OECD Complaint against Gamma International for possible Violations of the OECD Guidelines for Multinational Enterprises

Complainants:

Privacy International (Lead Complainant)
46 Bedford Row
London WC1R 4LR
United Kingdom

European Center for Constitutional and Human Rights

Reporters Without Borders

Bahrain Center for Human Rights

Bahrain Watch

Contact person:

Eric King
Head of Research, Privacy International
Tel.: +44 (0) 20 7242 2836
Email: eric@privacy.org

Defendant:

Gamma International UK Ltd
Fellows House
46 Royce Close
West Portway Industrial Estate
Andover
Hants SP10 3TX
United Kingdom

Ombudsman:

UK National Contact Point for the OECD Guidelines for Multinational Enterprises
Department for Business, Innovation & Skills (BIS)
3rd Floor Victoria Zone 3
1 Victoria Street
London SW1H OET
United Kingdom

Contents:

I. Introduction
   1. The Complainants
   2. The Defendant
   3. Complainants' previous attempt to make contact
   4. Parallel OECD Complaints

II. About Gamma International
   1. General background
   2. Details concerning the FinFisher product
   3. UK legislation and regulations relating to the product

III. The export destination
   1. General overview
   2. Political repression
   3. Torture
   4. Issues relating to privacy and surveillance
      a. Constitutional and legal framework
      b. Surveillance in practice
   5. Evidence relating to use of FinFisher products in Bahrain

IV. Violations of OECD Guidelines
   1. Method of perpetration
      a. Complicity
         aa. Causation
         bb. Knowledge
         cc. Proximity
   2. Violation of Guidelines
      a. 2011 Edition of OECD Guidelines for Multinational Enterprises

i. Violation of Chapter II. A. 2, in conjunction with Chapter IV. 1
ii. Violation of Chapter II. A. 10, in conjunction with Chapter IV. 5
iii. Violation of Chapters II. A. 11 and 12, in conjunction with Chapters IV. 2 and 3.
iv. Violation of Chapter II. A. 13
v. Violation of Chapter IV. 4
vi. Violation of Chapter IV. 6

b. 2000 Edition of the OECD Guidelines for Multinational Enterprises
i. Violation of Chapter II. 2
ii. Violation of Chapter III. 5

V. The Complainants' expectations
1. Expectations toward the company
2. Expectations toward the National Contact Point

VI. Sources

VII. Annex

I. Introduction

This complaint outlines matters that give grounds to investigate whether Gamma International UK Ltd (hereafter referred to as "Gamma") has violated the 2011 Edition and/or the 2000 Edition of the OECD Guidelines for Multinational Enterprises by supplying and maintaining computer intrusion products from the 'FinFisher' suite for use by the security and law enforcement agencies of Bahrain, thus facilitating access to the communications and online activities of dissidents and political activists in that country and, in some cases, enabling their exposure, arrest and torture.

It is hoped that further investigation by the British National Contact Point (NCP), and thereafter contact with the defendant, will provide an independent non-adversarial arena within which both parties can discuss the concerns raised by this complaint. The overarching aim is to assist as far as possible with protecting the human rights of Bahraini citizens, particularly those groups that are likely to have been specifically targeted by the state such as political opponents, journalists, academics, human rights defenders and lawyers.

The complainants ask the British NCP to ascertain whether the defendant, by supplying (if it is established that the date of the initial supply of FinFisher products took place after 1 September 2011, the date at which the 2011 Edition of the OECD Guidelines came into effect) and maintaining FinFisher products for use by Bahraini authorities since 1st September 2011, has breached the following sections in the 2011 Edition of the OECD Guidelines for Multinational Enterprises:

- Chapter II. A. 2
- Chapter II. A. 10
- Chapter II. A. 11
- Chapter II. A. 12
- Chapter II. A. 13
- Chapter IV. 1
- Chapter IV. 2
- Chapter IV. 3
- Chapter IV. 4
- Chapter IV. 5
- Chapter IV. 6

The complainants also ask the British NCP to ascertain whether, if it is established that the date of the initial supply of FinFisher products by Gamma to Bahraini authorities predated 1 September 2011, the defendant has breached the following sections of the 2000 Edition of the OECD Guidelines for Multinational Enterprises:

- Chapter II. 2
- Chapter III. 5

1. The complainants

Privacy International

Privacy International's mission is to defend the right to privacy across the world, and to fight unlawful surveillance and other intrusions into private life by governments and corporations. We aim to:

- research and raise awareness about threats to privacy;
- monitor and report on surveillance methods and tactics;

- work at national and international levels to ensure strong legal protections for privacy; and
- seek ways to protect privacy through the use of technology.

Privacy International was founded in 1990 and was the first organisation to campaign at an international level on privacy issues. We have advised and reported to international organisations like the Council of Europe, the European Parliament, the OECD and the UN Refugee Agency.

European Center for Constitutional and Human Rights (ECCHR)

The European Centre for Constitutional and Human Rights (ECCHR) is an independent, non-profit human rights organisation dedicated to protecting civil and human rights throughout the world. ECCHR was founded in 2007, its council is Michael Ratner, Lotte Leicht and Dieter Hummel, and they are represented by the Secretary General, Wolfgang Kaleck. In the field of Business and Human Rights, ECCHR uses judicial and quasi-judicial mechanisms to hold European corporations accountable for the impact they have on human rights. ECCHR has a history of working with victims of grave human rights abuses in Egypt and Bahrain. As a result, ECCHR is targeting European corporations who facilitate, or are complicit in, human rights abuses by these countries' governments.

Reporters Without Borders

Reporters Without Borders is an international non-governmental organisation that advocates freedom of the press and freedom of information. It was founded in France in 1985 and was registered as a non-profit organisation in 1995. Jean-François Juillard has served as Secretary General since 2008. Reporters Without Borders monitors attacks on freedom of information worldwide, denounces any such attacks in the media, acts in cooperation with governments to fight censorship and laws

aimed at restricting freedom of information, morally and financially assists persecuted journalists, and offers material assistance to war correspondents in order to enhance their safety.

Bahrain Center for Human Rights

The Bahrain Centre for Human Rights (BCHR) is a non-governmental organisation that defends and promotes human rights in Bahrain. It has been registered with the Bahraini Ministry of Labor and Social Services since July 2002. Its current president is Nabeel Rajab. BCHR encourages and supports individuals and groups to be proactive in the protection of their own and others' rights, and promotes democracy and human rights in accordance with international norms.

Bahrain Watch

Bahrain Watch was formed in February 2012 by a group of activists and researchers with personal and academic ties to Bahrain. It is an independent research and advocacy organisation, whose initial purpose was to investigate claims by the Bahraini government that it had instituted a number of human rights and democratic reforms. According to the organisation's website, its goals have broadened to include research and advocacy on all forms of government in Bahrain, including political reform, economic development and security. Its key members include Ala'a Shehabi, Bill Marczak and Marc Owen Jones.

2. The defendant

Gamma International (UK) Ltd is part of the Gamma Group of companies. It is based in the Gamma Group's development headquarters in Andover, Hampshire and owned by William Louthean Nelson, who is listed as having addresses in Salisbury, Hamburg and Beirut. The developer of FinFisher and

Managing Director of Gamma's German-based unit (in Munich) is Martin Muench. The FinFisher portfolio of products is marketed and sold by Gamma International (UK) Ltd.

3. Complainant's previous attempt to make contact

On 2nd March 2012, Eric King of Privacy International sent a letter to Gamma Group asking a number of questions regarding the company's human rights policies and practices. Specifically, he enquired whether Gamma Group had a human rights due diligence policy and whether the company would be willing to provide a copy. He also enquired whether Gamma Group was, or intended to be, involved in manufacturing and supplying software and services to countries classed as 'Not Free' (as defined by Freedom House's *Freedom in the World* survey). A response was received on 27th August 2012, which stated that Gamma was in the process of formulating a human rights due diligence policy that they would be willing to discuss with Privacy International. In response to questions concerning their dealings with 'Not Free' countries, Gamma stated that it does not discuss its client base because its clients do not wish their identities to be disclosed and because Gamma does not want the "*criminals*" being targeted by Gamma's products to receive details of the system being used against them so that they could "*avoid being brought to justice*". The letter also states that Gamma has an overarching policy which recognises sovereign states' rights to transfer electronic means of self-defence, to protect themselves from espionage and terrorism, and to obtain information relating to individuals' actions and intentions in the interests of national security, economic well-being or for the prevention of serious crime. It was also stressed in the letter that Gamma complies with Export Control Authorities in the UK and Germany.

Eric King also exchanged a series of emails with Martin Muench, Managing Director of Gamma International, between 8th August 2012 and 5th

September 2012. In these emails, Mr Muench expressed a desire to meet with Mr King in secret to discuss the nature of the FinFisher products and Privacy International's views on the products and export controls, as well as Gamma Group's human rights due diligence policy. Mr Muench made it clear that he would only be willing to meet if the meeting was informal and entirely off the record, and on the understanding that nothing discussed during it could ever be publicly disclosed by Privacy International. After careful consideration, Mr King did not agree to the meeting on the basis that PI's supporters and funders would want any engagement with Gamma and its representatives to be as open and transparent as possible, and ideally within official channels.

4. Parallel OECD Complaints

On 1st February 2013, Privacy International and its partner organisations filed a parallel OECD Complaint against Trovicor GmbH at the German National Contact Point.

Like Gamma, Trovicor develops, supplies and maintains surveillance technology. Media reports[1] have linked Trovicor's software to Bahrain. Trovicor's and Gamma's technologies complement each other and can be used together. Gamma highlights certain compatible Trovicor products in its marketing material.

II Gamma International

1. General background

[1] See, e.g., International Society for Human Rights, 'Middle East: German technology used against democratic movements', 29th August 2011, available at: http://www.ishr.org/Detailansicht.697+M5e490bfdd7b.0.html

Gamma International (UK) Ltd is part of the Gamma Group of companies. The Gamma Group was established in 1990 and consists of Gamma TSE, G2 Systems, Gamma International (UK) Ltd and Gamma Group International. Gamma Group also has a partnership with Elaman GmbH, a company based in Munich. The Group supplies advanced technologies, as well as providing training and consultancy services to State Intelligence Departments and Law Enforcement Agencies. Gamma International (UK) Ltd provides FinFisher IT Intrusion technologies and IT Intrusion Training.

Gamma operates from its headquarters in Andover, United Kingdom. Its employees, who are described on the company's website as "*world-class intrusion and IT experts*", have invented and developed the FinFisher portfolio of products that are the focus of this Complaint.

2. The FinFisher products

The following information concerning the FinFisher products is detailed on Gamma's website:

"Working out of our development headquarters in Andover, United Kingdom, Gamma International's world-class intrusion and IT experts have invented a portfolio of intrusion products called FinFisher.

The FinFisher product portfolio is solely offered to Law Enforcement and Intelligence Agencies.

The FinFisher suite can be used as individual products and when interconnected give intelligence agencies advanced tools for unsurpassed IT investigation and surveillance techniques within the IT environment."[2]

[2] Gamma Group website: https://www.gammagroup.com/

The FinFisher products work by installing malicious software (malware) onto a user's computer or mobile phone without the user's knowledge. This is accomplished by tricking the user into downloading fake updates from what appear to be legitimate sources, such as BlackBerry, iTunes, or Adobe Flash. Once the user accepts these updates, the computer or mobile phone is infected, enabling full access to the information held on it, including access to the user's emails, social media messaging and Skype calls. It also becomes possible to remotely operate microphones and cameras on computers and mobile phones, so that the targeted device is turned into a bug – one that the targeted individual unknowingly keeps in close proximity.

Analysis of emails received by targets whose devices were infected (see in detail under section III. 5, below) by security researchers at CitizenLab and Bill Marczak, a doctoral student at the Department of Electrical Engineering and Computer Science at the University of California, Berkeley, reveals that the malware acts as a "Trojan", taking screen shots, intercepting voice-over-Internet calls, and transmitting a record of every keystroke.[3]

The FinFisher products have been described in a Bloomberg report as:

"technologies [...] which mark the next step in the digital arms race, [...] whose programs, once installed, transmit an infected computer's activities. They are the retail cousins of state-made cyber weapons such as the Stuxnet computer worm, which damaged centrifuges in an Iranian nuclear plant and was jointly developed by the U.S. and Israel, according to the New York Times."[4]

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[3] Vernon Silver, Bloomberg, Cyber Attacks on Activists Traced To FinFisher Spyware of Gamma, 25th July 2012, available at: http://www.bloomberg.com/news/2012-07-25/cyber-attacks-on-activists-traced-to-finfisher-spyware-of-gamma.html

[4] *Ibid.*

One of the FinFisher products, the FinFly LAN, is marketed for use for surveillance of individuals staying in hotels. An Intelligence Note of 8th May 2012 prepared by the Internet Crime Center (IC3)[5] states that: *"[r]ecent analysis by the FBI and other government agencies demonstrates that malicious actors are targeting travelers' [sic] abroad through pop up windows while establishing an Internet connection in their hotel room."*

A product called FinFly ISP allows a server to be inserted into the core internet network of an internet provider to facilitate infection of specific targets' computers. Another product, FinSpy Mobile, operates in a similar way to infect mobile phones.

The FinFisher product portfolio has been marketed with promotional videos that are now in the public domain following a release by Wikileaks in 2011.[6] The promotional video with images and subtitles shows:

- A simulation of an agent deploying *"the FinFly ISP server into the Core Network"*
- *"FinFly ISP [analysing] traffic for easy Target Identification"*
- *"The Target [using] his private DSL or Dial-Up Account"*
- *"FinFly ISP [sending] a fake iTunes update to the Target System"*
- That *"[t]he Target System is now infected with the FinSpy software"*
- That *"[t]he Headquarters has full access to the Target System"*

FinFisher software requires regular maintenance. It is customary in trade maintenance contracts to include clauses regarding regular upkeep and servicing of software, and provision of updates to the system for the purpose of advancement and development of the technology. Such contracts normally also require company employees to be sent to the

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[5] See Annex 1
[6] *Ibid.*

customer countries to conduct on-site maintenance, as well as to provide face-to-face system training.

Gamma's website does not state which countries it has sold FinFisher products to. However, Mr Muench has stated that his company only supplies these products to governments. In a 2012 statement to the Guardian, Mr Muench said that "*Gamma International UK Limited manufactures equipment for dealing with security related threats and it supplies only to governments.*"[7] He also stated that it "*complies, in all its dealings, with all relevant UK legislation and regulation.*"

3. UK legislation and regulations relating to the product

The relevant UK legislation and regulation includes the Export Control Act 2002[8] ("the 2002 Act") and the Export Control Order 2008[9] ("the 2008 Order"). The 2008 Order came into force on 6th April 2009, and outlines national controls on the export of military, paramilitary and dual-use goods. According to sections 1 to 4 of the 2002 Act, the Secretary of State has the power to make orders regarding the imposition of export controls, transfer controls, technical assistance controls and trade controls in relation to goods and technology. Section 5(2) provides that controls "*may be imposed for the purpose of giving effect to any Community provision or other international obligation of the United Kingdom*". Section 5(4) provides that export controls "*may be imposed in relation to any description of goods within one or more of the categories specified in the Schedule for such controls*". Paragraph 2(1) of the Schedule provides that such controls

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[7] Jamie Doward, The Guardian, Crackdown on sale of UK spyware over fears of misuse by repressive regimes, 9th September 2012, available at: http://www.guardian.co.uk/world/2012/sep/09/block-on-exports-surveillance-equipment

[8] This Act can be found at: http://www.legislation.gov.uk/ukpga/2002/28/contents

[9] This Order can be found at: http://www.legislation.gov.uk/uksi/2008/3231/contents/made

"may be imposed in relation to any goods the exportation or use of which is capable of having a relevant consequence". Paragraph 3(2)(D) specifies as relevant consequences *"the carrying out anywhere in the world of (or of acts which facilitate)...internal repression in any country [or] breaches of human rights".*

The UK is also a party to the Wassenaar Arrangement. This governs the international trade in conventional arms, as well as 'dual-use' goods and technologies (those goods and technologies that can be used for both military and civilian purposes). The 41 Participating States maintain a list of relevant goods and technologies in relation to which they have agreed to impose national export controls. This list has formed the basis of the EU legislation that controls dual-use technology at EU level, in particular, Council Regulation (EC) No 428/2009[10], which establishes a European regime for the control of exports, transfer, brokering and transit of certain dual-use goods ("the Dual-Use Regulation"). This came into force on 27th August 2009.

The Treasury Solicitor's Department has indicated in a letter[11] to Privacy International's solicitors, dated 8th August 2012, that the FinSpy system, part of the FinFisher portfolio of products, is listed under Category 5, Part 2 ('Information Security') of Annex I to the Dual Use Regulation. A licence is therefore required for Gamma to export these products outside the European Union. This is because the product is designed to use controlled cryptography and thus falls within the scope of the Annex to the Dual-Use Regulation. The letter from the Treasury Solicitors stated that this was confirmed by the Secretary of State, who carried out an assessment of the FinSpy system. According to the letter, the Secretary of State also

[10] This Regulation can be found at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:134:0001:0269:en:PDF

- [11] See Annex 1.

understands that other products in the FinFisher portfolio could be controlled for export in the same way.

The UK Department for Business, Innovation & Skills ("BIS") has confirmed in a letter[12] to Privacy International's solicitors, dated 11th September 2012, that Gamma has not sought any licences to export the FinSpy system and/or provide technical assistance.

On 9th November 2012, Privacy International wrote to Her Majesty's Revenue and Customs ("HMRC"), which is responsible for enforcement of the export regulations and policies set by BIS, and included a 186-page dossier of evidence concerning Gamma and its products. The letter stated that, if Gamma had continued to export FinFisher products to countries outside the EU without a licence, the company was acting in breach of UK export regulations and was thus engaged in criminal conduct. It also commented that, while Gamma has been exporting FinFisher since 2006, it had only submitted a Control List Classification request (the mechanism whereby companies ask HMRC whether or not their products require export licences) in July 2012. The letter requested a response within 14 days, but no conformation as to whether an investigation is taking place has been received.

III The export destination

It is not firmly established exactly which countries across the Middle East, Central Asia and Africa have access to the FinFisher products that are produced and developed by Gamma. Material in the public domain suggests that the FinSpy system, part of the FinFisher suite of products, has been used in Egypt, Turkmenistan, Bahrain, Dubai, Ethiopia, Indonesia, Mongolia and Qatar. Of these, the most significant evidence concerns use of FinFisher products in Bahrain. Accordingly, this Complaint will focus on

[12] See Annex 1.

that evidence, but Privacy International believes the situation in Bahrain to be illustrative of a much wider problem.

1. General overview

Bahrain, officially the Kingdom of Bahrain, is a constitutional monarchy headed by King Shaikh Hamad bin Isa Al Khalifa. The king has the power to appoint the Prime Minister and his ministers, command the army, and chair the Higher Judicial Council. The head of the government is the Prime Minister, Shaikh Khalifa bin Salman Al Khalifa, who is the current king's uncle and has been Prime Minister for forty years. In 2010, roughly half the government was composed of the Al Khalifa family.[13] The population of Bahrain currently stands at 1,323,535.[14]

Bahrain's human rights record has been described by the Human Rights Watch as "*dismal*", and having "*deteriorated sharply in the latter half of 2010*".[15] Since 2011 there has been a brutal crackdown on pro-democracy protestors, in the wake of pro-democracy uprisings across the Middle East in 2011. There have been reports by both Human Rights Watch and Amnesty International in 2011 of serious human rights abuses, including the arbitrary detention and systematic torture of protestors exercising their right to free expression and peaceful assembly.

On 29th June 2011, King Hamad bin Isa Al Khalifa set up the Bahrain Independent Commission of Inquiry (BICI), the purpose of which was to

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[13]Al Jazeera, Bahrain Shia demand cabinet change, 5th March 2010, available at: http://www.aljazeera.com/news/middleeast/2010/03/2010356756685605.html

[14]Data from the World Bank, 2012, available at: http://www.google.co.uk/publicdata/explore?ds=d5bncppjof8f9_&met_y=sp_pop_totl&idim=country:BHR&dl=en&hl=en&q=the+population+of+bahrain

[15] Human Rights Watch, World Report 2011: Bahrain, available at: http://www.hrw.org/world-report-2011/world-report-2011-bahrain

investigate possible human rights violations that occurred in Bahrain during February and March 2011.[16] The commission concluded that security forces and other government authorities had committed serious and systematic human rights violations in connection with the government's suppression of pro-democracy protests in 2011. The BICI report was drafted by the former UN Special Rapporteurs and well-known experts in international law, Prof. Dr Sherif Bassiouni and Prof. Dr Sir Nigel Rodley.

2. Political repression

It is illegal in Bahrain to criticise the political system. Specifically, it is an offence to expressly incite others to develop hatred or hostility towards the system of government,[17]and to offend the National Assembly, other constitutional institutions, the army, law courts, authorities, or government agencies.[18] Criminal offences also include participation in public meetings abroad in order to talk about political, social and economic conditions in Bahrain[19], and circulation of pictures harming the reputation of the State of Bahrain[20]. Journalists are not free to work effectively since press and internet freedoms are highly restricted.[21] The use of filtering and blocking of political websites has only intensified since the upheavals in Spring 2011,[22]and numerous internet activists have been reported as missing.

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[16]Bahrain News Agency, HM King Hamad Sets up Royal Independent Investigation Commission, 29 June 2011, available at: http://bna.bh/portal/en/news/462963
[17]Bahrain Penal Code, Art. 165.
[18]*Ibid.*, Art. 216.
[19] *Ibid.*, Art. 165.
[20] *Ibid.*, Art. 174.
[21] Reporters without Borders, *Internet Enemies Report 2012*, available at: http://en.rsf.org/IMG/pdf/rapport-internet2012_ang.pdf
[22] *Ibid.*

Exercising the rights of freedom of expression and freedom of association in Bahrain can easily lead to arrest.[23]The targeting of political activists and dissidents has also increased since 2011, and is being facilitated by German surveillance technology.[24] In many cases, arrest is followed by abusive interrogation and torture. The rate of arbitrary detentions increased after Bahrain declared a state of emergency on 15th March 2011.[25] In September 2011 the Ministry of Interior publicly announced that anyone calling for protest or demonstration against the Kingdom of Bahrain online would be arrested.[26]

In most cases, dissidents who have been arrested do not receive a fair trial or legal assistance. Judges are neither independent nor impartial.[27] Dissidents often face heavy custodial sentences or, in some cases, the death penalty.

3. Torture

There have been continuing allegations of torture and ill treatment of opposition activists and human rights defenders, in particular under the rule of King Sheikh Hamad bin Isa Al Khalifa. These have intensified since April

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[23]Mepham, D., (2012) 'Don't Kid Yourselves: Bahrain Hasn't Changed', *Human Rights Watch* https://www.hrw.org/news/2012/04/18/don-t-kid-yourselves-bahrain-hasn-t-changed

[24] Wagner, Ben. 2012 "After the Arab Spring: New Paths for Human Rights and the Internet in European Foreign Policy." European Commission, Directorate-General for Economic and Financial Affairs, Brussels, Belgium, available at: http://www.europarl.europa.eu/committees/en/studiesdownload.html?languageDocument=EN&file=75431

[25]REDRESS, *Universal Periodic Review, Bahrain, 13th Session May-June 2012, Submission by the Redress Trust,* 2011.

[26] Privacy International, *Surveillance briefing: Bahrain*, 2011, available at: https://www.privacyinternational.org/reports/surveillance-briefing-bahrain

[27] Amnesty International Report, *Bahrain Harsh Jail Terms for Opposition Figures*, 23 June 2011, available at: http://www.amnesty.org/en/library/asset/MDE11/036/2011/en/a23be4fc-3470-48dc-b44b-205772baa286/mde110362011en.pdf

2011 as Bahraini authorities have attempted to bring pro-democracy reform protests under control. The U.N. Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment has remarked on the use of torture in Bahrain in his report from 2012.[28] According to the Bahrain Center for Human Rights[29], in February 2009 several key human rights defenders in Bahrain were arbitrarily arrested and detained including Abbas Abdul Aziz Al-Umran, Sayed Sharaf Ahmed, Ali Hassan Salman, and Jaafar Kadhim Ebrahim. Some of those arrested alleged that they had been prevented from sleeping, tied up for long periods and denied medical attention. Others said that they had been sexually assaulted whilst in detention. A disturbing 64% of those detained during the uprising in April 2011 reported being tortured.[30]

There is also the worrying issue of immunity from prosecution for past violations. In 2001, the King pardoned all those involved in the political violence of the 1990s, and freed hundreds of prisoners. Under the 2002 Royal Decree 56, amnesty was also granted to all state security officers who may have committed human rights abuses before 2001. Under this Decree, the Bahraini Public prosecutor has refused to accept any complaints of torture lodged against security officials, and no individuals have been charged or tried by the state, despite sustained pleas by international human rights groups.

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[28]U.N. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 29 February 2012, A/HRC/19/61/Add.4, available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/110/40/PDF/G1211040.pdf?OpenElement

[29]Bahrain Center for Human Rights, Bahrain: Deteriorating situation for human rights defenders, 2nd March 2009, available at: http://www.bahrainrights.org/en/node/2779

[30]Report by Bahrain Center for Human Rights, Bahrain: the Human Price for Freedom and Social Justice, 22nd November 2011, available at: http://bahrainrights.org/BCHR/wp-content/uploads/2011/11/BahrainTheHumanPrice.pdf

Amnesty International and Human Rights Watch have been calling for independent investigations into allegations of torture since the end of 2007. Many national and international human rights organisations, in particular the Bahrain Center for Human Rights, have been active in reporting allegations of torture during the period of repression that followed mass arrests in April 2011.

The reports of these human rights organisations concerning arbitrary detention and systematic torture by Bahraini security agencies have been confirmed by the independent expert commission, BICI. This commission was wholly independent from the Bahraini government and was granted access to all government agencies, officials and files. The BICI report identifies around 559 incidents during February and March 2011 that qualify as torture.[31]

4. Issues relating to privacy and surveillance

a. Constitutional and legal framework

Article 26 of the Bahraini Constitution provides for the secrecy of all telegraphic, postal and telephonic communications, and states that no communication content may be revealed except in cases of necessity prescribed by the law and in accordance with legal procedure.[32]

The Code of Criminal Procedures (Decree No. 46 of 2002) allows for monitoring of telephone and email communications where it would be useful in securing a conviction. Permission must be obtained from a Lower Court Judge, and the length of seizure, censorship or recording may not

[31] Report of the Bahrain Independent Commission of Inquiry, 2011, available at: http://files.bici.org.bh/BICIreportEN.pdf
[32]Constitution of the State of Bahrain, available at: http://confinder.richmond.edu/admin/docs/Bahrain.pdf

exceed 30 days.[33] However, the Law on Protecting Society from Terrorism (Decree No. 58 of 2006) appears to have weakened the warrant requirements for surveillance. This law enables the Attorney General, or whoever acts for him, where a suspected crime may "*cause public disorder*", to order surveillance of communications by any method and to record anything that takes place in public or private premises. The surveillance may continue for a period of up to 60 days.[34] In addition, the Lawful Access Regulation, which was adopted in 2009 by the Telecommunications Regulatory Authority appears to provide scope for unlimited access to such data: it effectively allows for the collection and retention of all communications data generated by users for one year. Government bodies that deal with or are concerned with security matters are able to demand access to any data, as and when they see fit. The Regulation also requires telecommunications providers to adopt content surveillance capabilities into their systems and programs, and to enable security officials to intercept and monitor phone calls, text messages and internet usage.

b. Surveillance in practice

There is widespread monitoring and censorship of internet usage by the Bahraini government. Censorship is particularly heavy in relation to political websites that criticise the government and the ruling family, and websites that are critical of Islam. The government uses the Press Law 2002 (Law 47/2002) to block and shut down certain websites and to prosecute journalists and activists for criticising the government, insulting the king, or inciting hatred against the government.[35] In September 2008, for example, the website wattani.net was referred by the Bahraini Ministry of Information

[33] http://www.vertic.org/media/National%20Legislation/Bahrain/BH_Code_Criminal_Procedure.pdf
[34] https://www.unodc.org/tldb/showDocument.do?documentUid=8520
[35] OpenNet Initiative, Bahrain report, 6th August 2009, available at: http://opennet.net/sites/opennet.net/files/ONI_Bahrain_2009.pdf

to the Public Prosecution for violating provisions of the Press, Printing and Publishing Law.[36]

The Ministry of Information has set up a special unit that monitors, blocks and shuts down websites. In 2009, the Ministry of Information declared that it can order a website to be blocked without referring the case to court.[37] In addition, a stipulation in the Legislative Decree no. 48 of 2002 Promulgating the Telecommunications Law allows *"security organs to have access to the network for fulfilling the requirements of national security"*.[38]

A report by Privacy International states:

"Government agencies have demonstrated that they can react quickly to breaking news and intensify the filtering and blocking of websites at key times. Following the start of pro-democracy demonstrations in Manama on 14 February 2011, Internet traffic to and from Bahrain, allegedly dropped by 20% compared to the three preceding weeks, indicating increased filtering being used in response to the events occurring in the country. At this time, communications monitoring and surveillance also intensified; activists as well as their family members were routinely interrogated on the basis of communications transcripts. Filtering and blocking of websites was intensified again on the anniversary of the original uprising in February 2012. According to Reporters Without Borders, this was again accompanied by strengthened and expanded surveillance measures to include human rights activists and their close friends and relatives."[39]

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[36] Bahrain Center for Human Rights, Website accused of violating press code, BCHR concerned that move is aimed at silencing critical voices, available at: http://www.bahrainrights.org/en/node/2446
[37] OpenNet Initiative, Bahrain report, http://opennet.net/sites/opennet.net/files/ONI_Bahrain_2009.pdf
[38] *Ibid.*
[39] Privacy International Report, "Surveillance briefing: Bahrain", July 2012, https://www.privacyinternational.org/reports/surveillance-briefing-bahrain

The Bahrain Independent Commission of Inquiry report has stated that the National Security Agency, which is responsible for collecting surveillance data and analysing political developments in Bahrain, has been monitoring the activities of several individuals and groups who are potentially a threat to "*national security*".[40] The report also states that the criminal investigation department was engaged in collecting information about demonstrations in order to interrogate detainees and thereby gain information about political activism in the country. These interrogations were frequently accompanied by ill treatment and/or torture.[41]

There have been several significant allegations of privacy infringement and abuses involving potentially unlawful surveillance programmes by the government, including:

Salah Al-Bandar, a British citizen who worked as an adviser in the Bahraini government's Cabinet Affairs Ministry, was deported to the UK in September 2006 for leaking a report describing how the government allegedly attempted to rig elections, manipulate the country's sectarian balance, and ensure Sunni domination over the majority Shi'ite population. The supporting material in this report includes documents such as cheques, hotel bills, accounting sheets and notes.[42] Al-Bandar claimed that the government was complicit in upholding unlawful surveillance practices against political opposition parties and civil organisations.[43]

In August 2010 **Abdul Ghani Al-Khanjar**, a school administrator and human rights activist, was detained by the Bahraini government for six

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[40] Report of the Bahrain Independent Commission of Inquiry, 2011, S. 54, para. 153.
[41] *Ibid.*, s. 53, para. 149.
[42] Zara Al Sitari, Bahrain Center for Human Rights, "Al Bander Report": Demographic engineering in Bahrain and mechanisms of exclusion, September 2006, available at: http://www.bahrainrights.org/node/528
[43] Report of the Bahrain Independent Commission of Inquiry, 2011, available at: http://www.bici.org.bh/BICIreportEN.pdf

months. During his interrogation, he was shown transcripts of text messages and mobile phone calls dating back to 2009. Mr Khanjar was reportedly unaware that government officials had access to these private communications and was unsure of how they had managed to obtain them.[44] Ahmed Aldoseri of the Telecommunications Regulation Authority commented: *"If they have a transcript of an SMS message, it's because the security organ was monitoring the user at their monitoring center."*[45] It is also reported that Mr Khanjar was tortured by Bahraini authorities as part of his interrogation. Bloomberg News reported that *"Bahraini jailers armed with stiff rubber hoses beat [Khanjar] in a windowless room two stories below ground in the [...] National Security Apparatus building. [...]If he refused to sufficiently explain his communications, he was sent back for more beatings."*[46]

In March 2012 **Alyaa Mohammed**, a student at the University of Bahrain, was questioned by university staff, who asked her if she had written the phrase 'Down with Hamad' on her BlackBerry Messenger in January 2012. Alyaa stated that she did write the phrase but that it was in reference to her boss at the law firm at which she was interning, and not to the king. Alyaa was suspended from the university for a term, and claims that, in a letter she received concerning the suspension, her 'crime' was writing *"phrases that insult His Majesty the King"* on her mobile phone and sending them to colleagues.[47]

5. Evidence relating to the use of FinFisher products in Bahrain

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[44] Vernon Silver and Ben Elgin, Bloomberg, Torture in Bahrain Becomes Routine With Help From Nokia Siemens, 22nd August 2011, available at: http://www.bloomberg.com/news/2011-08-22/torture-in-bahrain-becomes-routine-with-help-from-nokia-siemens-networking.html

[45] *Ibid.*

[46] *Ibid.*

[47] Brian Dooley, Bahrain Center for Human Rights, HRF: Bahrain student suspended for phone message, 4th June 2012, available at: http://www.bahrainrights.org/en/node/5311

There is cogent and substantial evidence that FinFisher products have been used to target three specific Bahraini pro-democracy activists. It is highly likely that many more individuals have been targeted and that the cases of these three individuals are illustrative of a more widespread phenomenon.

i) Ala'a Shehabi

In July 2012 Bloomberg News[48] reported that Ala'a Shehabi, a UK-born economist and Bahraini pro-democracy activist, received suspicious emails purporting to contain news on topics of interest to her, including torture and prisoners, while in Manama, capital of Bahrain. These emails were received in April and May 2012. She did not open the links, and subsequently forwarded the emails to Bloomberg.

Detailed tests and analysis were conducted on these emails by Morgan Marquis-Boire, a security researcher at Citizen Lab. His report was published on 9th July 2012, entitled 'From Bahrain with Love: FinFisher's Spy Kit exposed?'[49] A further report authored by him was published by him on 11th August 2012, entitled 'The Smartphone Who Loved Me: FinFisher Goes Mobile?'.[50] Mr Marquis-Boire's research suggested that the malware sent to Ms Shehabi's computer was a Trojan that stole the password to her email account, which was then accessed without her permission. The analysis also shows that the malware came with a product label for FinSpy: the computer code with the malicious program installed on Shehabi's

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[48] Vernon Silver, Bloomberg, Cyber Attacks on Activists Traced To FinFisher Spyware of Gamma, 25th July 2012, available at: http://www.bloomberg.com/news/2012-07-25/cyber-attacks-on-activists-traced-to-finfisher-spyware-of-gamma.html

[49] The report can be found at: http://citizenlab.org/2012/07/from-bahrain-with-love-finfishers-spy-kit-exposed/; see Annex 1.

[50] The report can be found at: https://citizenlab.org/2012/08/the-smartphone-who-loved-me-finfisher-goes-mobile/ ; see Annex 1.

computer bore multiple instances of the word 'FinSpy'. According to the Bloomberg report:[51]

"Marquis-Boire extracted a signature from the [...] samples – a sort of digital DNA. He then gave the signature to other researchers to see if they could find a matching sample they might have collected in the course of their work. The needle-in-a-haystack search came up with a match: a program that bore the hallmarks of a demonstration copy of FinFisher.

The evidence that the new sample they found was FinFisher itself was persuasive, Marquis-Boire said, because the presumed demo connected back to two websites, one with "ff-demo" in the name and the other with "gamma-international" in the name. The latter website, in turn, was registered to Martin Muench at Gamma International in Munich."

Bill Marczak, a doctoral student at the University of California, Berkeley, also received samples from Shehabi. He installed these samples on a 'virtual machine' on his laptop and monitored the Trojan's behaviour. He traced transmissions back to an Internet address in Manama. On receiving a further sample from Bloomberg News, he discovered it led to the same internet address. Bloomberg reported:

"Marczak made a Skype call on his infected machine in California, he watched the Trojan grab the data – and send it to Bahrain [...]."[52]

ii) Husain Abdulla

Husain Abdulla, a naturalised US citizen who owns gas stations in Alabama and is the Director of 'Americans for Democracy and Human Rights in

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[51] Vernon Silver, Bloomberg, Cyber Attacks on Activists Traced To FinFisher Spyware of Gamma, http://www.bloomberg.com/news/2012-07-25/cyber-attacks-on-activists-traced-to-finfisher-spyware-of-gamma.html

[52] *Ibid.*

Bahrain' was also reported by Bloomberg News[53] to have been targeted. He reportedly attempted to download an attachment sent to his BlackBerry in May 2012 entitled 'Existence of a New Dialogue' whilst in Washington DC. Marczak's and Marquis-Boire's analysis of the email and attachment yielded evidence similar to that found in the case of Ms Shehabi's computer, indicating that Mr Abdulla's Blackberry had also been infected by FinFisher malware. It is reported that Mr Abdulla is considering taking legal action, including filing a complaint to the US State Department.[54]

iii) Shehab Hashem

The Bloomberg report also asserted that Shehab Hashem, a London-based Bahraini activist, was targeted in April and May 2012. Mr Hashem claimed that he received three emails on his computer in London after travelling to Sweden and Switzerland, which drew attention to human rights violations in Bahrain. Bloomberg reports that two of these were identical to the emails received by Ms Shehabi.[55] The other email was sent to Bloomberg News and formed part of Mr Marquis-Boire's study.

Mr Muench claimed in a subsequent Bloomberg report that his company has not sold its products to Bahrain.[56] He further claimed that a copy of an old FinSpy demo version that was made during a presentation may have been stolen using a flash drive and then modified and used elsewhere. He stated: *"The modification meant that there was no message sent to our server when the demo product was used against a real target."*[57] However, Bahrain Watch has found that two different versions of FinSpy (believed to be versions 4.00 and 4.01) were used in Bahrain, which is inconsistent with

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[53] *Ibid.*
[54] *Ibid.*
[55] *Ibid.*
[56] Vernon Silver, Bloomberg, Gamma Says No Spyware Sold to Bahrain May Be Stolen Copy, 27th July 2012, available at: http://www.bloomberg.com/news/2012-07-27/gamma-says-no-spyware-sold-to-bahrain-may-be-stolen-copy.html
[57] *Ibid.*

Mr Muench's claim that a single demonstration version was stolen. Both versions communicated with the same server in Bahrain. In response to Mr Muench's further claim that, had the spyware communicated with Gamma, '*the company would have been able to deactivate that copy of the software*'[58], Mr Marquis-Boire's and Mr Marcazk's expert reports have found that Bahrain's FinSpy server appears to be receiving regular updates, as of the date of this submission. These updates are likely to be from Gamma.

The plausibility of Bahraini officials hacking into Gamma's servers to steal the spyware has been questioned by others, and it is has been claimed by Christopher Soghoian, a Washington DC-based privacy researcher and activist, via Twitter that this is a common excuse of suppliers of surveillance software. Significantly, the New York Times reported[59] that in August 2012 the security firm Rapid7 studied the communications structure of the spyware, using the same samples as those examined by Mr Marquis-Boire and Mr Marczak, and that their findings contradicted Mr Muench's claim that the FinSpy samples were stolen demonstration copies. According to the New York Times report:

" the imbalance between the sophistication of the spyware and its distribution techniques contradicts Mr. Muench's version of events. The spyware, researchers say, is highly sophisticated, particularly in its obfuscation, which circumvents more than 40 antivirus products on the market. But the unsophisticated way in which it is distributed — in suspicious e-mails rather than through sophisticated or even well-known security exploits, and from easily traceable command-and-control servers

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[58] *Ibid.*

[59] Nicole Perlroth, The New York Times Bits, Elusive FinSpy Spyware Pops Up in 10 Countries, 13th August 2012, available at: http://bits.blogs.nytimes.com/2012/08/13/elusive-finspy-spyware-pops-up-in-10-countries/

— suggests that those who engineered the spyware are much more sophisticated than those who distributed it."[60]

Mr Muench reportedly stated *"I can speculate that probably the demonstration version may have been stolen using a flash drive but I have no evidence to support this."*[61]

The complainants are concerned that Gamma is generally undiscerning about the governments to whom it markets and supplies its products, and there is therefore good reason to believe that FinFisher products were marketed or supplied directly to the Bahraini authorities by the company. As discussed under the specific OECD Guidelines violations (section IV below), Gamma did not (as of August 2012) have a human rights due diligence policy, and there is no evidence of any other statement from the company that it does not sell to repressive regimes or countries that are known to perpetrate serious and systematic human rights violations. Mr Muench has publicly stated that the company only sells its products to governments, but this clearly does not preclude it from selling its FinFisher products to the Bahraini security and law enforcement agencies. FinFisher promotional materials currently in the public domain do not name the company's clients.

IV. Violations of OECD Guidelines

1. Method of Perpetration

a. Complicity

If Gamma has supplied and maintained FinFisher products for used by the governments and/or law enforcement and intelligence agencies of Bahrain, where they are highly likely to be used for breaches of human rights,

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[60] *Ibid.*

[61] Vernon Silver, Bloomberg, Gamma Says No Spyware Sold to Bahrain May Be Stolen Copy, http://www.bloomberg.com/news/2012-07-27/gamma-says-no-spyware-sold-to-bahrain-may-be-stolen-copy.html

including arbitrary arrest, torture and breach of the right to privacy, it is arguable that the company has committed violations of the OECD guidelines listed below by aiding and abetting Bahraini officials in perpetrating these human rights violations, and supporting and providing the means for them to do so. The present case is one of direct complicity (distinguishable from beneficial and silent complicity), insofar as it is being complained that the company has assisted the perpetrators by providing means and resources that help commit the crime.[62]

According to various international scholars such as those working for the International Commission of Jurists (ICJ)[63], a company may be liable for complicity in gross human rights abuses under the conditions listed below.[64] Such reasoning is applicable to the present issue because it reflects the widely accepted standards of corporate liability under international law, which is applicable to international standards like the OECD guidelines for Multinational Enterprises.

aa. Causation

According to the ICJ, the definition of causation requires the company's conduct to enable, exacerbate or facilitate the abuses committed by the principal.[65] 'Enables' is explained thus: "*without the company's conduct the abuses would not have occurred*"[66]; 'exacerbates' is defined as "*[t]he*

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[62] See Bazela, M., 'Corporate Complicity in Human Rights Violations: When Is It Time To Leave A Country?' *Informacion Filosofica*, Vol. VIII (2011) num. 17 (pp. 55-72) for definitions and distinctions of direct, beneficial and silent complicity.
[63] International Commission Of Jurists, Corporate Complicity & Legal Accountability, Volume 1, p. 8.
[64] Their views are corroborated by case law from international tribunals and national courts.
[65] International Commission of Jurists, *Corporate Complicity & Legal Accountability*, Volume 1, p. 10.
[66] *Ibid.* p. 11.

company's conduct makes the abuses and the harm worse"[67]; and 'facilitates' as "*the company's conduct changes the way the abuses are carried out*".[68]

The international standard defining the *actus reus* of liability in international law, which is consistently applied by US courts in the context of corporate complicity liability and widely accepted in the relevant academic literature, is that of "*practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime.*"[69] The assistance "*need not constitute an indispensable element, that is, a condition sine qua non for the acts of the principal.*"[70] The relationship between the acts of the accomplice and of the principal must be such that "*the acts of the accomplice make a significant difference to the commission of the criminal act by the principal.*" These standards, developed by international tribunals, are also supported by US case law. In *Mustafa v. Australian Wheat Board Limited and Banque Nationale De Paris Paribas*, a tort case concerning financing human rights violations brought under the Alien Torts Claims Act, the court found that it was not necessary to show the particular funds provided were used to commit specific abuses.[71] Similar decisions were made in the context of financing terrorism.[72]

If Gamma has supplied and maintained FinFisher products for use by the Bahraini law enforcement or security agencies, then it may have contributed

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[67] *Ibid.* p. 12
[68] *Ibid.*
[69] Clapham, A., and Jerbi, S., "Categories of Corporate Complicity in Human Rights Abuses", *24 Hastings International and Comparative law Review* 339 (2001), p. 344; Cassel, D., "Corporate Aiding and Abetting of Human Rights Violations: Confusion in the Courts", *6 Northwestern University Journal of International Human Rights* 304 (2008), para. 16.
[70] Prosecutor v. Furundzija (Case No: IT-95-17/1-T), at para. 235.
[71] 2008 WL 4378443 (S.D.N.Y.)
[72] Strauss v. Credit Lyonnais S.A., 2007 WL 2296832, (E.D.N.Y.); In re Chiquita Brands International, Inc. Alien Tort Statute and Shareholder Derivative Litigation, 2010 WL 432426 (S.D.Fla).

substantially to internal repression in Bahrain, and to violations of internationally recognised human rights by government officials. Unlawful breach of the right to privacy would be the violation most directly caused by Gamma's supply of its FinFisher products to Bahrain: if, as is highly likely, the spyware has been used to gather private information and monitor the private correspondence of non-criminal activists, dissidents or other civilians, then Gamma's supply of the product would be the indispensable element and instrument of the human rights abuse. In addition, the complainants are concerned that arbitrary arrest and torture are being perpetrated as a result of the use of surveillance technologies such as those in the FinFisher suite. This is exemplified by the case of Abdul Ghani Al-Khanjar, outlined above.

In accordance with the tripartite explanation of causation outlined by the ICJ, Gamma may be said to have 'enabled' the human rights violations by its conduct, insofar as certain instances of privacy violations, arbitrary arrest and torture would not have occurred without the use of the spyware supplied by the company; it may be said to have 'exacerbated' the unlawful breach of the right to privacy, since the use of the spyware supplied by it served to increase the severity of the breach of the right to privacy (which was likely already being perpetrated in some instances without use of the equipment) in particular cases, as well as potentially increasing the number of victims of this human rights violation; and it may be said to have 'facilitated' the violations insofar as, where the right to privacy was already being abused by officials, Gamma's act of supplying spyware would have made it easier to carry out the abuses and changed the way in which those abuses were carried out.

In accordance with the above, whether or not torture, arbitrary arrest and the unlawful breach of the right to privacy were already being, or would have been, committed by Bahraini officials even in the absence of Gamma's actions, the company is still potentially liable in causation.

bb. Knowledge

In order to fulfil the international standards of aiding and abetting, it is necessary to show that the defendant knew, or should have known, that its conduct would be likely to contribute to the abuses.[73] The ICJ made it clear in *Mustafa v Australian Wheat Board* that the *'liability of a financier will depend on what he or she knows about how his or her services and loans will be utilised and the degree to which these services actually affect the commission of a crime'*.[74]

It may be that the staff members concerned at Gamma sold the FinFisher products to Bahrain intending that they would be used for the legitimate purpose of crime prevention and detection. However, it is highly likely that they knew that the governments and law enforcement agencies of Bahrain, where there is clear and well-documented evidence of internal repression and widespread human rights abuses, would be likely to use the equipment against both criminals and non-criminal activists, political dissidents, lawyers and journalists whom they wanted to repress.

Even if Gamma is able to prove that it did not know that its conduct would be likely to contribute to human rights abuses, it remains the case that it ought to have known of this likelihood. It is well known and widely documented that a repressive regime operates in Bahrain and that the country has a poor record of respecting human rights. The defendant is also certainly aware of the high potential for abuse associated with its FinFisher products. Accordingly, the defendant should have foreseen the likelihood that its product would be used illegitimately by government officials of a repressive regime to monitor innocent citizens, and that this

[73] International Commission of Jurists, *Corporate Complicity & Legal Accountability*, Volume 1, p. 8.
[74] International Commission of Jurists, *Criminal Law and International Crimes*, Volume 2, pp. 39-40.

would lead to other human rights abuses such as arbitrary arrest, torture and even execution.

cc. Proximity

To fulfil the standards of aiding and abetting, the defendant must have been close or proximate to the principal perpetrator.[75] Proximity is defined in terms of time, space and relationship: *"the closer – or more proximate – a company is, in time and space and relationship, to those who carry out the human rights abuses or those who suffer the abuses, the more likely it is that the company could be held legally responsible when it is complicit."*[76]

It is very likely that employees of Gamma were geographically close to the principal perpetrators of the human rights violations in the course of its alleged business relations with, and conduct concerning, Bahrain. Supplying software and training would require preliminary investigations in the relevant country and location, on-site installation as well as face-to-face system training and frequent on-site maintenance. The supply of such products thus requires proximity in space between the parties, both at the installation and training stage and at regular intervals thereafter for maintenance purposes. The fact that Gamma supplied the product directly to government authorities also creates sufficient proximity in terms of relationship. There is also proximity in time insofar as the products have been, and are being, sold to and maintained in Bahrain contemporaneously with the Bahraini government committing human rights violations.

2. Violation of the OECD Guidelines

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[75] International Commission of Jurists, Corporate Complicity & Legal Accountability Volume 1, p. 8.
[76] *Ibid.* p. 24.

It is possible that both the 2000 and 2011 Editions of the OECD Guidelines for Multinational Enterprises are engaged. The nature of the technology is such that it requires continuous updates from Gamma. These updates are critical to the product lifecycle, and without them the products would cease to function. Each update is thus essentially a re-supplying of the product, and so constitutes a new or continued breach of the OECD Guidelines. The complainants thus regard both the original act of supplying FinFisher products to Bahraini authorities and the subsequent maintenance of these products as constituting potential breaches of the OECD Guidelines. Whilst it is almost certain that Gamma has been regularly maintaining and updating this software for use by Bahraini authorities since September 2011, thereby engaging the 2011 Edition of the OECD Guidelines, the original supply date of the products is uncertain. Depending on whether the original supply occurred before or after 1 September 2011 (the date at which the 2011 Edition of OECD Guidelines came into effect), either the 2011 or the 2000 Edition of the OECD Guidelines will be engaged. Accordingly, we deal with both editions of the Guidelines below.

a. 2011 Edition of the OECD Guidelines for Multinational Enterprises

In relation to the 2011 Edition of the OECD Guidelines, Gamma may have violated the following:

i. Violation of Chapter II. A. 2, in conjunction with Chapter IV. 1 (in particular regarding the right to privacy, arbitrary arrest, and torture)

Chapter II. A. 2 states: *Enterprises should respect the internationally recognised human rights of those affected by their activities.*

In addition, Chapter IV.1 states: *Enterprises should, within the framework of internationally recognised human rights, the international human rights*

obligations of the countries in which they operate as well as relevant domestic laws and regulations, respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

The right to privacy and freedom from torture and arbitrary arrest are internationally recognised human rights. They are contained in the following international (human rights) instruments, two of which (the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights) are ratified by Bahrain:

- Article 5 of the Universal Declaration of Human Rights ("UDHR") provides "*no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*"

- Article 9 UDHR provides "*no one shall be subjected to arbitrary arrest, detention or exile.*"

- Article 12 UDHR provides *"no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation."*

- Article 7 of the International Covenant on Civil and Political Rights ("ICCPR") provides "*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*"

- Article 9 ICCPR provides "*everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such*

grounds and in accordance with such procedure as are established by law."

- Article 17 (1) ICCPR provides *"no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation."*

- Article 3 of the European Convention on Human Rights ("ECHR") states that *"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."*

- Article 5 ECHR provides *"everyone has the right to liberty and security of person"* and goes on to outline the various circumstances in which arrest and detention are lawful.

- Article 8 ECHR provides a right to respect for one's *"private and family life, his home and his correspondence"*, subject to certain restrictions that are "*in accordance with law*" and "*necessary in a democratic society*".

Freedom from torture and inhuman and degrading treatment or punishment is also internationally recognised by the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is aimed at the effective prevention of the practice of torture. This instrument is also ratified by Bahrain.

In addition, freedom from torture and arbitrary arrest, and the right to privacy in its various forms are recognised in the Constitution and other statutory provisions of Bahrain, including:

- Article 19 (a) of the Bahraini Constitution, which provides that *"personal liberty is guaranteed in accordance with the law."*

- Article 19 (b) of the Bahraini Constitution, which provides that *"no person shall be arrested, detained, imprisoned, searched or compelled to reside in a specified place, nor shall the residence of any person or his liberty to choose his place of residence or his liberty of movement be restricted, except in accordance with the law and under the supervision of the judicial authorities."*

- Article 19 (d) of the Bahraini Constitution, which provides that *"No person shall be subjected to physical or mental torture, enticement or degrading treatment, and the law shall provide the penalty for these acts."*

- Article 26 of the Bahraini Constitution, which guarantees the secrecy and freedom of all telegraphic, postal and telephonic communications, and states that no communication content may be revealed except in cases of necessity prescribed by the law and in accordance with legal procedure.[77]

The use of FinFisher software by Bahraini intelligence and security officials to unlawfully monitor the email, Skype and mobile phone communications of citizens who had not committed a crime, and to obtain information from their computer and mobile phone devices, without the consent or knowledge of the citizens concerned, constitutes a violation of their right to freedom from arbitrary interference with their privacy and correspondence. In addition, if victims of this surveillance have subsequently been arrested and subjected to torture or inhuman or degrading treatment or punishment

[77] Constitution of the State of Bahrain, available at: http://confinder.richmond.edu/admin/docs/Bahrain.pdf

as a result of information concerning their activities yielded by these spyware products, then further human rights have also been breached.

Even if the Bahraini security agencies' interference with individuals' privacy and communications by means of FinFisher intrusion products was deemed 'lawful' (i.e. in accordance with Bahraini laws concerning privacy, communications and surveillance outlined above), it is still very likely to be considered 'arbitrary' interference (in contravention of Article 12 UDHR and Article 17(1) ICCPR) and therefore not in accordance with international standards regarding the right to privacy. The domestic laws outlined above themselves fall short of the international standard regarding protection of the right to privacy and communications. The indiscriminate monitoring of any individuals who oppose the ruling party in Bahrain, for the anti-democratic purpose of suppression of dissent, is an abuse of the right to privacy as internationally recognised, and furthermore is in breach of the purpose, namely crime prevention and detection, for which the product is intended.

The use of torture or inhuman or degrading treatment against any individual, including criminals and terrorists, is not permitted under any circumstances, in accordance with international human rights standards.

If Gamma has supplied and maintained FinFisher products, which are inherently threatening to the right to privacy and carry a high risk of misuse against non-criminals, for use by authorities in a country where the national legal framework governing the right to privacy affords insufficient protection to that right, where the practices of widespread and indiscriminate monitoring and surveillance adopted by the government are clearly in breach of that right, and where the practice of torture is routine in the detention and interrogation of individuals, Gamma has not respected the human rights of the individuals concerned, in violation of Guidelines II. A. 2 and IV. 1.

ii. Violation of Chapter II. A. 10, in conjunction with Chapter IV.5

Chapter II A. 10 provides that: "*Enterprises should carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.*"

In addition, Chapter IV.5 states that: "*Enterprises should carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.*"

Gamma has disclosed to Privacy International that it is in the process of formulating a human rights due diligence policy. However, it is unclear what due diligence has been and is currently being conducted by Gamma in carrying out its activities. The nature of the product concerned and the severity of the risks of adverse human rights impacts associated with it would seem to require that the company have in place a human rights due diligence policy that is thoroughly adhered to in order to manage the risks to human rights inherent in the sale and use of their products. Proper due diligence would involve undertaking comprehensive research into potential government clients, including their domestic laws and practices regarding privacy, communications and surveillance, and their treatment of political dissidents, human rights defenders, activists, journalists, lawyers and ethnic/religious minorities. Such due diligence might also involve an ongoing assessment of actual and potential human rights abuses, and making active efforts to continuously or regularly monitor the use of the company's products, including having processes in place that enable remediation of rights abuses and deactivation of the relevant products. In

addition, there should be a strong obligation on Gamma to conduct extensive research into security concerns.

It is likely that any due diligence conducted by Gamma, and the company's response to any information yielded by due diligence processes that were undertaken, was inadequate. Even the most rudimentary research on the situation in Bahrain would reveal that a repressive regime operates in that country and it is therefore highly likely that products such as those that are the subject of this Complaint will be abused. The only adequate response to such findings would be to refuse to sell the product to Bahrain, a course of action it appears Gamma did not choose.

iii. Violation of Chapters II. A. 11 and 12, in conjunction with Chapters IV. 2 and 3

These Chapters state that companies must not commit human rights abuses through their own activities, must avoid causing or contributing to adverse human rights impacts and must address such impacts where they occur. In addition, it is specified in Chapters II. A. 12 and IV. 3 that companies, where they have not contributed to adverse human rights impacts, should nevertheless seek to prevent or mitigate an adverse impact where that impact is linked to their operations, products or services arising from a business relationship.

The adverse impacts concerned are those specified in the section IV. 2. a. i., above. These human rights impacts are directly linked to the FinFisher products, the use of which enabled the principal to perpetrate the human rights violations. If it is confirmed that Gamma sold its products directly to government and/or security officials of Bahrain, then the two entities are directly linked by a business relationship. Gamma may also be said in this case to have caused and/or contributed to adverse human rights impacts

insofar as it aided and abetted the Bahraini government in perpetrating human rights abuses by supplying and maintaining its spyware products.

It appears that Gamma has done little to prevent or mitigate actual instances of human rights violations. If it is confirmed that Gamma did supply and maintain its products for use by Bahraini authorities, then it has failed to take the most effective step to prevent human rights violations: refusing to supply and update a product capable of such serious abuse to a country where there is a well-known lack of respect for human rights.

In addition, it would seem that Gamma has failed to take the alternative measure of providing adequate training and guidance in relation to the product, and the potential risks and abuses associated with it, when supplying it to Bahraini officials.

Other steps Gamma could have taken to mitigate the human rights impact associated with the use of its product include ceasing to update the product and taking other steps such as revoking software licences to disenable use of the software or weaken its effectiveness, checking its software update logs to monitor where in the world its software is being used. There is little available information about which, if any, of these steps the company has taken. The nature and extent of the abuses that have occurred would suggest that Gamma has not taken sufficient steps to identify, prevent and mitigate the negative human rights impacts associated with its product.

Furthermore, there has been no declaration by the company that it will cease to enter business relationships with the Bahraini government in light of emerging evidence of abuses of its products.

iv. Violation of Chapter II. A. 13

Enterprises should encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines.

It is unclear what encouragement, if any, was offered by individuals concerned at Gamma to those to whom the FinFisher products were supplied to apply principles of responsible business conduct compatible with the Guidelines in their alleged business relations with them. Given the nature of the product, and the high risk of abuse associated with it, there is a strong onus on Gamma to provide its customers with detailed and substantial guidance and encouragement concerning the correct manner in which the product should be used and the risks associated with it.

Given the nature and extent of the alleged abuses associated with the FinFisher software that have arisen, it is likely that Gamma has not fully and adequately complied with this Guideline by offering the requisite encouragement and guidance.

v. Violation of Chapter IV. 4

Enterprises should have a policy commitment to respect human rights.

It is unclear whether Gamma currently has such a policy commitment or not; as of August 2012, the company did not have a human rights due diligence policy. If it has since developed one, it has not made it publicly available. The commentary by the OECD relating to this guideline states that this policy should be publicly available. It is therefore probable that Gamma has violated this guideline.

vi. Violation of Chapter IV. 6

Enterprises should provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

The ways in which Gamma might have remedied and mitigated the adverse human rights impacts caused by its activities and products, and its failure in this regard, have been addressed in sections IV. 2. a. i and iii., above. Gamma has not been clear or forthcoming in outlining what measures it has taken, and will take, to remedy the human rights impact caused by its products. In addition, it has not offered any clear assurance that it will cease to export its FinFisher products both to Bahrain and other repressive regimes abroad.

b. 2000 Edition of the OECD Guidelines for Multinational Enterprises

In relation to the 2000 Edition of the OECD Guidelines, Gamma may have breached the following by its initial supply of FinFisher products to Bahraini authorities:

i. Violation of Chapter II. 2

Chapter II. 2 states that "*Enterprises should respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.*"

This Guideline is essentially the equivalent of Chapter II. A. 2 of the 2011 Edition of the Guidelines. Thus details concerning the way in which this Guideline is engaged by Gamma's supply of FinFisher products are addressed in section IV. 2. a. i., above.

ii. Violation of Chapter III. 5 a) and b)

Chapter III. 5 states that "*Enterprises are encouraged to communicate additional information that could include:*

a) value statements or statements of business conduct intended for public disclosure including information on the social, ethical and environmental policies of the enterprise and other codes of conduct to which the company subscribes. In addition, the date of adoption, the countries and entities to which such statements apply and its performance in relation to these statements may be communicated.

b) information on systems for managing risks and complying with laws, and on statements or codes of business conduct."

This Guideline concerns the issue of disclosure, and its purpose, according to the OECD Guidelines Commentary, is to encourage improved understanding of the operations of multinational enterprises. The complainants are concerned that Gamma has not disclosed sufficient information on its social and ethical policies, the systems it has in place for managing risks and complying with laws, nor its code of business conduct. This is related to breaches of Chapters II. A. 10 and IV. 5 (which concern the integration of due diligence into an enterprise's operations) and IV. 4 (which concerns the implementation of a human rights policy) of the 2011 Edition of the Guidelines, addressed above, and so the complaint here is broadly similar to that in sections IV. 2. a. ii. and v., above.

As mentioned in those sections, above, in August 2012 Gamma disclosed to Privacy International that it was in the process of formulating a human rights due diligence policy. This would suggest that before 1 September 2011 Gamma did not have adequate systems in place for managing risks and complying with laws, nor a code of business conduct or, if it did, it did not disclose them in accordance with the Guideline above. Thus if Gamma supplied FinFisher products to Bahraini authorities before 1st September

2011, at which point the 2000 Edition of the Guidelines is engaged, it is potentially in breach of Chapter III. 5.

V The complainants' expectations

If it is confirmed that Gamma has supplied and maintained its FinFisher products for use by Bahraini government officials, the complainants have the following expectations:

1. Expectations toward the company

- Gamma should cease relations with Bahrain, revoke software licences, deactivate relevant copies of the FinFisher programme or devices so far as possible, to disenable use of those products in Bahrain,
- Gamma should implement a policy banning the export of FinFisher products to repressive regimes and/or countries that are known to perpetrate human rights abuses.
- Gamma should implement and publish a general human rights policy. In order to embed the policy, it should be clearly communicated internally as well as externally to workers, business partners, and other relevant state or non-state entities that may be directly or indirectly linked to the Gamma's products, services or technologies. The implications of the policy commitment should also be reflected in relevant internal operational policies and procedures. The salient human rights issues that Gamma might highlight in its policy include privacy and freedom of expression, and adverse impacts on other rights arising from misuse of technology or data (for example, impacts on political dissidents' right to life, liberty and security of the person, and freedom from torture, cruel, inhuman or degrading treatment).

- Gamma should incorporate effective human rights due diligence into their operations by means of a Human Rights Impact Assessment (HRIA) to control the human rights compatibility of existing and future business transactions. If the HRIA reveals that there is a risk that individuals are suffering adverse human rights impacts due to Gamma's activities and/or products, Gamma should make every possible effort to mitigate the harm. The HRIA should include end-use clauses that enable Gamma International to terminate the contractual relationship if its products are being systematically misused. As part of its due diligence, Gamma should also constantly monitor and audit the use of its products.
- Gamma should be transparent about their clients, and disclose the existence of all contracts to supply FinFisher products to foreign governments.
- Where Gamma identifies that it has caused or contributed to adverse human rights impacts, it should establish or participate in effective operational-level grievance mechanisms for stakeholders who may be adversely impacted by its activities, in order that grievances may be addressed early and remediated directly.
- Gamma should integrate security mechanisms into the technologies and products it develops to prevent their misuse.

2. Expectations toward the National Contact Point

We respectfully request that you review this case according to procedural regulations laid out in the OECD Guidelines, and that you take the appropriate steps. We furthermore request the NCP to:

- Investigate whether or not Gamma supplied and maintained its FinFisher products for use by Bahraini authorities.
- If the company's involvement is verified:
  - Give a Final Statement citing the breaches of the OECD Guidelines by Gamma in detail.

- Give recommendations to the company to avoid breaches of the OECD Guidelines.
- Make follow-ups concerning the compliance with the given recommendations at appropriate time intervals.

VI. Sources

- International Society for Human Rights, 'Middle East: German technology used against democratic movements', 29th August 2011, available at: http://www.ishr.org/Detailansicht.697+M5e490bfdd7b.0.html
- Gamma International 2012, Website Homepage, https://www.gammagroup.com/
- Silver, V., Bloomberg, 2012, "Cyber Attacks on Activists Traced to FinFisher Spyware of Gamma", http://www.bloomberg.com/news/2012-07-25/cyber-attacks-on-activists-traced-to-finfisher-spyware-of-gamma.html
- Doward J., The Guardian, 2012, "Crackdown on Sale of UK Spyware over Fears of Misuse by Repressive Regimes", http://www.guardian.co.uk/world/2012/sep/09/block-on-exports-surveillance-equipment
- The Export Control Act 2002, available at: http://www.legislation.gov.uk/ukpga/2002/28/contents
- The Export Control Order 2008, available at: http://www.legislation.gov.uk/uksi/2008/3231/contents/made
- The Council Regulation (EC) No 428/2009, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:134:0001:0269:en:PDF
- Al-Jazeera 2010, "Bahrain Shia deny Cabinet Change", http://www.aljazeera.com/news/middleeast/2010/03/201035675668560 5.html

- World Bank Data 2012, http://www.google.co.uk/publicdata/explore?ds=d5bncppjof8f9_&met_y=sp_pop_totl&idim=country:BHR&dl=en&hl=en&q=the+population+of+bahrain
- Human Rights Watch, World Report 2011: Bahrain, available at: http://www.hrw.org/world-report-2011/world-report-2011-bahrain
- Bahrain News Agency, HM King Hamad Sets up Royal Independent Investigation Commission, 29 June 2011, available at: http://bna.bh/portal/en/news/462963
- Bahrain Center for Human Rights 2009, http://www.bahrainrights.org/en/node/2779
- Bahrain News Agency (BNA), June 2011, "HM King Hamad Sets up Royal Independent Investigation Commission", http://bna.bh/portal/en/news/462963
- Bahrain Penal Code, 1976
- Reporters without Borders, *Internet Enemies Report 2012,* http://en.rsf.org/IMG/pdf/rapport-internet2012_ang.pdf
- Mepham, D., (2012) 'Don't Kid Yourselves: Bahrain Hasn't Changed', *Human Rights Watc,h* https://www.hrw.org/news/2012/04/18/don-t-kid-yourselves-bahrain-hasn-t-changed
- Wagner, B., 2012 "After the Arab Spring: New Paths for Human Rights and the Internet in European Foreign Policy." European Commission, Directorate-General for Economic and Financial Affairs, Brussels, Belgium, available at: http://www.europarl.europa.eu/committees/en/studiesdownload.html?languageDocument=EN&file=75431
- REDRESS, *Universal Periodic Review, Bahrain, 13th Session May-June 2012, Submission by the Redress Trust,* 2011
- Privacy International Report, July 2012, "Surveillance briefing: Bahrain", https://www.privacyinternational.org/reports/surveillance-briefing-bahrain

- Amnesty International Report, *Bahrain Harsh Jail Terms for Opposition Figures*, 23 June 2011, available at: http://www.amnesty.org/en/library/asset/MDE11/036/2011/en/a23be4fc-3470-48dc-b44b-205772baa286/mde110362011en.pdf
- U.N. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 29 February 2012, A/HRC/19/61/Add.4, available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/110/40/PDF/G1211040.pdf?OpenElement
- Bahrain Center for Human Rights, Bahrain: Deteriorating situation for human rights defenders, 2nd March 2009, available at: http://www.bahrainrights.org/en/node/2779
- Bahrain Rights, "Bahrain: The Human Price for Freedom and Justice", November 2011, http://bahrainrights.org/BCHR/wp-content/uploads/2011/11/BahrainTheHumanPrice.pdf
- Bahrain Independent Commission of Inquiry (BICI) 2011, "Report of the Bahrain Independent Commission of Inquiry", http://www.bici.org.bh/BICIreportEN.pdf
- Constitution of the State of Bahrain, http://confinder.richmond.edu/admin/docs/Bahrain.pdf
- Legislative Decree No. 46 of 2002, http://www.vertic.org/media/National%20Legislation/Bahrain/BH_Code_Criminal_Procedure.pdf
- United Nations Office on Drugs and Crime (UNODC) 2006, "Law No. 58 of 2006 With Respect To Protection of the Community Against Terrorist Acts", https://www.unodc.org/tldb/showDocument.do?documentUid=8520
- Open Net Initiative (ONI) 2009, "Bahrain", http://opennet.net/sites/opennet.net/files/ONI_Bahrain_2009.pdf
- Bahrain Center for Human Rights (BCHR), September 2008 "Website accused of violating press code, BCHR concerned that move is aimed

at silencing critical voices", http://www.bahrainrights.org/en/node/2446.

- Al-Sitari, Z., BCHR 2006, "Al Bandar Report: Demographic Engineering in Bahrain and Mechanisms of Exclusion", http://www.bahrainrights.org/node/528
- Silver, V., and Elgin, B., Bloomberg 2011, "Torture in Bahrain Becomes Routine With Help From Nokia Siemens Networking", http://www.bloomberg.com/news/2011-08-22/torture-in-bahrain-becomes-routine-with-help-from-nokia-siemens-networking.html
- Dooley, B., BCHR 2012, "HRF: Bahrain Student Suspended for Phone Message", http://www.bahrainrights.org/en/node/5311
- Citizen Lab 2012, "From Bahrain With Love: FinFisher's Spy Kit Exposed?", http://citizenlab.org/2012/07/from-bahrain-with-love-finfishers-spy-kit-exposed/
- Citizen Lab 2012, "The Smartphone Who Loved Me: FinFisher Goes Mobile?", https://citizenlab.org/2012/08/the-smartphone-who-loved-me-finfisher-goes-mobile/
- Silver, V., Bloomberg 2012, "Gamma Says No Spyware Sold to Bahrain; May Be Stolen Copy", http://www.bloomberg.com/news/2012-07-27/gamma-says-no-spyware-sold-to-bahrain-may-be-stolen-copy.html
- Perlroth, N., The New York Times 2012, "Elusive FinSpy Spyware Pops Up in 10 Countries", http://bits.blogs.nytimes.com/2012/08/13/elusive-finspy-spyware-pops-up-in-10-countries/
- Bazela, M., 'Corporate Complicity in Human Rights Violations: When Is It Time To Leave A Country?' *Informacion Filosofica,* Vol. VIII (2011) num. 17 (pp. 55-72)
- International Commission Of Jurists, *Corporate Complicity & Legal Accountability,* Volumes 1 and 2.

- Clapham, A., and Jerbi, S., "Categories of Corporate Complicity in Human Rights Abuses", *24 Hastings International and Comparative law Review* 339 (2001), p. 344
- Cassel, D., "Corporate Aiding and Abetting of Human Rights Violations: Confusion in the Courts", *6 Northwestern University Journal of International Human Rights* 304 (2008), para. 16.
- Prosecutor v. Furundzija (Case No: IT-95-17/1-T), at para. 235.
- Mustafa v. Australian Wheat Board Limited and Banque Nationale De Paris Paribas, 2008 WL 4378443 (S.D.N.Y.)
- Strauss v. Credit Lyonnais S.A., 2007 WL 2296832, (E.D.N.Y.)
- In re Chiquita Brands International, Inc. Alien Tort Statute and Shareholder Derivative Litigation, 2010 WL 432426 (S.D.Fla)

VII. Annex

- Annex 1:

Index:

1. Correspondence
   a) Letter from Bhatt Murphy Solicitors to Secretary of State for Business Innovation and Skills
   b) Letter Treasury Solicitors to Bhatt Murphy solicitors
   c) Letter from Bhatt Murphy to Treasury Solicitors
   d) Letter from Department of Business Innovation and Skills to Bhatt Murphy Solicitors

2. Gamma International Literature
   a) FinFisher: Government IT intrusion and remote monitoring solutions
   b) Gamma International Egypt proposal
   c) Gamma International Milipol Qatar 2012 exhibitor description.

3. Expert Reports
   a) University of Toronto The Citizen Lab Research Brief number 09-July 2012 "From Bahrain with Love: FinFisher's Spy Kit Exposed?"
   b) University of Toronto The Citizen Lab Research Brief number 11-August 2012 "The SmartPhone Who Loved Me: FinFisher Goes Mobile?"
   c) Rapid7 "Analysis of the FinFisher Lawful Interception Malware"
   d) Internet Crime Complaints Centre (IC3) intelligence note IC3 intelligence note

4. Press reports
   a) The Guardian: British firm offered spy software to Egyptian regime – documents
   b) BBC Radio 4 File on Four "UK firm denies 'cyber-spy' deal with Egypt"
   c) The Observer: UK 'Exporting surveillance technology to repressive nations'
   d) Bloomberg: Cyber Attacks on Activists Traced to FinFisher Spyware of Gamma
   e) Bloomberg "Gamma Says No Spyware Sold to Bahrain: May Be Stolen Copy"
   f) New York Times "Elusive FinSpy spyware pops up in ten countries"
   g) New York Times "Software meant to fight crime is used to spy on dissidents"

REGISTERED NUMBER: 04354366 (England and Wales)

Report of the Directors and

Audited Financial Statements for the Year Ended 31 January 2012

for

Privacy International

Armstrong & Co
Chartered Accountants & Statutory Auditors
4a Printing House Yard
Hackney Road
London
E2 7PR

Privacy International (Registered number: 04354366)

Contents of the Financial Statements
for the Year Ended 31 January 2012

	Page
Company Information	1
Report of the Directors	2
Report of the Independent Auditors	4
Income and Expenditure Account	6
Balance Sheet	7
Notes to the Financial Statements	8
Detailed Income and Expenditure Account	11

Privacy International

Company Information
for the Year Ended 31 January 2012

DIRECTORS:	Prof. Ian Angell Karen Banks Dr Fleur Fisher Dr Steven Wright Daniel Cooper Anna Fielder Kim Cameron Barry Stephen Steinhardt
SECRETARY:	Anna Fielder
REGISTERED OFFICE:	2nd Floor 46 Bedford Row London WC1R 4LR
REGISTERED NUMBER:	04354366 (England and Wales)
AUDITORS:	**Armstrong & Co** *Chartered Accountants & Statutory Auditors* 4a Printing House Yard Hackney Road London E2 7PR
BANKERS:	**The Co-operative Bank plc** PO Box 101 1 Balloon Street Manchester M60 4EP

The directors present their report with the financial statements of the company for the year ended 31 January 2012.

PRINCIPAL ACTIVITY
The principal activity of the company in the year under review was that of research and advocacy of personal privacy.

REVIEW OF BUSINESS
The results of the period and financial position of the company are shown in the annexed financial statements.

The Income and Expenditure Account shows a surplus for the year of £20,542 and reserves of £153,097.

EVENTS SINCE THE END OF THE YEAR
Information relating to events since the end of the year is given in the notes to the financial statements.

DIRECTORS
The directors shown below have held office during the whole of the period from 1 February 2011 to the date of this report.

Prof. Ian Angell
Karen Banks
Dr Fleur Fisher
Dr Steven Wright
Daniel Cooper
Anna Fielder
Kim Cameron
Barry Stephen Steinhardt

STATEMENT OF DIRECTORS' RESPONSIBILITIES
The directors are responsible for preparing the Report of the Directors and the financial statements in accordance with applicable law and regulations.

Company law requires the directors to prepare financial statements for each financial year. Under that law the directors have elected to prepare the financial statements in accordance with United Kingdom Generally Accepted Accounting Practice (United Kingdom Accounting Standards and applicable law). Under company law the directors must not approve the financial statements unless they are satisfied that they give a true and fair view of the state of affairs of the company and of the surplus or deficit of the company for that period. In preparing these financial statements, the directors are required to:

- select suitable accounting policies and then apply them consistently;
- make judgements and accounting estimates that are reasonable and prudent;
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the company will continue in operation.

The directors are responsible for keeping adequate accounting records that are sufficient to show and explain the company's transactions and disclose with reasonable accuracy at any time the financial position of the company and enable them to ensure that the financial statements comply with the Companies Act 2006. They are also responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

STATEMENT AS TO DISCLOSURE OF INFORMATION TO AUDITORS
So far as the directors are aware, there is no relevant audit information (as defined by Section 418 of the Companies Act 2006) of which the company's auditors are unaware, and each director has taken all the steps that he or she ought to have taken as a director in order to make himself or herself aware of any relevant audit information and to establish that the company's auditors are aware of that information.

AUDITORS
The auditors, Armstrong & Co, will be proposed for re-appointment at the forthcoming Annual General Meeting.

This report has been prepared in accordance with the special provisions of Part 15 of the Companies Act 2006 relating to small companies.

ON BEHALF OF THE BOARD:

Anna Fielder - Director

14 May 2012

Report of the Independent Auditors to the Members of Privacy International

We have audited the financial statements of Privacy International for the year ended 31 January 2012 on pages six to ten. The financial reporting framework that has been applied in their preparation is applicable law and the Financial Reporting Standard for Smaller Entities (effective April 2008) (United Kingdom Generally Accepted Accounting Practice applicable to Smaller Entities).

This report is made solely to the company's members, as a body, in accordance with Chapter 3 of Part 16 of the Companies Act 2006. Our audit work has been undertaken so that we might state to the company's members those matters we are required to state to them in a Report of the Auditors and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company's members as a body, for our audit work, for this report, or for the opinions we have formed.

Respective responsibilities of directors and auditors
As explained more fully in the Statement of Directors' Responsibilities set out on pages two and three, the directors are responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view. Our responsibility is to audit and express an opinion on the financial statements in accordance with applicable law and International Standards on Auditing (UK and Ireland). Those standards require us to comply with the Auditing Practices Board's (APB's) Ethical Standards for Auditors, including "APB Ethical Standard - Provisions Available for Small Entities (Revised)", in the circumstances set out in note twelve to the financial statements.

Scope of the audit of the financial statements
An audit involves obtaining evidence about the amounts and disclosures in the financial statements sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of: whether the accounting policies are appropriate to the company's circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the directors; and the overall presentation of the financial statements. In addition, we read all the financial and non-financial information in the Report of the Directors to identify material inconsistencies with the audited financial statements. If we become aware of any apparent material misstatements or inconsistencies we consider the implications for our report.

Opinion on financial statements
In our opinion the financial statements:
- give a true and fair view of the state of the company's affairs as at 31 January 2012 and of its surplus for the year then ended;
- have been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice applicable to Smaller Entities; and
- have been prepared in accordance with the requirements of the Companies Act 2006.

Opinion on other matter prescribed by the Companies Act 2006
In our opinion the information given in the Report of the Directors for the financial year for which the financial statements are prepared is consistent with the financial statements.

Matters on which we are required to report by exception

We have nothing to report in respect of the following matters where the Companies Act 2006 requires us to report to you if, in our opinion:

- adequate accounting records have not been kept, or returns adequate for our audit have not been received from branches not visited by us; or
- the financial statements are not in agreement with the accounting records and returns; or
- certain disclosures of directors' remuneration specified by law are not made; or
- we have not received all the information and explanations we require for our audit; or
- the directors were not entitled to prepare the financial statements in accordance with the small companies regime and take advantage of the small companies' exemption in preparing the Report of the Directors.



Anthony Armstrong (Senior Statutory Auditor)
for and on behalf of Armstrong & Co
Chartered Accountants & Statutory Auditors
4a Printing House Yard
Hackney Road
London
E2 7PR

14 May 2012

Privacy International (Registered number: 04354366)

Income and Expenditure Account
for the Year Ended 31 January 2012

	Notes	2012 £	2011 £
INCOME		447,521	487,293
Direct project costs		364,812	369,193
GROSS SURPLUS		82,709	118,100
Administration		62,506	21,974
OPERATING SURPLUS	3	20,203	96,126
Interest receivable and similar income		425	375
SURPLUS ON ORDINARY ACTIVITIES BEFORE TAXATION		20,628	96,501
Tax on surplus on ordinary activities	4	86	79
SURPLUS FOR THE FINANCIAL YEAR		20,542	96,422
Retained surplus brought forward		132,555	36,133
RETAINED SURPLUS CARRIED FORWARD		153,097	132,555

The notes form part of these financial statements

Privacy International (Registered number: 04354366)

Balance Sheet
31 January 2012

	Notes	2012 £	2012 £	2011 £	2011 £
FIXED ASSETS					
Tangible assets	6		6,059		-
CURRENT ASSETS					
Debtors	7	25,008		15,698	
Cash at bank		169,881		161,168	
		194,889		176,866	
CREDITORS					
Amounts falling due within one year	8	47,851		44,311	
NET CURRENT ASSETS			147,038		132,555
TOTAL ASSETS LESS CURRENT LIABILITIES			153,097		132,555
FUNDS					
Income and expenditure account			153,097		132,555
			153,097		132,555

The financial statements have been prepared in accordance with the special provisions of Part 15 of the Companies Act 2006 relating to small companies and with the Financial Reporting Standard for Smaller Entities (effective April 2008).

The financial statements were approved by the Board of Directors on 14 May 2012 and were signed on its behalf by:

Anna Fielder - Director

The notes form part of these financial statements

1. ACCOUNTING POLICIES

Accounting convention
The financial statements have been prepared under the historical cost convention and in accordance with the Financial Reporting Standard for Smaller Entities (effective April 2008).

Going concern
The company's income is mainly derived from non self generated sources, such as grants, statutory funding and other non-governmental sources. The accounts have been prepared on the basis that this support will be continuing.

Tangible fixed assets
Depreciation is provided at the following annual rates in order to write off each asset over its estimated useful life.

Fixtures and fittings	- 25% on cost
Computer equipment	- 50% on cost

Income recognition
Income is recognised when the company has a contractual or other right to its receipt. Income with conditions attached to its receipt is recognised when the company has fulfilled those conditions.

Deferred income
Income received which is contractually or otherwise not expendable until a future period is deferred.

Allocation of costs
Costs are allocated directly to projects where they can be identified as relating solely to that project. Other costs are allocated between the funds, based on staff time spent on the fund activities or other appropriate criteria.

2. DIRECTORS' EMOLUMENTS

Emoluments include salaries, fees, bonuses, expense allowances and estimated non-cash benefits receivable. All directors serve in a voluntary capacity and do not receive any payments for their services.

3. OPERATING PROFIT

The operating profit is stated after charging:

	2012	2011
	£	£
Depreciation - owned assets	1,165	-
Auditors fees - audit services	2,500	2,400
Auditors fees – other services	1,620	1,116

continued...

4. TAXATION

The company is non profitmaking and receives the majority of its income from grants and other non-trading activities. The directors' believe that the company is only liable to tax on its investment and similar income. Expenditure is recognised in the period in which it is incurred and includes attributable vat which cannot be recovered.

5. INCOMING RESOURCES

Incoming resources and surpluses are attributable to the principal activities of the company.

6. TANGIBLE FIXED ASSETS

	Fixtures & fittings	Computer equipment	Totals
	£	£	£
COST			
Additions	2,419	4,805	7,224
At 31 January 2012	2,419	4,805	7,224
DEPRECIATION			
Charge for year	111	1,054	1,165
At 31 January 2012	111	1,054	1,165
NET BOOK VALUE			
At 31 January 2012	2,308	3,751	6,059

7. DEBTORS: AMOUNTS FALLING DUE WITHIN ONE YEAR

	2012	2011
	£	£
Other debtors	3,961	-
Rent deposit	3,015	-
Accrued income	15,698	15,698
Prepayments	2,334	-
	25,008	15,698

8. CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR

	2012	2011
	£	£
Corporation tax	86	79
Payroll & taxation	4,211	2,437
Salaries control account	-	849
Deferred income	40,554	-
Accruals	3,000	40,946
	47,851	44,311

continued...

9. OPERATING LEASE COMMITMENTS

The following operating lease payments are committed to be paid within one year:

	2012	2011
	£	£
Expiring:		
Between one and five years	12,060	-

10. CONTINGENT LIABILITIES

The company had no material contingent liabilities at 31 January 2011 nor at 31 January 2010.

11. RELATED PARTY DISCLOSURES

There were no disclosable related party transactions during the year.

12. APB ETHICAL STANDARD - PROVISIONS AVAILABLE FOR SMALL ENTITIES

In common with many other businesses of our size and nature we use our auditors to prepare and submit returns to the tax authorities and assist with the preparation of the financial statements.

13. POST BALANCE SHEET EVENTS

There were no significant post balance sheet events.

14. COMPANY STATUS

The company is limited by guarantee and has no share capital. The guarantors' liability in the event the company is wound up is restricted to a maximum of £1 each.

Privacy International (Registered number: 04354366)

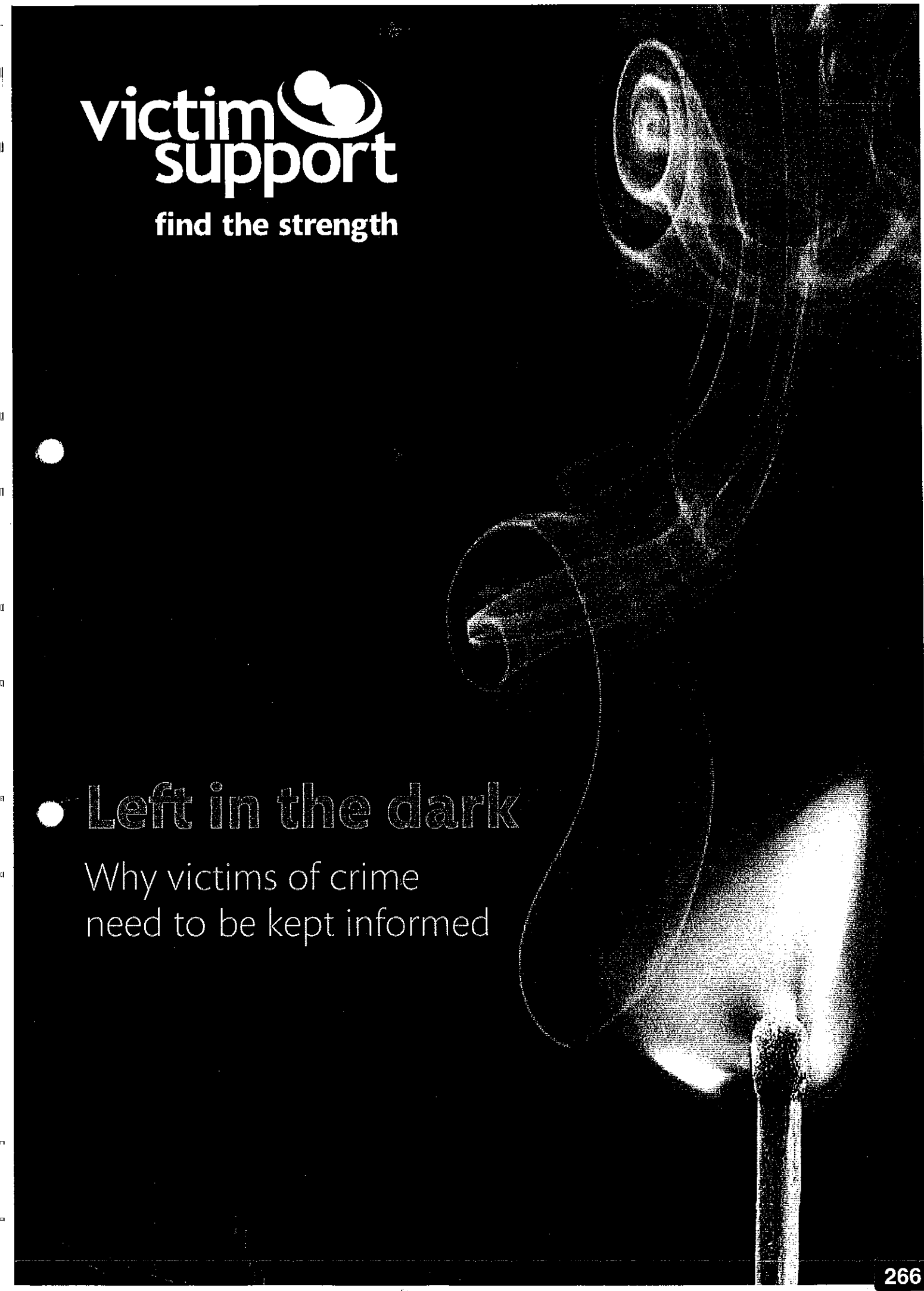
Detailed Income and Expenditure Account
for the Year Ended 31 January 2012

	2012		2011	
	£	£	£	£
Income				
JRRT surveillance society	33,750		20,000	
EUPHR	43,351		111,658	
EPIC	3,114		6,226	
IDRC – Asia	228,163		349,023	
Other donations	993		386	
DNA	4,613		-	
EPIAF	75,245		-	
OSF – REV	58,292		-	
		447,521		487,293
Direct project costs				
Staff salaries	102,000		53,436	
Staff social security	11,422		5,807	
Project expenses	161,591		276,799	
Consultancy fees	89,799		33,151	
		364,812		369,193
GROSS SURPLUS		82,709		118,100
Other income				
Interest received		425		375
		83,134		118,475
Expenditure				
Travel & transport	39,146		10,349	
Insurance	985		-	
Heat & light	27		-	
Repairs and renewals	610		-	
Household & cleaning	371		-	
Computer consumables	1,300		-	
Office expenses	2,826		8,006	
Rent & rates	9,804		-	
Miscellaneous expenses	896		-	
Legal & professional fees	1,320		-	
Bank charges	36		103	
Auditors fees - audit services	2,500		2,400	
Auditors fees - other services	1,520		1,116	
Depreciation of tangible fixed assets				
Fixtures & fittings	111		-	
Computer equipment	1,054		-	
		62,506		21,974
NET SURPLUS		20,628		96,501

This page does not form part of the statutory financial statements

victim support

find the strength



Left in the dark

Why victims of crime need to be kept informed

I was left in the dark. I didn't know what was happening.

Victim Support research participant, 2010

Left in the dark

Executive summary

People who use public services want to know what the service is doing for them. This is especially true for victims of crime, who have to try to understand and negotiate a complex criminal justice system (CJS) which they may never have dealt with before. All agencies involved in the CJS are responsible for giving information – including the police, Crown Prosecution Service, courts and judiciary. Independent organisations like Victim Support, the national charity giving help and a voice to victims of crime, witnesses, their family and friends, also have a role to play.

This report focuses on one crucial area of information for victims: being kept informed and updated about their case (ie the crime that affected them). From our research and work with victims we know that this is one of the things they most want from the CJS. But the evidence also tells us that, despite the efforts of government and police to improve, victims' needs still too often go unmet. This report aims to show just how often victims are left uninformed and how this affects their wellbeing as well as their confidence and engagement with the police and wider CJS.

Our findings show that the official performance data masks the true extent of the issue and that many victims get little or no further communication from the police or any other CJS agency after they report their crime. This is often a source of distress, disappointment and frustration for those who experience it. Lack of contact and information about their case can make victims feel uncertain and isolated – which can worsen the distress caused by the crime itself. If the victim knows the perpetrator, it can make them afraid for their personal safety or frightened about reprisals.

Lack of information can also make victims think that their case is being neglected or not being taken seriously. Evidence suggests that this is a significant factor in victims being generally less satisfied with the CJS, and having a lower opinion of the police, than the general public. As our strategic audit of the CJS has highlighted, too often contact with it reduces rather than improves people's confidence in it.[1] There is strong evidence to suggest that the quality of service that victims get from the CJS – of which being kept informed about their case is a vital element – is often as important a factor in their satisfaction and confidence in the police and wider CJS as the outcome of the case (ie whether or not the perpetrator is brought to justice).

Our analysis of the main evidence on this issue, including new Victim Support survey findings, reveals that:

- Victims are only kept updated about what is happening in their case to a satisfactory level in around half of all reported incidents. In around a third of reported incidents the victim hears nothing more from the authorities after first contact with police when they report the crime (which includes telling them that the case has been dropped). This equates to millions of victims left in the dark every year.
- This represents a widespread failure to meet the requirements for keeping victims informed set out in the Code of Practice for Victims of Crime.
- Dissatisfaction and loss of confidence can make victims disengage from the criminal justice system. In some cases a lack of communication can even affect the success of the investigation if victims drop out of a case while it is being prosecuted. Negative experiences also make it less likely that victims will report incidents in the future.

[1] Summing up: a strategic audit of the criminal justice system. 2011

- Until recently Local Criminal Justice Boards (LCJBs) measured the performance of police in this area by surveying victims who are most likely to have been kept well updated (ie those whose case results in a charge and goes to court). This produces a picture which is misleading and masks the true extent of the problem as it does not tell us about the average victim's experience.

These findings show that much more needs to be done in this area, and highlight the importance of focusing on improving victim care. Victims who report crime understand that there can be no guarantees that a criminal will be caught. They also appreciate that the police have to prioritise limited resources. Nevertheless, they expect their crime to be taken seriously and want to be assured that it was worth their while reporting it. Furthermore, the cost of ignoring victims' desires to be kept informed about their case has wider consequences for communities and society at large. Public attitudes to the police and wider justice system, and engagement with the criminal justice process are directly affected by how well we care for the victims of crime.

Victim Support believes that these findings are a matter of real concern and that they stand as a call to action to ensure that victims are kept informed about their case.

The police have the main role to play in keeping victims informed about their case because they are the main, and often the only, criminal justice agency which victims come into contact with, and the one that victims generally have the most sustained contact with. As we highlight in this report, the nature and level of the competing pressures and demands involved in frontline policing can mean that this aspect of their role can be difficult to fulfil. This is especially true at a time when budget cuts are putting pressure on all parts of the CJS and particularly its ability to deliver high quality services for victims. We recognise the difficulty this presents but stress that we are not asking criminal justice agencies to do anything they are not already committed to doing through the Code of Practice for Victims of Crime (Victim's Code) which governs the criminal justice services to be provided in England and Wales.

This report not only stresses the importance of the function of keeping victims informed once they report a crime to police but also sets out specifically what it is that victims want in relation to it, and suggests how this need can be met. We have sought to highlight existing good practice, and profile the 'TrackMyCrime' system – a new online account for communicating with victims.

Our recommendations are set out on the right.

Recommendations

1. Victims need to be updated regularly on the progress of their case with information that is:
   - understandable – clear explanation of practices, procedures and likely scenarios to make an opaque system comprehensible.
   - comprehensive – regular contact from the police, even if just to report no progress, is often just as important as updating on big developments.
   - accurate – generic updates are of little value; information does not need to be detailed but it should be specific to the case.

2. Victims should be treated like any other service user. The police should look to use innovative and cost-effective solutions to widen victims' choice and adapt their contact arrangements to victims' needs. This should include freeing up resources for face-to-face contact (which is generally highly valued and linked with higher satisfaction) where at all possible. Online accounts offer a promising new and efficient method of contact – the TrackMyCrime system being pioneered by Avon and Somerset police represents current best practice in this area.

3. Agencies need to tailor information to need so that those victims who want information get it in a timely way and in the right format for them. This might mean providing a service to meet the needs of a certain group known to have a specific need. It could also mean checking whether and how an individual victim wants to be updated at initial contact and subsequent stages. This will allow agencies to target resources where they are most needed.

4. Victims' rights to information need to have greater legal force. The Victim's Code should be retained and action taken to make it more robust and credible. The EU directive on establishing minimum standards on the rights, support and protection of victims of crime, which the UK government has now opted in to, is a further step in this direction[2]. It will provide an enforceable framework of victims' rights which include the right to get information and a clear complaints pathway when agencies fail to meet their statutory obligations.

5. The foundation of any improvement needs to be frontline staff who are aware of their role in providing victim care (and understand why it is important). Police officers and all other criminal justice officials who come into contact with victims need sufficient training and/or awareness raising on key aspects of victim care, including giving information.

6. There needs to be an accurate, consistent and reliable way of measuring compliance and progress to replace the Witness and Victim Experience Survey (WAVES) in order to help drive improvement and provide accountability.

[2] European Commission, Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime http://ec.europa.eu/justice/policies/criminal/victims/docs/com_2011_275_en.pdf

Chapter 1: Police and victims: a communications failure?

Once a crime has been reported, the police are responsible for keeping victims informed about their case. Under the Victims' Code of Practice, which came into effect in 2006, the police in England and Wales have a statutory obligation of "keeping victims updated on the progress of ongoing investigations and their outcome, including whether or not action is being taken against any suspect."[3] The Victims' Code specifies that police forces must tell the victim, at least monthly, about progress in cases being actively investigated up until the point of the closure of the investigation. They must also tell victims about key events in their case such as the arrest, bail, charge, summons, remand or other disposal of the case.

These measures are an official recognition of the importance of keeping victims informed. However, despite this statutory right to information, there is strong anecdotal evidence (plus the robust evidence on the information aspect of the Code cited in this report) that victims are not getting the service they are entitled to under the Victims' Code. This is because compliance against the provisions set out in the Code to guarantee victims a high level of service from the police and other agencies is not enforced. And the process for making a complaint under the Code is difficult and complicated. As a result, only two complaints have ever been upheld by the Ombudsman in the Code's six year history.

Evidence suggests that telling victims about their case is an area of particularly weak performance compared to other elements of police contact with victims, as the data from the British Crime Survey (BCS) in Table 1 shows.

Quality of service measure	Incidents in which measure was met (%)	Number of responses based on unweighted bases
Police responded immediately or wait for response was reasonable	84%	4,468
Police showed enough interest in what victim said	67%	5,269
Police kept victim well informed of the progress of their investigation	55%	3,772

Table 1 Comparison of victim responses on CJS satisfaction/performance measures

Source: British Crime Survey, 2008-09

Victims tend to have a much better experience at the reporting stage – the point of first contact, where police respond to the report of an incident – than they do of the subsequent weeks, months, even years while the investigation is open.

This contrast between initial and subsequent contact with police is also clear from a 2003 Audit Commission study into victims' experiences.[4] It was also highlighted by more recent research with people helped by Victim Support in the South East in 2010, in which respondents commonly drew a stark contrast between what happened at the reporting stage and afterwards:

"I believe the police need to address their communication skills. When they arrive they are very re-assuring but following this you have to chase for information." (Victim Support research participant, 2010)

The case study below gives an example of how victims can find initial police interest and responsiveness dwindle and evaporate, leaving them feeling isolated and angry.

[3] CJJI (2009), Report of a Joint Thematic Review of Victim and Witness in the Criminal Justice System, HMCPSI, HMICA, HMIC, p23
[4] Audit Commission (2003), Victims and Witnesses – providing better support

Jonathan, Anne and Kate's story

Jonathan and Anne contacted the police about their teenage daughter Kate who was being persistently bullied and harassed by a group of pupils in her school. The bullying was led by one girl in particular:

"It wasn't just name-calling, it was quite serious, relentless bullying including over text message and the internet. This girl was inciting other girls to join in through joining Facebook campaigns and things like that." (Jonathan)

After being initially impressed with the police response and the level of contact they had with them, Jonathan and Anne found the police became increasingly uncommunicative. After the police reprimanded the ring-leader bully and it failed to have any effect, Jonathan and Anne had very little further contact or information from the police, despite the problem continuing and despite the fact that they directly contacted the police to report a further incident and check on the status of the investigation.

This inconsistent, uncommunicative police response made the family, and Kate in particular more distressed and has damaged their trust and confidence in the police:

"It [the police handling of the case] had a massive effect on Kate. ...she didn't know who to trust. She couldn't trust the management of the school and she eventually couldn't trust the police. She had panic attacks and was in a very, very dodgy place. I spent six months just watching her and making sure she was all right and wasn't going to do anything stupid."

"We feel really let down and have had to do everything ourselves – all the paperwork, dealing with the school. Basically, the police have let us down." (Anne)

"We felt completely isolated and unsupported... It makes you think twice about whether to even bother to try and do anything about these things, which is a very sad situation to be in." (Jonathan)

The reaction stems from the lack of contact and information by the CJS, rather than failure to get a result.

What is the true scale of the problem?

How common is Jonathan, Anne and Kate's experience? The evidence at first sight looks conflicting.

Official compliance figures against which police forces assess their performance on this and other elements of the Victim's Code was, until earlier this year, based on the Witness and Victim Experience Survey (WAVES). WAVES data suggested that the majority of victims were being kept informed and were satisfied with the amount of contact they had.

However, other evidence – including the British Crime Survey – indicates that police performance and victim satisfaction on this issue is a lot lower.

The WAVES survey was cancelled in 2011. The cause of the divergence between WAVES and the other survey evidence is likely to lie in the fact that they represent the experiences and views of victims from quite different populations. WAVES covered only a sub-set of victims – those whose incident was investigated by police, resulting in a charge being brought against the alleged offender(s). It is an established fact that only around half of reported incidents ever reach this point.[5]

[5] 2009/10 BCS figures show that in concluded investigations police charged or cautioned someone for the offence in 21% of incidents, and did not charge or caution in 79% of incidents (unweighted base: 4,071)

Moreover, the investigations in the vast majority of WAVES respondents' cases resulted in a court trial (these accounted for 91% of respondents in the 2009/10 survey). Only a proportion of cases in which there is a charge subsequently go to trial, so these victims therefore represent an even smaller proportion of the wider population of victims who report crime.

WAVES findings are therefore likely to be a poor reflection of the average experience of victims of reported crime than surveys which cover a much wider cross-section of the victim population.

Victim Support has sought to explore this contradictory evidence and confirm the scale of the problem in keeping victims properly informed. Our 'Victim Voice' survey (May 2011) replicated the question from WAVES on how often respondents were kept updated about their case, but asked it to all respondents whose incident had been reported to police.[6] As Figure 1 shows, the contrast with the WAVES findings is stark:

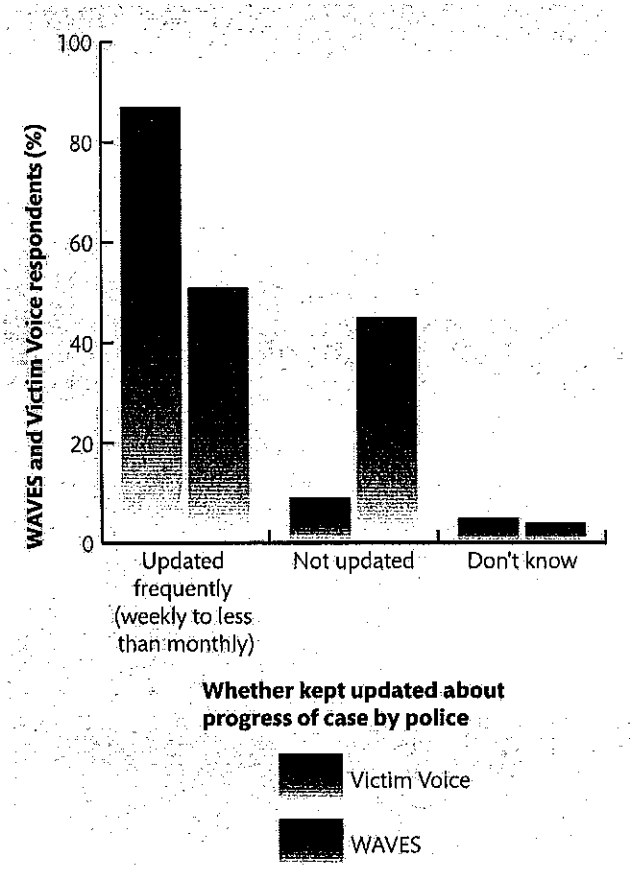


Figure 1 Comparison between WAVES and 'Victim Voice' findings on whether victims are kept updated on their case

Unweighted bases: WAVES – 19,032; "Victim Voice" – 667

- Many victims are not only not kept updated but do not hear anything further at all after initial contact with police. When asked what happened after the police became aware of the incident, one third (35%) of 'Victim Voice' respondents said they did not hear anything further.[7] These account for most of the victims in the survey who said they had not been kept updated about their case (58%), while a little over a quarter (29%) were not kept updated while the case was ongoing but were told of the outcome.[8]

- In some cases victims are explicitly told that they will be kept updated and then find that they are not. This is shown by the responses in the 2008-09 BCS of victims who said they felt they should have been kept better informed by police, with the particular type of information they wanted. Most (55%) said they had wanted general information on progress of the case and outcome, but some (7%) specifically said they wanted to know why they had not received the amount of information promised or expected.[9]

- Although those who get no further contact at all are worst off, there are also those who are updated, but inadequately, so that they are left wondering what is going on for extended

[6] The Victim Voice survey was conducted in June 2011 by Mori using their omnibus survey. A total of 5,396 interviews were carried out with adults (15+) face to face in home across England and Wales between 3-23 June 2011. Of these 1,134 respondents (21%) identified themselves as having been a victim of crime within the previous two years at an initial filter question, and proceeded to complete the questionnaire. Quotas were set to ensure that a representative sample of the population was obtained, and final data was also weighted by age, gender, ethnicity, social class, working status and Government Office Region to reflect the population profile.
[7] Unweighted base: 667
[8] For 6 % of responses the case was ongoing.
[9] Unweighted base: 1,586

periods. Both WAVES and our own 'Victim Voice' survey suggest that around 20% of victims are updated less frequently than monthly (and therefore fall outside of the Victim's Code commitment). Having large gaps between updates leaves plenty of scope for victims to begin feeling neglected and anxious.

The 'Victim Voice' findings are supported by the main source of evidence on crime and victimisation in the UK, the British Crime Survey (BCS)[10] . As Figure 2 shows, the 2008-09 British Crime Survey found that in around half of incidents victims felt they had not been kept well informed by police (45%), of which 31% said they were 'not at all well' informed). Again this contrasts with the one fifth (20%) of victims found by WAVES to be dissatisfied with the amount of contact they had about progress in their case.

BCS evidence also supports the indications from Victim Support research of a clear link in many victims' minds between lack of information and lack of action or effort to deal with their case. Comparing victims' responses to the British Crime Survey questions on efforts by police in dealing with their incident and how well they were kept updated about the investigation bears this out:

- In 81% of incidents where the victim considered the police had put enough effort into dealing with the matter they also said they had been kept well updated.

- In 88% of incidents where the victim considered the police had not put enough effort into dealing with the matter, they also said they had not been kept well updated.[12]

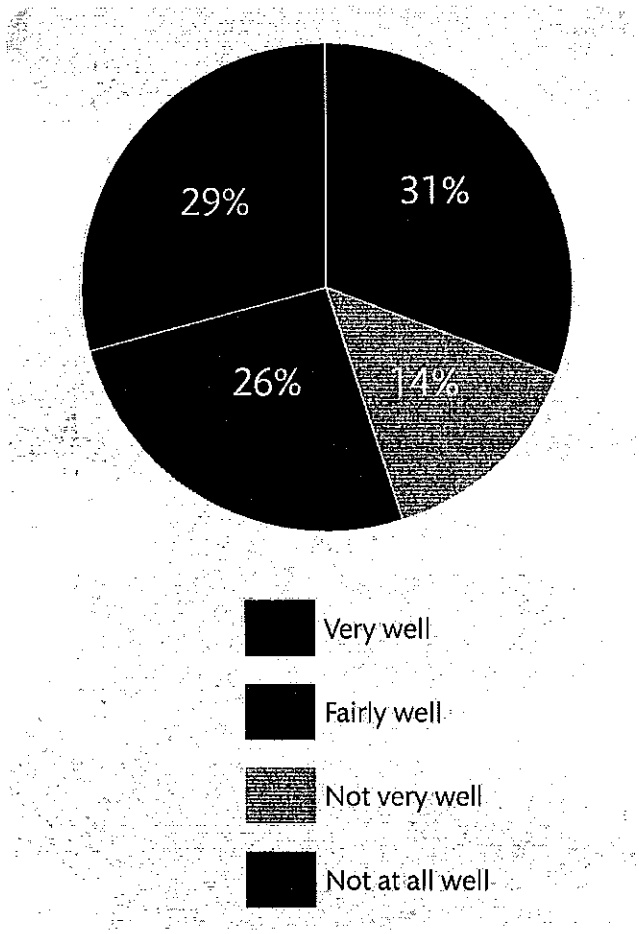


Figure 2 How well victims feel police keep them informed of progress in their case

Unweighted base: 3,772
Source: British Crime Survey, 2008-09
Note: Responses for incidents to which this question did not apply (eg because no investigation was going on) have been removed for the purposes of clarity

[10] We use 2008-09 BCS data in this report for responses to questions which were not asked in the 2009-10 survey.
[11] WAVES finding is based on 19,032 victim respondents
[12] BCS 2008-09, unweighted base: 3,693

Chapter 2: Why it matters

There is little doubt about the overall importance that being kept informed has for people's level of satisfaction with all public services. Research has shown that information is one of the top three drivers of satisfaction for public service users.[13] The evidence presented in this report shows that being kept informed about their case is something most victims want and which matters to such an extent that it can have a considerable bearing on their wider satisfaction, confidence and engagement with the police and wider criminal justice system.

Winners and losers

The above analysis very clearly shows that many victims are either completely or partially left in the dark about what is happening in their case. It also strongly suggests that, as a victim of crime, the key factor which determines the likelihood of being kept updated is whether their case is one of the relatively few which results in the perpetrator(s) being charged and/or taken to court. This is confirmed by examining 'Victim Voice' and BCS findings on being kept informed by outcome, as shown in Figure 3:

- As Figure 3 shows, victims of incidents in which no offender was charged are more than twice as likely to say they were not kept well updated about their case as victims of incidents in which an offender was charged (52% compared to 17%), and particularly likely to say they were not at all well kept updated (36% compared to 8%).

- This is consistent with the finding of the 'Victim Voice' survey that victims whose case went to court were far more likely to have been kept regularly updated than those whose case did not reach court

  - 48% of Victim Voice respondents whose case did not go to court were not kept informed, compared to 15% whose case did go to court.[14]

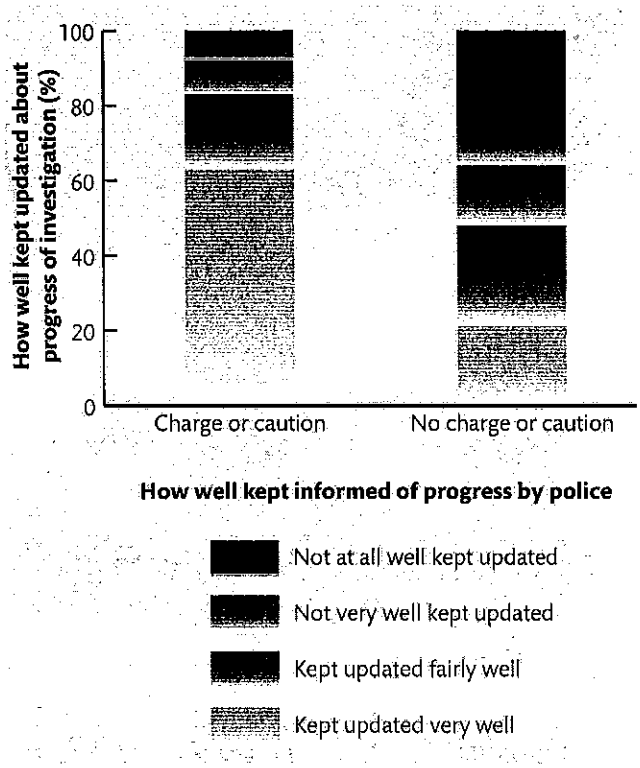


Figure 3 How well victims are kept informed by whether police charged someone for the offence

Unweighted base: 2,991
Source: British Crime Survey, 2008-09
Note: Responses for incidents to which this question did not apply (eg because no investigation was going on) have been removed for the purposes of clarity

There is no clear evidence on exactly why this is the case but there are some likely reasons:

- Having a charge in a case is an indication of an active investigation. The link between being kept informed and whether a perpetrator is charged may be because police are more likely to keep victims informed in active investigations – where there are positive developments to update victims on – than in less active ones.

- The link between the case going to trial and the victim being kept informed is likely to be at least partly because police have an interest in keeping victims informed in cases which look as if they might result in a trial because they may well rely on them for testimony.

[13] Cabinet Office, The Office of Public Services Reform (2004), The Drivers of Satisfaction with Public Services
[14] Unweighted base: 667

- It seems safe to assume that victims are more likely to have good contact from police if a dedicated victim/police liaison is assigned to the case, as happens with certain very serious crimes, such as homicide and rape (in the form of a family liaison officer (FLO) or sexual offence liaison officer (SOLO). If a member of CID is assigned to a victim's case, the CID officer will also have more time to devote to the investigation. CID work more regular hours than uniformed police officers, who work on more complex shift patterns.

- In cases of lower-level crime which are assigned only to uniformed police officers, irregular hours, combined with the various other competing demands of the job, may make it difficult for officers to keep victims updated. We know that this is an issue for victims because they often tell us that they have had real difficulty contacting the investigating officer on their case.

It is unlikely however, that logistical reasons tell the whole story. It also appears that some officers are simply not sufficiently aware that they have a responsibility to keep victims informed. A joint report from the criminal justice inspectorates in 2009, reviewing victim and witness experiences in the criminal justice system, found that levels of awareness of the Victims' Code among the police were very patchy both across and within police forces. Within forces, there appeared to be considerable differences in levels of awareness between different roles. Staff trained to deal with specialist cases such as domestic or sexual violence, child abuse and hate crime consistently exhibited the most thorough understanding of their obligations to victims under the Victims' Code. Non-specialist personnel (including regular police officers), demonstrated some awareness of the Victims' Code, but were unsure about precise details such as the time in which victims have to be notified and informed.[15]

What is clear, however, is that the police attitude has little to do with the needs of the victim. It may be, as victims often suspect, that lack of communication reflects lack of action, ie there is no or little active investigation and therefore police do not contact the victim because there is no event to report and they do not want to reveal the lack of progress. However, as this report shows, the majority of victims want to be kept informed and they want to be kept informed regularly – and this is just as true if there is no progress as when there are big events in their case.

We recognise that it is right to prioritise and deliver an enhanced service to victims of very serious crime, but seriousness of the offence from a victim's perspective may not be the same as from an official perspective. Our 'Victim Voice' survey found that victims who said that they were badly affected by the crime committed against them were just as likely to be left in the dark as those victims who said they were not much affected at all. Similarly, it also found that victims who felt their crime was "serious" reported that they were not much more likely to be kept informed by the police as those who thought their crime was not serious.[16]

Extent and nature of the support need

Of course some victims do not feel the need to be kept informed and/or are not much affected by not being kept well informed. As we might expect, these appear, most often, to be victims of less serious crime. However, it is also true that, even within that group, they are a minority. Evidence strongly suggests that most victims want to be told about what is happening in their case. The British Crime Survey shows that the vast majority

[15] Criminal Justice Joint Inspection (CJJI) (2009), Report of a Joint Thematic Review of Victim and Witness experience in the Criminal Justice System, HMCPSI, HMIC, HMICA; Her Majesty's Crown Prosecution Service Inspectorate (HMPSI), Her Majesty's Inspectorate of Constabulary (HMIC), Her Majesty's Inspectorate of Court Administration (HMICA)

[16] 42% of victims who rated the incident as serious were not kept informed about it, compared to 48% who did not rate it as serious; 45% of those affected by the incident a fair amount or great deal were not kept informed – the same proportion as those who said they were not or not much affected. Unweighted base: 667

[17] In the 2008-09 BCS, victims said they wanted to be kept informed about progress in their case, when asked, in 95% of incidents. Unweighted base: 805 incidents

of victims asked by police if they want to be kept updated about their case say 'yes'.[17]

Why victims want to be kept informed about their case depends on the individual, but for the most part, it stems from a natural, powerful wish to know the situation rather than be left in uncertainty and doubt. Strongly linked to this is a wish to feel that, once it is known to the police, their experience of victimisation (whether troublesome or traumatic) is being taken seriously. As the Audit Commission has stated, "a lack of contact is often perceived as a lack of action."[18] The police may be doing all they can in their investigation but if they do not communicate this to the victim, the victim will naturally begin to feel forgotten and suspect their case is being neglected. As the two case studies in this report illustrate, this can cause a destabilising uncertainty and sense of isolation which exacerbates the distress caused by the incident itself.

In certain instances lack of information from police may also cause victims to fear for their personal safety. A 2009 research study on victims' needs produced by the Greater Manchester Against Crime partnership (GMAC) with input from Victim Support in Greater Manchester, found that victims of offences which took place at their home tended to express a particular need for updates on their case. The research concluded that this was often motivated by fear of reprisal from the offender for reporting the crime because the offender knew where they lived.[19] This is something which has also emerged in other research we have done:

"when they're [the police] speaking to someone you know then they need to get back to you as soon as possible to make sure that you're alright, because it is quite frightening, [I was] 50 yards from this guy [when the police spoke to him] and you don't know what somebody is capable of."

"They [the police] let me know when he was released and when he was arrested. That sort of thing was very reassuring for me because unfortunately he lived in the same block as me, and I knew then when it was safer and ok for me to go out."

It is therefore particularly important for these types of victims to be given warning of developments by police so they can have peace of mind if the perpetrator is not around, or take precautions if they are.

[18] Audit Commission (2003), Victims and Witnesses - providing better support, p35

[19] The study is based on research capturing all needs expressed by victims referred to Victim Support operations across Greater Manchester over a six month period. The 'personal safety fear' group were linked by being victims of wounding, burglary, theft or damage at the home address and having delayed reporting the crime for two weeks or more after the incident (again, probably because they were unsure whether to report because of fear over possible reprisals).

Patrick's story

Patrick was the victim of an unprovoked attack from a former colleague which left him with a broken wrist. After being encouraged by staff at the hostel where he lives, Patrick reported the incident to police, made a statement and later was called to the police station where he was told that there was good quality CCTV evidence and that he would be regularly updated on the investigation. However, it was more than five weeks before Patrick was contacted again, and it was only through friends and former colleagues that Patrick found out that the perpetrator had been visited by police and taken in for questioning. Patrick was eventually contacted to be informed that the case had been put to the Crown Prosecution Service (CPS). After a further several weeks wait with no contact, Patrick was contacted again to be told, with minimal explanation, that the CPS had decided not to prosecute and the case was therefore dropped.

Now, three years after the incident, Patrick still feels hurt and disappointed at the lack of communication from police. He sees the lack of information as symptomatic of them not taking it seriously – something which he suspects may have been related to his mental health problems:

"I was so angry...The police didn't keep in contact like they said they would... I think, if I'm honest, that it [the way the police handled the matter] was because of my background.

Having already been in a vulnerable situation the experience has had a major, long term detrimental impact on his life:

"The whole thing really set me back. I'm now on anti-depressants and I see a psychotherapist."

The lack of contact and information from police has led to a big change in attitude towards police and reporting crime.

Link to satisfaction, confidence and engagement

According to the 'procedural justice' model developed by criminal justice academics, "fair, decent and appropriate treatment – and not results – is key in securing public support for the police".[20] This has recently been supported by a new British Crime Survey analysis we commissioned which shows that victims who have contact with Victim Support – and therefore get more or better 'victim care' – tend to think that the police are doing a better job and have greater confidence in the criminal justice system than victims who do not have contact with Victim Support.[21] As we show overleaf, our new data reveals that how much victims and witnesses were kept informed affects key measures of satisfaction, confidence and engagement.

The 'Victim Voice' survey asked victims who had received support, whether it had any influence (positive or negative) on their confidence in the criminal justice system and attitude towards engaging in the criminal justice system in each of four ways: reporting an incident in which they were a victim of crime to police; coming forward to police as a witness to a crime; helping with community safety initiatives, and; participating in restorative justice.

[20] Bradford, B. 'The quality of police contact: procedural justice concerns among victims of crime in London', London School of Economics
[21] Victims who had contact with Victim Support are 36% more likely to say that the police are doing a good or excellent job than those who havenot had contact with Victim Support, and 30% more likely to say that they are confident in the CJS than those who have not had contact with Victim Support. See Victim Support (2011), Summing Up – A Strategic Audit of the Criminal Justice System

Around a third (37%) of victims who received information or support from police said that it had made them more confident in the criminal justice system, compared to a quarter (25%) who said they were less confident in the system and a third who said it had made no difference (36%). As Figure 4 shows, responses were strongly linked to how good a service victims had received from police. Most (63%) victims who felt their support needs had been very well met by police said that receiving this support had improved their confidence in the criminal justice system. Meanwhile, the effect of lack of support from police was to lessen confidence in the criminal justice system (although this finding should be treated with caution).[22]

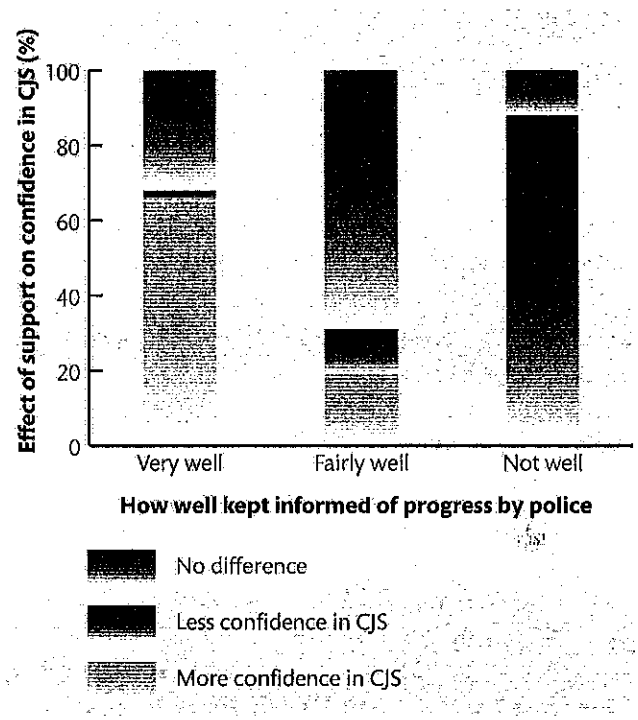


Figure 4 Effect of having support needs met by police on confidence in CJS

Source: Victim Support 'Victim Voice' survey
Unweighted base: 72

Victims themselves often tell us that their experience of the police affects how likely they are to engage with them in future:

"I didn't know what was going on... You felt that they [the police] saw it [the case] as a bit of paper – 'oh that's not important; we'll put that to one side'. That's how I felt... If anything else happened, I would not call the police again." (Victim Support research participant, 2010)

Our 'Victim Voice' survey sought to test how common and how wide (in terms of its effect on different forms of engagement) this effect is. As with the findings on confidence, it indicates a strong link between getting information from the police and likelihood of engaging and participating in the criminal justice system. Figure 5 shows the effect of receiving support from police on victims' engagement with the criminal justice system. It shows a strong positive association between receiving support and being more likely to report a crime (43% more likely if received information support), coming forward as a witness (33% more

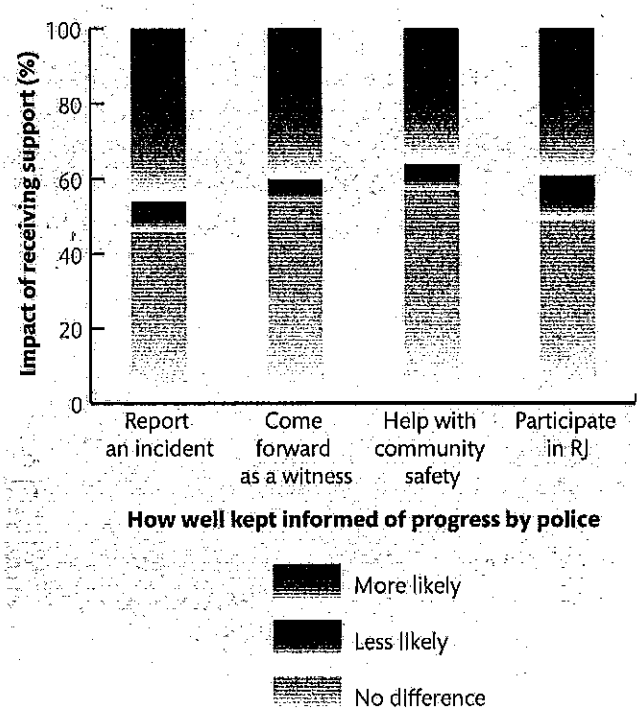


Figure 5 Effect of receiving information support from police on future engagement with CJS

Source: Victim Support 'Victim Voice' survey
Unweighted base: 105

[22] base sizes are low among those who felt the police met their needs 'not very' or 'not at all' well, and so these results should be treated as indicative only

[23] Information support does not necessarily only cover updates on cases but is likely to mostly refer to this when, as here, it is information received from police. A minority of victims received other support from police as well as information – in these cases the affect on engagement is based on all support received not only information.

likely), helping with community safety initiatives (30% more likely) and participating in restorative justice (31% more likely).[23]

As with confidence, the more the support had met their needs, the more likely it was to have had a positive effect on engagement.

These findings are given further weight by British Crime Survey indications on the relationship between being kept well informed about cases and satisfaction or confidence in the police. Figure 6 shows BCS 2008-09 findings on victims' satisfaction with police handling of each incident in which they had been a victim in the previous 12 months, split according to how well they felt the police had kept them informed. For incidents in which victims felt they were not well informed, satisfaction with police handling of the case overall is low; where victims felt they were kept well informed, it is far higher – in fact up to 96% in incidents where the victim was kept very well informed, compared to only 21% satisfaction amongst victims who were not kept at all well informed.

A similar pattern (although less pronounced) is evident in relation to confidence in the local police. Victims who were not kept very or at all well informed were at least twice as likely to say they were not confident in police in the local area.[24]

These findings should be treated with a sense of perspective. Whether victims were kept informed is only one factor in a complex range of factors governing attitude towards police and likelihood of engaging with the criminal justice system. The large proportions of people who said receiving support made no difference to their confidence or engagement shows that providing support is not a key factor for all. British Crime Survey findings on reasons for not reporting crime do not suggest that previous bad experience of the police or other criminal justice agencies is a main factor in decisions on whether to report crime.

Nevertheless, taken as a whole, this evidence shows that whether victims are kept informed or not really does matter, and that leaving victims in the dark can have a range of potential damaging consequences.

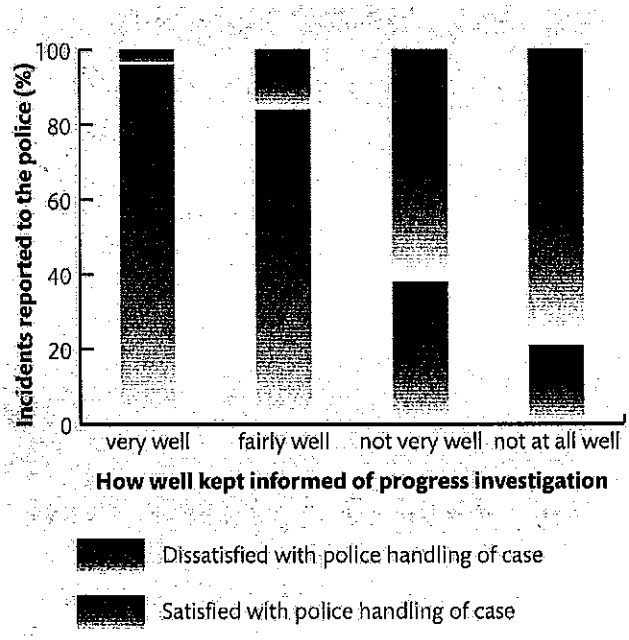


Figure 6 Effect of how well kept informed on satisfaction with overall handling of case

Unweighted base: 3,740
Source: British Crime Survey, 2008-09

[24] This BCS analysis does not confirm a causal link between being kept informed and attitude towards police handling of case or police in the local area, but doe show a strong, consistent pattern which strongly suggests that extent of contact and information has a significant bearing on victims' satisfaction with and confidence in the police.

Chapter 3: What victims want

Any attempts to address this issue have to be based on a clear, consistent understanding of what exactly is needed. If victims' needs are to be properly met then the information not only has to be there, but has to be there in the right type and form.

Evidence on what users want from public services may give us some useful guiding principles for this. The previously mentioned Mori/Cabinet Office research identified some useful measures for effective public sector information provision, which can be summarised as:

- how easy it is to understand
- whether it covers everything the service user needs to know
- whether it is accurate
- which methods of contact are used.[25]

Our own contact and research with victims suggests that in relation to keeping victims informed about their case, there are some general rules of good practice.

Understandable

The criminal justice system is outside of most people's direct experience and some of its workings are not always well understood. This is true among victims as well as the general public. Information about criminal justice procedures therefore needs to be communicated in clear, plain language. When it is not explained properly, information about the investigation may only act to confuse:

"I found that whole system to start with was very, very confusing... I didn't know what the system was because I'd never been involved in it before... some of the charges seem quite obscure and you need to know [what they mean], for your own peace of mind, it needs to be explained more to you." (Victim Support research participant, 2010)

When the process and terms are properly explained, it can be really valued by victims and can also help to manage their expectations. This should be something that happens at first contact as well as in further communication:

"Each step was explained to me, why they were doing that, you know what the next step was. Everything was explained very well, from start to finish, when I was giving my statement. So, that was good." (Victim Support research participant, 2010)

Comprehensive

It is important to tell victims about big developments in their case (eg the arrest of a suspect) and the eventual outcome, including if the case has been dropped. However, as noted previously, victims also greatly value contact aside from this. Regular contact, even if it is to report that there have been no developments, is often just as important to victims as being told about major developments:

"I only ask for a courtesy call, even if this is to say there is no update." (Victim Support research participant, 2010)

For incidents in which the perpetrator knows where the victim lives or knows the victim lives nearby, there is a slightly different need. Here it is important that the victim is given as much warning as possible of upcoming developments (eg the police going to interview the perpetrator, the perpetrator being released on bail etc).

Accurate

The importance of providing victims with correct information should be a given. However, in this context accuracy is also about how specific it is. Sometimes victims can be given generic updates which are of little value and, worse, can cause the victim to feel that they are being treated dismissively:

"They used words like we're progressing and we are looking at all avenues. It was all very vague and... non-committal and nothing was answered and

[25] See Cabinet Office, The Office of Public Services Reform (2004), The Drivers of Satisfaction with Public Services

TrackMyCrime

'TrackMyCrime' is the first system of its kind in England and Wales: an online service which allows victims to see what is happening in the investigation of their case. The service currently operates in the Avon and Somerset police force, where it was launched in March 2011. 'TrackMyCrime' gives victims a new option for being kept updated about their case which, in the same way as online bank accounts, offers the advantage of being faster, more efficient and more convenient than in person or telephone contact because it does not rely on the two parties both being available at the same time.

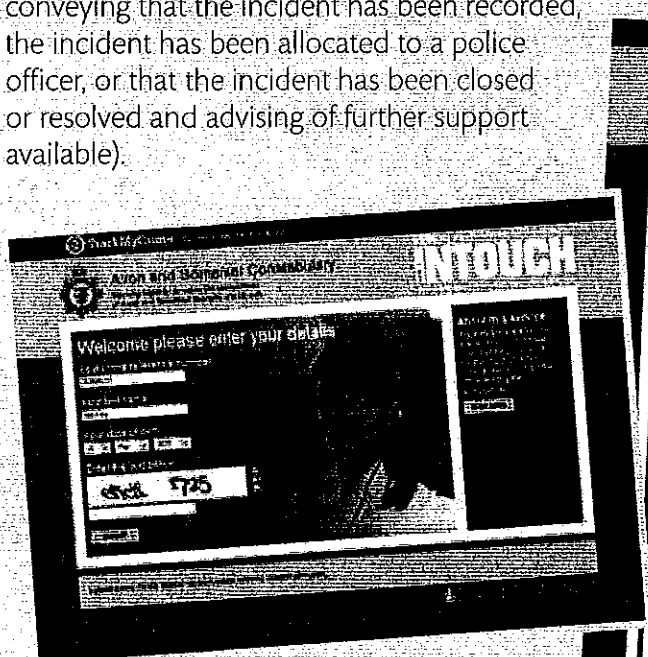
Victims are given the option of being able to access 'TrackMyCrime' when they give their statement. If they take it up they are contacted with details of how to access the account. Once the account is set up investigating officers can post updates on the status of the investigation which victims can then view whenever they next log on. Alongside these individual messages, the system also includes standard messages, automatically generated at certain key points in the investigation process (such as conveying that the incident has been recorded, the incident has been allocated to a police officer, or that the incident has been closed or resolved and advising of further support available).

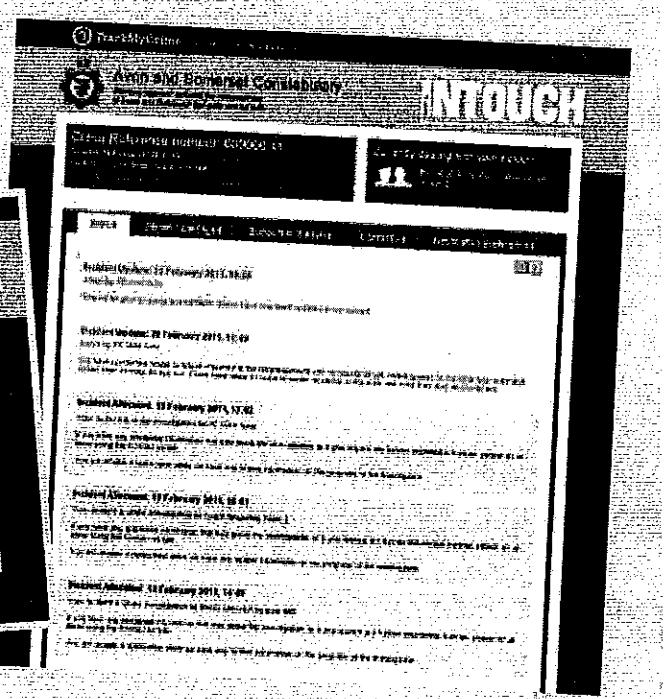
These messages also alert the victim to the system's interactive features, through which victims are able to:

- make general queries during the investigation
- update or correct information on items of property which have been stolen or damaged
- provide feedback once the case has been closed.

Victims can be notified of new updates by email and/or phone and are able to change their contact preferences on the system. Victims can also unsubscribe from 'TrackMyCrime' at any point they wish.

As well as greater convenience and efficiency 'TrackMyCrime' also provides the potential for greater openness and transparency in the relationship between victim and police investigation. 'TrackMyCrime' has attracted interest from a number of other police forces and looks set to be taken on more widely.





effectively. It carried on like that until they closed the case and by the end of the case I stopped answering their calls. I let them leave voicemails for me because it was so frustrating to hear them go through the motions really. They were simply saying their usual spiel and expecting me to nod and go oh, thank you very much and I really - it was upsetting to feel as though you were just getting passed through the system and nothing really was going to be done." (Victim Support research respondent, 2010)

Victims do not want or expect great detail but they do want information which they feel tells them specifically about their case.

Method of contact

Currently victims are generally kept informed about their case through a combination of face-to-face, telephone and written contact. Which method of contact is appropriate will depend on the individual victim and the nature of the information. However, it is clear from speaking to victims that personal contact is highly valued - particularly face-to-face. BCS analysis indicates that the overall satisfaction of victims with the police handling of their case is substantially higher when they have had face-to-face contact.[26] While face-to-face is preferable, all personal contact (whether in person or over the telephone) carries the advantage of allowing victims to ask questions and have a dialogue:

"I would prefer information by telephone. If an officer calls you it's more personal and you've got the chance to ask him questions." (Victim Support research respondent, 2010)

This may contribute to the view of some victims that information is generally easier to understand if delivered through personal contact. There is also a place for contact by letter, in part because letters provide a tangible, official record of key developments. However, letters can also be seen as impersonal and, in some cases, inappropriate and even insulting. For example, one person helped by Victim Support who had been a victim of a brutal mugging in which he was seriously hurt was upset when he received a seemingly generic standard letter (and nothing further) telling him that the police investigation had been closed. He would have preferred it if the letter had been accompanied by a phone call or visit. There may be a variety of other reasons why written contact is inappropriate (for example if the victim does not have good English, has a low literacy level or has a visual impairment).

Of course there are also logistical considerations to be taken into account over which method of contact to use. Face-to-face contact is time consuming and telephone contact can also be problematic and inefficient because police officers may call several times and not get through or may not be on duty when the victim is available to speak (particularly if the officer is on a certain shift pattern).

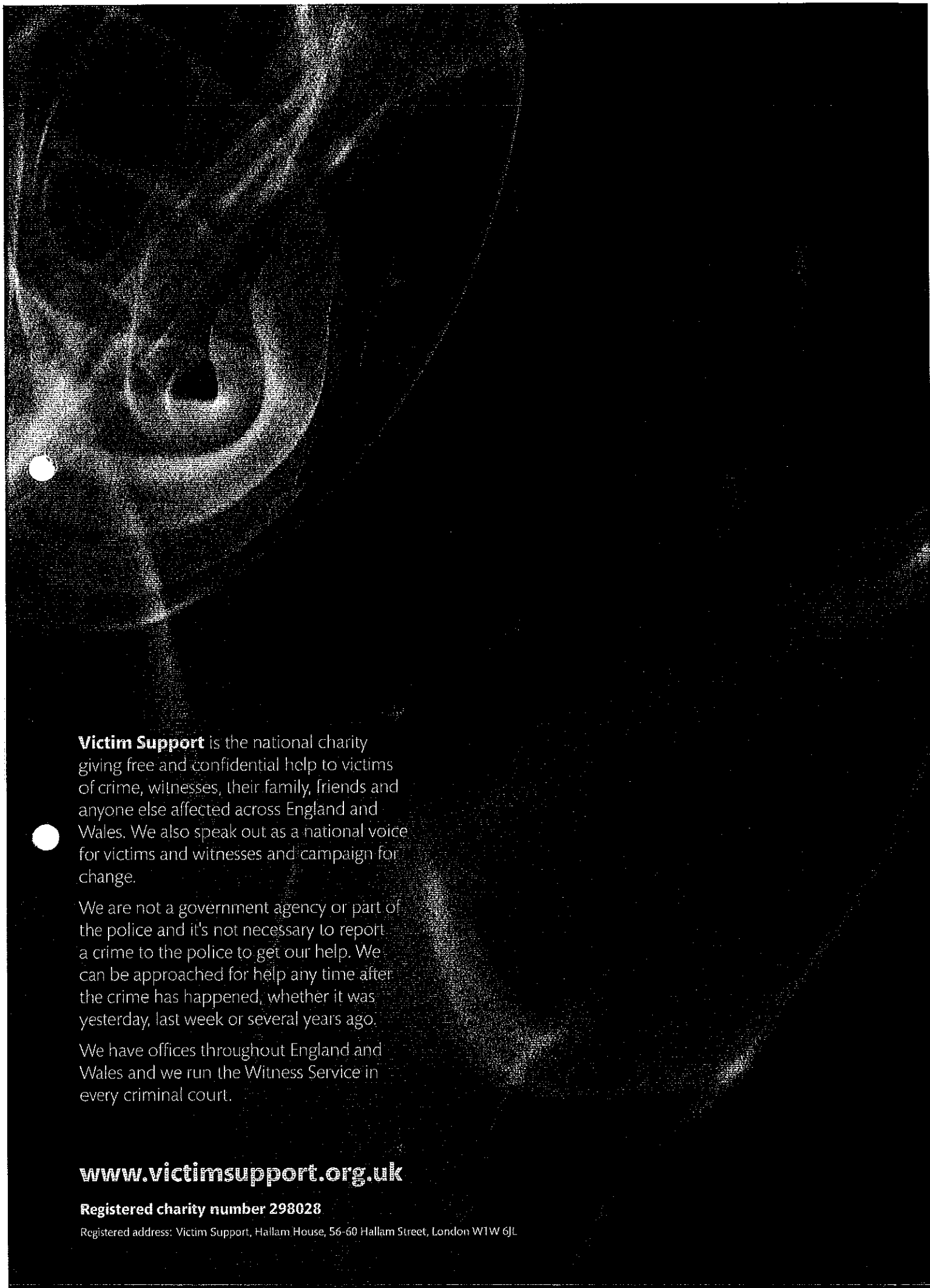
The internet offers a potential way to ease these logistical difficulties without weakening victim care. The 'TrackMyCrime' online account system developed by Avon and Somerset police is profiled on page 17. Online accounts should not (and are not intended to) replace personal contact and not all victims will want to, or be able to, use them. However, victims do appear to be generally receptive. When we sought the reaction of victims to the idea of online accounts, the response was largely enthusiastic[27]:

"I think that [having an online account] would be excellent [because] without having to chase people up, I could actually see what was happening for myself and read it, you know, in my own time and take it in." (Victim Support research participant, 2010)

"it would be good...being able to log on and see the progress of your case - that would be reassuring." (Victim Support research participant, 2010)

[26] Audit Commission (2003), Victims and Witnesses - providing better support

[27] albeit not everyone said they would use them and some reservations were expressed over security of information



Victim Support is the national charity giving free and confidential help to victims of crime, witnesses, their family, friends and anyone else affected across England and Wales. We also speak out as a national voice for victims and witnesses and campaign for change.

We are not a government agency or part of the police and it's not necessary to report a crime to the police to get our help. We can be approached for help any time after the crime has happened, whether it was yesterday, last week or several years ago.

We have offices throughout England and Wales and we run the Witness Service in every criminal court.

www.victimsupport.org.uk

Registered charity number 298028

Registered address: Victim Support, Hallam House, 56-60 Hallam Street, London W1W 6JL

The Code of Practice for Victims of Crime

CRIMINAL JUSTICE SYSTEM

THE CODE OF PRACTICE

1. Introduction

1.1 This Code of Practice governs the services to be provided in England and Wales by the organisations listed in section 2 below to victims of criminal conduct which occurred in England and Wales. It is issued by the Home Secretary under section 32 of the Domestic Violence, Crime and Victims Act 2004.

1.2 This introduction does not form part of the Code of Practice and does not place any obligations on service providers.

1.3 Where a person fails to comply with this Code, that does not, of itself, make him or her liable to any legal proceedings. The Code is, however, admissible in evidence in both criminal and civil proceedings and the court may take failure to comply with the Code into account in determining a question in any such proceedings.

1.4 Breaches of this Code should be referred initially to the service provider(s) concerned. The complaints procedures of the organisations with obligations to provide services are included in the final section of this Code (section 16). If the complainant remains dissatisfied, the complaint can be investigated and reported on by the Parliamentary Ombudsman under the Parliamentary Commissioner Act 1967, as amended by Schedule 7 to the Domestic Violence, Crime and Victims Act 2004.

1.5 This Code represents a minimum level of service in England and Wales. In some parts of England and Wales, organisations, including organisations not mentioned in this Code, will be providing additional services in accordance with priorities agreed by Local Criminal Justice Boards (or equivalent groups). These additional services are not covered by this Code.

Support

1.6 All victims, including relatives of victims who have died as a result of relevant criminal conduct, should have access to a range of support services in their area. While no organisation has an obligation under this Code to ensure appropriate support services are available for every victim, the Government aims to ensure that every victim has access to appropriate support services in their local area. Such support needs to be timely and of sufficient quality to meet the individual needs of every victim, including victims who require specialist support. For example, victims who are called to give evidence at criminal proceedings as witnesses in respect of relevant criminal conduct should expect to receive pre-trial court familiarisation visits before the court hearing if so desired and, where the court makes a special measures direction under section 19 of the Youth Justice and Criminal Evidence Act 1999, the victim being called to give evidence should expect to receive an enhanced level of support.

1.7 All victims are entitled under this Code to receive information about local support services in their area. As at paragraph 5.3, the police must ensure victims are provided with information about local support services and contact details for those services. With some exceptions outlined in the Code at paragraphs 5.5 and 5.6, the police must also ensure the victim's contact details are referred to the appropriate Local Victim Support Group.

2. Organisations required to provide services under the Code

2.1 This Code requires the following organisations to provide services to victims:

- The Criminal Cases Review Commission
- The Criminal Injuries Compensation Authority
- The Criminal Injuries Compensation Appeals Panel
- The Crown Prosecution Service
- Her Majesty's Courts Service
- The joint police/Crown Prosecution Service Witness Care Units
- All police forces for police areas in England and Wales, the British Transport Police and the Ministry of Defence Police
- The Parole Board
- The Prison Service
- The Probation Service
- Youth Offending Teams

3. Persons entitled to receive services under the Code

3.1 This Code requires services to be given to any person who has made an allegation to the police, or had an allegation made on his or her behalf, that they have been directly subjected to criminal conduct under the National Crime Recording Standard (NCRS). In the Code this will be referred to as 'criminal conduct'. This will include, for example, cases where the person has alleged that they have been subjected to racial insults or homophobic insults.

3.2 The person who has made the allegation (or on whose behalf the allegation has been made) must be the **direct** victim of the criminal conduct. This Code does not require services to be provided to third parties or indirect victims such as witnesses of violent crime.

3.3 Where a person has died, or become incapacitated to such an extent that they are unable to communicate as a result of criminal conduct, it is not necessary that an allegation has been made to a police officer. It is sufficient that a criminal investigation into the conduct causing the death or incapacitation has started.

3.4 Where a person has died as a result of criminal conduct, or is unable to receive services as a result of a disability, the victim's family spokesperson is entitled to receive services under this Code. A family spokesperson should be nominated by the close relatives of the person who has died. If the close relatives cannot nominate a family spokesperson, the Senior Investigating Officer (SIO) working on the criminal investigation must nominate a family spokesperson. If the person who has died has no identified close relatives, the SIO may nominate someone who appears suitable to receive assistance under the Code in respect of the death.

3.5 Where a person entitled to receive services under this Code is under the age of 17, then that person's parent or guardian is entitled to receive services under this Code as well as the young person. The parent or guardian is not, however, entitled to receive services under this Code if he or

she is under investigation, or has been charged, in respect of the criminal conduct of which the young person is a victim or, in the reasonable opinion of the organisation providing the relevant services, does not represent the best interests of the young person.

3.6 If the family spokesperson is an independent arbiter there will be no requirement for the police to provide family liaison support to that person. The nomination of an independent arbiter does not remove the necessity for a family liaison officer to be appointed to family members as deemed appropriate by the SIO and subject to the family wanting Family Liaison Officer support. Decisions made by the service provider in relation to contact with the family and independent arbiter should be recorded.

3.7 Businesses are entitled to receive services under the Code. However, in order for them to do so, a named contact must be provided to the service provider. This person will be the contact for all communications between the service providers and the business.

3.8 A victim of crime as defined under the Code may opt out of receiving services under the Code, or request that the obligations that they qualify for be modified, at any time. Service providers are, however, under no obligation to provide services beyond the minimum requirements expressed in this Code. A victim of crime as defined under the Code may choose to opt back into receiving services at any time while the case is under active investigation or receive an update if the investigation has been concluded. These decisions must be recorded by the service provider receiving this information and passed onto other service providers as appropriate on a case by case basis.

Exceptions

3.9 This Code does not require services to be provided to a person in circumstances where the criminal conduct is the subject of an investigation by an inspector under section 20 of the Health and Safety at Work etc. Act 1974 or prosecution by an inspector under section 39 of that Act (for example where an incident in the workplace is the subject of an investigation by the Health and Safety Executive).

Deciding whether a person is entitled to services under the Code

3.10 In determining whether a person is entitled to receive services under this Code, the service provider should only take into account the nature of the allegation of criminal conduct made by, or on behalf of, the person to a police officer. It is immaterial that:

(a) the service provider does not believe the allegation;

(b) no person has been charged with an offence in respect of the criminal conduct;

(c) a person has been charged with a different offence in respect of the criminal conduct (for example a person has been charged with handling stolen goods in circumstances where an allegation of theft was made);

(d) no person has been convicted of an offence in respect of the criminal conduct (including where a person has been acquitted of an offence in respect of the conduct).

3.11 A person is entitled to receive services under this Code only if an allegation of **criminal** conduct (i.e. a crime which would be recorded under the National Crime Recording Standard (NCRS)) is made. This includes the additional requirements of paragraphs 3.13 and 3.14. If a service provider is satisfied an allegation of conduct which does not constitute a criminal offence has been made, the service provider is not required to provide services under this Code.

3.12 If following an investigation it is decided that the person is not a victim of a crime under the NCRS then the service provider is not required to provide any further services under the Code (subject to the additional requirements of paragraphs 3.13 and 3.14). The person must be informed of this finding and that they will not receive further services under this Code.

3.13 Where a person has died and a police investigation has started into the cause of death, the provisions of the Code will apply until a decision is made as to whether criminal conduct was the cause of the death. If the decision is that the death was not as a result of criminal conduct then the family must be advised of this fact and that they will no longer receive services under the Code. If the death continues to be investigated by the police as criminal conduct then the family are entitled to receive services under the Code.

3.14 Where a person has died as a result of a road collision and the police are investigating whether an offence under section 3 of the Road Traffic Act 1988 has been committed, the family and family spokesperson are entitled to receive services under the Code.

3.15 If the victim of a crime is not at the time of the criminal conduct resident in England and Wales, then the basic provisions of the Code will still apply. The process of notifying the victim will, however, by default fall to either letter to the victim's home address, email, or text message to a mobile telephone. If the victim is temporarily resident in England and Wales, then the full provisions of the Code will apply until they leave England and Wales at which time contact will revert to letter, e-mail or text message as above.

3.16 If a service provider makes an incorrect assessment as to whether or not a person is entitled to receive services under this Code, then this can be investigated in the same way as any other breach of this Code.

4. Vulnerable or intimidated victims

4.1 Some services under this Code are to be provided only to vulnerable or intimidated victims based on the definitions given by sections 16 and 17 of the Youth Justice and Criminal Evidence Act 1999. For the purposes of this Code, vulnerable and intimidated victims are defined as such at the time of the offence, rather than at the time of hearing as specified in the 1999 Act.

Vulnerable victims

4.2 For the purposes of the Code a victim of crime is eligible for an enhanced service under the Code:

(a) If under the age of 17 at the time of the offence; or

(b) If the service provider considers that the quality of evidence given by the victim is likely to be diminished by reason of any circumstances falling within 4.3.

4.3 The circumstances falling within this subsection are-

(a) That the victim

(i) suffers from mental disorder within the meaning of the Mental Health Act 1983,

(ii) otherwise has a significant impairment of intelligence and social functioning;

(b) that the victim has a physical disability or is suffering from a physical disorder.

4.4 In determining whether a victim falls within the definition in paragraph 4.3 the service provider must consider any views expressed by the victim.

4.5 In this Section references to the quality of a victim's evidence are to its quality in terms of completeness, coherence and accuracy; and for this purpose "coherence" refers to a victim's ability in giving evidence to give answers which address the questions put to the victim and can be understood both individually and collectively.

Intimidated victims

4.6 For the purposes of the Code a victim of criminal conduct is eligible for an enhanced service under the Code if the service provider is satisfied that the quality of evidence given by the victim is likely to be diminished by reason of fear or distress on the part of the victim in connection with testifying in the proceedings.

4.7 In determining whether a victim falls within the definition in paragraph 4.6 the service provider must take into account, in particular-

(a) the nature and alleged circumstances of the offence to which the proceedings relate;

(b) the age of the victim;

(c) such of the following matters as appear to the service provider to be relevant, namely-

(i) the social and cultural background and ethnic origins of the victim,

(ii) the domestic and employment circumstances of the victim, and

(iii) any religious beliefs or political opinions of the victim;

(d) any behaviour towards the victim on the part of-

(i) the accused,

(ii) members of the family or associates of the accused, or

(iii) any other person who is likely to be an accused or a witness in the proceedings.

4.8 In determining whether a victim falls within the definition in paragraph 4.6, the service provider must in addition consider any views expressed by the victim.

4.9 The complainant in respect of a sexual offence or domestic abuse and the relatives of those who have died as a result of criminal conduct are eligible for an enhanced service under the Code unless the victim has informed the service provider of the victim's wish not to be so.

4.10 A victim's vulnerability may change during the course of an investigation due to health, intimidation or other reason. Service providers must give the victim the opportunity to be provided with an enhanced service if such a change in circumstance is brought to their attention.

4.11 All organisations with responsibilities under the Code should identify victims as vulnerable or intimidated as defined by this Code. Once the service provider has identified a victim as vulnerable or intimidated, that service provider must ensure that this information is passed on as necessary to other organisations with responsibilities in this Code.

OBLIGATIONS OF SERVICE PROVIDERS

5. The Police

5.1 All police forces for police areas in England and Wales, the British Transport Police and the Ministry of Defence Police (the "police") have the following obligations.

Crime Reporting, Assessment and Victim Support

5.2 Following the report of a crime to which the NCRS applies (criminal conduct); if the police, using their professional judgment, decide that there will be no investigation into that crime, they will advise the victim of that fact as soon as possible and within five working days at the latest. Once this decision is made the only sections of the Code which will apply are 5.3 (in all cases) and 5.4 (subject to the exceptions in 5.5 and 5.6).

5.3 The police must ensure that victims can access information about local support services and contact details for those services as soon as possible after an allegation of criminal conduct is made and no later than five working days after an allegation is made. The police can provide this information by either giving the victim a copy of the current local "Victims of Crime" leaflet or by ensuring that the victim can access the information in another format, such as via the internet. Subject to availability from national sources, any local "Victims of Crime" leaflet given to a victim by the police must be provided in a language or format the victim can understand.

5.4 Subject to the exceptions in paragraphs 5.5 and 5.6 below, the police must clearly explain to the victim that their details will be passed on to Victim Support unless they ask the police not to. The police must then provide the relevant local Victim Support Group with the victim's contact details no later than two working days after the day an allegation of criminal conduct is made.

5.5 In accordance with the victim referral agreement between the police and Victim Support, the police should not routinely pass over to a relevant local Victim Support Group the details of victims of the following criminal conduct:

(a) theft of a motor vehicle;

(b) theft from a motor vehicle;

(c) minor criminal damage; and

(d) tampering with motor vehicles.

However, aggravating factors such as repeat victimisation, victim request for contact, vulnerable victims or victims of hate crime will ensure a referral to Victim Support.

5.6 The police should only pass Victim Support the details of victims of sexual offences or domestic violence or the details of the relatives of homicide victims if the victims or relatives have given their explicit consent.

Identification of vulnerable or intimidated victims

5.7 The police must take all reasonable steps to identify vulnerable or intimidated victims using the criteria given at section 4.

5.8 Where a vulnerable or intimidated victim may be called as a witness in criminal proceedings, and may be eligible for assistance by way of special measure under Chapter I of Part II of the Youth Justice and Criminal Evidence Act 1999, the police must explain to the victim the provision about special measures in that Act and record any views the victim expresses about applying for special measures.

Investigation

5.9 If no suspect is arrested, charged, cautioned, reprimanded, given a final warning or subject to other non court based disposal in respect of relevant criminal conduct, the police must notify the victim on at least a monthly basis, of progress in cases being actively investigated up until the point of closure of the investigation.

5.10 Where an investigation into a serious crime is concluded with no person having been charged with the offence, the police must advise the victim, or family if bereaved, of this fact and the reasons for it. At this time, the fact that the case will be subject to periodic review must be discussed with the victim or family representative and they must be given the opportunity to decide whether they wish to be advised of any review procedures which take place. This decision must be recorded by the senior investigating officer at the time of the discussion.

5.11 If the victim or family representative expresses a wish to be advised of any review procedures, the police must ensure that information about the review is passed on to the victim or family representative within one working day of the review procedure commencing.

5.12 The victim or family must also be given the opportunity at this stage to say whether they wish to be advised of the reopening of the investigation due to new evidence or changes in forensic procedures. This decision must be recorded by the senior investigating officer at the time of the discussion. If an enquiry is reopened, the police must consider the expressed wishes of the victim or family before making contact with them and record the reasons for any decision made in this respect.

Family Liaison Officers

5.13 Where a victim has died as a result of criminal conduct or suspected criminal conduct, the police must assign a Family Liaison Officer to any relatives which the police consider appropriate and make a record of the assignment. The police must also provide close relatives of the victim with the packs "Advice for bereaved families and friends following murder or manslaughter", or "Advice for bereaved families and friends following death on the road", or equivalent packs.

Arrest and Bail

5.14 If a suspect is arrested on suspicion of an offence in respect of relevant criminal conduct, the police must notify the victim of this within one working day for vulnerable or intimidated victims and no later than five working days for all other victims.

5.15 If the suspect is released with no further action being taken the police must notify the victim of this event and the relevant reasons for no further action being taken within one working day for vulnerable or intimidated victims and no later than five working days for all other victims.

5.16 If the suspect is released on police bail to return to the police station the police must notify vulnerable or intimidated victims of this event, reasons for bail and any relevant bail conditions within one working day and notify other victims within five working days.

5.17 If police bail is altered by change of bail conditions, date of return on bail or bail is cancelled, the police must notify vulnerable or intimidated victims of these events and the reason within one working day and notify other victims within five working days.

Decisions to bring Criminal proceedings

5.18 If a suspect is interviewed and/or reported for offences by a police officer in relation to relevant criminal conduct, the police must notify the victim of this fact and the fact that a file will be submitted for a decision on prosecution to be made or summons to be issued. This notification must be within three working days of the suspect being interviewed and/or reported. When a summons is issued by the court the victim must be notified of this fact and the date of the first hearing within five working days of the police being notified of the summons being issued.

5.19 It will be the duty of the police to notify victims of all decisions to bring any criminal proceedings for a relevant offence. If a decision is made not to prosecute the suspect, the victim must be notified of this fact. If the decision is made by the police, the responsibility for notification lies with the police. In this case vulnerable or intimidated victims must be notified within one working day of the person being charged. All other victims must be notified within five working days of the person being charged.

5.20 In cases where, following a discussion between the investigating officer and a Crown Prosecutor, a decision is taken that there is insufficient evidence to charge a suspect with a relevant criminal offence, or a suspect is charged with an offence, it will be the responsibility of the police to notify the victim of this fact within one working day for vulnerable or intimidated victims and within five working days for all other victims.

Bailing of Persons to Court

5.21 If a suspect is charged with an offence in relation to relevant criminal conduct and released on police bail to appear at a court, the police must notify the victim of this event, the date of the court hearing and any relevant bail conditions within one working day for vulnerable or intimidated victims and within five working days for other victims. Where the decision to charge a suspect with a relevant offence is made by the police in accordance with the Director's Guidance on Charging, the notification must also state that the decision is subject to review by the CPS and that if after review the CPS takes a decision to substantially alter or drop any charge, the CPS will notify the victim.

5.22 If bail conditions are amended by the police prior to the suspect appearing at court the police must notify vulnerable or intimidated victims of any relevant changes to the bail conditions within one working day and all other victims within five working days.

5.23 If a suspect is charged with an offence in relation to relevant criminal conduct and the police will be applying to the court to remand the suspect in custody, the police must notify a vulnerable or intimidated victim of this event and the date of the remand hearing within one working day.

5.24 If a suspect in respect of relevant criminal conduct is remanded in custody by the court in circumstances where the police had applied for the suspect to be remanded in custody the police must notify a vulnerable or intimidated victim within one working day and all other victims within five working days.

5.25 The police must inform all victims if a suspect in respect of relevant criminal conduct is given bail by the court in circumstances where the police made an application to remand the suspect in custody. At the same time, the police must also inform all victims of any conditions attached to the bail that relate to, involve or affect the victim, and what the victim can do if conditions are broken. This information must be provided by the police within one working day for vulnerable or intimidated victims and within five working days for all other victims.

Other disposal methods

5.26 If a suspect is cautioned (simple or conditional), reprimanded, given a final warning, issued a penalty notice for disorder, or given any other non-court disposal method, in respect of relevant criminal conduct, the police must notify the victim of this event no later than one working day after the day of the event in the case of vulnerable or intimidated victims and within five working days after the day of the event in the case of other victims.

Youth Offending Teams

5.27 In cases where the perpetrator of relevant criminal conduct is under the age of eighteen, the police must pass the victim's contact details to the Youth Offending Team (unless the victim asks the police not to) to enable victims to have access to reparation or other restorative justice type initiatives.

Requests from the Criminal Injuries Compensation Authority (CICA) and/or the Criminal Injuries Compensation Appeals Panel (CICAP).

5.28 The police must respond to requests for information from the CICA or the CICAP to enable a victim's claim for compensation to be assessed with the most accurate information available at that time.

5.29 In the case of the initial request (TB1) for basic information from the CICA the police must pass this information on within 30 days of the police receiving the request.

5.30 In the case of subsequent requests for information (TB2) from the CICA following the agreement between ACPO and the CICA, the police must pass this information on within 60 days of the police receiving the request.

5.31 In the case of requests for information from the CICAP, the police should pass on this information within 30 days of the police receiving the request.

Information about the Criminal Cases Review Commission

5.32 Paragraphs 5.33 to 5.35 below do not apply where the Criminal Cases Review Commission has decided to contact the victim directly under section 15 of this Code below.

5.33 If a conviction or sentence in respect of relevant criminal conduct is being reviewed by the Criminal Cases Review Commission and, taking all the circumstances of the case into account, it is likely that the review will come to the victim's attention, the police must notify the victim no later than ten working days after the day the police receive notification of the review.

5.34 If the Criminal Cases Review Commission decides not to refer a conviction or sentence in respect of relevant criminal conduct to the Court of Appeal or the Crown Court, and the victim has been informed of the review under paragraph 5.33 above, the police must notify the victim no later than two working days after the day the police receive notification of the decision.

5.35 If the Criminal Cases Review Commission decides to refer a conviction or sentence in respect of relevant criminal conduct to the Court of Appeal or the Crown Court, the police must notify the victim no later than ten working days after the day the police receive notification of the decision.

6. Joint Police/Crown Prosecution Service (CPS) Witness Care Units

6.1 The joint police/CPS Witness Care Units have the following obligations.

6.2 The joint police/CPS Witness Care Units must conduct a full needs assessment with all victims where a 'not guilty' plea is entered.

6.3 The joint police/CPS Witness Care Units must notify victims of any requirement of them to give live evidence, and any subsequent amendment to this requirement, within one working day of receiving the notification from the CPS.

6.4 The joint police/CPS Witness Care Units must notify victims of the date of all criminal court hearings, including any set down for consideration of an amendment to the sentence originally passed, and any subsequent amendments to that date, within one working day of receiving the date from the court.

6.5 The joint police/CPS Witness Care Units must provide victims who are to be called as witnesses in criminal proceedings in respect of relevant criminal conduct with a copy of the "Witness in Court" leaflet, or current equivalent national information leaflet.

6.6 Where victims under the age of seventeen are to be called as witnesses in criminal proceedings in respect of relevant criminal conduct which involves sex, violence, or cruelty, the joint police/CPS Witness Care Unit must ensure that the victims and their parents or guardians are provided with the relevant "Young Witness" information pack (or equivalent).

6.7 Where a criminal trial is held in respect of relevant criminal conduct, the joint police/CPS Witness Care Units must notify any vulnerable or intimidated victim of the outcome of all pre-trial hearings (including applications for special measures directions under section 19 of the Youth Justice and Criminal Evidence Act 1999) and the verdicts of the trial, including the sentence if the suspect is convicted, no later than one working day after the day of receipt of these decisions from the court, and must notify other victims of the sentence (or any not guilty verdict) no later than one working day after the day of receipt of the sentence or not guilty verdict from the court.

6.8 The joint police/CPS Witness Care Units must explain to victims the meaning and effect of the sentence given to the offender in their case, and respond to any questions the victim may have. If the joint police/CPS Witness Care Unit is not able to answer the questions asked by the victim, they should refer the victim to the CPS.

6.9 If there is a significant amendment to the sentence originally passed the joint police/CPS Witness Care Units must notify the victim of this amendment within one working day of receipt of the information from the court.

Warrants

6.10 If a warrant is issued for the arrest of a defendant in relation to relevant criminal conduct following his or her failure to attend court on the appointed day, the police or the joint police/CPS Witness Care Unit must notify the victim of this fact within one working day of the receipt of the information from court in the case of vulnerable or intimidated victims and no later than four working days of receipt of the information for all other victims.

6.11 Following the arrest of a defendant on a warrant issued by a court for failure to appear in relation to relevant criminal conduct, the police or joint police/ CPS Witness Care Units must notify the victim of the arrest, next court date and result of the appearance, if known, within one working day of receipt of this information from the court in the case of vulnerable or intimidated victims and no later than four working days from receipt of the information for other victims.

Appeals from Magistrates' to Crown Court

6.12 If a person who has been convicted of an offence at the Magistrates' Court in respect of relevant criminal conduct appeals against their conviction or sentence to the Crown Court, the joint police/CPS Witness Care Units must inform all victims of the appeal no later than one working day after the joint police/CPS Witness Care Units are notified by the courts that an appeal notice has been lodged. When giving this information, the joint police/CPS Witness Care Units must make all victims aware of the Witness Service and explain that they will refer their details to the Witness Service unless they ask the police not to do so.

Appeals from Crown Court to the Court of Appeal

6.13 If a person who has been convicted of an offence at the Crown Court in respect of relevant criminal conduct appeals against their conviction or sentence to the Court of Appeal, the joint police/CPS Witness Care Units must inform any vulnerable or intimidated victim and the Probation Service victim contact team of the appeal no later than one working day after the joint police/CPS Witness Care Units are notified by the Appeal Court that leave to appeal has been granted and a hearing in a designated format will occur, and must inform any other victim no later than five working days after that day. When giving this information, the joint police/CPS Witness Care Units must make both vulnerable or intimidated victims and other victims aware of the Witness Service and explain that they will refer their details to the Witness Service unless they ask the police not to do so.

6.14 The joint police/CPS Witness Care Units must inform any vulnerable or intimidated victim and the Probation Service victim contact team of the result of an appeal in respect of relevant criminal conduct no later than one working day after the day the joint police/CPS Witness Care Unit is notified by the court of the result, and any other victim no later than four working days after that day.

Information about National Probation Service Victim Contact Scheme

6.15 In cases where an offender is convicted of a sexual or violent offence as defined in section 45 of the Domestic Violence, Crime and Victims Act 2004 in respect of relevant criminal conduct and given a sentence of imprisonment or detention of twelve months or more, or hospital order with restriction order, the joint police/CPS Witness Care Units must provide the victim with a copy of the "National Probation Service Victim Contact Scheme" leaflet or equivalent updated leaflet. The joint police/CPS Witness Care Unit must refer the victim's details to the Probation Service no later than ten working days after the expiry of the period in which victims may opt out of the National Probation Service Victim Contact Scheme. Both of these actions must be completed no later than a total of twenty working days after the day the joint police/CPS Witness Care Unit is notified of the sentence by the court.

7. The Crown Prosecution Service

7.1 The Crown Prosecution Service (CPS) has the following obligations.

7.2 It is the duty of the CPS to ensure that victims are informed of charging decisions taken by the CPS. In cases where, following discussions between an investigating officer and a Crown Prosecutor, the decision is taken that there is insufficient evidence to bring any proceedings for a relevant criminal offence it will be the responsibility of the police to notify the victim of this fact.

7.3 Where a Crown Prosecutor takes the decision that there is insufficient evidence to bring any proceedings following receipt of a full evidential report and other than during a discussion with the investigating officer, it will be the responsibility of the CPS to notify the victim of this fact within one working day for vulnerable or intimidated victims and within five working days for all other victims.

7.4 If, after an offender has been charged and following a case review, the CPS takes a decision to substantially alter or drop any charge, the CPS must notify the victim within one working day for vulnerable or intimidated victims and within five working days for all other victims. In all other circumstances, the police will be responsible for notifying victims of decisions in cases.

7.5 The Prosecutor may decide in accordance with CPS guidance that it is inappropriate or unnecessary in the particular circumstances to notify the victim, or that for legal reasons, no explanation beyond setting out the tests in the Code for Crown Prosecutors can be given. In such cases the reasons for providing no information or only limited information must be recorded.

7.6 The CPS has an additional obligation set out in paragraph 7.7 below in relation to cases involving a death allegedly caused by criminal conduct, such as murder, manslaughter, dangerous driving or careless driving, cases of child abuse, sexual offences, racially and religiously aggravated offences and offences with a homophobic or transphobic element.

7.7 The CPS must offer to meet the victims of the types of cases identified in 7.6 to explain a prosecution decision in the following circumstances:

> 7.7.1 where the Prosecutor decides not to bring any proceedings in respect of criminal conduct, following the provision of a full evidential report by the police to the CPS for a CPS decision on charge (in accordance with guidance issued by the Director of Public Prosecutions, and other than during a face-to-face consultation with an investigator);
>
> 7.7.2 where a decision is made to drop or substantially alter charges in respect of relevant criminal conduct;

unless the Prosecutor concludes that in all the circumstances a meeting ought not to take place in which case he or she must record in writing the reason for that conclusion.

7.8 Where a victim who is to be called as a witness in criminal proceedings in respect of relevant criminal conduct, has been identified as potentially vulnerable or intimidated, the CPS must have systems in place to assist prosecutors in considering whether or not to make an application to the court for a special measures direction under Chapter I of Part II of the Youth Justice and Criminal Evidence Act 1999. The outcome of that consideration must be recorded.

7.9 The CPS must ensure that, where circumstances permit, Prosecutors or, if Prosecutors are unavailable, other representatives of the CPS introduce themselves to victims at court. When meeting victims, Prosecutors or their representatives must answer any questions victims may have about court procedures and give an indication where possible of how long they will have to wait before giving evidence.

7.10 In the event of delays to criminal proceedings in respect of relevant criminal conduct, the CPS must, wherever possible, explain the reason for the delay and, wherever possible, tell the victim how long the wait is likely to be.

7.11 The CPS must pay expenses that the CPS has decided are due to the victim, in accordance with the Crown Prosecution Service (Witnesses' etc. Allowances) Regulations 1988 not later than ten working days after the day the CPS receives a correctly completed claim form.

7.12 The CPS must answer any questions the victim has about the sentence in their case if the victim is referred to the CPS by the joint police/CPS Witness Care Units as at paragraph 6.8.

7.13 The CPS must provide the joint police/CPS Witness Care Units with copies of the List of Witnesses Attending Court as soon as these are finalised to enable the joint police/CPS Witness Care Units to notify victims if they are required to give evidence.

7.14 The CPS must respond to requests for information from the Criminal Injuries Compensation Authority or the Criminal Injuries Compensation Appeals Panel no later than 60 working days after the day on which the CPS receive the request.

8. Her Majesty's Courts Service

8.1 Her Majesty's Courts Service (the "court staff") have the following obligations.

8.2 The court staff must notify the joint police/CPS Witness Care Units, in relation to all hearings including any set down for the consideration of an amendment to the sentence originally passed, of the court date(s) in respect of relevant criminal conduct, no later than one working day after the day on which the date is set in cases which court staff have been notified involve vulnerable or intimidated victims; and no later than three working days after the day on which the date is set in cases involving other victims.

8.3 In order for information about court decisions in criminal proceedings in respect of relevant criminal conduct to be passed to victims promptly, court staff must:

(a) in relation to first hearing bail/remand applications ensure that, in cases which the court staff have been notified involve vulnerable or intimidated victims, decisions reach the police and the joint police/CPS Witness Care Units no later than one working day after the day on which the decision is made; and in cases involving other victims, decisions reach the police and the joint police/CPS Witness Care Units no later than three working days after the day on which the decision is made.

If this is not possible in a particular case, a record must be made of why the decision was not conveyed to the police and the joint police/CPS Witness Care Units within the appropriate time-limit.

(b) in relation to all later hearings, including any resulting in a significant amendment of the sentence originally passed, ensure that, in cases which the court staff have been notified involve vulnerable or intimidated victims, decisions reach the joint police/CPS Witness Care Units no later than one working day after the day on which the decision is made; and in cases involving other victims, decisions reach the joint police/CPS Witness Care Units no later than three working days after the day on which the decision is made.

If this is not possible in a particular case, a record must be made of why the decision was not conveyed to the joint police/CPS Witness Care Units within the appropriate time-limit.

(c) in relation to all adjournments and postponements of scheduled hearings agreed to without a court hearing, ensure that, in cases which the court staff have been notified involve vulnerable or intimidated victims, decisions reach the joint police/CPS Witness Care Units no later than one working day after the day on which the decision is made; and in cases involving other victims, decisions reach the joint police/CPS Witness Care Units no later than three working days after the day on which the decision is made.

If this is not possible in a particular case, a record must be made of why the decision was not conveyed to the joint police/CPS Witness Care Units within the appropriate time-limit.

8.4 The court staff must ensure that, where possible, at criminal proceedings in respect of relevant criminal conduct victims have, and are directed to, a separate waiting area and a seat in the courtroom away from the defendant's family or friends.

8.5 Where the court hearing criminal proceedings in respect of relevant criminal conduct makes a special measures direction under Part II of the Youth Justice and Criminal Evidence Act 1999, the court staff must ensure the availability of those special measures so far as is possible.

8.6 The court staff must ensure, as far as is reasonably within their control, that victims who are witnesses do not have to wait more than two hours before giving evidence in criminal proceedings in respect of relevant criminal conduct in the Crown Court or Magistrates' Court.

8.7 Where victims are witnesses in criminal proceedings in respect of relevant criminal conduct, the court staff must, if appropriate, take contact telephone numbers for the victims so that the victims are able to leave the court precincts and be contacted when they are needed.

8.8 The court staff must ensure, whenever possible, that there is an information point where all victims in criminal proceedings in respect of relevant criminal conduct can find out what is happening in their case while their case is being heard in court.

8.9 If a person who has been convicted of an offence at the Magistrates' Court in respect of relevant criminal conduct gives notice of appeal against their conviction or sentence, the Magistrates' Court staff must notify the joint police/CPS Witness Care Units within one working day of the notice being lodged.

8.10 Staff at the Court of Appeal must notify the joint police/CPS Witness Care Units if a person who has been convicted of an offence in respect of relevant criminal conduct appeals against their conviction or their sentence no later than three working days after the Court receives the judge's decision granting leave to appeal.

8.11 If leave to appeal is granted by any court above the Court of Appeal, the court staff at that court must notify the joint police/CPS Witness Care Units no later than one working day after the day on which leave to appeal is granted.

8.12 The court staff at the relevant court must notify the joint police/CPS Witness Care Units of the result of the appeal no later than one working day after the day of the result.

9. Youth Offending Teams

9.1 Youth Offending Teams (YOTs) are required to take account of victims' needs and have the following obligations in respect of victims of youth crime referred to youth offending teams.

9.2 On receipt of a victim's details from the police, the YOT must decide if it would be appropriate to invite the victim to become involved in a restorative justice intervention relating to relevant criminal conduct, and record the reasons for this decision.

9.3 The YOT must keep victims' personal details securely and separate from details kept on offenders. Information on victims should be destroyed when the restorative justice intervention in a case is at an end, apart from information that would be relevant for future research and evaluation.

9.4 If it decides to make contact with victims, the YOT must explain its role and allow victims to make informed choices about whether they want any involvement and if so, the nature of that involvement. The involvement of victims must always be voluntary. Victims must not be asked to do anything which is primarily for the benefit of the offender.

9.5 YOTs must ensure that all staff working with victims have had appropriate training.

9.6 If the victim agrees to be involved, either directly or indirectly in a restorative justice intervention in respect of relevant criminal conduct, the YOT must, if the victim requests this, keep the victim informed about the progress of the case and notify the victim when the intervention has concluded.

9.7 The YOT must give victims who ask for additional support before, during or after a restorative justice intervention in respect of relevant criminal conduct access to information about appropriate services.

10. Probation – National Offender Management Service

10.1 Under the Domestic Violence, Crime and Victims Act 2004, the local probation boards have responsibilities in relation to the victims of offenders sentenced to 12 months or more for a sexual of violent offence, including mentally disordered offenders, in certain circumstances. These responsibilities are set out in full in the 2004 Act but are summarised below.

10.2 The Probation Service has the obligations set out below in relation to:

10.2.1 the victim of an offender who receives a sentence of imprisonment of 12 months or longer after being convicted of a sexual or violent offence;

10.2.2 the victim of an offender who is convicted of a sexual or violent offence and receives a restricted hospital order (including an order made under criminal insanity legislation); or is transferred to prison under the Mental Health Act 1983 with a restriction direction; or receives a hospital and limitation direction. (This only applies where the order or direction is made or the transfer to prison is directed on or after 1 July 2005).

10.3 The Probation Service must take all reasonable steps to establish whether a victim wishes to make representations about what licence conditions or supervision requirements (where it is a young offender) the offender should be subject to on their release from prison and/or conditions of discharge from hospital and to forward these to those responsible for making decisions about the prisoner's or patient's release.

10.4 The Probation Service must forward any requests for non-disclosure to those responsible for making decisions about the prisoner's or patient's release.

10.5 The Probation Service must pass on any information to the victim about whether the prisoner or patient will be subject to any conditions or requirements in the event of release or discharge and must provide the victim with details of any which relate to contact with the victim or their family and the date on which any restriction order, limitation direction or restriction direction is to cease to have effect.

10.6 The Probation Service shall also provide the victim with any other information which it considers appropriate in all the circumstances of the case. Generally, victims will be given information at key stages in an offender's sentence, for example, a move to a lower category prison or a temporary release from prison on licence.

11. Prisons – National Offender Management Service

11.1 Prisons and NOMS have the following obligations.

11.2 The National Offender Management Service must maintain the Prison Service telephone helpline to ensure that victims have a number to ring if they receive unwanted contact from a prisoner who has been convicted or remanded in custody in respect of relevant criminal conduct; or have any concerns about the prisoner's temporary release or final discharge.

11.3 The Probation Service may, as a result of information received from the victim, recommend to the Parole Board or the Secretary of State (as appropriate), that conditions relating to non-contact or exclusion are placed on prisoners' release licences. Governors and Controllers of Contracted Prisons must ensure that all approved conditions are inserted into release licences and that all associated administrative procedures are meeting victims' needs. In addition, prisons must ensure that this information is passed to the Probation Service so that the Probation Service can notify the victim.

11.4 Prisons must ensure that information about victims and their families, or their views and concerns about a prisoner's temporary or permanent release, is stored securely. As a general principle information provided by the victim which is pertinent to decisions about the conditions of a prisoner's release will be made available to that prisoner unless the victim requests that it is not disclosed and the Governor considers that to do so would put the victim or their family at risk of harm or would compromise any duty of confidentiality owed to the victim. Victims who wish their views not to be disclosed to the prisoner can make representations to the Governor/Controller through their Victim Liaison Officer.

12. The Parole Board

12.1 The Parole Board has the following obligations.

12.2 The Parole Board must consider any representations that victims have offered to the Probation Service on the conditions to be included in the release licences of prisoners serving sentences subject to consideration by the Parole Board and reflect these considerations in the parole decisions. Conditions relating to the victim should be disclosed to the victim through the Probation Service, and where a licence condition has not been included, the Parole Board should provide an explanation for the non-inclusion.

12.3 The Parole Board must consider any information regarding the victim that relates directly to the current risk presented by a prisoner in deciding whether or not to grant or recommend release and reflect this in the parole decision.

13. The Criminal Injuries Compensation Authority

13.1 The Criminal Injuries Compensation Authority (CICA) has the following obligations.

13.2 CICA must process all applications for compensation made under the Criminal Injuries Compensation Scheme ("the Scheme") in accordance with the rules of the Scheme.

13.3 CICA must make available clear information on eligibility for compensation under the Scheme.

13.4 CICA must respond to all correspondence regarding applications for compensation under the Scheme which requires a reply, no later than 20 working days after the day the correspondence was received by CICA.

13.5 In the event of a claim for compensation under the Scheme being refused or reduced, CICA must ensure that it gives explanations for its decisions to the applicant.

13.6 If CICA is unable to send a decision letter to an applicant for compensation under the Scheme within 12 months of receipt of the application, it must notify the applicant of the status of their claim after 12 months of receipt of the application.

13.7 When issuing its decision, CICA must notify applicants of their right to a review of the decision, and provide information on the procedure and the time limit for applying for review.

13.8 Where an applicant requests a review, CICA must process the review efficiently, fairly, and entirely afresh on the basis of all available information.

13.9 CICA must provide explanations of the review decision to the applicant, and must notify them of the process of applying for an independent appeal to the Criminal Injuries Compensation Appeals Panel.

13.10 Where an appeal is lodged, CICA must provide the applicant and the Criminal Injuries Compensation Appeals Panel with copies of all papers required for the appeal, as soon as is reasonably practicable. The applicant should be given at least 15 working days to deal with any new issues raised in the papers.

14. Criminal Injuries Compensation Appeal Panel

14.1 The administrative staff of the Criminal Injuries Compensation Appeal Panel (CICAP) have the following obligations at all stages of the process of an appeal under the Scheme, including at oral hearings.

14.2 CICAP staff must make available to claimants relevant information regarding the procedure for appeals by producing and keeping up to date guidance materials.

14.3 CICAP staff must respond to all correspondence relating to appeal cases under the Scheme which needs a reply, no later than 20 working days after the day the correspondence was received by CICAP.

14.4 CICAP staff must ensure explanations for appeal decisions under the Scheme are available to applicants.

15. The Criminal Cases Review Commission

15.1 The Criminal Cases Review Commission (the "Commission") has the following obligations.

15.2 The Commission must consider the extent of contact to be made with a victim where, during the course of a review of a conviction or sentence in respect of relevant criminal conduct, the Commission considers there is a likelihood of the case coming to the victim's attention. The Commission must record the reasons for its decisions as to the extent of contact with a victim and notify the police of those decisions.

15.3 If the Commission decides, under paragraph 15.2, to contact the victim during the course of the review the Commission must notify the victim that an application has been received and that the case is under review. If, following the review, the Commission decides not to refer the conviction or sentence to the Court of Appeal or the Crown Court, the Commission must notify the victim of that decision.

15.4 If the Commission refers a conviction or sentence in respect of relevant criminal conduct to the Court of Appeal or Crown Court, the Commission must notify the victim of its decision, unless the victim has made it clear that they do not wish to be informed, or the case includes no identifiable victim. In doing so the Commission must, so far as possible, make certain that arrangements are in place to ensure that the victim is notified of the decision to refer at the same time as the person whose conviction or sentence has been referred. The Commission must not issue a press statement when a case has been referred until arrangements have been made for notifying the victim.

15.5 If the Commission contacts a victim, under paragraph 15.2 or 15.4, this may be done either directly by the Commission or with the assistance of the police. In either case the victim must be provided with information about Victim Support and the Witness Service.

16. Complaints about any of the service providers with obligations under the Code

16.1 If the victim feels that any of the service providers has not delivered their obligations under the Code, they should discuss their complaint with the person they have been dealing with at that organisation. Following this, they should make a complaint through the internal complaints procedure of that service provider.

Service Provider	How to complain
Police	The victim should ask at their local police station for a leaflet explaining how to make a complaint. Victims will receive a response within 10 working days.
Crown Prosecution Service (CPS)	The victim should write to the CPS office which dealt with the case outlining their complaint. Contact details for CPS offices can be found at Police Stations, Citizens Advice Bureaux or the Yellow Pages. The CPS office will aim to reply within 3 working days.
Joint Police/Crown Prosecution Service Witness Care Units	The victim should write to the Witness Care Unit which dealt with their case, setting out their complaint.
Crown Court	If the victim has a complaint about the court process, the court will be able to provide a leaflet about the complaints procedure. Complaints should be made in writing to the Complaints Officer at the court. A reply will be sent within five working days.
Magistrates' Court	If the victim has a complaint about the court process, the court will be able to provide a leaflet about the complaints procedure. Complaints should be made in writing to the Complaints Officer at the court. A reply will be sent within five working days.
Court of Appeal	The victim should make their complaint in writing to the Customer Service Manager, The Royal Courts of Justice, Strand, London WC2A 2LL.
Youth Offending Team	The victim should write to the Youth Offending Team Manager at their local Youth Offending Team explaining their complaint.
National Probation Service	The victim should make their complaint to the local manager or Senior Probation Officer at the office they have been dealing with.
Prison Service	Complaints should be addressed to the Director General's Briefing and Casework Unit, HM Prison Service, Cleland House, Page Street, London SW1 4LN. In cases where the offender is held in a contracted prison, the Prison Service will refer the matter to the Office of Contracted Prisons as appropriate.
Parole Board	The victim should complain in writing to The Complaints Officer, Parole Board for England and Wales, Abell House, John Islip Street, London, SW1P 4LH.

Service Provider	How to complain
Criminal Injuries Compensation Authority	The victim should make their complaint in writing to The Manager, Customer Care Team, Criminal Injuries Compensation Authority, Tay House, 300 Bath Street, Glasgow, G2 4LN. The victim will receive a reply within 20 working days.
Criminal Injuries Compensation Appeals Panel	The victim should make their complaint within three months of the hearing by writing to Customer Service Manager, Criminal Injuries Compensation Appeals Panel, 11th Floor Cardinal Tower, 12 Farringdon Road, London, EC1M 3HS.
Criminal Cases Review Commission	The victim should write to The Complaints Manager, Criminal Cases Review Commission, Alpha Tower, Suffolk Street, Queensway, Birmingham, B1 1TT.

Referral to the Parliamentary Ombudsman

16.2 If the victim makes a complaint regarding a breach of the Code using the procedures set out above for the relevant service provider, and they are not satisfied with the outcome, they may refer the issue, through a Member of Parliament, to the Parliamentary Ombudsman for consideration. Information about taking a complaint to the Parliamentary Ombudsman can be found at www.ombudsman.gov.uk.

Definitions

In this Code –

"close relative" means a spouse, co-habitee, parent (including a step-parent) or guardian, sibling (including half-siblings and step-siblings) or a child;

"co-habitee" means a person who is living in the same household with another person as a husband, wife or same or different sex partner;

"criminal conduct" means conduct constituting a criminal offence;

"independent arbiter" means a person who is not involved in the police investigation, is not a member of the bereaved family or a close friend of the deceased, who acts on behalf of the family in their communications with the police. Examples of independent arbiters could be: a lawyer, local religious or community leader or member of a community interest group;

"Family Liaison Officer (FLO)" means a police officer trained to work with bereaved families to secure their confidence and trust, to provide support and information about the investigation and support agencies, and to gather information which contributes to the investigation;

"guardian", in relation to a person under the age of 17, means any person who, in the opinion of a service provider, has for the time being the care of that person;

"Local Victim Support Group" means a local group approved by Victim Support to provide services in the name of Victim Support;

"notifying a victim" means the posting of a letter, the making of a telephone call, making a personal visit, or the sending of an e-mail, fax, text message or any other mass communication method;

"relevant criminal conduct" means conduct in respect of which a victim is entitled to receive services under this Code;

"service provider" means a person required to provide services under this Code, as specified in section 2;

"victim" means a person entitled to receive services under this Code as specified in section 3 except where the context requires otherwise;

"Victim Support" means Victim Support National Office;

"working day" means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971.



Criminal Justice System: working together for the public

Produced by the Office for Criminal Justice Reform, October 2005. VictCode/1.

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISON

ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION

FOR JUDICIAL REVIEW

BETWEEN

R (on the application of PRIVACY INTERNATIONAL)

Claimant

V

HM CUSTOMS AND EXCISE

Defendant

WITNESS STATEMENT OF

DR ALA'A SHEHABI

I, Dr Ala'a Shehabi c/o Bhatt Murphy, 27 Hoxton Square, London N1 6NN[1] make this statement in support of the Claimant's application for judicial review. Documents referring to my husband's arrest and charges which are referred to in this statement are exhibited "AS/1". The contents of this statement are true.

1. I am a dual Bahraini/British national. I have a PhD from Imperial College London. I am a former policy analyst at RAND Europe and a former economics lecturer at the Bahrain Institute for Banking and Finance. I have recently completed a research fellowship for the Arab Council of Social Sciences ("ACSS"). I am one of the founding members of Bahrain Watch. This was set up by a group of researchers and activists

[1] I would like my family address to be kept confidential but can provide this to the Court if necessary.

with personal and academic ties to Bahrain following the February 2011 uprising and subsequent security crackdown in Bahrain. The aim of Bahrain Watch is to investigate and assess the government claims that they had instituted a number of human rights and democratic reforms.

2. I am married to Ghazi Farhan and have two young children. I come from quite a strong opposition background in Bahrain. My father Saeed Shehabi is a well known opposition activist. He is the leader of the Bahrain Freedom Movement. Although I am not someone who would ever be quiet about my views prior to events in 2011 my focus had been on an academic and research career as well as family rather than political activism. Things changed for me in February 2011 when the Bahraini people took to the streets in their hundreds of thousands. I joined the demonstrations which were calling for exactly the same things as other people in the rest of the Middle East and Arab world namely freedom, democracy and social justice.

3. In mid-March 2011 there was a security crackdown in Bahrain and I was involved in protests about this and the various human rights abuses that took place. Although I come from an opposition background my husband Ghazi Farhan was a businessman and completely apolitical. My husband had always deliberately stayed away from politics as he knew that this means trouble in our part of the world. He was not involved in any activism. However on 12 April 2011 my husband was arrested. It was a very big shock and completely unexpected. I believe that he was arrested because of his relationship to me and my family and was in order to punish us. Prison guards referred to my husband as "Shehabi" and during torture sessions, he was told to divorce me if he wanted to be released.

4. I was later to find out that he had been arrested by plain clothes officers in his office car park in on the island of Sitra. He was blindfolded and taken to a police station where he was held incommunicado for 48 hours. He was interrogated, tortured and otherwise ill-treated, including being beaten, forced to remain standing for long periods and suspended by his limbs. He was transferred to prison and charged by the Military Prosecution with "participating in a public gathering involving more than five people" and "publicising false information and lies through the internet with a view to destabilising the country". He was tried before the National Safety Court of First Instance, a military court in a trial that began on 30 May and concluded on 21 June 2011. He was wrongly convicted of the charges and sentenced to three years imprisonment. His case received some international attention through amongst others Amnesty International and Human Rights Watch (Amnesty International Urgent Action 12 September 2011 and Human Rights Post 29 August 2011 are exhibited to this statement). He appealed and in October 2011 his sentenced was reduced to 18 months. In the meantime I was forced to quit my job as a lecturer. My salary was cut in

September 2011 and I was told not to return to work because I was a 'risk' to the organisation.

5. In January 2012 my husband was freed without any explanation.

6. On 22 April 2012 during the Formula 1 Grand Prix that was going in Bahrain I was accompanying a group of UK Channel 4 journalists who were filming in some villages. We all got arrested. The Channel 4 journalists were deported the next day and I was released after several hours. I was not ill-treated.

7. A few weeks after my arrest I received four emails. The first was from "Khalil Marzouq", the deputy head of Bahrain's main political opposition party. I do not know him personally, but was intrigued by the content of the email which said that the attached document contained the agenda for dialogue with the King the following week. I tried to open the email as this was a hot topic that many were talking about. I kept getting a blank screen and I thought I was having problems opening the document so I forwarded it to someone I knew in Bahrain who knew about computers to ask what it was and he said that I had sent him a "virus". A few days later, I received another email from a "Melissa Chan" from Al Jazeera. I know people at Al Jazeera but not a Melissa Chan. The email was entitled "Torture reports on Nabeel Rajab". Nabeel is a human rights activist in Bahrain and the president of the Bahrain Center for Human Rights. I knew that Nabeel had not alleged he had been physically tortured on this particular occasion and I was suspicious of the email and did not open it. I then got another email from "Melissa Chan", again I did not open it. I was confident that these customised emails were trying to target me directly and I sensed the contents of the attachments should be investigated. Through a colleague connected with Bahrain Watch I got in touch with Vernon Silver from Bloomberg and I forwarded him the emails. This led to the Citizens Lab report of July 2012 which identified the attachments to the emails as containing Finspy.

8. I now understand that Finspy is part of an intrusion kit called FinFisher which I understand is distributed by a British company Gamma International. I understand that the FinFisher products covertly install malicious software (malware) on a user's computer or mobile phone without their knowledge.

9. When an individual's device is "infected", it allows access to emails, social media messaging, and Skype calls, as well as copying the files saved on the hard disk. These products also enable whoever is doing the targeting to commandeer and remotely operate microphones and cameras on computers and mobile phones, thus effectively turning the targeted device into a "bug".

10. I use the computer and internet a great deal both socially, academically and for political activities. I have very real concerns about the Bahraini regime having effective unfettered access to my computer, reading my emails and monitoring my calls. Not only is this a gross invasion of my privacy I am concerned that it could put in very danger from the Bahraini authorities myself, my family members and other activists.

11. I found it very disturbing that an attempt was being made to spy on me through this medium. It upset me a lot, scared me and made me feel quite paranoid. I was also angry that an attempt was being made to invade my privacy. I felt I had to be extra vigilant. Press reports suggest that FinFisher products continue to be used to target activists. I remain concerned even whilst I am away from Bahrain that further attempts will be made to infect my computer or mobile phone.

12. My family have now relocated to the UK and I finally left Bahrain in October 2012 but I plan to travel back this month.

13. I am very concerned that it appears that a product of a British company is being exported in breach of export controls to be used to attempt to spy on pro-democracy activists such as myself. I understand that Privacy International has sent a dossier including information about my case to HM Revenue and Customs ("HMRC") over 4 months ago asking for them to investigate what appears to be the unlawful exports in breach of export controls of a British company to regimes such as Bahrain that have very troubling human rights records. I have not been contacted by HMRC or any other UK state agency to enquire about the emails that I have received. In so far as I am aware nor has the Citizen Lab or anyone who was involved in analysing the material from myself and others. I understand that Eric King from Privacy International has sought clarification from HMRC about what is happening and has been told that no information can be provided. HMRC are refusing to tell us whether any investigation is being, or will be, conducted at all into possible criminal offences committed by Gamma International. I am very anxious to know what if any investigation is being done by HMRC. The absence of information or any form of contact with me is simply fuelling thoughts that I have that for reasons that are completely unclear to me no investigation is being undertaken into the exports of Gamma International and no action is intended to be taken.

Signed.....

Dr Ala'a Shehabi

Dated.....4/4/2013

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISON

ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION

FOR JUDICIAL REVIEW

BETWEEN

R(on the application of PRIVACY INTERNATIONAL)

Claimant

V

HM CUSTOMS AND EXCISE

Defendant

AS/1

This is the exhibit marked "AS/1" referred to in the witness statement of Dr Ala'a Shehaba dated 4 April 2013.

URGENT ACTION

"PROTESTER" JAILED AFTER UNFAIR TRIAL

A Bahraini businessman sentenced to three years in prison by a military court in June after he was convicted of participating in protests, is still awaiting a date for his appeal. Amnesty International believes he could be a prisoner of conscience.

Ghazi Ebrahim Farhan, 31, was arrested on 12 April by plainclothes police officers in his office car park in the capital, Manama. He was arrested without a warrant, blindfolded and taken to a police station in al-Rifa'a Town, in Manama. He was held incommunicado for 48 hours during which he is reported to have been interrogated, tortured and otherwise ill-treated, including by being beaten, forced to remain standing for long periods and suspended by his limbs, causing him severe pain. He was then transferred to the "Dry Dock" prison in Manama.

He was charged by the Military Prosecution with "participating in a public gathering involving more than five people" and "publicising false information and lies through the internet with a view to destabilising the country." He denied these charges and denied to interrogators that he had participated in public demonstrations held at the Pearl Roundabout in Manama or a march by protestors to al-Rifa'a, though he said he had been in his car near the Pearl Roundabout. He was tried before the National Safety Court of First Instance, a military court. The trial began on 30 May and concluded on 21 June. He was convicted on all charges, although it appears that the only evidence against him that was presented to the court was a "confession" that he alleges he was forced to make under torture. He was not allowed to consult a lawyer until his trial started.

Ghazi Ebrahim Farhan's lawyer lodged an appeal but no date has yet been set for this. Meanwhile, Ghazi Ebrahim Farhan continues to be held at Jaw prison in Manama where he has very limited access to his family. On 29 June, the King decreed that all cases linked to the February-March 2011 protests would be transferred to ordinary civilian courts; he then issued a further decree on 18 August (Decree 28/20011) ordering that the National Safety Court of First Instance continue to deal with felony (serious criminal) cases, while misdemeanor (less serious) cases would be referred to the civilian courts. Ghazi Ebrahim Farhan's appeal is expected to be heard by a civilian court.

Please write immediately in English, Arabic or your own language:

- Expressing concern that Ghazi Ebrahim Farhan appears to be a prisoner of conscience imprisoned solely on account of his legitimate exercise of his human rights, in which case he should be released immediately and unconditionally.
- Expressing concern that, although a civilian, he was tried by a military court in breach of his right to fair trial before an independent and impartial court;
- Urging the Bahraini authorities to conduct an immediate independent investigation into his alleged torture and other ill-treatment and bring to justice any officials found responsible.

PLEASE SEND APPEALS BEFORE 26 OCTOBER 2011 TO:

King
Shaikh Hamad bin 'Issa Al Khalifa
Office of His Majesty the King
P.O. Box 555
Rifa'a Palace, al-Manama, Bahrain
Fax: +973 176 64 587
Salutation: Your Majesty

Prime Minister
Prince Khalifa bin Salman Al Khalifa
Office of the Prime Minister
P.O. Box 1000, al-Manama, Bahrain
Fax: +973 175 33 033
Salutation: Your Highness

Minister of Justice and Islamic Affairs
Shaikh Khalid bin Ali bin Abdullah Al Khalifa
Ministry of Justice and Islamic Affairs,
P.O. Box 13, al-Manama, Bahrain
Fax: +973 175 31 284
Salutation: Your Excellency

Also send copies to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:

Please check with your section office if sending appeals after the above date.

AMNESTY INTERNATIONAL

URGENT ACTION

"PROTESTER" JAILED AFTER UNFAIR TRIAL

ADDITIONAL INFORMATION

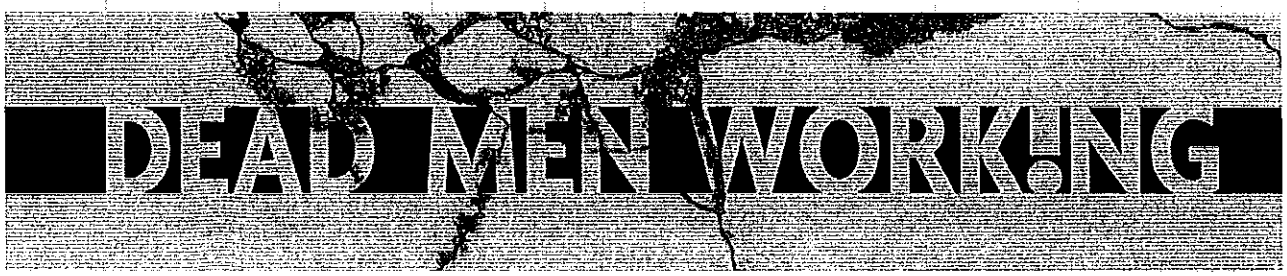
Scores of health workers, opposition and human rights activists, teachers and others are still facing military trials in Bahrain. Months have passed since scores of people demonstrated in Pearl Roundabout in February and March 2011, but the human rights situation in Bahrain is still very grim. Hundreds of people suspected of being connected with the anti-government protests are detained amid serious allegations of torture; scores of them have received unfair trials before military courts; and at least 2,500 others have been suspended or fired from their jobs.

Fifteen opposition figures who led and participated in the demonstrations in February and March were sentenced on 22 June to very harsh prison terms, including seven life sentences, on broadly worded terrorism charges. Their final verdict will be given on 28 September.

Name: Ghazi Ebrahim Farhan
Gender m/f: m

UA: 271/11 Index: MDE 11/048/2011 Issue Date: 12 September 2011

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Faraz Sanei | *August 29, 2011 11:46*

Opinion: Challenging Manama's narrative

Egregious violations of Bahraini rights have occurred in the wake of the protests.

Facebook 646 187 1 834



NEW YORK — On the afternoon of April 12, plain-clothes security officials arrested Ghazi Farhan, a businessman, in his office parking lot.

They blindfolded and handcuffed him and took him to a detention facility, where officers interrogated him, beat him with a hose, and forced him to sign a confession that he had participated in anti-government demonstrations. Authorities kept Farhan in incommunicado detention for 48 days, and prevented him from meeting with his lawyer and his family to prepare his defense.



Bahraini Shiites women cry during Bahiya al-Aradi's funeral in Manama on March 22, 2011. Aradi, 51, went missing on March 16, and a car that she drove was found the day after in al-Qadam village, west of Manama, with bloodstains on the driver's seat. She was pronounced dead on March 21 after being shot in the head. (Joseph Eid/AFP/Getty Images)

What do you think?

Today Farhan is having trouble sleeping. Until recently he shared a two-person cell in Jaw prison with a convicted murderer. On Aug. 6, after his family complained, authorities moved him to another cell. But as recently as July 27, Farhan asked his family to cancel a visit because prison guards were beating and harassing him, presumably to stop his wife from talking about conditions inside the prison.

Farhan's case is typical of the hundreds of Bahrainis caught up in Manama's campaign of retribution, which began on March 17. That is when security forces began their massive crackdown, targeting nearly everyone associated, however tenuously, with the anti-government protests in February and March.

It is this calculated campaign of arbitrary arrests, incommunicado detention, serious allegations of abuse in prisons, and show trials before special military courts that is at the heart of the rights crisis in Bahrain today. It is this reprisal campaign that Manama has tried desperately — and some would say successfully — to hide from world attention.

RECENT SLIDESHOWS



Planet Pic: Pope Francis leads first Palm Sunday Mass

CHECK IT OUT

MOST SHARED

177

OPINION: HACKING VS. RAPE: WHICH IS A CRIME MORE DESERVING OF JAIL TIME?

43

16,000 DEAD PIGS, 1,000 DEAD DUCKS FOUND IN CHINA RIVERS

25

WHERE AUNG SAN SUU KYI IS A TARNISHED IDOL

23

CHARDON HIGH SCHOOL SHOOTER TJ LANE LAUGHS AS SENTENCED TO LIFE (VIDEO)

TODAY'S POLL

By most accounts, Farhan was not really involved in the protests and was instead busy running his businesses. Perhaps he was arrested because his wife, Ala'a al-Shehabi, was a familiar face at the Pearl Roundabout, the center of anti-government protests and activity for a month. And his father-in-law, Saeed al-Shehabi, is the London-based leader of an opposition group. (On June 21, the special military court sentenced Saeed al-Shehabi, in abstentia, to life in prison, along with seven other prominent opposition leaders and activists.)

On May 30, two days before King Hamad bin Isa Al Khalifa declared an end to martial law, a military prosecutor brought Farhan before a special military court and charged him with two counts of participating in illegal gatherings and one count of spreading false information. Both his wife and his lawyer met with him for the first time since his detention after the two-minute court session ended. On June 9, Farhan had his second court session. The court did not permit Farhan's lawyer to meet with him to prepare his defense, but the judges did allow him to present three witnesses on Farhan's behalf.

Twelve days later, on June 21, the court sentenced Farhan to three years in prison. His wife, who reviewed his case file, said the court convicted Farhan based on a two-line forced confession regarding his participation in protests, a Facebook printout with a highlight around the words "the people are demanding their freedom from the government," and four messages he had sent from his private email to his work account that included YouTube links and pictures of anti-government protests.

Since mid-March, Bahraini authorities have mounted an aggressive public relations campaign aimed at advancing a narrative that focuses exclusively on what allegedly happened during the protest period between Feb. 14 and March 16 — and ignores everything that has happened since.

Officials obsessively harp on what they claim protesters did, the "human rights" they violated, and the crimes they allegedly perpetrated. Yet the majority of those sentenced by the special military courts were essentially convicted for speaking out against the government. This despite the fact that the crown prince had publicly stated at the time, on several occasions, that the demonstrations at the roundabout were not against the law.

Some protesters may have committed crimes of violence, and those who did should face justice. But most of those arrested, detained and put on trial were, like Farhan, denied a fair trial and are now sitting in prison, awaiting trial or convicted on politically motivated charges. Authorities say they will continue to try some of the detainees in special military courts after King Hamad issued a decree on Aug. 18 allowing these courts to retain jurisdiction over certain criminal cases.

The new decree seems to override an earlier one, issued by King Hamad in late June, which seemingly transferred all cases pending before the special military courts to civilian courts. Human Rights Watch opposes prosecution of civilians in these special military courts and believes that civilians charged with genuine criminal offenses should be tried in an independent civilian court that meets fair trial standards.

The Bahraini government has made some positive steps. An independent international commission of inquiry is looking into human rights violations associated with the period of unrest. Al-Wefaq, the largest legal opposition group, has held several large rallies without interference. And authorities have released a few hundred detainees during the past several weeks, though most are merely out on bail and charges have not been dropped.

But even the positive steps will count for little as long as people like Farhan remain unjustly imprisoned, abused, and deprived of their rights with impunity.

Except for the clearly excessive use of lethal force against peaceful protesters prior to March 17 that left seven protesters and bystanders dead and hundreds of others injured, the most egregious and systematic rights violations occurred in Bahrain after security forces violently suppressed the public protests.

To lose sight of this is to miss the mark on the rights crisis that is unfolding in Bahrain today. And squander the opportunity to provide real justice and accountability for the victims of this campaign of retribution.

Faraz Sanei is a Middle East researcher for Human Rights Watch.



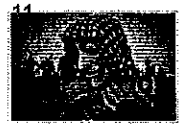
Obama's trip to Israel: Did he nail it?

- Watershed moment. He got Israel to apologize to Turkey for the Gaza flotilla deaths.
- President Obama won over folks in Israel and helped bilateral relations.
- A speech is one thing, but let's see what comes of it.

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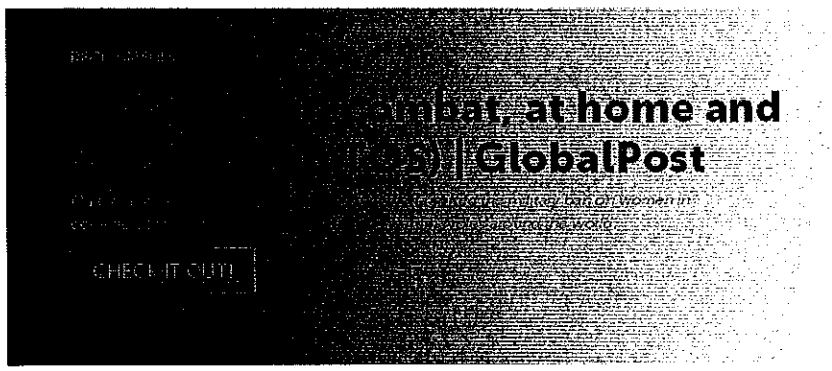


ANDERS BREIVIK'S MOTHER DIES, NORWAY MASS MURDERER ASKS TO ATTEND FUNERAL



http://www.globalpost.com/dispatch/news/opinion/110829/opinion-bahrain-manama-violence-crackdown-middle-east-protests

Arab Spring | Bahrain | Middle East | Opinion



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Fifteen airline crew members arrested in drugs bust

Fifteen members of a South African Airways crew, including pilots and air hostesses, have been arrested after cannabis worth about £150,000 was found in baggage at Heathrow airport.

By Richard Edwards, Crime Correspondent

6:58PM GMT 20 Jan 2009

HM Revenue and Customs said that a total of 50 kilos (110lb) of the drug were found on a flight which came in from Johannesburg.

The drugs were discovered in three pieces of baggage, a spokesman said, from a flight which had arrived at 8am. Those held were both flight crew and cabin crew.

The seizure was by officers from the UK Border Agency and the suspects are being held in cells at Heathrow and will be questioned by detectives today (Wed).

South African Airways (SAA) is South Africa's flag carrier and largest domestic and international airline company, with hubs in Cape Town and Johannesburg.

Bob Gaiger, HM Revenue and Customs (HMRC) spokesman, said: "Those arrested are now being held in custody and will be interviewed by HMRC investigation officers.

"HMRC, together with UKBA (UK Border Agency), play a vital role in the fight to prevent illegal drugs from entering the UK and in protecting our communities from the violence and corruption that always accompany this hideous trade.

"Anyone with information about activity they suspect may be linked to drugs smuggling should call our 24-hour customs hotline - 0800 59 5000."

Cabin crew have long been targets of international drug smugglers because they travel frequently and arouse less suspicion as they repeatedly pass through security at airports with official passes.

Last week it was disclosed that more than 30 airline staff in Tahiti have been accused of helping smuggle in drugs, including hauls of cocaine allegedly picked up by cabin crew on stopovers in America.

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REVIEW OF CRIMINAL INVESTIGATIONS AND PROSECUTIONS CONDUCTED BY HM CUSTOMS AND EXCISE

CONTENTS

		Page
Foreword		
Introduction		1
Executive Summary and Summary of Recommendations		5
Chapter 1	Background	13
Chapter 2	Excise Fraud in the Nineties	19
Chapter 3	London City Bond	25
	A - Background and System B - Excise Diversion Frauds	
Chapter 4	The Trials	43
Chapter 5	The Appeals	99
Chapter 6	The Liverpool Hearings	113
Chapter 7	Other Proceedings	145
Chapter 8	What Went Wrong	153
Chapter 9	Then and Now - The Changes and the Perceptions	165
	A - The legal framework B - Role of the Attorney General C - Reports and Reviews D - Structural and Management Changes in HMCE E - Perception of Customs now	
Chapter 10	Law Enforcement	185
	Customs as investigators Document handling, retention and disclosure Investigation Techniques Training of Investigators Inspection Assurance systems Regional structure Scotland and Northern Ireland	

		Page
Chapter 11	Solicitor's Office	225
	Structure Investigation Legal Advisers Disclosure Case handling system Instructions to Counsel Inspection Engagement with the Criminal Justice System	
Chapter 12	The Criminal Justice System	249
	Disclosure Abuse of process Regulation of Investigatory Powers Act 2000 Allocation of Judges	
Glossary of Terms		283

Appendices:

1.	Terms of reference.	289
2.	List of consultees.	291
3.	Report by Sir Gerald Hosker KCB QC on Aspects of the Simon de Danser case.	295
4.	Report by His Honour Gerald Butler QC into the case of Regina v Doran and others.	301
5.	The Stealer Appeal.	311
6.	Report by His Honour John Gower QC and Sir Anthony Hammond KCB QC of a review of prosecutions conducted by HM Customs & Excise.	313
7.	Report by Mr John Roques into the collection of Excise Duties by HM Customs & Excise.	321
8.	Statement of Customs Goals (links with Chapter 9 (iv)).	341
9.	Memorandum of Understanding.	343
10.	Executive summary of CPS Inspectorate report.	361

FOREWORD

1. The completion of this Review within the time constraints imposed would have been impossible without the assistance and co-operation of all involved.

2. My thanks go first to the Chairman and staff of HM Customs and Excise for the help which they have given to the Review team at all stages. A Review such as this, examining critically the working practices of an organisation, is inevitably an uncomfortable experience for all those involved. Nonetheless, we have throughout received only courtesy and co-operation. Special thanks go to the staff of the Internal Liaison Unit headed by Lance Railton, who have throughout responded to our innumerable requests for information promptly and professionally.

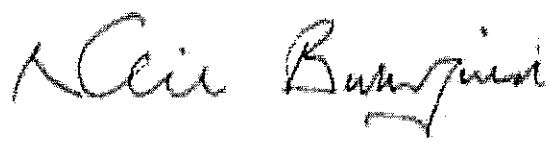
3. I also wish to thank all those many busy people outside Customs who have so generously given of their time, knowledge and experience in various ways to assist me in the Review. Their contributions have been enormously helpful.

4. The Review team was small but perfectly formed. There were but three members of it: each played a vital part in ensuring that the work was completed on time. The Secretary to the Review, Jenny Rowe, has given me dedicated and skilful support throughout. She has been immensely hardworking and highly efficient, not only as administrative leader of the Team but also in tendering advice on the contents of the Report. I owe her a considerable debt of gratitude for her invaluable services to the Review and her unfailing good humour.

5. I owe a like debt, too, to Peter Kiernan, the Solicitor to the Review, whose inquiring mind and infectious enthusiasm has been a great benefit. Last, but by no means least, Grainne Hawkins has provided immaculate secretarial assistance to us all, remaining unfailingly cheerful even under the most intense pressure. We also benefited from temporary assistance from Yeeni Cheung, a Case Manager in the Solicitor's Office. I could never have completed the task without them and I am deeply grateful to them all.

FOREWORD

6. I make it clear, however, that the opinions and conclusions expressed in the Review are all mine and that the contents of the Review in every detail are my responsibility and mine alone.



The Honourable Mr Justice Butterfield

Introduction

1. On Monday 25th November 2002 at the Crown Court at Liverpool before Mr Justice Grigson the prosecution, conducted by HM Customs and Excise, (HMCE) offered no evidence against 15 defendants who were before the court on indictments alleging conspiracy to cheat the public revenue of duty chargeable on spirits and beer. All the defendants were alleged to have been concerned in diversion frauds centred on a bonded warehouse trading as London City Bond. Mr Justice Grigson ordered that verdicts of Not Guilty be entered and made Defendant's costs orders under Section 16 of the Prosecution of Offences Act 1985 in respect of each defendant before the court.

2. The announcement of the decision to offer no evidence came on Day 35 of an application made by each defendant to stay the proceedings as an abuse of the process of the court. Mr Justice Grigson had by then heard lengthy and detailed evidence about the circumstances surrounding the investigations leading to the prosecutions, the conduct of the investigating officers and their superiors, and the way in which the prosecutions had been conducted by the Solicitors and Counsel acting for HMCE[1].

3. Following the verdicts and in the light of the circumstances disclosed in the course of the applications to stay the proceedings Mr Justice Grigson, addressing Counsel for the Prosecution Mr Lawson-Rogers QC, said:

> The evidence before me is incomplete. The course that the Crown has taken seems to me proper but, recognising the realities of the situation, the evidence was taking a particular turn which I think would have been difficult for the Crown to resist. I think it is inevitable that there will be some sort of inquiry into what has happened. I think it appropriate for me to say, even though the evidence is incomplete, that from what I have seen there is an urgent need to examine the role of the NIS [National Investigation Service] in relation to other branches of Customs & Excise and also in their relationship to the solicitors for Customs & Excise. I would hope that such an inquiry would deal with the problems that you and I and all defence counsel have experienced over disclosure. It is closing one's eyes to the obvious that there has been material nondisclosure in this case.

4. On 26th November 2002 a written Ministerial statement was made in the House of Commons by the Chancellor of the Exchequer (The Rt. Hon. Gordon Brown MP). He announced that in the light of the circumstances that led to the prosecution offering no evidence in the Liverpool cases the Attorney General (as Minister responsible for Customs and Excise prosecutions) and he would be asking a High Court judge to consider
   - the circumstances that led to the termination of those cases and, having regard to changes in relevant procedures and guidelines and to changes in practice within HMCE that have taken effect since 1995,

[1] Throughout the Report the abbreviation HMCE will normally be used to describe HM Customs & Excise. The exceptions are (i) where direct speech is reported; and (ii) where staff employed by HMCE are referred to eg Customs officers/Customs investigators.

- to review the practices of HMCE in the recording, retention, revelation and disclosure of material which may be relevant to the prosecution of its criminal cases; and in respect of HMCE criminal investigations
- to review current compliance with best practice in the use of investigation techniques and the management and control of cases to the extent these are relevant to the discharge of the prosecution's obligations in any subsequent criminal proceedings
- to make recommendations.

The full terms of reference for the Review are attached at Appendix One.

5. On 29th November 2002 the Economic Secretary and the Attorney General announced that I had been appointed to undertake the review.

6. In January 2003 HMCE did not seek to resist the appeal in the Court of Appeal (Criminal Division) of R v Grant and others (known as the Stockade case). That case is linked to the cases heard before Mr Justice Grigson in Liverpool and I agreed to consider the issues raised in the Stockade case as part of my review.

7. I have reached the clear conclusion that it would not be appropriate for me to express any view on the conduct of anyone involved in the investigation or prosecution of the London City Bond cases where such views might suggest that the individual was or was not guilty of a criminal offence. My reasons for that conclusion are:
   - When offering no evidence against the defendants in the abuse hearing Mr Lawson-Rogers made it clear that the action by the prosecution should not be construed by anyone as in any sense an acceptance of the existence of *mala fides* or conspiracy within HMCE.
   - This review is not a Public Inquiry where the competing evidence and arguments can be advanced, tested and considered, and where a person suspected or accused of crime can be represented and his interests properly protected.
   - The resources available to me, the informal nature of the review and the time constraints quite properly imposed on me make it impossible fairly for me to reach conclusions on such matters.
   - Further, and in my judgment critically, a number of defendants in the application to stay the proceedings and Mr Gordon Smith, a solicitor until recently employed as a Senior Lawyer of the Specialist Casework Unit in the Manchester office of HMCE, allege that certain customs officers have committed criminal offences in the course of investigating and prosecuting the London City Bond cases. Specifically it is alleged that those officers may be guilty of perjury, attempting to pervert the course of public justice and offences under Section 15 of the Customs and Excise Management Act 1979. Those complaints have been referred to the Police.
   - Additionally the Chairman of Customs and Excise has himself referred the conduct of one customs officer to the police. The Metropolitan Police have begun an investigation into those matters. For me to express any views on the very matters the subject of a police investigation would self-evidently be grossly prejudicial and wholly improper.

8. On the other hand I am satisfied that the material to which I have had access and the enquiries I have made are quite sufficient for me to express clear conclusions on the conduct of those involved in the investigation and prosecution outwith any question of the commission of criminal offences. In all cases where I have been critical of the conduct of an individual he or she has been informed of the proposed criticism and has been invited to respond. I have offered the opportunity to respond either in writing or in person and have given full weight to those responses in reaching my final conclusions.

9. In conducting the review I have had access to and considered all the material that was before Mr Justice Grigson in the abuse of process application, including the transcripts of the proceedings. In relation to those proceedings I have further consulted with Mr Justice Grigson, with Counsel and solicitors for both prosecution and defence and with Sir John Nutting QC, who was retained by HMCE in an advisory capacity in relation to London City Bond cases. On the wider issues raised in my terms of reference I have received much additional material from HMCE and submissions from many sources, including members of the judiciary, government departments, the Bar Council, the Law Society, and the Criminal Cases Review Commission. I also met and discussed the issues with many busy people who generously gave up their time to help me. Appendix 2 sets out a list of those who made written submissions and those with whom I met and consulted. I also met many members of staff of HMCE, investigators, administrators and lawyers. To each I gave an assurance that their confidentiality would be respected and accordingly I shall not, save where express permission was given, refer to them by name or set out their comments with sufficient particularity to enable them to be identified.

Executive Summary

1. The starting point for my Review was an examination of the way HMCE operated in the field of investigation and prosecution of serious crime, in particular excise diversion fraud, in the mid to late 1990s. The first three chapters of the Report seek to set the background to the way HMCE operated in law enforcement, explain the circumstances in which excise diversion frauds took place and provide an account of excise diversion fraud emanating from London City Bond between 1995 and 1998. Chapters Four and Five contain a detailed summary of the events surrounding a number of trials which were heard between the autumn of 1998 and 2001 concerning allegations of excise diversion fraud centred on London City Bond, and the subsequent successful appeals against conviction which resulted in orders for retrials. In Chapter Six I provide a detailed account of the evidence given at the hearing before Mr Justice Grigson in Liverpool, the early termination of which led directly to the commissioning of my Review.

2. One allegation raised in the Liverpool hearings which has attracted considerable publicity is whether HMCE incited the commission of criminal offences at London City Bond so as improperly to entrap defendants or those from whom they obtained diverted goods. I found no evidence that officers of HMCE or any employee of London City Bond incited or persuaded any trader to commit fraud, or that they actively encouraged crime which would not otherwise have been committed. A full account of my findings on this issue is to be found in the commentary on the collapse of the Liverpool hearings in Chapter Six.

3. I have also examined the linked case of Operation Stockade which Ministers referred to me subsequently. That trial, the appeal, and other later proceedings are considered in Chapter Seven. In subsequent chapters I analyse the problems arising in the investigation and prosecution of the London City Bond cases, what changes have been put in place since those events, and what further changes are required.

4. It is clear that a number of things went badly wrong. I cover this in more detail in Chapter Eight. The issues I identify include the absence of a strategic approach to excise diversion frauds; poor communications; serious deficiencies in the handling of informants; and failure to comply with disclosure obligations.

5. But the London City Bond events took place in the mid to late 1990s and they must be seen in perspective. Since those events there have been four independent reviews other than my own. There have been significant changes in the external environment, including statutory changes, and major alterations in the way HMCE is structured and managed, including a much clearer strategic direction for the whole organisation. I deal with these changes in Chapter Nine.

6. One of the most striking differences in recent years is the increase in the size and complexity of many of the cases investigated and prosecuted by HMCE.

HMCE do not walk alone in this changed environment. Similar changes have been experienced by other investigators and prosecutors. Many major cases investigated and prosecuted by HMCE fall squarely within the definition of serious and organised crime. They often involve long and complex investigations whose tentacles extend widely and sometimes link with investigations being conducted by other agencies. The investigations generate huge quantities of paper which have to be processed and managed. HMCE also deals with a large number of less complicated cases which generally proceed relatively satisfactorily through the criminal justice system. The statistics for HMCE prosecutions demonstrate that they are an organisation which enjoys considerable success in investigating and prosecuting less serious crime which falls within its remit.

7. HMCE is a many-faceted organisation. It is a tax collection agency and a frontier control agency, as well as a law enforcement agency. I accept that this does mean some issues are more complex for HMCE than they might be, for example, for some police forces and prosecuting authorities. Nevertheless, HMCE is an important part of the law enforcement community and it is in the public interest for it to be as effective as possible, and equally importantly for it to be seen to be effective. In examining the impact of the changes that have taken place within HMCE since the events of London City Bond I have borne these points very much in mind. However, one of the things that has struck me most forcibly during the course of this Review is the negative perception of HMCE within the criminal justice community in particular; and the fact that perception and reality are somewhat out of step. One investigator to whom I spoke said: "The most valuable thing that we have lost is our reputation". I agree. I will not repeat what is said elsewhere in the Report, in particular in Chapter Nine, but I am very clear that the perception issue is one that can only be addressed by radical action.

8. Ministers, and senior management at HMCE, are understandably anxious to "draw a line in the sand" so that the events of the London City Bond cases can be put behind them and they can move forward unencumbered by the detritus of the past. I understand that anxiety.

9. It is often said that the most important asset of an organisation is its staff. That is no less true of HMCE than elsewhere. Those staff I saw welcomed the Review as necessary, recognised the perception problems and appreciated the greater strategic direction they were receiving. Amongst them I detected no lack of integrity or commitment to the change process. In many I saw a deep-seated desire to regain their reputation so that they were able to operate in an atmosphere where their word was trusted by both the courts and those representing defendants. I have no doubt that these views are widely shared by staff at all levels within HMCE.

10. To be an effective organisation the staff need leadership, management and a culture and systems that foster and reward integrity, high standards and professionalism. I am satisfied that much of the necessary ground work has been done and that personnel and machinery has been, or is being put in place to achieve the changes HMCE need to make. There is much that is good and

some that is excellent within the present department. But the task is not yet complete and in some areas there is a considerable distance yet to travel. I agree that HMCE should now put the events of the London City Bond cases behind them and move forward, but not in a spirit of complacency. I cannot give an unqualified assurance that all is now well. The recommendations I make are designed to reinforce the change process, and in some cases to accelerate it or take it in a slightly different direction.

11. My detailed analysis of the further changes required, along with recommendations, can be found in Chapters 10, 11 and 12. A summary is given below. For most people my most significant recommendation so far as HMCE itself is concerned will be that HMCE should continue to have a separate role as an investigating force; and so far as the Solicitor's Office is concerned, that there should be a complete separation of the prosecuting function for HMCE's criminal cases from the organisation itself, through the creation of a separate prosecuting authority. I realise this will be regarded by some as a far-reaching step, but my researches show that only a radical move such as this is likely to be sufficient for HMCE to overcome the negative perceptions that exist within the criminal justice system. An associated recommendation is that the investigators should be provided with more dedicated expert legal advice to help improve the quality of cases that reach the new prosecuting authority.

12. In Chapter 12 I consider a number of criminal justice issues which have been thrown into prominence by the facts surrounding the London City Bond cases. These all have wider application than simply to HMCE. No one could claim that our criminal justice system works as effectively as it should. I have been particularly struck in the London City Bond cases by the considerable emphasis given to attacks on the process by which cases were investigated; and by the challenges facing prosecutors in these large and complex cases in meeting the demands of the Criminal Procedure and Investigations Act. I make recommendations in both these areas. I have also examined, and made separate recommendations on, the operation of the Regulation of Investigatory Powers Act 2000.

Summary of recommendations

Law enforcement

(i) I have considered carefully whether HMCE should retain its role as an independent investigating force. I have concluded that it should. I believe that any organisational change to remove HMCE's investigation role would hinder the progress that has already made to put right what has gone wrong. It might also hinder the fight against serious and organised crime. (Paras 10.1 to 10.16.)

(ii) I make three recommendations about the handling of human sources of information. In so doing I have considered the statutory regime provided by the Regulation of Investigatory Powers Act 2000, and the action that HMCE has taken to comply with that regime. My recommendations are:

a. *The proposed new procedures for handling and managing human sources are implemented as a matter of urgency and that clear guidance is issued to all law enforcement officers about their responsibilities under the regime. (Chapter 10 para 95.)*

b. *When the proposed new procedures for handling and managing human sources are implemented, consideration should be given to putting in place a system which ensures that all those who deal at any level with any source keep records in a durable and retrievable form, compliant in all respects with the Paragraph 3 contents requirements of the Regulation of Investigatory Powers (Source Records) Regulations 2000 (Chapter 10 para 100.)*

c. *Consideration is given to expanding the role of the SMUs and the NSU in the control and management of all human sources of intelligence posing potential risk (Chapter 10 para 104.).*

iii. It is of considerable importance that investigators are both well trained, and regularly trained. In the course of my Review I have found deficiencies, particularly in the regularity of training provided. The basic training provided to investigators is reasonably thorough and comprehensive and is regularly updated. However, subsequent training is somewhat ad hoc and not systematic. I have not been prescriptive about the solution, but have recommended that HMCE give consideration to the following:

a. *Regular refresher training for investigators every five years.*

b. *Specific training geared to particular key jobs within investigation, to include a written test before an officer is allowed to take up the new post.*

c. *Training to reflect changes in the criminal justice system. (Chapter 10 para 115.)*

iv. Customs investigators are not currently subject to systematic external scrutiny. I believe they should be. This would be of benefit to them internally; and would also contribute to improving the perceptions of HMCE held by those outside the department. I have suggested that:

> *A separate study is undertaken with a view to identifying how additional external scrutiny can best be introduced into HMCE investigation work. The review might start with looking at how the existing professional standards team could be enhanced and its reputation reinforced through external input. But a review should not necessarily confine itself to that limited scope. (Chapter 10 para 128.)*

v. As part of the recognition by senior management at HMCE that there were serious problems which had to be tackled, a number of quality and management assurance systems have been introduced since the mid-1990s. Whilst I welcome that development, I do have some concerns that there

may be too many and that some rationalisation would be of benefit. I have recommended:

> *That a review should be established to examine the full range of new assurance systems put in place in law enforcement since the events of the late 1990s; and that HMCE practice should be compared with that in the Police and other investigators, with a view to streamlining, where possible, the number of assurance systems in place whilst ensuring that HMCE are fully able to comply with the requirements on them as a professional investigating force. (Chapter 10 para 133.)*

vi. I have spent a little time looking at the way Customs is structured. It is a UK-wide organisation with a regional structure. I have made one general recommendation here and two which apply particularly to Scotland. There is a separate legal system in Scotland and it is important that investigators identify at an early stage of their investigations whether any subsequent prosecution is to take place in Scotland, or elsewhere in the United Kingdom. It is also important that Customs staff have available to them dedicated expert advice about the Scottish legal system. With all these issues in mind I have made the following recommendations:

a. *That HMCE management keep the issues of regional organisation under review to ensure that it best fits the needs of the organisation. (Chapter 10 para 138.)*

b. *That arrangements are put in place to provide specialist qualified legal advice for the investigators and intelligence officers operating in Scotland. (Chapter 10 para 152.)*

c. *That a system is put in place to ensure, so far as possible, that an early decision is taken in each investigation with a Scottish dimension as to whether the legal requirements of the Scottish system should be applied. Such a decision would be case specific. (Chapter 10 para 154.)*

Solicitor's Office

vii. The structure of the Solicitor's Office has been subject to considerable change over the last few years, most recently as a result of the Gower/Hammond Review (see Chapter Nine and Appendix Six). These changes have rightly been directed towards increasing the independence of the prosecuting lawyers within the Office so that they can more easily and perceptibly exercise their role as prosecutors. I welcome the changes that have been made and recognise that the effect of those changes is being felt. However, I have concluded that these changes do not go far enough. Prosecuting solicitors at HMCE must be in a position where they are able to exercise their "minister of justice" role without fear or favour; and as importantly they must be seen by others as in a position to do this. I have concluded that a vital element in restoring confidence in HMCE within the

criminal justice system is the assurance that prosecutions are conducted by lawyers who are wholly independent. I have therefore recommended that:

> *The Solicitor should no longer retain any responsibility for prosecutions brought by Customs & Excise. All prosecuting functions should be removed from the Customs & Excise Solicitor's Office and prosecutions conducted by a separate prosecuting authority. (Chapter 11 para 14.)*

viii. I have also made what I consider to be complementary recommendations to the above. There has now been in existence for some time a small corps of what are known as Investigation Legal Advisers. These are lawyers who are dedicated to providing advice to investigators pre-knock – that is to say before any criminal proceedings are commenced. I welcome this development; but believe that more is needed, both in terms of additional lawyers and their greater use by the investigators. This should improve the quality of cases which are presented to the new prosecution authority and ensure that the investigators receive regular and professional legal advice. My detailed recommendations are:

a. *The number of ILAs should be substantially increased to enable the objectives of Customs identified in paragraph 11.36 to be achieved (the appointment of an ILA at the outset of all sensitive, complex or substantial investigations)*

b. *ILAs should continue to have no part in the prosecution process.*

c. *The CPS Inspectorate should inspect and report on the ILAs to give an assurance as to the quality of their work.*

d. *Consideration is given to the transfer of responsibility for the ILAs to the Economic Secretary to the Treasury.*

e. *A review is conducted of the procedures for the recording and retention of advice given by the ILAs in the course of investigations, and the assurance of the quality of that advice given. (Chapter 11 para 58.)*

ix. Another welcome development since the Gower/Hammond review has been the introduction of independent inspection of the Prosecution Office by Her Majesty's Crown Prosecution Service Inspectorate. I believe the work already done should be built on and my recommendations are as follows:

a. *HMCPSI be given a clear and defined role in inspection and assuring the new prosecution organisation.*

b. *This relationship should ideally be placed on a statutory basis.*

c. *Specific and adequate resources are made available to HMCPSI for this purpose.*

d. *If appropriate, and this will depend on whether the Prosecutions Office remains part of Customs, joint inspection should be undertaken involving HM Customs & Excise internal assurance division and HMCPSI.*

e. *As part of the further definition of HMCPSI's role, it should specifically have the function of quality assuring the work of and advice given by the Investigation Legal Advisersn. (Chapter 11 para 76.)*

x. HMCE is a major prosecutor in both the Crown Court and the Magistrates' Court. As such I think HMCE representatives should be more systematically involved with the Court Service and with other players in the criminal justice system. I make the following recommendation to that effect.

> *I consider that more regular and systematic dialogue between, for example, HMCE and the Court Service on practical issues, and HMCE and the Home Office on policy issues, would be a profitable and fruitful development for all involved. I recommend that the Head of the new Prosecuting Authority takes the lead in putting suitable arrangements in place. (Chapter 11 para 80.)*

Criminal Justice System

xi. I have spent some time considering, and discussing with a number of practitioners, how the current disclosure regime operates in cases of the size and complexity of the London City Bond cases. I do not believe the system works satisfactorily and neither do any of the judges or practitioners to whom I have spoken. I am aware that the Government is presently making changes to that regime through the Criminal Justice Bill now before Parliament. I hope that those changes are sufficient to address the problems prosecutors have in determining what is relevant against wholly inadequate defence case statement. If those measures do not achieve the desired outcome, I make the following recommendation:

> *That if appropriate the disclosure regime is reconsidered and consideration given to effecting secondary disclosure by providing to the defence the schedule of non-sensitive material held or inspected by the prosecutor in connection with the case for the prosecution against the accused and permission granted to the defence to inspect any material so disclosed that appeared relevant. (Chapter 12 para 48.)*

xii. One of the striking features about many of the London City Bond cases was the extent of the attacks by the defence on process issues. Whilst it is vital that the defence has the ability to raise issues of abuse of process, it is clear that a significant number of applications are ill-founded and take up extensive, disproportionate and valuable court time. Although a Practice Direction already exists, its provisions are not universally followed. I have therefore recommended that:

Consideration be given by the new Criminal Rules Procedure Committee to the introduction of rules, or alternatively issuing by the Lord Chief Justice of practice directions, giving judges greater power to control the proceedings before them on all applications in criminal proceedings to be determined by the judge alone. (Chapter 12 para 77.)

xiii. Finally I have considered another aspect of the Regulation of Investigatory Powers Act 2000: the sections dealing with interception of communications. I believe there is a lacuna in the present regime so that where all intercepted material has been destroyed there is no procedure for the prosecutor to be assured that nothing the interceptors have heard undermines the prosecution case or assists the defence. In the light of that I recommend that:

a. *Consideration is given to amending the Code of Practice [issued pursuant to Section 17 of the Regulation of Investigatory Powers Act 2000] to make provision for the assurance of the prosecutor where all intercepted material has been destroyed. (Chapter 12 para 115.)*

It has also become apparent that many judges do not have sufficiently regular experience of cases involving intercept evidence necessarily to be fully acquainted with all the implications of RIPA. I therefore additionally recommend that:

b. *Consideration is given to including the topic (RIPA Part 1) within the syllabus of the Judicial Studies Board refresher course on criminal law. (Chapter 12 para 117.)*

Skip to main content

HM Revenue & Customs Media Centre
04 April 2013

You are here:
Home
Press Releases
Nine arrested in £6m counterfeit tobacco plot

Print

- Home
- North East
- North West
- Yorkshire and the Humber
- East Midlands
- West Midlands
- East
- London
- South East
- South West
- Scotland
- Wales
- Northern Ireland
- Contacts

Nine arrested in £6m counterfeit tobacco plot

Skip to downloads »

16 March 2012 15:08

HM Revenue & Customs

Eight men and one woman from Staffordshire and Buckinghamshire were arrested in raids yesterday, 15 March 2012, by HM Revenue & Customs (HMRC) officers on suspicion of illegally manufacturing and distributing a massive quantity of counterfeit hand rolling tobacco.

It is believed that the illegal activities of an organised crime gang would have resulted in a revenue loss to public finances of at least £6 million a year. The operation was supported by Staffordshire and Thames Valley Police forces.

Adrian Farley, Assistant Director of Criminal Investigation for HMRC, said:
"Our actions have disrupted what we believe to be the manufacture and supply of a substantial amount of illicit tobacco at an illegal manufacturing and distribution plant. With over £2 billion being stolen from UK finances each year by criminals involved in the illicit tobacco industry, its serious crime which we are determined to eradicate. We would encourage anyone with

information regarding tax evasion and fraud to contact the Customs Hotline on 0800 59 5000. Calls can be made anonymously."

Seized

- Cannock, Staffordshire - 254 kilos of counterfeit hand rolling tobacco, packed into 11 boxes from commercial premises.
- Milton Keynes, Buckinghamshire - three machines used to wrap and seal hand rolling tobacco pouches together with hundreds of boxes of counterfeit wrappings for numerous brands including Golden Virginia and Amber Leaf along with sheets of holograms, packet seals, and a quantity of completed packets of hand rolling tobacco from a residential address.
- Leighton Buzzard area, Buckinghamshire - two machines believed to be used in the process of cutting and drying tobacco, 250 kilos of processed cut tobacco, and 500 kilos of loose tobacco leaf from a rural farm building.

A cannabis factory housing around 100 plants was also found. Thames Valley Police are making further enquiries.

Arrested

Three men aged 43, 45 and 47 from Staffordshire, one man aged 28 from the West Midlands, four men aged 21, 31, 34 and 40 and a woman aged 45 from Buckinghamshire. Three of the men are UK nationals, one is a Latvian national and five others were either Chinese nationals or joint UK Chinese nationals.

All have been bailed until May 2012. Two men and one woman have been referred to UKBA, believed to be potential illegal immigrants.

The individuals were arrested on alleged offences under the Customs and Excise Management Act 1979, and money laundering under the Proceeds of Crime Act 2002.

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Press enquiries only please contact:

Contact Information

Name
HM Revenue & Customs
Email
news.reply@hmrc.gsi.gov.uk

Name
Jennie Kendall
Division
HM Revenue & Customs
Phone
07810 815832
Email
jennie.kendall@hmrc.gsi.gov.uk

Name
HMRC Out of Hours
Division
HM Revenue & Customs
Phone
07860 359544
Email
news.reply@hmrc.gsi.gov.uk

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Skip to main content

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04 April 2013

You are here:
Home
Press Releases
£5m international fraud gang arrested

Print

- Home
- North East
- North West
- Yorkshire and the Humber
- East Midlands
- West Midlands
- East
- London
- South East
- South West
- Scotland
- Wales
- Northern Ireland
- Contacts

£5m international fraud gang arrested

Skip to downloads »

13 February 2013 12:18

HM Revenue & Customs

Four people from the West Midlands have been arrested suspected of carrying out a £5 million international tax credit and maternity allowance fraud in a joint operation by HM Revenue and Customs (HMRC), West Midlands Police and the Department for Work and Pensions.

The three men and one woman were arrested during dawn raids. HMRC investigators and Police officers swooped on five residential and two business addresses in Tipton, Dudley, West Bromwich, Handsworth and Bewdley, seizing computers, business records, paperwork, mobile phones and cash. Four vehicles were also searched, including a Mercedes and a Rover.

Adrian Farley, Assistant Director of Criminal Investigation for HMRC, said:

"We are investigating what we suspect is a major plot to rob the country of vast sums of public money by an organised crime gang operating between the UK and Europe. We are working closely with our law enforcement colleagues abroad to close what we believe is a serious criminal

attack against the UK tax credits and benefits system.

"We would encourage anyone with information on tax evasion and fraud to contact the Customs Hotline on 0800 59 5000."

Detective Inspector Neil Postins, from West Midlands Police's Economic Crime Unit, said:

"Around 30 of our officers have supported this morning's operation which has seen a number of individuals arrested and a significant quantity of items seized.

"Fraud cases are notoriously complex and law enforcement agencies must work together to bring offenders to justice. This morning's operation is a testament to those close relationships and another step-forward in the fight against fraud."

Three men and a woman, all in their thirties, are currently being interviewed by HMRC criminal investigators.

They were arrested on suspicion of Conspiracy to Cheat the Revenue contrary to the Criminal Law Act 1977, Conspiracy to undertake fraudulent activity under the Tax Credits Act 2002, Making and Supplying articles for use in fraud contrary to the Fraud Act 2006, Money Laundering offences under the Proceeds of Crime Act 2002 and Conspiracy to defraud the Department for Work and Pensions contrary to Common Law.

Notes for Editors

1. Photographs of today's operation are available on HMRC's flickr channel www.flickr.com/hmrcgovuk or on request.

2. Follow HMRC on Twitter @HMRCgovuk.

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Press enquiries only please contact:

Contact Information

Name
HM Revenue & Customs
Email
news.reply@hmrc.gsi.gov.uk

Name
Jennie Kendall
Division
HM Revenue & Customs
Phone
07810 815832
Email
jennie.kendall@hmrc.gsi.gov.uk

Name
Andrew Bennett
Division
HM Revenue & Customs

Phone
020 7147 0052
Email
andrew.bennett3@hmrc.gsi.gov.uk

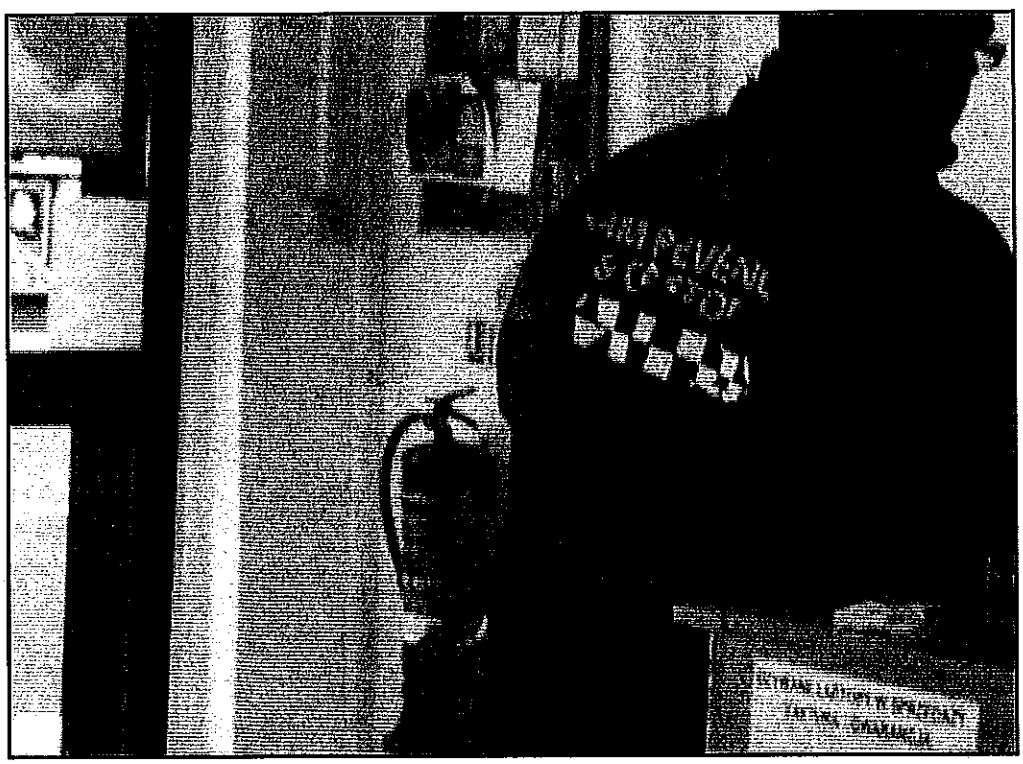
Name
Hana Esselink
Division
HM Revenue & Customs
Phone
020 7147 0394
Email
hana.esselink@hmrc.gsi.gov.uk

Name
HMRC Out of Hours
Division
HM Revenue & Customs
Phone
07860 359544
Email
news.reply@hmrc.gsi.gov.uk

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Skip to main content

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04 April 2013

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Home
Press Releases
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Print

- Home
- North East
- North West
- Yorkshire and the Humber
- East Midlands
- West Midlands
- East
- London
- South East
- South West
- Scotland
- Wales
- Northern Ireland
- Contacts

Investigation into Southampton's largest cigarette haul

Skip to downloads »

07 March 2013 13:59

HM Revenue & Customs

An investigation has been launched after 30 million smuggled cigarettes were seized at Southampton Container Port in a shipment supposed to be full of wind turbines.

The biggest ever haul of its type in the city began when Border Force officers discovered 8.5 million cigarettes crammed inside a cargo container on Friday 1 March. Further investigations led officers to another two 40-foot containers full of the illegal imports, bringing the total seized to around 30.3 million cigarettes.

The matter was referred to HM Revenue and Customs (HMRC) for investigation.

John Cooper, HMRC Assistant Director Criminal Investigation, said:
"The diligence of Border Force officers has prevented a huge quantity of cigarettes, believed to be

Chinese counterfeits, from reaching the UK's streets. The sheer scale of this haul would undoubtedly have seen criminal gangs selling the tobacco to retailers, clubs, car boot sales and eventually UK consumers.

"HMRC will continue to work with Border Force to crackdown on tobacco fraud, which costs the UK Government around £1.8 billion a year. Anyone with information about tobacco smuggling should contact the Customs' Hotline on 0800 59 5000."

The smugglers were trying to avoid paying over £8 million in taxes and duty and had described the containers' contents as "wind turbine parts" on import documents.

The three cigarette laden containers were loaded onto a cargo vessel in the Shenzhen area of China. Enquiries are ongoing.

Notes to Editors

1. Samples of the seized cigarettes are being tested, but are believed to be counterfeits made to look like Lambert & Butler and Regal brands.

2. The cigarettes have been shredded and burned at a power station to fuel the National Grid.

3. The previous largest haul in Southampton was 21.3 million counterfeit cigarettes seized in December 2008. Following an HMRC investigation, in June 2010 a Lancashire man was jailed for five and a half years for his role in that importation.

4. Follow HMRC on Twitter @HMRCgovuk

Contact Information

Name
HM Revenue & Customs
Email
news.reply@hmrc.gsi.gov.uk

Name
Lisa Billard
Division
HM Revenue & Customs
Phone
02380 797587
Email
lisa.billard@hmrc.gsi.gov.uk

Name
Bob Gaiger
Division
HM Revenue & Customs
Phone
07802 634 144
Email
bob.gaiger@hmrc.gsi.gov.uk

Name
HMRC Out of Hours
Division
HM Revenue & Customs
Phone
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- North West
- Yorkshire and the Humber
- East Midlands
- West Midlands
- East
- London
- South East
- South West
- Scotland
- Wales
- Northern Ireland
- Contacts

Co Armagh farm hides diesel laundering fraud

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07 March 2013 16:29

HM Revenue & Customs

Over 1.5 tonnes of toxic waste has been removed from a cattle farm in Co Armagh after the discovery of a diesel laundering plant by HM Revenue and Customs (HMRC) this morning.

Officers from HMRC and the Police Service of Northern Ireland searched farm buildings in the Cullyhanna area and discovered the laundering plant hidden behind a wall of round hay bales. The illegal operation, which used slurry tankers to launder and transport the diesel, was capable of producing 1.8 million litres of illicit fuel, evading almost £1.2 million in taxes and duty a year.

John Whiting, Assistant Director, Criminal Investigation for HMRC, said:

"This laundering plant was located on a working farm, using farm equipment to launder the diesel. Every illegal laundering operation typically generates tonnes of toxic waste, involving significant

safety and environmental issues, which flies in the face of countryside protection. As taxpayers and local ratepayers, not only are we missing out on the stolen tax that ends up the pockets of the criminals, we are also paying the substantial clean up and disposal costs.

"Buying illicit fuel funds crime and supports and encourages these dangerous activities within our communities. The only winners are the criminals. I would urge anyone with information on fuel misuse in their area to contact our free telephone hotline 0800 59 5000 and contribute to the fight against this criminality."

Two slurry tankers used to launder and transport the fuel, 2,800 litres of illicit fuel along with pumps and fuel tanks were removed from the site.

Notes to Editors

1. Diesel laundering waste is often dumped indiscriminately in the countryside or next to the road with no care for the pollution it can cause to land or waterways. Typically the waste is dumped in agricultural areas or forests, chosen for their remoteness to avoid detection.

2. Laundered fuel is red (or green) diesel, which has been filtered through chemicals or acids to remove the Government marker. The chemicals and acids remain in the fuel and damage fuel pumps in diesel cars.

3. Photographs of the laundering plant are available at HMRC's Flickr channel www.flickr.com/hmrc.gov.uk

4. Follow HMRC on Twitter at @hmrcgovuk

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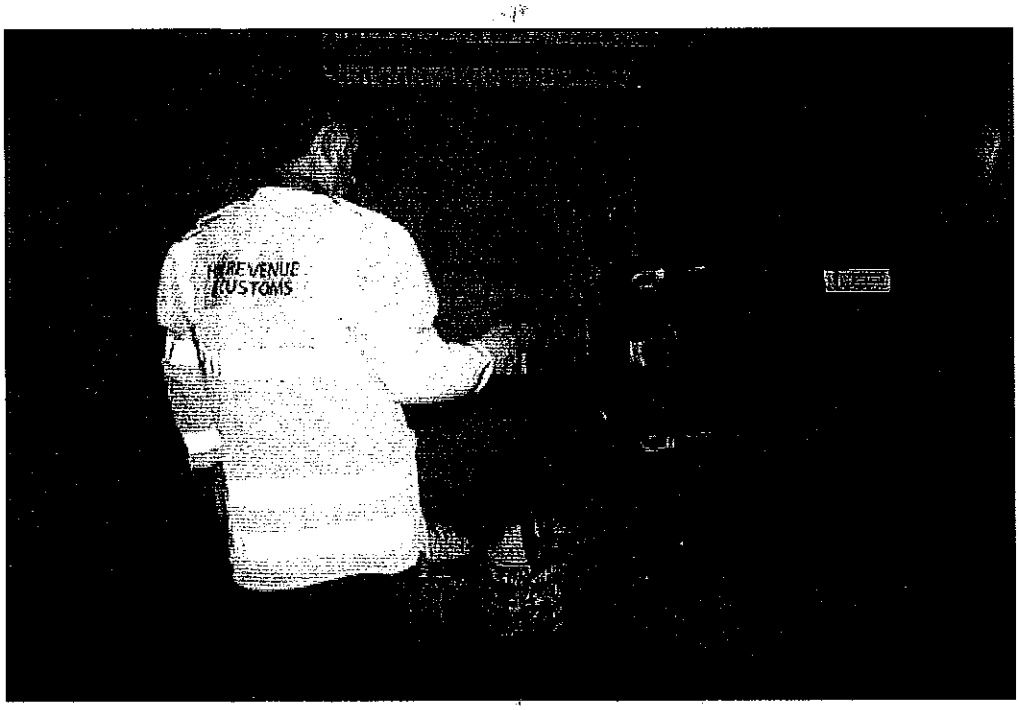
Name
Avril Clydesdale
Division
HM Revenue & Customs
Phone
02890 562718
Email
avril.clydesdale@hmrc.gsi.gov.uk

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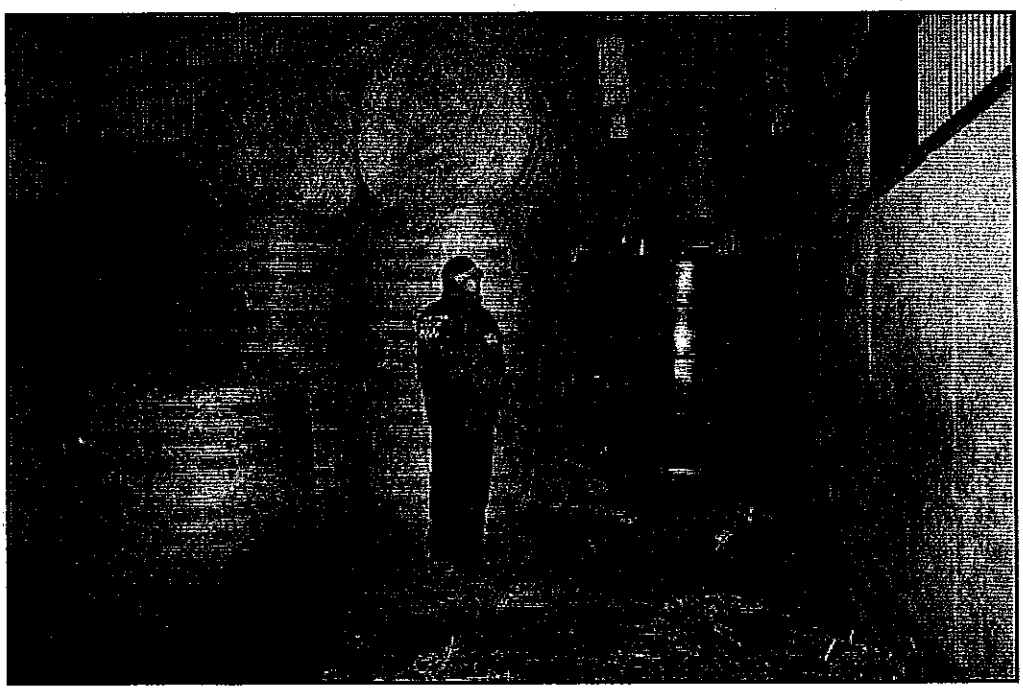
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- North West
- Yorkshire and the Humber
- East Midlands
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- East
- London
- South East
- South West
- Scotland
- Wales
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Law breakers targeted in M4 road checks

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20 March 2013 15:42

HM Revenue & Customs

Three people have been arrested, 1.5 tonnes of tobacco seized and over 100 fixed penalty notices issued during a crackdown targeting motorists on the M4.

The joint operation by Wiltshire Police and HM Revenue and Customs (HMRC) focused on excise fraud and motoring offences. HMRC was looking for illegal alcohol, tobacco or vehicles using non-road fuel. Wiltshire Police was identifying breaches of the Road Traffic Act.

As part of the operation officers:
• seized 1.5 tonnes of tobacco with an estimated £200,000 duty evaded; a man from the Nottingham area has been arrested,
• issued 106 fixed penalty notices with fines totalling over £18,000 for road traffic offences including 56 dangerously overweight vehicles, potentially putting other road users at risk,
• seized two vans loaded with non-duty paid alcohol, including vodka and wine, with an estimated £7,000 duty evaded,

- arrested a commercial driver for drink driving,
- seized a car and four commercial vehicles being driven without insurance,
- seized a van running on red diesel,
- seized a commercial vehicle being driven without a licence.

The UK Border Agency also made an arrest for immigration offences.

Simon De-Kayne, HMRC Assistant Director Criminal Investigation, said:

"This four-day blitz has been a success for HMRC and our law enforcement partners. Together we have prevented substantial quantities of illegal tobacco and alcohol from reaching the South West's streets and opened further avenues of enquiry.

"Tobacco fraud alone costs the UK Government around £1.8 billion a year. Anyone with information about this type of crime should contact the Customs Hotline on 0800 59 5000."

Craig Hardy, Commercial Vehicle Enforcement and Road Safety Partnerships Sergeant, who headed up the operation for Wiltshire Police, said:

"This operation has been a great success and, as a direct result of it, we have made the section of the M4 running through Wiltshire a safer place for motorists.

"Issuing more than 100 fixed penalty tickets for various road traffic offences in just four days goes to show that there are a number of motorists who flout the law which is in place to not only protect them but also other road users. We have prosecuted 56 drivers whose commercial vehicles were overloaded, several were found to be over 60 per cent overweight, and seized several uninsured commercial vehicles. We will continue to target these types of offences in the future.

"This operation is a great example of good partnership working with other key agencies. I hope this operation and its results highlight the dedication of Wiltshire Police in tackling road safety issues in our county."

During the four day operation approximately 450 mostly light commercial vehicles, travelling between Membury Services and junction 15 of the M4, were stopped. Of those, about 125 vehicles were escorted to a weighbridge near Swindon for further examination by Police and HMRC officers.

The operation ran from Monday 11 March to Thursday 14 March and involved around 25 officers and investigators each day.

Notes to Editors

1. Photos are available from HMRC's Flickr channel www.flickr.com/hmrcgovuk and from Wiltshire Police press office.

1. Anyone with information about excise fraud can report it online at www.hmrc.gov.uk/reportingfraud/online.htm or via the Customs Hotline on 0800 59 5000.

3. Anyone wishing to report a vehicle-related crime should contact Wiltshire Police on 101 or Crimestoppers on 0800 555 111, where information can be left anonymously.

4. Follow HMRC on Twitter @HMRCgovuk

5. Follow Wiltshire police at Twitter.com/WiltshirePolice

Contact Information

Name
Lisa Billard
Division
HM Revenue & Customs
Phone
02380 797587
Email
lisa.billard@hmrc.gsi.gov.uk

Name
Bob Gaiger
Division
HM Revenue & Customs
Phone
07802 634 144
Email
bob.gaiger@hmrc.gsi.gov.uk

Name
HM Revenue & Customs
Email
news.reply@hmrc.gsi.gov.uk

Name
HMRC Out of Hours
Division
HM Revenue & Customs
Phone
07860 359544
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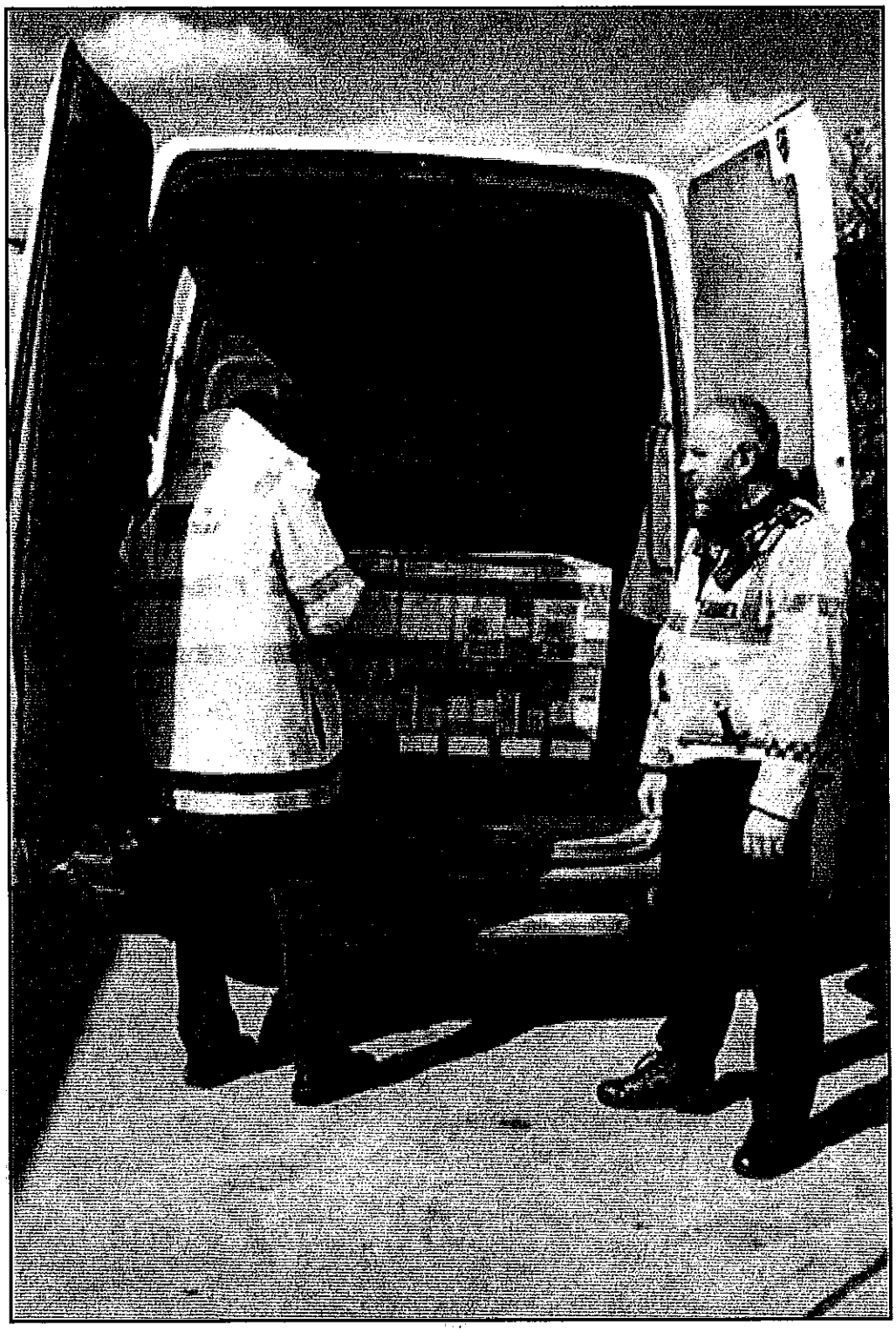
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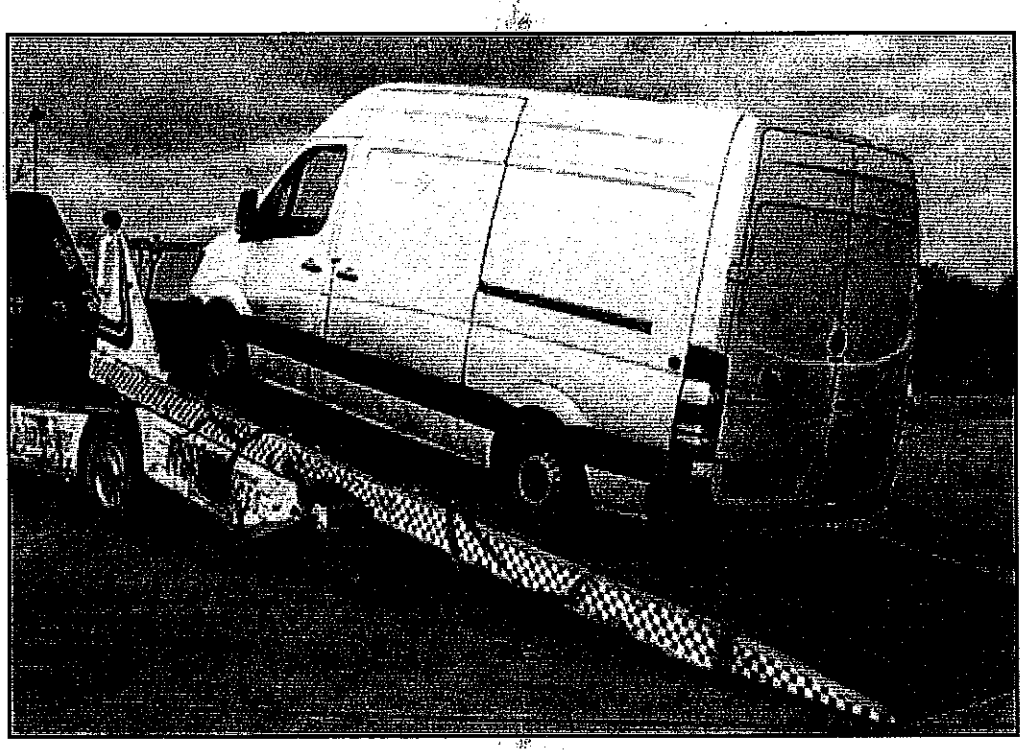
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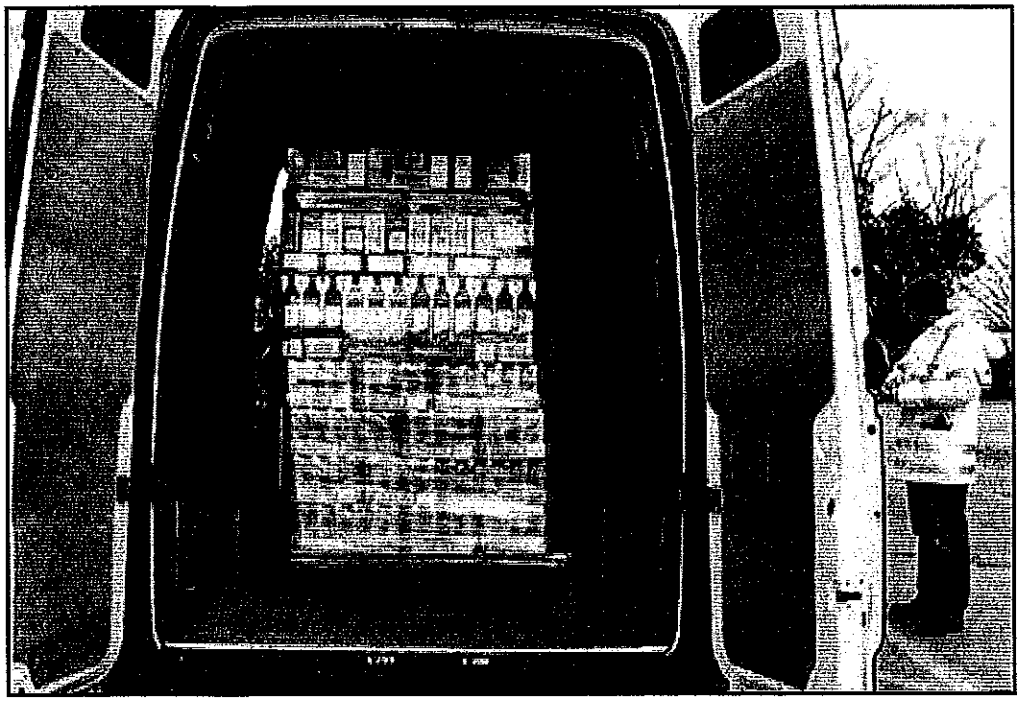
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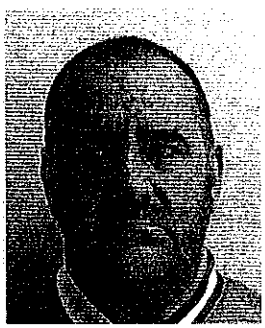
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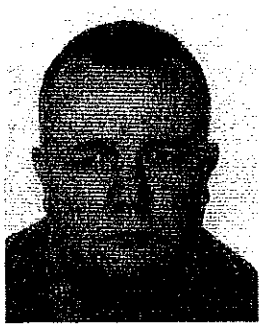
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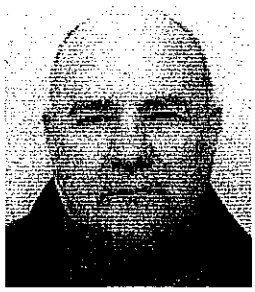
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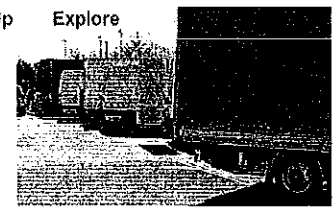
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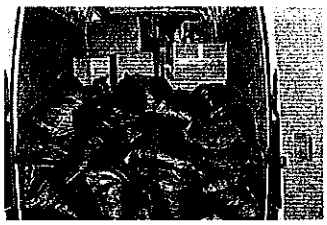
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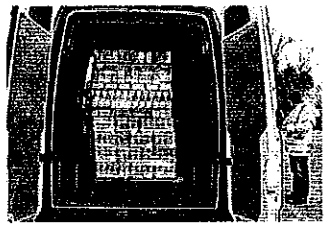
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Operation Tessie - Van full of tobacco

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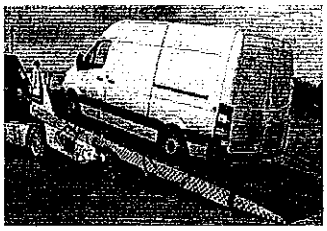
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Operation Tessie - Van full of alcohol

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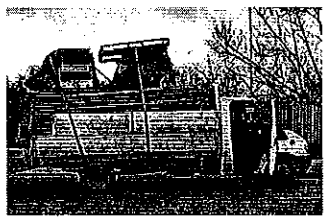
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Operation Tessie - Seized van

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Operation Tessie - Overweight vehicle

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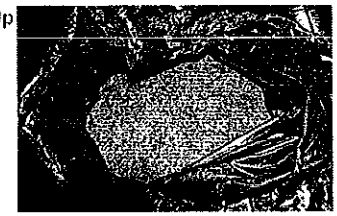


Operation Tessie - HMRC & Police with seized alcohol

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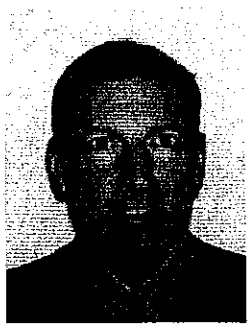


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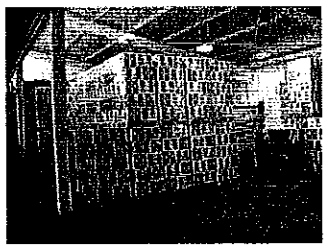


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Two men guilty of smuggling illicit Italian wine into the UK have been jailed for excise duty and VAT...

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HMRC's Most Wanted

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Photographs of HM Revenue & Customs (HMRC) Most Wanted tax fugitives.

To help in the effort to hunt down the UK's biggest tax fraudsters, HMRC has published photographs of its Most Wanted and is asking members of the public to assist in finding them.

People can report leads on the Most Wanted fugitives via HMRC's Customs, Excise and VAT fraud reporting hotline on 0800 595 000, by email or post bit.ly/PoT0Wx, or through the Crimestoppers website www.crimestoppers-uk.org

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Commissioners for Revenue and Customs Act 2005

2005 CHAPTER 11

PROSPECTIVE

Information

18 Confidentiality

(1) Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs.

(2) But subsection (1) does not apply to a disclosure—

(a) which—

(i) is made for the purposes of a function of the Revenue and Customs, and

(ii) does not contravene any restriction imposed by the Commissioners,

(b) which is made in accordance with section 20 or 21,

(c) which is made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions,

(d) which is made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions,

(e) which is made in pursuance of an order of a court,

(f) which is made to Her Majesty's Inspectors of Constabulary, the Scottish inspectors or the Northern Ireland inspectors for the purpose of an inspection by virtue of section 27,

(g) which is made to the Independent Police Complaints Commission, or a person acting on its behalf, for the purpose of the exercise of a function by virtue of section 28, or

(h) which is made with the consent of each person to whom the information relates.

Status: *This version of this provision is prospective.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Commissioners for Revenue and Customs Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(3) Subsection (1) is subject to any other enactment permitting disclosure.

(4) In this section—

(a) a reference to Revenue and Customs officials is a reference to any person who is or was—

(i) a Commissioner,

(ii) an officer of Revenue and Customs,

(iii) a person acting on behalf of the Commissioners or an officer of Revenue and Customs, or

(iv) a member of a committee established by the Commissioners,

(b) a reference to the Revenue and Customs has the same meaning as in section 17,

(c) a reference to a function of the Revenue and Customs is a reference to a function of—

(i) the Commissioners, or

(ii) an officer of Revenue and Customs,

(d) a reference to the Scottish inspectors or the Northern Ireland inspectors has the same meaning as in section 27, and

(e) a reference to an enactment does not include—

(i) an Act of the Scottish Parliament or an instrument made under such an Act, or

(ii) an Act of the Northern Ireland Assembly or an instrument made under such an Act.

Status:
This version of this provision is prospective.

Changes to legislation:
There are outstanding changes not yet made by the legislation.gov.uk editorial team to Commissioners for Revenue and Customs Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations.

Changes and effects yet to be applied to :

- s. 18(1) referred to by 2006 c. 25 Sch. 5 para. 24
- s. 18(1) restricted by 2009 c. 4 s. 1206(1)
- s. 18(2)(g) word omitted by 2012 c. 11 s. 24(3)(a)
- s. 18(2)(i) and words inserted by 2012 c. 11 s. 24(3)(b)
- s. 18(2A) inserted by 2012 c. 11 s. 24(4)

Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 16A inserted by 2009 c. 10 s. 92(1)
- s. 25A inserted by 2008 c. 9 s. 138(1)
- s. 25A(1) modified by 2009 c. 11 s. 3(8)(d)
- s. 25A(1) modified by 2009 c. 11 s. 11(7)(d)
- s. 25A(2) modified by 2009 c. 11 s. 1(7)(e)
- s. 25A(2) modified by 2009 c. 11 s. 7(8)(e)

Commencement Orders yet to be applied to the Commissioners for Revenue and Customs Act 2005:
Commencement Orders bringing provisions within this Act into force:

- S.I. 2005/1126 art. 2 commences (2005 c. 11)

Commencement Orders bringing legislation that affects this Act into force:

- S.I. 2006/378 art. 2-7 Sch. commences (2005 c. 15)
- S.I. 2006/3399 art. 2 commences (2006 c. 25)
- S.I. 2007/709 art. 3(a) commences (2006 c. 48)
- S.I. 2007/1064 art. 2 commences (2006 c. 12)
- S.I. 2007/3166 art. 2 3 commences (2007 c. 11)
- S.I. 2008/99 art. 2 commences (2007 c. 30)
- S.I. 2008/219 art. 2 3 commences (2007 c. 27)
- S.I. 2008/755 art. 2 15-18 commences (2007 c. 27)
- S.I. 2008/1586 art. 2 Sch. 1 commences (2008 c. 4)
- S.I. 2009/603 art. 2 commences (2008 c. 24)
- S.I. 2010/128 art. 2 commences (2006 c. 18)
- S.I. 2010/495 art. 4(d) commences (2006 c. 18)



Commissioners for Revenue and Customs Act 2005

2005 CHAPTER 11

PROSPECTIVE

Information

19 Wrongful disclosure

(1) A person commits an offence if he contravenes section 18(1) or 20(9) by disclosing revenue and customs information relating to a person whose identity—

(a) is specified in the disclosure, or

(b) can be deduced from it.

(2) In subsection (1) "revenue and customs information relating to a person" means information about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs (within the meaning given by section 18(4)(c)) in respect of the person; but it does not include information about internal administrative arrangements of Her Majesty's Revenue and Customs (whether relating to Commissioners, officers or others).

(3) It is a defence for a person charged with an offence under this section of disclosing information to prove that he reasonably believed—

(a) that the disclosure was lawful, or

(b) that the information had already and lawfully been made available to the public.

(4) A person guilty of an offence under this section shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.

Status: *This version of this provision is prospective.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Commissioners for Revenue and Customs Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(5) A prosecution for an offence under this section may be instituted in England and Wales only—

(a) by the Director of Revenue and Customs Prosecutions, or

(b) with the consent of the Director of Public Prosecutions.

(6) A prosecution for an offence under this section may be instituted in Northern Ireland only—

(a) by the Commissioners, or

(b) with the consent of the Director of Public Prosecutions for Northern Ireland.

(7) In the application of this section to Scotland or Northern Ireland the reference in subsection (4)(b) to 12 months shall be taken as a reference to six months.

(8) This section is without prejudice to the pursuit of any remedy or the taking of any action in relation to a contravention of section 18(1) or 20(9) (whether or not this section applies to the contravention).

Status:
This version of this provision is prospective.

Changes to legislation:
There are outstanding changes not yet made by the legislation.gov.uk editorial team to Commissioners for Revenue and Customs Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations.

Changes and effects yet to be applied to :

- s. 19 applied (with modifications) by 2007 c. 27 s. 85(6)
- s. 19 applied by 2005 c. 19 s. 352A (as inserted) by 2006 c. 25 s. 177
- s. 19 modified by 1994 c. 9 s. 41A(3) (as inserted) by 2012 c. 14 Sch. 23 para. 13
- s. 19(1) words inserted by 2012 c. 11 s. 24(5)
- s. 19(3)(4) applied by 1995 c. 32 s. 12B(2) (as inserted) by 2006 c. 12 Sch. 3 para. 14
- s. 19(7) applied by 1995 c. 32 s. 12B(2) (as inserted) by 2006 c. 12 Sch. 3 para. 14
- s. 19(8) words inserted by 2012 c. 11 s. 24(5)

Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 16A inserted by 2009 c. 10 s. 92(1)
- s. 25A inserted by 2008 c. 9 s. 138(1)
- s. 25A(1) modified by 2009 c. 11 s. 3(8)(d)
- s. 25A(1) modified by 2009 c. 11 s. 11(7)(d)
- s. 25A(2) modified by 2009 c. 11 s. 1(7)(c)
- s. 25A(2) modified by 2009 c. 11 s. 7(8)(e)

Commencement Orders yet to be applied to the Commissioners for Revenue and Customs Act 2005:
Commencement Orders bringing provisions within this Act into force:

- S.I. 2005/1126 art. 2 commences (2005 c. 11)

Commencement Orders bringing legislation that affects this Act into force:

- S.I. 2006/378 art. 2-7 Sch. commences (2005 c. 15)
- S.I. 2006/3399 art. 2 commences (2006 c. 25)
- S.I. 2007/709 art. 3(a) commences (2006 c. 48)
- S.I. 2007/1064 art. 2 commences (2006 c. 12)
- S.I. 2007/3166 art. 2 3 commences (2007 c. 11)
- S.I. 2008/99 art. 2 commences (2007 c. 30)
- S.I. 2008/219 art. 2 3 commences (2007 c. 27)
- S.I. 2008/755 art. 2 15-18 commences (2007 c. 27)
- S.I. 2008/1586 art. 2 Sch. 1 commences (2008 c. 4)
- S.I. 2009/603 art. 2 commences (2008 c. 24)
- S.I. 2010/128 art. 2 commences (2006 c. 18)
- S.I. 2010/495 art. 4(d) commences (2006 c. 18)



Export Control Act 2002

2002 CHAPTER 28

PROSPECTIVE

1 Export controls

(1) The Secretary of State may by order make provision for or in connection with the imposition of export controls in relation to goods of any description.

(2) For this purpose "export controls", in relation to any goods, means the prohibition or regulation of their exportation from the United Kingdom or their shipment as stores.

(3) Goods may be described in the order wholly or partly by reference to the uses to which the goods, or any information recorded on or derived from them, may be put.

(4) The power to impose export controls is subject to section 5.

(5) The Secretary of State may by order make provision in connection with any controls that may be imposed by a directly applicable Community provision on the exportation of goods.

(6) For the avoidance of doubt, export controls may be imposed in relation to the removal from the United Kingdom of vehicles, vessels and aircraft (as an exportation of goods), whether or not they are moving under their own power or carrying goods or passengers.

Status:
This version of this provision is prospective.

Changes to legislation:
There are outstanding changes not yet made by the legislation.gov.uk editorial team to Export Control Act 2002. Any changes that have already been made by the team appear in the content and are referenced with annotations.

Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:

- Blanket amendment words substituted by S.I. 2011/1043 art. 3 4
- Blanket amendment words substituted by S.I. 2011/1043 art. 3 6

Commencement Orders yet to be applied to the Export Control Act 2002:
Commencement Orders bringing provisions within this Act into force:

- S.I. 2003/2629 art. 2 commences (2002 c. 28)



Export Control Act 2002

2002 CHAPTER 28

PROSPECTIVE

3 Technical assistance controls

(1) The Secretary of State may by order make provision for or in connection with the imposition of technical assistance controls in relation to technical assistance of any description.

(2) For this purpose—

"technical assistance controls", in relation to any technical assistance, means the prohibition or regulation of participation in the provision outside the United Kingdom of that technical assistance; and

"technical assistance" means services which are provided or used, or which are capable of being used, in connection with the development, production or use of any goods or technology.

(3) Technical assistance may be described in the order wholly or partly by reference to the uses to which it (or the goods or technology in question) may be put.

(4) The power to impose technical assistance controls—

(a) shall only be exercised for the purpose of imposing controls corresponding to or connected with—

(i) any export controls or transfer controls imposed under section 1 or 2; or

(ii) any controls imposed by a directly applicable Community provision on the exportation of goods or the transfer of technology; and

(b) is subject to section 5.

(5) For the purposes of subsection (1) a person participates in the provision of technical assistance outside the United Kingdom if—

(a) he provides technical assistance outside the United Kingdom or agrees to do so; or

Status: *This version of this provision is prospective.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Export Control Act 2002. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(b) he makes arrangements under which another person provides technical assistance outside the United Kingdom or agrees to do so.

(6) The Secretary of State may by order make provision in connection with any controls that may be imposed by a directly applicable Community provision on participation in the provision of technical assistance.

(7) Technical assistance controls may be imposed on acts done outside the United Kingdom, but only if they are done by a person who is, or is acting under the control of, a United Kingdom person.

Status:
This version of this provision is prospective.

Changes to legislation:
There are outstanding changes not yet made by the legislation.gov.uk editorial team to Export Control Act 2002. Any changes that have already been made by the team appear in the content and are referenced with annotations.

Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:

- Blanket amendment words substituted by S.I. 2011/1043 art. 3 4
- Blanket amendment words substituted by S.I. 2011/1043 art. 3 6

Commencement Orders yet to be applied to the Export Control Act 2002:
Commencement Orders bringing provisions within this Act into force:

- S.I. 2003/2629 art. 2 commences (2002 c. 28)



Export Control Act 2002

2002 CHAPTER 28

PROSPECTIVE

5 General restriction on control powers

(1) Subject to section 6, the power to impose export controls, transfer controls, technical assistance controls or trade controls may only be exercised where authorised by this section.

(2) Controls of any kind may be imposed for the purpose of giving effect to any Community provision or other international obligation of the United Kingdom.

(3) In subsection (2) "international obligation" includes an obligation relating to a joint action or common position adopted, or a decision taken, by the Council under Title V of the Treaty on European Union (provisions on a common foreign and security policy).

(4) Export controls may be imposed in relation to any description of goods within one or more of the categories specified in the Schedule for such controls.

(5) Transfer controls may be imposed in relation to any description of technology within one or more of the categories specified in the Schedule for such controls.

(6) Technical assistance controls may be imposed in relation to any description of technical assistance within one or more of the categories specified in the Schedule for such controls.

(7) Trade controls may be imposed in relation to any description of goods within one or more of the categories specified in the Schedule for such controls.

Status:
This version of this provision is prospective.

Changes to legislation:
There are outstanding changes not yet made by the legislation.gov.uk editorial team to Export Control Act 2002. Any changes that have already been made by the team appear in the content and are referenced with annotations.

Changes and effects yet to be applied to :

- s. 5(3) words substituted by S.I. 2012/1809 art. 3(1) Sch. Pt. 1

Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:

- Blanket amendment words substituted by S.I. 2011/1043 art. 3 4
- Blanket amendment words substituted by S.I. 2011/1043 art. 3 6

Commencement Orders yet to be applied to the Export Control Act 2002:
Commencement Orders bringing provisions within this Act into force:

- S.I. 2003/2629 art. 2 commences (2002 c. 28)

Status: *This version of this contains provisions that are prospective.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Export Control Act 2002. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

PROSPECTIVE

SCHEDULE

CATEGORIES OF GOODS, TECHNOLOGY AND TECHNICAL ASSISTANCE

2 (1) Export controls may be imposed in relation to any goods the exportation or use of which is capable of having a relevant consequence.

(2) Transfer controls may be imposed in relation to any technology the transfer or use of which is capable of having such a consequence.

(3) Technical assistance controls may be imposed in relation to any technical assistance the provision or use of which is capable of having such a consequence.

(4) Trade controls may be imposed in relation to any goods the acquisition, disposal, movement or use of which is capable of having such a consequence.

Status:
This version of this contains provisions that are prospective.

Changes to legislation:
There are outstanding changes not yet made by the legislation.gov.uk editorial team to Export Control Act 2002. Any changes that have already been made by the team appear in the content and are referenced with annotations.

Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:

- Blanket amendment words substituted by S.I. 2011/1043 art. 3 4
- Blanket amendment words substituted by S.I. 2011/1043 art. 3 6

Commencement Orders yet to be applied to the Export Control Act 2002:
Commencement Orders bringing provisions within this Act into force:

- S.I. 2003/2629 art. 2 commences (2002 c. 28)

Status: *This version of this cross heading contains provisions that are prospective.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Export Control Act 2002. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

PROSPECTIVE

SCHEDULE

CATEGORIES OF GOODS, TECHNOLOGY AND TECHNICAL ASSISTANCE

RELEVANT CONSEQUENCES

Breaches of international law and human rights

D The carrying out anywhere in the world of (or of acts which facilitate)—

(a) acts threatening international peace and security;

(b) acts contravening the international law of armed conflict;

(c) internal repression in any country;

(d) breaches of human rights.

Status:
This version of this cross heading contains provisions that are prospective.

Changes to legislation:
There are outstanding changes not yet made by the legislation.gov.uk editorial team to Export Control Act 2002. Any changes that have already been made by the team appear in the content and are referenced with annotations.

Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:

- Blanket amendment words substituted by S.I. 2011/1043 art. 3 4
- Blanket amendment words substituted by S.I. 2011/1043 art. 3 6

Commencement Orders yet to be applied to the Export Control Act 2002:
Commencement Orders bringing provisions within this Act into force:

- S.I. 2003/2629 art. 2 commences (2002 c. 28)

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Human Rights Act 1998. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)



Human Rights Act 1998

1998 CHAPTER 42

Legislation

3 Interpretation of legislation.

(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

(2) This section—

(a) applies to primary legislation and subordinate legislation whenever enacted;

(b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and

(c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.

Changes to legislation:
There are outstanding changes not yet made by the legislation.gov.uk editorial team to Human Rights Act 1998. Any changes that have already been made by the team appear in the content and are referenced with annotations.

Commencement Orders yet to be applied to the Human Rights Act 1998:
Commencement Orders bringing legislation that affects this Act into force:

- S.I. 2006/1014 art. 2(a) Sch. 1 para. 11(v) commences (2005 c. 4)
- S.I. 2007/1897 art. 2 commences (2005 c. 9)
- S.I. 2009/812 art. 3(a)(b) commences (2006 c. 52)
- S.I. 2009/1604 art. 2 commences (2005 c. 4)

EUROPEAN CONVENTION ON HUMAN RIGHTS

ARTICLE 10

1. Everyone has the right to freedom of expression. this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

04 April 2013
18:02

DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 October 2012

establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee [1],

Having regard to the opinion of the Committee of the Regions [2],

Acting in accordance with the ordinary legislative procedure [3],

Whereas:

(1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, the cornerstone of which is the mutual recognition of judicial decisions in civil and criminal matters.

(2) The Union is committed to the protection of, and to the establishment of minimum standards in regard to, victims of crime and the Council has adopted Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings [4]. Under the Stockholm Programme – An open and secure Europe serving and protecting citizens [5], adopted by the European Council at its meeting on 10 and 11 December 2009, the Commission and the Member States were asked to examine how to improve legislation and practical support measures for the protection of victims, with particular attention paid to, support for and recognition of, all victims, including for victims of terrorism, as a priority.

(3) Article 82(2) of the Treaty on the Functioning of the European Union (TFEU) provides for the establishment of minimum rules applicable in the Member States to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, in particular with regard to the rights of victims of crime.

(4) In its resolution of 10 June 2011 on a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings [6] ('the Budapest roadmap'), the Council stated that action should be taken at Union level in order to strengthen the rights of, support for, and protection of victims of crime. To that end and in accordance with that resolution, this Directive aims to revise and supplement the principles set out in Framework Decision 2001/220/JHA and to take significant steps forward in the level of protection of victims throughout the Union, in particular within the framework of criminal proceedings.

(5) The resolution of the European Parliament of 26 November 2009 on the elimination of violence against women [7] called on the Member States to improve their national laws and policies to combat all forms of violence against women and to act in order to tackle the causes of violence against women, not least by employing preventive measures, and called on the Union to guarantee the right to assistance and support for all victims of violence.

(6) In its resolution of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women [8] the European Parliament proposed a strategy to combat violence against women, domestic violence and female genital mutilation as a basis for future legislative criminal-law instruments against gender-based violence including a framework to fight violence against women (policy, prevention, protection, prosecution, provision and partnership) to be followed up by a Union action plan. International regulation within this area includes the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted on 18 December 1979, the CEDAW Committee's recommendations and decisions, and the Council of Europe Convention on preventing and combating violence against women and domestic violence adopted on 7 April 2011.

[1] OJ C 43, 15.2.2012, p. 39.
[2] OJ C 113, 18.4.2012, p. 56.
[3] Position of the European Parliament of 12 September 2012 (not yet published in the Official Journal) and decision of the Council of 4 October 2012.
[4] OJ L 82, 22.3.2001, p. 1.
[5] OJ C 115, 4.5.2010, p. 1.
[6] OJ C 187, 28.6.2011, p. 1.
[7] OJ C 285 E, 21.10.2010, p. 53.
[8] OJ C 296 E, 2.10.2012, p. 26.

(7) Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order [1] establishes a mechanism for the mutual recognition of protection measures in criminal matters between Member States. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims [2] and Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography [3] address, inter alia, the specific needs of the particular categories of victims of human trafficking, child sexual abuse, sexual exploitation and child pornography.

(8) Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism [4] recognises that terrorism constitutes one of the most serious violations of the principles on which the Union is based, including the principle of democracy, and confirms that it constitutes, inter alia, a threat to the free exercise of human rights.

(9) Crime is a wrong against society as well as a violation of the individual rights of victims. As such, victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health. In all contacts with a competent authority operating within the context of criminal proceedings, and any service coming into contact with victims, such as victim support or restorative justice services, the personal situation and immediate needs, age, gender, possible disability and maturity of victims of crime should be taken into account while fully respecting their physical, mental and moral integrity. Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.

(10) This Directive does not address the conditions of the residence of victims of crime in the territory of the Member States. Member States should take the necessary measures to ensure that the rights set out in this Directive are not made conditional on the victim's residence status in their territory or on the victim's citizenship or nationality. Reporting a crime and participating in criminal proceedings do not create any rights regarding the residence status of the victim.

(11) This Directive lays down minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection.

(12) The rights set out in this Directive are without prejudice to the rights of the offender. The term 'offender' refers to a person who has been convicted of a crime. However, for the purposes of this Directive, it also refers to a suspected or accused person before any acknowledgement of guilt or conviction, and it is without prejudice to the presumption of innocence.

(13) This Directive applies in relation to criminal offences committed in the Union and to criminal proceedings that take place in the Union. It confers rights on victims of extra-territorial offences only in relation to criminal proceedings that take place in the Union. Complaints made to competent authorities outside the Union, such as embassies, do not trigger the obligations set out in this Directive.

(14) In applying this Directive, children's best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child adopted on 20 November 1989. Child victims should be considered and treated as the full bearers of rights set out in this Directive and should be entitled to exercise those rights in a manner that takes into account their capacity to form their own views.

(15) In applying this Directive, Member States should ensure that victims with disabilities are able to benefit fully from the rights set out in this Directive, on an equal basis with others, including by facilitating the accessibility to premises where criminal proceedings are conducted and access to information.

(16) Victims of terrorism have suffered attacks that are intended ultimately to harm society. They may therefore need special attention, support and protection due to the particular nature of the crime that has been committed against them. Victims of terrorism can be under significant public scrutiny and often need social recognition and respectful treatment by society. Member States should therefore take particular account of the needs of victims of terrorism, and should seek to protect their dignity and security.

[1] OJ L 338, 21.12.2011, p. 2.
[2] OJ L 101, 15.4.2011, p. 1.
[3] OJ L 335, 17.12.2011, p. 1.
[4] OJ L 164, 22.6.2002, p. 3.

(17) Violence that is directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately, is understood as gender-based violence. It may result in physical, sexual, emotional or psychological harm, or economic loss, to the victim. Gender-based violence is understood to be a form of discrimination and a violation of the fundamental freedoms of the victim and includes violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery, and different forms of harmful practices, such as forced marriages, female genital mutilation and so-called 'honour crimes'. Women victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence.

(18) Where violence is committed in a close relationship, it is committed by a person who is a current or former spouse, or partner or other family member of the victim, whether or not the offender shares or has shared the same household with the victim. Such violence could cover physical, sexual, psychological or economic violence and could result in physical, mental or emotional harm or economic loss. Violence in close relationships is a serious and often hidden social problem which could cause systematic psychological and physical trauma with severe consequences because the offender is a person whom the victim should be able to trust. Victims of violence in close relationships may therefore be in need of special protection measures. Women are affected disproportionately by this type of violence and the situation can be worse if the woman is dependent on the offender economically, socially or as regards her right to residence.

(19) A person should be considered to be a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them. It is possible that family members of victims are also harmed as a result of the crime. In particular, family members of a person whose death has been directly caused by a criminal offence could be harmed as a result of the crime. Such family members, who are indirect victims of the crime, should therefore also benefit from protection under this Directive. However, Member States should be able to establish procedures to limit the number of family members who can benefit from the rights set out in this Directive. In the case of a child, the child or, unless this is not in the best interests of the child, the holder of parental responsibilty on behalf of the child, should be entitled to exercise the rights set out in this Directive. This Directive is without prejudice to any national administrative procedures required to establish that a person is a victim.

(20) The role of victims in the criminal justice system and whether they can participate actively in criminal proceedings vary across Member States, depending on the national system, and is determined by one or more of the following criteria: whether the national system provides for a legal status as a party to criminal proceedings; whether the victim is under a legal requirement or is requested to participate actively in criminal proceedings, for example as a witness; and/or whether the victim has a legal entitlement under national law to participate actively in criminal proceedings and is seeking to do so, where the national system does not provide that victims have the legal status of a party to the criminal proceedings. Member States should determine which of those criteria apply to determine the scope of rights set out in this Directive where there are references to the role of the victim in the relevant criminal justice system.

(21) Information and advice provided by competent authorities, victim support services and restorative justice services should, as far as possible, be given by means of a range of media and in a manner which can be understood by the victim. Such information and advice should be provided in simple and accessible language. It should also be ensured that the victim can be understood during proceedings. In this respect, the victim's knowledge of the language used to provide information, age, maturity, intellectual and emotional capacity, literacy and any mental or physical impairment should be taken into account. Particular account should be taken of difficulties in understanding or communicating which may be due to a disability of some kind, such as hearing or speech impediments. Equally, limitations on a victim's ability to communicate information should be taken into account during criminal proceedings.

(22) The moment when a complaint is made should, for the purposes of this Directive, be considered as falling within the context of the criminal proceedings. This should also include situations where authorities initiate criminal proceedings *ex officio* as a result of a criminal offence suffered by a victim.

(23) Information about reimbursement of expenses should be provided, from the time of the first contact with a competent authority, for example in a leaflet stating the basic conditions for such reimbursement of expenses. Member States should not be required, at this early stage of the criminal proceedings, to decide on whether the victim concerned fulfils the conditions for reimbursement of expenses.

(24) When reporting a crime, victims should receive a written acknowledgement of their complaint from the police, stating the basic elements of the crime, such as the type of crime, the time and place, and any damage or harm caused by the crime. This acknowledgement should include a file number and the time and place for reporting of the crime in order to serve as evidence that the crime has been reported, for example in relation to insurance claims.

(25) Without prejudice to rules relating to limitation periods, the delayed reporting of a criminal offence due to fear of retaliation, humiliation or stigmatisation should not result in refusing acknowledgement of the victim's complaint.

(26) When providing information, sufficient detail should be given to ensure that victims are treated in a respectful manner and to enable them to make informed decisions about their participation in proceedings. In this respect, information allowing the victim to know about the current status of any proceedings is particularly important. This is equally relevant for information to enable a victim to decide whether to request a review of a decision not to prosecute. Unless otherwise required, it should be possible to provide the information communicated to the victim orally or in writing, including through electronic means.

(27) Information to a victim should be provided to the last known correspondence address or electronic contact details given to the competent authority by the victim. In exceptional cases, for example due to the high number of victims involved in a case, it should be possible to provide information through the press, through an official website of the competent authority or through a similar communication channel.

(28) Member States should not be obliged to provide information where disclosure of that information could affect the proper handling of a case or harm a given case or person, or if they consider it contrary to the essential interests of their security.

(29) Competent authorities should ensure that victims receive updated contact details for communication about their case unless the victim has expressed a wish not to receive such information.

(30) A reference to a 'decision' in the context of the right to information, interpretation and translation, should be understood only as a reference to the finding of guilt or otherwise ending criminal proceedings. The reasons for that decision should be provided to the victim through a copy of the document which contains that decision or through a brief summary of them.

(31) The right to information about the time and place of a trial resulting from the complaint with regard to a criminal offence suffered by the victim should also apply to information about the time and place of a hearing related to an appeal of a judgment in the case.

(32) Specific information about the release or the escape of the offender should be given to victims, upon request, at least in cases where there might be a danger or an identified risk of harm to the victims, unless there is an identified risk of harm to the offender which would result from the notification. Where there is an identified risk of harm to the offender which would result from the notification, the competent authority should take into account all other risks when determining an appropriate action. The reference to 'identified risk of harm to the victims' should cover such factors as the nature and severity of the crime and the risk of retaliation. Therefore, it should not be applied to those situations where minor offences were committed and thus where there is only a slight risk of harm to the victim.

(33) Victims should receive information about any right to appeal of a decision to release the offender, if such a right exists in national law.

(34) Justice cannot be effectively achieved unless victims can properly explain the circumstances of the crime and provide their evidence in a manner understandable to the competent authorities. It is equally important to ensure that victims are treated in a respectful manner and that they are able to access their rights. Interpretation should therefore be made available, free of charge, during questioning of the victim and in order to enable them to participate actively in court hearings, in accordance with the role of the victim in the relevant criminal justice system. For other aspects of criminal proceedings, the need for interpretation and translation can vary depending on specific issues, the role of the victim in the relevant criminal justice system and his or her involvement in proceedings and any specific rights they have. As such, interpretation and translation for these other cases need only be provided to the extent necessary for victims to exercise their rights.

(35) The victim should have the right to challenge a decision finding that there is no need for interpretation or translation, in accordance with procedures in national law. That right does not entail the obligation for Member States to provide for a separate mechanism or complaint procedure in which such decision may be challenged and should not unreasonably prolong the criminal proceedings. An internal review of the decision in accordance with existing national procedures would suffice.

(36) The fact that a victim speaks a language which is not widely spoken should not, in itself, be grounds to decide that interpretation or translation would unreasonably prolong the criminal proceedings.

(37) Support should be available from the moment the competent authorities are aware of the victim and throughout criminal proceedings and for an appropriate time after such proceedings in accordance with the needs of the victim and the rights set out in this Directive. Support should be provided through a variety of means, without excessive formalities and through a sufficient geographical distribution across the Member State to allow all victims the opportunity to access such services. Victims who have suffered considerable harm due to the severity of the crime could require specialist support services.

(38) Persons who are particularly vulnerable or who find themselves in situations that expose them to a particularly high risk of harm, such as persons subjected to repeat violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crime in a Member State of which they are not nationals or residents, should be provided with specialist support and legal protection. Specialist support services should be based on an integrated and targeted approach which should, in particular, take into account the specific needs of victims, the severity of the harm suffered as a result of a criminal offence, as well as the relationship between victims, offenders, children and their wider social environment. A main task of these services and their staff, which play an important role in supporting the victim to recover from and overcome potential harm or trauma as a result of a criminal offence, should be to inform victims about the rights set out in this Directive so that they can take decisions in a supportive environment that treats them with dignity, respect and sensitivity. The types of support that such specialist support services should offer could include providing shelter and safe accommodation, immediate medical support, referral to medical and forensic examination for evidence in cases of rape or sexual assault, short and long-term psychological counselling, trauma care, legal advice, advocacy and specific services for children as direct or indirect victims.

(39) Victim support services are not required to provide extensive specialist and professional expertise themselves. If necessary, victim support services should assist victims in calling on existing professional support, such as psychologists.

(40) Although the provision of support should not be dependent on victims making a complaint with regard to a criminal offence to a competent authority such as the police, such authorities are often best placed to inform victims of the possibility of support. Member States are therefore encouraged to establish appropriate conditions to enable the referral of victims to victim support services, including by ensuring that data protection requirements can be and are adhered to. Repeat referrals should be avoided.

(41) The right of victims to be heard should be considered to have been fulfilled where victims are permitted to make statements or explanations in writing.

(42) The right of child victims to be heard in criminal proceedings should not be precluded solely on the basis that the victim is a child or on the basis of that victim's age.

(43) The right to a review of a decision not to prosecute should be understood as referring to decisions taken by prosecutors and investigative judges or law enforcement authorities such as police officers, but not to the decisions taken by courts. Any review of a decision not to prosecute should be carried out by a different person or authority to that which made the original decision, unless the initial decision not to prosecute was taken by the highest prosecuting authority, against whose decision no review can be made, in which case the review may be carried out by that same authority. The right to a review of a decision not to prosecute does not concern special procedures, such as proceedings against members of parliament or government, in relation to the exercise of their official position.

(44) A decision ending criminal proceedings should include situations where a prosecutor decides to withdraw charges or discontinue proceedings.

(45) A decision of the prosecutor resulting in an out-of-court settlement and thus ending criminal proceedings, excludes victims from the right to a review of a decision of the prosecutor not to prosecute, only if the settlement imposes a warning or an obligation.

(46) Restorative justice services, including for example victim-offender mediation, family group conferencing and sentencing circles, can be of great benefit to the victim, but require safeguards to prevent secondary and repeat victimisation, intimidation and retaliation. Such services should therefore have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm. Factors such as the nature and severity of the crime, the ensuing degree of trauma, the repeat violation of a victim's physical, sexual, or psychological integrity, power imbalances, and the age, maturity or intellectual capacity of the victim, which could limit or reduce the victim's ability to make an informed choice or could prejudice a positive outcome for the victim, should be taken into consideration in referring a case to the restorative justice services and in conducting a restorative justice process. Restorative justice processes should, in principle, be confidential, unless agreed otherwise by the parties, or as required by national law due to an overriding public interest. Factors such as threats made or any forms of violence committed during the process may be considered as requiring disclosure in the public interest.

(47) Victims should not be expected to incur expenses in relation to their participation in criminal proceedings. Member States should be required to reimburse only necessary expenses of victims in relation to their participation in criminal proceedings and should not be required to reimburse victims' legal fees. Member States should be able to impose conditions in regard to the reimbursement of expenses in national law, such as time limits for claiming reimbursement, standard rates for subsistence and travel costs and maximum daily amounts for loss of earnings. The right to reimbursement of expenses in criminal proceedings should not arise in a situation where a victim makes a statement on a criminal offence. Expenses should only be covered to the extent that the victim is obliged or requested by the competent authorities to be present and actively participate in the criminal proceedings.

(48) Recoverable property which is seized in criminal proceedings should be returned as soon as possible to the victim of the crime, subject to exceptional circumstances, such as in a dispute concerning the ownership or where the possession of the property or the property itself is illegal. The right to have property returned should be without prejudice to its legitimate retention for the purposes of other legal proceedings.

(49) The right to a decision on compensation from the offender and the relevant applicable procedure should also apply to victims resident in a Member State other than the Member State where the criminal offence was committed.

(50) The obligation set out in this Directive to transmit complaints should not affect Member States' competence to institute proceedings and is without prejudice to the rules of conflict relating to the exercise of jurisdiction, as laid down in Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings [1].

(51) If the victim has left the territory of the Member State where the criminal offence was committed, that Member State should no longer be obliged to provide assistance, support and protection except for what is directly related to any criminal proceedings it is conducting regarding the criminal offence concerned, such as special protection measures during court proceedings. The Member State of the victim's residence should provide assistance, support and protection required for the victim's need to recover.

(52) Measures should be available to protect the safety and dignity of victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, such as interim injunctions or protection or restraining orders.

[1] OJ L 328, 15.12.2009, p. 42.

(53) The risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender or as a result of participation in criminal proceedings should be limited by carrying out proceedings in a coordinated and respectful manner, enabling victims to establish trust in authorities. Interaction with competent authorities should be as easy as possible whilst limiting the number of unnecessary interactions the victim has with them through, for example, video recording of interviews and allowing its use in court proceedings. As wide a range of measures as possible should be made available to practitioners to prevent distress to the victim during court proceedings in particular as a result of visual contact with the offender, his or her family, associates or members of the public. To that end, Member States should be encouraged to introduce, especially in relation to court buildings and police stations, feasible and practical measures enabling the facilities to include amenities such as separate entrances and waiting areas for victims. In addition, Member States should, to the extent possible, plan the criminal proceedings so that contacts between victims and their family members and offenders are avoided, such as by summoning victims and offenders to hearings at different times.

(54) Protecting the privacy of the victim can be an important means of preventing secondary and repeat victimisation, intimidation and retaliation and can be achieved through a range of measures including non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of the victim. Such protection is particularly important for child victims, and includes non-disclosure of the name of the child. However, there might be cases where, exceptionally, the child can benefit from the disclosure or even widespread publication of information, for example where a child has been abducted. Measures to protect the privacy and images of victims and of their family members should always be consistent with the right to a fair trial and freedom of expression, as recognised in Articles 6 and 10, respectively, of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(55) Some victims are particularly at risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender during criminal proceedings. It is possible that such a risk derives from the personal characteristics of the victim or the type, nature or circumstances of the crime. Only through individual assessments, carried out at the earliest opportunity, can such a risk be effectively identified. Such assessments should be carried out for all victims to determine whether they are at risk of secondary and repeat victimisation, of intimidation and of retaliation and what special protection measures they require.

(56) Individual assessments should take into account the personal characteristics of the victim such as his or her age, gender and gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, relationship to or dependence on the offender and previous experience of crime. They should also take into account the type or nature and the circumstances of the crime such as whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive, sexual violence, violence in a close relationship, whether the offender was in a position of control, whether the victim's residence is in a high crime or gang dominated area, or whether the victim's country of origin is not the Member State where the crime was committed.

(57) Victims of human trafficking, terrorism, organised crime, violence in close relationships, sexual violence or exploitation, gender-based violence, hate crime, and victims with disabilities and child victims tend to experience a high rate of secondary and repeat victimisation, of intimidation and of retaliation. Particular care should be taken when assessing whether such victims are at risk of such victimisation, intimidation and of retaliation and there should be a strong presumption that those victims will benefit from special protection measures.

(58) Victims who have been identified as vulnerable to secondary and repeat victimisation, to intimidation and to retaliation should be offered appropriate measures to protect them during criminal proceedings. The exact nature of such measures should be determined through the individual assessment, taking into account the wish of the victim. The extent of any such measure should be determined without prejudice to the rights of the defence and in accordance with rules of judicial discretion. The victims' concerns and fears in relation to proceedings should be a key factor in determining whether they need any particular measure.

(59) Immediate operational needs and constraints may make it impossible to ensure, for example, that the same police officer consistently interview the victim; illness, maternity or parental leave are examples of such constraints. Furthermore, premises specially designed for interviews with victims may not be available due, for example, to renovation. In the event of such operational or practical constraints, a special measure envisaged following an individual assessment may not be possible to provide on a case-by-case basis.

(60) Where, in accordance with this Directive, a guardian or a representative is to be appointed for a child, those roles could be performed by the same person or by a legal person, an institution or an authority.

(61) Any officials involved in criminal proceedings who are likely to come into personal contact with victims should be able to access and receive appropriate initial and ongoing training, to a level appropriate to their contact with victims, so that they are able to identify victims and their needs and deal with them in a respectful, sensitive, professional and non-discriminatory manner. Persons who are likely to be involved in the individual assessment to identify victims' specific protection needs and to determine their need for special protection measures should receive specific training on how to carry out such an assessment. Member States should ensure such training for police services and court staff. Equally, training should be promoted for lawyers, prosecutors and judges and for practitioners who provide victim support or restorative justice services. This requirement should include training on the specific support services to which victims should be referred or specialist training where their work focuses on victims with specific needs and specific psychological training, as appropriate. Where relevant, such training should be gender sensitive. Member States' actions on training should be complemented by guidelines, recommendations and exchange of best practices in accordance with the Budapest roadmap.

(62) Member States should encourage and work closely with civil society organisations, including recognised and active non-governmental organisations working with victims of crime, in particular in policymaking initiatives, information and awareness-raising campaigns, research and education programmes and in training, as well as in monitoring and evaluating the impact of measures to support and protect victims of crime. For victims of crime to receive the proper degree of assistance, support and protection, public services should work in a coordinated manner and should be involved at all administrative levels — at Union level, and at national, regional and local level. Victims should be assisted in finding and addressing the competent authorities in order to avoid repeat referrals. Member States should consider developing 'sole points of access' or 'one-stop shops', that address victims' multiple needs when involved in criminal proceedings, including the need to receive information, assistance, support, protection and compensation.

(63) In order to encourage and facilitate reporting of crimes and to allow victims to break the cycle of repeat victimisation, it is essential that reliable support services are available to victims and that competent authorities are prepared to respond to victims' reports in a respectful, sensitive, professional and non-discriminatory manner. This could increase victims' confidence in the criminal justice systems of Member States and reduce the number of unreported crimes. Practitioners who are likely to receive complaints from victims with regard to criminal offences should be appropriately trained to facilitate reporting of crimes, and measures should be put in place to enable third-party reporting, including by civil society organisations. It should be possible to make use of communication technology, such as e-mail, video recordings or online electronic forms for making complaints.

(64) Systematic and adequate statistical data collection is recognised as an essential component of effective policymaking in the field of rights set out in this Directive. In order to facilitate evaluation of the application of this Directive, Member States should communicate to the Commission relevant statistical data related to the application of national procedures on victims of crime, including at least the number and type of the reported crimes and, as far as such data are known and are available, the number and age and gender of the victims. Relevant statistical data can include data recorded by the judicial authorities and by law enforcement agencies and, as far as possible, administrative data compiled by healthcare and social welfare services and by public and non-governmental victim support or restorative justice services and other organisations working with victims of crime. Judicial data can include information about reported crime, the number of cases that are investigated and persons prosecuted and sentenced. Service-based administrative data can include, as far as possible, data on how victims are using services provided by government agencies and public and private support organisations, such as the number of referrals by police to victim support services, the number of victims that request, receive or do not receive support or restorative justice.

(65) This Directive aims to amend and expand the provisions of Framework Decision 2001/220/JHA. Since the amendments to be made are substantial in number and nature, that Framework Decision should, in the interests of clarity, be replaced in its entirety in relation to Member States participating in the adoption of this Directive.

(66) This Directive respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, it seeks to promote the right to dignity, life, physical and mental integrity, liberty and security, respect for private and family life, the right to property, the principle of non-discrimination, the principle of equality between women and men, the rights of the child, the elderly and persons with disabilities, and the right to a fair trial.

(67) Since the objective of this Directive, namely to establish minimum standards on the rights, support and protection of victims of crime, cannot be sufficiently achieved by the Member States, and can therefore, by reason of its scale and potential effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(68) Personal data processed when implementing this Directive should be protected in accordance with Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters [1] and in accordance with the principles laid down in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which all Member States have ratified.

(69) This Directive does not affect more far reaching provisions contained in other Union acts which address the specific needs of particular categories of victims, such as victims of human trafficking and victims of child sexual abuse, sexual exploitation and child pornography, in a more targeted manner.

(70) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, those Member States have notified their wish to take part in the adoption and application of this Directive.

(71) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

(72) The European Data Protection Supervisor delivered an opinion on 17 October 2011 [2] based on Article 41(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [3],

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Objectives

1. The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.

Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status.

2. Member States shall ensure that in the application of this Directive, where the victim is a child, the child's best interests shall be a primary consideration and shall be assessed on an individual basis. A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child.

Article 2

Definitions

1. For the purposes of this Directive the following definitions shall apply:

(a) 'victim' means:

(i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;

(ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death;

[1] OJ L 350, 30.12.2008, p. 60.

[2] OJ C 35, 9.2.2012, p. 10.

[3] OJ L 8, 12.1.2001, p. 1.

(b) 'family members' means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim;

(c) 'child' means any person below 18 years of age;

(d) 'restorative justice' means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party.

2. Member States may establish procedures:

(a) to limit the number of family members who may benefit from the rights set out in this Directive taking into account the individual circumstances of each case; and

(b) in relation to paragraph (1)(a)(ii), to determine which family members have priority in relation to the exercise of the rights set out in this Directive.

CHAPTER 2

PROVISION OF INFORMATION AND SUPPORT

Article 3

Right to understand and to be understood

1. Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority.

2. Member States shall ensure that communications with victims are given in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood.

3. Unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, Member States shall allow victims to be accompanied by a person of their choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood.

Article 4

Right to receive information from the first contact with a competent authority

1. Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive:

(a) the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;

(b) the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures;

(c) how and under what conditions they can obtain protection, including protection measures;

(d) how and under what conditions they can access legal advice, legal aid and any other sort of advice;

(e) how and under what conditions they can access compensation;

(f) how and under what conditions they are entitled to interpretation and translation;

(g) if they are resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect their interests in the Member State where the first contact with the competent authority is made;

(h) the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings;

(i) the contact details for communications about their case;

(j) the available restorative justice services;

(k) how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

2. The extent or detail of information referred to in paragraph 1 may vary depending on the specific needs and personal circumstances of the victim and the type or nature of the crime. Additional details may also be provided at later stages depending on the needs of the victim and the relevance, at each stage of proceedings, of such details.

Article 5

Right of victims when making a complaint

1. Member States shall ensure that victims receive written acknowledgement of their formal complaint made by them to the competent authority of a Member State, stating the basic elements of the criminal offence concerned.

2. Member States shall ensure that victims who wish to make a complaint with regard to a criminal offence and who do not understand or speak the language of the competent authority be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance.

3. Member States shall ensure that victims who do not understand or speak the language of the competent authority, receive translation, free of charge, of the written acknowledgement of their complaint provided for in paragraph 1, if they so request, in a language that they understand.

Article 6

Right to receive information about their case

1. Member States shall ensure that victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by the victim and that, upon request, they receive such information:

(a) any decision not to proceed with or to end an investigation or not to prosecute the offender;

(b) the time and place of the trial, and the nature of the charges against the offender.

2. Member States shall ensure that, in accordance with their role in the relevant criminal justice system, victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by them and that, upon request, they receive such information:

(a) any final judgment in a trial;

(b) information enabling the victim to know about the state of the criminal proceedings, unless in exceptional cases the proper handling of the case may be adversely affected by such notification.

3. Information provided for under paragraph 1(a) and paragraph 2(a) shall include reasons or a brief summary of reasons for the decision concerned, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.

4. The wish of victims as to whether or not to receive information shall bind the competent authority, unless that information must be provided due to the entitlement of the victim to active participation in the criminal proceedings. Member States shall allow victims to modify their wish at any moment, and shall take such modification into account.

5. Member States shall ensure that victims are offered the opportunity to be notified, without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from or has escaped detention. Furthermore, Member States shall ensure that victims are informed of any relevant measures issued for their protection in case of release or escape of the offender.

6. Victims shall, upon request, receive the information provided for in paragraph 5 at least in cases where there is a danger or an identified risk of harm to them, unless there is an identified risk of harm to the offender which would result from the notification.

Article 7

Right to interpretation and translation

1. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, upon request, with interpretation in accordance with their role in the relevant criminal justice system in criminal proceedings, free of charge, at least during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their active participation in court hearings and any necessary interim hearings.

2. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, communication technology such as videoconferencing, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victims to properly exercise their rights or to understand the proceedings.

3. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, in accordance with their role in the relevant criminal justice system in criminal proceedings, upon request, with translations of information essential to the exercise of their rights in criminal proceedings in a language that they understand, free of charge, to the extent that such information is made available to the victims. Translations of such information shall include at least any decision ending the criminal proceedings related to the criminal offence suffered by the victim, and upon the victim's request, reasons or a brief summary of reasons for such decision, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.

4. Member States shall ensure that victims who are entitled to information about the time and place of the trial in accordance with Article 6(1)(b) and who do not understand the language of the competent authority, are provided with a translation of the information to which they are entitled, upon request.

5. Victims may submit a reasoned request to consider a document as essential. There shall be no requirement to translate passages of essential documents which are not relevant for the purpose of enabling victims to actively participate in the criminal proceedings.

6. Notwithstanding paragraphs 1 and 3, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

7. Member States shall ensure that the competent authority assesses whether victims need interpretation or translation as provided for under paragraphs 1 and 3. Victims may challenge a decision not to provide interpretation or translation. The procedural rules for such a challenge shall be determined by national law.

8. Interpretation and translation and any consideration of a challenge of a decision not to provide interpretation or translation under this Article shall not unreasonably prolong the criminal proceedings.

Article 8

Right to access victim support services

1. Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

2. Member States shall facilitate the referral of victims, by the competent authority that received the complaint and by other relevant entities, to victim support services.

3. Member States shall take measures to establish free of charge and confidential specialist support services in addition to, or as an integrated part of, general victim support services, or to enable victim support organisations to call on existing specialised entities providing such specialist support. Victims, in accordance with their specific needs, shall have access to such services and family members shall have access in accordance with their specific needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

4. Victim support services and any specialist support services may be set up as public or non-governmental organisations and may be organised on a professional or voluntary basis.

5. Member States shall ensure that access to any victim support services is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.

Article 9

Support from victim support services

1. Victim support services, as referred to in Article 8(1), shall, as a minimum, provide:

(a) information, advice and support relevant to the rights of victims including on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial;

(b) information about or direct referral to any relevant specialist support services in place;

(c) emotional and, where available, psychological support;

(d) advice relating to financial and practical issues arising from the crime;

(e) unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation.

2. Member States shall encourage victim support services to pay particular attention to the specific needs of victims who have suffered considerable harm due to the severity of the crime.

3. Unless otherwise provided by other public or private services, specialist support services referred to in Article 8(3), shall, as a minimum, develop and provide:

(a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation;

(b) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.

CHAPTER 3

PARTICIPATION IN CRIMINAL PROCEEDINGS

Article 10

Right to be heard

1. Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity.

2. The procedural rules under which victims may be heard during criminal proceedings and may provide evidence shall be determined by national law.

Article 11

Rights in the event of a decision not to prosecute

1. Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

2. Where, in accordance with national law, the role of the victim in the relevant criminal justice system will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

3. Member States shall ensure that victims are notified without unnecessary delay of their right to receive, and that they receive sufficient information to decide whether to request a review of any decision not to prosecute upon request.

4. Where the decision not to prosecute is taken by the highest prosecuting authority against whose decision no review may be carried out under national law, the review may be carried out by the same authority.

5. Paragraphs 1, 3 and 4 shall not apply to a decision of the prosecutor not to prosecute, if such a decision results in an out-of-court settlement, in so far as national law makes such provision.

Article 12

Right to safeguards in the context of restorative justice services

1. Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Such measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services, subject to at least the following conditions:

(a) the restorative justice services are used only if they are in the interest of the victim, subject to any safety considerations, and are based on the victim's free and informed consent, which may be withdrawn at any time;

(b) before agreeing to participate in the restorative justice process, the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement;

(c) the offender has acknowledged the basic facts of the case;

(d) any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings;

(e) discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.

2. Member States shall facilitate the referral of cases, as appropriate to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral.

Article 13

Right to legal aid

Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law.

Article 14

Right to reimbursement of expenses

Member States shall afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system. The conditions or procedural rules under which victims may be reimbursed shall be determined by national law.

Article 15

Right to the return of property

Member States shall ensure that, following a decision by a competent authority, recoverable property which is seized in the course of criminal proceedings is returned to victims without delay, unless required for the purposes of criminal proceedings. The conditions or procedural rules under which such property is returned to the victims shall be determined by national law.

Article 16

Right to decision on compensation from the offender in the course of criminal proceedings

1. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.

2. Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

Article 17

Rights of victims resident in another Member State

1. Member States shall ensure that their competent authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed, particularly with regard to the organisation of the proceedings. For this purpose, the authorities of the Member State where the criminal offence was committed shall, in particular, be in a position:

(a) to take a statement from the victim immediately after the complaint with regard to the criminal offence is made to the competent authority;

(b) to have recourse to the extent possible to the provisions on video conferencing and telephone conference calls laid down in the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 [1] for the purpose of hearing victims who are resident abroad.

[1] OJ C 197, 12.7.2000, p. 3.

2. Member States shall ensure that victims of a criminal offence committed in Member States other than that where they reside may make a complaint to the competent authorities of the Member State of residence, if they are unable to do so in the Member State where the criminal offence was committed or, in the event of a serious offence, as determined by national law of that Member State, if they do not wish to do so.

3. Member States shall ensure that the competent authority to which the victim makes a complaint transmits it without delay to the competent authority of the Member State in which the criminal offence was committed, if the competence to institute the proceedings has not been exercised by the Member State in which the complaint was made.

CHAPTER 4

PROTECTION OF VICTIMS AND RECOGNITION OF VICTIMS WITH SPECIFIC PROTECTION NEEDS

Article 18

Right to protection

Without prejudice to the rights of the defence, Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.

Article 19

Right to avoid contact between victim and offender

1. Member States shall establish the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact.

2. Member States shall ensure that new court premises have separate waiting areas for victims.

Article 20

Right to protection of victims during criminal investigations

Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that during criminal investigations:

(a) interviews of victims are conducted without unjustified delay after the complaint with regard to a criminal offence has been made to the competent authority;

(b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation;

(c) victims may be accompanied by their legal representative and a person of their choice, unless a reasoned decision has been made to the contrary;

(d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.

Article 21

Right to protection of privacy

1. Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy, including personal characteristics of the victim taken into account in the individual assessment provided for under Article 22, and images of victims and of their family members. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.

2. In order to protect the privacy, personal integrity and personal data of victims, Member States shall, with respect for freedom of expression and information and freedom and pluralism of the media, encourage the media to take self-regulatory measures.

Article 22

Individual assessment of victims to identify specific protection needs

1. Member States shall ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

2. The individual assessment shall, in particular, take into account:

(a) the personal characteristics of the victim;

(b) the type or nature of the crime; and

(c) the circumstances of the crime.

3. In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.

4. For the purposes of this Directive, child victims shall be presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. To determine whether and to what extent they would benefit from special measures as provided for under Articles 23 and 24, child victims shall be subject to an individual assessment as provided for in paragraph 1 of this Article.

5. The extent of the individual assessment may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victim.

6. Individual assessments shall be carried out with the close involvement of the victim and shall take into account their wishes including where they do not wish to benefit from special measures as provided for in Articles 23 and 24.

7. If the elements that form the basis of the individual assessment have changed significantly, Member States shall ensure that it is updated throughout the criminal proceedings.

Article 23

Right to protection of victims with specific protection needs during criminal proceedings

1. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment provided for in Article 22(1), may benefit from the measures provided for in paragraphs 2 and 3 of this Article. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is a an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.

2. The following measures shall be available during criminal investigations to victims with specific protection needs identified in accordance with Article 22(1):

(a) interviews with the victim being carried out in premises designed or adapted for that purpose;

(b) interviews with the victim being carried out by or through professionals trained for that purpose;

(c) all interviews with the victim being conducted by the same persons unless this is contrary to the good administration of justice;

(d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a judge, being conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced.

3. The following measures shall be available for victims with specific protection needs identified in accordance with Article 22(1) during court proceedings:

(a) measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology;

(b) measures to ensure that the victim may be heard in the courtroom without being present, in particular through the use of appropriate communication technology;

(c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; and

(d) measures allowing a hearing to take place without the presence of the public.

Article 24

Right to protection of child victims during criminal proceedings

1. In addition to the measures provided for in Article 23, Member States shall ensure that where the victim is a child:

(a) in criminal investigations, all interviews with the child victim may be audiovisually recorded and such recorded interviews may be used as evidence in criminal proceedings;

(b) in criminal investigations and proceedings, in accordance with the role of victims in the relevant criminal justice system, competent authorities appoint a special representative for child victims where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family;

(c) where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.

The procedural rules for the audiovisual recordings referred to in point (a) of the first subparagraph and the use thereof shall be determined by national law.

2. Where the age of a victim is uncertain and there are reasons to believe that the victim is a child, the victim shall, for the purposes of this Directive, be presumed to be a child.

CHAPTER 5

OTHER PROVISIONS

Article 25

Training of practitioners

1. Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to their contact with victims to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner.

2. Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request that those responsible for the training of judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase the awareness of judges and prosecutors of the needs of victims.

3. With due respect for the independence of the legal profession, Member States shall recommend that those responsible for the training of lawyers make available both general and specialist training to increase the awareness of lawyers of the needs of victims.

4. Through their public services or by funding victim support organisations, Member States shall encourage initiatives enabling those providing victim support and restorative justice services to receive adequate training to a level appropriate to their contact with victims and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.

5. In accordance with the duties involved, and the nature and level of contact the practitioner has with victims, training shall aim to enable the practitioner to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.

Article 26

Cooperation and coordination of services

1. Member States shall take appropriate action to facilitate cooperation between Member States to improve the access of victims to the rights set out in this Directive and under national law. Such cooperation shall be aimed at least at:

(a) the exchange of best practices;

(b) consultation in individual cases; and

(c) assistance to European networks working on matters directly relevant to victims' rights.

2. Member States shall take appropriate action, including through the internet, aimed at raising awareness of the rights set out in this Directive, reducing the risk of victimisation, and minimising the negative impact of crime and the risks of secondary and repeat victimisation, of intimidation and of retaliation, in particular by targeting groups at risk such as children, victims of gender-based violence and violence in close relationships. Such action may include information and awareness raising campaigns and research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders.

CHAPTER 6

FINAL PROVISIONS

Article 27

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 16 November 2015.

2. When Member States adopt those provisions they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.

Article 28

Provision of data and statistics

Member States shall, by 16 November 2017 and every three years thereafter, communicate to the Commission available data showing how victims have accessed the rights set out in this Directive.

Article 29

Report

The Commission shall, by 16 November 2017, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, including a description of action taken under Articles 8, 9 and 23, accompanied, if necessary, by legislative proposals.

Article 30

Replacement of Framework Decision 2001/220/JHA

Framework Decision 2001/220/JHA is hereby replaced in relation to Member States participating in the adoption of this Directive, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law.

In relation to Member States participating in the adoption of this Directive, references to that Framework Decision shall be construed as references to this Directive.

Article 31

Entry into force

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 32

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 25 October 2012.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	A. D. MAVROYIANNIS