



## Briefing note

# Public nudity advice and decision tree

Naturism is defined by British Naturism as a 'philosophical belief in a natural, naked lifestyle wherein persons espouse nudity as part or possibly all of their lifestyle'. While many confine their activities to their own private property or in clubs, many use beaches which are known as 'naturist beaches'. Others engage in rambling in country areas and national parks, leisure areas and public spaces. There is no legal power to designate particular areas or otherwise.

Naturists have a right to freedom of expression which only engages criminal law if they commit sexual offences or use disorderly behaviour that they intend to or are aware may be disorderly within the hearing or sight of a person likely to be caused harassment, alarm or distress.

Although officers should consider every situation according to its own circumstances, forces should adopt a consistent approach to naturism to maintain public confidence in the police and to avoid the inappropriate use of police powers.

At the time that the **Sexual Offences Act 2003** was debated in Parliament, care was taken to word the legislation in a way specifically intended to avoid it impinging on the rights and activities of naturists. Consequently, the Act requires that a sexual offence dimension would need to be involved for public nudity to constitute the offence of exposure under **section 66** the Act. This would involve deliberately exposing genitalia towards another person with the intention of them seeing and being caused alarm or distress ('flashing' or sometimes referred to as 'indecent' exposure).

The common law offence of outraging public decency applies when a person's behaviour is so lewd, obscene or disgusting as to shock a reasonable person. This has a high threshold in law that simple public nudity would not reach.

A naturist whose intention is limited to going about their lawful business while naked will not be guilty of either of these sexual offences.

In some other cases, the conduct may be seen as (at most) amounting to an offence under the **Public**

**Order Act 1986** (POA) of using disorderly behaviour. This requires that a person needs to have used disorderly behaviour within the hearing or sight of a person likely to be caused harassment, alarm or distress. An act of public nudity is unlikely to constitute this offence unless members of the public were caused actual harassment, alarm or distress (as opposed to considering the likelihood of this happening or the complainant personally finding nudity distasteful or offensive).

The Crown Prosecution Service has produced guidance to prosecutors titled **Nudity in Public – Guidance on handling cases of Naturism**. The guidance makes it clear that prosecution will normally only be considered for a POA offence if a substantive offence has been committed and the public interest test is met. This test will be based on proportionality to the seriousness of the incident and the likely level of sanction, recognising that it is a summary only offence with no prison sentence available. Additionally, in recent years attempted prosecutions of naturists have all failed.

In deciding what action to take, officers need to also consider that any arrest, while unlikely to lead to prosecution, will result in a PND entry which is more likely to be disclosed in enhanced DSB checks and have a lasting impact on the individual and their career. This is an important factor to consider in terms of the proportionality of the police response.

In the lawful situation where there is an absence of any sexual context in relation to nudity and where the person does not intend the behaviour to be, and is not aware that it may be disorderly, it will not be appropriate to take any police action. The following decision tree may assist in determining the most appropriate and lawful response to a reported incident.

Officers and staff receiving reports need to avoid their personal views on public nudity affecting their decision making, which must be based on the legal framework that exists.

# Decision tree for call handlers

Question to ask of someone reporting public nudity:

- Is the person in a place where there are other people?
- Are they in their own home or garden?
- What is the person doing?
- Are they doing something sexual or are they just naked?
- Did the person see you?
- Did they say or do anything towards you (like exposing themselves)?
- Do they seem to be unwell, or under the influence of drink or drugs?

## Behaviour described by caller



# Decision tree for responding officers

