

Home Office consultation on the extension of police powers to remove masks - response from Netpol – Network for Police Monitoring.

Netpol - the Network for Police Monitoring - is a network of grassroots civil rights, community, legal support and protest groups. The response we are giving here is a result of our partners work in monitoring protest and community policing.

The wearing of face masks on demonstrations.

There is a general presumption in some quarters that protesters who cover their faces are 'up to no good'. However, the wearing of masks does not reliably indicate involvement in, or the intention to be involved in criminal activity. The forced removal of face coverings constitutes an interference with Convention rights of expression which must be justified.

The perception of the wearing of masks by protesters.

In the minds of many in the criminal justice system protesters who hide their face during a demonstration are inevitably intent on criminal behaviour. It is assumed that young people wearing scarves across their faces are troublemakers and violent criminals. This provides a moral justification for the targeting of stop and search and the removal of masks under threat of arrest. If they were not set on causing trouble, the reasoning goes, why would they wish to hide their identities from the police?

While it is accepted that some people wear masks in order to avoid detection for criminal activities, this is not universally the case. In fact, there are many and varied reasons for protesters to cover their faces. Many young people in particular are motivated by a genuine desire to keep their images and personal details away from police databases.

Radical politics is not unlawful and the freedom to be engaged in radical dissent is surely fundamental to a functioning democracy. Nevertheless the scale and range of police inference in political activity is becoming ever more evident to those who are engaged in it.

The gathering and retention of protester details on the police CRIMINT database¹, the operation of a protester image database, the use of plain clothes police on demonstrations and the deployment of undercover officers within radical protest groups have all been well documented. These factors have contributed to a general feeling of distrust and unease with protest policing.

One seventeen year old told us:

"I was on a peaceful protest, there were only a couple of hundred people. But the police were taking photographs. I'd never been on a demonstration before, it was my first time. But I didn't want a record. I didn't want them to have my face on file. So I put a scarf around my face, and my friends did the same thing. Why should they take our photographs anyway? It's not as if we were doing anything wrong."

¹¹ Documents obtained by Fitwatch and passed to the Financial Times revealed that the CRIMINT database included details of a number of non-criminal protesters, including MP Jeremy Corbyn and the Fiyaz Mughal, adviser to Nick Clegg, who had attended a demonstration organised by Stop the War.

Keffiyeh scarves are frequently worn on demonstrations. Not only is the wearing of a Keffiyeh a growing trend, they also express sympathy with Arab, Palestinian and Kurdish causes². However, the scarves are a frequent target of police, especially when worn by young black men. Commentators at demonstrations against education cuts in London on 30th June raised concerns that the police disproportionately used powers of stop and search and removal of masks against young black men wearing keffiyehs.³

There are of course other reasons why protesters might wish to hide their identities. Anti-government demonstrators from Syria have complained that they were photographed by the Syrian secret police on demonstrations outside the embassy, and that they had been subject to harassment and intimidation as a result. Some of those taking part in a recent Congolese demonstration were nervous that Congo state representatives may be spying on the demonstration and were fearful of repercussions to their families still in Congo.

Additionally people also wear scarves for the completely legitimate reason of keeping warm, although police have occasionally displayed a worrying inability to tell the difference between this, and a mask 'worn for the purposes of concealing identity'⁴.

We feel that the right to use of clothing as a means of expression is protected under article 10 of the Human Rights Act, and the right to refuse to allow the police to collect personal data is protected under article 8. We believe that extending the powers of the police to remove face coverings is neither necessary or proportionate.

Current legislative framework.

Currently, an authorisation for the removal of face masks can only be given if an order under s60 CJPOA 1994 has been given. This requires a police officer of the rank of Inspector or above to have a reasonable belief that serious violence may take place, or has taken place, or that weapons are being carried.

An authorisation under s60aa of the CJPOA 1994 may then be given if a police officer of the rank of Inspector or above reasonably believes that criminal activities may take place, and that the removal of masks is 'expedient'.

In theory therefore, the police have powers only to intervene in the wearing of masks where there is a reasonable anticipation of **serious** violence, or where dangerous instruments or weapons are being carried **AND** where this is expedient to prevent the commission of offences⁵.

² The Keffiyeh is not the only overtly political use of the scarf or face covering. Supporters of the Zapatista movement, for example, are renowned for wearing masks to express collective solidarity and the globalisation of the struggle. For them, the mask represents the political concept that 'we are everywhere, and we are each other'

³ Tweets on the day included many similar to the following:

Just saw 2 teenage asian lads being stopped and details taken for covering faces under S60. Keffiyeh confiscated 'to prevent violence'. #j30

15yr old stopped by police for wearing black hijab, accused of being black block + causing trouble #j30 #islamophobia
<http://t.co/alTtE4U>

⁴ A photojournalist was arrested in Brighton for wearing a Liverpool FC scarf while filming a demonstration
<http://photographywithoutborders.org/2008/12/disabled-student-arrested-under-anti-terror-laws/>

In practice, the use of s60 authorisations is widespread and routine. We do not have figures for the number of s60 authorisations made in relation to public protest, but the experience of protest groups is that these authorisations are not confined to those situations where there is a realistic likelihood of serious violence⁵. Examples of the police over-extending their powers under s60/s60aa are so common they have been virtually normalised in protest situation, but the legislation is drawn so loosely that legal challenge is hard to bring – even where protesters have the necessary knowledge and legal support. Government should be highly wary of extending powers further.

Proposed extension to legislative framework.

We oppose proposals to extend police powers to remove masks, whether pre-emptively, or in relation to an investigation of actual criminality.

The dangers of extending police powers pre-emptively, on the basis of criminal offences that are merely ‘anticipated’, are plain. Protest groups have complained that it is far too easy for regular participants, and especially organisers of political protest to be identified, and for their details to be held on a police database. It is also common knowledge that the police use ‘spotter cards’ to aid the identification of ‘known protesters’ even if they have no history of engaging in criminal acts⁷. We are concerned that there is a growing propensity for the police to use pre-emptive actions against known activists, and there is evidence that people have been targeted for an association with certain radical groups or merely ‘looking like an anarchist’. A judicial challenge may be brought in relation to pre-emptive arrests taking place in advance of the royal wedding last year.

Being targeted by police on a demonstration is an experience that can be unpleasant and even frightening, particularly if the police appear hostile or use force, as is sometimes the case⁸. The potential for such experiences to bring about a ‘deterrent effect’ preventing young people attending protest is worrying.

It is inevitable that the police would wish to have greater powers to remove face coverings where criminal acts **have been** committed, as opposed to where such acts are **anticipated**. Restricting extending powers to these circumstances may be seen as an effective safeguard against threats to civil liberties from pre-emptive actions.

However, allowing the police extended powers to remove masks where criminal offences have taken place would, in effect, provide a very wide ranging power.

⁵ Where a police officer reasonably believes

a) that activities may take place in any locality in his police area that are likely (if they take place) to involve the commission of offences, and

(b) that it is expedient, in order to prevent or control the activities, to give an authorisation under this subsection.

⁶ For example On the 10th October a group of around 60 people were kettled on Lambeth bridge after a peaceful demonstration called by the campaign group ukuncut. They were ordered to remove face coverings and submit to a search under s60aa / s60 CJPOA.

⁷ The Guardian published a spotter card in 2009. Many of those on the card had no criminal records. One of them was the Channel 4 comedian and campaigner Mark Thomas.

⁸ A small group of protesters, some wearing masks, were contained at the end of an entirely peaceful right to work march in Birmingham in 2010 when they attempted to continue their protest. They reported that the police used substantial force to search them, including pulling the hair of female protesters in order to force them to pose for police cameras. No arrests were made. Such accounts are sadly not uncommon.

Protest is by its nature a disobedient affair. Many protests involve some behaviour that may be interpreted as the commission of criminal offences, such as the obstruction of the highway, trespass, or in some cases, minor damage. To extend powers to remove masks in these situations would be unnecessary and disproportionate.

Only a very small proportion of protests involve serious criminal offences. In these cases it is invariably the case that they also involve serious violence. The student demonstrations last year for example have seen people coming in front of the courts for both criminal damage and violent disorder.

In these cases, the police already have powers to remove masks, and need no further extension. The imposition of section 60 authorisations are commonplace, are issued whenever there is any possibility of violence, and do not appear to be hindered by bureaucracy.

We believe that any extension to police powers in relation to the investigation of committed offences will inevitably be used against the former group of protests – those cases which entail civil disobedience and minor offences.

Intelligence-led policing.

In recent years, policing has increasingly come to depend upon an 'intelligence-led' approach to counter crime. This involves the building of an intelligence picture of identified groups and individuals, and surrounding certain behaviours. The police also appear to have taken a similar approach to public order policing, particularly in relation to political demonstrations. Here however, there are concerns that the intelligence picture built is one of political and campaigning groups, and individuals recorded and photographed at demonstrations – people who are engaging in lawful political activity.

An intelligence-led approach may be entirely appropriate to investigating and preventing certain types of criminality, but we would suggest it is a strategy that is wholly unsuited to the policing of public protest. It has exacerbated concerns over political freedoms and the interference of the state in aspects of an individual's private life.

It is also notoriously ineffective as a tool against protest disorder. A large proportion of those in front of the courts for offences at demonstrations have been of previous good character, and would have been 'under the radar' of intelligence policing. Judge Dennis, presiding over the sentencing of Gaza demonstrators for disorder in 2009, said "Such offences often involve young men such as you who are of otherwise of exemplary character."

Reliance on intelligence-led policing in relation to protest was criticised by HMIC - Nurturing the British Model -Policing Public Order HMIC 2011

"In these circumstances it is common, in hindsight, to pinpoint 'better Intelligence' as being a missing ingredient. But these are inherently messy events; complex and difficult. Intelligence however good will never be perfect, nor should it be expected to be so. Even the information that is available may not be credible or reliable, and the more pre-emptive the police attempts to gather intelligence, the more complex the oversight of these situations becomes"

The intelligence-led approach has also encouraged a culture in which surveillance has been prioritised over intervention. This is a strategy which we believe is damaging and dangerous. We have observed numerous occasions in which the police have preferred to film and document criminal behaviour, rather than intervene to stop it. It is in this context that the police are seeking extended powers to remove face coverings.

Student demonstrators 'kettled' in Whitehall in November 2010 systematically and repeatedly attacked and damaged a police van left within the containment. This took place over an extended period of time, during which the police took no actions other than to film the incident and photograph those responsible from a distance. The absence of any noticeable police activity inevitably encouraged and incited the demonstrators to further and more extreme acts of damage, presumably resulting in some of them now facing criminal charges.

The police did, finally, move their lines to retrieve the police van, and there is no apparent reason why they could not have done so a great deal sooner. The emphasis on surveillance rather than intervention in this instance, as with others, tends dangerously to provocation and entrapment.

We consider that this a failing strategy. Further we do not consider that civil rights and political freedoms should be eroded further in order to support such a strategy.

Conclusion

The police, by their approach to policing protest over recent years, have eroded the trust of a significant proportion of the population. A substantial proportion of people involved in political campaigning and engaged in protest feel that they are being treated as criminals, and that reasonable and legitimate behaviour is criminalised.

Existing powers are clearly adequate in dealing with situations of serious violence. We would however suggest that in actions be taken to restrict the police to their statutory powers under s60 / s60aa of the Criminal Justice and Public Order Act, and to prevent the normalisation of police behaviours that exceed those powers and which undermine civil rights.

In summary, we consider that:

1. There is no necessity to extend powers of the police to remove masks beyond current powers which allow police to do so in situations where violence is anticipated. There is no necessity to extend powers to remove masks where there is a threat of criminal activities.
2. Extending the powers of the police to remove masks carries with it a substantial risk of criminalising the covering of the face in all protest situations. This is unjustified and a substantial interference with Convention rights.
3. Allowing all police constables to remove masks without authorisation from senior officers will lead to an abuse of powers, and unjustified harassment of young people.
4. The identification and exclusion of 'known' individuals from public demonstrations will not prevent disorder, but will fundamentally undermine civil liberties.
5. An 'intelligence-led' approach has prioritised surveillance of disorder over intervention. This is a policing strategy which has failed to prevent disorder and cannot justify greater threats to civil rights.