



# The Network for Police Monitoring

## **CONSULTATION ON REVISED PACE CODE OF PRACTICE A**

### **Response from the Network For Police Monitoring (Netpol)**

This response has been prepared by the Netpol Lawyers Group (NLG). NLG is a collective of solicitors and barristers who specialise in representing protesters and activists. Netpol seeks to monitor public order, protest and street policing, and to challenge and resist policing which is excessive, discriminatory or threatens civil rights. Netpol has built a network of activists, campaigners, lawyers and researchers to create a forum for sharing knowledge, experience and expertise.

#### **Proposed revision to paragraph 2.6 of Code A**

The draft of revised Code A that has been sent out for consultation includes the following addition to paragraph 2.6:

*A similar approach would apply to organised protest groups where there is reliable information or intelligence that they arrange meetings and marches to which one or more members bring articles intended to be used to cause criminal damage in support of the group's aims. This may provide reasonable grounds to stop and search any members of the group to find such articles.*

This proposed guidance for police officers appears to tolerate, if not encourage, an unlawful approach to the consideration of reasonable grounds for suspicion in the context of protest groups. Only in very unusual circumstances will intelligence relating to just one or more member of a protest group give rise to reasonable grounds of suspicion in respect of any member of the group. However, the draft addition to the guidance suggests that such a leap can be made as a matter of course. We are concerned that, as a result, the use of stop and search powers against protest groups on the basis that they ‘may’ intend to cause criminal damage will inevitably become routine.

In addition, the ‘similar approach’ to protesters mentioned paragraph 2.6 is specifically linked to the wider issue of gang membership, where individuals “wear a distinctive item of clothing or other means of identification to indicate their membership of the group or gang”. We are concerned that this is intended to provide police officers ‘reasonable’ grounds to use powers under section 1 of PACE to stop and search anyone attending a protest who is, for example, wearing black, on the basis that they are perceived as potential ‘members’ of a ‘black bloc’. This could apply equally to any protesters wearing any identifiable items of clothing or other means of identification.

We note that the summary to the draft Code expresses this proposed change as necessary ‘*to reflect Howarth v Commissioner of the Met Police (2011) and clarify how RGS [Reasonable Grounds for Suspicion] may be applied to groups of individuals*’. However, rather than clarify police officers’ statutory powers of stop and search, there is a very real risk that guidance in these terms will lead to searches being conducted outside of those powers. It is correct that that the Court in Howarth was satisfied that the search of a group of protestors was lawfully conducted on the basis of reasonable grounds in light of intelligence about ‘one or more’ members of that group. However, that case concerned an unusual set of facts and the Court took care to emphasise that its decision turned on those specific facts. The Court, at paragraph 32, specifically considered the issue of relatively minor criminal damage and took the view that group searches were likely to be unjustified where as the proposed amendment makes no such distinction.

“32. Clearly, there must be limits to such group searches. All will depend on the circumstances of each individual case. One can imagine that a search for a single item of technically offending material (for example, a paint spray) might not justify the searching of a very large group of demonstrators, but the search of such a group, in which one as yet unidentified individual is reasonably suspected of carrying a bomb, might be very different.”

In another case, *R (Morris) v Chief Constable of Kent Police* [2009] EWHC 2264, the High Court considered this issue in different circumstances. In that case, police officers had received intelligence that some individuals, among a large number of environmental protestors, were intending to cause criminal damage to a power station. Police officers were then briefed that the intelligence about those limited individuals' intentions gave rise to reasonable grounds for suspicion in respect of all protestors involved in the event and searches were conducted on that basis. In the course of that litigation, the Chief Constable admitted that approach was unlawful. The High Court went on to rule that searches conducted pursuant to that approach were unlawful and had breached individuals' rights under Articles 8, 10 and 11 of the European Convention of Human Rights.

Disseminating guidance suggesting searches of groups may routinely be conducted based on intelligence on a small number of individuals within that group, or that endorses the targeting of individuals based simply on the colour or similarity of their clothing, carries with it a very real risk of arbitrary and unlawful searches. The need to avoid such an outcome is particularly acute in the context of protest given the inevitable impact upon individuals' rights under Articles 10 and 11 of the European Convention on Human Rights.

In order to avoid that consequence, we would suggest that the text in 2.6 after '(See note 9.)' should be deleted in its entirety.