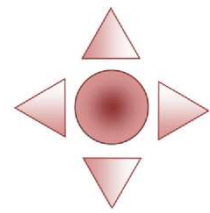




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**To all Chief Constables and
Police & Crime Commissioners.**

20th November 2013

Dear Sir or Madam,

**Crown Prosecution Service Guidance on Dealing with
Cases of Public Nudity.**

You will be aware that the Crown Prosecution Service has recently issued 'Nudity in Public - Guidance on handling cases of Naturism' to all Police Constabularies and Police and Crime Commissioners. We are writing to you and other Chief Constables and PCCs to comment on this document and on the problems it seeks to address, as our remit is to represent naturists in the UK, of whom there are approaching 3.8 million, according to an independent survey carried out by IPSOS MORI in 2011. To keep this letter of manageable length we will not quote full details of all the sources, cases and incidents referred to, but we will be happy to supply them if requested.

On the whole we welcome this CPS guidance as it recognises a problem which has been apparent to us for some years – that simple nudity in public is not illegal, but it is often policed as if it is, and that, on many occasions, policing has been inconsistent and disproportionate. To appreciate its significance, this CPS guidance needs to be read in the context of recent events both in and out of the Courts, and the changing culture surrounding the issue of nudity. This letter seeks to assist in this. We were in the process of preparing our own representations to the Authorities on this matter when the CPS issued their document. As part of our research we carried out a survey of all Police & Crime Commissioners and Chief Constables in England & Wales to see what policies and procedures existed for dealing with matters involving public nudity. We found that PCCs mostly considered this an operational matter and therefore did not get involved, and in no Police Authorities at all was there policy on it. As a result, front line police officers were left to handle matters according to unguided personal judgments. Our concern had been raised because we have been made aware of a series of cases in recent years where the police have acted against people who have been naked in public, with little consistency between cases and an over reliance on officers' personal beliefs. Furthermore, there have been some disturbing common themes to the police approach.

The most concerning common theme appears to be a misunderstanding of the law at grass roots level by many police officers, coupled with a belief that even if nudity in public is not illegal it should be. This has resulted in incidents involving nudity being given disproportionate attention and priority in the police response. There is a misconception in the minds of a few members of the public that it is illegal to be seen naked, except in private, and so any sighting of a naked person has to be reported to the police, even if the 'activity' involved is wholly unremarkable, e.g. sunbathing, gardening, walking, cycling. This is virtually guaranteed to get a police attendance, which in itself can (and has) provoked an escalation of events out of all proportion to their real importance. Police officers investigating such reports often still refer to 'Indecent Exposure' (an offence which was repealed by the 2003 Sexual Offences Act). This not only displays a lack of understanding of the law, but also places in the minds of onlookers the notion that something illegal has happened, so something should be done; and this seems to be part of an informal process whereby reports become escalated into complaints by people wishing to support the police. It seems that mere mention of nudity leads to a bypass of the normal case handling triage to see if any actual offence is being committed. Guilt is prejudged by an attitude which seems to assume that anyone who is naked must be engaged in sexual activity or be up to no good in some way. This both prompts unnecessary investigations and sets the scene for biased outcomes. Unnecessary police investigations can be very upsetting and intimidating to innocent naturists, even when they do not lead to any further action, and we believe that the requirement for investigation needs to be set considerably higher than a mere sighting of a naked person. There is no known correlation between simple nudity and the commission of crime. Indeed, it would be a foolish criminal who identified themselves in this way. In fact, the unacceptable behaviour often known as "flashing" is usually performed by clothed men exposing their genitals in a state of sexual arousal.

We accept that cases of "Exposure" under S66, Sexual Offences Act 2003 happen, but this is a very different thing to naturism, and any such incident should be easily distinguishable by the initial questioning.

The law most commonly used to prosecute cases of public nudity has been S5, Public Order Act 1986. But this has been a 'last resort' in the absence of any specific statute making public nudity illegal. This section has been used because its 'catch all' wording is so vague as to make it very open to interpretation. This whole Act was passed in the aftermath of the 1986 Brixton riots and seeks to address genuine Public Order incidents. Nowhere does the Act mention, or even hint at nudity as being relevant to Public Order. Our view (that use of this Act to prosecute public nudity) is an abuse of the law has been supported by numerous judgements in the Courts. Virtually all cases in recent years have been either dropped by the CPS or resulted in acquittal either at Magistrates Court or on appeal to a higher Court. The CPS have accepted this now by recommending use of this Act only where there seems to be some underlying or aggravating factor which actually causes genuine alarm and distress, and indicating that simple nudity should not be prosecuted. If Parliament had intended nudity in a public place to be illegal, it would have passed an unambiguous statute to that effect. In fact when Parliament passed Section 66 Sexual Offences Act (2003), they made it clear, both in the wording of the Act and in the lengthy consideration given to this section in debate that "It was not intended to criminalise Naturism or streaking". Clearly, to Parliament, which represents the will of the people, simple nudity is not an issue. Policing should reflect the view of Parliament. Policing is as much about protecting the legal freedom of people as it is about curbing illegal activity.

Independent surveys of public opinion (IPSOS MORI 2001/2011) have shown that the number of people who would be genuinely distressed at seeing a naked person in a non-aggressive, non-threatening situation is tiny. 88% classed Naturists as 'sensible', or 'harmless', and only 1 % *thought* nudity should be illegal. It is accepted that naturists are a minority in society, but they are a sizeable minority. Being a minority and espousing an unusual lifestyle is not illegal. The right to freedom of expression and diversity is nowadays enshrined in many laws as well as specific Human Rights legislation. We strongly disagree with the CPS's comment in the Evidential Test - that nudity *may* be 'disorderly' merely by being different from the 'normal standards of society'. Something is disorderly only if it brings about or is likely to bring about disorder. It is not accepted that a disorderly response by others to peaceful, legal nudity can be blamed on the naked person. We believe that case law supports our view, and that Courts would agree with us. If some people dislike simple nudity, they have better, and more legal, remedies than engaging in disorder. Simply ignoring it would seem to be the normal, and proportionate, response, as with other aspects of diversity which may not find favour, but which cause no harm.

Witnesses often express surprise at seeing something unusual, such as public nudity, and surprise is often mistaken for 'alarm and distress'. It is common practice for police officers to use the words 'alarm and distress' when interviewing witnesses, and then incorporate these words into witness statements which they get the witnesses to sign. We have seen many examples of such 'prompting' of witnesses, either intentionally or unintentionally, by over-zealous or prudish police officers who seem intent on bringing charges regardless of the real evidence or the requirement for proportionate policing and regard for the wider Public Interest. We are pleased to see that the CPS have made it clear in their guidance, that the level of 'distress' is not an absolute, and needs to be tested for 'Specific Evidence' - that the distress is not 'short lived or minimal'. It is clear that to base a measure of 'distress' on the reaction of an over-sensitive or phobic person would be unjust, and the likelihood of conviction would be low. It is clear from Case law that causing offence to someone by appearing in a way they do not like, or doing something they do not like, is not a criminal offence unless they are harmed or threatened. The law expects people to have a normal level of robustness in their reaction to events around them. To do otherwise would make society impossible to live in.

Allied to the aspect of 'distress' is the reference to 'vulnerabilities' referred to by the CPS in considering the Evidential Stage. Though under 18's may automatically be considered 'vulnerable' in a legal sense, it should not be assumed that the sight of nudity has any detrimental impact on a child. There is no evidence that experience of non-sexual, non-aggressive nudity affects children adversely. On the contrary, there is clear statistical evidence that rates of teenage pregnancy and sexually transmitted diseases are considerably higher in 'prudish' societies than in countries where nudity is accepted as a natural part of life. It is a view held by many psychologists that children, to whom the sight of naked bodies is common, grow up with a better adjusted attitude to their own and others' bodies. This is also the view of naturists, many of whom have families of their own, and would do nothing which they thought might harm them. It is worth noting also that Naturists include many police officers and lawyers among their number.

We are pleased also to see that the CPS are concluding that prosecution will rarely be in the public interest, or even to represent a proportionate response to such incidents. Indeed the whole thrust of the guidance is to discourage prosecution of nudity, unless there is some associated behaviour which is criminal. This needs to be understood, not only regarding prosecution, but in the whole handling of such matters by the police. Inappropriate action by junior officers investigating a report of public nudity can easily turn a minor incident, where no laws have been broken and which should be dealt with in an informal way, into serious

criminal proceedings which can have a devastating effect on the life and career of an innocent naturist. There has been tremendous distress caused to innocent people and a large waste of public resources in recent years because police authorities have had no coordinated policy or guidance on how to approach this subject. We have seen too many trivial incidents gain an apparently unstoppable momentum of their own once formal police procedures start to operate. It could be described as the police employing 'sledgehammers to crack a nut'.

We welcome the CPS's guidance as a first step in addressing this 'over policing'. However, matters which come to Court are only the tip of an iceberg, and resources will continue to be wasted, innocent naturists traumatised and freedoms breached unless both the CPS guidelines, and the cultural shift they arise from, is accepted and implemented at all levels within the police. It is essential that the approach the CPS is recommending is communicated throughout police forces, via training and education of officers at all levels. In doing this the CPS guidance should not be interpreted as an incentive to find better ways of prosecuting nudity, but as a discouragement from prosecuting it at all. The CPS is recommending that policing of nudity issues should be done with a light touch from the very start. Police forces have more important things on which to spend their time, and that is what the CPS is suggesting they do.

We see the training of police officers of all ranks as the priority and would be very interested to know what plans you have to integrate this CPS guidance into your training and procedures. We would be happy to engage in a dialogue as to any help we may be able to give you in implementing a training and education programme. Liaison with naturist groups in your area, could be arranged if this would be of any assistance to you

We look forward to hearing your training plans and your reaction generally to our comments.

Yours Faithfully

Jointly on Behalf of



Duncan Heenan
Director
Naturist Action Group

and

Malcolm Boura
Campaigns Director
British Naturism

Appendix

Copy of the Crown Prosecution Service “Nudity in Public - Guidance on handling cases of Naturism”

[Taken from http://www.cps.gov.uk/legal/l_to_o/nudity_in_public/]

What is 'Naturism'?

Naturism is used to describe the activities of persons who espouse nudity as part of their lifestyle. Whilst many naturists will restrict their activities to specially designated areas and/or places where there is a tradition of naked activity, such as nudist beaches, others may wish to enjoy nudity more widely.

In the case of naturism a balance needs to be struck between the naturist's right to freedom of expression and the right of the wider public to be protected from harassment, alarm and distress.

Recommended approach to naturism

Although every case should be considered according to its own facts and merits in accordance with the Code for Crown Prosecutors a consistent approach to naturism should be adopted to maintain public confidence in the CPS. Where none of the features exist that would bring behaviour within the ambit of one of the offences set out in the section on [Other offences that might involve nudity](#) below, the recommended approach to naturism should be as follows.

In the absence of any sexual context and in relation to nudity where the person has no intention to cause alarm or distress it will normally be appropriate to take no action unless members of the public were actually caused harassment, alarm or distress (as opposed to considering the likelihood of this).

In this case such conduct should be regarded as at most amounting to an offence under section 5 of the Public Order Act 1986; and regard needs to be had to the question of whether a prosecution is in the public interest.

Evidential considerations

In order to breach section 5 of the Public Order Act 1986 a person needs to have used threatening, abusive or insulting behaviour or disorderly behaviour within the hearing or sight of a person likely to be caused harassment, alarm or distress. Section 5 is summary only and a non-imprisonable offence.

When deciding whether a case passes the evidential stage of the Full Code Test, prosecutors should consider whether the behaviour can be described as 'disorderly' (rather than threatening, abusive or insulting). This is because the behaviour in question will often not

appear to cross the threshold for being 'threatening' or 'abusive'. Furthermore section 5 will be amended by section 57 of the Crime and Courts Act 2013 which will remove the word "insulting". Whilst for now "insulting" behaviour remains in breach of section 5, particular care needs to be taken before prosecuting on this basis alone.

Given that someone conducting their business naked in public is acting in a way that does not conform to the normal standards of society that require people to be clothed in public, 'disorderly' would appear to most aptly describe this behaviour.

Public Interest considerations

A prosecution will not automatically follow where a case passes the evidential stage of the Full Code Test. Careful consideration of the public interest will be required in such a case. The Code for Crown Prosecutors (7th edition) requires prosecutors to consider the following questions:

1. How serious is the offence committed?
2. What is the level of culpability of the suspect?
3. What are the circumstances of and the harm caused to the victim?
4. Was the suspect under the age of 18 at the time of the offence?
5. What is the impact on the community?
6. Is prosecution a proportionate response?
7. Do sources of information require protecting?

In reviewing a section 5 case involving nudity the following factors (reflecting the paragraph letters above) may be relevant:

1. On a scale of seriousness this offence is at the lower end, a factor making prosecution less likely to be required.
2. Whether the offending is premeditated and likely to be repeated, and whether the suspect has previous convictions for similar conduct.
3. Victims or witnesses with vulnerabilities might include children (and their carers) who are faced with the suspect's genitals and bottom in close proximity. Any views expressed by victims or witnesses on the impact the offence has had are important, in particular whether they have felt harassment, alarm or distress. However prosecutors need to form an overall view of the public interest and to consider whether any harm caused to victims is likely to be short-lived and minimal in the absence of specific evidence to the contrary.

and

5. Any impact on the local community, the extent and whether or not it is likely to be transitory.
6. Whether prosecution may be disproportionate to any eventual penalty, given that the offence is summary only and non-imprisonable.

Other offences that might involve nudity

Exposure contrary to section 66 of the Sexual Offences Act 2003

This requires a person to intentionally expose their genitals and intend that someone will see them and be caused alarm or distress. It is triable either way. Depending on the age of the

defendant and the sentence that is imposed, an offender may be subject to the notification provisions (the sex offender register).

The need to prove that the person exposed their genitals intending that someone will see them and be caused alarm or distress means that a naturist whose intention is limited to going about his or her lawful business naked will not be guilty of this offence.

Outraging public decency (OPD)

At common law it is an offence to do in public any act of a lewd, obscene or disgusting nature which outrages public decency. Although this may be widely interpreted, most cases will involve indecent exposure of the human body. If conduct falls within the scope of a statutory offence, such as exposure contrary to section 66 of the Sexual Offences Act 2003 (see above) it is better practice to charge that offence unless, exceptionally, the offence merits a higher penalty than that available in relation to the statutory offence. OPD is triable either way and there is no maximum penalty.

The requirement for the behaviour to 'outrage' public decency was said by Lord Simon in *Kneller (Publishing, Printing and promotions) Ltd v DPP* to: "go considerably beyond the susceptibilities of, or even shocking, reasonable people". The circumstances surrounding the conduct will need to be carefully considered.

A naturist whose intention is limited to going about his or her lawful business naked will not be guilty of this offence.

Public nuisance

At common law it is an offence to (a) do an act not warranted by law; (b) omit to discharge a legal duty if the effect of the omission is to endanger life, health, property, morals, or of comfort of the public, or to obstruct the public in the exercise of enjoyment of rights common to all Her Majesty's subjects.

The House of Lords in *Rimmington* [2006] 1 AC 459 made it clear that this offence should not ordinarily be used where there is a statutory offence covering the relevant conduct.

A naturist whose intention is limited to going about his or her lawful business naked will not be guilty of this offence.

Anti-Social Behaviour Order

An Anti-Social Behaviour Order (ASBO) may be imposed either as an ancillary order following conviction or on a 'standalone' basis by the police or a local authority. Although naked behaviour may fit the anti-social rather than the criminal category, an ASBO carries with it the risk of an early and repeated breach followed by prosecution and ultimately imprisonment. It is questionable whether such an outcome is proportionate either in terms of the cost to the CJS or the penalty incurred. Very careful consideration needs to be given before an ASBO is sought. It should be regarded as a last resort.

Where the decision is taken that an ASBO is required it is essential that prohibitions are drafted clearly and with care to enable effective prosecution of any ensuing breach.