



Big Brother Watch
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By email only

Police treatment of legal observers

To the Commissioner of Police for the Metropolis

I am writing in support of legal action taken by [REDACTED] and to express serious concerns about the recent policing of protests, in particular the treatment of legal observers, and the implications of this policing for the right to freedom of expression, freedom of assembly and the right to privacy.

We understand that on 16th March 2021, four Black Protest Legal Support legal observers were arrested, with two taken into custody, whilst observing protests against the Police, Crime, Sentencing and Courts Bill that took place in London.

According to reports we have read and footage we have seen, Metropolitan Police Service (MPS) responded to the protests of 16th March in large numbers. Legal observers, whose voluntary role involves recording arrests and other police actions that take place, were clearly marked with high-visibility jackets. We were alarmed to learn that four legal observers were arrested simply for carrying out their important voluntary work. We were also concerned to learn that of the four arrested, three are from racialised groups, indicating disproportionate enforcement that has sadly characterised policing under the Health Protection Regulations.

We were also concerned to learn that some of the legal observers had their personal details taken without giving their consent, overriding vital legal safeguards.

Legal status of protests

The right to protest is protected by Articles 10 and 11 of the European Convention of Human Rights.

Protests were not prohibited under the Government's COVID-19 Regulations in place on 16th March. According to Mr Justice Holgate in *Jessica Leigh et al v Metropolitan Police Commissioner (2021)* "it is inappropriate to treat the 2020 Regulations as if they give rise to a blanket prohibition on gatherings for protest".

Regardless of the legal status of protests under COVID-19 regulations, legal observers are not protesters. Legal observers fulfil voluntary service, which under The Health Protection

(Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 is a 'reasonable excuse' for being outside of one's home.¹

The role of legal observers

The voluntary function of legal observers is of important value in a democratic society, providing basic legal guidance and acting as independent witnesses of police activity at protests.

Legal observers are not active participants in the protests that they monitor. Instead, they objectively observe, document, and report back on incidents that may occur which infringe on the freedom of association and assembly.

Last year, the UN Human Rights Committee said legal observers "must not face reprisals or other harassment... If an assembly is declared unlawful or is dispersed, that does not terminate the right to monitor".

Police targeting legal observers at protests is a violation of fundamental human rights.

Chilling effect

MPS appears to have been emboldened to suppress peaceful protests under the extraordinary powers in the Health Protection Regulations. This has had a chilling effect – however, MPS' targeting of legal observers is particularly chilling, as it runs the risk of deterring independent observers, wrongly criminalising volunteer work and corroding an important democratic function.

Big Brother Watch supports the claimants in this legal action.

Yours sincerely,

Mark Johnson

Legal and Policy Officer, Big Brother Watch

¹ The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, Schedule 3A, para 2(5)(a), para 6(4)(a)