropriate
- the command of counter terrorism operations and delivery of counter terrorist policing through the national network as set out in the Counter Terrorism Collaboration Agreement
- the co-ordination of the national police response to national emergencies and the co-ordination of the mobilisation of resources across force borders and internationally
- the national operational implementation of standards and policy as set by the College of Policing and Government
- to work with the College of Policing, to develop joint national approaches on criminal justice, value for money, service transformation, information management, performance management and technology
- where appropriate, to work with the College of Policing in order to develop joint national approaches to staff and human resource issues, including misconduct and discipline, in line with the Chief Officers’ responsibilities as employers.

A departmental structure for the NPPC has been agreed, and recruitment is expected to begin in the early part of 2015.

Further details can be found on the National Police Chiefs Council website.
Operation of police powers in Great Britain under the Terrorism Act 2000 and subsequent legislation: arrests, outcomes and stops and searches, quarterly update to 30 September 2014

The Home Office has published statistics on the operation of police powers in Great Britain under terrorism and terrorism-related legislation. The data presented have been provided to the Home Office by the Association of Chief Police Officers (ACPO), Crown Prosecution Service (CPS), National Offender Management Service (NOMS), Scottish Prison Service, and the Metropolitan Police Service (MPS) and cover the period up to 30 September 2014.

Key findings

Arrests and outcomes

In the year ending 30 September 2014 there were 234 persons arrested for terrorism-related offences, a fall of 7% compared with the 252 arrests in the year ending 30 September 2013.

Of the 234 persons arrested, the largest proportion by gender, ethnicity, age and nationality were as follows:

- 213 (91%) were male
- 122 (52%) were recorded as being of Asian ethnic appearance
- 109 (47%) were aged 30 and over
- 180 (77%) considered themselves to be either British, or British dual nationality.

Ninety-three (40%) terrorism-related arrests resulted in a charge, 13% lower than the previous year. However, a further 58 persons (25%) were dealt with using alternative action, including 44 who were bailed to return pending further investigation.

Of the 93 persons charged, 77 (83%) were for terrorism-related offences. Fifty-four of these were charged under terrorism legislation and 23 under non-terrorism legislation.

At the time of data provision for this release (2 January 2015), 29 of the 77 persons charged with terrorism-related offences had been proceeded against. Of these, 26 were convicted of an offence.

Court proceedings

Of the 30 persons proceeded against in the year ending 30 September 2014, 22 were convicted and 8 were acquitted, representing a fall compared with the 93% conviction rate the previous year.

Of the 22 persons convicted, 14 pleaded guilty. Twenty were given immediate custodial sentences, 3 of whom received life sentences.
Terrorist and extremist prisoners

As of 30 September 2014 there were 145 terrorist/extremist prisoners in Great Britain, 83% of whom were UK nationals. Just under 25% (33) of the prisoners were classified as domestic extremists. The remaining 112 were in custody for terrorism-related offences.

Around 50% of all persons in custody for terrorism-related offences as of 30 September 2014 considered themselves to be of Asian ethnicity and a third self-defined their ethnicity as White.

Of those in custody for terrorism-related offences, 96% declared themselves as Muslim. Of those in custody for domestic extremism, the most common religious category was ‘no religion’, with 42% falling into this category.

Sixty-eight prisoners were released during the year ending 30 September 2014, 28% higher than the number released in the previous year. 56% of these prisoners had served a custodial sentence of more than 12 months.

Stops and searches

To date, no searches have been made in Great Britain under section 47A of the Terrorism Act 2000.

The MPS stopped and searched 360 persons under section 43 of the Terrorism Act 2000 (TA 2000) in the year ending 30 September 2014. This represents a 21% fall on the previous year’s total of 457. The arrest rate for section 43 searches was 7%, the same proportion as the previous year.

The most common self-defined ethnicity of persons stopped and searched under section 43 TA 2000 was White (41% of searches), followed by Asian or Asian British (24%).

A total of 37,064 persons were stopped at ports in Great Britain under Schedule 7 to the TA 2000, a fall of 25% on the previous year. In the year ending 30 September 2014, 684 persons were detained following a Schedule 7 examination, an increase of 10% compared with the previous year.

Criminal justice system

Home Office Circular 008/2015: Serious Crime Act 2015

The Serious Crime Act 2015 (SCA 2015) received Royal Assent on 3 March 2015. It gives effect to a number of legislative proposals set out in the Serious and Organised Crime Strategy published in October 2013 with a view to ensuring that the National Crime Agency, the police and other law enforcement agencies have the powers needed to pursue, disrupt and bring to justice those engaged in serious and organised crime.

The SCA 2015 also introduces measures to enhance the protection of vulnerable children and others, including by strengthening the law to tackle female genital mutilation (FGM) and domestic abuse. In addition, the Act includes provisions to tighten prison security and to guard against the threat of terrorism.

The Home Office has published a circular providing details of those provisions of the Act that are coming into force on or before 1 June 2015. This circular will be supported by more detailed operational guidance to the police and others issued by, amongst others, the College of Policing.

Part 1: Proceeds of crime (sections 1-12, 14, 37, 39 and 40)

Commencement: 1 June 2015

Sections 1-12, 14, 37 and 39 make amendments to the Proceeds of Crime Act 2002 (POCA). Section 40 amends section 97 of the Serious Organised Crime and Police Act 2005, which makes provision for confiscation orders to be made in magistrates’ courts. A further Home Office circular addressing these provisions will be issued in May, and will also cover other amendments to POCA made by the Policing and Crime Act 2009 and the Crime and Courts Act 2013 which are also scheduled to come into force on 1 June 2015.

Part 2: Computer misuse (sections 41-44)

Commencement: 3 May 2015

Section 41: Unauthorised acts causing, or creating risk of, serious damage

Section 41 of the SCA 2015 inserts new section 3ZA into the Computer Misuse Act 1990 (CMA 1990) creating a new offence of unauthorised acts causing, or creating risk of serious damage. It is designed to address the most serious cyber attacks, for example those on essential systems controlling power supply, communications, food or fuel distribution.
Section 42: Obtaining articles for purposes relating to computer misuse

This section amends the offence of making, supplying or obtaining articles (that is ‘hacker tools’ or malware) for use in an offence under section 1, 3 or 3ZA of the CMA 1990. Before this amendment, the prosecution was required to show that the individual obtained a tool with a view to its being supplied for use to commit, or assist in the commission of an offence under section 1 or 3 of the CMA. In other words, requiring the involvement or intended involvement of a third party.

Section 42 extends the section 3A offence so that it also covers obtaining a tool for use to commit a section 1 or 3 or the new section 3ZA offence, regardless of an intention to supply that tool and as such extends the existing offence to capture the personal use of tools to commit computer misuse offences. This removes the requirement of the involvement, or intended involvement, of a third party and ensures that the offence covers individuals acting alone.

Section 43: Territorial scope of computer misuse offence

Section 43 extends the existing territorial scope of offences in the CMA 1990 so as to provide a legal basis to prosecute a UK national who commits any section 1 to 3A offence whilst outside the UK, where the offence has no link to the UK other than the offender’s nationality, provided that the offence was also an offence in the country where it took place.

Section 44: Savings

Section 44 clarifies section 10 of the CMA 1990 which contained a savings provision whereby criminal investigations by law enforcement agencies did not fall foul of the offences in the Act. However, section 10 pre-dates a number of the powers, warranty and oversight arrangements on which law enforcement now rely to conduct their investigations, such as those in Part 3 of the Police Act 1997. The changes do not extend law enforcement agencies’ powers but merely clarify the use of existing powers in the context of the offences in the CMA 1990.

Section 45: Offence of participating in activities of organised crime group

Commencement: 3 May 2015

This offence provides a new means for law enforcement agencies and prosecutors to tackle serious organised crime, by targeting those who ‘oil the wheels’ of organised crime by participating in activities, for example by providing materials, services, expertise or information which contributes to the overall capability of the group, but without being aware of the precise nature of the criminality in which they are involved.

It also provides for the prosecution of those who head criminal organisations but who do not themselves directly participate in the commission of the criminal acts. The participation offence does not change the way that conspiracy is currently used for organised crime prosecutions.
The provision makes it an offence to participate in the criminal activities of an organised crime group. A person does this if they take part in any activities that they know or reasonably suspects are criminal activities or will help an organised crime group to carry on such activities.

It is a defence for a person charged with this offence to prove that participation was necessary for a purpose related to the prevention or detection of crime. The defence protects, for example, undercover police officers who are participating in the activities of an organised crime group for the purpose of frustrating those activities or collecting sufficient information to bring the perpetrators to justice and is also available to anyone whose actions were genuinely intended to assist law enforcement agencies.

Sections 47 to 50: Serious crime prevention orders

Commencement: 3 May 2015

Section 47: Adding indicative offences for imposing an SCPO

Section 47 of the SCA 2015 adds the cultivation of cannabis, firearms possession and cyber crime offences to the list of indicative offences for making a Serious Crime Prevention Order (SCPO). The new participation offence (see section 45 above) has also been added to the list of offences which can be found in Schedule 1 to the Serious Crime Act 2007.

Section 48: Making a new SCPO when a person has been convicted of breaching an existing order

Section 48 of the SCA 2015 makes provision for an existing SCPO to be replaced in the event of a conviction for the offence of breaching an SCPO. Previously the Crown Court did not have the power to impose a new order following a conviction for the breach offence (although a new order could be made following conviction for another serious offence under section 19 of the 2007 Act).

Section 49: Extending an SCPO when a person has been charged

If a person currently subject to a SCPO has been charged with a serious offence or the breach offence and the order is about to run out, section 49 of the SCA 2015 allows the order to be kept in place until the criminal proceedings have been concluded. This power is of particular relevance if the subject of the SCPO has only been charged with the breach offence and the investigator is planning to obtain a replacement order under the new section 48 power.

Section 50: Consolidation of the Financial Reporting Order into the SCPO

As a result of the changes made by section 50 of the SCA 2015, the SCPO will become the means of imposing financial reporting requirements on a person following a conviction instead of the Financial Reporting Order (FRO). The aim of this change is to improve the use of financial reporting requirements as a means of preventing further involvement in crime.
Section 50 of the SCA 2015 repeals the FRO legislation and from 3 May 2015 financial reporting requirements will be imposed through an SCPO. Section 50 also replicates the information sharing provisions in the Serious Organised Crime and Police Act 2005 so that law enforcement officers can verify the reports of individuals subject to a SCPO (for example, by seeking information from banks and other financial institutions).

Prosecutors other than the CPS do not have the power to make applications for SCPOs, but the CPS has agreed to make the applications on their behalf. Under transitional provisions in section 86 of the SCA 2015, existing FROs will remain active until they expire, and the existing offence of breaching an FRO will remain available.

**Section 51: Gang injunctions**

**Commencement: 1 June 2015**

In recognition of changes to the way gangs operate, section 51 of the SCA 2015 revises the test for the grant of gang injunctions under the Policing and Crime Act 2009. In particular, it is said that expanding the range of activities to include any involvement in support of the illegal drugs market will allow gang injunctions to be used to prevent individuals from engaging in such activity and to protect people from being further drawn into this illegal activity. This change will also enable local agencies to address the cross-over between urban street gangs and street drug dealing controlled by organised criminal groups.

With regard to the revised test for the grant of gang injunctions, section 51 of the 2015 Act recasts the key features of a gang, for the purposes of the 2009 Act, to be a group which:

- consists of at least three people
- has one or more characteristics that enable its members to be identified by others as a group and
- engages in gang-related violence or is involved in the illegal drug market.

The identifying characteristics of a gang may, but need not, relate to any of the following the:

- use by the group of a common name, emblem or colour
- group’s leadership or command structure
- group’s association with a particular area
- group’s involvement with a particular unlawful activity.

As is currently the case, the court will be able to attach prohibitions or requirements to an injunction. Such prohibitions or requirements may, for example, bar the respondent from going to a particular place or area or from associating with and/or contacting a specified person or persons, or requiring him or her to participate in set activities on specified days.
Alongside the amendments made to the 2009 Act by the 2015 Act, the provisions in section 18 of and Schedule 12 to the Crime and Courts Act 2013 also come into force on 1 June 2015. These provisions will transfer proceedings, in respect of gang injunctions, in relation to respondents under 18 years, from the County Court to the Youth Court.

Part 4: Seizure and forfeiture of drug cutting agents

Commencement: 3 May 2015

Power of seizure

These powers will be available to UK police forces (including the British Transport Police and Ministry of Defence Police), Border Force and the National Crime Agency. Law enforcement officers will have the power to seize and detain any substances suspected of being intended for use as a drug cutting agent. They will be able to do this in two ways: while legally on premises (for example at a port), or with a new cutting agents warrant.

Power of forfeiture

Once the suspected cutting agents have been seized under the new powers, they can be detained for up to 30 days while investigations proceed (with a possible further 30 days extension upon application to a court). The responsible officer must make reasonable efforts to give proper notice of the seizure and the consequences of this to the person from whom the substances were seized and the owner of the substances (if they may belong to a different person).

An application for forfeiture must be made to the magistrates’ court if the law enforcement agency wishes to destroy the substances. The court must grant forfeiture if satisfied, to the civil standard of proof, that the substance was intended for use as a drug cutting agent. Once the court has ordered the substances either to be returned or forfeited, a right to appeal against the decision within 30 days exists for a ‘party to the proceedings’ (most likely either the relevant law enforcement agency or the owner of the substances) or a person entitled to the substances (if not a party to those proceedings).

Should the property of a legitimate business be seized under these powers (that is, where substances are seized but no forfeiture is granted), the owner will be able to apply for compensation to be paid by the law enforcement agency which made the seizure. To prevent unreasonable claims, the value of the compensation will be no more than the wholesale value of the substances seized (unless exceptional circumstances exist).
Section 66: Child cruelty offence

Commencement: 3 May 2015

Children and Young Persons Act 1933

Section 1 of the Children and Young Persons Act 1933 (CYPA 1933) provides for an offence of child cruelty, which is committed where a person age 16 or over, who has responsibility for a child under that age, wilfully assaults, ill-treats, neglects, abandons, or exposes that child in a manner likely to cause 'unnecessary suffering or injury to health'; or causes or procures someone else to treat a child in that manner.

Section 1(2)(b) of the CYPA 1933 provides that, in a case where the death of a child under three is proved to have been caused by suffocation while the child was in bed with a person aged 16 or over, that person is deemed, for the purposes of the child cruelty offence, to have neglected the child in a manner likely to cause injury to its health, if he or she went to bed under the influence of drink.

Section 66 amendments

Section 66 of the SCA 2015 clarifies, updates and modernises some of the language of section 1 of the CYPA 1933. The effect of the changes made by section 66 are to:

- make it absolutely clear that cruelty which causes psychological or physical suffering or injury is covered under section 1 of the 1933 Act
- make it absolutely clear that the behaviour necessary to establish the ill-treatment limb of the offence can be non-physical (for instance, isolation, humiliation or bullying, if it is likely to cause unnecessary suffering or injury to health)
- replace the outdated reference to 'misdemeanour' with 'offence and
- amend section 1(2)(b) of the CYPA 1933 so that:
  - a person is also deemed to have neglected a child in the relevant manner where the person concerned is under the influence of 'prohibited drugs'
  - it is clear that the provision applies where the person comes under the influence of the substance in question at any time before the suffocation occurs and
  - it applies irrespective of where the adult and child were sleeping (for example if they were asleep on a sofa).
Section 68: Child sexual exploitation

Commencement: 3 May 2015

Amendments to sections 47 to 51 of the Sexual Offences Act 2003

Section 68(1) to (6) of the SCA 2015 amends the Sexual Offences Act 2003 to remove references to child prostitution and child pornography and replace them with references to the sexual exploitation of children. The scope of the relevant offences are not altered. The changes to the terminology used are intended to reflect a modern understanding of the position of children involved in such activities. They do not however change the behaviour to which the offences apply, which remains the recording of an indecent image of a person or the offer or provision of sexual services to another person in return for payment or a promise of payment.

Amendment to section 1 of the Street Offences Act 1959

Under section 1 of the Street Offences Act 1959 (the 1959 Act) it is an offence for a person persistently to loiter or solicit in a street or public place for the purpose of prostitution.

Section 68(7) of the SCA 2015 amends section 1 of the 1959 Act so that this applies only to persons aged 18 and over. It, in effect, decriminalises under-18s selling sex in the street and in doing so again recognises children as victims in such circumstances rather than consenting participants (buying sex from an under-18 in any circumstances would remain illegal).

Section 69: Possession of a paedophile manual

Commencement: 3 May 2015

This section creates a new offence of possession of a paedophile manual, which is any item that contains advice or guidance about abusing children sexually. For these purposes an ‘item’ includes anything in which information of any description is recorded.

Existing offences that seek to prevent the possession, creation and distribution of indecent images of children, and the dissemination of obscene material do not criminalise mere possession of material containing advice and guidance about grooming and abusing a child sexually. This new offence plugs the gap in the law by criminalising this behaviour.

Possible defences include that the individual concerned had a legitimate reason for being in possession of the material, or that he had not himself seen the material; and did not know, nor had any cause to suspect it to be a paedophile manual. A further defence would be that the person had received the material unsolicited and did not keep it for an unreasonable time.
In recognition of the sensitivity of this type of offence, the consent of the Director of Public Prosecutions (in England and Wales), or the Director of Public Prosecutions for Northern Ireland (in Northern Ireland) is required before a prosecution can be brought.

**Forfeiture**

The offence allows for the most commonly used and broad power of forfeiture, which is contained in section 143 of the Powers of Criminal Courts (Sentencing) Act 2000. This provides a general power of forfeiture allowing the courts to make an order depriving an offender of his or her rights to articles used, or intended to be used, in the commission or facilitating of an offence and conferring power on the police to take possession of the property. In addition, section 5 of and the Schedule to the Protection of Children Act 1978 confers on the police the power to forfeit any indecent photograph or pseudo-photograph of a child, and any property which it is not reasonably practicable to separate from that property following any lawful seizure. These powers will also apply to paedophile manuals.

**Section 70: Female Genital Mutilation (FGM) extension of extra-territorial jurisdiction**

**Commencement: 3 May 2015**

**Female Genital Mutilation Act 2003**

Under the Female Genital Mutilation Act 2003 (FGM Act 2003) it is an offence for any person in England, Wales or Northern Ireland (regardless of their nationality or residence status) to perform FGM (section 1), or to assist a girl to carry out FGM on herself (section 2). It is also an offence to assist (from England, Wales or Northern Ireland) a non-UK national or resident to carry out FGM outside the UK on a UK national or permanent UK resident (section 3).

Section 4 of the FGM Act 2003 extends sections 1 to 3 to extra-territorial acts, making it also an offence for a UK national or permanent UK resident to: perform FGM abroad; assist a girl to perform FGM on herself outside the UK; and assist (from outside the UK) a non-UK national or resident to carry out FGM outside the UK on a UK national or permanent UK resident.

Section 70(1) of the SCA 2015 amends section 4 of the FGM Act 2003 so that the extra-territorial jurisdiction extends to prohibited acts done outside the UK by a UK national or any UK resident. Consistent with that change, section 70(1) also amends section 3 of the FGM Act 2003 so it extends to acts of FGM done to a UK national or any UK resident.

These changes will mean that the FGM Act 2003 can capture offences of FGM committed abroad by or against those who are at the time habitually resident in the UK, irrespective of whether they are subject to immigration restrictions. It will be for the courts to determine on the facts of individual cases whether or not those involved are habitually resident in the UK and thus covered by the FGM Act 2003.
Section 71: Anonymity for victims of FGM

Commencement: 3 May 2015

Protection for victims of FGM

Section 71 of the SCA 2015 inserts a new section 4A and Schedule 1 into the FGM Act 2003 which make provision for the lifetime anonymity of victims of FGM. The effect of these provisions is to prohibit the publication of any matter that would be likely to lead members of the public to identify a person as the alleged victim of an offence under the FGM Act 2003.

The prohibition covers not just more immediate identifying information, such as the name and address or a photograph of the alleged victim, but any other information which, whether on its own or pieced together with other information, would be likely to lead members of the public to identify the alleged victim. ‘Publication’ is given a broad meaning and would include traditional print media, broadcasting and social media such as Twitter or Facebook.

There are two limited circumstances where the court may disapply the restrictions on publication, namely:

- where a person being tried for an FGM offence, could have their defence substantially prejudiced if the restriction to prevent identification of the person against whom the allegation of FGM was committed is not lifted
- where preventing identification of the person against whom the allegation of FGM was committed, could be seen as a substantial and unreasonable restriction on the reporting of the proceedings and it is considered in the public interest to remove the restriction.

Contravention of the prohibition on publication is an offence. It will not be necessary for the prosecution to show that the defendant intended to identify the victim. In relation to newspapers or other periodicals (whether in print form or online editions) and radio and television programmes, the offence is directed at proprietors, editors, publishers or broadcasters rather than individual journalists. Any prosecution for the offence requires the consent of the Attorney General or the Director of Public Prosecutions for Northern Ireland as the case may be.

There are two defences. The first is where the defendant had no knowledge (and no reason to suspect) that the publication included content that would be likely to identify a victim or that a relevant allegation had been made. The second is where the victim (where aged 16 or over) had freely given written consent to the publication. These defences impose a reverse burden on the defendant, that is, it is for the defendant to prove that the defence is made out on a balance of probabilities, rather than imposing a requirement on the prosecution to show, beyond reasonable doubt, that the defence does not apply.
Section 72: Offence of failing to protect girl from risk of genital mutilation

Commencement: 3 May 2015

Section 72 of the SCA 2015 inserts a new section 3A into the FGM Act 2003 which creates a new offence of failing to protect a girl from FGM. This means that if an offence under section 1, 2 or 3 of the FGM Act is committed against a girl under the age of 16, each person who is responsible for the girl at the time of FGM occurred will be liable under the new offence.

To be ‘responsible’ for a girl, the person will either:

- have ‘parental responsibility’ for the girl and have ‘frequent contact’ with her or
- be a person aged 18 or over who has assumed responsibility for caring for the girl ‘in the manner of a parent’ (for example family members to whom parents might send their child during the summer holidays).

It would be a defence for a defendant to show that at the relevant time, either they:

- did not think that there was a significant risk of FGM being committed, and could not reasonably have been expected to be aware that there was any such risk or
- took such steps as he or she could reasonably have been expected to take to protect the girl from being the victim of FGM.

A defendant would only need to produce evidence to support either defence. The onus would then be on the prosecution to prove, to the normal criminal standard of beyond reasonable doubt that the defence did not apply.

Section 78: Unauthorised possession of knives and other offensive weapons in prisons

Commencement: 1 June 2015

Section 78 of the SCA 2015 makes it an offence to possess any article which has a blade or is sharply pointed, or other offensive weapon in prison without authorisation. This includes makeshift weapons manufactured by prisoners from everyday items.

It is not currently a criminal offence to possess such articles within a prison establishment. Instead the unauthorised possession of weapons by prisoners is currently dealt with internally through the prison adjudication system or, for staff, as part of internal disciplinary procedures.

The conduct element of the offensive is satisfied if the person is in possession of an article which has a blade or is sharply pointed or other offensive weapon in prison without authorisation. Section 40E of the Prison Act 1952 enables authorisation to be given in certain circumstances when it is deemed necessary for persons in prison (including prisoners) to be in possession of a knife or other offensive weapon.
It is a defence for the person to show that either he or she reasonably believed that he or she had authorisation to be in possession of the article in question, or in all the circumstances there was an overriding public interest which justified his or her possession of the article.

Section 81: Preparation and training for terrorism

Commencement: 3 March 2015

Under section 5 of the Terrorism Act 2006 (TA 2006), it is an offence to engage in any conduct in preparation for giving effect to an intention to commit, or assist another to commit, one or more acts of terrorism. Section 6 of the TA 2006 makes it an offence to provide or receive training for terrorism. The maximum penalty for these offences is life imprisonment for section 5 and, as of 13 April 2015, life imprisonment for section 6.

Section 17 of the TA 2006 provides for extra-territorial jurisdiction in respect of certain terrorism offences, allowing those offences to be tried in this country in respect of acts committed abroad. The relevant offences are:

- section 1 of the TA 2006 (encouragement of terrorism)
- section 6 of the TA 2006 (training for terrorism)
- section 8 of the TA 2006 (attendance at a place used for terrorism training)
- sections 9 to 11 of the TA 2006 (offences involving radioactive devices and materials and nuclear facilities) and
- sections 11 (membership of proscribed organisations) and 54 (weapons training) of the Terrorism Act 2000.

However, in the case of the section 1 and 6 offences, the extra-territoriality is limited in that it only applies insofar as those offences are committed in relation to the commission, preparation, or instigation of one or more ‘Convention offences’, namely those to which Council of Europe Member States are required to extend extra-territorial jurisdiction as a result of Article 14 of the Council of Europe Convention on the Prevention of Terrorism (May 2005). The relevant offences are set out in Schedule 1 to the TA 2006. In the case of the section 5 offence, there was no previous extra-territorial jurisdiction.

Section 81 of the SCA 2015 amends section 17(2) of the TA 2006 to provide for extra-territorial jurisdiction for the section 5 offence and to extend the existing extra-territorial jurisdiction of the section 6 offence. As a result, a person who does anything outside of the UK which would constitute an offence under section 5 or 6 (whether in relation to a Convention offence or terrorism more widely) could be tried in the UK courts if they returned to this country.

Pre-charge bail: summary of consultation responses and proposals for legislation

Introduction

The injustice of cases where individuals under investigation have been subject to pre-charge bail for many months and sometimes years, yet ultimately no charges were brought against them led to calls for a fundamental re-examination of the way pre-charge bail is used.

The College of Policing carried out a consultation on the principles of pre-charge bail management between 27 March and 21 July 2014. The College published the responses to that consultation on 11 December 2014, along with a set of standards for the police to adopt. It is intended that those standards will shortly be incorporated into revised Authorised Professional Practice (APP) on Bail Management.

The Government published proposals to reform the statutory framework for pre-charge bail on 18 December 2014 and the consultation period closed on 8 February 2015. A total of 300 responses were received; 269 via the online portal, 29 by e-mail and two responses by letter. The Home Office has recently published a summary of the consultation responses received and proposals for legislation. Legislation to give effect to the proposals set out in that document would need to be taken forward in the next Parliament. Work will begin immediately on those measures that do not require legislation.

Summary of Consultation Responses

Enabling a suspect to be released without bail while an investigation continues

There was widespread support in the consultation responses for the proposal to reduce the number of individuals on bail by clarifying the law to make clear that a suspect can be released without bail while an investigation continues.

Where an investigation concludes with a decision that there should be no further action (NFA), a suspect must be formally released from bail. A number of consultation responses stated that, if release without bail were to be available, there should still be a requirement to notify a suspect of that decision. This requirement will be included in the legislation.

Other respondents expressed concern that enabling release without bail would not solve the underlying issue of an extended period of uncertainty for suspects between being arrested and the subsequent decision on charging. Moreover, some respondents were concerned that, without even the minimal level of scrutiny brought by the current process of granting and extending bail, there would be the potential for non-bail cases to take even longer to resolve, with priority given to cases where bail would need to be justified to the courts.
The response of the National Policing Leads proposed that, in deciding whether to release an individual from police custody, there should be a presumption that releases should be made without bail, with bail only being imposed where it is both necessary and proportionate in all the circumstances of the case. This was said to also address an issue of police culture raised by the Howard League for Penal Reform, in that bail would be ‘imposed’ rather than ‘granted’. Ten other responses called for the introduction of tests of necessity and proportionality to decision-making for pre-charge bail.

It is stated that this will require careful consideration of the relationship between PACE and the Bail Act 1976, section 4 of which currently provides for a ‘general right to bail of accused persons…’ This will be explored further to see how this change might be made.

The law will be amended to:

- make the presumption of a release from custody to be without bail, unless bail is both ‘necessary’ and ‘proportionate’ in all the circumstances of the case
- remove the requirement for all releases from custody while an investigation continues to be on bail
- require the notification of suspects by the police (whether or not they are on bail) where a decision is made to take no further action (NFA) in their case
- remove the contradictions between sections 34(5) and 37(2), enabling police bail in all circumstances to be issued with conditions when it is both ‘necessary’ and ‘proportionate’.

Placing an absolute limit on the length of pre-charge bail; or

Placing a limit on the length of pre-charge bail at 28 days, with further extension permitted only in certain circumstances

There was almost universal support among the responses to placing some sort of statutory limit on pre-charge bail. 44% of responses favoured an absolute limit, although there was no clear consensus as to what that limit should be. This issue will be revisited once the impact of these reforms has bedded in, to see whether it would be possible to introduce a hard limit in the future. 70.7% of responses favoured a limit that could be extended by some combination of senior police officers and the courts.

There was no clear consensus from the consultation responses as to where the limit should be set, with one response suggesting a limit as low as 24 hours, while just over half of all responses said there should be no absolute limit, with each case determined and reviewed on its own merits.
As stated above, the Government considers that the presumption should be that those under investigation should be released without bail, unless it can be shown that bail is both necessary and proportionate. Where those tests are met, the initial bail period should be 28 days, as recommended by the College of Policing, with a further review of the necessity and proportionality of bail taking place towards the end of that period and being conducted by a senior police officer, who can then extend bail to a maximum of three months.

A number of respondents raised concerns about the level of authorisation suggested for Model 2 (see depictions of Models set out below), arguing that the review be done by a lower rank, for example Superintendent rather than a Chief Superintendent, as the latter rank is being phased out in a number of forces as part of workforce reforms. This was considered to be a reasonable change, giving appropriately senior scrutiny while retaining operational flexibility.

Any extension of pre-charge bail beyond that point would only be possible with the authority of the courts.

The law will be amended to:

- set the initial bail period at 28 days, where the test for bail is met
- allow a senior police officer (Superintendent rank or above) to authorise a single extension of bail to a maximum of three months in total
- require any further extensions of bail to be authorised by the courts.

**Enabling the police to obtain key evidence more rapidly from other public sector agencies**

There was widespread acknowledgement in responses that many of the delays in investigating cases are due to the time taken to secure evidence from other public sector agencies, such as the NHS or local authority social services departments. However, there was a clear majority in favour (65.7% agree or strongly agree) of the agreement of memoranda of understanding between the police and umbrella bodies representing public sector agencies, rather than legislating to enable or require the production of material.

Work will begin immediately to:

- discuss with the National Policing Lead, College of Policing and umbrella bodies (such as NHS England and the Local Government Association) how the provision of evidence in a timely fashion, can be improved including potential for memoranda of understanding.
Enabling the courts to review the duration and/or conditions of pre-charge bail

There was widespread agreement that the courts should be able to review the duration of bail as well as the conditions. The Model set out (see below) will enable that to happen, although in order to reduce costs, it was proposed that each decision should not be subject to appeal. The first opportunity for an individual to challenge the duration of their pre-charge bail would therefore be after three months under Model 2. The existing process to challenge bail conditions at any time would remain, although it is hoped that the improved guidance in this area would reduce the already small number of challenges to conditions even further.

Guidance on the use of bail conditions

Almost two thirds of respondents welcomed the proposal to provide clear and consistent guidance to custody officers and magistrates. 10.7% suggested it should be produced by the College of Policing, 13% favoured the Judicial College and 39% were in favour of joint guidance. A number of formats for this guidance were suggested as part of the consultation, including adding material into the PACE Codes of Practice or the issuing of a practice direction by the senior judiciary. In addition, 20.6% of respondents replied that guidance was unnecessary.

In the light of these responses, the Government considers that guidance is appropriate, although more work will be done in conjunction with the Colleges and the senior judiciary to determine its format.

Work will begin immediately to:

- discuss with the College of Policing, the Judicial College and the senior judiciary how best to produce clear and consistent guidance on the use of bail conditions.

Hearings in the Crown Court

A mixed response was received to the proposal to hold some pre-charge bail hearings in the Crown Court, with 39% agreeing or strongly agreeing and 40% disagreeing or strongly disagreeing. Some respondents considered that involving the Crown Court would lead to unnecessary cost and complexity, while others considered that, in the type of cases that would be tried by specialist judges in the Crown Court, there could be advantages to involving them at the pre-trial stage, particularly where the measures for exceptional cases were used.

Having considered the volume data compiled on the basis of the police's data collection, the Ministry of Justice was concerned that the number of cases that would fall to be considered in the Crown Court would exceed the available capacity in Crown Court centres. Given that the overwhelming majority of cases where pre-charge bail exceeds twelve months are dealt with in large urban centres, where District Judges (Magistrates Courts) sit regularly, it would be possible for applications to be considered by professional judges in the magistrates’ courts. The Government
will work with HM Courts and Tribunals Service and the judiciary to ensure there is a presumption that this should happen with these cases. On that basis, it has been decided to have all pre-charge bail hearings dealt with in the magistrates’ courts.

**Exceptional Cases**

There was considerable support from the various criminal justice agencies for a ‘lighter touch’ process to be used in large and complex cases, although there was no clear agreement as to how that might be achieved. These responses were taken into account in considering how best to achieve this ‘lighter touch’ process. The following possibilities were discounted for the reasons given:

- **List of offences**: not specific enough (for example, an offence under the Fraud Act 2006 could cover a single instance of obtaining money by deception or an organised multi-million pound case); others thought it could be too specific and restrictive (i.e. could not cater for an exceptional case not contained in the list of offences).
- **Value**: while many large and complex cases are financial, not all are (e.g., investigations into historical allegations of child abuse).
- **Decision on a case-by-case basis by investigator or prosecutor**: not sufficiently transparent, not least because reducing the level of scrutiny will reduce the work for investigators and prosecutors.

Work will be done to produce guidance to define the most complex cases, where prosecutors will be involved from the pre-arrest stage, for example according to the agency that will in due course be responsible for prosecution, as the most complex cases will be handled by the Serious Fraud Office, as well as by the CPS’ Central Casework Divisions and Complex Casework Units. In such exceptionally complex cases, a decision to extend bail beyond three months would be taken by a Senior Civil Servant for SFO cases; in CPS cases, the decision would be taken by an assistant chief constable in consultation with a senior prosecutor, with the courts not becoming involved until six months after arrest.

The law will be amended to:

- place the decision to extend bail beyond three months in the hands of a Senior Civil Servant, where the case is being dealt with by the Serious Fraud Office, or an assistant chief constable, where the case is being dealt with by the CPS’ Central Casework Divisions or Complex Casework Units. Such cases would be dealt with by the courts from the six-month point in the same way as other cases
- enable investigators or prosecutors to apply to a magistrates’ court to ‘skip’ the next hearing where they can make a case that an investigation is being progressed with due speed but the enquiries being undertaken are unlikely to show results before the next hearing is due.
Proposed model for pre-charge bail

The consultation document proposed two models for the duration and level of authorisation of pre-charge bail:

Models 1 and 2

<table>
<thead>
<tr>
<th>Cumulative total period from ‘relevant time’</th>
<th>Model 1 bail authoriser/reviewer</th>
<th>Model 2 bail authorised/reviewer</th>
</tr>
</thead>
<tbody>
<tr>
<td>First bail period of 28 days</td>
<td>Inspector</td>
<td>Inspector</td>
</tr>
<tr>
<td>Extension up to 3 months</td>
<td>Magistrates’ Court</td>
<td>Chief Superintendent</td>
</tr>
<tr>
<td>Extension up to 12 months (3 months per extension)</td>
<td>Magistrates’ Court</td>
<td>Magistrates’ Court</td>
</tr>
<tr>
<td>Beyond 12 months (3 months per extension)</td>
<td>Crown Court</td>
<td>Crown Court</td>
</tr>
</tbody>
</table>

The consultation document made clear that it was constructed upon a limited evidence base, due to the fact that data on the number of individuals on bail and the duration of that bail is not recorded routinely. As part of their response to the consultation, the police provided data gathered from their custody and bail management systems which now gives a clearer picture of the numbers involved over the course of a year.

Taking into account the consultation responses and the data gathered during the consultation, it was said to be apparent that Model 1, where only the initial bail authorisation would be done by the police, with all extensions past 28 days done in court, would be unviable, given serious questions as to whether there would be sufficient capacity in the magistrates’ courts to deal with the estimated 270,000 bail hearings required per annum (of which 195,000 would be required at the 28-day stage).

While Model 2 still has a significant cost, the Government considers that it represents a better balance between accountability and affordability. Model 2 is therefore the Government’s preferred approach to the reform of pre-charge bail, with two changes:

- firstly, to alter the authorising rank of police officer at the 28-day review point from Chief Superintendent to Superintendent
- secondly, to have all pre-charge bail hearings dealt with in the magistrates’ courts.

The resulting Model 2A is set out below, together with the proportion of those on pre-charge bail in each ‘slice’ of the model.
### Model 2A

<table>
<thead>
<tr>
<th>Cumulative total period from ‘relevant time’</th>
<th>Bail authoriser/reviewer</th>
<th>Proportion of all bail cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>First bail period – 28 days</td>
<td>Inspector</td>
<td>29%</td>
</tr>
<tr>
<td>Extension up to 3 months</td>
<td>Superintendent</td>
<td>50%</td>
</tr>
<tr>
<td>Extension up to 6 months</td>
<td>Magistrates’ Court</td>
<td>14%</td>
</tr>
<tr>
<td>Extension up to 9 months</td>
<td>Magistrates’ Court</td>
<td>2.7%</td>
</tr>
<tr>
<td>Extension up to 12 months</td>
<td>Magistrates’ Court</td>
<td>2.5%</td>
</tr>
<tr>
<td>Extension up to 15 months</td>
<td>Magistrates’ Court</td>
<td>0.5%</td>
</tr>
<tr>
<td>Extension up to 18 months</td>
<td>Magistrates’ Court</td>
<td>0.5%</td>
</tr>
<tr>
<td>Extension beyond 18 months (3/6 months per extension)</td>
<td>Magistrates’ Court</td>
<td>0.002%</td>
</tr>
</tbody>
</table>


### Changes to Mental Health Act 1983 Code of Practice

The revised Code of Practice to the Mental Health Act 1983 came into force on **1 April 2015** following an open consultation.

The revised Code provides statutory guidance to registered medical practitioners, approved clinicians, managers and staff of providers and approved mental health professionals (AMHPs) on how they should proceed when undertaking duties under the Act.

The revised Code also provides non-statutory guidance for others, including commissioners of health services, the police and ambulance services, and others in health and social services (including the independent and voluntary sectors) involved in commissioning or providing services to people who are, or may become, subject to compulsory measures under the Act.
The Code introduces 5 new overreaching principles:

**Least restrictive option and maximising independence**

Where it is possible to treat a patient safely and lawfully without detaining them under the Act, the patient should not be detained. Wherever possible a patient’s independence should be encouraged and supported with a focus on promoting recovery wherever possible.

**Empowerment and involvement**

Patients should be fully involved decisions about care, support and treatment. The views of families, carers and others, if appropriate, should be fully considered when taking decisions. Where decisions are taken which are contradictory to views expressed, professionals should explain the reasons for this.

**Respect and dignity**

Patients, their families and carers should be treated with respect and dignity and listened to by professionals.

**Purpose and effectiveness**

Decisions about care and treatment should be appropriate to the patient, with clear therapeutic aims, promote recovery and should be performed to current national guidelines and/or current, available best practice guidelines.

**Efficiency and equity**

Providers, commissioners and other relevant organisations should work together to ensure that the quality of commissioning and provision of mental healthcare services are of high quality and are given equal priority to physical health and social care services. All relevant services should work together to facilitate timely, safe and supportive discharge from detention.

The revised Code also includes new chapters on:

- care planning, human rights, equality and health inequalities
- consideration of when to use the Mental Health Act and when to use to the Mental Capacity Act 2005 and Deprivation of Liberty Safeguards and information to support victims
- physical healthcare, blanket restrictions, duties to support patients with dementia and immigration detainees
- the appropriate use of restrictive interventions, particularly seclusion and long-term segregation, police powers and places of safety
- how to support children and young people, those with a learning disability or autism.
The revised Code is published alongside an updated reference guide to help people understand the main provisions of the Mental Health Act 1983 and the regulations under the Act, including by the Mental Health Act 2007, Health and Social Care Acts 2008 and 2012 and Care Act 2014.


The consultation documents and responses can be found at https://www.gov.uk/government/consultations/changes-to-mental-health-act-1983-code-of-practice


Consultation on dangerous dog offences guidelines

The Sentencing Council for England and Wales has launched an open consultation on reform of the sentencing guidelines for dangerous dog offences.

The consultation follows changes to the Dangerous Dogs Act 1991, which came into force last year which brought about substantial increases to the maximum sentences for these offences and which extended the law to cover offences on private property and to cover attacks on assistance dogs.

New sentencing guidelines are being produced to reflect the changes to legislation and to provide updated guidance for judges and magistrates to use in sentencing these cases, which can include those involving a fatality.

The council is seeking views on the proposals for how courts should sentence people convicted of offences relating to dangerous dogs.

The consultation is open until 9 June 2015.

The consultation documents can be found at https://www.gov.uk/government/consultations/dangerous-dog-offences-guideline
Home office Circular 2015/02: reporting restrictions applying to under 18s

The Home Office has published circular 2015/02 which explains the key changes to reporting restrictions applying to those under 18 years of age as at 13 April 2015.

Prior to the changes introduced by the Criminal Justice and Courts Act 2015 (CJCA 2015), reporting restrictions applying specifically to under 18s ended automatically when the individual reached the age of 18. In the recent case of JC and RT v the Central Criminal Court and others [2014] EWHC 1041 the President of the Queen's Bench Division commented that it was ‘truly remarkable’ that legislation provides for discretionary lifelong reporting restrictions for adult witnesses but reporting restrictions for under-18s end at the age of 18. In response to his comments urging that Parliament address this problem ‘as a matter of real urgency’ the Government made changes to reporting restrictions applying to under-18s in the CJCA 2015 so that, in circumstances similar to those applying to adult witnesses, as victims and witnesses they too may be subject to lifelong reporting restrictions.

The key changes are as follows:

- discretion is provided to any criminal court in England and Wales or any service court to order, under specified circumstances, a lifetime reporting restriction in respect of a victim or witness under the age of 18 during the proceedings. This will be achieved by commencing section 45A of the Youth Justice and Criminal Evidence Act 1999 (YJCEA); and

- the scope of reporting restrictions applying to under-18s in criminal and non-criminal proceedings have been widened so that they no longer apply to print and broadcast media only but include, for example, online content. This will be achieved by:
  - bringing into force section 45 of the YJCE Act 1999 which will apply, instead of section 39 of the Children and Young Persons Act 1933 (CYPA 1933), to any criminal court other than the Youth Court and to ‘any publication’;
  - amending section 39 of the CYPA 1933 to apply a broader definition of ‘publication’ in non-criminal proceedings; and
  - bringing into force provisions in Schedule 2 to the YJCE Act 1999 so that in criminal proceedings section 49 of the CYPA 1933 applies to ‘any publication’ in Youth Court proceedings or in relation to any matter on appeal from the Youth Court.

Lifetime reporting restrictions for victims and witnesses under the age of 18 – section 45A of the Youth Justice and Criminal Evidence Act 1999

Section 78 of the CJCA 2015 inserts section 45A into the YJCEA 1999 which makes provision, as an additional discretionary power, in respect of lifetime reporting restrictions, in specific circumstances, for victims and witnesses under the age of 18, involved in criminal proceedings or proceedings before a service court.
Making a reporting direction

At any time during criminal proceedings, and subject to the test set out in section 45A(5) of the YJCEA 1999, the court may make a ‘reporting direction’ under section 45A(2), which can apply to a:

- witness other than an accused in the proceedings and/or
- victim i.e. a person against whom the offence, which is the subject of the criminal proceedings, is alleged to have been committed.

Such a reporting direction applies for the lifetime of the victim or witness so that no matter relating to them may be included in any publication if it is likely to lead to them being identified by members of the public as being concerned in the criminal proceedings.

In order to make such a direction the court must be satisfied that fear or distress on the part of the victim or witness in connection with being identified by members of the public as a person concerned in the proceedings is likely to diminish the quality of the victim’s or witness’s evidence or the level of cooperation they give to any party to the proceedings in connection with that party’s presentation of its case.

The court or appellate court may lift or vary a reporting direction by making an ‘excepting direction’ where it is satisfied that it is necessary in the interests of justice to make the excepting direction or it is satisfied that the effect of the reporting direction is to impose a substantial and unreasonable restriction on the reporting of the proceedings and it is in the public interest to remove or relax the restriction.

Breaches of the reporting direction and defences to alleged breach

Section 78 of the CJCA 2015 amends section 49 of the YJCEA 1999 so that if a publication includes any matter in contravention of a reporting direction under section 45A of the YJCEA 1999 the person publishing it is guilty of a criminal offence, liable on summary conviction to a fine not exceeding level five on the standard scale.

Criminal proceedings other than in the Youth Court

Section 45 of the YJCEA 1999 will apply to criminal proceedings in any court other than those in or on appeal from the Youth Court. Section 39 of the CYP A 1933 will therefore no longer apply in such proceedings but will continue to apply in non-criminal proceedings. However section 39 will continue to apply to proceedings, no matter where they take place, in respect of civil injunctions for anti-social behaviour and Criminal Behaviour Orders.
Making a reporting restriction under section 45 of the YJCEA 1999 (criminal proceedings other than in the Youth Court)

Under section 45 of the YJCEA 1999 the court may direct that no matter relating to any person concerned in the proceedings shall be included in any publication, while s/he is under the age of 18, if it is likely to lead members of the public to identify him or her as a person concerned in the proceedings. The person concerned in the proceedings may be a victim, witness or defendant. Orders made under section 45 of the YJCEA 1999 apply up until the age of 18 (or until they are otherwise lifted, prior to the individual's 18th birthday) and as such differs to the new power under section 45A which provides for lifetime reporting restrictions for under-18s who are victims or witnesses (not defendants).

Lifting or varying a reporting restriction under section 45

A court or appellate court may make an ‘excepting direction’ dispensing, to any extent it specifies in the direction, with a reporting restriction made under section 45 YJCEA 1999. To do so the court must be satisfied that the effect of the reporting restriction, having had regard to the welfare of the victim, witness or defendant subject to it, is to impose a substantial and unreasonable restriction on the reporting of proceedings and that it is in the public interest to make an excepting direction.

Breaches of the reporting restriction and defences to alleged breach

Under section 49(1) YJCEA 1999 if a publication includes any matter in contravention of a reporting direction under section 45 of the YJCE Act 1999 the person publishing it is guilty of a criminal offence, liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Civil and family proceedings

Section 39 of the CYPA 1933 has been amended by section 79 of the CJCA 2015 to limit its application to proceedings other than criminal proceedings, so it will continue to apply to civil and family proceedings. Section 39 will continue to apply to proceedings in respect of Anti-Social Behaviour Orders, Criminal Behaviour Orders and, once the relevant provisions in the Anti-Social Behaviour Crime and Policing Act 2014 come into force, civil injunctions.

Currently section 39 of the CYPA 1933 applies only in respect of print and broadcast media. Section 79(7) of the CJCA 2015 provides a definition of ‘publication’ so that the term in section 39 of the CYPA 1933, as well as applying to printed and broadcast media, will now also apply to information published online including, for example, information posted on social media.
Online content

Through commencing the provisions in the CJCA 2015 described above and provisions within the YJCEA 1999, the reporting restrictions applying specifically to under-18s in court proceedings under sections 39 and 49 of the CYPA 1933 and sections 45 and 45A of the YJCEA 1999 all rely on the same definition of ‘publication’. These provisions therefore all apply to online content as well as print and broadcast media.

Section 80 of the CJCA 2015 inserts Schedule 1A and Schedule 2A into the CYPA 1933 and YJCEA 1999 respectively to transpose parts of the EU’s E-Commerce Directive dealing with breaches of domestic law (in this case reporting restrictions applying to under-18s) by providers of information society services.

Children who turn 18 years of age during proceedings

Where proceedings are ongoing as at 13 April 2015 and the child turns 18 years of age on or after that date, reporting restriction orders made under sections 39 and 49 of the CYPA 1933 and section 45 of the YJCEA 1999 will expire, unless already lifted by the court, at the time the child turns 18.

Where proceedings are ongoing on 13 April 2015 and the child turns 18 years of age on or after that date, an order under section 45A of the YJCEA 1999 may be made up until the proceedings have been concluded (namely once all appellate proceedings have concluded).


Ministry of Justice publish guidance on Criminal Justice and Courts Act 2015

The Ministry of Justice (MoJ) have published a circular on the Criminal Justice and Courts Act 2015 (‘the Act’) which is aimed at the judiciary, criminal justice agencies and practitioners and which contains detail on the provisions in the Act which were commenced on or before 13 April 2015.

The circular provides guidance about provisions in the Act which have an operational impact that stakeholders need to be aware of.

The Act contains a range of measures, including increased prison terms for serious crimes such as certain terrorism offences and internet ‘trolling’ and ‘revenge porn’. The Act also ends the automatic release of those jailed for child rape and serious terrorism offences half-way through their prison sentence.

Measures in the Act that came into force in April include:

- measures that ensure that all child rapists and terrorists serving custodial sentences will only be released before the end of their prison term if the independent Parole Board decides they no longer represent a risk to the public
• a new criminal offence of revenge porn has been created, meaning that those who share private, sexual images of someone without consent and with the intent to cause distress will now face up to 2 years in prison

• banning cautions for criminals convicted of serious offences and, for less serious offences, stopping repeat cautions for anyone who commits the same or similar offence more than once in a 2-year period. Serious offenders will instead face being brought before the courts where they could face a prison sentence

• making possession of extreme pornography that shows images depicting rape illegal

• increasing the maximum penalty to 2 years in prison for online trolls who send abusive messages or material

• four new criminal offences of juror misconduct. These are researching details of a case (including online research), sharing details of the research with other jurors, disclosing details of juror deliberation and engaging in other prohibited conduct

• imposing a new fee at the point of conviction to make criminals contribute towards the costs of running the courts system

• creating a new offence of causing serious injury by driving while disqualified, carrying a maximum penalty of 4 years in prison, and increasing the maximum prison sentence for causing death by disqualified driving to 10 years. We have also changed the law to make sure that driving bans are extended so they continue to apply after an offender has come out of prison

• increasing the maximum penalty for prisoners who fail to return from a period of temporary release from 6 months to 2 years in prison

• creating a new offence of remaining unlawfully at large following a recall from licence. The new offence will punish those who deliberately, and wilfully, seek to avoid serving the rest of their sentence in custody and carries a maximum penalty of 2 years in prison

• supporting economic growth through measures to speed up the Judicial Review process and reduce the number of meritless claims clogging the system

• tackling insurance fraud by new measures that ban law firms from offering inducements, such as iPads or cash, to potential clients and courts will be required to dismiss personal injury cases entirely where the claimant has been found to be fundamentally dishonest, unless doing so would cause substantial injustice.

Further details on the Act can be found at https://www.gov.uk/government/news/new-sentencing-measures-to-take-effect-next-month

Ofsted publish findings of thematic inspection on child sexual exploitation

Ofsted have published the findings of their thematic inspection which evaluated the effectiveness of local authorities’ current response to child sexual exploitation.

The findings highlight good practice examples, and draws on evidence from inspection and case examination in eight local authorities and from the views of children and young people, parents, carers, practitioners and managers. The inspection identified that the sexual exploitation of children and young people is a form of sexual abuse and while this is not new, what is new is the level of awareness of the extent and scale of the abuse and of the increasingly different ways in which perpetrators sexually exploit children and young people.

The findings highlighted that partnership action to tackle child sexual exploitation is often disjointed, resulting in opportunities being lost for a more cohesive approach to talking child sexual exploitation. The findings also suggest that partnerships have failed to define what management information is required from each agency and how this will be effectively shared to build a picture of child sexual exploitation in the locality.

Furthermore, the findings indicate that the way in which data is collected by many police forces does not allow for the effective collation of reported crime and prosecutions that are specifically linked to child sexual exploitation, meaning that information that the police share with their partners is of limited value.

It is also suggested that the training on child sexual exploitation, while generally of good quality, is not reaching everyone who needs it and this has resulted in many of those working with some of the most vulnerable children being unequipped to identify and respond to the signs of sexual exploitation.

**Key findings include:**

**Strategic leadership**

- local authorities and their partners are still not meeting their full responsibilities to prevent child sexual exploitation in their area, to protect its victims and to pursue and prosecute the perpetrators

- local arrangements, where they do exist, are poorly informed by local issues and self-assessment. They do not link up with other local strategic plans

- specific training, where it exists, is of good quality and gives staff confidence in their ability to identify and respond to child sexual exploitation. However, it is not always reaching those that need it most.
Performance management

- local authorities are not collecting or sharing with their partners the information they need in order to have an accurate picture of the full extent of child sexual exploitation in their area. As a result, they cannot know whether they are making a positive difference in the prevention, protection and prosecution of child sexual exploitation.

- not all local authorities and Local Safeguarding Children Boards (LSCBs) evaluate how effectively they are managing child sexual exploitation cases. This means that findings are not used to improve future practice.

Raising awareness

- local authorities and partners are successfully using a range of innovative and creative campaigns to raise awareness and safeguard some young people at risk of child sexual exploitation.

Findings from practice

- local authorities and police do not always follow formal child protection procedures with children and young people at risk of child sexual exploitation.

- screening and assessment tools, where they exist, are not well or consistently used in some local authorities to identify or protect children and young people from sexual exploitation.

- plans of how local authorities and their partners are going to support individual children and young people at risk of or who have been sexually exploited are not robust.

- local authorities are not keeping plans for children in need under robust review. This leaves some children in a very vulnerable position without an independent review of their changing circumstances and needs.

- a dedicated child sexual exploitation team that is solely responsible for the case does not always ensure that children receive an improved service.

Disrupting and prosecuting perpetrators

- not all police and local authorities are using their full range of powers to disrupt and prosecute perpetrators. Where they are using their powers well, they are effective in disrupting criminal activity. However, low numbers of prosecutions are achieved in comparison to the number of allegations made.

Missing children

- too many children do not have a return interview following a missing episode. This means that local authorities and police are missing opportunities to effectively protect these children and young people and to gather intelligence to inform future work.
local authorities are not cross-referencing information and soft intelligence relating to children who are frequently absent from school with their work with children at risk of child sexual exploitation

even when the correct protocols are used, too many children still go missing.

The report makes a number of recommendations to address the key findings:

**All local authorities should:**

- ensure that managers oversee all individual child sexual exploitation cases; managers should sign off all assessments, plans and case review arrangements to assess the level of risk and ensure that plans are progressing appropriately
- ensure that every child returning from a missing episode is given a return interview
- establish a set of practice standards for these interviews and ensure that these are consistently met
- ensure that schools and the local authority cross-reference absence information with risk assessments for individual children and young people
- establish a targeted preventative and self-protection programme on child sexual exploitation for looked after children.

**Local authorities and partners should:**

- develop and publish a child sexual exploitation action plan that fully reflects the 2009 supplementary guidance; progress against the action plan should be shared regularly with the local authority Chief Executive, the LSCB, the Community Safety Partnership and the Police and Crime Commissioner
- ensure that information and intelligence is shared proactively across the partnership to improve the protection of children in their area and increase the rate of prosecutions
- consider using the available child sexual exploitation assessment tools to improve risk assessments of children and young people in their area; where these are in place, they should be used consistently by all agencies
- ensure that sufficient appropriate therapeutic support is available to meet the needs of local young people at risk of or who have suffered from child sexual exploitation, including care leavers
- make sure that local strategies and plans are informed by the opinions and experiences of those who have been at risk of or have suffered from child sexual exploitation
- enable professionals to build stable, trusting and lasting relationships with children and young people at risk of or suffering from child sexual exploitation
- consider how effective local schools are in raising awareness and protecting children at risk of or who have suffered from sexual exploitation.
LSCBs should:

- ensure that the local authority and its partners have a comprehensive action plan in place to tackle child sexual exploitation
- hold partners to account for the urgency and priority they give to their collective and individual contribution to the child sexual exploitation action plan
- critically evaluate how effective the activity and progress of each of the LSCB members is against the action plan and publish these findings in the LSCB annual report
- ensure that all partners routinely follow child protection procedures for all children and young people at risk of or who have suffered from child sexual exploitation
- ensure that partners meet their statutory duties in relation to children returning from missing episodes where child sexual exploitation is a potential or known risk factor
- ensure that all partners carry out their responsibilities as defined in the locally agreed threshold document, which sets out the different levels of provision offered to individual children and young people at risk of or who have suffered from child sexual exploitation in the area, based on their individual needs
- ensure that an appropriate level of child sexual exploitation training is available to all professionals in the local area who require it.

The government should:

- review and update the 2009 safeguarding children and young people from sexual exploitation guidance so that it reflects recent research, good practice and findings from child sexual exploitation reviews and criminal investigations
- develop a national data set that requires local authorities, the police and their partners to report on all prevention, protection and prosecution activity relating to child sexual exploitation in their area to a standard format - this should include information on both missing children and looked-after children moving into and out of the area
- require every police force to collate information specifically on child sexual exploitation, including the number of crimes reported, the level of disruption activity undertaken and outcomes, including cautions and prosecutions.

Protecting the public
Supporting the fight against crime

As the professional body for policing, the College of Policing sets high professional standards to help forces cut crime and protect the public. We are here to give everyone in policing the tools, skills and knowledge they need to succeed. We will provide practical and common-sense approaches based on evidence of what works.

college.police.uk