

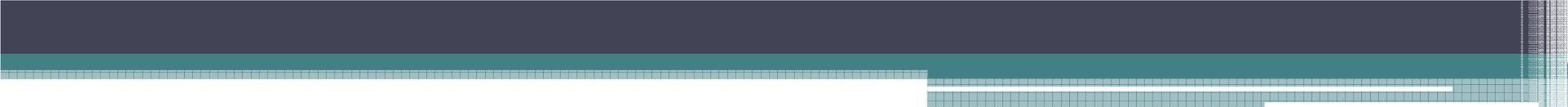
# Human Rights: The Issues

Effects of the Human Rights Regimes on Policing  
and the International Sharing of Information

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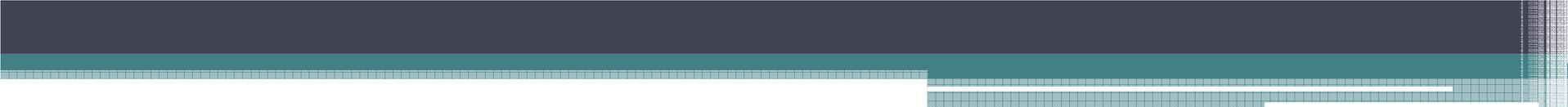
# Introduction

Despite there being a morally justifiable basis for Human Rights legislation it is contended that the application of it is unduly bureaucratic and burdensome which;

- Hampers the free flow of intelligence
- Causing more problems than it solves and is
- Contrary to the rights of the majority by giving haven to the criminal minded.

However this argument is counterbalanced by the argument that some developed countries have cynically abused measures and spoil the pitch for others.

- It is suggested that Human Rights legislation conceived to be applied to civil law regimes is effectively inconsistent with common law jurisdictions and needs to be re-thought and rewritten.



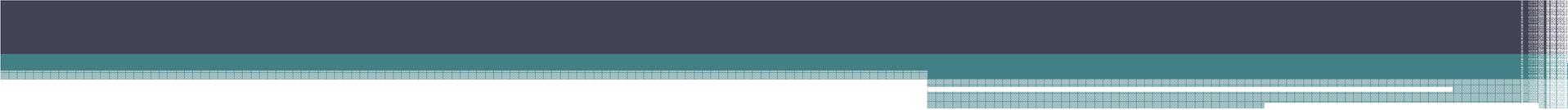
## Introduction - Continued

- It will be contested that in order for there to be a proper exchange of criminal intelligence, law enforcement needs to ensure that proper structures are in place to deal with, prioritise and action intelligence. The moves being progressed by the UK within the EU and internationally by Canada with National and International Intelligence Models are steps in the right direction by demonstrating that adherence to human rights can be built into intelligence systems.

# Crime Investigation and Prosecution in England and Wales

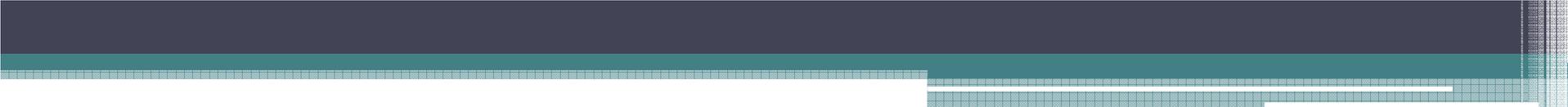
England and Wales operate an adversarial system of justice which is in essence a contest between the defence and prosecution.

- Each advocate represents his or her party's positions.
- Impartial person or group of people, usually a jury or judge, determine the truth of the case.
- Two-sided structure pits the prosecution against the defence.
- Justice is done when the most effective adversary is able to convince the judge or jury that his or her perspective on the case is the correct one.
- As an accused is not compelled to give evidence
- Right to silence prevents any examination or cross-examination of defendant's position.
- Incumbent upon the prosecution to prove the case against the defence beyond reasonable doubt.
- The rules of evidence are also developed based upon the system of objections of adversaries and on what basis it may tend to prejudice the ability of the judge or the jury to determine the truth.



# Actors in the Investigation and Prosecution of Crime

- Law Enforcement – Police, Customs, Immigration, SOCA to name a few.
- Prosecution – Normally the CPS
- Defence
- Judiciary/Court System



## **Overview of Policing in the UK:**

**England & Wales: 43 Home Office Forces**

**Scotland: 8 Forces**

**Central Scotland, Dumfries & Galloway, Fife,  
Grampian, Lothian & Borders, Northern,  
Strathclyde, Tayside.**

**Northern Ireland: 1 Force**

**Police Service of Northern Ireland (formerly, RUC)**

**The 43  
police  
forces in  
England &  
Wales**

Map of the Police Forces  
in England and Wales



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**A number of 'specialist' police services.**

- **British Transport Police (BTP)**
- **Ministry of Defence Police**
- **Civil Nuclear Constabulary**
- **and**
- **Port of Dover Police**



## 'Generic' rank insignia



**Constable**



**Sergeant**



**Inspector**



**Chief  
Inspector**



**Superintendent**



**Chief  
Superintendent**



**Assistant  
Chief  
Constable**



**Deputy  
Chief  
Constable**



**Chief  
Constable**

# Governance of Policing

**'Tripartite approach'**



**Home Secretary**

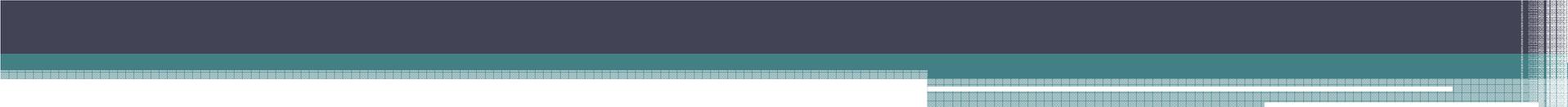


**Chief Constable**



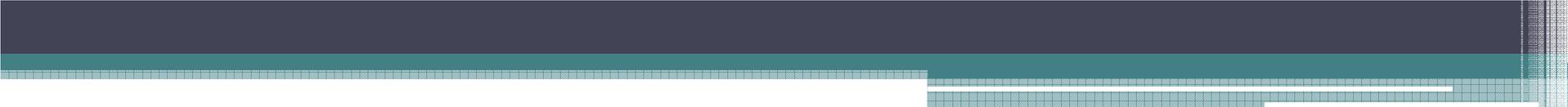
**Kent Police Authority**

(In place since Police Act 1964)



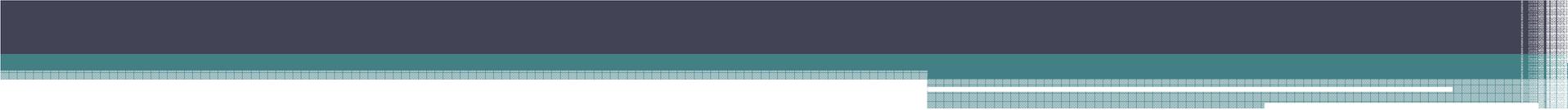
# Role of Law Enforcement in Investigation of Offences

- Responsible for the recording of crime allegations
- Identify Criminal Activity through intelligence
- Determine the investigation strategy for the investigation of crime allegations (Reactive)
- Determine the investigation strategy for the investigation of individuals suspected to be involved in crime (Proactive)
- Gather Evidence against suspect
  - Powers to seize evidence
  - Power to arrest suspects
  - Detain and interview
  - Limited Powers of entry
  - Requires Judicial permission to enter property and obtain confidential material
- Require special permission regulated under RIPA to conduct surveillance and use covert investigation techniques.



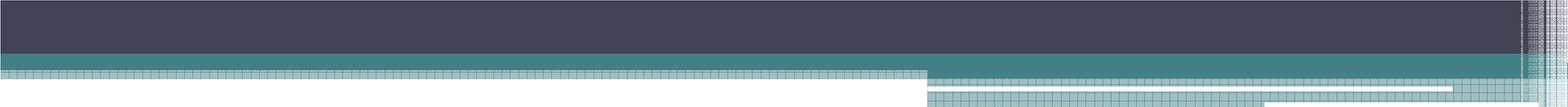
# Role of Prosecution

- Advising the police on cases for possible prosecution
- Determine the charge in all but minor cases.
- Preparing cases for court
- Presentation of cases at lower court
- Appoint private barristers and solicitors to present cases at higher court.



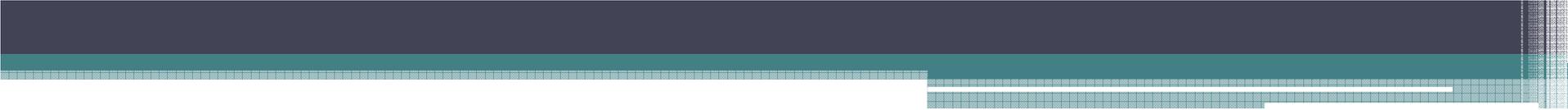
# Role of Defence

- Advising the defendant whilst in custody
- If required be present during the interviewing of suspects
- Make representations in respect of bail.
- Challenging the prosecution case at lower court
- Preparation of the defence case.
- Instruct barristers for higher court.



# Role of Judiciary

- Granting of Warrants to enter premises, obtain bank records etc.
- Provision of venue for the prosecution of the case – (see courts post)
- Act as arbiter and determine guilt (In serious cases with the assistance of a Jury)
- Determine the punishment
- Make orders for restitution.



# Types of Courts

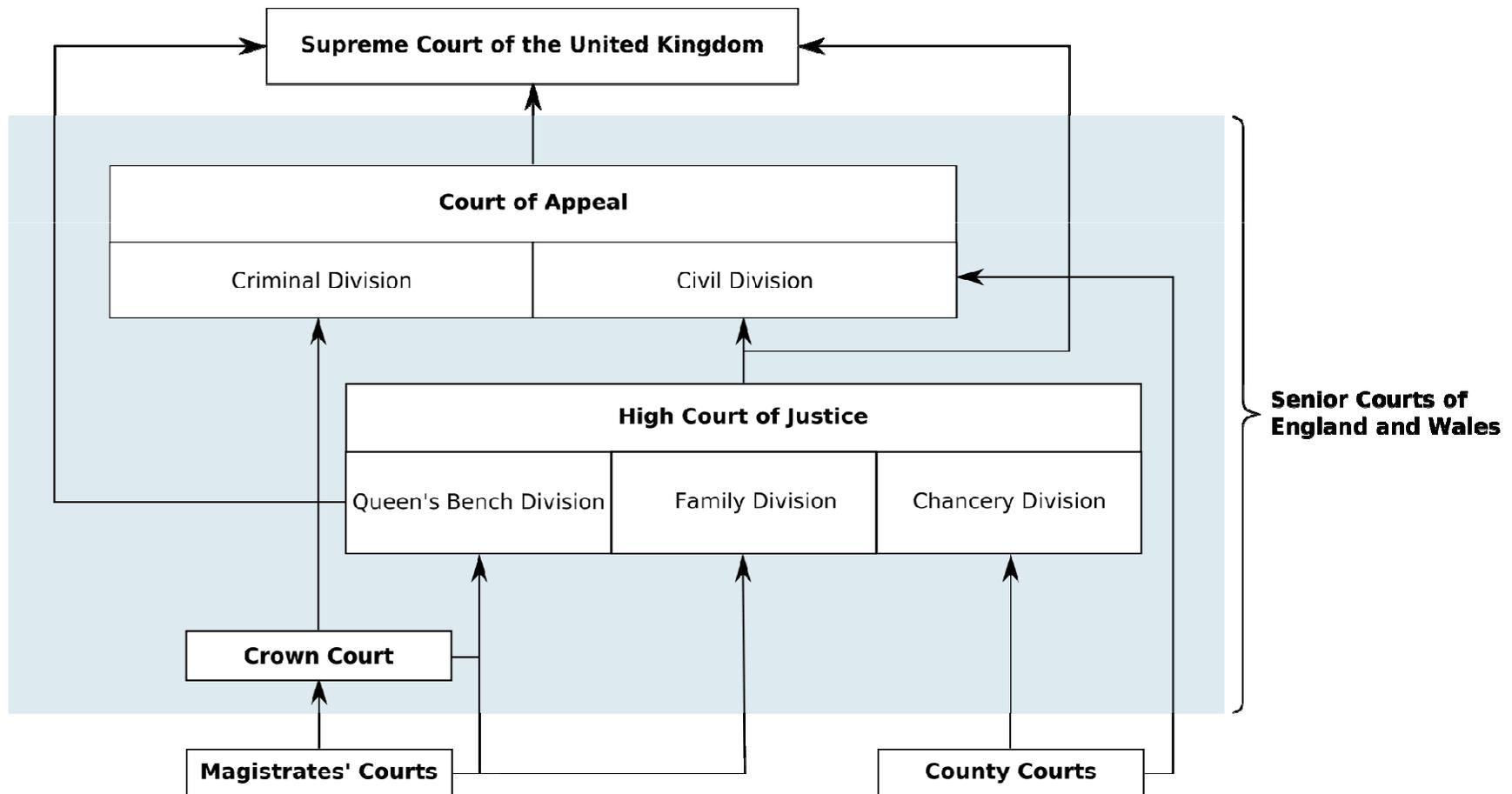
- Courts of Justice of England and Wales are responsible for the administration of justice for both the **Civil** and **Criminal** cases in England and Wales.
- We do not have a single unified legal system—England and Wales have one system, Scotland another, and Northern Ireland a third.
- **Civil Courts** deal with disputes where one party or another has to prove on the balance of probabilities.
- **Criminal Courts** deal with matters which have breached the criminal law. The prosecution has to prove the case beyond reasonable doubt.

# Other Courts

In addition, there are many other specialist courts. These are often described as "Tribunals" rather than courts. Examples of specialist courts are:

- Employment Tribunals
- Leasehold Valuation Tribunals
- VAT and Duties Tribunals (who deal with indirect tax cases)
- General Commissioners and Special Commissioners (who deal with direct tax cases)
- Rent assessment committees
- Coroners' courts The post of coroner is ancient, dating from the 11th Century, and coroners still sit today to determine the cause of death in situations where people have died in potentially suspicious circumstances, abroad, or in the care of central authority. They also have jurisdiction over treasure trove
- Ecclesiastical courts (Church)
- Court-martial (military)
- Admiralty court (maritime)
- Court of Chivalry (heraldry)
- Patents County Court (Intellectual property cases)
- Election court (ad-hoc courts hearing petitions against election results)

# Court Hierarchy



# Types of Criminal Trials

There are two kinds of criminal trial: 'summary' and 'on indictment'.

- Summary trials take place in a magistrates' court,
- Trials on indictment take place in the Crown Court.

Despite the possibility of two venues for trial, almost all criminal cases, however serious, commence in the Magistrates' Courts..

A criminal case that starts in the Magistrates' Court, may begin, either by the defendant being charged and then being brought forcibly before Magistrates, or by summons to the defendant to appear on a certain day before the Magistrates.

Offences are of three categories: indictable only, summary and either way.

- Indictable only offences such as murder and rape must be tried on indictment in the Crown Court. On first appearance, the Magistrates must immediately refer the defendant to the Crown Court for trial, their only role being to decide whether to remand the defendant on bail or in custody.
- Summary offences, such as most motoring offences, are much less serious and most must be tried in the Magistrates' Court, although a few may be sent for trial to the Crown Court along with other offences. The vast majority of offences are also concluded in the Magistrates' Court (over 90% of cases).
- Either way offences are intermediate offences such as theft and criminal damage, may be tried either summarily (by magistrates) or by Judge and Jury in the Crown Court. If the magistrates consider that an either way offence is too serious for them to deal with, they may "decline jurisdiction" which means that the defendant will have to appear in the Crown Court. An adult defendant has a right to compel a jury trial.

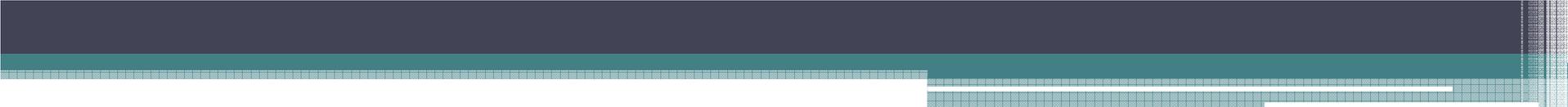
# Types of Judges

A Magistrates' Court is made up in two ways.

- A group (known as a 'bench') of 'lay magistrates', who do not have to be, and are not normally, lawyers. A lay bench must consist of at least three magistrates.
- A case may be heard by a district judge (formerly known as a stipendiary magistrate), who will be a qualified lawyer and will sit singly, but has the same powers as a lay bench. (District judges usually sit in the more busy courts in cities or hear complex cases (e.g. extradition)). Magistrates have limited sentencing powers.
- In the Crown Court, the case is tried by a Recorder (part time judge), Circuit Judge or a High Court judge, with a jury. The status of the judge depends on the seriousness and complexity of the case. The jury is involved only if the defendant pleads "not guilty".

# Brief History of ECHR

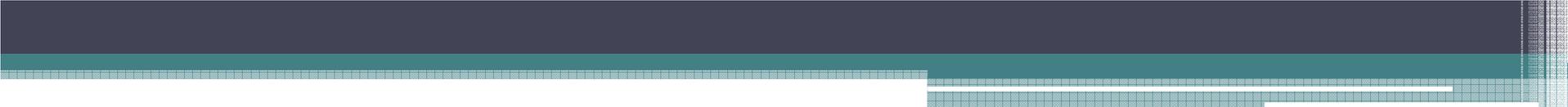
- The present regime of adherence to human rights by law enforcement in the UK has its origins in the setting up of the European Convention on Human Rights, which was prepared by the allies after the atrocities of the Second World War and The Holocaust.
- The Nuremberg Trials
  - Established a commitment to securing human rights for individuals and
  - Victims of crimes against humanity were entitled to the protection of International law.
- The UK played a major role in the drafting of the European Convention but did not incorporate its provisions into domestic law as it considered that the protection of individual rights and liberties was already safeguarded by the British common law.



# Development of Human Rights Legislation in the UK

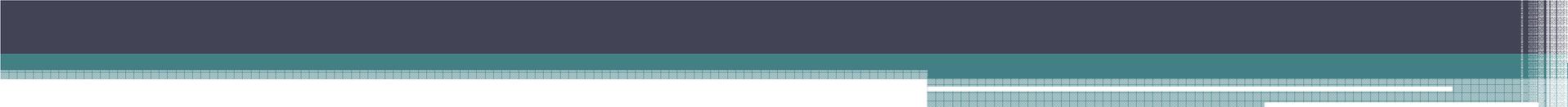
During the late 1990s the European Court of Human Rights put pressure on the UK to enshrine the European Convention (ECHR) into domestic legislation after a series of adverse rulings against Britain.

- Covert MI5 surveillance operations against civil liberties campaigners,
- Unnecessary interference with the freedom of speech of newspapers,
- Unsatisfactory safeguards for detained mental patients,
- Inhumane and degrading treatment of suspected terrorists during interrogation in Northern Ireland.



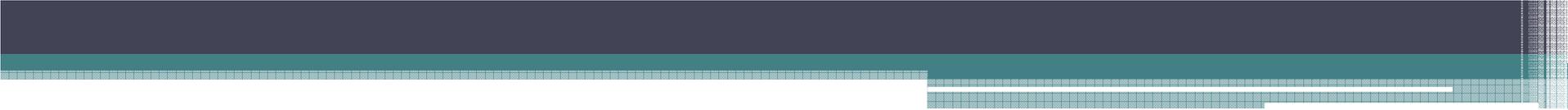
# Law Enforcement Response

- During the 1990s the police in response to Audit Commission recommendations concentrated upon Proactive approach to tackling crime.
- Use of covert techniques gained greater importance.
- In order to protect the integrity of these investigations, Law enforcement undertook to adhere to codes of conduct to minimise the interference of the rights of individuals. These codes of conduct later formed the bedrock for the Regulation of Investigatory Powers Act.



## Codes of Practice Turns into RIPA

- Parliament was obliged to pass the Human Rights Act 1998 which enacted the tenets of the ECHR into domestic legislation.
- It is universally accepted that it is permissible to interfere with the rights of individuals involved in crime
- The European Convention on Human Rights (ECHR) states quite categorically that such interference can only take in accordance with law



# The Articles

2. The right to life

3. The right not to be subjected to inhuman or degrading treatment

4. The right not to be held in slavery or servitude

5. The right to liberty & security of person

6. The right to a fair trial

7. The right not to be punished without law

8. The right to respect for privacy

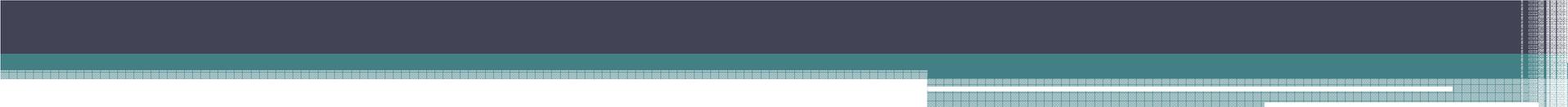
9. The right to freedom of thought

10. The right to freedom of expression

11. The right to freedom of assembly

12. The right to marry

14. The right to enjoy all the freedoms of the convention without discrimination



# Principles of Human Rights Legislation

The main principles of Human Rights Legislation impacting upon the UK are

## 1. Legality & the Rule of Law

- The restriction (on a persons rights) must have a basis in domestic law
- The law must be accessible
- The law must be sufficiently precise as to be foreseeable in its application

## 2.Necessity

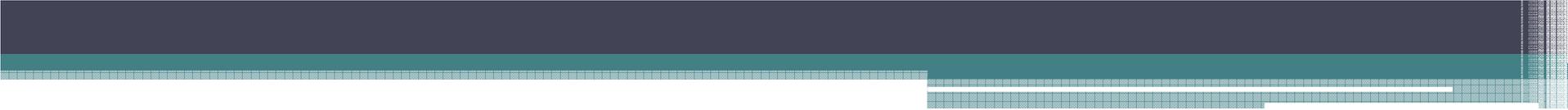
- Burden on the state to demonstrate that a restriction is necessary
- The restriction must be necessary to achieve one of the legitimate aims set out in the articles.
- The restriction must serve a 'pressing social need'
- The restriction must be proportionate to the aim pursued

## 3.Proportionality

- The 'Balancing Test'
- A measure is disproportionate if it imposes restrictions which are not justified in the light of the objectives which it seeks to achieve<sup>6</sup>

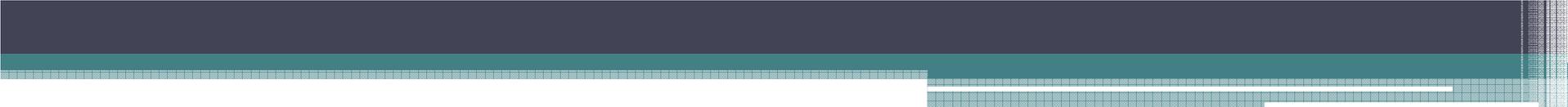
## 4.Subsidiarity

- A measure must impose no greater a restriction than is absolutely necessary to achieve its desired goals
  - A measure will be adjudged unnecessary and unlawful if a less restrictive measure would have sufficed
- Implications



# Laws Created Due to the HRA 1998

- 1. Legality & the Rule of Law
- Criminal Procedures and Investigations Act 1996 to comply with the need for equality of arms demanded by ECHR and put into being a regime of disclosure of evidence and information to the defence.
- Regulation of Investigatory Powers Act 2000 (RIPA).



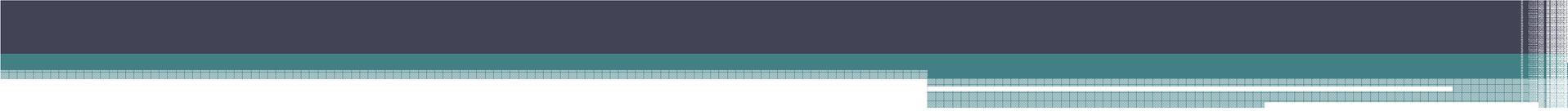
# Unregulated to Prescriptive

The regime is now prescriptive requiring the existence of permission to do any action rather than the existence of law that prohibits an action.

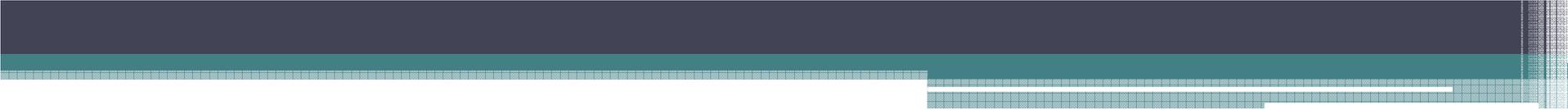
Under common law systems, where the defence have a robust right of challenge, the Human Rights Act has been cynically exploited and imposed the following on Law Enforcement

- Disclosure
- Need for Public Interest Immunity (Rowe & Davis v UK)

In typical British fashion, law enforcement has been tying itself up in knots to ensure that the letter of the Law is adhered to, whereas the law is applied differently in the rest of Europe where a smaller caucus of prosecutors and judges have responsibility for ensuring adherence with the principles of the ECHR.



*In the England police grapple to reconcile the demands of Human Right regimes with the practicalities and vagaries of real life whereas the lawyers and the judges choreograph intellectual pantomimes where short term aims of dismantling prosecution cases are put ahead of the rights of the general community.*

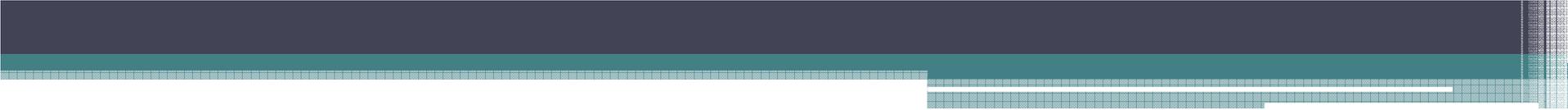


# Human Rights a Post 9/11 Perspective

- Strong and coordinated response required.
- Proportionate Response
- Within international law.

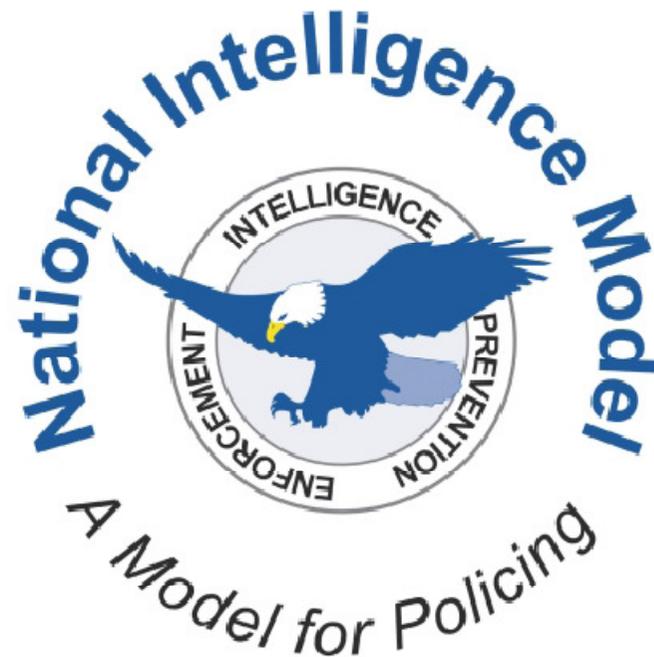
Whilst armed intervention is necessary other approaches have to be taken including

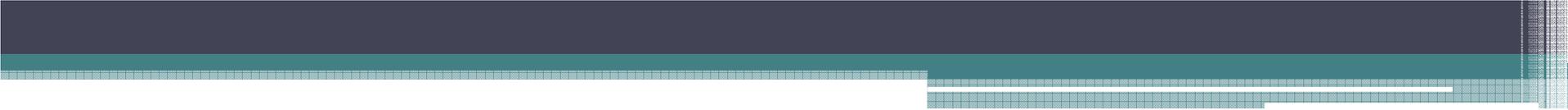
- political,
- economic,
- intelligence gathering and
- propaganda measures.



*Extraordinary Rendition examples an approach where the world's policeman has crawled into the gutter and begun fighting with the drunk.*

# National Intelligence Models – A way of dealing with Human Rights





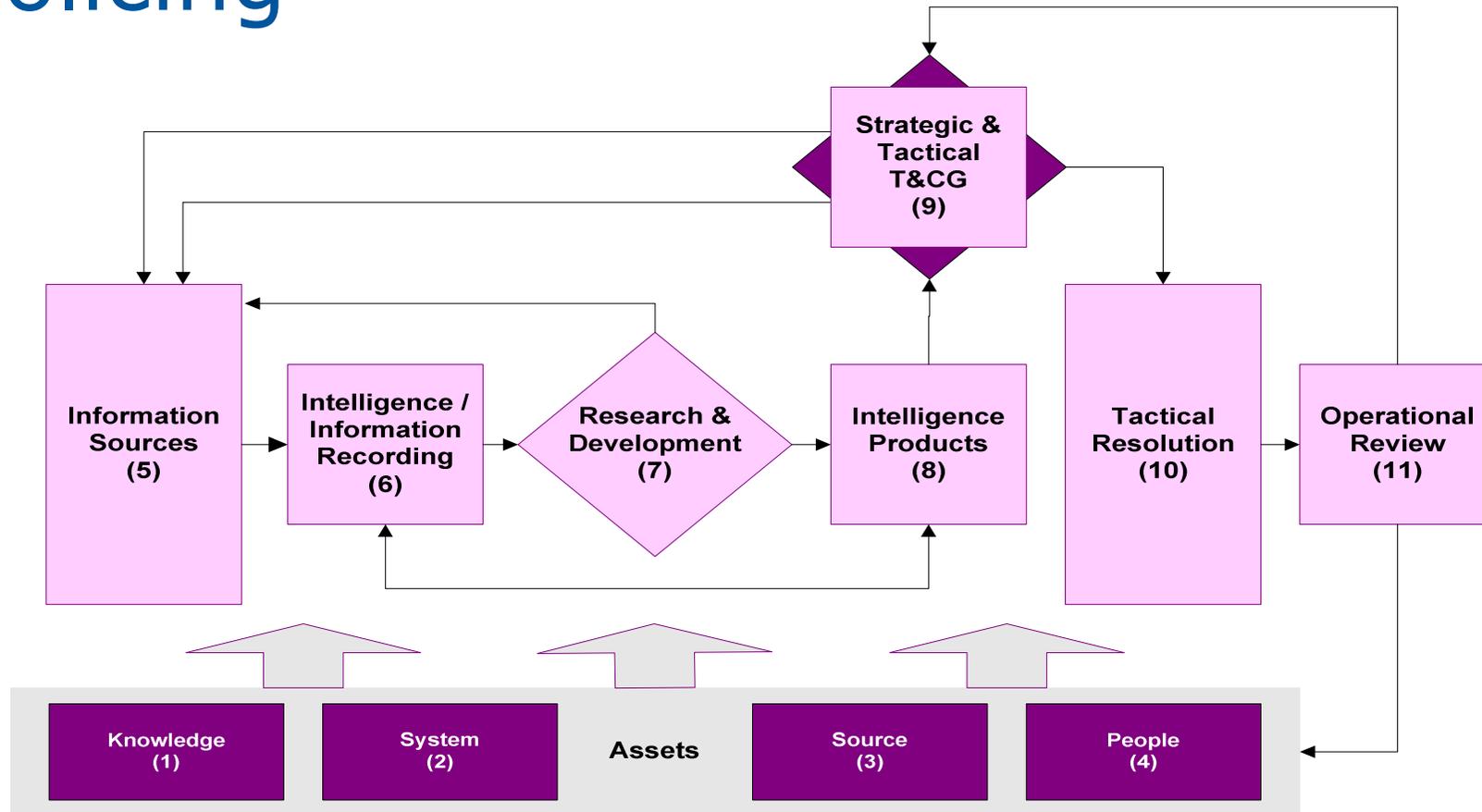
# Introduction

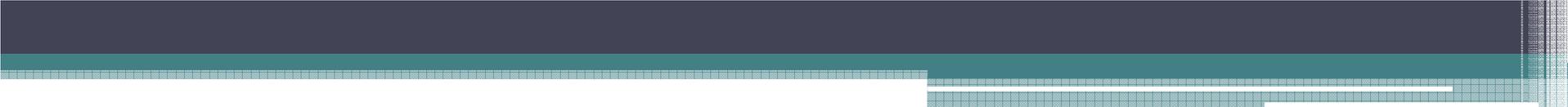
NIM the management model the police in the UK use to systematically :-

- identify,
- prioritise and
- eventually act upon information

they possess and which they are given to combat crime

# The NIM – a model for policing





# Intelligence-Led Policing

The *Intelligence-led policing* approach has been successful in improving law enforcement performance in several Member States and the same principles are capable of operating at the EU level. A European Criminal Intelligence Model offers that opportunity and would deliver benefits in particular by:

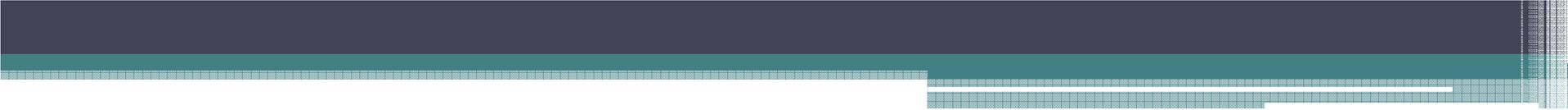
- Improving common knowledge of serious and organised crime through more effective collection, exchange, and analysis, of information;
- Increasing the effectiveness of Europol and other EU bodies;
- Achieving better operational results in the highest priority areas;
- Achieving greater accountability to Ministers in delivering action against Council priorities;
- Allowing all Member States and relevant EU institutions to observe a common methodology for tackling serious and organised crime in the EU.

# OCTA and JITs

## HOW THE MODEL WOULD WORK

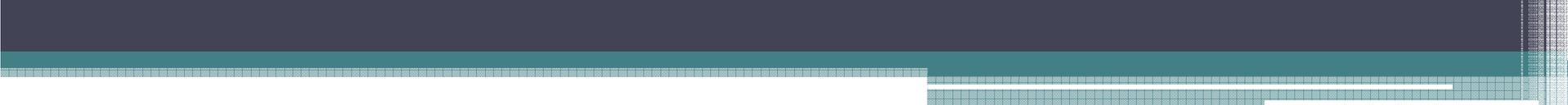
A European Criminal Intelligence Model turns knowledge into effective action through the management of an intelligence cycle.

- This calls for an EU Organised Crime Threat Assessment (OCTA), produced by Europol. OCTA identifies gaps in current knowledge, on the basis of which a formal EU Information Requirement (EUIR) will be produced by Europol.
- Europol acts as the central EU capability to receive, store, and analyse this collected information.
- Information System at Europol interprets the data to produce assessments to improve EU knowledge of
- priority threats and identify significant criminals, criminal networks and priority areas.
- On the basis of the operational leads identified by Europol, Member States will initiate cross-border investigations to disrupt significant criminal activity.
- Europol and Eurojust will support these investigations. *Joint Investigation Teams* may be formed. EU Police Chiefs will take a leading role in coordinating the operational response of Member States.
- The intelligence cycle is completed with the results and intelligence generated by cross-border investigations recycled to support the next round of assessments, through a debriefing process overseen by Europol



## Use of ECIM Evidences Proportionality

The systems built into National and International Intelligence Models ensures that police and law enforcement are not using 'sledgehammers to break walnuts'. They are therefore central to the effective transfer on intelligence whilst ensuring the protection of citizens' human rights.



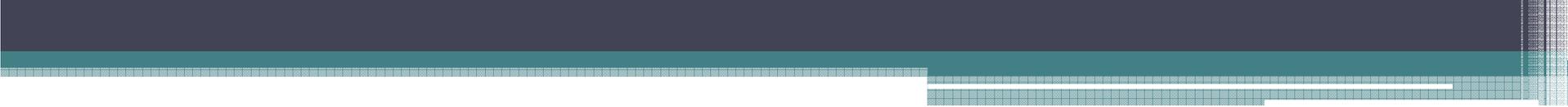
# Covert Human Intelligence Sources

- In the UK, covert human intelligence sources (CHIS) tend to be used for information and intelligence gathering only.
- Not used in the evidential chain.
- Protected from exposure in the court through recognised disclosure rules (Criminal Procedure and Investigations Act 1996).
- Protection from being used in evidential chain balanced against the acknowledgement that any material held by the prosecution which weakens its case or strengthens that of the defendant should be disclosed to the defence (*R v H and C*, 2004).
- Strict compliance with current legislation is demanded in the UK. The modern enacting by the UK of the Human Rights Act 1998 and the supporting RIPA of 2000 enshrines a long history of informer use that is, and will be entirely consistent with, the requirement for the UK to protect its citizens from harm.
- Use of CHIS is dictated by the European Convention On Human Rights (ECHR) in the UK. This does not appear to be the case in other member States.

# Use of CHIS in Europe

It is impossible to characterise the European use of informers

- Under the majority of jurisdictions judges or prosecutors independent of the law enforcement have oversight and control of the investigation. This limits the scope for legal challenges at subsequent hearings.
- On a national basis some agencies will use informants.
- Most States have legislation to govern the use of informants
- Many countries have processes for the use of 'special investigative methods'. This term refers to the use of covert techniques, of which informer deployment is often associated.
- Some will include the use of informers as an investigative method.
- Some understand that the use of an informer is outside the judicial process and is in fact an intelligence-related matter that rests solely within the hands of the law enforcement agency.
  - It is therefore purely information and not connected to an evidential investigation and does not require judicial sanction.
- Some agencies within some countries do not use or recognise informers within their systems.



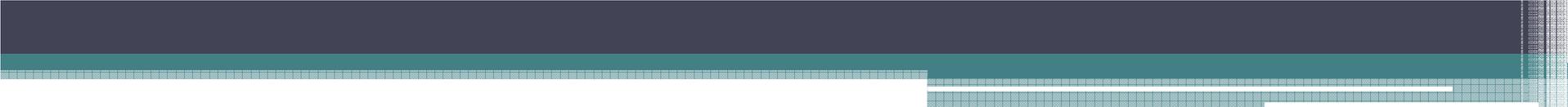
# Other Emerging Issues

## **Joint Investigation Teams**

- Ability to share information directly between JIT members without the need for formal requests
- Ability to request investigative measures between team members directly, dispensing with the need for Letters Rogatory. This applies also to requests for coercive measures
- Ability for members to be present at house searches, interviews, etc. in all jurisdictions covered, helping to overcome language barriers in interviews, etc.
- Ability to co-ordinate efforts on the spot, and for informal exchange of specialised knowledge
- Ability to build mutual trust between practitioners from different jurisdictions working together and deciding on investigative and prosecution strategies
- Ability for Europol and Eurojust to be involved with direct support and assistance
- Ability to secure potentially available funding

During the Nuremberg trials Herman Goering was asked why the Nazis abolished democracy when they came to power, he replied,  
*"We found it no longer necessary."*





## Conclusion

- The ever growing bureaucracy that surrounds human rights regimes especially when sharing information with trusted private companies and foreign countries. Raises the question whether such a system is compatible with ECHR and believe that a choice must be made either to change our system of law or redefine human rights legislation.
- As a public servant I must be ever conscious that my actions should be ethical and above all responsive to the undeniable rights of the individual.