



12 November 2015

SENT VIA EMAIL ONLY

Mr Rob Doran
Home Office
2 Marsham Street
London
SW1P 4DF

Dear Mr Doran

Please find attached a paper prepared by South Yorkshire's independent policing ethics panel. It makes a case for a change in the law relating to the policing of protests. Although it draws on the experience which we have, of repeated and disruptive protests in South Yorkshire, I hope it will be of wider relevance in the consideration now being given to this subject.

Please let me know if we can assist further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A Lockley'.

Andrew Lockley
Chair of the South Yorkshire Police and Crime Commissioner's Independent Ethics Panel

South Yorkshire Police and Crime Commissioner
18 Regent Street Barnsley S70 2HG
Tel: 01226 774600
Email: thepcc@southyorkshire-pcc.gov.uk
www.southyorkshire-pcc.gov.uk

THE INDEPENDENT POLICING ETHICS PANEL FOR SOUTH YORKSHIRE

POLICING PROTESTS IN SOUTH YORKSHIRE; A CASE FOR A CHANGE IN THE LAW

Introduction

1.1 The right of protest is enshrined in the common law of England and Wales. It is also protected by the European Convention of Human Rights (ECHR). The police have powers to place conditions on marches and assemblies, and in certain circumstances, to seek to have a march prohibited.

1.2 Since October 2012, South Yorkshire Police (SYP) has policed 20 protests within the county, the latest on 5 September 2015. 14 of these have been in Rotherham. Virtually all have been organized by far-right groups. The choice of location is not an accident. As is well-known, the police and local authority in Rotherham stand accused of failing to protect hundreds of young people from sexual exploitation. The conclusions of reports by Professor Alexis Jay in 2014 and Louise Casey in 2015 have not been seriously challenged. It is also widely believed that there has been disproportionate involvement of young males of Pakistani heritage in unlawful activity. Significantly, however, police report that a substantial majority of far right protestors are brought in from elsewhere; they are not local.

1.3 These protests come at a considerable cost, both to the police (paid for out of public funds) and to traders and the wider community in Rotherham. 11 of the protests have taken place in Rotherham since the publication of Professor Jay's report in August 2014, in which she estimated that there had been 1400 victims between 1997 and 2013.

1.4 This paper considers:

- a. Are these protests reasonable?
- b. Are adequate powers available to SYP to regulate this protest activity?
- c. If not, what changes might be made?

The right of protest and its limits

2.1 Despite the law's protection of the right to protest, that right is not unqualified. Art 11 of the ECHR – embedded in the law of the United Kingdom by the Human Rights Act 1998 – allows certain restrictions to be placed on freedom of assembly, if necessary in a democratic society (among other circumstances) in the interests of public safety, the prevention of disorder and crime and the protection of the rights and freedoms of others. Additionally, Art 10 protects freedom of expression, and this too is a qualified right, subject to broadly the same restrictions as Art 11.

2.2 The Public Order Act 1986 gives (in sections 12-14) a senior police officer the power to impose conditions on the route of a march and on the location of a public assembly. If a Chief Constable reasonably believes that the power to impose conditions will not be sufficient to prevent serious public disorder, he or she may apply to the local council, which has, with the consent of the Home Secretary, the power to ban a march. There has been reluctance on the part of chief constables to

apply for such a ban. There is no power to ban an assembly. The lesser power to impose conditions can be exercised if the senior police officer reasonably believes that a march may result in serious public disorder, serious damage to property or serious disruption to the life of the community. We understand that there have been recent examples of such restrictions on marches by the far right in Luton and by Muslim extremists in East London.

2.3 SYP has imposed conditions on protesters on a number of occasions, not least to prevent disorder. The pattern has been that once a protest assembly and march have been announced, locally-based opposing groups have organized a counter-protest. Keeping the factions apart is therefore a policing priority.

2.4 In this paper, we consider in particular the right to hold a march. To some extent, the same issues arise in relation to static assemblies. We appreciate that if there were power to ban an assembly – and therefore prohibit protestors gathering at all – this presents a potentially larger inroad into civil liberties. Furthermore, enforcing a ban on an assembly might also still require sizeable policing resources. Nevertheless, we recognize that if the measures we propose later in this paper do not prove effective, the time may come when prohibitions on assemblies have to be considered.

Are these protests reasonable?

3.1 The impartial observer might be surprised that protesters are focussed on the same theme now as in August 2014, when the Jay report was published, namely '*Justice for the 1400*'. There have however been important developments in the last year, and many measures have been taken both to remedy the past failings of the authorities and to prevent any recurrence. The Informatics presentation at App A sets out pictorially the steps taken by SYP, but the highlights include:

- 62 additional staff deployed on CSE inquiries, with 155 live investigations
- 54 suspects charged
- Specialist training for SYP
- Multi-Agency Safeguarding Hubs throughout South Yorkshire
- Police misconduct investigations by the IPCC.

3.2 We do not believe that an impartial observer would find that the frequent repetition of a familiar message, already overtaken by events, increases awareness or understanding.

3.3 Furthermore, the expressed anti-Muslim and anti-Islam views of far right groups – and the material handed out during the protests - present a clear risk to community relations in the areas where they are active. Against the recently reported background of a national increase in religious hate-crimes, Muslims in Rotherham in particular have felt threatened. Attacks on individuals have increased and businesses have moved away. Mosques have been damaged, and daubed with racist graffiti, which are then sometimes displayed on far right websites. Encouragingly, support has been offered to mosques in some cases by local churches.

3.4 The impartial observer might also be surprised that the right to protest can be pursued on a repeated basis despite evidence that it is damaging the financial well-being of a town which has suffered substantial economic disadvantage in recent years. The Commissioners, who were installed in Rotherham by intervention of the then Secretary of State following Louise Casey's report, have estimated that footfall in the town centre is reduced by between 10% and 40% on protest days. One estimate puts the decline in trade at 60-70%.

3.5 The cost of policing these protests has now reached about £4m, largely in payments to other forces for attendance for back-up. These are funds which SYP can ill afford in a time of financial cuts, and which become unavailable for policing activities elsewhere in the county. The total cost of policing the protests is actually much higher, if the diversion of officers from policing elsewhere in the county on the day is taken into account, not to mention the loss of rest days, which then have to be rostered in at a future date. Thus the number of officers and staff available for policing generally is reduced not only on protest days, but also subsequently. A Special Grant application may be made to the Home Office to contribute to these costs but even if successful, the majority of the costs must still be carried locally. In an ideal world, we would favour the availability of a national fund for policing these events, but we recognise that that might transfer a degree of control away from local decision-making, which can better take account of local circumstances.

3.6 No argument for change can be based on cost alone, however. The right of peaceful protest is a fundamental right in a democracy and to undermine the availability of that right on the basis that it costs too much, is a deeply unattractive position to take. This paper does not take that position. Neither does it argue that views which many consider to be obnoxious and offensive should intrinsically be prohibited from being aired in assemblies or on marches, provided of course that the actions of participants do not break the law. The assertion attributed to the French philosopher Voltaire is relevant here: *'I disapprove of what you say, but I will defend to the death your right to say it'*.

What about the policing of future protests?

4.1 The police face a dilemma in these situations. Members of the public rightly expect the police to protect them and their businesses from threats to their safety, well-being and prosperity, but the police also have a duty to uphold the right to protest which the law of this country affords. There are few ethical dilemmas in policing which are as sharp as this.

4.2 Pragmatic decisions about assembly points and routes cannot avoid the consequences for trade and community relations which accompany town centre protests, but they do avoid even higher policing bills. SYP will face the same dilemma on future occasions of far right protest. The risk is, therefore, that the pattern will repeat itself, with continuing damage to community relations and to trade.

What other powers are needed?

5.1 A number of factors, present in the Rotherham situation, have drawn attention to perceived limitations on the current powers of the police to control protests. These

are at present effectively dependent upon a reasonable belief that there may be serious public disorder, serious damage to property or serious disruption to the life of the community. **Factors such as:**

- **the repetitive nature of protests;**
- **the seriousness of their impact on community relations and on business confidence and health;**
- **the financial impact on the community; and**
- **the disproportionate cost of policing in both financial terms and operational efficiency**

- all outlined in this report – do not give grounds for banning the protests under the existing law, though some of them may be relevant to the imposition of conditions.

5.2 Subject to what we say in the next paragraph, **we believe that the law should allow factors such as these (ours is not an exclusive list) to be capable of forming the basis of a police application to the local authority for a ban on individual protest activity.** The Home Secretary has to consent, as stated above. We are conscious both of the precious right of protest, and of the risk of making martyrs of protest groups, and we do not recommend that these powers should be used lightly. In our view, as a safeguard, **consideration should be given to requiring that at least two of the factors should be present before an application can be successful.** If the law is changed in accordance with our recommendations, **any new factors must also be dependent on a reasonable belief that they are present.**

5.3 We have drawn attention to the unattractiveness of cost considerations as the sole basis of a policing decision. **Accordingly, we do not consider that the financial impact of policing a protest should qualify as one of the two statutory factors which might trigger an application to the Home Secretary to ban a march.** It will no doubt be very much in the minds of all involved, however. We should emphasize that in making this argument, we consider that the power to ban protest activity should be rarely used, but nevertheless available.

Conclusion

6.1. The Panel's consideration of these issues has been triggered by the sustained level of protest by the far right in the county. The available evidence is that most of these protestors are not local. Yet the impact they have on local residents and businesses is significant.

6.2 Our recommendations would not have been made if South Yorkshire was facing its first protest by the far right. Because, however, there have now been 20 such protests in 3 years – 14 of them since the Jay Report – our recommendations are made against that background.

6.3 In the Panel's view, the time has come to consider how this impact can be significantly reduced. The right to protest is jealously guarded in a democracy, but it is not an unqualified right. Much greater consideration needs to be given to the rights

of South Yorkshire citizens to go about their daily and business lives unhindered by protests (para 5.1).

6.4 Based on the experience in South Yorkshire, the Panel recommends to the Home Secretary (para 5.2) that the law be amended to allow new factors to be taken into account by a local council when it applies for consent to the prohibition of a march.

6.5 The panel does not recommend that the disproportionate cost of policing a protest should constitute such a factor (para 5.3).

About the Independent Policing Ethics Panel for South Yorkshire

The Panel was established by Dr Alan Billings, the Police and Crime Commissioner (PCC), and was launched in January 2015. It has a far-reaching remit. It can, on its own initiative, investigate issues of concern to the residents of South Yorkshire, but it also receives referrals from both SYP and the PCC. The Panel looked at the subject of this report at the request of SYP.

The members of the Panel are:

Andrew Lockley (chair)
Linda Christon
Imam Mohammad Ismail
Michael Lewis
Professor Ann Macaskill.

November 2015.

Appendix 1



