

A review to ascertain the circumstances in which Anthony Leon Peart, also known as Anthony Leon Joseph came to be at liberty on 29 July 2005

A report by Her Majesty's Crown Prosecution Service Inspectorate together with Her Majesty's Inspectorate of Constabulary, Her Majesty's Inspectorate of Court Administration and Her Majesty's Inspectorate of Prisons

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FOREWORD BY HM CHIEF INSPECTORS

This is the report of a review undertaken to ascertain the circumstances in which Anthony Leon Peart (also known as Anthony Leon Joseph) came to be at liberty on 29 July 2005. It was undertaken at the request of HM Solicitor General, the Parliamentary Under Secretary of State (Ministry of Justice) and the Minister of State for Policing (Home Office) and led by HM Crown Prosecution Service Inspectorate (HMCPSI). It was supported by HM Inspectorate of Constabulary (HMIC), HM Inspectorate of Court Administration (HMICA) and HM Inspectorate of Prisons (HMI Prisons).

The tragic background to the review was the fatal stabbing of Richard Whelan by Peart on 29 July on the top deck of a London bus. The stabbing occurred after Richard Whelan had remonstrated with Peart for throwing chips at passengers. After two inconclusive trials, Peart pleaded guilty at the Central Criminal Court to the manslaughter of Richard Whelan on the grounds of diminished responsibility.

There was extensive public concern because Peart had only been released from prison earlier that day and at a time when there was a warrant in existence which had been issued by Liverpool Crown Court for his arrest. Our task was therefore to identify as precisely as possible the circumstances leading to his release, any lessons to be learned, and to make recommendations. The exercise has revealed a far more complex sequence of events than the basic facts initially suggested. It has not been necessary for the review team to enquire into the circumstances of the killing itself. It was perpetrated by one of the many individuals who commit offences in multiple jurisdictions. The task for the authorities in keeping track of and co-ordinating different sets of proceedings within the criminal justice system (CJS) is a demanding one. However, the most striking feature of our findings does not relate to the systems and processes which were then in operation (some of which could be stronger), but to the attitudes and cultures of the CJS to the handling of cases involving the commission of further offences while the defendant is on bail and the degree of tolerance towards non-compliance with bail conditions. As is so often the case, there are also lessons to be learned about improving the quality of information available and strengthening procedures for communicating between different criminal justice agencies.

In the final analysis the review team found that, despite Peart's history of offending, there was nothing in that history which should have alerted the criminal justice authorities to the fact that he was a man capable of extreme spontaneous violence. Nor was there one specific act or omission which led to his release while the warrant remained in existence. Fairness also requires us to acknowledge at the outset of this report that the warrant itself would not have been issued by the Liverpool Crown Court had the circumstances of Peart's non appearance at that court been known. This does not, however, detract from some very unsatisfactory features of the overall handling of the series of cases arising from his conduct.

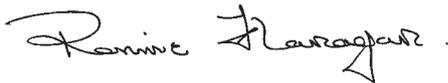
The findings of the review team and the recommendations are the result of a diligent and thorough enquiry carried out briskly. We take this opportunity to acknowledge the hard work of the team and to thank them.

Thanks also go to the Surrey Police, Merseyside Police, the Crown Prosecution Service (CPS) in Surrey and Merseyside and to HM Courts Service and HM Prison Service for the full co-operation received from them throughout the enquiry.

Nothing can guarantee that such a tragic event will never occur again, but we hope that this report will substantially reduce that likelihood.



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INTRODUCTION

- 1.1 On 29 July 2005, Richard Whelan was fatally stabbed by Anthony Leon Peart (also known as Anthony Leon Joseph) on the top deck of a London bus. Richard Whelan had done nothing more than remonstrate with Joseph for throwing chips at passengers. On 22 November 2007, Joseph pleaded guilty at the Central Criminal Court to the manslaughter of Richard Whelan on the grounds of diminished responsibility. The defendant contended that he was a paranoid schizophrenic and that the balance of his mind was disturbed at the time of committing the act. His plea of guilty followed two trials, in each of which the jury were unable to agree on whether he was guilty of murder. In accordance with convention the Crown did not seek a second re-trial. Joseph was ordered to be detained indefinitely by the Central Criminal Court on 21 December 2007.
- 1.2 On the day that Richard Whelan was unlawfully killed, Joseph had been released from the privately run Forest Bank prison in Pendlebury, Greater Manchester. At the time of his release there was a warrant outstanding for his immediate arrest.
- 1.3 Following Joseph's admission of manslaughter, Her Majesty's Solicitor General, Vera Baird QC MP, wrote immediately to the Chief Inspectors of Constabulary, the Crown Prosecution Service (CPS), Court Administration and Prisons inviting them, in conjunction with the operational heads of the agencies concerned, to look into the circumstances of the case with a view to identifying any issues for CJS partners.
- 1.4 The inspectorate review team has worked closely with the agencies involved to determine the chronology of events, processes and issues that led to the events which we set out below. However, the recommendations in this report and the evaluation of what took place are those of the inspectorates.

Terms of reference

- 1.5 The terms of reference of the review were:

"To ascertain the circumstances in which Anthony Leon Peart (also known as Anthony Leon Joseph) came to be at liberty on the 29 July 2005, to identify any lessons which should be learned from those events and to make recommendations."

Actions carried out by the review team

- 1.6 In the course of the review the team has examined the following:
 - Merseyside Police papers in respect of the defendant, including Police National Computer (PNC) documentation;
 - the CPS Merseyside file;
 - HM Courts Service papers in respect of the Liverpool Crown Court proceedings;
 - HM Courts Service papers in respect of the Central Criminal Court proceedings;
 - Surrey Police papers in respect of the defendant, including PNC documentation;
 - the CPS Surrey file;
 - HM Courts Service papers in respect of the South East Surrey Magistrates' Court proceedings; and
 - HM Prison Service's files in respect of the defendant's stay in HMP Elmley and Forest Bank prison.

- 1.7 In addition the review team has spoken with HM Prison Service staff at Elmley and Liverpool, and Kalyx (the private provider) staff at Forest Bank. Although the defendant was not in custody at HMP Liverpool during any significant period in the proceedings, this prison played a central role in the events that played out at Liverpool Crown Court.
- 1.8 There have also been a number of informal conversations with representatives of the relevant organisations, clarifying matters of a factual nature. However due to the passage of time some information is no longer available, although those we have spoken with have done their best to recall events as accurately as possible.
- 1.9 It is, however, surprising that more was not done by the relevant criminal justice agencies to compile a definitive chronology of events at an early stage. The implications for the CJS of what happened were apparent soon after the unlawful killing of Richard Whelan. Whilst there could not have been any formal review until the determination of the proceedings at the Central Criminal Court, an initial fact finding exercise while events were still fresh in the minds of those involved would have assisted both the agencies and this review team.

Key findings

- 1.10 We set out below the findings of this review and have, in accordance with the terms of reference, made recommendations. The findings and our recommendations address a number of issues, including the role of the prosecution post-conviction in deciding issues of bail or custody, access to the PNC by custodial establishments and the execution of warrants in respect of persons in custody. The review team also considered whether there was anything which should have alerted the criminal justice authorities to the fact that the defendant was a man capable of extreme spontaneous violence. We found that there was nothing in the defendant's previous offending, or the information on any file held by the criminal justice agencies, to suggest this to be the case.
- 1.11 However, the most striking feature of our findings does not relate to the systems and processes which were then in operation (some of which could be stronger), but to the attitudes and cultures within the CJS to the handling of cases in which there are the commission of further offences while the defendant is on bail and compliance with, and enforcement of, bail conditions. Whilst we recognise that the thousands of offenders passing through the CJS each year include many who commit offences in multiple jurisdictions, there seems to be too ready an acceptance of the commission of offences while on bail, insufficient rigour in respect of checking the validity of proposed bail conditions, and an apparent acceptance of the continual breach of bail conditions.
- 1.12 There was nothing in the defendant's previous encounters with the CJS which makes it appropriate to point to a particular act or omission as constituting a predictable link in the chain of events leading to the killing by him of Richard Whelan. The history of offending, committing of offences while on bail and persistent breaching of bail conditions is, regrettably, not particularly different from that of many offenders. It would be rash of us to state that a sequence of events like this would never occur again if our recommendations were accepted and implemented successfully. However we do believe that reducing the extent to which disrespect of the orders of the court and for the law generally is tolerated, or even condoned, can make a difference. We therefore believe that if our recommendations are implemented the likelihood of any similar tragedy occurring could be reduced significantly.

- 1.13 We would also add that the CJS is complex and relies on accurate and timely information being passed between its component parts. The passing of information, updating of computer systems and compliance with standard procedures all rely on human beings to undertake those tasks correctly. No recommendation can remove the possibility of human error.
- 1.14 What we have recommended, however, should improve the quality of information available and strengthen procedures to ensure that the agencies communicate more effectively with each other.

The report

- 1.15 The first part of this report sets out certain background information about the defendant. It also provides a detailed chronology of events in respect of the various court hearings in London, Merseyside and Surrey and what took place between, and in preparation for, those hearings. We have indicated where it is unclear, due to the passage of time, exactly what occurred at any given time. The second part contains a commentary on our key findings together with appropriate recommendations.

A review to ascertain the circumstances in which Anthony Leon Peart, also known as Anthony Leon Joseph, came to be at liberty on 29 July 2005

BACKGROUND AND CHRONOLOGY

The defendant

- 2.1 Anthony Leon Joseph¹ was born in London² on 5 September 1984. Throughout the time of his offending he went under at least seven aliases and one false date of birth. During the course of events which we have been asked to investigate he went under two names, his birth name and Anthony Leon Peart. However, we shall refer to him as the defendant unless the use of either name has any significance to the events we are describing. It is important to note that both aliases were known and entered on the PNC on 18 December 2004, therefore any search of PNC under either name would have brought up the defendant's full record.
- 2.2 His record of offending is not as extensive as many, having been convicted on nine separate occasions between 2001-05. Most offences are for dishonesty, including one serious conviction for burglary. There are no convictions for assault, although there is one for possessing an offensive weapon in March 2002. We do know, however, that his last conviction in April 2005 for affray involved violence against an individual, although the role was minor compared with some of his co-accused.
- 2.3 The defendant started his offending in Cardiff in 2001, when he was aged 16. He then offended intermittently in various parts of the country, namely Liverpool, London and Hereford, until October 2002 when he received a two year custodial sentence for two burglaries in dwelling houses. The sentence was served in a number of young offender institutions, before conditional release in January 2004.
- 2.4 Following release from his sentence the defendant does not again feature in the CJS until July 2004, when he is fined by the Liverpool Magistrates' Court for failing to surrender to his bail. The details of any substantive offence in respect of which he failed to answer his bail are not known, but were clearly not proceeded with.
- 2.5 In August 2004 he spends, according to HM Prison Service records, eight days in custody as an unconvicted remand prisoner. However, there is no relevant entry on his list of previous convictions for around this time, which suggests the proceedings may have been dropped.
- 2.6 He does not come to notice again until the start of the sequence of events which lead up to the fateful night of 29 July 2005.
- 2.7 We make this important observation that up to this stage there is nothing in the record of previous convictions or any of the records kept by the authorities that make up the CJS, including the Prison Service, to suggest that the defendant was suffering from any mental disorder, or that he had a propensity for extreme violence.
- 2.8 In the course of our review we have been made aware of serious concerns expressed by a Consultant Child and Adolescent Psychiatrist in 1999 as to the possibility of the defendant harming others. It does not appear that this was taken further at that stage, and pre-dates his first recorded offending by two years. We are also aware that the defendant had been referred to

1 The review team has not had sight of the defendant's birth certificate. The name Anthony Leon Joseph is that which was first recorded on PNC when the defendant started offending.

2 Again, this information is based on the first entry on PNC.

mental health in-reach staff at Forest Bank prison, but declined to be assessed by them on a number of occasions. Our enquiries indicate that this referral was because he had made reference, on reception at Forest Bank, to previous incidences of self-harm and had also requested a single cell because of the nature of the alleged offences.

The London offence

- 2.9 This was an offence of affray committed by a number of men on an innocent male passer by. The defendant's involvement was minor, one punch to the victim, which is reflected in the sentence passed. Following his arrest, the defendant was released on bail to enable the police to seek pre-charge advice from the CPS. We are aware that the defendant, unlike his co-accused, failed to answer his bail and was not, therefore, charged at the same time. The proceedings in respect of the co-accused therefore became separated from the defendant's at an early stage.
- 2.10 Whilst the CPS file in respect of the co-accused has been traced, it has not been possible to find the papers that relate solely to the defendant. The custody record indicates that he was arrested on 1 March 2005 for failing to answer his bail and gave an address of 42 Delancey Street. He was then charged with the offence of affray and kept in custody overnight to appear at Bow Street Magistrates' Court (which is now closed) on 2 March 2005.

Bow Street Magistrates' Court, 2 March 2005

- 2.11 The defendant was remanded on conditional bail to 16 March 2005. His bail conditions were:
- to live and sleep at 42B Deleyney Street, Camden NW1;
 - curfew between 10pm-6am each day with doorstep conditions;³
 - report to Kentish Town Police Station between 2pm-4pm daily; and
 - not to go to the congestion charge zone.
- 2.12 42B Deleyney Street does not exist and it is unclear how this address came to be recorded on the bail notice. We discuss the implications of this in the second part of our report.
- 2.13 The review team has made extensive enquiries, but can find no record of the defendant complying with the bail reporting condition, or of any action being taken by the Metropolitan Police as a result of any non-compliance with this requirement. However, as we set out below, the condition not to go the congestion charge zone was actively policed.

Bow Street Magistrates' Court, 16 March 2005

- 2.14 The defendant is again remanded on conditional bail to appear on 6 April, but at this hearing the condition of reporting is relaxed to reporting to the police between 7pm-9pm every Tuesday, Thursday and Saturday. The error in respect of the defendant's address is repeated. We have been unable to ascertain on what grounds the reporting condition was relaxed. On 26 March 2005 the defendant was arrested in the west end of London for breaching the bail condition that forbid him to go to the congestion charge zone. It is apparent from the events in Liverpool on 3 April 2005 that the defendant retained his liberty.

3 A doorstep condition requires a defendant to present themselves, if required by a police officer, at the door of the premises where they are required to be during their hours of curfew.

The Liverpool offence

- 2.15 In the early morning of 3 April 2005 a burglary occurred at a student hall of residence in Liverpool. The defendant leant through an open window of an occupied accommodation unit and stole a laptop computer. He was seen in the vicinity later in the day and identified by one of the occupants as being the person responsible. At this time the defendant (who gave the name of Anthony Leon Peart) denied any involvement and was released, in respect of this allegation, on police bail to return to St Anne's Street Police Station, Liverpool on 16 May 2005, pending fingerprint and forensic analysis.
- 2.16 However, on arrest for this offence it was discovered through PNC that he was in breach of the bail conditions imposed by Bow Street Magistrates' Court on 16 March 2005 in respect of the offence of affray.
- 2.17 Merseyside Police arrested the defendant for breach of those bail conditions and he appeared before Liverpool Magistrates' Court on 4 April. The magistrates found the defendant had breached his bail conditions and he was remanded in custody to re-appear at Bow Street Magistrates' Court on 6 April.

Bow Street Magistrates' Court, 6 April 2005

- 2.18 On 6 April he appeared before Bow Street Magistrates' Court⁴ and was re-bailed on the same conditions as had been previously imposed by the court, including residence at the non-existent address. It appears that there was no verification of the address at either this or the earlier stage. The defendant was next due to appear at Bow Street on 20 April.

Bow Street Magistrates' Court, 20 April 2005

- 2.19 It is unclear whether the defendant appeared on 20 or 21 April. His list of previous convictions indicates that he was sentenced on 21 April at Bow Street Magistrates' Court for the offence of affray, when he was fined £150 with £50 costs.
- 2.20 At the conclusion of these proceedings the defendant remained on police bail to return to St Anne's Street Police Station on 16 May 2005 in respect of the burglary allegation. However, at this point he was no longer subject to any conditions on his bail.

Events of 16-18 May 2005

- 2.21 The defendant failed to surrender to his police bail, imposed by the Merseyside Police, on the 16 May and was entered on PNC as wanted. This was therefore the second time in the course of these events that he had failed to answer his police bail. In the early hours of 18 May he was detained in Liverpool city centre on suspicion of theft from a shop. This matter was not taken further as, due to the hour, the shopkeeper did not wish to make a complaint. However the defendant was identified as being subject to arrest for the burglary and was taken back into police custody where he made a full admission. At this stage the PNC was updated correctly to show that he was in custody.
- 2.22 Pre-charge advice was sought from CPS Direct⁵ and at 8.48pm on 18 May 2005 the defendant was charged with the burglary and held in custody to appear before the next sitting of Liverpool Magistrates' Court.

4 We believe this to have been by video link as the defendant was released from custody from HMP Altcourse, near Liverpool, on 6 April.

5 CPS Direct provides statutory charging advice to the police outside normal office hours and at weekends.

Liverpool Magistrates' Court, 19 May 2005

- 2.23 On 19 May the defendant appeared before Liverpool Magistrates' Court in respect of the charge of burglary. At this stage he was no longer on bail to any court. The court accepted jurisdiction and he consented to be tried by that court and pleaded guilty. On receiving information about his previous convictions and having regard to the nature and circumstances of the offence the court committed the defendant for sentence⁶ at Liverpool Crown Court on 27 June 2005.
- 2.24 The Liverpool magistrates granted the defendant conditional bail, namely:
- to live and sleep at 42B Delancey Street, Camden NW1;
 - curfew between 10pm-7am each day;
 - report to Kentish Town Police Station daily between noon-2pm.
- 2.25 It is of note that the address recorded by the Liverpool Magistrates' Court (42B Delancey Street, Camden NW1) as the defendant's place of residence is slightly different from that recorded by Bow Street Magistrates' Court. There is no evidence that the authenticity or suitability of this address was ever checked, which in the light of what had already transpired is at the very least surprising. However, this street does exist and is, as stated, in Camden.
- 2.26 The same day Merseyside Police inputted the details of this hearing, including the conditions of bail, correctly on PNC.
- 2.27 Our investigation has revealed that attempts were made by Merseyside Police to fax the bail conditions to Kentish Town Police Station. The bail documents were stored in the fax machine, which continued to try to send the information. After several failed attempts Merseyside Police faxed the bail conditions to the Area Control Room for Kentish Town Police Station on Monday, 23 May 2005, requesting they be forwarded to Kentish Town Police Station.
- 2.28 However, it is unclear whether the fax transmission to the Area Control Room was successful. Merseyside Police have no record of the transmission failing, but neither Kentish Town Police Station, nor the Area Control Room, has a record of ever having received the fax from Merseyside detailing the bail conditions. As before there is nothing to suggest that they ever carried out any checks or verification that this was the defendant's address or that it was suitable, or indeed, that they were ever asked to carry out these checks.

The Surrey charges

- 2.29 At 8.38pm on Friday, 10 June 2005 the defendant was charged with two offences under the Child Abduction Act 1984, namely unlawfully taking and detaining a female child under 16 years old (the Surrey charges).
- 2.30 Both the defendant and the child (who was aged 15) were known to the Surrey Police. The child had been reported frequently as a missing person between January 2004-April 2005. Throughout this time the child had a relationship with the defendant and was a willing party to the events that formed the substance of the Surrey charges, despite the opposition of her parents. On two occasions before the events leading up to the charges of 10 June the defendant had been investigated for offences arising out of his relationship with the child, once in respect of an allegation of threats to kill against the child's father and once by the Metropolitan Police in respect of an allegation of unlawful sexual intercourse involving the child. In February 2005 the

6 Section 3 Powers of the Criminal Courts Act 2003.

child had a pregnancy terminated. It is strongly believed that the defendant was the father, although this was denied by him when interviewed in respect of the Surrey charges. However, due to the child's failure to co-operate with the police, no proceedings were started.

- 2.31 There is no doubt that the child was a willing participant in the events leading up to the Surrey charges and did not co-operate with the police. She declined to be interviewed by them in respect of these matters.
- 2.32 On 21 May 2005 the child was again reported as missing and was believed to be with the defendant. She was not found until 27 May when she was arrested in Lewisham (London) on suspicion of theft from a shop and returned to the custody of her parents. During this time she had been in the company of the defendant. As a result of the enquiries made by the Surrey Police they discovered that his was in breach of bail conditions imposed for the Merseyside offence, and their records indicate that they notified the Merseyside Police of this fact. The Surrey Police have no record of whom they spoke with and Merseyside Police have no record of this conversation.
- 2.33 On 28 May the child was again reported as missing and was now believed to be with the defendant in the Brighton (Sussex) area. The defendant was entered on PNC as wanted by the Surrey Police on 2 June.
- 2.34 The intelligence about the defendant's location proved to be correct as he was arrested at 4.20pm on 9 June at Brighton. The information as to the exact his whereabouts was provided by the child's father who was also looking for her in Brighton. The child was also in Brighton, but not with the defendant at the time of his arrest. She was not found until 16 June.
- 2.35 At no stage was the defendant arrested by the Sussex Police for breaching his bail conditions for the Merseyside offence. Even if the Sussex Police had been aware of the breach there would have been significant disadvantages if he had been arrested it at this stage, not least of which would have been the requirement for the defendant to appear within 24 hours from his arrest for the breach before Brighton Magistrates' Court, to have that court adjudicate on whether the breach was proved. This would have seriously hindered the investigation of the Surrey charges.
- 2.36 No evidence, apart from a statement from the arresting officer, was gathered by the Sussex Police. However, while the defendant was in the custody of the Sussex Police he made a very brief written statement denying the abduction but confirming the child was in Brighton. The statement appears to have been written by the duty solicitor, although signed by the defendant.
- 2.37 The Sussex Police custody record identifies the defendant as having a violent nature, but states that there is no known risk so far as any mental condition. The information about the violent nature could have come from two sources, either warning 'flags' on PNC or his previous convictions. However, as we have discussed at paragraph 2.7 the previous offending did not suggest a propensity to commit serious violent offences.
- 2.38 The defendant was detained by the Sussex Police until approximately 7.42pm on 9 June (the last entry on the Sussex Police custody record) when he was handed over to Surrey Police officers who took him to Staines Police Station, where the custody record indicates that he arrived at 8.45pm on the 9th. The Surrey Police custody record also indicates that the defendant informed the custody officer that he did not suffer from mental illness.

- 2.39 The defendant was interviewed at length during Friday, 10 June and charged at 8.38pm. He admitted being with the child throughout the relevant period but indicated that she was with him voluntarily and he had tried to persuade her to go home. The custody sergeant refused to grant the defendant bail, and he was retained in custody to appear before the next available magistrates' court.
- 2.40 In June 2005, Surrey was only a 'shadow charging' area which meant that the police were not required to seek the advice of a prosecutor before the defendant was charged. They would also not have had access to CPS Direct. However, at this time the CPS and police had a co-located unit at Staines Police Station, and during the afternoon of 10 June the officer in charge of the investigation consulted with a prosecutor for approximately an hour about the circumstances of the case.
- 2.41 We find it surprising that neither the police nor the CPS kept a record of that consultation. As a minimum a record of what was discussed would have assisted the prosecutor who conducted the first court hearing on 11 June.

South East Surrey Magistrates' Court, 11 June 2005

- 2.42 The defendant was released from police custody at 7.35am on Saturday, 11 June, to be taken to court by the prisoner escort company. At this point a custody officer knowingly incorrectly updated their local system which resulted in PNC showing that the defendant had been remanded on bail. This was done to 'clear' the custody screen. The entry on the screen should not have been updated until the result of the court hearing was known. In 2005 it was the practice for Surrey Police to make no further update to PNC unless a defendant was given bail with conditions. This was stopped in early 2007 and compliance with the correct procedures is now monitored by the Surrey Police, which now operates the NSPIS⁷ system.
- 2.43 This failure to update PNC may have had some bearing on subsequent events, in particular the authorities' knowledge of the defendant's whereabouts at the time of the Liverpool Crown Court hearing on 27 June.
- 2.44 The defendant first appeared on the Surrey charges at South East Surrey Magistrates' Court, sitting at Redhill, on Saturday, 11 June 2005 (all subsequent magistrates' courts' hearings in Surrey were at the North Surrey Magistrates' Court, sitting at Staines). At this stage the police provided the CPS with an Early Administrative Hearing Remand File. The file sets out the evidence still to be obtained, in particular a statement from the child's father and her best friend. It also states that the child will not give evidence for the prosecution. The file does not state how long it would take the police to obtain the outstanding evidence.
- 2.45 The file contains a form MG7 which is compiled by the police and sets out the grounds they believe exist for opposing bail. It is important to note that the form indicates clearly that the defendant was on bail for the Merseyside offence and also in breach of the bail conditions imposed by the Liverpool magistrates. It does not specify the nature of the Merseyside offence, apart from referring to it as a burglary, nor does it specify that the defendant was awaiting sentence at Liverpool Crown Court. It does, however, show that there was no confusion caused by the use of two surnames, namely Joseph in Surrey and Peart in Merseyside.

⁷ The National Strategy for Police Information Systems (NSPIS) Custody system was developed as a national solution to improve the processing of persons brought into police custody.

- 2.46 Importantly, the prosecutor also had available a PNC printout taken at 10.02am on 11 June. This printout shows correctly that the defendant was on conditional bail to Liverpool Crown Court, with a duty to surrender to that court on 27 June 2005. It also sets out in full the bail conditions imposed by the Liverpool magistrates.
- 2.47 It was therefore clear that by no later than 11 June both CPS Surrey and Surrey Police were aware of the Merseyside connection, including the type of offence, bail conditions and next date of hearing in Liverpool.
- 2.48 The record of the defendant's previous convictions, which formed part of the printout, also appears to be correct as it includes his appearance at Bow Street Magistrates' Court on 21 April 2005 when he was fined for the offence of affray, referred to at paragraph 2.19 above.
- 2.49 Prior to the defendant appearing before the court the prosecutor undertook an initial review of the file and determined that at that stage, based on the information available, the evidential and public interest tests set out in the Code for Crown Prosecutors were met. The review endorsement on the CPS file was adequate.
- 2.50 The prosecutor opposed bail, but the CPS file does not state on what grounds. The defendant was legally represented and applied for bail. He put forward two addresses to which he could go and live, one of which was his father's. One was found to be not suitable and his father refused to have him at his address. The shorthand endorsement on the CPS file indicates that the magistrates remanded the defendant in custody, to next appear on 17 June, because there were substantial grounds to believe the he would commit further offences, interfere with witnesses and fail to surrender to bail.
- 2.51 The magistrates did not determine at the 11 June hearing whether they would retain jurisdiction or whether the alleged offences (which can be dealt with in either the magistrates' court or the Crown Court) were so serious that they had to be dealt with at the Crown Court.
- 2.52 The appearance on 17 June was to be by video link from the custodial establishment to which the defendant was taken. Magistrates do not determine where a person is to be held while in custody; this is a decision for the Prison Service having regard to a number of factors, including the nature of the offence, age and sex of the defendant and the availability of space. In this case the defendant was taken to HMP Elmley which is on the Isle of Sheppey in Kent.

HMP Elmley

- 2.53 On the defendant's arrival at HMP Elmley on 11 June he was booked into the prison in accordance with the standard procedures and, as part of that, a 'core' record was compiled. Amongst other things this is intended to capture information about other pending court proceedings, apart from those for which the defendant has been remanded. We have examined this core record and it contains an entry in pencil to indicate that the defendant has offences pending at Liverpool Magistrates' Court. This information was provided by the defendant on his reception, which may account for the error as to the court venue (which was in fact Liverpool Crown Court). It also accounts for why the entry is in pencil as the information provided by prisoners is often incomplete.

- 2.54 Some further checks were subsequently carried out by the custody office, but these were primarily focussed on the validity of the warrant of commitment⁸ from the magistrates' court. In any event, at this stage there was no other warrant in existence. Prisons do not check or cross-refer prisoners' personal details against PNC on arrival, which would have highlighted the alias (see paragraph 3.45). Nor, as we discuss in section three, do they have access to the PNC 'warned/missing' list which would indicate any pending charges or outstanding warrants. There was, however, poor inter-departmental communication between the prison custody office and reception and the pencilled entry by reception staff was not checked by the custody office. We consider this to have been poor practice and, in our opinion, this information should have been checked further, even though it could not be a failsafe process as it is reliant on information provided by prisoners.
- 2.55 The lack of any PNC check is substantiated by the cell sharing risk assessment carried out on 11 June which is annotated "No PNC", although HMP Elmley has its own PNC terminal. This implies strongly that there was no PNC printout of the defendant's previous convictions available from which to inform the assessment. There could be a number of reasons why this was not available. The normal routine at the time would have been to request such a printout for the benefit of the first night risk assessment. However, if the previous convictions were not requested on the first night, then it is unlikely that they would have been requested subsequently. There is no PNC printout of previous convictions on the defendant's core prison record.
- 2.56 A public protection pro-forma was completed by reception staff on 14 June 2005. The purpose of this form is to highlight whether the prisoner may be subject to restricted regimes due to public protection issues. The form is basic and the checks would have been made on the available information on the prisoner's file. There is no indication on the completed form whether a PNC printout of previous convictions was obtained to assist with the risk assessment, but the absence of such a printout suggests it was not. The completed document simply highlights that the defendant may be subject to restrictions under Prison Service Order 4400, chapter 1 (child protection), presumably due to the age of the victim in this case. However, there is nothing on the core record or any other Prison Service papers at this time to indicate that the defendant was a serious threat to others or himself.
- 2.57 The core record would have gone with the defendant when he was subsequently transferred to another prison on 7 July.

Events between 11-17 June 2005

- 2.58 There is no indication on CPS or police files of any communication between CPS Surrey and the Surrey Police in the period between the first and second court appearances on the Surrey charges. As it was apparent that the defendant was denying the allegations, a request for the full file of evidence could have been made at this early stage. We are, however, satisfied that this did not delay the investigation or the preparation of the file.
- 2.59 Similarly CPS Surrey did not inform CPS Merseyside of the change in the defendant's bail status. CPS Merseyside was therefore unaware at this stage that there was now an impediment to the defendant appearing at Liverpool Crown Court on 27 June.

⁸ A warrant of commitment is a document issued by the court which orders the Governor of the prison to detain the defendant until the next court hearing date stated on the warrant.

- 2.60 Our examination of the CPS Surrey file indicates that nothing happened between the hearings on 11 and 17 June.
- 2.61 However, Surrey Police made contact with their counterparts in Merseyside on 16 June requesting details of the Merseyside offence, although erroneously stating that the next date of hearing for the Surrey offences was 20 June. It is therefore apparent that by this date both police forces were aware of each other's proceedings. However, the PNC would still have erroneously shown the defendant as being on bail to the South East Surrey Magistrates' Court, as it was not updated correctly following the court appearance on 11 June.

North Surrey Magistrates' Court, 17 June 2005

- 2.62 The defendant appeared, as scheduled, by video link from HMP Elmley. The magistrates were asked to deal with mode of trial and agreed with the prosecutor's representations that the alleged offences were so serious that they should be dealt with at the Crown Court. There is nothing on the CPS file, over and above the circumstances of the alleged offences, to indicate what factors were taken into account by the prosecution in representing that the case should be dealt with at the Crown Court.
- 2.63 The defendant again applied for bail and again the prosecution opposed the application on the basis that there were substantial grounds to believe that, if granted, he would commit further offences, interfere with witnesses and fail to surrender to bail. The magistrates refused to grant bail and remanded the defendant in custody on the basis that there were substantial grounds to believe that if granted bail he would commit further offences or interfere with witnesses. At this hearing the court record and the CPS file endorsement indicate that the magistrates no longer cited a fear that the defendant would fail to surrender if granted bail.
- 2.64 It is unclear what fresh information was before the court to change their view on the danger of the defendant failing to surrender to custody.
- 2.65 Having declined jurisdiction the magistrates set 29 July 2005 as the date for committal of the case to the Crown Court, with proposed interim remands of the defendant on 29 June (in his absence) and 15 July. As the defendant had made two full applications for bail, the court was not obliged to allow him to make a further application in the absence of any material change in circumstances.⁹
- 2.66 The prosecution therefore had six weeks to prepare and serve the committal papers. A minute from the CPS to the police to provide the full file was sent straightaway.
- 2.67 These circumstances meant that the defendant could not surrender voluntarily to Liverpool Crown Court on 27 June 2005. As we have stated in paragraph 2.46 CPS Surrey were aware, from the information on the PNC document available at the first hearing before South East Surrey Magistrates' Court, of this date. They could at this stage have liaised with their counterparts in CPS Merseyside, or alternatively requested the Courts Service in Surrey to liaise with their counterparts at Liverpool Crown Court. This would have enabled the Courts Service in Merseyside to request the production of the defendant on 27 June.

- 2.68 Contrary to national PNC guidelines Surrey Police again did not update PNC at this stage with details of the remand hearing. PNC therefore still showed the defendant as being remanded on bail, in the terms of the original entry made when he left Staines Police Station on 11 June.

Events in Surrey between 17-29 June 2005

- 2.69 We can find no record of any communication between the CPS in Surrey and Merseyside alerting CPS Merseyside to the fact that the defendant remained in custody. Similarly there is no record of any communication between the Courts Service in Surrey and Merseyside or between the Surrey and Merseyside Police forces.
- 2.70 All three agencies were aware of the Merseyside proceedings and at least two (the CPS and police) were aware of the exact date of hearing, but nothing was done. However, this was not a derivation from normal practice, but indicative of the lack of communication generally between the agencies.
- 2.71 During this period Surrey Police continued to gather evidence in respect of the Surrey charges. The child's best friend (Friend A), who would have been an important witness, provided evidence by way of a video recorded interview on 25 June, which was just over 14 days after the arrest of the defendant. The obtaining of her evidence was (quite properly) delayed until she had finished taking examinations. The technical difficulties which arose when this evidence was taken subsequently led to a delay in the submission of the police file to CPS Surrey, which we discuss further in the context of the events of 29 July.

Liverpool Crown Court, 27 June 2005

- 2.72 There is no evidence to suggest that any of the parties to the Merseyside proceedings were aware that the defendant was now in custody. There had been no communication between CPS Surrey and CPS Merseyside, nor between the Courts Service in Surrey and their counterparts in Merseyside.
- 2.73 Merseyside Police Crown Court antecedents section had researched PNC in preparation for the Liverpool Crown Court hearing. The defendant was incorrectly shown, as a result of the action by Surrey Police, as on bail from South East Surrey Magistrates' Court and this information was passed to Liverpool Crown Court. We comment in the second part of this report on what might have happened at this stage if PNC had been showing the correct information.
- 2.74 We have examined the transcript of the 27 June hearing. Prosecuting and defence counsel were both present. Prosecuting counsel indicated that there was no pre-sentence report. Examination of the court file shows that a report was requested by Liverpool Crown Court on 31 May 2005 for the hearing on 27 June, and one was prepared on 24 June by the London Probation Service. It contains little information because the defendant did not turn up for his appointment. The appointment letter was sent to 42B Delancey Street which, as we have indicated above, does not appear to have been his permanent abode. There is nothing in the transcript to indicate that those representing the defendant had taken instructions from him prior to this hearing.
- 2.75 In the absence of any information about the defendant's failure to surrender to bail the court, in accordance with normal practice, issued a warrant for his immediate arrest.

North Surrey Magistrates' Court, 29 June 2005

2.76 The defendant was remanded in custody again, in his absence.

Events in Surrey and Liverpool between 29 June-15 July 2005

2.77 As the defendant was in custody the full police file detailing the evidence in respect of the Surrey charges should have been sent to CPS Surrey within four weeks of the magistrates declining jurisdiction and should therefore have arrived by 15 July. It had not arrived by that date, and CPS Surrey had not made any enquiry as to the progress of the police investigation or when they could expect the case papers. There is nothing on the CPS file to indicate that the papers were chased at any stage, or a report requested on what progress was being made in completing the investigation.

2.78 On 29 June the Merseyside Police entered a wanted report on PNC in respect of the failure to appear at Liverpool Crown Court on 27 June. The import of this is that when a wanted report for an execution of a warrant is entered onto PNC it is available not only to all UK police forces but to specific non-police agencies that have appropriate access to the system, although our enquiries indicate that this does not include the Prison Service.

2.79 On the same day, we know that the Courts Service in Merseyside became aware not only that the defendant was in custody, but also the establishment at which he was being held. A form known as a CREST¹⁰ input document was sent by a Crown Court case progression officer to a court Re-list Clerk with instructions to "List EBW¹¹ Friday 8th July 2005". Under a section of the form titled "Other Comment" appear the words, "Deft now RIC at HMP Elmley Kent". The CREST document indicates that HMP Elmley, HMP Liverpool and the defendant's legal representatives were notified of the 8 July hearing. It is not clear how the Courts Service in Merseyside first became aware of the defendant's custodial status, although the recollection of the officer compiling the CREST document is that the information came from a police liaison officer.

2.80 There is no evidence to suggest that CPS Merseyside were specifically notified of the planned hearing of 8 July, although the defendant's name would appear in the warned list which is circulated to all relevant parties, including the CPS.

2.81 From correspondence we have seen it appears that for the hearing of 8 July, the defendant's case is shown as a 'floater', which is one added after the publication of the firm list (cases with fixed hearing dates). The case came into the court list after the publication of both the warned (cases with provisional hearing dates) and firm lists. The daily list for the 8th was published on the 7th, and a copy of that list would have been sent to the Calendar Prison (the one which normally holds prisoners for that particular Crown Court),¹² namely HMP Liverpool (in Walton) who would arrange, if necessary, for the production of the defendant. However, as we discuss at paragraph 2.84 HMP Elmley were already aware of the need for the defendant to be at Liverpool Crown Court on 8 July.

2.82 We now set out the events of 7 July.

10 Crown Court Electronic Support System.

11 Execute Bail Warrant.

12 We discuss the role of the Calendar Prison in our Commentary.

The move from HMP Elmley to Forest Bank prison, 7 July 2005

- 2.83 On 7 July at 7.55am the defendant was moved from HMP Elmley. From Prison Service papers it is clear that his intended destination was HMP Altcourse (in Fazakerley near Liverpool) but he ended up at Forest Bank prison (in Pendlebury near Manchester) just after 7pm that evening.
- 2.84 The intended transfer to HMP Altcourse was at the instigation of HMP Elmley, which had been alerted by the Courts Service in Merseyside to the defendant's appearance at Liverpool Crown Court on 8 July. The list of defendants (known as the prisoner information form) given to the prison escort contractors clearly has the defendant listed (albeit in the name of Joseph) for transfer to HMP Altcourse for production at Liverpool Crown Court on the 8th.
- 2.85 Although no evidence is now available from the Local Inmate Data System (LIDS), it is probable that it would have been updated at HMP Elmley by somebody in the custody office with a diary entry for the defendant's transfer on 7 July. Without such an entry, the discharging officer in reception at HMP Elmley would not have discharged him. The defendant's manual record, however, was not updated. Although it is not unusual for prison establishments to rely on LIDS for updating 'live' prisoner information, we consider that the manual record should have been updated as well with the accurate information about the court hearing (which we discuss further at paragraph 2.93). It is not possible to say whether or not a LIDS diary entry for his court appearance on 8 July was entered at Elmley, although the fact that Forest Bank prison had no idea why they were receiving the defendant suggests not.
- 2.86 The Prisoner Escort Record (PER) indicates clearly that the intended destination was HMP Altcourse. The PER is highlighted "not for release", with the reason being the outstanding case in Surrey. No mention is made on the PER about the reasons for transfer. The defendant was eventually received at Forest Bank after 11 hours on the road. Again, no mention is made on the PER about the reasons for the diversion. Indeed there are no entries at all on the PER for the last six hours of the journey.
- 2.87 Although there is no documentation as to why the prison escort van diverted, Serco (formerly Premier Prison Services) control room staff do remember the case as it was very unusual for the court escort contractor to do an out-of-area, inter-prison escort. Additionally, on this day there were a number of terrorist attacks on the London transport system which resulted in a significant loss of life and severe traffic disruption in and around the capital, which made the date even more memorable.
- 2.88 The recollection of the Serco control room staff was simply that the van would not have reached HMP Altcourse before the scheduled time for that establishment's reception to close caused, in part, by the delays due to the London bombings. Contact would have been made with HMP Altcourse at some point in the afternoon/evening, with an estimated time of arrival, and Altcourse presumably advised that this was too late, as they would have closed their reception by then. In these circumstances, the escort contractor would have contacted population management section (PMS) in Prison Service Headquarters. PMS staff would then, by means of a phone around, have identified an alternative prison for the van to take the defendant to (in this case Forest Bank). Once the alternative destination had been identified, this information would have been passed back to the escort provider and the van would have diverted to its new destination.

- 2.89 While the defendant was on the road for 11 hours during 7 July 2005 any interrogation of the national Inmate Information System (IIS) by, for example, HMP Liverpool while checking the daily list would have shown him still allocated to HMP Elmley, until the point of his actual arrival at Forest Bank, when that prison would have entered him onto LIDS.
- 2.90 It is not clear after this passage of time what, if anything, HMP Liverpool did with the daily list on 7 July, and there are no records available from this time. It is possible that contact was made with HMP Elmley (as this is where the defendant would still be showing up on IIS). Had this occurred it is possible that they would have forwarded the list on to HMP Altcourse, as this was his intended destination, although this is only speculation.
- 2.91 Despite not making it to Altcourse the defendant could still have been produced at Liverpool Crown Court the following day, if Forest Bank prison had received the appropriate instruction, with sufficient time to act on it. It would only have taken a phone call from HMP Liverpool (the Calendar Prison for Liverpool Crown Court) to broker this.
- 2.92 We know the defendant was received at Forest Bank prison just after 7.00pm on 7 July. This is likely to have been an extremely busy time of day for reception staff. It is unlikely that any particular interrogation of the reasons for his transfer would have been checked at this time, so it is most probable that the only checks made were against the warrant from Surrey.
- 2.93 Had the information on page three of the defendant's core record correctly showed him as due at Liverpool Crown Court then Forest Bank prison custody office would, at some point in the days shortly after his arrival, have sent a form to HMP Liverpool as the Calendar Prison to notify them that they were holding a prisoner due for appearance at the Crown Court.
- 2.94 However the information suggested a pending appearance at the magistrates' court, to which a different procedure applies. In magistrates' courts' cases where there is no warrant of commitment, it is the responsibility of the prosecution to submit a formal Home Office Production Order to the prison establishment where the defendant is held, which requests that they are produced at the relevant court on the date specified. Therefore as no notification system to the Calendar Prison exists for magistrates' courts' cases the information, as written on page three, which indicated a pending appearance at the magistrates' court, would not have prompted any further action by the custody office at Forest Bank.
- 2.95 The defendant was inducted into Forest Bank over a four day period up to 11 July 2005. No mention at any time during this induction appears to have been made of the other charges, and there is no mention on any of his prison records during this time at Forest Bank about the matter pending at Liverpool Crown Court.

Liverpool Crown Court, 8 July 2005

- 2.96 A transcript of the court hearing of 8 July has been obtained; it was a short hearing at which neither the defendant nor the prosecution were present. It is not clear why the CPS were not represented as the defendant's name appeared on the court lists. The CPS file gives no indication of any knowledge of this hearing.

- 2.97 It is clear from the transcript that the defence representatives, who were present, were aware the defendant was in custody but believed he was still at HMP Elmley. This belief is presumably based on the information they had been passed by the Courts Service in Merseyside. It is also apparent from the transcript that it was believed the defendant was due to appear before “the London Crown Court” (sic). There is no mention of the Surrey offences.
- 2.98 Counsel for the defence requested that the case be adjourned to 3 August. The court agreed and the judge directed that a ‘production order’¹³ be obtained for that date.
- 2.99 Merseyside Police inputted the updated remand details onto PNC on 11 July. The PNC record indicates a remand on bail, however the information provided by the court to the police, indicating that a production order should be obtained, should have alerted them to the fact that the defendant was in custody. However, the warrant was **not** withdrawn by the court and it remained open to the police to execute that warrant. The existence of the warrant was still flagged on PNC.

North Surrey Magistrates’ Court, 15 July 2005

- 2.100 On 15 July the defendant appeared as scheduled by video link from Forest Bank prison, to where he had been transferred as detailed above. He successfully argued that there was a material change in circumstances, namely his father’s address was now available. The magistrates ruled that there had been a material change such as to allow the defendant to apply for bail. The prosecution again opposed bail on the same grounds as they had successfully opposed bail on 17 June. However, the court granted bail subject to conditions, one of which was a condition of residence at the defendant’s father’s address. However they stipulated that the defendant was not to be released from custody until the police had verified that the bail address was satisfactory and notified Forest Bank prison accordingly.
- 2.101 It is unclear from the CPS and Courts Service papers as to what factors the court took into account when deciding that there was a material change of circumstances, namely the availability of the father’s address as a place of residence. It is, however, apparent that the magistrates were not sufficiently satisfied with the suitability of that address such that they were prepared to grant the defendant’s immediate release. As events transpired, nothing flowed from this decision, as the police were not able to verify the address. Subsequent information from the defendant’s legal representative at the next court hearing suggested that the property was uninhabited. The defendant therefore remained in custody until 29 July, the date set down for the committal to the Crown Court.
- 2.102 On the copy of the defendant’s bail notice given to him by the court there has been added in pencil after the pre-release condition of residence words to indicate that, alternatively, a bail hostel would be acceptable. However, this pencil entry does not appear on the warrant of commitment to Forest Bank prison, or more specifically schedule A, which is attached to the warrant. In cases where the liberty or otherwise of a defendant is concerned it is important that there is absolute clarity as to the circumstances in which they can be released.
- 2.103 There is nothing on the CPS file to indicate that the prosecution at any stage considered whether they would appeal to the Crown Court any grant of bail by the magistrates, as they were entitled to do under the Bail (Amendment) Act 1993.

13 Unlike the procedure in the magistrates’ courts there is no actual form called a production order.

- 2.104 There is nothing on the Courts Service or CPS papers to indicate that any query was raised as to why the defendant had been transferred between prison establishments, or that the agencies were aware of events at Liverpool Crown Court.

Events in Liverpool and Surrey between 15-29 July 2005

- 2.105 On 15 July the officer in charge of the Surrey case submitted the file of evidence to the Police Case Papers Unit. However the file was returned to the officer for further work to be carried out. It is clear that at this stage no statement had been taken from the child's father. As it was apparent from the outset of the investigation that the child would not support the prosecution, the evidence of her father as to the relationship between the defendant and the child was significant. However, that statement was not taken until 21 July 2005, approximately six weeks after the defendant's arrest. We find it surprising that the obtaining of the father's evidence was not prioritised.
- 2.106 The full police file was then submitted to the CPS with a despatch date of 27 July 2005.
- 2.107 There is no record on PNC showing any update from the 15 July court appearance, either because Surrey Police failed to do so or the result was not sent to them by the court. If Surrey Police had input the court decision onto the PNC then the outstanding warrant would have been identified on the PNC record at the time of the update.
- 2.108 On 20 July Liverpool Crown Court circulated a list of cases fixed for hearing on 3 August and HMP Liverpool received a copy of that list. However, we can find no record of any specific communication passing between Courts Service Merseyside or the Governors of either HMP Liverpool or Elmley in respect of the 3 August hearing. There is nothing to suggest any of the Merseyside authorities were aware that the defendant had been held in Forest Bank prison since 7 July.
- 2.109 If HMP Liverpool had established the alternative identity of the defendant, or had his prison number, then a simple IIS check would have shown him as resident at Forest Bank prison, and the paperwork should have been sent there.
- 2.110 However if HMP Liverpool, on checking the firm list, didn't make the connection between Peart (the name used in the Merseyside offence) and his prison identity, Joseph, then it would just have been assumed that the defendant was not in custody. It is however important to note that even if the connection had been made, and Forest Bank prison notified accordingly, it would not have altered what was to happen subsequently. Forest Bank prison could not have lawfully held the defendant after what took place on 29 July.

North Surrey Magistrates' Court, 29 July 2005

- 2.111 The expectation of the court was that the defendant would be committed to the Crown Court for trial. However, from notes on the CPS file it is apparent that the police file was only received in the CPS office the day before the hearing.
- 2.112 There is a note from a senior CPS manager to the prosecutor at court informing them of this fact and of the need to seek an adjournment of two weeks to prepare the committal papers. The note also states: "There are problems with the child video evidence as the video appears not to have worked". This is a reference to the video tape recorded evidence of Friend A. We have been informed

that the working copy of the tape was corrupted and could not be transcribed. The master copy remained unopened at that stage but has since been checked and has found to be working properly. Another working copy could therefore have been made.

- 2.113 The Surrey Police considered that part of the reason for the request for an adjournment was to facilitate the opening and copying of the master tape. This would have been in accordance with the Achieving Best Evidence in Criminal Proceedings guidance, which states that: "The master tape should not be opened without the authority of the Court or the CPS, in the presence of a representative of the CPS and only for the purposes of copying or editing".
- 2.114 The note on the CPS file which indicates "that the video appears not to have worked" is potentially misleading for the advocate at court. It also states that the police file was being retained in the office so that work could be started on the committal preparation.
- 2.115 Within the police file is a short description of what Friend A said to the police when interviewed on 25 June, but there is no transcript of the evidence. It is also clear because of the defective working tape, that no copy of it had been supplied to the defence, which would be the normal practice.
- 2.116 Whilst it was right that immediate steps needed to be taken to prepare the committal, the absence at court of at least a copy of the full file meant that the prosecutor at court was restricted in the information he could provide the court or, as it transpired, the remedial action he could take. In essence the CPS file taken to court on 29 July was no different from that available to the prosecutor on 11 June.
- 2.117 From the prosecutor's endorsement on the CPS file and the record on the Courts Service's papers we have sought to determine exactly what transpired at this hearing. It is clear that at the start of the hearing the prosecution were not ready to proceed to committal, the papers had not been prepared and therefore the evidence had not, as required by law, been served on the court or the defence. The prosecutor applied for an adjournment to enable the CPS to prepare the papers and also made reference to a difficulty in respect of the video taped evidence. A note on the Courts Service file states "the video was not working and it needs to be sorted out".
- 2.118 The defence representative, as they were entitled to do, opposed the adjournment. The magistrates, after consideration of the representations of the prosecution and the defence, refused to grant the adjournment.
- 2.119 In refusing to grant the adjournment the magistrates were not discharging the defendant. At this stage their decision meant that they required the prosecution to proceed with the committal. However, on the adjournment being refused, the prosecutor put no evidence before the court and at that stage the court had no option but to discharge the defendant, from which the tragic events of later that day flowed.

Forest Bank prison, 29 July 2005

- 2.120 Following the discharge by the magistrates of the defendant a fax transmission was sent by the magistrates' court to Forest Bank prison stating that the case against the defendant had been discharged. The notice also states that "I am not aware of any other criminal proceedings against the defendant at the Staines Magistrates' Court" – the letter is signed by the then Area Director (stamped signature).

- 2.121 The note makes no mention of the outstanding proceedings at Liverpool Crown Court.
- 2.122 We have examined the discharge record from Forest Bank prison, which has not been completed fully as required. There is no indication of any awareness of the Liverpool matters on the discharge papers. No further checks are carried out when prisoners are released in this way.
- 2.123 On being discharged from Forest Bank prison the defendant made his way to London, where later that day he killed Richard Whelan.

Liverpool Crown Court, 3 August 2005

- 2.124 By the date of this hearing the defendant had been released from custody and had killed Richard Whelan, but was not arrested until 7 August. As the court was now aware that the defendant was in custody on 27 June 2005, the original warrant was withdrawn and a fresh one issued.
- 2.125 Although the defendant was no longer in custody on 3 August the Liverpool Crown Court firm list, which includes the defendant's name, was issued well in advance, on 20 July. As per the normal arrangements, a copy was sent to HMP Liverpool. However, we can find no indication that arrangements were in hand to have the defendant produced on the 3rd. If they had been then this would have alerted Forest Bank prison to the outstanding proceedings.
- 2.126 The same day the outcome of this hearing was entered correctly on PNC by the Merseyside Police.
- 2.127 On 20 January 2006, the Liverpool Crown Court proceedings were transferred by the Courts Service to the Central Criminal Court.

Events at the Central Criminal Court

- 2.128 On 21 May 2007 the jury in the first trial failed to reach a verdict on the count of murder against the defendant. The Crown sought a re-trial which was set for 5 November 2007. On 22 November 2007 at the end of the re-trial the jury again failed to reach a verdict on the count of murder and, in accordance with convention, the Crown did not seek a third trial. The defendant then pleaded guilty to manslaughter and, on 21 December 2007, was sentenced to be detained indefinitely.

A review to ascertain the circumstances in which Anthony Leon Peart, also known as Anthony Leon Joseph, came to be at liberty on 29 July 2005

COMMENTARY

The scrutiny of bail conditions

- 3.1 The address of 42B Deleyney Street, Camden to which Bow Street Magistrates' Court bailed the defendant on 2 March 2005, and again on 16 March 2005, does not exist. We cannot determine whether this was an error in recording by a court official, or an error in the PNC entry. At a later hearing Liverpool Magistrates' Court remanded the defendant to reside at 42B Delancey Street. The Metropolitan Police Service has confirmed that 42B Delancey Street exists as a dwelling house and checks on their force intelligence system confirm that the defendant had connections to that address, but not as a permanent residency. This would have made it extremely doubtful that he would have ever been able to comply with the residency or doorstep reporting conditions.
- 3.2 Neither at this hearing nor at any subsequent one at which the defendant was granted conditional bail is there any evidence that the address put forward by him was checked by the authorities as to its suitability, or indeed whether it was genuine. If such a check had been carried out at this stage then at least the incorrect recording of the address given would have been discovered, if only by reference to a 'London A to Z'. However, more importantly, the checks would have indicated that this was not the defendant's permanent residence and therefore not one to which a doorstep condition could be properly applied. This fact only came to light as a result of the enquiries made in the course of this review.
- 3.3 We recognise that often the courts will be dealing with local defendants who provide local addresses in respect of which there is no doubt as to their existence or the permanency of the defendant's residency. However, that was not the case so far as this defendant was concerned. Bow Street Magistrates' Court was not the local court for the defendant, and clearly the Liverpool magistrates who subsequently granted him conditional bail would have had no knowledge whatsoever of the address proposed.
- 3.4 We have to conclude that throughout the various court hearings, the approach to the verification of bail conditions to assure the magistrates that they could safely bail the defendant was lacking in rigour. Where there is any doubt as to either the suitability or permanency of any address put forward by a defendant as a possible place of residence as part of any grant of conditional bail it is essential that the court is provided with sufficient information to make an informed decision as to suitability.¹⁴
- 3.5 Whilst the suitability of a proposed place of residence may be checked by the police during the time the defendant is in custody pending the court appearance, this is not always practicable. This is particularly the case where the proposed residence is not put forward until the court hearing. We recognise the practical difficulty in verifying the residence at this stage as there will not always be a police officer in the court precincts who could instigate the necessary checks. Similarly the prosecutor will have other cases with which they must deal. However, the importance of ensuring that these checks are made is evident from what transpired in these proceedings. Whilst it is for the agencies at a local level to decide on the most appropriate arrangements, one option is for there to be a single point of contact at the relevant police station through which any request to verify details can be made.

¹⁴ The Metropolitan Police Service set out in detail the actions to be taken in its Bail Management Standard Operating Procedures, which were introduced in July 2005.

3.6 We recommend that

- **where there is any doubt as to the suitability of an address put forward as a place of residence, the prosecution team should provide the court with sufficient information to enable it to make an informed decision; and**
- **suitable mechanisms should be in place to enable necessary checks to be made promptly.**

3.7 We recommend that the police service introduce a robust national standard to ensure that compliance with bail conditions is managed effectively, including the provision of the exchange of information across force boundaries, with clear audit trails.

The role of the prosecutor post-conviction in determining issues of bail or custody

- 3.8 In arriving at its decision on 16 May 2005 to commit the defendant for sentence, Liverpool Magistrates' Court clearly considered that its powers of punishment were insufficient. We have spoken with the prosecutor who dealt with the case and, understandably after this passage of time, she has no recollection of the hearing, particularly as the events which took place were unremarkable. However the normal practice would be to endorse the file to indicate if any observation was made about whether the defendant should be granted bail. There is no such endorsement on the file.
- 3.9 Having regard to the fact that the court considered its powers of punishment insufficient and the previous history of the defendant, including his previous failures to answer bail, breaches of bail conditions and offences committed while on bail, we consider that it would have been proper for the prosecution, as a minimum, to draw the court's attention to all the relevant factors. However, as we discuss below, it may have been the prosecutor's belief that they were not entitled to oppose the grant of bail post-conviction.
- 3.10 Prior to the implementation of the Bail (Amendment) Act 1993 the accepted view was that, post-conviction, the prosecution could not formally oppose bail but would ensure that the court had all the necessary information to allow it to decide whether or not to grant bail.
- 3.11 However we are of the view that the right of the prosecution, at least by clear implication, to formally oppose bail post-conviction was recognised by virtue of the provisions of the Bail (Amendment) Act 1993. That Act gives the prosecution, in certain circumstances, the right to appeal against the grant of bail by a magistrates' court.
- 3.12 By virtue of section 1 of the Act, where a magistrates' court grants bail to a person who is charged with **or convicted of** (our emphasis) an offence punishable by a term of imprisonment of five years or more, the prosecution may appeal to a judge of the Crown Court against the granting of bail.¹⁵ However, this right of appeal is only exercisable if the prosecution made representations that bail should not be granted and the representations were made before it was granted.¹⁶

15 Section 1 (1) (a) Bail (Amendment) Act 1993.

16 Section 1 (3) (a) and (b) ditto.

3.13 To argue that the prosecution could not make representations that bail post-conviction should not be granted would lead to a situation where they would never be able to satisfy the qualifying provisions of the Act, when the Act states clearly that there is a right of appeal in respect of convicted defendants.

3.14 However, as we have stated above, the prosecution never opposed bail and there could therefore have been no consideration of exercising their right of appeal. In the course of this review we have considered the guidance provided to CPS lawyers and designated caseworkers as part of their training on the provisions of the Bail Act 1976 and the role of the prosecutor. The guidance provided to designated caseworkers, which was last revised in July 2005, following conviction or a plea of guilty states:

“You are entitled and should insist on making pertinent observations re Bail/Custody to Court - use Bail Act observations.”

3.15 That for CPS lawyers, which was last revised in May 2007, states:

“Bail after Conviction

Once the defendant is convicted, or has pleaded guilty, the question of bail is strictly speaking a matter for the court alone. If a defendant pleads guilty on the first occasion, this deprives you of your right to object to bail.

In fact, the Magistrates will probably call on your services anyway. How can they make an informed decision otherwise? The defence may object to this but you can frame your address by saying something like “I know that bail is now an issue entirely for your Worships, but it may assist you to know the following”.

Be fair and dispassionate in what you say. And, be careful not to be too prescriptive, otherwise the defence will have genuine cause to object.”

3.16 In the light of the provisions of the Bail (Amendment) Act 1993 we consider that this guidance should be reviewed to ensure that it reflects correctly the role of the prosecutor post-conviction.

3.17 We recommend that the CPS review its guidance to prosecutors on the Bail Act 1976 and related provisions to ensure it reflects correctly the prosecutor’s role in deciding issues of bail or custody post conviction.

The accurate recording of information on the Police National Computer

3.18 The incorrect updating of Surrey Police’s computer system on 10 June 2005, and the failure to subsequently amend the system correctly, led to an automatic incorrect updating of PNC. This contributed to the lack of awareness by other authorities of the defendant’s status and to the chain of events that led to the defendant being released, although it was not the sole contributing factor.

3.19 There is an expectation in the national PNC Guidance that police forces should input remand details onto the PNC when they are received via the court registers. In June 2005 it was taking Surrey Police five days to input 50% of court results against the national target of ten days.

3.20 Surrey Police's processes in 2005 meant that the first remand from the custody system was uploaded to PNC, but not subsequent remands, be they from the custody system or from information from court registers. The only occasion this would occur was if bail conditions were being imposed. Therefore, once the initial error was made, it remained. This had a bearing on the error made in the custody suite on 10 June as the initial update was not rectified to show the true court decision, which was a failing in Surrey Police PNC procedures at that time.

3.21 We recommend that police forces ensure that predictive resulting in custody suites is not permitted, and compliance ensured by the introduction of operating standards for those systems and robust quality control mechanisms which ensure the accurate input of data and compliance with national standards.

3.22 In April 2007 the Surrey Police entered into a multi-agency agreement with the other criminal justice agencies in Surrey to tighten their procedures with regard to the updating of PNC with results of court hearings.¹⁷ Police bail and court bail updates are now being properly completed and PNC updated according to the Guidance. However the force still does not, contrary to national PNC Guidance, update PNC with remands that do not have bail conditions attached.

3.23 We recommend that all police forces should ensure they comply with PNC National Rules and the statutory Code of Practice for PNC, in particular the input of *all* adjudications from the courts that are normally sent to the police, including adjournments and remands as well as the finalisation of cases.

The failure to deal with the breach of the Liverpool Magistrates' Court bail conditions

3.24 Whilst the fact that the defendant was in breach of his Liverpool bail conditions was known by the prosecution at the time of the 11 June hearing at South East Surrey Magistrates' Court, there is no mention of any action being taken in respect of that breach. There is nothing on the Surrey Police custody record to indicate that the defendant was ever arrested for that breach.

3.25 If the South East Surrey Magistrates' Court had been asked to deal with the alleged breach of bail conditions, and found it proved, they would then have had to consider the position of the defendant's bail status in respect of the Merseyside offence. Having remanded the defendant in custody on the Surrey charges they would have had two possible options, either to grant the defendant technical unconditional bail or remand him in custody to Liverpool Crown Court.

3.26 A decision to remand the defendant in custody to Liverpool Crown Court on 27 June 2005 would have resulted in there being two warrants of commitment. One would have required the prison authorities to produce the defendant at Liverpool Crown Court and the other would have required him to be returned to South East Surrey Magistrates' Court. However, the magistrates were never asked to deal with the alleged breach of the bail conditions and therefore the defendant was not remanded in custody in respect of the Merseyside offence.

3.27 Whilst we accept that the Surrey Police and the prosecutor would have been focusing on dealing with the Surrey offences, it is important that defendant's understand fully the consequences of failing to comply with bail conditions. The requirement to comply with bail conditions is an order of the court, and should be enforced as such.

¹⁷ Responsibility for updating some aspects of PNC in some cases may pass to the Courts Service once the LIBRA computer system is implemented fully.

3.28 A proactive approach to dealing with the breach of bail conditions would also enable the court that imposed them to be made aware at an early stage of the defendant's flouting of the court's direction. Additionally, the defendant's propensity to breach bail conditions would then be flagged on PNC, and drawn to the attention of any subsequent court that dealt with the defendant in respect of any subsequent offending.

3.29 We recommend that where a defendant is alleged to have breached the conditions of their bail, the prosecution should formally request the court to adjudicate on whether the breach is proved.

3.30 We accept, however, that it would have been difficult for the prosecutor at court on 11 June to have asked the court to deal formally with the breach as the defendant had not been arrested on that matter, which is a pre-requisite.

The granting of bail with conditions precedent

3.31 The granting of bail subject to compliance with a condition precedent is allowed under the provisions of the Bail Act 1976,¹⁸ although in our experience it is most commonly used where the court requires the provision of a surety (in respect of which there are specific provisions)¹⁹ or where it is willing to grant bail subject to the defendant residing at an appropriate hostel. In respect of the provision of a surety the Act stipulates that a police officer not below the rank of inspector must be satisfied as to their suitability.²⁰ Where there is a pre-release hostel condition then this can only be satisfied by the agreement of the Probation Service and the proposed hostel. However, in this instance it was proposed to let the defendant go to an ordinary dwelling house, and responsibility for determining its suitability was left to the officer in charge of the investigation. In our view there should be sufficient statutory provisions (similar to those in relation to sureties) to govern verification that any conditions precedent stipulated by the court when granting bail have, in fact, been met. This would ensure that defendants are not released inappropriately and contrary to the intentions of the court. This approach would support and strengthen the recommendation we make at paragraph 3.32.

3.32 We recommend that the Ministry of Justice reviews the Bail Act 1976 to provide structured arrangements for verifying that any conditions precedent to the grant of bail determined by the court are in fact complied with prior to the release of the defendant.

The issuing of the warrant on 27 June 2005 by Liverpool Crown Court

3.33 It is important at this point to consider whether events may have taken a different turn if the Merseyside criminal justice agencies had known prior to the hearing at Liverpool Crown Court on 27 June 2005 that the defendant was in custody. Whilst this is conjecture, it is based on our extensive experience of the CJS. We consider it extremely unlikely that the judge at Liverpool Crown Court would have issued any warrant if he or she had known the defendant was in custody. The probable outcome would have been that the court would have adjourned the case to another date for arrangements to be made for the Prison Service to produce the defendant at Liverpool Crown Court.

18 S3 (6) Bail Act 1976.

19 S3 (4) Bail Act 1976.

20 S8 (4)a Bail Act 1976.

The process by which defendants in custody are produced at the Crown Court

- 3.34 As explained at paragraph 2.79, by 29 June 2005 the Courts Service was aware that the defendant was in custody and also aware of his location. The procedure for producing a defendant in these circumstances is set out in a Service Level Agreement (SLA) between the Prison Escort and Custody Services (PECS), Prison Service (which for this purpose includes both publicly and privately run prisons), the Prison Service Population Management Unit, Courts Service and the police.
- 3.35 The SLA states that the Crown Court will provide warned lists of defendants due to appear at court to the Calendar Prison and to PECS between two to four weeks in advance. Cases added to or removed from the list must be notified to the Calendar Prison and PECS within 24 hours of the amendment. The SLA states that the Crown Court will ensure that warned lists are as accurate as possible. Additionally, the Court will provide to PECS and the Prison Service by 5pm daily written/typed lists of cases (including times of hearing) due to be heard the following day.
- 3.36 The SLA states:

“On receipt of a warned list, warrant or production order, the Prison²¹ will contact any other Prisons holding Prisoners to advise of the production requirements and, where necessary to effect a timely Court delivery, the Prison Service will make arrangements to transfer the Prisoners (using the inter-Prison transfer system) to the nearest local Prison in time for the hearing date. If a Prisoner is to be produced from a distant location making impossible delivery by the listed time for the case, the dispatching Prison will notify the Court immediately, with an indication of the anticipated delivery time.”

- 3.37 There is therefore a clear expectation that the Prison Service will make the necessary arrangements, working with PECS, to produce defendants in custody to the relevant Crown Court. However, these arrangements are particularly resource intensive for the Prison Service. The relevant Crown Court lists do not distinguish between defendants in custody and on bail. Therefore the Calendar Prison has first to determine which defendants on the list are housed with them and then which of the others are on bail and in custody elsewhere, which can only be done by searching the national prisoner database. It then has to find out which establishment is housing those in custody and notify them of the pending appearance.
- 3.38 We have considered whether this task could be made simpler for the Calendar Prison if Crown Court lists at least specified whether the defendant is in custody or on bail. However, this is still problematic if a defendant previously on bail is remanded in custody to another court in the period between Crown Court hearings.

The discharge of the committal proceedings

- 3.39 On 29 July 2005 when the North Surrey Magistrates' Court refused the prosecutor's application for a substantive adjournment, the prosecutor could have asked for the case to be stood down and arranged for a lawyer in the CPS office to urgently review the case and, if they were satisfied that the evidential and public interest tests in the Code for Crown Prosecutors were met, prepare a set of papers which contained sufficient evidence to raise a prima facie case against the defendant. These papers could have been faxed to the prosecutor and served on the court and defence, at which point the prosecution would have met its obligation. Whilst the very last minute

21 i.e. the Calendar Prison.

preparation of papers is not ordinarily an appropriate practice, it might in this instance have prevented the case being discharged and the defendant being released.

- 3.40 Alternatively, although this would be extremely unusual, the prosecutor could have informed the court that he wanted the evidence examined by the magistrates at the committal stage²² and asked for the case to be adjourned for this to happen. However, we consider that such an application could have only properly been made before the magistrates had refused the adjournment.
- 3.41 However in the present case we must add a note of caution. In the course of this review we have considered the evidential file submitted to CPS Surrey by the Surrey Police. We have significant doubts about the sufficiency of the evidence to support the first charge of taking the child and certain aspects of the evidence in support of the second charge were problematic. We cannot, therefore, discount the possibility that had the court adjourned the proceedings, as requested, they would have subsequently been discontinued by the prosecution. The consequence of this would have been that the defendant would still have been released from Forest Bank prison, unless in the interim he had been produced at Liverpool Crown Court in respect of the 3 August hearing. However, as we have discussed at paragraph 2.125 that appears to have been unlikely.
- 3.42 The decision of the North Surrey Magistrates' Court to refuse the prosecution's application to adjourn was judicial, and therefore consideration of the merit of the decision is outwith the terms of this review. However, whilst historically very few committals are discharged in Surrey because the prosecution are not ready and an adjournment is refused, we are aware that at this time there was a particular issue in respect of the timeliness of the preparation of committal papers by the prosecution, such that the prosecutor would not necessarily have anticipated that his application for an adjournment would have been granted. It was unlikely in the time available from receipt of the papers from the police to the scheduled hearing that the case could ordinarily have been reviewed fully and, if appropriate, the committal papers prepared.
- 3.43 We do not agree with the view, which was expressed in correspondence passing between the CPS and Courts Service, that the magistrates should have granted an adjournment because the custody time limits did not expire until 19 August. The court had given the prosecution six weeks in which to prepare and serve the committal papers, which is the accepted adjournment period for defendants in custody.
- 3.44 There is nothing on the CPS Surrey file to suggest that the re-instatement of the proceedings relating to the Surrey charges was ever considered. However, it is clear from a minute on the file that they were notified in a timely manner by CPS London of the killing of Richard Whelan by the defendant. In these circumstances it is unlikely that the proceedings would have been re-instated.

Personal information checks when prisoners are received into custody

- 3.45 Prisons do not check or cross-refer prisoner's personal details, as saved on LIDS, against PNC on arrival. Additionally, the process for checking on outstanding court appearances is only partial and also unreliable as it is based largely on self-disclosure by prisoners, who can simply remain silent when asked about this. We discuss what happened in this case at paragraph 2.53.

22 S6(1) Magistrates' Courts Act 1980.

- 3.46 If a PNC check/cross-referral had been carried out in this case in the days after the defendant's arrival into custody, it would have highlighted his alias. If additional levels of access were provided (which we discuss further at paragraph 3.51), then a PNC check would also have highlighted details of the 27 June hearing in Liverpool. Therefore, both of these pieces of information could have been inputted into LIDS, which would have meant that when HMP Liverpool, as Calendar Prison, checked the warned list for 27 June against IIS, the defendant would have been shown as being in custody at HMP Elmley.
- 3.47 Prisons already carry out some checks on receipt of new arrivals, although currently they focus mainly on the warrant of commitment, so this would not be an entirely new process but a strengthening of existing procedures. We recognise, however, that there would be resource implications associated with increasing the rigour of the first custodial checks on PNC.

Pre-release checks on prisoners

- 3.48 As soon as the legal authority to detain a prisoner ceases, prisons are obliged to release the person immediately, regardless of whether other agencies may have an interest in him or her, or whether there are warrants outstanding for their arrest. Prisons, therefore, do not check for this additional information before a prisoner's release. In this case, as soon as HMP Forest Bank received the fax from Staines Magistrates' Court, the establishment had no option but to release the defendant.
- 3.49 As things currently stand, even if Forest Bank prison had been aware of the outstanding bench warrant, nothing would have been done with this information and the defendant would still have been released. Due to the requirement to release immediately, the establishment would not have detained the defendant further and there would not have been a proactive approach to the police, for example, to check whether they had any interest in the person due to the existence of the unexecuted bench warrant.
- 3.50 Responsibility for initiating arrangements to execute outstanding warrants lies with the police. Prisons do co-operate with the police and frequently, through the security department and the police prison intelligence officer (PIO), facilitate gate arrests of prisoners on discharge. However, the initiative for this always comes from the police, not from the prison.
- 3.51 If appropriate levels of access to PNC were provided then checks could be made before a prisoner's release from custody into whether there were any outstanding warrants. There would obviously be considerable resource implications associated with introducing a detailed check before all prisoner releases. Most releases of prisoners are predictable in their timing and so, if additional warrants were discovered, contact could be made with the relevant police force in order to arrange for the execution of that warrant before the prisoner's release. In cases such as this one, where the immediate release of a remand prisoner from a local prison was ordered with no prior notification, then execution of any outstanding warrant by the appropriate police force may be more difficult to arrange in the time-frame.
- 3.52 In cases such as these, there would need to be close liaison between the 'owning' force, the PIO and, if different, the police force which covers the establishment where the defendant is being held, in order for this process to be effective.

3.53 We are aware of commercial software which enables outstanding warrants to be matched against defendants in prison, by use of the daily list of persons in prison (including remand prisoners) supplied by the National Offender Management Service to police forces. If a match is made, the police force that 'owns' the warrant is automatically notified. The effectiveness of this process is currently being evaluated. If found to be effective this provision for matching prisoners to warrants could overcome some of the difficulties in this case, but there would remain the need for the owning force to make the necessary timely arrangements to ensure that the warrant is executed before the defendant is released.

3.54 In this particular case the defendant was released from prison because the remand hearing was by video link. If the defendant had appeared in person at the hearing then he would have been released directly from the court precincts and there would have been no requirement for the prison from where he had come to undertake any checks. Once the defendant is handed over to the prison escort the responsibility ceases. In these circumstances there is a need for prosecutors to be alert to any outstanding warrant and ensure that arrangements are in hand with the police to execute it if necessary.

Prison establishments' access to the Police National Computer

3.55 Throughout this report references are made to what checks were or were not made on PNC by the prison establishments at which the defendant was held, and what action if any could be taken if a prison was aware of an outstanding warrant or further charges.

3.56 The issues about prisons' access to PNC that need to be considered are:

- the provision of PNC access in prison establishments; and
- the level of access to information held on PNC and what use is made of this information.

3.57 The operation of PNC within prison establishments is governed by Prison Service Order 0905 of 1 March 1999. In terms of usage, prison establishments currently have 'read only' access to PNC. **Enquiries are allowed solely for the purpose of obtaining a printout of previous convictions.** This is used at the beginning of a prisoner's time in custody in order to inform categorisation and allocation decisions etc, and also at the end of the custodial period to inform early release decisions (e.g. Home Detention Curfew).

3.58 Not all prisons have direct access to PNC; there are only 46 terminals in establishments currently. Those prisons that do not have access to PNC have a named establishment that will make enquiries on their behalf (for Forest Bank prison it is HMYOI Hindley).

3.59 Some prison establishments inform the police of prisoner details which include the type of establishment where they served their sentence, its duration and details regarding their release. Although individual police forces have the ability to input this information onto a person's PNC record, and the PNC Guidance manual of 1997 (updated 2007) states that the Prison Service will become responsible for supplying certain information to the police regarding the subject, there is no specific national agreement between the prisons and police to support this. Consequently, the information transferred from the prisons and updated onto the PNC regarding an individual's custody history, is fairly limited and basic at best.

- 3.60 We note that Recommendation 35 of the Report of the Zahid Mubarek Inquiry²³ stated that PNC should be linked to the whole of prison estate, although the report recognised that there were security issues that needed to be resolved.
- 3.61 However, as we discuss above, our review has found that prison establishments' access to PNC does not allow them to call up the wanted/missing screen. It is clear, however, that the technology already exists for prisons to be provided with an enhanced level of information and for there to be much greater and more effective sharing of information between them and the criminal justice agencies.
- 3.62 In 1995 the Phoenix²⁴ project enhanced the functionality of the PNC giving greater access to other agencies, thus increasing the amount of data being updated on individuals. The project included the ability for the Prison Service to directly input details of individuals' custody history. The PNC was developed to cater for this but to date, for unknown reasons, update access has not been given to the Prison Service and in the meantime forces have to undertake this role.
- 3.63 The Prison Service has submitted a business case requesting extended access to what is available for viewing. This is still outstanding with no response to date. We recognise that there are considerable resource implications for the National Offender Management Service if the level of PNC checks were to be increased at the reception and discharge stages, particularly as those establishments without PNC have to send their enquiries to other prisons.
- 3.64 We have therefore concluded that there is a need for more extensive research to be undertaken into the desirability, practicalities and resource implications of enhancing access to PNC, and the level of PNC checks undertaken by prison staff or staff from other agencies based within prison establishments.
- 3.65 We recommend that the National Offender Management Service and the Home Office, as a matter of urgency, commissions a feasibility study into:**
- **providing prisons with enhanced access to existing PNC terminals to ensure that prison staff, dependent on their role, can either read only or appropriately update prisoner details;**
 - **providing PNC terminals at all custodial establishments;**
 - **amending existing instructions relating to the reception and discharge of prisoners to ensure that relevant information from the PNC, particularly in relation to outstanding charges and warrants, can be fed into prison records and acted upon appropriately; and**
 - **the Prison Service, in conjunction with the Police Prison Intelligence Officer, should develop robust processes to ensure that all intelligence and information regarding prisoners due for release is exchanged and acted upon within timescales that do not delay the lawful process of release.**

23 HC1082 – I – laid before Parliament on 29 June 2006.

24 The PNC Phoenix Project was developed in 1995 bringing major enhancements to the PNC. It gave police forces the ability to input detailed information of people including intelligence, descriptive information, details of charges and court results, directly into the PNC.

Conclusion

- 3.66 We have found nothing in the course of the extensive enquiries undertaken as part of this review to suggest that the criminal justice agencies should have been aware that the defendant was likely to commit an offence of extreme violence or that he was suffering from an extreme mental illness. His record of offending was not strikingly different, but regrettably all too familiar to those who work within the CJS.
- 3.67 There is no single or specific act or omission in the course of events which can properly be said to constitute a predictable link leading to the chain of events leading to the defendant killing Richard Whelan while there was an outstanding warrant for his arrest. However, what we have found is what may best be described as a lackadaisical or nonchalant approach within the CJS to many routine aspects of the handling of cases, the cumulative effect of which was to lead to the sequence of events which culminated on 29 July 2005.
- 3.68 The lack of diligence in verifying suggested bail conditions, scant evidence of enforcement of those conditions and a failure to deal effectively with breaches when they occurred, all contributed to events taking the course they did. This was compounded by a lack of communication between the agencies in the various parts of the country, including a lack of awareness on the part of CPS Surrey of the need to communicate with CPS Merseyside to inform them of the change in the defendant's status.
- 3.69 The approach at the time of Surrey Police to updating PNC (now stopped) contributed to the misinformation about the defendant's status. It played a part in what happened at the first hearing at Liverpool Crown Court when the warrant was issued but it did not prevent, only delayed, the authorities in Merseyside becoming aware that the defendant was in custody.
- 3.70 It is also apparent that the tragic events that panned out in London on 7 July 2005 delayed the defendant's journey north, such that he never reached his intended destination of HMP Altcourse. No system or process can legislate for those events. Had the defendant reached HMP Altcourse it is almost certain he would have appeared in Liverpool Crown Court as planned, although it would be wrong for us to predict the likely punishment he would have received, we consider that a custodial sentence was not inevitable.
- 3.71 However, in addition to a more rigorous approach overall to bail conditions and their enforcement there are further improvements that can be made. These include the enhancement of the access rights of prison establishments to PNC to include the wanted/missing screen, more rigorous checks of PNC at the time of reception or discharge of prisoners and, subject to its evaluation, the use of enhanced systems to alert police forces to when a person wanted on warrant is being detained.
- 3.72 But, above all else it is essential that all those within the CJS are fully cognisant of the need to ensure that information is passed within and between agencies when events occur that have consequences and implications beyond their own criminal justice area.

A review to ascertain the circumstances in which Anthony Leon Peart, also known as Anthony Leon Joseph, came to be at liberty on 29 July 2005



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