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2020 – A year without living history?

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EDITORIAL

With the vast majority of our members locked down at home, living history venues closed and re-enactment displays cancelled throughout the spring, we started a conversation with our broker about what we could do about this period when the only members doing anything that the PLI covers are those involved in the protection of livestock and crops. Our expectation is a rebate for groups and in anticipation of that we renewed some April 2020 groups to October 2021. We'll sort other groups out as they fall due, probably with reduced renewal fees.

Meanwhile, we watched the news on TV until we realized that the BBC were operating a news blackout. They solemnly announced the number of people 'discharged dead' due to Covid 19 without once mentioning the number of people discharged as having gotten over it.

Having the one number without the other doesn't help anyone figure out to what extent 'herd immunity' is developing. Then it emerged that Covid 19 was causing deaths in residential homes for the elderly – that weren't being mentioned in the daily death toll – AND there was talk of Covid 19 having entered those facilities via patients being prematurely discharged from hospitals.

The BBC broke its self-imposed news blackout on 19th April to mention a spree shooting incident in Nova Scotia perpetrated by a man dressed as a policeman using police guns and driving a police car.

Then they went back to concentrating on the news blackout and a new hero emerged in Captain (later Colonel Sir) Tom Moore. It bugged us to see him wearing his 1939/45 Star, Burma Star and Victory Medal group *sans the Defence Medal*. The 'missing' medal from his group was the most widely issued of all the WW2 decorations. It also went to civilians in certain occupations (but excluding the land army). Harry Patch, the last man standing from WW1 was

awarded it for his WW2 fire brigade service. The sort of people who weren't awarded it were those who didn't spend long enough in non-combatant roles, such as Odette Hallowes. She was recruited by S.O.E. (F) in 1942 and was deployed to theatre by the end of that year and remained in Occupied Europe until the occupation ended: she didn't do the requisite number of days in service outside a war zone. Incidentally, the First Aid Nursing Yeomanry in which she was commissioned isn't listed as a branch of service qualifying for the Defence medal.

She did qualify for the 1939/45 Star and War Medal, like Captain Tom; she got the France and Germany Star, whereas he got the Burma Star. The 'mystery', such as it was, found a solution on Tom's 100th birthday on the 30th April, when he appeared to review the RAF fly-past wearing a shiny new replacement Defence Medal and his recently awarded Yorkshire Regiment medal.

He also received the honorary rank of Colonel; which is handy, as using any rank below that of Major after leaving military service is improper. Purists may recall the fuss caused when a candidate for the 1964 General Election stood as 'Captain Robert Maxwell MC'. (the BBC re-ran the whole of their 1964 General Election coverage on 16th May)

Then on the 1st May, Auntie broke the news blackout again to report a shooting incident in Upminster, Essex – which they described as being in East London. Police said the homeowner opened his door to a person claiming to be a delivery driver, whereupon several suspects forced their way into the house. An 11-year old boy was shot, his Dad received other injuries: two firearms were recovered at the scene and two teenagers were later arrested.

Thereafter, the news started getting back to 'normal' with reports of troubles abroad, such as the untimely death of George Floyd on 25 May and the consequential protests and riots, which at one point forced President Donald Trump out of the Whitehouse and into his bunker. He wasn't amused.

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IN MORE DETAIL - NOVA SCOTIA SPREE KILLINGS

In the first non-Covid 19 incident to penetrate the BBC bubble, a suspect identified as Gabriel Wortman killed 22 people and wounded 3 in a 13-hour rampage across Nova Scotia, Canada. Details of the incidents suggest Wortman had pre-planned or at least fantasised an event and was triggered prematurely by his partner.

It was already dark when the couple left a party in Portapique during a row and returned home where Wortman attacked his spouse and put her in handcuffs. She escaped into nearby woodland: he set light to the house and then drove back to the party in one of his four restored police cars where the shooting started.

Police responders entering Portapique found 13 fatalities and 3 premises on fire They were told Gabriel Wortman was the shooter, the he was dressed as a policeman and was

driving a police car. Thinking that the suspect could not have left the area on the single road they came in on, police told everyone to stay indoors while they looked for him: it was thought may have committed suicide by then. Random or targeted, all the casualties probably knew Wortman, who was identified to officers as the suspect.

What he apparently did was to cross fields to get out of Portapique and then drove the 20-minute run to Debert where dumped some equipment and remained until shortly before dawn. As night broke, he drove north to Wentworth, where he killed two people he knew and a third who came to their assistance. After setting that house on fire he drove back towards Portapique, killing a pedestrian en route; some twenty minutes after he'd been publicly identified as an active shooter suspect.

Information trickled into the Royal Canadian Mounted Police, who had nothing to suggest Wortman was still active after the spree killings in Portapique until around dawn (06.21) on the 19th when Wortman's spouse was located. She confirmed that he had a police car told police about his replica police car and since they hadn't found that in the dead-end beach community of Portapique they put out a BOLO (Be On Look Out) for Wortman and his police car. They didn't tell the public anything until a tweet timed at 10.17 – nearly four hours later. By then he'd tried to access another house of people he knew in Wentworth and conducted two traffic stops of vehicles, killing their occupants and had driven through Truro in his police car.

Half an hour after the tweet, at Shubenacadie, he encountered Chad Morrison; an RCMP officer who was expecting to meet another officer – Heidi Stevenson. Morrison was injured when shot through his car window, so he drove away reporting the shooting and heading for a hospital. Wortman continued his journey until he encountered RCMP officer Heidi Stevenson driving the other way. He stopped her in a head-on collision and killed her in the gunfight that followed. Then he killed another motorist who stopped to assist. He drove off in that good Samaritan's SUV, taking Heidi Stevenson's duty sidearm and ammunition with him.

He drove to the nearby home of a woman he knew, killed her and took her vehicle, but within fifteen minutes had to stop at a fuel station where RCMP officers were refuelling. Recognising Wortman, they shot him dead with their assault rifle type AR15s.

In the aftermath, media interest highlighted the police not using the 'alert ready' system to warn everyone about the man dressed as a policeman driving around in a marked police vehicle shooting people. There was also interest in where he got his guns and the usual political knee-jerk reaction which resulted in the police going around collecting up 'assault type rifles' and guns with a bore exceeding 20mm (which includes some 12 bore shotguns) to fulfil a 2019

election pledge nobody had done anything about in the interim.

Gabriel Wortman was 51 and professionally a 'denturist' with clinics in Halifax and Dartmouth, both of which were closed due to the Covid 19 lockdown. Reports of his social shortcomings and financial manipulation suggest he'd been deleted from quite a few Christmas card lists, and he was known to police via various reports, none of which contained enough hard evidence for them to act upon.

He had a collection of police memorabilia and four old police cars that he'd restored. Police recovered two pistols and two self-loading rifles from his crashed 'police' car and Heidi Stevenson's service sidearm from him after he'd been killed. One of his rifles would have been seized in the post-shooting knee-jerk had the police known he had it. None of his firearms had been obtained through Canadian possession and acquisition licenses.

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George Floyd 14.10.74-25.5.20

Our interest was drawn to this case when a journalist likened the public reaction to this death in police custody to what happened after the video of Rodney King's (2.4.65-17.6.12 arrest on the 3rd March 1991 went public and then viral. The video showed Rodney King on the ground and four policemen using their batons to deliver limb strikes as he tried to get up.

We heard a good deal of analysis of this case from Massad F Ayoob when he presented his Stressfire shooting course in the UK – an annual event in the SRA's training calendar 1988-95. A Monadnock international trainer, gun writer and part time police officer Mass was a 'go-to' defence expert witness for policemen accused of crimes arising from their encounters with the public. He succeeded our chairman Jan Stevenson to the post of guns editor at Police Magazine in the US and in developing what became his Stressfire programme he identified post shooting trauma (later known as PTSD – Post Traumatic Stress Disorder) as a consequence - and weaknesses in training programmes as a cause - of incidents in which suspects (or police officers) were killed or injured during encounters.

Mass's summary in the Rodney King case on the training side was that the Los Angeles Police Department had, when it switched to side handle batons, trimmed the officer training programme down from sixteen hours to six: so the officers knew the limb strikes as a disabling technique but not the more complex wrist, arm or leg locks taught for controlling a suspect. Rodney King had been tasered twice without apparent effect before the video started running and it was said had tried grabbing an officer's sidearm. Those factors would have been influential as to how the police behaved in this arrest.

Four officers were indicted for their part in the incident and eventually acquitted and that sparked the riots. Rodney King's police stop was on suspicion of driving under the influence, but he was not charged with anything. His brutality claim against

the police department was settled in the sum of $3.8 million and he drowned in his swimming pool in 2012 while under the influence of alcohol and drugs, aged 47.

George Floyd came to police attention in Minneapolis when called by a shop owner after he passed a forged $20 bill in their establishment. Various bits of videos, or excerpts from them have appeared on social media and news bulletins which don't seem to show him resisting arrest but after he's been handcuffed, he does appear to passively resist being put in the patrol car.

Postmortem results reportedly showed he was under the influence of fentanyl and methamphetamine when he died of either "cardiac arrest caused by being restrained" (official autopsy) or "evidence…consistent with mechanical asphyxia as the cause of death" (family-obtained second opinion). That he was under the influence of substances may have been apparent to the officers detaining him and in turn that may have influenced how they sought to control him. Mass Ayoob mentioned the effects of various substances as influential in several cases; working like an adrenaline surge, giving people under its influence more strength and thus making them more dangerous and/or altering their perceptions. People under drugs influence tend to fight on in gunfights after being shot and the need for ammunition to be more effective (which was a concern in the Philippines campaign in 1898 and led to the .45"ACP cartridge) kicked off again after Matthew Platt stayed up and shooting for over a minute after being fatally wounded in an FBI felony car stop in Florida in 1986. That led to the development of .38" Special plus-P-plus cartridge, the .40" S&W etc.

George Floyd had been living in Minneapolis without coming to police attention for six years prior to this fatal incident. He moved there after release from prison in Houston, Texas, having served his term for 'aggravated robbery' - leading a home invasion while armed with a handgun. That was his fifth period of incarceration: he'd had earlier stints in custody for theft and drugs possession.

The police department fired the officers and subsequently charged them in connection with George Floyd's death while the 'black lives matter' campaign developed on the streets across the globe. In the UK, a statue of Edward Colston (2.11.1636-11.10.1721) put up in the 1890s was consigned to Bristol harbour by protesters and other statues have been targeted, notably that of Cecil Rhodes in Oxford.

Cecil Rhodes stands on the front of Oriel College, Oxford – or did: depends when you read this

Members of the statue community fight back.

Statues of Confederate army generals installed in southern towns in the 1920s have, like that of Edward Colston, been the subject of protests over many years for being reminders of what the old south stood for and they've reportedly been attacked too. This year's targets included the racists Lord Robert Baden-Powell, Winston Churchill and Admiral Lord Nelson who apparently didn't speak out against slavery. Hmm. Winston Churchill was a man of his times and is best remembered for his achievements rather than his shortcomings and as for Lord Nelson, St. Paul didn't speak out against slavery either and there's a cathedral named after him in the City of London.

Banning lead – a self-inflicted wound?

A bunch of shooting groups and rural organisations - to wit the Wildlife Conservation Trust, National Gamekeepers Organisation, Moorland Association, Scottish Land and Estates and Scottish Association for Country Sports picked the beginning of March to announce that they want an end to the use of lead shot and single-use plastics in shotgun ammunition for live quarry shooting within five years.

They say significant recent advances in technology have enabled the transition to take place.

The group also called for the support of the wider shooting community and says such a change will benefit wildlife and the environment while also safeguarding the growing market for healthy game meat.

(The EU had plans to ban lead shot which we escaped by leaving the EU: it seems that British self-determination is such that it's coming anyway.)

A week later, the four biggest cartridge manufacturers in the UK responded to the initiative, led by the leading shooting and rural organisations in the country, on the issue of the lead-shot ban. The cartridge company's – Eley Hawk, Gamebore Cartridges, Hull Cartridges and Lyalvale Express, articulated their concerns in response to the original statement that aside from not being consulted on the matter, a five-year timeframe for transitioning away from lead-shot altogether was impossible to achieve without significant investment.

Further to the statement issued by the shooting organisations and, in light of speculation on social media, BASC have responded to clarify their position. They begin:

"BASC understands the manufacturers' concerns for their

commercial interests as expressed in their statement on Friday 28th February. The cartridge manufacturers were consulted before the publication by the shooting organisations of their initial joint statement on the proposed five-year transition to sustainable, non-lead ammunition. Representatives of shooting organisations were in contact with cartridge manufacturers at meetings where the proposed joint statement by the shooting organisations was discussed. A copy of the statement was given to cartridge companies in advance and they had the opportunity to comment."

BASC go on to say that they are seeking financial support from the government for the cartridge companies to underpin the future development of sustainable alternatives to lead shot. BASC also say they have held meetings with ministers and Downing Street advisors to secure the support.

A senior representative of one of the cartridge manufacturers gave a presentation on the sustainable alternatives to lead shot in January to members of the All-Party Parliamentary Group for Shooting and Conservation.

The joint statement issued by the organisations was accompanied by material provided by the Gun Trade Association, of which the cartridge manufacturers are members.

BASC concluded: *"We have always worked closely with cartridge manufacturers in delivering policy on ammunition and we will continue to do so. The shooting organisations are seeking an urgent meeting with the CEOs of the companies to agree the way forward. BASC urges all members of the shooting community to stand together as we work through the detail of a transition that will ensure the long-term future of shooting."*

A spokesman for the Teifi Valley Gun shop in Ceredigion said that he'd had bismuth cartridges on the shelves for twenty years without selling any.

Gunsmith Ian Summerell said, "This has been a well-planned attack on the shooting sports by the very people who are supposed to look after us. There is no problem with lead shot game. It is an argument built on bad science. Condors (reportedly lead poisoned in California by eating deer entrails left by hunters for scavengers to clear up) did not eat lead-shot deer; they were getting the lead into their bodies off roofs and paint."

A study in Norway and found that hunters who eat lead-shot game had less lead in their blood than townies eating supermarket food, so they repealed the lead ban for shooting game with lead.

The original announcement was about both lead shot and single use plastics in cartridges cases and the latter didn't rate a mention: except by Ian Summerell, who wanted to know if plastic was an ingredient in fibre wads in the same way as micro plastics feature in such products as shower gel. He didn't get an answer.

Scott Harrison advises us that the Forestry Commission has banned lead

rounds for deer and will not permit headshots to dispatch wounded animals. They want stalkers to use solid copper warheads which are unlikely to expand like lead, and, according to Scott, can ricochet like Superballs.

According to Barnes Bullets (see their photo) solid copper bullets will

expand – it's a question of physics (depends what it hits) – and they don't fragment the way a bronze jacketed lead bullet does. That lack of fragmentation may be a good thing for the carcass but may be why Scott reports ricochet effects.

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A ban on importing Hunting Trophies?

The Departments of International Development (DIFD) and the Environment, Food and Rural Affairs (DEFRA) launched a consultation about the proposed ban on hunting trophy imports on 2nd October, seeking replies by 25th January 2020. These 'consultations' are usually a way of softening the ground before introducing a plan that's already been made.

Zac Goldsmith introduced the Commons debate on 2nd October 2019. The debate ran for two hours and is remarkable only for the levels of ignorance on public display. An analysis of the debate by Rowan B Martin for submission to the consultation for the 'Conservation Frontlines Dispatches' e-newsletter takes the view that the Parliamentarians who contributed to the debate (two of whom lost their seats in the December 2019 general election) didn't know the difference between 'animal rights' and 'animal welfare'.

That they don't know the difference is because they are being fed misinformation by animal rights activists, and as with the firearms debates (or non-debates) without some independent review process to sort out the truth it seems to be the misinformation that sticks to political minds.

As happens when public order civil servants' brief ministers on the shooting sports. The firearms 'problem' is that legitimate gun ownership and use is inextricably muddled in bureaucratic minds with the criminal use of firearms. Nevertheless, the data is clear that a high level of gun control does not

reduce violence and a low level of gun control does not increase it. Countries with stringent gun control would not become violent if their gun laws were relaxed and countries with relaxed gun laws would not become less violent if they adopted stringent gun laws.

In the game trophy market, trophies are usually taxidermy for wall mounting, 'Modern' trophies arise from big game hunting being marketed as a trophy hunting sport as part of participating countries' drive to increase revenue from tourism.

The political 'problem' is animal rights activists seeking to prevent game shooting in all its forms while offering no suggestions for alternative revenue streams (for 'farmed' game animals) or another solution to managing wild animal numbers where a 'surplus' is a consequence of some other man-made imbalance. A proposal in Scotland to 'control' the surplus deer population by reintroducing wolves, for example, was likely to control the defenceless sheep and rambler populations before the wolves would have the need to tackle the defensively armed red deer population. The muddled thinking continues.

AND IN SCOTLAND

The word from Scottish members is that the latest version of the Scottish Air Weapon certificate states that the weapons can only be used on an 'authorised' range. Whatever that is: our first thoughts was 'authorised by whom?'

Especially dangerous air weapons held on firearm certificates were not made subject to the old 'MoD approved range' condition and the condition that replaced it in 2006 – about using firearms where there are adequate financial arrangements in place – put target shooters on a par with deerstalkers. It's now up to the shooter whether a shot is safe or not, so anywhere judged to be safe by the shooter counts as a range. So where does that leave the Scottish air weapon certificate condition?

And then COVID 19 became the top topic.

Among the first to make a drama out of a crisis was Derbyshire's chief constable who announced in March that his department would not process any grant or variation applications and would instead concentrate on the renewals backlog. Barrister Nick Doherty, author of the 'Firearms Law Handbook' said that he'd probably get away with it if staff sickness or the lockdown rules prevent a full service.

Judicial reviews of chief constables refusing to process applications have always sorted the problem out – eventually.

The problem with the JR process is it takes time; maybe eight months before a hearing is scheduled whereupon the police can sit on their hands until the date looms and then do something to divert the case to the back of the queue of another court.

The next impact was some clubs announced closures, as did some venues at which living history members represent their period of history. Then the government stepped in and locked everybody down. The

Welsh Government were very specific: so our club room was closed but not the range. Nobody can get to it, however, as only essential journeys are permitted and maintaining skill at arms doesn't count as essential.

'Unprecedented times', as West Yorkshire police put it. This is the bulletin they put out:

03/04/2020

Until further notice and after consideration of current Government advice, the following applies

- All grant applications require a home visit. In line with current Government advice this will inevitably lead to unavoidable delays for the foreseeable future.
- We will continue to send out renewal reminders and advise that you respond to this within 2 weeks, to avoid any unnecessary lodging of weapons. All renewal applications will be conducted by telephone.
- Telephone service – we will now be opening the telephone lines to the public on a ***daily*** basis between the hours of ***10am to 1pm***. Please note that these hours are contrary to the voicemail automated message and may be subject to change.
- Please only call where ***absolutely*** necessary, having researched the website in the first instance.
- We will be regularly monitoring the advice given by Government and West Yorkshire Police and updating this website accordingly. Circumstances are changing on a daily basis and we will endeavour to keep you informed via this website.
- Please familiarise yourselves with the non-personal means of contacting us below. These remain up to date.
- Please ***do not*** visit HQ reception to hand deliver any licensing related items
- We ask for your patience in these difficult unprecedented times.

Which didn't stop them putting this announcement out a few days later:

Firearms Seized in Ongoing Crackdown Against Serious and Organised Crime Tuesday 7 April 2020:

Over 225 firearms were seized by West Yorkshire Police over the last year in the ongoing crackdown on serious and organised crime.

The Force seized a total of 228 firearms - an increase of 100 from the previous year.

At the same time the number of firearms discharges fell by 9 to 42 when compared to the previous year.

Programme Precision launched in early 2019, which seeks to make the fight against serious and organised crime a police and partnership responsibility, has helped to focus and coordinate activity across the four areas of the Government strategy – Pursue, Protect, Prepare and Prevent.

Detective Chief Superintendent Pat Twiggs from the Protective Services Crime Command oversees the force response to organised crime:

"Programme Precision has enabled us to make the fight against serious and organised crime everyone's business. Illegal firearms are a real threat to the safety of the communities we serve and we are doing everything we can to remove that menace from the streets of West Yorkshire.

"The reductions we have seen in the last 12 months and the increase in the seizure of firearms is a testament to the hard work of officers and staff across the whole force, and the very valuable work being undertaken by our partners."

"These efforts are clearly having an impact but we will never stop in our pursuit of those involved in this type of serious criminality."

Det Chief Supt Twiggs added:

"Programme Precision brings various partners together to recognise that crime has changed and so have those who commit it. Therefore we must change too.

"Although Precision is relatively new it is clear it is helping make a difference to the communities we serve."

Mark Burns-Williamson, West Yorkshire's Police and Crime Commissioner (PCC), said: "I fully support the work of Programme Precision which is a wider partnership response to serious organised and violent crime, and it's good to see the progress being made.

"I not only invested significantly in Programme Precision but have also funded many West Yorkshire grassroots projects through my Safer Communities Fund (SCF) to help tackle serious and violent crime. This is further supported by the recent launch of the Violence Reduction Unit (VRU) which focuses on early intervention and prevention in diverting young people in particular away from a life of serious and violent crime.

"This targeted operational law enforcement work, and the ongoing seizures of firearms and other weapons, combined with the early intervention work, is directly resulting in making our communities safer. Those found to be committing and involved in this sort of harmful criminality will be dealt with robustly and appropriately to get them and such weapons off the streets of West Yorkshire."

We asked their on-line enquiry process how many of these firearms were seized from firearm or shot gun certificate holders and two months later we'd had no reply and when we chased it up the original press release had also vanished.

The clouds gathering in respect of this claim are that the police chiefs and firearms licensing managers got together a few years ago and developed a 'seizure policy'. Here's what it says;

<u>When to seize firearms/shotguns?</u>

- **All MEDIUM and HIGH risk domestic incidents.**
- **All STANDARD risk domestic incidents where the perpetrator is suspected of**
  - **Use or threat of violence, or**
  - **Stalking/harassment, or**
  - **Where the circumstances indicate concern for public safety.**

Note: All licences/certificates <u>must</u> also be seized (to prevent further purchases)

<u>Why?</u>

- **To ensure public safety whilst Firearms Licensing consider revoking the license/certificate.**

<u>What to do next?</u>

- **Email a report to Firearms Licensing, attaching scanned copies of the relevant paperwork (eg MG11s, MG5)**
- **Do <u>not</u> return firearms/shotguns/licences /certificates – only an ACC can authorise their return.**

<u>What power do I use?</u>

- **Common law power to ensure public safety.**
- **Powers of arrest, entry and seizure under PACE if criminal offence committed/suspected.**
- **S46 Firearms Act warrant issued by a magistrate**
- **S47 Firearms Act if no firearms licence/shotgun certificate.**

This seizure of the private possessions of firearm and shot gun certificate holders takes place when the intervention is thought necessary thus to give whatever circumstances caused it to resolve themselves and for – post the Mike Atherton inquest – the issue of whether the lawful owner of the guns can have them back or get a certificate revocation letter instead.

In a Thames Valley case, he told a neighbour he would shoot the dog of his that attacked her chickens; that got his guns seized, him assaulted by the seize team and his certificate revoked. Other seizures have included guns of a farmer who let a former tied cottage to a tenant who grew cannabis in it and wasn't around to explain when the police called.

In Essex, a re-enactor's guns were seized because he wasn't registered with a GP.

We've had about 79 of these cases across our desk and the problem from our perspective is that since it's not a judicial procedure, there is no immediate action we can take in reply. An immediate response, such as seeking an injunction, could lead to a revocation letter as the way the police would likely resist someone who takes them to court before they are ready. Revocation moves a case out of a county court – or the high court if one went for a judicial review – and puts it at the back of the queue in a crown court, sitting in its capacity as successor to the quarter sessions.

Doing nothing actually gets guns back quicker where the owner is found to be an innocent party. The policy violates the certificate holder's rights under 1689 bill of rights the 1963 European Convention on Human Rights and the Human Rights Act 1998 but saying so doesn't get things resolved any quicker because once the police have worked out for themselves that they haven't got any lawful grounds for keeping the firearms away from the owner, Andy Marsh's 'by any means' policy kicks in and there's a second round of checks as to the suitability of the gun owner to own guns.

Where a revocation letter is issued, there's something to react to. There are times when it's best not to wait that long, just as there are times when waiting is the right thing to do. It's a judgment call based on experience that we seem to have to make every other week.

MEANWHILE, AT THE SRA

The SRA's position during the Covid 19 lock-down: we've been negotiating with our insurers for a discount, since lockdown has reduced the number of members doing anything risky from an insurance perspective to double figures: farmers, gamekeepers and deer stalkers are still engaged in pest control and crop protection. Some members use it as a defence for buying realistic imitation firearms and so on. We don't anticipate the insurers coming up with a solution until we renew the SRA policy in July, but in anticipation of a discount we've been renewing April groups for 18 months - or half price to next April - as we have to maintain some cash flow ready for the July renewal.

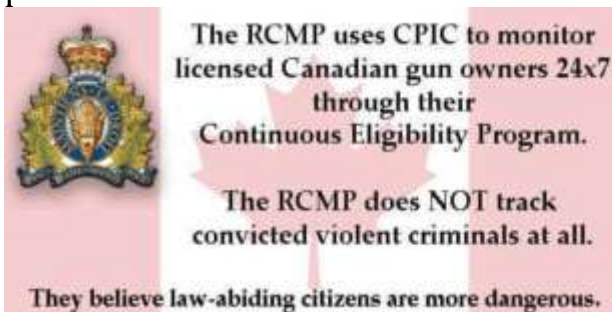
We currently expect every group that sticks with us to get six months 'free', either by paying full price for an 18-month renewal or by paying half price at their next renewal. While nothing is going on it may suit some groups to just leave it and contact us again next year as a new group. There's no 'right' or 'wrong' answer but do bear in mind that the insurance is continuous and is only one aspect of membership.

Any member can run into difficulties with the police at any time and may call upon our services to help sort things out. Politically, the Home Office are in the process of criminalising the possession of 'defectively deactivated' guns and imposing a registration scheme on owners. They tried to bring in a compulsory medical for certificate holders last year - that'll be back again - and they also tried imposing their definition of antique firearms on us by way of a statutory instrument. These last two turns of the screw fell because of the general election: they were also flawed in that the medical plan didn't extend to a form for GPs to fill in and the antiques definition is one that the Court of Appeal rejected in 1977 when they created the common law fact and degree test.

We've got members lobbying on all these matters at the moment and that generates costs for the association to maintain, which, as always, we do what's expected of us to the limits of our resources.

Police use of smart technology

This opinion of the effectiveness of the Royal Canadian Mounted Police in respect of people trying to keep up with ever-changing guns laws in that country is expressed in this sentiment posted on line:



Meanwhile, New Zealanders are also less than impressed with their government toeing the Home Office line of treating all legitimate firearms ownership as a public order problem. Here's what they put on line:

Stuart Nash, to save you looking him up, is a cabinet level member of the NZ Labour Party and a great-grandson of NZ's 27th Prime Minister Walter Nash.

British police 'use' of firearms

Following an incident in February 2020, when an airline passenger found a police sidearm and two passports in a Jumbo Jet's toilet compartment, inews.co.uk made freedom of information requests of all British police forces and received replies indicating that police weapons had been accidentally fired on 106 occasions in the past five years. That figure doesn't include anything Greater Manchester Police got up to, as they didn't reply to the FOI.

Most of these 'accidental' discharges (known as 'negligent' discharges to everyone else except the Metropolitan Police who call them 'unintentional' discharges) took place in police stations during procedural drills, or at training facilities; but nearly a third happened during armed operations or on public patrols.

Two of these NDs resulted in officers shooting themselves in the foot. The one non-police casualty in all this was a driver who rammed a police car causing an officer in it to discharge his weapon: so he had his finger inside the trigger guard and the safety catch – it the gun had one – not applied: maybe the impact spoiled his aim.

In the same time frame police opened fire deliberately 40 times. The 'inews' article doesn't extend to say who or what the police hit with those bullets.

The National Police Chiefs Council is quoted as saying that the accident rate is less than one in every thousand armed duties. That's hard to compute, given that the police no longer publish the number of time weapons are issued, drawn from holsters and fired (deliberately) in the handy format they used to.

A former senior firearms officer is quoted as saying that British police are among the best trained in the world – a self-serving statement that most of us who have experience of the police use of firearms would disagree with.

The Metropolitan Police contributed 39 'unintentional discharges' to the 106 total. Unsurprisingly, as they have the largest cadre of armed officers, more routine duties for armed officers and more emergencies to deal with than any other force.

Police forces responding to the inews FOI request also disclosed a small number of indiscretions in which guns were left insecure. It's a small number because the Metropolitan Police refused to locate the information on cost grounds.

LATEST GUN BANS

Elmer Fudd (left) and Yosemite Sam Looney Tunes cartoon remakes will feature these characters without their guns, but all the other violence, including using dynamite, is apparently going to be OK.

Firearms 'licensing' and what the powers that be are up to

Since we're all still locked down to some degree, we figured you'd have more time for reading and writing. This is a case of reading this article and then, if you can, raising the elements of it that are more relevant to your position with politicians.

The matters that concern us all are what changes the Home Office have in the pipeline for us. In 2019 they consulted on two proposed statutory instruments:

- one sought to make medicals compulsory for all certificate holders and
- the other sought to create a definition of an antique firearm.

Both these proposals were seriously flawed and neither made it into legislation before everything stopped for the December 2019 general election. Officially, the consultations

are closed while the Home Office think about it and we await developments.

The statutory instrument they actually put on the books in the run up to the election – you may remember delays in the date of the election to allow sufficient 'laying days' for secondary legislation and this was one of the SIs laying then - made on-line registration of transactions in deactivated firearms with the 'serious violence unit' compulsory and registration of the possession of deactivated firearms obligatory by April 2021. There was no consultation about this SI; it is actually one of the transitional arrangements for leaving the EU.

Then we had the general election followed by Covid 19. Police forces started making arbitrary decisions about their obligations under the Firearms Act, basically announcing that they would not process applications that involved a home visit because they weren't doing home visits: which are not 'authorised' in statute anyway. New applications would be returned to sender, likewise variation applications. Staff would concentrate on renewals only – of which every force had a backlog anyway. At least that nailed the lie about firearms 'licensing' being core police business.

Police forces have been failing to renew certificates on time for decades. This essay gives a lot of that history: references to Dyfed Powys police are because we live in their area and thus have more day-to-day dealings with people caught up in their problems.

In the last journal we suggested it was time for a re-think. The fundamental problem is that the police administer firearm and shot gun certificates to the agenda that reducing the number of firearms in the hands of the public is a desirable objective in itself. The Home Office has long been anti the public having guns: that dates back to the 1950s cold war and when the Home Office took over section 5 and club approval from the Defence Council in 1968 their sole interest in exercising control over us was as a public order risk. The department currently dealing with firearms matters is called the 'Serious Violence Unit'.

The structure of police forces since the late 60s has been for every force to have every department: detectives, dogs, firearms, forensics, traffic, etc. but lately some police forces have addressed certain specialities by amalgamating departments. The people in those amalgamated departments sense a trend towards a national service.

We like the idea of a national service; but we don't think either the police or the Home Office are relevant to the administration of either sports or businesses. The legitimate shooting sports have been practically wiped out by the Home Office obsession with treating us all as an innate threat to public safety in the teeth of all the evidence to the contrary.

At a practical level some police forces have been up to 11 months behind with issuing renewals. The Crime and Policing Act 2017 gave

firearm and shot gun certificates an 'automatic' eight-week extension, which helped a bit in some force areas. The Firearms Act itself affords the chief constable no discretion to fail to renew a certificate by the due date and an obligation to issue a permit under section 7 of the Act if he can't meet that deadline. Prior to the lockdown, Dyfed Powys reluctantly issued one three-month permit but insisted that guns were put into store with a gunsmith after that for no fault of the owner.

When lockdown came, there were guns in the gunsmiths that couldn't be retrieved because he was shut and permits expiring where people couldn't put them in store because the shops were shut. Failing to issue a certificate by the due date or failing to maintain the gun owner's possession with permits doesn't seem to cause the chief constable or his staff the disciplinary problems although it should. Quite a lot of certificate holders in Dyfed Powys use their guns in connection with their business – pest control on farms, protection of livestock at lambing time and such: and if they can't do so because of the chaos in the police headquarters that might be construed as restraining lawful trade, which is a criminal offence at common law.

Renewing a certificate takes about six minutes: but the 'agenda' kicks in. In summary, the police have had the job of issuing firearm certificates since 1920 and have spent a lot of time and money over the last hundred years seeking ways of not doing it. After the Home Office took over 'control' of approving rifle & Pistol Clubs and for issuing section 5 'prohibited weapons' authorities in 1968. They issued a memorandum of guidance for the police in 1969; a restricted document, not shown to certificate holders or the trade. A police committee recommended a severe curtailment of the shooting sports in 1972 (McKay Report), also unpublished, and although Parliament rejected that (as a green paper Cmnd 5297 in 1973) many of McKay's recommendations became police policy.

These two documents – unseen by stakeholders – formed the Home Office agenda. The agenda is that reducing the number of firearms in the hands of the public to an absolute minimum is a desirable end in itself (McKay) and a progressive separation of the shooting sports and gun trade from military weapons (Home Office). The Home Office had long 'worried' about the public having guns and when the power to deal with that transferred to them from the Defence Council (at a time when Prime Minister Harold Wilson was worried about a coup) it went to the public order department. At the time of writing they are probably trying to figure out what additional controls over the shooting sports are required in response to the 'black lives matter' street protests.

Neither Home Office policy nor the police ones have ever been adopted as government policy. The courts have provided restraint in many areas of firearms law, only to be ignored by both the police and the Home Office. Policy has been shaped by a series of

knee-jerks in reaction to something happening.

- The spree killing of 16 people by Michael Ryan in Hungerford in 1987 gave us the Firearms (Amendment) Act 1988 and the separation of rifle clubs from their traditional defence of the realm role.
- The massacre of schoolchildren in Dunblane by Thomas Hamilton in 1996 gave us the handgun ban in two 1997 Firearms Acts
- The spree killing in Whitehaven, Cumbria in 2011 by Derrick Bird resulted in 'prohibited person' status extending to include people sentenced to suspended sentences of more than three months and extended prohibited persons' prohibition to include the possession of antique firearms.
- The murder of family members in Hordern, Durham by Mike Atherton in 2012 set off the 'by any means' trawl through certificate holders to see if any could be weeded out.

We respond to the fact that these four had certificates for their guns by pointing out it was because the police – and not the shooting subculture - decided that they could. The views of the shooting community have not been sought – actively suppressed and sneered at in fact – since 1997.

1. Michael Ryan would not have had a certificate in 1987 under the old way of doing things. Prior to 1970 getting into a shooting club was quite masonic; one had to be introduced by a member and pass muster socially with his peers to be accepted. Once trained, it was up to the club officials when one put in for a certificate and what for. It was the Home Office taking over approving clubs that made commercial clubs like the 'Tunnel' where Michael Ryan joined possible and the police (not the clubs) micro-management of what they would allow certificate holders to acquire is how he got the firearms he used in his crimes.
2. Thomas Hamilton was a dead-wood member of a club when it closed in the 1990s. Home Office rules were such that his certificate could not be renewed unless he belonged to a club. He was actively pushing the Callandar club to take him as his certificate expiry loomed in February 1995. They didn't want him because his 'baggage' was known and in the end, he stopped pushing because the police had renewed his certificate anyway. If his local police had followed Home Office rules, he would not have had a certificate in March 1996.
3. Derrick Bird was not known to the shooting community in Whitehaven and the surrounding area. He didn't belong to any club, had never been mentored by anyone we could trace and only the police

who approved his having guns knew that he had them.

4. Mike Atherton in Durham likewise had certificates but no peers we've traced in the shooting sports. Only the police knew that he had guns because they'd authorised them.

   In the wake of the Atherton inquest, Andy Marsh (ACC in Hampshire at the time and ACPO's 'lead' on firearms matters) claimed he got the nod from David Cameron to trawl through all existing certificate holders to see if there was anyone there who shouldn't be. (Note that he didn't trawl through police departments in search of staff who weren't up to the job.) This policy became known to us as 'by any means'. The upshot of his trawl, meetings of firearms managers with police (ACPO-FELWG) and a growth spurt in Home Office guidance, primary legislation and Statutory Instruments brought us to where we are today.

The case for the firearms subculture; people who try and want to own and use guns legally is that controlling the various activities this group participate in as target criminals and a public order risk has made such a mess of both the controls and the functions of our society as a whole that it is unsustainable as a way of doing things, while it masks the true levels of gun crime in the UK.

Gun availability and violent crime are independent variables. A high level of gun control does not reduce violence and a low level of gun control does not increase it. Countries with stringent gun control would not become violent if their gun laws were relaxed and countries with relaxed gun laws would not become less violent if they adopted stringent gun laws.

The Home Office is irrelevant to section 5 (prohibited weapons) controls. James Edmiston (used to own Sterling of Dagenham and made submachine guns for the British army) negotiated a $45 million contract to supply 5.56mm rifles to a South American government. Negotiations involved the Ministry of Defence, the diplomatic service and the Department of Trade and Industry. Once those departments had all approved the contract and it was a done deal, he had to go to the Home Office for the section 5 authority to commence manufacture, as they'll only issue authority in response to proven export business. The Home Office put it out to the Metropolitan Police to approve the security of his factory (which had been making similar rifles for various foreign contracts under a previous owner) whereupon it sat on a police desk for eleven months.

The contract was lost, the factory closed and at a section 44 appeal a police superintendent said that it was the Commissioner's policy to prevent the manufacture of military weapons in London. To which we say "Huh?" The whole point of section 5 was to remove police discretion from the

decision to issue documents as required by the Defence Council and later the Home Office. The latter's involvement is quite pointless as they are merely reviewing the existence of the contract and DTi export licence.

In our view, Section 5 (prohibited weapons) authorities should be handled by the Department of Trade and Industry; they already being responsible for the legality of export permits and they have some expertise in matters of trade and business. The Home Office reviewing another department's work is sheer bureaucracy. Registration of firearms dealers should likewise be a DTi matter, or possibly a local authority one (as is the case with explosives storage, alcohol sales etc) rather than local police forces doing it.

Since the Home Office thinks shooting clubs are all 'businesses' the DTi would be well-placed to licence them too.

The 20th century concept of local police issuing certificates is obsolete. A central licensing authority, like the DVLA or the SIA, would be faster, cheaper and more efficient: especially with guidelines based on the law and not on the Home Office wish-list.

All wannabe certificate applications would go to the relevant shooting organisation for training and obtain a certificate of competence for the class of firearms they intended acquiring before sending off for the certificate. That way, everyone involved in shooting would have been approved by his peers who know what he's like with guns and not by a police force who don't.

Mr Edmiston was already registered as a firearms dealer in West Mercia but had to start again with a new application in London, hence the lengthy delays while the Met scuppered his $45 million contract by sitting on their hands. The Metropolitan Police not issuing his RFD in London merely added him to the long list of gunsmiths and other professionals whose lawful trade has been unlawfully restrained by police action or inaction. Since police disciplinary processes don't work in such cases, the only other option is privately prosecuting the relevant police officers for that common law offence. If one can identify the relevant officer(s) in the blur of buck-passing.

The Home Office refer to clubs as 'businesses'; the extent to which that is true is a reflection of the fact that their policies made that possible. Traditional rifle clubs are social entities. The 1859 volunteer rifle movement that created the National Rifle Association in 1860 was a social movement and its main annual competitions became part of the social season. Clubs only became 'businesses' when businesses had to become 'clubs' in order to get range safety certificates between 1969 and 2006 because the Ministry of Defence only issued range safety certificates to ranges belonging to clubs in the defence of the realm loop: not galleries, not RFD test-ranges and not commercial ranges.

As a community, we've had very grave problems caused by police revoking someone's certificate and then insisting that the club ostracise that person. Removal of the certificate denies the victim access to his hobby and more importantly to his friends. This has become more of an issue as the Home Office have obsessively escalated their use of medical conditions as grounds for preventing people having certificates. While everyone else – from the Royal Family down – encourages us all to regard both mental illness and mentally ill people as normal, the opposite is the case at the Home Office.

People who are unwell don't go shooting and when the police get wind of what ails them, they can lose their certificate and access to their social network at the club. The latter have been threatened with loss of their expensive Home Office approval if they don't ostracise the erstwhile member. And police forces treat this as a lifetime ban and not as a temporary exclusion.

- A brief psychotic episode in 2011 kept Kevin Jenkins out of being a certificate holder until a successful appeal (and three medicals saying he was OK) 2019. A report of his case is elsewhere in this journal.
- A similarly brief episode in Mark Holmes' life in 2010 kept him out of shooting until 2017. Gwent reneged on the two-year time out they proposed when they took the certificates off him, put him through additional medicals, used delaying tactics to rack up the cost of his appeal *(the ACC scuppered the first hearing by turning up 45 minutes late. At the second hearing he asked for an adjournment for Mark Holmes to obtain yet another medical and for him to produce a police officer witness, whom he didn't produce at the third hearing where he falsely claimed Mark had a 1995 drink-drive conviction)* and only granted the certificate shortly after the appeal was dismissed, it appears, to head off an investigation into their conduct.
- Michael Little and Adam Pamment both took a two-year time out in Thames Valley following revocations and at their appeals TVP ignored the time out and resisted the appeals on the original grounds for the revocations without considering what might have happened in the intervening time.
- Blair Grindle's 2016 appeal was resisted solely on the grounds of the original revocation in 2000. No attempt was made by Gloucester Constabulary to see what had changed in his life in the intervening 15 years.

There is no concept of the passage of time curing anything, unlike in every other judicial process. The Rehabilitation of the Offenders Act 1974 sets out periods of rehabilitation based on what the sentence for a crime was. The 1975 exceptions order obligates firearm and shot gun

certificate applicants to disclose 'spent' convictions, which are nevertheless still 'spent' and of the five mentioned above, only one of them has any convictions.

Back in the 1980s we negotiated a three-year time out with the Metropolitan Police as appropriate following a revocation that we could not be sure would succeed on appeal. That tended to happen anyway where a prosecution was involved:

- Harry and Peter Pullenger were out of shooting for nearly that long due to the time it took to get their alleged section 19 violation to court and for them to be acquitted.
- In another section 19 case, recorded as 'R. v. Stubbings' 1989, he got his certificate back after three years, which was before the Court of Appeal dismissed his appeal.
- Kevin Jenkins was out of the shooting for nearly three years when he was accused under section 19 in 1997.

These administrative cases against certificate holders (the Pullengers had guns and ammunition in their car because they were going to a club meeting; Stubbings was on his way back from a clay shoot to which he'd taken a revolver) aren't grounds for revocation anyway if one pays attention to the courts. Spencer-Stewart v Kent (1988) is clear that crimes not involving violence aren't evidence of danger to public safety or the peace and Shepherd v Chief Constable of Devon and Cornwall (2002) says the same of administrative firearms convictions.

The other problem with the policy is that the Home Office definition of a mental illness is incompatible with everyone else's. We wrote to the Home Secretary in August 2019 to ask;

"Which of the following medical diagnoses will result in a police officer's employment being terminated?

(i) Acute Stress Reaction or an acute reaction to the stress caused by a trauma;
(ii) suicidal thoughts or self-harm;
(iii) depression or anxiety;
(iv) dementia;
(v) mania, bipolar disorder or a psychotic illness;
(vi) a personality disorder;
(vii) a neurological condition: for example, Multiple Sclerosis, Parkinson's or Huntington's diseases, or epilepsy;
(viii) alcohol or drug abuse; and
(ix) any other mental or physical condition which may affect the safe possession of any defensive weaponry on issue."

We have not received a reply. Apart from *(ix)* the above list is the Home Office version of what should stop you shooting and necessitating your

friends turning their backs on you. Forever, it seems.

On our reading of the list, dementia would get a policeman invalided out and any of the others would see him off sick until well enough to return to light duties; yet any of these diagnoses is going to terminate a certificate holder's peaceful enjoyment of his private possessions, access to his hobby and friends without end.

The problem with revocation of certificates is it's just that: there's no concept in the Firearms Act of a time-out, as in motoring legislation where driving bans are finite and set by the courts: nor is there a penalty points scheme – all convictions are treated the same, despite the law: as grounds for revocation.

While the time out principle was respected by some forces prior to Dunblane; since the 1997 legislation and Tony Blair's administration, however, policing has tried to enforce any revocation as being a lifetime ban and prohibition: hence threatening clubs with closure if they allow revoked members to attend or allow their guns to be stored there while an appeal is pending.

Until 1990, Home Office approval (same as under the MoD) covered all firearms. The effect of 'approval' is that club members can use guns at the club without holding a certificate for them: they can borrow each other's or use guns held on the club certificate. The Home Office rapidly dismantled the machine gun clubs after taking control of clubs in 1968. In 1990, they limited approval to 'full-bore' rifles, 'small-bore' rifles, 'full-bore' pistols and 'small-bore' pistols. The main casualty of this change at that time was club shotgun sections, but since then other firearms types have been developed which the Home Office does not recognise for approval. Handguns weren't banned in 1997: what was banned was any small firearm with a barrel of less than 30cm and an overall length of less than 60cm. The effect of giving the gun trade dimensions was that they had something to build to and revolvers started to appear with long barrels and a back bar to make up the length. One has to belong to a club in order to buy one for target shooting, but because it's not an approved type the club can't teach members to use it and nobody but the owner can use it at the club.

A greyer area is the use of repeating shotguns for target shooting with slug ammunition. This has been going on since the 1970s in 'practical shotgun', which is not a Home Office approved club activity, but more recently it started taking hold in rifle clubs when a Russian company produced their national service rifle as a .410" shotgun. Smoothbored guns aren't rifled and the Home Office claim on the one hand that a semiautomatic .410" shotgun is not a rifle and on the other that a rifle is a firearm ordinarily held by both hands and fired from the shoulder.

The nit-picky restrictions are Home Office agenda (the multitude of section 5 subsections is pure job creation in the Serious Violence Unit) and irrelevant to public safety. The

majority of personal certificates that have been revoked are likewise not people who would be any danger to public safety within the real meaning of the term. The most difficult part of appeals is that the courts don't seem to feel bound by the earlier decisions of the High Court and Court of Appeal. So, does Boris Johnson want to own the current Home Office/police policy?

As London Mayor, Boris Johnson was expected to support a lifting of the 1997 handgun ban; if not altogether, at least enough for the Olympic games competitors to be the freely chosen 'best' among us. That was knocked on the head by the 2011 spree shooting in Cumbria by Derrick Bird. Following that incident, David Cameron said one could not legislate for a switch flicking in someone's head. That headed off any immediate knee-jerk by the Home Office but didn't stop Keith Vaz using his Home Affairs Select Committee to trawl through what was legal to see if anything could be shaved off it.

What he came up with was overturning R. v. Fordham (1969) to make suspended sentences count towards prohibition. That and extending 'prohibition' to include antiques came into law in 2014. Derrick Bird (Cumbria shootist) had been given a suspended sentence in the 1970s. The men who murdered drummer Lee Rigby in Woolwich in 2013 had an 'antique' revolver with them, which is thought to be the grounds for that change.

How the Labour Party's position changes or doesn't with Sir Keir Starmer as party leader remains to be seen. He is said to have had a background in human rights law and was seen as pro-police in the role of DPP. Labour's position in 1988 and again in 1996 was that the government wasn't going far enough against lawfully gun owners in the firearms subculture.

In office, they were marginally more restrained. While most Conservative firearms legislation has been directed at the people who are trying to act lawfully, Labour legislation tended to hit the firearms subculture with collateral damage.

An example would be the 2003 mandatory five-year sentence for possessing a handgun. Already a fraught area legally, the sentence was intended to hit street crime (Jack Straw said it would be for 'carrying') and missed because it didn't apply to under 21s and addressed 'possession' rather than 'carrying'. A rather pointless twist of the knife: 'carrying' was already covered by section 19 of the Firearms Act and simply making the five-year sentence mandatory for persons convicted under section 19 when also in possession without a certificate would have got Jack Straw where he said he wanted to be.

The end result has been juries allowing far more acquittals of middle-aged collectors for possessing antiques than would have been the case if the legislation had been framed to hit the intended target. Prior to the mandatory five-year ban, benign possession of a 'modern' firearm got the middle-aged collector fined. Now the Home Office are trying to redefine

antiques because of the problems caused by the five-year sentence, when the simple solution would have been to trust the discretion that the courts used to have.

The 1977 case Richards v. Curwen provided a two-legged fact and degree test to determine whether a firearm was an antique or not. The fact that has to be satisfied is that possession was solely as a curiosity or ornament – so Lee Rigby's murderers weren't in possession of an antique when arrested: they had a prohibited small firearm. The 'degree' test is age, obsolescence, etc. Court of Appeal decisions become common law, according to Lord Bingham's book 'the rule of law' and it's this common law test that the Home Office are trying to usurp with regulations.

Police policy was and is to micro-manage who can buy what. Buying a gun used to be like buying a car; one works out what is suitable *(which is why I was never allowed a Smart Roadster: Ed.)* in consultation with more experienced people and then it's a case of looking over what's on the market that fits the criteria. Nobody was put forwards for a firearm certificate before they were ready and informally sponsored by mentors and club trainers.

Then policing intervened: that cut across the social relevance of clubs and largely disregards the opinions of club officials and firearms dealers about individuals; so the people who will meet that person when he has loaded guns are not regarded by the Home Office as having a valid opinion as to whether he should or not. Policemen are looking for crime, so every certificate applicant became a criminal exploiting a loophole in the law to get access to guns and every dealers' transaction was investigated as a crime.

Chief Constables got the duty of issuing firearm certificates in 1920 because they had access to the relevant data to check the applicant against: the voters' list and criminal records. The fee for a firearm certificate was payable on *grant* to defray those costs that deciding to grant the certificate generates. Investigating the application and applicant is or should be in some other budget.

The police got the job of issuing shot gun certificates in May 1968. Prior to that, from 1870 to February 1966 gun licenses were issued by the Post Office. That was a tax, as was the licence to kill game and between 1903 and 1920 there was also a pistol licence. People who held any one of the three were exempted from buying the other two.

Firearm and shot gun certificates had a three-year validity until 1994 when a Firearms Act changed the period of validity to five years. At some point in 1994, new certificates were issued to 1999. There would have been some renewals in 1997, none at all in 1998 and then the five-yearly ones started to come up later in 1999: thereafter, three 'normal' years followed by two slack ones. During the first two 'dead' years, the firearms department would only have had new applications, and changes wrought by existing certificate holders to deal

with: variations (to add or change ‘slots’ on a firearm certificate), change of address etc. 1997 may have been quite busy, as that was the year pistol owners had to give them up; some replaced pistols with guns that were still legal – black powder revolvers and such and others let go. We assume the respite enabled chief constables to reduce staffing levels.

In 1981, Messrs Clarke and Ellis published “the law relating to firearms”. P J Clarke is described therein as a Lincoln’s Inn barrister; a fellow and tutor in Law at Jesus College, Oxford. John W Ellis is described as the Principal Prosecuting Solicitor for the Thames Valley Police Authority. A prosecutors’ bible. In the preface they state “…there have been more reported cases since the Firearms Act 1968 than under all the previous legislation together.”

When one looks at the post-1968 reported cases, this reported “crime wave” is prosecutions of certificate holders and registered firearms dealers: brought about wholly by an unpublished executive policy shift.

Prosecutions prior to 1968 all seem to be of people who didn’t have certificates at all: Gamages department store in 1907, for selling short barrelled air pistols to people who hadn’t bought the pistols licence: a chap called Cafferata in 1936 was selling dummy revolvers with instructions as to how to convert them to live fire and Read v Donovan in 1947 - his crime was converting a flare pistol (exempted from firearms controls) to fire shotgun cartridges. Moore v Gooderham 1960 came about because he sold an air gun to a minor, which would have been legal if it counted as a toy but not if it were a weapon. That case decided upon the threshold test for the meaning of ‘lethal’.

There were also a few cases of appeals against refusal of a certificate. In the 1920s, police were left with wide discretion as to what counted as a good reason for acquiring a firearm and ‘target shooting’ was not accepted by many forces. This may have been because doing that within a club was exempted from certification. In 1949 Greenly’s appeal against refusal of renewal of his certificate was because he wanted it as a house gun: exempted by common law from certification.

In 1966, the landmark Scottish case of Joy, in which the court said that the police should consider the application from the point of view of the applicant and not from that of a possible objector. The judgment also says that having a good reason for acquiring a certificate is not ground for refusing to issue it and a firearm does not have to be suitable to purpose, merely adequate. Major Joy had been using an off-ticket M2 carbine to shoot deer in his garden. The police seized it and told him he needed a certificate to get the rifle back and then refused his application when he made one.

A firearm certificate holder was prosecuted in 1952 for possessing the telescopic sight on his rifle without a certificate. (Watson v Herman). He was acquitted on appeal and that case really defined the difference between a component part (that needs mention

on the firearm certificate if possessed in addition to the firearm) and an accessory.

The post-1968 firearms crimewave reflects the change of regime. Until then, rifle club approval and prohibited weapons authorities came from the Ministry of Defence. Most rifle clubs were descended from the Victorian volunteer rifle regiments, university clubs (the main source of Olympic competitors when it was an amateur activity) disbanded WW2 Home Guard units or were works-based .22" clubs developed prior to the Great War. Clubs maintained their ranges to military specification and were registered as charities, having in their constitution the sentiment of practicing for war in peace. Ranges were maintained as to be available for military training use when necessary and club members could be called out as militia if required.

The Home Office 'problem' with all this was that they had made no provision to protect the public with bunkers and food stocks in the event of a nuclear exchange, so while the public were entitled to arms for their defence and could be called out with their weapons as militia in time of war (a practice dating back to King Alfred the Great) the Home Office saw them as a potential if not likely public order problem. In their training scenarios when they stress-tested the nuclear bunkers one of the 'problems' thrown at participating civil servants was bands of heavily armed men roving the countryside trying to get into the bunkers to steal the food, disrupt government etc.

That was a direct dig at the integrity of rifle club members, so it came as no surprise to us (in 1986) to find that the man who briefed the minister on firearms 'licensing' matters also briefed the minister on public order matters and that continues to this day.

The governing body for target rifle shooting is the National Rifle Association. Formed in 1860 as the umbrella for the volunteer rifle regiment movement that started in 1859, it's still precisely that: a governing body. The divergence started before the Great War when competitors found foreign service rifles were more accurate than British ones. When the British army adopted a self-loading rifle in 1957, the National Rifle Association didn't and self-loaders were banned in 1988 anyway.

Much of the Firearms (Amendment) Act 1988 was derived from Sir John McKay's 1972 report; rejected by Parliament in 1973, it was rammed through by Premier Margaret Thatcher's administration largely because the Labour Party supported the restrictions. If that was an ideological position, its likely origin lies in the class war. Left wing Labour MPs viewed the use of firearms as an upper-class Tory activity. The firearms subculture did enjoy the support of some Labour MPs, most Liberals and a lot of Conservatives. That the legislation passed was the politics of having started on that trajectory without thinking of the consequences.

Traditional riflemen are more likely to be Conservatives, while .22" rifle clubs all had their origins in working men's clubs and they extended to using pistols at the dawn of the 20th century. Shotguns are used by the wealthy for game, the agricultural industry for pest control and the largest socio-economic group in clay shooting are the skilled working classes.

The Firearms (Amendment) Act 1988 set the tone for the way the firearms subculture has been treated ever since. The police approach of reducing the number of firearms in the hands of the public was served by banning – by mechanical type – various guns used by the public. In doing that, the government also adopted 'deactivation', which had been a way of dropping guns out of any controls that happened to exist for decades. In the 1880s, a Scottish American scrap metal merchant called Francis Bannerman bought up American Civil War surplus muskets for the steel barrels. He replaced the barrels with broom handles and sold the resultant wall ornaments as 'Quakers'.

In Britain, worn out military rifles were downgraded to 'drill practice' and made inoperable: usually a saw cut through the barrel/chamber, firing pin broken off and sometimes a barrel blockage. They usually had 'DP' stamped on the woodwork. The Firearms Act 1920 defined a firearm as a lethal barrelled weapon from which any shot, bullet or missile could be discharged. The requirement to hold a certificate promptly threw up the question of a threshold: the difference between a real gun that didn't work, one that had been made inoperable *and the component parts thereof.*

We mentioned Watson v Herman (1952) as defining the difference between a component and an accessory. The Ministry of Defence took the view that a dismantled machine gun was not capable of discharging anything. The plethora of prosecutions of registered firearms dealers after the 1968 regime change came about because the Home Office view was different. Fred Clarke had a submachine gun which didn't work because it had no trigger nor a magazine. Any weapon that fires from an open bolt won't work without a magazine, because on that system the cartridge is stripped from the magazine by the bolt as it closes after the trigger is pulled.

While under the MoD Fred Clarke was a perfectly respectable gunsmith, club proprietor, shopkeeper and film armourer: under the Home Office regime he became a criminal. A Forensic scientist was able to make his submachine fire by replacing the trigger with a piece of string and borrowing a magazine of the right type for it from the Imperial War Museum, making Fred guilty of possessing a section 5 weapon without Home Office authority in 1986: despite it not being capable of firing while he had it and his 'crime' was not an issue before 1968.

All the registered firearms dealers prosecuted for section 5 violations prior to 1988 – and indeed since - were caught in essentially the same net. There was a developing collectors'

market for redundant military weapons, which is how the trade were disposing of them: downgraded to single shot for firearm certificate holders or bored out to become shotguns for shot gun certificate holders. There were target shooting competitions for every class of ex-military weapon. Smooth bored variants went either to collectors or into the developing battle re-enactment-living-history subculture.

The police prosecuted a Hampshire shot gun certificate holder called Hucklebridge for acquiring two bored out Lee Enfields and the case came before Lord Lane as Attorney General's reference no 3 of 1980. The two questions the AG posed were (1) did removal of the rifling to smooth bore it then make it into a shotgun, or (2) did that modification only take the barrel out of firearm certificate controls? Lane took the view that the modified gun met the definition of a shotgun contained in the Act and that all the parts thereof were thus parts of a shotgun.

After the 1988 Act, most section 5 prosecutions of certificate holders and registered firearms dealers relate to the woolly wording of the Act. The problem is that the Firearms Act 1968 deals with firearms, provides a specific definition of shotguns and exempts low powered air weapons and antiques from the controls.

The 1988 Act refers to 'rifles' without defining them and included the phrase 'rifle includes carbine' without defining the 'C' word and various other anomalies that set the Forensic Science Service in motion against people who were trying to comply with the law.

The word 'carbine' launched most cases against shooting sportsmen and registered dealers between 1989 and 1997. It was a case of the Forensic Science Service pushing the envelope past what Parliament had articulated. The problem with Parliamentary intentions is when they aren't articulated. To interpret what a statute means one looks at the interpretations section of the statute. Where a word (such as carbine) is not defined, one turns to a dictionary – which in this instance says a weapon with which carbineers are armed. Since Pepper v Hart in 1992, we have been able to go behind the statute to look at the Parliamentary debates and see what they thought it meant and in the minutes of Standing Committee F we find Douglas Hogg telling the committee that what is meant by his proposed legislation can be left to the courts to interpret.

Firearms controls pop up in an almost logarithmic way – progressively more frequently as the 21st century developed. The conflicting problems are that reducing the number of guns in the hands of the public *on certificates* increases the number held *without certificates.* Very simply: deactivating rifles under the 1988 Act took them off certificates but not off the public.

When the Home Office addressed the antiques issue with non-statutory guidance (in 1992) they adhered to their (rejected by the Court of Appeal

in 1977) policy of using ammunition types as a criterion: which placed their policy in conflict with the common law. They set about trying to give legislative dignity to this failed policy via a clause in the Policing and Crime Act 2017, enabling the secretary of state to issue regulations. These circulated in draft in 2019 but fell because of the general election and will doubtless be back. The flaw in them was that secondary legislation can't amend common law.

Here's a summary of 21st century legislation:

- Criminal Justice Act 2003

Section 287 created a mandatory minimum sentence of five years for possession of a 'prohibited small firearm'. Jack Straw told Parliament the sentence would be for 'carrying', which would catch street gangs etc. 'Possession' caught numerous middle-aged collectors, many of whom were acquitted by claiming the antique exemption applied to their property. Getting prosecuted is now very expensive, as legal aid has all but dried up. That results in people pleading guilty to non-offences because they can't afford a defence.

- Antisocial Behaviour Act 2003

Section 37 added 'imitation firearm' and 'air weapon whether loaded or not' to section 19 (possession in a public place) of the Firearms Act 1968. Section 38 changed the age limits for possessing air weapons; these were changed again in the Violent Crime Reduction Act 2006.

Section 39 prohibited (without compensation in violation of the Human Rights Act) air weapons in which the air power was contained within a cartridge with the pellet. Saxby & Palmer and Brocock designs.

- Violent Crime Reduction Act 2006

Section 36 created the new generic category of 'realistic imitation firearms' and prohibited their manufacture, import and sale with a defence of doing it for an authorised purpose. All this was directed at air soft guns, which have since been excluded from firearms controls – except in Dyfed Powys where Fraser Rees was convicted of possessing an air soft in a public place contrary to section 19 of the Act last year.

- Firearms (Amendment) Regulations 2010

Prohibits persons under 18 buying or hiring any firearm or ammunition. That prevents fairground galleries being used by minors; same as they can't use gambling slot machines.

- Crime and Security Act 2010

Section 46 made it an offence for an air weapon owner to fail to prevent a person under 18 having that weapon with him. In effect, an obligation to keep air weapons securely.

- Firearms (Electronic Communications) Order 2011

Legalized the practice of notifying sales of firearms to the police by email. Until then it had to be done by registered post or recorded delivery. We lobbied unsuccessfully to use fax for sending these in back in 1988.

- Anti-social Behaviour, Crime and Policing Act 2014. This extended 'prohibition' to include people whose

sentences were suspended. Excluded antiques from possession by prohibited persons and gave the Scottish Parliament the power to create air weapon certificates. Which they have exercised.

- Explosives Regulations 2014

Succeeded the Explosives Acts; limits on quantities stored etc.

- Firearms (Variation of Fees) Order 2015

Fees are periodically jacked up; the police mantra is that fees should be charged on a 'full costs recovery basis' while in the Act fees only cover those costs arising from the decision to issue the certificate: printing the certificate itself, the envelope and the stamp.

- Policing and Crime Act 2017

1. 125. Firearms Act 1968: meaning of "firearm" etc – introduced a list of 'component parts' that count as firearms of themselves. Following Watson v Herman in 1952 the law settled on those parts in contact with the ammunition when the gun fired: later articulated as 'pressure bearing parts' and now listed. This section also exempts 'air soft' guns from the Firearms Act
2. 126. Firearms Act 1968: meaning of "antique firearm" – Sets in train a series of 'qualifications' of antique status. The Home Office clearly want to enforce their obsolete calibres list despite its rejection by the courts.
3. 127. Possession of articles for conversion of imitation firearms – this is like that provision of possessing something (such as a railway timetable) useful to terrorists. A pillar drill, lathe, flat file, pliers etc.
4. 128. Controls on defectively deactivated weapons – a long running sore: after spending 30 years sulking about deactivated guns being legal, they've made transferring them illegal in prelude to registration by April 2021
5. 129.Controls on ammunition which expands on impact – 'expanding pistol ammunition' was banned in 1993, with exemptions for certain purposes, when the UK implemented an EU directive. It was re-banned by Tony Blair in the Firearms (No2) Act 1997 and this clause repeals the Blair ban.
6. 130.Authorised lending and possession of firearms for hunting etc – qualifies with more words the 'estate rifle' clause in the 1988 Act and the lending of shotguns in the 1968 Act.
7. 131.Limited extension of firearm certificates etc – an automatic eight-week extension to certificate lives to assist with backlogs.
8. 132.Applications under the Firearms Acts: fees – created outrageous fees for prohibited weapons applications and for Home Office approval of shooting clubs.

9. 133.Guidance to police officers in respect of firearms – starts the trend of (presumably replacing) setting Home Office guidance to police on a statutory footing: requires the police and courts to 'take account' of it. One section has been launched, for assessing suitability of persons to possess firearms.

- Firearms (Amendment) Rules 2018

Revised format for firearm and shotgun certificates. 'Shot gun' appears as two words in the 1968 Act and as one word here. I've always typed it as two words when quoting the Act and one normally. Now I'm going to have to look at when the Home Office changed from two words to one: the 1968 Act on-line still shows it as two words.

- July 2019 Statutory guidance for chief officers of police.

Mentioned above. The first tranche of statutory guidance.

- The Firearms (fees) Regulations 2019

Sets hefty fees for various authorities under the Act that definitely exceed the cost of issuing them.

- The Firearms Regulations 2019 and the Firearms (Amendment) (No.2) Rules 2019

Mostly transitional measures relating to leaving the EU.

That's where we're at and clearly, we have to go 'somewhere' from here. In the short term, it's separating our deactivated firearms controls from those of the EU. That's going to be complicated, since we suspect that a lot of the paranoid reactive gun controls seen in European countries were inspired by British officials in the first place.

Taking deactivated firearms first; the basic definition of a firearm is a lethal barrelled weapon from which any shot, bullet or missile can be discharged. Prior to the 1988 Act 'legalisation' of deactivation they'd been around for over a hundred years and in a prosecution, it was essentially a 'fact and degree' test as to whether the exhibit had been rendered inoperable or just didn't work. The deactivation guidelines of 1989 were re-written in 1995 and several times since but until 2017 all the certified variations technically prevented owners being prosecuted. Nevertheless, deactivated firearms owners and traders were prosecuted, mainly to do with standards in other European countries being different to the UK's.

The position following 2017 is that the whole lot have been reclassified as 'defectively deactivated'. That closed the market altogether. Currently, transactions involving deactivated firearms have to be registered with the Serious Violence Unit and the Statutory Instrument anticipates that all such ex-firearms have to be registered by April 2021. That's a transitional arrangement for EU law. Simply repealing that and going back to pre-2017 would suit most collectors and re-enactors as it would restore the higher values enjoyed before that legislation.

All the other problems we have are best addressed by a regime change from the Home Office to the DTi and from the police to a national agency. It's a case of putting that in politicians' minds as the way forwards; as the solution to the numerous problems we take to them.

IN THE COURTS

Neutral Citation Number: [2015] EWCA Crim 155 No: 20140101090/B3
IN THE COURT OF APPEAL CRIMINAL DIVISION
Royal Courts of Justice Strand London, WC2A 2LL 20th January 2015
B e f o r e:
PRESIDENT OF THE QUEEN'S BENCH DIVISION (SIR BRIAN LEVESON) MR JEREMY BAKER & MRS JUSTICE McCOWAN DBE
R E G I NA v JOHN RHODES

Computer Aided Transcript of the Stenograph Notes of WordWave International Limited A Merrill Communications Company 165 Fleet Street London EC4A 2DY Tel No: 020 7404 1400 Fax No: 020 7831 8838 (Official Shorthand Writers to the Court)

Mr J Bourne-Arton appeared on behalf of the Appellant
Mr L Ingham appeared on behalf of the Crown

JUDGMENT (Approved)

PRESIDENT OF THE QUEEN'S BENCH DIVISION: "On 21st February 2014 in the Crown Court at Isleworth before Mr Recorder Hobson QC, this appellant was tried before a jury on 22 counts of possessing, purchasing or acquiring, manufacturing, selling or transferring a prohibited weapon, contrary to section 5(1) (b) of the Firearms Act 1968 ("the Act").

After the conclusion of the evidence Mr James Bourne-Arton, on behalf of the appellant, submitted that the conflict in expert evidence was such that the case ought to be stopped. The judge however determined that the difference of opinion flowed only from different interpretations of the law.

Having ruled in favour of the approach to the law argued by the prosecution the appellant pleaded guilty and on the judge's direction the jury entered guilty verdicts. In addition the appellant had previously pleaded guilty to a further count relating to a firearm.

On 28th March 2014 before the same judge, the appellant was sentenced concurrently on each count to 9 months' imprisonment suspended for 18 months. He was ordered to undertake unpaid work for 150 hours to be completed within 12 months and to be supervised for 12 months. Orders were made under section 52(1) of the Act for the forfeiture and destruction of the various prohibited weapons. He now appeals against conviction by leave of the Full Court.

The facts can be summarized shortly. Following the arrest of a third party in possession of a blank firing pistol the sale of the pistol was traced to the appellant who was unlicensed. It was the discovered that he had sold a number of similar pistols through two websites "Gunstar" and "Milweb". The buyers were located and the pistols manufactured by different companies were recovered and examined. The police firearms expert described all the

weapons as "front venting multi purpose pistols with partially blocked barrels". Her evidence was that the barrels of these weapons would not permit the passage of a bullet but would allow irritant gases and hot burning gases fired from either a blank or a gas cartridge to pass through them. She concluded that the guns would be classified as designed to discharge a noxious gas under section 5(1) (b) of the Act.

In interview the appellant accepted that he had sold the guns but stated that he had done so in the belief that they were legal. In support of this proposition he called expert evidence from a Mr David Dyson, who concluded that while capable of discharging gas cartridge, this was not what they had been designed for. The manufacturers had developed a gas cartridge of the same calibre, so as to allow it to fit the pre-existing design of a blank firer.

Having said that, it was equally common ground that this pistol was sold in countries where it was not illegal to possess a weapon which can discharge a gas cartridge as a multiple purpose pistol specifically enabled to act as starter pistol, a CS gas cartridge firing pistol and, if fitted with the appropriate thread, equally capable of firing a flare.

The sole issue in dispute was whether the guns in this country were designed for the discharge of any noxious liquid gas or other thing and in particular the meaning of “design” in that context. The judge decided that this was an issue of law upon which he had to rule. In those circumstances his conclusion became dispositive. In that regard the view of the experts or indeed that of the manufacturers who had been contacted, obviously anxious to market their product wherever they could lawfully do so, as the proper construction of the statutory provision was irrelevant.

He was referred to a number of authorities to which we have also been referred; he decided that he would direct the jury that if they were satisfied the guns in question had the features which had been described as part of their design, that is forward venting, enabling discharge noxious liquids and gases, then they should consider the offence made out and find the appellant guilty. It was in that context that the appellant changed his plea.

In this court, both on paper and orally, Mr Bourne-Arton argues that the judge erred in his interpretation of the Act and should have concluded that the mere fact that a weapon which had not been designed for the purpose of discharging noxious gasses should be capable of doing so was not sufficient to bring it within the legislation. This was the case even if the weapon might be sold with that ability and specifically for that purpose in countries where it was lawful to do so.

We start therefore with section 5(1) of the Act, which having regard to the authorities on the section is worth setting out slightly more extensively than is necessary for this particular prosecution. It is in these terms:

"A person commits an offence if, without the authority... he has in his

possession, or purchases or acquires, or manufactures, sells or transfers—
2(a) any firearm which is so designed or adapted that two or more missiles can be successively discharged without repeated pressure on the trigger;...
(b) any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing ... "

The legislation was considered in R v Law [1999] Crim LR 837 which concerned section 5(1)(a) of the Act and whether a MAC 10 sub-machine gun was designed or adapted as such that two or more missiles could successfully be discharged without repeated pressure on a trigger.

The evidence was such that the gun had been adapted so it could not be utilised for automatic fire but that the adaptation was not fully effective, so it was still capable of automatic fire in the hands of an expert or someone with sufficient knowledge of the gun to use it for that purpose. It was argued that the words "designed or adapted" meant something more than a mere capability of burst fire. The judge did not agree. On appeal, reliance was placed on the decision of a circuit judge in a different case to the effect that phrase "so designed or adapted" were not words of sufficient width to mean "capable of being so used". This court did not agree with that approach and endorsed the construction of the trial judge.

Swinton Thomas LJ put the matter in this way:

"Section 5 does not import either explicitly or implicitly any intention on the part of the designer or the adapter. The section is not framed using words such as 'designed or adapted 'for the purpose of' burst fire or repeated fire. The central and vital words, in our judgment, are the words 'can be successfully discharged'. On the agreed facts two or more missiles could be successfully discharged without repeated pressure on the trigger. Once that is proved, in our judgment, the firearm is so designed or adapted."

The analogy in this case is that the phrase "designed or adapted for the discharge of any noxious liquid, gas or other thing" means that the language of Swinton Thomas LJ is equally apposite. It is certainly difficult to see how the words "designed or adapted" could be construed differently within different subsections of the same statutory provision.

In any event, the same conclusion was also reached in Turek v Regional Court In Gliwice Poland [2011] EWHC 1556 (Admin). This was an extradition case where the issue was whether the conduct relied upon as justifying extradition to Poland would constitute a breach of UK law: see section 64(1) and (3) of the Extradition Act 2003. The relevant allegation was the possession of a gas gun referred to as an ROHM RG TB412 without the required licence. The relevant UK offence was said to be a breach of section 5(1)(b) of the Act. Mr Dyson, the same expert who gave evidence for the appellant in this case, was of the view that there was nothing to suggest

that the pistol had been modified, that it would be capable of discharging gas cartridges. Mr Dyson went on:

"Although guns of this type are advertised as including the gas firing capability, it is my opinion that this is no more than the identification of a marketing opportunity by those selling such items in countries including Germany and France where it is permitted to possess CS cartridges for self-defence purposes; as the pistols could be used for this purpose in addition to firing blanks, why not highlight this capacity, and perhaps increase sales? This is not to say that pistols with barrel blockages are specifically designed for that purpose."

As Mr Ingram observed it was perfectly possible to construct a firearm pistol, the barrel of which is totally blocked and which vents in some other more innocuous manner. Silber J dealt with this argument in this way at paragraph 26:

"To my mind, the very fact that these weapons can be used for the discharge of gas and emergency bullets shows that they must have been designed for that purpose, otherwise it is difficult to see why they are capable of fulfilling this function, which seems to be an integral part of it."

Mr Bourne-Arton readily accepts that these cases are against him but he strives to distinguish them by reference to another decision of the Court of Appeal namely R v Formosa R v Upton, in which a washing up liquid bottle was found to contain hydrochloride acid. The court rejected the proposition that this bottle with the acid fell foul of section 5(1)(b). It was held that the phrase "designed or adapted" meant that the relevant object had been altered so as to make it fit for use as a weapon. An empty bottle was not a weapon and filling with hydrochloride acid did not alternative nature and therefore the bottle not be described as "a weapon designed or adapted or discharge of any noxious liquid".

Mr Bourne-Arton argues that this decision is closer to the facts of this case than the authorities to which we have referred. We do not agree. The critical finding was that the empty bottle was not designed or adapted as a weapon of any sort, as a firearm of any sort or as an imitation firearm of any sort; it simply does not engage with the legislation.

Furthermore, if Mr Bourne-Arton's construction of the legislation is correct, a pistol specifically designed so it can discharge gas cartridges will be caught by section 5(1) (b) but one that was designed without gas cartridges and scope but for which gas cartridges were then specifically developed so they could be fired would not. This is notwithstanding that both the gun and the cartridge are identical and the mischief which the legislation, in this country seeks to address, is manifested by both in exactly the same way. We do not accept that conclusion.

Whatever might be lawful in other countries, sale of a pistol which has the design capability and must have the deliberate design capability of discharging gas cartridges is not. In the circumstances this appeal is

dismissed." Crown copyright©

A case, according to barrister Nick Doherty, of the court trying too hard. A consequence of the conflicting objectives of the Home Office to control everything that looks like a firearm and the police objective to reduce the number of firearms in the hands of the public to an absolute minimum. This is one of a series of cases used to criminalize possession of 'firearms' outwith the controls, thus to claw them back into said controls.

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Kevin Jenkins v Chief Constable of Devon & Cornwall March 2020

An example of obstruction and contempt of legislation

By the Usual Suspect

Born in 1963, Kevin Jenkins enjoyed shooting since the days of his youth and obtained a shot gun certificate in 1983. In 1984 he was injured in a serious road accident and surrendered his certificate on medical advice due to the possible side effects of medication he was taking.

Some two years later, once well again and off the medication he applied for and was granted firearm and shot gun certificates.

He came to police attention 13 years later in the post-Dunblane panic attack so many police forces experienced when an overzealous police officer asserted that Kevin was in possession of one of his firearms where he had no authority to be. The police revoked his certificates but returned them without much fuss when he was acquitted of the section 19 charge three years later.

A further eleven years passed before Kevin came to police attention again: this time, in 2011 a charge of threatening behaviour meant the temporary loss of the peaceful enjoyment of his possessions until the police found out that the accusation was false and returned his property and certificates.

We should mention that Kevin's 1983 accident caused life-changing injuries that terminated his work as a labourer and left him in receipt of benefits ever after. After the accident, Kevin was prone to occasional bouts of despair. I describe these feelings as despair because, unlike depression, they had a clearly identifiable cause. One of these periods resulted in Kevin being hospitalized, and while there, he experienced a psychotic episode.

One of the many medications Kevin was treated with after his accident was to ward off psychosis. At the time, however, the medical profession was ignorant of the apparent fact that this particular drug could, in some cases, actually induce the effect it was supposed to prevent.

Fortunately, when this happened, one of the specialists treating Kevin was aware of this drug's potential side-effects and stopped its prescription. With the drug no longer in his system, Kevin's condition improved rapidly and permanently so he was able to return home shortly thereafter.

The removal of unsuitable medication from his cocktail was beneficial, but the 'episode' became

part of Kevin's permanent medical record, minus the explanation of its actual cause.

Years later this single entry in Kevin's medical file became the central plank of the chief constable's refusal to grant him a new certificate in 2017 to replace the one he'd revoked because of the hospital stay in 2012.

When Kevin re-applied for his certificate in 2017, he documented his medical history, including the one-off episode, as well as a recent examination which pronounced him sound. Despite this, someone; most likely the licensing branch office manager, stopped reading as soon as she came to the word psychotic.

To be fair, that is not a condition to take lightly. However, the Home Office Guidance to police clearly states that if the police require a more detailed summary, they undertake this at their own expense.

The licensing manager didn't see the need for additional information, however, and Kevin received a rejection letter of the type made obsolete by section 133 of the Policing and Crime Act 2017

This Act added section 55A to the Firearms Act, which states chief officers must have regard for any issued guidance. In this case, guidance is an on-line Home Office manual. Section 10.62 of the manual explains that the police should try to avoid unnecessary court appeals by discussing with an applicant their reasons for refusal. This regulation is not mandatory, but if the chief constable opts not to do so, then, he should have a clear reason why - see R (on the application of London Oratory School Governors) v Schools Adjudicator [2015] EWHC102 (Admin).

Devon & Cornwall police prefer the traditional approach, and their letter included the warning that if Kevin was unsuccessful, they would expect him to pay their costs. The fact that as a taxpayer, Kevin already financed the police budget escaped their notice, as did the absence of any Court of Appeal decision to support such a contention.

Our involvement in Kevin's case began in July 2017 and focussed on trying to get the Devon & Cornwall police to comply with current legislation. A forlorn hope, you might think this being the police force that made up a criminal record to resist the late Steve Johnson's application for prohibition to be lifted.

When this approach failed, the best we could do was to touch as many bases as possible to reduce the cost of his appeal. At one point the extreme delays Devon & Cornwall imposed on the correspondence back and forth enabled them to claim that the medical records Kevin supplied were out of date.

The saga embroiled Kevin's MP, the Police Complaints Commission and several specialists in mental health, among others. When it got to court in February 2020 the firearms licensing manager still wanted a further medical report oblivious of the fact that the definition of insanity is doing the same thing over and over again and expecting different results.

When the appeal was heard on 23rd March 2020, police objections to Kevin's appeal caved in when their expert agreed that:

- The single episode Kevin suffered was post administration of the anti-psychotic drug,
- There had been no further episodes once he was taken off the drug, and
- It had since been discovered that this medication caused others to have the same problem.

Justice Smith upheld Kevin's appeal, which was good, but did not allow him his costs, which was not.

The vast majority of this lengthy and protracted appeal rests with the refusal of the relevant police staff to comply with statutory legislation. Not only did they refuse to provide Kevin with the option of an informal resolution, they demanded he provided consultation papers (twice) from a specialist at his own expense. After he complied and they were unable to find fault with the contents of his report, they instead took issue with its format.

As was the case with Mark Holmes in Gwent, they caved in once they'd run out of options for jacking his costs up and are – based on past form – just waiting for another opportunity to have a go at him.

Five Years for Mustard Gas

As reported in the Irish Examiner, the sentence was handed down to Martyn Tasker at Nottingham Crown Court on 12th June after he pleaded guilty as charged.

Thought to be the first person convicted of possession of a chemical weapon in the UK, the background to this case is that he found 16 cannisters at an abandoned WW2 RAF site near Woodhall Spa, Lincolnshire.

After taking them home and feeling the effects of the toxic contents he dumped the cannisters in Stixwould Lake in October 2017 before he and his wife sought medical help for blistering skin and breathing difficulties.

Recovering the cannisters for safe disposal involved 27 separate agencies in an 11-day operation.

The judge described it as a deliberate crime, taking the cannisters and dumping them in a lake instead of calling the appropriate authorities to safely dispose of them.

His militaria collecting habit got out of hand! Ed.

ABOUT COMMON LAW

We established in our book "Does the Trigger Pull the Finger? (2011)" that we all have a right at common law to defend ourselves - life, liberty and property. The 'right' to keep and bear arms is, in our view, both that and an obligation to acquire arms 'suitable to one's condition' (which means what you can afford) and to train with them thus to be prepared for the call to arms by our government when needed to defend the realm. Or to attack another. It's a privilege (of residency, subject to age and sex) to be called upon to defend the realm.

The American Second Amendment is an articulation of this common law right/privilege/obligation. Acquiring the arms is an individual right (to meet the obligation via training in a well-regulated environment, i.e. a rifle club). Governments made no provision for arming or training militia and once you have weapons, you can use them for any lawful purpose.

In 1908, the British government formed the territorial army, which recruited (loosely speaking) working class men who could not afford to buy rifles. The government supplied the uniforms and weapons. The volunteer rifle movement (1859 and on) was peopled by those who could buy rifles; they set up rifle clubs and affiliated to the National Rifle Association in 1860.

When the country is at risk, the public are privileged to defend it. The legion of Frontiersmen mustered in Essex in 1939, months before the official callout of the militia in 1940. When stood down in 1944 many units become (or reverted to) rifle clubs.

After that, we detect a gradual administrative separation of the public from the *means* of meeting that privilege. Rifle clubs became the enemy within in Home Office cold war thinking.

In 1957, the British army adopted a self-loading rifle - the L1A1. None were sold to the public so civilians could not enter the army match until 1982 when Singapore National Guard surplus rifles reached the civilian market.

The army adopted a selective fire rifle (L85A1) in 1985, so the competition moved on – Royal Ordnance did briefly market a self-loading variant - but self-loaders were banned in the UK in 1988 anyway.

In 1993, the Home Office revamped the Charities Act to exclude rifle clubs from the charitable status they had enjoyed as part of their defence of the realm obligation.

The abolition of charitable status severed the last but one link between rifle clubs and defence of the realm, making them purely sporting clubs. The final link went in 2006 when the army stopped issuing range safety certificates and the Home Office had to replace the range condition with the current one about only using firearms where adequate financial arrangements are in place.

Messrs Mike Burke and John Hurst researched this subject for several years and then went to the High Court in the 1990s. The judge dismissed Mike's application on the grounds that the Firearms Act had superseded the

Bill of Rights. Then in 2001, in Thoburn v Sunderland City Council (the 'metric martyrs' case) Lord Justice Laws said that ordinary statutes do not overwrite constitutional ones and legislation to amend the common law has to say that's what it's doing on its face. To see this in action, look at section 2(4) of the Defamation Act 2013 as an example.

So, we all arrived at the conclusion that *possession* of arms for defence is legal, but only when being used as such. The Home Office have a phrase to the effect that carrying arms for defence on the 'off chance' of being attacked is not a good reason for being armed at all.

However, numerous officials - bank officers, Post Office employees, police officers, night watchmen etc. routinely carried on that off-chance. The practice was gradually discontinued after WW2 among other officials and the last time a private security guard using his firearm against attackers that we are aware of was in 1961 when a Securicor guard shot one of Freddie Furlong's gang dead.

The unanswered question is if *possession* for defence is a lawful purpose and outwith the Firearms Act controls, what about *acquisition?*

There is a clue to the answer in air soft legislation: under the Violent Crime Reduction Act 2006 it is an offence to sell a realistic imitation firearm to anyone, with an exception for those with a lawful purpose in having it. A person seeking to buy one thus has to satisfy the vendor that he would have a defence to a charge of making the sale. The buyer needs no authority to possess and while he has to satisfy the vendor that he will use it for historic re-enactment, once in possession he can use it for any lawful purpose from airsoft skirmish to decorating his sitting room wall.

We wondered whether someone just made this up in 2006 or whether, in fact, it's how the common law exemption for acquiring firearms for defence works.

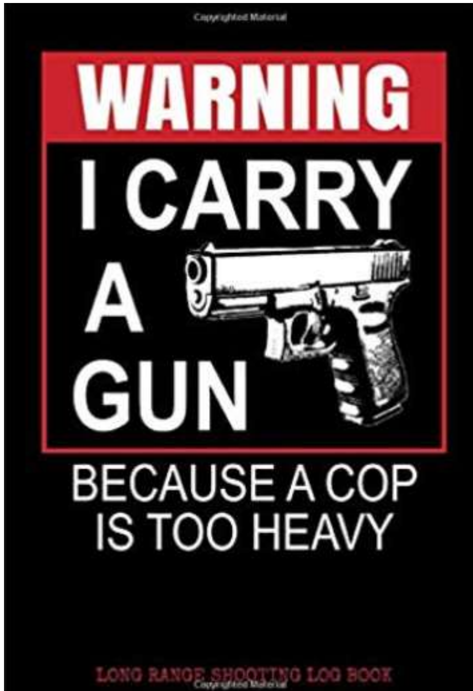
If we try this out by transferring the airsoft scenario to real guns, it would be a case of an intending purchaser satisfying an RFD stockist that he can sell a firearm to a UK resident who is neither drunk nor insane for self-defence – exempted by common law from needing any other authority to possess.

A subsequent prosecution would charge the seller with the transfer to an unauthorised person and the acquirer with possession without authority to possess and that would test the common law defence. In practice, for Met officer John Hurst's experience is that nobody wants a test case.

The ultimate 'solution' to all the problems caused to the legitimate shooting sports and the gun trade moving forwards is to move section 5 and club approval to a more suitable department, such as the DTi where they have the skills for developing, managing and promoting businesses and trade.

Richard Law wrote a sequel to 'does the trigger pull the finger?' in 2016 – 'Does the Common Law Prevail' available from the SRA @ £8.

Some sentiments from around the internet

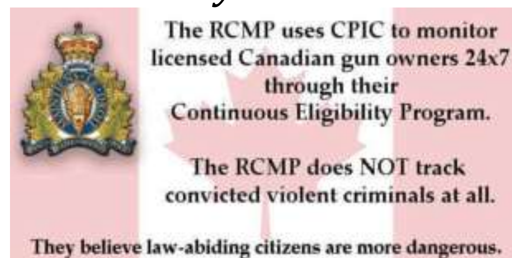


Perspectives vary according to country of origin (above is American, while below is British and maybe a tad cynical

Here's another British perspective on matters arising (or kneeling) from the death of George Floyd

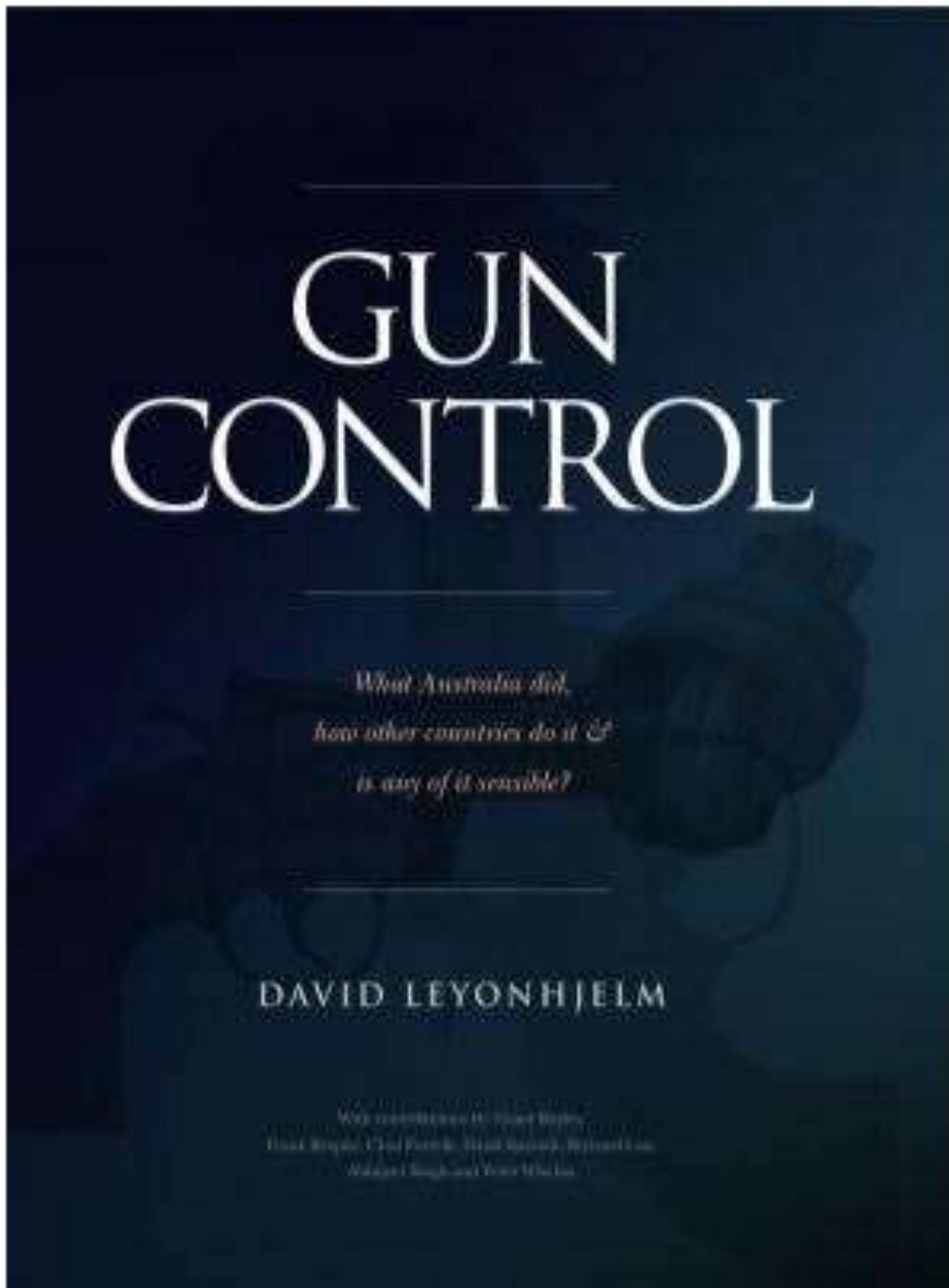
In New Zealand, public reaction to their govt's knee-jerk reaction is getting personal

And similarly in Canada



And for the Australian perspective, P.T.O.

PUBLICATION IN JULY 2020



Australians have been repeatedly told that their gun laws have made them safer but the data does not support that and there's no reason why it should – gun availability and violent crime are independent variables. A high level of gun control does not reduce violence and a low level of gun control does not increase it. Countries with stringent gun control would not become violent if their gun laws were relaxed and countries with relaxed gun laws would not become less violent if they adopted stringent gun laws. This book takes a detailed look at Australia's gun laws and their impact on gun violence including mass murders, it also considers gun laws in the UK, New Zealand, India, Czech Republic, Ireland and the United States in chapters written by people who live there.