



## The duty of the police to enforce the law

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Section Home Affairs Section

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Section 2 of the *Police Reform and Social Responsibility Act 2011* ('the Act') gives chief constables responsibility for the direction and control of their respective police forces. Chief constables must exercise their power of direction and control in such a way as is reasonable to assist the relevant police and crime commissioner to exercise the commissioner's functions. Section 8 of the Act states that chief constables must, in exercising the functions of chief constable, have regard to the police and crime plan issued by the police and crime commissioner for that police area. Police and crime commissioners have a duty (under section 5 of the Act) to issue a police and crime plan for their area setting out, amongst other things, the police and crime objectives for the area. Sections 5-7 of the *Crime and Disorder Act 1998* require the police and local authorities to work together and with other key agencies and the community to formulate and implement a crime and disorder strategy for reducing crime and disorder (including anti-social and other behaviour adversely affecting the local environment), combatting the misuse of drugs, alcohol and other substances and reducing re-offending in the area.

There is case law to suggest that, although under a general duty to uphold the law, chief officers of police retain discretion as to the degree of effort they will attach to enforcing any particular law at any particular time. Individual police officers also have wide discretion over how and when they make use of the powers available to them. The actions (or inactions) of the police can be challenged in the courts, but in practice the courts have generally been reluctant to involve themselves in making judgments about the exercise of police discretion and legal challenges have tended to be unsuccessful.

The discretion possessed by the police in enforcing the criminal law was considered by the Court of Appeal in the case of *R v Metropolitan Police Commissioner, ex parte Blackburn*

(1968)<sup>1</sup> which involved a legal action brought by a private individual who complained that the police had adopted a policy of not prosecuting London gaming clubs for illegal forms of gaming. The court found that the Commissioner was not an entirely free agent and had a legal duty to the public to enforce the law, but that the court would not question his discretion when reasonably exercised. The court said:

No minister of the Crown can tell [the Commissioner] that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone.

The appeal was therefore dismissed.

In 1972 the same individual brought similar proceedings asking the court to order the police to enforce the law against the publication and sale of pornography.<sup>2</sup> Again the court made clear that if the police were carrying out their duty to enforce the law, the court would not interfere with their discretion, but that it would in an extreme case where it was shown that they were neglecting their duty. The same person went on to make another unsuccessful attempt in 1980 to compel the police to enforce the law on obscene publications.<sup>3</sup> It was, however, held that the police were doing their best in a difficult situation to enforce the law with the resources available to them and there was no justification for the courts to interfere. The appeal was therefore dismissed.

A more recent case touching on these issues was *R v Chief Constable of Sussex, ex parte International Trader's Ferry Ltd (1998)*.<sup>4</sup> Here, it was held that, having regard to the chief constable's lack of resources, it was not unlawful - whether viewed from a domestic or European perspective - for the police to refuse to provide a police presence for more than two days a week, to protect the applicant's lorries from animal protesters and ensure the delivery of livestock to Shoreham Harbour. It was held that the right claimed here (that is, to trade lawfully) was not an absolute right by which the chief constable owed a duty to protect the trader at whatever cost and in whatever way necessary. In a situation where there were conflicting rights and the police had a duty to uphold the law, the police might, in deciding what to do, have to balance a number of factors and in so doing exercise their judgement and discretion. Although the courts would readily review the way in which decisions were reached, they would respect the margin of appreciation or discretion which a chief constable had. If the chief constable had carried out the required balancing exercise and had not been shown to have ignored relevant facts or taken account of irrelevant factors in a way which vitiated his overall decisions his decision would not be held to be unreasonable and would be allowed to stand.<sup>5</sup>

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<sup>1</sup> *R v Metropolitan Police Commissioner, ex parte Blackburn* [1968] 2 QB 118

<sup>2</sup> *R v Metropolitan Police Commissioner, ex parte Blackburn (No 3)* [1973] 1 QB 241

<sup>3</sup> *R v Metropolitan Police Commissioner, ex parte Blackburn* (1980) TLR 7.3.80

<sup>4</sup> *R v Chief Constable Of Sussex, ex parte International Trader's Ferry Ltd* (1998) LTL 11/11/98 : TLR 16/11/98 : (1998) 3 WLR 1260 : (1999) 1 AER 186

<sup>5</sup> The test of reasonableness was established in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* (1948) 1 KB 223. To summarise broadly, even if an authority has the power to do something it can only exercise that power in a reasonable way and, if it behaves unreasonably in exercising its powers, the courts may intervene.