Consultation by the National Police Chief's Council and College of Policing on Protest Operational Advice and Public Order APP

Response from Netpol – The Network for Police Monitoring • Sept. 2019

Introduction and summary

1. The last major review by the police of the operational policing of public order and protest, and of applicable standards, was nearly a decade ago when the ACPO manual "Keeping the Peace" was updated and revised. The College of Policing is currently consulting on the National Police Chiefs' Council (NPCC) Protest Operational Advice Document ('the Advice'), and its own Authorised Professional Practice ('APP') on Public Order policing (Section 2 – Core Principles and Legislation), a consultation said to "reflect the latest developments and lessons learnt from across the United Kingdom when policing protests."

2. The Network for Police Monitoring (Netpol), which brings together activists, campaigners, lawyers and researchers to monitor public order, protest and street policing, welcomes the chance to advance the protection of the right to protest in the UK but is strongly of the view that the Operational Advice (and consequent changes to APP) constitutes both a significantly retrograde step, and a missed opportunity to secure and embed the right within operational practice and training.

3. The comments set out below are directed at six general points in the Advice. Our six main criticisms are:

i) There is no legal basis for considering ECHR Article 17 is relevant to the decision-making framework

ii) There is no legal basis for excluding protest which deliberately causes disruption from the scope of the right to protest.

iii) The removal of the duty to facilitate peaceful protest is wrong in law

iv) The focus on a collective right of the protest rather than the right of individual protesters to have a peaceful assembly (or protest) is misplaced

v) The failure to recognise protest as a process not a single event represents a serious omission

vi) The potential for police surveillance and information gathering to infringe protesters' rights is underplayed or ignored

4. These points are addressed sequentially below.

5. We do not directly address consequent changes to the draft APP in this submission. However, our submissions in relation to the Advice should be read as recommending relevant modifications of the APP. In particular, we recommend that all reference to the use of Article 17 is removed from the APP.

6. One small point to note at the outset is the omission in the Advice of any discussion of the role of observers/human rights defenders, or of journalists. There is no consideration of the protection that should be offered to these groups.

I. Misplaced use of ECHR Article 17

7. The **first point is that the Operational Advice, and APP which draws on it, overestimates the relevance of Article 17 of the ECHR and misapplies it within the general context of peaceful protest**. It appears throughout the document as part of the structural framework for restricting the rights to free speech and assembly, Articles 10 and 11, specifically (p.17) action aimed at interfering with someone else undertaking lawful business activity.

8. There is no support within the caselaw of the domestic courts or that of the European Court in Strasbourg for such an assertion.

9. There is a very useful recent guide to Article 17 published by the Council of Europe in March this year in its series that is available here **https://www.echr.coe.int/Pages/home.aspx?p=caselaw/analysis/guides&c=#**

10. As stated in the guide, whilst headed “Prohibition of abuse of rights”, Article 17 has a more narrow meaning than that. Article 17 is limited to an “activity or … act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.” In short, the thrust of the case law summarised in the Guide identifies the purpose of Article 17 as being to prevent acts – in the name of exercising right X – the effect of which is harm to or destruction of the rights that inhere in the continued existence of our collectively enjoyed democratic polity and the fundamental values of the Convention.

11. Specifically, (see p.9 of the Guide, cited cases excluded) Article 17 covers:

    - hatred
    - violence
    - xenophobia and racial discrimination
    - anti-Semitism
    - Islamophobia
    - terrorism and war crimes
    - negation and revision of clearly established historical facts, such as the Holocaust
    - contempt for victims of the Holocaust, of a war and/or of a totalitarian regime
    - totalitarian ideology and other political ideas incompatible with democracy

12. There is nothing in the ECHR caselaw which comes anywhere close to the suggestion that Article 17 may be used in conjunction with the protection of the right peacefully to enjoy possessions under Article 1 Protocol 1 (‘A1P1’) as a basis to deprive protesters of the right under Article 11 to take action aimed at interfering with a company’s lawful business.

13. This is critical. There exists a long-established, sound doctrinal route when such tensions arise, and this is the balanced nature of Articles 10 and 11. It requires a case to be made on evidence that restrictions are proportionate – and not simply reasonable as the Operational Advice maintains (p.5) – a case that must be made by the state, or by the company if seeking e.g. a private law injunction. The state bears the onus. If Article 17 is prayed in aid successfully, that balancing stage is lost; the protest is defined out as something outwith Convention protection if it is aimed at the destruction of rights.

14. This is shown in sharp relief in the Advice (p.14) and its discussion of a protest blockade outside a company. The Advice asserts that an action “aimed at

preventing this type of lawful activity is likely to fall within the scope of Article 17". The above shows that is not a correct assessment of the current legal framework. From that premise then a different conclusion then follows. Instead (p.14 again) of it being the case that the police could simply decide to take action to protect the rights of the company and its workers, we suggest that the correct human-rights approach would be an assessment of the relative and proportionate effects of restricting on one hand the Article 11 rights of the protesters and on the other the A1PI rights (to peaceful enjoyment of possessions) of the company, those too being qualified by the standard proportionality analysis.

15. A search of the ECHR database (HUDOC) for Court judgments in which Article 17 played a role in determining the outcome of an Article 10/11 protest or assembly case brought up no cases. The closest were *Vona v Hungary*[1] and *Paartidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*[2] but the common feature of these is ban/proscription of a political organisation. Article 17 has not featured as a government argument where the issue was participation in some form of political protest - march, rally, demo or a form of non-violent direct action.

16. The narrower focus of Article 17 is clear in the extracts from the following cases:

    a) The case of *Zdanoka v Latvia*[3] concerned a ban on standing for election based on past Communist Party membership. The Court said:

    "…In particular, one of the main objectives of Article 17 is to prevent totalitarian or extremist groups from justifying their activities by referring to the Convention. However, in the present case, the applicant's disqualification from standing for election is based on her previous political involvement rather than on her current conduct, and the Court has just found that her current public activities do not reveal a failure to comply with the fundamental values of the Convention …. In other words, there is no evidence before the Court that would permit it to suspect the applicant of attempts to engage in any activity or perform any act aimed at the destruction of the rights and freedoms set forth in the Convention or the Protocols thereto." (at para 109)

    b) *The case of Kasymakhunov and Saybatalov v. Russia*[4] concerned two applicants who were convicted of membership of Hizb ut-Tahrir. The Court said

    "The general purpose of Article 17 is to prevent individuals or groups with

[1] App no 35943/10, 9 July 2013
[2] App no 46626/99, 3 February 2005
[3] App no. 58278/00, 17 June 2004
[4] App nos. 26261/05 and 26377/06, 14 March 2013

totalitarian aims from exploiting in their own interests the principles enunciated by the Convention" (at para 103).

17. The approach taken in the Advice – founding the policing power to restrict the right to protest on Article 17 – is not one that has featured in the outcome or reasoning of any domestic case. A search of the Westlaw database confirmed that view.

18. There is simply no authority and no legal basis for using Article 17 as a means to distinguish different types of protest leading to different levels of protection (p.12) or, indeed, removing a protest from the scope of protection in its entirety (p.14).

19. A compounding factor here is the expansive discretion that an approach premised on Article 17 vests in police commanders and by extension individual officers (who might need to take a rapid decision on the street) guided by this Advice and APP, based on that officer's assumption about the aim. The likely chilling effect – through pro-active policing that might only be checked after the event – will almost certainly, in many situations, undermine the presumption in favour of exercising rights (that underpins the whole HRA scheme), such that being able to enjoy the right to protest peacefully and to assemble is likely to be greatly reduced perhaps to the point of non-enjoyment, simply on one officer's view that protester A's aim is to interfere with lawful business operations.

20. The possibilities for abuse when there is incorrect reliance on Article 17 are evident in the Advice and its discussion of certain forms of speech under Article 10 (pp.12-13). While it is quite possible that hate speech (under Part III of the 1986, and 2006 Act) could constitute an abuse of rights as to bring it within Article 17 (and thus outside the protection of the guarantee in Article 10), it is almost inconceivable that threatening or abusive speech, as to meet the test in s.5 POA 1986, would do so. It would constitute a doctrinal leap of massive proportions on current case-law principles. To be advising officers that "such behaviour will often fall outside the protection" of the ECHR (our emphasis) is to render the right to peaceful protest likely ineffective, exposing those officers and the Advice to the risk of challenge on grounds of lawfulness/vires.

21. The Advice is misleading (p.14) when it seeks to distinguish different forms of counter-protest and to categorise them, effectively, according to Article 17. First, it should be noted that the case of *Plattform Ärtzte* on which the Advice relies is not an Article 17 case but one where a mainstream Article 11(1) right being set off against competing social interests in Article 11(2). Secondly, and to repeat points made earlier, there is no protest/assembly case in which Article 17 is set off against Article 11, so as to ensure it is defined out of protection at the outset. That being so, the approach of the Strasbourg Court, and thus of the UK courts were an issue to come before it, assuming a constant doctrinal trajectory would be to treat counter-demonstrations as they have before; not as implicating

Article 17 but as internal Article 11 balancing – see both *Plattform Ärtzte* and *Öllinger v Austria*.[5]

22. Finally, the error in seeking to apply Article 17 in the manner proposed in the Advice can clearly brought out in the following argument. Logically, Article 17 either applies throughout the Convention or not at all. There is no reason why Article 17, if it does apply, should act only as an ouster to a protester's rights under Article 10 or Article 11 but not in reverse to defeat any protection offered to business under A1P1. In short, one can just as well argue that Article 17 should be used to protect a protestor's rights under Article 11 where these come into conflict with a business's rights under A1P1 as the other way round. To protect the lawful operations of a business by arresting protesters is equally damaging to the Article 10 rights of the protestors as permitting the protest to continue is damaging to the A1P1 rights of the business. This reverse argument demonstrates the logical flaw in the manner in which Article 17 is deployed in the Advice and constitutes a *reductio ad absurdum* of the approach to Article 17 adopted therein. It brings out the fundamental point that the proper approach to circumstances in which Article 10 rights of protestors compete with A1P1 rights of a business is a balancing exercise that is necessarily and inherently fact specific.

II. Deliberately disruptive protest remains protected under Article 10/11 ECHR

23. It is well-established and beyond doubt that deliberately disruptive protest remains within the scope of Article 10/11. The Advice fails to recognize this important point.

24. As the courts have repeatedly made clear, direct action protests, including lock-ons, occupations of land and other activities which are capable of being deliberately disruptive to others, fall within the scope of Articles 10 and 11. In *Hashman and Harrup v United Kingdom* (1999) 30 EHRR 241 the court stated:

> *"It is true that the protest took the form of physically impeding the activities of which the applicants disapproved, but the Court considers nonetheless that they constituted expressions of opinion within the meaning of Article 10… The measures taken against the applicants were, therefore, interferences with their right to freedom of expression."* (at [28])

25. This was confirmed domestically in *R v Roberts & Others* [2018] EWCA Crim 2739 which concerned the deliberate blocking of a major road for a period of 3 days. The Court of Appeal stated: "there is no doubt that direct action protests

[5] App 76900/01, 29 June 2006

fall within the scope of articles 10 and 11…“ (at [39]).

26. The Advice repeatedly seeks to distinguish between protests which cause incidental or collateral disruption (which it claims are protected under Article 10) and protests which aim to interefere with other persons use of their own property (which it claims is not protected).

27. For example the Advice states (p14):

> *“The aim of the protestor in these types of cases must be carefully considered:*
>
> - *If the protestors’ aim is to mount a protest, the collateral effect of which may be to interfere with the rights of others, then the lawful and appropriate response by the police will be the imposition of only those conditions and controls that are necessary and proportionate under Articles 9(2), 10(2) and 11(2).*
>
> - *By contrast, if the protestors’ aim is to interfere substantially with, or prevent, another person from undertaking activity which involves the lawful use of their own property, then such activity is not protected.”*

28. This distinction is wrong in law.

29. There is no basis on which to assert that a protest which is deliberately disruptive to the activities of others thereby falls outside the protection of Article 10. Neither Article 17 not Article 10(2) can be used to achieve such a result. In drawing such a distinction between collateral and deliberate disruption and marking the latter out as inherently lacking protection under Article 10 the Advice misstates the law and will lead police officers to wrongly prohibit protests which should be protected and facilitated.

30. The correct approach to disruption caused by a protest (whether intended or collateral) is to balance the right to protest against the matters set out in Article 10(2)/11(2) (which include the rights of others). This is inherently a fact-specific enquiry.

31. In considering the need for tolerance of disruptive protest (whether intentional or collateral) the words of Laws LJ in *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23 are insightful:

> *“Rights worth having are unruly things. Demonstrations and protests are liable to be a nuisance. They are liable to be inconvenient and tiresome, or at least perceived as such by others who are out of sympathy with them.”* (at [43]).

III. Removal of duty to facilitate peaceful protest

32. The third **general point can be put far more briefly. The Advice no longer seems to recognise the positive duty on the police to facilitate the right to protest.** It identifies, as does the APP, two duties (p.9):

    - not to prevent, hinder, or restrict
    - in certain circumstances to take reasonable steps to protect those who want to protest

    This is a regressive step – and even if the sentiment of the Advice is to retain that notion, the language does not speak to it, and this in turn will create a chilling effect.

33. The idea of the police and state agencies facilitating the right to peaceful protest is now well known and enshrined. In international law, the UN Human Rights Committee in *Kirsanov v Belarus*[6] and *Turchenyak et al v Belarus*[7] held that 'states should be guided by the objective of facilitating rather than seeking to limit the right to peaceful assembly disproportionately'. As a matter of ECHR case law, the Strasbourg Court in *The United Macedonian Organisation Ilinden and Ivanov v Bulgaria*[8] reaffirmed that "genuine, effective freedom of peaceful assembly cannot be reduced to a mere duty on the part of the State not to interfere; it is the duty of Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully". It has also been accepted in other jurisdictions e.g. by the Constitutional Court of South Africa in *Mlungwana and others v State and another.*[9] Evidence from several UK cases shows it has been an accepted policing goal for many years in both Northern Ireland (*DB v PSNI*[10]) and in England: see High Court judgment in *Hicks*[11] and Court of Appeal judgment in *Laporte*[12] and in HMIC "Adapting to Protest" (2009) at p.6 and elsewhere.

34. There is a difference between facilitating and protecting, and not simply in the latter's connotations of defensiveness. The extent and scope will be different. Protecting a protester's right could, and may well only, involve putting in place measures to ensure a counter-demonstration (or individual threatening hecklers, as we've seen outside Parliament this year) do not interfere with the protest. Facilitation extends past that to encompass such policing matters as: traffic management, medical assistance, training in public order and crowd

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[6] Communication No. 1864/2009 CCPR/C/110/D/1864/2009, 5 June 2014, para 9.7
[7] Communication No.1948/2010 CCPR/C/108/D/1948/2010, 10 September 2013 para 7.4)
[8] App no 44079/98, 20 October 2005, para 115
[9] (2018) 46 BHRC 419; [2018] ZACC 45 at [101].
[10] [2017] UKSC 7 at [59]
[11] [2012] EWHC 1947 (Admin) at [24]
[12] [2004] EWCA Civ 1639 at [4]

dynamics, and in e.g. mediation (see UN Human Rights Council, Joint Report of Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (March 2016[13]) available here: **http://freeassembly.net/reports/managing-assemblies/**

IV. Misplaced focus on a collective right of the protest

35. The **fourth general point relates to the rights-holder, that is who is the beneficiary of the right**. The Advice (p.9) sets out the starting point as the "presumption in favour of peaceful assembly". It is important to recognise that it is individuals who exercise rights; while Article 11 guarantees the right to peaceful assembly, as an entity, but this is a right of each and every protester. This distinction, slender as it might seem, is critical as a failure to recognise that distinction leads into the trap of attributing to protester A the actions of protester B. From this then flows the legally flawed response – restricting or limiting protests on account of the behaviour of (a few of) its members. We can see this error in places in the Advice: it talks of the "protesters' aim" (p.14) rather than the aim of each and every protester, in the singular. Only if we adopt that latter approach can we be true to Strasbourg case law which emphasises that a protester does not lose the right to assemble/protest peacefully unless they themselves are violent:

> *"an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration if the individual remains peaceful in his or her own intentions or behaviour"* (*Ziliberberg v Moldova*[14]).

36. The Advice simply does not advert to the individual nature of the right, nor to the fact that a protester is not vicariously "liable" for the violent intentions of another, such that both might lose the right peacefully to assemble. An acknowledgement of this well-established point of principle would be welcome in Advice that is designed to guide the operational practice of officers on the spot, as it would put centre-stage the correct legal framework for decision-making.

[13] A/HRC/31/66, para 40-42
[14] App no 61821/00 Admissibility decision of 4 May 2004

V. Failure to recognise protest as a process

37. The **fifth general point is to note the absence in the Advice of any recognition of the right to peaceful assembly/protest as anything other than as "event-based**". The Advice conceptualizes protest as: at one point in time, X number of people will either/both march or hold a demonstration, or take part in some of action. There is no recognition of the right being "process-based", about organisational capacity in advance and behind the scenes, something as much subject to interference from policing decisions, especially (but not limited to) surveillance.

38. On this, the Advice appears to be out of line with contemporary international developments. A draft General Comment (GC 37) on Article 21, the equivalent to Article 11 of the ECHR, prepared for the UN Human Rights Committee by Special Rapporteur Christof Heyns, has been circulated for civil society consultation. It offers this (at para 37):

> *Article 21 and its related rights not only protect ongoing assemblies while and where they are conducted. Activities conducted outside the scope of the gathering but that are integral to making the exercise meaningful are also covered. The obligations of States parties thus extend to participants' or organizers' dissemination of information about an upcoming event; travelling to the event; communications between participants leading up to and during the assembly; conveying information about what is happening to the outside world; and going home afterwards. These activities may, like the assembly itself, be subjected to some limitations, but such limitations are also to be narrowly construed. For example, publicity for an upcoming assembly before notification has taken place cannot be penalized in the absence of a specific indication of what dangers would have been created by the early distribution of the information.*

VI. The potential for police surveillance to infringe protesters' rights

39. The **sixth general point is that advice as drafted does not fully recognise the potential for police surveillance and information gathering to infringe protesters' rights.** While there is some acknowledgement that the retention of images and data may violate privacy rights, there is no recognition that the collection of data can 'chill' protest freedoms.

40. Our concerns relating to information and intelligence gathering subdivide into

three areas:

a) Data gathering and usage;

b) Differential treatment through categorisation of protest groups; and,

c) The role of Police Liaison Teams (PLTs)

41. These are addressed below.

a) Data gathering and usage

42. Police data-gathering and overt surveillance practices in the context of protest are pervasive, sometimes physically invasive, and capable of 'chilling' protest freedoms. These practices are intrusive of individual privacy; they can also have a stigmatising effect, undermining legitimacy and disrupting the communicative function of protest assemblies. Such stigmatisation can further hinder the process of protest, by creating a more hostile or difficult environment for protest groups to grow and develop. In short, data gathering and overt police surveillance can result in the 'shrinking' of political space available for civil society to operate, interfering not only with individual privacy rights, but also with the freedom of expression and peaceful assembly.

43. Despite the acknowledgement that data retention may interfere with privacy rights, the document appears to presuppose extensive police powers to obtain and make use of personal data, including identification data, biometric data (e.g. photograph), and other special category data, such as political opinions voiced on social media forums (see page 19). These practices appear to be justified as being necessary for a range of very broadly defined purposes, including:

(i) The need for police to 'educate themselves regarding the individuals, groups, and groups within groups attending a protest' (p22)

(ii) To understand the 'motivations and actions of protesters' (p15)

(iii) To inform the legal basis for interfering in/restricting the protest, and the extent of any such interference (p15)

(iv) To identify a proportionate policing response (p22)

(v) To differentiate between groups and individuals (i.e. between 'protester', 'supporters' and 'activists' (p22)

44. The case law of the ECtHR does not support such an expansive interpretation of police powers. The starting point should be that no personal data will be collected/retained unless there are clear reasons for doing so (eg for the investigation of a criminal offence). Mere participation in a protest/association

with a protest group does not provide a legal basis for the collection and retention of personal data. The European Court of Human Rights has stated that 'the collection of data on individuals solely on the basis that they belong to particular movements or organisations which are not proscribed by law should be prohibited unless absolutely necessary or for the purposes of a particular inquiry.' (see *Catt v UK* para 124; Committee of Ministers' Recommendation R (87) 15 to member states regulating the use of personal data in the police sector, Principle 2.4).

45. If the collection/retention of information is collected/retained, there must be transparent and effective safeguards and constraints upon police discretion. The ECtHR has recognised that personal data revealing political opinions attracts a 'heightened level of protection' and has highlighted the dangers of 'an ambiguous approach to the scope of data collection' in relation to political activity (*Catt v UK*, para 123). Judge Koskelo, giving a concurring opinion in the case of *Catt*, expressed concern about the lack of 'clear rules governing the scope of the measures' and the consequent deficiency in '[t]he accessibility and foreseeability of the norms'.

46. On this basis it is simply wrong to suggest that police powers extend to the routine collection and retention of personal data for the broad and vaguely defined purposes listed above. The guidance must do more to clarify the circumstances in which such processing is likely to be necessary and proportionate, and to ensure that information gathering practices are restricted to those circumstances where they are absolutely necessary (and not merely useful or expedient) for the prevention and detection of crime.

47. Further clarity is particularly required in relation to: the recording/use of personal data by EGT/FIT/PLTs; the collection and retention of protester images (including the use/processing of body-worn video); the pro-active identification of individuals participating in protest (including the use of ANPR and facial recognition technology); the collection (and subsequent use) of personal data from on-line sources (eg social media).

b) Categorisation and differentiation

48. Further concerns arise in relation to the differential treatment of protest groups. The guidance distinguishes between three categories of person: supporters, protesters and activists. Previous police documentation has referred to a fourth category, the 'extremist' which is notably absent from this current draft guidance.

49. While the removal of references to protesters as 'extremists' is welcomed, rights issues remain in relation to categorisation. The way in which an individual is

categorised is likely to have a significant impact on the manner in which they are policed.

50. Categorisation may harm individual rights in a number of ways. Firstly, there is the danger of confirmation bias, in which 'risk' categorisation is influenced by pre-existing beliefs and biases. This may mean that certain populations (e.g. black or working class youth, migrants, ethnic communities) may be more likely to experience heightened risk categorisations than others (eg white, middle class, middle aged). Secondly, there is the danger that categorisation may be based on inaccurate or subjectively interpreted data. Thirdly, there is the danger that an increased 'risk' classification (i.e. a protest is classified as consisting of 'activists' rather than 'protesters') may routinely or habitually result in restrictions on protests which may not, in any instant case, be justified.

51. It is therefore critical that there are clear rules and transparent procedures relating to the circumstances in which categorisation takes place, the criteria used, and the potential consequences (in terms of policing style or intervention). These are largely absent from the guidance. Definitions and criteria are vague and ambiguous: the guidance itself points to the difficulties of classifying individuals whose 'identity and behaviour during a protest may change dependent upon a number of external influences' and that recognises that 'blanket terms…may lead to incorrect assumptions'. (page 22). Further, there is no explanation as to what an altered classification will mean for those concerned, and no information as to whether (or how) an individual may be able to obtain information about (or make representations about) the categorisation(s) that have been attached to them.

52. At present the inherent vagueness in the use of these terms create a substantial risk that unnecessary and disproportionate constraints may be imposed on individuals and groups seeking to exercise their right to freedom of peaceful assembly and association under Article 11. It should be noted that the European Court of Human Rights has expressed concerns about the 'significant ambiguity' resulting from the absence of any clear legal basis for the classification of protesters in this way (see *Catt v UK* para 97).

c) Police Liaison Teams

53. The guidance notes that Police Liaison Teams (PLTs) were introduced to facilitate communications with 'hard to reach' groups (page 30), and that these have 'gone some way' to addressing mistrust of the police (page 23). The guidance further notes that communication between police and protesters can be inhibited by the 'perception that the police are seeking information in advance in order to undermine protest' (page 23). The guidance does little however, to improve transparency about the PLT role, in particular about the

relationship between liaison, intelligence and enforcement functions.

54. It is clear from the national guidance on the role that the PLT role does involve collecting and recording information about protest and protesters, and that this information may be used either for intelligence or enforcement purposes. The NPCC should, in this respect, note comments made by the Special Rapporteur on the Right to Freedom of Assembly and Association in his follow-up report of 2017 (A/HRC/35/28/Add.1) at para 79:

> "[l]aw enforcement agencies should ensure there is an accessible point of contact within the organization before, during and after an assembly. The point of contact should be trained in communication and conflict management skills and respond to security issues and police conduct as well as to substantive demands and views expressed by the participants. The liaison function should be separate from other policing functions, [including intelligence gathering]".

55. Further, it should be explicitly recognised that there is no legal obligation on protesters to negotiate or communicate with the police prior to a public assembly. PLTs should not be deployed in such a way that the deployment undermines or limits the ability of protesters/organisers to decide for themselves whether or not to communicate directly with the police.

Authorised Professional Practice

56. We do not directly address consequential changes to the draft APP in this submission. However, our submissions in relation to the Advice should be read as recommending relevant modifications of the APP.

57. In particular, we recommend that all reference to the use of Article 17 is removed from the APP. Similarly we recommend removal of all passages reliant on the proposition that Articles 10 and 11 ECHR do not afford protection to demonstrations where the aim of those protesting is to deliberately cause disruption. Of particular importance are the following:

    i) We specifically recommend that Section 2.8.6.1.4 (deliberate interference with/prevention of the peaceful enjoyment of property) should be deleted in its entirety.

    ii) We recommend that Section 2.8.6.1.3 (counter protests) should be deleted.

    iii) In Section 2.8.6.1, references to 'counter protests' and 'deliberate interference with/prevention of the peaceful enjoyment of property' should be removed. The accompanying note should read: 'It [Article 17]

would not apply to a protest simply because the effect (intended or otherwise) was the inconvenience or annoyance of others – in such a case a balance needs to be struck between the rights of the respective parties'.

Conclusion

58. It is our view that in light of the matters identified above the draft Advice as it presently stands is fundamentally misguided. The associated Authorised Professional Practice is similarly flawed. It is our recommendation that both documents are revised in light of the criticisms set out above.

About Netpol – the Network for Police Monitoring

The Network for Police Monitoring (Netpol) seeks to monitor public order, protest and street policing that is excessive, discriminatory or threatens civil rights. We are a network of activists, campaigners, lawyers and researchers sharing knowledge, experience and expertise to effectively challenge policing strategies that are unnecessarily damaging to any sector of our society.

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