# Still to fix

1. <https://serverone.hopto.org/1%20The%20prosecution%20team%20manual%20guidance%202011%20MoG-final-2011-july%20Si%20Mod/>
2. <https://serverone.hopto.org/accpersonpowers%20Community%20Officers%20Si%20Mod/>
3. <https://serverone.hopto.org/Community%20safety%20accreditation%20scheme%20Si%20Mod/>
4. <https://serverone.hopto.org/Police%20community%20support%20officer%20Si%20Mod/>
5. <https://serverone.hopto.org/Police%20Reform%20Act%202002%20Si%20Made/>
6. <https://serverone.hopto.org/Power%20to%20the%20police%20staff_%20Big%20changes%20to%20police%20powers/>

# Audio Files

<https://serverone.hopto.org/Audio%20Files%20Link/>

# TABLE OF UK CRIMINAL OFFENCES

<https://www.cps.gov.uk/sites/default/files/documents/publications/annex_1a_table_of_offences_scheme_c.pdf>

# TABLE OF UK OFFENCES

<https://www.horrificcorruption.com/some-uk-laws-an-indexed-table>

# Maximum Sentences for Criminal Offences Table List

<https://www.thelawpages.com/court-cases/maximums.php>

# Kidnapping and/or False Imprisonment / Unlawful Detention

1. Kidnapping and false imprisonment are both common law offences. They are defined in case law, and not in legislation.
2. Kidnapping is taking someone away by force or fraud without their consent on any lawful excuse.
3. False Imprisonment is detaining someone against their will
4. Both are classed as very serious offences, with each carrying the potential for life imprisonment on conviction.

* **Elements of the offence**

In ***R v Rahman (1985) 81 Cr App Rep 349*** it was held that, on a charge of false imprisonment, the prosecution must prove:

**The unlawful**

1. Intentional behaviour
2. Reckless behaviour
3. The restraint of a victim's freedom of movement from a particular place

* **Restraint of a victim's freedom of movement**

False imprisonment at common law involves an act of the defendant which directly and intentionally (or possibly negligently) causes the confinement of the claimant within an area delimited by the defendant.

* **The elements of the existing offence of false imprisonment, as stated above, are**

**that:**

1. D’s conduct results in the restraint of V’s freedom of movement from a particular place.
2. D intends the conduct to have this result, or is reckless as to whether it will or not.
3. The restraint is unlawful, in the sense that it was without lawful authority or reasonable excuse. (As with kidnapping, a mistaken belief in the existence of lawful authority or reasonable excuse can be an excuse in
4. Itself.)

* ***Cooksey [2019] EWCA Crim 1410*** where false imprisonment occurred within the context of coercive and controlling behaviour in a domestic setting.
* ***Ward [2018] EWCA Crim 414*** where the court identified aggravating factors for the particular case; gratuitous degradation of the victim; abuse of power over the victim in his own home; previous violence or threats towards the victim in the context of a series of offences; threats made to stop the victim reporting the offending.
* **The Law Commission (LAW COM No 355) SIMPLIFICATION OF CRIMINAL LAW: KIDNAPPING AND RELATED OFFENCES**

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/376859/44612_HC_797_Law_Commission_355_accessible.pdf>

# Offences against the Person Act 1861 s.18

* **Homicide**

**4.** Conspiring or soliciting to commit murder.

Whosoever shall solicit, encourage, persuade, or endeavour to persuade, or shall propose to any person, to murder any other person, whether he be a subject of Her Majesty or not, and whether he be within the Queen’s dominions or not, shall be guilty of a misdemeanour, and being convicted thereof shall be liable

* **Acts causing or tending to cause Danger to Life or Bodily Harm**

**20.** Inflicting bodily injury, with or without weapon.

Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, [F2shall be guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding 7 years.]

* **Assaults**

**42.** Persons committing any common assault or battery may be imprisoned or compelled by two magistrates to pay fine and costs not exceeding 5 l.

* **Wounding or grievous bodily harm with intent to cause grievous bodily harm**

“117 Burncroft Avenue stabbing me with a Knife” because the local Authority’s allowed them to continue victimising myself. **“*Section 1 of the Prevention of Crime Act******1953*** prohibits the possession in any public place of an offensive weapon without lawful authority or excuse.”

* **Assault occasioning bodily harm.**

Whosoever shall be convicted upon an indictment of any assault occasioning actual bodily harm shall be liable to imprisonment for a term not exceeding 7 years and whosoever shall be convicted upon an indictment for a common assault shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding [two years]

* **What is the definition of battery in law?**

Definition.

**1.** In criminal law, this is a physical act that results in harmful or offensive contact with another person without that person's consent.

**2.** In tort law, the intentional causation of harmful or offensive contact with another's person without that person's consent.

* **How is offensive contact defined?**

A contact is offensive within the meaning of § 101(c)(ii) if: 2.

**(a)** The contact is offensive to a reasonable sense of personal dignity; or. 3.

**(b)** The contact is highly offensive to the other's unusually sensitive.

* **Offences against the Person Act 1861**

<https://www.legislation.gov.uk/ukpga/Vict/24-25/100/contents>

# Ill-treatment of patients / Mental Health Act 1983 s.127

* **Understanding the Laws**

There are two specific pieces of legislation that govern how people with mental health conditions receive care and treatment. They are the **Mental Health Act 1983** **(updated by the 2007 Act)** and the **Mental Capacity Act 2005**, including the Deprivation of Liberty Safeguards.

* **Demeanour**

**(2)** It shall be an offence for any individual to ill-treat or wilfully to neglect a mentally disordered patient who is for the time being subject to his guardianship under this Act or otherwise in his custody or care (whether by virtue of any legal or moral obligation or otherwise).

* **Law**
* **127Ill-treatment of patients.**

1. It shall be an offence for any person who is an officer on the staff of or otherwise employed in, or who is one of the managers of, a hospital [[F1](https://www.legislation.gov.uk/ukpga/1983/20/section/127#commentary-c10390551), independent hospital or care home]—
2. To ill-treat or wilfully to neglect a patient for the time being receiving treatment for mental disorder as an in-patient in that hospital or home; or
3. To ill-treat or wilfully to neglect, on the premises of which the hospital or home form’s part, a patient for the time being receiving such treatment there as an out-patient.
4. It shall be an offence for any individual to ill-treat or wilfully to neglect a mentally disordered patient who is for the time being subject to his guardianship under this Act or otherwise in his custody or care (whether by virtue of any legal or moral obligation or otherwise).

* **Penalty**

**(2A)**[**F2**](https://www.legislation.gov.uk/ukpga/1983/20/section/127#commentary-c20075811)**.**

Any person guilty of an offence under this section shall be liable—

1. On summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
2. On conviction on indictment, to imprisonment for a term not exceeding **[**[**F3**](https://www.legislation.gov.uk/ukpga/1983/20/section/127#commentary-c19854431)five years**]** or to a fine of any amount, or to both.

* **Mental Health Act 1983 s.127**

<https://www.legislation.gov.uk/ukpga/1983/20/section/127#:~:text=127%20Ill%2Dtreatment%20of%20patients.&text=(2)It%20shall%20be%20an,or%20moral%20obligation%20or%20otherwise>).

* **Combo (Index of Mental Capacity Act 2005 & more.) “Below the audio recorder!” Ps. It might take a few seconds to load**

<https://www.horrificcorruption.com/doctors>

* **Mental Capacity Act 2005**

<https://www.legislation.gov.uk/ukpga/2005/9/pdfs/ukpga_20050009_en.pdf>

# Breaches of the DPA – “Data Protection Act 1998” / GDPR 2016 – “General Data Protection Regulation”

**DPA 1998**

1. Got superseded by the Data Protection Act 2018 (DPA 2018) on 23 May 2018
2. Was a United Kingdom Act of Parliament designed to protect personal data stored on computers or in an organised paper filing system. It enacted the EU Data Protection Directive 1995's provisions on the protection, processing and movement of data.

* **GDPR**

1. The GDPR was adopted on 14 April 2016, and became enforceable beginning 25 May 2018. GDPR will levy harsh fines against those who violate its privacy and security standards, with penalties reaching into the tens of millions of euros.

* **The consequences of breaching the Data Protection Act 1998 / GDPR**

1. The Information Commissioner has the power to issue fines for infringing on data protection law, including the failure to report a breach. The specific failure to notify can result in a fine of up to 10 million Euros or 2% of an organisation's global turnover, referred to as the 'standard maximum.
2. GDPR is a legal framework that sets guidelines for the collection and processing of personal information of individuals within the European Union (EU). It is brought in to UK Law by means of Part 2 of the DPA 2018
3. Personal data is any information relating to an identified or identifiable living individual. An identifying characteristic could include a name, ID number or location data.

* **The GDPR provides the following rights for individuals:**

1. The right to be informed
2. The right of access
3. The right to rectification
4. The right to erasure
5. The right to restrict processing
6. The right to data portability
7. The right to object
8. Rights in relation to automated decision making and profiling

* **Section 132: Prohibition placed upon the Commissioner, or the Commissioner’s staff against disclosing information obtained in the course of their role (which is not available to the public)**

Section 132 replaces section 59 DPA 1998 and criminalises action by former or current ICO staff who disclose data obtained during the course of their duties. Section 132 (2) clarifies the circumstances in which disclosure – with lawful authority – may be made. Section 132 (3) however confirms that it is an offence for a person knowingly or recklessly to disclose information in contravention of subsection (1).

* **Section 144: False statement made in response to an information notice**

It is an offence for a person, in response to information notice from the Commissioner, to make or recklessly make, a statement which they know to be false in a material respect.

* **Section 148: Destroying or falsifying information and documents etc**

Under Section 148 (2) (a) it is an offence for a person to destroy or otherwise dispose of, conceal, block or (where relevant) falsify all or part of the information, document, equipment or material. Section 148 (2) (b) makes to cause or permit the actions set pout in the previous subsection.

* **Section 170: Unlawful obtaining etc of personal data**

Section 170 of the Act builds on section 55 DPA 1998 which criminalised knowingly or recklessly obtaining, disclosing or procuring personal data without the consent of the data controller, and the sale or offering for sale of that data. The provision was most typically/commonly used to prosecute those who had accessed healthcare and financial records without a legitimate reason. Section 170 adds the offence of knowingly or recklessly retaining personal data (which may have been lawfully obtained) without the consent of the data controller. There are some exceptions: for example, where such obtaining, disclosing, procuring or retaining was necessary for the purposes of preventing or detecting crime. Section 170 (2) and (3) set out the defences to Section 170 (1).

* **Section 171: Re-identification of de-identified personal data**

Section 171 - a new offence - criminalises the re-identification of personal data that has been ‘de-identified’ (de-identification being a process - such as redactions - to remove/conceal personal data). Section (5) states that it is an offence for a person knowingly or recklessly to process personal data that is information that has been re-identified. Sections 171 (3) and (4) set out the defences to Section 171 (1) – for example, the re-identification was necessary for the purposes of preventing or detecting crime. Sections 171 (6) and (7) set out the defences to Section 171 (5).

* **Section 173: Alteration etc of personal data to prevent disclosure to data subject**

Section 173 relates to the processing of requests for data from individuals for their personal data. Section 173 (3) makes it a criminal offence for organisations (persons listed in Section 173 (4)) to alter, deface, block, erase, destroy or conceal information with the intention of preventing disclosure. It builds on an offence under the Freedom of Information Act 2000. Possible defences to an offence under section 173 (3) are set out in Section 173 (5).

* **Section 184: Prohibition of requirement to produce relevant records**

Section 184 (1) makes it an offence for a person to require another to provide them with or give them access to a relevant record linked to the employment, continued employment of one of their employees or a contract for the provisions of services to them. Section 184 (2) makes it an offence for a person to require another to provide them with or access to a relevant record if the requestor is involved in the provision of goods, facilities or services to the public or the requirement is a condition of providing or offering to provide goods, facilities or services to the other person or a third party. Section 184 (3) details the possible defences to offences under subsection 184 (1) or (2).

* **Data Protection Act 1998**

<https://www.legislation.gov.uk/ukpga/1998/29/contents>

* **General Data Protection Regulation 2016**

<https://www.gov.uk/government/publications/guide-to-the-general-data-protection-regulation>

# Freedom of Information Act 2000

* **Demeanour**

1. The Freedom of Information Act 2000 provides public access to information held by public authorities. It does this in two ways: public authorities are obliged to publish certain information about their activities; and. members of the public are entitled to request information from public authorities.
2. You normally have 20 working days to respond to a request. For a request to be valid under the Freedom of Information Act it must be in writing, but requesters do not have to mention the Act or direct their request to a designated member of staff.
3. A subject access request (SAR) is simply a written request made by or on behalf of an individual for the information which he or she is entitled to ask for under section 7 of the Data Protection Act 1998 (DPA). The request does not have to be in any particular form.

* **Law**

An Act to make provision for the disclosure of information held by public authorities or by persons providing services for them and to amend the Data Protection Act 1998 and the Public Records Act 1958; and for connected purposes.

* **Penalty**

The penalty is a fine. There are no financial or custodial penalties for failure to provide information on request or for failure to publish information. But you could be found in contempt of court for failing to comply with a decision notice, enforcement notice, or information notice.

* **Freedom of Information Act 2000**

<https://www.legislation.gov.uk/ukpga/2000/36/contents>

# Defamation of Character Act 2013 - “Slander”

* **Demeanour**

If lies about you have appeared about you or your business on social media, a website or in print, or in the case of slander they had been spoken, and you reasonably believe that your reputation has suffered as a result, then potentially you are a victim of defamation of character and you have a claim against the author, the publisher, and anyone else involved in the publication.

* **Law**

1. The Defamation Act 2013 came into force on 1 January 2014.
2. Written defamation is called "libel," while spoken defamation is called "slander." Defamation is not a crime, but it is a "tort" (a civil wrong, rather than a criminal wrong). A person who has been defamed can sue the person who did the defaming for damages.
3. A claimant must satisfy the court that the defamation is sufficiently serious and that the imputation, extent and/or nature of the word’s publication is such that real reputational damage has been suffered.
4. An additional test applies to a body trading for profit, namely a requirement to show that a statement has caused, or is likely to cause, serious financial loss.

* **To prove prima facie defamation, a plaintiff must show four things:**

**(1)** A false statement purporting to be fact;

**(2)** Publication or communication of that statement to a third person;

**(3)** Fault amounting to at least negligence; and

**(4)** Damages, or some harm caused to the person or entity who is the subject of the statement.

* **To establish a character defamation case, you must show:**

1. The statement was not substantially true.
2. You can identify who made the false statement.
3. The person knowingly or recklessly made a false statement.
4. The statement was published (verbally or in writing) to someone other than you.
5. The false statement harmed you.

* **Judgment in Lachaux -v- Independent Print Ltd [2019] UKSC 27**

<https://www.hilldickinson.com/insights/articles/defamation-test-serious-harm>

# Housing disrepair = (Right to Repair) “UK” Regulations 1994; -- Housing Act 1985 “The Secure Tenants of Local Housing Authorities”

* **EXPLANATORY NOTE OF (Right to Repair) “UK” Regulations 1994**

1. These Regulations give secure tenants of local housing authorities rights relating to Repairs to their homes which their landlords are obliged, under repairing covenants, to carry out. Such a tenant is given the right, if the first contractor does not complete qualifying repairs within specified time limits, to require the landlord to appoint a second contractor to carry out the repairs. The tenant is also given a right to compensation from his landlord if the repairs are not carried out within specified time limits after he has asked for a second contractor to be appointed.
2. **Regulation 2** Contains definitions and provides that landlords themselves are included in references to contractors in the Regulations.
3. **Regulation 3** Describes the circumstances in which the rights apply. A repair must be within a description of repair prescribed by regulation 4.
4. **Regulation 5** Sets out the procedure the landlord should follow if a tenant asks for a repair to be carried out. If the repair is a qualifying repair and is not carried out within specified time limits, regulation 6 entitles the tenant to require the landlord to appoint a different contractor to do the repair. If the repair still is not completed within specified time limits, the tenant may be entitled to compensation from the landlord under regulation 7.
5. **Regulation 8** Suspends, in exceptional circumstances, the specified time limits and regulation 11 extends the limits in the transitional cases described.
6. **Regulation 9** Provides that notices may be served by post and regulation 10 provides that disputes may be determined by the county court

* **The Secure Tenants of Local Housing Authorities (Right to Repair) Regulations 1994**

<https://www.legislation.gov.uk/uksi/1994/133/made>

## **Entitlement**

1. 3.— (1) Subject to and in accordance with these Regulations, secure tenants whose landlords are local housing authorities are entitled—
2. To have qualifying repairs carried out, at their landlords' expense, to the dwelling-houses of which they are such tenants; and
3. To receive compensation from their landlords if qualifying repairs are not carried out within a prescribed period.

* **Repair notice**

**5.— (1)**

**(b)** If the landlord is satisfied that the repair is not a qualifying repair, it shall notify the tenant of that and explain why it is so satisfied and give the tenant an explanation of the provisions of these Regulations; and

**(c)** If the landlord is satisfied that the repair is a qualifying repair, the landlord shall issue a repair notice to a contractor and give to the tenant a copy of the notice and an explanation of the provisions of these Regulations.

**(2)** A repair notice shall contain a reference sufficient to identify the completed notice and shall specify—

**(a)** The name of the secure tenant;

**(b)** The address of the dwelling-house;

**(c)** The nature of the repair;

**(d)** The name, address and telephone number of the contractor who is to carry out the repair;

**(e)** The arrangements made for the contractor to obtain access to the dwelling-house; and

**(f)** The last day of the first prescribed period.

* **Substitute Contractor**

**6.**— (1) Subject to paragraph (3) and regulation 8, if—

**(a)** The qualifying repair has not been carried out within the first prescribed period, and

**(b)** The tenant notifies the landlord that he requires another contractor to carry out the qualifying repair,

the landlord, where it is reasonably practicable, shall issue a further repair notice to another contractor and give a copy of the notice to the tenant.

**(2)** The further repair notice shall contain a reference sufficient to identify it and specify the matters referred to in regulation 5(2)(a) to (e) and the last day of the second prescribed period.

**(3)** Paragraph (1) does not apply if compliance with that paragraph would infringe the terms of a guarantee for work done or materials supplied of which the landlord has the benefit.

* **Compensation**

**7.— (1)** Subject to regulation 8, the landlord shall pay the specified sum to the secure tenant if the qualifying repair has not been carried out within the second prescribed period.

**(2)** In paragraph (1), “specified sum” means the lesser of £50 and £10 + (£2 X n) where N is the number of days (counting part of a day as a complete day) in the period starting on the day after the second prescribed period ends and ending on the day on which the qualifying repair is completed.

* **SCHEDULE**

|  | **Defect** | Prescribed period (in working days) |
| --- | --- | --- |
|  | Total loss of electric power | **1** |
|  | Partial loss of electric power | **3** |
|  | Unsafe power or lighting socket, or electrical fitting | **1** |
|  | Total loss of water supply | **1** |
|  | Partial loss of water supply | **3** |
|  | Total or partial loss of gas supply | **1** |
|  | Blocked flue to open fire or boiler | **1** |
|  | Total or partial loss of space or water heating between 31st October and 1st May | **1** |
|  | Total or partial loss of space or water heating between 30th April and 1st November | **3** |
|  | Blocked or leaking foul drain, soil stack, or (where there is no other working toilet in the dwelling-house) toilet pan | **1** |
|  | Toilet not flushing (where there is no other working toilet in the dwelling-house) | **1** |
|  | Blocked sink, bath or basin | **3** |
|  | Tap which cannot be turned | **3** |
|  | Leaking from water or heating pipe, tank or cistern | **1** |
|  | Leaking roof | **7** |
|  | Insecure external window, door or lock | **1** |
|  | Loose or detached bannister or hand rail | **3** |
|  | Rotten timber flooring or stair tread | **3** |
|  | Door entry phone not working | **7** |
|  | Mechanical extractor fan in internal kitchen or bathroom not working | **7** |

* **Housing Act 1985**

<https://www.legislation.gov.uk/ukpga/1985/68/section/96>

# Interference with the course of justice 1963 / Perjury Act 1911

* **Demeanour**

What is classed as perverting the course of justice?

**Elements of the offence of perverting the course of justice**

1. Acts tending (and intended) to obstruct, divert or disrupt criminal proceedings or police investigations generally may suffice—the offence does not need to have taken place in respect of a particular trial or investigation.
2. Perverting the course of justice is a serious criminal offence that can carry a sentence of up to life in prison and whilst life imprisonment is unlikely, it is unusual for the court to impose a penalty other than a prison sentence.
3. Obstruction of justice is an offense that criminalizes any conduct in which a person wilfully interferes with the orderly administration of justice.

* **What does it mean to defeat the ends of justice?**

Definition. Consists in unlawfully and intentionally engaging in conduct which defeats or. obstructs the course or administration of justice. Elements.

* **Law**

**(1) THE LAWCOMMISSION OFFENCES RELATING TO INTERFERENCE WITH THE COURSE OF JUSTICE**

<https://www.lawcom.gov.uk/app/uploads/2016/07/LC.-096-CRIMINAL-LAW-OFFENCES-RELATING-TO-INTERFERENCE-WITH-THE-COURSE-OF-JUSTICE.pdf>

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* **Extract**

**1.9**

1. Person should be regarded as intending a particular result of his conduct if, but only if, either he actually intends that result or he has no substantial doubt that the conduct will have that result;
2. A person should be regarded as knowing that a particular circumstance exists if, but only if, either he actually knows or he has no substantial doubt that that circumstance exists;
3. A person should be regarded as being reckless as to whether a particular circumstance exists if, but only if, (i) he realises at the time of that conduct that there is a risk of that circumstance existing and (ii) it is unreasonable for him to take that risk. The question whether it is unreasonable for him to take the risk is to be answered by an objective assessment of his conduct in the light of all relevant factors, but on the assumption that any judgment he may have formed of the degree of risk was correct.

**PART II: PERJURY**

* **PRESENT LAW AND WORKING PAPER PROPOSALS**

1. The present law as to perjury in judicial proceedings is to be found in the Perjury Act 1911 (hereafter "the 1911 Act"). Section I of the Act provides that if a person lawfully sworn as a witness or interpreter in a judicial proceeding wilfully makes a statement material in that proceeding which he knows to be false or does not believe to be true he shall be guilty of perjury. By virtue of section 1(5) the offence extends to such statements made by persons lawfully sworn under the authority of an Act of Parliament
2. In any part of H.M.'s dominions or
3. Before a British tribunal or officer in a foreign country. Certain statements not made before a court are by section 1(3) treated as being made in judicial proceedings.

**2.2** The 1911 Act deals not only with perjury in judicial proceedings but also with statements on oath otherwise than in judicial proceedings

1. **(Section 2),** False oaths or statements with reference to marriage
2. **(Section 3),** False declarations or statements in relation to births and deaths
3. **(Section 4),** False statutory declarations and other oral declarations required under an Act of Parliament
4. **(Section 5),** And false declarations to obtain registration for carrying on a vocation
5. **(Section 6).** Finally,
6. **(Section 7(1)** Deals with aiding, abetting or suborning a person to commit an offence under the Act and **section 7(2)** with inciting or attempting to procure or suborn a person to commit an offence under the Act. Subornation is no more than another name for procuring an offence, whilst the other ancillary offences in this section add nothing to the general law to be found in section 8 of the Accessories and Abettors Act 1861 and the common law.

# Also see (2) Public Justice Offences incorporating the Charging Standard

<https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard>

|  |  |
| --- | --- |
| **(2) Public Justice Offences incorporating the Charging Standard** | |
|  | [Charging Standard - Purpose](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105660) |
|  | [General Charging Practice](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105661) |
|  | [Charging Practice for Public Justice Offences](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105662) |
|  | [Perverting the Course of Justice](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105663) |
|  | [Misrepresentation as to Identity](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105664) |
|  | [Perjury](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105665) |
|  | [Perjury by a Prosecution Witness](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105666) |
|  | [Perjury by a Defendant](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105667) |
|  | [Perjury by a Defence Witness](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105668) |
|  | [Offences Akin to Perjury](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105669) |
|  | [Offences Concerning Witnesses and Jurors](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105670) |
|  | [Intimidating or Harming Witnesses and Others - Criminal Proceedings](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105671) |
|  | [Section 51(1): Intimidation of Witnesses/Jurors](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105672) |
|  | [Section 51(2): Harming People who have Assisted the Police/Given Evidence/Been a Juror](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105673) |
|  | [Application to Set Aside a 'Tainted' Acquittal](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105674) |
|  | [Interfering or Harming Witnesses - Civil Proceedings](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105675) |
|  | [Section 39 - Intimidation](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105676) |
|  | [Section 40 - Harming](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105677) |
|  | [Interference with Jurors](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105678) |
|  | [Offences Committed by Jurors - Section 20 of the Juries Act 1974, (as amended)](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105679) |
|  | [Public Interest Considerations](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105680) |
|  | [Permission to Interview Jurors](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105681) |
|  | [Offences Concerning the Police](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105682) |
|  | [Obstructing a Police Officer - section 89(2) Police Act 1996](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105683) |
|  | [Wasting Police Time - section 5(2) Criminal Law Act 1967](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105684) |
|  | [Misrepresentation as to Identity](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105685) |
|  | [Impersonating a Police Officer](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105686) |
|  | [Refusing to Assist a Constable](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105687) |
|  | [Offences Concerning Prisoners and Offenders](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105688) |
|  | [Failing to Surrender to Bail](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105689) |
|  | [Escape/Breach of Prison](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105690) |
|  | [Harbouring Escaped Prisoners](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105691) |
|  | [Assisting an Offender - section 4(1) Criminal Law Act 1967](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105692) |
|  | [Offences Concerning the Coroner](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105693) |
|  | [Obstructing a Coroner - Preventing the Burial of a Body](https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard#_Toc536105694) |

* **Extract**

AAAA

# Disclosure Procedure and Investigations Act 1996 (CPIA)

* **Demeanour**

“Fairness ordinarily requires that any material held by the prosecution which weakens its case or strengthens that of the defendant, if not relied on as part of its formal case against the defendant, should be disclosed to the defence. Bitter experience has shown that miscarriages of justice may occur where such material is withheld from disclosure. The golden rule is that full disclosure of such material should be made.” ***(R v H [2004] UKHL 3; [2004] 2 Cr. App. R. 10, House of Lords).***

* **The Law on Disclosure is found here**

The Criminal Procedure and Investigations Act 1996 (CPIA) [Part I Disclosure](https://www.legislation.gov.uk/ukpga/1996/25/part/I) and [Part II Criminal Investigations](https://www.legislation.gov.uk/ukpga/1996/25/part/II) contains the main statutory disclosure provisions.

Additional guidance for the proper disclosure of unused material can be found in:

1. [CPIA Code of Practice](https://www.gov.uk/government/publications/criminal-procedure-and-investigations-act-code-of-practice), issued under s.23 CPIA (the Code of Practice);
2. [Judicial Protocol on the Disclosure of Unused Material in Criminal Cases](https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Protocols/Disclosure+Protocol.pdf) (the Judicial Protocol);
3. [Attorney-General’s Guidelines on Disclosure - For Investigators, Prosecutors and Defence Practitioners](https://www.gov.uk/government/publications/attorney-generals-guidelines-on-disclosure-2013) (the A-G’s Guidelines);
4. [Criminal Procedure Rules (Crim PR) Part 15](https://www.legislation.gov.uk/uksi/2020/759/part/15/made).
5. [Protocol and Good Practice Model on the Disclosure of Information in cases of Alleged Child Abuse and linked Criminal and Care Directions](https://www.judiciary.gov.uk/publications/protocol-good-practice-model-2013/) (the Child Abuse Protocol)
6. [The Better Case Management (BCM) Handbook](https://www.judiciary.uk/wp-content/uploads/2018/02/bcm-guide-for-practitioners-05032018.pdf) (the BCM Handbook) - in particular paragraph 3.20

* **The Duty to Disclose Commences when: --**

The statutory duty under the CPIA commences once the defendant (in the Magistrates’ Court) has pleaded not guilty and the case has been adjourned for trial or (for cases going to the Crown Court) once the case has been sent for trial to the Crown Court (see s.1 CPIA).

It lasts until the end of the trial ***(see s.7A CPIA; R (on the application of Nunn) v Chief Constable of Suffolk Constabulary and another [2014] UKSC 37; [2014] 2 Cr. App. R. 22; [2015] Crim. L.R. 76;*** see also section 7 of the Code of Practice).

Before this time there is a common law duty of disclosure requiring the prosecution to disclose material reasonably thought capable of assisting a defendant, for example in bail applications or where it would be helpful in allowing a defendant to prepare his case.

* **Disclosure under “Abuse of Process.”**

<https://www.cps.gov.uk/legal-guidance/abuse-process>

**Non-disclosure by prosecutor**

Failure on the part of the prosecution to comply with its disclosure obligations may amount to an abuse of process.

Some of the relevant factors to be taken into account when deciding whether non-disclosure amounts to abuse of process were considered in *Salt* [2015] 1 WLR 4905. They included:

1. The gravity of the charges;
2. The denial of justice to the complainants;
3. The necessity for proper attention to be paid to disclosure, the nature and materiality of the failures;
4. The conduct of the defence;
5. The waste of court resources;
6. The effect on the jury;
7. The availability of sanctions other than halting proceedings.

However, in ***DPP v Petrie [2015] EWHC 48*** (Admin), it was noted that in some cases:

*“A wholesale failure on the part of the prosecution to comply with its disclosure obligations may require the prosecution to offer no evidence, in accordance with the professional code for prosecutors and the guidance set out in the CPS/ACPO Disclosure Manual”.*

*“The possibility of such an outcome serves to illuminate that only rarely will recourse to an abuse of process argument be necessary or appropriate”.*

**However, see the section on Prosecution Failures, later in this guidance.**

# Abuse of Process / Malicious Prosecution

* **Demeanour**

What is the difference between abuse of process and malicious prosecution?

The primary difference between the two legal actions is that malicious prosecution concerns the malicious or wrongful commencement of an action, while, on the other hand, abuse of process concerns the improper use of the legal process after process has already been issued and a suit has commenced.

* **Law**

1. Abuse of process has been defined as "something so unfair and wrong that the court should not allow a prosecutor to proceed with what is in all other respect a regular proceeding"
2. Both the Crown Courts and magistrates' courts have discretion to protect the process of the court from abuse. This includes protecting the accused person from oppression or prejudice. The courts have often emphasised that the power to stay a case for an abuse of process is an exceptional power to be exercised sparingly

A case might form an abuse of process where:

1. The defendant would not receive a fair trial; and/or
2. It would be unfair for the defendant to be tried.
3. The traditional view has been that the burden of proof is on the defence to show that the proceedings should be stayed as an abuse of process. The standard of proof is the balance of probabilities. However, the decision to stay proceedings as an abuse of process is an exercise in judicial assessment based on judgment, rather than on any conclusion as to fact based on evidence, and use of terms such as 'burden of proof' and 'standard of proof' has the potential to mislead
4. There is no exhaustive list of situations where a court might halt a case for an abuse of process but the specific categories below are the most common situations where arguments arise.
5. ***R v Derby Crown Court ex p Brooks***: “It may be an abuse of process if either
6. The prosecution has manipulated or misused the process of the court so as to deprive the defendant of a protection provided by law or to take unfair advantage of a technicality, or
7. On the balance of probability, the defendant has been, or will be, prejudiced in the preparation or conduct of his defence by delay on the part of the prosecution which is unjustifiable” “The ultimate objective of this discretionary power is to ensure that there should be a fair trial according to law, which involves fairness both to the defendant and the prosecution ….”
8. ***R v Martin (Alan)***: „No single formulation will readily cover all cases, but there must be something so gravely wrong as to make it unconscionable that a trial should go forward, such as some fundamental disregard for basic human rights or some gross neglect of the elementary principles of fairness. ‟

* **Two Categories of Abuse**

In considering the development of case law it is clear that the Higher Courts will sometimes use the abuse of process jurisdiction to effectively ‘punish’ the police or prosecution for errors or faults. This ‘serious fault’ limb of the abuse of process jurisdiction highlights the way abuse applications fall into two broad categories;

1. **Category 1** cases where the defendant cannot receive a fair trial, and
2. **Category 2** cases where it would be unfair for the defendant to be tried: ***see R v Beckford (1996) 1 Cr App R 94, 101***. Thus, if evidence that should have been seized by the police but now cannot be obtained, but would have been helpful to the defence, then that is a ‘Category 1’ situation and the Judge could, exceptionally, stay the trial on the basis that the defendant could not get a fair trial.

* If, however, the police had the material but maliciously destroyed it, then that would be a ‘Category 2’ case and even though the defendant could get a fair trial it would be unfair to try him – in as much as it would offend our sense of justice and bring the administration of the criminal justice system into disrepute to do so, see e.g., ***R v Mullen [1999] 1 AC 42, HL***.
* **Abuse of Process**

<https://www.cps.gov.uk/legal-guidance/abuse-process>

* **Lawsuits for Malicious Prosecution or Abuse of Process**

<https://www.alllaw.com/articles/nolo/personal-injury/lawsuits-malicious-prosecution-abuse-process.html>

# Criminal damage Act 1971

* **Demeanour**

The offence of criminal damage is committed when a person destroys or damages property belonging to another person without lawful excuse, in contravention of the Criminal Damage Act 1971. The damage caused as a result of the offence does not have to be permanent.

* **Law**

**Other than Aggravated Criminal Damage)**

1. Section 1(1) Criminal Damage Act 1971 - A person who without lawful excuse destroys or damages any property belonging to another, intending to destroy or damage any such property, or being reckless as to whether any such property would be destroyed or damaged, shall be guilty of an offence.

* **Aggravated Criminal Damage and Aggravated Arson**

1. Aggravated criminal damage is set out at s.1(2) and aggravated arson is at s.1(2) and (3) Criminal Damage Act 1971. The aggravated offences require proof of an intent to destroy or damage any property or being reckless as to whether any property would be destroyed or damaged; and intending by the destruction or damage to endanger the life of another or being reckless as to whether the life of another would be thereby endangered.
2. Section 4 Criminal Damage Act 1971 sets out a maximum penalty of life imprisonment for aggravated criminal damage and aggravated arson. The offences are only triable on indictment.
3. If the damage is committed by fire, the offence is charged as arson with intent or being reckless as to whether the life of another would be thereby endangered.
4. Where the aggravated form of damaging property/arson is charged, specific counts should be preferred, as follows:
5. Intending to destroy/damage property or being reckless as to whether property would be destroyed/damaged and intending to endanger the life of another; or
6. Intending to destroy/damage property or being reckless as to whether property would be destroyed/damaged and being reckless as to whether life would be endangered.

* See further **R v Hoof*(1981) 72 Cr App R 126*** and **R v Hardie*(1984) 3 All ER 848***. Although both cases involved arson, the comments on charging practice are equally applicable where the damage is caused other than by fire.
* **Penalty**

**4 Punishment of offences.**

1. A person guilty of arson under section 1 above or of an offence under section 1(2) above (whether arson or not) shall on conviction on indictment be liable to imprisonment for life.
2. A person guilty of any other offence under this Act shall on conviction on indictment be liable to imprisonment for a term not exceeding ten years.

* **Criminal damage Act 1971**

<https://www.legislation.gov.uk/ukpga/1971/48/pdfs/ukpga_19710048_en.pdf>

# Discrimination = Race relations Act 1976 (Repealed) Race relations Act 2000 / to the Equality Act 2010

* **Demeanour**

1. The **Act** banned **racial discrimination** in public places and made the promotion of hatred on the grounds of 'colour, **race**, or **ethnic** or national origins' an offence.
2. It requires all public functions to be carried on without **racial discrimination** and imposes on certain specified bodies general and specific duties to promote **racial** equality. It also gives the Commission of **Racial** Equality (“CRE”) enhanced powers to issue statutory guidance and enforce the specific duties

* **Category**

1. Racially-aggravated assault
2. Racially-aggravated criminal damage
3. Racially-aggravated harassment/putting another in fear of violence
4. Racially-aggravated public order offence

* **Law**

1. **Racial discrimination**
2. A person discriminates against another in any circumstances relevant for the purposes of any provision of this Act if—
3. On racial grounds he treats that other less favourably than he treats or would treat other persons; or
4. He applies to that other a requirement or condition which he applies or would apply equally to persons not of the same racial group as that other but—
5. Which is such that the proportion of persons of the same racial group as that other who can comply with it is considerably smaller than the proportion of persons not of that racial group who can comply with it: and
6. Which he cannot show to be justifiable irrespective of the colour, race, nationality or ethnic or national origins of the person to whom it is applied; and
7. Which is to the detriment of that other because he cannot comply with it.
8. It is hereby declared that, for the purposes of this Act, segregating a person from other persons on racial grounds is treating him less favourably than they are treated.
9. **Discrimination by way of victimisation**
10. A person (" the discriminator ") discriminates against another person (" the person victimised ") in any circumstances relevant for the purposes of any provision of this Act if he treats the person victimised less favourably than in those circumstances he treats or would treat other persons, and does so by reason that the person victimised has—
11. Brought proceedings against the discriminator or any other person under this Act; or
12. Given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Act; or
13. Otherwise done anything under or by reference to this Act in relation to the discriminator or any other person; or
14. Illegal that the discriminator or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of this Act,
15. or by reason that the discriminator knows that the person victimised intends to do any of those things, or suspects that the person victimised has done, or intends to do, any of them.
16. Subsection (1) does not apply to treatment of a person by reason of any allegation made by him if the allegation was false and not made in good faith.
17. **Meaning of " racial grounds", " racial group " etc.**
18. In this Act, unless the context otherwise requires—

* " Racial grounds " means any of the following grounds, namely colour, race, nationality or ethnic or national origins;
* " Racial group " means a group of persons defined by reference to colour, race, nationality or ethnic or national origins, and references to a person's racial group refer to any racial group into which he falls.

1. The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group for the purposes of this Act.
2. In this Act—
3. References to discrimination refer to any discrimination falling within section 1 or 2; and
4. References to racial discrimination refer to any discrimination falling within section 1, and related expressions shall be construed accordingly.
5. A comparison of the case of a person of a particular racial group with that of a person not of that group under section 1(1) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.
6. **Discriminatory advertisements**
7. It is unlawful to publish or to cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention by a person to do an act of discrimination, whether the doing of that act by him would be lawful or, by virtue of Part II or III, unlawful.
8. Subsection (1) does not apply to an advertisement—
9. if the intended act would be lawful by virtue of any of sections 5, 6, 7(3) and (4), 10(3), 26, 34(2)(b), 35 to 39 and 41; or
10. if the advertisement relates to the services of an employment agency (within the meaning of section 14(1)) and the intended act only concerns employment which the employer could by virtue of section 5, 6 or 7(3) or (4) lawfully refuse to offer to persons against whom the advertisement indicates an intention to discriminate.
11. Subsection (1) does not apply to an advertisement which indicates that persons of any class defined otherwise than by reference to colour, race or ethnic or national origins are required for employment outside Great Britain.
12. The publisher of an advertisement made unlawful by subsection (1) shall not be subject to any liability under that subsection in respect of the publication of the advertisement if he proves—
13. that the advertisement was published in reliance on a statement made to him by the person who caused it to be published to the effect that, by reason of the operation of subsection (2) or (3), the publication would not be unlawful; and
14. that it was reasonable for him to rely on the statement.
15. A person who knowingly or recklessly makes a statement such as is mentioned in subsection (4)(a) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding £400.
16. **Liability of employers and principals**
17. Anything done by a person in the course of his employment shall be treated for the purposes of this Act (except as regards offences thereunder) as done by his employer as well as by him, whether or not it was done with the employer's knowledge or approval.
18. Anything done by a person as agent for another person with the authority (whether express or implied, and whether precedent or subsequent) of that other person shall be treated for the purposes of this Act (except as regards offences thereunder) as done by that other person as well as by him.
19. In proceedings brought under this Act against any person in respect of an act alleged to have been done by an employee of his it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing in the course of his employment acts of that description.
20. **Power to conduct formal investigations**
21. Without prejudice to their general power to do anything requisite for the performance of their duties under section 43(1), the Commission may if they think fit, and shall if required by the Secretary of State, conduct a formal investigation for any purpose connected with the carrying out of those duties.
22. The Commission may, with the approval of the Secretary of State, appoint, on a full-time or part-time basis, one or more individuals as additional Commissioners for the purposes of a formal investigation.
23. The Commission may nominate one or more Commissioners, with or without one or more additional Commissioners, to conduct a formal investigation on their behalf, and may delegate any of their functions in relation to the investigation to the persons so nominated.

## **Penalty**

## Maximum sentence and racially and/or religiously aggravated assaults

Common assault, battery and offences contrary to sections 47 and 20 OAPA are capable of being charged as racially and/or religiously aggravated assaults, where the provisions of s.28 Crime and Disorder Act 1998 are met. This results in a different sentencing framework, as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Offence** | **Maximum sentence** | **Maximum sentence – racially or racially aggravated offence (Refer to Racist and Religious Hate Crime, in CPS guidance)** | **Sentencing Council Guideline** |
| **Common assault / battery – section 39 Criminal Justice Act 1988** | 6 months’ imprisonment and/or fine not exceeding level 5 | 2 years’ imprisonment and/or a fine (triable either way) | Common assault / Racially or religiously aggravated common assault |
| **Section 38** | 2 years’ imprisonment |  | Assault with intent to resist arrest |
| **Section 47** | 5 years’ imprisonment | 7 years’ imprisonment and/or a fine (triable either way | Assault occasioning actual bodily harm / Racially or religiously aggravated ABH |
| **Section 20** | 5 years’ imprisonment | 7 years’ imprisonment and/or a fine (triable either way | Inflicting grievous bodily harm/Unlawful wounding / Racially or religiously aggravated GBH/Unlawful wounding |
| **Section 18** | Life imprisonment |  | Causing grievous bodily harm with intent to do grievous bodily harm / Wounding with intent to do GBH |

* **Race relations Act 2000**

<https://www.legislation.gov.uk/ukpga/1976/74/enacted>

* **Statutory CODE OF PRACTICE ON RACIAL EQUALITY IN EMPLOYMENT**

<https://www.bfwh.nhs.uk/wp-content/uploads/2015/07/Code-of-Practice-on-the-Duty-to-Promote-Race-Equality.pdf>

* **Equality Act 2010: guidance**

<https://www.gov.uk/guidance/equality-act-2010-guidance>

As you grow up, you may see racism, you may have racist things happen to you or to people you care about. It is important to know what racism is and what to do about it because no one should be treated badly because of how they look, the language they speak or where their family is from.

**Samir Jeraj, *Race Equality Foundation***

# Violent Disorder Public Order Act 1986 s.2 \_+  22 Broadcasting or including programme in cable programme service.

* **Demeanour**

**Violent Disorder**

1. Where 3 or more persons who are present together use or threaten unlawful **violence** and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for their personal safety, each of the persons using or threatening unlawful **violence** is guilty of **violent**
2. **Section 3** of the Public Order Offences Act 1986, **affray** is a criminal offence, committed when someone threatens violence toward another person, and behaves in such a manner that other people are fearful of their personal safety.
3. **Section 4** of the Public Order Act. This **offence** is referred to as Threatening Behaviour or intending to cause someone to fear or to provoke violence.

* **Public Order Offences**

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877785/count-public-order-apr-2020.pdf>

* **Law**

**\18 Use of words or behaviour or display of written material.**

1. A person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, is guilty of an offence

if—

1. He intends thereby to stir up racial hatred, or
2. Having regard to all the circumstances racial hatred is likely to be stirred up thereby.
3. An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling.

* **19 Publishing or distributing written material.**

1. A person who publishes or distributes written material which is threatening, abusive or insulting is guilty of an offence if—
2. He intends thereby to stir up racial hatred, or
3. Having reg

* **20 Public performance of play.**

1. If a public performance of a play is given which involves the use of threatening, abusive or insulting words or behaviour, any person who presents or directs the performance is guilty of an offence if—

**(a)** He intends thereby to stir up racial hatred, or

**(b)** Having regard to all the circumstances (and, in particular, taking

* **21 Distributing, showing or playing a recording.**

1. A person who distributes, or shows or plays, a recording of visual images or sounds which are threatening, abusive or insulting is guilty of an offence if—

**(a)** He intends thereby to stir up racial hatred, or

**(b)** Having regard to all the circumstances racial hatred is likely to be stirred up thereby.

1. In this Part “recording” means any record from which visual images or sounds may, by any means, be reproduced; and references to the distribution, showing or playing of a recording are to its distribution, showing or playing of a recording are to its distribution, showing or playing to the public or a section of the public.
2. In proceedings for an offence under this section it is a defence for an accused who is not shown to have intended to stir up racial hatred to prove that he was not aware of the content of the recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

**(4)** This section does not apply to the showing or playing of a recording solely for the purpose of enabling the recording to be included in a programme service].

* **22 Broadcasting or including programme in cable programme service.**

1. If a programme involving threatening, abusive or insulting visual images or sounds is included in a programme service], each of the persons mentioned in subsection (2) is guilty of an offence if—

**(a)** He intends thereby to stir up racial hatred, or

**(b)** Having regard to all the circumstances racial hatred is likely to be stirred up thereby.

**(2)** The persons are—

**(a)** The person providing the programme service,

**(b)** Any person by whom the programme is produced or directed, and

**(c)** Any person by whom offending words or behaviour are used.

1. If the person providing the service, or a person by whom the programme was produced or directed, is not shown to have intended to stir up racial hatred, it is a defence for him to prove that—
2. He did not know and had no reason to suspect that the programme would involve the offending material, and
3. Having regard to the circumstances in which the programme was included in a programme service], it was not reasonably practicable for him to secure the removal of the material.
4. It is a defence for a person by whom the programme was produced or directed who is not shown to have intended to stir up racial hatred to prove that he did not know and had no reason to suspect—

**(a)** That the programme would be included in a programme service], or

**(b)** That the circumstances in which the programme would be . . . F8so included would be such that racial hatred would be likely to be stirred up.

* **Penalty**

| The guidelines cover the offences below which are provided for by the Public Order Act 1986:   * Riot * Violent disorder * Affray * Threatening or provocation of violence and the racially or religiously aggravated counterpart offences * Disorderly behaviour with intent to cause harassment, alarm or distress and the racially or religiously aggravated counterpart offences * Disorderly behaviour causing or likely to cause harassment, alarm or distress and the racially or religiously aggravated counterpart offences * Offences relating to stirring up racial or religious hatred and hatred based on sexual orientation   The guideline contains sentencing guidance for the following offences in the Public Order Act 1986: | | |
| --- | --- | --- |
| **Offence** | **Definition** | **Maximum sentence** |
| **Riot**  **Section 1 of the Public Order Act 1986** | Where 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety  Volumes of this offence are very low. In the period 2008 – 2018 there were around 30 offenders sentenced for riot. All offenders were sentenced in the Crown Court. | **10 years** |
| **Violent disorder**  **Section 2 of the Public Order Act** | Where three or more persons who are present together use or threaten unlawful violence and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety  In 2018, 300 offenders were sentenced for this offence. Almost all offenders were sentenced in the Crown Court.  The offence of violent disorder can involve a broad range of activity. An analysis of cases identified that violent disorder can be charged in relation to offences akin to riot where all of the elements of a riot offence may not be made out; football related violence and disorder; fights between groups in public places or group violence towards individuals. Existing MCSG guidance also recognises that violent disorder offences may involve rare cases which involve minor violence or threats of violence leading to no or minor injury | **5 years** |
| **Affray**    **Section 3 of the Public Order Act** | A person is guilty of affray if he uses or threatens unlawful violence towards another and his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety.  Volumes of this offence are relatively high. In 2018, 2,400 offenders were sentenced for this offence. The majority of offenders were sentenced in the Crown Court. | **3 years.** |
| **Threatening behaviour**  **Section 4(1)** | A person is guilty of this offence if he—  uses towards another person threatening, abusive or insulting words or behaviour, or  distributes or displays to another person any writing, sign or other visible representation which is threatening, abusive or insulting,  with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.  In 2018, 4,800 offenders were sentenced for this offence. The vast majority of offenders were sentenced in magistrates’ courts. | **6 months.** |
| **Racially or religiously aggravated Section 4** | A person guilty of a racially or religiously aggravated offence is liable to a maximum of two years imprisonment. In 2018, 450 offenders were sentenced for the aggravated offence. The majority of offenders were sentenced in magistrates’ courts. | **2 years** |
| **Section 4A Disorderly behaviour with intent to cause harassment, alarm or distress** | A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he—   1. Uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or 2. Displays any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress.   In 2018, 3,200 offenders were sentenced for the basic offence. The vast majority of offenders were sentenced in magistrates’ courts. | **6 months** |
| **Racially or religiously aggravated disorderly behaviour with intent to cause harassment, alarm or distress Crime and Disorder Act 1998, Section 31** | Offence as s4A and at the time of the offence or immediately before or after the offender demonstrates to the victim hostility based on the victim’s membership (or presumed membership) of a racial or religious group OR the offence is motivated in whole or part by hostility towards members of a racial or religious group.  In 2018, 2,400 offenders were sentenced for the aggravated offence. The vast majority of offenders were sentenced in magistrates’ courts. | **2 years** |
| **Section 5 – Disorderly behaviour causing or likely to cause harassment, alarm or distress** | A person is guilty of this offence if he—   1. Uses threatening or abusive words or behaviour, or disorderly behaviour, or 2. Displays any writing, sign or other visible representation which is threatening or abusive,   within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.  In 2018, 3,900 offenders were sentenced for the basic offence. The vast majority of offenders were sentenced in magistrates’ courts.  In 2018, 1,000 offenders were sentenced for the aggravated offence.  All offenders were sentenced in magistrates’ courts. | **£1,000 fine.** |
| **Racially or religiously aggravated disorderly behaviour, Crime and Disorder Act 1998, Section 31** | Offence as s5 and at the time of the offence or immediately before or after the offender demonstrates to the victim hostility based on the victim’s membership (or presumed membership) of a racial or religious group OR the offence is motivated in whole or part by hostility towards members of a racial or religious group. | **£2,500 fine** |
| **Stirring up hatred based on race, religion or sexual orientation** | Racial Hatred Offences, Public Order Act 1986 (sections 18-23(3))  Hatred against persons on religious grounds or grounds of sexual orientation, Public Order Act 1986 (sections 29B-29G(3A) (3))  The legislation prohibits a range of activity including: use of words or behaviour or display of written material; publishing or distributing written material; public performance of play; distributing, showing or playing a recording; broadcasting or including in a programme service; and possession of racially inflammatory material where the offender intends to stir up racial hatred, and in some cases having regard to all the circumstances, racial hatred is likely to be stirred up.  Volumes of this offence are very low. In the period 2008 – 2018 there were around 80 offenders sentenced. The majority of offenders were sentenced in the Crown Court. | **7 years** |

* **Public Order Act 1986**

<https://www.legislation.gov.uk/ukpga/1986/64/section/18?view=plain>

* **Public Order Act 1986 CHAPTER 64**

https://www.legislation.gov.uk/ukpga/1986/64/enacted/data.xht?view=snippet&wrap=true

# Harassment and Stalking 1997

* **Demeanour**

Harassment and stalking are classed as offences under the Protection from Harassment Act 1997 and (where the offending is racially or religiously aggravated) the Crime and Disorder Act 1998. Both offences relate to behaviour that is repeated and unwanted.

Harassment is behaviour intended to cause a person alarm or distress. The behaviour must occur on more than one occasion but it does not have the be the same kind of behaviour on each occasion. Common harassment incidents include:

1. Texts, voicemails, letters or emails
2. Comments or threats
3. Standing outside someone’s house or driving past it

* **Harassment** involving putting people in fear of violence is a more serious offence. It involves two or more harassment incidents that leave the victim fearing that violence will be used against them.
* **Stalking** involves persistently following someone. It does not necessarily mean following them in person and can include watching, spying or forcing contact with the victim through any means, including through social media.

**Stalking** involving fear of violence or serious alarm or distress is a more serious offence. It involves two or more occasions that have caused the victim to fear violence will be used against them or had a substantial adverse effect on their day-to-day activities, even where the fear is not explicitly of violence. Evidence that the stalking has caused this level of fear could include the victim:

1. Changing their route to work, work patterns or employment to avoid contact with the stalker
2. Putting additional home security measures in place
3. Moving home
4. Suffering physical or mental ill-health

For both harassment and stalking, the offence is more serious if it is racially or religiously motivated, that is carried out because of someone’s racial or ethnic origin or their religion or lack of religion.

* **Sentencing**

Parliament sets the maximum (and sometimes minimum) penalty for any offence. When deciding the appropriate sentence, the court must follow any relevant sentencing guidelines, unless it is not in the interests of justice to do so.

* **Penalty**

What is the maximum sentence for harassment or stalking?

* If the offence is harassment or stalking:

1. The maximum sentence is six months’ custody
2. If racially or religiously aggravated, the maximum sentence is two years’ custody

* If the offence is harassment (putting people in fear of violence) or stalking (involving fear of violence or serious alarm or distress):

1. The maximum sentence is 10 years’ custody
2. If racially or religiously aggravated, the maximum sentence is 14 years’ custody

* **How is the sentence worked out?**

Sentences are calculated by an assessment of culpability and harm.

* Culpability is a measure of how responsible the offender was for the harassment or stalking. An indicator of high culpability would be if the harassment was sophisticatedly planned. An indicator of lesser culpability would be if the harassment was limited in scope and did not last for long.
* Harm is a measure of the distress caused to the victim as a result of the harassment or stalking. This could be evidenced by the victim having to make considerable changes to their lifestyle.
* **Aggravating factors may increase the severity of the sentence. Examples include:**

1. The offender has relevant previous convictions
2. The victim is particularly vulnerable

* **Protection from Harassment Act 1997**

<https://www.legislation.gov.uk/ukpga/1997/40>

# Fraud Act 2006 / Fraud company Act 2006 –

* **Demeanour**
* **Law**

1. Section 2 (evasion of liability by deception).
2. Section 1 creates a general offence of fraud and introduces three ways of committing it set out in Sections 2, 3 and 4.
3. Fraud by false representation (Section 2);
4. Fraud by failure to disclose information when there is a legal duty to do so (Section 3); and
5. Fraud by abuse of position (Section 4)
6. The defendant's conduct was dishonest;
7. His/her intention were to make a gain; or cause a loss or the risk of a loss to another.

No gain or loss needs actually to have been made.

* **The maximum sentence is 10 years' imprisonment.**
* **The defendant:**

Had possession or control of; an article;

* For use in the course of or in connection with any fraud.

1. The wording draws on Section 25 of the Theft Act 1968. The proof required is that the Defendant had the article for the purpose or with the intention that it be used in the course of or in connection with an offence

* **The defendant:**
* Makes, adapts, supplies or offers to supply any article;

1. For use in the course of or in connection with fraud;
2. Knowing that it is designed or adapted for use in the course of or in connection with fraud (Section 7 (1) (a)) or
3. Intending it to be used to commit or assist in the commission of fraud (Section 7 (1) (b).

* **Fraudulent Concealment**

Under contract law, a plaintiff can recover from a defendant on the grounds of fraudulent concealment where the defendant

**(1)** Concealed or suppressed a material fact;

**(2)** Had knowledge of this material fact;

**(3)** That this material fact was not within reasonably diligent attention, observation, and judgment of the plaintiff;

**(4)** That the defendant suppressed or concealed this fact with the intention that the plaintiff be misled as to the true condition of the property;

**(5)** That the plaintiff was reasonably so misled; and

**(6)** That the plaintiff suffered damage as a result.

* **Possession of Articles for use in Fraud**

1. Is governed by Section 6 of the Fraud Act 2006 which states: A person is guilty of Possession of Articles for use in Fraud if he: had possession or control of. ... for use in the course of or in connection with any fraud.
2. **Possession** of **articles for use in frauds Fraud** Act 2006 (section 6) Triable either way. Maximum: 5 years' custody. Offence range: Band A fine – 3 years' custody.

* **Fraud by failing to Disclose Information (Section 3)**

1. A person is guilty of fraud by failing to disclose information if he: failed to disclose information to another person. when he was under a legal duty to disclose that information. dishonestly intending, by that failure, to make a gain or cause a loss.

**The defendant:**

1. Failed to disclose information to another person when he was under a legal duty to disclose that information dishonestly intending, by that failure, to make a gain or cause a loss.

Like Section 2 (and Section 4) this offence is entirely offender focussed. It is complete as soon as the Defendant fails to disclose information provided, he was under a legal duty to do so, and that it was done with the necessary dishonest intent. It differs from the deception offences in that it is immaterial whether or not any one is deceived or any property actually gained or lost.

* **Fraud by abuse of position (Section 4)**

**The defendant:**

1. Occupies a position in which he was expected to safeguard, or not to act against, the financial interests of another person abused that position dishonestly intending by that abuse to make a gain/cause a loss.

The abuse may consist of an omission rather than an act.

Like the other two Section 1 offences, Section 4 is entirely offender focused. It is complete once the Defendant carries out the act that is the abuse of his position. It is immaterial whether or not he is successful in his enterprise and whether or not any gain or loss is actually made.

* **Possession etc of articles for use in frauds Fraud Act 2006 s.6**

A person is guilty of Possession of Articles for use in Fraud if he:

1. Had possession or control of
2. An article
3. For use in the course of or in connection with any fraud.

* **Penalty**

Sentencing guidelines for Possession of Articles for the use in Fraud Maximum Sentence: 5 years imprisonment

* **Making or supplying articles for use in frauds Fraud Act 2006 s.7**

A person is guilty of making or supplying articles for use in Fraud if he:

1. Makes, adapts, supplies or offers to supply any article.
2. For use in the course of or in connection with fraud.
3. Knowing that it is designed or adapted for use in the course of or in connection with fraud.

* **Penalty**

Sentencing guidelines for making or supplying articles for use in Fraud Maximum Sentence: 10 years imprisonment

* **Participating in fraudulent business carried on by sole trader etc. Fraud Act 2006 s.9**

Participation by sole trader in fraudulent business (Section 9) Section 9 makes it an offence for a person knowingly to be a party to the carrying on of a fraudulent business where the business is not carried on by a company. ... with intent to defraud creditors of any person; or. for any other fraudulent purpose.16 Jul 2020

* **Penalty**

1. The maximum penalty for offences under Sections 1, 7 and 9 and is 12 months' imprisonment on summary conviction and 10 years' imprisonment on conviction on indictment.
2. Section 10 of the Act increases the maximum penalty for offences contrary to Section 458 of the Companies Act 1985 to 10 years' imprisonment.
3. The maximum penalty for an offence under Sections 6 and 11 is 12 months' imprisonment on summary conviction and 5 years' imprisonment on conviction on indictment.

* **Fraud Act 2006 / Fraud company Act 2006**

<https://www.legislation.gov.uk/ukpga/2006/35/contents>

# Hate Crime Act 1998 = Crime and Disorder Act 1998

* **Demeanour**
* **Law**
* **Penalty**
* **Hate Crime Act 1998**

<https://www.legislation.gov.uk/ukpga/1998/37/contents>

# Admitting Evidence Under Sections 9 and 10 Criminal Justice Act 1967 - Updated 2 August 2018

* **Demeanour**

1. **Section 10** admission. A section 10 admission is conclusive evidence of the facts admitted. ... Evidence of the defendant's bad character or the bad character of a person other than a defendant such as a prosecution witness may be adduced by way of a s 10 admission.
2. **Section 9** statements can, providing they have been accepted by the defence, be relied upon in court as evidence, without the witness attending court to give evidence;
3. **Section 20(2)(j)** gives you the power to require a person to sign a declaration of truth.

* **Law**

**Principle**

1. Sections 9 and 10 Criminal Justice Act 1967 (CJA) provide for evidence to be tendered by way of written statement or formal admission.

References in this guidance to a section number are to the CJA, unless otherwise specified.

The Criminal Procedure Rules govern the use of Sections 9 and 10 and make specific reference to written statements and admissions. The response of a party to the use of Sections 9 and 10 is subject to the general requirement in Part One of the Rules to prepare and conduct the case efficiently and expeditiously.

* **Used properly, the provisions of Sections 9 and 10 have the following benefits:**

1. Witnesses can be spared the inconvenience of unnecessary attendance at Court
2. Evidence can be presented simply and clearly;
3. Trials can be shortened;
4. Costs can be saved

* **Section 9**

In any criminal proceedings, Section 9 provides that a written statement is admissible in evidence to the same extent as oral evidence.

* **Requirements**

The use of the provision requires compliance with certain formalities set out in Section 9(2) and the Criminal Procedure Rules:

1. The statement must be signed by the witness.
2. There must be a declaration of truthfulness.
3. The statement must be served properly on other parties (unless agreed before or during the hearing).
4. There must be no objections to the tendering of the statement in evidence.
5. The statement must contain the witness' age at the beginning of the document, if they are under 18.
6. If the witness cannot read the statement, a signed declaration by the person who read the statement to the witness must be provided.

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* **To do this:**

1. All parties must agree to the statement being used; and
2. The form of the statement must comply with section 9 of the Criminal Justice Act 1967 (CJA 1967). Statements taken using powers under section 20(2)(j) (form LP7) do not comply with these requirements and cannot therefore be used in this way. Guidance on the requirements is set out in the paragraphs below.

* The use of this procedure saves time and facilitates the progress of the prosecution but, as it does not allow the witness to be cross-examined, it is unlikely to be appropriate where the content of the statement is contentious or the evidence is central to the prosecution’s case.
* The procedure is particularly suitable for the admission of certain types of factual evidence that are not in dispute, for example:

**(a)** Evidence of employment;

**(b)** Evidence that an accident occurred; or

**(c)** Non-contentious laboratory evidence.

* The procedure may also be used if it is likely to be difficult to bring a witness to court.

<https://www.hse.gov.uk/enforce/enforcementguide/pretrial/witness-written.htm>

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**Editing statements**

All editing of witness statements should be carried out in accordance with the Criminal Practice Direction, which can be accessed here.

1. Criminal Procedure Rules and Practice Directions in force 6th October 2014
2. Criminal Practice Directions - October 2015
3. Criminal Practice Directions - amended April, October & November 2016
4. Criminal Practice Directions - February, April, August, October & November 2017
5. Criminal Practice Directions - April & October 2018
6. Criminal Practice Directions - April 2019
7. Criminal Practice Directions - 5 October 2020
8. Criminal Practice Directions - Last updated 8 February 2021

**It should always be done by a Crown Prosecutor, not by a police officer.**

The Practice Direction envisages two types of statements:

**Single statements.**

Composite statements which combine two or more earlier statements from a witness.

If a composite statement is prepared, Prosecutors must make sure that it complies with the provisions of Section 9 and that it is signed afresh by the witness. The Prosecutor must disclose to the Defence, as unused material, copies of the statements combined in the composite statement, unless there are grounds for withholding disclosure. Refer to the Disclosure Manual for further guidance.

**The Prosecutor can edit the evidence in a single witness statement in one of two ways:**

By marking a copy in a way which indicates the passages on which the Prosecution does not seek to rely;

By obtaining a new statement, omitting any inadmissible, prejudicial or irrelevant material, applying the procedure for composite statements above.

If Prosecutors edit by marking, they must mark a copy, not the original. The Prosecutor can deal with the relevant sections of the statement in the following ways:

1. Lightly strike through
2. Bracket
3. Lightly strike through and bracket.

* **Penalty**
* **What is the meaning of conclusive?**

1. conclusive, decisive, determinative, definitive mean bringing to an end. conclusive applies to reasoning or logical proof that puts an end to debate or questioning. conclusive evidence decisive may apply to something that ends a controversy, a contest, or any uncertainty.

* **False statement tendered under section 5B of Magistrates' Courts Act 1980 “Section 106”**

**106** False written statements tendered in evidence.

[F1(1) If any person in a written statement [F2admitted] in evidence in criminal proceedings by virtue of [F2section 5B] above wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true, he shall be liable on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine or both.

(2) The M1Perjury Act 1911 shall have effect as if this section were contained in that Act.]

* **Fabrication of evidence with intent to mislead a tribunal “Criminal Code 12.9 INTERFERENCE WITH THE COURSE OF JUSTICE”**

**129.** Fabricating evidence

Any person who, with intent to mislead any tribunal in any judicial

proceeding —

**(1)** Fabricates evidence by any means other than perjury or counselling

or procuring the commission of perjury; or

**(2)** Knowingly makes use of such fabricated evidence;

is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 129 amended by No. 119 of 1985 s. 30; No. 51 of 1992 s. 16(2).]

# Section 17: Offenses against the Administration of Justice 1696 / 1985

* **Demeanour**
* **Law**
* **Penalty**

|  |  |  |  |
| --- | --- | --- | --- |
| **Section 17: Offenses against the Administration of Justice** | | | |
|  |  |  | **Commentary** |
| **(1)** | **Article 189: Alteration or Destruction of Evidence** | Article 189.1: Definition of Offense  A person commits the criminal offense of alteration or destruction of evidence when he or she alters or destroys evidence introduced, or likely to be introduced, in judicial proceedings. | Judicial proceedings include not only trials of criminal offenses but also pretrial hearings before a judge. For the definition of evidence, reference should be made to Article 1(4) of the MCC. |
|  | **Article 189.2: Penalty** | Article 189.2: Penalty   1. The applicable penalty range for the criminal offense of alteration or destruction of evidence is one to five years’ imprisonment. 2. the court may impose a fine, as an alternative principal penalty, upon a per- son convicted of alteration or destruction of evidence. |  |
|  | **Article 190: Fabrication of Evidence** | Article 190.1: Definition of Offense  A person commits the criminal offense of fabrication of evidence when he or she, with intent to mislead, fabricates anything intending it to be used as evidence in existing or proposed judicial proceedings. | Judicial proceedings include not only trials of criminal offenses but also pretrial hearings before a judge. For the definition of evidence, reference should be made to Article 1(4) of the MCC. |
|  | **Article 190.2: Penalty** | Article 190.2: Penalty   1. The applicable penalty range for the criminal offense of fabrication of evidence is one to five years’ imprisonment. 2. The court may impose a fine, as an alternative principal penalty, upon a person convicted of fabrication of evidence. |  |
|  | **Article 191: Presentation of False or Forged Evidence** | Article 191.1: Definition of Offense  A person commits the criminal offense of presentation of false or forged evidence when he or she presents evidence in judicial proceedings knowing it to be false or forged. | Judicial proceedings include not only trials of criminal offenses but also pretrial hearings before a judge. For the definition of evidence, reference should be made to Article 1(4) of the MCC. |
|  | **Article 191.2: Penalty** | Article 191.2: Penalty   1. The applicable penalty range for the criminal offense of presentation of false or forged evidence is one to five years’ imprisonment. 2. The court may impose a fine, as an alternative principal penalty, upon a person convicted of presentation of false or forged evidence. |  |
|  | **Article 192: False Testimony** | Article 192.1: Definition of Offense  A person commits the criminal offense of false testimony when he or she gives false testimony in judicial proceedings, where he or she is under an obligation to tell the truth. | Judicial proceedings include not only trials of criminal offenses but also pretrial hearings before a judge. They also include noncriminal proceedings, such as administrative proceedings.  An accused person who is on trial is not liable for the offense of false testimony where he or she gives testimony without an oath. Reference should be made to Chapter 11, Part 2 on “Statement of the Accused,” of the MCCP. |
|  | **Article 192.2: Penalty** | 1. The applicable penalty range for the criminal offense of false testimony is one to five years’ imprisonment. 2. The court may impose a fine, as an alternative principal penalty, upon a per- son convicted of false testimony. |  |
|  | **Article 193: Obstruction of Justice of a Witness** | Article 193.1: Definition of Offense  A person commits the criminal offense of obstruction of justice of a witness when he or she:   1. uses physical force, threats or intimidation, or promises, offers or gives an undue advantage; 2. to induce false testimony or to interfere in the giving of testimony or the production of evidence in judicial proceedings. | Obstructing a witness in giving testimony or providing evidence before a court is a threat to the integrity of the criminal justice system and also greatly compromises the prosecution of perpetrators. In addition, this offense represents a grave threat to the safety and security of witnesses in judicial proceedings. The obstruction of witnesses has become a common phenomenon in serious crimes cases, such as those involving organized crime and corruption. In post conflict states, where organized crime and corruption are often endemic, obstruction of witnesses has been an obstacle to the prosecution of these offenses. Its perpetration has resulted in the evasion of justice and thus the facilitation of organized crime and corruption. Consequently, Article 23 of the United Nations Convention against Transnational Organized Crime and Article 25 of the United Nations Convention against Corruption require states parties to introduce this offense into domestic criminal legislation, if they have not already done so. The wording of Article 193 has been taken from those conventions, which share identical wording. Reference should be made to the Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto, drafted by the United Nations Office on Drugs and Crime.  Article 193.1(a) covers both coercive and corrupt means of influencing a witness in an effort to induce false testimony or to interfere in the giving of testimony or the pro­ duction of evidence. The legislative guide states that the phrase judicial proceedings “should be interpreted broadly” (page 92) and should include pretrial processes.  The criminalization of obstruction of witnesses is not the only means by which the Model Codes seek to protect witnesses in judicial proceedings, who may be in physical danger from the perpetrator of a criminal offense or from persons connected with him or her. Reference should be made to Chapter 8, Part 4, Sections 1 and 2, of the MCCP on witness protection measures and witness anonymity. Witness protection and witness anonymity measures are a more proactive approach to ensuring the safety of witnesses in judicial proceedings. These provisions seek to pre-empt the commission of criminal offenses against witnesses, specifically obstruction through the use of physical force, threat, or intimidation. Under the provisions of the MCCP, a witness who is under threat may be granted protective measures or witness anonymity, thereby protecting the person from any potential coercive conduct aimed at obstructing him or her. |
|  | **Article 193.2: Penalty** | Article 193.2: Penalty   1. The applicable penalty range for the criminal offense of obstruction of justice of a witness is one to five years’ imprisonment. 2. The court may impose a fine, as an alternative principal penalty, upon a per- son convicted of obstruction of justice of a witness. |  |
|  | **Article 194: Obstruction of Justice of a Justice or Policing Official** | Article 194.1: Definition of Offense  A person commits the criminal offense of obstruction of justice of a justice or policing official when he or she uses physical force, threats, or intimidation to interfere with the exercise of official duties by a justice or policing official. | Both the United Nations Convention against Transnational Organized Crime (Article  23) and the United Nations Convention against Corruption (Article 25) urge states parties to introduce the offense contained in Article 194 into domestic criminal legislation, if they have not already done so. Reference should be made to the Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto, drafted by the United Nations Office on Drugs and Crime.  Article 193 (“Obstruction of Justice of a Witness”) penalizes obstruction through coercion and corruption. A definition of the latter is not contained in Article 194; it is covered by Article 138 (“Corruption Involving a Public Official”), because justice and policing officials are considered public officials within the meaning of Article 1(9). |
|  | **Article 194.2: Penalty** | Article 194.2: Penalty   1. The applicable penalty range for the criminal offense of obstruction of justice of a justice or policing official is one to five years’ imprisonment. 2. The court may impose a fine, as an alternative principal penalty, upon a person convicted of obstruction of justice of a justice or policing official. |  |
|  | **Article 195: Retaliation against a Witness** | Article 195.1: Definition of Offense  A person commits the criminal offense of retaliation against a witness when he or she retaliates against a witness for giving evidence in the investigation of a criminal offense or for testifying in judicial proceedings. |  |
|  | **Article 195.2: Penalty** | Article 195.2: Penalty  The applicable penalty range for the criminal offense of retaliation against a witness is two to ten years’ imprisonment. |  |
|  | **Article 196: Retaliation against a Justice or Policing Official** | Article 196.1: Definition of Offense  A person commits the criminal offense of retaliation against a justice or policing official when he or she retaliates against an official of the court or a policing official on account of duties performed by that or another official. |  |
|  | **Article 196.2: Penalty** | Article 196.2: Penalty  The applicable penalty range for the criminal offense of retaliation against a justice or policing official is two to ten years’ imprisonment. |  |
|  | **Article 197: Failure to Respect an Order of the Court** | Article 197.1: Definition of Offense  A person commits the criminal offense of failure to respect an order of the court when he or she, in the course of judicial proceedings:   1. fails to respect an order of the court; or 2. fails to comply with a commitment made to the court. | Judicial proceedings include not only trials of criminal offenses but also pretrial hearings before a judge. An order of the court may be given orally in court proceedings, or it may be pursuant to a summons to a witness, an expert witness, or the accused to appear in court. It may also take the form of an order that has been granted pursuant to a motion of the prosecutor or the defence or a warrant that has been granted pursuant to an application of the police or the prosecutor. Where any of these orders is not respected by a person, he or she is liable for prosecution under Article 197. |
|  | **Article 197.2: Penalty** | Article 197.2: Penalty   1. The applicable penalty range for the criminal offense of failure to respect an order of the court is one to five years’ imprisonment. 2. The court may impose a fine, as an alternative principal penalty, upon a per- son convicted of failure to respect an order of the court. |  |
|  | **Article 198: Providing Assistance to a Perpetrator after the Commission of a Criminal Offense** | Article 198.1: Definition of Offense  A person commits the criminal offense of providing assistance to a perpetrator after the commission of a criminal offense when he or she:   1. harbour’s a suspect or an accused person for the purpose of evading justice; 2. helps the perpetrator of a criminal offense elude discovery by concealing instruments or evidence or aids the perpetrator in any other way; 3. harbour’s a convicted person; or 4. takes steps toward frustrating the execution of a penalty imposed by a court. | This criminal offense is referred to as accessory after the fact liability in some jurisdictions. In other jurisdictions, it is viewed as a form of accomplice liability rather than a stand­alone substantive offense. In the MCC, it is treated as a stand­alone criminal offense. For the definition of suspect, accused person, and convicted person, reference should be made to Article 1. |
|  | **Article 198.2: Penalty** | Article 198.2: Penalty   1. The applicable penalty range for the criminal offense of providing assistance to a perpetrator after the commission of a criminal offense is one to five years’ imprisonment. 2. The court may impose a fine, as an alternative principal penalty, upon a per- son convicted of providing assistance to a perpetrator after the commission of a criminal offense. |  |
|  | **Article 199: False Statements of a Cooperative Witness** | Article 199.1: Definition of Offense  A person commits the criminal offense of false statements of a cooperative witness when he or she:   1. having been declared a cooperative witness under the MCCP; 2. gives testimony that is false, in any relevant part, or purposely omits to state the complete truth to the prosecutor, the police, or the court during the investigation of the offense or in judicial proceedings. | A cooperative witness is a person suspected or accused of a criminal offense who is granted immunity from prosecution through a formal legal process by reason of his or her agreement to testify against another accused person in another trial. The MCCP contains extensive provisions that set out the formal legal process for the granting and revocation of cooperative witness status. Reference should be made to Chapter 8, Part 4, Section 3, of the MCCP and the accompanying commentary, which discuss the legal provisions on cooperative witnesses in greater depth.  Where a person who has been declared a cooperative witness is found to have made a false statement, either prior to or during the trial at which the cooperative witness is giving testimony, he or she may be prosecuted under Article 199. This provision is broader than Article 192 on false testimony in two ways. It covers the investigation prior to trial and not just statements delivered under oath before the court. A cooperative witness who makes a false statement to a prosecutor or the police during pretrial investigations can thus be prosecuted under Article 199. Under the MCC, it is not possible to prosecute other persons for false statements made to a prosecutor or the police in the investigation stage of proceedings. |
|  | **Article 199.2: Penalty** | Article 199.2: Penalty   1. The applicable penalty range for the criminal offense of false statements of a cooperative witness is one to five years’ imprisonment. 2. The court may impose a fine, as an alternative principal penalty, upon a per- son convicted of false statements of a cooperative witness. |  |
|  | **Article 200: Revealing the Sealed Order for Protective Measures or Anonymity** | Article 200.1: Definition of Offense  A person commits the criminal offense of revealing the sealed order for protective measures or anonymity when he or she reveals the sealed order for protective measures granted under the MCCP or the sealed order for anonymity granted under the MCCP, including the petition, any documents, or any information contained in them. | The MCCP contains extensive provisions on witness protection measures and the granting of witness anonymity. Reference should be made to Chapter 8, Part 3, Section 4, of the MCCP and the accompanying commentary, which discuss witness protection measures and witness anonymity in greater detail. In brief, witness protection measures and witness anonymity measures aim to protect witnesses whose personal security may be under threat because they have agreed to testify at a trial. Witness protection measures aim to protect the identity of a witness from the public and the press and include things such as expunging the name of the witness from the public record and closing court sessions to the public. Witness anonymity measures aim to protect the identity of a witness from the public, the press, and the accused person.  It is of vital importance that once an order for witness protection measures or anonymity is granted, the name of the witness in question and any details about the wit­ ness are not revealed by those persons who are privy to documentation pertaining to the witness protection order or the order for witness anonymity. These persons may include, for example, court staff, staff of the office of the prosecutor, or defense lawyers (where witness protection measures or orders for witness anonymity have been granted in favour of the defense). Thus, the criminal offense of revealing the sealed order for witness protection or witness anonymity was included in the MCC. Not only is revealing the final order for witness protection or anonymity criminalized, but so is revealing the petition for either order made by the prosecution or the defense, any other documents or information contained in the petition, the order, or other documents. |
|  | **Article 200.2: Penalty** | Article 200.2: Penalty   1. The applicable penalty range for the criminal offense of revealing the sealed order for protective measures or anonymity is one to five years’ imprisonment. 2. The court may impose a fine, as an alternative principal penalty, upon a person revealing the sealed order for protective measures or anonymity. |  |
| **End** |

# Malfeasance in Public Office

* **Demeanour**

**Misfeasance is Defined as**

While misfeasance in public office involves a public officer knowingly acting in an unlawful manner, malfeasance is an unlawful, intentional act of misconduct. In law, malfeasance is regarded as more severe than misfeasance and nonfeasance, which is a failure to act when there is a duty to do so.

**Misfeasance**

is often confused with negligence, whereby an individual does not carry out their role or responsibilities with a correct level of care which results in harm to another.

**Negligence**

Generally, involves harm to another as a result of carelessness, error or lack of judgement, whereas misfeasance requires a greater degree of culpability on the part of the person concerned, often when the person has intentionally committed an act that would be to the detriment of another and often where there has been an abuse of that person’s power or position of responsibility.

* **The legal definition of malfeasance?**

Intentional conduct that is wrongful or unlawful, especially by officials or public employees. Malfeasance is at a higher level of wrongdoing than nonfeasance (failure to act where there was a duty to act) or misfeasance (conduct that is lawful but inappropriate).

* **Examples of public officials in the UK include:**

1. Members of the police force
2. Members of the armed forces
3. Government ministers
4. Local government officials
5. Civil servants
6. Prison officers
7. Security agencies including immigration and border control

* **Law**

**For a case of misfeasance to be proven and prosecuted, two factors must be present:**

1. The misconduct was carried out by a public officer
2. The misconduct resulted in personal injury, financial loss or damage to your reputation

* **For the case to be successful the case must demonstrate that the public official:**

1. Intended to cause the damage, loss or injury
2. Had no concern for the third party in respect of the damage, loss or injury

* **Penalty**

**The Sentence for Misfeasance in Public Office under UK law is**

If found guilty of misfeasance in public office, the maximum penalty is life imprisonment, albeit the court has a wide range of discretion and much will depend on the harm caused and the position and level of responsibility exercised by the official in question.

* **Case Study**

*Lord Steyn said in* ***Three Rivers District Council v Bank of England (No 3)18***

That the tort’s rationale is that in a legal system based on the rule of law executive or administrative power ‘may be exercised only for the public good’ and not for ulterior and improper purposes. ... The tort bears some resemblance to the crime of misconduct in public office.

* **Malfeasance in Public Office**

<https://www.lawcom.gov.uk/app/uploads/2016/01/apb_tort.pdf>

# Targeted malice

* **Demeanour**

Targeted malice by a public officer. This is conduct specifically intended to injure someone. It involves bad faith in the sense of the exercise of public power for an improper or ulterior motive.

* **Law**
* **Penalty**

# Malicious Prosecution

* **Demeanour**

Some of the context is at the bottom of this document for now!

* **Law**
* **Penalty**

# Malicious Process

* **Demeanour**

Some of the context is at the bottom of this document for now!

* **Law**
* **Penalty**

# Misconduct in Public Office

* **The offence requires that:**

A public officer acting as such; wilfully neglects to perform his or her duty and/or wilfully misconducts him or herself; to such a degree as to amount to an abuse of the public’s trust in the office holder; without reasonable excuse or justification.

* **What is criminal misconduct?**

In law, misconduct is wrongful, improper, or unlawful conduct motivated by premeditated or intentional purpose or by obstinate indifference to the consequences of one's acts. ... "Gross misconduct" can lead to immediate dismissal because it is serious enough and possibly criminal.

* **Examples of behaviour that have in the past fallen within the offence include:**

1. Wilful excesses of official authority;
2. 'Malicious' exercises of official authority;
3. Wilful neglect of a public duty;
4. Intentional infliction of bodily harm, imprisonment, or other injury upon a person;
5. Frauds and deceits.
6. Corruption is a form of dishonesty or criminal offense undertaken by a person or organization entrusted with a position of authority, to acquire illicit benefit or abuse power for one's private gain. ... Strategies to counter corruption are often summarized under the umbrella term anti-corruption.

* **Wilful neglect or misconduct**

Nature of the neglect or misconduct

The wilful neglect or misconduct can be the result of a positive act or a failure to act. In the case of ***R v Dytham [1979] QB 722***, for example, a police officer was held to have been correctly convicted when he made no move to intervene during a disturbance in which a man was kicked to death.

* **Misconduct in public office “Penalty.”**

Misconduct in public office is an offence at common law and carries a maximum sentence of life imprisonment. It is an offence confined to those who are public office holders and is committed when the office holder acts (or fails to act) in a way that constitutes a breach of the duties of that office.

* **Misconduct in Public Office**

<https://www.cps.gov.uk/legal-guidance/misconduct-public-office>

# Putting people in fear of violence / Protection from Harassment Act 1997 s. 4(1)

* **Demeanour**

This section creates the offence of "putting people in fear of violence" where a person "causes another to fear, on at least two occasions, that violence will be used against him" provided "he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions".

1. Amended by: Police Reform Act 2002; Serious ...
2. Relates to: Stalking Protection Act 2019

* **Law**

**4 Putting people in fear of violence.**

1. A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions.
2. For the purposes of this section, the person whose course of conduct is in question ought to know that it will cause another to fear that violence will be used against him on any occasion if a reason
3. able person in possession of the same information would think the course of conduct would cause the other so to fear on that occasion.

* **Protection from Harassment**

<https://www.legislation.gov.uk/ukpga/1997/40/section/4>

* **Penalty**

**(4)** A person guilty of an offence under this section is liable—

**(a)** on conviction on indictment, to imprisonment for a term not exceeding **[**[**F1**](https://www.legislation.gov.uk/ukpga/1997/40/section/4#commentary-key-1712a108559f806cf3c256ff1105f9dd)ten years**]**, or a fine, or both, or

**(b)** on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

# Tort of nuisance Act 1893 Christie v Davey

* **Demeanour**
* **Law**
* **Penalty**
* **Christie v Davey**

<http://e-lawresources.co.uk/cases/Christie-v-Davey.php>

* **The Tort of Nuisance**

<http://www.e-lawresources.co.uk/Nuisance.php>

* **Tort Law**

<http://www.e-lawresources.co.uk/Tort-law.php>

# Prevention of Corruption Act

* **Demeanour**
* **Law**
* **Penalty**

### **United Kingdom**

* The [Public Bodies Corrupt Practices Act 1889](https://en.wikipedia.org/wiki/Public_Bodies_Corrupt_Practices_Act_1889) (52 & 53 Vict. c.69)
* The [Prevention of Corruption Act 1906](https://en.wikipedia.org/wiki/Prevention_of_Corruption_Act_1906) (6 Edw.7 c.34)
* The [Prevention of Corruption Act 1916](https://en.wikipedia.org/w/index.php?title=Prevention_of_Corruption_Act_1916&action=edit&redlink=1) (6 & 7 Geo.5 c.64)
* **The Prevention of Corruption Acts 1889 to 1916** is the [collective title](https://en.wikipedia.org/wiki/Collective_title) of the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916. These Acts were repealed by Schedule 2 of the [Bribery Act 2010](https://en.wikipedia.org/wiki/Bribery_Act_2010).

# Torture “Criminal Justice Act s.134”

* **Demeanour**

#### **Law**

#### **134Torture**.

* A public official or person acting in an official capacity, whatever his nationality, commits the offence of torture if in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties.
* A person not falling within subsection (1) above commits the offence of torture, whatever his nationality, if—

1. in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another at the instigation or with the consent or acquiescence—

**(i)** of a public official; or

**(ii)** of a person acting in an official capacity; and

1. the official or other person is performing or purporting to perform his official duties when he instigates the commission of the offence or consents to or acquiesces in it.

* It is immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or an omission.
* It shall be a defence for a person charged with an offence under this section in respect of any conduct of his to prove that he had lawful authority, justification or excuse for that conduct.
* For the purposes of this section “lawful authority, justification or excuse” means—

1. in relation to pain or suffering inflicted in the United Kingdom, lawful authority, justification or excuse under the law of the part of the United Kingdom where it was inflicted;
2. in relation to pain or suffering inflicted outside the United Kingdom—
3. if it was inflicted by a United Kingdom official acting under the law of the United Kingdom or by a person acting in an official capacity under that law, lawful authority, justification or excuse under that law;
4. if it was inflicted by a United Kingdom official acting under the law of any part of the United Kingdom or by a person acting in an official capacity under such law, lawful authority, justification or excuse under the law of the part of the United Kingdom under whose law he was acting; and
5. in any other case, lawful authority, justification or excuse under the law of the place where it was inflicted.

* A person who commits the offence of torture shall be liable on conviction on indictment to imprisonment for life.
* **Penalty**

the maximum **sentence** is life imprisonment (**CJA s134**(6)).

* **Torture “Criminal Justice Act s.134”**

<https://www.legislation.gov.uk/ukpga/1988/33/section/134>

# **Geneva Conventions Act 1957 (“GCA”)**

* **Demeanour**
* **Law**
* Under each convention is an article (50, 51, 130 & 147 respectively) which sets out the “grave breaches” – acts such as:

1. wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages, and extensive destruction and appropriation of property

* **where those acts are “not justified by military necessity and carried out unlawfully and wantonly”.**

Offences under the Geneva Convention are crimes of universal jurisdiction, meaning they can be tried anywhere, regardless of the nationality of the alleged offender, or where the alleged crimes were committed.  In the UK, they are triable on indictment only, i.e., in the Crown Court.  However, the consent of the Attorney General must be sought before a prosecution is brought under the GCA.  (GCA s1A(3)(a)).

* **Penalty**

# International Criminal Court Act 2001 (“ICCA”)

* **Demeanour**
* **Law**
* This legislation incorporates the offences in the Rome Treaty of the ICC into our domestic law so that the UK is in a position to investigate and prosecute any ICC crimes committed in the UK or committed overseas by a UK national, a UK resident or a person subject to UK service jurisdiction.
* Under s51(1) to the ICCA

1. “It is an offence against the law of England and Wales for a person to commit **genocide, a crime against humanity or a war crime.”**

The offences are defined at s50(1) and Schedule 8 Articles 6, 7 & 8.2 respectively.

Each offence covers a vast range of behaviours, but broadly can be summarised as follows:

1. **“Genocide”**is defined as a range of acts *“committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group”.*
2. A **“crime against humanity**” is a range of acts*“intentionally causing great suffering, or serious injury to body or to mental or physical health, when committed as part of a widespread or systematic attach directed against a civilian population, with knowledge of the attack.”*
3. **“War crimes”** means*“grave breaches of the Geneva Conventions”,* “other *serious violations of the laws and customs applicable in international armed conflict”*and various other violations of the laws of armed conflict, whether of an international nature of otherwise (but excluding certain internal disturbances such as riots or isolated and sporadic acts of violence).

* The offences are triable in the Crown Court only and the Attorney General’s consent is required to prosecute (ICCA s53(3)).  Sentencing is the same as for GCA offences (see ICCA s53(3) and (6)).
* **Penalty**

# Attempted Murder. Criminal Attempts Act 1981

* **Demeanour**
* **Law**
* **Attempted murder, contrary to section 1(1) Criminal Attempts Act 1981**

1. The required intent for murder is either intent to kill or intent to cause really serious injury.
2. The required consequence of the act is death. Accordingly, for a charge of attempted murder to be made out the intent which must be proved is intent to kill: see ***R v Whybrow (1951) 35 CAR 141.***

* This offence is committed when a person does an act that is more than merely preparatory to the commission of an offence of murder, and at the time the person has the intention to kill. It is an indictable only offence, which carries a maximum penalty of imprisonment for life.
* Unlike murder, which requires an intention to kill or cause GBH, attempted murder requires evidence of an intention to kill alone.
* Courts will pay particular attention to counts of attempted murder and any such count merits scrutiny to ensure it is only pursued where there is clear evidence of an intention to kill.

Evidence of the following factors may assist in proving the intention to kill:

1. Calculated planning;
2. Selection and use of a deadly weapon;
3. Threats;
4. Severity or duration of attack;
5. Relevant admissions in interview.

* **Penalty**

# Protection from Eviction Act 1977 s.1

* **Demeanour**
* **Law**

**Unlawful eviction and harassment of occupier.**

* In this section “residential occupier”, in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.
* If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.
* If any person with intent to cause the residential occupier of any premises—

1. to give up the occupation of the premises or any part thereof; or
2. to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts calculated to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

**[**[**F1**](https://www.legislation.gov.uk/ukpga/1977/43#commentary-c907907)(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—

**(a)** he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or

**(b)** he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

* Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager or secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
* **Penalty**

A person guilty of an offence under this section shall be liable—

1. On summary conviction, to a fine not exceeding **[**[**F2**](https://www.legislation.gov.uk/ukpga/1977/43#commentary-M_F_4ce49a7e-01e6-4955-e918-99de017860b5)the prescribed sum**]** or to imprisonment for a term not exceeding 6 months or to both;
2. On conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.

**Unlawful eviction and harassment of occupier.**

<https://www.legislation.gov.uk/ukpga/1977/43>

# Criminal Law Act 1967 – “Concealing an arrestable offence.”

* **Demeanour**
* **Law**

**5** Penalties for concealing offences or giving false information.

* Where a person has committed [F1a relevant offence], any other person who, knowing or believing that the offence or some [F2other relevant offence] has been committed, and that he has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accepts or agrees to accept for not disclosing that information any consideration other than the making good of loss or injury caused by the offence, or the making of reasonable compensation for that loss or injury, shall be liable on conviction on indictment to imprisonment for not more than two years.
* Where a person causes any wasteful employment of the police by knowingly making to any person a false report tending to show that an offence has been committed, or to give rise to apprehension for the safety of any persons or property, or tending to show that he has information material to any police inquiry, he shall be liable on summary conviction to imprisonment for not more than six months or to a fine of not more than [F3level 4 on the standard scale] or to both.
* No proceedings shall be instituted for an offence under this section except by or with the consent of the Director of Public Prosecutions.

**F4(4)**

* The compounding of an offence other than treason shall not be an offence otherwise than under this section.
* **Penalty**

Concealing an arrestable offence carries a maximum penalty of life imprisonment and/or a fine. ... Act 1861; and; concealing an arrestable offence: s.5 Criminal Law Act 1967.

* **Concealing an arrestable offence**

<https://www.legislation.gov.uk/ukpga/1967/58/section/5>

* **Concealing an arrestable offence**

<https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard>

In ***R v Cotter and Others [2002] EWCA Crim 1033*** it was held that where the prosecution case is that a false allegation has been made, all that is required is that the person making the false allegation intended that it should be taken seriously by the police. It is not necessary to prove that she/he intended that anyone should actually be arrested. The offence of perverting the course of justice is sometimes referred to as "attempting to pervert the course of justice". It does not matter whether or not the acts result in a perversion of the course of justice: the offence is committed when acts tending and intended to pervert a course of justice are done. The words "attempting to" should not appear in the charge. It is charged contrary to common law, not the Criminal Attempts Act 1981***: R v Williams 92 Cr. App. R. 158 CA.*** The offence of perverting the course of justice overlaps with a number of other statutory offences. Before preferring such a charge, consideration must be given to the possible alternatives referred to in this Charging Standard and, where appropriate, any of the following offences:

1. Corruption: Prevention of Corruption Act 1906 and Public Bodies Corrupt Practices Act 1889;
2. Agreeing to indemnify a surety: s.9 Bail Act 1976;
3. Making false statement: s.89 Criminal Justice Act 1967, s.106 Magistrates' Courts Act 1980 and s. 11(1) European Communities Act 1972;
4. Using documents with intent to deceive: s.173 Road Traffic Act 1988;
5. Impersonating a police officer: s.90 Police Act 1966;
6. Acknowledging a recognisance or bail in the name of another: s.34 Forgery Act 1861; and
7. ***Concealing an arrestable offence: s.5 Criminal Law Act 1967.***

* **Assisting offenders**

**What does assist an offender mean?**

An Assisting Offender is a suspected or convicted criminal in the United Kingdom, who has agreed to assist the investigation or prosecution of other criminals in return for some form of sentence reduction on their own criminal history.

# Oaths Act 1868

* **Demeanour**
* **Law**
* **Penalty**

<https://www.horrificcorruption.com/copy-of-treaties-of-rights-to-the-p-1>

<https://www.legislation.gov.uk/ukpga/Vict/31-32/72/contents>

# Civil Evidence Act 1968

* **Demeanour**
* **Law**
* **Penalty**

<https://www.legislation.gov.uk/ukpga/1968/64/contents>

# Criminal Evidence Act 1984 / 1898

* The purpose of the Police and Criminal Evidence Act 1984 was to unify police powers under one code of practice and to balance carefully the rights of the individual against the powers of the police.

<https://www.legislation.gov.uk/ukpga/Vict/61-62/36/contents>

# Crime and disorder Act 1998 / 1ST Asbo

* **Demeanour**
* **Law**
* **Penalty**

# The Prosecution of Offences Act 1985

* **Demeanour**
* **Law**
* **Penalty**

# Company Limited by Guarantee Act 1989

* **Demeanour**
* **Law**
* **Penalty**

# Not having a Share Capital Act 2006

# Trustee Act 1925 as amended Act 2000

# Agreeing to indemnify sureties

# Lease holds Reforms Act 1967 “Right to Buy”

# The local government Act 2000

# Fraudulent breach of trust 1980

# Fiduciary Duty Companies Act 2016 (“Companies Act”) (formally section 132 of the Companies Act 1965)

# Companies Act 2006 “Directors' Duties”

# The Company Acts 1985

The Companies Act 1985 (c.6) is an Act of the Parliament of the United Kingdom of Great Britain and Northern Ireland, enacted in 1985, which enabled companies to be formed by registration, and set out the responsibilities of companies, their directors and secretaries.

<https://www.legislation.gov.uk/ukpga/1985/6/contents>

# Making False Statement to Obtain Interim Possession Order Criminal Justice and Public Order Act 1994 s.75(1) also see Housing Act 1988: -- Criminal Justice and Public Order Act 1994 = “Raves Bill Act 1994!”

* [Powers in relation to raves](https://www.legislation.gov.uk/ukpga/1994/33/part/V/crossheading/powers-in-relation-to-raves)

1. **Ground** [**63.** Powers to remove persons attending or preparing for a rave.](https://www.legislation.gov.uk/ukpga/1994/33/section/63)
2. **Ground** [**64.** Supplementary powers of entry and seizure.](https://www.legislation.gov.uk/ukpga/1994/33/section/64)
3. **Ground** [**65.** Raves: power to stop persons from proceeding.](https://www.legislation.gov.uk/ukpga/1994/33/section/65)
4. **Ground** [**66.** Power of court to forfeit sound equipment.](https://www.legislation.gov.uk/ukpga/1994/33/section/66)

* **Interim Possession Order Criminal Justice and Public Order Act 1994**

An owner/landlord seeking to evict squatters can apply for an interim possession order under Part 55 as an additional measure to an ordinary possession order, although interim possession orders cannot be used against the majority of squatters (see below).

<https://england.shelter.org.uk/legal/possession_proceedings_and_eviction/squatters/interim_possession_orders_ipos>

* **“Housing Act 1988”**

The grounds for possession fall into two categories: mandatory, where the tenant will definitely be ordered to leave if the landlord can prove breach of contract, and discretionary, where the court can decide one way or the other.

* **Ground 8** is a 'mandatory' ground for possession.
* **Ground 10** is a 'discretionary' ground for possession
* **Ground 12** – This ground covers tenants in breach of their contractual (lease or tenancy) agreement conditions, other than rent payments.
* **Ground 13** – This ground covers waste, neglect or default concerning damage to the tenant’s accommodation or common parts. This ground also covers the acts of sub-tenants, lodgers, tenant’s family or visitors.
* **Ground 14** – The landlord can seek possession where a tenant, sub-tenant, lodger or visitor is causing a nuisance to neighbours or is using the property for illegal or immoral purposes. The ground also covers cases of domestic violence where one partner has left and is unlikely to return.
* **Ground 17** of Schedule 2 to the Housing Act 1988) which ... the landlord was induced to grant the tenancy by a false statement.

<https://www.landlordzone.co.uk/news/grounds-for-possession/>

* **Case Study**

Lords’ amendment: No. 70, in page 56, line 19, at end insert—

(“(A person commits an offence if, for the purpose of resisting the making of an interim possession order, he—

Toggle showing location of Column 344

1. makes a statement which he knows to be false or misleading in a material particular; or
2. recklessly makes a statement which is false or misleading in a material particular.")

Mr. Michael

I beg to move, that this House doth agree with the Lords in the said amendment.

Madam Deputy Speaker

With this, it will be convenient to take Lords amendments No. 71, Lords amendment No. 72, amendments (a) and (b) thereto and Lords amendment No. 73.

Mr. Michael

As I understand it, the effect of this group of amendments will be that a person will commit an offence if he or she makes a false statement to resist the making of an interim possession order. *In a sense, it is the mirror image of the offence of obtaining an interim possession order using a false statement.*

<https://hansard.parliament.uk/commons/1994-10-19/debates/0644b950-410c-4816-9318-7c63447d3e83/InterimPossessionOrdersFalseOrMisleadingStatements>

# Assisting or Encouraging Crime

* Part 2 of the Serious Crime Act 2007 creates, at sections 44 to 46, three inchoate offences of intentionally encouraging or assisting an offence; encouraging or assisting an offence believing it will be committed; and encouraging or assisting offences believing one or more will be committed.
* **Conspiracy**;

1. A conspiracy is an agreement where two or more people agree to carry their criminal scheme into effect, the very agreement is the criminal act itself: ***Mulcahy v. The Queen (1868) L.R. 3 H.L. 306; R v Warburton (1870) L.R. 1 C.C.R. 274; R. v. Tibbits and Windust [1902] 1 K.B. 77 at 89; R. v. Meyrick and Ribuffi, 21 Cr.App.R. 94, CCA.***

# Police and Criminal Evidence Act 1984 (PACE) codes of practice

* PACE sets out to strike the right balance between the powers of the police and the rights and freedoms of the public. Maintaining that balance is a central element of PACE.

**The PACE codes of practice cover:**

1. Stop and search
2. Arrest
3. Detention
4. Investigation
5. Identification
6. Interviewing detainees

* **(PACE) codes of practice**

<https://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice>

|  |  |
| --- | --- |
| Code | Subjects covered |
| [Code A 2015](https://www.gov.uk/government/publications/pace-code-a-2015) | Exercise by police officers of statutory powers to search a person or a vehicle without first making an arrest and the need for a police officer to make a record of a stop or encounter |
| [Code B 2013](https://www.gov.uk/government/publications/pace-code-b-2013) | Police powers to search premises and to seize and retain property found on premises and persons |
| [Code C 2019](https://www.gov.uk/government/publications/pace-code-c-2019) | Requirements for the detention, treatment and questioning of suspects not related to terrorism in police custody by police officers. Includes the requirement to explain [a person’s rights while detained](https://www.gov.uk/notice-of-rights-and-entitlements-a-persons-rights-in-police-detention) and the requirement to explain the [rights of a person who has not been arrested](https://www.gov.uk/government/publications/voluntary-police-interview-your-rights) that apply to a voluntary interview. |
| [Code D 2017](https://www.gov.uk/government/publications/pace-code-d-2017) | Main methods used by the police to identify people in connection with the investigation of offences and the keeping of accurate and reliable criminal records |
| [Code E 2018](https://www.gov.uk/government/publications/pace-codes-e-and-f-2018) | Audio recording of interviews with suspects in the police station |
| [Code F 2018](https://www.gov.uk/government/publications/pace-codes-e-and-f-2018) | Visual recording with sound of interviews with suspects - there is no statutory requirement on police officers to visually record interviews, but the contents of this code should be considered if an interviewing officer decides to make a visual recording with sound of an interview with a suspect |
| [Code G 2012](https://www.gov.uk/government/publications/pace-code-g-2012) | Powers of arrest under section 24 the Police and Criminal Evidence Act 1984 as amended by section 110 of the Serious Organised Crime and Police Act 2005 |
| [Code H 2019](https://www.gov.uk/government/publications/pace-code-h-2019) | requirements for the detention, treatment and questioning of suspects related to terrorism in police custody by police officers. Includes the requirement to explain [a person’s rights while detained in connection with terrorism](https://www.gov.uk/government/collections/notice-of-rights-and-entitlements-for-terrorism-detainees-translations) |

# Regulation of Investigatory Powers Act 2000

* **Si Note:** Please pay attention to the table below “Intrusive Surveillance”

|  |  |
| --- | --- |
| **Regulation of Investigatory Powers Act 2000** | |
| **Parliament of the United Kingdom** | |
| **Long title** | show  Click "show" |
| **Citation** | 2000 c.23 |
| **Dates** | |
| **Royal assent** | 28 July 2000 |
| **Text of statute as originally enacted** | |
| Text of the Regulation of Investigatory Powers Act 2000 as in force today (including any amendments) within the United Kingdom, from legislation.gov.uk. | |

* The **Regulation of Investigatory Powers Act 2000** (c.23) (**RIP** or **RIPA**) is an Act of the Parliament of the United Kingdom, regulating the powers of public bodies to carry out surveillance and investigation, and covering the interception of communications. It was ostensibly introduced to take account of technological change such as the growth of the Internet and strong encryption.

The Regulation of Investigatory Powers (RIP) Bill was introduced in the House of Commons on 9 February 2000 and completed its Parliamentary passage on 26 July.

Following a public consultation and Parliamentary debate, Parliament approved new additions in December 2003, April 2005, July 2006 and February 2010. A draft bill was put before Parliament during 4 November 2015.[2]

* **Contents**
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* **3.3** Directed surveillance
* **4**Controversy
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* **Summary**

RIPA regulates the manner in which certain public bodies may conduct surveillance and access a person's electronic communications. The Act:

1. Enables certain public bodies to demand that an ISP provide access to a customer's communications in secret.
2. Enables mass surveillance of communications in transit.
3. Enables certain public bodies to demand ISPs fit equipment to facilitate surveillance.
4. Enables certain public bodies to demand that someone hand over keys to protected information.
5. Allows certain public bodies to monitor people's Internet activities.
6. Prevents the existence of interception warrants and any data collected with them from being revealed in court.

* **Powers**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Type** | **Typical use** | **Reasons for use** | **Type of public authority permitted to use** | **Level of authorisation required** |
| **Interception of a communication** | Wire taps and reading post | In the interests of national security, for the purpose of preventing or detecting serious crime and for the purpose of safeguarding the economic well-being of the United Kingdom | Defence Intelligence, GCHQ, HM Revenue and Customs, Secret Intelligence Service, Security Service and territorial police forces of Scotland | Warrant from Home Secretary or Cabinet Secretary for Justice |
| **Use of communications data** | Information about a communication, but not the content of that communication (phone numbers, subscriber details) | In the interests of national security, for the purpose of preventing or detecting crime or of preventing disorder, in the interests of the economic well-being of the United Kingdom, in the interests of public safety, for the purpose of protecting public health, for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department and for the purpose, in an emergency, of preventing death or injury or any damage to a person's physical or mental health, or of mitigating any injury or damage to a person's physical or mental health. | As listed below | Senior member of that authority |
| **Directed surveillance** | Following people | In the interests of national security, for the purpose of preventing or detecting crime or of preventing disorder, in the interests of the economic well-being of the United Kingdom, in the interests of public safety, for the purpose of protecting public health and for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department. | As listed below | Senior member of that authority |
| **Covert human intelligence sources** | Informers; undercover officers | In the interests of national security, for the purpose of preventing or detecting crime or of preventing disorder, in the interests of the economic well-being of the United Kingdom, in the interests of public safety, for the purpose of protecting public health and for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department. | As listed above | Senior member of that authority |
| **Intrusive surveillance** | **Bugging houses/vehicles** | In the interests of national security, for the purpose of preventing or detecting serious crime and in the interests of the economic well-being of the United Kingdom. | GCHQ, Secret Intelligence Service, Security Service, Ministry of Defence, armed forces, Her Majesty's Prison Service or Northern Ireland Prison Service. | **Authorisation from**:  **Home: --Secretary or Cabinet Secretary for Justice** |
| The territorial police forces, the Ministry of Defence Police, the British Transport Police, the Royal Navy Regulating Branch, Royal Military Police, Royal Air Force Police and HM Revenue and Customs. | Authorisation from the head of the relevant agency:  **Chief constable of any of the territorial police forces,**  the Ministry of Defence Police or the British Transport Police, the Provosts Marshal of the Royal Navy Regulating Branch, Royal Military Police or the Royal Air Force Police and any customs officer designated for the purposes by the Commissioners of Revenue and Customs. |

* To See this webpage in a none edited format please click on the link below: -

<https://en.wikipedia.org/wiki/Regulation_of_Investigatory_Powers_Act_2000>

Last checked as a working webpage with the same information 28/02/2021.

# Statutory Conspiracy;

* Section 1(1) of the Criminal Law Act 1977 states: “If a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or would do so but for the existence of facts which render the commission of the offence or any of the offences impossible, he is guilty of conspiracy to commit the offence or offences in question.”*.*

# Criminal Liability

* An Act to amend the law of England and Wales by abolishing the division of crimes into felonies and misdemeanours and to amend and simplify the law in respect of matters arising from or related to that division or the abolition of it; to do away (within or without England and Wales) with certain obsolete crimes together with the torts of maintenance and champerty; and for purposes connected therewith.

Criminal Law Act 1967

<https://www.legislation.gov.uk/ukpga/1967/58/contents>

# Compensation Act 2006

<https://www.legislation.gov.uk/ukpga/2006/29/contents>

* Part 1 - Standard of care
* Part 2 - Claims Management Services
* Part 3 - General
* Part Claims Management Regulations

# Intent Criminal Justice Act 1967

* **Demeanour**

1. **What is the meaning of mens rea?**

Mens Rea refers to criminal intent. The literal translation from Latin is "guilty mind." The plural of mens rea is mentes reae. ... The prosecution typically must prove beyond reasonable doubt that the defendant committed the offense with a culpable state of mind.

1. In criminal law, intent is one of three general classes of means rea-necessary to constitute a conventional, as opposed to strict liability, crime. A more formal, generally synonymous legal term is scienter: intent or knowledge of wrongdoing.

* **purpose; the phrase** `with a view to' means `with the intention of' or `for the purpose of' will. a fixed and persistent intent or purpose.
* **Type of: end, goal.** the state of affairs that a plan is intended to achieve and that (when achieved) terminates behaviour intended to achieve it.
* **Three types of criminal intent exist:**

1. General intent, which is presumed from the act of commission (such as speeding);
2. Specific intent, which requires preplanning and predispositions (such as burglary); and
3. Constructive intent, the unintentional results of an act (such as a pedestrian death resulting from.

* **Law**
* **Penalty**
* **Criminal Justice Act 1967**

<https://www.legislation.gov.uk/ukpga/1967/80/contents>

**Also see**

* **Criminal Law Act 1967**

<https://www.legislation.gov.uk/ukpga/1967/58/contents>

# Police (efficiency) Regulations Act 1999 + The Police (Efficiency) (Amendment) Regulations 2003

How to inform the member concerned in what respect his performance is considered unsatisfactory;

These Regulations may be cited as the Police (Efficiency) Regulations 1999 and shall come into force on 1st April 1999.

These Regulations shall not apply in relation to—

(a)a chief constable or other officer above the rank of superintendent;

(b)an officer of the rank of constable who has not completed his period of probation.

The Assistant Commissioner”, in relation to the metropolitan police force, means the assistant commissioner for the time being authorised under section 8 of the Metropolitan Police Act 1856.

Circumstances in which a first interview may be required

4.  Where the reporting officer for a member of a police force is of the opinion that the performance of that member is unsatisfactory, he may require the member concerned to attend an interview (in these Regulations referred to as a first interview) to discuss the performance of the member concerned.

**Amendment 2003**

<https://www.legislation.gov.uk/uksi/2003/528/contents/made>

# WHAT IS MOOTING?

<https://www.law.ox.ac.uk/current-students/mooting-oxford/mooting-what-it-and-why-take-part>

# Making a complaint

The procedure for making a complaint about the conduct of an official person or other is simple and informal. A complaint is best made in writing, but may be made orally.

# Reference towards the Time Limitation Act

1. For example, a claim in fraud against the trustee of a trust is not subject to any limitation
2. There is no time limit under the time limitation Act 1996 - 1980 when accounting for fraud in certain aspects of the law
3. Through most of the time I have been undermined by your clients
4. I have been brutally over forced with malicious process unlogside may other illegal aspects of law such as Interference with the course of justice 1963.

The listed above accounts for special circumstances to proceed with my claim.

It is not me who has prolonged my claim by keeping me in a malicious process.

**LIMITATION PERIODS**

|  |  |
| --- | --- |
| **Class of claim** | **Limitation period** |
| **Fraudulent breach of trust** | None (LA 1980, s. 21(1)) |
| **Recovery of land** | 12 years (LA 1980, s. 15(1)) |
| **Recovery of money secured by mortgage** | 12 years (LA 1980, s. 20(1)) |
| **Speciality** | 12 years (LA 1980, s. 8(1)) |
| **Recovery of money due under statute** | 6 years (LA 1980, s. 9(1)) |
| **Enforcement of a judgment** | 6 years (LA 1980, s. 24(1)) |
| **Contract** | 6 years (LA 1980, s. 5) |
| **Recovery of trust property and breach of trust** | 6 years (LA 1980, s. 21(3)) |
| **Recovery of arrears of rent** | 6 years (LA 1980, s. 19) |
| **Tort (except those listed below)** | 6years (LA 1980, s. 2) |
| **Note:** This includes claims under s. 2(1) of the Misrepresentation Act 1967 | |
| **Defective Premises Ad 1972 (DPA 1972) claims** | 6 years (DPA 1972, s. 1(B)) |
| **Personal injury claims** | 3 years (LA 1980, s. 11(4)) |
| **Fatal Accident Act 1976 claims** | 3 years (LA 1980, s. 12(2)} |
| **Claims under the Consumer Protection Act 1987** | 3 years (LA 1980, s. 11 A) |
| **Carriage by Air Act 1961 (CAA 1961) claims** | 2 years (CAA 1961, Sched. 1) |
| **Claims for personal injury or damage to vessel, cargo, or** | 2 years (Merchant Shipping Act 1995, s. 190(3) and |
| **property at sea** | Sched. 6) |
| **Disqualification of company directors** | 2 years (Company Directors Disqualification Act 1986, s. 7(2)} |
| **Contribution under the Civil Liability (Contribution) Act 1978** | 2 years (LA 1980, s. 10(1)} |
| **Contributions under the Maritime Conventions Act 1911** | 1 year (Merchant Shipping Act 1995, s. 190(4)) |
| **Carriage of Goods by Road Act 1965 (CGRA 1965)** | claims 1 year (CGRA 1965, Art. 32(1)) |
| **Defamation and malicious falsehood** | 1 year (LA 1980, s.4A) |
| **Applications for judicial review** | 3 months (CPR54.5) |
| **Unfair dismissal under the Employment Rights Act 1996 (ERA 1996)** | 3 months (ERA 1996, s. 111(2)) |
| **Applications for new business tenancies under the** | Not less than 2 months nor more than 4 months (LTA |
| **Landlord and Tenant Act 1954 (LTA 1954)** | 1954, s. 29(3}) |
| **Actions for an account** | Period applicable to claim on which account is based (LA 1980, s. 23) |

**WHICH LIMITATION PERIOD APPLIES TO AN ACTION?**

It is sometimes difficult to determine into which category a particular case may fall. It is possible that the nature of the claim itself may affect the application of a limitation period. If the action arises from fraudulent behaviour, the court will consider whether it was the fraudulent behaviour of a party or of another. Where the fraud is that of a person who is not a party, then the defendant will normally be able to rely on a limitation period applying. But if the fraudulent behaviour is that of a party, then it is more likely that the court will determine that no limitation period applies. Claims that are a mixture of tort and contract can also cause difficulties.

A full examination of the more complex issues arising from limitation is outside the scope of this manual, but any legal representative acting in an action in which 'limitation' is raised will need to examine the law applying in detail (see *Blackstone's Civil Practice* in this regard).

The court has a discretion to dis-apply the limitation period in personal injury actions under s. 33 of the LA 1980. In these circumstances, the court will decide whether it would

be equitable and whether it would be prejudicial to the defendant, taking into account all of the circumstances of the case. There may be good reasons not to rely on what appears to be a limitation defence, where a fair trial can still take place despite the delay. Two recent cases have considered the application of s. 33 LA—in Kara Rayner v Wolferstans (A firm), Medway NHS Foundation Trust [2015] EWHC 2957 (QB), the judge allowed the claimant to proceed with her personal injury claim seven years after the statutory period of limitation had expired where the judge found that the claimant had been prejudiced by delays not of her making. This case is a clear example of the court assisting a 'deserving' claimant. In Collins v Secretary of State for Business Innovation & Skills [20131 the court would not exercise its discretion, as it decided that the evidence was sketchy and unreliable, and there would be real prejudice to the defendant if the limitation period was dis-applied.

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**Exceptions in the Limitation Act**

The Limitation Act 1980 does contain some exceptions to the rules discussed above. There are two exceptions that may be relevant to claims against the police. Firstly, time does not begin to run against a minor until he or she reaches the age of 18. Thus, if the alleged police misconduct occurred during the claimant's childhood the applicable limitation period would not start to run until he or she attained adulthood.

**Yes**

Secondly, the running of the appropriate limitation period is delayed where any fact relevant to the claimant's right of action has been deliberately concealed from him by the defendant’. In these circumstances the period runs from the time when the claimant discovers the concealment or from the point when he or she could have discovered it by using reasonable diligence. A deliberate breach of duty in circumstances where it is unlikely to be discovered for some time amounts to deliberate concealment for these purposes. Deliberate concealment therefore covers intentional wrongdoing that, by its nature, is unlikely to be discovered for a considerable period of time, if the wrongdoer does nothing to draw it to the claimant's attention.71 Accordingly, this concept could cover police misconduct that was not readily apparent to the claimant at the time but emerges subsequently, for example if; officers pressurised or induced a third party falsely to incriminate the claimant. In this instance the claimant would know from the outset that the testimony incriminating him or her was false, but he or she would not necessarily appreciate that this stemmed from improper police behaviour. The deliberate concealment must relate to a fact that forms part of the 'right of action’, as opposed to those which simply strengthen an existing case. Accordingly, it would be difficult for the claimant to obtain an advantage from this statutory provision in a false imprisonment claim, as the cause of action is treated as complete when the detention occurs and any subsequently discovered facts would bolster an existing claim, rather than create a fresh cause of action. In contrast, in a malicious prosecution claim, a lack of reasonable and probable cause for the prosecution and malice on the part of the wrongdoer are intrinsic elements of the cause of action; thus, subsequent discovered police misconduct relating to those issues may well to facts relevant to the right of action, so that the running limitation period is postponed until they came to light.

**Human Rights Act claims**

The limitation period for bringing proceedings against a public authority under the Human Rights Act 1998 is short. Proceedings must be brought before the end of one year beginning with the date on which the act complained of took place. However, there is provision for a longer period if the ‘court or tribunal considers it equitable having regard to all the circumstances. The one-year period is subject to any rule imposing a stricter time limit in relation to the procedure in question. Thus, for example, a judicial review application which relied upon breaches of the Human Rights Act 1998 would be subject to the usual three-month time period applicable to such claims.8" However, where a person does not bring proceedings against a public authority but merely seeks to rely on his or her rights under the European Convention of Human Rights in relation to legal proceedings brought by others, no limitation period is imposed by the Human Rights Act 1998.S1

**Discrimination claims**

The time limit for bringing proceedings under the Race Relations Act 1976 is within six months less one day from the date of the act complained of “It is possible to obtain a two-month extension where a claim is made to the Commission for Racial Equality for assistance within the six-month period. The Commission can grant a further month’s extension if it is considering the application. The six-month period for bringing a claim does not begin to run until the conclusion of ‘an act extending over a period'. The court has a discretion to extend the time limit for bringing discrimination claims where it considers it ‘just and equitable to do so. Similar limitation provisions apply in relation to discrimination on the grounds of sex and disability.

There may be instances where the same facts give rise to a number of different limitation periods. For example, if a person is stopped and searched in a manner which gives rise to a potential claim under the Race Relations Act 1976 and is then prosecuted, but the proceedings are not concluded until more than six months after the initial incident, consideration should be given to issuing proceedings in the county court under the Act and then staying these proceedings pending the outcome of the criminal case. The priority for the potential claimant may well be to secure an acquittal on the criminal case and he or she may not wish to aggravate the police or CPS by alerting them to a potential race case. In these circumstances it is open to the adviser to issue proceedings within the initial six-month period, but to delay serving them until the conclusion of the criminal matter.

**Persons under disabilities**

Where the claimant is a person under a disability, being either a child or a protected party ' (see paragraphs 7.3.1 and 7.3.2), the limitation period does not start to run until:

1. if a child, from the date of the child's 18th birthday;
2. if a protected party, if they were of unsound mind at the time of the cause of action (or the unsound mind was caused by the cause of action), from the date on which they are no longer of unsound mind (whenever that may be medically certified). If the person was of sound mind at the time of the cause of action, the limitation period will continue to run.

**Fraud, concealment, and mistake**

In claims based on fraud, the limitation period does not begin to run until the claimant discovers (or could, with reasonable diligence, have discovered) the fraud. The limitation period will also not run whilst the defendant deliberately conceals a relevant fact. Where the claim is for relief from the consequences of a mistake, time does not run until the mistake is discovered, or could have been discovered with reasonable diligence.

**Latent damage**

The Latent Damage Act 1986 created greater fairness in situations in which the limitation period may expire before a party is even aware that a claim exists. In claims in tort (other than for personal injuries), the Latent Damage Act 1986 provides new sections (inserted into the LA 1980, ss. 14A and 14B). The provisions added to the LA 1980 by the 1986 Act provide two periods of limitation: one that is six years from accrual (the usual period for claims in tort), and another that is three years from the 'starting date'—that is, the earliest date at which the claimant knew that the relevant damage was sufficiently serious to justify proceedings, enabling a claim to subsist, and when it could be attributed to the act of negligence and the identity of the defendant.

To prevent defendants being potentially 'at risk' of a claim indefinitely, s. 14B of the LA 1980 provides a long-stop period for bringing proceedings of 15 years from the act or omission alleged to constitute the negligence causing the claimant's damage.

**The discretionary extension of limitation periods**

Discretionary provisions to extend the statutory limitation period apply in:

* judicial review proceedings (the three-month time limit can be extended if good reasons are shown);

# Acting litigant

Acting litigant is a legal right of mine and at the present I feel it is best for me to do so as of the size of the case;

**1.** Because I am still organising the paperwork even low, I can prove my case beyond reasonable doubt at the present.

**2.** I am still transcribing recordings between me and you client's that proves what has happened.

**3.** To control additional legal cost by doing 95% of the work myself.

The documentation accounts for almost nine years now and equals to over three million words and by you refusing to talk to me on the phone or arranging a meeting in a later date as I requested earlier in our prior emails, I know that you are treating me unequal to a far standard by being incurious of my claim.

In the last email that I sent to you I merely explained that I would like to chat in person for a brief time and would be happy also to resolve the ongoing by email as well.

# About ASBOs

Anti-Social Behaviour Orders (ASBOs) are civil orders made against someone who has engaged in anti-social behaviour in the UK or the Republic of Ireland.  
ASBOs were introduced by the Labour party under Tony Blair in 1998. The intent was giving the state a way to prevent and control low-level behaviour that would not normally warrant a criminal prosecution but brings fear and misery to those living amongst it.

ASBOs are designed to limit and correct the recipient's behaviour. For example, by forbidding a return to a certain area or shop, or by restricting public behaviour such as swearing or drinking.

As the ASBO is a civil order, the defendant has no right to evidence that might disprove the assertions of the plaintiff, though violating an ASBO can incur up to five years imprisonment. This means getting an ASBO does not give you a criminal record, but breaking the ASBO could.

ASBOs are not without controversy. Many critics suggest that they may be "desirable" to certain people as a "badge", to be respected amongst peers.

In the United Kingdom, an ASBO may be issued in response to "conduct which caused or was likely to cause harm, harassment, alarm or distress, to one or more persons not of the same household as him or herself and where an ASBO is seen as necessary to protect relevant persons from further anti-social acts by the Defendant."[5] In England and Wales they are issued by Magistrates' Courts, and in Scotland by the Sheriff Courts.

The British government introduced ASBOs by the Crime and Disorder Act 1998. In the UK, a CRASBO is a "criminally related" ASBO. One local authority has published photos of those given ASBOs on an Internet site but this is not standard practice. &nbsp; Anti-social behaviour includes a range of problems including:

1. noise pollution - playing music persistently too loud or persitently making other loud or intrusive noise
2. drunkenness
3. abandoned cars, burned-out cars, joyriding
4. stealing/mugging/shoplifting
5. begging
6. vandalism, graffiti, criminal damage to property
7. loitering
8. dropping litter/fly tipping/dog fouling
9. drug dealing or drug taking
10. intimidation and bullying
11. spitting

**History of ASBOs**

ASBOs were first introduced in England, Scotland and Wales by the Crime and Disorder Act 1998. Later legislation strengthened its application: in England and Wales this has largely been via the Anti-social Behaviour Act 2003, in Northern Ireland through an Order-in-Council and in Scotland with the Antisocial Behaviour etc. (Scotland) Act 2004.[8] Scotland, however, has an existing tribunal charged with dealing with children and young persons who offend, the Children's Hearings System.

In a press release of 28 October 2004, Tony Blair and David Blunkett announced further measures to extend the use and definition of ASBOs. The remit would include:

* Extension of the Witness Protection Programme in anti-social behaviour cases.
* More courts dealing with cases.
* More offences including dog-fouling, litter, graffiti, and night-time noise liable for Fixed Penalty Notices.
* Giving parish councils the power to issue fixed penalty notices for infringements.

The press release concluded by remarking: "In the past year around 100,000 cases of anti-social behaviour have been dealt with. 2,633 ASBOs and 418 dispersal orders have been issued in the same period."

On 25 October 2005, Transport for London announced its intent to apply for a new law giving them the authority to issue orders against repeat fare dodgers, and increased fines. The first ever ASBO was given to offender Kat Richards for repeated drunk and disorderly behaviour. As of 31 March 2004, 2455 ASBOs had been issued in England and Wales. On 30 March 2006, the Home Office announced that 7,356 anti-social behaviour orders had been given out since 1999 in England and Wales.

**Why ASBOs are issued**

Applications for ASBOs are heard by magistrates sitting in their civil capacity. Although the proceedings are civil, the court must apply a heightened civil standard of proof. This standard is virtually indistinguishable from the criminal standard.  
The applicant must satisfy the court "so that it is sure" that the defendant has acted in an anti-social manner. The test for the court to be "satisfied so that it is sure" is the same direction that a judge gives to a jury in a criminal case heard in the Crown Court. This is also known as satisfying the court "beyond reasonable doubt": R v Kritz [1950] 1 KB 82, approved by the Privy Council in Walters v R [1969] 2 AC 26 at 30.  
As a matter of law, the burden of proof remains on the applicant and the standard is, effectively, the criminal standard. A court may not order an anti-social behaviour order unless it is satisfied so that it is sure that the defendant has committed one or more of the anti-social acts alleged.

Pursuant to section 1(1) Civil Evidence Act 1995, an applicant (and a defendant) has the right to rely on witness statements without calling the makers of those statements - known as hearsay. If a party proposes to rely upon a hearsay statement, then the other party is entitled to ask the court for permission to call that witness for cross examination: section 3 Civil Evidence Act 1995 and Rule 4 Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999.

If the court refuses to grant such an application, then the defendant will be unable to challenge the makers of the hearsay statements. Nevertheless, it is open for them to submit that the court should **place little or no weight upon material that has not been tested by way of cross examination**.

Section 4(1) Civil Evidence Act 1995 states that:

...in estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.[13]

The High Court has emphasised that the use of the words "if any" shows that some hearsay evidence may be given no weight at all.[14] For an ASBO to be made, the applicant must prove beyond all reasonable doubt that the respondent has behaved in an anti-social manner. The applicant can rely on hearsay evidence. However, **the Court of Appeal has stated that it does not expect a court to find that the criminal standard has been reached by relying solely on hearsay evidence. The Civil Evidence Act 1995 itself makes clear that courts should consider what weight, if any at all, attaches to hearsay material.** In Cleary, the Court of Appeal again restated that courts should consider attaching no weight at all to such material, in accordance with the words of the statute: **Cleary v Highbury Corner Magistrates** &amp; (1) **Commissioner of Police of the Metropolis and others (2007) 1 WLR 1272; [2006] EWHC 1869.** [citation needed]

It is for the court to decide what weight to give the hearsay evidence. The Court of Appeal has stated that the high standard of proof is difficult to meet if the entirety of the case, or the majority of it, is based upon hearsay evidence.[15] The proper approach will be for a court to consider to what extent the hearsay evidence is, amongst other things, supported by other evidence, the cogency and similarity of supporting instances of hearsay evidence and the cogency and reliability of contradictory evidence supplied by a defendant.

Where, for example, ten anonymous witnesses who are unrelated to each other each provide a witness statement as to the defendant's anti-social behaviour where each statement refers independently to the same particular events and where this is supported by a witness statement from a non-anonymous witness, such as a housing officer, who confirms that residents have made complaints about a particular person over a period of time then the court may be justified in according the statements a fair degree of weight.

# Hearsay Asbo

**WLR 1272; [2006] EWHC 1869**

<https://www.casemine.com/judgement/uk/5a8ff75f60d03e7f57eabd50>

# The Right to a Fair Trial

whether a conviction based “solely or to a decisive extent” on the statement of a witness whom the defendant has had no chance of cross-examining necessarily infringes the defendant’s right to a fair trial under articles 6(1) and 6(3)(d) which provide: “

**(1)** In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

**(3)** Everyone charged with a criminal offence has the following minimum rights: . . .

**(d)** to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”

# When can evidence not be used in court?

Evidence that cannot be presented to the jury or decision maker for any of a variety of reasons: it was improperly obtained, it is prejudicial (the prejudicial value outweighs the probative value), it is hearsay, it is not relevant to the case, etc.

# Can I be convicted without evidence?

Can a person be convicted without evidence? The simple answer is, “no.” You cannot be convicted of a crime without evidence. ... You cannot be convicted of a federal crime. If there is no evidence against you, under the law, it simply is not possible for the prosecutor's office to obtain a conviction at trial.

# **Notes**

# **Community safety accreditation schemes**

Community safety accreditation schemes were introduced by the Police Reform Act 2002 to contribute to community safety and security, and (in co-operation with the police) to combat crime and disorder, public nuisance and other forms of anti-social behaviour. They are a mean by which chief officers can accredit or ‘quality assure' the employees of bodies such as a local authority, housing association, licensed private security firm, NHS trust, organisations responsible for railway security or vehicle inspection, charities or employers of stewards in sport in stadiums.” However, the employee of anybody approved by the chief officer can be accredited, including civilian employees of police authorities such as community support officers, investigating officer’s detention officers or escort officers. Accredited members of a scheme can be given limited powers ally exercised by the police such as the power to issue fixed penalty notices and to confiscate alcohol and tobacco in certain circumstances^ Chief officers must ensure that the employers have establish and maintained satisfactory arrangements for handling complaints relating to the carrying out by accredited persons of the functions: the purposes of which powers are conferred For the purpose of det mining liability for unlawful conduct of a non-police authority employee, conduct in reliance or purported reliance on an accreditation is taken to be conduct in the course of the person’s employment. In da case of a tort the employer is treated as a joint tortfeasor. Similar arrangements exist for employees of police authorities

# **Civilians and misconduct in a public office**

Civilian staff employed by police authorities (in common with police officers), as people who are paid out of public funds for discharging a public duty in an office of trust, can be convicted of the common in offence of misconduct in a public office. It would be anomalous if detention officers or escort officers employed by a private contractor could escape liability in circumstances where an office employed directly by a police authority would be guilty of an offence The better view is that all detention and escort officers discharge; public duty in an office of trust and that the contractual arrangements That lie behind such an office cannot provide any protection for civilian officers who are employed by a contractor,

# **Home Secretary**

The Home Secretary must exercise his powers under the Police Act 1996 in such manner and to such extent as appears to him best calculated to promote the efficiency and effectiveness of the police.

Each year the Home Secretary must prepare and lay before parliament a National Policing Plan setting out the strategic policing priorities generally for the next three years. The Plan also sets objectives I and performance indicators for police authorities.

The Home Secretary has extensive powers to make regulations concerning the government, administration and conditions of service of police forces including regulations with respect to the conduct, 1 efficiency and effectiveness of members of police forces, the maintenance of discipline, the suspension from a police force and from the -j office of constable. Among numerous other powers he also has control over the annual police grant, grants for capital expenditure and in respect of national security.

The Home Secretary can require a police authority to call upon a chief officer, in the interests of efficiency or effectiveness, to retire or resign.60 He can also require the police authority to suspend the chief officer in certain circumstances where he considers it necessary for the maintenance of public confidence in the force in question.61 This must be decided by reference to public confidence at large, that is, nationally, rather than the confidence of the public in the police area in question.

Most modern statutes refer simply to the ‘Secretary of State' meaning one of Her Majesty’s Principal Secretaries of State: Interpretation Act 1978 s5, SCH 1. Responsibility for police matters is discharged by the Secretary of State for the Home Department, referred to in this book as the Home Secretary,

# **Malicious process**

Malicious process is a civil Wong, separate from malicious prosecution, which entails instituting a legal process short of prosecution without reasonable and probable cause and with malice. “The two most Common examples are applications for arrest warrants and search Warrants.

In relation to such applications there are four ingredients of the tort that the claimant must establish, namely:

1. a successful application for the warrant was made; there was a lack of reasonable and probable cause for making the application.

it was made maliciously; and there was resultant damage.

Proving a lack of reasonable and probable cause and proving malice have been described in detail under the preceding section on malicious prosecution. In relation to proceedings that the claimant has no right to attend, such as applications for warrants, it need not be shown that they terminated in his or her favour**.** Damage for these purposes is not as strictly confined as under the tort of malicious prosecution and encompasses all forms of recognised damage."

If the ingredients of a malicious process claim are proved, the claimant will overcome the difficulty that otherwise arises because of the Constables Protection Act 1750 in suing in relation to arrests or searches undertaken in obedience to a warrant **(see paras 6.76-6.78** and **9.15).** If the claimant cannot prove a lack of reasonable and probable cause and/or malice, in some circumstances an action in negligence may lie if the warrant was obtained on the basis of inaccurate information.**6\***

1. *Roy v Prior [1970] 2 All ER 729, HL; Gibbs v Rea [1998] AC 78G, PC.*
2. For other instances of malicious process see *Clayton and Tomlinson Civil Actions Against the Police (3rd edn, Thomson Sweet & Maxwell, 2004)* paras 8-083—8-089.
3. Keegan v Chief Constable of Merseyside Police [2003] 1 WLR 2187.
4. However, if the form of process under challenge involves the attendance of both parties, such as a complaint of breach of the peace, then in the claimant’s favour termination must be shown.
5. See the discussion of permitted heads of tortious damage in relation to misfeasance in a public office and in relation to negligence at paras 7,45 and 8.85 respectively.
6. Hough v Chief Constable of the Staffordshire Constabulary [2001] EWCA CIV 39, though see the discussion of this case at para 8.66.

# **Misfeasance in a public office**

**Definition**

The tort of misfeasance in a public office was originally developed during the eighteenth and nineteenth centuries for the benefit of elec­tors who were wilfully denied the right to vote by a returning officer. It was little used for some considerable time afterwards. More recently the value of this tort has been recognised as a broader remedy for abuse of administrative power. Over the last ten years it has come to be increasingly deployed in claims against the police. The rationale of the tort is that executive or administrative power ‘may be exercised only for the public good’ and not for ulterior or improper purposes.69 70 71 However, the fact that an official acts in excess of his or her powers does not always give rise to a monetary remedy. The elements of the tort of misfeasance in a public office were clarified by the House of Lords in ***Three Rivers DC v Bank of England (No 3 f°*** as follows:

* the conduct must be that of a public officer, exercising power in that capacity.
* the officer must either intend to injure the claimant by his or her acts or knowingly/recklessly act beyond his or her powers.
* and thereby cause damage to the claimant.
* in circumstances where he or she knew the act would probably cause damage of this kind.

These elements are considered in more detail in turn below. Miscon­duct in a public office can also amount to a criminal offence.

# **A public officer**

1. A police officer who abuses his position will certainly fulfil the first *element* of the tort. A civilian employed by a police authority is also likely to be a public officer for these purposes, as the comparable offence of misconduct in a public office applies to every person who is appointed to discharge a public duty and is paid to do *so.****72*** *A* decision made by an employee of the Crown Prosecution Service in relation to an actual or prosecution can also ground a claim in misfeasance (if the other elements of the tort are satisfied)/3
2. Jones v Swansea City Council [1990] 1 WLR 54, 85F.
3. *[2003] 2 AC 1, HL.*
4. In *Att-Gen’s Reference No 3 of2003 (2004)* *2 Cr App R 23* the Court of Appeal con­sidered the ingredients of the criminal offence; they are similar, but not identi­cal to the elements of the tort of misfeasance.
5. *R v Bowden [1995] 4 AUER 505.*

# **The officer’s act**

In the ***Three River****s* case the House of Lords emphasised that both limbs of the tort require the claimant to prove bad faith on the part of the relevant officer. Accident, mistake or carelessness is insufficient/4 The first way of committing the tort, where the officer intends to injure the claimant by his or her acts, is often referred to as ‘targeted malice’. The essence is the abuse of power for a specific improper or ulterior motive. The second way of committing the tort involves the relevant officer acting in excess of his or her powers. An example of the difference between the two ways that the tort can be committed could arise from an instance where a police officer mis­used information he or she gained from police records by leaking it to the claimant’s employer, thereby leading to the loss of his or her job. Assuming there was no legitimate reason for the disclosure **(see para 10.17 onwards),** the conduct could come within the first limb of the tort if the officer acted out of spite and in the hope that it would lead to a dis­missal, because the claimant had previously complained about that officer. The conduct could fall within the second limb of the tort if the officer had not acted out of spite but, knowing there were force procedures prohibiting such disclosures, he or she had decided to proceed anyway because he or she thought the procedures were too restrictive.

In the ***Three Rivers*** case the House of Lords decided that in order to establish liability under the second limb, the officer must either exceed his or her powers knowingly or be reckless about this occurring, in the subjective sense that the officer actually appreciated the risk that he or she was going beyond his or her powers but proceeded indif­ferent to this risk. A failure to appreciate such a risk, even if it was obvious, would not suffice for misfeasance. In ***Three Rivers Lord Hutton*** said that the ‘act’ in question may be an omission to act, provided it is the product of a deliberate decision not to act as opposed to mere inad­vertence or oversight,73 74 75

1. *Elguzouli-Daf v Commissioner of Police of the Metropolis [1995] 1 All ER 833. CA.*
2. See Lo similar effect: *Thomas v Chief Constable of Cleveland Police [2001] EWCA CIV 1552.*
3. See also *Toumia v Evans* (1999) *Times* 1 April, CA.

Misfeasance is a tort of personal bad faith and ultimately a claimant must establish bad faith on the part of a particular officer; but it is not always necessary to identify the officer(s) at the outset, if it is suffi­ciently dear from the conduct pleaded by the adamant that bad faith on the part of individual officers was involved.

# **Damage**

To succeed in establishing liability, the claimant must usually show that he or she suffered a recognisable head of damage' in consequence of the public officer's wrongful actions. Unlike the position in relation to the intentional torts of false imprisonment, assault and battery, it is insufficient to rely on the claimant's inconvenience or distress where ‘damage' has to be shown. ‘Damage’ in this context covers financial loss, loss of libertyand death or personal injury.The latter induces both physical injury and psychiatric trauma provided a recognised medical condition is established. Loss of reputation will probably suffice as well.However, where the misfeasance involves an interference with the claimant's constitutional rights it is unnecessary to prove damage. Constitutional rights are those which are of such importance that the right in question cannot be abrogated by the state, save by a specific legislative provision.Examples of constitutional rights are the right to vote and the right of access to justice.The extent to which abuses of power by police officers could involve infringement of the claimant’s constitutional rights is cur­rently uncertain. The more serious the abuse, the stronger the chance would be of showing such an infringement.

1. *Chagas Islanders v Att-Gen* [2003] EWHC 2222.
2. See *W v Home Office* [1997] 1mm AR 302, CA and the speech of Lord Clyde in *Darker v Chief Constable of the* West *Midlands Police* [2001] AC 435 HL.
3. *Akenzua v Secretary of State for the Home Department* [2003] 1 All ER 35.
4. See *Clayton and Tomlinson Civil Actions Against the Police (3rd EDN, Thomson Sweet & Maxwell, 2004) para 11-024.*
5. *Wcttkim- v Secretary of State for the Home Department [2004] EWCA CIV 966* where the claimant's legally privileged correspondence was opened by prison officers in breach of his constitutional right to unimpeded access to his solicitor,
6. *RV Lord Chancellor exp Witham* [1998] QB 575.
7. See the discussion in *Watkins v Secretary of State for the Home Department [2004] EWCA CIV 966.*

**The officer's state of mind in relation to the damage**

The House of Lords' decision in the *Three Rivers* case established that it was sufficient if the relevant officer was aware of the probability of damage being caused by his or her actions; it was unnecessary to show that he or she regarded this as a certainty. The same case also decided it was sufficient if the officer was reckless as to the probability of damage resulting from his or her actions (provided the recklessness was of the subjective type where the officer actually foresaw the risk, as discussed in **para 7.43 above).** An issue remained as to the extent to which the relevant officer was required to appreciate the risk of damage to the particular victim. This was specifically considered by the Court of Appeal in **Akenzua v Secretary of State for the Home Departments** The claim was brought by relatives of a woman murdered by a vio­lent criminal who had entered the United Kingdom illegally but (it was alleged) had been permitted to remain in breach of usual proce­dures and in deliberate disregard of the risks he posed, because of his role as a paid police informant. The defendants sought to strike out the claim on the basis that even if the relevant officers were aware of the murderer's violent tendencies, they were not aware that he posed a threat to the particular woman he killed. The Court of Appeal rejected the suggestion that misfeasance in a public office involved a proxim­ity requirement similar to that applied in the tort of negligence (see the discussion of negligence claims at **para 8.51).** For liability in misfea­sance to be established it was sufficient if the relevant officer con­templated harm to one or more victims who were unknown unless or until the expected harm eventuated.

# **Chief officer’s liability**

M7 It is sometimes suggested on behalf of defendants that the act of alleged misfeasance is, by its nature, beyond anything contemplated by the officer’s position and as such outside the scope of the chief officer’s liability for the actions of officers of the force. However, the usual principles of vicarious liability apply (see para 11.107 onwards). Accordingly, the chief officer of the relevant force will generally be held legally responsible for acts committed in the officer’s capacity as a constable, albeit that he or she has exceeded the powers of that office.83 84

1. Watkins v Secretary of State for the. Home Department [2004] EWCA CIV 966.
2. *See Marsh V Chief Constable of Lancashire Constabulary [2003] EWCA CIV 284 and Weir i> Chief Constable of Merseyside Police [2003] ICR 708,*

# **Misfeasance in police cases**

Many instances of police misconduct will fall within the more established torts, such as false imprisonment in relation to a wrongful arrest. In those instances, a claim in misfeasance is usually superfluous. However, the tort of misfeasance may be of considerable assistance to claimants in circumstances where misconduct does not relate to arrest, detention or assault. Criminal prosecutions are dealt with sep­arately below. Recent examples of the breadth of misfeasance claims in civil actions against the police include.

1. an officer’s misuse of information obtained via the police national computer concerning the claimant’s convictions: *Elliot v Chief Constable of Wiltshire?'*
2. an officer’s deliberate failure to investigate a complaint of crime and forging of related documentation; *Kuddus v Chief Constable of Leicestershire Constabulary?6*
3. wrongful identification of the claimants as distributors of stolen imported vehicles, publicised by officers to customers of the business: *Cruickshank Ltd v Chief Constable of Kent Constabulary,7*
4. misuse of a known violent criminal as a paid police informant: *Akenzua v Secretary of State for the Home Department*

Additionally, in *Thomas* v *Secretary of State for the Home Department* the court accepted that the tort would be made out if prison officers deliberately abused their powers by racially discriminating against and abusing inmates or encouraging other prisoners to so abuse them (albeit this was not established on the evidence in that case). How­ever, despite the wide scope of circumstances that could lead to a suc­cessful claim, it is important to bear in mind, as mentioned above, that claims in misfeasance require bad faith to be established and that carelessness, however gross, will never suffice. The Court of Appeal has recently warned against the routine inclusion of allegations of mis feasance in police actions where there is no clear evidence to support a contention of dishonest abuse of power.'

1. *(1996) Times 5 December, CHD*. The court accepted on a strike-out application that the claim was arguable.
2. *[2001] 3 All ER 193.* Liability was conceded and the case was contested on the issue of damages.
3. *[2002] EWCA CIV 1840.* The court accepted on a strike-out application that the claim was arguable.
4. *[2002] EWCA CIV 1840.*
5. *(2000) 31 July, QBD,* unreported.

**Misfeasance and malicious prosecution**

A vital question in relation to the tort of misfeasance is its inter-rela­tionship with the tort of malicious prosecution in circumstances where a claimant wishes to sue in respect of a failed prosecution brought against him or her. A successful claim in malicious prosecution requires proof that the criminal proceedings against the claimant lacked reasonable and probable cause (see para 7.19 onwards). But a prosecution supported by sufficient evidence to amount to reasonable and probable cause may nonetheless be tainted by false evidence. A rel­atively common allegation made by claimants is that officers have dis­honestly 'improved' the state of the prosecution case against them, by, for example, falsely claiming that admissions were made. In instances where there was a substantial amount of other evidence implicating the claimant, a malicious prosecution action is unlikely to succeed **(see para 7.23).** The House of Lords considered the viabil­ity' of a claim in misfeasance in such circumstances in **Darker v Chief Constable of West Midlands Police?'** where the defendant sought to strike out a claim in misfeasance concerning allegations that officers fabricated evidence and misused informants. The defendant relied upon the principle of witness immunity (that is, that a person cannot be subjected to a civil claim in relation to evidence he or she gives in court proceedings). Malicious prosecution, unlike misfeasance, is an expressly recognised exception to this principle. Previously, in ***Silcott v Commissioner of Police of the Metropolis?****1* the Court of Appeal had struck out a misfeasance claim brought by Winston Silcott concerning admissions allegedly fabricated by police officers in support of his prosecution for the murder of PC Blakelock. The Court of Appeal said that the principle of witness immunity extended to the preparation of evidence for trial, including the creation of false evidence to be used at trial, so the claim in misfeasance could not proceed (although in that instance the evidence which was said to have been fabricated was sufficiently fundamental to the prosecution case for the civil action to proceed as a malicious prosecution claim). In *Darker* the House of 90 91 92

1. *Masters v Chief Constable of Sussex [2002] EWCA CIV 1482.*
2. *[2002] EWCA CIV 1482.*
3. *(1996) 8 Admin LR 633.*

Lords rejected the Court of Appeal's approach. They held that witness immunity did not extend to the deliberate fabrication of evidence by police officers. They drew a distinction between officers' conduct that was part of the investigation process, which fell outside the immu­nity, and action undertaken in an officer’s capacity as a witness, which came within the immunity. As the House of Lords observed, the offi­cers never intended their dishonest creation of evidence to form part of the account they gave as witnesses at the criminal trial; on the con­trary, they intended to conceal it. Thus, in consequence of the *Darker* decision, officers’ fabrication of admissions, planting of false evidence and dishonest manipulation of potential witnesses would all fall out­side the immunity. In contrast, a complaint that did not concern ear­lier investigative action, but was simply to the effect that the officer gave a false account of his dealings with the claimant in his evidence at the criminal trial, would be caught by the witness immunity so as to preclude an action in misfeasance.

If the claimant's case in misfeasance avoids the application of the

witness immunity principle, the question remains as to whether as a matter of policy the courts should permit the civil claim despite; there having been reasonable and probable cause for the prosecution. In ***Darker both Lords Cooke and Hutton*** said in terms that this should not bar a claim in misfeasance. Lord Hope appears to have been of a similar view. The other two speeches did not consider this issue. Thus, the balance of current authority suggests that a misfeasance claim can proceed in such circumstances.93 However, practitioners should note that, unlike in malicious prosecution claims, where time runs from the date when the criminal proceedings terminated in the claimant’s favour, the normal six-year limitation period runs from the date of misconduct relied upon **(see paras 11.69-11.71)**. Further, if the misfeasance action succeeds, outstanding questions remain as to the level of compensatory damages (as opposed to exemplary dam­ages) that would be considered appropriate for a claimant having to face tainted prosecution evidence in circumstances where a prosecution was in any event justified.

1. Contrary to earlier observations made in *McDonagh v Commissioner of Police of the Metropolis (1989) Times 28 December, QBD.*

# **Negligence and related actions**

# **Malicious prosecution**

It is a tort maliciously and without reasonable and probable cause to initiate criminal proceedings against another person, which terminate in favour of that other and which result in damage to reputation, person, freedom or property.

The right to sue for malicious prosecution is intended to protect people from unwarranted accusations being brought against them in the criminal courts. Facing false charges may lead a person to suffer detention in custody, financial damage, loss of standing in his- or her community, anxiety and/or even psychiatric injury. However, the courts also recognise the importance of people, in particular the police, not feeling inhibited in using the legal process to prosecute crime and consider that collateral litigation following the resolution of criminal proceedings should be closely controlled. In framing the ingredients of the common law tort of malicious prosecution, the courts have had to weigh up these competing considerations. As Fleming says:

The tort of malicious prosecution is dominated by the problem of balancing two countervailing interests of high social importance: safeguarding the individual from being harassed by unjustifiable litigation and encouraging citizens to aid in law enforcement.'

As we shall see in more detail below, the balance has been struck by the courts requiring claimants to go so far as to prove (among other) **1**

**1** ***Fleming, The Law of Torts (9th edition, I. BC Information Services, 1998). p671.*** See this text for a fuller discussion of the competing public interests’ things} bad faith on the part of those responsible for the prosecution. A prosecution brought for a proper purpose will never be a malicious prosecution, even if based on slender evidence. Thus, although thousands of people are acquitted of the offences of which they were accused every year, only a relatively small proportion of those people will have a viable claim for malicious prosecution. The collective effect of the criteria that the claimant must prove to establish a claim in malicious prosecution has led one commentator to observe that ‘the action for malicious prosecution is held on a tighter rein than any other in the law of torts'" and a number have called for reform in this area.**2 3**

To succeed in a claim for malicious prosecution against the police, it must be shown that damage has been suffered because:

1. the police prosecuted; and
2. the criminal case was concluded in the accused’s favour; and
3. reasonable and probable cause were absent in the bringing of the prosecution; and
4. the police acted maliciously.

These elements are described in more detail in turn below.

Malicious prosecution claims are particularly useful where the claimant alleges that the prosecution case against him was based on evidence concocted by the police. It is much more difficult to establish a malicious prosecution claim where the prosecution evidence was substantially based upon accounts given by independent third parties, even if that evidence was discredited during the criminal proceedings. If a claimant wishes to allege police fabrication of evidence in circumstances where the prosecution was also based on significant incriminating evidence from other sources, a claim of misfeasance in a public office may be a more viable option, if the fabrication can be established, than an action for malicious prosecution**.4**

A malicious prosecution claim usually entitles the parties to choose trial by judge and jury, unless any of the prescribed exceptions apply.**5** The six-year limitation period for commencing a claim runs from the date when the criminal proceedings terminated in the claimant's

1. *Fleming, The Law of Torts (9th edition, LBC Information Services, 1998).*
2. *See e.g., Clayton and Tomlinson, Civil Actions Against the Police (3rd ed, Thomson Sweet & Maxwell. 2004) para 8-006,*
3. *See paras 7.50 -7.51 looking at the inter-relationship between the two torts.*
4. *See Supreme Court Act 1981 s69 and County Court Act 1984 s66, discussed in more detail at paras 12.78-12.90.* favour.

If the claimant's conviction was quashed on appeal, this may be some considerable time after the misconduct took place.

It is uncertain, on the current state of the caselaw, whether a defence to liability can be established by proving on a balance of probabilities that the claimant did in fact commit the offence in question. It is suggested that the better view is that technically this affects quantum rather than liability. However, if the police have strong evidence that he or she did in fact carry out the relevant crime, the claimant’s credibility as a witness may well be too damaged to enable the elements of the tort to be established.

**Necessary elements Damage**

Unlike some other types of police misconduct (primarily assault, battery and false imprisonment), it is necessary to show that damage has been suffered by the claimant for the action to succeed. In practice this requirement is sometimes overlooked, but historically only three types of damage fulfilled this criterion in a malicious prosecution claim, namely: loss of reputation, the risk of loss of ‘life, limb or liberty;' and financial loss of reputation is shown if the charge was 'necessarily and naturally' defamatory, that is to say, it was one that lowered the claimant in the estimation of right-thinking members of society generally." Accordingly, an alleged failure to pay a tram fare met this test as it involved an imputation of dishonesty,'0 On the other hand, an allegation of pulling a communication cord on a train without sufficient cause did not convey a sufficiently discreditable reflection on the claimant. It will always depend upon the degree of moral stigma attached to the particular offence. For example, some motoring offences, such as drink driving or driving while disqualified carry with them a strong element of this stigma, whereas other motoring offences, such as driving with a bald tyre or a defective

1. *Dunlop v HM Customs of Excise (1998) 12 March, CA. Limitation is discussed in more detail at paras 11.69-11.71.*
2. *See Clerk s [ Lindsell on Torts (18th edn, Sweet &. Maxwell, 2000) para 16-35 and Clayton and Tomlinson Civil Actions Against the Police (3rd edn, Thomson Sweet & Maxwell, 2004) para 8-075.*
3. *Savik v Roberts (1698) 1 Ld. Raym 374, 3 78.*
4. *Wijfen v Bailey e£ Romford UDC [1915] 1 KB 600, CA.*
5. *Rayson v S London Tramways Co [1893] 2 QB 304.*
6. *Berry v British Transport Commission [1962] 1 QB 306, CA.*

light would be unlikely to qualify. In respect of loss of liberty, it is enough if the offence for which the claimant is prosecuted is one punishable by imprisonment;1^ there need not be actual loss of liberty. Legal costs incurred in defending oneself against a malicious prosecution constitute sufficient damage to qualify as financial loss, even where the court grants an allowance towards those costs. It is sufficient for a claimant to prove that one of these three elements resulted from the prosecution. If ‘damage' in this sense is proved and the other elements necessary for liability are established, the claimant can then recover for all the consequences of the prosecution at the stage when compensation is assessed. Thus, distress and anxiety caused by the prosecution will be taken into account when the level of damages is determined (see chapterIt has not been decided whether the requirement to show ‘damage’ could be satisfied by the claimant having suffered psychiatric injury; arguably this could come within the concept of risk of injury to limb. However, in practice, if psychiatric injury has resulted from the prosecution, it is likely that the charge involved damage to reputation and/or risk of imprisonment and so the criterion would be satisfied in any event.

# **Police prosecution**

The claimant needs to show both that he or she was prosecuted and that the person who he or she alleges brought the proceedings maliciously should be treated as a ‘prosecutor’.

A prosecution consists of ‘setting a judicial officer in motion’.Thus, the first of these ingredients will only raise a potential difficulty if an allegation is withdrawn at a very early stage, before the claimant is actually brought before a criminal court at all. However, it has been held that laying an information before a magistrate is sufficient in itself to amount to a prosecution for these purposes. Most criminal proceedings commence with a charge. Clayton and Tomlinson submit that a prosecution will have begun if the claimant has been charged,**15** as this is the point from which damage to the claimant may result. On this basis an action in malicious prosecution would lie even if the charge was then withdrawn before the case ever came before the court.

1. *Wijfcn v Bailey of Romford UDC [1915] 1 KB 600, CA.*
2. *Berry v British Transport Commission [1962] 1 QB 306, CA.*
3. *Sewell y National Telephone Co [1907] I KB 557, CA.*
4. *Clayton and Tomlinson Civil Actions Against the Police, para 8-024.*

The prosecutor who is sued must be a person who was 'actively instrumental’ in putting the law in motion. There has been no recent appellate case law which has considered the meaning of this phrase. It seems relatively clear that for the purposes of this tort, a prosecution may have a number of different ‘prosecutors. Under Prosecution of Offenders Act 1985 s3(2) the Crown Prosecution Service (CPS) takes responsibility for the conduct of the prosecution following charge or summons by the police. Thus, the CPS could be a prosecutor for the purposes of a malicious prosecution action (in the relatively unlikely event that there was evidence that the CPS had acted in bad faith). In addition, police officers who provide material evidence in support of the prosecution would also appear to be 'actively instrumental’ in the charge being brought or summons being issued. In the majority of malicious prosecution claims where it is alleged that officers fabricated evidence against the claimant, it is accepted by the defendant that those officers were prosecutors for the purposes of the tort. Less ' commonly, defendants argue that the only police officer who should be regarded as the prosecutor for these purposes is the officer who determined there was sufficient evidence to charge (usually the custody sergeant on duty at the time; although more senior officers will be involved if the offences are serious). It is suggested that this line of argument does not accord with the ‘actively instrumental' test which is broad enough to include any officer whose account formed a significant part of the prosecution case. Furthermore, such a narrow view of who is the prosecutor does not accord with the division of labour in modern policing and would severely emasculate the tort, as in many instances the officer determining whether there is sufficient evidence to charge would be unaware of any concoction in the officers’ accounts.

Where the evidence that forms the prosecution case comes from civilian witnesses it may be more difficult to argue that the police were prosecutors for the purposes of the tort and/or that there was any lack of belief in the case or malice on their part. (Unless it is contended that officers had improperly induced such witnesses to provide evidence against the accused in circumstances where the officers knew such accounts were likely to be unreliable.) In limited situations it is possible to establish that a member of the public who made a false complaint to the police is him or herself a prosecutor and so potentially

1. *Danby V Beardsley (1880) 43 LT 603.*
2. *In castes before the Court of Appeal this approach has not been questioned, e.g., Isaac v Chief Constable of the West Midlands Police [2001] EWCA CIV 1405.*

liable in a malicious prosecution claim instead of the police. The House of Lords considered this issue in Martin v Watson.™ They decided that a civilian reporting an alleged offence to the police could be a prosecutor if he or she falsely and maliciously gave information to the police, making clear that he or she is prepared to be a witness for the prosecution and where the facts of the offence are such that they are exclusively within the complainant's own knowledge, making it virtually impossible for the police to make an independent judgment on whether or not to proceed with the prosecution. The test was satisfied on the facts of Martin v Watson where the defendant had made a deliberately false complaint to the police that the claimant had exposed himself to her and there were no other witnesses to the incident. In contrast, the test was not satisfied in *Mahon v Rahn (No2)* ‘-where the Serious Fraud Office had considered information supplied by the defendants and also had obtained information from other sources before forming an independent judgment on whether to prosecute.

A defendant may be liable not only for initiating, but also for adopting or continuing proceedings if he or she is actively instrumental in this process and, having acquired positive knowledge indicating the accused’s innocence, nonetheless perseveres. Thus, for example, if police officers came to learn of information that indicated the person charged was in fact innocent, but they deliberately suppressed the material, rather than passing it on to the CPS, liability might result.

# **The criminal case must end in favour of the person suing**

The criminal prosecution must have ended in favour of the person suing for malicious prosecution.” This can be achieved by a verdict of acquittal, by the conviction being quashed on appeal,by an acquittal on a technicality, such as an error in the indictment, or by the discontinuance of proceedings.

1. *[1996] AC 74, HL.*
2. *[2000] 1 WLR 2150, CA.*
3. *See Tims v John Lewis Co Ltd [1951] 2 KB 459, CA (reversed on another point by the House of Lords: John Lewis $ Co Ltd v Tims [1952] AC 676).*
4. *Parker v Langley (1713) 10 Mod 145 and 209.*
5. *Hemiman v Smith [1938] AC 305, HL; Berry v British Transport Commission [1961] 3 All ER 65, CA.*
6. *Jones v Gwynn (1712) 10 Mod 148, 214; Wicks v Fenthum (1791) 4 Term Rep 247.*
7. *Watkins v Lee (1839) 5 M &. W 270.*

A claim can still succeed even if there was a conviction for a less serious offence than the one for which a person is charged.Where a trial concludes in a person being acquitted of some offences but convicted of others, there may be claims for malicious prosecution in relation to those offences on which there has been an acquittal. If offences are ordered to 'lie on the file' after the defendant has pleaded guilty to other offences, it is likely that this will be treated as an ‘adjournment’ of the proceedings rather than a termination, favourable or otherwise. If proceedings have been stayed because they have been held to be an abuse of process (for instance, because of the length of time it has taken to bring the prosecution), then the ‘stay’ would probably be regarded as a termination in favour of the claimant, given that those reasons usually advanced for the imposition of this requirement in the tort of malicious prosecution, would not be applicable in the circumstances. The most commonly stated reasons for the rule requiring a favourable termination of the prosecution are that the rule exists to prevent individuals challenging the correctness of a subsisting judgment by a criminal court in collateral civil proceedings and that it exists to preclude civil actions where the criminal proceedings have shown that there was sufficient evidence to support a prosecution.

Special problems arise if someone is bound over to keep the peace and to be of good behaviour. If he or she is bound over after the hearing of a ‘complaint ‘the case does not end in his or her favour and he or she cannot sue. M More commonly, however, bind-overs are agreed to by the defence before the case is heard, in exchange for the prosecution offering no evidence on the charge before the court. In Hourihane v Metropolitan Police Commissioner0 the police applied to strike out a claim for malicious prosecution where the claimant had agreed to a bind-over, the CPS had offered no evidence, and the charges (of disorderly behaviour) were duly dismissed. The Court of Appeal

1. Boalerv Holder (1887) 51 JP 277.
2. Reed v Taylor (1812) 4 Taunt 616; Leibov Buckman Ltd [1952] 2 All ER 1057, CA, provided 'damage’ in the sense discussed above results from the offences that terminated in the claimant’s favour.
3. See, e.g., *Fleming the law of Torts (9th edn, LBC Information Services, 1998) p678. Under Magistrates’ Courts Act 1980 si 15.*
4. *Everett v Ribbands [1952] 1 All F, R 823, CA*; see also *Bynoe v Bank of England [1900-03] All ER Rep 65.*

If the complaint is rejected and thus the opportunity to sue arises, strictly speaking the action lies in malicious process, as discussed below.

1. *(1994) Times 11 December, CA*.

held that it was impossible to draw any inference that proceedings had terminated adversely to a defendant from the mere statement that he or she was bound over to keep the peace. The court said there might be many reasons why a defendant would prefer to agree to be bound over rather than run the risk of conviction. As the issue in the civil proceedings was whether the charges were brought maliciously and without reasonable and probable cause, the existence of a record showing that, following dismissal of the charges, the claimant was bound over, could not be a good ground for striking out the claim. However, in practice it is likely that the credibility of the claim for malicious prosecution would be adversely affected unless the claimant can convincingly explain why he or she accepted a bind-over in the circumstances.

|h If there is a subsisting conviction, a claim for malicious prosecution cannot succeed, even if there is no further right of appeal and even if it can be proved that the conviction was obtained by fraud.”

The prosecution must lack reasonable and probable cause. Reasonable and probable cause has been defined as:

1. an honest belief in the guilt of the accused based upon a full conviction, founded on reasonable grounds, of the existence of a state of circumstances which, assuming them to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. This definition has been approved and followed in subsequent cases. In *Glinski v Mclver” the House of Lords* held that a claimant has to prove one of two things in order to establish that there was a lack of reasonable and probable cause, namely:
2. the prosecutor did not believe in the guilt of the claimant; or a person of ordinary prudence and caution would not conclude in the light of the facts honestly believed at the time that the claimant was probably guilty of the relevant offence.
3. *Basebe v Matthews (1867) LR 2 CP 684.* Although where a dishonest abuse of authority can be shown a claim might arise in misfeasance, as discussed at para 7.50.
4. *Hicks v Faulkner (1878) 8 QBD 167, 171.*
5. *[1962] AC 726.*

The first element involves a subjective evaluation of the state of the prosecutor's mind at the time of the prosecution. The second element entails an objective assessment of whether there was a sufficient basis for the prosecution on the information known at the time. Thus, there must be actual belief and reasonable belief in the probable guilt of a person for there to be reasonable and probable cause to prosecute. The two elements will be considered in turn.

**Belief in the claimant’s guilt**

**7**In a trial by judge and jury, this is an issue to be evaluated by the jury, provided there is some evidence to support the claimant's contention that police officers lacked an honest belief in his or her guilt.If the criminal prosecution is based on the accounts of officers as eyewitnesses to the alleged crime involving the claimant (for example where he or she is charged with assaulting an officer or obstructing the officer in the execution of his or her duty), the legal position is relatively straightforward. If the claimant gives a conflicting account of events and contends that the officers fabricated their statements in support of the criminal prosecution, the jury simply has to determine which party is giving the truthful version. If the jury finds that the officers produced a concocted account of events, it must follow that they lacked an honest belief in the claimant's guilt. The strength of the claimant’s case in such circumstances is likely to depend upon factors such as the credibility of his or her own account, whether he or she has witnesses to the events in question, whether there are discrepancies between the officers' accounts and/or inconsistencies with contemporaneous documentation and/or inconsistencies with other known facts such as injuries.

The position is more complicated if the evidence in support of the prosecution comes from a number of sources, including non-police sources, and the relevant police officers did not witness the alleged offence. If the central evidence against the claimant comes from civilian witnesses or from expert forensic analysis, in many circumstances it will be difficult to establish that officers did not honestly believe in the prosecution. However, it is important to bear in mind that it is insufficient for officers to believe in the claimant’s guilt in a general sense; they must believe in the charge brought and in the case that is

1. 34 *Herniman v Smith [1938] AC 305, Hi; Dallis, on v Cajfery [1965] QB 348.*
2. For further detail see the discussion of the respective roles of judge and jury at *paras 13.31-13.34 and 13.39-13.40.*

Put forward against the claimant must the claimant.” Thus, to take an example, police may believe that X is a drugs supplier on the basis of circumstances concerning his lifestyle and associates, but if they plant drugs at X's address and then prosecute on the basis of discovery of those drugs, they would not honestly believe in their case. Situations in which police officers dishonestly create evidence to support the prosecution of someone who they believe has committed crime is sometimes referred to as ‘noble cause corruption’. Whether there is any nobility in such actions is debatable. In any event, it is submitted that such conduct may amount to a lack of honest belief in the case put forward and thus a lack of reasonable and probable cause, for the purposes of the claim in malicious prosecution (provided, of course, the claimant can prove the officers’ alleged misconduct). Nonetheless, the current state of the caselaw does not make clear what proportion of the prosecution evidence must be discredited by the claimant as dishonest concoction in order to show that officers lacked an honest belief in their case. Thus, if in the previous example, police officers genuinely found drugs at X’s address but fabricated incriminating admissions purportedly from X to bolster the prosecution, would the subjective element of lack of reasonable and probable cause have been established? It is submitted that the answer should be in the affirmative, as officers could not have believed a central element of their case. Equally, the same conclusion should apply if officers were shown to have obtained significant witness accounts by intimidation or inducements and then, knowing the circumstances in which they had been obtained rendered them suspect, dishonestly suppressed those circumstances and put forward the same as reliable evidence. Whether the claimant can show a lack of honest belief by proving that part of the evidence was obtained by officers dishonestly or improperly, is likely to depend upon the significance of that evidence to the overall prosecution case.

A further aspect to consider is how a claimant raises sufficient evidence of bad faith for the case to be left to the jury on this issue, in circumstances where he or she cannot deny the officers account from first-hand knowledge. Mere suspicion that officers concocted evidence or bullied witnesses will not suffice, but a process of inference may be relied upon where there are (for example) substantial inconsistencies

1. *See the speeches of Viscount Simmonds, Lord RaddifFe, Lord Denning and Lord Devlin in Glinski v Mclver [1962] AC 726.*

A potential claim in misfeasance could also arise in these circumstances if the officers' conduct amounted to a dishonest abuse of their authority.

with contemporaneous records or inexplicable changes in accounts given. A very good example of this enquiry in to the officer's state of mind is the decision of the Court of Appeal in Paul v Chief Constable of Humberside Police™ The court decided that the trial judge had erred in withdrawing claims in false imprisonment and malicious prosecution from the jury, as there was sufficient material on the particular facts to enable inferences to be drawn that the officers were not acting in good faith, in that they had arrested and charged the claimant to deflect attention from their own potential culpability in relation to the death of Christopher Alder in police custody, rather than out of a considered assessment of the evidence. Less commonly, there may be direct evidence available, for example from witnesses themselves that they were threatened or intimidated by officers into falsely incriminating the claimant, or evidence from what officers themselves said at the time, for example telling a claimant ‘We know you didn’t do it, but we’re going to nick you anyway'. However, it is impermissible to rely simply on the objectively weak nature of the prosecution case and contend from this that officer could not have honestly believed in the claimant's guilt/' However, it is arguable that the weakness of the case is one circumstance that should be considered, along with all others, when assessing whether inferences as to a lack of honest belief can be drawn.

It is well established that a lack of honest belief in the case cannot be inferred simply from proof that officers had an ulterior motive for the prosecution. Thus, if officers prosecute Y because she brought a previous complaint against one of their colleagues, but the case was supported by sufficient, genuine evidence indicating that Y was probably guilty, she would not have a viable claim in malicious prosecution. Similarly, if there is evidence that a white man and a black man are both guilty of a crime, but out of racism the police prosecute only the black man, a claim in malicious prosecution would not be made out.This is not to say that the same facts cannot be used to support both a finding of malice and a finding of lack of reasonable and probable cause,

1. *See the speech of Lord Denning in Glinski v Mclver [1962] AC 726.*
2. *[2004] EWCA Civ 308.*
3. *Glinski v Melver [1962] AC 726. See, e.g., the speech of Lord Raddiffe.*
4. *See Clayton and Tomlinson Civil Actions Against the Police {3rd edn, Thomson Sweet & Maxwell, 2004) para 8-042.*
5. *Glinski v Mclver [1962] AC 726; Matin v Commissioner of Police of the Metropolis [2002] EWCA Civ 907.*

Although an action under the **Race Relations Act 1976** {as amended) may arise, **see chapter 10.**

if those facts point towards officers lacking honest belief in the evidence put forward, for instance where evidence is fabricated. In the relatively unusual event that the defendant fails to offer any explanation for the basis of the prosecution in circumstances that appear to call for one, the omission can be treated as evidence of a lack of reasonable and probable cause. Sometimes a defendant will seek to defend a contention of lack of honest belief on the basis that the prosecution was approved by the CPS and/or counsel and so, it is said, officers were simply following advice. However, this will not avail the defendant if officers withheld information or the decision was based on evidence that the officers knew to be concocted or otherwise substantially flawed.

# Objective lack of evidence supporting the prosecution

Even if the prosecutor honestly believed in the case put forward against

the claimant, there will be a lack of reasonable and probable cause for the proceedings if the evidence was too weak to properly support a case. If the judge is sitting with a jury, the jury first decides any disputed facts that bear on this issue, for example, as to what information was known to the prosecutor at the time or as to the level and nature of inquiries that were actually made and then the judge rules upon the objective question of whether there was sufficient evidence to support the prosecution **(see also para 13.31).**

It has been suggested that there are a number of steps that an ordinarily prudent and cautious prosecutor would undertake; specifically, he or she would:

* take reasonable steps to ascertain the true state of the case.
* consider the matter on the basis of admissible evidence only; and in all but plain cases, obtain legal advice as to whether a prosecution is justified and act upon that advice.

Thus, it is possible that a lack of reasonable and probable cause can be established from a failure to follow obvious lines of inquiry, if doing so would have negated a viable case against the claimant.46 However, it is a question of degree. A prosecutor is not required to test every possible relevant fact before taking action: ‘His duty is not to ascertain whether there is a defence but whether there is a reasonable and probable cause for the prosecution'.47 48 49 If the prosecutor was mistaken about a matter of fact which, if true, would have given sufficient basis for the prosecution, the issue is whether the mistake was a reasonable one to make. The significance of taking legal advice has been considered under the discussion of the subjective element above. The fact that the claimant may have been convicted at trial is not treated as decisive of this issue against him or her, if the conviction is later overturned on appeal.41' If the Court of Appeal when overturning a conviction expresses a view about the lack of evidence in support of the prosecution, it is unclear to what extent the claimant can rely upon this opinion in a subsequent civil action.

1. *Gibbs v Rea [1998] AC 786, PC.*
2. *See Glmski v Mclver [1962] AC 726; Abbott v Refuge Assurance Co [1962] 1 QB 432.*
3. *See Abbott v Refuge Assurance Co [1962] 1 QB 432.*
4. *tor a recent example in a malicious process case sees Keegan v Chief Constable of Merseyside Police [2003] 1 WLR 2187.*

If a claimant establishes a lack of reasonable and probable cause by the objective route, rather than by showing that officers did not honestly believe in the case put forward, it may well be difficult to show the further necessary ingredient of malice, unless there is dear evidence of an improper purpose, as discussed below.

**The police acted maliciously**

In order to prove that the police acted maliciously, it must be shown that their motive, or their main motive, was something other than the desire to bring the claimant to justice. In circumstances where the claimant establishes that officers could not have believed he was guilty because they had concocted the account of his alleged criminality (usually in an attempt to mask their own misconduct), there will be no difficulty in establishing malice. For example, in Thompson v Commissioner of Police for the Metropolis” police falsely alleged that the claimant had bitten an officer's finger and assaulted others in order to cover up their own brutality towards her as she was manhandled into a cell at the police station.Additionally, malice possible relevant fact before taking action: ‘His duty is not to ascertain whether there is a defence but whether there is a reasonable and probable cause for the prosecution'.If the prosecutor was mistaken about a matter of fact which, if true, would have given sufficient basis for the prosecution, the issue is whether the mistake was a reasonable one to make. The significance of taking legal advice has been considered under the discussion of the subjective element above. The fact that the claimant may have been convicted at trial is not treated as decisive of this issue against him or her, if the conviction is later overturned on appeal.If the Court of Appeal when overturning a conviction expresses a view about the lack of evidence in support of the prosecution, it is unclear to what extent the claimant can rely upon this opinion in a subsequent civil action.

1. *Herniman v Smith [1938] AC 305, HL, per Lord Atkin at 319.*
2. *Hicks v Faulkner (1878) 8 QBD 167,*
3. See, e.g., *Hemiman v Smith [1938] AC 305, HL.*
4. Although no question of issue estoppel arises as the two parties are not the same, one would expect considerable weight to be attached to the Court of Appeal’s view.
5. *Stevens v Midland Counties Railway (1854) 10 Exch 352.*
6. *[1997] 2 All ER 762.*
7. *Commissioner of Police of the Metropolis v Gerald (1998) 10 June, CA, unreported, is another similar example.*

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**Additionally, malice**

1. *Herniman v Smith [1938] AC 305, HL, per Lord Atkin at 319.*
2. *Hicks v Faulkner (1878) 8 QBD 167,*
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6. *[1997] 2 All ER 762.*
7. *Commissioner of Police of the Metropolis v Gerald (1998) 10 june, CA,* unreported, is another similar example.

Although lack of reasonable and probable cause can never be inferred from malice (see above), a lack of reasonable and probable cause can provide evidence of malice.However, the extent to which this is possible depends upon the particular circumstances. If it has been shown that officers did not honestly believe in the charges brought, this will afford strong evidence of malice, for the reasons already discussed. However, establishing a lack of reasonable and probable cause by showing that, objectively viewed, there was an insufficient basis for the prosecution, does not generally provide evidence of malice as this state of affairs is not inconsistent with the prosecutor acting for the proper motive of seeking justice; he or she may simply have been careless, This is well illustrated by the decision in Thacker v Crown Prosecution Service,515 where an allegedly weak prosecution was ultimately discontinued. The Court of Appeal said that even if it could be shown that on the objective test there was a lack of reasonable and probable cause for the prosecution and that representatives of the CPS were remiss in not appreciating this earlier, there was no evidence that they acted in bad faith. In the malicious process case of Keegan v Chief Constable of Merseyside Police,the claimant sought to overcome this difficulty in relation to officers who sought a search warrant on the basis of slender evidence, by arguing from analogy with caselaw concerning the tort of misfeasance in a public office, that ‘malice' now bore an expanded meaning and included circumstances where officers acted with reckless indifference to the legality of their conduct **(see para 7.34)**. The Court of Appeal rejected this argument, reaffirming that malice required proof of an improper purpose. They held there was no evidence of malice on the facts as officers had obtained and executed the search warrant because they were genuinely seeking to recover stolen monies, a perfectly proper purpose (despite the lack of reasonable and probable cause for the warrant).

1. *See Clerke (Lindsell on Torts (18th edn, Sweet & Maxwell, 2000) para 16-37 and the authorities cited therein.*
2. *Brown v Hawkes [1891] 2 QB 718, 722,*
3. *See Haddrickv Heslop (1848) 12 QB 267; Brown v Hawkes [1891] 2 QB 718, 722 and Tempest v Snowdon [1952] 1 All ER 1.*
4. *Meeting v Grahame White Aviation (1919) 122 LT 44; Gibbs v Rea [1998] AC 786, PC.*
5. *(1997) Times 29 December, CA*.
6. 5In such circumstances an action in negligence would also be problematic, because of the difficulty of showing the existence of a duty of care, as discussed at para 8.56). *[2003] 1 WLR 2187.*

Whether there is some evidence of malice so that a jury could properly conclude that this element of the tort was proved, is a matter for the judge to decide. Whether or not, on that evidence, the prosecutor’s motive was indeed malicious is a question of fact for the jury to decide.

**European Convention on Human Rights**

Convention rights do not appear to expand the circumstances in which a claimant can succeed in an action for malicious prosecution. ECHR article 5(5) provides that everyone who has been detained in contravention of article 5 shall have an enforceable right to compensation. However, a period of detention is regarded as lawful for these purposes if carried out pursuant to a court order, made within the court’s jurisdiction, even if that order was subsequently quashed on appeal.6' Accordingly, where a conviction is quashed on appeal after the appellant has spent time in custody, any available remedies will normally arise in relation to an action for malicious prosecution or misfeasance in a public office, rather than under the Convention. The possibility of claiming compensation from the Home Office in such circumstances is looked at separately **(in chapter 7).**

1. *Hicks v Faulkner (1878) 8 QBD 167; Broum v Hawkc.s [1891] 2 QB 718; Daltison v Caffrey [1965] QB 348.* The respective roles of judge and jury are considered in more detail at paras 13.31-13,34 and 13.39-13.40.
2. *Benhamv UK (1996) 22 F.HRR 293.*

# Structure and functions of the IPCC Structure

The IPCC is a body set up by Police Reform Act 2002 Part 2, The IPCC replaces the PC A. It consists of a chairman formally appointed by the Queen (who is, therefore, not an appointee of the Home Secretary) and 'not less’ than ten other Commissioners appointed by the Home Secretary. All must be independent of the police.

The chairman and members of the Commission can be appointed for up to five years, and such period can be renewed. The extension of the appointment period from three years for the PCA is intended to increase the independence of the chairman and the commissioners from the Home Secretary. There are very limited provisions for removing the chairman or other members of the Commission from office.6 7 8 The IPCC can have up to two deputy chairmen, has a chief executive, and can appoint staff (including staff on secondment from the police)

The IPCC has the power to set up regional offices and has offices in Manchester, the Midlands, Cardiff and London.

**The functions**

The IPCC’s functions are exercised in relation to three matters:

* 1. the handling of complaints made about the conduct of ‘people serving with the police
  2. recording other matters where there may have been misconduct justifying criminal or disciplinary proceedings (known as 'conduct matters');
  3. the manner in which complaints or conduct matters are dealt with by the police and police authorities

IPCC has to ensure that suitable arrangements under Police Act 2002 Part 2 are maintained by itself, police authorities’ chief officers in relation to these functions. The arrangements be conducive to and facilitate the reporting of misconduct. arrangements must be kept under review, be efficient and effective, ifest an appropriate degree of independence' and ensure that confidence is established and maintained in the arrangements.” e IPCC has a proactive role in recommending changes to the ements, and also advising on 'police practice in relation to other rs’ arising from its work as it feels necessary or desirable. PCC can do anything which facilitates, or is conducive or ltal to, its functions. However, it has no functions in relation to respect of a complaint or conduct matter which relates to the direc-d control of a police force by a chief officer or his delegate.12 IPCC has a number of formal reporting functions. In addi-the requirement to produce annual reports, the IPCC must (port to the Home Secretary, when requested, on the exercise of \_eral functions.13 The IPCC can also submit other reports on ‘onal or grave matters which it feels should be drawn to the Secretary’s attention, and can produce reports containing advice ommendations in relation to police practice,’\*

IPCC has the power to require that information from police is provided for the purposes of fulfilling its functions1' and to time limits within which the information must be provided, cc can also require a police force to allow it access to prem-d to documents and other things on the premises to examine the cy and effectiveness of the police force’s arrangements for ing complaints,u and for the purposes of any investigation the if supervising, managing or carrying out itself.