



Statewatch analysis

Media freedoms in the UK curtailed by police “culture of suspicion” and double standards

By Max Rowlands

Examines the damaging attack on the media of new police powers and practices and calls for urgent police training on guidelines and legislation to protect journalists

On 9 September 2008, at its annual conference in Brighton, the Trades Union Congress (TUC) unanimously carried a motion, proposed by the National Union of Journalists (NUJ), condemning the government’s systematic erosion of civil liberties and the accompanying clampdown on media freedoms. NUJ General Secretary, Jeremy Dear, told the congress that journalists have been increasingly threatened with jail under anti-terrorism legislation for not revealing sources and photographers are routinely impeded and increasingly monitored by police surveillance units. This obstruction is caused, in part, by the police force’s inadequate understanding of the law. But there has also been a far more systematic targeting of the media and those who attempt to publicise legitimate democratic protest.

Photographers’ legal rights and the lack of police training

By law, if an individual is on public property there are no restrictions on their taking still pictures or moving images. They are not obliged to stop filming unless they have committed a criminal offence, such as causing an obstruction of free passage (a charge often used spuriously by police during demonstrations to displace people). More recently *The Terrorism Act 2000* has been invoked when police claim a photographer’s subject matter is sensitive to issues of national security (specifically under Section 44 which gives the police powers of stop and search). However, under the *Police and Criminal Evidence Act 1984 (PACE)* police have no right to confiscate cameras, film or memory cards from an individual unless they have first convinced a judge that the evidence is required in connection with a “serious arrestable offence” or that it would be admissible in court.

When the Metropolitan police agreed media guidelines with the NUJ, British Press Photographers’ Association (BPPA) and the Chartered Institute of Journalists, in March 2006, media workers hoped it would lead to greater police understanding of their legal rights and an improvement in relations (the guidelines were adopted for all police forces by the Association of Chief Police Officers in April 2007). [1] However, the guidelines, which contain details of media members’ rights and recommendations on how best for police to interact with them, have not been successfully implemented. Police officers have either not been given the advice or are routinely ignoring it. The NUJ’s magazine *Journalist* reported that a London police inspector knew nothing of the guidelines despite having recently taken a media training course. [2] And in April 2008, the chairman of the Metropolitan Police Federation, Peter Smyth, said that “the Terrorism Act 2000 doesn’t make police powers clear” and admitted that officers receive no training as to how to correctly apply recent legislation when dealing with photographers. [3]

The net result is that police and police community support officers (PCSOs) - whose training is far less substantial - regularly demonstrate a severe lack of understanding of photographers’ rights.

This has led to unlawful police action in the form of confiscation of photographic equipment, denial of access to and displacement from a location, wrongful detention and even physical assault.

The treatment of amateur and professional photographers

In an age when a large percentage of the population carry a camera with them at all times as part of a mobile phone (449 million picture messages were sent in 2007), the police force's insufficient training impacts upon an increasingly wide range of people in day-to-day life. It is a problem for everyone, not just members of the media, as a slew of incidents within the last twelve months have demonstrated.

For example, in July 2008 a man taking pictures of emergency service vehicles attending a fire at his local cricket club was ordered to stop doing so on grounds of "national security". [4] In the same month in Hampshire, a man was confronted by police when they saw him taking a picture of their car illegally parked at a bus stop. He was told that he was being questioned under the *Terrorism Act 2000* and forced to give them his full details which they said would be kept on file for a year. [5] In February 2008, a PCSO ordered an amateur photographer, who was taking landscape shots to submit to a Blackpool council photography competition, to delete any photos in which they appeared in the background. [6] And in December 2007, Suffolk police were forced to issue a full apology to a man they had made delete photos taken at a public Christmas lights event outside Ipswich town hall on the basis that he did not have a licence. [7] The video sharing website *YouTube* also features a number of videos in which individuals have been told to stop filming by police for spurious reasons. In one instance two police officers told a man standing in his own garden that he was committing a criminal offence by filming them. When he asked them what law he was breaking they were unable to answer and eventually walked away. [8]

Professional photographers are more aware of their rights, but this has not prevented them from also being obstructed and harassed. While they too often fall foul of insufficient police training, there has also been a marked change of attitude towards the press in recent years. Jeff Moore, chairman of the BPPA, says that "since the [7 July 2005 London] bombings there's definitely been a big, big swing against press photographers". According to Peter Macdiarmid, a Getty photographer and BPPA member, "what's changed since 7 July 2005 is that it appears we're excluded from where the public are standing. The anti-terrorism act has been given as a reason for us to be removed. There's been various incidents of colleagues being poked in the chest with guns." [9]

Photographers and journalists are more frequently being subjected to rough treatment and even physical assault by police, as in the case of Marc Vallée who, in October 2006, was hospitalised after photographing the "sack parliament" demonstration in parliament square. He sued for assault and breach of his rights to freedom of expression and assembly and received a full apology and an out of court settlement in February 2008. [10] Chris Atkins, director of the film *Taking Liberties*, who witnessed the incident, describes it as "a sad reflection on the political policing that is now part of everyday Britain...Marc's case is a stark reminder that peaceful protest, and the reporting of it, is very much under threat in this country." [11]

Attempts at controlling the subject matter of photographs have also reached an unprecedented high. In May 2007, *Milton Keynes News* photographer Andy Handley was given a police caution (later rescinded after his case received media attention) and detained for eight hours after refusing to hand over a memory card containing pictures taken on a public road. [12] And in March 2008, Lawrence Looi, a staff photographer with a Birmingham news agency, was forced to delete images taken whilst covering demonstrations on public roads outside the International Conference Centre. [13] Both of these incidents clearly breach police media guidelines which state that officers "have no legal power or moral responsibility to prevent or restrict what they [members of the media] record."

A culture of suspicion is undoubtedly being cultivated. In March 2008, the Metropolitan police launched a counter-terrorism advertising campaign that encouraged the public to report anyone they thought to be taking suspicious photographs. The adverts ran in national newspapers with the slogan: "Thousands of people take photos every day. What if one of them seems odd?" [15] This is particularly ironic when you consider that in the wake of the London terrorist bombings the police made numerous appeals for the public to come forward with any photographs they had taken on the day that could be relevant to their investigations.

These clampdowns also reflect a profound double standard because the police are increasingly trialling schemes that involve filming the public. For example in Northampton, police on motorcycles fitted cameras to their helmets to catalogue anti-social behaviour. [16] More recently, Essex police pioneered a scheme in which officers "knocked on the doors of known offenders, warned them that their behaviour would not be tolerated and then photographed them and their associates as they wandered around an estate for the next four days." [17] Britain is already the CCTV capital of the world with over four million cameras in operation filming individuals an estimated 300 times a day.

In recent months members of parliament have called for action to be taken. In March 2008 Austin Mitchell, a Labour MP, tabled an early day motion in the House of Commons which condemned growing police interference in photography on "specious grounds". By the end of June 2008 he had received the backing of over a third of MPs. And speaking in the House of Lords in July 2008, Lord Rosser called for "clearer guidelines to be consistently applied and a mutually acceptable balance between security needs and the legal right to take photographs in public places." [18]

The growth of surveillance

In June 2008, Jeremy Dear was told, in a letter from Home Secretary Jacqui Smith, that, although there is no legal restriction on photography in public places, police constables had the right to impose restrictions for "operational reasons" and that "...decisions may be made locally [by police] to restrict or monitor photography in reasonable circumstances". While the letter does not specify what qualifies as a "reasonable circumstance", Dear is in no doubt that restrictions are being liberally implemented by police. He highlights clampdowns on coverage of political protests at recent public events such as the Olympic torch rally and the visit of George Bush. More recently, journalists documenting demonstrators outside the US embassy in London have been threatened with having their camera memory cards seized. [19]

Perhaps the most brazen example of police obstruction and intimidation of the media occurred in August at the *Climate Camp* protest site outside Kingsnorth power station in Kent. Journalists were subject to stop and search procedures both upon entering and leaving the camp (taking up to 40 minutes), and there were multiple reports of police manhandling camera crews and photographers, and attempting to control where and when they could film. [20]

Alarming, members of the media are also being targeted and filmed by the Metropolitan Police's Forward Intelligence Team (FIT). FIT units are comprised of police officers in full uniform who use cameras, video and audio recorders to visibly surveil designated targets. They make no attempt to disguise their operations and are therefore often intimidatory. FIT existed as part of the Public Order Intelligence Unit which was established in the 1990s to monitor football hooligans, but was later expanded to monitor political protestors. In the last few years FIT has begun to routinely target members of the media who cover political protests.

In a meeting with one of the team's members, the NUJ was assured that media workers were not intended targets and that any photos taken of them merely represented "collateral damage". But at the *Climate Camp* journalists were filmed in a café several miles away from the protest site, and the claim is also disproved by a recent NUJ short film, released after the TUC conference to highlight the organisation's concerns, which contains footage of a photographer being overtly monitored for over five minutes. [21]

While provocative, this practice is obviously perfectly legal. What is unclear, however, is whether the surveillance of journalists goes beyond FIT's visibly discernable methods of recording data. Further, what information is being collected, what is it being used for and who has access to it? Having twice asked these questions in writing of former Metropolitan police Commissioner Sir Ian

Blair without reply, Jeremy Dear was hoping to receive clarification in a meeting with the Home Office on 14 October 2008, but a cabinet reshuffle led to its postponement.

Journalists and their sources

Speaking at the TUC conference, Jeremy Dear said:

The terrorising of journalists is not just done by shadowy men in balaclavas, but also by governments and organisations who use the apparatus of the law or state authorities to suppress and distort the information they do not want the public to know. The use of terrorism and SOCPA [Serious Organised Crime and Police Act 2005] increasingly criminalise not just those who protest but those deemed to be giving the oxygen of publicity to such dissent. [22]

In recent months this has been glaringly illustrated by unprecedented legal action brought against journalists. Sally Murrer, a freelance reporter, is currently awaiting trial on the relatively obscure charge of “aiding and abetting misconduct in a public office”. She was arrested in May 2007 on the basis of her association with police officer Mark Kearney, who she is alleged to have helped leak classified information. Having been under surveillance for months by security services - including having her car bugged - police carried out simultaneous raids on her home and place of work, the *Milton Keynes Citizen* newspaper. She has twice been held in police detention (once for 30 hours), strip-searched, and repeatedly told during interrogations that she would be jailed for life.

And yet it remains unclear exactly what Murrer has done to warrant the charges brought against her and the treatment she has received. All of the stories for which she used Kearney as a source, such as the arrest of a local footballer and the identity of a man killed in a fight, are relatively ordinary and localised and pose no threat to national security. Certainly Murrer’s methods of obtaining information are no different from those used by journalists throughout the country. But in February 2008, Kearney revealed that he had reluctantly taken part in a covert operation to bug a conversation between Labour MP Sadiq Khan and a constituent he was visiting in prison. Murrer says “this may be the missing piece of the jigsaw”, and speculates that “they tried to discredit the whistleblower and the journalist they thought he was going to blow the whistle to and destroy the story that way...they were trying to ruin him, destroying me in the process.” [23]

Murrer’s legal team are currently trying to have the case thrown out, arguing that bugging her conversations with Kearney breached her rights as a journalist under Article 10 of the *Human Rights Act*. But if she does go to trial and is found guilty, a precedent will have been set for the imprisonment of any journalist who receives information from a police or government source without official sanction. [24]

In another groundbreaking legal case in July 2008, investigative journalist Shiv Malik was ordered by the High Court to give Greater Manchester Police his source material on Hassan Butt, a self-confessed former militant extremist, on whom he had been writing a book. Malik had been seeking a judicial review against a production order, served to him in March under the *Terrorism Act 2000*, on the basis that its terms threatened both his safety and livelihood. Manchester police requested information on Butt after he was mentioned by a defendant in a forthcoming criminal trial, but the order required Malik to hand over all of his source material for the book; a move he argued would compromise multiple anonymous contributors. The judges agreed that the original order’s scope was too wide and narrowed its terms to information specifically related to Butt, but they dismissed Malik’s “frontal assault on the order itself” and ordered him to pay the police’s costs, adding that “proceedings should never have been brought.”

Speaking after the ruling, Malik acknowledged its severe implications for investigative journalism:

This makes it almost impossible for journalists working in the field of terrorism. It’s [The Terrorism Act] been a scythe hanging over our necks since it was enacted in 2000. Journalists in the field have been breaking the law and hoping they won’t get prosecuted. [25]

Writers can now be compelled to cooperate with police or face jail, undermining a fundamental tenet of journalism: journalists should be able to protect the identity of a source. This will undoubtedly have a profound impact on Malik because he works in the highly sensitive area of

Islamic terrorism where building trust and developing relationships with contributors is extremely difficult. He faces a sizeable task to maintain the contacts he has spent years developing because they can now legitimately reason that talking to him is little different from talking to the police. The obvious ramification of this is that information will be harder to come by; and this is to the detriment of both the police and the public.

Police have previously adopted far more dubious methods of procuring information from members of the media. Speaking at the NUJ Photographer's Conference in March 2007, solicitor Mark Schwartz said that police were spuriously arresting journalists and photographers in order to bypass safeguards afforded under PACE and gain access to their work:

At every demonstration, the police are figuratively scratching their heads as to how they can get hold of your material... What often happens is journalists are arrested, their material is taken from them, prosecution is not pursued, but then that material is used as part of the prosecution of non-journalists. [26]

Freedom of the press, a central tenet of any democracy, is being undermined. The media's inability to function freely and independently leads to the centralisation of information in the hands of the state. If access to sources and locations is mediated by police, courts and other institutions, there is a significant risk that journalists and photographers will become subservient to the very bodies civil society requires them to scrutinise. Better training of the police on media guidelines and the proper application of recent legislation is urgently required.

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