



**Response to  
Policing Green Paper  
*From the neighbourhood to the national – policing  
our communities together***

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## **Introduction and summary**

1. JUSTICE is an independent all-party legal and human rights organisation, which aims to improve British justice through law reform and policy work, publications and training. Its mission is to advance access to justice, human rights and the rule of law. It is the UK section of the International Commission of Jurists.
2. While some parts of the policing green paper cover structural or organisational issues that do not engage our expertise, there are a number of proposals in the paper that will directly affect human rights and the rule of law. We therefore offer comment on several issues below. If we have not commented on a proposal or section of the green paper, this is due to our need to focus on our primary concerns and should not be taken for implicit approval.

## **Establishing a single national top-down target relating to public confidence**

3. We welcome the decision to abandon the centralised offences brought to justice (OBTJ) target, as this has led to the targeting of ‘easy’ offences to resolve – the issuing of penalty notices for disorder (PNDs), the arrest of children for minor acts of misbehaviour and otherwise law-abiding citizens for trivial infractions, at the expense of concentration on offending which harms society much more seriously. We agree with the improvements to the PSA regime and other performance measures outlined in paras 2.10 and 2.11 of the green paper.
4. However, we question whether the single target of ‘increasing public confidence’ is the most appropriate target to choose. It will allow individual forces to concentrate on the particular crime profile of their region in deciding what to prioritise. In addition, it is important both that the public have confidence in the integrity and ability of the police service and that the fear of crime is reduced in order that people can go about their lives without being unduly restricted by it. However, we believe that the focus should be on reducing harm caused by criminal activity, rather than merely increasing public confidence in whether local crime and community safety priorities are being identified and addressed.
5. Further, since many kinds of crime – notably domestic violence and abuse (including child abuse and honour crime), human trafficking, etc are hidden from the view of most of the public, concentrating on the community’s needs as the community

perceives them may ignore some of its most vulnerable members. It may also result in undue focus upon the most vocal or well-resourced groups in the community, who are well-placed to complain, and ignore the impact of crime on the vulnerable; the elderly; children; non-English speakers, etc.

### **Direct elections to Police Authorities**

6. We disagree with the idea that police authorities should contain directly elected members and in particular that they should be chaired by a directly elected person. Although the paramount importance of democratic representation is not in doubt, this principle is applicable to legislative bodies but not, unless otherwise justified, to oversight bodies such as police authorities. We are particularly concerned that the turnout in such an election would be low, meaning that it could be hijacked by people with a particular agenda. What would be the impact, for instance, if a candidate from a racist political party was elected as the chair of a police authority? This is by no means unrealistic, as the experience of local elections in several wards in different parts of the country should show.
7. Of course, racist extremism is by no means the only danger in this context; we believe that the government is also underestimating the risk of candidates with corrupt or even criminal intent being elected to these positions on a well-funded campaign with low turnout. The risk of corruption in the police/police authority, or even worse, security compromises as a result of infiltration of a police authority by criminal elements, should not be countenanced. We do not believe that sufficient safeguards can be put in place in direct elections to prevent this and therefore believe that the proposal should be abandoned.

### **PCSOs**

8. We agree with the core PCSO principles on p17 of the green paper. Greater standardisation in uniforms and training would be helpful. We are concerned, however, that the current level of training for PCSOs cannot adequately prepare them for the exercise of coercive powers such as stop and search, seizure, detention, and photographing people away from a police station.
9. While the physical exercise of some of these powers may be relatively simple, the breadth of the legislation (eg ss44 and 45 Terrorism Act 2000) means that rigorous

training and guidance is required to ensure that they are not exercised arbitrarily, excessively or in a discriminatory fashion.

10. Further, while minor youth crime and anti-social behaviour may be one good focus for PCSOs, who can spend more time patrolling a locality and addressing such problems as they occur, we believe that it is important that any person dealing with children and young people should undergo specific training, particularly when they have coercive powers in relation to those young people.

### **Visible Justice**

11. We support the principle of increasing confidence amongst sentencers and the public in community sentences, as this is one way in which excessive use of custody, particularly short custodial sentences, can be avoided. We also support the involvement of the community in, for example, choosing which projects should be carried out, and the publication on completion of such projects through local media, plaques etc so that people can see the contribution that has been made.
12. However, we are strongly opposed to the notion that offenders – and in particular young offenders – should be identified whilst the project is being carried out. The notion of ‘shaming’ of offenders in public places is one that we hoped the criminal justice system had left behind many years ago. The importance of unpaid work in the community is, or should be, threefold: to provide practical rehabilitation through training in skills which may later be useful in employment; to provide psychological rehabilitation through attitude change and a greater sense of contributing to the community; and to provide reparation to the community which has been damaged by the criminal act. The offender continues to live in the community and it is surely the goal of the criminal justice system that he be fully re-integrated as a law-abiding member of the community by the end of his sentence.
13. Badging and drawing attention to offenders runs entirely contrary to this objective. Any fleeting political gains posited by this ‘hard’ treatment of offenders will surely be cancelled out by the long-term effects of such a short-sighted policy. It is likely, we believe, to engender feelings of hostility and disaffection amongst offenders towards both the probation service and the public; to increase rates of breach of community sentences; and to increase re-offending. In relation to children under 18, we also believe that it would be unlawful, as contrary to Article 40 of the UN Convention on

the Rights of the Child which mandates privacy for a child under 18 *at all stages* of criminal proceedings. Particularly in smaller and less mobile communities, to label a child or young person as an offender in their locality will impact hugely upon their future prospects for employment and rehabilitation.

14. We would also like to emphasise that restorative justice (the words used at para 1.44 of the green paper) is not the same as reparative justice. We further fear that drawing public attention to community payback as it occurs, and publication of offenders details and sentences, may well lead to an increase in vigilantism, and a reduction in the number of offenders complying with the terms of licences or community sentences. This is a particularly dangerous risk in relation to those sexual and violent offenders who require a high level of monitoring in the community.
15. Further, unpaid work, despite its popularity with sentencers, is not the only option available for community sentences. Although we do not agree with the ‘backloading’ of health and other service provision through the CJS instead of ensuring good standards of provision through ordinary public services, some other requirements available as part of a community sentence do at least give the chance to achieve offender-specific rehabilitation eg through drug or alcohol treatment or mental health care. Enthusiasm for unpaid work should not eclipse these options, particularly since not all offenders will be suitable for unpaid work programmes.

### **Virtual courts**

16. We have serious concerns regarding virtual courts. In its 2007 report on its visit to the United Kingdom, the European Committee for the Prevention of Torture (CPT) said:<sup>1</sup>

*For as long as a criminal suspect does remain in the custody of a law enforcement agency, stringent safeguards must be in place. One crucial requirement is that the detained person be physically brought before a judicial authority at regular intervals.*

...

*... one of the purposes of the judicial hearing should be to monitor the manner in which the detained person is being treated. From the point of view of making an accurate assessment of the physical and psychological state of a detainee, nothing*

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<sup>1</sup> <http://www.cpt.coe.int/documents/gbr/2008-27-inf-eng.htm>, paras 8-9.

*can replace bringing the person concerned into the direct physical presence of the judge. Further, it will be more difficult to conduct a hearing in such a way that a person who may have been the victim of ill-treatment feels free to disclose this fact if the contact between the judge and the detained person is via a video conferencing link.*

17. These remarks were made in the context of terrorism detention: however, they should also be seen as applicable to general crime. The use of virtual courts is designed in some cases to allow a person to be charged, 'appear' at court via video link, and in some cases plead guilty and be sentenced, without ever appearing physically before magistrates. In some cases, at least at the pilot level, it is envisaged that consultation with their solicitor will also take place via a link. The remarks of the CPT regarding danger of oppression or ill-treatment are pertinent in these circumstances.
18. While in a simple minor case such as a lesser road traffic offence, the safeguard against oppression or ill-treatment of a physical appearance at court may seem unnecessary to the casual onlooker, this is simply not the case. Even if the risk of ill-treatment, oppression or impropriety is low, the importance to human rights and the rule of law of preventing that risk means that the safeguard of a physical court appearance should always be present. Local or offender-specific circumstances can give rise to a high risk of oppression for reasons known or unknown to the court - for example, pressure on police to secure a guilty plea in a locally notorious case; personal animus between a suspect and a police officer; a high rate of racism in a particular police station; prejudice against a particular suspect because he is 'well known' to local police. Further, there are many ordinary crimes of drunk and disorderly behaviour, assault, assault on a constable, affray etc., where there may have been confrontation with police (for example in a late-night town-centre incident under the influence of alcohol) and where there is therefore a particular risk of disputed facts regarding ill-treatment.
19. We have further concerns regarding disclosure. Even relatively minor cases may involve a complex legal issue or several witnesses, different recollections of events, etc. that mean that substantial work by the CPS and solicitor is necessary to prepare the case properly and in the latter case, to advise the client on plea. We fear that proper disclosure will not be able to be made in many cases in time for a virtual court hearing to take place and that matters may be rushed to enable one to proceed. This may make it impossible for solicitors to advise clients properly, resulting in injustice.

20. We have further concerns regarding the ability of the solicitor to give proper legal advice to clients undergoing virtual court hearings. The solicitor may not be at the police station (an accredited representative may be present, or the suspect may not have received any legal advice). The defendant needs to be advised by a solicitor, not merely an accredited representative, for the purposes of the court proceedings. We understand that during the pilot scheme it is envisaged that this could take place over video link. However, we have several concerns about this. Firstly, part of the solicitor's role is to notice and/or take appropriate steps regarding any impropriety or ill-treatment that takes place. Secondly, the solicitor's physical presence at the station helps to deter such activities. Thirdly, the video link conference may not ensure proper confidentiality and may also not provide enough time for proper instructions to be taken and advice given before the court hearing. We are also concerned that the LSC may be proposing to reduce the fixed fee available for virtual court cases and that this may impact on the quality and quantity of work done in relation to these cases.
21. For all these reasons, we believe that the protections of Articles 3, 5 and 6 European Convention on Human Rights may be compromised by the introduction of virtual courts and we advise that this should not proceed.

### **Scrapping stop and account form**

22. We understand the need to reduce police bureaucracy and also to prevent resentment that may be caused when a member of the public is asked to wait while a lengthy form is completed. However, we are concerned that the abandonment of national monitoring of stop and account may lead to a rise in the disproportionate use of this power, in particular against demographic groups such as young black men.
23. If records are kept (including ethnicity records) through audio and individual officers can be called to account for a disproportionate and/or discriminatory use of the power, then this is better than no records being generated. However, we believe that to ensure proportionality and accountability at all appropriate levels – local, force and national, these records should be collated and used to develop national statistics that can be broken down by force and local area.

24. Our other concern is that the record should be made in the presence of the person stopped and that information that this will happen should be printed on the card they are given. They should also be given a telephone number on that card to call in the event of any complaint.

### **Repeal expansion of custody sergeant role to police staff**

25. When the Police and Justice Bill was going through Parliament JUSTICE opposed the move to expand the custody sergeant's post in this way, arguing that the importance of the custody sergeant in monitoring detention meant that a fully accountable and experienced police officer should fill that role. We therefore wholeheartedly welcome the government's recognition in the green paper that the expansion of the role was not appropriate and its reversal.

### **Equality and human rights strategy**

26. We are very concerned to read the green paper's proposed 'equality and human rights strategy'. While non-discrimination in the police workforce and diversity in recruitment are important and necessary goals for the police service, the 'strategy' contains no other human rights element whatsoever. Even if it is only intended to refer to the rights of police officers and staff, human rights in the workplace are not confined to non-discrimination issues.
27. In particular, we would expect a strategy to deal with: safety issues (particularly since policing is by its nature a hazardous occupation) in consequence of the Article 2 ECHR duty to protect the right to life; privacy at work (re Article 8 ECHR); any interferences with religion or belief (Art 9); freedom of expression and association for officers and staff (Arts 10 and 11) and additional rights under employment legislation (regarding working time; etc).
28. Further, it is of great concern that the proposed strategy does not deal with the need to protect the equality and human rights of the public – victims, witnesses, suspects, and others. A coherent and comprehensive strategy is needed to ensure that the police carry out their positive obligations to prevent discrimination and protect human rights, and abide by their obligations not to violate those rights - particularly in the current context of frequently overbroad legislative drafting in the field of police

powers. This should be urgently developed in consultation with the EHRC, human rights organisations, and others.

**JUSTICE, October 2008**