

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

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

“Policing and Protest” – Private Property

July 2008

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.

Liberties policy papers are available at

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

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Introduction

1. This short note supplements Liberty's written and oral evidence to the JCHR's protest inquiry in June 2008. During the oral evidence session a number of questions were raised about the right to protest in privately-owned space - an issue which was not covered in our original evidence. Liberty was asked to submit an additional paper on this issue.

2. The discussion during the evidence session focused on two distinct issues: first, protests on or in the vicinity of the private homes of public figures; and, secondly, protests in quasi-public spaces which are privately owned. The second issue is of particular interest to Liberty and one which we have litigated in the European Court of Human Rights. In this paper we focus principally on that issue but, before doing so, clarify Liberty's position on the first issue.

Private Homes of Public Figures

3. The particular example discussed in the evidence session was the protest by two members of Fathers for Justice on the home of Rt Hon Harriet Harman QC MP. We understand from press reports of the incident that two men scaled the roof of Harriet Harman's house in Herne Hill, South London, where they unfurled a banner reading "A father is for life, not just conception".¹ We also understand that the incident involved the use of significant police resources, that Ms Harman and her family were forced to leave their home and that their neighbours also suffered significant disruption. There has been a repeat of the incident. We would like to emphasise that Liberty does not and has never condoned the actions of these protesters.

¹ Times, "Harriet Harman abandons home after Fathers4Justice protest on roof", 8th June 2008

4. The trial of two of the men involved in these incidents is likely to take place later this month and we would not wish to comment in detail on these particular cases. In general terms it is, however, clear that the right to private and family life is affected by protests which target the private residences of public personalities. A public figure does not waive their right to a private life or home when they decide to go into public life. Legal restrictions on protest in this context would, therefore, pursue a legitimate aim.² As was pointed out in oral evidence such actions might indeed fall within the scope of existing criminal offences including aggravated trespass³ and harassment.⁴

5. Slightly different issues arise where the peaceful protest is not on private property but on public space outside the private residence of a public figure, e.g. on a pavement or road.⁵ Even in this context we would, however, accept that proportionate legal restrictions on protest could be legitimate given the clear potential for interference with private and family life. We would not, however, support blanket prohibitions on peaceful protest in the vicinity of the private residences of public figures. Such a prohibition could be disproportionate and lead to unjust outcomes. A building which serves as a public figure's private home could, for example, have broader public significance, making it a valid focus of peaceful protests. Number 10 Downing Street and Buckingham Palace are obvious examples. Furthermore, the fact that a public figure lives in a particular property or on a particular street should not operate as a blanket bar on protests in the area. There could, for example, be other legitimate reasons to stage a protest in a street in Herne Hill, South London - perhaps a protest against planned developments in the area.

² In the context of Article 11 "the protection of the rights and freedoms of others" and in the context of Article 10 "the protection of the ... rights of others."

³ Section 68 of the Criminal Justice and Public Order Act 1994

⁴ Section 2 of the Protection from Harassment Act 1997

⁵ Aggravated trespass would not, for example, be applicable.

6. It is worth pointing out that there are already legal restrictions on protest near private residence. S 42 of the Criminal Justice and Police Act 2001 criminalise a failure to comply with the directions of a police officer given in the belief that a protestor's presence will cause distress to the occupants of private premises⁶. Meanwhile S.137 Highways Act 1980 makes obstruction of the highway an offence.

Privately-owned quasi-public spaces

7. The Joint Committee on Human Rights has frequently commented on the continual blurring of the distinction between the public and the private and its implications for human rights protection. As the Committee has recognised we live in an "environment where many services previously delivered by public authorities are being privatised or contracted out to private suppliers."⁷ This phenomenon is not, however, restricted to the provision of public services. A growing number of quasi-public spaces are also now owned and managed by private bodies. Earlier this year, *the Guardian* ran a story on this issue entitled "Cities for Sale", stating:

"Urban public space is at the heart of city and town life. It is the essence of public freedom: a place to rally, to protest, to sit and contemplate, to smoke or talk or watch the stars. No matter what happens in the shops and cafes, the offices and houses, the existence of public space means there is always somewhere to go to express yourself or simply to escape.

Yet this, too, is under assault. From parks to pedestrian streets, squares to market places, public spaces are being bought up and closed down, often with little consultation or publicity. In towns and cities all over

⁶ The Serious Organised Crime and Police Act 2005 goes further by introducing a new s.42A which removes the need for police directions before the offence is committed but this has not yet come into force

⁷ Ninth report of 2006/07, "The Meaning of Public Authority under the Human Rights Act", Para 4

England, what was once public is now private. It is effectively owned by corporations, which set the standards of behaviour.”⁸

8. The precise scale of the shift of quasi-public spaces from public to private ownership is difficult to ascertain. There are, however, a number of high profile examples of urban regeneration projects which epitomise the change:⁹

- **The Broadgate Centre (EC2)** - a 30 acre site, adjacent to Liverpool Street Station is now owned entirely by British Land and is maintained and managed by its management arm Broadgate Estates, a management company which also manages ‘private-public’ estates at More London, Chiswick Park, Regents Place, Paternoster Square and Fleet Place.
- **The Paradise Street Development Area (Liverpool)** - Developer Grosvenor’s Paradise Street scheme in Liverpool is one of the largest regeneration schemes currently under construction in Western Europe, redeveloping 42.5 acres, including 34 streets, in the heart of Liverpool. While the council retains the freehold, it has leased the entire site to Grosvenor for 250 years.
- **Excel Centre, Royal Victoria Dock, London, E16** - the 100 acre private ‘campus’ which opened in 2000 is a mix of enclosed mall, conference and shopping centre with six on-site hotels and 2 000 homes. The majority owners are the Malaysian conglomerate Usaha Taegus, who also partly own the Petronas Towers in Kuala Lumpur, and control of the estate is in the hands of their management company.

9. It is certainly not Liberty’s aim to criticise such developments which may well lead to significant and welcome capital investment and redevelopment

⁸ 29th March, 2008, edited extract from *Real England: The Battle Against The Bland*, by Paul Kingsnorth

⁹ Examples sourced in “The privatisation of public space”, RICS, 2006:
<http://www.rics.org/NR/rdonlyres/14C852FF-1BC0-4453-B9A7-D80649BF245D/0/50479Privatisation.pdf>

opportunities.¹⁰ Our concerns are restricted to their impact on the protection of civil liberties and human rights and, in particular, the right to protest.¹¹ At the heart this lies the fact that as soon as a person enters onto privately owned property the scope of potential legal restriction is greatly enhanced. The implications are, therefore, real and practical; not theoretical or academic. This is clearly demonstrated by the facts of two cases in which Liberty has been involved:

- **Washington First:** In March and April 1998 members of an environmental group, the Washington First Forum, set about collecting signatures for a petition to persuade the Council to reject a project to build on a public playing field in the vicinity of Washington town centre. They tried to set up a stall and canvas views in "The Galleries", a shopping complex in Washington that had become the effective town centre. They were prevented from doing so by Postel, the private company which had bought most of the shopping area from the local authority. This case was litigated by Liberty in the European Court of Human Rights. Our arguments and the disappointing judgment of the Court are considered below.
- **Canary Wharf:** In 2004, the Transport and General Workers' Union planned to march on Canary Wharf in London to protest against the low wages of its cleaning staff. Canary Wharf was, of course, the most appropriate place to hold a protest on this issue - to bring the cleaners' wages to the attention of other workers in the area and members of the public shopping or doing business there. The owners of the Canary Wharf estate obtained an injunction to stop the march. As a result the TGWU advised its members not to attend the march. Liberty was a legal observer at the very limited stationary protest which did take place in an area near to Canary Wharf.

¹⁰ The Paradise Street Development in Liverpool, for example, led to an injection of £750 million into the city

¹¹ Other rights may, of course, also be affected by this shift such as the right to respect for private life (Article 8)

10. There is currently no legal requirement for private individuals or organisations, owning quasi-public property, to respect the right to peaceful protest on that land. It seems unlikely that such bodies would fall within the definition of “public authority” for the purposes of the Human Rights Act. Even when deciding whether or not to allow people to protest in the quasi-public spaces they own they would not, therefore, be required to respect the right to peaceful protest. This could lead to clear anomalies. Take, for example, a town centre which is sold by a local authority to a private development company. Before the sale there would be a right to protest under Articles 10 and 11 of the European Convention, enforceable against the local authority. After the sale, no one would be under any obligation to respect the right to protest in the same town centre. The only difference might be a legal transfer of ownership with everything else remaining the same.

11. In the *Washington First* case Liberty argued that this issue should be addressed by “carefully drafted legislation” including a “definition of ‘quasi-public’ land.”¹² There is not, of course, any bright line between privately-owned land where people should have the right to peaceful protest and privately-owned land where no such right exists. We would not suggest that a simple definition of “quasi-public” land would be easy to reach. The following factors might, however, be indicative, not determinative, of whether a piece of land is “quasi-public”:

- The historical uses of the land – has it historically been used for broader public purposes such as protests;
- The geographical position of the land within a local community and its significance to that community;
- How the space is normally used (Is it a public gathering space, do public events or entertainment take place there?);
- Whether the dominant use of the space is for non-public purposes (Is the land a shop, theatre or restaurant?); and

¹² *Appleby v United Kingdom*, (App no. 44306/98), para 35

- The availability of other areas nearby in which a person can reasonably and effectively exercise their right to peaceful protest.

Factors like these could also be applied in a judicial determination of whether a private owner of quasi-public land is a public authority for the purposes of the Human Rights Act when deciding whether to allow protests on that land. Case law on this issue from the United States may also provide some guidance.¹³

12. In a disappointing judgment in *Appleby v United Kingdom* the European Court of Human Rights decided that the UK Government had not breached its obligation to protect the right to peaceful protest. In particular the Court relied on the fact that, in the case before it, the land-owner's refusal to allow the protest had not prevented the communication of their views in other ways:

“It did not prevent them from obtaining individual permission from business within the Galleries ... or from distributing their leaflets on the public access paths into the area. It also remained open to them to campaign in the old town centre and to employ alternative means, such as calling door-to-door or seeking exposure in the local press, radio and television”.¹⁴

While disappointing, this judgment should not deter from the need, domestically, to address issues relating to the question of the right to protest in privately-owned quasi-public spaces. It should be remembered that the standards set by the European Court provide a floor and not a ceiling to rights protection in the UK. The Court has also, understandably, been reticent to impose positive obligations on states to protect rights.

13. Even assuming that the private owners of quasi-public land were required to respect the right to protest, it would not, of course, follow that protests would always have to be permitted without restriction. Even on publicly-owned land, legitimate and proportionate restrictions may be imposed on protest. Additional

¹³ Considered in *Appleby v. United Kingdom*, paras 24 ff

¹⁴ Para 48

factors might also need to be taken into account where quasi-public land is privately owned. It would, for example, be legitimate to allow a land-owner to impose proportionate restrictions on protest where needed to protect his property interests protected by Article 1, Protocol 1 of the Convention.¹⁵

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¹⁵ This was expressly recognised by the ECHR in *Appleby v. United Kingdom*, para 43