



**Liberty's response to the Joint  
Committee on Human Rights:**

**“Demonstrating Respect for Rights? A  
Human Rights Approach to Policing  
Protest”**

**May 2009**

## **About Liberty**

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organizations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

## **Liberty Policy**

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries, and other policy for a, and undertake independent funded research.

Liberty policy papers are available at

<http://www.liberty-human-rights.org.uk/publications/1-policy-papers/index.shtml>

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## Introduction

1. Liberty is pleased that the Joint Committee on Human Rights has decided to re-open its inquiry into the policing of peaceful protest. In 2008 Liberty submitted both written and oral evidence to the Committee's inquiry<sup>1</sup> and we welcomed many of the recommendations in the Committee's report.<sup>2</sup> In light of the recent high profile events, including the G20 protests in the City of London, the Tamil protests in Parliament Square and the arrests at the Iona independent school in Sneinton, Nottingham, Liberty welcomes the Committee's decision to take further evidence on the policing of protest in the UK.

2. Since its formation, peaceful protest has been at the core of Liberty's work. Indeed, we were founded in 1934 as the National Council for Civil Liberties principally to monitor the policing of protests and in response to the use of police agent provocateurs to incite violence during the hunger marches of 1932. We continue to campaign against unjustified and disproportionate interferences with the right to protest, including through the courts, in Parliament and in the media. In our previous written responses to this inquiry we considered why the right to peaceful protest is such an important part of the post-War human rights framework; looked at some of the many direct and indirect legal restrictions imposed on peaceful protest; and considered the legal position around the right to protest in privately-owned space. This short supplementary response draws on Liberty's long and varied history of fighting for the right to peaceful protest and focuses in particular on the operational tactics currently used to police protests.

## Kettling

3. A tactic increasingly used by police at public protests and widely used at the demonstrations in the City of London on 1<sup>st</sup> April 2009 is 'kettling' – essentially police containment. This tactic was first used over a long period of time on 1 May 2001 when demonstrators at an anti-capitalist protest at Oxford Circus were prevented from leaving

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<sup>1</sup> Original written evidence from Liberty available at: <http://www.liberty-human-rights.org.uk/pdfs/policy08/response-to-jchr-re-protest.pdf>. Supplementary written evidence available at: <http://www.liberty-human-rights.org.uk/pdfs/policy08/supplementary-evidence-to-jchr-protest-and-private-land-.pdf>

<sup>2</sup> *Report Demonstrating Respect for Rights? A Human Rights Approach to Policing Protest* published on 23 March 2009.

the area by a police cordon for about seven hours. As human rights solicitor, Louise Christian, has described:

*“[Kettling] is when the police impose cordons on demonstrators and refuse to let anyone from within the cordon leave for what can be hours. This is a controversial tactic, since the police are effectively imprisoning people who may be behaving perfectly peacefully and lawfully. Moreover such tactics might be thought to encourage violence in some instances by overreaction especially if... some of the more violent elements of a crowd are left on the outside of the cordon. Even worse can be if a person's safety is compromised as well as their liberty.”<sup>3</sup>*

4. A legal challenge to the use of the tactic at the 2001 May Day protests has recently gone all the way to the House of Lords. On 1 May 2001 at about 2pm a crowd of demonstrators marched into Oxford Circus from Regent Street South. They were joined later by others who entered the Circus, or tried to enter it, from all directions. By the end of the afternoon several thousand people were within the vicinity of the Circus. Lois Austin was among those who went to Oxford Circus as part of the crowd to demonstrate, but she was not one of the organisers. She was prevented from leaving the area by the police cordon for about seven hours and prevented by her detention from collecting her child from nursery. In 2002 Lois Austin and Geoffrey Saxby, a passerby caught up in the demonstration (who later dropped out of the litigation) brought a claim for damages against the police for false imprisonment and for breach of their right under Article 5(1) of the *Human Rights Act 1998*.<sup>4</sup> (HRA). The House of Lords handed down judgment in the case earlier this year and found that Article 5 of the HRA had not been engaged.<sup>5</sup> Liberty believes that the reasoning behind the judgment was deeply flawed. In reaching the decision that there had been no deprivation of liberty, their Lordships held that the *purpose* behind the police ‘kettling’ should be taken into account. Decisions as to whether liberty has been deprived are, of course, context specific. They will rightly depend on the circumstances of individual cases and factors such as length of time,

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<sup>3</sup> “G20: Questions need to be asked about ‘kettling’” Louise Christian, Guardian, 2<sup>nd</sup> April 2009

<sup>4</sup> Article 5 of the European Convention on Human Rights as incorporated under the Human Rights Act.

<sup>5</sup> *Austin (FC) (Appellant) & another v Commissioner of Police of the Metropolis (Respondent)* [2009] UKHL 5

conditions etc. We do not believe, however, that the purpose of a deprivation should have any bearing on whether the right to liberty has been engaged. The right to liberty is one of the more absolute rights protected under the HRA and can only be abrogated in five well-defined exceptions which include: detention to effect a lawful arrest or compliance with a court order; detention of a child who is unsupervised or of a person in breach of immigration rules; or "*the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants*". Liberty believes that it is at this secondary stage of determining whether an exception applies that the purpose behind the containment becomes relevant. Purpose should not inform the decision as to whether the deprivation has taken place in the first place.

5. Despite the House of Lords ruling in the May Day case, Liberty believes that kettling, over a prolonged period, necessarily engages Article 5 of the HRA. Lois Austin is now planning to take her case to the European Court of Human Rights and Liberty is intending to join the Strasbourg litigation. We will argue that the European Court of Human Rights should look again at the question of whether Article 5 is engaged when protesters are 'kettled' and we are hopeful that the legality of this tactic will be reassessed.

6. Putting aside legality or otherwise of the kettling tactic, Liberty believes that there are sound practical reasons why kettling can prove counterproductive. Informal containment of large numbers of people within a confined area for extended periods is unsafe. Where this has happened in the past, Liberty has heard that those 'kettled' have been unable to access food, water, facilities or medical treatment. It is not difficult to imagine how lack of facilities might exacerbate the risks of confrontation. In addition, common sense tells us that mass containment of this kind – where those intending harm may potentially be kept alongside those with solely peaceful aims – is as dangerous as it is illogical. Far from taking the heat out of the situation, it may temporarily imprison those who are potentially weak and vulnerable while simultaneously provoking those who are not so well intentioned. On a purely practical assessment, Liberty believes that the police would do better to stick to old fashioned dispersal where needed and arrest where necessary.

## Identification/Photography

7. Liberty is also concerned about recent evidence and reports that the police are misusing residual common law and statutory powers to intimidate protesters by both asking for names and addresses and recording footage of protests. We understand that the police frequently use stop and search powers (under section 44 of the *Terrorism Act 2000*)<sup>6</sup> and section 50 of the *Police Reform Act 2002* (PRA) to obtain the identity details of individuals. In some cases identity details have been demanded before protesters are allowed to leave areas of containment and we have heard numerous reports of protesters being told that a failure to provide identity details will lead to arrest. The use of this tactic was reported at the 1<sup>st</sup> April demonstrations in the City of London:

*Outside the Bank of England, thousands were held for up to eight hours behind a police cordon, in a practice known as "kettling". Parents with children and passers-by were told by officers on the cordon that no one could leave. According to witnesses, when they were finally allowed to go on Wednesday night, they were ordered to provide names and addresses and have their pictures taken. If they refused, they were sent back behind the cordon.*<sup>7</sup>

8. Liberty has serious concerns about this intimidating practice, not least for its potential chilling effect on speech and protest. Our specific concerns about the misuse of section 44 powers are well-documented. We also have particular concerns about the use of section 50 of the PRA. This section makes it a criminal offence to fail to give your name and address when asked by a police constable who has reason to believe that a person has been acting, or is acting, in an anti-social manner. Liberty objected to this provision when it was first introduced. We did not and do not see the justification for a criminal offence of failing to give a name and address when stopped on mere suspicion of committing a non criminal act, when it is not a criminal offence to fail to give a name and address in respect of suspicion of criminal offences. The fact that this provision is used by the police to request names and addresses of peaceful protesters makes this provision all the more worrying. Not only does the offence turn the already blurred

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<sup>6</sup> More information on the use of section 44 on peaceful protesters is provided in our first piece of written evidence to the JCHR enquiry (see footnote 1)

<sup>7</sup> <http://www.guardian.co.uk/world/2009/apr/03/g20-protests-police-tactics>

distinction between civil and criminal law on its head but its misapplication to peaceful protesters poses a threat to freedom of speech and freedom of assembly. The use of this power to obtain the names and addresses of protesters goes to the very heart of what appears to be a significant cultural problem with the policing of protest. While many talk of the right to 'peaceful protest' the police frequently talk of the right to 'legal protest'. These two ought perhaps to be one and the same, however problems arise when protest per se is perceived an anti-social activity either by the statute book<sup>8</sup> or by the police themselves. As we have seen, 'anti-social behaviour powers' are then used as justification for keeping tabs on protesters.

9. Liberty is also aware of numerous reports of the police videoing and photographing individuals (including members of the press) at demonstrations as well as (and often combined with) demands for identification. Indeed, in March the Guardian reported that:

*Overt surveillance was first used by police to monitor football hooligans and animal rights activists in the late 1990s. Pioneered by the Metropolitan police, the tactic has been expanded to cover all forms of political demonstrations and meetings, with surveillance units regularly deployed across the country. Those photographing or filming protesters are specially trained civilians or police officers, and are used to monitor movements to help the deployment of resources, or as gatherers of potential evidence. Indications suggest such surveillance is to increase.<sup>9</sup>*

An alarming example of the use of police surveillance and identification is demonstrated in a case that Liberty has recently brought, *R (on the application of Wood) v Commissioner of Police of the Metropolis*.<sup>10</sup> Mr Wood was the media co-ordinator for an organisation that campaigned against the arms industry. Mr Wood bought one share in a company with links to the arms trade so that he would be entitled to attend the AGM. Despite causing no problems within the meeting, as Mr Wood left the AGM, police say that they observed him talking to a known arms industry protestor and therefore decided to photograph, question and follow him. He refused to identify himself and was followed

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<sup>8</sup> See for example sections 132- 138 of the *Serious Organised Crime and Police Act 2005* discussed in Liberty's initial written evidence to the Inquiry.

<sup>9</sup> *Ibid.*

<sup>10</sup> [2008] EWHC 1105 (Admin).

to an underground station where police attempted to learn his identity from his travel documents with the help of London Underground staff. The police subsequently discovered Mr Wood's identity from the photographs and the company's records and retained them. Liberty argued that the taking and retention of photographs by the police amounted to an unjustified interference with his right to respect for privacy under Article 8 and rights to freedom of expression and assembly under Articles 10 and 11 HRA.<sup>11</sup> Last year the High Court held that there was no interference with Mr Wood's rights under Article 8 by the taking and retention of the photographs. This decision was made on the basis that Mr Wood was in a public place and the images were to be retained, without general disclosure, for very limited purposes. It was found that Article 8 had not been interfered with as their retention was not part of the compilation of a general dossier of information concerning Mr Wood of the type that had been held in the past to constitute an interference with Article 8 rights. Liberty has since appealed Mr Wood's case to the Court of Appeal who heard the case at the end of January. Since the hearing it has become clear<sup>12</sup> that photographs of individual protesters are commonly added to an image database within the public order branch of the Metropolitan Police. Liberty maintains that the taking, storing and dissemination of photographs of peaceful protesters is an unjustified interference with the right to private life and we await the judgment of the Court of Appeal in this case.<sup>13</sup>

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<sup>11</sup> Incorporating Articles 8, 10 and 11 of the ECHR.

<sup>12</sup> "Revealed: police databank on thousands of protesters" *The Guardian* (06/03/09) available at: <http://www.guardian.co.uk/uk/2009/mar/06/police-surveillance-protesters-journalists-climate-kingsnorth>

<sup>13</sup> In addition to the practice highlighted in the Wood case, Liberty also has deep concerns over recent reports over police and civil service intelligence sharing on the activities of peaceful protesters. On 20<sup>th</sup> April 2009 ("Secret police intelligence was given to E.ON before planned demo") the *Guardian* reported that "*Government officials handed confidential police intelligence about environmental activists to the energy giant E.ON before a planned peaceful demonstration, according to private emails seen by the Guardian. Correspondence between civil servants and security officials at the company reveals how intelligence was shared about the peaceful direct action group Climate Camp in the run-up to the demonstration at Kingsnorth, the proposed site of a new coal-fired power station in north Kent. Intelligence passed to the energy firm by officials from the Department for Business, Enterprise and Regulatory Reform (BERR) included detailed information about the movements of protesters and their meetings. E.ON was also given a secret strategy document written by environmental campaigners and information from the Police National Information and Coordination Centre (PNICC), which gathers national and international intelligence for emergency planning.*"

## Police Badges

10. Film footage and pictures that have emerged over recent months have raised concerns that some police officers tasked with policing protests are failing to display their shoulder numbers.<sup>14</sup> Confirming this evidence, in a survey undertaken by the magazine *Police Review*,<sup>15</sup> it was revealed that out of the 806 officers who responded to the survey 53 per cent (431) said they had always worn their force identification number while a worrying 45 per cent said they did not.

11. Wearing epaulettes (badges) acts as a checking process on those people in public order roles and helps to increase public confidence in the police. On this, at least, there seems to be consensus: Sir Denis O'Connor, a former Metropolitan police officer and chief constable of Surrey, told MPs on the Commons Home Affairs Select Committee that it is "*utterly unacceptable*" for police officers not to be wearing their shoulder numbers and Sir Paul Stephenson, the Metropolitan Police Commissioner, supported this view in a statement issued by Scotland Yard:

*One matter that I also want to make clear is that uniformed police officers should be identifiable at all times by their shoulder identification numbers. The public has a right to be able to identify any uniformed officer while performing their duty. We must ensure that this is always the case.*<sup>16</sup>

12. Despite this apparent consensus about the need for police badges, there is currently no legislative requirement for police officers to display their shoulder numbers. It is instead a long-established practice reinforced by the dress codes of various police forces. Although breach of the dress codes can lead to a disciplinary action under the *Police (Conduct) Regulations 2008*, it currently seems that it is standard practice across

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<sup>14</sup> In both the G20 protests and the Tamil demonstrations in Parliament Square, photographs and films have appeared in the media ('G20 police assault revealed in video', *Guardian* 7 April 2009, [www.guardian.co.uk](http://www.guardian.co.uk) and *Evening Standard*, 17 April 2009 showing that some officers are not wearing their epaulettes.

<sup>15</sup> [www.policereview.com](http://www.policereview.com)

<sup>16</sup> 'Sir Paul Stephenson orders review of riot police tactics following G20 protests', *Telegraph*, 16th April 2009.

various police forces that only constables and sergeants carry unique numbers on their shoulder badges and not officers of the rank of inspector and above. Liberty would urge that the requirement for all officers to display their numerals be put on a statutory footing.

### **Excessive Force and Accountability**

13. One of Liberty's biggest concerns in the wake of the G20 protests are the eyewitness reports, photographs and footage of the use of apparent excessive force by police officers. Footage taken of newspaper vendor, Ian Tomlinson, shortly before his tragic death on 1<sup>st</sup> April, shows him with his hands in his pockets being struck on the legs from behind by an armoured policeman. Following an initial post-mortem which concluded that he died of a heart attack, a second post-mortem concluded that the cause of death was abdominal haemorrhage. Whatever the outcome of the ongoing IPCC investigation and whatever the conclusion of the inquest into Mr Tomlinson's death, the footage alone raises serious questions about police conduct. This is especially so given that this incident appears far from isolated. Footage of a small female protester being struck across the face before being batonned on the legs from behind emerged not long after the footage of Mr Tomlinson. Similarly, the aggressive treatment of climate camp protesters later that same evening has been widely reported:

*Eyewitnesses said hundreds of environmental demonstrators camping out along Bishopsgate in a peaceful protest during the day were cleared from the area aggressively by riot police with batons and dogs after nightfall on Wednesday... eyewitness, Ashley Parsons, said: "The violence perpetrated against so many around me over that hour was sickening and terrifying. "Without warning, from around midnight, the police repeatedly and violently surged forwards in full riot gear, occasionally rampaging through the protest line and deliberately destroying protesters' property, some officers openly screaming in pumped-up rage."<sup>17</sup>*

This raises two issues – the accountability of individual officers and the operational instructions given to police ahead of large scale protests. It also raises concerns about wider police attitudes towards protest.

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<sup>17</sup> "Baton charges and kettling: police's G20 crowd control tactics under fire" *The Guardian* (03/04/09) <http://www.guardian.co.uk/world/2009/apr/03/g20-protests-police-tactics>

14. As regards individual accountability, Liberty does not for a second doubt the huge challenges faced by individual officers in policing large scale protests. We do, nevertheless, believe that as highly trained professionals, whose main duty and purpose is to keep the peace and uphold the rule of law, police officers should be able to handle confrontational situations without the need to resort to excessive force. Liberty understands that the IPCC is now investigating well over 100 complaints against police conduct lodged following the G20 demonstrations in the City of London on 1<sup>st</sup> April. Having consistently campaigned for the creation of an independent police watchdog, Liberty welcomed the establishment of the IPCC under the PRA. Since its creation, however, we have expressed concern about its operation – in particular the delayed and much-criticized IPCC investigation into the death of Jean Charles de Menezes. Much of the criticism expressed over its handling of that case – namely, speed, effectiveness and transparency - could, unfortunately, also be applied to the IPCC's initial response to Ian Tomlinson's death. Initially left in the hands of City of London police, the investigation was only taken over by the IPCC a number of days after they received witness statements alleging contact between Mr Tomlinson and the police. Once the investigation was eventually taken over the IPCC they then stated inaccurately that CCTV footage was not available for the area in which the death took place. Taken together this has done little to restore the loss of public confidence in the body following the de Menezes inquiry. Liberty believes that the IPCC needs, urgently, to restore public trust in its independence and effectiveness.

15. As regards operational instructions and police culture, serious questions remain. While evidence as to police culture is difficult to ascertain, off the record media briefing by police ahead of the 1<sup>st</sup> April demonstrations fails to instill confidence. Reports that the police were 'up for it'<sup>18</sup> and police predictions that the day would be 'very violent'<sup>19</sup> surely did little to cool the temperature and reduce the chances of aggressive confrontation as the day approached. Such reports also belie a worrying internal attitude towards the role of the police as regards protest. In light of the events of G20, the Metropolitan

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<sup>18</sup> "Fears police tactics at G20 will lead to violence" *The Guardian* (27/03/09) available at: <http://www.guardian.co.uk/uk/2009/mar/27/g20-protest>

<sup>19</sup> Ibid.

Commissioner has now announced a review of police tactics to be undertaken by Her Majesty's Inspector of Constabulary, Denis O'Conner. Liberty would urge that in order for lessons to be learnt and faith restored, any review needs a clear purpose and wide remit. This includes an examination of the operational instructions given to police units ahead of large scale protest – and the G20 in particular. Any such review also needs to be able to demonstrate independence, transparency and genuine engagement.

### **Pre-emptive arrest and bail**

16. Liberty is glad that the Committee's inquiry extends in particular to the arrest of 114 environmental protesters at the Iona independent school in Sneinton, Nottingham which occurred hot on the heels of the G20 protests. The protesters were arrested, shortly before a planned protest at an E. ON power station for conspiracy to cause criminal damage and aggravated trespass.<sup>20</sup> Over the next few days, all those arrested were released without charge on police bail. The offence of 'aggravated trespass' created under the *Criminal Justice and Public Order Act 1994* turned demonstrations on private land into a criminal matter even where there is no intended harm to people or property. When you add the suspicion of conspiracy to this already problematic offence, a broad discretion for pre-emptive arrests exists. And when restrictive police bail conditions are then imposed on those bailed without charge, the cumulative power of the police to stifle a potentially peaceful protest becomes alarmingly apparent. Liberty believes that the police must tread extremely carefully in applying these broad and discretion-heavy powers. Protests and demonstrations are frequently time-sensitive (for example protests with a purpose of preventing something from being built or to voice opposition to a visiting politician). Pre-emptive action in the protest sphere can therefore, by its nature, extinguish the effective exercise of the right of protest. This is to say nothing of the dangerous chilling effect that such pre-emptive action will undoubtedly have.

**Isabella Sankey**  
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<sup>20</sup> Section 68 of the *Criminal Justice and Public Order Act 1994*.