Authority (Disclosure of Donor Information) Regulations, SI No 1511, 2004) to be given access to identifying information relating to their biological parents, does *not* give to those children, respectively, a legal right to be told that they are adopted or the circumstances of their conception. Despite evidence that the overwhelming majority of children produced with the assistance of donated gametes remain unaware of this, the government has indicated that it will not impose an obligation on parents to tell them, believing that the matter is better governed by "good practice" (Department of Health, *Review of the Human Fertilisation and Embryology Act*, Cm. 6989, para. 2.58, December 2006).

The current enthusiasm for harmonisation of family law in Europe does not apparently extend to filiation, on which matter the laws of individual states could hardly be more discordant. As such, states enjoy a significant margin of appreciation and the extent of their positive obligations in facilitating the establishment of biological filiation is unclear. There is a strong case for the ECtHR to have regard, in its interpretation of ECHR rights, to the content of the child's rights in the UNCRC.

ANDREW BAINHAM

## ARREST FOR QUESTIONING

ON 24 May 2006, in the early morning, the police arrived at C's house and arrested him on suspicion of downloading indecent images of children. Armed with a search warrant, they searched his house and seized his computers. And, although (as he later claimed) he was prepared to answer their questions voluntarily, they carried him off, still under arrest, for custodial interrogation. All this was because, in 2002 – four years before – the US authorities had told the UK police that, in 1999, C's credit card had apparently been used, on two occasions, to access a website dealing in child pornography. When questioned, C denied the offences, and when the police searched his computers no indecent images of children could be found. Despite this failure to find corroborating evidence the police were not prepared to let the matter drop and, at the end of his custodial interrogation, C was released on "police bail" to reappear at the police-station in six months' time.

Feeling ill-treated, C brought judicial review proceedings to challenge his arrest, the issue of a search warrant and the decision by the police to keep the investigation open. In all three challenges he failed: *R. (C)* v. *Chief Constable of A, and A Magistrates' Court* [2006]

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EWHC 2353 (Admin). On all three issues the judgment of the Administrative Court is interesting. For reasons of space, however, this note will deal with the first one only: namely, whether, on these facts, the police were justified in arresting C and taking him to the police station for questioning.

The police arrested C summarily, without a warrant, under powers conferred by the Police and Criminal Evidence Act 1984, section 24 ("PACE"). When first enacted this provision was limited to "arrestable offences", which meant those punishable with five years' imprisonment or more. But under the Serious Organised Crime and Police Act, enacted in 2005 at the instance of the Government and the Home Office, the provision has now been "modernised", to give the police a power of summary arrest for *all* offences, irrespective of their gravity. This major change, which was steam-rollered through Parliament just before the general election, was opposed by civil libertarians, who thought it undesirable that the police should have the power of summary arrest for all criminal offences, no matter how trivial, and irrespective of how old. In response, the Government said that section 24 in its new form would only operate where one of a closed list of six conditions, set out in the section, was present; and in the light of this, the risk of its oppressive use was nil. But as one of these six conditions is that the arrest would "allow the prompt and effective investigation of the offence or conduct of the person in question", libertarian critics were unconvinced.

Predictably, it was this condition that the police relied upon to justify their arrest of C here. Arresting C for questioning was necessary, they said, for "the prompt and efficient investigation" of the case against him (a case which, incidentally, had been gathering dust in police in-trays for the previous four years). To this, C replied that, as he had been prepared to go to the police station for questioning voluntarily, a "prompt and efficient investigation" did not necessitate his arrest: and so the condition on which the police sought to justify arresting him had not been met. This point the judge discussed – but he was not prepared to make a ruling on it. It only arose for decision, he said, if it was clearly established that C would in fact have gone to the police station voluntarily, and this was a factual issue which had not been properly explored. As C's point was an important one, this absence of a judicial ruling on it is regrettable. In my view, C's point was an obviously good one – and our courts should be prepared to say so loud and clear.

In any circumstances, an arrest is a serious invasion of the arrested person's liberty. One made under section 24 of PACE is particularly invasive, because it triggers off a series of other even more invasive powers: in particular, the power to detain the arrested person for

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questioning for what could be as long as 96 hours, and the power, without obtaining a search-warrant, to search the arrested person's property. Arrests also carry the grave risk of injuring the arrested person's reputation. In our system the identity of suspects is not legally protected, and if the press discover the fact that a given person has been "nicked", this is likely to be given the same sort of publicity as if he had been convicted. And an arrest is potentially damaging in other ways as well. Some countries even more contemptuous of the presumption of innocence than we are here – like the USA – ask would-be visitors, "Have you ever been arrested?", and if the answer is "yes", refuse to let them in.

You would therefore think that, as an instrument for investigating past offences rather than a means of stopping current crimes from happening here and now, the power of the police to arrest a suspect without warrant would be limited to serious crimes. That two years ago Parliament was willing, at a nod from the Home Secretary, to extend it to even the most trivial of offences, seems utterly astonishing. It brings to mind a recent cartoon in *Private Eye* in which one uniformed figure is saying to another: "Actually, establishing a tyranny turned out to be quite a lot easier than we expected."

Given that this extension has now happened, it surely behoves the courts to interpret the restrictions that Parliament has imposed on it – feeble as they are – with strictness.

If a suspect is willing to be questioned voluntarily, arresting him for questioning cannot possibly be necessary for the "prompt and efficient investigation of the offence". The real reason why the police like to arrest co-operative suspects is, I suspect, that it enables them to tell the press that they have "arrested X for questioning" – and so to give the world the impression that they are acting promptly and efficiently, even if the truth is that they are not.

J. R. SPENCER

## HOLDING PROCEDURAL ERRORS AT BAY

WHEN does a procedural or jurisdictional failure affect the proper course of criminal proceedings so as to entail that, irrespective of the factual merits, the conviction must be set aside on appeal? An answer to this question was attempted by the Court of Appeal, Criminal Division in *R.* v. *Ashton, Draz and O'Reilly* [2006] EWCA Crim 794, [2006] 2 Cr. App. R. 15, where the court was confronted with three cases in which the common denominator was some form of procedural irregularity.

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