

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

**Liberty's report on legal observing
at the TUC March for the
Alternative**

March 2011

INTRODUCTION

Our role

At the joint invitation of the TUC and Metropolitan Police, Liberty (the National Council for Civil Liberties) provided legal observers for the TUC March for the Alternative on 26 March 2011.

Our chief aim was to protect the right to peaceful protest by providing an independent and impartial presence at the trade union led demonstration. Our role extended to observing the police's planning for the protest as well as the policing of the march itself and the rally in Hyde Park. In order to preserve neutrality, our observers did not offer legal advice or intervene in the events which we witnessed.

It was not within our remit to observe the policing of events after the TUC march or completely extraneous to it.

This report

This report starts by setting out our general observations of the day and moves on to discuss, in chronological order, the events which we consider the most significant. It then offers some commentary before drawing conclusions based on our observations.

Presence of legal observers at the TUC March for the Alternative

The TUC March for the Alternative was the biggest trade union event for 20 years and the biggest protest in London since the 2003 anti-war march. The TUC has estimated that it attracted between 250,000 and 500,000 people. The march ran for five hours (from 11am) along a route starting at Blackfriars Bridge and passing along the Embankment, through Parliament Square, Whitehall, Trafalgar Square, Piccadilly Circus, along Piccadilly and culminating in a rally in Hyde Park. We understand that some 4,500 police officers were involved in the whole operation of policing the march.

We provided 120 legal observers along the notified route of the demonstration. Observers were stationed in pairs at around 35 fixed points including six observers around Downing Street, six at Trafalgar Square, four at Piccadilly Circus and fifteen along the length of Piccadilly, as well as around 50 observers who moved with different sections of the march.

In addition, we provided seven observers to shadow the police's Bronze Commanders in charge of sectors covering the Embankment, Whitehall, Parliament Square, Trafalgar Square, Piccadilly, Hyde Park and Mayfair/West End. Two observers were present in the police's Special Operations Room ("SOR"), where the police's Silver and Gold Commanders were situated during the day.

All of our observers were easily identifiable by their fluorescent green tabards. Our observers were all either qualified lawyers, academics or law students.

GENERAL OBSERVATIONS

The policing of the TUC March for the Alternative

There can be no doubt that the official trade union-led demonstration was overwhelmingly civil, peaceful and good-natured and that the police response was in general proportionate.

One observer stationed in Hyde Park remarked on the "good relationship" between police and protestors and that they were "engaging in a positive way". Another, stationed on the Embankment close to Savoy Street noted officers' "regular friendly interaction with protestors (giving directions, answering questions etc.)". A third commented that officers were "very pleasant and smiling", another that they were "relaxed", that the atmosphere was "very good natured" and that the crowd was "generally well managed".

We received positive reports from observers of the police's restraint faced with some provocation. In relation to a confrontation in Hyde Park an observer's notes record: "Protestors' attitudes hostile. Police calm...",

concluding with an overall impression that the “Police handled it well”. An observer noted that groups were “tormenting” officers without apparent retaliation. Another noted that a protestor “abused the police verbally” but that the situation was “defused well”.

There were, however, a handful of events reported by our observers which cause us concern. Two incidents seemed to stem from offensive language on placards. In one case the placard was confiscated, apparently on the basis (as reported to our observer by a police officer) that it was “full of swear words”. In the other the police took the details of protestors carrying a placard “which contained the word ‘fuck’” before letting them move on. The most likely offence that officers had in mind is that of causing harassment, alarm or distress under section 5 of the Public Order Act 1986. However the offence is not made out simply by the inclusion of expletives on a placard. In the circumstances we question whether the police had lawful grounds to confiscate placards or take personal details of protestors.

The TUC

Our impression of the TUC’s stewarding operation was that it was well-organised and proficient. The union stewards appeared to us to be highly cooperative, both with the police and our legal observers. No criticism of the stewarding was made by our observers – several commented that they were “doing a good job”.

EVENTS ALONG THE ROUTE

Downing Street

As might be expected, our observers noted a highly visible police presence along Whitehall. However this did not, of itself, seem to provoke confrontation. Observers commented that the police were “not engaging with protestors” while overall the march proceeded peacefully. Our observers’ notes suggest that this might be attributed to the distance between officers and protestors created by box barriers (“Wapping boxes”). We were aware from the pre-march planning that it was intended that TUC stewards be the primary visible presence and TUC banners were fixed to the Wapping boxes to soften their impact.

Five of our observers reported an incident, starting around 1.05pm, which apparently stemmed from protestors describing themselves as the “TUC Armed Wing” attempting to set fire to a model of a Trojan Horse outside Downing Street. This plan was known to the police in advance, an observer with a Bronze Commander noting at 12.45pm a “rumour that horse structure will be set on fire at Parliament Square or Downing Street”.

Our observers recorded that the protest came to a temporary standstill while a significant number of police moved across the demonstration to isolate the group by a cordon. This had the effect of limiting the group with the Trojan Horse to one side of the road, while allowing the main part of the march to proceed on the other. It was clear that the collaboration of the police and the TUC stewards in managing this small group minimised the impact it had on the main protest which was able to continue, albeit with some congestion.

Our observers noted that the police cordon was removed quickly after the group with the Trojan Horse had moved off again. But it was also clear that these tactics immediately caused concern among protestors that they were being ‘contained’ or ‘kettled’. Another observer recorded at 1.15pm, outside Downing Street: “protestors shout worries about being kettled”.

Concerns about any police intervention being interpreted as containment or kettling appear to have been recognised by the Bronze Commander with responsibility for Whitehall. Our observer shadowing her noted in relation to certain “pinch points” along the route: “police anxious protestors don’t think being confined when actually congestion. Use Twitter etc.”. The potential for these sorts of rumours to proliferate was illustrated by one of our observers who arrived at Downing Street around 2.30pm only to note “reports of kettle outside Downing St. on Twitter unfounded.”

Piccadilly Circus

The notes made by our observers around Piccadilly Circus suggest that this was an important location at which groups which had otherwise not been part of the TUC demonstration melted into the official demonstration.

At several points during the day (around 1.30pm, 2.40pm and 3.30pm) significant numbers of a group apparently unconnected with the trade union protest moved from the bottom of Regent Street onto Piccadilly. Our observers noted that despite provocation (including smoke canisters being thrown and verbal abuse), the police response was restrained. Rather the tactic appeared to be to disperse the crowd as it joined the main protest by creating a staggered filter of officers through which the group passed. Our observer shadowing the relevant Bronze Commander noted at 1.35pm: “Bronze told subs that officers should not stop protestors going through [onto Piccadilly] – filter cordon instead”.

This approach, recorded by other observers, allowed the break-away groups to join the main demonstration. However, our observers also noted that there was a significant escalation in police resources over the course of the afternoon. By 3.30pm a greater number of officers were visible, carrying helmets and moving closer to the edge of the TUC route.

It appeared to our observer shadowing the Bronze Commander with responsibility for Piccadilly that as the break-away groups (referred to by the police as the “Black Bloc” or “red + blacks”) became more unruly, a range of

other tactics were considered at a senior level. Liberty observers present in the SOR noted that after windows had been smashed at the HSBC bank on Shaftesbury Avenue the Silver Commander authorised the use of 'containment' for the breakaway group on the basis that he was satisfied that a breach of the peace was imminent. Our observers in the SOR further noted that before a containment could be effected it was reported by officers on the ground that the breakaway group had re-joined the TUC march. This must raise questions about the practicality of using kettling as opposed to individual arrests in the context of violent breakaway people and groups.

The difficulties posed to the Bronze Commander in this sector seem to have been compounded by communications difficulties with his colleagues. Our observer noted of the group heading towards the main march at 1.10pm: "police lining up across Piccadilly Circus behind stewards on main march [...] filtered group down Piccadilly. No trouble. [...] Only issue – Bronze not informed group coming" and again at 1.20pm, "seems to be comms problems". Around 2.45pm he noted: "Police radios keep breaking! Using mobile telephone". And at 3.50pm, "Bronze again concerned that no advanced warning of arrival [of another break-away group]."

Piccadilly and The Ritz

It was reported by our observers that a significant amount of damage was caused to various buildings along Piccadilly between around 2.30pm and 3.10pm, most conspicuously to The Ritz. The damage appears to have been caused by the infiltration into the main march of a group unrelated to the TUC.

While the police presence along Piccadilly initially did not appear to be high, once disorder broke out at The Ritz the police appeared to deploy more resources in order to isolate the building quickly, defending its entrance, and allowing the main march to continue.

Our observers recorded that the police moved to block side streets with a highly visible and substantial police presence in riot gear. Several observers recorded seeing riot police in closed lines blocking Bolton Street, Clarges

Street and Half Moon Street. This, one observer noted, gave the impression that the crowd was about to be contained – creating tension among the large number of TUC protestors still moving past with the main protest, and re-directing those groups intent on confrontation back into the main part of the march. Another observer recorded: “3.10pm Big group of protestors wearing black, faces covered. Near Hyde Park. Broke off up Half Moon Street, sent back down by riot police”.

Fortnum & Mason

As is now well known, there was a significant police response at Fortnum & Mason. Our observation of these events was limited to their impact on the TUC march. We did not observe events inside the building or outside after the official march had ended.

Observers recorded that the occupation of Fortnum & Mason started shortly before 4pm. Again the overall police approach appeared to be to isolate the incident by blocking the entrance and exits to the shop, while allowing the TUC protest to pass along Piccadilly. One observer noted at 3.58pm “half of street continuing to march – other half stopped”. Another commented later around 4.50pm “crowd still moving”.

By 4.09pm our observers reported various missiles being thrown at the police including a baseball bat, cans of beer, placards and glass bottles. Our observers also reported fireworks being set off and paint bombs being thrown. In response there appears to have been quick escalation in the number of officers present at the scene (including reserves) and a group of police in “riot gear” were reported to have been lined up outside while others were dispatched into the shop.

Between 4.20pm and 4.40pm it was clear that the atmosphere deteriorated. One observer commented at 4.24pm: “Disorder. Breach of peace?” and “No unreasonable force. Protestors trying to kettle the police in order to stop police from entering Fortnum & Mason”. Another observer recorded at 4.25pm that the police response was proportionate, noting that: “police officers pushing

against protestors who are pushing back outside Fortnum & Mason... force used by police not unreasonable". At 4.40pm another noted: "Stand off. Two lines riot police - one line charging down Duke Street St James'. Police charging peaceful protestors to clear the street. Atmosphere aggressive and hostile on both sides... Very unpleasant."

COMMENTARY

Kettling

The use of 'kettling' or 'containment' as a public order tactic has been highly controversial and has become a major focus of attention for police, protesters and media alike.

Liberty's position is that the tactic is fatally flawed by the inevitability of detaining the innocent with the guilty, which not only raises the temperature for everyone, but also puts innocent, peaceful protestors (and even, on occasion, bystanders) at substantial additional risk.

We have noted some lack of clarity in the meaning of the terms 'containment' or 'kettling'. For the avoidance of doubt, in this report we use the terms to mean the mass detention of a group in a public place where only some of its members are suspected of crime, or of breaching the peace.

This is to be contrasted with circumstances in which the police surround a group with reasonable grounds to arrest each individual in the group and for the purpose of arresting them. We do not consider this to be a 'containment' and nor would it violate the right to liberty protected by Article 5 of the European Convention on Human Rights.

It was clear from our observation of senior officers that containment was a tactic under near constant consideration as soon as it became apparent that a breakaway group were committing damage to property and behaving violently towards police.

A number of senior officers clearly had in mind the major difficulties (both ethical and logistical) of imposing containment where there was a real possibility of the collateral detention of peaceful protesters. On several occasions containments were rejected because it was not sufficiently clear that the group in question was the same group that had committed offences earlier, or because there were large numbers of peaceful protesters in the same area who would have been wrongly detained.

It was also clear that the logistical difficulties of imposing a containment (or indeed a mass arrest) are significant, both because of the need quickly to deploy large numbers of officers around an often fast-moving group of protesters, and because of the challenges of finding a safe location in central London in which to contain / arrest the group.

Our observers were concerned that messages about containment emanating from the SOR were at times confusing and mixed. At various points in the afternoon kettles were authorised by those in the SOR in order to contain those responsible for damage to property, only for the authorisation to be withdrawn for practical reasons because the location was not suitable for a containment or because most of the violent group had moved off.

The tactic is obviously widely anticipated by protesters, which means that any cordon of officers is now likely to prompt mass movement away in anticipation of being contained. The police are clearly aware of this, and used a feigned, or threatened, containment to their advantage at times (for example to disperse a group). Officers also tried where possible to reduce or mask police presence so as not to cause alarm and to issue messages of reassurance via social media.

Although we were pleased to note that senior officers decided against authorising containment where it plainly would have been inappropriate, we are concerned that the tactic has become too great a focus of police attention. In the SOR there seemed to be a continual expectation that a containment

would be imposed at some point. The question seemed to be more 'when' than 'if'. We were unsure whether the purpose of containment was being adequately thought through, or whether officers had properly in mind what they intended to do with the group once detained especially once violent protesters had joined a peaceful crowd.

Overall it is understandable that protesters have become so wary of the possibility of being kettled and the tactic does appear seriously to undermine the relationship of trust and confidence between peaceful protesters and the police. The possibility of mass containment of peaceful protesters has undoubtedly had a chilling effect on many people's rights to freedom of expression and assembly. Since containment is additionally such a blunt, resource-heavy, and logistically difficult tactic to implement, we wonder why it has become such a favoured tactic in the policing of protest.

Removal of face coverings

Section 60 of the Criminal Justice and Public Order Act 1994 (CJPOA) enables an officer of or above the rank of inspector to authorise searches for weapons or dangerous instruments without reasonable suspicion. Criteria relating to serious violence must be met and the authorisation can only be given within a specified area for a specified period of time.

Once a s60 authorisation is in place, section 60AA CJPOA enables a similar authorisation to be given permitting constables to require the removal of face coverings if the constable reasonably believes these are worn wholly or mainly for the purpose of concealing identity. A person refusing to remove his or her face covering when requested to do so risks imprisonment for up to a month or a fine.

No authorisation under s60 or s60AA was in place at the outset of the march. An authorisation to cover the City of Westminster was given at 4.17pm.

Earlier in the day, senior officers had considered whether the statutory conditions for an authorisation were met, but also whether, in reality, the authorisation would have been of any practical use in the particular circumstances. It was quite clear that officers (under considerable pressure at the time from missiles and violent protesters) were not in any position either to conduct searches of individuals or to require them to remove face coverings. The officers were focused on protecting themselves and commercial premises from attack.

Senior officers were also mindful of the existence of the search power under section 1 of the Police and Criminal Evidence Act 1984 (power to search with reasonable suspicion) which does not require authorisation and could have been used wherever officers had the requisite suspicion and were, in practical terms, able to conduct individual searches. We entirely agree it is preferable to use a power based on reasonable suspicion wherever possible.

Our observers did not record any use of the power once the authorisation was in place.

We do not understand subsequent calls for a new power to require the removal of face coverings since such a power already clearly exists.

Communication

Briefing and internal messages

There were a number of key 'messages' effectively used by the police to convey among themselves the tone and approach to policing this demonstration. Chief among these was the expression "untidy is ok". In the context of a very large demonstration, it is right to expect, and accept, that there will be disruption, and there cannot be complete control. A level of disorder must be accepted for the greater good of the right to protest. The expression "untidy is ok" was used in briefing officers, and also repeated in the SOR (and elsewhere) to help ensure a proportionate approach, and we think in large measure this was effective.

Another message concerned the “look and feel” of the demonstration, used to convey a low-key police presence, and to assist the TUC in being the primary visible presence much of the time. It is right that the police should seek to avoid escalating any expectation of violence by their manner of dress and approach, as happened notably at the G20 protests. It does appear that the police have taken valuable lessons from this.

Internal communication during the protest

We observed some difficulties with the communication technology between the SOR, Bronze Commanders and officers on the ground. For much of the time the radios did not appear to work effectively and a considerable amount of time was spent trying to get in touch with different officers, and often failing. Officers in the SOR resorted to the use of mobile phones as a more reliable means of communication, but this too was unsophisticated.

We believe the police should be adequately resourced to keep communication equipment under review for upgrading as far as possible.

External communication during the protest

There was a dedicated team: “Bronze Engagement” tasked with managing social and traditional media. This is a positive development, and we were told that the police ‘tweets’ were the most followed in London on the day. Twitter was used to provide reassurance that people were not being contained, and used to enhance communication and promote public safety.

Incidents after the TUC march

We are aware from media reports that a significant number of arrests were made later in the evening as a result of the events at Fortnum & Mason, and that the police were engaged in a number of separate public order incidents in central London long after the TUC march had ended. As these occurred after our observation had concluded we are not in a position to provide any comment.

CONCLUSION

There is no such thing as a risk-free society, especially a free one that guarantees rights of association and peaceful dissent.

Given the sheer volume of protestors taking part in the TUC march and the number of officers involved in the policing operation, we were impressed with the overwhelmingly peaceful nature of the event. There is no doubt that the organisational cooperation between the Metropolitan Police and the TUC was a significant factor in ensuring that the vast majority of people who attended had a good day.

By far the greatest policing challenge was the presence of violent individuals and groups who had infiltrated the demonstration but periodically separated from the main route in order to attack high profile commercial properties and the police before melting back into the demonstration. Overall our impression was that the police reacted proportionately and gave appropriate consideration to the rights of the peaceful protestors on the TUC march who were affected by such incidents. As we have underlined above, we did not observe events which took place after the official march had ended and therefore this report contains no comment on them.

Our observation did, however, give rise to a few concerns. Principal among these is the police's attitude towards 'kettling' or 'containment'. Our observation suggested that there is too much focus on the potential use of this tactic which, for the reasons detailed above, undermines the rights of protestors and appears to pose serious practical problems. We observed a couple of incidents of placards being confiscated in circumstances where this is unlikely to have been justified. Finally, our observations suggested that communications technology between the SOR and officers on the ground could be improved.

We are aware that, in the days following the march, there have been some calls for tougher police action, or even new police powers, to deal with violent

groups who infiltrate such demonstrations. Nothing that we observed suggested that either response would help to protect the rights of those who are affected by such incidents.