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Metropolitan Police Service
Directorate of Legal Services
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By post and by email

cc
Cressida Dick QPM, Commissioner of the MPS
Max Hill QC, Director of Public Prosecutions
The Equality and Human Rights Commission
The Independent Office for Police Conduct

11 October 2019

Dear Directorate of Legal Services,

Extinction Rebellion and others – MPS human rights violations

We write regarding a concerning pattern of human rights abuses in the policing of the ongoing peaceful protests by Extinction Rebellion and other associated groups (which include global communities, disability groups, grandparents and grandchildren, scientists and former police officers). The abuses include, *inter alia*:

- Armed police, carrying rifles, stopping members of Extinction Rebellion and ordering them to put their hands in the air
- An officer breaking the finger of a peaceful protestor
- A plain clothes police officer attempting to incite violence in the crowd
- Arbitrary and aggressive use of stop and search powers
- Treading on protestors and dragging protestors
- Criminal damage
- Forcefully removing tents without checking whether children or others were inside

- Seizing portaloos, nappies, food, cooking equipment and disability ramps under the pretext that such items were needed in “evidence”
- Cyber attacks on social media assets
- Failing to investigate evidence in favour of the protestors, in breach of CPIA
- Ignoring CPS guidance on policing peaceful protest.

This pattern is consistent with a recent UN report, which warned that the climate crisis is the “greatest ever threat to human rights” referring both to the direct impacts of the crisis and attacks on activists who are challenging vested economic interests by demanding action on the crisis¹.

Given the seriousness of the matters in issue, we look forward to your early response.

Plan B’s charitable purposes

I write on behalf of Plan B. Earth (“Plan B”). Plan B is a charitable incorporated organisation registered with the Charity Commission with charitable objects including:

“to promote human rights (as set out in the Universal Declaration of Human Rights and subsequent United Nations conventions and declarations) in so far as they are threatened or adversely affected by the impacts of climate change and other environmental degradation, in particular by:

- *preventing infringements of such rights;*
- *obtaining redress for victims where such rights are infringed;*
- *promoting respect for such rights ...”.*

The Metropolitan Police Service’s (“MPS”) duty to pursue reasonable lines of inquiry

The MPS has a moral and legal obligation to take reasonable and proportionate measures to uphold the right to life (pursuant to Article 2 of the ECHR and its duty of care to the public). Under the CPIA Code of Practice, para. 3 it also has an obligation to pursue all reasonable lines of inquiry, both for and against any suspects:

“...In conducting an investigation, the investigator should pursue all reasonable lines of inquiry, whether these point towards or away from the suspect. What is reasonable in each case will depend on the particular circumstances.”

The MPS is, or at least ought to be, aware that protestors consider their actions to be a reasonable and proportionate response to the risk of mass loss of life from the heightening

¹ [“Climate crisis is greatest ever threat to human rights, UN warns”](#), The Guardian, 9 September 2019

climate and ecological emergency. The legal test for the defence of necessity is set out in the case of *Re A (conjoined twins) [2001] 2 WLR 480* as follows:

“(i) the act is needed to avoid inevitable and irreparable evil;

(ii) no more should be done than is reasonably necessary for the purpose to be achieved;

(iii) the evil inflicted must not be disproportionate to the evil avoided.”

On the basis that loss of the conditions which makes the planet habitable is a greater harm than temporary disruption to traffic, the protestors have a good defence in law which the police are bound to investigate, pursuant to their obligations under the CPIA Code. Yet the police are systematically failing to carry out such investigation.

In attempting to suppress action which is necessary to prevent mass of life, the MPS risks complicity in that loss of life, contrary to its duty of care to the public.

I attach a short climate science annex to this letter, which summarises the urgency and gravity of our current situation, according to established science.

Saturday 5 October 2019

Unlawful entry and seizure of property

It appears that on Saturday 5 October, police officers were conducting a covert surveillance operation in the vicinity of the former Lambeth County Court, Cleaver Street, Kennington, London SE11 4DZ in advance of peaceful Extinction Rebellion protests which had been planned to take place across London from 7 October 2019.

Officers arrested ten people on suspicion of conspiracy to cause a public nuisance, apparently on the basis that they were moving equipment such as portaloos and cooking equipment, to be used in the protests. The offence carries a maximum sentence of life imprisonment. The charge was not applied to any of the more than a thousand arrests occurring during similar protests in April. Officers forced entry to the building using a battering ram, despite the property being a Listed building.

They seized and removed various items of private property and equipment (“the Property”) which were likely to be used to support Extinction Rebellion protests. These items were necessary for Extinction Rebellion to ensure that the thousands of participants would be safe, that public spaces would be kept clean and hygienic, and that any disruption to the local community could be minimised. They included:

- First aid kits
- Nappies
- Wheelie bins to ensure the sites are kept clean
- Shelters
- Cooking equipment and food
- Disability ramps
- Disability toilets
- Other specialist disability equipment
- Banners, flags and placards and speaker equipment.

Prior to the Property being seized, I wrote to Detective Inspector Neil Gunn, the officer in charge of the scene, asking him not to remove property that was needed to ensure the safety of protesters. This was refused on the grounds that the items “taken as a whole... represent major infrastructure to support long term camps which are intended by XR to be situated at various locations in London.” He claimed that “People’s rights under Articles 10 & 11 have not been impacted by the actions taken today”. I enclose these emails as an annex to this letter.

Later, I attended the site and spoke to another officer in charge (Neil Gunn was no longer at the scene) who did not give his name. I asked why it was necessary to seize portaloos and related equipment. The officer said that the police did not want the protesters “to get too comfortable” because that would “prolong their stay”.

The police’s actions were disproportionate, unlawful and contrary to fundamental rights. The police purported to rely on section 32 of the Police and Criminal Evidence Act 1984 (“PACE”) to force entry to the premises and carry out searches and section 19 of PACE to seize the Property. As explained below, this does not withstand scrutiny.

Entering the Property was unlawful

A search under section 32 of PACE is not lawful unless (among other things):

- (a) the arrestee was at the premises when arrested or immediately before the arrest (s.32(2)(b));
- (b) entry was for the purpose of seizing evidence in relation to an indictable offence for which the arrestee has been arrested (s.32(2)(b)); and
- (c) entry was “reasonably required” for such purpose (s.32(3)) and the constable reasonably believes there is evidence on the premises (s.32(6)).

In this case, the Property was not evidence sufficiently related to the alleged offences of conspiracy. The essence of a conspiracy is an agreement to commit an offence. It cannot reasonably be said that support equipment is likely to be exhibited as evidence of such a conspiracy, and it is difficult to understand why it would be relevant in court. People were simply

preparing for a large-scale protest action, in accordance with the right to freedom of expression and freedom of assembly.

We are also concerned that the conduct of the search did not comply with paragraphs 6.4-6.12A of PACE Code B and, in particular, paragraphs 6.4-6.6. The officer in charge must try to obtain the occupier's consent before entering and must explain the basis on which the search is being carried out. Police officers may only enter a building by force if:

- (a) it is reasonable, proportionate and necessary to do so; and
- (b) one of the conditions in paragraph 6.6(i)-(iii) applies.

We have no evidence that these rules were complied with.

It follows that the search was not reasonably required for the seizure of evidence and was disproportionate. As a result, the search of the building amounted to unlawful trespass to land.

Seizing and retaining the Property was unlawful

Because the seizure of Property derived from an unlawful search, it follows that it was unlawful. However, regardless of the legality of the search as a whole, it is clear that it was wholly outside the police's powers to seize and retain any of the Property:

- (1) The Property was not "obtained in consequence of the commission of an offence" (PACE s.19(2)(a)) or "evidence in relation to an offence" (PACE s.19(3)(a)). Most or indeed all of the Property was designed to support entirely lawful activities. It was not evidence.
- (2) There cannot possibly have been grounds for believing the Property was going to be "concealed, lost, altered or destroyed" (PACE s.19(2)(b); s.19(3)(b)) if it was not taken into police custody.
- (3) If the Property was taken for evidence, then the police could simply take photographs of it (PACE ss.22(4); PACE Code B, paras 7.14-7.15). There is no reason to believe it will be used for forensic investigations (PACE s.22(2)). As such, it is not "necessary in all the circumstances" to retain the Property (PACE s.22(1)). Even if it had been taken lawfully, it cannot possibly be retained lawfully.

In fact, the motive for seizing the Property was (as the officer in charge told me) because the police did not want Extinction Rebellion participants to get "too comfortable" because that would "prolong their stay". In any event, the effect of seizing it was to make it more inconvenient for people to take part in peaceful protests and to disrupt Extinction Rebellion activities.

This was a disproportionate interference with participants' rights to freedom of expression and assembly under articles 10 and 11 of the Convention. Article 10 guarantees the right to freedom of expression and Article 11 to freedom of assembly and association. No restrictions can be placed on these rights which are not (a) prescribed by law, (b) necessary in a democratic society and (c) proportionate.

As mentioned, the seizure of property was not prescribed by law: the police's actions fell outside the scope of lawful authority provided for by s. 19 PACE. Additionally, or in the alternative, the nature of the interference was not necessary and proportionate: the Property seized included a large number of entirely innocuous and unobjectionable items such as cushions and cooking equipment. The impact on people's right to take part in peaceful protests was out of all proportion to the police's interest in gathering evidence (if any such interest existed in this case).

Finally, as mentioned above, the Property included a number of disabled ramps, toilets, first aid kits and other equipment to facilitate the participation of disabled people in Extinction Rebellion protests. It also included nappies, portaloos and other equipment which would have facilitated the participation of carers of young children and especially women. The seizure and retention of such equipment breaches the police's public sector equality duty (s.149 Equality Act 2010) and the right to take part in political events without lawful discrimination under articles 8, 10, 11 and 14 of the ECHR. We would also refer you, in particular, to paragraph 1.3A of PACE Code B which deals with unlawful discrimination during searches and seizure of goods.

The retention of the property seized is unlawful and represents a disproportionate interference with the rights of their owners and other Extinction Rebellion participants to express their views on the climate and ecological emergency. The police's whole approach was oppressive given the context of peaceful protest and assembly.

As such, please give written confirmation by close of play on 11 October that the Property will be made available for collection by its owners immediately.

In any event, please also confirm that full itemised details of the searches were produced in compliance with paragraph 8.1 of PACE Code B and that you are prepared to provide lists of, and supervised access to, the Property in accordance with paragraph 7.16 of PACE Code B.

If we do not receive a satisfactory response, we will consider further steps what further steps may be taken.

Armed police stopping members of Extinction Rebellion and demanding they put their hands in the air

Between 16:00hrs and 16:26hrs, two people who were driving milk and T-shirts away from the Lambeth property, were stopped by approximately six to eight armed police. They were ordered to put their hands in the air and to get out of their vehicle. One of the officers asked if the

people were members of Extinction Rebellion and they confirmed that they were. They said they wanted to search the vehicle for firearms following an anonymous tip-off. Needless to say, the vehicle did not contain firearms or any other prohibited item. One of the officers suggested the “tip-off” may have been malicious as lots of people “don’t like Extinction Rebellion.” The individuals were not arrested.

As your officers must have been aware, non-violence is a core principle of Extinction Rebellion. Please provide the justification for the use of armed police officers in the context of a peaceful protest movement. We reserve our rights to write to you further on this issue.

Policing of the protests from 7 October

We and others reserve our rights to write to you separately regarding the policing of the protests from 7 October more generally, once further reports have been gathered and investigated. However the pattern of reports and complaints emerging is already so serious, they demand urgent attention even at this stage.

1. Assault on a peaceful protestor

On Monday 7th of October, at around 11am, a police officer grabbed a protestor by the finger and broke the finger. The protestor was not committing any offence and was not arrested.

2. Plain clothes police officer inciting violence

On Monday 7 October a woman was seen to be inciting violence on Westminster Bridge, pushing various members of the crowd. Peaceful protestors reported her to the police. The police stopped her and spoke to her then released her. She continued to push members of the crowd, and when one responded in kind she shouted loudly “assault”. It transpired that she was a plain clothes police officer.

3. Aggressive use of stop and search powers

There have been reports of police using stop and search powers against protestors on the basis that they were wearing XR badges.

4. Violent conduct

Tuesday 8th October, 13:00hrs

Tufton Street, outside police van BX67 EVW

Officers SW2731 and SW1558 forcibly dragged an unwell woman, from a seated position on the pavement into a police van, just by holding her under her arms. This was despite her friends requesting that they ask two more officers to assist.

Wednesday 9th October, 16.10hrs

Time: between 16:10-16:15

Place: outside Pret A Manger on Whitehall pavement

Incident: police treading on people and aggressively dragging.

Multiple officers involved including U3951

There have been numerous reports of the violent seizure of tents, with police failing to check first whether the tents were occupied.

5. Criminal damage

There have been numerous allegations of criminal damage to property by police officers.

6. Oppressive conduct

The police have threatened numerous ordinary people with arrest for conspiracy to commit public nuisance (a sentence punishable with life imprisonment) and aiding and abetting a public nuisance, simply on the basis that they have been offering various forms of human and practical assistance to the protestors. To give one example, a person who was attempting to remove bags of rubbish from a protest site was told by the police that if he were to do so, he would be liable for arrest as an organiser.

7. Cyber attacks

There have been numerous reports of attacks on Extinction Rebellion social media assets, including its website and crowd-funding platform.

Clearly such matters require further investigation. For the moment they are included in correspondence as indicative of a disproportionate and oppressive approach to policing non-violent protestors, who are demanding that the Government should act on the urgent warnings of scientists.

The Code for Crown Prosecutors

On 28 January 2019 the Crown Prosecution Service published advice on “Offences during Protest, Demonstrations or Campaigns”. This states as follows:

“Criminal law in respect of public order offences is intended to penalise the use of violence and/or intimidation by individuals or groups. In addition, behaviour which is repeated and unwanted by the victim and which causes the victim alarm or distress may constitute harassment. Such behaviour may also motivated by hostility to race or religion or other protected characteristics ...

Prosecutors must apply the principles of the European Convention on Human Rights (the Convention), in accordance with the Human Rights Act 1998, at each stage of a case. It is a defence to prove the conduct was reasonable and in accordance with the freedom of expression and other freedoms. If these freedoms are engaged, a justification for interference with them (by prosecuting) must be established. A prosecution may only proceed if it is necessary and proportionate.”

The approach adopted by the police, which include threats of serious charges for minor acts of assistance, such as clearing rubbish or preparing food, implies that the police have treated the CPS guidance as irrelevant.

The discredited “Extremism Rebellion” report

In July 2019, the “think-tank”, Policy Exchange, published a report called “*Extremism Rebellion*”, calling for a more aggressive response to the Extinction Rebellion movement. One of the authors of this report, Richard Walton, was a former head of the MPS’ counter terrorism command and is now an “independent consultant”.

On 19 August 2019 Vice Magazine revealed that Policy Exchange is funded by the energy companies who stand to lose substantial profits if Extinction Rebellion’s demands are realised². This information had not been disclosed by Policy Exchange despite their claims to independence.

We are concerned that the approach now being adopted by the police, which is so different from the way protests were policed in April, implies that the police have relied upon the conclusions of this discredited report.

Conclusion

The police have a responsibility to protect the public from harm. As is widely acknowledged the climate and ecological emergency threatens harm on a vast scale, including from food shortages and civil disorder. Please consider the recently released video statement from a

² Group That Called Extinction Rebellion 'Extremist' Is Funded By Big Energy, Vice, 19 August 2019, https://www.vice.com/en_uk/article/ywagdx/policy-exchange-extinction-rebellion-funding

number of former police officers who have joined the protest movement, including former Chief Superintendent Rob Cooper, which discusses this further³.

People are scared for their lives. As the Government's own former Chief Scientist, Sir David King, has recently said, they are scared with good reason⁴. It is wrong that the police should attempt to intimidate people who are acting in self-defence and in defence of others.

Temporary disruption to "the business-as-usual", the "business-as-usual" which scientists tell us must change, does not involve a breach of human rights. It is not, as a matter of law, a good reason to erode the protected rights to freedom of assembly and freedom of expression and cannot justify the oppressive tactics being adopted.

As a former Deputy Director of the Serious Organised Crime Agency, I know from experience that there are many dedicated people working in law enforcement, who take seriously their responsibility to the public. It is sad to see these public servants now being instrumentalised to persecute those they are there to protect.

Extinction Rebellion activists are being treated as criminals. Their "crime", let's remember, is to demand the action required (according to science) to prevent the ultimate humanitarian catastrophe.

We look forward to your urgent response to the matters set out above.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tim Crosland', written in a cursive style.

Tim Crosland, Director, Plan B

³ https://www.youtube.com/watch?v=KtuGFhP_asM

⁴ "Climate change: It's right to be scared, says top UK scientist", Evening Standard, 16 September 2019 (<https://www.standard.co.uk/news/world/climate-change-its-right-to-be-scared-says-top-uk-scientist-a4237706.html>)

Annex 1: Enclosures: emails between Tim Crosland and Neil Gunn
Annex 2: Summary of climate science

Correspondence with DI Neil Gunn

Hi Neil

I've now spoken to people who know what's stored at the site.

The site contains everything to comply with the duty of care to ensure the tens of thousands of people who will be on the streets on Monday will be safe, and to ensure that sites are kept clean and hygienic:

Disability ramps

Disability toilets

Other specialist disability equipment

First Aid Kit

Nappies

Wheelie bins to ensure sites are kept clean

Portaloos

Shelter

We've spoke to external lawyers and are deeply concerned about the prospect of such items being removed. That will not stop people coming on Monday. The reaction to the seizure of such items is likely to have the opposite effect and most people have organised their transport long ago.

The seizure of such items will however prevent those people being safe.

Nor do we consider that the removal of such material would be a lawful exercise of PACE s. 19. It would not, in our view, be a genuine exercise in evidence gathering. It would be a misuse of s. 19 in order to frustrate rights under the Human Rights Act 1998, Articles 10 and 11.

But aside from any legal dispute over the use of PACE, we do ask you please to consider your duty of care to the families, disabled groups and others who will be coming to the capital en masse.

Wayne is aware that a number of "safe sites" have been organised by families, disability groups, groups from minority backgrounds and others who do not wish to risk arrest. Wayne has the detail of these sites. As I understand it, these sites have not formally been agreed by the police, but representatives from XR have been open and transparent about the plans for these sites.

Removing the equipment that is to be used to make sites safe and hygienic, where people will exercise their rights to protest against government inaction on the climate and ecological emergency, would, in our view be a serious breach of the duty of care and the Human Rights Act.

In the circumstances we request that:

i) you do not remove any material that is needed to keep people safe;

ii) you provide itemised justification for any property you consider to be subject to seizure under PACE s.19.

Best,

Tim

Tim

Apologies for the delay in getting back to you but I have literally just logged onto my computer.

I am not going to get into a long back and forth with you about the items that we seized but taken as a whole they represent major infrastructure to support long term camps which are intended by XR to be situated at various locations in London. There has been no agreement with the police in respect of these camps.

People's rights under Articles 10 & 11 of ECHR have not been impacted by the actions taken today which in no way prevent people coming to London to demonstrate as they are lawfully entitled to do.

Further correspondence in respect of today's actions should be directed to the Directorate of Legal Services for the Metropolitan Police.

With kind regards

Neil Gunn

*A/Detective Inspector Neil Gunn
Operation Cymbaline
Met Ops 6 – Public Order Crime Team*

Annex 2 Summary of Climate Science

What would 4°C warming mean?

According to the UK Committee on Climate Change, October 2008

"The Committee's judgement, on the basis of the IPCC AR4 report, is that ... if a 4°C rise were reached, extreme consequences potentially beyond our ability to adapt would arise. We therefore believe that global policy ... should ensure that the probability of crossing the extreme danger threshold of 4°C is reduced to an extremely low level (e.g. less than 1%)."

According to Professor Kevin Anderson, Tyndall Centre:

"there is a widespread view that 4°C is:

- incompatible with an organised global community
- beyond 'adaptation'
- devastating to eco-systems
- highly unlikely to be stable (tipping points, etc.)

and consequently, 4°C should be avoided at 'all' costs."

According to Professor Jonas Rockstrom, as set out in his interview with the Guardian in May 2019:

"Indeed, the consequences of a 4C warmer world are so terrifying that most scientists would rather not contemplate them, let alone work out a survival strategy.

Rockström doesn't like our chances. "It's difficult to see how we could accommodate a billion people or even half of that," he says. "There will be a rich minority of people who survive with modern lifestyles, no doubt, but it will be a turbulent, conflict-ridden world."

What's the probability of crossing 4°C?

According to last full IPCC report, AR5, from 2014:

"In most scenarios without additional mitigation efforts ... warming is more likely than not to exceed 4 degrees C above pre-industrial levels by 2100." [Summary for Policy Makers, s.3.2, p.18]